

twenty-three other petitioners on behalf of the Waitaha Tribe, a subtribe of the Arawa Tribe. The claim made by the petitioners in the petition (No. 20 in the schedule) presented by them to the House of Representatives in the year 1923 was that the Waitaha Tribe was entitled to 22,300 acres of the confiscated land. When, however, Mr. Wihapi presented the case for the petitioners before us the claim he made on their behalf was not merely for 22,300 acres, but for the whole area of 290,000 acres confiscated by the Proclamation of the 18th May, 1865. The claim of the Waitaha Tribe to the 22,300 acres appears to have been made for the first time in the year 1923, when the petition already mentioned was presented to the House of Representatives. Before that date, however, a claim was made to a smaller area of about 5,000 acres, and that claim was dealt with by Mr. Clarke, the Civil Commissioner, in 1878. There was also a claim made by the Arawa Tribe to the island of Motiti in Tauranga Harbour, but this claim was disputed by the Ngaiterangi. Until the year 1923 every one acted on the view that practically the whole of the confiscated land belonged to the Ngaiterangi Tribe. The Proclamation refers to it as their land, and Acts of Parliament were passed and settlements were made with Natives on this basis. The chiefs of the Waitaha Tribe must have known this, and allowed all these things to be done without protest and without a word about any further claim than that put forward in 1878. The fact that the area claimed grew from 22,300 acres to 290,000 acres between 1923 and 1927 makes it difficult to regard the claim seriously. According to the award of Messrs. Clarke and Mackay, made in December, 1864, on which Mr. Wihapi relied, Ranginui and Waitaha were the original owners of the Tauranga district, which was afterwards conquered and occupied by the Ngaiterangi Tribe. The claim made by the Waitaha, which came before Mr. Clarke, in 1878 was for an area which, on survey, was found to contain 4,947 acres. If the Ngaiterangi were not the owners of the rest of the land, why did the Waitaha tribe not say so, and assert their claim to all the land when the confiscation took place in 1865? Their silence from 1865 to 1923 is in itself strong evidence that the claim now made is without any merit. But even if the claim had any merit originally, this long silence is a ground for applying the doctrine of estoppel, and for saying that the Waitaha Tribe, having stood by while the land was dealt with as the property of the Ngaiterangi Tribe, is precluded now from making any claim to the land.

38. The principal reason for the campaign against the Tauranga Natives in 1864 was the fact that they had taken part in the Waikato war. The campaign, which ended with the fight at Te Ranga on the 21st June, 1864, was followed by the submission of the Tauranga tribes. "The friendliest relations," said Mr. Cowan, "were established between the fighters of the two races, who esteemed each other for the courage and the humanity which had distinguished the whole conduct of the brief campaign."

39. The Governor met the Natives at Tauranga on the 5th and 6th August, 1864. What happened at this meeting is thus described by Mr. Clarke in his letter of the 23rd June, 1865, to the Hon. Mr. Mantell: "When the Natives made their surrender to His Excellency the Governor, the Ngaiterangi gave up all their lands into the hands of His Excellency. The friendly Natives were parties to this arrangement. . . . Before the Governor declared the terms upon which he would accept the surrender of the Ngaiterangi, I was instructed by the late Ministers, Messrs. Whitaker and Fox, to meet the Natives and try to induce them to give up some specific block of land, but so many difficulties presented themselves, chiefly amongst themselves, that they abandoned the idea and adhered to their first determination of giving up all their lands. His Excellency the Governor in his reply to the Ngaiterangi told them that he would return to them three-fourths of their land, retaining the remainder as a punishment for their rebellion. The Natives all expressed satisfaction at the liberality of the Governor."

40. The Order in Council under the New Zealand Settlements Act, 1863, was made on the 18th May, 1865. By that the Governor declared the lands of the Ngaiterangi Tribe described in the schedule to be a district under the Act, and to be set apart and reserved as sites for settlements and colonization. The Governor also ordered "that, in accordance with the promise made by his Excellency the Governor at Tauranga, on the 6th day of August, 1864, three-fourths in quantity