

1936.
NEW ZEALAND.

THE NATIVE PURPOSES ACT, 1934.

REPORT AND RECOMMENDATION ON PETITION No. 262 OF 1933, OF HARI WI KATENE AND OTHERS,
PETITION No. 123 OF 1934, OF WAKA RAWIRI AND ANOTHER, AND PETITION No. 329 OF 1934-35,
OF J. A. ELKINGTON AND OTHERS REGARDING WAKAPUAKA BLOCK.

Presented to Parliament in pursuance of the Provisions of Section 9 of the Native Purposes Act, 1934.

Chief Judge's Office, Native Land Court, Wellington, C. 1, 18th May, 1936.

The Right Hon. Native Minister, Wellington.

PETITION No. 262 OF 1933 AND OTHER PETITIONS, WAKAPUAKA BLOCK.

PURSUANT to section 9 of the Native Purposes Act, 1934, I herewith transmit the report of the Native Land Court upon—

- (1) Petition No. 262 of 1933, and
- (2) Petition No. 123 of 1934, together with which is combined the report on
- (3) Petition No. 329 of 1934-35, referring to the same land.

The first petition claims that one Huria Matenga having been admitted into the title under a gift, that her grandmother, Kauhoe, was also entitled under the same gift, and therefore that others besides Huria Matenga are entitled to participate; the second petition claims that the Ngatitama Tribe had rights arising out of occupation; while the third petition, assuming the gift to be to Wi Katene te Puoho, father of Huria Matenga, alone, claims that, Wi Katene's issue having died out, the land has, according to Native custom, reverted to the Ngatikoata Tribe, as original donors.

The land in dispute originally contained an area of 17,739 acres. Part of the land has since been disposed of, leaving a residue of about 11,381 acres 0 roods 22 perches. The title was investigated by the Native Land Court in 1883, and a certificate of title under the Native Land Act, 1880 (not to be confused with a certificate of title under the Land Transfer Act, although by statutory provision the land did later become subject to that Act), was issued to Huria Matenga, on whose behalf it was claimed through her father, Wi Katene te Puoho, and her grandmother, Kauhoe (both of whom were then dead).

The main point at issue hinges round the question of whether the land was bestowed on Kauhoe and her son Wi Katene te Puoho jointly, in which case the other children of Kauhoe would, according to Native custom, participate; or was it confined to Wi Katene te Puoho, resulting in Huria Matenga being the proper owner.

Upon this inquiry the Native Land Court has gone fully into the history of events leading up to the gift and thereafter, and, having considered the matter, has concluded in brief that the true facts were not sufficiently disclosed to the Court of 1883 to enable it to judge properly of the rightful ownership, and that, had the Court known the true history of the gift, it would have included Kauhoe's other descendants in the title.

Possibly if Wi Katene te Puoho had been alive at the investigation he might have thrown light on the matter, but he would not have the title investigated, and apparently had shown strong antipathy to any Court proceedings in connection with the land.

A document (quoted at page 20 of the report) written on behalf of Wi Katene te Puoho and ostensibly on his instructions, regarding the purchase-money to be paid by the Crown for a portion of the same land known as the Cable Station site, then under Government negotiation, affords some explanation. This correspondence resulted in the passing of a special Act called "The Wakapuaka Telegraph Station Site Act, 1877," which curiously recites in its preamble that Katene te Puoho, Huria Matenga and her husband, Hemi Matenga, are the owners of the land, and authorizes them to execute a valid conveyance of 10 acres and 20 perches of the land notwithstanding that it had not passed through the Native Land Court.

The writer of the document referred to gives as a reason for not desiring to approach the Native Land Court, as had been suggested, the fear of the resuscitation of the old claims by Ngatikoata, and makes particular reference to the fact that Wahapiro, another son of Kahoe, having been released from captivity, had been invited by his brother Wi Katene te Puoho to share Wakapuaka lands. Owing, however, to Wahapiro having disturbed the European settlers, Wi Katene (it is said) had considered that, as from the time of that disturbance, his brother had forfeited his right to share in the land. Still, there was the danger that the sons of Wahapiro might possibly attempt to set up a claim. If this is correct and had he, according to Native custom, any right in the land, no offence by Wahapiro committed in 1845 could do away with such right.

It seems to the Chief Judge that a *prima facie* case has been made out for a reopening, and that an opportunity should be given for placing the claims of the various petitioners fully before the Court, with power to that tribunal to make such order as the justice of the case may require, taking care not to invalidate any past transactions for value.

Legislative action is recommended accordingly.

R. N. JONES, Chief Judge.

In the Native Land Court of New Zealand, South Island District.—In the matter of the Whakapuaka Block; and in the matter of section 9 of the Native Purposes Act, 1934; and in the matter of section 542 of the Native Land Act, 1931; and in the matter of Petition 262 of 1933, of Hari Wi Katene and others, praying for relief in respect of the rightful ownership of Whakapuaka Block on behalf of the relatives of one Kahoe; and in the matter of Petition 123 of 1934, of Waka Rawiri and another, praying for relief in respect of the rightful ownership of the Whakapuaka Block on behalf of the Ngatitama Tribe; and in the matter of Petition 329 of 1934, of John Arthur Elkington and others, praying for relief in respect of the rightful ownership of the Whakapuaka Block on behalf of the Ngati Koata Tribe.

At a sitting of the Court held at Wellington on the 8th day of July, 1935, before JOHN HARVEY, Esquire, Judge.

UPON reference by His Honour the Chief Judge of the above petitions for inquiry and report, and upon hearing counsel for the petitioners and for the legal owners of the land in question, and after considering all evidence adduced and available, the following report is submitted:—

1. The land the subject of the petitions is the Whakapuaka Block, which originally contained an area of 17,739 acres, and was awarded by the Native Land Court (Judge Mair, at Nelson) on the 20th November, 1883, to Huria Matenga as sole owner. A consequent certificate of title under the Native Land Act, 1880, was forwarded for registration under the Land Transfer Act on the 28th January, 1895, and was registered on the 4th February, 1895. On the death of Huria Matenga in 1909 the land passed by her will to her husband, Hemi Matenga. On his death in 1912 it went to the trustees under his will. The area remaining at present is owned by Thomas Neale and Ernest Frederick Upham (trustees under the will of Hemi Matenga) and comprises,—

Firstly: An area of 8,860 acres 2 roods 17 perches, being all the land in certificate of title, Volume 61, folio 64, Nelson Registry; and

Secondly: An area of 2,520 acres 2 roods 5 perches, being all the land in certificate of title, Volume 67, folio 109, Nelson Registry.

2. The Court has been directed to report upon three petitions which have the common ground that this land was derived from former owners by units of the force which came from Kawhia under the leadership of Rauparaha. Once beyond this common ground the claims of the petitioners and respondents vary in the following manner:—

3. John Arthur Elkington and others (Petition 329/35) claim that the land was originally given to Ngati Koata by Tutepourangi in return for his life; that Ngati Koata made a gift of the use of a part of the land to Kahoe for her son Wi Katene te Puoho; that the Ngati Koata occupied the land in conjunction with Wi Katene te Puoho, and that, as Wi Katene te Puoho's line has failed, the gift reverts to its source and thus leaves Ngati Koata sole owners of the land.

4. Waka Rawiri and Hoani Meihana (Petition 123/1934) claim the land for the members of the Ngati Tama Tribe, who lived at Whakapuaka, and for whom the land was set apart "long before 1862." Their list of Ngati Tama people who lived at Whakapuaka and cited as part of the petition includes Wi Katene te Puoho, from whom Huria Matenga derived her interest to the land, but does not include the ancestors of any of the petitioners in Hari Wi Katene's petition.

5. Hari Wi Katene and others (Petition 262/1933) claim that the land was given by Ngati Koata to Kahoe, and that, as Kahoe and her descendants resided permanently on the land from 1836 to 1883, the persons entitled to the land would be those who could properly claim rights according to Maori custom under this gift. Huria Matenga, as the only child of Wi Katene te Puoho, a son of Kahoe, would be entitled to a considerable share under this arrangement.

6. The case for the respondents (based upon and supporting the effect of the judgment of the Native Land Court in 1883) is that the land was given by Ngati Koata to Kahoe for her son Wi Katene te Puoho, from whom it naturally devolved to his only surviving child, Huria Matenga.

7. Huria Matenga died on the 24th April, 1909, at the age of sixty-eight years, and the estate has passed by the steps already shown to strangers. In these proceedings, however, as the attack is upon the root title, she will be treated as the ultimate respondent.

See plan.

8. The evidence tendered to this Court was extremely voluminous, and lengthy addresses were delivered by counsel and conductors. Much that was essentially the general history of the allied tribes that came South under the leadership of Te Rauparaha was traversed, and, in all probability rightly so too, as the Whakapuaka case viewed from any angle stands in bold relief against a background of general Maori and early New Zealand history. In this report, therefore, while every endeavour will be made to confine the history to that of the Whakapuaka Block, digressions are necessary to show causes for certain acts and reasons for certain doings, as these acts and doings in themselves are inexplicable.

9. A central figure in the case is that of Te-Puoho-ki-te-Rangi called by his enemies Te Manu (on account of his melodious voice). He was also known as Ngarau. In this report he will be referred to as Te Puoho.

10. The Ngatitama Tribe, to which Te Puoho belonged, was one famous for its fighting qualities. It was allied to Ngati Awa and Ngati Toa, and was the focus of a whole-hearted enmity on the part of the Waikato Tribes, which was not lessened when Kaeaea (or Taringa Kuri, as he was later known in the Wellington District) crucified Taiporutu in the gateway of a pa which Waikato were attacking. Taiporutu was the father of Waharoa, whose name commemorated the manner of Taiporutu's death. Kaeaea and Te Puoho were closely related.

11. Te Puoho, as one of the foremost and acknowledged leaders of Ngati Tama, worthily upheld the tribal prestige by the unparalleled feat of fighting his way against natural obstacles and hostile peoples in a series of raids, forays, and wars from his home at Poutama, near Kawhia, in the North, to his death at Tutarau, near the Village of Matura, in the South. He was also a high priest, and through acting in that capacity to Rauparaha, as well as being his ally in the field, was bound by close ties to that distinguished conqueror.

12. About the year 1818 (sometimes given as 1817 and 1819) Patuone and his brother Nene (afterwards Tamati Waka Nene) joined with Tuwhare and Rori in a raid to the South. At or near Kawhia these people (Ngapuhi and Ngatiwhatua) were joined by the Ngati Toa under Rauparaha and Rangihaeata. The following quotation from "Old Wanganui" (T. W. Downes) gives an idea of Te Puoho's interest in this raid:—

It so happened just about this time that the Ngati Tama Tribe of Taranaki had a grievance against the Whanganui Tribes, which arose as follows: Te Puoho, one of the principal chiefs of Ngati Tama, then living at Pukearuhe, near the White Cliffs, married his daughter to a son of Takarangi of Whanganui. On one occasion, in an assemblage of men, the husband said that when he embraced his wife her skin felt like that of a potato. When the wife heard of this she felt deeply insulted, and, leaving her husband, returned to her father at Pukearuhe and laid her grievance before him. Te Puoho looked on this as a curse, and determined to have revenge for the insult; so he sent messengers to Kawhia and right along the coast as far north as the Waikato Heads. No doubt other causes tended to incite the northern Natives to this raid, but this affair, known as Te Kiri-parareka, or potato-peel, certainly assisted.

13. The party which was reputed to be 1,400 strong, and which was under the leadership of Tuwhare, passed through Taranaki and along the coast to Whanganui. This expedition is credited with having at the outset an armament of four muskets (or it may have been ten), and probably the first seen in many parts of the district traversed, "which made their task of invasion an easy one." An attack was made on the Purua Pa (at Durie Vale, Wanganui), after which the party proceeded to Whangaehu and Rangitikei, thence along the coast to beyond Otaki—to Porirua and Wellington. On the way Rauparaha called in at Kapiti Island. From Wellington it went to Tauwharenikau and Kawakawa in the Wairarapa and up to Porangahau. This trip was attended throughout with considerable slaughter. While the expedition was in the Palliser Bay district, a party was cut off by a skilful ambush and Rori was killed.

14. Upon the return journey a stop was again made at Whanganui for the purpose of attacking Purua and Patupo pas. Both, however, withstood the attack, so Tuwhare (and the Ngapuhi apparently) decided to pursue the fugitives who had fled from other pas at his approach. He thereupon proceeded up the Whanganui River, and in the face of stubborn resistance achieved a point some fifty miles above Pipiriki. The defenders had made good use of facilities to hand, and had hurled logs and stones from the cliffs into the canoes while the occupants were held to the arduous task of poling up the narrow confines of the river. By the time that Tuwhare found his progress arrested the party had lost some canoes, so that numbers of the warriors were forced to travel overland. Upon turning back, his return was definitely barred at Kaiwhakauka Pa about a mile below the Retaruke junction. Here the issue was joined and a long and bitter fight took place. The Ngapuhi succeeded in getting into the pa, but the defenders (which included contingents specially requisitioned from as far away as Taupo) succeeded in clearing it. In the course of the fight, whilst Tuwhare was in the pa, he encountered a Whanganui chief and shot him in the shoulder, but before he could reload the wounded adversary had split Tuwhare's skull with a cut from his taiaha. The wound was not immediately fatal, and Tuwhare taunted his assailant with a reference to the proverbial weakness of a food-raiser's arm as contrasted with that of a warrior. After darkness had stopped the fight, a parley ensued, when Tuwhare recovered a relative who had been captured in the fight. Next morning the invaders were permitted to leave, and they rejoined the remainder of the expedition at the mouth of the river. It passed on to Patea, where a division took place, some going by canoe to Waitara and some going overland, carrying the wounded leader on a stretcher. At Ketemarae Tuwhare succumbed to his injury.

15. It was during the return of this expedition, while at Omere (the look-out point at Ohariu Bay, from which weather conditions in Cook's Strait were generally observed), that Tuwhare (some say

Nene) drew the attention of Rauparaha to a ship that was beating through the strait and advised that chief, if he wished to procure muskets and become great, to migrate to such a place where he could get in touch with ships and effect the necessary trade. Rauparaha had by this time seen the value of firearms, and was shrewd enough to foresee the futility of expecting to be able to hold his ancestral lands against tribes who had greater opportunities of obtaining muskets than he had so long as he remained at Kawhia. His Waikato and Maniapoto neighbours would only respect his rights so long as they respected his power to punish them in encounter, and it was patent that they would have an earlier opportunity of procuring modern arms than he.

16. About 1820, following upon increased pressure from the Waikato Tribes, the migration of Ngati Toa under Te Rauparaha and Rangihacata commenced from Kawhia. It is recorded that at the end of four days the party arrived at the pa of Te Puoho at Turangarua. Here Rauparaha left Te Akau, who had been taken to wife by him when he assumed the mantle of chieftainship held by her late husband, Hapekituarangi. Te Akau was at the time in a delicate condition, and was left at Te Puoho's pa. It is not inconsiderable proof of Te Puoho's office of high priest and friend to Rauparaha that the expectant mother should have been left with him, thus devolving upon Te Puoho her safety and the responsibility of seeing that the necessary baptismal ceremony was carried out at the proper time, a thing not so easily arranged if the child were born while the mother was one of the travelling party. Rauparaha with his following pushed on to Waitara, returning later with a small party to Te Puoho to collect his family.

17. About this time another invasion of the Manawatu, Whanganui, and Horowhenua districts was taking place, and must be briefly touched upon. This expedition, consisting of Waikato and East Coast people, raided down through Hawke's Bay and Wairarapa and up by way of the Horowhenua district to the middle reaches of the Whanganui River, where at a place called Mangatoa, two miles south of Koriniti, a party of them was enticed by a Whanganui female captive into a veritable death-trap, where they were ambushed and largely destroyed. To celebrate this and other victories a song was composed, which is of particular interest on account of its reference to Ngarau (Te Puoho) and his daughter (Tikawe ?) and the fact that his raid is noticed in a recital of considerable events.

18. In the autumn of 1821 (say) the tribe moved on from Waitara through friendly country to Waitotara, which would be on the borders of the Whanganui tribal territory. Here occurred a slight engagement between the party and the local people, as a result of which Rauparaha possessed himself of some canoes which he badly needed. The party then moved on to Whanganui, where they were met by relatives of Pikinga the Ngati Apa wife of Rangihacata, and by whom the party was taken to Rangitikei. It is more than probable that a large number of the party wintered with these people, and that they spent the next planting-season there.

19. In 1822 the migration reached Ohau, which had been spied out as the ultimate destination. A conspiracy by the Whanganui, Rangitane, and Muaupoko Tribes to rid themselves of Te Rauparaha was very nearly successful when the latter tribe invited him and many of his close relations to Te Whi at Lake Papaitonga (Lake Buller) and fell upon the party while asleep. Seventeen were killed, including a number of Rauparaha's children, while he, another man, and a slave had a narrow escape. It is interesting to note that Rauparaha was warned by Rangihacata that an attempt would be made on his life if he went to Papaitonga, as he, Rangihacata, had received an impression manifested by a peculiar twitching of his side that such dark purpose was in the minds of Muaupoko and Rangitane. In actual fact, he had been told by his wife's people that the attempt would be made.

20. From the time of this event onward, Rauparaha kept up a relentless attack on the Muaupoko Tribe. He took the Waipata Pa (an artificial island in the Horowhenua Lake) by swimming his force to it; he reduced Waikiekie, a similar but much stronger place, with the aid of canoes which had to be dragged up the Hokio Stream from the sea. His position was precarious, and he took desperate measures to secure his safety. After Waikiekie, a large body of Ngati Awa that had come with him returned to Taranaki. This reduction in the force at his disposal made it inadequate to hold the mainland against the enemies surrounding him, so he retired to Kapiti, which he had taken from a small branch of the Ngati Apa, and fortified himself against attack. From the comparative safety of the island he visited the mainland when he pleased for supplies, raiding the occupants of the Horowhenua and Manawatu districts whenever they were detected returning to the old habitations.

21. About 1824 the Rangitane Tribe rebuilt their old pa at Hotuiti (between Shannon and Foxton) and, with a section of Ngati Apa, occupied it. This constituted a gathering which was considered too close for the comfort of Ngati Toa, and in consequence Rauparaha and Rangihacata proceeded to Hotuiti to disperse it. The latter was accompanied by his Ngati Apa wife, Pikinga, who was sent in to the pa with a request from Rauparaha that the Ngati Apa people should withdraw themselves. This they refused to do, so Rauparaha invited the Rangitane chiefs to come out and arrange a peace. When they came out they were murdered and the leaderless occupants of the pa slaughtered.

22. The remainder of Ngati Apa were incensed at this action of Ngati Toa, and, hastily gathering a small party of thirty (Ngati Toa say there were two hundred), they fell upon a party of Ngati Toa on the mainland at Waikanae and killed thirty of them. Among the slain were three chiefs and four children of Te Pehi, who was the uncle of Rauparaha, and by birth his superior in rank.

23. The loss of his children deeply distressed Te Pehi, and in 1826 he managed to secure a passage on a ship to England, where he hoped to secure muskets that would ensure him a fitting revenge. Shortly after Te Pehi's departure, Te Ratu, who had been captured at Kukutauaki and kept as a slave by Te Pehi, escaped and made his way to the South Island. This would be about the beginning of 1827. Te Ratu effected an alliance of all the tribes that were menaced by the Kapiti situation—the Ngati Apa, Rangitane, and Ngati Kuia of the South Island; the Ngati Kahungunu of Wairarapa, the Whanganui, Rangitane, Ngati Apa, and Muaupoko of the West Coast. A concerted attack by these allied tribes was planned and immediate arrangements made to put the plan into execution.

24. Kapiti at the time was held by Ngati Toa, Ngati Koata, and Ngati Haumia. There were three pas—Wharekohu at the south, Rangitira near the north, and Taepiro near the middle on the side facing the mainland. The Ngati Toa and allies on the island were apparently unaware of the impending attack until the night before it was made, when two of Rauparaha's children who were up a tree saw the fires at Waikanae. It was thereupon decided by Rauparaha and Rangihaeata to cross over to the mainland in the morning and clear out the intruders, but at dawn the attack was launched not at the Ngati Toa at Rangitira, who had some knowledge of the situation, but at the Ngati Koata and Ngati Haumia at Waiorua, whose first intimation of their predicament was hearing the canoes of the attackers in the surf.

25. Although cast against fearful odds, the defenders opposed the landing with epic abandon and sacrifice. The quality of the defence, coupled with the fact that the invaders were having great trouble with the long canoes in the surf-rollers, threw the allied tribes into confusion, and, at a time which was quite likely to have been before the arrival upon the scene of Rauparaha and the better-armed Ngati Toa section, they broke in disorder. This battle was known as Whakapaetai or Waiorua, and was probably fought about 1827. From this point the history of Whakapuaka commences, but it may be as well while on the subject of general history of the North Island position to pursue it as far as need be in this report.

26. In revenge for this attack Rauparaha fell upon the people from Manawatu to Porirua, and, after clearing out the inhabitants with ruthless efficiency, took possession of the country. About this time Te Puoho came down from Taranaki to see how Rauparaha was faring. He came with a mixed party of Ngati Tama and Ngati Whakatere, and after consultation with Rauparaha and sizing up the situation went back to Taranaki. The following summer, say, 1828, he came down with his party of Ngati Tama and Ngati Whakatere. The Ngati Whakatere remained near the Manawatu River to harass Ngati Apa, while the Ngati Tama came on down to Waikanae.

27. By this time Rauparaha had established contact with the people from whom he could expect to receive and did receive muskets and ammunition in quantities sufficient to place his power nearer to the level of his ambition than at any time heretofore. There was a steady stream of migrants to build up his forces, and the trade (in flax principally) enabled him to adequately arm all that he wished to incorporate into his fighting forces. He appears to have had another source of supply of warlike equipment, as the following minutes of the Native Land Court of 1872 will show:—

Te Oroa went from Kapiti to Whanganui. He was caught, killed, baked, and eaten in revenge for Parematau. (A Whanganui chieftainess killed by the army under Rauparaha at the sack of Putikiwharanui in 1829.)

Under cross-examination the same witness (Matene te Whiwhi) said: "Te Oroa was Rauparaha's pakeha. Oroa provided him with guns. He did not go with him when he went to fetch Tamaiharanui (November, 1830), who was hanged. I don't know that the reason you killed Oroa was because he supplied Rauparaha with guns and ammunition. Te Oroa was killed before the establishment of law. We had not put an end to cannibalism at the time of Te Oroa's death."

We now turn to "Old Whanganui," page 169:—

The following explanation of this murder was furnished to the Rev. Richard Taylor by a man known as "Scotch Jack," who was one of Rowe's comrades on the Island of Kapiti:—

"The captain of the boat, Joe Rowe (Te Oroa!) organized the expedition to Whanganui. He lived at Kapiti, where he carried on a great trade in dried heads, which at that time were much sought after in England. So great was the demand that marauding expeditions were frequently undertaken merely to procure heads for traders, and those who had the finest moko were often murdered for the sake of their heads alone. Amongst the heads which Joe Rowe had purchased were two of a party of Natives coming from that district then on a visit to Kapiti, where Rowe kept a store. Some of these visiting Natives were related to the poor fellows whose heads were in the possession of the white man, and they immediately recognized the tatooing and entreated him to give them up, but he not only refused to do so but laughed and made fun of their tears. They left, vowing vengeance, and, finding that he had arranged a trading expedition to Whanganui, they awaited him at Wahi-puna. There they killed him, with some of his companions, cutting off his head and drying it in return."

This may or may not be the correct explanation, but as Joe Rowe was killed on the 14th January, 1831, it can reasonably be assumed that Rauparaha was well supplied with arms in 1828, 1829, 1830, and 1831–32, the years that seem likely to be the ones in which he made his raids to the South Island.

28. We can now go back to the Waiorua battle of 1827 and attempt to trace out from then the history of the South Island engagements.

29. At the battle of Waiorua, Tutepourangi, a leading Ngati Kuia chief, was, with some others, taken prisoner, while the invaders took with them in their flight back to the South Island a child named Tawhe, who had been hidden away by his parents when the attack was launched. Consequent upon the hue and cry raised when the loss of the child was discovered, a party, accompanied by the prisoners, set off to effect his rescue. The Ngati Koata, who were most concerned, appear to have held Tutepourangi as a hostage, and upon the child being recovered peace was made. As a result of this peace members of the Ngati Koata Tribe settled on Rangitoto (D'Urville Island), and one is known to have lived at Whakapuaka. Actually it seems that Tawhe never returned to the North Island, but lived with his brother Patete and the Ngati Kuia people on Rangitoto and in the Sounds district. The rescue of Tawhe marked the first occasion on which members of Rauparaha's forces landed in the South Island.

30. At this hearing the Ngati Koata claimed that Tutepourangi gave them Rangitoto and the whole of the land from there to Mataau (Separation Point). Evidence was adduced by them which

made it appear that the battle of Waiorua, the gift of the land from Tutepourangi, the rescue of Tawhe, the killing of Tutepourangi, and the battle known as Tukituki-patu-Aruhe were all incidents of one raid or campaign. In opposition to this claim it was argued that Tutepourangi, as a slave, had no right to give the land away, and that, in any case, the Ngati Koata could not have occupied under that gift as Tutepourangi was killed at Whakapuaka by Wahapiro (Puoho's stepson and nephew), who was one of a party of Ngati Tama that pursued the fugitives from the battle of Waiorua.

31. This telescoping of events and disregard for the intervention of interludes of quietude between occurrences of major importance makes the evidence of any one side particularly difficult to reconcile with the other material to hand.

32. In the first place, Te Puoho, Wahapiro, and the Ngati Tama were not at the battle of Waiorua (1827). It was after that battle that Puoho came down to see how Ngati Toa were faring (1827), and it was later again when in company with some Ngati Whakatare they came down and settled at Waikanae (1828). We can therefore safely leave Ngati Tama out of the story meantime.

33. We now take up the incident of the Tukituki-patu-Aruhe (the phrase meaning "to pound with a fern-root pounder").

34. After the battle of Waiorua, as mentioned previously, Rauparaha harassed and largely destroyed the Rangitane, Ngati Apa, and Muaupoko of the Horowhenua and Manawatu districts. Word of these catastrophes was received by another section of the Rangitane Tribe living in Wairau and Cloudy Bay districts (may have been Pelorus). The chief of this section was Ruaoneone. Ruaoneone thereupon said that if Rauparaha attempted to carry his operations to the Wairau district he would pound Rauparaha's head with a fern-root pounder. When Rauparaha heard of this threat he took it as a curse, and, taking an expedition over to Cloudy Bay, he fell upon the Rangitane there, won a battle, and brought Ruaoneone back to Kapiti, where he was killed. This event probably took place in 1828, and, although it seems possible that Puoho and Ngati Tama could have been there, the evidence is that the raid was carried out by a party of Ngati Toa. It seems plain, therefore, that Tukituki-patu-Aruhe took place some time after Waiorua, and certainly not as part of the rescue of Tawhe. On the one hand we have Waiorua battle, the Manawatu operations designed to punish northern tribes taking part in Waiorua, word of these operations being conveyed to allied tribes at Wairau, the curse uttered by Ruaoneone, news of the curse being taken to Kapiti, the expedition to Wairau, and the battle of Tukituki-patu-Aruhe. On the other hand we have an immediate pursuit of fugitives from the battle of Waiorua and the recovery of Tawhe within a week: some evidence says four days.

35. There is abundant evidence that Ngati Koata settled at the south end of Rangitoto after the battle of Waiorua, and that they were in occupation of that land and the coast-line adjoining, and had intermarried with the local people when the Ngati Toa invasion proper of the South Island took place. This invasion apparently took place a fair while after the time of the battle or campaign of the Niho-Manga (or barracouta's tooth), the reason for which must be explained.

36. It appears that word of Rauparaha's success against Ruaoneone of Wairau came to the ears of Rerewaka of Kaikoura, and he also being a man versed in conjuring up picturesque methods of dealing with his enemies declared that if Rauparaha dared ever to cross the Waiau (Waiau-Toa—i.e., Clarence River) he would rip his belly up with a "Niho Manga" (barracouta's tooth). Intimation of the fact and nature of this curse was conveyed to Rauparaha by an escaped slave. He chose to look upon the insult as one requiring extreme punishment and the occasion as one that warranted his taking the field with his maximum strength. Indeed, it seems that news of this curse arrived at an opportune time. Te Pahi had returned from England; reinforcements had arrived from Taranaki, and through intercourse with whalers and trading posts at Kapiti a considerable amount of arms and ammunition had been accumulated. All that was required was a reason (a good one for preference) for attacking the Southern Tribes.

37. The attack upon Rerewaka and the Kaikoura district was made (probably in 1828) by a large force that proceeded from Kapiti to Kaikoura by sea. The Kaikoura people mistook the invaders for friends and went down to the beach to welcome them and receive them on their landing. Had they been aware of the intention of their visitors it is probable that the Kaikoura people could have achieved safety only by flight. They were not outnumbered and they were not lacking in courage, but were hopelessly outclassed in the matter of the weapons with which they had to conduct the fight. It was the old story of the Maori weapon against the European weapon—of the taiaha against the musket—of what might be claimed to be the acme of perfection in the science of personal combat matched against an engine of destruction. The whole of the Kaikoura Peninsula and the coast-line as far south as Omihi were devastated with such an amazing suddenness that a party of the invaders, which included all the chiefs, proceeded to Kaiapoi to pay what might be termed a social call, secure in their own minds that the Kaiapoi people could not yet be aware of what had befallen their Omihi relatives. The Kaiapoi people, however, had received some word from a fugitive of the Omihi massacre, and, while they were anxious to preserve the atmosphere of social intercourse so as not to provoke Rauparaha to the point of war, were equally solicitous of their own safety.

38. The Kaiapoi people were rich in greenstone and greenstone weapons, and, strange though it may appear, these were the commodities valued and coveted above all things by their well-armed visitors. Many of the visiting chiefs entered the Kaiapoi Pa for the purpose of trading in greenstone, coming and going as they wished. Rauparaha, seemingly attuned to the presence of danger, although unconscious of it, always remained outside with his people.

39. On one occasion during the course of a haggle over a trade in greenstone, Te Pahi (second in command of the expedition) rebuked his Kaiapoi friend with a remark such as this: "Why do you, with a crooked tatoo, resist my wishes, you whose nose will shortly be cut off with a tomahawk." This threat, coupled with an increased knowledge of the extent of the northern disaster, convinced the Kaiapoi people that their visitors were insincere in their protestations of friendship, and upon a canvass

of the situation it was decided that advantage in the contest likely to ensue would rest with the side that struck the first effective blow. They accordingly made a goodly showing of their greenstone wares, and Tamaiharanui invited the visiting chiefs to enter the pa to trade and to receive presents. Most of the chiefs accepted the invitation and were all killed, among the slain being Te Pehi. Rauparaha was astounded at this blow to his mana, and, unnerved beyond the point of taking revenge there and then, he returned to his canoes, killed all of the prisoners taken at Omihi and Kaikoura, and returned to Kapiti Island, leaving the Kaiapoi people confident that Rauparaha would never again carry war to them.

40. In November, 1830, Rauparaha induced a Captain Stewart of the brig "Elizabeth" to convey a number of his followers to Akaroa, where Stewart enticed Tamaiharanui on board. Tamaiharanui was thereupon seized by Rauparaha and made prisoner, following which the war party went ashore and a general massacre of Tamaiharanui's people ensued. Tamaiharanui was then brought back to Waikanac and given to the widow of Te Pehi, who tortured and killed him in revenge for the death of Te Pehi.

41. The next event of importance is the siege of Kaiapoi, with which is closely interwoven the conquest of the country of which Whakapuaka formed part. One reason for the attack on Kaiapoi has already been given, but a further one, which involved the Rangitane and N'Kuia of the Nelson district, arose as follows.

42. Word was received by Rauparaha that the bones of Te Pehi had been taken by Tuhawaiki, a Kaikoura chief, to his home at Nelson, where they were used in the manufacture of fish-hooks for himself and his Rangitane and Ngati Kuia friends. It appears that this rumour was a false one, and involved the Nelson district in needless bloodshed and unmerited punishment. However, false or true, the attack which followed practically exterminated Rangitane, Ngati Kuia, and the Ngati Apa-ki-te-Rato (or the section of the Ngati Apa in the South Island). Recorded evidence is to the effect that this expedition left Kapiti "when the Tawhara was ripe and returned in time to dig the potato crop." It left in October, 1831, and returned in April(?), 1832, after capturing Kaiapoi and the whole of the northern end of the South Island.

43. The first attack appears to have been made upon the Queen Charlotte Sounds and Pelorus Sounds districts, later developing against the north end of Rangitoto and Whakapuaka. We are told that Waihaere (a leader of the South Island attack on Kapiti) was killed at Puna-a-Tawake on the north-west of Rangitoto, and that Tutepourangi was killed by Wahapiro at Whakapuaka. At the hearing a highly circumstantial account of the raid which culminated in the death of Tutepourangi was given by the Ngati Koata witnesses. They, however, treated the events as part of the rescue of Tawhe or battle of Tukituki-patu-Aruhe, and they do not fit into the dates or details of those earlier raids. It seems very likely that the incidents occurred as part of the preliminary raid upon the Sounds and Whakapuaka country which took place prior to the division of the forces against Kaiapoi on the one hand and Massacre Bay and the West Coast on the other. The Ngati Koata account is as follows: Te Rauparaha on his first trip across was met at the mouth of Pelorus Sound by Whakatari, a Ngati Koata chief to whom he was bound by ties of friendship and relationship. In the course of conversation Rauparaha conveyed to Whakatari the impression that he was becoming tired of petty annoyances from the South Island people and had come to exterminate them. ("He was not going to be annoyed by fleas.") He intended to commence on the Ngati Kuia and Rangitane of Pelorus Sound. This did not suit Whakatari, very probably on account of his fear that once the war party commenced killing they might not discriminate between plain Ngati Kuia and Ngati Kuia who had intermarried with Ngati Koata or even Ngati Koata people themselves. An argument ensued followed by a scuffle between Whakatari and Rauparaha in which the latter was tumbled into the water, not an improbable thing to happen, as Rauparaha was not a big man physically. It had also been suggested to Rauparaha that he would not be allowed to proceed through French Pass.

