

The present so-called Native custom of succession has grown up or become defined in the Native Land Court since the time when ancient tribal rights to land began to be converted into a European recorded title. The earlier decisions respecting the rights of adopted children considered that adoption alone did not necessarily entitle an adopted child to succeed to the whole of the property of the adopting parent, but that such complete right might need to be supported by an *ohaki* (verbal will), or might depend partly upon the circumstances of the case. Later decisions have, however, ruled that where the adoption is considered proved an adopted child is to be looked upon in the same light as a child of the body, and is, in the absence of children of the body, entitled to succeed to the whole of the property of the adopting parent. Such rule may, therefore, be now considered as fixed, and to have become a part of the present Native custom of succession.

But this Court is now asked to enlarge or further define the Native custom of adoption as applied to succession, by deciding—(a) that an adopted child would be entitled to succeed his foster-sister; (b) and this notwithstanding that such foster-sister had been herself adopted into a different family; (c) that adopting parents are entitled to succeed the child they have adopted.

There certainly never was any ancient Native custom of succession under the conditions named. The most that can be urged is that the Court should now rule that such further rights following upon adoption logically grow out of the custom as hitherto defined, and can be now made a part of Native custom as recognised by Court. Where there is a Native custom applicable, the Court is to decide according to the law of New Zealand. It may also be said that it would be expedient to bring Native custom, as regards ownership of land, into line as far as possible with European law.

By "The Adoption of Children Act, 1895," an adopted child does not acquire the right to succeed a foster brother or sister, nor can he take property from the lineal or collateral kindred of the adopting parent by right of representation. His right is confined to acquiring property directly through the adopting parent. It appears, however, that the adopting parents can succeed to the property of their adopted child dying intestate without issue—*Vide In re Carter* (VII Gazette Law Reports, 577)—as by the adoption all rights between the child and its natural parents are terminated, except the right of the child to succeed its natural parents; and, therefore, the only persons left who could succeed to the adopted child are the adopting parents.

The Native Land Court has already extended the rights of adopted children under the Native custom of succession further than the law of New Zealand would authorise, and we think it neither expedient nor necessary to further enlarge such custom in divergence from the law of New Zealand. There has not hitherto been any decision by the Native Land Court that under the Native customs of adoption and succession adopting parents are entitled to succeed to the lands of the child they have adopted, but who predeceases them; but, as it agrees with the law of New Zealand, we see no reason why it should not be incorporated into the present Native custom of succession, more especially as natural justice would seem to require that adopting parents should have even more right to succeed to the child they have adopted, and upon whom they have expended their substance and fostering care, than the adopted child would have to succeed them.

Coming, now, to the present case: We do not consider it proved that Tapata Wiremu was adopted by Hekiera Paora. Not much evidence was given in the Court below on that point, and the decision then given was occupied more with discussing what right an adopted child would have than in determining whether or not Tapata Wiremu had been adopted. But, even supposing the adoption of Tapata Wiremu by Hekiera Paora to be proved, it would not, under the law of New Zealand, entitle him to succeed Heni Hekiera; nor do we think that the Court should rule it to be a part of Native custom that an adopted child has any right to succeed his foster-sister. It thus becomes a question who are entitled to succeed Heni, the parents who adopted her, or the next-of-kin to her father, Hekiera Paora. The next-of-kin are all remote, none being nearer than second cousins.

We decide that the persons entitled to succeed Heni Hekiera, as regards the interests derived through her father, Hekiera Paora, are her adopting parents, Hapareta Rore and Mere te Hiko.

Lest it should be contended at some future time that the logical effect of this decision would be to entitle the adopting parents to claim also the rights derived through Amiria, we will say that, in our opinion, the claim of the half-brother, as regards interests derived by the deceased through the common parent, is to be preferred under the Native custom of succession to any claim by the adopting parents. The deposit of £5, less £2 retained for fees of Court, to be paid to Alfred L. D. Fraser, agent for Mere te Hiko.

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JUDGMENT of the APPELLATE COURT, delivered at New Plymouth on the 29th October, 1906, by H. G. SETH-SMITH, Esq., President, and C. E. MACCORMICK, Esq., Judge.—In the Matter of the SUCCESSION to ROERA RANGI, deceased.

In this case Hohepine Love and Tini J. Clements have separately appealed against the decision of the Native Land Court given on the 30th May, 1905, determining the successors to Roera Rangī, deceased.

The facts of the case so far as material to the present proceedings are that Ngarongo Kahu was in early infancy adopted by Roera Rangī in accordance with Maori custom; that Ngarongo lived with Roera, and continued to do so both before and after marriage; that Ngarongo was twice married, and had children by both marriages, four of whom are the subject of the present inquiry. Ngarongo and the majority of her children continued to live with Roera to the time of her death. Tongouri, the eldest, left when married, and two others appear to have gone away. When Roera was at an advanced age, and, as is alleged on behalf of the appellants, in an enfeebled state of mind, she registered four of Ngarongo's children as her adopted children, and these four children