

1951

NEW ZEALAND

**REPORT OF ROYAL COMMISSION APPOINTED TO INQUIRE INTO AND
REPORT UPON CLAIMS PREFERRED BY CERTAIN MAORI
CLAIMANTS CONCERNING THE OPOUTURI BLOCK**

Laid on the Table of the House of Representatives by Command of His Excellency

*Royal Commission to Inquire Into and Report Upon Claims Preferred by
Certain Maori Claimants Concerning the Opouturi Block*

GEORGE THE SIXTH by the Grace of God, of Great Britain, Northern
Ireland, and the British Dominions beyond the Seas, King,
Defender of the Faith :

To Our Trusty and Well-beloved Counsellor, SIR MICHAEL MYERS,
Knight Grand Cross of Our Most Distinguished Order of Saint
Michael and Saint George, and to Our Trusty and Well-beloved
subjects, HUBERT MAXWELL CHRISTIE, of Wellington, Company
Director, and RICHARD ORMSBY, of Te Kuiti, Farmer :
GREETING :

Whereas on the 25th day of April, 1871, a Crown grant was
issued in the names of certain Maoris in respect of the land known as
Opouturi Block :

And whereas on the 17th day of June, 1884, the Commissioner of Crown Lands for the Land District of Auckland executed a declaration to the effect that the said Opouturi Block, among others, had been purchased by and conveyed to the Crown in the year 1871 and that the deed of conveyance to Her Majesty the Queen had been destroyed by fire in or about the year 1872 :

And whereas the said Opouturi Block has for many years been deemed to be Crown land and has been administered as such :

And whereas certain Maoris have, in a number of petitions to Parliament, contended that a portion only of the said Opouturi Block was sold to the Crown and that the residue of the said block should be returned to the original Maori grantees or their descendants or representatives :

And whereas the Government is desirous that the truth and justice of the respective claims and complaints of the Maoris as hereinbefore set forth should be tested by inquiry so that, if such complaints be well founded and of substance, the Government will be able to take order for the redress of the grievances laid upon the Maoris :

Now know ye, that We, reposing trust and confidence in your impartiality, knowledge, and ability, do hereby nominate, constitute, and appoint you, the said

Sir Michael Myers,
Hubert Maxwell Christie, and
Richard Ormsby

to be a Commission :

In respect of the Opouturi Block aforesaid, to inquire and report—

- (i) Whether due regard being had to all the circumstances, it is reasonably established that the interests of all or any of the former Maori owners of the said Opouturi Block were extinguished by a deed of conveyance to the Crown ;
- (ii) If it be reported that it is reasonably established that the interests of the former Maori owners or any of them were not so extinguished, then to recommend whether the former Maori owners or their descendants or representatives, or any of them, should have any portion of the said Opouturi Block returned to them, or whether compensation in money or money's worth should now be granted to such former owners or their descendants or representatives, or any of them ;
- (iii) If it be reported that compensation should be so granted, then to recommend what the extent of such compensation should be :

Provided, however, that in any case where you shall see fit to recommend that compensation in money or money's worth be granted in respect of the purchases or cessions hereinbefore set forth, you shall have regard to the value of the land, as nearly as may be, at the time of the purchase or cession thereof and not to any later increment in the value thereof :

Provided, further, that you shall be at full liberty to disregard or differ from any findings, whether of fact or otherwise, conclusions, opinions, or recommendations of any former tribunal in respect of any matters or questions of similar character or import to those confided to you by these presents :

And We do hereby appoint you, the said

Sir Michael Myers

to be chairman of the said Commission :

And for the better enabling you to carry these presents into effect, you are hereby authorized and empowered to make and conduct any inquiry under these presents at such times and places as you deem expedient, with power to adjourn from time to time and place to place as you think fit, and so that these presents shall continue in force, and the inquiry may at any time and place be resumed although not regularly adjourned from time to time or from place to place :

And you are hereby strictly charged and directed that you shall not at any time publish or otherwise disclose save to His Excellency the Governor-General in pursuance of these presents, or by His Excellency's direction, the contents of any report so made or to be made by you or any evidence or information obtained by you in the exercise of the powers hereby conferred upon you except such evidence or information as is received in the course of a sitting open to the public :

And you are hereby authorized to report your proceedings and findings under this Our Commission from time to time if you shall judge it expedient so to do :

And, using all due diligence, you are required to report to His Excellency the Governor-General in writing under your hands not later than the thirtieth day of June, one thousand nine hundred and fifty, your findings and opinions on the matters aforesaid, together with such recommendations as you think fit to make in respect thereof :

And, lastly, it is hereby declared that these presents are issued under the authority of the Letters Patent of His Late Majesty dated the eleventh day of May, one thousand nine hundred and seventeen, and under the authority of and subject to the provisions of the Commissions of Inquiry Act, 1908, and with the advice and consent of the Executive Council of the Dominion of New Zealand.

In witness whereof We have caused this Our Commission to be issued and the Seal of Our Dominion of New Zealand to be hereunto affixed at Wellington, this sixth day of December, in the year of our Lord one thousand nine hundred and forty-nine, and in the thirteenth year of Our Reign.

Witness Our Trusty and Well-beloved Sir Bernard Cyril Freyberg, on whom has been conferred the Victoria Cross, Knight Grand Cross of Our Most Distinguished Order of Saint Michael and Saint George, Knight Commander of Our Most Honourable Order of the Bath, Knight Commander of Our Most Excellent Order of the British Empire, Companion of Our Distinguished Service Order, Lieutenant-General in Our Army, Governor-General and Commander-in-Chief in and over our Dominion of New Zealand and its Dependencies, acting by and with the advice and consent of the Executive Council of the said Dominion.

[L.S.] B. C. FREYBERG, Governor-General.

By His Excellency's Command—

P. FRASER, Minister of Maori Affairs.

Approved in Council—

T. J. SHERRARD, Clerk of the Executive Council.

Appointment of Another Member of the Royal Commission Constituted to Inquire Into and Report Upon Claims Preferred by Certain Maori Claimants Concerning the Opouturi Block

GEORGE THE SIXTH by the Grace of God, of Great Britain, Northern Ireland, and the British Dominions beyond the Seas, King, Defender of the Faith :

To Our Trusty and Well-beloved DOUGLAS JAMES DALGLISH, of Wellington, a Deputy Judge of the Court of Arbitration, HUBERT MAXWELL CHRISTIE, of Wellington, Company Director : and RICHARD ORMSBY, of Te Kuiti, Farmer : GREETING :

WHEREAS by Our Warrant of date the 6th day of December, 1949, issued under the authority of the Letters Patent of His Late Majesty dated the 11th day of May, 1917, and under the Commissions of Inquiry Act, 1908, and with the advice and consent of the Executive Council,

the late Sir Michael Myers, and you the said Hubert Maxwell Christie, and Richard Ormsby were appointed a Commission to inquire into and report upon certain claims preferred by certain Maoris :

And whereas the said Sir Michael Myers died after the members of the Commission had entered upon their labours but before they had made any report thereof, and it is desirable to appoint another member and a new Chairman of the said Commission :

Now know Ye that We, reposing trust and confidence in your impartiality, knowledge, and ability do hereby nominate, constitute, and appoint you, the said

Douglas James Dalglish,
Hubert Maxwell Christie, and
Richard Ormsby,

to be the Commissioners and members of the said Commission for the purposes and with the powers and subject to the directions specified in the said Warrant :

And We do hereby appoint you, the said

Douglas James Dalglish,

to be Chairman of the said Commission :

And we do hereby confirm the said Warrant and the Commission thereby constituted save as modified by these presents.

In witness whereof We have caused this Our Commission to be issued and the Seal of Our Dominion of New Zealand to be hereunto affixed at Wellington, this 26th day of April, in the year of our Lord 1950, and in the 14th year of Our Reign.

Witness Our Trusty and Well-beloved Sir Bernard Cyril Freyberg, on whom has been conferred the Victoria Cross, Knight Grand Cross of Our Most Distinguished Order of Saint Michael and Saint George, Knight Commander of Our Most Honourable Order of the Bath, Knight Commander of Our Most Excellent Order of the British Empire, Companion of Our Distinguished Service Order, Lieutenant-General in Our Army, Governor-General and Commander-in-Chief in and over Our Dominion of New Zealand and its Dependencies, acting by and with the advice and consent of the Executive Council of the said Dominion.

[L.S.] B. C. FREYBERG, Governor-General.

By His Excellency's Command—

E. B. CORBETT, Minister of Maori Affairs.

Approved in Council—

T. J. SHERRARD, Clerk of the Executive Council.

Extending Period Within Which the Royal Commission Constituted to Inquire Into and Report Upon Claims Preferred by Certain Maori Claimants Concerning the Opouturi Block Shall Report

GEORGE THE SIXTH by the Grace of God, of Great Britain, Northern Ireland, and the British Dominions beyond the Seas, King, Defender of the Faith.

