1905.

NEW ZEALAND.

# "THE MAORI LAND CLAIMS ADJUSTMENT AND LAWS AMENDMENT ACT, 1904"

(REPORT OF THE ROYAL COMMISSION APPOINTED UNDER SECTION 11 OF).

*Laid on the Table of both Houses of the General Assembly by Command of His Excellency.*

## COMMISSION.

PLUNKET, Governor.

To all to whom these presents shall come, and to George Boutflower Davy, of Wellington, Esquire, David Scannell, of Auckland, Esquire, and Apirana Turupa Ngata, of Gisborne, Esquire.

WHEREAS it is provided by section eleven of "The Maori Land Claims Adjustment and Laws Amendment Act, 1904," that it shall be lawful for the Governor by Order in Council to appoint one or more Royal Commissions to investigate the claims and allegations set out in the petitions referred to in the Second Schedule to the said Act, and to make such recommendations as appear to accord with the equities of each case: And whereas it is expedient that a Commission should be appointed as aforesaid:

Now, therefore, know ye that I, William Lee, Baron Plunket, the Governor of the Colony of New Zealand, in pursuance and exercise of the power and authority conferred upon me by the said Act, and of all other powers and authorities enabling me in this behalf, and acting by and with the consent and advice of the Executive Council of the said colony, do hereby appoint you the said

GEORGE BOUTFLOWER DAVY,
DAVID SCANNELL, AND
APIRANA TURUPA NGATA,

to be a Commission to investigate the claims and allegations set out in the petitions referred to in the Second Schedule to the said Act, and set out in the Schedule hereto, and to make such recommendations as appear to accord with the equities of each case.

And for the better enabling you to carry these presents into effect you are hereby authorised and empowered to make and conduct any inquiry hereunder at such place or places in the said colony as you may deem expedient, and to call before you and examine on oath or otherwise, as may be allowed by law, such person or persons as you may think capable of affording you information in the premises; and you are hereby empowered to call for and examine all such books, documents, papers, maps, plans, accounts, or records as you shall judge likely to afford you information on the subject of this Commission, and to inquire of any person concerning the premises by all other lawful ways and means whatsoever.

And, using all diligence, you are required to transmit to me, under your hands and seals, your opinions and recommendations resulting from such investigations and inquiries not later than the thirtieth day of June, one thousand nine hundred and five, or such extended date as may be appointed in that behalf.

And it is hereby declared that this Commission shall continue in full force and virtue although the inquiry be not regularly continued from time to time by adjournment; and that you and any two of you shall and may from time to time proceed to the execution thereof and of every power, matter, or thing herein contained.

And, lastly, it is hereby declared that this Commission is issued under and subject to the provisions of "The Commissioners Act, 1903."

Given under the hand of His Excellency the Right Honourable William Lee, Baron Plunket, Knight Commander of the Royal Victorian Order, Governor and Commander-in-Chief in and over His Majesty's Colony of New Zealand and its Dependencies; and issued under the Seal of the said Colony, this twenty-third day of December, in the year of our Lord one thousand nine hundred and four.

J. CARROLL,
Native Minister.

Approved in Council.
F. D. THOMSON,
Acting Clerk of the Executive Council.

## SCHEDULE.

PETITIONS SETTING OUT ALLEGED GRIEVANCES AND MISCARRIAGES OF JUSTICE IN RELATION TO FORMER ADJUDICATIONS OF THE COURTS.

1. PETITION No. 188 of 1896; Wi Pere and others.—Praying that an alleged omission by the Native Land Court of certain names from the title to the Kopaatuaki Block may be rectified. (J. 96/1287.)

2. Petitions Nos. 371/1899 and 236/1900; Te Uranga Potae and others, and Harata Poiwa and others.—Praying for a rehearing in connection with the investigation of title for the Motu-o-te-Ra Block. (J. 00/897.)

3. Petition No. 139 of 1900; Waraki Tukorehu and others.—Praying for a rehearing in connection with the investigation of title of Te Kauri No. 2B Block, Kawhia District.

4. Petitions Nos. 178 and 647 of 1900; Ngarere Pamariki and others.—Praying for a rehearing of their claims under the provisions of subsection (10) of section 14 of "The Native Land Court Act, 1894," as equitable owners in the Wharekauri No. 1 Block, Chatham Islands. (J. 00/856.)

5. Petitions Nos. 241 and 619 of 1901; Hakiaha Tawhiao and others, and Miriama Kahukarewao on behalf of self and hapu, all of Taumarunui.—Praying that the orders of the Appellate Court determining the ownership of Whatitokorua Block may be reviewed and varied. (J. 02/1266.)

6. Petition No. 1187 of 1901; Tipene Matua and others.—Praying for a rehearing in connection with investigation of title for the Manawaangiangi Block. (J. 01/1298.)

