

Troubling Inheritances: An illegitimate, Māori daughter contests her father's will in the New Zealand courts and the Judicial Review Committee of the Privy Council.

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Mary Ann Rhodes was born around 1852. She was the daughter of a Māori woman and the sea captain, whaler and early Wellington merchant, William Barnard Rhodes. Unlike many half-caste New Zealanders, reared by their mothers and their Māori kin, Mary Ann was raised by her father and two childless step mothers in an ostentatious Wellington mansion. She became bourgeois, her Māori identity and subjectivity muted or suppressed. William Rhodes died in 1878 just after having his will redrafted. This article explores Mary Ann's family history, court disputes about the meaning of Rhodes's will, and her pursuit of her fortune in the courts of New Zealand and the Judicial Committee of the Privy Council in London. While the male members of the Rhodes family have received some attention from historians, biographers and film makers, Mary Ann and her step-mother, Sarah, key players in these legal cases have not. In narrating her story, the article explores how private family matters became public and national issues, how this colonial inheritance struggle was judged in the highest imperial appeal court, and how family affection and intimacy were articulated, measured, and judged and in wills and courts.

IN 1881 Mary Ann Rhodes travelled to London from her home in Wellington, New Zealand. Steamships had not yet replaced sail on these long distance routes, though they would shortly do so. Such voyages could take anywhere from 89 to well over 100 days.¹ Angela Woollacott has described the lure of London to white Antipodean "girls," attracted as artists,

¹ My thanks to the Social Sciences and Humanities Research Council of Canada grant for funding that enabled me to complete some of this research. Thomas Carson, Opinion in Barnard Will, 6 and 10 June 1882, MS Papers 3504, Alexander Turnbull Library, Wellington, New Zealand (hereafter ATL), suggests that by June 1882 Mary Ann and her step mother had been absent from New Zealand for "upward of a year." Ships to New Zealand between 1875 and 1882. Ships to Wellington, <http://freepages.genealogy.rootsweb.ancestry.com/~shipstonz/wellington3.html> (23 November 2011). On lengths of journeys - Encyclopedia of New Zealand, <http://www.teara.govt.nz/en/shipping/5>

musicians, singers, writers, or simply shoppers to “try their fortunes” in that modern metropolis that was so far away and yet considered “home.”² She found “no evidence of Aboriginal women travelling to Britain in this period.”³ Mary Ann was also seeking “to try her fortune,” or at least to clarify what it would be. But Mary Ann was not white. She was born some thirty years earlier to a Māori woman and Lincolnshire born, William Barnard Rhodes.⁴ Nor was Mary Ann hoping to consult a fortune teller, establish a career, profit from the possibilities of modernity or find a spouse. She travelled to London because she had appealed the New Zealand court’s decision about the intentions of her father’s will. The Judicial Committee of the Privy Council had agreed to hear her appeal. *Rhodes v. Rhodes* was to be considered by the prominent all male members of that august imperial court in late January 1882.⁵

This article explores the family history of Mary Ann, this illegitimate, “half caste” Māori woman who insisted on her own interpretation of her father’s will and pursued her fortune first in the courts of New Zealand and then in the ultimate imperial court. In Mary Ann’s appeal and personal history, her class privilege and the wealth and the prominence of her father in New Zealand appear to have muted public acknowledgement of her mixed origins. She was widely acknowledged as William Barnard Rhodes’ “illegitimate” or “natural” daughter, but seldom mentioned as half caste or Māori. Unlike many children born of Pakeha

² Angela Woollacott, *To Try her Fortune Australian Women, Colonialism and Modernity* (Oxford: Oxford University Press, 1992), 5.

³ Woollacott, *To Try her Fortune*, 13.

⁴ Angela Wanhalla, *In/visible Sight. The Mixed-Descent Families of Southern New Zealand* (Wellington: Bridget Williams Books, 2009), 56-7; Brad Patterson, “Rhodes, William Barnard,” *Dictionary of New Zealand Biography* (hereafter *DNZB*) <http://www.teara.govt.nz/en/biographies/1r7/1> (4 August 2012)

⁵ *Rhodes v. Rhodes*, *The Law Times Reports* (hereafter *Law Times*), 46 (1882): 462-471.

fathers and Māori mothers, who were raised by their mothers and their kin, Mary Ann was raised by her father and two white stepmothers. Her story offers glimpses into one particular colonial family and “the intimate relations of households and families where racial crossings were lived and experienced,” in ways that promoted her “subjective transformation,” from half-caste infant to privileged colonial daughter.⁶ The first section tells the story of Mary Ann and her family, which is rooted in complex ways in the history of colonialism, of Māori dispossession and colonial wealth accumulation in New Zealand. While the male members of her family have received some attention from historians, biographers and film makers, Mary Ann and her step-mother, Sarah, key players in the legal case have not.⁷

The second section explores disputes about the interpretation of William Barnard’s will that divided members of the Rhodes family and erupted in the courts of New Zealand. As the case moved through the colonial court system it attracted growing interest in New Zealand, as legal contests over large family fortunes invariably do.⁸ At first this was largely due to interest in the size of W.B. Rhodes’s fortune – estimated as worth close to £300,000.⁹ But, as it became clear that there were differences about the interpretation of his will, and newspapers up and down the country reported on the court cases, this family inheritance tale

⁶ Damon Ieremia Salesa, *Racial Crossings. Race, Intermarriage, and the Victorian British Empire* (Oxford: Oxford University Press, 2011), 8, 249-50. There are interesting parallels and divergences here from the life story of Maria Aminta Maning, whose upbringing was similar, but she reconnected with her Maori kin.

⁷ Patterson, “Rhodes”; Brad Patterson, “That Glorious Stinking Stuff: Whale Fishing and the Economic Development of Early Wellington,” *Journal of New Zealand Studies*, 1 (2002): 19-40; Geoffrey W. Rice, *Heaton Rhodes of Otahuna. The Illustrated Biography* (Christchurch: Canterbury University Press, 2001); “Dancing in the Sky,” Māori Television production, broadcast 25 April 2011, written and directed by Julian Arahanga.

⁸ Similar public interest in family fortunes and colonial cultures of inheritance, in this case the Robinson’s pastoral fortune, a few years later see, W J Gardner, *A Pastoral Kingdom Divided* (Wellington: Bridge Williams Books, 1992).

⁹ *Bay of Plenty Times*, 15 June 1880, 6; *The Times* (London), 26 January 1882, 3.

moved from being viewed as simply an interesting Wellington or “North Island Will Case,” to being described as “The Great New Zealand Will Case,” and finally being read to indicate the significance that the imperial government attached to giving “the petitions of colonial subjects due attention.”¹⁰

The third section follows Mary Ann and her step mother, Sarah Rhodes as they awaited the outcome of the appeal to the Judicial Review Committee of the Privy Council in London. Though the New Zealand judge presiding in the Supreme Court suggested it “would have been the simplest matter in the world,” to have obtained leave to go to the Privy Council earlier, *Rhodes v. Rhodes* was only the eighth appeal sent from New Zealand. All but one had been dismissed. It was the first to deal with inheritance or indeed any private family matters though by this point in time such issues, especially originating in India, were frequently on the Committee's rosters.¹¹ Thus the appeal offers a salient reminder of the importance of this imperial court as the ultimate appeal court for the colonies in questions of marriage and inheritance as well as for issues raised by “large business houses, public authorities and the Crown.”¹² The final section looks briefly at Mary Ann’s life following *Rhodes v. Rhodes* and at some of the ripple effects the case and settling Rhodes’s estate caused in New Zealand.

¹⁰ *Otago Witness*, 15 May 1880, 8; *The Wellington Evening Post*, 19 January 1883, 3; *North Otago Times*, 9 January 1883, 2; *Wanganui Herald*, 13 January 1883, 2; *Poverty Bay Herald*, 27 January 1883, 2.

¹¹ *New Zealand Privy Council cases, 1840-1932* (Wellington: Butterworth and Co, 1938) (hereafter, *NZPCC*); Judicial Committee of the Privy Council, *Papers, 1850-1883*, (4 August 2012).

¹² P.A. Howell, *The Judicial Committee of the Privy Council, 1833-1876: Its Origins, Structure, and Development*, (Cambridge, UK: Cambridge University Press, 1979) 59-69; Robert Stevens, *The House of Lords as a Judicial Body, 1800-1976* (Chapel Hill: University of North Carolina Press, 1978); Peter Spiller, Jeremy Finn and Richard Boast, *A New Zealand Legal History* (Wellington: Brooker’s Ltd, 1995), 230.

Mary Ann, William Barnard Rhodes and her stepmothers.

Mary Ann was born around 1852, twelve years after Rhodes, the colonizing families brought to Port Nicholson by the New Zealand Company, and the “large indigenous communities living nearby” had begun working out their lives and relations with each other.¹³ William was born in Lincolnshire, England to a relatively prosperous tenant farming couple in 1807. He went to sea, became a captain and after visiting South America, Africa and India settled for a while in Victoria, Australia where he purchased land and stock in 1834. In 1836 he commanded a whaling ship headed for New Zealand, working for the Sydney merchants, Cooper and Holt.¹⁴ Historians have described the diverse intimate relationships, violent, forced and consensual between whalers and Māori women of those years.¹⁵ It would not have been unusual if Rhodes had had intimate liaisons with Māori women. They certainly boarded the whaling boat he was captaining that year.¹⁶ Three years later in October 1839 Rhodes returned to the New Zealand coast, this time claiming to purchase much of Kapiti Island and the land around what is now Otaki - both north of Wellington- from leading Māori

¹³ Salesa, *Racial Crossings*, 44; Angela Ballara, “Te Whanganui-ā-Tara: Phases of Māori Occupation of Wellington Harbour c. 1800-1840” in *The Making of Wellington, 1800-1914*, ed. David Hamer and Roberta Nicholls (Wellington: Victoria University Press, 1990), 9-34.

