

1939.

NEW ZEALAND.

THE NATIVE PURPOSES ACT, 1937.

REPORT AND RECOMMENDATION ON PETITION No. 66 OF 1936, OF W. BAKER AND OTHERS, PETITION No. 262 OF 1936, OF KAPERIERA TE POHE AND OTHERS, AND PETITION No. 301 OF 1936, OF MATEWAI UTIERA AND OTHERS, *RE* TARAWERA BLOCK.

Presented to Parliament in pursuance of the provisions of Section 16 of the Native Purposes Act, 1937.

Native Land Court (Chief Judge's Office),
Wellington, C. 1, 21st September, 1939.

The Right Hon. the NATIVE MINISTER, Wellington.

PETITIONS NOS. 66, 262, AND 301 OF 1936, TARAWERA BLOCK.

PURSUANT to section 16 of the Native Purposes Act, 1937, I herewith transmit the report of the Court herein.

This recommends—

- (1) That all partition orders be cancelled ;
- (2) That the order made on the 5th October, 1929, defining relative interests be annulled ;
- (3) That the Crown should, out of Crown land, compensate the twenty-four persons mentioned in the schedule to the agreement of the 13th June, 1870, and four since added (making twenty-eight in all) for their loyalty and assistance during the rebellion ; and
- (4) That the land be repartitioned upon a special valuation of land and timber.

The greater part of the history of the block is detailed in the report, but the report does not show that, from the time of the making of the agreement in 1870, complaints were made of its injustice in that it did not restore the lands, as had been implied in the Order in Council, to the loyalist owners of the particular blocks. Sir John Salmond put the matter very tersely when he said it was evident that the land—referring to the Tarawera Block—was intended to be granted to the loyal Natives by way of restoration of their original title as existing before the confiscation and that they were to hold in the same proportions in which they were interested in the confiscated land. All efforts to rectify the injustice and to have the matter dealt with on the basis of the loyal ownership were fruitless until in 1918 one, Hapi Nikora (admitted to be largely interested in the Tarawera Block), petitioned Parliament, alleging that many had been left out of the title to the Tarawera and another block and praying that authority be conferred on the Native Land Court to ascertain the correct owners according to Native custom. As a result of this, four persons to whom there was no objection were admitted. Hapi Nikora later petitioned for a more general admission, and as a result of a recommendation by the Native Affairs Committee of the House of Representatives section 38 of the Native Land Amendment and Native Land Claims Adjustment Act, 1924, was enacted. On the proceedings taken under this section, Hapi Nikora at first appeared by counsel, and after hearing all the parties the Court decided that the people known as Ngatihineuru were entitled to be admitted, while the Ngatikahutapere, the prior principal owners, were confined to a third interest in the block. There was never any serious dissent by the Kahutapere people from this decision, although special legislation expressly extended the time in which they might appeal. There was no trouble in settling the lists of owners, but the definition of the relative interests of the newly admitted owners took some considerable time. Apparently through Ratana influence, Hapi Nikora absented himself, although warned from time to time that the case was going on. The reason given in each case for his absence was not, in the Court's opinion a sufficient one. A conductor and a sister of Hapi Nikora watched his personal interests, while the interests of the different sections were adequately represented. On these proceedings, by general consent, the party represented by the petitioner in Petition No. 66 of 1936 was confirmed in its Land Transfer title and now asks to be restored to that position. The petitioners in Petition No. 262 of 1936 were secured by arrangement in the portion that was already located to them on partition, while those interested in Petition No. 301 of 1936, by similar arrangement, received an award which they now desire should be again confirmed. In 1928 Hapi Nikora petitioned Parliament for a reopening of the matter, alleging that he had been kept from the Court by certain influences, that an appeal lodged by him had not been properly adjudged, and that the definition of shares in 1926 was inequitable.

