

SESS. II.—1887.  
NEW ZEALAND.

## NATIVE AFFAIRS COMMITTEE

(REPORT OF), ON PETITION OF TE TEIRA TIAKITAI, OF HAWKE'S BAY, AND SEVEN OTHERS,  
TOGETHER WITH MINUTES OF EVIDENCE.

*Report brought up 15th December, 1887, and ordered to be printed.*

No. 444.—Petition of TE TEIRA TIAKITAI, of Hawke's Bay, and 7 Others.

THE petitioners pray that the title to the Porangahau Block may be reinvestigated, for the reasons set forth in their petition.

I am directed to report that, as there seems to be a wide difference between the original judgment of the Native Land Court in the Porangahau Block and its judgment in the rehearing thereof, and after viewing the evidence which has been submitted, the Committee consider the application for a further rehearing a reasonable one, and recommend that it should be granted, and the Committee further strongly recommend that rules should be laid down by the Native Land Court for the guidance of the Judges of that Court in respect to Native custom and usage.

15th December, 1887.

WILLIAM KELLY,  
Chairman.

### MINUTES OF EVIDENCE.

TUESDAY, 13TH DECEMBER, 1887. (Mr. W. KELLY, Chairman.)

AIRINI TONORE examined.

1. *The Chairman.*] Are you a petitioner?—Yes.
2. There are eight signatures to this petition; do you represent any of the others?—Yes; I have letters here from the other petitioners. [Letter produced.]
3. You ask for a rehearing of the block called Porangahau?—Yes.
4. Will you state to the Committee the ground on which you ask for a rehearing?—Yes.
5. Please make your statement. What is your first ground?—With regard to this block called Porangahau, we know that we are the owners of the block. There were only three of us who appeared before the Court when the block was passed: the others have been put into the petition since. But we three represent the others whose names are in this petition, and others also whose names do not appear there. The Judge who first heard the case was Major Mair. The award was given to us through our occupation of the land. Our claim on this first hearing was established. But the greatest right we had to be there was through mana. Tia Rita commenced it. At the time the case was heard, 2,500 acres were awarded to us. We thought that we had such a big claim to that land, that we had a right to ask for a rehearing, the portion awarded to us being inadequate. We think Major Mair properly belongs to the North Island. He understands the ideas of the Natives of the North Island much better than those of the Natives of the South Island. A few months back a rehearing of the block took place. The Judge who presided at the rehearing was Judge Mackay. The name of the Assessor was Tamati. I think Judge Mackay properly belongs to the Middle Island. He can best award the lands to the Natives of the South Island according to the Native customs and ideas there. But there was a great difference in the award made by the one Judge and the other in this case. Judge Mackay told me my right by mana was not sufficient; but it had been recognised by Judge Mair in the first instance. Judge Mackay told us that, as regards the sale of land, one person might sell, but the hapu would take it away again. Judge Mackay is right as regards the present days among the Natives, but in former days it was not correct. I wish also to refer to a piece of land sold by my ancestor, Tiakitai, in 1839. Nobody objected to his selling the land in those days—that is, no objection was made by the Natives. It was Sir Donald McLean that made objections to the sale of land by Natives. That was how Captain Rhodes got possession of Porangahau. That was in the early days. Therefore we think that we have very large rights, and therefore we are asking for a recognition of our claims. Therefore I wish to ask the Committee their opinion about this award made by Judge Mackay. I wish to explain the reason why we wish that Judge

Mackay's judgment should be set aside. His judgment was that we had no right by mana. I may state that we have large quantities of land, and this land was awarded to us by mana and by occupation. If this award made by Judge Mackay is allowed to stand, I suppose all the other claimants through mana will be thrown out in the same way as we have been. Therefore it is that we ask the Committee to allow our objections to this award.

6. *Mr. Carroll.*] Are these all the grounds on which you petition?—Yes.

7. *Mr. Graham.*] When that area of 2,500 acres was awarded, was it in a separate block by itself; was it cut off from the other portion of the same block; was it cut off a large piece, or itself separate?—It was not cut off; it was part of a larger piece.

