

subject to contradiction. Nor would I, speaking for myself individually, be willing to leave myself open to flat contradiction by every interested party by omitting the precedents and authorities on which my conclusions were founded; but to fully set forth the law of Maori-land tenure as far as I know it—to show how it arose and the changes or modifications it has undergone; to collate and produce my authorities and do justice to the subject—would take me not less than two years, and is a task which my present occupations do not allow me time for.

Under these circumstances I, being both willing and desirous to as far as possible comply with your request, shall proceed to reply, though in a brief and necessarily imperfect manner, to the inquiries made—namely, as to (1) the nature of title to land according to Native custom; (2) the customs affecting it; (3) the modes by which it may be acquired, and by which it may be ceded or forfeited between aboriginal native and Native; (4) any established principles by which the Native Land Court is guided in determining the rights of claimants and counter-claimants.

1. The Nature of Title to Land according to Native Custom.

The Natives found their title in the first instance on discovery and subsequent colonisation, and the nature of their title or tenure seems to have grown out of (1) the ideas they brought with them to this country of the value of land; (2) of the necessity or advisability of making, as their numbers increased, some sort of division of the tribal lands amongst themselves; (3) the necessity which arose of every able-bodied member of a tribe assisting as a soldier in the defence of the whole tribal estate; and (4) the exigencies and vicissitudes of war.

We have good reason for believing that this Island was discovered by a great Maori navigator, who after having named it “Aotea Roa” (Aotea being the name of his own country, the word Roa being added as descriptive of the shape of the discovered land, the two words meaning Long Aotea) returned and announced his discovery, and that the subsequent settlement made by the ancestors of the present Maori inhabitants was a deliberately-planned emigration—a perilous adventure no doubt, but undertaken with much precaution and foresight. The islands of the South Pacific, from one of which the first Maori settlers came, though fertile and endowed with a tropical luxuriance of vegetation, were many of them at the time of the Maori emigration to this country, and till long afterwards, overpopulated. The land had been all appropriated; the slightest encroachment on boundaries caused war and bloodshed, and numbers of the inhabitants were from time to time literally driven into the sea, being obliged, after defeat, to take to their canoes and hoist sail in search of some other spot of land in the ocean whereon to establish new habitations. The value of land, therefore, not only for its produce, but also for dignity and rank that was attached to its ownership, was very great, and its possession was coveted beyond all other things; and we therefore need not be surprised to find that almost the first act of each Maori party on their arrival was to take possession of a vast tract of country, the boundaries of which there is reason to believe they to a considerable extent actually perambulated and marked off.

The formal appropriation of such large tracts of land by such small numbers of people as the first settlers consisted of was not, however, without another practical motive besides the great value attached to land for its own sake by them. They were well aware that for some years, and until the *kumara* and other plants which they had brought with them for seed had been propagated sufficiently to be used in ordinary as food, their lives would be a struggle for mere existence. They perceived that the spontaneous productions of the soil such as men could subsist on were in this climate but trifling, and that in consequence they should require a very large area of country from which to procure in any sufficient quantity the game, birds, rats, fish, eels, and other things which were to be found. They were aware, also, that other settlements were being made, or likely to be made, by other parties, and were therefore anxious to secure by formal appropriation a title to as great an area of land as possible.

Besides these first acts of appropriation subsequent explorations were made by various parties, until at length the whole lands of the Northern Island were with little, if any, exception taken up. The boundaries laid down were generally respected until the breaking out of most fierce and continuous wars, which upset and confused all metes and bounds, changed the ownership of land, and brought in new conditions and modifications of Native tenure or title which I shall attempt to describe, but must first take notice of what the original tenure of the lands of a tribe seems to have been in respect of the different individuals and families of the same tribe.

For some years after their arrival the great object of the first settlers was to propagate the plants they brought with them to such an extent as would allow of them to be used freely for food and leave a surplus as seed for future crops. It would also appear from Native tradition, as well as from the probabilities of the case, that the first settlers, the nucleus of the future tribe, kept together for this purpose, uniting their efforts in the cultivation of a single piece of land, each person labouring for the common good, and in the course of time receiving his share of the produce in a common participation of the food produced. From this state of things, and from the necessity which afterwards arose that every man should fight to preserve or hold possession of the tribal estate, must have arisen the theory that the whole land of the tribe was the property of the whole tribe, and that every free man was an owner in the same undefined sense that every or any other man was. What the actual nature of this common ownership was is scarce worth inquiry, as it is with its modified form that we have to do at the present day. We know that soon after the Natives as settlers had a prospect of a secure and plentiful subsistence the subdivision of the tribal lands commenced—parties of one or more families began to remove from the original head-quarters of the tribe and settle on rich spots, often at a very considerable distance from the settlement of the main tribe. These offshoots often increased in numbers and became practically independent tribes, bearing separate distinctive names as sectional tribes. They appropriated to themselves large blocks of the tribal lands and began to give up claim to the other portions; but they still considered themselves to be belonging to the original tribe—acknowledged the superior rank of the chief