

1920.

NEW ZEALAND.

NATIVE LAND AMENDMENT AND NATIVE LAND
CLAIMS ADJUSTMENT ACT, 1919.

REPORT RELATIVE TO THE OWNERSHIP OF TARAWERA AND TATARAKINA BLOCKS.

*Presented to both Houses of the General Assembly in pursuance of Section 25 of the Native Land
Amendment and Native Land Claims Adjustment Act, 1919.*

9th August, 1920.

In the Native Land Court of New Zealand, Ikaroa District.—In the matter of section 25
of the Native Land Amendment and Native Land Claims Adjustment Act, 1919.

In pursuance of the powers and authority conferred upon it by the above Act, the Native Land Court, sitting at Hastings, made inquiries in order to ascertain and determine what Natives included in the Waikari-Mohaka agreement of 1870 have been omitted from the titles to the Tarawera and the Tatarakina Blocks; and I have the honour to report its findings as follows:—

In consequence of the outbreak of the Maori War in the Waikato in 1863 the New Zealand Settlements Act was passed, empowering the Governor in Council to confiscate the lands of any Native tribe or hapu that had after the 1st day of January, 1863, engaged in rebellion against the Crown. Provision was made by this Act, and also by the New Zealand Settlements Amendment and Continuance Act, 1865, for the payment of monetary compensation to any loyal Natives whose lands might happen to be included within the confiscated area, or to grant them lands in lieu of money payments.

About 1866 a large body of Natives in the north of Hawke's Bay joined Te Kooti in the Hauhau rebellion, and as a consequence an Order in Council, under the Act of 1863, was issued in January, 1867, confiscating a large tract of land in Hawke's Bay, called the Mohaka and Waikari District, and containing nearly a quarter of a million acres. It was stated in the Order in Council that no land of any loyal inhabitant within the district would be retained by the Government, and that all rebel inhabitants of the district who returned to their allegiance within a reasonable time would receive a sufficient quantity of land within the district for their maintenance.

Numerous claims were made, and meetings of loyal claimants were held in 1869 and 1870, and the outcome was an agreement drawn up and signed on the 13th day of June, 1870, between Mr. D. McLean (afterwards Sir Donald McLean), representing the Government, and thirty-one Natives, representing the loyal Maoris of the district. It was agreed that certain parts of the confiscated land should be retained by the Crown, and the balance should be subdivided into blocks and granted to those Natives whose names were in the schedule to the agreement, and were to be included in certificates of title for the respective subdivisions.

To give statutory effect to this agreement the Mohaka and Waikari District Act was passed on the 12th day of September, 1870. This Act validated the agreement and empowered the Governor to survey and define the various blocks into which the confiscated land was supposed to be subdivided, and to issue Crown grants therefor to the persons mentioned in the agreement as being entitled thereto. Titles, however, were not issued although surveys were made, and the Natives signed leases of several blocks in accordance with an arrangement made amongst themselves under the guidance of Tareha Moananui and Manaena Tinikirunga. The names in the leases do not correspond with those in the schedule to the agreement, as some of those who had died or left the district were omitted when the leases were being executed.

Matters were allowed to drift on till the Repeals Act, 1878, repealed the Mohaka and Waikari District Act, 1870, without any provision being made in its place. Tareha, the leading Maori in that locality, died in 1880, and in the following year was passed the Native Lands Act Amendment Act, 1881, which recited in section 7 the Order in Council of 1867, the agreement of June, 1870, the Mohaka and Waikari District Act, 1870, and its repeal in 1878, and stated that it was expedient to make provision for enabling the Governor to issue grants in favour of the persons who in pursuance of the agreement were entitled to the lands. The Native Land Court was empowered to inquire and determine who were the persons entitled, and to issue certificates in accordance with such determinations, and on receipt of these the Governor might issue Crown grants to the persons named therein.

In pursuance of this Act the Native Land Court sat in July, 1882, and the Natives sought to set aside the agreement of 1870 and to proceed on an investigation of title on the basis of ancestral right and occupation. They alleged that the names of many rebel Natives were in the schedule to the agreement, while many loyalists were omitted. The Court intimated that it had no jurisdiction to go behind the agreement, and could only recognize as being entitled those whose names appeared in the list, or the successors of those who had died in the meantime. The Natives then left in a body, and the Court made orders for the issue of certificates to the persons named in the schedule to the agreement in respect of the various blocks. In many cases, however, the names in the orders of the Court do not correspond with those in the agreement, as some of the persons named in the schedule did not get into any of the blocks. It is difficult to ascertain whether the lists submitted to the Court in 1882 were those compiled from the schedule or were those arranged by the Natives for leasing purposes subsequent to the 13th June, 1870.

The reason for the omission from the Court orders of persons named in the agreement or their successors is not clear. There is no evidence that they were dropped on account of the discovery of their disloyalty. It is now half a century since the agreement was signed, and all the leading spirits of those stirring times have passed away. It is therefore impossible to obtain any reliable information to account for the disparity between the agreement and the Court orders. A sum of £400 was distributed amongst the claimants as a solatium, but that does not seem to have weighed with the elders, as some of those who secured inclusion in the best blocks received also cash payments. The most probable reason for the omission of some of the contracting Natives is the fact of their having left the district and having ceased to assert their rights or to claim their rents. With the Native it frequently happens that "out of sight is out of mind," and it is well known that those who associated themselves with the Hauhaus ignored the Native Land Court, and their more astute relatives were ever ready to take advantage of their absence by ignoring their rights. Many Natives considered that the persons named in the agreement of 1870 and in the Court orders of 1882 were only trustees, and expected that sooner or later an investigation would be held under the Equitable Owners Act to determine who were the persons beneficially entitled; and it was not till 1896 that the Court of Appeal decided, in the case of *Teira te Paea v. Ruera Tareha*, that no trust was intended (15 N.Z. Law Reports, p. 91).

The Tarawera and Tatarakina Blocks do not, however, appear to have been included within the boundaries referred to in the agreement of 1870, but seem to have been recognized as part of the confiscated territory in all subsequent transactions. The land is mountainous, remote, and of little value, and the other blocks have been acquired by the Crown.

The only names sought to be included in the titles for Tarawera and Tatarakina are—(1) Hoani Ngarangi, (2) Rahera te Hautai, (3) Horiāna Hinehou, (4) Wirihana Ponomai. As there is little valid objection to their inclusion, and as they did not get into any of the subdivisions of the confiscated land although mentioned in the agreement of 1870, I recommend that provision be made for their inclusion in the titles for the remaining Tarawera and Tatarakina Blocks. Application can afterwards be made to the Native Land Court for the appointment of successors to them. The addition of these four names should not prejudice any steps taken for the alienation of these two blocks.

The Hon. Native Minister, Wellington.

M. GILFEDDER, Judge.

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