44. Rauparaha thereupon went back to Queen Charlotte Sound, and after raiding down Tory Channel returned to Queen Charlotte Sound and portaged his canoes over Torca Neck into Kenepuru Sound. From here he sailed up Pelorus Sound and through Tawhitinui Reach to Elaine Bay. He again portaged his canoes over Tawhitinui Neck into Whakitenga (Squally Cove) thence on to Whakapuaka, thus carrying out his original intention by following another route. Whakapuaka was thereupon attacked, and it is recorded that Tekateka (a Ngati Koata man who was living there), fearing that he would come to injury at the hands of his friends and allies, climbed on to a house and made his identity known: "I am Tekateka! I am Tekateka!" Upon his being recognized, hostilities ceased, but not before Tutepourangi had been killed.

45. Shortly after this the allied force divided, a strong party mainly of Ngati Toa under Rauparaha, Rangihaeata, Hiko, and others proceeded to Kaiapoi, while other parties, consisting of the Ngati Rarau hapu of Ngati Toa under Niho and Takerei, the Puketapu and Mitiwai hapus of Ngati Awa under Koihua, and the Ngati Tama Tribe under Te Puoho, proceeded to conquer the Blind (Tasman) Bay and Massacre (Golden) Bay districts. When this was effected Te Puoho and Koihua remained in charge of the conquered territory, while Niho and Takerei proceeded as far south as the Hokitika River, where they captured Tuhuru of the Poutini Ngaitahu and took possession of the country. Thus the whole of the coast-line from French Pass to Hokitika had come under the dominance of the allied forces, with the survivors of the original people occupying such country held in subjection.

46. On the East Coast the attack on Kaikoura and Omihi, followed by the sacking of Kaiapoi, extended the Ngati Toa influence as at (say) 1832 as far south as Akaroa (Banks Peninsula). At this time the coast-line from Wairau (Blenheim) to the Grey River was permanently occupied by units of the conquering force, while the East Coast south of Wairau, although ravished, was not.

47. Although Te Puoho took a considerable part in the conquest of the Blind and Massacre Bay districts, he did not immediately take up permanent residence upon the land conquered. He seems

to have spent some time on the land, but to have also had a semi-permanent home at Te Horo. Here about 1834 he was concerned in a typical Rauparaha affair which is sometimes referred to as the "Ohariu Massacre."

48. When the Ngati Raukawa under Whatanui arrived and were given the land from Otaki northwards to the Manawatu, it caused them (geographically) to come between Rauparaha at Kapiti and his most hated enemies, the Muaupoko and Rangitane, in the valley of the Manawatu and at Horowhenua Lake. In actual effect, also, Whatanui came between the rivals, because he took Muaupoko and Rangitane under his protection, promising them that in future "nothing but the rain from heaven would fall upon them." This did not suit Rauparaha, who could not see, in anything less than the utter extermination of Muaupoko, an adequate revenge for the loss of his children. He could do, and did, nothing openly against Muaupoko, as Whatanui was his friend and ally, yet with characteristic genius for trickery and deceit he encompassed their destruction. Events leading up to the massacre followed a course based upon a strict observance of ceremonial. Firstly, Te Whetu (a Ngati Koata chief of note) returned a prisoner to Mahuri, a Rangitane chief living in company with a Raukawa chief on the banks of the Manawatu River. In return Te Whetu was presented by Mahuri with an eeling-place that he fancied. Next Te Puoho expressed a desire to have a similar eeling-station, and was given one by Mahuri. Te Puoho's people thereupon collected a huge present of food for Mahuri's people, so much above the value apparently of the eeling-station that Mahuri had to make a similar present of food to Te Puoho. Te Puoho then prepared for a feast at Ohariu (the point of departure for the South Island), at which it was announced a new kind of food would be introduced (possibly melons, pumpkins, or vegetable marrows), and Mahuri and all the people of the district were invited to attend. When Mahuri reached Otaki on his way to the feast, he was warned by Whatanui and other Ngati Raukawa chiefs of the danger of venturing into such a hostile country as that beyond Waikanae. Mahuri's reply was that "It is the boast of Puoho that he will not have his forehead smeared with blood," meaning that he was above treachery, and that he would be safe under the protection of Te Puoho. When Mahuri and his people arrived at Ohariu they were killed by Rauparaha's Tribe. The friends of the victims did Te Puoho the honour of saying that he felt so disgraced by the action of Te Rauparaha that "he ran away to the South Island, where he was killed by the Ngaitahu." It may likely have been that neither Te Whetu nor Te Puoho did more than unwittingly supply Rauparaha with the opportunity he so much desired.

48A. About 1835 a division of the captured territory was made among the tribes and hapus comprising the allied force. Always a source of heartburning and strife, the problem presented was more than ever complicated by the influx into the sphere of influence of Rauparaha of numbers of refugees from the Ngati Awa Tribe, which had been driven out of Taranaki by the Waikato people. Some of these refugees would represent the few survivors of Pukerangiora, while others would be people from adjoining pas who had fled to avoid destruction. All were desperate, and in their desperation committed acts which seriously disturbed the relationship between the various units of the allied forces. Eventually, after some internecine fighting, peace was restored by a section of Ngati Tama (the Heke-uaua, which seems to have come down about 1832 and which had an engagement with Whanganui and Taupo at Pukemamou on the way) settling at Wellington and a section of Ngati Awa going to the Queen Charlotte and Pelorus Sound districts.

49. In the apportionment of territory Ngati Toa were given the land at the Wairau and Cloudy Bay; some of the Ngati Toa and Ngati Awa were given the Pelorus district; Rangitoto and some coast-line adjoining was given or retained by Ngati Koata—Ngati Haumia and Ngati Tumania—these being closely related people. The country to the western side of Blind Bay, including Massacre Bay, was given to Ngati Tama and Ngati Rarua.

50. About February, 1836, according to a Ngai Tahu account, Rauparaha, with a small party, set out for the South Island with the object of snaring or securing paradise ducks at Kapara-te-Hau, near Lake Grassmere. His arrival was expected by the Ngai Tahu people, who laid a plan for the capture of their enemy. This plan would have wholly succeeded, but for the action of a craven Ngai Tahu who purposely left sign on the beach to warn the enemy and avert an action. As it was, Rauparaha escaped death by the narrowest of margins by diving among the kelp to avoid his pursuers, while the majority of his people were killed. One canoe, which had not grounded when the sign was discovered and a trap suspected, took Rauparaha aboard, and escaped by throwing overboard those who could not lend speed to the craft. On his way back to Kapiti, Rauparaha met Te Puoho, who, with a canoe full of ropes, was on his return to the South Island. Te Puoho told Rauparaha that he was on his way to make captives of Ngai Tahu, whereupon Rauparaha attempted to dissuade Te Puoho from the venture, giving as a reason that he had recently gone against Ngaitahu himself and that all he had got was "a belly-full of salt water." Te Puoho then said that that was because Rauparaha had gone about the job in the wrong manner, adding "I am going to the tail of the fish and will scale it upwards—the proper way—not like you who commence at the head."

51. It is realized that this Ngaitahu version adds yet another to the number of reasons advanced for Puoho's daring raid, but it is as feasible as any. At this hearing the raid was asserted by Mr. Stowell to be an act of desperation committed by a "whakamomori" person—a person suffering from such an acute state of depression or sense of having been wronged that he might be expected to vent his feelings by a desperate act against any one, friend or not, that crossed his path, acting like a mad dog is said to act.

52. The Court cannot agree with Mr. Stowell. The raid was undertaken by a war party, not by a single person, and was carried out over a lengthy period in a manner that indicates the presence as leader of an able and accomplished general in full possession of his faculties, not the least of which was the exercise of patience.

53. It was 1836, therefore, when Te Puoho, with a mixed force mostly of Ngati Tama and Ngati Awa (there was even a Muaupoko warrior in the party named Ngawhakawa, saved by Puoho from the

Ohariu Massacre because he was the brother of Puoho's latest wife, who also accompanied the party), set out on an expedition which had for its object an attack upon the Ngai Tahu people living at the southern end of New Zealand. It is recorded that this expedition proceeded by means of two canoes along the West Coast to the mouth of the Awarua (Haast River). Here the canoes were left, the party forcing its way up the Awarua River and "over the snowy ranges" by means of the Haast Pass to Lake Wanaka. The people living there were attacked, and the entire population of twelve were captured, two being subsequently killed. A similar fate was intended for the few who lived at Lake Hawea, but they were fortunate enough to receive early notice of the situation and fled before the raiders arrived. The exact route followed by Te Puoho's party has not been settled definitely, but there seems no reason to doubt that they availed themselves of the method generally used, by crossing Lake Wanaka and coming down the Matau (Molyneaux), a short distance on mokihi or rafts made from korari (flax sticks). It must be remembered that the invaders had the services of the local people as guides, and that they would therefore travel along one or a series of the many tracks used by the local Maoris, and would also avail themselves of any means available to avoid the fatigue of marching. It is possible also that they would try to keep inland and away from large settlements, owing to the danger of their whereabouts becoming known, the more so since the fugitives from Hawea had fled down the Waitaki towards the coast with knowledge of the fate of their Wanaka relations as a spur to their endeavours to escape a similar one.

54. The ascertainment of the exact route followed at this stage of the journey is immaterial to the inquiry, but it is not improbable that they used the waterway only a short distance from Wanaka, and from thereabouts by the main track via the Kawarau natural bridge and Hector Mountains to the Waikaia (Wai-o-Whakaea) Plains. They came across the Waikaia Plains to the confluence of the Waikaia and Mataura Rivers, where they fell in with a small eeling party of Tutarau Natives that had effected a good catch, capturing all except one. From there the party went on to Tutarau, where, fatigued to the point of collapse, they made camp in what constituted the buildings of an eeling and piharau station there.

55. The Ngai Tahu at this time were on the alert and were practically all congregated between Otakou (Dunedin) and Ruapuke Island. The Ruapuke contingent was under Tuhawaiti (Bloody Jack), and, while that able and astute warrior had not given a moment's consideration to the possibility of attack from the West Coast, he had made arrangements with Karetai at Otakou for early advice of any movement of Ngati Toa people down the East Coast. The first information of the invasion was word of the situation at Tutarau. He hastily gathered a war party together and by fast travelling surprised Te Puoho and his party at dawn of what is said to have been a summer's day (February, 1837). Te Puoho was shot apparently while sleeping on the verandah of his whare, and the balance of the raiders with one exception were either killed or taken prisoner. Wahapiro, the stepson and nephew of Te Puoho was taken prisoner and held by Taiaroa, who was present at the fight and appears to have done what he could to crush the invasion with a minimum of bloodshed. The sole escapee, the Muaupoko warrior by the name of Ngawhakawa, carried news of the disaster back to the widow of Te Puoho at Parapara, informing her apparently that the whole party had been killed.

56. At the tangi which followed the receipt of news of the Tutarau disaster, a lament was composed by Kahoe in memory of her husband Puoho and son Wahapiro. Translated it runs somewhat as follows:—

In vain those southern rats with incantations
Prevent thy spirit from returning to me,
As I lie huddled (in grief) by the tide at Pa-Kawau⁽¹⁾
Lamenting thee as one of a spirit band
Gone with the fulfilment of the omens of Paua.

Beside me lie the sharp-edged pipi-shells
To score my forehead with deep gashes.

I must mourn thee my beloved spouse
Within the dwelling thou didst build
Patiently lining it with kakaho reeds
And covering it with a roof of tree bark.
Te Wahapiro⁽²⁾ indeed is lost,
But Ngamanu⁽³⁾ stands forth;
Te Matewhitu is ascending,
While Ngakopa passes by⁽⁴⁾.

Oh! Te Teke⁽⁵⁾ shall prepare the canoe of revenge,
Tungia⁽⁶⁾ and Te Hua⁽⁷⁾ shall render help,
The men of Kaiapohia⁽⁸⁾ shall occupy
The stern of the canoe of revenge
With Rauparaha standing in the bow.
Launch forth the canoe Tainui⁽⁹⁾,
Launch forth the canoe Arawa⁽⁹⁾,
Launch forth the canoe Tokomaru⁽⁹⁾,
And Matahourua⁽¹⁰⁾ drag down to the sea.
Let Raukawa and Whakatere arise
To carry thee on to Paremata
And by thy greatness overcome
The turns and twists in Taiari River.

(1) Pa-Kawau—near Parapara, Golden Bay.

(2) Te Wahapiro—Paremata Wahapiro.

(3) Ngamanu—Wi Katene te Puoho.

(4) Ngakopa—Harbinger of death—the ruru or morepork.

(5) Ngatitoea Chief—Father of the wife of Tipene Paremata.

(6) and (7) Noted Ngatitoea chiefs.

(8) Men of Kaiapohia—The expedition which avenged Te Pahi by destroying Kaiapoi in 1831-32.

(NOTE.—Te Pahi was probably a nephew of Kahoe.)

(9) Canoes in which her ancestors came to New Zealand.

(10) The canoe of Kupe, the first of the Polynesian circumnavigators to visit New Zealand.

57. As a response to Kahoe's exhortations, a party of Ngati Rarua set out by way of Mangatawai to avenge Te Puoho's death, but they did not get past Mangatawai (Tophouse Pass). Later it was decided that a second expedition should go to Port Cooper (Lyttelton) in the hope of being able to find a ship that would convey them to the South. This expedition only got as far as Cloudy Bay, where it was detained by the local allied people and dissuaded from going farther. Both parties were composed of Ngati Rarua people. The failure of Wi Katene te Puoho—then a man in years—to identify himself with either of these expeditions must discount the oft-repeated but little-warranted suggestion that Wi Katene te Puoho assumed, about 1839, Te Puoho's mantle of chieftainship.

58. It appears very probable that Kahoe and her party remained at Parapara until after the second expedition set out for Port Cooper. Paramena Haereiti, in his evidence on the Nelson Tenth case says: (1) That when Ngatirarua started for Port Cooper Wi Katene was still at Parapara; (2) (a direct contradiction) that, before the heke of Ngatirarua, Wi Katene had gone to Whakapuaka; (3) that, when Wi Katene went to Whakapuaka, Paramena went with him; (4) that Wi Katene was at Whakapuaka when the company came to Nelson; (5) that Paramena was not at Whakapuaka when the company came there.

Paramena's evidence on this Nelson Tenth case was in support of Wi Katene's rights to land round about Nelson, and is, in general, very unsatisfactory. The only value in many of his statements is that they caused Hemi Matenga to call upon the witness to contradict himself. For instance, there is a suspicion that Paramena may have told the truth when he said that Wi Katene was at Parapara when the second Ngatirarua expedition set out for Port Cooper; there is every reason to believe that he was telling the truth—Meihana Kereopa says that Kahoe did not go to Whakapuaka until after the company came to Nelson. He says he knows this to be the case because Kahoe stayed at his house on Rangitoto on the occasion when she approached Ngati Koata for the gift. In all probability, then, after the failure of the second expedition, Kahoe went to Rangitoto and interviewed the Ngati Koata chiefs with a request that they should supply her with land upon which to live. Eventually Te Whetu is reputed to have said to her as she stood downcast before him. "Maranga to Kanohi e anga ki Maunganui." He is also said to have added, "Haere ki reira; kawea to tamaiti ki reira," but such a lapse in style is almost incredible.

59. Kahoe and her children thereupon went to the Whakapuaka Block and settled. Somewhere about 1843, Kahoe died there; about 1854 her son Wahapiro, who was honourably returned from his captivity to Whakapuaka, died while on a visit to the North Island; about 1856 her daughter Kahiwa (or Kuini) was murdered by her husband at their home on the block; and about 1873 her remaining child Miriama Konehu died on the block.

60. On coming to the matter of the investigation of title of the Whakapuaka Block, a word may be said of the requirements of the Act in force at that time—*i.e.*, "The Native Land Court Act, 1880." Section 16 of that Act provided as follows:—

Any three or more Natives claiming to be the owner of any Native land may, subject to and in manner directed by any rules for the time being in force, make application to the Court to have the title thereto investigated.

Section 17 provided—

Such application shall contain—

- (1) A description of the land by name or otherwise sufficient to identify it;
- (2) The name of the tribe or the names of the Natives admitted by the applicant to be interested therein;
- (3) A statement that the boundaries have been clearly marked out on the ground by stakes or otherwise;
- (4) And, if a plan has been made, a statement that it has been deposited in the Court.

61. The investigation of title to the Whakapuaka Block was set afoot by the lodging of an unsigned application on an obsolete form with the Registrar. The application is made out in the handwriting of Alexander Mackay, with the addition of the name of Huria Matenga as claimant, and the tribe (Ngati Tama) on whose behalf it may be suggested she claimed (see section 17 (2) of the Native Land Court Act, 1880, *ante*) in what appears to be the handwriting of Hemi Matenga, the husband of Huria. The form is dated the 1st November, 1882.

62. The application was set down for hearing at Nelson on the 15th November, 1883, and following days. (*New Zealand Gazette* of 22nd August, 1883, page 1183.) The claimant is shown in the notice as Huria Matenga, and the lands the subject of the application described (quite unintelligibly) as under:—

Whakapuaka: Bounded on the west and north by the sea, commence at Waihi; thence to the Wangamoa Stream; bounded on the north [*sic*] by European land; one portion of this has been excluded being the 10 acres at Rotokura disposed of to the Government for a cable station.

The notice in Maori on page 1192 of the same gazette follows the description of boundaries in the application form, and is a fair description.

63. The claim came before the Court consisting of—W. G. Mair, Judge, Tunuiarangi, Assessor, H. S. Hadfield, Interpreter, E. A. Jones, Clerk, on the 17th November, 1883 (Nelson M.B. 1/14). A request by Huria Matenga that Hemi Matenga be allowed to appear on her behalf was granted by the Court. Hemi Matenga thereupon claimed the land solely for his wife, Huria Matenga, through

her father, Wiremu Katene, and her grandmother, Kauhoe. Upon objection being challenged two counterclaims were brought forward: Firstly, Meihana Kereopa and others claimed through Rangitane, Ngatikuia, and Ngati Apa Tribes, and, secondly, Tepine te Ruruku claimed through Ngati Koata Tribe.

64. The first claim taken was that of Ngati Kuia and Rangitane. Winini Wiremu was the first witness, and his evidence was colourless. The next witness was Hemi Whiro, who claimed ancestry. His evidence epitomized the history of the block as follows: Tutepourangi and the tribe gave the land to Ngati Koata solely before the conquest. After this came the invasion, when all (Ngati Kuia and Rangitane) were destroyed, conquered, and cleared out—Te Patete and Te Whetu (Ngati Koata) lived there after the conquest with Huria Matenga's ancestors—Wi Katene and others lived on the land since the conquest: Ngati Kuia and Rangitane did not move from the land until it was given (by Ngati Koata?) to Wi Katene and his mother, Kauhoe. Under cross-examination by Hemi Matenga the witness said that he heard that Te Whetu had given the land to Wi Katene. Obviously the witness was concerning himself more with the identity of the donor of the gift than with that of the donee, and no great weight can be placed upon the omission of reference in the cross-examination to Kauhoe as the donee or one of them.

65. The next witness was Meihana Kereopa, who stated that he lived with Paremata (Wahapiro) on the land, and that after the Ngati Toa - Ngati Tama sale (1853 and 1856) he came away. He first says (to Mita Karaka) that Ngati Koata gave the land to Wi Katene and then (to Hemi Matenga), that Te Whetu (Ngati Koata) gave the land to Kauhoe, mother of Wi Katene. He is possibly in error if he really said that Kauhoe reserved Whakapuaka from the sale. She died shortly prior to the sitting of Spain's Court, but she may have objected to the sale previously. This concluded the evidence for the Ngati Kuia, Rangitane, and Ngati Apa claim.

66. The first witness called on behalf of the Ngati Koata case was Ihaka Tekateka, who stated that his mother was killed on the invasion of Whakapuaka (she would probably be a sister of Tutepourangi). He claimed the whole block under the gift from Tutepourangi to Ngati Koata. He further stated that after the war Ngati Koata gave the land to *Wi Katene for himself not for the tribe*, whatever that means, adding that when Wi Katene wished to lease portions of the land he had to obtain the consent of Te Patete, his contemporary Ngati Koata chief. At this stage the Ngati Kuia and Rangitane case was withdrawn (Saturday, 17th November, 1883), and the Court adjourned to the Monday.

67. At the present hearing it was given in evidence that the Ngati Kuia and Rangitane case was withdrawn consequent upon a great "hakari" or feast being given exclusively to those tribes by Hemi and Huria Matenga. The witness was positive that there was no reason, other than the withdrawal of the claim, why the Matengas should have provided this "hakari." The Nelson paper of the 19th November, 1883 (Monday), contains a report of an exhibition of singing and dancing by the Natives in the Botanical Gardens.

68. On Monday, the 19th, Ihaka Tekateka was recalled by Hemi Matenga for the purpose of saying apparently that he knew of one Ngati Koata (Hohepa Kurua) who lived at Whakapuaka before Wi Katene took possession, and that he did not know of any who lived on the land during Wi Katene's time.

69. The next Ngati Koata witness was Hoera Ruruku, who also claimed under the gift from Tutepourangi and occupation by Tekateka under that gift. At a later date, after Whakapuaka had been sacked by Ngati Toa, Tekateka had still retained possession, being joined on the block by some of the witness's ancestors who moved there from Motueka. After staying a while at Whakapuaka all these people had gone to Rangitoto (D'Urville Island). He goes on to say:—

Kauhoe and Wi Katene (her son) came then to live at Whakapuaka. Kauhoe asked Te Whetu for a piece of land to live on. He told her to go to some other member of Ngati Koata. She went to Te Mako Ihairaira and Tepene Mukumai, who told her to go to Whakapuaka, and showed her the boundaries—from Kahupakura to Waihi."

To Hemi Matenga he said,—

That Te Mako Ihairaira and Tepene, on behalf of Ngati Koata, gave the land to Wi Katene, but we continued to have a right. This land was shown to Wi Katene as land on which *they* [the italics are mine] might live. Some Ngati Koata lived on the land after the gift to Wi Katene, but I cannot give their names. Never heard of leases to Mr. Mackay.

70. The next witness, Ngamuka Kawharu, corroborated the evidence of Hoera Ruruku regarding Tutepourangi's gift and Ngati Koata occupation. He adds that—

"After the peace Kauhoe and her son came over. She came to Te Whetu, who was living at Rangitoto, asking for some land for herself and boy."

"She was sent to Te Mako (Ihairaira) and by him sent to Whakapuaka but told not to take others with her."

"Huria (Matenga) agreed to give some land back."

To Hemi Matenga, the witness stated—

"Wi Katene excluded us but he had no right—Huria did not give us a written promise—but she promised—you have prevented her."

71. The next two witnesses, Raniera Kawharu and Tepene Turi, both testified that Huria Matenga had been asked by Raniera for a piece of land and that she had replied, "You are quite right—it is fortunate that you came to me."

72. The next witness was Alexander Mackay, and, as his evidence undoubtedly carried great weight with the Court, it is reproduced here in full :—

Alexander Mackay, sworn : (a) I live at Wellington. I am Commissioner of Native Reserves, also Civil Commissioner for the Southern Island. I know this block well. Have had to make myself thoroughly acquainted with the titles of persons and tribes to land ; in fact, I am better acquainted with that than the young men if not the elders. Tutepourangi has been often named in evidence. The gift by him to Koata was made prior to the invasion by the other tribes. Some little time after the fighting at Kapiti, Te Rauparaha invaded these shores. It was in consequence of what the inhabitants had said that caused Te Rauparaha to invade. It was always said that the gift of land by Tutepourangi to Patene and others comprised Rangitoto only. The effect of this gift was entirely done away with by the consequences of Te Rauparaha's invasion. Tutepourangi was subsequently killed by a half brother of Wi Katene. After the invasion the land was divided by Te Rauparaha among the various tribes. Ngatitōa had land in Cloudy Bay and Queen Charlotte Sound. At the same time Ngati Koata took possession of Rangitoto and Ngatitama, and others took possession of the land Whakapuaka, &c. Ngatiawa went to Taitapu in Massacre Bay. The land was formerly occupied by another tribe with whom Rangitane, &c., had no connection whatever. They came formerly from Taupo, then to Wanganui, and to this Island.

(b) It was stated by one witness that Te Maka received part of purchase-money paid by New Zealand Company. This sale did not include Whakapuaka. Up to 1851, when the survey-line of southern boundary of Whakapuaka was cut Ngati Koata was neither consulted or thought of in the matter. 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.

(c) Referring to evidence given as to Kauhoe asking for land to live on, I may state that this was simply Maori ceremony. In 1862 I was present at a meeting at Whakapuaka to adjust a difficulty about a reserve for Ngati Koata of 100 acres made by Mr. McLean. The Koatas wished the reserve made where they had formerly lived. The claim of Koata to any land south of the river was strenuously opposed. After two days' discussion it was settled that the 100 acres should be on the south part of the river, but it was purely a matter of concession that this was allowed.

(d) Referring to the sale of the Cable Station, some witnesses gave the impression that it was necessary to consult Koata. They were never thought of in the matter. There was no occasion to. It is untrue that they got any portion of the purchase-money. I paid the money to Wi Katene personally, who gave the whole sum to a builder named Brown to pay for building a house.

Cross-examined by Mita Karaka :—

(e) 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. Discussing the allocation of the 100 acres, they could not produce any strong claim. If Wi Katene had insisted they would have had to remain on the north side of the river. In all my dealings with Natives, I never heard of any Koata living at Whakapuaka—if any came they were visited [*sic* ?]. In the sale of the north end Koata was not consulted at all. If there had been any dispute of Wi Katene's right to lease I should have heard of it. I heard that Paremata killed Tutepourangi, but it was likely before we were born. Raniera and Te Maka and others now here were present at the discussion of the allocation of the 100 acres. Some of Koatas have died and been buried there, but I do not consider there is any claim, as they were just passing through.

To the Court :—

(f) The north portion of this block and several small portions in the South were leased by Wi Katene. Nobody ever disputed his right.

73. The last witness in the case was Hemi Matenga, whose evidence also is reproduced in full :—

Hemi Matenga, sworn : I live at Whakapuaka. The leases over Whakapuaka were given about the time I first went to live there—about 1860. No Natives interfered with these leases. I never knew Wi Katene to receive any rent for the 100 acres as stated by a witness. The European leasing that land could give evidence as to that if necessary. Upon the expiration of first lease, the northern end of Whakapuaka was re-leased to another European and no Native interfered. The south (small) block was leased to Mr. Thos. Mackay. The Natives did not interfere. Nor have they disturbed two Europeans leasing a section from Whakapuaka River to the road. There is a road right through the centre of the block leading to telegraph office. Europeans have had yearly leases to cut timber along the road. I asked Sir Donald McLean to grant a sum of money in order to form this road. With reference to the burials of Koatas on the land, I have questioned one of their witnesses, and he states that they were buried prior to Wi Katene's time. Koatas coming there only came for food, &c. I cannot say what claim they have to this land.

Cross-examined by Mita Karaka :—

Witnesses have not stated that they interfered in any way with the leases nor with the making of the road. I do not know what land Wi Katene set apart for Koata to live upon, nor was there any dispute been (between) Wi Katene and Koata.

To the Court :—

The original leases are most current. They were given by Wi Katene. The new ones I have given myself on behalf of my wife.

Para. 206.

Para. 107.

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, Rangihacata, 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), Ngatitooa 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 Ngatitooa, 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

balance of three thousand pounds (£3,000) is to be paid to us, and to the *Ngatiawa*, the *Ngati Koata*, the *Ngatirarua*, *Rangitane*, and *Ngaitahu*, who conjointly with ourselves claim the land; and we and the said tribes to be paid in yearly instalments of five hundred pounds (£500) in each year for six years until the said three thousand pounds (£3,000) are expended. These payments being made in December and January in each year.

Now this assuredly is the final transfer or sale of all our lands on the said Island which we have hereby certainly and faithfully conveyed, with its trees, lakes, waters, stones, and all and everything either under or above the said land, and all and everything connected with the said land to Victoria, the Queen of England, for ever and ever.

Now certain places are agreed to by the Queen of England to be reserved for our relations residing on the said land which has been sold by us, but the Governor of New Zealand reserves to himself the right of deciding on the extent and position of the lands to be so reserved and certain other portions of land have also been agreed upon by the Governor of New Zealand to be granted to some of our chiefs.

And having consented to all the conditions contained in this paper or deed which has been read aloud and explained to us by Donald McLean, we hereunto sign our names and sacred marks, and the Queen of England having consented to all the conditions specified or contained in this paper, Donald McLean, the Land Commissioner for the Governor of New Zealand, hereunto signs his name.

81. This deed was signed by Te Wahapiro Paremata, a half-brother of Wi Katene, and no doubt represents the sale which the latter is said to have repudiated. It should be noted, however, that Ngatitama are not mentioned in the deed as part owners of the lands sold and so entitled to share in the £3,000 deferred payments.

82. In actual fact, a similar deed purporting to convey all interests in the South Island and subject to one reservation only, and that *not* Whakapuaka, was taken from the Ngatitama and Ngati Rarua Tribes at Nelson on the 10th and 13th November, 1853. Neither Wi Katene nor Wahapiro signed this particular deed. A further deed was taken from Ngatitama on the 7th March, 1856, ceding "All the places for which we did not receive payment in any former sale of land," and, in particular, all their lands at "Anapu, Aorere, Papakohai, te Parapara, Tukurua, Anekaka, Waikaha, and all our cultivations at Tukurua." This deed was signed by Wi Katene te Puoho and one if not two of his half-brothers who were not brothers of Wahapiro who was by that time dead.

83. These deeds of 1853 to 1856 were taken by Mr. Donald McLean with a view of completely clearing up the Crown purchases in the north of the South Island. He endeavoured to extinguish all Native rights remaining, and with that end in view the phraseology of his deeds was as all-embracing as his vendors would permit. The deeds follow a set form, and, in view of the assertions so confidently and so often made that Paremata Wahapiro had sold Whakapuaka in 1853 and that Wi Katene had reserved it and saved it from such sale, it is interesting to compare the terms of the various deeds taken by Mr. Donald McLean. They are tabulated under three headings—(a) General Description of Land sold, (b) Particular Description, and (c) Reserves made by the Deed.

PRECIS OF TERMS OF DEEDS OF SALE OF 1852-56 HEREINBEFORE REFERRED TO.

Description of Deed.	General Description of Land sold.	Particular Description of Land sold.	Land or Places reserved.
Ngatitao Tribe: 10th August, 1853. Ceding all rights in Middle Island. (Mackay Com., Vol. I, page 307)	Entirely and for ever transfer our land at the Wai-pounamu	All our lands in the said Island, with its trees, &c.	Certain places are agreed to be reserved for our relations residing on the said land.
Ngatiawa Tribe: 2nd March, 1854. Ceding claim to land in Queen Charlotte and Wairau Districts. (Mackay Com., Vol. I, page 308)	Surrender for ever a portion of our land at Queen Charlotte Sound	A definite periphery is laid down by reference to place-names on the ground	No reserves are made.
Ngatitama and Ngatirarua: 10th and 13th November, 1855. Ceding all claims to land in the Middle Island. (Mackay Com., Vol. I, page 312)	Entirely and forever transfer all our lands in this Island, that is to say, all those lands that were not sold formerly to Victoria, the Queen of England. This is the last payment we are to receive for this land for ever	The great boundaries of the land commence at Wairau and thence to Mahura, continuing until it joins the land sold by the Ngaitahu	One place is excluded and reserved from this new sale—the land beyond the Whanganui commencing, &c.

(NOTE.—This deed was not signed by Whakapuaka Natives, and does not affect Whakapuaka Block.)

Ngatiawa Tribe: 9th February, 1856. Conveying all claims to land in the Middle Island to the Crown. (Mackay Com., Vol. I, page 314)	Entirely transfer all our lands in this Island to Queen Victoria	By particular description and by plan attached to the deed	The reserves for us are marked red on the map, which reserves were pointed out by the Interpreter and Surveyor.
Ngatikuia Tribe: 16th February, 1856. Ceding claims to Kaituna Horere and other places in the Middle Island. (Mackay Com., Vol. I, page 315)	Finally transfer all our lands in this Island	All the places at Kaituna and Hoiere, and all other places to which we have any right	The reserves and cultivations for our own use having been defined and set apart for us. (Plan attached to deed.)

PRECIS OF TERMS OF DEEDS OF SALE OF 1852-56 HEREINBEFORE REFERRED TO—*continued.*

Description of Deed.	General Description of Land sold.	Particular Description of Land sold.	Land or Places reserved.
Ngati Koata Tribe: 5th March, 1856. Claims in the Nelson Province. (Mackay Com., Vol. I, page 316)	All our lands in this Island	Boundaries the same as those sold by our relations the Ngatitōa at the Hoiere, Paparoa, &c.	Reserves for us as follows: Names of reserves, together with areas.
Ngatitama Tribe: 10th March, 1856. Ceding land at Motupipi and Takaka. (Mackay Com., Vol. I, page 317)	Full and true transfer of all our lands from Poroporo: Motupipi to Takaka and to Rangitoto	That is to say, all the land formerly sold by Aupouri. We did not receive any money so we opposed the sale. Now we completely give up all those lands	No reserves.
Ngatitama Tribe: 7th March, 1856. Ceding claims in Massacre Bay. (Mackay Com., Vol. I, page 318)	To give up and finally transfer all our lands in this Island—that is to say, all the places for which we did not receive payment in any former sale of land	This is the final giving-up of those places for ever—viz., the following places: Anapu, Aorere, Papakohai, Te Parapara, Tukurua, Anekaka, Te Wai-kaha, and all our cultivations at Tukurua	No reserves.

(NOTE.—This is the only one of this series of deeds signed by Wi Katene te Puoho, and is signed generally by Whakapuaka Natives. Whakapuaka is not mentioned in the particular description and is not reserved, but it is undoubtedly covered by the general description of the land proposed to be sold. It is interesting and instructive to note (para. 87 (35)) that this deed, couched in such wide terms, was signed by Wi Katene *after* Mr. Donald McLean had visited Whakapuaka and decided that that block was no more than the residents required as a revenue. Whakapuaka was therefore a reserve or exception from the Ngatitōa deed, and is *not* a reserve from the Ngati Tama deed which Wi Katene te Puoho signed.)

84. By a former deed, dated 15th May, 1852 (Mackay's Compendium, Vol. II, page 377), Wiremu Katene te Puoho (as Wi Nga Manu) signed away, subject to certain reservations, his interests in the Collingwood and Massacre Bay districts. This deed also contains the *signature* of "Paremata."

