1917.

NEW ZEALAND.

NATIVE LAND AMENDMENT AND NATIVE LAND CLAIMS ADJUSTMENT ACT, 1916.

REPORT AND RECOMMENDATION ON PETITION No. 43 OF 1916, RELATIVE TO KAWHIA R 2B BLOCK.

Presented to both Houses of the General Assembly in pursuance of Section 24 of the Native Land Amendment and Native Land Claims Adjustment Act, 1916.

Native Land Court (Chief Judge's Office), Wellington, 28th March, 1917.

The Hon. the Native Minister, Wellington.

PURSUANT to the provisions of section 24 of the Native Land Amendment and Native Land Claims Adjustment Act, 1916, I have the honour to transmit herewith the report of Charles Edward MacCormick, a Judge of the Native Land Court, on the petition No. 43 of 1916, of Kaho Barton, praying that the partition of Kawhia R No. 2B Block, made by the said Court at Ngaruawahia on the 24th September, 1914, may be cancelled, or that other relief may be granted to her.

After perusing the report I can only say that it appears to me to be a very careful analysis of the case, and that I am of opinion that it would be inadvisable to take any further steps in the matter.

JACKSON PALMER,
Chief Judge.

Native Land Court, Auckland, 13th March, 1917.

SIR,— *Kawhia R 2B.*

I have the honour to report that, in terms of your reference to the Native Land Court under section 24 of the Native Land Amendment and Native Land Claims Adjustment Act, 1916, for inquiry and report as to the claims and allegations in petition No. 43 of 1916, by Kaho Barton, praying that land be repartitioned, I duly held such inquiry at Kawhia on the 20th and 21st February last.

The petitioner was represented by her husband, Mr. C. Barton, and Tema Pouwhare appeared to support the existing partition. A number of the owners were in attendance.

I do not propose to go at length into the question of want of notice of partition alleged by petitioner, because that seems to have been fully and accurately dealt with in reports of the Registrar and Judge Holland. The facts disclose an extraordinary carelessness and indifference of the general body of owners, including the petitioner, to their own interests. Be it observed that there were nineteen owners in the block, not one of whom took the trouble to ascertain what had really been done on partition. If they had, several remedies were open to them.

I take it, however, that what is now material is to consider—(1) Whether the partition is just; (2) if not, whether the *status quo ante* can now be restored.

As to (1): In the Native Land Court, on application under section 121/09 (*vide* Mercer Minute-book, 19/347 *et seq.*), Tema Pouwhare's contention was that the improvements of his party were responsible for the increased value of 2B, Section 1, awarded to his party; that the other owners had done nothing to improve the land, and were seeking unfairly to participate in the improvements. Before me, however, while still maintaining this point, he advanced a new contention—namely, that his mother and her sister Te Aomangi Kaora were the dominant owners of 2B, Section 1, or Rangiaukaha, and were entitled under special right to that part, therefore could say who should or should not be included in it. This contention he based on certain evidence

of Hone Kaora, the well-known elder of N'Hikairo, given when Kawhia Block was partitioned in 1892. (Otorohanga, 12/236 *et seq.*). The evidence was denied. Without going into the matter at any length it is sufficient to say that this contention is disposed of by Hone Kaora's own evidence in relation to Kawhia R in Otorohanga Minute-book 39/348, when he stated that the names for each division of Kawhia were settled by mutual arrangement—practically a sort of consolidation. He went on to say that the right was from Te Makaho, thus entirely disproving Tema Pouwhare's assertion that Te Makaho's wife, Kahutaiki, was the source of title. Even apart from that the evidence does not satisfy me that any owner has any special local right. The ancient occupation, if any, would be in common. As to modern occupation, it is proved that Rakuraku, grandmother of Kaho Barton, occupied on the east of the land, and evidence was led to show that her children worked there also. The evidence also goes to show that others of the owners exercised acts of ownership at times, notably the Rukutai family. But Te Amopo Pouwhare seems to have been the only resident on the land for about twenty-five years. Her kainga is still there, and she has cultivated and improved a considerable area. This brings me to Tema Pouwhare's second contention, that the whole block is good land, and that it is only the improvements which make the admitted difference in value now. I do not think this contention is established. I inspected the block with the parties, and I had the advantage of the opinion of Mr. W. Duncan, late Government valuer, who has had special experience in Kawhia lands, and who was good enough to accede to my request that he should accompany me on my inspection and advise me. A reference to the map (No. 8676) shows that the partition has divided the land into three parts—viz., 2B No. 1, containing 17 acres 1 rood 2 perches, and 2B No. 2, consisting of two parts, east and west of No. 1—the eastern portion containing 8 acres 2 roods 10 perches, and the western 32 acres and 37 perches, the total area thus being 58 acres and 9 perches. No. 1 is the portion awarded to Tema Pouwhare's party. The eastern 8 acres of No. 2, with the exception of a narrow fringe along the road, is swamp. If drainable it would probably be much the better part of the block, but only taking levels could decide. The western 32 acres has always been severed from the remainder of 2B by the Paretao Swamp. It is not pure sand, but there is a great deal of sand, and I think there would be danger in breaking the surface. It should carry grass to some extent. It is hilly land also. The 17 acres is undulating; most is ploughable; fair soil of light quality; seemed to me exhausted by long cropping in parts, but apparently a fair crop of oats had been taken off one portion. Mr. Duncan valued the 32 acres at £5 an acre, the 8 acres at £10 an acre, and the 17 acres at £20 an acre. I should have thought this excessive all round, but the proportion is probably correct. The Government valuation two years ago of the 17 acres is said to have been £116, including £48 for improvements. It is plain that the persons to whom the 17 acres were awarded have received more than their fair proportion of value, even allowing for improvements. I should point out that these persons include not merely Te Amopo Pouwhare and her adopted daughter, but three other persons, including the uncle and cousin of Kaho Barton. Thus two-thirds of Rakuraku's one share is included in the 17 acres. Also one member of the Pohepohe family to the exclusion of the others. No special reason is given for this distinction. Mrs. Barton and her brothers, who have very small interests—one-twelfth share each—have not suffered as much as some of the other owners, who appear to have taken no action at all. In my opinion, then, the partition is not a just one.

Whether the *status quo ante* can be restored depends on the length to which the Legislature may be prepared to go. The order for Kawhia R 2B, Section 1, has been completed by survey and registered under the Land Transfer Act. A certificate of title, Volume 258, folio 150, has issued. Tema Pouwhare has purchased the interests of Mutu Pohepohe, Taumaha Pouwhare, and Tuokioki Tikaokao, amounting to one and five-sixth shares out of three and one-sixth. His mother, Amopo Pouwhare, has one share, and Moke Pumipi still holds his one-third share. The transfers to Tema Pouwhare are duly registered on the Land Transfer title. He thus holds an indefeasible title, of which it would appear he cannot be deprived except by a special amendment of the Land Transfer Act. I take it, however, that the Legislature will hesitate to disturb the long-established principle of the security of a Land Transfer title for the purpose of redressing an individual wrong. I may explain that though an Order in Council issued on the 21st July, 1916, prohibiting private alienations of this land, it was apparently too late to prevent the completion of the transfers referred to.

In this position of matters I do not see that I can make any recommendation to you.

I have, &c.,

CHAS. E. MACCORMICK, Judge.

The Chief Judge, Native Land Court, Wellington.

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