

**NGATI RAUKAWA: CUSTOM, COLONISATION
AND THE CROWN, 1820-1900**

**Report commissioned by the Crown Forestry Rental
Trust**

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- RDB Raupatu Document Bank (140 vols)
- VUWLR *Victoria University of Wellington Law Review*
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Preface

I was invited to write this report by the late Iwi and Ngawini Nicholson of Ngati Raukawa, and it is respectfully dedicated to their memory. I would thank to thank the Crown Forestry Rental Trust for commissioning me to write this report, and Nicola-Kiri Smith for her unfailing assistance and patience. Other thanks are due to all those of Ngati Raukawa, Ngati Kauwhata, and other claimant groups (including their counsel) who were present at the various hui at which I discussed my research, and who made many helpful comments and suggestions. Thanks are due also to those claimant counsel and claimants who contacted me directly with comments and suggestions. Other thanks are due to Alex Boast for his invaluable assistance with this report, including transcribing large amounts of primary material, for his construction of the volume of Appendices and for his detailed review and comments on the text, and for his careful checking of references. I thank Deborah Edmunds, counsel for some of the Ngati Raukawa claimants, for her comments and assistance, and also those other historians who have been commissioned to write reports in support of the Ngati Raukawa claims for the Porirua ki Manawatu Waitangi Tribunal inquiry. Paul Husbands prepared a detailed commentary on an earlier draft of this report, and it has been a pleasure to meet with him to discuss our shared interest in the complexities of the Maori history of the Manawatu. As always thanks are due to the staff of National Archives in Wellington.

R.P. BOAST

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1. Introduction

MATENE TE WHIWHI then said that whatever troubles or complications might in future arise the only sword Ngatiraukawa would unsheath would be that of the law, not war. (RAKAEA, his sister, looking askance at Mr Rogan, here interposed a remark that the sword of the law was much heavier and afflictive to bear than the other.)

[Matene Te Whiwhi, Ngati Toa and Ngati Raukawa, speaking at a public meeting in Foxton in 1873, immediately after the Native Land Court's Horowhenua decision.]

1.1 Author's qualifications

I am a Professor at Victoria University, where I have held a tenured teaching position in the Faculty of Law since 1986. I have a Master's degree in Law from Victoria University of Wellington and a Master's degree in History from Waikato University, Hamilton (First-Class Hons). I am also a practising barrister with many years' practice in the fields of environmental law and Waitangi Tribunal inquiries and I was made a QC in 2015. At Victoria I teach courses in natural resources law, property, legal history, and Maori land law, take seminar courses in legal history, and supervise postgraduate students at the LLB(Hons), LLM, and PhD level.

I have published widely in the fields of legal history and Treaty of Waitangi issues and I have prepared many papers and reports for the Waitangi Tribunal and related processes². I have given numerous seminar and conference papers in New Zealand and in overseas countries (Australia, the United States, Germany, Uruguay, Brazil, Indonesia, Malaysia, Singapore, Vanuatu). This is the first research report I have written for Ngati Raukawa ki te Tonga, but I have had a long-standing professional relationship with Ngati Raukawa over the years, most especially with Iwi and Ngawini Nicholson. I have also had a long and close relationship with the northern section of Raukawa (in fact I was born in Tokoroa), have represented them professionally in a number of Waitangi Tribunal inquiries, and in 2009 I completed a substantial research report for the northern section of Raukawa to support their claims against the Crown. I have written or co-authored textbooks on Maori land law, New Zealand legal history, and the law relating to the foreshore and seabed, and in 2009 my study *Buying the Land, Selling the Land*, a monograph on the legal history of Maori land alienation in the period from 1865-1921, published by Victoria University Press (2008)³ was awarded the Montana Book Award for history. More recently, in association with Dr Richard Hill of Victoria University I have co-edited a volume of essays on confiscation (including an essay by myself)⁴, based in turn on a major conference on confiscation hosted by Victoria University in mid-2008⁵. I have also published

² I have written reports for and given evidence in the Muriwhenua Lands, Geothermal, Tauranga, Central North Island, Te Whanganui a Orotu, Mohaka ki Ahuriri, Urewera, Wellington, and Northern South Island Inquiries; and I have acted as counsel for various claimants in the Pouakani, Central North Island, Urewera, Gisborne, East Coast, King Country, Taihape, and Foreshore and Seabed Inquiries, as well as in numerous urgency inquiries. Iwi I have given evidence for, or prepared research reports for, include Te Rarawa, Te Aupouri, Nga Puhī, Ngai Te Rangi, Ngati Whare, Ngati Hineuru, Ngati Kurumokihī, Ngati Raukawa, and Ngati Toa.

³ *Buying the Land, Selling the Land: Governments and Maori Land in the North Island 1865-1921* (Victoria University Press, Wellington, 2008).

⁴ Richard Boast and Richard Hill (eds), *Raupatu: The Confiscation of Maori Land*, (Victoria University Press, Wellington, 2009).

⁵ 'Coming to Terms? Raupatu/Confiscation and New Zealand History', held by Stout Centre for New Zealand Studies, Victoria University of Wellington, 27-28 June 2008.

two volumes of edited judgments of the Native Land Court (20136, 20157) and a third is in the course of preparation. Some of the material in these two books has been drawn on for the purposes of this report. Most of the decisions of the Native Land Court in the Kapiti-Otaki and southeast Waikato regions considered in this report are also included in these books (the main exception being those cases decided after 1909, the cut-off date for the second of my two books on the judgments of the Court).

1.2 Purposes of this Report: The Project Brief

This report is one of four major reports commissioned to support the historic claims of Ngāti Raukawa for the Waitangi Tribunal's Porirua ki Manawatu (PKM) regional inquiry. The focus of this first report in the sequence is on "introducing the claimants in terms of their occupation and ability to exercise customary rights".⁸

There are two main "general lines of inquiry" that are required to be addressed:

1. The exercise of rights, accommodations, contestations and arrangements made with other iwi/hapu including pre-1820 occupants and *how these rights and arrangements were treated by the Crown in its purchase arrangements and by the Native Land Court and various Commissions of Inquiry in their findings* (emphasis added).
2. The relationships between the various groups that migrated and settled the region and, more particularly, by Crown action and court processes.

The most important paragraph in the Project Brief (para 17) states that the "focus" of the report is to "look at the sources to understand the extent to which key rangatira and other important tūpuna *were able to explain the nature of their rights regarding authority and ownership* of land, taonga, and natural resources, and *how Crown officials, the Native Land Court, and authorities of the time understood those rights*" (emphases added). The Project Brief has (also) identified a number of specific issues and questions that are required to be addressed (this is not meant to be an exclusive list, however):

- Did the Crown ever *properly investigate customary* titles to the lands in the Porirua ki Manawatu district?
- Whether the views and attitudes of Crown officials to issues of customary interests *changed over time* and if so, for what reasons?
- Did the Crown *subvert the rights* of particular hapū and iwi, or the collective rights of Ngāti Raukawa and others, through acts and/or omissions?
- How were customary rights in land *translated and transformed* as a result of pre-emptive purchasing by the Crown, and the operations of the Native Land Court?
- Were the decisions of the Native Land Court *correctly based in customary law* or were they unduly influenced by external factors such as prior Crown practice and the goals of settlement?
- Was custom *correctly interpreted* by the Crown and the Native Land Court?

⁶ Richard Boast, *The Native Land Court Vol 1, 1862-1887: A Historical Study, Cases and Commentary* (Thomson Reuters, Wellington, 2013)

⁷ Richard Boast, *The Native Land Court: Vol 2, 1888-1909: A Historical Study, Cases and Commentary* (Thomson Reuters, Wellington, 2015).

⁸ CFRT Project Brief, para 9.

- At *what date of its exercise* should customary ownership have been assessed by the Court as at 1840 or later?
- To what extent did Ngāti Raukawa, Ngāti Kauwhata and other iwi or hapu of the heke acknowledge the rights of the tribes they found in occupation in the district, and vice-versa?
- Were Native Land Court decisions *consistent within the region*, and *with those elsewhere in the country* and, if not, why not and what is the significance?
- What was the impact of these findings on the exercise of tino rangatiratanga?
- What was the relationship between the exercise of Christianity on the allocation of customary rights, if any?

There are also some particular additional issues that have been identified for investigation, relating to the Compensation Court (set up the New Zealand Settlements Act 1863) and the Validation Court (set up by the Native Land (Validation of Titles) Act 1893). To cite the Project Brief again:

19. In addition to the issues above, the Contractor will investigate Raukawa’s experience with the Compensation Court. In particular the Contractor will provide a discussion and information regarding Raukawa individuals resident at Ōtaki being principal claimants in the Compensation Court in the Waikato.

20. An investigation will also be conducted into the Validation Court, set up under the Validation of Titles Act 1893, and the cases considered by that Court in the Ōtaki region.

Considerable attention in this report is in fact devoted to exploring the impacts of the Compensation Court.⁹ And in terms of methodology, the Project Brief requires this report to be richly illustrated with case studies:

The Contractor will provide detailed case studies of particular transactions and selected Native Land Court decisions of particular import to Ngāti Raukawa (such as the Rangitīkei-Manawatū Block, and the Ngarara West case of 1890). The Contractor will liaise closely with CFRT’s Approved Clients and the wider claimant community regarding the selection of case studies.

By agreement with the other contracted historians, and with the approval of the claimants, I have concentrated in particular on the Native Land Court, rather than on Crown pre-emptive purchasing and on political relationships more generally. It is however rather difficult to write about the Native Land Court without trespassing into the pre-emptive purchasing system or political relationships (as, for instance with the substantial political fall-out from the Native Land Court’s decisions relating to the two Himatangi cases of 1868 and 1869).

1.3 The Structure of this Report

What, then, is this report about? The focus of Project Brief appears to be on “customary rights” and on how those rights were *understood and applied by the Crown* (for which read, for the purposes of this report, ‘and especially by the Native Land Court’ (not in terms of public law a part of ‘the Crown’). This report is not meant to be a tribal landscape report of the type that ethnohistorians such as Angela Ballara have prepared for some inquiries. The emphasis seems to be placed very much on how customary rights were *interpreted and applied* by the Crown – the executive government – and by the Native Land Court. I see myself as being called on to research and to analyse how custom was

⁹ Established pursuant to the New Zealand Settlements Act 1863. See generally ch 8, below.

understood by government officials, no doubt in the context of Crown pre-emptive purchasing, and in particular by the Native Land Court. The Native Land Court is in fact given a great deal of prominence in the Project Brief. One of the two “main lines of inquiry” is how customary rights and practices were treated both by the Crown in its purchase arrangements “and *by the Native Land Court* and various Commissions of Inquiry” (the latter referring, no doubt, to quasi-judicial investigations such as the Horowhenua Commission or by the special commission set up to investigate Ngati Kauwhata interests in the Maungatautari area in 1881). The second such “main line of inquiry” is directed at the relationships between the “various groups that migrated and settled the region” and on the *effects* on those relationships of “Crown action and *court processes*”. The Native Land Court is also repeatedly mentioned amongst the issues and questions to be addressed.

However, the report is also required to explain “the exercise of rights, accommodations, contestations and peace arrangements made with other iwi/hapu” – that is, it requires these rights etc. to be *described*. The report is thus meant to be an ethnohistory at least in part, while at the same time exploring how customary rights and relationships were understood and applied by officials and judicial institutions. The Project Brief also recognises that customary rights and interests were not necessarily static, but perhaps evolved under the impact of new ideas and belief systems, particularly Christianity.

Designing a report which addresses these complex questions but which is at the same time reasonably coherent, readable, and manageable for claimants and their counsel has not been easy. The difficulty has been that of finding a way to combine the practical exercise of customary rights on the one hand, and their interpretation and application by the executive and judicial arms of the colonial regime on the other, in a coherent and (hopefully) useful text. The precise difficulty is that a principal means resorted to by ethnohistorians to reconstruct tribal histories and iwi relationships is the records of the Native Land Court, but it is the Native Land Court itself that is required to be examined by this report critically. Somehow a means has to be found of utilising the records of the Native Land Court and also of critiquing it. This has created a number of difficult conceptual technical difficulties in writing this report. Although I have devised a structure which has allowed all the important matters referred to in the Project Brief to be addressed, I have to admit that it is a little unsatisfactory in some ways, and a certain amount of repetition has proved unavoidable.

It may help if I explain the contents of the report at this stage and explain how this research design attempts to address the rather demanding requirements of the Project Brief.

Chapter 1 of the report is this Introduction, which covers the author’s qualifications, the Project Brief, and other preliminary matters. Chapter 2 of the report deals with the source materials that are used in this report, both primary and secondary. This report is based chiefly on material contained in the Otaki, Waikato, and Rohe Potae minute books of the Native Land Court, and most of Chapter 2 focuses on this vast body of material, and the problems inherent in its utilisation. Other types of source material, including secondary literature, are analysed more briefly.

Chapter 3 is focused on the various judicial bodies that interpreted Raukawa traditional history and customary rights in the period covered by this report. The Native Land Court (with, after 1894, the Native Appellate Court) was the most important of these, and most of the chapter is concerned with that body. However, there were other bodies that interpreted Raukawa – and Ngati Kauwhata – history and customary rights. These included the Validation Court, the Compensation Court, and (often overlooked) the ordinary courts of law. The Native Land Court did not operate in isolation but was closely connected

with the rest of the national legal system.¹⁰ There were also some special-purpose bodies which are discussed briefly in this chapter, in particular the Ngati Kauwhata Commission of 1881 and the Horowhenua Commission of 1896.

Chapter 4 paints the “big picture” of Raukawa’s pre-1840 history, beginning with their settlement of the southeast Waikato centuries ago but concentrating on the political situation in the Waikato in the early nineteenth century, Raukawa’s migration and relocation to the PkM region, and – as I believe this to be a most important point – the scale and completeness of the move south. Chapter 3 takes the sources, derived principally from the Waikato and Otaki minute books of the Native Land Court, relatively uncritically and without paying a great deal of attention to the precise contexts of the evidence given in the various cases. These matters of context and interpretation are addressed fully in other parts of the report. Ideally it might be better to address matters of context and interpretation before setting out a historical narrative, but it seemed essential to present a narrative framework early on in the report to give the reader something to navigate by. Striking a balance between writing a narrative history and analysing and critiquing the very sources on which that narrative is based was the principal technical challenge posed by the Project Brief for this report, and the solution I have adopted – of giving a reasonably detailed narrative at the beginning followed by a detailed review of major cases later on in the report was the best I could devise.

The point can be made here that the evidence about Ngati Raukawa’s pre-1840 history, both in the Waikato and in the PkM region, is amazingly full. Essentially the same story is told, in varying degrees of detail, by many Raukawa speakers in an endless array of massive cases in the Native Land Court, in both the Waikato and in the PkM district. It is not as if there were just one or two statements in a small number of cases. In ch 3 I have tried to find a number of different accounts of the same events to make it clear that there is a generally well-understood and coherent narrative. Chapter 3 is also quite deliberately “Raukawa-centric”. It aspires to let Raukawa tell their own history as *they saw it*. Of course Native Land Court cases were often highly contested, and this contestation is a central feature of later chapters, but this is not the main focus of ch 4.

Chapter 5 is somewhat similar to Ch. 4 in approach, but it aspires to look harder and more analytically than does Ch. 4 at relationships between Ngati Raukawa (or perhaps, more precisely, between Ngati Raukawa hapu and individuals) with neighbouring groups in the PkM region before 1840. A problem with this aspiration, however, is deciding where “Ngati Raukawa” begin and end. Ngati Raukawa migrated in tandem with closely-related groups such as Ngati Whakaterere and Ngati Kauwhata. Are these groups, indeed, “Ngati Raukawa” (whatever that means)? This is an issue this report does not address. My focus will be on historical sources and what is said in them, but I do not intend to use them to attempt to resolve matters of personal and collective identity today. The bulk of Ch. 4 is concentrated on relationships between “Ngati Raukawa” and “non-Ngati Raukawa” groups, and the discussion relates to two main classifications, i.e. relationships with the *other migratory groups* (Te Ati Awa – including its various subdivisions and hapu – and also Ngati Toa, Ngati Mutunga, and Ngati Tama) and relationships with the *earlier groups* in occupation when Ngati Raukawa arrived, notably Muaupoko, Ngati Apa, Rangitane, and Muaupoko.

Chapter 6 considers an important historical transformation for Ngati Raukawa, both in the PkM area and in the Waikato: Christianity. (This issue is raised in the project brief: “what was the relationship between the exercise of Christianity on the allocation of customary rights, if any?”) Between 1830-1850

¹⁰ On the relationship between the Native Land Court and the ordinary courts, see Boast, *Native Land Court* vol 1, 197-218,

Ngati Raukawa were Christianised, both in the Waikato and also in the PkM region, with the Anglican Church Missionary Society (CMS) playing an important role in both regions. Mostly research reports prepared for the Waitangi Tribunal do not pay much attention to Christianisation, as it seems irrelevant to the main issue of documenting acts or omissions of the Crown. Nevertheless, Christianisation was a hugely important change, as historians of New Zealand and of other parts of the Pacific (such as Samoa, Tonga, Tahiti, the Cook Islands, Fiji, and Hawai'i would unhesitatingly admit).¹¹ But the main purpose of Ch. 5 is not to consider Christianisation in a general sense, but rather to examine its impacts on custom and customary law, custom being the principal focus of this report.

Chapter 7 deals with pre-emptive purchasing. This is only traversed in an introductory way, as this will be a principal focus of the research carried out by other historians working in this inquiry. Nevertheless, it is important that the effects of the Native Land Court be clearly set in the context of Crown pre-emptive purchasing, which overlapped with the first major Land Court investigations into Raukawa land blocks. It is also very striking how Crown pre-emptive purchasing is referred to by witnesses in the Native Land Court, either critically, or sometimes as evidence supporting a claim: i.e. that the claimants' rights had already been recognised by the Crown). This point is also explored in Ch. 7, using illustrations from cases in which Ngati Raukawa participated.

Chapter 8 deals with the Waikato confiscation and with the first phase of the Maungatautari case in the Waikato. Maungatautari was the ancestral homeland of most of the Raukawa hapu in the PkM region, and was no less important for Ngati Kauwhata. Maungatautari was at the heart of a number of important cases in the Native Land Court, notably the original investigation of title in 1868,¹² the inquiry into Ngati Kauwhata interests in 1881,¹³ and a further investigation of title (Manukatutahi Otautahanga) in 1884.¹⁴ Ch. 8 pays particular attention to the interconnection between the first Maungatautari investigation in 1868 and the aftermath of the Waikato confiscation. As far as I am able to reconstruct matters, it appears that the first Maungatautari case was triggered by a number of Ngati Raukawa applications lodged in the Compensation Court. These applications came entirely from Ngati Raukawa people living in the PkM region, i.e. *not* from Raukawa people resident in the Waikato. As it happens, Maungatautari was not within the boundaries of the Waikato confiscation but was located just outside it, and it appears that Chief Judge Fenton 'converted' the Ngati Raukawa Confiscation Court applications into applications for investigation of title in the *Native Land Court*. Chapter 8 will consider the effects and implications of these procedural complexities.

Chapter 9 deals the Native Land Court's first sittings in the Otaki region and with the Himatangi case of 1868 and the Rangitikei-Manawatu case of 1869, roughly concurrent with the Maungatautari investigation of title (1868).¹⁵ As is explored in detail in Chapter 9, the Native Land Court was a somewhat peripheral and (perhaps) unthreatening institution at Otaki at first (in 1866 and 1867), but its effects moved to a "quantum leap" with the Himatangi case (1868) and, even more so, with the Rangitikei-Manawatu case of 1869, both of which had very significant impacts on Ngati Raukawa lands. Although the Crown did not usually play an important direct role in the Native Land Court, as

¹¹ See e.g. Clifford Outney, *Missionaries in Hawaii* (University of Massachusetts Press, (Amherst and London, 2010),

¹² Judgment at (1868) 2 Waikato MB 93-95; see also Boast, *Native Land Court*, vol 1, NLC41, at pp 462-474-477, judgments etc. at *ibid*, 474-477.

¹³ [1881] AJHR G2A; also Boast, *Native Land Court*, vol 1, NLC84, pp 854-863. This was a decision not of the Native Land Court but of the Ngati Kauwhata Claims Commission.

¹⁴ Judgment at (1884) 13 Waikato MB 65-76 and [1885] AJHR G3, at 3-7; see also Boast, *Native Land Court*, vol 1, NLC108, at pp 1020, judgment at *ibid*, 1026-1035.

¹⁵ Judgment at (1868) 1E Otaki MB 717-723 (investigation of title) and F D Fenton, *Important Judgments* 101-108 (rehearing); see also Boast, *Native Land Court* vol 1 NLC46, pp 551-578.

opposed to its *indirect* role behind the scenes which could be important on some occasions, this case was different. The government was deeply involved in the case, which interconnected with the Wellington Provincial Government's efforts to acquire the Rangitikei Manawatu block. The Crown (more precisely the Wellington provincial government) was *de facto* one of the two main parties involved in the case, the other being the Ngati Raukawa non-sellers in the Himatangi block.

Chapters 10 and 11 deal with Ngati Whakatere and Ngati Kauwhata, and with their respective interests in Kapiti Island and Aorangi. Angela Ballara characterises Ngati Raukawa, Ngati Whakatere, and Ngati Kauwhata as "associated groups". The ancestor Kauwhata is not a descendant of Raukawa, although Kauwhata and Raukawa do have an ancestor in common. This is Tawhao, grandfather of Raukawa and great-grandfather of Kauwhata. Ngati Whakatere are somewhat more closely linked, as Whakatere is a son of Raukawa, although by 1800 Whakatere were a numerous people living in the Maungatautari region with an identity of their own. Ngati Kauwhata and Ngati Whakatere also appear later in this report, Ngati Kauwhata with respect to the Maungatautari cases and Ngati Whakatere with the Rohe Potae investigation of 1886 and its partitions.

Chapter 12 is concerned with the intricate history of the Kukutauaki and Horowhenua blocks, beginning with the first title investigations in 1873 and carrying the story through into the 20th century. There are few narratives in the history of the Native Land Court more intricate than the history of the Horowhenua block. However much of the complexity relates specifically to Muaupoko, which can be left to other historians. Even specifically with respect only to Ngati Raukawa, however, the Horowhenua story is complex enough. The narrative begins with the Native Land Court's investigations of title into the Kukutauaki (or "Manawatu-Kukutauaki") and Horowhenua blocks in 1873.¹⁶ The Court awarded Kukutauaki to Ngati Raukawa, but excluded from the award "[a] portion of the block, the boundaries of which are not yet defined, situate at Horowhenua claimed by the Muaupoko tribe" and also an area at Tuwhakatupua claimed by Rangitane.¹⁷ This area in turn became the Horowhenua block. It was then partitioned in 1886, and was the focus of numerous investigations, Native Land Court and Native Appellate Court decisions, and cases in the ordinary courts in the 1890s.

Chapter 13 deals fully with an important aspect of the legal history of Horowhenua for Ngati Raukawa, this being the 1912 Appellate Court decision, which in effect reversed Judge Rogan's 1873 ruling. The Appellate Court concluded that Ngati Raukawa did in fact conquer Horowhenua, and as at 1840 were "the full and masterful owners of the block". This was a complete turnaround from the earlier decisions. The evidence given in 1912 and the reasons why the Appellate Court came to this conclusion are analysed in full. However, the practical effect of the decision, confined as it was to a small area of 132 acres (itself having a convoluted history) was slight, given all the changes that happened to the Horowhenua block in the intervening decades. Nonetheless the 1912 decision is of considerable historic significance. It also illustrates one of the main themes of this report, the Native Land Court's lack of consistency.

Chapter 14 returns to the northern part of the Ngati Raukawa rohe, and is principally focused on the years from 1880-1910. During this time there were a number of further investigations to Maungatautari in which people and hapu based in the PkM region were actively involved. This chapter pays particular attention to the investigation of Ngati Kauwhata claims to Maungatautari in 1881 and analyses the evidence given at the extensive hearings closely. By this time Ngati Kauwhata were

¹⁶ (1873) 1 Otaki MB 176-178 and Fenton, *Important Judgments*, 134-135, also Boast, *Native Land Court vol 1*, NLC61, pp 697-704, judgments etc at ibid, 699-704 [Kukutauaki]; (1873) 2 Otaki MB 54-55, Fenton, *Important Judgments*, 705-6, also Boast, *Native Land Court*, vol 1, NLC62, 705-706.

¹⁷ (1873) 1 Otaki MB 178; Boast, *Native Land Court*, vol 1, 700-701.

principally living in the Manawatu, and travelled to the Waikato for the 1881 hearings led by their chief, and principal claimant at the investigation, Tapa Te Whata. As far as I am aware there is no really detailed discussion of this important inquiry in any of the existing literature. The evidence sheds a great deal of light on Ngati Kauwhata's complicated history. Also considered in this chapter is the Maungatautari (Manukatutahi Otatauhanga) title investigation (1884) and its aftermath.

Chapter 15 deals with the Native Land Court at Cambridge, one of the most notorious of the "Court towns", and thus important in the history of the Native Land Court generally, and also considers the extent to which issues relating to the departure of Ngati Raukawa people for "Kapiti" in the decades before the Treaty of Waitangi had repercussions in cases in the Waikato. Ch 16 deals with the Rohe Potae and Taupouiatia cases (relatively briefly) and with some of the more important Rohe partitions in which Ngati Raukawa and Ngati Whakaterere were involved.

Ch 17 deals with the Validation Court, established in 1893. It is usually thought that this was an institution of importance only in Gisborne, but in fact there were Validation Court cases in other parts of the country as well, including at Otaki. These cases are interesting as opening a window into the complex commercial transactions that impacted on Ngati Raukawa following on the investigation of the Kukutauaki and other blocks in the PkM region.

Ch 18 deals with the Native Land Court and reserve blocks, focusing on Te Reureu as a case study.

There are two concluding chapters. Ch 19 deals with the judicial construction of Ngati Raukawa history, in both the Waikato and PkM regions, emphasising the inconsistencies in the Native Land Court's approach. Ch 20 sets out some more general conclusions.

Volume 2 of this Report contains the Appendices and is principally comprised of transcribed material, most of it taken from newspapers. As will be explained later in this report, newspaper records relating to hearings of the Native Land Court are often much fuller than the records contained in the Court's minute books. In some instances the minute book records have been lost or fail to include the evidence, a prime example being the Rangitikei-Manawatu case of 1869, where the only sources that preserve the evidence are archival records and the newspapers. Although ethnohistorians who use Native Land Court records tend to rely exclusively on the Land Court's minute books, these records cannot always be relied on as containing a full account of everything that was said in the courtroom.

1.4 Scope and Coverage of this Report

The writer has no concerns about the Project Description, which usefully highlight the key issues that need to be discussed in the final report, but as set out they do not necessarily follow a chronological sequence and in some respects are slightly overlapping and/or repetitive (although not significantly).

It can be seen that the above chapter design expands on the Project brief to some extent. It has become fairly obvious that Raukawa connections with the King movement during the early years of its formation is a matter of real importance, with very significant consequences for Ngati Raukawa's participation in the Waikato war and on the confiscation that followed in its wake. All the indications are that Raukawa played a major role in the early establishment of the Kingitanga. The links between the earlier proposals developed by Tamihana Te Rauparaha and Matene Te Whiwhi (both prominent Raukawa rangatira in their own right) and the later emergence of the King movement under the visionary leadership of Wiremu Tamihana of Ngati Haua (Raukawa's immediate neighbours to the north) have not hitherto attracted much attention, but seem to me to be highly significant. Raukawa

were certainly present at the key hui at Pukawa and at Paetai, and of course remain a prominent Kingitanga iwi to this day.

The principal focus of the report is on the Native Land Court – on its decisions, and on the evidence given in the various cases and inquiries. Not all decisions can be analysed in equal depth. Those considered most closely are the two Himatangi decisions of 1868 and 1869, the Pukekura/Puahue/Maungatautari cases of 1868, the Kukutauaki and Horowhenua decisions of 1873, the Aorangi investigation of title and rehearing (1873 and 1878), the 1881 investigation into Ngati Kauwhata claims, the Maungatautari decision of 1884, and the 1912 Appellate Court decision relating to Horowhenua. The report contains a thorough analysis of these decisions, and the evidence given. I have begun the process of drafting evidence tables, that is a full listing of all the evidence given in these cases with short summaries, so that it will be apparent who spoke in these cases and what they said. Parts of such tables are included in the current draft, for Himatangi (1868), Aorangi (1873) and the Ngati Kauwhata Commission (1881). Of course, the report is not confined to these cases, and a number of other cases will be discussed in varying levels of detail.

As is pointed out in the research reports prepared for Ngati Raukawa, for example the report prepared by Mr Husbands on reserved lands, the PkM inquiry district can be divided into two large areas, i.e. the land to the north and to the south of the Manawatu River. North of the river, the dominant historical reality is the vast Rangitikei-Manawatu Crown purchase block, the southern boundary of which was the Manawatu River. South of the river, the principal reality in terms of historical issues for Ngati Raukawa is the Native Land Court. It is not going far wrong to split the inquiry district into two major zones, a “Crown purchases” zone (north of the river) and a “Land Court” zone (south of the river). This division is only an approximate one, for two reasons. Firstly, as is described in the research reports by Mr Husbands and others), there was a significant amount of Crown purchasing south of the river as well, including pre-emptive purchasing but also Crown undivided share-buying in Native Land Court blocks or in blocks that had been partitioned by the Native Land Court. Examples of the latter include Crown purchases in parts of the Horowhenua and the Manawatu-Kukutauaki blocks. The other point to be noted here is that the Native Land Court also played a role *north* of the Manawatu. Here the Court’s function can be seen as subsequent to, or ancillary to, Crown purchasing, but its role was nevertheless significant. The Rangitikei-Manawatu purchase contained numerous reserves, some of them of considerable size. (These reserves are analysed in detail in the report prepared by Mr Husbands). Most of these reserves fell under the purview of the Native Land Court, in that the Court would investigate titles to the reserves and then deal further with them by making partition orders, defining relative interests, making succession orders, and (depending on the extent of the Court’s jurisdiction at the relevant time) dealing with Probate and with disputes over wills and intestacies. The most striking example of a reserve block which also had a long and protracted engagement with the Native Land Court is Te Reureu, located close to the Rangitikei River near Halcombe (and thus well to the north of the Manawatu River). The Court’s engagement with Te Reureu and the Te Reureu partitions is considered in depth in this report.

1.5 Some general issues

As John Hutton has noted, “Raukawa is a large iwi with a large rohe”¹⁸ (and he only had the northern section of Ngati Raukawa lands in mind). A full traditional history of Ngati Raukawa and all its component hapu would be a lifetime’s study, to say nothing of connected iwi like Ngati Kauwhata, Ngati Whakatere and so on. Ngati Raukawa’s land and history has been spread over a number of

¹⁸ Hutton, *Raukawa Traditional History Summary Report*, 2009, (Wai 898 Doc#A86), 5.

