

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, KAHATUREIA A, AND MANGAPOIKE No. 2 BLOCKS.

Presented to both Houses of the General Assembly in pursuance of Section 31 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 Makara 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 too 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.

Native Land Court, Gisborne, 18th April, 1920.

Hereheretau No. 2, and Succession to Wiripine Makaia, sen., Harawira te Rea, Hariata te Umu.

In accordance with your reference under subsection (1) of section 34 of the Native Land Amendment and Native Land Claims Adjustment Act, 1919, I inquired into the Petition No. 207 of 1916, of Wiripine Makaia, jun., with regard to the above matter, at the sitting of the Native Land Court at Wairoa on the 9th February last.

I beg to report that the facts as set out in the petition are substantially correct, viz.:—

1. That Wiripine Makaia, sen., and Hariata te Umu, or Puaha, were sisters, and that Harawira te Rea was their half-brother.

2. That Wiripine Makaia, sen., died on the 15th June, 1893, and Harawira te Rea on the 10th August, 1894.

3. That on the 13th September, 1894, orders were made appointing Hariata te Umu as successor to the interests of Wiripine Makaia, sen., in the following blocks, viz.: Hereheretau No. 2, Kahaatureia A, Mangapoike No. 2.

4. That on the 26th August, 1915, orders were made appointing Wiripine Makaia, jun., the adopted child according to Maori custom of Wiripine Makaia, sen., as successor to the interests of the same deceased—viz., Wiripine Makaia, sen.—in Hereheretau B 2, Hereheretau B 3, Hereheretau B II.

5. That on the 2nd May, 1899, an order was made appointing Hariata te Umu as successor to the interests of Harawira te Rea in Hereheretau No. 2.

6. That on the 7th October, 1911, orders were made appointing Te Rauna Hape the registered adopted child of Hariata te Umu, as successor to the interests of Harawira te Rea in Hereheretau B 2, Hereheretau B 3, Hereheretau B II.

7. That on the 28th November, 1911, orders were made appointing the said Te Rauna Hape as successor to the interests—including the interests she acquired as successor to Wiripine Makaia (No. 4, *ante*) and Harawira te Rea (No. 5, *ante*)—of Hariatau No. 2r, Kahaatureia A, Mangapoike No. 2b.

8. That the Native Appellate Court, in judgments delivered on the 22nd and 24th August, 1912, on appeals against the orders appointing successors to Wiripine Makaia, sen., Harawira te Rea, in Hereheretau Nos. B 2, B 3, and B II, decided—

(a.) That Wiripine Makaia, jun., was the adopted child of Wiripine Makaia, sen., and as such was entitled to succeed to her interests.

(b.) That the right of Wiripine Makaia, jun., to succeed was a vested right existing at the time of the coming into operation of the Native Land Act, 1909, and that section 161 of that Act did not affect such vested right.

(c.) That the estate of a Native dying before the coming into operation of the Native Land Act, 1894, vested in his rightful successors as from the date of his death, and that the succession order is merely the Court's recognition of his right—that is, legal evidence of the successor's title.

It follows from these judgments as alleged by the petitioner—

1. That the orders (No. 3 above) made on 13th September, 1894, appointing Hariata te Umu as successor to the interests of Wiripine Makaia, sen., in Hereheretau No. 2, Kahaatureia A, Mangapoike No. 2 are wrong, and that the proper successor to the said interests is Wiripine Makaia, jun., the petitioner.

2. That the order (No. 5 above) made on the 2nd May, 1899, appointing Hariata te Umu as sole successor to the interest of Harawira te Rea in Hereheretau No. 2, and the orders (No. 6 above) made on the 7th October, 1911, appointing Te Rauna Hape as successor to the interests of the same deceased in Hereheretau B 2, B 3, and B II, are wrong, inasmuch as the rightful successors to the interests of the deceased at the date of his death were Hariata te Umu (his sister), and Wiripine Makaia, jun., the adopted child of the other sister, Wiripine Makaia, sen.

It was stated by Mr. Mitchell, who appeared for the petitioner, that the whole of the interests of the three deceased persons in Hereheretau No. 2 have been sold to the Crown by Te Rauna Hape, the person appointed successor by the various orders of the Court now objected to.

JAS. W. BROWNE, Judge.

The Chief Judge, Native Land Court, Wellington.

Approximate Cost of Paper.—Preparation, not given; printing (450 copies), £3 10s.

By Authority: MARCUS F. MARKS, Government Printer, Wellington.—1920.

Price 3d.]