To Our Trusty and Well-beloved DOUGLAS JAMES DALGLISH, of Wellington, a Deputy Judge of the Court of Arbitration, HUBERT MAXWELL CHRISTIE, of Wellington, Company Director, and RICHARD ORMSBY, of Te Kuiti, Farmer: GREETING:

WHEREAS by Our Warrant of date the 6th day of December, 1949, issued under the authority of the Letters Patent of His Late Majesty dated the 11th day of May, 1917, and under the Commissions of Inquiry Act, 1908, and with the advice and consent of the Executive Council, the late Sir Michael Myers, and you the said Hubert Maxwell Christie, and Richard Ormsby, were appointed a Commission to inquire into and report upon certain claims preferred by certain Maoris:

And whereas the said Sir Michael Myers died after the members of the Commission had entered upon their labours but before they had made any report thereof, and it was desirable to appoint another member of the said Commission:

And whereas by Our Warrant of date the 4th May, 1950, you the said Douglas James Dalglish, Hubert Maxwell Christie, and Richard Ormsby, were appointed to be the Commissioners and members of the said Commission for the purposes and with the powers and subject to the directions specified in Our said Warrant first hereinbefore mentioned:

And whereas by virtue of Our Warrant first hereinbefore mentioned you are required to report not later than the 30th day of June, 1950, your findings and opinions on the matters thereby referred to you:

And whereas it is expedient that the time for so reporting in respect of the said matters should be extended as hereinafter provided:

Now, therefore, We do hereby extend until the 31st day of December, 1950, the time within which you are so required to report in respect of the said matters:

And We do hereby confirm the said Warrants and Commission save as modified by these presents.

In witness whereof We have caused these presents to be issued and the Seal of Our Dominion of New Zealand to be hereunto affixed at Wellington, this 28th day of June, in the year of our Lord, one thousand nine hundred and fifty, and in the fourteenth year of Our Reign.

Witness Our Trusty and Well-beloved Sir Bernard Cyril Freyberg, on whom has been conferred the Victoria Cross, Knight Grand Cross of Our Most Distinguished Order of Saint Michael and Saint George, Knight Commander of Our Most Honourable Order of the Bath, Knight Commander of Our Most Excellent Order of the British Empire, Companion of Our Distinguished Service Order, Lieutenant-General in Our Army, Governor-General and Commander-in-Chief in and over Our Dominion of New Zealand and its Dependencies, acting by and with the advice and consent of the Executive Council of the said Dominion.

[L.S.]

B. C. FREYBERG, Governor-General

By His Excellency's Command—

E. B. CORBETT, Minister of Maori Affairs.

Approved in Council—

T. J. SHERRARD, Clerk of the Executive Council.

Extending Period Within Which the Royal Commission Constituted to Inquire Into and Report Upon Claims Preferred by Certain Maori Claimants Concerning the Opouturi Block Shall Report

GEORGE THE SIXTH by the Grace of God, of Great Britain, Northern Ireland, and the British Dominions beyond the Seas, King, Defender of the Faith.

To Our Trusty and Well-beloved DOUGLAS JAMES DALGLISH, of Wellington, a Deputy Judge of the Court of Arbitration, HUBERT MAXWELL CHRISTIE, of Wellington, Company Director, and RICHARD ORMSBY, of Te Kuiti, Farmer: Greeting:

WHEREAS by Our Warrant of date the sixth day of December, one thousand nine hundred and forty-nine, issued under the authority of the Letters Patent of His Late Majesty dated the eleventh day of May, one thousand nine hundred and seventeen, and under the Commissions of Inquiry Act, 1908, and with the advice and consent of the Executive Council, the late Sir Michael Myers and you the said Hubert Maxwell Christie, and Richard Ormsby, were appointed a Commission to inquire into and report upon certain claims preferred by certain Maoris:

And whereas the said Sir Michael Myers died after the members of the Commission had entered upon their labours but before they had made any report thereof, and it was desirable to appoint another member of the said Commission:

And whereas by Our Warrant of date the fourth day of May, one thousand nine hundred and fifty, you the said Douglas James Dalglish, Hubert Maxwell Christie, and Richard Ormsby, were appointed to be

the Commissioners and members of the said Commission for the purposes and with the powers and subject to the directions specified in Our said Warrant first hereinbefore mentioned :

And whereas by virtue of Our Warrant first hereinbefore mentioned you were required to report not later than the thirtieth day of June, one thousand nine hundred and fifty, your findings and opinions on the matters thereby referred to you :

And whereas by Our further Warrant of date the twenty-eighth day of June, one thousand nine hundred and fifty, the time within which you were so required to report was extended until the thirty-first day of December, one thousand nine hundred and fifty :

And whereas it is expedient that the time for so reporting should be further extended as hereinafter provided :

Now, therefore, We do hereby extend until the thirty-first day of July, one thousand nine hundred and fifty-one, the time within which you are so required to report in respect of the said matters :

And We do hereby confirm the said Warrants and Commissions save as modified by these presents.

In witness whereof We have caused these presents to be issued and the Seal of Our Dominion of New Zealand to be hereunto affixed at Wellington, this sixth day of December, in the year of our Lord, one thousand nine hundred and fifty, and in the fourteenth year of Our Reign.

Witness Our Trusty and Well-beloved Sir Bernard Cyril Freyberg, on whom has been conferred the Victoria Cross, Knight Grand Cross of Our Most Distinguished Order of Saint Michael and Saint George, Knight Commander of Our Most Honourable Order of the Bath, Knight Commander of Our Most Excellent Order of the British Empire, Companion of Our Distinguished Service Order, Lieutenant-General in Our Army, Governor-General and Commander-in-Chief in and over Our Dominion of New Zealand and its Dependencies, acting by and with the advice and consent of the Executive Council of the said Dominion.

[L.S.] B. C. FREYBERG, Governor-General.

By His Excellency's Command—

E. B. CORBETT, Minister of Maori Affairs.

Approved in Council—

T. J. SHERRARD, Clerk of the Executive Council.

To His Excellency the Governor-General, Lieutenant-General Sir Bernard Freyberg, V.C., G.C.M.G., K.C.B., K.B.E., D.S.O.

MAY IT PLEASE YOUR EXCELLENCY,—

1. By Your Excellency's Commission of the 6th day of December, 1949, as confirmed in your Warrant dated the 26th day of April, 1950, appointing the present members of the Commission, we are directed to inquire into and report upon four separate and distinct subject-matters, and we are authorized to report our proceedings and findings to Your Excellency from time to time if we judge it expedient so to do.

2. We commenced our inquiry concerning the Opouturi Block at Kaitaia on the 11th day of July, 1950. Mr. A. Hall Skelton appeared as counsel for the Maoris concerned. Mr. V. R. S. Meredith appeared for the Crown. We continued our sittings on the 12th day of July, and on the 13th day of July the Commission adjourned to enable Mr. Hall Skelton, who had taken ill, to prepare and forward to the Commission final submissions in writing. These submissions have now been received and considered by us, and we accordingly propose to report our findings in connection with this matter.

3. On 1st November, 1869, an application was made by Wiremu Pikahu and others for investigation of title in the Opouturi Block which comprises 250 acres and which is situated in the County of Mangonui, near Mangonui. This application was dealt with in the Native Land Court on 1st June, 1870, and Judge Maning made an order in favour of Wiremu Pikahu, Noho Wetekia, Rutene te Wa, Pene te Kaitoa, and Rawiri Taringa. A certificate of title was issued on the 22nd July, 1870, giving effect to this order, and a Crown grant was duly issued in the name of the same five Maoris on the 25th April, 1871. This Crown grant was registered in the Deeds Registry Office at Auckland as No. 991H and was recorded in 3G H 42. From the Deeds Register it appears that the original Crown grant was uplifted from the Deeds Registry by H. N. Taylor, who signed "for the Superintendent."

4. At the time the investigation of title took place and for some years thereafter the Auckland Provincial Government was in office, and it is claimed on behalf of the Crown that the Opouturi Block was purchased by the Provincial Government from the Maori owners and that on the abolition of the provinces the land became vested in the Crown. No deed of conveyance of the land has been registered, but on the 17th day of June, 1884, the Commissioner of Crown Lands for the Land District of Auckland executed a declaration to the effect that the said Opouturi Block among others had been purchased by the Superintendent of the Province of Auckland on behalf of the Crown in or about the year 1871, and that the deed of conveyance thereof had been destroyed by fire in or about the year 1872. Nothing appears to have been done with the land by the Provincial Government or by the Lands and Survey Department for some thirty years, but it appears to have been regarded by the Lands and Survey Department as being Crown land. Some time after 1910 the last-mentioned Department decided to subdivide the block with a view to opening it up for settlement, and in 1916 the land was surveyed by Mr. F. R. Burnley for the Department. In 1919 most of the land was leased by the Crown to H. Southon as from the 1st day of July, 1919.

