

control of these Mataiapos. It is impossible to believe that, as the Ariki then had considerable power. It is reasonable, however, to believe that, as the Mataiapos brought him added strength, they would have their fair share of power in the decision of all matters pertaining to the welfare and government of the tribe, but the Court holds definitely that they had no supreme power as set up by Tepuretu.

In regard to the Makea-nui title, the wish of the ruling Ariki should be fully considered in regard to succession, provided that his choice of a successor is from the right Ariki line, and is a wise one according to all the circumstances of the case. Rangatiras of the Kopu Ariki in the case of Makea-nui should be consulted, and also the wishes of the Mataiapos. This would be a fair working arrangement considering the circumstances of the alliance between Makea-nui and the Mataiapos of Tupapa. If these conditions are carried out and there should be a dispute the Court would have little difficulty in giving a decision.

It is the opinion of the Court that the Mataiapos of Takitumu, considering the circumstances of their establishment in ancient times, would have considerable rights regarding the Ariki succession. The powers of the Mataiapos in that district were fully demonstrated when Pa Maretu was given the title of Ariki. As no case is before the Court in regard to Takitumu, nothing further need be said at present as to the power of the Mataiapos in that district.

Coming back to the particular case before the Court, one of the main matters to be considered is the arrangement made at the death-bed of Rangi Makea when he purported to make his will. The Kopu Ariki and rangatiras were present, and agreed with his wishes. Vakapora also agreed. Taraare expressed agreement immediately after the will was signed. These two Mataiapos were by custom the ones to be consulted by the Ariki. If they failed to carry out their duties properly the fault is on the side of the Mataiapos whom they represented, and not on the side of the Ariki.

Rangi Makea expressed his wishes, and an arrangement was made in the same way as was done in the case of Makea Takau; and, as he died without knowledge of any objection, and thinking that his wishes would be carried out, it appears to be a matter of honour that effect should be given to the arrangement.

1. To sum up, the decision of the Court in regard to question 1 is as follows:—

(a.) An Ariki is precluded by section 445 of the Cook Islands Act, 1915, from making a will according to European law and ideas.

(b.) He can, however, according to Native custom, give on his death-bed an expression of his wishes regarding the Ariki title. This must be made in the presence of certain necessary witnesses—viz., the priests, certain rangatiras of the Kopu Ariki, and representatives of the Mataiapos. This expression of wishes, if agreed to at the time, would become a binding arrangement according to Native custom, and, as a matter of honour, it would be carried out in due course after the Ariki's death.

(c.) At the death-bed any question or objection raised by any of the witnesses above stated would be considered at the time, and possibly an agreement or settlement arrived at.

(d.) Failing such a settlement, the matters in question might be considered after the Ariki's death, with a view to a settlement.

(e.) Failing a final settlement, the question at issue would be dealt with by the Native Land Court, pursuant to the Cook Islands Amendment Act, 1923, and in dealing with it the Court would give due consideration to the following matters:—

- (1.) The wishes of the deceased Ariki as recorded by any written statement or will, or any verbal expression made before his death, and properly recorded.
- (2.) The wishes of the rangatiras of the Kopu Ariki.
- (3.) The wishes of the Mataiapos and priests.
- (4.) The respective genealogies of the rival claimants. The new Ariki must be a recognized member of the Ariki family.
- (5.) The mental condition and moral character of the rival claimants.
- (6.) Any facts and circumstances which the Court considers should be taken into account.

If the deceased has left no will or expression of his wishes, the question of succession in the case of the Makea-nui title should be settled by the rangatiras of the Kopu Ariki and the Mataiapos and priests. Failing a settlement, the Court will give consideration to the matters in paragraphs (2) to (6) above mentioned.

Considering the conflict of evidence given in this case regarding the true custom, the Court considers that the above rules coincide as nearly as possible with the true ancient custom and also with present-day conditions.

It will be seen by this decision that the Mataiapos have been and will be recognized to the extent which the Court thinks proper.

2. From the facts found by the Court (see paragraphs 4, 6, and 7 as set out previously in this judgment), there seems to be no doubt that the descendants of Daniela have definitely gone over to the Karika side, and are thus precluded from holding the Makea-nui title. The evidence of Pori, father of the present claimant, Ngoroio, as set out in paragraph 6, is very strongly in favour of this view. He states (*inter alia*) that "the Karika elders gave Ngoroio (the son of Daniela) shares in the Karika lands, and appointed him a rangatira under the Karika family, and these lands have descended to me."

The written statement of Makea Takau, referred to in paragraph 7, states that the family of Makea Daniela by his first wife are amongst the family of their mother—that is, on Karika's side. In her statement to Captain Smith, Resident Commissioner, she stated that there were only two of her family left then—herself and Rangi Makea. The Court has already set this out fully in paragraph 7. It is clearly shown that Ngoroio's side are holding lands under Karika at the present day, and they are unable to show that they have been or are eating of the Makea-nui lands. It is true that Tui of that family held a rangatira title under Makea-nui, but it has been shown in evidence that he was