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Orakei,

ORAKEI.

AUCKLAND, December 22nd, 1869.

F. D. FENTON, ESQ., *Chief Judge*; HENARE PUKUATUA, *Arawa Chief, Native Assessor.*

(INTERLOCUTORY.)

THIS is a case in which Apinai te Kawau, on behalf of himself and the members of the tribes Te Taou, Ngaoho, and Te Uringatu, claims a certificate of title to an estate at Okahu, on the shores of the Waitemata, containing about 700 acres.

Heteraka Takapuna, on behalf of himself, as a remnant of the ancient possessors of this isthmus, and on behalf of himself and the tribes Ngatipaoa, Ngatimarū, Ngatiwhanaunga and Ngatitamatera, appears as a counter claimant.

Hori Tauroa, on behalf of himself, Ahipene Kaihau, and Matene Raketonga, members of the tribe Ngatiteata, appears as a co-claimant, not denying the title of the claimants, but asserting a right to come in along with them, through ancestral relationship and occupation.

Paora te Iwi, of the tribe Ngatitamaoho, sets up a similar right on behalf of himself.

Wiremu te Wheoro, of the Waikato tribe Ngatinaho, and Hawira Maki, of the tribe Ngatipou, assert similar rights on behalf of themselves.

All the counter-claimants seek only for a partition and a share in the estate along with the claimants, except Heteraka Takapuna, who denies the title of any person except himself and those who claim under or with him, though this extreme position was not taken by his counsel.

I will here mention that I propose to use the name of Orakei or of Okahu as applying (generally) to the whole estate; the smaller names, such as Wakatakataka, although necessarily used in the evidence, may be dropped in this judgment.

I intend also generally to use the first person in expressing the opinion of the Court, simply for convenience of diction, but I should add that in all points the Assessor entirely concurs with me. It is desirable also that counsel should be made aware that he understood their addresses as they were delivered in English, although, as he expressed himself, he would not have been able to reply to them in that language.

There are a few points brought under the notice of the Court by the several counsel which I will notice here before proceeding to treat the merits of the case itself.

1. It was with great regret that I observed that Hori Tauroa, who sat as an assessor in the previous case, where the parties were substantially the same, appeared as a claimant in this. Nothing can be more objectionable, and more repugnant to proper sentiment, than that an interested person should sit as an administrator of justice. Of course, such conduct cannot pass unnoticed, and it will be my duty to ask the Government to advise His Excellency to remove Tauroa from the list of Assessors. But although the confidence of parties must necessarily be shaken in the decision which was given in the previous trial, it does not appear to me that the present proceedings can be in any way impeached by this malfeasance. Of course, he now comes before the Court with an antecedent prepossession in my mind against his perfect integrity—a prepossession confirmed by a passage in his own evidence, where he says, "Heteraka's claim is as good as mine," although he decided against it, and now urges his own.

2. Many references were made by witnesses as to the doings of Captain Symonds, principally for the purpose of fixing dates. As it appeared in the course of the case that there were two gentlemen answering to this description who were not often distinguished by the witnesses, the Court is deprived of the assistance which it might have derived from the known and attested facts connected with them which it might have obtained if the Christian names of each had had been known and given.

3. The learned counsel for Heteraka drew my attention to an inconvenience—a hardship, in fact, as he put it—under which he felt himself to be labouring by the rule of Court which regulates the course of proceedings. I have given the subject some consideration, and cannot convince myself that there would be in reality any injustice in a rule which would in fact merely give the person in possession the advantage of being in the position of a defendant in an action of ejectment in the Supreme Court. But Mr. Gillies thinks that the rule goes further than that, especially in the matter of addresses of counsel to the Court. It was not in the power of the Court to alter it, and I do not think, however, that any substantial failure of justice has taken place in this case from this cause, for after the lengthened inquiry that has taken place, and the very complete manner in which the cases on all sides were placed before the Court, I cannot suppose that any alteration in the course of proceedings would have affected the result.

4. Much time was occupied in cross-examination, the object of which at the time it was difficult to perceive. For instance, Mr. Hesketh used much labour and great skill in endeavouring to upset Apihai's alleged possession from dates anterior to the coming of the first Governor; and Mr. Mackay, in Mr. Gillies' absence, cross-examined at considerable length, to prove or disprove descents from Potukeka, also induced the Court to recall a witness for the purpose of showing the political status of a rahi or pahi, and the distinction between them and common mokai or slaves. I did

not interrupt these gentlemen, trusting in perfect faith that they would show the Court, when the proper time came, how their own cases would be furthered by the course which they were taking. But this was not done, and the Court feels that if Mr. Hesketh had succeeded in upsetting Apihai's claim he would in so doing, as Mr. Gillies observed in his opening address, have only produced the effect of entirely destroying his own case; and the matters referred to, as inquired into by Mr. Mackay, appear to have been irrelevant. I may add that I am quite at a loss to discover what bearing the history of the mere pounamu called "Kahotea," which was investigated by Mr. MacCormick, can possibly have in this case. I merely mention these matters, as involving a painful waste of time.

5. There remains one more question for notice by the Court—viz., the appearance of Mr. Mackay, a Civil Commissioner, as agent for one of the parties in this suit. At the first sitting of the Court, Mr. Gillies applied for an adjournment on the ground that Mr. Mackay, who was instructing him, was absent, unavoidably detained at the Thames by important Government affairs, and said that he would be entirely unable to do justice to his clients in Mr. Mackay's absence, and urged for an adjournment. On Mr. MacCormick opposing the adjournment, Mr. Gillies stated that, if the Court determined to proceed, his clients would be placed in such a disadvantageous position that he should consider it his duty to ask for a re-hearing. The Court was of opinion that, if a re-hearing were asked for, supported by the authority of Mr. Mackay, it would in all probability be granted; and such a result appeared to be so unfortunate, not only as regards the great loss of time and expenditure of money, but also as leaving this agitating question for some time longer unsettled, that the Court thought the wisest course, and the most advantageous one for all parties under such circumstances, was that the adjournment should be granted.

At a subsequent stage of the proceedings, when Mr. Mackay was called as a witness, chiefly, as it appeared to the Court, to give Mr. MacCormick an opportunity of asking him any questions he might wish, that gentleman objected to his appearing, and argued on the ground of privilege. The Court decided that the privilege was with Mr. Mackay, and not with the suitors, that if he, called as a witness, stated on his oath that his giving evidence or producing papers would be prejudicial to the public service, the Court had no power to compel him to answer, but that the discretion to plead the privilege was with himself. In his concluding address to the Court, Mr. MacCormick referred in a very earnest manner to the disadvantages under which he felt himself to be labouring by reason of Mr. Mackay's appearance. He said that a Civil Commissioner, or any officer of the Government, had no moral right to use in a private suit communications made to him in confidence as a public officer; that such a course must be highly prejudicial to the Government, as tending to destroy the trust which should exist between the natives and officers of the Crown, especially officers purely charged with the

management of native affairs. And he added that my mind was affected, by his presence as I had already shown by granting the adjournment; and although he felt sure that my judgment would not be influenced, he could not have the same confidence with respect to the Assessor, who was in constant communication with Mr. Mackay, and looked to him as his superior officer, with power to influence his advancement or prejudice his future position.

It does not appear to me that the Court has any concern with the relations which exist, or may exist, between Mr. Mackay and the Government, or between the natives and Mr. Mackay as an agent of the Government; nor can Mr. MacCormick have anything to complain of, unless—

(1.) Mr. Mackay has disclosed matters entrusted to him in confidence by virtue of his position, to the prejudice of Mr. MacCormick's clients; or—

(2.) That the conduct of the Court is influenced by his presence or affected by his interference in this private suit.

The first is not alleged. The second was hinted at as far as concerns myself, and broadly stated as far as the Assessor is concerned. Now, I am inclined to think that Mr. Gillies' view of human nature as it is found among Englishmen is the more correct one. He appealed to the Court not to be too jealous about the appearance of the Crown officer on the side of his clients; not, in fact, to keep too strict a guard against Executive influence, lest we should err on the other side; but to decide as if there were no such person as Mr. Mackay present. The letter of the Native Minister to a Judge of this Court, to which Mr. MacCormick referred, has not, so far as my knowledge extends, in any way influenced, nor is likely to influence, the conduct of any Judge of this Court, and I cannot discover any grounds for entertaining the apprehension which Mr. MacCormick has expressed. Mr. Gillies read our common nature more truly. But there is another point of view to which I wish to direct the attention of parties and their counsel, with reference to Mr. Mackay's appearance and evidence. I gathered from his evidence that his clients were very powerful tribes, that they were excited about this contest, and that he had on the previous occasion of an adverse decision, restrained them from any excesses, and would endeavour, in case of another, to do so again. Now, without for a moment supposing that this information was intended as a menace to the Court, it struck me at the time that Mr. Mackay did not appear to have contemplated a decision adverse to the other side, which represents tribes, with their allies at Kaipara, Hokianga, and Waikato, equally powerful, and, possibly, equally excited. His influence could avail little with them, for they would regard him as a friend of their opponents, and a prime agent in their discomfiture.

Now, when I remember how, at a previous sitting of this Court, Ngatipaoa, his present clients, were defeated in a claim they made to land on the other side of Tamaki, and how effectively Mr. Mackay

stepped in and made an arrangement which healed their wounded feelings, and made them part from their victorious competitors in perfect amity ; and when I think of the great services he has rendered to this Court on other occasions when he occupied an impartial and, consequently, an influential position, I cannot but regret that on this occasion the Court cannot rely with the same confidence upon the efficacy of his intervention, for there are three parties to satisfy, and the decision must necessarily afford disappointment and loss to some of them.

Therefore, although I do not think Mr. McCormick suffers by this intromission, and the Court has not been "overshadowed by the Crown," yet I cannot conceal from myself that the Court is not in the position it ought to occupy with reference to the Executive Government ; and intimately concerned as its proceedings are, and unavoidably must be, with the peace of the country, my present mind is, that I (speaking as an individual Judge of the Court), shall decline in future to proceed with any case in which the Crown's officer appears, either with or without reward, as assisting either of the suitors.

The case has presented unusual difficulties, or rather the great value of the property has caused so much care and attention to be devoted to the preparation of the cases, that an appearance of intricacy and complication has been given to transactions which, in themselves, are clear and intelligible.

When once the history of the case is understood, and those passages which really have no bearing on the questions to be decided are eliminated from the evidence, the great principles which have governed this Court in determining Maori custom, or the laws of native ownership of lands, will suffice to guide us to a safe decision as to the effect of what remains.

The history of this estate is very much mixed up with the history of this isthmus, and that again is almost an epitome of the history of New Zealand during many years, for this was the highway of the armies of the tribes in old days ; and whether going North or South, all war parties passed through or touched at Tamaki.

For the sake of brevity and convenience, I have condensed this part of the question into the form of a historical chronology, and I have spent much time in preparing this statement in order that the judgment might be as short as possible. I cannot expect that all the dates and statements contained in this paper will be acknowledged as absolutely accurate, but I have got the best results I could from conflicting evidence, and in places where the statements seem to be contrary to some particular evidence, it must not be supposed that I have not noticed that evidence, but that I have preferred some other to it.

The land about this isthmus appears to have gone in early days under the general name of Tamaki, though that name is now confined to the river so called and a limited district adjoining it. In early times, the part of New Zealand comprised between lines drawn from Cape

Rodney across to the West Coast, and from Waikato to Tauranga, were in the possession of one great tribe, called, from their ancestor Oho, Ngaoho. As the tribe increased, it seems to have divided itself, without any express compact or arrangement, but simply by the gradual operation of ordinary causes, into sections, and these sections in the same unmarked and gradual manner became the possessors or persons especially entitled to reside in particular and partially defined sections of the original great tribal estate. These sections of the Ngaoho came to be distinguished by names taken or acquired from different origins. Those which have been brought to notice in this trial are Ngariki, Ngaiwi, and Ngaoho. Ngariki inhabited chiefly the land about and to the south of Papakura, Ngaiwi the interval between Papakura and the waters of Waitemata, and Ngaoho to the north of Waitemata, in the direction of Kaipara. At a later period Ngaiwi divided itself again into Ngaiwi and Te Waiohua, and a species of half-recognised boundary seems at a still later period to have existed between them at the canoe portage of Otahuhu, half of the peninsula of Mangere and Ihumatao being attached to the northerly subdivision. I do not think that this territorial division was ever distinctly laid down and agreed to, but there was a sort of understanding that that portion of the tribe who looked up to Hua (the origin of the name), who lived at Mangakiekie (One-tree Hill) and Mangere, and who inhabited the country around that place, should continue to live there, and should be called Waiohua, and those who remained in the southern part of the district should continue to be called after their ancestor Ngaiwi. But the names never had any definite meaning, and a person was still described by both names, or by either of them indiscriminately, and the territorial understanding carried no evidence of "ownership," for, in these days, the idea of ownership of land, or of anything else, except slaves and other movable property, did not exist.

As these original tribes became mixed up with intruding tribes, new names arose, such as Te Aua, Te Akitai, and many others, and the long inhabiting a particular piece of land by a particular tribe gradually grew into a right of possession, which was recognised as long as the tribe was strong enough to protect their persons from hostile attack without fleeing from the land to the protection of other tribes, or to the concealment of the mountains.

