

REPORT

OF

THE PUBLIC PETITIONS COMMITTEE

ON

THE PETITION OF THOMAS CRAIG;

TOGETHER

WITH EVIDENCE TAKEN THEREON.

REPORT BROUGHT UP 13TH NOVEMBER, 1871, AND ORDERED TO BE PRINTED.

WELLINGTON.

—
1871.

REPORT OF THE PUBLIC PETITIONS COMMITTEE ON THE PETITION OF THOMAS CRAIG.

PETITIONER states that in 1861 he, with the permission of Mr. Mantell, the then Native Minister, entered into negotiations with certain Natives for the purchase of timber on Native land at Opitonui, in the Province of Auckland, and in the following year concluded the agreements.

That on the faith of these agreements he expended £10,000 in the erection of mills, booms, dams, felling timber, &c., and for many years was in peaceable occupation.

That in January 1870, the Native Land Court issued certificates of title for the Opitonui Block, but through the influence of a European the Natives repudiated the agreements originally entered into with Petitioner, and leased the land to one C. A. Harris, there being on the land at the time about 3,000 logs cut and felled by Petitioner, worth £6,000.

That a Native named Mohi, claimed the logs and brought an action against Petitioner in the Supreme Court to recover them, and for damages for felling them, which action resulted in a verdict for the plaintiff, with 3s. damages, and full costs.

That the logs were subsequently taken possession of by Mohi, and converted to his own use; and that through the loss of these logs, and of his rights to the timber, and by reason of the expense of litigation, Petitioner has been ruined.

Petitioner submits that "The Native Land Act, 1865," never was intended to affect agreements with Natives for the sale of timber that had been honestly and fairly made with the sanction of the Government, and prays the House to take his case into consideration, and to grant such relief as the justice of the case may require.

I am directed to report that, from the partial evidence they have been able to obtain, the Committee have come to the following conclusions:—

(1.) That the Petitioner entered into an equitable agreement with the Natives Riria Poau, and others, for the timber and use of the land at Opitonui, and remained in peaceable possession until 1868.

(2.) That the land in question was passed through the Native Land Court in 1870, and the title vested in Mohi, the son of Riria Poau.

(3.) That at the time the said Mohi obtained legal possession of the land, a large number of logs had been prepared by Craig's workmen ready to be driven to his mill. The value of the logs is stated at £6,000.

(4.) That though equitably entitled to the logs he could not obtain them, because he had no legal right to go on the land on which they were lying.

(5.) That in consequence of want of time to pursue the inquiry, the Committee are unable to make any definite recommendation, but are of opinion that the Government should inquire into the matter, with the view of ascertaining if some relief could not be given to the Petitioner, being informed that if the Petitioner had the right given to him to drive his logs from his dam along the Waitekuri Creek, it would in some measure compensate him for his loss.

THOMAS KELLY,
Chairman.

MINUTES OF EVIDENCE.

Mr. Wilson.

MONDAY, 27TH OCTOBER, 1871.

27th Nov., 1871.

Mr. J. A. Wilson, Agent for Petitioner, attended, and was examined in the matter of the petition of Thomas Craig, of Auckland.

1. *The Chairman.*] I have not got the original agreement entered into by Mr. Craig with the Natives for the purpose of cutting timber on the land mentioned in the petition. The agreement was made with the permission of the Government.

2. I put in a letter from Mohi, the plaintiff in the case *Mohi v. Craig*, who is the descendant of one of the Natives who sold the timber to the petitioner. It is dated 1st November, 1864, and admits the agreement entered into by his mother Riria Poau with Craig. (See Appendix.) This letter was handed to Mohi in the witness-box, and to a question put before being permitted to read it, he replied that it contained his signature, and was in his handwriting.

3. Craig paid as consideration money the sum of £350 for the right to make use of the trees of the forest of Opitonui.

4. No length of time was stipulated in which Craig was to remove the timber off the land.

5. The block is 8,000 acres, and the great bulk of it is covered with these trees.

6. The sum of £350 did not give petitioner the right to use the land otherwise than for the purpose of cutting and removing the trees.

