

own people with whom disputes had arisen, and that it was the ancestors of the present Whanau-Apanui, not Ngaitai, who drove them out. They also assert that the present Ngaariki—*i.e.*, those now living at Whakatane—though related to themselves by ancestry, lost any right to the land when they were driven out. This agrees with the statements by Ngaariki themselves as to their ancestral descent. The Ngaitai have not pointed out any important inconsistencies in the Whanau-Apanui statements regarding Ngaariki. The Court is therefore forced to the conclusion that the Ngaariki, who at one time lived on Tunapahore, were a section of the people now generally known as Whanau-Apanui. And as Ngaitai admit that most of the pas on Tunapahore were built by Ngaariki, Whanau-Apanui case is considerably strengthened. It is not denied by Whanau-Apanui that Ngaitai did live on Tunapahore Block for a time, commencing about the year 1835, when, as Whanau-Apanui allege, Ngaitai were placed there by Whakatane, a Whanau-Apanui chief, to keep out of the way of the vengeance of Whakatohea, a section of whom they had just defeated at Te Muhunga, in the Turanga district. It is quite evident from the account given of numerous fights, that Ngaitai were a brave people not backward in upholding their own prestige. But they were a small tribe as compared with their neighbours on either hand—the Whanau-Apanui and the Whakatohea—and about this time it would seem that they had been somewhat weakened, as would appear from their migrations once to Hauraki and twice to the Turanga district. It is therefore not incredible that on this occasion they may have stood in need of and have accepted from Whanau-Apanui protection against their powerful neighbours the Whakatohea. Be this as it may, only two explanations are given of the occupation of Ngaitai at Tunapahore. One is that they were placed there by Whakatane, the other that they had lived there from the time of their ancestress Torere-nui-a-rua, twenty-six generations before. The Court cannot accept the latter alternative, chiefly because of the Ngaitai ignorance of the old pas on the land. It is therefore compelled to adopt the other alternative. It is supported in adopting this view by the fact that practically all the instances of occupation either on Tunapahore or Kapuarangi adduced by Ngaitai can be referred to the period of their alleged residence on Tunapahore about 1835 by permission of Whakatane. Almost the only definite act of ownership alleged, prior to that time, is the tree said to have been felled by Te Kaiwhakaruaki for a canoe. The canoe, however, was never completed, in consequence, Whanau-Apanui assert, of the objection raised by them. Another point in the Ngaitai case is their assertion that Whanau-Harawaka, some members of whom they admit had a right to and lived on the land, did so (1) by right of their descent from Te Whaki, a Ngaitai woman who married Apanui, the ancestor of all Whanau-Apanui, including Whanau-Harawaka; and (2) in consequence of later intermarriages with Ngaitai. The first assertion is incredible, (1) because there are no descendants of Te Whaki now amongst Ngaitai, proving that when Te Whaki married Apanui she entirely abandoned Ngaitai, and threw in her lot with her husband's people; and (2) because nearly all Whanau-Apanui can trace descent from Te Whaki through her son Harawaka. So that, even if the right did come from Te Whaki, it would avail Ngaitai nothing. The second assertion cannot be believed, because nearly all the descendants of these intermarriages are, properly speaking, Whanau-Harawaka or Whanau-Apanui, not Ngaitai—the male side in nearly every case being the Whanau-Apanui or Whanau-Harawaka side. It seems to us, therefore, that those persons of Whanau-Harawaka who lived on the land did so by right from the Whanau-Apanui side, and the Whanau-Harawaka occupation is no ground for saying that Ngaitai have any right to the land." Now, these pas I beg to call the Committee's attention to were big pas, some of them having walls as high as 20 ft. They were some forty in number, on a small area of about 1,000 acres; and yet these people, who base their claim on occupation, were unable to describe them, notwithstanding an alleged occupation of from twenty to twenty-five generations. I submit, therefore, that we have shown that we have had the judgment of four Courts substantially in our favour, and it has been reversed by the Commission, but not by the original Commission which Parliament set up, because the Commission did not have the benefit of Mr. Fraser's assistance. The reason given—and I am sure the Committee will pardon the necessary criticism of the result of the Commission—seems to me to be very inadequate. This is the statement: "Upon a review of the whole of the evidence we are of opinion that the balance is in favour of the Ngaitai claim as to the original ownership of the land, but the Whanau-a-Te-Harawaka have by their occupation of certain portions clearly established a right to share in it. This joint ownership becomes easily intelligible when the close relationship established between the two tribes by marriage is taken into consideration. Apanui himself had two Ngaitai wives, of whom Te Whaki, the mother of Te Harawaka, was one, and several other marriages between members of the two tribes, followed by residence on the land, took place in subsequent generations. We do not think any other section of the Whanau-Apanui has satisfactorily established a claim." Now, sir, upon the face of this judgment it is difficult to understand how these gentlemen arrived at this conclusion. The whole title on both sides depended upon occupation. How, then, could these gentlemen, in face of the admitted evidence, exclude the claim of the Apanui and allow the claim of the Ngaitai? The Commissioners speak of intermarriages between the Ngaitai and the Apanui; but that is completely explained by the judgment in the Appellate Court, which must have been overlooked by the Commission. Judges Edgar and Johnson, speaking of that intermarriage, say, "The first assertion"—that is, the assertion that they claim through the marriage of Apanui with Te Whaki—"is incredible, (1) because there are no descendants of Te Whaki now amongst Ngaitai, proving that when Te Whaki married Apanui she entirely abandoned Ngaitai, and threw in her lot with her husband's people; and (2) because nearly all Whanau-Apanui can trace descent from Te Whaki through her son Harawaka; so that, even if the right did come from Te Whaki, it could avail Ngaitai nothing." Now, apparently the Commissioners differed from that conclusion. One feels always the difficulty of the objection that there must be an end to litigation at some