

1929.
NEW ZEALAND.

NATIVE LAND AMENDMENT AND NATIVE LAND CLAIMS ADJUSTMENT ACT, 1925.

REPORT AND RECOMMENDATION ON PETITION No. 175 OF 1924, OF MITA WEPIHA AND OTHERS,
RELATIVE TO MOTUKINO ISLAND.

*Presented to Parliament in pursuance of the Provisions of Section 34 of the Native Land Amendment
and Native Land Claims Adjustment Act, 1925.*

Native Department, Wellington, 27th September, 1929.

Petition No. 175 of 1924.—Motukino (or Fanal) Island.

PURSUANT to section 34 of the Native Land Amendment and Native Land Claims Adjustment Act, 1925, I herewith transmit the report of the Court herein.

The matter of the ownership of the islands was settled by a competent Court set up for the purpose, and a grant was issued on the 30th August, 1864, which the Act under which it was issued declared to be valid and effective against the Crown and all other persons whatsoever. The Crown later acquired the land for valuable consideration.

In view of the 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, Tokerau District.—In the matter of section 34 of the Native Land Amendment and Native Land Claims Adjustment Act, 1925; and in the matter of petition No. 175 of 1924, of Mita Wepiha and others, praying that Motukino Island be revested in them.

To the Chief Judge, Wellington.

At a sitting of the Court held at Whangarei on the 28th September, 1928, before Frank Oswald Victor Acheson, Esquire, Judge, after inquiry into the claims and allegations made in petition No. 175 of 1924, it was decided to report as follows:—

(1) The island affected, called Motukino Island by the Natives, is part of what is now known as the Fanal Group, and is situated almost due east of Whangarei Harbour and in a line with the Morotiri, or Hen and Chickens Group, but a considerable distance south of the Poor Knights Group. The area of Motukino is about 97½ acres.

(2) At the inquiry it was alleged on behalf of the petitioners—

(a) That the Natives properly entitled to Motukino Island had not, either by themselves or by their chiefs or elders or predecessors, signed the deed of sale to Polack, nor consented thereto:

(b) That Motukino from time immemorial had been used as a fishing-place, and bird-nesting and bird-snaring place, and cultivation place by the Maoris of the mainland and of the Great Barrier Island, and that such use had continued undisturbed up to the time of the petition being lodged:

(c) That the Crown, having had knowledge of all the facts relating to the alleged sale to Polack, and having been aware of the reports of its own officers appearing on the Old Land Claims File, cannot claim now that at the auction in 1882, it was a *bona fide* purchaser for value without notice of the adverse claim of the Natives interested:

(d) That accordingly the Motukino Island should be restored to the Natives entitled.

(3) At the inquiry the contentions on behalf of the Crown were exactly the same as are set out in the Court's report of even date on petition 167 of 1925, affecting the Poor Knights Islands.

(4) After a minute examination of the old records, and after a further perusal of the evidence given at the present inquiry, this Court makes the following comments:—

(a) The Court is satisfied that Motukino Island has for many generations past been used by the Maoris for fishing, and bird-nesting and bird-snaring, and cultivation purposes without hindrance.

(b) The Court is not satisfied that the signatories to the deed of sale in 1845 had any right to sell the land to Polack. The Court's remarks under clauses 4 (e) and 4 (f) and 4 (g) of its report of even date on petition 167 of 1925, affecting the Poor Knights Islands, apply equally well to the case of Motukino Island, which is affected by the same deed of sale.

(c) The Motukino case differs from the Poor Knights case in the following respects:—

(i) The deed of sale refers to the "Pokohinu Group, consisting of one large island and three smaller islands." No mention is made of Motukino, unless it is one of the three smaller islands referred to, which is likely. Polack's own advertisements in the *Maori Messenger* of 1844 only refer to "the Islands of Tawhitirahi, Morotiri, and Pokohinu."

(ii) Governor Fitzroy did not waive the Crown's pre-emptive right over the "Motuhinou or Pokohinu Group (Fanal Islets)" until the 27th January, 1845—i.e., after the deed of sale to Polack had been signed on the 16th January, 1845, by most of the signatories. This point seems to have been overlooked by the Land Claims Commission in 1864, as also the point that Polack advertised in the *Maori Messenger* of the 15th July, 1844, and the 1st August, 1844, that he had already bought the islands, though the Crown's right of pre-emption was not waived until the 27th January, 1845.

(iii) There was no massacre on Motukino Island to make it sacred under the "tapu of blood"; therefore there was no very strong reason against a sale. The seasonal visits for fishing and bird-snaring and cultivation purposes would not in themselves prove an absolute bar if the rightful owners were asked to sell.

(iv) The Poor Knights Islands have not been occupied, except for burial purposes, since the massacre, whereas Motukino has been used frequently by the Maoris up to the present time.

(5) The Court refers to its report of even date on petition 167 of 1925, affecting the Poor Knights Islands, for the following:—

(a) Schedule A: Giving summary of steps in the title from 1845, to the present.

(b) Schedule B: Giving copy of deed of sale to Polack.

(c) Schedule C: Giving copy of list of items in consideration paid for the three groups of islands.

(d) Schedule D: Giving copy of evidence before Land Claims Commission, 1864.

(e) Schedule E: Giving copy of decision of Commission of 1864.

(6) The Court does not regard Motukino Island as being of any great material or sentimental value to the Natives, and the Court considers that the Natives have more or less acquiesced in the loss of Motukino by not objecting to the Crown's admitted occupation of Pokohinu Island close by.

Recommendation.—The Court does not think that any good purpose would be served by returning the island to the Natives, but in view of the position as set out in this report it begs to suggest that some little consideration be shown by the Crown to the Natives interested during consolidation proceedings pending. The Court also begs to recommend that the Natives be allowed to continue to use Motukino Island for fishing and bird-nesting and bird-snaring purposes as in the past.

As witness the seal of the Court and the hand of the Judge.

F. O. V. ACHESON, Judge.

Approximate Cost of Paper.—Preparation, not given; printing (450 copies), £2.

By Authority: W. A. G. SKINNER, Government Printer, Wellington.—1929.

Price 3d.]