

SESSION I.  
1912.  
NEW ZEALAND.

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## NATIVE LAND CLAIMS ADJUSTMENT ACT, 1910:

REPORT AND RECOMMENDATION ON PETITION No. 244/09, RELATIVE TO TUTUOTEKAHA No. 1.

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*Laid before Parliament in compliance with Subsection (4) of Section 28 of the Native Land Claims Adjustment Act, 1910.*

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Native Land Court (Chief Judge's Office), Wellington, 3rd November, 1911.  
The Hon. the Native Minister, Wellington.

*Tutuotekaha No. 1.*

PURSUANT to section 28 of the Native Land Claims Adjustment Act, 1910, I referred to the Native Land Court for inquiry and report the petition (No. 244/09) of Mere Horomona and others herein.

I have received, and forward herewith, the report of Judge Jones on the matter, and beg to recommend that steps be taken to rectify the matter in accordance with the suggestion set out in paragraph 8 of the report.

File No. 4875 also enclosed.

JACKSON PALMER,  
Chief Judge.

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In the Native Land Court of New Zealand.—In the matter of the Tutuotekaha No. 1 Block, and of a petition (No. 244/09) by Mere Horomona and others in connection therewith.

To His Honour the Chief Judge of the Native Land Court.

THIS matter having been referred by your Honour to the Native Land Court for inquiry and report, I beg to report as follows:—

1. After due notice was given the matter came on for hearing at Wairoa in open Court on the 26th day of September, 1911.

2. The ownership of the Tutuotekaha Block was originally investigated by the Native Land Court in the year 1868, when the Natives desired to have four grants issued for the block, and nominated the grantees to appear in each division. On the 18th September, 1868, orders were accordingly made for Tutuotekaha Nos. 1, 2, 3, and 4 respectively, with ten grantees in each of the first three blocks and eight in the No. 4 Block.

3. There is nothing on the face of the proceedings to show that any trust was intended, but one would naturally assume that these thirty-eight persons were not the sole owners of the whole block, nor that the ten were the only owners of Tutuotekaha No. 1; and the tendency of the Native Land Court has been to hold that where other blocks were similarly dealt with at the same Court the ten grantees really held as trustees for the rightful owners. In addition, one of these blocks (No. 2) has been dealt with under the Native Equitable Owners Act, 1886, and a list of 223 owners found.

4. According to the records, applications were made under the Equitable Owners Act, 1886, in respect of the Tutuotekaha No. 1 Block, but were dismissed in May, 1891, probably because of the then Chief Judge's opinion that this class of title did not come within the province of the Equitable Owners Act. The fact there had been a sale of a share in the block would have likewise prevented the Court from dealing with it. The real reason of the dismissal does not appear, but evidently it was not upon the merits.

5. An application was likewise made under subsection (10) of section 14 of the Native Land Court Act, 1894, in the year 1896, and is noted by the Chief Judge, "Not sufficient reason for inquiry under subsection (10); no action to be taken." The matter could, of course, not be proceeded with in the absence of the necessary Order in Council authorizing the Court to exercise the jurisdiction.

6. Before the Court on this inquiry it appears that a list of some fifty persons to come into the title had been agreed to by the representation of some of the grantees; others of the grantees, by their representations, objected to the matter being reopened. It was apparent, however, from the discussion that the ten were not the only owners of the block according to Native custom.

7. It may be questioned, seeing that former applications were apparently not dealt with on their merits, whether the petitioners have exhausted their legal remedies, inasmuch as, if so authorized under sections 103 and 107 of the Native Land Act, 1909, the Court might proceed to ascertain the equitable owners (if any), unless it is held that the effect of section 432 of the Land Titles Protection Act, 1902, bars such action.

8. If action is barred the simplest way to rectify the matter would be to authorize and direct the issue of the necessary Order in Council to enable the Court to deal with the matter, leaving the parties then to take such action as they may be advised.

9. Since the issue of the original title the block has been divided into Tutuotekaha 1A, which has been sold, and Tutuotekaha 1B, which has still been retained by Natives and divided into four parcels, 1B1, 1B2, 1B3, and 1B4 respectively. These will necessarily be disturbed in any readjustment, but it does not appear that any of them have been surveyed.

26th October, 1911.

R. N. JONES, Judge.

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