

1885.
NEW ZEALAND.

THE MAUNGATAUTARI CASE

(NOTES ON, BY THE CHIEF JUDGE OF THE NATIVE LAND COURT).

Presented to both Houses of the General Assembly by Command of His Excellency.

MAUNGATAUTARI.

INVESTIGATION into the title to this land was opened at Kihikihi on the 23rd day of April, 1884, at a sitting presided over by Judge Puckey and Waata Tipa, Assessor, the Chief Judge taking but a secondary part, and that only during the first stage of the proceedings.

On the 5th day of September, 1884, the Court announced its conclusions in relation to the respective tribal rights in the terms set out in a printed judgment, of which a copy is annexed.

Thereafter the Court—the Chief Judge being absent—proceeded, under the authority of “The Native Lands Court Act, 1880,” section 34, and in the course of that procedure dealt, in the terms set out in Appendix A, with the question of an alleged occupation of part of the block by certain of the Ngatiraukawa.

The investigation, after occupying many months, was concluded on the 7th day of November, 1884, by orders for the issue of various certificates of title.

Against this decision numerous applications for rehearing were made, and on the 12th February, 1885, when the time for further applications had passed, such of the parties as were so pleased appeared before me to personally urge anything they had to offer in support of their objections.

Instead of setting out at length each of the applications, which are largely repetitions one of another, it will be better to classify them, which may be done as follows: (a.) The Court was wrong in deciding that Marutuahu acquired mana over Maungatautari, and compelled Ngatiraukawa to vacate. (b.) Assuming the Court to have rightly decided that Marutuahu did acquire mana, and did compel Ngatiraukawa to vacate, those occurrences did not effect certain of the Ngatiraukawa (called herein for distinction “resident” Ngatiraukawa), who, admitting it as to the rest of the tribe, allege that they never vacated or fled. (c.) Maungatautari did not pass into the hands of Ngatihaua by the battle of Taumatawiwi because they, the Ngatihaua, did not after the fight reside on the land. (d.) We are Ngatiwhaita, and never were conquered or migrated. (e.) The resident Ngatiraukawa were forced by Judge Puckey to join with Rewi and the Ngatiraukawa generally in the case conducted by Simmons. (f.) Simmons was not allowed sufficient time to “get up his case.” (g.) Titles set up by reason of fightings and victories among their local peoples prior to Marutuahu possession. (h.) The name of Noko te Rangituru and those of his children were not placed in any list of owners. (i.) Wrong that Chief Judge should sit on an original investigation, as with him rests question of rehearing. (j.) Chief Judge did not confine his attention to the case, but attended to ministerial work, so there was only one Judge. (k.) No interpretation into English, so no one can say what reached the ear of the Chief Judge. (l.) Names of Alice Grey Dearle and her sisters omitted. (m.) We are not aware why we lost. (n.) We are aggrieved at losing. (o.) On division too much awarded to Ngatikoroki, and not enough to others. (p.) On division, ancient burial-places, &c., not awarded to representatives of deceased persons. (q.) The Assessor’s wife and children placed on a list of Ngatikoroki owners.

In addition to the foregoing written grounds of appeal on the personal appearance of the parties before me, the following further grounds were verbally set up: (r.) Ngatihourua ought to have had a separate award instead of being merged with Ngatihaua. (s.) Assessor ought not to have sat, because he was our enemy in old fightings. (t.) The Court disregarded a boundary laid down between Ngatihaua and Ngatiraukawa, after the conquest of Taumatawiwi. (u.) The Assessor was bribed with £200, paid to him by Mr. Moon. (v.) The Assessor assisted Haimona’s party (Ngatihaua).

