NATIVE APPELLATE COURT.—18TH MAY, 1906.—BLAKE-WELLWOOD APPEAL.

(Before Judges EDGER, MAIR, and JOHNSON, and HEMI ERUETI, Assessor.)

THE Native Appellate Court gave judgment at Hastings this morning in the Blake-Wellwood appeal case. Following is the full text of the judgment:—

"The question is, who are entitled to succeed the deceased in respect of lands that admittedly do not pass under the will, being inalienable lands? Applications for probate of the will, and for succession as regards lands not passing by the will, were dealt with by Judge Jones in February, 1905. Under the will, part of the estate is left to Eliza Hastings Blake, and part to Conrad Bryan Heatley, the husband of Hiraani. Probate of will was granted without dispute. As to lands not passing by the will, there was dispute between Hakopa te Ahunga, the next-of-kin, and the representatives of two children alleged to have been adopted by the deceased, Hiraani. Notices of adoption under section 50 (of 1901) had been registered in respect of both these children under the regulations then in force, which did not require any inquiry to be made by the Court prior to the registration of such adoption. Kathleen Hiraani Blake, one of the alleged adopted children, is a daughter of Mrs. Blake (a pure European), one of the devisees under the will, and of John T. Blake, a half-caste Maori. Hiraani, the deceased, was not related in any way to Kathleen, nor to either of her parents. Ralph Holden Wellwood, the other child alleged to have been adopted, is a second cousin to Hiraani.

Judge Jones held that the registration of adoption under section 50 was not conclusive evidence of the adoption, but that the onus of proof lay upon the party denying the adoption. He then proceeded to take evidence as to whether or not one or both of such children had in fact been adopted as alleged, and decided that Hiraani had expressed her intention to adopt both children, had endeavoured to carry out such intention, and that there was a *bona fide* adoption in each instance. Orders were accordingly made in favour of the two adopted children.

Hakopa te Ahunga, the next-of-kin, appealed. Upon the appeal coming on for hearing before Chief Judge Seth-Smith and Judge Palmer that Court agreed with the view held by Judge Jones, that registration was not conclusive, and that the Court was entitled to hear evidence to show whether or not the children had as a fact been adopted, but held that neither of the children had been effectually adopted, and that the orders made by the former Court must be reversed, and award made to the next-of-kin.

Upon this, application was made on behalf of the alleged adopted children that further evidence be received to prove the adoption, as such evidence, though available in the lower Court, was not called because Judge Jones intimated that it was unnecessary.

After consideration, that Appellate Court decided to allow the case to be reopened, and, in order that there might be finality, referred the case to be heard before a fresh Appellate Court consisting of three Judges and an Assessor not previously concerned on the case. An application to the Supreme Court for a writ of prohibition to prevent such further hearing before a fresh Appellate Court was refused, that Court holding that the Native Appellate Court had power to regulate its own procedure free from interference by any other Court. The matter thus comes before the present Court as an appeal from the original decision given by Judge Jones.

Two questions have been submitted to this Court for decision—(1.) Were the two children as a fact adopted? (2.) What effect must be given to registration of a notice under section 50? We deal with the latter question first.

The argument that such a notice is conclusive evidence of adoption was argued at the two previous hearings, and, with somewhat less confidence, before us. We have been referred to the cases of Barraclough *v.* Greenhough, and Hewitt *v.* Taylor, as bearing upon the distinction between "conclusive" evidence and "sufficient" evidence. The words used in section 50 are "sufficient evidence." We see no reason to dissent from the opinion expressed both by Judge Jones and Chief Judge Seth-Smith and Judge Palmer, that such registration is not to be taken as conclusive, at any rate, where such registration has been effected under the regulations as first issued, which did not require any inquiry to be made by the Court prior to the registration. Under the new regulations made under section 50, an inquiry is to be made by the Court as to the fact of such adoption according to Native custom; and where such inquiry has been held, and a certificate given by the Court to that effect, the registration may rightly be held to be conclusive. It is, however, open to question whether or not such amended regulations are *ultra vires*, as going beyond the statutory provision under which they are made. It is, in our opinion, necessary that this doubt be cleared away, and that the law be made certain, to the effect that to enable a claim by adopted children to succeed there must have been a prior order by the Court declaring the fact of the adoption after inquiry made in open Court. That would put the adoption of children by Maoris upon a similar footing to that by Europeans under "The Adoption of Children Act, 1895."

We now deal with the second question, whether these two children were as a fact adopted. This Court has read the evidence given before Judge Jones, and has also taken fresh evidence. As to the relationship existing between the parties to the case: Hiraani te Hei was, prior to her marriage, living in the Blakes' house as a member of the family; she was given in marriage by Mr. Blake, and there have been the closest ties of friendship existing between herself and Mr. and Mrs. Blake, both prior to and since her marriage. Hiraani was also an intimate friend of the mother of Ralph Holden Wellwood; they were in fact brought up together by Mr. Holden and his wife Keita Ruta, who was the mother of Mrs. Wellwood, and great aunt of Hiraani. Hiraani has never, on the other hand, had any close association with her next-of-kin, who belong to inland Patea, and with whom it is asserted she was not on the best of terms. There is clear evidence of the intention of Hiraani to adopt both children—in fact, this is not denied. The child Wellwood was bespoken by