85. As regards the suggestion that Whakapuaka was reserved from the Ngati Toa deed (already quoted in full, para. 80) as a result of the efforts of Wi Katene solely, let us turn to the following extracts from the witness's own narrative of the principal subjects included in the work (Mackay's Compendium, page 15):—

The only *Natives* who opposed the sale by the Ngatitōa Tribe was a *small section* of the Ngatitama at Whakapuaka under Wiremu Katene te Manu. *These people* objected to the land being sold by their relations in the North Island without their consent, and declined to give up any portion of the land held by them at Whakapuaka, it being no more than sufficient for their own subsistence; neither would they agree to receive any of the purchase-money, and, as the land in their possession was not of greater extent than they really required, it was not deemed prudent to urge a settlement of this particular question upon them.

86. From page 14 the following passage explains the passage just quoted:—

In August, 1853, however, Sir George Grey, assisted by Mr. Commissioner McLean, entered into arrangements with the Ngatitōa Tribe, *subject to certain reservations*, to dispose of the remainder of their claim by right of conquest, and to settle those of other tribes living on the spot, to the whole of the districts on the northern and western portion of the Middle Island, in consideration of the sum of £5,000. £2,000 to be paid on the execution of the deed of sale, and the balance by instalments of £500 each carried over a period of six years. Just, however, as these arrangements were initiated, Sir George Grey departed for England, leaving Mr. McLean solely to carry them into effect.

The reservations alluded to consisted of the cultivations and lands required for the subsistence of the Natives resident in the several districts.

87. The following extracts from the final report dated 7th April, 1856, from Mr. Commissioner McLean to the Colonial Secretary (Mackay's Compendium, Vol. I, page 300) is official authority for the narration of Mr. Mackay quoted above:—

3. After repeated meetings and discussions with the Ngatitōa and Ngatitama Tribes, who at first intended only to cede a portion of their less valuable land on the West Coast, a deed of sale was executed by them at Wellington on the 10th of August, 1853, by which they agreed, *subject to certain reservations*, to relinquish in favour of the Crown for a sum of £5,000 the whole of their claims upon the Middle Island.

4. These reservations consisted of the cultivations and lands *required for the subsistence of the Natives resident in the district*, it being always distinctly understood that Rangitoto or D'Urville Island was exempt from the sale.

35. *Before going to Nelson I called at Whakapuaka, where a section of the Ngatitama live.* These declined to give up any portion of the land held by them at that place, as they considered *it not more than sufficient for their own subsistence*. They object also to its being sold without their consent, by their relations in the North Island; *and, as the land they hold is not of much greater extent than they would really require as a revenue*, I did not deem it prudent at present to urge a settlement of this particular question upon them.

88. There is a world of difference between Alexander Mackay's evidence (1883) "that the Natives did not press the matter, and decided to leave the block entirely in Wi Katene's hands," and Donald McLean's report of 1856 that the block was no more than the section of Ngatitama living there required in the way of a revenue or reservation, and that he did not deem it prudent to urge a settlement of this particular question upon them.

89. There is a greater difference, however, between Mr. Mackay's evidence and the following extract from his report on the Land Purchases of the Middle Island (G.-6 of 1874—Waipounamu Purchase—para. (11)), which reads as follows:—

Besides the Island of Rangitoto and the block of 40,000 acres excepted from sale at West Whanganui, a block of 7,000 acres [*sic*] (17,000 acres) was also excluded at Whakapuaka. Wiremu Katene te Manu and the section of the Ngatitama residing there objected to the sale of the Waipounamu Block by the Ngatitama and their relatives in the North Island, and declined to give up any portion of the land held by them at Whakapuaka within the boundary determined on in 1845 between the Natives and the New Zealand Company's agent, the River Whangamoa forming the Eastern Boundary, it being no more than sufficient for their own subsistence. Neither would they agree to receive any of the purchase-money; and, as the land in their possession was not of greater extent than they really required, it was not deemed prudent to urge a settlement of this particular question upon them. It was however, arranged that, should they ultimately consent to surrender to the Government any portion of the aforesaid block, a sum of £100 should be paid them as their proportion of the purchase-money. No change, however, has ever taken place in their view of the matter, and the land remains with them as before.

90. A special payment of £2,000 was made on the 13th December, 1854 (Mackay's Compendium, Vol. I, page 311), and Wahapiro te Paremata, being in all probability then dead, his share was taken by his eldest son, Tipene Paremata, who lived much of his life upon the Whakapuaka Block, died there, and was buried there. He was in fact "a relative of Wahapiro residing on the land," and as a further fact we have Whakapuaka reserved to the section of Ngatitama living there. Manifestly then the sale by Wahapiro as a Ngatitama required no repudiation by Wi Katene to preserve the substance of the reservation made by the former, or to emphasize the sanctity of the promise by the Queen to reserve to occupiers the land they occupied.

91. This receipt by Tipene Paremata is claimed by the respondents in these present proceedings to prove that Tipene Paremata gave up all his interests in the Whakapuaka Block, because the receipt mentions Whakapuaka by name. There are two objections to the soundness of this contention:—

(1) The word Whakapuaka refers to a district as do Wairau, Hoiere, Taitapu, and Arahura; the other names used to describe with Whakapuaka a territory which comprised the north end of the South Island above a line from about Cape Campbell to the mouth of the Arahura River; and

(2) The receipt contains the following proviso: "This land we will fully give up and make over to the Europeans when the homesteads for us and our children are laid out."

92. A further quotation from Donald McLean's report of the 7th April, 1856, gives his reason for the necessity of dealing with Ngatitama as such, and should answer a good deal of the assertion of the witness that Wahapiro sold Whakapuaka over the heads of the occupiers:—

10. (Page 301.) The conflicting claim of different tribes residing on both shores of Cook Strait to the unpurchased lands in the Nelson Province occasioned considerable difficulty. For instance, the Ngatitama Tribe at Porirua (with whom the first treaty was concluded) had unquestionably, as the earliest invaders, a prior right to the disposal of the district. This they never had relinquished; although after the conquest their leading chiefs partitioned out to the subordinate branches of their own tribe, as well as to the Ngatiawa, a few of whom took part with them in the conquest, the lands which they now occupy in the Nelson Province.

11. The latter parties did not assume to themselves a power of sale except over the lands they actually occupied; yet some of them, when not confronted with the leading Ngatitama chiefs, professed to have independent and exclusive rights, while the majority, and even the parties making such assertions when closely examined, always acknowledged that the general right of alienation vested in the Ngatitama chiefs of the Northern Island. In fact, their relative rights, through intermarriage, the declining influence of the chiefs, and other causes, had become so entangled that, without the concurrence both of these occupants and of the remnants of the conquered Rangitane and Ngaitahu tribes, no valid title could have been secured.

In other words it was necessary before a valid title could be secured to any given piece of land to buy (1) from the Ngatitama chiefs, of whom Wahapiro was one, and (2) from the occupiers, if any were actually in possession.

93. As further proof—if such were needed—of the incorrectness of the contention that Wahapiro by the deed of 1853, or his son Tipene Paremata by the receipt of 13th December, 1854, disposed of the rights of the people resident upon the block, the following letter dated 15th December, 1854, from Donald McLean to the Hon. Colonial Secretary is quoted, with a suggestion that particular attention should be given to the passage in italics in clause (d). It is obvious also that no person could have had a clearer conception of the position created by this deed and receipt than Donald McLean had on the 15th December, 1854.

Land Commissioner's Office, Wellington, 15th December, 1854.

SIR,—

(a) In reference to the arrangement concluded with the Ngatitama Natives, previous to the departure of His Excellency Sir G. Grey in August, 1853, by which they undertook to dispose of their claims by right of conquest, and to settle those of other tribes living on the spot, to the whole of the districts in the northern and western portions of the Middle Island in consideration of the sum of five thousand pounds, of which two thousand was paid at the time, and the balance of three thousand pounds was to be paid in six annual instalments of five hundred pounds each; and on which arrangement I reported fully to the Civil Secretary at the time:

(b) I have now the honour to report, for the information of His Excellency the Officer administering the Government, that the principal chiefs of the Ngatitooa Tribe residing on the southern shore of Cook's Strait, having crossed over to this side—and Taiaroa, the Chief of the aboriginal tribes in the Middle Island—together with several chiefs of other tribes inhabiting the Nelson Province, being in Wellington, I took advantage of the opportunity afforded by the presence of so many of the parties interested to call a meeting at Porirua (the principal residence of the Ngatitooa in this neighbourhood) for the purpose of discussing the whole question.

(c) The chiefs were exceedingly anxious that a final settlement of all their claims in the Middle Island should take place at once, urging as a principal reason that so many of their leading chiefs had died since the conclusion of the first arrangement; and those who survived had become so weak from recent illness that their existence for any length of time could not be depended upon; and further that a sum so small as £500 being divided once a year among such a number of claimants afforded so trifling an amount to each that there was every probability of the Natives becoming dissatisfied with their bargain before its conclusion, when difficulties, hitherto unforeseen, might be thrown in the way of the settlement of the district.

(d) Taking these reasons into consideration, as well as the fact that so good an opportunity of discussing the question in the presence of the principal chiefs of so many different tribes (including those of the conquerors as well as those of the remnants of the conquered and original possessors of the soil) might not again occur, considering the great influence possessed by Te Rangihaeata and the other Ngatitooa chiefs, not only over their own followers, but extending to the other tribes, inhabiting the Middle Island; looking to the great advantage to be derived from the immediate acquisition of this land for settlement, and *having received the assurances of the chiefs that they would accompany me, as soon as my duties in this province would permit of my crossing to the Middle Island, for the purpose of using their influence in settling with the Natives of their own and other tribes resident there; and that, as soon as proper and sufficient reserves were marked out for their use, they would give up peaceable possession of the country.* I deemed it advisable to accede to their wishes, and accordingly paid them, on the 13th instant, the sum of £2,000, taking a receipt from them for the amount, a translation of which, as well as of the original deed of August, 1853, I do myself the honour to enclose herewith.

(e) This sum and that paid last year amount together to £4,000, leaving £1,000 of the sum originally agreed upon. Of this £1,000, however, I have paid already £700 to the Ngatiawa Tribe in Taranaki for their claims, so that £300 only remain unappropriated. This sum, I feel it my duty to report, will not be sufficient to extinguish the remaining claims of the Natives resident upon the territory now ceded, which is the most populous portion of the Middle Island, and the area of which may be estimated at about eight millions of acres. As soon, however, as I shall have had an opportunity of visiting the spot, and discussing the question with the resident Natives, I will lose no time in making for His Excellency's consideration a report of the amount for which this extensive and valuable district can be finally purchased—the cost under any circumstances is not likely to amount to the rate of one farthing an acre.

(f) I have been engaged during the greater part of the present and past weeks in discussing fully the claims of the different tribes and other questions affecting this transaction, and I have much pleasure in stating that the division of the £2,000 was effected with the most perfect fairness, and gave general satisfaction to the parties concerned, a sum of £200 being paid to Te Rangihaeata, as the principal conqueror of the country and leading chief of the tribe, the remainder of the money being paid to the other chiefs in amounts corresponding to their interest and the number of their relatives and followers.

(g) His Excellency will be glad to learn that the aged chief Te Rangihaeata, who has always been a determined opponent to the sale of any land, took a prominent part in this discussion, exerting all his influence in inducing his followers to bring the negotiations to a satisfactory conclusion and in restraining the exorbitant demands of some of the chiefs. He came forward without hesitation and affixed his name to the deed of sale, being the first time within my knowledge that Te Rangihaeata has voluntarily done so.

(h) I venture to hope that the course which I have adopted on this occasion may meet with His Excellency's approval, as it has finally settled all questions between the Government and the Ngatitooa Tribe as regards an extensive and valuable tract of land, rich in coal, copper, and other minerals, and will, through their influence, materially facilitate the negotiations with the other tribes possessing claims there.

(i) I have the honour to enclose for His Excellency's information the copy of a letter which I have addressed to the Commissioner of Crown Lands at Nelson in reference to this subject.

I have the honour to be, Sir, Your very obedient servant,
(Sgd.) DONALD McLEAN,
Chief Commissioner.

94. While on this subject of Ngatitooa deeds and Wi Katene's alleged single-handed efforts to hold the land, we might go back to an earlier sale and its consequences.

95. By a deed dated the 25th October, 1839, the Ngatitooa chiefs at Kapiti Island purported to transfer to William Wakefield as trustee for the Governor, director, and shareholders of the New Zealand Land Company of London, *inter alia*, all the land in the South Island bounded to the south by the forty-third degree of south latitude and including Whakapuaka, which was mentioned with the

other place-names that passed by the deed. This deed was not signed by Wahapiro, as he was then a captive of the Ngaitahu at Ruapuke Island. It was not signed by Wi Katene either, but when the leader of the New Zealand Company's party visited the district and made "presents" to the Natives found residing on the land Wi Katene received a "present" slightly in excess (to the extent of two pairs of boots) of that received by any other chief.

96. Upon the deed of 25th October, 1839, coming before Mr. Commissioner Spain, he reported (on 31st March, 1845) upon this "present" aspect as follows (Mackay Com., Vol. I, page 56) :—

(a) Herewith I enclose your Excellency a copy of the proceedings in my Court containing the substance of what I stated to the Natives on the subject of this purchase, and the manner in which a proportion of the whole sum ultimately agreed upon to be given to the Natives as a further payment (£800) was appropriated by Mr. Clarke under my sanction and superintendence. The first witnesses examined were called before me by Colonel Wakefield for the purpose of proving the fact that various presents were made soon after the arrival of the Nelson preliminary expedition by the late Captain Wakefield, the then Resident Agent, to the Natives of Whakapuaka, Motueka, and Massacre Bay.

(b) A schedule herewith enclosed showing the appropriation of goods of various descriptions to the amount of £980 15s. to the Natives of the above districts was put in and proved on this occasion, and substantiated by the concurrent testimony of several gentlemen who witnessed this transaction with the Natives, and was subsequently verified by a reference to the books of the company's storekeeper. From this testimony it appeared that the late Captain Wakefield, immediately on his arrival with the preliminary expedition, assembled the resident Natives of the several districts in the immediate vicinity of Nelson and informed them that he was about to take possession of the land by virtue of a purchase made by Colonel Wakefield, at Kapiti, of Rauparaha, Hiko, and others, but that, as it was customary on such occasions to make presents to the resident Natives he was ready to give them certain articles of merchandise, which they were to receive on the distinct understanding that such goods were not to be regarded in the light of a further payment for the land, but merely as presents.

(c) It is impossible to deny to the memory of Captain Wakefield the tribute of praise so justly due for this liberal and judicious policy, and it is to be regretted that a similar course had not been adopted in other districts on the like occasions, in which case I feel persuaded that much of the opposition which in other settlements has so severely retarded the colonists would have been obviated or removed. At the same time it may be remarked that the distinction thus sought to be drawn between a further payment for land and a present was somewhat too fine-drawn for the conception of the Natives, and I think Captain Wakefield carried his assumed position too far in claiming the land under a purchase from the conqueror only, and not admitting, to some extent, the title of the Natives whom he found in actual possession. Thus, while he made them presents to conciliate their friendship and good will and in a manner reconcile them to parting with their land, he refused to admit their title to any of it; and consequently was at no pains to procure from them any acknowledgment of the receipt of the presents or any declarations in writing of the lands which they then virtually consented for such consideration to alienate.

(d) *Had this been done, I have little doubt that the resident Natives would have regarded and acknowledged the transaction as a regular sale and disposal of their lands.* As it was, an over-anxiety not to compromise the company's title under the original alleged purchase in some measure counteracted the beneficial results of the otherwise judicious course adopted by the Resident Agent.

97. The following items appear in the "Statement of all presents made to sundry Native chiefs on account of the Nelson Settlement, by Captain Arthur Wakefield, on behalf of the New Zealand Company."

22nd February, 1842.

Sundries divided amongst the following thirteen chiefs: Ngapaki, Porewa, Ngapiko, Charley, Te Poa, Tongarewa, Tai, Ria, Taro, Po, Ngamamaku, Iti, and Te Manu (Wi Katene te Manu).

	£	s.	d.
130 blankets, at 14s.	91	0	0
13 felling-axes, at 7s. 6d.	4	17	6
13 squaring-axes, at 7s.	4	11	0
13 cwt. tobacco	54	12	6
3,900 pipes	3	18	0
13 kegs powder	14	12	0
13 double guns	63	7	6
13 cwt. biscuits	13	13	0
	250	11	6
(Value received by each, £24 11s. 6½d.)			
Freight charges, &c.	68	18	5
	319	9	11
1 pair boots (Te Manu)	0	9	4
	£319	19	3

On the 12th September, 1842, Te Manu received a further pair of boots, valued at 7s. 6d.

98. When it is realized that Mr. Commissioner Spain had the power of awarding land to the company where he was satisfied that it had been properly purchased from the Native owners, it would seem that, but for absence of proper records, he may have considered that Whakapuaka (or some other land owned by him) had been sold by Wi Katene and awarded it to the company.

99. Mr. Commissioner Spain's award to the company in the Nelson District was to the extent of 151,000 acres, made up as follows :—

Name of District.	Quantity.	Remarks.
	Aeres.	
Wakatu or Nelson	11,000	Surveyed.
Waimea	38,000	„
Moutere	15,000	„
Motueka	42,000	Partly surveyed.
Massacre Bay	45,000	„
	151,000	

100. The company, to hasten the award, agreed to make a further cash payment to the Natives concerned, and upon this money being paid deeds of release in the following form were taken from the Natives, the one quoted being the one signed by the Natives of Whakapuaka :—

Copy of deed of release signed by the Natives of Whakapuaka in relinquishment of their claims to land at Whakatu (Nelson), Waimea, Moutere, Riwaka, Taitapu (Massacre Bay), excepting their pas, cultivations, and burial-places to the New Zealand Company. Paid to us this day the 24th of August, 1844, by the directors of the New Zealand Company at London through William Wakefield, their principal agent, the sum of £200 in final payment for the relinquishment of all our claims to the land mentioned in the deed to which this is affixed—that is to say, to all our land at Whakatu, Waimea, Moutere, Motueka, Riawka, and Te Taitapu (Massacre Bay) in New Zealand excepting our pas, cultivations, burial-places and wahi rongoa—and we hereby agree to sign a deed to that effect, if called on to do so, to the directors of the New Zealand Company transferring all our interests in the places named with the exception of the reservations above set out.

Witnesses to the signing of the names :—

William Spain, Commissioner—	Paramata te Kiore	his X mark.
George Clarke, jun., Protector of	{ Matiu te Mako Maka Tarapiko Wiremu Ngaparu	his X mark.
Aborigines—		his X mark.
		his X mark.
Henry F. Butt, Curate, Nelson—	Karitoruie te Aoterangi	his X mark.
Donald Sinclair, Chief Police	On behalf of the	Natives of
Magistrate and Government	Whakapuaka.	
Representative—		

GEORGE CLARKE, jun., Protector of Aborigines.

A. McDonald, Manager, Union Bank of Australia, Nelson.

(NOTE.—In the minutes (para. 102, *post*) this release is referred to as being for the Natives of the district of Whakatu or Whakapuaka, which would account for the inclusion of other than Whakapuaka people's names.)

101. Exactly similar deeds of release were taken from the Motueka Natives (consideration £200) and from the Ngatiawa Natives (consideration £100) except that in these cases George Clarke, jun., signed on behalf of the *remaining* Natives of Motueka or Ngatiawa Natives, as the case may be. In the Whakapuaka deed of release, therefore, it might be fair to assume that Clarke signed for the *remaining* Natives of Whakapuaka and that Wi Katene was accordingly represented. As, however, Paramata Wahapiro had by this time returned from captivity, and as he apparently signed the release (as Paramata te Kiore. (See Fox's letter of 25/1/45 and Nelson M.B. 2/209, "Te Kiore was of Ngatitama")) it was probably considered immaterial whether Wi Katene signed or not.

102. This view of the practice of obtaining the principal chiefs' signatures is borne out by minutes of 24th August, 1844, which read as follows :—

(Mackay Com., 1/61.) The deed of release for the district of Motueka was then executed by the chiefs, Ngapiko, Te Iti, Aperahama, and others, and by Mr. Clarke on behalf of the other Natives of Motueka. Mr. Clarke having then stated, in reply to a question from the Commissioner, that he had obtained the signatures of as many of the principal chiefs as he considered requisite, the sum of £200 was paid over to the above chiefs for the district of Motueka.

The deed of release for the Natives of the district of *Whakatu or Whakapuaka* and the Natives of the Ngatiawa Tribe were then produced, and the Natives were paid the sums awarded them as follows : Whakatu, £200 ; Ngatiawa, £100.

103. The next passage of Mr. Mackay's evidence that might be noticed is the following :—

Referring to the sale of the Cable Station some witnesses gave the impression that it was necessary to consult Koata. They were never thought of in the matter. There was no occasion to. It is untrue that they got any portion of the purchase-money. I paid the money to Wi Katene personally, who gave the whole sum to a builder named Brown to pay for building a house.

104. Attached to the Native Land Court correspondence file, in Mr. Mackay's unmistakable handwriting, is a draft of a letter addressed to Mr. Clarke regarding the "sale" of the Cable Station. It may not have been sent exactly as in the draft form (it is, of course, possible that it was not used at all), but from the copies of notes by other prominent officials endorsed on the draft it would seem very probable that it was substantially the copy of a letter that was sent. In any case, it can fairly be said to represent the views of Mr. Mackay in 1877 upon the subject of the rights of ownership to the Whakapuaka Block, a subject upon which he in 1883 considered himself an authority. This draft, moreover, was the forerunner of a series of postulations of the root title (or "take") of Whakapuaka framed by Mr. Mackay and made to answer all manner of claims launched at various times and down to date in opposition to the simple view that no one but Wi Katene could have any proprietary rights. When referring to this draft in later portions of this report it will be referred to as the "Cable Station draft."

105. It and the notes copied on to it read as follows :—

Memo.

MR. CLARKE,—

(a) In continuation of my memorandum of the 9th instant on the subject of Wiremu Katene's objection to seek a title to the land taken for telegraph purposes at Rotokura in the Native Land Court. I propose to furnish some additional particulars relative to his ownership of the Whakapuaka Block in explanation of the opposition displayed by him to follow the course recommended by the Government.

(b) The land comprised in the Whakapuaka Block forms a portion of the territory in the neighbourhood of Nelson formerly conquered from the original occupants, the Ngatitumatakokiri, Ngatihapa, and Rangitane Tribes, by Te Rauparaha and the tribes who assisted him in the invasion of the country to the south of Cook Straits.

(c) It was first claimed by the Ngatikoata Tribe as their share of the profits and spoils of the conquest, but this tribe never occupied or exercised any rights of ownership over the land, and on application being made by Te Kauhoe (the mother of Wiremu Katene), a woman of rank belonging to the Ngatitama Tribe, the land was made over by the Ngatikoata chief Te Kahawai to her, and her son, and it has been held in undisputed possession ever since by the latter, for a period of fully forty years.

(d) The Ngatirua Tribe, who were allies of Te Rauparaha, also preferred a claim to the land in the manner frequently observed by conquering tribes, owing to a particular spot having been named after one of their chiefs, but these people never occupied or cultivated the land, and subsequently relinquished their so-called rights in favour of Wiremu Katene.

(e) No other tribes have exercised acts of ownership over it since the property has been in the possession of the present owner.

(f) Wiremu Katene is descended from Te Puoho, a celebrated chief of the Ngatitama Tribe, and one of the leaders of the allied tribes who joined Te Rauparaha in the invasion of the South Island. Te Puoho was killed in the South at a place called Tukurau by the Ngaitahu, and his nephew Te Wahapiro or Paramata, a half-brother of Wi Katene's (on the mother's side), was taken prisoner and kept in captivity for many years by the late Tuhawaiki of Otakou. On his release he was invited by his brother to share the Whakapuaka lands with him, and subsequently joined him there, but the alliance, owing to Te Wahapiro's turbulent nature, was nearly having a disastrous termination for all concerned. A few years after the foundation of the Nelson Settlement, Te Wahapiro's violence was nearly involving all his people in a conflict with the settlers. On this occasion he threatened the lives of some of the settlers, besides breaking into a house, stealing some flour, and destroying and burning some of their property.

(g) The origin of this outbreak on the part of Te Wahapiro was caused by the occupation of land to the north of Nelson which he asserted had not been included in the sale to the New Zealand Company. The question was finally settled and the boundary fixed by the New Zealand Company's agent, supported by an armed party of settlers, at a place several miles farther north than the boundary of the land the Natives admitted they had sold to the company, and it has always been considered by Wi Katene that the disturbance caused by Te Wahapiro on the occasion referred to was the means of curtailing the boundaries of the Whakapuaka Block by the New Zealand Company as payment for the aggression; it has therefore been considered since then that Te Wahapiro had forfeited his right to share the remaining lands with his brother.

(h) The foregoing narration of these early circumstances is given because there are several sons of the late Te Wahapiro still living who may consider they have a right to share the land conjointly with Wi Katene, and it is possible they might attempt to set up a claim, but it is well known that they only occupy a subordinate position, and such proprietary rights as they may possess over certain portions of the estate partake entirely of a secondary character.

Para. 142.

Para. 202A.

(j) In 1856, on the final completion of the various purchases from the tribes owning land in the northern part of this Island, the Whakapuaka Block was excepted from the sale owing to the opposition evinced by Wiremu Katene to the action taken by Te Wahapiro in conjunction with the Ngatitoa Tribe in disposing of their claims to the Waipounamu Block without consulting the wishes of the resident Natives. He consequently declined to surrender any portion of the land claimed by himself at Whakapuaka within the boundaries determined on in 1845 by the agent of the New Zealand Company, neither would he consent to accept any portion of the purchase-money paid in satisfaction of the Native claims within the boundaries of the territory (known as the Waipounamu Block) ceded to the Crown under the deed of August, 1853, in case it might prejudice his rights to retain the Whakapuaka Block.

(k) As I have already stated in my memorandum of the 19th instant, Wi Katene positively declines to make application to the Native Land Court to obtain a title to the land at Rotokura. His view of the matter is that the Government having taken the land without consulting him should do all that may now be necessary to obtain a satisfactory title without seeking his aid in the adoption of a course especially repugnant to him for many reasons, particularly as he is of opinion that such action will cause him an infinity of trouble and annoyance before the matter can be settled. He apprehends that an application to the Native Land Court for the required purpose will be the means of reviving many old claims that have long since been adjusted by the mutual arrangement of the persons concerned, many of whom are since dead, but have representatives still living, who may possibly give him trouble in combating their presumptive claims, a condition of affairs which he does not feel inclined under the circumstances to bring upon himself.

(l) Another matter that has exasperated him in regard to this land is that he fancies the payment of the purchase-money is likely now to be postponed until after the Court has sat, a circumstance that will cause him some inconvenience, as he has already, on the strength of receiving the money within a reasonable time, entered into arrangements to expend the amount in the erection of a new house, and the date named for payment is fast approaching.

(m) Altogether he believes himself to have been wronged in the matter of taking this land against his wishes, although Government has consented to pay him the price he asked.

(n) It is not reasonable, therefore, to expect that he will readily acquiesce in a proposal that is especially objectionable to him, and I am afraid from his present temper that there is little hope of inducing him to change his mind, as he is a man of great obstinacy of character in land questions where his own rights are involved.

(o) In fairness it ought to be remembered that circumstances, to him very alarming and irritating, have wrought strongly on his mind, but I am nevertheless of opinion that he has conjured up a great many difficulties that are not likely to assail him; but he is so thoroughly prejudiced against the Native Land Court that he won't hear anything in its favour.

(p) There can be no question as to Wi Katene's title to the land, such a term of uninterrupted enjoyment under English law would confer a legal right on the occupant, the practical question, however, to be determined in the matter is to devise some satisfactory method for vesting the land in the Crown other than by application to the Native Land Court, as the owner will not invoke its aid without he can be assured that he will neither suffer annoyance or expense in so doing; and even under those circumstances I am not fully convinced that he would do so, as his last words to me on the subject were to the effect that if the Government desired the assistance of the Court that it must take the initiative.

(q) As there are no conflicting claims to the land at Rotokura, I would beg respectfully to suggest that the determination to refer the question to the Native Land Court should be reconsidered, and a more acceptable course to the owner adopted if possible.

Memo. by Solicitor-General re Form of Receipt proposed to be signed by Vendors of Land at Rotokura to Crown.

(r) I cannot say the receipts would be any security to the Government in the sense that it would confer a title, but it would, of course, bind the persons giving it to the statement contained in the receipt. In accepting a receipt as the only title, Government runs a risk of having possibly only a right of proceeding against the Natives to recover the money in case a title could not be made out.

(Sd.) W. S. REID, 7/6/77.

The Assistant Law Officer.

(s) Will you look into this matter and draft a deed which will meet what is now desired—an instrument that will be binding on the Natives in the meantime until legislation can take effect.

(Sd.) W. S. REID, 26/6/77.

The Solicitor-General.

(t) See section 87, Native Land Act, /73—No deed or instrument until Native land is vested in freehold tenure will bind the Natives. I propose to prepare an absolute conveyance. What guarantee is there that the persons who receive the money are the persons entitled by Native custom to the land.

T. STAFFORD, 26/6/77.

(u) The Commissioner is aware the instrument will not confer a legal title, but it is decided not to keep the Natives longer out of their money, and the Government know that the purchase-money is paid at a risk. Mr. Mackay must take care that he gets all the parties interested according to Native custom to sign the deed and then the deed will (I suppose) be made valid by Act. It is not, of course, a satisfactory way of doing the business, but it is alleged that delay is dangerous, and the Government have erected valuable buildings on the lands.

(Sd.) W. S. REID, 26/6/77.

Hon. Mr. McLean.

(v) Herewith is a draft form of conveyance to be signed by the Natives. After being engraved on parchment it should be signed by every Native vendor. The mode of execution and attestation had better be the same as is prescribed in the cases of deeds by the 85th section of Native Land Act, 1873. If any of the vendors are married women, then husbands should be joined as vendors as well as themselves. In any case, the deed will not be worth the paper it is written on. (See sec. 87, N.L. Act, /73.) But this I understand is to be remedied by an Act. Am I instructed to prepare such a Bill.

(Sd.) STAFFORD, 27/6/77.

106. The deed of conveyance signed was in the following terms :—

This deed made the fourteenth day of December one thousand eight hundred and seventy-seven Between Wiremu Katene te Puoho Huria Matenga and Hemi Matenga all of Whakapuaka in the Provincial District of Nelson in the Colony of New Zealand Aboriginal Natives herein termed the vendors of the one part and her Majesty the Queen of the other part Witnesseth that in consideration of the sum of two hundred pounds paid by Her Majesty the Queen to the vendors (the receipt whereof is hereby acknowledged) the vendors do hereby convey and assure unto Her Majesty the Queen her successors and assigns All those pieces or parcels of land more particularly described in the Schedule hereto with all the appurtenances thereunto belonging And it is expressly declared that the covenants declared to be implied in a conveyance of land by way of sale by the conveyancing ordinance shall be implied herein on the part of the vendors as fully and effectually as if the same were expressly set forth in words at length. In witness the parties hereto have hereunto subscribed their names.

The Schedule above referred to.

All that piece of land containing 20 perches, more or less, being Section 89 on Square 23 of the plan of the said Provincial District of Nelson, and being part of the Whakapuaka Native Estate known as Rotokura. Bounded on the north-eastward by Native land (100 links), south-eastward by Native land abutting on high-water mark of the Whakapuaka mud flat (125 links), south-westward by Native lands (100 links), and on the north-westward by Native lands abutting on high-water mark of Blind Bay (125 links). And also all that piece of land containing 10 acres, more or less, being Section 90 on the said Square 23, and being part of the said Whakapuaka Native Estate known as "Rotokura": Bounded on the north-eastward by high-water mark of the Whakapuaka mud flat, south-eastward by Native lands (1091 links), south-westward by Native lands (871 links), and on the north-westward by Native lands (1328 links): as the same pieces of land are delineated by the plan drawn hereon together with a full, free, and uninterrupted right of ingress and egress way and passage for Her Majesty, her heirs, and successors, servants, and workmen, at all times through and over that portion of the said Whakapuaka Native Estate lying between the piece of land upon which the Cable House stands, and the piece of land marked at 10 acres on the plan drawn hereon. And also over that portion of land marked "Boulder Bank" on the said plan, and that with horses, carts, or carriages, laden or unladen. And also the full, free, and uninterrupted right to erect telegraph-poles upon the said pieces of land and stretch wires thereon and thereover, and to lay cables thereunder, and also free ingress and egress to the block of 10 acres from the lands abutting the said 10 acres of land.

Signed by the said Wiremu Katene te Puoho, Huria Matenga, and Hemi Matenga, the contents having been explained to them in the Maori language, and they appearing clearly to understand the same, in the presence of, the word "those" having been written over an erasure on the eleventh line—

(Sd.) Wiremu Katene te Puoho.
(Sd.) Huria Matenga.
(Sd.) Hemi Matenga.

(Sd.) Alexander Mackay, A.M., Native Commissioner.
(Sd.) Edward , Schoolmaster, Whakapuaka.

107. The statement that Wi Katene received the purchase-money from the sale of the Cable Station and paid it to a builder named Brown is borne out by the following statement of account and original receipts which have come into the hands of the Court since the inquiry closed :—

(A.)

						Nelson, August 8th, '79.		
						£	s.	d.
James Martin, Esqr., to Andrew Brown.								
To account rendered Sep. 24th, '77						369	5	4
						£	s.	d.
Received to account						200	0	0
April 7th, '78						62	0	0
Nov. 14th, '78						25	0	0
May 7th, '79						30	0	0
						317	0	0
						317	0	0
Paid Oct. 28/79						52	5	4
						25	0	0
Paid 3/8/80						27	5	4

(B.)

Native Reserves, Nelson, 3rd Aug., 1880.
RECEIVED from Alexander Mackay the sum of twenty-seven pounds five shillings and fourpence sterling, being balance of a/c. due by Hemi Matenga of Whakapuaka.

£27 5s. 4d.

STAMP DUTY.

(Sgd.) ANDREW BROWN.

ONE PENNY.

(C.)

Native Reserves, Nelson, 14 November, 1878.
RECEIVED from A. Mackay the sum of twenty-five pounds — shillings and — pence sterling, being on account of building done for Emanu at Whakapuaka, a/c. of H. Matenga.