8. *Mr. Parata.*] On what ground did the first Court make its award?—They said the mana we set up was a good claim, but then only 2,500 acres were awarded to us.

9. *Mr. Taipua.*] How did the second Court make its award?—We were grieved to find that the Court held we had no right by mana. We had not been satisfied in the first instance.

10. *Mr. Carroll.*] At the rehearing Judge Mackay disallowed the grounds of mana altogether?—Yes.

11. Was it in consequence of the rehearing that that took place?—That is what we suppose; others think it was in consequence of another application.

12. How many days did the hearing of the case last altogether?—I think it amounted to two months altogether; at all events we were several weeks over it.

13. *The Chairman.*] Do you mean the last hearing?—In both cases.

14. *Mr. Ormond.*] Was the evidence you gave on the second occasion the same as you gave in the first instance?—Yes; several of the people gave evidence on the first occasion, but, I think, they all did so on the second occasion.

15. *Mr. Parata.*] What claim did you put in?—We claimed the land as left to my people as a gift.

16. For what was it left?—As payment for food; besides, other people came and tried to conquer it in battle, but they were defeated; others again came, and they were served the same way.

17. Then, you are claiming in two ways, on account of the food you gave and conquering the land?—Yes.

18. How many hapus were admitted as claimants to that block in the first instance? What I want to know is, seeing that 2,500 acres were awarded to you, who got the remainder?—The name of the tribe is the Ngatikeri, but there were several sections of tribes in it.

19. Did Te Keri's people get the remainder of the block?—Yes.

20. Did you have that 2,500 acres awarded in the second instance?—No, we were not allowed any at all.

21. Who were the people that objected to you obtaining 2,500 acres?—I suppose they were the same as made objections in the first instance.

22. You now ask for a third hearing of that block?

*The Chairman.*] I would ask Mr. Lewis, the Under-Secretary of the Native Department, if he can tell us anything as to the position of this land?

*Mr. Lewis.*] I am only aware that the rehearing of the block was granted by the Chief Judge; that the rehearing has taken place; that the Chief Judge's functions are exhausted, and he has no further power in the matter. The only other recourse must be to legislation. I should state that the Native Department has nothing to do with this question at all.

23. *Mr. Ormond.*] I would ask the witness whether she knows if other claimants are dissatisfied with the judgment?—Yes.

24. Does she know Henry Matiu: does he object to it?—I have not heard that he has sent in any petition with reference to this block.

25. Would Matiu's objection be the same as yours?—I have heard that the objection he made was to the divisions in the block; my objection relates to the time when Mackay heard this case.

26. Henry Matiu is in Wellington?—Yes.

27. Have you heard that the right by mana has been set aside in any other judgment?—Yes, I have heard of cases, but we say that the right by mana is a good claim.

28. Did you ever hear of a case set aside on the ground that the claim was by mana?—No, I never heard of any case being set aside on account of the claim being by mana.

29. Did not the Native Land Courts formerly and up to lately take mana as one of the grounds of their judgment in favour of the applicant?—Yes; I have always heard they accepted it as a good claim.

30. *The Chairman.*] When the rehearing was granted was there any other application from other Natives for a rehearing?—Yes; all applied for a rehearing.

31. Was that in consequence of the small portion you got out of the block?—Yes.

32. *Mr. Taipua.*] How many blocks of land, do you know, have been awarded by the Court upon a claim through mana?—I cannot enumerate them, but a great number have been settled in that way.

33. *Mr. Ormond.*] Is it your experience that the Court always recognises mana as constituting a claim?—I never before heard of the Court objecting to people claiming by mana. I never knew it except in this last Court.

WEDNESDAY, 14TH DECEMBER, 1887.

MR. ALEXANDER MACKAY, Native Land Court Judge, examined.

34. *Mr. Hutchison.*] The petitioner yesterday seemed to wish the Committee to understand that you, in rehearing this claim, had ruled that mana could have no place in influencing your

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.