Thus at the opening of our history we find that the part of the Tamaki district to the north of Otahuhu portage, including part of the Mangere peninsula, was inhabited by a tribe called Waiohua generally, but still bearing the name of Ngaiwi. The northern section of the Ngaoho, who seem to have retained their original name, were at the same time gradually amalgamating at Kaipara with a conquering tribe from the North, called Ngaririki, subsequently called Te Taou, and the original name of Ngaoho disappeared in favour of the name of the intruders. At a later period (detailed hereafter) when Te Taou invaded this country and conquered the Waiohua, their chiefs intermarried with the women of the land; and their offspring,

at the suggestion of Awarua, one of the chief of them, revived the old name of the original tribe, and the doubly-mixed race appear again as Ngaoho—being, in fact, Ngaoho the Second. Others of the remnants of the nearly exterminated people of Tamaki gradually returned from their concealment, or the abodes of the Waikato tribes, whither they had fled for protection at the time of the conquest, were received into the conquerors' tribes now resident, and this "collection of remnants," as one of the witnesses called them, received the name of Te Uringutu. Apihai Te Kawau, by intermarriages of his ancestors on all sides, is now the chief these three tribes, Te Taohu, Ngaoho (the Second), and Te Uringutu, and on their behalf is the claimant in this suit. The pure Te Taou, *i.e.*, the descendants of the Kaipara tribe Ngaririki, from their intermarriages with the original Ngaoho (Ngaoho No. 1), have a chief of their own (Tautari), and are not altogether without jealousy of Paul and other descendants of the mixture with Ngaoho No. 2, but they look up to Apihai as their head chief, for he is, as Sir Walter Scott describes a Highland chief, "the man of many cousins."

The Ngatiteata and Ngatitamaoho, Ngatiuaho, and Ngatipou, are inhabitants of the southern or western sides of Manukau, and the result of intermarriages of Waikato tribes with the southern portion of the great original tribe Ngaoho. The Waikatos intruded from the South in precisely the same manner, though at different periods, as the Taou did from the North, though in my judgment Maki and Ngatipou would be more fitly included amongst the Uringutu than in tribes that have come to be regarded as almost purely Waikato.

Heteraka Takapuna is a member of three tribes, Ngatitai, Ngatikahu, and Ngatipoataniwha, and claims also to be descended from the Waiohua; and whether this claim is made out, or whether he and his co-claimants (the Thames tribes) have, by their ancestors or themselves, ever intruded themselves into this country is one of the principal subjects of this inquiry.

PEDIGREES.

It will be at once apparent that the pedigrees of the suitors will be a matter of great importance in determining the questions arising in this trial. Mr. Gillies expresses an entire disbelief in them; thinks that they are of no value, and, in fact, neither genuine nor authentic, but are made up or compiled for each case as it comes on. Now, it is obvious that the Court must express a decided opinion on this question generally, for it has been largely imported into the evidence of many of the witnesses.

This Court has no common law to direct its steps by; in fact it has by its own operations to make its common law, and to establish "year-books" which may in the course of time afford a code of law to which appeal may be made for guidance in deciding all questions which may come before it. And it has been the practice of this Court hitherto to inquire into pedigrees, giving them such weight

as they seemed entitled to from their intrinsic merits in each case. The general principle which should govern the Court as to pedigrees was laid down in a previous case;—"They must be received, not for the purpose of deciding tribal estates, but for the purpose of determining members of tribes." It is, no doubt, almost beyond the powers of members of a civilised race, who, possessing written documents, are not required, and are little accustomed to trust facts of importance to their memories, to believe that any person can remember from tradition a whole family, with all its branches, for twenty or even ten generations back; but, in my experience as a Judge of this Court, I have received pedigrees which I have compared with pedigrees given sometimes by the same witness, sometimes by others, at other Courts, at distant periods of time, and have found the general concord perfectly astonishing. Now it appears to me that, if the natives generally admit these pedigrees—and themselves largely found on them their right as members of a tribe to join in the tribal estate—it is strictly according to native custom that this Court should entertain them as aids in discovering the owners of properties; of course, subject in all cases to the more visible and important facts of occupation or possession. Even if these pedigrees are all "a mass of invention," and the names therein are purely fictitious, their general value is not in my judgment affected, if all natives agree to have their claims, to a certain extent, decided by them. The reception of them, under such circumstances, has not only convenience to recommend it, but safety also, and the knowledge that in so doing the Court is best consulting native feelings or prejudices, and native manners, and consequently is best interpreting "Maori custom." In our case all the parties put in pedigrees, Mr. Hesketh almost entirely relying upon them, for the acts of ownership or occupation proved by his witnesses were (with one exception) of a very trivial character; and Mr. Gillies' client (Heteraka Takapuna) made three starts at his pedigree to connect himself and his friends with Waiohua, and evidently felt so anxious about the question that at the close of the case he made an application to be recalled, in order to put in another.

The Court does not therefore propose to depart from its precedents, but will, for the purpose laid down in previous Courts, give such weight to the pedigrees as it thinks each is entitled to. And I may here state that, after much investigation and thought, I have not discovered any reason why any of them should be discredited—several little discrepancies, such as putting down Hua-kaiwaka as a woman and speaking afterwards of him as a man, not to my mind affording any ground for supposing that a person of that name never really existed, or for doubt whether he or she really occupied the allotted place in the pedigree.

I have, from the evidence, drawn out the pedigrees attached hereto, and will, in this judgment, allude to them hereafter when necessary, as evidence.

KAPETAWA'S CONQUEST.

Heteraka Takapuna founds his title and that of his co-claimants, the Ngatipaoa and other Thames tribes, partly on Waiohua ancestry (to be noticed hereafter), and partly on a conquest made by their ancestor in days long gone by. He says, "Kapetawa is the ancestor to whom this land belonged." This is the only conquest alleged by them; and it will, therefore, be proper to inquire into it particularly. Counting back by generations this conquering ancestor (Kapetawa) must have been contemporary with Hua, the Ngaiwi chief, who lived at One-tree Hill and Mangere, and as the name Waiohua then had its commencement, this part of the country must have been pretty thickly peopled. Indeed, when one looks at the enormous earthworks surrounding Mount Eden, One-tree Hill, and all the volcanic hills of this district, and recollects the character of the tools with which they were constructed, there can be no doubt that the people who built them can neither have been few in numbers nor sparsely settled. The same people seem also to have occupied Waiheke and the islands of the Gulf, and possibly down the shores of the Waitemata to the Firth of the Thames. At this time the Thames tribes seem to have been living on the Firth of the Thames and up the Thames Valley to Horotiu and Rangiawhia, and perhaps further west and south—for Hoterene Taipari told us that the ancestors of those tribes, Marutuahu (whence the name Ngatimaru), lived at Kawhia, whence they worked their way across the Waipa and Waikato plains, and ultimately down the Thames and Piako; and then gradually spread eastward and northward. At a later period of their history we find them living at Manga-tautari, and we have many witnesses who tell us of their final expulsion from the Waikato Valley by Waikato, under Te Waharoa and Potatau. And Taipari adds:—"At this time Te Waiohua owned all this land. We Ngatimaru were on lands that did not belong to us. We were living south of Kauaeranga, on the lands of Ngatihuarere and Ngatikorowhai." And Heteraka stated that the pa at Orakei captured by Kapetawa was built by Ngatihuarere. Possibly the two events may have some connection with each other. At the time of this conquest, then, some of the Thames tribes were living at Hauraki, near the mouth of the Thames. The cause of the war was as follows:—About seven generations ago, Tarakumikumi, a man who is alleged to be a Waiohua, though somewhat unaccountably his brother (Kapetawa's father) is stated to be a Ngatipaoa, was living in a pa near Orakei. His brother's son was Kapetawa. Tarakumikumi married Kapetawa's sister, *i.e.*, his own niece. The uncle and the nephew went out one day to fish near the Bean Rocks, and the uncle took the nephew, then a boy, and put him on the rock at low water, and left him. As the tide advanced, his mother from the shore heard his screams, put off in a canoe from Kohimarama, and rescued him. Kapetawa cherished the remembrance of this affront until he grew up, when he raised a war party of Ngatipaoa, and attacked his uncle in the pa at Orakei. This pa was taken, and another at Kohimarama, and many people killed, but Tarakumikumi escaped. Kapetawa,

thinking his *utu* insufficient, pursued *Tarakumikumi* to *Waiheke*, where he finally wiped off his early insult by killing him and his wife and children, and, then pursuing his successes, took many *pas* and killed many people. He settled at *Waiheke*, and the title of his descendants has been recognised to a portion of land at *Putiki*, founded, it is suggested, on this conquest.

Now, it is abundantly clear that this alleged conquest is nothing but a raid made for revenge. If *Kapetawa* had extended his views, and followed up his successes at *Orakei*, by taking possession of the land, and with his descendants permanently settling there, they would, doubtless, have acquired a title, but nothing was further from his thoughts. *Tarakumikumi* had escaped him, so the chase was renewed, and when at length he came up with him and killed him he quietly settled down where he was, and (as far as the evidence goes), giving no further thought to *Orakei*, ended his days in peace in his new acquisitions in *Waiheke*.

And this inroad into the district could have made no permanent impression, for we find at a later period the country fully peopled, and *Kiwi*, chief of the *Waiohua*, the tribe alleged to have been destroyed by *Kapetawa*, living at *Mangakeikei* (One-tree Hill), and sounding a big gong to a numerous people who lived there and holding places of strength on all the volcanic hills of the country, besides *pas* at *Kohimarama* and *Taurarua*, at the former of which places *Kapetawa* is alleged to have exterminated the original inhabitants. And at a later period of our history, after *Kiwi* had been killed, we find a populous *pa* at *Te Umuponga*, *Orakei*; and we are told of the sentinels singing their songs on the ramparts of *Kohimarama* as *Ngatiwhatua* advanced to the assault.

It does not appear to me that this inroad of *Kapetawa* should be allowed to have any weight in determining the question of ownership of any land, except perhaps that portion of *Waiheke* where he settled. The history has the characteristics of the inroad of *Chevy Chase*, except that the result was more fortunate to the aggressor.

1720.—KIWI.

About the year 1720, a great chief of *Waiohua* or *Ngaiwi* is found living in strength at One-tree Hill, where he had a *pa*, the trenches of which may be seen to this day. His people held *pas* or positions of defence, formed by large ditches and protected by stakes, and in some places by stone walls, at *Mangakiekie* (One-tree Hill), *Maungarei*, (Mount Wellington), *Mangere*, *Ihumatao*, *Onehunga*, *Remuera*, *Omahu* (near *Remuera*), *Te Umuponga*, at *Orakei*, *Kohimarama*, *Taurarua*, (Judge's Bay), *Te To*, (Freeman's Bay), *Rarotonga* (Mount Smart), *Te Tatua* (Three Kings), *Owairaka* (Mount Albert), and other places. In fact, he appears to have held undisputed possession of the whole country from the *Tamaki* river to *Te Whau*, and stretching from the *Manukau* to the *Waitemata*. But prosperity and power appear to have made him treacherous and overbearing to his neighbours. For we find about the year 1740, at a feast at *Wai-*

tuoru, Kiwi, assisted by Te Rangikaketu, the great-grandfather of Heteraka, surprised and treacherously murdered thirty of the tribe Te Taou; and about the same period he murdered, at Mimihanui, in Kaipara, Tahatahi, the sister of Tuperiri, a chief of Te Taou, and grandfather of Apihai, (the claimant), and other members of the tribe. We are also told by Hoterene Taipari that Kiwi's people murdered Kahurautao, an ancestor of Ngatimaru, "a different man," he adds, from the ancestor in "Heteraka's pedigree;" and about the same time Kiwi or his people treacherously killed Te Huru and Taura, of the Ngatiwhatua tribe, in Kaipara.

CONQUEST OF WAIOHUA BY TE TAOU.

At length, the Kaipara tribes took steps to avenge the slaughter of their friends, and about 1741 an army of Te Taou, under Wahaakiaki and other chiefs, descended from Kaipara to Manukau, crossed the Heads in the night time in canoes made of rushes, and stormed Tarataua, a pa of Te Waiohua or Ngaiwi, to the south of Awhitu, and slaughtered the people in it. The taua then returned and attacked Pukehorokatoa, a pa to the north of Awhitu, but met with a repulse, and re-crossed Manukau Heads. Kiwi assembled all his people from One-tree Hill, Mangere, Ihumatao, Moerangi, and other pas, and a great battle ensued at Poruroa (Big Muddy Creek). The Waiohua were defeated with immense slaughter, 30 being destroyed in one canoe, and Kiwi was killed. One-tree Hill and all the pas in the neighbourhood were deserted by the vanquished, and taken possession of by Te Taou. The remnants of the Waiohua assembled in their pa at Mangere and made a final stand, spreading shells on the paths approaching to the pa, so that the sound of their being crushed might give the alarm in case of a night attack. Te Taou advanced under Tuperiri, another of their chiefs (Apihai's paternal grandfather), spread their dogskin mats over the shells, assaulted the pa, and took it by surprise. The whole of the people inside were killed or finally dispersed, except some women and a few men, who were spared, amongst whom was Paerimu's grandfather.

CAPTURE OF KOHIMARAMA AND TAURARUA.

Two months after the pa of Mangere fell, the Ngatiwhatua, another tribe of Kaipara, to which Te Taou were related, collected their forces to avenge the murder of their friends Te Huru and Taura, and under their chiefs Takaake, Te Pahi, and Raoraowhaina, passed over the isthmus of Waikoukou to Pitoitoi (Brigham's Mill), and sailing down the Waitemata, assaulted and took in one day the pas of Kohimarama and Taurarua, held by Waiohua under their chiefs Hupipi and Humataitai, twin brothers. After destroying all the inhabitants, Ngatiwhatua returned to Kaipara, leaving the fruits of their victory to be enjoyed by their friends Te Taou.

Thus ended this episode in the history. Te Waiohua were extirpated as a tribe, and individuals only existed in a subject state, or as wives amongst the conquering tribe. Tuperiri built his pa at

One-tree Hill, and entered into occupation of the desolated and vacant country, and held undisputed possession of all the lands twelve months before inhabited by the numerous tribe Te Waiohua, which had now become extinct.

