

1915.
NEW ZEALAND.

NATIVE LAND CLAIMS ADJUSTMENT ACT, 1913:

REPORT AND RECOMMENDATION ON PETITION No. 161 OF 1913, TAMEHANA HETA AND
ANOTHER, RELATIVE TO MATARAKAU BLOCK (WHAREKAURI No. 1 BLOCK).

Laid on the Table of the House of Representatives pursuant to Act.

SIR,—

Native Land Court (Chief Judge's Office), 17th August, 1915.

Pursuant to section 2 of the Native Land Claims Adjustment Act, 1913, I have the honour to transmit to you a report upon the petition (No. 161 of 1913) of Tamihana Heta and another, set out in the First Schedule to the said Act.

I have the honour to recommend that leave be given to petitioner by statute to appeal within two months after the statutory provision comes in force, and that the Chief Judge should fix the amount of deposit to be paid by appellant, and that failing the payment of such deposit as fixed the Chief Judge may forthwith dismiss the appeal.

The Hon. the Minister of Native Affairs, Wellington.

JACKSON PALMER,
Chief Judge.

In the Native Land Court of New Zealand, South Island District (Chatham Islands).—

In the matter of the Matarakau Block (hereinafter called "the said block") and of the petition (hereinafter called "the said petition") of Tamihana Heta, being petition No. 9 in the First Schedule of the Native Land Claims Adjustment Act, 1913 (hereinafter called "the said Act").

WHEREAS, pursuant to section 2 of the said Act, the Chief Judge of the Land Court referred for inquiry and report to the Native Land Court the claims and allegations made in the aforesaid petition: And whereas such reference was duly gazetted for hearing before the said Court, and duly and regularly came on for hearing at Wellington, commencing on the 5th March, 1915: And whereas by the wish of all parties concerned such hearing was taken by the Chief Judge himself, who duly and regularly heard all parties concerned in the matter, and hereby reports, pursuant to the said section 2, as follows:—

1. That the said block is a portion of land situate within the Wharekauri No. 1 Block, Chatham Islands.

2. That the original title to Wharekauri No. 1 Block, estimated to contain 55,055 acres, was a Native Land Court certificate of title issued to ten persons, among whom were Epiha Kawhe (Coffey) and Pamariki Raunooa, by Judge Rogan under his hand and the seal of the Court, and dated the 27th June, 1870.

3. It was the law of New Zealand when this title was issued not to put in all of the owners, but to put in only up to ten of the owners in the title.

4. Natives put into a title as such owners at that time often used to treat the land as their own property, and in conformity with this idea Raunooa Pamariki got the Court to appoint him successor to the grantee Pamariki Raunooa on the 3rd September, 1881; and on the 11th February, 1885, he got the Court to cut out of the 55,055 acres an area for him as the representative of Raunooa Pamariki.

5. The area so cut out was estimated at 3,503 acres and 14 perches, and was called Tangipu or Wharekauri No. 1B; and at the same time he got the Court to cut out for the use of his sisters 3,276 acres 2 roods 15 perches out of the 55,055-acre block; thus this one family of one brother and two sisters got a total of 6,779 acres 2 roods 29 perches out of an area of 55,055 acres.

6. If the ten grantees had owned equally and were not trustees, then this one grantee was only entitled to 5,505½ acres, and not 6,779½ acres, which they got; and if the grantees were entitled equally, then the said grantee Epiha Kawhe was entitled to his one-tenth or about 5,505½ acres.

7. In 1868 the injustice of putting in only ten grantees in the title and allowing these grantees to act in the unjust manner set out above was so apparent that the Native Equitable Owners Act, 1886, was passed, which recited that these certificates of title were issued to grantees nominally as absolute owners, and that in many cases they were intended only to be clothed with the title as trustees for themselves and other members of their tribes or hapus. Pursuant to such recital sections were passed to enable the real owners to be admitted to the title.

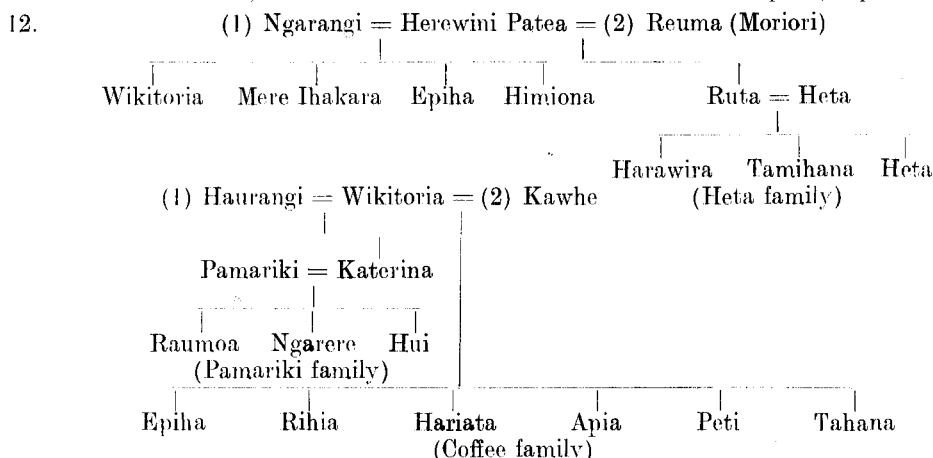
8. In the Native Land Court Act, 1894, these equitable-owner enactments were consolidated under subsection (10) of section 14 of that Act, and by this the Court, when authorized by Order