7. The names of the aboriginal natives who entered into the agreement above mentioned were: Riria Poau, Wiremu Hopihona Te Karore, and Paora Matutaera. They were admitted to be the owners of the timber at the time the agreement was entered into, and they and their heirs were the grantees when the land passed through the Native Lands Court, with the exception of Wiremu Hopihona, who was then dead, and no one appeared to represent his interest at the Land Court.

8. Mr. Craig commenced to use the timber in the beginning of the year 1862, and he remained in peaceable possession until March, 1868, when some of his workmen received a notice from Mohi to the effect that they must desist from cutting the timber.

9. In December of 1866 the petitioner sold the property to one Harris, who subsequently failed; and as the conditions of purchase had not been completed, it reverted to Craig in December, 1867.

10. The woman Riria, Mohi's mother, one of the parties to the original agreement, died in December, 1866.

11. The reason given by Mohi for sending the notice was because he alleged that Craig had not completed the payment of his mother Riria's share of the £350.

12. Craig took no steps after the passing of "The Native Lands Act, 1865," to renew his agreement with the Natives, but he did to get the land passed through the Native Lands Court.

13. The land was passed through the Court, 25th January, 1870, by another party, namely Harris, who paid for the survey. Mohi was against Craig at the time of the passing the land through the Court.

14. The title of certificate and Crown grant were issued in favour of Mohi, son of Riria, and Paora Matutaera.

15. To show the transaction entered into by Craig with the Natives was a fair one, Paora has since sold his half of the land to Harris for £200, which includes the growing timber thereon.

16. I put in copies of two letters which appeared in the *Evening Star* and *New Zealand Herald*. One is from H. H. Turton, dated 18th September, 1871, and one from C. De Thierry, dated 19th September, 1871. (See Appendix.)

17. I do not propose to produce evidence with regard to the allegations made in the petition, to the effect that the Natives were instigated by Harris to repudiate the agreement entered into by Craig, but if the Committee desire it I can procure the necessary evidence.

18. The property in question has been sold a second time by the Natives, and all the cut timber and logs, the result of the expenditure by Mr. Craig, have been seized and sold by the Natives.

19. An agreement was entered into between Craig and Harris to the effect that Harris was to take the standing timber on certain conditions. These conditions were that Craig was to be allowed twelve months to remove the fallen timber, and was to be assisted by Harris in getting a legal title from the Natives to the timber in another large bush called Wai-te-Kuri, in the same district; and further, that Harris, under certain conditions, should give him a title to his mill-site, or purchase the mill from him. Six witnesses proved in the Supreme Court that Mohi was a consenting party to this agreement; but Mohi refused to acknowledge this agreement between Craig and Harris with regard to the timber lying on the land at Opitonui, and about the month of May he instituted an action in the Supreme Court, and obtained an injunction prohibiting Craig from interfering with the logs, which had the effect of closing Craig's mill.

20. Mohi and Harris broke the injunction, and they seized the timber and have been for many months cutting it up and selling it. It was seized forcibly, under arms, and at the instance of Craig the Supreme Court adjudged them to be in contempt, and fined them about £30 costs. Subsequently, they cut the timber up, and the Court declined to interfere, when requested to do so by Craig.

21. The injunction was served on Craig in June, 1870.

22. Mohi, in May, 1870, entered an action in the Supreme Court against Craig to recover the felled timber on the land at Opitonui, and for damages for removing and felling the timber, and for

trespass on the land; the case was tried by special jury, who found, under direction of the Court, three shillings damages for trespass for the plaintiff. But the rest of their verdict was for the defendant, and shows that the timber was cut "with the knowledge and permission of the plaintiff." Their verdict is recited on page 15 of the printed statement of Craig's case, which I now hand in for the consideration of the Committee. I also hand in printed extracts from the local papers, being reporters' notes relating to the case.

Mr. Wilson.
27th Oct., 1871.

23. I know of other cases of agreements with Natives to cut timber without the authority of law, which have been entered into in the Province of Auckland, in fact it would have been utterly impossible to supply the demand for timber if these agreements had been entirely prohibited by the authorities. There is a case at Tairua, and at Port Charles, and other places where there was no legal title when operations for cutting timber were commenced.

