1951
NEW ZEALAND

REPORT OF ROYAL COMMISSION APPOINTED TO INQUIRE INTO AND REPORT UPON CLAIMS PREFERRED BY CERTAIN MAORI CLAIMANTS IN RESPECT OF THE TARAWERA AND TATARA-AKINA BLOCKS

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 Tarawera and Tataraakina Blocks

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, pursuant to section 38 of the Maori Land Amendment and Maori Land Claims Adjustment Act, 1924, and section 46 of the Maori Land Amendment and Maori Land Claims Adjustment Act, 1928, certain amendments were made by the Maori Land Court in the titles to certain subdivisions of the lands formerly known as the Tarawera and Tataraakina Blocks:

And whereas certain Maoris claim to have suffered an injustice by reason of the amendments aforesaid, on the grounds, amongst others, that the said lands had been awarded to their predecessors in title pursuant to an agreement dated the 13th day of July, 1870, made between the Crown and certain Maoris:

. . . . . .

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 Tarawera and Tataraakina Blocks aforesaid, to inquire and report—

(i) Whether, due regard being had to all the circumstances, there should have been any amendment in the titles to any portions of the said blocks;

(ii) If it be reported that there should have been no such amendment in the title to any portion or portions of either of the said blocks, then to recommend what measures should be adopted by the Government to remedy any injustice which might have been suffered by any person or persons as a result of such amendment:

. . . . . .

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 Tarawera and Tataraakina Blocks

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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.

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Extending Period Within Which the Royal Commission Constituted to Inquire Into and Report Upon Claims Preferred by Certain Maori Claimants Concerning the Tarawera and Tataraakina Blocks 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.

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

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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 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 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.

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

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

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 December, 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 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 twenty-fifth day of July in the year of our Lord, one thousand nine hundred and fifty-one, and in the fifteenth 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 the Right Honourable Lord Freyberg, V.C., G.C.M.G., K.C.B., K.B.E., D.S.O.

MAY IT PLEASE YOUR EXCELLENCY,—

1. We have the honour now to make the fourth and final report as the result of our inquiries into the four matters specified in Your Excellency's Commission of 6th December, 1949, as confirmed in your Warrant of 26th April, 1950, appointing the present members of this Commission. This report relates to claims in respect of the Tarawera and Tataraakina Blocks, which are situated on the Napier–Taupo road, on the Taupo side of the Mohaka River.

2. The Commission sat at Hastings to hear representations in respect of this matter on 17th April, 1951, and on the following day. Mr. R. F. Gambrill appeared as counsel to assist the Commission, and the following counsel also appeared: Mr. H. R. Moss for the Baker family; Mr. R. McKenzie for the Pohe family; Mr. M. J. Morrissey for the Ngati Hineuru Tribe and the Utiera family; and Mr. J. H. Holderness for the Ngati Tuwharetoa Tribe. The following Maoris were also heard by the Commission: Mr. T. Tareha, Mr. B. M. Otene, Mr. Hoeroa Tahau, Mr. Tawhiti Karaitiana, Mr. Hakopa Tongariro, and Mr. Wairama Te Hapu. At a later date the Commission visited the area and inspected the occupied portions of the two blocks.

3. In 1924 the Tarawera and Tataraakina Blocks, except for certain parts which had been sold to the Crown, belonged to certain Maoris. By section 38 of the Maori Land Amendment and Maori Land Claims Adjustment Act, 1924, the Maori Land Court was authorized to investigate the titles to the said blocks, and as a result of the investigation by that Court various amendments were made to the titles. Section 46 of the Maori Land Amendment and Maori Land Claims Adjustment Act, 1928, authorized further amendments to be made to the titles to the said blocks, and in due course the titles were amended after further inquiry by the Maori Land Court.

4. Following the amendments referred to in the last preceding paragraph, representations were made to the Government and petitions were presented to Parliament by certain Maoris claiming that they had suffered an injustice by reason of the amendments to the titles, on the grounds, amongst others, that the land had been awarded to their predecessors in title pursuant to an agreement dated the 13th day of June, 1870, made between the Crown and certain Maoris.

5. This Commission has accordingly been appointed to inquire and report, in respect of the Tarawera and Tataraakina Blocks,—

(i) Whether, due regard being had to all the circumstances, there should have been any amendment in the titles to any portions of the said blocks.

(ii) If it be reported that there should have been no such amendment in the title to any portion or portions of either of the said blocks, then to recommend what measures should be adopted by the Government to remedy any injustice which might have been suffered by any person or persons as a result of such amendment.

6. In order to examine the matter fully it has been necessary for us to consider the history of these blocks of land from the time of the Hau Hau rebellion, and to examine the said agreement of 13th June, 1870, and various legislative enactments and petitions in relation to the lands from 1870 onwards.

7. Consequent upon the outbreak of the Maori War in the Waikato in 1863, the New Zealand Settlements Act, 1863, was passed empowering the Governor in Council to confiscate the lands of any Maori tribe or hapu that had after 1st January, 1863, engaged in rebellion against the Crown. Provision was made by this Act and also by the New Zealand Settlements Amendment and Continuance Act, 1865, for the payment of monetary compensation to any loyal Maoris whose lands might happen to be included within a confiscated area or for the grant to them of lands in lieu of monetary compensation.

8. In and prior to the year 1866, a large number of Maoris in the Northern Hawke's Bay District joined in the Hau Hau rebellion, and, in consequence, an Order in Council was issued on 12th January, 1867, under the abovementioned Acts of 1863 and 1865 designating a large area of land in Northern Hawke's Bay containing approximately 250,000 acres to be "the Mohaka and Waikare District" and taking and reserving the lands within the district, not being the property of or held under grant from the Crown, for the purposes of settlements. The Order in Council declared that no land of any loyal inhabitant within the district would be retained by the Government, and, further, that all rebel inhabitants of the district who came in within a reasonable time and made submission to the Queen would receive a sufficient quantity of land within the district for their maintenance.

9. On 18 November, 1869, Mr. (afterwards Sir) Donald McLean, on behalf of the Government, wrote from Auckland to Mr. S. Locke, Resident Magistrate at Napier, instructing him to effect a settlement in relation to the Mohaka and Waikare District. This letter was in the following terms:—

SIR,

I have the honour to request that you will carry out the settlement of the Waikare Mohaka Block.

The Government do not expect or indeed desire to reap any pecuniary or other advantage from the confiscation of this block, or to incur any loss in connection therewith, but it is most desirable that all questions connected with it should be finally adjusted and disposed of. You will therefore endeavour to effect as equitable a settlement with the Natives as possible, taking care that large reserves are made for their own use.

The chief Tareha, who is becoming dispossessed of most of his landed property, should have reserves secured upon him within the block.

I need not supply you with more detailed instructions, as you are already acquainted with the history of this block, and I feel satisfied that you are fully competent to deal with it in such a just and equitable manner as will meet the requirements of the case.

You will of course in this as in all other cases confer with his Honour Mr. Ormond who represents the General Government at Hawke's Bay and act in accordance with his views in the carrying out of these instructions.

I have, etc.
DONALD MCLEAN.

S. Locke, Esq., R.M., Napier, Hawke's Bay.

10. Acting upon these instructions, Mr. Locke and Mr. J. D. Ormond communicated with the Maoris concerned, and an agreement was concluded with the Maoris having claims in the block and a memorandum of the agreement was signed on 13th June, 1870. In 1888 in giving evidence before the Native Affairs Committee (see parliamentary paper I–3c of 1888) Mr. Ormond, in referring to the Mohaka Waikare land and the agreement of 13th June, 1870, said: " The land referred to chiefly belonged to a tribe which was in rebellion in 1867–68: that was the tribe whose people came down on the plains of Napier to attack the Town of Napier, and who were defeated. A large number of them were killed or taken prisoners, and their lands were declared to be confiscated. . . . Concerned in these lands also were a number of natives who were all through friendly to Europeans and allied to the Government, the chief of whom was Tareha, whose services to the Government at that time were very great indeed. It was to him that the Government and Europeans were largely indebted for the security of the district. . . . Mr. Locke, who was at that time a Government officer in the Native Department, and well acquainted with all these people, was the officer employed to make inquiry into the whole of the circumstances and make a recommendation to the Government. He did make such inquiry. He went about among the Natives and held meetings, and, as far as I recollect, his inquiry was spread over a long time, and every Native, I must say, in that part of the country must have heard about it."

