

SECTION 72.

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

Area : 15 acres.

Restrictions prevent disposition by will.

Grantee : Hoani Uru.

Hoani Uru died 5th August, 1898, leaving a will devising lands to " my wife, Kata Uru, for her sole use and benefit, with power to apportion them between our children after her death as she pleases."

Letters of administration, with will annexed, were granted to Henare Whakatau Uru on 22nd June, 1899. No succession orders have been made. Widow has always been in possession. Next-of-kin did not raise any objection to Kata Uru being confirmed in her ownership of this section.

This will should be validated so far as it affects this section.

SECTION 75.

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

Area : 14 acres 1 rood 1 perch.

Restrictions prevent disposition by will.

Grantee : Aperahama te Aika.

Aperahama te Aika died 13th April, 1889. He left a will dated the 29th day of June, 1887, probate whereof was granted on 13th February, 1892 (save as to 20 acres, part of the Greymouth Native Reserve), to Eruera te Aika. By this will this section was devised to Mere te Aika and Tini Arapata in equal shares. Mere was the daughter-in-law of the deceased, and Tini Arapata claiming to be the adopted child according to Native custom. The adoption of Tini has not been registered, but as the testator died before 31st March, 1902, section 50 of the Native Land Claims Adjustment and Laws Amendment Act, 1901, does not bar her claim.

At the hearing of the application for probate Taituha Hape, in his evidence, stated (Middle Island Minute-book 8A, folio 13), " I am unable to state if there is any restriction in any grant of these lands as to power of disposing by will."

Eruera te Aika (on folio 14, same book) gave evidence as follows : " When the reserve at Rakaia was settled my father, Aperahama te Aika, made provision for the children of my brother, Mohi te Aika—namely, 33 acres between the three children ; also, in Kaiapoi Reserve, 3 acres to two of the children, and 4 acres to one—43 acres altogether in the two blocks. He also included their names in a town section at Ashburton, and in 73 acres at Puharakekenui they hold interests with other Natives. Aperahama made provision for these children ; they did not succeed their father in Kaiapoi Reserve."

Mere te Aika and Tini Arapata entered into possession in 1889, and remained in possession till 1904, when Native Land Court made (20th October, 1904) a succession order in favour of Ruiha Mona te Aika, one-tenth ; Rahera Whitau, one-tenth ; Pari te Aika, one-tenth ; Amiria Kemara, one-tenth ; Tupae Reihana, one-tenth ; Eruera te Aika, one-half.

An appeal was lodged against this order by Mere te Aika and Tini Arapata, the main ground being that the restrictions contained in the Crown grant preventing dispositions by will were not lawfully included in the Crown grant, and were therefore inoperative.

The further history of this section is more particularly set out in the earlier pages of this report, it being the circumstances of this particular section that gave rise to the case of *Attorney-General v. Te Aika* (28 N.Z. L.R. 1100) before the Court of Appeal.

Shortly put, the decision in that case ran as follows : That, even assuming the restrictions were invalid as being repugnant to the grant, and not authorized by the Acts of 1856 and 1862 (on which point the Court expressed no opinion), the effect of section 5 of the Native Land Act, 1866, and section 22 of the Native Reserves Act, 1882, both of which sections applied to this grant—and even if those sections were enacted on the mistaken assumption that such a condition was validly imposed—was to validate the condition and make it lawful.

This result was not arrived at without great expense to both parties. Since date of succession order the successors have been in possession, and have received the rents and profits. Some of them sued Tini Arapata (Mrs. Tregurthen) for £35, being one-half share of rent. Case was undefended, and they obtained judgment (Plaint No. 38/1910, Kaiapoi). This was for rent under lease given by Mere and Tini to Byron Moody, and paid to devisees.

The Native Appellate Court, on 2nd November, 1908, dismissed Mere te Aika and Tini Arapata's appeal, and the successors have now had the rents and profits for seven years.

Shortly, the position now is that after much litigation and heavy expense the title of the successors has been definitely established in the Native Appellate Court by the decisions of the Supreme Court and Court of Appeal, and it is only the passing of the Kaiapoi Reserve Act, 1910, that gives the devisees an opportunity of bringing their claims forward once more.

The great lapse of time between the granting of probate and the making of the application for succession—nearly thirteen years, during the whole of which the devisees had been left in possession—would have inclined me to validate the will. But, as the matter now stands, both parties have had their rights defined by the highest Court in the land, after the issue of an Order in Council consenting to such action, and it would surely be unjust to deprive the successful party of the fruits of their victory. Also, it must now be remembered that the successful party have held this section for nearly seven years, and are entitled to consideration on that ground also.

I do not think will should be validated, but would urge that Government pay the costs of both parties, and consider question of compensation to the devisees.