

1929.  
NEW ZEALAND.

NATIVE LAND AMENDMENT AND NATIVE LAND CLAIMS  
ADJUSTMENT ACT, 1926.

REPORT AND RECOMMENDATION ON PETITION No. 167 OF 1925, OF MAKI PIRIHI AND ANOTHER,  
RELATIVE TO TAWHITIRAHĪ OR PONAITI ISLAND.

*Presented to Parliament in pursuance of the Provisions of Section 35 of the Native Land Amendment and  
Native Land Claims Adjustment Act, 1926.*

Native Department, Wellington, 27th September, 1929.

*Petition No. 167 of 1925.—Poor Knights Islands.*

PURSUANT to section 35 of the Native Land Amendment and Native Land Claims Adjustment Act, 1926, I herewith transmit the report of the Native Land Court upon the allegations contained in the above petition.

The claim to these islands arose through dealings by Mr. J. S. Polack with Natives subsequent to the establishment of the British sovereignty. To settle the sundry claims that arose in respect of land dealings with Natives, the Land Claims Settlement Act, 1856, set up a Court of record (whose decision was to be final and conclusive), called the Land Claims Commission, to inquire into such claims, and the claim to these islands was among those submitted. On the first occasion it came before the Court the claim was allowed to stand over, the evidence as to the extinction of the Native title being incomplete. (See report, parliamentary paper, 1863, D.-14, p. 89, No. 1209.) The matter again came before the Court, and the formal report (parliamentary paper, 1878, N.-20, p. 7) shows that a Crown grant was issued on the 30th August, 1864, to R. S. Thomson (the assignee). The effect of this grant was that it became a valid and effective conveyance of the land against the Crown and against all other persons whatsoever (section 49 of 1856 Act). The question of what happened prior to the grant then became a closed page, even if the ordinary rule that a Court is presumed to have acted within its jurisdiction did not apply. It must be evident, if this title could be impugned, then every similar claim settled by the Land Claims Commission Court could be attacked upon similar grounds. The Crown later acquired the title to the land for valuable consideration.

Under these circumstances I have no recommendation to make.

R. N. JONES, Chief Judge.

The Hon. the Native Minister, Wellington.

In the Native Land Court of New Zealand, Tokerau District.—In the matter of section 35 of the Native Land Amendment and Native Land Claims Adjustment Act, 1926; and in the matter of petition No. 167 of 1925, of Maki Pirihi and another, praying for restitution of the Poor Knights, or Tawhitirahi Island, by the Crown.

To the Chief Judge, Wellington.

At a sitting of the Court held at Whangarei on the 28th September, 1928, before Frank Oswald Victor Acheson, Esquire, Judge, after inquiry into the claims and allegations made in petition No. 167 of 1925, it was decided to report as follows:—

(1) The islands affected by the petition are—						A.	R.	P.
Tawhitirahi	..	..	..	..	..	318	3	0
Aorangi	..	..	..	..	..	163	3	0
Total area	..	..	..	..	..	482	2	0

the two main islands comprising, together with several small rocky islets close by, the whole group known as the Poor Knights. The claim is not limited to Tawhitirahi.

An interesting description of these islands, including an account of their striking history, is given by Mr. W. M. Fraser in the *New Zealand Journal of Science and Technology*, Vol. 3, No. 1, paragraphs 8-14, year 1925.

(2) At the inquiry it was alleged on behalf of the petitioners—

(a) That the Natives properly entitled to the Poor Knights Group had not, either by themselves or by their chiefs or elders or predecessors, signed the deed of sale to Polack, nor consented thereto :

(b) That the islands were the scene of a terrible massacre more than one hundred years ago, that thereafter the islands became sacred to the survivors and to their descendants on account of the “*tapu* of blood” and that the Natives entitled had thereafter at no time either abandoned their claims or sold their interests to any European or to the Crown :

(c) That the Crown, having had knowledge of all the facts relating to the alleged sale to Polack, and having been aware of the reports of its own officers appearing on the Old Land Claims file, cannot claim now that, at the auction in 1882, it was a *bona fide* purchaser for value without notice of the adverse claim of the Natives interested :

(d) That accordingly the Poor Knights Islands should be restored to the Natives entitled.

(3) At the inquiry it was claimed on behalf of the Crown—

(a) That the Crown had purchased the islands at public auction from the mortgagee of the original grantee :

(b) That the original grantee had acquired his title through the Land Claims Commission in 1864, after a proper hearing of the claims of the Natives before a competent tribunal :

(c) That all possible steps were taken to deal with any objections by interested Natives :

(d) That the Crown's title to the islands should not be disturbed after so long a lapse of time.

