

SESSION II.

1921.

NEW ZEALAND.

NATIVE LAND AMENDMENT AND NATIVE LAND CLAIMS ADJUSTMENT ACT, 1920.

REPORT AND RECOMMENDATION ON PETITION No. 313/1915, RELATIVE TO SHARES ALLOTTED
TO OWNERS OF WAIRARAPA-MOANA BLOCK.

*Presented to both Houses of the General Assembly in pursuance of Section 32 of the Native Land
Amendment and Native Land Claims Adjustment Act, 1920.*

Office of the Chief Judge, Native Land Court, Wellington, 17th August, 1921.

Wairarapa Lake and Pouakani. Petition 313 of 1915.

ENCLOSED I forward the Court's report therein.

Pursuant to section 32 of the Native Land Amendment and Native Land Claims Adjustment Act, 1920, I make the following recommendation: That legislation be passed—

1. Authorizing and empowering the Native Land Court to inquire and determine whether the relative interests in which the Maori owners hold the Pouakani Block, mentioned in section 57 of the Reserves and other Lands Disposal and Public Bodies Empowering Act, 1914, as ascertained and defined by an order of the Court dated the 22nd January, 1915, are fair and equitable as representing the proportionate undivided share that each Maori owner was entitled to according to Native usage and custom in the land known as Wairarapa-Moana, formerly held under certificate of title of the Native Land Court dated the 13th November, 1883, and make an order accordingly.

2. If it finds such relative interests are not in the circumstances fairly and fully ascertained and defined, power to be given to redetermine and redefine them in such manner as shall seem to the Court just and equitable, to make an order accordingly, or amend or cancel the former order, but without prejudice to the title of the owners to the said Pouakani Block.

3. Upon any order made thereunder maturing, the District Land Registrar for the Auckland Land Registration District, upon production of such order with a plan approved by a Judge of the Court endorsed thereon, together, if necessary, with a list of the Maori owners and their respective relative interests, to be authorized, without further warrant, to issue a certificate of title in fee-simple in possession to the said Maori owners as from the 22nd January, 1915. The Court to be declared to have had jurisdiction to make succession and trustee orders as from that date.

R. N. JONES, Chief Judge.

The Hon. Native Minister, Wellington.

In the Native Land Court of New Zealand, Ikaroa District.—In the matter of the Pouakani Block, and of a reference by the Chief Judge under section 32 of the Native Land Amendment and Native Land Claims Adjustment Act, 1920, for inquiry and report regarding Petition No. 313 of 1915, respecting the shares allotted to the former owners of the Wairarapa Lake.

THIS matter came before the Court at Carterton on the 9th August, 1921, and the following report is submitted:—

1. The title to the Wairarapa Lake was investigated by the Native Land Court, and a certificate of title under the Native Land Act, 1880, ordered to issue in favour of 139 owners named therein.

2. The certificate of title is dated the 13th November, 1883, and does not ascertain the amount of the proportionate undivided share that each owner of such land was entitled to according to Native usage and custom, nor does there appear to have ever been any application to determine such shares.

3. In two instances names are grouped together as showing them entitled to one share among the respective groups, but this has always been understood to indicate that those persons were participants in the same right, but not that they owned any particular aliquot share of the land.

4. It was not compulsory, nor was it usual, where the owners were numerous, to define the shares, and there is nothing in the minutes or on the face of the order to show the shares were intended to be equal.

5. The Crown having entered into negotiations for the purchase of the lake, an application was made to the Court on the 6th November, 1895, to define the Crown's interest therein. In the course of these proceedings it would appear that the Crown entered into a voluntary arrangement, dated the 13th January, 1896, by which representative Natives conveyed the whole lake to the Crown upon the condition that the Natives should be paid £2,000 and receive ample reserves out of other lands to be left to the Minister to define.

