

objection was made in respect of the inclusion of additional persons in the same way in other subdivisions. It is evident that the owners generally considered that these additional persons were entitled to interests in the block, although they had not been included upon the investigation in 1870.

Had there been any substantial objection to the inclusion of these persons it may be that the Court would have found itself unable to admit them in this manner. There was a right of appeal to the Supreme Court from the decision of the Validation Court in any matter of law. We consider that the question of the power of the Validation Court to admit these persons on the succession order would be a question of law upon which there would have been a right of appeal. No appeal was made. Furthermore, no question appears to have ever been raised as to the jurisdiction of the Validation Court to determine the relative shares and to make the orders which it did.

In view of the fact that the additional persons were included in the title with the general consent of the tribe and that the mother of the first-named petitioner withdrew the objection made by her, and the long lapse of time since the decision of the Court complained of, this Court can find no justification for a reopening of the title on this ground. It must be recognized that, in view of the lapse of time and the death of those who had a knowledge of the rights of the various owners, at the time when the investigation was made there is very much less likelihood of the Court being in a position to make a fair and just determination as to the rights of the owners than there was in 1896.

(22) As to the allegation that persons in one block became owners in several, the history of the proceedings outlined above shows that there was good reason for this, and therefore this allegation does not disclose any injustice. Clause 7 alleges that non-sellers were penalized to the advantage of sellers. In this connection the Court refers to the pronouncement of the Court as to the interests of the sellers set out in paragraph 16 of this report. The petitioners have not produced any material to show that this finding by the Court and the subsequent allocation of interests to the sellers resulted in any injustice to the non-sellers.

(23) As to the claim put forward by the conductor for the petitioners that no persons other than the descendants of Konohi were entitled as owners of the block, there is no allegation in the petition to support this claim, and therefore the Court refused to entertain it.

(25) In conclusion the Court is of the opinion that, as the allegations in the petition either are not proved or do not disclose any injustice, there is no justification for the investigation sought by clauses 2, 3, and 4 of the petition.

Dated the 7th day of August, 1950.

For the Court,

D. G. B. MORISON, Chief Judge.

JNO. HARVEY, Judge.

[L.S.]

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