

were heard, and, as particulars of the various leases and other dealings were not then available, it was arranged with counsel that they should be forwarded later. These particulars I have received, and they are attached hereto.

The conclusion arrived at after a lengthy inquiry was that no hard-and-fast rule could be laid down as a guide to deciding what wills should be validated or not, for the circumstances affecting the sections devised were in many cases entirely different.

I gathered from the evidence that if the Natives' complaint to Mr. Buller as to the omission of the women from the grants had not been met by his answer that they could will the lands the Natives would have insisted on the grants being recalled and amended. The impression given then that these lands could be devised was confirmed by the part taken by different Commissioners and officials of the Native Department in the preparation and execution of these wills, by the Native Land Court making succession orders in accordance with the terms of wills, and by both Supreme Court and Native Land Court granting probate and otherwise acting on them. The Judges granting probate did not intend to convey the impression that Kaiapoi lands passed by will—that was a question that was only raised in the last ten years. Provided that all requisites of execution, &c., had been complied with, the will would be passed for probate. Its effect was another matter altogether.

But that was not the way the Maoris would be likely to regard the granting of probate. In the earlier days, when an owner died leaving a will, a succession order in pursuance of the terms of such will was obtained, and later on, when probates were granted in place of the succession orders, the Natives appear to have regarded them as being orders of the Court vesting the lands in the devisees.

It seems to me that where a person to whom land has been devised has obtained probate, entered into possession, and remained in possession for many years, that the length of time he has held the land should count very much in favour of the validation of the devise under which he claimed. What length of possession should be deemed sufficient?

The earlier orders made in pursuance of wills are protected by section 432 of the Native Land Act, 1909, which says, "No order of the Native Land Court, Crown grant, or other instrument of title which at the commencement of this Act is within the protection of the Land Titles Protection Act, 1908, shall thereafter, on any grounds whatever, be called in question in any Court or in any proceedings." That is to say, any order made, even if in pursuance of a will, previous to October, 1892, is absolutely protected.

It appears just that the title of a Native under a will, probate whereof was granted prior to that date, which will the Court at that time considered passed the land, and under which the devisee entered into possession without opposition from any one, should be equally protected. Furthermore, as all the Natives claiming in Kaiapoi assented to devisees taking the lands for some years, and the question as to the meaning of the words "or otherwise" was not settled till *Uru v. Te Rangi* was decided in 1904, possession commencing even later than 1892 should be considered as giving good grounds for validating such a devise.

Under the last Native Land Act, if an order has been in existence ten years it is protected except against leave for rehearing granted by the Chief Judge, with the precedent consent of the Governor in Council.

Even where the person in possession had no title, and the land (like this reserve, not under the Land Transfer Act) was restricted from alienation by the terms of the grant, possession for twenty years was deemed to give a good title (see *Sampson v. New Plymouth Harbour Board*, 27 N.Z. L.R. 607; *Matthews v. Box*, 28 N.Z. L.R. 402; and, as to alienation barred by statute, *Earl of Abergavenny v. Brace*, L.R. 7 Ex. 145).

Here the persons claiming as devisees put forward as their titles wills by previous owners, probate whereof had been granted and possession thereunder assented to for many years. Even when the question of these restrictions came before the Supreme Court it was not definitely settled for some years, and until the matter had been three times before the Court, that the titles of the devisees were bad, and it was not a unanimous decision.

In each case, however, I have carefully considered other matters as well as length of possession, and endeavoured to give full weight to all circumstances in favour of those claiming as devisees, while at the same time giving due consideration to the fact that those claiming under the succession orders are legally entitled as next-of-kin and also to any equities in their favour.

Mr. Wright, in his closing address, suggested that all points that might be raised in favour of the devisees had not been decided. Firstly, it was possible the Court of Appeal had proceeded upon a wrong assumption as to the facts—that this was not a "reserve" out of the land actually sold by