The difficulties complained of, so far as the various petitions are concerned, arise from the decision regarding relative interests given on the 5th October, 1929. The only way the petitioners can be restored to their previous position is to annul that decision as suggested by the Court of inquiry. This would mean—but I am not sure that the Court intended to go so far—that all the orders made in 1926 would be restored. It would follow that all partition orders made to carry out the order of 1929 should be cancelled. I see no justification for granting compensation, as suggested, out of Crown lands.

R. N. JONES, Chief Judge.

The CHIEF JUDGE, Native Land Court, Wellington.

TARAWERA BLOCK.

WE have the honour to inform you that the Court, sitting at Hastings on the 31st January, 1939, and the following days held the inquiry directed by you pursuant to the provisions of section 16 of the Native Purposes Act, 1937, into the following petitions:—

- (a) Petition 66 of 1936, of W. Baker and others, praying for the exclusion of Tarawera 5A Block from the scope of certain investigation or compensation:
- (b) Petition No. 262 of 1936, of Kaperiera te Pohe and others, praying for reinstatement of full rights in the Tarawera Block:
- (c) Petition No. 301 of 1936, of Matewai Utiera and others, praying that the ancestral rights to the Tarawera No. 3 Block be restored:

and we have to report as follows:—

In order to understand the position, it will be necessary to state shortly the history of the block.

1. In 1867, in consequence of the rebellion, certain lands, including this block, were confiscated by Proclamation. The effect of this Proclamation was to set aside the precedent Native title and vest the land in the Crown, subject to an undertaking by the Crown to grant certain portions of it to loyal Natives.

2. By agreement dated the 13th June, 1870, certain Natives were selected to receive grants of various portions. Included amongst these portions was this Tarawera Block, which it was agreed should be granted to twenty-four persons whose names were specified in the agreement.

3. In the same year the Waikare Mohaka District Act, 1870, was passed. This Act declared that the agreement of the 13th June, 1870, should be binding on the Government of New Zealand and on all persons named in the agreement, that certain portions of the land referred to in paragraphs Nos. 1 to 5 of the agreement should vest in Her Majesty, and that as regards the residue the Governor was empowered to issue Crown grants in favour of the persons who, in pursuance of the agreement, were entitled respectively to the said pieces of land.

4. The Waikare Mohaka District Act, 1870, was repealed without anything being done in the direction of the issue of a grant for Tarawera, and as a consequence the Native Land Amendment Act, 1881, was passed empowering the Native Land Court to inquire and determine the persons who, in pursuance of the agreement, were entitled, and authorized it to issue certificates accordingly.

5. On the 6th July, 1882, the Court, sitting at Napier, under the provisions of the aforesaid section made an order that a certificate of title for the Tarawera Block, containing 87,000 acres, should issue in favour of the twenty-four persons whose names were specified in the agreement.

6. By section 4 of the Native Land Claims Adjustment Act, 1914, it was declared that the order referred to in the foregoing paragraph was valid and should take effect as an order made on investigation of title in the Court's ordinary jurisdiction, and that as from the date of the said 1914 Act the Court was to have jurisdiction in respect of the said land accordingly. It was further ordered that in ascertaining the relative interests the Court should treat the persons named as owners in the schedule to the agreement of the 13th June, 1870, as having been entitled in equal shares. The section further validated any succession or trustee orders made previously.

7. Section 25 of the Native Land Amendment and Native Land Claims Adjustment Act, 1919, passed on the 5th November, 1919, authorized and directed the Court to ascertain and determine what Natives included in the agreement of the 13th June, 1870, were omitted from the title to Tarawera, and to ascertain and determine the reasons for such omission and for the omission of the descendants of such Natives. The Court was to report its findings to the Native Minister with such recommendation as it might think fit. As a consequence, there was an inquiry, and a recommendation by the Court dated 9th August, 1920, to the Minister to include certain names. In pursuance of this recommendation, section 13 of the Native Land Amendment and Native Land Claims Adjustment Act, 1920, empowered the Court to include four names specified in the section in the title to the block. These names have been included accordingly.

