

It is to be remembered that the main idea at the root of most Native customs has been the strengthening and consolidating of the tribe. The adoption of a child belonging to an alien or strange tribe could hardly be said to conduce to such strengthening or consolidating of the tribe of the adopting parent. Hence the rule above referred to.

A child of pure European blood would stand in the same relative position as the child belonging to an alien tribe.

I am therefore of opinion that a child of pure European blood cannot be adopted if unrelated by marriage to the Maori proposing to adopt.

Where, however, the child, although of pure European blood, is related through marriage, I think it would be in accordance with Maori custom to allow adoption.

Such a case might perhaps be looked on as somewhat similar to the taking of a wife from an alien or strange tribe. The children of such a wife would be members of the husband's tribe (except such as might return to the tribe of the wife—usually the eldest daughter).

Apart from the question whether Native custom, or the existing law, now permits a child of pure European blood to be adopted by a Maori, there is, I think, no doubt that such a practice is likely to lead to grave abuse, especially in the hands of an unscrupulous European.

With regard to the second question submitted, I think the right of an adopted child to succeed is not absolute. The existing law provides for the revocation of an adoption; and even where there is no revocation, an adopted child is liable to lose his right to succeed if he fails in his filial duties (see decision already quoted; also decision of Appellate Court in case of Punia Parata, given on 1st October, 1904).

If he does not so fail, he will share equally with the other children (if any).

Where there are no such children, it has been held by the Appellate Court that he will take the whole (see decision of 16th July, 1897, in Otuarumia and other blocks); and this decision has been followed, so far as I am aware.

But I am not clear that it is according to Native custom that an adopted child should always take the whole to the exclusion of near relatives, such as a brother or uncle.

Native custom is seldom a hard-and-fast rule. When it becomes rigidly defined it ceases to be Native custom. In my opinion, many of the present so-called Native customs are changing, or (especially as regards succession) have gradually grown up in the Court. Under the existing law, the decision in each case has still to be governed by Native custom, in view of the inquiry prescribed in the regulations of 15th March, 1905. But it is open to question whether the Native custom of adoption should not now be assimilated to the European law of adoption, and defined in a code, thereby, of course, becoming a law, and ceasing to be a Native custom.

#### PER JUDGE FISHER.

The term "Native" is clearly defined in the Act of 1894, and means "an aboriginal Native of New Zealand," while the term "European" is stated to mean "a person other than a Native."

Therefore, if a Native holds property free from restrictions there is nothing to prevent him alienating by will, subject, of course, to sections 46 to 51 of the Act of 1894 and its amendments, to a person other than a Native. As to Native land subject to restrictions, no alienation can be given effect to without confirmation under sections 53, &c., after removal of restrictions under section 52, or under section 14 of the Act of 1903.

The whole trend of Native-land Legislation is in the direction of preventing land being disposed of, except upon compliance with certain formalities. The adoption of an European child would most certainly not be in accordance with recognised Maori custom, and I think no child other than a Native can be adopted.

In the supposed case stated, I take it it is assumed that the parties have married in accordance with European law, and, therefore, while the children by the father would divide equally, the children by the mother (Native) only could succeed to her interests in Native land.

#### PER JUDGE MAIR.

As far as I am aware, the first reference to adoption is contained in section 50 of the Act of 1901. The adoption of children of their own race is an ancient Maori custom, and it conferred full rights; but it seems to me that the rights of Maoris to adopt European children, or the rights of such children to be adopted, has been assumed because there was no law forbidding it.

Given the rights of adoption, I suppose a white child would have the same right as a child possessing Maori blood, but I do not think that the Legislature, in the reference to the Act of 1901, contemplated the adoption of children other than those of Maori blood. In any case, the law should be more definite, and I am of opinion that European children should be distinctly barred; it does not seem just that Europeans should come into possession of Maori land in this manner.

I think that the above answers all the questions raised in the circular, but I would like to refer to one or two other vital questions affecting the Maori people.

It has been held that adopting parents have the right of succession to children by adoption. This seems to me a total reversal of the principle of adoption, and if permitted it will be abused, and delicate Maori children possessed of property will be adopted for selfish ends.

Another matter is the making of wills by Maoris in favour of Europeans. It is an established fact that old, childless Maoris possessed of property have been taken in and cared for by Europeans, who have in the end induced them to make wills in favour of themselves, or members of their own families,