1920.

NEW ZEALAND.

NATIVE LAND AMENDMENT AND NATIVE LAND CLAIMS ADJUSTMENT ACT, 1919.

REPORT AND RECOMMENDATION ON PETITION No. 207 OF 1916, RELATIVE TO INQUIRY *RE* SUCCESSORS TO DECEASED OWNERS' INTERESTS IN HEREHERETAU No. 2, KAHA-ATUREIA A, AND MANGAPOIKE No. 2 BLOCKS.

Presented to both Houses of the General Assembly in pursuance of Section 34 of the Native Land Amendment and Native Land Claims Adjustment Act, 1919.

Office of the Chief Judge, Native Land Court, Wellington, 3rd September, 1920.

Re *Wiripine Makaia and Harawira te Rea, deceased—Petition No. 207 of 1916.*

PURSUANT to section 34 of Act No. 49 of 1919, I transmit report of Native Land Court herein.

Following on that report, I beg to recommend that legislation be passed enabling the Court to rehear the applications upon which the various succession orders complained of were made, and to confirm or amend such orders, or to annul any of them and make such order as to it may seem just, with power also to make any incidental amendments in any other order affected thereby, but without prejudice to any valid alienation.

At the same time my personal opinion is that the question of adoption has been carried much to far, but I am quite aware that on this point I am out of harmony with the other Judges.

The original order was made in 1894, and at that date there was no thought of the *tamaiti whangai* (adopted child) getting more than she did, and according to the then lights Judge Gudgeon was quite justified in awarding this interest to the next-of-kin. However, shortly afterwards a series of decisions began in the Native Appellate Court, which culminated in enunciating the principle of the adopted child being treated as equal to the natural child of the foster-parent, and taking as such to the exclusion of other next-of-kin. This was quite a reversal of what I believe was the true Native custom, viz., that the adopted child took only what the foster-parent directed, or, failing that, what the next-of-kin or the tribe allotted to him. But latterly the Appellate Court has gone even further and decided that not only is the adopted child and his descendants entitled to succeed to his foster-parent, but also to all the next-of-kin of the foster-parent, extending back for an unlimited period.

I have always held, and I still think I am right, that the adopted child can only succeed to what the foster-parent has brought into possession in the legal sense—*i.e.*, has himself succeeded to. This, I believe, is consonant to the old Roman law, and is certainly more consistent with Native custom. Under the Appellate Court decisions a whole family might be exterminated by disease or calamity and their total possessions go into the hands of one of alien descent. What in my opinion has misled the Appellate Court is the confusing of the rules of the English law of devolution of property with the Native custom of succession—two entirely different things. Personally, I do not think that before the Act of 1909 any successor according to Maori custom had what is called a vested right to succeed. It was certainly on the contrary assumption that a Native successor was first held not to be responsible for his predecessor's debts.

R. N. JONES, Chief Judge.

The Hon. Native Minister, Wellington.