1948

NEW ZEALAND

REPORT OF ROYAL COMMISSION APPOINTED TO INQUIRE INTO AND REPORT UPON CLAIMS PREFERRED BY CERTAIN MAORI CLAIMANTS CONCERNING THE MOKAU (MANGINANGINA) BLOCK

Laid on the Table of the House of Representatives by Command of His Excellency

Royal Commission to Inquire into and Report upon Claims preferred by certain Maori Claimants concerning the Mokau (Manginangina) Block

GEORGE THE SIXTH by the Grace of God, of Great Britain, Ireland, and the British Dominions beyond the Seas, King, Defender of the Faith:

To Our Trusty and Well-beloved Counsellor SIR MICHAEL MYERS, Knight Grand Cross of Our Most Distinguished Order of Saint Michael and Saint George, and to Our Trusty and Well-beloved HANARA TANGIAWHA REEDY, of Ruatoria, Farmer, and ALBERT MOELLER SAMUEL, of Auckland, Retired: GREETING:

* * * *

Whereas by a certain deed of cession bearing date the 28th day of January, 1859, certain Chiefs and people of the Ngati-Whiu Tribe who thereunto subscribed their names, did thereby, on behalf of themselves, their relatives and descendants, and in consideration of the payment of the sum therein mentioned, cede to Her Majesty the piece of their land situated at Waimate North, in the Bay of Islands District, and named Mokau, the boundaries whereof were set forth in the said deed and in a map thereunto attached:

And whereas by a notice published in the *Gazette* on the 19th day of August, 1863, at page 345, it was notified that the Native title over the land described in the notice aforesaid and therein named "Manginangina Block," being the land comprised in the said deed of cession and therein named "Mokau," had been extinguished, exclusive of a Native reserve containing 200 acres, which had been stipulated for in the aforesaid deed of cession, and excepting another small portion therein mentioned:

And whereas in recent times the cession of the said Mokau Block to the Crown has, by certain Maoris claiming that their forbears were entitled to interests in the said Mokau Block, been impugned or called in question upon the grounds, amongst others, that the persons who purported to cede the said Mokau Block to the Crown were not the true owners of the land, or the whole of it, and had no power to act for other owners in ceding it; that the boundaries laid down for the said Mokau Block wrongfully included an area of land known as "Takapau"; that the purchase-price paid by the Crown for the land was inadequate; and that the deed of cession was not properly executed:

* * * *

And whereas the Government is desirous that the truth and justice of the respective claims and complaints of the Maoris as hereinbefore set forth should be tested by inquiry so that, if such complaints be well founded and of substance, the Government will be able to take order for the redress of the grievances laid upon the Maoris:

Now know ye, that We, reposing trust and confidence in your impartiality, knowledge, and ability, do hereby nominate, constitute, and appoint you, the said

Sir Michael Myers,
Hanara Tangiawha Reedy, and
Albert Moeller Samuel

to be a Commission:

* * * *

(*b*) In respect of the Mokau Block aforesaid, to inquire and report—

(i) Whether, due regard being had to the method generally employed throughout the North Auckland District in the conduct of transactions with the Maoris for the cession of land to the Crown at the time when the said Mokau

Block was ceded to the Crown, any injustice has been or would be done to the former Maori owners of the said Mokau Block or their descendants or representatives, or any of them, in asserting and maintaining the Crown's title to the said Mokau Block as against such former Maori owners or their descendants or representatives, or any of them; and

(ii) If it be reported that any injustice has been done or would be done as aforesaid, then to recommend whether the former Maori owners of the said Mokau Block or their descendants or representatives, or any of them, should have any portion of the said Mokau Block returned to them, or whether compensation in money or money's worth should now be granted to such former owners or their descendants or representatives, or any of them; and

(iii) If it be reported that compensation should be so granted, then to recommend what the extent of such compensation should be.

* * * *

Provided, however, that in any case where you shall see fit to recommend that compensation in money or money's worth be granted in respect of the purchases or cessions hereinbefore set forth, you shall have regard to the value of the land, as nearly as may be, at the time of the purchase or cession thereof, and not to any later increment in the value thereof:

Provided, further, that you shall be at full liberty to disregard or differ from any findings, whether of fact or otherwise, conclusions, opinions, or recommendations of any former tribunal in respect of any matters or questions of similar character or import to those confided to you by these presents:

And We do hereby appoint you, the said

Sir Michael Myers

to be Chairman of the said Commission:

And for the better enabling you to carry these presents into effect, you are hereby authorized and empowered to make and conduct any inquiry under these presents at such times and places as you deem expedient, with power to adjourn from time to time and place to place as you think fit, and so that these presents shall continue in force, and the inquiry may at any time and place be resumed although not regularly adjourned from time to time or from place to place:

And you are hereby strictly charged and directed that you shall not at any time publish or otherwise disclose save to His Excellency the Governor-General, in pursuance of these presents or by His Excellency's direction, the contents of any report so made or to be made by you or any evidence or information obtained by you in the exercise of the powers hereby conferred upon you except such evidence or information as is received in the course of a sitting open to the public:

And you are hereby authorized to report your proceedings and findings under this Our Commission from time to time if you shall judge it expedient so to do:

And, using all due diligence, you are required to report to His Excellency the Governor-General in writing under your hands not later than the thirty-first day of March, one thousand nine hundred and forty-eight, your findings and opinions on the matters aforesaid, together with such recommendations as you think fit to make in respect thereof:

And, lastly, it is hereby declared that these presents are issued under the authority of the Letters Patent of His late Majesty dated the eleventh day of May, one thousand nine hundred and seventeen, and under the authority of and subject to the provisions of the Commissions of Inquiry Act, 1908, and with the advice and consent of the Executive Council of the Dominion of New Zealand.

In witness whereof We have caused this Our Commission to be issued and the Seal of Our Dominion of New Zealand to be hereunto affixed at Wellington, this thirteenth day of August, in the year of our Lord one thousand nine hundred and forty-seven, and in the eleventh year of Our Reign.

Witness Our Trusty and Well-beloved Sir Bernard Cyril Freyberg, on whom has been conferred the Victoria Cross, Knight Grand Cross of Our Most Distinguished Order of Saint Michael and Saint George, Knight Commander of Our Most Honourable Order of the Bath, Knight Commander of Our Most Excellent Order of the British Empire, Companion of Our Distinguished Service Order, Lieutenant-General in Our Army, Governor-General and Commander-in-Chief in and over Our Dominion of New Zealand and its Dependencies, acting by and with the advice and consent of the Executive Council of the said Dominion.

[L.S.] B. C. FREYBERG, Governor-General.

By His Excellency's Command—

P. FRASER, Native Minister.

Approved in Council—

W. O. HARVEY, Clerk of the Executive Council.

To His Excellency the Governor-General, Lieutenant-General Sir Bernard Freyberg, V.C., G.C.M.G., K.C.B., K.B.E., D.S.O.

MAY IT PLEASE YOUR EXCELLENCY,—

1. By the Commission of the 13th August, 1947, with which Your Excellency has honoured us, we are directed to inquire into and report upon three separate and distinct subject-matters, and we are authorized to report our proceedings and findings to Your Excellency from time to time if we judge it expedient so to do.

2. The block of land referred to in the Commission as the "Mokau" Block was one of the subjects for inquiry, and as it was represented to us that this was the most urgent of the various matters to be inquired into we decided to commence our investigation at the earliest possible moment. With the concurrence of counsel acting for the parties concerned, Kaikohe was fixed as the place, and the 1st October as the date, for holding the inquiry, and we sat accordingly on that day and continued our sittings on the 2nd, 3rd, 6th, 7th, 8th, and 9th, on which last-mentioned day the inquiry was concluded. We also, at the request of counsel, and in the company of most of them, made an inspection at various points on the block to which they desired to draw our attention.

3. In his opening address to the Commission, Mr. Hall Skelton, who took the leading part as counsel in the representation of the Maoris, after speaking of the inquiry made by Mr. Acheson, a former Judge of the Native Land Court, and the report thereon of the then Chief Judge, Mr. Shepherd, said that the Natives now were very delighted and had told him "they would like to tell the Court they were very pleased" with the personnel of the Commission, "and would be quite satisfied with its judgment." We would add at this stage that every possible latitude was given to all the counsel engaged in the different sectional Maori interests in the presentation of their respective cases; and, knowing that the matter is an important one to the Maoris, and assuming it to be the intention of both the Government and the Maoris that our report is to be accepted as a final determination of this long-standing question, we have considered very carefully the material placed before us and the submissions of counsel, and, we feel justified in adding, with all possible sympathy towards the Maori claims.

