

627. Do you consider in any future legislation that the views of the large majority should determine the course of procedure?—I do.

628. You think that is just, and according to Native custom?—Yes; according to Native custom. Under the Act of 1869, which was mine, provision was made requiring the assent to a sale of the majority in value; but the Court in administering that Act found it to be practically impossible to discriminate between the values of individual Natives; and the shares of the owners were practically treated as equal, not because it was right, but because the Court could not do anything else. *Argumentum ab impossibili multum valet in lege* is the maxim.

629. Then, the doctrine which has arisen of practically treating the interests of the Natives as of equal value is not according to Native custom nor real right?—No, it is not; but the Court could not do anything else.

630. Under compulsion?—Under compulsion. I have a judgment about it of some length, and, I think, carefully written. I remember it occupied my thoughts a good deal when the Compensation Court was sitting at Taranaki, where cases came before us in such a form that we could not avoid settling them on some principle. It had to be done. You know the principle of that Act. There was a block of confiscated land. I was Chief Judge of the Court, and sat to determine what land in a block belonged to loyal Natives. Their land was to be preserved to them, and the Government was to take the rest. The enemy were still in the bush, and as for the people before the Court, who were called the loyal Natives, their object was to say that the people in the bush had no title at all—that they were nobody in so far as the land was concerned—and that the real men who were entitled were all before the Court. It was a very laborious business. In each case we had to go to the origin, and trace the people down to that day. I will illustrate my meaning. The Court having only one side before it might be easily deceived. So we were compelled to go back to the original ancestor, and discover all the descendants through fifteen or twenty generations until we had the names of every individual alive at the time. We then had to inquire into each case thus: “Where is Tamati?—In the bush. Where is Hone?—Shot by the soldiers. Where is Rewini?—Here. Where is Martha?—In the bush,” and so on through the whole list. We then added up the names of those in Court who had not gone to the war, and, having also added together those who had gone to the war, we found the numbers to be: say, seventy of the one category and seventy-two of the other. Then came the statement from the claimants, “Those men [the absentees and killed] were nobody; we are the men.” Under the circumstances it was impossible to entertain the question of the relative values of the interests claimed as between the individuals, and we were compelled to lay down that rule of the equal value of the interests. As a fact, the greatest men were generally rebels. The result was that we gave half of the land to the Governor, and half to these people in Court, drawing an arbitrary line on the plan, making two divisions.

631. Was there such a thing according to Native custom as individual rights belonging to every man, woman, and child in the tribe or hapu, and could they be defined over any particular piece of land?—I will reply by giving you another instance. There was a case in Waiheke where a husband got a piece of land marked off for himself out of the land of a different tribe, to which his wife belonged, as compensation for adultery.

632. That was a special gift as compensation for injuries?—There are a few cases of that sort; they are not numerous. Mr. Davis, who was a very learned man in Maori matters, said there is no such case except that at Waiheke, but I think he is wrong.

633. These would be striking exceptions to the general rule?—Yes; but, as I have given a judgment on this question, I should refer you to that for my opinion, as it is authoritative. I think it was the Kaitorete case, near Christchurch, reported in “Important judgments.”

634. The general rule is the tribal or hapu right?—That the land belongs to the hapu; subject to the suzerainty of the tribe.

635. I suppose the hapu would be a collection of families forming a sort of sub-tribe?—Yes, sometimes only one family. Of course, what you call “mana” does represent a certain idea that runs over the whole of these questions: that if attacked by any outsiders it was the business of the tribe to defend this hapu and its rights.

636. Then, the mana would be a species of authority without a title?—Yes. I remember hearing the word bandied about very much in the House of Representatives. I thought there was something in it then, because I had not then any experience; but I found subsequently that the word was not used in that way. Wiremu Kingi's was not mana, but title—the supreme title as long as he lived. Mana is simply, in the Maori use of the word as applied to an individual, personal influence.

637. What was the method of dealing with the Maoris for their lands in the olden times? How were the transactions conducted? In private dealing with the Natives and in Government dealing with the Natives, what was the mode?—I have no knowledge or experience of private dealing with the Natives. I have seen some Government transactions, and they were of this character. Again I will give you an instance.

638. The Commissioners would rather have instances?—I was present at the completion of a purchase at Tokatoka, that queer spiral mountain on the Northern Wairoa. The price had been settled at a general assembly of the tribe. Then came the question of payment, which of course was the most important part of the transaction. There were the chiefs seated round a circle. It was disputed land in the old days; but the dominant man and the most warlike chief in the old days in that district was old Tirarau, chief of the Parawhau, a hapu of the Ngapuhi Tribe. He occupied the place of honour, and next to him was Parore, his brother-in-law, a chief of the same hapu. Then, there were Paikea, Te Wheinga, Pairama, and Manukau, chiefs of the Uriohau, who were the original owners. Tirarau and Parore might be called the *conquistadors*, and along with them there were the representatives of the subdued tribe, as I have stated, which was a branch of