1913.

NEW ZEALAND.

NATIVE LAND CLAIMS ADJUSTMENT ACT, 1910:

REPORT AND RECOMMENDATION ON PETITION No. 435/1909, RELATIVE TO TUNAPAHORE BLOCK.

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

Native Land Court (Chief Judge's Office),
Wellington, 7th November, 1913.

The Hon. the Native Minister, Wellington.

Tunapahore.

I FORWARD herewith, in duplicate, report and recommendation in pursuance of section 28 of the Native Land Claims Adjustment Act, 1910, respecting the above-mentioned land.

JACKSON PALMER,
Chief Judge.

In the Native Land Court.—In the matter of section 28 of the Native Land Claims Adjustment Act, 1910; and in the matter of the land known as "Tunapahore."

Report, pursuant to the above-mentioned Section, on Petition of Kopu Erueti and Others.

THIS matter was duly inquired into by me at a sitting of the Native Land Court at Opotiki, on the 17th October, 1913, and following days. Mr. Myers (Bell, Gully, Bell, and Myers) appeared for Ngaitai, Mr. R. C. Sim for the Whanau Apanui, and Mr. Raureti Mokonuiarangi for the Whanau-a-Harawaka.

1. The primary question in this case is, Where is the location of the tribal boundary between the Ngaitai and the Whanau Apanui?

2. The Whanau Apanui claim that their boundary runs as far westerly as Pehitairi, while the Ngaitai claim their boundary runs as far north-easterly as a direct line inland from Tokaroa Rock via Rakautakihi.

3. There is no doubt that each party knows that it is claiming more than it is entitled to or can hope to obtain.

4. It is common ground to all parties in this case that Torere is the Ngaitai kainga and Marenui is the Whanau Apanui kainga. The position is shown on the sketch-plan hereto attached.

5. There is another question raised in this matter by a hapu of the Whanau Apanui who have to an extent intermarried with Ngaitai—namely, the Whanau-a-Harawaka. They claim that the disputed territory is Whanau Apanui land, but belongs only to the Harawaka Hapu of that tribe.

6. As the last-mentioned dispute did not come within the scope of this inquiry, I informed the parties that I could only consider whether a *prima facie* case for a new trial had been established or not, and that, if Parliament granted a rehearing, it would be for the Court to decide the position of the dividing-lines, and whether the Whanau Apanui or Whanau-a-Harawaka were entitled, and to what extent.

7. The Ngaitai have always been a brave and very intelligent tribe, and in ancient times were fairly numerous and held a considerable area of ancestral land. They never refused a fight, and always fought hard, and the consequence was that, after their wars with the Rongowhakaata, Ngatimaru, and Whakatohea, they became reduced in numbers, and their boundaries were effectively encroached upon by the Whakatohea on the west and south and by the Aitanga-a-

Mahaki on the east. On the north and north-east they lived in unison with the Whanau Apanui, until about thirty years prior to the wars between these two peoples in 1856.

8. This period of living in unison makes it more difficult to decide the boundary-line between them, as both sides have had occupation in modern times. The Whanau Apanui assert that they brought the Ngaitai on to their land so as to have them near to protect them (Ngaitai) from the Whakotohea, as the Ngaitai had become weakened through losses in war, and that it was not until the Ngaitai wanted to claim this permissive occupation as an occupation by right that disputes arose and war commenced between them. After the fight of 1856 peace was made, in accordance with which both sides were to go off Tunapahore. The Ngaitai honourably kept to the agreement, but the Whanau Apanui did not, but returned to the land and effected improvements, thus complicating the present position.

9. From the mouth of the Waiau River to Putikirua the ancient Maori occupation was along the coast-line, the hinterland being used mostly for hunting purposes and for retreat when hard pressed by an enemy. The occupation along this sea frontage was taken as extending to the hinterland *pro tanto* to its strength on the sea frontage. The occupation on Tunapahore was therefore a guide in determining the ownership and relative interests in the Takaputahi and Kapuarangi Blocks. *E converso,* in now reviewing the decision of these blocks, each party tries to show that the decision in Tunapahore is wrong inasmuch as it does not agree with the decisions in the other two blocks. I do not think I am called upon to analyse these decisions and give my reasons for disagreeing with them, as I consider there should be a rehearing as hereinafter shown. I therefore feel that it would not be advisable to prejudice the hearing by giving any further opinion than one sufficient to justify a *prima facie* case for rehearing.

10. The first decision in Tunapahore was given by Judge Mair, who fixed the boundary as shown on the attached sketch-plan. The value of this decision was called in question in the Native Appellate Court (Edger and Johnson, Judges; and Hemi Erueti, Assessor), which awarded the whole 5,446 acres of Tunapahore "to Whanau Apanui, of whom we think Whanau-a-Harawaka have the better right."

11. To sum up these decisions, it will be seen that Judges Mair, Edger, and Johnson, and Assessor Hemi Erueti (a very honourable and reliable Assessor) have all decided that the boundary of Whanau Apanui comes to the south of the Hawai River.

12. In consequence of dissatisfaction with these decisions a Royal Commission was set up to (*inter alia*) review and decide in regard to Tunapahore. This Commission, which consisted of Mr. Seth-Smith and Mr. Hone Heke, decided to adopt the Hawai Stream as the boundary, thereby awarding all the Whanau Apanui cultivations south of this river to the Ngaitai. This caused so much dissatisfaction that the assistance of the Hon. Sir J. Carroll and the Hon. A. T. Ngata was invoked, and they tried to adjust matters by allowing Whanau Apanui an area, on the south side of the stream, sufficient to cover their cultivations; but, as the suggestions made were not accepted, jurisdiction was conferred on the Native Land Court under section 28 aforesaid.