(4) After a minute examination of the old records and after a reperusal of the evidence given at the present inquiry, this Court makes the following comments :—

(a) The Court is satisfied that a great massacre did take place on the Poor Knights Islands about the year 1808, and that thereafter the survivors gave up occupation of the islands, regarding them as sacred under the “*tapu* of blood.”

(b) The Court is satisfied that prior to the massacre the two main islands in the group carried a substantial population. The remains of ancient stone forts of considerable extent can still be seen. Extensive old cultivation areas can still be traced. The details about the massacre indicate that well over one hundred persons must have permanently resided there, apart from the war-party of Te Tatua that was absent in the south.

(c) The Court is satisfied that Te Tatua was the principal chief of the islands at the time of the massacre, and that neither he nor his only son, Hori Wehiwehi, nor his only grandson, Pouaka Wehiwehi, ever consented to the alleged sale to Polack or to the acquisition of the islands by the Crown. It is quite impossible for the Court to believe that in 1845, so soon after the massacre, and in the lifetime of Hori Wehiwehi, one of the survivors of the massacre, the persons entitled to the islands would have sold them to Polack in face of the *tapu*. Nor would the Natives in after-years have continued to bury their dead on these islands if they had sold the islands to Polack.

(d) No evidence whatever has been produced or led on behalf of the Crown to indicate that the signatories to the deed of sale in 1845 were entitled, in their own right or as chiefs of the tribe directly interested, to sell the Poor Knights Islands to Polack or to any one else. No evidence has been given to show that the signatories were the people of Te Tatua or their descendants, and no evidence has been given to show that the signatories had ever occupied the islands or exercised rights of any description there. It is true that an attempt was made to indicate that Maihi, one of the signatories, was the same person as Hori Wehiwehi, but the advertisements in the *Maori Messenger* of the 15th July, 1844, and the 1st August, 1844, clearly show that the “Maihi” who signed the deed of sale was the well-known chief Kawiti (Marsh Brown Kawiti). Moreover, on the cross-examination of Hana Paengatai and other witnesses, the Crown Solicitor was unable to connect up any of the signatories with Te Tatua and other persons to whom the islands had clearly belonged.

(e) The fact that eleven Natives stated to be chiefs of Ngatiwai did sign a deed of sale purporting to dispose of the islands to one Polack is by no means conclusive evidence that they had a right to sell. Polack's own letter of the 20th December, 1844, to the Colonial Secretary stated, “I propose to purchase from a chief called Hokianga, his father, only brother, and son (sole claimants), of the Whangaruru Tribe.” A report dated the 3rd October, 1849, on Old Land Claims File 1209/12, refers to a recommendation by Mr. Clark, Protector of Aborigines, that the purchase of these islands “should be made from the whole of the Whangaruru Natives, who have partial claims thereto,” thereby implying that other Natives, in his opinion, had claims. Further, Mr. C. O. Davies, one of the witnesses to the deed of sale, stated on oath to Mr. Commissioner Bell on the 8th October, 1861, that “I told him (Polack) that I was doubtful whether the names of the sellers appended to the deed comprised all the claimants, whereupon he (Polack) told me that he took all the responsibility upon himself.”

(f) The Court making this present report regrets to have to say that the proceedings before the Land Claims Commission on the 20th July, 1864, do not make very satisfactory reading. Mr. Commissioner Bell had quite rightly recommended that a Mr. Davies assemble “all the Natives concerned in the title to the islands,” in order to come to a satisfactory arrangement with them. Mr. Davies produced only four Natives at the hearing, including Tawatawa, one of the signatories to the original deed of sale. It was not shown that any “assembly of Natives concerned” had previously been held, nor was it shown that Tawatawa and the others had been chosen to represent the Natives

concerned. Instead, Tawatawa was allowed to speak for all, and his hearty boasting should have been itself a warning to the Commission that it was dealing only with a minor chief, who was seizing the chance to add to his name and fame. Tawatawa said, "I have been the principal objector since Governor Grey came. I never had anything to do with the sale to Polack." Yet Tawatawa was one of the signatories to the original deed of sale. Also he stated, "I hold the three groups in my hand. No other parties can claim independently of me. I am the principal, and other claims must come through me"; and more to that effect. Yet at the inquiry held in 1849 Tawatawa himself stated that the Natives (himself and others) who had sold to Polack had no right, with the exception of Pihi, whose claim only extended to the Poor Knights. Thus in 1849, shortly after the sale, Tawatawa admitted that he had no right to sell the Poor Knights, yet in 1864 he claimed that he was the principal man and entitled to speak for all the Natives concerned. Again, the evidence disclosed the fact that Tawatawa and the others had already received £40 (presumably from Thomson), which may explain why he and the others disclaimed any further right to the islands. Moreover, the Commission had no right to assume, without any real evidence in support, that the rights to the three groups of islands were in each case the same, and that the same persons were the owners of each group.

