

and not estates. And now when a man comes into Court to claim land as an inheritance from his ancestors, handed down from father to son, from generation to generation, it generally turns out that there are other persons interested, and that he is, in fact, making a claim for the family. And when a Native does make out a claim to a piece of land as his own individual property it is either in consequence of his whole family having died out or of some private arrangement with the other owners.

Such arrangements, though not altogether in accordance with the ancient notions, have been so frequent since the arrival of the Europeans in this country, in consequence of the desire of the Natives to sell their lands, that they may now be considered as a part of Native usage and custom, and I think should be strongly encouraged for many reasons. The Native Land Act of 1873 very properly recognises them.

There are many other grounds of title put forth by Natives, some of which I shall have to mention further on, under a different head.

The original idea of common ownership in land amongst the Maori people seems to have arisen from the common exertions, risk, labour, and hardships undergone by the first settlers in obtaining it; and, secondly, from the long-existent necessity, which continued from age to age, that every man should fight for the protection of the whole tribal estate.

The question as to the nature of title to land according to Native custom I am unable to answer in any way except by giving examples, as I have done, of some of the principal grounds of the manner in which lands are held; but, though these grounds of title appear at first sight obvious enough, yet the constant state of war in which the Natives lived for a long period of time having confused all titles, both ancient and modern, the conquests, reconquests, and alleged and doubtful conquests set up as grounds of title, the obliteration and alteration of boundaries, the unreliability of evidence, and through all the ancient claim of discovery and first occupation sometimes feebly struggling to the front, makes often confusion more confounded to appear broad daylight in comparison with the wilderness a Judge has to wade through in the endeavour to ascertain what the rights of parties really are; and I am obliged to acknowledge that I do not at all know what the nature of Maori title is if it be not of the same nature as the good old plan of "Let them take who have the power, and let them keep who can."

2. Customs affecting Land under Native Title.

One of the most important customs or rights affecting Native lands was the right of veto on all alienations possessed by the head chief of the tribe, the lineal descendant of the leader of the first expedition. This right was formerly more exercised than is generally supposed, sometimes from good motives but with very bad consequences, and at others merely with the selfish purpose of extracting a payment from the sellers or purchasers, or both. Whether this right belonged to the chief in his character as guardian of the general interests of the tribe or was a prerogative of chieftainship derived from the customs of the Pacific Islands I cannot say; but that the absolute right did exist there is no doubt. It is now, however, from the general desire of the Natives to sell their lands, all but extinguished, and where recognised at all is merely acknowledged by a small payment or present to the chief out of the proceeds of a sale. This right has often been usurped by chiefs who had no right to it, but who had force on their side; but this is a different thing entirely. There are some chiefs still alive whose pedigrees—whether true or fabulous is of no consequence, as it is universally acknowledged—prove them to be of the standing I have described. Another right or custom exercised by a chief, probably after consultation with the principal men of the tribe, was that of blocking all public roads leading through the tribal lands, and preventing all traffic, no matter how long those roads might have been used in time of peace by outside tribes in passing through the country. This interdict would be laid on in time of peace, and would continue as long as the chief or tribe thought fit.

Game and fish as well as the wild edible productions of the forest were preserved by an interdict on any particular locality. This would be notified by the erection of a *rahui*, the purpose of which would, from its shape, position, or material, be understood by any Native.

Parties of strangers would sometimes be invited or allowed to reside with a tribe, and would be permitted to cultivate as much land as they had occasion for, as well as to use the fisheries, &c., as freely as if they were members of the tribe, though no rights of ownership were accorded to them. Persons in this position, when they took an unusually large quantity of fish or game, were expected to make a present or donation to the principal owners of the land, and these donations have been sometimes brought forward in Court as secondary proofs of ownership by the persons who received them. Lands held by Native title were subject to forfeiture for failure in performance of the military duties due to the tribe. I know of two instances since the arrival of the Europeans in the country—one instance in a Native war, and the other in a war against the Europeans.

Lands were subject to be taken as a penalty or as damages for an offence committed by one member of a tribe against another. I have known very marked instances of this. It would be, in such case, necessary that the person claiming and receiving the damages should be supported by the general opinion of the tribe.

I do not recollect just now any other customs affecting land held under Native title of sufficient importance to be worth mention.

3. Modes by which Land under Maori Title may be acquired, and by which it may be ceded or forfeited between Aboriginal Native and Native.

Previously to the establishment of the British Government in this country land was chiefly acquired by war and violence, or in some way connected with violence, or the apprehension of violence, or the precautions taken against violence, as I have partly shown; but I suppose that at the present time none of these modes of acquisition can take place, nor do I think land is likely to be acquired by Natives as damages or penalties for small offences, as formerly they did. Maori penalties, as they are for the most part exacted by the strong from the weak, are always extravagantly