7. Petition No. 105 of 1902; Rangipaia Ngamare, of Te Namu, Opunake.—Praying that orders of the Appellate Court and the Court affecting the estate of Wiremu Kingi Matakatea, deceased, may be reviewed with a view to their being set aside, and orders in his (the petitioner's) favour substituted. (J. 02/928.)

8. Petition No. 289 of 1902; Te Kono te Aho, of Mercer.—Praying for a rehearing in connection with succession orders made by the Native Land Court in respect of the interests of the late Takerei te Aho in Lot 79, Parish of Whangamarino, and of the late Peti te Aho in Lot 18, Parish of Te Onewhero, Lot 348, Parish of Taupiri, Lot 21, Parish of Whangape, and Lot 62, Parish of Koheroa. (J. 03/1080.)

9. Petition No. 269 of 1902; Erueti Tamekoha and others.—Praying that the partition of Tahora No. 2A may be revised, in consequence of alleged misrepresentations made to the Validation Court at the time it effected the said partition. (J. 03/1081.)

10. Petition No. 390 of 1902; Mereana Matuarei, of Rahotu.—Praying that the order of the Appellate Court determining successors to Hamuera te Punga Rangiuru, deceased, in the Mokotunu Cape Block may be quashed, and that she may be declared the successor to the deceased. (J. 03/1456.)

11. Petition No. 433 of 1902; Taonui Hikaka and others, of Taumarunui.—Praying that the orders of the Appellate Court determining the ownership of Pukuweka Block may be reviewed and varied. (J. 02/1266.)

12. Petition No. 7 of 1903; Areta te Rito, of Wairoa, Hawke's Bay.—Praying for a rehearing in connection with an order made by the Native Land Court, under the provisions of "The Native Equitable Owners Act, 1886," by which a number of other Natives were admitted with the original grantees into the title for the Potaka Block, near Wairoa, Hawke's Bay. (J. 03/1083.)

13. Petition No. 368 of 1903; Kerei te Otatu, of Wairoa, Hawke's Bay.—Praying that his claim to be sole owner of the Wharepu No. 1 Block, near Wairoa, Hawke's Bay, into the title for which a number of other Natives have been admitted under the provisions of subsection (10) of section 14 of "The Native Land Court Act, 1894," may be further investigated. (J. 03/1148.)

14. Petitions Nos. 653 and 766 of 1903; Tiki Morena and others.—Praying for further investigation into ownership of the Taumata-o-te-O Block. (J. 03/1295.)

15. Petition No. 654 of 1903; Arapata Hapuku and others.—Praying that the partition orders in connection with Waihua Nos. 1 and 2 Blocks may be cancelled and a fresh partition granted. (J. 03/1296.)

16. Petition No. 688 of 1903; Mutu te Ake and others.—Praying for a rehearing in connection with investigation of title for the Papa-o-karewa or Kawhia M Block. (J. 03/1330.)

17. Petition No. 759 of 1903: Hare Teimana and others.—Praying that legislation may be introduced to give them an opportunity of proving their claims to the Maungatautari Block, Waikato District. (J. 04/1390.)

18. Petition No. 728 of 1903; Tuta Nihoniho, on behalf of the Nga Tangihaere Hapu.—Praying for a rehearing in connection with the investigation of title of the Ngamoe Block, on the grounds of an alleged miscarriage of justice. (J. 03/1498.)

19. Petition No. 802 of 1903; Mohi Tuahu.—Praying for rehearing in connection with investigation of the title of the Ohuia No. 1 Block, part of Raekahu Block. (J. 03/1257.)

20. Petition No. 854 of 1903; Kararaina Kaimoana and others.—Praying that the decision of the Appellate Court on their claim to be admitted as equitable owners into the title for the Hereheretau B Block under the provisions of subsection (10) of section 14 of "The Native Land Court Act, 1894," may be annulled and a rehearing of their claim ordered. (J. 04/1112.)

21. Petition No. 500 of 1904; Ronga Hamana and another.—Praying for rehearing in connection with title of Te Kiwi Block, Hawke's Bay District. (J. 03/1321.)

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# REPORT.

To His Excellency the Right Honourable William Lee, Baron Plunket, Knight Commander of the Royal Victorian Order, Governor and Commander-in-Chief in and over His Majesty's Colony of New Zealand and its Dependencies.

SIR,—

As the Commissioners appointed by Your Excellency under section 11 of "The Maori Land Claims Adjustment and Laws Amendment Act, 1904," to investigate the claims and allegations set out in the petitions referred to in the Second Schedule to the said Act, and to make such recommendations as appear to accord with the equities of each case, we have the honour to report as follows:—

We opened the Commission at Hawera on the 1st day of March, 1905, and thereafter sat at Mercer, Te Kuiti, Cambridge, Hastings, Gisborne, and Kihikihi, the date of our sitting at each of the above-mentioned places having been duly notified in advance. The minutes of the proceedings and of the evidence taken before the Commission are herewith transmitted.