11. The agreement of 13th June, 1870, recites the Order in Council of January, 1867, describes the lands forming the Mohaka and Waikare District, and recites that at a meeting of the loyal claimants and D. McLean, Esquire, an agreement was entered into in which it was arranged that certain portions of the block should be retained by the loyal claimants, and other portions should be retained by the Government. The agreement then sets out that it is agreed between the Government and the loyal claimants that the Government shall retain certain blocks of land described in the agreement and shown in a plan attached to the agreement and that with those exceptions the whole block described in the proclamation shall be conveyed to the loyal claimants. It was also provided that the land should be subdivided into several portions as shown by the tracing annexed to the agreement and that the Government would grant certificates of title for the several portions to the Natives mentioned in the schedule. Thirteen blocks in respect of which Crown certificates were to issue were listed in the schedule, among them being Tarawera (with twenty-four names), Tataraakina (with twenty-two names), and Kaiwaka (with the name of Tareha te Moananui only). The number of Maori signatories to the agreement was thirty-one, and it is to be noted that the number of persons whose names were included in the schedule greatly exceeded the number of signatories.

12. This agreement of 13th June, 1870, was ratified by the Mohaka and Waikare District Act, 1870, which declared the agreement to be and to have been valid since 13th June, 1870, and to be binding on the Government of New Zealand and on all the persons whose names are stated in the agreement and in the schedule thereto. Provision was made in the Act for surveys and for the

issue of Crown grants in favour of the persons who, in pursuance of the agreement, were entitled to the said pieces of land respectively, subject to certain restrictions on alienation specified in the Act.

13. In February, 1871, Mr. McLean authorized a payment of £400 to be made to Tareha and others in completion of the settlement of the Mohaka Waikare Block. This sum was paid out to the Maoris, and a copy of the receipt for the payment appears in parliamentary paper I–3c of 1888 at page 6. This receipt, which was executed by twenty-nine Maoris of whom Tareha was one, recites that it was agreed on by the Government to give to certain claimants in the Mohaka Waikare Block the sum of £400 as a full and final settlement for the said block, and the receipt acknowledges payment of the £400 by Samuel Locke, Esquire, Resident Magistrate. It is not clear whether this was a money payment to further reward Tareha for his assistance to the Government, but from the fact that the receipt is executed by some twenty-nine Maoris it may well be that it was intended, in part at least, to be some sort of compensation for the interests of loyal Maoris in lands confiscated by the Crown.

14. Some surveys were made and some leases were granted of lands in the Mohaka and Waikare District, but no titles were issued under the Mohaka and Waikare District Act, 1870, which was repealed by the Repeals Act, 1878, along with a large number of other enactments which were considered to be spent or to have become unnecessary. Apparently the repeal of the 1870 Act was due to inadvertence.

15. In 1879 Tareha and eleven others petitioned Parliament to take measures to give effect to the Act of 1870 as regards the issue of the Crown grants. The petition was reported upon favourably, and in 1881 the Native Land Acts Amendment Act, 1881, was passed providing for the issue of grants in favour of persons who, in pursuance of the agreement of 13th June, 1870, were entitled to the residue of the lands in the Mohaka and Waikare District which were not set aside for the Crown. Section 7 of this Act provided that on application by the Native Minister the Native Land Court in its ordinary form of procedure might inquire and determine who were the persons entitled to the issue of grants in their favour, and section 8 of the Act authorized the Governor on receipt of certificates from the Native Land Court to issue Crown grants in favour of the persons named therein as tenants in common, but subject to certain restrictions against alienation as set out in the section. It is to be noted that the basis of this Act of 1881 was the carrying-out of the agreement of 1870.

16. Tareha died in 1880. There is no record of any dissatisfaction in relation to any of the matters covered by the agreement of 1870 up to the date of Tareha's death.

17. The Native Minister duly applied for an inquiry and determination by the Native Land Court as to the persons entitled to the residue of the lands in the Mohaka and Waikare District, and a Court was advertised to sit at Wairoa on 1st May, 1882, for that purpose. This Court was adjourned to 1st July, 1882, and at the request of interested Maoris was further adjourned to 6th July, 1882, for a sitting at Napier. When the sitting opened at Napier on 6th July, 1882, the Maoris refused to take part in the investigation unless the original agreement was ignored and fresh inquiry was made as to the parties entitled. As this would have been contrary to the Act of 1881, under which the inquiry was being made, Judge Brookfield, who was conducting the inquiry, advised the Maoris that he could not conduct the inquiry along the lines which the Maoris desired. The Maoris withdrew from the Court and the Court made orders in favour of the persons named in the schedule to the agreement of 1870, except in the case of one block where certain information was obtained as to successors to deceased Maoris.

18. In the following year an attempt was made by the introduction of a Bill into Parliament by a private member to authorize the Court to inquire and determine who were the loyal Natives entitled by right of ancestory or otherwise to the lands which under the agreement of 1870 were to be returned to the Natives. This Bill was referred to the Local Bills Committee, which made no report, and the Bill accordingly lapsed.

19. In 1888 Toha Rahurahu and others presented a petition praying that an Act might be passed enabling the Native Land Court to adjudicate on the "Mohaka and Waikare Blocks" with a view to including those who were left out and striking out those whose names were admitted wrongly. It was in connection with this petition that the evidence of Mr. J. D. Ormond already referred to (para. 10) was taken. The Committee reported that the petition be postponed until the next session. The next action taken appears to have been in June, 1890, when an Order in Council was signed purporting to bring the lands within the jurisdiction of the Native Land Court. This Order in Council was, however, not acted upon, there being doubts as to the power to issue such an Order in Council.

20. During the next few years the principal action in relation to the Mohaka and Waikare District related to the Kaiwaka Block, being the block which, under the agreement of 13th June, 1870, was to go to Tareha te Moananui alone. A petition was lodged in 1891 asking for some plan whereby the title of this block might be investigated. Representations were made to the Government and negotiations proceeded through the following few years, and finally Supreme Court proceedings were commenced by Te Teira te Paea and others against Te Roera Tareha and another, successors to Tareha te Moananui. The matter was dealt with in the Court of Appeal, the decision of that Court being reported at 15 N.Z.L.R. 91, and it was subsequently considered by the Privy Council (*New Zealand Privy Council Cases,* p. 399). The decision in this case as to the status of the Kaiwaka Block and as to the rights to the ownership thereof is equally applicable in respect of the Tarawera and Tataraakina Blocks, which are the subject of consideration by this Commission. The effect of the decision of the Privy Council was that all the lands comprised in the Mohaka and Waikare District were forfeited to the Crown by reason of the rebellion and could be retained by the Crown or granted out by it as it pleased, and such lands were not Native lands within the meaning of the Native Land Acts after the Order in Council of 12th January, 1867. The title to such of the lands in the district as were not retained by the Crown must be decided by the terms of the agreement of 13th June, 1870, and the persons named in respect of each block in that agreement must be treated as the only persons entitled to the block.

21. On 18th August, 1909, Hape Nikora and eighty-three others petitioned Parliament (petition No. 221/1909) concerning the Tarawera and Tataraakina Blocks. They asked that the restrictions on the land be removed and that the lands be brought under the operation of the Native Land Court to investigate the rights of the petitioners ancestrally. Another petition (No. 278/1909) was also presented. It appears from the records submitted to us that the question of reinvestigating the titles was considered by Cabinet following these petitions, but it was decided that no such legislation as asked for be introduced.

22. In 1911 and again in 1912 deputations waited upon the Native Minister asking for legislation reopening the whole matter. The Minister stated in reply that he was not prepared to introduce legislation for the purpose of reinvestigation unless a petition was presented to Parliament and a recommendation for a new trial obtained. In this connection the Chief Judge of the Native Land Court was asked to report on the matter in 1911, and Chief Judge Jackson

Palmer reported: " A very strong case would have to be presented before Parliament would act in view of the Hon. J. D. Ormond's evidence (I–3c of 1888) and the receipt of the £400 therein set out."

23. Apart from the Tarawera and Tataraakina Blocks, there were a number of petitions and requests about this time relating to other subdivisions of the Mohaka and Waikare District, but nothing was done and all the other blocks in the district had, by 1924, ceased to be owned by the Maoris. It is pertinent to note in this connection that the other lands in the Mohaka and Waikare District so disposed of by the Maoris were sold by the Maoris to whom the land was allocated under the agreement of 13th June, 1870, or their successors.

24. In 1913 there were two petitions to Parliament in relation to the Tarawera and Tataraakina Blocks, and following these petitions the matter was referred to the then Solicitor-General, Mr. (later Sir) John Salmond, who expressed it as his definite opinion that the only persons entitled were the Natives named in the agreement of 1870 or their successors in title in accordance with Native custom. He stated that he saw no justification for holding that they were necessarily entitled in equal shares, as had been suggested by departmental officials. Section 4 of the Native Land Claims Adjustment Act, 1914, was subsequently passed validating transactions by the Native Land Court relative to the lands in the Mohaka and Waikare District and declaring that the relative interests in the blocks were equal as between the original owners.

