Mahaki on the east. On the north and north-east they lived in unison with the Whanau Apanui, until about thirty years prior to the wars between these two peoples in 1856.

8. This period of living in unison makes it more difficult to decide the boundary-line between them, as both sides have had occupation in modern times. The Whanau Apanui assert that they brought the Ngaitai on to their land so as to have them near to protect them (Ngaitai) from the Whakotohea, as the Ngaitai had become weakened through losses in war, and that it was not until the Ngaitai wanted to claim this permissive occupation as an occupation by right that disputes arose and war commenced between them. After the fight of 1856 peace was made, in accordance with which both sides were to go off Tunapahore. The Ngaitai honourably kept to the agreement, but the Whanau Apanui did not, but returned to the land and effected improvements, thus complicating the present position.

9. From the mouth of the Waiau River to Putikirua the ancient Maori occupation was along the coast-line, the hinterland being used mostly for hunting purposes and for retreat when hard pressed by an enemy. The occupation along this sea frontage was taken as extending to the hinterland *pro tanto* to its strength on the sea frontage. The occupation on Tunapahore was therefore a guide in determining the ownership and relative interests in the Takaputahi and Kapuarangi Blocks. *E converso,* in now reviewing the decision of these blocks, each party tries to show that the decision in Tunapahore is wrong inasmuch as it does not agree with the decisions in the other two blocks. I do not think I am called upon to analyse these decisions and give my reasons for disagreeing with them, as I consider there should be a rehearing as hereinafter shown. I therefore feel that it would not be advisable to prejudice the hearing by giving any further opinion than one sufficient to justify a *prima facie* case for rehearing.

10. The first decision in Tunapahore was given by Judge Mair, who fixed the boundary as shown on the attached sketch-plan. The value of this decision was called in question in the Native Appellate Court (Edger and Johnson, Judges; and Hemi Erueti, Assessor), which awarded the whole 5,446 acres of Tunapahore "to Whanau Apanui, of whom we think Whanau-a-Harawaka have the better right."

11. To sum up these decisions, it will be seen that Judges Mair, Edger, and Johnson, and Assessor Hemi Erueti (a very honourable and reliable Assessor) have all decided that the boundary of Whanau Apanui comes to the south of the Hawai River.

12. In consequence of dissatisfaction with these decisions a Royal Commission was set up to (*inter alia*) review and decide in regard to Tunapahore. This Commission, which consisted of Mr. Seth-Smith and Mr. Hone Heke, decided to adopt the Hawai Stream as the boundary, thereby awarding all the Whanau Apanui cultivations south of this river to the Ngaitai. This caused so much dissatisfaction that the assistance of the Hon. Sir J. Carroll and the Hon. A. T. Ngata was invoked, and they tried to adjust matters by allowing Whanau Apanui an area, on the south side of the stream, sufficient to cover their cultivations; but, as the suggestions made were not accepted, jurisdiction was conferred on the Native Land Court under section 28 aforesaid.

13. It is obvious, therefore, that the only persons of all those above mentioned who have decided that the Whanau Apanui claims did not come south of the Hawai River were Messrs. Seth-Smith and Hone Heke. Mr. Seth-Smith was under many disadvantages when sitting on that Royal Commission; and its findings in other matters have proved wrong. If I were called upon, without going into its merits, to decide which I would rather trust to be correct—the Royal Commission or Judges Mair, Edger, and Johnson, and Assessor Edwards—I would not hesitate to say the latter; but, apart from this, after reading the evidence placed before the various tribunals, I am satisfied that, if this were an ordinary case under section 50 of the Native Land Act, 1909, where application had been promptly made, I should have granted a rehearing.

14. Mr. Myers has argued very forcibly and strenuously that I should not recommend a rehearing unless such would have been granted by a Court other than the Native Land Court upon well-founded legal principles. In reply I have to say that the Native Land Court Judges have found it necessary to abandon the ordinary principles at law in such matters as rehearings, because the Native Affairs Committee, in granting rehearings by statute, has not adhered to such principles. We have therefore adopted the practice pursued by Parliament, and have ignored most of the legal principles applying to rehearings.

In this case I would recommend legislation granting a rehearing, as though the same had been granted by me under section 50 of the Native Land Act, 1909.

JACKSON PALMER,
Chief Judge.

Approximate Cost of Paper.—Preparation, not given; printing, with map (1,400 copies), £1 17s. 6d.

By Authority: JOHN MACKAY, Government Printer, Wellington.—1913

Price 3d.]