

the Natives under "Kemp's purchase," but one of the "places of residence and cultivations" specially excepted from the sale. That being the case, he maintained there was not lawful authority for the imposition of the restrictions. I consider the Attorney-General *v. Te Aika* decision covers this.

Secondly, Mr. Wright argued that, it having been laid down in *The King v. Price* (24 N.Z. L.R. 291) that a devise of land restricted against "sale, mortgage, or lease for more than twenty-one years without the consent of the Governor" would pass the property to the devisee *clear of all restrictions*, therefore a succession order to the estate of a Native dying previous to the coming into operation of the Native Succession Act, 1881, would pass the property to the successor *clear of all restrictions also*. This he maintained was so by reason of the provisions of section 34 of the Native Land Act, 1865, section 57 of the Native Land Act, 1873, and section 3 of the Intestate Native Succession Act, 1876, which practically stated a succession order should have the same legal effect as a will. I cannot agree with him on this point either, as the reason for the decision in the *King v. Price* was that a will operated as an alienation, whereas a succession order was, under the Acts mentioned, a devolution of the estate according to Maori custom—the order had the same legal effect—*i.e.*, it passed the land to the person found entitled as successor by the Court; but it could not be deemed an alienation. In the words of Richmond, J., in *Mahupuku v. The A.M.P. Society*, "a will operates as a conveyance—that is to say, as an alienation—because it supersedes or interferes with what would otherwise be the course of descent or devolution." Under the Acts mentioned the Court had to ascertain the proper course of descent or devolution according to Maori custom, and make a succession order accordingly. It is not a matter of much importance, for, although I was unable to ascertain the exact date of death, in no case mentioned before me had the first succession order been made before 1883. As to succession orders made in pursuance of the terms of a will, I regard the wills as merely evidence upon which the Court founded its succession orders—no probates granted—and, as it was the orders that passed the lands, they are in the same position where protected by section 432 as other orders made in favour of the next-of-kin, and they do not pass the land clear of restrictions.

For other arguments for and against the validation of the wills I must refer you to the copy of my notes of counsels' addresses, attached hereto.

As regards the various dealings, particulars whereof are attached, Mr. Conlan, of Kaiapoi, solicitor, who appeared for a number of the lessees, maintained that the Natives, having obtained probates, it was, by section 48 of the Native Land Act, 1894, unnecessary to obtain succession orders, and the probates were the only evidence of title. This being so, the lessees had no other course but to pay rents to the executors or devisees; that they did so in all good faith, and no further claim should be allowed against them. He asserted—and I found it to be correct—that, although leases were properly executed after explanation by an interpreter, it had been the custom not to apply for confirmation; that now, by the Native Land Act, 1909, no alienation of Native land has any force or effect until and unless it has been confirmed, and application for such confirmation must be made within a limited time after execution. He strongly urged that South Island dealings should be released from the necessity of being confirmed, but I cannot see my way to recommend that.

I would, however, suggest as follows:—

1. That, as regards dealings with these Kaiapoi lands, neglect to apply for confirmation within the time limited by statute should not bar confirmation if the dealings are otherwise fair and equitable.

2. That all leases which the Native Land Court may think fit to confirm, and which were executed prior to the passing of the Kaiapoi Reserve Act, 1910, and which the Court was satisfied had been obtained in good faith and in the honest belief that the Natives executing the same were the owners or otherwise entitled to deal with the lands comprised therein, should be considered binding on the present owners or persons found to be entitled under any new legislation.

3. That receipts for all rents and other moneys paid in pursuance of such leases, and in good faith, and prior to the passing of the Kaiapoi Reserve Act, 1910, shall be deemed to be binding on the persons found to be entitled as owners, although the persons receiving such rents have since been found or declared not to be entitled; also, the devisees or others who received such payments shall not be sued for their return. This protection only to apply to payments made in respect of rent due and payable up to the passing of the Kaiapoi Reserve Act, 1910.

In this connection, see section 15 of the Maori Land Claims Adjustment and Laws Amendment Act, 1904.