

If I am correct in the view I take, then, as there can be no effective registration of an alleged adoption of an European, there can be no claim by adoption to the estate of the foster-parent. It is only fair to add that though the question has been raised and incidentally considered before me, it has not been argued or formally decided in my Court.

---

PER CHIEF JUDGE JACKSON PALMER.

Suppose an European man marries an European woman and they have an European son, A, and then the mother dies and the widower marries a Maori woman and they have a half-caste son, B (by our laws a Maori), A and B are half-brothers, and if the Maori (mother of B and stepmother of A) dies then B will succeed to the whole of her estate, and A will get none of it. If B then dies A will not succeed to his half-brother in any real property that the latter has acquired by inheritance from the Maori mother. If before the Maori mother's death she (willing to allow the half-brother A to succeed with her son B) adopts A as her *tamaiti whangai*, the Court would have to refuse to register such adoption, it being void. She could, however, adopt A under "The Adoption of Children Act, 1895"; but then A would only succeed to a share in her property on the principles laid down in section 7 of the last said Act. The Native Land Court Acts only provide for a mode of registration of a Maori adoption, and before such registration can be effected an actual adoption according to Maori custom must be *in esse*. According to the ancient law of Maori custom, it is obvious that there were no European children to adopt, and *ergo* there could be no custom of adopting European children. A Maori cannot adopt and register under the Native Land Court Acts any child unless such child has Maori blood in its veins.

---

PER JUDGE RAWSON.

All questions relating to the adoption by Maoris of children, and to the effect of such adoption upon the succession to the adopting parents' lands, should be decided in accordance with Maori custom, the statutory provisions simply requiring registration before effect can be given to the adoption.

My view is that under no circumstances could there be an adoption of an European child according to Maori custom.

Even where the child, although not of Maori blood, is a relative, the fact that it belongs to a different race seems to me to prevent the application of the custom of adoption.

There is no relationship between the Maori mother and the European child in the case submitted, and in my opinion an adoption by the mother of such child would not be in accordance with Maori custom.

This being my opinion, an answer to the second question is not required.

---

PER JUDGE MACCORMICK.

In my opinion, the legal status of an European child cannot be altered except by an order under the provisions of "The Adoption of Children Act, 1895." I am quite unable to see how the child could lose its right to the protection of the Act because the proposed adopting parent happened to be a Maori. The child is the dominant factor in the question, which must be determined by the law of New Zealand, and not by Maori custom. "The Native Land Court Act, 1894," and its amendments, do not create any method of adoption, but simply provide means of proving an adoption according to Maori custom.

My answer to the first question submitted must therefore be in the negative, both as to part (a) and part (b). In the view I take of the matter it is, of course, useless for me to refer to the second question.

---

PER JUDGE BATHAM.

1. I do not think that the adoption by Natives of European children is sanctioned or contemplated by "The Native Land Court Act, 1894," and its amendments. As "The Adoption of Children Act, 1895," does not except Natives from its operation, they are apparently within its scope and may adopt European children. This effect may not have been contemplated by the Legislature in passing the Act.

2. Requires no answer.

---

PER JUDGE EDGER.

In giving an opinion on this matter, I assume that the later regulations, dated 15th March, 1905, regarding adopted children are of full force and effect, though there is some doubt whether they are not *ultra vires*, as going beyond the provisions of section 50 of the Act of 1901.

As the existing law (including the regulations) provides that an inquiry shall be held to ascertain whether an adoption proposed to be registered is a *bona fide* adoption according to Native custom, the answer to the questions submitted is to be found in considering what are the essentials of an adoption according to "Native Custom."

So far as I am aware, there is only one judgment of the Court attempting to define those essentials (decision given at Hastings on the 19th June, 1895, *re Te Awaawa*, deceased, and other cases). It is there laid down that a child adopted will almost invariably be a relative by blood.