

REPORT

OF THE

COMMITTEE OF PUBLIC PETITIONS

ON

THE PETITION OF ROBERT GRAHAM.

ORDERED BY THE HOUSE OF REPRESENTATIVES TO BE PRINTED, TOGETHER WITH THE
EVIDENCE TAKEN BEFORE THE COMMITTEE, 22ND JULY, 1869.

WELLINGTON.

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1869.

REPORT OF THE COMMITTEE OF PUBLIC PETITIONS ON THE PETITION OF MR. ROBERT GRAHAM.

THAT this Committee has inquired into the subject of the Petition of Mr. Robert Graham, and heard evidence of the petitioner thereon.

That it appears from what is before the Committee that the petitioner desires the House to pass an Act to validate his title to certain land on the Thames Gold Field acquired from Native owners, the title to which, it is alleged, is invalid under the 75th section of "The Native Lands Act, 1865."

That it also appears that the petitioner has commenced proceedings in the Supreme Court for the purpose of substantiating the alleged invalid title, and that such proceedings are still pending.

That this Committee cannot recommend any interference with the functions of the Supreme Court, which appears to be the proper tribunal for the adjudication of the matter in dispute.

EVIDENCE TAKEN BEFORE THE COMMITTEE.

TUESDAY, 22ND JUNE, 1869.

Mr. F. D. Fenton was then called in and examined.

The Chairman.] Was any application made to you as alleged?—Yes, in conversation; but I do not remember that any specific application was made. Perhaps it would be better that the Committee should see the papers connected with Mr. Graham's cases.

Mr. Fenton then retired, and shortly afterwards returned and laid the papers before the Committee.

Mr. John Richmond was then called and examined.

The Chairman.] What is your name, and what is your occupation?—John Richmond, solicitor in Auckland, and acting for Mr. Robert Graham, the petitioner.

Will you inform the Committee to what case that Petition refers?—The Petition applies to several sections in Kauaeranga, but the principle involved applies to all lands which have passed through the Native Lands Court. The particulars are as follows:—Mr. Munro, Judge of the Native Lands Court in the Province of Auckland, made orders relative to the Kauaeranga Section in the month of June, 1868, and, on application, he assured the applicants that the certificate of title should be issued bearing the date of the said orders. The object of this application was, to comply with the provisions of clause 75 of "The Native Lands Act, 1865," and to enable the Native owners to forthwith legally dispose of the lands to which the orders referred. Relying upon this assurance, the Native owners executed leases in favour of the petitioner, dated the 2nd July, 1868. These leases were taken before the Registrar of Deeds, and that officer, deeming the leases as the first transfer or disposal by the Native owners, calculated the amount of duty payable under section 5 of the Native Lands Act of 1865; and the duties were duly paid into the office of the Sub-Treasurer in Auckland by the petitioner. The lands forming the section thus leased have subsequently been sublet by the petitioner upon building leases, and Graham's Town now stands upon the lands. Certificates of title were subsequently issued by the Native Lands Court relative to the lands so leased to petitioner, the first being dated the 22nd July, 1868. The fact that the date of the certificates was posterior to the dates of the orders and of the leases was not discovered till about seven months afterwards. This information having been acquired by other parties, they also obtained leases, for the same sections, from the Native owners. One of the sections thus leased twice over is Parareka or Kauaeranga E., No. 1. The order of Judge Munro directing certificate of title to issue is dated 27th June, 1868. This Parareka was leased in several blocks to different parties, among whom was a Mr. Hogg. The lease of the block leased to petitioner by the Native owners bears date the 9th July, 1868. Mr. Hogg's solicitors applied to the Native Lands Court on the 21st December, 1868, that a certificate might issue in accordance with the order of the 27th June, 1868. I produce (Exhibit No. 1) a letter from the Chief Clerk of the Native Lands Court to the said solicitors, dated 19th January, 1869, to the effect that, on account of errors discovered in the plan of Kauaeranga E., No. 1, which errors Mr. Eyre, the officer who surveyed it, declines to rectify, no certificate of title can be issued; whereas, in fact, the certificate had been issued on the 15th January, 1869—in other words, four days previously to the date of the letter in question. It is a curious fact that there is one of these double leases in favour of a Mr. Power which is dated the 16th January, 1869, the day following the day on which the certificate had been issued. The Crown Grant in the Parareka case has been issued in accordance with the certificate, and bears an ante-vesting endorsement of 15th January, 1869. This Crown Grant has been signed by the Governor, but it is still in the hands of Mr. Domett, the Secretary of the Crown Lands for the Colony, pending this application to the Legislature. Since the preparation of the

