

JOHN BARRETT SWORN.

To Mr. Bishop.] Hone Parete is my Maori name. Am original grantee. I remember Mr. Buller coming here to subdivide reserve; I would be about twenty years old. Mr. Buller came to allocate this land. I went South. Mr. Buller had my name in his list. This was in 1860. That was Mr. Buller's first meeting. I got a Crown grant. I understood I could not transfer it, and that we could only devise it to those entitled to succeed—that is, I had no power to will it away from the successor. I cannot say whether that was the general impression. I heard about the married women going to Mr. Buller because they had been left out of grants. Cannot give date. I was away from Kaiapoi for some years. I returned in 1887. It was after 1887 I heard about the women going to see Mr. Buller. Only hearsay—a rumour. Did not know of it firsthand.

Cross-examined by Mr. Wright.] I was not away altogether from 1860 to 1887. In 1880 I came here. Short visits only between 1860 and 1887. Did not know what was going on here in my absence. I suppose I could will my land to my children. No. 15 is my section. I could, I suppose, leave this to my wife if I wanted to.

Mr. Bishop: Can I close for present, reserving right to call further evidence later on.

Mr. Wright: I object.

After discussion, short adjournment taken to allow of conference between parties and counsel.

On resuming,—

Mr. Bishop: My friend and I have come to an agreement. I will close my evidence on general case now, but we have arranged that Mr. Wilson's evidence should be taken—for him to be examined by the Commissioner, and I to have right of cross-examination, and Mr. Wright to re-examine.

Mr. Wright: I agree.

JOSEPH LOWTHIAN WILSON.

To the Commissioner.] I am a journalist, residing at Kaiapoi since 1862. Since 1863 I have been closely in touch with Kaiapoi Natives. Present at all sittings of Native Land Court and Commissions of inquiry. Inquiry of Smith and Nairn 1879, and A. Mackay's 1888. In 1864, as agent for Mr. J. A. Fitzgerald, who indicated Native policy in 1862, I had frequent interviews with Natives and Canon Stack. At this time I never heard anything about wills. Mr. Fitzgerald's letters and speeches in direction of equal privileges for both races, and same laws as to lands. Mr. Rolleston's views the same—that ultimately same laws for both races. Rev. J. W. Stack arrived here 1859; left in 1899. During that time I heard little or nothing of any question about wills. I know personally Mr. Mackay and Canon Stack prepared some of the wills. Canon Stack gave me impression he had no doubt as to the legality of the wills. Probates have been granted in Native Land Court on many occasions. Canon Stack very high regard for fair dealing, and would not assist in any unfair wills. In many cases he said old men anxious to provide for their wives. I knew older men since 1863. High regard for their character. Do not think they would make wills for any improper purpose. My opinion is grants were accepted in good faith, and never examined for many years. It was suggested in 1864 by Mr. Clark, Protector of Aborigines, that an officer should be detailed to watch over the Natives' interests. For a quarter of a century after 1864 I never heard the question of these wills raised. Not till about 1894 did I hear any question as to wills. The Kaiapoi Natives, at any rate up till then, all recognized willing as a valid means of passing on their lands. They all believed they had the right to will. I never heard that they had any doubt as to their right to will. Canon Stack left Christchurch in 1899, but he left Kaiapoi about 1890, though he kept in close touch with Natives until he left Christchurch.

General case concluded.

Commission adjourned till 2 p.m.

ADDRESSES OF COUNSEL TAKEN AT CLOSE OF INQUIRY INTO TITLES.

Mr. Bishop: Three main points—First, as to legal inability to will; second, as to equities of devisees and next-of-kin; third, as to compensation. Kaiapoi Reserve part of Kemp's purchase, 1848. Indeed, "our residences and cultivations to be reserved for us and our children after us." Native Reserves Act, 1856, gave Commissioner power to impose restrictions (sections 6 and 7). Section 15 gave Commissioner power, with consent of Government, to convey subject to conditions. In 1862 these rights vested in Governor alone (Land Act, 1862, section 9). Section 10, power to make them inalienable. In 1859 partitioned by Buller, and in 1865 and 1868 Crown grant issued. *Attorney-General v. Te Aika:* Court of Appeal found foundation of grant Native Reserves Act, 1862, and Native Reserves Act, 1856. Definite policy: See Cooper, J., in *Uru v. Te Aika*, as to Governor's power to impose restrictions. *Mutu v. Public Trustee*, N.Z. L.R., 12/200, Prendergast, J., see p. 204. *Mahupuku v. A.M.P. Society*, 13 N.Z. L.R. 246: Inalienable, could not be devised; see p. 249, Richmond, J. First devise set aside was in 1899, when probate granted in 1893 was corrected by succession order. Native Land Court bound to do this in view of *Mahupuku v. A.M.P.* I submit that from this time—1899—the Natives knew land did not pass by will. Tika's evidence supports this (*Uru v. Te Rangi*, 24 N.Z. L.R. 390). Judgment of Denniston, J., p. 402. Edwards, J's., judgment: Judges held restrictions definite purpose. Government policy "or otherwise" deliberately placed in grant to prevent disposal by Native to will or otherwise. *Attorney-General v. Te Aika*, p. 548, G.L.R.: Reserve to be for "us and our children after us." Buller reported in favour of "entail." Not an informal technicality, as my friend suggests. Devisee would take by purchase, and would therefore hold land free from all restrictions. Now, as to equity. You have stated wills protected by section 432 would not be disturbed. My remarks only refer to probates granted since 1892. Grant of probate does not give devisee title to land. Section 75: Probate granted in 1892. Court of Appeal set aside