(g) It is also pointed out that the sitting of the Commission took place in 1864, at a time of great stress to Maori and pakeha alike; at a time when, as is common knowledge, a large number of the Maori people held aloof from all pakeha tribunals and refused to bring forward their claims. The Commission, moreover, sat at Auckland, and there is nothing whatever on record or in evidence to show that the Natives really interested in the Poor Knights Islands had any notice of the hearing or any opportunity to attend.

(5) The Court considers it to have been proved by evidence at the inquiry—

- (a) That Te Tatua and his people has special rights over the Poor Knights Islands in which their non-resident kinsmen of the mainland were not entitled to share:
- (b) That the descendants of Te Tatua and his people have kept their claims "warm" from the time of the massacre up till the present day by acts of ownership that were reasonable and sufficient, and quite in accord with Maori custom and thought.

*Recommendations.*—The Court begs to suggest that it be recommended to Parliament that the Natives interested be awarded substantial compensation for the loss of the Poor Knights Islands; and that the Native Land Court be authorized to decide who are the Natives entitled to such compensation, and in what shares. Should compensation be awarded, the Court expresses the hope that it will take the form of financial help or the provision of land to assist in the farming operations of the Natives interested, rather than the payment of cash. The Court also begs to recommend that something be done to meet the wishes of the Natives in respect of their burial-grounds on the islands, without interfering with the present excellent use of the islands as a bird sanctuary and scenic reserve.

As witness the seal of the Court and the hand of the Judge.

J. O. V. ACHESON, Judge.

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concerned. Instead, Tawatawa was allowed to stand for all and his party bearing should have been itself a warning to the Commission that it was dealing only with a minor chief who was wearing the cloak to add to his name and fame. Tawatawa said: "I have been the principal object of the Governor's eye. I never had anything to do with the sale to P. O. J. I hold the three groups in my hand. The three groups can claim independently of me. I am the principal, and other claims are mine. Yet at the inquiry held in 1849 Tawatawa himself said that his claim only extended to the Poor Knights. This in 1849, shortly after the sale, Tawatawa admitted that he had no right to sell the Poor Knights. Yet in 1861 he claimed that he was the principal man and entitled to speak for all the Native owners. Again the evidence disclosed the fact that Tawatawa and the others had already received £10 (presumably from the Government) which may explain why he and the others declined any further right to the islands. Moreover, the Commission had no right to assume, without any real evidence in support, that the rights to the three groups of islands were in each case the same, and that the same persons were the owners of each group. (c) It is also pointed out that the sitting of the Commission took place in 1861, at a time of great stress to Maori and Pakeha alike; at a time when, as is common knowledge, a large number of the Maori people fled from all Pakeha tribunals and refused to bring forward their claims. The Commission, moreover, set at naught the fact that there is nothing whatever on record or in evidence to show that the Maori people were interested in the Poor Knights Islands had any notice of the hearing or any opportunity to be heard.

- (d) The Commission is to have been proved by evidence at the hearing.
- (e) That the Tataru and his people have special rights over the Poor Knights Islands in which their non-payment of the purchase price of the islands was not noticed to them.
- (f) That the descendants of the Tataru and his people have kept their claims "warm" from the time of the massacre up to the present day by acts of ownership that were reasonable and sufficient and that in accord with Maori custom and law.

**Recommendation.**—The Commission has been informed by the Tataru and his people that they are interested in the Poor Knights Islands and that they have kept their claims "warm" from the time of the massacre up to the present day by acts of ownership that were reasonable and sufficient and that in accord with Maori custom and law. The Commission has been informed by the Tataru and his people that they are interested in the Poor Knights Islands and that they have kept their claims "warm" from the time of the massacre up to the present day by acts of ownership that were reasonable and sufficient and that in accord with Maori custom and law. The Commission has been informed by the Tataru and his people that they are interested in the Poor Knights Islands and that they have kept their claims "warm" from the time of the massacre up to the present day by acts of ownership that were reasonable and sufficient and that in accord with Maori custom and law.

J. O. V. Attorney, Judge.