

ADDRESSES OF COUNSEL.

TUESDAY, 25TH OCTOBER, 1910.

(1.)

MR. C. P. SKERRETT, K.C. (with him Mr. Kelly), for the petitioners, and Mr. H. D. Bell, K.C. (with him Mr. Fell), appeared to oppose.

The Chairman: Without unduly trespassing on your good nature, Mr. Skerrett, the Committee would like you to assist it by giving your address in as concise a manner as is practically possible.

Mr. Skerrett: I can quite appreciate what you say, and I will endeavour to give effect to your wishes. As the Committee knows, this petition relates to a block of land known as Tunapahore, of 5,500 acres, a settlement fourteen or fifteen miles northward of Opotiki, and the application is, in short, that the decision of a Royal Commission originally said to consist of Judge Seth-Smith, A. L. D. Fraser, and Hone Heke—a decision which was really given by Judge Seth-Smith and Hone Heke alone—should be sent to some competent tribunal for reinvestigation upon three grounds, which I will endeavour to express succinctly and then elaborate further. The first ground is this: that the judgment of the Royal Commission reverses the carefully considered judgments of four several Courts in favour of my clients, with all the disadvantages of lapse of time, and without the corresponding advantages which those Courts had of actually seeing and hearing the witnesses. That is the first ground we shall present to the Committee. The second ground—and it is almost equally cogent—is that the title of the two contending tribes depends absolutely on occupancy—that is to say, that the title of the Whanau-Apanui and the title of the Ngaitai—whom my friend Mr. Bell represents—both rest and have always been based exclusively on the occupancy of the block; and we shall show that there is no question of the occupancy of the block, which was always in my clients' (the Whanau-Apanui's) possession, by absolutely conclusive and overwhelming testimony. The third ground is that the judgment of the Commission absolutely includes in the award of the Ngaitai the kaingas and cultivations of the hapus of the Whanau-Apanui. You, Mr. Chairman, will find that these are the three main grounds on which we shall press for a Commission. Now, there are one or two preliminary observations I desire to make, and the first is that there are three blocks of land in precisely the same or very much the same position. The block on the sea-coast is Tunapahore, which adjoins the Kapuarangi Block, and that joins, again, the Takaputahi Block. All these three blocks were appurtenant to the Takaputahi Block, and their titles were really in the main determinable by the occupancy of that block. The Takaputahi Block consists of broken forest land which was used jointly with Tunapahore, and it was used for hunting, so that the title to these blocks was in the main to be determined by the ownership and occupancy of the first-named block. That is the fact I desire to show the Committee at once. In the report of the Commission to which I have referred, Commissioners Seth-Smith and Hone Heke say, "It has been admitted by all the parties that in ancient times the three adjoining blocks were occupied by the Native owners as one undivided piece of land"; and the judgment of Judge Scannell, which dealt with Takaputahi, is equally emphatic. He says, "The Kapuarangi Block itself, from the nature of the country, which is very broken, consisting principally of high hills and deep valleys covered with forest, appears never to have been regularly occupied in the same way that the coast lands were, and was used chiefly for getting birds and latterly pig-hunting, and the signs of occupation as given in evidence are very few, but, such as they are, are claimed by each party to the exclusion of the others, and it is acknowledged by all the parties that nothing remains at the present time to prove to whom they really did belong." I need not trouble you further on that. It was common ground that the title of these three blocks depended upon occupation of the coast lands. The claimants may be said to consist of three parties, one of whom may be disregarded by this Committee. One is the Whanau-Apanui, on the one side, and Ngaitai on the other, and a tribe called the Ngaariki is the third claimant; but for the purpose of this petition the Ngaariki may be put out of mind. I have already indicated that the nature of the claim of both these rival tribes—for one of whom I appear, and my friend Mr. Bell appears for the other—was occupation, and, further, there was the expulsion of a tribe called the Ngaariki. Before I deal with the second ground—namely, occupancy—I desire briefly to put before the Committee the course of the litigation. The ascertainment of the title to the Tunapahore Block took place in 1885 before an experienced Judge of the Native Land Court—namely, Judge Mair; and he awarded a small part at the western end to the Ngaitai, and the rest of the block to my clients the Whanau-Apanui. Judge Mair substantially decided in favour of my clients at that hearing. Now, the Ngaitai did not apply for a rehearing, but the Whanau-Apanui did; but this application for rehearing was refused, and ultimately the Act of 1895 was passed, which authorized a rehearing. That rehearing took place in 1898 before Judges Edgar and Johnson, and those experienced Judges of the Court, after listening to the witnesses in a very patient investigation, awarded the whole of the Tunapahore Block to Whanau-Apanui, my clients. That judgment was given by two of the most careful Judges of the Native Land Court, and my clients' claims were completely established. But something happened between the year 1885, when the original judgment was given, and the year 1898, when Judges Edgar and Johnson gave their judgment in favour of my client, and that circumstance was this: In 1895 the Kapuarangi Block came on for investigation—that is the next block to the Tunapahore—and that was heard by a very experienced Judge—namely, Judge Scannell. Judge Scannell dismissed the Ngaitai claim to Kapuarangi and awarded