¹⁴ William Barnard Rhodes, Log of the Barque Australian of Sydney, Messrs Holt and Roberts, owners, and Wm B Rhodes, commander and other papers, 14 Jun 1836-7 Mar 1838, qMS-1693, ATL. Also republished as W.B. Rhodes, *The Whaling Journal of Captain W.B. Rhodes: Barque Australian of Sydney, 1836-1838* (Christchurch: Whitcomb and Tombs, 1954).

¹⁵ Wanhalla, *In/visible Sight*, 19-36; Patterson, “Whale Fishing,” 26-7; David Haines, “In Search of the ‘Whaheen’: Ngai Tahu Women, Shore Whalers, and the Meaning of Sex in Early New Zealand,” in *Moving Subjects. Gender, Mobility, and Intimacy in an Age of Global Empire* ed. Tony Ballantyne and Antoinette Burton (Illinois: University of Illinois Press, 2009), 49-66; Salesa, *Racial Crossings*; Judith Binney, “‘In-Between’ Lives: Studies from Within a Colonial Society,” in *Disputed Histories. Imagining New Zealand’s Pasts* ed. Tony Ballantyne and Brian Moloughney (Dunedin: Otago University Press, 2006), 93-117.

¹⁶ Rhodes, Log of the Barque Australian, 22 September 1836, ATL.

Chiefs for his associates and himself.¹⁷ The deeds “purporting to give title to nearly two million acres on both islands,” were just the first of numerous land purchases, some allowed, and some subsequently disallowed by Land Claims Commissioners that made him and his brothers major landowners in and around Wellington, the Banks Peninsular and elsewhere throughout the colony. Rhodes made these initial purchases prior to legislation making it illegal for Europeans to buy land directly from Māori, prior to the Treaty of Waitangi, and also before the arrival of the first of the New Zealand Company’s settlers bound for the new planned settlement initially known as Port Nicholson. In these late months of 1839 he, the Wakefields and other “determined land hunters” were scrambling to secure what they hoped to claim as legitimate title to land before any constraints were placed on such exchanges. William and Arthur Wakefield had signed a deed with local Māori chiefs which they believed gave the New Zealand Land Company ownership of land for miles around their planned Port Nicholson settlement.¹⁸

Dispossession was not that simple. Ongoing tension characterized these early years of colonization, adding to the conflicts, uneasy relations and demographic turbulence that had brought successive Māori tribes from the north into the area. The first boat of New Zealand settlers arrived in January, 1840. As Salesa observes, “few emigrants expected to find the preponderance of resources so heavily on the side of ‘natives’ . . . they . . . controlled the

¹⁷ Rhodes, Log of the Eleanor, 1839-1840, Micro MS 596, ATL; Old Land Claims (hereafter OLC), 1 5; 128-129, ATL; Patterson, “That Glorious,” 26.

¹⁸ Patterson, “Rhodes,” OLC, 1 5; 128-129, ATL; Rosemary Tonk, “A Difficult and Complicated Question. The New Zealand Company’s Wellington, Port Nicholson Claim,” in *The Making of Wellington*, 35-7; John C. Weaver, *The Great Land Rush and the Making of the Modern World, 1650-1900* (Montreal and Kingston: McGill-Queen’s University Press, 2003) 104-5; Mark Hickford, *Lords of the Land. Indigenous Property Rights and the Jurisprudence of Empire* (Oxford: Oxford University Press, 2011).

land, dictated the terms of trade for virtually all items.”¹⁹ Rhodes’s Sydney based partners encouraged him to seek to secure some land in the company’s settlement and to trade with the newcomers.²⁰ In June 1840 he had a house built. By the end of the year there were some 1,500 Europeans in the area. It was a fragile settlement. Local Māori sought to disrupt surveyors, and reverse land sales.²¹ Settlers, the Company, and colonial officials grappled with the meanings of Māori land holding, transfer and “political authority over territorial space.”²² Rhodes drew on his experience trading with Māori to negotiate a place for himself at the heart of local exchange in this small colonial town. He provisioned newcomers and local merchants with goods ranging from candle sticks, coffee rosters, flour, tea, coffee and alcohol through construction materials. He purchased prime land, hired local Māori to build houses for clients, built the first wharf, had ‘substantial premises’ constructed near the waterfront and raised stock. He lent money to settlers, collected on unpaid mortgages, purchased more land, subdivided and sold it. By 1843 there were closer to 4,000 immigrants. Rhodes had cut his ties with his Australian partners, and after some setbacks and near bankruptcy, his fortune expanded. By 1853 he was being “referred to as the ‘millionaire of Wellington.’” The rough whaler captain was becoming part of the small merchant and professional elite.²³

¹⁹ Salesa, *Racial Crossings*, 44.

²⁰ Cooper and Holt, Sydney to W.B. Rhodes, 4 March 1840, reproduced in Log of the Barque Australian, 122, ATL.

²¹ Giselle Byrnes, *Boundary Markers. Land Surveying and the Colonisation of New Zealand* (Wellington: Bridget Williams Books, 2001), 108; Population figures from Michael King, *The Penguin History of New Zealand* (Auckland: Penguin Books, 2003), 172, 207.

²² Hickford, *Lords of the Land*, 450.

²³ Rhodes, Log of the Eleanor, 1839-1840, Micro MS 596, ATL; “Leaves from the ledger of Capt. W. Barnard Rhodes, June 1841,” FMS-Papers-8903, ATL; Port Nicholson District Wellington, 1 January 1850, Report from H.T. Kemp, Native Secretary, NM 8, 1850/283, Archives New Zealand (hereafter ANZ); Patterson, “Rhodes,”

He also became a father. As noted earlier, the circumstances leading to the birth of his daughter, Mary Ann are at best hazy. Until recently most published information offered no clues about her mother's name, rank or tribal origins, referring to her only as an "unknown Māori woman."²⁴ Family lore and private reminiscences offer other versions. The sister of Mary Ann's second step-mother claimed that Rhodes's first Pakeha wife "had no children, and was fond of them, so she fossicked about and found this little girl, who was reputed to be Mr. Rhodes's child," and Rhodes allowed her "to keep the child as she fretted for children."²⁵ The following generation, who became curious about their Māori ancestry, claimed that she "was given by her father and her tribe in ritual marriage to their" (the Māori people's) great friend, William Barnard Rhodes.²⁶ Mary-Ann's son's widow claimed that Rhodes "had no children, so adopted a daughter of his by a Māori princess, who had been given to him by her father as a mark of honour."²⁷ Most recently she has been named as the daughter of Otahi, a Ngati Ruanui or Taranaki woman living in Wellington.²⁸

Rhodes lived and worked in close contact with local Māori. When a rough census was taken of the Māori population in and around Wellington in 1850, some 745 men and women were

population figures, James Belich, *Making Peoples. A History of the New Zealanders* (Auckland: The Penguin Press, 1996), 368.

²⁴ Patterson, "Rhodes;" Geoffrey Rice, *Heaton Rhodes of Otahuna. The Illustrated Biography* (Christchurch: Canterbury University Press, 2001), 36; Wanhalla, *In/visible Sight*, 56.

²⁵ Studholme, "Some memoirs," 90, MS-Papers - 4168, ATL.

²⁶ George Bryant to Diocesan Secretary, 1 June 1966, Correspondence re. Rhodes and Moorhouse families, MS-Papers-6944-2, ATL, citing Mrs Alexis ffrench, one of Mary Ann's four children.

²⁷ Linda Rhodes-Moorhouse, *Kaleidoscope, 1886-1960: The Story of a Family in Peace and War* (London: A. Barker, 1960), 28, notes in Bryant Papers, MS-Papers - 6845-1, ATL.

²⁸ *NZ Herald.co.nz*. 23 April 2011; "Dancing in the Sky," Māori Television production, broadcast 25 April 2011, written and directed by Julian Arahanga.

counted in twelve settlements, including forty-four at the Waiariki Reserve “adjoining Mr Rhodes’s cattle station,” and nearly two hundred at the Te Aro Pa.²⁹ The Te Aro Pa site was situated in the heart of the new town on land coveted by the colonists. His office was located in Te Aro, where merchants and entrepreneurs rather than officials worked and lived, mingling with local Māori. Rhodes’s sexual relationship with Mary’s mother may have been fleeting or long, loving or coercive. He and the woman may or may not have cohabited or married following local custom. Rhodes could have offered to marry her “legally.” Māori women had good reason to avoid such marriages. As Salesa argues, “marriage inserted ‘native’ women into a new complex of relations explicitly mediated by the colonial state. . . . Under colonial law,” women gave up their “property rights to their husbands.”³⁰ How and by whom the decision was made about the future of this young girl can only be speculated about. What is clear is that Mary Ann went to live with her father. She would be raised as a Pakeha daughter, largely cut off from her Māori culture and kin, her half- caste status contained within a heterosexual, European family.

