

1929.
NEW ZEALAND.

THE NATIVE LAND AMENDMENT AND NATIVE LAND CLAIMS ADJUSTMENT ACT, 1927.

REPORT AND RECOMMENDATION ON PETITION NO. 13 OF 1927, OF TE PAEA PARO (SOPHIA BARLOW),
RELATIVE TO SUCCESSION TO MATIRE TOHA, DECEASED, IN MANGERE LOTS 3, 7, 13, AND 15,
AND LOT 243, WAIKOMITI.

*Presented to Parliament in pursuance of the Provisions of Section 63 of the Native Land Amendment
and Native Land Claims Adjustment Act, 1927.*

Native Department, Wellington, 10th September, 1929.

Petition No. 13 of 1927.—Allotment 3, Mangere and other Lands.

PURSUANT to section 63 of the Native Land Amendment and Native Land Claims Adjustment Act, 1927, I herewith forward the report of the Court herein.

The conveyance by Matire Toha to Hone Kawhena, of the 27th September, 1875, is absolute in its nature. It is expressly reserved to Hone Kawhena his heirs and successors according to Native custom. This is quite unusual, and could not have happened by accident. It bears the certificate of a licensed Native interpreter that he properly explained its contents to Matire Toha in the Maori language, and that she fully understood its purport and effect. It is witnessed by H. T. Kemp, Resident Magistrate, who was himself a Maori scholar, and also by a Native assessor, Paora Tuhaere. In addition, it bears the certificate of a Trust Commissioner, Colonel Haultain, who would be particularly careful in a transaction which was a gift between husband and wife. It was part of his duty to ascertain whether the parties to the transaction understood the effect thereof. In addition, in 1881 Hone Kawhena conveyed part of the land to a European, and in 1882 another part to another Native. It is impossible to suggest in the face of these facts that any fault in the drawing-up of the deed between Matire Toha and her husband was due to the misunderstanding of the solicitor who drew the deed as to the instructions given to him. It may be, of course, that there was some private arrangement between husband and wife, but no proof of this has been given.

Under the circumstances I have no recommendation to make in the matter.

The Hon. the Native Minister, Wellington.

R. N. JONES, Chief Judge.

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

*Matire Toha (deceased).—Reference by you under Section 63/1927 for Inquiry and Report as to
Petition No. 13/1927 by Te Paea Paro.*

The Chief Judge, Native Land Court, Wellington.

I HELD inquiry into this matter at Auckland on the 26th September last. Petitioner was represented by Mr. Sullivan, and the present owners of the property by Mr. Robb. Both parties called evidence and submitted argument in writing.

The lands affected by the petition are those included in conveyance No. 111818, dated 22nd March, 1889, from Hone Kawhena to Pukenui Tuia and William Swanson.

Following is a list of the deeds, in order of registration, affecting these lands :—

- Conveyance No. 52582, dated 27th September, 1875 : Matire Toha (Crown grantee) to Hone Kawhena.
- Conveyance No. 79302, dated 1st December, 1882 : Hone Kawhena to Honana Maioha (part of the lands in 52582).
- Conveyance No. 79989, dated 5th September, 1881 : Hone Kawhena to C. A. Brown (of another part of the lands in 52582).
- Conveyance No. 111818, dated 22nd March, 1889 : Hone Kawhena to Pukenui Tuia and William Swanson (of the residue of the lands in 52582).
- Memorial No. 112135, by Matire Toha, of action pending against Tuia, Swanson, and Kawhena.
- Conveyance No. 137362, dated 12th October, 1896 : Pukenui Tuia and Wiremu Taumaihi to Charles Swanson (part of land in 111818).
- Conveyance No. 157194, dated 15th July, 1901 : Tuia and Swanson to C. and G. Swanson (of all the residue in 111818).

The land in conveyance 157194 was subsequently brought under the Land Transfer Act, and a certificate (Volume 202, folio 226) issued on the 12th March, 1913, in the names of C. and G. Swanson for Allotments 7, 15, 30, and portion of 13, Village of Mangere, together containing 16 acres 1 rood 38.9 perches.

At the time conveyance No. 52582 was executed (27th September, 1875) Hone Kawhena and Matire Toha were living together as man and wife. The consideration expressed in the deed is "the natural love and affection she the said Matire Toha hath and beareth to the said Hone Kawhena and the sum of ten shillings." The deed was drawn by E. T. Dufaur, solicitor, and was executed in the presence of H. T. Kemp, Resident Magistrate ; Paora Tuhaere, of Orakei, Native assessor ; and E. T. Dufaur. A statement in the Maori language is endorsed on the deed, and E. S. Willcocks, a duly appointed interpreter, certifies that he properly explained the deed in the Maori language to Matire Toha before she executed it, and that she fully understood the purport and effect thereof. A certificate by Trust Commissioner T. M. Haultain, dated the 27th September, 1875, is also endorsed.