Having thus reduced all the matter relied on as giving a claim to a rehearing to distinct allegations, I will deal with them *seriatim* by their distinguishing letters. (a.) The decision so aspersed was not only amply supported by the evidence in the case itself, but is upheld by

uniform and unquestioned previous decisions of the Court (instance, Waipa, Hinuera, Horahora, Maungatautari 1 and 2, Pukekuru, Puhoe, and Te Aroha), and by the next ground of appeal (*b.*), and also by ground (*c.*) inferentially, and in specific words in ground (*t.*). (*b.*) Is a plea "in confession and attempted avoidance of the Maratuaha conquest, and was only set up when it appeared clearly to the litigants that the case of Ngatiraukawa, as a whole, was untenable. However, it was afterwards considered and dealt with by Judge Puckey, as mentioned in Appendix No. 1. With the views there expressed I entirely concur, as do other Judges to whom, at the instance of Judge Puckey, I submitted the matter. (*c.*) Maungatautari was only part of the area left open for occupation by the expulsion of Marutuahu, after which Ngatihaua resided on such part of the land as they thought fit, some more or less on Maungatautari, though mainly at Matamata. (*d.*) Ngatiwhaita did not set up any claim at any stage of the case, except as they were represented by Rewi, if they were so represented. (*e.*) It is not true that the resident Ngatiraukawa were forced to join Rewi. It was only in the last day or two of many months, when Rewi's failure was manifest to every one, that the "resident" theory was thought of or ventilated, and even then they were allowed full license to establish it, if so inclined (*f.*) Simmonds admitted to me, at the meeting in February, the fact that he was allowed four days "to get up his case," and after that he was allowed time to "get up" a new branch of title, much to the annoyance of the counter claimants. (*g.*) If my reply to objection (*a.*) be well founded these victories could have no effect as against Marutuahu, who possessed themselves in disregard of victor and vanquished. If such reply be not well founded the entire judgment is untenable. (*h.*) This person's name is in the Ngatihaua list. (*i.*) Whatever view may be entertained on this objection in general should have no weight in this case in particular by reason of the allegations set out in objections (*j.*) and (*k.*). (*j.*) Facts are as alleged, but there being only one Judge is no objection to validity of proceeding. (*k.*) There was interpretation into English, insomuch that the Clerk—not a Maori linguist—took down the evidence in English. (*l.*) Shall be spoken to later on. (*m.*) and (*n.*) require no answer. (*o.*) This is in relation to the division, and with which I had no concern, though, after careful inquiry into the point, I am satisfied no injustice was done. I fear the pride of Ngatihaua is touched by Ngatikoroki having a trifle larger area than themselves. The division was that of Judge Puckey, reluctantly concurred in by the Assessor, who, by an unfortunate coincidence (having regard to other circumstances), was inclined to deal still more favourably with Ngatikoroki. (*p.*) To some small extent this allegation is true, especially with regard to Wiremu te Whitu; but the position could not well be avoided. To give to every owner the spot where some ancestor or relative, more or less remote, had lived, died, or been buried, would disperse each man's share of land in patches all over the block. (*q.*) Reserved for subsequent remark. (*r.*) Ngatihouru (Wiremu te Whitu) was properly merged in Ngatihaua, who will no doubt not object to his isolating himself if he applies for division, which it is open to him to do. (*s.*) True, but as Thames men the feud of the ancestors had been equally against all the present claimants to the land. Waata was, I believe, selected because of his probable knowledge of their ancient doings among themselves. (*t.*) The Court never heard of this boundary line during the hearing. It was mentioned to me on the 12th February by one of the leading men of those aiding in the conduct of Rewi's case; but his assertion of the line and of its site was met by derisive laughter from all the Natives present. I have referred to the evidence in every case and to every person likely to have knowledge of the matter, and am satisfied no truthful evidence is forthcoming of the existence of such a line as mentioned. Other lines were traceable—one particularly, confirming the judgment and bearing out the opinion of the Court that the absence of right in Ngatiraukawa ceased at the southern boundary of Maungatautari. (*u.*) Reserved for subsequent remark. (*v.*) Haimona was counsel for Ngatihaua, and the "assistance" consisted in telling Haimona that his line of cross-examination was useless, a legitimate opinion for a Judge to express. Unfortunately the Assessor, instead of speaking, expressed himself in a scrap of writing, thrown from the Bench on to the Court table.