5. In 1923 certain Maoris who claimed to be interested in the land lodged a petition in Parliament (Petition No. 117 of 1923). As this petition is the first of several petitions relating to Opouturi Block, and as it sets out the claim of the Maoris in some detail, the text of the petition as translated from Maori into English is set out in full hereunder:—

To the Honourable the Speaker and Members of the House of Representatives in Parliament Assembled :

GREETING

Herewith your Petitioners, who have signed their names hereunder, Aboriginal Natives of (the Dominion) of New Zealand, pray to your Honourable Assembly who legislates upon weighty matters for the benefit of the whole Dominion, to consider in peace, the supplication of your Petitioners in connection with our land, the name of which is Opouturi, for an enquiry to ascertain how it came to be taken by the Crown.

Herewith your Petitioners with a clear mind make this true statement that this land belongs to us for the reasons following—

1. The area of this land is 250 acres more or less. It has been surveyed and the cost of survey was paid by our parents.
2. A European by name Thomas Wallen bought Crown land lying adjacent to the said land. Your Petitioners were requested to cut half of the (boundary) line and erect half of the fence. Your Petitioners complied with this request evidence of which may be seen to-day.
3. Your Petitioners fully admit that only a portion was sold. The real substance of your Petitioners' prayer is to have the land partitioned as the boundary line is as clear to-day as it was then.

As a mark that your Petitioners submitted these statements with a calm and clear mind we have hereunto subscribed our names.

GOD SAVE THE KING.

This petition was signed by Wiki Piki Pikaahu and twenty-five others.

6. The foregoing petition (No. 117/1923) was considered by the Native Affairs Committee of the House of Representatives which recommended that the petition be referred to the Government for inquiry, and the House of Representatives ordered accordingly. Following on this the Chief Judge of the Native Land Court, acting pursuant to section 6 of the Native Land Amendment and Native Land Claims Adjustment Act, 1922, referred the petition to the Native Land Court for inquiry and report. On several occasions the Native Land Court sat to deal with the matter. In 1928 and again in 1938 the inquiry was stood over by that Court, and on each occasion the Maoris hoped that their claim would be referred to a Royal Commission. On each occasion, however, the scope of inquiry by the Royal Commission was not wide enough to include the petition (No. 117/1923) concerning the Opouturi Block. A further petition (No. 37/1948) was accordingly laid before Parliament in 1948 asking for a Royal Commission to be established to investigate Maori land claims in the Mangonui district. Following upon this petition Your Excellency has honoured us with this Commission to inquire into and report in respect of the Opouturi Block.

7. The Commission recites that certain Maoris have in a number of petitions to Parliament contended that a portion only of the Opouturi Block was sold to the Crown and that the residue of the block should be returned to the original Maori grantees or their descendants or representatives, and the Commission further recites that the Government is desirous that the truth and justice of the respective claims and complaints of the Maoris should be tested by inquiry so that "if such complaints be well founded and of substance, the Government will be able to take order for the redress of the grievance laid upon the Maoris." We are by the Commission directed to inquire and report—

- (i) Whether due regard being had to all the circumstances, it is reasonably established that the interests of all or any of the former Maori owners of the said Opouturi Block were extinguished by a deed of conveyance to the Crown;
- (ii) If it be reported that it is reasonably established that the interests of the former Maori owners or any of them were not so extinguished, then to recommend whether the former Maori owners or their descendants or representatives, or any of them should have any portion of the said Opouturi Block returned to them, or whether compensation in money or money's worth should now be granted to such former owners or their descendants or representatives, or any of them;
- (iii) If it be reported that compensation should be so granted, then to recommend what the extent of such compensation should be.

8. For some years prior to the abolition of provinces by the Abolition of Provinces Act, 1875, Native land was being acquired in the Auckland Province both by the Central Government and by the Government of the province. Certain of the blocks of land purchased by the Central Government were handed over to the Government of the

province for disposal under the waste lands legislation and, during the period in which the Opouturi Block is alleged to have been purchased on behalf of the Government of the Province of Auckland, the Waste Lands Department of the province was dealing with the purchase of lands on behalf of the province and also with the settlement of settlers not only on lands acquired on behalf of the province but also on lands acquired by the Central Government and handed over to the Government of the province. The close liaison between the Central Government and the Provincial Government in connection with Crown lands and with the lands of the Provincial Government is evidenced by the fact that by section 27 of the Auckland Waste Lands Act, 1870, provision is made to the effect that the Commissioner of Crown Lands appointed for the Province of Auckland was to be the Waste Lands Commissioner having charge of the Administration of the Auckland Waste Lands Act. The extent of the operations of the Province of Auckland in the purchase of Native lands is evidenced by the fact that under a Provincial Empowering Act of 1864 an expenditure of £15,000 from loan-moneys was authorized in connection with the purchase of Native lands, and under a further Empowering Act, passed in the following year, expenditure of a further £5,000 from loan-moneys for the same purpose was authorized. During subsequent years substantial amounts were expended by the province in the purchase of Native lands, and an examination of the Journals of the Auckland Provincial Council shows the following amounts as being expended between the 1st October, 1869, and the 31st October, 1872 :—

	£	s.	d.
In the twelve months ended 30th September, 1870	1,664	4	3
In the thirteen months ended 31st October, 1871	2,944	15	9
In the twelve months ended 31st October, 1872	3,240	2	10

9. When application was made on the 1st November, 1869, for the investigation of title in the Opouturi Block, title to all the lands surrounding the Opouturi Block had been investigated and settled, and all the surrounding land had been surveyed. Opouturi Block was surrounded by three blocks, named respectively Hikurangi, Toa Toa, and Te Ahua. The first of these blocks to be dealt with was Hikurangi. This block was surveyed by W. B. White about December, 1857. His survey plan is numbered S.O. 779. Title to this land was ascertained, and the land was conveyed to Her Majesty the Queen on its acquisition by the Crown on the 15th March, 1861. The second block dealt with was the Toa Toa Block, which was surveyed by S. Campbell, jun., in December, 1864. His plan is numbered S.O. 778. This plan shows a substantial area of Native reserve without indicating the exact extent of the Native reserve. The Toa Toa Block was bought by the Central Government and was conveyed to Her Majesty the Queen by a deed dated the 30th May, 1865. Te Ahua was surveyed late in 1867 by S. Campbell. His plan is numbered M. L. 705, and was produced before Judge H. B. White on the 21st July, 1868, on the investigation of the title of Wiremu Pikahu and others to the block. This land is still owned by Maoris. Following the ascertainment of the title to Te Ahua Block, an area of land completely enclosed by the Hikurangi, Toa Toa, and Te Ahua Blocks remained with the title unascertained. This area of land had not at this time been given a name although the name Opouturi appears on plan S.O. 778 in a manner which seems to indicate that it was known to the surveyor as the name of a point on the boundary between the Toa Toa Block and this unnamed area of land. In February, 1867, a survey plan of Toa Toa Block was prepared by H. F. Richardson. This plan, which is numbered S.O. 796, was a subdivision of Toa Toa Block into various sections. It showed as "Tuanaki Native Reserve" the area subsequently called Te Ahua Block and included in Mr. S. Campbell's plan M.L. 705. The unnamed area which was subsequently called the Opouturi Block was, however, included within the numbered sections into which the Toa Toa Block was divided, and it is clear that the surveyor carefully surveyed the boundary between the Hikurangi Block and the unnamed area of land which subsequently became the Opouturi Block. The measurements shown on

this plan in respect of that boundary were subsequently adopted in the plan M.L. 1852 produced to the Native Land Court on the proceedings for the ascertainment of the title to the Opouturi Block.

