

the effect of the will nugatory. It is true that a will speaks as *at the time of the death of the testator*, but this general rule applies principally to the property under disposition. The death of the testator took place after Judge Barton's restriction was ordered. I need not, however, go into a review of the effect of Judge Barton's restriction order upon a valid will existing when the restriction order was made, because I must point out that Judge Barton had no power to make the restriction order, and his act in that respect was a nullity.

Prior to the passing of the Native Land Court Act, 1886, which was an amendment and a consolidation of the Native-land laws then existing, the Native Land Court acted upon what was called the Native Land Division Acts. By section 4 of the Native Land Division Act, 1882, power was given to the Court when dividing—*i.e.*, partitioning—land to impose restrictions, or to alter or vary them. This power was frequently exercised by the Judges of those days, but section 115 of the 1886 consolidation repealed all these former Acts and with them this section 4 of the Native Land Division Act, 1882; and it did not re-enact section 4 aforesaid or any substitution thereof, so that after the passing of the 1886 Act there was no longer any power in the Native Land Court to impose or alter restrictions when it made a partition—that is, the restrictions existing on the original title were brought down automatically on the subsequent partition titles. The practice of the Native Land Court in those days was very lax, and a lot of the Judges did not notice this change, but continued without jurisdiction to impose or alter restrictions on division (partition); and in the partition of Te Mahanga No. 2 in 1893 Judge Barton, without jurisdiction, altered the original restriction as above set out. The effect of such alteration, if valid, would have been to thereafter prevent the will passing the land.

If the Native Land Court proceedings had not been so lax when Judge Barton made this order in 1893 he would have seen from the amending Act, No. 37 of 1888, section 13, that Parliament had taken notice of the mistakes made by the Native Land Court Judges, and had validated their restriction orders made on partition up to the passing of the last-named Act, and no further.

It will be seen from the above and from the address in the present petition matter given before me by the petitioner Tare Mete (*vide* minutes of proceedings hereto attached) that he has quite misunderstood the position.

In my opinion, Judge Barton's restriction order is valueless, and if it were not so Tare Mete could not in any case be said to have any merits in his favour, as he acted for the beneficiaries under the will, and without their knowledge induced the Court, no doubt unintentionally, to alter the original restriction so as to deprive them of their legitimate rights.

I therefore respectfully recommend that no steps be taken to interfere with the operation of the restriction imposed by original title for Te Mahanga No. 2 Block.

Wellington, 31st August, 1915.

JACKSON PALMER,
Chief Judge, Native Land Court.

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