54. *Mr. Taipua.*] Supposing the chief of a tribe was a man of authority, what would you consider the value of his mana and his authority over the people? Would he have a smaller share than the others?—That is a question which it is impossible to explicitly answer. It would depend entirely upon other circumstances.

55. Now in the case of former land purchases, when the chief sold the land, had members of the tribe power to dispute those sales?—They would most likely have done so if they had chosen, or had the present condition of affairs existed then. There have been sales by chiefs disputed before now. There was a case in the Hawke's Bay District, in which this land is situated, in which the action of some of the chiefs in selling land in a surreptitious manner led to a quarrel of a serious nature. This kind of proceedings also led in time to the Land League being formed—through the chiefs selling the land and appropriating the proceeds without considering the rights of the hapus.

56. *The Chairman.*] Selling the land without considering the rights of the other members of the tribe?—Yes.

57. *Mr. Taipua.*] With regard to the former land purchases, have you heard of minor individuals disputing the right of the chiefs to sell the land?—I have not heard of minor individuals doing so.

58. Was not the mana and the interest of the petitioner's father, Tiakitai, in the land mentioned before the Court?—It was alleged that he had authority, but the evidence did not prove that he had any, but the contrary.

59. *The Chairman.*] You have had a good deal to do with Native claims in the South Island? Yes; I have had considerable experience in dealing with Native matters.

60. Did you recognise the mana of chiefs in any arrangements made there with regard to the land?—The lands in the South Island are on a different footing altogether. There is no question of that kind likely to arise.

61. Have you sat as Judge in many cases in the North Island?—Not many. I have been engaged during the last three years in that capacity, and have taken every opportunity to study the question.

62. And you do not know whether it was customary in the North Island to recognise the mana of chiefs by the Judges of the Court?—I could not say off-hand, because we have not the advantage of having these judgments published.

63. *Mr. Ormond.*] Are there any recognised rules laid down for the guidance of the Court in receiving evidence as to Maori customs?—There are no rules laid down by the Court, for the reason that it is impossible to do so, owing to the diversity of the tenure. The only rule that has ever been laid down is with reference to the rights of the Natives in the year 1840. The rule laid down in this case is that the Court should be considered as sitting in the year 1840, at the time British sovereignty was proclaimed over New Zealand, and that any right derived subsequently to that time could not be recognised.

64. Does each Court adopt its own view as to what Native custom is?—Yes, if it is compatible with the evidence.

65. Would different evidence as to Native custom guide in each case the decision of the Judge?—The Court would rely upon the main recognised conditions of tenure held by the Natives, and decide according to the evidence given in support of it.

66. Every Judge acting on some principle in his own mind as to Native custom?—Yes; there are certain established conditions of tenure that are always recognised; but there are many circumstances which would, of course, either add to or detract from the value of the claimant's title, subject to those conditions of tenure.

67. There would be guiding principles that would actuate the Judges in dealing with Native subjects?—There are certain recognised systems of tenure that we always adopted, such as hereditary rights, conquest, and occupation; also the right acquired through gifts.

68. Would all the Judges act and give judgment on a similar view of those questions?—Yes.

69. Mana would not be included in those considerations?—No; not mana alone.

70. Would not mana, as a Native custom, be something that all the Judges would have the same opinion on?—I never heard that mana alone would give a special right; it would have to be based on hereditary right, occupation, or conquest, to create a substantial claim.

71. You spoke of purchases in the Hawke's Bay District—of cases where the chiefs exercised authority that the people disagreed with?—Yes.

72. Have you any knowledge of the early purchases there?—I have a knowledge from having perused the correspondence on the subject.

73. Are you aware of the purchase of the Waipukurau Block and other purchases of that kind?—Yes.

74. Are you aware that Te Hapuku acted as salesman there?—Yes; but if the rights of the persons who had subordinate interests had not been recognised that sale would never have been effected.

75. Do you know whether Te Hapuku exercised the right of mana only in that and many other purchases that took place at that time in 1847 and 1848?—He exercised an authority over his people as his chief. He was the negotiator on behalf of his people, and if the rights had not been recognised those sales could not have been carried out, as it would have resulted in the Government having to compensate the Natives whose rights had been ignored.

