SESSION I.
1912.
NEW ZEALAND.

NATIVE LAND CLAIMS ADJUSTMENT ACT, 1910:

REPORT AND RECOMMENDATION ON PETITION No. 225/08, RELATIVE TO OHUIA BLOCK.

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

Native Land Court, Wellington, 26th October, 1911.

The Hon. the Native Minister, Wellington.

Re *Ohuia Block*.

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 of Haenga Paretipua and others herein.

I enclose the report herewith, and beg to call your attention to paragraph 15 thereof. The Court referred to therein sat for months on the case, and when I eventually went to Wairoa to ascertain the cause of the delay in completing the matter I found that it was occasioned by the thoroughness of the inquiry.

I would most strongly recommend that the matter be not reopened, as I am satisfied that the parties have had a fair trial and have received substantial justice

JACKSON PALMER,
Chief Judge.

In the Native Land Court of New Zealand.—In the matter of Petition No. 225 of 1908, by Haenga Paretipua and others seeking inclusion as part owners of Ohuia No. 1 Block.

To the Hon. 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. The matter came on for hearing in the Court at Wairoa on the 26th September, 1911, after due notice given.

2. I was one of the Judges constituting the Appellate Court which excluded these people from the title, but the Natives were good enough to raise no objections on that score. Personally, had it been convenient, I should have preferred some other Judge to have taken the matter. No doubt, however, your Honour will make such allowances as are necessary on that score.

3. The title to this block has had such a chequered career that it may not be uninteresting to have it recounted here. First, then, the block was investigated by the Court, and seven persons were included as owners on the 25th September, 1868.

4. The next step was to reopen the matter under the Equitable Owners Act, 1886, and on the 19th February, 1889, an order was made substituting 270 owners for those found on the first occasion.

5. A rehearing of these proceedings was applied for, and on the 5th February, 1890, the Chief Judge made an order cancelling the order mentioned in paragraph 4, on the ground that the order on investigation of title was made under an Act to which the Equitable Owners Act did not apply.

6. Subsequently, the Supreme Court decided that such titles were within the provisions of the Equitable Owners Act, and the Chief Judge remitted this with other matters to the Native Land Court to be dealt with again.

7. On this block coming before the Native Land Court it was pointed out that the Court had already dealt with the matter in 1889, and a judgment was delivered on the 20th December, 1892, refusing for that reason to hear the matter, the Court having already decided.

8. The matter again came before the Native Land Court on the 18th October, 1894, when the Court, evidently presuming the Chief Judge's order still effective, proceeded to define the relative interests of the seven original owners.

9. In response to applications by the Natives, who apparently were at a loss to know how they stood, Orders in Council were issued, dated the 6th March, 1896, authorizing the Native Land Court to hear the matter under subsection (109), section 14, of the Native Land Act, 1894. The matter was heard, and on the 24th July, 1896, an order was made naming 217 persons in all as owners; and incidentally it cancelled the Crown grant and the orders mentioned in paragraphs 4 and 8.

10. Certain aggrieved parties appealed against this latter order, and when the matter came before the Appellate Court they found the title in such a tangle that they referred it to the Chief Judge. He then, to get over the difficulty, referred the original application for rehearing of the proceedings of 1889 (which is was contended were not put an end to by the Chief Judge's order of 1890) to the Appellate Court under the powers conferred regarding undealt-with applications for rehearing by the Act of 1894.

11. This, together with the other appeals, was heard on the 27th October, 1896. The Court varied the order of 1889, and found a list of 159 owners for the block. They also again cancelled the order of the Chief Judge of 1890, and the order for relative interests of 1894, and also cancelled the Native Land Court order of 1896.

12. For some seven years the title was allowed to rest, when a fresh element was introduced which eventually led to another reopening. The Appellate Court in the year 1903 heard an appeal *re* ascertainment of equitable owners in Hereheretau B Block. They held that the original grantees were not trustees, and, as the circumstances attending the investigation of several other blocks, including Ohuia No. 1, were similar, both the grantees and those claiming and equitable owners conjoined in petitioning Parliament, each party with the reverse object in view, to get the various titles reopened.

