1942.

NEW ZEALAND.

THE NATIVE PURPOSES ACT, 1940.

REPORT AND RECOMMENDATION ON PETITION No. 25 OF 1938, OF RANGIRERE TE MAENAE, PRAYING FOR AN INQUIRY INTO THE DEALINGS WITH RESPECT TO THE AWAKINO, TAUMATAMAIRE, AND OTHER BLOCKS.

Presented to Parliament pursuant to the provisions of Section 11 of the Native Purposes Act, 1940.

Native Land Court (Chief Judge's Office),
Wellington C. 1, 7th July, 1942.

The Hon. the NATIVE MINISTER, Wellington.

CROWN PURCHASES IN THE AWAKINO DISTRICT.

I TRANSMIT to you the report of the Court, made pursuant to section 11 of the Native Purposes Act, 1940, upon Petition No. 25 of 1938, of Rangirere te Maenae, concerning the purchase by the Crown of the Awakino, Taumatamaire, and other blocks.

The Court's recommendations are to the effect—

(1) That the descendants of the original owners of the Awakino Block, which was purchased in 1854, should, in respect of an area of 7,000 acres which was found, on survey in 1884, to be in excess of the 16,000 acres which the block was estimated to contain at the time of purchase, be compensated in the sum of £231 17s. 6d., with simple interest thereon from 1884, or in land to the value of the commuted amount:

(2) That an area of approximately 50 acres should be set aside for the Natives at Ketekarino in satisfaction of a reserve at that place stipulated for in the Awakino deed of conveyance:

(3) That an area of suitable land should be set aside for the Natives in satisfaction of the Piripiri Canoe Reserve for which provision was made in the Taumatamaire deed of conveyance.

On the head of compensation, while admitting the weight of the argument by which the Court has felt itself pressed, I incline to think that the aspect of the purchase from the point of view of a "walk in, walk out" purchase, with all its implications and incidents, is the aspect which is paramount. In the first place, it is to be noted that the purchase was not of an area defined with any regard to the niceties of survey, but of a tract of land lying within boundaries the lines of which were determined by natural features. The description in the deed makes no mention of acreage. It runs, according to the translation: "The boundary of the land commences at Purapura and goes along the sea side to Huikomako and goes inland to Mangakahikatea and into the river of Mangakahikatea on to Manganui and goes in the water of the Manganui river until it reaches Awakino and crosses the Awakino and goes to Omoao and thence it turns seaward and goes on to Purapura where the boundaries join." As between the parties, this description of the land is clearly dominant, the sketch of the area used being of secondary importance only; *cf. Finlayson* v. *District Land Registrar of Auckland* (17 G.L.R. 793). As a matter of strict law, where there is a discrepancy between plan and description, the latter prevails unless the plan is expressly made the governing description or the description is clearly insufficient or inadequate: *Llewellyn* v. *Jersey* ([1843] II M. & W. 183). In the second place, it is to be remarked that the quantum of the purchase-price certainly had no reference to a value calculated as on an acreage basis. Taking this into consideration with the fact that the land in question was on record as being "very broken and hilly, thickly covered with wood, and extremely difficult—in many cases impossible—of access," and that the purchase was undertaken not from necessity but from motives of policy and expediency and the desire to meet the wishes of the Natives, it is gravely to be doubted that, had the area been known with greater precision, a larger price would have been offered. But whatever the position be, the simple fact remains that the Crown purchased a determinate tract of land which the Natives not only agreed to sell at a certain price, but were anxious to sell. In the face of the

terms of the conveyance, any loss—and it is not suggested here that there was any loss—must lie where it fell. There can be no room for speculation as to what would have happened had it so transpired that the area was less than was estimated. Even allowing for a moment that the Crown could have set up the ground of a mistaken description, it would have met immediately with the objection that after completion of a conveyance, and in the absence of a stipulation to the contrary, a purchaser is not entitled to compensation in respect of errors of description: *Larnach* v. *Irving* (12 L.R. 212). Colloquially speaking, that cuts both ways. By the deed of conveyance, the minds of the selling Natives were explicitly directed to the boundaries of the land which passed to the Crown under it; the sellers were satisfied with the bargain made; and *in foro conscientiæ* their descendants are now debarred from taking the ground that their forefathers were misled and did not receive that to which they were entitled. For these reasons and with the thought in mind that the plans incidentally used or referred to in many of the purchases undertaken in the early days of the Colony were merely essayed by the Crown's servants or agents from descriptions given by the Natives themselves and without any detailed traverse of the boundaries, I regret I am unable to concur in the Court's recommendation touching compensation.

