RANGAHAUA WHANUI DISTRICT 12

WELLINGTON DISTRICT: PORT NICHOLSON, HUTT VALLEY, PORIRUA, RANGITIKEI, AND MANAWATU

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WORKING PAPER: FIRST RELEASE

WAITANGI TRIBUNAL

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FOREWORD

The research report that follows is one of a series of historical surveys commissioned by the Waitangi Tribunal as part of its Rangahaua Whanui programme. In its present form, it has the status of a working paper: first release. It is published now so that claimants and other interested parties can be aware of its contents and, should they so wish, comment on them and add further information and insights. The publication of the report is also an invitation to claimants and historians to enter into dialogue with the author. The Tribunal knows from experience that such a dialogue will enhance the value of the report when it is published in its final form. The views contained in the report are those of the author and are not those of the Waitangi Tribunal, which will receive the final version as evidence in its hearings of claims.

Other district reports have been, or will be, published in this series, which, when complete, will provide a national theme of loss of land and other resources by Maori since 1840. Each survey has been written in the light of the objectives of the Rangahaua Whanui project, as set out in a practice note by Chief Judge E T J Durie in September 1993. The text of that practice note is included as an appendix (app I) to this report.

I must emphasise that Rangahaua Whanui district surveys are intended to be one contribution only to the local and national issues, which are invariably complex and capable of being interpreted from more than one point of view. They have been written largely from published and printed sources and from archival materials, which were predominantly written in English by Pakeha. They make no claim to reflect Maori interpretations: that is the prerogative of kaumatua and claimant historians. This survey is to be seen as a first attempt to provide a context within which particular claims may be located and developed.

The Tribunal would welcome responses to this report, and comments should be addressed to:

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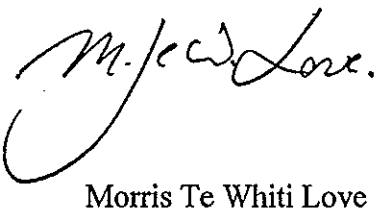

Morris Te Whiti Love
Director
Waitangi Tribunal

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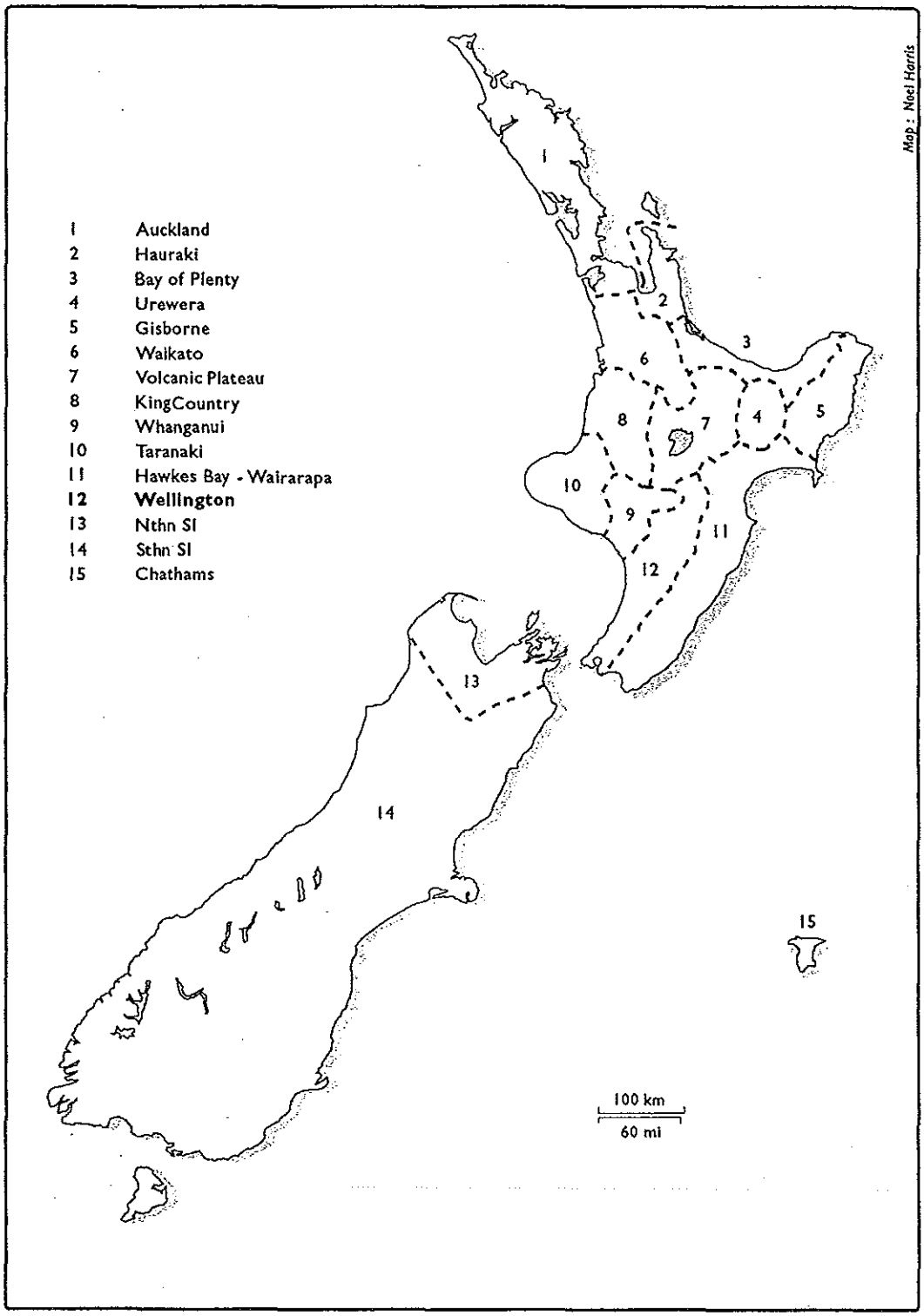
Note: Chapters 1 to 6 were written by Robyn Anderson and chapters 7 to 12 by Keith Pickens.

LIST OF ABBREVIATIONS

AJHR	*Appendices to the Journals of the House of Representatives*
AJLC	*Appendices to the Journals of the Legislative Council*
ATL	Alexander Turnbull Library
BPP	*British Parliamentary Papers: Colonies New Zealand* (17 vols, Shannon, Irish University Press, 1968–69)
CCJWP	Crown Congress Joint Working Party
ch	chapter
CMS	Church Missionary Society
CT	certificate of title
DNZB	*Dictionary of New Zealand Biography*
doc	document
DOSLI	Department of Survey and Land Information
encl	enclosure
fn	footnote
JALC	*Journals and Appendices of the Legislative Council*
JPS	*Journal of the Polynesian Society*
MA	Maori Affairs
MA-MLP-W	Maori Affairs – Maori Land Purchase Department – Wellington
MB	minute book
NA	National Archives
NLC	Native Land Court
NLP	native land purchase
NZJH	*New Zealand Journal of History*
NZLR	*New Zealand Law Reports*
NZPD	*New Zealand Parliamentary Debates*
OLC	old land claims series
p	page
pt	part
s	section (of an Act)
sec	section (of this report, or of an article, book, etc)
sess	session
SLC	Surplus Lands Commission
TCD	*Maori Deeds of Land Purchases in the North Island* (H H Turton (comp), Wellington, 1877)
TPD	*Maori Deeds of Old Private Land Purchases* (H H Turton (comp), Wellington, 1882)
WP	Wellington provincial government series



Rangahaua Whanui districts

INTRODUCTION

The following report outlines the history of land alienation in Wellington, the Hutt Valley, Porirua, Waikanae, and the Rangitikei and Manawatu districts. The period is approximately 1840 to 1970. Jane Luiten prepared an earlier exploratory study.[1]

As the footnotes indicate, the great majority of the documents used in this study are official papers of one kind or another. When Maori viewpoints are described, this is either at second hand or from translated letters contained in the files of the National Archives.

1. J Luiten, 'Whanganui ki Porirua', claim Wai 52 record of documents, doc A1

PART I

1840 to 1870

CHAPTER 1

TRADITIONAL HISTORY

1.1 SOURCES

Ethnographers who have examined the history of the Wellington region include S Percy Smith, A Shand, and Elsdon Best. The interest of Smith and Shand lay primarily with the Taranaki tribes and waves of conquest in the 1820s and 1830s. Smith's informants included, for example, Rangipito of Kaitangata, Te Ati Awa, while Shand relied on the Ngati Mutunga and Ngati Tama people living in the Chatham Islands of the 1870s. They describe in detail, from the perspective of the invading tribes, the migration down the Taranaki and Kapiti coasts and the battles fought there. Tamihana Te Rauparaha, in the memoirs of his father, provides a further Ngati Toa perspective, while the Spain commission records are a useful source for the Te Ati Awa and Ngati Toa view of occupation of the region. Particularly useful published material includes Patricia Burn's *Te Rauparaha: A New Perspective,* which provides a Ngati Toa history, and *The Kapiti Coast: Maori History and Place Names*, by W Carkeek, of Ngati Raukawa and Ngati Toa, who draws on the Maori Land Court record, as well as the writings of Smith and Best. A Parsonson discusses the northern heke to the coast in her PhD thesis, *He Whenua te Utu,* while P Erhardt draws on the Spain commission and Native Land Court record of the Ngarara hearing to discuss customary tenure in Whanganui-a-Tara. The perspective of Ngati Raukawa who migrated to the coast in the 1830s, is to be found in work by T L Buick and W L T Travers and in the correspondence of W Buller.

Generally, less accessible is the history of those who were resident in the region before the arrival of the northern tribes. Best also drew on informants amongst the migrating tribes (from Ngati Toa and Te Ati Awa) but consulted Aporo Kumeroa of Ngati Moe, manuscripts by Nepia Pohuhu of Ngati Tumapuhiarangi, and the records of Te Whatahoro of Te Matorohanga of Ngati Kahukura-whitia for the pre-Rauparaha history of Porirua and Whanganui-a-Tara. Useful recent work includes *Rangitane: A Tribal History* by J M McEwen, and that of H A Ballara who has written extensively about the migrations of people from the east coast (Ngati Ira, Ngati Kahungunu, and Ngati Kahukurawhitia. The Native Land Court investigation of the Himatangi block provides a fuller Ngati Apa perspective of the invasion period, 1819–40. Selected Maori Land Court hearings – for Ngarara and Kukutauaki – also have been consulted for the following discussion.

1.2 PRE-INVASION STATUS QUO ALONG THE COAST

In 1800, the Wellington region was occupied by people whose ancestors had migrated from the East Coast over the course of a number of generations, fighting and intermarrying with those already resident or with whom they found themselves in competition. Battles were fought, followed by peace-making through high-ranking marriages. Groups identified as being present in the general region include Ngati Apa, Rangitane, Muaupoko, and Ngati Ira. The demarcations between these peoples are obscured because of the complex genealogical origins of the iwi concerned. Best comments that the tribes became so mingled that one scarcely knows what name to apply to them.[1] While Muaupoko were not included within Best's assessment, they too intermarried extensively with the other peoples.

According to Rangitane traditional history, the first occupants of the region from Wellington to Manawatu were descendants of Toi, his son Whatonga, and grandsons, Tara and Tautoki (by Whatonga's marriage with Hotuwaipara and Reretua, respectively). The descendants of Tara, after whom the harbour was named, assumed the tribal name of Ngai Tara. Although tradition maintains that Toi and his family arrived at the harbour together, it is likely that the migration occurred over a number of years. Ngai Tara took up residence at Matiu and Te Motukairangi (Miramar) and according to Best 'occupied the district from the Hutt to the northern side of Porirua Harbour, settling on the coast line, but not occupying the forest lands back from the coast.' Fortified positions were established at various sites on the harbour – Te Whetu-kairangi on Miramar; Uruhau at Island Bay; Te Aka-tarewa at Matairangi (Mt Victoria); Te Wai-hirere at Point Jerningham; and at Pencarrow Head and Oruaiti. Cultivations were situated at Seatoun, Miramar, Island Bay, and Te Aro.[2]

Tautoki's descendants, known by the name of his son, Rangitane, were concentrated in the Manawatu, and in the Wairarapa where they came to call themselves 'Hamua'. Their tribal lands, and those of Ngai Tara, met at Kapiti.'[3] Ballara suggests that the relationship between Ngai Tara and Rangitane went through various phases, but in general there was a close interweaving of the two groups, initially through their shared descent from Toi and Whatonga, and later by intermarriage. Rangitane gradually established themselves as the pre-eminent group, defeating Ngai Tara in a series of battles fought in the vicinity of Pahiatua in the first half of the eighteenth century. Tara's descendants continued to flourish, but they took on the name of Rangitane in the Wairarapa and that of Ngati Ira in Whanganui-a-Tara.[4]

Buick suggests that the Rangitane people 'were not long in undisputed possession of the Manawatu before they were flanked on either hand by a new set of

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1. E Best, 'The Land of Tara and They Who Settled It: The Story of the Occupation of Te Whanganui-a-Tara (The Great Harbour of Tara) or Port Nicholson by the Maori', pt 5, JPS, vol 27, no 105, 1918, p 14
2. E Best, 'The Land of Tara and They Who Settled It: The Story of the Occupation of Te Whanganui-a-Tara (The Great Harbour of Tara) or Port Nicholson by the Maori', pt 1, JPS, vol 26, no 104, 1917, pp 162–163
3. E Best, 'The Land of Tara and They Who Settled It: The Story of the Occupation of Te Whanganui-a-Tara (The Great Harbour of Tara) or Port Nicholson by the Maori', pt 2, JPS, vol 27, no 105, 1918, p 9
4. H A Ballara, 'The Origins of Ngati Kahungunu', PhD thesis, Victoria University, 1991

neighbours.'[5] Ngati Apa settled at the Rangitikei River. According to S Percy Smith, Ngati Apa were descended from Kuruhaupo and Apa-hapai-taketake who were originally from the Bay of Plenty. They were later joined by a second migration, led by Te Whakakahu and Tumakoha of Te Apa-o-Rangatira.[6] Muaupoko settled to the south of Rangitane. They were concentrated around Horowhenua and Papaitonga Lakes but also maintained scattered settlements as far south as Pukerua Bay. Adkin describes Muaupoko as a 'tribe of somewhat mixed descent.' Their ancestral lines include the Kuruhaupo peoples who migrated from Mahia; those of Aotea who had established themselves primarily along the Taranaki coast; and original peoples whom the migrants found already inhabiting the region.[7] The close relationship between these neighbouring tribes did not preclude conflict over disputed resources. Control of the lower reaches of the Oroua River, which were rich in tuna and provided good conditions for kumara cultivation, was, for example, hotly disputed between Rangitane and Ngati Apa from the middle of the eighteenth century. Matheson states that tradition records 26 battles in this area prior to 1840.[8]

After some 11 generations the occupation of the Porirua–Wellington area by Whatonga's descendants was intruded upon by later arrivals from the east coast, who traced their descent lines from Iraturoto and Kahungunu. As Ira's progeny, led by Te Ao-matarahi, moved into the southern Hawke's Bay, they met with the descendants of Kahungunu. Together, they moved south, fighting and intermarrying with each other and with earlier inhabitants, descended from Whatumamoa, Awanui-a-rangi, Whatonga, and Toi. Ira's descendants who intermarried extensively with Ngati Kahungunu called themselves Rakaiwhakairi and Kahukuraawhitia. They settled in the area south of Tukituki River, at Porangahau, in the Wairarapa and Te Awakairangi (Hutt Valley). The group who eventually occupied the harbour, coastal Wairarapa, Palliser Bay, and the Kapiti Coast as far as Waimapihi, retained the name, Ngati Ira. Ngati Ira were also very closely interrelated with Ngai Tahu, the names of Tahu and Iraturoto, father and son, having been adopted to distinguish their separate descent lines. Ballara suggests, however, that the distinction was not made until after the migration to Heretaunga, where they arrived in about 1500AD. Ngai Tahu were concentrated at Takapau and in the Wairarapa.[9] But to later migrants from Northland, Kawhia, Waikato, and Taranaki, all people whose origins lay in the east belonged to 'Ngati Kahungunu' – just as the occupants of the harbour regarded those from the Taranaki area as 'Ngati Awa'. Ballara points out that this blanket labelling acted as a 'convenient regional coding' but contributed to later European confusion about tribal identity.[10]

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5. T L Buick, *Old Manawatu, or the Wild Days of the West*, Palmerston North, Buick and Young, 1903, p 32
6. S P Smith, *History and Traditions of the Maoris of the West Coast North Island of New Zealand Prior to 1840*, New Plymouth, Polynesian Society, 1910, p 154
7. G L Adkin, *Horowhenua: Its Maori Place-Names and Their Topographic and Historical Background*, Wellington, Department of Internal Affairs, 1948, pp 124–125
8. I Matheson, 'The Maori History of Rangiotu', in *A History of Rangiotu*, Maren Dixon and Ngaire Watson (eds), Palmerston North, Dunmore Press, 1983, p 6
9. Ballara, p 145
10. H A Ballara, 'Te Whanganui-a-Tara: Phases of Maori Occupation of Wellington Harbour c 1800–1840', in *The Making of Wellington 1800–1914*, D Hamer and R Nicholls (eds), Wellington, Victoria University Press, 1990, p 15

At the peak of their power in the first half of the eighteenth century, Ngati Ira were so numerous that it was said of them, 'Ko tini o te pekeha ki te moana, ko Ngati Ira ki uta' (as the myriads of petrel on the sea, so too Ngati Ira on the land). By 1800, they were living on the eastern shores of the harbour (Waiwhetu to Turakirae) but the western side from Ngauranga to Thorndon, and the Miramar Peninsula extending to Island Bay, were deserted after battles fought with Whanganui tribes, Ngati Hau and Ngati Apa, some five generations earlier. It is thought that Ngati Ira, although victorious, had withdrawn to the Hutt Valley where, in 1800, there were at least three major pa still occupied by Rakai-whakairi and Ngati Kahakura-awhitia – people of Ngati Ira descent, intermarried with Ngati Kahungunu, Ngai Tara, and Rangitane.[11]

Ethnographers such as Smith and Best tended to see Ngati Ira as conquering and displacing Ngai Tara. However, so much intermarriage took place over a number of generations that the people who settled Whanganui-a-Tara might be considered to descend from Tara, Rangitane, and Muaupoko as well as from Ira-turoto, Ira-kai-putahi, and Kahungunu.[12] This intermingling is illustrated by the line descended from Tuteremoana, one of the great chiefs in the history of the region, who is known to have lived on Kapiti and at Rangitatau Pa at Palmer Head. Although Tuteremoana is identified as Ngai Tara, he is also regarded as an important ancestral figure by Ngati Ira, Muaupoko, and Rangitane.[13]

Tuteremoana's wife, Wharekohu, who was of Rangitane descent, died at Rangitatau and was taken to Kapiti for burial. Various sites in the area were named after these tupuna. An important fishing ground at Barrett's Reef was known as Te Punga-whangai-o-Tuteremoana. The northern peak of Kapiti was named after Tuteremoana, and a cave on the island was called Te Ana-o-Wharekohu.[14] Moeteao, the only child of Tuteremoana, was married to Ngati Ira chief Whakaihirangi to cement peace between the two groups. Moeteao gave birth to twins, Mahanga Puhua (or Puhunga) and Mahanga Tiikaro. During the birth rites, the second-born, Mahanga Tiikaro, was affirmed as belonging to the Wairarapa, while the mana of Mahanga Puhua was fixed to the western seaboard. Smith, however, identifies Puhua as a Ngati Ira chief who migrated from the east coast. Rangitane claimants suggest that Smith had confused 'southern' Ngati Ira of Wairarapa with Ngati Ira from Anaura Bay descended from Tura, but that his mistaken identification, although subsequently questioned by Best, has been widely accepted by historians.[15] For this reason, Mahanga Puhua's descendant, Tamairangi, who held mana from Arapawa to Pukerua is generally described as a high-ranking Ngati Ira woman. But according to their tradition, Tamairangi was Muaupoko. Kaitangata, her grandparent, was the founding ancestor of the Muaupoko, Ngati Kaitangata, who were associated with Ngati Ira during the wars that were to follow in the 1820s.[16] Her mother, Te Ronaki,

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11. Ibid, p 13
12. Ibid, pp 12–13
13. The following account is drawn from information supplied by Rangitane ki Wairarapa claimants.
14. J M McEwen, *Rangitane: A Tribal History*, Auckland, Reed Methuen, 1986, pp 39–40
15. E Best, 'The Land of Tara and They Who Settled It: The Story of the Occupation of Te Whanganui-a-Tara (The Great Harbour of Tara) or Port Nicholson by the Maori', pt 3, JPS, vol 27, no 106, 1918, p 55
16. H C Christie, 'Rangitatau Pa', JPS, vol 52, 1943, pp 202–203

is variously described as connected with Muaupoko through the Tireo line and as Ngai Te Ao, Rangitane, and Ngati Kuia.[17] Tamairangi married Te Hukatai o Ruatapu, also known as Te Whanake, who was of Ngati Ira and Aitanga a Tumapuhiarangi descent. His father was also associated with Ngati Moe of Wairarapa. The son of Tamairangi and Te Huka was Te Kekerengu. This was the dominant family in the southern part of the Wellington region in the early nineteenth century. The destruction of that dominance is an important element in the wider picture of what happened to the established inhabitants of the west coast, as waves of migration from the north hit them in the 1820s and 1830s.

1.3 MIGRATIONS AND RESPONSE, 1820–40

By 1820, the tribes occupying the west coast had not been seriously disturbed by outside groups in the possession of that area for many generations. This situation began to change as a consequence of tensions originating at Kawhia Harbour where resident tribes were under intensifying pressure from the musket-equipped Waikato people. The competition for control of the fertile coastal land resulted in a cycle of war which eventually prompted the Kawhia tribes to migrate. Pursuit from the Waikato drew the Taranaki tribes into the conflict and prompted their migration also.[18] The conduct and impact of the subsequent invasion of the Kapiti Coast provided narratives of great significance in the later arguments regarding ownership in the area. The import of particular victories and alliances was disputed between resident and migrant tribes, and among incoming tribes as they argued about how conquered territory had been divided. The following account highlights some of the events represented to the ethnographers, and in Native Land Court hearings as being significant.

Playing a leading role in the events outlined below was Te Rauparaha, the toa rangatira of Ngati Toa. Ballara has pointed out that the spiralling warfare of the 1820s put 'unprecedented power into the hands of the toa'.[19] Te Rauparaha, like Te Pareihe of Ngati Kahungunu, expanded the traditional role of the toa to bring together disparate groups through judicious alliance, land allocations, military prowess, and charismatic leadership. His success in forging together traditional and novel elements of leadership led to a misconception among Europeans that he was the paramount chief of Ngati Toa.[20] The degree of authority and control exercised by Te Rauparaha over both his own people and the other tribes in the region was to be an issue of some significance in the later consideration of ownership.

In 1819 Ngati Toa, led by Te Rauparaha and Te Rangihaeata, joined members of Ngapuhi in a war expedition through Taranaki and down the west coast. Battles were

17. G Biltcliff, 'Ngati Pariri: The Genealogies of this Sub-Tribe of the Muaupoko, With Some Considerations of the Link Between This People and the Better Known Tribes of the Heke', JPS, vol 55, 1946, pp 40–80; DNZB,Wellington, Allen Unwin and Department of Internal Affairs, 1990, vol 1, p 422
18. N Gilmore, 'Kei Pipitea Taku Kainga – Ko te Matehou te Ingoa o Taku Iwi: The New Zealand Company "Native Reserve" Scheme and Pipitea, 1839–88', MA thesis, La Trobe University, 1986, p 7
19. Ballara, 'Origins', p 295
20. Ibid, pp 295–298

fought in the Wanganui area where Purua, a Ngati Apa pa, was taken. A running fight developed along the route of the taua from Rangitikei, Turakina to Oroua. Te Arapata Hiria, a Ngati Apa chief, and his sister Te Pikinga were captured and taken on the expedition further southwards. Ngati Ira successfully defended their pa at Pukerua but it fell when they were deceived by a false offer of peace – a stratagem attributed to Te Rauparaha.[21] Returning home by canoe, the party landed north of the Rangitikei River at Te Pou-a-te-rehunga. Te Rangihaeata sent the husband of his sister, Toperoa, and Te Arapata Hiria to make peace with Ngati Apa at Awamate Pa. According to Ngati Apa sources, a peace alliance was concluded. Te Rangihaeata took Te Pikinga as a wife of chiefly status, while she received a gift of greenstone named Whakahiamoe from Ngati Apa leaders Te Hanea and Te Pouhu.[22] In customary law, marriage with the tangata whenua gave occupation rights to those who held mana by conquest and Ballara argues that 'by this action, Te Rangihaeata was bound to Ngati Apa by ties of mutual protection'.[23] Ngati Raukawa, however, later disputed any interpretation of that event as impinging on rights of conquest and insisted that Te Pikinga had been captured and was a 'slave wife'.[24]

Taking Te Pikinga with them, Ngati Toa returned to Kawhia. Fighting in the region escalated. In 1820 several thousand Waikato and Ngati Maniapoto invaded Kawhia. After losses at Te Kakara near Lake Taharoa and Waikawau Pa at Tirau Point, and a siege of Te Arawi from which Ngati Toa were allowed to withdraw by relatives among the enemy, Te Rauparaha persuaded the majority of his people to relocate on the Kapiti Coast.[25] In 1821, Ngati Toa began the first step (Te Heke Tahu-tahu-ahi) of a many-staged migration that was also to draw the Taranaki tribes southwards. Ngati Toa were allowed resting places by their kin, growing numbers of whom were to join in the heke to the Cook Strait region over the following years.

Before the next stage of the migration, Te Heke Tataramoa, Te Rauparaha travelled to Maungatautari to persuade Ngati Raukawa to whom he was closely related through his mother (Parekohatu) to assist in the migration. Ngati Raukawa were also under increasing pressure from neighbouring tribes but were intending to invade Heretaunga, and refused to accompany Ngati Toa to the west coast. Te Rauparaha also attempted, unsuccessfully, to win support for the migration at Taupo, Tauranga, and Rotorua.[26] However, pursuit by Waikato eventually involved Ngati Mutunga, Ngati Tama, Te Ati Awa, and sections of Taranaki in that conflict, providing Te Rauparaha with the military support he required for his venture. Although Waikato were defeated in the battle of Motunui, fear of retaliation impelled sections of people occupying the northern Taranaki to accompany the next stage of the journey to Kapiti. According to Tamihana Te Rauparaha, Ngati Toa forces were augmented by some 200 warriors. Parsonson comments that this figure

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21. DNZB, vol 1, p 505
22. Ibid, p 479
23. Ibid
24. Wellington Native Land Court, Rangitikei–Manawatu claims, notes of evidence, 16 July 1869, MA series 13/71, p 20, NA Wellington
25. A Parsonson, 'He Whenua Te Utu', PhD thesis, University of Canterbury, 1978, p 158
26. Ibid

may be an exaggeration and points out that Tamihana gives a second estimate of 600 warriors, which was certainly too high.[27]

Te Rauparaha seems to have been anxious, at least initially, to conduct the migration peacefully. He ordered his people not to steal food south of Waitara, and during their winter at Otihoi in south Taranaki, the migrants were careful not to arouse local hostility.[28] The response of those already in occupation was divided. According to Metekingi of Whanganui, a confederation of chiefs of tribes related to his people – Muaupoko, Rangitane, and Ngati Apa – met at Kapiti, where it was agreed that Te Rauparaha should be killed.[29] However, not all local chiefs approved of this intention. While some members of Ngati Apa were advocating resistance, others, such as the chiefs Te Maraki and Mokomoko, travelled to Waitotora where they greeted their kinswoman, Te Pikinga. Carkeek, drawing on the evidence of Metekingi, includes Tokorou and Te Pauhu of Ngati Apa and Te Rangiwhakarurua of Whanganui in this group.[30] The alliance created by her marriage to Te Rangihaeata appears to have been acknowledged since the two groups lived together peacefully at Matahiwi, Te Awamate, and Tawhirihoe over the course of the next few months as the heke slowly moved southwards. Ngati Apa saw themselves as escorting the northern people through their territory. Ngati Toa for their part agreed that Ngati Apa should remain undisturbed on their land. Te Pikinga was left for a period at Rangitikei as 'he pohe rohe', a link between the two tribes and as the embodiment of Te Rangihaeata's authority in the region.[31] The compact was, however, soon placed under strain as Ngati Apa were drawn into the resistance of the other local tribes to whom they were closely related.

When the two peoples separated, Ngati Apa hosts warned Ngati Toa not to attack the Muaupoko, who were based south of the Manawatu River. Although Te Rauparaha and Te Rangihaeata agreed to this, Nohorua (Te Rauparaha's half-brother) killed Waimai, a Muaupoko woman of a senior family. This incident triggered the trouble that had been brewing between the established and the incoming tribes. Seeking revenge, Muaupoko chief, Toheriri, invited Te Rauparaha and the small band of kin with whom he was travelling to a feast at Papaitonga. In a surprise attack there, at least three of Te Rauparaha's children were killed, which demanded retaliation from Ngati Toa in turn. This initiated a period of sustained harassment of Muaupoko by Te Rauparaha, who is said to have sworn to kill them from dawn to dusk. Two island pa at Horowhenua were successfully attacked. The survivors dispersed widely, seeking refuge in the foothills of the Tararua Ranges from Horowhenua as far south as Paekakariki. According to Carkeek:

> in some cases they remained in hiding for only short periods waiting for the danger of attack to pass when they would reoccupy their old cultivations and kaingas. In other cases their place of refuge became permanent.

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27. Ibid, p 162
28. Ibid, p 163
29. W Carkeek, *The Kapiti Coast: Maori History and Place Names,* Wellington, A H & A W Reed, 1966, p 13
30. Ibid
31. DNZB, vol 1, p 489

Refuge sites included the summit of Pukehou Hill at Otaki, Toata close to Reikorangi on the Waikanae River, and one of the steep spurs at Paekakariki.[32]

The relationship between Ngati Apa and Ngati Toa also deteriorated. A number of Ngati Apa joined their Rangitane kin in rebuilding an old pa at Hotuiti on the Manawatu River. Te Rauparaha, threatened by this move, proceeded to the Manawatu with a war party. Pikinga was sent in to negotiate their withdrawal, but without success. When the Rangitane chiefs were subsequently persuaded to leave the safety of the pa to make peace, they were killed. The victors returned to Waikanae where they were assaulted in turn, by a force comprising Ngati Apa, Muaupoko, and Hamua from the Wairarapa, led by Te Hakeke and Paora Turangapito.[33]

While Te Rauparaha was fighting on the mainland around Horowhenua, the senior chief of Ngati Toa, Te Pehi Kupe, led a successful attack on Kapiti. The migrants, including later arrivals, established themselves on the island for greater security. Kapiti offered great strategic advantages, being easily defended, commanding the coast of the mainland, and providing sheltered waka tauranga. Ballara points out that the northerners' capture of the island contributed to the deterioration of relations with the local tribes, since Kapiti was 'not a prize to be lightly relinquished'.[34] At this stage, however, matters appear to have been fairly evenly balanced. Small victories were scored by either side.[35] Raids were launched against the tangata whenua on the mainland, but the position of Ngati Toa and their allies was far from secure. They still had to leave the safety of Kapiti to gather certain foods and had been weakened by 'constant fighting'.[36]

1.4 THE BATTLE OF WAIORUA

A crisis in the relationship between local and incoming tribes was reached at Waiorua in 1824. Members of Ngati Ruanui, Whanganui, Ngati Apa, Muaupoko, Ngati Ira, Ngati Kahungunu, and Ngati Kuia, estimated to number some 2000, attempted to regain their control of Kapiti. Despite being greatly outnumbered, the new occupants successfully defended the island. There seems to be little certainty about which migrant tribes other than Ngati Toa were involved in the defence. Ngati Koata, Ngati Hinetuhi, Ngati Rahiri, Kaitangata, Ngati Mutunga, and Ngati Haumia have been variously mentioned.[37] Ngati Toa date their authority in the general region from the battle, and accredit the willingness of other northern tribes to migrate to that victory. This belief was stated in a later letter to Grey, 'When they heard that we had captured all the land (they came down here)'.[38]

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32. Carkeek, p 14
33. 'Copy of Proceedings of Native Land Court at Foxton, November 1872, with Notes of Evidence', MA series 75/8, pp 172–173, NA Wellington
34. DNZB, vol 1, p 479
35. Parsonson, pp 164–165; Carkeek, pp 15–17
36. Best, 'The Land of Tara', pt 1, p 162
37. Smith, pp 396–399; Carkeek, p 18; P Burns, *Te Rauparaha: A New Perspective*, Wellington, A H & A W Reed, 1980, p 120; Ballara, 'Te Whanganui-a-Tara', p 17
38. 'Two Letters from Ngaati-Toa to Sir George Grey', JPS, vol 68, no 3, 1959, p 272

Despite a number of earlier clashes and deaths, Ngati Apa had not been harassed in the same manner as their Muaupoko kin. But their participation at Waiorua caused a deterioration in their relationship with Ngati Toa. Pleas for clemency from one of the captives, Te Rangi-mairehau, on the grounds of his kinship to Te Pikinga were ignored and he was put to death. Other Ngati Apa chiefs were subsequently killed at Awamate and a Ngati Apa pa, Te Poutu, unsuccessfully besieged. Again, Te Pikinga was sent to her people to make peace and their relationship with the newcomers seems to have been restored by the end of the decade.[39]

Rangitane and Muaupoko were also pursued. Te Whiwhi testified at the Kukutauaki hearing that a war party had travelled up the Manawatu River as far as Karekare, where they killed some 40 Rangitane and Nga Rauru from Waitotara who had escaped the battle at Waiorua.[40] Tamihana Te Rauparaha also talks of a war party 'to punish Muaupoko, Rangitane and Ngati Apa at Rangitikei', resulting in the capture of three pa and many deaths among the local tribes.[41] According to Ballara, Muaupoko and Rangitane continued to live at Horowhenua and Manawatu, but were now considered a defeated people.[42] The first Ngati Toa raid on the South Island tribes also resulted from the pursuit of Rangitane after Waiorua.

Ngati Ira and Ngati Kahungunu, based further to the south, emerged from Waiorua in a better position than did their Rangitane and Muaupoko allies. The adoption of a traditional peace-making technique by Ngati Ira made it possible for the tribe to remain unmolested at Porirua. Ballara points out, however, that their status 'whether they retained their mana or already were a client people, left at Porirua to catch fish for Ngati Toa, was a matter much debated in the Land Court'.[43] After Waiorua, Ngati Toa also made a peace treaty with Ngati Kahungunu. This compact is currently stressed as being of some importance by Ngati Toa. It is argued that this agreement helped to free Ngati Toa for the campaigns into the South Island and meant that they were not under the same sort of pressure in 1840 as were Ngati Mutunga, Ngati Tama, and Te Ati Awa, whose attempts to settle the Wairarapa and the Wellington Harbour had brought them into conflict with the east coast peoples.[44]

1.5 THE ROLE OF TE ATI AWA, THE TARANAKI TRIBES, AND NGATI RAUKAWA

Allied migrating tribes point to their presence at Waiorua also, but the bulk of their members reached the Kapiti Coast in successive waves over the next 10 years. This is not an easily delineated process. Each heke comprised a number of related but independent groups, and some individuals returned to their place of departure, only to set out on subsequent journeys southwards. The many-staged nature of the general

39. DNZB, vol 1, p 479
40. Otaki Native Land Court MB 1, 3 December 1872, pp 137–139
41. P Butler (ed), *Life and Times of Te Rauparaha by his Son Tamihana Te Rauparaha*, Martinborough, Alister Taylor, 1980, p 33
42. Ballara, 'Te Whanganui-a-Tara', p 18
43. Ibid, pp 17–18
44. These comments result from discussions with Ngati Toa claimants.

movement south complicates the question of the relationship between Ngati Toa and other migrating tribes, since the motivations of later participants were likely to be different from those who set out earlier. The first stages of the migration, although including some members of the Taranaki tribes as well as Ngati Toa, were conducted largely under the mana of Te Rauparaha. It would seem too, that the success of the first arrivals in establishing occupation helped to attract others – Ngati Raukawa and the bulk of Te Ati Awa – to the region.

Te Rauparaha is generally described as welcoming the newcomers for their strength and as formally allocating them territory along the coast. Questions later arose as to the boundaries established, and about the implications for the authority of those who had received the land. Ngati Toa have asserted a general paramountcy in the region as indicated by that grant of territory, but Te Ati Awa and Ngati Raukawa have tended to emphasise their independence from Te Rauparaha. They interpret any allocation of territory as marking recognition of their assistance in the conquest of the region, and the importance of their presence in enabling Ngati Toa to retain its control over the Cook Strait region. Gilmore argues that those sections of Te Ati Awa that were based further to the south and migrated later had not been involved in any alliance with Te Rauparaha, their closer kinship tie being to Te Pehi.[45] Ngati Raukawa, with whom Te Rauparaha and Te Rangihaeata did have close kinship ties, also stress their independence of action. They argue, for example, that the decision to move to the Kapiti Coast was at the behest of his sister Waitohi, a woman of great mana within their tribe, rather than of Te Rauparaha himself.

In the Manawatu, the question of Te Rauparaha's allocation of territory also affected the relationship between allied migrant and earlier occupant groups. The question arose in the Native Land Court as to how far the territory received by Ngati Raukawa extended. Underlying the evidence asserting a boundary far short of that claimed by Ngati Raukawa was a challenge to their status as a conqueror. Ngati Apa argued that their only allegiance was to Ngati Toa, a view that was largely accepted by the court. Judge Maning in his judgment interpreted Te Rauparaha's division of territory as suggesting that only Ngati Toa could be seen as 'conquerors' of the region.[46]

1.6 THE INVASION OF WELLINGTON HARBOUR REGION

In 1824, Nihoputa, a large heke of some 400 to 500 warriors largely of Ngati Kura, Ngati Kawhurua, and Ngati Rangi of Ngati Mutunga, arrived in the region. Also participating in the heke was a large contingent of Ngati Tama and Ngatata-i-te-rangi of Ngati Te Whitu hapu, Te Ati Awa. The arrival of these allied forces strengthened the position of those already settled in the region. Ngati Mutunga settled first at Waikanae, and Ngati Tama at Ohariu. With Te Rauparaha's encouragement they began to extend the northerners' occupation. Ngati Tama

45. Gilmore, 'Kei Pipitea Taku Kainga', p 8
46. F D Fenton, *Important Judgments Delivered in the Compensation Court and Native Land Court, 1864–79*, Auckland, 1879, pp 101–108

moved to Tiakiwai, and were soon followed by Ngati Mutunga, who settled from Te Aro to Kaiwharawhara.[47]

This initial move was peacefully conducted. Ngati Ira continued to live in the pa and kainga on the eastern shores of the harbour. The young chief, Te Kekerengu, although a participant at Waiorua, had been 'manoeuvred into an alliance with Ngati Toa's allies' and after a period of retirement to the Wairarapa was able to return to Porirua.[48] By the late 1820s, however, the relationship between the long-established occupants and the migrants had deteriorated to a point at which joint occupation was no longer possible. Patukawenga and Te Poki led a series of pre-emptive attacks by Ngati Mutunga and Ngati Tama which slowly drove Ngati Ira from the shores of Whanganui-a-Tara. During that process, however, Te Kekerengu remained undisturbed at Porirua. The last battle for control of Whanganui-a-Tara took place at Turikirae, and Tapu-te-ranga Pa in Island Bay finally fell in about 1827. Te Kekerengu's mother, Tamairangi, was captured but was offered protection by Te Rangihaeata. A subsequent indiscretion by Te Kekerengu subsequently resulted in their flight and pursuit to Kaikoura. Most surviving Ngati Ira appear to have found refuge in the Wairarapa.[49]

In 1828, the last of the northern Taranaki peoples of Ngati Mutunga and Ngati Tama left that area. The defence of Te Ati Awa territory from attack by Waikato and their allies was now extremely doubtful. In 1831 and 1832, Waikato forces invaded, seeking revenge for their earlier loss at Motunui. The remaining northern Te Ati Awa were defeated at Pukerangiora Pa and the survivors sought safety at Ngamotu (New Plymouth). There, they helped Te Wharepouri, a Te Ati Awa chief of Ngati Tawhirikura hapu, to repel the Waikato attack. Knowing that their enemy would return, in 1832 the bulk of Te Ati Awa joined Tama-te-Uaua in the move to the Cook Strait region. The largest contingent in the heke were Ngati Te Whiti, Ngati Tawhirikura, and Te Matehou, known collectively as Ngamotu.[50] These people were eventually to settle the shores of Whanganui-a-Tara.

1.7 THE IMPACT OF NGATI RAUKAWA'S ARRIVAL

In the meantime, a second strain of migration consisting of Ngati Raukawa was starting to arrive on the Kapiti Coast. While Ngati Toa and their allies among the Taranaki peoples had been settling there, Ngati Raukawa under Te Whatanui had attempted to establish a presence in the Heretaunga. They travelled first to Taupo where they fought a series of battles against Te Ati Haunui-a-Paparangi of Upper Wanganui and Ngati Te Upokoiri and Ngati Hinemanu in the upper Rangitikei. Te Whatanui joined Tuwharetoa under Te Heuheu in taking Te Roto-a-Tara Pa and was then invited by Te Kaihou of Ngati Whatu-i-apiti to assist her people against Ngati Te Upokoiri. At first, Ngati Raukawa, numbering some 150 to 200 warriors, lived

47. Ballara, 'Te Whanganui-a-Tara', p 18
48. Ibid, p 19
49. DNZB, vol 1, p 422
50. P Ehrhardt, *Te Whanganui-a-Tara Customary Tenure, 1750–1850*, Wellington, Waitangi Tribunal Research series, 1993, no 3, pp 21–22

peacefully in Heretaunga but tensions developed over resource use. Ngati Raukawa's pa at Puketapu fell to the Heretaunga forces and Te Whatanui decided to lead his people to the Kapiti Coast by way of Rangipo, Turakina, and Rangitikei. Skirmishes took place along the route, Ngati Raukawa killing small numbers of local people including the Ngati Apa chief, Te Whareki.[51]

Te Rauparaha welcomed Ngati Raukawa, who arrived on the coast in three stages from 1825 onwards. The first arrivals may have lived on Kapiti for a while but eventually settled in the vicinity of Otaki, Manawatu, and Horowhenua. Certain sections of the tribe were also allowed by Te Rangihaeata to settle in the Rangitikei area. The timing and bases on which lands were occupied by various Ngati Raukawa hapu later became matters of great controversy.

Similar questions arose in the upper Manawatu. Ngati Kauwhata took up residence on the Oroua River below Mangawhata; Ngati Hinepare, Ngati Turoa, and Ngati Tahuriwakanui above Mangawhata; among Ngati Tauira, Ngati Whakatere in the vicinity of Shannon; and Ngati Wehiwehi among the Rangitane peoples on both banks of the lower Manawatu.[52] For the next 30 years, the old occupants and the newcomers lived in peaceful co-existence with a good deal of intermarriage taking place between them. But the question of who held greatest mana in the upper Manawatu became a matter of great contention when land sales were initiated. Rangitane, for example, argued that Ngati Wehiwehi had been given land because a Ngati Raukawa chief, Te Whetu, had married a woman of their tribe, Te Hinetiti. In contradiction, Ngati Raukawa stressed their military dominance over the local tribe.[53] The relationship between Ngati Raukawa and Muaupoko was also to come to the attention of Government and court officials. During the course of his migration to the area, Te Whatanui had made a famous pledge to the Muaupoko still living at Horowhenua (numbering some 100 people) that he would shelter them as a rata tree would protect them from the rain. According to McDonald's account in *Te Hekenga*, Te Whatanui marked off 20,000 acres of land for Muaupoko, extending from Hokio to Tauataruru, 'leaving in the Raukawa territory the whole of the Hokio stream and the lower half of the lake'. The northern boundary of Te Whatanui's allocation of land ran through Poroutawhao swamp to Ngatokorua Island, and then in a south-westerly direction to Oioao flat.[54] The Native Land Court's subsequent recognition of the rights of Muaupoko because of their continuing occupation of land at Horowhenua caused great bitterness among Ngati Raukawa, who had regarded them as a subject people at 1840. For their part, a resurgent Muaupoko later insisted that they had never been defeated by Ngati Raukawa. Te Rangi Mairehau stated before the 1896 Royal Commission, investigating disputed Horowhenua

51. DNZB, vol 1, p 523
52. Matheson, 'Rangiotu', p 7. See also I Matheson, 'The Maori History of the Opiki District', in *From Fibre to Food: Opiki, the District and its Development, a Golden Jubilee Publication of the School and District, 1928–78*, M J Akers (ed), Opiki, Opiki Jubilee Book Committee, 1978, pp 6–7.
53. Buick, pp 103–104; Matheson, 'Rangiotu', pp 8–9
54. E O'Donnell, *Te Hekenga: Early Days in Horowhenua, Being the Reminiscences of Mr Rod McDonald*, Palmerston North, Bennett & Co, 1929, pp 18–20

lands, 'Ngati Raukawa made no conquests; let some old women of Ngati Toa who are here talk of conquests, but not Raukawa nor Whatanui.'[55]

1.8 THE BATTLE OF HAOWHENUA

A battle of great significance, Haowhenua, was fought at Otaki in 1834. Although the conflict was initially between the migrant tribes the event also drew in, and had implications for the local peoples. The trigger was a raid by Te Ati Awa on potato grounds on the northern bank of Nga Totara stream. But underlying the dissension was increasing pressure on the resources of the Kapiti Coast, which reached crisis point with the arrival of a final group of people from Pukerangiora on lands that had already been divided among earlier migrants.[56] This group has been identified as Te Heke Hauhaua, comprising largely Ngati Tama led by Te Puoho.[57]

A series of skirmishes were fought between Ngati Raukawa who claimed right over the area and Te Ati Awa. The latter eventually brought up a war party from Waikanae to the Otaki. Ngati Raukawa were driven into their pa – probably Rangiuru on the northern bank of the river. Ngati Ruanui joined the besieging forces but Te Rauparaha, who was living with his Ngati Raukawa kin at the time, managed to send messengers to Te Wherowhero for reinforcements. As Waikato, Ngati Maniapoto, and Tuwharetoa (who joined the expedition at Taupo) arrived on the field, Te Ati Awa withdrew a little north, to Pakakutu Pa.

Bitter fighting was conducted over the next two days while Te Rauparaha remained in Otaki. Both sides suffered considerable losses, but eventually Te Ati Awa were forced to withdraw to Haowhenua, their large fortified pa south of the Otaki River, where they took up a defensive position. A number of local tribes joined the besieging force. These included a section of Ngati Apa, a few Rangitane chiefs, some 200 Whanganui led by Pehi Turoa, and 100 Ngati Upokoiri from the upper Rangitikei under Te Whaiukau.[58] In the context of the Rangitikei–Manawatu land court hearings, Ngati Apa was to cite that assistance as indicating their status as allies. The opposing interpretation was, however, that such participation was in the nature of a tributary action on the part of a subject people.

Involved in the defence of Haowhenua were Ngati Ruanui, Ngati Tama, Ngati Mutunga, Kaitangata, Puketapu, Manu-korihi, Otaraua, Ngati Rahiri, and Ngamotu. They were also joined by a large segment of Ngati Toa. Te Hiko, who was closely related to Te Ati Awa through his mother, crossed to the mainland to join those kin.[59] The first attacks on Haowhenua were repulsed and the combined Ngati Raukawa and northern forces turned their attention to Te Ati Awa's pa at Kenakena, Waikanae.

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55. Horowhenua Commission, Te Rangi Mairehau, 14 March 1896, AJHR, 1896, G-2, p 92
56. Smith, p 516; Carkeek, p 34
57. Smith, p 497
58. H H Turton, *An Epitome of Official Documents Relative to Native Affairs and Land Purchases in the North Island of New Zealand*, Wellington, Government Printer, 1883, sec D, p 64
59. Carkeek, p 39; Parsonson, pp 174–175

Opinion on where the final victory lay is divided. According to Rangipito of Te Ati Awa, who was Percy Smith's informant, the assailants were routed when the main body of Puketapu, Manukorihi, and Ngamotu came to the assistance of the pa, and retreated to Otaki.[60] Carkeek points out, however, that Rangipito left out 'many important details most of which concern defeats suffered by his own people'.[61] Travers, drawing on Ngati Raukawa sources, suggests that the war was put to an end by a battle at Pakakutu in which Ngati Ruanui were defeated with serious loss. Soon afterwards, all the leading chiefs met, and on the advice of Te Heuheu and Te Whatanui, peace was made.[62] Buller also sees Ngati Raukawa and their allies as the victors.[63]

It would appear that the result was inconclusive, but that the greater honours probably lay with Te Ati Awa. In later years, they dated their rights of occupation in the region as being confirmed at Haowhenua. A rearrangement of tribal boundaries took place immediately following the cessation of hostilities. While some sections of Ngati Raukawa reoccupied their former settlements at Otaki, Ohau, and Horowhenua, others migrated to the area between the Manawatu and Rangitikei Rivers. Te Ati Awa also drew back from the battle area to south of the Kukutauaki Stream, which was to become accepted as the boundary between the interests of Ngati Raukawa and Te Ati Awa. Some migrated further south to Arapaoa and to the Marlborough Sounds, others to Whanganui-a-Tara.[64] Included within that movement were the Taranaki and Ngati Ruanui contingent of Te Heke Paukena who were permitted to settle between the Waitangi and Te Aro streams by the Ngati Mutunga chief Ngatata-i-te-rangi.[65] The section of Ngati Tama who had maintained a presence at Kaiwharawhara since 1825 attempted to take advantage of the hiatus resulting from the war, making a vigorous attempt to establish themselves at Paremata and Mana. But Ngati Toa, with the assistance of Ngati Raukawa, exerted their control over that territory. Taringa Kuri is said to have acquired that nickname from these circumstances because, like a disobedient dog, he 'refused to heed the expressed wishes of Te Rangihaeata, who held mana over the areas for which Ngati Tama yearned'.[66]

1.9 WELLINGTON HARBOUR AT 1840

According to Te Ati Awa witnesses before the Spain commission, continuing tension with Ngati Raukawa also contributed to the decision of Ngati Mutunga and Ngati Tama to migrate to the Chatham Islands.[67] On receiving news that Ngati Mutunga was about to vacate the harbour, Te Wharepouri, whose occupation of the

60. Smith, p 519
61. Carkeek, p 40
62. W L T Travers, *Some Chapters in the Life and Times of Te Rauparaha, Chief of the Ngatitoa*, Christchurch, Capper Press, 1975, p 71
63. Turton, *Epitome*, sec D, p 64
64. Ballara, 'Te Whanganui-a-Tara', p 25; Parsonson, p 175
65. Ballara, 'Te Whanganui-a-Tara', p 25
66. Ibid
67. Spain commission, Te Puni, 7 July 1842, OLC series 1/906, pp 21, 29, NA Wellington

Wairarapa was under challenge, decided to lead his people, numbering 200–300, back to Whanganui-a-Tara. Te Wharepouri settled initially at Waiwhetu and then moved to Matiu (Somes Island). Wi Tako led his hapu to the eastern shores of Miramar Peninsula (Seatoun). Te Matehou, under Te Ropiha, settled at Onehunga (Worser Bay) and Pipitea, where their interest was substantiated by the residence of Ngake, who was also the son of Patukawenga.[68]

According to Ballara, before their departure in 1835 Ngati Mutunga handed over the territory from Pito-one to Ngauranga by formal 'panui' to their Te Ati Awa kinsmen Te Matangi and Te Manihera Te Toru, who had been residing with them. In confirmation and extension of the earlier gifting by Ngatata-i-te-rangi, the area from Waitangi to Te Aro were given to Ngati Haumia and to Ngati Tupaia, who had taken over lands given earlier to Ngati Ruanui. These gifts of land were acknowledged by the presentation of greenstone to Ngati Mutunga chiefs, Te Poki and Pomare.[69] When Ngati Mutunga left they burned their houses, although fences were left standing.[70] Only Ngake remained, although Pomare appears to have subsequently returned on visits.

Ballara argues that the transfer of lands by Ngati Mutunga cemented the occupation of the harbour by Te Ati Awa and their allies. She sums up the basis of that right:

> Ngati Mutunga had occupied the harbour and gradually conquered and banished its original population; this population had either been killed or had withdrawn to Wairarapa or to the South Island, and had failed to regain its lands. Ngati Mutunga's claim had been legitimated by several years of unchallenged occupation; although they had abandoned their lands, they were a people with mana intact when they did so; the abandonment was unforced. In terms of traditional tenure, Ngati Mutunga had established an unchallenged right to large areas of the harbour, and this right they had formally transferred to Taranaki and Te Ati Awa in November 1835.[71]

She notes that Mohi Ngaponga later denied that there had been a formal transfer of territory while agreeing that there had been a meeting at Matiu.[72]

Within a short period, Te Matangi invited Te Wharepouri, Te Puni, and Ngati Tawhirikura to reside with him at Pito-one. Ngamotu were welcomed for the protection offered by their numbers, since by this stage the harbour shores were deserted except for Te Matangi's own whanau, a small party of Ngati Tama remaining at Kaiwharawhara, and some Ngati Haumia and Ngati Tupaia at Te Aro and Waitangi. Te Wharepouri subsequently moved to Ngauranga, which became his permanent home.

The various sections of Te Ati Awa located at Waikanae and Whanganui-a-Tara could call on each others' aid. None the less, their position in the region was not completely secure. Ballara points out that 'in 1836, it was by no means clear that the

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68. Gilmore, p 13
69. Ballara, 'Te Whanganui-a-Tara', p 28
70. Spain commission, Wi Tako, 21 May 1842, OLC series 1/906, p 44, NA Wellington
71. Ballara, 'Te Whanganui-a-Tara', p 30
72. Wellington Native Land Court MB 1c, 9 July 1868, p 81

cycle of war, which had seen such gross changes in rights over the larger region which included the harbour was coming to an end'.[73] It seems likely that the security of those sections of the tribe that had settled the harbour was weakened by the departure of Ngati Mutunga and many of Ngati Tama. The relationship with the former occupants remained tense in the years immediately prior to 1840. In March of that year, the Waiwhetu chief Puakawa was killed in a raid from Wairarapa, and Heaphy later recorded travelling inland from Lowry Bay to the source of the Orongorongo Stream, where his Te Ati Awa guides were 'awfully afraid' of an attack because 'they were on the debateable land of the two tribes'.[74] Tensions were ameliorated, however, by efforts at peace-making in 1840. During their occupation of the Wairarapa, Te Ati Awa had been attacked by a war party led by Nukupewapewa of Ngati Kahungunu. Te Wharepouri's wife (Te Uamairangi) and niece (Te Kakapi) had been captured, but their lives spared in order to prevent an escalation of conflict. Te Uamairangi was released and sent with an escort to find Te Wharepouri, who saw an opportunity to make peace with at least some of Te Ati Awa's enemies.[75] In 1840 he was in a position to make the journey to redeem his niece but Nukapewapewa died before he arrived. Te Wharepouri thus negotiated with the assembled chiefs of the Wairarapa and Heretaunga, led by Pehi Tu-te-pakihi-rangi. They wanted the restoration of the Wairarapa in exchange for the return of Te Kakapi. After further negotiations at Pito-one in July, an agreement was reached that the Rimutaka and Tararua Ranges would form a dividing line between the two peoples. This was confirmed by marriage, gift-exchange, and the release of prisoners. According to Ballara, the claims of Ngati Ira and of people living east of the ranges were then abandoned.[76] The Wairarapa people would not avenge the take of their Muaupoko, Rangitane, Ngati Ira, and Ngati Apa kin living on the west side of the divide. But neither were the claims of the west coast groups relinquished.

The impact of invasions from the north varied along the coast. By 1840 the record of Ngati Ira, Muaupoko, and other earlier occupiers was confined largely to the landscape of Wellington, north towards Horowhenua. Their names did not emerge in the Spain commission nor in subsequent Native Land Court investigations of title. In this portion of the region, questions of ownership revolved more closely around the relationships between the various allied incoming tribes, than the impact of the invasions on those already in occupation. Further to the north, it was a different matter. Purchase negotiations and land court investigation at the Rangitikei–Manawatu, Oroua River, and Horowhenua had to take into account the continuing presence of the original occupiers. The status and rights of these people vis a vis the invading tribes was a central issue in the conduct of land purchase activities in this part of the region.

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73. Ballara, 'Te Whanganui-a-Tara', p 30
74. C Heaphy, 'Notes on Port Nicholson and the Natives in 1839', *Transactions and Proceedings of the New Zealand Institute,* vol 12, 1879, p 34
75. DNZB, vol 1, p 522
76. In 1853, Ngati Kahungunu accepted a payment of £100 for their interests in Wellington Harbour, the Hutt, and Porirua (H H Turton, TCD, vol 2, deed 87, pp 266–267).

CHAPTER 2

ALIENATION OF WELLINGTON–PORIRUA

2.1 THE NEW ZEALAND COMPANY TRANSACTIONS

The New Zealand Company's claim to the Cook Strait region derived from three deeds of sale, the first signed by Te Ati Awa at Te-Whanganui-a-Tara, the second by Ngati Toa at Kapiti, and the third by a combination of Te Ati Awa, Rangitane, and Ngati Apa at Queen Charlotte Sound. In the case of Port Nicholson, the most significant deed was that resulting from the company's initial dealings with Te Puni and Te Wharepouri of Pito-one and Ngauranga Pa, who became the major protagonists of land sale to the company. This deed conveyed to the company all the land from Sinclair Head to Cape Turakirae and inland to the Tararua Range. Included within that area were the islands of the harbour and part of the inland Porirua district.

Contemporary accounts of the transaction between the company and the vendors raise questions about the validity of the purchase. Shortly after the *Tory* had arrived in the Cook Strait region, where the directors had suggested the first settlement be established, Wakefield met Richard Barrett. Barrett persuaded Wakefield to go to Port Nicholson, where his wife's relatives were living, and accompanied the *Tory* as pilot, and interpreter. On arrival, on 20 September 1839, they were greeted by Te Puni and Te Wharepouri, who arranged discussion of the sale at their villages of Pito-one and Ngauranga. Both the deed and the reserve system of 'tenths' were supposedly explained by Barrett. Later inquiry demonstrated, however, that Barrett had difficulty comprehending the contents of the deed, was incapable of performing an adequate translation, and could not have explained the real meaning of the sale. George Clarke junior, sub-protector, who was appointed to safeguard Maori interests during the land claim hearings, later commented that 'in no single instance of the Company's purchases have they been explained fully. Had they been so, I think no purchase would have ever taken place'.[1]

The deed was signed on the 27 September, the day after the display and division of payment goods (guns and ammunition, iron pots, soap, axes, fish hooks, clothing, slates and pencils, looking glasses, beads, umbrellas, sealing wax, and jews' harps) into six lots for distribution. About half of the 16 signatories were members of the

1. G Clarke jnr, 27 June 1844, *Letters to his Father, 1840–70*, Hocken Library (cited in J Miller, *Early Victorian New Zealand: A Study of Racial Tension and Social Attitudes 1839–52*, London, Oxford University Press, 1958, p 26)

Pito-one Pa. Several important chiefs, including those of Te Aro, Pipitea, and Kumutoto Pa, took little part in the proceedings. Wakefield invited Reihana Reweti, a Maori missionary, to witness the transaction but he refused to sanction it.[2] Barrett also expressed doubts about the transaction, telling Wakefield that not all owners had been consulted. The company agent ignored this caution, insisting that Te Aro people were a 'slave' tribe who need not be considered, and that they would be later compensated.[3] Despite evidence to the contrary, Wakefield maintained that he had effected the purchase of the whole of the Port Nicholson area and had the consent of all the principal chiefs of Te Ati Awa occupying the harbour area.

Two immediate reasons for the sale were given by the signatories. European arms and settlement would offer some protection against other tribes, especially Ngati Raukawa, with whom trouble was again brewing. When later questioned about the sale which he now admitted he had no right to effect, Te Puni summed up his immediate motivation: 'How could I help it when I saw so muskets and blankets before me?'[4] Ballara points out that Te Wharepouri and Te Puni reaped great immediate benefit from the sale: 'At one stroke Te Wharepouri acquired 120 muskets and 21 kegs of powder.'[5] In more general terms, they also wanted the wealth that European presence would bring and which had been previously monopolised by Ngati Toa, who controlled the major whaling station sites.

Underlying these apparently simple reasons were more complex political motivations deriving from the competition for control of land and resources. The act of sale was intended by Te Wharepouri and Te Puni to set the bounds of their mana over the harbour. There were three demarcation considerations here. 'Ngati Kahungungu' still contested the presence of Te Ati Awa. It seems likely that Te Puni and Te Wharepouri were also influenced by the increasingly strained relationship between their kin at Waikanae and Ngati Raukawa (supported by Ngati Toa), and wished to free themselves of Toa dominance in the Cook Strait region. Furthermore, they wanted to strengthen their position within the harbour itself, having recently quarrelled with their neighbours at Lambton Harbour (Te Aro and Pipitea Pa), who outnumbered them.[6] The Ngati Tawhirakuri chiefs achieved these ends by unilaterally offering the harbour area to Colonel Wakefield as if it belonged incontestably to them.

Ballara points out that the right of Te Puni and Te Wharepouri to sell was limited by the legitimate claims of other occupants within the bounds set by the deed – those of Taranaki and of Ngati Tama, who maintained a presence at Kaiwharawhara.[7] Rivalry continued with the occupants of Te Aro Pa who had sold some of their land to the Wesleyan Mission a few months earlier, thus denying that their rights of

2. Claim Wai 145 record of documents, doc A11, pp 31–32
3. P Burns, *Fatal Success: A History of the New Zealand Company*, Auckland, Heinemann Reed, 1989, p 116
4. N C Taylor (ed), *The Journal of Ensign Best, 1837–43*, Wellington, Government Printer, 1966, p 51
5. H A Ballara, 'Te Wharepouri', DNZB, Wellington, Allen Unwin and Department of Internal Affairs, 1990, vol 1, p 522
6. 'Reports by Commissioner of Land Claims on Titles to Land in New Zealand: No 1 – Port Nicholson', 31 March 1845, BPP, vol 5, pp 5–6
7. H A Ballara, 'Whanganui-a-Tara: Phases of Maori Occupation of Wellington Harbour c 1800–1840', in *The Making of Wellington 1800–1914*, D Hamer and R Nicholls (eds), Wellington, Victoria University Press, 1990, p 33

occupation derived from Te Ati Awa. The latter retaliated – firstly by the sale to Wakefield without acknowledgment of other proprietary claims. When Wakefield expressed interest in the flat piece of land on which the Wesleyan chapel stood, Te Wharepouri told him that it was already included within the company's purchase.[8] Secondly, they divided up the sale goods in a manner which reflected their own supremacy among the Port Nicholson pa. When Te Aro people accepted the smallest portion of goods, Te Puni and Te Wharepouri were satisfied that Ngati Tawhirakuri dominance had been acknowledged.

The fact of sale was also used to delineate borders with Ngati Kahungunu to the east. The boundaries described by Te Wharepouri to Wakefield were confirmed by the agreement reached between the tribes occupying Port Nicholson and the peoples of Wairarapa. During peace negotiations, Peehi Tu-te-pakihi-rangi of Wairarapa characterised the new understanding:

> I cannot occupy all the land. Yonder stands the great Tararua Range, let the main range be as a shoulder for us. The gulches that descend on the western side, for you to drink the waters thereof; the gullies that descend on the eastern side, I will drink of their waters. Remain here as neighbours for me henceforward.[9]

Accordingly, the Wairarapa was restored to its tangata whenua and its western boundaries set at the Tararua and Rimutaka Ranges. In exchange, 'Ngati Kahungunu' abandoned their claims to the west coast and Port Nicholson.[10]

2.2 THE KAPITI DEED

Soon after the first deed was signed, the *Tory* sailed to Kapiti in order to broaden the company's title by obtaining the rights of Ngati Toa to land on both sides of the strait. After several meetings extending over six days, a deed was signed by Te Rauparaha, Te Hiko, Te Rangihaeata, and eight other Ngati Toa chiefs. Te Rangihaeata was absent from Kapiti so goods (of a similar nature to those distributed at Whanganui-a-Tara) were set aside for him and on his arrival several days later, he added his mark to those of the others. The Kapiti deed purported to convey a vast territory to the New Zealand Company – all the land from 430 minutes south latitude in the South Island to an imaginary line at approximately 410 minutes south on the east coast – and listed localities within those wide parameters, as dictated by Te Rauparaha. The understanding held by Ngati Toa, and by company agents and employees of events on board the *Tory*, was widely divergent. Colonel Wakefield maintained that Te Rauparaha had intended to sell the sites he listed and that the deed had been fully explained to Ngati Toa. Captain Lewis, who had been resident in the area for some time, had told Ngati Toa that they were:

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8. P Burns, pp 116–117
9. D McGill, *Lower Hutt: The First Garden City*, Petone, GP Publications, 1991, p 22
10. Ballara, 'Te Whanganui-a-Tara', pp 32–34

> parting with all their land; that they would never get it back again, and that they would never receive any further payment than the one that they were just going to do. He also explained . . . the nature of the reserves made for them. They both perfectly understood him, and consented to the deed.

Te Rauparaha, however, denied any intention of alienating the places listed on the deed except for Whakatu (Nelson) and Taitapu (Massacre Bay). This view was tacitly supported by the later testimony of John Brook, who had been on board the *Tory*: only the boundaries of Whakaatu and Taitapu had been specifically pointed out on the map.[11] Tonk argues that Te Rauparaha had taken the opportunity to have the extent of his interests recorded in the European deed. The act of Pakeha dealing with them and the goods offered by Wakefield represented a tangible recognition of Ngati Toa claims to dominance in the region. Sale was thus seen as a means of strengthening rather than as weakening their title.[12] In turn, this would seem to indicate that Maori saw a need to augment the traditional bases of their claims to land, by virtue of sale and the written deed.

Wakefield also attempted to deal with Te Ati Awa at Waikanae, but found a battle in progress off the coast. The earlier sale seems to have contributed to a resurgence of hostilities between Te Ati Awa and Ngati Raukawa between whom a demarcation dispute continued. Ngati Raukawa, occupying the exposed shore at Otaki, were eager to control the ground opposite the anchorage at Kapiti in order to benefit from European trade opportunities, and thus were pressing on Te Ati Awa at Waikanae.

It has been suggested, too, that Ngati Raukawa were also angered that Te Ati Awa had benefited from the sale of land which they (Ngati Raukawa) considered them to hold on sufferance.[13] Burns describes Ngati Toa as 'caught between their two allies' and Ballara characterises Te Rauparaha as only reluctantly involved on the side of his Ngati Raukawa relatives. Tonk, on the other hand, argues that Te Rauparaha demonstrated his reaction to the sale of Te Whanganui-a-Tara by encouraging, or at least by permitting, the Ngati Raukawa attack.[14]

Te Ati Awa delegated Wiremu Kingi Te Rangitake and a few of the younger chiefs to accompany Wakefield to Queen Charlotte Sound. Some 30 chiefs signed a third deed for much the same territory as covered by the Kapiti deed.[15] Again, goods were 'distributed', or rather, divided in a fight on the deck of the *Tory*. The estimated value of these payments varies widely – from £365 for those paid to Te Puni and Te Wharepouri, to less than £9000, which total included the later payments

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11. Ballara, 'Te Whanganui-a-Tara', p 97
12. R V Tonk, 'A Difficult and Complicated Question: The New Zealand Company's Wellington, Port Nicholson, Claim', in *The Making of Wellington 1800–1914*, D Hamer and R Nicholls (eds), Wellington, Victoria University Press, 1990, p 44
13. Ballara, 'Te Whanganui-a-Tara', p 31
14. Burns, p 118; Ballara, 'Te Whanganui-a-Tara', p 31; Tonk, p 44
15. Burns, p 118

at Kapiti and Queen Charlotte Sound.[16] In exchange, the company claimed possession of 20 million acres.

2.3 THE CREATION OF THE TENTHS

The New Zealand Company, responding to missionary and Colonial Office criticism, made provisions for Maori in the new economic and social order that would result from systematic colonisation. These were contained in their land purchase arrangements. The company directed Wakefield to promise in every contract that one-tenth of the territory ceded would be set aside as reserves to be held in trust for the benefit of the chief families of the tribe. The reserved areas were to be chosen by ballot and scattered throughout the settlement:

> the intention of the Company is not to make reserves for the native owners in large blocks, as had been the common practice as to Indian reserves in North America, whereby settlement is impeded, and the savages are encouraged to continue savage, living apart from the civilised community, but in the same way, in the same allotments, and to the same effect, as if the reserved lands had been purchased from the Company on behalf of the natives.

Proximity to English settlers would also ensure that Maori participated in the increase in land value that would result from settlement. That Maori should share in prosperity which had not resulted from any contribution of labour or capital, was regarded as the real payment for their lands. Thus, in accordance with company instruction,[17] the 1839 deed included an explicit commitment to establish reserves in consideration for the extinguishment of title:

> William Wakefield, on behalf of the New Zealand Land Company . . . does hereby covenant, promise, and agree to and with the said chiefs, that a portion of land ceded by them, equal to one-tenth part of the whole, will be reserved by the . . . New Zealand Land Company . . . and held in trust for them for the future benefit of the said chiefs, their families, and heirs for ever.[18]

While Ngati Toa were not specifically promised 'tenths', Wakefield did make a pledge that a portion of the land ceded by them, suitable and sufficient for the residence and proper maintenance of the said chiefs, their tribes and families would be 'reserved and held in trust' by the company for their future benefit.[19]

The reserve arrangements were endorsed by the British Government in the November 1840 agreement which signalled the willingness of Lord John Russell,

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16. The lower sum is given by J Struthers in *Miramar Peninsula: A Historical and Social Study*, Trentham, Wright and Cramen, 1975, p 34; the higher by R L Jellicoe, in *The New Zealand Company's Native Reserves*, Wellington, Government Printer, 1930, p 18.
17. Instructions to Colonel Wakefield, 'Appendix to Report from Select Committee on New Zealand', app 2, BPP, vol 2, p 578
18. TCD, p 95
19. Second deed of purchase, 25 October 1839, 'Appendix to Report from Select Committee on New Zealand', app 2, BPP, vol 2, p 644

as new Secretary of State for the Colonies, to reverse the policy of his predecessors' and recognise the company as an instrument of colonisation. Under article 13 of the agreement, it was:

> understood that the company have entered into engagements for the reservation of certain lands for the benefit of the natives, it is agreed that, in respect of all the lands so to be granted to the company as aforesaid, reservations of such lands shall be made for the benefit of the natives by Her Majesty's Government, in fulfilment of and according to the tenor of such stimulations; the Government reserving to themselves, in respect of all other lands, to make such arrangements as to them shall seem just and expedient for the benefits of the natives.[20]

From this point, it was considered that the 'tenths' vested in the Crown which was to take control of their management at a very early stage in their history.[21]

The company instituted its reserve scheme. In the ballot of 1100 one-acre sections, every eleventh one was selected on the Maori behalf by Captain Mein-Smith, the company surveyor-general. Although this was in apparent fulfilment of company obligations within the deed of sale, Commissioner Spain later found that the reserves were inadequate to Maori needs. Sections were chosen with little consideration for their cultivation and living requirements or for the complex social and economic ties that bound Maori to their land. In Wellington itself, 600 acres were in actual occupation by the Maori but only 100 acres were allocated to them, and these were well scattered about town.[22] Of the nine pa in the Port Nicholson district, only three were reserved for Maori. In this sense, the occupants of Pipitea Pa were fortunate; their pa was chosen as a reserve, with other reserves close by on their former property. On the other hand, Gilmore points out that they were awarded only 2.3 percent of the 1500 acres traditionally claimed by them and they had not even consented to the sale.[23] Petone and Te Aro Pa were also reserved but Tiakiwai was 'wiped off the map'.[24] In the subsequent selection of 'country sections', the Maori were allocated approximately 4200 acres in 100-acre lots.[25] Many of these were located across country so hilly that they were impossible to cultivate. Others were selected on bare coastal hills with poor soils.[26] Pipitea missed out on country sections, as did Tiakiwai. Pito-one retained their gardens as well as their pa, but the lands of Kaiwharawhara, Ngauranga, and Waiwhetu were taken.[27]

The idea of reservation, as conceived by the company, was also largely unintelligible to Maori, because it entailed movement onto lands traditionally occupied by another whanau. As Ward points out:

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20. Russell to Hobson, 10 March 1842, BPP, vol 3, p 87
21. 'Memorandum by Mr A Mackay on Origin of New Zealand Company's "Tenths" Native Reserves', AJHR, 1873, G-2B, pp 10, 17
22. Miller, p 49
23. N Gilmore, 'Kei Pipitea Taku Kainga – Ko te Matehau te Ingoa o Taku Iwi: The New Zealand Company "Native Reserve" Scheme and Pipitea, 1839–1880', MA thesis, La Trobe University, 1986, p 30
24. Burns, p 158
25. Jellicoe, p 30
26. Wakefield to Secretary, 13 May 1846, NZC 3/6 (cited in Miller, p 49).
27. Burns, p 209

> The difference between Maori and settler concepts, evident in the pre-1840 transactions, still remained. Notwithstanding the deeds . . . the resident Maori clearly had no intention of handing over both the ownership and control of this vast territory and putting themselves at the disposition of the Company's officers.[28]

2.4 MAORI REACTION TO SALE

Opposition to any sale soon surfaced along the shores of Whanganui-a-Tara in a variety of forms. Te Ropiha Moturoa (of Te Matehou) at Pipitea Pa objected that he had a superior claim to the Pipitea and Te Aro lands because his brother-in-law, Patukawenga of Ngati Mutunga, had given them to him six months before Te Wharepouri had even arrived in the harbour. He had refused to participate in the sale to the New Zealand Company and subsequently sold approximately four acres at Pipitea to Robert Tod in an assertion of his right to do so.[29]

Reaction intensified when the company settlers moved from the initial flood-prone site near Te Puni's pa in the Lower Hutt to the Lambton Harbour. This occupation was immediately opposed by the inhabitants of Te Aro, Pipitea, Kumutoto, and Tiakiwai Pa, who interfered with the survey effort. They argued that the land had not been sold by them. Nor had it been paid for, the purchase goods being unfairly divided. Wakefield sent 20 blankets in an attempt to settle the claims but, according to Tonk, the recipients considered them to be either a gift, or as a payment to stop them from disrupting the survey.[30]

The survey continued after a show of force. Roads and sections were staked out through the pa, over cultivations, and through burial grounds.[31] The struggle between Maori and company settlers, and between the company and Crown, centred on these areas. Te Ati Awa had little interest in the reserves allocated to them in the company lottery and clung doggedly to their established villages and gardens. Thus, they continued to occupy the best lands, title to which colonisers now thought they possessed. A 'kind of slow tug-of-war commenced'.[32] Three years into settlement, George Clarke junior, commented:

> In the course of my visit to the different cultivations, I found that the white settlers did just what they liked, pulled down fences and drove the cattle on the potatoes. This is the systematic robbery by which the company's settlers deprived the natives of the plantations . . . and it requires my very utmost energies to keep the Europeans in check and the natives from adopting violent measures in self-defence.[33]

Ngati Toa also protested the right of Te Puni and Te Wharepouri to sell any land in the region. While they seem to have accepted the presence of Europeans along the

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28. A Ward, 'A Report on the Historical Evidence: The Ngai Tahu Claim, Wai 27' (claim Wai 27 record of documents, doc T1, p 75)
29. Ballara, 'Te Whanganui-a-Tara', pp 32–34
30. Ibid, p 46
31. Select Committee on New Zealand, J W Child, 2 July 1884, BPP, vol 2, p 233
32. Miller, p 49
33. G Clarke jnr, 15 March 1843, *Letters to his Father, 1840–70*, Hocken Library (cited in Miller, p 68)

harbour shore, Ngati Toa resisted encroachment on the Hutt Valley and the Porirua district. Te Rauparaha and Te Rangihaeata emphatically denied that these areas had been sold either by Te Ati Awa or themselves, but it was becoming difficult for them to restrain the activities of the increasingly numerous English settlers. Although he later admitted that the entire district from Porirua to Wanganui was unpurchased,[34] Wakefield was initially insistent that the company had bought the land and authorised a road to be cut through to the proposed Porirua settlement. Again Maori protest centred on the survey, which they disrupted by removing pegs, destroying bridges and surveyors' huts, and felling trees over the road. In the November dispatch of 1841, Hobson reported:

> The natives of Kapiti, who claim the land at Parorua, speak out more boldly [than those of Port Nicholson], asserting that they will surrender their lands but with their lives; and they have already made a show of following up this determination, by interrupting the construction of a road through the disputed lands, and obstructing the communication between Wellington and Wanganui, by tapuing a river over which it was necessary to pass.[35]

Governor Hobson asserted the Crown's right of constructing roads through the colony and informed Te Hiko that while he 'supported the natives in their just rights', he would 'as firmly maintain those of Her Majesty'. The Governor emphasised that road building was a 'measure intended for the benefit alike of the native and as well as the European population'.[36] The road and access up the coast remained an issue, Rangihaeata placing a tapu for settlers and their stock over an area intersecting the route to Wanganui.

Trouble also broke out in the Hutt Valley. Te Rangihaeata interrupted the efforts of settlers to build four houses upon section 57 near the harbour on the Porirua Road early in 1842. According to Thomas Mason, the Pakeha whose cultivation in the Hutt brought to the surface the potential conflict there:

> The settlers offered him [Te Rangihaeata] payment to let them alone, but he refused it, saying that Wakefield had not purchased this land, and that he did not want payment, and that the white settlers must remain at Port Nicholson.[37]

When the settlers persisted, Rangihaeata ordered his people to pull down the house and remove the timber off the land. Clarke reported that:

> everything was done with caution and system, and the whole was given to the owners, except one hatchet, which after a strict search could not be found, and for which, I understood, Rangiaiata offered immediate payment.[38]

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34. Samuel Revans, 26 May 1841, *Letters to H S Chapman, 1835–42*, ATL (cited Miller, p 28)
35. Hobson to Secretary of State, 13 November 1841, BPP, vol 3, p 171
36. Ibid
37. T Mason, *Letters 1841–85*, ATL
38. George Clarke jnr, 13 December 1842, 'Appendix to Report from Select Committee on New Zealand', app 4, BPP, vol 2, p 124

2.5 THE SPAIN COMMISSION

The resolution of conflicting land claims rested with the Spain commission. A more detailed discussion of Spain's investigations and findings may be found in work by R V Tonk, and submissions by Moore, Armstrong, and Stirling.[39]

One of the first Crown priorities in 1840 was to clarify land title. Normanby's Instructions had directed that a commission be set up to investigate pre-annexation purchases. Gipps and Hobson issued proclamations to this effect in January 1840. The commissioners would report on the lands that British subjects had obtained, the payment made, and the fairness and legality of those transactions. On receiving their reports, the Lieutenant-Governor would decide which claims would be confirmed by issue of a Crown grant.[40]

A separate commission was established to deal with the claim of the New Zealand Company to the Cook Strait region. Spain was appointed in January 1841 and, in common with the other commissioners, was instructed by Russell to be guided in his deliberations by 'the real justice and good conscience of the case without regard to the legal forms and solemnity'. He was directed that the object of his commission was primarily the 'prevention of future wrongs' rather than the 'redress of past injustices'.[41] Spain was also to give effect to the agreement reached in November 1840, under which the Crown undertook to ensure that the company had sufficient land for settlement. A Crown grant was to be issued for four times as many acres as pounds spent by the company, an area calculated as being 111,000 acres in the Port Nicholson area.

In the opinion of Russell, Hobson, and Spain, such grant was contingent upon proof of fair purchase.[42] The November 1840 agreement assumed that a valid sale had taken place, but when the commission began hearings in May 1842, it was soon revealed that the company's claim was shaky. The relationship between Crown and company officials deteriorated rapidly. As it became clear that Spain intended a detailed examination of the claim, Wakefield began a campaign of obstruction and delay which eventually undermined Maori confidence in the commission and the Government.[43]

Spain carried on conscientiously over the next four months. Te Ati Awa as well as Pakeha witnesses were examined. Responsibility for production of witness fell largely on Clarke, who had to combine the duties of sub-protector and assistant to the commission – a task complicated by his less than cordial relations with the commissioner.[44] Te Ati Awa initially welcomed the opportunity to testify. Extensive testimony was taken. Evidence given in Maori was recorded in that language and also translated into English while disputed sites were sometimes visited by the court.[45]

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39. D A Armstrong and B Stirling, 'A Summary History of the Wellington Tenths 1839–88' (claim Wai 145 record of documents, doc C1)
40. Tonk, p 35
41. Armstrong and Stirling, p 133
42. Ibid
43. Ibid, pp 147–148
44. G Clarke, *Notes on Early Life in New Zealand*, Hobart, J Walch and Son, 1903, p 47
45. Tonk, pp 48–49

Almost all Maori witnesses disputed the company's claim, and by August 1842, it was clear that Spain would recommend a grant for only a portion of the company's claim to Port Nicholson, forcing Wakefield into a more conciliatory position. Referring to a private letter in which Hobson stated that the Government would sanction any equitable and unforced arrangement reached by the company to induce Maori to 'yield up possession of their habitations', Wakefield now offered to compensate those who had missed out on the initial payment, suggesting that the amount be decided by Spain and Halswell, the company's Protector of Aborigines.[46]

Spain was prepared to adopt Wakefield's proposal, and urged Shortland to endorse it.[47] Spain accepted the evidence of Maori that land could not be alienated without the agreement of all members of the tribe – and that this had not been won – but believed that Maori were willing to carry through the sale. He saw this as giving him an opportunity to fulfil his dual obligations:

> an accession to Colonel Wakefield's proposition would have enabled me to settle a most difficult question upon quiet and equitable grounds, having always in view, on the one hand, the carrying out strictly the agreement entered into between the Government at home and the New Zealand Company, and on the other hand, to do this in such a manner as strictly to fulfil every treaty made between the Crown and the aboriginal inhabitants, as well as every assurance of protection made to them by Governor Hobson as the representative of Her Majesty.[48]

Spain feared that the development of the colony would be undermined if the claim was not settled soon:

> It appeared to me, also, that any further delay was likely to have the effect of creating a disinclination on the part of the natives to cede to the Europeans any more land in the neighbourhood of Port Nicholson, arising from the knowledge they are daily acquiring in their intercourse with the settlers of the value of the land at that time as selling in the market, as well as of the enormous rents paid for that let; which would naturally lead them to the conclusion, that it would be better for them not to sell but to let their land to the white people, which would have enabled them to live upon the rents without working, of which they are not over fond.[49]

That fear of the consequences of increasing Maori knowledge of land values underlay Spain's reluctance to insist on a complete repurchase. He believed that Maori insistence on current market value for their lands would result in the collapse of the colony. In his opinion, any benefits to Maori from such a return of land would be far outweighed by the loss of the European presence amongst them.[50]

Tonk argues that Spain, faced with established settlement and a hugely complex task of sorting out exactly which pieces of land the signatories of the 1839 deed had

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46. Hobson to Wakefield, 5 September 1841, BPP, vol 5, p 105
47. Spain to Shortland, 2 August 1843, 'Appendix to Report from Select Committee on New Zealand', app 4, BPP, vol 2, encl 1, p 174
48. Report of Commissioner Spain, 12 September 1843, 'Appendix to Report from Select Committee on New Zealand', app 9, BPP, vol 2, p 295
49. Ibid, p 296
50. Ibid

the right to sell, moved from the original mandate of deciding whether the purchase was fair and valid to determining what compensation should be paid to those who had not signed the deed or had been left out of the initial distribution of trade goods. The payment of that sum would correct the company's defective title. The Acting Governor, Shortland, endorsed the general proposal, directing that the amount to be paid was to be decided by Clarke and a company nominee. Shortland later recorded that he had explained the nature of the arrangements to the assembled 'chiefs of the district'. He had 'assured them that their interests would be most anxiously protected by the Government, and advised them to place the fullest reliance on the decision of Mr Clarke and Mr Spain.' According to Shortland, the chiefs had expressed themselves 'perfectly satisfied with what was proposed to be done', and had stated that their only 'wish was to be allowed to live peacefully with the Pakeha, and to cultivate the lands to which they were habituated; but that the boundaries of the land of the white man and of the Maori must be clearly defined'.[51]

Discussions were held as to the amount of compensation to be paid.[52] When Maori made what were considered to be excessive demands, Clarke reached a figure on their behalf. He decided that £1050 should be paid to the occupants of Te Aro, Pipitea, and Kumutoto Pa for lands sold by the company to settlers – excluding the company reserves, pa themselves, cultivation, and burial grounds. Clarke considered this sum to be largely secondary; the real payment lay in the reserves and the creation of an endowment. He included the company's reserves because he believed that this land had never been alienated and must remain in Maori ownership 'in fulfilment of the company's engagements with them'.[53] Wakefield rejected the demand, and an impasse having been reached, Spain decided to begin his investigation of west coast claims.[54]

2.6 SPAIN'S INVESTIGATION OF THE WEST COAST CLAIMS: MANAWATU

In March 1843, Spain, accompanied by Clarke and Meurant, the commission's new interpreter, travelled up the west coast to investigate New Zealand Company and private claims in that part of the country. Maori witnesses included members of Ngati Toa, Te Ati Awa based at Waikanae, and Ngati Raukawa. While this widening of the inquiry threw light on the relationships between the migrant tribes and doubt on the ability of any party to alienate large tracts of territory, questions of the rights of earlier occupants were not raised – nor did they come forward to testify.

After evidence was heard from several witnesses at Porirua as to different claims along the coast, the commission travelled to Wanganui, holding preliminary discussions at Waikanae, Otaki, Horowhenua, and Manawatu. Spain reported:

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51. Shortland to Lord Stanley, 17 April 1843, 'Appendix to Report from Select Committee on New Zealand', app 2, BPP, vol 2, pp 53–54
52. Armstrong and Stirling, pp 133–165
53. Ibid, p 15
54. Tonk, p 53

> On my journey from Port Nicholson to Wanganui, the natives of Manawatu, as I passed their river, expressed a very strong desire to meet and confer with me on the subject of the alleged sale of their lands there to Colonel Wakefield. I explained to them, through my interpreter, that I was on my way to Wanganui, to investigate claims there; that Colonel Wakefield had agreed to meet me there, and accompany me back to Port Nicholson, and that we would stop at Manawatu on our return, and examine their case. They appeared, however, so desirous of having a korero with me upon the subject, that I yielded to their wishes, and I now enclose minutes of what occurred at that meeting.[55]

Returning south after the Wanganui sitting, Spain began his official investigation of the company's claim to land between the Rangitikei and Horowhenua Rivers to the Tararua Ranges. This claim derived from a transaction between Wakefield and a section of Ngati Raukawa chiefs in 1841 to 1842, rather than from any of the 1839 deeds. Te Whatanui, after discussions at the head of the Manawatu River and Otaki, had led a deputation of six chiefs to offer their land to the company. Wakefield treated Hobson's statement that the Government would sanction any equitable and unforced arrangement to induce Maori, living within limits that included the Manawatu, to yield up their habitations, as constituting permission to institute a fresh purchase.[56] Terms were discussed between a large gathering of Ngati Raukawa and company officials at Otaki in December 1841. Ngati Raukawa rejected the payment offered as inadequate, and Wakefield agreed that more goods should be sent from Wellington. Some 300 Ngati Raukawa from both sides of the Manawatu gathered to receive the payment in February 1842. Goods for absentees were set aside, but subsequently ransacked, and only those reserved for the Otaki people were saved for distribution.[57]

The evidence heard by Spain comprised admissions by Te Whatanui, Ahu Karama, and Taratoa that they had agreed to sell land at the Manawatu – referred to as Raumatanga by a number of witnesses – and denials of any participation in that transaction by others. It was clear that Taikoporua, a chief from the upper reaches, had neither consented to the alienation nor participated in the distribution of goods.[58]

Spain believed that Wakefield had 'altogether exceeded the permission granted to him by Hobson', but that the arrangement reached in January 1843 whereby the company could pay compensation, enabled him to consider their Manawatu claim.[59] But when Wakefield, Spain, and Clarke later travelled up the coast in January 1844 in order to pay over £3000, Ngati Raukawa refused to accept payment. The commissioner blamed this apparent change of heart on Te Rauparaha's presence.[60]

In Waikanae, the ability of Ngati Toa chiefs to sell land without the agreement of Te Ati Awa was stoutly denied. The principal chief, Reretawangawanga, stated that the signatories of the Kapiti deed were closely connected to Te Ati Awa and

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55. 'Reports by Commissioner of Land Claims on Titles to Land in New Zealand: No 6 – Manawatu', BPP, vol 5, p 101
56. Ibid
57. Ibid, p 99
58. Ibid, p 101
59. Ibid
60. Ibid, p 102

once had held authority over the Waikanae lands but no longer did so. Despite quarrels with Ngati Raukawa, Te Ati Awa had been in undisturbed possession of the area for 17 years.[61] This statement was corroborated by Ketetakari who dated Te Ati Awa's complete independence from Te Rauparaha from the battle of Kuititanga.[62]

2.7 SPAIN'S DECISION AT PORIRUA

At Porirua, where the commission sat for two weeks, Spain heard further evidence on the New Zealand Company's claim for lands there and at Nelson. It was the Kapiti deed that was largely under examination.[63] Spain came to the conclusion that, while Wakefield had intended this deed to be 'general and over-riding', embracing the rights of the principal chiefs, the company's claim to the Porirua district was based almost entirely upon that transaction. This being the case, Spain argued:

> that document, which must, therefore, for the purposes of my present inquiry, be regarded merely as a purchase-deed of that district only, and the evidence adduced by the Company's agent in support of this claim, as well as that of the native parties to it, proves but little more than that the name of the district was included amongst many others mentioned in the description of the territory.[64]

The testimony revealed serious inadequacies in the arrangements transacted at Kapiti. Te Rauparaha and Te Rangihaeata would admit only to the sale of Taitapu and Whakatu respectively. Their denial of any alienation in the Porirua district was corroborated both by other Ngati Toa witnesses and by their subsequent opposition to the company's claim. Spain thought the translation and explanation given to Ngati Toa chiefs had been deficient and given 'the positive disclaimer of every native witness as to the sale of Porirua', found that 'whatever may have been the . . . presumptions of the Company's agents at the time, no sale of that district was ever contemplated or supposed by the signing chiefs.' He, therefore, disallowed the company's claim:

> All the circumstances detailed in the evidence quoted taken into consideration, with the stedfast [sic] opposition by the selling parties to any occupation of the district of Porirua, by the Company's settlers from the earliest attempt to locate them there, have induced me to decide against the Company's claim to that tract of land . . .[65]

As a consequence, the purchase had to be renegotiated. But that transaction, in 1847, was deeply coloured by the intervening conflict between Ngati Toa and the Government in the Hutt Valley, and by the agenda of Governor Grey.

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61. Spain commission, Reretawangawanga, 29 April 1843, OLC series 1/907, p 5, NA Wellington
62. Spain commission, Ketetakari, 29 April 1843, OLC series 1/907, pp 48, 50 NA Wellington
63. Spain commission, W Wakefield, 9 June 1842, OLC series 1/907, pp 131–133, NA Wellington
64. 'Reports by Commissioner of Land Claims on Titles to Land in New Zealand: No 5 – Porirua', BPP, vol 5, p 95
65. Ibid, p 98

2.8 PRIVATE CLAIMS

Private claims were also under investigation and Spain hoped to complete his investigation into these matters during the trip to Wanganui. Approximately 30 private claims were advertised for hearing by Spain – however, not all were pursued. Most concerned Kapiti and land at Porirua. Cases of interest include the awarding of a life interest only to John Bradshaw, for approximately three acres at Te Karaka Point, Porirua Harbour, on the grounds that although a deed of sale had been signed and goods of £17 received, the signatories had not intended a permanent alienation.[66] A similar award was made in the case Joseph Toms, a whaler, who claimed 40 acres at Titahi Bay. Ngati Toa admitted the sale of lands at Kapiti Island and Queen Charlotte Sounds to Toms. In the case of Titahi Bay, however, the evidence suggested that Nohorua had given Toms (his son-in-law) a life interest only, and had intended that the land should be inherited by his grandchildren. Spain granted 247 acres to the native reserves trustees which Toms could use during his lifetime, but which he could not sell, and which would go to his children on his death.[67] At Paremata, Toms was also granted just under five acres, including the area below the high-water mark, since this land had been bought as a whaling station. Goods to the value of £163 had been handed over and the sale was acknowledged by Ngati Toa.[68]

In the case of Mana Island, Spain recommended a grant of 1872 acres should be issued to Henry Moreing, to whom two of the original purchasers (in 1832, for £78 in goods) had transferred their interests. The Crown subsequently granted the whole of the island to Moreing on the understanding that if it contained more than the acreage awarded, the original grant would be surrendered and a new grant issued. However, on survey the area awarded was found to contain only 525 acres.[69]

The Polynesian Company claimed to have purchased a large block of land at Porirua by a deed signed in October 1839 by Te Hiko, Rangi Hiroa, Te Rauparaha, and Te Rangihaeata in exchange for goods valued at some £200. A second, slightly larger, payment was made a year later, but the exact location and extent of the purchase remained undefined. Since the transaction and receipt of payments were admitted by Ngati Toa, Spain disregarded the shortcomings of the deed and recommended the award of land scrip to each shareholder.[70]

In contrast, Te Rangihaeata and Te Rauparaha denied the sale of Kapiti, its station and rights to whale in adjacent waters, even though they admitted the receipt of £85 in cash and goods. While Spain accepted that the evidence of Tungia Hurumutu's daughter, Oriwia, supporting the claim of Couper, Holt, and Rhodes, he believed that it would not be possible to enforce the sale. A total of 688 acres on the opposite coast was thus awarded to the Sydney merchants, in addition to the 722 acres allowed in respect of their claim to all the lands between the Waikanae and

66. R V Tonk, 'The First New Zealand Land Commissions, 1840–45', MA thesis, University of Canterbury, 1986, p 203
67. Ibid, p 204
68. Ibid
69. Claim 553, Henry Moreing, Mana Island, MA series 91/24, NA Wellington
70. Tonk, 'Land Commission', pp 207–208

Otaki Rivers. However, Te Ati Awa resident at Waikanae prevented the Kapiti award from being taken up.[71]

Private claims, concerning Port Nicholson lands, may be briefly mentioned here. These include the cases of Tod, Scott, Barker, and of Whitely, on behalf of the Wesleyan Missionary Society.

Despite the warnings of the company's representative that it claimed the whole area, in January 1840, Tod acquired two small pieces of land near Pipitea Pa from the non-signatories of the November 1839 deed. One claim comprised approximately one acre of partially-fenced land with beach frontage, sold by Te Ropiha for £12. Tod had acquired a further 2½ acres on the flat behind Pipitea Pa, the proceeds of the transaction being shared by Ropiha, Mangatuku, and Richard Davis, a Christian Maori who had been cultivating some of the land. Both sales were fully acknowledged by Ropiha, over the opposition of the company, and allowed by Spain.[72]

In 1831, just over one acre of land at Kumutoto had been sold by Pomare, the Ngati Mutunga chief, to flax trader David Scott. A deed had been signed, payment had comprised four muskets and a 100-pound cask of powder, and the land had been fenced and built upon. Scott had removed from the area after the battle of Haowhenua. But when the trader returned in 1840, the sale was acknowledged by Wi Tako, who had settled Kumutoto on the departure of Ngati Mutunga for the Chatham Islands. The Te Ati Awa chief agreed to build a house to replace one that had been burnt down, re-erected the fence, and acted as a caretaker for Scott, for which he received a half-cask of gunpowder, a mare, and a foal. In court, both Wi Tako and Pomare admitted the sale, and again, Spain declared the purchase to be valid.[73]

Thomas Barker claimed to have purchased two acres of beach front near Pipitea, also from Richard Davis, who had received the land from Ngake, a relative of his wife, and son of Patukawenga. Barker agreed to a payment of £70, paying a £10 deposit to Davis and some goods and 10 blankets in payment to Ngake. Although Ngake, Davis, and the people of Pipitea acknowledged the alienation, Spain disallowed the claim because, in his opinion, it savoured of fraud. The deed was prepared with the knowledge that the company had formed a settlement at Port Nicholson. Although dated 12 November 1839, the deed had not been signed until April 1840, nor the full purchase price paid.[74]

The Wesleyan Missionary Society had given £2 worth of goods as a deposit for land at Te Aro by Te Awarahi and Ngatata. The goods were presented to Pomare, who was visiting, before being distributed among themselves. A chapel had been built on the land, but Whitely told Spain that the mission was prepared to withdraw its claim if one acre of land was confirmed to the Wesleyan Missionary Society. FitzRoy endorsed the proposal on Spain's recommendation.[75] Other sales include 40

71. Ibid, p 206
72. 'Reports by Commissioner of Land Claims on Titles to Land in New Zealand: No 1 -- Port Nicholson', 31 March 1845, BPP, vol 5, p 18
73. Ibid, p 17
74. Tonk, 'Land Commissions', p 167
75. Ibid, pp 167–168

to 60 acres to Henry Williams at Tiakiwai Pa on Haukawakawa Flat, in an effort on his part to ensure that Te Matehou retained some land.

In his assessment of the Port Nicholson private claims, Commissioner Spain drew attention to the difference in Maori testimony with regard to the company and non-company purchases:

> In the former, with few exceptions, it goes to deny, or to only partially admit the sales, while in the latter it tends generally to admit the sale, and the receipt of consideration, and usually to describe clearly the boundaries of the land sold.[76]

Gilmore makes the point that the sale of small areas such as this, in contrast to the sort of area claimed by the company, did not represent a threat to the Maori occupants of the harbour and 'was done with control and consideration to meet their own [Te Matehou] needs'.[77]

2.9 THE QUESTION OF CULTIVATIONS

On his return to Wellington, on 23 May 1843, Spain reopened his inquiry into Port Nicholson claims. Wakefield continued to stall on the question of compensation, endangering the credibility of the commission and the Government. Events in the Wairau eventually forced him towards compromise – none the less, Wakefield attempted to include pa, cultivations, and urupa within the lands for which compensation would be paid. Spain was not prepared to give way on this point:

> I could not, however, agree to their pahs, cultivations and burying-grounds being taken from them without their free consent, because it appeared clear, from the evidence, that they had never alienated them.
>
> This arrangement might be met with the objection that some of their pahs, cultivations and burying grounds had been sold by the Company and that roads and streets had been laid out through and over them, in the plan of the town of Wellington; the answer to which would be, that the present inconvenience of such an arrangement to the Company or to the parties claiming under them, could form no tenable grounds of argument why an act of injustice should be committed against any of Her Majesty's subjects, and more particularly the aboriginal inhabitants, who, from the darkness that had hitherto reigned among them, must require a greater degree of special care and protection of the Government (especially in a matter involving the retention or non-retention of their homes, gardens and burying grounds of their fathers) than the Europeans, who are so much more capable of protecting their own interests, and who have voluntarily left their native lands to seek a home amongst the New Zealanders.[78]

Spain closed his court. Anxious to make secure the titles of settlers, and believing that Maori identified the commission and the Crown itself with resolution of the

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76. Report of Commissioner Spain, 12 September 1843, 'Appendix to Report from Select Committee on New Zealand', app 9, BPP, vol 2, p 305
77. Claim Wai 145 record of documents, doc A11, p 35
78. Report of Commissioner Spain, 12 September 1843, 'Appendix to Report from Select Committee on New Zealand', app 9, BPP, vol 2, p 296

issue, Spain recommended that the Government pay Maori compensation and hold the debt against the company.[79]

FitzRoy, newly appointed as Governor, reopened the negotiations with the company in early 1844. He, Spain, Clarke, Forsaith, and Wakefield met at the residence of Major Richmond, police magistrate and former land commissioner, on 20 January. The Governor reiterated the Crown's position that the payment of such compensation would not extinguish Maori title to pa and cultivations. But now that these were to be defined, such areas were seen exclusively in terms of actual occupation. FitzRoy considered the limits of pa to be 'the ground that is fenced around their native houses, including the ground in cultivation or occupation around the adjoining houses without the fence'. Cultivations were 'grounds in actual cultivation'. Falling within the definition of cultivation, and thus, to remain within Maori ownership, were any areas used for gardening by Maori after 1840.[80]

In February, Clarke resubmitted his assessment of compensation, now at £1500, but Maori had yet to be persuaded to accept this sum. His proposed distribution of that amount was strongly criticised by Spain as including too much for Wi Tako of Kumutoto who had signed the deed, received a portion of the purchase goods, and who was, in the opinion of the commissioner, a man of 'no particular standing or rank amongst his countrymen'. Spain's opposition was, however, overruled by the Governor.[81]

A meeting was held at Spain's court, attended by the Governor, Spain, Richmond, Clarke, Forsaith, Wakefield, and the people of Te Aro, Kumutoto, Tiakiwai, and Pipitea, to present the arrangements that had been decided. FitzRoy assured Maori of the 'fullest justice', stressing the importance of a final resolution of the case.[82] According to Tonk, the major concern was to induce Te Aro occupants, whose lands were essential to the development of the settlement, to accept Clarke's proposed compensation. There was a general unwillingness to allow Maori the benefit of the post-1840 rise in land value, on the grounds that such an increase resulted from European capital and labour. Maori were reluctant to accept an offer which they considered to be trifling, but finally agreed under a combination of implicit and explicit threats on the part of officials, including Spain, Clarke, and FitzRoy. Clarke told Maori that Te Aro was a conquered land, of 'small consequence to them', and that they had no alternative but to accept compensation because the lands had already been built upon and would not be returned. FitzRoy also pressured Te Aro occupants to accept £300 for a valuable area in the heart of the town by stressing the worthless nature of Maori land.[83] On Te Aro acceptance of £300, the

79. Ibid, p 307
80. Minutes of the Conference held at Major Richmond's on Monday, 29 January 1844, BPP, vol 5, pp 18–19
81. 'Reports by Commissioner of Land Claims on Titles to Land in New Zealand: No 1 – Port Nicholson', 31 March 1845, BPP, vol 5, pp 9–10
82. *New Zealand Gazette* and *Wellington Spectator* (cited in Armstrong and Stirling, pp 165–177)
83. P Adams, *Fatal Necessity: British Intervention in New Zealand 1830–47*, Auckland, Auckland University Press, 1977, pp 191–192; N Gilmore, 'Kei Pipitea Taku Kainga – Ko te Matehou te Ingoa o Taku Ini: The New Zealand Company "Native Reserve" Scheme and Pipitea 1839–88', MA thesis, La Trobe University, 1986, p 42; Tonk, 'A Difficult and Complicated Question', pp 56–58; Armstrong and Stirling, pp 165–178

smaller pa of Pipitea, Kumutoto, and Tiakiwai also gave in. Pipitea and Kumutoto received £200 each, and Tiakiwai £30.

2.10 THE HUTT VALLEY

Clarke had also allocated £300 for Te Rauparaha and Te Rangihaeata for their interests in the Hutt. Spain objected to the inclusion of Ngati Toa in the payments, rejecting their claim as unsupported by occupation, but deferred to Clarke's judgment. Ngati Toa had accepted the presence of Pakeha at the Port Nicholson settlement but had never acknowledged the alienation of the Hutt. Te Rauparaha and others had made statements in the April 1843 hearing that he claimed the valley and had not sold it to the New Zealand Company.[84] When the Te Aro compensation meetings began, Te Rauparaha warned the Government, 'This was the cause of you and us getting wrong at Wairau, the foolishly paying to the wrong parties'. Spain and Clarke travelled to Porirua to try to reach a settlement, but Te Rauparaha refused payment. Spain suggested to Te Rauparaha that he was reneging on an understanding reached at Waikanae. Te Rauparaha maintained that he thought that the payment would be for Port Nicholson – all the land south of the Rotokakahi Stream. The refusal of Te Rangihaeata – whose claim was acknowledged to be the stronger in the valley – to consent to the sale, also influenced Te Rauparaha in this decision.[85]

On Spain's refusal to accept the Rotokakahi boundary, Te Rauparaha warned that Maori resident in the valley would refuse to recognise any sale that included land to the north of the stream. This was not understood by Spain and Clarke, neither of whom seem to have had a clear appreciation of the intricacies of tribal affairs in the valley. Although Spain had earlier recognised that no territory constituted 'wildlands' in the eyes of Maori, it was difficult for Europeans to see this heavily forested area as anything other than wasteland. Spain later wrote to Te Rauparaha:

> Here is a vast country, whose scanty population is incapable of occupying the whole. In such a case it is the law of the natives of Europe that the inhabitants of such a country have no right to appropriate to themselves more land than they have occasion for, or more than they are able to settle and cultivate. Their settled habitation in those regions cannot be held a true and legal possession, and the natives of Europe too closely pent up at home, and finding land of which the natives stand in no particular need, and of which they make no actual and constant use, are lawfully entitled to take possession of it and settle it with colonies.[86]

None the less, he argued, the British Government had 'bargained fairly', paying Maori 'largely and liberally' while setting aside reserves and securing their cultivations.

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84. Tonk, 'Land Commissions', p 232
85. Ibid, p 234
86. Spain to Te Rauparaha, 'Reports by Commissioner of Land Claims on Titles to Land in New Zealand: No 1 – Port Nicholson', 31 March 1845, BPP, vol 5, encl 8, p 34

In fact, the valley was a resource area for a number of iwi. Te Ati Awa had cultivated lands, extending up the valley for one and a half miles from the beach, but the northern part (from present Park Avenue) had been utilised during the 1830s by Ngati Rangatahi. Little is known about these people or their relationship to other migrating groups. They appear to have come, originally, from Otorohanga, and were related to Ngati Toa through Te Rauparaha's grandmother, Kimihia. They joined in the migrations from the north after the battle of Taraingahere, eventually occupying land north of Porirua Harbour, where they were based by the late 1830s. At some point – either during the initial southward migration, or during a retreat to the north after an attack by Ngati Kahungunu – they developed a relationship with people of the upper Whanganui River. Subsequent events in the Hutt would suggest, too, a close relationship with Ngati Tama. Ngati Rangatahi were granted rights of cultivation by Te Rauparaha for their assistance in the migratory struggle and in exchange for gifts of tribute. They had never lived permanently in the valley but had periodically visited it for birds, timber, and so on. Cultivations were maintained only for the duration of their visits.[87]

Strengthening the misperception of the valley as 'unoccupied' was the fact that it was in a state of two-year abandonment at the time of the original sale, having been placed under tapu by a Ngati Toa chief (possibly Te Rangihaeata) offended at not receiving his share of tribute. An alternative contemporary explanation was that they had been driven out by Ngati Kahungunu. When sufficient recompense had been made by Ngati Rangatahi, they were able to resume their interests in the valley under the leadership of Kaparatehau. During 1841 to 1842, they began to bring the land over which they had formerly exercised seasonal rights, under permanent cultivation, to supply crops for the burgeoning Port Nicholson market. They were joined in this venture by Taringa Kuri and Ngati Tama, under pressure at Kaiwharawhara from cattle trampling crops, and by some Whanganui kin.[88]

Spain and Clarke thought that Ngati Toa acceptance of compensation would settle the matter because they saw the valley occupants as acting under the orders of Te Rauparaha and Te Rangihaeata in a calculated attempt to impede settlement and increase the compensation due to them. In Spain's eyes, Taringa Kuri was a troublemaker, while he classified Ngati Rangatahi as 'slaves' of Ngati Toa.[89] Although they would be given one year in which to harvest their crops, neither were included in compensation – because Ngati Rangatahi had been present when the Petone deed was signed and because Ngati Tama had received a portion of the purchase goods.[90] But, by this stage, the various cultivators of the valley considered themselves to have accumulated rights independent of Ngati Toa. They had exercised cultivation and resource rights in the up-river valley for some 10 years,

87. R D Hanson, 'Extracts from a Letter to Captain FitzRoy', p 10 (cited in C Evans, 'Struggle for the Land in the Hutt Valley', MA thesis, Victoria University, 1965, p 3)
88. I Wards, *The Shadow of the Land: A Study of British Policy and Racial Conflict in New Zealand 1832–52*, Wellington, Government Printer, 1968, p 224
89. 'Reports by Commissioner of Land Claims on Titles to Land in New Zealand: No 1 – Port Nicholson', 31 March 1845, BPP, vol 5, p 15
90. P Ehrhardt, *Te Whanganui-a-Tara Customary Tenure, 1750–1850*, Waitangi Tribunal Research series, 1993, no 3, p 34

and since their return had established a permanent pa and were quickly bringing the fertile soils of the valley into production to the extent that within five years, 100 acres were in cash crops.[91] They had not received any share of the 1844 payments to Te Ati Awa and Ngati Toa, and it seems likely that Ngati Rangatahi, in particular, would resist any attempt to remove them from their occupation.

