Judgment of the Lords of the Judicial Committee of the Privy Council on the Petitions of C. W. Reardon and of Te Pamca, praying for special leave to appeal to His Majesty in Council from a Judgment pronounced by the Native Appellate Court of New Zealand in the Matter of the Will of Wi Matua, deceased; delivered the 16th July 1908.

Present at the Hearing:

LORD ROBERTSON.
LORD ATKINSON.
LORD COLLINS.
SIR ARTHUR WILSON.

[*Delivered by Lord Robertson.*]

In 1894 a Native Appellate Court was set up in New Zealand, the already existing Native Land Court being expressly continued. To these Courts the Legislature has given exclusive jurisdiction over the civil rights of natives in land and in matters of succession, probate, and administration. The object of the legislation was to provide for the determination of disputes among those natives according to their own customs, so far (to use the words of an earlier Imperial Statute, 15 & 16 Vict. c. 72) as these "are not repugnant to the general principles of humanity." The 93rd section of the Act of 1894 (No. 43 of 58 Vict.) declares that the decisions of the Native Appellate Court shall be "final and conclusive." There is no express exclusion of His Majesty's prerogative. The question now raised by the Caveators is whether the words of the section exclude a Petition to His Majesty for

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leave to appeal. The litigation was in the region of probate.

The rule applicable to such cases has been clearly stated in *Théberge* v. *Laudry* (L.R. 2 A.C. 102) as quoted and approved in *Cushing* v. *Dupuy* (L.R. 5 A.C. at p. 419):—

> "Their Lordships wish to state distinctly that "they do not desire to imply any doubt whatever "as to the general principle that the prerogative "of the Crown cannot be taken away except by "express words; and they would be prepared to "hold, as often has been held before, that in any "case where the prerogative of the Crown has "existed precise words must be shown to take "away that prerogative."

It has been argued that, inasmuch as the Native Appellate Court has a special jurisdiction, this sets its judgments apart, and excludes review by His Majesty in Council. The whole virtue of this argument resides in the word "special," and in the supposed assimilation thereby effected to the two cases of *Théberge* v. *Laudry* and *Cushing* v. *Dupuy*.

The difference between those cases and the present is of the broadest and most essential kind. In them the subject-matter of the protected jurisdiction connoted functions conferred on the Court by statute which would not otherwise have belonged to it as the general distributer of justice. In the one case (*Théberge* v. *Laudry*) the subject-matter was actually a part of the privilege of Parliament, and therefore entirely alien to the region of prerogative. In the other case, the duties imposed on the Court were truly not judicial, but administrative in their nature, and historically they had been originally vested in an administrative commission.

Turning to the present case, their Lordships have to deal with rights which are the ordinary legal rights of subjects of the King. The legal

rights of this particular people in the matters of land, succession, and probate are subjected to the newly created tribunal. But for the creation of this Court the Law Courts would have had to determine those rights as best they could, and an appeal would clearly have lain to His Majesty. The exclusion of the right to appeal to His Majesty would therefore be a forfeiture of existing rights on the part of sovereign and subject.

On the merits of the Petitions, however, their Lordships are of opinion that special leave to appeal ought not to be granted, and they will humbly advise His Majesty accordingly. The Caveators having failed on the preliminary objection, which necessitated an adjournment of the hearing, there will be no Order as to the costs of the Petitions.