REMARKS THEREON.

Before leaving this epoch, I desire to notice two remarkable circumstances which appear to me to have an important bearing on the case generally, and especially as indicating to some degree the real value of Heteraka's claim, and the importance to be attached to his case as put forth in his own evidence. Many witnesses speak of these histories with slight variations, which, to my mind, give a greater aspect of truth to the teller of traditions. Some of these variations were noticed by counsel, and admitted as errors or explained in a remarkable manner, as for instance the two Kiwis; but in the general tenor of the tale there is evidently a clear and very consistent train of history. Many of these witnesses must have seen and talked with the actors in these events. Apihai very probably heard from his grandfather the tale of the night attack on Mangere. It was Paerimu's grandmother who was murdered at Mimihanui, and he doubtless heard his mother often talk of the death of her mother and the subsequent capture of her husband's father at the great destruction of her tribe at Mangere. Warena Hengia has himself seen the posts of Tupiriri's pa at One-tree Hill, and Te Waka Tuae lived in the pa at Onewa as a child. Yet only one witness mentions Mount Eden all through these operations, and, when questioned directly, without one exception they say they never heard of a pa having been there in or since the days of the conquest. Yet Heteraka told us that Rangikaketu lived there with his people, and that it was the "permanent pa" of his grandfather, Te Hehewa. Now, Te Rangikaketu was a party with Kiwi to the murders. It is not credible that after the decisive battle of Paruroa, in which Te Rangikaketu was engaged, and at which Kiwi was killed, and his tribe so disheartened that they abandoned all their pas on the north of Manukau, and concentrated themselves in Mangere for a final struggle, Rangikaketu with his Waiohua, as Heteraka alleges, can have been quietly left in occupation of Mount Eden; nor would his son have been allowed to make it his "permanent pa." But while some of the witnesses tell us of the pas taken and those abandoned, not one speaks of Mount Eden at all, and there is no doubt in my mind that it had been altogether abandoned before Kiwi's time, and that it has not been occupied as a pa since. I do not say that Te Hehewa never lived at Mount Eden. I think he probably did; that is, I see no reason for supposing the contrary. He married Huiatara, a woman of Ngatikahua, a hapu of the Waiohua, and Teke, another Waiohua woman; and, his father having apparently cast in his lot with the Waiohua, Hehewa may have been living there before the conquest; for if Apihai's grandfather had a hand, as an influential chief, in effecting it, it is not at all

improbable that Heteraka's grandfather, as a young man, may have been one of the sufferers and subsequent fugitives. But to believe that Te Hehewa, after the conquest, had a "permanent pa" there, is quite impossible. The evidence is also conclusive against Heteraka's statement that he died or was buried there. The evidence is preponderating that he died a natural death, near Manukau Heads, — that he was buried at Horohoro, near Wharenga, at the Heads, — that some chiefs of Te Kawerau, on account of their relationship to him, moved his bones to Piha, near Waitakere, and placed them in the wahi-tapu of Te Kawerau, called Pukemore, near that place, where they now repose. The other remarkable incident which occurs to my mind is the presence of Rangikaketu with Kiwi's followers at this time, and his apparent connection with their fortunes, and theirs only; for it is admitted by all sides that he was a principal chief of Ngatitai and Ngatikahu, whose possessions extended from Takapuna northwards to Whangaparaoa. And Rangikaketu is engaged in these affairs, with a few followers, who are stated to be his own people—Ngatitai. Neither side has explained this satisfactorily. If these people were Ngatitai, what were they doing there? for we scarcely ever hear of Rangikaketu or Hehewa being "in their own country," as Mr. MacCormick would say, or "in their other country," as Mr. Gillies would say. Now, I think there is evidence to show that Ngatitai were a broken people before the time of Kiwi; and, if that is so, Te Rangikaketu and his few followers were then already refugees. Hapimana Taiawhio told us of the destruction of Ngatitai in old days by the Ngatipaoa, Ngatimaru, and other Thames tribes, and we have evidence that Ngatipaoa have exercised dominion over their lands; and we were told by another witness (Paora Tuhaere), "I have heard of the lament of Te Hehewa for his pa at Takapuna." Many matters difficult to explain, such as the residence of Purehurehu and of Heteraka amongst Ngatipaoa, can be easily understood on the above hypothesis; but I do not think that the evidence on this point is sufficiently clear or decided to allow the Court to make any important deductions from it. But one thing is certain, that Te Hehewa was, and Heteraka is, a chief without any followers.

From the period of this conquest for about half a century, there is no evidence of peace having been broken. Te Taou and the new mixture, under a revived name—Ngaoaho (really Ngaoaho No. 2)—and the returned refugees of Waiohua, under the name of Te Uringutu, lived together in different places in or near the isthmus, in undisturbed possession. They appear to have abandoned some of the pas that they captured from Te Waiohua, but maintained One-tree Hill as their principal pa, and had outlying pas at Onewa (Kauri Point), occupied by Tarahawaiki (Apihai's father), and Te Whakakiaki, the commander at Paruroa; Te Taou (Freeman's Bay), under Waitaheke; Mangonui (inside Kauri Point), under Reretuarau; and Tauhinu, further up the river. "These," Waka Tuaea says, "were all the pas that kept possession of this sea (Waitemata)

after the original people were destroyed." Besides these pas, they maintained others at Mangere and Ihumatao, under Te Horeta and Awarua, with whom and whose people the Waikato tribes had begun to mix by marriage, for the protection of that portion of the tribe living on the Manukau side.

1780.—GIFT OF LAND AT PANMURE, CALLED TAUOMA.

About 1780, an event fruitful in disturbances took place. Te Tahuri, the daughter of Te Horeta, who by descent was half Ngaoho and half Waikato, had a younger female relation (called by Heteraka a teina) who married Te Putu, a Ngatipaoa man. For some reason which does not appear, he wished to live away from the residences of his friends at Wharekawa, on the Firth of the Thames; and Kehu asked her relative Te Tahuri to mark off for her a piece of land on the Tamaki river. Te Tahuri defined a large track, probably then unoccupied, commencing near the place now called Panmure, and extending round the shores to Whakamuhu, and thence inland to Waia-tarua (College) Lake; and Te Putu and his wife and friends appear to have taken immediate possession. This place was celebrated for its great growth of tupakihi, the plant which produced the poisonous fruit called "tutu." The sages of Waikato, when they heard of the arrangement, predicted future quarrels and misfortunes as likely to result from the intrusion of a strange people into the hitherto compact territory, peopled alone by the cognate tribes. "Soon these two old women will be drunk with the juice of the "tutu" was the prophecy—not proverb, as Mr. Gillies understood it. It must here be noticed that the Court is of opinion that this estate was marked off for Kehu and her husband in the manner described, and that it was not the ancestral territory of Ngatipaoa. Haora Tipa and the witnesses on that side speak of Kehu as a Waikato woman, and of the land as belonging to her, though they deny the gift, and speak of it as originally Ngatipaoa land. This is clearly inconsistent. It was not alleged that Ngatipaoa had any land on the other side of the Tamaki; and I am aware that the title of the land on the East shores of the Wairoa, with the exception of a small piece of 100 acres or so at Oue, was, after a strong contest, decided in this Court not to belong to them, and they do not attempt to give any explanation of how they became possessed of this isolated piece at Panmure—called Tauoma. Indeed, when they state that Kehu was a Waikato woman and that the land was hers, it appears to me that practically they abandon their position of Tauoma being ancestral Ngatipaoa land.

1790.—FIGHT BETWEEN TE TAOU AND NGATIPAOA.

The prognostication of the Waikato sages was soon fulfilled. A party of the Ngaoho were at Mahurangi fishing for sharks, and at the same time a party of Ngatipaoa were there similarly engaged. Either to balance some old "utu" account, or to commence a new one, the Ngatipaoa party set upon the Ngaoho and killed great numbers of

them, amongst whom was Tarahawaiki, the son of Tuperiri and father of Apihai.

1792.

A year or two afterwards, a battle took place between the two parties at Rangimatariki, near the Whau, in which Ngatipaoa were defeated with heavy loss: "You may see hangis (ovens) to this day," says Tamati Tangiteruru. Apihai says that this engagement was to avenge the deaths at Mahurangi, but this can scarcely be, for Ngatipaoa appears to have been the attacking party.

1793.

Waikato, now closely related by intermarriage with Apihai's people begin to appear upon the scene, and, shortly after the above engagement, Te Taou, thinking they had not yet balanced the item in the utu account, caused by their losses at Mahurangi, called the Waikato tribes inhabiting the south shores of Manukau to their assistance, and together they crossed over to Waiheke to renew their attack on Ngatipaoa, but failed in meeting with the enemy. Re-crossing Tamaki straits, they were pursued by Ngatipaoa, and an engagement took place at Orohe, on the west shore of Tamaki river, in which Ngatipaoa were victorious, killing Te Tahuri, the giver of the fatal present of land, and Tomoau, her husband and the paternal uncle of Apihai. One witness said that Rangimatoru, Kiwi's son, was killed at this battle, fighting amongst his father's conquerors. "This was the last fight of old days," and the debtor and creditor account of slain appears to have been finally left unbalanced. I will here briefly state, as too clear to require any remarks, that those contests between Ngatipaoa and Te Taou and Ngaoho were fights for revenge simply and purely, and were never contemplated to affect in any way the possession or title to the estate under investigation. At the time of this last fight, part of the Ngaoho and Te Taou were living at Hikurangi, beyond the Manukau ranges. Tuperiri, with a party, was still at One-tree Hill, and Tauoma was uninhabited. There is now a blank in the evidence for many years. Clearly no great events happened, which would cause persons to remember or detail the residences and doings of the actors in this history. It is probable that both sides were for some time suspicious and in fear of each other, and kept as far apart as possible.

1815.

I can find nothing which I think the Court ought to rely upon until about the year 1815, when Ngatipaoa appear to be comfortably settled at Mokoia, a place on Tauoma, the piece of land given to Kehu; and Apihai's people appear to be living principally at Ihumatao and Mangere, cultivating also at Okahu and on the shores of Waitemata. It is also alleged by Heteraka and his friends that they cultivated there at the same time. The only witnesses who say that they themselves personally lived and planted there at this time are Heteraka, Haora Tipa, and Taitu. Heteraka's occupation can

have no weight in this suit, for his father had married a Ngatiwhatua woman, and he would have an undoubted right to cultivate on the estates of his mother's tribe at his will so long as he remained with them—a right which he would lose as soon as he cast in his lot with a strange tribe. Taitu and Haora Tipa pointed out to the Court, when it visited the estate, portions of land, comprising together about one-fourth of the whole property, or 150 acres, as that which they with their own hands cultivated. Now there was certainly, to say the least, great exaggeration in these statements. But, supposing that they cultivated in a settled and domiciliary manner for some period, I do not understand that any ground for the right to do so is set up except the conquest by Kapetawa, which I have already stated that the Court does not think has any characteristics beyond that of a raid for revenge for "personal affront." Certainly it cannot suffice in this Court to create any "take" for his descendents to commence cultivating a century afterwards. Apihai alleges that he and his people were in permanent occupation at the same time, but he and his witnesses all deny that any Ngatipaoa were cultivating Okahu (including in that name the whole estate) along with them. I think the truth is that neither party had their real domiciles at Okahu at this period, but that Ngatipaoa (including Heteraka, for he appears to have been living with them) lived at Mokoia, and Apihai and his people at Mangere, as their head-quarters, and that both parties came over to Waitemata waters for fishing purposes, and planted food at Okahu simply for such purposes—the former in a very small way, and the latter more largely, for it must be remembered that the tribes were in a state of perfect amity at this time. The Rev. Dr. Maunsell gave important testimony as to the habits of Maoris cultivating the lands of other tribes while in a state of friendship, and Hotereni Taipari gave some remarkable instances of the same custom: Ngatipukeko, now living on the lands of Te Parawhau, at Whangarei; Ngatipukenga, on the lands of his own tribe, Ngatimaru; and his own tribe, formerly living on the territory of Ngatikarowhai. I do not remember that any claims have been established in this Court solely on the ground of modern occupation without reference to some "take" of old days; and the Ngatipaoa seem to admit this rule, for they set up Kapetawa's conquest, which, in the judgment of the Court, does not suffice.

1818.

A few years after settling at Mokoia, Ngatipaoa built a strong pa, very near to Mokoia, called Mauinaina.

1820.

About the year 1820 we find a large party of Ngatipaoa living at Mauinaina; Te Taou at Oneonenui (Kaipara), and others of them at Onehunga; and Ngaoho at Mangere and Okahu, the former being their pa or head-quarters. I think the partial cultivation by some members of Ngatipaoa on or adjoining the Okahu estate still con-

tinued, but I am very doubtful on this point. They owned the land up to the college lake, and a trespass over the boundaries would be regarded with no jealousy, but rather as a flattering testimony of confidence and good feeling.

1821 OR 1822.

A party of the Bay of Islanders (Ngapuhi) touched at Tamaki Heads on their way to Maketu, on a war expedition against Te Arawa; and another party, under Koperu, came down from the Bay in canoes and attacked Mauinaina, but were repulsed by Ngatipaoa, assisted by Apihai and Ngaoho, and Koperu was killed. Apihai and his party came from and returned to Mangere.

