

Affairs Committee of 1901 was not satisfied with the reasons given by the learned Judges in the Appellate Court. Whatever may have been the motive or the moving power before this Committee, and whoever may have been the petitioners, it is perfectly clear that this Committee, if satisfied with the judgment of the Appellate Court, would never have disturbed it. It is plain that this Committee was not satisfied, because it directed that this question should be dealt with, as they somewhat humorously call it, "finally," by a Commission which was to issue under the authority of the Act of 1901. My learned friend Mr. Skerrett referred—I do not know whether it was with sorrow or with pleasure—to the absence of one of the Commissioners; but the commission is not directed to three, but to two of them. So we have the Commissioners reporting, as set out in G.-7, 1904, and the commission is directed to three gentlemen, including the Chief Judge of the Native Land Court, or to any two of them. The inquiry took place, and they made their finding. I want to refer to one or two passages of that finding, but what puzzles me is why the report of this Commission should be treated with anything but respect. I do not know of any Judge of the Native Land Court who has ever carried greater weight, so far as his absolute fairness and determination to get to the root of matters is concerned, than the late Chief Judge of the Native Land Court, Mr. Seth-Smith. I do not say for one moment that he knew as much of Maori customs and habits as some other Judges, but this I do know: that the then Chief Judge did honestly and carefully endeavour by every means to arrive at the root and essence of every matter that came before him. As to the other gentleman, Mr. Hone Heke, who was a member of Parliament, all I have to say is this: that he was at all events independent of the relations of these two people. He came from the north, and he was a man quite fitted to advise and confer with the Chief Judge upon matters of Native custom and occupation; and I should suggest also a fair judge of the value not of the testimony, but of the witness who is giving the testimony. I apprehend that they practically confirmed the judgments of the Courts, which were under their review. I take Judge Mair's judgment of 1885, and I ask the Committee to remember that it is ten years before Judge Seannell's, and Judge Mair's judgment is practically adopted by the Commission as to Tunapahore. The Commission say that the three blocks were by consent of Apanui and Ngaitai treated as one. You will find that, in the Appellate Court, Kapuarangi and Takaputahi were taken together by consent of both parties because they were one. The Commission so treated them—that is to say, they dealt with these blocks as a single block divided by surveyors' boundaries, the ownership to be determined in favour of Apanui or Ngaitai, or both, and they found it to be joint ownership by awarding it to both. They found that that was the course taken by the Appellate Court which had practically so dealt with Kapuarangi and Takaputahi, whatever be their reasons. I say that no one can doubt that, the Court being presided over by His Honour Mr. Seth-Smith, it was a careful and honest attempt to settle these matters in accordance with the desire of the Committee and Parliament; and the conclusion they arrived at the Committee are perfectly aware of. I should like to refer to certain passages of the Commission's finding. Under the heading "Ngaitai Claim" they say, with regard to occupation, "The two tribes continued in joint occupation of Tunapahore, occasionally leaving the land on visits to friendly tribes or on hostile expeditions. On one of these occasions, while the Whanau-a-te-Harawaka were temporarily residing at Ohiwa, on the invitation of the people of that neighbourhood, many of them were treacherously killed. The survivors fled to Tunapahore, and sought and obtained refuge among their Ngaitai friends. The joint occupation was thus resumed, and continued until a quarrel arose in or about the year 1856, in which several hapus of the Whanau-Apanui took part against the Ngaitai." That is the reverse of the Apanui view. "The joint occupation was thus resumed, and continued until a quarrel arose in or about the year 1856, in which several hapus in the Whanau-Apanui took part against the Ngaitai. Fighting ensued at intervals extending over a period of two years, when peace was made on the intervention of a Native clergyman named Hakaraia." That brings us to 1858. "One of the conditions imposed by the peacemaker was that all parties should leave the land. The Ngaitai accordingly retired to Torere, but the Whanau-a-te-Harawaka, after some delay, refused to leave, and have continued to reside on and cultivate some portion of the land down to the present time. Then immediately follows their finding when dealing with the Apanui claim. They say, "In consequence of their repeated conflicts with Ngatiporou, Ngatimarua, Ngapuhi, Ngaiterangi, and Whakatohea, and other tribes, the Ngaitai, who had been a numerous and powerful people, had become much weakened—so much so that at the close of an expedition to Turanga as allies of Whanau-a-Apanui they feared to return to their own kaingas at Torere, and sought the protection of the Whanau-a-Apanui from the dreaded attacks of their old enemies the Whakatohea. In response to this appeal the Whanau-a-Apanui assigned to them certain places of residence on Tunapahore, and thus for the first time the Ngaitai became occupiers of this land. The Whanau-a-te-Harawaka, who derived their hapu name from Harawaka, the son of Apanui and Te Waki, support to some extent the evidence given by Whanau-a-Apanui as to the early history of this land, but they allege that apart from themselves no section of the Whanau-a-Apanui Tribe ever acquired any rights to this land, and that in the several contests and transactions with Ngaariki, Ngaitai, and others they (the Whanau-a-te-Harawaka), and they alone, were concerned as owners of the land. Upon a review of the whole 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." Then it goes on in this way: "It has been admitted by all parties that in ancient times the three adjoining blocks, now known as Tunapahore, Kapuarangi, and Takaputahi, were occupied by the Native owners as one undivided piece of land. Takaputahi and that part of Kapuarangi now known as Kapuarangi No. 2 are not before us on this inquiry, but we have found it necessary to admit some evidence of occupation of these last-mentioned pieces as bearing directly upon the ownership of the land under investigation. The evidence before us shows that, while the Ngaitai and the Whanau-a-te-Harawaka