Rhodes chose an English wife. In May of 1852, he married Sarah King, the daughter of an English solicitor and notary, John King, who had migrated to Wellington with his family in 1844. William Barnard was forty five years old. Sarah was eighteen. This makes the story that Sarah was unable to have children unlikely, as the couple clearly had not sought to procreate for very long before the young Mary Ann came to live with them. If Mary Ann was indeed born in 1852, as later reporting of her age would suggest, then she was born during

²⁹ George Bryant to Diocesan Secretary, Wellington, 1 June 1966, Correspondence re. Rhodes and Moorhouse families, MS-Papers-6944-2, ATL

³⁰ Salesa, *Racial Crossings*, 113, 249.

the first year of their marriage. Biographers and family reminiscences agree that once Sarah and Rhodes took charge of Mary Ann, she had no further contact with her birth mother or her people. Salesa argues that dominant discourses at the time promoted such racial amalgamation for children like Mary Ann. Governor Grey sought to prevent European males from “abandoning . . . their half caste children.” Alfred Domett, Legislative Councillor and future poet, argued that “half-castes be taken from their native mothers and given to the care of European women, who would see that they were brought up to our habits and usages.”³¹ Mary Ann’s upbringing would virtually obliterate her Māori heritage, and distance her from Māori culture.

While there was no doubt gossip about his child, marriage set the old sea captain Rhodes on a new path to respectability without interrupting his economic, political and social activities? He had served on Grand Juries in Wellington from the early years. In 1853 he was appointed as one of the magistrates for the Province of Wellington, and that same year he was elected as one of two Wellington members of the House of Representatives. By then, Edward Gibbon Wakefield had retired to the colony and was elected by the colonists in the nearby Hutt district. Neither man would have a major impact as a politician. Rhodes found public speaking in the House difficult, preferring the smaller discussions in committees. When seeking re-election in 1866 he faced heckling from electors that hints at ongoing gossip about his past.³² The *Wellington Independent* reported that the crowd at a public meeting jeered

³¹ Salesa, *Racial Crossings*, 20, citations, 112; see the 1858 ambrotype of William, Sarah and Mary Ann at <http://www.digitalnz.org/records/22523773>

³² Patterson, ‘Rhodes,’ Belich, *Making Peoples*, 339-40; W.B. Rhodes to Buckland, 30 September 1860, Ms-Papers 7956-1, ATL.

him, asking “what about the blackbird you brought from Otago,” and accused him of having “run away from his colours,” political insults that might blend references to dubious trading and commercial ventures or to past political choices with the liaison that brought Mary Ann into the world.³³

Mary Ann’s first step mother died in 1862 at the age of twenty-eight. Sarah’s ten year marriage with Rhodes had produced no surviving offspring.³⁴ Mary Ann would have been about ten. As a widower and her sole parent, Rhodes had to find care for his daughter while he continued to run his business, farms and his political career. He could have paid for a governess. Yet her aunt’s recollections suggests that she may have been sent for some time to a Catholic boarding school,³⁵ possibly to the St. Joseph’s Providence school for young women, which opened in 1852. It included “many half-castes among its pupils,” and taught them “English, Writing, Arithmetic, Needle-work, etc.,” mainly to turn Māori and half-caste girls into “good House Servants.” If so, it is possible that Mary Ann, or May, as her family came to call her, spent some time as a child alongside other Māori and half-caste children.³⁶ Yet, witnesses would later say that she was understood to be the mistress of the house in which father and daughter lived on Manners street in Wellington between Sarah’s death and

³³ *Wellington Independent*, 27 February 1866, 6.

³⁴ St. Paul’s Pro-Cathedral. Baptism, Marriage and Burial registers, 1840-1866, Micro MS 252, fo. 27, ATL. There are no indications of births or deaths for any children of Sarah and William Barnard Rhodes; “Sarah Rhodes,” M. Alington, Bolton Street Cemetery, Transcripts, MS Papers 2260 Folder 064. Rhodes had a tombstone erected in memory of Sarah and her parents in the Bolton Street Cemetery in 1864.

³⁵ Studholme, “Some memoirs,” 90, ATL.

³⁶ Salesa, *Racial Crossings*, 114; “Report of Roman Catholic Schools, Wellington, 1856-7,” Appendix to the Journals of the House of Representatives, New Zealand, 1858, 47; “St. Joseph’s Providence Porch,” <http://www.wellington.govt.nz/services/heritage/details.php?id=58&m=building&p=9>, (4 August 2012).

his next marriage.³⁷

After seven years of widowhood, Rhodes remarried. Mary Ann's second step-mother, Sarah Ann Moorhouse, came from a British family that was becoming prominent in the colony and that considered themselves socially superior to Rhodes despite some shared life experiences. Her eldest brother, William Sefton Moorhouse had, like Rhodes gone to sea and served in the Merchant Navy. He also trained in law, and in 1852, one year after arriving in the colony with his two brothers, was admitted to the New Zealand Bar. After a brief stint in the Australian goldfields in 1853, he settled in Canterbury, practising law, dabbling in newspaper editing, purchasing land and importing and exporting goods from Melbourne. Like Rhodes, he acted as a magistrate, and stood for election. In 1855 he was elected Superintendant of the Province of Canterbury, a position he held on several occasions. Sarah migrated to New Zealand in 1859 with her two sisters and younger brother, Edward to join their three older brothers. The young women caused quite a stir in Canterbury in their Paris fashions and crinolines. She may have met her future husband at the dances her brother William Sefton held. However, Sarah's family opposed the courtship and marriage. They considered Rhodes a "most unsuitable" suitor, in part because of his illegitimate daughter.³⁸ Sarah ignored the "earnest prayers" of her siblings and married Rhodes on the 29th of November, 1869. The wedding was later reported in the marriage columns of at least six newspapers across the colony.³⁹

³⁷ *Evening Post*, 7 May 1880; Belich, *Making Peoples*, 340

³⁸ Studholme, "Some memoirs," 46, ATL; Graham M. Miller, "William Sefton Moorhouse," *DNZB* <http://www.teara.govt.nz/en/biographies/1m53/1> *DNZB*; http://www.knottingley.org/history/people/wm_moorhouse.htm; Rice, *Heaton Rhodes*, 36.

³⁹ Studholme, "Some memoirs," 90, ATL; *Evening Post*, 10 December 1869; *Wellington Independent*, 11

Five days before their wedding, Sarah and Rhodes had met to draw up an ante-nuptial agreement, or marriage settlement.⁴⁰ This was the one way a woman could avoid the most drastic effects of coverture which, until the passage of the New Zealand Married Women's Property Act of 1884, transferred virtually all property to a husband on marriage, and largely obliterated wives' individual identity.⁴¹ The document suggests he may have had to strike a hard financial bargain with his future brothers-in-law, given their reluctance about the marriage. It also reveals his canny provision for potential bankruptcy, his realistic expectation that his wife would outlive him, and his strong hope that this marriage would produce legitimate children. Rhodes set aside sufficient property to ensure that Sarah would receive an income of £1,000 sterling a year should he die or become bankrupt. The property was considerable. It included 470 shares in the Bank of New Zealand, and five parcels in the heart of the city. During this period, when the inequalities of marriage and feminist critiques of coverture were leading to early transformations in married women's property rights, Rhodes might have used this settlement to give Sarah significant autonomy as a wife with separate property of her own to manage or dispose of as was increasingly common in some families in the colony and elsewhere.⁴² He did not. This was a conservative settlement that

December 1869, 4; *Nelson Evening Mail*, 14 December 1869, 2; *Colonist*, 14 December 1869, 2; *Nelson Examiner and New Zealand Chronicle*, 15 December 1869, 3; *Daily Southern Cross*, 20 December, 4.

⁴⁰ William Barnard Rhodes and Sarah Anne Moorhouse, Marriage Settlement, 24 November 1869, Deeds Register no 18, folio 877-883, ANZ.

⁴¹ Bettina Bradbury, "From civil death to separate property: Changes in the legal rights of married women in nineteenth century New Zealand," *New Zealand Journal of History*, Vol. 29, 1 (April, 1995): 40-66.

⁴² Bradbury, "From civil death;" Lee Holcombe, *Wives and Property. Reform of the Married Women's Property Law in Nineteenth-Century England* (Toronto: University of Toronto Press, 1983); Carole Shammas, Marylynn Salmon and Michel Dahlin, *Inheritance in America. From Colonial Times to the Present* (New Brunswick and London: Rutgers University Press, 1987); Mary Poovey, *Uneven Developments. The Ideological Work of Gender in Mid-Victorian Britain* (London: Virago, 1989); Bettina Bradbury, *Wife to Widow. Lives, Laws and Politics in Nineteenth-Century Montreal* (Vancouver: University of British Columbia Press, 2011); Rhodes and

transferred property into the hands of male trustees and gave them considerable power to manage, sell or mortgage it in order to generate income for her. It created separate property, but that property was to be managed by trustees and to pass eventually to his children or grand-children or, in the absence of children, to someone he designated in his will. In either case he also instructed the trustees to “permit and suffer” Sarah to live in one of his houses. The only property designated as Sarah’s own separate property was anything she already possessed or inherited later that was worth more than £250. Yet even this was to be placed in the hands of the trustees who would then pay her the “annual income arising therefrom,” or pay it to him if she died first. The marriage settlement had one further purpose: all provisions were explicitly designated to be instead of any “dower and thirds to which she may be entitled upon” his death.⁴³

In this contract William Barnard Rhodes exercised a conservative version of husbandly patriarchy, ensuring that his wife would be provided for very generously if he died or went bankrupt, but avoiding giving this “very clever woman” full control of anything beyond her jewellery and other most personal property.⁴⁴ He entrusted other men to look after some of his property which was as a result, protected from creditors. And he ensured that there was no possibility she could claim a widow’s right to a third of his extensive landed property as dower, upsetting his own plans about how his assets would be bequeathed, or other men’s

Moorhouse, Marriage Settlement, 24 November 1869, Deeds Register no 18, folio 877-78, ANZ.

