

him he left his interests in his aunt's share of the Karamu Reserve to a Native named Te Whare-angaanga, and the deceased's relations were disposed to recognise this disposal, had the Act under which the land is held admitted of a devise being recognised. Notwithstanding this, however, it may be accepted as evidence that the deceased did not intend his interest in his aunt's share to go to his adopted child.

The Court, after considering all the circumstances of the case, and weighing the evidence given by the several witnesses examined on the point raised that an adopted child would succeed his foster-father as a matter of course, to the exclusion of other blood-relatives, is of opinion that, excepting in very exceptional cases, an *ohaki* is necessary to vest the foster-father's property in the adopted child to the exclusion of others of a closer degree of consanguinity. Judgment will therefore be in favour of the nearest-of-kin.

---

NEW ZEALAND NATIVE LAND COURT.—JUDGMENTS delivered by Judges EDGER and MAIR, and APERAHAMA TE KUME and HEMI ERUETI, Assessors, at Hastings, on the 19th June, 1895.

*Decision respecting the Rights of an Adopted Child.*

THREE cases have come before this Court for rehearing respecting the rights of an adopted child to succeed to the interests of its adopting parent, and also involving a consideration of the Native custom of *ohaki*, or verbal devise. These cases are—(1) Succession to Te Awaawa in the Awarua Blocks; (2) succession to Reihana Wahapaukena in the Karamu Reserve; (3) succession to Henerieta te Hei in Otawhao A. Before giving a decision in each particular case, we will state the general conclusions we have arrived at upon the Native customs of adoption and *ohaki*, after a consideration of the evidence given and the numerous authorities and decisions referred to during the hearing of the three cases.

In the case of Te Awaawa, Mr. Sainsbury argued that the Native custom to be taken into account was the custom existing at the particular time, and not the custom as it may have existed in olden times. As he specially asked for an expression of opinion on this point, we will say that we cannot at all agree with this view, which appears quite contrary to the established meaning of "custom," an essential feature of which is that it must have existed from time immemorial.

Mr. Baldwin, in dealing with this question, contended that there could be no Native custom affecting titles that have been in existence only some twenty or thirty years. To our mind, the custom to be taken into consideration is the custom as it has existed amongst the Maori race from time immemorial. Whether such custom is applicable to the different circumstances of to-day is another question that will be treated later on in the course of this decision.

First, as to the Native custom of the adoption of children: (1.) Complete adoption would be where the child was taken in early infancy, and lived with its adopting parent up to marriage or manhood. (2.) Where the adoption was not of this complete character, the surrounding circumstances would have to be taken into consideration in determining the rights, if any, of the adopted child. (3.) It does not appear that any special ceremonies or formalities were observed upon the adoption being made. It would be sufficient that the adopted child be generally recognised as such. (4.) The adopted child would almost invariably be a relative by blood of the adopting parent. (5.) If the adoption were made with the consent of the hapu or tribe, and the adopted child remained with such tribe or hapu, it would be entitled to share the tribal or hapu lands. (6.) Under such conditions it would be entitled to succeed to the property of the adopting parent. (7.) If there were no near relatives, and the adopted child had duly cared for the adopting parent in his old age, he would succeed to the whole of the interest of the adopting parent. (8.) If there were near relatives, the adopted child would share in the succession. (9.) The adopted child would lose his rights if he neglected his adopting parent in his old age, or ceased to act with, or as a member of, the hapu or tribe. The rights of adopted children, as above set out, might be modified if the adopting parent made an *ohaki*.

We will now state what appear to be the essential features of an *ohaki*: (1.) It is the verbal expression of the wishes and intentions of a Native, shortly before his death, regarding the disposal of his property. (2.) It must be made in the presence of, or be made known to, his near relatives. (3.) It would seldom or never be made in favour of a complete stranger in residence as well as in blood. (4.) By old Native custom, an *ohaki* would be held binding, and be acted on without question, by the relatives of the deceased after his death. (5.) It has been argued that an *ohaki* must be made *in extremis* or under circumstances when dying depositions would be taken, but we do not consider that this would be an essential condition.

We will now consider to what extent the Native custom of *ohaki* is applicable to the circumstances of the present day. In olden times, inasmuch as the tribal lands were held jointly and not individually, the property to be affected by an *ohaki* was, first, the personal property, and, secondly, such limited rights in land as may have existed by virtue of use and occupation. Under the changed circumstances of to-day, an *ohaki* could have no effect upon land unless it be held to apply to the interests of individual Natives as awarded by the Native Land Court. We think it reasonable that it should be held to apply to such interests, and Natives themselves consider that it does so apply.

A further question is whether a written will can have the effect of an *ohaki*. It will be seen, from the description above set out, that an *ohaki* differs widely in character from a will, as ordinarily executed, and the decision whether it can be treated as an *ohaki* will depend upon whether it has been made with the knowledge of the near relatives. If it fulfil this essential of an *ohaki*, it can, we think, have effect as such. We will give our decision in each separate case.