The commission returned to Wellington and continued to settle claims there. A further £30 was offered to both Ngauranga and Petone Pa. Te Puni at first refused to accept these sums. Tonk interprets this refusal as an indication of a continuing lack of Maori differentiation between a payment, compensation, and a sale. To Te Puni's way of thinking, if the original transaction was valid, no further payment was necessary; if this was a second sale, he could not accept less than other chiefs without undermining the pre-eminence which he had claimed by his initiative in 1839. This money was placed in a bank for the future benefit of Te Puni's people.[92] The Waiwhetu people also declined payment, arguing that they were entitled to more since they had missed out in the initial distribution of goods. Spain warned them that the land would be taken in any case and the money spent on their behalf by the Government. Left with no say in the disposal of their land, Waiwhetu accepted, with reluctance, £100 and a promise that reserves would be set aside for them.[93]

The Hutt question remained unsettled, with Taringa Kuri beginning in March to cut an aukati, running from Rotakakahi Stream. But by April, most of the work of the commission in Port Nicholson was considered to be completed. Kaiwharawhara Pa had accepted £40, Waiariki £20, and Pakuao and Tikimaru £10 each. Oterango and Ohau also had been pressured into accepting £20, having been told that the amount would not be increased and the land would go to the Europeans whether they agreed or not.[94] No negotiations had been held with Ohariu inhabitants who were at the Rangitikei, deliberately it was suspected, since their chief was Taringa Kuri who was defying the Government in the Hutt Valley. Their consent was not regarded as essential, however, since the Ohariu land was not required for settlement[95] and the survey of the external boundary was commenced.

2.11 THE MANAWATU CLAIM

Towards the end of the month, Spain and Clarke made a second trip up the coast, to finalise compensation arrangements at Manawatu, Wanganui, and New Plymouth. They were accompanied by Wakefield, carrying £3000 in New Zealand Company funds to make immediate payments. But they now found strong opposition to sale along the coast and the money for Manawatu was refused. Spain blamed Te Rauparaha's influence. He was present at Otaki where Spain was told by a chief named Matui that payment would not be accepted by Ngati Raukawa – and spoke

91. M K Watson and B R Patterson, 'The Growth and Subordination of the Maori Economy in the Wellington Region of New Zealand, 1840–52', *Pacific Viewpoint*, vol 26, no 3, 1985, p 525
92. Tonk, 'A Difficult and Complicated Question', p 56
93. Tonk, 'Land Commissions', p 237; Armstrong and Stirling, p 203
94. Armstrong and Stirling, p 181
95. Tonk, 'A Difficult and Complicated Question', p 57

angrily against the sale at Ohau.[96] Taikaporua's opposition was, however, long-standing. Te Whatanui and Te Ahu Karama remained committed to the sale, but Taratoa was no longer willing to finalise the transaction and continued to oppose alienation of the Manawatu over the next 20 years. On refusal of payment by the majority of Ngati Raukawa, and since there was no deed or authority for the post-1840 purchase under which Spain could issue a grant, the company's claim failed except for a 100-acre block, 'Te Taniwa', at Horowhenua which Te Whatanui and Te Huri, acting on behalf of the other owners, transferred by deed to the company on 25 April 1844.[97]

Spain believed that it would not be possible to persuade those, such as Taikaporua, who had not received any of the purchase goods to accept compensation for their claim. But, since a partial sale had been effected, he recommended that the company be given a right of pre-emption to the lands between the Rangitikei and the Horowhenua Rivers.[98]

2.12 THE GRANT AT PORT NICHOLSON

Spain had devoted many weeks to the investigation of the New Zealand Company's claim at Port Nicholson. In that time, he acted conscientiously, and genuinely endeavoured to withstand the pressures of the company and settlers to automatically endorse their claim. He and Clarke provided a forum for Maori complaint and made a genuine attempt to understand principles of Maori ownership. However, Spain did not question that Maori would benefit from the presence of Europeans and, although he acknowledged that the transaction had been neither fully understood nor endorsed, he did not seriously consider disallowing the purchase altogether. Instead, he attempted to find a compromise between Maori rights as owners and the needs of settlement, through the payment of compensation which would validate the transaction.

For their part, by 1845 the various Te Ati Awa and allied communities of the area accepted the presence of settlement, and that this would be to their ultimate benefit – a belief actively encouraged by Crown agents such as FitzRoy and Spain. They, too, were eager for the matter to be settled, but objected to the levels of payment being offered. Their expectations were not met. When some parties – the Te Aro, Waiwhetu, Oterango, and Ohaua groups – continued to refuse the proposed settlement, pressure was applied and their objections overridden. Maori were also promised repeatedly during negotiations, that they were guaranteed the possession of their pa, cultivations and burial sites. Those assurances soon came under threat.

Fitzroy was recalled on 30 April 1845. The following week Spain filed his final report on the company's claim, and in July FitzRoy issued a Crown grant for 71,900

96. 'Reports by Commissioner of Land Claims on Titles to Land in New Zealand: No 6 – Manawatu', BPP, vol 5, p 102
97. Deed of conveyance from Watanui to New Zealand Company, 'Reports by Commissioner of Land Claims on Titles to Land in New Zealand: No 6 – Manawatu', BBP, vol 5, encl 15, pp 108–109
98. 'Reports by Commissioner of Land Claims on Titles to Land in New Zealand: No 6 – Manawatu', BBP 5, p 104

acres at Port Nicholson, including the Hutt lands, on the basis of Spain's recommendations. Company reserves, burial grounds, pa, and cultivations as defined at Major Richmond's in early 1844, were specifically excepted from the grant. It remained unclear, however, exactly what land was to go to the company and what was to be retained by Maori. Some reserves had been let by administrators on long-term leases to Europeans. As migration pressures grew, Maori found the areas for their residence occupied. Reluctant, in any case, to move onto reserved 'tenths', they often continued living and cultivating sections belonging to absent white owners. The Hutt remained in dispute and the survey of boundaries had not been completed since the prerequisite of survey to grant, required under the Lands Claim Ordinances 1840 and 1841, had been dropped in the interests of speeding up the process.[99] Nor was the land remaining to Te Ati Awa, although excluded from the company award, Crown granted. These areas, as a consequence, were not safe from encroachment.

This proved the case when the company rejected the grant deriving from Spain's awards because the quantity of land comprising Maori cultivations would exclude one-sixth to one-quarter of the developed part of Wellington. It was also protested that the extent of reserves had been fixed in the belief that 'the whole of the remainder was to be the Company's property'.[100] On these grounds, and over the question of awards to private purchasers (eg, Tod), the company requested that a new grant be executed. Pressured by Buller's attack on behalf of the company in the House of Commons, Lord Stanley offered the Government's assistance in securing their title to the lands comprised in the purchases:

> With a view, therefore, to facilitate this object, Lord Stanley would (if the Company were to desire it) despatch forthwith to the colony a properly qualified person, whose duty it should be to give his best assistance to the Company in their selection of land, to aid in surveying the exterior boundaries of such selections, and to judge of the reasonableness of the terms of any purchase which the Company might make from the natives, with reference to the Company's right to reimbursement in land in respect of money's paid for such purchase.[101]

This offer was forwarded to Grey, who had been appointed Lieutenant-Governor in June 1845. In fact, Grey, who had already challenged FitzRoy's awards, unsuccessfully, on grounds of irregularity[102] anticipated Stanley's instructions by annulling FitzRoy's grant. Grey took a similar position to the company's, that the internal boundaries had not been sufficiently defined. The description of cultivation was 'very vague', making it impossible to know what lands should be excluded from the grant.[103] But Grey argued too, that the company reserves were 'in some respects insufficient for their present wants, and ill-adapted for their existing notions'. He acknowledged that it would be necessary to secure to Maori, 'in addition to any

99. Tonk, 'Land Commissions', pp 78–81
100. Secretary of New Zealand Company to Gladstone, 23 February 1846 (cited in 'Report on Native Reserves in Wellington and Nelson under Control of Native Trustee', AJHR, 1929, G-1, pp 24–25)
101. Hope to Ingestre, 7 August 1845, 'Copy of Letter from Lord Ingestre to Lord Stanley on the 24th day of July and the Reply', BPP, vol 4, p 5
102. Tonk, 'Land Commissions' p 303
103. Grey to McCleverty, 14 September 1846, and encl, BPP, vol 5, p 62

reserves made for them by the New Zealand Company, their cultivations, as well as convenient blocks of land for the purpose of future cultivation in such localities as they may select themselves'.[104]

2.13 CRISIS IN THE HUTT VALLEY

Colonel McCleverty was sent to assist in the adjustment of the New Zealand Company's claim in December 1845 but, by this stage, the situation had deteriorated badly in the Hutt Valley. The crisis had been developing throughout 1844 and 1845. Up to the end of 1844, officials, particularly Richmond, as Superintendent of the Southern District, had been attempting to resolve the question. But the thrust of negotiations had been directed solely towards persuading the Maori to vacate the valley. Richmond made it clear that while the Government would compensate the occupants for their crops, it would not recognise any claim to the land itself.[105] Te Rauparaha, seeking to cooperate with the Pakeha, had agreed to give up his claim. But he did so without Te Rangihaeata's concurrence, and his attempts to persuade the occupants to abandon the valley were ignored. Te Rangihaeata continued to support Ngati Rangatahi's claim, insisting that they be given the upper portion of the valley before he would accept the alienation of the rest (the larger, coastal portion) to the whites.

By March 1845, it appeared that Te Rangihaeata was willing to regard the matter as solely between Ngati Tama, Ngati Rangatahi, and the Government. He refused, however, to add his weight to efforts to dislodge them. He accepted compensation but did not regard this as affecting the claims of Ngati Rangatahi.[106] That view was not shared by Pakeha. Wards suggests that throughout the escalation of conflict, Ngati Toa demonstrated a willingness for accommodation and that the conditions were ideal for arbitration.[107] But the actions of Te Rangihaeata and Te Rauparaha were often misinterpreted, while the question of Kaparatehau's rights and the future of his people were largely ignored. Both settlers and officials became frustrated by what seemed to them to be trickery and extortion. It was widely believed that lack of retaliation for Wairau had made Maori generally, and Ngati Toa in particular, confident that Pakeha were too weak to retaliate. There was mounting pressure for an armed resolution of the Hutt question. Even relatively level-headed men such as Spain and Hadfield believed that a sharp military lesson should be inflicted for moral effect and to convince Ngati Toa that resistance to British law would be futile.[108] But Governor FitzRoy, after his experience in the north, was reluctant to initiate a policy of military pacification and refused 'to enforce a sale of land, vi et armis'.[109] Although military support was promised in the event of attack, no troops would be sent in the meantime.

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104. Ibid, p 63
105. Moore, p 75
106. Wards, p 231
107. Grey to McCleverty , 14 September 1846, and encl, BPP, vol 5, p 62
108. Adams, p 227
109. FitzRoy to Spain, 3 June 1844, G 13/1 (cited in Wards, p 228)

For their part, Te Ati Awa rejected the claims of others in the valley. Tensions continued to build and in April 1845, Te Puni, caught between two conflicting forces asked Richmond for Government protection and offered assistance in any fighting.[110] Richmond refused the offer, but had decided that force would be necessary and began the construction of forts in both Wellington and the Hutt. In May 1845, Te Rangihaeata had moved with a 500 to 600 strong party to the Hutt, where they were joined by Te Mamuku, a Ngati Haua Te Rangi chief from the Wanganui River who wished to support the Whanganui Maori in the valley.[111] In August, Kaparatehau was threatening to cut a boundary line at Boulcott's farm which would 'dispossess' settlers in the upper valley.

2.14 THE POLICY OF GOVERNOR GREY

In February 1846, Grey arrived in Wellington, armed with new instructions from the Crown and backed by troops, whose presence did little to allay the suspicions of Maori already sceptical of arrangements concerning their land. His attempts to negotiate the withdrawal from the valley were undermined by military dispositions and assessments of compensation at a level unlikely to be acceptable to Maori.[112] Grey believed that a display of military force would be sufficient to persuade Maori to vacate the valley. Negotiations should continue but resistance would be met by force.[113] The Governor regarded Taringa Kuri as the principal 'intruding chief' and insisted that Ngati Tama show proper respect for the Government by leaving the valley, after which he would consider giving compensation for lost crops as a token of good faith, not as a recognition of their legal entitlement. No discussions were held with Kaparatehau. Grey then rejected Protector Kemp's estimate of £1500 compensation, called for two further estimates – Police Magistrate St Hill suggested £207 10s, and Assistant Surveyor Fitzgerald £420 8s 9d – before finally settling on the figure of £371.[114]

Maori had largely vacated the valley by 21 February 1846, but returned to warn off settlers who had immediately attempted to move in. Grey reacted with a demonstration of military power, moving troops up the valley where they occupied land just north of Boulcott's farm. Taringa Kuri kept his agreement with Grey, withdrawing from the valley, in exchange for land at Kaiwharawhara, agricultural tools, and goods worth £70 as compensation for crop loss, but the situation with Ngati Rangatahi remained unresolved. They were now beginning to suffer from the disruption to their cultivation. Kaparatehau stated that his people (numbering between 60 and 70 persons) were hungry and agreed to relinquish his claim if they were adequately compensated. Upon Grey's insistence that Ngati Rangatahi move before being compensated, and after much persuasion on the part of Reverend Taylor, Kaparatehau agreed to leave the valley. Upon their departure troops

110. Richmond to FitzRoy, 4 April 1845. NAM 10/2, pp 66–70 (cited in Wards, p 232)
111. Wards, pp 236–237
112. Ibid, pp 242–245
113. Ibid, p 240
114. Ibid, p 242

ransacked and burnt their homes, destroyed the chapel, and violated their urupa. Wards states that it can be presumed that this destruction took place on Grey's orders and that 'this hasty and ill-considered act put Grey irretrievably in the wrong'.[115] Kaparatehau retaliated, raiding the property of those who had settled on land claimed by him (on the banks of the Hutt and Waiwhetu). Grey had drawn up a proclamation of martial law, in reaction to the ransacking, for issue on 2 March. He was initially dissuaded from this course by the Crown Prosecutor, who told him that this would be illegal because the Maori involved were entitled to resist in terms of the Crown grant. But when shots were exchanged at the military post at Boulcott's farm on 3 March, Grey was provided with a justification for proclaiming martial law over the region south of Wainui.[116]

Grey's primary concern was the creation of an area of European dominance between Wellington and Wanganui.[117] The Hutt conflict provided an opportunity for opening access to Porirua. Grey's first priority was to establish Paremata and Upper Hutt as frontier posts. Control of the Paremata inlet was the key not only to the defence of Wellington but also to future expansion northwards, because it enabled the domination of communications in the region. In order to supply the garrison, and with an eye to the fertile lands to the north, he gave instructions for the construction of a military road, upgrading the New Zealand Company's work on the track to Porirua. If possible, the road 'was to be carried as far north as Wainui, and within this limit every exertion was to be made to enforce British authority'.[118] Despite his long-term efforts to obstruct the passage of the road, Te Rangihaeata refrained from attacking the troops working on it, and kept his promise not to actively oppose the Government. Wards argues that, in contrast, Grey's actions:

> ran strictly counter to what the Maoris had been so solemnly promised. The land through which the new road was being driven, and the site of the garrison at Paremata, belonged not to the Crown, or to the Company, but to the Maori tribes.[119]

The same lack of adherence to principles of justice was demonstrated in the treatment of Te Rauparaha. According to Ruth Allan, Grey's imprisonment of the chief in July 1846 'on suspicion of complicity' in the fighting 'owed more to expediency than to strict observance of the letter of the law'.[120]

2.15 THE FATE OF NGATI RANGATAHI

Over the course of 1846, the occupants of the valley were driven out. Te Ati Awa assisted the Government troops in the conflict. Wi Kingi, based at Waikanae, helped prevent more Whanganui joining their relatives in the Hutt. Te Puni's people

115. Ibid, p 245
116. Ibid, p 246
117. Grey to Earl Grey, 26 March 1847, BPP, vol 6, p 7
118. Wards, p 257
119. Ibid, pp 258–259
120. R M Allan, *Nelson: A History of Early Settlement*, Wellington, A H & A W Reed, 1965, p 306

attacked Te Rangihaeata from the Pauatahanui–Hutt trail and gave chase to north of Paekakariki after the final battle at the top of the Horokiwi Valley in August. Te Rangihaeata took refuge at Poroutawhao, while Kaparatehau and his people retreated to the Rangitikei River, where McLean reported them to be living in poverty, and on the sufferance, in the late 1840s. They were still there in 1870 when a reserve, Te Reu Reu, was created by McLean to accommodate Ngati Rangatahi and other groups whose title to the Rangitikei–Manawatu block had been denied by the court. It would appear that some Ngati Rangatahi attempted to return to the Hutt. According to Wards, Kaparatehau died there in 1850, and was buried on the very land from which he had been forced some four years earlier. A subsequent land court judgment denied any Ngati Rangatahi entitlement in the 'tenths' land, but implied that at least some members had participated in the McCleverty awards, then moved back onto Government-owned land in the valley before eventually departing the region for the Rangitikei River and Taumarunui regions. It is possible that some Ngati Rangatahi descendants were later (in the 1890s) included among the owners of Otari 5A on whakapapa presented by Ngati Tama.[121]

2.16 CHANGING PUBLIC POLICY

The alacrity and firmness with which Grey could institute his imperial policy reflected the Colonial Office's increasing commitment to colonisation and hardening attitude to the rights of the Maori. The tenor of Grey's own instructions, issued in two separate dispatches from the Colonial Office in June 1845, left him far less restricted than had been his predecessors.[122] In the general instructions of 13 June, Stanley directed Grey to uphold the Treaty 'honourably and scrupulously'. Adams argues, however, that the Crown was unable to administer the policy to which it was publicly committed. FitzRoy's inability to control the situation in the north and increasingly vociferous demands from New Zealand Company settlers that the British law protect them and punish Maori 'outrages', resulted in the Colonial Office taking a harder line towards Maori. This was most clearly demonstrated in a requirement for their absolute subjection to the law. In 1844, FitzRoy had been told to practise caution and patience, particularly as lack of military backing 'might forbid interference in cases where otherwise it might be advisable'.[123] In contrast, Grey 'would of necessity enforce that submission by the use of all the powers, civil and military' that were at his command.[124] His authority was substantially increased by the Colonial Office's commitment to sending sufficient troops to meet existing problems and a promise that they should be at Grey's disposal until peace was restored.[125]

The separate despatch of 27 June 1845 to Governor Grey indicated that this hardening military stance was accompanied by a declining respect for Maori rights

121. My thanks to Neville Gilmore for this information.
122. Wards, pp 257–258; Burns, p 286
123. Adams, p 226
124. Wards, p 173
125. Ibid

of possession. Earlier instructions had emphasised the importance of Maori retaining sufficient land for their needs and of the Crown acquiring land for Maori endowment purposes. Stanley now suggested that the boundaries to all the lands owned by Maori 'should be distinctly recognised and set forth under the sanction of the Sovereign authority, with a view of preventing future dissensions between the Native Tribes, or between the Natives and British settlers . . .'[126] Land which had not been brought within the European title system within a few years would then be at the Crown's disposal as 'unoccupied' territory.

This policy was not put into effect, but its conception was indicative of the declining influence of humanitarianism and a move towards the principles on which the 1844 select committee recommendations rested. In 1846, Earl Grey, who was now Secretary of State for the Colonies, sent new instructions to Governor Grey, in which this more restrictive attitude was more firmly expressed. Earl Grey was of the view that:

> From the moment that British dominion was proclaimed in New Zealand, all lands not actually occupied in the sense in which alone occupation can give right of possession, ought to have been considered as the property of the Crown in its capacity of trustee for the whole community . . .[127]

He recognised that a principle of Crown possession of 'unoccupied' lands would be difficult to enforce but directed Governor Grey to look upon this precept as the 'foundation of the policy' he was to pursue whenever possible.[128]

2.17 THE CROWN PURCHASE OF PORIRUA

Governor Grey, who had left Wellington immediately after issuing instructions for the construction of the stockaded road, returned in February 1847 to resolve the conflict between Ngati Toa and New Zealand Company settlers. This took the form of negotiating the purchase of the Porirua district. Not only was it considered desirable to place settlers on the sections which they had bought from the company, but the acquisition of the area was still seen by Grey as being vital to the security of Wellington and the settlement of the Kapiti Coast. In his despatch to Earl Grey, the Governor emphasised the strategic advantages of the purchase, '[I]n a military point of view, the possession of a great part of the Porirua district, and its occupation by British subjects, were necessary to secure . . . Wellington and its vicinity from hostile attacks . . .'[129]

The land acquired by Grey comprised the company's 270 sections of 100 acres each, in order to meet 'the specific claims of European settlers' and 'a very extensive block of country to meet the probable prospective requirements of the Government

126. Stanley to Grey, separate instructions, 27 June 1845, G1/3 (cited in Wards, p 172)
127. Earl Grey to Governor Grey, 23 December 1846, BPP, vol 5, pp 68– 69
128. Ibid, p 69
129. Governor Grey to Earl Grey, 26 March 1847, BPP, vol 6, p 7

and settlers'.[130] McCleverty, who had been asked to judge the reasonableness of the price, valued the area at £2000. The purchase boundaries were only vaguely described within the deed as 'at the Kenepuru, running to Porirua, Pauatahanui, Horokiri, extending as far as Wainui, then the boundary takes a straight course inland to Pouawa, running quite as far as Pawakataka'.[131] The accompanying map states that the eastern boundary was that determined by Commissioner Spain for the Port Nicholson district. The Crown grant, issued to the company on 27 January 1848, was for 68,896 acres.

The deed by which the disputed Porirua land was conveyed to the Governor was signed by eight Ngati Toa chiefs – Rawiri Kingi Puaha, Te Watarauihi Nohorua, Mohi Te Hua, Matene Te Whiwhi, Tamihana Te Rauparaha, Nopera Te Ngiha, Ropata Hurumutu, and Paraone Toangira. Puaha also signed on behalf of Te Waka Te Kotua and Tapui, both of whom were included in the subsequent payment. It may be doubted whether these signatories represented the full and willing consent of Ngati Toa to the alienation of this territory. The deed did not state that these individuals were acting on behalf of the tribe and they apparently neglected to distribute the 1847 payment further.[132] Furthermore, the consent of neither Te Rauparaha, still in captivity, nor Te Rangihaeata, who was in hiding, was sought. A punitive attitude was alleged to have characterised Grey's conduct during the transaction. That this was the case was the more likely in that the negotiations for Porirua and Wairau were linked. According to a contemporary newspaper report, 'During the discussions [. . .] on the sale, the natives evinced considerable anxiety for the release of Te Rauparaha, but they were given distinctly to understand that he would not be liberated'.[133] George Clarke placed an adverse construction upon this refusal. He described the sale as a 'disreputable bargain':

> Thompson, Rauparaha's nephew, remonstrated against the proceedings but by threats to retain Rauparaha withdrew his remonstrance, and when the Governor was told that the bargain was incomplete without the consent of Rangihaeata the Govr. said he was a rebel and would not treat with him.[134]

Clarke's perception may have been coloured by his critical attitude towards Grey. In any event, the imprisonment of Te Rauparaha and the military harassment of Te Rangihaeata meant that Ngati Toa were bereft of their traditional leadership during land negotiations. The past resistance to white occupation of his territory demonstrated by Te Rangihaeata in particular, would strongly suggest that he would have refused to countenance the alienation of Porirua. Further evidence of resistance to and dissatisfaction with the sale is to be found in an immediate attempt 'to repudiate the deed, and re-claim the greater part of the lands . . . including Takapu, Paua-tahanui, and half the Horokiri Valley' as soon as Grey departed for Wanganui.

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130. Ibid, p 8
131. Turton, Deeds, no 22, p 127
132. Serrantes to Colonial Secretary, 27 March 1848, AJHR, 1861, C-1, p 247
133. *New Zealand Spectator*, 20 March 1847
134. G Clarke, 3 October 1848 (cited in J Rutherford, *Sir George Grey KCB, 1812–98: A Study in Colonial Government*, London, Cassell, 1961, pp 165–166)

According to an account by Best, a settler who attempted to bring his stock on section 63 at Pauatahanui was ordered off by the commanding officer at the military post and threatened by McCleverty with prosecution under the Native Lands Ordinance. When Grey returned on 13 March, however, he 'at once put the settler on his land, and expressed his opinion of Ngati Toa in vigorous terms'.[135]

The purchase arrangements combined apparently generous treatment with measures designed to keep Ngati Toa in submission to British authority. The settlers considered the purchase sum of £2000 recommended by McCleverty as exorbitant, although this represented a payment of something less than sevenpence per acre. This amount was to be paid in three instalments – the first sum of £1000 was paid on 1 April 1847, to 10 chiefs, eight of whom had signed the deed: Rawiri Kingi Puaha, Te Watarauihi Nohorua, Mohi Te Hua, Matene Te Whiwhi, Tamihana Te Rauparaha, Ropata Hurumutu, Nopera Te Ngiha, and Paroone Toangira. Te Waka Te Kotua and Tapui, who had been absent at the time of signing, also received payment.[136] Two further instalments, of £500 each, were paid in 1848 and 1849. The division of the payment into annual instalments was promoted by Grey as both having 'a powerful influence on the future advancement of the natives in civilisation', progressively teaching them judicious habits of expenditure, and as giving the Government 'an almost unlimited influence over a powerful and, hitherto, a very treacherous and dangerous tribe'.[137]

Three large, contiguous blocks, extending from Arataura to Wainui and incorporating 16 of the country sections claimed by the company, were excluded from the sale. The exact acreage of this land is not known because these boundaries were not surveyed, and later records vary in their figures for individual blocks and for the total reserved area.[138] A tally of the acreages recorded in the Certificates of Title, subsequently issued, indicate that over 10,000 acres had been excepted from the 1847 alienation. Again, the reservation of this extent of territory appears, at first glance, to be a relatively generous measure. Richmond described the acreage as 'ample', explaining to Wakefield that this was necessary because the owners 'were only willing upon these terms to alienate their lands'.[139] This figure represented 40 acres per head of Ngati Toa population, which Kemp estimated at some 250 in 1850.[140] The reserved area included Taupo Pa, an important focus of Ngati Toa activity, and part of the harbour, but critical positions 'commanding the road and anchorage, and thereby necessitating the presence of troops' were deliberately excluded.[141]

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135. H Fildes, 'Scrapbook on Porirua', MS Papers 1081, p 19, ATL
136. Serrantes to Colonial Secretary, 27 March 1848, AJHR, 1861, C-1, p 247
137. Governor Grey to Earl Grey, 26 March 1847, BPP, vol 6, p 8
138. The index to Turton's Deeds states that 7000 acres were reserved.
139. Richmond to Wakefield, 23 March 1847, NZC 3/7, p 96, NA Wellington (cited in J Luiten, 'Whanganui ki Porirua', claim Wai 52 record of documents, doc A1, p 9)
140. H T Kemp, Report No 1: Port Nicholson District (including the Town of Wellington), *New Zealand Gazette (Province of New Munster)*, vol 3, no 16, 21 August 1850, p 72
141. W Wakefield to Secretary of the New Zealand Company, 23 February 1847, New Zealand Company (NZC) series 3/7, no 23, NA Wellington

2.18 THE McCLEVERTY COMMISSION

McCleverty had been directed by Governor Grey to complete the exterior boundary survey of the New Zealand Company's lands at Port Nicholson and to ascertain what lands belonged to Maori under the definition of pa, cultivations, and sacred places. If these areas interfered with settlers' claims, he was to arrange for their purchase or exchange for other lands. Grey advised that 'it would be essential that every exchange of this kind should be one which is rather advantageous to the natives than otherwise'.[142]

McCleverty found that of 639 acres under cultivation, 528 acres were on sections sold to Europeans. Although much blame for the confusion and for the tension between Maori and Pakeha was laid on the lack of boundary definition, the real crux of the issue lay in the fact that the cultivations were on the most desirable land in the area. This was in contrast to the reserves, which were largely unsuited to Maori needs. It was estimated by surveyors that less than half of the 4200 country acres so designated were of useable land and McCleverty calculated that at least 1200 acres would have to be offered to the Maori to win their agreement to surrender the lands under cultivation. Since the Government did not own sufficient land suitable for this purpose in the Port Nicholson area, he proposed that land be awarded from existing company, Government, and public reserves.[143]

By agreement of the Government, acting on behalf of the Native Trust, a number of sections were taken out of the company 'tenths' and awarded to individual hapu.[144] Jellicoe gives the figure of 44 town sections and 2868 country acres and describes the remaining sections as being drawn from the town belt and unsurveyed land. According to Heaphy, lands awarded to Maori were as follows: 2525 acres from the tenths, 12,205 acres from the company's estate, 3495 acres from 'disputed land', and a further 959 acres from 'doubtful territory' at Waiariki and Tekamaru. Any discrepancy in these calculations derives from the absence of McCleverty's schedules, showing the designations of land from which the reserves were drawn. Additionally, Governor Grey purchased another 406 acres at Hutt and Wainuiomata to supplement these areas.[145]

On the whole, Maori gave up small but good sites near the harbour and settlement for larger, outlying blocks. The Crown defended the size of the substitutions on these grounds. Lieutenant-Governor Eyre quoted McCleverty to Wakefield, 'The lands now relinquished by the natives are their very best, selected on account of soil aspect and vicinity to their homes, whilst the lands they receive . . . have not these advantages'.[146] Replacement lands were to be selected by Maori themselves, but whether this was directive was carried out is obscured by the lack of minutes or

142. Grey to McCleverty , 14 September 1846, encl Grey to Gladstone, 14 September 1846, BPP, vol 5, p 63
143. Armstrong and Stirling, pp 259–263
144. 'Memorandum by Mr A Mackay on Origin of New Zealand Company's "Tenths" Native Reserves', AJHR, 1873, G-2B, p 9
145. Ibid, p 25; C Heaphy, 'Memo on the Wellington "Tenth", Being Remarks of Mr A MacKay's Paper', 29 August 1873, Justice Department (J) series 1/1903/1024, p 25, NA Wellington (claim Wai 145 record of documents, doc A39, p 212)
146. Eyre to Wakefield, 25 November 1847, New Munster (NM) series 5/1/69, p 118, NA Wellington (claim Wai 145 record of documents, doc A43, p 307)

reports on the negotiations. There are indications, however, that this was not the case. McCleverty and Grey rejected the Maori request that they should be given lands within company subsidiaries larger than the 100 acres that were supposed to comprise the country sections. And although Maori expressed a wish to stay near the town, most of the land allocated to them were in outlying areas.[147] Within Wellington, Maori retained only three pa, 105 acres of the surveyed land that had been sold, and 219 acres of the town belt. Some valuable land was retained at Waiwhetu and the Hutt (some 100 acres of flat land and 200 acres of steep bush area). Relatively large acreages were awarded outside Port Nicholson. Much of this land lay in the Orongorongos and was unsuitable for cultivation, but was intended to serve as a hunting and gathering area.[148]

In 1847, the Maori chiefs of the area entered into a third series of deeds, by which they agreed to give up the disputed cultivations 'in exchange for certain other land'. The reasons for their acquiescence in McCleverty's exchanges is at issue between the claimants and the Crown. Gilmore argues that Te Ati Awa were willing to accept the exchanges for security of possession, because each hapu was being guaranteed land which traditionally belonged to it, and because the land awarded was of just a sufficient quality and quantity to meet their current needs.[149] It is the position of the Crown, however, that this acquiescence reflected genuine Maori acceptance of the essentially satisfactory nature of those arrangements.

The areas to which Maori claims were admitted and which were subsequently registered at the Wellington survey office were contained in the following deeds:

Deed number	Date	Area (acres roods perches)
Te Aro deed no 4	22 March 1847	526a 1r 31p. Their pa of 2a 1r 11p was also guaranteed
Te Aro deed no 7	7 October 1847	A further 50a
Waiwhetu deed no 5	30 August 1847	246a
Ngauranga deed no 6	4 October 1847	212a
Petone deed no 8	13 October 1847	6926a 37p
Ohariu and Makara, deed no 9	18 October 1847	2202a 24p
Pipitea deed no 10	1 November 1847	7436a
Kaiwharawhara deed no 11	undated	Three blocks containing 440a and their pa guaranteed at Kaiwharawhara and Tiakiwai

A new Crown grant for 209,372 acres was eventually issued to the company in 1848. The area reserved to Maori under McCleverty's awards totalled 18,926 acres 3 roods 31 perches, although there is some discrepancy in the figures quoted by

147. A Ward, et al, 'CCJWP Historical Report on Wellington Lands', p 61 (claim Wai 145 record of documents, doc A44)
148. Armstrong and Stirling, pp 268–270
149. Claim Wai 145 record of documents, doc A11, p 56

sources. Mackay in his memorandum on the tenths gives the acreage granted as 209,247. Heaphy's estimate of reserved area was 18,226 acres in the original arbitration, which was later enlarged by Government purchase to 19,591 acres.[150] This arrangement was intended both to satisfy the terms of the November 1840 agreement and to complete the settlement between the company and Te Ati Awa initiated in 1839 and extended by Spain's 1844 recommendations. In Governor Grey's words the awards were devised 'to extinguish absolutely the native title to the tract purchased, but to reserve an adequate portion for the future wants of the natives'.[151]

2.19 IMPACT ON WELFARE OF MAORI IN WELLINGTON

Initially, Maori took advantage of the opportunities offered by the increasing presence of Europeans and, in turn, made important contributions to the growth and welfare of Wellington. They cleared land, performed domestic duties, acted as guides and most significantly, provided much of the food for the new settlement in the early years. Maori dominated the market for pigs, potatoes, wheat, and seafood. They quickly adopted cash cropping, much of this activity being centred in the disputed Hutt Valley. In 1840, there were few permanent cultivations in the valley; by 1846, 102 acres were being farmed with a market value of £208 to £420. A year later, Maori were cultivating 528 acres of the district, over 80 percent of which was claimed by the New Zealand Company.[152] From the late 1840s, Maori production declined while that of Europeans increased for most crops. This inversion coincided closely with the reallocation of Port Nicholson and Hutt reserves in the McCleverty exchanges. Crop acreage dropped by 74 percent as Maori gave up cultivation lands claimed by settlers.[153]

The other form of sustainable income available to Maori, that from rental of land, was also largely denied to them. Watson and Patterson suggest that leasing lands was an option that fitted well with Maori usage:

> Although rent was a European concept, it was roughly similar to Maori notions of use rights, and was especially attractive as a novel means of validating tribal claims to land. The undisputed ability to collect tribute in the form of rent was seen as superior proof of ownership.[154]

The town 'tenths' were the reserved lands most likely to realise a profit. Wards points out that in the early 1840s, a few Maori in Wellington, for example the Nga

150. 'Memorandum by Mr A Mackay on Origin of New Zealand Company's "Tenths" Native Reserves', AJHR, 1873, G-2B, p 9; C Heaphy, 'Memo on the Wellington "Tenth", Being Remarks of Mr A MacKay's Paper', 29 August 1873, Justice Department (J) series 1/1903/1024, p 25, NA Wellington (claim Wai 145 record of documents, doc A39, p 212)
151. Governor Grey to Earl Grey, 15 May 1848, BPP, vol 6, p 25
152. M K Watson and B R Patterson, 'The Growth and Subordination of the Maori Economy in the Wellington Region of New Zealand, 1840–52', *Pacific Viewpoint*, vol 26, no 3, 1985, p 525
153. Ibid, p 534
154. Ibid, p 525

Puhi missionary, Rawiri Davis, 'had begun to discover the monetary worth of "tenths" if they, not the Company could directly control them and recoup the added-value of the land themselves'.[155] Neither the company nor the Government were prepared, however, to management and income pass to Maori hands. The 'tenths' were poorly administered during crucial decades of adjustment – while the rent that was obtained, was largely devoted to administration. Areas awarded by McCleverty did come under hapu control, but country lands reserved to Maori were often poorly located, unsuited to pastoral activity, and unable to realise high rents.

Europeans frequently surveyed the district in the 1840s. While their figures should be approached with some caution, the broad outlines of the impact of land sale and white settlement on Maori may be traced. There appears to have been little immediate effect on Te Ati Awa population and residential patterns. They refused to vacate 'occupied' areas and it is estimated that in 1846, 600 to 700 Maori were still living within the township area.[156] But the transfer to settler ownership of cultivable land in the town vicinity eventually resulted in the departure of Maori. By 1857, only 63 Maori are recorded as still living in the town.[157]

In theory, reserved sections were to be interspersed with European settlement so that Maori would enjoy the benefits of civilised contact and enhanced land value. On the other hand, the reserves as originally conceived were to support only the principal families and their children. There was no real intention that they would provide residential or farming properties for the tribe. Adams comments that, despite promises that Maori would be protected in their occupied and cultivated areas, the general thrust of official effort had been to remove Maori from the settlement.[158] That trend continued after McCleverty's exchanges. Earl Grey, for example, in 1849 instructed Governor Grey, to offer every assistance to efforts to remove Te Aro Pa from the town.[159] This was partly because reserved pa sites were valuable real estate, but Hamer comments that it was also 'assumed by the colonisers of Wellington . . . that, because towns were an advanced, distinctively European type of community, indigenous peoples did not belong to them'.[160] The efforts of officials such as Swainson and Rolleston protected town Maori during the 1860s, but the few who remained were exposed to these pressures in the following decade. The Native Reserves Commissioner's report of 1876 approved the sale of three subdivisions of Pipitea Pa, stating that 'for sanitary and other purposes it was desirable that these pa lands in the town should cease to be Native property'.[161]

The pattern of declining numbers within the town was repeated within the wider Wellington district. When settlers first arrived in Port Nicholson, there were some 800 Maori resident at the various pa and kainga of the harbour. By the end of the 1850s, Maori numbers had fallen by about 22 percent in Wellington district as a

155. Ward, 'The Ngai Tahu Claim', pp 75–76
156. D Hamer, 'Wellington on the Urban Frontier', in *The Making of Wellington 1800–1914*, D Hamer and R Nicholls (eds), Wellington, Victoria University Press, 1990, p 231
157. Watson and Patterson, p 541
158. Adams, pp 191–192
159. Earl Grey to Grey, 9 November 1849, BPP, vol 6, p 240
160. Hamer, p 229
161. 'Report of Commissioner of Native Reserves', AJHR, 1876, G-3, p 3

whole. In addition to the 60 or so town residents, 396 Maori are recorded as resident in the Lower Hutt and 124 in the Upper Hutt.[162] It is not possible to say with precision what caused this decline, because of the absence of demographic detail, but it appears that a number of kainga were abandoned by their occupants, who migrated northwards. Approximately 200 Ngati Tama had left in the mid-1840s, and a few years later almost 600 Te Ati Awa people returned with Wiremu Kingi to Taranaki, where Grey had purchased reserves for them. Although many of these people were from Waikanae, they also included residents from Ohariu, Ohaua, and Oterongo.[163] In 1855, the residents of Waiariki, Oterongo, Ohaua, and Te Ika-a-maru 'disposed of all the land reserved for them by Col McCleverty in 1847, to the Government and also moved northward'.[164]

It is not possible to accurately assess the role of increased mortality and declining birth rates in this general population decline, but we do know that a number of Maori communities were devastated by a series of epidemics, of which more were recorded in the 1850s than in any other period. Watson and Patterson point out that the ratio of Maori children to adults was declining – most rapidly where there was a large European presence. The ratio was lowest in Wellington, and higher in areas such as Lower Hutt, with a moderate settler population. The highest ratios occurred in districts like Upper Hutt, where there were relatively few Europeans.[165]

162. Watson and Patterson, p 540
163. Ibid
164. MacKay to Lewis, 14 April 1888, 'Memorandum re Sitting of Native Land Court in Wellington', Justice Department (J) series, 1/1903/1024, NA Wellington (claim Wai 145 record of documents, doc A39, pp 111–112)
165. Watson and Patterson, pp 540–541

CHAPTER 3

McLEAN AND THE RANGITIKEI–TURAKINA PURCHASE

3.1 NGATI APA'S OFFER OF SALE AND GOVERNMENT RESPONSE

In the course of negotiations for the Wanganui block, Ngati Apa indicated their willingness to sell further territory to the north and to the south. However, three years of discussion took place before the Rangitikei lands could be purchased by the Crown. A swift transaction was precluded by the objections of other iwi claiming interests in the region. Ngati Apa, by offering to sell land to the south of the Whangaehu River were, in part, asserting their traditional right over it, but Ngati Toa and Ngati Raukawa at once objected to the proposed sale, and to the extent of territory under offer, arguing that they had conquered the whole of the Cook Strait region, from the Wanganui River to the top of the South Island.

The Government was, however, eager to accept Ngati Apa's offer of sale. Pressure for land was being generated from Wanganui and Wellington where New Zealand Company settlers continued to wait for the sections awarded in compensation by Spain. Lieutenant-Governor Eyre assured the company's acting agent that the Government understood 'the very great importance of at once adjusting the claims of the New Zealand Company settlers who have chosen the Rangitikei neighbourhood for the selection of their compensation allotments.'[1] The Government was 'anxious only to meet the wishes of the New Zealand Company and if possible close this long open question'.[2]

By this stage, too, the Crown view on Maori ownership was narrowing to exclude uncultivated lands. Earl Grey's 1846 instructions to Governor Grey reflect this more restrictive attitude, which had been expressed by the select committee on New Zealand some two years' earlier. Earl Grey was of the view that:

> From the moment that British dominion was proclaimed in New Zealand, all lands not actually occupied in the sense in which alone occupation can give right of possession, ought to have been considered as the property of the Crown in its capacity of trustee for the whole community . . .

1. Eyre to Kelham, 23 April 1849, New Zealand Company (NZC) series 3/10, p 2, NA Wellington
2. Eyre to Wakefield, 20 April 1849, Donald McLean MS Papers 32 (137), p 3, ATL

He recognised that a principle of Crown possession of 'unoccupied' lands would be difficult to enforce, but directed Governor Grey to look upon this precept as the 'foundation of the policy' he was to pursue whenever possible.[3]

The view that there were 'waste lands' which might be acquired without purchase could not be sustained. It had been demonstrated by Clarke and the Protectorate Department that the nature of Maori interest in land was, in fact, so complex that, if every particular interest was to be located on the ground, and negotiated for, alienations would be limited in extent. While declining to implement Earl Grey's policy as such, Governor Grey attempted to reconcile settler pressure and growing Crown support for land acquisition and settlement, with Maori resistance to dispossession. He instituted a practice of buying the rights of Maori over all their rohe, including areas which were used for hunting and in which other iwi might have a similar interest, without specifying those rights in the land in detail. Reserves were then made for the vendors within the alienated block.

In 1848, McLean was instructed in accordance with this procedure which underlay the practice of large scale land acquisition. He was informed that the Government was 'desirous of purchasing the whole of the Native claims to the country between Porirua and Whangaehu . . .' He was then specifically directed to mark off the internal boundaries of land reserved to Maori while leaving inland boundaries of the purchase undefined:

> where the boundaries of these claims upon the coast are marked, the reserve will be ascertained and defined; then the whole claim, however far inland extending, having in every case been purchased, the mere registration of reserves will be the registration of the entire Native claims in the district. It is considered preferable thus to negotiate for the whole claims without attempting to define their exact inland extent, instead of suggesting in the first instance as the boundary of the desired purchase any great range of mountains or other natural feature of the country . . .[4]

This practice was intended to circumvent challenge and speed up the purchase, for to attempt to determine the extent of Ngati Apa interest in the interior 'might have raised disputes and prevent[ed] the acquisition of the district for a lengthy period'.[5]

McLean proceeded cautiously in the early months of 1849, believing that this approach would save trouble in the long term.[6] He toured the district, discussing the proposed alienation with both Ngati Apa and Ngati Raukawa. Ballara points out that McLean insisted on the resolution of quarrels among Ngati Apa hapu before he would negotiate with them, and argues that 'by insisting that sales take place on a "tribal" basis as against sales by individual chiefs and their communities, McLean induced many independent sections of Ngati Apa to behave as one institutional entity'.[7] Ngati Apa cooperated in this process because they were contending against the more numerous Ngati Raukawa. The Crown supported their right to sell,

3. Earl Grey to Governor Grey, 23 December 1846, BPP, vol 5, p 69
4. Domett to McLean, 12 December 1848, AJHR, 1861, C-1, p 251
5. Eyre to Domett, 1 October 1849, Donald McLean Papers MS 32 (3), ATL
6. 22 February 1849, Donald McLean, 'Diary', draft letters, 12 January–13 March 1949, MS 1224, ATL
7. H A Ballara and G Scott, 'Crown Purchases of Maori Land in Early Provincial Hawke's Bay – Report on Behalf of the Claimants to the Waitangi Tribunal', claim Wai 201 record of documents, doc I1, p 71

McLean representing Ngati Apa as bravely asserting their interests against a more powerful tribe. The Lieutenant Governor announced to a Ngati Apa audience that the Crown regarded their claims as 'just', while 400 Ngati Raukawa assembled at Rewa Rewa were given notice by McLean that the Government intended to proceed with the Rangitikei purchase.[8]

3.2 TRIBAL RESPONSE TO PROPOSED NGATI APA SALE

McLean's diaries reveal much of the motivations of two tribes. One Ngati Apa chief stated that in 'former times' he had been 'friendly with the Ngati Raukawas. Now I wish to know the Europeans and be friendly with them'. Other Ngati Apa chiefs assured McLean that they were anxious to give up all their land to the Crown as an inheritance or place for the Europeans.[9] The question was how far south those claims extended. Reihana Moitai stated: 'Omurupapaka is the boundary and Oruakatana is also the boundary including Omurupapaka'. This southernmost point of the Ngati Apa claim was five miles from the Manawatu River.[10]

Ngati Raukawa at first took the position that Ngati Apa was not entitled to alienate any territory at all. Taratoa, who was seen by them as holding mana from the Manawatu to the Whangaehu River, responded to McLean's announcement of the Government's intention of pursuing the purchase that 'he would not allow the Rangitikei country be sold nor would he sell any part of the Manawatu'.[11] The grounds of Ngati Raukawa objection were based partly on issues of mana. They considered that the region had been conquered by Te Rangihaeata and the area north of Kukutauaki Stream allocated to them by Waitohi. Te Rangihaeata was forthright in his rejection of Ngati Apa's assertion of right. At Poroutawhao, he advised McLean against the purchase, stating, 'That they were slaves and had no right to sell that it was through Taratoa any of them was spared when they fought with them'.[12]

Other considerations than questions of mana underlay the Ngati Raukawa response – concern that Ngati Apa was selling land to Europeans on their very doorstep. McLean records that at a meeting held on 13 January, Taratoa did not 'display any passionate feeling or obstinacy as regards the claims of the Rangitikei people further than stating his general aversion to dispose of land which he considered the natives required for their own use'. This concern also motivated Te Rangihaeata. He told McLean:

> He had an understanding with Governor Grey that from Porirua to Wangaehu should be for the Maoris . . . All the natives along this coast joined by my brother Iwikaw [?] of Taupo are strongly opposed to the Ngati Apas selling that country. The natives will be enslaved by you. I do not like natives living among Europeans on spare patches of

8. 1–2 January 1849, Donald McLean, 'Diary', May–July, December 1848–January 1849, MS 1222, ATL
9. 10 January 1849, Donald McLean, 'Diary', May–July, December 1848–January 1849, MS 1222, ATL
10. 23 February 1849, Donald McLean, 'Diary', draft letters, 12 January–13 March 1849, MS 1224, ATL
11. 1 January 1849, Donald McLean, 'Diary', May–July, December 1848–January 1849, MS 1222, ATL
12. 17 January 1849, Donald McLean, 'Diary', draft letters, 12 January–13 March 1849, MS 1224, ATL

> land. It is a step to acquiring the whole . . . . What is money compared to land . . . . your money returns to you and we benefit little by it and lose our land.[13]

However, eventually, Taratoa, the other Ngati Raukawa chiefs, Te Rauparaha, and Te Rangihaeata, were reconciled to the sale of the Rangitikei as a means of satisfying European demands for land by territory they were prepared to concede to Ngati Apa. McLean records a speech of Te Rauparaha at Otaki which suggests that he saw the claims of Ngati Apa as surviving and as strengthened within the changed world of post-1840:

> Children, my days for talking are over. We have cleared the forest of many of its trees but still we have left trees standing for shelter from the winds and now those trees 'wakaruru hau' as he termed them cause talk and annoyance – meaning the Ngatiapas – they have kept growing from time to time till they are become very large and difficult under the new order of things, Christianity, to cut down.[14]

But the claim by Ngati Apa that their right to sell extended to the Manawatu was rejected by Ngati Raukawa. McLean was advised that if he wished to purchase more land, 'let it be the other side of the Rangitikei. Do not consent to buy this side. It will not be given up. All the people have determined to hold the land. The boundary is Rangitikei'.[15]

A large and crucial meeting was convened at Te Awahou Pa on 15 March. Those present included George Kingi Te Anaua, Aperahama Parea invited by McLean, and five other Whanganui chiefs who came independently; some two hundred Ngati Apa, including senior chiefs, Kingi Hori Te Hanea, Kawana Hunia, Aperehama Tipae, and Te Whaitine; and a large contingent of 'about one hundred men comprising the most influential members' of the Ngati Raukawa. Among the older Ngati Raukawa chiefs present were Nepia Taratoa, Te Ahu Karama Paora, while the younger missionary leaders of the tribe are listed as including Tamehana Te Rauparaha, Ihakara Tukumaru, and Matene Te Whiwhi. Martin Te Rongomaitai, a chief of Ngati Upokoiri, and 10 Ngati Maniapoto also participated.[16] In Wilson's account based on J D Ormond's reminiscences, a few Rangitane were also at the meeting, allying themselves with Ngati Apa. He describes the non-sellers as Ngati Raukawa and Ngati Awa, under the leadership of Te Rauparaha, Te Rangihaeata, and Taratoa.[17]

At the meeting, the majority of Ngati Apa reiterated their intention to sell their interests in the Rangitikei. Their land was 'now in the ocean or given up to the sons of the ocean the Europeans'.[18] Not all Ngati Apa chiefs, however, agreed to the alienation. Panapa, who is described as having extensive inland claims, stated his refusal to sell: 'I will not give up my land. No! No! I love my land too much to give it up. Your place is in England, that is the place of the Pakehas, you have no right

13. 17 January 1849, Donald McLean, 'Diary', draft letters, 12 January–13 March 1849, MS 1224, ATL
14. 23 January 1849, Donald McLean, 'Diary', draft letters, 12 January–13 March 1849, MS 1224, ATL
15. [Hakaraia and Others] to McLean, 20 January 1849, Donald McLean Papers MS 32 (3), ATL
16. Meeting at Te Awahou Pa, Rangitikei, 15 March 1849, Donald McLean Papers MS 32 (3), pp 1–2, ATL
17. J G Wilson, *Early Rangitikei*, Christchurch, Whitcombe and Tombs, 1914, p 28
18. Meeting at Te Awahou Pa, Rangitikei, 15 March 1849, Donald McLean Papers MS 32 (3), p 19, ATL

here'.[19] In McLean's eyes, however, Panapa's stance was tainted by his association with Te Rangihaeata, and he had earlier 'rebuked' the Ngati Apa chief as a deserter from the interests of his tribe.[20]

Ngati Raukawa again expressed concern about the pace of alienation: 'we are now crowded on both sides, Wanganui north of us is sold to the Europeans, Port Nicholson south and Porirua. Now this is.'[21] While the right of Ngati Apa to sell land to the north of the Rangitikei was now conceded, they stressed that the river should be regarded as the southernmost limit of any alienation. McLean reported that Raukawa acknowledged the existence of Ngati Apa interests on the south bank but still expressed 'the strongest opposition to its being purchased or possessed by Europeans'.[22] This stance was expressed by Kingi Te Ahu Ahu whom McLean records as saying:

> It is right you should welcome us. We were friends long ago before this new tikanga – or new order of things took place, we also had quarrels before then, but we should keep friends. Just look Mr McLean, the boundary we claim is the Rangitikei, your people shall have one side, and we shall keep possession of this side but our retaining possession of it will not be for ourselves but for your people also; meaning for the Ngatiapa.[23]

Ngati Raukawa stressed repeatedly to McLean that the south bank should not be bought by him: 'Do you wish for strife Mr McLean? I will hold all this side, and the other side shall be yours. Rangitikei, Rangitikei, Rangitikei shall be the boundary.'[24]

In the face of Ngati Raukawa opposition, territory south of the Rangitikei could not be sold by Ngati Apa. Clearly, however, there was dissatisfaction at this limit to their claim. McLean records that towards the end of the meeting, when Ngati Apa was asked whether they consented to no Europeans living on the south side of the river, only one or two of the tribe agreed, along with the 10 Ngati Maniapoto: the others firmly objected to consent from having previously ceded their lands to the Government.[25]

McLean continued:

> Kawana Hunia seemed much affected with the proceedings as if feeling his want of power to entirely establish the right of his tribe to dispose of all their ancient claims and possessions a great portion of which are now in the hands of the powerful Ngati Raukawa tribe before whom he was 'contending'.[26]

McLean's acceptance of Ngati Raukawa's obstruction of any further alienation was for the short term only. Early in March he recorded his optimism at Ngati

19. Ibid, pp 10–11
20. 3 March 1849, Donald McLean, 'Diary', draft letters, 12 January–13 March 1849, MS 1224, ATL
21. 'Meeting at Te Awahou Pa, Rangitikei', 15 March 1849, Donald McLean Papers MS 32 (3), p 8, ATL
22. McLean to Colonial Secretary, 26 June 1849, Donald McLean Papers MS 32 (3), ATL (cited in J Luiten, 'Whanganui ki Porirua', claim Wai 52 record of documents, doc A1, p 16)
23. Meeting at Te Awahou Pa, Rangitikei, 15 March 1849, Donald McLean Papers MS 32 (3), pp 12–13, ATL
24. Ibid, p 20
25. Ibid, p 21
26. Ibid, p 23

Raukawa's softened stance on the Ngati Apa claim and pointed to his intentions with regard to the south bank. If it proved necessary, Ngati Raukawa's tribal entity was to be undermined: 'If I find any obstinate opposition in buying the Manawatu I will treat with the chiefs separately and by this means bring the majority to terms and so arrange matters satisfactorily'.[27] He believed that the alienation of Rangitikei–Turakina would be followed by others along the coast:

> This purchase once undertaken and persevered in by the Government will induce many of these tribes (especially the Ngatiteupokoiri of the Manawatu and those inhabiting Ahuriri and the East coast who are in communication with and connected with the Ngatiapa of Rangitikei) to offer their superfluous land for sale to the Government.[28]

McLean saw Ngati Raukawa's acquiescence in the alienation as:

> the means of breaking-through a combination on their part and several other tribes in correspondence with them, who resolved, embodying their resolution in a written document drawn up at their public meetings, to make a stand against the further acquisition of land by the Europeans excepting by way of annual lease for cattle grazing.[29]

The concern to curtail Maori leasing land on the west coast was in line with Crown policy elsewhere. There was a growing realisation that Maori would never sell the freehold if leaseholding became entrenched and gave them a regular source of income. As Ihakara told McLean and Ngati Raukawa, 'To lease for two, three and four years for sums was good as the land afterwards reverted to themselves but to sell he would not agree to on any account'.[30] But the Maori effort to control the disposition of their land rights was deliberately thwarted, the Government's intent being most clearly enunciated in Grey's Land Purchase Ordinance 1846, which prohibited direct leasing of Maori land, and created a Crown monopoly of all land transactions – not of purchase alone.

3.3 THE SETTING OF RESERVES

After the Parewanui meeting, 43 Ngati Apa accompanied McLean and the surveyor, Parks, on a preliminary inspection of the block. Boundaries were pointed out, and McLean reported that he had taken every care during the inspection to ensure that Ngati Apa understood that they were giving up all rights as far as their claim extended to the interior – 'that the whole of their country north of Rangitikei excepting their reserves must in accordance with the understanding I repeatedly had with them at their several public meetings now passed into the hands of the

27. 22 February 1849, Donald McLean, 'Diary', draft letters, 12 January–13 March 1849, MS 1224, ATL
28. Meeting at Te Awahou Pa, Rangitikei, 15 March 1849, Donald McLean Papers MS 32 (3), pp 25–26, ATL
29. Ibid, p 21
30. 13 January 1849, Donald McLean, 'Diary', draft letters, 12 January–13 March 1849, MS 1224, ATL

Government'.[31] McLean accommodated the expectation of vendors that they would be able to continue to hunt and trap on land that had been sold. But, while they might still traverse the land to snare birds, it was emphasised that other rights would be confined henceforth to the areas specifically reserved to them.[32]

McLean had been directed 'to reserve such tracts for the Natives, as they may now or at a further time require'.[33] According to his notes of the earlier discussions, McLean had assured Ngati Apa that the Government would not take such advantage of their willingness to sell as to leave them entirely without land. But much of his effort during the April inspection was directed towards limiting the extent of the areas to be reserved. He argued that sufficient land already had been set aside as a 'general reserve' between the Turakina and Whangaehu Rivers – although in effect, this area seems to have been simply excepted from the sale. It was intended that most Ngati Apa would move to this area for the 'eventual settlement of the whole tribe'.

McLean had insisted that Ngati Apa should sell as a tribal entity. Now he resisted proposals that large reserves be put aside for individual hapu, refusing on the grounds that Ngati Apa, as a whole, were already sufficiently provided for. Nor were the additional lands that were reserved ever seen by McLean as truly inalienable. He reluctantly agreed to the reservation of some 800 acres at Turakina, but informed the Colonial Secretary in his report on the final sale that the leading chief of the river had told him 'that in the course of a few years, he will dispose of the Turakina reserve . . . as he intends at my suggestion to make immediate preparations to settle between the rivers'.[34]

Ultimately, McLean would not tolerate Maori impediment to settlement, and underlying his actions was an uneasy, and often inconsistent, mix of paternalism and self-help ethic. Under an entry titled 'pensioning chiefs' McLean predicted that:

> Land reserved by the Govt . . . would be productive of great good incorporating them with the Europeans and manifesting that although the Govt purchased large tracts from them that its parental care for their welfare was not neglected and that although they once sold their land it was again obtainable from Europeans.[35]

McLean believed that Maori would be compensated for any loss of their land by enhanced security and clarity of interest under the European title system, noting:

> I do not doubt but it would greatly facilitate the purchase of all wastelands if we could introduce a more paternal and liberal policy with the natives by which they could easily repurchase any land they required or wished for in addition to their reserves at a moderate rate say 3/- – 5/- per acre instead of holding it as locked up from them . . . instead of laying it out to good interest which would be the case by getting the labour and cultivation of aboriginal settlers to play in a more agreeable and independent

31. McLean to Colonial Secretary, 10 April 1849, Donald McLean Papers MS 32 (3), p 5, ATL
32. Ibid
33. Domett to McLean, 12 December 1848, AJHR, 1861, C-1, p 251, no 5
34. McLean to Colonial Secretary, 21 May 1849, Donald McLean Papers MS 32 (3), ATL
35. McLean, 3? April 1849, Donald McLean, 'Diary', Maori notes, April and June 1849, MS 1225, ATL

> manner for themselves than under their own native system which is always subject to squabbling and dissension.[36]

The belief that the position of Maori would be improved if they reacquired land under Crown-granted title, predisposed McLean to limit their reserves. However, no practical assistance towards that transition appears to have been given.

Although there were exceptions, McLean was generally prepared to accede only to requests for small reserves of limited value. He agreed to Aperahama's request for the reservation of a urupa site on the coast, as this land was of 'little or no value' and provided that there was no danger of conflict arising from cattle trespass in the area. But he denied Reihana's wish to keep his cultivation ground at Matawhero, allowing its retention for a three-year period only, 'as this land may be all valuable and shortly required if the agent of the Canterbury settlement is wise enough to select this country as a site for the settlement'.[37] McLean also rejected the notion that Ngati Apa should be able to retain land to sell as settlement expanded and its value had risen. He recorded that when the party reached the northern bend of the Turakina River some 10 miles from the coast, his guides wished to turn back:

> we camped here for the night the natives objecting to proceed further in this direction alleging the forest as impenetrable and that it was claimed by the Mangauhau natives, a district branch of their tribe residing at Wanganui – I soon discovered that the natives along with me were the actual claimants of the lands which they alleged to be the property of the Mungawhao tribes, and found that a few intriguing young men ingeniously concocted this pretext – with a view that the land should be reserved under the pretence of being the property of a tribe who had not appeared at any of the meetings when the sale of the country was discussed. The object of these young men in endeavouring to reserve the forest ranges and other large portions of their claims was to dispose of them afterwards in small allotments when the value of the district should be enhanced by the location of European settlers.[38]

McLean was particularly concerned to forestall any effort by Maori to block off the interior. He told those who accompanied him on his inspection that:

> as ample reserve was made for them between the Turakina and Wangahu rivers I would not recognise any boundaries or pretended claims limiting the Europeans from going as far into the interior as their present rights as a tribe extended . . .[39]

Thus, Ngati Apa were dissuaded from retaining a portion of land on the track to Taupo. McLean interpreted their wish as intended to 'prevent the Europeans from getting further inland', and convinced Ngati Apa that an intersection of Maori and Pakeha interests would result in 'further discontents'.[40]

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36. 5 August 1850, 18 September 1850, Donald McLean, 'Diary', Maori notes, 19 July–12 October 1850, MS 1229, ATL
37. 19 April 1849, Donald McLean, 'Diary', Maori notes, April and June 1849, MS 1225, ATL
38. McLean to Colonial Secretary, 10 April 1849, Donald McLean Papers MS 32 (3), pp 2–3, ATL
39. Ibid, p 5
40. Ibid, p 9

When McLean reached Porowhara, Panapa, who had cultivations there, again raised objections to the sale:

> At Porowhara, sixteen miles from our last stage, we found some native plantations owned by Panapa, a ngatiapa chief of most forbidding countenance, who deserted his tribe and joined Rangihaeata, threatening with that chief to use his utmost influence in preventing the sale of the district. Our reception was not the most friendly the natives (excepting a few who came up from Parewanui to meet me) loudly exclaiming against the sale of their lands. Panapa erected a flag staff that morning where his claim, which is considerable, commenced stating that he would die by it before he would cede his land.
>
> His language which was violent was evidently borrowed from Rangihaeata who I understood from some of the natives on their journey to Taupo was very much vexed that the Europeans were acquiring a right to such a large territory in a part of the country where his retreat into the interior might be intercepted, should he at a future period find it necessary to take refuge there.[41]

McLean later stated that Panapa was persuaded by his arguments and 'yield[ed] his opposition', much to the 'annoyance' of those who had failed to win their own arguments for reserves and 'were now indirectly instigating the others to make a firm stand for their lands . . .'[42] But Panapa's consent appears to have been limited to accepting the alienation of tribal land other than where his primary claim lay. His name does not appear on the deed and he is subsequently mentioned by McLean as opposing the position of the inland boundary.[43]

3.4 FINALISATION OF PURCHASE

The preliminaries took longer than McLean had anticipated, but by May 1849 he was ready to finalise the purchase, noting that:

> All the external boundaries of the district are now ascertained as far as necessary and the survey of the reserves nearly completed so that the whole of the arrangements with the Ngati Apas may be completed on receipt of the first instalment of compensation.[44]

A large gathering of Ngati Apa and a number of chiefs of other iwi in the region had assembled at Wanganui. McLean invited all claimants to speak on the sale before signing the deed:

> The principal chiefs and claimants, responded to this request, by declaring in the most emphatic terms, that it was their firm and mature resolution to part with their lands to the Government, and that they anxiously desired to participate in the various advantages they would derive from the settlement of a numerous European population amongst them.

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41. McLean to Colonial Secretary, 10 March 1849, Donald McLean Papers MS 32 (3), pp 9–10, ATL
42. Ibid
43. McLean to Colonial Secretary, 13 May 1850, Donald McLean Papers MS 32 (3A), ATL
44. 26? April 1849, Donald McLean, 'Diary', Maori notes, April and June 1849, MS 1225, ATL

> The deed of sale was then read over, the natives fully assenting to the boundaries and other conditions therein specified . . .[45]

McLean reported that only Reihana and Ngawaka demurred. Although they agreed to the general provisions of the sale, requests for more extensive reserves were repeated. These applications were again rejected by McLean because ample reserves were already provided for them.[46] The boundary descriptions were re-read, and the deed signed, Reihana and Ngawaka being among those first to do so.

On the following day, the deed was read again for the benefit of those who had been previously absent and more people signed. A number of chiefs spoke to their people, confirming their commitment to and understanding of the sale. Laments were sung for the departing land.[47] The first instalment of £1000 was then distributed, a large first payment being considered advisable by McLean in order to satisfy 500 claimants, many of whom had 'contracted debts in anticipation of receiving a large amount similar to what they are aware has been recently offered for a less extensive district at the Wairarapa'. Satisfaction of Ngati Apa was also deemed important to influence Maori 'at the Manawatu and elsewhere who are present tenacious of parting with their land . . .'[48] Ten pounds was received by each of 86 hapu, £40 by Aperehama Tipae of Wangaehu and Paora Turangapita of Turakina, and £60 by two leading Rangitikei chiefs, Hori Kingi and Hunia Te Hakeke. The remaining £1500 was to be paid in three further, annual, instalments.

According to McLean, 'some portions' of this first payment would be distributed by Ngati Apa to 'chiefs not immediately connected with their tribe . . . in order to secure the acquiescence of those chiefs to the disposal of their lands'.[49] It is not clear whether Ngati Raukawa participated in any disbursement of the proceeds. McLean only mentions in 1850 that he saw Hori Kingi who 'agreed to proceed to Rangitikei to send a present to Rangihaeata for his Ngati Apa claim'.[50] Walter Buller later suggested that Ngati Raukawa received part of the actual purchase money on the understanding that Ngati Apa would participate in any later payments for the Manawatu. But this seems unlikely given Ngati Raukawa's expressed resistance to further alienation, and most contemporary observers agree that they did not accept payment for the Rangitikei block.[51]

In exchange for the sum of £2500 and the consideration of reserves, Ngati Apa, calculated as numbering some 250 persons at 1850, gave up all their lands between the Rangitikei and Turakina Rivers, and to the north of the Whangaehu. The boundaries of alienation were described in the deed as follows:

> The river of Rangitikei on one side the sea on the other side, on one of the other sides the river of Turakina thence towards the interior to where our inland boundary adjoins. The whole of the land between Turakina and Whangaehu rivers are reserved to be a

45. McLean to Colonial Secretary, 21 May 1849, Donald McLean Papers MS 32 (3), p 3, ATL
46. Ibid, p 4
47. Ibid, p 9
48. McLean to Colonial Secretary, 11 April 1849, Donald McLean Papers MS 32 (3), p 3, ATL
49. McLean to Colonial Secretary, 1 May 1849, Donald McLean Papers MS 32 (3), ATL
50. 29 July 1850, Donald McLean, 'Diary', Maori notes, 19 July–12 October 1850, MS 1229, ATL
51. Buller to Mantell, 31 August 1863, Mantell Papers, MS 83 (236), ATL

> gathering place for the men of Ngatiapa. The whole of our lands on the northern side of the Whangaehu we permanently hand over to Mr McLean. The commencement of the boundary is at the mouth of the Whangaehu river, thence following the course of that stream to Tapiripiri thence to Oeta thence proceeding to a place over against the boundary set aside for the Whanganui settlement thence along that boundary to Motukaraka thence to the sea.[52]

The Rangitikei block was eventually surveyed at some 225,000 acres. A payment of 2.6d per acre was thus made for land which McLean described, on the whole, as a 'most valuable and extensive acquisition, capable of maintaining a numerous European population and superior to any other part of the island for cattle runs'.[53]

The 'whole of the land between Whangaehu and Turakina Rivers' – an area later estimated at 30,000 acres – was 'reserved to be a gathering place for the men of Ngatiapa'.[54] Also reserved 'in consideration of our [Ngati Apa's] final surrender of all these lands of ours' were 800 acres at Turakina, 1600 acres at Parewanui, Te Kawana Hunia's urupa of 12 acres, eel-fishing rights in any lakes until they were drained, an eel-fishing station at Otukapo comprising 50 acres, and the right to cultivate at Te Awahou for another three years.[55]

The protracted nature of negotiations, the large scale meetings, the lamentations in farewell of the land, the number of signatories on the deed, and its wording, all would suggest that McLean had genuinely attempted to identify the legitimate sellers and obtain their full consent to the sale. The significance of McLean's effort was, however, limited by his failure to accommodate the interests of many individuals and communities in his reserve allocations and by his dismissal of those who opposed European expansion. The integrity of the Crown's negotiations was also subsequently diminished by the purchase of the area south of the Rangitikei River. McLean took the purchase only as far as adjoining tribes would countenance, but their acquiescence was won by prevarication about the Government's future intentions. Ngati Raukawa had renounced their claim to land north of the Rangitikei on the understanding that the south bank would not be purchased by the Government. But clearly, there was no intention on the part of the Government to cease land purchasing operations at this point. In fact, the purchase of the Rangitikei block was seen as the 'thin edge of the wedge' opening up the rest of the west coast to sale and Ngati Raukawa's recognition of Ngati Apa's presence as far south as Omarupapaka would be used against them in later years. The subsequent alienation of the south bank involved a repudiation of the Government's tacit recognition of Ngati Raukawa authority, which had permitted a smooth transfer of the Rangitikei–Turakina block to the Crown.

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52. Turton, Deeds, no 69, p 213
53. McLean to Colonial Secretary, 10 April 1849, Donald McLean Papers MS 32 (3), p 13, ATL
54. Turton, Deeds, no 69, p 213
55. Ibid

3.5 THE INLAND BOUNDARY

The inland boundary remained undefined – a matter of some concern for European settlers since the interior portion of the purchase comprised the most fertile lands. The question of where the boundary lay almost immediately became the 'subject of serious discussion among the natives', and gave 'rise to hostile expressions . . .' towards settlers in the area.[56] During the preliminary inspection, McLean had formed the opinion that Ngati Apa claims extended 'inland from te Moria bush . . . about six miles, having co-jointly with the Wanganui tribe individual claims beyond that to a settlement named Otara [present-day Ohingaiti]'.[57] These lands lying between the Porewa Stream and Rangitikei River, were to form a focus of resistance to sale and disputed claim.

At first, Lieutenant Governor Eyre did not perceive that the undefined boundary might give rise to problems. He believed that where the claims of two tribes met, it was 'always necessary in purchasing to obtain a cession of the rights as far as such claims extend of the party purchased from, whether that point be clearly defined and agreed upon or not'.[58] But New Zealand Company concern that this would provide an excuse for repudiation prompted a change in instruction to McLean. He was now ordered to return from Taranaki and advised that:

> if the boundary is not definitely decided upon – seen and understood by the Natives – and marked in some way upon the ground the sooner it is done the better . . . . I cannot too strongly impress upon Mr McLean therefore that in all purchases it is *essential* that however far supposed rights to extend some distinct and definite boundary must be acknowledged by the Native and be marked on the ground, as the limits of the land absolutely purchased, and to which the rights of the selling parties are undisputed – and this limit or boundary should exist on every side of the purchase either in a natural feature of the country or in Surveyor's lines. [Emphasis in original.][59]

McLean assured Eyre that it had been in anticipation of future difficulties that he had arranged for the Ngati Apa to accompany him on his preliminary survey, 'to point out the exact inland termination of their claims'.[60]

McLean returned from Taranaki to finalise the Rangitikei boundary in May 1850. Word having reached McLean that trouble was brewing about the inland boundary, he travelled from Taranaki via the Upper Whanganui. He reported that:

> At Purikino, I met Te Heu Heu, who I was most anxious to see before he returns to Taupo, as I was informed that he, Rangihaeata and Taratoa had been making some objections to the interior boundary of the Rangitikei purchase, and that a post had been put up in their name by a native named Panapa to indicate that opposition would be offered to an extension of the boundary beyond that spot.[61]

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56. Swainson to Colonial Secretary, 28 August 1849, New Munster (NM) series 8 1859/916, NA Wellington
57. McLean to Colonial Secretary, 10 April 1849, Donald McLean Papers MS 32 (3), p 8, ATL
58. Eyre to Domett, 1 September 1849, New Munster (NM) series 8 1849/916, pp 2–3, NA Wellington
59. Lieutenant Governor to McLean, 7 September 1849, Donald McLean Papers MS 32 (3A), ATL
60. McLean to Colonial Secretary, 1 October 1849, Donald McLean Papers MS 32 (3A), p 3, ATL
61. McLean to Colonial Secretary, 13 May 1850, Donald McLean Papers MS 32 (3A), ATL

McLean persuaded Te Heu Heu to accompany him to Whanganui, so that he might 'in the presence of the chiefs and assessors at that settlement have an explanation from him of such proceedings'. The Tuwharetoa chief agreed to withdraw his opposition, which had been directed towards the claims of Ngati Apa rather than to the Crown's purchase per se. At the same time, Te Heu Heu maintained his right to be consulted in the matter, offering to 'assist in definitely laying down an interior boundary'.[62]

By this time, the second instalment of the payment was due. McLean was advised to defer disbursement 'until all questions that may give rise to future difficulties respecting boundaries are definitely arranged'.[63] This course was rejected by McLean as 'highly imprudent'.[64] The money was still unavailable at the end of June, and McLean reported that the Rangitikei people were growing 'most discontented at the delay', preventing settlers from occupying their selections at Turakina. He warned that the Government was in danger of alienating not only Ngati Apa, but also all other tribes from whom it might 'now or eventually desire to purchase land'. He pointed out that Wairarapa Maori, for example, 'might justly argue that the settlers are more punctual in paying their annual rents than the Government promise to be in carrying out that admirable system of paying annual instalments'.[65]

The second instalment of the purchase price was paid in July, but further trouble surfaced regarding the interior boundary. During the 1849 inspection, McLean mentioned that while some Ngati Apa regarded Otara as the boundary, that settlement was:

> inhabited by a migrative band of Taupo natives, whose claims or rights to reside there are disputed by the Ngatiapa who also object to their receiving any payment for land to which they have not a hereditary or legitimate right.[66]

In July 1850, these people whom McLean describes as 'principally outcasts' and a 'wandering tribe' were led by their chief, Pohe, to take possession of land at Porewa.[67] McLean reported that this group 'with many others throughout the island, viewed with considerable alarm and discontent the inland extent of the Rangitikei purchase'.[68] Pohe (like Te Heu Heu) was asked at Parewanui Pa to explain his conduct, before those who had sold the district and a number of chiefs whom McLean had invited from Whanganui and other places. McLean rejected Pohe's claim to Porewa and inland portions of the district, which he interpreted as deriving from general opposition to European settlement and fear that the alienation of Rangitikei 'would lead to the acquisition of more of the interior and eventually dispossess the inland tribes of all their land'. Pohe was told that his 'fears were quite

62. Ibid
63. Domett memo on McLean to Colonial Secretary, 14 May 1850, Donald McLean Papers MS 32 (3A), ATL
64. McLean to Colonial Secretary, 1 June 1850, Donald McLean Papers MS 32 (3A), ATL
65. McLean to Colonial Secretary, 20 June 1850, Donald McLean Papers MS 32 (3A), ATL
66. McLean to Colonial Secretary, 1 October 1849, Donald McLean Papers MS 32 (3), ATL
67. McLean to Colonial Secretary, 30 July 1850, Donald McLean Papers MS 32 (3A), ATL; 19 July 1850, Donald McLean, 'Diary', Maori notes, 19 July–12 October 1850, MS 1229, ATL
68. McLean to Colonial Secretary, 30 July 1850, Donald McLean Papers MS 32 (3A), ATL

as unfounded as his claims appeared to be', and he reluctantly returned to Otara which McLean promised to exclude from the purchase.[69]

McLean blamed Pohe's actions on Whanganui Maori, based at Pukehika (near Ranana), who had claims at Murimotu and Otara – apprehensive as they were, 'that each instalment paid to Ngati Apa would extend the inland boundary till it eventually included their bird-snaring ranges . . .' at those places.[70] In August, a meeting of some 1500 Maori was convened by Reverend Taylor at Pukehika. McLean used this opportunity to enquire into disputes and to assess the disposition of those objecting to the inland boundary. Hemi Nape, described by McLean as the 'ringleader of the rebel tribe at Pukehika', and 'troublesome during the war at Whanganui', eventually agreed 'to relinquish his opposition provided his interior claims were not interfered with as he had been given to understand that the Government contemplated a road being made through this country . . . to Taupo . . .' McLean records that he dispelled this, and 'other idle rumours [that] excites the jealousy of the upper Whanganui natives'.[71]

McLean decided to gather together as many chiefs as possible to settle the Otara boundary and 'to prevent any future difficulties'.[72] Te Rangihaeata and Taratoa (living at Maramahoia) agreed to assist in the question and it appears that McLean was able to mobilise the support of the coastal-based chiefs against the claims of the interior tribes.[73] McLean's party travelled up-river. He records that a pole had been set by Te Heu Heu at Te Pohui, a settlement on the south bank, occupied by a mixed group of Ngati Whakatere and Ngati Pehi, and headed by Ngawaka, whom McLean describes as a 'Taupo man'.[74] Ngati Whakatere opposed the boundary while McLean's party, which included Taratoa, Wiremu Te Tauri Parata, and Hori Te Rangiao, spoke in favour of a settlement of the question. Taratoa is recorded as speaking 'with great animation in favour of the whites having all the Ngati Apa's claims'.[75]

The party then travelled on to Whauwhau where McLean had decided to fix the boundary as being a point acceptable to all parties.[76] McLean reported that while some individual Ngati Apa had claims beyond that point, they intersected with those of other tribes, 'which as the present boundary includes all the most desirable and available land are not worth contending for'. None the less, McLean was able to report that a 'considerable enlargement' of the block had been conceded 'without further renumeration', while inland settlers would be able to use the 'waste country'

69. McLean to Colonial Secretary, 13 May 1850, Donald McLean Papers MS 32 (3A), ATL
70. 5 August 1850, Donald McLean, 'Diary', Maori notes, 19 July–12 October 1850, MS 1229, ATL
71. 27 July 1850, Donald McLean, 'Diary', Maori notes, 19 July–12 October 1850, MS 1229, ATL; McLean to Colonial Secretary, 12 August 1850, Donald McLean Papers MS 32 (3A), ATL
72. 29 August 1850, Donald McLean, 'Diary', Maori notes, 19 July–12 October 1850, MS 1229, ATL; McLean to Colonial Secretary, 17 September 1850, Donald McLean Papers MS 32 (3A), ATL
73. 7, 21, 29 August, 2 September 1850, Donald McLean, 'Diary', Maori notes, 19 July–12 October 1850, MS 1229, ATL
74. 14 September 1850, Donald McLean, 'Diary', Maori notes, 19 July–12 October 1850, MS 1229, ATL
75. 3 September 1850, Donald McLean, 'Diary', Maori notes, 19 July–12 October 1850, MS 1229, ATL
76. 4 September 1850, Donald McLean, 'Diary', Maori notes, 19 July–12 October 1850, MS 1229, ATL

falling outside the boundary since Maori were 'unlikely to occupy it in its present valueless state'.[77]

The boundary was cut for a mile and walked over, while Taratoa made a speech promising to uphold it 'against any troublesome characters from the interior'.[78] The surveyor Park went with a large group of Maori to carry on, cutting towards the Turakina, while the chiefs remained with McLean. A notice with the chiefs' names attached was sealed in a bottle and placed at the boundary stating that this marked the 'certified inland boundary (of the Rangitikei purchase) as decided by the natives and myself'.[79] At Rangatuau, Taratoa defended McLean against criticism that neither Te Heu Heu nor Te Rangihaeata had been present when the line was fixed, and again spoke in favour of the decision:

> What chiefs are so much above me that they will interfere with McLean's boundary and mine. No, let our boundary stand. What can Rangihaeata do without me and why should Te Heu Heu a friend of the Governor interfere. The boundary is at Te Whauwhau and the other or inland side is for myself, for the natives.[80]

A document confirming the settlement of the boundary, was signed by Ngati Raukawa, Ngati Hau ki Whanganui, and Wiremu te Tauri o Taupo, as well as by Ngati Apa.

77. 6 September 1850, Donald McLean, 'Diary'; Maori notes, 19 July–12 October 1850, MS 1229, ATL; McLean to Colonial Secretary, 17 September 1850, Donald McLean Papers MS 32 (3A), ATL
78. 5 September 1850, Donald McLean, 'Diary', Maori notes, 19 July–12 October 1850, MS 1229, ATL
79. 6 September 1850, Donald McLean, 'Diary', Maori notes, 19 July–12 October 1850, MS 1229, ATL
80. Ibid

CHAPTER 4

SEARANCKE'S NEGOTIATIONS AS LAND PURCHASE OFFICER, 1850s

4.1 NEGOTIATIONS IN THE WAIKANAE AREA

Sections of Te Ati Awa, readying themselves to return to Taranaki in 1847, offered to sell portions of the Waikanae area to the Government. According to the later evidence of Wiremu Tamihana Te Neke of Te Ati Awa, the land was divided between those who intended to go back to Taranaki and those who wished to remain:

> We came to this place [Waikanae] to point out boundaries of land we proposed to sell and to keep. Wiremu Kingi Te Rangitaketu put a pole on a hill close to the other side of this pole we proposed to sell and this side to retain. We then went to the boundary, the Wainui stream. Another pole was put in there to fix the portion for sale. At that time it was agreed upon who should remain and who should return to Taranaki. It was arranged by W Kingi that the portions outside should be sold by the parties returning and the other to be for the parties who remain on the land.[1]

When they heard of the proposed sale, Ngati Toa objected. Matene Te Whiwhi, Tamihana Te Rauparaha, Karanama Kapukai, and Hakaraia travelled to Waikanae where they rejected Te Ati Awa's claim, stating that 'Rangihaeata's boundary is from Whangaehu to Rimurepu'.[2] The grounds of their rejection lay in the argument that they, rather than Te Ati Awa, had been the original conquerors of the area. In their view, Waitohi's allocation of territory to Te Ati Awa for their participation in the conquest of the coast did not entitle them to regard that area as under their exclusive control. Although Ngati Toa did not 'dispute the right of the Ngati Awa to possess and occupy the land for their own use, but they strongly object[ed] to their disposing of it to the Government'.[3]

Te Ati Awa argued that they were entitled to sell because they had assisted in the conquest. Until their arrival, Ngati Toa had been unable to fully hold the land against Ngati Apa and Muaupoko, 'from fear of whom and the Ngati Kahungunu they were compelled for security to live on the island of Kapiti'. As a result of that assistance, they had been allocated territory from Wellington Harbour to Kukutauaki Stream. Te Ati Awa told McLean that they had presented Ngati Toa with produce and two canoes, 'on which occasion the Ngati Toa chiefs publicly transferred their right to

1. Otaki Native Land Court MB 2, 19 May 1873, p 181
2. Ibid
3. McLean to Colonial Secretary, 26 November 1850, AJHR, 1861, C-1, p 258

the land'. Their 'undisputed possession' had been underscored by the territorial definitions (between Ngati Toa, Ngati Raukawa, and Te Ati Awa) settled at the battles of Haowhenua and Kuititanga. And although the numbers of Te Ati Awa living at Waikanae had declined, they had maintained occupation since that time. Now they insisted on their right of sale.[4]

According to the evidence of Tamihana Te Neke, a compromise had been reached at the Waikanae meeting but the conflict regarding the rights of ownership which derived from differing roles in the conquest of the region, from gift exchange, and occupation, delayed purchase of this territory for more than a decade. McLean reported that both sides asserted their argument in 'strong terms' at the meeting he had convened in 1850 – and 'without any party arriving at any definite understanding'.[5] The land in question was 'not of much extent or value, the greater portion of it being necessary for the use of the natives', but McLean was

> anxious, however, to have the rights of the selling party or their opponents fairly established according to the prevailing customs of the country, so that if the land is in future required, no difficulty of disputed title may thereafter arise.[6]

However, conflicting interpretations of land right proved impossible to reconcile and McLean had to advise Ngati Toa and Te Ati Awa to discontinue their discussions.

Matters rested there except for an attempt by Governor Grey, in 1852, to persuade his old adversary, Te Rangihaeata, to sell Waikanae. This overture was 'flatly and rudely refused', Te Rangihaeata telling Grey, 'You have had Porirua, Ahuriri, Wairarapa, Wanganui and the whole of the Middle Island given up to you and still you are not contented; we are driven into a corner, and yet you covet it'.[7]

Elsewhere along the Kapiti Coast, tribal complexities had to be sorted out before the Government could successfully pursue a purchase policy. Questions of boundaries and sales were discussed between Ngati Raukawa, Ngati Apa, and Rangitane. Ngati Apa continued to assert rights at least as far south as Omarupapaka, while Rangitane began to assert its authority to territory in the Upper Manawatu. In the meantime, the missionaries attempted to persuade 'conquering tribes' to accommodate the demands of defeated peoples. Samuel Williams later testified that 'Ngati Raukawa had constantly asserted a claim as far as the range called Te Ahu o Turanga', but that he had advised them to 'withdraw their opposition to the sale of a large block lying useless to them'.[8]

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4. Ibid
5. Ibid
6. Ibid
7. Richard Taylor, *Te Ika a Maui, or New Zealand and its Inhabitants*, London, Wertheim and MacIntosh, 1855, p 339
8. Otaki Native Land Court MB 1C, 17 March 1868, p 250

4.2 UPPER MANAWATU LANDS: RANGITANE'S OFFER

Ngati Raukawa's general authority over the region was under increasing challenge. Te Hiriwanu, described as of Ngati Kahungunu, Motuahi and Ngati Upokoiri, travelled to Auckland where he offered to sell land to McLean.[9] There was some contention about the significance of this event, which gave rise to the Upper Manawatu negotiations. According to Ngati Raukawa, later arguing their case before the land court, Hiriwanu had first sought Taratoa's permission and they emphasised that McLean rejected the offer until their consent had been won. Rangitane was to argue, however, that McLean directed Hiriwanu to consult with Ngati Raukawa only because he sought to include Otaki and Waikanae in the sale.[10]

Disputes of interpretation of the significance of particular actions, extent of territory concerned, and understandings supposedly reached, were to punctuate the negotiations for the Rangitikei–Manawatu lands over the next 20 years.

Interest in the upper Manawatu flowed on from purchasing activities in the Wairarapa. Searancke had advanced £100 to Hoani Meihana and others of Rangitane for Ngaawapurua, at the Wairarapa end of 70-Mile Bush. Although this block was located east of the Ruahine Ranges, the proposed alienation brought Rangitane interests on the western side, to the foreground of negotiations. In May 1858, James Grindell, an interpreter for the Native Land Purchase Department, was sent by Searancke to assess the Manawatu district – the nature of the land, who held interests in it and their attitude towards sale. When he reached the settlement of Raukawa on the western bank of the river, Grindell found Hiriwanu and his people opposed to Meihana's sale of Rangitane interests in the Wairarapa. Hiriwanu was prepared, however, to sell land on the western side. Hiriwanu told Grindell that:

> Hoani Meihana had, most unjustifiably, acted in direct opposition to the expressed desire of the people resident on the land. He did not appear to object to its being sold at a future period, but he thought Hoani had been too precipitant [sic]. They were determined not to sell any lands on the East of Tararua (viz, in the 70 Mile Bush) until they had disposed of all their lands on the west side – supposing no doubt, that these lands being nearest to the Ngatiraukawas, were most likely to be disputed and claimed by them.[11]

The lands under offer lay west of the Ruahine Ranges to Meihana's claims, and north of the Manawatu to the sources of the Oroua, Mangaone, and Puhangina Rivers.

Grindell informing both Ngati Upokoiri (residing on the river between Raukawa and Puketotara), and Ngati Apa (by letter), that matters affecting their interests were to be discussed, travelled down-river with Hiriwanu to Puketotara. He told the assembled tribes that he had been sent by the Government to ascertain what lands they were willing to sell and their respective claims within them. Grindell advocated recognition of the interests of the east coast people resident along the river: 'I

9. Ibid; Searancke to McLean, 27 September 1858, AJHR, 1861, C-1, p 280
10. Otaki Native Land Court MB 1D, 4 April 1868, p 497
11. Journal of James Grindell, 19 June 1858, AJHR, 1861, C-1, no 46, encl 1, p 277

reminded them that there were several families located amongst them who had become part and parcel of themselves, and exhorted them to be mindful of the interests of these people in the disposal of their lands'.

But at the same time, he emphasised the advantages of maintaining a united front against Ngati Raukawa:

> I represented to them that as they were all related together (having descended from one common source) they should endeavour to agree relative to boundaries and claims – that they should 'speak with one voice' – that if they were disunited by internal dissension they would be laying themselves open to the attacks of Ngatiraukawas from whom much opposition was to be expected, and that there would thus be much less chance of coming to an amicable understanding with that tribe.[12]

After discussions extending over several days it was decided that, in addition to the Puhangina block, land on the south bank should be offered for sale. Grindell estimated the two areas to comprise some 150,000 acres and recorded that the reserves and boundaries were decided. A portion of the block was allocated to Ngati Upokoiri and the existence of Ngati Raukawa interests to the east of the Oroua River, acknowledged: 'I was anxious to have the Oroua River as the western boundary, but it could not be arranged as the Ngatiraukawa have claims east of that river'.[13] No definite arrangement was made regarding Ngaawapurua.

4.3 THE REACTION OF NGATI RAUKAWA

Ngati Raukawa's resistance to sale was beginning to break down. Several small blocks at Otaki had been submitted for sale, but Searancke recommended that these offers not be pursued until negotiations for the lands between the Manawatu and Rangitikei Rivers were more advanced.[14] Ihakara and Ngati Whakatere of Ngati Raukawa had also offered land at the mouth of the Manawatu River in March 1858 – a proposal opposed by other groups within Ngati Raukawa. Grindell now travelled further down the river to ascertain the reaction of Ngati Raukawa and to pursue Ihakara's offer of sale of coastal lands. He anticipated some opposition to Hiriwanu's alienation, but no serious obstacle to the completion of the purchase, partly because of shifting attitudes to alienation. Nepia Taratoa, supported by his own people of Ngati Parewahawaha, and Ngati Huia, based at Poroutawhao where Rangihaeata had spent considerable time, continued to resist any further alienation. But Grindell reported that there was a strengthening perception amongst Ngati Raukawa that 'it was impossible to resist the "kawanatanga"'. According to Grindell, the non-selling sections saw 'Hirawanu's intentions of acting independently of them as a piece of assumption', while advocates of sale welcomed the move as strengthening their own position.[15]

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12. Journal of James Grindell, 2 July 1858, AJHR, 1861, C-1, no 46, encl 1, p 277
13. Ibid
14. Searancke to McLean, 31 May 1858, AJHR, 1861, C-1, no 44, p 274
15. Journal of James Grindell, 7 July 1858, AJHR, 1861, C-1, no 46, encl 1, p 278

Grindell rejected any right of the larger tribal entity of Ngati Raukawa to prevent an alienation by hapu of their interests:

> When the Ngatiraukawas first established themselves in the country, each division of the tribe claimed and took formal possession of certain tracts, as their share of the conquest, of which they forthwith became the sole proprietors and which they ever afterwards retained possession; but now, when the idea of selling the land is gaining ground amongst them, the opponents of such a step, for the first time, assert that the country is common property, and that no portion of it can be sold without the consent of all.[16]

He anticipated that in the changing climate of opinion, opponents of sale would be forced to confine their resistance to areas where their claim was undisputed. While the district could be purchased piecemeal, this would greatly increase the cost and the possibility of disputes. Grindell advocated a careful approach, with the object of effecting a large-scale alienation in which a single payment would be distributed among the various interested parties.[17] This view was shared by Searancke, who wrote to McLean advising that Taratoa should not be encouraged in any effort to subdivide the Manawatu lands.[18]

By the end of July, Taratoa's opposition was seen as untenable and for form's sake only. Searancke suggested that the chief's opposition was only 'for the satisfaction of his friends', and advised:

> Let him understand this fairly that the land on this south side of the Manawatu is for them, together with one large block at Rangitikei where their mill is situated and I believe that there will be no difficulty – Nepia now stands almost alone, most of his friends 'te pupiri whenua' having consented to the sale . . .[19]

Grindell also anticipated that Taratoa's remaining supporters would desert his cause 'if he persist in his opposition longer than they deem necessary to evince his power and importance . . .' He recorded that Taratoa had travelled to Puketotara and, on finding Rangitane determined that a sale should be effected, agreed to the alienation under his own mana:

> he told them to 'wait a little while, a very little while', and he would not oppose their desire. He has since declared his intention of selling the whole country between Manawatu and Rangitikei, including a portion of Te Hiriwanui's block. I believe, however, that he does not object to Te Hiriwanui's receiving the money – he is merely ambitious of the name and anxious to prove his right to sell the whole country.[20]

However, the matter was far from settled. Testimony in the Himatangi hearing suggests that Hoani Meihana had informed Taratoa of Hiriwanu's proposal and Rangitane's assent to it. After a runanga at Otaki, some 40 Ngati Raukawa – sections

16. Journal of James Grindell, 12 July 1858, AJHR, 1861, C-1, no 46, encl 1, p 278
17. J Luiten, 'Whanganui ki Porirua', claim Wai 52 record of documents, doc A1, p 26
18. Searancke to McLean, 26 July 1858, Donald McLean Papers, MS 32 (565), no 12, ATL
19. Ibid
20. Journal of James Grindell, 12 July 1858, AJHR, 1861, C-1, no 46, encl 1, p 279

located both at the Rangitikei and the lower Manawatu – travelled to Puketotara where they met with the up-river peoples of Ngati Kauwhata, Ngati Te Ihiihi, and the offspring of intermarriage to respond to Rangitane's desire to sell.[21] According to Parakaia, he, Taratoa, and Aperahama Te Huruhuru had proposed that a block bounded by Oroua be sold jointly by Rangitane, Ngati Kauwhata, and Ngati Te Ihiihi. But up-river Ngati Raukawa affiliates had refused to condone the alienation. Their interests had to be taken into account before the purchase could be completed. The semi-independent nature of the relationship of Ngati Kauwhata and Ngati Ihiihi to the entity of Ngati Raukawa was also to become a matter of some importance in the context of the land court. Integral to Rangitane's claim that they held mana over the region, was the argument that Ngati Kauwhata's interests in the Oroua area did not entitle Ngati Raukawa based at Otaki – in the words of Peeti Te Awe Awe, 'Ngati Raukawa had no right. The man who had a right was Tapa Te Whata – he is Ngati Kauwhata'.[22]

However, those who had settled the coastal sections of the region considered that they did have some authority over the fate of the upper Manawatu. At Otaki, during discussions between the Government, Ngati Parewahawaha, other Ngati Raukawa, and Ngati Toa regarding Te Horo block, Tamihana Te Rauparaha and Matene Te Whiwhi demanded payment for the upper Manawatu so 'that Ngati Raukawa may have the just proceeds'.[23] After some discussion, it was decided that sections of Ngati Raukawa, represented by Ihakara, Aperahama, Taratoa, and Wi Pukapuka should meet with Te Hiriwanu. A letter was sent to Te Hiriwanu, stating that Ngati Raukawa were prepared to accede to a limited alienation, stating: 'To whenua! hei tua mau, hei tahu mau, hei ko mau, hei hau hake mau'.[24] In August 1858, Searancke and Grindell, accompanied by Taratoa and a large contingent of leading Ngati Raukawa travelled to Raukawa, where a runanga was held. Groups described as being present include Ngati Parewahawaha, Pikiahu, Ngati Kauwhata, Ngati Te Ihiihi, Ngati Waratere, Ngati Whakateretere, Ngati Maniapoto, Ngati Upokoiri, Ngati Apa, Ngati Motuahi, and other Rangitane.[25] Taratoa and Ngati Raukawa rejected Hiriwanu's claim to Tawhitikuri but agreed to the formal return of land down to the Oroua River and consented to its immediate sale. Searancke recorded that:

> Nepia and his friends gave up all right and title to the land of the Rangitane's, telling the Hiriwanu that they were now friends to do what he liked with his land, if he wished to sell to do so, that he had come up at my desire to publicly assent to his doing so . . . and clearly signified that as soon as the sale of the upper part of the Manawatu was completed he would be prepared to go on with the lower part.[26]

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21. Otaki Native Land Court MB 1C, 16 March 1868, p 244
22. Otaki Native Land Court MB 1D, 4 April 1868, p 498
23. Otaki Native Land Court MB 1C, 16 March 1868, pp 244–245
24. Ibid, p 245
25. Searancke to McLean, 27 September 1858, AJHR, 1861, C-1, no 48, p 280; Searancke to McLean, 5 September 1858, Donald McLean Papers, MS 32 (565), no 14, ATL
26. Searancke to McLean, 5 September 1858, Donald McLean Papers, MS 32 (565), no 14, ATL

4.4 SETTING THE BOUNDARY OF RANGITANE INTERESTS

The next obstacle to the completion of the purchase was generated by Rangitane–Upokoiri rather than within Ngati Raukawa. The exact sequence of events is not clear. According to a private letter from Searancke to McLean, dated 5 September, Hiriwanu insisted at the Raukawa meeting that:

> before the land could be sold that it must be surveyed all round the Boundaries and then paid for at the rate of 30/- per acre – that his land was of immense extent and that it should not be sold in the dark, that you had promised him that it should be actually surveyed . . .[27]

Privately, Searancke blamed these demands on the precedent of Kempthorne's survey and the increasing difficulty in purchasing at a low price, on 'the advance of knowledge among the Natives generally the great advantages from position and value of this land'.[28] Hiriwanu's demands were not, however, fully conveyed in official correspondence until 12 November. According to the published report of 27 September, Searancke had pointed out the difficulty of surveying heavily forested land and after two days negotiation, Rangitane had agreed to accompany him to the Ruahine Ranges from which point a sketch survey of the block could be made. Searancke claimed that Hiriwanu was satisfied with this rough delineation of the block's boundaries, but the obstacles to purchase were to prove insurmountable in the short term and the chief was later represented as capriciously reneging on this arrangement.[29]

Challenges were mounted by adjoining tribes – to the north, by Ngatirarohata, centred at Patea, and to west by Ngati Kauwhata and Ngati Ihiihi. According to Meihana, the south and south-west boundaries of the block had been set at the Oroua River by Ngati Whakateretere and Ngati Kauwhata. However, Ngati Kauwhata elders who had not attended the Raukawa runanga rejected the inclusion of the river in the block and demanded that the boundary be set at the Mangaone River instead.[30] Te Hiriwanu and his people accompanied Searancke to the Ngati Kauwhata settlement of Awaturi where the matter was settled 'amicably' after several days of discussion.[31] Searancke decided to give priority to the definition of Rangitane and Ngati Raukawa interests:

> The Ngatikawhata and Ngatiwhiti [sic] giving way to Te Hiriwanu, I found that the West boundary not being defined by any natural features, but merely by certain names of places, the position of which were uncertain, and therefore liable to be moved at the Natives' pleasure, it would be necessary that a line (boundary) should be cut . . .[32]

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27. Ibid
28. Ibid
29. Searancke to McLean, 27 September 1858, AJHR, 1861, C-1, no 48, p 280
30. Otaki Native Land Court MB 1C, 16 March 1868, p 246; Otaki Native Land Court MB 1C, 17 March 1868, p 252
31. Searancke to McLean, 27 September 1858, AJHR, 1858, C-1, no 48, p 280
32. Ibid

Accounts before the land court suggest that a subtle adjustment of interest was occurring within Ngati Raukawa alliances rather than between them and Rangitane. Reverend Williams saw the boundary setting as 'entirely between Ngati Raukawa hapus' – an adjustment of the claims of Ngati Ihiihi and Ngati Kauwhata, with Ngati Raukawa groups resident in the lower reaches of the river.[33] This view was supported by Te Kooro Te One and Te Aratakana of Ngati Kauwhata. Te Kooro denied that the boundary at Oroua had ever been accepted by his people. They had been 'hardly persuaded' to acquiesce to Rotopiko, between the Mangaone and Oroua Rivers as the dividing line.[34] At Awahuri, Taratoa stated his acceptance of the Oroua as the boundary to Rangitane interests. Tohutohu of Ngati Te Ihiihi rejected Taratoa's ability to make that decision: 'You must not bring the boundary to Oroua – it is for me and Ngati Kauwhata to do that, the owners of the land'.[35] But when it was again proposed that the boundary should be drawn at the Mangaone, Wi Pukapuka had replied 'If Ngati Kauwhata insists on Mangaone we shall insist on taking it to Oroua', and a compromise was reached.[36]

Agreement had been reached among all interested parties that a sale could be effected by Rangitane, the boundaries apparently agreed, but the extent of their interest remained a matter of dispute. In Ngati Raukawa eyes, the entire interests of Rangitane on the west coast were satisfied by the sale. Te Kooro Te One later testified to Ngati Raukawa interpretation of the significance of that agreement:

> Hirawanu expressed his gratitude for the concession of Ngatiraukawa in favor of his 'hoko . . . Nepia said, "Ka hoatu e au tena whenua ki a koe" – I am satisfied; Ngati Apa is the 'matua' of the land, the other side of the Rangitikei:– and now your wish is gratified "hei mutunga tonu – tanga tena mo to taha" what remains is for me alone.'[37]

While there were Rangitane living outside the boundaries agreed upon for the sale of Ahuaturanga, in Williams' opinion, they 'seemed to come in only under Ngati Te Ihi Ihi', with whom extensive intermarriage had occurred.[38] According to Ngati Raukawa testimony, the boundary for Ahuaturanga was a 'barrier' to Rangitane's claim.[39] Taratoa had told Hiriwanu that he might sell to the agreed boundary but that 'If the fire is kindled on any other portion "ka tineia, mo te hoko tenei."' Meihana later stated that he did not know 'whether the boundary agreed on was fixed as a tribal boundary or as a boundary of sale', and that 'nothing was said about Rangitane claims in the strip between the boundary of the block and Oroua'.[40] Te Awe Awe claimed, however, that it was he who had fixed the boundary to retain land for himself between the Queen's line and the river, and denied that it was set as the dividing line between the two tribes. But he admitted that he had ceased to cultivate land at Pouwhata after the sale. Rangitane was to later dispute that their interests had

33. Otaki Native Land Court MB 1c, 17 March 1868, p 252
34. Ibid, p 254
35. Ibid, p 256
36. Ibid, p 255
37. Ibid, p 254
38. Ibid, p 252
39. Ibid, p 255
40. Ibid, p 247

been confined to the boundaries set for Ahuaturanga – or acknowledged adequately by the sale of that block.

4.5 PROBLEMS OF PRICE

Although Searancke regarded the question of survey and boundary position as settled, he still felt concern about the price that would be asked. Convinced of the importance of the acquisition, which he saw as opening the way for further purchase in the Manawatu, Searancke informed McLean that he was prepared to offer £5000, or as much as £7000 – at a rate of ninepence per acre for a calculated 170,000 acres.[41] By October, Searancke considered the purchase to have been completed, 'inasmuch as they want the money to be shown to them' and reported:

> £5500 is the price that we stuck at. Of course they wanted double that sum. I offered £4000 which I do not think very much for 200,000 acres of fine timbered land but the former sum I was told that they would take if offered. I purpose closing the purchase at once by giving them a sum of £2000 – and the balance at not very distant dates . . .[42]

Within weeks, however, these plans had gone awry. Searancke reported that he had met with Te Hiriwanu, other Rangitane, and some Ngati Apa to finalise arrangements for the alienation of the block. At first, matters had seemed to progress smoothly for the Government, Searancke stating that, 'we arranged anew the reserves, reducing them very much in extent, and I also consented, as there appeared to be a complication of difficulties, to cut off a portion of the land on the Oroua river and make it a distinct purchase'.[43] According to the official report, Te Hiriwanu had then informed him that he was 'determined not to sell his land except by the acre'. Searancke argued that this was an impossible demand – and one that had been settled in September. It was now that he recorded Te Hiriwanu's insistence, if the 'land should be sold in the dark, that he should require a much larger sum than we formerly spoke about, and mentioned sum too ridiculous to report'.[44] The Government's offer of £5000 was refused and prior survey again requested, Te Hiriwanu suggesting that this had been promised to him by McLean. Searancke argued that this would undermine his claim, representing to Te Hiriwanu:

> the difficulties into which he himself was re-plunging his land, which was now principally through my interest and exertions with opposing Tribes, assented to, and the sale of it allowed to him . . .[45]

In private, he told McLean that he could not consent to the survey, 'as that, I imagine would involve my making him acquainted with the quantity'.[46]

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41. Searancke to McLean, 13 September 1858, Donald McLean Papers, MS 32 (565), no 15, ATL
42. Searancke to McLean, 11 October 1858, Donald McLean Papers, MS 32 (565), no 16, ATL
43. Searancke to McLean, 12 November 1858, AJHR, 1861, C-1, no 50, p 282
44. Ibid
45. Ibid
46. Searancke to McLean, 1 November 1858, Donald McLean Papers, MS 32 (565), no 17, ATL

Discussions were broken off 'to save disputes among themselves'.[47] In this context, Searancke had little sympathy with Te Hiriwanu's aspirations which he attributed to tribal jealousy and ignorance:

> The number of different tribes interested in the sale of this Block, and having all made over or difficulty, has had, in my opinion, the effect of making him fearful of selling it for a sum of money that, though a fair price and large, would appear but small when divided their claims to Te Hiriwanu in order that the land may be sold without any confusion among so many; irrespective of this reason, the isolated position and ignorance of these Tribes, but seldom brought into contact with Europeans, or even with their more civilised brethren on the coast; and who, through accidental circumstances, have been again put in full possession of the land of their forefathers, having but a slight knowledge of the value of money, makes them more anxious to conduct the sale of their own land slowly, and attended with all their own Maori custom, and strive to obtain a price and enunciate a new principle in the sale of land which will give them importance, and place them a favourable contrast with the Tribes who have sold land to the government.[48]

In the meantime, Stewart was left to carry on the survey of the block in the hope that this would 'keep the idea of the sale of it constantly and prominently before the Natives'.[49] Searancke believed that there would be a delay of only a month or two since 'the other natives interested will not allow the sale of this land to be stopped by any 'pakeke' on the part of Hiriwanu'.[50] In the event, however, the purchase of the upper Manawatu was not to be effected until 1864.

4.6 NEGOTIATIONS REINSTITUTED AT WAIKANAE

Negotiations for Waikanae lands were also re-initiated in 1858 when, in April, Searancke entered into an agreement with 'the Chiefs and people of Ngatitoa and Ngatiawa to fully cede a portion of [their] place' to the Crown. A deed was signed by 12 chiefs included Matene Te Whiwhi, Nopera, Rawiri Puaha, Heruwina Te Tupe, and Teira. The alienation was described as extending from Poauwa to Pawakataka and east to land sold by Ngati Kahungunu. The northernmost coastal point was at Waikanae. Searancke calculated this area to comprise 60,000 acres and described it as mostly of a 'broken hilly' character.[51] The purchase was, however, far from finalised, no agreement having been reached on the purchase price which was to be decided after survey. At this stage, only a deposit of £140 was paid.[52]

Searancke attempted to complete the transaction in the following months, but his efforts to survey the area revealed the limited quality of the initial agreement. He immediately ran into difficulties caused by 'numerous conflicting claimants', and

47. Searancke to McLean, 20 November 1858, Donald McLean Papers, MS 32 (565), no 18, ATL
48. Searancke to McLean, 12 November 1858, AJHR, 1861, C-1, no 50, p 282
49. Ibid
50. Searancke to McLean, 1 November 1858, Donald McLean Papers, MS 32 (565), no 17, ATL; Searancke to McLean, 20 November 1858, Donald McLean Papers, MS 32 (565), no 18, ATL
51. Searancke to McLean, 31 May 1858, AJHR, 1861, C-1, p 274
52. Turton, Deeds, no 23, 20 April 1858, p 129

over the extent of reserves and the final price.[53] The purchase was, however, now variously calculated at 76,000 and 95,000 acres, reflecting an enlargement in the proposed alienation to Kukutauaki Stream, which was generally regarded as the northernmost extent of Te Ati Awa interests.[54]

Searancke complained that he had been 'compelled to consent to the eka eka notion . . .' which he criticised as giving rise to 'endless trouble'. The reserves proposed were estimated by Searancke to total 6000 acres.[55] His disapproval appears to reflect a general reluctance among officials to allow Maori to exclude extensive portions of land from initial alienations to keep for later sale. He suggested that if the reserve system was to continue, it should be 'fairly understood that the land must be in the first place conveyed to the Crown and the portion reserved for the eka eka pointed out on the ground and to be as a place for their occupation and not speculation . . .'[56] In the meantime, Searancke attempted to by-pass the issue by persuading the vendors to leave the extent of the reserves for the Governor to decide. The friends of Reverend Riwai Te Ahu demanded, however, that:

> the lands should, prior to any sale, be surveyed and conveyed to them; also insisting that the disputed portion of the block, about fifteen hundred acres (1500) in extent, should also be reserved, in addition to the reserve which I had consented for them to have, in extent about twentyfive hundred (2500) acres.