The petitioner alleges that this conveyance, owing to Mr. Dufaur's imperfect knowledge of the Maori language, conveyed the lands named therein to Hone Kawhena absolutely, instead of, as Matire Toha had intended, for a life interest only.

She claims that when the mistake was discovered, in 1877, Mr. Dufaur conferred with Hone Kawhena, and was then instructed by Hone and Matire to prepare a deed of correction. No evidence of this, however, was produced to the Court. Apparently no such deed of correction was drawn. A copy of a will drawn by Mr. Dufaur and executed by Hone Kawhena on the 18th October, 1886, was put in. This devises all his real and personal property to executors in trust for Sophia Barlow (the petitioner) for a life interest, with remainder to her natural children or her heirs. Prior to the execution of this will Hone Kawhena had sold Allotment 243, Parish of Waikomiti, and part of Allotment 13, Village of Mangere (conveyances Nos. 79302 and 79989).

On the 22nd March, 1889, he conveyed the residue of the land in conveyance 52582 to Pukenui Tuia and William Swanson. This deed was executed with the usual formalities in the presence of John G. Blyth, solicitor, Auckland, who certified that before signing the same it was read over and properly explained to Hone Kawhena by George Brown, a licensed interpreter, and J. R. R. Blomfield, gentleman, Auckland. A Trust Commissioner's certificate, dated the 9th July, 1889, by Mr. H. G. Seth-Smith, is also endorsed thereon.

It seems that Matire Toha got to know of the execution of this conveyance in April, 1889. It is on record that she instituted the proceedings in the Supreme Court referred to in the petition. These were filed on the 20th August, 1889, but owing to the death of the plaintiff intervening the action did not come to trial.

On the 12th October, 1896, Pukenui Tuia and Wiremu Taumaihi conveyed an area of 1 acre and 7 perches, being part of Allotment 13, Parish of Mangere, to Charles Swanson, the consideration being the sum of £100. Hone Kawhena joined in the conveyance, as it is stated that on the execution of conveyance 111818 there was an honourable understanding that he was to receive the rents and profits derived from the lands during his lifetime, but that such payments should be merely voluntary and should not be legally enforceable.

On the 15th July, 1901, William Swanson, jun. (otherwise Wiremu Taumaihi), and Pukenui Tuia conveyed to Charles Swanson, of Auckland, and George Swanson, of Whatawhata, in trust, the residue of the area in conveyance 111818.

Although no mention of this conveyance is made in the petition, petitioner attacks it on the ground that the consideration (10s.) was inadequate, and that the deed was not confirmed under the provisions of the Maori Land Administration Act, 1900. As the land was not owned by more than two owners, the Act of 1900 did not apply ; and, in any case, the Maori Land Act of 1900 was not operative, as the boundaries of the Waikato district, in which these lands are situate, were not gazetted until the 10th July, 1902 (section 5, Maori Land Administration Act, 1900). The conveyance was attested by Judge Brabant, who gave the certificate required by section 55 of the Act of 1894. The nominal consideration paid for this very valuable property appears to be quite inadequate ; but it is to be observed that Pukenui Tuia was to have the use of a portion of Lot 15, containing 1½ acres, which he was then occupying, for his lifetime free of rent, and also two-thirds of the net revenues derived from the leases of the remainder of the property while he and Swanson remained alive, and the whole of the net revenue during his lifetime if Swanson predeceased him.

Respondent's counsel suggests that the circumstances and the relationship existing between Hone Kawhena, Pukenui Tuia, and William Swanson would have been known to the Trust Commissioners certifying to the same, and who by appending their certificates approved of the transaction evidenced by the deeds.

I find that Matire Toha conveyed the sections to Hone Kawhena while they were living together as man and wife. She raised no objection to sales of parts of the properties to Honana Maioha in 1882 and C. A. Brown in 1881. These conveyances were drawn by Mr. Dufaur, who had previously acted for Matire.

Apparently Matire and Hone Kawhena were still living amicably together in 1886 when the will of the latter in favour of Matire's granddaughter was executed (18th October, 1886), but separated before the 22nd March, 1889, the date on which Hone Kawhena conveyed to Pukenui Tuia and Swanson. No evidence of their relationship at this date has been submitted, but as Matire almost immediately afterwards commenced her action in the Supreme Court it can be assumed their relations were not amicable.

It is clear that petitioner had no case in law, otherwise she would have taken action in the Supreme Court. So much was admitted by her counsel.

The nature of any redress to remedy the indiscretion of her grandparent is one for the consideration of Parliament, and it must be remembered that, as the present owners hold under a Land Transfer title, they will probably have a substantial claim against the Assurance Fund in the event of their being dispossessed of the whole or part of their title.

E. P. EARLE, Commissioner.

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