

natural-born subjects of the Crown. Therefore, if the prosecution have made out to your satisfaction that the prisoners at the bar were engaged with others in endeavouring, not to right some private grievance, or to exact some retaliation against private enemies of their own, or against tribal enemies, but to deny and resist the authority, and withdraw themselves from subjection to the authority of the Government of Her Majesty in the Colony, they are guilty of high treason. In allusion to one matter to which attention has very properly been called by the learned counsel for the defence, I tell you that you need not embarrass yourselves as jurymen—who have only to pronounce, as a verdict, guilty or not guilty—with any question as to the relative degree of guilt of these prisoners and the persons with whom they have acted in concert. I shall tell you presently the law in respect to persons acting in concert for a common purpose; but referring as I have done to the question of the results of this inquiry, let me tell you that you have no right—and it must and would be unwise of you—to contemplate what may be done afterwards should your verdict be one condemning the accused. You must not consider whether the sentence of the law will be modified, or how the prerogative of the Crown may be exercised by those who have the power to exercise it. You must come to your conclusion regardless of the consideration whether, from what may be called the moral point of view, the prisoners before you are more or less guilty than those with whom they have been acting. I put it succinctly to you, that it matters little to you whether it is Te Kooti or the humblest of these men that you have before you, if it be established that the acts of any may be taken to be the acts of all. And now I must advert to the question of force or compulsion, which was very properly urged by the learned counsel for the defence. This is one of the most prominent features of the defence, and requires that you should apply your minds vigilantly to the consideration of it, in order to see whether these parties, or some one of them, may not come within the principle on which compulsion is admitted as excusing co-operation with rebels. On this subject I will read to you a passage from the work of Mr. Justice Sir Michael Forster on the subject, which is one of the highest authorities on the head of law. The doctrine had originally been laid down that “the only force that doth excuse is a force upon the person, and present fear of death, and this force and fear must continue all the time the party remains with the rebels.” But Forster afterwards says it will be enough if “upon the whole the accused may be presumed to have continued among the rebels against his will, though not constantly under an actual force or fear of immediate death.”

Now it is for you to say, when you come to review the evidence, whether that rule can be applied to the conduct of any one of the three prisoners. There is, no doubt, a considerable amount of evidence to show that Te Kooti is a man of strong will and iron rule, who does not threaten without striking; and from the evidence of some of the women you will probably infer that there were persons in his camp—females among them—who were almost paralyzed by the fear of his threats, and who,—when you consider the specific language about prisoners, and his threats of how his god would deal with them,—may have been put into an irresponsible position. You will, however, have to test whether, when you review the whole evidence, that can be said with any show of justice with regard to any one of the three prisoners. If, as it is suggested, here is Hetariki at one time alone with the women, there is Rewi at another time alone, sick at Hungaroa, far away from Te Kooti, and again there is Matene going backwards and forwards as *kokiris*, and taking an active and prominent part in attacks on out-scouts of the Colonial Forces,—if all this be proved to your satisfaction, you are to say whether these men were acting voluntarily or were under compulsion. I must point out to you that, according to my judgment, you must, in asking yourselves whether there was force and compulsion or not, remember that if these men were originally forced, by fear of death and by the fear of Te Kooti's threats, to obey his orders while his power was impending over them, yet they afterwards got, as I may say, into the spirit of the thing, and voluntarily went and fought,—there was not such a present fear of death and danger to their persons from Te Kooti as would justify them under the rule which I have pointed out. That is to say, supposing it to be true that their first joining was under compulsion—that the first step in this long tragedy was under compulsion—yet if afterwards they resigned themselves to the situation, and did not escape when they could have escaped, but voluntarily joined in acts of rebellion, the doctrine of compulsion cannot be held to apply. In the first place, with regard to Hetariki, you find his voice,—the voice remarkable above all others,—recognised as the voice crying out “Kekaka, kekaka,” “be strong, be strong,” in the midst of the fight. Is that an indication that at that time he was there against his will,—that he was there doing something that nothing but the fear of death would compel him to do? Rewi was not certainly shown to have taken any leading part in the matter; but with regard to Matene, the attack on the escort would seem to be almost conclusive. With regard to escaping, it has been shown that Ohapata escaped because he wished to do so, and it has been shown also that several women escaped. It is for you to consider whether, from the beginning to the end of this disastrous tale, you have any indication of any one of these men attempting to escape from the influence of the force of which it is said they were afraid.

Now, I lay it down to you as law that, without speculating about the animus and the intention of particular parties, if a body of men use violence towards the Queen's Troops, whether Imperial or Colonial, or towards any persons in authority under the Crown or assisting persons in authority under the Crown, for the purpose of shaking off the yoke of Government, it is as much levying war against the Queen, as it would be to go and attack Her Majesty in Windsor Castle and slay her guards. Then, as it may be necessary to import the doctrine of specific intention, you will have to consider whether there is ample evidence of the intention of the parties, if not on their first arrival, at all events during many of the scenes that occurred after their arrival from the Chatham Islands. What was their intention? Te Kooti's intention at first, as he said, was to go to Taupo and overthrow the King. It is not suggested for a moment that he was going to make war on his own account. There is no indication, nor is there any pretence for saying, that what was done by Te Kooti was either in consequence of tribal quarrels or for the purpose of repossessing himself of land of which he or his party had been dispossessed by the Government. They belonged to different tribes, few of them had dwelt there, and there is no evidence to show that any land was taken from them by the Government; neither is there any evidence to show that the intention was to avenge themselves for a wrong they had suffered.