

The following is a summary of the old and present laws relating to the appointment of Arikis, and the settlement of disputes in regard to the Ariki titles :—

(a.) Regulations were made by the Resident Commissioner, Colonel Gudgeon, on the 5th November, 1905 (*Cook Islands Gazette* No. 172, of the 9th October, 1905, at page 264), providing thus :—

All Arikis, Kavanas, and Mataiapos shall hereafter be elected by a majority of the tribe or family whom it is intended they shall represent, and no person outside such tribe or family shall take part in such election.

A further provision was that—

A candidate for election shall be chosen from children (or the near relatives in default of children) of the deceased Ariki, Kavana, or Mataiapo, unless it be shown that the deceased had no right to the office for which he had been originally chosen, or that the children of the deceased were mentally or morally unfit for the position, of which condition the Resident Commissioner shall be the sole judge.

(b.) A Federal Ordinance, No. 26, was passed on the 24th October, 1908, to regulate the election of Arikis. The preamble is as follows :—

Whereas, since the annexation of the Cook and other Islands to the British Empire, the status of the Ariki has altered, and the Ariki has now only jurisdiction as an hereditary member of the Federal Council and of the Island Council, wherefore it is advisable that on the death or removal from office of any Ariki the new Ariki should be chosen from the best men of the Ariki family.

This Federal Ordinance provided that any Ariki to be elected shall be chosen by the unanimous vote of all the members of the Island Council. The Island Council was given the power to call before it an Ariki family or the people of any district to hear their views before choosing any person as Ariki.

Section 2 of the Ordinance provided that—

The person chosen for the Arikiship shall be of good character, and of pure Maori blood, and a recognized member of the Ariki family. The senior line of any Ariki family shall not be passed over without good and sufficient reason.

The Resident Commissioner was given power, in the event of any dispute between the members of the Island Council, to finally decide the matter at issue.

(c.) The Cook Islands Act, 1915, section 658, repealed all Ordinances, regulations, and other enactments and laws whatsoever then in force in the Cook Islands.

(d.) No provisions were substituted for the repealed Ordinance of 1908 except section 67, which, as already pointed out, only dealt with the constitution of Island Councils. This meant that Ariki successions in regard to Ariki land, and all other functions attached to the office of Ariki, except so far as the Island Council were concerned, were left to be determined according to Native custom.

(e.) By the Cook Islands Amendment Act, 1923, the Native Land Court was vested with jurisdiction to determine all disputes relating to the title of Ariki, and other Native chiefs. It is pursuant to this provision that this Court entered upon the hearing and determination of the dispute in question regarding the Makea-nui Ariki title.

Two main questions arise in this case, viz. :—

(1.) (a.) The right and power of an Ariki to devise his Ariki title by will.

(b.) The rights and powers of Mataiapos regarding such a will, and generally in regard to the appointment of a new Ariki in succession to the deceased.

(2.) Whether it is established that Ngoroio's line was definitely adopted into the Karika family so as to preclude this claimant from succeeding to the Ariki title of Makea-nui.

In regard to question No. (1), various opinions are recorded as to Native custom.

(a.) In November, 1895, the Arikis' Council met as the Upper House of the Rarotonga Council and unanimously adopted a report drawn up by Vakatine and Teariki Taraare, and affirmed it as a true statement of the old and unbroken law and practice relating to the succession of Arikis and the mode of election and installation. This report is set out in parliamentary paper A.-3 of 1896. It states that—

Only upon the death of an Ariki is it settled who is to succeed to the title. It is the business of the priests and Mataiapos of Rarotonga to select the proper person to be Ariki of Rarotonga, and such selection is to be made only from the nearest relations of the Ariki deceased. Should any Ariki be chosen without all the Arikis, priests, and Mataiapos of all the districts being present at the meeting, it must be proven satisfactory to them that the one chosen is a near relative of the Ariki deceased. If it is not so proven, the Arikis, priests, and Mataiapos from every part of Rarotonga shall meet together in one place, and it shall be for them to decide who is to be the new Ariki.

The last words of a dying Ariki (will): An Ariki may wish to appoint a successor on his or her death-bed. After the Ariki's death these words shall be carefully considered, and if it is found that the party named as a successor is the proper heir such words shall be confirmed, not otherwise.

This Court cannot agree with this report so far as it states that the Arikis, priests, and Mataiapos of all districts have a right to choose a new Ariki. This clearly could not be ancient custom, for in the old days the districts were frequently at war with one another, and it is not reasonable to suppose that one district would go outside its own boundaries in regard to the succession of a deceased Ariki. Confusion has probably arisen in regard to the selection and appointment of an Ariki, which is one thing, and the present-day ceremony of anointing and installation, which is quite a separate function.

(b.) Mr. F. J. Moss, who was for a long time British Resident of Rarotonga, in an article on the "Maori Polity in the Island of Rarotonga," published in the *Journal of the Polynesian Society*, stated as follows :—

The Ariki is supreme, but largely controlled by the Mataiapos. A new Ariki is named by the Arikis of the other tribes from the Ariki family, but the confirmation depends on the Mataiapos, as the installation rests with them. They regard the Ariki as only the first amongst equals.