£25.

STAMP DUTY.

(Sgd.) JOHN BROWN *pro* ANDREW BROWN.

ONE PENNY.

(D.)

Native Reserves, Nelson, 7th May, 1879.
RECEIVED from Alexander Mackay the sum of thirty pounds — shillings and — pence sterling, being payment on a/c. of moneys due by H. Matenga of Motueka.

£30.

(Sgd.) ANDREW BROWN.

(E.)

Native Reserves, Nelson, 3rd Novr., 1879.
RECEIVED from Alexander Mackay the sum of twenty-five pounds — shillings and — pence sterling, being part payment of balance of a/c. payable by H. Matenga for erection of a house at Whakapuaka.

£25.

STAMP DUTY.

November 3rd, '79.

(Sgd.) ANDREW BROWN.

ONE PENNY.

(F.)

Native Reserves, Nelson, 5th April, 1878.
RECEIVED from Alexander Mackay the sum of sixty-two pounds — shillings and — pence sterling, being part payment of amount due to me by Hemi Matenga of Whakapuaka.

£62.

STAMP DUTY.

Received payment,

April 5th, '78.

(Sgd.) ANDREW BROWN.

ONE PENNY.

(G.)

Native Reserves, Nelson, 8th Sept., 1877.
RECEIVED from Alexander Mackay the sum of two hundred pounds — shillings and — pence sterling, being an advance on account of moneys payable by the General Government for Telegraph Station, Whakapuaka.

Paid.

£200.

(Sgd.) WIREMU KATENE.

Witness—(Sgd.) E. Smallbone, Nelson.

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.

117. The next matter of inquiry which hinged upon the history of the Whakapuaka and adjoining country was the ascertainment by the Court of the persons entitled to the benefits of the reserves made by the New Zealand Company out of the area of 151,000 acres awarded by Mr. Commissioner Spain in 1844. The question came before the Native Land Court consisting of Alexander Mackay, Judge (late Native Reserves Commissioner), Tamati Tautuhi, Assessor, and A. H. Mackay, Clerk at Nelson, on the 7th November, 1892.

118. The judgment of the Court reads as follows (the underlining is as recorded in the minute-book):—

New Zealand Company's Tenth's situate in the City of Nelson and the Suburban Districts of Moutere and Motueka.

The Court gave judgment in this case.

The investigation of the beneficial interest of the persons entitled to the usufruct of these lands having been referred to the Court by the Public Trustee under the terms of clause 16 of the Native Reserves Act, which provides that on doubts arising as to the persons beneficially interested in any lands administered by the Public Trustee it shall be competent for him to refer the matter to the Native Land Court:

The application of the Public Trustee to investigate the beneficial interest of the persons entitled to participate in the rental accruing on these lands came before the Court on the 7th inst., when five sets of claimants preferred a right to the land from various causes.

These lands were originally set apart in pursuance with the terms of an agreement made between the Imperial Government and the New Zealand Company that a tenth of the land should be set apart and held in trust for the Native vendors.

The deed pertaining to the Nelson Settlement is dated the 8th November, 1839, and contains a stipulation on the part of the company that a portion of the land ceded by the Natives suitable and necessary for the proper maintenance for the chiefs, their tribes, and families will be reserved on their behalf by the company and held in trust by them for the benefit of the said chiefs and their tribes' families for ever, and the quantity to be set apart for that purpose was fixed by the prospectus of the Nelson Settlement to be one-tenth of the town, suburban, and rural lands.

In pursuance with this agreement certain reservations were made in the Town of Nelson and the suburban districts of Moutere and Motueka, and the object of the inquiry was to ascertain the names of the persons beneficially entitled to participate in the fund accruing from these lands, and for this purpose it was necessary to carry back the inquiry to the date the land comprised in the original Nelson Settlement was acquired by the company.

The total area of land comprised in the Nelson Settlement under Mr. Commissioner Spain's award is 151,000 acres situate in the undermentioned districts, viz:—

	Acres.
Nelson	11,000
Waimea	38,000
Moutere	15,000
Motueka	42,000
Massacre Bay	45,000
	<hr/>
	151,000

The other deeds bearing on the sale of the land comprised within the Nelson Settlement were four deeds of release signed by the resident Natives, three of which were executed on 14th August, 1844, and the other on the 23rd May, 1846.

Of the five claims set up—

(a) The first was made by Tupoki Herewine Ngapiko on behalf of the Ngatirarua, for whom Mr. Pitt appeared as counsel. This claim was based on—

- (1) Conquest:
- (2) Occupation:
- (3) The sale of the land to the New Zealand Company:
- (4) The participation in the goods distributed and the money paid to the resident Natives in the years 1841 and 1844.

(b) The second claim was made by Ihaka Tekateka on behalf of the Ngatikoata and Ngatitaoa and a section of the Ngatitama and Ngatiawa. This claim was based on—

- (1) Conquest:
- (2) The gift by a former owner called Tutepourangi of all the country including the Island of Rangitoto from the Croixelles to Separation Point (Te Mataau):
- (3) Occupation:
- (4) The sale to the New Zealand Company and consequent participation in the payments made.

This claim was conducted by Hohepa Horomona.

(c) The third claim was made by Huria Matenga of the Ngatitama hapu, and was conducted by Hemi Matenga. This claim was based on—

(1) Conquest :

(2) Occupation :

(3) The sale by Wi Katene, the claimant's father, to the New Zealand Company of the land at Nelson and Waimea :

(4) That payment made to him by the company for these lands.

(d) The fourth claim was made by Hohaia te Rangiauru of the Ngatiawa hapu, and was conducted by Pamariki Paaka. This claim was based on—

(1) Conquest :

(2) Occupation :

(3) The sale to the New Zealand Company of the land comprised in the Settlement.

(e) The fifth claim was preferred by Meihana Kereopa on behalf of the Ngatikuia and Rangitaane hapus, and was conducted by Reimana Nutana. This claim was based on—

(1) Ancestral right :

(2) Occupation :

(3) The sale of the land to the company.

The chief points for consideration were three :—

(1) Whether all the land to the south of the Native boundary at Waihi and extending to Separation Point was included in the gift made by Tutepourangi to Ngati Koata; and, if so, whether the force of this gift was not afterwards set aside by subsequent events.

(2) Whether the land comprised in the Nelson Settlement was fully acquired by the conquest of the original owners by the Ngatitama, Ngatikoata, Ngatiawa, Ngatitama, and Ngatirua hapus.

(3) Whether the former owners retained any right to the land after the conquest.

Touching the first point, the Court is of opinion that the evidence did not support the statement that all the lands from the southern boundary of the land now owned by Huria Matenga and extending to Separation Point was included in the gift by Tutepourangi to the Ngatikoata.

With reference to the second point, the Court considers that the evidence discloses that the right to the land was fully established in addition to the conquest by the occupation of it by the several hapus who were found in possession on the arrival of the New Zealand Company.

As regards the third point, the Court is of opinion that the right of the former owners was entirely extinguished by the conquest of Te Rauparaha and his allies and that at the time the land was sold they were living in a state of subjection to their conquerors, consequently the Court dismisses this claim.

In addition to the foregoing there were two other points for consideration, viz. :—

(a) In what position are the rights of the claimants of certain hapus who had assisted in the conquest but who had not occupied prior to the year 1840.

(b) Who are the persons of these hapus whose rights have not been prejudiced in this manner.

In the opinion of the Court, the members of the hapus who took part in the conquest under Te Rauparaha who did not occupy the land comprised within the Nelson Settlement up to the year 1840 lost their right to it, as no rights of ownership were exercised by such persons as would confer a proprietary right to the soil, it being a recognized principle of Native custom that conquest alone without occupation confers no right.

The hapus who retained their right after the conquest through residing on and cultivating the land are the Ngatirua, the Ngatitama, Ngatiawa, and Ngatikoata.

As regards the Ngatitama claim, this hapu, although it took part with the other hapus in conquering the country on the south side of Cook Straits did not occupy any portion of the territory gained in that manner within the Nelson Settlement. The only places retained by that hapu in the South Island were situated at Cloudy Bay, the Wairau, and the Pelorus, these were the only places in the *bona fide* possession of this hapu at the foundation of the colony, consequently they had not acquired any proprietary rights in any other part of the territory conquered from the original owners.

Under these circumstances the claim preferred by the Ngatitama to a beneficial interest in the New Zealand Company's Tenth in the Nelson Settlement must be dismissed.

The Court is of opinion that the territory comprised within the Nelson Settlement at the time of the sale to the New Zealand Company was owned by the Ngatikoata, Ngatitama, Ngatirua, and Ngatiawa in the following manner—viz. : That the Nelson District, comprising 11,000 acres, belonged to the Ngatikoata, and the Ngatitama. That the Waimea district, comprising 38,000 acres, was the common property of the four hapus previously named—through the conquest. That the Moutere and Motueka district, comprising 57,000 acres, belonged to the Ngatirua and the Ngatiawa, and that the Massacre Bay district, comprising 45,000 acres, belonged to the Ngatirua, Ngatitama, and Ngatiawa.

That although the reserves made by the company were situated in certain localities the fund accruing thereon was a general one in which all the hapus who owned the territory comprised within the Nelson Settlement had an interest proportionate to the extent of land to which they were entitled, at the time of the sale to the company.

The Court requests that the members of the hapus who it has been decided were the owners of the land, at the time it was sold to the company, will furnish lists of the persons, being the survivors of the vendors, including also those who are deceased, the right of succession to whom will be investigated, and it is further requested that the lists be furnished as early as possible as the time at disposal is limited.

119. Following upon this judgment lists of the persons beneficially entitled were on the 24th November, 1892, put through the Court, and on the 14th March, 1893 (Nelson M.B. 3/153), a formal order was made which defined the shares to be allotted to the hapus whose claims had been upheld. This order reads as follows :—

Nelson Tenth.

It is hereby ordered that the survivors and the successors to those deceased of the persons whose names are entered on folios 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, and 57 of Col. 3 of the Nelson Court minute-book shall be deemed and are hereby declared to be the persons beneficially entitled to the proceeds that have accrued and may yet accrue on the Native Reserve lands situated in the City of Nelson and the suburban districts of Motueka and Moutere known as the New Zealand Company's Tenth, saving and excepting the rents accruing and to become due on certain portions of the aforesaid reserves which have already been allocated to individual Natives, and that an order defining the relative interests of the several persons entitled to the proceeds of the first before-mentioned land be drawn up and dated from to-day.

(Sgd.) A. MACKAY, Judge.

Schedule of the Proposed Apportionment of the 151,000 Acres amongst the several Hapus for the Purpose of determining their Proportionate Beneficial Interest in the Funds accrued from the Nelson, Moutere, and Motueka Tenth under the Management of the Public Trustee.

Name of Hapu.			Area allotted.	Locality of Former Abode.	Proportionate Share of Funds.
			Acres.		
Ngatikoata	..	..	20,000	D'Urville and Croixelles ..	20/151
Ngatitama	..	..	20,000	Whakapuaka	20/151
Ngatirarua	..	..	49,000	Motueka	49/151
Ngatiawa	..	..	12,000	.. ..	12/151
Ngatirarua	..	..	20,000	Takaka and Motupipi ..	20/151
Ngatitama	..	..	20,000	.. ..	20/151
Ngatiawa	..	..	10,000	Takaka, Motupipi, and Aorere ..	10/151
			151,000		151 shares.

(Sgd.) A. MACKAY, Judge.

Later on at pages 268 to 279 the names of the survivors and successors to the persons shown in the lists and the extent of their shares are set out.

120. The aim of the Court was to ascertain the names of the persons who owned the 151,000 acres awarded by Mr. Commissioner Spain to the New Zealand Company in 1844, as it would be these persons and their successors who would be entitled to the benefits of the Tenth reserved to them by the scheme of the company. Unless a person were an owner in the actual area awarded to the company he could not, naturally, have any interest in the benefits which accrued from the alienation represented by that award.

121. The evidence given in this Tenth case is the evidence that was not given and should have been given when the title to Whakapuaka was investigated. The award of 151,000 acres has for its north-eastern boundary the southern boundary of Whakapuaka. The line that runs between the Nelson portion of this award (which portion the judgment just quoted says belonged to Ngatikoata and Ngatitama) and Whakapuaka Block must, to give Whakapuaka a separate and distinct identity, be one of four things—(1) The boundary of a reserve by some one ; (2) the boundary or limits of a conquest ; (3) the boundary of a separate occupation ; or (4) the boundary of a gift.

122. Wi Katene (speaking figuratively) was awarded the whole of Whakapuaka under a claim based upon conquest and occupation. Logically, therefore, Whakapuaka must either represent the extent of his conquest or he must have reserved it from a large area to which he had exclusive rights as a conqueror. In actual fact he did claim that he reserved it from the sale, but as he also (in the Tenth case) claimed to have sold the land adjoining it to the company, and as it has been plainly shown that many others of his tribesmen were equally entitled to this adjoining land, it is difficult to understand how he could, but for the weakness of the opposition and paucity of evidence generally, have succeeded in obtaining, under the claim advanced, his judgment in Whakapuaka. As an

actual conqueror he did not figure at all: he was the youngest son of a conqueror (Puoho), and the youngest son of Puoho's wife (Kauhoe). Three of his half-brothers, Hori te Korama, Herewine te Roha, and Paremata Wahapiro, were warriors, the last-named being a distinguished warrior.

123. Any attempt by Wi Katene to have established sole occupation of Whakapuaka would have been discredited by the evidence now under review. There were many people who lived at Whakapuaka, among them being some who sprang from the same father as Wi Katene, and others who were borne by the same mother. His claim that he reserved the land from the sale solely for himself was answered by Mr. Commissioner McLean's reports already quoted (para. 87 (35)) that the land was reserved for the Ngatitama people living there. Lastly of all, had he founded his claim to exclusive ownership upon the gift from Ngati Koata (which apparently for the reasons already quoted he did not do) it is quite plain that he could not (on this Tenth's evidence) have succeeded. The evidence given at the Whakapuaka investigation and New Zealand Tenth's inquiry touching this alleged gift of Whakapuaka by Ngati Koata is so interesting and illuminating that all references to the gift have been extracted and are summarized under appropriate headings as appendix "A" to this report. This appendix has a special value in that one of the petitions being reported upon is based upon the assumption that the gift was to Kauhoe.

124. The attempt by Hemi Matenga in the Nelson Tenth's case to show Wi Katene as a considerable owner in the lands sold as well as being the sole owner of Whakapuaka gave his witness, Paremena Haereiti, a most uncomfortable time. In fact, one can safely say that the quality of Paremena's evidence regarding Wi Katene's rights is much below that of any other witness in the case. He is faced with the impossibility of showing Wi Katene to be a substantial man of property prior to his obtaining Whakapuaka from Ngati Koata on account of his needy condition after Puoho's death. He has further difficulty (not in any way lessened by what appears to have been a skilful cross-examination by opposing conductors) in explaining that Wi Katene held under a gift at Whakapuaka and as the first claimant to vacant land adjoining. To make this story feasible he must hold that the southern limits of Ngati Koata ownership stopped at the Whakapuaka—Spain's award line. Eventually he got so deeply involved that he said:—

The gift of Whakapuaka to him (Wi Katene) was the basis of his rights to the Nelson District. If he had remained at Parapara (Golden Bay) he would have no rights to the land extending to the Waimea. But as he had acquired Whakapuaka and the land to the south of it was lying vacant on to the Waimea he gained a right to that locality as well.

And in reply to the next and obvious question he contradicted himself and said:—

If land was given to another within fixed boundaries the person to whom it was given would not be entitled to the part beyond.

Para. 142.

125. Paremena Haereiti also spoke of the repercussions of alleged depredations by Paremata Wahapiro upon the early settlers, but as this allegation is given further impetus as a factor in determining rights to Whakapuaka when petitions to Parliament were later reported upon, it is intended to reserve the marshalling of evidence on this point until the question of these petition reports is under review.

126. It is significant that the Court (Judge Mackay) in its Tenth's judgment to the Ngati Koata people a share of the benefits, and it makes one think that perhaps Mr. Alexander Mackay was wrong when in his evidence at the Whakapuaka hearing he stated that Ngati Koata had no rights beyond Rangitoto Island.

127. At the Tenth's inquiry valuable evidence was obtained from Meihana Kereopa, an old man of the Ngati Kuia Tribe, and reputed to be 100 years old. His chronology of events has the ring of truth, and is much more likely to be correct than those of the rival claimants wherein tendencies were noticeably in the direction of ante-dating any events of critical import to the peculiar claims of each.

128. One statement by Meihana and generally backed up by other evidence is that the attack upon Whakapuaka and the Blind (Tasman) Bay district was caused by a false report being made to Rauparaha that the bones of Te Peehi Kupe had been brought to Nelson by Tuhawaiki of Kaikoura (not Bloody Jack of Ruapuke) and used for making fish-hooks. This with other evidence fixes the date of the attack pretty conclusively as late 1831 or early 1832, and contemporaneous with the sacking of Kaiapoi.

129. The next link in the chain of events was a lease dated the 15th February, 1895, from Huria Matenga to Hemi Matenga, leasing the whole area of 17,739 acres for the life of Hemi Matenga at an annual rental of £100 per annum. This lease was confirmed by Judge Mackay at Levin on the 29th May, 1895, the proceedings being recorded with unusual brevity as follows (Otaki M.B., 26/325):—

Confirmation—95/116. Whakapuaka.

Lease Huria Matenga to Hemi Matenga.

Inquiry satisfactory—deed to be confirmed.

No declaration appears to have been filed with this application, and there is nothing in the minutes to show why it was dispensed with.

130. Hemi Matenga was at this time also sole devisee under a will of Huria Matenga dated 11th January, 1886. This will was in the handwriting of Alexander Mackay, and he was one of the witnesses. A second will of similar effect was made on the 5th September, 1898, the witnesses being F. A. Bennett (now Bishop of Aotearoa) and Percy Adams, a solicitor.

131. As soon as Hemi Matenga had firmly established himself as lessee of the land, with prospects of later being sole owner, he proceeded to eject the other members of the family residing there. There is every probability in favour of his having taken the lease for just that purpose, as Huria Matenga was too weak-willed, or perhaps too fair-minded, to be trusted to carry to a conclusion any drastic action which would hurt her relatives. As one witness said, "Huria was weak-minded and was incapable of doing the things that Hemi did." His action took the form of destroying stock

generally, and when Atiraira Nopera was absent from Whakapuaka he, after shifting her belongings to a place of safety, burned her house. These happenings took place in 1895 and 1896, and in the latter year the first petition of Wi Katene Paremata and another (Petition 60 of 1896) was made to Parliament. This petition and papers in connection therewith were not made available to this Court. (It is very probable that they have been destroyed by fire.)

132. In a letter dated 9th September, 1904, and applying for an Order in Council permitting a further investigation of the block, Messrs. Findlay, Dalziell, and Co. state that, upon this petition coming before them, the Native Affairs Committee agreed to a rehearing, but when Judge Mackay presented a statement to the Committee on the following day the Committee altered its first report and drew up another which was against the petitioners.

133. This statement of Judge Mackay's reads as follows:—

Wellington, 24th August, 1896.

The Chairman, Native Affairs Committee, House of Representatives.

In the matter of the Whakapuaka Block, and in the matter of the petition of Wi Katene Paremata and others.

The particulars stated in the first paragraph of the report furnished by the Chief Judge supply the necessary information relative to the application made to the Court by Huria Matenga.

(1) Touching the statement contained in the 2nd, 3rd, 4th, and 5th pars. of the petition that prior to the case being proceeded with by the Court the descendants of Kahoe—viz., Huria Matenga and Atiraira Mohi made a voluntary arrangement between themselves to the effect that Atiraira Mohi agreed that Huria Matenga should alone set up a case for the land, and that on the Court awarding the land to Huria Matenga she was to insert the names of Atiraira Mohi and party in the list to be prepared and handed to the Court, and that in consequence of the said agreement Atiraira Mohi refrained from setting up a case on behalf of herself and the other members of her party, I am unable to state positively that no arrangement of the kind was entered into, but, knowing the relative position of the persons referred to as the chief actors in the matter, I am unable to believe that it is probable that such an agreement could have been entered into. Para. 135.
Para. 180.

(2) To make the position clear it is necessary to go back to the early occupation of the Whakapuaka Block by Wiremu Katene Te Puoho and the Ngatitama, who belonged to his party.

At the time that Te Rauparaha with the allied tribes belonging to his party conquered the Natives residing on the southern shores of Cook's Strait, the present Whakapuaka Block and the country extending as far as the West Wanganui beyond Cape Farewell was in the possession of a branch of the Ngatiapa Tribe, who had previously dispossessed the earlier inhabitants. Te Puoho, the father of Wi Katene te Puoho, who had taken a prominent part in conquering the Ngatiapa found in occupation of Whakapuaka and extending to the Moutere and Motueka districts, proceeded with his nephew Paremata te Wahapiro with a war party down the West Coast (about 1832) for the purpose of taking possession of that country, and subsequently travelled across to Lake Wanaka, and from there to Tuturau on the banks of the River Mataura in the Southland District, where they were attacked by a party of Ngaitahu under Tuhawaiki, at which encounter Te Puoho and a number of his people were killed and others, among whom was Paremata te Wahapiro, were taken prisoners and kept in captivity for several years on the Island of Ruapuke until after the establishment of Christianity. Para. 151.
Para. 152.

(3) It is alleged that shortly after Te Puoho left on the southern trip his son Wiremu Katene te Puoho (*alias* Te Manu) with his mother, Kahoe, went to reside at Whakapuaka, and that the Ngati Koata who were then in occupation made over their rights in the land as a gift to Kahoe for her son Wi Katene te Puoho who was in undisturbed possession of the land in 1840 on the establishment of British Government, the point of time fixed by the Native Land Court at which title should be regarded as settled, and all parties who were proved to have been the actual owners or possessors of land at that time must be considered as the owners of these lands. Para. 152.
Para. 153.

(4) The only persons who opposed Huria Matenga's claim to Whakapuaka were certain members of the Rangitane and the Ngatikoata Tribes. The Rangitane asserted a claim as original owners, and the Ngatikoata claimed a right through prior occupation to Wiremu Katene te Puoho and the Ngatitama who resided with him on the land. Both sets of claimants failed to establish their claims, and the Court allotted the whole block to Huria Matenga.

(5) It will be seen by the foregoing particulars that the land was not *tribal*, but was acquired through a gift to Wi Katene te Puoho: consequently the descent from Kahoe advanced by the family of Paremata te Wahapiro as a basis of claim is of no avail, as they do not derive any right of inheritance from that source. Para. 154.

(6) The assertion contained in the petition that Atiraira Mohi "agrees that Huria Matenga alone shall set up a case to the land" is so ridiculous that it creates a supposition that the person who prepared the petition could not be acquainted with the difference in the status of the persons in question. Para. 136.
Para. 137.

The genealogical table furnished appears to be correct, except that the translator has not given the correct definition of the words above the name of Ngamianga in the Maori copy. The words used in that copy mean "second wife" and not "legally married wife." Paremata te Wahapiro had four children by his first wife, three sons and one daughter—viz., Tipene, Ripine, Wi Katene, males and Heni Tipo, female. By his second wife he had two daughters, Atiraira and Ngawaina.

Paras. 139, 140,
and 141.

Concerning the rights of the parties to the Whakapuaka Block, the following memorandum taken from a copy of a genealogical table of Wi Katene te Puoho's lineage written between thirty and forty years ago bears on the question at issue:—

“Kauhoe was first married to Te Puoho's brother, and at his death she married Te Puoho by whom she had one son named Piti, *alias* Te Puoho, to whom Whakapuaka was allotted (by common consent) as his portion and residence. Te Puoho (senior) was slain by Ngaitahu at Tutura. His enemies called him Te Manu on account of his eloquence and melodious voice.”

Paras. 136 and
137.

(7) Touching the statement contained in the petition relative to the alleged agreement between Atiraira Mohi and Huria Matenga, although these persons are descended from a common ancestor, they are not equal in rank for the reason that Taku the first husband of Kauhoe (who married two brothers) was the junior of Te Puoho the second husband: consequently his son Wi Katene took precedence of Paremata te Wahapiro, the son of the first husband. Another circumstance that makes a further distinction between Huria Matenga and the two daughters of Ngamianga, the second wife of Paremata te Wahapiro, is that, irrespective of these children being the offspring of the “wahine iti” (second wife), the mother, who was a Ngaitahu, was a member of a conquered race. The statement therefore contained in the petition that Atiraira Mohi agreed that Huria Matenga, her superior in rank, should be allowed to prefer a claim to her own property seems rather preposterous and incapable of belief.

Para. 138.

(8) Paragraph 7: I am unable to say at what time Atiraira Mohi first became aware that her name was not in the title, but I am inclined to believe that all the Paremata family were aware from the outset that their names were not in the title, as the decision of the Court was widely known.

Paras. 156 to 162.

(9) As to the occupation of any of the members of the Paremata family either formerly or of late years, such occupation was at the will of Wi Katene te Puoho during his lifetime and since then at the will of Huria Matenga.

Paras. 156 to
162.

(10) In former years Tipene Paremata, the eldest son, lived on the land during Wi Katene's time, and the second son Ripeni occasionally lived there; but other members of the family, with the exception of Atiraira Mohi, have rarely been there, excepting probably on a visit for a brief period.

Paras. 142 to
150.

(11) In support of Wi Katene te Puoho's right to the land it is necessary to narrate certain circumstances in connection with the ownership of it. It has already been pointed out that Paremata te Wahapiro was a captive amongst Ngaitahu at the time the Whakapuaka Block was first occupied by Wiremu Katene te Puoho, and up to the establishment of Christianity amongst his captors, subsequent to 1840. In 1842 he arrived in Nelson and was present at Commissioner Spain's Court in 1844, and after residing at Whakapuaka for a short time he crossed over to Wellington and eventually returned in the early part of January, 1845, with a party of turbulent Natives and proceeded to turn off the European settlers occupying the land within Commissioner Spain's award to the New Zealand Company. This ultimately led to the company's agent, Mr. Fox, proceeding with an armed volunteer force to protect the Chief Surveyor while laying down the boundary of the northern limit of the purchased lands awarded by Commissioner Spain to the New Zealand Company.

This line ultimately formed the southern boundary of the Whakapuaka Block.

In consequence of Paremata's turbulent conduct to the Europeans, Wi Katene turned him away from Whakapuaka to the North Island, and he was absent there for several years.

Paras. 142 to
150.

(12) At the time that Paremata attacked the settlers Wi Katene was absent at Te Taitapu, and on his hearing of the aggression he returned hurriedly to Whakapuaka and found that an armed party had proceeded there in a boat belonging to H.M.S. “Hazard,” with Major Richmond, the Superintendent of the Southern Division, the company's agent, and the Nelson Police Magistrate to further interview the Natives and warn them not to disturb the settlers living to the south of the boundary-line fixed by the company.

Paras. 142 to
150.

(13) In compliance with the request of the company's agent Wi Katene te Puoho inspected the line fixed on for the southern boundary of the Whakapuaka Block, but, although he objected to it, he ultimately gave way through a desire to put an end to the quarrel, though he resented Paremata's turbulent conduct, which he believed had led to his losing part of his land. Paremata's excuse on being questioned by Wi Katene te Puoho as to why he attacked the European settlers was that they were residing to the north of the line that Wi Katene had pointed out he had sold to the company.

Para. 202A.

Para. 202A.

(14) Although the position of the southern boundary of the Whakapuaka Block was fixed in 1845, the matter was not settled until 1851, when Wi Katene te Puoho and Major Richmond, the Superintendent of the Nelson District, aided by Mr. F. D. Bell, finally adjusted the matter, and Wi Katene subsequently superintended the survey of the line by the Government Surveyor. The next spoliative action which Paremata was concerned in against his brother was his joining the Ngatitōa in 1853 to sell all the lands claimed by that tribe on the southern shores of Cook's Strait to the Government. Amongst other parts included in the sale was the Whakapuaka Block, and if it had not been for the strenuous opposition of Wi Katene in 1856, when Mr. Commissioner McLean visited Whakapuaka for the purpose of paying a share of the purchase-money reserved for the local residents, and to lay off the size of the reserve, the major part of the block would have passed into the hands of the Government.

On that occasion Wi Katene repudiated the sale of the land by the people in the North Island, and declined to give up any part of the Whakapuaka Block or receive any part of the purchase-money offered him; and the Commissioner did not deem it prudent to urge the matter.

(15) The whole of the block therefore which Wi Katene claimed belonged to him was left in his possession, and no further claim was preferred to it by the Government under the sale of 1853.

(16) At one time there were a large number of Natives living at Whakapuaka, belonging chiefly to the Ngatitama Tribe. None of these persons, although they lived on and cultivated the land for many years, claimed a right to it.

(17) Much misconception and many fallacious reasonings on the subject occasionally prevail, and may be attributed to mistaken assumptions as to the right derived through occupation, as mere occupation does not confer a title unless it is founded on some previous right of which the occupation could be regarded as a consequence.

(18) As regards the Whakapuaka Block, Wiremu Katene te Puoho was the recognized owner, and all arrangements relative to the occupation of the land were made with him or with his concurrence, either in the shape of leases or the right to graze or cut timber on the land.

(Sgd.) A. MACKAY.

134. Taking into consideration the fact that these were the first proceedings taken before Parliament, it seems highly desirable that the statements of Alexander Mackay and the conclusions arrived at by the Native Affairs Committee should be carefully examined in order that one may see whether the mass of evidence accumulated to that date had been made available to the Committee, or whether, as in the Native Land Court proceedings, only one side was given.

135. A commencement will be made with Alexander Mackay's report: Firstly, we can take the matter of whether or not an arrangement was made between Atiraira Nopera and Huria Matenga whereby Huria alone was to combat the claims of Ngatikoata and Ngatikuia on the understanding that when she succeeded she was to include the names of Atiraira and party in the list of persons sharing with her to be handed to the Court. It is difficult to understand why Mr. Mackay found himself unable to believe it probable that such an agreement could have been entered into. Actually, it is a very common practice in investigations for a representative of the hapu to set up the claim and when successful in establishing his rights to present to the Court the full list of others who have equal rights. Mostly in such cases, however, the co-claimants are present or represented at the hearing and see that their names are included on the lists.

136. It is still more difficult to understand the following passages:—

The assertion contained in the petition that Atiraira Mohi "agrees that Huria Matenga alone shall set up a case to the land" is so ridiculous that it creates a supposition that the persons who prepared the petition could not be acquainted with the difference in the status of the persons in question.

And again:—

Touching the statement contained in the petition relative to the alleged agreement between Atiraira Mohi and Huria Matenga, although these persons are descended from a common ancestor they are not equal in rank for the reason that Taku the first husband of Kauhoe (who married two brothers) was the junior of Te Puoho the second husband; consequently his son Wi Katene took precedence of Paremata te Wahapiro the son of the first husband. Another circumstance that makes a further distinction between Huria Matenga and the two daughters of Ngamianga, the second wife of Paremata te Wahapiro, is that irrespective of these children being the offspring of the wahine iti (second wife) the mother, who was a Ngaitahu, was a member of a conquered race. The statement therefore contained in the petition that Atiraira Mohi agreed that Huria Matenga, her superior in rank, should be allowed to prefer a claim to her own property seems rather preposterous and incapable of belief.

137. This sort of statement was hardly fair to the inquiry. To begin with, "Mana rangatira" (power or authority of a Chief) does not of itself give exclusive rights to land. All who can trace to the source of the right (or "take") and can show occupation have a right, and no person, no matter what her social standing may be, can deny that right. Claims equal in virtue confer equal rights to the land—the eldest son shares equally with the youngest daughter if the source of the right is common and all have had equal occupation. Mr. Mackay's assertions regarding rights of primo-geniture are not sufficiently amplified to be valuable. So far as Whakapuaka is concerned there can be no comparison between Taku and Puoho, because Taku was killed probably twenty years before Puoho saw Whakapuaka. The real point is that Puoho and Wahapiro as brothers-in-arms jointly shared in the conquest. While Puoho was alive the "Mana rangatira" was in him, but that did not mean that Puoho alone could claim the land he conquered. It is not an inviolable rule that "Mana rangatira" descends automatically to the eldest son or the eldest child. Te Rauparaha was the youngest of four brothers who took their orders from him and shared his conquests with him. There is abundant evidence that Wahapiro assumed the mantle of Chief of the Whakapuaka Ngatitama Tribe on his return from the South, as was his right from all points of view—age, birth, experience, and prowess in war. It is hard to believe that selection would have fallen upon one who, as far as can be gathered, made no effort whatever to avenge his father's death—was not even one of either party that set out for that purpose.

138. The next reference to be noticed is that referring to "wahine iti" or "second wife," and we can dispose of it in this manner. Ngaitahu was not a conquered race, it was severely handled, but not

as severely handled as Ngatiawa was at Pukerangiora in Taranaki about the same time, or Ngatiapa in the Rangitikei a little previously. As a tribe Ngaitahu retained its lands, and that is the rule which measures its status. The children of this Ngaitahu woman have equal rights with the other children of Paremata Wahapiro to any land that springs from him, and equal rights with any other children of hers to any lands that may come through her. Kauhoe was actually a "second wife" of Puoho. As stated before, Wi Katene te Puoho was the *youngest son* of each of his parents, and all the children of each (except one Mutumutu) were living when Wahapiro came back from the South to Whakapuaka. How possibly can one reconcile these facts with Mackay's statement that Wi Katene took precedence of Paremata te Wahapiro because Puoho was an elder brother of Taku. Had he said that Hori te Korama—Puoho's eldest son—took precedence of Wahapiro his statement would have been consistent although incorrect instead of suspect of being both inconsistent and incorrect.

Para. 133 (6).

139. The next point in the report to be considered is the following passage :—

Concerning the rights of the parties to the Whakapuaka Block, the following memorandum taken from a copy of a genealogical table of Wi Katene te Puoho's lineage written between thirty and forty years ago bears on the question at issue :—

"Kauhoe was first married to Puoho's brother and at his death she married Te Puoho, by whom she had one son named Piti, *alias* Te Manu, *alias* Te Puoho, to whom Whakapuaka was allotted (by common consent) as his portion and residence. Te Puoho (senior) was slain by Ngaitahu at Tuturaui. His enemies called him Te Manu on account of his eloquence and melodious voice."

