

land because they would be useless to the Crown until substantial purchases had been made elsewhere to which the papakainga interest might be attached on partition.

The bulk of the Orakei Block was purchased prior to any purchase in the papakainga in 1914, and it does not appear that the Crown's agent had any difficulty in effecting purchases. He did not himself again visit Orakei. Mr. Mays said, "At the outset several of the small owners wanted to sell their papakainga land. I would not buy then, and told them so. I said, 'I am not buying the papakainga just now.'" There is probability in this statement. The land belonged to the Natives. While the Crown might intimate its intention not to purchase, it was still open to the Natives owning interests to sell to private individuals. The Crown might, of course, undertake not to purchase, but it obviously could not promise that other Natives would not sell their interests to private purchasers. Mr. Mays could not have made the promise attributed to him without varying the instructions given to him and without, as the event proved, the very early embarrassment which would be caused by the making of purchases in the papakainga in breach of such promise.

Section 363 of the Native Land Act, 1909, provided that where any contract had been made for the purchase by the Crown of any Native land or of any interest therein or when any negotiations were contemplated or in progress with a view to making any such purchases, the Governor-General might, on the recommendation of the Native Land Purchase Board, make an Order in Council prohibiting for such period as he thought fit, not exceeding one year from the date of the Order, all alienations of that land other than alienations in favour of the Crown. At all times between the commencement of purchases in the Orakei Block and the commencement of purchases in the papakainga, an Order in Council under that section was in force affecting the whole of the land in the Orakei Block, including Orakei No. 1 Reserve, the kainga. An Order in Council had been made prior to Mr. Tole receiving his instructions, and that Order was further extended for a year by Order in Council made on the 12th October, 1914. Mr. Mays as purchasing agent, must have been aware of the Order in Council. Its justification was a contract for the purchase by the Crown of Native land or negotiations contemplated or in progress with a view to making such a purchase. The papakainga should not have been included unless a contract of purchase had been made or unless negotiations were contemplated or in progress with a view to making purchases.

71. I accept Mr. Mays' evidence as truthfully given. I am not prepared to accept Ngapiapi Reweti's evidence in so far as it is in contradiction. I was unable, having seen and heard him, to regard him as a reliable witness. I do not doubt that Ngapiapi Reweti may have passed on information at an early stage that Mr. Mays was not, as he was not then, purchasing interests in the papakainga, but I do not accept his statement that he was instructed to promise that the papakainga land would never be purchased. What Mr. Mays said was a mere statement of his present intention and did not in any way amount to a promise that, if the Natives would sell their other blocks, the papakainga would not be purchased but would be permanently retained. If there had been such a promise, then I think it must have been mentioned by sellers and non-sellers and would have become a matter of grave complaint in 1914 and long before 1927. Ngapiapi Reweti said he made the promise to Hira Pateoro and to others whose names could not be given. Te Hira Pateoro gave evidence before Judge Acheson, and, though specifically asked as to the return of the papakainga, he did not depose to any statements having been made to him similar to those mentioned by Ngapiapi Reweti. No other Native came forward to state that a promise had been made to him.

72. The position in which Te Hira Pateoro is found in connection with the promise allegedly made by the Crown's agent calls for examination. No question as to any promise or undertaking, as such, seems to have been raised until about a year before the Natives petitioned Parliament in 1928 for the return to them of the papakainga and church reserve.

According to the translation, the prayer of the petitioners in Petition No. 156 of 1928, so far as the papakainga is concerned, is "that their papakainga be returned to them as a home for themselves and their descendants. *This was the understanding at the time the solicitor representing the Crown came to see us.*" The prayer of the signatories to Petition No. 165 of 1928 in the same premises translated, runs: "That their papakainga be returned to them as a permanent home for themselves and their descendants, *as was intended at the time the Solicitor representing the Crown visited them.*"

There can be but one interpretation of the clauses which have been quoted from the petitions, and that is that a promise or undertaking was given by the Crown's agent to the Natives that the papakainga would be reserved to them.

In both petitions Te Hira Pateoro is the leading petitioner, and it is evident from his statements made in the Native Land Court at Auckland on the 11th November, 1927, during the course of the hearing of the Crown's application for the partition of Orakei No. 1 Reserve C 2B—namely, "I object to partition proceedings. I do not wish to say where I want my area to be located. The position is that I am petitioning the Prime Minister to have the whole of Orakei No. 1 Reserve C 2B handed back to us because the Crown had no authority to purchase interests in this block at all"—and from certain correspondence on the departmental files, conducted by Te Hira with the Native Minister in the closing months of 1927 and in 1928, that the petitions had their origin in him. If any such promise as is alleged was made, it is unthinkable, in view of Te Hira's acknowledged standing in the community, that it would not have come to his notice immediately it was made, and that he would not have questioned in no uncertain way, at a time long antecedent to the presentation of the petitions to Parliament, any action opposed to the terms of the alleged promise. Nor is his complaint by way of petition easily reconcilable with the attitude disclosed by the manner of the disposition of his own interests in the Orakei subdivisions to the Crown. It is revealed that, except in the case of interests in the Orakei No. 3F 1 and Orakei No. 5 Blocks, which were sold to the Crown pursuant to resolutions of the assembled