Waitangi Tribunal inquiry districts (Tauranga, Rohe Potae, Central North Island, and Porirua ki Manawatu), still leaving a core area of Raukawa lands in the southeastern Waikato around Putaruru and Tokoroa outside any concluded Tribunal inquiry district to date (as the northern sections of Ngati Raukawa have settled their historic claims with the Crown by this time, and commissioned additional research to cover the Te Kaokaoroa o Patetere district to support the negotiations no Tribunal inquiry into the southeastern Waikato region now seems likely.)

One general theme which has become apparent is the close interconnections that still existed at this time between Raukawa groups in the Otaki-Kapiti region and those in the Waikato. Today a situation has developed that Ngati Raukawa ki te Tonga and Raukawa 'ki Waikato'¹⁹ (if that is a permissible expression) are almost separate iwi, although of course individual and hapu links still exist. But in the 1860s this was far from the case. Raukawa people at Otaki were keenly interested in the fate of their kin in the Waikato, especially after the British army and the colonial defence force crossed the Mangatawhiri and invaded the Waikato in 1863. Otaki became known as a bastion of support for the Maori king in the mid-1860s. People from Otaki fought in the Waikato war. Ngati Raukawa people from the Waikato, conversely, who fought the Crown forces at Orakau and in the Tauranga fled south to Otaki and later surrendered or handed in their weapons to the government in the Manawatu. People from Otaki later become involved in cases and claims in the Waikato. Parakaia Te Pouepa, an Otaki chief, led Raukawa claims in the Native Land Court both in the Otaki region (e.g. the Himatangi block) and the Waikato (e.g. the Pukekura and Maungatautari blocks). Karanama, a prominent rangatira of Ngati Huia, was originally a Kingite supporter and sympathised openly with Wiremu Kingi in 1860 over the Waitara affair; in 1873 he can be found both as a lessee of the Tokoroa block in the south Waikato to Brissenden²⁰ and as a prominent witness for Raukawa in the Horowhenua case.²¹ It was people living at Otaki who advanced claims to confiscated lands in the Waikato in the Compensation Court set up under the New Zealand Settlements Act. Ngati Huia, now mainly based near Levin, were also awarded substantial interests in the Waotu No 2 block near Maungatautari. The reality of these close interconnections have added to the difficulties of writing this report but have also made it a more interesting project.

Moreover, it is my understanding that it is a strong preference of the PkM claimants that every endeavour be made to narrate their history in an integrated way. This view has been put to me very clearly at a number of meetings and via the feedback I have received from the Crown Forestry Rental Trust.

It is possible that the process of war and confiscation may of itself served to divide Raukawa ki te Tonga from their Waikato kin. It seems strange, for example, that the principal actors in the Raukawa claims relating to the Maungatautari area were Otaki-based (rather than, say, Patetere-based) and were advanced partly on the basis that the applicants were not in a state of rebellion. Otaki Ngati Raukawa people were in a position to say that; obviously the Raukawa defenders of Orakau were not. There is some evidence that Governor Grey treated Ngati Raukawa at Otaki and Raukawa in the Waikato quite differently. On 1 April 1865 Grey issued an important proclamation against 'Ngati Raukawa on the Horotiu' essentially branding them as rebels and calling on them to come and surrender or risk losing all their lands. At the same time, however, he was in contact with Ngati Raukawa people at Otaki encouraging them to lodge claims pertaining to confiscated lands in the Waikato (which they

¹⁹ One does see in 19th century documents the term Ngati Raukawa 'ki Horotiu' (of the Waikato River), used to differentiate the northern sections of the iwi from Ngati Raukawa at Otaki.

²⁰ Hearn, *Raukawa, Land, and the Crown*, 53; H H Turton, *Epitome*, 591-592.

²¹ See (1873) 1 Otaki MB 184.

did). On the other hand, Raukawa's claims in the Land Court, north and south, did not fare at all well in the 1860s and 1870s. Raukawa people of the time must have come to feel that the judges of the Court had some kind of general hostility towards them, whether their claims happened to be advanced in the Waikato or in the PkM region. It is clear that the process of war and confiscation created a situation of bitterness and division within neighbouring iwi such as Ngati Haua, and it seems reasonable to assume that this would have been the case with Ngati Raukawa as well.

By 1869 Raukawa had suffered a massive double blow in the Native Land Court. In November 1868 Raukawa suffered significant defeats in a group of cases relating to the three Maungatautari blocks of Pukekura, Puahue, and Maungatautari. In April of the same year the Native Land Court gave judgment in the Rangitikei Manawatu case.²² This was also a disaster for Raukawa. Ngati Apa were found to have equal rights with Raukawa in this block. In fact the main purpose of the Himatangi hearing was to determine the extent of the Crown interest in the wider Manawatu-Rangitikei block, purchased by the Wellington provincial government in 1866. The Crown played an active role in the case and was represented by William Fox, later to be Premier in the Fox-Vogel-McLean government. The Court also found that Raukawa as an iwi had no rights in the block at all – only certain Raukawa hapu. The Court gave particular emphasis to rights based on occupation rather than on *take raupatu*. This however can be contrasted with the Court's approach in the Maungatautari cases, which gave particular prominence to *take raupatu* at Raukawa's expense (and Ngati Kauwhata's expense) – the common thread being to disadvantage Raukawa, north and south. As this report will emphasise, the Native Land Court was not always consistent, either in its application of its basic rules or in its reconstruction of historical events.

1.6 Role of the historian

Any person purporting to give expert evidence in a judicial forum has to be qualified to do that, and as has been explained, I am primarily a legal historian, and my work on the Native Land Court has focused on the Court as an institution. I am not an ethnohistorian (examples of such experts would be Angela Ballara and Judith Binney). I also believe it is unwise for non-Maori academics to adopt dogmatic positions on iwi and hapu relationships, especially when – as is usually the case – those relationships are highly contested. This contestability is certainly true of Ngati Raukawa's historical interaction with its neighbours, whether in the PkM region (as with the Horowhenua block, for example) or in the Waikato (as demonstrated by the nearly endless contestation over Maungatautari). On the other hand, this report is written for Ngati Raukawa, and has been commissioned and funded to support their case in the Waitangi Tribunal and, no doubt, in subsequent negotiations.

There seem to be two ways out of this difficulty, both of which I try to pursue in this report. The first is to write the report in such a way that the Ngati Raukawa position on key points of contestability is fully presented. The second is to focus on the institutional framework in which this contestation was formulated, argued, and assessed – that is to say, primarily on the Native Land Court. How did the Native Land Court respond as an institution to contested claims by opposing groups (Ngati Raukawa as opposed to Ngati Apa, for example, or Ngati Raukawa as opposed to Ngati Haua or Ngati Tuwharetoa)? Was it a suitable forum for debates of this kind? Was it capable of resolving them in any meaningful way? What were the qualifications and experience of its judges? How did they go about investigating and inquiring into claims? And – a neglected question – what were the opportunity costs of the Native Land Court process? Were there better options that should have been experimented with, rather than create a judicial body which was faced with an almost impossible task?

²² (1868) 1e Otaki MB 719-20; also reprinted in the *Evening Post*, 29 April 1868.

1.7 Customary tenures: an overview

Maori land tenure was a variant on eastern Polynesian tenure and thus has affinities with the tenurial systems of other Pacific societies such as that encountered by the first European visitors to Tahiti, the Marquesas, Hawai'i, Easter Island (Rapanui), and Rarotonga.²³ In the case of Aotearoa-New Zealand (or, perhaps better, 'South Polynesia', a term devised by Atholl Anderson) the basic patterns of eastern Polynesian tenure were inscribed on a landscape of almost continental scale, the North and South Islands being considerably larger than all of the other Polynesian islands added together and with a climatic, geographical and ecological diversity probably equalled only by New Guinea in the entire Pacific.

As elsewhere in Polynesia, and indeed as is typically the case with traditional indigenous societies in Africa, the Pacific and the Americas, land tenure and social organisation are inextricably linked given that the land-owning unit is typically some kind of collective or group, rather than the individual. In some pre-European societies, such as those found in Mesoamerica, the land-owning unit was the town or the indigenous city-state, but more typically, and certainly in Polynesia, land was held by kin groups, and in this Maori were no exception. It seems to be the general consensus today that the middle-level social group, the hapu, lying somewhere between the larger entity of the iwi ('tribe') and the extended family, or whanau, was the primary right-holding group. The relationship between iwi, hapu, and whanau is much-debated, and any notion of a tidy hierarchy has to be abandoned, but nevertheless it can at least be said that rights in land were preponderantly vested in hapu. In fact in the Native Land Court all descent groups, large or small, were invariably referred to as hapu, and whatever else can be said of the Court's opinions on customary tenure, it appears to be the case that the Court was more or less right in its understanding that land-holding groups were typically quite small. The hapu appears to correlate with other kin-based corporate hand-holding units elsewhere in the Pacific, such as the *kāiga* in the Tokelaus, well-analysed in a recent ethnographic study by Judith Huntsman and Anthony Hooper.²⁴ In Samoa the equivalent group appears to have been the *faletama* or *itu'āiga*, defined by Gilson as a "non-localized corporation headed by a *matai*"; each such group "usually bears the name of the title it possesses, with its initial point of genealogical reference being the ancestor who is reputed to have been the first to hold or acquire the title".²⁵ In New Zealand, where a formal system of titles such as that seen in Samoa did not develop, hapu are likewise usually named after a particular ancestor, although sometimes hapu can be named after a particular historical incident. Tenure and chiefly power overlapped, but did not exactly correlate. A great chief might, by reason of his descent, achievements and force of personality command widespread allegiance, but his rights as a landowner derived less from his chiefly authority than from his hapu, although of course great chiefs might belong to many hapu. Chiefly authority was very real. In the earliest years of the Native Land Court's history, for instance in Hawke's Bay, the dominance of the process by the traditional elite is very apparent, and it seems most likely that this was a reflection of the realities of power at the local level than a new development attributable to the Land Court itself. In the long run, however, chiefly authority declined as a result of a number of different processes and pressures operating in combination, of which the post-1873 Native Land Court was one.

²³ On land tenure in the Pacific, see generally Ron Crocombe and Malama Meleisa (eds), *Land Tenure in the Pacific*, Institute of Pacific Studies, University of the South Pacific, and Macmillan Brown Centre for Pacific Studies, Canterbury University, Suva and Christchurch, 1994.

²⁴ Judith Huntsman and Anthony Hooper, *Tokelau: A Historical Ethnography*, Auckland University Press, Auckland, 1996, 109-126.

²⁵ Gilson, R.P. *Samoa, 1830-1900 The Politics of a Multi-Cultural Community*. Oxford University Press, Oxford, 1970. 29.

As Alan Ward has written, Maori land rights were “extremely intricate”; “[c]onstant adjustment was required to accommodate the primary rights of a lineage born and resident on the land, the contingent rights of those who married or were adopted out of the lineage but later returned, the rights of children who returned, and the rights of those who married into the lineage or were given permissive residence in time of war or migration”.²⁶ As in central Polynesia, the land held by hapu was made up of a range of ecological zones which provided areas suitable for horticulture, access to various kinds of seasonal resources, and – ideally – access to the coast and its all-important resources of fish and shellfish. In many Polynesian islands, especially the high tropical islands such as Rarotonga or Nuku Hiva, these areas were often wedge-shaped zones running from the inland mountain peaks, seemingly held by larger groupings and allocated amongst constituent sub-groups in various complex ways. The island of Mangaia, studied in detail in a recent monograph by Michael Reilly, was split into six *puna* or traditional territories that met in the centre of the island and which ran down to the coast and the surrounding lagoon waters.²⁷ Each territory was controlled by a *pava*, or senior chief, and each district was in turn split into smaller units, *tapere*, controlled by regional chiefs known on Mangaia as *kairanga nuku*: other chiefs, at a still more local level, were known – as in Aotearoa – as *rangatira*. On Mangaia each of these territories, which varied somewhat in size, wealth, and political authority, contained a range of ecological zones ranging from the hills and taro gardens of the interior to the encircling hills of raised coral (*makatea*) around the island perimeter, and to the waters of the surrounding lagoon and the reef and ocean beyond.²⁸ In New Zealand this ancient Polynesian pattern of wedge-shaped territories covering on a central peak and running down to the coast may have reproduced itself in at least one key area, that is in Taranaki, where the territories of the various Taranaki iwi are to some extent pie-shaped areas arranged around the great volcanic peak of Mt Taranaki.

In other parts of the country it seems that a range of ecological zones within the hapu territory was certainly the norm, or the desired norm more accurately. This seems to be the case with the hapu of Raukawa ki te Tonga, whose lands typically extended from the sea up to the Tararua range, embracing a number of distinct ecological zones (but bearing in mind that Raukawa were relatively new arrivals in this region). Possession of a range of ecological zones by the primary right-holding unit appears to be standard, but not always are these territories geographically contiguous. In atolls such as the islands of the Tokelau group, the various *kāiga* typically owned “a variable number of sections or islets dispersed around the atoll”.²⁹ Nor was there any equality of distribution. Hapu territories in South Polynesia were not equal in value or in size, any more than were – for instance - the famous ahupua’a, the traditional tenurial divisions of Hawai’i. In Aotearoa generalisation is made more difficult because of the scale of the country and the climatic differences between the North and South Islands: it seems to be the case that traditional territories become larger and more fluid as one moves from north to south and from the coast to the interior, putting to one side the density and complexity of settlement of some parts of the North Island interior in the Waikato and Waipa valleys and around the lakes and hot springs of the Rotorua region. In fact it is possible to see pre-European traditional history as a constant process of generally southward movement caused by population pressure, leading to the displacement of groups from such well-favoured areas as Northland, the Auckland isthmus, the Bay of Plenty and Hauraki further south into the lower North Island and sometimes on into the South Island.

²⁶ Ward, *Show of Justice*, 7.

²⁷ Michael P J Reilly, *Ancestral Voices from Mangaia: A History of the Ancient Gods and Chiefs*, Polynesian Society, Auckland, 2009. See the map at *ibid*, xiv.

²⁸ Reilly, *op.cit.*, 18-19. Each widge or pie-shaped territory was in turn divided into six or seven concentric circles, with such names as *rautuanu’e* (“fern on the mountain”), *roroka* (“reef”) and *moana* (“ocean”).

²⁹ Huntsman and Hooper, *Tokelau*, 112.

The various ways in which customary tenures have been interpreted and understood have had very significant impacts on Maori land policy in New Zealand. It can easily be shown not only that the Native Lands Acts had deep roots in the British Isles but also that they had their counterparts in many parts of the world – Mexico, Central America, Hawai’i, the United States – at roughly the same time. The Native Lands Acts did indeed reflect a particular ideological stance which stressed the importance of clear titles to, and individual ownership of, land. In the British Isles the same ideology was reflected in parliamentary enclosure and the final abolition of Gaelic customary tenures in Ireland and the Scottish highlands.³⁰ The legislation of the 1860s can also be seen as a product of the thinking and political power of the political and economic liberals represented originally by the New Zealand Company settlers and their political allies in Britain, who quickly took control of the new colony and who reshaped it in their image. That image equated freehold tenures with liberty and progress, and customary tenures with despotism and poverty. Schooled in their own distinctive historical traditions and the philosophy and historiography of Harrington, Locke, Hume, Robertson and Adam Smith, English and Scottish thinkers were convinced that (as J G A Pocock puts it) “it was the mark of a true ‘oriental despotism’ that the subject possessed no free tenure, no property in his goods, and no law to protect either”.³¹ Freedom, individual tenures, and economic progress all went together. Rightly or wrongly, the drafters of the legislation had little time for Maori customary tenure, perceiving it simply as a pointless and inefficient relic, and there can be no doubt the Native Lands Acts were partly designed to provide for its piecemeal disappearance – as indeed has happened. Thus, the Native Lands Acts need to be sited in a double context. The first of these is the long history of the standardization and simplification of tenures in English law, combined with parliamentary intervention to abolish and replace customary tenures in England, Ireland and Scotland. The second is the very striking parallels that exist between tenurial changes in New Zealand and similar processes that took place at roughly the same time in other jurisdictions, including the United States, the Hawaiian kingdom, and in the newly independent Latin American republics.

It is probably the case, however, that the contemporary evolutionist anthropology of the day also impacted on the statutory law relating to tenures in New Zealand and other jurisdictions. Evolutionism in its nineteenth-century variant saw societies ranged on a developmental hierarchy, with so-called “Stone Age” hunter gatherers at the bottom and enlightened capitalist constitutional democracy on the Anglo-American model at the top. Not only that, but existing ‘tribal’ societies were seen as fossilized relics of earlier – and superseded – developmental stages. Translated to land tenures, that meant that customary tenures, while interesting as an object of study and a window into the past, were of no practical or economic value and were doomed to disappear: their statutory abolition merely hastened the inevitable. This explains why even sympathetic “friends of the Indian” in the United States were committed to the abolition of collective tenures on the reservations and their replacement by individualised freehold patents (grants). Customary tenures were seen as an impediment to Native American progress. The rise of legal positivism contributed to this frame of mind, as it typically – although, arguably, not necessarily – tended to see rule-making by bodies other than courts and legislatures as simply invisible and irrelevant to the scientific study of law. New Zealand’s most

³⁰ On Ireland see generally T W Moody and W E Vaughan (eds), *Eighteenth-Century Ireland (A New History of Ireland, Vol IV)*, Oxford University Press, Oxford, 1985, especially ch VII and IX, by L M Cullen and J H Andrews; and W E Vaughan (ed), *Ireland under the Union 1801-70 (A New History of Ireland, Vol V)*, Oxford University Press, Oxford, 1989, especially chs XI, XVII, and XXIV, by T W Freeman, James S Donnelly, and J C Brady.

³¹ Pocock, *Barbarism and Religion: Volume Two: Narratives of Civil Government*, Cambridge University Press, Cambridge, 2001, 239. These words capture fairly accurately how Maori customary tenures were perceived by nineteenth-century liberals.

celebrated jurist, Sir John Salmond, was undoubtedly a legal positivist, and he saw little to interest him in the study of Maori customary law. (Not all of his contemporaries, however, were of the same mind, notably Frank Acheson, who in addition to being a serious scholarly investigator of Maori customary law was a judge of the Native Land Court.)

The rise of cultural relativism and functionalism in twentieth century led to a quite different approach to customary tenures, which were now studied in order to see how societies organised and managed themselves in the present rather than as superseded relics of earlier stages of human development. Bronislaw Malinowski, the doyen of functionalism, insisted that all societies have law, understood by him to mean the rules of conduct that were enforced by actual sanctions in the real world (as opposed to feelings of guilt, or anxiety about divine punishment). Functionalism led also to a new kind of analysis of land tenure, an example being that found in Raymond Firth's celebrated studies of the Polynesian inhabitants of the island of Tikopia. Firth also wrote what is probably the classic functionalist account of Maori land tenure in his *Economics of the New Zealand Maori*, based on his 1927 PhD thesis in anthropology at the London School of Economics and first published in 1929. Firth's book is the first extended analysis of Maori land tenure by a modern professional anthropologist of international stature.

Firth sees tenure as a matter of social organisation rather than law. He begins his analysis with Maori cultural attitudes towards land and land ownership: Maori "had a great respect for land *per se*, and an exceedingly strong affection for his ancestral soil, a sentiment by no means only to be correlated only with its fertility and immediate value to him as a source of food".³² It followed that any proper study of Maori land tenure had to be based on Maori concepts rather than on legal categories.³³

Much has been written on the subject of Maori land tenure, not always with knowledge and impartiality, but even in the relevant literature there are opinions which it is difficult to reconcile. What is required is an adequate study which will be based on native concepts and not on European juristic ideas, which will recognise the vital importance of emotional as well as purely rational factors, and will consider ownership from the political and economic as well as from the legal point of view.

Firth, like Acheson and others dubious about some of the excesses of positivistic description of Maori rule-making, has no patience with the idea that Maori land tenure was based simply on force: to state that Maori "knew no law but that of the strongest is incorrect".³⁴ Even title by conquest rested on a bedrock of customary practice: "when meditating the acquisition of land by force a tribe was usually careful to justify its action by uncovering some old *take* or cause which gave them a claim to it".³⁵ Control over land was collective: "[t]he influence of the tribe as a whole was paramount over any portion of the land held by the members of it, and no action of any moment affecting it was valid unless ratified by the tribal opinion".³⁶

Firth turns next to two pivotal matters, the authority of the chiefs and the rights of hapu. According to Firth:

³² Firth, *Economics of the New Zealand Maori*, 368.

³³ Ibid, 373-4.

³⁴ Ibid, 374.

³⁵ Ibid.

³⁶ Ibid.

In all matters affecting the handling or disposal of the tribal land the head chief exercised great authority, *a position of control due to his normal social status rather than to his direct claims of ownership* [emphasis added].

Chiefly authority as such over land was functionally distinct from exact rights of ownership. But the authority of chiefs was circumscribed: “[i]t would often be said of a chief that he was “*he tangata whai whakaaro, he tangata whai mana*”, a man of understanding and power, but this did not mean that he had power to part with it or in later days to sell it or claim it as his own – unless power to do so had been conferred on him by his tribe”. Firth obviously regarded the difference between the political control of the chiefs over land and their personal customary rights as vital, for he returns to the point some pages later and underscores it:³⁷

The control of a principal chief over the tribal land was not undifferentiated in scope, but varied from an immediate property interest in certain areas to a somewhat vague social or political jurisdiction over others. To restate the position more precisely, the chief did not have a personal claim in all the lands of his tribe. To certain places he had an individual right, derived from his ancestors, from occupation or from some other cause, and he also possessed

Contemporary ethnohistorians such as Angela Ballara have written extensively about Maori social organisation, and about iwi and hapu. It would be inappropriate to attempt to summarise this literature here. Suffice it to say that the modern literature has reached a level of depth and sophistication that it can now easily be seen that bodies such as the Native Land Court did not, and could not have, grasped the complexities of what it was dealing with. The accent today is on the complexity of Maori social organisation. The notion that Maori society was tidily divided, pyramid-like, into iwi (“tribes”), hapu and whanau has long been abandoned. That (as Ballara puts it) “in contrast to iwi and waka, hapū were always corporate groups: that is, there were at least some occasions when they combined all their membership to act as one body in political, social, or economic affairs”³⁸ is widely accepted. But hapu were themselves complex, could vary in size and in influence, and could affiliate to different ancestors as the time and the circumstances demanded:

In anthropological terms, the hapū was a cognatic descent group. The essential feature of such a group was that its members were all descended via either parent from a founding ancestor. But often this hapū founder him or herself descended from multiple ancestors from different lines of descent. Sometimes quite major, long-established hapū could trace to the earliest tangata whenua, and also to various ancestors arriving in later canoes, or later migrating to the area where their descendants were to be found. In this way the descent of hapū was often reckoned from multiple, diverse ancestral directions. In the affairs of the hapū, these different links would be emphasised or glossed over as political circumstances dictated.

It must also be remembered that iwi and hapu identities are, and were, multiple. Descent lines cross and commingle. A simple example is Waitaoro of Ngati Tama, whose mother was Rongorongo of Ngati Toa and her father Raniera of Ngati Tama; she grew up in the Chatham Islands with Ngati Mutunga and is regarded today as an elder of Ngati Tama, Ngati Mutunga, Ngati Toa and Ngati Maniapoto.³⁹ In the Kukutauaki case (1872) Matene Te Whiwhi said that “I belong to the Ngati Toa, Ngati Awa and Ngati Raukawa”.⁴⁰ Tamihana Te Rauparaha told the Native Land Court that he was

³⁷ Ibid, 377.

³⁸ Ballara, *Tribal Landscape*, 178.

³⁹ On Waitaoro see Angela Ballara, “Waitaoro”, *Dictionary of New Zealand Biography*, vol 2, 261.

⁴⁰ Kukutauaki case, (1872) 1 Otaki MB 1, 135.

“partly Ngati Raukawa and partly Ngati Toa”.⁴¹ In the Himatangi case (1868) Henere Te Herekau said that “I am a Ngati Raukawa and Ngati Toa and Ngati Awa and live at Manawatu”.⁴² These examples can be readily multiplied. Or, one can pay a visit to the cemetery at St Luke’s Anglican church at Waikanae and simply read the headstones. Wi Parata Te Kakakura Waipunaahu is “Ngatitua me Ngatiawa”; Onaui Te Kakakura, “he wahine rangatira” of “Ngati Toa, Ngati Raukawa me Ngati Awa”. Te Rauparaha is quintessentially Ngati Toa, but some regarded him as primarily Ngati Raukawa;⁴³ and of course his mother, Parekohatu, was Ngati Raukawa. The linkages were overlapping and complex.

One important issue that emerges from the most recent literature relates to boundaries. It is sometimes asserted that Maori lacked a sense of sharply-defined land boundaries, but this has been recently disputed by Atholl Anderson. It is certainly the case that there is a great deal of evidence given the Native Land Court about land boundaries, which are sometimes stated with great precision, and it is hard to believe that all of this material is a post-1862 invention or distortion. For example a key issue in the Kukukatauki and Horowhenua cases related to the pre-1840 boundary arranged by Te Whatanui of Ngati Raukawa and Taueki of Muaupoko. For its part the Court worked on the assumption that boundaries were always fixed and carefully defined. In the Heruiwi case (1890), confronted with evidence that one group had lived in the area but without formal boundaries being laid down, the Court rejected such a suggestion out of hand.⁴⁴

The Court cannot accept this as a reliable statement for it is aware that the boundaries of tribes were at all times fixed with the greatest formality in order to avoid quarrels.

1.8 The Native Land Court and the intelligibility of Maori history:

The Native Land Court could never have functioned had it not been believed that Maori history was intelligible: that there was such a thing as Maori history, and that it was susceptible of investigation and proof in a judicial forum. The Court operated on the assumption that historical narratives could be crafted from oral traditions. It had to be further assumed that the narratives so fashioned were sufficiently robust to create a foundation for property rights in the present. This can only be the case in cultures which possess a strong historical self-awareness. Maori are, of course, Polynesians. In contrast to some other indigenous societies, Polynesian culture exists in a strong relationship with a known and much-discussed past. In the case of New Zealand this historicity was simply assumed at the beginning of the Court’s history with surprisingly little debate and reflection. Why that was so is not clear. To educated Englishmen steeped in the Bible and the Classics perhaps the historicity of traditional narrative was easy to assume. If Agamemnon, Aeneas and King David were real people, why not Polynesian ancestors such as Toi or Ngatoro-i-rangi?

For whatever reason, a belief in the intelligibility of Polynesian history led to the early publication of substantial historical narratives in 19th century Polynesia. This early reliance on traditional narrative has never been abandoned in Polynesian scholarship. The importance of genealogy continues to be emphasised in many modern studies of Maori ethnography as well as in Polynesia generally. As Patrick Kirch puts it, “[i]n all Austronesian societies, claims to rank and power depended on being able to demonstrate, through recitation, an unbroken genealogical chain back to high-ranking

⁴¹ Otaki Townships case, (1866) 1 Otaki MB 24.

⁴² Himatangi case, (1868) 1 C Otaki MB 54.

⁴³ Rawiri Te Whanui (Ngati Raukawa), Himatangi case, (1868) 1 C Otaki MB 231.

⁴⁴ (1890) 3 Whakatane MB 191.

ancestors”.⁴⁵ As well as Kirch, modern archaeologists and anthropologists who accept the historicity of Polynesian traditions include Raymond Firth, Marshall Sahlins, and Atholl Anderson. One of Firth’s massive monographs on Tikopia is devoted to an exploration of the island’s history as recounted in oral narratives and genealogies.⁴⁶ In the 1990s Sahlins and Kirch collaborated on an ambitious interdisciplinary project integrating history and archaeology in the Anahulu Valley on Oahu, and among the historical sources taken into account were indigenous Hawaiian traditions recoding in manuscript and land commission documents.⁴⁷ Kirch has recounted elsewhere how the results of his archaeological fieldwork on Tikopia fitted well with contemporary oral narratives describing resource conflicts between the island’s existing socio-political groups (Nga Ravenga, Nga Faea, and Nga Ariki).⁴⁸ More recently Kirch has integrated traditional Hawaiian historical narratives (mo‘olelo) and genealogies (mo‘okū‘ahuahu) with archaeology as part of his reconsideration of ancient Hawaiian society. Drawing these two different kinds of source material together, Kirch has demonstrated that late precontact Hawaii should be seen as an “archaic state” rather than a “complex chiefdom”.⁴⁹ (One aspect of this is that, uniquely in Polynesia, the study of genealogy was strictly restricted to the governing ali‘i aristocracy.⁵⁰) The situation is the same in western Polynesia. A study of the ethnohistory of Tokelau by Judith Huntsman and Anthony Hooper published in 1996 relied extensively on traditional narratives and genealogies as sources for the reconstruction of Tokelauan ethnohistory.⁵¹ Such examples can readily be multiplied. Given this continued reliance on Polynesian narratives by contemporary anthropologists and archaeologists it was not quixotic or naïve for the judges of the Native Land Court to act on the assumption that it was possible to construct sound historical narratives based on Maori historical testimony, including but not limited to whakapapa (genealogies).

Maori culture, as modern scholars such as Atholl Anderson insist, was richly *historicised*: Maori certainly did not see themselves as existing in an eternal present. On the contrary, Maori located themselves in historical time and as connected to a complex and contested but intelligible past.⁵² As Anderson puts it, “[h]istory mattered for Māori and Moriori, both philosophically as a duty towards the

⁴⁵ Kirch, *How Chiefs became Kings: Divine Kingship and the Rise of Archaic States in Ancient Hawai‘i* (University of California Press, Berkeley and Los Angeles, 2010), 79.

⁴⁶ Firth, *History and Traditions of Tikopia*, (Polynesian Society, Wellington, 1961).

⁴⁷ See Patrick V. Kirch *Anahulu: The Anthropology of History in the Kingdom of Hawaii: Vol 1: Historical Ethnography* (University of Chicago Press, Chicago and London, 1992, 17-35).

⁴⁸ See Kirch, *Unearthing the Polynesian Past*, 138-40. Patrick Kirch is notably resistant to the arguments of structuralist anthropologists such as Lévi-Strauss and Edmund Leach that indigenous historical narratives should be understood as myth rather than as history (see *ibid*, 138).

⁴⁹ Kirch, *Unearthing the Polynesian Past*, 322.

⁵⁰ See Kirch, *How Chiefs Became Kings*, 79: “In striking distinction to most Polynesian societies...in Hawai‘i at the time of European contact, the possession of a chronology had become an exclusively chiefly prerogative. Commoners were absolutely denied the right to cite a pedigree.” There was no hard and fast rule to this effect in Aotearoa, but it could often be the case that members of the chiefly elite would have special expertise in whakapapa.

⁵¹ See Judith Huntsman and Antony Hooper, *Tokelau: A Historical Ethnography* (Auckland University Press, Auckland, 1996) 148-180. The authors note that “[i]n most, if not all Polynesian cultures, genealogy is one of the prime idioms of historical discourse, providing a basic conceptual framework for the construction of cosmological, religious, political and social orders, as well as depicting the relationships between them” (176-177).