As the result of our investigations we have the honour to submit the following special reports and recommendations, the several petitions being reported on as nearly as may be in the order in which they appear in the Schedule to the Act.

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## No. 1.—KOPAATUAKI.—Petition of WI PERE and Others.

This block came before the Native Land Court in 1881, when a memorial of ownership was ordered in the names of fifty-four persons, the two persons whose claim is represented by this petition not being amongst them.

It is claimed for these two persons, Rangikohera te Kani and Teira Ioapa te Hau, that as descendants of Te Whakahihipa (the person referred to in the petition as the "Whangai"), and by virtue of a gift to that person, they were entitled to a specific portion of the block at present unascertained by survey, but which was pointed out in a general way on the plan before the Commission.

The minutes of the proceedings before the Court in 1881 show that this claim was mentioned at that time, and a request made that the gift land should be separated from the rest of the block; but the matter appears to have been lost sight of in the ultimate decision.

Wi Pere says he handed in the names of these two persons for inclusion in the list of owners. He may have done so, but no trace of it is now discoverable.

The Crown having acquired the rights of certain of the owners, the Court sat in 1896 to define the interests of the sellers, and a portion of the block was awarded to the Crown in satisfaction of the shares purchased. The award was made on the basis of equal shares, which the petitioners complain of as an injustice to the non-sellers, as they allege that the majority of the sellers were persons having little or no interest. This, however, is outside the scope of the petition.

We understand from the petitioners that they have been in communication with the Land Purchase Department with a view to the repurchase of the land; but until the question as to the rights of these two persons is disposed of it is useless to consider any other aspect of the matter.

We recommend that the Native Land Court be directed to inquire and ascertain whether the two persons above named are entitled to any—and if so, to what—portion of the Kopaatuaki Block, and if found so entitled to amend the title accordingly.

G. B. DAVY.
D. SCANNELL.
A. T. NGATA.

## No. 2.—MOTU-O-TE-RA.—Petition of TE URANGA POTAE and Others.

The complaint in this case is that the land known as Motu-o-te-Ra, containing 357 acres, more or less, was by mistake included within the boundaries of the Poroikamoana Block, by reason whereof the petitioners have lost their title.

The Poroikamoana Block came before the Native Land Court in 1876. When the plan of that block was produced to the Court it was pointed out that it included Motu-o-te-Ra, which was the subject of a separate application for investigation of title; and at the request of the Natives the hearing of the Motu-o-te-Ra portion was adjourned to be heard at a later date.

When the title for Poroikamoana came to be issued, what had occurred with regard to Motu-o-te-Ra was apparently lost sight of, and that land was included in Poroikamoana, although the title had never been investigated.

The whole of the land is now vested in James Nelson Williams by purchase from the owners of Poroikamoana, and he holds a Land Transfer title for the same. The mistake was entirely that of the Court. No blame is attachable to the purchaser, who was justified in supposing that the persons named in the title were the proper owners.

Judging from decided cases, particularly that of the Okirae Block, in which the circumstances were almost exactly similar, we believe it will be found that, though the title of the purchaser will be protected, the persons deprived of their land have a valid claim for compensation on the Land Transfer Assurance Fund. The first step, however, is to ascertain who are the persons entitled.

We recommend that the Native Land Court be directed to ascertain who are the persons entitled according to Native custom to the land known as Motu-o-te-Ra, and in what shares and proportions, and to certify accordingly. As to the claim on the Land Transfer Department, the Natives will, of course, have to take legal advice.

G. B. Davy.
D. Scannell.
A. T. Ngata.

No. 3.—Te Kauri.—Petition of Waraki Tukorehu and Others.

The petitioners claim that they suffered injury through partition by the Native Land Court, without due notice, of a block of land known as Te Kauri No. 2B.

The allegations in the petition appear to be well founded to the extent that the petitioners had no reason to believe that the application notified to be dealt with by the Native Land Court on the 22nd March, 1899, was for any other purpose than to ascertain the interest of the Crown in the Te Kauri Block, and to separate the land purchased by the Crown from that of the non-sellers. We consider that the petitioners may well have been taken by surprise by the action of the Court in proceeding without further notice to partition the unsold residue.

We recommend that the partition complained of be annulled to the intent that the Native Land Court may be in a position to deal with the block as if that partition had not been made.

G. B. Davy.
D. Scannell.

No. 4.—Wharekauri No 1.—Petition of Ngarere Pamariki and Others.

Owing to the difficulties of communication with the Chatham Islands, the Commission has been unable to deal with this petition. Residents at Chatham Islands would require three months' notice to enable them to attend at Wellington, and when there it would be another three months before they could return, although the inquiry would probably not occupy more than a day or two.