Crown Grant in this case, Mr. Fenton, Chief Justice of Native Lands Court, amended the certificate of title by erasing the original date, viz., 15th January, 1869, and substituting the date of the original order, viz., the 27th June, 1868. The Secretary for Crown Lands has been applied to, to rectify the Crown Grant and make it correspond with the certificate; but he refuses to do so, on the ground that the Crown Grant was drawn out in accordance with the certificate of title as it existed at the time the Crown Grant was made out. The not making the date of the certificates the same as that on which the order was passed—a practice which has prevailed to a great extent in the Province of Auckland—is occasioning great confusion, affecting not only the Kauaeranga lands, but many other lands also. The petitioner urges that the meaning of clause 75 is, that the order and certificate shall be simultaneous documents, and he prays that this may be rendered clear by legislative enactment. Owing to the phrase, “grantees of Crown Lands,” used in clause 26 of “The Crown Grants Act, 1866,” doubts have been raised as to whether the provisions of that clause are applicable to lands of which certificates of title have been granted under the Native Lands Act; and this point should be cleared up.

Mr. Richmond then retired.

THURSDAY, 24TH JUNE, 1869.

Mr. Fenton having been called, attended, and was examined.

The Chairman.] Without reference to any particular case, can you suggest to the Committee any course to remedy the evils complained of?—I should not like to point out to the Committee any course, because nine out of ten are points of law, and not matters of fact. I think it would be very difficult for the Committee to discover any remedy, unless the Committee is prepared to recommend the strongest, and, I may say, unusual measures, as far as my knowledge extends, to the Legislature. I am of opinion that the words “issue of certificates,” in clause 75 of “The Native Lands Act, 1865,” should be in future made to mean the date on which the certificate is ordered to be issued.

Mr. Potts.] Will you give us the history of the changes that took place in your mind with regard to the date of these certificates?—The certificates at first, for some years, were dated on the day on which they were signed. Afterwards, when I became aware of the passing of “The Crown Grants Act, 1867,” apparently making the date of the certificate a matter of importance, I commenced the practice of making the date of the certificate the same as the date of the order authorizing it. In my view, this was to effectuate the intention of the Legislature, as shown in “The Native Lands Act, 1865.” Afterwards I doubted whether the date of the certificate would in any case be held to be final in the Supreme Court, and I have further formed the opinion that all of the Crown Grants Acts fail to have application to any of the Native Lands. I have, consequently, returned to my former practice of dating the certificates on the day of signature.

How long have you held this last view?—About four months.

What action have you taken on it?—I have returned to my old practice. I beg to add, that when I saw the difficulties which existed, I determined not to issue any more certificates until the Legislature had declared its mind on the subject, and I pronounced the determination in Court in the case of the Shortland claims; in which, I think, that there are 130 certificates now not issued in consequence.

Mr. Fenton handed in some papers to the Committee, and then retired.

FRIDAY, 25TH JUNE, 1869.

Mr. Domett, having appeared before the Committee, was examined.

The Chairman.] The statement of Mr. Fenton, Chief Justice of the Native Lands Court has been read to you. Can you suggest any remedy for the evils brought to the notice of the House in the Petition of Mr. Robert Graham?—I must state, first, that one of the allegations, viz., that certain mistakes have been made in the preparation of Crown Grants, is incorrect. All Crown Grants connected with the case, I think I may positively state, have been made, as to dates of ante-vestment, exactly to correspond with those of the issue of the certificates. This, according to the ordinary construction of the law on the case, is strictly in accordance with that law. But I find that Mr. Fenton has raised a doubt as to the proper construction of the law. I am inclined to think that Mr. Fenton's view is correct with respect to the non-applicability of the Crown Grants Acts to Native lands excepting Native reserves.

Can you state what the intention of the Legislature was with regard to the date of the order authorizing the issue of a certificate, and the date of the issue of the certificate itself?—I believe, at the time of the passing of the Act of 1865, the idea prominent in the mind of the Legislature was, that the order authorizing the issue of a certificate and the issue of the certificate should be simultaneous. At the same time, the insertion in the Act of provisions for appeal against the decision or order of the Court militates against this view, as apparently necessitating some lapse of time between the issue of the order and that of the certificate.

Will you state what your idea was, as regards the dates of the order and certificate?—When I drafted “The Crown Grants Act, 1867,” the idea prevailed in my mind that the order and the certificate were simultaneous documents.

Assuming injustice to have been done in this case, can you suggest any remedy for it?—I do not know of any remedy but *ex post facto* legislation.

Mr. Domett then retired.
