that they are the same people as the Ngaariki, who, he says, were there before the canoe. Then he sought to establish an exclusive ownership of the land in Apanui, and a continuous exclusive occupation. What my learned friend Mr. Skerrett avoided was reference to and any attempt to explain the fact — because this fact is admitted by the Apanui — that Ngaitai was from time to time in occupation with them of this very land. Now, there has been no reference whatever to that before the Committee, but it has been proved further by the judgment and from the admissions of the Apanuis themselves, so that, whatever may have been the occupation of the Apanui, it certainly was not exclusive of the Ngaitai. Then, my learned friend referred to certain evidence with regard to the old pas. I will deal with that in detail, but I want to show the Committee at the outset that it proves far too much. Of course, Mr. Skerrett was logical enough when he stated (*a*) Ngaitai never occupied that land at all, and (*b*) that he could prove that by their ignorance of certain old pas which were built by the Ngaarikis. But if it is admitted that the Ngaitai were in occupation of the land with Apanui—admitted, I mean, by Apanui —then, of course, the evidence of ignorance of the pas cannot prove that they were not in occupation when it is admitted that they were, so that he proves too much. The point I want to make now is that Mr. Skerrett depended upon exclusive occupation; but there are certainly admissions not only in the judgments, but in this very petition, that the Ngaitai were in joint occupation of these very lands for thirty years. Therefore if some of these persons must have known of the existence of these pas, then the argument falls to the ground. Then, finally, my learned friend Mr. Skerrett said he had the judgments of four separate Courts in his favour; and that to me is an astonishing argument, and I will endeavour, quite briefly, by reference to the judgments themselves, to show that there is no foundation whatever for Mr. Skerrett's contention on that point. I say that he has not those judgments in his favour. On the contrary, I claim the several judgments to have been in favour of the Ngaitai with the exception of two—of Judge Scannell's—which I will show the Committee were reversed by the Appellate Court itself, and not by the Commission. Now I come to the point upon which we are not at issue. Mr. Skerrett says that the three blocks—the Tunapahore, Kapuarangi, and Takaputahi—are practically all one, that the boundaries are surveyors' boundaries, and that the three blocks together constitute a block occupied by the people, whoever they may be, practically as one. That I do not dispute. It is so found, and I will refer to it in the petition and by the several Courts. It is admitted by all the parties before the Courts, and admitted by the Apanui before the Commission. And Mr. Skerrett relies on it, because he brings in the judgment of Judge Scannell as a judgment affecting the Apanui—rightly enough. One judgment is wholly reversed, and the other reversed as to part. If you take, then, this foundation, that the three blocks are practically a series—that the divisions are surveyors' divisions, and you are to treat Tunapahore, Kapuarangi, and Takaputahi practically as one—then you have the decision of Judge Mair, and the decision of the Appellate Court, before the Commission sat, that these blocks were held in common. Now, Ngaitai were equally entitled with the Apanui in the blocks which have a common derivative title. If you take the three blocks as one, then you find that the ascertainment of the block as one block in three divisions has been partly Ngaitai and partly Apanui. Now, the Committee is aware that the lands lying to the westward of Tunapahore—when I speak of Tunapahore I mean the collective three, although I have occasionally to refer to it in its individual character—indisputably belong to the Ngaitai who occupied it, and on the other side of these blocks the people who descended are entitled. Now, this individual block of Tunapahore is a piece of land on the coast—low-lying land which the Courts appear to say was the natural land the Natives would have settled on. The big blocks were only for hunting and catching birds, and the probability is apparent to every one that the occupation of this piece of low-lying land would have been naturally close. Remember that these people were fighting together until 1858—that is to say, on the Torere side the Ngaitai would have had their hapus in cultivation, and on the other side of Tunapahore the Apanui would have had their cultivations and homes. Now, I would remind the Committee that the only available materials are the judgments. The minute-books are not available. They are in Auckland. And I am unfortunate in not being able to bring the matter out in detail. But from the judgments I think enough can be arrived at to see that the Commission came to a just conclusion from the Native Land Court's decisions. Having said so much, I turn to the petition itself. If you will refer to paragraph 8 (d) of the petition, which I will read, you will find it is thus stated: "The many pas within the Tunapahore Block were, according to the Ngaitai statements, built by Ngaariki, and only very few pas were built by Ngaitai. Your petitioners say the same, except that the Ngaitai built no pas. Ngaitai say that these people only lived here a short time and then went away." So there is this admission by the petitioners, that these pas were built by Ngaariki, not by Apanui, and these are the pas with respect to which ignorance is alleged. In paragraph 9 it says, "Even though Ngaitai and Te Whanau-Apanui were many times combined when they were fighting with one another or fighting with other tribes." You see that is an emphasis of the fact that these two peoples were living in friendly amity on this common boundary. They were not peoples fighting one another, but were fighting with other tribes, and many times combined. "Ngaitai were originally a large and powerful tribe, but because of their continual defeats by Ngatiporou, Ngatimaru, Ngapuhi, Ngaiterangi, and Te Whakatohea, they became fewer in number, and powerless, and that condition of things having become so continuous right down to the close of their going to Turanga as the companions of Te Whanau-Apanui, they were afraid to remain living at their kaingas at Torere, and sought the Whanau-Apanui to protect them."