Hongi Hika, the great Ngapuhi chief, in command of a powerful party of the Northern natives, armed with guns, went up the Frith of the Thames and took by assault a large pa at Totara, near the mouth of the Thames, held by Ngatimaru and the Thames tribes. The slaughter was very great, and the strength of the tribe was much weakened. In the same year Apihai and his people united with several of the Waikato tribes and started on a war expedition through Rotorua to Hawke's Bay; thence they went on to Wellington, and returned back through Taranaki to Waikato and home. They were away nine months, and during their absence in 1823, Hongi Hika attacked Mauinaina (Panmure) Pa and captured it from Ngatipaoa. Those who escaped fled for the most part up the Waikato, while some joined their friends at Maungatautari. The loss of life appears to have been very great, and Hongi remained there many days feasting; then hauled his canoes over the portage at Onehunga, sailed across the Manukau to Waiuku, again hauled his canoes across the portage one and three-quarter miles into the Awaroa river, near its source, thence down the Awaroa, straightening the channel where the length of his large canoes required more room, and passed up into the Waikato river. He sailed quickly up the Waikato and Waipa rivers, driving all the inhabitants, men, women, and children, before him until he arrived before a great pa at Matakitaiki, on a high sandcliff at the place where the Mangapouri river flows into the Waipa. The total population of the Waikato country seems to have collected here; and here, also, some of the remnants of Ngatipaoa, who fled from Mauinaina, sought a refuge. Hongi attacked the place at once, and took it. The slaughter which ensued was very great. Mr. Cowell, who at the same time was living at the Bay, and who saw Hongi start and return, says that above 2,000 people were killed, and many heads were brought back to the Bay. Some of the Ngatiwhatua joined Hongi in this expedition, but I can find no explanation of this singular circumstance. Hongi returned to the Bay after a year's absence. When Apihai and his tribe returned from their Southern invasion, they found that all these events had taken place. Mauinaina, which he left a flourishing settlement, was desolated and vacant, and the survivors of the slaughter, who fled from Mauinaina were either dispersed among their friends up the Horotiu or had been killed at Matakitaiki.

It appears probable, also, that those of his own tribe whom he had left behind him at Mangere, and scattered about the country across to the Waitemata, had fled away to the broken country known as the Manukau Ranges, where they at all times of great danger appear to have found certain refuge. Apihai and his people took up their abode at Hikurangi, the wooded district to the north of Manukau heads, and Oneonenui, in Southern Kaipara. From thence they moved to Waikumete (Little Muddy Creek), a small stream flowing into the Manukau, and finally settled down along with Ruka Taurua and some Ngatitahinga (Waikato) people at Te Rehu (Low and Motion's), a small stream flowing into the Waitemata. During nearly two years Te Rehu appears to have been their principal domicile, though they occasionally visited Pahurihuri, in Kaipara, and had also some small cultivations at Okahu, and at the place where Auckland now stands.

This year (according to Heteraka) Ngatipaoa organised and sent from Waikato, under Purehurehu, Heteraka's father, a war expedition against Te Parawhau, (Ngapuhi), living at Whangarei; and another Ngatipaoa taua started under Te Rauroha, their chief, who made a successful attack against the same tribe, and killed Kaipia, and took Kahungau prisoner.

1824.

In 1824 the three tribes were living at Te Rehu (Low and Motion's), and had also a settlement at Kumeu, the head of the Waitemata river, visiting as before Okahu and Auckland. The whole of the Ngatiwhatua tribes assembled, for some object not told, at Aotea, on the banks of the Kaipara, and immediately afterwards many of Te Taou and Ngaoho settled at Okahu.

In the early part of this year a party of Waikato chiefs, headed by Te Kanawa and Te Kati, visited the Bay of Islands to make peace with Ngapuhi. After the usual speeches, peace was made, and one of the chief women of Ngapuhi, Matire Toha, was betrothed to Te Kati, who was Potatau's brother, as a pledge of peace and permanent friendship. The Waikato party, accompanied by the bride and sixty Ngapuhi chiefs under Rewa and others, started away from the Bay by the direction of Hongi to return the visit of the Waikato chiefs, and to complete the peace by formally reinstating the tribes of Waikato in their usual residences. When the party arrived at Takapuna they were met by Apihai at the head of all Te Taou Ngaoho, and Te Uringutu, who treated them courteously and supplied them with food from Okahu, where at that time they were sojourning. The Taou took the Ngapuhi party up the river to Ongarahu, where they entertained them for three days. The Ngapuhi party then went to Te Whau, dragged their canoes over the neck of land into the Manukau, and thence, pursuing the route formerly traversed by Hongi, they passed up the Waikato. At Weranga o Kapu, an island in the Waikato river below Tuakau, they saw a party of Ngatipaoa, under Kohirangatira and Paraoarahi, living in a pa; and, arriving at the pas of the Waikato on the Mangapiko river, a branch of the

Waipa, they there found another party of Ngatipaoa, part of the survivors of the original inhabitants of Maunainā. The Waikato chiefs of the pas were Te Kanawa and Te Roherohe, and the chief of Ngatipaoa refugees Te Rauoha. The Ngapuhi chiefs remained two years at this place and then returned to their own country. At the end of the year 1824, Te Taou and Ngaoho were living at Te Rehu, at Horotiu (Queen-street), and some at Okahu. Most of these facts I have taken from the statements of Matire Toha and Ruka Turua, one of a Waikato tribe and the other of Ngapuhi, independent witnesses who have no claim to the estate under investigation and no interest in the matter.

1825.

Heteraka tells us of an expedition of Ngatipaoa who started from Waikato about 1825 and assailed the Ngapuhi at Whangaruru and defeated them; and at a later part of the year Te Uringutu, under Hakopa Paerimu, who with Ruka Turua were making a fishing visit to Motu Tapu, were attacked by Ngapuhi, under Te Rori, and many of them killed, amongst whom was Popiotahi a relation of Paerimu's. Twenty women were captured. Apihai, with the tribe Ngaoho, and Wakaariki, with Te Taou, arrived in the night time and were urged to renew the contest, but declined, and retreated with the Uringutu to Kumeu. A party of revenge was shortly afterwards despatched by Te Taou and Ngaoho, accompanied by Ruka Taurua and Te-Ao-o-te-Rangi at the head of some Ngatitahinga (Waikato); and they advanced to Whangarei, and planned and executed a very successful surprise against the Parawhau (Ngapuhi), who, being from their position accessible and handy, seem to have been selected as objects of attack whenever an utu account wanted a victim to balance it. Many men were killed and 40 women taken prisoners, with whom they returned to Kumeu.

A short time afterwards Te Taou, Ngaoho, and Uringutu, to the number of two hundred, settled permanently at Okahu, and made this estate the head-quarters of the tribes. They had been living here a year, when the battle of Ikaranganui took place. From the time of the battle of Maunainā, Tamaki district had been entirely abandoned by Heteraka and Ngatipaoa.

1826.

In the year 1826, Hongi Hika again appears in our history. At the head of a large party of his own tribe he advanced into Kaipara, where he was joined by Te Parawhau under Tirarau. A battle ensued at Ikaranganui, in which all the Ngatiwhatua tribe, of Kaipara, were engaged, and in which they sustained a severe defeat. The Ngaoho and Apihai's people were not there, all of them still being at Okahu, but Apihai himself was approaching the field of battle to take part in the combat, when he met his friends in full retreat, and he fled away with the rest. Hongi returned with his people; and the Uriohau and Ngatiwhatua proper, and other

defeated tribes, retreated to Waikato Heads, where they left their women and children. Returning unexpectedly, they suddenly attacked Te Parawhau, at Otamatea, and out of a party of eighty, killed seventy and captured ten, who were subsequently liberated. The head of Tuhoihoi, the chief, was taken to Waikato, and the flesh of the rest. Thus impeded, Ngatiwhatua fled rapidly up the Waikato, and sought refuge with Ngatipaoa in the before-mentioned pa of Rauroha's, at the Mangapiko. Ngatipaoa invited them in, and the same day Hongi, who had been in full pursuit, arrived. And now came one of those strange combinations and commingling and separating of parties which are so constantly occurring in this history, and which are so utterly unintelligible. Ngapuhi were joined by the Ngatihaua (Waikato), and the allies desired the Ngatipaoa to leave the pa in order that they might attack Ngatiwhatua. Te Rauroha and his people complied with this request, and the allies immediately stormed the pa, and killed many of the Ngatiwhatua. After this adventure, peace was made between Ngatipaoa and Ngapuhi, and many of the Thames tribes returned from their refuges, and took up their abodes at Waiheke, Taupo, and elsewhere, occupying also the other side of the Frith; but they do not appear to have been perfectly assured of their safety in these open places, for there is evidence of their constantly moving backwards and forwards during the whole of these unsettled times. Te Taou and Ngaoho were not concerned in these affairs.

Although Apihai's tribes had not joined in the battle of Ikaranganui, they seem to have known that it would have been unsafe for them to await the arrival of Hongi—whether on account of their near relationship to Ngatiwhatua, or on account of their doings with the Parawhau, we are not told. At any rate, they determined that it was not wise to stay here, so they assembled at Waikumete (Little Muddy Creek), and fled up the Waikato to Pukewhau, on the Waipa, and, after sojourning there a short time, escaped to Mahurangi, where a party of Ngapuhi lived, who were friendly to Apihai.

At this time the Upper Waikato country, Maungatautari, Cambridge, etc., was in the occupation of Ngatipaoa, Ngatimaru, and the Thames tribes. In fact, here the great body of their people seem to have been living.

The close of this year found the whole of this isthmus without an inhabitant. Ngatipaoa had been driven from Mauinaina, and were living on the banks of the Mangapiko and Horotiu. Heteraka was wandering about, sometimes in Waikato (his mother dying about this time at Rangiaohia), and sometimes in the Thames districts. Ngatiwhatua were thoroughly broken, attacked first by Ngapuhi, and then by Waikato, for which purpose their friends the Ngatipaoa politely stood on one side, and seemed likely to share the fate to which they and their related tribes had previously subjected the Waiohau. The Taou and Ngaoho were in refuge near Mahurangi, subject to constant attacks and dangers. Ngatiteata, Ngatitamaoho, and all the Manukau

tribes were in pas and strong places near the head waters of the Waikato river, or on the banks of the Waipa ; and Te Uringutu were sojourning for some untold reason with a party of Ngatipaoa, who seem to have been living at Whakatiwai and Ponui. No tribe was in its own place. For many years there is, in truth, a blank in the history of Tamaki. About 1832, Mr. Cowell, sailing from Waihopuhopu, at the head of the Hauraki Gulf, opposite Shortland, to Mahurangi, did not see a single inhabitant nor observe a single fire. From Whakatiwai to Mahurangi the country was quite empty. The dread of Ngapuhi was so great that the people thought of nothing but securing their personal safety, and the mountain ranges and inaccessible or little-frequented places were then more sought for than fertile lands. "All the tribes were being driven backwards and forwards," said Mr. Cowell. "Everything was in confusion, and no one settled anywhere," was Mr. Marshall's recollection of this period. "All the men were wandering about the face of the earth," was Warena Hengia's evidence. Hori Tauroa said that all people thought of was to save their lives and get guns. And Apihai asked, "How could a man settle anywhere with the fear of Ngapuhi?" Ngatipaoa seem to have gradually formed a large settlement at Waihopuhopu, but they never returned to their old place Mauinaina, because, as they alleged, the land was tapu from blood ; most likely because, although they had made peace with Ngapuhi, they had a natural feeling that this isthmus—the highway of all war parties—was not a desirable place for a tribe to live in in such evil days as those. I therefore propose to discontinue the narrative style which I have adopted, and merely refer to a short chronological epitome which I have prepared of events which happened during the interval from the battle of Ikaranganui until people reappear in Manukau. And I broadly state the opinion of the Court that nothing that happened during this dreadful interval can in any way affect the ownership of this land. As the title was in 1826, so it would be when the history is resumed in 1835. I will therefore here adopt my epitome.

1827.

Apihai and his party collect from the forests at Waiaro, near Mahurangi. They are here attacked by Te Parawhau, under Tirarau ; their pa is captured, and the remnant flees to the mountains. After some time they assemble at Orewa, and proceed by Takapuna to Te Whau, thence to Woods' Island (Pahi), thence to Kopapaka (Henderson's Mill). Here they settle—Apihai, Tinana, Uruamo, Watarangi, and most of the Taou and Ngaoho. Te Urungutu, under Hakopa Paerimu, are living with Ngatipaoa at Wharekawa.

Shortly after Apihai and his people settle at Kopapaka, they are fetched by Hakopa Te Paerimu, and carried in Ngatipaoa canoes to Wakatiwai. Thence they pass up the Piako River, and the Horotiu to Haowhenua, near Maungatautari. Most of them remain here until the expulsion of Ngatipaoa in 1831.

The other Ngatiwhatua tribes, with some of Apihai's people,

occupy a pa on the banks of the Waipa River, near Kaniwhaniwha, called Te Horo. Along with them are Ngatiteata, Ngatitamaoho, Te Akitai, and most of the Manukau tribes.

Ngapuhi, under Pomare, invade Waikato, and are defeated at Te Rori, on the Waipa, by Ngatiteata and other Waikato tribes. The Ngapuhi party is nearly all destroyed.

1828.

Ngatitipa (Waikato) defeat Ngapuhi, under Rangitukehu, at Paneherinui, near Tamaki Heads.

1829.

Ngatiwhatua, Ngatitipa, and other tribes defeat Ngapuhi at Tawatahiti, in the North. Hongi is killed at Wangaroa.

1830.

A portion of Ngatipaoa is seen by Mr. Marshall living at Waikato Heads. The great bulk of the Ngatipaoa and Thames tribes at this time occupy the country extending from the Frith of the Thames to Maungatautari, including considerable part of the Waipa Delta.

1831.

The Ngatipaoa and Thames tribes are attacked by all Waikato under William Neero, Te Waharoa, and other chiefs, and defeated with great loss at Taumatawiwi near Haowhenua or Pukekura, near Maungatautari. The pa is evacuated, and Ngatipaoa are expelled from the Upper Waikato. They go to Waihopuhopu, Wakatiwai, and the Frith of the Thames. They are subsequently driven entirely out of this part of the country (Upper Waikato) by a treacherous attack made on them at Matamata by Te Waharoa's people.