76. He was the man who effected the sale?—Yes, on behalf of his people.

77. Have you any knowledge of the share that went to him of the purchase-money?—No; I could not say off-hand. I know it was through his influence that the price was raised; I do not know what he received.

78. He gave out what he chose to the people under him, and that was mana?—He made a distribution of the money, I presume, that was satisfactory to the other Natives.

79. *The Chairman.*] Your opinion, as published in the judgment you have given, is that Major Mair was wrong when he said, "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 Castlepoint." Do you think he was wrong in giving that judgment?—He was wrong in coming to the conclusion that Te Whatuiapeti's mana was not destroyed, as it ceased over the land when he handed over the property to the Natives who subsequently occupied it. And as regards the influence of Tiakitai and Te Aroatua, it was not proved in evidence in the same Court to have existed.

80. Do you think if the Court was sitting in 1840 there would be any attempt made to upset that mana?—If the Court had been sitting in 1840 no such claim would have been preferred.

81. How many claims were sent in for hearing in regard to this block?—There were three or four claims; all the claimants in the first case applied for a rehearing.

82. Was there any claim set up against the 2,500 acres that had been awarded?—Yes; there was a claim of Henare Matua objecting to the award made to Tiakitai and Te Aroatua. The Court had the evidence of the half-brother to the petitioner to the effect that had the award been made to him alone he would have handed the land back again to the people to whom it belonged.

83. *Mr. Taiwhanga.*] If a chief objected, would the tribe be strong enough to survey or sell any block of land?—They would, probably, out of deference to their chief, refrain from doing anything to annoy him. On the other hand, if they had an independent right irrespective of the chief, and desired to have their land dealt with by the Court, they would do so.

84. Now, if Te Hapuku had a mana over the land and disposed of it, the subordinate chiefs would not have the power to object to his disposal of the land?—I have already stated that Te Hapuku's right was questioned; if not in the first case, it was subsequently. In consequence of Te Hapuku's surreptitious sale of the land the people resented it, and a serious quarrel and loss of life ensued.

85. I am not alluding to surreptitious sales: I am simply alluding to established customs of the Natives.—I have answered your question by the example quoted. The Land Purchase Department and the Government frequently elevated persons of the Native race into positions that they were not entitled to occupy. There is one paragraph in the petition to which I would like to refer. It states "That the late Sir Donald McLean, acting as Land Purchase Officer for the Government, purchased the Tautane Block from your petitioners, Te Teira Tiakitai and others, and that your petitioner, Te Teira Tiakitai, received not only part of the purchase-money, but a part far exceeding the amount paid to any of the owners." That appears to me to be a concoction. As a matter of fact, the Tautane Block was not sold by Tiakitai. He was admitted afterwards, and received a sum of money. He did not know that his name was on the list until I told him. It was a kind of receipt for an additional sum of money that the late Sir Donald McLean agreed to give the people because they were dissatisfied with the payment of the first sum to certain persons.

86. *Mr. Ormond.*] Who was that money paid to?—The sale was arranged in Wellington, and a sum of money paid to the person who effected the sale, and Sir Donald McLean paid a further sum. It was then that Tiakitai possibly got a small sum. There was not very much to divide amongst any of them. The deed does not go into details to show how much he received. He did not know that his name appeared in the document until I told him.

87. *The Chairman.*] Why did he get any money if he was not in the deed?—It is difficult to say. There is no certainty that he did receive any money. It was not an unusual thing to obtain the signatures of all the persons present at a meeting. The petitioner himself says that he received money, but that is not corroborated. There are no details attached to the deed to show that he received any. It is merely an assumption that he did.

88. I understood you to say that he received a small sum of money afterwards?—I presume he received a sum of money inasmuch as his name is appended to the receipt. I could not say how much it was. With regard to the names attached to the deeds of sale, it was not an unusual thing for every one present at a meeting to sign. They used to assemble in large numbers when they heard of a sale, and every one present would sign irrespective of whether they had a right to the land or not. The money would likely be paid over to the principal men, and distributed by them to their friends.