*Mr. Skerrett:* That is in 1835, remember.

*Mr. Bell:* That is so. But I wish to read passages of the petition which establish the fact that there was a joint occupation. They were living together and fighting on the boundary, and when they became weak they sought the Whanau-Apanui to protect them. "A. Ngaitai are a tribe who migrated at many times, so that Torere was abandoned. There was one migration

to Hauraki, two to Turanga, one to Omaio, and three to Maraenui, and Torere was forsaken for many years—not a single person remained living on the land." So that, according to Apanui, for some time antecedent to the occupation of 1835 there was not a single person living there and could not have had any acquaintance with the land. "B. Te Whanau-Apanui caused Ngaitai to migrate from Turanga after the fighting by Te Aitanga-a-Mahaki, Te Whanau-Apanui, and also Ngaitai, against Te Whakatohea, and Te Whanau-Apanui placed them on Maraenui, and afterwards returned them to their own land at Torere. C. Subsequently a chief of Ngaitai died, and Te Whanau-Apanui went to the tangi and to visit Ngaitai at Torere, and while they were there they heard a word expressed by Te Whakatohea proposing to attack and slaughter Ngaitai in revenge for their having suffered defeat at Turanga. D. Because of this report Whakatane and Rangipaturiri, who were chiefs of Te Whanau-Apanui, proposed to take Ngaitai to the southern side of Tunapahore to live, so that they might be close to Te Whanau-Apanui to protect and assist Ngaitai, and Ngaitai were taken at that time and located at that place, and Te Waaka Patutoro was placed in the position of their chief. E. They had not been living there for long when they began to interfere with the cultivations of Te Whanau-Apanui, and through this evil work on the part of Ngaitai they were told by Te Whanau-Apanui to return to Torere, and Ngaitai replied to them in this wise: that they 'refused to move, as they were the anchor of a man-of-war' (an epigram). F. As the result of this evil work of Ngaitai a fight arose between these peoples in the year 1856, and subsequently peace was made by Hakaraia, and Ngaitai returned to Torere, and Te Whanau-Apanui remained in occupation of this land." To summarize that, the Committee will see that on the petitioners' own statements, which I am adopting for my present argument, between 1835 and 1858 these people, the Ngaitai, were in occupation of that southern part of Tunapahore—that is to say, they were in occupation of the very land which has been awarded to them, and therefore, if it be the fact that the land was in their occupation they must have known of the pas. These people did know of the pas. The explanation is that what took place in 1858 was that Hakaraia directed that both sides should depart wholly from Tunapahore. Ngaitai went in accordance with the terms of the truce, and Apanui would not go. So that since 1858, admittedly, Ngaitai have been obeying the terms of Hakaraia's judgment, and the result of it is that they were not in the same position as people living on the land to point out the locality of the pas. The matter came before the Court where these pas were brought into question, in 1895, nearly forty years afterwards, and the Court took it from the people who had not been on the block for thirty-three years, and, according to the Court, must have known the pas if they had been in occupation of this land, and then they were asked to come into competition with people who had been there all the time. It has been proved that they were in occupation, and it is said that they should have known if they did not know, after a lapse of forty years, specific details in connection with those pas. Now, if you go to 11E, you will see that the petitioners say, "The hearing of Takaputahi Block took place before Judge Scannell in the year 1895, and, even though Tunapahore, Kapuarangi, and Takaputahi are three separate lands, they are all one land. That is why so much has been said about these lands actually resting on the occupation and workings of Tunapahore." So that it is not my learned friend Mr. Skerrett, but these gentlemen, who say that if you find the decision affecting one of these blocks it will affect them all. Then, if you look at 11G you will find that there is only one place of burial of the Ngaitai: "G. As to the burial-places of the dead, there is only one burial-place of Ngaitai which is admitted by us in the southern partition—*i.e.*, Whiroariki alone." That refers to us. If you attach any weight to the burial-place, it says that they were there dating from the actual time when they were placed there by Te Whanau-Apanui. The Appellate Court gave Takaputahi wholly to Ngaitai. Judge Scannell had given the whole of Tunapahore to Apanui.