24. There are two ways in which the Legislature could afford the petitioner redress, namely:—

1st. By compensating him for the losses he has sustained on the ground of the injurious *ex post facto* character of the operation of "The Native Lands Act, 1865," in his case, which by its 48th and 75th clauses gave effect to Crown grants being issued without making provision for interests arising out of agreements previously entered into with the Natives owning the lands, and this notwithstanding the Government might have sanctioned such agreements in the manner they had sanctioned Mr. Craig's agreements. The Act invalidated Craig's agreements, and gave Mohi a power to injure him that he did not before possess.

It would appear, according to the preamble of "The Land Purchase Ordinance, 1846," that agreements thus entered into between Europeans and Natives, before 1865, respecting lands, were valid if sanctioned by the Crown.

2nd. To introduce a clause into the new Native Lands Act now before the House, which would validate the ancient agreements that Craig had made with the Natives, in so far as they might be found to be equitable.

25. Mr. McGillivray.] The original agreements between Craig and the Natives are in Mr. Craig's hands. The Supreme Court could not recognize them in any way.

26. The Chairman.] The evidence of Paora Matutaera was to the effect that "the trees of Opitonui are Craig's; he has paid for them; we have received his money; I have received his money; Hopihona received his money; and Biria and her children received his money.

Hon. Mr. Mantell attended, and was examined.

Hon. Mr. Mantell
1st Nov., 1871.

27. In 1861 I held the office of Minister for Native Affairs. At that time the direction and control of Native affairs vested in the Governor alone, as representative of the Imperial Government; but upon my taking office, or shortly after, the Governor, Colonel Gore Browne, requested me to take the direction of Native affairs, he undertaking to confirm and indorse my actions.

28. In September, 1861, an application was received at the Native Office from Messrs. Craig and Sibbin for permission to purchase timber at Cabbage Bay from the Native owners. This application was refused as being in contravention of the Native Land Purchase Ordinance. On a further application being made by the Native Hata Pata Ngahi to be allowed to sell the timber, I obtained the opinion of the Attorney-General upon the subject, and finding that it was still possible to leave the Ordinance inoperative during the good behaviour of the person proposing to effect the purchase from the Natives, I, as I perceive by my minute of the period, received Mr. Craig or his agent at an interview on the 30th September, 1861. From the papers (N.S., 61-477) before me, and the minutes upon them, I am satisfied that the person who had that interview with me was informed by me of the substance of Mr. Fenton's (the Assistant Law Officer) minute, that *quamdiu se bene gesserit* the Government promised not to appoint an informant to lay informations under the Native Land Purchase Ordinance. This gave them liberty to peaceably occupy the land and cut timber, the effect of this being, as I was advised at the time, precisely the same as a revocable license.

29. The Chairman.] I have no recollection of ever having, during my tenure of office, to take any further steps with regard to this matter.

30. Mr. Wilson.] I have mentioned Cabbage Bay, but as there were no different political considerations affecting other parts in the neighbourhood, I consider that Mr. Craig was justified in regarding the decision of the Government in the one case as sufficient to warrant him entering into similar negotiations on the same tenure in any part of that locality in which he could do so satisfactorily.

31. No trouble was caused by Mr. Craig which obliged me to put in force the provisions of the Native Land Purchase Ordinance.

32. After my interview with the person already mentioned, the papers relating thereto were ordered to be filed.

Hon. Mr. Farmer attended, and was examined.

Hon. Mr. Farmer.
1st Nov., 1871.

33. The Chairman.] I was foreman of the special jury in the case of Mohi v. Craig, tried in the Supreme Court at Auckland in June last. It appeared from the evidence adduced at the trial that a fair and *bonâ fide* arrangement had been entered into with the Natives by Craig, and with the consent of the Government, for the purchase of a timber forest, and that he (Craig) was in undisputed possession of it for several years.

34. In terms of this agreement with the Natives, Craig had cut down a good deal of the timber.

35. In consequence of the Constitution Act and subsequent legislation, which declared any agreements entered into with Natives (prior to the passing of "The Native Lands Act, 1865") with respect to land illegal, and after the passing of that Act invalid—the Judge ruled that no documentary evidence that Craig had in his possession to establish the *bonâ fide* nature of his agreements with the Natives—could be received. Thus the absence of title deprived him of legal remedy and enabled the plaintiff to take advantage of, and to profit by, his own wrong doing.

36. The Jury were of unanimous opinion that the whole of the logs in dispute belonged to Craig, and that he ought to get them.