25. Further petitions were presented in 1916 and 1917 (petitions Nos. 150/1916 and 366/1917), but nothing came of these petitions. By petition No. 50/1918 Hape Nikora asked that the Native Land Court be empowered to determine who was entitled to inclusion in the title to the Tarawera Block. The Native Affairs Committee recommended that this petition be referred to the Government for inquiry, and the matter was inquired into by Judge Gilfedder pursuant to section 25 of the Native Land Amendment and Native Land Claims Adjustment Act, 1919. He reported on 9th August, 1920, and recommended that four extra names be included in the original title to the Tarawera and Tataraakina Blocks. These were the only names then sought to be included in the title, and legislation was passed authorizing this to be done. Judge Gilfedder's report is parliamentary paper G–6L of 1920, and the legislation passed to give effect to it was section 13 of the Native Land Amendment and Native Land Claims Adjustment Act, 1920. Following the amendment to the titles pursuant to this legislation the two blocks were partitioned and certain portions of the Tarawera Block were sold to the Crown.

26. In the report referred to in the last preceding paragraph Judge Gilfedder said: " The Tarawera and Tataraakina Blocks do not, however, appear to have been included within the boundaries referred to in the agreement of 1870, but seem to have been recognized as part of the confiscated territory in all subsequent transactions." This statement provided the basis upon which further action was taken by Hape Nikora and others leading to the passing of section 38 of the Maori Land Amendment and Maori Land Claims Adjustment Act, 1924, under which the first of the amendments to the titles of the Tarawera and Tataraakina Blocks into which we have to inquire were made.

27. On 17th October, 1923, Messrs. Morison, Smith, and Morison, solicitors instructed by Hape Nikora, wrote to the Under-Secretary of the Native Department claiming that the Tarawera and Tataraakina Blocks were included in the Order in Council of 1867, but were excluded from the agreement of 1870 as to description, but included in the plan, they said, in error. In consequence they claimed that none of the legislation affecting Waikare and Mohaka applied

to these two blocks and that the title to the two blocks should be determined according to Maori custom. In the course of the letter Messrs. Morison, Smith, and Morison stated that Hape Nikora was not aware of the true position of the blocks (as alleged by them) up to 1920.

28. In 1924 a petition (No. 101/24) was presented to Parliament by Hape Nikora and seventy others. This petition alleged that the 1870 agreement did not include the Tarawera and Tataraakina Blocks, and it referred to Judge Gilfedder's report. The prayer of the petition was that the Native Land Court in its ordinary jurisdiction should ascertain and define the relative interests of those entitled according to Maori custom and usage to be included in the title of the said blocks. By an additional petition (No. 337/1924) the same petitioners alleged as further grounds for a reinvestigation that the Court which sat in Napier on 6th July, 1882, was not properly constituted by reason of the fact that it sat at Napier instead of Wairoa. As already mentioned (para. 17), the adjournment from Wairoa to Napier was at the request of the Maoris interested, and in our view the grounds for this second petition are untenable.

29. The Native Affairs Committee sat to deal with the two petitions on 15th October, 1924. The papers lodged in the House of Representatives do not indicate whether notice of the petitions was given to any persons who might be adversely affected if the prayer of the petitions was given effect to. The minutes of the meeting of the Committee do not disclose that any one appeared before the Committee other than the solicitor for the petitioners and Hape Nikora and others who appeared in support of the petitions. The matter appears to have been dealt with at the one sitting, when, after hearing the solicitor for the petitioners and Hape Nikora and three others, the Committee resolved that the petitions be referred to the Government for favourable consideration. In a letter subsequently written to the Minister for Native Affairs, Messrs. Morison, Smith, and Morison said: "It was shown in evidence before the Native Affairs Committee that most of the owners in the present title are non-resident, and live in Napier, and on the contrary, that the children of the petitioners were being born on the said Blocks, but had no claim therein. It appeared, further, that although notice was given to them of the petitions before the Native Affairs Committee, not one appeared to oppose the petitions. This is an unusual circumstance and goes to show that the owners in the present title apparently realize that the Petitioners should be entitled to admission to the Blocks." We think that the assumption of the solicitors to the petitioners is not justified. We can find no evidence that any of the persons in the title to the Tarawera Block at that time received notice of the petition. The petition itself did not disclose for the benefit of the Committee the names of any of those persons. The only reference which we can find to notice being given is a reference contained in a petition lodged in 1925 asking for a repeal of section 38 of the 1924 Act. This petition (No. 172/1925) stated that neither the petitioners nor any other owner in the Tarawera and Tataraakina Blocks for whom the then petitioners were acting were aware of Hape Nikora's petitions and they were therefore not able to attend before the Native Affairs Committee. They stated that they believed that notice of the presentation of the petitions was sent to Te Roera and Kurupo Tareha, both of whom had long since sold out their interests in the Tarewera Block and who therefore were not concerned in any way about the presentation of the petitions to Parliament. Whether or not these allegations are correct, it seems clear that no one appeared to oppose the petitions of Hape Nikora in 1924. If any one had so appeared, that fact would almost certainly appear from the minutes of the meeting of the Native Affairs Committee.

30. Apart from the representations made by and on behalf of the petitioners under the 1924 petitions, the only material before the Native Affairs Committee appears to have been a report by Chief Judge Jones, who forwarded the opinion given by Sir John Salmond in 1914 concerning the title to the Mohaka and Waikare District and who added: "There seems little doubt that the Tarawera and Tataraakina Blocks were well within the confiscated boundary. This was borne out when the position of the Te Matai Block was under review. The location of the boundaries including that of the Hawke's Bay province was then ascertained. It may be that the plan referred to in the agreement of 1870 has misled some person."

31. The Native Affairs Committee recommended that the petition be referred to the Government for favourable consideration, and section 38 of the Maori Land Amendment and Maori Land Claims Adjustment Act of 1924 was enacted to give effect to the recommendation. This section empowered the Native Land Court to inquire and determine what persons, if any, other than those already admitted, ought to be included in the titles of the Tarawera and Tataraakina Blocks, and the Court was given power to redetermine and readjust the interests of the Native owners accordingly. It was provided that the Court, in ascertaining the persons entitled or in determining the relative interests of the Native owners, was not bound to regard the agreement of 13th June, 1870, nor the provisions of section 4 of the Native Land Claims Adjustment Act, 1914, "but the Court shall proceed as near as may be as if the Native customary rights of the parties still existed."

32. Chief Judge Jones of the Native Land Court conducted a special sitting of the Court in June, 1925, to deal with this matter. The position in connection with the title at that time was that the persons who were in the title were members of the Ngati Kahutapere Tribe, with a small sprinkling of members of the Ngati Hineuru Tribe. When the matter came on for hearing before Chief Judge Jones he found in effect that the persons who were entitled to the land according to Maori custom at the time of the confiscation were members of the Ngati Hineuru, but as the Ngati Kahutapere had been in possession for fifty years it seemed unjust to deprive them wholly of their interest in the land. He accordingly awarded two-thirds of the Tarawera Block to the Ngati Hineuru and the balance to the Ngati Kahutapere. As certain parts of the block had previously been sold by members of the Kahutapere, the balance of the block was divided by the Court on the basis of 15,000 shares to the Ngati Kahutapere and 50,051 shares to the Ngati Hineuru. The following extracts from the Napier Minute Book 73B under dates 23rd June, 1925, and 24th June, 1925, indicate the basis upon which the matter was considered by the Chief Judge and the award made:—

The present proceedings are the result of an application under section 38 of the Native Land And Claims Adjustment Act 1924 (*sic.*). That section confers jurisdiction upon the Court to ascertain who besides those already admitted ought to be included in the titles of the Tarawera and Tataraakina Blocks.

The Court in ascertaining the persons so entitled is directed to proceed as near as may be as if the Native customary rights of the parties still existed. The present proceedings have accordingly been conducted primarily as if the Native customary title still subsisted. . . .

From the review of the proceedings it will be observed that there has been no judicial investigation into the title as it was held under Native custom and usage so that the Court in these proceedings starts with a free hand in that respect except so far as the parties are entitled to any presumption in their favour from the fact that they have been named as owners in the present title. The Court assumes that in ascertaining the owners to be added, it should proceed and find who were the persons according to Native custom and usage entitled to the land when it was confiscated in 1867, that is,

who would have been entitled to have an order for title made in their favour if the land had not been confiscated. Of course, those who are already in the title, even if without such right, have to be retained in the title and their interests protected. . . .

The only inference thus left to be drawn by the Court is that the claimants when in possession were so under their own rights and not under those of N'Kahutapere; and that when the land was confiscated by the Crown the N'Hineuru were the owners of it according to Native custom. . . .

The Court said this was not a case for allowing these persons already in the title nominal shares only. . . .