10. The position, therefore, was that immediately before 1st November, 1869, there was an area of land which had been included in a scheme of subdivision by H. F. Richardson but in respect of which the Native title had not been ascertained. On 1st November, 1869, application was made for the investigation of title in this land under the name Opouturi Block. This application was dealt with by Judge Maning on the 1st June, 1870, and in support of the application a plan, No. M.L. 1852, was produced in the Native Land Court. This plan was not prepared as the result of a special survey. It was a plan which had been compiled from the above-mentioned plans numbered S.O. 778 and S.O. 796. The plan bears an endorsement signed by a draughtsman in the Waste Lands Department which certifies that the plan was "compiled from Messrs. Campbell and Richardson's surveys of the Toa Toa Block." It would appear, therefore, that the allegation in the first paragraph of the petition to Parliament, No. 117/1923, set out in paragraph 5 of this report to the effect that the land in the Opouturi Block "has been surveyed and the cost of survey was paid by our parents" is incorrect. Mr. Skelton sought to explain this statement by the petitioners by pointing out that under the law and practice existing in 1870 a fee was chargeable by the Court for the examination of the plan and if a surveyor had not been paid the cost of the survey he was entitled to a lien on the Crown grant for the survey charges. A fee for examination of plan was charged and there was no application by any surveyor claiming a lien for his charges. Mr. Skelton claimed that as all that was required by the Judge for the plan had been paid on the proceedings for the ascertainment of the title the petitioners fully believed that the original grantees had paid all the necessary fees including the cost of the plan. Nevertheless, it is a fact which is not open to argument that it was not necessary for any surveyor prior to the hearing of the application for the investigation of the title in Opouturi Block to go on the land and make a survey of its boundaries for that purpose, whereas usually a surveyor would have had to do that in order to define the boundaries. The fact that the plan produced for the purpose of the investigation of title to the Opouturi Block was compiled in the Waste Lands Department was regarded by Mr. P. B. Wright, Investigating Officer of the Lands and Survey Department, who was called as a witness, as indicating that the investigation of the title by the Native Land Court was probably a preliminary step in the purchase of the block by the Provincial Government and we see no reason to doubt this. If that be the case, then the application for investigation of title and the preparation of the plan were first steps leading towards the alleged purchase of the block by the Government of the Province of Auckland. Unfortunately, it is not possible to obtain confirmation of this from the minute-book of Judge Maning as this minute-book is not available and is assumed to have been destroyed in a fire which destroyed Judge Maning's house.

11. On 1st June, 1870, when he investigated the title to Opouturi Block, Judge Maning also investigated the titles to several other blocks. These blocks included Patiki, Whakapapa, and Taumatapukapuka, which will be referred to later in this report. On 1st June, 1870, Judge Maning made an order that certificates of title be issued in respect of Opouturi and each of these other blocks, and certificates of title were accordingly issued on 22nd July, 1870. A Crown grant was issued for Opouturi and each of these other blocks, bearing the date the 25th day of April, 1871, and all these Crown grants were registered on the 24th day of June, 1871.

12. It is claimed on behalf of the Lands and Survey Department that between 22nd July, 1870, and the middle of 1872, the Opouturi Block was purchased by the Government of the Province of Auckland and a deed of conveyance of the block was duly executed. It is further claimed that such deed of conveyance was destroyed in a fire which occurred on the night of 19th-20th November, 1872, which damaged or

destroyed a number of Government offices including the offices of the Provincial Council. In support of this claim certain documents have been produced bearing on the matter. The Commission is satisfied that officers of the Lands and Survey Department have either made or caused to be made extensive and thorough searches for any papers, books, vouchers, or other documents in connection with the Opouturi Block. In particular, a thorough examination has been made of papers of the Provincial Government held in the Auckland Public Library and of the registers of the Trust Commissioner appointed under the Native Land Frauds Prevention Act, 1870, which came into force in the Province of Auckland in June, 1871. A search has also been made both in Auckland and in Wellington for the ledgers and other books and documents of the Provincial Government covering the material period, but nothing has been found either supporting or tending to disprove the Department's case other than the documents which have been put before us. The Paymaster-General caused to be made a thorough search of the books and papers held in the Treasury, and on 19th April, 1926, the Paymaster-General advised the Lands and Survey Department officially that the expenditure books for 1870, 1871, and 1872 showed no trace of the purchase of the Opouturi Block. He stated that the names of the blocks were not always inserted and that the supporting vouchers had before that date been destroyed. Such being the case, it was impossible for the Lands and Survey Department to produce any direct evidence of any specific payments made in connection with the purchase of the Opouturi Block, and Mr. Meredith has sought to establish the purchase of the block by the Provincial Government of Auckland by indirect evidence to be gathered from various documents and surrounding circumstances.

13. The most important document produced on behalf of the Lands and Survey Department was a letter written on behalf of the Superintendent of the Auckland Province by Hugh H. Lusk to the Colonial Secretary asking for the remission of duties and fines in respect of a number of blocks of Native land purchased by the Provincial Government. This letter, which will hereinafter be referred to as "the Lusk letter," is set out in full hereunder (including the Schedule thereto):—

Superintendent's Office,
Auckland, 6th November, 1872.

SIR,—

I enclose a statement of a number of blocks of native land purchased during several years past by the Provincial Government; upon which, in order to complete the title for the Province by registration, there would require to be paid under the Native Land Acts, duties and fines (as per statement) to the amount of four thousand nine hundred and twenty-six pounds sixteen shillings and four pence (£4,926 16s. 4d.). I have respectfully to request that the Government will take the necessary action to cause those duties and fines to be remitted upon the following grounds—These lands have all been purchased for the public estate and should therefore no more be subject to duties and fines than lands bought by the General Government and handed over to the Province as Provincial estate. Again it was impossible in regard to many of these blocks to have paid the duties so as to avoid fines; the price having been so much per acre according to quality, not settled for years after purchase, and payable by instalments over a series of years. Further these duties and fines if paid would require a Provincial Appropriation and would return to the Provincial Treasury as Land revenue but meanwhile apparently swelling the revenue of the Native Land Court and the Provincial revenue though not in reality doing so. Further it was intended to have provided for this state of things in the proposed Native Lands Bill 1871 and also in the similar Bill of 1872; and action was delayed in hopes of one of these Bills passing. As it now stands, the Province runs a risk through the non-registration of these deeds; and I trust that you will see your way to comply with the request I now make.

I have the honour to be

Sir,

Your most obedient Servant,

(Sgd.) Hugh H. Lusk,

For the Superintendent.

The Honble.
The Colonial Secretary,
Wellington.

STATEMENT of amounts required for payment of duty and fines under the Native Lands Acts, for the under-mentioned conveyances to the Superintendent of the Province of Auckland, before such conveyances will be received for registration.

Name of Block.	Duty.	Fine.	Total.
	£ s. d.	£ s. d.	£ s. d.
Opuawhango No. 1	163 16 8	491 10 0	655 6 8
Opuawhango No. 2	72 0 0	216 0 0	288 0 0
Opuawhango No. 3	18 19 8	56 19 0	75 18 8
Opuawhango No. 4	136 15 9	410 7 3	547 3 0
Otonga No. 1	227 4 10	681 14 6	908 19 4
Otonga No. 2	17 7 0	52 1 0	69 8 0
Pukenui No. 1	66 7 11	199 3 9	265 11 8
Kaitara No. 2	243 18 9	731 16 3	975 15 0
Pipi Wharauoa	5 13 6	17 0 6	22 14 0
Whakapapa	14 3 6	42 10 6	56 14 0
Opouturi	8 2 6	24 7 6	32 10 0
Taheke	1 1 9	33 5 3	34 7 0
Patiki	92 13 1	277 19 3	370 12 4
Taumatapukapuka	36 14 0	110 2 0	146 16 0
Waitangi	119 5 2	357 15 6	477 0 8
	£1,224 4 1	£3,702 12 3	£4,926 16 4

To this letter a reply was sent to the Superintendent, Auckland, dated 2nd December, 1872, in the following terms:—

2853/72
Nov. 6

I am instructed by the Col. Treasurer to acknowledge your letter noted in the margin, on the subject of duty on certain conveyances of native lands to the Prov. Government.

In reply I have to inform you that the *duty* must be paid to give the deeds validity, and to enable them to be registered, but that this does not apply to the penalties which would only become payable if sued for and received. I have to add that to save the Province from any inconvenience, the Sub-Treasurer is directed by this mail to pay the money direct to the Provincial Account as soon as he receives it.

Under section 55 of the Native Lands Act, 1865, a duty equal to 10 per cent. of the purchase-money was payable by the purchaser on the first sale of Native land, and by section 25 of the Native Lands Act, 1867, it was provided that if the duty was not paid "within six calendar months from the day of the date of the signing or execution or the day of the date of the deed of transfer conveyance lease or other instrument whichever day shall be prior in time" the person liable to pay the duty became liable to pay as a penalty a sum equal to three times the duty. In addition, by section 27 of the same Act it was provided that upon each first sale of Native land an additional duty at a rate to be prescribed by the Governor in Council, but not exceeding 6d. per acre, was to be payable. Section 58 of the Native Lands Act, 1865, provided that no transfer or conveyance disposing of Native lands on account of the sale of which duty was payable under the provisions of that Act should be valid or have any effect at law or in equity (except for the purpose of rendering persons liable to the payment of the duty) unless and until a receipt for the duty had been endorsed on the document. Having regard to these statutory provisions it was strongly submitted by Mr. Meredith that there must have been a completed conveyance of the Opouturi Block before the Lusk letter could have been written, otherwise it would have been impossible to calculate the duty. The consideration money and the area must have been known to enable the duty to be calculated, and no penalty of treble the amount of the duty would have been payable

unless the conveyance had been signed or dated more than six months previously. Mr. Meredith further directed attention to the statement in the Lusk letter that "these lands have all been purchased for the public estate," and to the further statement that "as it now stands, the province runs a risk through the non-registration of these deeds."

