1922.

NEW ZEALAND.

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

REPORT AND RECOMMENDATION ON PETITION No. 293/1919, RELATIVE TO THE ADOPTION OF NGAWHAREWITI TIWAI AND OTHERS.

Presented to Parliament in pursuance of Section 34 of the Native Land Amendment and Native Land Claims Adjustment Act, 1919.

Gisborne, 22nd September, 1922.

Petition 293/1919, re *Ngamoni Ngawharewiti (deceased) and Alleged Adoption of Ngawharewiti Tiwai and Others.*

HEREWITH I forward report of the Native Appellate Court hereon for transmission to the Native Minister. Report is in triplicate.

The Under-Secretary, Native Department, Wellington. W. E. RAWSON, Judge.

Hon. Native Minister.

THE report is to be presented to Parliament.

5th October, 1922. R. N. JONES, Under-Secretary.

In the matter of section 32 of the Native Land Amendment and Native Land Claims Adjustment Act, 1921 22, and of Petition No. 293 of 1919, of Ngawharewiti Tiwai and others, regarding the adoption of certain children by Ngamoni Ngawharewiti (now deceased).

To the Hon. the Native Minister, Wellington.

Report and Recommendation of the Native Appellate Court.

As empowered and directed by the said section, the Native Appellate Court sitting at Wellington on the 28th August last inquired into the claims and allegations made in the said petition, and now submits the following report and recommendation as to the alleged adoption by Ngamoni Ngawharewiti (now deceased) of the three children Ngawharewiti Tiwai, Te Manu Tiwai, and Ngamoni te Waari.

According to Ngamoni's own statement before the Native Land Court at the Chathams in 1907, the two first-named children had been adopted by her mother, Paranihi te Ringa, who had died on the 26th January of that year. That adoption gave no right to share in the succession to the mother's lands, as it had not been registered in the Native Land Court as required by section 50 of the Native Land Claims Adjustment and Laws Amendment Act, 1901. It was only natural that Ngamoni should desire to provide for these two, who had been brought up in her own home, and whom she would regard as her own foster-brothers, and this was the object of her application to have their adoption by herself registered. She informed that Court (which was placing her evidence on record for use when a formal application was brought before a future Court) as follows: "I desire to adopt those three children, and wish them to succeed to my lands after my death as though they were my own children. I say that two of them were previously adopted by my mother, and I wish to adopt those three children so that they may succeed to my father's land. It is true that the children I am adopting are related to me on my mother's side, but I claim I have the right to dispose of my father's lands as I may think proper. [To Court.] My desire to adopt these children began in the past and has continued to the present time. It was not through any ill-feeling towards relatives on either side that I desired to adopt them."

At this time (22nd March, 1907) Ngamoni was forty-one years of age, the elder Tiwai sixteen, Te Maunu Tiwai ten, and Ngamoni te Waari two. There is no evidence to show that the first two were known or recognized by the people as *tamaiti whangai's* of Ngamoni, or that she herself had ever publicly acknowledged them as such; but it must be remembered that her mother had been dead only two months at this time, and her application to the Court to take her statement may be looked upon as a public notification of her intention to adopt all three children. No objection was raised in that Court beyond that of Inia Tahata on behalf of his niece, who he claimed had also been adopted by Ngamoni and her mother. As to the youngest child, Ngamoni te Waari, she appears to have been taken on the day of her birth (7th January, 1905), with the consent of her father. Her mother died about a week after the child's birth. This child, like the others, is related to Ngamoni on her mother's side, and, as in the case of the others, Ngamoni stated her desire to take her as her own child, in the Court of 1907. All three have lived with Ngamoni.

Under these circumstances, and in the absence of opposition, we think any Judge would probably have given the certificate required by the Act of 1901, that in the case of each of the three children there was a *bona fide* adoption according to Native custom, though there is some doubt in regard to the two elder children, owing to their age and to the fact that they were already foster-brothers of Ngamoni.

Assuming, however, that all three children were adopted according to Native custom, are there any special reasons in their case why non-compliance with the Acts of 1901 or 1909 should not be the bar that it has been in dozens of other instances? If there are no such special reasons, then to give these children an opportunity of obtaining legal status as the adopted children of Ngamoni would result in a great number of petitions for similar treatment which Parliament could not logically refuse. In this way a virtual repeal of section 161 of the Native Land Act, 1909, would be effected. It is for Parliament to say whether this is considered desirable.

Notwithstanding the difficulties in the way of communication between the Chathams and Wellington, there was ample time between March, 1907, and March, 1910, for the application for a certificate of adoption to have been fully heard. The evidence was on record, and the attendance of witnesses was therefore not necessary. As a matter of fact, no witnesses were present at the Court on the 28th April, 1913, when the issue of a certificate was ordered, and Ngamoni's agent had been in attendance at a Court in Wellington in 1908, but did not then bring this matter forward.

As for the youngest child, there was, in addition (as the Chief Judge in his report pointed out), ample time to obtain an order of adoption under the 1909 Act between the coming into force of that Act and the death of Ngamoni Ngawharewiti on the 12th August, 1915. Moreover, previous to the 31st March, 1910, the principal lands in question, except Kekerione 28, were devisable by will, and even 28 was so devisable after that date. It was therefore in Ngamoni's power to distribute these lands in any way she wished; but she died intestate, although her advisers must have known that a certificate of adoption was merely *sufficient*, not *conclusive* evidence.

No one has even suggested that any official of the Court has been guilty of delay or error, or was in any way to blame for the application not having been brought before the Court earlier.

There is also this further point of view: that, in addition to the case stated for the opinion of the Supreme Court as to the validity of the adoption order, there has been considerable litigation over the succession to Ngamoni's lands and property. This has been rendered more than usually expensive by the fact that witnesses and parties have had to come from the Chathams. Surely the ordinary equity of the next-of-kin is enhanced by this, and they should not be lightly deprived of the results of so much expenditure of time, labour, and money. Native opinion in such cases, so far as our experience goes, usually leans more to the next-of-kin, regarding it as important from a hapu standpoint that the near relatives should not be antagonized by having their claims to succeed ousted entirely by adopted children.

We think there are no special reasons to induce us to recommend legislative action to remove the bar imposed by section 161 of the Native Land Act, 1909.

15th September, 1922. CHAS. E. MACCORMICK, W. E. RAWSON, } Judges, Native Appellate Court.

Approximate Cost of Paper.—Preparation, not given; printing (450 copies), £2 5s.

By Authority: W. A. G. SKINNER, Government Printer, Wellington.—1922.

Price 3d.]