Concerning the reserves, it does appear that, notwithstanding that at least one reserve was set aside in the adjoining Mokau Block which cannot now conclusively be accounted for, the Natives are, in accordance with the agreements witnessed by the deeds of conveyance, entitled to two further reserves, and I suggest that steps be taken to have the appropriate areas vested in them. Possibly the provisions of section 80 of the Native Purposes Act, 1931, could be applied for the purpose.

G. P. SHEPHERD, Chief Judge.

REPORT FOR THE CHIEF JUDGE, NATIVE LAND COURT, UPON INQUIRY INTO MATTERS RAISED BY PETITION 25/1938 IN RELATION TO AWAKINO, TAUMATAMAIRE, AND OTHER BLOCKS PURCHASED BY THE CROWN.

I HAVE to report having conducted an inquiry as directed into the matters referred to in Petition No. 25/1938 in connection with these several blocks at Awakino on Tuesday, 19th August, 1941. Mr. F. Phillips, of Otorohanga, appeared for the petitioners, and Mr. Darby, of the Lands and Survey Department, Auckland, for the Crown. The petition was in such general terms that it was impossible to gather, until the hearing, what the claims of the petitioners were precisely. When finally stated they were as follows:—

1. That upon the acquisition of the Awakino Block by the Crown in 1854 the area, although defined in terms in the deed of conveyance or cession, whichever it may be called, was also referred to in the margin of the deed as containing 16,000 acres, and a sketch plan prepared by the officer of the Crown responsible for the acquisition showed the area as 16,000 acres. The land was surveyed by Mr. Brookes, a departmental surveyor, in 1884, and upon survey was discovered to contain an area of 23,000 acres. The petitioners asked that the excess of 7,000 acres should be returned to them.

2. That the Native owners of the four blocks referred to in the petition acquired at about the same time were entitled to the benefit of "tenths."

3. That in the deed of sale of the Awakino Block, provision was made for vesting in the owners certain reserves, and that these were not vested or reserved or, in so far as they were, they were deficient in area. These were referred to in the Awakino deed as follows:—

(1) "At Ketekarino a small piece, the boundaries of which have been fixed by Mr. Cooper and Mr. Rogan":

(2) "Another place, the south boundary is Ounutae, the north boundary at Waihi. The inland boundary is at Orongorea":

(3) "50 acres are to be granted to Reihana Takerei's son."

4. That in the deed of conveyance relating to the Taumatamaire Block of 24,000 acres, a reserve was provided for in these words: "It commences at the bend of the Awakino Stream and thence to Mangakawakawa. It then follows the stream of Mangakawakawa, and ascending the hill, proceeds to Awakino, a short distance inland of the road to Ruakaka." This reserve was never vested in the owners.

It will be convenient to deal with these claims in the order in which I have set them out:—

1. As to the claim to the 7,000 acres excess referred to, it is claimed that if the Native owners had been aware that the block sold contained 23,000 acres, the purchase-price of £530 would have been proportionately greater, and that they have lost the money equivalent since 1854 and that this sum compounded at 5 per cent. is what they should receive.

The plan upon which the purchase was founded was a sketch prepared by Mr. John Rogan, and appears to have been the result of a compass survey. Even allowing for the fact that his first plan for the purpose of purchase was a sketch only, the employment of any method of survey should have disclosed a greater area than 16,000 acres. The boundaries shown on the sketch are physical boundaries which were used between vendors and purchaser to define the block, and in so far as the boundaries were incorrectly placed on the plan, error as to area would necessarily be involved. Mr. Moverly, of the Lands and Survey Department, New Plymouth, who was called by the Crown, was able to point out, for instance, on Rogan's sketch that the northern boundary was so incorrectly placed as to show at once a very substantial error, and he expressed the opinion that the discrepancy in area might have arisen almost wholly from that error. He also expressed the opinion that from this sketch by Rogan the estimate of an area of 16,000 acres was not unreasonable.

The land was surveyed by Mr. Brookes, a departmental surveyor, in the year 1884, and upon completion of the survey it was discovered for the first time that the area was incorrect. The petitioners claim that this excess area of 7,000 acres should now be made good, either in the shape of money or in the grant of land.

In my opinion, the exact area of the block when the purchase was made in 1854 was a matter of little moment to the Native owners. The land sought to be acquired by the Crown was confined within physical boundaries, and the sketch prepared for the purpose of purchase did not profess to be accurate, and the area was therefore expressed in round figures at 16,000 acres. Unfortunately, however, this assessment of area was made by an officer of the Crown, and the error was so substantial that it should not have occurred. Had the difference in area been a matter of a few hundred acres either way, no objection could have been taken, but when the area was discovered to be half as much again as the area bargained for, it does seem to me that, notwithstanding little attention was paid by the Native owners to the precise area being sold, the Crown acquired through its own error a substantial area that it did not intend to acquire.