(*g.*) and (*u.*) These two allegations, personal to the Assessor, have caused me infinite trouble, I being naturally much impressed with their seriousness. There is no doubt the names of the Assessor's wife and children are in a list of names, and it is equally certain that among 1,200 persons they so went in by one of the numerous names assumed by the female in common with other Maoris, and as such unknown to the Judge at the time. Mrs. Teepa either had a right to appear as an owner, or she had not. Her husband must have had pretty good knowledge of the truth. If he knew the right existed, or was to be set up, he ought not to have acted as Assessor on the occasion. If the right did not exist, but was accorded by Ngatikoroki, then the matter looks still more unpleasant. I am told it is not infrequent for the name of an Assessor greatly looked up to to be entered as an owner, with the assent of all parties, and that more out of compliment perhaps than of title, but the thing does not appear to have been so done in this case, although it is significant, if true, that the names were originally inserted in the list to be proposed by Ngatihaua, but erased from some cause.

Now as to (*u.*) The allegation of bribery rests on the bare assertion made before me on the 12th February, and it was obliged to rest there, as I had no power of compelling evidence to be given, but this much I am satisfied of, that the Assessor, shortly before the opening of the case and during its progress, did receive from a Mr. Moon pecuniary accommodation, and I do not imagine that the distinction between that and bribery can be worth considering—always

assuming the transaction to have been done with a view of affecting the Assessor's judgment in the interest of any of the parties. Whether that was so or not I do not know, nor have I power to sift the matter. Fortunately that is immaterial, for without asserting anything against anyone, I shall, for the business in hand, assume that the monetary business, whether loan or gift, was intended by Mr. Moon to affect the Assessor's mode of dealing with his judicial duties.

Now, ought I to grant a rehearing by reason of the matters alleged, either as to the wife and children or the money? I think not, for I am satisfied that substantial justice is done by the decision. In entertaining that opinion, I assume the Court was right, for the reasons already mentioned, in deciding against the claimants, for otherwise the judgment is radically bad. Perhaps the most energetic applicants for a rehearing is Ngatihaua, but their objection is to the division only, and they candidly put it "so sure are we that the main judgment is correct, and must be followed, that to further a rehearing in respect to the division we will join in a cry for general rehearing."

I have already expressed an opinion against the husband of a person interested acting as Assessor, and my unfavourable view of the pecuniary transaction; but, however much the circumstances are to be regretted, and however unfavourably they may be looked upon, I still do not think it would be right to entail upon all the parties (one only—if one—guilty, the rest innocent) the trouble, and loss of time and money consequent on a new trial, and upon the country the enormous cost of a repetition of such a lengthened hearing. It would be much easier for me to grant a rehearing on the circumstances than to refuse it, but in so doing I should be consulting my own convenience instead of taking the responsibility of doing what I believe to be my duty to the parties and the colony.

(l.) There only remains for consideration this allegation. I am of opinion that an injustice was done in the exclusion of the names of Hera Nikora and of her sisters from the Ngatihaua list of names, and that they were unfairly dealt with, and to the extent of inquiring whether their names should or should not have been inserted as owners in such list, a rehearing ought to be had.

Apart from the purposes of the matter in hand—although it is not for me to consider the action of the Assessor—I shall feel it my duty to forward to Government a copy hereof.

Enclosure No. 1.

JUDGMENT of the COURT on the MAUNGATAUTARI CASE, Delivered at Kihikihi on 5th September, 1884, by Chief Judge MACDONALD and Judge PUCKEY.

THE application which the Court elected to take in deciding the title to this block of land was that made by Rewi Maniapoto and others, as the plan before the Court had been made at their instance, containing an area of 49,450 acres. The *prima facie* case was made by calling Ngata, who claimed that the land belonged to his ancestor, Raukawa, and that it had been held by his descendants to the present time without interruption; he also admitted the right of certain other hapus, also that a portion of the block belonged exclusively to Koroki and Kapu. Mr. H. Teimana, who claimed under the claimants, appeared for them.