140. Since the inquiry closed, what appears to be the original of this quotation has been received by the Court from among the late Judge Mackay's papers, and it is distinctly unsatisfactory to be confronted at this late stage in Whakapuaka proceedings with the suggestion (one might be justified in calling it evidence) that the copy of the genealogical table referred to was one that had been entered up by Mr. Mackay in his own handwriting, and that the memo endorsed on the copy is also in his handwriting.

141. As this passage from the report received particular attention from counsel and conductors, it is considered that this writing should be carefully scrutinized both by petitioners and respondents with particular reference to the pencilled word "senior" in what seems to be Mackay's writing between "Te Puoho" and "was slain" and the word "younger" between "Puoho's" and "brother" in an alien hand. The first pencilled word is included and the second is not. The word "Taku" after "Puoho's brother" is omitted from the report, although included in the memo. Otherwise the memo is exactly similar to the quotation in the report of 1896. In passing, it might be noted that the genealogical table as written in ink is incorrect in that it leaves out Heni Tipo as one of the children of Paremata. This writing was not available to counsel and conductors appearing before the Court, and is now attached to Native Land Court file.

Para. 133 (11)
to (14).

142. We can now take the narrative of the report contained in that portion numbered for convenience as paragraphs (11), (12), (13), and (14). The statements made are "in support of Wi Katene te Puoho's right to the land," and concern "the turbulent conduct" of Paremata towards the settlers upon that portion of Spain's award which adjoined the Whakapuaka Block to the south. What can be regarded as the true history of this incident is to be found in two letters dated respectively 25th and 28th January, 1845, and written by William Fox (later Sir William Fox), Resident Agent for the New Zealand Company at Nelson, to Colonel Wakefield. They read as follows (Mackay's Compendium, Vol. No. 2, page 268) :—

Nelson, January 25th, 1845.

SIR,—

(a) Having considered it my duty to take certain steps, with the view of checking the aggressions of a party of Natives in this settlement, and having done so in opposition to the express injunction of the Police Magistrate, and in contravention of the policy by which the local government appears to be actuated in all its transactions with the aborigines, I hasten to give you a circumstantial account of my proceedings.

(b) In the plan of this settlement, as agreed upon by Mr. Commissioner Spain at the sitting of the Land Claims Court, held here in August last (a copy of which signed by the Commissioner, Mr. Protector Clarke, and myself on behalf of the company, is in my possession), a small valley of four or five hundred acres, distant about 10 miles from the Town of Nelson, is included in the Suburban North district, embracing Sections 24 and 39 on the Surveyor's plan of accommodation lands. No part of the land allotted to the company in this valley was occupied or cultivated by the Natives at the period of the formation of the settlement, nor has been at any subsequent time, nor do they occupy any at a less distance than about five miles, at which distance, farther north from Nelson, they have a pah on the sea-coast, at a place called Whakapuaka. The chief of this pah is Paramatta, who was many years in slavery to Tuawaiki, of Otago. When the Commissioner held his Court in Nelson, in the course of which transaction he displayed the faithlessness of the New-Zealander, by a fraud which he attempted to practise on his people, by having a portion of the goods which were purchased with the distributed money secretly kept back for himself. He also excited much indignation amongst the other Natives in Blind Bay by pretending a right to the Waimea district, his claim to which they all concurred in asserting was a mere fabrication, and unheard of till then.

(c) After receiving his share of "utu," he returned to his pah, and several settlers proceeded to occupy sections and to graze cattle and sheep in the valley referred to. Paramatta, or his men, told some of these that they were right in so doing, that the land was the white man's, and that they should not be disturbed. About a month ago, however, Paramatta crossed the strait on a visit to some of the Waikato Tribes, in company with a few of whom

and some of his own people he returned here on Tuesday the 15th current. He landed between Nelson and the valley, and immediately proceeded to the latter, where he commenced his aggressions on the settlers, warning them off the land, and threatening to destroy their houses and themselves if they did not quit.

(d) After many alarming menaces he left the valley, and returned to the farm of Mr. F. Jollie (nearer Nelson), where he and his party endangered the crops and buildings by their fires, and also threatened Mr. Jollie as they had done the settlers in the valley.

(e) On the following day a complaint was made by the disturbed settlers to the Police Magistrate of Nelson, who with his Clerk and Interpreter, Mr. Tinline, proceeded to the valley, where they had an interview with Paramatta. The latter denied having sold the valley, assaulted Mr. Tinline and Mr. Jollie, and told the Police Magistrate and his Interpreter that he would serve them as Rauparaha had served Messrs. Thompson and Brooks at the Wairau. Eventually, however, he promised to be quiet for a fortnight, in order that the Magistrate might produce evidence of the sale and Commissioner's award, but, if he failed in doing so, Paramatta declared he would drive off the settlers.

(f) The Police Magistrate returned to Nelson, and Paramatta, the following morning, recommenced his aggressions. He broke into the house of a settler named Graham, robbed him of some flour, and told him he would return on the following Monday and burn all down. He then destroyed a stockyard and burnt a quantity of hurdles and shingles belonging to other parties, and returned to his pah.

(g) These renewed aggressions being reported in Nelson, considerable feeling was excited, and on Saturday afternoon (18th current) the Police Magistrate called a public meeting over which he presided, and at which were present Dr. Monro, J.P., Mr. Valle, J.P., and several leading settlers. It was proposed by the Police Magistrate, and finally agreed to, that he should proceed on the following Monday to the valley, with the plan settled by the Commissioner before referred to, and warn Paramatta against future aggression; the Police Magistrate stipulating that he should be accompanied by an armed and volunteer force.

(h) On the following evening (Sunday) a meeting of the above-named three Magistrates was held, after which the Police Magistrate announced to the public that his intention was changed, and that he would take no step towards checking Paramatta, except writing to him to come to Nelson to see the plan, and sending to Wellington to request Major Richmond to afford military assistance.

(j) This resolution, it afterwards appeared, was not concurred in by Dr. Monro, and, at a private interview which I had with the Magistrates, I informed them that I could not acquiesce in the decision they had come to, and should consider it my duty to maintain the settlers in possession of the land by whatever means I might think most expedient.

(k) The following morning (Monday), a public meeting was held, when it was determined that Mr. Stephens, the company's principal surveyor, should proceed to the valley and cut a broad line across it in exact accordance with the Commissioner's plan; that Paramatta should be requested to inspect this line, and warned against disturbing settlers within it; and, lastly, as Mr. Stephens would probably be prevented by the Natives from cutting the line if alone, that he should be accompanied by a well-armed volunteer force, who should remain with him till his work was done. A number of respectable settlers, including Dr. Monro, J.P., immediately volunteered, and, at their request, I consented to take the command of the party and the responsibility of the necessary arrangements. The rest of this day was spent in making preparations, and, in the evening, an armed muster was held, at which a notice, issued by the Police Magistrate, forbidding our proceedings was read by the Chief Constable.

(l) On the following morning (Tuesday, 21st January), the party proceeded to the valley, to the number of upwards of eighty, about one-third of whom were settlers of the upper class, and the whole armed with weapons and ammunition whose order had been carefully tested overnight. On arriving in the valley, Mr. Stephens proceeded to cut the line; to which no obstacle opposed itself, the Natives having heard of our muster, and withdrawn from the valley.

(m) On the previous evening, the Rev. Messrs. Reay and Butt, the resident clergymen of the Episcopal Church, and missionaries, had volunteered to proceed to Paramatta's pah by water, for the purpose of endeavouring to persuade him to come to the valley to see the line cut, and offering him safe conduct there and back. They found him very sulky and obstinate. He treated the Commissioner's award as a concerted fraud, in which the Protector had taken part, and, as a proof of it, he urged the cases which had been reported to him on the other side of the strait, where the Commissioner's award had been set aside, and the Natives affected by it received additional money from the Governor. He declined coming to the valley or to Nelson, in accordance with the Police Magistrate's requisition which he had received. Mr. Reay, finding him obstinate, left him, and met us in the valley shortly after our arrival in it, when he communicated the substance of the above.

(n) It was then proposed to visit Paramatta at his pah, to show him the plan and caution him, but Mr. Reay declined to act as the guide for an armed party, and, no one knowing the road, which was through a thick bush and understood to be difficult, the proposal was abandoned; and Mr. Reay returned alone, carrying with him the plan and some printed notices in the Native language (into which they had been translated by the Rev. Mr. Butt) by which I gave Paramatta notice that "I had cut the line, and that if he gave any more trouble to the settlers I would come with many white men and bring him to Nelson to be tried by the Queen's laws."

(o) On reaching the pah, Mr. Reay produced the plan and notices, which, however, Paramatta would not look at, but they were inspected and read by the other Natives, among whom were several from Massacre Bay, who had arrived during Mr. Reay's absence. Paramatta repeated his assertions about the plan being a fraud, and the disallowance of the Commissioner's award on the other side of the strait. Three young Natives had accompanied Mr. Reay, and, on their return, gave an exaggerated account of our force, telling their fellows that we were 1,000 strong, a mis-statement which will probably tend to increase the effect of our demonstration.

(p) Our party returned to Nelson in the evening, having been 12 hours under arms, in a very hot day, during which they behaved in an extremely orderly manner. Before their dismissal the nucleus of a permanent volunteer force was formed, which will, I believe, be very generally joined, the late alarm having brought forcibly before the minds of the settlers the unprotected condition in which they are.

(q) Since the Governor and Council have distinctly declined acting in obedience to Lord Stanley's recent instructions to embody a militia, the settlers see that they must take steps to afford themselves that protection which Government denies them; and I cannot help feeling that it is my duty to assist them as far as possible in a proceeding so necessary and so much in accordance with the wishes of the Home Government, even though it may place me in opposition to the local authorities.

(r) Aggressions such as these above recorded are of too serious a character to be trifled with, and I am satisfied that it is only by our facing the aggressors on their first appearance that we can hope to check them. This outbreak of Paramatta's is the first we have been subjected to since the Commissioner's award, and I believe that the promptitude with which the settlers have met his attempt to extort further payments (for that is his sole object) will go far to prevent a recurrence of such annoyances in this settlement. The movement has also had a visible effect in inspiring confidence in the settlers, many of whom by the unhappy result of the Wairau, and the continually recurring reports of unchecked Native aggression in the Northern Island, had acquired a feeling of awe for the aborigines, which I do not believe that their real prowess by any means justifies.

(s) The few expenses attending the expedition have been borne by voluntary subscription. Hoping that the course I have pursued will meet with your approbation.

I have, &c., WILLIAM FOX, Resident Agent.

Colonel William Wakefield, Principal Agent, New Zealand Company, Wellington.

144. Copy of letter from William Fox, Esq., Resident Agent of the New Zealand Company at Nelson, to Colonel Wakefield :—

Nelson, January 28th, 1845.

SIR,—

Referring you to my despatch of 25th January, 1845 (No. 56), relating to a Native aggression, and the means adopted by me to repress it, I have now to inform you that on Saturday last, H.M. ship "Hazard" arrived here, on her way from Wanganui to Wellington, and yesterday morning Major Richmond, accompanied by the Police Magistrate of this place, Mr. Forsaith, the Government Interpreter, and myself, visited Whakapuaka in one of the boats of that vessel. We found Paramatta at his pah. At first he obstinately persisted in his assertions that he had not sold the valley, and that the plan shown him was a forgery. He was then invited to accompany us to the boundary-line, but refused, on which we took with us his brothers, Emanu and Etera, with one or two other Natives, to whom we showed the line, and Mr. Forsaith informed them that the Government would maintain it as laid down. On returning to the pah we found Paramatta's tone altered, and, after a little more conversation, perceiving that his followers did not coincide with his view of the case, he yielded and gave a solemn pledge to abide by the boundary laid down by me and confirmed by Government. Major Richmond informed him that for the present his housebreaking and robbery would be overlooked, but that they would be kept hanging over his head, and if he did not keep faith respecting the boundary, he would be punished for those offences. He wished he had made compensation for the acts alluded to, but it was considered prudent to keep the charge against him alive as a security for his good behaviour.

I trust that the result of these measures will be to put an entire end to all troubles with the Natives in Blind Bay.

I have, &c., WILLIAM FOX, Resident Agent.

Colonel William Wakefield, Principal Agent, New Zealand Company, Wellington.

145. It can safely be assumed that William Fox in reporting this matter within ten days of its happening would (1) be sure of his facts and (2) would not be disposed to gloss over in any way the conduct of Paremata. The whole affair might fairly be described as follows :—

146. Paremata, the Chief of the Whakapuaka Pa, warned the settlers on the Nelson portion of Spain's award, which adjoined Whakapuaka, that if they did not quit he would destroy their houses and themselves, but did not put his threats into effect. The next day he was interviewed by the Police Magistrate and his Interpreter, Mr. Tinline. Paremata denied having sold this valley, and assaulted Mr. Tinline and Mr. Jollie (a settler) whose crops and houses had been endangered (but not harmed) by the (camp ?) fires of the party the night before. Eventually Paremata promised to stay proceedings for a fortnight in order that the Magistrate might produce evidence of the sale and Commissioner's award. It seems clear that Paremata's difficulty in reconciling the settlement with land sold could have been to a great extent caused by the fact that although the Nelson portion of Spain's award was

surveyed (see his report) the line was not cut (see Fox's report under review). From the Maori point of view it was the duty of Paremata, as chief and mouthpiece of the neighbouring people, if he considered they were being encroached upon to demand of the settlers and company that they prove their rights to the land they were occupying. Para. 99.
Para. 150 (b).

147. On the following day (Thursday), however, he is accused of breaking into a settler's house and robbing him of some flour (which may or may not be a just accusation), and of destroying a stock-yard and burning a quantity of shingles and hurdles.

148. On the following Monday a public meeting was held in Nelson whereat it was decided that "the surveyor should proceed to the valley and cut a broad line across it in exact accordance with the Commissioner's (Spain's) plan." On the next day the surveyor (in the presence of an armed party of upwards of eighty persons who were there in defiance of a notice of the Police Magistrate forbidding such proceedings read to them the night before by the Chief Constable) proceeded to cut the line "to which no obstacle opposed itself." A proposal that the gathering, "with weapons and ammunition whose order had been carefully tested overnight," should "visit" Paremata at his pa came to nothing, as Mr. Reay (with commendable good sense) declined to act as the guide of an armed party.

149. On the 26th January, 1845, the H.M.S. "Hazard" arrived fortuitously at Nelson on her way from *Wanganui* to *Wellington*, whereupon Mr. Richmond, the Police Magistrate, the Government Interpreter, and William Fox visited Whakapuaka and met Paremata. Paremata was invited to inspect the line, but did not go. Two of his brothers Emanu (Wi Katene) and Etera (Herewini te Roha?) went on his behalf. It is valuable at this point to note that the Maori chief of a place almost invariably used a subordinate as a go-between in his dealings with officials. Upon the return of the party Paremata gave a solemn pledge to abide by the boundary "laid down by me" ([sic] it was Spain's award cut by Fox), which thereafter he duly kept.

150. In the following respects Mackay's report verges upon an exaggeration of the facts as recorded by William Fox and William Spain:—

(a) The turbulent Natives did not proceed to turn off the European settlers, but respected the lawful course of events in marked contrast to William Fox's contempt of it.

(b) The surveyor "did not lay down the boundary"—it was surveyed before, but apparently the line was not cut. This is made clear by the minutes of Spain's Court held on 19th August, 1844 (Mackay Com., Vol. No. 1, page 60):—

Colonel Wakefield on behalf of the New Zealand Company then produced two plans of the *surveyed districts* in the Nelson Settlement comprised under the present claims.

The Commissioner then inquired of Colonel Wakefield whether the land marked on the plans produced exhibited the total quantity of acres claimed by the New Zealand Company in that district.

Colonel Wakefield said that they did *in this immediate (Nelson) District*, but that he was not prepared to state the precise quantity of acres, but would furnish the Court with such particulars to-morrow.

(c) William Fox says that the Natives from Massacre Bay arrived between Mr. Reay's two visits, not as Mackay says (or suggests) after the boat from the "Hazard" had arrived. It is very unlikely that there were two parties absent from Whakapuaka in the same district. It is, of course, absolutely necessary to the Mackay delineation of the immaculate Wi Katene that he should be absent while the trouble occurred. If he were not shown to be absent it might be suggested that he should have used his authority over Paremata to compel him to desist from his turbulent behaviour.

(d) The suggestion that Wi Katene lost land on this occasion through Paremata's action is weak, as also is the statement that he objected to the line at first and then agreed to it. Major Richmond dealt with Paremata. Of the alleged loss of land more will be said later.

(e) The statement that settlers were alleged by Paremata to be residing to the north of the line that Wi Katene had pointed out he had sold to the company is a strange one. The line was the line of Spain's award, and was laid down at a Court at which Paremata was present and Wi Katene was not. (See Nelson minute-book 2, page 335—Paramena Haereiti in reply to his conductor, Hemi Matenga—"Wi Katene was absent at Te Taitapu at the time payment was made by Mr. Spain.") Hemi Matenga secured this evidence in order to show a good reason for Paremata's having received money which should, be contended, have gone to Wi Katene. It has already been shown that Wi Katene was not a seller to the company prior to 1845, although he received benefits, so that the explanation cannot be found in the substance of a line having been laid down by Wi Katene at the time of sale. One becomes forced to the opinion that it was a repetition of the stock answer to any act of ownership or chieftainship exercised by Paremata that Wi Katene was away at the particular time.

(f) The further reference to the fixing of this line in 1851 was capable of a useful explanation which was not given by Mr. Alexander Mackay and which will be given when the declaration of James Mackay on the same subject is under review. (See Para. 202A).

151. We can now turn to paragraphs 2 and 3, which refer to the Tuturau raid and to the gift of Whakapuaka. Para. 133.

In the first sentence of paragraph 2 a reference is made to "the early occupation of the block by Wiremu Katene te Puoho and the *Ngatitama* who belonged to his party." The reply is that occupation of this nature would establish the strongest possible presumption of rights in the members of the party whether Wi Katene took by conquest or gift.

152. The remaining statements are quite incorrect. Firstly, Te Puoho did not go straight from the conquest of the Blind Bay district (1831-32) to Tuturau (1836-37). He spent some time in the North Island, and was at the Ohariu Massacre of the Muaupoko in 1834 or 1835. Secondly, Kahoe was at Parapara when news of Puoho's death was received. This her lament plainly shows. The

Para. 105 (c).

gift is stated to have been to "*Kauhoe for her son Wi Katene te Puoho*," although in the Cable Station draft Mackay says that "*on application being made by Te Kauhoe (the mother of Wi Katene), a woman of rank belonging to the Ngatitama Tribe the land was made over by the Ngatikoata chief Te Kahawai to her and her son.*" Incidentally, Te Kahawai was killed when the invasion of the Blind Bay district took place at least five years before the necessity for the gift arose.

153. It is difficult to understand how Judge Mackay in 1896 could define this gift as he did in face of the evidence then available as summarized in Appendix "A" to this report, even when one allows that he was not acting judicially nor even inquisitorially, but purely as a private person volunteering information on behalf of a friend.

154. In paragraph 5 the gift is stated to be to *Wi Katene te Puoho*—a variation of what was stated to be the position in a previous paragraph. He also stated that the land is not *tribal*, but was acquired through a gift. Now this same Alexander Mackay in his "Narrative on the principal subjects included in the work" (Mackay's Compendium, published 1873, page 16), says:—

The settlement of the claims of the West Coast Natives and the subsequent purchase of Stewart's Island finally disposed of all the land claims in the Southern Islands, and the only lands over which the *Native title is not extinguished*, exclusive of the reserves set apart for the Natives, are the Island of Ruapuke, in Foveaux Strait, Rangitoto or D'Urville's Island, in Cook's Strait, and a block of land at Whakapuaka, to the north of the Town of Nelson.

This was actually the case, and the land was therefore Native land (meaning "lands in the colony which are owned by Natives under their customs or usages") within the meaning of the Native Land Court Act, 1880, the Act in force when the title was investigated and an Act in which "tribal land" had no meaning or import.

155. The last and probably the most damning of Alexander Mackay's statements that need to be treated is the following paragraph:—

Para. 133 (9).

As to the occupation of any of the members of the Paremata family, either formerly or of late years, such occupation was at the will of Wi Katene te Puoho during his lifetime and since then at the will of Huria Matenga.

Para. 133 (10).

In former years Tipene Paremata, the eldest son, lived on the land during Wi Katene's time, and the second son Ripene occasionally lived there, but other members of the family, with the exception of Atiraira Mohi, have rarely been there excepting probably on a visit for a brief period.

156. Tipene Paremata was also known as Te Rau-O-Kewa, and was the eldest son of Paremata Wahapiro. He lived at Whakapuaka for a considerable portion of his lifetime, he died there and was buried there. He signed the receipt of 13th December, 1854, for the final payment under the Ngatitoa deed, and was a person of standing and a chief in his bearing. Upon the death of Wahapiro (about 1854) a lament was composed by Wahapiro's sister, Kahiwa (who was murdered by her husband on the block in 1856), which goes far towards establishing the rights of both Wahapiro and Tipene Paremata to a prominent place in Whakapuaka. The lament is a classic, as might be expected from one who had been bred from or associated with such intellectuals of the old Maori world as Kauhoe, Puoho, Te Whetu, and their peers.

157. The following is a feeble translation of the lament:—

Agitated are the waters at Te Kawau-a-Toru⁽¹⁾
And farther away the headlands of Whangarae⁽²⁾ pierce the horizon:
With but little beyond the promontory of Whakapuaka thrusting itself upwards,
And below standing Te Wahapiro the son of the absent one⁽³⁾
With it firmly in his grasp.

Hold thou then the lands scooped out by Te Puoho⁽⁴⁾
What time, of son, the number of men
Was like unto a broad-leaved forest
In the density of shade they cast.

What matters (that you are no longer protector),
Leave it to your son⁽⁵⁾ after you:
He who was nourished on strength-giving foods and thus emerged into the light of day,
To seal the root of the land and thus hold Whakapuaka.

Kahu Matao will be angered that the land of her grandchildren has passed to me
And will never be returned.
It is now firmly clasped as a charm for my grandchildren
And as a sustenance for my descendants always.
In time to come it will be displayed by valiant men and by many women, my choicest daughters, as their
cherished possession.
Retire then, Oh Ngati Koata to your home at Rangitoto
And so clear the way for the journeyings of the son of Wahapiro.

Let Ngati Rahiri from beyond the ranges hear this my song:
Ngati Tama will fix the boundary at Titere Moana
As a reservation for the hundreds and the thousands.
Oh Rahiri, gather all your forces
And raise your weapons so that the death of Te Puoho may be avenged by you,
And thou, oh son, call upon the armed company of Ngati Whakatere to support Rauparaha in marshalling
together the avenging band
Whose voices will resound along the shores of Whakatu.
Then will Whakapuaka be firmly held.

(¹) Kawau-a-Toru—The rip in Cook Strait—here applied to a rip in Current Basin between D'Urville Island and the mainland.

(²) Whangarei—Croiselles. The poetess is describing natural features as they would appear from a viewpoint on Rangitoto Island.

(³) The absent one—i.e., Te Puoho. In this and the next two lines Wahapiro is referred to as a "son" of Te Puoho.

(⁴) Scooped out—laid bare by conquest.

(⁵) Tipene Paremata.

158. Evidence was given at this inquiry by a daughter of Paremata Wahapiro to the effect that Wi Katene built a good wooden home for Tipene Paremata on the block, and that he gave him as well nine hundred sheep. In explanation of this, J. A. Elkington, who was brought up by Tipene Paremata, says:—

Our first home was made of raupo, a second house was built afterwards and was built of wood, boards, &c. Te Rau-O-Kewa (Tipene Paremata) ordered the timber himself. Some of it came from Pelorus Sound, some from Nelson. This house was built in the year 1879. I helped to build it. It was built by a pakeha contractor. His name was Andrew Brown, from Nelson. The money that was paid over to Andrew Brown was got from Mr. Mackay, Commissioner of Native Reserves. I am not sure whether this money was a loan or not, but I remember that when Tipene used to take me before Mackay and say that I wanted clothes I used to get them. This used to happen quite often. I could not say in what capacity Mackay acted in these transactions. Just before Tipene died he went to Matenga to demand sheep from him and to see that his (Tipene's) mark was placed on these sheep. Matenga agreed to mark sheep for Tipene. Just before the sheep were shorn Tipene died. Matenga never considered the wife of Tipene or myself the tamaiti whangai. Matenga had actually marked some sheep for Tipene. When Tipene died trouble for every one commenced to creep in. Wi Katene died about twelve months before Te Rau-O-Kewa. Maybe more than twelve months, but not two years. Friction commenced about this time, and the eviction of residents commenced.

Under cross-examination by Mr. Evans, the witness said "Tipene used to go to Mr. Mackay as an officer and get clothes for me. I understood that the money came from the Tenth's Reserves."

159. Since the inquiry closed the Court has recovered from among the papers of the late Judge Mackay a bundle of receipts for moneys paid out by him. The bundle is labelled "Miscellaneous Deposit Account. Wiremu Katene's Account." The receipt forms are all headed "Native Reserves, Nelson," although obviously all the moneys paid were not derived by Mr. Mackay from the Native Reserves of which he was Commissioner. For instance, Whakapuaka was not a Native Reserve, yet many of the receipts are for rents apparently collected by Alexander Mackay from tenants on Whakapuaka Block and paid to Wiremu Katene, Hemi Matenga, or Huria Matenga. The receipts previously quoted in paragraph 107 of this report were part of the same bundle.

160. Among those receipts was the following one:—

Nelson Reserves, Nelson, 29th January, 1881.

RECEIVED from Alexander Mackay the sum of twenty-three pounds ten shillings and — pence sterling, being payment of first instalment on cost of erecting house for Tipene Paremata at Whakapuaka.

£23 10s.

ANDREW BROWN.

161. This receipt apparently shows that after Wi Katene's death Tipene Paremata had a house built for him on the Whakapuaka Block; that Mr. Mackay knew of this, and in fact paid the builder the first instalment of payment for the job possibly out of moneys other than those he received as Reserves Commissioner, and possibly also out of moneys he received as rent-collector under the tenancies over parts of Whakapuaka.

162. If it so happened that the money spent on Tipene's behalf came from some source other than Whakapuaka, the fact merely strengthens Tipene's claim. In any circumstances whatever, it is strong proof of ownership when a Maori erects, and is permitted to erect, a permanent home, whether of raupo or wood, on land that he has been occupying for the past thirty-odd years. It is a further proof of ownership that Hemi Matenga should agree to mark sheep on the place with Tipene's ear mark.

163. Another receipt dated 9th May, 1878, of an amount of £40 for "half payment of threshing and winnowing machine delivered for Natives at Whakapuaka as per agreement," seems to point to there being a community living at Whakapuaka that had common interests and a common purse. This is further borne out by another receipt dated 19th June, 1876, representing an amount of £26 10s., which is stated to be "on account of work done to the Native Church at Whakapuaka as per arrangement with the Natives." This money also was received by Andrew Brown.

164. The house built by Tipene was on his death occupied by his brother Ripine or Rangiira. Later, when Ripine went away from the block (or was driven off), it was occupied by Atiraira Mohi until at a time when she was absent from the block it was burned down by Hemi Matenga.

165. The report of the Native Affairs Committee upon the petition (like the judgment of the Court of 1883) could be no more than a reflection of the evidence brought under its notice. It reads as follows (I.—3, 1896):—

Para. 131.

No. 60: Petition of Wi Katene Paremata and another. Petitioners claim to have had interests, through an ancestor named Kahoe, in the Whakapuaka Block (Nelson District) and allege that, in consequence of the non-fulfilment of a promise made to them by the present owner (Huria Matenga) to see that their names were included in the title when the land was put through the Native Land Court, they have been shut out of the same. They now pray that a rehearing may be granted to enable them to establish their rights. I am directed to report that the Committee find that this is a case of some difficulty.

There was some evidence that the Whakapuaka Block was owned by Kahoe and her son Wi Katene te Puoho. It is stated by Mr. Alexander Mackay that Kahoe's right was only as trustee for Wi Katene, and that she had no individual right. It seems doubtful if in 1832, when the land was handed over by Ngati Koata to Kahoe, that she would not have been deemed to have rights in the block.

It has also been proved to the Committee (*vide* Appendix to Journals of House of Representatives, G.-2, 1881) that any rights Te Wahapiro (the son of Kahoe, through whom the petitioners claim) had were ceded to the Crown. If the petitioners had, therefore, through Wahapiro, made out any right to any portion of the block before the Court, the Court would have been bound to award it to the Crown. There was no claim made by them before the Court. They assert, however, that they kept away from the Court because of an arrangement between them and Huria Matenga. This is denied by Huria Matenga. It is thirteen years since the Court sat and awarded the land to Huria Matenga, and only now has a petition been brought before Parliament. No application has therefore been made to the Court or the Crown by the petitioners. Their absence from the Court and their delay in making a claim seems to confirm the view that Wahapiro's descendants did not think they had any claim to the land. The Committee cannot, therefore, say that the petitioners have made out a claim to their satisfaction.

Para. 72 (c). 166. This finding of the Native Affairs Committee is the earliest review of the order of the Native Land Court of 1883, and the first thing that strikes one in perusing it is that Alexander Mackay informed the Committee that Kahoe held as trustee for Wi Katene te Puoho, to whom the land had been donated by Ngati Koata, while before the Native Land Court of 1883 he denied to Ngati Koata any right whatever to the land at any time. Furthermore, before the Native Land Court he scouted the matter of the gift by saying, "Referring to evidence given as to Kahoe asking for land to live on, I may state that this was simply Maori ceremony."

167. The Committee stated that it had some doubts over the matter of a trusteeship attaching to this gift which they were informed by Judge Mackay took place in 1832. Had they elicited the truth which was that the gift took place in 1838 or 1839, when Wi Katene te Puoho was twenty-three or twenty-four years of age, and been advised of the Maori custom regarding gifts, it is probable that their doubts would have been removed. The fixing of the date of this gift at 1832 is, to my mind, a perversion of history, and done with the object of representing Wi Katene te Puoho as a child at the time so as to avoid the necessity of explaining to persons unversed in Maori custom why the gift was not made to him direct without any reference to Kahoe at all. All the evidence, including the inscription on his tombstone, goes to show that Wi Katene te Puoho was born in 1815. ("He died on the 18th April, 1880, aged 65 years.")

168. With due respect to the Committee's finding, I cannot agree that G.-2 of 1881 proves that Wahapiro ceded his rights in Whakapuaka to the Crown, or that if Wahapiro's descendants had been found entitled to any interest in Whakapuaka by the Court of 1883 that that share must necessarily be awarded to the Crown.

Para. 80.

169. The history and effect of the Ngatitooa deed has already been treated in this report. Wahapiro, by that deed and in his capacity as an overruling Ngatitooa chief, sold his interest in lands in the South Island, but by the same deed reserved any land where his relations were living. His relatives (and close relatives at that) were living at Whakapuaka, and Whakapuaka was in fact reserved from the deed. His relatives, therefore, if they had a good claim to the land could press that claim, and I know of no law or practice that would permit the Crown to claim or take the fruits of the rights of those relations in the circumstances. If the issue of Wahapiro entirely failed (which as yet they have not), it might then be argued that all rights recentered in Wahapiro and that the Crown possessed revived rights as his assignee, subject to reservations which had failed.

Paras. 87 and 35.

170. G.-2 of 1881 does not enter into the matter at all, as the construction and effect of the Ngatitooa deed was not at issue before the 1880 Commission. The Commission's functions are explained by the following:—

By the Ngatitooa deed it was agreed that, besides reserving lands for relations residing on the land, certain other reserves should be made for some of the chiefs. It was subsequently decided that these chiefs—twenty-six in number—should receive grants of 200 acres of land each. This provision was not observed by the Crown: no grants were made to the chiefs and no consideration given in lieu thereof. In 1879 the General Assembly voted £5,200 in settlement of the claim, and paid the amount to the Public Trustee for investment for the benefit of the parties respectively entitled thereto.

171. On the 12th October, 1880, a Commission, consisting of Charles Heaphy, V.C., and Alexander Mackay was appointed and charged with—

Ascertaining the names of the persons entitled to participate in the benefits of the said sum of £5,200 together with the proportion per annum of interest or profit accruing therefrom to which they are respectively entitled.

172. The Commission submitted its report under date the 29th January, 1881, and stated:—

The scope of the inquiry was defined by our Commission as follows, viz.:—

To ascertain what survivors remain of the twenty-six chiefs named in the margin, and who are the representatives now living of such of the said chiefs as may have died, and the proportionate share which each of such representatives is entitled to of the portion of the chief deceased from whom he claims.

Notice of the intention to hold a sitting of the Commission at Porirua on the 12th day of January, 1881, was inserted in the *New Zealand Gazette* and the *Kahiti*. We met on the day appointed, and continued our inquiry the two following days.

In framing this report we beg to furnish a brief history of the causes that led to the setting-apart of the aforesaid sum of money.

In August, 1853, the then Governor, Sir George Grey, assisted by Mr. Commissioner McLean, entered into arrangements with the Ngatitooa Tribe, *subject to certain reservations, to dispose of the remainder of their claims by right of conquest, and to settle those of other tribes living on the spot, to the whole of the districts on the northern and western portions of the Middle Island, in consideration of the sum of £5,000.*

Para. 93.

173. The remainder of the report contains nothing of moment or interest in this present case. The list of the twenty-six chiefs written in the margin of the Commission were as follows :—

- | | |
|------------------------------|-----------------------------|
| 1. Te Wahapiro. | 14. Pitiroi Paea. |
| 2. Nopera te Ngiha. | 15. Tamati Hauhau. |
| 3. Rapata Wainui (Hurumutu). | 16. Waka te Kotua. |
| 4. Te Whawharua. | 17. Tamihana te Rauparaha. |
| 5. Hohepa te Maihengia. | 18. Matene te Whiwhi. |
| 6. Mokau (Rangihaeata). | 19. Hoani te Okoro. |
| 7. Te Hiko. | 20. Horopapera. |
| 8. Rewiri Puaha. | 21. Riwai te Ahu. |
| 9. Wi te Kanae. | 22. Hohaia. |
| 10. Horomona. | 23. Te Karira. |
| 11. Rawiri Hikihiki. | 24. Rawiri te Onenuku. |
| 12. Mohi te Hua. | 25. Eraia te Hunga. |
| 13. Tungia. | 26. Peti te Rau-o-te Rangi. |

174. The schedule of succession shows Tipene Paramutu [*sic*] of *Whakapuaka* to be the successor to Te Waha Piro. It also shows Kereihi Tipene of *Whakapuaka* (Tipene Paremata's wife) as a successor to Tamati Hauhau. Attached to the report as Enclosure No. 5 is a letter dated 11th August, 1853, from the Land Commissioner (McLean) to the Civil Secretary. The first paragraph of this letter runs as follows, and puts in a nutshell, the day after it happened, what was subsequently put on record by McLean's report of 7th April, 1856 :—

I have the honour to transmit to you the original deed of sale executed by the principal chief and people of the Ngatitōa Tribe yesterday, for the whole of their claim to the Middle Island, *excepting Rangitoto or D'Urville Island and such other places as may be actually required by the Natives, within the limits of the purchase as reserves, for their own use and occupation.*

175. With regard to the alleged existence of an arrangement between Huria Matenga and other members of the Ngati Tama Tribe to the effect that Huria would fight a representative action against Ngati Koata and when successful include her relations, much has been said. Mackay says the idea is ridiculous and preposterous and incapable of belief. The Native Affairs Committee of 1896 says that the allegation is denied by Huria, and leaves it there. Para. 133 (6) and (8).

