

The investigation of the New Zealand Company's "tenths" at Nelson came before Judge Mackay in 1892, when, on the application of the Public Trustee, the Native Land Court proceeded to ascertain the persons beneficially interested in these reserves. In the course of the inquiry it was found that five sets of claimants preferred a right to the land from various causes. After referring to the original deeds of purchase, the subsequent deeds of release, and the Spain awards, the Court, in dealing with the five claims set up, stated in its judgment that—

"(A) The first of these claims was made by Tupoki Herewine Ngapiko on behalf of the Ngatirarua, for whom Mr. Pitt appeared as counsel. The claim was based on—(1) Conquest; (2) occupation; (3) the sale of the land to the New Zealand Company; (4) the participation in the goods distributed and the money paid to the resident Natives in the years 1841 and 1844.

"(B) The second claim was made by Ihaka Tekateka on behalf of the Ngatikoata and Ngatitua, and a section of the Ngatitama and Ngatiawa. This claim was based on—(1) Conquest; (2) the gift by a former owner, called Tutepourangi, of all the country, including the Island of Rangitoto, from the Croixelles to Separation Point (Te Mataau); (3) occupation; (4) the sale to the New Zealand Company and consequent participation in the payments made. This claim was conducted by Hohepa Horomona.

"(C) The third claim was made by Huria Matenga, of the Ngatitama Hapu, and was conducted by Hemi Matenga. This claim was based on—(1) Conquest; (2) occupation; (3) the sale by Wi Katene, the claimant's father, to the New Zealand Company of the land at Nelson and Waimea; (4) the payment made to him by the Company for these lands.

"(D) The fourth claim was made by Hohaia te Rangiauru, of the Ngatiawa Hapu, and was conducted by Pamariki Paaka. This claim was based on—(1) Conquest; (2) occupation; (3) the sale to the New Zealand Company of the land comprised in the Nelson Settlement.

"(E) The fifth claim was preferred by Meihana Kereopa on behalf of the Ngatikuia and Rangitaane Hapus, and was conducted by Reimana Nutana. This claim was based on—(1) Ancestral right; (2) occupation; (3) the sale of the lands to the Company.

"The chief points for consideration were three:—

"(1) Whether all the land to the south of the Native boundary at Waihi and extending to Separation Point was included in the gift made by Tutepourangi to Ngatikoata; and, if so, whether the force of this gift was not afterwards set aside by subsequent events.

"(2) Whether the land comprised in the Nelson Settlement was fully acquired by the conquest of the original owner by the Ngatitua, Ngatikoata, Ngatiawa, Ngatitama, and Ngatirarua Hapus.

"(3) Whether the former owners retained any right to the land after the conquest.

"Touching the first point, the Court is of opinion that the evidence did not support the statement that all the lands from the southern boundary of the land now owned by Huria Matenga and extending to Separation Point was included in the gift by Tutepourangi to the Ngatikoata. With reference to the second point, the Court considers that the evidence discloses that the right to the land was fully established, in addition to the conquest, by the occupation of it by the several hapus who were found in possession on the arrival of the New Zealand Company. As regards the third point, the Court is of opinion that the right of the former owners was entirely extinguished by the conquest of Te Rauparaha and his allies, and that at the time the land was sold they were living in a state of subjection to their conquerors; consequently the Court dismisses this claim.

"In addition to the foregoing, there were two other points for consideration, viz:—

"(a) In what position are the rights of the claimants of certain hapus who had assisted in the conquest but who had not occupied prior to the year 1840?

"(b) Who are the persons of these hapus whose rights have not been prejudiced in this manner?

"In the opinion of the Court, the members of the hapus who took part in the conquest under Te Rauparaha who did not occupy the land comprised within the Nelson Settlement up to the year 1840 lost their right to it, as no rights of ownership were exercised by such persons as would confer a proprietary right to the soil, it being a recognized principle of Native custom that conquest alone without occupation confers no right.

"The hapus who retained their right after the conquest through residing on and cultivating the land are the Ngatirarua, the Ngatitama, Ngatiawa, and Ngatikoata.

"As regards the Ngatitua claim, this hapu, although it took part with the other hapus in conquering the country on the south side of Cook Strait, did not occupy any portion of the territory gained in that manner within the Nelson Settlement. The only places retained by that hapu in the South Island were situated at Cloudy Bay, the Wairau, and the Pelorus. These were the only places in the *bona fide* possession of this hapu at the foundation of the colony; consequently they had not acquired any proprietary rights in any other part of the territory conquered from the original owners. Under these circumstances the claim preferred by the Ngatitua to a beneficial interest in the New Zealand Company's "tenths" in the Nelson Settlement must be dismissed.

"The Court is of opinion that the territory comprised within the Nelson Settlement at the time of the sale to the New Zealand Company was owned by the Ngatikoata, Ngatitama, Ngatirarua, and Ngatiawa in the following manner, viz.: That the Nelson district, comprising 11,000 acres, belonged to the Ngatikoata and the Ngatitama; that the Waimea district, comprising 38,000 acres, was the common property of the four hapus previously