Searancke refused, suggesting that they should have right of occupation for two years with an option to purchase during that time, but referred the matter to McLean.[57]

The Government's rejection of the price demanded by the vendors obviated the necessity of any response from McLean on this question. It was the issue of price that finally thwarted the sale. Searancke had suggested to McLean that no more than sixpence per acre should be paid,[58] but was obliged to accept a price of £3200 in addition to the £140 already paid as a deposit. Further payments to settle the claims of Muaupoko and Ngati Kahungunu were also envisaged and would raise the cost to over ninepence an acre. Despite the poor quality of the land, Searancke believed that the price was justified by the block's position and size, and by 'the jealousy existing among the various Natives resident' on it.[59] That sum was, however, rejected by the Government, which insisted on the original offer of sixpence per acre on the estimated area since the terrain was of such a rugged character.[60]

When Searancke returned to the district in November 1858, the Government's proposal was accepted by Ngati Toa but rejected by Te Atiawa. The Government

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53. Searancke to McLean, 31 May 1858, AJHR, 1861, C-1, no 44, p 274
54. Searancke to McLean, 26 July 1858, Donald McLean Papers, MS 32 (565), no 12, ATL; Searancke to McLean, 6 August 1858, AJHR, 1861, C-1, no 47, p 279
55. Searancke to McLean, 26 July 1858, Donald McLean Papers, MS 32 (565), no 12, ATL
56. Ibid
57. Searancke to McLean, 6 August 1858, AJHR, 1861, C-1, no 47, p 279
58. Searancke to McLean, 26 July 1858, Donald Mclean Papers, MS 32 (565), no 12, ATL; Searancke to McLean, 20 November 1858, Donald McLean Papers, MS 32 (565), no 18, ATL
59. Searancke to McLean, 6 August 1858, AJHR, 1861, C-1, no 47, p 279
60. Searancke to McLean, 11 October 1858, AJHR, 1861, C-1, no 49, p 281

abandoned its efforts to buy land north of Whareroa Stream, near Waikanae itself, because Te Ati Awa wished to retain 'all the best of it', while refusing to reduce their price.[61] But Searancke proceeded with the purchase of the southern portion of the land originally under negotiation. Known as Whareroa or Matahuka, the block comprised 34,000 acres, and was bounded by the Whareroa Stream in the south and the Huruhi settlement to the north. Reserves of 200 acres at Wharemauku, and of 50 acres at Whareroa, were set aside for the vendors and for Tamati Te Whakapakakeke respectively. A claim was also marked out on behalf of the half-caste children of John Nicholl and Henry Flugent. According to Searancke's reports to McLean, £800 was to be paid for land. The purchase price included £70 which had been already received on 20 April, and it appears from later evidence that the balance was paid in instalments. In November 1858, Searancke described the transaction for Whareroa as being finalised without 'objection or difficulty' and stated that he considered the land to be ready for immediate settlement.[62] It appears, however, that the purchase was not fully accepted, objections to the northern boundary being later raised by Te Ati Awa. Nor does there appear to be a deed relating to this purchase, although witnesses before the Native Land Court subsequently referred to – and disputed – one dated 26 November 1858.

4.7 TE AWAHOU

Searancke had come to the conclusion that only by immediate payment of a large portion of the purchase price could deals be clinched with Maori.[63] In the course of the Upper Manawatu negotiations he had received £1500 in funds for the purchase of both that block and lands at the mouth of the river.[64] In November 1858 he used £400 of this money for an initial payment to Ihakara and Ngati Whakatere for the Te Awahou block (comprising 37,000 acres on the north bank of the mouth of the Manawatu River) in order to put pressure on the non-sellers, led by Nepia Taratoa.

During the negotiations for Hiriwanu's land, Searancke had been also attempting to reconcile Nepia to Ihakara's proposed sale. This was a more difficult problem for Taratoa than that of acknowledging the rights of older, resurgent occupiers over land, the sale of which might satisfy the Europeans. Ihakara was acknowledged as the primary interest-holder within Te Awahou, but the recognition of the right of the individual, or hapu, to dispose of interests within the tribal rohe was likely to result in further loss of land. Ihakara saw land sales, settlement, and cooperation with the Government as the best course of action and spoke of Te Awahou's alienation as but the first step in the sale of the lower Manawatu lands. He told the court at the hearing for Himatangi, 'I did say with reference to Te Awahou – I will take out my plank in order that the ship may sink – I took out my plank and the water is running

61. Searancke to McLean, 20 November 1858, Donald McLean Papers, MS 32 (565), no 18, ATL
62. Searancke to McLean, 27 November 1858, AJHR, 1861, C-1, no 52, pp 283–284; Searancke to McLean, December 1858, Donald McLean Papers, MS 32 (565), no 19, ATL
63. Searancke to McLean, 11 October 1858, Donald McLean Papers, MS 32 (565), no 16, ATL
64. Searancke to McLean, 12 November 1858, Wellington District, AJHR, 1861, C-1, no 50, p 281

in . . . The anti-selling league is the ship I mean'.[65] Taratoa's party asserted a wider right of Ngati Raukawa to hold onto tribal land – against the weight of official opinion and the determination of the individual to sell land. They regarded Ihakara's statements about removing the plank of Te Awahou as a 'malicious act towards the tribe . . .' and objected to his having brought 'persons not owning the land' on it, in order to strengthen the party of sellers.[66]

Throughout August, Searancke 'pacified' the sellers while taking 'every opportunity of associating Nepia Taratoa with myself in all disputes and negotiations pending in the District'.[67] He reported that he had held frequent private discussions with the chief, informing him of the Government's intention of fulfilling 'pledges' made to Ihakara. Taratoa's replies were considered by Searancke to be 'dubious', but 'on the whole favourable'.[68] Samuel Williams again added his persuasions, advising the non-sellers to withdraw their opposition. He later testified that he had told them that, 'while they might be afraid of mischief arising from a particular hapu selling its land – I saw clearly that mischief would arise from any body of natives trying to prevent real owners from selling their land'.[69] One hundred and fifty Ngati Raukawa – the majority being supporters of Ihakara – assembled at Te Awahou in early November. Nepia attended the meeting with what appears to have been some reluctance. According to Searancke, when Taratoa voiced no objection, all believed that he had consented to the sale of the whole block. Taratoa demanded that the price should be discussed immediately but on finding Searancke apparently ready to accede to all the demands of Ngati Whakatere, he left the meeting. On the next morning Searancke found that Taratoa was 'sending Natives over the whole Block marking out his own and friends' claims'. These areas were 'with one exception very small, and the worst parts of the Block, the whole not amounting to one-third of the whole block'.[70] Native Land Court minutes would suggest that it was Omarupapaka that was under dispute, Parakaia later testifying that the poles were taken out from the sea to the river and taken southwards to Pakingahau.[71] Searancke reported:

> Ihakara and his friends again assembled, and demanded that the sale should be proceeded with, I with some difficulty pacified them, and in the meanwhile sent for Nepia, and found that not withstanding all his promises made both to me and the Natives, he was determined, while preserving an apparently friendly appearance to the Government, to resist the sale of any lands over which he laid claim. This determination on his part I believe to have some connection with his evident wish to proceed to Auckland to see the Maori King.[72]

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65. Otaki Native Land Court MB 1C, 18 March 1868, p 265
66. Ibid, p 267
67. Searancke to McLean, 15 November 1858, AJHR, 1861, C-1, no 51, p 283
68. Ibid
69. Otaki Native Land Court MB 1C, 18 March 1868, p 267
70. Searancke to McLean, 15 November 1858, AJHR, 1861, C-1, no 51, p 283
71. Otaki Native Land Court MB 1C, 17 March 1868, p 259
72. Searancke to McLean, 15 November 1858, AJHR, 1861, C-1, no 51, p 283

From the beginning, Searancke had considered Taratoa's objections to have been 'without any feasible grounds' and as less tenable, as Ihakara's support had grown.[73] Taratoa's tolerance for the alienation of any land over which Ngati Raukawa asserted a claim had only ever been reluctantly given. Searancke, however, saw this latest action as a gross piece of deceit on Taratoa's part, and felt quite justified in pushing ahead with the purchase, telling the chief 'utterly impossible it was for him to resist the general wish of the Natives to sell their waste lands', that he would create distrust amongst his own people, and that any further difficulty in completing the transaction would be laid at his door.[74]

Arguing that 'too much notice' had been given to the opponents of sale, Searancke agreed to a purchase price of £2500. This compact was backed by a sizeable down payment, in the hope that many of those 'wavering between selling and holding the land', would consider any further opposition to the sale to be 'useless'.[75] A deed was signed by 67 people. Taratoa refused to do so. The external boundaries were described, but the reserves were left for future consideration. Searancke reported to McLean that this was a temporary measure, but one likely to lead to a speedy solution of the Government's difficulties in the whole district:

> As regards the step I have taken at the Awahou I depend upon you to justify me with the Government. [I]t is a bold stroke and one that will I think carry some weight with it in the district. I was compelled to either do what I have done or at once give up any further chance of purchasing at Manawatu. [T]he deed forwarded is only a temporary affair until the excitement settles down and that double-faced old sinner Nepia comes round in his ideas and becomes honest.[76]

In December 1858 a further £50 was paid on the block to Ngati Apa at Ihakara's request.[77]

Searancke spent the next few months in the Wairarapa, returning to the west coast in May 1859, when he attempted to finalise the purchase of Te Awahou. Taratoa now signed the deed. Parakaia, who also accepted the sale at this stage, later testified that the boundary was set between the lands to be sold and those to be retained. He told the court that 'Nepia stood up and extended his arms and said, "My son, Ihakara! You have your desire, eat your portion."'[78] According to Ngati Raukawa witnesses, Taratoa intended the area excepted to the north of the block to be kept for Ngati Turanga, Ngati Raukau, and Ngati Te Au.[79] However, Amos Burr, appearing for the Crown, which supported Ngati Apa's claims in the region, suggested that Taratoa had included Ngati Apa when speaking of lands to be kept for his people.[80] The balance of the payment was then disbursed, although the total had been reduced

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73. Ibid
74. Ibid
75. Ibid
76. Searancke to McLean, 20 November 1858, Donald McLean Papers, MS 32 (565), no 18, ATL
77. Searancke to McLean, 30 December 1858, AJHR, 1861, C-1, no 55, p 285
78. Otaki Native Land Court MB 1C, 17 March 1868, p 259
79. Otaki Native Land Court MB 1C, 20 March 1868, p 294
80. Otaki Native Land Court MB 1D, 3 April 1868, pp 476–477

to £2335.[81] According to Parakaia, all interested tribes were satisfied, Ihakara making payment to Ngati Toa because they were conquerors, and Ngati Apa and Muaupoko on the grounds of their tupuna. Conquest was thus acknowledged, but not to the exclusion of other groups' rights.[82]

The second deed lists, but leaves undefined, those areas within the block that were to be excepted from the transaction. These included areas at Raumatangi, Wirikino and Haumiaroa which were considered to have been already transferred to the New Zealand Company, gifts to the half-caste children of Cook, and to the Reverend Duncan, 20 acres for Ihakara and his brother, Kereopa, which was subsequently subdivided, and urupa at Moutoa and Whakawehi. A reserve was also defined:

> These are the boundaries commencing at the Manawatu at the fence of Te Kuka (Mr Cook) thence to the landmark of Ihakara (pou Ihakara) thence direct to Auwaituroa thence to Te Mutu at Manawatu thence following the course of the Manawatu River to Manawaaru where it turns off towards Mukaka to the end of the forest of Tapuiwaru and along the edge of that forest at Paretau and thence to Manawatu.[83]

Taratoa's fenced settlement and an adjacent area were set aside, for Nepia and Kereopa respectively. But, in line with McLean's preference for Maori to purchase land themselves on individual title rather than for it to be reserved, these lands were to be bought at the rate of £5 per quarter-acre. A similar arrangement was made for Wirihana at Moutoa.[84]

Te Peina, Wereta Te Waha, and Horima refused to accept any money for their claims. These were then pointed out by Ihakara in the presence of the opposed rangatira and Searancke instructed Stewart to survey the disputed areas. Te Peina immediately objected. Searancke called a halt until a 'satisfactory arrangement' could be made. He then wrote to interested parties, including Taratoa, inviting their assistance in settling the disputed claims. On all but one refusing to come to his aid, Searancke instructed Stewart to complete the survey as 'quietly as possible'. He was to mark on the plan both the boundaries pointed out by Ihakara, and the various claims made by others, so that the land could be gazetted and 'such portions thrown open at once for sale as [were] undisputed'.[85] The areas marked as belonging to Te Peina were reserved to his people by the second deed. Te Peina, however, did not consider their claim limited to the boundaries so defined.[86]

4.8 WAINUI AND WHAREROA

The already confused situation at Waikanae was exacerbated by a further purchase to the south of the Whareroa block, the arrangements for which were linked with those concerning Whareroa itself. In June 1859, Searancke reported that he had

81. Turton, Deeds, no 52, p 176
82. Otaki Native Land Court MB 1C, 17 March 1868, p 260
83. Turton, Deeds, no 52, p 176
84. Ibid
85. Searancke to Assistant Native Secretary, 31 May 1860, AJHR, 1861, C-1, p 291
86. Wardell to Superintendent, 16 December 1872, MA series 13/75B, NA Wellington

purchased 30,000 acres of land about Wainui and Paekakariki which had been initially excepted from the sale of Porirua district as reserves for Ngati Toa. The agreed price was l.850 which included an earlier payment of 'earnest money' – a sum of £50 – to Hurumutu, the principal vendor. The purchase price (a little less than sevenpence per acre) was regarded as sizeable, but justified by the block's proximity to Wellington and position on the road to Wanganui. The land reserved – their settlements at Whareroa, Wainui, and Paekakariki, and tracts at Ngapaipurua, Te Rongo-o-te-wera, and Te Ruka – totalled 787 acres. Even though the reserves amounted to less than 3 percent of the area alienated, they were deemed 'large'. Searancke reported, however, that 'when the number of Natives resident within the boundaries [was] taken into consideration they could not in justice be made smaller'. Two pieces of land within the sale boundaries were also conveyed by deed of gift to Pakeha married to Maori women.[87]

In July 1859, the land purchase commissioner reported that he had made surveys of both the Wainui and Whareroa blocks: 'surveying and marking out the boundaries of all the reserves, pointing them out to the natives . . .' In contrast to his earlier comment regarding the population of the Wainui district, Searancke suggested that his efforts to reserve land in Whareroa were 'to little purpose, they all with but few exceptions looking northward'.[88] According to Hurumutu's evidence, when the boundary between Wainui and Whareroa had been established, a second payment of £140 for Whareroa was divided between Eruini Te Tupe (who received £50), Nopera (£40), and himself.[89] Deposits were paid and accepted without an exact understanding of which land was involved, with the consequence that potential vendors were led into making progressive alienations. Hurumutu told the court that Ngati Toa had understood that the initial payment was for the mountain Pouawha:

> After we had received the £50, Searancke wished it to include the land at the bottom – all Wainui to Wareroa. When we agreed to receive the second payment, Mr Searancke desired us to include all the bottom part the lower portion extending to the sea – the Whareroa people agreed to this.[90]

Searancke had been optimistic that the area north of Whareroa could be purchased if sevenpence per acre was paid, but his problems persisted.[91] When he returned to Waikanae in August, he found that his confidence regarding future purchase had been misplaced. His efforts to complete the survey as 'the only practical way of bringing the matter to an issue' proved too contentious:

> a large group of natives headed by Wi Tamihama were still violently opposing the sale and also Eruini Te Tupe coming forward and saying that as the sale if carried out would breed dispute etc etc among them and that he (consequently) would therefore rather

87. Searancke to McLean, 6 July 1859, AJHR, 1861, C-1, no 56, p 285
88. Searancke to McLean, 8 July 1859, Donald McLean Papers, MS 32 (565), no 26, ATL
89. Otaki Native Land Count MB 2, 30 May 1873, p 207
90. Ibid
91. Searancke to McLean, 27 November 1858, AJHR, 1861, C-1, no 52 , p 284

withdraw his offer of sale, I determined to relinquish an affair which I feared would lead to bloodshed . . .[92]

The question of exactly what land had been purchased by the Crown was not settled until the early 1870s when Wi Parata brought a claim to the land court for Ngarara block, the boundaries of which included Whareroa and Wainui. H S Wardell, working as an agent for the provincial government, reached an agreement with Parata that the line between Crown and Maori land would be set at magnetic east from the trig station at Wood's fence. At the same time, the court awarded a portion of Ngarara (as Muaupoko block) to Eruini Te Tupe, who admitted having received £50 on account of his land and expressed himself willing to see through the transaction.[93]

4.9 BREAK IN LAND NEGOTIATIONS

Elsewhere, too, problems continued to frustrate land acquisition. By August, Wereta was still holding out against the alienation of Te Awahou, while Tamihana Te Rauparaha refused to accede to the sale of the small Te Horo block. Hirawanu was informed that the Government was prepared to offer sixpence per acre for his land, estimated at 200,000 acres. Searancke reported that he believed that this sum would be accepted ultimately, but 'that so long as the Natives think that by referring to you [McLean] or any other officer that they can get an increase of price, no district officer will be able to deal with them'.[94] The conflict between Ngati Apa and Ngati Raukawa was also threatening to overturn Hadfield's plans to establish a mission in the Otaki area. Taratoa, Te Kingi, and Te Wata (of Ngati Kauwhata) had consented to the alienation of Whakaari and set up poles to mark the boundary. Searancke reported, however, that Ngati Apa were 'very much excited and indignant at the idea of Ngati Raukawa assuming the right of giving the land away without reference to them and determined to oppose it'. Ngati Apa were invited to participate in the gift to the church, and it was eventually agreed that they would match Ngati Raukawa by giving an equivalent acreage (1000 acres) to Reverend Taylor at Wanganui.[95]

Searancke's competence was called into question by the Governor in mid-1859. He had been unable to effect purchases at the sort of low prices contemplated by the Government, and adjustments of boundaries, hotly disputed in a region where the tribal status quo had been so recently disrupted, proceeded at a pace dictated largely by Maori, not the imperatives of colonisation. Searancke attributed his failure to effect any large-scale purchase to:

The extreme jealousy of the Natives amongst themselves respecting the ownership of claims of different families, thereby rendering it necessary that the boundaries of lands offered for sale should, when possible, be surveyed or very clearly defined by

92. Searancke to McLean, 5 August 1859, Donald McLean Papers, MS 32 (565), no 28, ATL
93. Wardell to Superintendent,10 June 1873, MA series 13/75B, NA Wellington
94. Searancke to McLean, 5 August 1859, Donald McLean Papers, MS 32 (565), no 28, ATL
95. Ibid, no 29

> perambulation previous to completion of purchase. The necessity that the consent of all the owners should be obtained, and the greatest publicity being given to the negociation [sic], thereby preventing any of them making after claims , for which I regret to say they have a peculiar aptitude. This conclusion I have come to, from the innumerable claims made on lands sold in 1853, 4, and 5.[96]

He was increasingly discouraged by the slow rate of progress of acquisition along the coast, and clearly dismayed at the ease with which apparent deals fell through. His letters make frequent reference to his weariness and his frustration with tribal politics, Maori vacillation and perversity, and their preference for dealing with McLean.

Searancke began to question the wisdom of not accepting limited alienations in the pursuit of the large scale acquisition, and to doubt whether the purchase methods so effectively applied by McLean in the Hawke's Bay would work to the west coast situation. In August 1859, he advocated acceptance of an offer by Ngati Upokoiri, who were preparing to return to Ahuriri, to sell a 350-acre block at Moutoa, lying between Otaki and the Manawatu River, and located within a larger general reserve made by Grey.[97] Searancke expressed some reservations about the purchase as creating a precedent of a small-scale and expensive acquisition, but suggested that the reservation of large areas did not work because of 'jealousies and want of unanimity among the Natives themselves'. This failure having been demonstrated by such offers to sell, so Searancke argued, it would be 'desirable to reconsider the advantage of any longer refusing to purchase the lands the Natives are so anxious to sell'.[98] The acquisition of the block would allow the Awahou swamp to be drained and 'the getting in of the claims of this tribe, who, through removing to a distance, may give considerable trouble to any land purchasing operations in the district'.[99]

Although Searancke tended to see sale as the ultimate solution to disputes between different tribes and hapu,[100] purchase negotiations ground to a halt. He was increasingly concerned about the laying in of arms in the district.[101] In May, Searancke agreed to make a sketch survey of lands at Muhunoa-Ohau, repeatedly offered for sale by Roera Te Hukiki, based at Otaki. He informed Hukiki, however, that 'in the present unsettled state of affairs [he] could not think of involving the Government in further embarrassment by making any purchase of lands'.[102] It is likely that the question of price played a large role in the failure to complete a deal. Searancke reported himself as 'anxious to have if possible, completed the purchase as it would have been the best proof at this present time that it is not our intention to take their lands as their reports go, by force without purchase'.[103] But Hukiki's demand for £7000 had 'electrified' Searancke, who had no alternative but to give

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96. Searancke to McLean, 21 February 1860, AJHR, 1861, C-1, no 61, p 288
97. Searancke to McLean, 24 August 1859, AJHR, 1861, C-1, no 58, p 287
98. Ibid
99. Ibid
100. Searancke to McLean, 21 February 1860, Wellington District, AJHR, 1861, C-1, no 61, p 288
101. Searancke to McLean, 25 April 1860, Donald McLean Papers, MS 32 (565), no 37, ATL; Searancke to McLean, 3 September 1860, Donald McLean Papers, MS 32 (565), no 43, ATL
102. Searancke to Assistant Native Secretary, 31 May 1860, AJHR, 1861, C-1, no 66, p 291
103. Searancke to McLean, 10 May 1860, Donald McLean Papers, MS 32 (565), no 38, ATL

him time to think over his counter-offer of £1000. Searancke considered this to be a generous sum for 22,000 acres, only 10,000 acres of which was level and arable.[104]

Within days, the commissioner was instructed to break off any survey activity in the Manawatu, and to report to the Governor, because he was creating 'dissatisfaction . . . among the Southern Natives'. Searancke defended his actions, but in June recommended a suspension of purchasing efforts in the Wellington region, stating that:

> two-thirds of sums of money paid on account of land during the year 1859 and to the end of March, 1860, has been devoted solely to the purchase of arms and ammunition; also that large sums of money have been forwarded to Waikato for the use and purpose of the Maori King.[105]

Searancke's reports on the temper of the country were mixed, but he remained cautious throughout 1860 'when even the most friendly Natives evince such sympathy for their friends at Taranaki'. Thus, while many former opponents of sale in Upper Manawatu seemed to be ready to endorse the alienation, Searancke thought that it would be unwise for the Government to attempt to complete the transaction.[106] However, Te Awahou was finally gazetted and thrown open for sale in early 1861 on Searancke's recommendation. A number of problems had arisen since the signing of the Te Awahou deeds some two years earlier. The gifts to Duncan and to Cook's children had been challenged.[107] Wereta had claimed land at Paretao and 'obstinately refused to cede it', and a portion of the block at Iwi te Kai had been occupied by Te Herekau of Ngati Whakatere who was also requesting the extension of the reserve at Whakawehe.[108] Searancke believed that only European settlement would confirm the transfer of title. He considered that little was to be gained from withholding the block from sale when settlers were anxious to purchase land in the district, and he further advocated its opening on the grounds that:

> the Natives themselves are most anxious to see settlers among them and are disappointed at the delay and openly state that as the Crown is not making use of the land they will resume possession; that its non-occupation is daily bringing forward fresh disputes, and that the settlement of Europeans amongst them will tend to distract their attention very much from other more exciting subjects, by giving them employment and its consequent pecuniary advantages, and the establishment of a healthy social intercourse between the two races.[109]

Searancke was not prepared to extend the reserve at Whakawehe, but recommended that a pre-emptive right be extended to Ngati Whakatere over a 50-acre area adjacent to it. Such areas and disputed claims were to be excluded from the lands to be put on the market.

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104. Ibid
105. Searancke to McLean, 18 June 1860, AJHR, 1861, C-1, no 67, p 292
106. Searancke to McLean, 29 August 1860, AJHR, 1861, C-1, no 71, p 296
107. Searancke to McLean, 6 August 1860, AJHR, 1861, C-1, no 69, p 295
108. See Luiten, p 31; Searancke to McLean, 1 February 1861, AJHR, 1861, C-1, no 78, p 302
109. Searancke to McLean, 1 February 1861, AJHR, 1861, C-1, no 79, p 302

CHAPTER 5

FEATHERSTON'S PURCHASES, 1860s

5.1 ESCALATION OF TENSION IN RANGITIKEI–MANAWATU

Negotiations were not fully resumed in the district until Featherston, the Superintendent of Wellington, was given authority to make land purchases as a special commissioner.

Under the Whitaker–Fox Ministry, he replaced Mantell as General Government Agent, with the intention that Native Department officers in the district be given more rigorous direction. A powerful political figure, Featherston was able to act with considerable independence throughout the 1860s, taking little heed even on those occasions when ministers attempted to curtail or redirect his dealings with Maori, He was assisted in his purchase negotiations by Buller, resident magistrate. Under their influence, the momentum of purchasing gathered.

At first, however, little purchase activity was possible, given the continuing disturbance of the country, and in his first year Featherston was able to buy only one small block of land. Papakowhai, at Porirua, was acquired from 13 leading members of Ngati Toa for £210 in May 1862. Later in the year, Pehira Turei of Ngaipairangi offered to sell all but two of the Okui eel weir that had been reserved on the south bank of the river in the Wanganui purchase. The outbreak of fighting in the Waikato intervened, and the transfer was not effected until October of the following year.[1]

In the first six months of 1864, the Ahuaturanga purchases was finalised, the Te Awahou reserves acquired, and the acquisition of Muhunoa furthered. In the short term, the unsettled state of the country continued to impede the purchase of the larger part of the lower Manawatu. There was considerable danger of fighting flaring between Ngati Apa, Rangitane, and Ngati Raukawa. And while the roots of this dispute were locally grounded, the underscoring of tribal lines by Kupapa and Kingite allegiance made the Government anxious that conflict not break out and draw in Pakeha. Ultimately, however, the war in Taranaki further shifted the distribution of power among the Rangitikei–Manawatu tribes towards the older occupiers who generally supported the Government and had long advocated sale of the lands excluded from the 1848 sale. Their intensifying challenge allowed Featherston and Buller to promote the alienation of the entire Manawatu area as the only means of maintaining peace in the district. In effect, Featherston fostered the growing power of Ngati Apa in order to secure the sale of the block.

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1. Turton, Deeds, no 79, p 247

The conflict between Ngati Apa and Ngati Raukawa revolved on issues of rights deriving from earlier occupation, as opposed to subsequent conquest. But also crucial to Ngati Raukawa's position was the agreement that they argued had been reached at the negotiations for the Rangitikei–Turakina block in 1847 to 1849. Ngati Raukawa consistently maintained that Ngati Apa interests had been satisfied by that sale. That interpretation of the agreement, reached in 1849, was not acknowledged by the Government and came under growing challenge from Ngati Apa. Buller, after talking to the opposing parties, came to the conclusion that relations were hardening:

> It appears that when the Ngati Apa in 1847 surrendered to the Crown the land lying between the Wanganui and Rangitikei Rivers they compromised the conflicting Ngati Raukawa claims (of conquest) by conceding to the latter the right of disposal over the territory lying south of the Rangitikei with this mutual understanding – that as the Ngati Raukawa had received a share of the payments to Ngati Apa, should in like manner participate in the purchase money of this block whenever Ngati Raukawa should sell – with the lapse of years the Ngati Apa have come to regard their right in every respect equal to that of the present holders while the latter always regarding the Ngati Apa claim as one of sufferance are disposed now to ignore it altogether.[2]

After the sale of the Rangitikei–Turakina block, a number of disputes broke out over the exercise of rights on the south bank. For example, Ngati Apa crossed the Rangitikei to cut totara at Pakapakatea. Aperahama Te Huruhuru responded by moving to and cultivating the area, but was forced to decamp in the following summer when two canoes of armed Ngati Apa arrived. Further downstream, Aperahama's waerenga was burnt off by Ngati Apa, who planted the area with corn. Ngati Raukawa replanted potatoes three times, being burnt off on each occasion. A meeting was called at Maramaihoea to settle the dispute. Parakaia later told the court that he had gone to the meeting to protect the mana of Whatanui and Ngati Raukawa, and 'in confidence because [he] knew the boundary had been fixed and the Government were witnesses and parties to the arrangement which was now being interfered with . . .'[3] According to Parakaia, Ngati Apa requests to have their right to the south bank recognised were rejected, and the matter had subsided.

Trouble was again triggered by leasing land to Pakeha squatters. This had long been considered, by elements within Ngati Raukawa, a more desirable alternative to outright sale. But the practice was likely to give rise to questions of who had the right to negotiate such arrangements and how revenues were to be apportioned. According to a memorandum of William Fox, who was resident at Rangitikei at that time, Nepia Taratoa had largely controlled the initial negotiation of leases and the distribution of the rents, but Ngati Apa and Rangitane also participated in the revenues. It is not clear how the money (some £600 per annum) was apportioned, but Taratoa's willingness for the other tribes to share in the rents appears to be consistent with his long-held position. At the negotiations for Rangitikei–Turakina, he had recognised the presence and interests of Ngati Apa south of the Rangitikei River, but not their power to oversee the alienation of those lands.

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2. Buller to Mantell, 31 August 1863, Mantell Papers, MS 83 (236), ATL
3. Otaki Native Land Court MB 1C, 16 March 1868, p 239

5.2 THE DEATH OF TARATOA

Taratoa's mana was sufficient to prevent serious challenge to either leasing arrangements or the wider issue of alienation of the Rangitikei–Manawatu. However, his death in 1862 threw the Manawatu question open. According to Fox, trouble had been dampened but not extinguished by the influence of Taratoa, and on his deathbed the chief had attempted to appease the 'most exacting of the claimants', Ngati Apa, by allocating them a large sum of money. This failed to satisfy Ngati Apa, while irritating the other tribes. Fox reported in August 1863:

> Since Nepia's death the differences which had been kept down by his great influence have assumed a more marked character, and for some months passed there has been great agitation among the natives on the subject. The Ngatiraukawas and Rangitanes appear to have considered that the Ngati Apa's were receiving very much more rent than their interest in the land entitled them to claim, and the two former tribes have combined to assert their rights as against the other.[4]

In May 1863 a meeting was called at Parewanui, attended by the three tribes as well as Ngati Rauru and Ngati Kahungunu. Ihakara Tukumaru proposed that either the rents, or the land itself, should be shared by Ngati Raukawa, Ngati Apa, and Rangitane, but Hunia Te Hakeke responded by demanding the complete withdrawal of Ngati Raukawa. Hostility escalated. In July, a meeting was attended by Ngati Raukawa and Rangitane at Puketotara, where it was decided that, in the face of Ngati Apa's uncompromising position, they 'would stand on their strict rights and assume the ownership of the entire land in dispute as well as take steps to assert their right to the rents received from the Europeans'.[5] Some 200 armed men then took up position at a pa that they had erected near the stockyards of Mr Alexander, who had been paying rents to Ngati Apa for the past three years. They threatened to drive off his stock to Oroua unless he paid them all future rents and a portion of the back-rent already given to Ngati Apa.

The Government, anxious to avoid the outbreak of an inter-tribal war, sent Buller to investigate and to calm the disputants. He reported in August that both parties had agreed to lay their claims before the Governor. However, Ngati Raukawa and Rangitane refused to withdraw from the area and began to cultivate the land under particular dispute. Fighting seemed to be imminent, and later in the month Fox attempted another intervention, writing to both Hunia and Noa Te Rauhihi of Reureu, whom he described as the 'principal man of the Ngati Raukawa in this neighbourhood'. On being invited by both parties to hear their views, Fox travelled first to Kakanui, Ngati Raukawa's pa at Alexander's run, and then crossed the river to Parewanui. Both parties again agreed that the dispute should be submitted to a Court of Arbitration in order that the history of the case could be fully examined and

4. 'Memorandum for Native Minister Relative to the Disputes and Threatened Hostilities Between Ngati Raukawas, Rangitanes and Ngati Apas in Rangitikei–Manawatu District', 19 August 1863, Mantell Papers, MS 83 (236), ATL
5. Ibid

the conflicting claims of inheritance and occupation reconciled.[6] Ngati Raukawa were particularly anxious that McLean and Williams should be consulted about the promises made during the Rangitikei–Turakina negotiations. In the meantime, they and Rangitane agreed to withdraw from the area, and Ngati Apa to the rents being held in abeyance until the question of title was settled. Such accord was likely to be temporary only, and both Fox and Buller urged the Government to take urgent steps to set up a court and resolve the dispute as soon as possible. However, nothing was done to carry through arbitration and the conflict continued to brew.[7]

In December 1863, Shortland, the Native Secretary, instructed Featherston to negotiate with the three tribes and 'induce them if possible to agree upon an arbitration or division of the land'.[8] Featherston's intervention in the dispute signalled a change of direction in the policy, away from arbitration towards sale. Arriving in the district accompanied by an interpreter, he found some 400 Rangitane and Ngati Raukawa gathered at Ihakara's pa at Tawhirihoe. In general, Featherston was unsympathetic to Ngati Raukawa because they were an obstacle to purchase and because of their links to the King movement. He considered that they were acting provocatively, and immediately announced that the Government was determined to preserve the peace and would regard the first shot to be fired as an act of war. Ihakara again proposed that the dispute be settled by arbitration conducted in the presence of the three tribes. This suggestion, reluctantly extended to Ngati Apa by Featherston, was rejected. Ngati Apa (numbering some 150) told Featherston that, while they recognised the mana of Te Rauparaha's descendants (Te Whiwhi and Tamihana) to a limited extent, Ihakara enjoyed no such authority. According to Featherston:

> A consultation here took place amongst the chiefs, and they got up one after another in rapid succession, and declared they never would consent to arbitration; that an arbitration would involve them in an endless number of disputes; that they would dispute about the apportionment of the block; that they would dispute about the particular block to be assigned to each party, about the surveys, about the boundaries of each man's land, and therefore they would have nothing to say to arbitration.[9]

They then handed all the Rangitikei–Manawatu lands over to the Government for sale. According to Buller's later testimony, Featherston's acceptance of Ngati Apa's claims had not been planned – the desire to preserve the peace outweighed any wish to buy land but Featherston had accepted Ngati Apa's argument that it was 'impossible to have settled the disputes by an investigation of title – it was considered that the only course was to get clear of all'.[10]

While the issue was considered to be too complicated to be settled through an examination of the grounds of ownership, Featherston argued that the operation of

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6. Buller to Fox, 27 August 1863, Mantell Papers, MS Papers 83 (236), ATL; Fox to Mantell, 19 August 1863, Mantell Papers, MS Papers 83 (236), ATL
7. V Fallas, 'Rangitikei–Manawatu Block', claim Wai 52 record of documents, doc A3, pp 13–14
8. Shortland to Featherston, 15 December 1863, WP series 3 1863/637, NA Wellington
9. Featherston to Fox, 18 February 1864, 'Further Papers Relative to the Native Insurrection', AJHR, 1864, E-3, p 38, no 29, encl
10. Otaki Native Land Court MB 1C, p 219

leaseholding had greatly simplified the complexity of the dispute. He saw Ngati Raukawa's 1863 offer to divide the land between the three tribes, the proportions in which the rent had been paid out, and Nepia's lump payment to Ngati Apa, as indicating not only the existence but also the extent of each tribe's interest in the block. He suggested further that '[these] three interests might easily be satisfied by a money payment but not by a subdivision of land', and that this should be a 'sum which would at the ordinary rate of interest yield to them the same amount as they have been jointly receiving from the squatters as rent'.[11]

On Ngati Raukawa's and Rangitane's rejection of the right of Ngati Apa to hand over the area for sale, Featherston argued that the Government could not force Ngati Apa into arbitration. Urging the opponents of sale to look for some other solution, he then travelled to Putiki, where he gathered the consent of chiefs located at Wanganui, Wangaehu, and Turakina, who expressed their willingness to support Ngati Apa in event of attack. On returning to Tawhirihoe, Featherston found that all parties were readying themselves for confrontation. Ngati Apa again stressed to the commissioner that they would not agree to arbitration but that 'they gave up the whole of the lands, together with the quarrel to the Government, and that they also surrendered their arms as a proof of their sincerity . . . .' Featherston, accepting one gun and a box of cartridges, emphasised the need to keep the peace and the Government acceptance of only that land to which Ngati Apa was found to be entitled. He then met with Ngati Raukawa and Rangitane, rebuking them for their war-like behaviour. Although Matene Te Whiwhi and Tamihana Te Rauparaha urged acceptance of Ngati Apa's proposal, Ihakara and Hoani Meihana reiterated the determination of their peoples to hold onto the land. On Ihakara suggesting that they were now entitled to all rents since Ngati Apa had transferred their interests, Featherston announced that the Government would not consent to either party receiving revenue from the land until the dispute had been settled. Eventually, both sides agreed to withdraw from the area, leaving only sufficient people to tend their cultivations. It was agreed, also, that rents should be held by the Government – a decision that Featherston saw as likely to bring about a compromise within short order, and which was to subsequently undermine the position of the non-sellers as the dispute dragged on.

5.3 MUHUNOA

While Featherston waited for Ngati Raukawa and Rangitane to withdraw their opposition to the sale of the Rangitikei–Manawatu, he pursued the transactions initiated by Searancke in the 1850s.[12] Te Roera Hukiki and Karaipi Te Puke, principal right-holders in the Muhunoa block, remained firm in their desire to sell,

11. Featherston to Fox, 18 February 1864, 'Further Papers Relative to the Native Insurrection', AJHR, 1864, E-3, p 39, no 29, encl
12. The following account is based on J Luiten, 'Whanganui ki Porirua', claim Wai 52 record of documents, doc A1, pp 35–37.

writing to Featherston in November 1863, 'The boundaries have been given to the Government long ago . . . send some European to look at the land'.[13]

In February 1864, it was agreed that Muhunoa block should be sold to Featherston for £1100. A deposit of £100 was paid to Hukiki and Te Puke for distribution. Rather than a deed, a memorandum of agreement was signed in which Hukiki consented to the sale, and the boundaries of the alienation were described. Five hundred acres and an important eel fishery, Lake Ororokare, were reserved for the vendors.[14] Featherston and Buller now considered the block to have been sold to the Government, but no agreement had been made to the respective interest. Within a few months, Ngati Raukawa at Otaki were threatening to repudiate the sale, complaining to Buller that they had not received any portion of the down payment. At a meeting held on 24 June 1864, Buller denied any further responsibility on the part of the Government, arguing that the land was sold and that the terms of the agreement had been fulfilled by Featherston. If the down payment had not been properly distributed, that was a matter to be settled between the vendors:

> You cannot blame the Commissioner for that. He paid the money to men appointed by you to receive it and he holds the receipt for it both in English and Maori. The land now belongs to the Queen, and the surveyor will be here soon to fix the boundaries. When this has been done the remainder of the money – £1000 – will be paid.[15]

He stressed that Hukiki and Te Puke, as the largest claimants, could not be ignored, but suggested that a runanga be held between the Muhunoa and Otaki peoples to decide how the money was to be distributed. The general sentiment of the Otaki people was that they would ignore the matter of the down payment, but should receive half of the remaining payment.[16]

Buller also refused to look at Ngati Raukawa's specific claims within the block. He rejected Matene Te Whiwhi's request that Papaitonga should be set aside. Pointing out that the lake fell within the boundaries set out in the agreement, Buller argued that it now belonged to the Queen and would have to be purchased by Ngati Raukawa at the 'best bargain' they could make to price. Nor would he accede to Ngati Raukawa's request that they point out their claims at survey, arguing that this would only result in dispute. He told Ngati Raukawa, 'All that remains for you is to decide about the distribution of the thousand pounds'.[17]

Buller considered the meeting to have been satisfactory, but noted on 30 June, that he had received information that Hema Te Ao was 'raising the old point and threatening to interrupt the survey of the block'. Attributing the rumoured opposition to political motives, he advised:

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13. Te Puke to Featherston, 9 November 1863, MA series 13/75A, NA Wellington
14. Memorandum of agreement to sell Muhunoa, Otaki, February 1864, MA series 13/75A, NA Wellington
15. 'Rough Notes of a Meeting at Otaki, on the 24th June, Convened to Consider Questions Arising out of the Muhunoa Sale', WP series 3 1864/530, p 3, NA Wellington
16. Ibid, p 4
17. Ibid

> If true . . . it may be prudent to delay the survey a few months, as it is far from desirable at this juncture to rouse Kingite opposition on a land question. The delay in making the final payment of £1000 would operate favourably.

It would seem, however, that those who generally supported the Government opposed them on this issue. Te Whiwhi and Tamihana told Buller that 'the people wish to retain the land as a place of residence for us and our children'.[18]

The question of how the money was to be distributed continued to plague the Muhunoa transaction. In the latter months of 1864, a number of applications were made to Featherston for payment of their share of the Muhunoa monies, but no agreement could be reached regarding the alienation. A year later, James Hamlin, interpreter for the department, reported the failure of all interested parties to agree to the sale of their interests:

> I saw Hema Kihiwa and Te Roera [Hukiki] but could not get them to come to any terms Kiharoa and Hema named to Te Roera he had better sell part of his own land to pay your Honour for the money he had received, as they would not sell.[19]

The matter still had not been settled by 1866, Featherston informing Te Whiwhi that the balance of the purchase money would be paid once the disputed boundaries were settled and the survey completed.[20] It would appear that a transference of rights could not be effected by the Government until after the block had been subdivided in the 1870s.[21]

5.4 AHUATURANGA PURCHASE COMPLETED

In mid-1864, Featherston was able to complete the purchase of the upper Manawatu block for £12,000 – twice the amount Searancke had been prepared to offer in 1858.[22] Featherston subsequently gave credit for the completion of the purchase to Buller, whose role in land negotiations was giving rise to some concern.[23] Parakaia Te Pouepa complained that he was frightening Ngati Raukawa into sale.[24] Mantell, the new Native Minister, questioned the propriety of a resident magistrate being involved in land purchase operations. According to Mantell, who described Buller as one of the 'least discrete officers', Featherston himself had earlier condemned his use in this dual role as being 'detrimental to a Magistrate's judicial efficiency'. Mantell reported that whatever policy had been pursued by Bell and Fox:

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18. Luiten, p 36
19. Hamlin to Featherston, 27 November 1865, MA 13/69A, NA Wellington
20. Featherston to Te Whiwhi, 29 September 1866, MA MLP-W series 1, p 99, NA Wellington
21. Turton, Deeds, no 43, p 159; Turton, Deeds, no 205, p 162
22. Searancke to McLean, 6 August 1861, AJHR, 1861, C-1, p 295, no 69
23. Featherston to Colonial Secretary, 21 August 1865, 'Correspondence Relating to the Manawatu Block', AJHR, 1865, E-2B, p 3
24. Parakaia and Others to [Featherston], 14 December 1864, WP series 3/16/64/96, NA Wellington

> He [Buller] could expect no instructions from me but such as would stop his interference in land purchases; but when I spoke to them on the subject, he, in support of his connection with these affairs had been very slight, described it as follows:–
>
> The Natives and Dr Featherston would commence negotiations about a block of land, for which the commissioner would offer a certain price, say £1000, and the Natives demand, say £10,000. The Commissioner would then propose that the value should be assessed by Mr Buller, and on the Natives assenting to this reference, that gentleman would ascertain from the Commissioner what price he was really ready to give, say £3000, and give that as his award.[25]

On coming to office, Mantell had withdrawn Buller from the district but, when attacked by Featherston for his interference,[26] expressed concern that the resident magistrate should have been present at the Ahuaturanga purchase. Buller, for his part, denied both the conversation and the allegation of manipulation:

> I considered the Government offer for this block (£6000) far too low, while I regarded the price which the Natives had continued to demand for several years (10 to 15s per acre) ridiculously high.
>
> I sought to convince the Natives that to ask an exorbitant price was practically to postpone indefinitely the sale of the land; while at the same time, I used every legitimate argument to prove that (provided that the Reserves were ample and well selected) the speedy occupation of the Block by European settlers would be of utmost advantage to the Natives themselves. I told them plainly that I considered the Commissioner's offer [of £6000] an insufficient one. I promised that if they would make a reasonable offer I would urge the Commissioner to accept it; and, without consulting Dr Featherston, I myself suggested £12,000 as a fair price for them to ask. Having ultimately agreed to this, they communicated their decision to me, and I reported it to Dr Featherston on his arrival at Manawatu from Wanganui. He at once accepted the offer, and I then learnt, for the first time, that he had already in his own mind fixed upon this price (within a few hundred pounds) as the maximum he was prepared to give.[27]

He argued that his influence had been strengthened rather than impaired by his participation in land negotiations:

> that not being myself the Government buyer, and not being in any sense bound to beat the Natives down, as to price, I was able to take an independent position, and to act as much on behalf of the Natives of my district as on behalf of the Government . . .[28]

As in the preceding decade, negotiations for the upper and lower Manawatu were linked, and it would seem that the major concern of Featherston and Buller was not to beat down the price for Ahuaturanga but rather to convert opponents to alienation

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25. 'Correspondence Relating to the Manawatu Block', AJHR, 1865, E-2B, p 8, no 32, encl
26. Featherston to Colonial Secretary, 21 August 1865, 'Correspondence Relating to the Manawatu Block', AJHR, 1865, E-2B, pp 3–4, no 1
27. Buller to Native Minister, 27 September 1865, 'Correspondence Relating to the Manawatu Block', AJHR, 1865, E-2B, p 10, no 5
28. Ibid

of the coastal area by the immediate disbursement of the monies for upper Manawatu in a lump sum. Featherston later noted:

> The payment of twelve thousand pounds to the Rangitanes for the Upper Manawatu Block no doubt tended very materially to hasten the conversion of the opponents of the sale. Some were disappointed at not getting any portion of the purchase money, others sore at not obtaining what they considered their fair share, and there were very few who were not tempted by the distribution of so large a sum to agree to the sale of the Rangitikei Block. Defectives from the ranks of the anti-sellers began to take place so rapidly that the leading chiefs determined to lose no time in offering the block.

It is apparent that Ngati Raukawa participated in the payment only to a limited extent. The deed was signed on 23 July as a 'full and final sale conveyance and surrender' of the block 'with its trees minerals waters, rivers, lakes streams and all appertaining to the said land or beneath the surface of the said land' by Rangitane, Ngati Kauwhata, and Ngatitumokai, who were the descendants of Rangitane intermarried with Ngati Apa.[29] According to Hoani Meihana, the Ngati Kauwhata who signed were married to Rangitane women and living among them. He told the court that the principal chiefs of Ngati Raukawa were not parties to the deed, but had received some of the money from Rangitane.[30] Peeti Te Aweawe later argued that the assent of Ngati Raukawa had not been required because only Te Tapa Te Whata of Ngati Kauwhata had any right in the land. Williams, however, interpreted Ngati Raukawa's non-participation in the payment for the sale as reflecting the tribe's generosity and emulation of Whatanui 'first preacher of peace'.[31]

The Ahuaturanga deed described the purchase boundaries, which ran east of the Oroua River, as agreed by the tribes in the 1850s, until reaching a point due west of the Manawatu Gorge, when it followed the river. The eastern boundary ran along the foothills of the Tararua and Ruahine Ranges. Reserves were marked on the accompanying plan, but not defined within the deed itself.

5.5 RANGITIKEI–MANAWATU: IHAKARA AGREES TO SELL

In September 1864, Ihakara Tukumaru wrote to Featherston, stating that he was now prepared to countenance the sale of disputed land between the Rangitikei and Manawatu Rivers as 'the only means of settling our difficulty'. At the same time, he warned Featherston:

> But we wish you to understand that this is the individual act of a few, the leading men in the dispute, and threatened fight. The general consent of the tribe has not yet been obtained to the proposed sale. The final decision as to selling or refusing to sell, rests of course with the whole tribe. But we are anxious to communicate to you at once our own conclusions on the subject.

29. Turton, Deeds, no 53, pp 177–179
30. Otaki Native Land Court MB 1C, 16 March 1868, p 248
31. Otaki Native Land Court MB 1C, 17 March 1868, p 251; Otaki Native Land Court MB 1D, 4 April 1868, p 498

> You are sufficiently acquainted with the system of land selling – that it is only when both chiefs and people are agreed the land can be absolutely ceded.[32]

In a separate letter, Tapa Te Whata endorsed Ihakara's proposal.[33]

Featherston met with Ihakara and a dozen other chiefs of Ngati Raukawa and Rangitane in October. He was well pleased with progress towards purchase, reporting that there had been a 'tacit admission that Ngatiapas had undoubted claims, and would be entitled to a share of the purchase money'. He had continued to refuse the release of rents, on the grounds that this would be a 'breach of faith towards the Ngatiapas', which had been accepted by those present. And Ihakara had presented him with a carved club once belonging to Taratoa as 'a token that the land was for ever gone from them', and was now in the hands of the Government.[34] Although Featherston had earlier expressed some doubt about the extent of Ihakara's authority over Ngati Raukawa,[35] he was confident that the alienation would go ahead:

> I feel therefore that I am fully justified in saying that this quarrel which has for so long seriously threatened the peace of this Province is now virtually at an end, and that though some considerable time may elapse before the questions of price, reserves, &c, are arranged, that the purchase of the Block is certain.[36]

But, within a matter of months, the agreement had faltered, while support for Paimarire started to grow in the Rangitikei.[37] Unknown to Ngati Raukawa, Featherston had moved an amendment of the Native Land Act 1862, by which the block was specifically excluded from its operation. That clause was repeated in the 1865 legislation. Featherston feared that once the Government's monopoly of purchase was lost, private speculators would push up the price or frustrate the sale altogether.[38] Promoting sale as the only means of settling the dispute, Featherston and Buller questioned the capacity of any tribunal to judge ownership of the block according to tenets of customary law:

> Formerly it might have been comparatively easy to settle the matter by a reference to Maori law and usage; but the events of the last seventeen years have so complicated the question of title, and have imported so many new elements into the case, that to adjust it by any such reference now is simply impossible.[39]

Ihakara and Ngati Raukawa, who were confident that an examination of title would support their claim, were incensed that they had not been informed of the

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32. 'Papers Relative to the Rangitikei Land Dispute', AJHR, 1865, E-2, p 4, no 1, encl 2
33. Ibid, encl 1
34. 'Memorandum by the Superintendent of Wellington for the Colonial Secretary', AJHR, 1865, E-2, pp 3–4
35. Featherston to Fox, 18 February 1864, 'Further Papers Relative to the Native Insurrection', AJHR, 1864, E-3, p 37, no 29, encl
36. 'Memorandum by the Superintendent of Wellington for the Colonial Secretary', AJHR, 1865, E-2, p 4
37. P Clark, *'Hau Hau' The Pai Marire Search for Maori Identity*, Auckland, Auckland University Press, 1975, p 23
38. R Galbreath, *Walter Buller: The Reluctant Conservationist*, Wellington, GP Books, 1989, p 68
39. 5 August 1865, 'Correspondence Relating to the Manawatu Block', AJHR 1865, E-2B, p 5, no 1, encl

exception earlier. Threatening to repudiate their earlier agreements, they petitioned Parliament, in April, that the 'ill-working restriction' be removed from their territory.[40] Further offence was given by a caricature portraying the three tribes as pigs being driven off the block by Featherston and Buller who, exaggerating their former chances of success, now accused 'certain parties' of attempting to 'upset the adjustment of the dispute' by representing to Maori that they had been 'overreached in their agreement'.[41] Buller reported in August that the purchase still might be completed within a matter of months if Featherston could devote all his time to the negotiations, but warned:

> On the other hand, it is very certain that if the Natives are tampered with by those whose interests are opposed to the acquisition of the block by the Government, the negotiations will be impeded, and the cession of the land to the Crown, the only practicable solution of the 'Rangitikei difficulty', indefinitely postponed.[42]

5.6 SALE NEGOTIATIONS 1864 TO 1865

In December 1863 Featherston and Buller held meetings with Ngati Raukawa and Rangitane. Featherston, obscuring the fact that the land court exception dated back to 1862, maintained that it was usual for blocks on which down payments had been made to be excluded from the operation of the act, and that 'although no deposit had yet been paid on the Rangitikei–Manawatu block, Ihakara could not deny that virtually it was already in the hands of the Commissioner'. He reminded the chief of his presentation of Taratoa's mere as a token of the 'absolute surrender' of the land in the presence of 'representative chiefs' and argued that 'It was only fair therefore to deal with the . . . block as under sale to the Government, although the final terms had not yet been arranged'.[43] Featherston emphasised the futility of arbitrating the dispute through the court, since all three parties would not abide by its decision. Ihakara agreed to accept the exclusion by the Act, provided that land south of the block, between the Manawatu and Ohau, was brought under its operation. Featherston acceded to this request, even though he doubted Ihakara's statement that the area was clear of dispute.

Meetings followed with other Ngati Raukawa chiefs at Maramaihoea, Ngati Kauwhata at Oroua, and Rangitane at Puketotara. Ngati Raukawa and Ngati Kauwhata, based further to the north, objected to the continuing confiscation of rents, arguing that revenues were being withheld to 'force them to terms' rather than to keep the peace. Ihakara actions were criticised by some, while others expressed their continued opposition to any alienation of land.[44] The mood of Rangitane at

40. 'Petition of Ihakara and other Natives Resident at Rangitikei and Manawatu', AJHR, 1865, G-4, p 4
41. Superintendent to Colonial Secretary, 21 August 1865, 'Correspondence Relating to the Manawatu Block', AJHR, 1865, E-2B, p 2
42. Memorandum by Buller on Rangitikei land dispute, 'Correspondence Relating to the Manawatu Block', AJHR, 1865, E-2B, p 7, no 1, encl
43. 'Further Papers Relative to the Manawatu Block', AJHR, 1866, A-4, p 15, no 6, encl 1
44. Notes of a meeting at Maramaihoea (Rangitikei), 4 December 1865, 'Further Papers Relative to the Manawatu Block', AJHR, 1866, A-4, pp 16–19, no 6, encl 2

Puketotara was more divided. Hoani Meihana urged both sale and the retention of rents in the interval but Peeti Te Aweawe objected:

> I was not present at the meeting at Manawatu when the nine chiefs handed over the Rangitikei. You did not hear my voice there, but you shall hear it now. I dispute the right of those nine men to dispose of my land. Hoani says that they only consented subjected to the general consent of the tribe. Then let me tell you at once this tribe does not consent. The Ngati Raukawa may, and the Ngatiapa may, but the Rangitane never will. If we sell this land, where shall the tribe look for support. We have sold the upper block to you, and we want the lower one for our cultivations. It is true that we are not actually cultivating it at present but it is leased to Pakehas, and we are living on the rents.[45]

He demanded that these be distributed, as did Te Kooro. Both Meihana and Te Kooro stressed that they would not contemplate the sale of land reserved for Rangitane to the east of Oroua River. Featherston, for his part, denied any responsibility for promoting sale, and emphasised that his sole motivation as purchaser was the desire to prevent armed conflict. He told Ngati Raukawa that he would consider the release of rents, but only if Maori were unanimous in their demands that this should be done. To Rangitane, he stressed the benefits of settlement as an avenue of trade and means of protection, advocated early sale, and announced his decision to hold rents in the meantime. Further south, at Otaki, Ihakara, Tamihana, Horomona, and Matene expressed support for this policy.[46]

A meeting was called by Ihakara to discuss the mode of sale – whether the tribes would act together, or independently, in the matter. Ngati Apa refused to attend despite the representations of Featherston. Aperahama Tipae told him that they would not consent to dividing the purchase money with the other tribes. According to Buller's minutes:

> Governor Hunia made a still more violent speech against the other tribes, openly boasted that they (the Ngatiapa's) had now plenty of arms and ammunition, and could easily drive off their opponents, and that they would now prefer an appeal to arms to any other course. He almost intimated that they had during the West Coast campaign reserved their ammunition for that purpose.[47]

Featherston emphasised that the Government was determined to preserve order, but that he would be prepared to sign a separate deed of cession with Ngati Apa if the other tribes did not object. Price was then discussed, 'the whole of the Natives present declaring that they would not take a penny less than £40,000, and that the other tribes should not share the payment with them; that their great desire was to fight, and take the land by right of conquest'.[48]

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45. Notes of a meeting at Puketotara (Manawatu), 6 December 1865, 'Further Papers Relative to the Manawatu Block', AJHR, 1866, A-4, p 19, no 6, encl 3
46. Notes of a meeting at Otaki, 9 December 1865, 'Further Papers Relative to the Manawatu Block', AJHR, 1866, A-4, p 21, no 6, encl 5
47. Notes of various meetings, March and April 1866, 'Further Papers Relative to the Manawatu Block', AJHR, 1866, A-4, p 24, no 6, encl 6
48. Ibid

The other tribes gathered at Te Takapu in early April. Featherston lists as being present some 700 Maori including Rangitane, Muaupoko, Ngati Toa, and Ngati Raukawa and their affiliates – Ngati Kauwhata, Ngati Wehiwehi, Ngatipare, Te Matewa, Ngatiparewahawaha, Ngatipikiahu, Ngatiwhakatere, Ngatihuia, Ngatingarongo, and Ngati Rakawau.[49] Ihakara's speech, which was fully recorded by Buller, reveals some of the motivations of the chief. Pointing to the sale of Te Awahou, Ihakara argued that it had been alienated despite Taratoa's opposition, and that if the whole of the land between the Rangitikei and the Manawatu been sold then, there would have been 'no more trouble'. He detailed the events leading to his decision to sell, and stated that he had opposed this proposal when it came from Ngati Apa, and would have continued in his opposition to the point of warfare, if that had been the wish of the tribe. Other solutions having failed, he had invited Ngati Apa to unite with him in the sale. They had refused to do so, and he now demanded a separate payment for Ngati Raukawa of £20,000, with another £1000 for 'all the tribes concerned'.[50]

Opposition to sale was led by Nepia Maukiringutu, a son of Nepia, Te Kooro Te One, Parakaia Te Pouepa, and Aperehama Te Huruhuru, who had withdrawn his earlier support because of the continuing non-release of rents. Featherston, however, belittled the significance of their stance, reporting that they had used the interval before the formal opening of discussion to 'foment discontent', and arguing that 'those who were most zealous in opposing the sale and in proposing other modes of adjustment, were amongst those who had least claim to the land'. He reported that this was admitted by many of the non-sellers themselves, and condemned their opposition as based 'not any particular ground, but because they were opposed generally to the further alienation of Native lands'.[51] According to his report:

> Many who at the outset had declared against the sale, were now avowedly favorable to it, and it was evident that the spirit of opposition had been in a great measure crushed by the resolute determination of Ihakara and other leading chiefs to effect a sale of the disputed block.[52]

Ngati Apa and Whanganui were now persuaded to attend the Te Takapu meeting at which a deed of sale was signed by some 200 Maori. According to Featherston's report, all but a small section advocated immediate settlement of the question by sale, a proposal by Ihakara that the matter be submitted to the land court being rejected by almost all. Then Featherston spoke of the three avenues by which the dispute might be settled. He told his audience that arbitration was impossible unless all tribes agreed to abide by the court's decision. An examination before the land court would not work for much the same reason. Nor were the tribes able to agree on how the land was to be divided:

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49. Ibid, pp 24–25
50. Ibid, p 25
51. Ibid, pp 24–26
52. Ibid, pp 26–27

whether each tribe should take a third, or one tribe a half, and two tribes the other moiety; that even if this difficulty could be got over, who was to decide what portion of the land is to belong to this tribe, what portion to the other and who was to decide whether one tribe should not be confined to the sandhills, another to the good land . . .[53]

He spoke at length on the position of non-sellers:

He (Dr Featherston) repeated what he had then [October 1864] and often since said, that he would purchase no land without the consent of the people. But what did he mean by the consent of the people or tribe? He did not mean that the opposition of one man (not a principal chief) should prevent a whole tribe selling their land. Neither did he mean that a small section of one tribe should be allowed to forbid some six or seven tribes disposing of a block which they were anxious to sell. However much he might insist upon having the consent of the tribe, of all the real and principal claimants, he would be no party to such a manifest injustice as would be implied by one or two men probably possessing little or no interest in the land, forbidding the tribe selling it, or in a small section of one tribe opposing the wishes of some half-dozen tribes, especially when the carrying out of the decision of the majority was the only means of avoiding an inter-tribal war.[54]

Featherston called upon the chiefs of each tribe to answer whether they consented to the alienation. Receiving an affirmative answer from all but Ihakara, who none the less insisted on sale since the 'large majority' of Ngati Raukawa, including the 'principal claimants', wished for the alienation to be carried through, the commissioner announced that his 'course was clear'.[55] He told the meeting that five of the tribes were firm in their determination to sell, only a minority of Ngati Raukawa were opposed and, of those, Nepia and Aperahama had formerly supported the sale:

He felt, therefore, so confident that the deed would ultimately be executed by all the real claimants, that he had no difficulty in publicly announcing his acceptance of the block, and in congratulating them upon this longstanding feud being thus amicably settled and finally adjusted.[56]

The price was discussed and set at £25,000, and a memorandum of sale, detailing the boundaries, signed by some 200 of those present. As in his other transactions, it was Featherston's contention that the purchase was now complete – that it was the responsibility of Maori to decide how the purchase money was to be divided and by whom.[57] The extent and position of reserves, however, would be left 'entirely to my [Featherston's] discretion'.[58] These questions, and the payment of the first instalment, were to be deferred until a deed had been signed.[59]

53. Ibid, p 28
54. Ibid, p 29
55. Ibid
56. Ibid
57. Ibid
58. Featherston to Richmond, 23 March 1867, MA series 13/70, p 2, NA Wellington
59. Notes of various meetings, March and April 1866, 'Further Papers Relative to the Manawatu Block', AJHR, 1866, A-4, p 30, no 6, encl 6

5.7 ATTEMPTED INTERVENTION BY GENERAL GOVERNMENT

For the past four years the position of Native Minister had fallen to Mantell, who took little interest in the running of the Native Department. In the first months of 1866, however, the receipt of a number of letters asserting claims or protesting Featherston's activities, prompted closer inquiry from the new Native Minister, A H Russell. On the one hand Ngati Apa, angry at the delay in the completion of the sale, criticised the commissioner for paying heed to the 'interests of a stranger tribe who have no claim whatever to our land'. They pointed to Ngati Raukawa's claims elsewhere:

> Friend Stafford, and your colleagues, you know (because) you have distinctly seen that the land of the Ngatiraukawas is at Maungatautari. They have sent in their claims. Let the Europeans clearly understand that (Maungatautari) is their land.[60]

Ngati Apa argued, too, that Featherston had acknowledged their authority over the Rangitikei: 'We placed the gun of peace in his hand, and told him and the Governor to buy land from us, and that we would arrange with the other tribes. He replied it is well'. In fulfilment of that bargain, they had given £100 to Ihakara and had refrained from fighting at Patea.[61] Peeti Te Aweawe also wrote to Russell, refuting all but the limited claims of a few Ngati Raukawa, and stating that 'this land belongs to us, to two tribes, Rangitane and Muaupoko'.[62]

On the other hand, correspondence, deputations, and petitions were received from Ngati Raukawa – Te Herekau, Te Pouepa, Taharape, and Te Waharoa – asserting their determination to hold onto their claims within the block. Sections of Ngati Kauwhata and Ngati Wehiwehi, led by Te Kooro Te One, also protested the sale by Meihana and Tapa Te Whata, of the Manawatu side of the area between the Oroua and Rangitikei Rivers.[63] Parakaia objected that he had consented to the alienation of the Rangitikei–Turakina by Ngati Apa, Ahuaturanga by Rangitane, and Te Awahou by those within Ngati Raukawa who also wished to participate in the profits to be made by land sales; but he was 'not willing to give this small piece' to the Government, and complained that Featherston had pushed through the purchase at the April 1865 meeting by explicitly supporting tribes who had fought for the Queen, and by giving weight to Whanganui interests:

> His talk was light, acceptable to four tribes but the falling of the wrong was upon us. It was a new word. There are 800 of Whanganui, 200 of Ngatiapa of Rangitane, and Muaupoko 100. As for you Ngatiraukawa you are half – you are small.
>
> Then we pronounced his words to be wrong. We said your act is a Maori robbery of our land.

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60. Hunia Hakeke and Others to Premier, 23 March 1866, 'Further Papers Relative to the Manawatu Block', AJHR, 1866, A-4, p 5, no 1, encl 3
61. Ibid, p 4
62. Huru Te Hiaro and others to the Native Minister, 28 April 1866, 'Further Papers Relative to the Manawatu Block', AJHR, 1866, A-4, p 8, no 2, encl 5
63. Te Koori Te One and others to Governor, 13 June 1866, 'Further Papers Relative to the Manawatu Block', AJHR, 1866, A-4, p 31, no 6, encl 6

> The 800 of Whanganui are not present on this transaction. You are pretending that an agreement has been made to make us fear.[64]

Whereas Ngati Apa based their argument on their long-term occupation of the region, Ngati Raukawa pointed to the understandings created by the past 20 years of dealing between the Government and their people:

> Dr Featherston: It is not a new thing for the Ngatiraukawa to refuse to sell this side of the River Rangitikei. Formerly, in the time of Governor Grey and Mr McLean, we quietly gave up the other side for Ngatiapa to do what they liked with; that side of the river passed fairly into the hands of the Governor, and just as clearly this side remained. Afterwards, in the time of Mr McLean and Governor Browne, Searancke treated with Ngatiapa. Governor Browne would not listen to Ngati Apa. The sale of Manawatu was arranged with Governor Browne, that of the Rangitikei with Governor Grey, but those Governors never said any words like yours.[65]

Russell demanded an account of Featherston's proceedings, reminding him of official policy – that in all cases of outstanding land purchases, officers were required to show that they had properly investigated claims to land within the block, had ascertained that title vested in the vendors, that the area, price, and dates of payment had been clearly defined, and that the persons to whom those payments were to be made, had been agreed upon by all claimants.[66] At a meeting with Colonel Haultain, acting on behalf of the Native Minister, Te Pouepa, and Te Herekau and other Ngati Raukawa opponents to the purchase were assured that 'no sale would be allowed unless the owners of the land agreed to it' – a commitment that was repeated by a number of Government officials over the ensuing months.[67]

In June 1866, Featherston sent in his account of the meetings of the previous year and reported that deed had been prepared, was currently being executed and would have over 1000 signatures attached. On completion of the deed, Featherston intended to follow his earlier practise of handing over the purchase money to chiefs nominated by a general meeting of the tribes, who would also decide how it was to be divided. He stated that he anticipated no difficulty in this matter.[68] But the methods of Buller, who largely had responsibility for the collection of signatures, were later protested by Ngati Raukawa. They argued that many who signed the deed had no interest in the block, and particular outrage was expressed that the consent

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64. Parakaia Te Pouepa and Others to the Assembly, 14 April 1866, 'Further Papers Relative to the Manawatu Block', AJHR, 1866, A-4, pp 9–10, no 2, encl 7
65. Statement by Parakaia Te Pouepa and others, 5–14 April 1866, 'Further Papers Relative to the Manawatu Block', AJHR, 1866, A-4, p 10, no 2, encl 9
66. Haultain to Featherston, 30 April 1866, 'Further Papers Relative to the Manawatu Block', AJHR, 1866, A-4, p 3, no 1; Native Minister to Featherston, 3 May 1866, 'Further Papers Relative to the Manawatu Block', AJHR, 1866, A-4, p 3, no 2
67. 'Notes of an Interview Between the Hon Colonel Haultain, Acting for the Native Minister, and Thirty-Five Natives of the Ngatiraukawa Tribe, on the Subject of the Sale of the Manawatu Block', AJHR, 1866, A-4, p 11, no 5, encl 1
68. Notes of various meetings, March and April 1866, 'Further Papers Relative to the Manawatu Block', AJHR, 1866, A-4, p 30, no 6, encl 6

of Whanganui should have been sought by the Government. Featherston later acknowledged that the Whanganui interests were of 'a purely secondary character':

> They claim through the Ngati Apa tribe to whom they are closely related, and whom they were pledged to assist in the event of hostilities with the Ngatiraukawa and other rival claimants.
>
> The Ngati Apa might have exercised the right of selling without the consent of the Whanganui people, but they would never have attempted a trial of strength with the Ngati-raukawa in the absence of the powerful support of their Whanganui allies.[69]

Allegations of bribery and forged signatures were also made. One witness at the subsequent land court investigation admitted that he had received money for signing, although he had no claim.[70] Taratoa accused Buller of offering him a position as assessor, ammunition, and beer to sign, of threatening to falsify his signature when he refused, and of attaching the names of others without their consent – charges all denied by the resident magistrate.[71]

In the meantime, Parakaia employed a surveyor (Hughes) in an attempt to mark off his claims within the block. This was protested by pro-sale Ngati Raukawa and Ngati Apa, who identified the action as Hauhau inspired, and who were reported to have disrupted the survey with the encouragement of Featherston.[72]

In July Aperahama Te Huruhuru agreed to sell, and having now acquired his signature, Featherston arranged for the payment of the money in December. This brought another wave of protest from the non-sellers.[73] In October, 20 chiefs, led by Te Pouepa, Te Herekau, and Taratoa, met with the new Native Minister, J C Richmond, seeking his intervention and an investigation by the Native Land Court. The Government again pledged that the payment price would not be disbursed until an investigation had identified the owners and whether they had consented to the alienation.[74]

Both Russell and Richmond reminded Featherston of departmental policy requiring a full report before the Governor could be advised that the transaction was 'ripe for completion'.[75] In November Richmond asked the commissioner for a full report detailing numbers involved, and distinguishing between resident and non-resident, assenting and dissenting hapu. The numbers and nature of secondary and remote claimants were to be estimated. Participation in payments for former sales, the understandings reached in those cases, and the proposed distribution of the

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69. Featherston to Richmond, 23 March 1867, MA 13/70, pp 14–15, NA Wellington
70. Native Lands Court, Otaki, 25 March 1868, *Wellington Independent*, Hadfield Papers, MS 139 (30), ATL
71. 'Notes of a Conversation with Certain Natives in Number about 20 who Waited on the Hon Mr Richmond on October 24th, 1866 on the Subject of the Manawatu Purchase', 23 March 1867, MA series, 13/70; 'Copy of a Memorandum by Mr Buller', 15 November 1866, 24 October 1866; Featherston to Richmond, 23 March 1867, MA series, 813/70, p 8, NA Wellington
72. Featherston to Native Minister, 23 July 1866, 'Further Papers Relative to the Manawatu Block', AJHR, 1866, A-4, p 33, no 14 (see also 'Correspondence Relative to the Manawatu Block', AJHR, 1866, A-15, pp 9–14, no 1, encls 11–25)
73. Luiten, p 49
74. Ibid
75. Native Minister to Featherston, 17 July 1866, 'Further Papers Relative to the Manawatu Block', AJHR, 1866, A-4, p 32, no 9; Richmond to Featherston, 11 November 1866, MA series 13/70, NA Wellington

purchase money were to be outlined. Featherston was also reminded of the necessity of fully defining the reserves provided for the dissentients. In Richmond's opinion, special care was required in the case of the Rangitikei–Manawatu block:

> I need perhaps scarcely observe that the peculiar position in which the district of Manawatu stands under the legislation of the Colony respecting Native Lands requires a more exact mode of dealing in this case than has in former purchases sometimes prevailed and this necessity is if possible strengthened by the repeated protests of a considerable section of those claiming to be interested in the first degree in the lands under negotiation, protests some of which have been from time to time brought officially under your notice and which reflect in terms of much irritation on Mr Buller who has been engaged under you in the matter on behalf of the Government. I may further remind you as an additional motive for conducting the negotiations, that the present time is one of revived excitement throughout the Maori population and it is essential on that account that every detail of these important transactions should be unassailable in itself and recorded for the general information and criticism.[76]

Three days later, Featherston replied that there were 'only about fifty bona fide Ngati Raukawa claimants whose signatures can be considered in any way essential to the satisfactory completion of the Deed of Purchase'.[77] According to his report, most of this group had tacitly assented to the sale. The vast majority of non-resident claimants had also agreed to the alienation. Featherston admitted that many non-resident Ngati Raukawa refused to endorse the alienation but denied their authority in the matter, equating their rights with those of Whanganui:

> I may state, however, that I consider the 600 signatures of the remote Wanganui claimants as little necessary to the completion of the deed of title as I do those of the non-resident Ngatiraukawa, a large number of whom have refused to sign and are now protesting against the sale. They have never resided on the block, nor have they exercised such acts of ownership as would justify their claim; and the fact of their signing the Deed would, I apprehend, simply entitle them to a present from the bona fide sellers when the money comes to be distributed.[78]

The question could not be settled until the tribes met at Parewanui in December, but Featherston believed that the money to be paid over on that occasion should be divided into portions of £10,000 each to Ngati Apa and Ngati Raukawa, and £5000 to Rangitane. Out of these sums, Ngati Apa were expected to satisfy the secondary claims of Whanganui and Ngati Upokoiri. Rangitane were to give part of their payment to Muaupoko (whom Featherston records as numbering only about 75 people) and a 'small hapu of the Ngatikahungunu claiming through Te Hiriwanu.' Ngati Raukawa would settle the claims of Ngati Toa and non-resident members of the tribe.[79]

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76. Richmond to Featherston, 11 November 1866, MA series 13/70, NA Wellington
77. Featherston to Richmond, 14 November 1866, MA series 13/69B, pp 2–3, NA Wellington
78. Ibid, pp 4–5
79. Ibid, p 6

In the report, Featherston dismissed the relevance of former sales to the question of the Rangitikei–Manawatu, implying that Ngati Raukawa's assent had not been a requirement for those transactions:

> The land north of the Rangitikei River was sold to the Crown by the Ngati Apa with the passive concurrence of the Ngatiraukawas. In like manner the Awahou Block (Lower Manawatu) was sold by the resident Ngatiraukawa, with the passive concurrence of the Ngatiapa: while the Upper Manawatu Block of 250,000 acres was sold by the Rangitane with the concurrence of both the Ngatiapa and the Ngatiraukawa. The Manawatu-Rangitikei Block lying between the three blocks I have named is on the contrary debateable ground and the right to occupy or sell it is claimed by all three tribes independently.
>
> I may observe here that the 'right by conquest' claim now put forward by the non-resident Ngatiraukawa might have been urged with equal force in the case of the adjacent blocks to prevent their sale by Rangitane and Ngatiapa.[80]

Richmond reacted with alarm, doubting the wisdom of some of Featherston's actions, and suggesting wholesale purchase had been 'too hastily assumed' to be the only solution to the dispute. Nor was he satisfied with Featherston's proposals for the completion of the sale and again attempted to bring him under some direction. He was particularly concerned that no reserves or excisions had been made, since estimates by Buller suggested that fully one-third of Ngati Raukawa repudiated the sale:

> The Government have never yet recognised the right of a majority in a tribe to overrule the minority on the absolute way here implied. Whilst refusing to countenance a small section in pressing their communistic claim in mere obstruction of all dealings by the rest of the tribe, they have at all times been consistent on recognising to the fullest extent the propriety claims of every bona fide owner. Nor are they prepared on the present occasion to take a different course.
>
> . . . The dilemma at present stands thus. Your Honour, acting as Commissioner under the Governor has, without previous consultation with the Government given a pledge for the payment on a fixed day of the purchase money agreed on with the sellers. Meantime reiterated oral and written assurances have been given by several Ministers that the rights of the dissentients will be respected and their shares of the territory secured to them and had no assurance been given the Government would have felt no less bound.[81]

Richmond denied any intention of tying Featherston's hands by detailed instruction as to the mode in which principles of purchase should be applied, but proposed that the commissioner should meet with the sellers as arranged and complete the acquisition of their shares. At the same time, however, he should announce that the Government would not override the objections of bona fide claimants whose interests would be determined by future inquiry. The payment of a large portion of the price would then 'quiet the impatience' of sellers with the

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80. Ibid, pp 8–9
81. Richmond to Featherston, 21 November 1866, MA series 13/70, pp 2–3, NA Wellington

retention of the balance enabling the Government 'carefully to revise the claims by means of a Commission acting in the manner adopted by the Native Lands Court'. On that commission's report, the Government would either pay out the rest of the money or exclude the lands of the dissentients from the sale. This course was all the more advisable in that the Native Rights Act 1865 would entitle the non-sellers to themselves bring the case before the Supreme Court and, in effect, appeal to the Native Lands Court.[82]

The Government was not, however, prepared to go further on behalf of the dissentients:

> You will it is believed be able to convince the sellers that this course would be fair and patriotic and conceived in the spirit which they have adopted throughout. It will be easy too for you to make it apparent that the Government cannot properly go further to remove the cause of strife without entering on an arbitrary course which must excite jealousy and suspicion and which would violate principles held almost sacred among Europeans.[83]

5.8 PURCHASE DEED, DECEMBER 1866

Some 1500 Maori, including Ngati Apa, Rangitane, Ngati Raukawa, Ngati Toa, Te Ati Awa, Ngati Upokoiri, Ngati Kahungunu, Taranaki, and Ngati Ruanui gathered at Parewanui in December 1866 to finalise the deed.[84] The dissentient Ngati Raukawa refused to attend. Richmond's directions were largely ignored by Featherston. Kawana Hunia, on his own ground, dominated the proceedings, confidently asserting Ngati Apa's right to the land and their ability to uphold it. He recognised only the claims of Taratoa's descendant, Nepia Maukiringutu, and his immediate hapu who had been residing in the area for the past 30 years, and demanded not only the major share of the payment for the block but the reservation of Tawhirihoe Pa to him.[85] These demands were unacceptable to Ngati Raukawa vendors who wanted half of the payment. On the three major parties being unable to reach agreement on how the money was to be divided, Featherston proposed that Ngati Apa should receive £15,000, out of which the claims of Rangitane, Whanganui, Muaupoko, and the east coast tribes were to be settled. Ten thousand pounds would to go to Ngati Raukawa who were to satisfy the non-sellers within the tribes, Ngati Toa and Te Ati Awa.[86] Ihakara, Aperahama Te Huruhuru, and pro-sale Ngati Raukawa agreed to this proposal, but Hunia was intransigent, insisting that Ngati Raukawa should receive only £5000, and threatening to occupy Tawhirihoe.[87]

Featherston was unwilling to discuss the question of reserving land:

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82. Ibid, pp 5–7
83. Ibid, pp 6–7
84. 'Further Papers in Reference to the Rangitikei Land Dispute: Notes of a Native Meeting at Parewanui, Rangitikei, December 1866', *Acts and Proceedings of the Provincial Council, Session XV, 1867, With the Printed Council Papers and Acts Appended*, Wellington, Wellington Provincial Council, 1867, pp 1–2
85. Ibid, pp 2, 6
86. Ibid, pp 6–7
87. Ibid, p 7

> By the deed of cession the whole block was ceded to the Crown, and that at their own request, because 'every acre was in dispute.' – 'was fighting ground.' Unless, therefore, it was understood that there were no reserves whatever he should decline to pay the purchase money; and he certainly would not entertain or listen to Hunia's demand. He had, however, pretty plainly intimated that he had no wish to disturb them in any of their kaingas they desired to retain. Still he repeated that they could not claim any reserve as a matter of right.[88]

However, in face of Hunia's continuing determination to recover the pa, Ihakara agreed to waive all claims to a reserve there, in Ngati Apa's favour. Hunia, in turn, accepted Featherston's proposed sum of £15,000, and the money was paid out, the commissioner marking the occasion by presenting his signet ring to the chief.[89]

Major Edwards, resident magistrate at Otaki, reported the response by non-selling Ngati Raukawa. Three hundred people of all political persuasions – Hauhau, Kingite, and Queenites – led by Parakaia, Taratoa, Tohutohu, Wi Hapi, Wiriharai, and Te Whiwhi had gathered there. He informed Richmond that they were willing to concede the general alienation of the Rangitikei–Manawatu but not of their own portion:

> After some discussion it was determined to withhold from sale that portion of the Rangitikei–Manawatu Block claimed by those present at the meeting, to prevent the survey and hold possession peaceably if possible, trusting to the law to protect them. If the law does not protect them, then they would lose their faith in the law and the Pakeha and there would be 'a second Waitara.' They have no intention to interfere with the sellers of the Manawatu Rangitikei block but the portion claimed as their own they would not sell under any circumstances.[90]

While the dissentients had perforce to accept that an alienation of some portion of the block had been effected, the December 1866 deed on which the Crown based its claim was rejected as any sort of proof of the ownership of Ngati Apa and allied tribes.

Meetings were held immediately to decide how the payments should be distributed. Ngati Raukawa met at Maramaihoea, where it was decided that Ngati Toa and Te Ati Awa should receive £1000 for their interest in the land, and Matene Te Whiwhi's sister, a further £500. Six thousand pounds was divided evenly between three groups: Te Huruhuru, Ngati Parewahawaha and associated hapu; Tukumaru, Ngati Patukohuru and their allies; and Ngati Kauwhata and the Oroua peoples, led by Te Whata. On Ihakara's insistence the £1000 initially set aside for the dissentients was raised to £2500, on the understanding that this was an 'act of grace' rather than a reflection of the extent of their claim. Of this amount, £1500 was offered to Taratoa and subsequently returned to Featherston on the chief's refusal to accept the sum. Tapa Te Whata was given the remaining £1000 to distribute among the Oroua people. Only half of this sum was offered to the dissentients and on Te Kooro's refusal to accept the money, the whole amount was distributed among Te

88. Ibid, p 6
89. Ibid, pp 9–11
90. Major Edwards to Richmond, 17 December 1866, MA series 13/70, pp 1–2, NA Wellington

Whata's hapu. Featherston objected to this, informing Te Whata that no reserve would be made for his people unless he handed back the money. By March 1867, £1000 of the sum returned by Taratoa had been distributed among some 150 dissentients who had capitulated to the side of the sellers. Included within this number was Taratoa.[91]

Ngati Apa retained £10,000, £6000 being allocated to those residing at Rangitikei and the rest to the Turakina and Wangaehu peoples. Whanganui received £2000. In Featherston's opinion, this generosity reflected Ngati Apa's acknowledgment of the reciprocal obligations created by Whanganui support for their claim against Ngati Raukawa.[92] Ngati Upokoiri and Hawke's Bay people were allocated £1000. Ngati Kahungunu received £400, and Taranaki and Ngati Ruanui £200. Rangitane and Muaupoko were each given £700. Additional informal payments of some £500 and the promise of £300 from the back-rents failed to satisfy Rangitane, who had been expecting some £5000. Hoani Meihana, who had objected to Rangitane's payment being left in Ngati Apa's hands, received only £15 out of their allocation. It was through his wife, Te Kooro Te One's sister, that Meihana had the bulk of his payment, a further £200. Featherston believed that Kawana's refusal to allow Rangitane more of the payment was in retaliation for their earlier failure to pay Ngati Apa a significant portion of the Ahuaturanga moneys.[93]

While the purchase moneys were distributed, Featherston attempted to allocate the reserves. In February, a memorandum of agreement was signed by Hunia on behalf of Ngati Apa, accepting 1000 acres at Pakapakatea to be held in trust for the tribe, and 500 acres for his own family at Tawhirihoe. Ten acres, including the pa and urupa at Te Awahou 1510 acres, the exclusive right to the eel fisheries at Kaikokopu and Pukepuke, and an additional two acres for a landing site at Panapa's kainga, were also reserved.[94] This arrangement was changed later in the year when Hunia Te Hakeke was made sole owner of the Pakapakatea reserve in exchange for his surrender of the Tawhirihoe land. At Ngati Apa's request the tribal reserve, now comprising 500 acres, was set aside at Te Kawau.[95]

Featherston also met with Rangitane. Angered by the small sum allotted to them by Ngati Apa, they looked to the commissioner to intervene on their behalf and demanded that he 'make good the loss' by agreeing to a 3000-acre reserve at Puketotara. Although acknowledging that the tribe had been poorly treated, Featherston argued that he had advised them against allowing Hunia to determine Rangitane's share, and that he could not be held responsible for the result. However, he 'was prepared, under the circumstances, to be liberal' in the matter of Puketotara, and set aside 1000 acres provided that the survey was conducted at Rangitane's

91. Featherston to Richmond, 23 March 1867, MA series 13/70, pp 7–8, NA Wellington
92. Ibid, p 15
93. 'Notes of a Meeting of the Rangitane Tribe at Puketotara, January 19, 1867, Further Papers in Reference to the Rangitikei Land Dispute: Notes of a Native Meeting at Parewanui, Rangitikei, December 1866', *Acts and Proceedings of the Provincial Council, Session XV, 1867, With the Printed Council Papers and Acts Appended*, Wellington, Wellington Provincial Council, 1867, p 14
94. 'Memorandum of Agreement with the Ngatiapa as to Reserves', 11 February 1867, MA series 13/7, NA Wellington
95. Featherston to Richmond, 27 July 1867, 'Return of Correspondence Relative to the Manawatu Block', AJHR, 1867, A-19, p 7, no 4, encl 1

expense.[96] Despite initial dissatisfaction, Peeti Te Aweawe agreed to accept this area in a memorandum dated 2 March 1867.[97]

The allocation of the Puketotara reserve was, however, unacceptable to the dissentients, and especially to the non-signatory Ngati Kauwhata who lived alongside Rangitane on the west bank. Led by Te Kooro Te One, they removed equipment during the day and returned it to the survey party in the evening, telling them to 'cease to persist in surveying our land'.[98] Stewart sought the assistance of Buller and 'got the lines of the reserve cut by a party of the Rangitane natives themselves'.[99] According to Te Kooro, Buller told a troubled Meihana that he would be justified in using force and that he would take no notice of slaves. Then, as Ngati Kauwhata continued to remove the survey marks, 'Mr Buller acted as a post so as no one might pull it down, then Mr Buller and his people (gave vent to their feelings) by chanting a very evil chant'.[100]

Although Buller succeeded in cutting the Puketotara line, other questions remained outstanding – £3000 in back rents had to be distributed, reserves allocated to Ngati Raukawa sellers, and provision made for the dissentients. Non-sellers continued to protest. On 29 June, 71 non-signatory members of Ngati Pikiahu, Ngatiwaewae, Ngati Maniapoto, and Ngatihinewai of Ngati Raukawa petitioned the actions of the Crown and its agents – the exclusion of their lands from the Native Land Court, the failure of Crown officials to respond to their earlier protests, and the claim by Featherston that he had purchased the whole of Ngati Raukawa when they had been received no payment. This was followed on 4 July by a petition by Parakaia.[101] In the face of the continuing delays and protests, Featherston informed the Government that he had given assurances to Ngati Raukawa:

> I have however promised the chiefs that they shall not be required any of their permanent settlements, that their burial places shall be held sacred, and that ample reserves shall be set aside for all the resident hapus.
>
> The non-sellers in that tribe having declined to accept a reserve to the extent of their claims as admitted by the sellers, I have signified my willingness to refer the question to two arbitrators, in order that the extent and position of their actual claims may be determined, and excluded from the purchase; and failing arbitration, I have stated my readiness to leave the settlement of this question to any to two Judges of the Native Land Court who may be selected by the Government for that duty.'[102]

96. 'Notes of a Meeting of the Rangitane Tribe at Puketotara, January 19 1867; Further Papers in Reference to the Rangitikei Land Dispute: Notes of a Native Meeting at Parewanui, Rangitikei, December 1866', *Acts and Proceedings of the Provincial Council, Session XV, 1867, With the Printed Council Papers and Acts Appended*, Wellington, Wellington Provincial Council, 1867, pp 13–14
97. 'Memorandum of Agreement with the Rangitane as to Reserves', 2 March 1867, MA series 13/70, NA Wellington
98. Te Kooro and Others to Rolleston, 6 March 1867, MA 13/70, p 1, NA Wellington
99. Stewart to Featherston, 13 March 1867, MA 13/73B, NA Wellington
100. Te Kooro and Others to Rolleston, 6 March 1867, MA 13/70, pp 2–3, NA Wellington
101. AJHR, 1867, G-1, pp 11–12
102. Featherston to Richmond, 27 July 1867, 'Return of Correspondence Relative to the Manawatu Block', AJHR, 1867, A-19, p 7, no 4

Efforts to set up arbitration were not vigorously pursued and quickly fell through. Te Kooro and Wiriharai Te Angiangi, who claimed land at Awahuri, Oroua, agreed to the proposal, requesting that Mr Justice Johnston act on their behalf. Johnston refused, however, seeing the task as one likely to compromise the position of the chief judge of the Supreme Court. In the meantime, there was a flurry of accusations from Ngati Raukawa, supported by Hadfield, that Featherston and Buller had condoned threats by Kawana Hunia to send a party of 500 armed men to survey the inland section of the exterior boundary.[103] A further petition was sent by Matene Te Whiwhi and other Otaki people in September, requesting an examination by the Native Land Court of their claims, including those to the Manawatu lands. They pointed to their compliance with the Government's earlier request that:

> one year should be allowed to elapse whilst Dr Featherston was carrying on his negotiations; after which the assembly would empower the Native Lands act to operate in the claims to the land excluded.[104]

On the same day, Rolleston informed Hadfield that while the Government regretted Featherston's apparent use of threat, it was taking steps to bring the claims of the dissentients before the Native Land Court and thus saw no useful purpose in discussing the matter any further.[105]

103. 'Return of Correspondence Relative to the Manawatu Block', AJHR, 1867, A-19, pp 12–17
104. Petition of Te Whiwhi and Other Natives at Otaki, September 9, 1867, AJHR, 1867, G-1, pp 11–12
105. Rolleston to Hadfield, 9 September 1867, 'Return of Correspondence Relative to the Manawatu Block', AJHR, 1866, A-19, p 16

CHAPTER 6

THE NATIVE LAND COURT IN THE RANGITIKEI–MANAWATU

6.1 THE HIMATANGI HEARING

Under section 40 of the Native Lands Act 1867, the Governor-in-Council was able to refer the claims of non-signatories to the deed of sale to the court, negating the exception of Rangitikei–Manawatu lands under the earlier legislation. In late November, Richmond directed that notice be given that:

> any persons having claims within the block of land described in the schedule thereunto annexed and who have not signed the deed of sale therein and who desire to have their claim referred to the Native Lands Court may send the same to the Governor for consideration and reference if he shall see fit.[1]

In March 1868, Parakaia and 26 other members of Ngati Raukau, Ngatiteao, and Ngatituranga applied to the court for a certificate of title to Himatangi, which was situated on the west bank of the Manawatu, at the confluence with the Oroua, and bounded to the south by Te Awahou. The provincial government, anxious to defend its purchase, objected to such a certificate being ordered, and appeared against the claimants. This was one of the first occasions on which the Crown claimed to have acquired an interest in lands brought to court, and the presence of Government officials in the role of counsel and as adversaries was regarded with considerable suspicion. The claimants complained that the proceedings were weighted against them: not only did the Crown appear as the opponent but its title would not be investigated while their own rights would be subjected to all the court's scrutiny.[2]

Initially, counsel for the Crown tried to block the case on grounds that the claim was too vague. Richmond, however, was fully committed to an investigation, and this effort to impede the hearing on a technicality drew his criticism:

> I observe that sect 17 of the Native Lands Act 1867 distinctly recognises this sort of Representative claim as within the class of claims by 'persons' independently however of any technical question the Government are bound in fulfilment of the plain intention if the legislature to secure for all claimants a full hearing without formal impediment on the part of the Crown.[3]

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1. *New Zealand Gazette*, no 63, 28 November 1867, pp 6461–6462
2. Rolleston, 31 October 1867, 'Memo on Parakaia's letter of 23 October 1867', MA series 13/73B, NA Wellington
3. Richmond to Featherston, 11 March 1868, MA series 13/73B, p 2, NA Wellington

Reassuring Featherston that the general government was disposed neither 'to neglect any means of supporting the substantial rights of the Province under the Crown', nor to tolerate inroads on the purchase from 'fictitious or mythical pretensions', he stressed the importance of dealing, none the less, with every claim on its merits:

> The Government are necessarily and expressly pledged to have all claims treated on their merits. To impede any claim would add strength to disloyal suspicions throughout the Island, without saving us from local excitement.
>
> The Government therefore request that the Counsel may be instructed to rely on broad considerations and not to allow any smaller or semi-technical difficulties to postpone a decision by the Court which the quiet of the Country requires should be arrived at without delay.[4]

The case proceeded over the course of the following six weeks, in an atmosphere of considerable acrimony. The case for the claimants was conducted by T C Williams, son of Henry Williams, untrained as a lawyer, but a 'spirited advocate'.[5] Overseeing the case for the Government, was Fox, with Buller and Featherston in attendance. According to Galbreath, Fox 'revelled in the combative role in the courtroom or in Parliament', and attacking his opposition with 'invective, sarcasm and innuendo', used 'all his barrister's skill' to refute Ngati Raukawa's claim.[6] He described Parakaia as a 'land shark', and attempted to undermine the credibility of Hadfield by raising the question of his land purchase activities within the bounds of the Rangitikei–Manawatu. When Williams appealed to the Treaty's guarantee to Maori of the undisturbed possession of their lands, Fox poured scorn upon the argument, calling the Treaty a 'great sham' and 'the work of landsharks and missionaries and missionary landsharks'.[7]

6.2 THE CLAIMANTS' CASE

Parakaia's claim of ownership was based on an argument of right acquired by conquest, and confirmed by actual occupation. Williams, in his opening argument, stressed the extent of Ngati Raukawa dominance. He argued that members of Ngati Raukawa had been living as far up the coast as to the north bank of the Rangitikei. Parakaia had been in occupation of Himatangi, as guaranteed by the Treaty, until the late 1840s when Ngati Apa had begun to sell. Any Ngati Apa living on the south bank had been in a 'state of captivity'. According to William's argument, the rest of the tribe had not moved to the south side of the Rangitikei River until 1854, when they had attempted to lease land there. The deed was not to be taken as establishing the claim of these people, Featherston having used the excepting clauses within the

4. Ibid, p 3
5. R Galbreath, *Walter Buller: The Reluctant Conservationist,* Wellington, GP Books, 1989, p 72
6. Ibid
7. Ibid

Native Land Act 1862 and 1865, to deny the wish of the majority of Ngati Raukawa for an investigation of title before any alienation of land took place.[8]

The court had taken the view that it had to reach a decision on the conflicting tribal claims to the Rangitikei–Manawatu, as a whole, before it could determine the ownership of Himatangi itself. Evidence was presented accordingly. The first witness, Matene Te Whiwhi, testified to the tribal history of the district, starting with Te Rauparaha's initial invasion with Ngapuhi. Ngati Raukawa participation in the migrations to the Kapiti Coast was then outlined. According to Te Whi Whi, 'Ngatitoa thought to give the land as far as Whangaehu to Ngati Raukawa because of the murder of Te Poa by Muaupoko at Ohau – Ngatitoa chiefs assented and gave Te Ahukarama the land. "The land on which Te Pou was killed".'[9] As the waves of heke reached the district, Ngati Apa, Rangitane, and Muaupoko left the district for the Wairarapa. Te Whi Whi testified that they had been attacked by Wairarapa forces and after a year returned to the west coast, some going to the Rangitikei, some to Whanganui, some to Waitotara, and others to their 'hunaonga' – Te Rangihaeata, at Kapiti, who had taken Pikinga to wife. In Te Whi Whi's view, these people – 'the greater part of Ngati Apa' – were 'dependents' on Te Rangihaeata.[10] Ngati Raukawa's mana had been extended to Turakina when they had successfully assisted Ngati Apa in fighting against Whanganui.

Parakaia testified next, giving an account of their heke to the coast. According to Parakaia's account, Te Rauparaha had invited Te Whatanui and Te Hukiki to occupy territory extending from Porirua to Turakina. The witness gave an account of various battles fought by Ngati Raukawa against Ngati Apa, Rangitane, and Muaupoko, as their major body (Te Heke Nui) moved into the area. He told the court:

> Ngatiraukawa then proceeded to apportion the lands at Manawatu and Rangitikei between themselves. In 1830 peace having been partially made Ngatiapa came and lived under the protection of Ngatiraukawa – all the land had been taken by Ngatiraukawa and Ngatiapa occupied by their permission and under their protection.[11]

Not until the arrival of Christianity had Ngati Apa began to be 'whakahi' to Ngati Raukawa. Fox's cross-examination, however, brought an acknowledgment of Ngati Apa's exercise of cultivation and fishing rights at various locations within the block – at Tawhirihoe, Te Awahuri, Kaikopu, Pukapuka, and Oroua – under the authority of various Ngati Raukawa chiefs.[12]

This testimony to Ngati Raukawa dominance of the general region was strongly supported by Hadfield, who told the court:

> Up to the time of the Treaty of Waitangi Ngatiraukawa was the only tribe acknowledged to be in possession of this part of the country from Kukutauaki 3 miles this side of Waikanae up to Turakina – Muaupoko were then living at Horowhenua; Rangitane were living in the neighbourhood of Oroua; Ngati Apa were living on the

8. Otaki Native Land Court MB 1C, 11 March 1868, pp 194–195; *Wellington Independent*, 10 March 1868
9. Otaki Native Land Court MB 1C, 11 March 1868, pp 197–198
10. Ibid, pp 198–199
11. Otaki Native Land Court MB 1C, 12 March 1868, pp 201–202
12. Ibid, pp 203–204

> other side the other side of Rangitikei on to Turakina excepting a small fishing settlement at the mouth – kainga o Taratoa. I always understood that Muaupoko were living in subjection under Whatanui – were living at Horowhenua under the 'mana' of Te Whatanui.[13]

Meihana gave corroborating evidence that, while some Ngati Apa were living at Putanga (Oroua) and Parewanui, and Rangitane at Te Mahau, 'Ngati Raukawa was the tribe in occupation' in 1840 and 'had the mana'. He told the court that he believed that those Rangitane and Ngati Apa residing on the block were living 'manakoie' and had 'no tikanga to the land then or from some time previous'.[14]

Evidence was also brought forward to prove the importance of the consent of Ngati Raukawa to the sale of Rangitikei–Turakina and Ahuaturanga, and to interpret the significance of those sales. Samuel Williams testified that he had encouraged both Ngati Toa and Ngati Raukawa to consent to the alienation of the lands north of Rangitikei, advising Raukawa to 'to shew kindness to the tribes whom they had conquered formerly' and to 'curtail their boundaries, and not to hold useless tracts of land.'[15] He told the court that Ngati Raukawa 'relinquished their mana' over this territory, enabling Ngati Apa to sell. Ngati Raukawa retained authority over the south bank. Although he did not consider Ngati Apa debarred from occupying and sharing in those lands, Williams considered that their rights could not revive in them without boundaries being set, nor sold without the permission of Ngati Raukawa.[16] He admitted under cross-examination, however, that it would not have been wise to have omitted signatures from the purchase deed of conquered people who had been allowed to acquire rights in the block.[17]

A similar argument of Ngati Raukawa restoration of mana was made with reference to Rangitane and the Ahuaturanga sale. A number of Ngati Raukawa witnesses then testified to their defence of their control over the lands south of the Rangitikei since the setting of the tribal boundary there. They pointed to Te Huruhuru's protection of Ngati Parewahawaha's clearings at Pakapakatea from Ngati Apa incursions.[18] Evidence was also brought forward to the nature and significance of leasing arrangements in the 1850s. Henare Te Herekau testified to Ngati Rakau driving off sheep being pastured under Ngati Apa permission. It was argued that Taratoa had allowed Ngati Apa to lease land at Kakanui (Makowai) for three years in order to enable them to participate in running a mill there. In a lease to Robinson of lands on the north-west bank of the Manawatu, Nepia had allowed Ngati Apa to share in the rents for Omarupapaka, but Parakai had refused to admit them into the arrangements made with regard to Himatangi.[19]

Intrinsic to the claimants' case was the argument that Featherston's purchase had been unfairly conducted. Buller was thus closely questioned about the inclusion of

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13. Otaki Native Land Court MB 1C, 13 March 1868, pp 211–212
14. Otaki Native Land Court MB 1C, 14 March 1868, pp 222–224
15. Ibid, pp 228–229
16. Ibid, pp 230–231
17. Ibid, pp 230–231
18. Otaki Native Land Court MB 1C, 16 March 1868, pp 238–243
19. Otaki Native Land Court MB 1C, 18 March 1868, pp 270–279

so many Whanganui and the means by which other signatures been obtained. The witness defended the course pursued by the provincial government, arguing that monies paid to Whanganui and others were loans rather than advances, that the signatures of non-claimants would not invalidate the deed and that the purchase had been necessary to the maintenance of peace.[20]

Parakaia also had to uphold his claim against the selling section of Ngati Raukawa. Evidence was thus brought forward to show that the interests of Ihakara, who had also preferred a claim to the Himatangi lands had been confined to Te Awahou and extended up-river to Motoua only.[21] Amiria Taraotea admitted that Ngati Patukohura had once cultivated Himatangi lands, but only for a period of two years while others described the boundaries laid down by Taratoa and the leading chiefs of adjacent areas for the three claimant hapu of Ngati Rakau, Ngatiteao, and Ngatituranga.[22]

6.3 THE CROWN'S CASE

During cross-examination, Fox had attempted to highlight the apparent inconsistency of non-Raukawa witnesses who had signed the deed now supporting claims of ownership by that tribe. He threw doubt on the integrity of Parakaia's evidence, on Hadfield's motives, and on the depth of his understandings in 1840, raising questions about the witness' knowledge of Maori at that date. Now in presenting its case, the Government did not contest that Ngati Raukawa had been in possession of the block at the time of the Treaty signing but sought to deny any exclusive right on the part of the claimants deriving from conquest. Witnesses called by Fox, thus, stressed the failure of Ngati Raukawa to dispossess the original occupiers, and argued that the claimants had occupied only a small portion of the block under examination.

The case for the Crown was opened by Tamihana Te Rauparaha, Nopera, Tamaihengia, and others from Ngati Toa. The import of their evidence was that authority over the region lay with Ngati Toa, who had been at peace with Ngati Apa when Ngati Raukawa arrived in the region. Tamihana argued that Ngati Apa's mana had been fixed at the Manawatu River by Te Rauparaha in 1840. He disparaged Ngati Raukawa, arguing that they came as the soldiers and 'kai mahi' of Te Rauparaha. The court was told that those living in the Rangitikei–Manawatu after the 1849 sale of the north bank, did so as the 'mokai' of Ngati Apa, whose mana was the greater.[23] Greater credence seems to have been given to the more moderate evidence of Nopera and Tamaihengia. Nopera testified to the significance of Rangihaeata's marriage to Pikinga, and told the court that Ngati Apa had escorted Ngati Toa down to Kapiti on their return to the region after the first taua. He suggested that Ngati Raukawa had been forced north after their defeat by Te Ati

20. Otaki Native Land Court MB 1C, 13 March 1868, pp 193–194, 216–220
21. Otaki Native Land Court MB 1C, 18 March 1868, pp 264, 269
22. Otaki Native Land Court MB 1C, 21 March 1869, pp 304–307
23. Otaki Native Land Court MB 1D, 28 March 1868, pp 384–391

Awa at Haowhenua and Kuititanga and stated that in 1840, Ngati Apa were living on their own land, exercising full mana over it as demonstrated by their sale of the Rangitikei–Turakina block:

> When I fought these tribes I drove them off – when the fighting ceased, we lived together. After this Ngati Apa lived on the land and had 'mana', otherwise how could they have sold the land? Did the Ngatiraukawa gain any battle or take any 'pas' of the Ngati Apa upon which it should be said that they had destroyed the Ngatiapa 'mana?'[24]

Under cross-examination Nopera drew a contrast between the authority exercised by Taratoa at the Rangitikei–Manawatu and the place of his ancestors:

> the reason why he considered Nepia in no way superior to Ngatiapa was that Nepia did not resent the curses of Ngatiapa; that if the same terms of opprobrium had been made use of at Maungatautari with reference to Nepia the country would have been swept . . .[25]

Tamaihengia corroborated that Ngati Raukawa's settlement of the north bank of the Manawatu had not taken place until the mid-1830s and had been conducted peacefully. Ngati Apa's fires had never been extinguished on the Rangitikei–Manawatu lands. Tamaihengia told the court that, although some members of Ngati Apa had been enslaved, the tribe had been 'elevated' by the Raukawa leaders. He explained that lands were owned by those actually occupying, but that those outside – the forests – belonged jointly to the tribes. The witness testified further that Te Rauparaha's allocation to Ngati Raukawa extended only as far north as Poroutawhao, just south of the Manawatu River.[26]

Leading chiefs of the other tribes claiming interest in the region were next called to testify: Kawana Paipai and Mete Kingi of the Whanganui, Karaitiana of Kahungunu, Paramona Te Naunau of Ngati Upokoiri, Peeti Te Awe Awe of Rangitane, Hunia Te Hakeke of Ngati Apa, Matene Te Matuku – also of Ngati Apa – who had lived at Himatangi before the arrival of Parakaia, and others. Their evidence tended to stress that Ngati Raukawa had moved to the coast after defeat at the hands of Ngati Kahungunu and to confirm that they had taken up residence north of the Manawatu only after fighting with Te Ati Awa. There was some confusion, however, whether that move north had taken place after Haowhenua or Kuititanga. It was admitted that Raukawa's movement to the Rangitikei–Manawatu had not been entirely under duress, since Te Ati Awa had also withdrawn from the scene of conflict. Kawana Paipai suggested, however, that Ngati Raukawa's survival owed much to the support of Whanganui.[27] Witnesses acknowledged defeats by Ngati Raukawa in the first battles, but maintained that enslavement and death had been restricted to people of little standing.[28] It was also emphasised that the later occupation of the Rangitikei–Manawatu by Ngati Raukawa hapu had been

24. Otaki Native Land Court MB 1D, 30 March 1868, p 395
25. *Wellington Independent*, 30 March 1868; Otaki Native Land Court MB 1D, 30 March 1868, p 398
26. Otaki Native Land Court MB 1D, 30 March 1868, pp 399–403
27. Otaki Native Land Court MB 1D, 31 March–1 April 1868, pp 425–430, 436–443
28. Otaki Native Land Court MB 1D, 31 March–2 April 1868, pp 427, 468

conducted without fighting. According to Kawana Paipai, they were not conquerors, only people in search for a place to live.[29] The mana of these new arrivals extended only over the lands pointed out to them by Ngati Apa and Rangitane chiefs.[30]

Matene Te Matuku of Ngati Apa claimed that he had been living at Himatangi at the time of the Treaty, but after the sale of Rangitikei–Turakina had moved residence to Koputara. Although he had stopped cultivating Himatangi, he had continually returned to catch eels and told the court, had occupied the land until it was sold to Dr Featherston and had burnt Parakaia's houses and boundary poles. The import of his testimony was, however, modified under cross-examination. It was reported that the witness admitted, 'Parakaia's fire is and has been burning on the bank of the Manawatu', and that he had received part of the rents for the area from Nepia's hands.[31] When Te Matuku was questioned by the court as to why he would allow a Ngati Raukawa to have the management of leases over lands which he claimed to own himself:

> He answered that it was because Nepia Taratoa in defining the boundary then, stood on the boundary at Omarupapako, and first turned to Ngatiraukawa (ie, towards the Manawatu) and said 'this Ngatiraukawa is for you,' and then turning to Rangitikei, said 'I shall now turn my front to Ngatiapa,' thereby meaning that Ngatiraukawa were not to transgress this boundary (running from the sea to above Moutoa) with regard to Ngatiapa.[32]

Peeti Te Awe Awe also claimed resource use at Himatangi, giving the names of lakes where Rangitane used to catch eels. He is reported as having told the court that after Matuku's departure, 'Ihakara, Tukumaru, Mamakau and others of us went and took possession of the land; Matene Te Matuku disputed, and if one cultivated the other cultivated too'.[33]

General support for these claims was given by Amos Burr who was called by Fox, apparently to challenge the evidence of Hadfield. Burr had been involved in the New Zealand Company's Manawatu negotiations in 1841 and subsequently had operated the ferry on the river. Pointing to this experience, he claimed that he had a better knowledge of the district than did the missionary, who only occasionally travelled through the area. Burr testified that although Ngati Raukawa had cultivations near Opiki, nobody was living at Himatangi in the mid-1840s. He told the court that Ngati Raukawa occupied land in the Manawatu–Rangitikei block by consent of Te Hakeke and Ngati Apa, who eventually left the district to be near their missionary, Mr Taylor; they were not driven away by Ngati Raukawa.[34]

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29. Ibid, p 428
30. Otaki Native Land Court MB 1D, 4 April 1868, p 496
31. Otaki Native Land Court, 2 April 1868, *Wellington Independent*, Hadfield Papers, MS Papers 139 (30), ATL
32. Ibid
33. Otaki Native Land Court, 4 April 1868, *Wellington Independent*, Hadfield Papers, MS Papers 139 (30), ATL
34. Otaki Native Land Court MB 1D, 3 April 1868, pp 473–476

In his closing address, Fox summed up the case for Ngati Apa right of ownership over the Rangitikei–Manawatu lands. He first questioned the legality of the 'forty year rule', arguing:

> since the Court still respects the native law of ownership, as it existed in and long previously to 1840, and decides between native claimants in accordance with native law, there is not a shadow of a reason shown for fixing a period of limitation, either at 1840 or any other date.[35]

Pointing out that peoples of defeated European nations would not be denied the right to prosecute claims to their ancestral lands beyond 30 years, Fox continued:

> Still less ought such a rule to exist in New Zealand where if in some instance 'tribal' ownership may rest on military occupation, the 'individual' holding as distinguished from 'tribal' almost always rests on the peaceful occupation of the owner achieved by his own manual labour, or that of his immediate ancestors.[36]

Fox argued that nowhere in New Zealand would a strict application of the 1840 rule be more unjust than in the case of the Kapiti Coast:

> At that period owing to a series of events which have been related to this Court by the witnesses for the Crown, the sovereign rights of the tribes and the titles to the land were evidently in a state of fusion; old political landmarks were broken down; new ones hardly yet defined or established. 'In those days of Satan,' said one of the old witnesses, 'the tribes were fighting each other. I cannot say where was the mana.' At this moment this Court crystallizes, if I may so express it, the title of the lucky holders of 1840, whoever they might be; utterly regardless of the events of previous periods and the interests of those whose claims, if momentarily in abeyance, had never been abandoned or transferred.[37]

Fox, however, did not admit Parakaia's title to be good even at 1840. He argued that witnesses for the Crown had given a:

> consistent record of continuous exercise of ownership in every possible way in which a Maori could exercise it, to show that Ngatiapa have never ceased to own the land which they inherited from a long line of ancestors, and their occupation of which was fully confirmed to them by the only persons who could have shaken it, Rauparaha and those who accompanied him in his first taua.[38]

Acts of Ngati Apa ownership were then outlined by Fox. They were 'actually living' on parts of the block – Oroua, Awahou, Makowhai, Pukepuke, near Matahiwi, and Pakapakatea being admitted by the claimants. Fox argued too, that evidence had been adduced that Ngati Apa had cultivations on every part of the

35. W Fox, *The Rangitikei–Manawatu Purchase: Speeches of William Fox Esq, Counsel for the Crown, Before the Native Lands Court at Otaki: March and April, 1868, Together with Other Documents*, Wellington, William Lyon, 1868, p 14
36. Ibid, p 15
37. Ibid
38. Ibid, p 24

block, some witnesses being able to give specific names, others speaking to the fact generally. In the case of Himatangi itself:

> Matene Te Matuku and a number of other Ngatiapas of two hapus, accompanied by two hapus of Rangitane were cultivating in Himatangi bush in 1840, 'from which place' says Matene (confirmed by Hamuera), 'I was sent for to sign the Treaty of Waitangi.'[39]

Ownership of the eel ponds was also attributed to Ngati Apa, Fox citing in support of this contention the testimony of Kereopa of Ngati Raukawa and the reputed presentation of a dish of 20,000 eels to Featherston. Stating there was 'no ingredient of so much weight in all this case, to prove the continuance of Ngati Apa mana in the disputed block', Fox attempted to argue that ownership of adjacent land was essential to the exercise of the right of fishery.[40] Other examples were cited by Fox as pointing to continuing Ngati Apa authority: the invitation to their chiefs to sign the Treaty of Waitangi at Tawhirahoe; the removal of Ngati Raukawa boundary posts and, subsequent to 1840, their participation in leasing arrangements.[41]

While the continuing authority of Ngati Apa over the land was asserted, the superiority of Ngati Raukawa was denied. Fox argued that Ngati Raukawa had come to the coast under Te Rauparaha's protection and could not cite any significant battles with Ngati Apa. The first Ngati Raukawa settlement north of the river had been undertaken by the father of Tapa Te Whata, the latter having testified that the move was undertaken with the consent of Ngati Apa. Further settlement had occurred after Haowhenua, when Nepia and Horomona accompanied Te Hakeke to the Rangitikei 'and gradually drew around them a small body of followers who settled on Ngatiapa ground by Ngatiapa permission'. According to this interpretation of events, it was only after the introduction of Christianity that Ngati Apa gradually drew over to the north side of the Rangitikei River, and Ngati Raukawa to the north bank of the Manawatu – not by force, but by the 'friendly act of Ngati Apa'. Any Ngati Apa slaves in Ngati Raukawa hands were 'only a few stragglers taken by their eel ponds and cultivations'.[42]

Fox next questioned Ngati Raukawa's representation of the Rangitikei negotiations, citing McLean's opinion, expressed in correspondence with the New Zealand Company and the Government, that Ngati Apa had an 'undoubted right' to retain land on the south bank. Crown counsel pointed out that Ngati Raukawa had admitted the existence of those interests at the Awahou meeting in 1849. According to Fox, Ngati Apa's boundaries on the south bank were acknowledged as incorporating Omarupapako, Pukehinau, Purakau, Waikatira, Oroua, the river, and Otara inland. Those boundaries, he argued, had been confirmed by the sale of the Awahou block, when Taratoa had agreed that Raukawa would confine themselves to south of the Manawatu River.[43]

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39. Ibid, p 14
40. Ibid, p 25
41. Ibid
42. Ibid, p 27
43. Ibid, p 28

The Crown concluded its case by arguing that the claimants had proved actual occupation of only 30 acres, and cultivation of no more than 120 acres, in a block of some 12,000 acres. Counsel maintained that this occupation was a 'mere encroachment which conferred 'nothing even in the character of possessory right beyond the then absolute limits of ground intruded upon'. This was in contrast to the sort of right enjoyed by Ngati Apa: 'an occupation like that of Matene Te Matuku might do so. It was a representative occupation; he and his two hapus sat there as members of a tribe whose ancestral mana covered the whole district.'[44]

6.4 THE FINDING OF THE COURT

The court decided on two questions: tribal right over the general district lying between the Rangitikei–Manawatu and the ownership of Himatangi itself. At the heart of their reasoning was an affirmation of occupation as conferring ownership. Occupation underlay the three basic principles of customary title enunciated in the court's finding: that conquest had to be followed by continuous occupation to confer right; that earlier occupiers, even though defeated, retained rights if they remained on the ground and continued to assert their interests; and that title devolved only those in permanent residence, not upon a wider tribal entity.

