

1881.

NEW ZEALAND.

MIDDLE ISLAND NATIVE LAND PURCHASES

(REPORT OF THE COMMISSION ON).

[In continuation of G-7, Appendix to Journals of House of Representatives, 1880.]

Presented to both Houses of the General Assembly by Command of His Excellency.

No. 1.

APPOINTMENT OF COMMISSION

NORMANBY, GOVERNOR

To all to whom these presents shall come, and to THOMAS HENRY SMITH, of Auckland, and FRANCIS EDWARD NAIRN, of Nelson, Esquires, Greeting:

WHEREAS it is expedient that a Commission consisting of two persons, one to be nominated by the Governor, and the other by or on behalf of the Natives interested in the subject of inquiry, should be appointed for the purpose of making the inquiry hereinafter mentioned: And whereas the aforesaid Natives have nominated the person hereinafter secondly named to act on such Commission on their behalf:

Now, therefore, know ye that I, George Augustus Constantine, Marquis of Normanby, the Governor of the Colony of New Zealand, having full trust and confidence in your impartiality, ability, and integrity, in pursuance and exercise of all powers and authorities enabling me in this behalf, and by and with the advice and consent of the Executive Council of the said colony, do hereby appoint you, the said

THOMAS HENRY SMITH, of Auckland, and
FRANCIS EDWARD NAIRN, of Nelson,

to be Commissioners, by all lawful ways and means, and subject to the terms of these presents, to examine and inquire into the several matters and things hereinafter set forth, that is to say,—To inquire into and ascertain in what manner the “Ngaitahu” Block of land, situate in the Middle Island, was purchased by Mr Kemp and Mr Mantell, in or about the years 1848 and 1849, from the Native owners thereof, notwithstanding a certain order of reference, dated the 28th day of April, 1868, signed by the Honorable John Hall, on behalf of the Governor of New Zealand, and “The Ngaitahu Reference Validation Act, 1868,” and to examine all deeds and documents relative to such purchase, and in respect thereof to investigate and determine—(1.) Whether or not any promises or conditions within the legitimate scope of the instructions and authority severally granted to the aforesaid Mr. Kemp and Mr. Mantell, and made by either of them respectively on behalf of the Crown at the time of the aforesaid purchase yet remain to be fulfilled; and, if so, what is the amount of damage sustained by the aforesaid Natives by reason of such non-fulfilment. (2.) Whether any lands were reserved or agreed to be reserved and excepted out of the lands so purchased for the use of the aforesaid Natives; and, if so, whether such reserves have been made in terms of the original agreement in respect thereto, and, if not, what is the amount of damage sustained by the aforesaid Natives by reason of such reserves not having been so made. To inquire into and ascertain in a similar manner in all respects into the circumstances of the purchase, from the Native owners thereof of the following blocks of land, that is to say, the “Akaroa” Block, by Mr. Hamilton, in 1856; the “Otago” Block, by Captain Symonds, in 1844; and the “Murihiku” Block, by Mr. Mantell, in 1853; and generally, by all lawful ways and means, to examine and inquire into every matter and things touching and concerning the premises, in such manner, and at such time or times, and at such places, as you may appoint or determine: Provided that any such inquiry may be adjourned by you from time to time or place to place. And I do hereby authorize