⁵² This is a characteristic of Polynesian societies generally it would appear. For a classic case study of Polynesian historical narratives see Raymond Firth *History and Traditions of Tikopia* (Polynesian Society, Wellington, 1961).

ancestors and pragmatically as a means of contemporary advantage in gaining and holding status and property”.⁵³

For its part the Native Land Court was never in any doubt about the intelligibility of Maori traditional history, even if that history could be complicated and difficult to disentangle from a welter of partial and self-interested testimony. A reliable history could be found and narrated, albeit sometimes with difficulty. Near the very beginning of the Court’s history, in the *Orakei* decision of 1868,⁵⁴ Chief Judge Fenton made a point of emphasising the general reliability of Maori “pedigrees” (whakapapa). Although some of the counsel in the *Orakei* case expressed doubts about their evidentiary value, Chief Judge Fenton disagreed. “It is”, Fenton observed, “almost beyond the powers of members of a civilised race, who, possessing written documents, are not required and are little accustomed to trust facts of importance to their memories, to believe that any person can remember from tradition a whole family, with all its branches, for twenty or even ten generations back; but, in my experience as Judge of this Court, I have received pedigrees which I have compared with pedigrees given sometimes by the same witness, sometimes by others, at other Courts, at distant periods of time, and have found the general concord perfectly astonishing.”⁵⁵ Fenton’s views must have been shared by his colleagues on the bench, the use of whakapapa (genealogy) being standard practice in the Court. The issue remains, however, whether the Land Court judges were able to evaluate and assess whakapapa critically, which seems unlikely (although some of the Court assessors may have been able to do so).⁵⁶

Fenton’s views about whakapapa accorded with those of some of his contemporaries who had written books and scholarly papers about Maori society. An example is Edward Shortland’s *Southern Districts of New Zealand* (1851), based on a journal written in 1843-4 while he was employed as a Native Protector by the colonial government.⁵⁷ The journal describes his journey around the South Island and his encounters with Ngai Tahu, the iwi (tribe) of most of the South Island. Shortland was a notably well-educated and intelligent observer, who spoke Maori well. He was a qualified physician with an MA from Cambridge, a radical liberal, strongly sympathetic towards Maori and is described by Atholl Anderson as perhaps “the first anthropologist of the Maori”.⁵⁸ On the whole, like Fenton, he regarded whakapapa-based narratives as reliable, a position he came to by comparing genealogies given in different parts of the country. Having done this, he writes, “I was then so struck with the remarkable manner in which they coincided with each other, often when least expected, that I felt satisfied that dependence might be placed on their general accuracy”.⁵⁹ Shortland was one of the first grasp the extent to which Maori culture was deeply historicised. Whakapapa were just a framework on which much else was draped.⁶⁰

⁵³ Anderson, in Atholl Anderson, Judith Binney, and Aroha Harris, *Tangata Whenua: A History* (Bridget Williams Books, Wellington 2015), 33.

⁵⁴ (1868) 2 *Orakei* MB 355; F D Fenton (ed), *Important Judgments delivered in the Compensation Court and Native Land Court 1866-1879* (Henry Brett Printers, Auckland, 1879), 53-96, Boast, above n 2, 481-540.

⁵⁵ F D Fenton, above n 30, 60.

⁵⁶ As Angela Ballara notes, “Whakapapa are particularly filled with flaws. Whakapapa deriving from the Land Court may have been deliberately distorted or poorly recorded. There are always other, often contradictory versions”: Ballara, *Tribal Landscape Overview*, 1.

⁵⁷ Edward Shortland, *The Southern Districts of New Zealand; A Journal with passing notices of the customs of the Aborigines*, (Longman, Brown, Green and Longmans, London, 1851 [Capper Press Reprint, Christchurch, 1974]).

⁵⁸ Anderson, “Shortland, Edward 1812?-1893, Doctor, administrator, scholar, linguist”, *Dictionary of New Zealand Biography*, Vol 1, 1990, 394-397, at 397.

⁵⁹ Shortland, *Southern Districts*, 93.

⁶⁰ *Ibid*, 95.

My informants did not content themselves with a bare recollection of names; but related the most remarkable actions connected with the lives of their distant ancestors. The history of the migrations, and wars, and losses, and triumphs of the tribe, generation after generation, seemed to be preserved in their retentive memories, handed down from father to son nearly in the same words as originally delivered.

He adds that “[w]e, who have so long trusted to the authority of books, are, I am persuaded, too suspicious of the credibility of the traditional history of a people who have not yet weakened their memories by trusting to a written language”.⁶¹ He adds:⁶²

I have always listened with interest to the accounts which the members of a tribe are able to give of the early wanderings of their ancestors, and of their wars with other tribes, subsequent to their first settlement in New Zealand. These narratives are generally fairly within the limits of probability; and I do not know but that they may rest on authority as worthy of credit as that of much of the early histories of European nations.

Shortland also believed that Maori had a kind of aristocratic scholarly elite comprised of specialists in traditional history, tikanga, and religion.⁶³

It is worthy of mention also, that the more important families of a tribe are in the habit of devoting one or more of their members to the study of this traditional knowledge, as well as to that of their “tikanga” or laws, and the rites connected with their religion. Persons so educated are their books of reference, and their lawyers.

But perhaps the most fascinating observations that Shortland makes relates to traditional Maori forensic inquiries into land claims that he had the good fortune to observe more than once, and which he describes using carefully-chosen legal terminology (“counsel for the plaintiff”, “defendants” etc.):⁶⁴

When the right to a piece of land, or its boundaries, is disputed, these native lawyers are appealed to, and the case is investigated before all interested, generally near the spot in dispute. The counsel for the plaintiff opens his case by naming in a loud voice some ancestor, A, of his party, whom he calls the root of the land. “Ko Mea te taki o te kainga.⁶⁵ Na...” “So-and-so is the root of the estate. Now then...” is the form of words in which they invariably commence. He then endeavours to prove that this root exercised some right of ownership undisputed by any one, and deduces, step by step, the descent of his clients from this ancestor or root. If the adverse party cannot disprove the fact of original ownership, or find a flaw in the pedigree, the case would be decided *nem. con.*⁶⁶ against them. The cases, however, which I have heard discussed have never been so simple. Counsel for the defendants has perhaps set aside the claim derived from A, by proving that that ancestor only exercised a right of possession as the husband of a daughter of B – the root from which his clients derived their claim – that A had no children by his wife, and that the land, therefore, on her death reverted to her brothers, from one of whom his client was descended, - and did not belong to the offspring of A’s other wife, the present claimants.

Shortland’s book shows that the historical authenticity of Maori traditional narrative had become widely accepted by the time the Native Land Court was set up. In fact it is possible that without this belief the Native Land Court would never have been established in the first place. Shortland’s analysis perhaps indicate not so much that land claims were supported by whakapapa as the opposite – that whakapapa was important because it was the foundation of rights in land. This was why it was so

⁶¹ Ibid.

⁶² Ibid, 97-8. Following this observation Shortland goes on to give an account of the traditional history of Ngai Tahu based “on the authority of Tuhawaiki, and other natives belonging to the same tribe” (ibid, 98).

⁶³ Ibid.

⁶⁴ Ibid, 96.

⁶⁵ Sic – i.e. Ko mea te take o te kainga.

⁶⁶ i.e. with no dissent, unanimously (*nemine contradicente*) – a legal term.

pivotal for whakapapa to be remembered, but also why it could often be contested. It was a kind of legal language that allowed claims to land to be debated, analysed, and resolved (or not). It also provided a framework for the recording and re collection of history, again because rights to land rested on historical foundations and precise events: actual battles, victories and defeats, gifts and peacemakings, invasions and migrations.⁶⁷ Its study, as Anne Salmond has recently put it, “was a prerequisite for effective leadership, and a lifelong pursuit”.⁶⁸

What remains in issue is the actual *reliability* of the narratives that the Native Land Court did in fact construct in the specific case of Ngati Raukawa. This is an issue that runs right through this report and which I will return to in the conclusion. It is often said that Maori witnesses in the Native Land Court manipulated historical events dictated by some contemporary goals. It can be argued, however, that the Native Land Court often did this itself, creating smooth-flowing narratives of complex and much-debated events. Difficulties of interpretation or awkward facts that got in the way of the solution the Court wanted to impose are either ignored or are elided or interpreted in such a way as not to disturb the solution the Court wants to get to.⁶⁹ The second Himatangi judgment by Judge Maning in 1869 is (in my view) a classic example.

1.9 Argument of this report: Ngati Raukawa and the Native Land Court as a case study

I first approached this research project with the general idea of demonstrating the inconsistencies of the Native Land Court’s approach with specific reference to Ngati Raukawa, being already familiar with the vagaries of the Court’s approach to land rights in the Maungatautari area. The Court was no less inconsistent, it is clear, with respect to Ngati Raukawa’s rights in the PkM region. However there are many more issues with respect to Ngati Raukawa’s experience of the Native Land Court than mere inconsistency.

A more important issue is the manner in which the Native Lands Acts and the Court process forced claimants to structure their claims to land – i.e. that they had to construct their cases in particular *ways*. Although some scholars have argued that the Court process was on the whole non-doctrinaire and reasonably flexible in the 19th century, this was not Ngati Raukawa’s experience in the 19th century. The Court’s categories of conquest and occupation were forced upon Ngati Raukawa, both in the Waikato and in the PkM region, at a comparatively early date. The effects were significant.

Another theme of this report, which underpins every part of it, is that the effects of the Native Land Court on Ngati Raukawa, and as well as on groups who were connected historically and/or genealogically, with Ngati Raukawa (Ngati Kauwhata and Ngati Whakatere in particular) was

⁶⁷ For further discussion and examples see Richard Benton, Alex Frame and Paul Meredith, *Te Mātāpunenga: A Compendium of References to the Concepts and Institutions of Māori Customary Law* (Victoria University Press, Wellington, 2013) 504-515 (entry on whakapapa). The learned authors explain that ‘whakapapa’ carries the sense of to place something in layers (ibid, 504), and note also the interconnection between whakapapa and claiming land (“*Whakapapa* was firmly connected with rights to land”; “[t]o rehearse the descent of names was to make a claim to the land in question”: ibid, 505).

⁶⁸ Salmond, *Tears of Rangī: Experiments Across Worlds*, (Auckland University Press, Auckland), 2017, 246.

⁶⁹ Ballara (2003: 38) notes how 19th century Pakeha writers on Maori history such as John White, S. Percy Smith, T W Gudgeon and so on “performed a scissors-and-paste job on Māori accounts, selecting sections, patching them together to create a plausible sequence, and rejecting others that did not agree with their own pet theories”. I believe that the Native Land Court often did the same thing. Indeed many of the judges were engaged directly in the 19th century scholarly enterprise that Ballara describes here. (T W Gudgeon, mentioned by Ballara, was a Native Land Court judge, who presided over some King Country cases of considerable significance to Ngati Raukawa.)

cumulative. By this I mean that it is not possible to understand the history of the effects of the Native Land Court groups by focusing solely on the PkM region itself. All of these groups migrated to the PkM region, and in fact a large part of this report focuses directly on these migrations. The ancestral homelands of Ngati Raukawa, Ngati Kauwhata, and Ngati Whakareta all adjoined. Mostly people from these groups referred to their homeland as “Maungatautari”. This does *not* mean only the mountain of that name, a well-known and very prominent volcanic peak in the southeastern Waikato, but rather a large area around it, on all sides. A very important part of “Maungatautari”, for example, was the large area between the Waikato River and the northern flanks of the mountain. This part of “Maungatautari” was bitterly fought over in the nineteenth century, in the so-called “musket wars” era, creating a cycle of conflicts and migrations, the significance of which is difficult to exaggerate. This complex history of conflict and migration has meant that Ngati Raukawa, Ngati Whakareta, Ngati Kauwhata, and all their various hapu, have land interests both at “Maungatautari” and also in “Kapiti” (in the widest sense: in the 19th century Maori people regarded “Kapiti” not just as the island of that name but the wider area in general sight of it, including virtually all of (or perhaps a larger area than) the PkM inquiry district. To repeat, Ngati Kauwhata, Ngati Raukawa, Ngati Whakareta etc. all have lands in both their old homelands and in their new homelands in the PkM region. Moreover, these lands, north *and* south, were affected significantly by the Native Land Court. All these owi and hapu were affected by the decisions of the Native Land Court relating to cases at, or near, Maungatautari (such as the Maungatautari cases themselves, and also the Rangitito, Wharepungu, and Rohe Potae cases) as well as cases in the PkM region (such as the Manawatu-Kukutauaki, Rangitikei-Manawatu, Horowhenua, and Himatangi cases). Two consequences follow from this. One is, as mentioned, that the full effects of the Court were cumulative and arose from the *combination* of Court cases in the wider “Kapiti” and “Maungatautari” areas. Further, the fact that cases affecting the claimant groups for whom this report has been commissioned caused particular problems. Managing Court cases in these two widely-spaced regions caused severe practical problems. Groups such as Ngati Kauwhata and Ngati Raukawa had to do their best to maintain a presence in large Native Land Court cases affecting their lands going on in different regions, which could be heard at more or less the same at Otaki, Levin, and Wellington or at Cambridge, Kihikihi, or Otorohanga. Ngati Kauwhata, for example, faced severe problems because they could not participate in separate cases going on at once and were forced to make a choice. By not attending a pivotal case in the Waikato, they had to try to make up for the consequences by seeking reinvestigations and rehearings, which proved to be very difficult and usually unsuccessful.

1.10 Two representative figures: Hitiri Te Paerata and Parakaia Te Pouepa

I will conclude this introductory section with brief representative biographical sketches of two key figures, Hitiri Te Paerata and Parakaia Te Pouepa and Hitiri Te Paerata, who in rather different ways exemplify aspects of Raukawa history during the 19th century. Both men spent much of their later lives trying to obtain justice for Ngati Raukawa in Courts and before parliament. This discussion also illustrates the importance of the north-south divide described in the preceding section of the report. The lives and times of these two prominent chiefs illustrate many of the themes of this report in microcosm.

Parakaia Te Pouepa, who is mentioned a great deal in this report, lived at times in Maungatautari and also around Otaki and Levin. Formerly a Raukawa chief of the Maungatautari area, he and his kin moved to Kapiti with the migrations and formally left his lands at Maungatautari in possession of Ngati Kahukura.⁷⁰ Mainly resident at Himatangi and then at Otaki, Parakaia was a dedicated Christian and

⁷⁰ Evidence of Parakaia Te Pouepa, Pukekura case, 1873 AJHR G-3, 13:
In 1828, Ngatikaukura [i.e. Ngati Kahukura], and Ngatiharu lived here, and at Tauaroa; in 1829, Ngatiraukawa went to Otaki; Ngatikaukura left this land; myself, and my uncle, Matauruao, my father's

was generally regarded “the head of the Anglican laity at Otaki.”⁷¹ At Otaki he was closely connected with Octavius Hadfield (CMS missionary at Otaki), T C Williams, Matene Te Whiwhi, Rewiri Te Whanui and Henare Te Herekau (both later ordained by Hadfield) and Wi Parata.⁷² This was a strongly Anglican or ‘Mihanere’ connection. Parakaia attended the Kohimarama conference in 1860, along with the Ngati Raukawa/Ngati chiefs (and cousins) Matene Te Whiwhi and Tamihana Te Rauparaha. Parakaia Te Pouepa was someone who spoke his mind, and at the Kohimarama conference he was “scathing” about Governor Browne’s mishandling of the Waitara crisis, especially his resort to force.⁷³ “The mischief”, he said, “has been contrived by Auckland. The evil is the work of the Council of Auckland”. In May 1864 Parakaia was one of a number of Raukawa rangatira at Otaki who wrote to Grey – on Grey’s own invitation - regarding Raukawa confiscated lands in the south Waikato.⁷⁴ He seems to have known Grey well, and in 1866 had a sensational interview with him, where Grey tried to browbeat him into consenting to the sale of the Rangitikei Block.⁷⁵ Judging from the records of this discussion Parakaia Te Pouepa was a forceful and intelligent character, more than up to holding his own in a one-on-one verbal battle with Grey. He was also a long-standing opponent of the Kingitanga and in a speech he made at Kakariki, Rangitikei, in 1870, argued that a combination of the tribes under King Tawhiao was “utterly hopeless” and suggested instead that the government of New Zealand be resumed directly by the Queen (perhaps indicating that as well as opposing the King movement he had also had his reservations about colonial politicians).⁷⁶

In March 1868, along with others of Ngati Raukawa, Parakaia applied to the Native Land Court for a certificate of title to the Himatangi (also known as the Rangitikei-Manawatu) block. In April of that year he led the Himatangi claim for Ngati Raukawa in the Native Land Court, where he strongly opposed the Ngati Apa claim to Himatangi. In his evidence he stressed Te Rauparaha’s invitation to Te Whatanui and Te Hukiki of Raukawa and – notwithstanding his own commitment to Christianity – told the Native Land Court that Ngati Apa had only begun to be “whakahi” to Raukawa after the advent of Christianity.⁷⁷ As the leader of the Himatangi claim Parakaia was not unnaturally bitterly disappointed with the Court’s findings and instructed his court conductor, T C Williams, to apply for a rehearing, an action which was not at all pleasing to powerful politicians in Wellington. After the case Parakaia played a key role in obstructing the Wellington provincial government’s efforts to survey its prized Manawatu-Rangitikei block. Parakaia was also closely involved in a number of critical cases in the Native Land Court in the Waikato region. In November 1868 he was the principal claimant and witness for Raukawa and Ngati Kauwhata in the Pukekura, Maungatautari and Puahue cases.⁷⁸ All of these blocks abutted directly on the confiscation boundary line in the south Waikato. Matene Te Whiwhi and other prominent Raukawa chiefs supported him, but the cases were not a success for Raukawa, any more than Himatangi

elder brother, left the land in the possession of Ngatikaukura, i.e., Kuruaro, Te Tapae, and all the lands in the map; we left it in the possession of Te Toanga, and Tapararo, Te Iwihara, Te Pae, Pango, Te Amo, and Huka; these are the only persons I know who were left in possession of the land

⁷¹ Ramsden, *Rangiatea*, 279.

⁷² Ramsden, *Rangiatea*, 279.

⁷³ See Lachy Paterson, *Colonial Discourses*, 158.

⁷⁴ DOSLI Hamilton 4/25, Waikato Confiscations: Compensation Court: Claims and Correspondence: Ngati Raukawa Claims (Maungatautari District) 1864-1866, RDB 106, 40626-40695.

⁷⁵ Wellington Advertiser, 11 May 1867, reprinted in T C Williams, *A Letter to the Right Hon WE Gladstone being an Appeal on behalf of the Ngati Raukawa Tribe*, J Hughes, Lambton Quay, Wellington, 1873.

⁷⁶ *Evening Post*, Volume VI, Issue 13, 28 February 1870, p 2.

⁷⁷ Himatangi Case, (1868) 1C Otaki MB 203-204.

⁷⁸ Pukerua Case, Native Land Court, reprinted in *Report from Mr James Mackay, Jun.*, 1873 AJHR G-3, 12-17. However, Ngati Kauwhata speakers in the 1881 investigation into Ngati Kauwhata claims at Maungatautari insisted that Parakaia had no authority to speak for them at the 1868 hearings.

had been. Much of his energy was then taken up with trying to obtain redress for Himatangi and other blocks.

Hitiri Te Paerata, our other leading chief selected for this introductory discussion, was a leading rangatira of the northern section of Ngati Raukawa in the 19th century who had a particular association with the North Taupo area. Hitiri Te Paerata was a veteran of the Battle of Orakau and later represented Ngati Raukawa in many Native Land Court cases and discussions with the Crown. He was born around 1822, so he would have been in his forties when he fought at Orakau with his father, brother and sister. (He told parliament in 1888 that he was 66 years old at that time, “but I fully intend to live for another sixty-six years”.⁷⁹) Hitiri’s main hapu affiliations were Ngati Wairangi and Ngati Te Kohera. His father was Te Hoariri, given the name “Te Paerata” (The Pilot) by Te Wherowhero.⁸⁰ When he gave evidence to the Tauponuiatia Commission he said that he lived at Waipapa and Pouakani, that he was Raukawa, and that his hapus were “Ngati Waerangi, Ngati Kohera, Ngati Parekawa, Ngati Moe, Ngati Korotuoahu, Ngati Takehiku”, all of these being hapu with interests in the Taupo region (but not confined to that).⁸¹ Hitiri affiliated to a number of descent lines but principally thought of himself as Ngati Taukawa. When addressing parliament in 1888 about the Battle of Orakau he referred to “my own tribe, the Ngati Raukawa”. He seems to have lived mainly at Mokai not far from Atiamuri, but also at Kaiwha, Waipapa and Pouakani. He had a famous house at Mokai named Wairangi, described by W J Phillips as follows:⁸²

This [house] was a carved house of superior design, dating from 1880, and burnt down in the extensive scrub fires at Mokau a few years ago. It was the house of Hitiri Te Paerata. Mr Te Tomo, of Mokai, supplied this information, but he could not say who the carvers were, save that the work was of good type and much better than that of the present building.

Wairangi was replaced with a new house named Pakake-Tairari, built for Hitiri Te Paerata at Mokai around 1900.

Hitiri fought on the Kingitanga side at Orakau, along with his brother, his father (Te Paerata) and his sister Ahumai; his brother and father died in the battle but Hitiri and his sister survived. Gilbert Mair thought that Hitiri Te Paerata and Teri Paerata both displayed “conspicuous courage” at the battle.⁸³ Ahumai was present also, was of the view that the women at Orakau were prepared to die along with the men (she said so, in no certain terms) and was wounded in the retreat. She survived the battle, and lived long enough to collect her old-age pension.

In February 1872 Hitiri Te Paerata was present at a key meeting at Ohinemutu. The main reason for the occasion was the opening of Tamatekapua, Ngati Whakaue’s new house at Ohinemutu, for which numerous iwi and hapu gathered. Maihi Te Ngaru, Perenara and Ngatio were present to represent Ngati Raukawa as well. H T Kemp, Civil Commissioner at Tauranga, was also present and the Ngati Raukawa chiefs spoke publicly in favour of a road being constructed across their lands from Ohinemutu to Te Whetu.⁸⁴ He had a house at Waipapa (Taupo), which was sometimes used as a polling place for the Western Maori electorate during general elections (eg in 1881). C.O. Davis, who knew Hitiri well,

⁷⁹ See Hitiri Paerata’s account of Orakau, reprinted in *Historical Review: Whakatane and District Historical Society Inc.*, November 1973, vol 21(2).

⁸⁰ See Pei Te Hurinui, *King Pōtatau*, (Polynesian Society, Wellington, 1959, reprinted by Huia Press, Wellington, 2010, 156. Te Paerata was killed in action at Orakau, as was his son Hone Teri. Hitiri Te Paerata and his sister Ahumai were also both present. Ahumai was wounded in the retreat.

⁸¹ Minutes of Evidence, Tauponuiatia Commission, p 127, MA 71/2.

⁸² W J Phillipps, *Carved Maori Houses of Western and Northern Areas of New Zealand*, R E Owen, Government Printer, Wellington, 1955, p 171.

⁸³ *Evening Post*, Volume LIX, Issue 112, 12 May 1900, p 1.

⁸⁴ *Further Reports from Officers in Native Districts*, 1872 AJHR F-3A, 5.

described him in 1870 as “a man of excellent character, and of considerable ability, deservedly respected by both Europeans and Maoris”.⁸⁵ He was something of a public figure, and in 1888 he gave a description of the battle of Orakau to an audience at parliament. Gilbert Mair acted as interpreter. Hitiri and Mair had of course been on opposite sides in the famous battle.

Hitiri Te Paerata attempted to represent Raukawa interests in the Native Land Court investigation of title to the Taupouuiatia block but was unable to be present in Court in time as he found he was summoned to appear in the Magistrate’s Court at Cambridge at the same day. He obtained legal advice from one of the Maori Land Court judges who had sat on the Taupouuiatia hearing, Judge Brookfield, who for reasons that have never been satisfactorily explained was dismissed some weeks into the hearing. In January 1888 Hitiri sent a very detailed petition to the Chief Judge of the Native Land Court explaining in great deal his complaints about Taupouuiatia.⁸⁶ Later Hitiri was involved in the Taupouuiatia Royal Commission, which however declined to remedy his complaints.⁸⁷ Hitiri seems to have mainly concentrated his energies on land issues around Titiraupenga, Mokai and North Taupo rather than at Maungatautari or Patetere, although he certainly did play an influential role in the steps leading up to the great Rohe Potae case in 1886. He was still alive in 1900, which was when a new wharenuui was built for him at Mokai. Hitiri Te Paerata and Parakaia were both chiefs of Ngati Raukawa and collectively were present at some of the most dramatic events of 19th-century Maori history, including the Battle of Orakau, the Kohimarama Conference of 1860, and the Rohe Potae negotiations of the 1860s (recently analysed at length in the Waitangi Tribunal’s recently-released *Rohe Potae* report). Something else that Parakaia Te Pouepa and Hitiri Te Paerata had in common was that both had much experience with the workings of the Native Land Court and the effects of the Native Lands Acts.

⁸⁵ *Nelson Examiner and New Zealand Chronicle*, Volume XXIX, Issue 44,1 June 1870, p 7.

⁸⁶ Hitiri Te Paerata to Chief Judge of Native Land Court, Cambridge, 18 January 1888, copy on Taupouuiatia Closed Correspondence file, Te Kooti Whenua Maori, Rotorua.

⁸⁷ See *Report of the Royal Commission Appointed to Inquire into Certain Matters Connected with the Hearing of the Taupouuiatia Block*, 1889 AJHR G-7, 3.

2. Documents: primary and secondary sources for the history of the Native Land Court in the PkM region

2.1 Introduction

This chapter is an exploration of the source materials available for the reconstruction of Ngati Raukawa ethnohistory in the 19th century, paying particular attention to the Minute Books of the Native Land Court. This is a subject that the author has been working on and thinking about for many years, along with a number of other investigators. The Minute Books are a very rich source, but also a problematic one.

The sources can be divided, firstly, into the obvious categories of primary and secondary sources. The principal primary source relied on for the purposes of this report are the Minute Books of the Native Land Court, which are discussed separately below. Other primary sources include printed primary sources, notably the material published in the *Appendices to the Journals of the House of Representatives (AJHR)* and manuscript material, including the vast wealth of material held by Archives New Zealand in its various collections, and other manuscript collections relevant to Ngati Raukawa held by the Alexander Turnbull Library, the Auckland Public Library, and other institutions. As a result of an informal division of labour amongst the contracted historians working on this inquiry, this report is oriented almost entirely around the Minute Books of the Native Land Court, making it unnecessary for me to describe other primary source materials in detail.

2.2 Chief Judge Fenton's *Important Judgments* (1879)

There are, however, some particular printed sources relating to the Native Land Court and its sister institutions which need to be mentioned. Until the publication of the two volumes edited and written by myself and published in 2013 and 2015 no other published collection of the 19th century decisions of Native Land Court judgments existed,⁸⁸ apart, that is, from the important exception of the collection published under Chief Judge Fenton's own name in 1879 as *Important Judgments delivered in the Compensation Court and Native Land Court, 1866-1879* (cited in this report as Fenton, *Important Judgments*.)⁸⁹ This collection is of some significance for the history of Ngati Raukawa engagement with the Native Land Court. Fenton's selection of important decisions contains three judgments directly relevant to Ngati Raukawa (Rangitikei Manawatu,⁹⁰ Kuketauaki,⁹¹ and Horowhenua⁹²) and one of some indirect importance, "Aroha"⁹³ (i.e. Te Aroha, a mountain in the Kaimai ranges on the boundary of the Waikato and Hauraki districts).

⁸⁸ There have been more modern guides to the decisions, including the publication known as *Tai Whati* [publication details] and the reports in the *Maori Law Review*. However, judgments of the Maori Land Court and the Maori Appellate Court are still not fully reported in law reports format to this day, although decisions since 1993 can be found online.

⁸⁹ F D Fenton, *Important Judgments delivered in the Compensation Court and Native Land Court, 1866-1879*, published under the direction of the Chief Judge, Native Land Court, Henry Brett Publishers, Auckland, 1879. The original is now very difficult to find (I have never seen a copy). The text was reprinted by Southern Reprints in 1994, and even the reprint is now quite rare.

⁹⁰ Fenton, *Important Judgments*, 101-108.

⁹¹ Ibid, 134-135.

⁹² Ibid, 136.

⁹³ Ibid, 109-133.

Some general comments can be made about Fenton's collection of judgments as a whole, after which I will turn to the judgments relating to Ngati Raukawa referred to above.⁹⁴ In his Preface to the book, Fenton explains its purpose as arising from the frequent requests made by various people to obtain copies of "judgments delivered in the Compensation Court and Native Land Court".⁹⁵ For this reason it was "advisable" to publish "all the more important of these in a collective form", which would make them "easily accessible" to those who wanted them "and also as a record of some of the most interesting events in Native history".⁹⁶ Fenton went on to explain that the Native Land Court often had to embark on a historical inquiry "inasmuch as Native title is founded either upon long-continued occupation from ancestral times, or upon conquest". For this reason, the judgments included in the collection contain a great deal of "interesting material" relating to Maori history, which, Fenton thought, "will prove invaluable to any one who may hereafter compile a history of the Maori race".⁹⁷

As can be seen from Fenton's Preface, his collection is not confined to decisions of the Native Land Court (the Native Appellate Court did not come into existence until 1894) but includes the most important decisions of the Compensation Court, the latter being set up under the New Zealand Settlements Act 1863 to investigate confiscated lands. The whole collection includes only 19 judgments, four Compensation Court decisions, and 15 Native Land Court decisions. With respect to the Native Land Court, Fenton's collection is a tiny sample of the caselaw of the Native Land Court by 1879, and many decisions which we would regard as significant – such as the Chatham Islands decisions of 1870 or the Kaueranga foreshore case (also 1870), for example – are not included. It is plain from Fenton's Preface that the selected judgments were included mainly because they might be of interest to persons investigating Maori history, and nearly a third of the whole book is comprised of just one judgment, Fenton's own decision relating to the Orakei block in Auckland, which contains a great deal of material on the traditional history of the Auckland Isthmus. None of the decisions have any introductory commentary or notes, and some of them are incomplete (much of the Compensation Court's lengthy Oakura decision is missing from the version printed in *Important Judgments*).

The fact that the Rangitikei-Manawatu, Kukutauaki and Horowhenua decisions *are* included shows that Fenton thought that these decisions were especially historically interesting, and perhaps also that many people had tried to find copies of them, significant facts in themselves. The Himatangi decision of 1868, given by Judge Rogan, which closely interconnected with the Rangitikei-Manawatu case heard the following year, is not included. The 1869 decision, printed in Fenton's collection, is not found anywhere in the Otaki Minute Books, or anywhere else in the manuscript records of the Native Land Court (at least, I have not succeeded in finding it.) There is, however, a manuscript copy of the evidence given at the rehearing held by Archives New Zealand, but not recorded in the ordinary Minute Books of the Court to my knowledge.⁹⁸ The Kukutauaki and Horowhenua judgments (1873) printed in Fenton's collection, on the other hand, are the same as the manuscript versions found in the Otaki Minute Books of the Court,⁹⁹ which also contain records of the evidence given in both cases.