The court attempted to reconcile these two different assertions of tribal mana over the lands between the Rangitikei and Manawatu Rivers, in a decision intended as a precedent for other claims within the block. It accepted that Ngati Raukawa had 'acquired and exercised rights of ownership over the territory in question', before the establishment of British Government. The court considered further that the 'prominent part' that Ngati Raukawa had played in the cession of Rangitikei, Ahuaturanga, and Awahou, 'prove also that those rights have been maintained up to the present time'. On the other hand, it also thought that the evidence showed that the original occupiers were never 'absolutely dispossessed' and that they had 'never ceased on their part to assert and exercise rights of ownership'.[45]

Although the court acknowledged Ngati Raukawa's military preeminence, it did not see them as conquerors who enjoyed overriding rights over the lands in question:

> The fact established by the evidence is that the Ngatiapa–Rangitane, weakened by Ngatitoa invasion under Te Rauparaha, were compelled to share their territory with his principal allies, the Ngatiraukawa and to acquiesce in joint ownership.
>
> Our decision on this question of tribal right is that Ngatiraukawa and the original owners possessed equal interests in and rights over the land in question, at the time when the negotiations for the cession to the Crown of the Rangitikei–Manawatu Block were entered upon.[46]

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44. Ibid, p 30
45. 'Judgment of the Native Land Court in the Claim of Parakaia Te Pouepa and Others, Otaki, Monday 27th April 1868', in Fox, pp 33–34
46. Ibid, p 34

Next, the tribal interest of Ngati Raukawa was found to be vested in the people in 'actual occupation, to the exclusion of all others'. Parakaia's hapu comprised this group. A claim preferred by Ihakara and Patukohura was disallowed because their occupation had been temporary in nature. In addition, two members of Parakaia's hapu were also excluded from the award since they had signed the sale deed. The court, thus, found that Parakaia and his co-claimants were entitled to one-half less $^{2}/_{27}$ of Himatangi block.[47]

6.5 REACTION TO THE COURT'S FINDING

The decision satisfied no one entirely. Ngati Apa and Rangitane continued to mount challenges to Ngati Raukawa authority. Featherston approved the finding as corroborating his action 'in giving to the claims of Ngatiapa and Rangitane the weight which I attribute to them', but condemned the grant of such an extensive acreage to Parakaia. He argued that the chief should have been awarded only that portion of the block actually occupied by his hapu, while the remainder should have gone to the whole of the tribe.[48]

The decision was an especial blow to non-selling Ngati Raukawa – in their opinion, it was based on a misreading of both history and principles of customary usage. Parakaia immediately asked Williams to apply to the Governor for a rehearing.[49] The application, drawn up by Williams, was based on:

> the fact that for thirty-three years they have held sole possession of the block which they obtained by conquest and that they cannot see why half of the land should be taken from them and restored to Ngatiapa and Rangitane the 'vanquished survivors'.[50]

Williams objected further, that the court's decision to deal with the Rangitikei–Manawatu as a block had disadvantaged his clients because it ignored their power base to the south of the Manawatu River:

> Parakaia and his people object to this that Himatangi is not necessarily a portion of such block but rather apart of their portion of the country which fell to their share at the time of the conquest, the other part being on this side of the Manawatu river immediately opposite to Himatangi.[51]

The claims of Ngati Apa and Rangitane that had survived conquest had been recognised by Ngati Raukawa when they 'formally returned' large, adjacent areas to them. Ngati Raukawa, thus, 'considered themselves thenceforth relieved from any joint ownership with these two tribes and entitled to be left in undisputed ownership'

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47. Ibid
48. 'Extract From the Speech of his Honour the Superintendent, on Opening the Sixteenth Session of the Provincial Council, Tuesday, 19 May 1868', in Fox
49. Parakaia and others to Williams, 2 May 1868, MA series 13/73B, NA Wellington
50. Williams to Colonial Secretary, 7 May 1868, MA series 13/73B, pp 1–2, NA Wellington
51. Ibid, p 2

of the remaining land.[52] Williams pointed to past Government acknowledgment of right by conquest, the court's recognition of Ngati Apa's forced acquiescence in the occupation by Ngati Raukawa, and shortcomings in the evidence of the Crown witnesses, but did not directly challenge the finding that Ngati Apa had retained interests in the region.[53]

The judges of the court, to whom the Ngati Raukawa complaint was referred, defended the bases of their decision, expanding on their reasoning. They informed the Government that Parakaia had failed to prove either sole possession of the Himatangi block or that he had taken it by conquest. Those boundaries had no existence at 1840 and had been fixed by Parakaia at a recent date. Parakaia's argument that Himatangi should be seen as a northerly extension of his territory to the south was also rejected:

> It was not shown that the Himatangi block as defined and described in the evidence formed portion of country which fell to the share of Parakaia and his people or that formal possession of it was taken by them until very recently. The evidence brought before the Court did not prove any conquest of Ngatiapa and Rangitane by Ngati Raukawa or any forcible dispossession by the former by the latter of the country lying between the two rivers.[54]

The other objections raised by Williams were not considered to require comment. The Government informed Parakaia, accordingly, that there were no grounds for a rehearing.[55] Parakaia's people continued to refuse to acquiesce in the court's decision, failed to survey, and were considered to be 'squatting' on the land over five years later.

6.6 REMAINING DISSENTIENT CLAIMS IN THE RANGITIKEI–MANAWATU

The implications of the decision regarding Parakaia's case were inescapable for other non-sellers whose claims remained to be heard. Included here were Akapita, near present-day Kakariki; Te Kooro Te One in the vicinity of Mangatangi and Puketotara; Rawiri Te Wainui at Kakanui; and Te Ara Takana at Awahuri and Rairakau.[56] Te Kooro outlined the position of the Oroua non-sellers:

> The court laid down a principle of equal tribal title over the whole block. We then sat down and tried to devise some measure for ourselves in accordance with the principle (new law) laid down by the court of equal tribal right with those tribes who had ceased

52. Ibid, p 3
53. Ibid
54. 'Memorandum on Mr Williams's Letter Applying on Behalf of Parakaia Te Peneha and Others for a Rehearing of Their Claim to the Himatangi Block', 14 May 1868, MA series 13/73B, NA Wellington
55. Ibid
56. Rawiri Te Wainui to Rolleston, 2 November 1867, MA series 13/73B, NA Wellington

> (to have title) long before the time of the Treaty (of Waitangi) and have continued in the same state up to the present time.[57]

They sought counsel, but Williams declined to appear on their behalf, against what he saw as unfair odds – an adverse precedent and the combined forces of Fox, Featherston, and Buller.[58] The court reconvened at Rangitikei, against the wishes of the Raukawa claimants who preferred Otaki or Wellington, but closed its session without deciding upon the remaining cases.

In November 1868, the claims of the non-sellers were resubmitted to the court by A McDonald, their newly authorised agent. But, once again, the hearing failed to go ahead. Fox reported that McDonald had failed to bring the case before the court 'in a manner satisfactory to it'.[59] On being informed by the court that it would be obliged to dismiss his clients' cases, McDonald had applied for an adjournment, or for permission to withdraw the case which had been referred to the court by the Governor. McDonald complained that the opposition of the Crown disadvantaged his clients. While the Crown was 'assumed to have a good title which must not be enquired into', that of his clients would be 'sifted in every possible way'.[60] He objected too, that the court was composed of the same judges who had decided on Himatangi. Counsel had informed him that there was 'little hope, therefore, of being able to convince them that their opinion is erroneous and that the grounds upon which the claimants base their right represents the correct principle on which the judgement of the court should proceed.' J G Allan had written to McDonald:

> The claimants consequently if they go on with their cases must do so with the very strong probability that the judgment in the former case so far as it relates to the manner in which Maoris can obtain and hold possession of land under native custom will be confirmed.[61]

McDonald told the Government that his clients would not accept the court's decision and requested its support for their withdrawal from the court.[62]

Richmond replied, defending both the Crown's position and the operation of the Native Land Court:

> a negative proof on the non-selling claims but this is no advantage but the reverse and The Crown's proof may perhaps be limited by a strictly technical reading of the Act to in practice this limitation has been impossible. The court has evidently acted upon the opinion that their duty could only be effectually done by taking a comprehensive view of the history of the whole title and the principle of the decision in Parakaia's case is drawn from an examination of the claims of all parties. Nor have I heard of any reason

57. Te Kooro Te One and Others to Head of Government, 11 May 1868, MA series 13/73B, pp 1–2, NA Wellington
58. Galbreath, p 72; T L Buick, *Old Manawatu or the Wild Days of the West*, Palmerston North, Buick and Young, 1903, p 244
59. Fox to Colonial Secretary, 18 November 1868, MA series 13/73B, p 1, NA Wellington
60. McDonald to Richmond, 10 November 1868, MA series 13/73B, p 2, NA Wellington
61. Allan to McDonald, 10 November 1868, MA series 13/73B, NA Wellington; *Wellington Independent*, 13 July 1869, p 2
62. McDonald to Stafford, 14 November 1868, MA series 13/73B, pp 1–2, NA Wellington

> to doubt that the action in the present claims will be on narrower grounds. The Court has really been acting as a Commission of general enquiry.[63]

Richmond advised McDonald that his clients should proceed with their case, suggesting that the court would be acting as a general commission of inquiry.[64] But on McDonald's repeated application and the advice of Fox, Richmond consented to the withdrawal, on the proviso that:

> In doing this you will be able to state to the Court that the Crown was not to be considered as pledged to a new reference, or to any other particular mode of dealing with the cases, but only to an equitable treatment of every claim on its merits.[65]

For their part, Ngati Apa and the selling portion of Ngati Raukawa were frustrated by the continuing delay. As soon as the court had made its finding in favour of joint ownership, Hunia Te Hakeke had begun to run sheep on the block, and to interfere with Ngati Raukawa stock.[66] Halse advised Hunia that such an action should wait until the court had finished its work.[67] But as the question dragged on, Ngati Apa objected to any further investigation at all, complaining that it was Ngati Raukawa's own fault that their claims had not been decided and insisting that the rents be distributed and that the survey should go ahead.[68] Fox backed their complaint to Bowen, arguing that they had been put to the expense and inconvenience of attending three sittings and were increasingly impatient 'at what they regard as a failure of justice, and a break down of the institutions provided for the settlement of their case'. The greatest point of irritation for vendors was the continuing non-payment of back rents. Fox advised that there was a growing danger of Ngati Apa seizing stock in lieu of rents and of conflict again flaring between the two tribes.[69]

The frustration of the vendors was shared by the provincial government and settlers who still could not move into the area. But, from the point of view of the general government, the quick completion of the purchase was secondary in importance to maintaining the peace. In light of the continuing complaint from both sides, and the failure of the land court to settle the question, Richmond again suggested that it should 'sit as a commission conducting the whole enquiry itself':

> For the disposal of those claims I believe a great deal of irritation may be escaped by appointing a special commission of four members, two Messers Fenton and Maning to be named by the Government, the others to be named by the claimants and Mr

63. Richmond to McDonald, 15 November 1868, MA series 13/73B, pp 1–2, NA Wellington
64. Richmond to Halse, 17 November 1868, MA series 13/73B, NA Wellington
65. Colonial Secretary to Fox, 22 November 1868, MA series 13/73B, NA Wellington; Colonial Secretary to McDonald, 22 November 1868, MA series 13/73B, NA Wellington
66. Parakai to Richmond, 15 July 1868, MA series 13/73B, p 2, NA Wellington
67. Halse to Hunia Te Hakeke, 10 July 1868, MA series 13/75A, NA Wellington; Halse to Akapita, 11 July 1868, MA series 13/75A, NA Wellington
68. Hunia Te Hakeke to Bowen, 21 November 1868, MA series 13/73B, NA Wellington
69. Fox to Bowen, 25 November 1868, MA series 13/73B, p 4, NA Wellington

> Featherston . . . the Commission should report on the whole subject of the purchase and should make recommendations for satisfying the outstanding claims . . .[70]

Frustrated by the continuing delays in the court, Richmond hoped to remove the adversarial element imparted by Fox, Travers, and McDonald. The investigation would be conducted in public, but the commission, rather than counsel or agents, would call and examine witnesses. However, the idea fell through, when McLean, who had been nominated by Featherston, declined the commission. Richmond informed McDonald that the Government preferred the Native Land Court 'to appointing Commissioners who would not have the greatest weight with the country and the claimants'.[71]

At the same time, the Government sought to come to a settlement of the rents. Richmond accepted Fox's suggestion, approved in discussions with Ngati Raukawa, and by Bowen, that the back rents be divided as in Taratoa's lifetime. He proposed, further, that rents accruing after December 1866, when the purchase was supposedly completed, should be divided in half according to the court's finding for Himatangi. Half of this sum was to go to the Crown, and the remainder to Ngati Raukawa. He suggested that the money designated for the latter tribe be divided again between the Crown and the non-sellers. Advances would be paid to them, while the remainder of their share would be placed into a trust account until their titles had been defined.[72]

While the Government sought for some means of settling the question of title, tribal tension flared. Pakapakatea continued to be hotly disputed, Hunia occupying the 1000 acres that had been reserved for Ngati Apa by Featherston. He was accused of building a fighting pa, but Hunia insisted that he was merely reoccupying ancestral land 'reserved for us to light our fires upon when the land was sold to Dr Featherston Superintendent'. Hunia refuted any suggestion that this area should be confined to the north of the Rangitikei.[73] McDonald complained that Hunia had threatened to destroy the Pakapakatea steam mill, which had been built with the consent of all local parties. A confrontation with local Ngati Raukawa passed without incident, but Hunia subsequently set fire to a kainga of Matiawa, arguing that it lay within the bounds of his intended reserve.[74] Rangitane's dissatisfaction found vent at Puketotara, while tensions were also growing at Horowhenua.

6.7 AKAPITA'S HEARING

In June 1869, the Governor referred 'all questions affecting the title or interests' of all those who had not signed the December 1866 deed of sale to the Crown. These

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70. Richmond, Manawatu Block, 28 November 1868, MA series 13/73B, pp 1–2, NA Wellington
71. Richmond to McDonald, 17 February 1869, MA series 13/73B, p 2, NA Wellington
72. Richmond, Manawatu Block, 28 November 1868, MA series 13/73B, p 1, NA Wellington; Fox to Bowen, 25 November 1868, MA series 13/73B, pp 3–4, NA Wellington
73. Te Hakeke to Cooper, 1 February 1869, MA series 13/73B, pp 1–2, NA Wellington
74. MacDonald to Stafford, 17 December 1868, MA series 13/73B, NA Wellington; MacDonald to Cooper, 8 May 1869, MA series 13/73B, NA Wellington

comprised the claims of Akapita Te Tene, Keremihana Wairaka, Paranini Te Tau, Punipi Te Kaka, Wiriharai Te Angiangi, Henare Te Waiatua, Hare Hemi Taharapi, Rawiri Wainui, Te Kooro Te One, and Te Ara Takana.[75] In the following month, the court opened its session in Wellington. Fenton and Maning sat on the bench, and Ihaia Porutu filled the position of assessor. Travers, a member of Parliament, appeared on behalf of the claimants, and the Attorney-General, Prendergast, for the Crown. Travers again raised technical objections to the presence of the Crown as objector, but was overruled by the court and the case proceeded.

The tribal history of the Rangitikei–Manawatu lands was re-examined over the following six weeks. Some 80 witnesses, many of whom had testified in the Himatangi hearing, gave evidence on that history and the relationship of the tribes. The arguments of both sides were essentially unchanged from those presented in the earlier case. Travers opened with a narrative of the conquests, arguing that Ngati Raukawa played a vital role in the support of Ngati Toa. He pointed to the status of the tribes at 1840 as establishing the claim of Ngati Raukawa. Travers denied that Ngati Apa had retained their authority over the block in question:

> Rauparaha with aid of his allies succeeded in completely subjugating the Ngati Apa and Rangitane tribes. Tribes were placed in a condition of submission or bondage to the conquerors. The conquest was complete within the rules of Maori custom. Joint occupation on friendly terms after this almost an impossibility. Insisted that when two tribes proceed to make a peace, the ceremonial was a very important one – no evidence of any such formal establishment of peace. Ngati Apa were allowed to remain in occupation of the land on sufferance.[76]

It was argued by the claimants that 'if any Ngati Apa acquired rights subsequently after conquest they were merely such individuals as actually occupied, and . . . were absorbed into Raukawa or the occupying hapu'.[77] As regards Ngati Toa, they had abandoned their interest in the Rangitikei–Manawatu lands, which had been taken possession of, in specific blocks, by various Ngati Raukawa hapu. The court's denial at Himatangi of an over-arching tribal interest, which impinged on the ownership of those in actual occupation, was not accepted by the claimants. While the rights of those Ngati Raukawa who had sold were recognised by them, it was contended that 'those signing had no right to do so without the common consent of the tribe'.[78]

After evidence had been heard for the claimants, Prendergast set out the Crown's lines of argument, again rejecting claims of Ngati Raukawa conquest and stressing Ngati Apa's continuing independence. He argued that Ngati Raukawa had sought the protection of Te Rauparaha, after suffering defeats at the hands of Ngati Kahungunu, and Whanganui assisted by Ngati Apa, and in fear of the Waikato at Maungatautari. The marriage of Pikinga to Te Rangihaeata was again pointed to as

75. *Wellington Independent*, 10 July 1869, p 3
76. Wellington Native Land Court, 'Notes of Evidence, Rangitikei–Manawatu Claims', 14 July 1869, MA series 13/71, p 2, NA Wellington
77. Travers, *Wellington Independent*, 12 August 1869
78. Wellington Native Lands Court, 'Notes of Evidence, Rangitikei–Manawatu Claims', 14 July 1869, MA series 13/71, p 3, NA Wellington

cementing an alliance between Ngati Apa and Ngati Toa. Neither that alliance nor the established occupation of Ngati Apa and Rangitane north of the Manawatu had been disturbed by Raukawa's arrival. Ngati Raukawa had secured a 'foothold' in the Rangitikei–Manawatu only after Haowhenua, their occupation of that area being by permission of Ngati Apa:

> Small parties under Taratoa and Te Whata squatted side by side with Ngati Apa cultivating the same ground, living in the same pa and fishing the same lagoons . . . certain permissive rights of ownership were acquired by a section of Ngati Raukawa . . . with the tacit assent of Ngati Apa who if not of themselves in a position to resist, were backed by the numerous and powerful Wanganui tribes . . .[79]

Prendergast argued that further proof of Ngati Apa's independence was to be found in the assistance rendered to Ngati Raukawa by Te Hakeke at Haowhenua, and by their inclusion in the signing of the Treaty of Waitangi. This was rejected by Ngati Raukawa. who contended that Ngati Apa formed a tributary party of whom leaders of both forces had taken 'no notice'. Hadfield, who had accompanied Williams in the gathering of signatures for the Treaty, also attempted to throw doubt on the importance of Ngati Apa inclusion in that process. He told the court that Ngati Raukawa had scorned their signing, but that Williams had not had the time to investigate the right of tribes.[80]

Crown counsel also pointed to events occurring after 1840 as indicating title at that date. Prendergast emphasised that Ngati Apa had fully participated in the negotiation of leases, sometimes jointly but, on other occasions, independently.[81] He argued further that the bulk of the claimants resident at Otaki, Ohau, and Waikanae, belonged to hapu that had never acquired rights in the block through occupation – 'not till recently – till the sale of land to the Crown', had they put in any claim to it.

Nor, according to the Crown, had there been any general division of territory at the 1849 sale of Rangitikei.[82] McLean was called to testify on this point. Ngati Raukawa had frequently directed Government officials to McLean assuming his support on the significance of the sale of the Rangitikei block in terms of ownership of the remaining west coast lands. Now, however, their understanding of that event was refuted by McLean. Of especial significance was the recognition of Ngati Apa rights to Omarupapaka, which had been affirmed by Ngati Raukawa at the Awahou meeting in 1849. In Taratoa's eyes, the nature of those rights had not encompassed that of alienation. McLean's interpretation was, however, quite different. He told the court:

> My impression was that the Ngatiapa claimed land on the south bank of the Rangitikei as far as Omarupapaka. Nepia and Ngatiraukawa who were with him adduced claims there; but Ngatiapa never relinquished their rights over this land. I did consider it necessary to the obtaining of a quiet title that land that all the tribes claiming

79. *Wellington Independent*, 7 August 1869
80. Wellington Native Land Court, 'Notes of Evidence, Rangitikei–Manawatu Claims', 28 July 1869, MA series 13/71, pp 4–5, NA Wellington
81. *Wellington Independent*, 7 August 1869
82. Ibid

> should give their consent – including the Ngatiraukawa. I believed myself that the Ngatiapa had a perfect right to dispose of that land; but for quiet possession it was necessary to get the sanction of all the tribes.[83]

According to McLean, Ngati Apa had been 'in actual possession' of the north bank and jointly held the land to the south of the river. Questioned by the court, McLean stated that he understood Ngati Raukawa to have agreed at the Rangitikei negotiations that Omarupapaka should be the boundary between the two tribes. He argued that 'when Ngati Raukawa speakers referred to Rangitikei as the boundary they spoke of the sale to the Crown and not of any boundary between the Ngatiapa and Ngatiraukawa'.[84]

6.8 THE DECISION OF THE COURT IN THE SECOND HEARING

The court had decided that, as the basis on which title was argued was the same for all the claimants, and the specifics of their individual claims of secondary importance, it would reserve its decision on tribal title until all the cases had been investigated. The judgment would, thus, dispose of all the claims at once, preventing the withdrawal of the outstanding cases if the first decision went against them.[85] In late August the court delivered its finding. The decision was based on the examination of six issues that had been submitted for its deliberation, by agreement of counsel.

The first question was whether Ngati Raukawa had acquired the 'dominion' over any part of the Rangitikei–Manawatu lands by themselves 'or others through whom they claimed'. To this, the court answered, 'No'.[86] Secondly:

> Did that tribe or any and what hapus thereof, acquire, subsequently to conquest thereof, by occupation, such a possession over the said land, or any or what part or parts thereof, as would constitute them owners according to Maori custom; and did they, or any and what hapus, retain such possession in January, 1840 over the said land, or any and what part or parts thereof?[87]

Having deleted the words, 'subsequently to conquest thereof,' Maning and Fenton ruled that Ngati Raukawa 'as a tribe' had not acquired any interest through occupation. Three hapu – Ngati Kahoro, Ngati Parewahawaha, and Ngati Kauwhata – had, however, 'with the consent of Ngati Apa, acquired rights which will constitute them owners according to Maori custom'. Those rights were judged to extend throughout the block, Maning stating that the court had heard no evidence to cause it to limit the interests of the three admitted hapu to any specified piece of

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83. Wellington Native Land Court, 'Notes of Evidence, Rangitikei–Manawatu Claims', 28 July 1869, MA series 13/71, p 1, NA Wellington
84. Ibid, p 3
85. *Wellington Independent,* 15 July 1869
86. 'Memorandum on the Rangitikei–Manawatu Land Claims', AJHR, 1870, A-25, p 3
87. Ibid

land.[88] The question of the interests of Ngati Wehiwehi was left for later consideration (when they were excluded on the grounds that their residence on the block had been temporary only). Were, then, the rights of Ngati Apa completely extinguished? To this question, the court answered that they had been merely affected by the others' acquisition of rights at 1840. And on the point whether Ngati Apa's ownership was 'hostile, independent of, or along with, that of the Ngati Raukawa, or any . . . hapus thereof', it was found that the rights of the three Raukawa hapu existed alongside those of Ngati Apa.[89] Although Maning did not explain, at this point, the distinction between 'independent' and 'along with', it became clear, subsequently, that he saw those hapu occupying the land by permission of Ngati Apa. Furthermore, any significance in the existence of a group, calling themselves 'Rangitane', settled at Puketotara 'unopposed and apparently in a permanent manner', was discounted because they were the product of intermarriage with Ngati Apa.[90] Thus, the progeny of intermarriage were found to be entitled only through their Ngati Apa parentage.[91]

The court proceeded to sift through the list of some 500 claimants, hearing the case on either side, and excluding all but 62 of them. At this point, the sitting adjourned to allow absent claimants, whose names had been eliminated by the court, to bring evidence in support of their claim. While McDonald sought out these people, Featherston and Buller attempted to reach an agreement with the admitted claimants about the extent of their boundaries. Ngati Apa chiefs who accompanied them to the first meeting at Oroua suggested an award of 10 acres each – an offer that was rejected out of hand. Featherston then proposed that each claimant should receive an award of 100 acres, and should be consulted in the selection of that land. This suggestion was accepted by the Oroua people, but rejected on the Rangitikei side, at Matahiwi.[92]

The court reconvened on 25 September. McDonald was absent and no fresh evidence was brought forward in support of disallowed claims. Judge Maning examined a representative each from Ngati Apa and Ngati Kauwhata at Oroua about their negotiations and, according to Buller's later report, 'further Native evidence was taken as to the absolute requirements of the hapus for whom provision was about to be made'.[93] A final and detailed judgment on the claim of Akapita was then delivered.

Maning first outlined the court's understanding of the history of the invasions from the north. Te Rauparaha was seen as the central figure, skilfully playing off one tribe against the other. With the assistance of Ngapuhi, he drove Ngati Apa into retreat, took possession of a large tract of territory around Otaki, and laid the 'foundation for a more permanent occupation and conquest'. Te Rauparaha then returned to Kawhia to collect the remainder of Ngati Toa. At the same time, he

88. Ibid
89. Ibid
90. Ibid, p 6
91. Ibid, p 3
92. Ibid, pp 4–5
93. Ibid, p 4

invited Ngati Raukawa to settle the territory which had been only 'partially conquered'. Maning continued:

> It is to be noticed here that on the return of Rauparaha to Kawhia he was met by the chiefs of the Ngatiapa Tribe on their own land, and that upon this occasion friendly relations and peace were established between them, he returning to them some prisoners he had taken in passing through their country . . . presents were also exchanged, and the nephew of Te Rauparaha, Te Rangihaeata, took to wife, with all due formality, a chieftainess of the Ngatiapa Tribe, called Pikinga, notwithstanding that she had been taken prisoner by himself on the occasion of the first inroad into the Ngatiapa country.[94]

The judge then moved to the effects of Te Rauparaha's invitation, which he saw as triggering the movement of 'strong parties' of Ngati Raukawa to Kapiti, primarily for purposes of trade and acquisition of muskets. In a statement subsequently criticised by Buick for its unfair characterisation of the opposing forces, Maning described the ensuing conflict:

> These parties of Raukawa, on their way South, in passing through the country of the Ngatiapa, killed or took prisoners any stragglers of the Ngatiapa, or others whom they met with, and who had lingered imprudently behind in the vicinity of the war track, when the prudent but brave war chief of the Ngatiapa had withdrawn the bulk of the tribe into the fastnesses of the country whilst these ruthless invaders passed through, being doubtless unwilling to attack the allies of Te Rauparaha, with whom he had wisely made terms of peace and friendship. In passing through the country of the Ngatiapa these Raukawa parties also took a kind of pro forma, or nominal possession of the land, which, however, would be entirely invalid except as against parties of passing adventures like themselves, who might follow; because the Ngatiapa Tribe, though weakened, remained still unconquered, and a considerable proportion of their military force still maintained themselves in independence in the country under their Chief Te Hakeke.[95]

The primary reason for this continuing independence was the peace made by Te Rauparaha, which signified that he had 'waiv[ed] any rights he might have been supposed to claim over their lands'.

From this time onwards, friendly relations were maintained between Ngati Toa and Ngati Apa except for a brief period of conflict triggered when some men of the latter tribe were killed at a Rangitane pa. Maning saw Te Rauparaha not only as repaying friendly acts by Ngati Apa, but also as balancing the two tribes to cement his position in the region:

> The policy, however, of Te Rauparaha has been evidently, from the beginning, after having made the Ngatiapa feel his power, to elevate and strengthen them as a check on his almost too numerous friends the Ngatiraukawa, who, were it not that they were bound to him by great common danger, created by himself in placing them on lately conquered lands, he would never trusted.[96]

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94. Ibid, pp 4–5
95. Ibid, p 5
96. Ibid, p 6

The implications of the close kinship links between Ngati Raukawa and Te Rauparaha and Te Rangihaeata were not considered by the court.

The court did not believe that Ngati Raukawa in the early heke, 'whether by killing or enslaving individuals of the Ngatiapa, or by taking a merely formal possession of any of their lands', had acquired any kind of right over that territory.[97] Nor had they been allocated it by Te Rauparaha when the bulk of the tribe arrived. After Haowhenua, however, three Ngati Raukawa hapu had settled on the north bank. Maning did not consider that authority over the district had shifted to Ngati Raukawa as a result of that movement. Maning described integrated communities in which Ngati Apa exercised the greater mana:

> we find that three distinct hapu of the Ngatiraukawa Tribe settled peaceably and permanently on the Ngatiapa lands between the Manawatu and Rangitikei Rivers unopposed by the Ngatiapa, on terms of perfect alliance and friendship with them, claiming rights of ownership over the lands they occupy, and exercising those rights, sometimes independently of the Ngatiapa, and sometimes cojointly with them; joining with the Ngatiapa in petty war expeditions; 'eating out of the same basket'; 'sleeping in the same bed', as some of the witnesses say; and quarrelling with each other; and on the only occasion on which the disagreement resulted in loss of one's life, making peace with each other like persons who, depending much on each other's support, cannot afford to carry hostilities against each other to extremity . . .[98]

The court underscored the implications of the Himatangi judgment, now explicitly rejecting the claimants' argument of conquest, either by taking the land by force, or as a result of Te Rauparaha's general allocation of territory to the allied, incoming tribes:

> two at least of these Raukawa hapu, namely Ngatiparewahawaha and Ngatikahoro, were simply invited to come by the Ngatiapa themselves, and were placed by them in a position which, by undoubted Maori usage, entailed upon the newcomers very important rights, though not the rights of conquerors.[99]

Ngatikauwhata, the third group, had 'stretched the grant of Te Rauparaha', moving to the north bank of the Manawatu River. This move had been conducted peaceably. Maning described the nature of this process as follows:

> the facts appearing in reality to have been that they made a quiet intrusion onto the lands of Ngatiapa, but offering no violence, lest by so doing they should offend Rauparaha, as, under the existing relations between the tribes, to do so would have been a very different affair to the killing of the stragglers they met with several years before on the occasion of their first coming into the country. The Ngatiapa, on their part, for very similar reasons, did not oppose the intrusion, but making a virtue, apparently, of what seemed very like a necessity, they bade the Ngatikauwhata welcome, and soon entered into the same relations of friendship and alliance with them which had entered into with the other two sections of Raukawa . . . It is well known to the Court that all

97. Ibid
98. Ibid, pp 6–7
99. Ibid, p 7

> the chiefs of tribes, and all the tribes, particularly such as were, like the Ngatiapa, not very numerous, were at all times eager by any means, to increase their numerical strength; and that, much as they valued their lands, they valued fighting men more, and were at all times ready and willing to barter a part of their territorial possessions for an accession of strength, and to welcome and endow with lands parties of warlike adventurers like the Ngatiraukawa, who would, for the sake of those lands, enter into alliance with them, and make common cause in defending their mutual possessions.[100]

Maning found that, according to customary usage, those Ngati Raukawa hapu enjoyed 'well-known and recognised rights in the soil'. These were, however, the rights of allies rather than conquerors, with the greater authority again judged to lie with the Ngati Apa community:

> Those who, living on the soil, have assisted in defending it, – who, making a settlement, either invited or unopposed by the original owners, have afterwards entered into alliance with them, and performed the duties of allies, – acquire the status and rights of ownership, more or less precise or extensive, according to the circumstances of the first settlement, and what the subsequent events may have been.[101]

The question framed in Maning's judgment was not whether Ngati Apa were entitled, but whether Ngati Raukawa were:

> But be the motives of the Ngatiapa whatever they were, for inviting or not opposing the settlement of these three Raukawa hapu, the fact remains that we find them in a position, and doing acts, giving or proving that they had acquired, according to Maori usage and custom, rights which the Court recognizes by this judgment, that is to say, firstly, that the three Ngatiraukawa hapu – called respectively Ngatikahoro, Ngati Parewahawaha, and Ngatikauwhatua, have acquired rights which constitute them owners, according to Maori usage and custom, along with the Ngatiapa Tribe, in the block of land the right to which has been the subject of this investigation.[102]

Finally, Maning endorsed the Himatangi decision on tribal rights of veto, finding that Ngati Raukawa, as a tribe, enjoyed no 'right, title, interest, or authority in or over' the Rangitikei–Manawatu lands. This left a limited number of interests to be recognised and excised from the purchase. The court then ordered 4500 acres to Ngati Kauwhata, 1000 acres to Ngati Kahoro and Ngati Parewahawaha, 500 acres to Te Kooro Te One's people, and 200 acres to Wirihirai Te Angiangi – with a 21-year restriction on alienation.[103]

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100. Ibid
101. Ibid
102. Ibid
103. Ibid

6.9 DISCUSSION ON THE COURT'S FINDING

The workings of the Native Land Court – why one set of evidence should be accepted over another, what were the persuasive arguments, what was the basis of their authority within customary usage for their decisions about rights conferred in particular instances, how closely they stuck to the 1840 rule, the role of outside influences – are not easily ascertained. Conclusions in individual cases are likely to remain a matter of inference rather than proof. The court strengthened the Himatangi judgment which had already endorsed the Crown's purchase policy, both in the relative weight given to Ngati Apa, and in the denial of any right on the part of non-resident Ngati Raukawa as tribal members to interfere in the alienation of lands occupied by others within the wider structure. The thorny issue is whether the court was correct in that interpretation of customary usage or whether its findings were made in response to the political imperative to confirm Featherston's purchase.

These decisions were controversial, seen by settlers and the provincial government as a complete vindication of Featherston's actions, but protested by Ngati Raukawa, and prompting later accusations of political interference. Buick, arguing that Ngati Raukawa had been opposed not merely by Ngati Apa, but by the combined forces of the provincial and general governments, suggested that undue influence had been exerted.[104] This opinion has been echoed by M P K Sorrenson who states that 'It is almost certain that there was direct political interference during the first sitting of the Court'.[105]

Such criticisms seem to be founded largely on the contrast between the court's finding and the writings of observers around 1840. At that date, the descriptions and dealings of officials, missionaries, and travellers recorded the dominance of Ngati Raukawa in the general region. The extent of that territorial dominance was not defined in specific geographical terms and, as we have seen, the Crown raised questions about the accuracy of some of that early evidence – how much familiarity commentators had with the interior, the degree of their understanding of Maori – and brought in their own witnesses asserting a different perception, engendered by contact with Ngati Apa and Rangitane in the Oroua area. Yet even McLean, despite his insistence on Ngati Apa interests in the lands south of the Rangitikei, did not doubt, privately, that they had been defeated in the battles with the invading tribes, recording in 1849 that 'several of the Ngatiapas inhabiting the country from Rangitikei to Wangaehu escaped the vengeance of the conquerors whilst others were saved by them or taken prisoners'. Christianity had intervened before Ngati Apa had been 'entirely subdued'.[106] That assessment was shared by Richmond who was still of the opinion, after the Himatangi decision, that Ngati Apa had been driven out of the territory, but that:

> After some years of slaughter and violence, the expelled tribes the Ngatiapa and Rangitane were suffered by the conquerors to return. They came back as slaves, but

104. T L Buick, p 265
105. M P K Sorrenson, 'The Purchase of Maori Land 1865–92', MA thesis, University of Auckland, 1955, p 70
106. McLean to Fox, 12 April 1849, New Zealand Company (NZC) series 3/10, p 3, NA Wellington

> gradually resumed more and more of equality with the conquerors, intermarried with them and cultivated the land.[107]

Ngati Apa assertion of their claims had strengthened appreciably during the period after 1840 – a process acknowledged by McLean at the Kohimarama conference in 1860. Arguing that the 'various customs of nature tenure' resolved themselves into the single 'law of might', McLean stated:

> It was true that Christianity introduced a different state of things. By its influences the conquered were permitted to reestablish themselves on the lands of their ancestors. In the process of time, however, the conquered encroached too far on the formerly recognised rights of the conquerors, occasioning . . . much bitterness of feeling between the two classes of claimants.[108]

Featherston's support, a friendly relationship with the white Government, and the ability to call on Kemp's support had further strengthened the Ngati Apa voice. But, at the very least, Ngati Apa could have argued that they had always retained their independence of action over the north bank of the Rangitikei River and had kept their fires alight in their ancestral lands to the south by maintaining cultivations, continuing to take eels throughout and, later, by challenging Ngati Raukawa claims. While there is growing recognition that the claims of ancestry, and resistance to intrusion were adequate to keep a claim alive for some three generations, an award of title on such grounds was less than assured in the forum of the nineteenth-century land court.

Why the court should have rejected the generally held perception of the relative status of the two tribes is not easily demonstrated. But to have done otherwise would have challenged the legitimacy of the Crown's purchase, since tribes deemed to have conquered were often found by the court to be owners to the exclusion of the interests of a defeated people even when they lived side by side. In the Rangitikei–Manawatu case, it was considered that Ngati Raukawa's intrusion did not constitute conquest, since it had not resulted in the complete expulsion of the original inhabitants – a prerequisite to title that seems to have been erratically applied.

The basis of the court's reasoning at the Rangitikei–Manawatu was reflected its refusal to consider the question of the rights of hapu within the wider entity of Ngati Raukawa. The court flatly rejected the argument that the tribe as a whole had to agree to the alienation of any territory. Ngati Apa, Whanganui, Kahungunu, and Raukawa signatories – in many instances, non-resident – had been able to wield their numbers to push through the transaction. The court, however, was not obliged to directly consider the basis of their right to have participated in the sale. In contrast, the claims of over 400 Ngati Raukawa non-sellers were rejected on the grounds of non-residence at 1840. Included here were not only those who were based in the

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107. Richmond, 'Memorandum on the Petition of Parakaia, Paranihi Punipi and Rawiri Te Wainui to the Queen', 20 July 1867, MA series 13/73B, p 1, NA Wellington
108. 'McLean's Speech at Conference of Native Chiefs', 1860, Turton, *Epitome*, 1883, p 17

Otaki area, but some 200 to 300 Ngati Wehiwehi who had moved to join their kin in the Rangitikei–Manawatu block after that date.

Ngati Raukawa interests on the north bank of the Manawatu had already received some recognition through the sale of Te Awahou, and the initial court award of 5500 acres, restricting Parakaia's ownership to a half share of Himatangi. The other dissentients were now left with only 6200 acres in a block of some 250,000 acres. Maning rejected criticism that such an award failed to reflect the court's own finding that it had heard no evidence to cause it to limit their rights to any specified piece of the block, arguing that:

> The whole tenor of the evidence from beginning to end shewed that the rights of those hapus *could not* be defined exactly, or even approximately by precise boundaries; they had territorial rights which the court endeavoured as nearly as possible to compensate by adjudging to them certain *areas* of *land*, and the time given them to agree about the precise spots and boundaries was given as a favour, and with the consent of the other parties, and from a consideration by the Court that it might lead to a peaceable and desirable arrangement of the matter by giving the Raukawa a chance to obtain certain spots which they seemed attached to, or desirous to become possessed of, and which lands, or part of them, they seemed to have resided on or used more than others, but to which they could not show that they had an absolute right more than others. [Emphasis in original.][109]

Maning was confident that Ngati Raukawa dissentients would have 'submitted quietly, if not with satisfaction' to the court's award had it not been for the subsequent agitation of Travers and Macdonald. Others, however, believed that Ngati Raukawa had been unfairly treated – not by the finding for joint ownership but by the excision of such a limited interest from the purchase. Included amongst this group were McLean, Native Minister since mid-1869, and even some Ngati Apa who had opposed Ngati Raukawa's efforts to be declared the sole owners of the block, but thought that the non-signatories deserved to retain more land.[110]

6.10 MCLEAN'S INTERVENTION

Notice was published in October 1869 that native title had been extinguished over all the Rangitikei–Manawatu block, except for those portions that had been awarded to Maori. The back-rents were then paid out, but resistance was immediately offered when the provincial government began to survey the block for settlement. A section of Ngati Kauwhata pulled up survey pegs and destroyed a trig station. The leader of the obstruction, one of the admitted claimants, Miratana, was arrested despite strong local opposition. Convicted, he was sentenced to a fine of £25 or three months' imprisonment. Pakeha sympathisers were blamed for inflaming Maori opinion, and McDonald was also convicted and fined £30 for inciting persons to commit a breach

109. Fox, 8 September 1866, NZPD, vol 9, p 579
110. MacDonald to Superintendent, 15 September 1871, MA series 13/75A, p 18, NA Wellington

of the peace.[111] A lull followed, but when opposition resurfaced under Parakaia's leadership at Oroua, in May 1870, the general government suspended survey activities.

The provincial government, in increasing financial difficulties, partly because of the failure of its land revenue, sought a compromise so that the block could be opened.[112] In Featherston's absence, McLean was requested to undertake further negotiations to settle the matter. McLean found that considerable dissatisfaction existed among all parties. Those who had signed the deed threatened to repudiate the sale, complaining that promises of ample reserves had not been fulfilled or had become the sole property of individual chiefs. Rangitane continued to protest the failure to receive full payment for their lands and demanded 10,000 acres in lieu of the monies retained by Ngati Apa. McLean blamed these demands on Featherston's improper conduct of the purchase. In his opinion, the failure to properly define reserves and awards before the final payment of the purchase price had given vendors the 'opportunity to escape from their engagements on the plea of non-fulfilment of the promise made to them respecting their reserves'.[113] None the less, another 4750 acres were eventually added to Featherston's limited award of 3300 acres.[114]

Non-sellers had been awarded 6200 acres by the court. They continued to argue against any decision of the court 'purporting to limit and define their interests', and rejected the purchase as invalid because the general estate could not be sold before title had been individualised.[115] They complained, too, that their boundaries had been marked out by Buller rather than by themselves.[116] Although he had done much to promote the interests of Ngati Apa in the block, McLean was critical of the limited court award to the non-sellers and wished to remove an irritation to Ngati Raukawa that could provoke them into closer alliance with the King movement in the Taupo, Waikato, and Hauraki areas.

Non-selling Ngati Raukawa argued that they should be entitled to a proportionate share of the 'general estate', which McDonald, looking at the number of owners ascertained by the court, calculated to be a little over 21,000 acres. This suggestion was rejected by McLean, who had told them, 'If you persist in that demand you will find it out of my power to be kind (atawhai) to your tribe'. According to McDonald:

> while the previous injustice to the natives was admitted generally by Mr McLean he had called upon them to agree to a final settlement of the dispute according to the proverb 'Ko maru kai atu ko maru kai mai, ka ngohe ngohe' without entering into the special merits of the case or into the injustice or otherwise of past proceedings . . .[117]

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111. 'Memorandum on the Rangitikei–Manawatu Land Claims', AJHR, 1870, A-25, p 8
112. Taylor to Gisborne, 26 September 1870, 'Claims of the Province of Wellington Against the Colony', AJHR, 1872, G-40, p 3, no 2
113. Undated memorandum, Donald McLean Papers, MS 32 (35B), ATL
114. McDonald to Fitzherbert, 26 July 1871, MA series 13/75A, p 3, NA Wellington
115. Ibid, pp 2–3
116. Notes of meeting at Oroua, 18 November 1870, MA series 13/72, p 23, NA Wellington
117. McDonald to Superintendent, 15 September 1871, MA series 13/75A, p 8, NA Wellington

Ngati Raukawa dissentients eventually agreed to accept 3000 acres, on the understanding that a portion of the difference between what they had demanded and what they received should go to disallowed hapu.[118] A further 6500 acres were set aside for these groups.[119] Included here was provision for Ngati Wehiwehi, who had been excluded, even though they had been resident on the block for some 30 years, and for 'a considerable number of Natives [200–300] of different tribes of Ngatiwhakatere of the Ngatipikiahu and of Ngatimanaiapoto', who had moved onto the block to take advantage of the settlement of Rangitikei–Turakina. They considered this area to be their home and McLean was told by them:

> that if the Government were determined to take possession they, the natives, must first be driven into the river or elsewhere for they had no Land to which they had a better right to retire than that upon which they were then located.[120]

In his view, they were industrious people who should receive reserves for their maintenance in order to prevent them from 'scattering about in marauding bands and joining any disaffected leaders in any parts of the island such Taupo, Waikato, Upper Whanganui, Mokau from which places they [had] come'.[121]

When McLean left the district in December, he directed H T Kemp to complete his arrangements – to secure to Maori 'large cultivations . . . in places they had occupied along the banks of the river' while making it clear that 'while the Government would make sufficient provision for their actual wants, they were not to expect any lands, not being cultivated, extending back from the first range of hills'.[122] Kemp was charged with adjusting any dispute, and reported subsequently, that he had to add a further 3000 acres to the boundaries at Reureu, opposed there by Ngati Pikiahu and Ngawaka, one of the leading obstructionists in the earlier attempts to survey. According to Kemp, this was far below their expectations, since, 'as non-sellers, they were claiming an "unfettered right to select"'.[123]

McLean's negotiations and Kemp's additions added a further 14,379 acres to the earlier allocations.[124] Featherston, returning from Great Britain, immediately rejected the agreement, making a claim against the general government for the price of the additional reserves at £1 and the cost of survey. In reply, McLean defended the increases, arguing that the demands of the non-sellers had been reduced from 19,000 acres to the lowest figure that they would accept. He told Featherston, too, that all but 1800 acres of the newly allocated lands comprised sandhills, swamp, and bush. For these limited concessions a question had been settled that, if left in abeyance,

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118. Ibid
119. McDonald to Fitzherbert, 26 July 1871, MA series 13/75A, p 6, NA Wellington
120. Ibid, p 3; McDonald to Fitzherbert, 2 August 1871, MA series 13/75A, p 3, NA Wellington
121. 'Rangitikei–Manawatu Block', 21 November 1870, MA series 13/70, p 7, NA Wellington
122. 'Report on the Claim of the Province of Wellington in Respect of the Manawatu Reserves', AJHR, 1874, H-18, p 11
123. Kemp to McLean, 18 January 1871, Donald McLean Papers, MS 32 (369), ATL
124. 'Further Correspondence Relating to the Manawatu Rangitikei Purchase', AJHR, 1872, F-8, pp 4–5

would have proved 'a source of lingering irritation and annoyance', and prevented the peaceful settlement of a 250,000 acre block.[125]

Fox halted the survey of the extra awards made by Kemp, while the provincial government continued to protest McLean's allocations, complaining that the Rangitikei River was 'spotted' by reserves, taking valuable river frontage. McDonald defended the sites, pointing out that:

> They were almost without exception laid off so as to include cultivations, graveyards, eel fisheries etc in the occupation of the Natives and are necessary for the maintenance of the 500 or 600 souls forming many distinct families for whom the reserves are made.[126]

McLean again met with the Rangitikei people after Ngati Maniapoto, under Rawiri, started obstructing survey for road and railway on the inland portions of Reureu. Agreement was reached at Wanganui on 23 January 1872. In return for £1500, they would relinquish their claims for costs in prosecuting their case and to all but the land awarded to them by the court and McLean. Five hundred pounds was paid to MacDonald and four complainants 'as being for the purchase of surplus land and reserve at Rakihou'. The balance of £1000 was paid to MacDonald on behalf of Kooro Te One and his followers, to settle their claims in the block. Two hundred pounds was given towards the Oroua mill, £500 for the purchase of agricultural tools, and a further £1500 advanced on security of their reserves, for which two mortgages were executed by them.[127]

McLean sent specific instructions to Carkeek regarding the survey of a 4400-acre reserve for some 200 people at Reureu, noting that 'greater care' would be required in laying off these boundaries because the residents came from so many different tribes. He was to include cultivations and important sites where possible. More detailed directions were given with regard to the inland boundary which was to be cut with the cooperation of Ngati Upokoiri, who were offering to sell land to the east of that line.[128]

Despite this apparent agreement, disputes rumbled on as promises, not fully recorded, had to be worked out on the ground.[129] Dundas, the district surveyor reported, for example, that problems had arisen with the survey of eel reserves at Kaikokopu and Koputara, since the fishing site at the outlet of the lagoons, had been promised to different tribes.[130] Furthermore, the status of McLean and Kemp's allocations remained unsettled. Maori were unable to obtain Crown grants because, until validating legislation was passed, McLean's awards were an illegal disposal of

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125. McLean to Featherston, 15 February 1871, 'Claim of the Province of Wellington Against the Colony: Manawatu Purchase', AJHR, 1872, G-40, p 11, no 18
126. McDonald to Fitzherbert, 2 August 1871, MA series 13/75A, p 3, NA Wellington
127. McLean to Superintendent of Wellington, 6 February 1872, MA series 13/75A; 'Rangitikei–Manawatu Purchase: Memorandum of Data Connected with the Rangitikei–Manawatu Purchase', MA series 13/74A, pp 8–9, NA Wellington
128. McLean to Carkeek, 3 February 1872, MA series 13/75A, NA Wellington
129. McDonald to Superintendent of Wellington, 15 September 1871, MA series 13/75A, NA Wellington
130. Dundas to Commissioner of Crown Lands, 28 March 1872, MA series 13/75A, NA Wellington

Crown lands.[131] In late 1872, McDonald complained of the continuing delay which was preventing Maori from meeting their financial engagements – to complete the mill at Oroua, fencing of reserves, survey of a township, and the authorisation of trustees.[132] Four years later, the details and implementation of the deal, worked out at Wanganui, were still being disputed. By then, however, attention had shifted south of the Manawatu to Kukutauaki and Waikanae, the last substantial areas of Maori land remaining in the Wellington district.

131. Cooper on McDonald to Fitzherbert, 12 September 1872, MA series 13/75B, NA Wellington
132. McDonald to Fitzherbert, 16 September 1872, MA series 13/75B, NA Wellington; McDonald to McLean, 25 October 1872, MA series 13/75B, NA Wellington

PART II

1870 to 1970

CHAPTER 7

HOROWHENUA 1869 TO 1871

7.1 INTRODUCTION

Te Rauparaha and his Ngati Toa arrived on the Kapiti Coast at the beginning of the 1820s. Shortly afterwards, one of the resident tribes, Muaupoko, made an attempt on his life. In the course of this affair some of Te Rauparaha's children and close relatives were killed.[1] He vowed vengeance on the perpetrators, and a harsh war of attrition began. This was directed at Muaupoko initially, but dragged in the other resident tribes, first Rangitane and then Ngati Apa, as well. When this struggle was concluded, Ngati Toa had subdued all local resistance. But they were relatively few in number, they now had a great deal of land to hold, and they had acquired many bitter enemies. It was imperative that allies be sought, and these Te Rauparaha found principally among Ati Awa, and his kinfolk Ngati Raukawa. Over a period of some years, at the expressed invitation of Ngati Toa, many members of these two tribes, both hapu and leading chiefs, moved south to the Kapiti Coast. By the late 1830s, when the pattern of tribal occupation along the coast had been finally settled, Ati Awa occupied the land to the south of the Kukutauaki Stream, Ngati Raukawa the land to the north.[2]

Te Whatanui, the paramount Ngati Raukawa chief, occupied the district of Horowhenua, settling at several locations on the south side of the Hokio Stream, near the south-western shores of Lake Horowhenua. He also maintained an imposing dwelling at Rangiuru, the Ngati Raukawa's stronghold on the Otaki River, and he had places at other locations within the tribal territories of Ngati Raukawa as well.[3]

The new Ngati Raukawa lands were renowned and highly prized for the abundance of the natural food resources they contained, particularly eel and other kinds of fisheries. But in all of this very desirable territory, no place was more favoured or valuable than Lake Horowhenua. In the years immediately after the arrival of Ngati Toa, the original holders of Horowhenua, the Muaupoko tribe, had been worn down by constant attacks and driven into the hills and bush. But Te Whatanui, for reasons unrecorded, chose to shelter and protect the Muaupoko remnant, maybe as few as 100 souls, on a block of land to the north of his own

1. W L Buller, 'The Story of Papaitonga; or A Page of Maori History', *Transactions of the New Zealand Institute*, vol 26, 1893, pp 572–584; G Graham, 'Te Wi: The Massacre There and Its Consequences as Recorded by Tamihana Te Rauparaha', JPS, vol 54, no 1, 1945, pp 66–78
2. W C Carkeek, *The Kapiti Coast: Maori History and Place Names*, Wellington, A H & A W Reed, 1966, p 42
3. R N Grove, 'Te Whatanui: Traditional Maori Leader', MA thesis, Victoria University of Wellington, 1985, pp 85–86

residence at Horowhenua.[4] This block, of about 20,000 acres, included the principal Muaupoko pa of Raia te Karaka, on the western side of the lake, some other small lakeside settlements, and the northern part of the lake itself. The southern half of the lake, and the Hokio Stream, with its eel fisheries, remained in the hands of Te Whatanui and his people, part of the Ngati Pareraukawa hapu of Ngati Raukawa. On the east and west the boundaries were the snowline and the sea. To the south, adjacent to Ngati Pareraukawa, a related hapu, Ngati Kahoro, had their place, and several other Ngati Raukawa hapu were also resident on or close to the southern boundary as well. To the north, the Muaupoko block was bound by the territory of two other Ngati Raukawa hapu – Ngati Matau and the much larger Ngati Huia, based at Porotawahao.

Rod McDonald, a son of one of the first settlers, and a man who knew the tribal geography of Horowhenua intimately, described the situation of the Muaupoko as 'curious'. They were not Ngati Raukawa slaves; nor was it strictly true to say that they had been conquered by Ngati Raukawa. But the bulk of their land had been taken from them, a small portion only being set aside for their use, on which they lived in 'semi-independent fashion'.[5]

7.2 1869: WHATANUI'S HEIRS

Te Whatanui died in 1849 and was succeeded by his sons Whatanui Tahuri and then Whatanui Tutaki. Whatanui Tutaki died in January 1869, leaving only one direct descendant – his daughter, Te Riti, married to a Ngapuhi chief, Wiremu Pomare. Te Riti's normal place of residence was with her husband at Mahurangi, north of Auckland. Tutaki's widow, Riria Te Whatanui, of Ngati Apa, decided during 1869 to return to her own people in the Rangitikei. This was not at the wish of her daughter and son-in-law.[6] Perhaps it was because she missed her own people. One reason may have been, as McDonald says, that she could make no claim to Te Whatanui's land. Whatever the reason or reasons, she went, and with her went those of her tribe who had been settled with her at Horowhenua – according to McDonald, about 50 in number.[7] It seem likely that this departure reduced the number of permanent residents in the different Ngati Raukawa settlements at Horowhenua quite sharply. Indeed, some of these settlement sites were apparently abandoned. The overall effect was to leave the local Ngati Raukawa interest, compared to Muaupoko, at a distinct numerical disadvantage. For example, when Hunia's raiding party came across the lake in 1871, 20 strong, there were, Watene Te Waewae reported later, only five adult residents at Kouturoa, too few to offer resistance.[8]

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4. Horowhenua Commission, Wirihana Hunia, 12 March 1896, AJHR, 1896, G-2, p 48
5. E O'Donnell, *Te Hekenga: Early Days in Horowhenua; Being the Reminiscences of Mr Rod McDonald*, Palmerston North, Bennett and Co, 1929, p 36
6. Wiremu Pomare to Reria Te Whatanui, 12 March 1869, 'Papers Relative to Horowhenua', AJHR, 1871, F-8, no 1, p 1
7. O'Donnell, p 127
8. 'Horowhenua Land Dispute, Together with Notes of Meetings', 1874, MA series 75/12, p 7, NA Wellington

Another complication was that while Te Whatanui's lands at Horowhenua had apparently been left to Te Riti and her husband, they were resident in the far north, and in no apparent hurry to take up their inheritance.[9] The problem here was that there were other claimants – the grandchildren, and one of the children, of Hitau, Te Whatanui's sister – much closer to home. The principal figures in this group were Kararaina (Caroline) Nicholson, her sister Tauteka, and their uncle, Hitau's son, Watene Te Waewae.

According to evidence given before Horowhenua Commission in 1896, Kararaina's normal place of residence, in the late 1860s was in the Manawatu. Tauteka normally resided at Otaki, with her husband Matene Te Whiwhi. Watene Te Waewae was resident at Horowhenua from the late 1840s, but spent the latter part of the 1860s away, fighting for the Government. He returned to the district in 1869, to stake his claim, with his nieces, to Te Whatanui's land.[10] In any event, within a short time of Whatanui Tutaki's death, Kararaina and Tauteka attempted to exercise the rights of ownership. They did this by ordering Hector McDonald, a Pakeha settled at Horowhenua, to pay the rent for land which had been leased from Whatanui Tutaki to them. When McDonald declined, they started a campaign of petty harassment, the object being to drive him off the land. Hector wrote to J C Richmond, then Native Minister.[11] He also wrote to Whatanui Tutaki's heirs, Wiremu and Te Riti Pomare, about these matters, and received an encouraging reply from the latter.[12] He also received practical support from Ngati Huia, at Pomare's request, when more intimidating tactics were used against him, and assistance also from Muaupoko when Watene wrote to the Native Minister to accuse McDonald of interfering with the survey set in train by Kararaina and her sister.[13]

It was this action, the starting of a survey, that particularly riled both Riria Whatanui and the Muaupoko, stirred up Muaupoko memories, and led on to a determined campaign, under the direction of Kawana Hunia Te Hakeke and Kepa Te Rangihiwinui, to reclaim Horowhenua.

Kawana Hunia's main tribal affiliation was Ngati Apa, through his father, but his mother was of Muaupoko, hence his ability to interest himself in matters relating to Horowhenua. His father, Te Hakeke, had been one of the west coast chiefs first humbled by Ngati Toa and then forced to live, with his people, as dependents of Ngati Raukawa. His mother had been a Ngati Raukawa slave.[14] Thus on both his father's and his mother's side Kawana Hunia had grievances to settle with Ngati Raukawa. Ngati Apa had, in the late 1860s, already tried their lances against Ngati Raukawa in the Rangitikei–Manawatu over the right to sell land. This contest had ended, both during the purchase negotiations and then in the courts, with a defeat for

9. Wiremu Pomare to Hector McDonald, March 1869, 'Papers Relative to Horowhenua', AJHR, 1871, F-8, no 2, p 1
10. Horowhenua Commission, Hector McDonald, 16 March 1896, AJHR, 1896, G-2, p 114
11. Hector McDonald to Richmond, 7 April 1869, MA Series 75/5, NA Wellington
12. Atereti and Wiremu Pomare to Hector McDonald, 11 August 1869, 'Papers Relative to Horowhenua', AJHR, 1871, F-8, no 13, encl, p 6
13. Hector McDonald to Fox, 25 October 1969, 'Papers Relative to Horowhenua', AJHR, 1871, F-8, no 12, p 5
14. T L Buick, *Old Manawatu, or The Wild Days of the Old West,* Palmerston North, Buick and Young, 1903, p 231

Ngati Raukawa, and it was this event north of the Manawatu, in the 1860s, which formed part of the context for what happened south of the river in the 1870s.

Kepa's mother was Rangitane. His father, a Muaupoko chief, had escaped Ngati Toa by fleeing to the Wanganui district, where he lived in exile. His anger and desire for revenge against both Ngati Toa, who had killed his people, and Ngati Raukawa, who had taken his land, never died, and he passed on both to his son Kepa. By 1869 Kepa, or Kemp as he was often known, was a distinguished soldier. The men who had served with him during the campaigns, mostly Whanganui but some Muaupoko, Rangitane, and Ngati Apa as well, were hardened veterans. Of the latter tribal group, many were reputed to be the sons of men who had lived through, or perhaps not survived, the arrival of Ngati Toa on the Kapiti Coast, and the subsequent troubles of the 1820s and 1830s. In March 1869 Richmond received a letter from Riria Te Whatanui, Whatanui Tutaki's widow, from Te Wiiti, one of Te Whatanui's old comrades in arms, and a Muaupoko, Tamati Maunu, the list of signatories to the letter ending with the catch-all designation of 'Muaupoko also'. At this stage, the Muaupoko at Horowhenua and Te Whatanui's widow seemed to have been on good terms, and of one mind with respect to the attempts of Kararaina and her sister to lay claim to Te Whatanui's Horowhenua land. They wanted Richmond to prevent any surveying, because it was 'exceedingly wrong of certain persons to ask for such a thing'.[15]

H Halse, Assistant Native Secretary, replied, advising that they allow the land to be surveyed, and then make any claims they may have when the matter came before the court.[16] Riria was unmoved by this reasoning, and wrote to the surveyor, G F Swainson, on 14 April 1869, asking that he cease work and go away, and to Richmond in the same month, asking that he have the survey stopped.[17] In the same month the Muaupoko also wrote to Wellington, asking that Swainson be removed, 'also these people how are here without authority, making trouble in order that they may claim an interest in the land'.[18] But while the Muaupoko were writing these letters to the Government, other correspondence received in the Native Department during April 1869 revealed that they had, at the same time, been taking direct and by all accounts effective action to halt the survey.

Early in the month Swainson wrote from Otaki to G S Cooper, Under-Secretary of the Native and Defence Departments, asking for a copy of any letter from Te Ngakinui to Richmond, the Native Minister. He went on to say that Tauteka and Riria Te Whatanui had received letters from Te Ngakinui, but it is not clear what these letters say about the survey. Did Te Ngakinui in fact consent to a survey and the subsequent Native Land Court application? Swainson continued:

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15. Riria Te Whatanui and Others to Richmond, 17 March 1869, 'Papers Relative to Horowhenua', AJHR, 1871, F-8, no 4, p 1
16. Halse to Riria Te Whatanui and Others, April 1869, 'Papers Relative to Horowhenua', AJHR, 1871, F-8, no 5, p 4
17. Riria Te Whatanui to Swainson and Hone, 14 April 1869, 'Papers Relative to Horowhenua', AJHR, 1871, F-8, no 7, p 4; Riria Te Whatanui to Richmond, April 1869, 'Papers Relative to Horowhenua', AJHR, 1871, F-8, no 8, p 4
18. Hetariki Mateo and Other to Richmond, 19 April 1869, 'Papers Relative to Horowhenua', AJHR, 1871, F-8, no 9, p 4

> Muaupoko have come down to the southern boundary line at Waiwiri, nearly three miles inside Ngatiraukawa land, pulled up the boundary marks of the latter, and are trying to stop the survey by any means in their power. If, however, Te Ngakenui wishes, as expressed to Mr Richmond, are explicit on the subject, much may be done to prevent actual force being used by the Muaupoko, whose claims to interfere with the southern boundary are absurd.[19]

On 23 April 1869 Swainson wrote again, from Ohau. Would Cooper send him some reply to his recent request for information about Te Ngakinui's views on Horowhenua, assuming it was not a 'state secret':

> If these wretched Muaupoko knew what he says on the subject of the survey they might cease their work of pulling up pegs and threatening men's lives. So if he, Ngakinui, *has* answered Mr Richmond's letter, will you let *us*, ie, Tauteka, Riria and Hone Wiite have a copy of it. [Emphasis in original.][20]

The Native Department had received no letter from a Te Ngakinui, and Swainson was informed accordingly.[21] Subsequent correspondence lead to the identification of Te Ngakinui as Wiremu Pomare, the son-in-law of Whatanui Tutaki, and jointly with his wife Tutaki's heir.[22] While Muaupoko attitudes to the situation that had developed with the death of Whatanui Tutaki seem to have been plain enough, the views of the two Pomare, as expressed to their relatives Tauteka and Kararaina, were far from clear. They did say that Hector McDonald should be left undisturbed, and that Tauteka and Kararaina should 'be strong in the matter of our lands'. However, they said nothing about a survey. Nor did they see any need for urgent action, advising them that 'as soon as our interests in connection with the Ngapuhi are settled we intend going thither; this will be next sumer'.[23]

7.3 1870: KUPE

The attempt to survey Te Whatanui's land had raised the question of boundaries, and at Kawana Hunia's initiative a meeting was called of all interested tribes to discuss this matter. There were some preliminary discussions among Ngati Raukawa, Ati Awa, and Ngati Toa before they travelled up to Horowhenua to attend this meeting at the end of April 1870.[24] To provide a venue, Hunia had had the Muaupoko erect a large meeting house, Kupe, at Panui-o-Marama.[25] This location, a little to the south of the main Muaupoko pa at Raia te Karaka, was in fact south (that is, on the Ngati

19. Swainson to Cooper, 12 April 1869, MA series 75/5, NA Wellington
20. Swainson to Cooper, 23 April 1869, MA series 75/5, NA Wellington
21. Minute by Cooper, 24 April 1869, Swainson to Cooper, 23 April 1869, MA series 75/5, NA Wellington
22. Swainson to Cooper, 26 April 1869, MA series 75/5, NA Wellington
23. Wiremu Pomare and Te Riti Pomare to Tauteka and Kararaina, 'Papers Relative to Horowhenua', AJHR, 1871, F-8, no 3, p 1
24. Tamihana Te Rauparaha to Cooper, 25 April 1970, 'Papers Relative to Horowhenua', AJHR, 1871, F-8, no 19, p 8
25. G L Adkin, *Horowhenua: Its Maori Place-Names and Their Topographic and Historical Background*, Wellington, Department of Internal Affairs, 1948, pp 200–201

Raukawa side) of Te Whatanui's traditional boundary line, and indeed Kupe was built offensively close to the burial site of one of Te Whatanui's wives. Kupe was by all account an impressive building, but it was clearly intended to be more than an architectural statement. Besides Ngati Raukawa and their allies, chiefs from Muaupoko, Rangitane, Ngati Apa, Whanganui, and other tribes attended.

After talking about Horowhenua, and some other issues, for nearly two weeks, the assembled chiefs decided that in the absence of Wiremu Pomare and his wife nothing could be settled about the boundaries. The investigation would, therefore, be 'left open', pending the arrival of the Pomare heirs. 'When they arrived the relatives of Whatanui and the Muaupoko will be assembled again, and then it will be clearly understood how to settle the question of your land'.[26] A letter, signed by 13 chiefs, was sent to the Wiremu Pomare, asking him to come in February or March 1871 or earlier if he wished, and to bring with him any letters or documents he or his wife might have concerning Horowhenua.[27] This letter was dated 5 May 1870. Within days, however, it was made clear to the Government that the solution of simply waiting for Pomare had little appeal for Watene and his relatives:

> The runanga say, leave it until Pomare arrives. I – in fact, all of us – did not consent, for there is no reason why we should wait for Pomare. We, the people who are living here, can arrange with Pomare. You have heard what I said to you, 'The children ought not to lay up for the parents, but the parents for the children'. That word is in the Scripture. I use that word with reference to Pomare; therefore I say that I will not wait for Pomare, because we are the elders, and Pomare is the child. We, the people who have always lived at Horowhenua, have the management.[28]

By the end of the month, it was clear that Hunia and the Muaupoko were not waiting for Pomare either – they were building houses south of Te Whatanui's boundary, on the disputed land. The Otaki chiefs who complained to McLean about this, however, had something else on their minds as well; the 'bringing of guns by Kawana Hunia and the Ngati Apa to Horowhenua'. The Otaki chiefs wanted these guns returned to the Government stores, 'for it is through his having possession of those guns that Kawana Hunia is so arrogant'.[29]

It seemed apparent that Hunia and Watene, if not Ngati Raukawa and Muaupoko, were on a collision course, but before events could move much further along, Pomare at long last appeared at Horowhenua. Tamihana Te Rauparaha wrote to Halse on 23 June 1870, announcing Pomare's arrival and describing how the Ngati Raukawa had quietly sent him off to talk to the Muaupoko by himself, that is, without a Ngati Raukawa entourage, and without fanfare.[30] Early in July, Wiremu wrote to McLean. He had talked to the Muaupoko about the boundary dispute, and given his opinion that Te Whatanui's original boundary (known as Tauteruru) should be the boundary they observed. When they objected to this he had offered to

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26. Maiti Paraone Kaiiti and Thirteen Others to Wiremu Pomare, 5 May 1870, 'Papers Relative to Horowhenua', AJHR, 1871, F-8, no 22, encl, p 10
27. Ibid
28. Watene to Cooper, 9 May 1870, 'Papers Relative to Horowhenua', AJHR, 1871, F-8, no 23, p 10
29. Matene to McLean, 24 May 1870, 'Papers Relative to Horowhenua', AJHR, 1871, F-8, no 24, p 11
30. Tamihana to Halse, 23 June 1870, 'Papers Relative to Horowhenua', AJHR, 1871, F-8, no 25, p 11

move the boundary a little further to the south, so that Kupe would be on the Muaupoko side of the boundary. They objected to this as well, and said that the matter must wait until Hunia could be consulted. Pomare had agreed to this, he said, in the hope that this would eventually result in an amicable settlement.[31]

A few days later, apparently in a more decisive and less conciliatory frame of mind, Pomare wrote to Maitai Pene Tani.[32] He had decided on the boundary already offered to Muaupoko, and Maitai should inform Kemp. He also mentioned that the Muaupoko had proposed Mahoenui (a location just north of Lake Papaitonga) as the boundary, and that Te Whatanui's descendants should live, with Muaupoko, within this boundary. This offer and boundary he had rejected.

In late September, vaguely threatening letters arrived in Wellington from Kemp and Hunia.[33] In the same month, Maitai Pene Tani reported that he had attended a meeting at Waikanae on the settlement of the Horowhenua dispute and that on 14 September:

> We led the descendants of Te Whatanui to see – along with the Muaupoko – the laying down of the boundary of their land. Six of the Muaupoko went with us when the boundary was pointed out.
>
> I have the decision of the Maori ruannga on the subject of that dispute in my possession. It is to be printed and circulated amongst the people.
>
> In our opinion the trouble has not arisen through the work of Muaupoko and the descendants of Te Whatanui: they have been living quietly for many years and during the lifetime of the old chiefs. It is through Hunia Te Hakeke and some of the Ngatiraukawa who are bounceable that this trouble has arisen.[34]

In 1874 Watene described where this boundary had been laid and by whose authority. It was, he said, the work of a 'Komiti' of leading chiefs, who had met at Waikanae. When Hunia and Kemp had been sent for, they had refused, three times, to attend. 'The boundary line, therefore, was laid down in their absence'.[35] This 'Komiti' probably had in front of it Pomare's firm decision as to where the boundary should be. In any event, whatever the authority for this boundary-setting exercise, it was quite unsuccessful. In October, Muaupoko wrote to McLean, to tell him to ignore whatever Pomare has said about boundaries, since they did not accept his ruling with reference to their land. Nor were they willing to have the matter decided by Pakeha law – a clear enough reference to the Native Land Court – or to have the land surveyed.[36]

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31. Pomare to McLean, 29 June 1871, 'Papers Relative to Horowhenua', AJHR, 1871, F-8, no 27, pp 11–12
32. Pomare to Maitai Pene Tani, 9 July 1870, 'Papers Relative to Horowhenua', AJHR, 1871, F-8, no 54, encl, p 19
33. Kemp to Fox, 19 September 1870, 'Papers Relative to Horowhenua', AJHR, 1871, F-8, no 29, p 12; Hunia to McLean, 22 September 1870, 'Papers Relative to Horowhenua', AJHR, 1871, F-8, no 30, p 12
34. Maitai Pene Tani to McLean, 26 September 1870, 'Papers Relative to Horowhenua', AJHR, 1871, F-8, no 31, p 12
35. 'Horowhenua Land Dispute, Together with Notes of Meetings', 1874, MA series 75/12, p 7, NA Wellington
36. Heta Te Whatamahoe and all the Muaupoko to McLean, 28 October 1870, 'Papers Relative to Horowhenua', AJHR, 1871, F-8, no 32, pp 12–13

The new year started with petty disturbances – Muaupoko interfering with crops and fences at Mahoenui, a Ngati Raukawa kainga just north of Lake Papaitonga.[37] A few Ngati Raukawa wanted to punish Muaupoko, but the final decision was to act with forbearance, and to refer the matter to the Government's attention.[38]

By now the Horowhenua problem had been grumbling away for two years or so. The Government had left the matter more or less completely in Maori hands: no solutions devised in Wellington or by Pakeha had been attempted. In mid-1871, however, the Horowhenua situation moved into another and rather more problematic phase, and the Government became obliged to take a more active role in its resolution.

7.4 1871: CRISIS AT KOUTUROA

At the end of June 1871, Kemp, Hunia, and a party of Muaupoko raided Watene's settlement at Kouturoa, on the southern shore of Lake Horowhenua. The attack appears to have been unprovoked, although J T Edwards, the Resident Magistrate at Otaki, later reported that Ngati Raukawa defiance in the face of demands by Hunia and Kemp that they should vacate Horowhenua was the underlying cause. The residents, mostly elderly, but some children as well, were dragged out of their houses; one of the old women was roughly handled; the houses were burnt.

Watene sent word of the attack to Ngati Raukawa.[39] News was received from Ihakara Tukumara that Ngati Apa and Ngati Raukawa were arming themselves.[40] Matene Te Whiwhi wired McLean for advice.[41] Edwards was sent post-haste to the district.[42] J A Knocks, a Native Department interpreter stationed at Otaki, was told to locate Kemp and Hunia and find out what they were doing.[43] He replied on the same day that they were said to be still at Horowhenua, and went on to report:

> A part only of the Muaupoko are taking part with Hunia and Kemp, the other side more or less with the Ngatiraukawa. Hunia has a strong determination not to allow the Ngatiraukawa to have any claim to the Horowhenua district, and is prepared to prevent occupation of the disputed land by force of arms. They have built a war pa, and keeping military guard. I do not think anything serious will come of it.[44]

On 4 July, Edwards made his first report on the situation:

> Much ill-feeling between Ngatiapa and Ngatiraukawa. The latter have determined to bring the case of house burning against Hunia and Te Horo before the Resident

37. Nerihana Te Paea to McLean, 27 January 1871, 'Papers Relative to Horowhenua', AJHR, 1871, F-8, no 36, p 13
38. Tamihana to Halse, January 1871, 'Papers Relative to Horowhenua', AJHR, 1871, F-8, no 34, p 13
39. Watene to Ngati Raukawa, 28 June 1871, 'Papers Relative to Horowhenua', AJHR, 1871, F-8, no 37, encl, p 14
40. Buller to Fox, 30 June 1871, 'Papers Relative to Horowhenua', AJHR, 1871, F-8, no 38, p 14
41. Matene to McLean, 30 June 1871, 'Papers Relative to Horowhenua', AJHR, 1871, F-8, no 39, p 14
42. Halse to Edwards, 1 July 1871, 'Papers Relative to Horowhenua', AJHR, 1871, F-8, no 42, pp 14–15
43. McLean to Knocks, 2 July 1871, 'Papers Relative to Horowhenua', AJHR, 1871, F-8, no 43, p 15
44. Knocks to McLean, 2 July 1871, 'Papers Relative to Horowhenua', AJHR, 1871, F-8, no 44, p 15

> Magistrate in Wellington. Hunia boasts he will take the land and hold it by force of arms. I hope to be able to persuade them to refer the matter to the Native Land Court, as the only successful way of setting the difficulty.[45]

Over the next week Edwards worked to get agreement on his plan to allow the dispute to go before the court, but with no success. There was, he reported, a strong feeling of opposition to this course of action, one that he was quite 'unable to dispel'.[46] What might be acceptable, however, was another runanga, to be presided over or assisted by Europeans. As a pre-condition, neither side was to occupy the disputed lands pending the decision of this runanga, which was to be binding on both sides. Kemp and Hunia were receptive, provided the land was left unoccupied.[47] Ngati Apa were prepared to accept this plan, and Matene Te Whiwhi was willing to endorse it as well. In the meantime:

> There is no danger of a collision between the tribes at present; they are thoroughly afraid of one another. Ngatiraukawa caused the armed demonstration of Hunia and Kemp by threatening to keep off, by force of arms, any of their opponents who should attempt to occupy the disputed block.[48]

McLean telegraphed Edwards that the idea of a runanga appeared 'to be the best mode of settlement', and that he hoped it would be adopted.[49] A few days later Edwards reported that both parties had agreed to the runanga proposal:

> I would suggest this meeting should be held as soon as may be, that the European members of it should be men in whom the Maoris have faith, and who have knowledge of Maori tenure.
>
> The burning of the house can only be settled by an appeal to the law, and the case will probably be brought before the Resident Magistrate in Wellington; the idea of the plaintiff being, that there will be less chance of collision between the adverse parties there than if the case were heard in the Native districts.
>
> That Ngatiapa is much better armed than Ngatiraukawa, added to the wish of the latter to keep the peace and trust to the law alone for protection, had been the cause of their remaining passive under the great provocation they have received.
>
> Prior to leaving the district the opposing parties promised me they would neither occupy the disputed block nor take any action with regard to it until the matter had been referred to the runanga, as proposed above.
>
> In conclusion, I would respectfully suggest that if the Hon. Mr McLean were to see the disputing Natives and give them his views as to the merits of the case, a final solution of the difficulty would be rapidly and peacefully arrived at.[50]

By 10 July 1871, it looked as if Edwards had settled the immediate crisis, and put the dispute on track for final resolution. But late on that day the situation began to

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45. Edwards to Bell, 4 July 1871, 'Papers Relative to Horowhenua', AJHR, 1871, F-8, no 48, p 15
46. Edwards to McLean, 10 July 1871, 'Papers Relative to Horowhenua', AJHR, 1871, F-8, no 55, p 17
47. Kemp and Hunia to Edwards, 6 July 1871, 'Papers Relative to Horowhenua', AJHR, 1871, F-8, no 51, p 16
48. Edwards to Bell, 6 July 1871, 'Papers Relative to Horowhenua', AJHR, 1871, F-8, no 49, p 16
49. McLean to Edwards, 6 July 1871, 'Papers Relative to Horowhenua', AJHR, 1871, F-8, no 50, p 16
50. Edwards to McLean, 10 July 1871, 'Papers Relative to Horowhenua', AJHR, 1871, F-8, no 55, p 17

veer out of control again. Watene broadcast an appeal for help. 'Send us some men, this very night. Send them quickly, and send them to-night'. The reason? Hunia and Kemp intend to use 'the muzzle of the gun'.[51] The Ati Awa chief, Wi Tako, sent word to Wellington that an attack on Horowhenua was imminent, and that Ngati Raukawa had started to mobilise.[52] Halse was instructed to send Edwards back to the district.[53] By 12 July, more encouraging intelligence was being received in Wellington. Matene Te Whiwhi advised that Ngati Raukawa were 'living peaceably'.[54] Knocks reported that the excitement had been caused by some intemperate language used by Hunia, 'expressive of hostile intentions to the Ngatiraukawa'. This language had been used in the presence of Muaupoko, who were, it seems, friendly to Watene, and they had told Watene. Hence the alarms in the night. However, while Knocks seemed to think these were false alarms, some, like Hadfield, then Bishop of Wellington, could see the potential for disaster that existed. He recommended that Edwards stay in the area.[55]

A few days later Edwards reported that Kemp and Hunia were at Horowhenua with 25 armed followers, and that Ngati Huia were building a pa at Porotawahao, to the north of the lake.[56] In the past, the dispute with Ngati Raukawa had centred on the area to the south of the lake, and with the handful of Ngati Raukawa known from about this time as Te Whatanui's descendants. Now the far more numerous Ngati Huia hapu, on the northern boundary, were involved as well.

Kemp was eventually tracked down and asked to explain himself. He admitted that he did have an armed party with him, but that was alright, they were all Muaupoko, who belonged at Horowhenua. As for the cause of the difficulties, the Ngati Raukawa were to blame, giving offence by building a pa, living on disputed land and going about armed.[57]

McLean asked that Hunia and Kemp go to Wellington, to discuss the trouble.[58] Eventually, Hunia did make the trip, and agreed, again, to the Edwards plan of an arbitration by a court or committee of Europeans and Maori. There appears to have been two strings attached to this concession. One seems to have been that the matter of the house burnings would be forgotten.[59] The other was that Ngati Huia must stop killing Muaupoko cattle and committing other acts of aggression.[60] Immediately, McLean wrote to Matene Te Whiwhi, asking him to nominate the chiefs Ngati Raukawa wished to see on the court. He also asked him to send word to Ngati Huia that they were to stop interfering with Muaupoko cattle. His letter concluded with

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51. Watene to Ohau and Others, 10 July 1871, 'Papers Relative to Horowhenua', AJHR, 1871, F-8, no 56, p 17
52. Wi Tako Ngatata and Others to Ihaia Porutu, 11 July 1871, 'Papers Relative to Horowhenua', AJHR, 1871, F-8, no 69, p 19
53. McLean to Halse, 11 July 1871, 'Papers Relative to Horowhenua', AJHR, 1871, F-8, no 59, p 18
54. Matene to McLean, 12 July 1871, 'Papers Relative to Horowhenua', AJHR, 1871, F-8, no 61, p 18; Knocks to McLean, 13 July 1871, 'Papers Relative to Horowhenua', AJHR, 1871, F-8, no 68, p 19
55. Hadfield to McLean, 13 July 1871, 'Papers Relative to Horowhenua', AJHR, 1871, F-8, no 63, p 18
56. Edwards to McLean, 18 July 1871, 'Papers Relative to Horowhenua', AJHR, 1871, F-8, no 72, p 20
57. Kemp to McLean, 22 July 1871, 'Papers Relative to Horowhenua', AJHR, 1871, F-8, no 74, p 20; Kemp to McLean, 29 July 1871, 'Papers Relative to Horowhenua', AJHR, 1871, F-8, no 78, p 21
58. McLean to Kemp, 19 July 1871, 'Papers Relative to Horowhenua', AJHR, 1871, F-8, no 73, p 20
59. Halse to Edwards, 31 July 1871, MA series 5/1, p 464, NA Wellington
60. Hunia to McLean, 11 August 1871, 'Papers Relative to Horowhenua', AJHR, 1871, F-8, no 88, p 24

a direction that Matene was to see 'that Raukawa and Ngati Huia conduct themselves properly'.[61] Finally, McLean ordered A Clarke, of the Native Department, into the district to act as the Government's eyes and ears:

> It will be your duty to take up your residence for a short space of time in the vicinity of [Otaki], and to frequently traverse the country, visiting settlements like Horowhenua, Manawatu, &c, and make yourself acquainted with the Native Inhabitants.
>
> You will lose no opportunity of arriving at the real views held by those on the questions at present affecting them, more especially the Horowhenua dispute, and the disposition they feel to refer this matter to arbitration. Kawana Hunia has already expressed himself in favour of this course, and I should like to ascertain the general feeling of the rest of the contesting parties.
>
> You will take care to keep me fully supplied with any information you may acquire.[62]

Clarke duly went to the coast, and started to supply reports back to McLean. He was making progress with the Ngati Huia and the cattle problem. He was hoping to persuade Watene to remove himself from the disputed land. He had, he thought, influenced Watene to cease work on a building which Watene said was a house but which, in Clarke's opinion, was intended to be a pa. He was still trying to get Watene to leave, 'as he is a cause of irritant to Hunia and Kemp'.[63] He was trying to work out with Ngati Huia and Muaupoko a solution to the cattle problem.[64] He had discussed Watene's situation with Matene Te Whiwhi. Ngati Raukawa would not agree to his removal, but he had got an undertaking that Watene would not 'touch anything about the place'. This was intended to avoid actions which 'keep up the excitement'. He noted that both sides were making mountains out of molehills.[65]

At the end of August Clarke forwarded a long report to Wellington.[66] This elaborated on the shorter communications he had made to McLean over the previous two weeks, enabling a clearer picture of the situation as it existed in August 1871 to emerge. Firstly, the newly-aroused Ngati Huia were proving to be a formidable obstacle in the way of Hunia and Kemp's ambitions in the Horowhenua. Their mobilisation had produced a force at least equal to that of Hunia and Kemp's, turning the area to the north of the lake into a no-go zone for Muaupoko. While Ngati Huia stood to arms, Hunia and Kemp were faced with a powerful and organised local Ngati Raukawa presence, not just the handful of Te Whatanui's descendants they had dealt with in the past. Secondly, there was considerable and increasing resistance to any scheme to move Watene away from Horowhenua, whatever the motives for the move, or to make any more concessions to Hunia and Kemp. This was true not only of Ngati Raukawa, but also of Ngati Raukawa's natural allies on the coast, Ngati Toa and Ati Awa. Tamihana Te Rauparaha, of Ngati Toa, in particular, was becoming very vocal in his support for Watene and his

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61. McLean to Matene, 11 August 1871, 'Papers Relative to Horowhenua', AJHR, 1871, F-8, no 89, p 23
62. McLean to Clarke, 11 August 1871, 'Papers Relative to Horowhenua', AJHR, 1871, F-8, no 87, pp 22–23
63. Clarke to McLean, 26 August 1871, 'Papers Relative to Horowhenua', AJHR, 1871, F-8, no 96, p 25
64. Clarke to McLean, 29 August 1871, 'Papers Relative to Horowhenua', AJHR, 1871, F-8, no 99, p 25
65. Clarke to McLean, 28 August 1871, 'Papers Relative to Horowhenua', AJHR, 1871, F-8, no 100, p 26
66. Clarke to McLean, 31 August 1871, 'Papers Relative to Horowhenua', AJHR, 1871, F-8, no 104, encl, pp 26–28

condemnation of the Government, and Wi Tako, of Ati Awa, was already on record as a man suspicious of the Government's motives, and unlikely to restrain his tribe should Hunia's provocations become unbearable.[67] What had started out as a very localised affair was now starting to drag in the whole of the Kapiti Coast, and a general hardening of opinions and positions was occurring among these tribes in favour of Te Whatanui's descendants.

At the same time, there was little, if any, extra support for Kemp and Hunia to be seen. It was clear, for example, that there was no enthusiasm in the Whanganui district, where Kemp might have expected sympathy, for intervention in Horowhenua and, indeed, Mete Kingi had already stated quite flatly that the tribes concerned 'did not intend joining in the work of Keepa and Hunia'.[68] Chiefs in the Wairarapa and Hawke's Bay had also expressed the view that the dispute should be settled according to the law, although in the latter case this was at McLean's prompting.[69] None the less, the desire among Maori in the lower half of the North Island that the peace not be broken, and that any difficulties about Horowhenua be confined to Horowhenua, seems to have been genuine enough. Finally, while both sides were prepared to rattle the sabre, there seemed to be a general reluctance to be the first to actually start fighting. Indeed, at no stage of the Horowhenua dispute was anyone ever seriously hurt, let alone killed. There were suggestions at the time that much of the warlike behaviour, on both sides, was bluff or posturing that was never seriously intended to do more than impress the opposition. Kemp, of course, had a considerable reputation as a fighter, and it was unlikely that anyone would have challenge him directly. On the Ngati Raukawa side, the descendants of Te Whatanui were a handful of mostly elderly men and women: when they needed support it had to be summoned from Otaki, and the built-in delay this entailed tended to prevent hasty reaction. Ngati Raukawa were, it was said, less well armed than Kemp and Hunia and, if true, this was probably a moderating factor as well. At the same time, forbearance in the face of provocation seemed to have been the main characteristic displayed by Ngati Raukawa from the beginning to the end of the troubles at Horowhenua. But not always, and not by every section of the tribe. When Ngati Huia, the hapu to the north of Horowhenua, stood their ground in the winter of 1871 the effect was decisive.

Their resistance, growing support elsewhere on the coast for Ngati Raukawa, lack of support in the surrounding districts for anything that might disturb the peace, and Clarke and McLean's diplomacy, all combined to produce something of a backdown by Kemp and Hunia in the late winter of 1871. In September they withdrew to Wanganui.[70] Arrangements for the arbitration runanga were firmed up.[71] McLean

67. Clarke, 8 July 1871, 'Papers Relative to Horowhenua', AJHR, 1871, F-8, no 54, p 16
68. Mete Kingi to Matene, Karanama and Tamihana, 15 July 1871, 'Papers Relative to Horowhenua', AJHR, 1871, F-8, no 71, p 20
69. Ramera Te Iho and Others to Fox, 10 July 1871, 'Papers Relative to Horowhenua', AJHR, 1871, F-8, no 57, pp 17–18; Renata Kawepo and Noa Te Hui to Matene, 13 July 1871, 'Papers Relative to Horowhenua', AJHR, 1871, F-8, no 67, p 19
70. Woon and Others to McLean, 15 September 1871, 'Papers Relative to Horowhenua', AJHR, 1871, F-8, no 107, p 29
71. McLean to Kemp, 6 October 1871, 'Papers Relative to Horowhenua', AJHR, 1871, F-8, no 126, pp 31–32; Clarke to McLean, 5 October 1871, 'Papers Relative to Horowhenua', AJHR, 1871, F-8, no 119, p 30

raised the issue of the Government rifles with Kemp, and declared himself satisfied with Kemp's response.[72] In early October McLean asked Clarke to start making visits to the Manawatu and Rangitikei districts, clear evidence that Horowhenua was considered to be on the mend, a verdict confirmed in mid-October, when Edwards reported that 'all the Ngatiapa have left Horowhenua, and the Muaupoko are busy fencing and cultivating, and quieter than they have been for months'.[73]

7.5 1871: TAMIHANA'S PETITION

The improvement in the Horowhenua came at a good time for the Government. In late September 1871 Tamihana Te Ruaparaha petitioned Parliament, raising the questions of the Government rifles, the attack on Kouturoa, the lawless behaviour of Kemp and Hunia, the lack of Government action, and general Government indifference to the plight of those that 'have been patient thorough the troubles which have occurred in this Island, [who] have steadfastly kept to their churches, their schools, and have been faithful to the Queen, and have upheld her laws'.[74] W B D Mantell, a former Native Minister, moved, on 26 September, in the Legislative Council, that all correspondence concerning Hunia and Kemp's activities in Horowhenua be tabled, taking the opportunity to ridicule Government policy on the arming of friendly tribes.[75] The motion of 26 September was renewed and expanded in the House of Representatives on 4 October.[76] Two days later, Tamihana's petition was referred to the Legislative Council's Select Committee on Native Affairs.

On 17 October McLean forwarded to the select committee relevant papers, and a memorandum for the chairman, setting out his position on the investigation the committee was planning to undertake. McLean said it was inexpedient for the committee to make any inquiry into the Horowhenua dispute. Both parties had already agreed to refer the matter to arbitration. Moreover, the committee would hear only one side of the dispute, which would have the effect of retarding its settlement. Hunia and Kemp had retired from Horowhenua some time ago. They had also agreed to deliver up their arms to the Government store. Every endeavour to bring about a peaceful solution to the tribal differences had been made, and McLean felt sure that the committee could see that it would be inappropriate for anyone to interfere with the Horowhenua situation at its present stage of development.[77] On 18 October Mantell moved successfully that the return ordered by the council on 26 September be produced 'forthwith'.[78] However, by that date the Government's damage control had saved the day. By the simple device of denying Tamihana and

72. McLean to Kemp, 7 October 1871, 'Papers Relative to Horowhenua', AJHR, 1871, F-8, no 128, p 32
73. McLean to Clarke, 6 October 1871, 'Papers Relative to Horowhenua', AJHR, 1871, F-8, no 120, p 31; Edwards to McLean, 12 October 1871, 'Papers Relative to Horowhenua', AJHR, 1871, F-8, no 131, p 32
74. 'Petition of Tamihana Te Rauparaha and Others', AJHR, 1871, I-1
75. Mantell, 26 September 1871, NZPD, vol 10, pp 597–598
76. Gillies, 4 October 1871, NZPD, vol 11, p 85
77. McLean to Wakefield, 17 October 1871, MA series 75/5, NA Wellington
78. Mantell, 18 October 1871, NZPD, vol 11, p 383

Watene a hearing before the select committee, the lid was kept on the Horowhenua situation, and the Government's critics deprived of all useful ammunition. On 20 October, reference was made in the House to a letter from Tamihana and Watene Te Waewae, published in the *Evening Post* of the day before.

> Sir, – Please publish my letter in your next. I have made repeated visits to Wellington to request the Government to settle the Horowhenua dispute, to no avail. On the 25th September we petitioned the House of Assembly, now sitting in Wellington, on that subject, and asked the House to listen to the prayer of peaceful men. The House appointed a Committee to inquire into the cause of our petition. It was agreed that the Committee should meet on the 14th of this month. Watene and I were summoned to attend: we came. The Committee met that day, and was postponed till eleven o'clock on Monday, and was postponed till Tuesday. On that day Watene and I attended again, but we were not allowed to be present. Taiaroa was sent to tell us that the Committee was over, and the matter settled; that Watene had consented to move off, that the arms were being collected, and that the investigation was to take place in December. Now, I wish the pakeha to know that the person appointed to collect these arms is this very Major Kemp who has taken up arms against us. Watene has not consented to move off the land. I am returning very sad *(pouri)* to my home, for I see this conduct is wrong, and will lead to wrong. If blood is shed, do not let the blame be thrown on NgatiRaukawa. Mr McLean's Government is not a Government that upholds the Queen's laws. It is carried on by bribing the Maori with money to keep them quiet. This is all.

G S Whitmore, Legislative Council, wanted to know if the statement made in the letter, that Kemp had been appointed to collect the rifles in question, was true.[79] However, he had worded his question badly, and appeared to be asking if all the statements in the letter were true. H Sewell, Minister for Justice, objected to the notion that a minister could be asked if a newspaper item that reflected, at least in part, on a parliamentary committee, was true or not, and asked the Speaker to rule whether the question, in the form given on the order paper, was one that a minister should be expected to answer.[80] The Speaker felt it was up to the minister whether he chose to answer or not, but did think that perhaps the question could be made more specific. Sewell could see an escape hatch when it was so carefully pointed out to him, and declined to answer the question unless it was withdrawn, redrafted, and re-submitted. Whitmore accordingly withdraw, redrafted, and re-submitted the question. Sewell, however, seemingly outsmarted him yet again. Whitmore wanted to know specifically if Kemp was to collect arms from Ngatiraukawa – a rather fanciful interpretation of Tamihana's letter – or from his own people. Sewell replied that Kemp had been given no instructions to collect arms from Ngatiraukawa, simply ignoring the second part of Whitmore's question.[81] Whitmore made no protest. He was, after all, a most unlikely candidate if the objective was to press home an attack on Kemp. The Government, in any event, was able to avoid admitting the truth of Tamihana's accusation: that Kemp had indeed been made

79. Whitmore, 20 October 1871, NZPD, vol 11, p 485
80. Sewell, 20 October 1871, NZPD, vol 11, pp 485–486
81. Sewell, 25 October 1871, NZPD, vol 11, p 514

responsible for disarming his own followers and thus for the disbanding of the private army that he and Hunia had been using to back up their claims to Horowhenua.

On 6 November 1871 the select committee reported back to the council that, as the decision of the arbitrators appointed by the tribes was currently being awaited, the committee did not deem it expedient to give any further consideration to the subject of the petition. Thus by a little devious management, and some shabby treatment of Tamihana and Watene, parliamentary scrutiny of the Horowhenua dispute, and the Government's policy with regard to it, had been avoided. Yet, in retrospect, it is hard to see what, if anything, the Government had to be defensive about. When the papers relating to Horowhenua were tabled, on or about 18 October 1871, they showed that the district was quiet, the matter of the rifles in hand, and plans for an arbitrated settlement well advanced.[82]

7.6 1871: TRAVERS COMMISSION

In November 1871, T L Travers was instructed by McLean to collect statements concerning the Horowhenua dispute from the opposing parties. In their evidence during the Foxton hearing, in November 1872, Kemp and Hunia both referred to this inquiry. According to Kemp, the suggestion came from Governor Bowen, during an after-dinner discussion between Kemp and Hunia on one side and McLean, Fox, and Bowen on the other.[83] Kemp also said that he gave his statement to Travers the following day. Kemp's statement to Travers is dated 23 November, and is prefaced by a note to the effect that it was obtained under an instruction by McLean dated 20 November 1871, that is, two days before.[84] If Kemp's evidence at Foxton is correct, the Travers investigation was not the product of a spontaneous after-dinner viceregal notion; it was something that had been planned by McLean some days in advance, then sprung on Kemp and Hunia with the help of Bowen and probably Fox as well. To what purpose is not at all clear, but it may have been an attempt to push the Horowhenua affair to a conclusion. Alternatively, it may have had something to do with Hunia. He was present at the dinner and apparently agreed to give a statement. In the cold light of day, however, upon hearing that statements were to be collected from Ngati Raukawa as well, he declined to do so.[85]

Watene Te Waewae and Ihakara Tukumaru, both of Ngati Raukawa, and Wi Tako Ngatata, of Ati Awa, displayed no such hesitation when approached to give their sides of the story later that month. Together, their statements, and Kemp's, provide a very clear picture of the origins of the dispute, and of the position of each of the

82. 'Papers Relative to Horowhenua', AJHR, 1871, F-8
83. 'Kukutauaki Block: Copy of Proceedings of Native Land Court at Foxton, November 1872, with Notes of Evidence', MA series 75/8, p 60, NA Wellington
84. 'Minutes of Evidence Taken by Thomas Locke Travers in Reference to the Horowhenua Land Dispute Under Instructions of the Hon Mr McLean Dated 20th November 1871', MA accession 1369, box 4, p 1, NA Wellington
85. 'Kukutauaki Block: Copy of Proceedings of Native Land Court at Foxton, November 1872, with Notes of Evidence', MA series 75/8, p 61, NA Wellington

parties on the eve of the arbitration. Watene's evidence is of particular value, in as far as he was one of the key players: yet little, relatively speaking, was known about him at the time.

Kemp's position was crystal clear. He claimed all of the land formerly occupied by Te Whatanui and his descendants to the south of the lake, with the exception of a small plot that had, he said, been gifted to Te Whatanui. Of land within the Horowhenua block to the north, currently occupied by Ngati Huia, all, except for a small burial site, was claimed. He based these claims on ancestral rights, denying the significance of the battle of Waiorua, in fact stating that Ngati Toa claims of conquest based on that battle were inventions of recent origin. According to Kemp, Te Whatanui settled at Horowhenua after he had asked the Muaupoko to make peace with him. Muaupoko were at that time in occupation of the land and at no time before Te Whatanui's arrival had they ever ceased to occupy the land. After that peace, both sides had lived in harmony, in a state of complete fusion. There had been no problems until the time of Whatanui Tutaki. Then disputes over the leasing of land to the Pakeha arose, different parties trying to get as much land, and so as much rent money as possible. This had led to encroachments by Ngati Huia across the northern boundary, and by Matene Te Whiwhi and others, who were trying to push up from the south. Kemp also denied any knowledge that Te Whatanui had dealt with all of the land in the vicinity of Horowhenua: 'I never heard anything of the sort, and I was living there at the time. I am not keeping anything back. If I had heard that he had so, I should have stated it freely.'[86]

Kemp's evidence was taken across two days. On the second day, Kemp claimed that Te Whatanui's famous promise to Muaupoko, that nothing would touch them but the rain from heaven, had not been kept. There had been a subsequent attack by Ngati Toa. On the second day Kemp also contradicted statements he made the previous day, about the relationship between Te Whatanui and Muaupoko. They did not, he said, live together on a friendly basis but in 'a state of distrust towards each other'.[87]

Watene gave his evidence on 29 November 1871. He said that he was living on Te Whatanui's lands at Horowhenua, his claim being that he was the nephew of Te Whatanui. He had lived at Horowhenua since 1847, since the time of Whatanui Tutaki, some 24 years in total. He agreed that Wiremu Pomare had a claim to the land, and stated: 'I am the elder branch of the same family, and I am in occupation of the land; this keeps his claim good as well as my title'.[88] His claim, he said, was to Te Whatanui's land; he had not encroached in any way across the original boundary laid down by Te Whatanui. Indeed, he had already consented to the transfer of part of Te Whatanui's land to Muaupoko, the territory that Pomare had agreed should be given, so that the meeting house Kupe would be on the Muaupoko side of the boundary. This new boundary had been confirmed by a 'Komiti' of

86. 'Minutes of Evidence Taken by Thomas Locke Travers in Reference to the Horowhenua Land Dispute Under Instructions of the Hon Mr McLean Dated 20th November 1871', MA accession 1369, box 4, p 6, NA Wellington
87. Ibid, p 9
88. Ibid, p 11

leading chiefs, then formally pointed out to both the descendants of Te Whatanui and Muaupoko in September 1870.

It was Muaupoko who no longer observed the boundary lines, whether new or old. But this behaviour was of recent origin, only since 1870, and at Hunia's instigation. When asked about the status of Te Whatanui's land, Watene replied that it was family rather than tribal land. However, Ngati Raukawa would protect the descendants of Te Whatanui in their occupation if that was necessary. Te Whatanui had kept his promise of protection; the attack Kemp described had occurred away from Horowhenua, without Te Whatanui's knowledge. And while Te Whatanui and the Muaupoko chief at Horowhenua, Taweki, were friends, there was never any promise by Te Whatanui to return land to them. 'He laid down the boundary at first, and there was an end of it. It was never recurred to afterwards'.[89]

Ihakara Tukumaru's evidence was quite brief and to the point. Te Whatanui had had mana over extensive tracts of land, not just at Horowhenua but in the Manawatu as well. When this latter land was sold to the New Zealand Company, Te Whatanui was the prime mover, and no one other than Ngati Raukawa had had any say in the matter. Ihakara noted that Taweki and other Muaupoko chiefs were alive at the time of this sale, living within the boundaries laid down by Te Whatanui, and went on to make the point:

> It gives you a very good idea of the position at the time of the sale of the Manawatu, that although their chiefs were alive; they took no part in the sale on one side or the other. It is only owing to the Europeans that they are able to open their mouths at all now. They are like a dog that swims across the river. When he gets on the other side he shakes the water off. They are shaking themselves now.[90]

Ihakara had not heard that Te Whatanui had shared the proceeds of this sale with Muaupoko but he imagined that 'as they were his slaves, it is very likely that he gave them blankets and things to keep themselves warm'.[91]

As to the status of the land, Ihakara endorsed Watene's evidence. Horowhenua was the family estate of Te Whatanui and his descendants. Ngati Raukawa was only taking an interest in the matter because Hunia and others were interfering, suggesting that Ngati Raukawa would dig their 'spurs into them presently if they don't look out'.[92]

Wi Tako's evidence dealt with two principal issues – the status of Te Whatanui on the Kapiti Coast and the position of Muaupoko at Horowhenua. Te Whatanui was, according to Wi Tako, a very great chief, a major power-broker in the Ngati Toa, Ati Awa, Ngati Raukawa alliance, and a man whose word was always respected along the coast. As for the Muaupoko, they lived under Te Whatanui's protection; had this not been the case, they would have all been killed by Ngati Toa and Ati Awa. Their territory had been conquered by Ngati Toa and Ngati Raukawa, and Te

89. Ibid, p 15
90. Ibid, p 17
91. Ibid, p 16
92. Ibid, p 17

Whatanui had 'merely allowed the Muaupoko to return and live there'.[93] Mana or right over the land was never given back to them, only permission to reside on it.

When he had finished taking evidence, Travers provided McLean with a summary of the main points. The land was claimed by Watene as the representative of the immediate descendants of Te Whatanui. Ngati Toa, Ngati Raukawa, and Ati Awa made no claims on the land, but felt obliged to defend the right of Te Whatanui's descendants to the land, as against the claims of Muaupoko, the former owners. Muaupoko had not, even with the assistance of Ngati Apa and Rangitane, been able to offer effective resistance to Ngati Toa and their allies, and if Te Whatanui had not provided his protection they would have all been killed. Te Whatanui took possession of the land and marked off the boundaries of the land to be occupied by Muaupoko. Taweki and his people made no objection to the appropriation of their land, and Te Whatanui and his descendants remained in undisputed possession until 1870, when Hunia erected a building on Te Whatanui's side of the boundary. A new boundary was drawn to allow for this encroachment, but this was an act of grace, not a recognition of Muaupoko right to the land in question. These, said Travers, were 'the leading facts deducible from the evidence of the parties examined'.[94]

During the troubled winter of 1871 it had been agreed by all parties that the Horowhenua dispute was to be submitted to a court or runanga of chiefs and Pakeha nominated by both parties. This plan appears to have been a Maori initiative, possibly fashioned with the help of Edwards, and was explicitly an alternative to placing the whole matter before the Native Land Court. A good deal of time was devoted during the latter half of 1871 to getting this proposal accepted, organising nominations by each of the parties, and setting the month: December 1871. One reason for the calm that settled over Horowhenua in late 1871 was that Ngati Raukawa seemed content to wait patiently for this arbitration to occur; that it was to occur was also the reason the select committee advanced in November 1871 for declining to hold a hearing on Tamihana's petition.