4. It will be remembered that some months earlier—namely, on the 5th October, 1946—Your Excellency issued to us a Commission to inquire into the matter of "surplus lands." During our inquiry in connection with the Mokau Block the question of surplus lands was mentioned at times by counsel, but, in actual fact, the matter of surplus lands has no relation whatever to the Mokau Block. This, indeed, is now common ground, and our only reason for referring to the point is to correct an erroneous statement in the report of Judge Acheson after his inquiry which has been mentioned in our last preceding paragraph and to which more detailed reference must be made later. In that report Judge Acheson said, under the title "Surplus Lands," that Mr. Blomfield had raised the question and claimed that this particular matter of the Mokau Block was affected by it; and, after indicating various "surplus lands" close to the block, Judge Acheson continues: "These surplus areas were lands which the Crown representatives, after inquiry, found had not been paid for by private purchasers; or, rather, the Crown allowed private purchasers to retain certain areas only *being equivalent in value to the prices paid*" (the italics are ours). What

the private purchasers were allowed to retain were areas equivalent in value not to the prices paid, but to arbitrary prices fixed by the Crown for the purpose of computing the areas to be granted to the purchasers. We shall, of course, deal fully with the question of "surplus lands" when we report to Your Excellency on the Commission relative thereto issued to us in October, 1946, but that inquiry is necessarily a lengthy and intricate one and has not yet been completed. We merely make this present reference to the question in order to correct the erroneous statement which appears in Judge Acheson's report and which, unless corrected, might be quoted as an authoritative statement on the subject.

5. The Mokau Block, or Manginangina, or Mokau-Manginangina (as it has been indifferently called during the course of the proceedings), was ceded to the Crown by deed dated 28th January, 1859, whereby, as recited in Your Excellency's Commission to us, certain Chiefs and people of the Ngati Whiu Tribe who thereunto subscribed their names, and who on behalf of themselves, their relatives and descendants, and in consideration of the payment of the sum of £240, ceded to Her Majesty Queen Victoria the piece of land situated at Waimate North, in the Bay of Islands District, and named Mokau, the boundaries whereof were set forth in the said deed and in a map thereunto attached. The map or plan was not "attached" in the sense of being a separate paper, but, in fact, appears on the deed and forms part of one and the same document. The Commission then recites that by a notice published in the *Gazette* on the 19th August, 1863, at page 345 (which was signed by Mr. Reader Wood, who was, at the time, Colonial Treasurer) it was notified that the Native title over the land described in the said notice and therein named "Manginangina Block," being the land comprised in the said deed of cession and therein named "Mokau," had been extinguished, exclusive of a Native reserve containing 200 acres which had been stipulated for in the said deed of cession, and excepting another small portion therein mentioned. The Commission then recites as follows: "And whereas in recent times the cession of the said Mokau Block to the Crown has, by certain Maoris claiming that their forbears were entitled to interests in the said Mokau Block, been impugned or called in question upon the grounds, amongst others, that the persons who purported to cede the said Mokau Block to the Crown were not the true owners of the land, or the whole of it, and had no power to act for other owners in ceding it; that the boundaries laid down for the said Mokau Block wrongfully included an area of land known as 'Takapau'; that the purchase-price paid by the Crown for the land was inadequate; and that the deed of cession was not properly executed." What we are directed to do is to inquire and report—

(i) Whether, due regard being had to the method generally employed throughout the North Auckland District in the conduct of transactions with the Maoris for the cession of land to the Crown at the time when the said Mokau Block was ceded to the Crown, any injustice has been or would be done to the former Maori owners of the said Mokau Block or their descendants or representatives, or any of them, in asserting and maintaining the Crown's title to the said Mokau Block as against such former Maori owners or their descendants or representatives, or any of them; and

(ii) If it be reported that any injustice has been done or would be done as aforesaid, then to recommend whether the former Maori owners of the said Mokau Block or their descendants or

representatives, or any of them, should have any portion of the said Mokau Block returned to them, or whether compensation in money or money's worth should now be granted to such former owners or their descendants or representatives, or any of them; and

(iii) If it be reported that compensation should be so granted, then to recommend what the extent of such compensation should be.

The Commission provides that if we shall see fit to recommend that compensation in money or money's worth be granted, we shall have regard to the value of the land, as nearly as may be, at the time of the purchase or cession thereof, and not to any later increment in the value thereof.

6. Our inquiry has, of course, been made on the hypothesis, which is now common ground, that the title of the Crown cannot be impugned or attacked in law, and what we have to do is to consider whether, on the material placed before us by the parties, any wrong or injustice has been or is being done to the original Maori owners or their descendants by asserting and maintaining the Crown's title to the block, and, in the performance of that task, to apply principles of equity and fairness.

7. In applying those principles there are certain fundamental maxims and rules which must be borne in mind:—

(i) The title to the Crown being unassailable in law, the onus of showing that some wrong or injustice has been done must necessarily lie upon those who assert it—*i.e.*, the Maori claimants.

(ii) Law, equity, and common-sense alike discourage stale demands where a party has slept upon his rights and acquiesced for a great length of time. The established Courts, indeed, refuse to lend their aid to such claims. We cannot ignore this rule, though we consider that, in applying it, some latitude should be allowed in respect of a Maori claim such as this, but not to the extent of excusing delay which must be regarded as in itself unconscionable, or which has been such as to be calculated to prejudice the opposing party (in this case, the Crown), or to prevent the possibility of evidence being given which would have been available by way of answer had the claim been made in reasonable time.

(iii) From lapse of time all things are presumed to have been done rightly and regularly. This maxim applies as well where matters are in contest between private persons as to matters public in their nature. Deeds, wills, and other attested documents which are more than thirty years old, and are produced from the proper custody, prove themselves, and the testimony of the subscribing witness may be dispensed with. The law will presume in favour of honesty and against fraud, and the presumption acquires weight from the length of time during which a transaction has subsisted.

8. Now, the deed of cession was made as long ago as the 28th January, 1859, and, although (as we shall show in more detail later) the fact that the land had been sold to the Crown was known generally to the Natives in the district and to all those who conceivably had any interest in the land, it has not been satisfactorily shown to us that any exception or objection was taken to the sale until the year 1935. Efforts have been made to show that certain objections were made previously, commencing soon after

the beginning of the present century. To those efforts we shall refer later, but suffice it in the meantime to repeat that there is no proof which we can regard as satisfactory of any previous objection or exception having been taken.

9. In 1935 a petition was presented to Parliament by Hone Rameka, Hare Werohia, and a number of others, which by section 16 of the Native Purposes Act, 1937, was referred to the Native Land Court for inquiry. An inquiry was held before Judge Acheson, who, after saying "firmly and definitely that the price was unconscionable and even outrageous," made a recommendation that such portions of the milling timber on the block as are not required for scenery-preservation purposes be milled commercially and a liberal percentage of the net proceeds be paid over from time to time by the State Forest Service to the Tokerau District Maori Land Board as a trust fund to be devoted to community or tribal purposes. This report of Judge Acheson went before the then Chief Judge, who, for the reasons set out in his memorandum to the Native Minister dated 15th September, 1941, expressed himself as being unable to concur in the recommendation. There the matter has remained; but further petitions were presented to Parliament in 1943 and 1944, and we understand that, in consequence of this further agitation, the present Commission has been issued. Our inquiry involves, in substance, a review of Judge Acheson's report.

10. At the inquiry before Judge Acheson, the late Mr. E. C. Blomfield represented Hone Rameka and others; Mr. Hall Skelton represented Tamati Arena Napia and others; and the Crown was represented by Mr. V. R. Meredith, Crown Solicitor at Auckland. In the proceedings before the present Commission, Mr. Hall Skelton appeared "for a Committee of the representatives of the Ngati Whiu and other hapus related to them"; Mr. G. Blomfield for Hone Rameka, Hare Werohia, Tamati Mahia, the Ngati Tautahi, Ngati Tawake, and Ngati Whakaeke; and Mr. Reynolds for the Ngati Uru and the Hokianga branch of the Ngapuhi, the Tamati Waaka Nene people. The Crown was represented by Mr. Meredith and Mr. McCarthy. Mr. O. A. Darby, of the Lands and Survey Department, attended to assist the Commission and the parties in the direction of research of the various old plans, deeds, documents, and files to which reference was necessary from time to time, and he also gave evidence. All the counsel expressed their thanks to Mr. Darby for his invaluable assistance throughout, and the Commission would like to endorse that expression, and also to express its indebtedness to Mr. Blane, of the Native Department, for his admirable and helpful service as Secretary to the Commission.

11. The Tamati Waaka Nene section were not separately represented at the inquiry before Judge Acheson; their interests were included (so Mr. Reynolds informs us) in the "over-all" representation of Mr. E. C. Blomfield; and in point of fact Keina Poata, the principal witness called by Mr. Reynolds in the proceedings before us to give evidence on behalf of the Waaka Nene interests, was called as a witness and gave evidence before Judge Acheson as a member of the Ngati Uru Tribe.

