

MINUTES OF EVIDENCE TAKEN

SATURDAY, THE 20TH DAY OF OCTOBER, 1860.

PRESENT:

Mr. Domett,
Mr. Forsaith,
Mr. Dillon Bell,
Mr. Williamson,

Mr. Heale,
Mr. Fox,
Mr. Hunter Brown,
Mr. King,

Mr. Sewell in the Chair.

Sir William Martin.

Sir William Martin, D.C.L., late Chief Justice of New Zealand, examined.

20 Oct. 1860.

1205. *Chairman.* You were for more than 16 years Chief Justice of New Zealand?—I was.

1206. In the course of that time did you pay attention to Native affairs?—Considerable attention. The Natives very early began to come to me and make enquiries as to what the English Institutions meant.

1207. You are acquainted with the Native language?—I am.

1208. Have you read Mr. Fenton's Report?—I have.

1209. Will you favour the Committee with your views on that report, the system pursued by Mr. Fenton, and its effects?—It appears to me that the main principles laid down in the report are very sound, and applicable to the circumstances of the Natives. I don't know whether the Committee will allow me to read a paper which I submitted to the Governor towards the end of 1859. It will show in a brief compass the results at which I had then arrived, and the mode by which I had been led to them. I was not aware at that time of Mr. Fenton's report; I had heard nothing of it.

[The witness put in the following statement, which was read.]

REMARKS ON THE ADMINISTRATION OF JUSTICE AMONG THE NATIVES.

During the present year (1859) I have been frequently led to consider this subject, but most particularly at the time when the leading men of Ngatipaoa (the tribe occupying part of the island of Waiheke and the main land opposite to it) visited Auckland for the purpose of conferring with the Governor on various matters affecting their tribe. Many of these men were old friends of mine; and during their stay they came over repeatedly and explained to me the state of things amongst themselves, their own efforts to imitate the Pakeha in settling disputes amongst themselves in a peaceable and judicial way, and the many perplexities and difficulties which attended those efforts. They therefore urged me very strongly to provide them with some simple rules to go by.

Having also had opportunities of conversing with both Englishmen and Natives from other Districts, I find that a similar state of mind and of circumstances appears to exist in most parts (if not in all) of this island. There are generally manifested:—

1. A strong sense of the superiority of our mode of proceeding, and of the necessity of adopting it.
2. A determination and practical endeavour to introduce it by their own efforts amongst themselves; which takes effect through a very rude and irregular course of proceeding, a most lawless mode of administering what they take to be law.
3. A belief that they have received full authority to introduce it.
4. Exceeding confusion and perplexity on the part of the administrators of the new system, attended in many cases by grievous injustice and oppression towards the persons who are exposed to its visitations.

On these points I desire to offer a few remarks.

1. The existence of such a conviction, and that so widely spread, may well be regarded as a source of unmitigated satisfaction. It is the state of things which has been for years earnestly desired. It is the clearest indication of the energy and good sense of the race, and a strong ground of hope for the future.

2. The attempt to gain their end by their own efforts is not to be regarded merely as an indication of the strong will or self confidence of the race. It is grounded on an analogy which naturally presents itself to their minds, and their sense of which is continually showing itself in their conversations on the subject. The only movement of reform or renovation which they have as yet experienced is the introduction of Christianity. They conceive of this movement as the consequence or completion of that. They speak of this as being for the body what that was for the soul. And as the former was carried through the land by their own agency, the Missionaries occupying central positions, whilst the population of the scattered and smaller villages received instruction originally and chiefly from their own countrymen, they take for granted that this later reform will be propagated in the same way.

3. The belief that they possess competent authority arises from the fact of numerous appointments having been made from time to time of their own chiefs, to administer justice among them. It is true that the English name of Office "Assessor" indicates that the person so appointed is not to exercise independent powers; but in the Maori version, which alone is intelligible to them, he is described as a *Kai Whakawa*, that is to say, a Magistrate or Judge. Occasionally there is an express reference in the notice of appointment to the Resident Magistrate's Ordinance, under which they were to act as Assessors; but I do not think that such reference could make much difference, the Ordinance itself being little known. I am not intending to find any fault with the form of the notice given in such cases. I do not know that even the substance of it could have been made intelligible in any other way. Indeed