One other decision in Fenton's collection needs to be traversed, the "Aroha" decision of 1871. This case related to the area around Mt Te Aroha near the modern town of the same name in the Hauraki-Waikato region. Ngati Raukawa did not participate in the case, which was a courtroom battle between

⁹⁴ This discussion builds on my earlier analysis of Fenton's *Important Judgments* in Boast, *Native Land Court 1862-1887*, 227-9.

⁹⁵ Fenton, *Important Judgments*, "Preface" (not paginated in original).

⁹⁶ Ibid.

⁹⁷ Ibid.

⁹⁸ Wellington Native Land Court, Notes of Evidence, Rangitikei-Manawatu Claims, MA 13/78B.

⁹⁹ Judgments at (1873) 1 Otaki MB 176-178; (1873) 2 Otaki MB 54-55.

Ngati Haua and Hauraki groups (Ngati Maru, Marutuahu). The Te Aroha case (cases, more accurately) were nevertheless important as they played an important role in the construction of the Native Land Court's historical understanding of the events which took place in the early 19th century in the Waikato and Hauraki regions, and which conditioned the Court's understanding of Raukawa's history in other cases in important ways. The Te Aroha judgment printed in Fenton's *Important Cases*, like the Rangitikei Manawatu judgment, is the *rehearing* judgment, although there is no way of telling this from the printed text. The first instance judgment, given by Judge Rogan in 1871¹⁰⁰, is not included in Fenton's collection. In this case the omission is a glaring one, as the two cases come to quite different answers: at first instance the Court awarded Te Aroha to Ngati Haua, but the rehearing Court reversed this and awarded the block to Hauraki. This division of opinion about Waikato history in the Native Land Court is significant, as will be discussed later in this report.

2.3 The Minute Books of the Native Land Court as historical source material

The primary source for the reconstruction of Ngati Raukawa traditional history are the Minute Books of the Native Land Court, an intimidatingly bulky source. John Hutton has calculated that there "are around 8,500 pages of Native Land Court minute book evidence relevant to the determination of Raukawa lands"¹⁰¹, referring only to the northern half of the iwi (this is a conservative estimate in my view). There is probably even more for Raukawa ki te Tonga. The Otaki MBs are one of the most comprehensive and bulky of all Minute Book sequences, taking up 65-odd volumes up to 1920 of roughly 400pp each.

The testimony, both evidence in chief and in cross-examination, was translated into English and recorded in the Court's Minute Books, along with the judgments of the Court and other ancillary matters such as notes of Court hearing fees and survey expenses. There are now thousands of Minute Books in continuous sequences running back to 1865, probably forming one of the largest records of a judicial encounter between an indigenous people and a European-style court anywhere in the world. The importance and scale of this record is undeniable, although has to be conceded that it is not always easy to use (or decipher, given that until 1910 it is all handwritten). As Keith Pickens has written:¹⁰²

The limitations of the Native Land Court minute books are well known. They are, normally, notes in English, of evidence originally given in Maori. The accuracy of the translations and transcriptions is unknown. The quality of the original evidence itself cannot be assessed. Even as a simple record of proceedings, the minute books are sometimes deficient.

The minute books were exactly that: standard 19th-century leather-bound volumes of quarto size, typically of 400 or so pages, which were filled up with handwritten transcriptions of the evidence, written down by the Court clerk as the interpreter translated it from Maori into English. The Court minute books were an official record, kept by the Court clerk and which were the Court's property. The Native Land Court was a mobile court, mostly sitting in the 'court towns' (such as Cambridge, Otorohanga, Marton and others) close to the main areas of Maori population and areas of uninvestigated land but also at times at much more isolated places, including the Chatham Islands. There were periods of particularly intense activities at various places as the Court moved into previously uninvestigated areas, as at Cambridge from 1879-1886 – particularly important for Ngati Raukawa - or Otorohanga

¹⁰⁰ (1869) 2 Waikato MB 300-304; also Boast, vol 1, NLC45, pp 544-550, Judgment at pp 549-50.

¹⁰¹ Hutton, *Raukawa Traditional History Summary Report*, 2009, (Wai 898 Doc#A86), 7.

¹⁰² Keith Pickens, *Operation of the Native Land Court in the National Park [Waitangi Tribunal] Inquiry District*, report commissioned by the Crown Law Office for the Waitangi Tribunal Wai 1130 National Park Inquiry, 2005 (Wai 1130, National Park Inquiry, Document No. A50), p 4.

from 1886-1893. The judges themselves had their own personal minute books, which were their own property, which have sometimes survived, and the Chief Judges maintained separate minute books of their own to deal with rehearing applications and other matters of judicial administration. Sometimes the judges' minute books have been added to the public collections, meaning that for some cases there is a double or even a triple record that can now be consulted: i.e. the judge's (or judges') minute books, as well as the official court volumes. On other occasions the judges kept their personal minute books as their own property, throwing them away when they no longer wanted them. This occurred with Judge Wilson, who freely admitted to the Horowhenua Commission that he had thrown away his own copy of the notes of the Horowhenua partition case in 1886, which was very unfortunate given that the official minutes of this key partition are extremely garbled and more or less indecipherable. Wilson explained to the Native Appellate Court in 1897:¹⁰³

I trusted entirely to my own notes, which I kept several years, along with about a hundredweight of notes of other blocks, and then burnt them. I saw no reason for keeping them, as I was no longer a Judge, and the time for rehearing having long expired. I treat my private papers in the same way, and have done so for the last thirty years. It is different now; the Judge's notes go into the Registrar's strong-room.

Other judges will have done the same. The Court sat with Maori Assessors, who kept their own minute books as well, and sometimes these have also survived. This can mean that some cases, such as the Omaha block rehearings in 1892 are particularly well-recorded. Mostly the books are in English, recording the translation of the evidence, but there are some are in Maori. There are also some examples of manuscripts kept by Maori people themselves, sitting in the Courtroom and recording verbatim the evidence as given in Maori. For this report, however, I have relied on the standard English-language minute books, principally the Otaki and Waikato sequences.

The extent to which traditional history is recorded in the Court's minute books varies a great deal from region to region. Some regions, such as Otaki, Whanganui, Rotorua, Hawke's Bay, the southeastern Waikato, the King County and the Bay of Plenty are richly documented. For other areas there is much less material. The variation is explained by the differing tenurial histories of New Zealand's regions. The Native Land Court sat very seldom in Taranaki, for example, and the 19th century Taranaki minute books contain very little material of interest. That was because so much land in the province had been confiscated. The tenurial history was no less complicated and eventful in Taranaki than elsewhere: it is simply that the Native Land Court minute books are not a rich source of material.

There has been some debate about whether evidence given in the Native Land Court can be entirely trusted as a source for ethnohistorical research since (obviously) it was given in a courtroom and was being given to support a claim to a parcel of land.¹⁰⁴ Despite a degree of hesitation it nevertheless continues to be used for this purpose. Other types of evidence, however, such as the location of resource-gathering places, fishing grounds, villages and so on would appear to be less capable of manipulation and more objective in a general sense. The Court would also regularly conduct site visits to check on the reliability of testimony of this kind. The Native Land Court record is of such a scale and depth that it is used routinely both for academic works of ethnohistory and for research reports for the Waitangi Tribunal investigation and inquiry process. It is too big to ignore. Thus one aspect of the importance of the Native/Maori Land Court for New Zealand historiography is simply its record, often mined and analysed by historians, anthropologists, and by Maori people themselves

¹⁰³ 1897 AJHR Session II 5.

¹⁰⁴ See Angela Ballara *The Origins of Ngati Kahungunu* (PhD thesis, Victoria University of Wellington), 504; David Simmons *The Great New Zealand Myth: A Study of the Discovery and Origin Traditions of Maori* (AH and AW Reed, Wellington, 1976) at 9; Ballara, *Iwi*, 43-51.

interested in researching family or tribal history or the tenurial history of parcels of land. Yet this wealth of material is a problem in itself. As Angela Ballara has pointed out, “[n]o one person can hope to wade through and process all the information in all the minute books in all the land court circuits”.¹⁰⁵ In fact reading – and processing – all the information relating to Ngati Raukawa alone is not possible either, except perhaps as a lifetime’s study, although I have done the best I can to make the report comprehensive. Essentially, I have studied a number of cases intensively, in particular Himatangi (1868), Kukutauaki (1872-3), Horowhenua (1873), the Aorangi title investigation and its rehearing (1873, 1878), Maungatautari (1868, 1884), the Ngati Kauwhata Commission (1881), the Rohe Potae investigation (1886), the Horowhenua Commission (1886), the Rangitoto case in the King Country (1898) and the Horowhenua Appellate Court decision in 1912. I have also drawn on other cases, however, which I have considered more briefly, or which I was aware of from other research I have done.

The fullest accounts of Ngati Raukawa’s pre-1840 history are indeed to be found in the Minute Books of the Native Land Court which are thus an indispensable record. This report draws to a substantial degree from material in the Otaki, Waikato, Wellington, Nelson, Waikato, Otorohanga and Chatham Islands Minute Books (especially the first two sequences). That aside, the reliability of Minute Book testimony is a matter of some debate. In the present case, the evidence has the particular value of being often given by eyewitnesses who were personally involved in the events of the 1820s and 1830s. The evidence is often substantial. Whether the Court’s minute books are inherently less reliable than manuscripts, diaries and books is debatable.¹⁰⁶ A strong case could be made that evidence given in the Court, in contentious circumstances before a packed courtroom of local Maori people all of whom were keenly interested in the outcome of the case, is in fact to be preferred to the evidence given to Pakeha ethnologists and ethnohistorians (such as Alexander Shand, Edward Tregear, John White, S.Percy Smith, and Elsdon Best) by Maori informants. The latter process has, needless to say, well-known risks of its own. M.P. K. Sorrenson has called White’s *Ancient History of the Maori* a “scissors and paste compilation from note books that White paid literate Maoris to fill up with traditions gathered from elders”.¹⁰⁷ S.Percy Smith’s account of Ngati Toa’s departure from Kawhia was largely based on notes taken by John Ormsby from Major Te Wheoro’s and Hone Kaora’s evidence in the Native Land Court in 1886.¹⁰⁸ (I have read and transcribed the original evidence myself, which is included in the Appendix.) Smith tells us nothing about the objective of Te Wheoro’s evidence, which was in fact to demonstrate a claim to Kawhia by Ngati Mahuta on the basis of *take raupatu*. In fact Te Wheoro’s claim was *rejected* by Judge Mair, who concluded that “we are of opinion that there was no conquest of

¹⁰⁵ Ballara, *Iwi*, 43.

¹⁰⁶ On this problem see Brent Layton, “Alienation Rights in Traditional Maori Society: A Reconsideration”, *Journal of the Polynesian Society*, vol 93, 1984, 423; Alan Ward, “Alienation Rights in Traditional Maori Society: a comment”, *Journal of the Polynesian Society*, vol 95, 1986, 259. The fullest and most comprehensive discussion may be found in Angela Ballara, *The Origins of Ngaati Kahungunu*, Ph.D. Thesis, Victoria University of Wellington, 1991, Appendix 1.

¹⁰⁷ Sorrenson, *Maori Origins and Migrations*, (Auckland University Press/Oxford University Press, Auckland, 1979) 43. Sorrenson says that White’s volumes were in turn “mined” by Smith for his *Peopling of the North and History and Traditions of the Taranaki Coast*.

¹⁰⁸ S.P. Smith, “History and Traditions of the Taranaki Coast”, *Journal of the Polynesian Society*, vol. 18, 1909, p.50: “I have been favoured by Mr James Cowan with the loan of a copy of the notes taken by Mr John Ormsby at the Native Land Court, Otorohanga, in 1886, detailing the evidence given by Major W. Te Wheoro (sometime M.H.R.) and Hone Kaora, in the case of the title to Kawhia, from which is taken the following information as to events in that place in the early times of Te Rau-paraha.” Why Smith did not read the original Minutes for himself I am not certain. Perhaps the Land Court material was not readily accessible to scholars in those days.

Kawhia according to the strict meaning of the term, but that Te Rauparaha and his people went away quietly at a time when there was no fighting”.¹⁰⁹

This, I believe, shows only too clearly the risks involved of assuming that nineteenth-century ethnographers are presenting a reasonably objective analysis of the traditional accounts, and if anything indicates that a comprehensive presentation of the original Minute Book material is vastly to be preferred. In the Land Court, at least, the evidence was given in open court, often in highly contentious circumstances (perhaps the most contentious of all being the seemingly endless hearings regarding the rights of the non-sellers in the Rangitikei-Manawatu blocks), and was subject to questioning and cross-examination, more than can be said for personal accounts such as letters and diaries or the efforts of nineteenth-century ethnographers.

As might be expected, the Land Court evidence is given in a highly traditional idiom, employing categories of thought and ordering very typically Maori, and thus not readily translatable into the concerns of modern historiography. Historians might be interested in such matters as structural changes to Maori society brought about by the coming of the musket and the musket wars, or the rise of small hapu-based personal followings as the main means of Maori social and military organisation in the early nineteenth century, but the history found in the minute books is of a static, unchanging kind. Historical events are explained in terms of killings and revenge-killings, utu and retaliation for utu, putting out the fires of one's enemies, fires, fights and battles, withdrawals and invasions, peace-makings and diplomatic marriages. These were the matters that were of most interest to Maori themselves. One exception to this is the discussion of the effects of the coming of Christianity, some witnesses claiming that the missionaries had induced formerly subject tribes to become “whakahi” (cheeky) and to pursue unwarrantable claims in the Native Land Court. This is an important point and is discussed fully below.

Often the history will be presented as a straightforward linear narrative with not much commentary, but a comparison of a number of descriptions of the same events by different witnesses makes very plain that this apparent simplicity is deceptive. In fact the material presented is often highly selective, carefully chosen to back up a particular reading of history which gains its force from an abundance of circumstantial detail. Although sometimes the evidence-in-chief is somewhat disjointed and is obviously only a set of responses to questions, in other cases the evidence is quite obviously a carefully prepared self-referring narrative, carefully structured, with quotations chosen to underscore important points and for dramatic effect. As with any kind of historical discussion, and most Native Land Court evidence is about historical events, the issue is not so much the events themselves, but their interpretation. This is true of all historiographies. It is well-known, for example, that relationships between the Crown and Parliament broke down disastrously in 1640-1642, leading to the outbreak of the English Civil war, but interpreting and explaining this event is another matter – a problem which has generated thousands of books and scholarly articles. In the same way it was the interpretation of events, rather than the events as such, which were at the heart of debate in the Native Land Court. It was agreed by all parties, for example, that the battle of Taumatawiwi had occurred, but its interpretation was highly contested (whether it resulted in a clear victory for either side, what its immediate political consequences were, and so forth). To take another example, a key one for this report, “[a]ll the claimants and the counter-claimants of the Horowhenua block discussed the coming of Te Whatanui and Ngāti Raukawa, though they debated the nature of their relationship with Muaupoko”.¹¹⁰

¹⁰⁹ Judge Mair, Rohe Potae judgment, (1886) 2 Otorohanga MB 55, 66. Of course I do not mean to suggest that factual conclusions by Judges of the Native Land Court must always be accepted as authoritative.

¹¹⁰ Ballara, *Iwi*, 49.

The Minute Books are, as far as one can judge, a fairly reliable record of what was actually said.¹¹¹ However this cannot always be assumed, and especially not with probably the most important case discussed in this report, the Himatangi case of 1868. In the case of the Himatangi hearings of 1868 the MB that has survived, and which all historians to date have relied on, is not actually the formal Court minute book, but Judge Smith's own notes of the hearing. These notes formed part of a copying project that took place in 1890 by which the Judge's notes for the early hearings at Whanganui, Otaki, the Wairarapa, and Wellington were recopied and entered into the minute book sequence. This must have been done because the Court's MBs at Otaki etc. from 1865-1872 have been lost. The newspapers preserve much more of what was actually said, at least in this instance. For example Thomas Williams' opening address to the Court in Maori is recorded in the surviving minutes only as brief disjointed notes, whereas the *Wellington Independent* and the *Evening Post* printed an English translation of his lengthy address in full. Much of the evidence given in the case was recorded fully in the newspapers, sometimes more fully than is recorded in Judge Smith's notes (although not necessarily). All of the material contained in the newspapers has been transcribed carefully by Alex Boast and placed in chronological sequence (this material is set out in the Appendix). It is in my view not possible to give a full analysis of the case without studying carefully both Judge Smith's notes *and* the newspaper material. The newspaper material, while full of typographical mistakes, is often much clearer and easier to follow than the judge's disjointed (and at times somewhat garbled) notes. Some important procedural aspects of the case, including the Crown's argument (rejected by the Court) that the Court had no jurisdiction to hear the case at all are recorded only in the newspapers. The cross-examination and re-examination are often much easier to understand from the newspaper accounts than from the judge's notes. And, as noted above, the newspapers provide very full versions of the addresses of counsel.

There are also linguistic and conceptual issues with the Court record. The fact that the MBs are almost invariably in English, as Pickens points out, pose other sorts of problems (although there in fact some volumes in Maori, and occasionally notes of the original Maori testimony have survived in manuscript). Questions obviously arise with regard to the reliability of the English text, which most of the time is all that has survived. Terms used by Maori speakers, such as 'utu', 'mana', 'taua', 'take', the many variants of 'rongo', 'koha' 'ohāki' and so on convey complex ideas which can be, quite literally, lost in translation.¹¹² For example it became important in the Kukutauaki and Horowhenua cases whether Te Whatanui's decision to give shelter and protection to Muaupoko was a 'peacemaking' or just an act of 'kindness' a kind of *noblesse oblige*. This distinction was pivotal, because a 'peacemaking' implied a negotiation between equal parties, while a mere act of kindness did not. The English text of the minutes makes it clear that an important discussion was being carried on, and that key distinctions were being drawn by the opposing witnesses. However we only have the English translation of these discussions in the Court and the precise vocabulary as used by the Maori-speaking witnesses has been lost. What *precisely* were they talking about? Probably the speakers whose words

¹¹¹ Occasionally, especially with important cases such as the Himatangi case, the evidence and legal argument was printed in full in newspapers such as the *Evening Post* and the *Daily Southern Cross*, which allows the Minute Books to be cross-checked; and in that case at least, the material in the newspapers and in the Minute Books is not materially different, although it tends to be somewhat fuller, and gives comments on the behaviour of the witness, how he or she was coping with the cross-examination and so on, details which are never found in the Minute Books.

¹¹² For a richly-documented guide to these and other key concepts, see Richard Benton, Alex Frame, and Paul Meredith, *Te Mātāpunenga: A Compendium of References to the Concepts and Institutions of Maori Customary Law*, Te Mātāhauariki Research Institute, University of Waikato, and Victoria University Press, Wellington, 2013 [Benton, Frame, and Meredith, *Te Mātāpunenga*].

have been translated as ‘peacemaking’ would have used ‘houhou i te rongo’, itself a complex concept with several shades of meaning, but we cannot be certain.¹¹³

Another example, discussed by Ballara, is the term ‘utu’, which Maori speakers would have often used in evidence, which would typically have been translated as ‘vengeance’ or ‘revenge’. The problems are wider than mere mistranslation:¹¹⁴

A Maori witness gave evidence concerning a series of battles between Ngāti Awa and its allies and various Tūhoe hapū. His words in Māori were translated as: ‘The Ng. [āti] Awa several times tried to get satisfaction, but the debt was not fairly wiped off for a long time.’ This is a good translation, probably of such words in the second phrase as ‘kua roa rawa kīhai i ea te utu’, but many times in the Land Court and elsewhere such words in Māori would have been translated as ‘for a long time no vengeance was obtained’. That nineteenth-century Māori accounts could, sometimes, seem to express this search for utu as one for simple revenge or ‘vengeance’ reflects the introduction of exotic concepts, and the limitations inherent in interpretation from one language into another.

Yet another term is “half-caste”, frequently seen in the MBs to describe a person not of mixed Maori-European ancestry, but Maori people affiliating to two or more hapu/iwi. For example the English-language record of the evidence in the 1881 investigation to Ngati Kauwhata claims at Maungatautari has Hakiriwhi describing Wiremu Tamihana as “a half-caste of Ngatikauwhata” – meaning that he had descent lines from both Ngati Haua and Ngati Kauwhata (in fact the witness describes himself in the same way, saying that he was of “Ngatihaua and half-caste of Ngatikauwhata”).¹¹⁵ In cross-examination he said that the chief Wiwini “belonged to Ngatihaua half-castes of Ngatikauwhata”.¹¹⁶ In the same case Hori Wirihana of Ngati Haua spoke of the “Ngatikauwhata half-castes”: the “Ngatikauwhata half-castes here were on the same side and working in concert with the resident Ngatihauas”.¹¹⁷ One wonders what term in Maori was translated by “half-caste”, a culturally loaded example of Victorian racial classification if ever there was. In fact Maori people derived rights in land “from multiple, not single strands of inheritance”.¹¹⁸

Similar problems arise from the terminology used to describe Maori social organisation. This point has been addressed by Ballara in her book *Iwi* (1998):¹¹⁹

¹¹³ See the entry on Houhou i te Rongo in Benton, Frame, and Meredith, *Te Mātāpunenga*, 86-93. The learned authors define ‘houhou i te rongo’ as ‘peace after war or conflict’. It seems safe to assume that this would have been the Maori term used by witnesses in the Kukutauaki and Horowhenua cases. But this is just a guess. It is important to know *exactly* what term was employed. The impression I gain from reading the relevant section of *Te Mātāpunenga* is in any ‘houhou i te rongo’ there would normally be elaborate discussions and formal ceremonial – if the evidence failed to disclose any evidence of such formalities, then it would be a proper inference that Te Whatanui’s actions could not be characterised in this way. The term ‘rongo’, according to Benton, Frame, and Meredith carries connotations of news, fame, etc (ibid, 86):

Rongo ‘peace after war or conflict’ is expressed especially through two idioms: *Hohou i te Rongo* ‘make peace’ (the ordinary meaning of *hohou* is ‘lash together’), and *Maunga Rongo* ‘attaining a state of peace (from *mau* ‘fixed, continuing, established). Associated idioms are *Rongo ā whare*, peace brought about by the mediation of a woman, *Rongo ā marae*, peace brought about by the mediation of a man, and *Rongo taketake* ‘well-established peace’. In other contexts the word *rongo* means ‘apprehend through the senses other than sight’, and in the context of hearing includes ‘news’ and ‘fame’.

¹¹⁴ Ballara, *Taua*, 83.

¹¹⁵ Evidence of Hakiriwhi, Pukekura case, Investigation of Ngati Kauwhata claims to Maungatautari, 1881 AJHR G2A, 11.

¹¹⁶ Ibid, p11.

¹¹⁷ 1881 AJHR G2A, 18.

¹¹⁸ Ballara, *Tribal Landscape*, 181.

¹¹⁹ Ballara, *Iwi*, 272.

Many of the difficulties of identification and categorisation of named groups stemmed from the need to work in two languages. Interpreters and judges imposed their own choice of terminology, both on their evidence and in their judgments. It was their choice, for example, to translate or use the Māori term ‘iwi’ as tribe, people, or nation; ‘hapū’ as tribe, subtribe, or clan; or, as often happened (implying that interpreter or judge could find no suitable equivalent), to leave these terms in Māori. Terms such as ‘hunga’, ‘tāngata’, ‘rangatira’, ‘ariki’ and especially, ‘mana’ received the same anomalous treatment. In much the same way, English terms such as ‘ownership’, ‘authority’, ‘patronage’ or ‘client’ raise questions about which Māori term they were intended to translate.

Another problem with the MBs is the way the evidence is usually written down. When recording cross-examination the clerk did not normally write down the questions and the answers (although there are some exceptions), but would write down the cross-examination as a continuous text. An example is the record of Keepa Te Rangihiwini’s cross-examination in the Horowhenua case:¹²⁰

I object to Ngatiraukawa claim over land shown on the map. I swear that Ngatiraukawa did not take any land. Ngatiraukawa have no part of this land shown on the map, they are merely squatters. We did not consent to the occupation by Ngatiraukawa of the land shown on the map. We have been driving off the Ngatiraukawa continually, and by doing so we have been able to bring it before the courts. According to Maori custom 50 years occupancy gives no mana over the land. I don’t know where you get the fifty years from – if any of my tribe were to take land the original possessors would drive them off, if they were strong enough – although such lands as refer to were taken before the establishment of government those who took the land could be driven off now – I know the Ngatiraukawa obtained Crown grants for portions of the land on which they were living, I am living on a portion of it now, and we have always been telling Ngati Raukawa to go away – I have driven Ngatiraukawa off and I am doing it now.

In fact this is the record of a question-and-answer session in Court. So the exchange would have in fact gone something like: “Do you object to the Ngatiraukawa claim over the land shown on the map? – “Yes”; “Did Ngati Raukawa take any of the land? – “No”; “Does Raukawa have any part of this land shown on the map? – “No, they are merely squatters” – and so on. This explains the two sentences “According to Maori custom 50 years occupancy gives no mana over the land”, followed by “I don’t know where you get the fifty years from”.

However it is also possible (I would say very likely) that evidence-in-chief is recorded in the same way, or at least often is, so that the passages in the MBs that ethnohistorians place so much emphasis on are *not* in fact the record of an extemporaneous speech, but are in fact records of questions and answers written out in the same way as cross-examination. This would explain why the evidence-in-chief of claimants often seems a little disjointed. It is safe to assume that witnesses did not read from written briefs of evidence, and that while many would have had the confidence to speak extemporaneously at length, others would not, and would be examined by counsel or by the conductor – a question and answer session that would have been conducted in Maori, translated aloud by the interpreter, and written out as a continuous narrative. Even an experienced and confident witness like Matene Te Whiwhi would have been examined by counsel or the conductors, although he would have been someone very able to elaborate his answers. Thus to take an example from the same case, there is Matene Te Whiwhi’s evidence about the “kindness of Whatanui”, where we have Matene recorded as saying:¹²¹

I do not know of any peacemaking between Whatanui at the time of the killing of these people. It was at a much later period when I heard of Whatanui’s kindness towards them, not his peacemaking. I swear

¹²⁰ (1872) 1 Otaki MB 55.

¹²¹ (1873) 1 Otaki MB 149.

most solemnly that I know nothing of the peacemaking between Whatanui and Muaupoko. All I know is that it was the kindness of Whatanui not a peacemaking. As for Piripi Rangiatuhia said in Wellington respecting peacemaking, he used a wrong word.

Again, the *actual* exchange, bearing in mind that leading questions are not allowed in evidence-in-chief, was probably something like this: “Do you know of any peacemaking between Whatanui at the time of the killing of these people?” – “No”; “What did Whatanui do, and when did you learn of it?” – At a later period, it was a kindness, not a peacemaking”; “What do you say about a peacemaking between Whatanui and Muaupoko?” – “I solemnly swear I never heard of it”; Did you hear what Piripi Rangiatuhia said in Wellington?” – “Yes”; “What do you say concerning what he said about a peacemaking? – and so on. Counsel or conductors in the Native Land Court would not have placed witnesses on the stand and just allow them to talk for hours on end about whatever came into their heads, any more than they would in a modern court (in both cases there would soon be a sharp reaction from the bench). The fact that the MBs record evidence given in courtroom setting must never be forgotten – an address by Matene Te Whiwhi on a marae, and his testimony in the Native Land Court are very different things, the latter being far more managed than the former. It is sometimes said that Maori witnesses learned to “tailor” their evidence to meet the criteria developed by the Native Land Court, but this is to minimise the role of counsel or the conductors. It is they, as experienced practitioners, who would have done the “tailoring”. Such management of testimony is an *inevitable* consequence of using a judicial body to inquire into matters of importance.

Some witnesses will have spoken extemporaneously more than others, especially in response to open-ended questions (“Tell the Court about the incidents that happened on the heke to Kapiti”, perhaps.) It is also possible that the opening addresses to establish a *prima facie* case in the Court may have been formal addresses to the Court without questions. The threshold to establish a *prima facie* case was not high. Three matters were usually addressed: the boundaries of the block before the Court (“I know the block before the Court, and can point out the boundaries”, following which the boundary points would be named, the witness speaking to the plan before the Court, which must have been placed on a board or the wall so everyone could see it), the principal ancestors for the block, and bases of the claim, the *take*. Following the establishment of a *prima facie* case the counterclaimants were required to announce themselves (“Objectors challenged”), following which the counterclaimants would give their evidence, each counterclaim being introduced by its conductor – and the evidence would be cross-examined, both by the counsel/conductor for the claimants and also by the other counter-claimants – with the claimants going last, giving the claimants an obvious tactical advantage in the courtroom. (They would be able to orient their evidence towards rebutting points made by the counter-claimants.) The opening statement does not seem to have been subject to cross-examination. The speaker who made the opening statement would reserve his (or, very occasionally, her) main evidence until the second half of the case, when the full evidence as to ancestral descent, landmarks, resource-gathering places, cultivations, burial places, the history of the block and its people etc. would be given.

2.4 The Otaki MBs

The major source utilised for this report are the minute books in the Otaki sequence. There are (by my count) 65 volumes of volumes of the Otaki MBs from the first sittings of the Court in the region in 1866 until 1920 – a substantial amount of material.¹²²

¹²² Otaki MBS 1, 1B-1G, 2-21, 21A, 22-38, 28A-28B, 29-31, 31A, 33-55. The Otaki 1B-1G MBs form part of a copying project carried out in 1890, when Judge Smith’s own notes of early cases at Otaki, Whanganui and Wellington were re-copied and added to the sequence. Vol 1 of the Otaki MB sequence begins in 1872 and

These MBs record cases in the ‘Otaki’ region generally, and include sittings of the Court heard at Otaki itself, Levin, and Foxton, and sometimes cases heard at Weraroa, Palmerston North, Marton, and other places. (Cases heard at some of these places are more usually recorded in other MB sequences: for example cases heard at Marton, one of the most important of the ‘Court towns’, are more usually recorded in the Whanganui MBs.) To further complicate matters, some cases heard in the Otaki MBs might deal with land blocks some distance away, such as Queen Charlotte Sound (referred to as Arapaoa/Arapawa, a place settled by “Ngati Awa” people, others living at Waikanae). Another complexity is that appeals and decisions of the Chief Judge (on such matters as whether to allow a rehearing) are often in separate sequences. Some cases appear in one set of MBs and then for some reason disappear to have further instalments in the same case recorded in a completely separate series – this happened, for example, with the Kapiti Island investigation of title, some of which is recorded in the Otaki MBs and the remainder in the Wairarapa MBs. It probably all came down to which MBs the Court happened to have with it at the relevant time. Of course cases in the Otaki MBs were not concerned only with Ngati Raukawa, but with all the iwi and hapu of the wider region, including Ngati Toa, Rangitane, Muaupoko, Te Ati Awa (always referred to as ‘Ngatiawa’ in the the 19th-century MBs), and Ngati Apa. Precise quantification of the amount of material relating specifically to Ngati Raukawa is impossible without individually counting all the pages in all the relevant volumes, but it is certainly very substantial.