Counter Claimants.—On counter claimants being challenged, there appeared no less than thirty persons who claimed to be entitled, some to the whole block, others to part only. The Court therefore adjourned to enable parties to coalesce with a view to shorten the proceedings, and render them less complicated. On the Court resuming, it was found that, by coalition of parties, the number of counter claimants was reduced to—(1.) Ngatikauwhata and Matau, represented by Hori Wirihana. (2.) Ngatikoroki, &c., for whom Atutahi Hone appeared, and later on Karaka Tarawhiti. (3.) Ngatikoura, under Te Hakiriwhi, latterly conducted by Kaukiuta. (4.) Ngatikoura, Ngatiparehaehaeora, and Ngatiraukawa, represented by Te Puke Huirama. (5.) Ngatiapakura and Ngatihinetu, represented by Mr. William Swanson. (6.) Ngatihaua, which included Ngatihourua, &c., for whom Haimona Patara appeared. (7.) Ngatihourua and Kauwhata, represented by Wiremu te Whitu. (8.) Ngatitakihiku, represented by Aperahama te Rangitutia, who, soon after the commencement of proceedings, joined the claimants, leaving seven distinct counter claimants.

(1.) Hori Wirihana, by his witnesses, claimed that the whole block belonged to his ancestor, Kauwhata, originally, and that his ancestral title thereto had never been destroyed, but he also claimed to have a title by conquest of Marutuahu at Taumatawiwi; but though admitting that Raukawa, an ancestor contemporary with Kauwhata, was also an owner of this block, he was not able to point out to the Court which part belonged properly to Kauwhata, and it is rather a significant fact that not one amongst all the witnesses called was able to inform the Court on this point.

(2.) The Ngatikoroki witnesses claimed that after the migration of the main body of Ngatiraukawa to Kapiti and Taupo, Marutuahu, who had been driven out of their own country by Ngapuhi under Hongi, took and occupied Maungatautari, and that as they by force of arms had driven away such of the Ngatiraukawa as had till then retained possession they acquired the mana of the land; that disputes and quarrels took place between Ngatikoroki and Marutuahu, which culminated in the battle of Taumatawiwi, when Ngatihaua and its allies defeated Marutuahu,

and so disheartened them that they sued for peace, and that immediately after the latter returned to Hauraki they took possession of Maungatautari, and set bounds to such portions as they chose—the boundary line running about north and south—and they have continued in undisputed enjoyment and occupation thereof till the present.

(3.) Ngatikoura, under Te Hakiriwhi, based their claim on identically the same grounds as Ngatikoroki, but with one difference. Their boundary line ran from Mangapiko to Waitete, cutting the boundary lines of the Koroki claims at right angles as nearly as possible.

(4.) Ngatikoura, Ngatiparehaehaeora, and Ngatiraukawa, under Te Puke, based their claim on the same grounds as the other Ngatikoura, with a comparatively slight variation of their boundary line, also on descent from Ihingarangi, a son of Raukawa, and continuous occupation from a period anterior to Taumatawiwi.

(5.) Ngatiapakura set up that they conquered the Natiraukawa in a series of battles, commencing with Waipatoto and ending with Arukoata; that it was entirely owing to them that Raukawa migrated to Kapiti. They also claim by conquest to have acquired the mana of the land, and that, therefore, the result of any battle between Marutuahu and Ngatihaua could in no way affect the title of this land. They also claim to have occupied, and, in evidence thereof, set up occupation of Rangiaohia, Te Whanake, and other places, and also claimed by reason of a curse.

(6.) The Ngatihaua and Hourua case is based on the expulsion of Marutuahu by the Taumatawiwi victory, and the occupation of the land by some of the Ngatihaua and Ngatikoroki hapus. The witnesses in this case deposed that no boundaries were laid down, as sworn to by the witnesses in the Ngatikoroki and Ngatikoura cases; and that though most of the hapus which constituted the army of Ngatihaua and its allies at Taumatawiwi, which were led by the famous Te Waharoa, did not actually occupy Maungatautari, it was partly on account of the military duties enforced upon them by the aggressive spirit which for several years after Taumatawiwi actuated Marutuahu that they were compelled to occupy Matamata and other defensible positions close to the northern portion of this district; that they were not able to turn their attention to agricultural pursuits and to the peaceful possession of the conquered country; and it can scarcely, we think, admit of doubt, as alleged, that if danger had threatened from the south portion Te Waharoa and his redoubtable warriors would have been there to meet the foe, and drive him back to whence he came or perish in the attempt.

(7.) As to the Hourua case under Te Whitu, that is actually part of the Ngatihaua case, and should have been so dealt with from the first.

