At this point the case was closed and intimation given that the judgment would be given on the following day.

74. The judgment of the Court delivered on the 20th November, 1883, was as follows:—

> The evidence in this case has been perfectly clear. It appears that Wi Katene came into possession before the great sale. This land was reserved from sale at his instance. He and his heirs have enjoyed undisputed possession to the present time. Even Ngati Koata, who set up a counterclaim, admit the mana of Wi Katene. They argue that Huria ought to admit them, not that they have any right. With that aspect the Court has nothing to do with any promise she may have made. When Huria gets her title she is free to do with it as she will.
>
> Therefore the Court makes an order in favour of Huria Matenga for the Whakapuaka Block as shown in the map, excepting the 100 acres set apart for Ngati Koata and 10 acres for the Cable Station. A certificate of title to issue upon production of an approved survey.

75. Upon the evidence before it at the time it seems clear that the Court could come to no other decision than the one set out above.

76. However, the more one delves into the history of Whakapuaka the more abnormal do these proceedings upon investigation of title appear. In the first place it should be made clear that a claimant to Native land invariably has the clearest possible conception of his or her "take" (or root of title) to the land claimed, and it is usual for the Court to require the nature of that claim to be expressed in plain unequivocal language. It may be under ancestry or conquest or a gift, but in any case it must be coupled with permanent occupation under the enabling right. Mere ancestry, conquest, or gift, without occupation, confers no title. This is Native custom as recognized by the Courts for close upon a century. The following extract from a report dated 31st March, 1845, from Mr. Commissioner Spain to His Excellency Governor Fitzroy, codified with the necessary exactitude the custom as he found it operating among people to whom observance of custom was as yet the only operative law:—

> I was perfectly willing to entertain the claim of the Ngati Toa chiefs whom I have already named (Rauparaha, Rangihaeata, Hiko, and Tutahanga) so far as I was assured of their actual residence on and cultivation of parts of the various portions of land of which they declared themselves owners; but in accordance with a principle which I have more than once laid down in my communications to your Excellency and your predecessors, and which has guided my decisions in every instance, and been confirmed by all the evidence I have ever taken on the subject—namely, that mere conquest, unsupported by actual and permanent occupation, and more particularly where the conquered parties still remain in occupation or, having left it for a short time, return and occupy it for a series of years, bestows no title on the invaders.

77. In this case the "take" of the claimant Huria Matenga appears to have been conquest and occupation. The gift was not set up by her conductor, and it could not be set up on the evidence of her witnesses, who denied the title of Ngati Koata to the land at any time since the invasion or conquest. It seems clear that the judgment was influenced by the evidence of witnesses for the counter claimants that a gift had been made only to the extent that it confirmed the Court in an opinion that the counter claimants had no right as "they thereby admitted the mana of Wi Katene."

78. The land was apparently awarded to Huria Matenga not so much upon the strength of her case as upon the utter impossibility from the Court's point of view of finding any one else to give it to. Let us examine the testimony of her witnesses with a view to determining what further evidence might have been made available to the Court had the whole story been told. Let us assume not that the mass of evidence before this Court should have been available to the Court of 1883, but that what was given in 1883 should have been wholly given.

79. We will take firstly the evidence of Alexander Mackay, who in 1873 (ten years prior to the investigation) compiled a compendium of official documents relative to Native affairs in the South Island. Much that might have come before the Court of 1883 is contained in this valuable work. For instance, Alexander Mackay states:—

> "Wi Katene was the only one concerned in the reservation of this land. He repudiated the sale by his half brother, and the Natives did not press the matter, and consented to leave the block entirely in his hands."

This statement is reflected in the judgment by the following passage:—

> This land was reserved from sale at his (Wi Katene's) instance.

80. The following is an amplification that might have affected the judgment.

By a deed dated 10th August, 1853 (Mackay's Compendium, Vol. I, page 307), Ngatitoa Tribe ceded all their rights to land in the South Island to the Queen in consideration of a sum of £5,000. The translation in Mackay's Compendium of the terms of the deed is as follows (the italics are mine):—

> This paper or deed, written on this day on the tenth of the day of August, in the year of Our Lord one thousand eight hundred and fifty-three, is a paper of the full and true consent of us the chiefs and people of Ngatitoa, on behalf of ourselves, our relatives, and descendants, to entirely and for ever transfer our land at the Waipounamu as a sure and certain land from us to Victoria, the Queen of England, or to the Kings or Queens who may succeed her for ever and ever.
>
> And having agreed to sell and for ever give up these lands, Victoria, the Queen of England, agrees to pay us in money five thousand pounds (£5,000) two thousand pounds (£2,000) of the said money has been paid into our hands this day by Donald McLean. The