My attention was drawn to discrepancies in area in the case of seven other purchases where areas were specified in the purchase deeds. These discrepancies, which, with one exception, are all in excess of the areas specified, vary from a few acres to over 4,000 acres in the case of a specified area of 29,500 acres. In no case, however, does the difference approach an excess of 7,000 acres in a specified area of 16,000 acres.

From the Crown's point of view the matter was put by Mr. Darby in this way: That in 1854 land had little value on the basis of acreage, and that wilderness lands were of no value. This, no doubt, is true, but in making the purchase the Crown itself gave the area an acreage value by fixing the purchase-price, evidently related, whether closely or not, to a definite area. Although it is only a matter for speculation now as to whether the difference in area if known to the Natives at the time would have made any difference to the amount of purchase-money, in my opinion it is only equitable that the Crown should pay for what it got upon the basis fixed by it—that is to say, £530 for 16,000 acres, otherwise 8d. per acre.

It was a matter for some comment by the Crown that no complaint had been made by the Native owners since 1854 as to the discrepancy in area. To this they reply that it was not known until 1884 at the earliest, that they were not advised upon survey of the precise area, and that it was many years before they were aware that there had been any error in computation. This reply seems to me to be well founded.

On the whole, in my opinion, the claim would be justly met if a proportionate sum were allowed in respect of the 7,000 acres, together with simple interest from 1884.

2. The second claim, relating to "tenths," appears to me to have resulted from historical research by somebody on behalf of the Native owners. Their counsel placed little reliance on this claim and declined to address the Court on the subject, although invited to do so. He did, however, call one witness to support the claim, and this witness, after stating that they had not had tenths, was unable to say whether the tenths should have been represented by a refund of one-tenth of purchase-money or by a reservation of one-tenth of the area to the Native owners, nor did he appear to know whether the claim related to possible expenditure on behalf of the Native owners of one-tenth of the price at which the Crown might ultimately have sold the land. In short, he had so little appreciation of the claim that I am satisfied he was not aware of how it was founded and that the claim should be disregarded.

3. *Ketekarino.*—This is referred to in the deed relating to the Awakino Block in the terms mentioned above. The area, undoubtedly, was used as a burial-ground and pa reserve in the early days, but it is quite apparent that it is many years since it was last so used.

The Crown undertook in the deed that it should be set aside, and this has not been done. If there was any reason why it was not so set aside, and it may well be between 1854 and 1884 that the necessity for the reservation had disappeared, the Crown was not able to show what the reason was for the land not being set aside. The petitioners' suggestion in respect of this piece is that it should be a small piece, similar to other small pieces referred to in the deed, containing an area of 50 acres. It is true that in the Awakino deed there is reference to small pieces. For instance, a small piece at Rangitoto was to be reserved for Hokipera. This was reserved and was an area of 55 acres. In my opinion, the claimants are entitled to have an area at Ketekarino set aside, as undertaken by the Crown, and that the "small piece" should be similar in area to the other small pieces—about 50 acres—for their old burial-site.

The conclusion I came to at the hearing was that the site was no longer used as a pa reserve, nor likely to be, and that the Native owners attach importance to it solely for the reason that it had been used as a burial place and had therefore sacred significance. I understood at the hearing that the Crown was inclined to assent to the setting-aside of a small area of, say, 5 acres as bargained for in the deed. I do not think an area of 5 acres, however, would be a sufficient area to satisfy the meaning of the words "small piece" in the deed.

4. *Ounutae.*—This reserve, referred to in the deed, is shown on Rogan's sketch plan as containing an area of 220 acres. When it was set apart by survey in 1884, the area so set apart was 110 acres. The petitioners therefore claim that the area of this reserve should now be increased to 220 acres or compensation granted to them. I am satisfied from examination of the plans that the area of 220 acres shown on the sketch plan was an error, and that the land reconveyed to the Natives containing 110 acres was the identical piece bargained for between the Natives and the Crown. It had certain physical features, to wit, streams to the north and south. These boundaries were adopted upon survey, and the only position in which error might have occurred was on the eastern boundary. The eastern boundary, upon survey, conformed so closely to that appearing on Rogan's sketch that I am satisfied that the Native owners obtained the exact piece of land they were entitled to.

