

15. The present position of the title therefore seems to be—

- (1.) The order of investigation of title of the 31st August, 1892, with relative interests defined, unaltered in any way. This is in the Land Transfer Office, and the land in that title is now vested in the Maori Land Board.
- (2.) An order for equitable partition, dated the 28th May, 1917, founded on the order of the 31st August, 1892.
- (3.) An order, dated the 12th September, 1919, purporting to be under the 1917 Act, striking out six names from the title, and redetermining the relative interests.
- (4.) A further order, dated the 7th October, 1920, for equitable partition, founded on the order of the 12th September, 1919.

16. The petitioners complain that the order of the 12th September, 1919, was not arrived at after due trial, and that it does not properly define the relative interests of the beneficial owners. It is therefore necessary to refer to the proceedings before that Court.

17. The case started out by the conductor who represented the petitioners, on the 5th June, 1918, intimating to the Court that they claimed that 224 out of the 390 owners were objected to as without right, leaving 166 admitted owners. It is also apparent, though it was not so stated, that these 166 were not all of equal right. The ones objected to were admitted to be in most cases descended from the ancestor, but it was claimed that their particular branch had left the land in an earlier generation, and thus ceased to have any rights. Judging by the minutes, which are very sparse, some seventy-five of those objected to seem later to have been admitted as owners, but to have lessened rights than other owners.

18. At this stage the proceedings were adjourned and did not resume till the following year. The Natives say that a committee had been set up by the Court, consisting of four persons representing the acknowledged owners, four representing those objected to, and a chairman selected from the admitted owners. Presumably this committee submitted a general scheme of allotment, which, when brought before the Court, evoked some criticism. Among others objected to by the finding was the personal party of the conductor who had in the first instance brought the matter before the Court, and who now found his personal claims coming into conflict with his duty as conductor for those desiring exclusions. Under these circumstances he found himself compelled to cease to act as a general agent, and in declining to any longer so act he seems to have taken the only course open to him, and no blame is attachable to him.

19. This phase, however, evidently put the parties at a disadvantage, because there was no recognized head to champion the rights of the principal owners, nor does there appear to have been any attempt after this at any combination of groups to show any reasons why the persons first objected to were not entitled as alleged. Indeed, some evidence was given that those objected to ought not to be rejected altogether, but should be retained in the lists and get lesser shares; and eventually only six out of the 224 first objected to were absolutely rejected. The Court then went on to settle the relative interests.

20. This was done by calling for lists of the different groups, allotting shares to the groups according to the varying degree of ownership, ranging from four shares down to one share, according to their supposed rights, and then allowing the groups to adjust the total shares so allotted among its members.

21. If the Natives were given full opportunity of asserting their own rights and testing those of others, it may be possible that the scheme proposed would work out justly.

22. The Natives, however, claim that they did not on the hearing get that full scope and opportunity to have the matter threshed out that they claim they were entitled to, and that they were hampered by the Court procedure in their attempts to object to the various lists.

23. The Court cannot say how far this is borne out by the facts. The minutes apparently do not contain a full record of what took place, as both sides admit incidents not recorded, and where objections were recorded the evidence taken was either very meagre or else not fully recorded.

24. The actual allotment of the relative interests among twenty-one lists and several sublists, according to the minutes, took only about three days. On the 9th September the lists and whakapapas (genealogies) were handed in. On the 10th September list No. 1 was taken and shares awarded. On the 11th lists Nos. 2 to 15 had their shares allotted; and on the 12th lists Nos. 16 to 21 were completed. In an ordinary case, requiring allotment of shares among 390 persons, unless the people were practically unanimous it would be absolutely impossible to satisfactorily adjust the shares in so short a time. So far from being in agreement, it is apparent the feeling was all the other way. There had been a keen contest at the original hearing, lasting over a lengthened period. Much evidence had been given then, claiming occupations, and citing names, localities, and circumstances. Some of these were admitted and others warmly disputed. The parties had petitioned Parliament, claiming that over two hundred persons, not owners, were in the lists, and they had made the same claim at the beginning of the Court proceedings. The usual practice is for those objected to, to prove their occupation either by fresh evidence or reference to past evidence, and for the witnesses to be cross-examined in an endeavour to break down their evidence. Then, possibly, evidence in rebuttal might be called.

25. The only conclusion this Court can come to after weighing the probabilities is that, whatever the reason, the parties did not get that full and free scope to have their claims and objections heard in open Court which every Maori should have of right in the Native Land Court, if his rights are to be properly determined.

26. As the parties were practically unanimous in deciding the six names referred to in paragraph 11 were without right, it would seem that they could conveniently be dropped from the title without injustice.