Despite these expectations, it seems clear that the arbitration hearing, court, or runanga, as it was variously called, never took place. A report in the *Evening Post* dated 10 July 1872, says: 'Mr McLean promised to arbitrate in December, and has not arbitrated yet.'[95] In January 1874, during a meeting at Otaki, McLean mentioned that before Horowhenua had been referred to the Native Land Court, he had appointed certain chiefs to investigate and if possible settle the dispute over the land but 'that attempt failed'.[96] It is not clear if this meant efforts to have the chiefs meet and consider the matter had not succeeded or that they had met but failed to agree, although the former seems more likely.[97] The exact nature of the failure in question

93. Ibid, pp 19–20
94. Horowhenua Land Dispute (Summary of Evidence Taken by Thomas Locke Travers in Reference to the Horowhenua Land Dispute Under Instructions of the Hon Mr McLean Dated 20th November 1871), MA accession 1369, box 4, p 3, NA Wellington
95. *Evening Post*, 10 July 1872
96. 'Horowhenua Land Dispute, Together with Notes of Meetings', 1874, MA series 75/12, p 5, NA Wellington
97. Ibid, p 12

is possibly of no significance: what is significant is that this failure left only one alternative. Early in 1872 the dispute was referred to the Native Land Court.

CHAPTER 8

KUKUTAUAKI 1872 TO 1885

8.1 INTRODUCTION

In the early stages of the Horowhenua dispute there had been considerable resistance from both Ngati Apa and Muaupoko to any suggestion that the matter be taken to the court. Ngati Raukawa, on the other hand, seemed well disposed to the court.[1] And while Pakeha occasionally commented between 1869 and 1871 that the Horowhenua dispute should be settled in the Native Land Court, or the problem solved by the Government buying the land, it was never McLean's policy that the dispute be solved by forcing it into the Native Land Court; nor were McLean's actions driven by a desire to purchase the land in question.[2] His view seems to have been, quite consistently, that the land was not important; what was important was that the dispute over the land be settled. In 1872, however, men for whom the land was of primary importance came to the fore. Horowhenua became part of the larger problem of Kukutauaki, issues relating to the ownership of land on the coast on one hand, and its sale or purchase on the other, became hopelessly entangled, and recourse to the Native Land Court unavoidable.

If the descendants of Te Whatanui had no right to Horowhenua, and for three years Hunia and Kemp had said they did not, what claim did Ngati Raukawa have to the rest of the lands south of the Manawatu – the vast district known as Kukutauaki? And for that matter, what rights did Ati Awa and Ngati Toa have to the lands they claimed to the south of Kukutauaki, for these lands had originally belonged to others as well. Could the clamour over Horowhenua be merely the thin edge of a Ngati Apa wedge? There were some among Ngati Raukawa who feared this to be the case. If so, how were Ngati Raukawa and other tribal rights south of the Manawatu to be defined, and placed beyond all dispute?

Since the mid-1860s the Native Land Court had been the official machinery for settling all questions relating to the ownership of Maori land. Anyone could make an application to the court for an investigation of claim; once such an application was made, other interested parties were obliged to make counter-claims, or lose any rights they might have to the land by default. The result was that the initial claim was often followed by a flood of other claims.

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1. Matene and 36 Others to McLean, 24 May 1870, 'Papers Relative to Horowhenua', AJHR, 1871, F-8, no 24, p 11
2. Cooper to Gisborne, 12 January 1870, MA series 13/75B, NA Wellington; Fox to Gisborne, 30 June 1871, MA series 75/7, NA Wellington

8.2 1872: APPLICATIONS FOR TITLE INVESTIGATIONS

The Kukutauaki boundaries, of course, included land that was separately occupied by particular Ngati Raukawa hapu or groups of individuals, and during 1872 many of these laid claim to their own chosen patches, as an assertion of prior right. Among these applications were two separate claims to Horowhenua, for example, one by Watene Te Waiwai, Pomare, other descendants of Te Whatanui, Matene Te Whiwhi, and Tamihana Te Ruaparaha, the second by Hitau descendants: Tauteka, Kararaina, and their relatives. Kemp also made an application for the Horowhenua, on behalf of Muaupoko, and so did the Muaupoko chiefs. Some of these smaller or sectional claims overlapped each other, which made internal boundaries the issue. Others, like Horowhenua, pitted one group of claimants against another. All of these claims were set down to be heard at Foxton, during November 1872. But not only were Ngati Raukawa's claims, both general and particular, set down for hearing during that month: those of Ati Awa and Ngati Toa, relating to lands to the south of the Kukutauaki boundary, were also to be determined. In short, the flood gates had opened; title to the entire coast, from the Government lands at Wainui in the south to the Manawatu River in the north, was to be determined, and once determined, the major obstacle in the way of purchase or sale of all or part of this land would be removed.

This was a situation which undoubtedly caused great satisfaction to W Fitzherbert, then Superintendent of Wellington, and at that time the Government's land purchasing agent in the province. The west coast represented the last large area of land in the Wellington provincial district still in Maori hands; it was thus the only area left that could be used for new European settlements. These lands also formed a barrier between the European settlements at Wellington and the Hutt in the south, and those of Wanganui and the Manawatu in the north. For strategic reasons and the further expansion of European settlement in the province, acquisition of land along the coast was a political imperative.

It was Fitzherbert who had arranged for James Grindell, a Native Department interpreter, to be seconded to the Wellington Provincial Government at the beginning of 1872, his mission being to traverse the coast, persuade the tribes and hapu to make applications for the investigation of their titles, and discuss with them the question of land purchases.

On his first foray into the district, in March 1872, Grindell found his ground well prepared by Hunia and Kemp. Their agitations at Horowhenua, now into a third year, had produced insecurity with respect to land ownership not only in that district, but up and down the coast as well. The suggestion, therefore, that the Horowhenua dispute be taken to the Native Land Court as part of general clarification of tribal rights along the coast, fell on receptive Ngati Raukawa's ears.

Grindell went first to Otaki, where he held a meeting with a very large and representative contingent of Ngati Raukawa. The speeches made were principally concerned with the claims made by Muaupoko and Rangitane to the land. These tribes, along with Ngati Apa, were considered to be 'a scheming dissatisfied lot, desirous of obtaining possession of the whole country under the shelter of the law,

which they and their fathers had not been able to hold by force of arms'.[3] Ngati Raukawa felt that they had been patient, and made concessions to preserve the peace, but the more these tribes got, the more they wanted. They would give nothing further, and allow no further trespass. Ngati Raukawa were prepared to sell the mountains to the Pakeha, and would oppose any claims these other tribes might make. Grindell's response set the parameters he would observe for the duration of his time on the coast. First, that the only way to settle disputes of the kind described was via the Native Land Court. Secondly, that the Government would not buy land until title to it had been properly investigated. Thirdly, that applications should be sent in covering all land to which they wished to claim title. Grindell asked specifically if Ngati Raukawa were prepared to have the Horowhenua dispute settled by the court, and received, after much discussion, the decision of the Otaki gathering: all disputes concerning land, including Horowhenua, would be left to the court to determine.

Grindell next travelled to Foxton, and up the Manawatu River to a meeting with members of the Rangitane, Muaupoko, and Ngati Whakatere tribes. Among the matters discussed at this meeting was the question of Horowhenua, the Muaupoko saying that while they were willing to submit the matter to the court, they must obtain Kemp's views before making a final decision. Grindell's response was that only the court could provide full legal title, and that since Ngati Raukawa had already agreed to place the dispute in the hands of the court, it would be best if Muaupoko did the same. Porotawahao was the next stop. Ngati Huia endorsed the decision of the Ngati Raukawa who had been present at Otaki, namely that Horowhenua and all other disputed claims were to be settled by the court. They wished to sell only the mountains, but Grindell said the Government wanted flat land as well, for roads and settlements. While Ngati Huia did not 'fully consent' to this, Grindell felt that there would be little difficulty in obtaining land of the required type.[4]

Watene and other Ngati Raukawa assembled at Horowhenua all supported a court adjudication, and provided Grindell with an application for investigation of their claims. They also offered to sell flat as well as mountain land.

Grindell then returned to Otaki, accompanied by many of the Ngati Raukawa who had been at Horowhenua, and 'one or two of the Muaupokos, who came to hear the discussions of Ngatiraukawa'.[5] For several days, the various hapu argued about their respective claims. Finally nine applications were obtained, including one by Matene Te Whiwhi and his sister Rakapa Topiora for all of Kukutauaki, on behalf of the tribe as a whole. Grindell reported that many of the hapu did not approve of this application, and applied to have their claims investigated separately. This meant that some claims made infringed on those of others, while in other cases different parties were claiming the same block of land.

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3. Grindell to Superintendent, 25 March 1872, *New Zealand Gazette (Province of Wellington)*, vol 19, no 10, 3 May 1872, p 89
4. Ibid, p 91
5. Ibid

While at Otaki Grindell received a message that the Ngatitehihi and Ngatiwehiwehi people wished him to see him in the Ngatiwehiwehi district at Waikawa. These Ngati Raukawa hapu had declined to attend the meeting at Otaki, fearful, according to Grindell, 'of some advantage being gained over them by the other'.[6] Grindell remarked that these feelings of mistrust and jealousy were prevalent among Ngati Raukawa all along the coast, not only towards Rangitane and Muaupoko, but also among the different hapu. Grindell travelled up the coast to Waikawa, where he found about 40 people camped in tents. They objected very strongly to any investigation of their title to the land they claimed, and refused to make application to the court. They were none the less willing to sell land. Grindell simply stated the Government's position, that no land would be purchased until it had passed through the court and the facts of ownership been determined. He left them some application forms, invited them to discuss the matter among themselves, and returned to Otaki to await their decision. An apparently heated debate then ensued in the sand-hills at Waikawa. Next, a deputation travelled to Otaki to wait on Matene. After consultation with him, the Waikawa people joined in his general application for the whole of the Ngati Raukawa domain.[7]

In general, Grindell reported, Ngati Raukawa were prepared to take their claims, and their disputes with Kemp and Hunia, to the Native Land Court. Rangitane also favoured this approach, and Grindell was hopeful that Muaupoko would support it as well. Ngati Raukawa were also willing to sell the hills, along the full extent of their territory, and some of them were prepared to sell flat land as well. The question of surveys had come up repeatedly, everyone pleading inability to bear the expenses involved. Grindell had stated that it was proposed to make a general map of the district, with as many natural features, place names, and boundaries as possible. This map would be used to divide up the land, according to the judgments made by the court. The Government would pay for the surveys needed to prepare this map, and it had been agreed that these surveys would be permitted. Grindell concluded his report to Fitzherbert by noting that everywhere he went, demands for money as advances on claims were made, demands he 'invariably discountenanced'.[8] In his opinion, it was 'inadvisable, as a rule, to make advances on land to which there are so many adverse claimants before their titles have been investigated by the Court'.[9]

8.3 1872: SURVEY OF COAST

In a period of little more than two weeks, Grindell had obtained numerous applications for investigation of titles, indicated plainly the Government's wish to buy land along the coast for roads and settlements, and obtained approval for the first step in the process of sale: survey and mapping of the land, at Government expense. He expected this work would take only a short time, since an exact survey

6. Ibid
7. Ibid, p 92
8. Ibid, p 93
9. Ibid

was not required. It would be, he thought, 'sufficient to roughly traverse the rivers with a pocket compass for a sufficient distance to mark their general direction, and their sources could be shown as seen in the hills from the flats below'.[10] The expense would be 'trifling', and he clearly anticipated no difficulties with Ngati Raukawa or, indeed, any of the tribes along the coast. In fact, he spent much of the winter of 1872 on the coast, coping with bad weather, poor health, escalating costs, frustrating delays and, worst of all, shifting opinions within the different tribes concerning, at the most basic level, whether a survey should be allowed at all, and then, if a survey was to be permitted, what sort of survey it should be and who should control it. Many of these difficulties related to the ongoing dispute over Horowhenua; others to internal tensions within Ngati Raukawa, as the hapu struggled to unite in the face of a common enemy. Some of the problems seem to relate to simple confusion about the meaning or significance of a survey line, relative to or in comparison with the boundary lines that had long been used to mark off tribal or hapu territory; confusion that was compounded by 'the immense amount of jealousy and suspicion [that existed] amongst the various claimants and tribes in reference to each other's claims and boundaries'.[11] A few of the difficulties were apparently the product of rumour, or of predictions made by interested Pakeha about what the eventual outcome of allowing the survey would be. In a district racked with anxiety and foreboding about the impending court hearing, almost anything could quickly erode away what was in reality often only fragile support for the survey, or even more disheartening and alarming, convert it into active hostility towards the surveying parties.

In April Grindell went back up the coast to get the survey under way and follow up some applications. The difficulties that Horowhenua presented were evident right from the start, Grindell reporting his concerns about the presence of Hunia in the district, calling him an 'extremely violent and unreasonable man' who, if he were associated with the survey in any way, might be the cause of its downfall.[12] In an attempt to counter Hunia's influence with the Muaupoko, Grindell enlisted Hector McDonald, a long-established Pakeha settler at Horowhenua, on the side of the survey. He had also arranged for the Rangitane chief Hoani Meihana to travel with the survey party while it was at Horowhenua, to keep the Muaupoko, in Grindell's opinion, 'an excessively mulish and obstinate people', in check. Grindell was anticipating difficulties because he had found the Muaupoko, on his second visit to them, still very hesitant about the survey. He had explained to them that since Kemp and his allies had sent in an application covering the whole of the coast, a survey had become a necessity. Despite his explanation of the purpose of and reason for the survey, Muaupoko had absolutely refused to allow any Ngati Raukawa onto their land to point out any boundaries, apparently believing that this would be in some way an acknowledgment of right. Grindell had told them that since the different sections of Ngati Raukawa were making separate applications for their own portions of the tribal domain, Muaupoko would have to make a similar application for the

10. Ibid
11. Grindell to Minister of Public Works, 31 May 1872, AJHR, 1873, G-8, no 41, p 32
12. Grindell to Superintendent, 29 April 1872, MA series 13/75B, p 2, NA Wellington

land they occupied. This had lead to much 'tedious talk'.[13] Eventually the chief, Te Rangi Rurupuni, had announced himself in favour of the survey, in order that the dispute might be determined by the court. This did not, as might have been expected, settle the matter, but it was finally decided that after the tribe had consulted with some absent friends, an application would be forwarded to Wellington. Grindell clearly considered that this would mean Muaupoko resistance to the survey would end, since Hunia could have no objection to the survey: his name was on the application for a title investigation already received from Wanganui.

If the Muaupoko were difficult, the Ngati Raukawa were everywhere, and still reasonable and conciliatory. Ihakara Tukumaru and his people, for example, occupied land to the north of the district. They gave Grindell their application, along with the necessary assent to the survey, after only a brief discussion. Their land would therefore pass through the court with the rest of the Ngati Raukawa claims. Watene and his people, on land at Horowhenua, were reported to be quite anxious that the survey proceed, and had promised that they would not interfere with the Muaupoko, even if they did survey, as Kemp had threatened, up to their 'very door steps'.[14] The Ngati Huia at Porotawahao, to the north of the lake, on land adjacent to that of Muaupoko, were of a similar mind to Watene and the descendants of Te Whatanui: willing to have the survey proceed, unwilling to create any difficulties that might prevent its completion. The Ngati Raukawa at Otaki, Waikawa, and Ohau supported the survey as well.

Grindell was also able to report that he had nipped in the bud a potential dispute between Wi Parata of Ati Awa and Tamihana Te Ruaparaha of Ngati Toa concerning the lands to the south of the Ngati Raukawa tribal claim, with the result that these lands too would be surveyed and passed through the court. This meant that the applications in hand covered all of the land on the west coast still in Maori hands, from the Manawatu River in the north to the edge of the Crown lands at Wainui, south of Waikanae.

Grindell was anxious that everyone who occupied land along the coast should make an application for investigation of their title – no one was to be dispossessed by default. Similarly, the survey was to be conducted in the interests of all claimants. He provided details of all the boundary information contained in the various applications to Thompson the surveyor, and 'instructed him to be particular in showing on the maps the position of all points mentioned along disputed lines of boundary'.[15] At this stage, April 1872, Grindell expected the survey to be completed by September.

In May the promised Muaupoko application arrived in Wellington, 'with the names of the principal men of the tribe attached'. In the same mail, however, came another letter:

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13. Ibid, p 8
14. Ibid, p 9
15. Ibid, p 12

> purporting to be from the whole tribe with several signatures attached in the same handwriting, threatening to break the chain of the surveyor if he persists in surveying the land in dispute between them and the Ngatiraukawa.[16]

There appeared to be, Grindell remarked with probably unconscious drollery, 'a division amongst them'.[17]

By May the survey was under threat from another direction as well. Ngati Raukawa opinion had shifted, or perhaps simply crystallised, and there was now a strong sentiment in favour of a united or single application to the court, covering the whole of the Ngati Raukawa tribal domain. Sectional claims to different parts of this tribal domain were to be sorted out at a later date. The corollary, as far as the survey was concerned, was a simple one: no internal boundaries should be surveyed at this stage, only the outer borders of Ngati Raukawa's claim.[18] The Ngati Huia resident at Otaki were very much of this new persuasion, so much so that they had prevented the survey party from crossing the Otaki River.

Grindell reported that he had taken a very firm line with Ngati Huia.[19] The court would not sit without properly prepared maps, and if the court did not sit, the whole matter would remain undecided. Nor would the Government be able to buy any land they might wish to sell. There must be maps, and he had insisted that these maps should contain information that would enable the court to divide the land up hapu by hapu as required, thus saving time and the expense of secondary surveys. After some discussion Ngati Huia had agreed to allow the survey to continue. Grindell telegraphed Fitzherbert on 13 June with a brief account of Ngati Huia's actions, adding that the matter had been settled and that the survey was going on. The message ended with a few words giving a glimpse of the everyday realities Grindell was facing – 'Weather inclement. Got wet. Cough returned. Natives require watching everywhere'.[20]

Early in July Grindell provided a much fuller account and explanation of Ngati Huia's interference with the survey. It was, he said, part of a general Ngati Raukawa response to the threat posed by the emergence of a hostile coalition of five opposing tribes acting as one: Muaupoko, Rangitane, Ngati Apa, Whanganui, and Ngati Kahungunu. There was concern, in the face of this development, that the pursuit of sectional, that is, hapu, claims might sow dissension within the ranks of Ngati Raukawa, at a time when a united front was required, and thus provide the opposition with some advantage at the hearing. In other words, the argument was that Ngati Raukawa should fight Hunia and Kemp first. Then they could fight among themselves.

There had also been Pakeha intervention in the affairs of Ngati Raukawa by T C Williams, the son of Henry Williams, and Wyld, a private surveyor. Williams had strongly advised Ngati Raukawa not to sell their land, and had recommended that they gather funds so they could repay any advances made on the land by the

16. Grindell to Minister of Public Works, 31 May 1872, AJHR, 1873, G-8, no 41, p 32
17. Ibid
18. Grindell to Superintendent, 13 June 1872, MA series 13/75B, p 1, NA Wellington
19. Ibid, p 2
20. Ibid

Government. Williams had also told them they while they might wish to sell only useless land, the mountains, for example, the Government would not be satisfied with land of this kind. That was why they wanted the land cut up into separate blocks, so they could gain possession of it piece by piece. Williams' advice to them had been that they should survey the land themselves, in one block, and establish their tribal claim 'independently of Government interference'.[21]

Williams had the best interests of Ngati Raukawa at heart. Wyld's interests clearly lay a little closer to home. His message was that Ngati Raukawa should avoid Government surveyors, since this could lead to the cost of the survey being charged against the land, ultimately forcing its sale. What Williams and Wyld were saying was enough to cause uncertainty, alarm, and back-sliding among Ngati Raukawa, to the detriment of the survey, and Grindell had had to reassure them yet again as to the Government's intentions and objectives. He admitted that the Government wanted to buy flat land on the coast, but reminded Ngati Raukawa that he had told them this at the very beginning, when they had first offered to sell the mountainous country. But this did not mean that the Government would take all the land:

> they were aware that not an inch would be alienated without a price agreed upon and the full and free consent of all interested, and that indeed if they were to offer the whole of the land the Government would not agree to purchase it all – it was not the object of the Government to beggar them and render them homeless but to improve their condition.[22]

Nor was the Government intending to use survey charges as a way of obtaining the land. He had said previously that 'the Government would make no charge for the surveys', and he explained again why the Government was willing to bear these costs:

> The Government have agreed to do this not for the purpose of having a lien upon the land, but for the purpose of preserving peace and quietness amongst you and of enabling you to settle your differences by Law. The Government objects to fighting anywhere, but more especially in the midst of European settlements, and you were very nearly coming to that a short time ago at Horowhenua. If each hapu amongst you were to employ its own surveyor, the other tribes claiming would desire to do so likewise and the result would be confusion and bloodshed. To prevent this the Government was willing to step in as a mediator and employ its own surveyors to mark off the boundaries as claimed by each party, leaving the Court to finally settle all disputes.[23]

The surveying party was now approaching Horowhenua, and Grindell had decided that he would offer the Muaupoko their own surveyor, in a manner of speaking, in the hope that this would persuade them to allow a survey of their boundaries to be made. In fairness, the same arrangement was to be offered to Ngati Raukawa as well.[24] On his arrival, he described the Muaupoko as 'obstinate and unreasonable as

21. Grindell to Superintendent, 2 July 1872, MA series 13/75B, p 4, NA Wellington
22. Ibid, p 7
23. Ibid, p 6
24. Grindell to Superintendent, 7 June 1872, MA series 13/75B, NA Wellington

ever', their settlement full of Ngati Apa, Ngati Kahungunu, and other opponents of Ngati Raukawa. Not only did they lay claim to the whole coast from north to south, they also:

> positively refused to allow the country in their locality to be surveyed, and protested strongly against the surveys of other parts of the coast at Otaki and elsewhere, declaring that the whole must be discontinued until they had given their consent. They threatened to break the chain and the theodolite and turn off the surveyors if they came there to survey.[25]

Grindell pointed out, among other things, that if they took their opposition as far as to break the law, they risked Kemp's disapproval. He made the offer of a surveyor, who would work under their observation as far as the surveying of their internal boundaries was concerned, and offered to let them go with the surveying parties, and point out any boundaries or locations anywhere on the coast that they wished to be shown on the map being prepared for the hearing. Te Rangi Rurupuni once again said that he could see no objection to a survey of the boundaries claimed by Watene and again advised that the survey be permitted to go ahead. But again the chief's opinions gave rise to hot dissent, and Grindell decided, in the face of this discord, to place the survey of Horowhenua on hold until Kemp arrived back in the district.[26] In the meantime, he announced, he would continue with the survey to the north and south of Horowhenua, a decision that some 'still grumbled' about. Grindell left the Muaupoko settlement that day in a far from optimistic frame of mind:

> it seemed to me that nothing less would satisfy them than an absolute admission on the part of the Government that they were the only owners of the country and that the Ngatiraukawa were only aliens and intruders.[27]

In the morning, Te Rangi Rurupuni came over to Hector McDonald's house to tell Grindell that if he wanted to push ahead with the survey of Watene's boundaries, he could do so. A party would come and protest about it, but Te Rangi Rurupuni doubted that they would use force to get their way. Grindell's position was that the survey could not proceed in the face of opposition. He would wait for Kemp to arrive.

Grindell went across to talk to Watene before leaving Horowhenua, and recorded at some length what Watene and his people had to say, in the middle of June 1872, about these matters:

> from the commencement of the dispute they, the Ngatiraukawa, had exercised great patience and forbearance under extreme provocation and insolence from a remnant of slaves whose lives had been spared by Te Whatanui from mere compassion when the country was first occupied by Te Ngatiraukawa; that they had been anxious to preserve peace throughout, and had been always guided by the wishes of the Government, and

25. Grindell to Superintendent, 2 July 1872, MA series 13/75B, p 9, NA Wellington
26. Ibid, p 12
27. Ibid, p 11

> that now again they would wait patiently until Major Kemp returned as desired by me. But, they said, if after that the Muaupoko still remained obstinate they would ask the Government to allow them to settle the dispute themselves in their own way 'after the manner of their ancestors'.[28]

On his way north, Grindell stopped an Porotawahao to check up on the Ngati Huia. They were ready and waiting for the surveyors to arrive. Visits to the Ngati Raukawa settlement at Hikaretu, on the Manawatu River, and the nearby Rangitane village at Oroua both went well, each tribe agreeing to allow the other to point out their boundaries to the surveyors without interference. This was not the first time, nor would it be the last occasion, on which Rangitane would take an independent and moderate line, despite their ties to Muaupoko and Ngati Apa. Given the history of their relationship with Ngati Raukawa, Rangitane's generally conciliatory and cooperative attitude to their distant relatives was perhaps to be expected.[29]

A meeting at Foxton with Ihakara Tukumaru had both good and bad aspects. On one hand, Ihakara reported that a large and very recent gathering of Ngati Raukawa at Otaki had agreed that everyone would drop particular claims until the court had heard Ngati Raukawa's claim to Kukutauaki as a whole. Only then would the land be subdivided. Grindell reported that he had, consequently, encountered some reluctance to allow any surveying of internal boundaries. However, Ihakara was quite willing to have the boundaries of his own block surveyed.[30]

While in Foxton, Grindell interviewed Peeti Te Aweawe, Hoani Meihana, and other Rangitane chiefs. All of them condemned the Muaupoko attitude to the survey, and agreed to try and talk Hunia around, identifying him as the cause of all the problems. Hoani Meihana in fact produced another application from the Muaupoko for an investigation of their title to Horowhenua. He had obtained this from them following a recent visit by Hunia to their settlement, to which he attributed their change of heart.[31]

On his way back to Wellington, at the end of June, Grindell stopped at Ohau and Waikawa, where he found that arrangements for the survey were proceeding 'as satisfactorily as at the other settlements of Ngatiraukawa'.[32] While at Ohau, a small party of Muaupoko arrived, protesting to Ngati Raukawa that the survey should not proceed until they (Muaupoko) had consented. Ngati Raukawa politely referred them to the Government. When the delegation turned to Grindell, and ordered him to stop the survey, he declined to do so, stating again that Horowhenua would not be surveyed until Kemp had made his views known, but that the survey would proceed elsewhere on the coast. They withdrew, said Grindell, 'after a great deal of vapouring'.[33]

At Otaki, on 28 June, Grindell met with an influential gathering of Ngati Raukawa, and answered all their questions and explained anything which they did

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28. Ibid, pp 13–14
29. J M McEwen, *Rangitane: A Tribal History*, Auckland, Reed Methuen, 1986, p 132
30. Grindell to Superintendent, 2 July 1872, MA series 13/75B, pp 16–17, NA Wellington
31. Ibid, pp 17–18
32. Ibid, p 20
33. Ibid, p 21

not seem to understand. The meeting seems to have been a wide ranging one, covering matters such as the survey, disputed boundaries, what action should be taken if the Muaupoko interfered with the survey, the operation of the Native Land Court, road making, and the advantages of European settlement along the coast. Despite what Ihakara Tukumaru had reported about the recent Ngati Raukawa gathering at Otaki, Grindell gained an assurance from the meeting that the survey would proceed without obstruction.[34] The next day, he took the coach to Wellington.

Writing his report a few days later, Grindell noted that there were now three surveyors working on the coast, and that he expected the work to be completed by September. He then went on to sum up his impressions of the three tribes he had dealt with during his month of travelling and meetings:

> ... Ngatiraukawa from the commencement have been extremely forbearing and anxious to submit every dispute to the decision of the Court, whilst the Muaupokos have been extremely unreasonable, and even arrogant and imperious, protesting against and interfering with surveys in localities which have been, within my own knowledge, in the undisputed and peaceable occupation of the Ngati Raukawa for over 30 years. I believe Kawana Hunia of Ngatiapa to be their principal instigator in this line of conduct for the deliberate purpose of creating a disturbance between the tribes. The Rangitane by no means approve of this course, and are equally as anxious as Ngatiraukawa that the survey should proceed and the whole question be settled by the Court.[35]

In July, Grindell was on the coast again, in yet another effort to get the Muaupoko to cooperate with the survey, Halse telegraphing him to be 'very cautious' in putting in surveying posts on the south side of the Hokio.[36] Grindell expected to meet Kemp, but Kemp was ill, and did not make the journey. Instead Hunia turned up, and Grindell reported that he found him much more reasonable that he had expected. Hunia asked a great many questions about the survey and the Government's intentions, and said he was satisfied with the answers Grindell provided. Hunia even had favourable things to say about Ngati Raukawa, referring to Te Whatanui's role as the protector of the Muaupoko people, an act which he said had not been forgotten. However, Ngati Toa and Ati Awa were spoken of with 'great rancour and bitterness'.[37] Hunia announced that he was withdrawing any opposition to the survey, and a deal was immediately struck. Muaupoko would cease to protest about or interfere in any way with the surveys. In exchange, they would be permitted to point out whatever boundaries they wished to the surveyors, even on land occupied by Ngati Raukawa, anywhere on the coast. Grindell offered to accompany a party of Muaupoko and their Ngati Apa escort to the south, as far as the Government boundary at Wainui, so that Muaupoko could erect posts and otherwise place their own stamp on the survey maps.

Grindell and his charges arrived at Otaki, the very heart of Ngati Raukawa country. The Government man explained to Matene Te Whiwhi why they were

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34. Ibid, pp 21–22
35. Ibid, pp 22–23
36. Halse to Grindell, 25 July 1872, MA series 5/2, p 158, NA Wellington
37. Grindell to Superintendent, 29 July 1872, MA series 13/75B, p 2, NA Wellington

there, and the arrangement he had made with Muaupoko concerning the survey. The visitors, according to Grindell, were 'somewhat shy and reserved',[38] but they were given a cordial welcome. Matene assured them that they were welcome to conduct their surveys wherever they chose, and that Ngati Raukawa were pleased that all of the parties to the dispute now accepted that their respective rights and title should be decided by English law. And so, said Grindell, 'the matter was amicably arranged', and the Muaupoko went off to place the posts and markers which signalled their intention to claim and divide up among themselves all the domains of Ngati Raukawa.[39]

Grindell's relief at this outcome was evident enough in his telegram to Fitzherbert and Cooper: 'Matters never looked as well as now. I have no further anxiety. Home end of week'.[40] But he did not take any great credit for this turn around himself, attributing the Muaupoko change of heart to the influence that Hoani Meihana and the other Rangitane chiefs had brought to bear on their wayward allies, and that Hunia, seeing the way the wind was blowing, had 'made a virtue of necessity and submitted with a proper grace'.[41] Kemp, he thought, had probably exerted influence on Hunia as well. In any event, the last obstacle in the way of completing the survey had been removed, and Grindell urged that a sitting of the court be advertised as soon as possible. If publication of the necessary notice was left until the survey was finished, the sitting of the court, he stressed, would be delayed unnecessarily.

In August Grindell received advice from Hector McDonald that Hunia was likely to cause more trouble over the survey. However, Grindell doubted that anything serious would occur: Hunia was 'naturally of a bounceable and vapouring disposition', but he and the Muaupoko had written both to McLean and the Governor, re-affirming the arrangements that had been made about the Horowhenua survey, and this would go ahead over the next few weeks.[42] Watene had also been to see Grindell, to tell him that Muaupoko were talking of cultivating on the disputed land – on the very site where Watene's houses had been burnt. Again, Grindell did not attach any great significance to this information, but did note however that these matters needed 'to be carefully watched'.[43] To date, according to the information Grindell provided to Fitzherbert, only minor problems with the survey had occurred: a Ngati Raukawa chief had objected to the presence of a Muaupoko labourer in one of the surveying parties, and a letter had been received from a Muaupoko chief objecting to Ngati Raukawa being involved with the survey between Ohau and Manawatu. Grindell had taken a strong line over the Muaupoko labourer and nothing more had been heard of the matter. In the case of the Muaupoko protest, the principal Rangitane chief Hoani Meihana had intervened, and set the record straight as to Ngati Raukawa's right to work with the survey parties north of Ohau. Grindell was following up with a letter to the same effect. The underlying problem in all of

38. Ibid, p 5
39. Ibid
40. Grindell to Superintendent, 26 July 1872, MA series 13/75B, NA Wellington
41. Ibid
42. Grindell to Superintendent, 16 August, 1872, MA series 13/75B, p 1, NA Wellington
43. Ibid, p 2

this, Grindell concluded, was that 'each party regards the survey of the other with extreme jealousy and suffers the work to proceed with a very ill grace'.[44]

In fact, Hector McDonald's information was sound, and in mid-September Grindell was on the coast, talking to Hunia and trying to persuade him and the Muaupoko, yet again, to allow the survey to proceed. On 17 September he reported that he had had a long talk with Hunia, that they would see the Muaupoko on the following day, and that the work would be resumed. 'I shall wait till it is finished or at least till all danger over'.[45] On 21 September he reported success with the Muaupoko after a marathon 'reasoning' session. No further difficulties were anticipated, and he mentioned that Hunia and some others were on their way to Wellington. He was very glad that they were out of the way, since one of this party was the chief source of obstruction.[46] This was probably the Muaupoko Heta, and Grindell heard that, while in town, Heta was going to try to get an advance on some land at Horowhenua. He telegraphed the Provincial Secretary, H Bunny: 'Old Rangi says the land does not belong to him. Give him nothing'.[47]

Unfortunately for Grindell, however, Hunia took his complaints about the survey to the Government. Cooper telegraphed Grindell on 26 September that he had interviewed Hunia, and agreed with him that only outside boundaries needed to be surveyed. Any internal boundaries or subdivisions would be left to the court to decide, and then surveyed only by order of the court. He then directed that if any surveying of internal subdividing boundaries was going on, to 'stop it'.[48] A second telegram on the same day spelt out Hunia's objections: there was to be no surveying at Mahoenui, Ngatukorua or, in particular, 'Tau o te ruru'.[49] All of these were sensitive spots, especially Tauataruru: the site of one of the posts marking the southernmost boundary of the land allocated to Muaupoko by Te Whatanui. Mahoenui, in turn, was the southernmost boundary of the Horowhenua district. Nga Tokorua was north of the lake, and the site of one of the posts marking the northern boundary of the Muaupoko block, and so the border between that tribe and Ngati Huia.[50] Grindell immediately telegraphed Fitzherbert, to tell him that Cooper had halted the survey, at that stage within a few days of completion.[51] A longer telegram to Cooper and Fitzherbert on the same day set out the situation as Grindell saw it:

> All surveys completed except one internal boundary at Mahoenui. Muaupokos *all* agreed that this should be done on condition of their survey on the beach to Manawatu without interruption from Ngatiraukawa. This they have done and also their internal boundary between them and the Ngatihuia and elsewhere. Hunia agreed fully to this and authorised me to go on with it. Kemp has also agreed and written Muaupokos not to interfere and telegraphed me and the NgatiRaukawa have been promised that they shall

44. Ibid, p 6
45. Grindell to Superintendent, 17 September 1872, MA series 13/75B, NA Wellington
46. Grindell to Superintendent, 21 September 1872, MA series 13/75B, NA Wellington
47. Grindell to Bunny, 25 September 1872, MA series 13/75B, NA Wellington
48. Cooper to Grindell, 26 September 1872, MA series 5/2, p 276, NA Wellington
49. Halse to Grindell, 25 July 1872, MA series 5/2, p 280, NA Wellington
50. G L Adkin, *Horowhenua: Its Maori Place-Names and Their Topographic and Historical Background*, Wellington, Department of Internal Affairs, 1948, p 256
51. Grindell to Superintendent, 26 September 1872, MA series 13/75B, NA Wellington

do theirs. If the Ngatiraukawa are told that they must not do it after submitting so patiently to all the whims of Muaupokos they will have just cause of complaint. This is a breach of the promises made publicly by Hunia and Kemp. Hunia drew a plan on the sand, pointing out boundaries to be surveyed with the full consent of all his people after a whole night's consideration. His subsequent action in Wellington is deceitful in the extreme. Hope you will reconsider the matter. See Mr Fitzherbert. Have written to him. Can't explain all in telegram. Can finish survey in a few days. Stopping work now at request of Hunia in direct opposition to pledge from him will create dissatisfaction and complication. He interviewed Karanama Kapuhai at Otaki and told him no further interruption would be offered and told me I might depend upon his words. I am anxious about this. Reconsider and reply. See Hoani Meihana. [Emphasis in original.][52]

The next day Grindell sent another telegram to Cooper and Fitzherbert:

Hunia's action in Wellington is a bare faced breach of faith. He never expected such a concession when he asked it. Merely trying it . . . I know positively he is now acting without the knowledge of Muaupoko and in opposition to their desire, he and the spiteful creature with him Heta. See Rangi Rurupuni, chief of Muaupoko, who goes per coach today. See Ngatuere who is in town and knows all about it . . . Muaupoko's own internal boundaries are done and it would be beyond all precedent unjust not to allow NgatiRaukawa to finish theirs . . . There is no danger of any collision between them. If I saw danger I should at once withdraw surveyors. You can depend on my judgment.[53]

In Grindell's opinion the Government had taken Hunia's complaints too seriously, overestimated the support for his views, and seen dangers which did not exist. Now that it had a correct assessment of the situation, it must reverse the decision to halt the survey.

By the spring of 1872 all the tribes on the coast supported the idea that the disputes over land titles should be settled by referring the matter to the Native Land Court – Muaupoko being the last tribe to agree to this mode of settlement and the tribe with the least commitment to it. The need for a survey seems to have been generally accepted as well, but the concept of survey lines that represented hapu or some other kind of subdivisional boundaries that were provisional until confirmed by the court seems to have been less well understood, at least by Muaupoko and some sections of Ngati Raukawa. In the case of the Muaupoko, Grindell attributed a great deal of their obstructionism to Hunia's influence, and Hunia he thought was simple trying to ferment tribal conflict. It is true that many of the difficulties encountered in the survey of Horowhenua do seem to have originated with Hunia. Perhaps he was concerned that the Muaupoko case for Horowhenua, let alone the wider claim for all of the coast, would not stand up under the scrutiny of the court. If so, the only thing to do was prevent the survey, and so the court hearing. At the same time, it is possible that Hunia, and the Muaupoko, who seem to have been less familiar with Pakeha ways than Ngati Raukawa, were also exhibiting a degree of genuine confusion about the precise meaning of newly-cut survey lines, especially ones that ran along the boundaries traditionally claimed by their opponents.

52. Grindell to Cooper and Superintendent, 26 September 1872, MA series 13/75B, NA Wellington
53. Grindell to Superintendent, 27 September 1872, MA series 13/75B, NA Wellington

On at least two occasions during 1872 the Muaupoko chief, Te Rangi Rurupuni, took an opposite line to Hunia and/or some sections of Muaupoko, but was unable to carry all of his tribe with him. This indicates a division of opinion within Muaupoko, but the basis of this division, whether over the survey or the claim for Horowhenua, or the alliance with Ngati Apa, or whatever, is not entirely evident. It is possible, of course, that too much emphasis had been placed on the concept of tribe, and therefore of tribal unity, and not enough on the hapu or tribal subdivisions. It may be that unity at the tribal level was unusual; the apparent 'split' in Muaupoko may be simply a manifestation of normal hapu dynamics and interactions.

Whatever the interpretation, at Otaki, Matene Te Whiwhi was having problems of a similar kind with Ngati Raukawa. According to the evidence provided by Grindell's reports, the leadership of Ngati Raukawa became very preoccupied, during the winter of 1872, with 'tribal unity', a sure indication that this was either something being anxiously sought, or that it was something being threatened by splits and divisions of one kind or another. During the 1830s, the hapu of Ngati Raukawa had settled themselves, or been settled, in different areas of Kukutauaki. Ngati Pareraukawa, Te Whatanui's hapu, for example, had located themselves at Horowhenua, on the south bank of the Hokio Stream. Ngati Huia held land near Otaki and in the north at Porotawahao. These hapu districts were by no means rigidly fixed, and boundary disputes were not uncommon. Even as late as 1873, Grindell reported that one reason for the delay in buying land was 'owing to the impossibility of getting the natives to agree about their boundaries'.[54] But while boundaries may have been movable feasts, there does seem to have been strong associations between particular hapu and particular districts. During the early part of 1872 some of these hapu had shown a desire to take their own smaller claims to the court, or to otherwise act in an independent manner in their dealing with the Government, not approving, for example, of Matene Te Whiwhi's claim on behalf of Ngati Raukawa for all of the tribal domain.[55] This is probably good evidence that the prospect of land sales, which would be opened up by a successful claim in the court, was having a corrosive effect on the tribe's cohesion, assuming of course that the tribe was, prior to this date, a closely knit entity. As the situation developed during the winter of 1872, it also seems evident that opposition to the survey of hapu boundary lines equated with opposition to land sales, and that this opposition was strongest among the Otaki Ngati Huia, possibly because of the influence of Williams on this particular section of Ngati Raukawa.

In any event, Grindell had very obviously underestimated, at the beginning of 1872, the difficulties the survey would encounter. Consequently he had to spend a good deal of his time up and down the coast that year, preaching the need for a survey, and in particular for a survey that would allow the land to be subdivided, for the purposes of sale. While elements of both Ngati Raukawa and Muaupoko at some stage or other opposed and obstructed the survey, Grindell invariably talked of the Ngati Raukawa as 'reasonable' and the Muaupoko as very 'unreasonable',

54. Grindell to Superintendent, 21 April 1873, MA series 13/75B, p 1, NA Wellington
55. Grindell to Superintendent, 25 March 1872, *New Zealand Gazette (Province of Wellington)*, vol 19, no 10, 3 May 1872, p 91

'excessively stupid and ignorant', and 'mulish and obstinate'.[56] Despite these opinions, he explained, discussed, reasoned, and cajoled with equal tact as required; when opposition was strong, and the situation volatile, he left well alone. No attempt was ever made to carry on the survey against the will of any of the occupants, and a forcible survey was never contemplated. Had opposition been widespread, strong, and intractable, Grindell would almost have certainly recommended that the survey be abandoned. When asked why a survey was needed, he explained it in terms of the need to clarify land titles, and so prevent arguments and conflict, and he seems to have been meticulous in seeing that everyone who had a claim to land made application for investigation of their title: no one was to forfeit their land by default. But he was also quite forthright about the other reason for the survey; the Government wanted to buy land along the coast, and it wanted to buy this land from those who had a legal and settled title to it. Thus the land had be passed through the court, and the survey was the necessary prerequisite to this operation.

8.4 1872: ADVANCES ON THE LAND

The provincial government was anxious to acquire land. Grindell and McLean were, they said, concerned that land should be purchased only after title to it had been satisfactorily investigated. Once titles had been settled Grindell felt there would be no shortage of willing sellers, for it was quite apparent that the various tribes along the coast 'were generally desirous of selling their waste lands at the present time', and Grindell was confident that 'some valuable blocks will be acquired'.[57] Indeed, before the survey had started, Grindell was deluged with demands for advances on land offered for sale, and through the year applications of this kind, claims for a share of any money that was to be paid for land, and requests for food, the cost of which was to deducted from the price of the land, were frequently made. Generally, Grindell advocated caution in dealing with propositions of these kinds, especially when the ownership of the land in question was disputed or unsettled. He had explained his reasons to a meeting of Ngati Raukawa at Waikawa in March 1872:

> if we were to pay them money for [land] without first duly ascertaining the ownership, they would be secure, having received the payment, but we should, in all probability, be landed in a difficulty, as it was likely this and that hapu would come forward, each claiming and taking a slice, till at last we should be left with nothing but the bones. For our own protection, therefore, we required the title to be investigated.[58]

Similarly, when approached by those who wished to stake a claim in advance to a share of the proceedings of any land sales, Grindell seems to have consistently responded that anyone wanting to have their claims to land recognised would have

56. Grindell to Superintendent, 24 April 1872, MA series 13/75B, NA Wellington; Grindell to Superintendent, 29 April 1872, MA series 13/75B, p 5, NA Wellington; Grindell to Superintendent and to Under-Secretary Public Works, 19 June 1872, MA series 13/75B, NA Wellington
57. Grindell to Minister of Public Works, 31 May 1872, AJHR, 1873, G-8, no 41, p 32
58. Grindell to Superintendent, 25 March 1872, *New Zealand Gazette (Province of Wellington)*, vol 19, no 10, 3 May 1872, p 92

to attend the court and look after their own interests.[59] McLean seems to have taken a similar line. When Nepia Taratoa wanted to come to Wellington, for example, to discuss matters relating to land, McLean minuted that 'it would be more judicious not to encourage the natives to come to Wellington until the land is passed through the Court'.[60]

But while the official line may have been that no advances would be made before the land had passed through the court, in practice a more flexible approach seems to have been in operation. In August 1872, for example, Grindell received a letter from Hector McDonald at Horowhenua, dealing with Hunia's objections to the survey but commenting also about advances:

> I have heard that Caroline Nicholson has been getting advances on Whatanui's land at Manawatu and Watene is going to town to draw more also for here. You must mind what you are doing for Pomare and his wife is the rightful owners.[61]

McDonald went on to say, incidentally, that 'Watene is only looking after the place for Pomare and his wife' and that 'Pomare is no fool I can tell you and has lots of money to go to law'.[62]

Earlier, in July, Grindell had reported that some of the Manawatu Ngati Raukawa had complained, 'with some bitterness', that Booth had advanced money to Rangitane on account, while their applications for similar treatment had been turned down, on the grounds that their claims to the land in question had not yet been investigated by the court. To the Ngati Raukawa this seemed, Grindell said, 'a recognition of the claims of Rangitane to the prejudice of Ngatiraukawa'.[63] He went on to note in passing that while it was not unknown for 'some small sums' to be advanced on land, to be accounted for when the purchase was finalised, Booth had in this instance not only advanced money on disputed land, he had also fixed the price, 'which is very considerable', to be paid per acre, thus tying the Government's hands in all future dealing over the block in question. This was bad enough, but then Grindell's real objection to Booth's behaviour emerged: the land in question 'was within the boundaries of the district allocated to me by the Hon The Native Minister', Booth's actions therefore constituted 'interference' and as such was 'highly objectionable'.[64]

This small bureaucratic skirmish seems revealing. For one thing, it suggests that the left hand did not always know what the right hand was doing and, additionally, that as far as laying the foundations for purchase was concerned, it was business as usual along the coast and in the Manawatu during 1872, even to the extent of dealing with disputed lands. Nor does Booth's behaviour in this respect seem exceptional.

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59. Ngawai to Superintendent, 14 May 1872, MA series 13/75B, NA Wellington; Henare Waiatua to Superintendent, 3 August 1872, MA series 13/75B, NA Wellington; Kaperiere Te Mahirahi to Superintendent, 29 August 1872, MA series 13/75B, NA Wellington
60. Nepia Taratoa to Fitzherbert, 18 July 1872, MA series 13/75B, NA Wellington
61. Hector McDonald to Grindell, 15 August 1872, MA series 13/75B, NA Wellington
62. Ibid
63. Grindell to Superintendent, 2 July, 1872, MA series 13/75B, p 18, NA Wellington
64. Ibid, pp 19–20

In March 1872 Grindell said that it was 'inadvisable, as a rule, to make advances on land to which there are so many adverse claimants' because:

> if one party receive money, the others will expect it also, or they will say with reason that favour is shown, and that the rights of one party is being acknowledged to the prejudice of the other.[65]

In May of that year he noted that the Kaihinu West block was disputed land, and that several competing applications had been made to the court, yet, his report says, 'some small advances have been made on account of this block'.[66] The reality, in short, did not always match the rhetoric.

The making of cash advances was a very common feature of mid-nineteenth century land purchasing, and is usually considered to have been an effective device, ensuring that sooner or later the owners, because of their indebtedness, would be obliged to complete the sale. In fact, at least along the coast, some of the blocks on which advances were made were sold so long after the advance that the connection between the advance and the final sale does seem very tenuous. Advances were also made with the objective of breaking down any resistance there might be within the iwi or hapu to sale, thus ensuring that alienation occurred sooner rather than later. Again, some of the blocks along the coast on which advances were made were never purchased, and the advances were eventually refunded or otherwise repaid.

Another way to create debt among landowners was to supply provisions, the cost of which was then debited against the purchase price finally agreed. During the winter of 1872 a number of requests were made to Grindell, McLean, and Fitzherbert for arrangements of this kind, with respect to land both on the coast and in the Manawatu. There were more requests in the spring, up to and during the sitting of the court in November and December of that year. In August Grindell recommended that one request of this kind be declined, and with reference to another remarked that 'such applications may be expected from all quarters, but it is not expedient to grant them, except in very exceptional cases'.[67] At the beginning of September a third application came in from T U Cook, a Foxton settler with Ngati Raukawa connections, on behalf of Ngati Raukawa living in the Moutoa area. This hapu owned large areas of land between Moutoa and the mountains, and sought an advance in the form of provisions. Since they were, Cook continued:

> a tribe that have always stood in the way of land sales, I should think it would be good policy to make them the little advance of food they solicit, and really stand much in need of, as the natives generally on the river are entirely out of potatoes, and at presence there are no government works that they seem capable of undertaking. The Norwegians apparently cutting them out altogether.[68]

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65. Grindell to Superintendent, 25 March 1872, *New Zealand Gazette (Province of Wellington)*, vol 19, no 10, 3 May 1872, p 93
66. Grindell to Minister of Public Works, 31 May 1872, AJHR, 1873, G-8, no 41, p 32
67. Grindell to Superintendent, 16 August, 1872, MA series 13/75B, p 3, NA Wellington
68. Grindell to Superintendent, 5 September 1872, MA series 13/75B, NA Wellington

Grindell recommended an advance of between £25 and £30, presumably because this was the type of exceptional case he had had in mind the previous month. Another apparently exceptional case was dealt with at about the same time, Grindell reporting to Fitzherbert that, as instructed, he had divided an advance of £100 among some Ngati Raukawa, '33 in number', and obtained a receipt. However, since they had come to Wellington unnecessarily, the cost of their accommodation, £31 17s, would be deducted from the price of the land as well.[69]

During September, information came to hand that a Mr John Martin was offering an advance of £1000 on land in the vicinity of Otaki.[70] The fact that the Government land purchasing agents now had competitors on the coast seemed to have unsettled Grindell, and at the end of September, when two other requests for provisions came in, he remarked that it was 'unsafe' to make further advances on the security of land if private parties were to be allowed to engage in land purchasing.[71] In October, further requests for advances in the form of provisions were received, and one request for a tent, to be used as accommodation at the Foxton hearing.[72] One of these petitions came from Rangitane, and may be the only non-Ngati Raukawa inquiry of this kind extant: Grindell recommended against it, giving no reason.[73] As for the others, he felt that agreeing to them would be unsafe, for the same reason he had given earlier. At the end of the month, however, another request came in from Cook, this time on behalf of five Ngati Raukawa hapu: Ngati Kikopiri, Ngati Huia, Ngati Pareraukawa, Ngati Pihaka, and Ngati Kahoro, who said that 'unless food is provided on account of their land they will not be able to exist during the holding of the Court'. Cook strongly supported this request. Grindell recommended in their favour as well, noting that there would be at least 500 or 600 Maori in the Foxton area for four to six weeks, and that their own crops would not be ready for harvest for some time. McLean could see no objection to providing the supplies requested, and Fitzherbert approved as well, recommending that the food 'be issued from time to time to the grantees as their blocks are passed through the court'.[74] It seems that other advances of food were made during November and early December as well: on 16 December, about a week after the court had adjourned, Grindell sent some vouchers to the provincial government for payment. The minor item was £1 5s for office rent, the major item £423 5s, for food supplied at Foxton.[75]

It is clear from the files that food was very short on the coast in the late spring of 1872; according to Ihakara Tukumaru it always was at that time of the year, before

69. Grindell to Superintendent, 6 September 1872, MA series 13/75B, NA Wellington
70. Ibid
71. Ihakara Tukumaru to Superintendent, 30 September 1872, MA series 13/75B, NA Wellington; Wereta Te Wahe and Others to Superintendent, 30 September 1872, MA series 3/75B, NA Wellington
72. Hoani Taipua and Others to Superintendent, 17 October 1872, MA series 13/75B, NA Wellington; Ngati Huia to Superintendent, 21 October 1872, MA series 13/75B, NA Wellington; Rawiri Wainui and Others to Superintendent, 21 October 1872, MA series 13/75B, NA Wellington; Henare Te Hahete to Superintendent, 22 October 1872, MA series 13/75B, NA Wellington; Nerihana Te Paea to Superintendent, 22 October 1872, MA series 13/75B, NA Wellington
73. Grindell to Superintendent, 9 October 1872, MA series 13/75B, NA Wellington
74. Cook to Grindell, 25 October 1872, MA series 13/75B, NA Wellington; Fitzherbert to Waterhouse, 31 October 1872, WP series 6/8, pp 42–43, NA Wellington
75. Grindell to Superintendent, 16 December 1872, MA series 13/75B, NA Wellington

the new crops were harvested.[76] It may be, however, that 1872 was a winter of unusually severe food shortages: in early October, Tamihana tried to have the hearing postponed till February 1873, apparently on these grounds. We are, he said, 'eating . . . shoots of tree fern'.[77] The Government, however, was unmoved; other principal men had agreed to the November date, and the hearing would therefore go ahead as planned.

It is possible that when the November date was set no one foresaw that the hearing would attract an attendance of between 600 to 1000 members of the six or seven different tribes involved. It is also possible that no one anticipated that the initial session of the court would take the best part of two months. On the other hand, the Native Department possessed a good deal of prior experience of Native Land Court hearings: Grindell, for example, seemed to have had (in late October) the probable attendance numbers and duration at his finger tips.[78] It had also been evident for some months that provisioning of the hearing would be a problem. Perhaps better arrangements could have been made. But none were, and the timing of the hearing, at the end of a winter of shortages, and before the harvest, and then its long duration, inevitably created an extraordinary demand for food on the coast. Even at the best of times, the local food resources may not have been sufficient to meet the sudden pressure placed on them in the spring and early summer of 1872. From the Government's point of view, of course, the effect of this shortfall was far from unsatisfactory; from all directions provisions and cash advances were being urgently sought, secured by land about to pass through the court. The Government was not having to solicit, persuade, or entice in any way at all: even hapu who had in the past opposed land sales were approaching the Government for advances. By good luck, if not good planning, a buyer's market had come into existence at exactly the right moment – or so it appeared at the time.

While the food problems may have allowed the Government land purchase agents to get a foot in the door, general economic and social decline seems to have been the underlying cause of the ground swell in favour of land sales. Grindell had mentioned, for example, in one of his reports, that there was fever on the coast during the winter of 1872, and W J Willis, the resident magistrate at Rangitikei, depicted not only an unhealthy community but one seemingly on the verge of collapse:

> I cannot report favourably of the physical condition of the Maoris; there had been a great deal of sickness among them, especially at Otaki and its neighborhood, and the population is rapidly diminishing. There has been during the last two years fifteen per cent of deaths, while there has been only seven per cent of births in a population of about 700 . . . At Otaki, the crops grown hardly suffice for themselves, leaving them very short of provisions previous to harvest. Some flax is dressed for sale, but only in small quantities. Their principal income is derived from rent, which is generally anticipated, being expended chiefly in spirits, &c, to treat the visitors at their numerous meetings. During the summer a great number of Maoris from Foxton and Oroua and

76. Ihakara Tukumaru to Superintendent, 1 October 1872, MA series 13/75B, NA Wellington
77. Tamihana Te Rauparaha to Superintendent, 3 October 1873, MA series 13/75B, NA Wellington
78. Grindell to Waterhouse, on Cook to Grindell, 25 October 1872, MA series 13/75B, NA Wellington

> those neighborhoods, and a few from Otaki, obtained employment on the Government roads and tramways, and did their work in a satisfactory manner, but none are working now in consequence of the wet and cold weather.[79]

Yet in 1850, just over 20 years previously, Otaki had been, according to H Tacy Kemp, one of the showcase Maori settlements, with an 'air of comfort and good order rarely to be met with in a district inhabited exclusively by natives'.[80] Two mills were then in the course of construction. When completed, the inhabitants of the Otaki district 'will be, in point of comfort and actual wealth, better off then any natives I know'. Already they possessed a herd of nearly 100 cattle, 'well selected and in good condition', their soil was of a good quality, and their crops healthy. Much the same was said of the other Ngati Raukawa settlements that Kemp visited that year: at Waikawa and Ohau the cultivations were 'in excellent order', and the wheat crop had 'turned out very well'; at Horowhenua the bountiful supplies of eels and flax were noted; at Porotawahao the land 'is of the best kind, and the crops looked remarkable well'. At Porotawahao flax was also being harvested, as it was at several other locations, and Kemp also mentioned the rearing of pigs for sale, which almost certainly was going on elsewhere as well. Kemp did have some concerns about health matters. The new village at Otaki was felt to be damp. The pa at Ohau was described as wretched and unhealthy. He reported that fever and consumption were prevalent along the Manawatu River, and recommended that a dispensary be established at Awahou, to serve the Otaki and Rangitikei districts, thus avoiding the need to travel to Wellington or Wanganui in the event of illness.

These concerns to one side, Kemp seems to have been impressed with the general state of Ngati Raukawa; they were, he reported, the most powerful tribe in the region, able to field over 1000 fighting men, and he described them as 'industrious, brave and very much united'.[81] They were also, he noted in passing, the undisputed owners of both Kukutauaki and the Manawatu, and overlords of Rangitikei and of the tribes they had dispossessed.

M Richmond had reported in the same vein to Governor Grey in 1847. There was pleasing industry in the new village of Hadfield (Otaki) he said, and good prospects:

> The great quantity of available land belonging to the Ngatirankana [sic] tribe in this district, with the energy and disposition they evince to turn it to advantage, foretells the future prosperity of this body, while the scattered nature of their settlement, incapable as it of being enclosed or properly defended, affords proof of their peaceful intentions.[82]

Richmond might have noted as well that Ngati Raukawa needed no defences; they were the strongest military power on the west coast.

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79. Resident Magistrate, Otaki, to the Native Minister, 5 July 1872, 'Reports from Officers in Native Districts', AJHR, 1872, F-3, no 12, pp 15–16
80. H Tacy Kemp, 'Report No 3, Otaki, Manawatu and Rangitikei Districts, 10 March 1850', BPP, pp 235–237, 242–243
81. Ibid
82. Governor Grey to Earl Grey, 22 August 1847, Enclosure, *Report of M. Richmond on Waikanae and Otaki*, Correspondence and Papers Relating to Native Inhabitants, the New Zealand Company and Other Affairs of the Colony 1851, BPP

Two decades later, Ngati Raukawa had been decimated by sickness. While still relatively numerous compared to other tribes, they could project little in the way of military power. They no longer owned either Rangitikei or the Manawatu. Tribes that only 20 years before would have deferred to Ngati Raukawa now openly challenged them. In the face of this attack a divided Ngati Raukawa was struggling to unite in defence of Kukutauaki, all that remained of the great tribal domain they had possessed in the 1840s.

Willis, the main official source on the state of Ngati Raukawa in the early 1870s, was stationed at Marton, and seems to have possessed only a general knowledge of conditions along the Kapiti coast. Thus, while his immediate colleague, R W Woon, in the Whanganui district, provided lengthy reports on every aspect of Maori life in his locality, the reports provided by Willis for the coast are brief in the extreme. Yet some of the things Woon noted in his district must have applied generally in the lower half of the North Island. Woon, for example, noted that mortality rates were high among adults and infants alike, adding that numbers of the women were 'barren and unfruitful'.[83] Woon also pointed out that in his district the population decline had lead to many of the original settlements being abandoned. He also remarked that 'the natives themselves are well aware of their decline, and are very despondent in consequence'.[84] Yet, despite this despondency, a good deal seemed to be happening on the agricultural front in the Whanganui district in the early 1870s. Large crops of potatoes, maize, and wheat were being grown, depending on the state of the market, and the mills were being repaired. Tobacco was being cultivated, to the extent that it met the local need, and plans were afoot to improve the quality of the product so it could become a cash crop. There was a desire to grow hops, and even grapes. The contrasts with the Otaki district were almost too painful: there barely enough food was being produced for local needs, let alone a surplus for sale. But while the Ngati Raukawa in his district seemed to be doing badly, Willis reported that the Ngati Apa, at Parewanui, had:

> devoted themselves to a considerable extent to agricultural pursuit, growing extensive crops; are the owners of several teams of plough horses and have lately purchased a threshing machine for £75.[85]

Why one tribe should appear to be coping so badly while other, nearby, tribes, equally afflicted with poor health and declining numbers, seemed to be acquiring and using Pakeha agricultural technology to build a firm economic foundation for themselves, is something of a puzzle. It is even more of a puzzle if we take Kemp's 1850 observations into account: in that year the Ngati Raukawa along the Kapiti Coast already had a well-developed agricultural infrastructure, they were engaged in commercial flax production, and they were also rearing pigs for the European

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83. Resident Magistrate, Upper Whanganui, to Native Minister, 16 July 1872, 'Reports from Officers in Native Districts', AJHR, 1872, F-3, no 11, p 14
84. Ibid
85. Resident Magistrate, Otaki, to Native Minister, 5 July 1872, 'Reports from Officers in Native Districts', AJHR, 1872, F-3, no 12, p 16

market. Altogether, the land was supporting a population of several thousand.[86] Twenty years later, the coastal Ngati Raukawa still possessed substantially the same amount of land. The population had fallen sharply, perhaps by as much as 50 percent.[87] But agricultural production and general economic activity seem to have fallen even further; to the extent that food shortages during the late winter and early spring were a normal state of affairs. If, as Willis remarked, the Otaki Ngati Raukawa did live mainly on the proceeds of renting the land, supplemented by casual summer labour, they must have lived basically on fixed incomes; this meant that a poor or late harvest simply had to be endured. An extraordinarily expensive event, like a protracted court hearing, and the hospitality demands this would create, could only be financed by dipping into the only capital they possessed, the land itself. In any case, if the land was rented out, how could it be used to increase food production in the short term, let alone as the basis for an agricultural renaissance? In the end, whatever the reasons for the Ngati Raukawa economic decline before the 1870s, it is the results that are important. In 1872 these seemed plain enough. The subsistence nature of agriculture along the coast, coupled with a greatly increased demand for food in the spring and summer of that year, created a situation to the advantage of the Government land purchasing agents; advances were solicited, and once accepted, a process of land transfer from Maori to Pakeha got under way.

8.5 1872: HEARING AT FOXTON

The session of the Native Land Court gazetted for Foxton sat for the first time at 10 am on 5 November 1872, John Rogan and T H Smith presiding, Hemi Tautari assessor. Ngati Raukawa had hired P A Buckley, a prominent Wellington lawyer, and a member of the Wellington Provincial Council, to represent them, and when he sought to be recognised by the court, Hoani Meihana, on behalf of the five tribes who were opposing Ngati Raukawa's claim, objected to the participation of Pakeha lawyers in what was a Maori matter. The Ngati Raukawa representative, Henare Herekau, agreed that the dispute was a Maori one but 'the work is European', meaning that the court and the law to be applied were European, and that this justified the use of Pakeha lawyers.[88] Moreover, he observed, the tribes now objecting to European lawyers had used them in the past, for example, at the Rangitikei hearing. An objection of this kind had not been anticipated, and Tamihana Te Rauparaha and other principal men asked for an adjournment, so that the parties could meet outside the court, and settle the issue. When the court resumed the next morning, Henare announced that Ngati Raukawa, Ngati Toe, and Ati Awa

86. H Tacy Kemp reported, in 1850, an estimated population of 2515 for Otaki, Manawatu, and Rangitikei, and a further 888 in the southern districts of Waikanae, Porirua, Wainui, and Whareroa – 3403 in total. However, in 1848 Wiremu Kingi and some 580 Ati Awa had left Waikanae for Taranaki, producing a substantial drop in the coastal population (W C Carkeek, *The Kapiti Coast: Maori History and Place Names*, Wellington, A H & A W Reed, 1966, pp 86–87).
87. 'Return Giving the Names etc, of the Tribes of the North Island', AJHR, 1870, A-11. This gives the population of the districts surveyed by H Tacy Kemp in 1850 as being (in 1870) 1831, a decline of 1572 over a 20-year period.
88. Otaki Native Land Court MB 1, 5 November 1872, p 1

had discussed the matter, and wished counsel to appear. He then sought an adjournment, which was granted, so talks could continue with the five tribes. The court resumed at 10 am the next morning (7 November). Rogan wanted to know what the results of the out-of-court discussions had been. On this cue the five tribes renewed their objection to the employment of counsel: 'The only Europeans we want to see here', said Peeti Te Aweawe, 'is the Court'.[89] Hunia and other members of the five tribes also raised a general objection to the hearing of the case at all, indicating that if the hearing went ahead the tribes opposed to Ngati Raukawa would decline to present their own counter claim. The first objection was accepted; no counsel would be allowed to appear; Buckley could 'watch' the proceedings on behalf of his clients but he would not be permitted to take part in the hearing. As for the objection touching on the right of the court to hear the matter, this was firmly rejected. The court had jurisdiction and it would exercise it. 'It would not dismiss or refuse to hear a claim at the bidding or desire of persons who merely asserted a counter-claim without proving it by evidence'.[90] The court then adjourned, because after all the trouble taken to survey the land, no copy of the survey map had been sent to Foxton for the court's use. The adjournment was also intended to give Ngati Raukawa time to consider their situation now that Buckley was unable to act for them, and the five tribes time to reconsider their stated intention not to participate in the hearing. On the next day, Friday 8 November, Kemp requested a further adjournment, so that he and his supporters could obtain assistance with their case. Ngati Raukawa concurred, and the adjournment was granted.

The communications to and from Foxton during the first few days of the hearing seem innocuous enough. Buckley sent word to Fitzherbert on the first day that the court had adjourned for 24 hours.[91] Rogan telegraphed that the tribes in attendance were about to hold an open air meeting.[92] McLean wanted to know if proceedings had commenced, and how many Maori were in attendance.[93] When word was sent, he replied that he was glad to hear the court was sitting, and hoped it would be successful, remarking to Rogan 'the land I attach no value to but the disputes connected with it I should much like to see disposed'.[94] On 7 November Rogan sent Cooper a brief account of the proceeding that day:

> Court sat today. Great crowd of natives. Hunia objected to proceeding with all cases. Objection disallowed. Mr Buckley not allowed to act for Ngatiraukawa. Waiting for maps. Real business commences tomorrow.[95]

The same day a slightly more problematic communication arrived from Kemp for the Premier. 'My tribe', he said, 'did not agree to the title being investigated . . . I have been trying to mollify my people but they are not willing'.[96] The next day a

89. Otaki Native Land Court MB 1, 7 November 1872, p 4
90. Ibid, p 6
91. Buckley to Superintendent, 5 November 1872, MA series 13/75B, NA Wellington
92. Rogan to Superintendent, 6 November 1872, MA series 13/75B, NA Wellington
93. McLean to Rogan, 6 November 1872, MA series 13/76, NA Wellington
94. McLean to Rogan, 7 November 1872, MA series 13/76, NA Wellington
95. Rogan to Cooper, 7 November 1872, MA series 13/76, NA Wellington
96. Kemp to Waterhouse, 7 November 1872, MA series 13/76, NA Wellington

message came from Wi Parata, advising the Government to ignore reports of difficulties, and to let the hearing proceed.[97]

At this stage, it seems the Government had little or no knowledge that anything was amiss at Foxton. Within a few days, however, the provincial authorities and ministers and their officials began to receive alarming and disturbing news of an unequivocal kind: Kemp and Hunia had come out in firm opposition to the hearing, their immediate objective was to obtain an indefinite adjournment of the proceedings and they were threatening war if they did not get their way.[98] The five tribes, Grindell reported, were complaining about the maps and advancing every imaginable excuse to have the hearing adjourned. 'Their whole energies are directed towards intimidation and obstruction'. Further, the talk in Foxton was that:

> If court proceeds the above mentioned tribes will take possession of the land and not acknowledge decision of court and that Kepa offers to refund advances of Govt to Ngatiraukawa. This of course would be equivalent to acknowledging the claims of opponents of Ngatiraukawa.[99]

He then went on to lay out the problems and the options:

> What is to be done. You will understand question best with difficulties, and responsibility great. What is to be done. Do you wish court to adjourn. If so instruct me accordingly. I will not presume to advise but am of opinion that much dissatisfaction will arise among Ngatiraukawa and their supporters throughout island if Ngatiapa & the others are allowed to stay proceedings of court. It will be said Govt ignore their (Ngatiraukawa) claims after arming their opponents. Please direct me immediately so that I may communicate to court in morning the desire of Govt. Court adjourned at the request of Kepa for two days so as to allow him to combat the decisions of his people but he did not attempt to do so. Court sits again tomorrow morning. Want answers before it sits. Kepa says it is people who are opposing but I see he is with them. Mr Rogan knows I am communicating with you and understands the whole matter. Mr Wardell just received letter from Kepa. The following is an extract. 'I will not disturb the court. But I will quietly keep outside of it. I will publish the day then I and my tribe will fight for the land'.[100]

The replies received, from the point of view of the men on the spot at Foxton, must have seemed far from satisfactory. Cooper, the Colonial Under-Secretary, said the Government did not have enough information to advise on the question of adjournment. In any case the 'Court must know best whether its proceeding. . . at present time is likely to lead to satisfactory and peaceable solution of threatened difficulties'. He asked if the provincial government had been consulted.[101] Hall, then Colonial Secretary, telegraphed that McLean was being consulted:

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97. Parata to Wi Tako, 8 November 1872, MA series 13/76, NA Wellington
98. Grindell to Superintendent, 10 November 1872, MA series 13/75B, NA Wellington
99. Grindell to Cooper, 10 November 1872, MA series 13/76, NA Wellington
100. Ibid
101. Cooper to Grindell, 10 November 1872, MA series 13/76, NA Wellington

> In meantime, unless he [McLean] instructs you otherwise, govt desire to leave matters in your hands having confidence in your discretion not to bring about any serious complications either by precipitate action or too facile withdrawal of court in face of opposition. Of course, if natives will not have court govt cannot thrust its benefits upon them against their will. Can you not go on with undisputed cases?[102]

In short, the Government on that November Sunday afternoon did not really know what to do with the very hot potato Grindell had served up.

The next day, Monday 11 November, the court opened and then adjourned immediately. The ostensible reason was the birthday of the Prince of Wales; the real reason, according to Rogan, was to gain time to obtain McLean's views on the situation.[103] McLean was at this time in Hawke's Bay, but some 30 miles from the nearest telegraph and therefore to all intents and purposes unreachable at short notice. During the day telegrams flowed to and fro as everyone waited for McLean to declare himself.

Rogan telegraphed McLean and had the telegram repeated to Hall. Cooper wired back that the wording of this telegram was not very clear. Was Rogan saying that he was prepared to accept responsibility for continuing with the sitting? Cooper also wanted to know the exact meaning of the words 'There great danger in going on, there is certain death in retreating'. Rogan didn't mean, by any chance, that he was prepared to run the risk of 'actual collision?'[104] Another telegram to Hall followed the same lines as Grindell's telegram of the day before: the opponents of Ngati Raukawa objected to the hearing, wanted an indefinite adjournment and have said they will resort to armed resistance if this is refused. 'The consequences', said Rogan, 'of either course cannot be foreseen by us'. Moreover, there were questions of policy involved that rested with the Government rather than the court. He added that court orders made in the absence of one or other of the parties were unlikely to be respected or produce the desired results, and that the court could not simply refuse to proceed. Good cause had to be shown.[105] Hall telegraphed J D Ormond, Minister of Public Works, that it looked as if the judges wanted to adjourn the hearing but that 'they do not like to take responsibility and throw decision upon Govt'. The cabinet would meet that evening to 'decide the question', but in Hall's opinion the situation at Foxton looked serious, and he thought 'it best to advise postponement of court for a few days to see if excitement calms down'.[106] Accordingly, Rogan and Smith were telegraphed that 'Govt. think it better to have adjournment from day to day or for a few days, in order that Mr McLean may be fully consulted'.[107] McLean was telegraphed, and asked to communicate instructions directly to Foxton.[108] McLean telegraphed Rogan and Smith, stating that the question of an adjournment must be left to the judges.[109] A second telegraph arrived within

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102. Hall to Rogan, 10 November 1872, MA series 13/76, NA Wellington
103. Rogan to Hall, 11 November 1872, MA series 13/76, p 1, NA Wellington
104. Cooper to Rogan, 11 November 1872, MA series 5/2, p 368, NA Wellington
105. Rogan to Hall, 11 November 1872, MA series 13/76, NA Wellington
106. Hall to Ormond, 11 November 1872, MA series 13/76, NA Wellington
107. Hall to Rogan and Smith, 11 November 1872, MA series 13/76, NA Wellington
108. Hall to McLean, 11 November 1872, MA series 13/76, NA Wellington
109. McLean to Rogan and Smith, 11 November 1872, MA series 13/76, NA Wellington

minutes of the first, McLean saying that he was always reluctant to interfere with the court unless there were strong reasons for doing so, and asking for their opinions as to the most 'advisable' course to follow given the present situation. He observed that it would be better for the parties, rather than Grindell, to ask for an adjournment.[110] The same telegrams had been received in Wellington, and Cooper forwarded the gist of McLean's views to Foxton.[111] Kemp telegraphed the Premier, asking that the hearing be postponed, to give him time to 'work upon the thoughts of my tribe', warning that 'I and my tribe will not go into the court to talk'.[112] Young, a Native Department interpreter, arrived in Foxton post-haste from Wellington, and telegraphed Cooper that 'matters appear to be in the same state' and that Wi Parata was 'doing his best to arrange'.[113] The only hopeful note, in a day of confusion, uncertainty, and apprehension, came from Grindell, late in the afternoon. 'Think I perceive symptoms of yielding amongst opposition section and in favour of court'.[114]

The next morning, Hall sent an urgent and, in part, slightly garbled telegram to Foxton, reiterating the advice of the day before. The court should adjourn for 24 hours, to allow McLean to issue 'deliberate instructions by which you will be guided'. This advice followed on from a decision of Cabinet, after consideration of the telegram of the day before, 'in which you appear to throw on us of deciding question of adjournment on the Govt'.[115] McLean also followed up on his messages of the day before. It was difficult, he began, 'for a person who is not on the spot to comprehend all the different phases of the present Manawatu difficulty'. He 'feared' that pressure with regard to the survey, and the making of contracts with Ngati Raukawa, had aroused distrust and suspicion. Under these circumstances, if Ngati Raukawa were the only tribe prepared to take part in the hearing, he thought that proceeding on that basis would make the situation more difficult. He suggested that the judges call a meeting of all the principal men on both sides, to see if some resolution of the opposing viewpoints was possible. 'In the meantime, I consider that the Hon. Mr Hall's suggestion of adjourning the court from day to day a most judicious one'.[116] On receiving this message, Rogan telegraphed Hall that he was 'at a loss for the first time how to act'.[117] Hall replied later that day as follows:

> I can only point out that a temporary delay for which no doubt sufficient reasons can be given to the natives is in case of doubt the safest course. This would afford opportunity for what McLean appears to favour namely an attempt to bring about an understanding or reconciliation out of court before matters are forced further.[118]

Perusal of the communications between Ministers and the judges and Government agents in Foxton on 10, 11, and 12 November 1872 makes it clear that no one could

110. Ibid
111. Cooper to Rogan, 11 November 1872, MA series 13/76, NA Wellington
112. Kemp to Waterhouse, 11 November 1872, MA series 13/76, NA Wellington
113. Young to Cooper, 11 November 1872, MA series 13/76, NA Wellington
114. Grindell to Cooper, 11 November 1872, MA series 13/76, NA Wellington
115. Hall to Rogan, 12 November 1872, MA series 13/76, NA Wellington
116. McLean to Rogan and Smith, 12 November 1872, MA series 13/76, NA Wellington
117. Rogan to Hall, 12 November 1872, MA series 13/76, NA Wellington
118. Hall to Rogan, 12 November 1872, MA series 13/76, NA Wellington

see any certain or safe way out of the impasse that Kemp and Hunia had created: if they did boycott the hearing, as they threatened to do, and it was continued without them, it would be difficult to enforce whatever the court might decide. The Horowhenua dispute would thus remain unsettled. On the other hand, if the hearing was aborted, this would be seen as a backdown by the Government, and it would also leave the opposed tribes in a possibly dangerous confrontation. There were already threats about armed intervention being made. At the very least, withdrawal of the court would halt the process of land purchase. For this reason, Fitzherbert favoured a continuation of the hearing if at all possible.[119] So did Ngati Raukawa. Indeed, they wanted the Government to ignore Kemp and Hunia, and to proceed without them if necessary. McLean and Rogan, however, knew that decisions obtained ex parte would never be accepted, and would simply give rise to further and possibly more violent disputes. Considerations of this kind tended to suggest adjournment, perhaps on a day-to-day basis, and a concerted effort behind the scenes to persuade Kemp and Hunia to accept the court's jurisdiction. When H Wardell, Resident Magistrate Wairarapa, like Grindell, seconded to the provincial government for the duration of the Foxton hearing, heard that McLean was advocating day-to-day adjournment, he wired the provincial government that he thought this was 'very undesirable', and his reason seems obvious.[120] It would lead to the indefinite adjournment that Kemp and Hunia were seeking. In any case, if the hearing were to be adjourned for any length of time, solely at the request of Kemp and Hunia, the prestige of the Government, not to mention the court, would be seriously damaged. Both would lose all credibility with Ngati Raukawa. If in fact a deal could be struck with Kemp and Hunia, and McLean seems to have been the only one who thought this was a possibility, the reconvening court might well be boycotted again, this time by Ngati Raukawa.

Damned if they did and damned if they did not, no one seemed willing to take or advocate a firm stand. Hall left it to McLean. McLean thought it was the responsibility of the judges. Cooper wanted the provincial government's views.[121] Grindell would only act on specific Government instructions. The judges said it was a policy issue, and so a matter for Government decision. In the end, as it happened, the judges were obliged to bite the bullet since they, unlike the others, could not avoid or ignore the situation; nor could they abstain from action.

The Government had said that it was for the judges to decide whether or nor the court adjourned; at the same time the Government's view seemed to have been that the safest course was to allow a temporary adjournment or postponement of the hearing, to allow time for matters to settle.

On 12 November, the court opened again. Kemp made an application for an indefinite adjournment. The three Rangitane chiefs, Peeti Te Aweawe, Hoani Meihana, and Huru, broke ranks, and opposed the application. Rogan refused to grant it. Kemp and his followers then left the court. It was agreed that Ngati Raukawa would commence their case on the following morning. The court then

119. Grindell to Cooper, 11 November 1872, MA series 13/76, NA Wellington
120. Wardell to Superintendent, 12 November 1872, MA series 13/75B, NA Wellington
121. Cooper to Grindell, 10 November 1872, MA series 13/76, NA Wellington

adjourned for the rest of the day. By early afternoon news of these developments had reached the provincial government, and Cooper had been informed as well.[122] Young wrote:

> Kemp on behalf of ngatiapa, rangitane and muaupoko applied this morning in a temperate speech for an indefinite adjournment of court. Peeti Huru and Hoani Meihane chiefs of Rangitane have declared openly in court their intention of going on their own responsibility. Court had decided to go on with case. Kemp states he and his people go away.[123]

By mid-afternoon, Hall had been notified too:

> You will be glad to know that the court decided the important question relating to this court today. Major Kemp appeared, applied for an indefinite adjournment in an orderly and respectful manner. The application was refused, immediately upon which Kemp and party left the court very quietly.[124]

'I accepted', continued Rogan, 'the responsibility thrown upon court by Mr McLean in his telegrams to us in order to leave the Govt free.'[125]

It appears that Hall was not entirely pleased with Rogan's actions, and that some communication to this effect was sent to Foxton. In any event, early on the next day Rogan sent a testy telegram to the Colonial Secretary:

> As on every question coming before it the court must use its own discretion. Judges cannot receive instructions from the govt as to decision of procedure of court. They also decline responsibility for consequences resulting from proper discharge of duty imposed by law. Submitted if govt desire certain course to be adopted its agents should appear and show cause leaving Court to decide after statement of circumstance made in open court.[126]

Rogan went on to add that he and Smith felt they would place themselves in a false position if they held private meetings with the parties, or sought their advice on matters connected with their land disputes, clearly rejecting the suggestion of that kind made by McLean the day before.

On the same morning the court reassembled, and Ngati Raukawa started to present their claim to Kukutauaki. While they did so, McLean and others began to evaluate the new situation, seeking out the dangers, looking for the pressure points that could be exploited to advantage. Wardell reported that, with the exception of Rangitane, the opponents of Ngati Raukawa remained determined. But he was 'quite satisfied no violence will be used to interfere with the business of the court'. However, he had some doubts that a satisfactory judgment would be possible based on the evidence which would be presented. 'Kemp's party will undoubtedly assert

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122. Wardell to Superintendent, 12 November 1872, MA series 13/75B, NA Wellington; Rogan to Cooper, 12 November 1872, MA series 13/76, NA Wellington
123. Young to Cooper, 12 November 1872, MA series 13/75B, NA Wellington
124. Rogan to Hall, 12 November 1872, MA series 13/76, NA Wellington
125. Ibid
126. Rogan and Smith to Hall, 13 November 1872, MA series 13/76, NA Wellington

that their claim has not been heard although it will be a result of their own action.'[127] Grindell telegraphed Cooper that Ngati Kahungunu had decided to participate in the hearing as well; Ngati Raukawa was now faced with two counter-claimants.[128] Wardell notified the provincial government that there was a possibility of an accommodation between Rangitane and Ngati Raukawa, and mentioned that Buckley was going to try and push Ngati Raukawa in that direction. But that was not all. 'If they [Ngati Raukawa] will admit the joint claim of Muaupoko also arrangements may be made much sooner than expected. Buckley pledges himself to endeavour to effect this also'.[129] McLean, for his part, accepted Rogan's fait accompli, especially since Rangitane had agreed to give evidence in opposition to Ngati Raukawa. The hearing would proceed. But he had the same concern as Wardell – what kind of reception would the verdict of the court receive if it appeared to be based on one-sided evidence? Would an ex parte order be enforceable? He thought it advisable that Ngati Raukawa, and especially Rangitane, give their evidence, but that the formal decision of the court then be delayed for three to four months. In his opinion 'the position of the court had been sufficiently vindicated to allow of a reasonable adjournment after the evidence above referred to has been taken'.[130]

McLean's telegram of 13 November was based on the assumption that Kemp and Hunia, having left the court, would remain outside; the situation in Foxton, however, was far from static. Kemp and Hunia had started out with five allies: that had become four, then three. Two days after Rogan had refused the application for an indefinite adjournment, Grindell telegraphed Cooper that the Muaupoko were wavering as well; clearly the three might soon be two.[131] Rangitane and then Ngati Kahungunu had broken with Kemp and Hunia when the latter two had attempted to derail the hearing. This did not mean, however, that Rangitane and Ngati Kahungunu had ceased to oppose Ngati Raukawa. But Rangitane had started almost immediately to seek an accommodation with Ngati Raukawa, an agreement by which each tribe would recognise the claims of the other. On 14 November Wardell reported that the prospect of such an arrangement was 'promising', that Buckley was doing all he could to 'secure that end', and that the court had adjourned early that day, after a joint application by the parties, to allow 'further opportunity' for an arrangement to be reached.[132] Kemp and Hunia were aware that their support was ebbing away; they must also have realised that if Rangitane did manage to reach an agreement with Ngati Raukawa, that tribe's position would be greatly strengthened while their's would be seriously weakened. The views and wishes of McLean and the Government also had to be considered; some of the Pakeha in Foxton, Rogan and Young among them, spoke to Kemp as well.[133] Early on 15 November, Young

127. Wardell to Hall, 13 November 1872, MA series 13/76, NA Wellington
128. Grindell to Cooper, 13 November 1872, MA series 13/76, NA Wellington
129. Wardell to Superintendent, 13 November 1872, MA series 13/75B, NA Wellington
130. McLean to Rogan, 14 November 1872, MA series 13/76, NA Wellington
131. Grindell to Cooper, 14 November 1872, MA series 13/76, p 1, NA Wellington
132. Wardell to Superintendent, 14 November 1872, MA series 13/76, NA Wellington
133. Young to Cooper, 14 November 1872, MA series 13/76, NA Wellington; McLean to Rogan, 16 November 1872, MA series 13/76, NA Wellington

despatched a telegram to Cooper. He thought Kemp's party were coming around, and he recommended that Grindell be instructed immediately to seek a 24-hour adjournment. 'It is very desirable that these people should have another chance'.[134] Grindell was telegraphed, and accordingly sought an adjournment, justified on the ground that it would give Kemp and his party time to make arrangements 'to come in'.[135] Later that morning Young wired Cooper: 'Your telegram came just in the nick of time – everything is all right now. Another days adjournment granted. Kemp and Hunia will come in tomorrow'.[136] The next day, Kemp appeared in court, stating that the tribes he represented would contest Ngati Raukawa's claim, and that he would conduct their case. However, since he had come into the court in a hurry, and was quite unprepared, he sought an adjournment till the following Monday. There being no objections, the court adjourned, but Rogan stated that no more applications of that kind would be granted.[137]

Cooper was advised that all was well. 'Kemp's party have come into Court', and there is 'no appearance of any further complications'.[138] McLean also expressed great satisfaction with developments. His first telegram to Rogan that day was dispatched from Hawke's Bay just before the court convened:

> I believe much good has resulted from your interview with Kemp. I am sending him a telegram which is to be submitted to you before delivery. I am much gratified with the success that has attended your action at Manawatu & trust the results may be satisfactory. The action of the Rangitane chief is most favourable. I am watching with deep interest all that takes place at Manawatu. I am recovering from my illness and enjoying the retirement of country life. We have had splendid showers of rain lately. Vegetation of every kind is abundant.[139]

His second telegram arrived in mid-afternoon, after news of Kemp's appearance in court had been sent to Hawke's Bay:

> I congratulate you most fully on the tact & judgment you have displayed in bringing about such a happy change in favour the court at Manawatu. It is only one of many instances in which your skill & firmness have proved successful. The subject gave me considerable anxiety until the receipt of your last telegram intimating that Kemp & Hunia were preparing to submit their case to the Court. This removes the last difficulty and hope matters will now work smoothly. I expect you will have a long sitting. I am very glad to hear Mr Buckley has been of such assistance in advising the natives to accept adjournment. Will you kindly thank him for what he has done.[140]

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134. Young to Cooper, 15 November 1872, MA series 13/76, NA Wellington
135. Grindell to Superintendent, 15 November 1872, MA series 13/75B, NA Wellington; Wardell to Superintendent, 15 November 1872, MA series 13/75B, NA Wellington
136. Young to Cooper, 15 November 1872, MA series 13/76, NA Wellington
137. 'Copy of Proceedings of Native Land Court at Foxton, November 1872, With Notes of Evidence', MA series 75/8, p 12, NA Wellington
138. Young to Cooper, 16 November, MA series 13/76, NA Wellington
139. McLean to Rogan, 16 November 1872, MA series 13/76, NA Wellington
140. Ibid

On Monday 18 November the court assembled. Kemp had now retained counsel, and wanted the court to reverse its earlier ruling on this question. The Marton lawyer T R Cash appeared, and sought permission to act for Kemp's party. Ngati Raukawa objected, and the application was refused.[141] Hoani Meihana then began to present the evidence of the counter-claimants.[142] The next day Wardell telegraphed Bunney that that all the parties were now present in the court and that the situation was 'very satisfactory'.[143]

There is a good deal in the working out of this sequence of events to interest historians. Grindell became convinced, quite quickly, that Kemp and Hunia would start fighting if the court did not adjourn. Around 12 November it became apparent that the reason for this belief was an inflammatory letter, purportedly written by Kemp.[144] Kemp disowned the letter at this stage, and Rogan for his part felt that Grindell had over-reacted; panic is in fact the word he used.[145] Grindell said, after the event, that 'I never for a moment believed he [Kemp] intended to proceed to extremities and I told Mr Rogan so – intimidation and obstruction are his game.'[146] This does not quite fit the tone of the telegrams out of Foxton at the time and, panic or not, the facts are that no one, with the possible exception of Wi Parata, doubted that a crisis existed, Hall and McLean both accepting that the situation looked serious enough to justify 'day-to-day' adjournment. This underlines the observation Hall made at an early stage: the Government could not force the court upon Maori if they were determined to oppose it.

The situation began to turn around when Rogan rejected Kemp's application for an indefinite adjournment; all the European observers agreed about that. The fact that Rangitane opposed this application, and thereafter took an independent line, was noted, but not considered to have the same importance as Rogan's 'firmness'. In retrospect, however, this defection from Kemp's party, followed by the attempt to reach an accommodation with Ngati Raukawa, seems to have been the pivotal event; the development which above all others opened Kemp and Hunia to Pakeha persuasion to 'come in'. Rogan, indeed, had heard reports that the Rangitane chiefs might be going to defect before Kemp came into the court to apply for an indefinite adjournment. He had pointed out to Hall that if these reports were true, it would leave 'the opposition rather in the lurch'.[147] If Rangitane had gone out with Kemp, and left the hearing court an entirely one-sided affair, no amount of judicial 'firmness' would have saved the Foxton sitting; indefinite adjournment would have been inevitable. And if Kemp had been able to keep his allies in line, it would in all probability have taken inordinate amounts of Pakeha persuasion to get him to accept the court. In short, there was a good deal of manoeuvring in and around the Foxton court in pursuit of Maori agendas successfully by Rangitane; possibly less successfully by Kemp and Hunia. Some of this manoeuvring, happily for Grindell,

141. Otaki Native Land Court MB 1, 18 November 1872, p 19
142. Young to Cooper, 18 November 1872, MA series 13/76, NA Wellington
143. Wardell to Bunny, 19 November 1872, MA series 13/75B, NA Wellington
144. Young to Cooper, 12 November, MA series 13/76, NA Wellington
145. Rogan to Hall, 14 November, MA series 13/76, NA Wellington
146. Grindell to Superintendent, 14 November 1872, MA series 13/75B, pp 3–4, NA Wellington
147. Rogan to Hall, 12 November, MA series 13/76, NA Wellington

Rogan, and McLean, coincided with Pakeha objectives, and this allowed the court to regain a measure of control over the situation.

During the latter half of November 1872 telegrams continued to flow from Foxton, conveying now a picture of confident Pakeha control of the situation. Rogan telegraphed Cooper that 'everything here is progressing to my extreme satisfaction'.[148] A day or so later he commented that it would be inadvisable to attempt to curtail the presentation of evidence by the different parties. So 'I see a long period of apparent attentive listening before us which must be submitted to'.[149] The plan was to hear the tribal claims to Kukutauaki first, 'then will come the grand battle over Horowhenua and one or two other places which when decided will in fact determine all other cases quickly in this court'.[150] A week or so before Rogan had pointedly told Hall that the judges were not the servants of the Government. Now he suggested to Cooper that he (Cooper) accept appointment as a Native Land Court judge, so he and Rogan could consult 'without being attacked about court etiquette and all that.'[151] Cooper wired back that it would be impossible for him to spend an extended period of time in Foxton, so acceptance of a judgeship was out of the question. But consultation would not be a problem: 'we can confer confidentially by wire'.[152] The need to confer privately was mentioned again, this time in a telegram to McLean in early December. Rogan hoped to see McLean in Wellington, after the court had adjourned, because he needed, he said, to talk 'confidentially on several matters I cannot explain now'.[153] Again, in mid-November Rogan had insisted that adjournments of the court were procedural matters, for the determination by the judges alone. If the Government wanted an adjournment, he said, 'its agents should appear and show cause leaving Court to decide after statement of circumstance made in open court'.[154] By late November, however, he appeared quite willing to raise the question of adjourning the hearing with Cooper, McLean, and others, although, to be fair, there was a general consensus in Foxton, among all the European observers, that when the evidence had all been presented an adjournment would be welcome.[155] The natives were 'tired', Buckley said, and without food.[156] The desire for an adjournment seemed general, reported Wardell, both sides wanting to get their crops in.[157] Rogan himself was 'nearly exhausted'.[158] McLean had already pointed out that it was 'customary' for the court to adjourn, and take time to consider its decision.[159] Adjournment would, of course, delay land sales, and Fitzherbert was opposed. He

148. Rogan to Cooper, 21 November, MA series 13/76, NA Wellington
149. Rogan to Cooper, 23 November 1872, MA series 13/76, NA Wellington
150. Ibid
151. Ibid
152. Cooper to Rogan, 23 November 1872, MA series 13/76, NA Wellington
153. Rogan to Cooper, 5 December 1872, MA series 13/76, NA Wellington
154. Rogan to Hall, 13 November 1872, MA series 13/76, NA Wellington
155. Rogan to Cooper, 2 December 1872, MA series 13/76, NA Wellington; Rogan to Hall, 3 December 1872, MA series 13/76, NA Wellington; Young to Cooper, 5 December 1872, MA series 13/76, NA Wellington
156. Buckley to Superintendent, 4 December 1872, MA series 13/75B, NA Wellington
157. Wardell to Superintendent, 5 December 1872, MA series 13/75B, NA Wellington
158. Rogan to McLean, 5 December 1872, MA series 13/76, NA Wellington
159. McLean to Rogan, 23 November 1872, MA series 13/76, NA Wellington

approached the Premier, but Waterhouse said he would not interfere. He did recommend, however, that any adjournment be 'for as short a time as possible.'[160]

8.6 1873: KUKUTAUAKI JUDGMENT

The judges heard evidence until early December. When all the parties had completed their cases, the court adjourned on 9 December 1872 until 4 March 1873, on which date the decision on Kukutauaki was handed down. Ngati Raukawa had claimed Kukutauaki on the basis of conquest, and then occupation at the time the Treaty of Waitangi was signed. Their opponents denied that conquest had occurred, and counter claimed on the basis of ancestral right, and continued possession.

In April 1868 the Native Land Court had accepted, in the Himatangi judgment, that Ngati Raukawa had come into possession of the Rangitikei–Manawatu district after the resident tribes, weakened by the depredations of Ngati Toa, had been 'compelled to share their territory with [Ngati Raukawa].' This appeared to be an acceptance of Ngati Raukawa evidence that the original owners of the Rangitikei–Manawatu district had been conquered and dispossessed before 1840, the land thereafter being in the possession of, and occupied by, Ngati Raukawa. However, at the same time the court found that Ngati Apa had an equal claim or title to the land, on the grounds that 'the evidence shows that the original owners were never absolutely dispossessed, and that they have never ceased on their part to assert and exercise rights of ownership.'[161] When this decision was relitigated, in September 1869, much the same evidence being presented, the court reversed itself on one key point: there had been no Ngati Raukawa conquest of Rangitikei–Manawatu. Nor had Ngati Toa conquered, or made allocation of these lands, not having 'ever acquired the right to do so'.[162] Rather, certain Raukawa hapu had more or less been invited to occupy land or, in one case, had simply moved in and settled down. With the passage of time, these hapu, but not Ngati Raukawa as such, had acquired the rights of owners, equally with Ngati Apa.

Buick, in commenting on the 1868 judgment, argued that it invented a form of land tenure, namely joint ownership by separate tribes 'utterly foreign and repugnant to their whole system'.[163] It is possible Buick followed Hadfield in this matter, and Hadfield's view was 'that the right of each tribe to lands extends over the whole of the tribal territory, and entirely precludes the right of any other tribes over it'.[164] Other authorities, however, pointed out that there were often debatable lands, to which more that one tribe laid claim.[165] Spain argued that occupancy constituted a claim to land which should be given precedence over claims, by non-residents, of

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160. Waterhouse to Rogan, 4 December 1872, MA series 13/76, NA Wellington
161. T L Buick, *Old Manawatu or the Wild Days of the West*, Palmerston North, Buick and Young, 1903, p 242
162. *Important Judgments Delivered in the Compensation Court and Native Land Court 1864–1879*, Auckland, 1879, p 106
163. Buick, p 245
164. 'Opinions Relative to Native Tenure', AJHR, 1861, E-1, p 9
165. Ibid, p 5

rights based on conquest.[166] The question of joint ownership to one side, the other feature of the 1869 decision was, of course, that it denied the great historical fact of Ngati Toa conquest. Buick also noted that European testimony, which had been permitted at the first hearing, and which tended to favour Ngati Raukawa, was excluded from the second hearing, only evidence from Maori sources being admitted.[167] Since this evidence came from two diametrically opposed directions, the effect, perhaps, was to leave the court in the position of being able to find among the statements made grounds to justify or support whatever decision it cared to make. Buick considered the language of the 1869 judgment to be in part 'ill-chosen and inconsistent if not actually biassed',[168] and he suggested that Ngati Raukawa, in arguing their case, had not only Ngati Apa to contend with but also 'whatever influence the Governor, the Government, and the Superintendent could exercise'.[169] Buick, indeed, invites his readers to consider whether this was not a political judgment, framed with more regard for the preservation of the European purchase of the Rangitikei–Manawatu district, and Featherstone's reputation, than for historical facts, let alone any considerations of justice for Ngati Raukawa.[170]

In the case of Kukutauaki, the court once again rejected conquest as a basis for title. It did accept that Ngati Raukawa had obtained rights over the land which 'constitute them owners thereof', but these 'rights were not acquired by conquest, but by occupation, with the acquiescence of the original owners.' These rights had been established by 1840, when Ngati Raukawa had been 'in undisputed possession'.[171] There were some qualifications noted: Ngati Raukawa shared its title with Ngati Toa and Ati Awa, which had already been admitted by Ngati Raukawa, and ownership of the block by these three tribes was not total – the Muaupoko at Horowhenua and the Rangitane at Tuwhakatupua were found to have ownership rights. This was also admitted by Ngati Raukawa, with the proviso that the extent of these rights, in both cases, had yet to be settled. The court's ruling with respect to these two exceptions was based on the same grounds that had been advanced to justify Ngati Apa's claim north of the Manawatu River, namely that the original owners were never absolutely dispossessed, and had never ceased to assert and exercise rights of ownership over the land. However, on this basis, three of the other counter claimants – Ngati Apa, Whanganui, and Ngati Kahungunu, were excluded, other than via any connection they might have with the Muaupoko at Horowhenua. Similarly, members of Rangitane, the other counter-claiming tribe, could only claim an interest via relationship with either the Tuwhakatupua Rangitane or the Muaupoko at Horowhenua. This was because the Rangitane tribe, with the exception of that section of the tribe that was resident at Tuwhakatupua, was excluded as well. This finding, of course, was similar to that delivered in 1869, namely that certain

166. Ibid, p 7
167. Buick, p 246
168. Ibid, p 260
169. Ibid, p 265
170. Ibid, p 267
171. *Important Judgments Delivered in the Compensation Court and Native Land Court 1864–1879*, Auckland, 1879, p 134

resident hapu of Ngati Raukawa, but not the tribe as a whole, had acquired ownership rights over land at Himatangi.

It was clear, after the judgments on Himatangi, and particularly the 1869 judgment, that claims of landownership based on the conquest would only succeed if the conquest of the lands in question had been total and complete, that is, there must be no survivors. From this point of view the deficiency in Ngati Raukawa's conquest, both north and south of the Manawatu, would always be the fact that some of the dispossessed tribes still lived within their original tribal boundaries. After the arrival of Ngati Raukawa, or perhaps the key event was the earlier arrival of Ngati Toa, these people were said by Ngati Raukawa to have been slaves or persons who lived on the land only with the permission of Ngati Raukawa. But by the 1860s the coming of Christianity, the establishment of European Government, and the need to employ Maori forces on the European side during the fighting in Taranaki, Wanganui, and the East Coast, had changed the status of these dispossessed tribes. Now they were seen both as loyal subjects of the Queen and as residents on and occupiers of the land. On the former ground they claimed the good will of the Government; the latter circumstance made it possible for them to argue plausibly that they had always resisted Ngati Raukawa encroachments on their land, their very existence being proof of this.

Arguably the first Himatangi judgment showed a court trying to reconcile conquest and occupancy as competing grounds for landownership. The second shows a court prepared to deny well-established historical fact in order to establish occupancy as the primary grounds on which ownership would be established. There is reason to suspect that this judgment was framed in that particular way to justify the disregard that had been shown for Ngati Raukawa during the purchase of the Rangitikei–Manawatu district. Be that as it may, it created a precedent that could be followed by later courts that found themselves faced with competing claims, from tribes or sections of tribes who were indisputably residents of the land in dispute.

While it is possible to read the evidence presented to the court at Foxton in November and December of 1872 on which the Kukutauaki decision was presumably based, it is impossible to form any opinion on the reactions of the judges to it. Rogan talked of a long period of apparent attentive listening, suggesting that the taking of evidence may have been a kind of charade, leading to a pre-determined conclusion. Towards the end of the hearing, Rogan expressed the need to talk confidentially with McLean on several matters. It is a reasonable inference that one of these matters was the shape of the impending judgment. In terms of what was politically possible, it would have been difficult for the court at Foxton to have found that Ngati Raukawa's claim to the west coast was based on conquest, since this would have been tantamount to admitting that the court's 1869 finding on Himatangi had been questionable, if not wrong. The more immediate result, in 1873, however, would have been the complete undermining of the west coast residents who opposed Ngati Raukawa's claim. While Ngati Raukawa had no stated intention of immediately and forcibly removing either the Tuwhakatupua Rangitane or the Horowhenua Muaupoko, the awarding of a title based on conquest would have given Ngati Raukawa the legal right to send them packing if they felt so disposed. More

importantly, it would have given Ngati Raukawa the right to sell the land at Tuwhakatupua or Horowhenua if, or when, they were of a mind to do so. Thus, while a decision in favour of Ngati Raukawa on the grounds of conquest would not lead to immediate dispossession of any non-Ngati Raukawa residents, dispossession at some stage was likely. It is quite clear that one of the objectives being pursued on the west coast during the early 1870s was resolution of the tribal disputes that had flared up on several occasions within recent memory, and it is reasonably to suppose that the court had some awareness of the need to do what it could to help pacify rather than inflame the district. Thus the Ngati Raukawa claim of conquest, which would have greatly increased the risk of tribal warfare in Kukutauaki, and which may also have raised embarrassing questions about the Rangitikei–Manawatu purchase, was rejected. Ngati Raukawa, none the less, were awarded the lion's share of the land, on the basis that they occupied the land in question, and had done so since at least 1840. At the same time other much smaller awards, intended to be contiguous with land actually occupied, were made in favour not of the counter-claiming tribes, but of those sections of these tribes that resided on the lands in questions. At the Horowhenua Commission hearing, Alexander McDonald remarked that in 1873 the:

> Native Land Court followed its usual practice of providing for any persons of the original tribe who clung to the land and remained on it notwithstanding the incursion and overwhelming strength of the incoming tribes.[172]

Many may have felt aggrieved by the equating of simple residency with ownership, but few seem to have seen in it sufficient grounds for war.

Yet while the Kukutauaki decision contained a large measure of justice, and some commonsense, it does appear to be a contrived judgment, based on a far-fetched interpretation of the historical evidence. To say that the original inhabitants of Kukutauaki were never conquered seems wrong; to say that Ngati Raukawa did not conquer the land may be historically correct; to say that they occupied the land with the 'acquiescence of the original owners', is, however, to deny the historical realities.

Travers, in 1871, had taken evidence very similar to that presented at the Foxton hearing, and his finding was that the Muaupoko, Ngati Apa, and Rangitane together, let alone singly, had not been able to offer effective resistance to Te Rauparaha and his allies. Further, if Te Whatanui had not offered the Muaupoko Ngati Raukawa's protection, they would have all been killed. If the Muaupoko were, at that point in time, on the verge of extinction, and so sorely in need of shelter, did they need further conquest? And if Te Whatanui could bar the door at Horowhenua against Te Rauparaha, in what sense did he or his tribe need the 'acquiescence of the original owners' to the occupation and settlement of any Muaupoko land? While the Native Land Court supposedly employed the 1840 rule, and appeared to do so at Foxton, it seems clear that in the case of the Kukutauaki decision the pattern of tribal power and residency that had come into existence by 1872 was a far more compelling

172. Horowhenua Commission, Alexander McDonald, 13 March 1896, AJHR, 1896, G-2, p 72

influence on the court than the tribal situation that had existed in 1840. So the latter was distorted to fit the realities of the former.

Kemp's reaction to the judgment was recorded by Grindell: 'Kemp turned pale and trembled when decision given but neither party spoke a word. Expect some protest perhaps threats but do not apprehend anything serious'.[173] The next day, and on the following day, Cash, now apparently able to act for the counter-claimants, successfully sought adjournments, so his clients could consider the judgment and consult among themselves. On 10 March Cash came into the court to state that the counter-claimants intended to ask for a rehearing. Buckley, on behalf of Ngati Raukawa, asked for an order defining the boundaries. Cash took the position that since an application for a rehearing was to be made, there should be no further proceedings. Buckley countered by asking the court to issue a certificate of title. Cash then stated that if the court proceeded in the direction requested, his clients would take no further part in the proceedings. The court ruled that since the claim was only partly heard, neither party was in a position to pursue applications either for a rehearing or a certificate of title. Rogan then indicated that the court would hear evidence concerning the boundaries of Horowhenua. Cash responded that his instructions allowed him to continue no further.[174]

The court suggested that he consult with his clients again, and adjourned for this purpose. The next day, on 11 March 1873, Cash came into the court to say that his clients wished to continue with their application for a rehearing, and were not prepared to assist the court in defining the boundaries of the two blocks excepted. He suggested that while he was not in a position to continue, the court could proceed, and that Kemp was available. Kemp was then invited to make a statement on the boundaries of the Horowhenua block. When he concluded, the court announced its intention of proceeding with evidence on this matter. Kemp and his party then withdrew from the court. The Horowhenua claim was then called, but in the absence of a map, the court adjourned until 2 pm. At that time, the court resumed, and Ngati Raukawa began to present evidence, conceding at the beginning that Muauapoko had a claim, and defining that claim in terms of the boundaries originally laid down by Te Whatanui. The next day, 12 March 1873, the court suggested that it would be willing to make an order granting Ngati Raukawa the title to Kukutauaki, excluding the Horowhenua block, the proportional ownership of this block having yet to be settled. This arrangement was intended to allow everyone else to get on with their business; it was not intended either to indicate that all of Horowhenua belonged to Muaupoko, or where the boundaries of their portion lay. This proposal was acceptable to Ngati Raukawa, and an order was accordingly made.[175]

173. Grindell to Superintendent, 4 March 1873, MA series 13/75B, NA Wellington
174. Otaki Native Land Court MB, 1, 10 March 1873, p 182
175. Grindell to Superintendent, 10 March 1873, MA series 13/75B, encl, NA Wellington

8.7 CROWN LAND PURCHASES 1873 TO 1881

The Wellington provincial government wished to acquire land along the west coast; to this end Grindell had been sent to encourage and persuade the tribes to make applications to the Native Land Court for investigation of their claims, and then given the task of managing the prerequisite surveys. In November, on the eve of the sitting, Fitzherbert issued definite instructions covering the land to be purchased: 'I am very anxious at least to obtain 250,000 acres in a block, extending from the top of the Tararua Ranges to a roadway marked on the tracing with which you will be furnished.'[176] Since the area of the land between Waikanae and the Manawatu was said to total between 400,000 and 500,000 acres, the province, in effect, was instructing its agents to negotiate the purchase of at least half of the available land along the coast, in a single large block stretching along the eastern side of road planned to link Wellington and the Manawatu, the price to be offered for this land being set at between 1s and 1s 6d per acre.[177] The land on the western side of the coast, between the road and the seashore, was to be left in Maori hands.