We recommend that this matter be allowed to stand over till the summer months, when communication is more frequent, and that the time for dealing with it be extended to, say, the 31st March, 1906.

G. B. Davy.
D. Scannell.

No. 5.—Whatitokarua.—Petitions of Miriama Kahukarewao and Others, and of Hakiaha Tawhiao and Others.

The above block was originally heard by the Native Land Court in conjunction with another block—or portion of the same block—called Taraunui. The petitions appear to refer to the Whatitokarua portion only.

The petitioners (Whanganuis) complain that the ancestor set up by them was rejected by the Court and the land awarded to certain Ngati Maniapoto claimants, who also, in the opinion of the Court, failed to establish an ancestral right, but whose claim was supported by the Court on the ground of occupation.

This block, which forms part of the original Rohe Potae, and is on the border-line between the lands of Whanganui and Ngati Maniapoto, came before the Native Land Court in 1898. After a protracted hearing the Court awarded the land to Te Ratutonu Taiamai and fifty-four others on the ground of occupation only, their alleged ancestor (Kowaenga) being disallowed by the Court. The unsuccessful claimants appealed, and the appeals came before the Native Appellate Court in 1900. That Court, whilst characterizing the evidence as more than usually elusive and contradictory, held that whatever might be the case as to the ancestry, the main fact—that of actual occupation—was satisfactorily proved, and on this ground supported the decision of the Native Land Court.

We think that the Appellate Court took the reasonable and proper course under the circumstances. The Native Land Court may have made a mistake in rejecting the ancestor whilst accepting the claim of the descendants, or alleged descendants; but the Court was on firm ground in awarding the land on the basis of occupation. The evidence in favour of the occupation by Te Awhitu and those in the same right with him was undoubtedly strong, and is indeed the clearest thing about the whole case.

Another point in favour of the decision is the boundary laid down by the Court in 1888 as the tribal boundary between the lands of Whanganui and those of Ngati Maniapoto. Attempts have been made in this and the Pukuweka case to discredit this boundary, but up to the present time it remains the accredited dividing-line between the lands of those tribes, and, so far as we can see, there is no reason why it should be departed from, especially where, as in the present case, it is in accord with the occupation.

On consideration of the whole matter we are of opinion that, although the action of the Native Land Court was unusual and of a kind likely to create dissatisfaction, still, substantial justice was done by the decision, and we should not feel justified in making any recommendation which would put the parties to the expense and trouble of a rehearing.

We recommend that no further action be taken in the matter of these petitions.

G. B. Davy.
A. T. Ngata.

No. 6.—MANAWAANGIANGI.—Petition of TIPENE MATUA and Others.

It is difficult to understand the position of the petitioners. That they were entitled to a considerably larger share in the Manawaangiangi Block than they obtained on the partition of that block in 1895 seems clear enough. Why their claim was suppressed or misrepresented by themselves or by their own witnesses in the Native Land Court is not so apparent. The allegation on the part of the petitioners is that they acted in ignorance of their rights. We find it hard to credit this; but as no other reason is discoverable, it is perhaps safer to give them the benefit of the doubt. We find some justification for so doing in the consideration that of the sixteen or more persons interested some, at all events, may not have been responsible for the conduct—or, as it is now alleged, misconduct—of the case in the Native Land Court, and should not be made to suffer for it.

It is on this ground mainly that we feel justified in recommending a rehearing, with the proviso that all costs of such rehearing and of the proceedings before this Commission be borne and paid by the petitioners, and that as a condition precedent to the rehearing the petitioners deposit with the Registrar of the Native Land Court at Wellington such sum as the Chief Judge of the Native Land Court shall direct as security for such payment.

G. B. DAVY.
D. SCANNELL.
A. T. NGATA.

No. 7.—NGATIKAHUMATE AND OTHER BLOCKS.—In the Matter of the Succession to Wiremu Kingi Matakatea (deceased).—Petition of RANGIPAIA NGAMARE.

The Native Land Court, in 1894, appointed certain persons to succeed to the interest of the deceased in the above lands, the mother of the petitioner being one of them. The lands were divided between the next-of-kin on the father's side and those on the mother's side. The connection of the petitioner is with the father's side. The petitioner asks that these proceedings be set aside on the ground that she, as the adopted child of the deceased, is the sole successor.

The evidence shows that the petitioner is only one of several children, each of whom might with equal reason advance a similar claim. The deceased and his wife, being childless, appear to have taken a succession of children to live with them, none of whom, however, can be considered as being in the full sense of the term adopted. One of these was Mokonuikau, the principal opponent of the petitioner before the Commission. As to the will executed by the deceased in favour of the petitioner, he seems to have made several wills, one of them in favour of this same Mokonuikau. We attach, therefore, little importance to the will as supporting the claim by adoption. Of course, all the wills are equally inoperative, the lands being subject to the provisions of the West Coast Settlement Acts.