and empower you to have before you and examine all books, papers, maps, plans, documents, and writings whatsoever which you shall judge necessary or expedient relating to the subject matter of this inquiry or any part thereof, and also to have before you, and examine on oath or otherwise as may be allowed by law, all witnesses or other person or persons (whether claimants or not) whom you shall judge capable of affording you any information touching or concerning the said inquiry or any part thereof: Provided always that nothing herein contained, or in the exercise of the powers hereby conferred, shall be deemed or construed to call into question the validity or due execution of any deed or instrument whereby any of the lands herein referred to were surrendered or ceded to Her Majesty. And I do further require you within two years from the date of these presents, or as much sooner as the same can conveniently be done (using all diligence), and thereafter from time to time as you shall think fit, to certify to me under your hands and seals your several proceedings and your opinion touching the premises, and that you do also report to me in the same manner what you deem to be the true and just condition of each case hereby referred to you for inquiry as aforesaid. And I do hereby declare that this Commission shall continue in full force and virtue, and that, subject to these presents, you, the said Commissioners, shall and may from time to time proceed in the execution thereof at such place or places and at such time or times as aforesaid as you shall judge convenient. And I do hereby further direct that, in any case where you shall differ in opinion in relation to any matter the subject of inquiry before you, or as to the course to be pursued in connection therewith in any way, then and in every such case you are hereby required to make a special report thereon to me, stating in such report the opinion which each of you has severally formed thereupon, together with the grounds and reasons of such opinion. And, lastly, I do hereby declare that this Commission is and is intended to be issued subject to the provisions of "The Commissioners' Powers Act, 1867," and "The Commissioners' Powers Act Amendment Act, 1872."

(L.S.) Given under the hand of His Excellency the Most Honorable George Augustus Constantine, Marquis of Normanby, Earl of Mulgrave, Viscount Normanby, and Baron Mulgrave of Mulgrave, all in the County of York, in the Peerage of the United Kingdom; and Baron Mulgrave of New Ross, in the County of Wexford, in the Peerage of Ireland; a Member of Her Majesty's Most Honorable Privy Council; Knight Grand Cross of the Most Distinguished Order of Saint Michael and Saint George; Governor and Commander-in-Chief in and over Her Majesty's Colony of New Zealand and its Dependencies, and Vice-Admiral of the same; and issued under the Seal of the said Colony, at Wellington, this fifteenth day of February, in the year of our Lord one thousand eight hundred and seventy-nine.

JOHN SHEEHAN

Approved in Council.

FOSTER GORING,
Clerk of the Executive Council.

No. 2.

The MIDDLE ISLAND COMMISSIONERS to the Hon. the NATIVE MINISTER.

Middle Island Native Land Purchases Commission,
Auckland, 31st January, 1881

SIR,—

We have the honor to transmit through you the accompanying report, with enclosure, addressed to His Excellency the Governor on the subject of the Commission held by us.

We have, &c.,

THOS. H. SMITH,
F. E. NAIRN,
Commissioners.

The Hon. the Native Minister, Wellington.

Enclosure in No. 2.

To His Excellency the Honorable Arthur Hamilton Gordon, K.G.C.M.G., Her Majesty's High Commissioner for the Western Pacific, Governor of New Zealand, &c., &c.

MAY IT PLEASE YOUR EXCELLENCY,

We, holding Her Majesty's Commission to inquire into and report upon certain matters connected with the purchase of land in the Middle Island of New Zealand, have the honor to address your Excellency upon the subject thereof.

Your Excellency is doubtless cognizant of the fact that in February, 1879, a Commission under the hand of His Excellency the Marquis of Normanby and the Seal of the Colony of New Zealand was issued, by which we were commanded to inquire into, and, within two years from the date thereof, to report upon certain matters connected with the purchase of land in the Middle Island of New Zealand from the aboriginal owners.

We presume that it has also come under your Excellency's notice that the prosecution of the inquiry which we were required to make under the Commission referred to was interrupted and suspended at the instance of the Hon. the Native Minister (Mr Bryce), and that a letter upon this subject was addressed by us to your predecessor, Sir Hercules Robinson, on the 9th August last, and by His Excellency's command was presented to both Houses of the New Zealand Parliament.

Vide G.-7.
Appendix to
Journals of
House of
Representatives,
1880.

Seeing no prospect of being able to proceed further with the task assigned to us, as the period of two years has nearly expired, we conclude that our proper course is to return our Commission to your Excellency, which we now do.