89. *Arini Tonore te Teira Tiakitai.*] You have stated that Te Hapuku sold the land without the consent of his people, and that eventually his people disputed his right to sell: do you not know that it was the chief who disputed with Te Hapuku?—The chief, aided and abetted by the people; it was not their dispute alone. They disputed it on behalf of themselves and their people.

90. Do you not know that it was the chiefs Tareha, Te Moananui, Renata, and Karaitiana who objected to Te Hapuku selling the land?—Yes; on their own behalf and on behalf of the people.

91. You say that the chiefs derive their assistance from the people, and the people derive their assistance from the chiefs?—Yes; one is necessary to the other.

92. Should not the chiefs have a larger share in the land on account of the mana?—The chiefs as well as the people, are entitled to land through hereditary rights, conquest, occupation, gifts, and other substantial claims.

93. Do they get nothing for their mana?—Not for their mana alone. There are many influential chiefs who have no land at all, or very little land, and yet they may have mana over the people.

94. Can you mention any chiefs in Hawke's Bay who had mana and yet no land?—I have not got a list of all the chiefs here to enumerate them, nor have I gone sufficiently into their history to know.

95. *Mr. Carroll.*] Supposing the people enjoyed the mana of the chief, would that not give him a right to the land?—Yes, possibly so; but other circumstances would have to be considered. It is impossible to answer abstract questions.

96. *Arini Tonore te Teira Tiakitai.*] There was a block called Matamahoa sold by Tareha—did you ever hear that the people objected to that sale?—No, but they may have done so.

97. Do you know whether the tribe objected to the sale of Te Matauamaui by Te Moananui?—I am not aware whether the people disapproved or not; but I know there was a general disapproval of the conduct of the *rangatiras* in selling the property of the tribe without their concurrence.

Mr. JOHN EDWIN MACDONALD, Chief Judge, Native Land Court, examined.

98. *Mr. Ormond.*] Can you tell the Committee whether the Native Land Court has any guiding rule on which judgment is given?—Yes; almost every case now would be provided with a precedent—that is, every case of Maori usage and custom, as distinguished from question of fact, would have a precedent, and they are mostly to be found in Judge Fenton's book—"Important Judgments."

99. In your opinion, are the Native customs, as regards guiding the Court, fairly laid down?—I think so. I can hardly conceive that any custom not subjected to previous investigation and decision could arise. Every question of custom or usage that would come before the Court would have been the subject of consideration before.

100. The last witness says that such precedents do not exist for their guidance?—Every Judge must have his own decisions in the first case to guide him, and then he would have the decisions of other Judges in a most handy form. Judge Fenton's book touches almost every subject.

101. That the Judges would have before them?—Yes; that and judgments reported in the newspapers is where I obtained most of the knowledge I possess.

102. Do you not think it advisable, considering the large interests the Native Land Court has to deal with, that the Judges should have fixed rules to guide the Court as regards Native customs?—I hardly think it is necessary to fix any such rules, for in almost every instance they would be guided by precedent, in the same way as the Supreme Court Judges are guided by previous decisions in common-law points.

103. Then, with regard to this particular case, the question has arisen as to the weight which the Court gives to mana. What would you say had been the former action of the Native Land Court in admitting mana as a right in the judgment of cases?—As to the admission of the right in respect of mana in the abstract, I never heard it questioned until this case. I never knew a case in which a right or established mana was disputed. The amount of value and weight to be given in respect of a particular mana was a question between the person who claimed mana and the persons at whose expense he claimed it, and has frequently been a subject of dispute between them.

104. But the principle has been acknowledged as something to be considered?—Acknowledged in every instance in which mana was set up. I never knew it questioned before.

105. Can you say whether, in the majority of the more important cases the Native Land Court has dealt with, mana has had a more or less bearing upon such cases?—In every case some one claims larger interests than others—that is, in respect of their position and *status* among the people who own the block—a sort of mana in the particular person. In point of fact, the land is very seldom equally divided among all; and when any man gets more than another it is by reason of his *status*, which is more or less an acknowledgement of his mana.