Fitzherbert was also willing to make it a condition of sale, assuming the land was obtained in the desired location and in the quantity specified, that a sum equal to half of the purchase price would be expended on road building within 12 months of purchase. 'You will not fail to point out to them that the construction of such a road will greatly enhance the value of the remainder of their estate lying on the seaward side of the main line'.[178]

The budget for this land-buying exercise was to be £30,000.[179] The general government was approached to provide this sum, but Hall expressed doubts that the province would be able to purchase the amount of land in question, alluding, apparently, to the possibility that private agents might be able to outbid the provincial agents. The Government was prepared to advance £10,000, but would not provide additional funds until land had actually been purchased.[180] But, without money in hand land could not be purchased, so the provincial government approached the Loan and Mercantile Agency Company for a loan, to cover the £20,000 shortfall. The terms on which this loan was made seem to have created some pressure on the provincial government to effect purchases quickly, explaining, for example, Fitzherbert's opposition to the December adjournment of the court.[181] It also explains the unsuccessful efforts of the provincial government to obtain, in December 1872 to January 1873, reimbursement from the general government for the provisions it had supplied in Foxton.[182] The province was short of cash, and the sense of urgency this engendered was communicated, in turn, to the men on the spot in Foxton. Grindell's instructions, for example, included the statement that 'any

176. Superintendent to Grindell and Wardell, 4 November 1872, WP series 6/8, pp 46–47, NA Wellington
177. Ibid, p 46
178. Ibid
179. Fitzherbert to Hall, 2 November 1872, WP series 6/8, p 45, NA Wellington
180. Fitzherbert to Hall, 12 November 1872, WP series 6/8, pp 54–55, NA Wellington
181. Fitzherbert to Loan and Mercantile Agency Company, 13 December 1872, WP series 6/8, pp 86–87, NA Wellington
182. Fitzherbert to Waterhouse, 19 December 1872, WP series 6/8, pp 94–95, NA Wellington; Fitzherbert to Hall, 9 January 1873, WP series 6/8, pp 106–107, NA Wellington

steps which you may in your discretion think proper to take in furtherance of the above objective will receive the sanction of the Prov Govt'.[183]

The general thrust of Fitzherbert's instructions were apparently much to Grindell's liking. Later that month, after the initial excitement at Foxton had settled, he wrote to Fitzherbert:

> I have set my heart upon obtaining this district for the Province. I have used every means in my power from the commencement to further that object, and am now quietly pulling the strings in the back ground to prevent the proceedings of the Court from being stayed. I trust I may not be thwarted.[184]

However, the long duration of the first session, then the adjournment in December for several months, prevented rapid progress. In mid-December Grindell reported, in fact, that no progress had been made, although a respectable sum had been spent on advances in the form of provisions. He and Wardell had done their best to keep expenditure of this kind as low as possible, 'but the demand for aid, especially on the part of the Ngatiraukawa has been incessant'.[185]

In March 1873, the nature of the judgment created an unforeseen problem. The boundaries of the block at Horowhenua that would eventually go to Muaupoko would intersect the boundaries of the land the province had its eyes on. Thus, these boundaries would have to be established before negotiations could be begin. Secondly, the admission of Muaupoko meant that Grindell would have to begin again the tiresome process of negotiating with two separate parties on either side of a common boundary.[186] The possibility of a rehearing was a cause for concern as well, since no land could be purchased in the interim.[187] The certificate of title granted to Ngati Raukawa on 12 March was a more encouraging development, since this opened the way for the purchase of a good deal of the land sought by the Province. None the less, Grindell advised caution. The situation in Foxton was delicate. Kemp's party were still seeking a rehearing of the whole case. Under these circumstances, any attempt to buy land from Ngati Raukawa would create serious difficulties. However, he had no doubt that in the end a very satisfactory arrangement would be concluded. In the meantime, he was proposing:

> to go about for a time amongst the Natives and endeavour to make some preliminary arrangements as to boundary line of block to be sold etc, and also to ascertain the views and general feelings of the natives.[188]

Before Grindell could start laying the groundwork for the purchase of the 250,000-acre block, however, yet another difficulty emerged. Grindell was under the impression that Ngati Raukawa intended to apply for a single tribal title to the vast area of land the province required, subdividing along hapu lines only land to the

183. Superintendent to Grindell, 4 November 1872, WP series 6/8, p 46, NA Wellington
184. Grindell to Superintendent, 14 November 1872, MA series 13/75B, p 8, NA Wellington
185. Grindell to Superintendent, 12 December 1872, MA series 13/75B, pp 1–2, NA Wellington
186. Grindell to Superintendent, 4 March 1873, MA series 13/75B, NA Wellington
187. Grindell to Superintendent, 10 March 1873, MA series 13/75B, p 2, NA Wellington
188. Grindell to Superintendent, 13 March 1873, MA series 13/75B, p 2, NA Wellington

west of the proposed road. But, he reported, 'the various hapus are now going in for their separate claims, as shown on the map, from the beach to the summit of the hills'.[189] The danger now was of:

> private speculators coming in and making offers which would embarrass the Government and cause vexatious complications. The only course which I can see to prevent this is to make advances on the various blocks as they pass the Court, each set of grantees executing a Deed which would give the Government a lien on the land, leaving the purchase to be completed at leisure afterwards.[190]

Grindell was still very uneasy about what the effects of making advances to Ngati Raukawa would be on Kemp's party, suggesting that they might say that the Government had prejudged their application for a rehearing. However, he consoled himself with the thought that if the Government did not make advances on the land, private parties would do so, and the result would be the same. Moreover, even if a rehearing was granted, he thought it quite inconceivable that the original judgment would be overturned.

If liens were to be obtained as land passed through the court, the court had to continue to sit. In April, after the Horowhenua judgment was handed down, Grindell had to scurry to prevent adjournment. Then he had to intervene, on behalf of some hapu as well as in his own interest, to prevent Smith making out certificate of title in favour of the tribe, rather than to lists of owners. Certificates in the tribe's names would have made the land, under section 17 of the Native Lands Act 1867, inalienable until subdivided.[191] The court continued to sit, and to issue titles of a kind that made purchase negotiations feasible, but Grindell's frustration did not abate. While he made some progress, it was a slow business, 'owing to the impossibility of getting the natives to agree about their boundaries, and disputes as to what names should be inserted in the grants'.[192] There were also problems to do with the prices being offered, and indications that some hapu intended to hold onto their land, in order to obtain a better price when the proposed road was completed. Fitzherbert's response was that if the province could not get the land it wanted, there would be no road. 'If they are too greedy they will probably lose all. Ought to be content with the enhanced price which road will confer on seaward portion. Am firm with respect to not making road.'[193] At this stage (April), Grindell was negotiating liens on Muhunoa (11,734 acres), Ohau (13,950 acres), Ohau 2 (750 acres), and Waikawa 1 and 2 (20,270 acres). Fitzherbert cannot have been too pleased when he received Grindell's report, to discover that after almost six months, not an acre of ground on the west coast had actually been purchased. By the end of April, Grindell had obtained liens on Manawatu–Kukutauaki no 2 (65,000 acres), Manawatu–Kukutauaki no 3 (11,550 acres), and had partly executed liens on Manawatu–Kukutauaki no 7A, B, and C (2226 acres), and Manawatu–Kukutauaki no 4A, C, and

189. Grindell to Superintendent, 17 March 1873, MA series 13/75B, p 2, NA Wellington
190. Ibid
191. Grindell to Superintendent, 9 April 1873, MA series 13/75B, p 2, NA Wellington
192. Grindell to Superintendent, 21 April 1873, MA series 13/75B, p 1, NA Wellington
193. Fitzherbert to Grindell, 10 April 1873, WP series 6/8, p 210, NA Wellington

D (12,670 acres). He also expected to obtain liens on Manawatu–Kukutauaki no 4B and E, and on substantial blocks at Ohau and Muhunoa in the near future as well. This was an improvement, but it meant that the province so far had a possible lock on only 76,500 of the 250,000 acres it wanted. There was a hint, as well, that even these arrangements were not completely settled, Grindell remarking that he had arranged with the sellers to settle the boundaries of the land to be sold at a later date since 'it would be impossible to determine that question during the sittings of the Court – it will require time and patience'.[194]

It seems that the buyer's market evident in the early spring of 1872 had dissipated by the late summer of 1873, and that there was now a reluctance to complete sales already negotiated, or to sell the better land along the coast.

The objective Grindell had set his heart on, the acquisition of the coast for the province, seemed to be slipping through his fingers, obstacles and delays being thrown up at every turn. The frustration evidently became too hard to bear: there was a drunken scene with Rogan, and Grindell was suspended by the general government.[195] The provincial government was less willing to dispense with his services, but eventually did so.[196]

In June Wardell was sent to continue the land purchasing programme. He was instructed to avoid doing anything with respect to the blocks for which Grindell had been negotiating, but reported that this was impossible: 'the whole must be dealt with by one person'.[197] He was offered several small, isolated, blocks, but turned the would-be sellers down for the time being, considering it better to wait and secure the larger blocks first. He was, he said, approached for advances on land that was passing through the Waikanae court, but had declined to make any advances unless the final price, and the area to be sold, were settled first. His reason was that:

> I found that . . . those to whom advances had been made by Mr Grindell expressed themselves resolved to sell only the mountains reserving all the available land to themselves and in one or two instances had had the lands from the mountains to the sea made inalienable.[198]

However, he did report that he had made some small advances here and there, including some on reserved lands.

Sometime about the middle of 1873 J W Booth, a land purchase officer in the Native Department, and also Resident Magistrate, Wanganui, was given responsibility for land purchases along the west coast. A good deal of the land had by that time passed through, or was in the process of passing through, the court, acquiring in the process a name, a set of owners with a certificate of title, a specified acreage, a set of boundaries, and a surveyor's map, although the last four seem to have sometimes followed on after the naming of the block and the listing of its

194. Grindell to Superintendent, 24 April 1873, MA series 13/75B, p 4, NA Wellington
195. Rogan to McLean, 3 May 1873, WP series 4/86, NA Wellington; Reynolds to Superintendent, 6 May 1873, WP series 4/86, NA Wellington
196. Bunny to Grindell, 10 May 1873, WP series 9/6, p 34, NA Wellington; Cooper to Rogan, 10 May 1873, MA series 5/2, p 665, NA Wellington
197. Wardell to Superintendent, 10 June 1873, MA series 13/75B, p 5, NA Wellington
198. Ibid, pp 5–6

owners. The subdivision of Kukutauaki continued in this way on into the 1880s, by which time there were over 100 named blocks.

Between 1874 and 1881, Booth purchased 51 of these blocks, or around 157,085 acres: 32,233 acres in 1874; 42,543 acres in 1875; 26,604 acres in 1876; 1250 acres in 1877; 9761 acres in 1878; 4025 acres in 1879; and 42,669 acres in 1881. If the 103,000-acre Tararua block, purchased in 1873, and extending across the ranges between the Wairarapa district and the west coast is included, the final total was over 250,000 acres, the amount of land that Fitzherbert had specified in 1872 as the provincial government's objective.

Fitzherbert had expected that the land would be obtained in a matter of months: it had taken almost a decade. While the purchases did tend to lie on the eastern side of the district, as Fitzherbert had wanted, they by no means extended in a single large block from north to south. At Horowhenua, Maori land extended from the mountains to the sea. Further south, at Ngarara–Waikanae, the coastal land and much of the interior remained in Maori hands. The objective of linking Wellington with the northern settlements, by transport systems running across a strip of Pakeha-owned land, had yet to be achieved.

Fitzherbert had set the average price to be offered for land at between 1 shilling and 1s 6d per acre. Most of the land purchase by Booth exceeded these parameters. Manawatu–Kukutauaki 3, for example, was purchased in 1875 for 2.7 shillings an acre; a number of blocks in Manawatu–Kukutauaki 2, totalling over 41,425 acres, were purchased in 1881 for 5.8 shillings an acre. The three blocks making up Manawatu– Kukutauaki 7 sold in 1876 for 8.4 shillings an acre. A number of other blocks were purchased by Booth for between 3 shillings and 4 shillings an acre: parts of Manawatu–Kukutauaki 4, Muhunoa 3 and 4, some Ngakaroro blocks, Ngawhakangutu 2, Ohau 2, some sections of Pukehou 4 and 5 and some of the Waihoanga blocks as well. Totara 3 fetched over a guinea an acre, and Wahaotemarangai 1A, one of two small areas Booth purchased in 1885, around 24 shillings an acre.

In July 1871, James Mitchell, then district surveyor, prepared a report on northern Kukutauaki, block by block.[199] Manawatu-Kukutauaki 7 he described as about two-thirds good land, some sections being worth as much as £2 an acre, the inferior sections being worth perhaps 7.5 shillings an acre. This block was purchased, in three equal subdivisions, for 8.4 shillings an acre. Manawatu–Kukutauaki 4 was described by Mitchell as being, on the east 'fair average bush land', and nearer the mountains as land with 'indifferent soil' and timber of inferior quality. The land towards the coast, apart from some small flats, was worth about 7.5 shillings an acre. Booth purchased a number of blocks of Manawatu–Kukutauaki 4 at an average price per acre of 3 shillings, the block by block prices varying by only small amounts.

If Mitchell can be taken as a reliable source of information about the value of land along the west coast in 1871, then Booth generally seems to have offered less than the land appeared to be worth, although rather more than Fitzherbert had instructed

199. J Mitchell, 'General Description of Native Lands Situated Between the Manawatu River and the Northern Boundary of the Wainui–Wharerou Purchased Block, July 1871', MA series 13/75B, NA Wellington

Grindell to offer. On the other hand, there seems to have been no compulsion on the sellers to accept Booth's initial offer. For example, in 1877 he appears to have offered the owners of Pukehou 5A about 1.2 shillings an acre for a block of 5600 acres. They wanted, however, another sixpence an acre, which Booth said he did not feel justified in advancing, and a reserve of 2000 acres.[200] When the sale of this block was completed in 1878, the area sold was 3400 acres, which suggests the owners got the reserve they wanted. The price per acre was 3.9 shillings, which seems to indicate that they got more than their original asking price as well.[201] The owners of Ngakaroro 1C were offered 4 shillings an acre in 1876; they apparently wanted 5 shillings.[202] When the sale was completed in 1879, the yield per acre was 7.7 shillings, suggesting that Booth had had to considerably increase his initial offer before it was accepted.[203] There are also cases like Totara 3. Mitchell described this as 10 shillings land – Booth paid more than twice that amount for this block in 1876.[204]

Little is known about the negotiations associated with the purchase of these blocks, although Booth did report that the sellers had been allowed to have whatever reserves they had asked for, which they had always chosen close to their settlements; that private speculators had made, according to Booth, unsuccessful attempts to buy or lease land along the coast, and that the number of owners per block and the need to get all their signatures on the deeds made for 'considerable labour'.[205] If the date on which a certificate of title was issued is taken as the likely date for commencement of negotiations, and the date of the land deed as the concluding date, then of 36 purchases for which both dates are known five were completed in less than a year. At the other extreme, negotiations over the sale of five other blocks took more than eight years to complete. However, these last five blocks do seem to have been exceptions since over half (22) of the 36 blocks in question were acquired after negotiations of less than two years, and nine more were acquired after negotiations extending from just over two years to just over three years.

Obviously a good many things could influence the speed of these negotiations: disagreement among the sellers, the need to settle boundaries, acreage, and price, the need to schedule meetings between the sellers and the land purchase agent, the priority the agent gave to the purchase of the block in question, the need to collect signatures once agreement had been reached, and so on. If national data were available, it might be possible to compare these west coast sales with sales in other districts, but in the absence of data of this kind all we can say is that most Crown purchases along the west coast during the decade 1874 to 1884 seem to have been

200. 'Purchase of Land from the Natives', AJHR, 1877, G-7, p 20
201. 'Return of Land Purchased and Leased or Under Negotiation in the North Island', AJHR, 1885, C-7, p 14
202. 'Purchase of Land from the Natives', AJHR, 1877, G-7, p 20
203. 'Return of Land Purchased and Leased or Under Negotiation in the North Island', AJHR, 1885, C-7, p 14
204. Ibid, p 13
205. Booth to the Under-Secretary Native Department, 30 June 1876, 'Purchase of Land from the Natives', AJHR, 1876, G-5, p 12, no 8

concluded within a relatively short, but possibly not unreasonably short, span of time.

Grindell had reported in 1873 that there was a general willingness to sell land and quite large amounts were purchased in 1874, 1875, and 1876. In 1877, however, a sharp drop in the amount of land purchased occurred, and for the next three years the amount of land acquired remained low. In his 1877 report Booth explained this marked slow-down in two ways. Firstly, he had many other duties to perform, and this meant that he could not give his full attention to land purchasing. The second reason was the attitude of some of the owners:

> Some of these men have adopted the repudiation principles of a section of Natives on the East Coast, and although they refrain from active open opposition, yet by persistently absenting themselves from all meetings called for the purpose of completing purchases, they have been able very seriously to interrupt our operations.[206]

There were also problems with the lands that had been already purchased, apparently lingering complications of a vague and ill-defined kind to do with the titles. Fitzherbert gave evidence to the Hutt–Waikanae Railway Committee in 1877, and in talking about the land along the west coast available for settlement mentioned 'inchoate transactions' and difficulties that had arisen with the purchases made since 1873, which were claimed to be due to the activities of private purchasers along the coast.[207]

The land purchase officer, Booth, seemed disinclined to admit to the committee that any problems of a general nature existed, but he did state that the owners of the Manawatu–Kukutauaki 2A, 2B, 2C, 2D, and 2E blocks had changed their minds about sale after advances had been made. They were now, according to Booth, opposed to sale or wanted an exorbitant price for the land. In his report for that year, however, he listed a number of other blocks which were no longer being considered for purchase, giving various reasons for accepting or seeking a refund of the advances made.[208] The owners of Hurutini, for example, had leased the block as a sheep run; the leaseholder would repay the advance. The owners of Horowhenua had decided not to sell. Muhunoa 1 was going to be re-heard. Ringawhati had gone through the court, and emerged with a new name and a different set of owners. Paruauku 1 was cultivated land, and the asking price was higher than the Government was inclined to accept. The valuable timber on another block had been felled, so there was no point in proceeding with sale negotiations.

The nature of the difficulties to do with the purchases made during the 1870s – the ones Fitzherbert had described as 'inchoate transactions' – was clarified during the hearing before the Railways Commission in 1880. According to Richard Gill, the Native Department Under-Secretary responsible for land purchases, the Crown did not, by that date, have title to a large but undisclosed area of the land along the west coast which was recorded as having been purchased. This was attributed to delays

206. Booth to Under-Secretary, Native Department, 28 June 1877, 'Purchase of Land from the Natives', AJHR, 1877, G-7, no 9, p 17
207. Hutt–Waikanae Railway Committee, Fitzherbert, 22 August 1877, AJHR, 1877, I-12, p 8
208. 'Purchase of Land from the Natives', AJHR, 1877, G-7, no 9, pp 20–21

in the operation of the Native Land Court, and to delays in getting surveys completed. According to Gill, the land had been sold, and the owners could not repudiate the sale, but until the court issued titles and the surveys were completed, the Crown could not take full possession. In the case of land reported to be under negotiation, progress towards completion of the sales was being impeded by the attitudes of the owners: they wanted higher prices than had been paid in the past, and they also wanted to set aside large reserves. About 70,000 acres between Foxton and Waikanae were affected, and Gill thought that because of the price being asked, and the large areas that were being sought as reserves, only about half of the land under negotiation would eventually be purchased. Gill was asked specifically about Horowhenua. How much did the owners want to retain? 'Nearly the whole of it' was Gill's answer.[209] He was not asked about the land around Waikanae, but it seems certain that this was also an area where the land purchase officers had made little headway.

There seems to be little doubt that during the late 1870s the Government land purchasing programme along the west coast faltered. There were problems getting the earlier sales completed; negotiations for some blocks had to be abandoned; there were few new sales, and in these cases the initial offers were having to be increased, and concessions made with respect to reserves, before the deals could be clinched.

The difficulties to do with the titles of the purchased land were resolved in the opening years of the 1880s, enabling the Crown to transfer around 110,000 acres of it to the Wellington and Manawatu Railway Company in 1882.[210] This left in Government hands more than half of the 'considerable estate' Booth and others had acquired along the coast since the early 1870s.[211] The problem, from the point of view of those who wanted to promote development and European settlement along the coast was that the land given to the railway, as well as the land retained by the Government, was mostly on the bush-clad, hilly, eastern side of the district: the flat coastal land, and the better land, remained in Maori hands. The Government might have made advances on this land, but it was seemingly unable to complete the purchases.

In 1885 Locke asked that details of land still in Maori hands be provided. The next year, when the return was tabled, it shows that land in the Horowhenua County yet to be passed through the Native Land Court amounted to 1862 acres.[212] Another 2800 acres was listed as reserves.[213] Land already passed through the Native Land Court, and held on inalienable terms, amounted to 179,055 acres.[214] In round figures, some 184,000 acres remained in Maori hands. By the standard Mitchell had applied, a good part of this land was of fair to good quality. If evidence given to the Railways Commission is any guide, most of the best land on the coast was included. The great

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209. Railways Commission, Gill, 17 March 1880, AJHR, 1880, G-3, p 20
210. 'Report of the Waste Land Committee on the Petition of the Wellington and Manawatu Railway Company, Together with Minutes of Evidence and Appendix', AJHR, 1888, I-5B, p 38
211. Booth to the Under-Secretary, Native Department, 30 June 1876, 'Purchase of Land from the Natives', AJHR, 1876, G-5, p 12, no 8
212. 'Lands Possessed by Maoris, North Island', AJHR, 1886, G-15, p 1
213. Ibid, p 11
214. Ibid, p 13

bulk of this land was held in some 70 named blocks. Some of these blocks were quite small; a few acres or less. Others contained thousands of acres: for example, Horowhenua (52,460 acres), Ngarara (45,250 acres), Manawatu–Kukutauaki 7D (10,487 acres), and Ohau 3 (6799 acres). Muhunoa 3A (1105 acres), Pukehou 5D (1062 acres), and Ngakaroro 2B (1933 acres) were three of the 15 or so blocks in the 1000- to 2000-acre range, and there were a handful of others in the 2000- to 3000-acre range.

It is plain from the return of 1886 that a large area of land had passed out of Maori hands during the preceding 15 years. But the land remaining still represented, to use Booth's phrase, a considerable estate. The linchpins of this Maori estate were the two very large and still undivided blocks: Ngarara in the south, Horowhenua to the north. Together, Ngarara and Horowhenua contained nearly 98,000 acres, more than half of the land between Wainui and the Manawatu still under Maori control.

CHAPTER 9

NGATI RAUKAWA AND HOROWHENUA 1873 TO 1924

9.1 INTRODUCTION

The hearing on Horowhenua had started on 11 March 1873 in much the same way as the earlier hearing on Kukutauaki, that is to say, with Kemp objecting and then withdrawing. But on this occasion there seems to have been no special concern expressed about this withdrawal, and no talk about adjournment Grindell simply reported to Wellington that the court was proceeding ex parte, that he had talked to both Kemp and Hunia, and that while he was not sure if they would come in they seemed to be 'wavering'.[1]

Ngati Raukawa began their case by conceding Muaupoko's claim to the block at Horowhenua allocated to them by Te Whatanui, but laid claim, on the grounds of conquest followed by occupation, to all of the other land at Horowhenua both north and south of the Muaupoko boundaries. By noon on 12 March 1873 they had concluded their introductory statements.

Over the next two weeks the court busied itself with the issuing of subdivisional certificates. Rogan seems to have become aware during this period that Kemp was intending to give evidence, telegraphing Cooper on 17 March that the Horowhenua issue was to be settled in the court, in a hearing that 'will decide the land question on the west coast either one way or the other'.[2] On 25 March Grindell telegraphed the provincial government to the same effect: 'The real question at issue comes on tomorrow, namely Horowhenua. Muaupokos are coming into Court', The next morning Kemp appeared in court and began to present his counter-claim, supported by a number of Muaupoko witnesses. The court heard the Muaupoko evidence until the end of the month, and then adjourned for a short period, so that the judges could visit Horowhenua, and settle 'certain points'.[3] The court reconvened again on 3 April, and over the next two days Ngati Raukawa completed its evidence. On 5 April 1873 the court delivered its judgment. The decision was extremely unfavourable to Ngati Raukawa. A few days later (8 April 1873), Kemp applied for a tribal certificate to Horowhenua. When the list of owners was produced, Tamihana Te Rauparaha protested at the issuing of a certificate, on the grounds that Ngati Raukawa intended to seek a rehearing. The court took the view that an application

1. Grindell to Superintendent, 11 March 1873, MA series 13/75B, NA Wellington
2. Rogan to Cooper, 17 March 1873, MA series 13/75B, NA Wellington
3. Otaki Native Land Court MB 2, 31 March 1873, p 29

for a rehearing was a question for the Government to decide, and proceeded to issue Kemp with his certificate of title.[4] At the Native Affairs Committee hearing in 1896, Williams mentioned that shortly after this event he had been present in the court at Waikanae, when the Muaupoko petitioned to have Kemp and Hunia's names removed from the newly issued certificate. This request was denied, mainly because it was too late but partly also, it seemed, because the judges considered the Muaupoko to be acting in an ungrateful manner.[5]

9.2 1873: HOROWHENUA JUDGMENT

Consistent with earlier judgments, the court rejected any suggestion of conquest. Having done so it weighed up the claims based on occupancy, and concluded that 'Muaupoko was in possession of the land at Horowhenua when Te Whatanui went there, that they still occupy these lands, and that they had never been dispossessed of them.'[6] Accordingly, the court found for the counter-claimants. Turning to the nature of the relationship between Te Whatanui and Muaupoko, the court accepted that Te Whatanui had protected the tribe in question, and that Muaupoko had looked up to him as their chief, but this relationship had no significance with respect to the land: the only land acquired by Te Whatanui at Horowhenua was by way of the gift of a small area at Raumatangi, and the court considered that the awarding of 100 acres in the vicinity of this location would be a fair and substantial recognition of this fact.

In earlier decisions, the court had found in favour of those who were resident on the land. Now it had brought down a judgment that dispossessed residents, for the Muaupoko had not only been awarded the 20,000-acre block they had always lived on, they had also been awarded an additional 30,000 acres to the north and south of this block, land in long-term occupation by several Ngati Raukawa hapu. Among this land was a strip at Waiwiri (Papaitonga), to the south of Mahoenui, which had always been considered to lie beyond the boundaries of Horowhenua and which, in fact, had already been awarded to Ngati Raukawa under the terms of the barely dry Kukutauaki decision.

According to Hector McDonald's son, his father had been present in the Foxton court on the day that Kemp was cross-examined by Buckley, and he recalled his father coming home and saying that Kemp's case had been all but destroyed. In Hector McDonald's view, taking into account both Maori custom and the rules used by the court to determine landownership, Kemp's claim could not succeed. A verdict in favour of Ngati Raukawa was a foregone conclusion.[7] But, McDonald related, Kemp had risen in the court the next day and told the judges in no uncertain terms that if he did not get the verdict he wanted he would bring his warriors to

4. Otaki Native Land Court MB 2, 9 April 1873, p 60
5. Native Affairs Committee, T C Williams, 20 August 1896, JALC, 1896, no 5, p 18
6. *Important Judgments Delivered in the Compensation Court and Native Land Court 1864–1879*, Auckland, 1879, p 136
7. E O'Donnell, *Te Hekenga: Early Days in Horowhenua; Being the Reminiscences of Mr Rod Donald*, Palmerston North, Bennett and Co, 1929, p 142

Horowhenua, and neither the Government nor Ngati Raukawa would remove him from the land. He had then turned to Hector McDonald, and demanded to know what right a Pakeha court had to settle the matter: 'This is a matter for the Maori to decide. By guns the land was lost, and by guns I will re-conquer it.'[8]

There is no evidence in the relevant Otaki minute book that supports McDonald on this point, and no one else seems to have recorded the particular outburst alleged. However, other eyewitnesses have reported behaviour of a very similar nature around this time. Kipa Te Whatanui, for example, told the Natives Affairs Committee in 1896 that at the Foxton hearing Kemp and his people were all armed and that 'Kemp stated openly outside the Court that if the Court gave a decision against him he would spill blood on the block'.[9] Williams said that when he had asked the Maori Assessor, Hemi Tautari, to explain why the court had awarded Horowhenua to Kemp, Tautari had replied: 'If we had not done so there would have been bloodshed'.[10] Neville Nicholson, Kararaina's son, confirmed to the Native Affairs Committee that 'during the hearing of this case Major Kemp was to be seen dressed up in his regimental uniform, wearing his sword, and marching about Foxton'. When asked if he wanted 'the Committee to understand that Kemp, coming with five hundred men and guns, and going about in that way with his sword, was threatening the Judge if he was to give a wrong decision?' Nicholson replied 'yes'; adding that he believed 'not only the Court but the Government was afraid'.[11] McLean, he said, 'told us that if he should grant us a rehearing as applied for by us Kemp was sure to fight'.[12]

The Horowhenua decision does seem to make little sense. How, for example, could the court have earlier found that Kukutauaki had been acquired by 'occupation, with the acquiescence of the original owners', the fact of which was enough to constitute Ngati Raukawa as the owners 'thereof', when a similar occupation of Horowhenua, equally with the 'acquiescence of the original owners' was found to have conferred no rights of ownership on Ngati Raukawa at all? Were not the 'original owners', in both cases, the same tribes?

It is this nonsensical quality that gives some credence to the argument of McDonald and other contemporary observers that the court was panicked into giving Kemp what he wanted. McDonald, for example, described how Kemp, the judges, and a party of officials rode along the beach, Kemp putting in the boundary markers he wanted.[13] On returning to Foxton, the court simply rubber-stamped what Kemp had done, making no investigations at all into the ownership of the lands that had been so abruptly incorporated into a greater Horowhenua.

But McDonald had another explanation for the court's actions: there was, he said, a belief at the time that the authorities wanted to 'compensate Kemp for his services to the Crown'.[14] There is some support for this position as well. For example,

8. Ibid
9. Native Affairs Committee, Kipa Te Whatanui, 14 August 1896, JALC, 1896, no 5, p 14
10. Native Affairs Committee, T C Williams, 20 August 1896, JALC, 1896, no 5, p 18
11. Native Affairs Committee, Neville Nicholson, 31 August 1896, JALC, 1896, no 5, p 32
12. Ibid
13. O'Donnell, p 144
14. Ibid, p 145

Williams claimed in 1896 that the Maori Assessor at Foxton had justified the Horowhenua decision with these words: 'See all the good they have done fighting against the Hauhaus'.[15] Again, when Hunia was taken into custody in 1874, over an incident of house burning at Horowhenua, McLean advocated leniency, on the grounds of the service Hunia had rendered to both the colony and the province. The Magistrate agreed, the Crown did not proceed with its case and Hunia was set free. If the Government was prepared to recognise some debt of gratitude to Hunia, then it is far from unreasonable to suggest that it may also have been prepared to recognise a similar but much greater obligation to Kemp, one of its most distinguished military commanders.

That the court was frightened or that the Government felt it owed Kemp something; either explanation seems tenable. There is a third possibility as well. Horowhenua was before the court in 1873 because for years it had been a source of dispute and dissension. It is know that McLean wanted the main outcome of the Horowhenua hearing to be the pacification of the district. The provincial government, with its ambitious plans for road building and settlement along the coast, would have wanted this also. The suggestion is that the real issue for the court in 1873 was not who owned Horowhenua, but how to settle the arguments over this block of land in a final and permanent way. What needed to be done to achieve this result? With Kemp outside the court, behaving in the way that he was, a decision in favour of Ngati Raukawa would very likely produce serious breaches of the peace. On the other hand, a decision against Ngati Raukawa was unlikely to have the same effect: only very rarely had that tribe used the threat of violence, let alone violence, to get their own way. So, it is surmised, the court decided there was less danger of dissent, and a far better chance for peace, if Horowhenua was awarded to Kemp, the actual merits of his case being an irrelevant consideration. A proportional award, to both sets of claimants, was generally expected, but once Kemp put his markers in, the judges seem to have decided that Horowhenua was indivisible, another curious aspect of the decision. In any event, it seems evident that once Kemp had defined his boundaries, the die was cast. After the court had returned from Horowhenua, but before Ngati Raukawa had completed their evidence Rogan wired McLean: 'Am glad to inform you that this long vexed Horowhenua business will soon close. Kemp has made out a clear case in my opinion and I will when the time comes give him the full benefit of it.'[16]

The strongest support for this explanation of the underlying reason for the Horowhenua decision comes from Native Land Court Judge J A Wilson. He explained to the Horowhenua Commission in 1896 that it had been a doctrine of the Native Land Court since its inception that any wrong acts on the court's part would be made right by legislation. There was, he said:

> a promise from the Minister for the time being, which went from Minister to Minister, that by special powers and contracts, or in some other way, special legislation should make anything that seemed to require it valid so much so, that in 1873 Mr McLean the

15. Native Affairs Committee, T C Williams, 20 August 1896, JALC, 1896, no 5, p 18
16. Rogan to McLean, 3 April 1873, MA series 75/10, NA Wellington

> Native Minister, thanked Judge Rogan for acting outside the law so as to get the country settled. All that he did was legalised afterwards I have no doubt. Of the five Judges, Smith was the one who heard the block in the first instance, and he said to me, 'They will legalise what we have done.'[17]

There is other evidence as well. A few weeks after the Horowhenua judgment was handed down, McLean was advised that:

> The large block of land joining Horowhenua called Porotawhao is disposed of just now. The boundary is common to Horowhenua fixed by the Court. I am very glad of this. It is hitting the nail on the head and clinching it on the other side. The Court will remove to Waikanae on Friday 25th.[18]

What Rogan seemed to be saying was that the court's later decision on the land directly to the north of Horowhenua (Porotawhao or Manawatu–Kukutauaki 7) had been primarily influenced not by any consideration of the merits of Ngati Raukawa's case but by the need to lock the earlier Horowhenua decision firmly in place. The northern boundary for Horowhenua that Kemp had marked on the beach, and which had been accepted by the court without further investigation, had in fact encroached on land claimed by the closely related Ngati Matau and Ngati Huia hapu. Now, by its decision on Porotawhao, the court had legalised what had been done with respect to this northern boundary.

In the final analysis it is impossible to say with any certainty why Rogan and Smith, in their adjudication, found for Kemp and the Muaupoko alone rather than for Ngati Raukawa and Muaupoko jointly. However, it does seem fair to say that the evidence will support a degree of scepticism about the impartiality of the judges on this occasion, and a corresponding suspicion that the court was acting not judiciously but in a political manner.

According to Grindell, Ngati Raukawa were 'vexed and disgusted with the Horowhenua decision', and were inclined to seek an adjournment.[19] This, of course, would have delayed the issuing of certificates, and therefore the acquisition of the land, so Grindell persuaded some of the hapu not directly affected by the decision to apply for certificates, in an effort to keep the court open. Fitzherbert heard from Grindell what was happening, and he approached Rogan directly: 'Hope you will exercise patience and allow Ngatiraukawa time to get over their disappointment and name their grantees. I do not think there ought to be an adjournment just yet'.[20] These tactics seemed to have worked. The next day Grindell telegraphed Fitzherbert: 'Native applications crowding in and everything going right Am very pleased with Rogan's conduct of matters'.[21]

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17. Horowhenua Commission, J A Wilson 31 March 1896, AJHR, 1896, G-2, p 132
18. Rogan to McLean, 21 April 1873, MA series 75/10, NA Wellington
19. Grindell to Superintendent, 9 April 1873, MA series 13/75B, NA Wellington
20. Fitzherbert to Rogan, 9 April 1873, WP series 6/8, p 200, NA Wellington
21. Grindell to Superintendent, 10 April 1873, MA series 13/75B, NA Wellington

9.3 1873: APPLICATIONS FOR REHEARING

Two weeks after the decision, Watene and 69 others applied to the Governor for a rehearing of their case. They did not understand, they said, why their 'dwelling houses . . . cultivations . . . pa tuna's . . . farms and permanent settlements' had been taken from them, since they 'been 46 years in the absolute possession of this land, that is Horowhenua'. They would not vacate until there had been another adjudication. The grounds for seeking a rehearing were that many witnesses had not been heard, listing Hadfield, Samuel Williams, Edward Wakefield, White, Hector McDonald, Grindell, and 'others whom we had arranged to give evidence as to our claim to Horowhenua'.[22] In early May Watene wrote to inquire about this application. 'Have you got it or not.'[23] Cooper noted on this letter that Rogan was opposed to a hearing, but that the matter needed to be decided by the Executive Council. He also suggested that Wi Parata might be consulted. McLean agreed with this last suggestion. A final note by Cooper, dated 26 May 1873, says that Wi Parata supported a rehearing.[24]

Early in May Buckley received an application for a rehearing from over 70 Ngati Raukawa, who asked him to forward it to the Governor and to McLean. This application spelt out in great detail the location of the land in question:

> Waiwiri, Whakamaungariki, Puketoa, Otawhaowhao, Mahoenui, Papaitonga, Hiweranui, Te Wera-a-Whango as far as Tauamorehurehunui, from thence down towards Tokoroa, ascending the Tararua range, until it reaches the Queen's line, hence along the said line and on till it strikes Te Awa Kevi of Taumanewa, from there it turns Eastward to Arapaepae, Keraroa, Makomako, thence through the centre of the Lake, till it meets Tau-a-te-Ruru, Komokorau, Tauhitikuri, from thence to the sea, running from the mouth of the Hokio River till it reaches Rakauhamama and meets again at Waiweri, where the boundaries end.[25]

It also identified the Ngati Raukawa, who had suffered as a result of the court's decision: Ngati Pareraukawa (Te Whatanui's hapu) and Ngati Kahoro, the hapu on the southern boundary of Horowhenua. Buckley passed this application along as requested, and in the ordinary course of events it was minuted by Smith and Rogan:

> The land referred to in this application is the southern portion of the Horowhenua Block . . . [and] was the subject of a claim by Ngatiraukawa which was subsequently heard, and which was decided against them after a patient hearing. No valid ground for asking for a re-hearing is even attempted to be shown and we are not aware that any exists. Both claimants and their opponents were represented by counsel in the conduct of this case in court, and there is no reason to believe that any evidence which would throw light on the matter was wanting. We do not think a re-hearing should be granted.[26]

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22. Watene to Governor, 21 April 1873, MA series 75/14, p 3, NA Wellington
23. Watene to Governor, 12 May 1873, MA series 75/14, NA Wellington
24. Cooper to McLean, 26 May 1873, MA series 75/14, NA Wellington
25. Horomona Toremi to Buckley, 7 May 1873, MA series 75/14, pp 2–3, NA Wellington
26. Rogan and Smith, 3 June 1873, MA series 75/14, NA Wellington

In the same month, May 1873, Watene and 42 others wrote directly to McLean, asking him to consent to a rehearing of the Horowhenua case. Te Whatanui and his descendants had been in occupation 'for five generations'; now they 'have become like a sand piper whose sandbanks have become obliterated by the flowing tide'. The court had awarded them only 100 acres, land 'not fit for the occupation of man, nor would it support a rat with its young'. They pointed out the contradiction between the decision on Kukutauaki, which had awarded title on the grounds of long-term occupation, and Horowhenua, where long-term occupants had been dispossessed, and then stated their reason for seeking a rehearing. Many of their witnesses had not given evidence on their behalf.[27] Cooper minuted this letter on 19 June 1873: 'The judges who heard the case are strongly opposed to a re-hearing.'[28]

In August, Ngati Matau wrote to the Governor, seeking a re-hearing on the land between Oioao, where one of the original northern boundary posts of the Muaupoko block had stood, and Waingaio, where Kemp had set the new northern boundary. This in effect was asking for a rehearing not only of the Horowhenua case but also of the decision on the Porotawhao or Manawatu–Kukutauaki 7 block mentioned above. They were, they said:

> not clear why we should be deprived of our houses, our eel weirs, our farms, our places of abode and burying places. We have resided permanently for 46 years on this block of land Waingaio to Oio-ao. Our word to you is that we shall not leave . . . but make application to you in the first place to grant us a re-hearing. The people of Ngatihuia tribe failed to appear before the court in support of our claim.[29]

By December 1873 none of the letters from Watene and others seeking a rehearing had received a reply, and in that month Watene wrote to F D Fenton, Chief Judge of the Native Land Court, again requesting that Horowhenua be re-heard. On receipt, this letter was annotated to the effect that applications for rehearing had to be submitted within six months of the date on which a certificate had been issued; the sender should be informed that it was now too late to reopen the case.[30]

At this stage, ignoring the application to Fenton, no less than four separate applications for a rehearing had been made: two to the Governor, one to the Governor and McLean via Buckley, one directly to McLean. Three of these applications concerned the southern area of Horowhenua; the other, from Ngati Matau, dealt with land on the northern boundary. According to Neville Nicholson, T C Williams, the son of Henry Williams, was the 'chief framer of these petitions'.[31]

Williams also made a direct appeal to the British Prime Minister W E Gladstone.[32] This letter was printed for general distribution; it took up more than 65 pages, and was followed by some 270 pages of appendices: extracts from official documents,

27. Watene, Ngawaki and 42 Others to McLean, 13 May 1873, MA series 75/14, NA Wellington
28. Cooper, 19 June 1873, MA series 75/14, NA Wellington
29. Te Oti Kere Te Hoia and 31 Others to Fergusson, 13 August 1873, MA accession 1369, box 4, NA Wellington
30. Watene to Fenton, 8 December 1873, MA series 75/14, NA Wellington
31. Horowhenua Commission, Neville Nicholson, 9 April 1896, AJHR, 1896, G-2, p 219
32. T C Williams, *A Letter to the Right Hon W E Gladstone Being an Appeal on Behalf of the Ngatiraukawa Tribe*, Wellington, 1873

material supplied by Travers, passages from Wakefield's *Adventures in New Zealand,* statements by Maori chiefs, opinions by Hadfield, judgments of the Native Land Court, and, finally, copies of letters from the Ngati Raukawa disadvantaged by the court's decision to Williams, asking him to take up their cause.

Williams wanted more than a review of the Horowhenua judgment: he wanted the British Government to investigate the tribal situation that had existed in 1840, when the Treaty of Waitangi was signed; the sale of the Rangitikei, Ahuaturanga, and Rangitikei–Manawatu blocks; the correctness of the various Native Land Court decisions, including those on Kukutauaki and Horowhenua, and, finally, the conduct of Major Kemp at Horowhenua. His letter and the documents in the appendices covered all of these subjects.

The practice of the British Government was to refer petitions from a self-governing colony like New Zealand back to the Colonial Government. Thus, an appeal to the British Government of the kind Williams was making could never be more than a futile gesture. Moreover, Williams would have known that the appeal procedure laid down by the Act was to the Governor-in-Council. However, the fact that Williams published his petition as an open letter, and prefaced it with a few pages addressed to the 'General Public', suggests that the main objective of the exercise was to shame and embarrass the Colonial Government. Be that as it may, in June 1873 Rogan and Smith opposed a rehearing of the Horowhenua case on the grounds that there was no new evidence to consider. After July 1873, when Williams published his petition, this position simply could not be sustained. The judges had claimed that the evidential basis for the Horowhenua decision was sound and comprehensive: Williams demonstrated that it was neither.

The petitions from Watene and Ngati Matua did not, of course, contain the volume of documentation that Williams presented in his *Letter to Gladstone,* but they did make the salient point – there were other witnesses to be heard. They also said that it had been intended that these witnesses would give evidence at the first hearing, but had not appeared. It is not at all clear, however, that this was the case. Grindell, for example, was one of the so-called non-appearing witnesses. But he was present in the court during the hearing. There would have been no physical difficulty in the way of his being called. But availability to one side, Grindell was a Government agent, and he was also most anxious to avoid giving offence to Kemp. On both grounds its seems unlikely that he would have consented to give evidence. The point, however, is that there is nothing to show that he was ever approached to do so. Hector McDonald was another non-appearing witness who is known to have been present at the court. McDonald was settled at Horowhenua, was friendly with both Muaupoko and Ngati Raukawa and, more importantly perhaps, leased land from both tribes. These things would perhaps have made him reluctant to take sides in a dispute so close to home. On the other hand, there is nothing to show that he was asked to give evidence either. His son, writing many years after the event, commented that his father and the other old settlers knew what the tribal situation had been on the coast in the 1830s and 1840s, but that this evidence was not sought

by the Foxton court.[33] Hadfield was another of the witnesses who, it was claimed, had not appeared to give evidence. He had not been present at Foxton, but had he been asked to attend and give evidence, he would certainly have done so, neither Government service or the need to maintain good relationships with either side being disqualifying factors.

As far as can be ascertained, the only witness who was expected at Foxton, but who did not attend, was Wiremu Pomare. Evidence given before the Horowhenua Commission showed that Kemp had gone to see Pomare in advance of the court hearing, and that Kemp and Pomare had reached an understanding: Pomare would not attend the hearing; Kemp would deal fairly with Te Whatanui's descendants over the land.[34] It is perhaps significant that Pomare, who was generally considered to have been Whatanui Tutaki's heir, was apparently not involved in any of the attempts to obtain a rehearing.

The Ngati Raukawa petitions may have been muddying the water to some extent in claiming that certain witnesses had not appeared to give evidence. However, in making application without delay and well within the six month time period, they appear to have met the legal requirement. The fact that the applications were strongly supported, each having between 40 and 70 signatures, was also in their favour.

9.4 1873: TE PUKE'S STAND

At the beginning of December 1873 Knocks, a Native Department interpreter stationed at Otaki, reported that Ngati Raukawa had refused a request by Hunia that he be included as one of the owners of their portion of the Tararua block.[35] A few days later word spread that Hunia and the Muaupoko had burnt Ngati Raukawa houses at Mahoenui and Rakauhamama, pulled up crops and broken fences. One of the Ngati Raukawa residents of Mahoenui, a chief named Te Puke, was seriously offended by these actions. He assembled his followers, moved up to the Hokio, constructed a pa, and began exchanging fire with the Muaupoko. Watene and Te Whatanui's descendants seem to have associated themselves with this action as well.

Hunia had already retreated back across the Manawatu with his men, and Kemp, according to his own evidence before the Horowhenua Commission, went from Horowhenua to Wanganui to fetch his men.[36] Te Puke seems to have had only a relatively small force initially, and the Muaupoko were able to stand their ground. As news of Te Puke's action spread, however, other Ngati Raukawa set off for Horowhenua.

Te Puke's objective was to capture and burn Kupe, the Muaupoko meeting house, but the Muaupoko had a good defensive position, and neither side could strike a

33. O'Donnell, p 144
34. Horowhenua Commission, Te Rangi Mairehau, 13 March 1896, AJHR, 1896, G-2, p 93; Horowhenua Commission, Meiha Keepa, 10 March 1896, AJHR, 1896, G-2, p 26
35. Knocks to Under-Secretary, Native Department, 8 December 1873, MA series 75/14, NA Wellington
36. Horowhenua Commission, Meiha Keepa, 7 April 1896, AJHR, 1896, G-2, p 186

decisive blow. Skirmishes and exchanges of fire were frequent however.[37] McLean's initial concern was that the press be given 'correct information'.[38] He seems not to have taken energetic action to end the fighting immediately. According to McDonald, all he did was to send a troop of armed constabulary to rather ineffectually patrol the beach between Otaki and the Manawatu.[39] However, it is hard to see exactly what McLean could have done, for Te Puke, described by Booth as a man who 'seems to have no love for the Govt.' was apparently ignoring pleas from the Ngati Raukawa leadership to cease fighting; it was hardly likely that he would have taken more heed of the Pakeha Government.[40] There is some doubt however about the sincerity of at least some of the Ngati Raukawa who professed to want peace, Grindell remarking to Cooper that 'I have no doubt he [Puke] is strongly supported and encouraged by the more cautious and cunning, if less honest, of the Ngatiraukawa'.[41] This suggests that there is probably more to Puke's stand than meets the eye. At a quite early stage, for example, the cessation of hostilities and the question of a rehearing were linked. Booth reported that they (Ngati Raukawa) 'want a direct reply to the question as to whether the Govt. will grant a rehearing.'[42] Young said their reply to a message from McLean, asking them to submit the dispute to the law, was 'Give us back our land or we shall certainly fight'.[43] Booth reported the same message, in somewhat stronger terms: 'Give us back our land. Give it back. If you do not we shall fight. This is our fixed determination from Puke Watene and all the tribe.'[44]

In the Native Department, Cooper wanted to know where the petitions for a rehearing were, and in short order two of them were located. A third, Watene's application of 21 April, could not be found, but Cooper thought it was probably with McLean or Clarke.[45] The Ngati Matau petition of August 1873, it should be noted, was not included on the list of petitions mentioned above, and it does not seem to be recorded in the departmental register for 1873 either.

The situation at Horowhenua remained in a very dangerous state until early in the New Year, when McLean went to Otaki to hold talks with Ngati Raukawa. McDonald says the impetus for this meeting was the news that Ngati Toa were on the march.[46] According to him, the passage through Otaki in early January of a Ngati Toa taua, 150 strong, alarmed both the Government and the Ngati Raukawa leaders, neither of whom would have been ignorant of the likely outcome if a Ngati Toa war party were to cross the Hokio. Runners were sent to Te Puke and Watene, ordering them to stop fighting, and come down to Otaki. According to McDonald, the Ngati Toa reinforcements and the Ngati Raukawa under arms at Horowhenua debated for some time whether to obey this order or not, but eventually decided to do so. Be that

37. O'Donnell, pp 147–156
38. McLean to Pollen, 13 December 1873, MA series 75/14, NA Wellington
39. O'Donnell, p 149
40. Booth to Pollen, 15 December 1873, MA series 75/14, p 2, NA Wellington
41. Grindell to Cooper, 19 December 1873, MA series 75/14, p 3, NA Wellington
42. Booth to Pollen, 14 December 1873, MA series 75/14, p 2, NA Wellington
43. Young to Pollen, 17 December 1873, MA series 75/14, NA Wellington
44. Booth to Cooper, 21 December 1873, MA series 75/14, p 1, NA Wellington
45. Cooper to Lewis, 19 December 1873, MA series 75/14, NA Wellington
46. O'Donnell, p 157

as it may, the notes of the January meetings make it plain that Te Puke and Watene did not attend on McLean at Otaki immediately, and that they had to be summoned a second time.

The first meeting took place on 6 January 1874. Tamihana Te Rauparaha proposed at the beginning of the meeting that the dispute should be handed over to the Government to settle. Others spoke in support of Tamihana's proposal, but it was firmly rejected by Hare Wirikake, one of the Horowhenua claimants. His solution was a rehearing: 'a modest request'.[47] It quickly became evident that, while the hapu disadvantaged by the Horowhenua decision favoured a rehearing, and were disinclined to agree to anything else, the rest of Ngati Raukawa were in favour of handing the dispute over to McLean, to settle as he wished.

Wi Parata and Wi Tako pointed out that if a rehearing of Horowhenua was granted, then a rehearing of Kukutauaki would have to be granted as well. This might result in some of the land already awarded to Ngati Raukawa being lost. McLean said that if a rehearing was granted, then those dissatisfied by the second ruling would want a rehearing. In this way the matter would continue on and never be settled. He also said that the Government could not grant a rehearing, 'it is only Parliament that could now do so, by an Act'.[48] It is far from clear that this was the case, although it was true that it was now more than six months since the case had been heard. However, as Hare pointed out, 'this has not been out fault – we applied over and over again within the prescribed time'.[49] As for the argument that a rehearing of Horowhenua meant that there would have to be a rehearing of Kukutauaki as well, Hare had a short answer: 'let it be so'.[50]

Although summoned, Watene and Te Puke had not come down from Horowhenua. Since nothing could be decided in their absence, it was agreed that word would be sent to them, and a second meeting held on their arrival. This meeting took place on 12 January, and Te Puke, Watene, and other Ngati Raukawa who had lost land were in attendance. They made it clear that they wanted their land back, complaining that their numerous applications for a rehearing had been neglected. McLean denied that their letters had been ignored but stated that 'when the Court decided, the matter was settled: it cannot be reopened, and I acquiesce in the judgment'.[51] He again proposed that the dispute be given into his hands to settle, and as before this proposal was supported by a number of speakers, none of whom seem to have had land at stake. However, it would be wrong to assume that all of those who supported McLean's proposal were driven by self-interest, or indifference to the plight of Watene and the others. Some of them, like Horomona Toremi, were simply uncomfortable with the situation that had developed at Horowhenua: 'I have been a churchman for thirty-three years past, and during that time I have not had a quarrel.'[52]

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47. 'Horowhenua Land Dispute, Together with Notes of Meetings, 1874', MA series 75/12, p 2, NA Wellington
48. Ibid, p 3
49. Ibid, p 4
50. Ibid
51. Ibid, p 12
52. Ibid, p 6

In the end, Watene seems to have agreed to halt the action at Horowhenua, although Te Puke remained resolute: 'I cannot agree to give up this quarrel into your hands, or you will next ask me to give up my claim to the land between Waingaio and Waiwiri.'[53]

Because there were still some opposed, like Te Puke, it was decided that a third meeting would be held, this time between McLean on one hand and Watene and his people on the other.

Watene began this meeting by reciting his history of the Horowhenua dispute, mentioning in passing that when the court had heard Horowhenua, the Ngati Raukawa claimants had not been told what kind of evidence was required. He was followed by his niece Tauteka, who claimed that Horowhenua had been left to her, her sister, and Watene. Te Puke then recited the basis of his right to Mahoenui, and others spoke of the status of the Muaupoko in the time of Te Whatanui. Nothing appears to have been decided by this meeting, and on 15 January there was a fourth and final meeting. Tamihana Te Hoia, of the Porotawahao Ngati Huia, was an early speaker on this occasion, stating that:

> My hapu is a large one, and we are completely done for by the action of the Court. The boundary now is right at Porotawahao. Give me back my land: my quarrel is different to Te Watene's. Give me back my land.[54]

Although the Porotawahao Ngati Huia apparently had as good a case as Watene and Te Puke, they seemed, during the Otaki meetings, to have had even less support that their southern compatriots. They also appeared to have been excluded from the arrangements made subsequently, although there is some suggestion that Kemp made an oral promise of reserves. If so, these never eventuated, and the hapu seems not to have pursued their claims in later years with the same vigour as Watene and the other descendants of Te Whatanui.

In any event, at the final January meeting McLean announced what he planned to do. First, he intended to send for Kemp. Then he would give consideration to 'the settlement of this difficulty'.[55] Hunia's action in burning the houses had led to his arrest, and 'if any such offences occur again the offenders will be seized'. To ensure peace, an officer who understood Maori, and some police, would be stationed in the district. Finally, all warlike activity at Horowhenua was to cease. There was no mention of a rehearing; that apparently was now a dead issue. Te Puke was present at this meeting, and seems to have accepted McLean's decision, in as far as he did not speak in opposition. Watene was also present, and similarly seems to have accepted McLean's decision. His agreement, however, was conditional:

> If there is another attack made on me, I shall shoot some one. If Kawana Hunia commits any more mischief I shall shoot. If this work is well finished, I shall make an end of the cause of the disturbance; if not, I shall be stubborn.[56]

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53. Ibid, p 5
54. Ibid, p 16
55. Ibid, pp 16–17
56. Ibid, pp 10–11

McLean must felt well satisfied with the results of his efforts at Otaki. He had calmed a dangerous situation, he had made no concessions and, above all, he had resisted attempts to obtain a rehearing. The arguments he had used against a rehearing seem quite spurious, with the possible exception of the prediction that one rehearing would led to another and so on and so on ad infinitum. In reality, of course, the financial resources available would not have allowed repeated applications to the court. But McLean's intention was clearly to prevent anything happening that might signal that Horowhenua was still debatable. If anything of that sort were to occur, then all the arguments, confrontations, and difficulties that had been associated with that block of land since 1869 would start up again. Land titles, and the purchasing of land, would be thrown into a state of confusion. Public order would be threatened. Settlement of the coast would be delayed. It did not matter, therefore, how many rehearing applications were made, their legal correctness, or the strength of the cases advanced; it was simply, as Young said, not 'expedient' for the Government to allow any rehearing of Horowhenua.[57]

Te Whatanui's descendants and their allies had started the series of meetings firmly in favour of a rehearing. Indeed, that was actually their second choice, their first preference being that McLean should simply return the land to them. But other Ngati Raukawa were disinclined to support a rehearing, much less the use of force. Isolated, Watene and Te Puke were obliged to drop their demands for a rehearing, to dismantle their fighting pa and to place their trust in McLean.

9.5 1874: HUNIA'S ARRAIGNMENT

At the Otaki meetings there had been general agreement that Hunia should be called to account for the latest episode of whare burning. Even Mete Kingi, probably acting with Kemp's knowledge, agreed that there was a case to be answered.[58] At the end of January 1874 Hunia and four others were taken into custody and charged with arson. After Watene had given evidence on 20 January the trial was adjourned. When the court resumed again on 23 January, the Crown prosecutor sought leave to withdraw the charges. He had, he said, received instructions from the Government that the main purpose in laying charges had been to show the Maori that the law must be upheld. This objective had been achieved. Further, the Government was cognisant:

> that these men had surrendered themselves to European jurisdiction, and had without any compulsion come voluntarily to Wellington and submitted themselves. Moreover, the Government fully recognised the fact that Hunia had on former occasions rendered good service to the country. Taking these things into consideration, the Government had determined to withdraw the informations, and they did so on the grounds that the law had been sufficiently vindicated, and the Natives had been shown that lawless deeds of

57. Ibid, p 1
58. Knocks to Cooper, 29 December 1873, MA series 75/14, p 2, NA Wellington

the description with which these men were charges could no longer and would no longer be tolerated.[59]

The magistrate pointed that he could continue the case, irrespective of the wishes of the Government, but it would be 'an extremely absurd thing if he were to set himself against the wishes of the Government in a matter of policy.' He made some remarks about the evils of house burning and then said that 'he was extremely glad to be able to allow the withdrawal of a charge against a person of who he heard so much good as he had of Hunia.'[60]

All of this, of course, was McLean's doing.[61] But he had the support of Fitzherbert, who expected 'very beneficial results' to ensue from the course of action the Government had adopted.[62] There was also considerable Maori support for a lenient approach as well.[63]

9.6 1874 SETTLEMENT

At the conclusion of the Otaki meetings, McLean invited those directly concerned to go to Wellington with him. Those who did so included Watene, Te Puke, Horomona Toremi, Matene Te Whiwhi, Kararaina (Caroline) Nicholson, her sister Tauteka, Nerehana Te Paea, Te Puke's brother, and several others.[64]

Kemp arrived in Wellington a few days later. McLean asked him for a piece of Horowhenua. When Kemp demurred, McLean raised the matter of the promise Kemp had made to Pomare before the 1873 Horowhenua hearing.[65] Kemp had apparently told Pomare that if he (Kemp) was successful in his claim, he would return some of the land to Te Whatanui's descendants, in recognition of the original arrangement made between Te Whatanui and the Muaupoko chief Taueki. When reminded of this pledge Kemp agreed to give 1200 acres which, when added to the 100 acres already awarded by the court, made 1300 acres.[66] There was also some discussion between Kemp and McLean over a sum of money which the Government was to pay to Ngati Raukawa, a discussion which Kemp, according to his testimony before the Horowhenua Commission, did not fully understand.[67] In 1896 Neville Nicholson provided an eyewitness account of the meeting between McLean and the Ngati Raukawa where the terms of the settlement agreed with Kemp were announced:

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59. 'Horowhenua Land Dispute, Together with Notes of Meetings', 1874, MA series 75/12, p 18, NA Wellington
60. Ibid
61. McLean to Fitzherbert, 22 January 1874, MA series 75/14, NA Wellington
62. Fitzherbert to McLean, 24 January 1874, MA series 75/14, NA Wellington
63. Stevens to McLean, 31 January 1874, MA series 75/11, NA Wellington; Edwards to McLean, 23 January 1874, MA series 75/11, NA Wellington
64. Horowhenua Commission, Neville Nicholson, 9 April 1896, AJHR, 1896, G-2, p 205
65. Horowhenua Commission, Meiha Keepa, 10 March 1896, AJHR, 1896, G-2, p 26
66. Ibid
67. Horowhenua Commission, Meiha Keepa, 7 April 1896, AJHR, 1896, G-2, p 187

> He addressed Watene and Tauteka, and said, 'Listen to what I have to say. I have settled your disturbance, and the number of acres that is to be given to you, the children of Whatanui, that Kemp has given to me to hand over to you, is 1,300.' Then McLean turned round to Puke and his people, and said, 'Puke, your land was sold by your father Te Paea and Hukiki, and was purchased by Mr Serang, but how I will give you £1,050 for the people who are living south of Mahoenui, and some reserves of land also for you'; and then McLean ended his talk, and Watene got up and said, 'I thought, Mr McLean, that you would have given me back all my lands.' Then Matene te Whiwhi said, 'You must be satisfied, and let it rest at that.' And Tamihana Te Rauparaha, and others got up and said, 'You must agree to it.'[68]

The reference to an earlier sale of the land, to a Mr Serang, referred to some incomplete negotiations in the mid-1860s over the Muhunoa block, between Te Roera Hukiki, Te Puke, and others on one hand and Searancke on the other.[69] While Hukiki and Te Puke apparently wished to sell the block, there was strong opposition from other Ngati Raukawa, and it seems that, while a deposit of £100 was paid, disputes over the sale prevented the purchase from being concluded, and the balance of the purchase price, £1000, being paid. These earlier dealings over the Muhunoa block, which lay directly to the south of Horowhenua, had been raised during the January meetings at Otaki, where it had been claimed that Muhunoa had already been sold as far north as Mahoenui. However, it was also stated that Puke's claim had been reserved from this sale, and the land between Mahoenui and the lake belonged to Horomona and Watene.[70]

Be that as it may, some aspects of the Searancke negotiations do seem to have been incorporated into the agreement signed by Kemp and the assembled Ngati Raukawa on 9 February 1874. The Government paid the Ngati Raukawa signatories £1050 to extinguish their claim to the block of land on the southern boundary of Horowhenua which Te Puke, among others, had so recently taken up arms to defend. The land was not totally lost however, Kemp consenting to the exception of 'certain reserves hereafter to be surveyed between the Papaitonga Lake and the sea'.

A few days later Kemp agreed:

> to convey by way of gift to certain of the descendants of Te Whatanui, to be hereafter nominated, a piece of land within the said Horowhenua Block, near the Horowhenua Lake, containing one thousand and three hundred acres (1,300) the position and boundaries to be fixed by actual survey.[71]

Watene was, according to Nicholson's account, disappointed with the amount of land he was to receive, but was pressed by the others to be content with the allocation and to agree to the settlement. He seems to have done so with good grace.

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68. Horowhenua Commission, Neville Nicholson, 9 April 1896, AJHR, 1896, G-2, p 205
69. J Luiten, 'Whanganui ki Porirua', claim Wai 52 record of documents, doc A1, pp 35–37
70. Horowhenua Land Dispute, Together with Notes of Meetings, 1874, MA series 75/12, pp 9, 14, NA Wellington
71. H H Turton, TCD, vol 2, p 435

A few days later he wrote to McLean, saying that he adhered to the decision arrived at and that this position 'will not be altered'.[72]

It may be important to note that two separate transactions seem to have taken place: the first, dealing with the cash payment and the reserves, was concluded on 9 February 1874; the second, making the gift of the land, described as 1300 acres, was signed on 11 February 1874. Turton's copy of these agreements is a single entry, which tends to suggest the original was a single document and thus the record of a single covenant, with two parts to it. It is not clear, however, if these arrangements were originally on the same sheet of parchment, or on two separate sheets that were kept together.

The files contain one additional document of possible relevance to the events of 1874. Some months after the meetings in Wellington, McLean asked Booth for confirmation of the details of a conversation he had had with Kemp at that time. Booth replied that he did recall the conversation: 'It was immediately after Kemp had agreed to convey the land within the Horowhenua block'. Booth went on to outline the nature of the exchange. McLean had offered, after the deeds and surveys were completed, to find Kemp a good-sized block of land and to assist him to stock it with sheep. McLean had remarked that he wished the most deserving chiefs to be in the same position as Europeans with respect to sheep farming. Kemp had wanted land at Waiwiri, on the southern boundary of the Horowhenua block, but McLean had not promised it. Murimotu had been suggested. Booth was aware that Kemp believed that he had been offered 'several thousands of acres'. To Booth's recollections, however, no specific amount of land or locality had been agreed.[73]

9.7 NGATI RAUKAWA PETITIONS 1880 TO 1924

It would appear that McLean considered the settlement of 1874 to have been final and comprehensive. Watene received 1200 acres, and seems to have conceded that the rest of the land claimed had been lost. After 1874 he made no attempts to re-open the dispute. Te Puke received money and the promise of reserves. He subsequently made difficulties over the surveying of the southern boundary of Horowhenua, but Kemp and Booth resolved the situation, and there seems to be no record of any further action by Te Puke or any of his people.

Watene and others affected by the Horowhenua decision had at first wanted the case re-heard. The Government would not budge, however, and the meetings at Otaki in 1874 had shown that those who wanted a rehearing were in the minority. Judging from the speeches made at these meetings, some Ngati Raukawa feared that contesting Horowhenua again would lead to a new hearing of Kukutauaki as well, and compromise the land sales that had been or were being made. Others wanted an end to the troubles at Horowhenua. Both at Otaki and then in Wellington, Te Whatanui's descendants were placed under strong pressure to agree to McLean settlement terms, and to cease their agitation.

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72. Watene to McLean, 11 February 1874, MA series 75/11, NA Wellington
73. Booth to McLean, 19 September 1874, MA series 75/11, NA Wellington

After 1874, the files show that Watene made repeated applications to the Government to get the 1200-acre block partitioned off. Te Puke made similar efforts to get the reserves he had been promised laid off, but this correspondence has not survived.[74] But while the Ngati Raukawa disadvantaged by the Horowhenua decision tried to make the best of the situation, the other hapu apparently went their own way, taking no interest in the tribulations of Watene and Te Puke.

In 1880, however, Ngati Raukawa petitioned the Secretary of State for the Colonies, seeking redress of grievances relating not only to the 1873 Horowhenua decision but also to the sale of the Rangitikei–Manawatu block. Four letters were sent to the Governor, Sir Hercules Robinson, during August 1880, each containing a petition for transmittal to the Imperial Government.[75] These were well supported appeals. The 282 signatures on Waratini's petition, for example, were organised by locality, and showed support from one end of the Ngati Raukawa tribal district to the other: the covering letter had 304 signatures attached to it. Another of the principal petitioners in 1880 was Matene Te Whiwhi, the leading Ngati Raukawa chief. In 1874 Matene had strongly recommended acceptance of the McLean settlement, and he had been one of those who had discouraged efforts to obtain a rehearing. Now he was petitioning, in effect, for a rehearing.

The petitions forwarded by Matene and the others were quite similar in content. All stressed that the transactions in question violated the Treaty of Waitangi, which had been an agreement between Maori and the Crown. It was for the Imperial Government, therefore, to investigate these matters and provide whatever relief was necessary.

On 21 August 1880 a deputation of Ngati Raukawa, including Henere Te Herekau, Rawiri Te Wanui, Matene's wife (Ngawiki), and Wiremu Te Whatanui (Te Whatanui's great-grandson), met Robinson, and asked that their petitions be forwarded to the Secretary of State, and also set aside for the new Governor, Sir Arthur Gordon, due to take office within the month. Robinson agreed to do this, and also requested that they have T C Williams provide him (Robinson) with a written statement, in English, covering the matters they wished to have addressed.[76]

Te Herekau wrote to Williams the same day, and asked him to provide a statement to Robinson on behalf of the petitioners. Te Herekau then specified what Williams was to say, setting down very briefly the argument contained in the petitions.[77] Matene had wanted to attend the meeting with the Governor, but was too late arriving in Wellington. He wrote to Williams in the same vein as Te Herekau a few days later.[78] The Ngati Raukawa also called on Williams, and kept him up late discussing the Governor's request, and what was to be said in response.

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74. 'Proceedings and Evidence in Native Appellate Court', AJHR, 1898, G-2A, p 4
75. Henere Te Herekau and Rawiri Te Wanui to Governor, 12 August 1880, MA series 13/16, NA Wellington; Waretini and 282 Others to Chief Secretary of the Colonies, August 1880, MA series 13/16, NA Wellington; Matene and 263 Others to Governor, August 1880, MA series 13/16, NA Wellington; Ihakaru Ngatahuna and 84 Others to Governor, August 1880, MA series 13/16, NA Wellington
76. 'Deputation of Ngatiraukawa Chiefs to his Excellency the Governor, Saturday, August 21 1880', MA series 13/16, p 4, NA Wellington
77. Te Herekau to Williams, 21 August 1880, MA series 13/16, NA Wellington
78. Matene to Williams, 23 August 1880, MA series 13/16, NA Wellington

In this statement, sent to the Governor's private secretary A C Cardigan, Williams said that Ngati Raukawa had lost their land through no fault of their own and that every effort they had made to obtain justice had failed. He described the Rangitikei–Manawatu purchase as 'fraudulent'. Horowhenua, he said, was taken from Ngati Raukawa because another tribes 'armed with government rifles and ammunition . . . threatened to fight if the land were not given to them'. As for the remedies, Horowhenua should be returned. The other lands had long since been sold and settled by Europeans, so they could not be returned. But Williams did not think it desirable that money should be offered by way of compensation; rather, what was needed was 'justice and good government, to know there are those over them who take an interest in their welfare'. Most of the letter was taken up with discussion of the Treaty of Waitangi, and the lack of regard that had been shown for it. He concluded with the words that 'what the Maoris want is really good and honest government. Less property. With less facilities for obtaining their great destroyer and curse strong drink'.[79] It is hard to believe that all of these sentiments were those of Williams' clients, and Williams seems to have had some doubts, on reflection, about the contents of this letter as well. The next day he wrote again to Cardigan, to express regret about some of the remarks he had made in the earlier letter. 'Permit me [to] withdraw anything I should not have written. That I have thought much upon these matters and felt strongly must be my excuse'.[80]

The context suggests that Williams wanted to take back the characterisation of the Rangitikei–Manawatu purchase, and possibly as well some observations he had made about the attitude of the Pakeha settlers towards the Maori people.

Robinson was on the eve of departure, and it was decided to hold matters over until Gordon had taken up office. Lewis recommended to the Premier, Hall, that Williams and the petitioners be informed of this decision and this was done.[81] In January 1881, Williams wrote to Gordon's private secretary, requesting an interview for Ngawiki, Matene's wife. The subject was to be the petitions, and the lack of a reply. This interview took place, and Gordon was given another petition, possibly a copy of Matene's petition of August 1880. Gordon referred the matter to the Government, noting for the information of ministers that he had assured Ngawiki that the delay in forwarding a reply was due only to the change in the governorship, and that he had no doubt a reply would 'speedily be returned'.[82] Bryce, the Native Minister, thought a 'simple acknowledgment [of the petition] would be a sufficient reply'.[83] In August Williams wrote to inquire if the petition had been sent to the Secretary of State.[84] Gordon noted in his minute to W Rolleston, then Native Minister, that while he had no doubt that the Secretary of State would refer the petition back to the Colonial Government, his instructions none the less required him to forward the document. He also asked if the simple acknowledgment

79. Williams to Cardigan, 23 August 1880, MA series 13/16, NA Wellington
80. Williams to Cardigan, 24 August 1880, MA series 13/16, NA Wellington
81. Lewis to Premier, 6 September 1880, MA series 13/16, NA Wellington
82. Governor to Atkinson, 11 January 1881, MA series 13/16, NA Wellington
83. Bryce to Atkinson, 11 January 1881, MA series 13/16, NA Wellington
84. Williams to Mundy, 1 August 1881, MA series 13/16, NA Wellington

recommended by Bryce had been sent.[85] Rolleston had to admit, in his reply, that in the change of ministers the matter had been overlooked. The petitioners should be informed that the petitions would be forwarded to the Secretary of State. But they should also be told that there could be 'no interference by [the] Imperial Govt in a matter already dealt with by law and courts of the colony'. If the petitioners were to be given any hope that the Imperial Government would intervene in the matter this, in Rolleston's opinion, would give rise to expectations that could never be realised, and make the settlement of native grievances impossible.[86] There appears to have been a response to these observations which has not survived, but which relates to a later memorandum from Rolleston to Hall. In this document Rolleston made the same points he had made to Gordon originally, but he also raised the issue of responsible government and the possibility that the affair could be heading in a direction that might lead to the resumption of native affairs by the Imperial Government.[87] Hall saw Gordon, and advised Rolleston that no further steps were to be taken by ministers.[88]

The petitions were forwarded to London, and in due course an acknowledgment was received, along with the instruction that the matter was one for the Colonial Government.[89] Rolleston passed this information along to Williams, Waritini, and Te Herekau.[90] Te Herekau replied, thanking Rolleston for his letter, asking for speedy Government action, and suggesting that the Governor should reply 'in his own words'.[91]

Bryce was now minister and he minuted Lewis that he did not think the question should be re-opened. This appears to be all the official consideration given to the petitions. Lewis wanted to know if he should inform Te Hererau that the matter could not be re-opened or simply file the papers. Bryce replied: 'File'.[92]

This was an outcome that might have been expected, given the exchange between Rolleston and Gordon: the Colonial Government would not respond to a petition that arrived via the Imperial Government. To do so might suggest that the Colonial Government was acting at the wish of the Secretary of State for the Colonies; it would also encourage others to use the same line of approach.

During July and August 1883 Williams published a series of 'advertisements' in the *New Zealand Times*: letters, documents extracts, and a map laying out the history of the Rangitikei–Manawatu purchase and the Horowhenua decision. The series began with an open letter to the Governor, Sir William Drummond. This letter indicates a connection between the Ngati Raukawa petitions of 1880 and this later exercise, since Williams mentions quite explicitly the letter from the Secretary of State referring the petitioners to the Colonial Government for redress. But it is not known if these newspaper articles were an initiative by Williams alone or if he was

85. Governor to Native Minister, 3 August 1881, MA series 13/16, NA Wellington
86. Rolleston to Governor, 4 August 1881, MA series 13/16, NA Wellington
87. Rolleston to Premier, 18 August 1881, MA series 13/16, NA Wellington
88. Premier to Rolleston, 30 August 1881, MA series 13/16, NA Wellington
89. Kimberley to Gordon, 6 October 1881, MA series 13/16, NA Wellington
90. Rolleston to Te Herekau, 23 December 1881, MA series 13/16, NA Wellington
91. Te Herekau to Rolleston, 9 January 1882, MA series 13/16, NA Wellington
92. Bryce to Lewis, 18 January 1882, MA series 13/16, NA Wellington

acting as a Ngati Raukawa agent. On 10 August 1883 the series was cumulated into a supplement published with the *New Zealand Times* edition of that date.[93] The Native Department was interested enough to add a copy of this document to its files.[94] One of the paper's Foxton readers, under the pen name Moutoa, replied to Williams a few weeks later, questioning some of the statements that had been made about Ngati Apa.[95] This gave the affair something of the tone of an academic debate about a remote past – if one overlooked the strong statements Williams made in the open letter to Drummond, and his concluding remarks:

> I now have the honour to demand that your Excellency should desire your Ministers and Advisers to have me arrested, and tried for having published what may prove only a false and scandalous libel on the Government of this country; or that your Excellency should cease to consider yourself the Representative here in New Zealand of England's Imperial Majesty, but the Representative of England's Broken Treaty of England's Bad Faith.[96]

There seems to have been no attempt to obtain a re-investigation of Rangitikei–Manawatu or Horowhenua associated with this series of newspaper articles; nor do there seem to have been any attempts of this kind during the latter half of the 1880s. In 1890, however, Kipa Te Whatanui petitioned Parliament, asking for a Royal Commission to enquire into Horowhenua, and for the block to be declared inalienable for the time being. This petition was probably prompted by the sale of parts of the block following the subdivision of 1886, and by the difficulties that had developed over the 1200-acre block. It was reported to have been signed by 76 Ngati Raukawa, far fewer than had signed the petitions of 1880. But the number of signatures does indicate that Kipa had good support among those who still nursed grievances relating to Horowhenua. Because of the possibility that Parliament would be prorogued before the Native Affairs Committee could consider the petition, it was held over until 1891. Kipa wrote to E Mitchelson, then Native Minister, reporting the reason why his petition had not been heard, and asking that in the meantime Kemp be prevented from selling any part of the block. Sheridan commented on this letter that the Government 'can clearly give the writer no relief except by introducing a bill to repeal the title of 1873'. He saw no problem in introducing such a Bill but could see very great difficulty in the way of getting it passed.[97] It was decided to advise Kipa that no application for a rehearing could be entertained.[98]

In 1891 some evidence was taken in connection with Kipa's petition, but the Native Affairs Committee held the matter over until 1892, when more evidence was taken. The committee then recommended to the Government that the whole matter be taken under consideration and that, if possible, legislation be passed that would finally settle the disputes over Horowhenua.[99] Nothing was done and in 1894 Kipa

93. Supplement, *New Zealand Times*, 10 August 1883, MA series 13/16, NA Wellington
94. MA series 13/16, NA Wellington
95. *New Zealand Times*, 17 September 1883
96. *New Zealand Times*, 3 July 1883
97. Sheridan to Morpeth, 22 October 1890, MA series 75/15, NA Wellington
98. Mitchelson to Morpeth, 23 October 1890, MA series 75/15, NA Wellington
99. 'Report of Native Affairs Committee', AJHR, 1892, I-3, p 5

petitioned that the 1892 recommendation be given effect. The Native Affairs Committee referred this petition to the Government with the same recommendation that had been made in 1892.[100] Besides Kipa Te Whatanui's petition, the Native Affairs Committee dealt with three other petitions concerning Horowhenua during 1894. It also reported on the Native Land Claims and Boundaries Adjustment and Titles Empowering Bill, recommending that two new clauses be added to this Bill, one placing temporary restrictions on the sale of Horowhenua blocks 6, 11A, and 11B, the other setting up a Royal Commission to investigate 'who are the Maoris entitled to the disputed land in the Horowhenua block'.[101]

These clauses were not added to the Bill in question, but the general substance of the committee's recommendations emerged in the Horowhenua Block Act 1895. Kipa had wanted a Royal Commission, and one was to be set up by this Act. The brief of the Horowhenua Commission, however, extended only to transactions that had occurred since 1873; there was no power to re-open the 1873 Native Land Court decision. However, a good deal of testimony relevant to the debate over the 1873 decision was produced during the hearings of the commission. Following the tabling of the commission's report, Kipa Te Whatanui and nine others petitioned the House, asking for a rehearing of Horowhenua, on the grounds that this report showed that false evidence had been given in 1873, and that Pomare had been tricked into not appearing. Ru Rewiti petitioned against the finding with respect to the ownership of block 9, on the grounds that the Nicholson party had accepted that the direct descendants had a right to share in the land, that Kemp's testimony had been given no weight and that the evidence contained in the Travers report had been overlooked. These petitions were referred to the Government for consideration.[102] Petitions of the same kind were sent to the Legislative Council as well.[103] The passage of the Horowhenua Block Bill 1896 through Parliament later that year produced another set of petitions again. C B Morison, for example, asked to be heard at the bar of the council on behalf of his clients, the collateral descendants.[104]

The Horowhenua Commission had not be able to consider the Native Land Court decision of 1873, and the Horowhenua Block Act 1896, when it emerged, permitted consideration of nothing that had happened before 1874. But during 1896 Kipa Te Whatanui petitioned the Legislative Council. This petition was supported by 90 Ngati Raukawa, of whom about 50 were said to be Te Whatanui's people: too large a number to have been the direct descendants only.[105] In that year the Native Affairs Committee of the Legislative Council was chaired by H Williams, Bay of Islands, the elder brother of T C Williams. In the course of its hearing, the committee considered the evidence taken with respect to the petition of 1890, the reports of the Native Affairs Committee of the House of Representative in 1892 and 1894, the Travers report, the evidence given at Foxton in 1873, and, most recently, the evidence given before the Horowhenua Commission. It also heard a number of

100. Ibid, p 6
101. Ibid, p 14
102. Ibid, p 24
103. 'Schedule of Petitions Presented to the Legislative Council', JALC, 1896, pp xi–xii
104. JALC, 14 October 1896, p 224
105. 'Report of Native Affairs Committee', JALC, 1896, no 5, p 13

witnesses, taking lengthy statements from T C Williams and Travers in particular. The witnesses were Ngati Raukawa or European; no Muaupoko were called, and Kemp was either not invited, or declined, to give evidence.

In its report, tabled on 2 September 1896, the committee remarked that it was a matter of regret that the terms of reference given to the Horowhenua Commission had not allowed for any re-examination of the 1873 decision:

> There will always remain a constant sense of injustice in the minds of [Te Whatanui's people] unless a rehearing is granted. We are convinced that any inquiry which does not go behind the judgment of the Court in 1873 – which caused all the subsequent trouble and ligation – will be futile and only render confusion worse confounded.[106]

On the substantive issues the committee found that in 1873 Te Whatanui's people had been in peaceful occupation of Horowhenua for 40 years; that the boundaries of their land, and of the block occupied by the Muaupoko, were then well-known; that false evidence had been given at Foxton in 1873; that threats and intimidation had been employed during the hearing, and that following the judgment Ngati Raukawa had been denied their right to an appeal. The committee recommended that a rehearing of the Horowhenua block take place, but excluded from the scope of the proposed rehearing the awards made by Horowhenua Commission with respect to the 100-acre and 1200-acre blocks. The committee also pointed out that the petitioners had promised not to disturb the title of the Crown over any part of the Horowhenua block or of any Europeans who were lawfully occupying land within the boundaries of the block.[107]

The committee's chairman tabled the report and moved that it be referred to the Government for favourable consideration.[108] In his speech, Williams said that the Horowhenua case should not be re-heard, rather the judgment should be subjected to a process of 'revising'. In his view, the Ngati Raukawa case had been conclusively proven, and the Government should simply legislate for the return of Te Whatanui's land to his hapu. Title to the balance of Horowhenua, excluding the Muaupoko block, areas already sold to the Crown or to the Wellington and Manawatu Railway company and any portion held under Crown title, should be determined by the Native Land Court, on the basis of the historical boundaries between the two tribes.

Whitmore, Hawke's Bay, opposed the report on the grounds that it was one-sided, maligned Kemp, would unsettle the Rangitikei–Manawatu purchase if adopted, and be 'a nail driven in the coffin of every title in the North Island'.[109] W C Walker, Christchurch, speaking for the Government, noted that the report did raise 'a very difficult, large, and dangerous subject', since in his view it would 'unsettle nearly every Native-land title in the North Island'. He asked if the word 'favourable' might be removed from the motion, a suggestion Williams accepted immediately.[110]

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106. Ibid, p 2
107. Ibid, p 3
108. Williams, 9 September 1896, NZPD, vol 95, p 441
109. Whitmore, 9 September 1896, NZPD, vol 95, p 443
110. Walker, 9 September 1896, NZPD, vol 95, p 444

T Kelly, New Plymouth, could see no harm in the motion to refer the report to the Government for consideration. It did not bind the Government or the council.[111] Ormond, Napier, took much the same position as Kelly, but raised the possibility that a rehearing 'might open the door to laying the colony under an obligation for enormous sums if it were once adjudged that the former case had been wrongly decided'.[112] Ormond also referred to Kemp in favourable terms, and agreed with Whitmore that the Horowhenua Commission had made an error in finding that Kemp had committed perjury during the 1873 hearing. Whitmore had made some adverse comments about the position of Te Whatanui at Horowhenua, and Williams responded by citing the historical evidence provided by Hadfield, Wakefield and others, much of which was included in the committee's report. Williams also reminded the council that Kemp had been dismissed as an assessor and land purchase officer in 1880, over his activities in connection with the Murimotu block. He than recited what had been alleged about Kemp's behaviour during the Foxton hearing, the parallels between the two situations being too obvious to require comment.[113]

The motion as amended was accepted. Some two weeks later Williams moved that the report and evidence be printed. Walker opposed this motion, on the grounds of the expense, the relevance of the material, and the fact that much of the evidence was already in print in one place or another.[114] W T Jennings, Auckland, favoured printing, so that members of the council might be better informed.[115] Whitmore supported Walker: the evidence was 'interminable', 'voluminous', and 'ancient'. No purpose would be served by printing it since 'no Government would have the courage to go back on the decisions of the Court of 1873'.[116] Ormond favoured printing, because the evidence might have value in connection with the Bill dealing with Horowhenua shortly to be introduced in the House.[117] S E Shrimski, Oamaru, observed that never before had he seen such opposition to the printing of a report. He wondered if the object was 'to hide something which ought not to be hidden'.[118] It was suggested that perhaps the motion should be withdrawn, the evidence pruned back, and a new motion put to the council. Williams, however, refused to withdraw his motion and forced a division. The vote was 18 to 16 in favour of the motion to print.[119]

In 1897 Kipa petitioned again, asking yet again for a rehearing of the Horowhenua block. The petition was held over until 1898. In July of that year the Native Affairs Committee reported that the case been exhaustively considered by the committee in 1892 and 1894, and by the Legislative Council's Native Affairs Committee in 1896, and that these reports had all strongly favoured the petitioner. It recommended that

111. Kelly, 9 September 1896, NZPD, vol 95, p 444
112. Ormond, 9 September 1896, NZPD, vol 95, p 446
113. Williams, 9 September 1896, NZPD, vol 95, pp 446–451
114. Walker, 23 September 1896, NZPD, vol 96, p 92
115. Jennings, 23 September 1896, NZPD, vol 96, p 92
116. Whitmore, 23 September 1896, NZPD, vol 96, p 92
117. Ormond, 23 September 1896, NZPD, vol 96, p 93
118. Shrimski, 23 September 1896, NZPD, vol 96, p 93
119. NZPD, vol 96, p 94

'urgent and favourable consideration' be given to the matter.[120] In September H Kaihau, the member for Western Maori, asked R J Seddon, the Premier and Native Minister, when the Government would reply to Kipa Te Whatanui's petitions of 1892, 1894, 1896, and 1898, all of which had been referred to the Government for consideration, and to the 1896 report on the petition presented to the Legislative Council, which had recommended a rehearing of the Horowhenua case. Seddon replied that these petitions were nothing new:

> Successive Governments had had the case before them, and it should not be forgotten that Sir Donald McLean, who had personal knowledge of the whole matter, would not re-open it. The proposal to grant a rehearing of a block the title to which was settled twenty-five years ago required the gravest consideration, and through the reports of Petition Committees of the House were entitled to much deference, it by no means followed that they had exhausted everything that was to be said on the matter. The chances were that if a rehearing be granted the lawyers and agents would be the chief persons benefited. Again, if Horowhenua was reopened, on what ground could similar applications be refused? Abstract justice might require that Ngatiraukawa should have another opportunity of proving its claim; but if finality was not to be secured after the lapse of a quarter of a century, they had better tear up all the Natives titles in the country and start afresh all round. He might say this was the difficulty Government were in in dealing with this question. Titles had been granted: Europeans had purchased from the Natives, and those European had sold to other Europeans, and now the Government were asked to go back and start afresh. The honourable member would see the difficulties of the position.[121]

The message was plain enough. It was, essentially, what McLean had said in 1874.

Neville Nicholson also petitioned the Legislative Council in 1898. Williams presented the report of the Native Affairs Committee on this petition on 20 October 1898.[122] It was the committee's opinion that the petition, which covered the same ground as that of Kipa Te Whatanui's petition of 1896, should be granted. The recommendation was that the Government give the matter careful and favourable consideration which, in the committee's view, should lead to legislation that would allow the Native Land Court to review and rehear the case. The report of the committee was tabled.

By October 1898 the Native Land Court had already rendered decisions on the two matters concerning Ngati Raukawa included in the Horowhenua Block Act 1896: the 1200-acre block and the reserves described in the 1874 deed. As for the rest of Horowhenua, the court was well advanced with the work of ascertaining interests, seeing to the subdivision of the land and issuing titles to the Muaupoko owners. The Act provided that there was to be no appeal from any of the decisions reached. In this way, to echo what Seddon had said a few weeks before, finality was to be secured.

In 1902 Kipa Te Whatanui petitioned Parliament, claiming on behalf of his hapu to have an interest in the Horowhenua block and seeking a rehearing. The Native

120. 'Report of Native Affairs Committee', AJHR, 1898, I-3, p 5
121. Seddon, 13 September 1898, NZPD, vol 104, p 24
122. JALC, 20 October 1898, p 153

Affairs Committee made no recommendation.[123] In 1922 Heni Kipa petitioned, seeking a re-investigation of the order of the Native Land Court made with respect to block 11. The Native Affairs Committee made no recommendation.[124] In 1924 Heeni Kipa petitioned for a commission of inquiry into the claims of Te Whatanui (deceased), to an interest in the Horowhenua block. The Native Affairs Committee made no recommendation.[125]

9.8 1200-ACRE BLOCK AND RESERVES: 1874 TO 1898

While the deed of gift signed in February 1874 stated that Kemp was acting on behalf of himself and the 'Muaupoko Tribe', the Muaupoko seemed, during the early part of 1874, to have no knowledge of the arrangement that had been made. In March Hoani Amorangi, also known as Hoani Puihi (and Kemp's cousin, as it happens) wrote to McLean. They had heard talk that Horowhenua was to be subdivided, and wanted information about this. 'We have strong reasons for wishing to know everything that is going on respecting this land'.[126] McLean referred them to Kemp. In April Hoani wrote again. They had had no word from, or contact with, Kemp and they wanted to know what was happening about Horowhenua. 'We heard a sort of promise made respecting the subdivision of the land, hence our request that you explain the same to us'. They also wanted to know which portion of the block had been subdivided.[127]

Hunia had not been present at the February meeting, and had left Wellington before the agreement was signed.[128] He seems to have heard about the settlement during May 1874, if not before, since late that month Knocks reported that Hunia was threatening to oppose the survey of the land awarded to Watene.[129] In May Henare Matua and the Ngati Apa at Parewanui warned Watene and Te Puke to stop surveying and leasing land, less there be more trouble with the Muaupoko.[130] In July Watene received another letter from Henare Matua, asking for a piece of the land, and again instructing him not to lease or survey the land. Watene had also received visits from parties of Ngati Apa and Muaupoko, apparently attempts to persuade him to leave the land.[131]

The fundamental cause of these continuing problems was the ambiguous status of Watene's tenure. He still resided on land which had been awarded to Muaupoko. He knew, as did Kemp and McLean, that he had been given 1200 acres, but that land had yet to be surveyed; nor did it appear to be common knowledge that this grant had been made. Certainly, the Muaupoko were not immediately informed about the arrangement Kemp had made in their name, and they subjected Watene to some

123. 'Report of Native Affairs Committee', AJHR, 1903, I-3, p 6
124. 'Report of Native Affairs Committee', AJHR, 1923, I-3, p 7
125. 'Report of Native Affairs Committee', AJHR, 1924, I-3, p 17
126. Hoani Amorangi to McLean, 26 March 1874, MA series 75/14, NA Wellington
127. Hoani Amorangi to Clarke, 27 April 1874, MA series 75/14, p 1, NA Wellington
128. Hunia to McLean, 3 February 1874, MA series 75/14, NA Wellington
129. Knocks to Under-Secretary, Native Department, 28 May 1874, MA series 75/11, NA Wellington
130. Henare Matua to Watene and Te Puke, 23 May 1874, MA series 75/11, NA Wellington
131. Watene to McLean, 29 July 1874, MA series 75/14, NA Wellington

degree of harassment.[132] Hunia and the Ngati Apa appear to have had better information, but they put pressure on Watene as well.

In September 1874 Watene wrote to Clarke, acknowledging receipt of his letters of 14 August and 2 September, and asking about the survey: 'Many years have now passed and I am not yet quietly settled on this land'.[133] Later that month he wrote again, to say that the Muaupoko had ceased interfering with his fences, which suggests that the Muaupoko now knew about the settlement Kemp had made, and that they had been warned off, possibly by McLean, probably by Kemp.[134] In July 1875 he wrote again, asking when the 1300-acre block would be laid off.[135] In September 1875 he wrote to Fenton, saying he made two applications to McLean about his land but received no reply, and asking Fenton to investigate.[136] McLean wrote to Watene, and received a reply from Watene Tuaina, identity uncertain, and Watene's nieces and nephew: Waretini, Hitau, and Tauteka. Watene was dead, they said, and a survey was urgently requested.[137] A letter of the same date (27 September 1875) and to the same effect was received as well, signed by Tauteka (also known as Ngawiki); Waihaki and Arara Watene, two of Watene's children; Waretini and his sisters Kararaina and Hitau; and Heni Kipa, a niece of Wiremu Pomare, and a direct descendant of Te Whatanui.[138] In November 1875, and again in December, further letters arrived seeking a survey, the December letter informing McLean that the Muaupoko were intending to take possession of Watene's eel weirs, an event that would be certain to cause trouble since Watene's people were, Waretini said, 'in a state of sullen anger and darkness'.[139] In January 1876 Tere Whatanui, also known as Tuainuku, and who seems to have been a son of Te Maianewa, Te Whatanui's brother, wrote to McLean, asking yet again for a surveyor.[140] McLean noted on this letter, for Clarke's attention, that he understood Kemp had settled the matter of a survey, and he asked Clarke to look into the situation.[141] This instruction seems to have lead to some communication with Kemp. In September 1876, Waretini, Teri Whatanui, and Hare Wirikahe made two requests to see McLean, having seen Kemp and obtained a confirmation of the 1300-acre grant.[142] It appears that their requests to see McLean were refused. In October 1876 Teri Whatanui wrote to Clarke on his own behalf. He had heard that Waretini had received a letter from Clarke, and he requested that all correspondence concerning Horowhenua be sent to him, since he was Te Whatanui's heir, not Waretini, and 'the person to whom this land belongs'.[143]

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132. Ibid
133. Watene to Clarke, 6 September 1874, MA series 75/14, NA Wellington
134. Watene to McLean, 16 September 1874, MA series 75/14, NA Wellington
135. Watene to Clarke, 24 July 1875, MA series 75/14, NA Wellington
136. Watene to Fenton, 9 September 1875, MA series 75/14, NA Wellington
137. Watene Tuaina and Others to McLean, 27 September 1875, MA series 75/14, NA Wellington
138. Ngawiki and Others to McLean, 27 September 1875, MA series 75/14, NA Wellington
139. Waretini to McLean, 8 November 1875, MA series 75/14, NA Wellington; Waretini to McLean, 13 December 1875, MA series 75/14, p 2, NA Wellington
140. Teri Whatanui to McLean, 29 January 1876, MA series 75/14, NA Wellington; 'Report of Horowhenua Commission', AJHR, 1896, G-2, exhibit n, p 301. Tuainuku was spelt Tuaenuku in a certified genealogy produced to the Native Appellate Court in May 1898 (see MA series 75/19, NA Wellington).
141. McLean to Clarke, 8 February 1876, MA series 75/14, NA Wellington
142. Waretini and Others to McLean, 12–15 September 1876, MA series 75/14, NA Wellington
143. Teri Whatanui to Clarke, 9 October 1876, MA series 75/14, NA Wellington

In April 1877 Teri Whatanui wrote to Pollen, then Native Minister, again asking for a surveyor to be sent.[144] A minute on this letter stated that the delay was not entirely the Government's fault, an earlier attempt to survey the land as requested having been interrupted.[145] In November Waretini made the same request, referring in his letter to the 'parchment' on which the agreement between McLean and Kemp had been written.[146]

It appears that late in 1878 some surveying activity was commissioned at Horowhenua, not necessarily in response to Ngati Raukawa concerns.[147] Early in the new year there were reports that Te Puke was obstructing work on the southern boundary, but desisted after Kemp and Booth intervened.[148] In August 1879 Booth reported that the external boundaries of Horowhenua had been surveyed, but pointed out that internal boundaries could only be surveyed on the request of the whole of the owners of the block or on the application of Kemp, who was the trustee for the tribe.[149]

In July 1881 Tauteka and others wrote to Lewis, to inform him that they were going to eject the Muaupoko and occupy the land. Since this was certain to cause trouble they were informing the Government in advance.[150] They were warned to obey the law and not to commit any breaches of the peace. They were also told that the Government was making inquiries. One of the officials consulted during the course of these inquiries was Booth. He told Lewis that it was quite true that Kemp had signed a deed conveying 1300 acres, 'particulars will be seen on reference to parchment deed in Govt. offices'. Kemp had also promised to have the land surveyed but had always put the survey off. 'My impression was that he had not informed the Muaupoko tribe and was afraid to carry out his promise'. Booth went on to say that 'the arrangement was between Sir D McLean and Kemp and the registered owners of the block were not parties to the transaction'. In Booth's view, if Kemp was unwilling to personally see to the survey, no solution was possible.[151]

Later that month (July 1881), Tauteka wrote to Lewis again. They had Kemp's permission to go onto the land, but the Muaupoko were objecting none the less, and were 'so impracticable to deal with'. They wanted, therefore, the Government's permission to work on the land.[152] They were advised to write to Kemp, to get him to honour his promise and have the land subdivided by the court.

In August 1883, Aohau Nekitini, better known as Neville Nicholson, and Kararaina's son, wrote to Lewis, complaining about Muaupoko encroachments. Members of that tribe were building houses and putting up fences on Watene's land. 'If the Government does not cause the Muaupoko to remove from our land we will

144. Teri Whatanui to Pollen, 28 April 1877, MA series 75/14, NA Wellington
145. Young to McLean, 14 May 1877, MA series 75/14, NA Wellington
146. Waretini to Pollen, 22 November 1877, MA series 75/14, NA Wellington
147. Hunia to Sheehan, 21 July 1878, MA series 75/14, NA Wellington
148. Booth to Clarke, 28 January 1879, MA series 75/14, NA Wellington; Booth to Native Minister, 17 February 1879, MA series 75/14, NA Wellington
149. Booth to Lewis, 13 August 1879, MA series 75/14, NA Wellington
150. Ngawiki to Lewis, 6 July 1881, MA series 75/14, NA Wellington
151. Booth to Lewis, 26 July 1881, MA series 75/14, NA Wellington
152. Ngawiki to Lewis, 26 July 1881, MA series 75/14, NA Wellington

create trouble'.[153] In his minute on this letter Lewis stated that the only title the writers had to the land in question was a letter from Kemp. The block had never been defined, and the Muaupoko were continually interfering with the Ngati Raukawa residents. It was difficult for the Government to intervene, but if the dispute was left to itself it might lead to serious trouble. He suggested that Ward, the Resident Magistrate, be sent to talk to the tribes and to communicate with Kemp. If Kemp made difficulties about completing the gift, the Government could threaten to charge the cost of surveying Horowhenua against the land. After further official consideration it was decided that the Ngati Raukawa should be told that when the matter came before the court they should look to Kemp to obtain their land, and that the Government would not interfere in an intertribal dispute. They should settle it among themselves.[154]

Aohau replied very promptly to this letter. McLean had said in 1874 that the Government would settle the trouble, and that is why Ngati Raukawa had consented to end their armed resistance. They now looked to the present Government to carry out McLean's promise. He continued: 'Muaupoko have come and built houses adjoining our Kainga. We object to this proceeding of theirs Well then if you do not tell these people to desist there will be trouble.'[155]

In July 1885 Aohua wrote to J Ballance, then Native Minister, asking him to intercede with Kemp over the land.[156] The registrar of the Native Land Court, W Bridson, reported that an application for subdivision of the Horowhenua block was set down for hearing at Foxton. This was probably one of Hunia's attempts to get the land subdivided. Another official noted that this application might 'fall thro', but the decision of the court must be awaited. Lewis recommended that Aohau be informed that the matter was before the court. A final minute on the file, dated 6 October 1885, noted that the application for division had been dismissed. A year later Rewiti Te Whatanui, better known as Ru Rewiti or Lewis Davis, a great-grandson of Te Whatanui, wrote to Lewis asking about the land, and wanting a copy 'of the paper containing the transfer by Major Kemp of the 1300, out of Horowhenua block, to the descendants of Te Whatanui, that is, to us' because, he said, 'we are living in constant doubt'.[157] Lewis instituted a search for this document, but it could not be found.[158] The files show, however, that the existence of a copy of the deed, in Turton's book of deeds, had been known to at least one Native Department official in July 1885.[159] In July 1886, or soon after, it appears that Lewis became aware of this copy as well. In this manner the full details of the settlement made 12 years before and, more importantly, proof that it had been made, became available both to the Native Department and to other interested parties.

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153. Aohua Nekitini to Lewis, 17 August 1883, MA series 75/14, NA Wellington
154. Lewis to Bryce, 18 August 1883, MA series 75/14, NA Wellington; Bryce to Lewis, 25 August 1883, MA series 75/14, NA Wellington
155. Aohua Nekitini to Lewis, 7 September 1883, MA series 75/14, p 2, NA Wellington
156. Aohua Nekitini to Ballance, 10 July 1885, MA series 75/14, NA Wellington
157. Rewiti Te Whatanui to Lewis, 21 June 1886, MA series 75/14, NA Wellington
158. Davies to Lewis, 8 July 1886, MA series 75/14, NA Wellington
159. Aohua Nekitini to Ballance, 10 July 1885, MA series 75/14, NA Wellington

In November 1886 the Horowhenua block was subdivided, and as part of this process Kemp was persuaded to honour the promise he had made in 1874. There was difficulty over where the land was to be located. It appears the original intention was to locate the grant to the south, near Lake Papaitonga, on the boundary between Muaupoko and Ngati Raukawa land. Neville Nicholson and perhaps some others objected, however, insisting that the 1200 acres be near Lake Horowhenua, as the 1874 deed specified, and adjacent to the original 100 acres allocated by the court. Kemp was initially reluctant to meet this demand, but when Lewis produced a copy of the deed, the block (block 9) was cut off in the desired locality. There was also some dispute over the size of this block, the Ngati Raukawa claimants arguing that the deed said 1300 acres, Kemp claiming that the original intention had been to give 1200 acres which, when added to the 100 acres already granted by the court, made 1300. Kemp held his ground, and the grant was for 1200 acres. Nicholson and the other claimants expected that the block would include their houses, cultivations, and eel weirs but when the block was finally surveyed they found their land stopped some distance short of the lake, and that their homes and cultivations were on the wrong side of the survey line. This caused continuing difficulties.

In 1874 Kemp had agreed to set aside reserves between Lake Papaitonga and the sea for the benefit of Ngati Raukawa south of Horowhenua, the deed saying that these reserves were to be surveyed at a later date. In the same year Kemp made an oral promise to the Ngati Huia, on the northern boundary, that reserves would be made for them as well. No reserves, however, were made either to the north or the south after 1874 or in 1886, when the land was subdivided. This created another source of grievance, one that was not fully ventilated until the hearing of the Horowhenua Commission, in 1896.

The major question that arose in 1886 however, with the setting aside of the long-promised 1200-acre block, was to whom, exactly, the land was to be given. The deed said the land was to go to 'certain of the descendants of Te Whatanui, to be hereafter nominated.' Who were the descendants of Te Whatanui? Who was to have the right to nominate which of them were to be chosen?

In 1886 two separate groups claimed to be the descendants of Te Whatanui. The direct descendants traced their title either from Whatanui Tutaki's daughter, Te Riti, also known as Hine Matioro, who had married the Ngapuhi chief, Wiremu Pomare; or from the first Te Whatanui's daughter, Rangingangana, who seems to have married Wiremu Pomare's father, Wiremu Pomare the elder. These two lines of descent were linked by the marriage of Te Whatanui's grandson, Wiremu Pomare, and his granddaughter, Hine Matioro.

The Pomare party, as they were referred to in evidence before the Horowhenua Commission, were based in the Bay of Islands and were never numerous in the general vicinity of Horowhenua: Heni Kipa, the great-granddaughter of Te Whatanui, and a niece of Pomare the younger, lived at Otaki with her husband Kipa Te Whatanui. Kipa was a descendant of Te Maianewa, Te Whatanui's brother. Te Maianewa arrived on the coast in the 1820s, with his son Tuainuku, known also as

Tere Te Whatanui, and his daughter-in-law Hine Puarorangi.[160] Hine was a daughter of Hitau, Te Whanui's sister, and her children were Hitau, Tauteka, Kararaina, and Waratini. According to a genealogy produced during the hearing before the Native Appellate Court at Levin in 1898, Tuainuku married a second time, to a Paranihia Whawha.[161] A daughter of this union was Hinenui Te Po, and Kipa Te Whatanui was Hinenui Te Po's son.[162] Tuainuku and Hine were cousins, and their children could claim descendant, therefore, from both a brother and a sister of Te Whatanui. But neither Tuainuku nor his children from the second marriage seem to have had any recognised claim to Horowhenua, although Tuainuku did assert at one stage that he was Te Whatanui's heir. Kipa Te Whatanui, while apparently unable to make any claim on his own behalf, was none the less always active in pursuit of his wife's claims, and those of Te Whatanui's direct descendants in general.

Hare Pomare, Heni Kipa's uncle, was resident at Otaki and Horowhenua during at least part of the 1870s and 1880s, as well, and played an active but minor role in proceedings. The other local member of the Pomare party, if Wanganui could be considered local, was Rewiti Te Whatanui, better known as Ru Rewiti or Lewis Davis. Ru Rewiti was a great-grandson of Te Whatanui.

Wiremu Pomare, the man recognised as Whatanui Tutaki's heir, visited Horowhenua at least twice during the early 1870s. Despite his claim, his attempts to excise the rights of ownership were largely ignored. Pomare was responsible for placing his niece, Heni Kipa, at Otaki, to look after the interests of the direct descendants. This in itself was perhaps not a particularly successful move, although his choice of Kipa as her husband paid far better dividends. Despite their lack of numbers, and the inability to assume a dominant position, the Pomare party none the less had a solid claim to the title 'Te Whatanui's descendants', and Watene himself had acknowledge to Travers, in 1871, that Pomare had a valid claim, equal to his own, to Horowhenua.

The Pomare party were opposed by the Nicholson party. The latter were the collateral descendants: the offspring of Te Whatanui's sister, Hitau. The original principals of group were the elder children of Hitau's daughter Hine Puarorangi: Kararaina (Caroline) Nicholson and her sister Tauteka, and Hitau's son Watene Te Waewae. By 1886 Kararaina's son Neville Nicholson was the acknowledged leader of the collateral descendants. The Nicholson party had three things in their favour: there were far more of them at and around Horowhenua, some of them were in actual residence on the land, and they were commonly known to the other Ngati Raukawa on the west coast, and even to the Muaupoko, as the children of Te Whatanui.

In 1874, whatever the formula contained in the deed, it had seemed plain who was to receive the 1200 acres: if not Watene and his people, the sequence of events before and after the Otaki meetings makes very little sense. But by 1886 McLean had been dead for a decade; the report on the Otaki meetings, while printed, had never been distributed; the deed itself had been lost for most of the intervening period; it was plausible to argue that since Kemp had made the gift, Kemp must

160. Horowhenua Commission, Neville Nicholson, 9 April 1896, AJHR, 1896, G-2, p 209
161. 'Minutes of Native Appellate Court, Levin, May 1898', MA series 75/19, p 25, NA Wellington
162. W C Carkeek, *The Kapiti Coast*, Wellington, A H & A W Reed, 1966, p 155

know who the gift was for; Kemp's recollections, it was true, were at variance with those of others who had been privy to the 1874 settlement but there were no disinterested witnesses; and now there was now something very tangible to fight over: 1200 acres.

Because of the dispute between the direct and collateral descendants, the land was retained in Kemp's hands. At his request the Native Land Court was directed, in 1890, to determine which of the descendants of Te Whatanui were to receive block 9. The court decided to divide the land; 400 acres for the Nicholson party, 800 acres for the Pomare faction. The Nicholsons appealed, and the Appellate Court split the land down the middle: 600 acres for each side. The Pomares applied to the Supreme Court, seeking an injunction that would prevent the Appellate Court judgment being put into effect, on the grounds that the word 'descendants' in the original Order in Council had to be interpreted in law as meaning lineal or direct descendants. The Supreme Court agreed with the Pomare party on the question of interpretation, but pointed out that this finding which almost certainly lead on to re-consideration not of the wording of the 1874 deed, but of the underlying intention of the document.[163]

Since the parties could not agree, and the matter had already been before the Native Land Court, the Native Appellate Court, and the Supreme Court, the question of who were the intended beneficiaries of the 1874 agreement was set aside, to be determined by the Horowhenua Commission.[164]

In 1896, before the commission, Kemp claimed that he had gone to Wellington in 1874 on other business that had nothing to do with the Horowhenua troubles, that he knew nothing of the meetings that had occurred at Otaki, or the reason why Te Puke, Watene, and other Ngati Raukawa were in Wellington. He further claimed that he did not understand that Ngati Raukawa were paid money to extinguish their claims to the block of land described in the deed, that the deed had never been fully read or translated to him, and that he thought he had been asked to sign simply because of two reserves that had been a contentious matter at the time. On the critical questions of why the land was given and who it was for, Kemp claimed it was for Pomare, because he had promised Pomare he would honour the agreement between Te Whatanui and the Muaupoko. It was not given as a consequence of the troubles at Horowhenua, or as a settlement of these troubles.[165]

This interpretation of what had occurred in 1874 was contradicted by Warena Te Hakeke, one of Hunia's sons, who stated that his father Hunia had told him that that land was intended for Watene and Te Puke, and in settlement of the disturbance started by his (Hunia's) burning of houses.[166] Warena also said that these facts had been common knowledge among the Muaupoko at the time, and Muaupoko

163. *Wiremu Pomare and Others v Piukanana and Others* [1895] 14 NZLR 340, 346
164. *New Zealand Gazette*, no 10, 11 February 1896, p 279
165. Horowhenua Commission, Meiha Keepa, 10 March 1896, AJHR, 1896, G-2, p 26; Horowhenua Commission, Meiha Keepa, 4 April 1896, AJHR, 1896, G-2, p 169; Horowhenua Commission, Meiha Keepa, 7 April 1896, AJHR, 1896, G-2, p 189
166. Horowhenua Commission, Warena Te Hakeke, 11 March 1896, AJHR, 1896, G-2, pp 42–43

witnesses before the commission tended to agree that this was the case.[167] Other witnesses also disagreed with Kemp's version of events.[168]

Neville Nicholson, in his evidence, was able to point to the printed record of the meeting held at Otaki on 13 January 1874, where Watene, Tuateka, her sister and others identified as the children of Te Whatanui, had addressed McLean, and to the subsequent meeting in Wellington, where the same party of Ngati Raukawa were in attendance.[169] He was also able to point to the lengthy series of letters from Watene and others asking for the land to be surveyed, and to his own very active involvement during the 1886 subdivision in getting the 1200-acre block located to the satisfaction of himself and his elders.

