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WHAKATOHEA (OPOTIKI) CONFISCATIONS.

The question of the justice of the confiscation of the lands of the Whakatohea tribe was one of the matters which was submitted to the Royal Commission appointed on the 19th July, 1920 for inquiry and report. The personnel of this Commission comprised Chief Judge Jones of the Native Land Court, Mr. John Strauchon, a former Under-Secretary for Lands and Mr. John Ormsby an enlightened half-caste Maori.

The opening sentence of this Commission's report reads as follows, namely:-

"This is a complaint from the Whakatohea Native Tribe, who belonged to Opotiki. They say that when their lands were confiscated in 1866, for the murder of the Rev. Mr. Volkner on the 2nd March 1865, they were unduly punished by the deprivation of so much of their lands."

The report of the Commission then proceeds to give a careful review of the facts which gave rise to the action taken by the Government to confiscate the lands and after discussing at length the opposing views as to justification for the policy of confiscation concludes as follows, namely:-

"It would seem to us that righteous indignation at a very diabolical murder partly swayed the judgment of those who advised and authorised the confiscation of such a large area. The punishment of the actual perpetrators was an after event, and could not have been taken into account in assessing the amount of land that should be confiscated. Nor, apparently, was the fact sufficiently considered that the arch-criminal was of another tribe altogether. No doubt the Whakatohea tribe was carried away by fanaticism, and was equally responsible.

In our opinion the fact that punishment was inflicted on the Whakatohea by a punitive expedition in

1865, and that the actual offenders were captured and dealt with according to the civil law, should have had some effect in lightening the punishment that was imposed on the tribe by confiscating so much of their land. But as a fact the lands were cut up and partly sold and dealt with before the principal offender (Kereopa) was brought to justice. We have not sufficient material before us to say what would have been a fair and just area to confiscate nor do we think it wise to go into that question. We have no hesitation, however, in affirming that, judged by the light of subsequent events, the penalty paid by the Whakatohea Tribe, great as was their offence, was heavier than their deserts."

The report of Chief Judge Jones' Commission, it will be observed, found that the penalty imposed on the Whakatohea tribe for the acts of rebellion of its members was excessive. But the Commission did not express any opinion as to the extent of excess neither did it make any recommendation nor venture any suggestion as to what would be a reasonable compensation to make to the members of the tribe by way of relief.

The petitions which were submitted to the Royal Commission presided over by Chief Judge Jones were therefore amongst those included in the schedule to the Royal Commission appointed on the 18th October, 1926 the members of which comprised the Hon. Mr. Justice Sim, the Hon. Mr. Vernon H. Reed and Mr. William Cooper.

It has already been mentioned that the Rev. Mr. Volkner was murdered by the Natives at Opotiki on the 2nd March, 1865 but owing to the disturbed state of the District no immediate attempt was made to punish the murderers, although a skirmish took place about the 21st May, 1865, by an expedition under Captain Fremantle in an attempt to seize one of those implicated. But on the 27th July, 1865, Mr. Fulloon and others were murdered at Whakatana by another tribe and it was decided

to despatch a punitive expedition. In the Proclamation of Peace in respect of the previous war, dated the 2nd September, 1865, the following reference is made to these murders, namely:-

"The Governor is sending an expedition to the Bay of Plenty to arrest the murderers of Mr. Volkner and Mr. Fulloon. If they are given up to justice the Governor will be satisfied; if not the Governor will seize a part of the lands of the tribes who conceal these murderers, and will use them for the purpose of maintaining peace in that part of the country and for providing for the widows and relatives of the murdered people."

An expedition followed, assisted by the officers and men of H.M.S. "Brisk" and some of the murderers of Mr. Fulloon and Mr. Volkner were secured. On the 30th December, 1865, Mr. Stafford decided that the prisoners should be tried by the Civil Courts, which event took place a few months later.

On the 17th January 1866, an Order in Council was issued confiscating all the lands of the Natives within the Bay of Plenty district as defined in the schedule to the Order in Council. This was later amended - on the 1st September 1866 - by altering the boundaries and dating the taking as from that date. Any defect in the Proclamation was apparently relieved by the Act of 1866, passed later, which expressly validated all Proclamations theretofore made.

On the 23rd March, 1866, the Governor reported that he had visited Opotiki, among other places, and that he had found the Hauhau fanatics entirely subdued, and tranquility fully established.