The Claimant in reply set up—(1.) Ancestral title and occupation. (2.) A peacemaking with Waikato. (3.) A formal handing over of Maungatautari after Hangahanga to Waikato—viz., to Tukorehu and Te Akanui, chiefs of Maniapoto and Ruakawa, and to Te Paewaka and to Te Wherowhero, the great Waikato chief, the father of Tawhiao. (4.) That in later days the land the subject of this inquiry was given back by Te Wherowhero and Te Paewaka, also by Haunui and Porokuru (to whom it does not appear to have ever been given by the Raukawa owners), to Ngatiraukawa, and that therefore it became the property of the whole of the Ngatiraukawa Tribe. It is also alleged in support of this theory that Ngatiraukawa went in peace to Kapiti and other places, after formally handing over their land to the guardianship of the chiefs above named, and that some eighty of them came from Pawaiti and settled on certain portions of it, and remained in occupation till their death, when they were succeeded by their descendants, whose representatives are still in occupation. That Marutuahu never acquired mana over Maungatautari, and that the result of Taumatawiwi could not in any way affect their title thereto. It is admitted on all sides that Ngatiraukawa and Ngatikauwhata were the owners of Maungatautari and the land surrounding it. Some generations back there was trouble between Koroki and his relative Taowhakauro about a woman. The position was aggravated by some very objectionable observations made by the latter as to what he would do with Koroki; a fight ensued, and as the case of each of the belligerents was espoused by the neighbouring hapus, a very pretty *mêlée* was the result. From a small matter at first it at length assumed large proportions, and became a general war, in which Taowhakauro was defeated and slain, and a good many of the Ngatikauwhata pas were taken. The Waikato and Maniapoto Tribes, from various causes, took part against Raukawa and Kauwhata, and a series of engagements were fought, with varying success, victory now inclining to one side and now to the other. At length, whilst some of the Ngatiraukawa were absent on an expedition to Hawke's Bay, the rest of them were hemmed in in their pa at Hangahanga. The besiegers sat down before Hangahanga to starve out the garrison, and invested the place for several months. One of the besiegers, being of an inquiring turn of mind, built a tower or crow's-nest to enable him to watch the proceedings of the besieged with a greater accuracy, but paid for his rashness with his life, for Te Ahukaramu, one of the Ngatiraukawa, being armed with a musket, one day watched his ascent, and just as the feather with which he embellished his head-dress appeared above the top of his tower, he took a pot shot and brought him down. There were two stand of arms in the pa—a musket and a pistol. The besieged evacuated the pa one night and escaped to Pawaiti, it is alleged, with the connivance of Te Korehu and Te Akanui, who commanded part of the besieging force. Two of the Ngatiraukawa, one very old man, Te Koru, and Matangi, who was sick, having been left in the pa, were butchered next morning. After a time there was, it is alleged, a peacemaking between a section of the Ngatimaniapoto and Ngatiraukawa, at Pawaiti, and some of the latter