As in other regions, the types of cases contained in the Otaki MBs changes over the decades as investigations of title become less frequent (i.e. after the initial title investigations have been done). Cases relating to contested successions, partitions, and relative interests become much more frequent after about 1890. In 1890, as a result of the Native Land Laws Amendment Act 1890, the Native Court was given the same powers as the Supreme Court with respect to probate of Maori wills or the grant of letters of administration of Maori dying intestate. In 1894 the Native Land Court was then given *exclusive* jurisdiction in these fields.¹²³ Before this time if a succession order was sought in the Native Land Court and it appeared that a will was in existence then the application could not proceed until probate had been granted by the Supreme Court (or, from 1890-94, by either the Supreme Court *or* the Native Land Court). Giving, or perhaps inflicting, a probate jurisdiction on the Native Land Court generated a vast amount of additional work for the Court and especially for the Native Appellate Court on appeal. The reason for that was because the Native Land Court was now required to come to terms with and apply the complex rules of the Common Law relating to the validity of wills, a complex area responsible for generating substantial case law in the ordinary Courts, and – as events were to show – in the Native Land Court. After 1894 cases over disputed wills start to become quite noticeable in the Otaki MBs, as they do elsewhere. Historians have tended to neglect cases relating to contested successions and wills, focusing their attention on the large title investigations and large partitions, but in fact cases about contested wills can be very interesting and important, sometimes with large interests at stake (by no means were all Maori people poor and marginalised). The Otaki MBs also have their own complexities arising from the intricacies of the tenurial history of the region, most notably the spate of Appellate Court decisions heard by Judges Mackay and Butler in 1898 relating to the various subdivisions of the Horowhenua block, which were de facto title investigations (more precisely they were special hearings applying the provisions of the repealed Native Equitable Owners Act 1886 to the Horowhenua subdivisions).

contains (inter alia) the evidence and the judgment relating to Manawatu-Kukutauaki. What became of the official MB vols from 1866-1871 I do not know.

¹²³ Native Land Court Act 1894, s 51 (Exclusive jurisdiction in probate and administration). This was continued by s 144 and 145 of the Native Land Act 1909.

2.5 Other Minute Books relevant to Raukawa ethnohistory

This report, however, is not based solely on material in the Otaki MBs. It also draws on material from three other sequences, the Waikato, Otorohanga and Taupo MBs. All of these provide a wealth of material of value to understanding the history of Ngati Raukawa, Ngati Whakatere, and Ngati Kauwhata. The Waikato MBs are one of the oldest MB sequences, commencing in 1865 and running to the present day. The various cases relating to the Maungatautari area are all in the Waikato MBs. The Otorohanga series, by contrast, does not begin until July 1886, as the Court did not begin sittings at Otorohanga until then (although as it happens the first cases recorded in the Otorohanga MBs were at Kihikihi¹²⁴). On the 28 July 1881, however, the Court (Judge Mair and Paratene Ngata, Assessor) began its Otorohanga sittings, commencing with the biggest and arguably the most important case the Native Land Court ever heard, the Rohe Potae block title investigation. Sitting at Otorohanga was a novelty, as Otorohanga had formerly been inside the King's aukati. Representatives of Waikato groups asked for the Court to adjourn and hear the case at Alexandra (Pirongia),¹²⁵ but the Ngati Maniapoto leadership was opposed to this and wanted the case to be heard at Otorohanga. Taonui had arranged for the construction of a special building for the hearings ("I wish to state to the Court, this hall was built expressly for the accommodation of this particular Court and was built by the united efforts of the five tribes".¹²⁶ (The five tribes were Ngati Maniapoto, Ngati Raukawa, Ngati Hikairo, Ngati Tuwharetoa, and Whanganui.) Hone Ormsby(Hone Omipi) of Ngati Maniapoto, himself an assessor of the Resident Magistrate's Court and the Native Land Court, also opposed the adjournment application, partly because the hall at Otorohanga had already been built on the understanding that the government had agreed to allow the local people to choose where the Court should sit, and also because at Otorohanga Maori people in attendance would be unable to buy "intoxicating liquors" which they did all too often when the Court sat in European towns.¹²⁷ Mair and Ngata considered the matter, and decided that the case should proceed at Otorohanga.

The evidence for the Rohe Potae case is contained in the first volumes of the Otorohanga MBs, and from 1886 to roughly mid-1895 the Court was in frequent session at Otorohanga dealing with the partitions of the Rohe Potae block, many of these cases being very lengthy and complicated hearings generating a large volume of evidence. (The Court has continued to sit from time at Otorohanga ever since.) Much of the evidence given at the first Rohe Potae investigation of 1886 relates to the interests of Ngati Raukawa, Ngati Kauwhata and Ngati Whakatere in the Maungatautari region, as it was of the essence of the Waikato claims to the Rohe Potae that these groups had extensive rights arising from the conquest of Maungatautari and the defeat and withdrawal of Ngati Raukawa and their allies. (Waikato were notably unsuccessful in this instance.) Moreover Ngati Raukawa and Ngati Whakatere were directly involved in the Rohe Potae case as claimants and subsequently were claimants in important partition cases relating to the eastern Rohe Potae (Wharepuhunga and Rangitoto). Thus the Otorohanga MBs provide a wealth of material that has been drawn on for this report.

Also of some importance are the Taupo MBs, as Ngati Raukawa have significant interests in northern and western Taupo. The principal block is Tauponuiatia of nearly 1,000,000 acres, investigated and partitioned in 1886-87. The Court fixed the ancestors for this block as Tuwharetoa and Tia, and efforts by Hitiri Te Paerata and others of Ngati Raukawa to have Raukawa added as an ancestor for Tauponuiatia were opposed by Ngati Tuwharetoa and rejected by the Court. Nonetheless Ngati

¹²⁴ See (1886) 1 Otorohanga 1.

¹²⁵ (1886) 1 Otorohanga 38 (application by Aperahama Patene on behalf of "all the principal men of Waikato").

¹²⁶ (1886) 1 Otorohanga 41 (Taonui Hikaka).

¹²⁷ (1886) 1 Otorohanga 44 (Hone Ormsby).

Raukawa did participate in some of the Taupouiatia cases all the same, and most especially when the Pouakani block was reinvestigated in 1891. Although Pouakani is usually associated with the Lake Wairarapa settlement, in fact Pouakani itself belongs to Ngati Raukawa and it was mostly awarded to Ngati Raukawa hapu at the reinvestigation. There is thus some important material relating to Ngati Raukawa in the Taupo MBs as well. Other Minute Book series used on occasion for this report include the Nelson, Wellington, Chatham Islands, and Tokaanu Minute Books. These sequences are used only in passing and need not be commented on in detail.

2.6 Rangitikei-Manawatu case (1869) (MA 13/113/71)

Somewhat exceptionally, the notes of evidence for one pivotal case, the Rangitikei-Manawatu hearing of 1869 (resulting in Judge Maning's judgment printed in Fenton's *Important Judgments*) are not recorded in the MBs but are instead to be found at least in part in a large file of papers on MA 13/71 held at National Archives Wellington. Many historical studies do not refer to this bulky collection of Court minutes and even appear unaware that it exists, but in fact it is a very rich source and I have done my best in this report to exploit it fully. On this occasion the Ngati Raukawa claimants were represented not by Thomas Williams (who argued the first Himatangi case in 1868) but by William Travers, a prominent Wellington lawyer, whose opening address is recorded in the manuscript notes. Many of those who spoke at the first Himatangi hearing also gave lengthy evidence at the second, including Matene Te Whiwhi.

The file itself is comprised of a box of miscellaneous papers and is on the whole very disorderly. It includes notes of evidence of those speaking at the second Himatangi hearing, some of which is in the form of notes taken verbatim, and some of which seem to be more elaborately written-up documents in law hand presumably for ease of reference by the Attorney General. The file has been consecutively numbered in pencil by someone and there are 580 folios in all. Also on this file are a handwritten text of Maning's 1869 judgment (some pages of which appear to have been signed by the judge), a document setting out the various points referred to the Court, a letter from J C Richmond to the Attorney-General (Prendergast) setting out some legal questions, with Prendergast's responses in the margin, a report from Walter Buller relating to the Pareteao case of 1869, and various lengthy lists of owners. I am unsure what the latter relate to (perhaps to the finalisation of the Rangitikei-Manawatu purchase). There are also some documents in Maori, and what appear to be various draft deeds.

2.7 Newspapers

Although the principal source for the reconstruction of the Court's history are its own records, and in particular its minute books, I have also used newspapers to a considerable extent in this report. This is partly because judgments of the Court were often printed *verbatim* in the newspapers, which was helpful as it meant that at least there was a printed, as opposed to a handwritten, version of the judgment available (although the newspaper versions are replete with typographical and other errors however). Sometimes the Court judgments contained in the minute books are clippings of the newspaper version of the judgment pasted into the minute book by the clerk, occasionally with marginal handwritten corrections by either the clerk or the judge.

However, my use of newspapers is not confined to the Court's judgments. Proceedings in the Native Land Court were often recorded in great deal in the newspapers, obviously because the cases were widely perceived as important.¹²⁸ The newspaper reports often contain vivid detail and a sense of

¹²⁸ See R P Boast, "The Native Land Court at Cambridge, Maori Land Alienation and the Private Sector"(2017) 25 *Waikato Law Review* 26-40.

immediacy not always apparent from the formal record, and can provide much additional material, such as descriptions of meetings outside the courtroom, discussions amongst the Maori community preceding, during and after the hearings, and other contextual details. Moreover Maori people themselves at times sent letters to the newspapers commenting on cases in the Land Court, which the newspapers took the trouble to translate and print. Newspaper coverage of the Court varied over the country, but it so happens that the *Waikato Times* is a particularly valuable source, which regularly reported on Court proceedings in the Waikato (especially at Cambridge, Kihikiki and Otorohanga). Many of these cases related to Ngati Raukawa interests in the Waikato and King Country. Material heard at Otaki, Foxton, Marton etc. is often recorded in the Wellington and Whanganui newspapers, but the coverage is more uneven than in the Waikato. In Wellington newspaper accounts are an important supplement to the records of cases in the Otaki MBs and the second Himatangi hearing of 1869 (MA 13/71).

In particular, this report relies to a significant extent on newspaper coverage of the Himatangi case in 1868 and the Rangitikei Manawatu case of 1869. The minutes of the Himatangi case that survive are Judge Smith's own notes of the evidence, subsequently recopied and given the names of Otaki MBs 1A-1F. The newspaper record is much fuller, and as a part of the research for this report all of the newspaper record of this pivotal case has been located and the evidence transcribed afresh. This material, as well as newspaper versions of the evidence given in the Himatangi case in 1869, forms vol 3 of this report, providing the fullest possible record of these cases for this inquiry. The complex research and transcription work was carried out by Alex Boast in 2017.

2.8 Secondary sources

The traditional history of the PkM region has been much written about, and some of this literature is either based on the records of the Native Land Court, or touches on the history of the Court. On the whole the literature is concerned with the post-migration history, beginning around 1819, and material about the history of pre-migration groups is more difficult to find. The principal secondary sources I have drawn on for these purposes are books by Dr Angela Ballara and various biographical entries written by her for the *Dictionary of New Zealand Biography*. Dr Ballara's work has often been relied upon and is frequently cited throughout this report. Dr Ballara is an ethnohistorian who is very experienced in utilising the records of the Native Land Court, and who has also written at length and with great insight and clarity on the problems of the Court minute books as a source, which (and I agree) she sees as both pivotal and problematic.

3. Legal Structures: The Native Land Court and other Judicial bodies

3.1 Introduction

This chapter describes in a general way the origins and functions of the Native Land Court, as well as a number of other related judicial bodies (the Compensation Court and the Validation Court). I have based this chapter on material contained in my two books on the Native Land Court, omitting material which is of no particular relevance for Ngati Raukawa. I have reduced and rearranged much of the material in my two books to make it as useful as I can for this process, and I have tried to consider some further questions that I admit to neglecting in my 2013 and 2015 books, in particular the ‘opportunity costs’ of the Native Land Court.

3.2 Discussion of the Native Land Court by historians and the Waitangi Tribunal.

Fairly or not, the Native Land Court does not have a good reputation in New Zealand historical writing. Sir Hugh Kawharu, in his classic study of Maori land tenure (1977), observed that the land tenure system brought into being by the Native Lands Act of 1865 was an “engine of destruction for any tribe’s tenure of land, anywhere”.¹²⁹ Claudia Orange wrote in 1987 that the Native Lands Act 1865 “effectively severed the threads of Crown protection and nullified the treaty’s second article”.¹³⁰ In 1990 described the Native Land Court “an effective mechanism of subtle conquest”.¹³¹ The same author wrote in his *Making Peoples* (1996) of this “notorious institution”, the Native Land Court, “designed to destroy Maori communal land tenure and so facilitate Pakeha land buying and ‘detribalise’ Maori”. He also noted that “the picture of naïve Maori victims succumbing to legal chicanery and the blandishments of cunning land buyers and storekeepers can be overdrawn”.¹³² Judith Binney has argued that that the Native Land Court and the Native Lands Acts were designed to make land readily available to private purchasers and resulted in rapid Maori land alienation and poverty.¹³³ David Williams’ book on the Court, published in 1999 was likewise a highly critical review of the Court and its work.¹³⁴ Few historians have had anything good to say about the Native Land Court or its decisions.

As Belich has also written, “[s]ince 1940 New Zealand historiography has profited from four developments: an international explosion in the scope of history; the growth of universities; great bursts of public history; and the slow and incomplete collapse of re-colonization”.¹³⁵ The existing secondary literature on the Court, pioneered by David Williams, Judith Binney, Sir Hugh Kawharu and others has

¹²⁹ I H Kawharu, *Maori Land Tenure: studies of a changing institution*, Oxford University Press, Oxford, 1977, 15.

¹³⁰ Orange, *Treaty of Waitangi*, 179.

¹³¹ Belich, “The Governors and the Maori”, in Sir Keith Sinclair (ed), *The Oxford Illustrated History of New Zealand*, 1990.

¹³² Belich, *Making Peoples: A History of the New Zealanders: From Polynesian Settlement to the End of the Nineteenth Century*, Allen Lane/Penguin Press, Auckland, 1996, 258, 259. For other negative assessments in general histories see e.g. Philippa Mein Smith, *A Concise History of New Zealand*, Cambridge University Press, Cambridge, 2005, 72-73 (Mein Smith describes the Land Court as ‘worse’ than confiscation under the New Zealand Settlements Acts).

¹³³ Binney, “The Native Land Court and the Māori Communities”, in J Binney, J Bassett and E Olssen (eds), *The People and the Land: Te Tangata me te Whenua: An Illustrated History of New Zealand 1820-1920*, Bridget Williams Books, Wellington 1990, 143.

¹³⁴ David Williams, *Te Kooti Tango Whenua: The Native Land Court 1864-1909*, Huia Press, Wellington, 1999.

¹³⁵ Belich, “Colonisation and History in New Zealand”, in Robin Winks (ed), *Historiography, OHBE*, Vol V, Oxford University Press, Oxford, 1999, 182, at 186.cz

now been vastly expanded and enriched by research done for historic claims heard, or still being heard, by the Waitangi Tribunal. The Native Land Court has always been a key issue for the Tribunal. A number of Waitangi Tribunal reports have focused on the Native Land Court with the objective of dealing with it once and for all, in particular its reports relating to the Gisborne or Turanga¹³⁶, Central North Island,¹³⁷ Kaipara,¹³⁸ Hauraki,¹³⁹ and Urewera¹⁴⁰ regional inquiries. In its report on the Gisborne claims (*Turanga*) the Tribunal devoted 140 pages to the Native Land Court, taking a “fresh perspective” in the hope that “we might finally resolve one of the enduring subjects of debate between Crown and claimants in Treaty jurisprudence and historiography”.¹⁴¹ Resolution has turned out to be difficult, and nothing in history can ever be “finally resolved” anyway, as aficionados of such endless controversies as the origins of the English Civil War will know. Following *Turanga* (2004) the Tribunal felt it necessary to discuss the Court at length again in its Central North Island, Kaipara, Hauraki, Wairarapa, Urewera, National Park, and Whanganui reports: it will need to be traversed again in the Rohe Potae, Northland, and Taihape reports. Part of the Waitangi Tribunal’s *Rohe Potae* report has now been released (November 2018) and has been cited in this report at various points. In its *Central North Island* Report the Tribunal noted that notwithstanding that “the operations of the Native Land Court and their impact on Maori communities have been key issues in many previous Tribunal inquiries”, nevertheless “these issues remain some of the most important and most contested in the Central North Island inquiry”.¹⁴² And the same will be no less true of this PkM inquiry.

While the Tribunal process has failed to achieve closure on the subject of the Native Land Court it certainly has generated an explosion of new research. Many historians working for claimants, the Crown, or the Tribunal itself have produced detailed reports on all aspects of the Court’s operations. While the Tribunal’s reports, and even more so the background research reports written by a small army of historians, amount to a massive outpouring of new work on Maori land alienation in the 19th century, including material on the Native Land Court, there remain some important regional gaps in our knowledge. The most serious such gap, unfortunately, is the Waikato, which happens to be one of the most important zones of interaction between Maori, the colonial state, and the Native Land Court – as well as being a pivotal zone for Ngati Raukawa, who featured in large numbers of cases heard at Cambridge, Otorohanga and Kihikihi (as this report will demonstrate). One reason for this gap arises from the decision made by the Tainui Maori Trust Board to by-pass the Waitangi Tribunal process and to proceed directly to a negotiated settlement of Waikato’s historic raupatu (confiscation) claims against the Crown, a process concluded by the enactment of settlement legislation in 1995.¹⁴³ The absence of a large regional Waitangi Tribunal inquiry in the central Waikato has meant that the wealth of research reports now available for such areas as Gisborne, Hawke’s Bay, the Urewera region, and Whanganui has no counterpart for the Waikato. The complex events relating to Maungatautari have never been systematically explored by the Waitangi Tribunal (Maungatautari was outside the boundaries of the Tribunal’s Rohe Potae inquiry). There will probably never be a Tribunal inquiry into this region, and so this inquiry is actually the last opportunity that Ngati Raukawa and Ngati Kauwhata will get to bring evidence relating to the Maungatautari cases. Partly for this reason, but also because, as noted in the

¹³⁶ Waitangi Tribunal, *Turanga*, Wai 814, 2004. The key section of this report for present purposes is Ch. 8, ‘The Native Land Court and the New Native Title’, pp 395-537.

¹³⁷ Waitangi Tribunal, *CNI*, Wai 1200, 2008.

¹³⁸ Waitangi Tribunal, *Kaipara*, Wai 674, 2006.

¹³⁹ Waitangi Tribunal, *Hauraki*, Wai 686, 2006.

¹⁴⁰ Waitangi Tribunal, *Te Urewera*, Wai 894, 2017.

¹⁴¹ *Turanga*, 397.

¹⁴² Waitangi Tribunal, *He Maunga Rongo: Report on Central North Island Claims*, 2008, Wai 1200, vol 2, 446.

¹⁴³ Waikato Raupatu Claims Settlement Act 1995.

Introduction, it is essential to consider cases relating to lands in the Waikato as well as in the PkM region, the Maungatautari cases are considered fully in this report.

The complicated interplay between confiscation and the Compensation Court and the Native Land Court remains poorly understood. This issue is an important one for Ngati Raukawa and some other claimant groups in the PkM inquiry, notably Ngati Kauwhata and Ngati Whakatere. As is explained later in this report, Ngati Raukawa individuals living at Otaki filed numerous claims in the Compensation Court relating to their Waikato lands on the assumption that they had been confiscated, and at a time when the boundaries of the Waikato confiscation were still uncertain.

3.3 Origins of the Native Land Court

This report is one of four major reports commissioned to support the historic claims of Ngati Raukawa for the Waitangi Tribunal's Porirua ki Manawatu (PKM) regional inquiry. The focus of this first report in the sequence is on "introducing the claimants in terms of their occupation and ability to exercise customary rights".¹⁴⁴ As explained in the introduction, in this report this issue will be explored in the context of the Native Land Court and the legislation relating to Maori land.

In considering the "origins" of the Native Lands Acts, the question arises which Act ought to be seen as the starting-point of the Native Land Court system. Some historians, and even some of the Native Land Court's own judges, have seen the system as beginning with the Native Lands Act of 1865, but this is incorrect. The true starting-point was undoubtedly the 1862 Act. It was this Act which introduced the basic conceptual structure which underpinned the system, based on the three planks of waiver of Crown pre-emption, conversion of customary titles to English tenures, and the creation of a new judicial body to control the process – the Native Land Court. It was the 1862 Act which received by far the most parliamentary scrutiny out of the two Acts, the 1865 Act being perceived at the time as basically an amendment. As Don Loveridge has noted, the effective establishment of the Court in its modern form began in 1865 but under the 1862 Act, when the Native Land Court was reconstituted as a single court for the whole country. In his view "the changes made by the 1865 Act in October of that year had little impact upon the operations of the Native Land Court", which is certainly the case in some areas at any rate, particularly in Northland and Coromandel.¹⁴⁵ By the time the 1865 Act was enacted the Court in its fully-established form was already up and running and had issued titles to a number of blocks in the Kaipara area, in the furthest North around Kaitaia, near Whangarei, and at Coromandel. The minute book system also emerges in early 1865, under the 1862 Act. In the case of the PkM region, however, there were few, and as far as I can find out, no) cases heard under the 1862 Act.

That the pivotal Act was the 1862 Act is important in understanding the origins of the Court, which thus originates not in the years from 1862-1865, but rather in the period from the establishment of responsible government in 1856 to 1862.¹⁴⁶ The background to the 1862 Act has been authoritatively analysed by Don Loveridge in a report prepared for the Crown Law Office in 2000. In this report Loveridge argues that it was always British policy to absorb the Maori people into the European population. It was assumed without much reflection that Britain had a duty to bring to Maori the supposed benefits of English law and land tenure and of British government and administration, it also

¹⁴⁴ CFRT Project Brief, para 9.

¹⁴⁵ Don Loveridge, *The Origins of the Native Lands Acts and the Native Land Court in New Zealand*, research report commissioned by the Crown Law Office, 2001, Wai 1200 [Central North Island] Doc#A72.

¹⁴⁶ A point made by Don Loveridge – see Loveridge, *Origins*, 13.

being axiomatic that British ways of doing things were unquestionably superior. Loveridge sites the origins of the Native Lands Acts in the political struggle between Governor Browne and his responsible advisers over the control of Native policy. The full details of this political drama need not be gone into here, save to note that the principal forerunner of the 1862 Act was the Native Territorial Rights Act, enacted by the General Assembly in 1858. Governor Browne saw the Act as an attempt to challenge his own control over Maori affairs: he required that the Bill be reserved for the royal assent, and the following year it was disallowed by the Colonial Office.¹⁴⁷

Following the crisis over the Waitara purchase in 1859 and the subsequent collapse of the pre-emptive purchasing system, Governor Browne took the step of asking the judges of the Supreme Court whether the Court could be used to ascertain Maori titles through a judicial process. Chief Justice Arney and his colleagues were not enthusiastic. When Sir George Grey returned as Governor he suggested that district runanga (Councils) might be empowered to investigate disputed land boundaries. Grey's proposal contained some of the ideas that would later re-emerge in the Native Lands Bill of 1862, including the formal definition of private titles and a right of free alienability.¹⁴⁸ William Fox introduced a Native Lands Bill into the House in July 1862, but this could not be proceeded with because of the confused political situation of the time. In August of that year Fox's ministry was replaced by a new government dominated by Alfred Domett and Francis Dillon Bell, a "hard-line administration",¹⁴⁹ which brought in a new Native Lands Bill, enacted as the Native Lands Act 1862.

The Acts of 1862 and 1865 mark a turning point in New Zealand history. The policy reflected in the legislation was a radical departure from pre-emptive purchasing, in fact its complete opposite. The Acts are often seen as introducing the "individualisation" of Maori customary tenures, which is certainly the case, but even more radically they amounted to a privatisation of the Maori land market.¹⁵⁰ Maori land became freely alienable to private sector buyers. It was assumed that the Crown could now retire from the scene as a purchaser, and that Maori land purchasing could be left to the free market. Individualisation of title went together with freedom of contract. However, this aspect of the policy underpinning the legislation was soon jettisoned under the force of circumstances, the state returning to land purchasing in 1869 and on a massive scale after 1871. The government soon found it necessary to enact legislation to privilege itself against private sector buyers, just adding further thickets to the statutory jungle.¹⁵¹ Notwithstanding the Native Lands Acts the dominant purchaser by a very substantial margin has continued to be the state.¹⁵²

¹⁴⁷ See Loveridge, *Origins*, 109-124; Ward, *A Show of Justice: racial "amalgamation" in nineteenth century New Zealand*, Auckland University Press, Auckland, 1995, 107.

¹⁴⁸ Boast, *Buying the Land, Selling the Land: Governments and Maori Land in the North Island 1865-1921*, Victoria University Press, Wellington, 2008, 62. Grey's memorandum is at 1862 AJHR E2, 12.

¹⁴⁹ This is O'Malley's judgment: see O'Malley, *Agents of Autonomy: Maori Committees in the Nineteenth Century*, Huia Publishers, Wellington, 2007, 25.

¹⁵⁰ On "individualisation" see Evelyn Stokes, *The Individualisation of Maori Interests in Land*, Te Mātāhauariki Institute, University of Waikato, Hamilton, 2002.

¹⁵¹ Most importantly with the Government Native Land Purchase Act 1877, amended and extended by the Native Land Purchases Act 1892. Full Crown pre-emption was restored by s 117 of the Native Land Court Act 1894, and was removed again – after a very complicated intervening legislative history – by the Native Land Act 1909.

¹⁵² This was the principal theme of my *Buying the Land, Selling the Land*, (2008). See also Hickford, *Lords of the Land*, 446-447.

The Native Lands Acts were not enacted in isolation, but had had many parallels with legislative “reforms” enacted in many other places around the same time, as is shown by the following table.

3.4 Purposes and functions of the Native Land Court

The full statutory regime relating to Maori land in the 19th century will not be traversed in detail in this report. It has been described many times by the Waitangi Tribunal, and it is also traversed in full in my two books on the Native Land Court published in 2013 and 2015. Just some key features of the statutory system will be sketched in here.

Until 1862 the official law relating to land owned by the indigenous Maori and Moriori (by which I mean the Moriori of Rekohu/Wharekauri/the Chatham Islands) peoples of New Zealand derived from the common law as modified and applied by the various statutes and ordinances, local and imperial, that applied to New Zealand.¹⁵³ The Native Lands Act 1862 marked a decisive break from the earlier period, and the legal rupture was cemented into place by the more elaborate Native Lands Act of 1865. The latter statute was drafted by Francis Dart Fenton, who became Chief Judge of the Native Land Court in that year. The 1862 Act expressly waived Crown pre-emption as provided for in the Treaty of Waitangi. The Preamble to the 1862 Act stated that the waiver was “in favour of the Natives”.¹⁵⁴ The legislation set up the Native Land Court (today the Maori Land Court) and created a special process by which Maori customary tenures were “investigated” and then Crown-granted, converting them from interests in land governed by Maori customary law to Crown-granted fee simple estates, usually co-owned.¹⁵⁵ Section 5 of the Native Territorial Rights Act 1865 gave exclusive jurisdiction over matters relating to Maori customary title to the new Native Land Court. The Native Land Court itself and the ordinary courts accepted the exclusive jurisdiction of the former as a matter of course, one result being that the common law of Native title was for long of little practical importance in New Zealand, or, more exactly, that the main legal battles that have been fought out in New Zealand have tended to relate to the territorial extent of the Native Land Court’s jurisdiction rather than direct invocations of common law Native law in the ordinary courts. However, albeit confined within the enclosed world of the Native Land Court, the content of the body of law that the Court built up certainly does have close affinities with the rules of Native law as these are commonly understood, as it happens sharing more common ground with the Canadian rather than Australian variants of Native title.¹⁵⁶

The objectives of the Native Lands Acts can best be discerned from the preambles to the first two main statutes, that is the Native Lands Acts of 1862 and 1865. The preamble to the Native Lands Act 1862 states that it would:¹⁵⁷

greatly promote the peaceful settlement of the colony and the advancement and civilisation of the natives, if their rights to land were ascertained, defined, and declared, and if the ownership of such land, when so

¹⁵³ See generally Kaitorete (Boast, *Native Land Court 1862-1887*, NLC 35); also discussion of pre-emptive purchasing system, *ibid*, 45-50. For a highly innovative discussion of the legal discourses in play during the early colonial period see Mark Hickford, *Lords of the Land: Indigenous Property Rights and the Jurisprudence of Empire*, (Oxford University Press, Oxford, 2011).

¹⁵⁴ Native Lands Act 1862, preamble.

¹⁵⁵ Native Lands Act 1862, ss 5-8; Native Lands Act 1865 ss 5-20 (Constitution of Court); 21-45 (Jurisdiction and Duties of the Court). The 1865 provisions are much more elaborate.

¹⁵⁶ On the problematic state of Australian native title law see Simon Young, *The Trouble with Tradition: Native Title and Cultural Change* (Federation Press, Sydney, 2008). Young’s book contains an interesting analysis of the consequences of the Native Land Court for the development of native title law in the New Zealand courts: see *ibid*, 28-32.

¹⁵⁷ Native Lands Act 1862, Preamble.

ascertained, defined, and declared, were assimilated as nearly as possible to the ownership of land according to British law.

Here the emphasis is placed on (a) the ascertainment and definition of Maori rights to land, and (b) the assimilation of such rights “as nearly as possible” to English law tenures. With the 1865 Act, drafted by Francis Dart Fenton, these objectives were redefined and expanded.¹⁵⁸

It is expedient to amend and consolidate the laws relating to lands in the Colony which are still subject to Maori proprietary customs and to provide for the ascertainment of the persons who according to such customs are the owners thereof and to encourage the extinction of such proprietary customs and to provide for the conversion of such modes of ownership into titles derived from the Crown and to provide for the regulation of the descent of such lands when the title is converted as aforesaid and to make further reference in reference to the matters aforesaid.

The objectives, as can be seen, continue to be (a) the “ascertainment” of owners according “Maori proprietary customs” (or, as it would be phrased today, Maori customary law); but include as well (b) the encouragement of “the extinction of such tenures”; (c) for the “conversion” of customary titles into titles derived from the Crown (that is, Crown grants); and, this being a new departure from the 1862 Act, (d) the “regulation” of the “descent of such lands” (successions).

The 1862 and 1865 Acts had three main effects. First, the legislation amounted to a *statutory waiver of Crown pre-emption*; secondly, the legislation established a *new judicial body*, the Native Land Court, a purely statutory body with the power to make binding judgments in rem; and, third, the legislation set up a particular type of *process*, by which Maori customary titles could be converted into Crown-granted freehold titles. All these three core features of the legislation interconnect. The legislation marked a decisive shift, indeed a complete about-face, from the previous law relating to Maori land and Maori alienation, which until then had been governed by the common law doctrines of native or customary title and Crown pre-emption. The statutes set up a method of transmuting the former customary tenures governed by tikanga. As Angela Ballara has pointed out, “the various successive Native Land Acts assumed or stated that customary rights still existed”.¹⁵⁹ In her summation, “the Court extinguished customary title to land by converting it into something else, such as a fee simple estate or a papakāinga reserve”.¹⁶⁰

After some very preliminary efforts in 1864, the Court began operating under the 1862 Act in Northland and Coromandel on a significant scale in early 1865. The 1865 Act, however, was certainly a much more elaborate statute than its earlier counterpart, and following its enactment in October the Court’s operations soon spread beyond northern New Zealand to Hawke’s Bay, the Waikato, Wellington, the Kapiti-Horowhenua region, the Manawatu, Whanganui, and other regions.