in Council, could ascertain the true owners and put them in the title, together with or without the ten grantees: Provided, however, that the Court could only act as aforesaid in regard to land over which there had been no alienation other than a lease, mortgage, or contract for sale upon which the purchase-money had not been paid.

9. Application under subsection (10) of section 14 aforesaid having been made for an Order in Council for this Wharekauri No. 1 Block, the Orders issued exempted 1A and 1B, among other pieces, from the equitable-owners' clause, and thus protected the Pamariki family. The Coffee (Kawhe) family were entitled to interests in 1A and 1B, but for the reason shown above Judge Edger could not put them into the title; and in any event Raumoā Pamariki had already sold 1B before Judge Edger's Court sat.

10. When Judge Edger sat pursuant to the above-mentioned Order in Council it was found that the Wharekauri No. 1 Block embraced in its area several blocks of land each with a distinct ownership. Among these was the Matarakau Block, containing 3,362 acres.

11. It was admitted by all parties before me that the original owner to this Matarakau Block was Herewini Patea, and that his issue were as shown in the next paragraph.



13. There is no doubt that Herewini Patea's issue were entitled to succeed to his property, and that in ordinary circumstances Judge Edger would have put them all in the title. There is also no doubt that Judge Edger would have put in Tamihana Heta and his brother Harawera into the title but for the fact that Tamihana assured Judge Edger that he had no claim. Tamihana now explains the mistake he made when he misled Judge Edger, and I am satisfied that he and his brother should be included in the title, but the interest awarded them should not be very great.

14. As to the exclusion of Raumoā Pamariki and his two sisters Ngarere and Hui from this title by Judge Edger, I may state, if this Pamariki family had an injustice done to them by Judge Edger in the Matarakau Block, they by their own acts and shrewdness had inflicted graver injustice on the Coffee family in regard to 1A and 1B subdivisions. If a comparison is made of the 3,000-odd acres that were awarded to the six members of the Kawhe family with the 6,000-odd acres awarded to the three members of the Pamariki family, and if the rights of the two families are compared, one wonders why the Pamariki family ever appealed to Parliament instead of remaining quiet.

15. At the close of the hearing the counsel engaged for the Kawhe family (Mr. Martin Luckie) and for the Heta family (Mr. C. B. Morison) intimated at the trial that if it were decided to admit Tamihana Heta and his brother Harawera into the title, that they could agree on the relative interests to be allowed, and that the Chief Judge could be authorized to amend the title for the relative interests so agreed to, and thus save the expense and delay of sending the case on to the Appellate Court for rehearing.

16. After waiting for some months for counsel to come to some such agreement, both counsel attended me on the 7th August, 1915, and intimated that Tamihana Heta demanded half of the block in question, and so no agreement was arrived at.

17. This action of Tamihana will cause the respondents, if an appeal is allowed, very heavy costs in coming to New Zealand to defend the case before the Appellate Court. Tamihana Heta misled Judge Edger or he would have got into the title in the beginning, and thus rendered unnecessary the heavy expenses already incurred by the other side over this case, as well as the expenses of a future trial. He has allowed the position of parties to be materially altered by his neglect and delay in getting the matter reopened, and yet he claims the half of Herewini Patea's estate, though Herewini has four other children who are not by a slave wife, while he (Tamihana) is by a wife from the conquered Moriōri race, namely, Reuma.

18. I consider Tamihana Heta should be allowed by statute to appeal against the decision of Judge Edger, but the time for appeal should be limited to the ordinary two months, and he should lose his right of appeal if he does not pay the deposit necessary to cover such cost (if any) as the Appellate Court considers he should pay. The deposit to be fixed by the Chief Judge as in an ordinary appeal.

19. Attached hereto is a copy of the evidence given before me—namely, that of—(a) Tamihana Heta, for his family; (b) Ngarere Pamariki, for her family; (c) Herare Grennell and Tahana Kawhe, for the Coffee family.

Dated this 7th day of August, 1915.

JACKSON PALMER,
Chief Judge.

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