6. On the 14th January, 1896, the Court made an order vesting the lake in the Crown.

7. Section 53 of the Reserves and other Lands Disposal and Public Bodies Empowering Act, 1907, recites that it was expedient to reserve lands as set out in the agreement for sale in the locality of the lake, but it was proposed to purchase land elsewhere to the value of £5,000 and vest it in trustees for the Natives, and authority was given accordingly, and to dispose of the foreshore of the lake unencumbered by the agreement.

8. Section 57 of the Reserves, &c., Act of 1914 recites that in place of purchasing land it was then desired to grant certain Crown land to the Maori owners of the lake or their successors, and the Native Land Court was directed to compile a list of such owners, and thereupon to make an order determining their relative interests in the land to be vested in them. A certain portion of the Pouakani Block could by Proclamation be vested in such Maori owners, and the latter was then to be entitled to such land in proportion to their several interests as determined by the Court.

9. It must be manifest that the Natives could hold no relative interests in land which was Crown land and not yet vested in them, so it must be assumed that the Court was to determine the shares or proportions in which the Maori owners according to Maori custom and usage had held the lake, and that this was to be applied to the Crown land to be vested in them.

10. This was the view the Court evidently took when it determined the interests in 1915, but unfortunately, owing possibly to some misconception, there was no proper hearing to determine these shares. According to the Minute-book Wairarapa 31, page 2, the Court commenced to hear the matter on the 21st January, 1915. Several Natives asked for an adjournment to confer, while among others opposing the adjournment was one who apparently alleged the relative interests were already defined. The Court eventually decided: "It is better to adhere to the certificate of title, giving a share to each person named therein, except where the certificate indicates that a number of persons should take one share between them. If the door is opened there would be ceaseless wrangling and applications for inclusion from the North Cape to the Bluff. It is therefore decided to adhere to the names and shares set out in the certificate of title."

11. It is quite evident there was no evidence taken as to the respective rights. The judgment seems to be founded on the impression that the shares had been defined by the certificate of title of the 13th November, 1883. This may have been caused by lists on the file showing the original owners as entitled to one share each, but a reference to the original certificate shows the shares as undefined.

12. An order was thereupon made, dated the 22nd January, 1915, purporting to declare the persons beneficially entitled to receive the Pouakani Block, and that they were so entitled in the relative interests set out after the name of each of them respectively.

13. It does not appear that any appeal was lodged against this order. In paragraph 8 of the petition the petitioners allege they approached the late Chief Judge with a view to obtaining a rehearing. There must be some confusion about this, as he had no power to grant a rehearing, and probably the opinion said to be expressed by him that he concurred in the Court's decision has arisen from a misapprehension, for, in writing on the 14th April, 1914, he says, referring to a previous application, "A Court will sit at Wellington on the 29th instant to define the relative interests of the Native owners, as *this apparently was not done at the hearing on the 13th November, 1883*, although on the distribution of purchase-money the basis of equal shares was practically adopted by the Natives themselves."

14. The petition is dated the 19th July, 1915, and was before Parliament in September of the same year, so that, beyond perhaps missing the time for appeal if such was open to them, the petitioners cannot be said to have slept on their rights, and it is quite evident that before and at the trial a considerable section was objecting to the principle of equal shares for all.

15. Several of the petitioners purported to withdraw their names from the petition, leaving only about three persons out of those who signed assenting thereto.

16. This Court has come to the conclusion that the relative interests of the Maori owners of the Wairarapa Lake have not been determined according to Native custom, and consequently that the shares and interests in the land vested in them in Pouakani Block are not fairly and equitably adjusted.

17. Between the 22nd January, 1915, and the 14th April, 1916, when the Proclamation issued vesting the Pouakani Block in the Natives (*Gazette*, 1906, p. 1105), several succession orders were made. Seeing the land was still Crown land, it is doubtful if the Court had in the meantime jurisdiction to make those orders.

Dated this 17th day of August, 1921.

For the Court,
R. N. JONES, Chief Judge.

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