⁴³ The three trustees were two Wellington businessmen, William Waring Taylor and Frederick Augustus Krull as well as William’s brother, Robert Heaton Rhodes; Rhodes and Moorhouse, Marriage Settlement, 24 November 1869, Deeds Register no 18, 881-83, ANZ.

⁴⁴ Studholme, “Some memoirs,” 91, ATL.

concerns for clear title.⁴⁵

After their marriage in Christchurch, Captain Rhodes and “his fair bride” were reported to have been greeted by a large number of “private friends” and the general public when they disembarked in Wellington. They travelled from the quay by carriage first to his town residence and then to the Grange, the impressive mansion which he had had constructed in Gothic style on the extensive estate he had purchased on the hills of what became the Wellington suburb of Wadestown.⁴⁶ Sarah settled in as the new mistress of the Grange household and the second step-mother of the now seventeen-year-old Mary Ann. This mature, well educated thirty-three years old brought a new level of gentility and grace to the home of the sixty-two year old sea captain turned entrepreneur and politician. Rhodes was by then very wealthy. The Moorhouse family was impoverished when the girls were young, but they were genteel and well educated. A governess and music teacher educated Sarah and her sisters at home. Sarah played the harp and the piano and, according to her sister, Lucy, they all “danced and sang well.”⁴⁷ Lucy describes their singing master as encouraging them all to go into opera, but their mother, despite being “large minded,” “clear-headed,” but “not a prude,” had very strict notions about theatres and even good opera.”⁴⁸

To the surprise of Lucy, her sister, Sarah’s marriage “turned out far better” than expected.

⁴⁵ Charlotte Macdonald, “Land, Death and Dower in the Settler Empire: The Lost Cause of “The Widow’s Third in Nineteenth-Century New Zealand,” *Victoria University of Wellington Law Review*, 41, (2010): 493-518.

⁴⁶ *Wellington Independent*, 14 December 1869, 2; See the 1869 painting of the Grange: <http://www.digitalnz.org/records/22432937>

⁴⁷ Studholme, “Some memoirs,” 30, ATL.

⁴⁸ Studholme, “Some memoirs,” 34, ATL.

Sarah, she claimed, helped transform the “manners and way of life” of this “old captain of a whaler,” while she “gave up singing and showed herself an exceptionally staid and excellent wife.”⁴⁹ Rhodes continued his entrepreneurial efforts. His biographer, Brad Patterson calculates that “between 1853 and 1877 Rhodes acquired from the state the freehold of nearly 40,000 acres in the southern North Island, and probably secured at least as much in private purchases.” In 1871 he was appointed to the Legislative Council, perhaps the ultimate signal that this sea captain, one of the “most successful of graspers,”⁵⁰ had achieved the prominence and respectability that he and his second wife craved.⁵¹ In 1878 his combined properties and investments were worth around £300,000.00. Highland Park, his Wellington estate which included the Grange, was officially assessed at £10,600 and his other major estate Heaton Park, further North, near Bulls, at nearly seven times that amount.⁵² This level of wealth placed him among the wealthiest “fraction of the colonial capitalist class.”⁵³

William Barnard Rhodes’ will and the New Zealand courts

William Barnard Rhodes died on the 11th of February, 1878. Four days earlier he decided to make a new will. He invited the Wellington lawyer, Mr. Hart, who had drafted his previous will, to prepare a new one based on his suggestions. Hart did so, and convinced that

⁴⁹ Studholme, “Some memoirs,” 90, ATL.

⁵⁰ Patterson, “Rhodes.”

⁵¹ Oliver Arthur Gillespie, “The Rhodes Brothers,” *An Encyclopedia of New Zealand*, 1966, edited by A. H. McIntock online version; Lucy Studholme claimed in her memoirs that the appointment was only made because Sarah was so upset that her other sister Mary’s husband, Tom Wigley was on the Council and Rhodes was not, that she continually pressured her husband to get those in power to appoint him, despite their reluctance, Studholme, “Some memoirs,” 92, ATL.

⁵² Rhodes v. Rhodes, *Ollivier, Bell and Fitzgerald’s Reports of cases* (hereafter *OB&F*) 1, CA, 1880, 17.

⁵³ Jim McAloon, *No Idle Rich. The Wealthy in Canterbury and Otago, 1840-1911* (Dunedin: University of Otago Press, 2002), 23, 29.

it was impossible that "the dying man could have children, he made no provision for them."⁵⁴ Rhodes, in contrast, hung tenaciously to the possibility of a recovery and future offspring. He insisted that "the provisions in a former will in favour of his issue should be restored." Hart did as requested in several different clauses of the will and returned to see Rhodes with the new will a few days later. Hart later testified that Rhodes was very ill, but "of disposing mind." He read the new will out loud to the sick man, who signed it. Afterwards Rhodes told Sarah that he had had trouble following the contents clearly. He died two days later.⁵⁵ The *Wellington Evening Post* of February 12 announced his death, issuing a public invitation to friends to attend his funeral, scheduled to depart from "his late residence, The Grange, Wadestown, Friday 15th inst. at 2pm."⁵⁶

Much about Rhodes' will was simple. It exercised benevolent, paternalistic control over the women of the family from the grave, exhibiting a conservative version of companionate patriarchy, typical of wealthier husbands within the colony⁵⁷ and across the empire, but rather out of synch with the growing tendency of less wealthy men to promise most or all of their property to their wives either outright, for life, or until remarriage.⁵⁸ He made numerous charitable, religious and family bequests. He promised his widow, Sarah, the full use of Highland Park, subject to maintaining it for her life time or widowhood, caring for Mary Ann and not absenting herself for more than two years. She was to receive an annuity of £2,000 to

⁵⁴ Rhodes v. Rhodes, *Law Times*, 46, 1882, 465.

⁵⁵ Rhodes v. Rhodes, *Law Times*, 46, 1882, 465; *Evening Post*, 8 May 1880, 2; *Poverty Bay Herald*, 8 May 1880, 2.

⁵⁶ *Evening Post*, 12 February 1878, 3.

⁵⁷ McAloon, *No Idle Rich*, 83 found that among the wealthy of Canterbury and Otago, the largest group of testators - 33.8%, bequeathed their widows some of their property in life interest, as Rhodes did.

⁵⁸ R.J. Morris, *Men, Women and Property in England, 1780-1870. A Social and Economic History of Family Strategies amongst the Leeds Middle Class*, (Cambridge: Cambridge University Press, 2005); Bradbury, *Wife to Widow*, 158-9.

support her during her widowhood and additional monies to maintain the property. These were in addition to the promises made in their marriage settlement, and as in that instrument, were specified as being in lieu of dower. If his net income from his property did not provide the amount promised he clarified that it should be taken from his personal estate and that if it made more, she should get it all. He also named his “dear wife,” Sarah as one of his trustees, along with two Wellington merchants and Sarah’s sister, Lucy’s husband.⁵⁹

The will spelled out his desire that while Mary Ann remained unmarried “she be permitted to reside” with Sarah, who was to “supply her with board and lodging and the use and keep of a horse, subject to the payment to my said wife by my said trustees out of income of my said daughter of £250 per annum.” He requested that the trustees build his daughter one house on a specific section of that property, and if she so wished, another on his freehold property in Fitzherbert Terrace and Murphy Street for a like purpose “at a cost not to exceed £2,000 from his estate.” Thus, the illegitimate, part Māori daughter was included as deserving ongoing support from the estate as a dependent. His wishes for her went further, but were constrained by his longing for male heirs. This is where the confusions over Rhodes’ intent mattered most. The will appeared to make Mary Ann, the residuary legatee, and to promise her an annual income of about £20,000 for life, but only if and after Sarah died without any children from their marriage. Rhodes’ concern that he might die without leaving any legitimate sons to carry on his name and inherit his property marked multiple aspects of this will. One clause

⁵⁹ Will, William Barnard Rhodes, 1878, AAOM W3265 6029, Box 24; The other trustees were the Wellington Quaker, Thomas Mason, John Studholme, Lucy’s husband and the Wellington merchant, William Waring Taylor, who later embezzled from the estate. On him see Brad Patterson, “Whatever happened to poor Waring Taylor,” *Turnbull Library Record* 24/2 (1991): 111-31.

provided that his brother, Joseph's son, named William Barnard after him, could take over his business and its stock in trade. Another entailed the majority of his estate for his sons. In the absence of any such legitimate male offspring, he decreed that Mary Ann's sons could inherit on the condition that they "assume the surname of Rhodes (as a prefix to his own) and the arms of Rhodes, within twelve months" of taking possession or lose their entitlement. Should neither Sarah nor Mary Ann have children surviving to the age of twenty-one, he wished his estate to be shared among his five brothers.⁶⁰

The executors had the will proved expeditiously and filed it with the Commissioner of Stamp Duties.⁶¹ By April newspapers across the colony were reporting on the charitable and individual bequests Rhodes had made. The Commissioner of Stamp Duties charged the estate with £18,405.0s.0d duty, based on their interpretation that the will left the income of a residuary estate worth some £272,796. 0s.5d to Mary Ann. Whether this reflected Rhodes' intent would be contested in colonial and imperial courts for the next three years. First, the trustees contested the decision of the Commissioner of Stamp Duties, arguing that Rhodes's will only gave Mary Ann a life interest in the estate following her step-mother, Sarah's death, and hence that the duties should remain part of the estate and accumulate income until she or other heirs came into possession or use of them.⁶² The case was heard in the Supreme Court, and then moved by consent in November 1879 to the Court of Appeal. The case for the

⁶⁰ Will, William Barnard Rhodes, 1878, AAOM W3265 6029, Box 24; Rhodes v. Rhodes, *OB&F* 1, CA, 1880, 16-44, citation at 24; Rhodes v. Rhodes, Thomas Scott-Smith, ed., *Digest of the reported cases in the Court of Appeal and Supreme Court of New Zealand 1861-87* (hereafter *DRC*)(Dunedin: James Horsburgh, 1885-1888),198-99. .