The Court thinks that substantial justice would be done by dividing the land into three parts and giving the present holders one third and the new-comers two thirds.

33. When this award was made by Chief Judge Jones the representatives of the Ngati Hineuru asked for time to consider the award with the object of allocating the shares awarded to them, and it was not until some time in 1926 that the final award was made. In the meantime a petition (No. 172/1925) was presented by Waha Pango and six others asking for the repeal of section 38 of the 1924 Act. The Under-Secretary of the Native Department reported on this petition to the Native Affairs Committee and stated that the inquiry under section 38 was still in progress. The matter was stood over, and in August, 1926, the Under-Secretary informed the Committee that the Court had now made its final order in respect of the Tarawera Block and that, although the time allowed for appeals had lapsed, no appeals had been lodged. The Native Affairs Committee recommended that the Kahutapere section, of whom the petitioners were representatives, should have a right to appeal, and section 27 of the Native Land Amendment and Native Land Claims Adjustment Act, 1926, was passed giving an extension of time for the lodging of appeals in respect of the Tarawera Block. Certain appeals were lodged, but the petitioners under the last-mentioned petition did not lodge any appeal. The Court made minor amendments to its final orders, but otherwise these appeals were dismissed.

34. The proceedings under section 38 of the 1924 Act in respect of the Tataraakina Block were stood over until all appeals in relation to the Tarawera Block had been disposed of. Thereupon the Tataraakina Block was somewhat similarly dealt with, being allocated partly to the Ngati Kahutapere and partly to the Ngati Hineuru.

35. As already mentioned (par. 32), 15,000 shares in the Tarawera Block had been allocated by the Court to the Ngati Kahutapere and 50,051 shares had been allocated to the Ngati Hineuru. These last-mentioned shares were by agreement divided as follows and the portion of the Tarawera Block represented by these shares was partitioned accordingly:—

	Shares.
Raroa Sullivan for payment of costs of Ngati Hineuru people	4,800
Ngati Tuwharetoa section	3,200
Ngati Hineuru section	42,051
	50,051

In making these allocations the Court appears to have specially considered the cases of the successors to the original grantees, who were more Hineuru than Kahutapere, and allocated their shares out of the total number allocated to the Hineuru section. In the case of some of them there appears to have been a special arrangement whereby they retained the areas previously partitioned to them and also received additional shares. The Pohe family, the Baker family, and the Utiera family were treated in this way. This was one of the grounds of complaint in the petition referred to in the next succeeding paragraph.

36. In 1928 Hape Nikora and nine others petitioned Parliament under petition No. 47/1928 stating that owing to certain influence he was unable to attend the earlier hearings and he asked for the matter to be reconsidered by the Court. This petition was heard by the Native Affairs Committee on Wednesday, 3rd October, 1928, and it is clear from the minutes of that Committee that representations were heard both for and against the petition, although it is not clear that the petition was opposed, except on behalf of other members of the Hineuru section who were newcomers to the title. The Committee recommended that Hape Nikora's petition should be referred to the Government for favourable consideration, and section 46 of the Maori Land Amendment and Maori Land Claims Adjustment Act, 1928, was enacted to give effect to the recommendation of the Committee. This section empowered the Native Land Court, on an application lodged by any person interested within six months after the date of the passing of the Act, to reopen the proceedings of the Court under section 38 of the Act of 1924 in respect of the Tarawera Block in so far as such proceedings "affect the division or allotment of the shares awarded to the section of persons known as the Ngatihineuru and the distribution of such shares to the individual owners." The provisions of the section did not extend to the 3,200 shares awarded to the Tuwharetoa section nor to the 4,800 shares set apart for the payment of expenses. The Court was given power to amend, vary, or cancel any partition order in so far as it might be repugnant to the relative interests as determined by the Court under this section, and it was declared that the Court was not to be bound by the decision of any former Court or Appellate Court.

37. In pursuance of this section the Court sat in April, 1929, and varied the orders made in 1925, and on 5th October, 1929, it made an order defining the relative interests in the Ngati Hineuru portion of the Tarawera Block. The actual partitioning of the land in accordance with the definition of the interests was left over and was the subject of meetings of representatives of the owners, and it was not until April, 1934, that an arrangement was presented to the Court. Two matters in dispute relating to the Baker family and the Pohe family were referred to the Court, which, however, accepted the arrangement without alteration. Appeals were lodged, and the matter was finally disposed of by the Court in June, 1935, when it dismissed the appeal of the Baker family. The effect of the redistribution of the shares of the Ngati Hineuru section was to reduce substantially the interests of the Baker family, for on this redistribution the special consideration which was given to the Baker family, the Pohe family, and the Utiera family in the 1925 distribution no longer operated.

38. In the meantime the Baker family was petitioning Parliament, but the matter was not taken further while legal proceedings were still uncompleted. In 1935 the petition was referred to the Government for favourable consideration, but according to a note on the file the Minister in October, 1935, directed that the matter should be held over as the "other side was not heard." The petition was re-presented in 1936, and in the same year the Pohe family and also the Utiera family presented petitions. These three petitions were in 1938 referred to the Maori Land Court for inquiry and report pursuant to section 16 of the Maori Purposes Act, 1937. The report of Judges Browne and Carr was duly presented to Parliament and is printed as paper G–6A of 1939.

39. In 1936 Te Roera Tareha and Kurupo Tareha presented a petition asking for restoration of their interests in the Tataraakina Block as they existed prior to the passing of section 38 of the 1924 Act or, alternatively, that they

be paid compensation for the lands of which they were dispossessed. This petition was referred by the Maori Affairs Committee in 1940 to the Government for favourable consideration.

40. Judges Browne and Carr in their report in relation to the Tarawera Block (parliamentary paper G–6A of 1939) recommended—

(*a*) That all partition orders be cancelled and that the order made in October, 1929, defining the relative interests be annulled;

(*b*) That the Crown should out of Crown lands compensate the twenty-eight original grantees or their successors who had not sold their interests in the block prior to the 1924 legislation for their loyalty and assistance during the rebellion; and

(*c*) That the balance of the Tarawera Block be divided on the basis of a special valuation of land and timber amongst the persons found by the Courts in 1924 and 1929 to be entitled.

These recommendations were not given effect to, and nothing has been done towards settling the problems of the Tarawera and Tataraakina Blocks for a number of years. This is possibly due in part to war conditions in the period immediately following the publication of the report of Judges Browne and Carr. It appears clear, however, that the matter received a great deal of consideration by the Government of the day and that it was inclined to accept the view expressed by Chief Judge Jones when, in forwarding the report to the Native Minister, he said that he saw no justification for granting compensation, as suggested, out of Crown lands.

41. This Commission has now been appointed to consider the matter. We are required to report whether, due regard being had to all the circumstances, there should have been any amendments in the titles to any portions of the Tarawera or Tataraakina Blocks, and if there should have been no such amendments we are to recommend what measures should be adopted to remedy any injustice which may have been suffered as a result of the amendments.

42. There is no doubt whatever that the lands in the Mohaka and Waikare District were confiscated because substantially they were lands of rebellious Maoris. In our view the purpose of the agreement of 13th June, 1870, was twofold. In the first place it was for the purpose of returning to loyalist Maoris who lived in the district their interest in the land. In the second place it was intended to reward loyalist Maoris, some of whom may not previously have lived on the land. The payment of £400 made in 1871 to which we have already referred (para. 13) was probably for the purpose of equalizing the rewards of the Maoris and also perhaps to compensate some of the Maoris who had not had lands returned to them. The land referred to in the agreement of 13th June, 1870, was intended to be held by the Maoris as under a grant from the Crown and it was not intended that the land should be held for particular hapus.

43. It has been suggested that Mr. Locke did not take adequate steps to ascertain who were the loyalists Maoris who were entitled to receive land. We do not agree with this view. We have already referred to Mr. Ormond's evidence on this point (para. 10). At the time the agreement was completed the rebellion had not been long over and, to quote Mr. Justice Conolly in *Teira Te Paea* v. *Roera Tareha*, 15 N.Z.L.R. at 113, "No one could know better than Mr. McLean and Mr. Locke who were loyal Natives and who were most entitled to be considered in the distribution of the land." There is on the Government files a letter written to the Native Minister on 6th July, 1914, by George Bee, who stated that he had then been an occupier in the Waikare Mohaka Blocks for considerably over forty years and that Mr. Locke, who conducted

the investigation under the direction of Sir Donald McLean, inquired very carefully into the matter before compiling the lists. He added that Mr. Locke was an extremely careful man with a wide knowledge of the Natives in the district and was a great Maori scholar.

