1939.

NEW ZEALAND.

THE NATIVE PURPOSES ACT, 1938.

REPORT AND RECOMMENDATION ON PETITION No. 177 OF 1937, OF RANGIRUMAKI PERENIKI, OF PAEROA, PRAYING FOR AN INQUIRY IN RESPECT OF THE OWNERSHIP OF MURAOTEAHI BLOCK.

Presented to Parliament in pursuance of the provisions of Section 23 of the Native Purposes Act, 1938.

Native Land Court (Chief Judge's Office),
WELLINGTON, C. 1, 18th September, 1939.

The Right Hon. Native Minister, WELLINGTON.

PETITION No. 177 OF 1937.—MURAOTEAHI BLOCK.

PURSUANT to section 23 of the Native Purposes Act, 1938, I transmit herewith the report of the Court on the above petition.

The Court has gone into the matter fully and finds that the petitioner has failed to show that she had any right to be included in the title and that the proceedings upon investigation of title to the land should not be reopened.

Under the circumstances, I have no recommendation to make in the matter.

R. N. JONES, Chief Judge.

In the Native Land Court, New Zealand, Waikato-Maniapoto District.—In the matter of the Muraoteahi Block; and in the matter of reference dated 14th October, 1938, by the Chief Judge in terms of section 23 of the Native Purposes Act, 1938, to the Native Land Court for inquiry and report upon the claims and allegations made by the petitioner, Rangirumaki Pereniki, in Petition No. 177 of 1937, for an inquiry in respect of the above-named block.

THE Court held inquiry as directed at Auckland on the 18th and 27th July last (Akld. M. Bk. 17, pp. 90–95, 99–101).

Mr Sullivan appeared for the petitioner, and Messrs. Blomfield and O'Neill for the successors to Rihitoto Mataia, deceased.

The title to the block was investigated by the Native Land Court sitting at Paeroa on the 2nd September, 1878. There had been three applications for investigation, two of which, dated 11th April, 1876, were by Rihitoto Mataia only. One was signed by Rihitoto herself (her signature being well known to the Court) the other was not. This latter was objected to by the District Officer and was not further dealt with. A third application was lodged on 5th April, 1878. It purports to be signed by Rihitoto [*sic.*], Pereniki, Apera, and Hati. I do not think the signatures were those of the people themselves, but were made by the agent or other person who prepared the application. Certainly the signature "Rihitoto" is not the signature of Rihitoto Mataia. Both the applications signed by Rihitoto herself and the last-mentioned application appeared in the *Gazette* of 29th April, 1878 (gazetted in *New Zealand Gazette* of 1878, pages 678 and 679). This disposes of the statement in clause 4 of the petition that the name of Muraoteahi Block did not appear in the *Gazette*.

It was urged upon me by counsel for petitioner that the fact that Pereniki's name was not mentioned in he Court minutes shows that he was not present. But, in my opinion, all it shows is that he made no claim. It is obvious that unless he did so or gave evidence his name would not be mentioned.

The petitioner in giving evidence before me stated that she was born in 1873 and so was only five years old when the investigation took place. She said she had "heard that her grandfather was not present at the hearing. Te Kata and Pereniki's wife (apparently not her own grandmother) told me. They are dead. *Probably* the wife was there herself and knew he was not." These statements are easy to make, but impossible of contradiction after the lapse of sixty years, when all the elders are dead. Later in her evidence the witness declared that Pereniki took no steps because it had been arranged that Rihitoto should be left as trustee for herself and the Pereniki family. I am not prepared to accept this wholly uncorroborated statement, which is in contradiction of the contention that Pereniki knew nothing about the hearing. At the hearing Rihitoto gave evidence of occupation and stated that she was the sole owner. No person objected to her claim except one man, who asserted that there was an overlap on part of Te Tawa Block, and the Court dismissed this claim on the ground that it had been settled in the Tawa case.