Mr. Wilson.
1st Nov., 1871.

37. *Mr. Wilson.*] By the evidence at the trial it appeared that Craig had hitherto lived in peace and harmony with the Natives at Opitonui, and that during that time he was spending large sums of money in carrying on the works of the saw-mill.

38. I don't remember how many million feet of timber Craig was taking out of the bush, but it would appear to be a very large quantity, as evidenced by the cutting of some £3,000 worth of logs for one season's supply.

39. This £3,000 was money out of pocket.

40. It appeared that Craig had paid the entire sums due to the Natives for the timber under the original agreement.

41. In saying that Craig ought to have the logs, I mean he should receive the original value of them, as they would now be much deteriorated.

42. "The Native Lands Act, 1865," had a retrospective action, as it enabled the Natives to repudiate agreements they had entered into with Europeans, with the sanction of the Government, previous to the land passing through the Native Land Court. Craig's agreement with the Natives for the Opitonui bush is a case in point.

43. The Judge stated at the trial, that under clause 75 of "The Native Lands Act, 1865," any agreement made or entered into with the Natives previous to the passing of the Act was absolutely void.

44. *Mr. Rhodes.*] Craig had a right to cut timber and carry it away without any conditions as to time being mentioned, as far as I am aware. He paid a fixed sum for that privilege.

45. *Mr. Bryce.*] I would suggest as a remedy that the Legislature should pass an Act whereby agreements with Natives made and entered into in good faith, and which had received the consent of the Government in the first instance, should have legal effect given them as between the parties.

46. In this particular case, the law should give power to the petitioner to recover the logs or their value.

The Attorney-General.

The Attorney-General attended, and was examined.

9th Nov., 1871.

47. *Chairman.*] I am not aware of any law existing in 1861 by which a private individual could acquire rights to Native land, even with the assent of the Governor or of his Minister.

48. Land could be acquired by and in the name of the Queen from Natives; it would then have to be dealt with under the ordinary laws regulating the sale and disposal of waste lands of the Crown, and such would apply to the leasing, purchase, or the right of occupation, for the purpose of cutting timber.

49. Before "The Native Lands Act, 1862," when persons desired to acquire land from the Natives, the course taken was to get the Government to allow a surrender of the land to be made to the Queen by the Natives, a Crown grant was then issued in favour of the person who had entered into the arrangement with the Natives.

50. By "The Native Lands Act, 1862," a Land Court was established, and this enabled the Natives to obtain a certificate of title, and deal with the land as soon as they got a certificate, but not before. The Act did not affect the rights of the Crown; it did not render it necessary that a certificate should be obtained in order to enable the Crown to acquire the land.

Clause 75 of "The Native Lands Act, 1865," was introduced therein because the Act repealed "The Native Land Purchase Ordinance, Session VII., No. 19," which prohibited the purchase of land from Natives by Europeans, and also because it was considered that even without any Statute the Crown had a pre-emptive right, and, therefore, that individuals could not purchase lands from Natives unless held under Crown grant.

Mr. Wilson.

Mr. J. A. Wilson attended, and was re-examined.

10th Nov., 1871.

51. *The Chairman.*] The land at Opitonui was passed through the Court in January 1870. "The Native Lands Act, 1865," by its 75th clause, invalidated Craig's agreement, and gave Mohi a power to injure Craig which he did not before possess. The above clause declares that every conveyance, transfer, gift, contract, or promise, affecting or relating to Native land in respect of which a certificate of title shall not have been issued by the Court shall be absolutely void, and the 48th section of the same Act gave the Native grantee also a right he did not before possess, to "bar all estates, rights, titles, interests or persons whosoever therein."

52. The Act of the Legislative Council of 1846, clause 1, although it prohibits any person dealing with the Natives for the purchase of the right of cutting timber or other trees, provides that persons may do so under license from the Government; and from the evidence of Mr. Mantell, the Native Minister of the day, who acted for the Governor in the matter when Craig made application to deal with the Natives, it appears that Craig did obtain what amounted to a revocable license.

53. The logs in question belonging to Craig, valued at £6,000, lying at Opitonui, petitioner has been unable to obtain possession of in consequence of the decision of the Supreme Court, that he incurred the risk of an action for trespass in going on the land, and in consequence of the injunction issued by the Court to prevent him from taking those logs. This injunction was obtained by Mohi under the plea of the timber having grown on land belonging to him.

