

orders, still retain the properties conveyed by the will, and even yet Maoris are now making their wills, which are passed by the Court. In 1899 Mr. Bishop nullified the will of Irai Tehau, and divided his property among the next-of-kin; nevertheless, at a late period, part of this land was given to a child which was adopted by his wife after the death of Irai Tehau. It would be well for all the wills to be examined, and the advice of Taituha Hape taken with regard thereto. He has much knowledge of the circumstances surrounding each. Were I well enough to undertake the duty I could be of great assistance, having been Native land agent for upwards of fourteen years, during which time I became intimately connected with not only the lands, but the rights of the owners. My opinions or statements would not be challenged by any of my Maori people.

There are five points, then, to be considered, and to which I beg to direct your attention.

First, *ohaki* was practised for many generations by our ancestors, and was the only way of leaving property.

Second, the first will and many subsequent wills were drafted for us by officials who were appointed by the Government to teach us and to look after our interests.

Third, That our wills were granted for many years in the ordinary course by the Supreme Court and also the Native Land Court.

Fourth, that afterwards the Supreme Court and the Native Land Court threw out these wills which they had granted before, and others also.

Fifth, that upon whom is this great expense to fall for the mistake of the Government, and for which the Maoris are in no way to blame. The expenses reach back now many years, and there is every prospect of much heavier expenses to be met in the near future.

A copy of this has been sent by me to the Commissioner.

H. TARE TIKAO.

COPY OF JUDGMENT IN RE MARY TE AIKA AND ANOTHER.

Judge Edgar : It appears to us that it will be necessary to state a case for the Supreme Court as to whether the Governor has power to insert restrictions in the Crown grant. In the case of *Uru v. Te Rangi* the Court of Appeal clearly indicated in its decision that the Court ought to state a case. Should that Court decide that the Governor had no power to insert restrictions in this grant a large number of titles will be affected—namely, all the cases where a will has been in question. Several of the cases set down for hearing by the present Court are concerned with the question of wills, and will therefore all be affected by the decision to be given by the Supreme Court. It seems to us, therefore, to be proper to defer dealing with all such cases until it is definitely known whether a will is affected or not on these South Island lands. In some cases before the present Court, although a will has been left by the deceased, the dispute is between two rival parties claiming to be entitled as next-of-kin, it having been supposed that the will had no effect owing to the particular wording in the grant. If the parties wish, we will hear and decide these cases between the parties claiming as next-of-kin, but it must be understood that any decision we may give may be liable to be disturbed by the Supreme Court as the Supreme Court decides. We will either hear these cases or adjourn them to a future Court, as the parties may wish. Although we feel compelled to state a case for the Supreme Court, in my opinion this is not the best method of having the matter settled. The Court of Appeal made a further or alternative suggestion—namely, that legislation be passed to set these doubts at rest; and in our opinion this should be done, as what is wanted is not simply a decision upon a special technical point, but that it may be made plain whether or not a Maori can will his interest in these South Island lands. To our mind, the settling of that question should not turn upon the precise wording of the restrictions in the grant. The intention as regards all these restricted lands has been the same—namely, that they shall be reserved for the use and benefit of the Native grantees and their successors; and it does not well carry out that intention when some of such lands can be willed, while others should appear, owing to slightly different wording of the restrictions, to be prohibited. In our opinion it should be made clear by Act if any or all of these lands can be willed. We have therefore decided, as well as stating a case for the Supreme Court upon the special point raised, to make a special recommendation to the Governor through the Chief Judge that legislation be obtained. If this is carried out it may render it unnecessary to go on with the special case to the Supreme Court. The suggestion that we intend to make is that a will be allowed of these restricted lands, but a will to a Maori only, a will to a European being absolutely barred, and therefore that a devisee that takes under a will shall take it under the same restrictions as exist under the original grant, just as he would if a succession order were made in his favour. The Court refers under this matter especially to the case of *Rex v. Price*, which decided that in that case, the interest having been disposed of by will, the restrictions ceased. In our opinion the restrictions ought to continue, and we think that this would carry out the original intention as regards the restricted land—namely, that they be reserved for the grantees and for their successors. The case where a Maori made a will leaving his children and widow landless, or his next-of-kin, that is guarded against by section 46 of the Act of 1894, which empowers the Court to bar the operation of the will for such portion of the estate as the Court considers should be set apart for the next-of-kin. Provision should, of course, be made to protect the titles already decided without dispute. These are the recommendations that we intend to make through the Chief Judge; and, as regards the cases that are before us, it will be for the parties to say whether they want them adjourned or gone on with—that is to say, where the dispute is between two parties claiming as next-of-kin.

Judge Jackson Palmer : If this Court do not now state a case it could not prevent the future Court stating the case. If a future Court sitting here was to go and state a case for the Supreme Court, and that Court decide that the Governor had no power to place such restrictions, they might upset all the work we may do here to-day, and that would cost the Natives a great deal more expense than if we were to do it now. We are sorry that they have been put to this expense of coming, but that is not our fault, and we do not want them to be put to extra expense in the future; that is why we adopt this course.