12. In his report, Judge Acheson disregards any question of Native occupation since 1859—and on that point we agree with him—and says that the crux of the whole question was "the price, £240, paid for 7,224 acres of rich kauri forest." No doubt, as the case developed before us, the price paid for the land becomes the crux of the question so far as concerns the interests represented by Mr. Skelton—*i.e.*, the Ngati Whiu Tribe—because (as Judge Acheson himself says) the members of that tribe are bound now

by the acts of their Chiefs in 1859 as to the fact of the sale and cannot be heard to deny that the land was sold in a proper and regular manner. Plainly, therefore, the only injustice (if any) of which the Ngati Whiu could now be heard to complain must be based on, and limited to, the question of inadequacy of the price.

13. The Waaka Nene people, and perhaps some of the people represented before us by Mr. Blomfield, are not in the same position. Their ancestors are not named in the deed as sellers, the land being described therein as the property of the Ngati Whiu Tribe. Consequently, therefore, so far as the Waaka Nene section (and possibly some of Mr. Blomfield's clients) are concerned, the question of price does not arise at all unless it is first shown to our satisfaction that their ancestors were, as well as the Ngati Whiu Tribe, owners of the Mokau Block; and Mr. Reynolds was quite right in saying that in that way, so far as he is concerned, the question of ownership, and not that of price, is the crux of the matter. It is only if he and Mr. Blomfield are able to show that the predecessors of their present clients were owners of the block as well as the Ngati Whiu, and if the questions of knowledge, acquiescence, and delay are satisfactorily answered, that the question of price will arise so far as they are concerned.

14. Mr. Reynolds frankly appreciated the difficulties inherent in his case, and he endeavoured to meet and overcome them by such evidence as he was able to adduce, and by logical and reasoned argument. The same may, we think, be said of Mr. Blomfield, who, however, did not take so prominent a part at the hearing. On the other hand, Mr. Skelton took up a much more aggressive attitude, as will be seen in the next succeeding paragraph.

15. According to him—we are repeating substantially his own words—Wiremu Hau was the only person who signed the deed for himself; the others were not present; Wiremu Hau got strangers to come along and put their names down on the deed with a cross as proxy for the other nine and bolster up the deed by making it appear to be a true document; the top man (meaning Wi Hau) signed his own name, and the others—in their absence a proxy signed for them "at the behest of this man, Wiremu Hau"; of the nine men who signed, there is one at the bottom who was thought to be a signatory, but who "turns out to be a proxy"—"on the document I have got they have 'omitted' written alongside his name"; (incidentally, it may be said that there is no such word as "omitted" at all on the document; the word is an abbreviation of commissioner—"comr" to describe Mr. Kemp, whose name is on the document as witness); the plan on the deed was a bogus plan, something concocted after the deed was signed; the vendors named in the deed were not the owners of the land; the Maoris did not know of the sale for a period of more than sixty years; both Wi Hau and Mr. Kemp acted fraudulently; Mr. Kemp had acted in a dual capacity, and Wi Hau had been bribed; the block was sold under a bogus name. Then Mr. Skelton criticizes "the so-called missionaries, who were not missionaries but laymen," and he describes them as "marauders." (Incidentally, it may be said that the missionaries had nothing whatever to do with the Mokau transaction, and the criticism had no relevance to the subject-matter of this inquiry—the most that can be said is that Mr. Kemp was the son of a missionary.) Mr. Skelton's reference to the question of price for the block will be the subject of later observations. Meantime we shall proceed to deal seriatim with his other assertions and allegations to which we have referred.

16. The assertion that the persons, other than Wiremu Hau, who purport to be parties to the deed did not sign either by their own signatures or as marksmen, and were not present at the execution of the deed, is ill-founded. One of them, apart from Wi Hau, signed his name. The others all signed by mark. The document itself and all the facts and circumstances are consistent with the actual presence of all the parties named. For the use of the expression "proxy," in the sense that the person who actually signed or made the mark was acting as a proxy in the absence of the party, there is no justification. The deed was executed in the same way as deeds in those times were ordinarily executed where, as was generally the fact, the Maoris were unable to read and write or sign their names. But there is no justification for asserting, in the absence of proof or evidence, that the parties were not actually present and did not give authority for their signatures or marks to be placed upon the deed. Indeed, the experienced Native interpreter who acted in that capacity in the proceedings before us, and who was called as a witness by Mr. Skelton, said that all the facts and all the wording in connection with the signatures and the attestation of the deed were consistent with the actual presence of the persons who are stated to be signatory parties. The presumption which must be made by any Court or tribunal is that the parties were present at the execution of the deed and that the deed was properly and regularly executed, and there has been no evidence presented to us that in the least disturbs that presumption.

17. As to the assertion that the plan on the deed is "a bogus plan drawn by a young fellow called Fairburn who was only a cadet and was not a surveyor," the facts are that Fairburn was a surveyor, and apparently a surveyor of considerable experience. It is true that he was not, in 1859, a licensed surveyor, because at that time no such thing as the licensing of surveyors was in existence. It was only after the Native Land Act of 1862 was passed that provision was made for the licensing of surveyors, and Mr. Fairburn's name was apparently on the first list of licensed surveyors under that Act. Moreover, the plan was actually registered in 1858. The plan is complete with chainages, linkages, and bearings, and is genuine in every respect. The deed itself refers to an attached plan, and we can entertain no doubt as to the plan being actually on the deed at the time when it was executed. That, after the lapse of time that has occurred, would be the presumption in any case; but, quite apart from any presumption, we are satisfied from the evidence before us that there is no justification whatever for the assertion or suggestion that has been made. It is true that the reserve of 200 acres is not shown upon the plan on the deed, nor could it, indeed, be shown, because at that time the reserve had not been surveyed or actually set aside. The deed itself says or implies that the reserve was to be made and to be located in the future. Later on a survey of the reserve was actually made, and the boundaries were delineated for record purposes on Fairburn's plan. In any case, it is immaterial and has no bearing whatever upon the *bona fides* of the plan actually on the deed. It would appear that, comparatively recently (in 1934), a Mr. Holt prepared a plan of the block for the Maoris to be placed before the Native Land Court, on which he noted that there were no chainages or bearings on the western boundary. The plan itself was not admissible, because it did not comply with the regulations; but, be that as it may, Mr. Holt was apparently not a professional surveyor and must have been mistaken, because, in fact, Fairburn's chainages and bearings all round the block are complete.

18. As to the vendors not being the owners of the land, we have dealt with this point to some extent in paragraph 16. The fact is, moreover, that according to the deed the sale purports to be a sale by the Chiefs and people of the Tribe of Ngati Whiu, and that, with possibly two exceptions, all the signatories, whether they signed by name or by mark, were rangatiras of the Ngati Whiu. It is suggested that the land belonged not merely to the Chiefs, but to the tribe, that the members of the tribe have not signed, and that there is no proof that the sale was made with their consent. The fact is, however, that in practice in those days it was only the Chiefs who did sign these deeds, and they signed for the tribe. It is true that there is no evidence that there had been a meeting of the tribe or that the Chiefs consulted the tribe, and that the sale was made by general consent, but neither is there any evidence the other way; and in the absence of rebutting evidence, the presumption is that any necessary or customary or prescribed requirements were rightly observed, carried out, and done, and that any necessary consultation had been made or necessary consent obtained.

19. The assertion that the Maoris (other, presumably, than the actual signatories) did not know for a period of more than sixty years that the sale had been made will not bear scrutiny. The documentary evidence and the proper inferences to be drawn therefrom completely negative the assertion, and show that the sale was from the outset and at all material times generally known to the Maoris throughout the district; and, indeed, the absence of such knowledge is inconceivable. This point will receive further attention at a later stage.

20. As to the allegations of fraud made against Mr. Kemp and Wiremu Hau, the first suggestion as against Mr. Kemp is that, at the time of the negotiations for the sale and the execution of the deed, he was in a dual position and held two conflicting offices—namely, Land Purchase Officer and Protector of the Aborigines. This assertion is not correct. He had at one period held the appointment of a Protector of the Aborigines, but this duty and office lapsed about 1852. In 1858 he was merely a District Land Purchase Officer or Commissioner, the principal Land Purchase Commissioner being Mr. (afterwards Sir) Donald McLean.

21. Then, a great deal is sought to be made of a letter from Mr. Kemp to the Chief Commissioner of the 1st July, 1858, in which Mr. Kemp says that the survey of a block of land known as Mokau had just been completed, that it was one of the blocks already reported on as under negotiation, and was estimated to contain 10,000 acres, chiefly forest, comprising some very fine kauri and other timber, and that it was situated north-west of Waimate distant ten miles, with an available road. The letter goes on: "The Chief, Wi Hau, a well-known and useful servant of the Government, is the seller; and as he is anxious to assist the Government in establishing a settlement here, I beg to recommend that I may be authorized finally to conclude this purchase." It is to be noted that this letter states that the survey had *just* been completed. It by no means follows that Mr. Kemp had seen the plan. Indeed, the inference is that he had not, because at that time he had no knowledge of the area of the land—he only knew that it was estimated to contain 10,000 acres. It is true that he refers to the Chief Wi Hau as being *the seller*, but obviously that cannot mean that Wi Hau was the only seller, because the fact is that when the deed comes to be executed it is found that there are a number of persons included as sellers. It can only mean that Mr. Kemp regarded Wi Hau as being the leading seller because he was, in fact, the principal Chief of the tribe.