176. As stated before, such arrangements are common, but that does not mean that one was in existence in this case. The allegation of an arrangement appears to have exercised the minds of a later Committee (Native Affairs Committee of the Legislative Council in 1903), which passed a resolution directing the Chairman to request the Minister of Justice—

to instruct the Stipendiary Magistrate at Nelson to examine Huria, in the presence of the petitioners, their solicitors, or agents, and with full liberty to the petitioners, their solicitors, or agents to cross-examine her, and that the Magistrate put in writing for the information of the Committee her answers to the following questions a question of similar import.

The text of this resolution was passed on to the Minister of Justice by letter dated the 29th October, 1903.

177. It was pointed out to the Chairman of the Committee by the Minister of Justice (under date the 30th October, 1903) that “ the Stipendiary Magistrate would have no power to compel the attendance of Huria, or compel her to answer the question,” and that, although the Minister was willing to assist the Committee in every possible way, he was reluctant to place the Magistrate in a false position.

178. Notwithstanding, the examination was proceeded with, the following being the minutes of Mr. H. W. Robinson, the Stipendiary Magistrate who conducted the inquiry :—

In the matter of the petition of Atiraira Nopera under the consideration of the Native Affairs Committee of the Legislative Council at Wellington.—Nelson, November 16th, 1903, at the Magistrate's Court Room.

Notes of evidence taken before Henry Wingman Robinson, Esquire, Stipendiary Magistrate, under authority of the Honourable Henry Williams, M.L.C., Chairman of the said Committee.

Mr. Wilford appeared on behalf of Huria Matenga ; Mr. Ellison appeared on behalf of Atiraira Nopera.

Ngawaina Hanikamu and Wi Katene Tipō. James William D'Blois of Nelson was sworn as Interpreter.

It was agreed that Mr. Wilford should put the questions 1, 2, and 3 as set out in the letter of the Chairman of Committee dated the 5th November, 1903.

The questions and answers were as follows :—

Huria Matenga was then asked the questions.

Question No. 1 : Did you promise or represent directly or indirectly at or before the time when the Whakapuaka Block was awarded to you that you would admit the petitioners into the title to the block, or that you would provide them with land, parcel of the block, for their maintenance ?

Answer : No.

Cross-examined by Mr. Ellison—Question : Did you see Wi Katene, junior, at the Court at Nelson about the time the title to the block was heard ?

Answer : I don't remember.

Question : If Wi Katene has stated before the Committee of Native Affairs at Wellington that you approached him and made a certain arrangement, would you deny it ?

Answer : No, I had no conversation with Wi Katene about it.

Question : Did you see the petitioner (Atiraira Nopera) in the precincts of the Court just before the case was heard ?

Answer : I did not see her there.

Question No. 2 : Have you at any time since told the petitioners, or in any way represented to them, that you were willing to consider their case, and to provide them with land, parcel of the block ?

Answer : No, I did not.

Cross-examined by Mr. Ellison—Question : No questions.

Question No. 3 : What were the terms of the conversation between you, Wi Katene, and Hira Parata when you met on Nelson wharf on Monday, the 26th ultimo ?

Answer : I remember that well. Hira asked me in the presence of Wi Katene if I had promised a share of the Whakapuaka Block to Wi Katene or others. I said "No."

Cross-examined by Mr. Ellison : None.

(Signed) HURIA MATENGA.

The foregoing evidence, written on four sheets of paper numbered consecutively from two to five, were taken before me, Henry Wingman Robinson, Esquire, Stipendiary Magistrate at Nelson, this sixteenth day of November, 1903.

(Signed) H. W. ROBINSON, Stipendiary Magistrate.

179. Two points in connection with the above examination may be noted—(1) That the inquiry was instigated by the Chairman of the Native Affairs Committee *after* he had been informed of the inability of the Magistrate to compel attendance or answers, and (2) that Huria's evidence is unsworn testimony, probably because the Magistrate had no power in the circumstances to have her sworn.

180. At this present hearing evidence was given by Mere Paaka, a Ngatiawa woman, who was born in 1860 and whose husband was one of the conductors in the case of 1883. In answer to Mr. Sim she said :—

I remember the investigation by the Native Land Court in 1883. I was at Nelson then. I heard discussions between Huria and other members of the family regarding this land. *I heard Huria Matenga tell Atiraira (Nopera) and Rangiira (Ripene Paremata) that she would conduct their case before the Court, and the other members of the family agreed.* That was freely talked about at that time. That was before the investigation. The result was that Rangiira, Atiraira, and others never interfered with the case before the Court, as they were sure that Huria Matenga was looking after their interests. I do not know as to what actually took place in the Court, but it was found afterwards that things were not as expected, and some way was sought to remedy the wrong. How I came to know that what was done in the Court was not quite right was when I learned from Wi Katene Tipo, who was living at Motueka, that the people were petitioning Parliament.

Under cross-examination by Mr. Evans the witness said :—

I was at the 1883 Court, but did not hear the case regarding Whakapuaka. My husband was a conductor. We were there to hear the case, but the women did not talk upon it. It was a long time after that I heard that the decision had gone wrong. I first heard of this when a petition was made to the House 13 years after the decision.

My friendship with Huria lasted all her life. I do not know of Huria's giving evidence before a Magistrate at Nelson. I was living at Motueka thirty years ago. This is the first time I have ever been asked to give evidence about this block. *I was in the home of Huria when the arrangement was made between Huria and the others that she would oppose the claims of Ngatikoata on behalf of them all.*

I do not recall what other people besides Atiraira and Rangiira were present when the arrangement was made with Huria. There were quite a number present. *I was present at the arrangement when made at Whakatu (Nelson) before the investigation.*

Re-examined by Mr. Sim she said :—

Hemi Matenga was not present at the discussion between Huria and the family at Nelson before the Court case. Huria was not mentally weak at that time. It was a long time afterwards that she was not so mentally strong. Would not say she was "rorirori"—it may have been old age.

181. This old lady's evidence was found, in any respect in which it could be checked, quite reliable, and I feel that due weight should be given to her testimony, which was not shaken by cross-examination.

182. As regards Huria Matenga's mental state in 1903, the following matter is instructive :—

In 1902, Huria Matenga, while away from the restraining influence of her husband, Hemi Matenga, sold a piece of land called Waikawa Section 11, Subdivision 2, to Mrs. Josephine Love. Later in 1903, in the presence of her husband, she sold the same piece of land to Kairira Tahuaroa. Confirmations of these agreements (and a transfer executed in 1906 in pursuance of Mrs. Love's agreement) came before the Native Land Court on the 26th August, 1909, and following days (Wellington M.B. 16, page 298 and following pages). Huria by this time was dead.

183. The evidence of Hemi Matenga concerning the matter was as follows :—
(W.M.B. 16, p. 321.) (The italics are mine.)

Hemi Matenga on oath : Am sheep-farmer at Kapiti and husband of Huria Matenga, deceased. Know this section at Waikawa in dispute. Was present when agreement of 7th July, 1903 [on file], selling the land to Watsons was made. It was made at my own home. Huria signed the agreement in my presence, and the signature to it is hers, so is the other signature to it mine. Prior to this date I know that Huria gave them the right to occupy the land. At the actual time of signing the agreement of 7th July, 1903, the land was in the possession of Wikitoria—Julia's mother. I made a mistake. I thought the agreement I just saw was the agreement of 1883. In Victoria's time there was an arrangement between Victoria, Julia, myself, and Karira's father by which Karira should get the land, and it was given gratis according to the usual Maori custom, but owing to the persistence of Karira the matter was completed by sale. In 1903 I wrote to Karira and said I knew of the agreement and wished to carry it out. [Letter produced of 21st June, 1903, and put on file.] [Letter read out in Court.] In consequence of this letter Watson went to Nelson and the agreement of 7th July, 1903, was signed. Julia knew of all this. Prior to 1903 I know of no transactions for the sale of this land to Mrs. Love. *I negotiate always on her behalf all transactions but she was always present. I dealt with matters on her behalf as Julia's father had previously directed, and Julia recognized this direction and always agreed to it. I know of no other case except this of Mrs. Love where Julia has sold land without my consent.* Hira Parata acted for her and was well informed of her arrangements. About the time of the opening of Picton-Seddon Railway [1902] Huria went to Picton. *She was taking drink at that time, and I then met Mrs. Love, and she told me Huria was acting strangely and that she had ordered Dan to take her back to Whakapuaka.* In 1906, when Julia was away from me, she was not capable of looking after herself, and liable to take to drink. I sent her over £50 at that time, and she was only here [Wellington] a week, when she wanted it, as she had spent all the money she brought from home. She was here about three weeks at that time, and she came back without even a sixpence left. She was about sixty-two years of age at that time. *In 1906 her memory had failed, and when I asked her where she had been and the names of the places, she could not remember.* I, her husband, noticed these things more than strangers. I first heard of the sale to Mrs. Love from the Court in January, 1907. I then went to the Court and said the statement made by Mrs. Love in my absence was incorrect.

Cross-examined Bunny : It does not matter to me whether Mrs. Love or Watsons get the land, but I could not say that the land should go to Mrs. Love, as I was a party to the sale to Karira. I heard Huria had stayed with Mrs. Love. I do not know that Dan Love was the Kai-whakahaere when the land went through on original investigation. Huria never mentioned to me when she came back in 1906 that she had sold to Mrs. Love. [Letter 21st June, 1903, read.]

Q. What do you mean when you say in that letter about another person to give a larger amount than the £40 ?

A. Several persons were offering £50.

Q. Was not the person who would give the larger sum Mrs. Love ? Did not your wife tell you this ?

A. Hira told me that there was another person who would give £50, he did not say who, and he said it would be better to get £50 than £40. I said "No," it was agreed between Wikitoria and Karira's father, and it will have to be carried out.

I do not know who wrote out the agreement of sale of 7th July, 1903. I could not rely upon Julia's keeping off the drink when she was away from me. When she went on that Wellington trip she told me she was going to Taranaki. She did not tell me she was going via Wellington, but I saw by the steamer advertisement she was going via Wellington. She did not tell me why she was going to Taranaki and I did not ask her. She had £25 which I gave her on leaving Nelson. I directed the solicitor should advance this. After she was here another week I sent her another £50.

Q. Is that the proper way for you to look after a wife who you say required control out of your sight ?

A. The £25 was to cover her trip, and she wired Adams and Harley for £50, and they saw me and I agreed to it being sent. When she was going away she promised me to keep away from drink, and I thought when she spent the £25 she was on the spree.

It was about this time Wi Parata had died. I contributed to his funeral expenses, not Julia. I do not know that Mrs. Love wanted the land in 1903, before the agreement of 7th July, 1903, was signed. If she wanted it then why did she not come to me for it ?

Q. Was not the transfer to Mrs. Love sent to McGinity for your inspection ?

A. I do not remember seeing the transfer in 1907 after I attended the Court and denied the sale to Mrs. Love. I neither wrote nor saw the Watsons about what had happened. I wish to correct this. I did inform Karira about this.

Re-examined Mr. Kirk : *When I found that two transfers were made by Julia, I asked her her reason for doing this, and she said she knew nothing about it.*

184. The next petition was presented in 1898, and came before the Native Affairs Committee of the Legislative Council on the 4th October, 1898. Evidence was taken from Hanikamu te Hiko and Mohi Nopera—husbands respectively of Ngawaina Hanikamu and Atiraria Nopera, youngest children of Wahapiro. The evidence of Hanikamu te Hiko is quite sound when compared with the mass of evidence available in 1898, but the Committee chose to believe the Mackay version of things.

185. The report of the Committee was against the petitioners. It states :—
- Para. 154. (1) That the land is not tribal land.
- Para. 167. (2) That the block was acquired in or about 1832 by Kauhoe, the mother of Wi Katene te Puoho, by gift from Ngatikoata.
- (3) That at the time the gift was made Paremata Wahapiro was a prisoner and did not return to Whakapuaka until 1842.
- Para. 142, *et seq.* (4) That on Paremata's return he annoyed the settlers and was expelled by Wi Katene te Puoho.
- Para. 80. (5) That Paremata Wahapiro signed the Ngatitoa Deed of 1853 which purported to include Whakapuaka, and that his son Tipene signed the receipt for a portion of the purchase-money on 13th December, 1854.
- Para. 91. (6) That Paremata Wahapiro was one of the twenty-six Ngatitoa chiefs who were promised reserves of 200 acres apiece.
- Para. 170, *et seq.* (7) That it is a recognized rule in the Native Land Court *that the Natives in actual possession of any land in 1840, the date of the Treaty of Waitangi, are to be regarded as the then rightful owners of such land.*
- Para. 186. (8) That in 1840 Paremata Wahapiro was not in possession of the Whakapuaka Block or of any part thereof, and any interest he may have had therein or may have transmitted to his successors in title must be held to have been determined by his signing the aforesaid deed of sale and by his successors accepting a sum of money voted by Parliament in lieu of the reserve of land promised to him as above mentioned.
- Para. 79, *et seq.* (9) That Wi Katene te Puoho upheld his claim to the block by successfully opposing the sale thereof to the Government in 1853, and by continuously exercising his right of ownership thereover.
- Paras. 85, 87, and 93.

186. This report is simply a résumé of the Mackay letter of 24th August, 1896, together with the report of the same Committee of 1896. It is based upon a submission of half-truths, and so must be expected to bristle with half-conclusions. We can take one example. If it were, as stated, the inviolable rule of the Native Land Court (which it is not) that the persons in actual (physical) possession of land at the date of the signing of the Treaty of Waitangi are to be deemed the owners, then the owners of Whakapuaka would (either as successors to Kauhoe or in their own right) include Kahiwa and Miriama Konehu, whose interests would upon succession on their respective deaths in 1856 and 1874 (which dates made their shares safe from the danger of taint by any act of Paremata Wahapiro, who died about 1854, and could not sell what he did not have) go in the respective shares of one-half to Wi Katene Puoho and one-half to the children of Paremata Wahapiro. Incidentally the Committee stresses something which does not matter in saying that *the successors* of Paremata Wahapiro accepted a sum of money voted by Parliament in lieu of the reserve of 200 acres. The Commission of 1881 awarded this money to Tipene Paremata to the exclusion of the other children of Paremata Wahapiro, and if these other children later took as *his* successors it could not affect any rights they had in their own names. Actually, of course, paragraphs (7) and (8) of the Committee's report are contradictions. If Paremata Wahapiro had no rights in Whakapuaka through being absent in 1840, then nothing he did or could do could affect Whakapuaka or the rights of the owners of Whakapuaka.

187. All other matter in the Committee's report has already been treated—the marginal cross-references showing where the relative information can be found in this present report.

188. The next step brings us to a motion in the Legislative Council (*Hansard*, 1901, p. 870) by the Hon. H. Tomoana :—

That the Government be requested to make inquiries during the recess as to whether or not there are other Natives having an equitable claim in the Whakapuaka Block of 30,000 [*sic*] acres, more or less, awarded by the Native Land Court to Huria Matenga, with a view to relief being granted to them.

It was stated that the reason for this motion was that a further petition of Atiraira Paremata made in 1899 had been adjourned until the next session and had not been dealt with.

189. In course of the debate it was stressed that the Native Affairs Committee of the Council made a very full inquiry in 1898, and that "there was a long report from Judge Mackay, who went into it very closely indeed and made a very clear statement of the case." The motion as propounded was duly resolved and the resolution passed on to Government, but nothing was done with the request of the Council.

190. On the 9th September, 1904, an application was made for an Order in Council under the Land Titles Protection Act, 1902, consenting to the Native Land Court inquiring into the title under the equitable owners provisions of the Native Land Court Act, 1894.

191. This application reads as follows :—

Wellington, 9th September, 1904.

The Hon. the Minister for Native Affairs, Wellington.

SIR,—

Re *Whakapuaka Block*.

(a) We are instructed by two Native women, Atiraira Mohi and Ngawaina Hanikamu, who claim that they and two other Natives, Wi Katene Paremata and Wi Katene Tipi, are equitably interested in this block, to apply that inquiry be made by you, and an Order in Council issued as provided by the Land Titles Act, 1902, consenting to the Native Land Court inquiring into the title under the equitable owners clause, subsection (10) of section 14 of the Native Land Court Act, 1894.

(b) This block, situate in the Nelson Provincial District, comprises an area of some 17,575 acres, and the title thereto was first investigated by the Native Land Court in the year 1883. Huria Matenga, a cousin of our clients, being under the circumstances hereinafter referred to, declared to be the sole owner. A certificate of title in lieu of grant under the Land Transfer Acts was in due course issued to her, and she is still the registered proprietor of the whole of the block (save and except some $2\frac{1}{2}$ acres she has sold and transferred), subject to certain leases she has granted, including in particular as a peculiar feature a lease dated 15th February, 1895, from herself to her husband, Hemi Matenga, for life, of the whole of the block at a yearly rental of £100.

(c) Prior to the hearing of the case, Huria Matenga, Atiraira Moho, and Wi Katene Tipomet, and it was then arranged on the suggestion of Huria Matenga that she should be the person to conduct the case of herself and the other members of her family then living (of whom the four Natives above-named are now the sole survivors), and if she won the case she was to have their names placed on the titles. There is unfortunately for our clients no record of this arrangement.

(d) As the result of the investigation the claims of all the other Natives who set up rights in the block were dismissed, and the root of title was determined to lie in Kauhoe solely, a Native woman of influence who is the common ancestor of Huria and the four Natives above-named.

(e) Kauhoe married in turn two brothers—first, the younger brother, Te Taku; secondly, on his death, the elder brother, Te Puoho. The only descendants of the first marriage living at the date of the investigation and still alive are three grandchildren, Atiraira Mohi and Ngawaina Hanikamu (our clients), and also Wi Katene Paremata and one great grandchild, Wi Katene Tipomet.

(f) The only descendant of the second marriage alive at the date of the investigation as well as at the present time is Huria Matenga.

(g) When the case was called on Hemi Matenga (the husband of Huria Matenga) conducted it for her and without the knowledge of our clients.

(h) In presenting the case Hemi Matenga claimed the land for Huria Matenga alone and ignored the rights of the other members of her family.

(j) When the Court gave its decision it decided in favour of Huria Matenga. Thereupon Hemi Matenga in presenting the list of names only gave in the name of his wife, and left out the names of all other descendants of Kauhoe. It would appear he did so designedly.

(k) The persons who made the arrangement with Huria Matenga and the other members of the family in good faith relied upon her faithfully carrying out the above arrangement, and therefore did not trouble to attend the Court.

(l) After the case had been determined neither Huria Matenga, her husband, nor any of the other Natives who were present mentioned a word about how the case was conducted, or the fact that Huria Matenga alone was put into the title. Our clients and the other two equitable claimants were not aware of this latter fact until the year 1895.

(m) Long prior to the investigation of this land in 1883, Atiraira Mohi, Ngawaina Hanikamu, and Wi Katene Tipomet were living on this land in the one settlement with their relative Huria Matenga.

(n) Since the investigation of the land in 1883 and the decision of the Court they still continued to live on this land in perfect peace with Huria Matenga up to 1895.

(o) In 1895 Huria Matenga began to give Atiraira Mohi and her husband trouble by destroying their pigs, and this led up to Huria Matenga ordering them to leave the land saying that she alone was the owner.

(p) This was the first intimation which Atiraira Mohi received that Huria Matenga had not carried out the terms of the arrangement come to when the title was investigated. Atiraira thereupon caused the title to be looked up, and to her surprise then learnt that Huria Matenga's name alone appeared therein. In consequence, Atiraira Mohi and her husband were compelled to leave the block and come to Porirua, where they have since been living.

(q) In 1896 Wi Katene Paremata, Ngawaina Hanikamu, Atiraira Mohi, and Wi Katene Tipomet petitioned the House of Representatives praying for a rehearing to be granted for the Whakapuaka Block. The Native Affairs Committee agreed that a rehearing should be allowed, but when Judge Mackay presented a statement to the Committee the following day, the Committee altered its first report and drew up another which was against the petitioners.

(r) Ever since 1896 in each session of Parliament the Natives injured have been petitioning Parliament, but without fruit to them. The Committees have always relied on the prejudicial and biased statements made by Judge Mackay against the petitioners petitions. This is why the injured Natives now make this new form of application to the Government to afford them an opportunity of having their grievance redressed.

(s) It is alleged by our clients, and we think not without foundation in this instance, that Judge Mackay is not only a prejudiced and biased person to give evidence or to make a statement in regard to the ownership of this land, but also an interested person for the following reasons:—

- (1) His long and close friendship with Huria Matenga and her husband.
- (2) The relationship and connection his uncle, Mr. Thomas Mackay, had in regard to this land as shown by official records. Mr. Thomas Mackay held a lease from Huria Matenga of 950 acres of the block for 21 years from the 30th December, 1886. This fact our clients have only recently learned and has never been brought under the notice of any Native Affairs Committee.

- (3) It is common talk amongst Europeans and Maoris of the strong feelings of friendship which Judge Mackay holds with Huria Matenga's husband, Hemi Matenga, and his brother, Wi Parata and Wi Parata's family in land cases which the Parata family have an interest in, and which have come before a Native Land Court presided over by Judge Mackay.

(t) Apart, however, from the questions whether any such arrangement was made as our clients allege, or whether any statements made to any Committee of the House by Judge Mackay are biased or prejudiced, the fact still remains that an inquiry ought to be made by the Native Land Court to ascertain if the injured Natives' names were improperly left out of the title to the block. We are informed that one if not more of the Judges of the Native Land Court would (if requested to report to the Government) recommend that an inquiry should be granted.

(u) We believe that it is an unheard of thing where the equitable owners clauses of the Native Land Acts have been invoked for a Native Land Court to find one member of a family, although appearing as sole grantee under the Crown Grant, to be the only person entitled, to the exclusion of the other members of that family, to so large a tract of Native land. Such a state of things would only be recognized by the Native Land Court where a grant has been made to a single Native of Crown lands for services rendered to the Crown and not as Native custom affecting the title to Native land occupied by several Natives of the same family in common.

(v) If the Maori customs bearing on the Maori title of this land were to be investigated it would show that this land was the common property of Huria Matenga, Wi Katene Paremata, Atiraira Mohi, Ngawaina Hanikamu, and Wi Katene Tipo (through their parents).

The Maori facts are these :—

- (1) This land belonged originally to Ngatikoata, a hapu of Ngatitōa.
- (2) Ngatikoata made a gift of it to Kahoe and her children.
- (3) One member of a family could not be the sole owner of 17,575 acres of land according to Native custom to the detriment of the other members.

(w) For proof of the gift, and that it was made in favour of Kahoe and her children and not to Kahoe and only one of her children—i.e., the father of Huria Matenga—there are Ngatikoata elders still alive who will prove this.

(x) The relationship of the injured Natives to Huria Matenga is shown by the genealogical tree at the end hereof.

(y) The present position of the injured Natives in regard to the land is as follows :—

- (1) Atiraira Mohi owns 11 acres in Paekakariki No. 1 and 30 acres in Komangarautawhira.

Atiraira Mohi has four children dependent on herself and husband.

- (2) Ngawaina Hanikamu owns 7 acres in Komangarautawhira, $\frac{1}{2}$ acre at Porirua, and 30 acres Wairau and White's Bay Block.

Ngawaina Hanikamu has four children and five grandchildren dependent on herself and her husband.

- (3) Wi Katene Paremata owns only a few acres.

No children.

- (4) Wi Katene Tipo owns 7 acres at Paekakariki and 11 acres at Motueka.

He has nine children dependent on him.

Whereas Huria Matenga has no children—

- (1) She owns—by false representation to the Court—Whakapuaka, 17,575 acres :
- (2) Pukearuhe (Taranaki) :
- (3) Komangarautawhiri (Porirua).

(z) The history of the migration of the parents of the injured Natives and Huria Matenga from Kawhia, and how they obtained land in the Nelson and Marlborough districts, and also the history in regard to Whakapuaka being made a gift of to Kahoe and her children by Ngatikoata all points to the ownership as being one in common. All the circumstances surrounding the cause of the gift will prove this. When the land was given to Kahoe and her children she (Kahoe) and her families by her two husbands (who were brothers) all lived on Whakapuaka. The names of Kahoe's children who lived on this land with her were—

Kahoe's first husband	{	<ol style="list-style-type: none"> (1) Kahiwa (f). (2) Miriama Konehu (f). (3) Paremata te Wahapiro, who, when he came back from Ngaitahu before 1840, lived on Whakapuaka and was the chief of the place.
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Kahiwa (f) died an old woman on Whakapuaka and was buried there in 1856.

Miriama Konehu died an old woman on Whakapuaka and was buried there in 1873.

Paremata te Wahapiro lived there before 1840 up to about 1859–60, when he came over to the North Island to bring some slaves he had to give them their freedom, when he took ill and died there.

Paremata te Wahapiro's son Tipene Paremata, a brother of Wi Katene Paremata, lived and died and was buried at Whakapuaka in 1881.

Wi Katene te Puoho, the son of Kahoe by her second husband, lived and died at Whakapuaka in 1879.

Wi Katene te Puoho was the father of Huria Matenga.

The injured Natives' parents are Paremata te Wahapiro and Heni Tipo—Heni Tipo was the daughter of Paremata te Wahapiro.

(aa) Judge Mackay states that Paremata te Wahapiro sold his interest in Whakapuaka to the Crown. This is not correct. He only sold his interest in the lands of Ngatitōa, of which hapu he was a member, leaving Whakapuaka out.

(bb) Paremata te Wahapiro was the Chief of Whakapuaka as every European and Maori knows, and as Judge Mackay knows, and is referred to as such by William Fox in his official correspondence while employed in the service of the New Zealand Land Company (see Judge Mackay's papers, Vol. II, Native Affairs, South Island, in Parliament Library).

(cc) Neither of Paremata's sisters sold their rights in Whakapuaka.

(dd) The practice and rule laid down by the Native Land Court for its guidance in regard to Maori title to land is—Continuous occupation from some Native root of title prior to 1840, when the Treaty of Waitangi was signed.

(ee) The grant in February, 1895, by Huria Matenga to her husband Hemi Matenga for his life of a lease of the whole block at a yearly rental of £100 is a peculiar feature regarding this block. Why was it granted? Hemi conducted the case in the Native Land Court for his wife. He purposely left the names of the injured Natives out of the title when the list of names was settled. In 1895 he and Huria no doubt arranged to assert Huria's title as sole and paramount and to eject the injured Natives then upon the block therefrom. With this end in view, and to give himself some show of right for so doing, he took the lease. It was a merely colorable transaction, and we have little doubt Hemi has never paid his wife the rent reserved. He then ejected Atiraira and her husband as above stated. The Lands Register shows that at the time of this lease 950 acres of the block were held by Mr. Thomas Mackay under lease from Huria at a rental which we have been unable to ascertain. Since this lease some 8,000 acres of the block have been sublet by Hemi Matenga at a total yearly rental of £133. Some $2\frac{1}{2}$ acres of the block have been sold for prices totalling £350. There is no record to show that Huria or Hemi have sold or leased any part of the remainder of the block amounting to nearly 9,600 acres.

(ff) Judge Mackay admitted before the Native Affairs Committee that in the event of the death of Huria Matenga this block would go to her injured relatives. Huria Matenga has, however, for some considerable time been trying to sell the block, and in view of the hostility she has displayed to her injured relatives, seeing she has no children, if she does not succeed in selling she will be sure to dispose of the land by gift or will in favour of her husband or his nephew, both of whom are wealthy landowners in their own right.

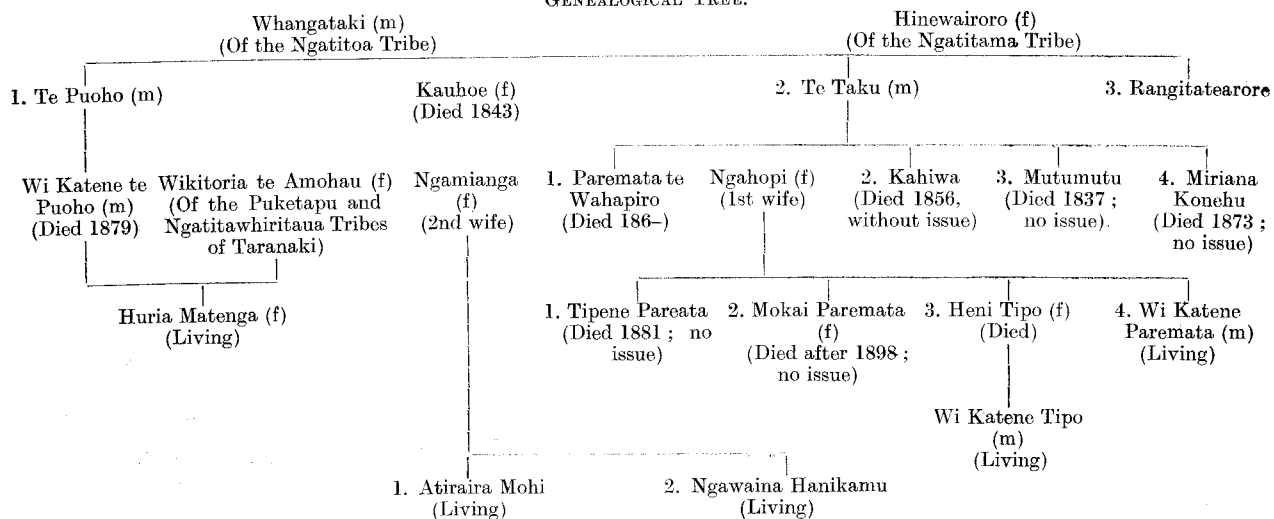
(gg) Under these circumstances we submit that we have established a *prima facie* case entitling our clients to the issue of an Order in Council directing further inquiry into the Native title to the Whakapuaka Block. It is quite clear that the Native Land Court has never dealt with the interests of our clients so far as they conflict with those of Huria Matenga in an equitable spirit and upon their merits in open Court, and that a Native Affairs Committee of the House (guided almost solely by the advice of a single Judge of the Court whose opinion, if not warped by bias and family interest, is, to say the least, wrong) is not a satisfactory tribunal to dispose of matters involving so much valuable property.

We have the honour to be, Sir,
Your Obedient Servants,
FINDLAY, DALZIELL, AND CO.

192. No comment need be made upon the terms of this application, except to say that it is pretty clear that Paremata Wahapiro was not at Whakapuaka in 1840 as stated.

193. The application was referred to Huria Matenga's solicitors, who replied by forwarding to the Minister of Native Affairs a copy of an affidavit by James Mackay, Native Commissioner, and a copy of a declaration by Alexander Mackay, Judge of the Native Land Court.

GENEALOGICAL TREE.



194. The reply of Huria Matenga's solicitors and the declarations annexed to such reply are as follows :—

Nelson, 26th June, 1904 (1905).

To the Honourable the Minister for Native Affairs, Wellington.

SIR,—

Re Whakapuaka Block.

In reference to the request dated the ninth day of September, 1904, of the four Natives, Atiraira Mohi, Ngawaina Hanikamu, Wi Katene Paremata, and Wi Katene Tipo, in which they claim to be equitably interested in the above block, and in which they ask that an inquiry be made by you, and an Order in Council issued consenting to the Native Land Court inquiring into their claims, we are instructed by Huria Matenga, the owner of the block, to write you in reply thereto and to request that no such Order in Council be issued for the following reasons :—

1. That the claims of the Paremata family have already been repeatedly before the House, and have been fully and exhaustively inquired into by the Native Affairs Committee, and in every case the claims of the above-mentioned claimants have been disallowed and reported against, and that this attempt to again get an inquiry is highly vexatious.

2. That the Whakapuaka Block originally belonged to the Ngatikoata and was given by the Ngatikoata to Kauhoe for her son Wi Katene, the son of Te Puoho, who was the elder brother of Te Taku, from whom Atiraira Mohi, Ngawaina Hanikamu, Wi Katene Paremata, and Wi Katene Tipo claim descent, and of this there is un rebuttable evidence (see the copy affidavits annexed hereto of Mr. James Mackay, Native Commissioner, and Mr. Alexander Mackay, Judge of the Native Land Court).

3. That Wi Katene, the father of Huria Matenga, was undoubtedly the sole owner of the block (see the copy affidavits annexed hereto of Mr. James Mackay, Native Commissioner, and Mr. Alexander Mackay, Judge of the Native Land Court).

4. That Huria Matenga was the only child of Wi Katene, and so inherited all his land, including this block.

5. That if Paremata te Wahapiro, the descendant of Te Taku, the younger brother of Te Puoho, from whom the present petitioners claim descent, had any right under the alleged gift to Kauhoe *that he sold and alienated all such right* to the Crown when he joined in the general sale to the Government of all his interests in the South Island (see the report of the Native Affairs Committee on the petition of the Paremata family prepared by Sir Robert Stout, a member of the Committee at that date, which report confirms this contention).