14. On the night of 19th-20th November, 1872, between the date of the Lusk letter and the date when the reply was received a fire occurred in Auckland. The fire attacked various Governmental offices including the Post Office, the Telegraph Office, the Customs House, and the Offices of the Provincial Council. According to contemporary records there was a total loss of almost everything of value in the Superintendent's office, the Government records for the province for the preceding twenty years together with all important documents and papers being destroyed, except some printed papers, a handful of almost worthless documents, and some files of newspapers for about eight or nine years. The *New Zealand Herald* of 21st November, 1872, stated that nothing of great importance had been lost from the Waste Lands Department and that although some Crown grant registers were lost they could be replaced from other sources though this would entail a great deal of labour. It was pointed out by Mr. Skelton, appearing before the Commission on behalf of the Maoris claiming to be interested in the Opouturi Block, that the Native Land Court Office was in another part of the town and had escaped the fire. It would appear, however, that the place where the conveyances of the Opouturi Block and the other blocks referred to in the Lusk letter would be held would be the Superintendent's Office, the office of the Provincial Council, or the Waste Lands Office. The conveyance of the Waitangi Block referred to in the Lusk letter apparently survived the fire. This conveyance which was dated 11th May, 1869, was duly registered in the Deeds Registry Office on the 19th November, 1873. The conveyance of the Waitangi Block which is on deposit in the Deeds Registry Office at Auckland has been examined, and it bears no indication of having been through a fire nor does it bear any indication as to the date when the duty payable in respect of the purchase by the Superintendent was paid. Following upon the fire, conveyances of certain of the blocks referred to in the Lusk letter were signed by the Maori owners who had sold the blocks. In 1875 two of the blocks—namely, Kaitara No. 2 and Pukenui No. 1—were conveyed by a simple conveyance, without any recital as to being in replacement of earlier deeds, to the Superintendent of the Province of Auckland. In November, 1878, conveyances of the Otonga Blocks, numbered 1 and 2, and the Opuawhanga Blocks, numbered 1, 2, 3, and 4, were signed. In two of these cases where one of the original Maori owners had died and a successor was involved payment of a sum in excess of £800 was paid as consideration for the conveyance, but in all the other cases the consideration was expressed as being either £6 or £31. All the conveyances executed in 1878 were conveyances from the Maori owners to Her Majesty the Queen as the Provincial Government had been abolished by the Act passed in 1875. These conveyances were all in a similar form, and each conveyance recited that the land had been purchased by the Superintendent of the Province of Auckland, that a conveyance of the land to the Superintendent had been executed, that such conveyance prior to the registration thereof in the Deeds Registry Office at Auckland was "supposed to have been destroyed by fire," and that all the estate and interest of the Superintendent in the land had become vested in the Crown. Each conveyance accordingly was a conveyance to Her Majesty of all the land referred to therein. The register of the Trust Commissioner, who by the law then in force was required to endorse any instrument of alienation with a certificate that the alienation was in accordance with the Native Lands Frauds Prevention Act, 1870, shows that the conveyances in November, 1878, were in confirmation of former sales except in the two cases where successors were involved, and in those two cases the Trust Commissioner's register records the transactions as conveyances of interests in the blocks in question. The Trust Commissioner's register under date 5th November, 1878, contains a reference to a transaction relating to Pipi-whareroa [*sic*], being "confirmation of former sale"—"previous purchase deed lost,"

but apparently the document was not completed by the Maori vendors as the entry in the register is incomplete, and the Crown's title to this block was not finally dealt with until 1889. All the blocks which were conveyed to the Superintendent or to the Crown as mentioned above during 1875 and 1878 were situated in the Whangarei district, and the Pipiwharauroa Block was also situated in that district. The remaining blocks which were referred to in the Lusk letter and which were apparently not covered by conveyances signed after the fire—namely, Opouturi, Patiki, Whakapapa, Taumatapukapuka, and Takehe (south portion)—are all situated in the Mangonui district.

15. As further evidence that the Opouturi Block had been purchased by the Government of the Province of Auckland, a report made by the Commissioner of Crown Lands to the Superintendent of the province in 1874 was produced on behalf of the Lands and Survey Department. This report is published in the Journals of the Auckland Provincial Council of 1874 as Paper A, No. 6. The document in question is a report to the Superintendent of the province by the Commissioner of Crown Lands, D. A. Tole, upon provincial lands north and south of Auckland. It is dated in the Crown Lands Office at Auckland on 26th March, 1874, and commences with the following words :—

Sir,—

I have the honour in pursuance of instructions received by me in connection with the recent visit of Your Honor and some of the members of your Executive to several of the most important settlements of the Province, North and South of Auckland, to submit briefly the following information collected by me, relative to the situation extent, and general character &c. of such portions of the landed estate of the Province already acquired, as also such other lands deemed desirable of acquisition, as appear to be deserving of especial notice and mention, on account of their more or less acknowledged adaptability for purposes of settlement.

In dealing with the Mangonui district the Commissioner of Crown Lands says :—

The lands which are reported to present natural inducements and facilities for settlement in this district are the Kaiaka, Patiki, and Maungataniwha Blocks, embracing in all an area of about twenty-one thousand acres.

To these may be added three smaller blocks containing about two thousand one hundred and fifty acres, and named respectively Taumatapukapuka, Whakapapa, and Opouturi.

And his report on that district concludes with the following two paragraphs :—

It may also be stated that in addition to the lands above recited there are at present under negotiation for purchase by the General Government two blocks of land named the Takahue and Uwhiroa, embracing an area of about forty-seven thousand acres, the former of which is said to offer a suitable location for intending settlers.

The area of land at present time under the control of the Provincial Government in this district is estimated at one hundred and fifty-four thousand acres.

In other parts of the same report the Commissioner of Crown Lands refers to specified lands as being "recommended for purchase" or "strongly recommended for immediate purchase." The interpretation sought to be placed upon this report by Mr. Meredith in connection with the Opouturi Block was questioned by Mr. Skelton who stated that there was lack of lucidity. He claimed that the report did not say which lands had been inspected provisionally with a view to finding whether they would make good land-settlements. In the opinion of the Commission, however, looking at the report as a whole, the report deals with the Taumatapukapuka, Whakapapa, and Opouturi Blocks as being blocks already acquired by the province, and not as blocks "deemed desirable of acquisition." Daniel Austin Tole, who signed the report quoted above and who is referred to in the next paragraph of this report, was appointed Commissioner of Crown Lands for the Province of Auckland under the Commissioners of Crown Lands Act, 1869, as from 5th October, 1871, and at the time he made the statutory declaration referred to in the next paragraph on the 17th June, 1884, he still held the position of Commissioner of Crown Lands. As mentioned in paragraph 8 of this report, by virtue of being Commissioner of Crown Lands for the Province of Auckland he was also Waste Lands Commissioner having charge of the administration of the Auckland Waste Lands Act.

16. The next document put forward on behalf of the Lands and Survey Department in support of its claim that the Opouturi Block had been purchased by the Province of Auckland was a statutory declaration of loss made by D. A. Tole, Commissioner of Crown Lands for the Land District of Auckland, on the 17th June, 1884, but before dealing with this declaration we think it desirable to deal in some detail with the inquiries made at that time by various officers of the Crown into the question of the alleged purchase by the Provincial Government of Auckland of the Opouturi and other blocks. On 8th April, 1884, Henare Kepa wrote to the Minister of Lands offering to sell the north-western portion of the Taumatapukapuka Block. As a result of this letter inquiries were made by the Under-Secretary of the Land Purchase Department concerning the matter. The file of papers in connection with this matter contains a minute signed by D. A. Tole on the 9th May, 1884, to the effect that the Taumatapukapuka Block (1,430 acres) was purchased from the Natives by Mr. Superintendent Williamson in 1870 or 1871 for the sum of £216 9s.—a conveyance was obtained at the time but before it could be registered was unfortunately destroyed in the fire of the Government buildings in Auckland in 1872. Mr. Tole suggested a search of the Provincial Treasury books in Wellington for proof and other necessary particulars of the purchase. As a result of this suggestion a search was made by J. C. Moginie who had previously been employed in Auckland. J. C. Moginie's minute concerning this search was in the following terms :—

I have had the books and vouchers of the late Provl. Govt. of Auckland thoroughly searched but no entry of, or voucher for, the payment for the Taumatapukapuka Block can be found. The payment must have been made out of Imprest moneys which would account for its not being entered in the Provl. Ledgers. It is impossible now to ascertain how the Imprest advances were expended as the vouchers were not rescued from the fire. A voucher is in existence for the sum of £6 5s. amongst other moneys drawn by the Record Clerk of the Provl. Govt. to pay the duty and fine on the conveyance of the Taumatapukapuka Block—this shows that a Deed of Conveyance existed. When I left Auckland in July 1877 there was a large iron box containing deeds belonging to the late Provl. Govt. more or less damaged by fire in the temporary custody of Mr. H. H. Lusk, Solicitor, which no doubt has been forwarded to the Govt. Offices in Auckland before now, this might be searched for the deed required.