22. The suggestion now made is that Wi Hau, because he was a well-known and useful servant of the Government, was prepared to betray the interests of his fellow-Maoris and to sell the land to the Government, irrespective of whether other people had interests in it or not, and at an inadequate price. But, on the other hand, the extract quoted from the letter is at least equally consistent with an implication of Mr. Kemp's desire to make the purchase for the reason that Wi Hau, who was a well-known and useful servant of the Government, was anxious to have a settlement established. The fundamental rule must not be overlooked in this connection that the presumption is in favour of honesty and against fraud, especially where the person against whom the charge is made is dead and no longer able to speak for himself. That applies equally to Wi Hau as to Mr. Kemp. Of course, the presumption is rebuttable, but the material offered to support the rebuttal must be clear and convincing.

23. Mr. Kemp then writes to the Chief Land Purchase Commissioner on the 4th October, 1858, when he reports that the price for the Mokau Block referred to in his letter of the 1st July "and containing by survey 7,225 acres" has been "fixed at the sum named in the margin (£240)." The letter goes on: "The particulars connected with the negotiations for this block have already been transmitted to your office. I now beg to recommend for the Governor's approval the payment of the above-named sum, which I think fair and reasonable, and as low as it could be made, taking the ascertained quantity and other favourable points into consideration." The first observation to be made about this letter is that it is the first statement of the actual area of the land, from which the inference is that between the 1st July and the 4th October the survey had been completed, and that in all probability Mr. Kemp had seen the actual plan. The next observation has reference to the words "the ascertained quantity." Judge Acheson in his report says that, according to Mr. Kemp's letter, the quantity of *timber* on the block had been "ascertained." In making that statement he presumably accepted an assertion made before him by Mr. Skelton—and, indeed, Mr. Skelton has emphasized the point before us as being evidence of what he is pleased to call Mr. Kemp's fraud. In point of fact, both Mr. Skelton and Judge Acheson are clearly wrong on this point. The words "ascertained quantity" in Mr. Kemp's letter obviously are referable to the *land*. "Quantity" clearly means "area" and nothing else. First of all, that is the only reasonable interpretation of what Mr. Kemp says, and, secondly, it can mean nothing else because the land was the only thing the extent or area or quantity of which had been ascertained: the timber could not have been measured or its quantity ascertained at that time. We may have to make further reference to this letter of Mr. Kemp's when we come to deal with the adequacy of consideration.

24. As to the allegation of fraud made against Wi Hau, it is further suggested that he had been, in effect, bribed by the Government, firstly by a payment of £100, and secondly by his appointment as one of ten members of a runanga for the district. As to the question of bribery, the suggestion seems to us to be very far-fetched. It is true that a sum of £100 had been paid to him, but that payment was made on a recommendation by Mr. Commissioner Bell, and is explained in a letter of his of the 30th June, 1858, to the Chief Commissioner of the Land Purchase Department. Suffice it to say that in one of the old claims (Joyce's claim) which was heard before Commissioner Richmond in November, 1842, an award of 219 acres was made to the claimant Joyce. It happened, however, that a sum of £62 2s. 6d.

which formed part of the original payment agreed for in 1839, was not given to the Natives, but Joyce handed them a promissory note for the amount, which note was not honoured. When the matter came before Mr. Commissioner Bell in 1858, Wi Hau made a claim for the return of a portion of the land. He, however, indicated that he was prepared to be bound by Mr. Bell's decision. Mr. Bell considered that, on principle, there should be no return of land, and he informed Wi Hau that the land could not be given back to him, but that he was clearly entitled to have the balance of the money paid. Mr. Bell proceeds in his letter: "And I stated further to him that, in consideration of his admirable conduct, and the good example he had given in acquiescing beforehand in what I might decide; in consideration also of the long time (18 years) which had elapsed without the balance due by Joyce being paid; I would recommend the Governor to direct some additional payment besides the £62 2s. 6d." And Mr. Bell, after consultation with District Commissioner Kemp as to what sum ought in fairness to be paid to Wi Hau, expressed the opinion that the Government should give the Chief the sum of £100, which was accordingly done. In the result, Wi Hau received no more than he was morally, if not legally, entitled to: what he received was the £62 2s. 6d. which he should have been paid some eighteen or nineteen years before plus £37 17s. 6d. which, presumably, represented the equivalent of interest at (for those times) a very low rate. And this is what it is now suggested was a bribe!

25. As to Wi Hau's appointment to the runanga, it was not until 1862 (some three years after the sale of Mokau) that the runanga was set up by the Government, consisting of ten of the principal Chiefs of the various tribes in the district. The appointments were made upon the recommendation of Mr. George Clarke, who, as the result of his inquiries, made a report to the Native Minister on the 30th December, 1861. After consultation with the tribes with a view to selecting the most influential and intelligent Chiefs to constitute the future government of the district, Mr. Clarke says in his report: "Upon the whole, the Natives are aware that these who are nominated to represent them are Chiefs of the first rank, and are those whose parents ruled in this district indisputably for nearly half a century." Wiremu Hau was nominated as representing the Ngati Whiu; Tamati Waaka Nene was also nominated as one of the Chiefs to be appointed, and both he and Wi Hau were in fact appointed as two of the ten members. These facts as to the time and circumstances of the setting-up of the runanga and of Wi Hau's appointment thereto show the readiness with which charges of fraud have been hurled.

26. Now, as to the allegation that the block was sold under a bogus name. It is described in the deed as "Mokau." In the plan on the deed it is called "Mokau and Manginangina." The suggestion is that the Maoris under the deed thought that they were selling some or all of the lands to the north of this block, and which are now described as Mokau No. 1, Mokau No. 2, and Mokau No. 3 (or Awarua). This suggestion is untenable. On this point Judge Acheson said in his report that he accepted the plan as identifying the 7,224 acres that Wi Hau and the other Chiefs sold. With that view we entirely agree. Firstly, the areas do not fit, nor does the description. The block that was being sold contained 7,224 acres. Mokau No. 1 contains only 481 acres; Mokau No. 2, 451 acres; and Mokau No. 3, 1,500 acres. True, the deed does not state the area, but it does identify the land by both boundaries and plan. Secondly, there is the plan on the deed, and there is evidence that the Maoris at the time, or some of them, went

round the boundaries with the surveyor when he made his survey and themselves placed at one spot a stone peg—this statement comes from Tamati Arena Napia in evidence given by him in 1934 as information handed down to him from his grandfather, Hare Napia. That stone peg is still there. Thirdly, Hone Rameka, in giving evidence in 1934, said that Mokau was sold by the descendants of Turou, and that his elders "saw the survey of the big block sold to the Crown." He also said, "Mokau was sold by the descendants of Turou . . . My ancestors sold the main block and told me about the 200 acre N.R." What Hone Rameka was then complaining of was that the Crown was claiming the 110 acres referred to as Motukauri which was not included in the land that the Crown had purchased. Fourthly, the plan on the deed shows the River Waipapa, which is the most sizeable river in the neighbourhood, running through the centre of the block which was sold. There is no such river on the blocks to the north. Fifthly, the land known as Mokau No. 3 had been sold years before—namely, in 1839—and was the subject of an old land claim. This, of course, must have been quite well known, at least to the Ngati Whiu. The truth is—and this we think is clearly shown by the evidence—that in the old days of the Maori the names of these blocks were somewhat loosely used, and it appears that, while the whole of the land now in question was sometimes called Manginangina, portion of it was sometimes called Takapau, and the whole of it, as well as Mokau No. 1, Mokau No. 2, and Mokau No. 3, and probably other lands, were included in a large area, the whole of which was known as Mokau, though parts of it bore other names as well. Indeed, Mokau No. 1, Mokau No. 2, and Mokau No. 3 were not known by these numbers—or, at all events, this applies to Nos. 1 and 2—until long after 1859. In his evidence before Judge Acheson, Keina Poata said that "in former days" the Natives had many names for these several places, and that it was after the pakeha surveyor had surveyed the lands that the Maoris started to know them—*i.e.*, the northern blocks—as Mokau Nos. 1, 2, and 3. He also said in the Motukauri investigation in 1933 that that particular piece of land (110 acres) was "formerly part of the Mokau Block." Hone Rameka said in his evidence in the same proceeding: "*Mokau* is the piece of land on the other side of Motukauri and was sold to the Crown." Tamati Arena Napia said in evidence before us that Manginangina and Takapau were really one block of land divided by the river, Manginangina on the north of the river, Takapau on the south. In Keina Poata's evidence given before us the names Mokau and Manginangina were much discussed, but finally Mr. Poata said that Manginangina was a part of Mokau and that it was always recognized by the Maoris that it was part of the large Mokau Block.