When passing down the Horotiu after the evacuation of Pukekura, Apihai and his people accompanied Ngatipaoa—leaving them at Ngaruawahia and passing up the Waipa, join their friends at Te Horo pa. Here they remained until their return to Manukau in 1834.

1832.

Mr. Cowell makes a voyage from Waihopuhopu (Frith of Thames) to Mahurangi, sailing past Tamaki, Motutapu, etc., and does not see a fire or a native during the whole interval. This part of the country quite empty.

Great expedition of Ngapuhi under Pukerangi, and of Parawhau under Tirarau against Waikato. The Waikato tribes are driven before them up the river, but Ngapuhi retreat without effecting anything. Te Akitai, Te Taou, Ngatiteata, and other Manukau tribes follow them North, defeat them and kill Pukerangi, the leader.

Te Taou, &c., still living at Te Horo with the greater part of Ngatiwhatua.

It thus appears that during this interval the fortune of war had been gradually but constantly turning against Ngapuhi. Waikato,

having procured arms through Mr. Cowell and other traders at Kawhia and Waikato Heads, had been rapidly rising into prominence ; had successfully repelled all the late Ngapuhi invasions ; and had even inflicted some defeats upon that tribe in the North ; had carried their arms down south to Taranaki ; and had, by 1834, assumed a military position which entitled them to be considered the dominant people in this part of New Zealand. They had, moreover, completely driven Ngatipaoa with much loss out of their possessions in Upper Waikato, and had made peace with Ngapuhi. When, therefore, in 1835, Te Wherowhero, the most powerful chief of the district, proposed to conduct the Manukau tribes to their old places, and locate himself amongst them, there was little chance of their being molested by any of the armies which had for 12 years made this isthmus a place where it was impossible for anyone to live. Moreover, Christianity had begun to make some progress, and, wearied and worn out with war, the people appear to have hastily and gladly embraced the new religion, which, while it offered them a prospect of a happy life after death, secured to them, at any rate, a tolerable certainty of keeping their bodies in peace in this world until the time came for them to die naturally, and without being converted into the "heads," which one of the witnesses so frequently alluded to, and by the number of which he appears to have recollected events.

1835.

Accordingly we find in 1835 Te Wherowhero, with his own personal tribes Ngatimahuta, Ngatiapakura, &c., brought down Ngatiteata, Ngatitamaoho, Te Akitai, and the other Manukau tribes, along with Te Taou, Ngaoho, and Ngatiwhatua. A small party came first to prepare for the greater migration, stopping on their way at Waihekura and Kaitangata places on the Ngatitipa's land in Waikato, where they put in crops, left them to grow, and came on to Manukau. Finally Te Wherowhero settled with his own people at Awhitu, as a guarantee of the protection of the Waikato to the rest. Ngatiteata took possession of their own lands at Awhitu. Ngatitamaoho returned to their places at Pehiakura, Te Akitai to Pukaki, and the other Manakau tribes to their former residences. Apihai and his people took possession of Puponga, where they built a pa called Karangahape.

In this year the missionaries, Dr. Maunsell and others, took up a station at Puriri, near the mouth of the Thames. Possibly at their instigation, otherwise spontaneously, a meeting of the Thames and Waikato tribes was convened for the purpose of formally declaring peace. This peacemaking was necessary, not only on account of the great war between the tribes which had terminated in the expulsion of Ngatipaoa from the Waikato valley, but also on account of the attack made by Te Aua, Ngatitamaoho, and other Waikato-Manukau tribes, assisted by Apihai and some Ngaoho, upon Ngatipaoa at Whakatiwai. The object of this attack was to balance an "utu" account, and in no way concerned the land under investigation or

any other land. The Ngatipaoa side say that this account had been previously squared, and that the killings which happened at this attack were murders. The other side deny this, and say that the balance was against them previously, but the deaths of the three men who fell wound up the account, and the whole proceeding was "tika." Whether it was so or not is of no consequence as regards this suit. Nor can this peacemaking or any other peacemaking at which no reference is made to land, and where the previous quarrels had been purely personal, and no land had been seized or occupied which had been previously in the possession of the other side, be regarded as a matter which this Court is called upon to consider in deciding ownerships of land. If in consequence of wars a tribe abandons a place in their possession because it is too close to the hostile tribe, or too open to attack by them, and the hostile tribe takes no possession, and the land simply lies vacant until better times come and the previous owners return, nothing concerning the title can be founded on such evacuation; and the peace when it is made merely affords to the temporary emigrants the assurance of their personal safety on their return to occupy their former residences. No doubt that is the native custom. And not one of the witnesses on any side asserts that at any of the peacemakings any conditions or stipulations were made or proposed with respect to any land except Mr. Fairburn's purchase. Kahukoti's conversations will be noticed hereafter.

In December, 1835, Kahukoti, chief of Ngatipaoa, and Taraia, chief of Ngatitamatera, arrived at Tamaki with Dr. Maunsell; and Te Wherowhero and Kaihau, on behalf of Waikato, went over to Puke, on the Tamaki river, to meet them. Here peace was finally concluded. Uruamo and Watarangi, of Te Taou, accompanied Te Wherowhero; but Apihai and Ngaoho, and the bulk of the people, remained on the Manukau side, and did not join in the peace-making.

About the same time Apihai and his friends sold to Mr. Mitchell, on behalf of a Scotch company, a vast tract of country, extending from Manukau Heads to Tamaki, and thence along the Waitemata to Brigham's mill on the West Coast. Mr. White said this transaction occurred in 1833, but I think he must be wrong.

The succeeding year, 1836, Apihai and his people were living at Karangahape, but they commenced to cultivate at Mangere. Later on in the year, they built a pa at Mangere and another at Ihumatao. Another meeting, said by some to be a missionary meeting, took place at Otahuhu, at which the peace between Ngatipaoa and Waikato was confirmed in an informal manner. Te Taou came to the shores of the Waitemata, and began to cultivate the land about Horotiu (Queen-street). Mauinaina was still unoccupied and desolate. Captain Wing made a chart of Manukau harbour, which he produced in Court. It showed Mr. Mitchell's house as then standing at Karangahape. Potatau's people commenced planting at Onehunga, and Te Tinana, of Te Taou, cleared for cultivation at Rangitoto, near Orakei.

In April of this year, Uruamo and Watarangi, with 60 of their people (Te Taou), went to Orere, near Taupo, on a peacemaking

visit to Kahukoti, chief of Ngatipaoa, on account of the Whakatiwai killings. They made presents as payment for the dead, performed the customary ceremonies, and finally made peace. At the great meeting at Tamaki, when peace was made between Waikato and Ngatipaoa, it was stated that Uruamo requested Kahukoti, to allow Te Taou to occupy Okahu, to which he replied, "Presently;" and the conversation was renewed at this Orere visit. This is what passed according to the evidence of Timothy Tapaura, a Whakatohea slave who was present. Uruamo said to Kahukoti, "I want you to agree that Okahu shall be lived upon by us;" to which Kahukoti replied, "Yes, light a fire there for both of us." This account is directly denied by all the claimants' witnesses. None of them, however, were present except Warena Hengia. He says there was a conversation, and his account of it is this: Uruamo said to Kahukoti. "My friend, my fire will now burn at my place." Kahukoti replied, "My father, to whom does your kainga belong?" Now, as the Ngatipaoa allege that this permission given by Kahukoti was the only ground of the undisturbed possession held by Apihai of this estate for more than 30 years, it is evidently necessary to inquire into this conversation. The circumstances were these:—After the usual salutations and ceremonies had been performed, the visitors were shown to a large house in which they took up their quarters. In the evening Kahukoti came to visit his guest, according to the usual custom, and then this conversation happened. Warena Hengia is the only witness on Te Taou side who knows anything about it, and there are two on the other side who state that they heard of it, and that it was as detailed by Timoti Tapaura. Now, it must be remembered that the last time Okahu was permanently occupied was the year 1826, at the time of the battle of Ikaranganui, at which time Mauinaina had been three or four years captured, and its occupiers dispersed amongst the Waikatos. What had happened in the interval between the two peoples? Nothing, except the attack at Whakatiwai, which was the occasion of the present meeting. It must be remembered that at the fall of Mauinaina the tribes were in perfect amity, and the year previous to that attack were fighting together against Koperu's army. What possible reason was there then for the alleged permission to be asked? If we go back to the time anterior to Koperu, and take the idea most favourable to Ngatipaoa, viz., that both people were then cultivating there, we can find no reason for asking permission to return to that status, especially as Ngatipaoa, had totally abandoned that part of the country. It might possibly be suggested that the "tapu" for Mauinaina extended over Okahu, and that Te Taou wanted the assent of Ngatipaoa to breaking the "tapu." But this will not help us, for the "tapu," if it ever extended over Okahu, had been broken and disregarded long before, for, as we have seen, the whole tribes Te Taou, Ngaoho, and Uringutu were living and cooking there, at and before the battle of Ikaranganui. But I do not believe that Okahu ever was or could be included in the Mauinaina "tapu," for no blood was shed there. Moreover, the whole tale as recounted by Ngatipaoa

is not only quite inconsistent with Maori custom, but also with Ngatipaoa's present case. Heteraka Takapuna is alleged to be the putaki of the Ngatipaoa title, and yet he does not appear to have been consulted—as consulted he would have been if his title had been recognised then as now, and if such an event had really happened. Moreover, there is no pretence made of any previous meetings or consultations of the Ngatipaoa chiefs to discuss such an important question. The well-known Maori habit seems to have been entirely forgotten, and a chief is stated to have answered a question of which it is alleged he had had previous notice at Otahuhu, and the consideration of which he had himself adjourned, without a single consultation with the tribe in the interval, and the first knowledge the tribe had of this chief's determination is a proclamation made in the morning outside his house. Besides, if Uruamo had wanted to make such an important demand, would he have trusted to the accident of Kahukoti's coming to his house? Would he not rather have sought an interview with Kahukoti wherever he could be found? And when the first request was made at Otahuhu, would not Ngatipaoa, if their present case was then believed in by themselves, have consulted with Heteraka in the interval.

The Court cannot accept either the account given by the Ngatipaoa witnesses of this conversation, or the interpretation put upon it by them. That some such conversation did pass I quite believe. I think that Te Taou and Ngaoho were aware that the Thames tribes still nourished feelings of revenge on account of the killing of their friends Rewa, Haurua, and Kapatahi, at Wakatiwai; and that they were perfectly correct in this belief is shown by the fact that even six years later Ngatiwhanaunga gave Haora Tipa a paddle and two tomahawks, called after their dead men, as a sign that he should go and avenge their deaths. And it is quite natural that so long as this feeling was known to exist Te Taou and Ngaoho should be unwilling to locate themselves permanently, with their women and children, on the shores of the Waitemata, where they would be peculiarly open to attacks and surprises from Ngatipaoa, who, although they had suffered greatly, were still a powerful tribe. One can well understand, therefore, how, after peace had been formally concluded, and the ancient feeling of amity restored, the Taou chief would exclaim to his host, when he came to pay him a friendly visit in the evening, "I can now return without anxiety to my old home." To which the other would reply, "Certainly, why should you not go to your own place?" And even if Kahukoti had replied, "Yes, return there and light a fire for both of us," I can see nothing in the words beyond the polite expression which is usually given by the Maoris to their language when talking with persons of rank with whom they are in friendship. When travelling with a Maori in his canoe, he never speaks of "my canoe;" the phrase is always "to taua waka," "the canoe of us two," and if his guest smokes he will give or ask for "to taua paipa," whether it belongs to himself or to you; and if you live on his land, he will speak to you of "to taua kainga," without the slightest idea of con-

ferring any title upon you. And this expression—"tahuna he ahi ma taua,"—would (even if used) mean no more than a civil way of expressing that he should be glad to see Te Taou living at Ikahu, for he would be then often able to come and see them, and accept their hospitality.

The Court, then, being of opinion that no importance whatever is to be attached to this conversation of Kahukoti, and that it cannot be construed into acknowledging a title on one part, or giving a temporary leave of residence on the other, I shall make no further reference to it. At the end of this year Te Taou and Ngaoho were cultivating at Okahu.

1837.

In 1837 a pa was built at Okahu, under Watarangi and Uruamo, of Te Taou. It is stated that this pa was built against Ngapuhi (Te Parawhau), which is probable, as Apihai's people seemed to have been engaged in a long series of hostilities with them, and they were the only enemy with whom peace had not been made; and it will be remembered how Eruera Patuone, a Ngapuhi, described his refusing to land to cook food at Mechanics' Bay, when passing along these shores in a boat with Governor Hobson, preferring rather to cross over to Takapuna, from fear of Apihai, whom "he had not yet seen," as he says.

1838.

In 1838 the principal place of Apihai's people still appears to have been Mangere, but they were permanently domiciled also at Onehunga, Auckland, and Okahu. In this year Potatau took up his permanent residence at Onehunga.

1839.

In 1839 the Okahu tribes cultivated Official Bay, (Waiariki), and planted peach trees where the Provincial Council Chambers now stand. Ngatipaoa appear again in this district, but for what purpose is not shown. Te Hemara saw two hundred of them at Maraetai, when he came up with Captain Clendon in the 'Columbine.' He also saw Apihai, Te Tinana, Te Reweti, Paerimu, Uruamo, and Watarangi, and all the chiefs of Te Taou, Ngaoho, and Uringutu completely settled there. "The food of that place," he says, "had been cultivated long before; the fences were made and the houses built." He then describes going in a boat with Taipau, a relation of Heteraka's, to mark out the boundaries of land proposed to be purchased by Captain Clendon from Heteraka's tribes, Ngatikahu and Ngatipoataniwha. The boundary commenced at Takapuna and went on by the Wade to Whangaparoa.

