

The Utiera family neither applied for a rehearing nor did they appeal against this award. In the petition it was stated on their behalf that they were not aware of the nature of the order and that they therefore did not appeal against the order of 1929 defining relative interests. They had the same objection as the other petitioners to make to the legislation, deeming it to be unfair and unjust.

After hearing the petitioners the Court was left with the impression that the original proposed grantees of the Tarawera Block have been rather badly treated by the Legislature. The Court has no reason to think otherwise than that the block was promised to them after a fair and impartial inquiry in which the utmost leniency was shown to any one making a claim, and they had in three Acts of the General Assembly what was tantamount to an assurance that they would receive a Crown grant for it. They were left alone from 1870 to 1924 under the mistaken idea that the land would be granted to them.

This Court can only surmise that as time went on the memory of the rebellion grew fainter and its influence gradually became less, with the result that the Legislature in 1924 gave the Native Land Court jurisdiction to treat the block to all intents and purposes as if it were uninvestigated Native land and as if there had been no confiscation on account of the rebellion. The consequence was that a number of persons who, or whose parents, had been actually in rebellion and who had not at any time surrendered were included in the title and have been awarded substantial shares therein in some instances greater than those allotted to the grantees themselves. It seems to this Court that if the Legislature was of opinion that these unsundered rebels were entitled to consideration, the fair and equitable way to have shown them this consideration would have been to have awarded them interests out of the confiscated lands or other Crown land in the locality. There is no doubt the twenty-four persons named in the agreement suffered from the defect of not having a strong leader who could make his influence felt when and where necessary.

The Kaiwaka Block, containing 31,200 acres, was awarded to Tareha te Moananui alone on exactly the same terms and subject to the same promise by the Crown as the Tarawera Block to the twenty-four persons named in the agreement. It is very improbable that Tareha alone would have been entitled to this area if the block had been dealt with by the Court as uninvestigated Native land. An attempt made to include other owners in the title was strenuously opposed by Tareha's representatives. The question came before the Supreme Court and the Court of Appeal, and finally reached the Privy Council. That tribunal, in a considered and exhaustive judgment, held that Tareha did not hold as trustee but as an absolute owner. The Privy Council stated in the course of its judgment: "The allottees of each block must be treated as the only persons entitled to them under the agreement."

No subsequent steps appear to have been taken to include other persons in this title, and this Court cannot understand why a distinction should have been drawn between Kaiwaka and Tarawera. The twenty-four persons in the agreement were as much entitled to Tarawera absolutely as Tareha was to Kaiwaka.

In our opinion the Native Land Court is in no way to blame for the confusion and consequent dissatisfaction that exists with regard to the ownership of this block. This confusion and dissatisfaction is due solely to the character of the legislation that has been enacted since 1924, and the Court has simply made the best of what was a very difficult matter.

We would state, however, that we are not altogether satisfied with the partition of 1934. This partition was based on a valuation made for the Court of 1922 when the timber was regarded as of little or no value. In this valuation there was shown to be 22,900 acres of bush. That this bush is of some value is proved by the fact that 8,540 acres of it were sold or cutting rights granted for £16,738. The value of the timber as milling-timber was disregarded on the partition, with the result many of the divisions have timber on them probably of a much greater value than the land itself. In addition to this, in order to obviate any further survey costs being incurred, the lists had to be made up to fit into the divisions already surveyed, with the inevitable consequence that many persons with no right by ancestry or occupation to particular divisions have been included as owners in those divisions. It seems to this Court that matters have gone too far now for the block to revert to the position it was in before 1924 as regards the ownership, but we are of opinion—

- (1) That all the partition orders and the order of 1929 defining relative interests should be annulled.
- (2) That a special award out of the Crown areas in Nos. 3 and 10, or its equivalent in value, should be made to such of the proposed twenty-eight grantees as have not sold for their loyalty and assistance during the rebellion.
- (3) That the balance of the land, without regard to the present surveyed partitions, be divided on the basis of a special valuation of the land and timber amongst the persons found by the Courts of 1924 and 1929 to be entitled, including the grantees or their representatives if they can prove rights.

In this connection we envisage a regrouping of interests whereby the petitioners will thus be able to consolidate their values around their present holdings or occupations.

Any costs of survey necessitated by this proposed revision could be met out of balance of approximately £7,433 held by the Registrar, being the balance of the consideration on the sale of 9 and parts of 6 and 7 (now Tarawera X) to Gardner, to pay expenses.

If our suggestions are adopted, it would be advisable that an embargo be placed on the balance of the proceeds of the alienations of Nos. 3, 8, and X.

JAS. W. BROWNE, Judge.
H. CARR, Judge.

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