

Section 31 to Henare Whakatau Uru and Section 104 to Ruru Uru, and all the rest of his estate to H. W. Uru and Ruru Uru. 7 acres at Te Pou o Patuki mentioned in will as having been "bequeathed to me by my sister" had not in fact been so bequeathed, and did not therefore belong to the testator.

Probate was granted by the Native Land Court on 9th October, 1893, to Henare Whakatau Uru, the executor named in the will, a note being placed on probate by presiding Judge that the 7 acres at Te Pou o Patuki were excepted from the operation of this will.

On 9th June, 1899, the Native Land Court made an order appointing the following successors to Mikaera te Horo (the same person as Mikaera Turangatahi): Hohepa te Rangi, one-third; Mirika, one-third; Wiremu Ratara, Rena Bradshaw, Meri Pari, Katerina Pari, Teone Pari, Kuini Pari, Kiti Ratara, one-third equally.

H. W. Uru appealed against this order on the grounds that the land had been lawfully devised, and that succession orders could not lawfully be granted except to the beneficiaries under the will. The Native Land Court had held that the restrictions barred the operation of the will, and the Native Appellate Court decided to state a case for the opinion of the Supreme Court on this point.

On 1st July, 1904, the Supreme Court held that the will was inoperative, but intimated it had not dealt with question as to whether the restriction had been properly inserted by the Governor.

The history of the litigation has been already set out, and there is no necessity to reiterate it here. Eventually, on the 2nd November, 1908, the Native Appellate Court affirmed the above succession order. Mr. Wright asked that this will should be validated on the following special grounds, in addition to the general grounds referred to at the commencement of this report: That will is very clear and definite, and shows how established custom of willing these lands had become; that it was executed in 1891, and probate granted in 1893, when no one thought of contesting it; that note on probate by Judge, that 7 acres at Te Pou o Patuki were excepted from operation of will, shows that Court intended these other lands to pass under the will; that in December of 1893, two months after probate granted to H. W. Uru, Hohepa te Rangi, the leading man amongst the successors, himself puts in an application for letters of administration or grant of probate, and was informed probate had already been granted to H. W. Uru; that duty has been paid on probate; that it was not until 22nd November, 1898, that Hohepa te Rangi made any objection (on that date he put in what purported to be an application under section 39 of the Native Land Court Act, 1894, and was subsequently advised by the Chief Judge to file applications for succession); that Uru was in possession of lands for a considerable time, then gave up possession, and then went into possession again and is still in possession; has built a house on this land (Section 31), and otherwise improved it; admits successors have also had possession for some time.

In reply, Mr. Bishop, for those claiming under the succession orders, maintained, in addition to general objections previously mentioned, that the mere fact of the Judge making a note on the probate of lands not owned by testator could not be taken as showing that he considered all other lands mentioned in the will passed thereby; that probate granted no title, and was issued by the Native Land Court as a matter of course, so long as will had been properly executed, &c. If the Judge granting the probate had considered these lands had passed by the will, would he have made the succession orders subsequently? That those claiming under the will would not suffer any hardship by being dispossessed, as they had had possession of lands they were not entitled to for some years.

In this case I am faced with this position: that the successors have been put to considerable expense in litigation which has, after hearings in the Native Appellate Court and Supreme Court, resulted in their favour. Would it be equitable to deprive them of the fruits of that success? I do not think so. On the other hand, the Urus, believing themselves legally entitled, have occupied these lands, built a house, and effected other improvements. Had the testator or they themselves been aware that the Governor's consent was necessary, it would no doubt have been obtained, for the testator had no family of his own to consider. The successors found by the Court are nephews and nieces. Expense to Urus also from litigation.

What seems to me a fair division would be to give the Urus the house and, say, 4 acres surrounding it. The Government valuation of Section 31 is—Unimproved, £420; improvements, £30: of Section 104—Unimproved, £450; improvements, £170.

As H. W. Uru and Ruru Uru are married to one another, and the house is on Section 104, which was devised to Ruru Uru, the Native Land Court would require to be empowered to alter the present succession order and include the names of H. W. and Ruru Uru for the share suggested above.

SECTION 32.

Title: Grant under the Crown Grants Act, 1862 (No. 2).

Area: 14 acres and 12 perches.

Restrictions prevent disposition by will.

Grantee: Te Teira Turakina.

On 17th October, 1885, a succession order was made in favour of Tini Kaiwae Tarapuhi. Minutes (Book 2, folio 20) show clearly that it was made in pursuance of a will. Order is, however, protected by section 432, Native Land Act, 1909.

On 10th June, 1895, a succession order was made appointing Hira Makarini successor to Tini Kaiwae Tarapuhi. Hira Makarini having died, on 17th December, 1908, a succession order was made in favour of Riaki Tauwhare. This was appealed from, the appellant's real object being to upset the original succession order in favour of Tini Kaiwae Tarapuhi. Appellate Court, of course, had no jurisdiction to do this, and the appeal was dismissed, as was a subsequent application to the Chief Judge for a rehearing under section 50 of the Native Land Act, 1909.