⁶¹ Rhodes, Legal Papers, MS-Group-1254, MS-Papers-7956-3, ATL.

⁶² Rhodes v. Rhodes, *OB&F*, 1, CA, 1880, 16-17; *Thames Star*, 7 April 1880, 2.

Crown was presented by the Hon. H.A. Atkinson, then Commissioner of Stamps, and soon to be Prime Minister, and argued by Frederick Whittaker, the Attorney General. The five judges were divided about the outcome. Three agreed with the executors, two did not,⁶³ so the duties had to be returned from the “government coffers” to the estate.⁶⁴

With her future and fortune at stake, Mary Ann, who played no visible role in the legal proceedings about the stamp duty, stepped in and initiated a new court case seeking to show that the clause that had been inserted in her father's will on his deathbed that made her claim contingent on her step-mother Sarah's death without issue had been inserted by mistake. The case opened in the Supreme Court in Wellington on the 7th of May and was to be heard by the Chief Justice and a special jury. It pitted Mary Ann's claim as plaintiff against two sets of defendants: her stepmother, Sarah, and the other trustees; and Rhodes' three surviving brothers and the children of the two deceased brothers. The case brought together a “formidable array of legal talent.”⁶⁵ The Attorney- General and future Premier, Frederick Whitaker now appeared as leading counsel for Mary Ann.⁶⁶ If she won the government would have a legitimate claim on the £18,000 duties, which might explain his involvement. Also, it had been rumoured earlier that he was planning to appeal on behalf of the government to the Privy Council regarding the decision about the stamp duty.⁶⁷ In representing Mary Ann in her suit, he ensured that either Mary Ann or the Rhodes estate

⁶³ Rhodes v. Rhodes, *OB&F*, 1, CA, 1880, 16.

⁶⁴ *Thames Star*, 7 April 1880, 2.

⁶⁵ Rhodes v. Rhodes, *Law Times*, 46, 1882, 465; *Evening Post*, 7 May 1880, 2; *The Thames Star*, 7 April 1880, 2; .

⁶⁶ Spiller et. al, *A New Zealand Legal History*, 249 explain that the Attorney- General had the power to appear in court.

⁶⁷ *Thames Star*, 7 April 1880, 2. This question was raised later in the *Taranaki Herald*, 30 March 1882, 2.

would pay the considerable costs should an appeal to London be made.⁶⁸

Such family conflicts over large fortunes invariably solicited considerable attention, and in Rhodes' case, his prominence, the extent of his wealth and the fact that he and his brothers held land throughout much of the country surely added to the national interest. The case was widely reported in papers throughout the colony.⁶⁹ Though some dwelled on the large income she would secure if successful, most initially dismissed her claim, suggesting that though the fortune was immense, the "trial itself" was not expected to last more than one day.⁷⁰ They were wrong. The first day's arguments were lengthy. Whitaker stated that though the will was elaborate, it was only the "introduction of a few words," that had caused misunderstandings and led to litigation. Mary Ann's status within the family mattered in interpreting Rhodes' intent. All sides agreed to admit testimony from his former coachman that Mary Ann "had always been treated as the daughter of the deceased." But evidence from the lawyer, Hart, about the re-writing of the will revealed confusion at the time it was redrafted.⁷¹ Furthermore, Sarah testified that Mr. Rhodes had told her after the reading of the new will that he was confused and did not understand very much of it. After this evidence, the counsel all agreed in a private meeting that the case should be turned into a special case to be tried without a jury. The possibility of enabling either party to appeal to the Privy

⁶⁸ *Evening Post*, 3 May 1880, 2.

⁶⁹ E.g. *Southland Times*, 8 May, 1880, 2; *Timaru Herald*, 8 May 1880, 2; *Bay of Plenty Tribunal*, 15 May 1880, 6 and 29 May 1880, 3; *North Otago Times*, 8 May 1880, 2; *Otago Witness*, 15 May 1880, 8; *Grey River Argus*, 2 May 1880, 2 and 16 May 1880, 2; *West Coast Times*, 8 May 1880, 2; *Inangahua Times*, 10 May 1880, 2; Gardner, *A Pastoral Kingdom*.

⁷⁰ *Evening Post*, 3 May 1880, 2

⁷¹ *Evening Post*, 7 May 1880, 2.

Council was explicitly raised.⁷² “A friendly gathering in the library,” on the 10th of May and the “arrangement between the parties,” on May 25th, to move to determine whether they could strike out the words in question in the will, recall the probate, and re-issue the probate without the offending words, all suggest some degree of co-operation among the various branches of the Rhodes families and the trustees at this time.⁷³ However, once the court pronounced against the possibility of reconsidering probate, and against Mary Ann’s claim to immediate use of “of the moneys arising and to arise from the residuary estate of the testator,” she fought back.⁷⁴ Any case involving disputes about property over the value of £500 could be appealed “as of right,” to the Privy Council.⁷⁵ Mary Ann took advantage of this. She could afford to fight for her rights and the Rhodes brothers, who were apparently keen to upset the will, were wealthy enough in their own right to support the interpretation of the will that worked to their advantage.⁷⁶ In early September of 1880, the Supreme Court agreed to appeal the “now celebrated case” to the Judicial Committee of the Privy Council in London.⁷⁷ Mary Ann’s fortune would be tried in England.

Mary Ann Rhodes and the Judicial Committee of the Privy Council

What was Mary Ann's role in all of this? Unlike the Canadians, Elizabeth Campbell, who published a very detailed account of her 1930 appeal regarding her mother’s will, or Florence

⁷² *Evening Post*, 8 May 1880, 2; *Poverty Bay Herald*, 8 May 1880, 2.

⁷³ *Evening Post*, 10 May 1880, 2; 25 May 1880, 2.

⁷⁴ Rhodes v. Rhodes, *OB&F*, 1, SC, 1880, 100; Rhodes v. Rhodes, *Law Times*, 465.

⁷⁵ Spiller, et. al, *A New Zealand Legal History*, 229.

⁷⁶ Studholme, “Some memoirs,” 90-91, ATL.

⁷⁷ *Evening Post* 27 May 1880, 2; 2 September 1880, 2; *Otago Witness*, 15 May 1880; *Wanganui Chronicle*, 31 May 1880, 2.

Deeks whose claim that H.G.Wells had plagiarized her work was heard in 1932, Mary Ann does not seem to have left either published details or private papers that might reveal her reasons and feelings. Only the recollections of her step-mother's sister shed some light on what happened.⁷⁸ Her father had been her main parent and probably the most influential adult in her life ever since she left her Māori birth mother as a baby. For the first ten years of her life she had shared him with his first known legal wife, then for seven years, in her formative teenage years, the family comprised only her and her father. As noted earlier, she may have spent some of that time in a boarding school, but Rhodes's clerk testified that "during the interval before the second marriage, when Mr. Rhodes was living in Manners Street, Miss Rhodes appeared to be regarded as the mistress of the house."⁷⁹ Sarah had been her second step-mother for only nine years. Their relationship appears to have been a close one. Mary Ann was no longer a child, and one can imagine that as a woman in her late twenties, the thought of waiting until her widowed step-mother, then only forty-two years old, died to inherit a substantial income may have rankled. She may also have wished to respect her dead father's wishes. It was her claim that the "few words," that delayed her right to use the income of most of the residual estate until "after the decease," of Sarah had been inserted by mistake. The decision would make a difference not only to her potential income, but also to her understanding of the affective ties in her life, of her place in the family and in her father's affection as one who "had been treated in all respects as if her birth had been

⁷⁸ Constance and Nancy Backhouse, *The Heiress and the Establishment. Mrs. Campbell's Campaign for Legal Justice* (Vancouver: UBC Press and the Osgoode Society for Legal History, 2004); A.B. McKillop, *The Spinster and the Prophet: Florence Deeks, H.G. Wells and the Mystery of the Purloined Past* (Toronto: Macfarlane Walter & Ross, 2000); Studholme, "Some memoirs," 90-91, ATL.