In so doing, however, we conceive it to be our duty to place in your Excellency's hands the results of our labour, in the hope that they may be found useful. We are strongly impressed with a sense of the magnitude of the questions which were the subject of our inquiry, and feel that the issues involved must yet be dealt with and decided by the local or by the Imperial Government; and we have the satisfaction of knowing that important evidence has been collected by us which could scarcely have been obtained by any Committee appointed by the New Zealand Parliament. So far, we venture to hope that our labours have not been in vain.

From the circumstances to which we have referred, we are unable to present to your Excellency the detailed report required by our Commission, but we feel it to be our duty to state to your Excellency the opinion which we have been led to form during our inquiry, so far as it has proceeded.

OTAKOU AND NGAITAHU BLOCKS.

Having regard to evidence laid before Select Committees of the House of Representatives, to the instructions of the Imperial Government given to Governors and officers who from time to time have been intrusted with the administration of New Zealand affairs, and to the evidence collected by us, we are of opinion that the transactions with the aboriginal natives for the surrender or cession of their lands in the Middle Island, carried out by Messrs. Symonds, Kemp, and Mantell, must be regarded as pledging the Crown (in the case of the Otakou Block by explicit stipulation, and in the case of the Ngaitahu Block by implication) to a reservation of a large proportion of the land for the exclusive benefit of the Maori owners. The Ngaitahu deed expressly says that the "greater portion" only is given up for the pakeha, not the whole of the land. We have then to consider what was that reserved proportion; and, seeing that the lands were in both cases understood to be bought for the New Zealand Company, we think it not unreasonable to assume that they were so bought in both cases with the understanding that they were to be administered upon the New Zealand Company's plan of setting apart one acre for the Maori for every ten acres sold to the pakeha, this plan being known at the time as the New Zealand Company's plan of colonization, adopted before New Zealand became a British colony, acted upon in their settlements at Port Nicholson, Nelson, and Taranaki, and recognized, sanctioned, and insisted upon by the Imperial Government. Mr. Mantell, in a statement made by him to a Select Committee of the House of Representatives on Middle Island Native Affairs, asserts, with reference to the Otakou and Ngaitahu Blocks, that "in making these purchases it was clearly intended that nominally one-tenth, but virtually one-eleventh, was to be reserved for the Natives."

Parl. Papers,
H. No. 9, 1872.

We consider that the promises made to the Native owners of the territory which is held to have been ceded by the deeds or agreements relating to what are called the Otakou and Ngaitahu Blocks must be held to amount to a distinct pledge that the lands included therein would be so dealt with by the pakeha that the Maori would share them with him, and that the consequences of the surrender would, under such administration, be so advantageous to the latter that, in comparison with future advantages, the money payment offered ought to be regarded as, and really was, but a trifling part of the consideration. That such was understood by the Maoris to be promised, that such promises were made by the officers who treated with them for the cession of their land, and that the making of such promises was within the legitimate scope of the instructions and authority granted to those officers, is, we think, clearly shown by the evidence. Upon this point we have formed a decided opinion, namely, that the promises made amounted to this, and that the Maoris so understood them, though they probably did not at the time realize their full scope and importance. What they understood may, we think, be gathered from the contents of the various petitions and letters from time to time addressed to the Government and Legislature, the allegations in which we consider to be for the most part borne out by evidence. We refer more particularly to the following:—

1. The statement of Matenga Taiaroa handed in to the Committee *re* Middle Island Native Affairs which sat in September, 1872.
2. Letter of H. K. Taiaroa, addressed to Sir D. McLean on the 30th January, 1874, reporting upon the meeting of Ngaitahu, at Otakou Heads, on the 22nd of same month.
3. Petition of Natives assembled at Kaiapoi on the 25th March, 1874, addressed to the Speakers and members of the General Assembly then in session in Wellington.
4. Petition of Ngaitahu to His Excellency the Marquis of Normanby, dated Otakou, 10th June, 1875.
5. The petition of John Topi Patuki to the House of Representatives, reported on by a Select Committee on Native Affairs on the 1st October, 1875.