(about eighty in number) returned to Maungatautari and lived at Puke Whakaahu, Aratitaha, and other places, the principal kainga being Aratitaha. It would appear that Ngatimaniapoto and Waikato, after Hangahanga, returned to their homes without occupying Maungatautari, but whilst matters in the Waikato were wearing a more peaceful aspect, it was but the precursor of a more terrible storm. Hongi Hika, of Ngapuhi, having now got firearms, sailed in his canoes from Bay of Islands to Waitemata. He attacked and took Mauinaina, a pa belonging to Ngatipoa, at the Tamaki, after which he attacked the Totara, a pa of Ngatimaru at the Thames; then returning he sailed up the Tamaki, dragged his canoes across to the Manukau, went to Waiuku, took his canoes by way of Te Awaroa to Waikato. The country people felled large quantities of timber into the Awaroa Creek to obstruct his passage, but to no purpose. At length he arrived at Matakītaki, on the Waipa, near the mouth of Mangapouri Creek. All Waikato were in the pa—men, women, and children. A panic ensued, and about two thousand perished in the attempt to escape. After this, all the tribes and hapus, including Marutuahu, who had fled to Waikato after the fall of Mauinaina and the Totara, fled to the interior, leaving the valley of the Waikato without inhabitants. Amongst those captured at Matakītaki was Rahuruaki, wife of Te Kanawa. Proposals of peace were made through her with Waikato, which was finally cemented by Matire Toha, daughter of Rewa, the head chief of Ngapuhi, being given in marriage to Kati, brother of Te Wherowhero, the great chief of Waikato. Hongi came no more to invade Waikato, though after the defeat of Ngatiwhatua at Te Ikaaranganui, he followed them up the Waikato to Otawhao, and then on to Pawaiti, whence they doubled back to Horotiu pa, which he reduced. Some of the Ngatiwhatua remained for a time in hiding, amongst others of whom Te Tinana. After the fall of Horotiu pa, Te Rorehu, to balance some former account, had him killed. Whilst Hongi was at Te Rore, on his way up the Waikato in pursuit of Ngatiwhatua, the first migration of Ngatiraukawa under Te Puke Ki Mahauariki took place. Then Pomare of Ngapuhi came to Waikato, and after fighting a resultless battle, was returning home, when he was seen by Taraia at Te Rore. Taraia invited him ashore to fight. The challenge was accepted. They fought, and Pomare's army was defeated, some going down the left bank of the Waikato, and some across country to the coast. Parties started in pursuit, whilst some were sent to intercept the fugitives at Te Awaroa. Scarcely one escaped. It is of no matter to us to inquire into the question any further; suffice it to say Ngapuhi never after invaded the Waikato, though with their allies of Ngamaru they ventured into the Ngatihua country. A general concentration of tribes and hapus now took place at Kihikihi, Otawhao, Kaipaka, Ngamoko, and other places about Kihikihi, for mutual protection against Ngapuhi; all the hapus remaining in occupation until Potatou went to take up his abode at Manuka, when most of them returned to their own former kaingas, whilst the Patukoko, Ngatinaenae, and Ngatiparehaehaera continued to live at Kihikihi and Otawhao. We have already referred to Marutuahu; they came as fugitives from Hauraki and settled at Horotiu and other places with Ngatihaua and Ngatikoroki. Some trouble arising between the Tangatawhenua and the Heke, Ngatihaua went from Horotiu to Kawehitiki (Maungakawa), whilst Ngatikoroki determined to go to Kawhia, but accepted the invitation of Ngatiapakura and settled at Kaipaka. Here they remained for a time till trouble arose between them and the Ngatihinetu, a hapu closely related to Ngatiapakura. A skirmish took place, and several of Ngatikoroki were killed, some of the dead being mutilated with adzes. When news reached Ngatihaua, they came and attacked the Ngatiapakura pa, Kaipaka, whilst many of the warriors were at Ngaroto eel-fishing. Amongst the slain was Rangianewa, a woman of very high rank. Ngatihaua did not attack Taurangatahi, the pa of Ngatihinetu. We are told Te Paewaka interceded in its behalf. Immediately on the fall of Kaipaka, those of Ngatiapakura, who had been at Ngaroto, and the Ngatihinetu, from Taurangatahi, went to Kawhia. After being there some time, some of the great chiefs of Waikato brought them back to Rarowera with a strong escort, and it was intended that Ngatihaua should be attacked in their pa at Kawehitiki, in order that satisfaction might be had for Rangianewa's death. And now we come to a point in dispute as to whether or no Te Waharoa did or not give up Rangiaohia to Ngatiapakura as satisfaction for Rangianewa's death. It appears to us highly probable that Te Waharoa did give the land as stated, inasmuch as the Ngatihaua were not attacked. It is also equally clear that Ngatiapakura and Ngatihinetu were allowed to occupy Rangiaohia without molestation. Shortly after Pomare's disastrous expedition to Waikato, the second migration of Ngatiraukawa, known as "Te Hekewhirinui," took place, which was followed by the death of Te Hiwi at the hands of the Ngatierangi, and whilst Ngatiraukawa were at Tauranga getting vengeance for his death, Ngatimaru attacked and took Te Kopua pa; then there was trouble between Ngatimaru and Ngatiraukawa on account of Te Whaha, a Ngatimaru, having been killed by Te Whatakaraka. It was alleged that this was settled, and Ngatimaru got satisfaction by killing Te Uhangā. Soon after this, the third migration of Ngatiraukawa, known as Kariritahi, occurred. Then followed the attack by Ngatimaru on Ngatitama and Ngatitahu at Parikawaru; when this *ope* of Ngatimaru were returning they killed Te Whatakaraka at Piraunui. Te Whatakaraka's remains were carried to Taupo, and the last great migration took place, some of the Ngatiraukawa going to Kapiti and the rest to Rotorua. Ngatimaru now took possession of Maungatautari, and lived at Ngatokoi and Haowhenua, a large pa, so named because of the large extent of ground it covered, whilst Ngatipoa lived at Kaipaka (near Maungakawa), not the pa of same name which belonged to Ngatiapakura. The