⁷⁹ Studholme, "Some memoirs," 90, ATL; *Evening Post*, 7 May 1880, 2.

legitimate,” despite being a “natural daughter.”⁸⁰

One might be tempted to read her motivation here as the revenge of a step-daughter on her a wicked step mother: part Māori, illegitimate daughter fights the white widow of a wealthy colonial self-made man in court. Yet, although Sarah was one of the executors and would be provided for regardless of the decision, she was not a major beneficiary of the will. Furthermore, the careful co-operation of the counsels for all parties in the cases in New Zealand courts, along with the reminiscences of Sarah’s sister and later documents point to collaboration between the counsel for Mary Ann and the trustees, if not the Rhodes brothers and their children.⁸¹ Her sister Lucy recalled that it was Sarah who was determined that Mary Ann would win, refusing to co-operate with the Rhodes brothers “in upsetting the will.”⁸²

From 1833 when Lord Brougham initiated reforms seeking to create “an appellate tribunal which would command respect,” through to the period of Mary Ann’s appeal the source of the appeals heard in this court had changed drastically. Initially, the “greater part of the Judicial Committee’s ecclesiastical business . . . consisted of appeals in matrimonial and testamentary causes” originating in England. Then it was swamped with appeals from India. With the passage of the Matrimonial Causes Act of 1857 and the Court of Probate Act, 1857, jurisdiction in English testamentary and matrimonial appeals was transferred to the House of

⁸⁰ *Evening Post*, 7 May 1880, 2; On wills as expressive of affect and revealing past sexual liaisons, see Durba Ghosh, *Sex and the Family in Colonial India. The Making of Empire* (Cambridge: Cambridge University Press, 2006).

⁸¹ Studholme, “Some memoirs,” 90-1, ATL.

⁸² Studholme, “Some memoirs,” 91.

Lords. Following the 1873 Judicature act most “UK appellate business” was transferred to the new Court of Appeal of the House of Lords.⁸³ As a result, by the time that Mary Ann and Sarah Rhodes travelled to London in 1881 to hear the trial about her fortune, the Judicial Committee was a court of empire in which British jurists decided about private colonial familial frictions regarding property and inheritance alongside the merits of cases on commercial and constitutional issues.⁸⁴

Four years had passed since William Barnard Rhodes’ death when Mary Ann and her widowed step mother arrived in London to hear the case. Mary Ann was the appellant; the respondents were the living Rhodes brothers and the children of the deceased brothers. It was Sarah, according to her sister, Lucy, who “took her stepdaughter to England,” and who made it possible for Mary Ann to win. In her version Sarah secured the services of the “best lawyer of the day,” Judah Benjamin for Mary Ann, apparently just hours before the Rhodes family sought his services themselves.⁸⁵ Born in Louisiana, this Jewish lawyer and former plantation and slave owner and confederate had served as Attorney General, Acting Secretary of War, and Secretary of State for Jefferson Davis and the Confederacy before a dramatic escape that led him eventually to London. There, in 1866, he became a law student again, and very quickly rose in prominence until by 1872 he ranked as “leader for all legal assignments in all of England.” His knowledge of French legal codes, hard work, and fluency in French, Spanish, Latin and English had helped him make a specialty of appeals from the

⁸³ Howell, *The Judicial Committee*, 2, 59, 69.

⁸⁴ Kenneth Keith, “The Interplay with the Judicial Committee of the Privy Council,” in *The Judicial House of Lords 1876-2009*, ed. Louis Jacques Blom-Cooper, Brice Dickson and Gavin Drewry (Oxford: Oxford University Press, 2009), 317.

⁸⁵ Studholme, “Some memoirs,” 91, ATL.

Dominions to the Privy Council. Little wonder both sides sought his services. By 1882 he had reached the peak of his career and accumulated considerable experience and wealth, but was having serious health problems. Within ten months of arguing Mary Ann Rhodes' case he had a heart attack and retired to join his family in Paris.⁸⁶ Both sides secured men who were leaders of the profession. Such work, historian of the Judicial Committee, Howell argues, attracted the cream of the English bar. The Rhodes brothers and their descendents secured the services of Sir Henry James, who was then the Attorney General in Gladstone's government. Both leading counsels cost around 250 guineas a day, with consultants and refreshers extra.⁸⁷ The trustees were represented separately by other prominent barristers, who watched the case for them, but did not take part in the arguments.⁸⁸

The six members of the Judicial Committee hearing Rhodes v Rhodes spent five days between January 25th and Feb 1st 1882 listening to the cases presented by the counsels for both sides of the "Great New Zealand Will Case." New Zealand newspapers interpreted the attendance of Lords Blackburn and Watson alongside the other "ordinary judges" as proof of the "importance of the appeal."⁸⁹ Such boards varied. For Rhodes v. Rhodes all were prominent, experienced men aged between fifty-five and seventy two. Historian, Robert Stevens describes Lords Blackburn and Watson as the intellectual leaders of the law lords of the period. Lord Blackburn was known as a brilliant common lawyer prior to his appointment

⁸⁶ Judah Best, "Judah P. Benjamin. Part Two. The Queen's Counsel," http://www.supremecourthistory.org/wp-content/themes/supremecourthistory/inc/37_Judah_P_Benjamin_Pt2wf_oootnotes.pdf (3 August 2012); Eli Evans, *Judah Benjamin: The Jewish Confederate* (New York: The Free Press, 1988).

⁸⁷ *North Otago Times* 9 January 1883, 2.

⁸⁸ Howell, *The Judicial Committee*, 192; *Law Times*, 46, 1882, 464-5, 471; *The Otago Times* 9 January 1883, 2.

⁸⁹ *Evening Post* 19 January 1883, 3; *North Otago Times*, 9 January 1883, 2; *Wanganui Herald*, 13 January 1883, 2; *Poverty Bay Herald*, 27 January 1883, 2.

as the first Lord of Appeal following the reforms of the 1870s. He served frequently on the Judicial Committee between 1876 and 1887. When he retired, six years after *Rhodes v Rhodes*, he was celebrated as the country's leading lawyer. Lord Watson is better known in imperial and Canadian history as the Lord who during the 1890s decided on a series of appeals that reversed the centralizing thrust of Canadian Confederation, giving greater power to the provinces. He served first in 1880, so was a relative newcomer at the time of the *Rhodes* case.⁹⁰ Blackburn and Watson were both Scots by birth, and experts in Scottish as well as English law, as well as increasingly knowledgeable about the wide body of other colonial laws required to assess the appeals that came to the Privy Council.

The four other members brought further expertise to the assessment of appeals. Three, Sir Richard Couch, Barnes Peacock and Arthur Hobhouse, drew frequently upon expertise gained while serving in India.⁹¹ Their knowledge was essential, as during this period, the vast majority of cases decided by the Judicial Committee of the Privy Council were about issues of marriage, inheritance, or property law in diverse regions of India. Mary Ann's case followed one between two Canadian Railway companies appealed from the New Brunswick Supreme Court and preceded one that dealt with the modes of descent for land held under a particular land tenure system in Bengal.⁹² These decisions required that judges be familiar

⁹⁰ Robert Stevens, *Law and Politics. The House of Lords as a Judicial Body, 1800-1976* (London: Weidenfeld and Nicolson, 1979), 109, 130-31.

⁹¹ C. E. A. Bedwell, 'Couch, Sir Richard (1817-1905)', rev. David Hardiman; J. A. Hamilton, 'Peacock, Sir Barnes (1810-1890)', rev. Roger T. Stearn; C. E. A. Bedwell, 'Hobhouse, Arthur, Baron (1819-1904)', rev. H. C. G. Matthew, *Oxford Dictionary of National Biography* (hereafter *ODNB*) (Oxford: Oxford University Press, 2004).

⁹² George Wheeler, ed., *Privy council law. A synopsis of all the appeals decided by the Judicial Committee (including Indian appeals) from 1876 to 1891 inclusive; together with a precis of all the important cases from the Supreme Court of Canada, in which special leave to appeal has been granted or refused, or in which appeals*

with the many different legal systems governing civil matters, property regimes and inheritance in the colonies. This was simplest in colonies where the English Common Law regulated such matters. However, for cases from Quebec they had to be familiar with the Custom of Paris, from South Africa with Roman-Dutch Law, as well as with Hindu, Muslim and diverse local customs from India. Sir Richard Couch had been Chief Justice in Bombay and Calcutta. Sir Barnes Peacock was also a former Indian Judge. He first joined the committee in 1871 and had accumulated considerable experience and knowledge of the laws of the Empire in the period he had been hearing appeals. Between 1872 and 1876 alone he sat on close to 600 appeals.⁹³ Sir Arthur Hobhouse, the fifth member of her board spent the period between 1872 and 1877 in India where he served as a law member of the council of the Governor-General of India and as Chancellor of the University of Calcutta. His brother, Edmund Hobhouse had spent the years between 1858 and 1865 in New Zealand as the first bishop of Nelson and had sought unsuccessfully to set up a Māori boy's school. Arthur Hobhouse was a "strong Liberal," very interested in legal reform, and an early proponent of married women's property rights. Sir Robert Collier, another liberal, was the longest serving member of the board hearing the Rhodes appeal. He had been appointed in 1871 as one of the four new judges that took up their positions following the reform of its operations.⁹⁴

have been heard (London: Stevens, 1893); That year 31 of the 51 cases heard came from parts of India, predominantly Bengal; 5 from Canadian provinces; 3 from Australian colonies; 3 from within England; 2 each from Colombo and Malta, and 1 each from New Zealand, the Cape, Shanghai, Penang and Mauritius. Calculated from "Privy Council Papers on line," 1882, <http://www.privycouncilpapers.org/privy-council-papers> (2 August 2012).

