

and I venture to submit to the Committee that what is necessary—and not before the Native Affairs Committee alone—is that in all such matters if you are going to have a new trial you must establish, not that you have a strong case—but you must establish that you have an overwhelmingly strong case. No Court will grant a new trial because it is said that a Judge would have found differently if it had been heard before him. You must find that the Judge must have found wrongly in some special direction before a new trial can be granted. That is the rule of the Courts. There must be something like that here before this Committee, or there is no end to it. Let us assume that Mr. Skerrett has a strong case. I do not admit that, because I do not see how he can have, but I put it as strong as that against myself. Suppose there had been a continuous line of decisions in these Courts and the Appellate Court in favour of Apanui, and then suppose the Committee and Parliament after that sent the matter to a Commission for the purpose of reinvestigation and cancellation of titles. What is to happen before that Commission? Has the Commission no authority to reverse the continuous line of decision? If not, what is it for? It gives its decision. You have exhausted the Courts, you have exhausted the Commission, you have established your final Court of Appeal, which has given its decision, and then there is to be another Court. I venture to submit that that can only be established by the presentation of an overwhelming case by the other side, and I submit that, apart from the discussion of the merits, this Committee will properly dismiss the petition.

*Mr. Herries:* I want to know whether you maintain that the Harawaka and the Whanau-Apanui are practically the same—that the satisfaction given to the Harawaka by the Commission is practically giving it to the Whanau-Apanui.

*Mr. Bell:* No; they exclude the Apanui. It is the Harawaka alone who have been found to be in continuous occupation. We have not the least objection to Harawaka being left in with the Apanui in the Apanui's division, but it is clear that the position is this: that the Apanui put forward a claim, and that Harawaka insisted before the Court that they, and not Apanui, were entitled. They maintained a separate case, and the judgment was in favour of Harawaka.

*Mr. Herries:* You were speaking of joint occupation, and said Ngaitai practically admitted that, but that did not include Harawaka.

*Mr. Bell:* Yes, that is all they did admit.

*Mr. Skerrett:* The discussion between Mr. Bell and myself has made it clear what a plain and, indeed, simple case this is. As I said in opening, no difficult question of ancestry or question of Native law was involved in this case, but what was involved was one of simple fact: Who were the ancient occupiers of this ground, the Whanau or Ngaitai? The Ngaitai case involved two things: They had been there twenty-six generations, with the exception of one generation; secondly, that these Ngaariki were only in possession for a short generation. Now, my friend pooh-poohs the judgments of Judge Scannell and the Native Appellate Court upon this pure question of fact. Judge Scannell says that the ignorance of the Ngaitai of these old pas was incredible if they had occupied the land as they claimed, and that their statement as to their long occupation was a fabrication, and on his judgment Mr. Bell relies as being in his favour. The Native Appellate Court says it is incredible to think that people like the Ngaitai could have been ignorant of these things. I cannot help thinking that Mr. Bell in his explanation seemed to imagine that the learned Judges were referring to church steeples or some other prominent objects in the landscape. He says these people were in occupation of the land, and must have known of these pas, and therefore they did know of these pas. But that is the point—they did not know the pas. That is a fact that was ascertained clearly and distinctly, and therefore my friend's contention is quite inaccurate. It is quite clear that these pas were old pas concealed with brushwood and timber, and were unknown to the Ngaitai. If they had been known to the Ngaitai it would have been conclusive evidence of occupation. They were known by us and were pointed out by us, as is shown in the judgment. Now, I wish to point to another matter: Both parties admit that many of these pas were Ngaariki pas. My friend's case is that the Ngaariki were only in occupation for a generation. That is the case of the Ngaitai beyond any question. Read any judgment you please—you will find that the Ngaitai were the people who came in the Tainui canoe. They occupied this land for twenty-six generations, with the exception (so they say) of the admission of the Ngaariki for one generation to a joint occupation, and with the exception of two journeys, each occupying a short time, and when they returned and found the land unoccupied, we resumed occupation. Yet it is admitted that there are many pas which are Ngaariki pas, and could not have been erected in the comparatively short time of one generation. I have only one further observation to make: I may have taken a slightly favourable view when I stated that Judge Mair's judgment was wholly in our favour. You will remember that I pointed out that he gave part of the land to the Ngaitai. But my friend has sinned more grievously than I have when he has laid down the statement that the Native Appellate Court judgment is in his favour. I ask the Committee to read it. The Appellate Court, in the most emphatic terms, said it was inconceivable that the Ngaitai could have been in occupation of this ground, and the mere fact that they whittled down the Kapuarangi Block 9,000 acres is nothing at all. It will be seen that my friend's clients insisted that the occupation of Tunapahore did not affect the Whakatohea. At page 5 of the Native Appellate Court's judgment this is the Ngaitai's ground of appeal: "(1.) That it is part of the Ngaitai tribal estate, and that they alone occupied it, as shown by kaingas, burial-places, and other signs of ownership. (2.) That it is one land with Torere, which is acknowledged to be Ngaitai land. (3.) That the track leading inland from Torere to Peketutu, on the Motu River, is exclusively a Ngaitai tribal track, the tribal tracks of Whanau-Apanui and Whakatohea being in other places not on this land. (4.) That sufficient weight was not allowed to the agreement entered into in 1879. (5.) That too much weight was allowed to the Whanau-Apanui occupation of Tunapahore as establishing