

On H. W. Uru's appeal coming before the Native Appellate Court, that Court, finding that titles to other sections were affected in the same way, decided to state a case for the Supreme Court's opinion.

After a long interval the case was heard by the full Court, and a decision given on the 1st July, 1904, to the effect that the words "or otherwise" in the restrictions covered an alienation by will, and therefore the Governor's consent was necessary to the validity of any will of these lands. Sir R. Stout, C.J., dissented from this decision, and the Court raised the further question as to whether there was any power to impose the restrictions set out in the grant.

Some time later this matter came before the Native Appellate Court again, a large number of Natives being present, and Hone Maaka appeared for those interested in opposing the wills. After several of the leading Natives had stated their views, the Court (consisting of Judges Edgar and Palmer) adjourned till the afternoon. The Judges then made a statement of the position, and expressed the opinion that it would be necessary to state a further case for the opinion of the Supreme Court. A copy of their statement is attached, from which it appears that the Court was of opinion that the question as to whether a Native could devise these lands or not should not be answered by merely ascertaining the precise legal meaning of the restriction clause in the grant.

A further petition to Parliament by Taituha Hape and others followed some time later asking for validation of these wills on grounds of ancient right, protection of parents against undutiful children, and to enable husbands to make provision for their wives. A copy of this petition is attached. The reply received by the petitioners was that the legality of the restrictions must be settled by the Courts before Parliament could be asked to interfere.

This further question came before their Honours the Chief Justice and Mr. Justice Edwards in 1908 (*In re Native Land Court Acts* (28 N.Z. L.R. 646), when they held that the Governor had had no power to insert these restrictions in the grants. They also held that, in enacting sections 22 and 23 of the Native Reserves Act, 1882, the Legislature evidently having assumed that restrictions against alienation had been lawfully inserted in grants of land under the Native Reserves Act, and it being doubtful whether in enacting those sections under a mistake of law the Legislature had not validated such restrictions, it was the duty of the Native Land Courts to treat them as valid until they were declared invalid by the Supreme Court in proceedings in which all the interested parties were represented.

It will be seen from the foregoing that the question of the validity of the restrictions was still undecided, and it was finally settled by the Court of Appeal in *The Attorney-General and others v. Te Aika and others* (28 N.Z. L.R. 1100) in November, 1909.

The judgment was shortly 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 the grants in question—and even if those sections were enacted on the mistaken assumption that such a restriction was validly imposed—was to validate the restrictions and make them lawful; for in those sections the Legislature had expressly recognized the existence of such conditions, assumed that they were valid, and provided machinery for their modification or removal.

This litigation was spread over a period of ten years, and during that time first the successors had ousted those claiming under wills and had gone into possession under their succession orders, then the devisees in some cases had repossessed themselves of the lands, and finally the successors had come into possession again. Leases had been given by devisees and by successors—the tenants did not know to whom they were safe in paying rents—and trouble in many ways had arisen in connection with these lands.

In my opinion it would have been a comparatively easy matter to have dealt with this trouble when it first arose by legislative enactment; but at this date the matter has become so complicated that it is impossible to give anything like general satisfaction, or even to avoid injury to some of the parties.

Upon the opening of the inquiry at Kaiapoi on the 25th April last, Mr. Wright and Mr. Bishop, solicitors, of Christchurch, appeared and intimated that the former would act for those asking that the wills should be validated so as to pass these lands, and the latter for those interested in opposing. These gentlemen were present at all sittings, and were of great assistance.

The course adopted by me was to first hear the addresses of counsel, and evidence led by them in support of their views on the general question as to whether wills should be validated or not, and then to make a separate inquiry into the title of each of the sections (numbering about three hundred) included in the reserve. At the conclusion of this further addresses by counsel