It is to be observed that the Court at which this hearing took place was a very important Court and dealt with a large number of blocks, mostly, but not all, of comparatively small size. It would be the subject of discussion throughout the Maori community. Pereniki was resident in the locality of Paeroa and attended the Court. The Court minutes show that he was in attendance making a claim in Kohanui Block on 5th August, 1878, and again on 3rd September, 1878, the day following the Muraoteahi hearing. This block is some little distance from Muraoteahi. It contained 12½ acres and the Court awarded four-fifths to Aherata te Mihinui, Uringaho hapu of N'Maru, and one-fifth to Pereniki Kokako, Te Matiwaru hapu of N'Tamatera. He was also present on 12th September, 1878, at the hearing of Waihou West Block, and received a small interest. On 7th September, 1878, Pereniki was again present giving evidence on his claim to the Koromatua Block, which adjoins Muraoteahi. His claim was from Kurireko of N'Taharua and was rejected by the Court, which awarded the land to the descendants of Maruwhenua, of whom Rihitoto Mataia was one, she being descended from both Kurireko and Maruwhenua. She mentions in her evidence that she lived on Muraoteahi, the adjoining block. The block was awarded in three portions—No. 1 to Keepa Raharuhi and others named as members of N'Koi hapu of N'Tamatera, No. 2 to Hori te Ruinga and others named as members of Te Urikaraka hapu of N'Paoa, and No. 3 to Rihitoto Mataia, N'Taharua hapu of N' Tamatera.

These circumstances show that Pereniki was in frequent attendance at the Court, and to my mind it is most improbable that he knew nothing about the Muraoteahi hearing. The most likely thing was that he recognized that he could not successfully claim, and therefore did not bring any before the Court. It may be added that the evidence of Pereniki in the Koromatua case and the petitioner before me shows that at the time of the hearing in 1878 there were a number of descendants of Taharua living, any of whom could have objected to Rihitoto's claim if they desired. None of the petitioner's elders seem to have taken any steps at any time to challenge Rihitoto's right.

The assertion in clause 5 of the petition is incorrect and misleading. The Judge did not make such an order. The Court order of the 2nd September, 1878, duly signed and sealed, is that a memorial of the ownership of Rihitoto Mataia of a parcel of land at Ohinemuri containing 120 acres 2 roods and 16 perches, and known by the name of Te Muraoteahi, be inscribed on a separate folium of the Court rolls. The memorial of ownership so ordered issued in due course to Rihitoto Mataia only. I may draw attention to the reference in the memorial to names being arranged according to their hapus and tribes, as it has a bearing on the point that I am now about to discuss.

The assertion in clause 5 and the contention of petitioner's counsel to a similar effect is based upon the following entry in the Court minutes of the Muraoteahi case (Hauraki minute-book 11, page 295):—

and

> "Ordered that a Memorial of the Ownership of Rihitoto Mataia λ N'Taharua hapu of N'Tamatera containing 120 ac. 2 r. 16 p. be inscribed upon a separate folium of the Court Rolls."

The interlineation is not initialled or verified in any way.

It is to be observed these minutes were written by the Clerk of the Court and not by the Judge himself. In my opinion, the interpolation of the word "and" was effected by some unauthorized person and not at the time of the hearing or by the Clerk of the Court. Such a happening has been known on other occasions.

There are several reasons for the conclusion I have come to:—

Firstly, the word "and" is in a different handwriting and different ink from the rest of the entry. That is not only my opinion, but that of the Registrar at Auckland (now Judge Browne) as expressed in a report by him to the then Chief Judge in regard to petitions to Parliament in 1899 and 1900 by the present petitioner under her married name of Rangirumake Haora. The Registrar's report states: "the word 'and' between Rihitoto Mataia and N'Taharua is interlined in the minute-book and is written in a different handwriting and in a different ink from the rest of the judgment. You will notice that in the petition stress is laid upon the fact that the land was awarded to Rihitoto Mataia and N'Taharua." In regard to both the petitions of 1899 and 1900 the Native Affairs Committee had no recommendation to make.

Secondly, the signed and sealed order for memorial of ownership and the memorial of ownership itself are, as already pointed out, in favour of Rihitoto Mataia only. It is incredible that the Judge would have signed these documents if the position were as contended for the petitioner.