Parl. Papers,
1872, H-9, p. 8.

N & D., 74-1804.

Parl. Papers,
1876, G-7.

- N. & D., 75-3242. 6. Petition of Ngaitahu to His Excellency the Marquis of Normanby, dated 12th April, 1875.
- Parl. Papers, 1876, G.-7B. 7 Statement by H. K. Taiaroa on Judge Fenton's report on Ngaitahu petition, dated 26th October, 1876.
- N. & D., 78-3484. 8. Petition of chiefs of Ngaitahu to Ministers and members of the Legislature, *re* Middle Island purchases, dated 25th May, 1878.
- N. & D., 78-2314. 9. Letter of Wereta Tainui and others, addressed to the Premier and Native Minister, dated 21st June, 1878.
- N. & D., 78-4366. 10. Letter from Te Maiharoa, addressed to the Hon. Mr. Sheehan, September, 1878, *re* Middle Island land claims.

It is perfectly clear to us that the sellers did not understand that they were parting with the whole of their interest in their land. The promises made, if they meant anything, meant that an interest in the land was reserved for them. It cannot be supposed that, with respect to the promises to establish schools and hospitals, and to promote their welfare generally, it was understood that these promises were to be completely and finally fulfilled immediately on the cession of their land; that hospitals and schools would be built and established forthwith; and that other provision for their needs would be then made as promised. It must have been meant and understood that these promises were only to be completely fulfilled in the future; that is, as the settlement of the land by the pakeha advanced, and funds accrued from its sale to European settlers. The reserves made by Mantell were merely intended as a present provision, which it was necessary to make at once, preparatory to the introduction of the pakeha settler—an instalment, as it were, on account, and one which Mr Mantell was instructed to restrict as much as he possibly could by reducing to the narrowest limits the area of the reserves set apart by him. Those reserves were certainly not regarded, either by the Maoris concerned or by the officers who treated with them, as a fulfilment of promises made, or as satisfying the terms of the contracts entered into.

See Symonds's
letter in Mackay's
book, vol. I.,
p. 103.

These reserves were a "special provision," excepting from the sale "lands then occupied, the management of which the Maoris wished to retain in their own hands"; whereas the one acre for every ten to be reserved under the New Zealand Company's plan was to be reserved *for their benefit only*, but not to be subject to their management. As an instalment only, therefore, on account of the tenths could they be regarded; and, in the case of the Otakou Block, Mr. Symonds says distinctly that the further choice of reserves was left to be decided by His Excellency the Governor

The result of our inquiry, so far as completed, has been to satisfy us that promises were made which involved a reservation for the benefit of the Native sellers of a large and permanent interest in the land ceded, which would be fairly and properly represented by one acre reserved for every ten acres sold to European settlers. No such reservation has been carried out; had it been, it may be assumed that a fund would have been created out of which might have been defrayed the cost of establishing and maintaining hospitals and schools, and making other provision for the welfare of the Maori owners of the ceded lands as promised. We think it must be admitted that those promises remain unfulfilled. As regards schools, it would appear from the evidence that until very recently scarcely any attempt at fulfilment has been made. It is true that the obligation incurred by the Government in respect of the promise of additional reserves to be set apart for the aboriginal owners of the Ngaitahu Block was defined by the Native Land Court in 1868, when the Ngaitahu deed or agreement was referred to it; but, although the awards made by that Court have been declared by law to be in final extinguishment of the Native title within the boundaries delineated on the plan annexed to that document, it is, in our opinion, clear from the evidence taken by us—1st. That the Natives interested as parties to that agreement were not aware of the fact, or of the object of such reference. 2nd. That they were not represented or heard in the Court as parties to that agreement. 3rd. That had they known that the whole question of that agreement was referred to a tribunal which had power under the Native Lands Act, quoted in the order of reference, "to investigate the title to and interests in the Ngaitahu Block, and to make orders for the completion of the agreement upon such terms and conditions as the Court might think fit, or for the apportionment of the land between the parties interested therein as the Court might think equitable," in such case, we believe, questions would have been raised the inquiry into which would have materially affected the judgment of the Court—among others, that of the boundaries of the block, the description of which in the deed is so utterly vague, and in reference to which the evidence of the Maori witnesses examined by us is almost unanimous to the effect that they were not understood to include the Kaitorete Peninsula, or anything beyond a strip of land on the eastern seaboard, having for its inland boundary a line from Maungatere (Mount Grey) to Maungaatua, one of the boundaries of Symonds's purchase. These questions were not raised; and, in fixing the area of the awards made in satisfaction of the promise of future reserves, the Court acknowledges itself bound by the Crown witnesses in the interpretation of the terms of the contract. We notice also that an opinion then expressed by the Judge, that the allowance of fourteen acres per head was a liberal one, was afterwards entirely changed by him, as appears in his evidence before us and in his report on the petition of Ngaitahu in 1876.