6. That in answer to the allegation by the claimants that Huria Matenga at the hearing of the Whakapuaka Block told Atiraira Mohi that if she (Atiraira Mohi) remained quiescent that she (Huria Matenga) would protect her interests, the said allegation is absolutely without foundation and is a fabricated story concocted to create a wrong impression, and is utterly false and untrue, and although Atiraira Mohi is now dead ample testimony can be obtained that Atiraira Mohi when questioned on this point stated that she knew nothing about any such alleged conversation with Huria Matenga. That the tale is also most improbable when the positions of the parties are fully understood, inasmuch as Atiraira Mohi, although a cousin of Huria Matenga, held a subordinate position to her according to Maori custom, she being the grandchild of Te Taku, the younger brother of Te Puoho (Huria Matenga's grandfather), and being in that position would not presume to assert a right that would place her on the same level as Huria Matenga. Moreover, Huria Matenga like her father, Wi Katene, was very jealous of her rights, especially in all matters pertaining to land, and always evinced the strongest objection to any attempt on the part of the Paremata family to assert a claim to Whakapuaka in the smallest degree.

7. That Wi Katene was the paramount owner of the block and was accepted as such is clearly shown by his performing the following actions in connection with the block. The records show—

- (a) That Wi Katene fixed the southern boundary of the block in 1851 :
- (b) That Wi Katene fixed the western boundary of the block in 1862 :
- (c) That when Paremata te Wahapiro joined in the sale by the Ngatitoa and disposed of all his interests in the South Island in 1853 to the Government Wi Katene refused to sell his interest to the Government and strongly opposed any interference with his interest at Whakapuaka, and refused to recognize the right of the Ngatitoa to dispose of it, and after an attempt to adjust matters the Government finally abandoned all claim to the Whakapuaka Block, leaving Wi Katene in possession.
- (d) That Wi Katene exercised the sole right to let portions of the block to Europeans and to make agreements for the disposal of the timber on the estate.

8. That Huria Matenga holds a certificate of title to the Whakapuaka Block in her own name, and has always dealt with the land as the sole owner of the property.

9. That Huria Matenga has at different times sold parts of the block included in her certificate of title to the Eastern Extension Telegraph Company and others, and quite recently, to wit, on the 11th day of August, 1904, she sold and gave a title to some 1,250 acres, part of the said block known as "Pepin Island" to one William Rayner in consideration of £800, all of which transactions have been duly confirmed and registered.

10. It is quite true as alleged by the claimants that some years back, on the 15th February, 1895, Huria Matenga, being herself unable to work the property, granted a lease of the same to Hemi Matenga at the yearly rental of £100. There is nothing "peculiar" about this lease or is it a "merely colorable transaction" as alleged by the claimants. It is a proper lease duly confirmed and registered, and the collection of the rent has always been entrusted to Messrs. Adams and Kingdon, Solicitors, Nelson, who have regularly collected the same, kept the accounts, and duly paid the rent over to Huria Matenga. That most of the clearing and improvements on the property have been done since Hemi Matenga took the lease and *all* entirely at his own expense.

We respectfully submit on behalf of Huria Matenga that inasmuch as she was born on this property and has continually lived on same for upwards of 60 years, throughout all of which time she has been in undisturbed possession and occupation, and that her father, Wi Katene, held the land for many years prior thereto and died and was buried on the property while in undisturbed possession and occupation of the same, and that the strongest evidence has been produced by witnesses living and by the Government records confirming her sole right to the property, and that she holds a certificate of title to the land granted to her by the Government and under which she has from time to time disposed of parts, and that her title has been repeatedly assailed and petitioned against and in every case without result, and that *as no additional evidence is now forthcoming*—that it is unfair and an injustice that she should be continually put to the expense and annoyance of defending vexatious actions and about the ultimate result of which there can be no doubt, but which she is bound to oppose and defend at considerable expense. Huria Matenga claims that there should be a finality to these attempts to assail her title which only cause delay, expense to her, and the postponement of the division and settlement of the block.

We have the honour to be, Sir, Your obedient servants,
(Sgd.) Adams and Kingdon,
Solicitors for Huria Matenga.

195. *In re* Huria Matenga (Julia Martin) and the claim made by the descendants of the late Paremata te Wahapiro to the piece of land situated in the Provincial District of Nelson known as the Whakapuaka Native Reserve:—

I, James Mackay, of Paeroa, in the Provincial District of Auckland, Land Agent and Licensed Interpreter, make oath and say:—

1. That I am thoroughly acquainted with the piece of land known as the Whakapuaka Para. 199. Reserve situated in the Provincial District of Nelson.

2. That in the year 1845 I became intimately acquainted with Wiremu Katene te Manu, the father of Huria Katene, now known since her marriage with Hemi Matenga as Huria Matenga. The said Huria Matenga was a child a year old or thereabouts when I first saw Para. 200. her at her father's settlement at Whakapuaka in October, 1845.

3. That in the same year I also made the acquaintance of Paremata te Wahapiro, a half-brother of the above Wiremu Katene te Manu by the same mother, Kauhoe, but a different father—the name of the father of Wiremu Katene te Manu was Te Puoho o te Rangi, head chief of the Ngatitama Tribe. The Ngatitama Tribe joined with Te Rauparaha and the Ngatitao and Ngatiawa Tribes in the wars and conquest of the southern portion of the North Island and the northern districts of the Middle Island adjacent to Cook Strait. Te Puoho o te Rangi went on an expedition to the Otakou (Otago) District of the Middle Island and was killed by the Ngatitahu Tribe. Paremata te Wahapiro was retained by Topi Para. 201. as a slave. They cut one of his ears as a degradation. Paremata te Wahapiro eventually returned to the Ngatitao Tribe at Wellington and subsequently came to Nelson.

The Whakapuaka Block originally belonged to a tribe known as the Ngatitumatakokiri, who were conquered by Te Rauparaha and the confederated tribes under his command. In the partition of the lands after the conquest, Durvilles Island (Rangitoto), Croixelles Harbour (Kaiaua), and the Whakapuaka district were allotted to the Ngatikoata Division of the Ngatitao Tribe. The Ngatikoata subsequently gave to Wiremu Katene te Manu the whole of the Whakapuaka Block extending south from the Whangamoa River. I obtained this information from a small remnant of the Ngatitumatakokiri Tribe who lived near Squally Cove, Croixelles Harbour, from the late Maka Tarapiko, the principal chief of the Ngatikoata Tribe, who resided at Whangarahi, Croixelles Harbour, from the late Wiremu Katene te Manu, father of Huria Matenga, and from other sources.

4. That I, with my father, mother, and the rest of their family, arrived at Nelson in the barque "Slaines Castle" in January, 1845. We found H.M.S. "Hazard" at anchor in the roadstead outside Nelson Harbour; she had come from Wellington, bringing Major Para. 202. Richmond, who was then Superintendent of the Southern Division of New Zealand (a Crown appointment, not an elected Superintendent of a Province). The cause of this visit was to put a stop to outrages committed on European settlers and their property at a place known as the Happy Valley adjoining the southern side of the present Whakapuaka Reserve by Paremata te Wahapiro and some Natives he had brought with him from Wellington. Paremata te Wahapiro alleged that he had received no payment from the New Zealand Company for lands which they had surveyed and settled at Nelson and its immediate neighbourhood. Also that the New Zealand Company's purchase only extended about four miles north of Nelson to land occupied by a settler named Wells, and that Horoirangi and Happy Valley were not included in the purchase. Paremata te Wahapiro was emboldened

to make this attack on the settlers because Governor Fitzroy had condemned the Wairau Massacre of 1842 and Hone Heke had become turbulent at the Bay of Islands. Paremata te Wahapiro, being a bitter enemy to European settlers, considered it an opportune time to commence "to drive them back into the sea from whence they came." During the week previous to our arrival at Nelson in the "Slaines Castle" a large number of settlers armed themselves and accompanied Mr. Stephens, a principal surveyor of the New Zealand Company, to protect him while cutting a line across the Happy Valley on the northern side of a section occupied by a settler named Berry. Paremata te Wahapiro did not interfere with the survey or with the armed party. Wiremu Katene te Manu and a Native named Pitama Iwikau came to Mr. Stephens when he was cutting the line and acquiesced in his proceedings.

Para. 202A.

5. That my father when in England had purchased land from the New Zealand Company, and he found on applying to Mr. Fox, the Nelson Resident Agent of that body, that one of his suburban sections was situated nine miles north of Nelson and adjoining the Whakapuaka Reserve. He had others, but they were much farther from the Town of Nelson. My father then arranged to settle on the Whakapuaka Section. The New Zealand Company could not fulfil their agreements with the settlers and furnish them with their rural sections of 150 acres each, and a compromise had to be made. My father eventually received 1,350 acres at Horoirangi, north of Nelson, bounded on the north by the Whakapuaka Reserve. In 1848-49 the boundary between my father's land and the Whakapuaka Reserve had to be defined on the ground. At this time I could talk the Maori language, and when Mr. Thomas Brunner, a New Zealand Company's surveyor, was instructed to survey my father's property, I and two Maoris, who were in our employ, assisted in the survey. Our commencing-point was on the sea-coast at the mouth of the Horoirangi Stream (the place now known as The Glen). We ran the line on the exact bearing of that of Mr. Stephens which had been cut in the Happy Valley in 1845. During the progress of the survey the chief, Wiremu Katene te Manu, came to us, and the day we emerged from the bush to the fern ridge overlooking the Happy Valley we then ranged and flagged ours down to that which had been cut by Mr. Stephens, and found that our line was parallel to his but was some two or three chains north of it. Wiremu Katene te Manu then demanded that we should cut Stephens's line through to Horoirangi. Mr. Brunner and myself would not consent to this until we could see Mr. Francis Dillon Bell, who had succeeded Mr. William Fox as Agent for the New Zealand Company at Nelson. Very high words ensued, and our two Maori assistants joined their chief against us. It nearly ended in a stand-up fight, but Pitama Iwikau came and made peace between us. The question was then submitted to Major Richmond, who had settled permanently in Nelson as Superintendent of the Middle Island. He subsequently came to my father's house with Messrs. Bell and Brunner, where I had assembled Wiremu Katene te Manu and several of his people. We then proceeded to walk along the survey-line, and, on arriving at the range overlooking the Happy Valley, Major Richmond suggested that the line which had been cut by Mr. Brunner should be extended down to the Happy Valley. Wiremu Katene te Manu objected to this, and it was finally arranged that the two lines should stand as they were. A peg was put at the end of each line on the ridge and the distance between the two was measured, and the boundary-line was finally fixed as shown in the margin hereof. I cannot after this lapse of time remember the exact linkage between the two pegs, but I think it was between two and three chains.

Para. 203.

6. That Paremata te Wahapiro took no part in these proceedings. My father gave the Natives an entertainment in 1846 and Paremata te Wahapiro shortly after that left for Wellington, and I do not recollect ever seeing him again at Nelson or Whakapuaka. Some years afterwards, when I was Commissioner for Native Reserves, I saw Tipene, a son of Paremata te Wahapiro, but he said nothing of any claim of his to the Whakapuaka lands.

Para. 204.

7. That from 1849 to December, 1852, I made numerous visits to the Whakapuaka settlements, as I had a number of young stock depasturing there for a fee of ten shillings per head per annum. This arrangement was made with the chief, Wiremu Katene te Manu solely, and he received the money. No claim was ever set up by any one on behalf of Paremata te Wahapiro in respect of this depasturage of stock. My father afterwards had sheep running on the Bluff portion of the Whakapuaka Reserve, his arrangements were with Wiremu Katene te Manu only. In December, 1852, I secured a sheep and cattle run at Cape Farewell, and removed the cattle from Whakapuaka to that place.

Para. 205.

8. That in the year 1855 I went to Nelson and was introduced to Mr. Donald McLean, Chief Land Purchase Commissioner, who was then engaged in arranging and completing a purchase which he had made at Wellington of the claims of the Ngatitao and other tribes to lands in the Middle Island. He asked me information about the Taitapu Block on the west coast of the Middle Island, south of West Wanganui Harbour. He then invited me to attend the meeting of Natives which was held on the grass patch in front of the New Zealand Company's offices at Nelson. Riwai Turangapeke denied the right of the Wellington tribes to sell the Taitapu Block, and it was finally handed back to him. Wiremu Katene te Manu objected to the Whakapuaka Block being included in the purchase made at Wellington. It was urged that Paremata te Wahapiro had agreed to the inclusion of Whakapuaka in "McLean's purchase" and had received money for it. To this Wiremu Katene te Manu replied "Paremata te Wahapiro has no claim to Whakapuaka, it is mine. Another thing, the Ngatitao cannot sell Whakapuaka because the Ngatikoata hapu gave it to me." After very lengthy argument Mr. McLean withdrew the Government's claim to the Whakapuaka Block, and it was reserved.

9. That in February, 1858, I was appointed Assistant Native Secretary in the Middle Island. Among other duties I was instructed to complete any outstanding questions and lay off reserves which had been agreed to between Chief Commissioner McLean and the Natives residing in the Province of Nelson (subsequently altered to Nelson and Marlborough).

10. Messrs. Domett, Brunner, and Heaphy were at that time the Commissioners of Native Reserves. They resigned, and I was appointed sole Commissioner in their place.

11. I subsequently arranged all matters relating to all classes of Native Reserves in the Provinces of Nelson and Marlborough. In 1862 I interviewed Maka Tarapiko and the Ngatikoata as to the northern boundary of the Whakapuaka Block as given by them to Wiremu Katene te Manu. The Whangamoa River was the boundary according to their statement, but they said that Chief Land Purchase Commissioner McLean had made a stipulation that they were to have a piece of 100 acres on the south side of the Whangamoa River. Wiremu Katene te Manu agreed to this, and I caused the survey of the 100 acres to be made. Paras. 206 to 210.

12. That I subsequently arranged with Mr. Domett, Commissioner of Crown Lands, and Mr. Brunner, Chief Surveyor for Nelson, the exact boundaries of the Whakapuaka Reserve. Para. 212.

13. That in 1864 I resigned my office as Commissioner of Native Reserves, as Sir George Grey had given me another appointment at Auckland. My cousin, Alexander Mackay, was appointed Commissioner of Native Reserves in my stead.

14. That from 1847 to 1864 I never saw any of Paremata te Wahapiro's family or descendants living at Whakapuaka or did they to my knowledge ever make any application to me in respect of that block. Para. 214.

Sworn at Auckland, in New Zealand, this twelfth day of January, 1905, before me— } JAMES MACKAY.

C. L. CLAYTON,

A Solicitor of the Supreme Court of New Zealand.

196. In the matter of the Whakapuaka Native Block and of the title of Huria Matenga thereto :—

I, Alexander Mackay, of Wellington, in the Provincial District of Wellington, in the Colony of New Zealand, formerly a Judge of the Native Land Court, do solemnly and sincerely declare :—

1. That for many years, from the year 1864 to the year 1882, I was acting as Commissioner of Native Reserves and Native Commissioner at Nelson in the district in which the Whakapuaka Block is situate. That sometime prior to my being appointed Commissioner of Native Reserves I lived at Horoirangi otherwise known as Drumduan immediately adjacent to the Whakapuaka Block and became personally acquainted with many of the Natives living at Whakapuaka, and among the number I knew intimately Wi Katene te Puoho, or Wi Katene te Manu as he was sometimes called, and his daughter Huria or Huria Matenga.

2. That after my appointment as Judge of the Native Land Court I held Courts at Nelson, and am fully conversant with all the Native claims and titles to the lands in the Nelson District. In the allocation of the lands included in the territory conquered by the Ngatitōa and their allies, the Ngatikoata were the primary owners of the lands in the northern part of the South Island, which included Whakapuaka, and the Whakapuaka Block was a gift from the Ngatikoata to one Kahoe for her son Wi Katene te Puoho, or Wi Katene te Manu as he was sometimes called. Kahoe was a Native woman partly of the Ngatitōa Tribe, and originally came from Poutama, a place owned by the Ngatitama. She married in the first instance Te Taku, at Poutama, and by him had one son—namely, Paremata te Wahapiro—and two daughters—namely, Miriama, or Konehu as she was sometimes called, the wife of Pitama te Iwikau, and Kahiwa, known also as Kuini—the first-named died at Whakapuaka leaving no children, the last-named was murdered by her Maori husband in a hut near the iron gate, the present entrance to the Whakapuaka Block, leaving no children. When her first husband (Te Taku) died, Kahoe married Te Puoho, who was Te Taku's elder brother, and by the latter marriage with Te Puoho she had one son—namely, Wi Katene. Para. 215.

3. The Ngatikoata Tribe in the first instance offered Whakapuaka to Te Puoho as an inducement for him to remain in the Nelson District instead of carrying out his expressed intention of leaving and proceeding southward, because he (Te Puoho) was annoyed at all the available territory being appropriated before his arrival from the North Island. Para. 216.

4. Te Puoho, however, determined to proceed with a party farther south, to appropriate land in that direction, and this led to his death at Tukurau, and the capture by the Ngaitahu of his stepson, Paremata te Wahapiro, who was with him. One of the war party who escaped brought word of Te Puoho's death to Te Kahoe, who was then living with her son, Wi Katene, son of Te Puoho, with a party of the Ngatitama at Te Parapara, near Collingwood. It was not known at that time whether Paremata te Wahapiro was killed or not, or what had become of him, until he returned to Whakapuaka about the early part of 1844. Para. 217.

5. In the meantime, Kahoe, who was related to the Ngatikoata, being left without lands for her son Wi Katene, and being mindful of the offer previously made by the Ngatikoata to Te Puoho before he went southward, interviewed the Ngatikoata Tribe and sought a fulfilment of their offer, with the result that the concession was finally made and the Whakapuaka Block was given by the Ngatikoata to Kahoe for her son, Wi Katene. That it has always been recognized by the principal men of the Ngatikoata as an absolute Para. 218.

gift in fulfilment of their original intention to make over the territory at Whakapuaka to Te Puoho. That Paremata te Wahapiro after being captured at Tutarau in the Southland District, when his stepfather Te Puoho was killed, was held in captivity for several years, probably ten, amongst the Ngaitahu at Tuapuke in Foveaux Straits, and was not released till probably about the end of 1843 or the beginning of 1844. That at the time the Ngatikoata gave the land at Whakapuaka to Kahoe for her son, Wi Katene, it was not known whether Paremata te Wahapiro was even alive, the presumption was that he was dead, killed at the same time that Te Puoho was; it is highly improbable, therefore, that the Ngatikoata gave the land to Kahoe for her son, Paremata te Wahapiro, as the Paremata family have tried to establish, as he was supposed to have been killed at Tutarau with his stepfather, Te Puoho; moreover, the land given by the Ngatikoata was the land formerly offered to Te Puoho, the father of Wi Katene, to induce him to remain in the district, in place of going south, which he had decided to do for the reason previously stated, and the subsequent concession was merely a fulfilment of the first offer, and it was the fulfilment of this offer by the Ngatikoata to Te Puoho that was afterwards sought by and made to Te Kahoe, for her son, Wi Katene te Puoho.

Para. 219.

6. It is highly improbable, and the probabilities have to be considered in a case of this kind, that if the primary offer had not been made to Te Puoho that Kahoe would not have asked the Ngatikoata to fulfil it, and that it is unlikely under the circumstances that she would ask the Ngatikoata to make the concession in her favour (a point that is contended by the Paremata family) inasmuch as her main object in asking for the concession was to provide for her son, Wi Katene, who through being the son of Te Puoho, the eldest brother, was her primary care and occupied the premier position in her estimation, especially as her eldest son by her first husband, Te Taku—namely, Paremata te Wahapiro—was dead for all she knew and so needed no further consideration. Her two daughters by the first marriage were not with her at the time, and probably if they had been would have not caused her any consideration, as it would be expected that their husbands when they married would provide for them. From years of association with the history of this block and from facts that have from time to time come to knowledge, I am satisfied that Kahoe asked the Ngatikoata for the land, not for herself, but for and on behalf of her son, Wi Katene.

7. Taking all the circumstances into consideration and judging by after events, the supposition is undoubtedly in favour of the Whakapuaka Block having been given to Te Kahoe for her son, Wi Katene, who, although the youngest brother, held the premier position according to Native custom through being the son of the eldest brother, Te Puoho.

Para. 220.

8. To me it is quite clear that as the block was first offered to Te Puoho, the father of Wi Katene, at his death the natural result would be, on the Ngatikoata being asked to do so, to make over the block to his son, and that if it had not been for this offer the concession would never have been asked for, and made.

Para. 220.

9. Te Taku, the father of Paremata te Wahapiro, died in the North Island before the Ngatitama immigration went south to join Te Rauparaha at Kapiti, consequently he was not concerned in the subsequent conquest of the South Island, and his family were not persons of any consequence in the eyes of the Ngatikoata. That statement cannot be rebutted that Paremata te Wahapiro was captured at Tutarau when his stepfather Te Puoho was killed. This occurrence took place prior to the colony being founded, and Paremata was not released until 1843 or the early part of 1844.

Para. 221.

10. Paremata was present with Wi Katene (Te Manu) and other chiefs at an interview held with the Natives when Governor Fitzroy visited Nelson in February, 1844, and he was also present at Commissioner Spain's Court held in Nelson in June, 1844, and the next that is known of him is at the trouble caused by him in Happy Valley either at the end of 1844 or the beginning of 1845. That, partly owing to Paremata's hostility towards the European settlers and his general quarrelsome nature, and partly to assert his own rights to the Whakapuaka Block, Wi Katene determined to turn Paremata away from Whakapuaka, and did turn him away in 1845. Paremata left and went to the North Island. He was at Paekakariki when the Wainui Block was sold to the Government, and he was in Wellington in 1853, and joined with the Ngatitao Tribe in selling all his claim to lands in the South Island. Paremata used to visit Whakapuaka at intervals between 1845 and 1853, but he did not return again after attempting to sell Whakapuaka, and he ultimately died up the Manawatu River amongst the Ngatiwakatere. That, though Paremata was an older man than his stepbrother, Wi Katene, on the mother's side, it must be understood that Wi Katene held the paramount position according to Maori custom through being the son of the elder brother, Te Puoho, consequently Huria Matenga, the daughter of Wi Katene, ranks superior to the progeny of Te Taku, the younger brother, whose descendants are the Paremata family.

Para. 222.

11. That Paremata te Wahapiro joined in the sale by the Ngatitao in 1853 and disposed of all his interest, whether possessing any or not, in the South Island, inclusive of Whakapuaka to the Government. That, on the other hand, Wi Katene refused to sell his interest to the Government and strongly opposed any interference with his interest at Whakapuaka, and refused to recognize the right of the Ngatitao to dispose of it, and after an attempt to adjust matters the Government finally abandoned all claim to the Whakapuaka Block and allowed matters to remain *in statu quo*. That had it not been for the strenuous efforts of Wi Katene to retain possession of the block, and his steadfast refusal to accept payment from the Government, the Whakapuaka Block would in all probability have passed to the Government, subject to a reserve of 100 acres for the Natives. This was what was contemplated by the Land Purchase Department, but Wi Katene's opposition saved the block.

12. In the face of these facts it is preposterous that the descendants of the man Paremata te Wahapiro, who did all the mischief, and upon whose disposal of his imaginary interest in the Whakapuaka Block the Government were induced to found a claim to the block, should now endeavour through adventitious means to gain a share of the land which their father actually disposed of, so far as he was concerned, whether he had any title or not thereto. In some of the correspondence relative to the disturbances at Happy Valley Paremata te Wahapiro is described by persons who had only an imperfect knowledge of the matter as the "Chief of Whakapuaka." This is a mistake, he could not possibly be the "Chief of Whakapuaka" under the circumstances already narrated. Had a better knowledge of affairs prevailed it would have been known that "Wi Katene" or "Te Manu," as he was then known as, was the Chief according to Maori custom, and that it was only Paremata's assertiveness and bumptious conduct that caused the Europeans at that time to assume that he was a person in authority, whereas his half-brother, Wi Katene, was highly annoyed with his misconduct and, in fact, turned him away from Whakapuaka in consequence. Para. 223.

13. A petition was before the Legislative Council in the session of 1903, when certain assertions were made by some of the petitioners (the Paremata family) under examination by the Native Affairs Committee, that Huria Matenga had promised them if they remained quiescent, when the Whakapuaka Block was before the Native Land Court that she would protect their interests. These statements were referred to Huria Matenga for reply, and, as she was unable to go to Wellington, it was decided to hear her evidence at Whakapuaka. Mr. Wilford, solicitor on behalf of Huria Matenga, and Mr. T. Ellison on behalf of the Paremata family, went over to Nelson to conduct the examination. It is understood that the petition was reported against by the Native Affairs Committee.

14. As to the alleged statement that Huria Matenga promised, if the Paremata family remained quiescent when the Whakapuaka was adjudicated upon, to protect their interest, I feel convinced that the same is utterly untrue, for the reason that none of the family of Paremata te Wahapiro would presume to dictate terms to Huria Matenga their ariki, according to Maori custom, through her descent from Te Puoho the elder brother. The Paremata family on several occasions attempted to claim an interest in the Whakapuaka Block, but on each occasion have failed to support their contention. Para. 225.
Para. 180.

15. Owing to the difficulty of getting reliable evidence concerning the early history of the block, there has been a disposition to listen to the statements of persons who had little or no knowledge of the matter, and it has come to my knowledge that Mr. John Tinline, an early resident at Nelson, is reported to have stated that the Whakapuaka Block was a reserve made by the New Zealand Company for the Natives. This statement is evidently a misapprehension of the true position of the matter, as the fact was the New Zealand Company had no authority to make reserves beyond the Tenths stipulated for in their deeds of purchase from the Natives, but even then that did not authorize them to localize such lands. It will be seen that the statement is a fallacy. The New Zealand Company claimed to have acquired large tracts of country from the Natives, but the extent of the purchases had to be finally determined by the Commissioner (Spain) sent out by the Imperial Government armed with plenary powers to award such tracts of land as were found to be acquired by the New Zealand Company, but no part of the Whakapuaka Block was allotted to the company in the Nelson award, consequently it will be seen, irrespective of other reasons, that the company had no authority to meddle in any way with the said block. Para. 226.

16. A dispute took place in the early part of 1845 between Paremata te Wahapiro and the European settlers in the Happy Valley on land awarded to the company by Mr. Commissioner Spain, which led to Mr. Donald Sinclair, the Police Magistrate, and Mr. John Tinline, his Clerk, proceeding to the scene of the disturbance. Paremata was very bumptious and threatened to assault both Mr. Sinclair and Mr. Tinline, but nothing eventuated, and they returned to Nelson. As the New Zealand Company considered they were entitled to the land under the award made by Mr. Commissioner Spain in 1844, and had located settlers on it, the Resident Agent, Mr. Fox (afterwards Sir William Fox), decided to fix the northern boundary of the award on the ground with a view to putting an end to further disputes about its position. It is safe to assume that Mr. John Tinline was not present when the boundary was cut, for the following reasons—namely, (a) Prior to Mr. Fox proceeding with a party to cut the line, he informed Mr. Sinclair of the intention and asked him to be present, but Mr. Sinclair declined to accompany the party, and as Mr. Tinline was Mr. Sinclair's Clerk it is reasonable to assume that he did not go either, as he had no separate function in the matter; (b) another reason is that the only known person present when the boundary was fixed who could speak Maori was the Reverend Mr. Reay, and when it was resolved to send a messenger to the pa who could speak Maori Mr. Reay declined to go; if, therefore, Mr. Tinline, who understood Maori, had been present he would in all probability have been asked to go instead. After the commotion caused by Paremata in 1845 nothing further happened at Whakapuaka to necessitate the authorities interfering, consequently the Government officials were not called upon to interfere or concern themselves about the Natives there, the result being that very little was known about them either individually or collectively as to their landed rights or other matters of importance. The reason of this in a great measure was that the Native Settlement was outside the boundary of the New Zealand Company's award, consequently no European interest was involved, and so long as the Natives did not interfere with the European settlers on the company's lands the authorities had no occasion to take cognizance of their inter-tribal proceedings. The position was different with the Native residents at Motueka and Massacre Bay: these Native people resided amongst the European settlers, and came more into contact with the authorities in consequence. Para. 226.

Para. 226.

17. The Natives residing at Whakapuaka owing to their isolated position did not mingle frequently with the European population to the same extent as the Natives of other districts, and as they led a peaceable life, the authorities had no cause to intermeddle with them, hence the reason whereby so little was known about their affairs.

Para. 226.

18. Mr. Tinline, who was Clerk and Interpreter to the Magistrate's Court at Nelson, had a better knowledge of the affairs of the Natives of Motueka and Massacre Bay, in fact his theatre of operations was confined chiefly to matters in Massacre Bay. His first official employment in connection with Native matters so far as records show was to assist the Police Magistrate (Mr. D. Sinclair) to adjust the Native Reserves in Massacre Bay. His next was to assist Major Richmond to acquire the Pakawau Block near Collingwood, and probably the latest was to adjust a Native reserve dispute near Collingwood.

Para. 227.

19. I have furnished the foregoing information relative to Mr. John Tinline so that his knowledge of the history of the Whakapuaka Block can be gauged in case the Paremata family call him as a witness, and that it may be supposed because he is an old resident in the Nelson District that his knowledge is entitled to weighty consideration, whereas as a matter of fact the information he possesses so far as the Whakapuaka Block is concerned is of a meagre description and not well founded. As I have pointed out before, there was nothing to cause a discussion relative to Whakapuaka that would enable Europeans to become acquainted with its early history, consequently an opinion formed under these circumstances as to the rights of parties must have been of a very unreliable nature.

Para. 227.

20. At one time there was a large Native population at Whakapuaka, but these people belonged chiefly to the Ngatitama Tribe (Wi Katene's own people) and were attracted to the locality through Wi Katene settling there, but they had no proprietary rights in the land, and did not claim any, although many of them lived there for many years and ultimately disappeared by death, or moved away to other places until very few remained about the time of Wi Katene's death. That, as far as I am aware, Wi Katene resided on the Whakapuaka Block from his youth to the date of his death, and died at Whakapuaka, and is buried on the property.

Already it is difficult, and as each year goes past it will become more difficult owing to the old people dying who can give evidence, to obtain evidence of a reliable character, as to the true claims and rights to the Whakapuaka Block, and for this reason I feel it my duty, not only to the Government whose servant I have been as Commissioner of Native Reserves, Native Commissioner, and Judge of the Native Land Court for nearly forty years, in which capacities I have been closely associated with Native Affairs and in a favoured position to acquire a full detailed and correct knowledge of their claims, rights, customs, &c., but in justice also to Huria Matenga the rightful owner of the Whakapuaka Block, to place on record during my lifetime for reference if need be in future years the knowledge and facts I have acquired as to Huria Matenga's title during the periods I was engaged in my official capacity in inquiring into the true position of this block.

21. It is my firm opinion, and convictions arrived at in the course of many years spent in the Nelson District where the block is situate from the facts that have from time to time come to my knowledge, that Huria Matenga, the only child of Wi Katene, the son of Te Puoho and Kauhoe, is the true and rightful owner of the Whakapuaka Block.

And I make this solemn declaration conscientiously believing the same to be true, and by virtue of the provisions of an Act of the General Assembly of New Zealand intituled "The Justices of the Peace Act, 1882."

Declared at Wellington this 13th day
of February, 1905, before me—

A. MACKAY.

D. SCANNELL,
A Justice of the Peace in and for the Colony of New Zealand.

197. I do not intend to comment upon the letter of Messrs. Adams and Kingdon, except to point out that it was no doubt the best they could do, and their idea of the best was to tell with little variation the story which had been given credence and credit in the past.

198. The declarations of James and Alexander Mackay, however, are in an entirely different category. They are sworn statements of fact from men of standing who professed to a high degree of knowledge of the matter which comprised the substance of their depositions. The Court has not been able to secure the originals of these declarations, but it is satisfied that the copies forwarded by Adams and Kingdon and now on the Native Department file are admissible evidence of the existence of the documents they represent. The Court is also satisfied that these copies of declarations were admitted as genuine and used to combat the claims opposed to Huria Matenga both in the matter of the application for the Order in Council under the Land Titles Protection Act, 1902, and in the matter of petitions presented to Parliament since 1905. The paragraphs in the affidavits have, for the sake of ease in reference, been numbered by me—otherwise they are exact copies of the copies to hand.

We can take the affidavit of James Mackay first:—

199. *Para. 1:* A profession of thorough acquaintanceship with the Whakapuaka Reserve [*sic.*].

200. *Para. 2:* Huria Matenga died on the 24th April, 1909, at the age of sixty-eight years. She was therefore born in 1841, and would be four years old in 1845—not one year as stated. This is not material.

201. *Para. 3:* There is no evidence that Paremata te Wahapiro was retained by Topi as a slave: evidence is available from John Matapura Ellison, of Karitane, that Wahapiro was held by Taiaroa and treated as befitted his rank, and that it was on account of this and other friendly actions of Taiaroa towards Wahapiro that Ellison (as a boy and as a descendant of Taiaroa) at various times spent his holidays at Whakapuaka as the invited guest of Huria Matenga. There is no evidence that Wahapiro was degraded by having an ear cut. The Ngatitumatakokiri were *not* conquered by Rauparaha. They were practically exterminated by the Ngati Apa, Rangitane, and Ngati Kuia, who in turn were conquered by Rauparaha. The deponent is definite that Whakapuaka was apportioned to Ngati-

koata after the conquest, and most indefinite when he says that Ngatikoata gave the block to Wiremu Katene te Manu for no apparent or expressed reason.

202. *Para. 4*: The H.M.S. "Hazard" did *not* come from Wellington, she casually called in at Nelson while on the way from Wanganui to Wellington. The so-called "outrages" were not the cause of the visit, although the differences between the Natives and the company over the southern boundary of Whakapuaka were mended permanently without bloodshed or trouble at a conference between Major Richmond and Paremata during this visit. Paremata did *not* allege that he had received no payment from the company; he denied having sold Happy Valley, which is the valley of the Whakapuaka River. Actually some of it was contained in Spain's award, the dividing-line being surveyed but not cut, and some remained in the Whakapuaka Block. The evidence contained in this paragraph is heresay of the most inadmissible kind, and treats of events that happened before James Mackay or his family arrived in New Zealand. Para. 150 (b).

202A. *Para. 5*: This is a most interesting paragraph, and it deals with something which James Mackay was personally acquainted with. It is necessary to hark back to a statement in the "Cable Station draft" that the line was fixed by Fox several miles north of the place admitted by the Natives to be correct. Therein Alexander Mackay adds:— Para. 105 (g).

It has always been considered by Wi Katene that the disturbance caused by Te Wahapiro on the occasion referred to was the means of curtailing the boundaries of the Whakapuaka Block by the New Zealand Company as payment for the aggression, it has therefore been considered since then that Te Wahapiro had forfeited his right to share the *remaining* lands with his brother.