The proceeding in the Native Land Court which it is desired to set aside was based on an arrangement come to in open Court, to which the petitioner was herself a party, and is, so far as we can judge, in accordance with the rights of the case. The claim now set up by the petitioner is an afterthought.

We recommend that no further action be taken in the matter of this petition.

G. B. DAVY.
D. SCANNELL.

No. 8.—LOT 18, ONEWHERO, and other Lots.—Petition of TE KONO TE AHO, for Self and Others.—Succession to Takerei te Aho (deceased).

That the petitioners are the persons entitled according to Native custom to succeed to the interest of the deceased in the above lands can be clearly established, and, indeed, was not disputed. The only defence attempted by the persons opposing the petition was a frivolous one, to the effect that the petitioners (who must have been mere children at the time) having joined the Hauhaus were not entitled to succeed to lands granted to loyal Natives. This was the reason given for the suppression of the names of the petitioners, and the substitution of the names of other persons in the Native Land Court. The Court, of course, had only the evidence to go by, and acted accordingly.

Unfortunately, it appears that some of the lands in question have been alienated by the pseudo-successors. As to such of them as remain, we recommend that the existing succession orders be annulled, and that the Native Land Court be directed, without further cost to the petitioners, to ascertain who are the persons entitled according to Native custom, and to make order accordingly.

G. B. DAVY.
D. SCANNELL.

No. 9.—TAHORA No. 2A.—Petition of ERUETI TAMAIKOHA and Others.

The complaint in this case is that the petitioners have suffered injury through the partition without due notice of a block of land known as Tahora No. 2A.

The circumstances in this case are almost identical with those in the Te Kauri case (No. 3) already reported upon. There is no doubt that the owners of Tahora No. 2A were taken by surprise by the action of the Court (in this case the Validation Court) in partitioning that block. The petitioners charge Mr. Balneavis (who is himself one of the owners) with having taken an unfair advantage of them in the matter of the partition. As that gentleman was prevented by unavoidable circumstances from attending before the Commission, we did not hear his side of the question. As in the Te Kauri case, however, we consider that on the ground of want of notice alone the petitioners are entitled to a rehearing.

We recommend, therefore, that the partition complained of be annulled to the intent that the Native Land Court may be in a position to deal with the block (Tahora No. 2A) as if such partition had not been made.

G. B. DAVY.
D. SCANNELL.
A. T. NGATA.

No. 10.—MOKOTUNU, CAPE BLOCK.—Succession to Hamuera te Punga Rangiuru (deceased).—Petition of MEREANA MATUAREI.

The question as to who are the persons entitled to succeed to the interests of Hamuera te Punga may be taken to have been finally decided in the Appellate Court in the matter of his interest in Section 102, Opunake, heard at New Plymouth in December, 1899. It only remains for the Native Land Court to come into line with that decision in the present case.

Recommended that the existing order of the court appointing successors to the interest of the deceased in Mokotunu, Cape Block, be annulled, and that the Native Land Court be directed to make such order as may be necessary to make the decisions uniform in the matter of this succession.

G. B. DAVY.
D. SCANNELL.

No. 11.—PUKUWEKA.—Petition of TAONUI HIKAKA and Others.

This block (3,700 acres or thereabouts, originally included in the Rohe Potae boundary) lies on the border-line between Whanganui and Ngati Maniapoto, being on the north or Maniapoto side of the boundary laid down by the Court in 1888 as the dividing-line between the lands of those tribes. The block came before the Native Land Court in 1897, and was divided into two parts, Nos. 1 and 2, Pukuweka No. 1 being awarded by the Court to the Whanganui claimants, and Pukuweka No. 2 to those of Ngati Maniapoto. The Court, in giving its judgment, said, "This has been a most unsatisfactory case, for the evidence" [meaning, no doubt, the evidence as to ancestral right] "has been very much in favour of the Whanganui claim, whereas the proof of actual occupation has been equally in favour of the right of Ngati Maniapoto."

Whanganui appealed as to No. 2, and the Appellate Court reversed the decision, awarding that portion also to Whanganui. It is in respect of the last-mentioned decision that the petitioners are asking for a rehearing.

A question has been raised whether the terms of the reference to the Commission include Pukuweka No. 1, seeing that that portion of the block has never been the subject of a decision of the Appellate Court. Strictly speaking, we should say that it is not so included, and that the Commission had no authority to make any recommendation with regard to that portion, though we have not thought it right to specifically exclude it from the inquiry. As regards the equity of the case, however, no practical distinction can be recognised.