The Native Land Court soon became a very important institution in some areas of the North Island – much less so in the South Island – notably in Hawke’s Bay, Gisborne, the PkM region, the Bay of Plenty and the Waikato. From 1865-1873 the ten-owners rule, so called, was in operation, derived from s 23 of the Native Lands Act 1865 (“Provided always that no certificate shall be ordered to more than ten persons.”) The “rule” limited the number of grantees in any one block to ten – or, indeed, less than ten. That in turn led to a very rapid alienation of Maori land interests in the some parts of the

¹⁵⁸ Native Lands Act 1865, Preamble.

¹⁵⁹ Ballara, *Tribal Landscape Overview*, 174,

¹⁶⁰ Ibid.

country, as in Hawke's Bay. A notorious example of the rule in action was the Heretaunga case of 1866.¹⁶¹

The 1865 Act was amended a number of times before 1873, when it was repealed and replaced with new legislation. The most important amending provision before 1873 was s 17 of the Native Lands Amendment Act 1867, which gave to the Native Land Court the option of registering in the court "the names of all the persons interested" in the land. This created an alternative to the ten-owner rule, but did not repeal it. After 1867 the Court used both s 23 of the 1865 Act and s 17 of the 1867 Act as the circumstances permitted, meaning it would usually make a s 17 award if the parties in Court asked it to. The Court seems, in other words, to have left the implementation of this reform to the parties before it, and did not implement it in any active way.

Following inquiries into the abuses arising from the ten-owner rule, the Fox-Vogel-McLean government enacted the Native Land Act 1873. Instead of ten owners, in all cases the owners were to be recorded on a "memorial of title", essentially a record of equitable interests in a block. This was similar to s 17 of the 1867 amendment; in fact after 1873 land allocated under s 17 and land held by memorial of title under the 1873 Act came to be regarded as forming a single category. The 1873 Act was not retroactive, and so large areas of land Crown-granted under the 1865 Act continued to remain in place. While blocks under the 1865 Act were intended to be simply Crown-granted, "memorial" land became a new and distinct category of land, the exact nature of which caused a staggering amount of litigation in the ordinary courts over such issues as whether the holders of a memorial of title were able to maintain an action in trespass and a host of other collateral questions.¹⁶²

By circa 1890 large areas of land had been investigated by the Native Land Court and titles issued under s 23 of the 1865 Act, s 17 of the 1867 amendment, and under the Native Lands Acts 1873, and its successors, the Native Land Court Acts of 1880 and 1886. The Court's influence spread out over an increasingly wide area. In 1886 the Court heard the pivotal *Taupouuiatia* and *Rohe Potae* decisions, the largest the Court ever heard (*Ngati Raukawa* played a role in both, especially the latter). Large areas of investigated land had been alienated either to private sector buyers or to the government. Although a principal aim of the Native Lands Acts had been to privatise the Maori land market, in fact even after the Native Lands Acts were enacted the biggest purchaser by far of Maori land continued to be the Crown.¹⁶³

3.5 The Ten Owners Rule: s 23 of the 1865 Act

From 1866-1873 the Court heard cases under the "ten owners" rule. This included a number of pivotal decisions relating to *Ngati Raukawa* lands, including the *Maungatautari* and *Himatangi* blocks.¹⁶⁴ Part III of the Native Lands Act 1865 dealt with the jurisdiction and duties of the Native Land Court, and included s 23, the core section of the Act and pivotal for the ten owner rule that the Court applied after the 1865 Act came into force. Section 23 mapped out the Court's investigation of title jurisdiction and

¹⁶¹ Original judgment at (1866) 1 Napier MB 207 (24 December 1866); see Boast, *Native Land Court 1862-1887*, 353-4.

¹⁶² See Boast, vol 1 ch 8, pp 197-218, where this case law is reviewed in detail.

¹⁶³ See my *Buying the Land, Selling the Land*, 2008, pp 1-40.

¹⁶⁴ Ten-owner blocks in which *Ngati Raukawa* (north and south) were involved include *Horahora*, judgment at (1867) 1 Waikato MB 132-133 (Boast, *Native Land Court* vol 1, NLC 29, 394-395); *Pukekura*, *Maungatautari* and *Puahue*, (1868) 2 Waikato MB 93-95 (Boast, *Native Land Court* vol 1, NLC 41, 462-477); *Himatangi*, (1868) 1E Otaki MB 717-723 (Boast, *Native Land Court* vol 1, 551-578); *Rangitikei-Manawatu*, (1869) Fenton ed *Important Judgments* 101-108 (Boast, *Native Land Court* vol 1, NLC 41, 462-477).

contained a double proviso, the first limb of which relates to the ten owners rule, and the second to tribal titles:

At such sitting of the Court the Court shall ascertain as it thinks fit the right title estate or interest of the applicant and of all other claimants to or in the end respecting which notice shall have been given as aforesaid and the Court shall order a certificate of title to be made and issued which certificate shall specify the names of the persons or of the tribe who according to Native custom own or are interested in the land describing the nature of any such estate or interest and describing the land comprised in such certificate or the Court may in its discretion refuse to order a certificate to be issued to the claimant or to any other person. Provided always that no certificate shall be ordered to more than ten persons. Provided further that if the piece of land adjudicated upon shall not exceed five thousand acres such certificate shall not be made in favour of a tribe by name.

The Court was directed to “ascertain” the “right, title, estate, or interest” – the commas have been inserted – of the parties before it, and issue titles accordingly. It can be seen from the wording of the provision that no certificate of title could be “ordered to more than ten persons”. These words are the source of the ten owners rule, abolished in 1873. Blocks over 5,000 acres *could* be awarded to a “tribe by name”. But examples of this actually happening are uncommon, and when it did occur usually seems to have only been a temporary status until a block was further partitioned. In the case of Ngati Raukawa, however, it seems that the Manawatu-Kukutauaki title awarded in 1873 actually *was* “tribal”, a status which persisted until the various Manawatu-Kukutauaki subdivisions were partitioned out. The Horowhenua block was awarded under s 17 of the Native Lands Amendment Act 1867 (see below).

The statutory language does not clarify whether the ten acquired title as individual fee-simple owners or whether they became trustees for the remaining owners of the block. Certainly there is nothing in the wording which points to any kind of trust, and one does not get the impression from a close examination of the early minute books that Court practice and procedure was based on any assumption that the owners as recorded in the Court certificate of title were trustees. The word ‘trust’ or ‘trustee’ is never seen in the minute books relating to the ten owner period (1865-1873), and there is never any kind of discussion of the responsibilities of owners as trustees or any mention of any class of beneficiaries. If the grantees were meant to be trustees it seems reasonable to assume that this would be reflected in some way in the record and this is simply not the case. Such indications as exist are quite to the contrary. In the Hikutoto case heard at Napier in 1866 Judge Smith informed the Hawke’s Bay chiefs not only that no more than ten persons could go into the grant, but also went on to explain “the effect of a Crown grant in fee simple *as vesting the title absolutely absolutely and exclusively in the persons named in the grant*” (emphasis added).¹⁶⁵ The ten were the legal owners. Of course as legal owners they could then set up an ordinary civil trust in favour of some specific class of beneficiaries if they wanted to: but it seems clear enough that legally the vesting of the block in ten owners did not of itself set up a trust of any kind. Yet the grantees must have been seen by the Court at the very least as *representatives*, as it will have been obvious that only relatively few names were being included in the title records. Representatives, however, in what sense? This is not documented or explored in the evidence. Representative owners are not necessarily the same thing as trustees. It does not follow from this that Maori grantees did not see themselves, or – more likely – were perceived by other customary owners to be trustees in some sense. Some non-Maori commentators at the time thought so as well,

¹⁶⁵ (1866) 1 Napier MB 6 (7 March 1866).

and the same conclusion was reached by the Haultain Commission of 1871 and the Hawke's Bay Commission in 1873.¹⁶⁶

The ten owners rule was often commented on by judges of the Native Land Court in later cases, often in terms of puzzlement and disapproval. An example is a decision of the Court relating to the partition of the Matamata block in the Waikato in 1884. This block was originally investigated in 1868 and title awarded to ten grantees in the usual way. On partition in 1884 it was argued that the ten grantees were actually trustees. The Court (Chief Judge Macdonald and Judge Puckey) were unsure about the rationale for the rule and clearly thought it difficult to explain, but on the facts of the case they did not need to decide the point. (their judgment, obviously regarded as being of high interest, was reprinted in the newspapers). According to the Court:¹⁶⁷

The practice of limiting grantees to a number under eleven was enjoined by the Native Land Act 1865, and continued until the Act of 1873. The object of the provision has been variously guessed at, one theory is that the ten Grantees were to be trustees as just mentioned. The other theory being that a block, when under investigation, should be divided into a number of parcels equal at least to one tenth of the tribe.

But neither theory fitted with the Court's actual practice:¹⁶⁸

The latter theory has not it is thought been instanced in practice in the case of any specified block before a Court, the nearest approach being where various lands were to come before the Court, it was agreed among the people that one set of ten should take one piece or block, and another set another piece, so as to provide for all. As to the former theory it has not been recognized in practice, and has indeed only been recently broached – it has been negatived by the legislature in changing tenure from joint tenancy – one proper for trustees – to tenancy in common, and by declaring that the ten should not be considered to hold in equal shares, a provision inapplicable to estate as Trustees. Whatever the merits of this question may be, they are not for this court to consider it sufficing for us to say that the land is land granted to natives and in which the applicant, Mr Firth, had acquired before the 13th September, 1882, acquired undivided shares, and in relation to which shares he has applied to have his estate or interest defined, and that thereupon it became our duty to define a portion of the block proportionate to the value of the estate or interest acquired to Mr Firth.

And it is interesting that in later years some of the judges of the Native Land Court stated explicitly that grantees under the 'ten owner' system in fact *were* trustees. In a South Taranaki case, Pukengahu No 3, Judge Puckey in 1890 was confronted with the issue of whether grantees under Native Land Court title orders were trustees or not. In the course of a thorough review of the legislative history he concluded, in fact, that there is 'no doubt' that grantees from 1865-73 in fact *were* often trustees:¹⁶⁹

The Native Land Act 1865. This Act limited the persons to be named in the Certificate of Title to any number not exceeding [sic] ten. Grants could issue under the certificate – there is no doubt that in many cases the persons holding under the Crown Grant were in reality trustees though no trusts may have been expressed.

By that time the Native Equitable Owners Act 1886 had already been in force for four years: this statute allowed the Court to make express findings that surviving ten owners or their successors in title were in reality trustees. The Court was certainly prepared to exercise this jurisdiction, although it obviously could not provide a remedy where the block or substantial sections of it had been sold in the interim.

¹⁶⁶ See 1871 AJHR A-2A, 4-6; 1873 AJHR G-7 6-9 (Commissioner Richmond). See also the excellent discussion of this point by Grant Phillipson: Phillipson, "Native Land Court and Private Purchase", 196-7.

¹⁶⁷ (1884) 13 Waikato MB 119-121.

¹⁶⁸ Ibid.

¹⁶⁹ Pukengahu No 3 (1890) 5 Taranaki MB 29-30.

The Rees-Carroll Commission of 1891 was also in no doubt whatever that the ten owners were trustees, perhaps reflecting what had become the orthodox understanding by that time, going so far as to suggest that if the point had ever been tested in the Supreme Court at the time the Court could have come to no other conclusion.¹⁷⁰ If that is correct, then the failure of the ten owner process as it operated to give any effect to the trust-like character of the grants is a pivotal shortcoming. In any event, even if it was not the intention of either the legislature or the Courts to facilitate grants on trust, that is an equally significant failing on the part of both.

Yet, as noted, the *reality* at the time of the operation of the ten owners rule was that grantees holding certificates of title under s 23 of the 1865 Act for the most part were *not* trustees, and tended not to behave as though they were. The legislation did not stipulate that the ten owners were trustees, which it could easily have done. The grantees could, as noted, have set up trusts under the ordinary law had they wished to do so, provided that any trust so established would have met the usual requirements for certainty. But this was not even attempted, at least not on any large scale. At the time the whole structure of the system and its practical implementation operated against any widespread trust model.

3.6 Native Lands Amendment Act 1867 s 17

There were a number of amendments of the Native Lands Acts between 1865-73. The most important amending Act was the Native Lands Amendment Act 1867, which according to Fenton was drafted by J C Richmond and Prendergast J.¹⁷¹ The most important provision of the 1867 Act was s 17 which gave to the Court the option of recording all the names – rather than just ten - of those with an interest in the block, but the section is very confusingly worded. Thomas Mackay had this to say about section 17 in his separate report produced as part of the Rees-Carroll Inquiry in 1891.¹⁷²

Section 17 ... was but a clumsy attempt to amend s 23 of the Act of 1865. The verbiage of the former is so infelicitous and obscure that it can hardly be “understood of any man”. Nevertheless titles have been determined by it, but whether satisfactorily is doubtful.

Fenton himself had no patience with section 17, believing that the true remedy to the problems caused by the ten owners rule was to ensure that blocks were subdivided sufficiently to ensure that all owners received their one-tenth shares.¹⁷³ Moreover the 1867 Act operated, or, at least, was treated in practice, only as a supplement to the 1865 Act and did not replace it; it gave the Court an option, but whether the option was utilised was a matter for the applicants. Section 17 happens to be important for this report, because it was applied by the Native Land Court in the case of the Horowhenua block, title to which was investigated by the Court by Judges Rogan and Smith in 1873. There was just one owner in whom the block was formally vested, Keepa Te Rangihwinui, with 143 Muaupoko names recorded on the back of the certificate. Horowhenua was a contested block which had a very complex history and it is therefore (unfortunately, given that the section is long, convoluted, and not easy to understand) to analyse s 17 closely, as its effects became relevant once the block was partitioned.

Section 17 begins by reciting s 23 of the 1865 Act and this can be ignored for present purposes, save to note that s 23 is not repealed. The 1867 Act thus is intended to create a separate or alternative path to s 23 (the latter related to Crown grants to ten owners or less). Section 17/1867 required the Court to:

¹⁷⁰ 1891 AJHR G-1, vii.

¹⁷¹ See 1891 AJHR G-1, 47.

¹⁷² 1891 AJHR G-1A, 10.

¹⁷³ 1891 AJHR G-1A, 10.

ascertain by such evidence as it shall think fit the right title estate or interest not only of the applicant and of all claimants to or in the land...but also the right title estate or interest of every other person who and every tribe which according to Native custom owns or is interested in such land whether such person or tribe shall have put in a claim or not.

(How the Court was supposed to do this is unclear.) There were a number of provisos. The first is almost unbelievably intricate, and needs to be broken down into a number of components. Firstly, when it appeared to the Court that more than ten persons or any “tribe or hapu” were “interested” – i.e. had interests – in the land, *and* “such persons tribe or hapu” consented, the Court at its discretion could issue a certificate to ten persons or less, “and the court shall cause to be registered in the court the names of all the persons interested in such land including those named in the certificate”. That is, the section created two groups of owners, those “named in the certificate” and those “registered in the Court”. Thus, to take a specific example, in the case of the Horowhenua block, the Court ordered a “certificate” for the whole 52,000 acre block to be issued to Keepa Te Rangihwinui: he was the “certificated” owner. The Court also recorded the names of 143 people, supposedly everyone who was Muaupoko (in fact there were numerous gaps, and some mistakes in the list) recorded on the back of the Court order: these people were the “registered” owners. Land subject to such an order was inalienable except by lease, and could not be leased for longer than 21 years:

no portion of the land comprised in such certificate shall *until it shall have been subdivided*...be alienated by sale gift mortgage lease or otherwise except by lease for a term not exceeding twenty-one years and no such lease shall contain or be made subject to any proviso agreement or condition for renewal thereof.

The words “until it shall have been subdivided” need to be noted. The section went on to further provide that “it shall be lawful for the persons found by the court to be interested in or for the majority of them” (confusing in itself) to apply for a subdivision (i.e. a partition).

The Waitangi Tribunal discussed in its *Horowhenua* Report (2017) whether s 17 of the 1867 Act created trusts.¹⁷⁴ The answer is that it did. Section 17 set up what was essentially a *temporary* title, with “certificated” and “registered” owners. The provision was interpreted in practice to mean that such land only remained as “s 17 land” until it was partitioned, and up to that time could only be leased. Once it was partitioned its status changed, although what to exactly, is unclear. After 1873 the Native Land Court usually issued memorials of title for the partitioned blocks under the Native Land Act 1873, which abolished both the ten owner rule of the 1865 Act and s 17 of the 1867 Act. Between 1867 and 1873 the Court could use either s 23 of the 1865 Act or s 17 of the 1867 Act. Although both the 1865 and the 1867 Acts were repealed by the 1873 Act, the repeals did not operate retroactively with respect to land blocks investigated under s 23 of the 1865 Act or s 17 of the 1867 Act. Section 17 land did not cease being ‘s 17 land’ once the section was repealed, nor did Crown grants under the Native Lands Act 1865 cease to exist with the repeal of the latter. Again, the Horowhenua block is an example. Title orders were issued to Horowhenua under s 17 in 1873 (the 1873 Act was not enacted until later in the year, after the Horowhenua case had been heard). As explained, Kemp was made the certificated owner and the 143 Muaupoko the registered owners. The formal title to Kemp, ordered in 1873, was not actually issued until 1881. In 1886 Horowhenua block was partitioned, and at this point it ceased to become “s 17” land. What, however, was the relationship between the “certificated” and “registered” owners until partition? In 1882 the Native Land Division Act, in allowing for partitions of ‘s 17’ land, provided (s 10) that “all the persons registered as owners” shall “be treated as owners in the division”. This seems to merely reinforce the practice that the trust lasted only until partition: partition turned beneficiaries in the trust into legal owners. The 1882 Act also allowed a majority of owners in ‘s 17’

¹⁷⁴ Waitangi Tribunal, *Horowhenua*, 179.

and in ‘memorial’ blocks – the two categories were very similar – to apply for a partition. According to decisions in the ordinary courts, the certificated owner(s) was a trustee for the registered owner - a fact which may surprise those who repeatedly claim that orders under the Native Lands Acts did not create trusts: s 23 of the 1865 Act did not, but s 17 of the 1867 Act did. On partition, however, the trust was terminated. In the case of Horowhenua it remained held in trust by Keep for 15 years. In *Hunia v Kemp* Prendergast CJ Held that Keepa was “in effect a trustee for the other persons interested – the 143 – until subdivided amongst them”.¹⁷⁵ In 1886, on partition, the former trust disappeared. This had important consequences for the Horowhenua block, as will be seen. As that case also shows, new trusts – resulting trusts or constructive trusts - could sometimes arise after partition.

Assuming, then, that s 17 created trusts, what were the obligations owed by the trustee(s) to the persons named on the back of the certificate? There was nothing to stop the certificated owner or owners from entering into leases, as that is exactly what Te Keepa did with some parts of Horowhenua. Presumably the ordinary law relating to leases of land held by trustees would apply: the certificated owners could not pocket the rents, for example, or would have to ensure they were distributed fairly. The decision to lease itself, however, would be for the certificated (legal) owners, unless perhaps the lease amounted to a breach of trust in some way. In the case of Horowhenua Te Keepa agreed that Ngati Raukawa were entitled to certain areas of land at Raumatangi and elsewhere, the arrangements being confirmed by two deeds involving the Crown and Ngati Raukawa. My guess is that Te Keepa, as trustee, would not have had power to do that – i.e. in effect give away a part of the trust estate - although it might confer some kind of equity perhaps. There were those at the time who thought Kemp’s actions were “ultra vires”, even if the claims of Ngati Raukawa were meritorious (which in fact, in my opinion, they were). In the case of Horowhenua Ngati Raukawa’s interests were recognised at partition in 1886.

Section 17 ceased to have any relevance to new cases with the enactment of the Native Land Act 1873, which replaced the 1865 Act and its various amendments, although by this time there was a substantial amount of ‘s 17’ land scattered around the North Island, including – as explained – the Horowhenua block. The ‘memorial of title’ system set up by the 1873 Act was, however, more or less the same as titles issued under s 17 of the 1867 amendment, and in practice ‘s 17’ and ‘memorial’ land were treated as a single category of investigated land, distinct from Crown-granted land in Maori ownership, the latter being registrable as a freehold under the Land Transfer Act 1870. The difference between s 17 land and land held under memorial was that in the case of the former the class of “certificated” trustee owners disappeared. One of the key advantages of s 17 – if it was an advantage (some Maori owners may have seen this as simply paternalistic and irksome) – was, as explained, that the land subject to it could not be sold or mortgaged until it had been partitioned. It could, however, be leased by the ten (or fewer) individuals whose names appeared on the face of the court certificate. This can be seen as a useful protection and an amelioration of the 1865 Act. Section 17, whatever Fenton thought of it, seems to have been extensively employed in some areas. The Rees-Carroll commission of 1891 thought that “large areas” were set aside under the 1867 Act.¹⁷⁶ They believed, however, that the ten owners tended to pocket the rent money without sharing it just as “ten owner” vendors pocketed the sale proceeds under the 1865 Act. All the same, the 1867 Act was “useful by preventing the absolute alienation of these estates from their real owners”.¹⁷⁷

3.7 Investigations of Title

¹⁷⁵ *Hunia v Kemp* (1894-5) 14 NZLR 71, (SC and CA), p 73, per Prendergast CJ. Kemp did not deny that he was a trustee as it happens.

¹⁷⁶ 1891 AJHR G-1, vii.

¹⁷⁷ Ibid.

The Native Land Court was a statutory body and thus the cases it could deal with were controlled by the Native Lands Acts and their multifarious amendments. Over the years the Court's jurisdiction changed somewhat, and grew increasingly elaborate and complicated, but its principal function in the nineteenth century was to investigate the title to blocks of land formerly held under customary tenure.

Investigations of title were the most pivotal cases dealt with by the Native Land Court in the 19th century, these being the very cases by which customary titles were “investigated”, the owners determined and the Court orders made. By around 1900 this jurisdiction was mostly spent. By that time most of the land still in Maori customary title as at 1862 had been investigated and titles issued, although the process was still not quite complete. There have been a number of investigations to papatipu (uninvestigated) blocks in the 20th century. There have also been some reinvestigations of some blocks *de novo* following petitions and special jurisdictions being conferred on the Native Land Court by means of the endless “washing up” Acts (Maori Purposes Acts, or Maori Land Claims Settlements Acts) enacted in the twentieth century (including, as it happens, Maungatautari, as is discussed in a later chapter of this report⁵⁵⁵).

The cases could sometimes be very complex, in some cases lasting for weeks or even months, and requiring elaborate closing submissions by counsel at the end, summing up the evidence and making submissions on points of law. When Walter Buller presented his closing submissions to the Court at Cambridge in 1883 on behalf of his clients with respect to the Te Whetu block he spoke for an entire day.¹⁷⁸ The cases were characterised by a great deal of cross-examination, and Maori conductors and claimants would often cross-examine one another, this being something they were not in the least hesitant about doing. In some instances the questions and answers were copied down into the minutes, but as explained earlier the more usual practice was to omit the questions and to write out the responses as a single narrative. (The effect could be more than a little garbled.)

The Court's conceptual language, if I can put it that way, was very limited, using quite simple dichotomies (“conquest” versus “occupation for example). The Court was set up in the 1860s, after all. The discipline of anthropology did not exist at that time, and the nuanced understandings of a modern ethnohistorians such as Angela Ballara or Judith Binney (for instance) were entirely absent. Judgments were often very sparse,¹⁷⁹ giving very little indication as to why the Court found for one side or the other – and indeed the Kukutauaki and Horowhenua judgments, pivotal for Ngati Raukawa and discussed fully in later chapters, are certainly examples of this. Claims brought in the Court were often less about the interpretation of “customary rights” in the present than about the significance of dramatic and well-remembered events in the past: wars, battles, migrations, diplomacy, political marriages, and peace-makings. The two of course interconnect, as rights were derived from assertions of power and

¹⁷⁸ *Waikato Times*, VolXX, Issue 1654, 10 February 1883, p 2.

¹⁷⁹ For example see the Court's judgments relating to *Omarunui* (1866) 4 Napier MB 41 (Boast, *Native Land Court* vol 1 278-280); *Wharerangi* (1866) 1 Napier MB 183 (Boast *Native Land Court* vol 1 (339-343); *Heretaunga* (1866) 1 Napier MB 207 (Boast *Native Land Court* vol 1 344-354); *Ngatarawa* (1866) 1 Napier MB 212-218 (Boast *Native Land Court* vol 1 355-358); *Parahaki Native Reserve* (1867) 1 Whangarei MB 148 (Boast *Native Land Court* vol 1 368-369); *Paremata* (1867) 1G Otaki MB 65 (Boast *Native Land Court* vol 1 380-384; *Whakaari and Moutohora* (1867) 1 Maketu MB 4,36 (Boast *Native Land Court*) 585-390; *Kaingaroa No 1* (1867) 1 Taupo MB 6 (Boast *Native Land Court* vol 1 391-393); *Horahora* (1867) 1 Waikato MB 132-133 (Boast *Native Land Court* vol 1 394-395; *Waikohu* (1868) 1 Gisborne MB 5 (Boast *Native Land Court* vol 1 396-399); *Puatai* (1868) 1 Gisborne MB 15 (Boast *Native Land Court* vol 1 400-401). There are many other examples. Merely because the Court's judgment is brief and conclusory is no guide to the importance and value of the block, *Heretaunga* being an obvious example.

authority, but often it was the events themselves, or more exactly their interpretation which tended to be the real issue in court. (The Maungatautari and Horowhenua cases are examples.)

In the Land Court, moreover, it was a very particular set of historic events that was in issue and the ramifications of which were traversed over and again in the principal cases. While assembling my two recently-published books on the judgments of the Court I was surprised to the extent that the cases, and especially the most important and contested cases, involved the interpretation of events in the musket wars period, so-called, of the period from about 1810-1835. More ancient history was in issue in some of the cases, certainly, but it was the events of those key years which caused some of the most bitter and prolonged debate in the Court. The cycles of conflict of the early 19th century created complex displacements all over the country which created in their turn fertile grounds for debate, disagreement and tension in the Land Court. These relatively recent and large scale transformations created urgent and challenging problems of interpretation. The difficulties are shown by the *Porangahau-Mangmaire* case (1886),¹⁸⁰ by the complex cases relating to the Maungatautari area, by the equally complex cases relating to the *Te Aroha* block¹⁸¹ in the southern Hauraki/eastern Waikato region, the *Rangitoto (D'Urville Island)* case of 1883,¹⁸² *Wakapuaka* (1883)¹⁸³, by the massive *Rohe Potae* case of 1886¹⁸⁴, many cases relating to Whaingaroa-Aotea-Kawhia region on the Waikato coast,¹⁸⁵ the cases relating to the Mokau region (the *Mohakatino ki Paraninihi*¹⁸⁶ and *Mokau Mohakatino*¹⁸⁷ cases), numerous cases in the Bay of Plenty region, a sequence of major cases in the Manawatu and Horowhenua areas, cases in the upper Wairoa-Waikaremoana region, the Wellington and Nelson Tenth cases (1888 and 1892, respectively), and the Chatham Islands cases of 1870.¹⁸⁸ In all of these the Court's interpretation of the events of the decades immediately before the Treaty of Waitangi was pivotal. Moreover – for present purposes – many of these cases about the events of the 'musket wars' period impacted profoundly on Ngati Raukawa. (It was these decades which were in issue in the Himatangi, Rangitikei-Manawatu, Kukutauaki,¹⁸⁹ and Horowhenua¹⁹⁰ cases in the PkM district, and in the major cases relating to the Maungatautari area and the Rohe Potae block - and its multifarious partitions - heard at Cambridge, Kihikihi, and Otorohanga.) All of these cases, moreover, were characterised by deep disagreement over the effects of those decades of conflict. Often those giving evidence had themselves participated in the events or had heard about them from their own parents and had their own deeply-felt understandings of what had happened and what the political and tenurial consequences were.

Investigations of title went hand in hand with cases relating to the fixing of the names of the owners: the two were opposite sides of the same coin. Before 1873 the Court simply made an award to ten owners, or less, who then could apply for a Crown grant. The 1873 legislation, however, provided for a more complex and elaborate process. After 1873 essentially the function of an investigation of title was to lay down the broad parameters governing the lists of names that would subsequently entered

¹⁸⁰ (1886) 12 Napier MB 351-6, Boast *Native Land Court* vol 1 1134-1140.

¹⁸¹ (1889) 2 Waikato MB 300-304, Boast *Native Land Court* vol 1 544-550); and *Te Aroha Rehearing* (1871) 4 Hauraki MB 249, 257, Fenton, *Important Judgments* 109-133, Boast *Native Land Court* vol 1 653-682.

¹⁸² (1883) 1 Nelson MB 12, Boast *Native Land Court* vol 1 1006-1008,

¹⁸³ (1883) 1 Nelson MB 27, Boast *Native Land Court* vol 1 1009-1015.

¹⁸⁴ (1886) 2 Otorohanga MB 55-70, Boast *Native Land Court* vol 1 1168-1190,

¹⁸⁵ *Manuaitu-Aotea* (1887) 16 Waikato MB 304-319, Boast *Native Land Court* vol 1 1204-1216.

¹⁸⁶ (1882) 1 Mokau-Waitara MB 48-52, 71-74 Boast *Native Land Court* 930-944,

¹⁸⁷ (1882) 1 Mokau-Waitara MB 85, Boast *Native Land Court* vol 1 945-946,

¹⁸⁸ (1870) 1 Chatham Islands MB 63-67, Boast *Native Land Court* vol 1 581-595.

¹⁸⁹ (1873) 1 Otaki MB 179-178, Fenton, *Important Judgments* 176-178, Boast *Native Land Court* vol 1 697-704.

¹⁹⁰ (1873) 2 Otaki MB 54-55, Fenton, *Important Judgments* 136, Boast *Native Land Court* vol 1 705-706.

into the Court's records. The starting point was the identification of the principal hapu or ancestors – often, in fact, the same thing. The investigation fixed the main claimant hapus or ancestors, providing a basis for the admission of particular people to the title – and, by the same token, for their exclusion. Thus in the Whakamaru-Mangaiti case of 1881 (a case relating to Ngati Raukawa lands), which investigated a large block in the Taupo/Waikato area, the Court disallowed various claims and then made the following finding as to the rightful owners:¹⁹¹

In the opinion of the Court this land belongs to the Ngatiwhaita, Ngatiwairangi, Ngatiparehinu, [Ngatiparehunuku?], Ngatimoe, Ngatipakau and such others whom they admit who are incorporated with them by Marriage or Native Custom who have kept their fires burning on the land.