The evidence offered by the Pomare party: Kipa Te Whatanui, his wife Heni Kipa, and Ru Rewiti, tended to show little or no involvement in the key 1874 meetings, and perhaps very little concern about the land before 1886, when block 9 was finally cut off. Nor were they able to demonstrate residence – other than Heni's presence at Otaki, or offer convincing evidence that Pomare had ever exercised ownership rights over the block in question. Possibly a major weakness in their evidence was that they conceded that Nicholson's people had some claim to the land in question and, indeed, that it was Watene who had kept Te Whatanui's fires burning.[170]

Their case cannot have been helped either by the suggestion that the interest of the direct descendants in the land not only dated from 1886, but that it was related to Ru Rewiti's marriage, about that time, to Kemp's daughter.[171]

There is good evidence from the early phase of the Horowhenua dispute that Pomare was recognised as the heir to Te Whatanui's land at Horowhenua, and in 1871 Watene conceded to Travers that Pomare had a strong claim on the land. But Pomare did not appear at the 1873 investigation to give evidence on either his own, his relatives, or Ngati Raukawa's behalf, apparently because he had made some prior arrangement with Kemp over the land. Nor did Pomare initiate any of the appeal applications that were made during 1873, although it is possible some of the direct descendants signed the petitions in question. Between 1886 and 1894 the division between the direct and collateral descendants does not seem to have been very marked; after the subdivision hearing in 1886 Hitau and Neville Nicholson provided Lewis with a list of names for the 1200- and 100-acre blocks. Both lists included Heni Kipa, Ru Rewiti, and other direct descendants.[172] The letter of 8 August 1887 to Lewis, inquiring about the land, and mentioning the lists, was signed by Waretini

167. Horowhenua Commission, Te Rangi Mairehau, 14 March 1896, AJHR, 1896, G-2, p 93; Horowhenua Commission, Makere Te Rangimairehau, 16 March 1896, AJHR, 1896, G-2, p 104; Horowhenua Commission, Kerehi Tomu, 16 March 1896, AJHR, G-2, 1896, p 109; Horowhenua Commission, Kerehi Tomu, 17 March 1896, AJHR, 1896, G-2, pp 120–121; Horowhenua Commission, Hoani Puihi (Hoani Amorangi), 31 March 1896, AJHR, G-2, 1896, p 143

168. Horowhenua Commission, Donald Fraser, 13 March 1896, AJHR, 1896, G-2, p 70; Horowhenua Commission, Alexander McDonald, 13 March 1896, AJHR, 1896, G-2, p 75

169. Horowhenua Commission, Neville Nicholson, 9 April 1896, AJHR, 1896, G-2, pp 205–206

170. Horowhenua Commission, Kipa Te Whatanui, 10 April 1896, AJHR, 1896, G-2, pp 225–226; Horowhenua Commission, Hene Kipa, 13 April 1896, AJHR, 1896, G-2, pp 227–229; Horowhenua Commission, Ru Rewiti, 13 April 1896, AJHR, 1896, G-2, pp 239–241

171. Horowhenua Commission, Hoaini Puihi, 10 April 1896, AJHR, 1896, G-2, pp 143–144

172. Hitau Ranginui and Te Aohau Nekitini to Lewis, 13 December 1886, MA accession 1369, box 17, NA Wellington

and by Hare Pomare, grandsons of Hitau and Te Whatanui respectively.[173] In July 1890, Kemp wrote to the Native Minister, saying that the two groups of descendants had agreed to divide the land equally, but did not want to burden themselves with legal expenses. They had asked Kemp to pay the cost of partitioning the lands. Kemp wanted the Government to pay.[174] In 1892 Neville Nicholson gave evidence in support of Kipa Te Whatanui's petition.[175] There was some jockeying for position, of course: Nicholson advised Lewis in 1888 to ignore lists that were not sent through him.[176] Within a few weeks, Heni Kipa proffered the same advice, and claimed that she, Ru Reweti, and Hare Pomare were 'the true heirs'.[177] It appears that the unequal division of the land decided upon by the Native Land Court in 1894 was the event that placed the direct and collateral descendants in firm opposition, and made them willing to take on the burden of legal expenses that they had tried to avoid in 1890. The Native Land Court and the Appellate Court both accepted that the Pomare party had a right, on the basis that they were direct descendants of Te Whatanui, to a substantial share of the 1200-acre block. They also accepted that Hitau's descendants had a claim on the land. The decision of the Native Land Court, however, led to the Appellate Court. The Appellate Court led to the Supreme Court, and, finally, to the Horowhenua Commission.

In October 1895, during debate of the legislation setting up the commission, H Heke, member for Northern Maori, had raised the question of extending the brief of the commission so as to take in the decision of the Native Land Court in 1873.[178] The terms of reference given to the commission, however, did not permit this. Nor was the commission asked to decide who the descendants of Te Whatanui were, or which of these descendants had the best claim in terms of Maori custom to block 9. The task set was a far more limited one: to decide who had been intended to receive the 1200 acres promised in 1874. The commission completely rejected Kemp's argument that the 1200-acre block was intended for Pomare, and recommended that it be awarded, in its entirety, to Hitau's grandchildren: Hitau, Tauteka, Waratini, and Kararaina; to Hitau's son Watene; to Erena Te Rauparaha, who traced her descendant from a brother of Te Whatanui and who was the daughter of a sister of Tere Whatanui; and to Te Wiiti, who was also distantly related to Te Whatanui.[179] All of these individuals were known to have been resident at Horowhenua, and in some cases long-term residents, during the 1860s and early 1870s, and some of their descendants were still resident in the 1880s and 1890s, living more or less under Kemp's protection.

During the debate on the report of the Horowhenua Commission, and on the Horowhenua Block Bill which followed, a number of members touched on the recommendation in the report concerning block 9 and the descendants of Te

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173. Waretini and Hare Pomare to Lewis, 8 August 1887, MA accession 1369, box 17, NA Wellington
174. Kemp to Mitchelson, 24 July 1890, MA accession 1369, box 17, NA Wellington
175. JALC, 5, 1896, p 37
176. Hitau Ranginui and Te Aohau Nekitini to Lewis, 13 December 1886, MA accession 1369, box 17, NA Wellington
177. Heni Kipa to Lewis, 11 January 1887, 13 December 1886, MA accession 1369, box 17, NA Wellington
178. Heke, 25 October 1895, NZPD, vol 91, p 684
179. Horowhenua Commission, AJHR, 1896, G-2, pp 10–11

Whatanui. Heke again raised the question of re-visiting the decision of the Native Land Court in 1873.[180] The Government, however, was apparently disinclined to do anything other than simply accept the principal recommendations of the commission, and it used its majority to beat off all attempts to change any clauses of the Bill.[181] During the debate preceding the third reading of the Bill, J G Wilson, the member for Otaki, pointed out that the Bill did not seem to give the descendants of Te Whatanui represented by Kipa Te Whatanui any real right to make a case to the Native Appellate Court. Nor did the Bill include the recommendation made by the commission that the northern boundary of block 9 should be extend to the Hokio Stream.[182] Heke raised the question of declaring the land to be native land, thus opening the way for a rehearing of title, with the proviso that the results of any such rehearing would not affect the validity of any alienations of the land that had occurred. This was a concession that Kipa Te Whatanui had made in his petition to the Legislative Council debated a month before. If the court were to declare that Horowhenua had new owners, these owners would have to accept whatever depletions had occurred in the past.[183] R Stout, the member for Wellington, echoed the points made by Wilson. The Bill was not solving a problem, it was perpetuating one.[184] Despite these and other objections, the Bill was read a third time, the vote being 41 to 17. The Horowhenua situation had had a full airing in the Legislative Council in early September, when the report of Kipa Te Whatanui's petition had been debated. During the debate on the Horowhenua Block Bill, Williams took the opportunity to go over the same ground again, making use of the research materials provided by his brother.[185] J Rigg, Wellington, agreed that the lineal descendants had not been well treated, but could not accept that inquiry should extend to the decision of 1873, since 'European titles all over the place would be upset, and there would be no knowing where litigation would end'.[186] J MacGregor, Dunedin, could not see the difficulty: if justice required that investigation of the 1873 Native Land Court decision be undertaken, then it should be undertaken.[187] MacGregor also remarked on the provision that there would be no appeal for the decisions the courts were to be asked to make on Horowhenua. W T Jennings, Auckland, supported MacGregor.[188]

During the committee stage, the council amended the Bill, so as to allow other persons to be added to the list of block 9 owners identified by the Horowhenua Commission. The new wording benefited the lineal descendants, but Williams was one of only two members to vote against this change, perhaps because he saw that it would effectively restrict Ngati Raukawa's Horowhenua claims, and those of the lineal descendants, to block 9.[189] However, when the amended clause was put to the

180. Heke, 25 September 1896, NZPD, vol 96, p 225
181. Horowhenua Block Bill, 28 September 1896, NZPD, vol 96, pp 259–261
182. Wilson, 2 October 1896, NZPD, vol 96, p 396
183. Heke, 2 October 1896, NZPD, vol 96, pp 397–398
184. Stout, 2 October 1896, NZPD, vol 96, pp 398–399
185. Williams, 10 October 1896, NZPD, vol 96, pp 649–653
186. Rigg, 10 October 1896, NZPD, vol 96, p 653
187. MacGregor, 10 October 1896, NZPD, vol 96, p 656
188. Jennings, 10 October 1896, NZPD, vol 96, pp 658–659
189. Horowhenua Block Bill, 13 October 1896, NZPD, vol 96, p 667

vote Williams voted with the majority. Later he successfully amended the Bill, so that anyone who was found to have abused the right of trusteeship or acted in ways prejudicial to the rights of the other owners could be excluded from the list of owners. A second amendment, in the direction Heke had indicated, that would have declared much of Horowhenua native land, was defeated 14 to 7. The Government was prepared to give the lineal descendants the chance to make a case for a share of block 9; it was prepared to allow punitive action to be taken against Kemp and the Hunia family if the evidence warranted it; but the Government was not prepared to allow ownership of even the unsold areas of Horowhenua to be re-litigated.

The Horowhenua Block Act 1896, directed the Wellington District Land Registrar to issue a certificate of title for block 9 to the persons who had been named by the commission, and to 'such other persons, if any, as may by the [Native Appellate] Court be declared to be equitably entitled'.[190] Heni Kipa and Ru Reweti both filed applications under section 8A, that is to say, for the ascertainment of persons equitably entitled.[191] The case was heard at Levin, commencing on 12 May 1898; judgment was delivered on 16 May, and was to the effect that Wiremu Pomare and his descendants, those in the direct line of descent from Te Whatanui, were entitled to a share of block 9.[192] Neither Baldwin nor Fraser, appearing for the lineal descendants, called witnesses; they rested their case on the evidence that had been produced at all of the previous hearing, including the Horowhenua Commission. Morison, for the collateral descendants, reserved the right to call witnesses but did not in the end do so. The lawyers, of course, argued the cases of their respective clients. Two of the Hunia family, Wirihana and Raraku, had made applications to be considered equitably entitled to block 9 as well. The court eventually dismissed these applications, but not before their lawyer, McDonald, had tried to get the case adjourned, so that a ruling could be sought on whether the Muaupoko tribe had consented to the original 1874 grant. Both of the Ngati Apa applicants gave evidence bearing on the substantive issue: Wirihana stated that Watene's people were the rightful owners under the 1874 deed, and that this was general knowledge among the Muaupoko. Raraku's evidence was that the land was intended for Te Whatanui's people: she was not concerned which branch of the descendants got title.

In their decision, the judges remarked that when the court in 1873 had awarded only a 'paltry 100 acres' to Te Whatanui's people, they (Rogan and Smith) must not have fully understood what Te Whatanui had done for the Muaupoko people.[193] Turning to the agreement in 1874, they said they were satisfied that neither Kemp nor McLean had intended to exclude Te Whatanui's direct descendants from benefiting from the gift or grant of land that had been made in that year. They also claimed, on the basis of their understanding of Maori custom, that the exclusion of the direct descendants would have been a thing 'utterly repugnant' to Maori thinking.[194]

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190. Horowhenua Block Act 1896, s 8A
191. *New Zealand Gazette*, no 24, 7 April 1898, p 606
192. 'Minutes of Native Appellate Court', 16 May 1898, MA series 75/19, p 18, NA Wellington
193. Ibid, p 16
194. Ibid, p 18

The Pomare party had a list of 15 names prepared, and these were handed to the court. On this list were Wiremu Pomare, then deceased, and his two children, Nepia and Iritana. Hine Matioro was not listed and may have been dead by this stage. Hare Pomare was not listed either, probably for the same reason. Heni Kipa and her sons Wiremu and Moruti were listed, but not their father Kipa Te Whatanui. Ru Reweti and some others who may have been his children were listed. The majority of the names on the list were of individuals resident in the Bay of Islands; their relationships to each other, and their lines of descent, are not at all clear. Probably most of them were descendants of Rangingangana, Te Whatanui's daughter.

Of the seven collateral descendants named in the third schedule of the Report of the Horowhenua Commission, only Waretini was alive in 1898, so the court turned its attention to determining who the heirs of Hitau, Tauteka, Kararaina, Watene, Erena Te Rauparaha, and Te Wiiti might be.

Hitau, who had died in 1891, may never have married. In any event, she left no children. Her successors were determined to be her brother Waretini; the five children of her sister Kararaina – Neville, Howard, and Edward Nicholson, Kararaina Pera, and Emma Winiata; and Kipa Te Whatanui's son, Wiremu Kipa, who was judged to have been Hitau's adopted son.

Tauteka had died in December 1883. The agent Knocks attempted to make a case that Riria Wirehana, who seems to have been Kipa Te Whatanui's niece, and who was certainly a granddaughter of Tuainuku (Tere Te Whatanui), should share in the succession on the grounds that she had been adopted by Tauteka. After hearing evidence, the court dismissed this claim, and determined the succession to be to Waretini and to Kararaina's children.

Kararaina had died in 1877, and her children succeeded. Her uncle Watene had died in 1875, and his children, Piukanana, Arara, and Raniera, succeeded. Te Wiiti had died in 1876 – his next of kin were determined to be Nepia and Iritana Pomare, the two children of Wiremu Pomare and Hine Matioro. The basis of the relationship between Te Wiiti and the children of Hine Matioro is not evident, but it must have been known to the Ngati Raukawa present at the court, since no objections were recorded. Heni Kipa made what seemed to have been a half-hearted attempt to be counted as one of Te Wiiti's heirs also, but despite the fact that she and the Pomares were cousins, the court did not accept her claim. Erena Te Rauparaha had died in 1878, leaving one daughter, Mohi, who received her mother's share.

The court was then asked to divide the land between the two sets of owners. Neville Nicholson argued that, though his party had in the past been agreeable to an equal division, they should now receive the greater share, on the grounds that they had, over the years, borne the greater share of the expenses associated with the struggle to get the block from Kemp. The division announced was 600 acres for the Nicholsons, 575 acres for the Pomares, and 25 acres for Te Wiiti's heirs. Since Te Wiiti's heirs were Pomares, this was an equal division. The land was partitioned along an east west line into two halves: Horowhenua 9A and Horowhenua 9B. The Nicholsons took the northern block, the one closest to the lake. The Pomares, most of whom were non-residents, took the southernmost division.

The individual shares were then calculated. Kairaraina's children had 210 acres to share, of which Neville Nicholson received 25, his brother Edward 72.5 acres, his sister Emma a like amount, and the two non-resident siblings 20 acres each.[195] Tauteka, Hitau, Erena, and Watene were allocated 78 acres each, to be divided among their respective heirs. Waretini received 78 acres as well. Among the Pomares, Nepia and Iritana received in their own right 10 acres each, but they also received their father's share, and that of Te Wiiti, giving them 65 acres apiece. Heni Kipa and Ru Rewiti received 150 acres each. The balance of the estate was allocated in mostly 10-acre blocks, three on the list receiving 25 acres, one a 35-acre block. The land was declared inalienable, and all necessary orders were made and recorded.[196]

The Horowhenua commissioners had also considered evidence on the reserves that had been mentioned in the 1874 agreement, and had decided it would be absurd, for several reasons, to attempt to lay off reserves between Papaitonga and the sea. Their suggestion was that the northern boundary of block 9 be shifted to the southern bank of the Hokio Stream, which would give the children of Te Whatanui access to fishing grounds, and include the land on which their houses stood within the boundaries of their block. Action of this kind, if taken, could be considered to have extinguished the claims to reserves on the land to the south near Papaitonga Lake, which was now part of block 11. The assumption here was that the reserves had been intended, along with block 9, for Watene's people. A close reading of the evidence provided by Nicholson to the commission, and of statements made during the meetings at Otaki and Wellington in 1874, however, suggests that the reserves were intended for Te Puke and some others, members of different hapu, and that they were given partly to compensate these hapu for the loss of land newly incorporated into the Horowhenua block, and also to complete the terms of sale for the Muhunoa block.

The Horowhenua Block Act 1896 conveyed block 9 to the individuals identified by the Horowhenua Commission as being the rightful owners. It also included in the title for block 9 a portion of block 11, the effect of which was to make part of the boundary of block 9 contiguous with the south bank of the Hokio Stream. The Act also provided that another part of block 11 would be vested in those members of four named Ngati Raukawa hapu who were judged by the Native Land Court to be entitled to the reserves mentioned in the agreement of 1874, provided application was made within one month of the legislation's passage. Several applications were made within the time limit specified, and Kemp and the Muaupoko hired Buller, McDonald, and Fraser to oppose the claims.

Morison appeared for three of the named hapu (Ngatiparekohatu, Ngatihikitanga, and Ngatipareraukawa), and Knocks seemed also to have been representing clients drawn from the same hapu. R Ransfield, otherwise Ropata Ranapieri, appeared to conduct the case for the last of the named hapu: Ngatikahoro. Ngatiparekohatu was

195. These were the shares of their mother's estate. They also received land from their aunts Tauteka and Hitau.

196. 'Minutes of Native Appellate Court, 17–18 May 1898', MA series 75/19, pp 33, 41, 48–51, NA Wellington

the hapu of Matene Te Whiwhi and Mohi Te Rauparaha, a prominent member in 1898 being Matene's daughter, Heni Te Rei. Ngatihikitanga was Te Puke's hapu, and Ngatipareraukawa was the hapu of the Nicholsons, claiming in this case not through Te Whatanui but through another ancestor, Aperahama Te Ruru, the son of a brother of Te Whatanui. Ngatikahoro was the hapu of Horomona Toremi, who had taken up arms in 1874 to defend his claim to the land between Raukauhamama and Waiwiri, to the south of Te Whatanui's land. His hapu seems to have been one of the last to have evacuated the area, some members cultivating as late as 1877.[197] In 1898 Ransfield was claiming on behalf of Horomona Toremi's daughters, Hunia Arona and Te Rei Paehua, and possibly for himself as well.

The root of the problem was that the usually accepted boundary of Horowhenua was at Mahoenui; in 1873, however, the Native Land Court decision had moved it south to the Waiwiri Stream, taking in land that had already been awarded to Ngati Raukawa, and which was occupied by a number of different hapu. The agreement signed by Matene, Watene, Te Puke, and others in 1874 described the area between Mahoenui and Waiwiri as being part of the Horowhenua block. This, however, was part of the process by which the Native Land Court's decision was tidied up, for there seems to be little doubt that the area in question had never been considered part of Horowhenua before. At the conclusion of the troubles in 1874, the 1200-acre block had been set aside, along with some additional areas. However the extent of these additional reserves, where they were to be located, and who was to receive them, had not been fully decided. According to the deed, they were to be surveyed between Papaitonga and the sea, and to go to members of four named hapu: Ngatiparekohatu, Ngatihikitanga, Ngatipareraukawa, and Ngatikahoro, but only to those who were permanently resident on the land.

Kemp argued at Levin in April 1898 that in 1874 the intention had been to give comparatively small areas, basically burial grounds, to Te Puke, who had been resident on the land newly added to the southern boundary of Horowhenua. He said that the deed had never been read to him, and had he known that it named four Ngati Raukawa hapu he would never have signed it. He further claimed that he had made adjustments to both the north and south boundaries of Horowhenua, at the time of their survey, designed to accommodate and placate both Te Puke and the Ngati Huia.

The Ngati Raukawa witnesses were able to provide evidence that showed that the area between Waiwiri and Mahoenui, and even north of Mahoenui, had been in Ngati Raukawa occupation before 1873, and that following the court's decision, and in response to Muaupoko pressure, these areas had been abandoned, a process that took several years to complete and was indeed not completed until the southern boundary was settled, and surveyed, early in 1879.[198]

The court heard evidence for two days, then announced it would reserve its decision, pending an inspection of the land.[199] The inspection was carried out, but then the court went on to hear other applications, and did not render a judgment until

197. 'Proceedings and Evidence in Native Appellate Court', AJHR, 1898, G-2A, p 7
198. Booth to Native Minister, 17 February 1879, MA series 75/14, NA Wellington
199. 'Proceedings and Evidence in Native Appellate Court', AJHR, 1898, G-2A, p 10

19 September 1898.[200] The text of the judgment may not have been recorded, but it is clear from a later reference that the court awarded the four Ngati Raukawa hapu a 200-acre block, enclosing both the south and north banks of the Waiwiri Stream, running inland from the coast in the direction of Papaitonga. The March 1899 map of the subdivisions of Horowhenua block 11 shows the exact location of this block (Horowhenua no 11A, no 1), identified on the map as a reserve for certain Ngati Raukawa hapu.[201] On 28 September 1898 the court dealt with the allocation of this land among the four hapu, and with the division of each of the subdivisions among the individuals found to have ownership rights. All the orders made on that date were based on agreement among the interested hapu as to what should be done with the land. It was divided into four sections with north-south boundaries, and allocated to the four hapu in the following way. Ngatihikitanga received 75 acres, running from the coast inland. Ngatikahoro took the next section of 12 acres, and Ngatiparekohatu a block of 60 acres. At the eastern end of the subdivision Ngatipareraukawa received 63 acres. Ngatihikitanga and Ngatikahoro had been made an additional grant of seven acres to compensate them for sand drifts: Ngatiparekohatu received an extra three acres, on account of the swampy nature of the land. These small additions extended the grant from 200 acres to 210 acres.[202]

When the small blocks were subdivided among the agreed lists of owners, the Ngatihikitanga owners received the following allocations: Matenga Moroati (20 acres), Perawiti Te Puke and Hautawaho Perawiti (20 acres jointly), and Rangiwhiua Te Puke (20 acres). The remaining 15 acres went to Hura Te Ngahue, who may not have belonged to Ngatihikitanga, but who was included among the claimants because he had always lived with Te Puke. He was given an allocation in recognition of the £10 he had provided for legal expenses. Twenty acres of the Ngatiparekohatu allocation went to Heni Te Rei, Matene's daughter, and to the eight children of Matene's other children: Wirihana and Ruiha. The balance was distributed in lots of eight acres to Raiha Puaha; Hakaraia and Inia Tuatete; Mohi Te Rauparaha; Erenora Tungia; and Wi Neera. The Ngatipareraukawa section was divided into a block of 30 acres for Waretini, an eight-acre block for Rangingana, the adopted daughter of Hitau, and a number of blocks of either six or seven acres for each of Kairaraina's five children. There were only three Ngatikahoro claimants: Hunia Arona, Te Rei Paehua, and Ropata Ranapieri, and they shared equally in the 12 acres set aside for Ngatikahoro.[203]

In 1873 Ngati Raukawa had unsuccessfully laid claim to some 25,000 to 30,000 acres of Horowhenua. After the courts had finished their work in 1898, the final tally of Horowhenua land in Ngati Raukawa hands was less than 1600 acres.

200. Otaki Native Land Court MB 35, 19 September 1898, p 369
201. 'Map of Subdivision of Block 11', MA series 75/24, NA Wellington
202. Otaki Native Land Court MB 36, 28 September 1898, p 249
203. Ibid, p 252

9.9 THE 80-ACRE BLOCK: 1896 TO 1912

The Horowhenua Block Act 1896, section 8B, had provided that an area of land, part of block 11, described as 'eighty acres, more or less', situated between block 9 and the Hokio Stream, was to be vested in the owners of block 9, that is to say, given to the descendants of Te Whatanui. Section 8B was based on a recommendation in the Report of the Horowhenua Commission concerning the reserves promised by Kemp in 1874. After taking evidence on this matter the commissioners had decided it would be absurd to attempt to lay off reserves in the area between Papaitonga and the sea mentioned in this agreement. Their suggestion was that the northern boundary of block 9 should be shifted to the southern bank of the Hokio Stream. This would give the children of Te Whatanui access to fishing grounds, and also include the area on which their houses stood within the boundaries of their own land. In the opinion of the commission, if this addition was made to the area of division 9, it would extinguish any claims Ngati Raukawa might have to reserves near Papaitonga Lake.[204]

The assumption made by the commission was that the reserves promised in 1874 had been intended, along with block 9, for Te Whatanui's descendants. A close reading of the 1874 agreement itself, of the statements made during the meetings at Otaki and Wellington in 1874, and of the evidence provided by Nicholson to the Horowhenua Commission in 1896, however, suggests that the reserves were intended for Te Puke and some other Ngati Raukawa, members of different hapu, and that the reserves were given to compensate these hapu partly for the loss of land newly incorporated into the Horowhenua block, and partly to complete the original terms of sale for the Muhunoa block.

The Horowhenua Commission intended the enlarging of block 9 to stand for the reserves promised in 1874, it was not to be an additional grant of land. The 1896 legislation, however, made provision both for the reserves between Papaitonga and the sea (s 8D), and for the addition of the 80 acres, more or less, to block 9 (s 8B). The latter provision was later described as a mistake, the result of the haste with which this piece of legislation was drafted and passed through the House. The effect, in any case, was to provide Te Whatanui's descendants with an extra block (Horowhenua 11B, section 41) of land, the area of which, on survey, was found to be not 80 but 140 acres (later amended to 132 acres). This was considered to be an overgenerous definition of 'more or less', and the Surveyor-General, acting on Government instructions, refused to certify the plan.[205] According to information provided to the Government, Horowhenua 11B, section 41 contained houses and cultivations belonging to Muaupoko, and it was decided for this reason to hold the matter up, to allow time for further consideration.[206]

It seems probable that the Government's source of information was Wirihana Hunia, who, with others, petitioned Parliament, asking that the section of the Act

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204. Horowhenua Commission, AJHR, 1896, G-2, p 11
205. Sheridan to Barron, 12 May 1898, MA series 75/21, NA Wellington; Pitt, 17 October 1905, NZPD, vol 135, p 752
206. Sheridan to Barron, 12 May 1898, MA series 75/21, NA Wellington

authorising the grant be rendered null and void.[207] The Native Affairs Committee considered this petition and referred it to the Government for further inquiry, recommending remedial legislation if it was found a mistake has been made. The Government's response was to appoint H G Seth-Smith, chief judge of the Native Land Court, as a one-man commission of inquiry. He took evidence at Levin during October 1902, and his report stated that sufficient grounds existed to justify repeal of section 8B of the Horowhenua Block Act 1896, and recommended firstly that the Government should empower the Native Appellate Court to deal with the question of who the owners of the 132-acre block might be, and secondly that the court should be given the power to annul or amend the granting of the 210-acre reserve near Lake Papaitonga, should this be necessary.[208]

Having received the Seth-Smith report in November 1902, the Government seems to have forgotten about it. J Rigg, a Wellington member of the Legislative Council, had raised the matter of the 132-acre block in 1900, and he did so again during 1905.[209] Rigg may also have been responsible for the Bill passed by the Legislative Council in that year, dealing in part with the 132-acre block, and which seems to have been an attempt to force the Government's hand in this matter.[210] In any event, the Government allowed this Bill to lapse in the House of Representatives.[211] In the following year, however, the Horowhenua block Act Amendment Bill 1906 was introduced. This followed the 1905 Bill closely, and was quickly passed by both houses.

The Horowhenua Block Act Amendment Act 1906 repealed the relevant section of the Horowhenua Block Act 1896, and provided that the ownership of the land in question would be determined by the Native Land Court. This act also dealt with another matter that had been raised by the Horowhenua Commission but which, in the haste to pass the 1896 legislation, had been overlooked. This was the question of a grant for the family of Hector McDonald.[212] Kemp had promised the McDonalds that 10 acres, containing the family home and a burial ground, would be given to them. The Horowhenua Commission had considered the matter, and recommended that the land be given as promised. The legislative provision made for this grant in the 1906 Act was said to have been made with the consent of both Muaupoko and Ngati Raukawa, each tribe agreeing to honour the promise, whatever the eventual decision concerning the Maori ownership of the small block in question might be.[213]

In 1905, Neville Nicholson had taken the opportunity to petition that the impending legislation permit the whole of Horowhenua to be re-heard, but to no avail.[214] During the debate on the 1906 Bill, H Heke, for Northern Maori, asked why it was possible for a rehearing to be granted to Muaupoko over a small area when

207. 'Report of Native Affairs Committee', AJHR, 1901, I-3, p 27, no 783
208. 17 October 1905, NZPD, vol 135, p 751; JALC, 1906, no 6
209. Rigg, 28 September 1900,, NZPD, vol 114 pp 325–326; Rigg, 2 October 1900, NZPD, vol 114, p 437; Rigg, 8 September 1905, NZPD, vol 134, pp 580–581; Rigg, 17 October 1905, NZPD, vol 135, pp 750–752
210. 26 October 1905, NZPD, vol 135, pp 1071–1074
211. 28 October 1905, NZPD, vol 135, p 1243
212. Horowhenua Commission, AJHR, 1896, G-2, p 13
213. 19 September 1906, NZPD, vol 137, p 709
214. 'Nicholson Petition', 2 October 1905, MA accession 1369, box 17, NA Wellington

repeated requests for a rehearing of the whole block by Ngati Raukawa had been turned down.[215] He received what had long been the usual Government response to a question of this kind.[216] In due course the Native Land Court heard the case. The judgment, on 21 July 1908, dividing the land between the Ngati Raukawa and Muaupoko claimants, 47 acres to the Nicholson party, 85 acres to Wirihana Hunia's party. This unequal division took into account the fact that 210 acres near Lake Papaitonga had already been given to Ngati Raukawa, the court taking the position that Seth-Smith seems to have taken, namely that the land near the Hokio Stream had been intended as a substitution for the promised Papaitonga reserves, not as an addition to them. This particular interpretation can be traced back to, and seems to have originated from, the report of the Horowhenua Commission.

Edward Nicholson (or Eruera Neketine as he was sometimes known) petitioned Parliament, seeking a rehearing. In due course this petition was considered by the Native Affairs Committee, and referred to the Government for favourable consideration.[217] The Government's reply, in the closing days of the 1910 session, was to add Horowhenua 11B, section 41 to the miscellaneous list of difficult and confusing matters to be dealt with under the terms of the Native Land Claims Adjustment Act 1910. Section 12(1) of this Act conferred on the Native Appellate Court the power to hear appeals arising from decisions of the Native Land Court made under section 2 of the Horowhenua Block Act Amendment Act 1906. Section 12(2) directed the Appellate Court to proceed as if the 1873 judgment of the Native Land Court did not affect the land in dispute, and to give due weight to evidence concerning the occupation of the land in 1840. This direction concerning the 1873 decision seems to have be required by the situation that had been created by the repeal, by the Horowhenua Block Act Amendment Act 1906, of section 8B of the Horowhenua Block Act 1896. This section had conferred title to the 132-acre block on the descendants of Te Whatanui. Once their title had been revoked, the land was not left without owners but reverted to the owners, determined by the court decision of 1873, that is to say, to the Muaupoko. If any new attempt was made by the descendants of Te Whatanui to lay claim to the land by way of an appeal, the 1873 decision would be invoked, and the attempt would fail. The only way to provide for a genuine rehearing was, therefore, to legislate that for the purposes of a rehearing, the 1873 decision was to be considered as having no effect on the land in question. This is what section 12(2) of the Native Land Claims Adjustment Act 1910 did.

Edward Nicholson lodged an appeal under section 12 of the Native Land Claims Adjustment Act 1910. The Native Appellate Court heard the matter during October 1912. Skerett, the lawyer acting for the Nicholsons, stated that the fundamental issue was the conclusion or position the court would have to reach or adopt concerning the 1873 decision. If the court did find that the 1873 decision – that there had been no Ngati Raukawa conquest of Horowhenua – had been wrong, it was not intended to attempt to reopen proceedings with respect to the adjacent subdivisions of

215. Heke, 30 August 1906, NZPD, vol 137, pp 287–289
216. Carroll, 30 August 1906, NZPD, vol 137, p 289
217. 'Report of Native Affairs Committee', AJHR, 1910, I-3, p 13

Horowhenua. His submission was that this decision had indeed been in error, according to Maori law and custom, and he quoted the opinion of Hadfield, the evidence that had been collected by Williams, and evidence that had been given to the Horowhenua Commission. Baldwin, Fraser, and Sir John Findlay argued the case for the Muaupoko, the thrust of their submission being that there was no proof of conquest, no evidence of occupation, and therefore no grounds for believing that the decision of 1873 had been wrong.

The judgment was given on 25 October.[218] The Appellate Court had earlier held that while the Native Land Court of 1908 could not have disregarded the decision made in 1873, the present court was operating under section 12 of the Native Land Claims Adjustment Act 1910: it could, therefore, for the purposes of the appeal before it, ignore the 1873 judgment, and it could also take evidence concerning occupation both before and since 1840. It was in fact able to do that which no court since 1873 had been permitted to do, namely to go behind the judgment made in that year, and to consider the issues of ownership in an original manner.

The Appellate Court held that the court of 1908 had been mistaken when it took into account, in its division of the 132 acres, the fact that reserves had been made near Lake Papaitonga; that transaction was a separate agreement, which had nothing to do with the descendants of Te Whatanui. If in fact the Muaupoko needed to be compensated for the loss of this land, and the Appellate Court did not seem to believe that a case for compensation existed, it should not have been at the expense of Te Whatanui's hapu. Nor was it true to say, as the court had said in 1908, that the agreement of 1874 concerning the 1200-acre block, had created an estoppel, preventing Ngati Raukawa from thereafter disputing the 1873 judgment. In the opinion of the Appellate Court, the refusal of the Government to allow a rehearing had left Kemp in a position to dictate the terms of the 1874 agreement, and under these circumstances Ngati Raukawa could not be blamed for taking whatever they could get. As for the 132 acres in dispute, the court believed that these had originally been intended to form part of block 9; the omission was attributed to a error made when the block was originally surveyed.

On the crucial issue of whether there had been a conquest by Ngati Raukawa or not, the court stated that 'there is not a particle of doubt that the Ngati Raukawa in 1840 were the absolute masterful owners of the block'.[219] At the very least, there had been an effective conquest of the land to the south of the Hokio Stream, and, consequently, fishing rights in the stream belonged to Ngati Raukawa. The court accepted completely evidence that Te Whatanui had protected the remnants of the Muaupoko tribe, that these fugitives had lived on land given them by Te Whatanui, and within boundaries determined by that chief, and that as a people they had no rights other that those granted to them by Ngati Raukawa. If they had ever fished in the Hokio Stream, it was with the permission and at the sufferance of Ngati Raukawa.

The Appellate Court considered that the evidence of Kemp and others on which the 1873 decision had been based had been compromised by their later statements,

218. Wellington Appellate Court MB 3, 25 October 1912, pp 251–270
219. Ibid, p 265

and by subsequent findings, and that this provided 'sufficient justification for our preferring our own conclusions to those of the Court of 1873'.[220]

On the basis that the land had been conquered by Ngati Raukawa, was held by Te Whatanui in 1840, and had been effectively occupied by his hapu ever since, the court considered that all of the 132 acres should go to the applicants. Some of the land, however, contained Muaupoko buildings and cultivations. These seemed of very recent origins, but the court decided to extend the benefit of any doubts to the Muaupoko occupier, and awarded him five acres (11B, section 41D) of the block. The rest of the block (11B, section 41A; 11B, section 41B; 11B, section 41C; 11B, section 41E), 127 acres, went to the Nicholsons.[221]

After nearly 40 years the 1873 court decision had been reversed. But not universally, for the Appellate Court stated that the finding that there had been a Ngati Raukawa conquest did not 'necessarily' extend beyond the area covered by the payment of £1050 in 1874, the Raumatangi block, subdivision 9, the Waiwiri reserves and the 132 acres that were the immediate problem. Indeed, under the provisions of section 12 of the Native Land Claims Adjustment Act 1910, the finding applied only to the 132-acre block. 'It has not been', the judges said, 'part of our duty to consider more than that'.[222]

Despite this disclaimer, the logic of the final situation produced by the 1912 Appellate Court decision was curious in the extreme. Horowhenua block 11B, section 41, was found to be conquered land, continuously occupied by Ngati Raukawa since before 1840. Its legal ownership now rested on this determination. But block 11B, section 41 lay more or less towards the centre of the original Horowhenua block. Its northern boundary was the Hokio Stream, and it was surrounded on all sides by other Horowhenua subdivisions. According to the 1873 decision Horowhenua had never been conquered, either wholly or in part; nor, with the exception of the small Raumatangi block, had any part ever been effectively occupied by anyone other than Muaupoko. The legal title to virtually all of Horowhenua rested on this 1873 determination. Some of the land had been alienated since 1873, of course, but that did not affect the original basis of the legal title. Now, at the very heart of this unconquered Muaupoko land, according to one court, lay, according to a second court, 132 acres of conquered land; Ngati Raukawa land.

220. Ibid, p 268
221. Wellington Appellate Court MB 3, 5 November 1912, pp 271–272
222. Wellington Appellate Court MB 3, 25 October 1912, p 270

CHAPTER 10

MUAUPOKO AND HOROWHENUA 1873 TO 1956

10.1 UNDIVIDED LAND 1873 TO 1886

The order made on 10 April 1873 was for a certificate of title (issued 27 June 1881) under section 17 of the Native Lands Act 1867. This section directed that no more than 10 persons were to be listed on a certificate. The names of the other persons found to have an interest in the land were to be registered, however: the common practice was to write their names on the back of the certificate. Land held under a section 17 certificate could not be alienated by sale or gift, but it could be leased out for a period of up to 21 years. Only the persons named on the front of the certificate had the power to do this, however; the other owners, those listed on the back of the certificate, had no power to deal with the land in any way. Once the land was subdivided, different provisions applied, and it was possible for the land to be alienated. According to the 1867 Act, those with an interest in the land, or a majority of them, could make application for a subdivision. The practice, however, may have been to restrict the right of application to those named on the front of the certificate. At least this is what seems to have happened with respect to Horowhenua.

The certificate of title for Horowhenua contained 143 names on the back. On the front only one name appeared: Kepa Te Rangihiwinui. The effect was to leave Kemp in total control. Only he could lease the land: he alone could apply for a subdivision.

In December 1873, when the situation at Horowhenua was still very volatile, Hunia wrote to Smith, asking for a survey to be made, so that the land could be subdivided.[1] Both T C Williams and A McDonald say that signs of dissatisfaction with the terms of the 1873 certificate of title emerged very early, and the letter cited above is a tangible expression of this early discontent.[2] However, as McDonald pointed out, the certificate left Kemp in an unchallengeable position. Since nothing could be done, the initial resentment died down. However, animosity flared up again in the late 1870s over Kemp's leasing of the land. In 1878 Hunia wrote to J Sheehan, Native Minister, applying on behalf of 30 members of his Mauapoko hapu, Ngati Pariri, for a survey and a subdivision.[3] He complained that the certificate issued in 1873 was wrong, that Kemp had been leasing the land by himself and that he

1. Hunia and 21 Others to Smith, 8 December 1873, MA series 75/14, NA Wellington
2. Native Affairs Committee, T C Williams, 20 August 1896, JALC, 1896, no 5, p 18; Alexander McDonald, 'A True History of the Horowhenua Block, By Alexander McDonald, Native Agent and Licensed Interpreter: Being a Reply to Sir Walter Buller's Pamphlet', AJHR, 1897, G-2, p 145
3. Hunia and Others to Sheehan, 13 April 1878, MA series 75/14, NA Wellington

(Hunia) was 'distressed at these hidden doings'. Some sort of reply was sent to Hunia, and he responded, in May 1878, by threatening to drive the sheep of the leased land, stating that 'I will cause evil to arise between Keepa (Kemp) and myself.'[4] In the same month he wrote to Sheehan, denying that he had been interfering with the survey for the railroad. He did think the land should be subdivided before anything else was done, however, since this would facilitate the construction of the railway. In July 1878 he complained to Sheehan that it was not right for surveys of road and railway lines to be going on while the land was still unsettled, saying that he had applied to the Government for a survey so the land could be subdivided.[5] In October Hunia wrote again, seeking permission to carry out a survey of his own. In April 1879 he wrote yet again, still on the matter of a survey and a subdivision.[6] Booth was asked to make inquiries, and informed Lewis that a subdivisional survey could be made if all of the owners asked for it, or 'on the application of Meiha Keepa, who is in the position of trustee for the tribe'.[7] Hunia was informed accordingly. In effect, Booth had said that nothing could happen without Kemp's approval, and no doubt Hunia realised that Kemp would never give the approval required. In any event, correspondence with the Government on the matter of a survey and a subdivision appears to have ceased from about this time. However, before Hunia received this reply, in late August 1879, he had already attempted to fence off some of the land for his own use, an action which provoked spirited resistance from almost the entire Muaupoko tribe.[8] Hunia had the support of his own tribe, and of some of his Muaupoko hapu, the Ngati Pariri, but a confrontation between the fencing party and several hundred Muaupoko ended badly for Hunia. There was a heated argument with a group of Muaupoko women, one of whom was a former wife. The bullocks pulling the carts were unnerved by the commotion, and all the pushing and shoving. They bolted, scattering the fencing timber near and far. According to evidence before the Horowhenua Commission, it was left to rot on the ground.[9] Hunia was made to look extremely foolish. S Baker, Ward's interpreter, reported that Hunia had been so angry over the involvement of the women that he had attacked the hut of one of them with a tomahawk.[10]

Ward wanted Hunia bound over to keep the peace: Ballance thought the Maori should be left to settle their own difficulties.[11] The occupant of the hut apparently considered that the Pakeha court would provide the best remedy; she laid a complaint, alleging a breach of the peace. Hunia appeared in court in late June 1878, to answer the charge.[12] After these events had run their course, Hunia, according to Kemp, never again attempted to interfere with Horowhenua.[13]

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4. Hunia to Clarke, 4 May 1878, MA series 75/14, p 2, NA Wellington
5. Hunia to Sheehan, 28 July 1878, MA series 75/14, NA Wellington
6. Hunia to Sheehan, 2 April 1879, MA series 75/14, NA Wellington
7. Booth to Lewis, 13 August 1879, MA series 75/14, NA Wellington
8. E O'Donnell, *Te Hekenga: Early Days in Horowhenua; Being the Reminiscences of Mr Rod McDonald*, Palmerston North, Bennett and Co, 1929, p 161
9. Horowhenua Commission, Meiha Keepa, 10 March 1896, AJHR, 1896, G-2, p 25
10. Baker to Ward, 7 June 1879, MA series 75/14, p 2, NA Wellington
11. Ward to Morpeth, 9 June 1879, MA series 75/14, NA Wellington
12. MA series 75/14, NA Wellington
13. Horowhenua Commission, Meiha Keepa, 10 March 1896, AJHR, 1896, G-2, p 25

Baker's opinion was that Hunia, in Kemp's absence, had been attempting to gain possession of one of the better areas. He reported, as well, that everyone except Kemp wanted the land divided. That may have been the case, but the Muaupoko, none the less, were clearly not prepared to have the land divided in an informal or customary way by Hunia: nor did they seem to accept that Hunia had any chiefly or other rights over Horowhenua.

Kemp seems to have been firmly of the opinion through the 1870s and early 1880s that the land should not be subdivided, and for more that a decade he resisted all pressures coming from the Hunia family, from the descendants of Te Whatanui, and from the Government purchase agents to do so. McDonald, Hector's son, said that this decade was a kind of golden age for the Horowhenua Muaupoko. By the mid-1880s, however, Kemp was under increasing financial pressure. In particular he had incurred a large debt with W Sievwright, a Gisborne lawyer, which was causing him considerable anxiety. Subdivision would enable him to sell part of the land, and thus reduce his debts. While the Government agents had made little headway with Kemp, the Wellington and Manawatu Railways had appointed A McDonald as their agent. McDonald was able to persuade Kemp that there were advantages to be gained in subdividing the land in a way that would promote European settlement along the coast, and the success of the Wellington and Manawatu Railway Company. There is little doubt, however, that while Kemp may have believed that subdivision would benefit the tribe, the need to deal with his debt situation was of equal if not greater importance. Indeed, before Kemp could leave Wanganui with McDonald, to travel to Wellington to discuss the proposed subdivision, McDonald had to deposit money with the Wanganui police, because Kemp had been summoned for failure to pay a debt.[14]

The discussions in Wellington centred around a proposal that the Government would buy 4000 acres at Horowhenua to establish a town settlement. According to McDonald, Kemp was satisfied with the tenor of these talks, and signed an application for partition.

10.2 DIVIDED LAND 1886 TO 1896

The application to partition Horowhenua came before the Native Land Court at Palmerston North late in 1886. During the hearing, and as a result of discussions and arrangements made outside the court by Kemp and the Muaupoko, Horowhenua was divided in 14 separate subdivisions or blocks.

Block 1 was a long strip running roughly north and south. Containing 76 acres, this block was intended for the Wellington and Manawatu Railway Company, and the certificate was issued in Kemp's name, so that the land could be transferred to the company without hindrance. The company did not pay for the land as such; it was said to be a gift from Kemp and the Muaupoko. Following the transfer, Kemp received a number of Wellington and Manawatu Railway Company shares. These were said to be a gift as well.

14. Horowhenua Commission, A McDonald, 13 March 1896, AJHR, 1896, G-2, p 73

Block 2 was an area of 4000 acres to the east of the lake, surrounded on all sides by other subdivisions. This was the land earmarked for the Government township. Again, the certificate was issued in Kemp's name, to facilitate completion of the sale.

Block 3 contained some 12,000 acres. It lay to the north, contiguous with block 12 on the east and block 6 on the south. The certificate was issued in the name of the Muaupoko chief, Ihaia Taueki, and over 130 others.[15] Block 4 (512 acres) was issued to Hirote Teihi and 29 others. Block 5 was a small plot of four acres, on the northern boundary high in the hills. It was issued to Tamati Taopuku and Tupii Kotuka.

Block 6 contained 4620 acres, and was intended for those who had been inadvertently omitted from the list of owners drawn up in 1873. It lay on the southern side of Horowhenua, bound on the east by block 11 and on the west by block 12. Title was issued to Kemp. Block 7 was an area of 311 acres given to the Rangitane chiefs Waata Tamatea, Te Peeti Te Aweawe, and Hoani Meihana. Block 8 was a small area of 264 acres, the certificate being issued to Mere Karena Te Manaotuwhaki, Ruakota, and Karena Tarawhao. Blocks 4, 7, and 8 lay towards the north, on the eastern side of the line dividing blocks 3 and 12. Block 9 was an area of 1200 acres set aside for the descendants of Te Whatanui. Title was issued to Kemp, to facilitate transfer once various matters connected with this grant had been settled. Block 10 was an area of 800 acres, given to Kemp to enable him to clear his debts with Sievwright. It lay on the south side of block 2, parallel to it, and was bisected, as was block 2, by the railway line. Block 11 contained nearly 15,000 acres, including all the areas where the Muaupoko had their home and cultivations. It covered the western half of Horowhenua, surrounding the lake and stretching to the coast. Within this block were the two Ngati Raukawa blocks, block 9, and Raumatangi. Kemp intended that the title to this area should be issued in his name, but there was some objection from Hunia's hapu, and it was agreed that Warena Hunia should be a certificated owner of block 11 as well. Block 12 lay to the east of blocks 3 and 6. The certificate for the 13,000 mountainous acres in this block was issued to Ihaia Taueki. Block 13 was a tiny patch of one square foot located in the extreme north east corner of the Horowhenua block, high in the mountains. Among the list of registered owners was a man (Wiremu Matakara) no one could identify, and this land was set aside for him. It seems that the individual concerned was on the list of owners twice, in one place with a misspelt name. But to avoid any possible legal complications, or any suggestion that a register owner had received no allocation of land, block 13 was solemnly set aside.

Block 14 was an allocation of 1200 acres issued in Kemp's name. It lay on the southern boundary of Horowhenua, originally to the east of the railway line. When surveyed, however, it was short, so it was extended across the railway as far as the western shore of Lake Papaitonga. It was one of several Horowhenua blocks that was to attracted increasing levels of scrutiny, and be subjected to searching investigation in the 1890s.

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15. Horowhenua Commission, AJHR, 1896, G-2, p 282

Under the certificate ordered in 1873 Kemp held Horowhenua in trust for the registered owners. These owners could not deal with the land in any way, only Kemp, the certificated owner, having any power in this respect. But Kemp's powers were quite limited in that he could lease the land for a period of 21 years but he could not sell or otherwise dispose of it.

Under the certificates issued following the subdivision of 1886, the situation changed entirely. These certificates were issued under different legislation, and they conferred on the listed persons, and only the listed persons, the full and unrestricted rights of ownership, including the ability to sell the land without reference to any other person. In 1890, when the dispute with Warena Hunia got underway, Kemp claimed that neither he nor the Muaupoko had known that the legal effect of the new certificates was to convey the land in such a total and absolute way to the certificate holders. Nor had the Muaupoko understood that in consenting to these arrangements they had, in law, given away their right to a share of the tribal estate.[16]

Kemp seems to have believed that the situation after 1886 would be the same as the situation after 1873, namely that he would continue to make all decisions concerning the land held in his name, including block 11, despite the fact that the certificate for this particular block had two names on it: his and Warena Hunia. Warena, however, took his position of co-owner seriously, and he asked for an accounting of the rent monies that been received with respect to block 11. He then decided that he and Kemp were absolute owners, and he asked for the land to be partitioned between them.[17] Kemp argued that he and Warena were not the owners of block 11 but trustees for the Muaupoko tribe. The court, however, took note of the names on the certificate, and in early 1890 partitioned Horowhenua 11 into two parts – Horowhenua 11A and 11B, allocated to Kemp and Hunia respectively. This, said Kemp, was when the legal effects of the 1886 certificates were first made manifest. Kemp petitioned for a rehearing, but the judges who presided over the rehearing, while convinced that a trust had been intended, and that an injustice was being done to the Muaupoko, had to decide the case in accordance with the law. The partition stood.[18] However, having applied the law, the judges expressed the view that the proceedings of 1886 had created a situation of 'severe loss' to the Muaupoko tribe, and that they felt obliged, under the circumstances, to make a report to the Chief Judge, Native Land Court, with the view of obtaining 'ultimate justice' for all parties.

This report reiterated what had been said in the judgment: the real owners of block 11 were the Muaupoko, but the effect of the 1886 certificate was to give the land absolutely to Kemp and Hunia, and there was no legal way around this situation. Kemp, they said, believed himself to be a trustee for the tribe, not the owner, and that while the inclusion of Warena's name on the certificate had been done to satisfy the Hunia family, it had not been intended by either the tribe or Kemp that Warena should exercise any power over the land. Kemp alone was to

16. 'Petition of Major Kemp Te Rangihiwinui', AJHR, 1894, J-1
17. *Statement of Warena Te Hakeke (Sometimes called Warena Hunia) With reference to the Horowhenua Block Subdivision No 11*, Wanganui, 1892, p 4
18. 'Horowhenua No 11 Judgment', 9 May 1891, MA accession 1369, box 17, NA Wellington

have the powers of trusteeship. The judges then went on to describe what they perceived to be Kemp's notation of trusteeship:

> a power of doing exactly what he choses with it, that it was understood he would hand the land to the people, but as he puts it, only to such persons as he chose, and in what areas he chose; it entirely depended on what he chose to consider the good behaviour of individuals, whether he gave them a large portion or a small one or none at all, and that Warena Te Hakeke's name being conjoined with his made no practical difference.[19]

Kemp, they said, admitted that his own personal claim on the block was a small one, and, according to Kemp, Warena's claim was even less. There was no doubt at all that the land really belonged to the people who lived on it, but as a by-product of the way the 1886 partition had been managed, legal ownership had passed away from these people and into the hands of Kemp and Warena. If steps were to be taken to determine who the real owners were, so that legal title to the land could be restored to them, this work should be undertaken 'by some impartial tribunal . . . and not left to the caprice or favouritism of either of the so-called trustees'.[20]

The judges also mentioned that block 12 was in a similar position to block 11. That is to say, there was only one legal owner, who was said to be a trustee for others who were not identified and who, in any case, no longer had any legal claim to the land.

While these views were being considered in Wellington, Kemp petitioned Parliament, seeking legislation that would restore to the Mauapoko their equitable rights.[21] A large number of Mauapoko petitioned in support of Kemp.[22] Warena counter-petitioned, seeking an affirmation that Horowhenua had been vested in Kemp and himself as absolute owners.[23] All of these petitions were referred to the Government.

To gain time to consider the matter, the Government passed legislation, the Native Land Court Amendment Act 1891, which provided that blocks 6, 11, and 12 would be inalienable until the end of the 1892 parliamentary session. The same clause stayed for the same period of time any actions commenced or pending in relation to any of these blocks, or in relation to any payments, rents, or profits derived from them.

The reason for block 11 being covered was obvious enough. This was the block that all the trouble was about. As for block 12, there is nothing in the files to indicate why it was included. There had been no trouble over this block, and there are no complaints about the actions of the certificate holder, Ihaia Taueki, on record. Block 12 was probably added to the list because the judges had pointed out the similarities between the situation with respect to this block and the situation pertaining in block

19. *Memorandum for Chief Judge Native Land Court: Horowhenua No 11*, 11 May 1891, MA accession 1369, box 17, pp 10–11, NA Wellington
20. Ibid, p 13
21. 'Report of Native Affairs Committee', AJHR, 1892, I-3, p 16
22. Ibid
23. Ibid

11. On this analysis, block 12 had the same potential for trouble as block 11, and the Government decided it would be prudent to lock it up as well.

The other block covered by the 1891 legislation was block 6, another block being held, it was claimed, in trust for others but on a certificate that conferred absolute ownership on Kemp. The Government may have had prior indications of discontent concerning this block when it passed the suspensory legislation in the closing days of the 1891 session, although there seems to be nothing on the files. It seems more likely that block 6 was included in the 1891 legislation for the same reasons that block 12 had been included: it was another trust block, and the judges had alerted the Government to the potential these block had to produce difficulties and problems. In 1894, as it happens, block 6 block did generate a petition for a rehearing.[24] The report of the Native Affairs Committee on this petition recommended that legislation be passed that would allow the Native Land Court to deal with the matter of the trust. The committee said that, while Kemp admitted he held the block in trust, he did not recognise the petitioners as having any right to a share of the land. This was the kind of attitude, and notion of trusteeship, the judges had been critical of in their 1891 report to the chief judge, and it seems that whoever had decided, in that year, that block 6 was likely to cause problems in the future, had guessed right.

Block 9 was the only one of the trust blocks not covered by the 1891 Act. This was probably because the Native Land Court had already been directed, by Order in Council, to inquire into the ownership of this particular block.

Kemp never denied that blocks 6, 9, 11, and 12 were trust blocks, but there was one other block which his opponents said was a trust block also – block 14. Kemp said 14 was his own personal property, and during the mid-1890s Kemp, and his champion Walter Buller, successfully defended Kemp's title against all comers. In view of the later difficulties that ensued over the status of block 14, its omission from the list of blocks covered by the 1891 legislation calls for comment. The inference to be drawn is perhaps that in 1891 block 14 was not considered to be a trust block, and that no complaints about this particular block had reached the ears of Government and none were anticipated.

No solution to the problem of block 11 emerged from the Government during 1892, and as the end of the parliamentary session approached, and with it the end of the protection provided by the suspensory Act, Kemp's lawyer, Buller, arranged for Horowhenua to be proclaimed. This was a common enough procedure, which worked in the following way. The owner or owners of the land accepted a deposit from the Government, in this case £5.[25] The Government issued a proclamation that the Crown was negotiating to buy the land.[26] The effect was to prevent anyone other than the Government dealing with the land in question.

About the same time (October 1892) Buller also arranged for a document to be drawn up releasing Kemp from any obligations to account for any monies he had

24. Ibid, p 5
25. Horowhenua Commission, AJHR, 1896, G-2, exhibit x, p 314
26. Horowhenua Commission, AJHR, 1896, G-2, exhibit q, pp 309–310; *New Zealand Gazette,* no 78, 10 October 1892, p 1362

received as a trustee.[27] Many of the Muaupoko were persuaded to sign, and it was hoped that the existence of this document would prevent Warena from taking legal action against Kemp to recover any of the funds in question, once the suspensory Act had lapsed, and such matters became actionable again.

Buller hoped that these steps would leave Warena with no room to move, but Warena countered by offering to sell part of block 11 to the Government. This was the area that became known as the State farm, intended for a project close to the Government's heart. In August 1893 Parata asked McKenzie if the rumours about a Government purchase of Horowhenua were true and, if so, would the Government ensure that it had the consent of the beneficiaries (the Muaupoko) before it completed the purchase. McKenzie replied the Government had received overtures and was at present considering if it would enter into negotiations. As far as title was concerned, it was believed that title was vested in Kemp and Warena. Then McKenzie went on to say:

> he could promise the honourable gentleman this: that if the Government did negotiate for the purchase of that block they would take very good care, before a purchase was made, or before any money was paid over, that the interests of the beneficiaries should be protected, and that they should get the proper value for this land.[28]

Despite this promise, the Government purchased the 1500-acre State farm block in October 1893.[29] The Muaupoko only learnt of the sale when a survey or some other kind of working party went on to the land a short time later. They made their objection plain.[30] During a meeting in late January 1894 with a deputation from the tribe, Seddon refused to void the sale, refused to impound the purchase money, and refused to accept that there were any imperfections in either Warena's or the Government's title to the State farm block. He threaten to lift the proclamation, and allow all of the land to be sold, if the Muaupoko did not cease their opposition.[31] The Muaupoko did not oppose the sale in principle: their objections seemed to have been that they had not been consulted, that they would not received the purchase money, and, above all, that the sale seemed to recognise that the land belonged to Warena. This might mean that they would eventually be deprived of all of the land, or left with only the inferior areas. Indeed, Warena had apparently already offered them a share of block 11 which, on examination, proved to be a collection of all the sandy and swampy places in the block.[32] However, for all Seddon's bluster and bullying the Government was in a difficult position: caveats preventing transfer of the land had been lodged against the title.[33] The Government was thus not only faced with the minor annoyance of having been caught breaking a promise concerning Maori land; it also had on its hands a major embarrassment – a purchase it could not legally

27. Horowhenua Commission, AJHR, 1896, G-2, exhibit f, pp 287–292
28. 4 August 1893, NZPD, vol 80, p 461
29. Horowhenua Commission, AJHR, 1896, G-2, exhibit c, p 286
30. Horowhenua Commission, AJHR, 1896, G-2, exhibit u, p 311
31. Horowhenua Commission, AJHR, 1896, G-2, exhibit v, pp 311–314
32. Ibid, p 313
33. Edwards to Controller and Auditor General, 24 October 1894, MA series 75/15, NA Wellington

complete, and a purchase, moreover, which was eminently actionable. Buller was overseas at this stage, and Kemp was taking advice from another lawyer, W B Edwards. Edwards thought the best thing to do was to get the Supreme Court to declare that a trust existed, since this would destroy the positions of both Warena and the Government. In the run-up to the Supreme Court hearing, which was set down for October at Wanganui, Edwards attempted to obtain from the Government a copy of the agreement with Hunia, and any other documents pertaining to the purchase. He wrote a number of letters to C J A Haselden, Under-Secretary, Department of Justice. The minutes associated with these letter leave little doubt that the Government had something to hide.[34] By October 1894 Buller was back in the country and he, Kemp, and Edwards assembled at Wanganui. On the eve of the hearing Edwards decided he must have his fee before he would continue. Kemp had no funds available, and Buller agreed to loan the money, on the security of a mortgage over block 14.[35]

During the hearing it was revealed that the Government had made a payment (£2000) on the State farm block at the beginning of September, despite the lack of certainty about title, and despite the assurance given to Parliament a year earlier by McKenzie, and repeated as late as July 1894, that no payments would be made until the interests of the beneficiaries had been protected.[36] This admission caused further embarrassment to the Government, suggesting as it did that Parliament had been mislead, and that the Government was dealing with land in disputed ownership in an underhand manner. In November 1894 the Supreme Court ruled in Kemp's favour: a trust did exist. Warena appealed. In May 1895 the Appeal Court rejected his appeal. Block 11, the block from which the State farm block had been cut, was a trust block. The Government's position had now gone from bad to worse. Before it had a purchase it could not complete: now there was, as well, a large sum of money that it could not recover. Warena made plans to take the matter to the Privy Council. Before this could be done, however, the Government announced that a royal commission would be appointed to investigate dealings in Horowhenua land.

When the legislation setting up the commission emerged it listed the blocks that were the subject of concern, declaring them to be inalienable until the end of the 1896 parliamentary session, and staying all proceedings with respect to any of them for the same period of time. The list of blocks included 6, 11, and 12, the same block covered by the 1891 suspensory Act. Block 9, the trust block earmarked for Ngati Raukawa, was included as well. This block had become, like block 11, troublesome during 1895, and its inclusion was no surprise. The other block listed in the Horowhenua Block Act 1895 was block 14, the block held by Kemp as his own property, parts of which he had sold or leased to Buller. This was also the block that secured the loan Buller had made to Kemp just before the 1894 Wanganui Supreme Court hearing. Block 14 had not been covered by the 1891 suspensory Act, and on the face of it there seemed to be no good reason for it to be covered by the 1895 Act. However, Buller did have a reputation for sharp dealing, and in 1891 he had had no

34. Edwards to Haselden, many dates 1894, MA series 75/15, NA Wellington
35. Horowhenua Commission, AJHR, 1896, G-2, exhibit ar, pp 322–324
36. McKenzie, 10 July 1894, NZPD, vol 83, p 362

stake in block 14. This may be why this block received attention in 1895 that it had not received in 1891. Again, by 1895 more and more information about Kemp's stewardship was coming to hand, and this information may have persuaded the Government to push the investigations of Horowhenua, and of Kemp, to the fullest extent possible. And, of course, Kemp and Buller, in defending block 11, and undercutting the Government's purchase of the State farm block, had become powerful sources of irritation to McKenzie, and perhaps others in Seddon's cabinet. Subjecting block 14 to the scrutiny of a royal commission would make difficulties for them, and perhaps deflect attention away from the Government's own dealings with Horowhenua land.

During the debate on the Bill, McKenzie responded to opposition criticism by referring to Buller's dealings with Maori land, Horowhenua included, in highly uncomplimentary terms.[37] Buller responded immediately by letter, inviting McKenzie to repeat these 'slanderous statements' outside the House.[38] McKenzie claimed a breach of privilege had occurred, and Buller asked to be heard at the Bar of the House in his own defence.[39] Buller, by all accounts, acquitted himself well, but McKenzie continued to make the same allegations at frequent intervals.[40] From this time on, the Horowhenua dispute took on the character of a personal vendetta.

When the Report of the Horowhenua Commission was tabled, in June 1896, Buller and Kemp were both criticised. Both men petitioned Parliament. In early September, the Horowhenua Block Bill 1896 was introduced into the House.[41] This seems to have been something of a draconian measure, and apparently was much amended before emerging in the closing stage of the 1896 session as the Horowhenua Block Act 1896. Under this legislation most, but not all, of the issues raised by the Report of the Horowhenua Commission were to be settled by the courts. For example, the Appellate Court was to determine who the owners of blocks 6, 11, 12, and 14 might be. The underlying rationale was quite clear – the holding of land as an informal trust for an unspecified number of beneficiaries, whose entitlements had yet to be calculated, had created far too many problems. The owners, therefore, were to be identified, their shares determined, and certificates issued to them. The court was also to decide who should be given block 9, what part of block 11 should be cut off for the reserves promised to Ngati Raukawa in 1874, and who should receive these reserves. Again, the underlying rationale was the same.

The Horowhenua Commission had referred to some unnamed 'officers of the Crown' who had purchased the State farm block, knowing as they did so that it was trust property.[42] But McKenzie and his Department received no rap over the knuckles for doing exactly what McKenzie had accused Buller of doing. Nor did the commission want the sale voided and the land returned. To the contrary, the

37. W L Buller, 'At the Bar of the House: Sir Walter Buller at the Bar of the House; and the History of the Horowhenua Block', Wellington, *Evening Post*, 1895, p 15
38. McKenzie, 28 October 1895, NZPD, vol 91, p 741
39. 28 October 1895, NZPD, vol 91, pp 741, 770
40. McKenzie, 25 September 1896, NZPD, vol 96, p 230
41. 2 September 1896, NZPD, vol 95, p 251
42. Horowhenua Commission, AJHR, 1896, G-2, p 12

commission commended the purchase, claimed that everyone admitted that it 'was an excellent thing for the district'.[43] There was a difficulty, of course, and the commission got around this by recommending that the State farm block be considered to have been Kawana Hunia's share of block 11. The Horowhenua Block Act 1896 contained a declaration to this effect, and it was left to the Appellate Court to determine in the ordinary way who Hunia's heirs might be, so that the balance of the purchase money could be paid to them. The Hunia family thus had their claim to block 11 defined and validated by legislation. Everyone else had to have their claim tested in the courts.

It is possible to argue that the 1896 legislation provided for the forcible completion of the State farm block purchase from the Muaupoko, since they were certainly the legal owners but they were not allowed to contest the purchase. The fact that they received none of the purchase money simply added injury to insult. On the other hand, if it was accepted that Kemp was entitled to receive a disproportionate share of Horowhenua on the grounds that he was a chief, then Kawana Hunia was entitled to a similar degree of consideration. Following this line of thinking, the commission and then the Government decided that the State farm block would be the measure of Hunia's entitlement in block 11, and in this rough and ready way it was intended that the claims of the Hunia family to any other large areas within this block would be extinguished. Whether Hunia had had, in the first place, any claim to land at Horowhenua was not addressed, the commission not following through on the observation made in its report that after the arrival of Ngati Toa and Ngati Raukawa:

> the right of the Muaupoko to the land was practically extinguished. It is important to bear this in mind, because, when subsequently members of the Muaupoko claim rights based on a foundation prior to their dispersal, the arguments in support of those rights are founded on an extinguished basis.[44]

The Native Appellate Court, however, operated on a different set of premises. In September 1898, when it had finished taking evidence on the relative merits of the different claims made for an interest in block 11, it awarded the Hunia family 1503 acres, in recognition of the important role Kawana Hunia had played in connection with Horowhenua.

Block 12 was a block that was treated by the legislation in a similar way to the State farm. It was declared to be Crown land, the court being asked to ascertain exactly who the owners were so that the purchase money could be given to them. There had never been any difficulties associated with block 12, and there seems to have been little real justification for its compulsory purchase. Again, injury was added to insult; the costs of the Horowhenua Commission were to be deducted from the money to be paid for block 12. Block 12 was valued for the purpose of purchase at £1619 5s. When the cost of the Horowhenua Commission (£1266 19s 5d) and the

43. Ibid, p 13
44. Ibid, p 4

commission charged by the Public Trust Office (£3 10s 10d) were deducted, the 82 owners were left with £348 and a few coins: a little more than £4 each.[45]

10.3 BULLER AND KEMP: 1897 TO 1899

Early in 1897 the Appellate Court began to consider the applications that had been made concerning various matters to do with Horowhenua. In May it settled the ownership of block 9.[46] In July it reached decisions concerning the ownership of block 6.[47] In September it rendered judgment with respect to the reserves that had been set aside for Ngati Raukawa in 1874.[48] In September 1898 it determined who the owners of block 11 were, allocating the Hunia family 1500 acres, in recognition of the important role Kawana Hunia had played in the recent history of Horowhenua.

Under the 1896 legislation, Buller and Kemp were to be dealt with in related actions in two separate courts. The Appellate Court was to determine the status of block 14, that is to say, whether it was Kemp's personal property or held in trust for the Muaupoko. In a separate action, to be initiated by the Public Trustee within six months of the passing of the Act, the Supreme Court was to be asked to determine the validity of Buller's dealing with Kemp over block 14 land. There were two questions to be answered. Was block 14 trust land? If it was, had Buller known or suspected it was trust land? If the Appellate Court should decide that block 14 was not trust land, then there would be no point in commencing an action in the Supreme Court. Everything depended therefore on the Appellate Court producing a timely decision on the matter of the trust.

The Appellate Court began its work in late February 1897. After a week or so, the court announced that it wished to refer some matters to the Supreme Court for decision, but that the giving of evidence could proceed in the meantime.[49] On 18 March the court took the time to point out some of the difficulties that had been created by the Horowhenua Block Act 1896. The Appellate Court had jurisdiction as far as determining the status of block 14 was concerned. The Supreme Court had had conferred on it jurisdiction with respect to the alienations that had occurred on block 14. Both courts were to make final decisions from which no appeal was possible. It could:

> happen, therefore, that the decision given by the two Courts in respect of Subdivision No 14 may clash, and should that happen neither Court can reverse the decision of the other. The result, therefore, would be that two conflicting decisions will co-exist about the same matter.[50]

The arrangements made rather hastily to settle the issues concerning block 14 were in fact quite clumsy. This became obvious as the deadline approached for the

45. 'Miscellaneous Papers re Payment Block 12', MA accession 1369, box 17, NA Wellington
46. 'Minutes of Native Appellate Court', 12–19 May 1898, MA series 75/19, NA Wellington
47. 'Proceedings and Evidence in Native Appellate Court', AJHR, 1898, G-2A, p 142
48. Otaki Native Land Court MB 35, 19 September 1898, p 369
49. 'Minutes of Native Appellate Court', AJHR, 1897, G-2, p 13
50. Ibid, p 51

initiation of the Supreme Court action. At the eleventh hour Stafford, the Government's lawyer, set the wheels in motion, but then tried to delay the matter proceeding. These efforts were ultimately unsuccessful and in August 1897 the Supreme Court sat to hear the case. Since the Appellate Court had not at that stage determined the question relating to the existence of a trust, Stafford had to admit that there was no evidence against Buller. Judgment was thereupon given in favour of the defendants, Buller and Kemp, and costs were awarded to them as well. McKenzie was a poor loser and continued to attack Buller.[51] The Government refused to provide the funds so the Public Trustee could pay the costs awarded to Buller and Kemp. Buller obtained a Supreme Court opinion which indicated that, whatever the specifics of the situation, the executive had an obligation to provide the funds.[52] In December 1897 a further Horowhenua Block Amendment Bill was introduced. This Bill set aside the decision of the Supreme Court, flatly declared that block 14 was trust land and directed the Public Trustee to take further legal action. The Public Trustee protested privately to Seddon that politically-motivated activity of this kind was not the business of his office.[53] McKenzie, however, was determined to pass the Bill. Kemp and Buller both petitioned to be heard at the bar. Rolleston moved a motion to this effect. Some of the liberal backbench voted with the opposition. By the narrowest of margins (30 to 29) it was agreed that Buller and Kemp would be heard.[54] A time was set, but it passed while the House was preoccupied with other business. When it was made plain to the Government none the less that if the Bill were to proceed, Kemp and Buller must be heard, and heard first, the Bill was left to fall off the order paper. Buller took up the question of the costs again, and petitioned Parliament on the subject. The Public Petitions Committee took evidence, but made no recommendation to Government.[55] The money was not in fact paid until 1901, and then probably only because Kemp's daughter, Wikitoria, petitioned on behalf of her father's estate.[56]

In April 1898 the Native Appellate Court finally delivered its decision on block 14.[57] It was Kemp's own property; the allegation of trust was a fabrication, dating from the time of the beginning of the dispute over block 11. In upholding Kemp's title to block 14, the court also upheld Buller's claims as well. However, when Buller tried to have his titles re-registered on the strength of this judgment, the judges decided the 14 April decision was interlocutory, and not a final order at all.[58]

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51. McKenzie, 25 October 1895, NZPD, vol 91, p 684; 'Memorandum by the Minister of Land', AJHR, 1897, G-2A, p 1
52. *The Public Trustee v Buller and Another* [1898] 16, NZLR 513, 522; 'Examination of Mr J C Martin, Public Trustee, Before His Honour the Chief Justice, 16 October 1897', MA series 1 6/14, NA Wellington
53. Public Trustee to Premier, 16 December 1897, MA series 1 6/14, NA Wellington
54. 16 December 1897, NZPD, vol 100, p 820
55. Sir W L Buller, 'Report of Committee on Petition of, for Payment of Costs in Horowhenua Case', AJHR, 1898, I-1B, p i
56. 'Report of Native Affairs Committee', AJHR, 1900, I-3, p 13; AJHR, 1901, B-7A, p 70
57. 'Proceedings and Evidence in Native Appellate Court', AJHR, 1898, G-2A, pp 156–184
58. 'Proceedings in Native Appellate Court on Application of Hetariki Matao and Others', AJHR, 1898, G-2B, pp 2–4

It was January 1899 before Buller was able to persuade the court to make a final order, and he was able to re-register his titles and other claims to block 14.[59]

Kemp had died on 15 April 1898, the day after the Native Appellate Court had issued its interlocutory decision. It does not seem to be known if Kemp knew of this decision before he died.

Kemp had fought for Horowhenua in 1873, and he had preserved it inviolate until 1886. In that year he permitted a limited alienation to occur – a few acres for the railroad, a larger area for the Government village, 800 acres to pay off legal fees incurred elsewhere, some other areas to settle long-standing debts of honour, the largest of which was the subdivision set aside for the descendants of Te Whatanui. It is clear that Kemp intended that no more of Horowhenua would be lost, and that in particular he wished to safeguard and preserve subdivision 11, the block that contained the lake, and the homes and cultivations of the Muaupoko. Unfortunately, a decade of litigation, which divided the tribe and weakened both sides financially, followed. Both sides also took their dispute to Parliament and to the Government. Both solicited Government intervention. Having, in effect, been invited in the door, the Government sized the opportunity to 'bust up' Horowhenua; first by buying the State farm, then by appropriating block 12. With the owners divided and in disarray, these encroachments could not be easily resisted.

Kemp had argued that the problem was Hunia's refusal to accept that the land was being held in trust. The Horowhenua Commission decided that the problem was in fact the trust idea itself, despite the fact that this was the arrangement the Muaupoko had decided on in 1886. In the commission's opinion, it was inherently unsatisfactory for one person to hold legal title on behalf of others who had not had their share determined, and who had no legal say concerning the land. Their solution, implemented by the Horowhenua Block Act 1896, was that every owner would have his or her share of the tribal estate determined, and a certificate issued accordingly. It was a solution that would facilitate the migration of the land from Maori to Pakeha hands.

In the 1890s Kemp had selected Buller as his lawyer. On the basis of results obtained, this had been an excellent choice. But because of the animosity that developed between McKenzie and Buller, block 14, the land in which Buller had a particular interest, was targeted by McKenzie. Block 14 was claimed by Kemp as his own property. If it could be proved that Kemp held this block as a trust, and not as his own property, a case could be made that Buller had dealt in trust land, in a way that amounted to fraud. Thus if Kemp lost, so did Buller. In defending Kemp against McKenzie, Buller found himself in the fortunate position of being able to defend himself, while billing Kemp. Whatever else he may have done, Buller gave no discounts. But he did extend credit. When Kemp died, he owed Buller nearly £7000.

In due course Kemp's heir, his daughter Wikitoria, decided to let Buller exercise his rights as mortgagee. Block 14 would be auctioned; the highest bidder would become the owner.[60] It seems that Wikitoria and Buller had agreed that Buller would

59. Wellington Appellate Court MB 7, 12 January 1899, p 112
60. Wiki Keepa to Sheridan, 26 January 1899, MA series 75/24, NA Wellington

bid enough to clear the debt, now grown to nearly £8000, plus a little more for Wikitoria.[61] This figure was considerably more than the land was worth, which ensured that Buller would have, in the ordinary course of things, no competitors for the land. McKenzie wanted the Government to outbid Buller, to the tune of nearly twice the valuation. In the end, however, this last-ditch attempt to deprive Buller of block 14 came to nothing.[62] In May 1899, at public auction, Kemp's land passed into Pakeha hands.

It looked like a familiar and rather simple tale; a Maori pressured into debt, a European ending up with his land. But it had been a far a more complicated story than that.

10.4 LAKE HOROWHENUA 1898 TO 1856

Kemp had proposed, when planning the sale of the land earmarked for the town of Levin, that 100 acres along the foreshore of the lake be set aside as a public reserve and garden.[63] The Government displayed no interest. Later, during the subdivision of Horowhenua, the lake and a one chain strip surrounding it were set aside as a tribal fishing reserve, to be held in trust for the Muaupoko residents.[64] Even before the certificate of title had been issued, however, Pakeha eyes had been drawn towards the lake, and it had been suggested that it be purchased for regattas and other recreational purposes, preserving of course, Maori fishing rights.[65]

In 1903 the Department of Tourist and Health Resorts commissioned James Cowan to visit and report on Lake Horowhenua.[66] Cowan noted in his report that while the main road from Levin gave access to the native reserve surrounding the lake, the public could only cross the reserve with the permission of, and at the sufferance of, the Maori owners. According to Cowan, there had been a degree of friction between the Pakeha residents and the Maori over rights of access for a number of years, and he felt it was desirable that this unsatisfactory state of affairs should be terminated. As for the lake itself, he reported that flax grew thickly along the water edge, and that the Maori derived a considerable food supply from it: eels, kakahi shellfish, ducks, and flounders that came up the Hokio Steam. The Hokio was itself a major source of eels, and large eel weirs were to be observed. He also noted that the stream was choked in places by raupo and flax. Cowan made special mention of the islands in the lake and of the remains of Kemp's pa at Papiriki, on the western shore of the lake, recounting the history of both Papiriki and the lake islands. The latter were heavily covered with flax and other vegetation. Some of the islands were slowly decreasing in size, which seemed to be related to diminishing

61. Goffe to Sheridan, 29 December 1898, MA series 75/24, NA Wellington
62. Sheridan to Fitchett, 8 February 1899, MA series 75/24, NA Wellington; McKenzie to Sheridan, 12 April 1899, MA series 75/24, NA Wellington
63. Horowhenua Commission, AJHR, 1896, G-2, p 6
64. Reserves and Other Lands Disposal Act 1956, s 18
65. Stevens, 26 November 1897, NZPD, vol 100, pp 143–144
66. James Cowan, 'Report on Lake Horowhenua to Department of Tourist and Health Resorts', AJHR, 1908, H-2A

vegetation. Cowan said that the Maori had been cutting flax around the lake edge, and 'if they are allowed to interfere with the islands the beauty of these interesting spots would be greatly marred, and the unprotected soil (which is only a foot or two above the level of the lake) will gradually wash away'.[67]

Much of the bush and forest surrounding the lake had been destroyed, but there was a considerable area of light bush on the eastern side and at the south-eastern end. This bush lay on Maori land, but the timber rights had been sold, and most of the millable timber taken. At the southern end of the lake he noted that a fair-sized clump of milling timber (the Poriro-a-te-Wera bush) was still standing. Some of the biggest trees had been felled, but he thought there was still time to save the rest. The western side of the lake was mainly cleared land, except for a few lakeside places. Cowan thought these spots should be carefully preserved as well.

Cowan concluded his report by recommending that steps should be taken to protect and preserve Papiriki, the islands, and the native bush and vegetation around the lake. Particular attention should be paid to the eastern and southern shores, from Kaweu bush, at the northern end, to the Hokio Stream at the extreme south-eastern corner, and including the Poriro-a-te-Wera bush on the south-western shore, a distance of about four miles. All of this land lay within the native reserves, which Cowan describes as varying from 15 to 20 chains in width. He also recommended that the lake be taken, under proposed new legislation which would have as its purpose the establishment and protection of scenic reserves. If this was done, Maori fishing and hunting rights would have to be guaranteed.

Cowan reported that he had spoken to the Muaupoko chief, Te Rangimairehau, who seemed agreeable to some sort of arrangement being made. Te Rangimairehau was particularly anxious to preserve what was left of the bush, lamenting the disappearance of native birds from the lakesides as the forest had been destroyed. Cowan also reported that the Ngati Apa tribe lived on the shores of Lake Horowhenua, and that his information was that their principal man, Wilson Hunia, would be sure to disagree with whatever the Muaupoko did. Accordingly, 'the best plan is to set the reserve apart and explain to the Maoris afterwards that their ancestral rights will not be interfered with beyond forbidding them to destroy the bush and other vegetation'.[68]

Following Cowan's report, plans were set in motion to acquire, under the Scenery Preservation Act 1903, 150 or so acres of bush land adjoining the eastern edge of the lake, and the islands in the lake, but not the lake itself.[69] The views of the Native Department on this scheme have not survived, but it appears that Cabinet approved the plan in January 1905.[70] However, before the land could be proclaimed, maps had to be drawn by the Department of Lands and Surveys. There was a delay in getting

67. Ibid, p 1
68. Ibid, p 2
69. Acting Superintendent of Department of Tourists to Under-Secretary of Lands and Survey, 29 July 1904, Tourist and Publicity Department (TO) series 1, 20/148, NA Wellington; Acting Superintendent to Minister of Tourist and Health Resorts, 10 January 1905, Tourist and Publicity Department (TO) series 1, 20/148, NA Wellington; 'Scenery Preservation, Department of Lands', AJHR, C-6, 1906, p 6
70. Acting Superintendent of Department of Tourists to Under-Secretary of Lands and Survey, 1 February 1905, Tourist and Publicity Department (TO) series 1, 20/148, NA Wellington

this work done, Lands and Survey taking the view that scenery preservation could not take precedence over work needed for land settlement purposes.[71]

During this period, 1903 to 1905, W H Field, the member for Otaki, seems to have played an important role in keeping the idea of making Lake Horowhenua a public reserve before the Government, asking questions on the topic in 1903, 1904 and 1905.[72] In 1903 he was told that the Government was nearly ready to introduce legislation (the Scenery Preservation Act 1903) that would give the power to acquire and preserve scenic spots. In 1904 Seddon said that unless power was given to acquire land compulsorily, no action could be taken on the matter. In point of fact, the Scenery Preservation Act 1903 did give the Government power to acquire land compulsorily, but the Government apparently did not want to take Lake Horowhenua on that basis, or perhaps just did not want to announce that it had that possibility in mind. In 1905 the Minister replied that to secure the lake it was necessary to obtain the consent of the Maori owners, and that it was the intention of the Government to approach them on the subject at the first favourable opportunity.

Later that year Field seems to have been responsible for arranging a meeting between Seddon and Sir James Carroll on one hand, and Muaupoko on the other. This meeting may have been the meeting Carroll had promised earlier, or it may have come about after there had been further difficulties over Pakeha boating on the lake. The meeting apparently took place in the boat shed that had been erected by the Levin boating club sometime before 1903, when Cowan visited the lake and reported the existence of this structure. The outcome of this meeting was an agreement which permitted Pakeha use of the surface of the lake, while preserving Maori ownership and fishing rights generally. There were nine clauses in the agreement, dealing with the preservation of native bush within the one chain zone, forbidding the dumping of rubbish, granting the Governor the right to acquire up to nine acres of the lakefront for a public domain and boat shed, permitting the construction of a flood gate, so the lake flow and level could be regulated, confirming fishing rights exclusively to the Muaupoko, forbidding the shooting of birds over the lake, ceding, with the provisos already noted, the full use and enjoyment of the lake to the public, setting up a Board of Management, on which Maori were to be represented, and, finally, confirming, subject to what had been agreed, that rights and mana over the lake stayed with the Muaupoko.[73]

It may be a misnomer to describe these arrangements as an agreement between the Government and the Muaupoko; it may be that they were more in the nature of a set of decisions imposed on the owners. In any event, these terms formed the basis of the Horowhenua Lake Act 1905. The preamble stated that it was 'expedient that the Horowhenua Lake should be made available as a place of resort for His Majesty's subjects of both races, in as far as it is possible to do so without unduly interfering with the fishing and other rights of the Native owners'.[74] The Act then went on to

71. Under-Secretary of Lands and Survey to Acting Superintendent of Department of Tourists, 22 August 1905, Tourist and Publicity Department (TO) series 1, 20/148, NA Wellington
72. Field, 13 August 1903, NZPD, vol 124, p 477; Field, 6 July 1904, NZPD, vol 128, p 141; Field, 9 August 1905, NZPD, vol 133, pp 551–552
73. 28 October 1905, NZPD, vol 135, p 1206 (cf MA series 75/24, NA Wellington)
74. Preamble to the Horowhenua Lake Act 1905

declare the lake a public recreation reserve, subject to the provision that the 'owners shall at all times have the free and unrestricted use of the lake and of their fishing rights over the lake but so as not to interfere with the full and free use of the lake for aquatic sports and pleasures'.[75] Other sections set up a controlling board, of which at least one-third of the members were to be Maori, and prohibited shooting on the reserve and over the lake. Although the original agreement had given the Governor the right to acquire up to nine acres for boat sheds and so on, the Act permitted 10 acres to be purchased for these purposes. This admittedly small change was made while the Bill was in the committee stage, but apparently without obtaining the consent of the Muaupoko. Some of the other matters covered by the agreement, for example, the preservation of native bush on the one chain strip, and the flood gates, were not mentioned in the Act, but possibly were matters that were considered to come under the control of the board, and so did not require specific enumeration. The other clause of the agreement that was not mentioned in the Act was the acknowledgment that rights and mana over the lake remained with the Muauapoko owners. During the debate on the Bill, Rigg had pointed out that this part of the agreement would mean very little once control of the lake was handed over to the board.[76] Finally, the 1905 Act made no mention of the one chain strip, restricting the coverage of the Act to the surface of the lake, and to the small area of nine to 10 acres on the foreshore where the boat sheds were to be built. This was in accordance with Muaupoko understanding of the Seddon–Carroll agreement.

The Scenery Preservation Commissioners and the Tourist and Health Resorts Department had been working during 1905 towards taking 150 acres of lakeside bush, along with the islands in the lake, for the proposes of preservation, and the enhancement of Lake Horowhenua as a tourist site. Compensation for the Maori owners concerned was to be determined by the Native Land Court. The Horowhenua Lake Act 1905 was a far less ambitious scheme. Concerned mainly with giving the local Pakeha population access to the water, the legislation displayed little interest in the matters that were driving the Scenery Preservation Commission and the Tourist and Health Resorts Department. The new Act called for the taking of only 10 acres of land, for the purpose of building boat shed; it left the islands in Maori hands, and there was little mention in the Act of preservation or conservation in the sense that the Cowan Report had used these notions. It is possible that the Horowhenua Lake Act 1905 was promoted by the Native Department as a way of heading off the far more disruptive Tourist and Health Resorts Department proposals. Certainly the passage of the Act seems to have caught the latter department by surprise, and led to the abandonment of their own plans for the lake.[77]

The Muaupoko had become aware around 1904 that the lake was under some kind of threat. In that year, there was a petition asking that no change in the title to the Lake be permitted.[78] Following passage of the 1905 Act, T Parata, Southern Maori,

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75. Horowhenua Lake Act 1905, s 12A
76. Rigg, 28 October 1905, NZPD, vol 135, p 1206
77. C R C Robinson to Superintendent of Department of Tourists, 30 October 1905, Tourist and Publicity Department (TO) series 1, 20/148, NA Wellington
78. 'Report of Native Affairs Committee', AJHR, 1904, I-3, p 19, no 891

asked Carroll if the Government would repeal the legislation, on the grounds that it had appropriated valuable Maori property without the consent of the owners.[79] Carroll said he would look into the situation, to see if any grievance existed, but that the Government had no intention of interfering with the Act. The petition of 1904, and the exchange between Parata and Carroll during the 1906 parliamentary session, indicates that at least some of the owners of Lake Horowhenua were anxious to retain full control of the lake and unhappy with the legislation that had been passed.

During the same 1906 parliamentary session, Field, the member for Otaki, asked if the Government would amend the Act so that another 20 acres of the foreshore could be acquired for 'preservation'.[80] According to Field, this was land of no value to Maori, and land they were anxious to sell.[81] Carroll declined to make amendment, on the grounds that the Native Department were opposed. He also asked if the Maori were willing to sell, why did they themselves not make application to do so.[82]

Around 1911 difficulties started to emerge over fishing rights in the lake. There appeared to be some Pakeha resentment over the fact that fishing rights were confined to the Maori owners. There were reports that Maori were actively preventing Europeans fishing for trout in the lake, while refusing themselves to obtain licenses.[83] An opinion was obtained from the Crown Law Office in 1914, to the effect that the lake had 'probably' once belonged to the adjoining landowners but that currently there was no Maori claim to any part of the lake bed. As for European rights, the 1905 Act had not prohibited European fishing in the lake. But to fish for trout a license was required, whether one was Pakeha or Maori.[84]

In 1916 the Government introduced the Reserves and Other Lands Disposal and Public Bodies Empowering Bill 1916, a miscellany of legislative changes, some of which were amendments to the Horowhenua Lake Act 1905. There was a petition by Hemi Henare and 33 others that the clause in this Bill covering Horowhenua Lake and the Hokio Stream not proceed. The Native Affairs Committee considered the matter, but made no recommendation to Government, and the Bill was passed.[85] The 1905 Act had said that Maori members should constitute as least one-third of the board; now Maori membership was to be no more than one-third.[86] The authority of the board was now extended to the Hokio Stream, and the one-chain reserve on either side of the stream as well, areas that had not been conceded in 1905. Finally, the reserve was defined as the lake plus the one-chain strip surrounding it. The inclusion of the latter had not been agreed to in 1905, and it had not been mentioned in the 1905 Act. The effect, whether intended or not, was that a substantial and strategically placed area of land was removed from Maori control.

In 1917 a similar Act, the Reserves and Other Lands Disposal and Public Bodies Empowering Act 1917, transferred to the control of the board a 13-acre area of

79. Parata, 12 September 1906, NZPD, vol 137, p 508
80. Field, 12 September 1906, NZPD, vol 137, p 510
81. Ibid, pp 514–515
82. Carroll, 12 September 1906, NZPD, vol 137, p 523
83. Field to Native Minister, 24 January 1911, MA accession W2459 5/13/173, NA Wellington
84. 'Horowhenua Lake: The Question of Fishing Right', MA accession W2459 5/13/173, NA Wellington
85. 'Report of Native Affairs Committee', AJHR, 1916, I-3, p 30, no 251
86. Reserves and Other Lands Disposal and Public Bodies Empowering Act 1916, s 97

lakefront land. This was land that had been purchased, although during debate on the Reserves and Other Lands Disposal Act 1956 it was suggested that it had perhaps simply been taken, and no compensation paid.[87] According to the Harvey report of 1934, this area of 13 acres did not extend to the water edge, apparently stopping at the chain strip.[88]

In 1926 further legislation affecting Lake Horowhenua was passed, the Local Legislation Act 1926 containing among its many miscellaneous clauses one giving the Hokio Drainage Board authority, upon proclamation, to carry out land-drainage operations involving the Hokio Stream and Lake Horowhenua. Provisions had to be made to protect fishing rights before any drainage work could be commenced, matter noted for special attention being any widening or deepening of the Hokio Stream, the removal or replacement of eel weirs in the stream, and any lowering of the level of the lake itself.

The Hokio Drainage Board proceeded to widen and deepen the Hokio Stream, in the process, according to Maori testimony, all but destroying the stream as a source of eels. The deepening of the stream also allowed the level of the lake to fall, exposing and damaging the shellfish beds, and changing the nature of the water edge. Where once this area had been muddy, and rich in vegetation, it became stony and free of vegetation, and so less attractive to eels. The lake margin had also produced a rich crop of flax. This resource was diminished as well.

The drainage work was undertaken at the representation of Pakeha and apparently Ngati Raukawa farmers with land adjoining the stream. Rere Nicholson was one of these farmers, and he had made it plain that he wanted the stream cleared, but not deepened.[89] There was considerable Muaupoko opposition and even active intervention to stop the work proceeding, but these objections were overridden.

According to Morison's submission to the 1934 committee of inquiry, there had been an earlier case of inference with the level of the lake, around 1905, when water races had been built by an unnamed local authority. Some of these races discharged into the lake, making it prone to flooding during winter, submerging the chain strip and adjoining land.[90] Apparently it was this tendency to flood during winter than led to the 1926 drainage scheme.

The receding of the lake in 1926 had produced an additional area of unfenced land, the dewatered area, and the farmers bordering the lake proceeded to use this extra land, allowing their stock to wander along the foreshore, eating and trampling the vegetation. It had apparently always been the practice for fences to run down to the water edge, and across the chain reserve. This may or may not have been a source of grievance in the past. However, because the flax and other vegetation extended out past the water's edge, stock damage had been limited. However, after the lake level was lowered, the farmers apparently extended their fences down to the

87. Section 64 of the Reserves and Other Lands Disposal and Public Bodies Empowering Act 1917; Tirikatene, 23 October 1956, NZPD, vol 310, p 2713; memoranda attached to Crown Purchase Deed 972
88. 'Judge Harvey's Report to the Honourable The Minister of Lands', 10 October 1943, MA accession W2459 5/13/173, p 3, NA Wellington
89. Nicholson to Ngata, 15 August 1930, MA accession W2459 5/13/173, NA Wellington
90. 'Minutes of Committee of Inquiry, Levin', 11 July 1934, MA accession W2459 5/13/173, pp 3–4, NA Wellington

new water edge, obtaining in the process an extra area of land. Additionally, because the flax and vegetation had been left high and dry by the receding water line, stock damage quickly reached unacceptable levels. The Muaupoko wanted to fence the flax off, but when they tried to oblige the property owners bordering the reserve to fence off their land, they were told that the Domain Board was the vested owner, not the tribe.[91] They also reported that one of the adjoining landowners threatened to pull any fence erected down.[92]

A long series of complaints, petitions, and deputations began to the Domain Board, Government departments, and to the Government. In 1931 the Domain Board sought an opinion as to the legal situation from the Department of Land and Survey. Was the domain Crown or native property?[93] This letter was referred to the Crown Solicitor for advice. His opinion was that by the 1905 legislation the Crown had effectively resumed ownership of the lake, except for the fishing and other rights set out in the Act.[94] Since the lake had been declared to be a public reserve, not a domain, the lake had not been vested in the board. But the board had all the powers of a Domain Board, and it could require adjacent landowners to fence their land, and it could impound stock left to wander on the reserve. The fact that the lake level had been lowered did not effect the legal boundaries defined in subsection 10 of section 97 of the 1916 Act. If adjoining landowners were grazing stock in the dewatered area and on the chain strip, they were trespassing.

It seems that the board did not care to act on this advice, but resolved, after a meeting with the Levin Borough Council, to ask the department to set up an inquiry into its rights with respect to the lake and chain strip.[95] Finally, in 1934, J Harvey, judge of the Native Land Court, and H W C Mackintosh, Commissioner of Crown Lands, were appointed to conduct this inquiry. Their terms of reference were to hear and consider the views of the Domain Board, the Levin Borough Council, and other local bodies or individuals with respect to the development of the Lake Domain as a public resort; to hear and consider the representations of the Maori with respect to the rights they possessed under the Horowhenua Lake Act, 1905, and the subsequent amending legislation, and to consider how these rights might be affected by the carrying out of any proposals for development; to consider any other matters which might emerge connected with the administration of the Domain in relation to the legal or equitable rights of the Maori; and, finally, to furnish a report to the Minister of Lands.[96]

The Committee of Inquiry held a meeting in Levin on 11 July 1934. A number of local bodies and other interested Pakeha groups were represented: the Domain Board, the Levin Borough Council, the Chamber of Commerce, and the Wellington

91. Puku Matakatea and others to Ngata, 30 October 1929, MA accession W2459 5/13/173, NA Wellington
92. Puku Matakatea to Ngata, 14 November 1929, MA accession W2459 5/13/173, NA Wellington
93. Under-Secretary Lands and Survey to Under-Secretary Native Department, 30 July 1931, MA accession W2459 5/13/173, NA Wellington
94. Crown Solicitor to Under-Secretary, Department of Lands and Survey, 31 May 1932, Tourist and Publicity Department (TO) series 1, 20/148, p 2, NA Wellington
95. Under-Secretary, Department of Lands and Survey, to Minister of Lands, 15 November 1933, MA accession W2459 5/13/173, NA Wellington
96. 'Judge Harvey's Report to the Honourable The Minister of Lands', 10 October 1943, MA accession W2459 5/13/173, p 1, NA Wellington

Acclimatisation Society. Two Pakeha residents gave their views as well. Morison presented the views of the Muaupoko, and two members of the tribe spoke as well.

With the exception of the representative of the Acclimatisation Society the Pakeha all desired improvement and development, and to this end wanted the legal position with respect to ownership, particularly of the chain strip, clarified. The Borough Council thought the lake should be under the absolute control of the Domain Board. The Chamber of Commerce wanted to see a road built around the edge of the lake, which would, they thought, benefit everyone, Maori in particular, by providing access to Maori land on the western side of the lake. They also suggested that jetties, a boat harbour, and swimming pools, and possibly even a base for seaplanes might be worthwhile developments of the lakefront area. The Pakeha individuals were both concerned to see facilities in place that would foster the use of the lake for boating; their submissions made it plain that the lowering of the lake level had had an adverse effect on this type of use as well, and that the boat sheds and jetties that had once existed now no longer did so. The Domain Board was in favour of developing the facilities for boating, but seems to feel that it could not act while its powers, and Maori rights, were undefined.

The Acclimatisation Society were most concerned with the effect that the running of stock along the foreshore was having on the food supplies of the game and fish in the lake, and on the wildlife generally. They wanted the water edge protected, so it could be re-vegetated, and indicated that the society might be able to assist with the necessary fencing. The society had no comments to make on proposals for roading or chain strip development, but since the thrust of their submission was towards preserving the lake as a game reserve and wildlife refuge, they would probably not have favoured developments of this kind. They 'did not mind natives fishing', but opposed them taking ducks.

Morison then stated the views of the Muaupoko. The lake was their property, held in trust since 1898 as a common food source. The Maori understood the 1905 agreement had permitted Pakeha boating on the lake, nothing more. The 1905 Act did not vest ownership of the lake in the Domain Board; nor did it affect Maori ownership of the chain strip. The Domain Board had been advised by the Department of Lands in 1911 that it did not own the lake, or have any control over the chain strip. The 1916 Act had included the chain strip in the definition of the reserve it contained: the Muaupoko had not been consulted about this, and they had never given their consent. This legislation was a breach of the 1905 agreement with Seddon and Carroll.

In 1925 there had been some agitation to establish a Drainage Board and to control the level of the lake. The Muaupoko raised concerns about any interference with the Hokio Stream, and the effect that this would have on their food supply. There was a meeting with a representative of the Department of Lands, and some kind of agreement was reached. When the Drainage Board commenced work, the Muauapoko felt that the terms of the agreement were not being observed and intervened to stop the work. There was a second meeting and a further agreement

signed.[97] The board then went ahead with its work, cutting a narrow, deep, and fast-flowing channel with high perpendicular banks. As a result, where once there had been 13 eel weirs, only two sites survived. Work of this kind was only meant to be done after proclamation. According to Morison, the Drainage Board did the work before the proclamation was issued: 'the board trampled on native rights and then got legislation to justify their action'.[98]

The work on the Hokio spoilt it as a food source, and the lake was spoilt also, as a result of its level being lowered. In 1930 a deputation went to Wellington to complain about the damage that had been done to the Hokio and the lake, and there was another meeting at Horowhenua, to examine the situation and discuss the situation with local interests. There was also an investigation of the numbers of eels in the lake. Nothing seems to come of these investigations, the Muaupoko were unable to afford to take legal action, and the situation remained the same until the present committee of inquiry was set up.

The Muaupoko's position was that the lake and the surrounding lands were their property. They did not object to the 1905 agreement or to the 13 acres that had been taken by later legislation. But they had never given up their ownership of the chain strip. Previously they had obtained a considerable revenue from the flax, but the lowering of the lake allowed stock onto the foreshore, and this damaged the flax. In other cases, Pakeha farmers burnt the flax or ploughed it under. They now wanted control of this land to be returned to them, and they wanted to fence it off for their own use. They strongly objected to the road proposal.

Harvey's report to the Minister listed the clear evidence that the lake and the one chain strip were considered Maori property up to the time of the passage of the 1916 legislation, and the later legislation of 1926. He then noted that 'it may be that these amendments have taken away the Native's title if so they have done it a subtle manner mystifying alike to Domain Board and Natives'.[99]

The Domain Board wanted to make improvements along the waterfront, beyond the extent of the 13 acres they controlled, but at the present time could not even improve that site by giving access to the water without infringing on the chain strip and attracting Maori objections. The board's main concern was to clarify and define Maori rights and ownership with respect both to the lake and the chain strip.

The Muaupoko conceded that the Crown had rights over the surface of the lake. But they contended that the chain strip had never been handed over, and that there had never been any agreement or understanding that it would be handed over. They wanted control of this land handed back to them.

Harvey felt that the solution might lie in a compromise rather than in any legal definition of rights, and suggested that the parties be invited to consider the following propositions: that the board would have control over the surface of the lake, subject to the fishing rights; that the lake bed would be owned by the trustees

97. R M Watson, 'Re Hokio Steam', 28 November 1925, MA accession W2459 5/13/173, p 2, NA Wellington
98. 'Minutes of Committee of Inquiry, Levin', 11 July 1934, MA accession W2459 5/13/173, p 5, NA Wellington; *New Zealand Gazette*, no 81, 16 December 1926, p 3410
99. 'Judge Harvey's Report to the Honourable The Minister of Lands', 10 October 1943, MA accession W2459 5/13/173, p 3, NA Wellington

appointed in trust for the owners of Horowhenua 11; that the Domain Board would be given title to the dewatered area, and adjacent section of the chain strip along the Levin side of the lake; that the rest of the dewatered area and the chain strip would be owned by the trustees, and administered as the tribe determined.

G W Forbes, the Native Minister, felt that the report provided a basis for 'final negotiations' and for draft legislation.[100] In March 1935, the proposals were put to the Muaupoko. The Harvey scheme called for the Muaupoko to concede an area of about 83½ chains to the Domain Board, but they were prepared to give an area of only about half this size, and the meeting was adjourned.[101] The Department of Lands and Surveys and the Native Department agreed that the matter should be left to settle.[102]

Later that year some difficulties arose over the cutting of flax on the foreshore, apparently a dispute between rival sections within the tribe. One side appealed to the Domain Board.[103] The board sought advice from the Department of Lands and Surveys.[104] The Native Department was asked to investigate, and decided that 'the only solution to this matter is the completion of arrangements in train for the creating of a reserves along the shores of the Lake'.[105]

In May 1936 a deputation travelled to Wellington to see the Prime Minister, M J Savage. After reciting the difficulties and hardship caused by the legislation of 1905 and 1916 they made a simple request: that these Acts be repealed and the ownership of the lake and the foreshore be returned to the original owners. Savage suggested that they meet with departmental officers, to see if a solution could not be worked out.[106]

In December 1936, two Government officers travelled to Levin, to meet with the Muaupoko. Representatives of local bodies were invited. Harvey chaired the meetings. The Muaupoko began by taking umbrage; this was not the kind of meeting they had expected. They had thought the meeting would be in Wellington, with the Minister and his officials, and that the topic of discussion would be the legislation that disturbed their ownership of the chain strip. The officials, on the other hand, wanted to discuss Harvey's original proposals for settlement of the dispute. When it became obvious that an impasse had developed, the meeting lapsed.[107] Harvey later advised the Native Department that nothing was likely to be achieved by further

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100. Forbes to Minister of Lands, 4 February 1935, MA accession W2459 5/13/173, NA Wellington
101. Horowhenua Lake Domain, minutes of meeting, 23 March 1935, MA accession W2459 5/13/173, NA Wellington
102. Under-Secretary, Lands and Survey to Under-Secretary, Native Department, 15 August 1935, MA accession W2459 5/13/173, NA Wellington
103. Tuku Matakatea and Others to Hudson, 6 November 1935, MA accession W2459 5/13/173, NA Wellington
104. Hudson to Under-Secretary, Lands and Survey, 7 November 1935, MA accession W2459 5/13/173, NA Wellington
105. Under-Secretary, Native Department to Under-Secretary, Lands and Survey, 22 November 1935, MA accession W2459 5/13/173, NA Wellington
106. 'Minutes of Meeting of Deputation of Muaupoko Tribe and Prime Minister, 29 May 1936', MA accession W2459 5/13/173, p 6, NA Wellington
107. 'Minutes of a Meeting Between the Native Owners of Horowhenua Lake and Departmental Officers and Representatives of Local Bodies, Levin', 9 December 1936, MA accession W2459 5/13/173, NA Wellington

meetings.[108] He suggested that if a solution was urgently required, that the chain strip be re-vested in the trustees, and that the Government then take, under the Public Works Act, the land required for the proposed domain. This would be an honest and straightforward approach.

By the late 1930s early 1940s the Domain Board had effectively ceased to function, no Maori being willing to accept nomination.[109] The grievances over the lake, the Hokio, and the chain strip remained, and so had the bad feelings between Maori and Pakeha. In 1943 another deputation travelled to Wellington, this time to meet H G R Mason, then Native Minister. They covered the same ground that had been cover before, and had the same request; that control of the chain strip, and the dewatered area between the strip and the water edge, be returned to them. There is very little in the files concerning any actions taken after this meeting. G P Shepherd, chief judge of the Native Land Court, was asked to comment, and laid a good deal of the blame on the Domain Board for failing to fence off the chain strip, and for taking no action to prevent adjoining landowners from running their stock on the reserve. He expressed the view that, while the legal position with respect to the ownership of the lake and the chain strip had become confused, they were still the property of the Maori owners, pursuant to the Native Land Court orders.[110] Mason wrote to Morison, offering the Harvey solution.[111] The reply is not on file. It may be that the war delayed attention to the matter, or that the impasse over the Harvey proposals continued to prevent progress towards a resolution. In any event, the grievance remained.

In the 1950s a new series of meetings, deputations, and representations to Government began. In 1952 a report by E McKenzie, Assistant Commissioner of Crown Lands and J A Mills and J M McEwan, both of Maori Affairs, was produced. The authors doubted that the 1905 Act had vested the lake in the Crown, despite Crown Law Office opinions to the contrary. The main source of difficulty was the Domain Board, which had ignored Maori views and wishes, and had even asked that the Maori representatives be removed from the board. The only solution seemed to be to attempt to purchase the land wanted for the domain reserve.[112]

It is not clear what the link, if any, between this report and the clauses dealing with Lake Horowhenua in the Reserves and Other Lands Disposal Act 1956 might be. There may have been no particular association. On the other hand, both documents seem to focus on the constitution of the Domain Board, and both started from the position that the lake and the chain strip were Maori property. In introducing the legislation the Minister of Lands and Maori Affairs, E B Corbett, remarked that it dealt with a matter, namely the ownership and control of Lake

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108. Harvey to Under-Secretary, Native Department, 15 December 1936, MA accession W2459 5/13/173, NA Wellington
109. Under-Secretary, Lands and Survey to Under-Secretary, Native Department, 13 June 1940, MA accession W2459 5/13/173, NA Wellington
110. Shepherd to Under-Secretary, Native Department, 21 October 1943, MA accession W2459 5/13/173, NA Wellington
111. Mason to Morison, 17 November 1943, MA accession W2459 5/13/173, NA Wellington
112. E McKenzie, J A Mills, and J M McEwan, 'Horowhenua Lake Domain Brief History and Recommendation', 1952, MA accession W2459 5/13/173, NA Wellington

Horowhenua, that had been a subject of controversy for over 50 years. After much discussion, it had been decided to set up a new Domain board with a Maori majority, and to repeal all previous legislation relating to the lake. E T Tirakatene, the member for Southern Maori, wanted to know if the legislation would deal with the central issue, the ownership of the lake, the Hokio Stream, and the surrounding one chain strip. This question had been confused by a series of acts, all of which had restricted or denied the rights of the original owners. Corbett replied that he could assure:

> the Member for Southern Maori that the Bill safeguards the rights of the Maoris to the ownership of the lake bed, to the bed of the Hokio Stream, the chain strip, and the dewatered area around the Lake, as well as those lands for which title had been granted by the Court in days gone by.[113]

Section 18(2) and (3), declared that the lake bed, the islands on the lake, the dewatered area and the one chain strip, the bed of the Hokio Stream and the one chain strip along (part) of the northern bank of the stream were, and had always been, owned by the Maori owners, vesting these areas in the trustees appointed by the Maori Land Court. Subsection (5) vested a much smaller area of the chain strip and dewatered area than Harvey had originally proposed in the Domain Board. Subsection (9) abolished the Hokio Drainage Board. Subsection (10) transferred responsibility for maintenance of the Hokio Stream and the lake to the Manawatu Catchment Board, but directed that no work be done without the prior consent of the Domain Board. Subsection (8) laid down how the board was to be constituted: four members of the Muaupoko tribe, one member recommended by the Horowhenua County Council, two members recommended by the Levin Borough Council, and in an ex officio capacity the Commissioner of Crown Lands, who was also to chair the board. Subsection (12) repealed the Horowhenua Lake Act 1905; section 97 of the Reserves and Other Lands Disposal and Public Bodies Empowering Act 1916; section 64 the Reserves and Other Lands Disposal and Public Bodies Empowering Act 1917; and section 53 of the Local Legislation Act 1926.

