

challenged. In addition to this there were disputes as to the ownership of various reserves. One of these, touching the Rapaki Block, occupied some time; issues were framed, and judgment was given on the 28th April, 1868. In the course of this judgment the learned Chief Judge says: "The Court feels that it would be leaving its duty only half discharged if it failed to notice the character of the deeds purporting to extinguish the Native title to this Island which have been produced before it. Whether the deed called the 'Ngaitahu deed' can have any effect whatever in law is not a question upon which it is necessary to pronounce any opinion; but, having been compelled in the course of these proceedings to consider the terms and stipulations in this and other deeds produced, the Court could not fail to be struck with the remarkable reservation by the vendors of 'all their pahs, residences, and cultivations, and burial-places, which were to be marked off by surveys and remain their own property.' This provision has not, according to the evidence, been effectually and finally carried out to the present day, nor has any release been sought for by the Crown. . . . The Court feels very strongly that it would be greatly to the honour and advantage of the Crown that the stipulations and reservations of these deeds of purchase should, without further delay, be perfectly observed and provided for. The present large assemblage of the persons interested has removed many of the difficulties which would otherwise attend the obtaining of the necessary agreement and release."

2 MacKay,
pp. 202, 203.

1 MacKay,
p. 243.

After this judgment was delivered the Kaitorete case was called on. This was an application by the Natives to have the title to certain lands investigated. The claim was made on ancestral rights, and thus put the onus of proof upon the Crown of showing that it had purchased the land. Some of that land was already Crown-granted, and some was under pasturage license. Mr. Cowlshaw, for the Natives, did not claim the land which had been Crown-granted, but did claim the balance. After some evidence had been taken, Mr. John Hall, a member of the Executive, conferred with counsel, and the matter was adjourned until next day to ascertain whether any arrangement could be arrived at between the parties.

1 MacKay,
p. 204.

On the following day counsel for the Crown handed in what purported to be a reference to the Court, under section 83 of the Native Lands Act of 1865, of an uncompleted agreement. This reference, after reciting the authority under which it was made, goes on: "And whereas in the year 1848 a certain agreement was made between certain persons owning land in the Middle Island of the one part, and duly authorized officers of the Government of the other part, purporting to extinguish the Native title to land comprised in the plan hereto annexed, save over such lands as were thereby stipulated should remain the property of such Native sellers: And whereas such reserved lands have never hitherto been effectually and completely defined, and there are doubts whether the said agreement has been absolutely effectuated in law by written instruments: And whereas it is expedient to determine all such questions, and finally to conclude the agreement for the purchase of the lands comprised in the said plan: Now, therefore, the said agreement is hereby referred, in accordance with the above-mentioned Acts, to the Native Lands Court."

2 MacKay,
p. 244.

1888, I.—8,
p. 33.

Counsel for the Crown, in handing in the order of reference, said that it was proposed to adduce evidence that certain reserves were to be made under the Ngaitahu deed, which had never been carried out; and in respect to the non-fulfilment of those stipulations evidence would be given to show what quantity of land the Natives would be entitled to. This the Crown would consent to have given to them upon their signing a release of all claims to land in the Ngaitahu Block. Mr. Cowlshaw, for the Natives, objected to the order of reference on various grounds, which were overruled.

The Kaitorete case then proceeded. Some formal evidence was taken, and then Mr. Williams, for the Crown, put in the plan and the Ngaitahu deed, and said that was the Crown's case. Mr. Cowlshaw, for the Natives, contended the Native title had not been properly extinguished, and various legal questions were raised. The Chief Judge reserved his decision.

2 MacKay,
p. 211.

A very lengthy judgment was delivered on the 5th May, 1868. The judgment is emphatic that the Ngaitahu deed did not vest any estate in