8. On the 1st November, 1922, the Court, sitting at Hastings, partitioned Tarawera Block into ten divisions amongst the persons or their successors to whom it had been ordered that a Crown grant should issue. This partition purported to be based on a valuation made by a surveyor attending the Court at the time. The divisions into which the block was partitioned have all been surveyed.

9. The next and most important step in the legislative progress was the passing of section 38 of the Native Land Amendment and Native Land Claims Adjustment Act, 1924. This section empowered the Court to inquire and determine what persons, if any, other than those already admitted, ought to be included in the title. If the Court found other persons were entitled, it was as a consequence to redetermine and readjust the relative interests of the owners as it should think fit, and in this the Court was not bound to regard the agreement of the 13th June, 1870, nor the provisions of section 4 of the Native Land Claims Adjustment Act, 1914, directing the Court to treat the persons named as owners as being entitled to equal shares. It was to proceed as near as may be as if the Native customary rights of the parties still existed. It was empowered to cancel any partition order already

made excepting as regards such portions or interests as were affected by alienation to the Crown—*in short, the Court was authorized to ignore the rebellion and confiscation and the various promises and Acts that preceded the legislation of 1924, and to ascertain the owners of the block as if it were Native land the title of which had not been investigated.*

10. In pursuance of this section, the Court, sitting at Napier on the 25th June, 1925, and following days, by implication, cancelled the partition of 1st November, 1922, excepting as regards Nos. 3, 5A, and 5B, admitted a number of persons other than the proposed grantees or their descendants into the title and readjusted the relative interests. Nos. 3, 5A, and 5B were left as made by the Court of 1922, 1A, 1B, 1C 1, &c., were awarded to the Kahutapere section of claimants, and one order made for the residue of the block comprising all the other divisions. Appeals were lodged against the decision and were heard by the Appellate Court at Hastings on the 4th April, 1927. That Court, after making slight variations in the orders appealed against, dismissed the appeals.

11. On the 20th August, 1927, the Court made a further partition cutting off 3,664 acres for Raroa Sullivan in pursuance of the award to him of 4,800 shares by the Court of 1925 for the purposes of sale to pay expenses. Applications were made to the Court for the partition of other interests, but the Court deemed it inadvisable to proceed further at the time and made no other order. It added: "As this last-named area is to be sold to pay survey liens and costs and as there is unmistakable unanimity regarding its location and little chance of an appeal, the order for it will date from yesterday, 19th August."

12. Section 46 of the Native Land Amendment and Native Land Claims Adjustment Act, 1928, next empowered the Court, on an application lodged by any person interested within six months from the date of the passing of the Act, to reopen the proceedings of the Court under section 38 of the Act of 1924 "in so far as such proceedings affect the divisions or allotment of shares awarded to the section or persons known as Ngatihineuru and the distribution of such shares to the individual owners, and to make orders therein as circumstances may require." The provisions of the section were not to extend to the 3,200 shares awarded to the Tuwharetoa Section nor the 4,800 shares set apart to be applied to the payment of expenses. The Court had power, also, to adjust the relative interests shown in any order, or to amend, vary, or cancel, any partition order in so far as it might be repugnant to the relative interests as determined by the Court—and the Court was not in proceeding under the section to be bound by the decision of any former Court or Appellate Court.

13. In pursuance of this section, the Court sat at Hastings on the 11th April, 1929, and following days. By implication it superseded the orders for Nos. 3, 5A, and 5B and the residue order of the 1925 Court, and made an order on the 5th October, 1929, defining the relative interests in the Ngatihineuru portion of the block, less the division called X, which had been awarded to Raroa Sullivan. The question of a partition was held over.

14. Meetings of the representatives of the owners were subsequently held at Wellington, Hastings, and Te Haroto to arrange a partition. An arrangement was made which was presented to the Court at a sitting at Te Haroto on the 30th April, 1934. Two matters in dispute were referred by the Committee to the Court—the complaints of the Baker family and the Pohe family. After consideration, the Court accepted the arrangement without alteration and made orders giving effect thereto.

