

1929.
NEW ZEALAND.

NATIVE LAND AMENDMENT AND NATIVE LAND CLAIMS ADJUSTMENT ACT, 1928.

REPORT AND RECOMMENDATION ON PETITION No. 263 OF 1928, OF PARE TE PUTU,
RELATIVE TO WRONGFUL ALIENATION OF HER MOTHER'S LANDS.

Presented to Parliament in pursuance of the Provisions of Section 50 of the Native Land Amendment and Native Land Claims Adjustment Act, 1928.

Native Department, Wellington, 26th September, 1929.

Petition No. 263 of 1928.—Timata Titoko's Settlement.

PURSUANT to section 50 of the Native Land Amendment and Native Land Claims Adjustment Act, 1928, I transmit herewith the report of the Court upon the allegations contained in the above-mentioned petition.

In view of that report I have no recommendation to make.

R. N. JONES, Chief Judge.

The Hon. the Native Minister, Wellington.

In the Native Land Court of New Zealand, Waikato-Maniapoto District.

Re Timata Titoko (deceased).—Reference by you under section 50/1928 for inquiry and report as to petition No. 263/1928, by Pare te Putu.

The Chief Judge, Native Land Court, Wellington.

I HELD inquiry herein at Auckland on the 19th November last. Petitioner was represented by Mr. Armstrong, and George Swanson and his children by Mr. Vallance.

The complaint is as to two deeds of settlement executed by the deceased in 1874. The first deed, dated the 1st October, 1874, settled certain lands upon her son George Swanson for life. The second deed, dated the 2nd October, 1874, recites the first and the settlor's desire to settle her reversion in the said lands. It provided for remainder to George Swanson's wife and children; then, upon failure of them or their issue, to William Swanson (the younger) and Charles Swanson (half-brother of George Swanson but not children of settlor) or their issue; then, upon failure of them, to "Mary of Waikato and Ani now residing at Rarotonga." "Mary of Waikato" is the petitioner, while Ani is her half-sister by another husband of the deceased.

William Swanson (the elder) was appointed trustee of the settlement, but in 1886 appointed George Swanson in his stead. The Court file shows you have copies of the two deeds of settlement.

Mr. Vallance stated that he did not dispute paragraphs 1 to 6 of the petition, except that it was denied that petitioner was a natural daughter of William Swanson. No evidence was called, or, I think, could be called, to support this denial after so many years; but I do not regard it as material. Mr. Armstrong stated he admitted the due execution of the deeds and that he could not attack them in law, but he suggested that the terms are such as to raise a strong presumption that deceased did not execute them of her own free will, because her own daughters are postponed to collaterals of George Swanson, her son.

The petitioner then gave evidence at length, the only other witness being her daughter-in-law, Te Puea Herangi. The latter's knowledge is confined to the last twenty years, and went only to show that petitioner and family have been in poor circumstances.

The petitioner's evidence does not bear out the allegations in the petition in some important respects, notably paragraph 7, to which I will refer later. Mr. Armstrong, who prepared the petition, admitted that his instructions were faulty.

After the lapse of more than fifty years it is, of course, impossible to get any very satisfactory evidence, but from the evidence and admissions I think the history of the matter is somewhat as follows :—

The deceased lived with William Swanson (the elder) as man and wife, and they had George Swanson, who is still living, well on in the “seventies.” Subsequently the deceased, either by Swanson or some other man, had the petitioner, who is not so old as stated in the petition, though over seventy. Her own evidence is that when she was born she was taken to Waikato and brought up by her mother’s people, and that she had always been with the “Kingites.” She went on to say, “I did not visit my mother again, but she came to see me now and again. I was not married then.”

I doubt the statement as to the mother’s visits. But witness stated, and it was not denied, that when she was grown up and shortly before her marriage George Swanson took her to see their mother at Turua, near Thames. The mother had left Swanson and was living with a Native called Rongopiri. Prior to this petitioner had never seen her brother George Swanson, and had to be told by others who he was. She states that she stayed some time with her mother, who consented to her marrying one Katipa. Petitioner then returned to Waikato, and obviously did not see her mother again for many years, if ever. At the time of petitioner’s visit to Turua, Ani Rongopiri (“Ani of Rarotonga”) was not born, because petitioner says, “I never saw Ani Rongopiri till she came back from Rarotonga. I heard she was adopted by a chief of Rarotonga and married another, Vaikai.” I knew Vaikai. He died in New Zealand about ten years ago, and his wife returned to Rarotonga and is now dead; had no issue. Petitioner continued that when Rongopiri died at Turua the deceased went to live at Devonport. She asserts that she paid her mother a short visit there and was invited to come again, but the mother died soon after. No one is in a position either to corroborate or contradict this. Copy of entry in the register of the death of the deceased was produced showing that she died on the 14th August, 1885, her age being given as eighty-five. She died at Devonport, and I think it is clear that she was living there when the deeds were executed in 1874. These deeds were prepared by Hesketh and Richmond, a firm of highest repute. They are certified to by a Trust Commissioner.

According to the petitioner, her mother lived by herself at Devonport. It is common ground that she did not live with Natives or on Native land. Though there is no evidence of it, I have no doubt she was maintained during her old age by the Swansons and placed by them at Devonport. There was no one else to look after her. If this were so, it would supply a motive for the settlement. The very slight intercourse which took place between the deceased and her daughters may have been a reason, though possibly not an adequate one, for their postponement to the Swanson collaterals. I need not enlarge on the inadequacy, and even eccentricity, of the reasons which sometimes guide settlers or testators.

The settlement was, no doubt, unfortunate for the petitioner. Though it did not dispose of the whole estate of the settlor, it did embrace what has turned out to be far the most valuable portion of it. If not settled, however, I do not doubt it would long since have been sold. Petitioner is not wholly landless, nor are her children, but apparently they derive little from such land as they have. Petitioner herself was shown to possess over 200 acres. She admitted having sold one interest for a considerable sum. But no doubt she and her family have had a hard struggle.

While having full sympathy for her, I do not see that I can make any recommendation under the circumstances.

The title to the settled lands is apparently not Land Transfer.

Morrinsville, 12th December, 1928.

THOS. MACCORMICK, Judge.

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