54. I hand in a sketch plan of Mr. Craig's and adjoining property at Whangapou, and with reference to a question asked me at my former examination as to the manner in which the petitioner could be compensated, I would state, that if the Crown granted him the right to drive logs from his dam along the Waitekuri Stream to Whangapou Harbour, it would, I think, go a very great way towards satisfying him. The Crown has power to effect this under the 76th clause of "The Native Lands Act, 1865." The granting of this to Craig would not injure the interests of other persons.

APPENDIX.

TRANSLATION of Letter from MOHI to THOMAS CRAIG.

FRIEND CRAIG,—

Whangapoua, 1st November, 1864.

The talk of Te Wharewhenua and Te Hapoki and Teraia, about the trees at Opitonui, is not right. These trees do not belong to them. This land, Opitonui, does not belong to them. Te Kiharahi, however, has a right; but Poau comes before, and Te Kiharahi follows. This is in accordance with their line of ancestry. Te Kiharahi is long since dead, but his daughter is here alive, and I admit that she has an interest in this land, Opitonui.

But the trees of this land, Opitonui, have all passed into Thomas Craig's possession—having been purchased for the sum of three hundred and fifty (£350) pounds sterling; and these are the persons who received the money:—Riria Poau, Wiremu Hopihona Te Karore, Paora Matutaera. (The money these two had they took secretly.)

Riria has given twenty (£20) pounds sterling to the daughter of Kiharahi.

Now, in reference to the sale by Teraia and Kiharahi and others, of the trees at Opitonui to Haki, Poau knew nothing of that transaction. Poau lived continually at Whangapoua, and that payment was made at Hauraki. Poau was angry with Kiharahi about that sale. The name of Poau was attached to that document without her knowledge.

These words are ended. From

To Thomas Craig.

RIRIA POAU.
MOHI.

MOHI v. CRAIG.

(To the Editor of the *Herald*.)

SIR,—

Parnell, 18th September, 1871.

I am very glad to see the leading article about Mohi v. Craig, as the latter has suffered great injustice. Craig's transactions about timber commenced when I was Resident Magistrate at Coromandel in 1860–62, and as both parties came to me for advice, &c., I knew all about it, and saw that fair dealing obtained on both sides. Afterwards, as a land agent, the balance of money due was paid through me, after a full oral and written explanation of the whole of the transactions from beginning to end. Riria (mother of Mohi), and Paora Matutaera, and others, were the parties concerned, as owners of the timber—Mohi being only a little boy.

I am, &c.,
H. H. TURTON.

MOHI v. CRAIG.

(To the Editor of the *Evening Star*.)

SIR,—

19th September, 1871.

The letter of Mr. H. H. Turton in this morning's issue of the *Herald*, in regard to the glaring case of justice perverted, Mohi v. Craig, fully bears out the facts of the case, and I feel myself called upon, in the common cause of justice, to corroborate Mr. Turton's statement so far as I know.

I was employed by Mr. Craig in 1862 to purchase for him the timber on the Opitonui and Waitekuri Blocks at Whangapoua, and paid the first instalment of £50 to Riria Pouau, Paora Matutaera, and W. Hobson, when I went over the boundaries pointed out by the above-named Natives. I was also present when the other payments were made in Auckland to Wi Hobson and Paora, and the timber was paid for in full.

The transaction was *bonâ fide*, and fully understood by the Natives; and I can confidently assert that no man could have made a fairer purchase than Mr. T. Craig did, who, I must say, in all the Native transactions in which I was concerned for him, always fulfilled any arrangements that he entered into to the letter.

I may remark that at that time the Natives in the Wangapoua district received Mr. Craig with open arms, and made him frequent offers of all the bush between Wangapoua and Mercury Bay; and I consider that he has been shamefully used throughout this transaction. And I, having had much experience amongst the Natives, do not believe that they would have acted as they have done towards Craig if they had been left to themselves; and, indeed, I have heard Natives connected with the matter express great surprise at the decision in Mohi's favour.

I am, &c.,
CHARLES DE THIERRY,
Licensed Interpreter.