The groups named are a group of Ngati Raukawa hapu, which are of course descent-based groups. “Ngati Whaita” in fact meant basically anyone who was recognised as descending from Whaita, a well-known Raukawa ancestor, and “Ngati Wairangi” was someone who was descended from Wairangi. Many people, of course, would be descended from both. Anyone affiliating to the named hapu could therefore be admitted as an owner, as could those “admitted by them” who were “incorporated by Marriage or Native Custom” who had “kept their fires burning”. That was still to leave plenty of scope for argument. In the pivotal Rohe Potae case the claimant hapu set up for Ngati Raukawa were Ngati Takihiku and Ngati Whakatare, i.e. two of the three sons of Raukawa; the third son, Rereahu, was treated separately as the ancestor of Ngati Maniapoto. The case thus admitted into the title for “Ngati Raukawa” anyone who descended from Whakatare and Takihiku, a wide class of people who might be thought of as “Ngati Raukawa tuturu” (strictly speaking). The successful claimant groups acquired the right to object to those who asserted descent under these categories, who would then be forced to prove their entitlement under the specified criteria. It could easily happen, in fact, that individuals who were counterclaimants in the main hearing would be entitled to admittance under the Court's definition of the successful claimants. There are even examples of the Court suggesting to defeated claimants that the successful parties might be generous and admit them into the owners' lists in any case. The “winners” in an investigation of title were given, therefore, the right to control the lists of owners and force particular individuals seeking admission on to the defensive if need be.

In order to fully comprehend the full effect of a particular case it is pivotal to study carefully the final lists of owners, which might often be much more extensive and subtle than is apparent from the initial decision. Any temptation to see the fixing of names as a somewhat boring and unimportant consequence of the main investigation of title should certainly be avoided. It is very unlikely that Maori people themselves would have seen things in this light. In fact the lists of names could often be far more contested and fought over than the original investigation. Who the named ancestors were was a vital point. This fundamental fact explains the contention over the Tauponuiatia block in 1886-7. At an early stage in the Tauponuiatia case, which went on for nearly 18 months, the Court fixed the ancestors for the block as Tuwharetoa and Tia, who lived many generations ago. This created a very wide class of potential admittees, but one which had its limits. It was not that a Ngati Raukawa chief such as Hitiri Te Paerata could not gain admission to the block, as he too could claim descent from the Tuwharetoa ancestors of Tia and Tuwharetoa as fixed by the Court. So could other Raukawa people, but only through *their Tuwharetoa-Tia descent lines*, not their Raukawa descent lines. Ngati Raukawa people wanted to have Raukawa in his own right included as an ancestor in Tauponuiatia, but were unsuccessful in this. The Native Land Court refused to admit Raukawa in his own right as an ancestor for this block. This meant that some, but not all Raukawa people could gain admittance, whereas all Tuwharetoa hapu, or more precisely those individuals affiliating to those hapu, in the strict sense could gain admittance.

¹⁹¹ (1881) 7 Waikato MB 184 (see below).

Excluding Raukawa as an ancestor for Taupouiatia was a blow to Ngati Raukawa prestige, but admitting him as an equivalent to Tuwharetoa and Tia was something that the Tuwharetoa leadership would resist in their turn. But there were also practical consequences in terms of who was “in” and “out”.

It seems that a principal reason why so many Maori people attended the hearings in person was to ensure that they were admitted to the lists of names. The lists seem mainly to have been worked out outside the Courtroom by the conductors and the Maori agents and handed in to the judge once the main ancestral or hapu names had been fixed. This preparation of the lists is one of the great unknowns of the Land Court process, out of sight of both of Court officials and the newspapers. Representatives of the successful groups could however challenge any individual name, which would mean that that person would have to show evidence in Court of descent or at least some kind of connection with the main groups or principal ancestors. How the names, however, were actually written up is not clear, but it seems likely that outside the Courtroom agents and conductors would go around the assembled people and compile the lists. Maybe not everyone from the affected descent groups needed to be there, but probably at least some representatives of most families felt that they should be. People were at Court, in other words, not necessarily to give evidence or participate in the cases but rather to make sure they were admitted to the titles, either because that was desirable in itself or in order to be entitled to a cash payment if the block was being purchased either privately or by the government. People endured the mud and the cold and the tedium to get some cash or to make sure they were in the title (or both). It also seems likely that people would try to get their names into as many blocks as they could, waiting around outside the Courtroom to learn of the results of the cases in order to know whether they could claim admission. Some of the judges actually welcomed the fact that large numbers of people were at the hearings, as this meant for more reliable lists of owners. Judge Maning, for instance, revealingly stated to Fenton in 1874 that “the larger the number of natives assembled at a sitting of the Court the less chance there is of any difficulty arising in the future from any of the persons having interests from being overlooked”.¹⁹²

Successful claimants sometimes added in the names of other people on the grounds of “aroha”, a term used to denote those who had been included in the list out of regard or affection but who were not strictly speaking entitled to inclusion under the named hapu or ancestors. The Court was ambivalent about this practice. Some of the judges disliked it, others allowed it, or at least declined to interfere.

The Court’s decisions were on the whole pragmatic, rather than doctrinaire. By the end of the 1880s the Court had not built up any kind of fully worked-out code of Maori custom, and in very few cases are matters of custom discussed in any depth. The Court favoured evidence of occupation over evidence of descent, and was particularly wary of claimants who tried to rely on very remote ancestry at the expense of those who claimed from more recent recognised ancestors and supported this by evidence of occupation. References to cultivations and resource-gathering are commonplace in the minute books, and are in fact the norm, although claimants usually laid primary emphasis on descent from particular ancestors, indicating that to them this was really the most important thing. Claims on the basis of conquest, even, were typically based on a claim of descent from a particular individual who played a prominent role in whatever conquest was said to have occurred – rather, that is, on the basis that the claimant’s own iwi or hapu as a collective corporate body had carried out a conquest in the past. These are merely generalisations, however, and exceptions can certainly be found.

¹⁹² F E Maning to F D Fenton, 20 April 1874, BPOP 4309 4a, Archives New Zealand, Auckland, cited Armstrong and Subasic, *Northern Land and Politics*, 820-821.

The Court laid primary emphasis, however, on the rights of kin-groups – of hapu. After 1873 the Court was concerned to find out which hapu had rights in the block that had been surveyed off and put before the Court, and these hapu then won in turn the all-important ability to submit lists of names of owners to be entered into the Court record. This begs the question whether property rights in fact *were* held solely by hapu, which the Court simply assumed, for which it can hardly be blamed given that commentators and other judicial bodies charged with investigating Maori property rights in land, including the Waitangi Tribunal and the ordinary courts in recent decades, have worked on the same assumption. Even, the question does need to be asked whether an exclusively kin-based approach to land rights in fact captures fully the complexities of Maori tenurial organisation and rights in land.

3.8 Court process

One of the most often-repeated criticisms of the Native Land Court is that it applied an “adversarial” style of procedure, one which was contrary to Maori interests and which was a most unsuitable means of discovering accurate information about customary interests in land. The criticism is a long-standing one, going back at least as far as 1873, and it is one that has been repeatedly made both by historians and by the Waitangi Tribunal.

In Alan Ward’s view Chief Judge Fenton “stuck to the principle that only evidence presented in court would be taken into account”.¹⁹³ David Williams, in his book on the Native Land Court refers to s 23 of the Native Lands Act as “[t]he legal justification for Fenton’s insistence on evidence being presented to the Court as the sole means of ascertaining title”.¹⁹⁴ The criticism of Tribunal procedure made by Ward and others has been developed in subsequent reports of the Waitangi Tribunal. For instance, in its *Wairarapa ki Tararua* report (2010) the Tribunal observed:¹⁹⁵

The Native Lands Act 1862 had preserved some of the principles of the ‘new institutions’, particularly an emphasis on Māori involvement at a decision-making level. Rather than the chiefs sitting under the chairmanship of the local magistrate, the legislature opted instead for a formalised ‘English style adversarial Court’ under the effective control of a Pākehā judge who would apply the ‘best evidence rule’ – or, in other words, would take cognisance only of the evidence presented in the courtroom, even if contradicted by other information.

The Native Land Court was set apart from the ordinary Courts with regard to the admissibility of evidence. Section 19 of the 1886 Act provided:

The Court may thereon proceed by such evidence as it shall think fit (whether admissible in a Court of ordinary jurisdiction or not) to ascertain and decide what Natives are, according to Native custom or usage, entitled to such Native land or to any part or parts thereof.

This had been the position from the beginning of the Court’s history. Under s 7 of the Native Lands Act 1862 the Court could determine title by such evidence as it “shall think fit”, and the provisions of the 1865, 1873 and 1880 Acts were to the same effect.¹⁹⁶ Former army officers, surveyors, and land purchase officers could not be expected to be familiar with the technicalities of the law of evidence as

¹⁹³ Alan Ward, *A Show of Justice: Racial ‘amalgamation in nineteenth century New Zealand*, (Auckland University Press/Oxford University Press, Auckland, 1974), 213.

¹⁹⁴ David Williams, *‘Te Kooti Tango Whenua’: The Native Land Court 1864-1909* (Huia Press, Wellington, 1999), 159.

¹⁹⁵ Waitangi Tribunal, *Wairarapa ki Tararua*, Wai 863, 2010, 416.

¹⁹⁶ See Native Lands Act 1865, s 23 (“the Court shall ascertain by such evidence *as it shall think fit* the right title estate or interest of the applicant and of all other claimants”) (emphasis added); Native Land Act 1873 s 40 (“such evidence as it shall think fit”); Native Land Court Act 1880 s 23 (“such evidence as it shall think fit (whether admissible in a Court of ordinary jurisdiction or not)”).

applied in the ordinary courts. The legislation probably also reflects a sense that the complexities of English law were not suitable for a body that was meant to apply Maori customary law. A strict application of the hearsay rule, for example, would have made the Native Land Court's day to work very difficult.

The Court saw its procedure as evolving, moving from a very informal process by the standards of the day in the 1860s to something resembling ordinary civil process by the 1890s. In a rehearing judgment given in 1891 the Court, comparing the practice of earlier decades (1867) with that of the present, made the following remarks:¹⁹⁷

In those days this Court was Patriarchal and dealt with its cases very much as the old Manor Courts and Court-leets of England used to deal with similar matters, and thus Judge Manning without attention to formality collected the evidence and used it for the future use of future Courts.

In other words, the Native Land Court saw its own practice, at least in the 1860s, not as unusually formal but rather as unusually *informal*, more like that of the old manorial courts in England where counsel were absent and the court collected evidence as it thought best – in other words, behaving in an “inquisitorial” manner. Yet it has to be said that this was not Ngati Raukawa's own experience of the Native Land Court. As will be shown in a later chapter, the Court's operations at Otaki *at first* were very localised and gave little indication of what was soon to come. There was nothing even faintly resembling a Court leet with (for example) the second Himatangi block hearing in Wellington in 1869, in which Ngati Raukawa, represented by one of the leaders of the Wellington Bar (Travers) contended against the Crown in a massive hearing with dozens of witnesses on either side.

The Court did sometimes take into account extrinsic material (i.e. evidence other than that presented by oral testimony at its hearings. It did, for example, carry out site visits.¹⁹⁸ When investigating title to Kapiti Island (the island was in fact split up into 5 separate blocks of land in 1874), the Court (Judge Rogan, Enoka Te Whanake Assessor) announced that it planned to defer its judgment on Kapiti No. 4 (Rangatira) until it had visited the island “to look over the boundaries and cultivation and would then be prepared to give judgment which although the Court could do so now would be unsatisfactory”. The Court “would take no more evidence but would prefer to go over the Island after which a judgment would be given which would be altogether definite”.¹⁹⁹ Following the release of its Horowhenua decision in 1873 Judge Rogan announced that the Court would pay a visit to Tuwhakapua to check on the boundaries there.²⁰⁰ When in 1891 the Native Appellate Court inquired into the partition of the Horowhenua block, the Court (Judges Scannell, Mair, and RM Campbell, Assessor) paid a visit to Horowhenua block and were concerned to find that the two partitions, one vested solely in Keepa Te Rangihiwini and the other in Warena Hunia, actually included the whole Muaupoko community, its cultivations, burial places and so on. As Keepa and Hunia both had Land Transfer Act titles to their respective portions the whole community was at risk of having their land sold from under them. They drew the situation to the attention of the Chief Judge.²⁰¹ The partitions were later annulled, as will be discussed in a later chapter. In 1895 when considering partition boundaries and relative interests in Manawatu-Kukutauaki 7D2D (a lengthy and complicated inter-Ngati Raukawa

¹⁹⁷ Rehearing judgment in Te Ti case, (1891) 11 Tokerau MB 35-48, at 39-40.

¹⁹⁸ For a full discussion of the extent to which the Court carried out site visits, see Boast, *Native Land Court*, vol 2, 115-119.

¹⁹⁹ (1874) 2 Wairarapa MB 51 (22 April 1874). Whether the Court actually did visit the island is unclear. It deferred final judgment on Kapiti No. 4 for five days, giving judgment on 27 April 1874 in favour of Matene Te Whiwhi and Tamihana Te Rauparaha: see (1874) 2 Wairarapa MB 76.

²⁰⁰ “The Native Lands Court”, *Wellington Independent*, Vol XXVIII, Issue 3776, 10 April 1873, p 3.

²⁰¹ (1891) 15 Otaki MB 122-4; Boast, *Native Land Court* vol 2, 634.

case) the Court adjourned for a site visit to Poroutawhao. Site inspections were thus not routine practice, but the Court would at times carry out such an inspection when it thought it necessary. (The question remains, however, as to what the Court was looking for on these site visits, and how the judges and assessors interpreted what they saw.) The Court did occasionally invite independent experts to give evidence in order to help clarify issues relating to ancestors and traditional history. I have found examples of this occurring in some of Rohe Potae (i.e. King Country) partitions, but not in the PkM region as far as I am aware. I have also found some cases where the Court was prepared to consider extrinsic documents, but again not in the PkM region to my knowledge.

Thus although the Court was not always as strictly wedded to basing its determinations solely on evidence given before it as is sometimes said, nevertheless it was a Court, and that may be said to be precisely the problem. Courts are meant to make their decisions on the evidence before them, after all. The New Zealand government had opted for a judicialised method of inquiry into customary tenures, and that necessarily meant at that time a process of investigation based on testimony. The real problem, however, was not so much the Court's practice of basing its determinations on testimony but rather the risk that groups who were not present in Court (either because they were unaware of the case or had deliberately stayed away) would not be admitted into land titles. This problem was a result not only of the Court's reliance on testimony but a number of other factors, including the way in which cases were scheduled and the Court's practices with regard to notifying its hearings. Ngati Kauwhata, for example, did not participate in the original Maungatautari investigation of title because they had to participate in hearings in the Rangitikei scheduled at the same time, and obviously could not be in two places at once [expand]. [or could not participate]

3.9 The Native Land Court, Maori customary law, and Maori social organisation

The Native Land Court was simultaneously a court of Maori customary law and a court set up reduce much of the scope of that law by a process of piecemeal extinguishment. The Native Lands Acts required the Court to investigate titles on the basis of Maori customary law, or as the expression went, on the basis of "Native custom and usage". Section 2 of the Native Lands Act 1862 referred to "owners by *Native custom*". Section 7 of the same statute gave the Native Land Court power to ascertain titles and estates and "upon the Court being satisfied that "such Tribe Community or Individuals *are entitled by Native Custom* possessed of or entitled to any any estate in any Native lands" it could proceed to define such and register the same. The Native Lands Act 1865 was defined in its long title as an "Act to Amend and Consolidate the Laws relating to Lands in the Colony in which the *Maori Proprietary Customs* still exist".²⁰² Section 23 of the same statute, a much more elaborate re-wording of s 7 of the 1862 Act, required the Court ("shall order") to "order a certificate of title to be made and issued which certificate shall specify the names of the persons or of the tribe *who according to Native custom* own or who are interested in the land". There were similar provisions in the 1880, 1886, and 1894 Acts (the 1873 Act was somewhat different).²⁰³ Thus the Native Lands Acts were built on the foundation that there was a body of "Native custom" relating to land tenure which could (a) be ascertained in the first place, and (b) which would form the basis of a Court order. In that sense the Native Lands Acts recognised Maori customary law and the Native Land Court endeavoured to apply it. However the Court was set up to convert titles governed by Maori customary law to freehold grants, meaning that the applicability of Maori customary law to land tenure would gradually cease to be of any practical

²⁰² Native Lands Act 1865, Long Title.

²⁰³ Native Land Court Act 1880, s 24; Native Land Court Act 1886 s 19; Native Land Court Act 1894 s 14. Definition sections in the statutes defined "Native Land" as land owned by Maori under their 'customs and usages' – e.g. Native Land Court Act 1880 s 3.

importance as the remaining corpus of Maori customary land was investigated and converted. Or, at least, such was the plan.

The Native Land Court never explored the content of Maori customary law in any comprehensive way, and rarely called expert witnesses for the sole purpose of ascertaining the content of the Maori customary law of tenures.²⁰⁴ Ethnohistorians, anthropologists and lawyers interested in Maori customary tenures today stress their complexity and subtlety. The 19th century judges, on the other hand, relied on their own intuition and quite rapidly developed a kind of code of practice and methodology that could be applied in title investigations. The judges adopted a breezily confident attitude and seem to have believed that Maori tenures were quite simple and easy to apply – in fact that they were essentially applied common sense. In his judgment in the Mokau Mohakatino case Fenton stated that “the principles of Maori Law on which this Court has always acted in cases of this sort are very simple, very intelligible, and in truth could not be otherwise”.²⁰⁵ This confidence was, however, misplaced. As Ballara puts it, “Māori lives were moulded by multi-stranded whakapapa, hapū with more than one iwi affiliation, communities and settlements shared by multiple descent groups, and resources claimed through an intersecting web of inherited, gifted, or conquered rights”.²⁰⁶ Such complexities “were the stuff that the Native Land Court was attempting to convert to a fee simple ownership and property rights consonant with a western legal framework”.²⁰⁷ A core problem was that people had multiple identities. Matene Te Whiwhi, for example, described himself in the Native Land Court as Ngati Toa, Ngati Raukawa, or as Ngati Toa *and* Ngati Raukawa depending on the case, and the context, and this was the norm.²⁰⁸

Investigations of title to large and important blocks were typically contested, especially after the abolition of the ten owners rule in 1873. The Court thus had to work out a process for the hearing and determination of such cases, and had to devise some basic tests or criteria as to what needed to be proved. These rules included the so-called “1840 rule”, first elaborated in the Compensation Court in 1866, and a number of basic categories of claim. Today these are usually referred to as “take”, meaning something roughly equivalent to a cause of action: “take raupatu” (entitlement by conquest); “take tupuna” (claims by ancestry) and so on. Some recent scholarship has persuasively argued that the various categories of proving title by *take* (i.e. conquest (take raupatu), descent, gift, occupation), often said to characterise the rigidity of the Native Land Court’s approach, are in fact a 20th century construct, and that the Court’s approach in the 19th century was far more flexible. In fact, it has been argued, the Court basically had no fixed approach at all, and decided cases entirely on pragmatic grounds. While it is true that the criteria were not as hard and fast as is sometimes made out - in fact sustained discussion of *take* are very unusual in the Court’s judgments – there were limits to the Court’s general pragmatism and flexibility. It was not as if there were no rules at all, even if they were sometimes selectively applied,

²⁰⁴ There are occasional instances of persons addressing the Court, or special commissions of inquiry, as “an expert”: see eg evidence of Te Ngakau, Ngati Kauwhata inquiry 1881, 1881 G-2A 12. Occasionally the Court asked independent witnesses to address the Court on complex matters of traditional history, but the results were not always what the Court was hoping for: see Pukeroa-Hangatiki case, (1882) 3 Otorohanga MB 232; Oamaru case (1883) 3 Opotiki MB 356-7; Boast, *Native Land Court*, vol 2, 120.

²⁰⁵ (1882) 1 Mokau-Waitara MB 51.

²⁰⁶ Ballara, *Tribal Landscape*, 172.

²⁰⁷ Ibid, 172-173.

²⁰⁸ Ballara, *Tribal Landscape*, 180-181:

The fact that any one individual could identify him or herself by a number of different hapū names would lead to endless confusion for Crown officials struggling to understand the system, and to accusations by them that individuals were trying to ‘cheat’, opportunistically attaching themselves to different lists for the purposes of claiming lands. But individuals could legitimately claim different lands under their different ancestors. They derived their rights to land from multiple, not single strands of inheritance.

and variable in their application from judge to judge. On the whole the Court preferred to make its decisions based on occupation, as demonstrated by evidence of residence, cultivations, resource-gathering, and defending the land from attack by others. As Ballara puts it, “[i]t was quickly (and correctly) established by judges that landownership could not be adequately decided through ancestry alone; mere membership of a large, geographically dispersed descent group or tribe was not acceptable evidence of ownership”.²⁰⁹ Claims by conquest or descent without supporting evidence of occupation could often fail, especially where challenged by occupiers. The basic rule was set out by Fenton in the Parininihi Mohakatino decision in 1882 - conquest, to be effective, must be followed by effective occupation (“occupation undoubted”).²¹⁰

A conquest, attended by the expulsion of the defeated party from their land, conferred no title on the conquerors, unless followed by occupation. A conquest resulting in the complete expulsion of the defeated party, or the abandonment of their territory under the stress of force, and followed by permanent occupation of the conquerors, conferred a perfect title, which endured until they were evicted by force. When the British authority was introduced into New Zealand, of course a new state of things came with it, and private warfare being illegal, no rights could be acquired by force. It therefore follows that any conquering tribes found at that epoch in the perfect occupation, - by which I mean occupation undoubted, and not diminished in its character by hostile force, - of land from which the owners had been previously expelled, or which they had abandoned from fear, would retain all its rights over that territory, unless it admitted the return of the expelled people by consent, express or tacit. Nor would it be necessary to eject the intruders by force; for the exercise of such force having since 1840, been, in contemplation of law, illegal, - if dissent is signified that is sufficient.

Essentially the Court’s practice was to allow evidence of occupation to trump claims founded only on ancestral descent, but it was not quite as simple as that. It is better to think of the Court’s adjudicative process as one in which descent-based claims and occupation-based claims were both in play. There was essentially a sliding scale in operation between these two poles, but also the two categories operated in combination: claims could be based on descent combined with occupation; occupation only (i.e. with no ancestral connection to the primary right-holding ancestor); and descent only. The strongest kinds of claim were those in the first category. In practice claims based on conquest were often descent/occupation claims, i.e. descent from a recognised conqueror, who may have lived generations ago, maintained by occupation of the conquered territory by the conqueror’s descendants. On other occasions, however, the conquest would be within living memory, as with the Kapiti Coast region and Maungatautari. Strong evidence of occupation could almost prove its own lawfulness, as it were, in the absence of evidence to the contrary. By the same token, conquest *unsupported* by occupation did not create a strong title. Thus the Court declined to allow Ngati Toa a beneficial interest in the Nelson Tenth reserves for the reason that Ngati Toa did not follow up on the conquest of the region in the 1830s by occupation.²¹¹

As regards the Ngatittoa claim this hapu although it took part with the other hapus in conquering the Country on the South side of Cook straits did not occupy any portion of the territory gained in that manner within the Nelson Settlement. The only places retained by that hapu in the South Island were situated at Cloudy Bay the Wairau and the Pelorus, these were the only places in the bona fide possession of this

²⁰⁹ Ballara, *Taua*, 270.

²¹⁰ Chief Judge Fenton, Mohakatino Parininihi decision, (1882) 1 Mokau-Waitara MB 48-52, 71-74, at 52 (15 June 1882) (see Boast, *Native Land Court vol 1, NLC95*, pp 930-944). This case and its background is studied comprehensively by Paul Thomas, *The Crown and Maori in Mokau 1840-1911*, research report commissioned by the Waitangi Tribunal (Wai 898 [Rohe Potae]) Doc#A28, 2011); see also Evelyn Stokes, *Mokau: Maori Cultural and Historical Perspectives* (University of Waikato, Hamilton, 1988).

²¹¹ (1892) 2 Nelson MB 7.

hapu at the formation of the Colony, consequently they had not acquired any proprietary rights in any other part of the territory conquered from the original owners.

In this case the successful parties were those who could point to descent from the conquerors, supported by occupation (Ngati Tama, Te Ati Awa, Ngati Koata, Ngati Rarua). Ngati Toa were conquerors as well, but were non-occupiers (supposedly), and their claim was rejected. Ngati Kuia, Ngati Apa and Rangitane had an ancestral connection, but this had been displaced by the conquest. So the claims of Ngati Toa on the one hand, and Ngati Kuia, Ngati Apa and Rangitane on the other were all rejected, but for different reasons. The Ngati Toa case was however in a way a “descent only” claim: Ngati Toa undoubtedly were the descendants of Te Rauparaha and the other Ngati Toa conquering chiefs, but that was all –in the Court’s opinion – that they could show. Whether this reflected Maori customary practice is a very moot point.

The concept of occupation was roughly congruent with the Maori concept of ahi ka, or continuously burning fires. As in English common law, land could be abandoned and title lost. There seem to have been no fixed rules about abandonment in Maori customary law. Persons who returned, or their descendants (up to a point) could ‘relight’ their fires.²¹² In Ballara’s view, “[t]he longer people or descent groups were away, the more it became a matter of choice whether those with continuous occupation would admit their claims if they or their descendants returned”.²¹³ A complexity, however, was the practice of maintaining guardians or caretakers on the land, the intention to preserve rights in areas that had been migrated from.²¹⁴ The Native Land Court tended to be wary of arguments that groups who had migrated away retained rights in their former lands. As the Court put it in the Waotu North case, “those who abandoned the land in trouble are disclaimed by it in peace”.²¹⁵ It was this issue which was pivotal in the lengthy sequence of cases relating to the Maungatautari area. In a number of cases the Court took the view that Raukawa, the original owners, had broken their ancestral connection and occupation of the Maungatautari area by migrating to the Kapiti region in the 1820s and 1830s. On Raukawa giving evidence that some of their people had remained behind, the Native Land Court in the Maungatautari investigation (1884) professed itself to still be unconvinced: “they merely occupied by sufferance such places as they did occupy after the land had changed owners, and that occupation having terminated no right now exists”.²¹⁶ As will be seen, many Ngati Raukawa and Ngati Kauwhata claimants argued in the Native Land Court that leaders of other groups in the Waikato, sometimes leaders of groups such as Ngati Haua and Ngati Koroki with whom Ngati Raukawa and Ngati Kauwhata had been at war, had invited people affiliating to the former groups to return to their ancestral lands.²¹⁷ This was seen as recognition of a right: a chief like Te Wherowhero would not have invited persons without such rights to return. Tapa Te Whata of Ngati Kauwhata said that Wiremu Tamihana invited Ngati Kauwhata to return to Maungatautari “because he knew (1.) This land belonged to us; (2.) because of our relationships.”²¹⁸ It was important in terms of Maori customary law whether an invited group had abandoned the land because they had been defeated, or whether they had withdrawn with mana intact – indeed some witnesses said that in the latter situation a migratory group could return at any time

²¹² Ballara, *Tribal Landscape*, 231.

²¹³ Ibid.

²¹⁴ e.g. Reweti Kohu, Ngati Kauwhata investigation, 1881 AJHR G-2A, 9.

²¹⁵ *Waikato Times*, 25 November 1882, p 2

²¹⁶ (1885) AJHR G3, 7.

²¹⁷ Parakaia Te Pouepa, Pukekura case, (1868)2 Waikato MB 29; Tapa Te Whata, Ngati Kauwhata investigation 1881, 1881 AJHR G-2A 8; Takana Te Kawa, *ibid*, 10; Hakiriwhi, *ibid*, 11 (“Tamihana’s invitation was because of their natural right”); Te Ngakau, *ibid*, 12.

²¹⁸ Tapa Te Whata, Ngati Kauwhata investigation 1881, 1881 AJHR G-2A, 8-9.

(presumably within reason).²¹⁹ Evidence was also given of gifts to recognise the rights of migratory groups to return to their former lands: Tapa Te Whata said in 1881 that “the Waikato chiefs gave me the mat I now wear in token of my ownership and right”.²²⁰ Evidence of this kind would not have been given so often if it not been seen as important in terms of Maori customary practice. But the Land Court tended to lay little weight on such invitations, especially if the invitations had been made after the accession of British sovereignty.

Occupation could be shown in a number of ways. It was quintessentially demonstrated by cultivating, building houses, burying the dead. But much less intensive activities also ranked as occupation, in both Maori custom and in the Native Land Court. In the case of the Parumoana foreshore case relating to an area of Porirua harbour, it was shown by “collecting pipis”.²²¹ Occupation could mean “the hunting on the land of weka and kiwi, kiore and tītī – all wild species of birds or edible rodents – as well as hunting managed pig herds, or later, running horses, cattle or sheep on the land”.²²² The Court was aware that some areas were used much intensively than others, but in no case did the Court find that there was *no* occupation: every part of the country was presumed to be occupied by some group. Mangaohane was a remote and mountainous area with a harsh winter climate, but this only meant that it was occupied in a particular way.²²³

What that occupation must be to entitle, must be defined according to Native custom in such cases, as this in which we have a block of land, admittedly not much occupied formerly by inhabitation; in which the principal rights exercised were bird catching, hunting, fishing and gathering the fruits of the land. Acts like these habitually done of right, and undisputed, and before 1840 would in our judgment show a sense of right not slept on or abandoned.

3.10 The 1840 rule²²⁴

The Court felt that it needed a cut-off date for determination of titles, something which obviously not be derived from Maori custom. The solution it adopted was to base titles on the date of the accession of British sovereignty. The Native Land Court is usually seen as working on the assumption that it applied

²¹⁹ Te Ngakau, Ngati Kauwhata investigation 1881, 1881 AJHR G-2A, 12:
Had they (Ngati Kauwhata) lost their land by conquest, the word of Potatau would not restore them to their rights...Potatau invited them back because they left Pukekura in a peaceable manner. Had they left the land because of any disturbance they could not have returned; but, on the other hand, had they left in peace they could have returned in the face of Potatau, or against Potatau’s will, if Potatau had forbidden them.

²²⁰ Tapa Te Whata, Ngati Kauwhata investigation 1881, 1881 AJHR G-2A, 7.

²²¹ (1883) 1 Wellington MB 159.

²²² Ballara, *Tribal Landscape*, 229.

²²³ (1885) 9 Napier MB 241.