next incident is the death of Te Whakaete, a great chief of Waikato, killed by Ngatimaru, at Haowhenua. Ngatihaua tried to avenge his death, but were defeated at Kariaruhe. Then Waikato went, with no better result, as they sustained a repulse at Putoetoe. There were several battles fought between Marutuahu and Ngatihaua, but as they do not affect the history of the case, we will omit all reference to them. The next incident was the great battle of Taumatawiwi, which has already been very ably described. There Marutuahu sustained heavy loss, though dealing heavy blows in return; they were forced to sue for peace, being almost completely out of ammunition. Te Waharoa allowed them to return to their own land, to breed men, to get payment for those they had lost. Ngatikoroki now took possession of and occupied the north-east part of Maungatautari, also Ngatikahukura, and Ngatiwerewere, and Ngatihourua, Ngatihura, &c. Te Waharoa and Ngatihaua returned to Matamata and remained there, as it was rumoured that Ngatimaru and Ngapuhi were coming to attack Matamata. Ngatimaru and Ngapuhi came in two detachments, one of which invested Matamata and the other Kawehitiki; the attacking force retired from Kawehitiki, and joined the other before Matamata. News then reached them that Waikato in strong force was coming to the relief of Matamata, and the siege is raised. Simultaneously with the occupation of the north-east portion of Maungatautari by Ngatikoroki and other hapus we are told was the occupation of the south-west part by Ngatikoura, who, though they do not appear to have taken any part in the battle of Taumatautiri, were eager to get what benefit was likely to arise therefrom. The occupation of Maungatautiri by Ngatikoroki and the other hapus was never questioned by Ngatiapakura or Ngatiraukawa, or by any other hapus whatever. In consequence of Poara te Uata, a Ngatiraukawa chief, having spared the lives of Tetenui and Pitorua, two young chiefs of Ngitahaua, captured by him at Matamata, and to mark his sense of the generous treatment accorded to them by Poara te Uata, Te Waharoa invited them to return and occupy the tribal possession of Ngatiraukawa on the right bank of the Waikato River. He laid down a boundary which has since been respected, and but slightly varied in later times. After Ngatiraukawa had lived some years at Otaki and other places near Kapiti, they were visited by Potatou and afterwards by Haunui and Porokoru, and formally invited to return to the land, but few appear to have availed themselves of these invitations. Now, the questions we have to determine are: (1.) Were the battles between Waikato and Ngatiraukawa and Kauwhata, which began during the time of Taowhakairo and Koroki and ended with Hangahanga and Aurukoata, of any effect as to the ownership of the land the subject of this adjudication? (2.) Did Marutuahu acquire the mana over Maungatauri. (3.) Did Ngatihaua and the other hapus get the mana over this land at Taumatawiwi?

Now, having in view the fact that at the previous hearings of the claims to parts of Maungatautari, many persons of the Native race held aloof from having anything to do with the Native Land Court, and by so doing shut themselves out of Court, but who now are present to prosecute their claims in person, we decided to afford them the fullest opportunity of supplying such evidence as they could bring.

(1.) Now, as to the first question. After giving full weight to all the evidence we find that the battles between the Waikato and Raukawa did not in any way affect the title of Raukawa to the land before the Court or their other lands.

(2.) As to the second question. Having referred to the evidence of Ngatiraukawa witnesses in a great many cases brought by themselves and others before the Court, as well as the evidence adduced in the present case, we unhesitatingly answer, Yes, Marutuahu did acquire the mana over Maungatauri; for although they came here as refugees they by force of arms caused such of Ngatiraukawa as continued in occupation to vacate the land before the Court, and by that and their occupation acquired the mana.