Had the Maoris interested in the Ngaitahu Block realized the position in which they were placed by the reference to the Native Land Court of the document called Kemp's deed *as an agreement*, and that it was competent to them to bring before the Court all questions relating to the purchase which were then in dispute between themselves and the Crown, or had they been properly advised or represented on the occasion, we believe that important points which were not, but should have been, brought under notice would have received the attention of the Court. In support of our opinion we refer to the evidence on this point given by Chief Judge Fenton and Mr Alexander Mackay

To estimate the damage sustained by the Native owners of the land through failure, during so long a period, to fulfil promises made, by which they were induced to "put their land into the hands of the pakeha" (as they express their idea of the transaction), is a task beyond our powers.

Full amends for failure or neglect in the past cannot be made in the present by assessing damages. Restitution can, however, be made; and a trust accepted, but almost ignored in the past, may now be acknowledged and more faithfully administered in the future.

Having thus stated to your Excellency, in general terms, the opinion which we have arrived at after a consideration of the whole question, so far as it has been presented to us, we now take the liberty of suggesting a plan which we conceive would meet the requirements of justice, and the obligations still existing in virtue of the treaties made with the Ngaitahu for the surrender of the land comprised in the Otakou and Ngaitahu Blocks.

We propose that an account should be opened as between the Government and the Ngaitahu; that on the one side should be entered the eleventh part of the proceeds of all land sold by the Government within those two blocks. On the other side of the account should be entered—1st. The present value of all reserves which have been made for, and are now in the possession of, Maoris within those blocks. 2nd. The total expenditure by the Government for the benefit of the Ngaitahu or other tribes interested in the land, including all payments on account of lands within the boundaries of the Ngaitahu and Otakou Blocks made subsequently to those referred to in the deeds of cession as the money consideration. The balance to be regarded as a funded debt, a fair interest on which should be allowed and applied for the general purpose of ameliorating the condition of the Natives interested, in such manner as may be found from time to time expedient and practicable, as, for instance—(1) supplying medical aid; (2) in establishing and supporting schools; 3) in the purchase of land in cases where the reserves already made are found inadequate, also for Maoris who have no share in any of these reserves; 4) in giving pensions or annuities in certain cases, and in providing for the infirm and destitute; lastly, in generally carrying out the promise of "atawhai" or kindly care.

We propose this in view of the fact that a literal fulfilment of all the terms and conditions of the treaties referred to, and of the promises made in connection therewith, is not now possible. The evidence before us shows that lands which, by the terms of the Ngaitahu deed should have been excepted, have been Crown-granted to European settlers; that reserves were promised which have never been made; and that eel preserves, kauru groves, and other sources of food supply, which, under the term "mahinga kai," were not to be interfered with, have been destroyed. In many ways the terms of contract have been violated. To restore is impossible. A compromise of the claim for compensation is the only possible way of meeting the case, and we submit that the mode suggested by us is just and reasonable.

