

SESSION II.

1923.

NEW ZEALAND.

NATIVE LAND AMENDMENT AND NATIVE LAND CLAIMS ADJUSTMENT ACT, 1922.

REPORT AND RECOMMENDATION OF NATIVE APPELLATE COURT ON PETITION No. 21/1921, BY RANGIHAWE TE KAHU AND OTHERS, RELATIVE TO THE IDENTITY OF THE PERSON NAMED RAHO IN GRANT No. 3749 OF THE OKAHU BLOCK, WEST COAST SETTLEMENT RESERVES.

Presented to Parliament in pursuance of Section 51 of the Native Land Amendment and Native Land Claims Adjustment Act, 1922.

THE NATIVE APPELLATE COURT, NEW ZEALAND.

SIR,—

Wanganui, 15th March, 1923.

We have the honour to state that, sitting as the Native Appellate Court, we have at Wanganui this day inquired, as directed by section 51 of the Native Land Amendment and Native Land Claims Adjustment Act, 1922, into the claims and allegations made by the petitioners in a petition to the House of Representatives, No. 21 of 1921, by Rangihawe te Kaho and four others, respecting the identity of the person named as "Raho" in Grant No. 3749 of the Okahu Block, and report thereon as follows:—

Mr. R. C. Sim appeared for the petitioners, and Mr. Currie for the children of Te Raho.

As the petition and records show, the question is whether the name of "Te Raho" in the Crown grant is a clerical error for "Te Kaho."

Mr. Sim satisfied us that Te Kaho was a person who on an investigation of title by the Native Land Court would probably have been held entitled to an interest in the Okahu Block, and who, no doubt, if living (and if dead, his issue) might properly have been included in the grant. He was, in fact, dead at the time the recommendation for the grant issued. There are no doubt other persons also entitled who were omitted. That, however, is clearly not the question we have to consider, which is one of identity merely.

The allegations of the petitioners have been the subject of a previous inquiry and report by the Native Land Court, which is dated 7th July, 1922, and is attached to the Native Department file 1922/402. This report recommends legislation. In forwarding the report to you on the 15th September, 1922, the Chief Judge expressed himself as not convinced that the Native Land Court had come to a correct conclusion, and gave certain reasons. Subsequently section 51 above referred to was passed, directing this Court to inquire and report.

It was properly admitted by Mr. Sim, and it is quite plain, that the burden of proof is on the petitioners to establish that an error in the name has occurred. The Court is not entitled to presume anything of the kind. The presumption of law is entirely the other way.

It will be convenient to discuss the inquiry and report of the Native Land Court and the Chief Judge's comments thereon.

Clauses 1 and 2 of the Native Land Court's report are, in our opinion, entirely correct. They show that Te Kaho, a man, died about 1879 (some three years before Sir W. Fox's recommendation for the Crown grant), leaving issue; that he was quite distinct from Te Raho, who died in 1914, and also left issue; that Te Kaho drew rent from Okahu while alive, and that the chief witness and conductor for Te Raho's family admits that Te Kaho should have been in Okahu Block, but was omitted with many others.

It is to be noted, however, that one of the witnesses for the petitioner—namely, Tonga Awhikau—makes a statement which discloses a fact that possibly had some bearing on subsequent proceedings. He states that Te Kaho received £100 in rent about 1879 from one Caverhill, but did not share it with the other persons interested. Owing to this the others had a grievance against Te Kaho, who died shortly after. This witness says the Crown grant for Okahu was issued in 1866 or 1867; subsequently, in cross-examination, that it was issued in 1869. Sir W. Fox's recommendation for the grant was dated 11th January, 1882, and the grant itself, of course, issued later, on the 22nd May, 1882. This witness had a good deal to say as to the age of Te Raho. We will refer to this point later.

The Native Land Court's report, paragraph 3, says: "The Court file for Okahu contains a copy of the grant, but the copy shows an alteration in the name, either from 'Raho' to 'Kaho,' or from 'Kaho' to 'Raho'—it is not clear which." It is quite plain, however, that the alteration is from "Raho" to "Kaho." But we must confess ourselves entirely unable to understand why this copy is referred to. It has no probative value whatever in regard to the question at issue. No one knows who made the copy or who made the alteration, and certainly there is nothing to show any authority for the alteration.