15. Applications for rehearing were lodged by these families (two of the present petitioners), but after hearing the Court dismissed them. Appeals were lodged. In the case of the Pohe family, Kaperiera Pohe, who represented the appeal, decided to withdraw it, and it was dismissed. The appeal of the Baker family was proceeded with, and resulted in a considered judgment dismissing it on the 4th June, 1935.

16. As to the petitions, the Court will now deal with them, taking firstly that of

Kaperiera Pohe and others (No. 262 of 1936).

The petitioners are the representatives of Ngahere te Pohe, one of the twenty-eight proposed grantees. The grounds of the petition are shortly as follows:—

- (1) That Ngahere te Pohe, from whom they derive their interest, was a loyal Native and a stout supporter of the Crown.
- (2) That the proposed award of the Tarawera Block to the twenty-eight persons in equal shares was sanctioned and approved by Parliament, and was further confirmed by the Court of 1922, which allotted the petitioners Tarawera No. 7, containing 2,743 acres.
- (3) That the petitioners had rights by ancestry and occupation to Tarawera No. 7.
- (4) That the passing of section 38 of the Native Land Amendment and Native Land Claims Adjustment Act, 1924, reopening the whole case and empowering the Court to include additional names, was a direct breach of the agreement of the 13th June, 1870.
- (5) That the petitioners were not at any time in agreement with the reallocation made by the 1924 Court.
- (6) That the rights of Ngahere Pohe as an original grantee were not investigated by the Court of 1929, and that the petitioners were unaware that an order had been made in 1929 defining the relative interests of the persons whom it found entitled.
- (7) That the Court of 1934 refused to hear any objection to its award, alleging that the petitioners were too late in making it.

The petitioners therefore prayed—

- (a) That they be reinstated to their full rights, shares, or interest in the Tarawera Block, as descendants of Ngahere te Pohe, which they had or were possessed of prior to the passing of section 38 of the Native Land Amendment and Native Land Claims Adjustment Act, 1924; or, in the alternative,

- (b) That they be granted full compensation for the shares or interest in the said block of which they were dispossessed as a result of the investigation following the passing of the said section 38 of the Native Land Amendment and Native Land Claims Adjustment Act, 1924; or, in the alternative,
- (c) That the Native Land Court be empowered to reopen the whole question of the Tarawera Block and reallocate the same to the descendants of the original grantees thereof in the spirit of the agreement of 1870 and not on the basis of the customary rights of the Ngatihineuru as at present allocated.

The Court begs to report as follows:—

1. Numbers (1), (2), and (3) of the grounds of claim are correct. This Court is of opinion that the grantee whom the petitioners represented had rights by ancestry and occupation to a portion, at any rate, of Tarawera No. 7.
2. With regard to Nos. (4) and (5) of the grounds of claim: The Court, in pursuance of section 38, sat in Napier in 1925, cancelled the orders of the Court of 1922 excepting those for 3, 5A, and 5B, and made a residue order for the balance, including therein the area formerly called No. 7. In this residue order the petitioners were awarded an aggregate of 1,772 shares out of a total of 52,350. A number of appeals were lodged against the findings in this case, but none from the petitioners, although the Court is satisfied that they were present or represented at the hearing. It must be assumed, therefore, that they were satisfied with the award to them. Subsequently, in 1927, a division comprising a portion of divisions called by the 1922 Court 6A and 7 and the whole of 9 was partitioned off in one area, which the Court called Tarawera X and awarded to Koroa Sullivan for the purposes of sale. Immediately after the boundaries of this portion had been defined and the order made in favour of Sullivan, Mr. McDonald, as representing the Pohes, handed in a list comprising ten of them and asked that the balance left of No. 7 should be awarded to them. Subsequently Aterea Pohe objected to the inclusion of No. 7 in the sale, but later on at the same sitting he said (M.B. 74, p. 142): "He had been assured by the other owners that no objection would be offered by the Pohe family taking the balance of Section 7, and as Mr. Gardner did not desire to include their houses or cultivations near the bush edge in the north he would not appeal."

