

The Decision of the Governor in the Dispute Between Matiu and Te Tirarau.

7th February, 1863.

On Saturday the 7th February, 1863, the Governor met Te Hira and Te Tirarau with their people, to give his decision on the arbitration; the arbitrators being present: Te Hemara and Eruena on Te Hira's side, and Mr. Walton and Mr Heath on Tirarau's.

The arbitrators explained their opinions to the Governor, and gave the reasons why they had not been able to come to an unanimous decision among themselves, but had been obliged to bring up the case to the Governor for final decision.

The arbitrators named by Te Tirarau set forth the grounds on which they rested his right, namely:—1st. Descent from the same ancestor as Matiu. 2nd. A gift from Matiu's ancestors. 3rd. Undisturbed possession during five generations.

The arbitrators for Te Hira set forth the grounds of his claim to an equal partition of the land in dispute. They said that the title by ancestry vested in Matiu's side, but that in consequence of the long possession and occupation by Tirarau he ought not to be driven off. They therefore requested that the Governor should declare both sides to have been in the right, and divide the land as he thought just.

After various questions had been addressed by the Governor to the arbitrators as to maori usage, and explanations given by him of the English custom as to ownership and possession of land, His Excellency stated his decision to be as follows:—

- That generations ago, when the land of New Zealand was only inhabited by the maoris, the only use to which land was put, was to grow food: and if the ancestors of one tribe had permitted the ancestors of another to occupy and possess a tract of country, there would have been no cause or pretext for an attempt to remove them afterwards by force, so long as they peaceably cultivated the land.
- That in the same way as the English law recognised long possession as conferring a good title, so it was admitted on all sides that according to maori law a body of Natives who had been many generations in actual possession of a tract of land could not be turned off.
- That when Europeans came into this country, a new usage had sprung up unknown in former days, with respect to land, namely, selling it; that as this was not the use to which the original inhabitants would have put it, so when a tract of country had been by one tribe given to be occupied by another, and these imported the new usage of selling land, the original owners were in justice entitled to share in the purchase money when the land was sold.

Applying these rules then to the present quarrel, as Tirarau's ancestors had received part of the land as a gift from Matiu's ancestors, had gathered Karakas upon another part, and had for five generations been in occupation, he and his people could not now be turned off the disputed land so long as they occupied it for cultivation. But if they should wish to sell any of it in future, the descendants of Matiu would be entitled to share in the payment. And in the case of any dispute arising out of the division of purchase money, the Government would itself step in and Judge between the various claimants, and apportion the amount to each side. And in order to prevent difficulties arising again soon, none of the land in dispute would be bought except by the Government, nor by them till the ill-feelings arising out of the recent bloodshed had calmed down; nor would the actual battle-field, where the blood of relations and friends had been shed, be allowed to be sold at all. The Governor further promised that, as he had stepped in between the combatants last year, and they had on both sides behaved most honourably to him and obeyed his word, so now he would continue to stand between them and aid them in the settlement of any difference that might arise hereafter.

Ko Te Whakaotinga O Te Kawana I Runga I Te Tautotohe O Matiu Raua Ko Te Tirarau.

7 PePURE, 1863.

No te Haterei, te 7 o nga ra o Pepuere, 1863, ka tae a Te Hira, a Te Tirarau, me o raua tangata, ki a Te Kawana, kia rongo i te putanga o tana kupu whakaotinga mo runga i te whakawa. I reira ano nga tangata nana i whakawa, ara, a Te Hemara raua ko Erueni o tetahi taha, a Te Watene raua ko Te Ita o tetahi taha. I whakaaturia e ratou ki a te Kawana nga take i kore ai i taea e ratou te whakaoti i tenei mea, i kore ai i riterite a ratou whakaaro, me te take hoki i kawea atu ai ma te Kawana e tino whakaoti.

I whakaaturia e nga Kai-whakawa i karangarangatia e Te Tirarau nga take i pa ai ia ki te whenua. Ko te tuatahi: He tupuna kotahi to raua ko Matiu. Ko te tuarua: He mea tuku na nga tupuna o Matiu. Ko te tuatoru: Ko te mea kaore i whakaohokia i roto i nga whakatupuranga e rima.