27. It is perhaps desirable at this stage to refer to the history of the proceedings in connection with this Mokau Block which is the subject of the present Commission. It is not suggested that the Maoris took any proceedings whatever prior to 1902, but even the suggestion that anything was done then is, we think, mistaken. Certainly the fact that anything was then done has not been proved.

28. The suggestion is that, in 1902, a petition to Parliament was prepared and presented by Mr. Hone Heke, M.P. The reason why we think that that year is wrong in any event is because the evidence (particularly that of Keina Poata) shows that the petition, if prepared at all, was not prepared till after the Stout-Ngata Commission had sat in the district, and the records show that that sitting was in 1908. We have caused careful search to be made of the records in both the Native Department and Parliament, and no

trace can be found of the presentation of any such petition as we are now informed was presented in 1902; nor can any trace be found of any such petition in subsequent years. The Stout-Ngata Commission visited the district in March and April, 1908, and sat at Kaikohe, Whangaroa, and other places. On the application of one Henare Tuporo, the reserve of 200 acres on Manginangina was considered and was reported by the Commissioners as land for sale. In consequence of this, the land was subsequently vested in the Tokerau District Maori Land Board, and was eventually sold by the Board to the Crown.

29. The main block into which we are now inquiring was apparently not brought in any way before the Stout-Ngata Commission. It should, however, be said that, although the duty of the Commission was to inquire into and report as to what areas of Native lands there were which were unoccupied or not profitably occupied, the owners thereof, and the nature of such owners' titles and the interests affecting the same, the Commission considered that the definition of "Native land" in the Native Land Settlement Act, 1907, excluded papatupu lands from the Commission's jurisdiction. Consequently, if the block was (as in effect is now claimed), papatupu land, the Stout-Ngata Commission would have had no jurisdiction to deal with it. Nevertheless, the reports of the Commission show that they ascertained the areas of papatupu land in the various districts and the names of blocks the titles to which had not been ascertained or properly ascertained, and it seems remarkable that, if the Maoris thought then that they had a substantial grievance, it was not brought before the Commission and the land claimed to be papatupu land. If it had been, of course, the Commission would have had to say that the land was not within its jurisdiction owing to the deed of 1859, but it was almost certain to have referred to the complaint in its report.

30. But, assuming even the possibility of the matter having been mentioned to the Stout-Ngata Commission, and of the Maoris then being told what the legal position was, and that it was in consequence of this that a petition was prepared (though not presented), there had still been a lapse of just on fifty years, and even after that nothing was done (with the exception of an incident in 1911 to which we shall refer presently) for a further period of twenty-seven years—that is, until 1935—when a petition was presented to Parliament.

31. It has been suggested that Mr. Hone Heke may have had the petition in 1902 or later and did not present it because he was then informed of the deed of 1859. That, we think, is an idle suggestion. It cannot be suggested that Mr. Hone Heke, Sir James Carroll, Mr. Ngata, and other Maori Members of Parliament of that period did not well know their rights in connection with the presentation of petitions and the powers of Parliament to redress real grievances. We think it extremely likely that the Maoris are now confusing this matter with the subject-matter of some other petition in which they may have been interested and which was actually presented to Parliament.

32. Nothing was done until March, 1911, when one Poi Te Huriwai—nobody appeared to be able to tell us who he was or whom he represented—made an application for the investigation of title of land which he called "Te Takapau o Korohaere." He left the description of the land in his application unfinished, and there was no plan; but, as far as can be ascertained, this land which he calls Takapau was located in the south-west portion of Manginangina and comprised only a fraction of the whole block. No minutes can be found in the Native Land Court books referring to this application, the only note being, on the application itself, the word "Dismissed."

33. After that, nothing was done until 1935, when a petition was in fact presented to Parliament, and it was that petition which by section 16 of the Native Purposes Act, 1937, was ultimately referred to Judge Acheson. It will be remembered that Judge Acheson sent his report to the Chief Judge, who found himself unable to concur in it, and there the matter rested.

34. It is very interesting, however, in view of Mr. Skelton's suggestion that in the deed of 1859 a bogus name was given to the land, that the petitioners themselves in 1935 (and they included Hone Rameka and Hare Werohia) referred to the land which they alleged to have been wrongly sold as "Mokau-Manginangina," and they referred to the land which they alleged was wrongly taken from them as being known to them and their parents as "Takapau," and they alleged that this wrongful taking of their land, Takapau, was caused through wrong boundaries being laid down for the Mokau-Manginangina Block. They said that this wrong survey caused their land, Takapau, to be included in the Mokau-Manginangina sale. When the petition came before Judge Acheson, quite a different case was presented. For the first time, allegations of fraud were made, and the claim was not restricted to the land which in the petition was said to have been wrongly sold and taken away from them, but the petitioners claimed the whole Mokau-Manginangina Block and said that they understood (or, at least, Mr. George Marriner, their principal witness before Judge Acheson, said that he understood) that the land surveyed and sold in 1859 was not the land which is the subject of our present inquiry, but Mokau No. 3, containing 1,500 acres.

35. Now, when the matter comes before us, we are told by some of the claimants that their claim is in respect of Takapau, and when we try to ascertain what land they mean, one statement is that the whole of the 7,224 acres is one block (Takapau) divided by the River Waipapa; another, that Takapau is the portion of the block which lies to the south of the Waipapa River; while others, the Waaka Nene people, say that the northern boundary of Takapau is a line (which they do not give) some distance to the south of the Waipapa River, and that this Takapau belonged to Waaka Nene. Then, again, Keina Poata, one of the witnesses, indicates a line running from Puketotara through the Manginangina Block into Mokau No. 3 on the north, which he says is the approximate line of Wi Hau's western boundary, but it may not be without significance that he said nothing about this line in his evidence at Judge Acheson's inquiry. Incidentally, it may be noted that Napia, one of the Ngata Whiu witnesses, strongly denies that the Waaka Nene people had any interest in any part of the Manginangina Block.

36. In these circumstances, it is perhaps unfortunate that what may be called the Hone Heke petition, if it ever existed, is not available; it might have been consistent with one or another of the present claims, or it might have been inconsistent with them all. Be that as it may, the claims are exceedingly nebulous and unsatisfactory, and, that being so, the lapse of time between the date of the deed and the making of complaints by the Maoris becomes a most important factor: and, even if the Hone Heke petition were found to exist and were actually forthcoming, it would, in all probability, be of little help in view of all the other circumstances.

37. Then there is the question as to the configuration of this land. Judge Acheson says that it was a main watershed block facing north, south, east, and west, and that it seemed to him incredible that Wi Hau and other Ngati Whiu Chiefs should have seriously claimed the right to name and to sell the portions on what he calls the other three sides of the watershed. He thought it more likely that Wi Hau gave the name "Mokau" to the Ngati Whiu side

of the 7,224 acres. We observe first of all, as we have previously said, that there was evidence to show that the whole of this land was included in the land known, apparently indifferently, as Mokau or Manginangina. Secondly, we do not accept Judge Acheson's description of the land. We think that it may be more correctly described in the words of Mr. Campbell as "basin country—a basin facing west generally and with the slopes into the valley from north and south—some of the ridges are easy topped and some of the country is what you would call fairly hilly, and the balance is broken." Mr. Darby's description of the land given from the plans would seem to be a fair one: he says it is "more or less a basin containing fairly broken country." Apparently Judge Acheson based his opinion as to other tribes being owners of the block largely, if not entirely, upon the configuration of the land. We can see no reason based on Maori custom or any other hypothesis why the configuration of the block, *per se*, raises the inference that other Natives than the Ngati Whiu would necessarily be interested in its ownership or that it could not belong entirely to one hapu. Not only does the mere configuration of the land, as we see it, not of itself justify Judge Acheson's finding, but in our opinion all the other circumstances of the case tend to the contrary view.

38. Judge Acheson says that his Court cannot believe that Wi Hau or any other Ngati Whiu Chief "would have seriously claimed the right to name or to sell the Hokianga side dominated by the mana of famous Tamati Waaka Nene, or the Whangaroa side where Hongi's kinsmen held sway, or the southern side looking towards Okaihau and Kaikohe." But the fact is that Wi Hau and the other Chiefs of the Ngati Whiu *did* sell this land, and all the documentary evidence shows that Waaka Nene and his people and all the other persons referred to by Judge Acheson knew perfectly well that the land had been sold, and, so far from ever making any claim until recent years, seem never to have uttered a protest. Mr. Reynolds was constrained to admit, implicitly, if not explicitly, that the sale was known to Waaka Nene and his people, and that, except for the suggestion in the evidence of one witness (which we consider too nebulous to be seriously regarded) of a protest by Waaka Nene, and except also for the preparation of the alleged Hone Heke petition, there is no evidence of any active steps ever having been taken. It is true that at the time of the sale Waaka Nene was an old man, but there is no suggestion that his intellect was impaired, and he was certainly not the man to stand idly by while lands in which he knew he was interested were being filched away from him. If Waaka Nene had been interested in the land, we cannot think that Wi Hau would have dared sell the land to the prejudice of the rights of that great warrior Chief; nor is it credible that Mr. Kemp would have been a party to a transaction which violated the rights of the great warrior and chief who had been, perhaps of all the Maoris, the greatest and most loyal friend of the Government and to whom the Government was greatly indebted for his help in bringing about the Treaty of Waitangi. The fact that Wi Hau and his fellow-chiefs of the Ngati Whiu did sell this Mokau land, and that the transaction was negotiated by Kemp, who was an officer of the Government, are in themselves eloquent testimony to negative the Waaka Nene people's present claim.