⁹³ Howell, *The Judicial Committee*, 65-6, 154-5, Appendix 234; J. A. Hamilton, 'Peacock, Sir Barnes (1810-1890)', rev. Roger T. Stearn, *ODNB*.

⁹⁴ Stevens, *Law and Politics*, 112; C. E. A. Bedwell, 'Hobhouse, Arthur, Baron Hobhouse (1819-1904)', rev. H. C. G. Matthew, *ODNB*; Katherine W. Orr, "Edmund Hobhouse," *DNZB*, <http://www.teara.govt.nz/en/biographies/1h28/1>; David Pugsley, 'Collier, Robert Porrett, first Baron Monkswell (1817-1886)', *ODNB*.

Local newspapers reported that the widow, Mrs. Rhodes attended daily to hear the case argued.⁹⁵ Mary Ann may have attended as well.⁹⁶ The Judicial Committee of the Privy Council met in the Council Chamber, located in the heart of Westminster at the intersection of Downing Street and Whitehall. Designed in the 1820s, then renovated in the 1840s, it remained an uncomfortable room that was cold in winter until long after Mary Ann's appeal in the depths of a London winter. The room was small, with limited space for about twenty visitors. One image from 1863 shows women among those in attendance. Running down the center of the Chamber was a long rectangular table on each side of which the members of each appeal board sat. Members of the legal profession, including solicitors, and other agents of appellants and respondents, "were accommodated in cramped quarters behind a bar, which crossed the room at, and adjoining, the eastern end of the table." Counsel and agents had the use of a table and desks, hemmed in by reporters' desks.⁹⁷

Mary Ann's appeal rested on her claim that the words postponing her claim on the income from the residual estate until "from and after the decease of my said wife without leaving issue of our said marriage," had been inserted by mistake, did not express her father's wishes, and that therefore she was entitled under the trusts of the will to immediate possession of the income from the residuary estate. The major issue, as in the case of most jurisprudence regarding wills in common law jurisdictions, was the intention of the testator,

⁹⁵ *The Sheffield and Rotherham Independent*, 1 February 1882, 3.

⁹⁶ *Evening Post*, 19 January 1883, 3 reports "Miss Mary Ann Rhodes heard her case argued," while an anonymous notation on this report in a file regarding the case suggests she spent the time in Italy. If "May" is in England you had better shew(sic) it to her. I thought "May" was in Italy .. the case argued! People in London know better!" Thomas Carson. Opinion on Barnard will. 10 June 1882, MS Papers 3504, ATL.

⁹⁷ Howell, *The Judicial Committee*, 167-88, citation at 177; *Evening Post*, 19 January 1883, 3.

but the specific question was about whether words inserted by mistake could be revoked following probate.⁹⁸

In presenting her case, Judah Benjamin and his colleagues argued cogently that the will only made sense if the new words inserted in the will by the lawyer, Mr Hart, were removed. They pointed out that Rhodes's widow had been well provided for, so it made little sense to postpone Mary Ann's right to take her life interest. Sir James Henry and his colleagues countered, arguing that "the words should be interpreted literally, according to their plain meaning, and that to give them a distributive construction would be contrary to the letter and spirit of the will and the intention of the testator."⁹⁹ Perhaps Committee members interrupted these arguments, seeking clarifications. Howell describes this as common. Once counsel had presented their cases and withdrawn, the members deciding on the appeal met behind closed doors. Only the result of their deliberations, the judgment, became public.¹⁰⁰

In 1930, the Canadian, Elizabeth Campbell waited from February to May to learn of the successful outcome of her appeal."¹⁰¹ The Rhodes v. Rhodes hearing ended on the 31st of January. The collective judgment was delivered five weeks later by Lord Blackburn on March 8th. Their Lordships did not accede to Mary Ann's request that the will be adjusted and sent back to probate again because although they accepted that the words in question "were improperly introduced," by the lawyer, the will had been properly executed and there

⁹⁸ Rhodes v. Rhodes, *The Law Times*, 46, 1882, 464.

⁹⁹ Rhodes v. Rhodes, *The Law Times*, 46, 1882, 464.

¹⁰⁰ Howell, *The Judicial Committee*, 192; The judgment is a report to the Sovereign which is followed up by an Order in Council of the Sovereign, Spiller et al, *A New Zealand Legal History*, 229-30.

¹⁰¹ Backhouse & Backhouse, 156-7, citation at 164.

was no indication of fraud.¹⁰² Their judgment, like Benjamin's argumentation, was based in large part on a logical reading of the will to determine Rhodes's intention. The main question they sought to answer was whether or not Rhodes had intended to vest certain interests immediately on his death. This, they warned, required "examining the whole will at perhaps tedious length."¹⁰³ Hence after sifting through the evidence sent from New Zealand and the arguments made there, reflecting on the arguments made by the counsels for both sides and considering the precedents, they parsed the will's logical inconsistencies clause by clause, and dug deeply into the way it had been made. In seeking to establish Rhodes's wishes they weighed words and their meaning and established their own understanding of the affections and desires that shaped his intent.

The boundaries and hierarchies they expressed, like the will, spoke to Mary Ann's ambiguous inclusion within the Rhodes family, to her current state of singlehood and to Sarah's failure to produce a legitimate heir. "The testator was married but had no children, and there was not much prospect of his having any. He had a natural daughter, Mary Ann, the now appellant, for whom he makes a provision. . . such as to show that she was the object of his care and affection, and that he expected that on his death she would live with his widow, and be treated by her as she would have treated a legitimate stepdaughter."¹⁰⁴ In this way they recognized Rhodes's affection for Mary Ann, while re-iterating her illegitimacy. The provisions that depended on there being issue from his marriage with Sarah indicated that "he preferred his issue by his wife, if he should have any to Mary Ann." Those providing

¹⁰² Rhodes v. Rhodes, *The Law Times*, 46, 1882, 462.

¹⁰³ Rhodes v. Rhodes, *The Law Times*, 46, 1882, 467.

¹⁰⁴ Rhodes v. Rhodes, *The Law Times*, 46, 1882, 468.

for Mary Ann's potential future husband and children might serve to remind her that she was still single and childless as she approached thirty. In the Lords' reading they decided that Rhodes had "preferred Mary Ann to her collateral relatives."¹⁰⁵ In their logical analysis of the will, Rhodes had wished to give Mary Ann all the rights of a legitimate daughter because he had no legitimate heirs. And, he meant these to start at the moment of his death. It was only in the case of Mary Ann's death, without issue, that he expected his other relatives to benefit from the large residual estate. The judges therefore argued that the decree of the New Zealand Supreme Court dismissing the appellant's suit should be reversed. Mary Ann was to be recognized as "entitled to the present enjoyment of the interest . . . given to her for her life in all the undisposed-of residue of the testator's real and personal estate." The trustees were required to repay the costs of all parties to the cases in New Zealand and for solicitors and clients in the London appeal from the estate.¹⁰⁶

Elizabeth Campbell wrote that on hearing the decision in her 1930 case, she exclaimed "Thank God, O thanks God for the Privy Council."¹⁰⁷ Many colonials were not so thrilled with the Judicial Committee's decisions, but Mary Ann's response may well have been similar.¹⁰⁸ Within a week cable messages reached New Zealand with a brief summary of the judgment. Even without the full details, newspapers noted that the effect was to confer "on Miss Rhodes an annual income," which was said to be "very large."¹⁰⁹

¹⁰⁵ Rhodes v. Rhodes, *The Law Times*, 46, 1882, 468.

¹⁰⁶ Rhodes v. Rhodes, *The Law Times*, 46, 1882, 471.

¹⁰⁷ Howell, *The Judicial Committee*, 192; Backhouse & Backhouse, *The Heiress*, 156-7, citation at 164.

¹⁰⁸ Howell, *The Judicial Committee*, 1.

¹⁰⁹ *Grey River Argus*, 13 March 1882, 2.

After Rhodes v. Rhodes

The outcome of this appeal offered Mary Ann the potential for an independent life. Travelling to London to observe her fortune on trial took courage. Her family history and background, along with her father's will were subject to both legal and public scrutiny. In the Council chambers, in the judgment and in the metropolitan newspapers her situation as the "natural" daughter of Rhodes was referred to repeatedly. The appeal and reporting on it also rendered public the extent of her fortune. Mary Ann's success lay in part in the skill of her lawyers, in part in the particular experiences that the Lords brought to interpreting Rhodes's will. This all required money, as New Zealand newspapers liked to point out. The total costs of the appeal, including the services of the three sets of lawyers were reported at close to £2,840 in addition to the costs incurred in New Zealand: "Lawyers seem to have had fully their share of the late lamented Barney Rhodes' four millions." Underlining her class privilege, readers were also informed that Mary Ann had "hunted with the Empress of Austria."¹¹⁰ Her wealth and class position thus muted the history of her Māori mother. In 1860 New Zealand politicians had sought to legitimize the children of interracial couples who subsequently married through the provisions of the Half-Caste Disability Removal Act. Ostensibly offering such offspring the right to inherit property from their white fathers, it was part of the broader policy of encouraging "legal" marriage. Mary Ann faced no such disabilities. Her adoption into and upbringing in an increasingly bourgeois, wealthy, English New Zealand family made her a successful example of what promoters of racial

¹¹⁰ *The Evening Post*, 19 January 1883, 3; *North Otago Times*, 9 January 1883, 2; *Wanganui Herald* 13 January 1883, 2; *Poverty Bay Herald*, 27 January 1883, 2.