44. The agreement of 13th June, 1870, was ratified by Parliament in 1870 and again in 1881. Attempts to have the agreement upset were in the following thirty years repeatedly rejected by successive Governments, and in 1914 Parliament again ratified the agreement and the actions which had been taken by the Native Land Court to give effect to the agreement. We are satisfied that the alterations made by the addition of the names of four persons as original owners as a result of Judge Gilfedder's report in 1920 were in accordance with the intentions of the agreement.

45. The amendments which were carried out as a result of the legislation passed in 1924 and 1928 are, however, open to serious objection. They substantially disregarded the agreement of 1870. The agreement of 1870 was in effect, only supported to the extent of the 15,000 shares in the Tarawera Block and the small portion of the Tataraakina Block awarded to the Ngati Kahutapere, as representatives of the original grantees. The alterations made by the Court were not made as a result of any action initiated by the Court of its own motion, but were made as a result of directions given to the Court by the Legislature. The first legislation in question was section 38 of the Maori Land Amendment and Maori Land Claims Adjustment Act, 1924. By that section in effect the Court was authorized, to use the words of Judges Browne and Carr, with which we agree, "to ignore the rebellion and confiscation and the various promises and Acts that preceded the legislation of 1924 and to ascertain the owners of the block as if it were Native land, the title of which had not been investigated." It is difficult to understand why in 1924 Parliament should proceed to abrogate almost in its entirety an agreement which has stood for over fifty years and dispossess persons whose title had been validated and in effect guaranteed during the whole of that period. Either Parliament had some very compelling reason which we have been unable to discover or it acted in error.

46. As already mentioned (para. 29), the proceedings before the Native Affairs Committee on the petitions lodged by Hape Nikora and others which led to the passing of the 1924 legislation did not last more than a few hours. No person appeared, and apparently no interested person was given an opportunity of appearing, to oppose the granting of the prayer of the petitions. We therefore assume that the material put before this Committee consisted of the allegations contained in the petitions supported by an address from the solicitor for the petitioners and statements from several of the petitioners. We have examined the statements in the petitions carefully and we have examined letters on the departmental files written to the Native Minister and to the Department by the solicitor to the petitioners both before and after the hearing of the petition (paras. 28 and 29, *ante*). We are satisfied that the petition and the submissions to the Native Affairs Committee were substantially based upon the statement from Judge Gilfedder's report of 1920 to which we have already referred, where he stated that the Tarawera and Tataraakina Blocks were not included in the description in the agreement of 1870 and that therefore nothing that had been done in relation to that agreement applied to those blocks. We assume that the Committee's recommendation was based on an acceptance of those submissions, although the fact that no one appeared to oppose the granting of the prayer of the petition may have weighed with the Committee.

47. We have examined the statement made by Judge Gilfedder as to the Tarawera and Tataraakina Blocks not being included in the description contained in the agreement of 1870. There is in our view no justification for that statement and, as from the Judge's notes no representation seems to have been made to him on the point, it is difficult to understand why he made the statement. The description of the land covered by the agreement is the same as the description of the land in the Order in Council of 1867 which defined the district, and in the letter addressed to the Under-Secretary of the Native Department on 17th October, 1923 (para. 27, *ante*), the solicitors for Hape Nikora agreed that the last-mentioned description included the Tarawera and Tataraakina Blocks. In the same letter the solicitors agreed that the plan referred to in the agreement of 1870 apparently included the two blocks, but they claimed that the plan was incorrect and should be rectified in order to carry out fairly the operation of the agreement of 1870. The argument of the solicitors seems to us to be untenable in view of the following facts:—

(*a*) The agreement of 1870 provided that certain blocks and pieces of land specifically described should be retained by the Government and that with those exceptions the whole block described in the Order in Council should be conveyed to the loyal claimants.

(*b*) The agreement provided that the block should be subdivided into the several portions shown in the tracing annexed to the agreement and that the Government should grant certificates of title for the several portions to the Natives mentioned in the Schedule.

(*c*) The Schedule itself specifically refers to the Tarawera and Tataraakina Blocks and contains the names of the Maoris to whom those two blocks were to go.

(*d*) The plan clearly includes the Tarawera and Tataraakina Blocks, and in following on the plan the description of the land covered by the agreement it is equally clear that those blocks are included within the boundaries of the land covered by the agreement.

48. In our opinion a very grave error of judgment occurred when the Native Affairs Committee recommended that the petitions be referred to the Government for favourable consideration, and in our opinion an even greater error occurred and a very substantial miscarriage of justice took place when Parliament passed legislation directing the Native Land Court to disregard the agreement of 13th June, 1870, and allocate the ownership of the Tarawera and Tataraakina Blocks to the persons who were found to be entitled to them according to Native custom. The report of the Native Affairs Committee was made on 17th October, 1924, and the legislation was passed on 6th November, 1924. The departmental files do not disclose that the Government obtained any report on the matter before the legislation was enacted, and the fact that it was passed within three weeks after the Native Affairs Committee made its report would seem to confirm that there was no adequate investigation.

49. We cannot understand why the allegations in the petitions were not very carefully investigated before action was taken which could so detrimentally affect vested rights of property based on a contract made in 1870 by the Government of the day and ratified by it and by subsequent Governments on a number of occasions during a period of fifty years.

50. When Chief Judge Jones came to consider the matter under the 1924 legislation he allotted 15,000 shares in the Tarewera Block to the former owners (Ngati Kahutapere) and 50,051 to the Ngati Hineuru, the latter being held to be entitled by Native custom (para. 32, *ante*), and, as already mentioned (para. 35), the representatives of some of the original owners, who were substantially of the Ngati Hineuru people, had their shares in blocks

preserved. This decision appears to have been accepted by the representatives of almost all the original owners. The further legislation passed in 1928 and the amendments consequent upon that legislation were brought about by a further petition lodged by Hape Nikora and others who were dissatisfied with the award of only 50,051 shares to the Ngati Hineuru and who were also dissatisfied with the allocation of those shares among the members of the Ngati Hineuru. The amendments to the title made under the 1928 legislation were made on the same basis as those under the 1924 legislation—namely, on the basis of ownership under Native custom prior to the confiscation of the land in 1867. These amendments varied the allocation of the shares of the Ngati Hineuru section in the Tarawera and Tataraakina Blocks and in our opinion are open to the objection that they were made entirely on the wrong basis.

51. Both Mr. Morrissey and Mr. Holderness, who were representing parties who got into the titles under the 1924 and 1928 legislation, sought to justify the admission of their clients to the titles because their ancestors had occupied the land before the confiscation. We accept the findings of Chief Judge Jones on this question to the effect that the ancestors of the persons admitted to the title as a result of the 1924 legislation did occupy the land according to Maori custom immediately before the confiscation. That does not, however, conclude the matter in their favour. The question is, Did the justice of the circumstances demand that these people should be admitted to the title. We are firmly of opinion that the whole of the circumstances were such that there should have been no alteration to the titles. The claim to be admitted to the titles because of occupation according to Maori custom disregards entirely the circumstances of the rebellion and the confiscation of the land and the fact that the title of the owners in 1924 had been undisturbed for over fifty years and moreover was based upon a contract entered into with the Government which had been affirmed by legislation on three separate occasions. If the Government in 1924 had wished to compensate the Ngati Hineuru for having their land confiscated in 1867—and we do not consider that that was the reason for the legislation—then it does not seem proper that it should do so at the expense of persons who were holding the land under a contract from the Crown. We reiterate that we consider that the legislation was passed to deal with what was mistakenly considered to have been an error. If the legislation was not based upon a mistake, then the only inference is that the written contract of the Crown, confirmed and re-confirmed by Act of Parliament, is worthless and there can be no element of security in any contract to which the Crown is a party. The implications are no less than those.

52. We are of opinion that the alterations in the titles to the Tarawera and the Tataraakina Blocks which took place under the 1924 legislation and under the 1928 legislation should not have taken place. In other words, we find that, due regard being had to all the circumstances, there should not have been any amendment in the titles to any portions of the Tarawera and Tataraakina Blocks pursuant to section 38 of the Maori Land Amendment and Maori Land Claims Adjustment Act, 1924, or section 46 of the Maori Land Amendment and Maori Land Claims Adjustment Act, 1928.

53. In view of that finding, we must now proceed to consider what measures should be adopted to remedy any injustice which might have been suffered by any person or persons as a result of the amendments in the titles to the two blocks in question.

54. There appear to be two alternative ways in which the situation can be dealt with. Either (*a*) the persons who have been granted title as a result of the 1924 and 1928 legislation can be left with their present title while those who have suffered loss as a result of that legislation are compensated for their loss, or (*b*) those who were owners immediately before effect was given to the

1924 legislation can have their rights of ownership restored to them while the persons who now hold title and would lose by the restoration of the former ownership are compensated.

