Maoris Claim Head

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Recent years have seen great controversy over the disposal of human remains; particularly the remains of indigenous peoples dating from historical times.[1] This case concerned a preserved head. The identity of the person concerned was never established. However, the tattooing on the head was characteristically Maori and the practice of dealing with heads in this particular way was limited to New Zealand – matters of which the judge took judicial notice. The proceedings showed imaginative use of existing legal devices to prevent human remains being treated as items of commerce.

The head came to prominence when the London auctioneers, Bonham's, advertised it in their catalogue as a 'rare and important early 19th century Maori Mokomakai preserved human head' to be auctioned in London on 20 May 1988. Newspapers revealed that the head had been found in the attic of a house in Suffolk in England where it had been for more than 100 years. An ancestor of the owner's husband had worked in New Zealand as a whaler and later settled there.[2]

The proposed auction of the head aroused controversy and anger in New Zealand. The President of the New Zealand Maori Council applied to the High Court of New Zealand for letters of administration of the estate of the deceased warrior. He did this as President of the Council and as a *Rangatira* of the deceased's likely *iwi* (literally, 'chief of his people').

The judge, Greig J., commented in his judgment:

> There can be little, if any, dissent from the proposition that the sale and purchase of human remains for gain and for the purposes of curiosity is abhorrent to New Zealanders and, I hope, to any civilized person. There is a macabre circumstance to the proposed transaction that has some of the attributes of necrophily. That is not to say, of course, that for archaeological and other scientific reasons human remains should not be kept for study and for consideration. I do not forget, also, that for religious reasons human remains may be revered and retained for those purposes. It is the underlying purpose in this situation which, in my view, raises a proper indignation.

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> Whatever epithets may be used to describe what is proposed, and whatever indignation may be felt in the matter, it is necessary, of course, that this application should be considered dispassionately and in accordance with the law and the practice that pertains to these matters and it is in that way that I have considered this matter. It is plainly quite extraordinary and, I think, totally unprecedented. Certainly no case has been referred to me which has any similarity at all.

Because of the tattooing, the method of preservation and circumstantial evidence provided by the auction catalogue, the judge was satisfied that the deceased was a Maori who had died in New Zealand about 1820. Although there were no assets in the warrior's estate, the judge held that administration could be granted to constitute a personal representative so as to be able to commence legal proceedings and in order to accord the deceased 'a proper burial according to Maori law and custom and to prevent further indignity being visited upon him'.

Judgment was given on 19 May 1988.[3] That same day, armed with this order, the President of the Maori Council sought an injunction in the High Court in London to prevent the sale of the head the next day. The defendants gave an undertaking not to dispose of or destroy the head and it was withdrawn from sale. Subsequently, agreement was reached between the parties for the return of the head to New Zealand. It returned there on 3 July to be buried at Whatuwhiwhi on the Karikari peninsula.

Notes

1 Hubert, H. 'Dry Bones or Living Ancestors? Conflicting Perceptions of Life, Death and the Universe' (1992) 1 *International Journal of Cultural Property* 105; Webb, S. 'Reburying Australian Skeletons' (1987) 61 *Antiquity* 292; Klesert, A.L. & Andrews, M.J. 'The Treatment of Human Remains on Navajo Lands' (1988) 53 *American Antiquity* 310; Higgenbotham, C.D. 'Native Americans Versus Archaeologists: The Legal Issues' (1983) 10 *American Indian Law Review* 310.

2 *Dominion*, 22 July 1988, p. 10.

3 Estate of Tupuna Maori, Warrior (unreported decision – High Court of New Zealand, 19 May 1988).

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