With regard to Pukuweka No. 2, it is necessary to mention that since the ascertainment of the title a portion of that block containing 300 acres has been alienated by the persons to whom the Court awarded the land, and the purchaser now holds a Land Transfer title for the same.

Speaking with regard to Pukuweka No. 2, and to the decision of the Appellate Court reversing that of the Native Land Court, we are of opinion that the occupational rights of the Ngati Maniapoto claimants, fortified as they were by the strong presumption of right created by the laying-down of the tribal boundary before referred to, hardly received sufficient consideration. The Court held that the boundary should not be considered a hard-and-fast one. It was, however, expressly put forward by the Native Land Court as a main ground of the decision in the Whatitokarua case, which was affirmed by the Appellate Court, and until it has been more effectually discredited than it has hitherto been, we think it would be well to adhere to it.

We recommend that the decision of the Native Appellate Court in respect of Pukuweka No. 2 be referred back to that Court, or to such other tribunal as Parliament shall see fit, to be reheard, with the usual powers in such cases.

With regard to Pukuweka No. 1, it does not, as we have already said, seem to come strictly within the terms of the reference, but, so far as the equities of the case are concerned, it appears to be undistinguishable from the case of Pukuweka No. 2, and if a rehearing is granted it would be advisable that it should include both blocks; otherwise, should the petitioners succeed with regard to No. 2, it will probably lead to a further petition. The portion of Pukuweka No. 2, which is held by the purchaser under Land Transfer title (now known as Rangitoto-Tuhua No. 8), should be excluded from the rehearing.

G. B. DAVY.
A. T. NGATA.

Nos. 12, 13, 14, 19, 20, and 21.—OHUIA No. 1, and other Blocks.—Petitions of ARETA TE RITO, KEREI TE OTATU, TIKI MORENA and Others, MOHI TUAHU, KARARAINA KAIMOANA and Others, and RONGO HAMANA and Another.

The above petitions may be dealt with comprehensively in a single report, the point being the same in each case—viz., the conflicting decisions under circumstances which, so far as the material facts are concerned, seem to be practically identical. The only difference is that in the Herehereteau B case the Court had before it certain evidence which was not before the Court in other cases, and which may be presumed to have to some extent influenced the decision. Which of the conflicting decisions is correct is not for us to determine. It is clear that there should be no such

conflict, and that serious injustice has been done either in the one case or the other.

We recommend that the whole of the decisions challenged by the above petitions be referred for rehearing to the Native Appellate Court, or such other tribunal as Parliament shall see fit, with a view to secure as nearly as may be uniformity of decision.

G. B. DAVY.
D. SCANNELL.
A. T. NGATA.

No. 15.—WAIHUA NOS. 1 AND 2.—Petition of ARAPATA HAPUKU and Others.

The title to Waihua Nos. 1 and 2 was investigated by the Native Land Court in 1868, and certificates of title ordered in the names of ten persons in each case. The Court further ordered that the names of eight hapus—viz., Ngati Pahauwera, Ngati Ruakohatu, Ngati Kura, Ngati Kapukapu, Ngaitaumau, Ngai te Honokai, Ngaitaumau, and Ngai te Huki—should be registered on the title in each case under the 17th section of "The Native Lands Act, 1867," being the names of tribes found by the Court to be interested in the said land.

In 1888 the Court sat to partition the land, and lists of names were handed in by the Natives, and apparently agreed to by all present, as the names of the persons entitled by virtue of the registration under the 17th section. The Court accepted these names, and proceeded to partition the land and define the relative interests accordingly.

A rehearing having been applied for and granted, the Court sat to rehear the case in 1890, and added certain names to the list of owners already admitted, but in other respects confirmed the proceedings before the Court in 1888.

It is now claimed that the names of the members of the registered hapus were never properly ascertained by the Court, that persons who had no hapu rights were admitted, and generally that the proceedings before the Court in 1888 and 1890 by no means carried out the intention of the Court in 1868. That the Court did its best to ascertain the owners on both occasions goes without saying, but owing to the action of the Natives themselves there is no doubt that considerable confusion has arisen.

There is practically no opposition to the prayer of the petition, there being a general desire on the part of such of the Natives as attended, or were represented before the Commission, to have the matter reopened.

We recommend, therefore, that the whole of the proceedings before the Native Land Court and the Rehearing Court in the matter of the partition of Waihua Nos. 1 and 2 be annulled, to the intent that the Native Land Court may be in a position to deal with the said blocks as if those orders had not been made. The prayer for the reinstatement of the application under the Equitable Owners Act is, of course, founded on a misapprehension as to the nature of that procedure.

G. B. DAVY.
D. SCANNELL.
A. T. NGATA.

No. 16.—KAWHIA B (PAPA-O-KAREWA).—Petition of MUTU TE AKE and Others.