55. To confirm the present ownership and compensate the former owners for their loss is to accept the wrong which was done by the 1924 and 1928 legislation without attempting to right it. If the former owners receive compensation they would have the extent of their loss reduced, but we consider that it would be very difficult, if not impossible, to assess with any degree of certainty the value of that which they have lost. The current Government valuation (as at 31st March, 1949) of the land remaining in Maori ownership in the Tarawera and Tataraakina Blocks show the unimproved value in the Tarawera Block to be approximately 3s. 5d. per acre and the unimproved value in the Tataraakina Block to be approximately 3s. 1d. per acre. The value of the improvements is very small. There is a substantial amount of timber on parts of the blocks. This timber has not been valued by the Government valuer, nor has it been valued by the State Forest Service except to a very small extent, but it is clear that the accessible timber which can be economically worked must have a considerable value at the present time, although it should be pointed out that in relation to the total area of the blocks the area covered by such timber is very small. When the blocks were partitioned amongst the former owners in 1922 the timber had little or no value. An examination of the surveyor's valuation on which the Tarawera Block was partitioned by the Maori Land Court makes it clear that at that time no particular value was placed on the timber as milling-timber. In 1924 when the first of the legislation which interfered with the ownership of the two blocks was passed the position as to the value of the timber was probably very much the same, but it is clear that by 1927 the timber had in some cases assumed a considerable value—greater, in fact than the value of the land—for it was in that year that the area of land which was partitioned off to Raroa Sullivan to pay costs and which had been valued by the surveyor at approximately 10s. per acre in 1922 was sold for £3 5s. per acre to a sawmiller. It does not seem to us to be fair and equitable that persons who at the expense of the rightful owners obtained interests in certain land at a time when the timber thereon was of little value should be allowed to retain that land and obtain the benefit of the increased value of the timber, with the possibility of further improvement in that value, while the rightful owners have to be satisfied with compensation which would certainly not be more than a conservative estimate of the present value of the timber but which more probably would be much less than that value. It seems to us that the approach to the problem should be from the point of view of restoring the rights of the rightful owners in the land.

56. If the former owners have their rights of ownership, which in 1924 they could trace back for over fifty years, restored to them, then those present owners whose rights of ownership depend on amendments made to the titles under the 1924 and 1928 legislation will be deprived of rights of ownership which at this present date they can trace back for a period of twenty-three to twenty-seven years. Accordingly, therefore, we consider that if the rights of these newcomers to the title are taken from them and restored to the former owners, then the newcomers to the title so deprived of rights should receive some compensation. It may well be that as a consequence of having rights of ownership in the Tarawera Block or the Tataraakina Block individual Maoris have entered into obligations which they would otherwise not have undertaken.

57. If our opinion that the legislation of 1924 and 1928 was based on the incorrect view that the agreement of 1870 did not cover the Tarawera and Tataraakina Blocks is not well founded, then it would seem that the Government,

in introducing the legislation, must have taken up the attitude that the rebels should be forgiven and that their land which had been confiscated should be returned to them or their descendants. If that was the Government's idea, then it surely did not intend to take away from the loyal Maoris and their descendants the rewards which had been given to them for their loyalty. The obvious thing for the Government to have done would have been to compensate the rebels or their descendants out of Crown lands or moneys for the lands which had been confiscated at the time of the rebellion. In their report on certain petitions in relation to the Tarawera Block (parliamentary paper G–6A of 1939) Judges Browne and Carr of the Native Land Court had this to say on this point:—

This Court can only surmise that as time went on the memory of the rebellion grew fainter and its influence gradually became less, with the result that the Legislature in 1924 gave the Native Land Court jurisdiction to treat the block to all intents and purposes as if it were uninvestigated Native Land and as if there had been no confiscation on account of the rebellion. The consequence was that a number of persons who, or whose parents, had been actually in rebellion and who had not at any time surrendered were included in the title and have been awarded substantial shares therein—in some instances greater than those allotted to the grantees themselves. It seems to this Court that if the Legislature was of opinion that these unsurrendered rebels were entitled to consideration the fair and equitable way to have shown them this consideration would have been to have awarded them interests out of the confiscated lands or other Crown land in the locality.

58. We have given careful consideration to the question whether any compensation to be provided in accordance with the recommendations in this report should be provided by grants of interests in Crown land in the locality as suggested by Judges Browne and Carr or by the payment of money. Mr. Gambrill in his final submissions to us stated that the Department of Maori Affairs and the Department of Lands and Survey, while they did not admit that there is any liability to compensation, held the view that if compensation were awarded it should be awarded in land. It is our view, however, that the disputes as to these blocks should be brought to an end and a final settlement reached. The lists of present owners in the blocks are large but, generally speaking, the individual interests are small, and the re-establishment of numerous small interests in other blocks of land will not lead to finality as, with the passing of the years, the small interests will become smaller, generation by generation. Furthermore, the land in the locality has very little value unless it happens to carry timber in reasonable quantity and readily accessible. We have come to the conclusion that any compensation to be provided under this report should be monetary compensation. We consider, however, that in every case where the amount of compensation payable to any person is at all substantial it should be administered by the Maori Land Board for the benefit of the person entitled thereto and be paid to that person, or expended for his benefit, as and when the Maori Land Board, in its discretion, thinks fit. We will discuss later the question of the quantum of compensation and the determination of the individual rights thereto.

59. Judges Browne and Carr in their report from which we have quoted above (parliamentary paper G–6A of 1939) favoured approaching the problem of remedying the injustice to the former owners by compensating them while preserving the ownership rights of the present owners, but they appear to have formed the opinion that matters had gone too far for the Tarawera Block to revert to the position it was in before 1924 as regards ownership. At the hearing before this Commission counsel were invited to explain why Judges Browne and Carr should have formed this opinion, but they were unable to point to any special circumstances which gave it any particular force. Possibly the Judges had in mind the fact that since 1924 4,800 acres had been partitioned off to Raroa Sullivan and sold to pay costs, but in our opinion this does not present an insuperable difficulty, and in the Tataraakina Block there is no transaction

of this nature to create any difficulty in relation to that block. The only other reason which it occurs to us might have influenced Judges Browne and Carr in coming to the opinion that the matter had gone too far for the Tarawera Block to revert to the position it was in before 1924 as regards ownership was the idea that persons admitted as owners since 1924 might have entered into possession and it would not be fair or proper to dispossess them. This reason in the particular circumstances of the case has very little force and no insuperable difficulty will be met in overcoming it. Further, it is to be borne in mind that the decisions of the Native Land Court under the 1928 legislation deprived several owners of substantial rights in lands which they had owned and also occupied for many years. For example, the Baker family owned Tarawera 5A before the passing of the 1924 legislation and actually obtained a Land Transfer certificate of title for the land, which had been occupied and farmed by the family for many years. Under the orders made pursuant to the 1928 legislation the shares of the Baker family were reduced to the equivalent of 89 acres and 24 perches (valued at £207) out of the total area of Tarawera 5A amounting to 726 acres and 2 roods (valued at £1,685, which included improvements put on the land by the Baker family valued at £1,125). This created a much greater hardship than any hardship which is likely to be created by the restoration at the present time of the pre-1924 ownership.

60. Since the hearing in Hastings we have caused inquiry to be made as to the extent to which the Tarawera and Tataraakina Blocks are being occupied and used by the Maori owners, whether original owners or newcomers to the titles, and we have ourselves visited the area and viewed occupied portions of the blocks. We have found that very few of the owners actually reside on the blocks. In passing, it may be mentioned that no rates are being levied on the land. Most of the owners who live in the district live on the Te Haroto Native Reserve or at Tarawera, areas which are adjacent to, but not part of, the blocks. We found only two cases—one in the Tarawera Block and one in the Tataraakina Block—where persons who were admitted to ownership as a result of the 1924 or 1928 legislation are living on, or have improved, or are actually working, land in which but for that legislation they would have no rights. In our view the position of those persons can be protected without upsetting what should be the guiding principle in this matter—namely, that the original owners should have their land restored to them. Those newcomers to the title who occupy or use land in which they at present have ownership rights should be entitled to retain certain rights, and those newcomers to the title who can establish that they have improved any land in which they at present have ownership rights should be entitled to receive compensation for those improvements if they are deprived of their rights of ownership.

61. We now turn to a consideration of the basis upon which persons who have their interests in the blocks reduced or cancelled by the restoration of the pre-1924 ownership should be compensated.

62. In 1924 when the first of the legislation which conferred rights on these owners was passed the land was of little value. Such increases in value as have occurred since that time are due entirely to factors outside the control of the owners, except in any case where an owner in possession may have improved the land, which, as already mentioned, we consider should be dealt with as a special case. The increase in the value of the land since 1924 is due to the increase in the value of the timber thereon. Having regard to this fact, we consider that the compensation should be based on what the newcomers to the title received as a result of the legislation passed in 1924 and 1928 valued without regard to the timber, which had no value at the time when the first legislation was passed.