This minute indicates the extent of the investigation then made into the books and vouchers of the Provincial Government of Auckland. It also indicates that payment for Native lands purchased by the Provincial Government was sometimes made out of Imprest moneys. Minutes on an old file held by the Maori Affairs Department show that the iron box referred to in J. C. Moginie's minute quoted above was examined and nothing bearing on Native land purchases was found in it. Inquiries were made in May, 1884, to ascertain whether the title to any other land was in the same state as the title to Taumatapukapuka Block, and a minute dated 3rd June, 1884, stated that the title to several blocks of land was in exactly the same position as the title to the Taumatapukapuka Block owing to the deeds of conveyance which were never registered having also been burnt in the fire referred to in D. A. Tole's minute of the 9th May, 1884, referred to above. The blocks referred to in this minute as being in a position as to title similar to the Taumatapukapuka Block were Opouturi, Whakapapa, Patiki, and Taheke (south part) 330 acres. A minute of 17th June, 1884, indicates that the Pipiwharuroa Block should also have been included in the list but was not included as one of the officers of the Crown Lands Office was under the impression that the Government had already obtained a new conveyance. This minute states that the registers in the Trust Commissioner's Office were searched at that time but without finding that any deeds in respect of any of the blocks referred to were received by the Trust Commissioner or his predecessor for certification. It would appear that as a result of these inquiries and the disclosure of the unsatisfactory state of the title to these blocks D. A. Tole, the Commissioner of Crown Lands on 17th June, 1884, made the declaration of loss already referred to, and dealt with in more detail in the next paragraph of this report, and had it registered in the Deeds Registry Office against the deeds indices to the lands referred to in the declaration.

17. This declaration states that in or about the year 1871 D. A. Tole, the declarant, was an officer in the service of the then Provincial Government of Auckland, holding the position of Commissioner of Crown Lands in the Waste Lands Department, and that as such he was well acquainted with the various transactions and negotiations with reference to the acquisition and disposal of Government lands and of the lands under the administration of the Provincial Government. After referring to the ascertainment of the title to and the issue of Crown grants for the lands referred to in the Schedule to the declaration, the declaration contains the following as clauses 6, 7, and 8 of the declaration :—

6. That in or about the year 1871 the Superintendent for the time being of the Province of Auckland entered into negotiations with the said grantees for the purchase of the said lands and did purchase the same on behalf of the Crown and thereupon Conveyances of the said lands were prepared and duly executed by the said grantees whereby all the right title and interest of the said grantees in the said lands were conveyed and assured unto Her Majesty the Queen.

7. That the said Conveyances were deposited for safe custody in a Building situated in Shortland Street Auckland aforesaid and then used and occupied by Departments of the said Government as Public Offices and that in or about the year 1872 the said Building was totally destroyed by fire and with the other contents of the said Buildings and said Conveyances were burnt.

8. That by reason of the premises last aforesaid the said Conveyances have never been registered against the said lands.

The Schedule to the declaration refers to the following blocks :—

Pipihararua	..	..	..	..	..	282 acres.
Opouturi	..	..	..	..	..	250 acres.
Whakapapa	..	..	..	..	..	470 acres.
Patiki	..	..	..	..	..	4,007 acres.
Taumatapukapuka	..	..	..	..	..	1,430 acres.

The blocks so included in the Schedule to D. A. Tole's declaration were all the blocks of land referred to in the Lusk letter of 6th November, 1872, which had not by 1884 been vested in Her Majesty with the exception of the south part of the Taheke Block containing approximately 330 acres. It would appear that this piece of land was not referred to owing to some oversight. This declaration could not of itself have any legal effect on the title to the lands referred to in the declaration. Registration in the Deeds Registry Office was apparently intended to operate as something in the nature of a caveat against dealings with the lands referred to in the declaration. So far as can be ascertained, except in the case of Pipihararua, no steps were taken by way of proceedings in the Native Land Court or otherwise for a declaration that the Crown owned the land.

18. D. A. Tole's declaration, referred to in detail in the preceding paragraph of this report, was severely criticized at the hearing before this Commission by Mr. Skelton. He claimed that the declaration should have shown that a *bona fide* and diligent search had been made in all places where the documents alleged to have been burnt could possibly have been. He also claimed that the declarant was not the appropriate person to make the declaration. He further claimed that there should have been set out in the declaration details as to the price paid, the date of the transaction, and the signatories to the alleged deed, and that the alleged purchase should have been supported by declarations by the purchasing officer. The declaration was also criticized by Mr. Skelton on the basis that there were evidences that the declarant showed carelessness in the manner in which he prepared documents to be signed by him. In this connection he referred to what he speaks of as the "lack of lucidity and lack of clarification" in D. A. Tole's report which is referred to in paragraph 15 of this report. The passage of time between the alleged transactions and the declaration was also referred to as an element which should lead the Commission to disregard the document. Paragraph 6 of D. A. Tole's declaration certainly is indefinite on the question of whether the purchase of the lands was on behalf of the Central Government or the Provincial Government. It appears from the documents which were executed before the abolition of the Provincial Government to carry out certain of the transactions referred to in the Lusk letter (see paragraph 14 of this report) that any conveyance prepared in 1871 would have been a conveyance

to the Superintendent of the Province of Auckland and not a conveyance to Her Majesty the Queen. This does not seem to us to be of such vital importance as to render the declaration entirely worthless, as Mr. Skelton would have us regard it. The steps outlined in paragraph 16 of this report show that the declaration followed considerable inquiry and search for the documents declared to be lost, and it must be borne in mind that the declarant, D. A. Tole, had since a date more than twelve months before the fire in November, 1872, held the position of head of the Department which dealt with both purchases and sales of land by the Provincial Government. It must be borne in mind also that this declaration is not the only document relied on by the Lands and Survey Department. The Lusk letter is the principal document relied upon by that Department.

19. Nothing further appears to have been done in connection with the title to the Opouturi Block until some time after 1910, but, in the meantime, a return was laid on the table of the House of Representatives in 1891 which appears in the Appendix to the Journals of the House as paper G-10 and which contains a reference to the Opouturi Block. The return was made pursuant to an order of the House of Representatives which required that there should be laid upon the table of the House a return showing, *inter alia*, lands which had passed through the Native Land Court and were still held by the Maoris for personal occupation, detailing property tax valuation in respect thereof. On page 34 of the return the Opoturi [*sic*] Block, containing 250 acres, is shown as being land still held by Maoris and "used for pastoral or agricultural purposes." The property tax valuation is shown as £250. Although provision was made in the return to break up the area of any of the blocks into two areas being first, the area used for pastoral or agricultural purposes, and, second, the area lying unproductive, the return shows the whole of the Opouturi Block as being used for pastoral or agricultural purposes. The evidence of the surveyor, who made a survey of the Opouturi Block in 1916, showed that most of the block was then covered with bush and that only a small portion of the block adjacent to the boundaries was cleared of bush. From this fact Mr. Meredith for the Crown argued that the return had been prepared without adequate consideration of the particular facts in relation to the block. He may well be correct in this respect as the return in respect of the Auckland district alone covers more than thirteen pages with about eighty blocks on each page. Mr. Skelton on behalf of the Maoris, however, argued from this return that the block in question must have been shown in the books of the Property Tax Department as owned and occupied by Maoris. We see no reason to doubt this interpretation sought to be placed upon the return which, while it was no doubt prepared by the Native Department, would be prepared in consultation with the Property Tax Department. The Commission has caused inquiries to be made from the Valuation Department which has inspected its valuation rolls as far back as they are available, and this inspection shows that the roll prepared for the Mangonui District as at 31st March, 1910, showed the land to be owned and occupied by Natives, but that during the currency of that roll, which continued in existence until the new roll came into force on 31st March, 1916, the roll was amended to show the Crown as the owner and occupier.

