

judgment. Some of the members of the Committee appeared to think that it was a novel view in a Native Land Court, that the Judge who heard the claim had ruled that mana could have no place in influencing the judgment of the Court?—It would depend altogether on the kind of mana on which the claim was based. In the first judgment it was decided that the petitioners' claim was based on mana alone, and 2,500 acres of land was awarded in consideration thereof; but Judge Mair, who heard the case, afterwards recommended the application for a rehearing somewhat to this effect: that it was a matter of opinion as to the value of that kind of claim, and that another Judge and Assessor might take a totally different view of a claim of that nature.

35. The petitioner yesterday seemed to base her claim upon the fact that you in rehearing the claim had ruled that no mana could have any place in influencing the judgment of the Court?—That would depend entirely on circumstances. The decision of the Court is set forth in the judgment. As regards the kind of mana that the petitioner based his claim on, the case was gone into *de novo* irrespective of anything that was said or laid down in the previous judgment. The Court heard the case over afresh. The rights asserted by the petitioner were based on a number of foundations, all of which were dealt with by the Court *seriatim*.

36. It was stated yesterday that you disallowed the claim of mana. Some of the Committee considered it as introducing a novel ruling in the Native Land Court, to exclude mana from any influence in forming a judgment?—Yes; mana alone, without any other right, such as occupation or a right from some other recognised source, would be an insufficient title. There was no such thing known in former times as *mana o te whenua*. It is a misused term in regard to land in the sense it is now used. The Natives could not tell you what *mana o te whenua* meant, it is a pakeha expression.

37. You put it that a claim from mana alone could not be recognised?—Yes; it confers no proprietary right according to Maori custom.

38. *The Chairman.*] If that case had arisen in 1840, would mana have had any influence then?—No; no more than it could have later on, because the Court always considered that it is dealing with the Native title as it existed in 1840.

39. In the first judgment it is stated "We consider that the mana of Te Whatuiapeti was not destroyed, and we have ample evidence that the two chiefs named did in the past generation exercise paramount influence and power over all the hapus living on the coast from Cape Kidnapper to Castle Point"?—That was not supported by the evidence given before the rehearing Court.

40. Then it goes on to say, "Such claims may at this distance of time appear rather shadowy to some people, but this Court must be considered as though it was sitting in the year 1840, when we know that such claims would be undisputed"?—Yes, that is the tenor of the judgment given; but that view was not substantiated at the second hearing.

41. It further states, "We think, therefore, that they are entitled to substantial recognition, and we award 2,500 acres in satisfaction of the claims of the descendants of Tiakitai, and the claims of Hori te Aroatua"?—As regards Te Aroatua, he stated in Court that if he had been alone in the matter, and the land had been awarded to him, he would have returned it to those to whom it belonged.

42. It is your opinion that mana without occupation, or some other claim is proved, is not sufficient?—It is not sufficient to establish a substantial title.

43. You and Major Mair differ in that respect?—Yes; and he admitted in the minute alluded to that another Judge or Assessor might take a different view to what his Court had done.

44. *Mr. Ormond.*] Do you know whether the Native Land Court has not recognised mana in the great majority of the judgments that have been given?—I am not aware of any case where mana alone has been decided to confer a proprietary right to land; there must have been some other right to the land independent of mana.

45. Then Major Mair's decision in this case would have been without precedent?—Yes, as far as I know.

46. *Mr. Hutchison.*] Could you indicate the nature of the evidence on which the claims were substantiated?—All the particulars are set out in the judgment; each case is gone through and reviewed.

47. And it is based on evidence which, in your opinion, raises a doubt on the shadowy claim of mana?—Yes.

48. *Mr. Carroll.*] Would mana with occasional occupation constitute a right?—It would depend very much upon what constituted the mana. There are many circumstances that would interfere. It is impossible to give an off-hand opinion of that kind. Each case has to be dealt with separately and on its merits. To show the difference of opinion in regard to Native tenure, in 1856 a commission was appointed to make inquiry. There were some thirty-four persons examined on the matter, including half-a-dozen or more Maoris, and the evidence given on nearly every point differs considerably. It differs on every system of tenure.

49. *Mr. Hutchison.*] There was another Judge sitting with you?—Yes.

50. And the judgment was considered a unanimous one?—Yes, it was a unanimous one; both of us, as well as the Assessor, went through the evidence separately and came to our own conclusions on the matter.

51. And they were substantially the same?—Yes, entirely so. The Assessor, Judge Scannell, and myself, analysed the evidence separately, and the whole of the judgment was discussed between us.

52. And the Native Assessor was a person of experience?—I do not know that he was ever employed to any extent in the Native Land Court before, but he was a man of large experience as regards Native tenure.

53. *The Chairman.*] Do you know whether Tamati Tautuhi, the Assessor, has been employed as an Assessor before?—Except in a few minor cases; this was the largest case he was employed in.