Subsection (4) 'reserved to the public at all times and from time to time the free right of access over and the use and enjoyment of the land' that is to say, to the 13-acre reserve, the chain strip, and the lake bed; subsection (5) declared the surface waters of the lake and the original 13-acre lake frontage to be a public domain. The same section provided:

> that the Maori owners shall at all times and from time to time have the free and unrestricted use of the lake and the land . . . and of their fishing rights over the lake and the Hokio Steam, but so as not to interfere with the reasonable rights of the public, as may be determined by the Domain Board.[114]

It was legislation, said Corbett, 'which meet fully the wishes of the Maori owners'.[115]

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113. Corbett, 23 October 1956, NZPD, vol 310, p 2714
114. Reserves and Other Lands Disposal Act 1956, s 18, subs 5
115. Corbett, 23 October 1956, NZPD, vol 310, p 2712

CHAPTER 11

NGARARA 1873 TO 1904

11.1 NGARARA 1873 TO 1888

The land to the south of the Kukutauaki Stream, some 45,000 acres, passed through the court in 1873, after being gazetted for hearing under the name 'Te Ngarara and Waikanae, at Waikanae'.[1] The block was first called, at Foxton, under the name Te Ngarara.[2] The hearing, under the name of Ngarara, was adjourned from Foxton to Waikanae, then to Wellington.[3] Although Ngati Toa disputed Ati Awa's claim, the issue of most concern during the hearing was the question of where the boundary of the Government land to the south, at Wainui, should be located. Eventually this issue was settled by agreement between the Government's agent, Wardell, and Wiremu Te Kakakura Parata, who was managing Ati Awa's case. Judge Rogan then awarded the land to Ati Awa, Parata producing a list of names 'of the Ngatiawa tribe' to be registered.[4]

In January 1874, 19,600 acres of this land was sold, under the name Maunganui, for £600.[5] This left 29,500 acres in Ati Awa hands.[6] Subsequently, in February of 1874, a further sum of £200 was paid to Parata, to extinguish his and his family's claim to the Maunganui block.[7] The matter of this additional payment was raised during the 1888 Native Affairs Committee hearing, the inference being that it had been in some way improper.

In 1874, a Ngati Toa claim to an area of some 840 acres within the Ngarara block was heard. This land lay on the south side of the northern boundary of the block, on the coast; it was land already awarded to Ati Awa. The Ngati Toa challengers were Tamihana Te Rauparaha, Matene Te Whiwhi Hemara Te Tewe, and others. The block was gazetted for hearing as 'Kukutauaki, near Otaki', and identified in the Native Land Court minute book first as Ngarara then as Kukutauaki no 1.[8] In his

1. 'Notice of Times and Places for Investigating Claims', *New Zealand Gazette (Province of Wellington)*, vol 19, no 26, 7 October 1872, p 192
2. Otaki Native Land Court MB 1, 19 November 1872, p 23
3. Otaki Native Land Court MB 2, 8 April 1873, p 56; Otaki Native Land Court MB 2, 16 May 1873, pp 163–165; Otaki Native Land Court MB 2, 22 May 1873, pp 197–198; Otaki Native Land Court MB 2, 29 May–2 June 1873, pp 203–211
4. Otaki Native Land Court MB 2, 2 June 1873, p 211
5. H H Turton, TCD, vol 2, pp 134–135
6. Native Affairs Committee of the Legislative Council, Marchant, 20 August 1888, MA series 70/3, p 1, NA Wellington
7. H H Turton, TCD, vol 2, p 434
8. 'Notice of Times and Places for Investigating Claims', *New Zealand Gazette (Province of Wellington)*, vol 20, no 26, 9 October 1873, p 176; Otaki Native Land Court MB 2, 5 March 1874, p 225; Otaki Native Land Court MB 2, 6–11 March 1874, pp 235–256

decision the presiding judge accepted that Ngati Toa had conquered and occupied this land, but found that they had gone to live elsewhere before 1840. Wi Parata and his co-counter claimants, on the other hand, had proved occupation since 1840, and on that basis judgment was made, in March 1874, in their favour.[9] A month after this judgment Parata handed in a list of six names to the court, and asked for a certificate of title to be issued. Many other applications of a similar kind were being processed at this time, and no objection seems to have been made to this particular one. The certificate requested was granted, and the 840 acres passed into the hands of the individuals named: Parata, three members of his family, and two members of Ngati Toa, cousins of the Parata family, but not among the owners listed in 1873.[10]

In 1887, the remaining area of Ngarara (29,500 acres) was partitioned. The land was variously described in the *Gazette* notifying the hearing as Waikanae, Ngarara, or Te Ngarara.[11] It was heard under the name Ngarara West. When the hearing was concluded, and the orders made, Enoka Hohepa and his wife Ema Tini Hohepa received the land they were occupying – about seven acres (Ngarara West A no 1). The two Hohepa belonged to the Otarawa hapu, most of whom lived on the nearby Muaupoko block, and it appears that they (the Hohepas) owned land on this block, but resided on Ngarara West.[12] The claim of Eruini Te Marau, of Otarawa, were accepted as well, to the extent of some 15 acres (Ngarara West A no 3).[13] A larger grant, of 1584 acres (Ngarara West B) was made to the Puketapu hapu.[14] This land was later described as 'swamp and some sand hills principally.'[15] The great bulk of the 29,500 acres (Ngarara West A), save for a four-acre plot, was awarded to a list of some 40 owners. These owners were members of other Ati Awa hapu; they were led by Wi Parata, whose name appears at the top of the list.

The four acres (Ngarara West A no 2) were for Inia Tuhata and his sister Rangihanu, and represented the extent of the land they were considered to be occupying and cultivating at that time.[16] Inia and his sister were great-grandchildren of Hone Tuhata, of Mitiwai. Evidence had been given during the hearing that this ancestor and the other members of his hapu had left the Waikanae district before 1840, thus relinquishing any claim they might have had to a share of the land being subdivided.[17] Indeed, the only reason Hone's two descendants were given their cultivations was because their names had been included on the 1873 list of registered owners; if the matter was being heard for the first time, they would, according to the judgment, have received nothing.[18]

The Tuhata party asked for an extension of the hearing, so that they could bring forward fresh evidence. This was denied. Enoka Hohepa also sought to have the case

9. Otaki Native Land Court MB 2, 11 March 1874, p 256
10. Otaki Native Land Court MB 2, 16 April 1874, p 396
11. 'Notice of Times and Places for Investigating Claims', *New Zealand Gazette*, no 17, 18 March 1887, p 374
12. Otaki Native Land Court MB 7, 13 May 1887, p 249
13. Otaki Native Land Court MB 7, 14 May 1887, pp 256–258
14. Ibid, pp 254–255
15. Native Affairs Committee of the Legislative Council, Brown, 20 August 1888, MA series 70/3, p 4, NA Wellington
16. Otaki Native Land Court MB 7, 13 May 1887, pp 256–257
17. Ibid, p 250
18. Otaki Native Land Court MB 7, 14 May 1887, p 255

adjourned, possibly for other reasons. This request was refused as well, on the grounds that the case had already been closed.[19] The Tuhata family made an application to the Chief Judge for a rehearing. This failed.[20]

Inia Tuhata and others then petitioned (12 June 1888) for an inquiry into the title of the Ngarara block, and that their claim to a share of the block be reheard.[21] The House Native Affairs Committee commented in its report (26 June 1888) that the Tuhata petition was yet another request for a rehearing after the Chief Judge had refused an application, and recommended that the Government introduce general legislation to deal with the question of rehearings. On the particular matter before it, the committee recommended that the Government should inquire carefully into the allegations that had been made.[22] It appears that the Government's response was to insert a clause in the Native Land Court Act 1886 Amendment Bill, then being passed through Parliament, authorising a rehearing of the Ngarara block. Parata and 18 others petitioned, on 16 August 1888, the House of Representatives, opposing both this clause, and any rehearing.[23] A similar petition was presented on the same day to the Legislative Council.[24] Inia's aunt, Heni Te Rau (Mrs Jane Brown) had already petitioned the Legislative Council, on 14 August 1888, in favour of her niece and nephew.[25] This may have been the same petition forwarded to the House of Representatives in June 1888.

11.2 NATIVE AFFAIRS COMMITTEE HEARING 1888

The Native Affairs Committee of the Legislative Council took evidence for and against Inia Tuhata's petition, beginning on 17 August 1888 and continuing on into the following week. Inia's aunt, Mrs Jane Brown, was the main witness for the Tuhata family, and during her questioning the main issues emerged.[26] The 1887 subdivision court had based its decision on evidence that Hone Tuhata had left the district before 1840. Judge E W Puckey would not allow the case to be reopened so that evidence in rebuttal could be given. The Chief Judge had rejected an application for a rehearing. Not just the Tuhata family, but every member of Hone Tuhata's hapu, had been disadvantaged by these decisions. As for Parata, he was said to have behaved badly. To begin with, it was alleged that he had used the name Ngarara to conceal exactly what land was being passed through the courts. It was claimed that he had then interfered with the list of owners. Subsequently, he had taken the 840-acre (Kukutauaki no 1) block for himself and his family, something that only became known some years later. It was stated also that Parata was principally of

19. Ibid, p 253
20. Native Affairs Committee of the Legislative Council, MacDonald, 20 August 1888, MA series 70/3, p 1, NA Wellington; *New Zealand Gazette*, no 17, 15 March 1888, p 357
21. Petition of Inia Tuhata, 12 June 1888, MA series 70/4, NA Wellington
22. 'Report of Native Affairs Committee', AJHR, 1888, I-3, p 14, no 209
23. 'Report of Native Affairs Committee', AJHR, 1888, I-3, p 32, no 481
24. JALC, 16 August 1888, p 169
25. JALC, 27 August 1888, pp 205–206
26. Native Affairs Committee of the Legislative Council, Brown, 20 August 1888, MA series 70/3, NA Wellington

Ngati Toa descent, and only distantly connected with Ati Awa. His claim to land at Waikanae was, therefore, questionable.

Hadfield gave evidence that Hone Tuhata had indeed been resident at Waikanae in late 1839, and other witnesses said that it was from Waikanae that Hone had been summoned to Wellington, in 1840, to sign the Treaty of Waitangi.[27] Hadfield also said that he had never before heard the name Ngarara used to describe the land in question. From reading the papers, he had gained the impression that the block normally known as Waikanae had been gazetted for the purposes of the Native Land Court hearing as Ngarara. Whoever had suggested that this name be used 'must have done so for the purpose of deceiving those interested in the land.'[28] As for the ownership of the land, Hadfield stated flatly that it belonged to Ati Awa; no other tribes had had rights there in 1840. Hadfield had a good deal to say about Parata: he (Hadfield) remembered him as being, in 1840, a small child of about four or five. Parata's grandfather had been, according to Hadfield, a Ngati Toa chief who 'was distantly connected with Ngatiawa.'[29] The committee was interested to obtain Hadfield's views on Maori custom with regards to tribal affiliation and land ownership, and Hadfield expressed very firm beliefs on these matters:

> All the time I am referring to, such a thing as a man belonging to two tribes was unknown, in the sense, that is, of possessing property in both. There was no exception to this. In the case of marriage between persons of different tribes, they were obliged to elect to which tribe they would belong. There is no fact in reference to native custom on which I am more positive than on this.[30]

It was an 'absurdity', he said, to suppose:

> that any member of a different tribe could claim, or rather own, land in the territory of another tribe, the reason of this is to obvious, when it is borne in mind that each tribe was a distinct nation, politically considered, and at anytime liable to be at war with the other tribes, that it would hardly seem to need proof. But of the fact there can be no doubt. [31]

Hadfield had been called as an expert witness, to shed light on, among other things, Wi Parata's claim to belong to two tribes, his claim to have rights to land stemming from both of these tribal affiliations, and his claim to own land, in respect of these two tribal identifications, in the same district or location. According to the sense of Hadfield's testimony, while it was certainly possible to belong to two different tribes, rights to land would always be related to membership of one tribe or the other, but not to both. Hadfield, of course, was describing the situation that existed in 1840, when tribal warfare had only just ceased. Then the bitterness and

27. Native Affairs Committee of the Legislative Council, Pirihira Te Tia, 23 August 1888, MA series 70/3, p 2, NA Wellington; Native Affairs Committee of the Legislative Council, Wi Hape Pakau, 23 August 1888, MA series 70/3, p 1, NA Wellington
28. Native Affairs Committee of the Legislative Council, Hadfield, 17 August 1888, MA series 70/3, p 3, NA Wellington
29. Ibid, p 2
30. Ibid, pp 2–3
31. Ibid, p 4

insecurity created by the fighting during the 1820s and 1830s perhaps made tribal boundaries, and tribal identifications, more clear cut and rigid than had been customary in the past. It is also possible that by the time (1888) the Native Affairs Committee held its hearing, decades of peace between the tribes had eroded away the sharp distinctions Hadfield saw in the 1840s. Again, the attitudes about land that Hadfield described may have originated in the special circumstances that pertained along the west coast during the 1830s, as successive waves of the different tribes arrived, and struggled in the usual ways to establish and hold tribal territories in the area. By the 1880s these traditional methods had long been rules out of order; it was now the Native Land Court that determined tribal rights; and new rules of engagement had had to be learnt and applied.

In any event, while Hadfield's evidence before the Native Affairs Committee was probably persuasive, the evidence of the Chief Judge of the Native Land Court, Judge J E MacDonald, may have been conclusive. He conceded that if it could be shown that Hone Tuhata had been resident at Waikanae in 1840, then the petitioners had a good claim to a rehearing.[32] While MacDonald was most reluctant to accept that there might be grounds for rehearing not just the partition but the original claim, he agreed that poor or misleading descriptions of the land being heard, or failure to give proper notification of a hearing, could constitute grounds for a rehearing.[33]

Parata was among the last witnesses to be heard. He seemed to admit that the use of the name Ngarara had originated with him, but denied he had been trying to deceive anyone. Ngarara, according to Parata, was the name of the block in dispute between Tamihana Te Rauparaha and himself.[34] However, the minute books show that this particular block went through the court as Kukutauaki no 1, not as Ngarara, although the case was first called under the name Ngarara, and the Ngarara Stream did run along its southern boundary.[35] In any case, the point at issue was how the name of a part, Ngarara, had been extended to cover the whole, Waikanae. On this question Parata said that the name Waikanae referred only to the stream; the land on either side had many names and those who owned these cultivations would never have referred to them as Waikanae.[36] This, however, did not explain why Ngarara was an acceptable name for all of these different areas while Waikanae, apparently, was not.

The committee reported on 27 August 1888 that the evidence it had obtained pointed to 'a serious miscarriage of justice in the subdivision of 1887'.[37] An insignificant portion of the land had gone to Hone Tuhata's descendants; the general effect of the subdivision had been to shift ownership of the land away from Ati Awa and into Ngati Toa hands. Prompt action was recommended because the expulsion

32. Native Affairs Committee of the Legislative Council, MacDonald, 20 August 1888, MA series 70/3, pp 10–11, NA Wellington
33. Ibid, p 22
34. Native Affairs Committee of the Legislative Council, Parata, 20 August 1888, MA series 70/3, pp 8–9, NA Wellington
35. Otaki Native Land Court MB 2, 5 March 1874, p 225
36. Native Affairs Committee of the Legislative Council, Parata, 20 August 1888, MA series 70/3, p 9, NA Wellington
37. Richmond, JALC, 27 August 1888, p 205

of the disinherited parties, and the alienation of the land, were likely to occur quickly. Once these things happened, attempts to have the matters reconsidered would be of little use.

The Government had added a clause to the Native Land Court Act 1886 Amendment Bill, then being passed through Parliament, effectively authorising a rehearing of the Ngarara block. The Legislative Council struck out the this clause, on the grounds that it was misplaced with respect to the legislation in question, and because it had the effect of making Parliament into a court of appeal.[38] However, there seemed to be general agreement that something had to be done about Ngarara, and the solution was a new clause, making the land inalienable until the ending of the next session of the General Assembly.[39] The Bill passed the House on 30 August 1888. The day before, the Native Minister, Mitchelson, announced the setting up of a commission to examine Ngarara and some other matters.[40]

11.3 NGARARA COMMISSION 1888

The Ngarara, Porangahau, Mangamaire, and Waipiro Commission began taking evidence on the Ngarara block on 15 November 1888. The main issues concerning the Ngarara dispute had been determined by the judgment of 1887, and by the hearing before the Native Affairs Committee the previous August. Was Hone Tuhata resident at Waikanae in 1840? What was his status or importance? What was Parata's claim to the land? Had he behaved wrongly with respect to the hearings in 1873, 1874, and 1887? How had the name Ngarara become attached to the block, and what was the significance of this change of name?

The Parata party argued that Hone Tuhata had been, at best, the chief of a minor hapu; some said he was just an ordinary man. He and his hapu (variously described as Ngatipawhenua or Mitiwai) had left Waikanae permanently for Arapaoa (Picton) in the mid-1830s, after the battle of Haowhenua. Some said that Hone and his people had run away, fearing the vengeance of Ngati Raukawa. The Mitiwai hapu was not the same as, or related to, the Kaitangata hapu: that hapu could claim land at Waikanae, whereas the Mitiwai hapu had had no cultivations. According to the Parata witnesses, Hone Tuhata had had no significant role at Waikanae before Haowhenua, and he had played no part at all in the affairs of Waikanae after that event. In particular, he had not been present at the key battle of Kuititanga, in 1839, which had confirmed Ati Awa's right to the land.[41]

The Tuhata camp, to the contrary, claimed that Hone had in fact been one of the principal chiefs of the Waikanae Ati Awa – an uncle, in fact, of the paramount chief

38. 24 August 1888, NZPD, vol 63, pp 360, 363
39. Native Land Court Act 1886 Amendment Act 1888, cl 27
40. Mitchelson, 29 August 1888, NZPD, vol 63, p 523
41. Ngarara, Porangahua, Mangamaire, and Waipiro Commission, Enoka Tatairau, 26 November 1888, MA series 70/1, p 11, NA Wellington; Ngarara, Porangahua, Mangamaire, and Waipiro Commission, Pare Tawhera, 27 November 1888, MA series 70/1, p 4, NA Wellington; Ngarara, Porangahua, Mangamaire, and Waipiro Commission, Tamihama Te Karu, 4 December 1888, MA series 70/1, p 1, NA Wellington; Ngarara, Porangahua, Mangamaire, and Waipiro Commission, Ihakara Karaka, 5 December 1888, MA series 70/1, p 6, NA Wellington

Wiremu Kingi. After Kingi's departure for Taranaki in 1848, Hone had been the dominant Ati Awa chief in the district. He had been one of the Ati Awa generals at Haowhenua; he had fought, and been wounded, at Kuititanga; he had welcomed Hadfield to Waikanae in November 1839; in 1840, at Wellington, he had signed the Treaty of Waitangi, under the name Patuhiki. There was documentary evidence that he had been present at Waikanae, and exercising the rights of a chief, on several occasions during the 1840s and 1850s. He had, for example, signed the deed of sale for the Wainui block in 1858, along with Tamihana Te Rauparaha, Matene Te Whiwhi, and many other principal men of the district, including, it should be noted, Wi Parata.[42]

If Hadfield's evidence both to the commission and the earlier Native Affairs Committee was correct, then many of these claims made on behalf of the Tuhata family were beyond dispute. Certainly there was not the slightest doubt that Hone Tuhata had signed the Treaty in 1840, and the 1858 Wainui deed, or that he had been present at Waikanae at various dates between these two signings.

The commissioners reported that Waikanae was indeed the more generally accepted name for the Ngarara block, but they did not find that the change of name had confused or deceived anyone. On the central issue, the evidence they had been given was 'extremely conflicting', but they found that Hone Tuhata had been resident at Waikanae, and that his descendants had continued to occupy land in the district after his death. Mitiwai was either the same as, or a branch of, the Kaitangata hapu. They were unable to determine Hone's interest in the land with any exactitude, but considered that it was at least equal to other chiefs of the Kaitangata hapu.

As for Wi Parata's behaviour, the commission found nothing 'which would justify an interference with the judgment of the Court in 1887'. The court had made, in the commission's view, an 'unsatisfactory' decision, but this was not due to improper actions on the part of Wi Parata; rather the fault lay principally with the Tuhata party, who had not been sufficiently prepared to deal with the arguments advanced by the other side during the 1887 subdivision hearing.[43]

When the circumstances of the 1887 hearing are considered in detail, this aspect of the commission's report seems unfair. As for the absolution granted to Wi Parata, there were many who remained convinced that he had acted in 1873, 1874, and in 1887 in his own interests rather than in the interest of Ati Awa. Some disparaging remarks about the fact that his father had been a Pakeha were made, both during the hearing and in the House, but Parata was in fact a man of distinguished ancestry. His mother, Metepere Waipunahau, of Ngati Toa, was a daughter of Rangihiroa, a niece of Te Pehi, and a woman of considerable prestige and standing on the Kapiti Coast. When Wiremu Kingi decided to return to Taranaki in 1848, and there was a need to settle the northern and southern boundaries of the Ati Awa lands, Waipunahau was consulted on this matter by all of the tribes concerned. One of Parata's grandfathers

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42. Ngarara, Porangahua, Mangamaire, and Waipiro Commission, Tamati Te Wera, 15 November 1888, MA series 70/1, p 7, NA Wellington; Ngarara, Porangahua, Mangamaire, and Waipiro Commission, Wi Hapi Pakau, 16 November 1888, MA series 70/1, p 1, NA Wellington
43. 'Report of the Commission on Ngarara, Porangahau, Mangamaire, and Waipiro Blocks', AJHR, 1889, G-1, p 1

had been Ati Awa, a member of the Kaitangata hapu. He could thus quite legitimately claim membership of both tribes, although it does appear than the stronger tie was to Ngati Toa.

In any event, by virtue of his Ati Awa ancestry, the fact that his mother was Waipunahau, and also because of his Pakeha education and his knowledge of Pakeha ways, Parata seems to have been left in charge at Waikanae when Wiremu Kingi returned to Taranaki. In this capacity he collected the rents and, in 1873, managed the business of the tribe in the Native Land Court. In that year Parata was well into a five-year term as the Member for Western Maori; he was a minister without portfolio in both 1873 ministries, and remained so until 1876. There seems to have been no one else at Waikanae with any better right to direct the affairs of the tribe, or with more standing in the world of the Pakeha. Parata, in fact, was in much the same position of dominance that Kemp enjoyed to the north, at Horowhenua, and there are many parallels between the two situations, not least of all the suggestions that the powers of stewardship were being abused. In Parata's case, no satisfactory explanation for the re-naming of the Waikanae block as Ngarara was ever forthcoming. The suspicion that he had doctored the list of owners presented to the court in 1873 never abated. After the event he claimed Kukutauaki no 1 for himself on the basis that it was Ngati Toa land. This argument had been rejected by the court in 1873 and it was to be rejected again by the court in 1890. Finally, the judges who presided over the 1890 rehearing all but accused him and his supporters of manufacturing evidence, both in 1887 and 1890, the objective being to disinherit the Tuhata family and others with a right to the land.

All of these criticisms were made to the Ngarara Commission, but none of them seemed to have struck home. In the commissioners' view, if anyone was to blame for what had happened at the 1887 subdivision hearing it was the Tuhata family. At the same time, the commissioners did accept that Hone's descendants had a grievance. There were, they said, 'sufficient doubts as to the correctness of the decision of the Native Land Court in 1887 to render further inquiry proper'.[44] The 1887 decision should be set aside, and a rehearing ordered.[45]

11.4 PUCKEY'S REFUSAL

The fact that Puckey had refused to grant the Tuhata family an adjournment, so that they might produce evidence in rebuttal of the statement that Hone Tuhata had left Waikanae in the 1830s, was not mentioned in the commission's report. But the commissioners did comment that the argument that Hone had abandoned his Waikanae lands seems to have been advanced for the first time during the 1887 hearing.[46] This fits evidence from the Tuhata camp that they had never anticipated that such a claim would be made, that they had been taken aback with the audacity of it, and been ill-prepared to immediately refute what had been said, or provide

44. Ibid, p 2
45. Ibid, p 3
46. Ibid, p 2

counter-argument.[47] In fact, the statement in question seems to have been made after the Tuhata party had finished presenting their case, and it was apparently for this procedural reason (that is, that they had already closed their case) that Puckey refused to grant an adjournment so that fresh evidence might be presented. But had the Tuhata party been able, on the day, to provide an immediate rebuttal, it seems likely Puckey would have refused to allow them to do so, on the same grounds that he justified his refusal to grant an adjournment.

Puckey was consulted when the request for a rehearing was made to the chief judge; he also gave evidence before the Ngarara Commission. The chief judge, MacDonald, gave evidence to the earlier Native Affairs Committee hearing. On that occasion MacDonald had observed that it was usual for the findings of the Native Land Court to be disputed, especially when the ownership of land was concerned. He also had some views about the nature of the evidence the Native Land Court had to deal with:

> The evidence in nineteen cases out of twenty in the first place is mere hearsay of what persons profess to have had from an ancestor. Of later years especially the class of person who come before the Court are distinguished from those who did so formerly by giving evidence not only of hearsay handed down from father to son but of evidence manufactured for the purpose of the case. Evidence is often most unreliable for this reasons.[48]

Puckey had made a similar observation, but one specific to the Ngarara subdivision hearing, in a memorandum to MacDonald:

> Most of the facts alleged have come to light since the case was determined and there can be no doubt if they are not strong enough to accomplish the object in view others of a more impressive nature will be unearthed.[49]

Perhaps this attitude to the parties that came before him, which seems to have been shared by the chief judge, was why Puckey told Morison, the lawyer for the Tuhata party at the Ngarara Commission hearing, that he very seldom permitted evidence in rebuttal to be presented.[50]

During his questioning by Morison, Puckey made other, seemingly damaging, admissions. He conceded, for example, that Parata had produced no evidence of abandonment and that he could not be certain that the Tuhata party had known in advance that Parata would advance an argument of that kind. Morison suggested to Puckey that Inia's mother, Mary Pomare, had come to see him after the court had risen, on the day the statement was made, before the judgment was delivered.

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47. Ngarara, Porangahua, Mangamaire, and Waipiro Commission, Hone Taramena (John Drummond), 19 November 1888, MA series 70/1, pp 37–38, NA Wellington
48. Native Affairs Committee of the Legislative Council, MacDonald, 20 August 1888, MA series 70/3, pp 8–9, NA Wellington
49. Puckey to MacDonald, 21 July 1888, MA series 70/4, p 4, NA Wellington
50. Ngarara, Porangahua, Mangamaire, and Waipiro Commission, Puckey, 23 November 1888, MA series 70/1, p 8, NA Wellington

Puckey agreed that this was true.[51] Morison wanted to know if Mrs Pomare had asked him to extend the case. Puckey did not think she had, but could not be positive. The next day, at 10 am, Mary had asked for an extension, to bring more evidence. This had been refused, and the judgment delivered. The reason for the refusal was, said Puckey, that 'the court did not see any reason at the eleventh hour to grant the request. Had it been made before it would have been granted.'[52] The minute book shows that the abandonment theory was stated as fact by Parata during his closing address; it had not been raised during cross-examination. The court adjourned for the day shortly afterwards. The minute book shows that Mary Pomare made the request for an extension the next morning, as soon as the court opened. In other words, at the earliest possible time. Indeed, Morison suggested that the request had been made informally the evening before. The inference to be drawn from Morison's line of questions was quite clear: Puckey had decided the case on the basis of an unsupported statement made by Parata, after unreasonably denying the Tuhata party the opportunity to make a reply.[53]

A good deal flowed from this decision: a two-day hearing before the chief judge, to consider the case for a rehearing; petitions and counter-petitions; a Native Affairs Committee hearing; parliamentary debates; the Ngarara Commission; legislation; a lengthy rehearing of the Ngarara subdivision; and then another set of petitions.

11.5 NGARARA AND WAIPIRO FURTHER INVESTIGATION ACT 1889

Legislation was necessary to give effect to the recommendations of the Ngarara Commission, and this emerged in July 1889. The commission, while admitting that 'a substantial failure of justice' had occurred at the hearing in 1887, apparently felt that this failure had nothing to do with the court; rather it was the fault of the parties. Therefore, in the interest of justice, the commissioners had recommended that:

> a reasonable proportion of the costs of and incidental to this Commission, and all subsequent costs reasonably incurred in and about obtaining the necessary legislation, be made a first charge upon the land contained in the Ngarara Block; and that the costs of and incidental to the rehearing be in the discretion of the Court before whom the rehearing is had.[54]

The commission had also expressed the opinion that the situation revealed by its investigations had 'brought forcibly before us the desirability of making some general provisions for individualising Native titles; and we are strongly impressed with the advantage that would accrue from such legislation in obviating future disputes.'[55]

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51. Ibid, p 7
52. Ibid, p 6
53. Ibid, p 10
54. 'Report of the Commission on Ngarara, Porangahau, Mangamaire, and Waipiro Blocks', AJHR, 1889, G-1, p 3
55. Ibid, p 3

Both of these recommendations found their way into the Ngarara and Waipiro Further Investigation Bill, and both were subject to strong attack during the debate. Parata had hired E Stafford, of Buckley, Stafford and Treadwell, to represent him, and Stafford also strongly attacked, in letters to the chief judge, and Mitchelson, the clauses in question.[56] These objections and representations appear to have been effective. The final version of the Bill provided for a rehearing of the Ngarara subdivision, excluding lands already awarded to the Puketapu and Otarawa hapu. It allowed the court to determine the relative shares of each hapu or individual, but there was to be no survey or subdivision of the land unless the owners asked for it. No costs were to be levied against the land.

11.6 NGARARA REHEARING, JANUARY 1890 TO JUNE 1891

The Ngarara rehearing commenced on 13 January 1890, in the Methodist School Room, Sydney Street, Wellington. It was immediately adjourned until 20 January, when the real business got under way. Judges W G Mair and D Scannell presided. Rakena Wi Waitaia was assessor. C B Morison represented Inia and a number of others. There were four separate parties within the group represented by Morison, united by their dissatisfaction with the 1887 subdivision and their opposition to Parata. Stafford appeared for Parata and, according to the minute book, the other owners not presented by Morison.[57] Stafford's task was to defend, on Parata's behalf, the 1887 subdivision.

The claim of Eruini Te Marau, on behalf of the Ngatirahiri hapu, was the first to be heard, commencing on 20 January and running through until mid-February. The hearing of Inia Tuhata's application began on 20 February, and concluded on 25 February 1890. Other applications were heard during March and April, and the court also visited Waikanae. At the end of April 1890 the court adjourned to Auckland, apparently to await a ruling from the Supreme Court on a matter raised by Stafford, to do with section 2 of the Ngarara and Waipiro Further Investigation Act 1889. The Supreme Court ruling was to the effect that the Native Land Court could do, with respect to this section of the Act, whatever it felt was just. Having received this opinion, the Native Land Court proceeded, on 23 July 1890, to deliver its decisions on the various subdivision applications received. The judgment was wide-ranging, taking in the history of the conquest, the tribal wars of the 1830s, and the nature of Ati Awa's occupation of Waikanae prior to 1840.

Parata had advanced to the court the arguments that Ngati Toa had a claim to the land, based on conquest, and that his title to the 840-acre block was based on a gift made by the Ngati Toa chief Te Pehi to an ancestor. The court rejected both arguments: Ngati Toa had no claim to Waikanae; no gift was ever made.[58]

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56. Stafford to Chief Judge, Native Land Court, 12 July 1889, MA series 70/4, NA Wellington; Stafford to Native Minister, 12 July 1889, MA series 70/4, NA Wellington
57. Otaki Native Land Court MB 10, 20 January 1890, p 9
58. Otaki Native Land Court MB 12, 24 July 1890, pp 20–21, 25

All of the applications to the court had been argued as hapu claims. The court found, however, that claims made on that basis were untenable. The situation in the period before 1840 was that, for security reasons, the different Ati Awa hapu had not dispersed across the Waikanae block, but congregated together in one or two locations. There was good evidence for this finding: Hadfield had mentioned to the Ngarara Commission, for example, that when he was at Waikanae, in 1840, the Ati Awa took their weapons when they went to work, fearing that they might be caught unaware by Ngati Raukawa.[59] Again, some of Parata's witnesses had talked of a general exodus from Waikanae after Haowhenua, attributing this to fear of Ngati Raukawa retaliation. To the court, the implication of evidence of this sort was clear: Waikanae had to be considered land held in common by the tribe rather than land that had been divided, parcelled out, or occupied hapu by hapu. Claims based on the premise that a particular hapu had exclusive rights to a particular location or set of cultivations could not, with a few exceptions, be entertained.[60] Claims would be determined on the basis, of individual rights, and these in turn would be based on the contribution that individuals had made to the conquest and holding of Waikanae before 1840, and to the extent of his or her transferred occupation since 1840. On this basis allocations of between 125 to 600 acres or more were made to the various claimants represented by Morison.[61]

With respect to the Tuhata claim, the court found they had a right to a substantial area of Waikanae, although not to as large an area as they had claimed in their application. The court referred in critical tone to the string of witnesses who had stated positively, from personal knowledge, that Hone Tuhata had left Waikanae in the 1830s, that thereafter he had returned only as an occasional visitor, and that he had neither been present, nor wounded, at Kuititanga. These witnesses, while they had been able to minutely account for all of Hone's movements during the 1830s and 1840s, had, when previous testimony was taken into account, contradicted themselves, and their efforts to explain these contradictions had further devalued their testimony.[62] The court made specific mention of Hadfield's evidence, which was based not on memory, but on entries from his journal, that Hone had been present when Hadfield arrived at Waikanae in 1839, shortly after the battle in question, that he was suffering from a musket wound sustained during the fighting, and that Hone was, after his nephew Wiremu Kingi, the principal chief of Ati Awa at that time.[63] The court also noted that Hone's descendants had remained in occupation after his death, until the present time. On the basis that Hone Tuhata had made an important contribution to the conquest and defence of Waikanae, and that his family had continued to occupy the land, and defend their claim, the court awarded Inia and his sister 1220 acres, to be shared equally.[64] This was less than

59. Ngarara, Porangahua, Mangamaire, and Waipiro Commission, Hadfield, 22 November 1888, MA series 70/1, p 4, NA Wellington
60. Otaki Native Land Court MB 12, 24 July 1890, p 16
61. Ibid, p 30
62. Ibid, pp 21–23
63. Ibid, p 23
64. Rangihanu's share went to her daughter, Rangihanu Eruera: Otaki Native Land Court MB 12, 24 July 1890, p 30.

10 percent of the land, but a large improvement on the four acres they had been given in 1887.

Section 4 of the Ngarara and Waipiro Further Investigation Act 1889 had provided that the court, at its discretion, could determine the share, and mark on a map the position, of the land belonging to each individual and hapu. The court decided to exercise this discretion, and adjourned so the various owners could agree among themselves what their shares were, and where they were located.[65] The owners, however, were unable to reach agreement, and the matter was adjourned to Wellington. When the case resumed in January 1891, the owners were still unable to agree, so the court began to take evidence. Progress was slow. In March 1891 the court ruled that the parties were neither to be represented or assisted by counsel, and for some weeks the hearing continued without the presence of lawyers. This mode of operation apparently did not produce the desired results, and the lawyers re-appeared. In due course the hearing ended, and the court issued a long series of orders defining the share of each owner, and the boundaries of the different blocks containing these shares.[66] The details relating to ownership were subsequently transcribed, no doubt for some official purpose, and found their way into the files of the Native Department.[67] The land was divided into two large blocks, Ngarara West A and Ngarara West C; Ngarara West B was the 1584 acres awarded to the Puketapu hapu in 1887. West A was divided into 78 sections, and West C into 41, making 119 subdivisions. The largest of these subdivisions was over 8000 acres, but that was very much an exception. Most were less than 100 acres; some were less than 20 acres. Some individuals had shares in more than one subdivision, and while the court apparently tried to consolidate shares, some fragmentation of holdings may have occurred. Most of the subdivisions had more than one owner, and individual shares were, in some cases, quite small: Ngarara West A no 75, for example, contained 16 acres and had nine owners: one owner received eight acres, the other eight received one acre each. It seems probable that in many cases the owners of each subdivision were related to each other, and possibly to the owners of adjacent subdivisions as well, but if true the long-term significance, if any, is hard to say. Some of the subdivisions were quite large: several hundred acres, and in these cases, if the number of owners was small, quite substantial individual holdings could result, 60 to 100 acres or more. The quality of the land in these holdings is unknown, although certainly discoverable.

When all the land had been divided, Wi Parata was the largest single landowner, receiving something in excess of 8000 acres. After 1891 he and his family possibly held as much as a third, perhaps more than a third, of Waikanae.

Before 1840, and until the late 1880s, Waikanae had been land held in common by the tribe. After 1891, it was a patchwork: dozens of subdivisions; hundreds of different sized shares; scores of individual owners.

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65. Otaki Native Land Court MB 12, 24 July 1890, p 29
66. Otaki Native Land Court MB 12, 2 June 1891, pp 214–277
67. MA series 14/8, NA Wellington

11.7 NGARARA PETITIONS 1891 TO 1904

Following the decision of 1890, Wi Parata and one of his strong supporters, Tamihana Te Kura, petitioned Parliament and made representation to Government for a rehearing, Tamihana complaining specifically that his cultivations had been given to others.[68] These endeavours came to nothing, but the file on these petitions contains a memorandum from Judge Scannell setting out the reasoning underlying the 1890 decision, and commenting in particular on Te Kura's complaint:

> occupation was shown to be of that intermittent kind usual among the Natives. Individuals came and went from Taranaki, Picton and elsewhere in addition to those who remained after the exodus to Taranaki and all cultivated whenever and wherever fancy or convenience dictated, remaining as long as it suited them and left it as they choose; and came again.
>
> In the particular case of Tamihana Te Kura . . . he left for Taranaki with Wirimu Kingi's party in 1847, returned to Waikanae after the Taranaki War of 1860–61, remained there a short time, went to Collingwood in the South Island, remained there about two years, returned to Waikanae and remained there until 1874, went to Taranaki and did not return to Waikanae except for a short visit in 1879, till just before the Court sat in 1887, and then in consequence of the receipt of a letter from Wi Parata for the express purpose of driving Inia Tuhata off the land he taken up long before. He was prosecuted for forcible entry into Inia Tuhata's house.
>
> Any cultivations then that Tamihana Te Kura could have had on that part he says he was deprived of could only have been made since his arrival in 1887, and these, as shown by his own statements principally, were made for the express purpose of asserting ownership and ousting Inia Tuhata . . .
>
> There were several reasons which induced the Court not to locate Tamihana Te Kura on that particular part. Among others, that by exclusive and long continuing occupation he could not assert a better claim to this that to other parts, that he had as good or as bad a claim to other parts as to this, that the parts on which he was located were equal to these, that the party to which he had attached himself since his return to Waikanae and with whom he was actually residing were located on another part of the block and were anxious to retain that part and that party and Tamihana Te Kura were particularly hostile to Inia Tuhata and to all who opposed their desire of taking to themselves the bulk of the land, leaving to those who opposed them the patches only on which their cultivations actually stood, that considering the hostility and actual violence shown by Tamihana to Inia it would be undesirable to locate them together and that this keeping them apart resulted in no real injury to Tamihana Te Kura, the claims of the persons to whom it is complained Tamihana Te Kura's land as been given were confined to that part of the land and part of their interests had already been defined in that neighbourhood by previous courts. [69]

Among the other petitions received after the 1890 rehearing was one by Rako Eruera Wiremu Kingi. He and his hapu petitioned in 1891 that the law be amended to allow their Ngarara claim to be heard as an original application, and that a special

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68. 'Report of Native Affairs Committee', AJHR, 1891, I-3, p 10, no 7; 'Report of Native Affairs Committee', AJHR, 1891, I-3, p 19, no 243; 'Report of Native Affairs Committee', AJHR, 1892, I-3, p 9, no 304
69. Scannell to Chief Judge, Native Land Court, 22 February 1892, Maori Affairs (MA) series 13/53, NA Wellington

commission be set up to investigate the actions of the Native Land Court. The Native Affairs Committee made two reports on this petition, but had, in both cases, no recommendation.[70] It is not clear from the reports of the Native Affairs Committee who Rako Eruera Wiremu Kingi was, or what the nature of his claim might have been. He does not seem to be among those who gave evidence at any of the earlier hearings. It is possible that he belonged to the Taranaki branch of Ati Awa.

Mere Ngapaki Hughes and Jane Clements also petitioned Parliament in 1891, stating that their grandmother Ihipera Nukiahu had been one of the principal chiefs of Ati Awa. According to their petition they, Ihipèria, and their sister Mere Cameron had all been resident at Waikanae in 1873, but their names had been omitted from the list of owners drawn up by Wi Parata. They said that the use of the name Ngarara to describe the land, and the adjournment of the Foxton court first to Waikanae and then to Wellington, had made it difficult for the owners to know what decisions were being made. They made the point that Wiremu Kingi and others who were not resident at Waikanae in 1873 had also been excluded from sharing in the land.[71] The Native Affairs Committee recommended that this petition be referred to the Government for inquiry.[72] A memorandum from Sheridan to the Native Minister, dated 7 July 1893, seems to have been part of the inquiries the Government made. This document indicated the nature of the problem as it appeared to the Native Department:

> . . . [That] Wi Parata dealt unfairly with a number of persons entitled under Native custom and usage to a share in the Ngarara block is patent and if the bulk of the land had not changed hands it might be well to re-open the title – this, now however is an impossibility.
>
> There is not a single block of Native Land which has ever passed through the NLC in respect of which some similar hardship could not be shown.
>
> The only suggestion I can make is that if the natives are as they allege landless they should be advised to take up land under the Village Settlements regulations.[73]

The only other relevant document in the file is a letter from Ihakara Te Ngarara to the Native Minister, A J Cadman, objecting to the Hughes–Clements petition.[74] Te Ngarara apparently occupied the land Mrs Hughes and her sisters wanted, so he was not a disinterested party. But according to him 'these women' had attended the 1873 court. They had requested, and been given, a small area of land. They had not made any other claims. They had attended the court in 1887, and made no claims then either. In 1890 they had attempted to make a claim, but because their names were not on the list of owners, the court would not consider it.

All of the things Te Ngarara said about 1873 and 1887 might have been true, but the important issue was this. On the basis of what the court had decided in 1890, if

70. 'Report of Native Affairs Committee', AJHR, 1891, I-3, p 17, no 199; 'Report of Native Affairs Committee', AJHR, 1891, I-3, p 31, no 199
71. 'Petition of Mere Ngapaki Hughes and Jane Clements', 1891, MA series 13/53, NA Wellington
72. 'Report of Native Affairs Committee', AJHR, 1891, I-3, p 16, no 200
73. Sheridan to Native Minister, 7 July 1893, MA series 13/53, NA Wellington
74. Ihakara Te Ngarara to Cadman, 30 May 1892, MA series 13/53, NA Wellington

the ancestor, Ihiperia Nukiahu, had been a person of importance, and if her family had been in continuous occupation of the land, then Mrs Clements and her sisters had a claim; on the face of it, perhaps as good a claim as that of the Tuhata children.

In 1894 the member for Otaki, J G Wilson, asked if the Government had considered the petition of 1891, or made any inquiries concerning it.[75] Seddon replied that the Government had considered the matter but decided that the Government, as Government, could do nothing. He suggested that Wilson might attempt to amend the Native Land Court Bill, then before the House, in a way that would confer upon the Native Land Court the power to deal with cases of the kind in question.[76] A copy of this question is contained in the files of the Native Department, with a notation by Haselden, Under-Secretary, Department of Justice, dated 20 September 1894, that 'The Government considered this matter and decided that it would take no action.'[77] This is possibly the departmental brief to Seddon, so that he could provide an answer to Wilson.

In 1903 the member for Hawera, C E Major asked again if the Government had considered the petition of 1891, and the corresponding report of the Native Affairs Committee, and, if not, would legislation be introduced that would allow the Native Land Court to investigate the title of those parts of Ngarara still in Wi Parata's hands. The Native Minister, J Carroll, replied that Ngarara had been investigated under the terms of the Ngarara and Waipiro Further Investigation Act 1889, and that this legislation did not permit any investigation of the claims of Mrs Hughes and Mrs Clements. Carroll thought that the parties might consider petitioning Parliament, in order to get provision for a further investigation, but he 'offered no opinion on the matter'.[78] Major asked if the Minister would prevent Wi Parata from alienating the land. Carroll replied that the Government would take no such step.

In 1904 Mrs Clement and Mrs Hughes petitioned Parliament again, seeking legislation that would allow their claim to Ngarara to be heard. The Native Affairs Committee made no recommendation, on the grounds that the petitioners had yet to exhaust all the legal remedies available to them, although it is not clear what these may have been.[79] There is no further information on the files, and it seems that this claim, in the face of legal difficulties, and reluctance on the Government's part to re-open the Ngarara case, simply lapsed.

One of the last petitions produced by the 1890 rehearing was presented in 1896. In that year Hone Tuhata, sometimes named as John Damon, the brother of Inia Tuhata and a great-grandson of Hone Tuhata, petitioned that his name and that of his brother (Te Matoha) and sister (Ngaropi) had been omitted from the list of owners drawn up in 1873 and 1890, and asked for legislation to enable their names to be inserted into the titles.[80] The Native Affairs Committee recommended that this petition be referred to the Government for consideration.[81] The Chief Judge of the

75. Wilson, 20 September 1894, NZPD, vol 86, p 118
76. Seddon, 20 September 1894, NZPD, vol 86, p 119
77. Haselden, 20 September 1894, MA series 13/53, NA Wellington
78. Carroll, 30 September 1903, NZPD, vol 126, p 91
79. 'Report of Native Affairs Committee', AJHR, 1904, I-3, no 785, p 13
80. 'Petition of Hone Tuhata', 1896, MA series 13/53, NA Wellington
81. 'Report of Native Affairs Committee', AJHR, 1896, I-3, no 503, p 26

Native Land Court, G B Davy, had no doubt that Hone and his brother and sister had a just claim, and that a mistake had been made in 1890. The difficulty was that the certificate of title had been issued in the names of Inia and Rangihanu. His verdict was that 'it is beyond the power of the Court to rectify the omission.'[82] The Government attached a clause to the Reserves, Endowments, and Crown and Native Lands Exchange, Sale, Disposal, and Enabling Bill 1897, providing for a rehearing of the Ngarara block with reference to the children of Inia Tuhata, but the Bill lapsed.[83] Hone Tuhata petitioned the House again in 1897; the petition was held over until 1899, but no recommendation was made.[84] There is no further information on the files, and it may be that this claim, admitted by Davy to be every bit as strong as that of Inia Tuhata's, lapsed as well.

82. Davy to Chairman, Native Affairs Committee, 2 October 1896, MA series 13/53, NA Wellington
83. 'Supplementary Order Paper', House of Representatives, 20 December 1897, MA series 13/53, NA Wellington
84. 'Report of Native Affairs Committee', AJHR, 1899, I-3, p 6, no 259

CHAPTER 12

HOROWHENUA COUNTY 1885 TO 1970

12.1 INTRODUCTION

In 1886, of the estimated 400,000 or more acres that lay between Wainui in the south and the Manawatu River in the north, some 184,000 acres remained in Maori lands: 1862 acres on customary titles; another 2800 acres as reserves; and 179,055 acres on land court certificates of title.[1] The bulk of this land was located in about 70 named blocks. Around 25 of these blocks were 1000 acres or more in area. The largest, Horowhenua, contained 52,000 acres.

Twenty years later, in 1906, the Legislative Council requested information to be tabled on the amount of land still in Maori hands. Among the detail sought was a general description of all blocks of 1000 acres or over. When this information was produced, only 12 blocks of the required size could be located between Wainui and the Manawatu.[2] These blocks containing just over 33,000 acres. This, of course, was not all the land in the Horowhenua County district still in Maori hands. In the preceding years much of the land had been subdivided; this process, if the subdivision of Ngarara is any guide, produced many owners and many relatively small plots, of tens or hundreds of acres. Only rarely did one of these subdivisions exceed the 1000-acre benchmark used to prepare the Legislative Council return of 1906. Some of this subdivided land had then been purchased, if not by the Crown then by the Wellington and Manawatu Railway Company or private individuals. The amounts purchased by the Crown, and by the railway company, are more or less known; the amount of land purchased directly, by way of private treaty, is unknown, but even the most cursory examination of the numerous *Gazette* entries dealing with land transfers along the Kapiti Coast indicates that private sales, within the framework of the law relating to the purchase of Maori land, became, from the late 1880s, an increasingly important avenue of land alienation.

Evidence given to the Railways Commission at the beginning of the 1880s showed that the major Crown land purchases of the 1870s had been largely confined to the bush and hilly eastern side of the district. The flat coastal lands remained, by and large, in Maori hands, although the Crown was said to have liens over some of it, and other areas were said to be under negotiation. In 1880, however, Richard Gill seemed quite pessimistic that any immediate or extensive acquisitions would be made by the Crown along the coastal plains.

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1. 'Lands Possessed by Maoris, North Island', AJHR, 1886, G-15, pp 1, 11, 13
2. 'Acreage of Unproductive Native Land in North Island', JALC, 1906, no 5, p 20

According to the 1881 census, the European population was 417, and of this number 248 (around 60 percent) were located at Otaki. The other 40 percent were scattered in small handfuls up and down the coast. Some lived on land privately purchased, or on the few areas that had been purchased by the Crown; others, perhaps the majority, occupied leasehold land. Arguably, two things explained why the European population numbered only a few hundred at the beginning of the 1880s. One was that the Crown had little land suitable for European settlement available. The other was the lack of a good system of transport. Until the late 1870s, vehicular transport, in the form of coaches and wagons, traversed the coast along the beach, turning inland in the vicinity of the major rivers to seek safe fording places. Those of foot, or horseback, followed the same route. The alternative to the beach 'road' was sea travel, via small ships. These vessels were able to drop passengers and cargo off at various points on the coast, depending on the weather, but often seem to have been used to bypass the district, travelling from Wanganui, or the Manawatu, to Wellington and back.

12.2 THE WELLINGTON–MANAWATU RAILWAY

The first road through the interior, track might be a better description, was constructed in the late 1870s. It appears to have been associated in some way with plans for a railway line between Wellington and the Manawatu. Construction of the Wellington–Johnsonville section of this line began in 1879, but the Hall Government stopped the work, and appointed a Royal Commission (1880) to investigate all railway lines in the country either being constructed or proposed. The Wellington–Manawatu line was among the schemes that the commission recommended against, one of the main grounds for this veto being that too much of the land to be traversed remained in Maori hands.[3]

Business and commercial interests in Wellington approached the Government, and while failing to overturn the decision that had been made, did receive offers of material support, and a promise of suitable legislation, should a private company be formed to construct and operate a Wellington–Manawatu railway. The Railways Construction and Land Act 1881 gave authority for the construction of railways by joint stock companies, and allowed the Government to make grants of Crown land to offset the cost. While the Bill was being passed through Parliament the Wellington and Manawatu Railway Company came into existence. In 1882, the company and the Government agreed, under the terms of the 1881 legislation, that the company, for its part, would complete a line between Wellington and the Manawatu within five years. In return, the Government would transfer to the company 210,500 acres of Crown land, the bulk of it lying between Wainui and the Manawatu.[4] Construction began immediately, from both the north and the south, and the final spike was driven on 3 November 1886, at Otaihanga, just south of the

3. 'Report of Railway Commission', AJHR, 1880, E-3, p ix
4. 'Contract Entered into Between Her Majesty the Queen and the Wellington and Manawatu Railway Company Ltd', AJHR, 1882, D-7

Waikanae River, six months ahead of schedule. Regular service began on 1 December 1886, the first train reputedly carrying nearly 600 passengers. The trip from the Manawatu to Wellington, took 4½ hours. The Longburn to Otaki section of the line had been opened in August 1886, and a reporter who made the trip commented on the bush that stretched away on both sides of the line, going on to predict that:

> a very short time will work wonders and that at no distant date the site of the forest will be converted into rich fields and smiling homesteads whose produce will find a profitable market in Wellington by means of this railway line.[5]

Kemp, at Horowhenua, and Parata, at Waikanae, had been enthusiastic supporters of the railway, and both had persuaded their tribes to donate to the company the land in their districts over which the tracks were laid. By the time the line was completed, however, Maori support for the railway may have diminished. Swabey quotes a *Feilding Star* report that Maori were conspicuous by their absence at the ceremonies associated with the driving of the last spike, where both the Premier, Sir Robert Stout, and the Governor, Sir William Jervois, were present, among with many of the leading citizens of both Palmerston North and Wellington.[6] According to Swabey, there were 1000 spectators, undoubtedly the largest gathering of Pakeha ever witnessed in the district.

It would be hard to overestimate the significance of the coming of the railway. Adkin, no doubt thinking of the Levins and Shannons, noted that the practice of assigning Maori names to new localities along the coast virtually ceased in the late 1880s.[7] If true, the reason for this seems clear enough – the railway facilitated European population growth on a scale that quickly ended the numerical dominance of the Maori along the west coast. The precondition for this population growth was of course the availability of land – not so much the land Booth had acquired during the 1870s, thousands of acres of which had been passed over to the Railway Company, but the land the company purchased directly after 1882, and the land the Government obtained in the mid-1880s and later at Horowhenua and Ngarara. Moreover, as the European population began to burgeon along the coast, the demand for land increased, and direct purchases by newcomers or old hands, private dealings, became the most common form or method of alienation. Ngarara and Kukutauaki were passing away: Horowhenua County was rapidly being erected in their place.

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5. B Swabey, 'The Opening of the Horowhenua and Manawatu Districts: The Wellington–Manawatu Railway Line', *Otaki Historical Journal*, no 18, 1985, p 10
6. Ibid, p 8
7. G L Adkin, *Horowhenua: Its Maori Place-Names and Their Topographic and Historical Background*, Wellington, Department of Internal Affairs, 1948, p 16

12.3 POPULATION CHANGES 1881 TO 1936

There is no reason to doubt the essential accuracy of the 1881 census data as it pertains to the European population. The figures provided for the Maori population, on the other hand, seem quite dubious: the Muaupoko, for example, were located, quite wrongly, at Otaki, and said to number only 81.[8] McDonald, however, reported that the Muaupoko (at Horowhenua) were several hundred strong in 1879, only two years earlier.[9] Nineteenth-century Maori were mobile, moving from one district or locality to another, and they were possibly disinclined to cooperate with the census takers as well: both circumstances could skew census counts, invariably in the direction of underestimation. In this case, it seems safe to assume that in 1881 the Maori population along the west coast was nearer 1000 than the 613 reported by the census report. If so, the Maori population was at least twice as large as the European population. Certainly, if we take the 1881 census figures at face value, the 248 Europeans at Otaki were greatly outnumbered by the 455 Ngati Raukawa reported to be residence in and around that settlement.

Successive censuses seem to show that the Maori population along the coast grew steadily during the late nineteenth century and early twentieth century, although some of the reported increase may have been the result of better enumeration. There is no data on Maori migration either into or away from the west coast districts, but net outward flow seems the more probable. The 1911 census reported a Maori population of 1295; if the 1881 census figure of 613 is correct then the Maori population doubled over the 30 years in question.[10] If, however, the 1881 figure was an underestimation, and that does seem quite probable, then the rate of Maori population growth was correspondingly slower. It is even possible, depending on the size of the correction made to the 1881 figure, to suggest that the Maori population was static or even in decline during the period 1881 to 1911. Certainly there was no growth in the Maori population between 1911 (1295) and 1926 (1290), although the Maori population did grow by about 25 percent between 1926 and 1936.

There is no uncertainty, on the other hand, about the growth rate, or the direction of growth, of the European population: the 400 recorded in 1881 had by 1911 grown to over 7500. By 1936, this 7500 had grown by 40 percent (11,045).[11] In 1881 the European population had been at best half the size of the Maori population; by 1911 it was six times larger.

12.4 LIVESTOCK AND AGRICULTURAL PRODUCTION

One consequence of the growth of the European population was, predicably enough, a great increase in all forms of agricultural and livestock production along the west coast. One would have anticipated that the production and livestock data would, at

8. 'Census of the Population of New Zealand, 1881', p 309
9. E O'Donnell, *Te Hekenga: Early Days in Horowhenua; Being the Reminiscences of Mr Rod McDonald*, Palmerston North, Bennett and Co, 1929, p 161
10. 'Census of the Population of New Zealand, 1911', appendix a, p v
11. 'Population Census, 1936', vol 1, p 14

the very least, track along the same lines as the population breakdown (in 1911, 14 percent Maori; 86 percent European). This, as it happens, is broadly true as far as agricultural activity is concerned. The situation with respect to pastoralism, however, was far different.

In 1885 around 30 Maori were listed in the sheep returns as having flocks in the Horowhenua district, totalling altogether 4000 head.[12] The McDonalds were the only Europeans in the district, but their flocks, reported to number 7500 in total, made up around two thirds of the sheep in and around Horowhenua. The number of Maori owners fell by one or two between 1885 and 1895.[13] Between 1895 and 1900, however, the number was halved: from 26 to 13.[14] Between 1900 and 1905 it was halved again: from 13 to six.[15] By the 1920s there seemed to have been only two Maori running sheep at Horowhenua.[16] The decline in Maori sheep numbers was less dramatic, which suggests that it was the owners with the smaller flocks who abandoned pastoralism first. None the less, while Maori-owned sheep had numbered between 3000 and 4000 around the turn of the century, by 1925 there were only 700 to be found in the Horowhenua locality.[17] But pastoralism had not ceased to be an important activity at Horowhenua. Indeed, it had become more important year by year. Thus while Maori-owned sheep totalled 700 in 1925, the total number of sheep in the locality was over 26,000. In 1885 there had been 30 individuals running sheep in the Horowhenua district, only one of whom was European. By 1900, two-thirds of the sheep owners were Europeans, and by the 1920s only two of the 38 or 39 sheep farmers reported in the Horowhenua locality were Maori. The turning point, as far as the number of owners is concerned, occurred between 1895 and 1900.

In the south, at Waikanae, the same pattern is apparent. According to the sheep returns, there were no Europeans running sheep in that district in 1885. By 1905 there were no Maori sheep owners reported in the district. Yet sheep numbers, which had varied between 2500 to 3000 between 1885 and 1900 doubled in the five years beginning in 1900. By 1930, there were close to 14,000 sheep in and around Waikanae.

By 1910, along the west coast between Waikanae and the Manawatu, in the statistical area known as Horowhenua County, there were 167,935 sheep in total.[18] Of this number, 8000, less than 5 percent, were owned by Maori. In the same district in 1911 there were 25,000 cattle, of which 1100, again less than 5 percent, were owned by Maori. The figures for sown grasses, 124,215 acres in total, break down in the same way: 94 percent European; 6 percent Maori.

For reasons that are not entirely clear, pastoralism ceased to be an activity with a significant Maori involvement just before or just after the turn of the century, about the time that European names began to multiply on the lists of sheep owners, and the sheep population along the west coast began to grow rapidly.

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12. 'Annual Sheep Returns', AJHR, 1885, H-8, pp 20–22
13. 'Annual Sheep Returns', AJHR, 1895, H-23, pp 52–53
14. 'Annual Sheep Returns', AJHR, 1900, H-23, pp 60–61
15. 'Annual Sheep Returns', AJHR, 1905, H-23, pp 61–62
16. 'Annual Sheep Returns', AJHR, 1925, H-23B, pp 73–74
17. Ibid, p 52
18. 'Statistics of New Zealand, 1910', p 406

The figures for agricultural and horticultural activity tell a different story. In 1911, of the approximately 5299 acres of land being cropped or used as orchards, 602 acres (around 11 percent) was Maori production.[19] Thus while the Maori population (in that year 14 percent of the total) owned only about 5 percent of the livestock, they produced about 11 percent of the agricultural outputs. It is certain that Maori owned more land in Horowhenua County in 1910 to 1911 than they used themselves; it was apparently not uncommon for European farmers to lease Maori land for pasture, for example, and there was in fact a long history along the west coast of Maori land being leased to Europeans rather than being farmed or used as grazing land by its owners. But how much of the European pastoral industry in 1911 was based on Maori leasehold land, and the extent of the rental income, is impossible to say. Nor is it possible to say how much of the estimated 184,000 acres of Maori land in 1886 still remained in Maori hands in 1911, let alone in subsequent years. But some of the areas where land was purchased or sold during and after the mid-1880s are known, and so too are some of the reasons why certain areas of land were acquired by the Crown.

12.5 HOROWHENUA ACQUISITIONS 1886 TO 1929

In 1886 the Crown purchased an area of 4000 acres to the east of Lake Horowhenua, to be the site of the township of Levin. Kemp had wanted the town to be a Maori–Pakeha community, and he had made several stipulations concerning the development before he had agreed in principle to the sale.[20] The Government, however, had little commitment to Kemp's vision, and in the end his financial embarrassment was such that he had to accept the Government's final conditions, and conclude the sale.

Two other parts of Horowhenua passed out of Maori hands in 1886. Block 1 was a long strip running roughly north and south. Containing 76 acres, it was given to the Wellington and Manawatu Railway Company, as a right of way. Block 10 was an area of 800 acres, given to Kemp to enable him to clear his legal debts. It passed into the hands of Kemp's lawyer, Sievwright. These three transactions: the township, the railway, and the Sievwright block, left some 47,000 acres in Maori hands.

The next significant sale was the 1500-acre State farm block in October 1893.[21] During the negotiations over the purchase of the Levin township block the Government had taken advantage of Kemp's financial difficulties to get the terms it wanted, but there seems to be little doubt about the legality of the sale. The State farm block purchase on the other hand, appears to have been a dubious transaction from beginning to end. At the time the offer of the land was made the Government had prior knowledge, or at the very least reason to suspect, that the land in question was part of a trust block, and that the vendor, Warena Hunia, had no right to sell the

19. Ibid, p 413
20. Horowhenua Commission, AJHR, 1896, G-2, p 296
21. Horowhenua Commission, AJHR, 1896, G-2, exhibit c, p 286

land without the consent of the other owners. Indeed, the Government Minister concerned, McKenzie, had promised Parliament in August 1893:

> they would take very good care, before a purchase was made, or before any money was paid over, that the interests of the beneficiaries should be protected, and that they should get the proper value for this land.[22]

Despite this assurance, the purchase went ahead. When a Muaupoko deputation meet the premier, Seddon, in early 1894 to protest the transaction, he adopted a dogmatic and threatening attitude.[23] These bullying tactics did not succeed. Kemp's lawyer, W B Edwards, took the matter to the Supreme Court. He needed Government documents concerning the sale to prepare his case. Haselden, Under-Secretary, Department of Justice, was uncooperative and tardy in providing the necessary access, perhaps to the point of being obstructive.[24] None the less, Edwards won the case, and the matter of the State farm block purchase was set aside for consideration by the Horowhenua Commission.

The commissioners found that the Crown had purchased the State farm block, knowing when it did so that it was trust property.[25] But no rebuke was issued, nor was any recommendation made that the land be returned. Instead, the commission suggested a formula that could be used to validate the purchase, and this was put into effect by the Horowhenua Block Act 1896. From one perspective, this legislation provided for the compulsory completion of the State farm block purchase: from another it simply accorded Kawana Hunia the same degree of consideration with respect to Horowhenua land that had been shown to Kemp. But whether legitimised, or merely legalised, the effect, in either case, was the same. The State farm block became Crown land.

The Horowhenua Commission had also recommended that block 12 be purchased as well, and this transaction was effected during 1899. It had been determined that the costs incurred by the Horowhenua Commission were to be a charge against the land, and possibly block 12, mostly rough bush country with few inhabitants, was considered to be the most suitable land for this purpose. Another 12,000 acres was added to the Crown's Horowhenua estate.

In the same year (1899) the Government also purchased block 6, containing 4363 acres, bringing Crown purchases in the Horowhenua block during the 1890s to 19,000 acres. After the turn of the century, the Crown continued to acquire land from time to time: 1035 acres in 1900 (Horowhenua 3E 5, Horowhenua 6A, Horowhenua 6B, Horowhenua 6C); two sections on the lake shore (37 and part 38) in Horowhenua 11B, totalling 13 acres in 1907; 101 acres (Horowhenua 7A) in 1908; 1088 acres (Horowhenua 11B42C1) in 1927; a small area of less than an acre (part Horowhenua 9A2) in 1929.[26] Other portions of Horowhenua were considered for

22. McKenzie, 4 August 1893, NZPD, vol 80, p 461
23. Horowhenua Commission, AJHR, 1896, G-2, exhibit v, pp 311–314
24. Edwards to Haselden, many dates 1894, MA series 75/15, NA Wellington
25. Horowhenua Commission, AJHR, 1896, G-2, p 12
26. 'Crown Purchase Deeds Index Wellington Province', Wellington, Department of Survey and Land Information, not dated

purchase from time to time as well. For example, Horowhenua 3C no 2 was partitioned in 1909 into 3C 2A and 3C 2B. In the late 1940s the Crown offered to purchase a 25-acre portion of 3C 2A; the elderly owner was represented during the negotiation by her son. He suggested that the Crown should purchase the whole of the block. The Department of Land and Surveys was not interested in buying to that extent, and talks lapsed.[27]

12.6 OTHER CROWN ACQUISITIONS 1891 TO 1959

In the south, at Ngarara, Crown purchases totalling nearly 9000 acres (Ngarara West C, sections 24 to 39; Ngarara West C, part section 41) were made during 1891.[28] There seems to have been few sales of any significance size after this date, and there is at least one example of land being offered for sale, but the Government being unwilling to buy. In 1925 Nora Reilly offered 25 acres of Ngarara West C to the Government.[29] R Heaton Rhodes, Commissioner of State Forests, replied that there were no funds available for purchase, and he referred Mrs Reilly to the Scenic Preservation Commission.[30] There is nothing to indicate that Mrs Reilly took this advice, but if she did, the Scenic Preservation Commission turned her down as well. The owners of Muaupoko A no 2, section 2, subdivision 1, had better luck when they offered 136 acres to the Crown in 1959. This land was seen as a valuable addition to the Paraparaumu scenic reserve, and was quickly snapped up.[31]

The Paraparaumu scenic reserve had been established in 1906, with the taking of 185 acres in Ngarara West C, subdivision 7, the Maori owners being given £300 by way of compensation. The compensation was determined by the Native Land Court. The decision to take the land was at the recommendation of the Scenery Preservation Commission, an advisory body set by the Scenery Preservation Act 1903.[32] This legislation provided that Maori, Crown, or private land might be taken permanently, in order to preserve any areas of scenic, thermal, or historic importance. In 1906 the Commission established by this legislation had its eye on another 1100 acres of land along the west coast: 950 acres in Ngarara; 150 acres along the shores of Lake Horowhenua.[33] None of these proposals eventuated; the plan to take land around Lake Horowhenua was aborted when it was discovered that the door at Horowhenua had been locked by the Horowhenua Lake Act 1905. It may be that the Ngarara block was the only land along the west coast acquired under the terms of the Scenery Preservation Act 1903; if so, this would seem to be a somewhat anomalous situation, given the extent to which this legislation was used in other parts of the county. The Crown could, of course, pass special legislation to much the same effect: the Kapiti

27. Under-Secretary, Department of Lands and Survey, to Under-Secretary, Department of Maori Affairs, 27 January 1948, MA series 1, 5/5/47 NA Wellington
28. *New Zealand Gazette*, no 72, 15 September 1892, p 1274
29. Reilly to Coates, 28 June 1925, Forestry (F) series 1, 9/3/6, NA Wellington
30. Heaton Rhodes to Reilly, 11 July 1925, Forestry (F) series 1, 9/3/6, NA Wellington
31. Secretary of Maori Affairs to Minister of Maori Affairs, 9 April 1959, MA series 1, 5/5/39 NA Wellington
32. *New Zealand Gazette*, no 13, 15 February 1906, p 536
33. 'Department of Lands, Scenery Preservation', AJHR, 1906, C-6, pp 3, 6 (21), 11 (201)

Island Public Reserve Act 1897, for example, or the Horowhenua Lake Act 1905. It also had, in the various public works acts, legislation that could justify the taking of land for a variety of purposes.

12.7 PUBLIC WORKS

The necessity to extend or improve the roading system was the most common reason for the exercise of the power of compulsion provided by the Public Works Act, but it was not the only one. The need to establish gravel pits, see to river protection, or provide public buildings were among other reasons given for the taking of land. Generally, the areas in question were small, and often the only information available is the *Gazette* notice, detailing the land being taken and the purpose. If the amount of compensation could not be agreed between the owners and the Crown, then the minute books of the Maori Land Court may yield further information. If there were firm resistance on the part of the owner or owners, or some other kind of difficulty, there may be a file as well.

For example, in the 1920s, land for roading was taken from two Waikanae blocks, Ngarara West A3C and Ngarara A32C2. There was some doubts as to the amount of compensation that should to be paid, which had led to delay in finalising the matter. Eventually a valuer, R A Fougere, was commissioned to inspect the blocks and prepare reports. In these documents Fougere meticulously lists the factors that had to be considered when making a case for compensation. His main conclusion was that the road works had enhanced, rather than detracted from, the value of the land, and his recommendation, which was accepted, was that nominal compensation, of £75 in total, should be paid.[34]

In 1921, to give another example, the Crown gazetted the intention of taking an acre of Muhunoa 1B2B, for the purpose of building a post office. Muhunoa 1B2B was a block of 500 acres. It belonged to Hemi Ropata Te Ao, and had been leased to a Pakeha farmer. Apparently Te Ao had originally offered to sell the acre in question, but had then withdrawn the offer before the purchase could be made. When the Crown advised him that it intended to acquire the land anyway, Te Ao objected, on the ground that removing the acre in question would ruin the block. He offered land he owned on the other side of the road.[35]

The Chief Postmaster inspected the two sites, and reported that he preferred the original location. It was sunnier, while the alterative site was low-lying and would require filling before it could be built on. None of the land in question was suitable for agriculture. He described it as third-grade grazing land. For this reason he felt that the suggestion that the larger block would be depreciated in value if the one acre section were to be cut out of it need not be given serious consideration. In addition,

34. Fougere to Department of Maori Affairs, 25 November 1925, MA series 1, 54/19/29 NA Wellington
35. Harper and Atmore to Minister of Public Works, 9 June 1921, Public Works (W) series 1, 20/865, NA Wellington

the land had been leased out for 21 years, and the leaseholder had no objection to the land being taken.[36]

The official verdict was that Te Ao's objection was not well-grounded, and that any loss sustained could be met by way of compensation. Te Ao was informed accordingly.[37] The required proclamation was made, and the matter of compensation referred to the Native Land Court.[38]

In November G Halliday, a land purchase officer, wrote to Te Ao to tell him that he (Halliday) would be attending the court sitting at Levin, to ask the judge to settle the compensation. He asked if he could meet with Hemi beforehand, and talk things over. The original asking price had been £100, and Halliday indicated the department was willing to settle for that amount.[39] Te Ao apparently was not, and the matter went before the judge.

Halliday subsequently informed his superiors that compensation had been fixed after an on-site inspection by the judge, and in the absence of any evidence from the landowner, at £130 for Te Ao and £20 for the leaseholder. Halliday went on:

> I was afterwards informed by the Judge himself that he had tossed a coin with the solicitor for the Natives to decide whether he would award £125 or £150. The whole proceeding was farcical, and I think the Minister should be approached to take steps to prevent a recurrence of such a method of disposing of public money. I consider this Judge's last two awards (Porirua and this case) have cost the Department about a thousand pounds in additional compensation, an expenditure absolutely unwarranted, the Crown's evidence in both cases being practically ignored. Unfortunately there is no appeal on the question of value.[40]

The substance of Halliday's report was passed onto the Minister, the Under-Secretary adding:

> I understand in addition to the evidence in Mr Halliday's report, that after the case at Levin was over the Judge called upon the claimant to shout for the party, which was duly done.[41]

The Minister's reactions, if any, are not recorded. But the compensation, in the amount ordered, was eventually paid, the land surveyed, and the Ohau post office constructed.

In 1953 it was determined that the one-acre block contained land in excess of both current and future departmental needs. The plan produced about this time indicated that no more than a third of the acre taken had been used by the post office, the

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36. Chief Postmaster to Assistant Under-Secretary, Public Works, 5 July 1921, Public Works (W) series 1, 20/865, NA Wellington
37. Assistant Under-Secretary, Public Works, to Harper and Atmore, 12 July 1921, Public Works (W) series 1, 20/865, NA Wellington
38. *New Zealand Gazette*, no 68, 21 July 1921, pp 1933–1934
39. Halliday to Te Ao, 29 November 1921, Public Works (W) series 1, 20/865, NA Wellington
40. Halliday to Assistant Under-Secretary, Public Works, 2 December 1921, Public Works (W) series 1, 20/865, NA Wellington
41. Furkert to Minister of Public Works, 5 December 1921, Public Works (W) series 1, 20/865, NA Wellington

balance, in 1953, being used by an adjoining farmer as free grazing land.[42] Eventually, about a half acre was declared to be surplus Crown land, and £60 was credited to the Post and Telephone Department. A smaller area, of 13.3 perches, was diverted to roading.[43]

The largest single area of land taken for public works along the coast was the land used to build the Paraparaumu airport. The development of the airport at Wellington had created a requirement for a secondary, emergency, landing field in the province. After investigation of a number of alternatives, it was decided in 1939 that Paraparaumu was the best of a not altogether promising selection of local sites. Nearly 300 acres was gazetted: around 250 acres of Maori land (Ngarara West B no 7, subdivision 2C, block 3 (29 acres); Ngarara West B no 7, subdivision 2B, block 3 (30 acres); Ngarara West B no 7, subdivision 1, block 3 (90 acres); part Ngarara West B no 5, block 3 (107 acres 3 roods 9 perches); and 30 acres of European land (Ngarara West B no 7, subdivision 2A, block 3).[44]

When notified of the Crown's intention to take the land, Paoka Hoani Taylor objected on behalf of the minors who owned Ngarara West B no 7, subdivision 2B, block 3. This, he said, was the only piece of land from which they obtained any revenue. He asked if the land might be leased rather than taken, concluding his letter by expressing the view that taking the land was 'an injustice'.[45] R Semple, then Minister of Public Works, replied that the suggestion that the land be merely leased had been given careful considerations, but the amount of work required to be done, among other things, obliged the Crown to acquire the freehold.[46] The land was taken, and in due course the question of compensation was considered. The owners of the European land, who also held a lease over the remaining land in the air field block, agreed to accept £1000 both for their land, the value of their lease and various improvements they had made. The owners of Ngarara West B no 7, subdivision 2B, block 3 – the children in the guardianship of Taylor – received a negotiated payment of £611 for their 30 acres. The owners of the two larger blocks had their compensation fixed by the Native Land Court – £1890 for the 90-acre block, £2507 2s 4d for the 107-acre block.

There is no easy way to quantify the amount of Maori land that was taken for public works along the west coast; nor is it currently possible to determine if Maori land was more or less likely to be taken for public works than European land. These, and other related matters, deserve further study.

42. Director-General Post Office to Commissioner of Works, 28 September 1953, Public Works (W) series 1, 20/865, NA Wellington
43. *New Zealand Gazette*, no 31, 28 April 1955, p 706
44. *New Zealand Gazette*, no 5, 2 February 1939, p 122
45. Taylor to Minister of Public Works, 6 January 1939, Public Works (W) series 23/381/49/0 NA Wellington
46. Semple to Taylor, 27 January 1939, Public Works (W) series 1, 23/381/49/0 NA Wellington

12.8 KAPITI ISLAND 1897 TO 1965

The Crown occasionally used its power of coercion not for public works but for what it saw as a public good; the establishment of reserves and domains, and the preservation of sites of historical or ecological significance. The Kapiti Island Public Reserve Act, 1897, was a measure of this kind. It declared Kapiti Island to be a public reserve, vesting in the Crown those parts of the island, amounting to about 750 acres, held by individuals other than the original owners, and prohibited all private dealing in Kapiti land. The owners strongly objected to the legislation in question, partly because the land was appreciating in value, mainly because of the association that their forefathers had had with the island. According to the member for Northern Maori, H Heke, the value of the land lay in its history, and could not be measured in money.[47] Seddon, however, justified the legislation as a conservation and preservation measure, arguing that if the land were left in Maori hands they would eventually lose it.[48] In the Legislative Council, T Kelly, New Plymouth, took the same line, claiming that the taking of the land was in the best interests of the Maori owners.[49] J A Bonar, Westland, interjected that the owners did not want their land taken, but no one took up his point, either because Kelly had expressed the majority viewpoint, or because there was general support for the conservation principles the legislation embodied.[50] By 1904, the Crown had acquired around 3000 of the estimated 4990 acres on the island, leaving some 1620 acres in the hands of the original owners.[51] Land on Kapiti continued to be acquired, a number of sections being purchased between 1911 and 1918. In 1920, the Department of Lands and Survey reported that a small portion of Kapiti Island was still retained by the Maori owners, and that proposals to purchase these interests had so far been unsuccessful.[52] One further section was purchased in 1931. The most recent purchases appear to have been made in 1963 and 1965.[53]

Wi Parata had been one of the landowners on Kapiti, and his daughter, Te Utauta Parata (Mrs Webber), was particularly strong in defence of the Parata interest. In 1920 she wrote to Massey in an effort to forestall legislation that would have permitted compulsory purchase of the remaining Maori holdings on the island. This legislation did not, as it happens, proceed. Nor had an earlier attempt, in 1914, to pass legislation of a similar kind. Mrs Webber had protested in that year as well. These interventions may or may not have been influential in preventing forcible completion of the island's purchase. But the 1920 letter to Massey showed clearly the stance Mrs Webber took on the question of rights and entitlement. Her argument was that the land was hers, based on rights created by Te Rauparaha, and directly transmitted. Moreover, she gained her livelihood from the sheep she grazed on her

47. Heke, 20 December 1897, NZPD, vol 100, pp 915–916
48. Seddon, 20 December 1897, NZPD, vol 100, p 915
49. Kelly, 21 December 1897, NZPD, vol 100, pp 927–928
50. Bonar, 21 December 1897, NZPD, vol 100, p 928
51. 'Return Showing Particulars in Respect of Island of Kapiti', AJHR, 1894, G-8
52. 'Department of Land and Survey, Scenery Preservation', AJHR, C-6, 1920, p 5
53. 'Crown Purchase Deeds Index Wellington Province', Wellington, Department of Survey and Land Information, not dated

land, and had 'nowhere else to fall back upon to maintain myself and my children'.[54] The Crown's position was just as clear, and can be seen stated in a 1923 memorandum to the Native Minister, G Coates, from W Nosworthy, Minister of Agriculture, acting for the Minister of Lands. The immediate issue was an application by one of the few remaining owners, a Mrs D'ath, for an exchange of land between herself and the Crown, her own section being precipitous and inaccessible. Nosworthy began by pointing out that the 1897 legislation had set the island aside as a sanctuary for the preservation of the native flora and fauna. He continued:

> For this purpose the Crown has consistently acquired all interests in the land, and discouraged all settlement there. Should the present request be agreed to, it would inevitable mean that in the course of time a private dwelling or public boarding house would be erected in an advantageous position to which pleasure seekers could resort whenever they wished. It would be impossible to keep Kapiti as a safe sanctuary and the whole object of the reservation would be destroyed . . .
>
> In the circumstances, therefore, I regret that I do not see my way to take any action in the matter, and I can hold out no hope that the policy of the Government in this matter will be changed.[55]

To Wi Parata's daughter, the issue was ownership rights that derived from events before 1840; to the Minister, it was the right of the Crown to place restrictions on, or prevent the exercise of, individual property rights if the public good demanded that this be done.

12.9 RAILWAY AND PRIVATE PURCHASES 1882 TO 1919

In the 1880s the Wellington and Manawatu Railway Company made numerous purchases of Maori land in the district, totalling some 33,000 acres.[56] Authority to do so derived from the Crown, via the terms of the Railways Construction and Land Act 1881. Some of this land was good, flat, fertile land; exactly the kind of land the Government had been unable to acquire. There was also 15,000 acres of potentially very valuable swamp land. In 1908, when the line was nationalised, land still in the company's possession was vested in the Crown.

Land was also purchased privately, within a legal framework peculiar to Maori land alienation. The Native Lands Fraud Prevention Act 1881 Amendment Act 1889 directed that there be 'as far as possible, inquire into the circumstances attending every alienation' and also 'inquire as to the amount of the consideration paid'.[57] Measures like this show that the Crown intended that, in the private sector, dealings with Maori land should be fair and above board. Whether the efforts made to monitor these transactions were adequate or not is, of course, another matter.

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54. Parata to Massey, 6 August 1920, MA series 1, 5/5/126, vol 2, NA Wellington
55. Nosworthy to Coates, 6 August 1923, MA series 1, 5/5/126, NA Wellington
56. 'Dealings with Native Lands', AJHR, 1883, G-6, pp 9–11, 16–17
57. Native Lands Fraud Prevention Act 1881 Amendment Act 1889, s 5

It appears that details of many, if not all, transactions involving land along the west coast were captured in the appendices, the gazettes, the minute books of the Native Land Courts and in particular on the successive certificates of title issued for particular blocks of land. When this information is properly collated, it should be possible to trace the ownership of practically every acre through time, and to model in detail the transfer of land from Maori to Pakeha, the fairness of the process, and the relative importance of the different buyers: central government, local bodies, corporate entities, and private individuals.

The Horowhenua Commission, as it happens, asked that something of this kind be done with respect to land transactions in the various Horowhenua blocks in the years immediately before 1896. The document that resulted is of considerable interest.[58] Horowhenua 3, for example, contained around 12,000 acres, divided into sections 102 acres in size. It lay to the north, contiguous with block 12 in the east and block 6 in the south. At the beginning of the 1890s it had over 130 owners. The first transaction uncovered by a search of the title deeds was in February 1892, when Robert Stevens paid Warena Hunia £225 for the 102 acres in 3B no 2. In October of that year Stevens sold this land, and possible another 50 acres as well, 152 acres in total, to Alexander McHardie, for £1252 13s. Stevens seems to have made other purchases as well, including two 102-acre sections (3B no 1 and 3B no 3). These last two sections were owned by Hunia and a Hopa Te Piki. Hopa received £225 for his acres, and Warena probably a similar amount. In October 1892 Stevens sold 247 acres of land, including both of these sections, to Mark Searle. Searle paid £1734 5s. There were other men dealing in Horowhenua land for a profit as well during the early 1890s. Donald Fraser, for example, purchased (for £200) a 102-acre section from Rangipo Hoani in mid-1892; a few months later he sold 60 acres of this land to John Gower. The sale price was £252. Three years later Gower sold this land, plus another 44 acres, to one of his brother for £790. F J Stuckey purchased the interests of Noe Te Whata (in January 1893, for £150) and Taare Matai (in August 1892, for £100) in the block, and then re-sold this land to Richard Cresswell in December 1893 for £2550. The return made to the commission reported a number of other dealings in block 3 as well. The size of the profits associated with some of these early transactions immediately strike the eye. However, when they are tallied with respect to the amount of land transferred, the figure for the period 1892 to 1894 is in excess of 1000 acres. If that rate of alienation was sustained, block 3 would have been completely sold in not much more than a decade.

Block 14 lay to the south, on the southern boundary of the Horowhenua block. It contained 1200 acres, land eventually determined to be Kemp's personal property. By the time this determination was made, however, the block had been effectively acquired by his lawyer, Walter Buller, passing formally, by way of a mortgagee sale, into Buller's hands in 1899. The report made to the Horowhenua Commission covered, of course, only transactions concluded before 1896, but it does show that by the year of the commission's sitting Buller had already made some purchases of land in block 14, and that he held mortgages over the balance. It would not have

58. 'Horowhenua Block: Return of the District Land Registrar to the Order of the Horowhenua Commission', 9 March 1896, MA accession 1369, box 17, NA Wellington

been possible, in 1896, to predict exactly when the land would fall into Buller's hands, but the information placed before the commission indicated that, sooner or later, an outcome of that kind was all but inevitable.

Land at Horowhenua continued to be acquired by private treaty through the 1890s and into the twentieth century. And not just at Horowhenua. The issues of the *Gazette* for the period are strewn with notices to do with the confirmation of land alienations, with applications for the removal of restrictions on sale, and with the notification of investigations under the Native Land Frauds Prevention Acts, covering land from one end of the district to the other.[59]

It would be a mistake to assume that all of these transactions were as questionable as the one investigated or uncovered by the Horowhenua Commission. James Gear and Isabella Ling, for example, purchased a good many Ngakaroro sections, apparently to the satisfaction of the sellers.[60] Farthing has studied in detail the acquisitions made by W H Simcox in the Wairongomai and adjacent Pukehou blocks between 1878 and 1919, by which time Simcox had purchased 1823 acres and leased another 2380.[61] According to Farthing, the transactions involved were all scrupulously honest and fair. One of the main advantages Simcox possessed when it came to buying land was his wife Francis. She was a daughter of William Colenso, and so well-versed in Maori ways, and a fluent speaker to boot. But the main predisposing or 'push' factor seems to have been the progressive fragmentation of the land as it was passed from one Maori generation to the next. As the individual shares became smaller and smaller, it appeared that the owners had less and less incentive to hold onto the land. Typically, purchases were made when an owner died, that is, at about the point in time when the fragmentation of a holding occurred. When Simcox's purchases are mapped, they show no particular pattern: he simply acquired land in the vicinity as and where it became available.

Multiply this kind of situation 100 times or more up and down the west coast. Imagine men perhaps more willing to take advantage that Simcox appears to have been. In the district studied by Farthing, all the land had been Maori land in 1878. By 1978, perhaps as much as 75 percent of it had passed into European hands. It seems quite likely that detailed studies of other districts along the coast would produce similar findings.

12.10 WAIFS AND STRAYS: THE 1960s

The progressive fragmentation of the land provided Simcox and others with opportunities to purchase. But it was often difficult to get agreement from all of the owners, and sometimes owners could not be traced. By the 1960s, local bodies in Horowhenua County were running into similar kinds of problems. There were areas of land that were known to be Maori land. Rates were not being paid. Sections were

59. For example, *New Zealand Gazette*, no 38, 10 July 1890, p 784; *New Zealand Gazette*, no 96, 24 December 1891, pp 1423–1424; *New Zealand Gazette*, no 37, 11 May 1893, p 633; *New Zealand Gazette*, no 74, 26 August 1897, p 1565
60. 'Dealings with Native Lands', AJHR, 1883, G-6, p 11
61. B R Farthing, 'Forest Lakes', *Otaki Historical Society Historical Journal*, vol 1, 1978, pp 11–24

infested with noxious weeds. The owners could not be found. If they were located, they were perhaps unable to pay whatever money was owed. A legislative remedy existed, in that local bodies could apply to have the land vested in the Maori Trustee, who would see to its sale, and to the consequential payment of the sums owing. The files contain details of a number of sections that were treated in this way. Horowhenua 3E1 subdivision 4B, for example, was a small area of 3 roods 14 perches. No rates had been paid for a number of years. It was vested in the Maori Trustee in July 966, under section 109 of the Rating Act 1925. The owners were advised that if the rates were not paid, the land would be sold. No reply was received, and the land was accordingly sold.[62]

Horowhenua 11B36 no 5 contained 36 perches. Over 100 persons were entitled to succeed to it. There was some rivalry among these individuals with regard to the section, some wanting to buy out the others. They appear to have agreed to seek a court order, vesting the land in all of the successors, so they could continue to discuss what its final disposition would be. The court, however, was not prepared to vest such a small area in so many owners, and it was passed to the Maori Trustee to sell and to distribute the proceedings. The area was small, could not be sewered, and was so badly sited as to access that the Levin Borough Council indicated that it would not issue any kind of building permit. This effectively made the section unsaleable to anyone other than the council who, as its happens, expressed interest in acquiring the land at a special valuation, with the intention of adding it to the town reserve. The 1925 legislation vested land in the Maori Trustee for the purpose of sale and the subsequent payment of outstanding rates. There was provision for mortgaging of land, in order to raise money for this purpose, but this section was of little avail in the particular case being considered. Sale was in fact the only option, and there was only one possible buyer.[63]

Ngarara A78E2 was one of 14 sections in Horowhenua and Ngarara vested in the Maori Trustee in mid-1964, on the application of the Horowhenua County Council. These 14 sections contained, in total, about five acres of land. Ngarara A78E2 was 1 rood 8.98 perches in extent. It was in a good location in township of Waikanae and was considered very saleable. The sole owner was a Raumoa Matenga Baker, whom the county council had not been able to locate. In 1965 the county council expressed interest in buying the Baker section. At that time, a valuation of £850 was obtained. New efforts to locate Mr Baker were made, but without success. In November 1965 a contract to sell the land to the county council at valuation plus 10 percent (£935) was entered into. After settlement had been made, and all fees and charges deducted, £860 17s 5d was left for distribution. Shortly afterwards, Mr Baker was located in Blenheim, and informed of the sale. Events then began to move rapidly. Mr Baker said he would pay the rates. He was advised that it was too late; the land had been sold. The county council's lawyers lodged a caveat, to protect the county's position. Mr Baker's lawyer lodged a caveat, to prevent any transfer of title. Maori Affairs

62. McKellar to Head Office, Department of Maori Affairs, 20 November 1970, MA series 1, 54/22/5, NA Wellington
63. Hilkie to Head Office, Department of Maori Affairs, 29 August 1967, MA series 1, 54/18/26, NA Wellington

decided to forward the purchase money to Mr Baker, to see if he would accept it.[64] He did not. It was retrieved and given to the Maori Trustee to hold.[65] Mr Baker made an application to the High Court, to have his caveat extended. This was refused, apparently on technical grounds.[66] Shortly afterwards, Mr Baker agreed to terminate proceedings and take the money. It is not known how much of the £860 was left after he had paid his legal fees.[67]

Horowhenua A5E was another of the 14 sections vested in the Maori Trustee in 1964. One acre in extent, it had seven owners. As of 1 February 1961, some £23 had been owed to the Horowhenua County Council. After the land was sold, one of the owners, a Mrs Murray, complained. Firstly, she claimed that she had approached the Maori Trustee, and had asked that rent money held by the Trustee be used to paid the rates. This had not been done. Secondly, the estate agent employed to sell the land had in fact sold it to a subsidiary company, Peka Peka Properties. Peka Peka had almost immediately re-sold the section at a considerable profit.[68]

A *Truth* reporter took an interest in the case. Peka Peka Properties offered to transfer the sale to the Maori owners, provided they paid the company the original purchase price plus fees and expenses.[69] In effect, the Maori owners were being asked to buy back their own land. Mrs Murray claimed that the Maori Trustee should not have sold the land in the first place, since money to pay the rates was available. An internal inquiry, however, found that no blame could be attached to the Palmerston North District Office; Mrs Murray had been written to on several occasions about the rates, and warned that the land could be sold.[70] As far as the Maori Trustee was concerned, the case was closed.

In April 1968 the New Zealand Maori Council asked for an investigation into the circumstances surrounding the sale. In the council's view, there were lesson of wide application to be learnt, to do with the pressure local bodies were exerting to have land vested and sold for the rates, and the effects different pieces of legislation had on the way vested land was treated.[71] The council wanted the inquiry to focus on the actions of the Maori Trustee and on the legislative framework under which he operated with respect to vested land. When the matter was reopened by the department, the focus was on the actions of the real estate agent.[72] By July 1968 all inquiries had been completed. There were no grounds for action against the real estate agent. The Maori Trustee had no authority to involve himself in any way in the deal offered to the Maori owners by Peka Peka Properties. All he could do was bring the offer to the attention of the owners. By this time, it appears that the owners had decided to accept the £800 that the Maori Trustee had received for the land,

64. MacKinnon to Blane, 15 April 1966, MA series 1, 54/22/5, NA Wellington
65. MacKinnon to Blane, 6 May 1966, MA series 1, 54/22/5, NA Wellington
66. Watts and Patterson to Maori Trustee, 30 May 1966, MA series 1, 54/22/5, NA Wellington
67. Gascoigne, Wicks, and Company to Maori Trustee, 26 May 1966, MA series 1, 54/22/5, NA Wellington
68. Stewart, 'Note for File', 8 March 1968, MA series 1, 54/22/12, NA Wellington
69. Morrill to Head Office, Department of Maori Affairs, 18 March 1968, MA series 1, 54/22/12, NA Wellington
70. Stewart to Souter, 21 March 1968, MA series 1, 54/22/12, NA Wellington
71. Booth to Secretary, Department of Maori And Island Affairs, 5 April 1968, MA series 1, 54/22/12, NA Wellington
72. Forsell to Morrill, 23 April 1968, MA series 1, 54/22/12, NA Wellington

possibly because they could not raise the money necessary to take up the offer made by Peka Peka Properties. The final decision was to distribute the £800, and close the file. The district office was advised accordingly. The memo in question contains a post script: 'Would you please ensure that land is not sold to any land agent unless it is first put up for tender'.[73]

There were several common themes running through these different transactions. One was the smallness of the individual sections involved. The other was the problem created by multiple ownership. Either the owners could not all be found, or there were too many of them to reach any kind of consensus about what was to be done. If only one or two were available, they might refuse to accept full responsibility for rate payment.[74] Again, on the few occasions when owners did develop a plan to make use of their land, they were frustrated by the inability to borrow money for development, for surveys, for roading, or for putting titles in order. The file on the five-acre Ngarara West A3C and its residue section makes this quite clear.[75] At the same time, there were others who could apparently turn a profit when neither the owners, nor the Maori Trustee, were able to do so. The Horowhenua County Council was the local body that commonly initiated the process that led to the vesting of orphan sections in the Maori Trustee; its files may contain additional information about the amount of land in the district that was dealt with under section 109 of the Rating Act 1925. This legislation was quite restrictive in its operation, in as far as land was vested in the Maori Trustee for the sole purpose of sale and rate payment: not for development, and not for retention in Maori hands. The local bodies had an alternative to section 109; they could apply for a charging order. The courts, however, apparently did not like to deal with repeated applications for charging orders with respect to the same piece of land, and encouraged section 109 applications in such cases.[76] Along the west coast, the main beneficiaries of section 109 seem to have been the local bodies. Despite this, relations with the Maori Trustee did not always run smoothly; in March 1970, after the Horowhenua County Council had served a notice under the Noxious Weeds Act, it was indicated to the county that if actions of that sort continued, the Maori Trustee might decline to accept section 109 vestings in future.[77]

It is not clear how much land along the west coast passed out of Maori control via the operation of section 109 of the Rating Act 1925. In general, only small, abandoned, or uneconomic sections of land tended to be affected. This suggests that the significance of these transactions may not lie in the amounts of land involved, but in their location at the end of a long line of alienations, the net effect of which was to transfer ownership of the land from Maori to European.

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73. Blane to Maori Trustee, District Office, Palmerston North, 26 June 1968, MA, series 1, 54/22/12, NA Wellington
74. McLaren to Maori Trustee, 1 November 1963, MA series 1, 54/22/2, NA Wellington
75. MA series 1, 54/22/5, NA Wellington
76. McLaren to Maori Trustee, 1 November 1963, MA series 1, 54/22/2, NA Wellington
77. McKellar to Horowhenua County Council, 13 March 1970, MA series 1, 54/22/5, NA Wellington

12.11 FINAL COMMENT

There appears to be no way of determining the rate of land alienation after the 1880s, or of determining how much land remained in Maori hands at successive dates after 1886, when the last summary return was made. However, Farthing's study of the pattern of landownership in the Wairongomai and adjacent Pukehou blocks shows that by 1978 most of the Wairongomai block, and about half of Puhehou 4G, was Maori-owned. A number of other, smaller, blocks in the area were Maori-owned as well. Overall, Maori appeared to own about 25 percent of the land in the area concerned.[78] Maps indicated that in the early 1930s Maori held significant holdings around the shores of Lake Horowhenua as well. By contrast, almost all of the Tuwhakatupua block, in the far north of the district, had passed out of Maori hands by 1910, the balance, of some 300 acres, being leased to Europeans. By 1929 only 12 acres remained, six acres being sold in that year, the other six acres being eroded away by the Manawatu River.[79] Systematic studies, of other blocks and districts along the west coast, are badly needed.

78. Farthing, pp 11–24
79. I R Matheson, 'The Maori History of the Opiki District', in *From Fibre to Food: Opiki, the District and its Development, a Golden Jubilee Publication of the School and District, 1928–1978, Including Early History*, M J Akers (ed), Opiki, Jubilee Committee, 1978, pp 5–14

APPENDIX I

PRACTICE NOTE

WAITANGI TRIBUNAL

CONCERNING the Treaty of Waitangi Act 1975

AND Rangahaua Whanui and the claims as a whole

PRACTICE NOTE

This practice note follows extensive Tribunal inquiries into a number of claims in addition to those formally reported on.

It is now clear that the complaints concerning specified lands in many small claims, relate to Crown policy that affected numerous other lands as well, and that the Crown actions complained of in certain tribal claims, likewise affected all or several tribes, (although not necessarily to the same degree).

It further appears the claims as a whole require an historical review of relevant Crown policy and action in which both single issue and major claims can be properly contextualised.

The several, successive and seriatim hearing of claims has not facilitated the efficient despatch of long outstanding grievances and is duplicating the research of common issues. Findings in one case may also affect others still to be heard who may hold competing views and for that and other reasons, the current process may unfairly advantage those cases first dealt with in the long claimant queue.

To alleviate these problems and to further assist the prioritising, grouping, marshalling and hearing of claims, a national review of claims is now proposed.

Pursuant to Second Schedule clause 5A of the Treaty of Waitangi Act 1975 therefore, the Tribunal is commissioning research to advance the inquiry into the claims as a whole, and to provide a national overview of the claims grouped by districts within a broad historical context. For convenience, research commissions in this area are grouped under the name of Rangahaua Whanui.

In the interim, claims in hearing, claims ready to proceed, or urgent claims, will continue to be heard as before.

Rangahaua Whanui research commissions will issue in standard form to provide an even methodology and approach. A Tribunal mentor unit will review the comprehensiveness of the commission terms, the design of the overall programme, monitor progress and prioritise additional tasks. It will comprise Tribunal members with historical, Maori cultural and legal skills. To avoid research duplication, to maintain liaison with interested groups and to ensure open process:

(a) claimants and Crown will be advised of the research work proposed;
(b) commissioned researchers will liaise with claimant groups, Crown agencies and others involved in treaty research; and
(c) Crown Law Office, Treaty of Waitangi Policy Unit, Crown Forestry Rental Trust and a representative of a national Maori body with iwi and hapu affiliations will be invited to join the mentor unit meetings.

It is hoped that claimants and other agencies will be able to undertake a part of the proposed work.

Basic data will be sought on comparative iwi resource losses, the impact of loss and alleged causes within an historical context and to identify in advance where possible, the wide ranging additional issues and further interest groups that invariably emerge at particular claim hearings.

As required by the Act, the resultant reports, which will represent no more than the opinions of its authors, will be accessible to parties; and the authors will be available for cross-examination if required. The reports are expected to be broad surveys however. More in-depth claimant studies will be needed before specific cases can proceed to hearing; but it is expected the reports will isolate issues and enable claimant, Crown and other parties to advise on the areas they seek to oppose, support or augment.

Claimants are requested to inform the Director of work proposed or in progress in their districts.

The Director is to append a copy hereof to the appropriate research commissions and to give such further notice of it as he considers necessary.

Dated at Wellington this 23rd day of September 1993

Chairperson
WAITANGI TRIBUNAL

APPENDIX II

SUMMARY OF CLAIMS

There are 11 claims registered with the Waitangi Tribunal concerning land or fisheries in the land area and chronological period covered by this report.

Wai 28

Claimant(s):	R Ahipene-Mercer
On behalf of:	Wellington District Maori Council
Date received:	26 September 1986
Area/location:	Moa Point

Wai 60

Claimant(s):	K Maurice and others
On behalf of:	Descendants of Pirikawau Parai
Date received:	17 September 1987
Area/location:	Takapuwahia C2A3 block, Porirua

Wai 89

Claimant(s):	Te Pehi Parata
On behalf of:	Descendants of Te Kakakura Wi Parata Waipunaahau; Ati Awa ki Waikanae
Date received:	7 August 1989
Area/location:	Whitireia block, Porirua

Wai 113

Claimant(s):	Jacobs and others
On behalf of:	Ngati Raukawa ki te Tonga
Date received:	29 November 1989
Area/location:	Manawatu–Rangitikei block, Horowhenua block, Tangimoana State Forest, Waiterere State Forest, Manawatu block

Wai 172

Claimant(s):	T Te Poata and others
On behalf of:	Descendants of Orongo Riria and others
Date received:	30 October 1990
Area/location:	Makara lands in general and, in particular, Waiarike native reserve, Oteronga Bay, Te Ika a Maru Bay, Te Ika a Maru 1, Ohau Bay

Wai 182

Claimant(s):	R J H Harris
On behalf of:	Rangitane ki Manawatu (Rangitane Runanga–Tanenuiarangi Manawatu Incorporated)
Date received:	3 January 1991
Area/location:	Manawatu River, Manawatu–Rangitikei block, Ahuaturanga block
Places of historical importance:	Te Ahu-a-Turanga Peak, Parahaki (Motuere) Island, Otangaki urupa (Ashhurst Domain), Raukawa Pa site, Te Wi village site, Horowhitu gathering place, Ruahine village site, Te Motu-a-Poutoa Pa site and urupa, Te Marae o Hine (Palmerston North Square), Palmerston North Showgrounds, Awatapu Lagoon site (Awatapu College), Karara Grove, Mokomoko village site (Massey University), Te Kuripaka village site (Massey University), Awapuni Lagoon site, Lane Place (Awapuni village), Awapuni Marae site, Marae-Tarata Pa site, Kairanga village site (Linton Camp) Karere village site and urupa, Puketotara Pa site

Wai 207

Claimant(s):	Akuhata Wineera and others
On behalf of:	Ngati Toa Rangatira
Date received:	1 June 1989
Area/location:	Lands between Whangaehu and Kaikoura

Wai 265

Claimant(s):	G Matthews
On behalf of:	Ngati Apa
Date received:	11 December 1991
Area/location:	Ngati Apa lands

Wai 267

Claimant(s):	R M T Waaka
On behalf of:	Descendants of owners: Whanaunui Trust
Date received:	18 October 1992
Area/location:	Koha Ora annexe, Palmerston North Hospital

Wai 310

Claimant(s):	T Takapua
On behalf of:	Muaupoko
Date received:	25 September 1992
Area/location:	Sea fisheries between Manawatu River and Wellington

Wai 385

Claimant(s):	N Lomax and others
On behalf of:	Ngati Hauiti
Date received:	23 August 1993
Area/location:	Potaka (now Utiku) township

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1 Ordinary inwards dispatches from Secretary of State, 1840–1943

7 Inwards dispatches from Lieutenant-Governor Eyre, 1847–53 (to Grey)

13 Miscellaneous letters, 1842–50

Internal Affairs (IA) series

1 Colonial Secretary, inwards letters, 1840–65

2 Minutes from the Governor, 1841–49

3 Registers/indexes of inwards correspondence, 1840–1937

4 Outwards letterbooks, 1840–1913

Legislature (LE) series

1 Files of Public Petitions Committee

Maori Affairs (MA) series

1 Memoranda and registered files

2 Registers of inwards letters

4 Outward letterbooks, 1840–1916

7/1 Governor's letterbook 19 January 1846 to 10 May 1847 (very limited use; a few letters referring to Wellington issues: eg, Te Rangihaeata's demands)

7/2 Governor's outward letterbook to Maori, 22 February 1846 to 29 October 1852 (includes a few letters addressed to chiefs in Wellington region; very limited use)

11/3 Papers relative to the commission on the removal of restrictions on the sale of land (Barton's investigation)

12/12 Wellington–Wanganui (Names of grantees, Act under which Grant was made, date and locality)

12/13 Wairarapa and Manawatu

13/16 Ngati Raukawa petitions (to Governor, Government, and Secretary of State, generated by Native Land Court award in Rangitikei–Manawatu; see also MA 13/69–75)

13/22–29 Removal of restrictions (applications for removal of restrictions on alienation of Maori reserves, recommendations of trust commissioners)

13/37 Himatangi (Criticism of NLC decision and Government extinguishment of title because of failure to carry out survey within six months as provided for in court award; subsequent inquiry and Maori complaint about conditions of new award and back rents)

13/58 Otamakopua (block was awarded to Ngati Huiti; most of file devoted to dispute between Kawepo at Napier and Potaka at Marton, but Kawana Hunia of Ngati Apa also claimed that part of the block, between Rangitikei River and the Watitapu and Kiwitea Streams; application for rehearing denied on advice of Fenton and Heale; Native Affairs Committee did not support Kawana's subsequent petition because of the many years since Ngati Apa last occupied the area)

13/69A, B Rangitikei Manawatu (Maori letters to superintendent of Wellington (Featherston) and assistant (Buller), concerning portion of land, impounded rents, threat of armed uprising, personal claims; meeting notes of Wanganui, Rangitane and Ngati Apa reaction to proposed sale, 1868–69)

13/70 Rangitikei Manawatu (specially prepared schedule of papers on purchase (possibly for use at NLC); contains reports of purchase negotiations, letters from non-sellers, report by Buller on Otaki-based Ngati Raukawa claim)

13/71 Rangitikei Manawatu (papers include evidence of Ngati Raukawa claims heard in 1869; lists and analyses of sellers versus non-sellers; copies of NLC judgments and orders; opinion of Attorney-General on legal aspects of the case)

13/72 Rangitikei Manawatu (McLean's notes of arbitration meetings at settlements, discussing location, boundaries, and reserves correspondence between McLean and surveyor (Keep))

13/73A, B Rangitikei Manawatu (Native Office record of purchase, includes Featherston's reports and account of finalisation of purchase at Parewanui; non-seller submission to NLC; complaints from Rangitane about non-receipt of payment; material on interruption of survey)

13/74A, B Rangitikei Manawatu (Native Office record of purchase; contains McLean's reports on reserves; provincial government's claim for compensation for McLean's increase in reserves; investigation of Rangitane claims; Alexander Mackay's reports on Wellington reserves including Reu Reu)

13/75 Rangitikei Manawatu A (provincial papers; contains material on block itself; analyses of grants to Ngati Raukawa; NLC judgment in Himatangi reserves; McLean's increased allocation of reserves and provincial government demands for compensation; Carkeek's correspondence regarding McLean's awards)

13/75 Rangitikei Manawatu B (Reports of native agents and land purchase officers to superintendent of Wellington regarding down-payments; efforts to persuade non-sellers to lease, questions of value; includes material on Horowhenua, Himatangi, Awahou, Manawatu, Muhunoa, Kukutuauki, Ngarara, Otamakopu)
13/76 Rangitikei–Manawatu (1872 correspondence received by Native Department and NLC regarding investigation of title, requested by Raukawa and Rangitane, and objected to by Ngati Apa, Muaupoko, Whanganui and Wairarapa)
14/1 Copies of Orders of Council granting removal of restrictions, 1881–92
14/3 Register of Maori applications for removal of restrictions, 1883
14/6 Index of blocks (shows grant number, area, and disposal, 1880s)
17/1 Native reserve reports (consists largely of Heaphy's's reports and general correspondence)
17/6 Native reserves Wellington
19/1 Trust commissioner reports, 1872–79
24/9 Petitions before Native Affairs Committee, 1883–1912
24/10 Index to petitions, 1906–16
24/21 Miscellaneous official correspondence, 1840–42, 1844, 1863–66, 1870 (includes material on Mana Island)

Maori Affairs Wellington series
1/1 Protector of Aborigines, 1844
2/1 Minute book (trust commissioner, under Native Land Frauds Prevention Act 1870; cases heard by Heaphy, 1872–75)

Maori Trust Office (MA-MT) series
1 Registered files, Commissioner of Native Reserves (Heaphy's: a few inwards letters, 1861–83: Public Trust Office files, 1882–1918)
1A Inwards letters, Commissioner of Native Reserves, 1869–81
1B Inwards letters, Commissioner of Native Reserves, 1869–83
6/13 Schedule of reserves Rangitikei Manawatu block, 1869–73
6/14 Commissioner of Native Reserves Heaphy's minute book 1872–79 (includes return showing lands in New Zealand Company settlements set apart for natives; minutes of committees, claims, leases, alienations)
6/17 Volume of plans of native reserves 1850–70 (Includes good index map for Wellington, showing reserves – whether tenths, Crown land, grants to church, etc)
6/20 Return of native reserves in Wellington province (gives name of reserves, area, location, whether inalienable; grants Waitotara, Turakina, Otaki, etc)
6/25 Inwards letters, Commissioner Native Reserves Wellington (mostly accounts)

Maori Land Purchase (MA-MLP) series
6/2 Copies of deeds of sale, Wellington, 1849–72

Maori Land Purchase, Wellington (MLP-W) series
1/1 Land Purchase Commissioner, 1862–66

New Munster (NM) series
8 Colonial Secretary's inwards correspondence, 1844–53
9 Registers and indexes of Colonial Secretary's inwards correspondence, 1844–53
10 Colonial Secretary's outwards correspondence, 1843–53

New Zealand Company (NZC) series
3 Duplicate dispatches from principal agent, 1839–51 (files arranged chronologically)

Old Land Claims Commissions (OLC) series
906 (New Zealand Company claim to Wellington)
907
908 (Porirua and Manawatu)
909 (includes George Clarke jnr report to George Clarke snr at close of investigation of New Zealand Company claims)

Wellington Province (WP) series
3 General inwards correspondence, 1856–76
5 Registers of inwards correspondence, 1856–77
6 Entry books of outwards letters, 1856–77

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