39. We revert now to the question, to which we said we would later return, of the knowledge of all the Maoris in the district of the sale of this land. This is, we think, shown (in addition to the various matters to which we have already referred) by the inferences that must necessarily be drawn from the facts and the chronology of the dealings in lands surrounding the block, inferences which we consider have not been answered by the claimants.

40. Tamati Arena Napia, now aged seventy-three, was the principal witness called by Mr. Skelton. He it was who said in his evidence that the block now in question was not Mokau at all, that Mokau was a block of 1,700 acres or more to the northward and consisted of the land which is now known as Mokau No. 1, Mokau No. 2, and Mokau No. 3; that Manginangina and Takapau were really one block of land divided by the river, one being on the one side of the river and the other on the other; and that the land that was intended to be sold in January, 1859, was the land now known as Mokau No. 1, Mokau No. 2, and Mokau No. 3, and not the land now known as Manginangina, Mokau-Manginangina, or Mokau. He says he knew that an area of 200 acres was to be reserved for the Natives, but his understanding was that that was part of the land to the north. Plainly, no reliance whatever can be placed upon this witness, and his testimony is quite unacceptable. His own grandfather, Hare Napia, was actually one of the sellers and signatories to the deed. In 1876 the grandfather gave evidence in the Native Land Court before Judge Monro on an application which had reference to the reserve of the 200 acres and which was dismissed on the ground that the Court had no jurisdiction, the Native title having been extinguished. But for present purposes the important factor is an actual statement which Hare Napia made and which is set out in the Judge's own minute as follows: "Hare Napia said that the Native title had been extinguished over the whole Manginangina Block. The Government had promised to give him back a small piece, which he now claims." There is not, nor can there be, any dispute as to what this means: the land which was referred to as the whole Manginangina Block is the area of 7,224 acres with which we are now dealing. Steps were then taken, however, to perform the promise made that 200 acres should be reserved, and on the 17th October, 1878, a Crown grant was issued for this area of 200 acres, one of the grantees being Arena Napia, the father of the witness who appeared before this Commission, and the description of the 200 acres shows that it was part of and located in the area of 7,224 acres.

41. But the statement of Hare Napia before Judge Monro is not the only sworn testimony which goes to refute the statements made nearly a century after the event upon which the present claims are made. In November, 1878, when Mokau No. 2 was being investigated by the Native Land Court, Heremaia Te Ara, who was of the Ngati Uru, gave evidence. So did Hamiora Hau (son of Wi Hau), who was opposing Heremaia te Ara's claim to Mokau No. 2. In his evidence Hamiora Hau said "Wi Hau sold the land adjoining this block on the south (Manginangina). It was sold to Kemp. Wi Hau gave Heremaia a part of the money paid for it. I do not know why he did so." Another witness, Paora Whataparaoa, said: "It was Wi Hau alone who sold the adjoining land to the pakeha." And Wiremu Hau himself, who gave evidence, said: "It was I who sold the land on the south. Heremaia te Ara had no part in it." Heremaia te Ara himself had previously given evidence, but was recalled. He did not dispute any of the statements we have quoted, though, of course, he had heard those statements and had the opportunity of denying them. In cross-examination he was asked by Hamiora Hau: "Had I not a tapu on this land?" (meaning Mokau No. 2). The answer was, "No, your tapu was on Manginangina, which you have sold, not in Mokau at all." It is plain, therefore, that this Chief of the Ngati Uru, Heremaia te Ara (who was the elder of Keina Poata, one of the protagonists of the present claimants), also knew very well that the 7,224 acres had been sold, because it was that land which was referred to

in the evidence just quoted as Manginangina. Again, Hone Rameka, who was actually one of the signatories to the petition in 1935, in giving evidence in the Native Land Court in 1933 on the investigation of the title to the two small triangular pieces of land containing 110 acres and called Motukauri (though it was also referred to as part of Manginangina), said that "Mokau" was the piece of land on the other side of Motukauri and was sold to the Crown. He was referring, of course, to the 7,224 acres. He also said: "This" (meaning Motukauri) "is the last block of papatupu land." Obviously, if the case now attempted to be made is correct, the block of 7,224 acres would have been papatupu land. But no such suggestion was made. On the contrary, Hone Rameka admitted that the 7,224 acres had been sold to the Crown. In view of the fact that the alleged original petition was never actually presented and no trace of it can be found, of the doubt therefore as to its actual existence, and of the further fact that the application for investigation of Takapau in 1911 was apparently made by an individual only, and nothing of a definite character was done until 1935 when the first petition to Parliament was presented, there is at least considerable ground for the suggestion that the modern claim is an afterthought, especially having regard to its nebulous character and the conflicting material upon which it is sought to be established.

42. Even the tradition regarding the killing of the woman (Meinga) referred to by some of the witnesses is indefinite. Even if the location of that incident were material, it completely loses its importance or significance by reason of the fact that, whereas an attempt is now made to locate the killing on Manginangina or Takapau (as part of Manginangina) the evidence given in the Native Land Court in 1878 placed it on Mokau No. 2.

43. Knowledge, on the part of all parties concerned, of the sale in 1859 is also to be inferred from a tracing of the history of the lands surrounding this Mokau or Manginangina Block of 7,224 acres. To begin with, on the north-west there is the Matawherohia Block, which was purchased by the Crown, as is evidenced by deed of the 8th June, 1859. The owners of that land, as stated in the deed, were the Chiefs and people of the tribe called Ngati Uru, and one of the signatories was Heremaia te Ara. Wi Hau was not an owner of that land, nor were the Ngati Whiu interested in the ownership, though Hamiora Hau and Hone Peti, two members of the Ngati Whiu Tribe and signatories of the Manginangina deed on the 28th January, 1859, were attesting witnesses of the signatures to the deed of cession of Matawherohia. The plan of the block shows that on the south-east it is bounded by Manginangina, which is noted on the plan as "Government land—Wi Hau's sale."

44. Below the Matawherohia Block and on the western side of the 7,224-acre block which we are investigating is the Omataroa Block, the title to which was investigated by the Native Land Court in April, 1875, and was very shortly afterwards sold to the Crown. This block contained 3,320 acres, and although Tupari Raniera gave evidence that he had a claim on the land from his ancestor, he said that he had agreed to let Hamiora Hau, who was one of the owners, have the land. He said there was no dispute, and, as all other claims were withdrawn, an order was made in favour of Hamiora Hau. The plan of Omataroa shows the land on the east—*i.e.*, the block of 7,224 acres—as Government land.

45. Then to the south of Omataroa Block is the Waitaroto Block, containing 7,590 acres, which was investigated by the Native Land Court in July, 1866, on the application of Waaka Nene and his people, and of this

block Wi Hau was found to be one of the owners, all the others being Waaka Nene people. The plan produced on this application showed as Government land the land to the east, which, be it noted, is, or at all events includes, the very land (portion of the 7,224 acres) that the Waaka Nene people now claim as Takapau.

46. To the east of the Waitaroto Block and south of the Mokau or Manginangina Block of 7,224 acres is land included in an old land claim known as Orsmond's Claim, of which Wi Hau was an owner and a seller. This land was sold in 1836.

47. To the east of that land is the Puketotara Block, which had been sold to one Shepherd in August, 1836, and it appears from the deed of sale that both Waaka Nene and Wiremu Hau were (with others) owners of the land.

48. Coming to the eastern boundary, we find that the area of 110 acres known as Motukauri was investigated in June, 1933. The Crown contended that this Motukauri was intended to be included in the purchase of January, 1859, but had by mistake not been included in the survey. This contention was rejected by Judge Acheson, who found that these particular pieces of 110 acres had not been sold to the Crown, and were still papatupu land. There were a number of persons who claimed to be included in the title, and their claims seemed to be very much confused, so that there is no inference to be drawn from that particular proceeding which is at all helpful in our present inquiry.

49. To the eastward of Motukauri is the block Inumia, which had been sold by the Native owners in 1836. Wi Hau was not one of the sellers, and does not appear to have had any interest in this block.