1840.

On the 29th of January, 1840, Captain Hobson landed at the Bay of Islands. In February following, the Treaty of Waitangi was made, and on the 21st of May the sovereignty of her Majesty was proclaimed over the British Island of New Zealand.

The remaining part of the history of our case is of little importance, and I will therefore again read from my epitome.

Sept. 13.—First vessel, "Planter," with Mr. Terry and Mr. Robertson (witness) anchors at Auckland.

„ 16.—Captain Stewart's vessel, "Anna Watson," arrives with Mr. Shearer (witness).

„ 19.—British flag hoisted at Fort Britomart by Captain Symonds, assisted by Te Reweti and others.

Oct. 1.—Captain J. J. Symonds arrives from Bay of Islands in the "Ranger" cutter.

Nov. 27.—Ship "Diana" arrives with Mr. G. Graham (witness) and troops.

1841.

January.—Governor Hobson takes up his abode in Auckland. Final settlement of the gift of a piece of land called Pukapuka to Te Kati and Te Wherowhero. Te Kati and his Ngapuhi wife, Matire Toha, take up their abode there. Kahukoti and the Thames tribes visit the Governor, calling on their way to visit Apihai and his people at Okahu. Apihai at Auckland. Scotch settlers arrive in Manukau.

1842.

Haora Tipa and Ngatipaoa visit Okahu to make peace. They present Apihai with a paddle and two tomahawks, called Haramia, Kapotahi, and Rewa, after the persons who had been killed at Wakatiwai; they were presented to Haora Tipa by Ngatiwhanunga as an intimation that he was to go to Okahu and seek "payment" for those deaths, but he did not think such a course "tika," and gave them up to Apihai instead, and made peace finally. Ngatihura, hapu of Ngatipaoa, go to Okahu and live there.

March.—Maketu executed at Auckland. Mr. Clarke, Native Protector, Patene Puhata and William Hoete, and eight others of Ngatipaoa, go to Kohimarama and attempt to run a line, including some part of the estate now under investigation, but being opposed by Apihai's people, desist and go away.

September.—Governor Hobson dies. Mr. Shortland administers the Government. Te Reweti, of Te Taou, &c., dies the same day. Ngatiteata and Ngatitamaoho come to see Te Reweti.

1843.

Mr. Shortland Acting Governor. Some Ngatiteata commence cultivating at Okahu, remaining until the time of the Whanganui war. Second pa built at Okahu by Apihai (during Governor Fitzroy's time, some say).

December.—Fitzroy Governor. Gift of Remuera to Wetere Te Kauae, of the tribe Te Maungaunga of Ngatitamaoho. Ngatipare, a hapu of Ngatipaoa, come to Okahu and settle there.



1844.

The 10s. an acre proclamation. Paora Tuhaere and others, at the invitation of Pohi and Te Meihana, visit Whangarei to make peace with Te Parawhau.

May 11.—Great feast at Remuera. Battle of Taurangaruru between Ngatiteata and Ngatitamaoho and their allies. Battle of Ihutaroa between Ngatiteata, Ngatipou, and their allies, and Ngatitipa and their allies. All Ngatiteata and Ngatitamaoho come to Orakei and Remuera to live. They remain about two years.

October.—The penny an acre proclamation. Wetere Te Kauae sells part of Remuera, and many sales of land in this neighbourhood are made by Apihai's people.

1845.

November.—Governor Grey.

NGATITEATA AND NGATITAMAOHO.

The evidence differs as to whether Ngatiteata or Ngatitamaoho were living on this land before the time of Governor Hobson. I think it is most likely that they were living here, that is, that numbers of the tribe came and resided here, fishing and assisting at the cultivations, and returning to their own "kaingas" after periods of varying length. And I think that this practice had been continued nearly up to the time when the greater part of these tribes went into rebellion. We find that during the interval between 1840 and 1850 they came several times in parties, and on the occasion of the battles of Taurangaruru and Ihumatao the whole tribes settled at Okahu for a short time. The Court places no value on these acts of occupation. It is an ordinary custom for persons who have, or pretend to have, no claim whatever to the land itself, to come and reside upon estates of other tribes, when on terms of amity with the owners, especially when they are connected by intermarriages of the present day or by ancestry. The modern intermarriages between Apihai's people and members of the Ngatiteata tribe are proved to have been numerous, and the ancestral relationship is admitted, and is very clearly set forth in the pedigrees. This principle has been recognised by the Court on many occasions in all parts of New Zealand, and we do not intend to set up a new rule. An understanding was clearly arrived at by previous generations that each of the tribes around Manukau, which were formed from the intermixture of intruding tribes with the original occupiers of the soil, should possess and occupy certain fixed, and more or less well-defined, portions of the country; and it would entirely frustrate the object for which this Court was established, if we were to ignore these territorial arrangements, and throw the ownership of land into a state of confusion greater than that in which we found it. Occupation in modern times of land to which the title of others is admitted by such occupiers, can confer no title on them, unless the occupation is founded on some previous "take," of which

the occupation can be regarded as a consequence, and partly as a proof. And this original "take," must be one which the Court can recognise, and which would be consistent with ordinary rules governing and defining Maori custom. Mr. Hesketh sets up as such "take," or ground of title, the ancestral relationship of Hori Tauroa and his other clients of their two tribes, to Apihai and other members of Te Taou, Ngaoho, and Te Uringutu. Te Atairehia was the granddaughter of Hua, the great ancestor of Te Waiohau. She married the great Waikato chief Tapaue, the ancestor of Te Wherowhero; and from the different offspring of this union there have resulted in the present day—Apihai, after a descent of four generations; Hori Tauroa, five generations; Aihepene Kaihau, five generations; and Matene Raketonga, six generations. Now, all these persons, in their several generations, except Apihai's ancestors, lived with and formed members of other tribes, into which they intermarried, and to some of which they have given their names (ex. gr. Ngatiteata), and their descendants now have their lands in the estates of those tribes. If their present representatives are allowed again to return and claim a share in the lands which their ancestors left, there will be no such thing as even a tribal right in any part of New Zealand. The whole of the tribes are related by blood in a more or less remote degree; and, if any such principle as that advocated by Mr. Hesketh were sanctioned, New Zealand would become one vast inheritance, of which all the Maories in the island would be the joint owners. And this great principle of ancient and gradual separation of tribes and tribal estates was very strikingly recognised by many of the witnesses. Hapimana Taiawhio is a much more direct and true representative of the ancient owners of the soil than any of Mr. Hesketh's clients except Maki, and he said he had no claim, although he has lived on this place, and followed Apihai's fortunes during nearly the whole of a long life. Another old chief, Te Keene Tangaroa, is similarly very pure blood of the old owners, and has lived here permanently all his life, but asserts no claim, and says that Ihaka Takaanini would have had none had he been alive; yet his mother was the great-granddaughter of Papaka, who is the ancestor on whom Hori Tauroa founds his case. Watarawhi Tawhia was another witness with similar claims and ancestral connections, but he asserted no claim.

In fine, I say that the Court cannot recognise such claims as these, without disregarding all its precedents, and ignoring the objects for which the Legislature constituted it, and overriding its previous history and decisions. It is scarcely necessary, therefore, to notice that, during these descents, the conquering Taou came in and took this part of the country by force of arms; and that, if those ancestors who are now set up, had remained on the land which is now claimed through them, they would either have been taken prisoners or killed, unless they had been allowed to intermarry with the conquerors, or become members of their tribes, as Te Tahuri did, and Mokorua did. In any of those cases the present claimants would never have existed.

The only point in the case of Ngatiteata and Ngatitamaoho which is of any value is that Paul Tuhaere, the nephew of Apihai, seems to have disregarded this rule on the occasion of the confiscation of the Ngatitamaoho's land at Pehiakura by the Crown. He applied to the Government for compensation on account of his ancestral interest in that land, and received from the Crown Agent (not through the Court) a sum of £150. If the Court were certain that it had all the facts of that affair before it, it would make an order for the return of that money, for we think it was wrongly obtained. "*Qui sentit commodum sentire debet et onus.*" But we cannot consent that a successful act of imposition, as we think it to be, judging from what is before us, should influence this Court to adopt the principle involved in it, and abandon its own rules of action, with the idea of dispensing a perfect justice even beyond the limits of this suit.

The presents made on the sales of land about here do not seem to the Court to have carried any admission of ownership of the land sold. It is customary for Maori chiefs when they come into the possession of property immediately to distribute it among their friends, especially amongst those from whom they have received or expect to receive benefits, or to whom they are ancestrally related. And there is no doubt that Ngatiteata, with the other Waikato tribes who returned with Potatau, had rendered considerable services to Apihai and his people. These services were requited by the gift of a piece of land near Onehunga to Potatau, of Pukapuka to Te Kati his brother, and of Remuera to Wetere Te Kauae. The above remarks apply equally to Paora Te Iwi.

The Court is, therefore, of opinion that Hori Tauroa and Paora Te Iwi, and their co-claimants, have no interest, according to Maori custom, in the estate under investigation.

MAKI AND TE WHEORO.

The cases of Wiremu Te Wheoro and Hawira Maki are stronger than those of Ngatiteata and Ngatitamaoho. Maki, the father of claimant, seems to have lived the greater part of his life with Apihai, and only left Okahu a short time before his death. There he seems to have made his home. He was the second cousin of Te Wheoro, and grandson of Waikahina, the sister of the great Kiwi. This woman seems to have escaped the massacre of her tribe, and to have fled South to the protection of a tribe called Ngatipou, living about Pokeno, whose chief took her to wife, and these claimants are the results of the union. Wiremu Te Wheoro is a member of the tribe Ngatinaho, a hapu of Te Wherowhero's tribe, Ngatimahuta; and having cast in his lot with them, he must be regarded as a member of that tribe, and his ancestral claim will not avail. Had his father returned, and been admitted amongst the conquerors and intermarried with them, he would, as far as the Court can see, have had as good a right to be considered and treated as a member of Te Uringutu or the "collection of remnants" as Eruera Paerimu, whose right is admitted. But his forefathers preferred the

greater dignity of their Waikato connection, and he must now be excluded.

The case of Maki is more doubtful. He does appear to have lived with Apihai for a great number of years, and his claim apparently is in no way inferior to Paerimu's, except that his fathers did not intermarry with Apihai's tribe as Hakopa Paerimu did. Paerimu's wife who gave birth to Eruera Paerimu, the claimant, was Titoki, of Te Uri-o-te-ao-tawhi-rangi, the hapu of Ngaoho to which Tokarorae, whose name was often mentioned, belonged. But this distinction in their status is very important. Moreover, Hawira Maki, the present claimant, does not appear to have himself coalesced with Ngaoho at all. He has entirely cast in his lot with Ngatipou, his own tribe at Maketu near Pokeno. It is a very singular fact, to which the attention of the Court was called by Mr. MacCormick, that, though he was in the Court for many days, he never appeared as a witness in support of his claim.

Te Wheoro seemed to found some of his right to this land on the assistance and support afforded by Waikato to Apihai when they were reinstated by Te Wherowhero after the days of Ngapuhi; but whatever claim the Waikatos may have on this ground, and even if their claims were not compensated by the gift of land of which we have had evidence, it is quite clear that Te Wheoro is not the person entitled by position or connection with the tribes who gave assistance, to urge them.

The Court is therefore of opinion that Wiremu Te Wheoro and Hawira Maki have no interest, according to Maori custom, in the Orakei estate.

HETERAKA TAKAPUNA AND NGATIPAOA.

The name Ngatipaoa has been and will be used as meaning all the Thames tribes, unless some other tribe is indicated. And here I must state the opinion of the Court that, after the most careful weighing of the evidence, and consideration of the arguments used by their counsel, we are quite unable to discover any connection, either in their grounds or their incidents, between the claim of Heteraka, and that of Ngatipaoa. Kapetawa's conquest has already been discarded; but, even if it had not, Heteraka does not profess that Kapetawa was an ancestor of his. Kapetawa was six generations below the time when the Thames tribes branched off from Tainui, the ancestor of Ngatitai, and the direct ancestor of Heteraka; and four generations below Haoraterangi, the great nephew of Tainui, through whom Heteraka claims another line of ancestry directly connecting him with Ngatipaoa. He could therefore have got no status from Kapetawa's conquest, even if it had been a conquest. And this was the only conquest on which he relied. Hoterene Taipari mentions a conquest of Te Waiohua by Ngatimaru on account of Kahurautao, who had been murdered by them; but he adds, "This is a different man from Heteraka's ancestor." That they were occupying the land together before Hongi's time in no

way connects their claims, unless it can be shown that the grounds or "take" or occupation were the same, or had an intimate connection. Heteraka asserts that he is the representative of Te Waiohūa, the ancient possessors of this country; but he also asserts that he is the sole representative. It is true that this statement was often varied; for instance, in one place he says, "There are plenty of Waiohūa left—Ngatipaoa, Ngatimaru, Ngatitamatera, Ngatiwhanaunga. There are Waiohūa amongst Ngapuhi. These Waiohūa own this land. There are 100 there. They have a new name now. Ngatiwai of Whangaruru are the people." And using the term in a similar sense, he says in another place, "At this time Waiohūa, under Kapetawa, were living at Orakei, under Hehewa at Taurarua, and at Okahu under Parakotia," forgetting that according to his own showing Hehewa lived three generations ago, Kapetawa seven. In another place he says, "There are no Waiohūa left besides me that are known by that name." Now it is impossible soberly to urge that Ngatipaoa are interested in the estate as representatives of the old Waiohūa, when we have living amongst us and appearing in this Court the lineal descendants of Kiwi. And if Kiwi was not a Waiohūa (although the grandson of the man who gave rise to the name), and if all his tribe who were conquered by Te Taou were not Waiohūas, I cannot understand who the true Waiohūas were at Kiwi's epoch. Heteraka says they were living at Mount Eden and at Taurarua; but the circumstance continually recurs to my mind that when asked who was the chief, or who built the pa, or who was in it, the answer is always the same, "Te Rangikaketu or Te Hehewa." I cannot discover that Heteraka, from the time of Rangikaketu and Kiwi to Hongi's time, has ever mentioned the name of a single Waiohūa as keeping possession of this great tract of country, or doing anything, except these two men. Waiohūa, according to him, kept their ground at Mount Eden and Taurarua when the whole country was being overrun by a powerful tribe, who came to avenge the murders of their friends, at which Rangikaketu assisted; and yet, although questioned on the subject, he is silent as to any other persons composing the tribe except these two men. I merely refer to this subject now to show that the view previously expressed by the Court must be followed as the correct one, and that Kiwi and his people were the true Waiohūa, although equally entitled to be called Ngaiwi. Ngatipaoa do not claim to be descended from them, and there are no other Waiohūa to be descended from that I can discover. Hoterene Taipari gave a very curious version of this part of our subject, varying from that given by anyone else, and clearly inconsistent and absurd; "The ancient inhabitants of the country from Tamaki to the Whau were Te Waiohūa. The Ngaiwi were from Te Waiohūa. The lands of Ngaiwi were I don't know where. The people from Tamaki to Te Whau were killed by the Thames tribes. The pas of Ngaiwi were on that side of Tamaki towards Waikato. The pas of Waiohūa were at Tamaki on the Hauraki side."