13. A Royal Commission was accordingly set up by section 11 of the Act of 1904, and it reported in favour of legislation, which was passed in 1906, reopening the titles of the several blocks appealed against affected by the varying decisions of the Native Appellate Court.

14. In February, 1907, an Appellate Court consisting of three Judges found that this block (*inter alia*) was affected by a trust, and they later proceeded with two Judges to rehear, as directed by the Act, the original applications, and on the 12th March, 1908, they made an order finding that 317 persons were entitled.

15. The Appellate Court, knowing that there was no ordinary appeal against its decision, gave the Natives every latitude and facility for properly proving and testing their rights, as it was hoped to have some finality at last.

16. The Court was assisted by a committee appointed by the Natives, who first of all carefully scrutinized the various lists submitted. Where there were no objections the lists as passed were adopted and brought before the Court, published before all the people, and, if there were no objections, those named were finally accepted as owners by the Court. Where the lists were disputed they were in each case fought out on their merits before the Court, evidence on oath being given for and against, and the evidence on the former inquiries and also in adjoining blocks was looked at to test the value of the later evidence. If the persons named in the lists were found entitled they were admitted; if not, rejected. That the Court took the most literal view it could is manifest in the fact that the number admitted by it exceeded those of the former occasions, due, no doubt, to the fact that the matter was thereby contested.

17. The list submitted by the present petitioners to the Court was of considerably larger dimensions than the one lately produced, the conductor saying he had shorn it of all but those who had a manifest right. It is extremely probable that if a list of the present modest dimensions had been submitted to the Appellate Court some of them at any rate would be admitted, as they have apparently rights under an ancestor not set up for the larger list. They would scarcely be entitled to any appreciable interest or the Natives in the spirit with which they worked with the Court would scarcely have objected to them, or, if they had, the Court would have discovered from the evidence and occupation that their rights were being ignored. The Court can safely say that on the evidence before it it would not, if it had the power, be justified in granting a new trial of the matter, as the parties had ample opportunities to set up and prove their rights in the Appellate Court. At the same time, this Court is not prepared to say that some injustice has not been done these people. Your Honour is well aware from the nature of trials in the Native Land Court that where there are disputes as to ownership it is extremely difficult to decide without causing some injustice. On the one hand, the Natives often assume the Courts know as much as they do themselves, and neglect to bring out the full aspect of their case; on the other hand, there are so many attempts at what are popularly known as "try-ons" by those without right beyond bare ancestry that the Court has to be extremely cautious and jealously watch the proof lest the lists be flooded with people without right. For once let a list without right, no matter how insignificant or unimportant it looks in the first instance, it may be but the beginning of a large stream of persons who cannot logically be excluded if the other be admitted. But what makes the Court extremely cautious in this respect is that if the Natives once realized that these "try-ons" can be readily successful, the confidence of the Natives in the Court would naturally diminish.

18. Besides the claim through the ancestors of the Ohuia Block, the petitioners further claim that some of them are entitled through the Ohuia No. 1 overlapping the Wairau Block, in which latter block they are interested. This question was raised, and after evidence taken in 1868 a

dividing-line was then fixed between the two blocks. The Appellate Court did not consider on application under the Equitable Owners Act that they were justified in disturbing the boundaries laid down. In the 1889 Court the matter was also mentioned, but was treated as settled by the former decision. It is not as if there were an undisputed overlap for which owners might be admitted, but it is claimed by the other side that there is no overlap; in other words, the Court fixed as the boundary the one claimed by them.

19. It is alleged in the petition (or at least in the translation before the Court), paragraph 6, that Ropitini te Rito and Te Paea Newa are full brother and sister. This is a misapprehension which may have arisen in translation, as it was not claimed before this Court that they were anything but relatives. It is obvious a full sister could not be omitted properly; but, while Ropitini or his successors have been admitted, the Court has not been able to find Te Paea Newa's name in preceding lists adopted by the Courts, although it may have escaped attention.

19th October, 1911. R. N. JONES, Judge.

Approximate Cost of Paper.—Preparation, not given; printing (1,400 copies), £2.

By Authority: JOHN MACKAY, Government Printer, Wellington.—1912.

Price 3d.]