106. Do you not think the tendency has been of late years for mana to lose a great deal of the influence which attached to it a few years ago?—Yes; because the old chiefs, who would, no doubt, have the right to mana, are getting too old to care to assert it; and the young chiefs, on the other hand, rise up and say they are as good as the people who claim the mana. That is the feeling nowadays; but it has been very different years ago.

107. I put it this way: Supposing important cases were being heard in 1840, the year on which we start, would not mana have had such an influence as this, that no set of Natives could have disposed of their lands without the assent of the chief who exercised the mana?—Yes; most undoubtedly. That was the origin of Thompson's war, as I understand.

108. Do you know, personally, anything of the history of this particular case we are now inquiring about?—No; all the knowledge that I have is that Judge Mair gave a judgment in respect of which an application was made to me for a rehearing. I read his judgment; but, inasmuch as every person concerned in the judgment desired a rehearing, and the Judge recommended that it should be given, I gave it without much consideration.

109. *Mr. Hutchison.*] Is mana a Maori word or is it a word of long standing in the Maori language?—I do not know. I do not know more than five words of Maori, and that is one of them.

110. What does it mean?—I have often talked to people learned in Maori matters about it, and I came to the conclusion that it meant the position which I hope my ancestors held among their neighbours.

111. Does it not mean the getting of influence rather than rights?—Whenever the word has been defined precisely it is held to be a sort of influence that one man had over certain people and certain land in some cases, quite irrespective of any occupation of this land or proprietary title to it. You will understand that my knowledge is derived from a limited practice in the Native Land Court and sitting as Judge afterwards.

112. You asked the two Judges, Mr. Mackay and Major Scannell, to rehear this case?—Yes.

113. I suppose you were satisfied they were quite competent to deal with it, with the aid of the Assessor?—I had no doubt they were as competent as I was.

114. *Mr. Monk.*] Do the Natives understand the judgments of the Court, and have they such judgments for their guidance in bringing their cases before the Native Land Court?—It would be very useful to have them printed either in English or Maori, or in both languages. The judgments given are read over in Maori, and the Natives can have them copied. We generally get the newspapers to print them in English and sometimes in Maori.

115. In forming an opinion upon Native rights in the Native Land Court you do not identify influence with mana. You would not hold the great influence of a chief among his tribe to be mana?—No; the question before us would be the relative rights of different tribes and hapus. Mana has no connection between the relative rights of tribes and hapus.

116. You do not, in your own mind, estimate influence with mana? You can understand a Native having great influence and no mana?—Yes.

117. You can understand a chief having mana and having no influence?—Yes.

118. *Mr. Carroll.*] Would mana alone carry with it a right to the land as you understand mana?—The mana is certainly a something over the land which gives the person using it an influence over and an interest in the land.

119. Without occupation?—Yes. The same man may have mana over a number of different blocks which he has never set foot on.

120. *Mr. Taipua.*] Have you got copies of the judgments delivered by the Court relating to land in this district in the years 1868 to 1873?—I may have. I do not suppose that I have all of them; but, in almost every case of any importance whatever, the Judge takes care to get the judgment printed in the newspapers, and copies of that report are attached to each file of papers relating to the block.

121. Do you know if special importance was attached to the mana of any people in any of those judgments?—I could not name any case on the moment.

122. Do you not remember a judgment given by Judge Fenton in the case of Renata Kawepo?—I have a recollection of the circumstances of that case.

123. Did not that judgment recognise the mana of Renata Kawepo?—It did.

124. *Mr. Parata.*] Did the petitioners apply for a rehearing of the block under consideration?—Yes; I granted a rehearing in the case of Porangahau.

125. Were the rehearings for the whole block, or were they only to apply to the 2,500 acres?—The rehearings were made in respect to every person interested in the whole block, and in respect of the whole block.