AKAROA.

With respect to the Akaroa Block we think it would come properly under the arrangement proposed with reference to the Ngaitahu and Otakou Blocks. It would appear, from the correspondence on the subject of the purchase of the Port Cooper and Port Levy Blocks by Mr. Commissioner Mantell in 1849, that Banks Peninsula was held by the Government to be included in the purchase made by Mr Kemp. The memorandum by Lieut.-Governor Eyre on Mackay's book, the instructions to be given to Mr Mantell directs that, for the purpose of treating with the Natives for such portions of the Peninsula as were required by the New Zealand Company, it should be regarded as a reserve made on behalf of the Natives, to be given up on payment of compensation; and that, with the exception of the French Company's claim and the reserves to be made for themselves, the title to the residue is vested in the Queen by the purchases made. The payments, therefore, which were made for the Akaroa and other blocks in the Peninsula should be entered in the proposed account to the credit of Government as expenditure for the benefit of Ngaitahu, reducing by its amount the balance which it is proposed to regard as a debt. The evidence in the case of the Akaroa Block shows that many of the Native owners were absent at the time of the purchase by Mr Hamilton, that they have since returned, and in several cases are homeless and destitute, having received no portion of the purchase-money, and not being admitted to share in any of the reserves. An attempt to provide for these absentees by reserving a large portion of the Akaroa Block appears to have been made by Hoani Papita, but was not successful.

MURHIKU

With respect to the purchase of the Murihiku Block we consider that the wording of the deed excludes the possibility of any such understanding with reference to reserves as we think

See Matenga
Tairaroa's state-
ment.—Extract:
"Mr. Kemp said
to us that we
should give up
all the land, and
that he would
take charge of
it"—"tiaki,"
administer;
literally, take
care of.

Mackay's book,
vol. I., p. 253.

attaches to the other purchases. In this case the land was ceded to the Crown, not sold to the New Zealand Company, and at a period long after that Company had ceased to exist. It would, however, appear that similar promises with respect to schools, hospitals, and other advantages were made to the sellers for the purpose of inducing them to part with their land; and that, at least in two cases, reserves were promised which were not made, namely, at Waimatuku and at Piopiotahi. Our inquiry into the circumstances attending the purchase of this block was not completed, and we therefore can do no more than call attention to the evidence so far as it goes, and to two valuable reports by Mr H. T. Clarke, R.M., addressed to the Hon. the Colonial Secretary on the 29th and 30th September, 1864; also to a memorandum upon those reports penned by the Hon. Sir William Fox, then, if we mistake not, holding the Native Minister's portfolio; also to an able memorandum by Mr Rolleston, then Under-Secretary, Native Department, dated the 14th December, 1865.

Mackay's book,
Vol. II.,
pp. 89-92.

Mackay's book,
Vol. II., p. 75.

We shall have the honor of forwarding, for your Excellency's information, addressed to the care of the Hon. the Native Minister, papers and records, as per enclosed schedule, connected with the inquiry which we entered upon in virtue of our Commission, and which we prosecuted as far as circumstances permitted.

In conclusion, we humbly crave your Excellency's indulgence and favourable consideration of the circumstances under which this our *quasi* report has been drawn up, and is now respectfully presented to your Excellency, duly certified under our hands and seals, this 31st day of January, 1881.

(L.S.) THOMAS H. SMITH,
(L.S.) F. E. NAIRN,
Commissioners.

Enclosure.

SCHEDULE.

1. Commission.
2. Minutes of proceedings. Books Nos. 1 and 2.
3. Evidence and minutes of evidence taken by Commissioners.
4. Appendix.
5. Copies of correspondence, letters, and telegrams.
6. Maps and plans.
7. Census papers.