

1908.

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.

[In continuation of G.-5, 1907.]

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.)

REFERENCE UNDER SECTION 43 OF "THE NATIVE LAND LAWS AMENDMENT ACT, 1895."

QUESTIONS having arisen as to the adoption of European children by Maoris, and it being necessary to have uniformity of decisions by the Native Land Court, the undermentioned questions relating to the subject are referred to the several Judges of the Appellate Court:—

1. Can an European child be adopted under any circumstances under the provisions of "The Native Land Court Act, 1894," or any Act amending the same—(a) Where the child although a relative has no Maori blood; (b) where the child is not a relative?
2. If an European child is adopted as aforesaid, what is its right in regard to succeeding to its adopted parents' property?

13th April, 1908.

JACKSON PALMER, Chief Judge.

Section 43 of "The Native Land Laws Amendment Act, 1895."

43. The Chief Judge shall have power from time to time to refer to the Judges of the Appellate Court, severally or collectively, any question of Native custom, or of practice and procedure, which he may think necessary to have decided for the purpose of securing uniformity in the decisions of the Court; and the opinion of the majority of such judges upon any question referred shall be binding upon the Court and upon all the Judges thereof, and shall be followed in all subsequent decisions of the Court and of the Native Land Court.

PER JUDGE JONES.

The questions referred seemed to have been framed upon an erroneous hypothesis. There can be no adoption, as far as I am aware, under "The Native Land Court Act, 1894," or any of its amendments. The whole question of adoption of children by Maoris, apart from "The Adoption of Children Act, 1895," rests upon Native custom and usage. All that section 50 of "The Native Land Laws Act, 1901," does is to regulate the evidence necessary to prove such an adoption. It is desirable to keep this in view, for, in my opinion, the section implies a *bona fide* adoption according to Native custom, or at least a *bona fide* attempt at such an adoption, before complete effective registration can take place. Assuming, therefore, that a *bona fide* adoption according to Native custom is intended, the first question resolves itself into, Could there under Native custom be an adoption of an European child? I think not. Whatever the other essentials of an adoption by Maoris, I take it that it was a guiding principle that the party adopted should not be of a stranger tribe. To hold otherwise would be to give to the individual a latitude which would not be claimed by or permitted to even a substantial part of a tribe. Much more, then, would an alien in race and colour such as a pakeha be barred. It follows that the party adopted must necessarily have some Maori blood.