126. And the rehearing opened up the question of right to the whole block?—It reopened every question involved.

127. *Major Jackson.*] Supposing a Native claimant had any land awarded to him in 1845 or 1846, or any time before the Native Land Court was established, and that it could be shown that he had land awarded under some mana, would not the Court take into consideration that mana, and the fact that he had been awarded land?—I do not quite follow the question.

128. Supposing on account of his mana he sold a portion of a block of land and was paid the money, and afterwards distributed that money as he liked amongst his people; and supposing the balance of that block came before the Native Land Court twenty years afterwards, would they ignore his mana over that land, or would they take into consideration that when the Natives had the matter entirely in their own hands, he had a title to that land,—would the Court not acknowledge that?—That transaction would be almost conclusive evidence that a particular person was entitled to mana.

129. *Mr. Carroll.*] Is Judge Fenton's rule *re* 1840 a hard-and-fast one, or is it subject to relaxation?—I do not know what particular rule you refer to. It is hardly fair to call it the rule of Judge Fenton. It has been followed by the Native Land Court. The rule that I am referring to is to the effect that after 1840, when English law came into force, no interest in land could be acquired by conquest or the exercise of force. That is the only rule I know of. Whatever the relative rights of persons in 1840 were, they exist; they can be established by evidence.

130. No title could be acquired by force?—No; no title could be acquired by force after 1840.

131. How would it apply in a case of this kind: After 1840, and before the passing of the Act under which the Native Land Court was constituted, a gift was made by one Native to another—a transfer of property according to Maori title, otherwise than property acquired by force?—I suppose the transferee would have a right to come in as one of the owners. A stranger might come into a tribe and have a piece of land allotted to him, and when the block went through the Court he would be recognised as an owner. Of course his rights would be limited in respect to allowance for occupation. No doubt Natives did transfer their interest and allow others to come in and take share in the tribal property.

132. *Mr. Hutchison.*] In the case of Renata Kawepo, mana was recognised?—Yes.

133. Is that a printed judgment?—Yes.

134. *Mr. Ormond.*] Can it be seen?—I do not think it could just now conveniently. A copy is on the file of papers.

135. *Mr. Hutchison.*] What was the mana there recognised?—Judge Fenton, without any hesitation, admitted the right of mana. Then Renata Kawepo claimed to have a particular portion of the land awarded to him in respect of this mana. The Judge recognised the right of mana. Under the Native land laws existing persons declared to be joint owners have the right to say to the Court we should like our portion of this block set out to ourselves as distinguished from the rest of the owners. Renata claimed to have a piece set out in respect of his mana. Judge Fenton replied, "I cannot do that, because I do not exactly know what value to set upon your mana, and I do not care to go into the subject." Then, if I remember right, Renata went to the Supreme Court and tried to upset the proceedings, because he had claimed to have his interest set out apart for himself, and the Court neglected to do it. Thereon Renata applied to the Supreme Court, and claimed that he (Renata) had a right to the value of the share. My impression is that the Court held that he was right, and sent the case back to the Native Land Court for revision.

136. Can you say whether that mana was influence apart from possession?—I could not say the ground upon which the claim for mana was made. I have no knowledge of the basis of the claim.

137. *The Chairman.*] Are you aware of Natives claiming a portion of the Chatham Islands and establishing their mana to get the land?—I have no knowledge of it.

138. Judge Mair gave a decision awarding a certain portion of the land to certain Natives in consequence of the mana they held.—Yes.

139. I presume that establishes a principle; whether it is recognised by the Court all over the North Island or not is another thing?—Yes; that and other decisions to the same effect may be taken as setting up a principle.

140. Then at the rehearing of the case that principle was upset, and the award made by Judge Mair ignored altogether?—I have not read the judgment, but I believe that is so. So far as my knowledge goes, I have never heard the right of a person holding mana—of the interest in the land in respect of his mana—questioned.

141. As Chief Judge, do you think it is right that judgments should be given quite at variance on laid down principles; is it not perplexing to the Natives?—I say it would be more convenient if Native Land Court Judges followed the practice of the Supreme Court Judges, and where a point has been established they would feel bound to follow it, even though in individual cases they might not approve of it.

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