It appears to the Court to be a position which cannot be controverted, that the several things brought forward to support the joint title of Heteraka and Ngatipaoa must have some connection with each other, and some sequence or concatenary dependence, but we have been unable to discover any relation of the sort. I can well understand that if, in times before the English sovereignty was proclaimed here and English law was supposed to exist, Heteraka had asserted a claim to this estate, and had succeeded in getting these powerful tribes to support him in maintaining it, their union with him would have been of the greatest value, for force would have decided the contention. But such considerations will avail nothing now, and this Court has already decided, in the great Hawke's Bay case, that it would recognise no titles to land acquired by intertribal violence since 1840.

NGATIPAOA.

Taking first, then, the case of Ngatipaoa, this claim is grounded on—

- I. Descent.
- II. Conquest.
- III. Possession and occupation.

I. DESCENT.

Most of the witnesses said they were ignorant of the ancestry through which they claimed this property; and I do not remember that any one, except Heteraka, attempted to set forth any pedigree. The answer, usually, was, "I claim through the ancestors mentioned by Heteraka." Now, this pedigree, mostly prepared by Mr. Mackay, and proved by Heteraka, contains the names of the principal chiefs of the Thames tribes now alive; and also shows the connection with Ngatikahu and Ngatipoataniwha, and with Ngatitai. The direct line is the genealogy of Ngatitai; and it is taken up even above Tainui, from whom the name, according to Heteraka, is derived. Now, with the exception of Heteraka's father, grandfather, and great-grandfather, with whom Ngatipaoa pretend to have no lateral or descending connection; and except Tarakumikumi, who, with his wife and all his children, was killed, and Kapetawa, who returned seven generations ago to settle in Waiheke, there is not a name in this list of chiefs of any person who is alleged to have lived on this property, excluding of course the present generation. It was attempted to show that Huaokaiwaka was the same person as Hua, the grandfather of Kiwi, but the attempt did not succeed. It will be remembered that, when Heteraka was asked to give his Waiohau pedigree, he commenced with Tangamakaia. This man was stated by witnesses on the other side to be a Ngaiwi, and the father-in-law of Hua, but Heteraka was unable to continue, and said he wanted to begin again. The genealogy which he then set forth is appended to this judgment, and is the one to which I have lately been referring. And we think it has nothing whatever to do with this land, and that the ancestors mentioned in it never had, or pretended to have, any claim to it;

and, with the exception of Tarakumikumi and Kapetawa, none of them have been shown ever to have been on it. Nor (except as above) does it show any lateral connection with any person or tribe that ever possessed or lived on the land, or any relationship with any member of the Ngaiwi or Waiohua tribes. In fact, it is the genealogy of distinct tribes, who lived in different places, and possessed different lands. Haora Tipa and the witnesses relied on this ancestry for their claim by descent.

The Court therefore thinks that this ground of their claim fails.

II. CONQUEST.

The affair of Kapetawa has been disposed of, and I cannot find evidence of any other conquest. I thought at one period of the case that I could trace something in the doings of Ngatiwhanaunga which indicated a right, acquired by force of arms, superior to that of the other Thames tribes, but the idea was not borne out. Subsequently it was stated by witnesses, and finally by their counsel, that their claims were all equal.

III. OCCUPATION.

No modern occupation can avail anything in establishing a title that has not for its foundation or authority either conquest or descent from previous owners, except of course in the case of gifts or voluntary concessions by the existing owners. Such occupation is called by the natives "*he noho noa iho*"—equivalent to our word "squatting." As above stated, the Court is of opinion that, whilst Ngatipaoa were living at Maunaina, and were at amity with Apihai and his tribe, individuals of Ngatipaoa used to come over to these waters, and make small cultivations, for fishing purposes, at Okahu. The other side deny this: "*horerawa*," Apihai says. But whether they did or not is of little consequence—the possible grounds for a right so to cultivate not having been established; for, as previously observed, the cultivation of land by this generation must be taken merely as an evidence of a right obtained by the cultivating or conquests of antecedent generations.

The residence of Ngatihura and Ngatipare hapus of Ngatipaoa scarcely needs remark. There was, in our judgment, not the slightest evidence or appearance of any intention or thought of asserting a right when these people went to Okahu, or that their going was founded on a right. If any such notion had been in the minds of Ngatipaoa it is not escaped prisoners of war like Mohi Te Puatai, or returned Ngapuhi slaves such as Natanahira Te Urupa, or second or third-rate men like Hemi Kaihi, who would have been sent, but some powerful and influential chief like Patene Puhata, who, as we know, conducted Mr. Clarke's attempted survey. These acts of cultivation and residence were of a trivial and transitory character, much less worthy of attention than those of Maki, whose case the Court has already dismissed, although backed up by well-known and admitted ancestral relationship. Like him, when they were "*sick unto death*," they generally moved, after the Maori custom, to die on their own

land at Waiheke or elsewhere ; or, if they died on the place, they were not buried there. In fine, their residence had all the manifestations of a sojourn, and of nothing else. Moreover, sundry other persons have lived there both before and since the time of Hongi—some of them nearly all their lives, such as Te Keene Tangaroa, Hapimana Taiawhio, Te Hamara Tauhia, Pairama Ngutahi, and Watarauhi Tauhai, who were intimately related to Apihai's people, and yet recognise Maori custom, and set up no claim. Other persons, too, of strange tribes, such as Raniera Taupape, of the Rarawa, in the North ; Ruka Taurua, of Ngatitipa, in Waikato ; members of the Ngaiterangi, of the Waikato tribes, of Ngatiporou, and even people of the South Sea Islands, and a considerable number of Te Arawa, who are there domiciled at this present time, have been residing there, but make no pretence of founding a claim to the land upon such occupation. The truth is that, from its proximity to Auckland, Okahu is a convenient place for natives to live on who desire to have intercourse or trade with Europeans ; and Apihai seems to have extended free and unquestioning hospitality to all who chose to come.

I stated, during the progress of the trial, that the Court had made a practice not to attach much importance to the purchases made by the Government as evidencing any title in the sellers. It was the duty of the Land Purchase Commissioner to obtain land that could be immediately and peaceably occupied by settlers ; and when a chief came to demand payment for an estate, backed by a sufficient following, it was found more expedient to satisfy his claim than to contest it. The rule which has governed the Court on this point is that, if on land being sold to the Government a tribe made no claim, it might be received as a very strong evidence that it had none, but if it made a claim, and it was recognised, that fact afforded very slight evidence that the claim was a good one. The sale of all the land from Taurarua to Te Whau affords, to my mind, no evidence that the sale was a rightful one ; on the contrary, I think it was not. The sale of Taranaki by Potatau, to which Mr. Gillies compared the sale by Ngatipaoa, was much better justified, for we have had evidence in this case of a conquest made by him of the people of that country ; but even that sale did not avail the Government much.

The "Kupu" of Herua as it is called—that is, the permission alleged to have been given by Kahukoti—is put forth by Ngatipaoa as the reason why they have during more than a quarter of a century made no protest against Apihai's continued occupation of this land, and that they put it on one side now simply because Apihai is claiming a Crown grant. It is not a matter of much moment, but it certainly is remarkable that neither this permission nor anything connected with it, or with the land, was alluded to at the return visit of Kahukoti to Okahu, or on the occasion of Haora Tipa visiting Apihai and presenting him with the paddle and tomahawk, representatives of his dead relations, or on the other numerous occasions when the chiefs of the tribes saw each other. Heteraka seems to have treated the "Kupu" with less respect, for he agitated

about his claim in early days, but the Court is not told whether he connected Ngatipaoa with it.

HETERAKA TAKAPUNA.

The case of Heteraka Takapuna has been very carefully considered, not only because the Court felt itself called upon to devote more than usual time and thought to a case on which so much labour has been expended by the parties, but also because it desired to discover or to recognise the facts or principles in the case which called forth so much energy and skill. But the Court has made the endeavour in vain. Of all the claims which we have been called upon to consider, we think Heteraka's is the weakest, and the only obscurity that could possibly surround it is caused merely by the immense mass of facts which have been connected with it, and which render it difficult to ascertain its real character.

It is impossible to review all the evidence brought forward in support of Heteraka's claim, but as he was himself examined, and gave a full statement of his case, I will as briefly as possible notice some things that he said, because the case as put forth by him differs in important particulars from that elaborated by his counsel:—He commences with the early times, and states that the first inhabitants of this country were destroyed by Ngatiwhatua. "Ngatiwhatua is the tribe that I know attacked Waiohau; I mean Te Taou. Te Taou destroyed Ngaiwi, also Ngatiwhanaunga,—and for another reason. I don't know of any others." And on cross-examination the next sitting-day he stated that the Thames tribes, naming them all, are the people who slaughtered the original inhabitants, and added that he had been scolded in the interval for making the previous statement.

"I was born at Orakei."

Two witnesses, one of whom was grown up and both living when Heteraka was born, contradicted this. Paramina says: "I know where Heteraka was born. He was born at Whaitere, in Kaipara. I was living there at the time. He was grown up when he left Kaipara. He left Kaipara on account of a squabble with another boy, Te Po. They quarrelled about fern root. Then he and his father Purehurehu left. There is no doubt about his being born there. I knew Heteraka's mother, Tahikura." She was of Ngatiwhatua, hapu Tematarahurahu. Heteraka admits having lived with his mother at Kaipara as a child, and that his mother lived there before she was married, and that in fact his father went there to marry her, and remained there some time, but came down to Orakei, apparently to give birth to him, returning immediately afterwards.

This may be true, but Heteraka says also that his brothers and sisters were born there. Now, remembering that he states that his father and mother were married at Kaipara, and remained there some time after their marriage; that he was the first-born, that they were again at Kaipara when he was knee-high; that, as he says in another place, "She was a young woman when she went there, and an old

woman when she came away—when they had to leave about the Te Po quarrel ; that they then went to Te Weiti, and from there to live amongst the Ngatipaoa, whence they went to Waikato, where his mother died ; it is difficult to see how the latter part of the statement as to his brothers and sisters can be true. I think the evidence against Heteraka's statement as to his place of birth is to be preferred, though not as decisive as that relating to Hehewa's burial place.

On cross-examination the following questions were put and answers made :—

Has Te Kawau any claim to Orakei?—No.

Has Te Taou any claim?—No.

Has Te Taou any claim to any land about here, from Onehunga to Waitemata?—Kaore i eke. Formerly they had not, but in consequence of their fighting they have.

Did Te Taou own Te Pukapuka?—No.

Or Purewa?—No.

Or Queen-street?—No.

Or Remuera?—No.

Did Apihai's people own any of these?—Formerly, until now they have no claim.

Whose were the lands from the Tamaki to Te Whau before the Government came?—Ngatipaoa's.

Did not Ngatiwhanaunga join?—Yes.

Is the claim of Ngatipaoa, Ngatiwhanaunga, Ngatitamatera, and Ngatimaru of equal goodness, i.e., on the same grounds?—Yes, there is one "take."

Have they always had this claim?—Yes, long before the fighting.

Had Apihai and his people never any claim?—None whatever.

Now this appears to the Court extravagant, and represents a position that very wisely was not taken by Heteraka's counsel.

He tells us in another place of Te Hehewa having held Taurarua with his Waiohua, and having evacuated it and handed it over to Ngatiwhanaunga.

In either case, the question occurs to my mind what became of the defenders—whoever they were—when Ngatiwhatua assaulted the place and killed all the inhabitants?

How far did the Waiohua estate extend?—It went to Wakatiwai and on to Cape Colville.

And then he stated that he had made no appearance at the Land Courts recently held at Kauaeranga. It appears that Ngatipaoa are not as ready to admit the Waiohua title to the Thames country as they are to the more westerly portion of the estate as described by Heteraka. He then goes on : "The Waiohua estate goes north to the Wairoa at Tauranga, and south to Patetere on the Waikato river. The Waitaha and Ngariki come into that." And in reply to the question, "Why don't you occupy that estate?" he says, "The original inhabitants were slaughtered and the intruders kept possession. I am the real owner. I am the only Ngatitai left."

It would be very difficult to reinstate Heteraka in these dormant rights.

Who is the true representative of Ngaiwi now alive?—Te Hapimana, Heteraka, and the children of Isaac. Paerimu would represent Ngaiwi equally with Te Hapimana.