*Mr. Skerrett:* But they emphatically confirm Judge Scannell's judgment in connection with Tunapahore.

*Mr. Bell:* My friend is still evading the fact of his own admission, that the three blocks are one.

*Mr. Skerrett:* Not at all.

*Mr. Bell:* Well, it seems so to me. I will leave the petition now, and take Judge Mair's judgment. To my astonishment, my learned friend Mr. Skerrett stated that that judgment was in his favour. He referred to Judge Mair as an able Judge, and took the credit of his judgment. The judgment was to the same effect as that of the present Commission which is now being attacked. Judge Mair's judgment is given in the printed petition for rehearing by Whanau-Apanui, immediately after the judgment of Takaputahi, and was the earlier judgment of 1885. Judge Scannell's judgments were in 1895, and the Appellate Court's judgment in 1898. I should like to read a great dealt of it, but I do not wish to take up the time of the Committee. Judge Mair, in the second paragraph, says, "If then there is so much difficulty in ascertaining the truth about circumstances occurring only twenty-five years ago, and in which persons now in the Court are said to have taken a prominent part, how much more difficult must it be to estimate the value of evidence relating to events dating back many generations! On the question of ancient boundaries of this land we are not clear. It would appear that Tunapahore, or Motatau, as some call it, was at one period in possession of a tribe called Ngaariki, and the strong point in the claims both of Ngaitai and Te Whanau-Apanui is the conquest of that people, while Ngaariki, though admitting there was fighting amongst themselves, deny that they were conquered and that they lost their land. The Court does not think it necessary to seek further back for the title to this land, nor to inquire from whence Ngaariki came, nor how they acquired possession. That they did hold possession of it is evident from the number of old walled pas, which both sides state belong to Ngaariki." I want to emphasize that, because that appears throughout. These old pas were not the pas of either the Apanui or Ngaitai—they were pas built by Ngaariki, which

