

NATIVE LAND COURT.—A. MACKAY, JUDGE.—20TH DECEMBER, 1893.—KARAMU RESERVE, *In re* NGAWAHIE, DECEASED.

*Judgment.*

THE case before the Court has arisen on the application of Renata Tauihu to succeed to a Native woman named Ngawahie in the Karamu Reserve, the land in question being held under the provisions of "The Karamu Reserve Act, 1889." The deceased died in June, 1889, and the object of the present inquiry is to ascertain who is the proper person to succeed to her interest.

Mr. A. C. Lewis, solicitor, appeared for the applicant, Renata Tauihu, and Mr. A. L. D. Fraser, Native Agent, for Reihana te Ua, the adopted child of the late Reihana Wahapaukena.

The applicant traced his relationship to the deceased, and asked that an order be made in his favour as nearest-of-kin.

Mr. Fraser opposed the application on the ground that the applicant was not the proper successor, as the late Reihana Wahapaukena, if alive, would have been entitled to succeed to the deceased Ngawahie, and, as he left no issue, his adopted child, Reihana te Ua, was, according to Native custom, the proper successor.

Evidence was called in support of the contention as to the right of Reihana Wahapaukena to succeed to his aunt Ngawahie, who predeceased him, and also as to Reihana te Ua being his adopted child.

The evidence taken on the 14th January last on the application to succeed Reihana Wahapaukena was also put in, by which it appeared that the deceased Reihana had made an *ohaki* (bequest) at the time of his death by which he bequeathed his interest in his aunt Ngawahie's share to a Native named Whareangaanga, but owing to the provisions of "The Karamu Reserve Act, 1889," prohibiting the disposition of the land comprised in the said reserve by way of devise, the *ohaki* could not be taken into consideration as an indication of the deceased's intention, it was ruled that he died intestate, and the adopted son was appointed successor. This decision has been appealed against.

In this case a difference of opinion appears to exist as to the line of descent through which the land was derived. On the one hand Renata Tauihu contends that it was derived from Pikitoitoi, the father of Reihana Wahapaukena, and on the other hand it is asserted on behalf of Pene te Umairangi that it was derived from Reihana's mother Rukareia. It would seem that Rukareia, who married Pikitoitoi and begat Reihana Wahapaukena, had been previously married and had had issue, and so likewise had Pikitoitoi. The latter by his first wife begat Paora te Muri, the father of Renata Tauihu, the present claimant. This, according to the evidence furnished, constitutes him a nephew to the deceased, Reihana Wahapaukena, and grand-nephew to Ngawahie. Pene te Umairangi claims to be a nephew of Kukurehia, the mother of Reihana Wahapaukena, and a second cousin to Reihana.

The chief points for consideration are—(1.) Was the whole or any portion of the interest of the late Ngawahie in Reihana Wahapaukena at the time of his death? (2.) In the case of a Native dying intestate, without issue, leaving an adopted child him surviving, is such child entitled, according to Maori custom, to succeed to the deceased by right of its adoption, in preference to persons more immediately related?

Touching the first point, the Court is of opinion that a portion, if not the whole, of the late Ngawahie's interest in the Karamu Block was in Reihana Wahapaukena at the time of his death.

As regards the second point, which depends entirely on Native custom, it is advisable under the circumstances, as Maoris have no fixed modes of procedure in matters of this kind that will furnish a precedent on which a basis can be established for determining the matter at issue, to adopt the principles so far as they may be applicable on which matters of this kind are determined by the common law of England, which is the embodiment of custom. Custom in English law is either general or particular. A particular custom must, like a general custom, be established as in force for a time—whereof the memory of man runneth not to the contrary. A custom must have been uninterrupted as regards right, though the exercise of it may have been disused; it must have been held without objection and be unopposed to other customs; it must not be unreasonable, nor uncertain in operation. Proof of the existence of a custom must be established by the evidence of experienced witnesses, or by such documentary evidence as the nature of the case may render available.

A number of witnesses have been examined in this case as to the Maori custom in respect of adopted children, but the result of the inquiry has not been to present a very clear idea of what the custom really was. This may be due, in regard to the evidence given by the majority of the Native witnesses, to their inaptitude to take an abstract view of anything, through the habit which prevails amongst the Maoris, if questioned on any matter, of considering some particular case in which they are personally interested, and suiting their evidence so as to correspond therewith. Of the nine witnesses examined on the subject as to whether a foster-child would succeed as a matter of course, only one gave positive evidence in favour of the contention; all the others either directly or indirectly admitted that a bequest was necessary to confer the property on the foster-child, to bar the right of the nearest-of-kin.

The adoption of Reihana te Ua by Reihana Wahapaukena seems to be generally admitted; but, according to the evidence, it does not appear that the deceased viewed it as a matter of course that his foster-child was entitled to succeed him in regard to all his property, nor did he intend that he should do so, as he bequeathed (by *ohaki*) shortly before his death his landed property and personal effects to other persons besides his adopted child, and amongst other dispositions made by