(3.) Now, as to the third question. We find that Ngatihaua, Ngatikoroki, and Ngatihourua, and their hapus, having driven Marutuahu away from Maungatautari, dispossessed them and acquired the mana over the land, which they have retained ever since. The evidence in this and former cases is very clear as to the boundary struck by Te Waharoa, and is to our minds conclusive; for if Te Waharoa had not had the mana over the land why should he have been able to give part of the land back to Ngatiraukawa. Having disposed of the claims by ancestry which we find were extinguished by the *take rau patu*, we will now dispose of the cases in the order most convenient to us.

(a.) As to claimant, we uphold the former decisions by this Court as to Ngatiraukawa having forfeited their rights by leaving the land.

(b.) As to the persons represented by Hori Wirihana, they are in precisely the same position as Ngatiraukawa. Hori himself has a good claim as a Ngatikahukura.

(c.) As to the Koroki, Haua, and Hourua cases, they are in reality one, and should have been so treated from the first, and expense saved. As we have already decided that Ngatihaua, &c., by the Taumatawiwi victory, acquired the mana over this land, no further remark is now necessary.

(d.) As to the case brought by Te Puke, we find that, although Ngatikoura did not fight at Taumatawiwi, yet they were permitted by those who had got the mana to occupy portions of Maungatautari, and this has continued almost uninterruptedly for fifty years. Ngatikoura will therefore be admitted. We can make no distinction between the Ngatikoura represented by Te

Hakiriwhi and that represented by Te Puke; but Hakiriwhi, as the "Tauhiwi" of Ngatihaua, has a strong personal claim, and we consider that Te Puke te Huirama has also, but not through ancestry, as claimed, as the Marutuahu occupation did away with that.

(e.) As to the case brought by Mr. Swanson, the Ngatihaua and other hapus, having wrested the mana from Marutauhu, did away with any ground of claim they might otherwise have had. It is, moreover, quite clear to us, from the evidence before the Court, that a portion of the block as it originally was, was given to them and the boundaries fixed, so they can have no claim to what is before the Court now.

(f.) Wiremu te Whitu's case being really a branch of the Ngatihaua case, the remarks already made respecting Ngatihaua applies to this section of Ngatihourua.

In conclusion, we have but to express our regret that Ngatihaua, Ngatihourua, and Ngatikoroki did not coalesce, and take the smaller hapus all under their wing. The proceedings would have been shorter, the expense would have been less to themselves and the country, and the case would have been less complicated. And we would suggest to those who got the mana at Taumatawiwi that, as that battle was fought to avenge the death of te Whakaete, it would be an act of grace on their parts to include the name of Ratiwa te Whakaete in their list of names, as perhaps, without that *take*, Marutuahu might still have been in occupation.

Enclosure No. 2.

APPENDIX A.

Copy of Supplementary Judgment in reference to Occupation by Raukawa.

THE Court has already given judgment as regards ancestral title over this block; our present decision therefore simply applies to the alleged occupation of parts of the land before the Court by some of the descendants of the original owners, Raukawa.

It appears from the evidence before us, that after the Ngatimaru had driven away Ngatiraukawa, some few persons did not migrate; they lived at Wharepuhunga and sometimes on this block, and a short time before Taumatawiwi they sought shelter at Otawhao, and that after Taumatawiwi Marutuahu having returned to Hauraki they resumed occupation, which continued till the war in Waikato, in 1864, when they removed to Wharepuhunga and other places which do not appear to have been possessed or occupied by Marutuahu.

The question before us is, was this occupation, the ancestral title having been destroyed, sufficient to entitle these persons to class among the owners? Our answer is: It is not; and we say so on this ground, that they merely occupied by sufferance such places as they did occupy after the land had changed owners, and that occupation having terminated, no right now exists.

In such a case, nothing but continuous occupation could confer a right to the use of the sites of the whares and their cultivations, but that could give no right whatever to any of the land beyond that so occupied; that occupation once terminated, the right to occupy ceases to be.

