

1907.
NEW ZEALAND.

NATIVE LAND COURT AND NATIVE APPELLATE COURT

(DECISIONS OF) RELATIVE TO WILLS IN FAVOUR OF EUROPEANS AND THE ADOPTION AND SUCCESSION OF CHILDREN.

Return to an Order of the House of Representatives dated the 17th July, 1907.

Ordered, "That there be laid before this House a return showing the recent decisions of the Native Land Court and Native Appellate Court in regard to wills by deceased Maoris to Europeans, and in regard to adoption of children and the succession of such children to the adopting parents; together with an outline of facts necessary to explain the principles of such decisions."—(Mr. NGATA.)

COPIES OF JUDGMENTS *IN RE* WILLS BY DECEASED MAORIS TO EUROPEANS.

NATIVE LAND COURT.—THURSDAY, 21ST JANUARY, 1897.

(Before W. E. GUDGEON, Esq., Judge.)

Decision of the Native Land Court in the Matter of the Application of Angela Elizabeth Karaitiana for Probate of the Will of her Deceased Husband, Albert Karaitiana.

In this case no objection has been raised as to the due execution of the will, nor has it been alleged that there is any impropriety in the fact that a husband has devised his real estate to his wife. The point raised is that the Court has no power to grant probate to a will made by a Maori in favour of a European.

Mr. Scannell, acting for Henare Tomoana and others, the nearest-of-kin to the deceased, contends that section 117 of "The Native Land Court Act, 1894," restricts the alienation of all Native lands, except such as therein mentioned, and that this restriction on alienation includes also land devised by will.

It is not the intention of the Court to deal with this case and its arguments at any great length, for it is, to say the least, unlikely that judgment of this Court will be allowed to settle a point of so much importance to the community.

The general policy of the Act of 1894 is undoubtedly in the direction of restricting the alienation of all lands, and it may be that the Legislature intended that Maoris should not devise their lands to Europeans. But for the Native Land Court to declare that an Act intended to do a certain thing, it must have some grounds on which to base such an opinion. As I have said, the policy and tenor of the Acts are in favour of the theory that the devise of real estate to Europeans was not anticipated, but the absolute wording of the Act does not support the theory. The words of section 117, as amended, read, "Except as in this Act provided it shall not be lawful," &c. The question then is, what does this Act provide? Section 46 enacts, "The Court shall inquire whether the testator has devised land to a person other than his successor." Now, the definition of "person" in the interpretation clause of the same Act is comprehensive: it is "Native or European, and includes a corporation." Here, then, the devise to Europeans is clearly contemplated.

It is admitted that previous to the passing of the Act of 1894 the Maori could and did devise lands held under English tenure to Europeans. This was decided by Mr. Justice Conolly *in re Mangapai*. And by section 33 of "The Native Land Laws Amendment Act, 1895," any doubts are removed as to the application of section 117 of the Act of 1894, for the section in question declared that, subject to section 46, nothing in that Act shall be deemed to have taken away any right of testamentary disposition held by any Maori. It does not say, subject to section 117 as amended by section 3 of the Act of 1895. As I read and understand the Act, section 33 interpreted the Act of 1894 as regards wills, and says in effect that, excepting always the provisions of section 46, the right of the Maoris to make wills in any one's favour is not affected by the Act of 1894, and if this reading is correct then we need not consider what the effect of section 117 might have been under other circumstances.

The notice of the Court has been drawn to the last paragraph of section 51 of the Act. This, however, does not seem to affect the question now at issue; all that the paragraph referred to does is to define a certain class of wills over which the Native Land Court has not exclusive jurisdiction.