20. As the result of several inquiries being made by persons desirous of taking up the land, the matter of dealing with the Opouturi Block was taken up by the Lands and Survey Department between 1910 and 1912. The position of the title as it then existed was considered, and the Department, acting upon the advice of a Crown Solicitor given upon the assumption that the Crown owned the land, opened it for selection in the ordinary way notwithstanding that a Crown grant for the land was registered in the name of the Maoris referred to in paragraph 3 of this report. The District Land Registrar was advised that the Crown proposed to treat Opouturi as demesne lands of the Crown, and steps were taken to prepare the land for selection. As the result of this notification, the Deeds Index in the Deeds Registry Office at Auckland was marked with a statement to the following effect: "This block is now to be treated as Crown Land."

This statement was initiated by C. R. Keeble who was the Examiner of Titles. F. R. Burnley, a surveyor employed by the Lands and Survey Department, was instructed to make a survey of Opouturi Block together with a further area of some 1,200 acres. F. R. Burnley, who is now retired, gave evidence as to what he found on the Opouturi Block at the time he made the survey in 1916. His instructions were to survey Opouturi and other sections, and he prepared a plan which is now known as No. 19133, blue. This plan was produced to the Commission and shows almost the whole of the Opouturi Block as being Lots 14 and 15, very small pieces of the block being included in adjoining sections. The survey was done between March and June, 1916, and from the beginning of March until after the end of June, F. R. Burnley was camping on a portion of the Opouturi Block. He stated that in all there might have been 25 acres cleared of bush in strips along the boundary, along the road, and between the road and the creek. There were no occupants of the land at that time and there were no signs of habitation on the land. There was only one fence on the land and that fence, which was not on the correct boundary, was on the western side of the block and was intended to fence off land occupied by F. T. Costall. The Opouturi Block was not otherwise fenced, and it is clear from the plan and from the evidence that the surveyor went over all the boundaries of the block carefully. In 1919 practically the whole of the Opouturi Block was leased to Henry Southon. Following on this, the petition, No. 117/1923, was presented to Parliament as mentioned in paragraph 5 of this report. Having regard to the evidence of F. R. Burnley it is quite clear that the second paragraph of the petition referring to the erection of a fence between portion of the Opouturi Block and land occupied by Thomas Wallen is incorrect. The land occupied by Thomas Wallen was not on the west where the only fence was situated but was on the eastern side of the Opouturi Block.

21. In view of the inability of the Crown to produce a conveyance of the Opouturi Block we considered that it might be of assistance to examine what has taken place in connection with the other blocks of land conveyances of which were allegedly destroyed in the same fire and not replaced by new conveyances. These blocks are the Pipiwhararoa, Whakapapa, Patiki, and Taumatapukapuka Blocks and the southern part of the Taheke Block containing approximately 330 acres. It is proposed to deal briefly with each of these blocks :—

- (a) *Pipiwhararoa*.—This block is in the Whangarei district. Apparently, some effort was made to obtain a new conveyance in replacement of the old one. Evidence of this appears from the Trust Commissioner's Register referred to in paragraph 14 of this report, and there is in existence on an old file held by the Maori Affairs Department evidence that one of the original owners was paid £3 on 5th November, 1878, in consideration of signing a conveyance to the Crown. The other two owners apparently did not sign, and when an application was made to the Native Land Court in 1883 for a succession order to be made in connection with the interest of one of these owners, the Crown stepped in, and ultimately after various proceedings had been taken the Native Land Court made an order in 1889 declaring that the block belonged to the Crown. When the matter was before the Court a sale to the Government was acknowledged though there was some question as to whether all the three owners had received the purchase-money or whether one of them had been personated. A certificate was produced to the Native Land Court at one of the hearings signed by the J. C. Moginie who is referred to in paragraph 16 hereof, to the effect that on looking back through the provincial ledgers he found an entry dated in September, 1870, relating to the final payment on the Pipiwhararoa Block. This certificate was signed by J. C. Moginie on 11th December, 1883. It will thus be seen if it is compared with J. C. Moginie's minute in connection with the Taumatapukapuka Block, referred to in paragraph 16 of this report, that in some cases the name of the block was shown in the provincial ledgers and that in other cases the name did not appear.

- (b) *Whakapapa*.—The title to this block of 470 acres was investigated by Judge Maning on 1st June, 1870. The Crown grant was issued in the names of Wiremu Pikahu and five others, four of the six grantees being interested as owners in the Opouturi Block. The circumstances in connection with this block appear to be somewhat similar to the Opouturi Block, except that the subdivision and disposal of the same by the Crown commenced at an earlier date. A succession order was made in 1889 in respect of the interest of one of the Maori owners who had died, but when an application for partition was made in 1898 the Native Land Court dismissed the application as the land had been sold to the Crown. The Whakapapa Block, containing 470 acres, is shown in the return of 1891, published as parliamentary paper G-10 (referred to in paragraph 19 of this report), as being still held by Maoris for personal occupation. It is clear, however, from a minute on an old file held by the Maori Affairs Department, which was signed by the Valuer-General on the 1st December, 1898, that as at that date the land was assessed as being owned by the Crown and was included in an area of 2,480 acres so assessed.
- (c) *Patiki*.—The title to this block was also investigated by Judge Maning on 1st June, 1870. The Crown Grant was issued in the names of nine Maoris, one of whom was also interested as an owner in the Opouturi Block. No applications have been made to the Native Land Court for any succession orders in respect of this block which has been dealt with as Crown land for many years, the first of the titles to be issued as a result of alienations by the Crown being issued in March, 1886. At the hearing before the Commission it was claimed that the Patiki Block was still being treated as Maori land and that the Crown had made no claim to it. There are, however, two blocks of the same name close to one another, and it is clear that the Patiki Block, which contains 4,007 acres and which is referred to in the Lusk letter and in D. A. Tole's declaration, has been dealt with as Crown Land for many years and that the other Patiki Block is still in the name of Maori owners. Parliamentary paper G-10 of 1891 shows this other Patiki Block as still being held by Maoris, but does not contain any reference to the Patiki Block referred to in the Lusk letter and in D. A. Tole's declaration.
- (d) *Taumatapukapuka*.—The title to this block was also investigated by Judge Maning on 1st June, 1870. The Crown grant was issued in the names of three Maoris, none of whom were named as owners in any of the other blocks with which the Commission has concerned itself. Mr. Skelton has stated, however, that the three owners in whose names the Crown grant for the Taumatapukapuka Block was issued belonged to the same hapu as the owners of Opouturi. As mentioned in paragraph 16 of this report, Henare Kepa, one of the Maoris to whom Taumatapukapuka was Crown granted, wrote to the Minister of Lands offering to sell portion of the block. The searches made and the information obtained as a result of those searches are described in paragraph 16 of this report. No reply appears to have been sent to Henare Kepa in reply to his letter of 8th April, 1884, and he wrote again the following year repeating his wish to sell the block to the Government. To this offer a letter was sent advising him that the block had been bought by the Superintendent of Auckland many years before. From the old Native Land Purchase Department file in connection with this matter it appears that a suggestion was then made within the Department that special legislative provision should be made in some way or another in connection with this and the other blocks of land the deeds of which had been burnt before registration, but no trace can be found of any legislative action having been commenced. There are no succession orders on record for this block which has been dealt with as Crown land since before 1906. This block does not appear in parliamentary paper G-10 of 1891.

(c) *Taheke*.—Although the southern portion of the Taheke Block, containing 330 acres, is omitted from D. A. Tole's declaration apparently by oversight, the title to that land in 1884 was otherwise in the same unsatisfactory position from the point of view of the Crown as the title to the five blocks included in the declaration. The title to the whole of the Taheke Block, containing 484 acres, was investigated by Judge White on 31st August, 1866, and a Crown grant was issued in the name of six Maoris, one of whom was also interested in the Patiki Block. Various succession orders have been made in connection with the Taheke Block on various dates from 1884 up until the present time. None of these succession orders indicate the area in respect of which they are made, but in the opinion of this Commission it is probable that they were intended to apply only to the unsold portion amounting to 154 acres. Between 1887 and 1890 a survey was made of portion of the block, and the surveyor was instructed that 154 acres at the northern end belonged to the Natives. In 1890 the surveyor received specific instructions to define the boundary-lines between the Crown and Native owned portions of the block and to accept the lines pointed out by the Natives which ran approximately as shown upon a tracing supplied to the surveyor on 16th January, 1890. Following upon this instruction a survey was apparently completed and the boundary-line between the Crown area and the Native area of the block was endorsed upon the original survey plan of the block which had been prepared by S. Campbell, surveyor, prior to the hearing of the proceedings for investigation of title on the 31st August, 1866. The 330 acres has been treated as Crown land for many years and the position appears to have been accepted by the Native Land Court and by the Maoris in 1934 when the balance of the block amounting to 154 acres was partitioned between the Maoris who were then interested in the block. Parliamentary paper G-10 of 1891 shows only 154 acres of Taheke Block as then being held by Maoris.