Thirdly, any order purporting to be made as contended for the petitioner would be an incomplete order on which no final order could be drawn up for the reason that the individual names of N'Taharua are not given.

Fourthly, I have no doubt at all that the hapu name "N'Taharua" was for the purpose of showing the hapu to which Rihitoto herself belonged. That accords with the invariable practice of the Court at the time, and was necessary to enable such information to be embodied in the memorial of ownership to which I have already drawn attention.

I have pointed out in commenting upon Kohanu and Koromatua Blocks that the names of the hapus to which individuals found entitled are given. In searching through the records of the many blocks dealt with at the 1878 Court I have not come upon any case in which that was not done.

I may give some further instances. On the same day as that on which the Muraoteahi Block was dealt with (2nd September, 1878) Te Pareoa Block was the subject of Court orders (Hauraki minute-book 11, page 296). Te Paeroa No. 1 was awarded to twenty persons, and after the name of each person is given his hapu—*e.g.*, Hirawanu Karawhiu N'Koi hapu of N'Tamatera, and so as to each person his hapu.

Te Paeroa No. 2 was awarded to nine persons including Rihitoto Mataia, N'Taharua hapu, N'Tamatera Tribe.

On the next day, 3rd September, 1878, a small block named Parahamuti (Hauraki minute-book 11, page 298) was the subject of an order to Rihitoto Mataia, N'Taharua hapu N'Tamatera. On the same date (page 303 of same minute-book) a block called Pukeamaru was the subject of an order in favour of Wini Kerei, N'Huruhuru hapu of N'Paoa and Waata Tipa, M'Kawahi hapu of N'Paoa. On 11th September, 1878 (minute-book 11, page 354), are set out the orders in respect of divisions of Mochau No. 1 Block to over forty persons, the hapu and tribe of each being given.

These examples are sufficient to show the invariable practice of the Court.

There remains the question whether in fact Pereniki Kokako had any right. There is no evidence that he ever had any occupation in or near Muraoteahi. He is not included as an owner in any of the lands adjoining that block. There are six of these. The only one in which he advanced a claim was Koromatua, and, as already stated, it was dismissed. A small block, Ngahungahu, which was one of the six, was awarded to Takerei te Puhi alone in 1880 and was *purchased* by Pereniki's two children, Mere Raiha and Panipaura, in 1898, transfer being confirmed 14th August, 1901. There was a small block of under 14 acres called Muraoteahi No. 2 which was investigated in 1880. Rihitoto gave evidence that it was a swamp and had never been occupied. She gave in a list of owners, but subsequently amended it to include herself, her husband, William Grey Nicholls, Mere Pereniki, and Te Motui Aramoana. This has every appearance of Rihitoto having included these names through aroha. The fact that Mere's brother, Panipaura, is not included lends colour to that. Pereniki himself was dead at that time, having died on 14th January, 1879.

The petitioner's own evidence showed very little knowledge of the rights of her elders. She was not able to mention any land owned by her grandfather except Opukeko, which is some distance from Muraoteahi.

I have, however, ascertained from the Court records that he was an owner in Waihou West No. 2 with thirteen owners, also in Onekaharau Block, but sold his interest soon after it was awarded to him, also in Kohanu already referred to. Opukeko Block appears to have been sold prior to investigation by Te Awhe and other chiefs, and there is no Native Land Court title to it. Pereniki appears as a part owner in several other blocks, but none of these is in the immediate vicinity of Muraoteahi. I can find nothing in any of those cases tending to show a right of Pereniki in Muraoteahi.

The petitioner's evidence as to her family is that she herself was born at Kotukuwhakatoro, close to this land. I have not been able to ascertain exactly where this place is. Petitioner did not know where her mother was born. Pereniki, she says, was born at Ruawehea, on Ohinemuri Block. She states that when she first remembered things she was living on Muraoteahi with her mother, who had left her pakeha husband, Henry Tizard, the petitioner's own father. From this it appears that petitioner was born at the place she mentions while her mother was living with Tizard there. No inference of right or otherwise can be drawn from this. It appears to me plain from the evidence that the occupation of the petitioners' family began only with her mother when an adult. It is not ascertainable whether the mother went there before or after the investigation of the block. There is not the slightest evidence of occupation prior to that, and I do not think that any Court would find a right established by such occupation alone, even though the claimant had descent from the ancestor. In my opinion, the mother went there to live through relationship to and by permission of Rihitoto, a quite usual thing to happen.

