

It has also been proved to the Committee (*vide* Appendix to Journals of House of Representatives, G.-2, 1881) that any rights Te Wahapiro (the son of Kahoe, through whom the petitioners claim) had were ceded to the Crown. If the petitioners had, therefore, through Wahapiro, made out any right to any portion of the block before the Court, the Court would have been bound to award it to the Crown. There was no claim made by them before the Court. They assert, however, that they kept away from the Court because of an arrangement between them and Huria Matenga. This is denied by Huria Matenga. It is thirteen years since the Court sat and awarded the land to Huria Matenga, and only now has a petition been brought before Parliament. No application has therefore been made to the Court or the Crown by the petitioners. Their absence from the Court and their delay in making a claim seems to confirm the view that Wahapiro's descendants did not think they had any claim to the land. The Committee cannot, therefore, say that the petitioners have made out a claim to their satisfaction.

Para. 72 (c). 166. This finding of the Native Affairs Committee is the earliest review of the order of the Native Land Court of 1883, and the first thing that strikes one in perusing it is that Alexander Mackay informed the Committee that Kahoe held as trustee for Wi Katene te Puoho, to whom the land had been donated by Ngati Koata, while before the Native Land Court of 1883 he denied to Ngati Koata any right whatever to the land at any time. Furthermore, before the Native Land Court he scouted the matter of the gift by saying, "Referring to evidence given as to Kahoe asking for land to live on, I may state that this was simply Maori ceremony."

167. The Committee stated that it had some doubts over the matter of a trusteeship attaching to this gift which they were informed by Judge Mackay took place in 1832. Had they elicited the truth which was that the gift took place in 1838 or 1839, when Wi Katene te Puoho was twenty-three or twenty-four years of age, and been advised of the Maori custom regarding gifts, it is probable that their doubts would have been removed. The fixing of the date of this gift at 1832 is, to my mind, a perversion of history, and done with the object of representing Wi Katene te Puoho as a child at the time so as to avoid the necessity of explaining to persons unversed in Maori custom why the gift was not made to him direct without any reference to Kahoe at all. All the evidence, including the inscription on his tombstone, goes to show that Wi Katene te Puoho was born in 1815. ("He died on the 18th April, 1880, aged 65 years.")

168. With due respect to the Committee's finding, I cannot agree that G.-2 of 1881 proves that Wahapiro ceded his rights in Whakapuaka to the Crown, or that if Wahapiro's descendants had been found entitled to any interest in Whakapuaka by the Court of 1883 that that share must necessarily be awarded to the Crown.

Para. 80.

Paras. 87 and 35. 169. The history and effect of the Ngatitooa deed has already been treated in this report. Wahapiro, by that deed and in his capacity as an overruling Ngatitooa chief, sold his interest in lands in the South Island, but by the same deed reserved any land where his relations were living. His relatives (and close relatives at that) were living at Whakapuaka, and Whakapuaka was in fact reserved from the deed. His relatives, therefore, if they had a good claim to the land could press that claim, and I know of no law or practice that would permit the Crown to claim or take the fruits of the rights of those relations in the circumstances. If the issue of Wahapiro entirely failed (which as yet they have not), it might then be argued that all rights recentered in Wahapiro and that the Crown possessed revived rights as his assignee, subject to reservations which had failed.

170. G.-2 of 1881 does not enter into the matter at all, as the construction and effect of the Ngatitooa deed was not at issue before the 1880 Commission. The Commission's functions are explained by the following:—

By the Ngatitooa deed it was agreed that, besides reserving lands for relations residing on the land, certain other reserves should be made for some of the chiefs. It was subsequently decided that these chiefs—twenty-six in number—should receive grants of 200 acres of land each. This provision was not observed by the Crown: no grants were made to the chiefs and no consideration given in lieu thereof. In 1879 the General Assembly voted £5,200 in settlement of the claim, and paid the amount to the Public Trustee for investment for the benefit of the parties respectively entitled thereto.

171. On the 12th October, 1880, a Commission, consisting of Charles Heaphy, V.C., and Alexander Mackay was appointed and charged with—

Ascertaining the names of the persons entitled to participate in the benefits of the said sum of £5,200 together with the proportion per annum of interest or profit accruing therefrom to which they are respectively entitled.

172. The Commission submitted its report under date the 29th January, 1881, and stated:—

The scope of the inquiry was defined by our Commission as follows, viz.:—

To ascertain what survivors remain of the twenty-six chiefs named in the margin, and who are the representatives now living of such of the said chiefs as may have died, and the proportionate share which each of such representatives is entitled to of the portion of the chief deceased from whom he claims.

Notice of the intention to hold a sitting of the Commission at Porirua on the 12th day of January, 1881, was inserted in the *New Zealand Gazette* and the *Kahiti*. We met on the day appointed, and continued our inquiry the two following days.

In framing this report we beg to furnish a brief history of the causes that led to the setting-apart of the aforesaid sum of money.

In August, 1853, the then Governor, Sir George Grey, assisted by Mr. Commissioner McLean, entered into arrangements with the Ngatitooa Tribe, *subject to certain reservations, to dispose of the remainder of their claims by right of conquest, and to settle those of other tribes living on the spot, to the whole of the districts on the northern and western portions of the Middle Island, in consideration of the sum of £5,000.*

Para. 93.