The facts that they did not appeal against the award of the Court of 1925 and that they acquiesced in the sale of a portion of No. 7 to Gardner do not, in this Court's opinion, bear out their allegation that they were not at any time in agreement with the allocation made by the 1924 Court.

On the revision of the Hineuru lists under the provisions of section 46 of the 1928 Act the Pohe family were allotted 1,950 shares out of a total of 50,026—that is a greater award than they obtained in the 1925 Court, which had investigated the ancestral rights of the grantees.

At the 1929 Court, a Committee was set up which investigated the "takes," allotted shares, and reported to the Court. Some objections were raised to the Committee's report, and the Court, after dealing with them and making the sundry alterations that it considered necessary, adopted the report as amended, and on the 5th October, 1929, made an order in accordance therewith defining the relative interests. The Pohes were represented at this Court. No objection was made by them, and they lodged no appeal against the definition of relative interests as specified in the order of the Court.

On the partition of 1934, seven members of the Pohe family were allotted 7B 1, 703 acres, taking up 1,543 of their shares, valued at £677. Two other members, entitled to 387 shares, took their interests in Tarawera 6B, and the remaining member, who is in 7B 1 for the bulk of his shares, took the balance in 10C 5.

A rehearing of this award was applied for, on the grounds that the boundaries of the land sold to Gardner came too far south and included some of their kaingas, that the land awarded to them in No. 7 was not sufficient to take in the whole of the interests of their family, and that, in addition to the award under Ngatihineuru, they should have been awarded some portion of the land allotted to Kahutapere. The rehearing was dismissed by the Court, and consequently an appeal was lodged and advertised for an Appellate Court sitting at Hastings. Before, however, the appeal could be heard the appellants withdrew it in open Court, and it was dismissed.

As to the area of the land partitioned off to pay costs and sold to Gardner, the Court has no means of knowing if the allegation in the petition that it was alienated at a price considerably less than its true value is correct. The freehold was purchased by a miller with the object of working the timber, but there is nothing to show that an appraisal of the timber was made by the State Forest Service or by any one else, nor was the consent of the Commissioner of State Forests obtained as would seem to be required by subsection (2), section 35, of the Forests Act, 1921. The Government valuation of the land was a little over 10s. per acre. Gardner offered £3 5s. per acre, or £11,908. This offer was accepted by Sullivan; and the Court, apparently satisfied that the consideration was adequate, confirmed the alienation.

Although subsection (2), section 35, Forests Act, 1921, refers only to a grant of a right to cut timber, the alienation of the freehold of a block of land with timber growing on it includes the right to cut the timber and, we think, comes within the provisions of subsection (2).

While on the question of timber, we were informed there was a considerable quantity left on some of the other divisions. The partition of 1934 is purported to be made on a valuation basis, but the valuation that was used was one by the surveyor for the purposes of the 1922 partition. In this valuation he did not place any particular value on the timber standing on the block, as the following examples show:—

"East and south side of high and broken country, high to medium mixed bush, red-birch, matai, rimu, and kahikatea: 12,000 acres at 10s., £6,000.

"Balance of bush country west of Taupo Road, fair to good mixed bush, rimu, matai, white-pine, and tawai: 10,700 acres at 15s."

It is very probable, therefore, that some partitions awarded on a valuation basis of from 10s. to 15s. per acre have timber on them to the value of several pounds per acre. Although this was not a ground in any one of the petitions, it was mentioned to the Court at the inquiry and we now draw attention to it.

Petition by William Baker and others (No. 66 of 1936).

The history of this matter is shortly as follows :—

Thomas Baker, the grandfather of the petitioners, went to Tarawera as a member of the armed constabulary. He married there a woman of Tuhoe, and took an informal lease of a portion of the Tarawera Block, including the land that was known as 5A. On this block his children were born ; and when his first wife died he married Rihī Nene, a member of the Ngatihineuru tribe. Rihī Nene was devisee under the will of Pani te Kaanga, a nominated grantee, to the extent of one-third of her interest, and in turn Rihī devised her interest to the following of her husband's children : Robert Baker, William Baker, and Mary Baker.