With regard to the area of land confiscated in the Bay of Plenty, Judge Jones' Commission in its report has said:

"As far as we can gather, about 440,000 acres in all were taken from the Whakatane and Opotiki Natives. The latter are the Whakatohea Tribe. In the first Proclamation

about 87,000 acres as we understand it, belonging to the Arawa Tribe, were erroneously included, and were restored to them; and about 40,832 acres at the eastern end were abandoned. This left about 312,168 acres, out of which 3,832 acres were absorbed by old land claims leaving 308,336 acres. From the information supplied us we have reason to believe that the area taken within the Whakatohea Block was 173,000 acres, or about half their total possessions, and all the flat and useful land. Out of both blocks there was required for the military settlers an area of 23,461 acres, and apparently 201,213 acres, including 96,261 acres awarded to loyal Natives were returned to Natives. As far as we can learn only the Opape Block, 20,326 acres in all, were returned to Whakatohea. The consequence is that after various sales to the Crown, the Whakatohea have, including the land returned to them, a total area of 35,449 acres. The Government is not, of course, responsible for the sales, but the land sold was the inland portion of the land left, and which was not so useful to the Natives as the former settlements from which they had been removed to Opape."

The question of the area of land confiscated and taken from the Whakatohea Tribes is set out in the report of the Commission of the 18th October, 1926. The figures given differ slightly from those given in Judge Jones' Commission and for that reason the extract from the report of the former Commission is here quoted, which is as follows, namely:-

"The total area included in the proclaimed district was 448,000 acres. Of this, 118,300 acres were restored to loyal Natives and 112,300 acres to rebel Natives. There was an area of 6,340 acres which had been sold privately before the confiscation, so that the area finally confiscated was 211,060 acres (? 210,060). The territory

confiscated included an area of 87,000 acres which was claimed by the Arawas, and was ceded to them. This claim was disputed by the Ngatiawas, who said that this area belonged to them. If the area be treated as belonging to the Arawas, the Ngatiawa had originally 107,120 acres, and were left with 50,321 acres, which was increased by grants to 77,870 acres. The Whakatoheas had originally 491,000 acres and were left with 347,130 acres. The Tuhoes had originally, 1,249,280 acres, and were left with 1,234,549 acres. These figures are based on the tribal boundaries as given on what is known as Heaphy's plan. There is some dispute as to the correctness of the boundaries as shown on this plan."

The confiscations in the Bay of Plenty included the lands of the tribes at Whakatane as well as those of the Whakatohea tribe, which is the tribe which occupied the lands in the Opotiki Districts. The Military operations of the Colony had been carried out against the tribes in both districts. The murder of Mr. Volkner occurred at Opotiki and that of Mr. Fulloon at Whakatane. Both acts may be ascribed to the fanaticism of the adherents of the Hauhau religion introduced into the districts from Taranaki by Kereopa who later suffered the extreme penalty for his part in the murders, having been tried and convicted for the murders in the Supreme Court at Auckland where he was hanged in 1871.

Counsel for the Natives before the Hon. Mr. Justice Sim's Commission submitted that there should have been no confiscations in the Bay of Plenty District; that the acts of the Natives in connection with the deaths of Mr. Volkner and Mr. Fulloon were cases of murder. On this point he submitted that:

"Volkner's death, which occurred on the 2nd March, 1865, was treated by the Government as murder and nothing less than murder: it was not treated as part of an armed

rising in this district. Some attempt may be made to show the contrary. My answer for the present at any rate, is I submit, a sufficient one: the Government treated it as murder and not as being in the nature of rebellion."

In support of his submission that the Government treated the deaths of these two men as a case of murder, Mr. Smith quoted an extract from a letter from the Native Minister (Mr. Fitzgerald) to the Resident Magistrate at Whatawhata dated the 22nd August, 1865, as follows, namely:-

"The murderers of Mr. Volkner and Mr. Fulloon must be arrested and brought to justice. The Government is about to issue a proclamation of peace, bringing the war to a final conclusion, and offering pardon to all except to those who have committed some of the worst murders - that is murders that no state of war could justify or excuse. With these exceptions peace will be offered to all, and no more land will be taken. At the same time, while no further steps will be taken against rebels, a strong expedition is sailing to Opotiki to arrest the murderers of Mr. Volkner and Mr. Fulloon, and if not given up, their lands will be taken to provide the cost of establishing a police force in the district. The same policy will be pursued in all future cases of murder, under an Act now passing, of which I send you a copy. All this you must explain to Thompson (Wiremu Tamihana) so that he may fully understand that whilst the Government will take no further steps to punish those who have been in arms against the Queen, it is resolved to put down all acts of violence."