50. Then to the north of the 7,224-acre block lie Mokau No. 1, Mokau No. 2, and Mokau No. 3 (or Awarua). Mokau No. 1 was surveyed and the title investigated in 1866 on Heremaia te Ara's application. The area is 481 acres, and Wi Hau was found to be an owner; so was Heremaia te Ara. The plan showed the land on the southern boundary (the 7,224-acre block) as Government land.

51. Mokau No. 2, containing 451 acres, was surveyed in 1875, and the title was investigated by the Native Land Court in 1878. As already stated, the Ngati Uru, through Heremaia te Ara, claimed to be entitled; so did Wiremu Hau and Hamiora Hau. The claims seem to have been somewhat puzzling to the Court, because the minute of the judgment is: "The Court considered that both parties had equal claims, neither had been very successful in proving a good title." The claimant and the opponent consulted together and handed in a list containing a number of names as being those of the owners on both sides, and in this list Heremaia te Ara, Hamiora Hau, and Wiremu Hau were all included. At the hearing in the Native Land Court, Heremaia te Ara said in evidence that it was he who procured the survey.

52. Mokau No. 3 had been the subject of a dealing to which we have previously incidentally referred in connection with Joyce's old land claim. It is unnecessary to deal with this in detail. It is sufficient to say that in the deed Wiremu Hau and William Toto were the sole signatories.

53. In all the sales to which we have referred subsequent to January, 1859, plans were prepared and in most cases endorsed on the deed, and in all the investigations of title were prepared and placed before the Native Land Court, and in all these plans, except one, where one of the boundaries

is the Manginangina Block of 7,224 acres, that land is shown as Government land, which necessarily means land sold to the Crown. In all the proceedings by way of investigation of title the application was, of course, made by the Maoris. The surveyor was the agent of the Maoris, and the Maoris produced the surveyor's plan as part of the evidence before the Court. When, therefore, it appears in all these plans that the 7,224 acres was Crown land, especially when taken in conjunction with all the facts of the case to which we have made reference in this report, the Maoris cannot be heard now to say that they did not know of the sale. Incidentally, we might repeat that, in regard to this very transaction of January, 1859, after Hone Rameka, in giving evidence in the Native Land Court in 1934, had said that his ancestors had sold the main block and told him about the 200-acre reserve, Tamati Arena Napia himself gave evidence and said, referring to the survey in 1858: "The boundary on the southern side was marked by a stone peg placed there by the Maoris. My grandfather, Hare Napia, told me that the Natives who went round with the surveyor placed this stone peg there."

54. The history of all these surrounding blocks, so far from tending to negative, strongly supports Wi Hau's mana and the Ngati Whiu ownership over the whole of this block of 7,224 acres.

55. Even if (as has been suggested) the Maoris did not know of the sale till the Native Land Court proceedings in 1876, they still did nothing for a long period. But the evidence all shows that they knew from the outset and did nothing. As further evidence that they did know (and that they were not owners), though in 1866 and 1875 the Ngati Whiu, the Ngati Uru, and Waaka Nene took steps to have the titles of all the unsold surrounding blocks investigated, no application was ever made in regard to Manginangina. There surely can be but one inference from all this.

56. In view of all the matters set out in the foregoing paragraphs of this report, we feel (but, as to Mr. Reedy, not without hesitation, as is mentioned later) that we are compelled to the following conclusions:—

(i) It has not been satisfactorily shown that either the Ngati Uru or the Waaka Nene section of Maoris, or any hapu or persons other than the Ngati Whiu, were owners of the land containing 7,224 acres known as Mokau or Manginangina.

(ii) The Ngati Whiu (or the persons who purported to cede the Mokau Block to the Crown) were the true owners of the whole of the 7,224 acres, and the Chiefs who signed the deed must be deemed to have been fully empowered to sell the land and execute the deed.

(iii) The boundaries laid down for the land as shown in the plan did not wrongfully include an area of land known or referred to as Takapau.

(iv) The deed must be deemed to have been properly executed.

(v) If (contrary to our finding in that behalf) any tribes, hapus, or persons other than the Ngati Whiu were interested in the ownership of the block, it is clear that the fact of the sale was generally known from the outset to all the persons who could conceivably have had any claim and they must be deemed, in view of their inaction and unconscionable delay, to have acquiesced in the sale. It would be contrary, in our view, to all principle that they should, after the lapse of nearly a hundred years, be heard to make their present claim, especially

on such flimsy material as that which they have submitted to this Commission. Even if it could be shown that they had prepared (or presented) a petition in the early years of this century, there would still have been a delay up to that time of nearly fifty years, and even then there was the further delay for a long period until 1935 during which no action was taken.

57. There remains, however, the question of the consideration paid for the land. That question must be considered, although, if compensation were to be given by reason thereof, the ironical result would be that the only persons who would be *prima facie* entitled to any such compensation would be the descendants of the very people—namely, the Ngati Whiu—who actually and deliberately sold the land in 1859. It would, however, be impossible, owing to the inter-marriage that has taken place during the last century, to individualize the compensation, which would have to be applied generally to Native purposes over the whole community of the district, so that many of the beneficiaries (perhaps the majority) would be people who really would have no claim at all to compensation because their rights had not been infringed.

58. In dealing with the question of consideration we have to regard not present values, but values at the time of the transaction—namely, in 1859. One further observation must be made: the mere fact, if fact it be, that the consideration paid was small would not in itself justify us in making a recommendation for the payment of compensation. Before such a recommendation could be made it must be shown not merely that the consideration was small or inadequate, but that it was so grossly inadequate as really to shock the conscience. It has been judicially said on various occasions that a Court—and for all practical purposes this applies to a Court of conscience, such as, in effect, this Commission is, as to any other Court—must avoid the easy but fallacious standard of subsequent events. With all respect to Judge Acheson, we cannot help feeling that he has unconsciously succumbed to a temptation to apply that easy and fallacious standard, and we think it is regrettable that he should have been led into using what we cannot but think is very exaggerated language when he says: "The Court says firmly and definitely that the price was unconscionable and even outrageous, but that the Crown's officers and the Government of the day were not the only ones to blame. Wi Hau and the others who assisted him in this unconscionable bargain betrayed the interests of their own sub-tribe, Ngati Whiu, and of its individuals, as well as the interests of other sub-tribes . . . "

59. We cannot but feel from a perusal of the whole of Judge Acheson's report that the statement is induced by what he considers to be the present value of the timber on the land, and to some extent perhaps by his curious misinterpretation of the expression "ascertained quantity" in Mr. Kemp's letter of the 4th October, 1858, referred to in paragraph 23 of this report. In this connection he says, after stating that there were no official figures given to the Court, and that the absence of such figures had compelled Mr. Hall Skelton to quote £5,000,000 as the probable value of the sawn timber likely to be taken from Puketi Forest, that the Court had no doubt whatever but that the timber had been accurately appraised by Forest officials, and that the figures were available on State Forest files. We are satisfied that the timber had not at that stage been accurately appraised by Forest officials, and that figures as to any such appraisement were not

available on State Forest files. Of course they could not be available if they did not exist, and Judge Acheson's statement is particularly regrettable in that it was made (as we were informed during the hearing before us) after he had been told by the responsible and reputable counsel who appeared before him for the Crown that figures were not then available and that no appraisement had then been made, though it was in process of being made. In point of fact, the appraisement was not actually made and completed, so we are informed by Mr. Meredith, whose statement, based on his own knowledge and investigation, we accept unreservedly as correct, until some months after the date of Judge Acheson's report.

60. It now appears from the evidence of Mr. Campbell (who is a recently retired Conservator of Forests) that, although there are valuable stands of kauri on the land, they do not exist to anything like the extent suggested by either Mr. Skelton or Judge Acheson; and it must be remembered that any appraisement which is made now is based upon an additional growth of the trees over a period of eighty years. Moreover, some scores of thousands of pounds of Government funds have been expended upon roading, forest conservation, and other items of capital expenditure. Even so, Mr. Campbell's valuation of millable timber (mostly kauri) on the land is only £121,509.

61. However all that may be, it is the value at the time of the transaction, and not the value of to-day, that we have to consider. We do not doubt that at that time there was a market for kauri; but necessarily, in the then stage of development of the country, the demand must have been comparatively limited. Not only that, but there were valuable stands of kauri in many parts of the Northland which were much more accessible and much more readily and less expensively marketable than the timber on this block. There was evidence given before Judge Acheson himself in 1925 on a reference to him for inquiry and report upon the petition to Parliament of Tamaho Maika (*in re* Te Kauae-o-Ruru-Wahine Block) with regard to the price of certain kauri-forest land paid by the Crown in 1875. One witness deposed that a little before 1875 he was dealing in timber, and bought kauri in the squared log close to the water and easily worked at the rate of 2d. per 100 ft. (equal to 1¼d. or, at most, 1½d. for ordinary log measurement). He said that he did not consider that the timber on the block then in question could have been profitably worked till about 1905 or 1906 when the prices of timber rose, and that it was of no commercial value in 1875. He also said that in 1886, and perhaps at the end of 1884, he bought kauri from Europeans in the Pupuki Block, which was convenient to a splendid creek and handy to a harbour, and that the timber was sold to the Europeans for 4d. per 100 ft. superficial. Another witness said that the value of the timber in 1875 was nil, and that the value of kauri timber in that year was 2d. to 4d. per 100 ft. adjacent to water. He also said that about 1888 he sold millions of feet of kauri timber for the Crown at Whangaroa at 1s. per 100 ft. and that this timber was very conveniently situated.

