

of that tribe, held to the theory which they had themselves in a certain degree already practically contradicted, that the whole lands of the tribe belonged to all the tribe, and acknowledged themselves bound to join the other sections in defending all or any part of the tribal estate from encroachment by strangers.

The tribe having now been broken up and divided into sections, living at a distance from each other, claiming separate portions of the tribal lands, and virtually relinquishing any right over the other parts, and each section forming practically a separate and independent tribe, the next action which they took having any effect on the nature of Maori title or tenure was to commence making war against each other. War, also, with alien tribes broke out—war of the most inhuman and merciless description raged from that time out with very little cessation. Massacre and cannibalism became the order of the day and night; no man's life was safe; all old metes, and bounds, and titles were overthrown and a new Native title to land arose—the title by conquest, or *te rau o te patu*. And amongst the established principles by which the Native Land Court is guided in determining the rights of claimants and counter-claimants is that of scrupulously respecting the rights of a successful murder and treachery.

Other new titles to land besides that mentioned above arose from the state of warfare. Sections of an alien people who felt themselves too weak to maintain themselves in their own country, who had been worsted in battle, would be admitted into a tribe willingly as an accession of strength, and lands allotted to them on the well-understood condition of their assistance in war, offensive or defensive, and to be generally aiding and assisting their protectors. By the fulfilment of these conditions and a continued residence on the land these incomers would in time acquire an undoubted title; but if in the rapid vicissitudes in power and population, which we know did in those times take place amongst the tribes the incomers became the strongest, as has sometimes happened, and that they then massacred and devoured their protectors, they would have then acquired a title of the first order, which the Native Land Court would be bound to recognise.

Another but inferior sort of title arose from the state of warfare in this way: A certain tribe had been utterly conquered and exterminated with the exception of some twenty or thirty persons, who for some unusual freak the conquerors allowed to live, and to whom they allotted a small portion of the land which had formerly been their own as a *mahinga* or place to cultivate for their subsistence. They were not reduced to the condition of menial servants or slaves of the lowest class, but to that of *tutua*, or persons who might be knocked about *ad libitum*, and all sorts of odd services required of them as occasion arose. Now, it so happened that in the course of some generations these remnants of the *tutua* grew up to be a respectable little *hapu*—by respectable is of course understood a little tribe able to turn out a company of fighting men sufficiently numerous and valiant to be able to give appreciable assistance to their masters in their wars. After these people had attained to this position of respectability the Europeans arrived in the country, and after several years the conquered lands began to bring high prices in cash, and were sold by the conquerors, and the money, as a matter of course, soon spent. The conquerors then, to raise further supplies, bethought them of the bit of land which they had allotted as a residence and cultivation to the remnant of the original inhabitants who they had conquered, and claimed it in the Native Land Court, with the purpose of getting a title which would enable them to sell; but, to their great surprise and indignation, they found themselves opposed by the occupants of the land, who pleaded—(1) That their ancestors should by rights have all been killed, in which case they (the opponents) would not have appeared in Court; (2) that their ancestors having been allowed to live, and having been allotted lands from which to gain a subsistence, and their descendants having also for several generations subsisted upon them, they (the opponents) had the same rights; (3) that their ancestors and they (the opponents) themselves had on several occasions done their devoir valiantly in assisting their masters in their wars, and in holding possession of all their conquered lands, the piece in dispute included; (4) they declared that they did not claim any right to sell the land without permission of their masters, but protested that under the circumstances their masters had no right to sell the land under their feet and turn them adrift without a spot of land on which to maintain themselves.

These objections were met by mere insult and abuse by the claimants, and their head man commenced to kick the principal opponent out of Court, a proceeding which he had to be informed was considered irregular, and notwithstanding this and other forcible arguments disinterested Maori jurists considered that the opponents had a right to a subsistence because they had not been knocked on the head.

The Court coinciding in opinion the case was dismissed, and the opponents left in possession; but, nevertheless, I am inclined to think that the mistake made by leaving the opponents' ancestors alive would have soon been rectified upon themselves if their residence had not been near Auckland, and the principal claimant had not been rather under a cloud, having been lately in rebellion, and just then on his good behaviour, lest more of his land should be confiscated than had been already.

Gifts of land unconditional were sometimes made by one tribe to another in acknowledgment of services as allies in war. Such a gift would, of course, constitute a good ground of title. Long occupation of land unopposed—or, if opposed, opposed unsuccessfully—gave or proved a good title. Land would sometimes, at the conclusion of a war wherein neither party had conquered the other, be given by one tribe to the other, who, on the whole, seemed to have had the best of it, as a condition of peace, or price for the cessation of hostilities. But through all these descriptions of title ran a thread of the old indestructible idea that all the land belonged to all the people in some undefined way. The land of the tribe at first belonged to all the people to use, but not to alienate. When the sections or *hapu* became independent, then their part of the land of the tribal estate belonged to the whole people of the *hapu* in the same way. After this land began to be alienated on special occasions, but only by consent of the whole tribe or *hāpu*. When the subdivision of land got as far as holdings for single families, then the land belonged to the whole family in an undefined way as to each person's interest, and the cultivation of spots by single individuals were *mahingas* merely,