

1915.
NEW ZEALAND.

NATIVE LAND CLAIMS ADJUSTMENT ACT, 1913:

REPORT AND RECOMMENDATION ON PETITION (No. 113 OF 1911) OF CHARLES SMITH AND
TWELVE OTHERS RELATIVE TO THE INTERESTS OF MARARA TE KARAKA (DECEASED)
IN TE MAHANGA No. 2 BLOCK.

Laid on the Table of the House of Representatives pursuant to Act.

In the Native Land Court of New Zealand.

REPORT OF THE CHIEF JUDGE OF THE NATIVE LAND COURT ON PETITION (No. 113 OF THE YEAR
1911) OF CHARLES SMITH AND TWELVE OTHERS TO PARLIAMENT, PRAYING FOR AN INQUIRY AS
TO WHETHER THE INTERESTS OF MARARA TE KARAKA (DECEASED) IN TE MAHANGA No. 2 BLOCK
COULD BE DEVISED BY WILL, AND FOR CANCELLATION OF GRANT OF PROBATE OF THE WILL OF
THE SAID MARARA TE KARAKA.

In compliance with the provisions of section 2, subsection (1), of the Native Land Claims Adjustment Act, 1913, I referred this matter to the Native Land Court on the 23rd March, 1914. The Court sat at Wairoa on the 2nd December, 1914, and as no other Judge was available I held the inquiry myself, and elicited the following facts:—

1. The original restriction on the title to Te Mahanga No. 2 Block was as follows: “Inalienable by sale, or by lease for a longer term than twenty-one years, or by mortgage, except with the consent of the Governor being previously obtained to every such sale, lease, or mortgage.” (This restriction does not bar an alienation by will: *vide* 2 Gazette L.R., p. 368, *re* Rauruna Takeke; and *King v. Price*, 7 Gazette L.R., p. 45.)

2. Marara Karaka was on the 26th June, 1879, appointed sole successor to Maata Kereponga, an original grantee in the land (Te Mahanga No. 2).

3. Marara Karaka made a will in favour of Arapeta Hapuku and his wife Oriwia Parone and the latter's child, Teone Ngaruhe. The will is dated the 19th November, 1890, and the restriction above set out is not in conflict with its provisions.

4. Wairoa Minute-book, Volume vii, folio 47, shows that in December, 1892, applications for the partition of this block were pending before the Native Land Court (Judge Barton), and that Piripi Purupuru applied that Tare Mete (present petitioner) should conduct his case.

5. On the 14th January, 1893, this partition case was again continued before Judge Barton (Vol. vii, folio 70), and Tare Mete said to the Court, “I could not see Arapeta Hapuku at Napier, but I told his wife that I would conduct the case of Marara, the successor of Maata Kereponga. Arapeta has always acted as conductor for Marara.” The Court allowed him (Tare Mete) to act accordingly. On the 20th January, 1893, the subdivision of Te Mahanga No. 2 was completed by the Court and agreed to by its owners, and thereupon Tare Mete arose in Court and said (Vol. vii, folio 102), “It is the wish of all parties to have the land made inalienable.” The minutes continue: “Objectors challenged. None appeared. Request granted. The land to be inalienable except by lease.”

If the position is here reviewed it will be seen that Tare Mete, who was at the time appearing for Arapeta Hapuku, was by this action of having the land declared “inalienable except by lease” attacking the provision in the will of Marara Karaka, which was in favour of his own clients (Arapeta, his wife, and her child), unknown to them and behind their backs. It is quite possible that Tare Mete did not know of the existence of the will when he did so, but that excuse falls to the ground if he subsequently tried (as in the present case) to gain an advantage from what he then did in ignorance.

When the will was made it was, after probate, good and effectual in law to pass the interest of Marara Karaka, the testator, to Arapeta and his wife and her child, and it is questionable whether the order of restriction as above, made on partition some two years later by Judge Barton, even if otherwise valid—which is not admitted—was sufficiently retroactive to render