63. In 1922 the Maori Land Court had before it a surveyor's valuation which was a very meagre one and which divided the land for the purposes of valuation into a number of substantial areas. The surveyor's estimate of values in the Tarawera Block, for example, ranged from 5s. to 27s. 6d. per acre, with an average value of 12s. 10d. per acre. This value included the improvements on the land at that time, and an examination of the valuation shows that the areas which were cleared or open country were, generally speaking, valued at a higher figure than the uncleared areas. This indicates that the timber was not taken into account as affecting the value to any great extent. There is a Government valuation in respect of both blocks as at 31st March, 1931, and also as at 31st March, 1949. Improvements are shown on each of these valuations, but they do not take into account the timber on the areas where there is standing timber. In view of our recommendation that improvements put on the land by newcomers to the title are to be compensated for if those newcomers to the title are not to be allowed to have shares in the land they occupy, then the question of the value of improvements can be disregarded from the point of view of the assessment of compensation. We have been able to locate a copy of a Government valuation of parts of the Tarawera Block as at 7th January, 1925, but it does not include the largest and least valuable subdivision. Generally speaking, however, it shows values equal to about half as much again as those in the 1931 valuation. The Government valuations as at 31st March, 1931, of the land remaining in Maori ownership in the Tarawera and Tataraakina Blocks show the unimproved value in the Tarawera Block to be approximately 3s. 9d. per acre and the unimproved value in the Tataraakina Block to be approximately 3s. 2d. per acre. The corresponding figures as at 31st March, 1949, are 3s. 5d. per acre and 3s. 1d. per acre.

64. Having in the course of our inspection seen the blocks and noted the poor nature of the land, we consider that these valuations are a better guide to the unimproved values than the earlier valuations. On the basis of the latest valuations, therefore, it would seem that the loss should be assessed at no more than 3s. 9d. per acre in respect of the Tarawera Block and 3s. 2d. per acre in respect of the Tataraakina Block. There are, however, two important factors which should be taken into account in arriving at the proper figure to use for compensation purposes.

65. In 1924 when the first legislation was passed and subsequently when the newcomers had their ownerships allocated to them by the Court there were substantial sums owing to the Crown in respect of surveys of the blocks. These moneys were secured by survey liens. Without interest they averaged 1s. per acre on the Tarawera Block and 1s. 9d. per acre on the Tataraakina Block. The existence of these liens would have the effect of reducing the values per acre in the two blocks from 3s. 9d. to 2s. 9d. in the case of the Tarawera Block and from 3s. 2d. to 1s. 5d. in the case of the Tataraakina Block. If interest were to be taken into account it would be found that there is now owing on the Tataraakina Block for survey liens and interest more than that block is worth according to the Government valuation (excluding timber). However, in our view the position in 1924 is the position to be considered in determining the compensation. In the case of the Tarawera Block, when the land allocated to Raroa Sullivan for payment of costs was sold the liens over the lands allocated to the Hineuru section were satisfied by payment of half the amount then owing, the other half and all interest being written off. While it is true that this amount was paid out of the sale of land allocated to the Hineuru section under the 1924 legislation, it was, in our view, a sale of land which should have remained vested in the original owners. Therefore this particular payment should be disregarded in considering the effect of the survey liens in arriving

at the compensation which should be paid. We understand that, probably as a result of the Napier earthquake, many of the details of the surveys have been lost and that, as a result, if the surveys in respect of which the liens are outstanding are to be used in the future much of the survey work will have to be done over again. If this is so it may well be a factor to be taken into account when any discussions take place as to a basis for settlement of the survey charges owing, particularly if the old survey is being abandoned, but we regard that as a matter for discussion between the owners and the appropriate authorities in the future and not as a matter which should affect the quantum of compensation.

66. The sale of the land allocated to Raroa Sullivan for costs resulted in over £15,000 becoming available, and of this amount approximately £8,000 has been distributed for the benefit of the Hineuru section in payment of their costs and various expenses, out of which Hape Nikora and Raroa Sullivan each received approximately £1,650. Something should be taken into account in respect of the Tarawera Block for this amount of £8,000. We consider that it would be fair to take the view that the newcomers to the title have already received a sum of, say, £3,000 (approximately 1s. per acre) on account of the value of the rights they received in the Tarawera Block under the 1924 and 1928 legislation.

67. Taking these factors into account and also having regard to the fact that no use has been made of the land by the newcomers to the title except in those cases where we propose that special provision should be made, we consider that it is fair and reasonable that compensation should be paid to the present owners whose interests in the blocks are reduced or cancelled as a result of the carrying-out of the recommendations in this report on the basis of 1s. 9d. per acre in the Tarawera Block and 1s. 6d. per acre in the Tataraakina Block.

68. An examination of the lists of owners shows that some of those who were admitted to the title of the Tarawera Block for the first time, or had their interests in that block substantially increased, as a result of the 1924 and 1928 legislation, at the same time had their interests in the Tataraakina Block substantially reduced. For example, Aniheta Kingita, who was admitted to the Tarawera title for 1,838 shares (or acres), had his interests in the Tataraakina Block reduced. It would appear that the gain on the Tarawera Block calculated at the rate of 1s. 9d. per acre was approximately £160 16s. 6d., while the loss in the Tataraakina Block calculated at the rate of 1s. 6d. per acre was approximately £115. If his ownership is restored to the pre-1924 position, then at those respective values per acre he would lose £160 16s. 6d. in respect of the Tarawera Block while gaining £115 in respect of the Tataraakina Block. The two blocks should be looked at together. In this case no more than the net loss of approximately £45 16s. 6d. should be paid. We find that this case is not an isolated one. There are nine other cases where members of the Hineuru section received more than 1,000 shares (or acres) in the Tarawera Block, and in at least four of these cases they had their interests in the Tataraakina Block reduced.

69. As already mentioned, certain transactions have taken place since 1924 and because of these it is not possible to restore the ownership to exactly the same position as it was in before the 1924 legislation. But in our view there are no insuperable difficulties attaching to any of these transactions.

70. The principal transaction is the sale of approximately 4,800 acres, part of the Tarawera Block, to a sawmilling company. This land was the land which was partitioned off to Raroa Sullivan so that the costs and expenses of the Hineuru section could be paid out of the proceeds. The price at which the land was sold was £15,090 and, with interest £3,855 5s. 8d., the total amount

received by the Ikaroa District Maori Land Board was £18,945 5s. 8d. £11,514 12s. 9d. has been paid out for commission, costs, and expenses (including payments of approximately £1,650 each to Raroa Sullivan and Hape Nikora), leaving a balance of £7,430 12s. 11d., which is held by the Maori Land Board pursuant to section 33 of the Maori Purposes Act, 1949. We are of opinion that this transaction can be regarded substantially as having been consented to by the former owners of the Tarawera Block and that if the balance of the proceeds of the sale are paid out for the benefit of the former owners they will not have suffered any substantial injustice. There are various reasons why we have come to this conclusion. In the first place, at the time the land was partitioned off to Raroa Sullivan for the payment of costs the title to the Tarawera Block was in a position which was apparently accepted by all parties, as there had been only one petition to Parliament against the 1924 legislation and the petitioners had not availed themselves of the rights of appeal which Parliament had conferred on them. In the second place, the principal families who were in the position of petitioners in respect of the Tarawera Block before us—namely, the Baker, Pohe, and Utiera families—consented to the transaction and actually received money for costs and expenses out of the proceeds. The Pohe family, which before the 1924 legislation actually owned and occupied part of the land, were represented at the hearing of the Court when approval was given to the partition, and they did not object to the partition. Again, the price which was received for the land far exceeded the value of the land at the time of the 1924 legislation, and the balance still in hand exceeds that value. Moreover, of the proceeds which have already been paid out, various sums of money were paid to meet expenses and costs in respect of the land which would have had to be paid in respect of the land if it had remained in the ownership of the original owners. These amounts included £1,275 which was paid to the Crown in respect of survey liens which were owing in respect of most of the Tarawera Block by the former owners. Finally, as a further £1,275 and a substantial sum of over £1,300 for interest owing to the Crown in respect of the same survey liens was written off, it would not be reasonable to suggest that the Crown should find any moneys in order to restore to the former owners the full benefit of the price obtained from this land.

71. The fact that land originally partitioned to certain of the former owners of the Tarawera Block cannot now be restored to those particular owners because it has been sold, as mentioned in the last-preceding paragraph, will not prevent the restoration of the balance of the block to the former owners generally in the proportions in which they held the block immediately before the 1922 partition, excluding, of course, those who had sold their interests before the 1924 legislation. This is what we consider should be done, the balance of the proceeds of the land partitioned to Raroa Sullivan and of any timber on other land being divisible amongst the former owners in the same proportions.