22. When Petition No. 117/1923 was presented to the House of Representatives it was referred to the Under-Secretary of the Department (at that time Chief Judge Jones) for report by him. On the 6th August, 1924, he reported to the Chairman of the Native Affairs Committee of the House of Representatives in relation to the matter and the last two paragraphs of his report are as follows :—

I have made diligent search and have been unable to find any proclamation of the Native title having been extinguished. I find that in a return (1891 G. 10 p. 34) it is described as being in the occupation of the Natives. Correspondence shows that in 1915 a Native alleged that he had been called upon by an adjoining owner in 1907 to erect one half of the boundary fence and that the Natives did so and he further alleged that he had been informed by a Commissioner it was Native land.

The position is that at present there is in force a grant by the Crown to the Natives and also a lease from the Crown to a European. With all due respect to the Crown Law Office I hardly think the Crown can derogate from its own grant by treating it as a nullity and there should have been more formal proceedings for establishing the Crown title if confirmatory documents could not be obtained.

Our views as to various matters referred to in these two paragraphs may be summarized as follows :—

(a) Counsel for the Crown was unable to direct our attention to any *Gazette* notice stating that the Native title to the land had been extinguished. Considerable stress was laid upon the absence of this notice by Mr. Skelton who inferred that a *Gazette* notice necessarily followed the extinction of the Native title. Such was not the case. Section 10 of the Native Lands Act, 1867, provided that a notification in the *Gazette* under the authority of the Governor stating that the Native title over any land had been extinguished was to be received in the Native Lands Court as conclusive proof that the Native title had been extinguished. The section did not make it compulsory that a *Gazette* notice should be published, and we cannot therefore regard the omission in this connection as evidence tending to prove that there was no conveyance of the Opouturi Block.

- (b) The position with regard to the return of 1891 (paper G-10) is set out fully in paragraph 19 of this report. We do not regard the reference to the Opouturi Block in this return as conclusive against the Crown, although we regard it as evidence that up to that time no steps had been taken by the appropriate Department to have the Crown ownership recorded on the valuation roll.
- (c) The allegation by a Native in 1915 that he had been called upon by an adjoining owner in 1907 to erect one-half of the boundary-fence is similar to the statement in the second paragraph of the petition (No. 117/1923). In paragraph 20 of this report we have stated our opinion that it is quite clear that the second paragraph of the petition referring to the erection of a fence between portion of the Opouturi Block and the land occupied by Thomas Wallen is incorrect.
- (d) In our opinion it cannot be said that the Crown in these proceedings is endeavouring to derogate from its own grant by treating it as a nullity. The claim of the Lands and Survey Department admits that the Crown grant was a valid document, but claims that after the Crown grant was issued a further transaction took place by way of sale to the Superintendent of the Province of Auckland followed by a conveyance in pursuance of the sale. We agree, however, that some more formal proceedings should have been taken to establish the Crown title if confirmatory documents could not have been obtained.

23. In the foregoing paragraphs of this report we have dealt with the history of the Opouturi Block and the material documents placed before us in support of the Crown's claim. In addition to producing the documentary evidence tending to prove the alleged sale to the province with a view to establishing that the Crown is properly entitled to the land, Mr. Meredith drew special attention to paragraph 3 of Petition No. 117/1923. In this paragraph the petitioners state that they admit that only a portion of the block was sold. Mr. Meredith argues from this that the petitioners admit that there was a sale. The question thus arises as to whether only a portion of the 250 acres was sold to the Superintendent of the province. In this connection it is noted that the report of 1874, referred to in paragraph 15 of this report, in mentioning 2,150 acres as the area of the three smaller blocks (including Opouturi) specifies the total area of the whole of the three blocks. Mr. Meredith claims that the Maoris have failed to indicate that clear boundary-line or, as Mr. Skelton would prefer to see the original Maori translated, "that separation," which according to the petitioners is still clear to-day. Further, the surveyor, F. R. Burnley, stated that there was no natural division in the block and he saw no signs of any boundary or partition in the block. Although there were numbers of Maoris present at the hearing before the Commission in Kaitaia the only witness called for the Maoris was Louis Wellington Parore whose evidence dealt with the results of his inquiries and investigation as to various transactions and as to legislation. He did not give any explanation of what was meant by the continued existence of the boundary-line or separation between what was sold and what was not sold, and none of the local Maoris were called to explain the matter. Mr. Skelton's case at the hearing was based on a direct denial that there was any conveyance whatsoever. In his written submissions in reply to the Crown's case Mr. Skelton endeavours to explain the reference by the Maoris to a sale of a portion of the block by saying, in effect, that the 250 acres included in the Crown grant to the Opouturi Block, issued in 1871, was part of a larger block all of which was sold to the Crown except the 250 acres and that it was this other sale to the Crown that was referred to by the Maoris. In support of this suggestion Mr. Skelton draws attention to the fact that the boundary between the Hikurangi Block and the Opouturi Block consists of straight lines and that this was not in accordance with the practice of surveying in those days when the surveyors followed natural features such as waterways, valleys, ridges, &c. He mentions this as an indication that the straight lines were drawn for the purpose of cutting off from the block which was to be sold land which was to be retained. We are unable to accept this explanation of the reference in the petition to a sale of a portion of the block. Mr Skelton also suggested that it was unthinkable that an area should have been set aside from the sales of adjacent

lands as reserved for Natives and that subsequently that land should be sold. He refers to Native reserves shown as adjacent to nearby blocks, but none of these Native reserves coincide with any part of the Opouturi Block. The only Native reserve which was near the Opouturi Block was the Te Ahua Native Reserve, and that reserve was separated from the Opouturi Block by a stream.

24. Having regard to the matters already mentioned in this report and having given careful consideration to those matters and to the evidence tendered and the submissions made by both parties to the Commission, we are firmly of opinion that there was a sale by the Maori owners of the Opouturi Block to the Superintendent of the Province of Auckland. We are also of opinion that a deed of conveyance to the Superintendent of the province was duly executed and that the conveyance has been lost or destroyed. In our opinion the conveyance was almost certainly lost in the fire which took place in Auckland on the night of the 19th–20th November, 1872. As the result of our inquiry, therefore, we find (following the form of the question set out in the Commission) that “it is reasonably established that the interests of all . . . the former Maori owners of the said Opouturi Block were extinguished by a deed of conveyance to” the Superintendent of the Province of Auckland. The deed of conveyance was not a conveyance to the Crown as appeared to be contemplated at the time the question in the Commission was framed. This is not, however, material in view of the fact that by virtue of the Abolition of Provinces Act, 1875, the interest of the Superintendent in the land became vested in the Crown. We have, therefore, to report accordingly and to say that the case does not call for any recommendation in favour of the Maoris claiming to be interested in the Opouturi Block.

25. Although in the result we find that the Opouturi Block was sold by the Maori owners and is now the property of the Crown and that the claimants have no right to any interest in the land, we nevertheless feel that if the appropriate Government Department had taken the steps which were open to it over sixty years ago to assert the claim of the Crown to the land before the Native Land Court, the matter would have been satisfactorily cleared up without the need for this present inquiry. In 1884 the unsatisfactory position as to the Crown's title was known and steps were then contemplated but not taken to put the matter in order. For about two years, between 1886 and 1888, there was no legislation under which an application could have been made to the Native Land Court for an order defining the Crown's interest in the Opouturi Block, and during that time the matter of taking steps to clear up the title to the block may have been dropped, but with the passing of the Native Land Court Act 1886 Amendment Act, 1888, the former legislation in this connection was re-enacted. After the passing of that Act steps could have been taken, as was done in connection with the Pipihararuroa Block, to have a Court order made declaring the land to be the property of the Crown. Had the appropriate action been taken by the Department to put the Crown's title to the land in order the Maoris would not have been advised to press their claims to the land as they have done on a number of occasions, and they would not as a result have incurred expenses probably in excess of the value of the land which is shown in the latest Government valuation roll as being £225, with timber valued at £200. We suggest, therefore, that it would be a gracious act on the part of the Government to pay towards the costs and expenses of the Maoris out of the Consolidated Fund a sum not exceeding £75 in all.

We have the honour to be,

Your Excellency's humble and obedient servants,

D. J. DALGLISH, Chairman.

H. M. CHRISTIE, Member.

R. ORMSBY, Member.

Wellington, 4th December, 1950.

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