

jurisdiction to destroy the trusteeship that existed, but the Court did do so, and partitioned the land amongst the owners, specifying them. It did not appoint a trustee in place of Apihai te Kawau, who had died, and it varied the restrictions on the alienability of the land. The Court by its orders stated that "so much and such part of the share of each owner as is set out in the third column of the said schedule is inalienable, except by a lease for a period not exceeding forty-two years. Provided that no fine, premium, or foregift shall be taken upon any lease, and that no part or parts of the said Orakei Sections . . . shall be leased without the consent of all the owners thereof." That is, the owners of each lot or subdivision could alienate their lot or subdivision without the consent of the owners of the other subdivisions or lots. By section 52 of "The Native Land Court Act, 1894," the Court had not power to vary the restriction in the grant. Section 52 reads as follows:—

"Any land heretofore or hereafter to be rendered inalienable may be rendered alienable, subject to the provisions of this Act; and any restriction on the alienation of any land heretofore or hereafter to be imposed, or recommended to be imposed, may be removed or varied, either absolutely or in respect of any particular alienation, by the Court, as to the whole of such land or as to any part or parcel thereof, or as to any estate, share, or interest therein respectively, with the assent of the owner, or of one-third in number at least of the owners, of such land, part, parcel, estate, share, or interest, and on proof that every such owner has sufficient land left for his support: Provided that restrictions on alienation existing prior to the thirtieth day of August, one thousand eight hundred and eighty-eight, may be removed or varied only by the Governor, on the recommendation of the Court and in accordance therewith."

A case was stated for the opinion of the Supreme Court as to the action of the Court, the questions being, "1. Is 'The Orakei Native Reserve Act, 1882,' impliedly repealed by 'The Native Land Court Act, 1894'? If this question be answered in the negative, the following questions are submitted: 2. Had the beneficial owners named in the several partition orders of the Native Land Court power (a) to lease the said land in terms of 'The Orakei Native Reserve Act, 1882,' without the intervention of any trustee? (b) Or are the beneficial owners named in the said partition orders thereby impliedly appointed trustees for themselves? (c) Or should the Native Land Court, when partitioning the land, have appointed a trustee in respect of each partition made in succession to Paora Tuhaere, deceased? 3. (a.) Does 'The Orakei Native Reserve Act, 1882,' enable the Native Land Court to grant confirmation under 'The Native Land Court Act, 1894,' notwithstanding that otherwise the said leases apparently contravene section 117 of the said Act, as amended? (b.) Or is any confirmation necessary of leases under 'The Orakei Native Reserve Act, 1882'?" And the answers given were as follows:—

CONOLLY, J.—"I am of opinion that 'The Orakei Native Reserve Act, 1882,' is not repealed by 'The Native Land Court Act, 1894.' The former Act applies specially to the Orakei Native Reserve, and authorises leases of the whole or any part thereof for any period not exceeding forty-two years, thus altering the Crown grant by which the land had been held inalienably. The Native Land Court Act, section 117, applied to Native lands generally, and therefore does not affect those which have been the subject of special legislation. The maxim, *Generalia specialibus non derogant* applies. With regard to question 2, (a), 'Had the beneficial owners named in the several partition orders of the Native Land Court power to lease the said land in terms of "The Orakei Native Reserve Act, 1882," without the intervention of any trustee?' my answer is in the affirmative. The Native Land Court has awarded them the land as owners, subject to certain restrictions, and has therefore apparently held that the intervention of trustees was unnecessary. Question 2, (b), requires no answer. Question 2, (c): It does not appear to be necessary, or even desirable, that a trustee should have been appointed under the circumstances. As to question 3, I think that the leases should be confirmed by the Native Land Court, and that the Court has full power to confirm them. I have already explained why section 117 of 'The Native Land Court Act, 1894,' does not apply."