The petitioner admits that Rihitoto and her husband worked and improved the land long before the petitioner sent in her first petition. She further says, "Sometimes I lived with Rihitoto and went to school at Paeroa. My mother had a house as well as Rihitoto. There were others there without right." (This was not intended as an admission that her mother had no right, but it shows that Rihitoto permitted occupation by a number of people.) Petitioner states she was married from Muraoteahi in 1899. "Rihitoto took me because I was the only girl of N'Taharua at that time. My mother stayed there till she was ejected in 1918."

A witness called Wharera Meneta was called for petitioner. He stated he was sixty years old, and therefore was not born at the time of the investigation of Muraoteahi. His evidence is not of any great value as bearing upon the question of right. He states he knew the land about forty years ago, and Rangirumaki and her mother were living there then. That, of course, is not disputed. Witness recollected the time when Tihitapu Moananui married Petiwai Warena, Rihitoto's daughter. Several others were there (*i.e.*, on Muraoteahi), but without right. Rihitoto lived there. On cross-examination witness said: "When I first knew the land, Rihitoto and Nicholls were living there. Their house had been built by them. They had erected other houses on different parts of the block. The meeting-house was erected by all the people. Rihitoto herself erected the church. There were small houses near the meeting-house occupied by visitors to the huis. Pereniki's people put them up" [Rangirumaki

herself did not say this]. "Petiwai lived on the block. Rihitoto may have built that house. Rangirumaki and her mother did not live in it. I do not know that they lived in a house put up by Rihitoto. I remember Rangirumaki marrying Haora. I was not there." Witness went on to say that Haora asked consent of N'Taharua. The elders present were Rihitoto and Mere Raiha—others of N'Taharua present were young people whose names witness could not give. N'Taharua was a big tribe, but it is not a big tribe now.

No evidence was called by counsel for the successors (grandchildren) of Rihitoto Mataia, who died on 14th May, 1935, it being stated that there was now no one living capable of giving evidence of the facts at the time of the investigation. It was, however, stated, and from my judicial knowledge I believe correctly stated, that this block was Rihitoto's home and remained in her occupation from before the investigation till her death. By her will she set apart an area to include the church and meeting-house, and devised it to her two eldest grandchildren as *joint tenants*.

The case for the successors rested upon the records of the Court.

With reference to paragraph 6 of the petition referring to the transfer of the block to W. G. Nicholls there is no mystery about the matter. The transfer was the subject of an inquiry by the Native Land Court as required by the Native Land Act, 1873, before any sale of land held under memorial of ownership could take effect, and the Court presided over by Judge Symonds declared that the transaction was *bona fide* and the sale complete, and made the order usual and necessary in such cases that the land be held in freehold tenure by William Grey Nicholls, of Paeroa, half-caste, as from the date of the order—namely, the 12th day of February, 1881. Certificate of title, Vol. 21, folio 244, under the Land Transfer Act issued in due course to Nicholls on 11th September, 1882. By transfer No. 14744, produced and entered on 5th July, 1893, Nicholls transferred the land to Rihitoto Mataia, who therefore became the owner as a purchaser and not by inheritance.

I have made an exhaustive investigation into all the circumstances and given most careful consideration to all aspects, and in my opinion petitioner has failed to show that she has any right or that there is any reason for reopening the title.

I therefore do not recommend any action.

Dated at Auckland, this 13th day of September, 1939.

[L.S.] CHAS. E. MACCORMICK, Deputy Chief Judge.

Approximate Cost of Paper.—Preparation, not given; printing (465 copies), £1 10s.

By Authority: E. V. PAUL, Government Printer, Wellington.—1939.

Price 3d.]