evidence as a whole, and that Mr. Edwards does not agree with me in the award about to be made." I do not know—possibly some members of the Committee may know—who Mr. Edwards was. Apparently he was a half-caste, and I suppose, by being appointed an assessor, he was a gentleman of some standing; but he ought to be, from his having been appointed assessor, a fair judge of such matters as Judge Scannell had to decide, which were not matters of law but matters of Native custom; and Mr. Edwards arrived at a directly contrary conclusion to that arrived at by Judge Scannell, and I conceive that must be of importance unless you are going to ignore an assessor altogether. He goes on, "Previous to the passing of the Native Land Court Act of 1894, if such a difference arose between the Judge and the assessor there was no option but to dismiss the case altogether, thus causing a waste of valuable time as well as of the money already paid in Court fees; but as by section 19 of the Native Land Court Act, 1894, the concurrence of the assessor in any order or judgment is not necessary to the validity thereof, the present judgment will stand valid until varied or reserved by the Appellate Court. Should the unsuccessful parties in the case choose to appeal, which no doubt they will, I have felt from the beginning and mentioned it in Court to all parties concerned when they pressed me to hear the case, that such a hearing would be merely to advance a step towards a final decision. I was aware, and said so, that whatever the decision was, even if the Judge and assessor agreed in that decision, the unsuccessful parties would appeal. It must be understood then that this judgment is not concurred in by the assessor. I will endeavour as briefly as possible to review the main facts put forward and relied on by each party in support of this claim." It is a pity that we have not Mr. Edwards's views, but all we know is that they were diametrically opposed to Judge Scannell's. I ask the Committee to refer to what he said at page (g) of the judgment: "The Court visited Tunapahore as well to test the knowledge of the proofs of occupation of the parties as to see those proofs for itself. Whilst no trace, or very slight traces, as I have said, remained of the cultivations mentioned by Ngaitai, there were over a dozen old walled pas of which they had no knowledge whatever as to name, locality, or history. These were not away in the forest, but for the most part on the coast or within easy distance of it — one especially was so close that travellers along the beach must pass within a few paces of it; it was on a slight rise now partly overgrown with trees, and hidden. The Ngaitai knew nothing of this — either its name, or how it came to be built, or who owned it, and never had any knowledge of it. It was the same with regard to four or five more along the steep ridge close to the beach between Hawai and Tokaroa; only one of all these was known to Ngaitai; and that was on the most conspicuous part of the spur looking west. Ngaitai had stated that one of their principal burial-places had no pa within a considerable distance of it. Whanau-Apanui stated the contrary, that the place they called the burial-ground was really an ancient and unmistakable pa. On inspection, the place was found to be an old pa, with some of the protecting walls 20 ft. high. It was the same in all the other places inspected, where Ngaitai alleged no pas ever stood. Pas were found still standing — not modern-built pas, but pas of ancient construction, and such as could not fail to be known to any residents of the land. Of all marks of occupation I hold the most important to be the old pas standing on the land. These remain traceable for generations, long after every other vestige of occupation is effaced by time; their names, location, and history are commonly known to almost every man, woman, and even child of the tribe owning the land—certainly to the elders of the tribe; and where such a people as Ngaitai, who have their own tribal history at their finger-ends, show such gross ignorance of such a number of pas on a comparatively small space of land which they claimed to have owned and occupied exclusively and continuously for over twenty generations, I can only say that such a claim of ownership appears to me to be pure fabrication." Now, just examine that for a moment. What Judge Scannell says is that these pas were not concealed in the forest, but were on the beach—they were manifest to every one—"one especially was so close that travellers along the beach must pass within a few paces of it; it was on a slight rise now partly overgrown with trees, and hidden." I quite conceive that my friend must feel the force of what I am saying, but the point I am endeavouring to make is this: that here are pas that must have been known to the people who were there, because they were on the beach. Now, these people were there by the admission of all parties. How can you, then, attribute ignorance of things they must have known? What I say is that for forty years, by force of the truce, they had not been there, and the old pas which had been built by Ngaariki had passed from their memory. No doubt they would have some sort of tradition of pas which they had built themselves, but they would not know the old pas except from recent occupation of the land. But they did once occupy the land, and therefore the ignorance attributed to them cannot have the evidentiary weight attempted to be given to it by my learned friend. I do not think I need trouble the Committee with references to the judgment in the Kapuarangi. Again, however, Judge Scannell goes to Tunapahore for his evidence, and again he refers to the question of the pas, and he gave both blocks to the Apanui. Then comes the judgment of the Appellate Court. It is almost comic in its result, because after saying that the three blocks are one, and after going to Tunapahore for their evidence, they give the whole of Takaputahi to Ngaitai, reversing Judge Scannell's decision; they gave 9,000 acres of Kapuarangi to Ngaitai, again reversing Judge Scannell's decision; and they reversed Judge Mair's decision in Tunapahore. Now, if the three blocks were one, you ignore the survey boundaries. Suppose you wipe them out altogether, then the ordinary course of partition would be the course they adopted: they gave one end of the block to Ngaitai, and the other end of the block to Apanui; and that is what I apprehend they intended to do. At all events, they admit having gone to Tunapahore for evidence, and, finding this about the pas, they proceeded to give one block to Ngaitai and 9,000 acres to another, being influenced by the fact that they did not know anything about these old pas. They felt themselves that there must be a division, and they divided the land; that, as I have said, was the judgment. That being the position, it then became evident that the Native