13. It is obvious, therefore, that the only persons of all those above mentioned who have decided that the Whanau Apanui claims did not come south of the Hawai River were Messrs. Seth-Smith and Hone Heke. Mr. Seth-Smith was under many disadvantages when sitting on that Royal Commission; and its findings in other matters have proved wrong. If I were called upon, without going into its merits, to decide which I would rather trust to be correct—the Royal Commission or Judges Mair, Edger, and Johnson, and Assessor Edwards—I would not hesitate to say the latter; but, apart from this, after reading the evidence placed before the various tribunals, I am satisfied that, if this were an ordinary case under section 50 of the Native Land Act, 1909, where application had been promptly made, I should have granted a rehearing.

14. Mr. Myers has argued very forcibly and strenuously that I should not recommend a rehearing unless such would have been granted by a Court other than the Native Land Court upon well-founded legal principles. In reply I have to say that the Native Land Court Judges have found it necessary to abandon the ordinary principles at law in such matters as rehearings, because the Native Affairs Committee, in granting rehearings by statute, has not adhered to such principles. We have therefore adopted the practice pursued by Parliament, and have ignored most of the legal principles applying to rehearings.

In this case I would recommend legislation granting a rehearing, as though the same had been granted by me under section 50 of the Native Land Act, 1909.

JACKSON PALMER,
Chief Judge.

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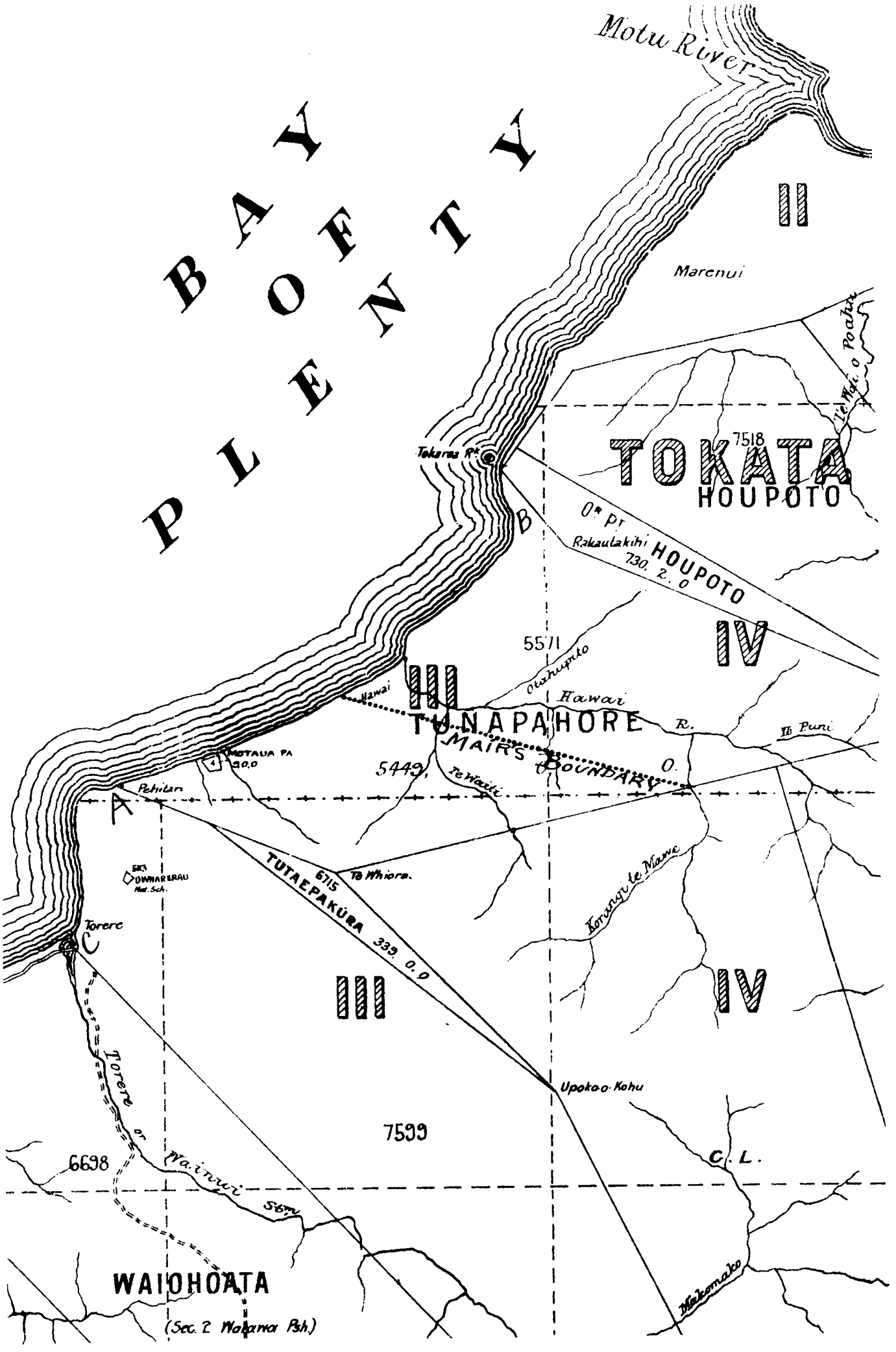

Sketch-plan of

TUNAPAHORE BLOCK,

Showing Boundary as fixed by Judge Mair.

Scale: 1 mile to an inch.

1400 2/14 41.