Further than that, one of the owners selling to the Crown was a man named Taniora, and he was employed by Mr. Brookes in his survey party when this Ounutae reserve was laid off. To my mind there can be no doubt that if such a gross error as indicated had occurred, Taniora would have drawn attention to it. No such complaint was made, and Mr. W. H. Skinner, who was surveying the Mokau Block at the time, and who was the senior surveying officer in that district, states that he heard of no complaint as to this reserve. Any complaint would have reached him as the senior officer then engaged on these surveys. Further than that, the plan of Ounutae was before the Native Land Court on the investigation of title to the Awakino Block in January, 1922, when an investigation was made by Judge Browne. The reserve was shown on the completed survey plan then produced to the Court, but no word of complaint was heard as to the insufficiency of the area. In my opinion, the claim in respect of Ounutae has no foundation.

5. *Piri Piri Canoe Reserve.*—This was referred to in the deed relating to the Taumatamaire Block. The reference in the deed is as I have already set out, and the fact is that the reservation was never made. The Crown was invited to say whether any circumstance could be cited in justification of the failure of the surveyors to set apart the reserve. The only justification made to me by way of reply was that an area of 6 acres had been set apart as a reserve on the Mokau River, and the name Piri Piri appeared on the plan as referring to this area. I am not at all satisfied that this reserve had any relation to the Piri Piri Reserve referred to in the Taumatamaire deed, and in my opinion the Native owners have substantiated their claim to a reserve at the point mentioned in the deed. It is a little difficult to identify the land, as the references in the deed were by no means exact, but it can be demonstrated from the plans that an area of perhaps 50 acres to 70 acres should have been set apart between the Mangakawakawa Stream and the Awakino River. The reference in the deed to the " road to Ruakaka " is a reference to a Native track then in use by the Natives which ran generally along the Awakino Stream to Ruakaka. The old plans give quite a fair indication of where this track met the Awakino River, and I have no doubt that an area intended to be set apart could, at this stage, be determined with sufficient certainty to be satisfactory. The land, however, I understand, is in part held by a Crown tenant and has been fully improved, and as to the other part is represented by a road reserve 2 chains wide running along the Awakino River bank. It would appear to me to be unfair that the Native owners should be entitled to a reserve at this particular spot, as the land appears to be some of the best land on the banks of the river and to be fully improved. It is not required for the purpose of the canoe reserve, and it is very many years since it could have been so used for the purpose—in fact, Mr. Skinner stated it was not so used in 1884.

A letter from the Under-Secretary of the Native Department to Mrs. Mae Taniora dated 13th January, 1938, was referred to in relation to " Ketekarino " and " Piri Piri " reserves, and the suggestion there offered was that these two reserves had been located in the Mokau Block, the first containing 6 acres and the second 76 acres. The 6 acres, however, set apart in the Mokau Block is for a scenic reserve. I was not informed as to how the 76 acres came to be reserved.

Had the owners of the Awakino and Mokau Blocks been identical, this explanation might have had some weight. They are, however, two different sets of owners, though some names appear in both blocks. The explanation is therefore insufficient, and there were no records of any sort produced to support the theory of the location of Awakino reserves in the Mokau Block.

I think that the owners should be compensated by a grant of a suitable piece of land of equivalent area. It will be necessary, however, to refer to the deed and the old plans so that the area might be computed.

6. *Reihana's Piece.*—The petitioners made much of the fact that the deed provides for a reserve for Reihana Takerei's son, and that although the area that should have been appropriated to him lay on the southern side of the Awakino River, he was nevertheless granted an equal area of similar land on the northern side of the river, and that he subsequently sold it. There appears to me to be little merit in the petitioners' claim in respect of this land. Reihana, by agreement with the Crown, got an area as bargained for, and had it lain on the southern side of the river he could have sold it just as readily as he sold the piece on the northern side of the river. It does not appear to me that anybody has suffered in respect of the grant to Reihana. Reihana himself made no complaint, and it was for him surely to raise the matter if he was not satisfied. The petitioners' claim rests apparently upon the hypothesis that had the land lain on the south side of the river, Reihana would not have sold it.

The suggestion made by the petitioners as to compensation was that they were entitled to say that they should have granted to them Sections 4 and 5, Block V, and Section 6, Block III, Awakino Survey District, comprising an area of 8,840 acres. This suggestion appears to me to be so extravagant as to carry its own condemnation. In so far as I may make any recommendation, I would suggest that the owners are entitled to have compensation in land or money representing 7,000 acres on the basis of £530/16,000 per acre, plus an area representing the Piri Piri Reserve of perhaps 50 acres to 60 acres when that area is discovered. Any further compensation, I think, would have to rest upon the good nature of the Government. In addition, the claimants appear to me to be entitled to a reserve at Ketekarino as a burial-ground.

I wish to say, in conclusion, that I am indebted to the claimants for their assistance, and particularly to the Crown representative for the great amount of research undertaken to assist the inquiry.

[L.S.] E. M. BEECHEY, Judge.

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