

108. It will be noticed that Wi Katene was paid three months before the deed of conveyance (para. 106) was signed, and that the account for the house appears to have been in the name of Hemi Matenga.

109. As a dissection of the statements made in the "Cable Station draft" can best be attempted in the light of evidence which became available after 1883, it can be left meantime and judged later if thought necessary on the evidence embodied in this report. It is sufficient in the meantime to observe that Mr. Mackay was aware in 1877 of the probability of other Ngatitama people being claimants to the land when it came before the Court, "as they may possess proprietary rights of a secondary nature over parts of the estate other than Rotokura," and that in 1883 he testified that "Ngatitama and others took possession of the land Whakapuaka, &c.," without giving the Court any indication that there were any Ngatitama claimants other than Wi Katene.

110. In reply to Mita Karaka, who appeared for Ngati Koata, Mr. Mackay said:—

Ngati Koata had no right to Whakapuaka. After the conquest *they were allowed* to take Rangitoto. Ngati Koata never told me they had any claim. Tutepourangi gave Rangitoto to Patete and others for having saved his life. Koata formed part of the *conquered party*. I never heard any elder Koata say they had any claim to Whakapuaka *nor do I consider they have any claim at all*. [The italics are mine.]

During the present hearing I was inclined to agree with the view of a conductor that the word "conquered" was purely a misprint for "conquering." After going more fully into the matter, however, I am decidedly of opinion that the evidence is recorded as it was given. The statement of witness is really much on a par with his later answer to the same conductor, viz.:—

In all my dealings with Natives I have never heard of any Koata living at Whakapuaka, if any came they were visited (visitors?); and "some of the Koatas have died and been buried there, but I do not consider this is any claim, as they were just passing through."

111. Actually, of course, Ngati Koata were not part of the conquered party. They were also not part of the conquering party that took Whakapuaka, as the incident of Tekateka's climbing upon the roof to announce his identity to the attackers will, with other circumstances, show. Ngati Koata say, with some justification, that the affair at Whakapuaka was a "kohuru" (murder), not a conquest. Furthermore, Ngati Koata people did live permanently at Whakapuaka in Wi Katene's time, and permanent Ngati Koata residents were buried at Haua, the Whakapuaka cemetery. This occupation would not necessarily confer title upon these Ngati Koata people.

112. It is not remarkable for the reasons to be given that the case for Huria Matenga should have taken the form of a wholesale denial of a shadow of right to any one else instead of a straightforward recital of facts and circumstances that would plainly show that Wi Katene's heir and no one else was the owner of Whakapuaka.

113. Hemi Matenga could not very well set up a conquest by an old woman and a young lad of exceptionally placid and serene nature. He could not very well set up the gift without admitting that the title to Whakapuaka at one time was in the donors, Ngati Koata. He placed a good deal of weight on the fact that Wi Katene had leased the land and that his lessees were not interfered with. The Court, too, seems to have regarded the leasing by Wi Katene as strong proof of ownership.

114. Two of these leases were produced at the present hearing. Both were from Wi Katene to members of the Mackay family, and both were witnessed by Alexander Mackay, Native Commissioner, Nelson. Both were issued in the year 1870. In the case of the one to James Mackay, senior, a significant passage occurs—viz., "There is excluded from this lease all of the 'food workings' of Te Meihana." It is conceivable that if Te Meihana's "food workings" were to be reserved that Te Meihana had some rights. Te Meihana is probably identical with a Ngati Tama warrior of that name who took part in the conquest. It was unlikely to be Meihana Kereopa, as "he went away in 1854."

115. The other lease is to Robert Mackay, and is for twenty-one years from the 1st July, 1870. The land leased is described as being—

All that piece or parcel of land situated at Whakapuaka in the said Province of Nelson being the northernmost portion of the *Native Reserve* there.

A proviso to the deed reads as follows:—

And the said lessor for himself his heirs and assigns doth hereby promise and agree to and with the said lessee his executors administrators and assigns that in the event of a Crown title being received by him or them for the reserve at Whakapuaka of which the land hereby demised forms part that thereupon they will ratify this deed and do all and everything that is necessary to maintain the said lessee his executors administrators and assigns in lawful possession of the within demised premises until the expiration of the term hereby granted.

116. The description of the land as part of a "Native Reserve" may mislead, as the land was not at any time subject to the Native Reserves Act, 1856, which Act provided for the management in the following manner of lands set apart for the benefit of the aboriginal inhabitants of New Zealand. Where the Native title had been extinguished and the land reserved to the Natives, the Act gave the Commissioner full power of management and disposition restricted in general to leases for a period not exceeding twenty-one years, and such other alienations as had the consent of the Governor first obtained. Where the land had been reserved or excepted from sale and the Native title had not been extinguished, the Act did not apply unless the Governor, with the consent of the Native inhabitants, declared such land to be subject to its provisions. Still, notwithstanding the fact that this land was not subject to the Native Reserves Act, it is conceivable that Wi Katene's leases were not more likely to be questioned by his fellow-inhabitants of Whakapuaka because the Native Commissioner had identified himself with their issue.