I whakaaturia e nga Kai-whakawa o te taha ki a Te Hira nga take i kiia ai e raua me wahi te whenua, kia rite ki tetahi ki tetahi Kiia ana e raua, ko te takenga ake o nga tupuna i a Matiu anake. Otira no te mea kua roa ke te nohoanga o Te Tirarau ki runga ki te whenua, me te tiaki tonu, kihai ano i tika te pei atu. Na konei raua i mea ai, kia ki ake te Kawana kei te tika tetahi, kei te tika tetahi, a kia wahia e ia te whenua ki a raua rurua i runga i te tika e kitea e ia.

Ka mutu te tohu patai a te Kawana ki nga Kai-whakawa mo runga i nga ritenga Maori, a, no te whakamaramatanga o nga tikanga o to te Pakeha paanga taturanga hoki ki tenei mea ki te whenua, puta ana te kupu whakaotinga o te Kawana, koia tenei:—

- I mua i era whakapaparanga, te mea ko nga tangata noho o Niu Tireni he Maori anake, heoi nei nga pai o te whenua, hei ngakinga kai; a me i whakaae nga tupuna o tetahi iwi kia nohoia o ratou whenua e nga tupuna o tetahi iwi, penei, kahore kau he take e pana kinotia ai, ara i te mea e ngakia kautia ana e ratou te whenua.
- Ko te mea e whakaaetia ana e te ture Pakeha te tika o te take i runga i te nohoanga roatanga ki te whenua, waihoki e whakaaetia ana e te mano i runga i te ritenga Maori, ki te nohoia noatia ake he whenua e tetahi iwi Maori, i roto i nga whakatupuranga e hia ranei, ekore ano e tika kia pana atu.
- No te taenga mai o nga Pakeha ki tenei motu, ka tupu ake he ritenga hou mo tenei mea te whenua, kahore nei i mohiotia imua, ara, ko te tikanga hokohoko. A no te mea ehara taua tikanga hoko i te mea i kitea e o mua tangata, koia hoki ko tenei, i te tukunga whenua o tetahi iwi kia nohoia e tetahi iwi, a hapainga ana e ratou te tikanga hou ra, ara te hoko whenua, he tika rawa kia whiwhi tahi i nga utu mo te whenua ana hokoa.

Ka whakaekea mai enei tikanga kua oti nei te whakapuaki ki runga ki tenei ngangaretanga, a ko te mea ko tetahi wahi o te whenua ra i tukua e nga tupuna o Matiu ki nga tupuna o Tirarau, a no te mea i whawhaki ratou i nga karaka i tetahi atu wahi o taua whenua, a rima noa nga whakapaparanga i nohoia ai, na kihai i tika i tenei wa kia pana atu ratou, i te mea e nohoia kautia ana hei mahinga kai. Engari, ki te hiahia ratou a muri ake nei kia hokoa, e tika kia whiwhi nga iwi o Matiu ki tetahi wahi o nga utu. A ki te tupu ake he ngangaretanga i runga i nga utu ka waongia e te Kawanatanga, ka wahia tikatia nga moni ki tetahi ki tetahi. A kia kaua ano e tupu he tautotohe i nga ra e haere ake nei, ka meatia ma te Kawanatanga anake e hoko te whenua. A ekore ano hoki te Kawanatanga e hoko, kia mutu ra ano nga mamae kia marire nga whakaaro i te whakahekenga toto kua mutu tata ake nei. A ekore te turanga parekura, te wahi i heke ai te toto o nga whanaunga o nga hoa, e whakaaetia kia hokona. A i ki ake ano a te Kawana, no te mea i tu ia ki waenga o raua ki te wawao i te riri i houanga nei, a no te mea i rangatira raua, i rongo ki tana kupu, koia ko tenei ka tu tonu ano ia ki waenga ia raua, hei whakahoa hei ata whakarite i nga tautohetohenga ana tupu ake, a takoto ake nei.