72. The only other transactions in respect of the Tarawera and Tataraakina Blocks since the 1924 legislation which stand in the way of complete restoration of the ownership of both blocks to the position it was in before effect was given to the 1924 legislation are sales of timber-milling rights. In the more recent transactions the proceeds are held by the Ikaroa District Maori Land Board, so that where the timber has been removed the proceeds will be available. In two earlier cases there were distributions, but some of the payments went to former owners and, in any event, the amounts involved were so small that they should not, in our opinion, be taken into account so as to upset the possibility of a final and complete settlement of the difficulties in relation to these two blocks. Moreover, at the time when the titles were interfered with in 1924 timber was not regarded as being of any great value.

73. We have already indicated that we consider that the balance of the Tarawera Block should be revested in former owners on the basis of the ownership before 1924, the 1922 partitions being disregarded. One reason for disregarding the partitions of 1922 is that the whole block is not now available and it is therefore impossible to restore owners to areas which were partitioned to them in 1922. But a more important reason is that the partitions of 1922 disregarded the value of timber. In fact, we were informed that if the present ownership based on partitions made in 1934 was to be upheld, then the owners desired the existing partitions, made as late as 1934, to be revised in view of this factor; and in their report Judges Browne and Carr also made a similar recommendation. For this reason, therefore, we suggest that the same action should be taken in respect of the Tataraakina Block, in which none of the land has been sold, although timber-milling rights have been granted over, and timber has been removed from, one of the subdivisions.

SUMMARY

74. Having discussed at length the history of the Tarawera and Tataraakina Blocks and our views in relation to the matters referred to us concerning those blocks, we think it might be convenient to summarize our views very briefly before setting out our recommendations. Our views are as follows:—

(*a*) Due regard being had to all the circumstances, there should not have been any amendment in the titles to any portions of the Tarawera and Tataraakina Blocks pursuant to section 38 of the Maori Land Amendment and Maori Land Claims Adjustment Act, 1924, or section 46 of the Maori Land Amendment and Maori Land Claims Adjustment Act, 1928.

(*b*) The rights of the " original owners " (*i.e.*, those who were owners immediately before the 1924 legislation, and their successors) are greater than the rights of the newcomers to the titles (*i.e.*, those who were admitted to ownership or had their ownership rights increased under the 1924 and 1928 legislation), and the rights of the original owners should be restored as far as possible.

(*c*) As the partitions of the blocks made prior to the 1924 legislation were made without regard to the value of the timber on the land, and as in the case of the Tarawera Block some of the land has been sold, those partitions should not be restored and, moreover, the proceeds in hand from any timber which has been cut should be treated as being owned by the original owners in proportion to their interests in the block from which the timber has been cut and not by the owners (according to those partitions) of the particular subdivisions of the block from which the timber has been cut.

(*d*) Those newcomers to the title who have entered into occupation of any land in which they have an interest under the present ownership should be protected by being allowed to remain in occupation if they so desire, and those who do not desire to remain in occupation should be compensated for any improvements effected by them.

(*e*) Those newcomers to the title who pursuant to the recommendations contained in this report are deprived of any interest in the blocks (whether completely or only partially) should receive compensation, assessed on the basis of 1s. 9d. per acre in the Tarawera Block and 1s. 6d. per acre in the Tataraakina Block.

(*f*) The balance held by the Ikaroa District Maori Land Board of the proceeds of the sale of portions of the Tarawera Block which have been sold since 1924 should be distributed to the original owners of the Tarawera Block in proportion to their rights in the block.

RECOMMENDATIONS

75. We recommend that to remedy the injustice which has been suffered by the original owners and their successors as a result of amendments to the titles to the Tarawera and Tataraakina Blocks which should not have taken place the measures set out hereunder should be adopted. Legislation will be necessary to give effect to these recommendations. (NOTE.—Where reference is made to the Tarawera Block we do not intend to include any portion thereof which, before the passing of the 1924 legislation, was sold to the Crown.)

(1) The existing partition orders affecting the Tarawera and Tataraakina Blocks should be cancelled.

(2) The Maori Land Court should be authorized and directed to determine—

(*a*) The respective interests of the present owners in each block as if the block had not been partitioned, on the basis that the ownership of the Tarawera Block is divided into 55,451 shares and the ownership of the Tataraakina Block is divided into 36,773 shares, each share being equivalent to 1 acre of average value; and

(*b*) The persons who would now have been entitled to the ownership of each of the blocks if the 1924 and 1928 legislation had not been enacted and the blocks had not previously been partitioned, and the respective interests of each of those persons, on the basis that the ownership of the Tarawera Block is divided into 55,451 shares and the ownership of the Tataraakina Block is divided into 36,773 shares. The list of persons and their respective interests ascertained under this subparagraph is hereinafter referred to as the provisional list of owners.

(3) If after the Maori Land Court has settled the provisional list of owners it is satisfied than any present owner is in occupation, and desires to remain in occupation, of any part of the Tarawera Block or the Tataraakina Block in which he has an interest as an owner, and that if the block were owned in accordance with the provisional list of owners his interest as an owner in the block would be cancelled or reduced to such an extent that he would not be entitled to have the area actually occupied by him partitioned to him, then the Court should be required to adjust the shares of the owners as shown in the provisional list of owners in such manner as it may think fit so that the present owner who is an occupier would be entitled in an appropriate case to have the area actually occupied by him partitioned to him by the Court: Provided, however, that his interest in the block should not be increased to such an extent that it becomes greater than his present interest in the block. After all adjustments have been made under this paragraph the Court should settle a further list of owners (hereinafter referred to as the final list of owners) with such adjustments shown thereon.

(4) If the Maori Land Court is satisfied that any present owner has carried out any improvements to any part of the Tarawera Block or the Tataraakina Block in which he has an interest as an owner and that he is no longer in occupation of the land so improved or does not desire to remain in occupation thereof, the Maori Land Court should assess the current value of those improvements, and the present owner shall thereupon be entitled to receive the amount of such value by way of compensation out of the moneys held by the Maori Land Board in respect of the block on which the improvements have been effected.

(5) The Maori Land Court should be empowered and directed to issue an appropriate order declaring that the Tarawera and the Tataraakina Blocks are respectively vested in the persons and for the respective interests set out in the final list of owners of that block as settled by the Court under paragraph (3) hereof, or, if there have been no adjustments under that paragraph, then

according to the provisional list of owners of the block. Nothing in this paragraph or elsewhere in these recommendations is intended to confer any right to interfere with the ownership of the area of 4,800 acres, part of the Tarawera Block, which has been sold since 1924.

(6) Any present owner whose shares in either block, as determined under subparagraph (2) (*a*) hereof, exceed the shares in the block vested in him by order of the Court under the last preceding paragraph shall be entitled to receive compensation for every share by which his interest in the block is reduced, calculated in the case of the Tarawera Block at the rate of 1s. 9d. per share (or acre) and in the case of the Tataraakina Block at the rate of 1s. 6d. per share (or acre): Provided that if as a result of the vesting order made by the Court under the last preceding paragraph that owner becomes entitled to a greater number of shares in the other block than those to which he is at present entitled according to the determination of the Court under subparagraph (2) (*a*) hereof, the amount of compensation to which he would be entitled under this paragraph shall be reduced to the extent of the increase in his shares in the other block, calculated at the rate per share above referred to.

(7) If the Maori Land Court makes any adjustment in the shares of the owners in any block pursuant to paragraph (3) hereof, the original owners of the block according to the provisional list of owners shall be entitled to receive compensation, calculated at the rate per share referred to in the last preceding paragraph, in respect of any consequential reduction in the number of shares in the block allocated to them.

(8) The amount of the compensation payable under paragraph (6) hereof to present owners whose shares are reduced and any compensation payable under paragraph (7) hereof to the owners referred to in the provisional list of owners should be provided by the Crown out of the Consolidated Fund and should be paid through the Ikaroa District Maori Land Board.

(9) The balance of moneys in the hands of the Ikaroa District Maori Land Board from sales of timber on each block, the compensation payable pursuant to paragraph (7) hereof, and the balance of the proceeds of the sale, which has taken place since 1924, of 4,800 acres, part of the Tarawera Block, shall, after payment thereout of any compensation for improvements payable under paragraph (4) hereof and after all proper deductions (*e.g.*, survey liens) have been made therefrom, be distributed to the owners of the block in accordance with the *provisional list of owners* according to the respective interests of those owners as set out in the provisional list of owners.

(10) The provisions of section 281 of the Maori Land Act, 1931, shall apply to any moneys payable to any Maori pursuant to these recommendations in the same manner and to the same extent as if they were moneys paid to the Maori Land Board pursuant to a requirement of the Maori Land Court under that section.

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, 24th October, 1951.

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