The petitioners are known collectively as the Te Ake family. The complaint is that on the partition of the Kawhia Block by the Native Land Court in 1892 they were not included in that portion of the block known as Papa-o-Karewa.

The contending parties are members of the same hapu of Ngati Hikairo (Te Whanau Pani), and that they and their parents lived together at Papa-o-Karewa is not disputed. This was when the Kawhia people reoccupied their lands after the evacuation of the district by Waikato about 1828. There is no proof of exclusive occupation by either party, until, by the going-away of the others, Hone Kaora and his people were left in sole occupation. This was long previous to the partition in 1892. That person (Hone Kaora) was born at Papa-o-Karewa in 1838, and, with the exception of a short interval during the troubles in the Waikato, has resided there up to the present time. He has houses and other improvements on the land.

In dealing with this claim it is important to bear in mind that there is no ancestral title to this land. The Court in dealing with this (Kawhia) block said, "The title of Nagti Hikairo is not ancestral, but merely occupation in conjunction with other tribes, who drove Te Rauparaha away. . . . . It follows that each member of Ngati Hikairo can only claim a fair share of the land in accordance with occupation." The claim of the petitioners therefore resolves itself into a claim through temporary occupation only, and cannot be considered equal to that of Hone Kaora's family, whose occupation of this same place had at the date of the partition in 1892 been permanent and continuous for more than fifty years.

The petitioners have been awarded other lands in the Kawhia Block which are probably more in accordance with their permanent occupation.

It is noticeable that, with the exception of one woman (Te Atakohu Wetere), none of the petitioners have shown any particular interest either in the proceedings before this Commission or in the proceedings before the Chief Judge (on application for rehearing) in 1893. We take it, therefore, that they are not greatly dissatisfied.

This woman, Te Atakohu, resides on the adjoining block (Kawhia P), and has interests in several other subdivisions, but nothing will serve her but Papa-o-Karewa. The opposite party has been put to considerable trouble and expense through her persistence.

We recommend that no further action be taken in the matter of this petition.

G. B. DAVY.
D. SCANNELL.

PAPA-O-KAREWA.—Petition of MUTU TE AKE and Others.—Supplementary Report.

As I understand that the petitioners are now inclined to take exception to my having acted in this case, on the ground that as Chief Judge of the Native Land Court I had previously dismissed an application for rehearing of the same matter, I desire to offer the following explanation:—

When the petition was before the Native Affairs Committee in 1905 I reported as follows: "The subdivision complained of was the subject of an inquiry by the Chief Judge of the Native Land Court in 1893, on an application for rehearing. The inquiry lasted several days. Finally, the application was dismissed. I am not sure, however, but that the applicants might have obtained a rehearing had their case been better conducted." Consequent, no doubt, on this report the matter was referred for further inquiry, and came before the Commission at Te Kuiti in April last. The only Commissioners then present were Judge Scannell and myself, the third member (Mr. A. T. Ngata) not having, up to that time, joined us. Under these circumstances we were not desirous of proceeding with the case, but the petitioners, through their agent (Pepene Eketone), waived all objection on that account, preferring that the case should be proceeded with rather than that it should be indefinitely adjourned. Even then I would not have consented to act were it not that my report to the Native Affairs Committee showed that I had no prepossession in the matter —certainly none against the petitioners.

Notwithstanding that the case for the petitioners was on this occasion very ably conducted, the Commissioners, for the reasons set out in their report, have not been able to make a favourable recommendation.

G. B. DAVY.

No. 17.—MAUNGATAUTARI BLOCK.—Petition of HARE TEIMANA and Others.

The petitioners are members of the Ngati Raukawa Tribe, which tribe were the original owners of Maungatautari, but were held by the Native Land Court to have "forfeited their rights by leaving the land." Against that decision the present petition is a protest.

The title to Maungatautari was investigated by the Court in 1884, when Ngati Raukawa were amongst the claimants. The Court held that Ngati Raukawa had lost their right through conquest by Ngati Maru, who, in the words of the Court, "by force of arms caused such of Ngati Raukawa as continued in occupation to vacate the land, and by that and their occupation acquired the mana."

The Court further found that Ngati Haua, Ngati Koroki, and Ngati Haurua, and their hapus having driven Ngati Maru (Marutuahu) away from Maungatautari, in their turn acquired the mana, which they had retained ever since.

Ngati Raukawa disputed this decision, and applied to the then Chief Judge of the Native Land Court for a rehearing, which was refused. This is one of the grounds of the petition.

Another ground is that since the adjudication of Maungatautari, certain adjoining blocks have been adjudicated upon by the Native Land Court and awarded to Ngati Raukawa, notwithstanding that the conditions were—as the petitioners allege—substantially the same as in the case of Maungatautari. The blocks particularly specified are Wharepuhunga and Rangitoto-Tuhua, which the petitioners allege are really one with Maungatautari. This part of the case is summed up in the statement in paragraph 8, "That there was no conquest of Ngati Raukawa as regards these blocks collectively."