Continuing his argument Counsel for the Natives said as follows:

"Following on that letter (Mr. Fitzgerald's quoted above), was the publication of the proclamation itself on the 2nd September, 1865, and the next was the proclamation of

martial law on the 4th September 1865, contained on page 267 of the Gazette of 1865, when martial law was proclaimed in Opotiki and Whakatane. The British force sent to capture these murderers landed at Opotiki on the 8th September 1865, just six months after the murder of Mr. Volkner; so the Government took a long time to consider that this was necessary. When the force came here they met with no fortifications or redoubts."

Counsel then proceeded to quote extracts from Cowan's History of New Zealand Wars to show that in reality the troops did not have many engagements in the district, and had no real trouble at all.

The delay on the part of the Government to take prompt and effective measures to apprehend the murderers of Mr. Volkner is referred to in the report of Judge Jones' Commission which is quoted earlier in this review and is there ascribed to the disturbed state of the district, and mention is made of a skirmish having taken place on the 21st May, 1865.

Counsel for the Crown in replying to the submissions of Counsel for the Natives after citing extracts from Cowan as to the fighting between the opposing forces said:

"Now, I have cited these extracts from Cowan to show that while before the murder of Fulloon and Volkner, at a time when there was no aggression nor the faintest hint of aggression on the tribes of the Bay of Plenty District, these tribes - namely the Whakatohea, Ngatiawa, Tuhoe - were engaged in an active and well organised attempt to join the Waikato rebels in the Waikato, and I cite it further for the purpose of showing that the statement made by my friends, that the Whakatohea, Ngatiawa and Tuhoe Tribes were loyal and peace loving tribes, is not correct. I shall now proceed to deal with the Opotiki expedition, which followed on the murder of Mr. Volkner."

But I do not purpose entering upon a detailed account of the murder because it is submitted that although the Government may have taken into account the murder of Volkner when making the confiscation, the real justification for the confiscation was the continued warlike hostilities to the Government by the tribes concerned, hostility which began long before the murder, and which continued after, and of which the murder may be said to have been symptomatic. I shall now proceed to show that following the murder there were serious acts of rebellion by the Whakatohea Tribe. When the Government attempted to enforce the Criminal Law by the arrest of the murderers they were met by what I think can be shown to be a very considerable opposition on the part of the Whakatohea Tribe."

In support of his submissions as above, Counsel for the Crown then proceeded to refer the Commission to certain citations from Cowan's History of the New Zealand Wars (Volume II commencing at page 102).

No attempt is being made in this review either to justify or condemn the confiscation of the Whakatohea Tribal lands but merely to give a brief outline of the main submissions which were made to the Royal Commission which was set up to inquire into and report upon certain aspects of the matter and out of the report of which the recommendation was made which is to be discussed by the representatives of the Natives and the Government.

The matters which the Commission was directed to inquire into and report upon were as follows:-

1. Whether having regard to all the circumstances and necessities of the period during which Proclamations and Orders in Council under the said Acts were made and confiscations effected, such confiscations or any of them exceeded in quantity what was fair and just,

- whether as penalty for rebellion and other acts of that nature, or as providing for protection by settlement as defined in the said Acts.
2. Whether any lands included in any confiscation were of such a nature as that they should have been excluded for some special reason.
 3. Whether any, and, if so, what Natives (having title or interest in the lands confiscated) are in your opinion justly entitled to claim compensation in respect of the confiscation of such title or interest, and, if so, what Natives or classes or families of Natives are now entitled by descent or otherwise to claim to receive such compensation.
 4. Whether reserves or other provision subsequently made for the support and maintenance of Natives within one or more of the classes excepted by the said section five were in regard to any particular tribe or hapu inadequate for the purpose.

In its report to the Governor-General pursuant to the Commission issued to them, the Commission has said:

- "54. It is clear that the Natives of Opotiki and Whakatane were engaged in rebellion against Her Majesty's authority when they resisted with arms the advance of the forces sent out to capture the murderers. Their cases came, therefore, within the terms of The New Zealand Settlements Act, 1863, and the Governor was justified in confiscating their lands as a penalty for their rebellion.
57. The Whakatohea Tribe have in their favour the report of the Commission which sat in the year 1920. The concluding sentences of the report are these: 'We have not sufficient material before us to say what would have been a fair and just area to confiscate, nor do we think it wise for us to go into that quest-

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ion. We have no hesitation, however, in affirming that, judged by the light of subsequent events, the penalty paid by the Whakatohea, great as was their offence, was heavier than their deserts.

58. We have considered the matter carefully, and we think that, except in the case of the Whakatohea Tribe, the confiscations in the Bay of Plenty did not exceed what was fair and just. In the case of the Whakatohea Tribe it was excessive, we think, but only to a small extent, and we recommend that a yearly sum of £500 should be paid for the purpose of providing higher education for the children of the members of that tribe."

Deputation and ... - purpose was to be restricted to education