A further reference occurs in the evidence of Paramena Haereiti, who was Hemi Matenga's witness in the New Zealand Tenth's case (Nelson M.B. 2, pp. 329 and 335) when he says that "Wi Katene gave the land as payment for the 'hara' (serious offence—sin) of Paremata."

It is also necessary to revert to a passage in Alexander Mackay's letter of 24th August, 1896, that Wi Katene inspected the line, ultimately agreeing to it "although he resented Paremata's turbulent conduct, which he believed had led to his losing part of his land." (But see the last sentence of para. 11 of this report, in which Mackay himself refers to the line as that of Spain's award.) Para. 133 (13).

It will be remembered that the line (surveyed but not cut) of Spain's award marked the southern boundary of the Whakapuaka Block, and that, consequent upon Wahapiro's demonstration and demand, a portion of the line (shown on the plan attached hereto and marked C to D) was, on the 21st January, 1845, cut on the ground by Mr. Stephens, the New Zealand Company's principal surveyor. The remainder of the line from the western end of Stephens's line to the sea was the portion cut by Thomas Brunner, the surveyor that James Mackay was assisting. Brunner's line did not, however, join Stephens's line. Brunner commenced his survey at the sea at a point about 83 links north of where he should have started, and, pursuing a bearing eight and one-half minutes out of the parallel of Stephens's line missed the end of Stephens's line by 63 links (not two or three chains) as stated by James Mackay. (See plan attached.) The line subsists to this day, and a calculation shows that Whakapuaka Block has lost a tittle of about *four acres and three roods* (4 acres 3 roods) through Brunner's mistake. It is striking commentary upon the zeal of Alexander Mackay in the cause of his friends and upon the value of his evidence generally that he should stress the views of Wi Katene in a matter which he must have known concerned only an innocent mistake of a surveyor, and was not to his own knowledge a matter of forfeit exacted by the New Zealand Company or Government as punitive damages, or a matter in which Paremata was involved. Incidentally, Pitama te Iwikau, the peacemaker between Wi Katene's party and Brunner's party, was the husband of Miriama Konehu, sister of Wahapiro. Para. 150 (b).

203. *Para. 6*: It was not necessary for Tipene Paremata to prefer a claim before James Mackay, as Mackay had no jurisdiction over this land. It seems quite possible that Paremata Wahapiro could have been on the block without James Mackay knowing of it, as the latter had multifarious *official* duties to attend to elsewhere and none respecting Whakapuaka Block.

204. *Para. 7*: This concerns one of those private deals of the Mackay family with Wi Katene te Manu which may in the past have clouded the issue.

205. *Para. 8*: This paragraph is useful, as it bears out what has previously been said—*i.e.* (1) That lands were reserved under the clause of the Ngatitoa deed which provided that "certain places are agreed to by the Queen of England to be reserved for our relations residing on the said land"; and (2) that this reservation was made *prior* to Wi Katene te Puoho signing the deed of 7th March, 1856, which provided for no reserves and generally described the land passing as "all the places for which we did not receive payment in any former sale of land." Wi Katene would have referred to the land as "mine" and the gift to "me," even if it had been owned by all the people—a Maori engaged as he was invariably uses the first person even if he is referring to events which happened before he was born. Para. 83.

Paras. 9 and 10: No comment.

206. *Para. 11*: James Mackay, in this declaration, says that Maka Tarapiko in 1862 fixed the Whangamoa River as the northern boundary of the land given by them to Wiremu Katene te Manu, but asserted that Donald McLean had stipulated that Ngati Koata were to have a reserve of 100 acres to the south of the river, to which Wi Katene agreed. Alexander Mackay, in his evidence before the 1883 Court, says that he also was present at this meeting when "the Koatas wished the reserve made where they had formerly lived." He states, further, that this claim was strenuously opposed, but that after two days' discussion, and purely as a matter of concession, the Ngati Koatas were given 100 acres on the south side of the river. Para. 72 (c).

207. The Ngati Koata deed of the 5th March, 1856, reserves an area of 100 acres at Whangamoa from the sale, and the plan attached to this particular deed shows the 100 acres reserved by the Ngati Koata people as being for the main part to the south of the Whangamoa River and thus within the boundaries of the Whakapuaka Block, there being only a slight tinge of colour to the north of this river. The deed was executed at Nelson after Donald McLean had called at Whakapuaka and reserved the Whakapuaka Block to the people living there.

208. On the 12th August, 1862, James Mackay, in a report to the Native Secretary, Wellington, gave a full account of the proceedings of this meeting, which adjusted the question of the Whangamoa Reserve. The letter reads as follows (Mackay's Compendium, Vol. I, page 333):—

Assistant, Native Secretary's Office, Collingwood, 12th August, 1862.

SIR,—

(a) The question as to the position of the northern boundary of the lands held by the Ngatitama at Whakapuaka having been long pending, and the Provincial Government of Nelson being desirous of surveying some land in that neighbourhood, I deemed it expedient, when at Nelson in June last, to arrange it.

(b) I accordingly proceeded to the pa at Whakapuaka, and on the 27th and 28th days of June had interviews with the chiefs Wiremu Katene te Manu of the Ngatitama and Maka Tarapiko of the Ngatikoata, and other Natives interested in the matter. On the 28th it was arranged that the River Whangamoa, from its source to the sea, should form the northern boundary of the Whakapuaka lands, and that a reserve of 100 acres at Whangamoa, intended for the Ngatikoata (the position of which had not been defined) should be included within the Ngatitama boundary, but should be marked off for the Ngatikoata.

(c) In order to more clearly understand the case, it may be considered necessary to make the following remarks on it, and on my proceedings:—

(d) In 1856 the Ngatikoata ceded to the Crown all their claims to lands as far as Maunganui, a place a short distance south of Whangamoa. The Ngatitama and their chief, Wiremu Katene te Manu, refused to acknowledge the right of the Ngatikoata to sell any land south of the River Whangamoa. Mr. McLean also found it impossible to purchase any lands from the section of the Ngatitama residing at Whakapuaka. On investigating the case, and inquiring from Maka Tarapiko why himself and the other Ngatikoata had sold the land as far as Maunganui, he answered that the lands between O Mokau, north of the River Whangamoa, and Maunganui, south of Whangamoa, belonged to both the Ngatikoata and Ngatitama Tribes, and for many years previous to Mr. McLean's purchase both tribes had disputed about the boundary. He considered that the Ngatikoata had not the sole right to dispose of the land as far as Maunganui. If both tribes had joined in doing so, it would have been valid.

(e) The chief, Wiremu Katene te Manu, on his part, expressed his determination to have the River Whangamoa as the boundary of the lands held by himself and his tribe, and would not admit the right of the Ngatikoata to sell any land south of that river. He also demanded that the reserve of 100 acres, intended for the Ngatikoata, should be laid off on the northern bank of it.

(f) Finding that the Ngatikoata could not prove a clear title to any of the land south of Whangamoa, I then proposed that the River Whangamoa should be the northern boundary of the Whakapuaka lands, provided the reserve of 100 acres for the Ngatikoata was laid out on the south side instead of on the north. After much argument and numerous refusals on the part of both Wiremu Katene te Manu and Maka Tarapiko, this was agreed to; and whenever the reserve of 100 acres is surveyed, both tribes will attach their names to the plan of the boundaries.

(g) The other boundaries of the Whakapuaka Reserve are well known, and have been arranged for many years past.

(h) Hoping that the steps taken to conclude this long outstanding dispute will meet with the approval of His Excellency the Administrator of the Government.

I have, &c.,

JAMES MACKAY, JUN.,

Assistant Native Secretary.

The Native Secretary, Wellington.

209. The acknowledgment of this report by the Acting Native Secretary is as under:—

SIR,—

Native Office, Auckland, 8th November, 1862.

In acknowledging the receipt of your letter of the 12th August last, reporting your proceedings, when in Nelson in June last, in arranging the position of the northern boundary of the lands held by the Ngatitama at Whakapuaka, I am directed by the Minister for Native Affairs to inform you that he has during a long time past, observed with pleasure that your reports generally show that what cases are taken in hand by you are really settled, and that your proceedings in this instance are entirely approved.

I have, &c.,

H. HALSE,

Acting Native Secretary.

The Assistant Native Secretary, Collingwood.

210. The following inconsistencies between the declaration of James Mackay and his report of forty-three years previously must be noticed:—

Firstly: We are told by the report that Maka Tarapiko did not (as affirmed in the declaration) fix the boundary of the gift to Wiremu Katene te Manu as the Whangamoa River. He claimed and insisted that the land between Maunganui (a mountain situated about the middle of the north end of Whakapuaka) and the Whangamoa River (the north-eastern boundary of the north end of the block) was owned by Ngati Koata and Ngati Tama jointly, and that had Ngati Tama joined in the sale such area would have passed to the Crown under deeds of 1856. If it seems reasonable that one should place more reliance upon James Mackay's report of 1862 than upon his declaration of 1905, then the definite suggestion in the declaration that Maka Tarapiko acknowledged a gift to Wiremu Katene te Manu of the land as far north as the Whangamoa River can be wholly discounted.

211. This report of 1862 has a further value in that it was written and shows that it was written before any idea was formed that Whakapuaka was the sole property of Wi Katene. The following extracts are particularly valuable:—

Para. (a): "the lands held by the Ngati Tama at Whakapuaka."

Para. (b): "the Chief Wiremu Katene te Manu of the Ngati Tama and Maka Tarapiko of the Ngati Koata and other Natives interested in the matter."

Para. (d) : “ *The Ngati Tama and their chief Wiremu Katene te Manu refused to acknowledge the right of the Ngati Koata to sell.*”

“ *Mr. McLean also found it impossible to purchase any lands from the section of the Ngati Tama residing at Whakapuaka.*” (Note.—This is correct—no member of Paremata Wahapiro’s family who lived at Whakapuaka ever sold land, although Wiremu Katene te Manu did by signing the deeds of 7th March, 1856, and 15th May, 1852.) Paras. 83 and 84.

“ *If both tribes had joined in doing so it would have been valid.*”

Para. (e) : “ *The chief, Wiremu Katene te Manu, on his part, expressed his determination to have the River Whangamoa as the boundary of the lands held by himself and his tribe.*”

In the acknowledgment by Mr. H. Halse of James Mackay’s report, the land is referred to as “ *the lands held by the Ngati Tama at Whakapuaka.*”

212. *Para. 12 :* One can hardly see why James Mackay should arrange the boundaries of the Whakapuaka Reserve. The Whakapuaka Block comprised an area of land which through having been excepted from the operation of any deed of sale was deemed to be Native land held by the Maoris under their customs and usages. It was not a Native Reserve. James Mackay may have clarified the matter of the boundaries of this Native land, but he had no jurisdiction to fix its boundaries, name it, or determine its ownership. He could and did, however, do valuable work as a conciliator.

213. As a final observation upon this phase, one must say—(1) That Alexander Mackay was present at the meeting when Maka Tarapiko, chief of the Ngati Koata, claimed that his tribe owned the land between Whangamoa and Maunganui (the northern part of the Whakapuaka Block) in common with the Ngati Tama Tribe, and (2) Alexander Mackay in his evidence before the Court of 1883 said, “ *I never heard any elder Koata say they had any claim to Whakapuaka.*” Para. 72 (e).

214. *Para. 14 :* James Mackay was from all accounts an observant person, and it is strange that he never noticed Kahiwa, Miriama, Tipene, and Ripine living upon Whakapuaka Block between 1847 and 1864. However, as facts cannot be proved by negatives, the paragraph has no value as evidence. Mackay with his wide knowledge of affairs should have been able to state positively where the family and children of Paremata Wahapiro did actually live from 1847 to 1864.

215. We now turn to the declaration of Alexander Mackay. In para. (2) he says that Ngati Koata owned the Whakapuaka Block and gave it to Kauhoe for her son Wi Katene te Puoho. At the 1883 hearing he denied that Ngati Koata ever had any right, and said that Kauhoe’s request for land was merely Maori custom. In the Cable Station draft he says that the land was given to Kauhoe and her son. If Huria Matenga’s title to the land was a gift solely to or for her father Wi Katene, why was not Alexander Mackay asked by Hemi Matenga to give this information in his evidence before the 1883 Court? Might not the reason be that such evidence would have betokened Huria’s insincerity and have brought before the Court the parties who had agreed to lie quiet and let her establish against the original Ngati Kuia, Rangitane, and Ngati Apa owners the Ngati Tama rights under the conquest and occupation “ *take* ” set up by her conductor? Para. 72 (e).
Para. 72 (c).
Para. 105 (c).

216. The statement in para. (3) is a further variation on former evidence, and again establishes Ngati Koata rights over Whakapuaka at one time. It would be interesting to know where the authority for this statement came from.

217. *Para. (4)* requires no comment, except that it is doubtful if Te Puoho intended to take or occupy land with the very inadequate force which accompanied him.

218. A serious objection to the statement contained in the beginning of para. (5) is that Wi Katene had ample lands through his father Puoho. In fact, the children of Te Puoho must have had extensive and widely spread interests, as the reserves made to them by Crown grant from the various sales to the Crown will show. Furthermore, these lands were not situate in the Whakapuaka district—they are all well to the westward—one considerable reserve in the names of Hori te Korama, Herewini te Roha, and Wiremu Katene (all children of Te Puoho) being at Karamea right over on the West Coast. It was Kauhoe and her other children and grandchildren who were landless. Furthermore, although Alexander Mackay is (for the first time) consistently careful always to say that the gift “ *was to Kauhoe for her son Wi Katene,*” Appendix A to this report will show what slender authority he had for making such a definite statement, apart altogether from the fact that gifts were never made to one person in trust for another single known person.

219. The balance of para. (5) and the whole of paras. (6) and (7) are conjecture or hearsay evidence, and of no value whatever. The laboured attempt to show why Kauhoe should make Wi Katene her primary care because “ *for all she knew Paremata was dead and so needing no further consideration* ” leaves out of all account the widow and orphan children (presumed) of Paremata te Wahapiro. These children were Kauhoe’s “ *mokopunas,*” and it is just as fair and more reasonable to conjecture that her primary care would be for these, her helpless “ *mokopunas,*” than of her twenty-four-year-old son Wi Katene.

220. Paras. (8) and (9) are mainly matters of opinion where they do not stress matters of little moment.

221. *Para. (10) :* Alexander Mackay says that Wi Katene turned Paremata away in 1845 after the Happy Valley affair. James Mackay in his declaration says (para. 6) that his father gave the Natives an entertainment in 1846, and that Paremata shortly afterwards went away to Wellington. James Mackay says that he never again saw Paremata at Nelson or Whakapuaka, while Alexander Mackay says that Paremata used to visit Whakapuaka at intervals between 1845 and 1853. The remainder of para. (10) is dogmatism which conveniently overlooks the fact that Puoho had three children—nobly born—who were older than Wi Katene and who, on Alexander Mackay’s own showing, should have ranked paramount to Wi Katene in 1845. To cut out these people he must centre the right in Kauhoe, and as she also had children older than Wi Katene and just as nobly bred he must necessarily make Kauhoe out to be merely the vehicle by which the bounty of Ngati Koata is conveyed to Wi Katene te Puoho exclusively.

222. *Para. (11)* has been exhaustively dealt with already. It is interesting to add, however, that Alexander Mackay now says that the Government allowed matters to remain *in statu quo* which bears

Para. 72 (b).

Para. 85 *et seq.*

out the contention that he was wrong in 1883 when he suggested that the land had been left by the Government or Natives entirely in Wi Katene's hands.

223. In para. (12) the declarant goes rather far in attributing to William Fox an imperfect knowledge of the identity of the "Chief of Whakapuaka" in 1845, and makes his offence worse by suggesting that there is anything in the declaration under review that shows that William Fox made a mistake in assuming that a certain person was "Chief of Whakapuaka." If William Fox was wrong, then Major Richmond (Superintendent of the Southern Division of New Zealand) and Mr. Forsaith (Government Interpreter) also must have been in error when they recognized Paremata as the Chief of Whakapuaka and settled (permanently and for good) the disputed boundary with him.

224. Para. (13) has already been dealt with. (See paras. 178, 179, and 180 of this report.)

225. Para. (14) overlooks the old rule of Maori custom that "Mana rangatira" in a superior does not debar social inferiors from claiming an interest in land to which each have rights backed up by occupation. The deponent is wrong when he says that the Paremata family claimed an interest in Whakapuaka Block. They were not represented (except perhaps by Huria) at the 1883 hearing—the only occasion when this land has been before the Court.

226. Paras. (15), (16), (17), and (18) of the declaration are apparently designed to discredit the evidence of a John Tinline should he at any time come forward with a statement of his knowledge of the early history of this block. In actual fact, John Tinline felt the weight of Paremata's arm when Donald Sinclair interviewed Paremata over the Happy Valley dispute about a week before the Mackay family arrived in New Zealand. It is possible that John Tinline did not know the whole history of Whakapuaka, but it is unfair to suggest that he should know less of incidents that he participated in than the declarant, who was not even in the country when the incidents occurred.

227. Para. (19) is an apologia defence of paras. (15) to (18) as para. (20) is of the declaration as a whole. Para. (21) is a statement of opinion of a partisan.

228. Comparing as we now can the varying and contradicting statements contained in the "Cable Station draft," the evidence of 1883, the report of 1896, and the declaration of 1905, one feels that there is considerable justification for the remarks of Mr. Sim when in his address to this Court he said:—

I am amazed at the deadly persistency with which Alexander Mackay pursued these unfortunate people. Whenever and wherever they sought a way of relief they saw the massive figure of Alexander Mackay blocking the path. I am amazed at the tremendous efforts he made to establish Huria Matenga in the sole ownership of this land. I am amazed at his devotion to her cause and at the way he wrestled with the truth and sometimes overcame it. It is no wonder from his frequent appearances in this case the Maoris got the idea the decision against them was given by Judge Mackay. It was he certainly who killed every attempt they made to get a rehearing.

229. Mr. Sim was at pains to make it clear that while he must severely criticize the statements made by both James Mackay, jun., and Alexander Mackay, he was far from wishing to assail the high character which each of these gentlemen possessed. This Court is in full accord with the latter sentiment and would point out that no official or judicial act of the late Judge Mackay has been the subject of unfavourable comment at this inquiry.

230. From 1896 to 1934 petitions have been presented to Parliament praying for a reinvestigation of title to the Whakapuaka Block. In each case the petition was referred by the Native Affairs Committee to the departmental head for report. Taking them in the reverse order to which they were received these reports are to the following effect:—

(a) The report of 5th September, 1934, upon petition 123/1934 was purely a reference to previous reports upon petitions 262/1933, 361/1929, and 56/1928.

(b) The report of 27th December, 1933, upon petition 262/1933 was purely a reference to previous reports upon petitions 361/1929 and 56/1928.

(c) The report of 12th October, 1929, upon petition 361/1929 was purely a reference to a previous report upon petition 56/1928.

(d) The report of 31st August, 1928, upon petitions 56 and 57 of 1928 was a reference to the proceedings in regard to petitions 60/1896, 2/1897, 6/1898, and 8/1903 (L.C.).

It also draws particular attention to Judge Mackay's report of 1896 and to the fact that there was on file "long" declarations by James Mackay and Alexander Mackay. Attached to the report of the Under-Secretary is a report of the Registrar of the Native Land Court which, after quoting the judgment of the 1883 Native Land Court in full, adds as comment the following:—

It appears that even at this time the Court decided that although Wi Katene had considerable mana he had no actual right to be included.

In regard to William Fox's reports (Mackay's Compendium, folii 268-270) there is no doubt that Te Wahapiro (Paremata in these reports) took up a most aggressive attitude when his rights were questioned to a small valley of about four or five hundred acres on the sea-coast known as Whakapuaka. These reports also indicate that Paremata had sold the valley and received the "utu" from the Europeans.

The Whakapapa given in the petition may be compared with the Whakapapa recited by Hani Kamu in his evidence on the probate of Huria Matenga's will. (Wn, M.B. 16/326-7.)

An unfortunate lapse makes the comment of the Registrar a mis-statement of fact. The "Wi Katene" mentioned in the judgment was the deceased father of Huria Matenga and the person through whom she derived all her rights to the land. The "Wi Katene te Puoho" who signed the petition under review by the Registrar was a son of Heni Tipu, a grandson of Paremata Wahapiro, and a namesake of Wi Katene te Manu or Te Puoho. It is also rather unfortunate that the Registrar should interpret William Fox's report as stating that Paremata Wahapiro had sold the valley *on the sea-coast known as Whakapuaka*, as it makes it appear that Wahapiro sold his interest in the Whakapuaka Block itself. Actually, of course, the dispute was over land not on the sea-coast but within the boundaries of Spain's award, the northern boundary of which is the southern boundary of Whakapuaka Block.

(e) The report of 16th September, 1912, upon petition 186/1912 was a reference to previous proceedings and findings upon petitions Nos. 60 and 535 of 1896, 317 of 1909, 6/1898 (L.C.), and 33/1910 (L.C.).

This report adds: "At the same time it seems very strange that any one Native should be entitled to such a large area (18,000 acres) in the Middle Island."

(f) The report of 13th October, 1910, upon petition 33/1910 (Legislative Council) is exactly the same as the report upon petition 186/1912 (clause (e)).

(g) The report of 5th November, 1909, upon petition 317/1909 was as follows:—

"I do not think I can do better than refer you to the findings of your Committee on petitions Nos. 60 and 535 of 1896, and to the report of the Legislative Council of the 14th October, 1898, on petition No. 6 of that year."

Before issuing this report the Under-Secretary referred the matter to the Chief Judge (Jackson Palmer), who in his reply remarked that it seemed very strange that any one Native should be entitled to such a large area (18,000 acres) in the Middle Island.

(h) The report of 28th September, 1903, upon petition 689/1903 was purely in reference to previous reports upon similar petitions.

Correspondence regarding previous petitions was not available to this Court. It has probably been burned in the Parliament Buildings fire.

231. From the foregoing it will readily be seen how the official attitude all along was to direct attention to the viewpoints of Alexander Mackay as expressed by his letter of 1896, and how easily the Maoris praying for a rehearing could conceive the idea that it was a judgment of Judge Mackay's that they were attacking.

232. At a sitting of the Native Appellate Court held at Wellington on the 22nd September, 1910, Hemi Matenga applied to have the Whakapuaka Block declared European land. The application was not granted. It is interesting to note that the late P. Sheridan, whose knowledge of Native affairs was unique, expressed the opinion in a memorandum dated 25th August, 1910, that "this application should be opposed until the question of a trust is settled."

233. This completes the marshalling of all material evidence that the Court is aware of.

234. The Court has arrived at the following conclusions:—

(a) That the evidence adduced to the Native Land Court of 1883 was insufficient to furnish that Court with the facts of the true history and ownership of the Whakapuaka Block.

(b) That Huria Matenga agreed to contest the Ngati Kuia and Ngati Koata claims on behalf of certain other descendants of Kauhoe (all being close relations of hers and all being members of the Ngati Tama Tribe), and that she practised a fraud upon those relations when she failed to have their names included with her own in the title to the Whakapuaka Block.

(c) That, through this action of Huria Matenga and the failure of her husband Hemi Matenga and witnesses at the 1883 hearing to have the full history of the Whakapuaka Block disclosed to the Court, the rights of sundry persons who were in occupation of parts of the block in and around the year 1840, and who without in any way alienating their interests lived upon parts of the block until their respective deaths, have never been the subject of a judicial inquiry.

(d) That it was reasonable for certain persons resident upon the block in 1883 to remain quiescent and to rely upon the substance of the promise of Huria Matenga to them to have their names included in the title until, say, the year 1896, when the actions of Hemi Matenga (husband of Huria Matenga) in ousting those persons should have made it clear to them that Huria was not going to honour such promise to them.

(e) That since the year 1896 descendants of Kauhoe have taken all reasonable steps and have made every endeavour to have the question of ownership of the land reopened, and that their efforts have been thwarted largely by statements and declarations which to this Court appear unworthy of the value hitherto placed in them.

(f) That Kauhoe was a sister of Waipunaahau (*vide* Wellington M.B., 12/56), mother of Te Peehi Kupe, whose murder at Kaiapoi and the alleged desecration of whose bones were reasons that have been given for the conquest of the Tasman Bay and Golden Bay districts. The Court therefore sees nothing abnormal in her approaching in her trouble the highest local representatives of the conquerors—the Ngati Koata—particularly so if the Court is correct in assuming that she did not approach Ngati Koata until after her late husband's people (Ngati Tama and Ngati Rarua) had failed to avenge his death.

(g) That, without in any way expressing an opinion upon the nature or even the existence of the alleged gift, it can be stated positively that Kauhoe was of such high rank and Maori custom such that she could not have been present in company with her son Wi Katene te Puoho at the ceremony of a gift to him of land without in her own right participating in the benefits of such a gift. The Court knows of no Maori custom by which land can be given to one as trustee for another.

(h) That, while there is a possibility of Ngati Koata having been entitled with others to rights in the northern end of the block, such rights by now cannot but be prejudicially affected by the long delay that has ensued between the investigation of 1833 and their one petition of protest in 1935.

(j) That those claiming under the petition of Waka Rawiri and another have shown no strong claim to the land, and have offered no satisfactory reason why they failed to make a claim before the Court of 1883, or why they waited fifty years since 1883 before pressing to have their rights investigated.

(k) The fact that the "take" to Whakapuaka Block is never mentioned without reference to Kauhoe in some way is considered strong evidence that she had at least considerable interests in her own right in the block, and, as such block was in 1883 deemed to be held by the Natives under their customs and usages, the Court cannot but suggest that all descendants of Kauhoe must be found to have some share or interest in such block, and that a determination which gives the land to any one descendant to the exclusion of all others must be wrong in principle and unjust in effect.

(l) That a reinvestigation of the ownership of the Whakapuaka Block, and if necessary an adjustment of the equities upon the basis of such a finding, appears to be desirable.

For the Court—

JNO. HARVEY,
Judge.

SUMMARY OF EXTRACTS FROM THE MINUTES SHOWING A MECHANICAL COUNT OF VARYING STATEMENTS OF THE EFFECT OF THE NGATI KOATA GIFT OF WHAKAPUAKA BLOCK.

Name of Witness.	M.B. Reference.	That the Gift was to Wi Katene.		That the Gift was to Kahoe.	That the Gift was to other than Kahoe or Wi Katene.
		In Reply to Hemi Matenga.	In Reply to other Conductors.		
Hemi Whiro ..	Nelson, 1/15..	It was given to Wi Katene and his mother.
" ..	" 1/16..	I heard that Te Whetu had given the land to Wi Katene.	..	..
Meihana Kereopa ..	" 1/16..	..	Koata gave the land to Wi Katene and we remained there in slavery.	..	
" ..	" 1/16..	..	..	..
Ihaka Tekataka ..	" 1/17..	..	Koata gave the land to Wi Katene for himself, not for the tribe.	Te Whetu gave the land to Kahoe, mother of Wi Katene.	
Hoera Ruruku ..	" 1/18..
" ..	" 1/19..	Te Mako Ihairara and Tepene on behalf of Koata gave Whakapuaka to Wi Katene but we continued to have a right to it.	..	Kahoe asked Te Whetu for a piece of land to live on. He told her to go to some other member of Koata. She went to Te Mako Ihairara and Tepene Mukumai who told her to go to Whakapuaka and showed her the boundaries.	..
" ..	" 1/20..	This land was shown to Wi Katene as land on which they might live.
" ..	" 1/20..	Some of the Ngati Koata lived on the land after the gift to Wi Katene, but I cannot give their names.
Ngamuka Kawheru ..	" 1/20..	Kahoe and her son came to Te Whetu asking for some land for herself and boy on which they might live. She was sent to Whakapuaka, but told not to take others with her. Whakapuaka was given by Ngati Koata to Kahoe and her son Wi Katene. Te Wahapiro was at Murihiku at that time. The Ngati Tama referred to are Kahoe and her family. (To Hemi Matenga.) These people were at Rangitoto when Whakapuaka was given to Kahoe and Wi Katene. These were the only persons to whom the land was given. The boundaries of the land given were described.
Ihaka Tekataka ..	" 2/259	..	..	..
" ..	" 2/260	..	..	..
" ..	" 2/261	..	..	..
" ..	" 2/261	..	..	..

"	"	2/264	..	..	I know of the gift of Whakapuaka by Ngati Koata to Kauhoe from Kahupakira to Waihi.	..
"	"	2/265	..	..	I heard of the gift by Ngati Koata to Kauhoe. The land has been dealt with by the Court. Don't know whether all the family of Kauhoe are in the title to the land.	..
Paramena Haerititi		2/278	..	..	Te Whetu of Ngati Koata gave Whakapuaka to Kauhoe. It was before the Nelson District was sold to the company that this gift was made. The reason why Kauhoe did not occupy Waimea was owing to the few people belonging to her party and the fear of being attacked by Ngaitahu. It was probably three years after Whakapuaka was given to Kauhoe that the company arrived.	..
"	"	2/280	..	..	I don't know of the source from which Te Whetu obtained a right to Whakapuaka, but I know it did belong to Te Whetu because of his giving it to Kauhoe.	..
"	"	2/281	..	..	Don't know of the boundaries of the land included in the gift of Te Whetu to Kauhoe.	It was after Wi Katene's return from Te Taitapu that Whakapuaka was given to himself and Kauhoe.
"	"	2/282	..	..	Kauhoe was related to Ngati Koata—that was the reason why Te Whetu gave the land to her.	..
"	"	2/285	..	..	In my opinion the rohe of Ngati Koata did not extend beyond Whakapuaka. the part they gave to Kauhoe.	I heard that Te Whetu gave Whakapuaka to Kauhoe and Wi Katene, but this was not made on the first arrival.
Hohaia Rangiauru		2/296	..	..	Cannot say if Wi Katene had remained at Te Parapara whether his name would have appeared in the books of the company.	..
"	"	2/300	..	..	If Ngati Koata had not given Wi Katene land at Whakapuaka he would not have taken part in the proceedings.	..
"	"		..	..	Cannot say how Te Whetu derived a right to Whakapuaka to enable him to give it to Kauhoe. It was probably through the conquest of Te Rauparaha that they gained a right to the land.	..

SUMMARY OF EXTRACTS FROM THE MINUTES SHOWING A MECHANICAL COUNT OF VARYING STATEMENTS OF THE EFFECT OF THE NGATI KOATA GIFT OF WHAKAPUAKA BLOCK—continued.

Name of Witness.	M.B. Reference.	That the Gift was to Wi Katene.		That the Gift was to Kauhoe.	That the Gift was to other than Kauhoe or Wi Katene.
		In Reply to Hemi Matenga.	In Reply to other Conductors.		
Meihana Kereopa ..	Nelson, 2/313	..	..	The gift by Te Whetu of Whakapuaka to Kauhoe was made after the company arrived. Remember the occasion, as Kauhoe went to my home at Raingitoto. She came from Te Taitapu.	..
"	" 2/315	..	..	My statement is correct relative to the gift by Te Whetu to Kauhoe being after the company's arrival. I disagree with Ngati Koata when they say the gift was after the arrival of the company [<i>sic</i>].	..
"	" 2/318	Don't know the boundaries of the land that was given to Wi Katene. I remember when Te Whetu gave the land to Wi Katene.	..	..	..
"	" 2/322	..	..	I don't know the boundaries of the gift to Wi Katene, but I know that the land was given by Te Whetu to Kauhoe before the arrival of the company.	..
Paramena Haereti	" 2/328	..	..	It was before the gift of Whakapuaka to Kauhoe that Wi Katene claimed the land from Horoirangi to Waimea. Cannot say why Kauhoe went to Ngati Koata to ask for land while at the same time her son Wi Katene was already possessed of land between Horoirangi and the mouth of the Waimea River.	..
"	" 2/328	..	..	It was because Kauhoe was landless that she asked that Whakapuaka be given to her.	..
"	" 2/330	..	..	..	It was in order for Kauhoe to ask Ngati Koata to give the land for herself and Wi Katene.
"	" 2/331	..	..	The reason why Kauhoe went to Ngati Koata to ask for land at Whakapuaka was owing to her not having any land elsewhere. It was under this right that Wi Katene occupied at Whakapuaka. Kauhoe was also the mother of Paremata. Kauhoe asked for the land at Whakapuaka for Wi Katene. Paremata was in slavery at the time.	..

The gift of Whakapuaka to him (Wi Katene) was the basis of his rights to the Nelson District. If he had remained at Parapara he would have no rights to the land extending to the Waimea. But as he had acquired Whakapuaka and the land to the south of it was lying vacant on to the Waimea he gained a right to that locality as well. If land was given to another within fixed boundaries, the person to whom it was given would not be entitled to the part beyond.

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1. Entrance into the block to Cable Bay and to the Macri Pa.
2. Pitcher's house, which was opposite the church-house. This was also known as Te Kopu-o-tenuku.
3. Original site of church-house before it was shifted to the site opposite Pitcher's home.
4. Wahapiro's home, called Hatana.
5. The "Hop Garden," or the plantation known as Te Taekai.
6. The site of the old raupo whare.
7. House occupied by James Harrison and his wife.
8. The dairy-farm known as Urungaruhe and occupied by Europeans.
9. Kowhitiwhiti.
10. Kaiata, which was near Wi Katene Puho's old home.
11. Where Paru Inia lived with his wife.
12. Big weatherboard house named Turakiwaru, occupied by Mr. Ellison; also known as Martin's house.
13. House occupied by Rangira and his wife Te Ahi—built for Tipene by Wi Katene Puho.
14. Place where Te Atiraira lived, and named Kuhakuha.
15. Home of Tane Pirimona and Kerehi Putai, at Kahupakira.
16. Where Renae Pau used to live.
17. Where Nganianga lived just before she died—2 or 3 days before. She was the second wife of Wahapiro.
18. The old house in which the old woman Rivia lived.
19. The newly-built cottage occupied by Wikitoria, the mother of Horia Matenga.
20. Old house named Nukunuku, where Horia Matenga lived.
21. Cottage used by Percy Adams as a shooting lodge.
22. Boat-sheds owned by N'Konta, Hohapata, Tame Pirimona, Renae Pau, and others.
23. Cemetery named Haua.
24. Old Pa, on Pipins Island.
25. Old Pa named Te Rotokura. Once the main Pa.
26. The old Kainga, where signs of the old wicker fences are still to be seen, and referred to by Ngawaina as the Pa.
27. The old Church-house.
28. Site of old Pa named Ngawhakapakoko.