amalgamation had sought.¹¹¹

Mary Ann and Sarah remained in England after the appeal, but were soon worried by the clause of the will that stated that the £2,000 promised Sarah annually and the right to occupy the Grange depended on her not being absent for over two years. In June 1882, they sought legal advice in England as they were contemplating staying away longer. The newly independent Mary Ann and her step mother also wanted to know if Sarah were cut off from this income whether it would fall into the residual estate. If so, Mary Ann wished to compensate Sarah for that loss by paying her the same amount. The advice they received was that after any absence of two years the income would indeed cease, but that it would resume once she resumed residence. Mary Ann would, indeed, be free to use her income as she wished.¹¹² Stepmother and step daughter thus cooperated to minimize the patriarchal limits that Rhodes' will had placed particularly on Sarah. They returned to New Zealand. Within a year the newspapers were reporting that this now very wealthy, not so young woman was soon to marry Mr. Edward Moorhouse.¹¹³ Edward was Sarah's younger brother and seventeen years older than Mary Ann. Family records suggest he had long loved her, but she refused to marry until he controlled his drinking. They married at St. Paul's Cathedral in Wellington in July 1883. In the registration of their marriage the sections for her mother's name and her own place of birth were left blank.¹¹⁴ Shortly thereafter they moved to England and remained there for the rest of their lives, maintaining some connection to New

¹¹¹ Wanhalla, *In/visible Sight*, 95; Salesa, *Interracial Crossings*, 125-32.

¹¹² Thomas Carson, Opinion in Barnard Will, 6 and 10 June 1882, MS Papers 3504, ATL.

¹¹³ *Hawke's Bay Herald*, 26 June 1883.

¹¹⁴ Marriage registration reproduced in Bryant Papers, MS-Papers-6944-2, ATL; Notes from *Kaleidoscope* reproduced in Bryant Papers, 6845-1, ATL.

Zealand through visits and donations to causes there. Whether this was his choice, hers or a collective decision, the move distanced Mary Ann from the colony of her mother's people and from those who knew about her origins and the sources of her wealth. Their four children grew up wealthy, rather wild, and with little knowledge of their Māori background. Mary Ann and Edward named their eldest son William Barnard, and prior to his marriage in 1912, he changed his surname to Rhodes-Moorhouse, responding to the clause in his grandfather's will that would qualify him to inherit much of his namesake's fortune. A dare devil kid, fascinated by fast cars and airplanes, he became the first member of the flying corps to win a VC in World War One after dying on a daring, dangerous mission. He was later recognized as the first Māori winner of a VC.¹¹⁵

The Judicial Committee's decision did not end public and political contests over Rhodes' fortune and will. The trustees and the government disagreed about whether the duty had to be paid. The repeal of sections of the Stamp Duty Act complicated the question. Newspapers again pointed out that these duties were of "interest to the colonists from a financial point of view."¹¹⁶ It took petitions from the trustees, the drafting and redrafting of a bill and negotiations between the trustees and politicians before a special act of the New Zealand Assembly settled the issue. The £7,000 duties specified fell far short of the original assessment of closer to £20,000.¹¹⁷ There were ongoing challenges in administering the estate, many of which Sarah and Mary Ann worked through together. In 1884 Sarah had to

¹¹⁵ Arahanga, "Dancing in the Sky."

¹¹⁶ *Taranaki Herald*, 30 March 1882, 2; *Evening Post*, 29 August 1882, 3; 31 August 1882, 3.

¹¹⁷ "An Act to empower the Executors of the late William Barnard Rhodes to pay certain additional Duties under Part III. of "The Stamp Act, (1875), *NZ Statutes*, 30, 1882, 956-7.

deal with the fact that one of the trustees, Waring Taylor had embezzled from the estate. He went bankrupt owing Sarah, Mary Ann and the estate considerable sums. In 1931, the widow of Mary Ann's son contested the Commissioner of Stamp Duty's assessment of the worth of the estate following the death of Mary Ann.¹¹⁸

Conclusion

Mary Ann's troubling inheritance as a woman of mixed descent brought up in an English, colonial capitalist household offers glimpses into the history of one particular colonial New Zealand family. Unlike many half-caste New Zealanders, reared by their mothers and their Māori kin, Mary Ann was cut her off at an early age from her whanau and broader culture. Raised by her father and two childless step mothers in an ostentatious Wellington mansion, she became bourgeois, her Māori identity and subjectivity muted or suppressed. William Rhodes's will demonstrated his affection for her and his concern that she should possess the means to be independent. It also displayed his conservative, dynastical, patriarchal, primogeniture-like longing for male heirs and for control over his fortune and his widow's future. The provisions of his will, and their different interpretations in the courts constituted Mary Ann as second-best to legitimate heirs and to male heirs through her gender and illegitimacy, but a legitimate heir. This family's history reminds us of the tense and tender ties of early Māori-Pakeha intimacies, the fortunes of colonialism and colonials, and the

¹¹⁸ *Evening Post* 8 September 1884, 2; Patterson, "Whatever happened;" *Evening Post* 1 April 1931, 15. William Barnard Rhodes-Moorhouse died in a daring flying mission in 1915. He had not yet inherited the entailed estate because Mary Ann was still alive and living off its proceeds. Hence it passed to his wife, following Mary Ann's death in 1930.

trans-empire movement of peoples and fortunes back and forth between colony and metropole.

Mary Ann's contest over her inheritance, her troubling of the trustee's and New Zealand courts' interpretation of her father's will turned this family story into a national story – “the Great New Zealand Will Case.”¹¹⁹ In the New Zealand courts some of the country's most prominent lawyers and politicians were involved in adjudicating the meaning of their former fellow politician's last wishes. Newspapers across the country published the details of the content of the will and followed the evolving legal battles, making private family issues of inheritance and property matters of public attention. The cases pitted the nation's claim on the considerable duties charged initially based on one reading of the will against the trustees' claim that payment should occur much later based on their reading of the will. Rhodes's will was of interest to the nation for many reasons. Beyond the political, legal and fiscal issues, it made public the story of successful colonial wealth accumulation and taught lessons about the importance of well drafted wills.

Mary Ann's appeal to the Privy Council, the ultimate appeal court of empire, placed her case among appeals from Bengal, Canadian provinces, and other parts of the empire. The eminent British jurists who staffed the Judicial Committee judged private colonial familial frictions about property and inheritance alongside the merits of cases regarding commercial and constitutional conflicts.¹²⁰ Her hope that this court would agree with her interpretation of her

¹¹⁹ *North Otago Times*, 9 January 1883, 2; *Evening Post*, 19 January 1883, 3.

¹²⁰ Kenneth Keith, “The Interplay with the Judicial Committee of the Privy Council,” in *The Judicial House of*

father's will demonstrates the faith that some colonial subjects placed in the decisions of the Privy Council.¹²¹ Mary Ann's successful appeal shared some characteristics with the later case of Elizabeth Campbell, the Canadian woman who is the subject of Constance and Nancy Backhouse's book, *The Heiress vs. the Establishment*. Campbell initiated and successfully argued her own appeal against the claims of the rest of her family regarding her mother's will in 1929. Backhouse and Backhouse attribute some of Campbell's success to the fact that "she was an insider by class, race, and ethnicity, an outsider by gender," as well as having access to financial help.¹²² Mary Ann Rhodes was also an outsider by gender but also by race, ethnicity and her illegitimate birth. She was an insider by class and had access to greater amounts of money than Campbell did, as well as to the support of family members and prominent members of the New Zealand legal establishment for the appeal. She did not attempt to argue her own case. The considerable assets of her father's estate ensured that she could secure the services of one of London's leading lawyers to do so.

Mary Ann's emigration to England as Edward Moorhouse's wife severed any remaining potential ties with her Māori past and forged new cross generational links between families in England and New Zealand. She remained in close touch with her stepmother, Sarah who never remarried and remained in the Grange until her death in 1914, and visited England on several occasions.¹²³ When Sarah wrote her last will in New Zealand in 1912, she directed her trustees to send Mary Ann her Brussels, Honiton, Spanish and Chantilly lace and any of

Lords 1876-2009, ed. Louis Jacques Blom-Cooper, Brice Dickson and Gavin Drewry (Oxford: Oxford University Press, 2009), 317.

¹²¹ Howell, *The Judicial Committee*, 1; Backhouse and Backhouse, *The Heiress*, 179.

¹²² Backhouse and Backhouse, *The Heiress*, 179.

¹²³ Studholme, "Some memoirs," ATL; Papers relating to Lieutenant William Rhodes-Moorhouse VC, George A. Bryant Papers, MS-Papers - 6845-1.

her personal chattels or clothing that Mary Ann might desire. After specific bequests to many relatives in New Zealand, England, South Africa, and Australia, Sarah divided her residual estate into nine parts. She left one to support women's education at Victoria University, another to support the Wellington Boy's Institute and the other seven to specific family members including her "beloved step-daughter." In contrast to her father's will, in the "economy of sentiment and family affect," expressed in Sarah's last wishes, Mary Ann was a legitimate and valued member of Sarah's trans-imperial family.¹²⁴

¹²⁴ Will, Sarah Anne Rhodes, probated 14 April 1914, AAOM W3265 6029 Box 263; Record # 16250, ANZ: Ghosh, *Sex and the Family*, 10.