On the partition in 1922, 5A, containing 726 acres and 2 roods, was awarded to the three Bakers named above, and in pursuance of this order a Land Transfer title, Vol. 41, folio 40, issued.

The Court of 1925, although it cancelled most of the orders made in 1922, left the order for 5A as it was. In addition to this, the Bakers were awarded 449 shares each in the Hineuru award. Henare Peka, a brother of Robert, William, and Mary, was also included in the award for 449 shares.

At the Court of 1929, the order for 5A was cancelled, and the Bakers were included in the order defining the relative interests as follows :—

Robert Peka ..	..	..	..	..	..	..	118
William Peka ..	..	..	..	..	..	..	118
Mere Peka ..	..	..	..	..	..	..	118
Henare Peka ..	..	..	..	..	..	..	118
							472

Therefore, by this order they had their shares reduced from 1,796 to 472 and, in addition, the order in their favour for 5A was cancelled.

No appeal was lodged against this award. It was stated that they had no knowledge of the proceedings of the Court, and because a Land Transfer certificate of title was issued for 5A they did not think for a moment that the block would be in any way affected by the proceedings. On the allotment of shares to the several partitions in 1934, 5A was valued at £1,685, which equalled 3,841 shares. It was decided to award it to the Baker family, but as they had only 472 shares Mihiroa Tinimene had to be included in the title for 3,569 shares to make up the area.

A rehearing of this award was applied for and dismissed, and an appeal was lodged which came before the Appellate Court in June, 1935, and was also dismissed. It was argued before the Appellate Court that they had an indefeasible title for 5A and that the Court of 1929 was wrong in disregarding and cancelling it. The Appellate Court, however, held that the issue of the Land Transfer title for 5A did not preclude the Native Land Court from taking that part of the Tarawera Block into consideration in dealing with the matter under section 46 of the Act of 1928.

The petitioners now ask that Tarawera 5A be deemed to be excluded from the scope of the investigation under section 46 or that, in the alternative, the petitioners be awarded compensation for the land they have lost through the inclusion of 5A within the provisions of section 46.

The position complained of has arisen almost wholly through the Act of the Legislature in 1924 in reopening the whole matter, and we do not consider that because the petitioners had a Land Transfer title issued to them before 1924 that they were thereby placed in any better position than the representatives of the other grantees who had divisions awarded to them in 1922, but did not obtain Land Transfer titles.

The comments regarding timber in the report on the petition of the Pohe family apply to this petition also. The Court was given to understand that this is one of the divisions on which there is milling-timber and if the timber were appraised the value placed on it might necessitate a somewhat different award.

Petition by Matewai Utiera and others (No. 301 of 1936).

The petitioners in this case are the representatives of Hoani Ngarangi, one of the persons whose names were inserted in the title in pursuance of the Act of 1920.

On the partition of 1922, the petitioners, six in number and an outsider, were awarded Tarawera No. 3, containing 3,740 acres, in equal shares.

The Court of 1924 did not disturb this award, but made an additional award to them of 752 shares in the residue, the Ngatihineuru division. On the 6th October, 1927, the Native Land Court incorporated Tarawera No. 3 and appointed the whole seven owners as a committee of management. The body corporate, we were informed, sold the timber to one, Gardner, but no particulars of the transaction were supplied to us --we understand the agreement has expired by effluxion of time, although the timber has not all been taken off. There was in this case, also, no appraisal by the State Forest Service or consent by the Commissioner.

The Court of 1929, by implication, cancelled the order for the residue, and for No. 3 the former owners of No. 3 were included in its order defining relative interests for 2,393 shares.

The Court of 1934 again located these shares in Tarawera No. 3. As stated before, this block contained 3,740 acres, which was equal to 5,110 shares, valued at £2,242. As the Utiera family had only 2,393 shares, it was necessary to include other owners to make up the total shares.

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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