But Paerimu is admitted by himself to be a Waiohua, and by all Apihai's witnesses to be the true representative of the people originally conquered by Te Taou.

Did you not say at the previous trial that you were a Ngaiwi?—I said so.

Who built Taurarua Pa?—Rangikaketu and Te Hehewa.

Did Te Hehewa live there?—Yes.

Why did he leave it?—He left it, and gave it to Ngatiwhanaunga with the land. The pa was attacked. It was attacked by Ngapuhi, and by no one else.

Mr. Gillies admitted that Ngatiwhanaunga had no ground of claim superior to or different from that of the other Thames tribes; and all the Thames witnesses, as well as Heteraka himself in another place, said that the "take" was the same, and their claims were all equal. In setting forth an attack on Taurarua by Ngapuhi, and concealing that by Ngatiwhatua, Heteraka tells us of an event which is nowhere else disclosed, and ignores another about which there is no doubt.

You said you were living at Orakei before Koperu's attack?—I lived there from the time I was born until Koperu came.

Had you no other home all that time?—I used to reside there and at Mauinaina Pa.

He here forgets his previous statement that he was living at Kaipara with his mother from the time she was a young woman until she had become an old one.

What is the history of Ngatipaoa's ownership of Taurarua?—Waiohua ancestorship, and the conquest by Kapetawa.

Ngatipaoa being driven out of Waikato, was this by Te Waharoa?—I did not say they were driven off; we came quietly away.

I often wished, during the progress of the trial, that there had been a jury, so that the Court might have been relieved of that part of their duty which is comprised in determining facts, and judging of the credibility of witnesses; but, having to perform this function, I ought to express that the Assessor felt equally with myself that Heteraka's evidence made on our minds an unsatisfactory impression.

The question of Heteraka's ancestry, as set forth in his genealogical table, has already been partially dealt with.

The Court is of opinion that his pedigree is in no way connected with any tribe who ever held possession of this land, or of any part of Tamaki on this side of the river. It is the pedigree of Ngatitai, Ngatipoataniwha, Ngatikahu, and partially of the Thames tribes. It will serve to explain the connection existing between Heteraka and those tribes, but is of no other value, as far as this case is concerned. Mr. Gillies urged the Court to disregard pedigrees; and I cannot but

think that this was the wisest course to pursue regarding the interests of his clients.

The question as to whether Heteraka is a representative of Te Waiohūa at all is very doubtful. Many witnesses say that he is, and that Rangikaketu was a Waiohūa—some of them entitled to great credit in matters of this sort, such as Paora Te Iwi;—but others assert in a very decided manner, that he has no claim to be so considered—that he is a Ngatitai, Ngatikahu, and Ngatipoataniwha, and nothing else. It will be remembered how his father, grandfather, and great-grandfather had been described as each of a different tribe; and Warena Hengia put down Purehurehu as a Ngatikohua, a tribe not mentioned by any one else except Heteraka himself. Watarawhi says, "I say distinctly that Heteraka is not a Waiohūa," and Keene Tangaroa, an old chief of Ngatikahu and Ngatipoataniwha, Heteraka's admitted tribes, says, "Heteraka is not a Waiohūa." I think the truth lies between them. Te Rangikaketu was, in the judgment of the Court, a chief of Ngatitai, perhaps the principal chief, and also of Ngatikahu and Ngatipoataniwha; and there is evidence enough to make us incline to the belief that at the time of Kiwi, his tribe had already been conquered by Ngatipaoa, and that he was living with a few followers with Kiwi in the character of a refugee, well and courteously treated, and still regarded as a chief but that he was not a member of Te Waiohūa, nor connected with them, except so far as Ngaoho (in which name Ngatikahu would be included), Ngaiwi, and Waiohūa are all connected together. But his son, Te Hehewa, seems to have married into the tribe. His wives were Huiatara of the Ngatikohua, a hapu of Te Waiohūa, and Teke, another Waiohūa woman. This fact will explain what Warenga Hengia meant when he called Heteraka a Ngatikohua from his grandmother's tribe, and this connection will entitle him to be considered a Waiohūa, but she must have been a slave or a refugee, if alive at the time of the invasion of Te Taou, or the offspring of one if born afterwards. Te Rangikaketu disappears after the conquest, except in Heteraka's evidence, who makes him to be still living in a pa at Mount Eden, and building another at Taurarua. But we do not believe this statement. We think that he fled with the other surviving friends of Kiwi, and that he went to his relatives the Ngatipaoa, and remained with them. Te Hehewa also, with his Waiohūa wife, took up his abode with that tribe, and we accordingly find him actively engaged on their side at the battle of Orohe. It is not difficult to understand why no title is founded on this Waiohūa marriage, though, if his grandmother was a woman of rank, and Heteraka and his grandmother and father had remained with the conquerors, and been admitted into their tribe, he might—especially after Purehurehu's Ngatiwhatua marriage—be entitled to be considered an "Uringutu." This course was not taken, however. They cast in their lot with Ngatipaoa, and never appear to have resided away from them, except during Purehurehu's courtship, and some few years after his marriage in Kaipara. From that time to the present, with the exception of

the two short intervals hereafter mentioned, the family have continued with Ngatipaoa. Even if Rangikaketu were a Waiohua, he must have shared the fate of that people. He seems to have escaped with his life, and so far had a better lot than his friend Kiwi; but nothing else seems to have been left to him, as far as the Court can discover.

Heteraka's claim by conquest is clearly absurd. He is not a descendant, according to his own showing, from Kapetawa; and, even if he were, it would avail nothing, for that was not conquest, as previously shown.

The occupation of Okahu by himself and his father was of no more significant a character, as far as this case is concerned, than that of Ngatipaoa; and the "take" failing, the occupation, such as it was, must be unproductive of result. Indeed, his occupation would be less significant than that of Ngatipaoa, for the family would have a right to cultivate, according to Maori custom, on Ngatiwhatua land, so long as they did not annex themselves to a strange tribe, though no longer; and no doubt Apihai could extend this right over his own lands to his Ngatiwhatua friends, as, indeed, we see he has extensively done.

After the time of the English sovereignty, Heteraka came again, in Governor Hobson's time, and remained three weeks with Te Tinana, living in a tent made of a sail. He came again in Governor Grey's time and planted one season. Warena tells us that the produce left for sale to the townspeople was one basketful of potatoes.

When Tauoma was sold by Ngatipaoa they gave Heteraka three greenstones, and that is all he ever received from the sale of land by that tribe. Even when they sold his ancestral territory—from Takapuna to Te Arai—they gave him nothing; so he sold it over again himself—which seems to have been the usual and correct thing to do. It is very remarkable that in all the land transactions by Ngatipaoa from Te Whau to Taurarua, Tauoma, and north of Takapuna, Ngatipaoa never consulted Heteraka. When asked about these sales himself his answer is always the same—"I was at the Thames." It was not until these trials that the Thames tribes appear to have discovered that Heteraka was the true owner of the country, and that they were "behind his back." He was never dealt with at all by the Government for lands south of Waitemata, though his title to the North was recognised. And the important fact is this, that he never remonstrated with the Government about the Ngatipaoa selling his land from under him except as regards that on the north of the river Waitemata.

Much was made of a greenstone slab called Whakarewhatahuna, which it was alleged carried with it the "mana" of Tamaki, and possession of it was evidence of the ownership of the land. It appeared that this greenstone was used as a gong in Kiwi's pa at One-tree Hill. It occurs to me that this gong must have belonged to the chief and people of that pa, with whom Heteraka disclaims any connection. But, disregarding that point, I never in my experience in this Court heard of such an evidence of title being

brought forward, and should be very reluctant to admit a principle which would be so very unsafe as a guide, and so liable to abuse as a document which carries with it no intrinsic evidence, and which must depend for its force, and even its character and interpretation, on oral testimony and tradition. But the necessity to decide this point does not arise. It belonged, Heteraka tells us, to Teke, a wife of Te Hehewa. She was the last person seen with it, and she hid it—Heteraka does not know where. So that Heteraka has not the possession of this document, and it cannot be produced, nor does Heteraka appear to be entitled to the possession of it, for the woman Teke was not his grandmother, but another wife of Te Hehewa's. However, it was buried last century, and with it must be taken to be buried whatever "mana" it possessed. Nor do we hold that the title to Tamaki will be revived for the benefit of the person who may happen hereafter to find it as Kahotea was found.

The newspaper correspondence is not before the Court, and the interviews with Mr. De Thierry and others resulting from that correspondence do not, in our judgment, affect the aspect of the title as it was before that period. The evidence as to what passed is conflicting. The jealousy which is still evident between the pure Taou and the Ngaoho, and more markedly the Uringutu, appears to have been more demonstrative then than at any other time, and it was fostered by Mr. De Thierry; but we do not think that any concessions were made by Mr. MacCormick's clients. Where the accounts differ, we prefer that of the claimants; and we hold that no alteration in the status of the parties could have been then made, except by voluntary and mutual agreement, and certainly no such agreement took place.

The Court quite agrees with Mr. Gillies that Heteraka has kept his claim alive. And we also concur that the Court should "imagine itself to be sitting in 1841," and we have endeavoured to do so. Doubtless the 30 years' possession by Apihai must be allowed to have weight, but principally because we find that it has been undisputed except by Heteraka, whose right to dispute has been considered, and because we find that that possession was founded on anterior rights which have never been overtly questioned until now (except as above-named by Heteraka). We can easily imagine cases where equally undisturbed possession for an equally long period would avail nothing in this Court, where there is nothing on which it is based; and we have even such cases appearing in this trial, where indeed no claim is urged; as, for example, Te Hapimana and Te Keene Tangaroa. It would be a very dangerous doctrine for this Court to sanction that a title to native lands can be created by occupation since the establishment of English sovereignty, and professedly of English law, for we should then be declaring that those tribes who had not broken the law by using force in expelling squatters on their lands, must be deprived "pro tanto" of their rights. The precedents are all the other way, and are founded in reason. And as no Court existed in the country by which such trespasses could be tried and the true owner-

ship of land ascertained, a peaceful protest against the occupation, or an assertion of a hostile or concurrent right made at a sufficiently early period, must be held to have been all that the counter-claimant was required to do to keep alive his rights, and indeed all that he lawfully could do.

But giving Heteraka the full benefit of this doctrine, and imagining ourselves to be sitting in 1841, we think that his case would be no stronger then than it is now. In fact, the Court is of opinion that he never had any title to or interest in this land, nor even a "scintilla juris;" and that he has no more now. His claim is therefore dismissed both as concerns himself and all who claim by, with, or under him.

APIHAI'S CLAIM.

The claim of Te Taou, Ngaoho, and Te Uringutu will now need short notice. The epitome of the evidence read with the table of ancestry, and combined with the part of this judgment which has gone before, will sufficiently explain their status. But it ought to be noticed that of seventeen native witnesses called by Heteraka not one is out of his own tribe or disinterested, while of twenty native witnesses called by Apihai nine have no claim on the estate. This case is briefly this: Te Taou—a tribe resulting from the union of a Northern tribe with an ancient tribe called Ngaoho—came down from Kaipara for reasons which have been previously stated, exterminated the tribes that occupied this isthmus, entered into possession of the empty country and settled down permanently, and here they have ever since remained, except during periods of hostility, during which the surrounding land was evacuated as being unsafe to live in, always returning as soon as the danger ceased.

Shortly before and about the time of the arrival of Governor Hobson, European evidence is imported into the case: Mr. George Graham, Mr. Shearer, Mr. Robertson, Mr. Smith, Captain Wing, Captain J. J. Symonds, Mr. Blake, and Mr. George, all of whom—with one exception, Mr. George Graham—more or less corroborate the fact by their recollection of different circumstances, that Apihai's people, under their generally-known name of Ngatiwhatua, were the sole resident natives here and on this part of the shores of Waitemata at the time of the Governor's arrival, and that they had houses and cultivations at Auckland and at Okahu. The arrival of the English power found them domiciled at Okahu in undisputed possession, and thus they have remained ever since as the dominant lords of the soil.

The Court has found that there are no concurrent rights or titles which ought to diminish their estates or interests; and it therefore decides that one or more certificates of title shall issue in favour of these tribes, or in favor of such persons comprising them as shall be determined upon on hearing further evidence, or as shall be agreed to amongst the members of the tribes.

It only remains for me to thank the learned counsel engaged in

this case for the great time and care which they have bestowed upon it, and for the very complete and able manner in which it has been placed before the Court. I also thank them for the patience with which they have listened to this long judgment. I could not, satisfactorily to myself, have made it shorter without the expenditure of more time than I have at my disposal. I cannot suppose that every fact which I have detailed is correct, or that the Court has in all cases accurately stated the evidence; but I beg the parties to believe that the evidence has been read and re-read with great care, and that in all probability those particular portions which they may think to be wrong have in fact been taken from other and contradictory testimony. The vast value of the rights at issue (proved in evidence to be £50,000), no less than the example of the several counsel, demanded this care from the Court.

sses).

Whatua

= Paki

Aho. m.
(Mangere.)

nakiitara

V. = T
| (

areum

okotoh

sses).

Whatuarawa.

= Pakau.

Aho. m. = Kahu.
Mangere.) (Of Ngaoho.)

Tiaki. m. = Kiringoru.
(Of Ngaoho.) (Of Ngatipo, of Maketu.)

nakiiterangi.

Te N

f. = Tangataiti. Ngahuirangi.
(Of Ngatipaoa.) hi.

areumu. = Urupikia. Puku. f.
(Of Ngatireko.)

alive 1879

Hakopa Te Paerimu.

kotoko. Te Tinana. Uruhutia,

Kopakopa f. = Haupatahi.

Wharepouri. H. Te Tinana.

Mohi Te Ngu.

