

having been withdrawn, there was really nothing before the Court, and there could be no rehearing. He would, however, take the opportunity of noticing the arguments of counsel, which must be regarded more in the way of suggestions for assisting the Court. As to Mr. Lascelles' contention,—that the Natives who had signed the application for rehearing were merely the agents of others,—the Court could not for one moment recognize such a doctrine, the operation of which, if admitted, would be fallacious, delusive, and calculated to mislead. The Court could only recognize those who came before it as claimants. To suppose the existence of, say, ten undisclosed claimants in the background for every one who appeared would land the Court in endless difficulty and trouble—would, indeed, have the effect of stopping its proceedings altogether. The whole theory of the Native Land Act, when the Court was created in 1862, was the putting an end to Maori communal ownership. To recognize the kind of agency contended for would be to build up communal ownership, and would tend to perpetuate the evil instead of removing it. His Honour instanced succession claims to show how impossible it was to treat as representatives those Natives whose names had been enrolled as owners. The consent to the names must carry with it all the legal consequences, and those admitted must be treated as absolute owners in fee-simple. In the next place, as to whether the Natives who had withdrawn the application acted with the concurrence of the rest, it appeared to the Court that the assent or concurrence of the others did not signify. The same power that applied for the rehearing had withdrawn the application. As often happened with Natives, the same person who signed the names in the application signed them in the notice of withdrawal also. The right to do this had never been questioned; and the case would now be entered up as “No appearance.” The Court was clearly of opinion that it had no power to make any order. With regard to the effect that this might have on the existing title, as argued by Dr. Buller, certain doubts had been raised in the minds of himself and colleague as to the construction of the present statute law, upon which they had decided to take the opinion of the Supreme Court. Of course it would be a monstrous injustice to allow a title to be destroyed by merely getting a rehearing and not prosecuting it. It was evident in this instance that very large interests were involved, and that the case had occasioned much anxiety. After full consideration the Court had come to the conclusion to submit a case to the Supreme Court, under the powers in that behalf which appeared still to obtain under the Act of 1873.

The case was accordingly dismissed.

I cannot pass over this judgment without stating my entire disagreement with it. No more monstrous injustice could be done by any Court than by declaring certain persons were owners, and treating them as absolute owners, when the Court knew they were not the whole owners, but only some of those who were owners. It was the Court's duty to name all the owners, and not to select a few only and call them “absolute owners.” Communal title no doubt was and is bad, but depriving some of the “community” of all their possessions was and is worse. So far as I can see, no Maoris wished to perpetrate any “monstrous injustice:” those who were the means of accomplishing that were Europeans. Judge Fenton says, “it would be a monstrous injustice to allow a title to be destroyed by merely getting a rehearing and not prosecuting it.” I am amazed at his use of such language. He knew the desire not to prosecute the rehearing did not come from the Natives. If Dr. Buller's telegram of the 26th July, 1880, is correct, it was at Judge Fenton's own suggestion that the Natives were asked to consent to a withdrawal of the rehearing. And it seems to me that, once a rehearing has been granted, any person who had any claim to the land had a right to be heard, and that two or more persons who had applied for a rehearing could not stop the Court investigating the case fully. The whole of these proceedings, in my opinion, were invalid. (1.) The order for rehearing had only operation for three years from the 31st October, 1877, and this Court was sitting, without any adjournment of the case, therefore, one day too late. The Court had no power to deal with the application at all. (2.) Further, if the rehearing had been withdrawn before the 1st November, as Judge Fenton had minuted, again the Court had no power to deal with the case, for its jurisdiction had not been