There are other allegations of a more or less personal character contained in paragraphs 9 to 15 of the petition, which may be passed over without remark, as they were not relied upon by the petitioners.

As regards the proceedings in the Court of 1884, we think that no one who dispassionately considers the evidence before that Court, the reasons given by the Court for its decision, and the reasons given by the Chief Judge for refusing a rehearing, can doubt that both the Court and the Chief Judge were fully justified in their decisions. The Royal Commission which sat in 1881, to inquire as to certain claims of a branch of Ngati Raukawa calling itself Ngati Kauwhata, had previously—in respect of a portion of Maungatautari which had been severed from the original block as Maungatautari Nos. 1 and 2—come to the same conclusions.

Most of the minor points raised by Mr. Fraser on behalf of the petitioners were urged in support of the Ngati Kauwhata claims before the Commission of 1881. For instance, some of the Ngati Raukawa who were left behind having taken part in the fight at Taumatawiwi. Also the contention that some of the Ngati Raukawa were left on the land to maintain the rights. Also as to the invitation given to the Kapiti people by Te Waharoa, and subsequently by Wi Tamihana, to return and occupy the land. As on all these points we are in accord with the findings of that Commission, we need not further refer to them.

Great stress was laid by Mr. Fraser on the finding of the Court in the Te Aroha case to the effect that Taumatawiwi was not a conquest of land. That is true as regards the matter then before the Court. In that case it was shown clearly that there had been no effective occupation by Ngati Haua on the Te Aroha lands. But there are no better-attested facts in the history of the period immediately preceding and following Taumatawiwi than the occupation of Maungatautari by Marutuahu previous to, and by Ngati Haua subsequent to, and as one of the results of that victory.

The case of the petitioners rests, however, mainly on the allegation in paragraph 8 already referred to, "that there was no conquest over those blocks (Maungatautari, Wharepuhunga, and Rangitoto-Tuhua) collectively." This is undoubtedly true as regards the conquest by Ngati Maru, but is, we submit, not the proper test of the question now before us. That a people which retains any considerable portion of its lands cannot be called a conquered people may be conceded. But there may be a complete conquest of a portion of its territory, and this is exactly what is claimed in the present instance. It is indisputable that after the migration to Kapiti, Maungatautari was occupied in force by Marutuahu, who built pas there, and held it against all comers up to the

time of Taumatawiwi. It is true that the Court in the Te Aroha judgment, speaking of Horotiu and Maungatautari, says that Marutuahu occupied more as combatants struggling for possession than as established owners. But the conquest was complete as against Ngati Raukawa, who, as a fighting-force, had ceased to exist in the district.

With regard to the Wharepuhunga and Rangitoto-Tuhua cases, it is unnecessary to analyse them at length. Any one going into the history of those blocks can see the essential differences existing between them and Maungatautari.

The Royal Commission in 1881, speaking of the migration to Kapiti, says, "In our opinion they (Ngati Raukawa) left not only to obtain better food and ammunition, but principally because, being few in number, they feared they would be attacked by Ngati Maru and altogether exterminated." The evidence as to the state of affairs at that time seems to justify this conclusion, especially at the time of the final migration in 1828, by which time the fighting-strength of Ngati Raukawa must by previous migrations have been greatly diminished. But whatever the motive may have been, the fact remains that they left their lands to be occupied by the common enemy, and for anything Ngati Raukawa has done, Marutuahu might have been still at Maungatautari. It seems scarcely reasonable that having left others to bear the brunt in the time of danger, they should claim the benefit of the altered state of things at the present day.

On consideration of the whole matter we see no equity in the present claim, nor does there appear to us to be any reasonable probability that any Court can be got to reverse the decision of 1884. We therefore recommend that no further action be taken in the matter of this petition.

G. B. Davy.
D. Scannell.

No. 18.—Ngamoe.—Petition of Tuta Nihoniho and Others.

The statements in this petition are vague and misleading, and point to a mistake having been made by the Court in substituting the list of names of the defeated party for that of the other party.

No such mistake, however, occurred, and the petition is really only an attempt on general grounds to obtain a rehearing.

The petitioners have wholly failed to show any grounds for reopening the case. So far as we can judge, the decision of the Court was in accordance with the evidence, and, as nothing new has been adduced, there are no grounds for a rehearing.

We recommend that no further action be taken in the matter of this petition.

G. B. Davy.
D. Scannell.

*Approximate Cost of Paper.*—Preparation, not given; printing (1,425 copies), £3 18s.

By Authority: John Mackay, Government Printer, Wellington.—1905.

*Price 6d.*]