

of the said lands shall be set apart for such persons of the tribe Ngaiterangi as shall be determined by the Governor after due inquiry shall have been made."

41. Doubts were raised as to the validity of the Order in Council and as to the arrangements made with the Natives. These doubts were removed by the Tauranga District Lands Act, 1867, which validated the Order in Council and everything done under it. In the following year the Tauranga District Lands Act, 1868, was passed to amend the Act of 1867 and the Order in Council so as to make them include the whole of the land of the Ngaiterangi Tribe.

42. The area confiscated was described in the Order in Council and the two Acts of Parliament as being estimated to contain 214,000 acres. It contained in fact 290,000 acres. Of this area the Katikati and Te Puna Blocks, containing 93,188 acres, were purchased and paid for by the Government. Other blocks were restored to the Natives, and the total area restored to them or bought from them was 240,250 acres, leaving 49,750 acres as the balance of land finally confiscated.

43. It is clear that the Tauranga Natives were engaged in rebellion against Her Majesty's authority after the 1st January, 1863, and their case came, therefore, within the terms of the New Zealand Settlements Act, 1863. This was admitted by the Natives at the meeting with the Governor on the 5th and 6th August, 1864, and they really agreed then with the Governor as to the total area to be confiscated as a penalty for their rebellion. In his letter of the 31st July, 1867, Mr. Mackay, the Civil Commissioner, said that the whole tribe, loyal and ex-rebel, joined in the settlement of this question. Mr. Smith did not contend seriously that confiscation was not justified, or that in the circumstances the area finally confiscated was excessive. His main contention was, first, that as to the 50,000 acres confiscated the loyal Natives, who had ancestral rights therein, were entitled to those rights or their equivalent; and, secondly, that as to the remainder of the land both the loyalists and rebels were entitled to their full share therein as if the land had not been confiscated. Mr. Smith suggested that there should be an inquiry by the Native Land Court as to both these matters. Before such an inquiry can be recommended a *prima facie* case of injustice at least must be established, and it must be reasonably certain that, if injustice has been done, the facts can be ascertained and the sufferers compensated. Mr. Smith did not attempt to prove a *prima facie* case of injustice in any of the arrangements and settlements that were made in connection with the confiscated land, and confined himself to suggesting that the purchase of the Katikati and Te Puna Blocks was made at an under-value.

44. If an inquiry such as that suggested were directed to be made, it would mean that, in the first place, the Court would have to ascertain who of the Natives concerned were loyal. That would be a difficult thing to do after the lapse of more than sixty years. It would be necessary also to go into all the arrangements and settlements that were made, and ascertain exactly what each Native, whether loyalist or rebel, obtained in the shape of land or money. It is obviously impossible to ascertain this now, and unless accurate information can be obtained on this subject, and as to the interests of the different claimants, it is impossible to say whether or not any injustice has been done.

45. Mr. Mackay's letter of the 31st July, 1867, to the Under-Secretary of the Native Department shows what was done in the way of settling claims. The following are passages from that letter: "Out of the lands reserved or returned to loyal Natives within the military settlements block of 50,000 acres, I would observe that these were at first to be more in the light of gifts from the Crown to the Natives on account of having lost land than as compensation. It is true that since the extension of the area of these to 6,000 acres by Mr. Clarke and myself we and the Natives now look on it as compensation. The intention of the Governor, in the first instance, was evidently that the question of compensation to loyal Natives should be adjusted out of the three-fourths of the whole district to be returned to the tribe, and not out of the one-fourth retained by him. . . . The fact of the Natives having sold to the Crown the Katikati and Puna Blocks to a certain extent altered the position of the case. However, in arranging this question Mr. Clarke and myself endeavoured to adjust any outstanding claims by making reserves for some of the