62. In this present inquiry, Mr. Campbell's evidence is that during the years 1896 to 1898 various large quantities of kauri timber were available at prices varying from 8d. to 1s. per 100 ft. and failed to secure buyers; that in May, 1897, a quantity of 925,000 ft. was offered from the Puketi Forest itself for sale at 1s. per 100 ft. without securing a purchaser; that in 1902 it was offered by advertisement from Matawherohia at 1s. and 9d. per 100 ft.

but failed to find buyers; and that in 1901 offers were made to the Government for timber at only 6d. per 100 ft. from Waipoua, which offers the Government did not accept.

63. Since 1896 prices for timber have increased enormously; according to Mr. Campbell, timber then worth 1s. per 100 ft. is now worth £1.

64. Mr. Campbell also gave evidence as to the accessibility of kauri forests in the earlier days and the facilities for the working of the timber to show that the timber on this block, whatever may be its value to-day, was of little, if any, commercial value in the conditions existing in 1859, and we accept his evidence as correctly stating the then position. It is true that in Mr. Kemp's letter of the 1st July, 1858, he refers to what he says is an available road, but we are satisfied from Mr. Campbell's evidence that the road, such as it was, was not a material factor as affecting the value of either the land or the timber at that time.

65. The consideration paid by the Crown was £240, which is practically 8d. per acre. Admittedly that seems in these days a very trifling amount, but if it be compared with other purchases of similar land it would seem to be not unreasonably low. It is true that in his letter of the 4th October, 1858, Mr. Kemp refers to the sum of £240 as being "as low as it could be made," but it is obvious from the terms of his letter that he has in mind what he considers a fair price to the Natives, and what he means is simply that £240 is about as low a price as could be paid in fairness to the Natives, because immediately before the statement just quoted he says that the sum is, he thinks, fair and reasonable. It must be borne in mind, too, that when this land was purchased in 1859 it was not purchased as a forest reserve. At that time the Government was buying land for settlement, and it may be no more than chance that this land was not sold and the valuable timber destroyed, as has been the case with so many hundreds of thousands of acres of forest in New Zealand, for the purpose of creating pasture lands. The present very high value of kauri timber is doubtless due to a great extent to the fact that there has been so much destruction of forest timbers in the past.

66. Comparing the price paid for this block with that paid for other blocks, we find among other blocks containing large stands of timber, including kauri, that in 1855 for the Manaia Block of 5,365 acres at Whangarei Heads, with harbour access, there was paid 9d. per acre; and in 1856 for the Whakapuku Block of 3,000 acres near Whangaroa Harbour, 1s. 4d. per acre; also in 1856 for 15,000 acres of Oruru Block, near Mangonui Harbour, 5½d. per acre; in 1859, for 11,000 acres of the Kohumaru Block, near Mangonui Harbour, 8¾d. per acre; for 6,950 acres, Waiaka or Upper Aorere, Mangonui District, Parapara River, 7½d. per acre; and for 15,021 acres, Paparoa Block, 8d. per acre; for 8,458 acres, Pukekaroro Block, 1s. per acre; and in 1860 for the Oruawharo Block of 3,000 acres, 9½d. per acre. There were many other similar transactions during these and subsequent years, but it is unnecessary to refer to more of them. In 1875—sixteen years after the transaction we are inquiring into—we find 7,500 acres of the Waitaroto Block purchased at 1s. 1d. per acre, 3,320 acres of Omataroa Block for 1s. 3d. per acre, and 3,100 acres of the Awarua Block at 1s. 6d. per acre. In 1877 we find that the Waipoua State Forest was purchased, and Judge Acheson refers to that very purchase in his report in 1925 upon his inquiry into Tamaho Maika's petition where he says: "The Waipoua State Forest is in the same position, only infinitely more valuable, and the price paid for it in 1877 was £2,200 for 35,300 acres." This purchase of Waipoua works out at slightly under 1s. 3d. per acre. Indeed, Judge Acheson's present report

is in striking contrast to that which he made in the 1925 case where he said, speaking of the motives lying behind the efforts of the petitioners: "They see in the Hokianga district very large areas of most valuable kauri forest which their elders sold to the Crown in 1875 to 1877, for what was then a fair price, but what now represents only a small part of the present value." That observation precisely meets the present case, where the land was sold many years earlier—namely, in 1859—for 8d. per acre.

67. It follows from what we have said that we disagree with Judge Acheson's finding that the price was unconscionable. We also differ from him in various other conclusions, and it is the fact that we are differing from his findings that has impelled us to state at some length our own conclusions and the grounds on which they are based. We think that possibly the difference between our view and Judge Acheson's is that, on a careful reading of his report, it would appear to us that he may have, in effect, misdirected himself as to the onus of proof.

68. There is no difference in principle between the present case and any other case where land, or any other more or less permanent commodity, is sold at a small price and in the course of years, owing to development and altered conditions which could not well have been foreseen, may have risen tenfold or a thousandfold or more in value. Unless in some way the vendor in the original transaction has been defrauded or overreached, it cannot be said, either legally or morally, that he has suffered an injustice which calls for compensation. In our view, no injustice has been done or would be done to the former Maori owners of the block or their descendants or representatives, or any of them, in asserting and maintaining the Crown's title to the block as against such former owners or their descendants or representatives, or any of them, and the case therefore does not call for compensation.

69. A great deal was said by Judge Acheson in his report and by counsel in the present inquiry about the Treaty of Waitangi. If, as we have found, the land belonged to Ngati Whiu alone and the deed of cession was properly executed and was binding upon all whom we find to have been the owners of the land, no question arises under the provisions of the Treaty, while, on the other hand, if we had found that any wrong or injustice had been shown, the Commission would have given us ample authority to consider the matter accordingly, irrespective of the Treaty. We mention this point only for the purpose of showing that it has not been overlooked.

70. There is just one other point that perhaps we should mention. On the last day on which the Commission sat, Mr. Skelton said that the Maoris had asked him to request the Commission to withhold its report until after they had procured an expert to count and measure the trees. The adoption of that course would, in our view, have involved the Natives in considerable expense without any possible beneficial result.

71. Mr. Reedy has felt some diffidence and hesitation in agreeing with some of the conclusions of the other members of the Commission. In particular, he inclines to the view that Waaka Nene was an owner of Takapau and that Wi Hau was an owner in lesser degree, but, in view of the other difficulties in the way of the Maori claimants to which we have referred and of the necessity for finally disposing of these claims, he feels that his doubt or hesitation on the question of ownership is not sufficient to justify him in dissenting or making any separate report. With that explanation, he joins with the other members of the Commission and is a party to this report accordingly.

72. Perhaps we should add just a word or two regarding Mr. Shepherd's recommendations to the Native Minister of 15th September, 1941, on Judge Acheson's report. What we have said in this report agrees in a large measure with Mr. Shepherd's reasons for differing from Judge Acheson, but we desire to emphasize that we have not been in any way influenced by Mr. Shepherd's statement that "It is patent that if this particular sale can be attacked, many others might, by the same or similar tokens, be impeached . . . ." Had we come to the conclusion that the Maoris had satisfactorily proved their claim and that they had suffered an injustice which called for compensation, we would have said so, irrespective of consequences. It is sufficient to say that we have found ourselves, for the reasons set out in this report, unable to come to those conclusions or to make any recommendation in favour of the Maori claimants.

73. Although the Maoris have not succeeded, and we are unable to make any recommendations in their favour, we feel that their continuance in agitating their claims since 1941 has been due to the encouragement they received from Judge Acheson's report, which we have rejected. We suggest, in these circumstances, that it would be a gracious act on the part of the Government to pay towards the Maoris' costs and expenses out of an appropriate Maori Purposes Fund, or, if such a Fund does not exist, out of the Consolidated Fund, a sum not exceeding £300 in all.

74. A copy of the verbatim report of the proceedings before the Commission is in the hands of the Native Department and is available for perusal by Your Excellency's advisers. We have assumed that it is not necessary to forward a copy with this report.

We have the honour to be,

Your Excellency's humble and obedient servants,

MICHAEL MYERS, Chairman.
A. M. SAMUEL, Member.
HANARA TANGIAWHA REEDY, Member.

Wellington, 8th March, 1948.

Approximate Cost of Paper.—Preparation, not given; printing (703 copies), £40.

By Authority: E. V. PAUL, Government Printer, Wellington.—1948.

Price 9d.]