²²⁴ On the 1840 rule see B Gilling, “The Queen’s Sovereignty must be Vindicated: The 1840 Rule in the Māori Land Court” (1994) 16 NZULR 136; this article was based on his evidence given in Waitangi Tribunal’s Chatham Islands Inquiry (Gilling, *‘The Queen’s Sovereignty must be Vindicated’: The Development and Use of the 1840 Rule in the Native Land Court*, research report commissioned by Te Iwi Moriori Trust Board, 1994, Wai 64 [Chatham Islands Inquiry] Doc#A79). Gilling’s evidence resulted in a response from Fergus Sinclair on behalf of the Crown: see Sinclair, *The “1840 Rule” and the Moriori Claim (Wai 64)*, research report commissioned by the Crown Law Office, 1995, Wai 64 #G11. Sinclair sees the “rule” as having the following components (ibid, 3-4): “(1). No use of force could confer rights to land after 1840. (2) No later assertion of rights could be upheld that did not have the consent of the owners as at 1840. (3) Lack of occupation did not destroy a claim that was valid at 1840. (4) The owners at 1840 could voluntarily dispose of their rights or admit other persons to ownership.” I discuss the “1840 Rule” in detail in Boast, *Native Land Court*, vol 2, 126-137, on which this section of the report is based with additional material relating to Ngati Raukawa cases in the PkM region and the Waikato. On the 1840 rule see also Ballara, *Tribal Landscape Overview*, 605-607. Ballara notes that the rule was applied “erratically and inconsistently” (ibid, 607).

an “1840 rule” by which customary rights in land were in a sense “freeze-framed” at the time of the accession of British sovereignty in 1840.²²⁵ The Court is thought to have imagined itself as sitting in 1840 and making its decisions on the configurations of power and authority that existed at that time, shutting its eyes to anything that might have happened subsequently, or perhaps artificially prolonging and entrenching a possibly fluid situation at that time which did not in fact represent the reality of customary interests.

The first important statement on the so-called ‘1840 rule’, by which titles derive from the rights of groups as at 1840, the date of the acquisition of British sovereignty, was made in the 1866 judgment of the Compensation Court relating to the Oakura block in Taranaki. Chief Judge Fenton stated that it could not “be reasonably maintained that the British Government came to this Colony to improve Maori titles, or to reinstate persons in possessions from which they had been expelled before 1840, or which they had voluntarily abandoned previously to that time”:²²⁶

Having found it absolutely necessary to fix some point of time at which the titles, as far as this Court is concerned, must be regarded as settled, we have decided that that point of time must be the establishment of the British Government in 1840, *and all persons who are proved to have been the actual owners or possessors of land at that time, must (with their successors) be regarded as the owners or possessors of those lands now.* [emphases added]

Fenton was, however, careful to state some qualifications to the “rule”. Firstly, it had no application where post-1840 changes had been acquiesced in, actually or tacitly, by the government (“except in cases where changes of ownership or possession have subsequently taken place, with the consent, expressed or tacit, of the Government, or without its actual interference to prevent these changes”).²²⁷ That was to leave a very wide field open to the Court for not applying, ignoring, or simply forgetting about the rule altogether. Secondly, said Fenton, *Oakura* was not a decision of the Native Land Court at all, but of the Compensation Court. In the Native Land Court the “rule” could be applied more flexibly, because of the pivotal differences between the two institutions: the Compensation Court involved contested claims between Maori and the Crown; the Native Land Court was concerned with claims between Maori *inter se*:

Of course the rule cannot be so strictly applied in the Native Lands Court, where the questions to be tried are rights between the Maoris *inter se*, but even in that Court the rule is adhered to, except in rare instances.

The precise issue in *Oakura* was whether Maori who had abandoned their former territories *before* 1840 could lay claim to them *after* 1840. Fenton was concerned with the claims of numerous people residing in the Chatham Islands, the South Island, Wellington, Waikanae, Otaki, Auckland and the Waikato to land in Taranaki. All these claimants were from Taranaki originally, but they left before 1840 and – pivotally – mostly had not returned. Thus in the case of persons who had migrated to the Chatham Islands, Fenton found that they had been “expelled” from Taranaki by Waikato before 1830, “and that *since the establishment of the Government in 1840* none of these none of these persons have returned to occupy the lands from which they were driven, and we therefore think that they have no

²²⁵ There is no discussion in the cases that I am aware of that clarifies exactly *when* in 1840 the rule commences – i.e. the date of the Treaty of Waitangi, or the formal proclamations of British sovereignty, or whatever.

²²⁶ Vol 1, 291-2; also [1866] AJHR 4.

²²⁷ Vol 1, 291; [1866] AJHR 4.

title, interest, or claim to any land within this block”.²²⁸ There were another 61 claims from people living in Wellington, “on portions of which they still reside”; once again “[n]one of this class of claimants have returned to re-occupy any portion of this block”.²²⁹ The same was the case with Taranaki people living at Waikanae and Otaki, who likewise could not now assert an interest in lands in Taranaki. It is significant that Fenton applied the rule in an individualised way, consistently with his overall approach to land titles. A *person* who had left the ancestral homeland before 1840 and had not returned after 1840 could not now assert a claim. Consistently with this Fenton was quite willing to recognize the rights of persons who had returned after the supposed cut-off. He mentioned, for instance, one Rawiri Motutere, who had come back to Taranaki from the Kapiti region after 1840 and had cultivated land there: his claim was admitted. So was that of one Wi Tamihana Te Neke, who “on the sale of the Tataramaika Block to the Crown, came back and asserted his right to a portion of the payment”; Wi Tamihana’s claim “was admitted by the tribe, and it has not been proved to the Court that any protest or objection was made by the Agent by the Crown”.²³⁰ His claim was also admitted, as were the claims of Taranaki Maori people made captive by the Waikato and Nga Puhi tribes before 1840 and who had been emancipated and allowed to return to Taranaki after that date.

In Fenton’s understanding of the “rule” persons excluded on the basis of non-occupation by 1840 were not necessarily wholly deprived of rights to land: rather, they could maintain such claims with respect to the places they had moved to. The “Chatham Islanders” – in fact, people affiliating to Ngati Mutunga - could not claim land in Taranaki, but they certainly could do so in the Chatham Islands. Fenton evidently thought that without a fixed cut-off date there would be complete chaos. He specifically referred to claims by Ngati Raukawa people now living in Otaki and Ngati Toa people at Porirua to their abandoned former lands in the southeast Waikato and Kawhia.²³¹

If greater lassitude is allowed, and the *date of ownership* is permitted to be variable, the confusion will be such as to render any solution of this great question, upon any principle of justice, perfectly hopeless. Thus, we know that there are claims preferred by the Otaki natives to Maungatautari and the whole of Waikato, from which countries they have long been expelled, and from which, at an earlier date, they themselves drove out other tribes. Again, Te Rauparaha’s people claim Kawhia on similar grounds, and have sent in claims.

Fenton here must have been thinking of the claims brought by Ngati Raukawa people at Otaki in the Compensation Court to confiscated lands in the Waikato. As will be explained in a later chapter, these claims were re-directed by Fenton into claims in the Native Land Court to the Maungatautari block. His resistance to Ngati Raukawa at Otaki being able to claim land in the Waikato is already apparent.

Elaborate discussions and even clear applications of the 1840 rule after *Oakura* are hard to find, but it certainly did inform Native Land Court practice in a general way. The Pukekura, Maungatautari and Puahue blocks were investigated in 1868, as will be seen.²³² The circumstances here were a little different from *Oakura*. Ngati Raukawa’s departure had certainly been before 1840, but there was no issue (as far as the Court was concerned) of a *post*-1840 return; simply, Ngati Raukawa had not returned at all, and were no longer in occupation of their ancestral lands and thus their customary title to them no longer could be recognised. “It is...clear”, said the Court, “that the Ngatiraukawa did not

²²⁸ Ibid (emphasis added). The classic account of the traditional history is S Percy Smith, *History and Traditions of the Taranaki Coast*, Memoirs of the Polynesian Society, Vol 1, Thomas Avery, New Plymouth, 1910.

²²⁹ Ibid, 293; [1866] AJHR 4.

²³⁰ Ibid.

²³¹ Ibid, 292; [1866] AJHR 4.

²³² (1868) 2 Waikato MB 93-95.

avail themselves of the alleged invitation of the [sic] Wherowhero as they still remain in occupation of the land to which they migrated”.²³³ The case can be explained on the basis of the Court’s interpretation of Maori custom: Ngati Raukawa had (supposedly) wholly abandoned the Maungatautari area and had not gone back to it, whether before 1840 or afterwards.

The 1840 rule was discussed explicitly in Fenton’s lengthy judgment in the Orakei case.²³⁴ In *Orakei* Fenton makes another important statement about the rule, as follows:²³⁵

It would be a very dangerous doctrine for this Court to sanction that a title to native lands can be created by occupation since the establishment of English sovereignty, and professedly of English law, *for we should then be declaring that those tribes who had not broken the law by using force in expelling squatters on their lands, must be deprived “pro tanto” of their rights* [emphasis added]. The precedents are all the other way, and are founded in reason.

As seen, in *Oakura*, Fenton was concerned to prevent persons who had left an area before 1840 to reclaim that area after 1840; in *Orakei*, Fenton’s point is somewhat different. He believes that the Court should not entertain claims to new areas on the basis of occupation after 1840, and the reason for that is because to do so would allow peaceable groups who had not forcibly expelled “squatters” post-1840 to be deprived of their rights. Recognition of a post-1840 occupation would have to be at the expense of some other group, who perhaps out of respect for British law had forborne to expel the intruders.

There were further developments of the rule in later Land Court cases. The 1840 rule did not, for example, prevent the Court from giving effect to post-1840 gifts of land.²³⁶ The Court also modified aspects of the rule in later cases. In 1887 the Court reconsidered the “rule” in the Porongahau Rehearing.²³⁷ In this case the Court observed that the “1840 rule” meant only that no *new* rights could be obtained post-1840. It had no application where, as at Porongahau, the former owners returned to land that they had formerly occupied, and had resettled it without challenge.²³⁸ Sometimes it was simply impossible to apply the 1840 rule in any meaningful way because of local circumstances, as the Court recognised in an important later case in the PkM region. This was the Ngarara West decision in 1890.²³⁹ In this case the Court was asked to partition the block amongst various Te Atiawa hapu, based on areas of exclusive hapu rights, but the Court concluded that in the particular circumstances of the occupation of parts of the Kapiti coast region by Taranaki and Waikato groups in the early 19th century this could not be done.²⁴⁰

With these two exceptions then, the remaining Ngatiawa consisting of the hapus of Kaitangata, Ngatikura, Ngatihinetuhi, Ngatirahiri, and those who remained of Ngatimutunga lived up to 1840 all over the Block in common, there were no particular parts set aside for each hapu, no boundaries as the evidence shows were recognized as dividing the lands of the hapus, one from another and any attempt to base a claim to particular parts of the land as the property by native custom before 1840 of any one hapu to the exclusion of the other hapus of Ngatiawa is one that cannot be maintained. Whatever rights then the

²³³ (1868) 2 Waikato MB 95.

²³⁴ (1868) 2 Orakei MB 355; Fenton, *Important Judgments*, 53-96; Vol 1, 481-540.

²³⁵ Fenton, *Important Judgments*, 94-6; Vol 1, 536-7.

²³⁶ As shown by the Harataunga case in the Coromandel region: see (1872) 2 Coromandel MB 395, 400; Boast, *Native Land Court*, Vol 1, 687-90. Here the Court was willing to recognise a post-1840 gift of land by Ngati Tamatera to a hapu of Nga Puhui. Gifts do not conflict with the “1840 rule” because they are, by definition, based on consent: if Ngati Tamatera, after 1840, are minded to give away some of their lands, they can do so.

²³⁷ (1887) 14 Napier MB 77-78 (vol 1, 1231-1251).

²³⁸ (1887) 14 Napier 78 MB (vol 1, 1249-50).

²³⁹ (1890) 12 Otaki MB 3-30.

²⁴⁰ (1890) 12 Otaki MB 15-16.

individuals now in the certificate Title possess as against others in the same certificate are such only as are derived (first) from the individual acquisition of each separate member of the tribe who took part in the conquest and in the subsequent occupation of this transmitted right, and secondly the occupation exercised during the years from 1840 to the present time by the tacit consent of the others.

The Court continued:²⁴¹

With regard to these hapu claims which have been brought forward so often and urged so persistently following no doubt the custom in other Blocks were hapu claims have long been established; we think from the very nature of the acquisition and occupation of the land up to 1840 that any claim made under this head to any particular section of the land to the entire exclusion from that part of the other hapus, is altogether untenable. As we have already shown a portion of the Ngatiawa tribe came and settled on the land, there was no exodus from their original location of any one hapu, some of each remained and some of each came away, they could not all at once spread out over the land, to do so meant exposing themselves to probable annihilation in detail, they all congregated in two or three pas for mutual protection and cultivated around in common as most convenient and so they remained till Christianity was introduced and English law established, the time when it is attempted to be proved the hapu rights were established and recognized by long continued custom.

The Court here is speaking of Te Atiawa, but it can certainly be (in my view) very convincingly argued that Ngati Raukawa's position in the PkM region had many similarities: ("there was no exodus from their original location of any one hapu, some of each remained and some of each came away"). The Court is by this time developing a more sophisticated sense of the complexities of the settlement of the PkM region. The Court's remarks here, which show a reasonably sophisticated understanding of the circumstances of settlement in the PkM region, are highly inconsistent with what happened in the earlier Himatangi, Kukutauaki and Horowhenua cases (1868-1873) – a point which will be discussed further later in this report.

By the 1890s the Native Land Court was taking the position that the "1840 rule" had to be kept within very narrow boundaries. At the rehearing of the Omahu block²⁴² the court, presided over by Chief Judge Seth Smith and Judge Scannell decided that a strict interpretation of the "1840 rule" was inappropriate and recognised their interests.²⁴³

If it were the duty of the Court to imagine itself sitting in the year 1840, immediately after the introduction of the British Government into the colony, we should have come to the conclusion that the Ngaiteupokoiri were not owners of this land. But we think also that if we were placed under the necessity of we should also be obliged to find that no natives had any beneficial interests in this land at that time, and if the strict interpretation of the so called rule of 1840 were insisted upon the experience of the present members of the Court leads us to believe that a very large area of the land of the North Island would be found to be without an owner.

The court went on to draw attention to the practical difficulties of the rule and the need to temper it with a sense of fairness and basic justice:²⁴⁴

Apart from the inherent difficulty of imagining ourselves in 1892 as sitting in 1841, it would be necessary to introduce so many other fictitious elements that no satisfactory result could be arrived at. But when the various statements of the so-called rule of 1840 are looked into it is clear that the Court never intended to lay down any rule which would be productive of so much injustice to native owners as so strict an

²⁴¹ (1890) 12 Otaki MB 19,

²⁴² (1892) 26 Napier MB 7-8.

²⁴³ (1892) 26 Napier MB 7.

²⁴⁴ Ibid.

interpretation would lead to. We accept the rule as laid down in the Oakura case as containing all the qualifications to which every rule of the kind must be subject, that are necessary to enable us to do what we believe to be substantial justice in this case, and we have no intention of restricting or extending the rule beyond what is there laid down.

There certainly was an 1840 rule. Even in Fenton's initial formulation of it, the "1840 rule", however, did not prevent the Court from recognising the interests of former individual "exiles" who had returned after 1840. The rule did not prevent the recognition of post-1840 gifts, did not exclude uncontested resettlement of former territories, and by the 1890s was being interpreted in the context of a felt need to be flexible and to avoid injustice in particular cases.

3.11 Lawyers and conductors

The history of Maori interaction with the legal profession has not been much investigated by historians. As the Native Land Court was, by definition, a process of judicial inquiry into Maori land titles by a Court of record, Maori people were inevitably going to need legal assistance at least on occasion, especially with more complex cases. The state had opted for the use of a courtroom process for determining Maori land titles, and this inevitably meant not only Maori engagement with courtrooms and judges, but also with the legal profession. Some Maori will have consulted with the legal profession about various matters before the Native Lands Acts were in place (about wills, contracts, recovery of debts etc.), but Maori engagement with the legal profession must have been significantly increased with the new legislation. Powerful and wealthy chiefs such as Renata Kawepo regularly sought advice from solicitors, who also drew up his will (admittedly it was challenged by his grand-niece Airini Donnelly, leading to a courtroom battle which went all the way to the Privy Council.) That engagement with the Land Court meant an increased need for legal advice may have not been apparent at first, but once the Court began dealing with large blocks with significant interests at stake then increased engagement with lawyers was only a matter of time.

As it happens lawyers were from time to time excluded from the Court by the Native Lands Acts. There appears to have no formal bar on lawyers appearing in the Native Land Court under the 1862 and 1865 Acts. The practice appears to have been a discretionary one, and parties could object to counsel being present. This occurred with one of the most important cases affecting Ngati Raukawa, the Kukuatauaki block heard in 1872-3 (and thus under the Native Lands Act 1865 and its amendments). In this case Ngati Raukawa retained the services of Patrick Buckley, a leading Wellington barrister. When Buckley sought leave to appear, Hoani Meihana of Rangitane objected to any party in the case employing counsel, leading to a prolonged debate in the Court. Others spoke in support of Hoani's objection. A different perspective was that of Henare Herekau, who said that "with regard to this application the people are Maori but the work is European – it will not do to go backwards". Moreover "the Court is Pakeha and the Lawyer is Pakeha" – and in any case those who wished the case to proceed without lawyers were inconsistent – "these tribes mentioned by Hoani employed Lawyers during the sittings at Rangitikei, it was there that these Natives were glad enough to employ Lawyers in their claims".²⁴⁵ In the same case Kawana Hunia, one of the main counterclaimants, said that he had nothing to say about counsel, but that he objected to the case proceeding at all.²⁴⁶ The Court decided that the case had to proceed without counsel, but Buckley was permitted to "watch the Case in their (Ngati Raukawa's) behalf without interfering".²⁴⁷ After the Court had given judgment however, counsel for

²⁴⁵ (1872) 1 Otaki MB 1-2.

²⁴⁶ (1872) 1 Otaki MB 3.

²⁴⁷ (1872) 1 Otaki MB 5.

both Ngati Raukawa (Buckley) and the counterclaimants (Cash) made various submissions and applications to the Court as to what should happen next.

The 1873 Act, however restricted the role of counsel. Section 44 of the 1873 Act stated:

The examination of witnesses and the investigation of title shall be carried on by the presiding judge without the intervention of any counsel or other agent: Provided that it shall be competent for the claimants to select one of themselves to act as their spokesman to conduct the case in their behalf.

Section 44 was not, in fact, a blanket ban of lawyers from the Court. It was contained in the part of the *Act relating to investigation of titles*. This, and the wording of the provision, indicates that lawyers could appear in support of other kinds of applications – successions, or partitions, for instance. Even for investigations of title it seems that the exclusion was not total: the exclusion related only to “the examination of witnesses and the investigation of title”. If issues came up about points of law or the Court’s jurisdiction then presumably Maori could instruct counsel to argue them. Mainly the provision was aimed at preventing counsel from cross-examining witnesses, no doubt because it was thought that lengthy cross examination would slow the process down and make it more expensive. This provision was aimed not only at lawyers (i.e. qualified members of the legal profession). The reference to “other agent” in s 44 is a reference to Native agents, so called, who were usually Maori themselves, and who worked in the Court towns as land-brokers and land-dealers. The provision was aimed, and could only be aimed, at the management of cases in Court. Maori were always free to seek legal advice from solicitors about Maori land issues, and perhaps even to get advice about how to best present a case, although how often they did that is unclear.

In 1878 the ban on lawyers and agents appearing in the Court was removed. Instead the Court was given a discretion to allow counsel or not, a reversion to the practice under the 1865 Act. Section 3 of the Native Land Amendment Act of that year gave the Court power to “allow counsel or agent to appear for either party in a case, and to conduct such case on behalf of such party”.²⁴⁸ It was said in parliament that this change had been made because Maori themselves had wanted it, and that the change was also supported by the Native Land Court judges (who were mostly not lawyers themselves).²⁴⁹ This provision was re-enacted as s 63 of the Native Land Court Act 1880.²⁵⁰ It appears, however, that Maori were divided in their views as to whether lawyers should be allowed to practice in the Native Land Court, and there were a number of petitions asking for the ban to be reinstated. In November 1883 Aperahama Te Kume objected to lawyers representing Maori parties in the Whakamaru rehearing case at Cambridge (Whakamaru is Ngati Raukawa block): “[h]e considered that those natives who were interested should fight their own cases”.²⁵¹ This would indicate that some groups briefed counsel while at the same time others disapproved. In 1883 Major Kemp and 278 Whanganui Maori petitioned parliament complaining that lawyers who practiced in the Native Land Court were too costly and asked that lawyers be banned from appearing.²⁵² Around the same time Te Heuheu Tukino Horonuku complained to parliament about lawyers’ fees in the Land Court.²⁵³ Also in 1883 Piripi Whatuaio of Ngati Raukawa petitioned parliament seeking a rehearing of the Waotu South No 2 Block, at which one

²⁴⁸ Native Land Act 1873 Amendment Act 1878, s 3.

²⁴⁹ See (1878) 28 NZPD p 3 (28 July 1878); see also Keith Pickens, *Operation of the Native Land Court in the National Park Inquiry District*, Wai 1150 Doc#A50, 22.

²⁵⁰ Section 63 of the 1880 Act stated that “[i]t shall not be lawful for any person to appear or be assisted in Court by counsel or agent, unless the assent of the Court or a Judge thereof is first obtained, and the Court may at any stage of the proceedings withdraw such assent”.

²⁵¹ *Waikato Times*, Vol XIX, Issue 1620, 21 November 1882, p 3.

²⁵² 1883 AJHR I-2, p 11.

²⁵³ 1883 AJHR I-2, p 20.

of the issues which came up for discussion was the role played by lawyers in the Court sittings at Cambridge. The Native Affairs Committee took evidence on the petition in July 1883, presided over by Colonel Lawrence Trimble.²⁵⁴ Extensive evidence was given by the petitioner (Piripi Whatuaiao), Chief Judge Macdonald, Judge Puckey, and two of the most prominent barristers who practised in the Court at Cambridge, John Sheehan – formerly Native Minister in the Grey government – and Walter Buller.²⁵⁵

Piripi Whatuaiao complained that the Court paid no attention to him because he was not associated with any of the powerful groupings in the Court represented by “the lawyers” and by “the company” and that he had not been able to properly present his case to the Court.”²⁵⁶ The Committee members were aware of the various petitions pressing for the banning of lawyers in the Native Land Court and complaining about legal fees. Judge Puckey – like most of the Native Land Court judges, not a lawyer himself – was questioned on this point. Judge Puckey thought the Land Court could deal with the majority of cases without counsel being present.²⁵⁷ Naturally the lawyers who appeared before the Committee, Sheehan and Buller, disagreed.²⁵⁸ (Walter Buller was a lawyer very well-known to Ngati Raukawa, both in the Waikato and in the PkM region.²⁵⁹) Sheehan stated was asked whether, if lawyers were excluded whether the Court had “any machinery by which it could arrive at a definite and just conclusion” (the same question put to Judge Puckey). Sheehan did not think so:

I do not think the Court as at present constituted has any machinery of the kind. The Court consists generally of one or two European judges and the Native Assessor. The other officers of the Court are the Clerk – who, by no means, can be an assistance to the Court in determining the title, because his function is to take down the evidence – and the Interpreter, who can be of no assistance, because his impartiality must be above suspicion.

Sheehan’s point, in which he was quite right, was that the Native Land Court had no investigative machinery of any sort. It was merely a court, with its judges, assessors, clerks, and interpreters. It could hear cases, but that was about all it could do. Sheehan believed that presenting a case to the Court in an effective way required the skills of a good advocate familiar with the Court and its workings. He was right about that too. To put the point another way, while of course there were many other alternative methods that could have been used of investigating and recording titles to Maori land, the method that was actually employed - that is, a Court which based its decisions on the evidence before it - involved reliance on experienced advocates who could manage cases, brief evidence, present it effectively, cross-examine opposing parties, and present opening and closing submissions.

Section 3 of the Native Land Laws Amendment Act 1883 repealed s 63 of the Native Land Court Act 1880. This was the provision that gave the Court discretion to allow lawyers to appear and manage cases in the Court. Section 4 of the same Act reimposed the ban on counsel by stipulating that “no person shall in any case be permitted to appear in Court by or to have the assistance therein of any

²⁵⁴ *Native Affairs Committee: Report on Petition of Piripi Whatuaiaiao, together with Minutes of Evidence*, 1883 AJHR I-2A.

²⁵⁵ Buller is the subject of an outstanding biography: see Ross Galbreath, *Walter Buller: The Reluctant Conservationist*, GP Books, Wellington, 1989. Buller was certainly a very good lawyer and very experienced in Native Land Court practice. Pakeha tended to see him, according to Galbreath, as a “Maori doctor” or a “Maori man” (the latter term, especially, was not a friendly one). Maori used his services extensively but not always did Maori trust him, and on one occasion he was referred to as a “Ngarara whanako” (thieving monster): see Galbreath, *op.cit.*, 135.

²⁵⁶ 1883 AJHR I-2A, Minutes of Evidence, 1.

²⁵⁷ *Ibid*, 14.

²⁵⁸ *Ibid*, 19.

²⁵⁹ On Buller, see Ross Galbreath, *Walter Buller: The Reluctant Conservationist* (GP Books, Wellington, 1989). Buller was involved – in many different ways – in the Horowhenua case (on Buller and the latter see *ibid*, 216-244), and was also involved in many of the principal Land Court cases at Cambridge from 1879-1884.

counsel, solicitor, agent, or other representative”. The ban, as before, did not prevent Maori from obtaining legal assistance outside the courtroom. Section 4 must nevertheless have struck a blow at the lucrative legal practices of Sheehan, Buller and other lawyers running extensive Maori land practices. By means of some procedural confusions in parliament in 1886, however, the ban was again repealed.²⁶⁰ There were thus two periods of formal exclusion, from 1873-1878 and from 1883-1886. From 1886 counsel have regularly appeared in the Court and of course routinely do so today, although even now many parties in the Court do not have legal representation.

As well as lawyers, meaning qualified members of the legal profession, para-legals, usually styled ‘conductors’, also played an important role in the Native Land Court. Lawyers, as seen, were excluded from the Court from time to time, but there was conversely no rule that stipulated at any time that cases *had* to be managed by lawyers. Many cases were managed by these unofficial specialist counsel, many of whom were Maori themselves. Arekatere Te Wera of Ngati Raukawa, was a prominent conductor of cases at Cambridge and seems to have made a good living, combining his expertise as an advocate with saw-milling, hotel-keeping and other commercial activities. As a ‘conductor’ he was a skilled practitioner in the Court, well able to cross-examine witnesses – including government officials²⁶¹ - and make opening and closing submissions. Sometimes he worked in association with formally qualified legal counsel, such as Walter Buller.

3.12 Evidence

Cases in the Native Land Court, especially major title investigations, were carefully managed – either by lawyers, by Maori kaiwhakahaere (managers, or conductors), or by others who for one reason or other took charge of presenting and managing a case (such as Thomas Williams). Witnesses did not as a rule simply go to the witness stand and orate to the Court about whatever crossed their minds, but were examined and cross-examined. Often in the MBs one sees written in the margins ‘Xd’ (i.e. ‘examined’, that is giving evidence in chief in response to questions), ‘XXd’ (cross-examined), and ‘Rxd’ (re-examined). Maori chiefs were not in the least hesitant about cross-examining one another, which they often did at length, with a certain amount of gusto, and considerable forensic skill.

Witnesses sometimes gave evidence several times in the same case. This occurred on a very large scale in the Himatangi case in 1868 for example, where important witnesses such as Parakaia Te Pouepa, Henare Te Herekau and Matene Te Whiwhi of Ngati Raukawa and Hoani Meihana of Rangitane gave evidence on multiple occasions, but speaking on different topics. This occurred as result of the way that Ngati Raukawa’s counsel (Williams) decided to plan out and manage the case. In the Himatangi case of 1868, for example, Henare Te Herekau spoke on 12 March about Raukawa tribal history and the migrations,²⁶² on 14 March about the sale of the Rangitikei block (1849),²⁶³ on the 17 March about the the boundaries of the Ahuaturanga block (sold by Rangitane to the Crown in 1864),²⁶⁴ on the 18 March about how Ngati Raukawa successfully frustrated an attempt by Ngati Apa to lease land south of the Rangitikei by driving off the tenant’s sheep,²⁶⁵ and later that same day about a dispute

²⁶⁰ Native Land Court Act 1886 s 65: “[i]t shall not be lawful for any person to appear or be assisted in Court by counsel or agent without the assent of the presiding Judge first obtained, and which assent may be at any time withdrawn”.

²⁶¹ See *Waikato Times*, Vol XX, Issue 1651, 3 Feb 1883, p 2.:

Mr S. Locke, formerly government agent in the Taupo district, was examined, and was cross-examined by Arakatere and Dr Buller.

²⁶² (1868) 1C Otaki MB 206-8.

²⁶³ (1868) 1C Otaki MB 234-236.

²⁶⁴ (1868) 1C Otaki MB 258.

²⁶⁵ (1868) 1C Otaki MB 269-70

between Ngati Apa and Ngati Raukawa over a mill (presumably a water mill or a flax mill) at Makowhai.²⁶⁶ Matene Te Whiwhi gave detailed evidence on tribal history on 11 March,²⁶⁷ on conflicts in the Wairarapa between Ngati Toa, Ngati Awa, and Ngati Kahungunu on 13 March,²⁶⁸ and on the meetings with McLean over the Turakina-Rangitikei block boundary on 14 March.²⁶⁹ The Reverend Samuel Williams, to take another example, also gave evidence on a number of occasions on different topics (14 March 1868, 17 March, 18 March). This reflected the overall management of the case by Thomas Williams, probably assisted by community leaders, which broke the case up into blocks of evidence dealing with different subjects (general tribal history, the Ahuaturanga purchase, the Te Awahou purchase, disputation with Ngati Apa over leases and rents, the arrival of Isaac Featherston of the Wellington provincial government in the area, the Manawatu-Rangitikei deed, and so on). Each issue had a number of speakers. Some people spoke often, reflecting their knowledge and seniority, others less frequently, or sometimes only once. Some speakers spoke, or were examined at length, others were very brief (“I heard the evidence given by x, I was present at the time, what she says is correct”.) Some witnesses were cross-examined at length, followed by a re-examination, and often questions from the bench. The latter were annotated in the MB as “by the Court”, or “the Court”, the questions coming from either the judge or the assessor.

Judges frequently complained about evidence being inconsistent. In the Manuaitu-Aotea investigation (a block just to the north of Kawhia) the Court stated that the “investigation lasted 47 days”; moreover “the evidence brought forward in each case being very voluminous and of a very conflicting nature”.²⁷⁰ In a case involving Ngati Raukawa, Matanuku, Chief Judge Fenton observed that “[a] great deal of the evidence is contradictory, and I have been compelled, of course, in accepting some of it, to reject other parts which do not appear to be true.”²⁷¹ (The same could be said of most cases that come before Courts anywhere.) In the Rohe Potae case of 1886, in which Ngati Raukawa were involved as co-claimants, the Court observed that “[t]he case has occupied fifty-eight sitting days, and in support of the different claims a great mass of evidence has been brought forward, some of it of a very contradictory nature”.²⁷² Sometimes the Native Land Court went further, however, complaining that the evidence before them had sunk to new depths. In a Bay of Islands case in 1891 the Court remarked that “[t]he conflict of evidence is really appalling”, going on to note that “[i]t has been stated by Judge Ward recently in his evidence before the Commission upon the Native Land Laws²⁷³ that when Maories [sic] are contending in Court they consider themselves as carrying on war and try to win the land just as they were attacking a pa in the olden times”.²⁷⁴ In the Mokoia Island case in 1916 Judge MacCormick complained that the case was “about the most unsatisfactory case in this Court’s experience”; “[t]he evidence is a mass of contradictions, and the parties are so mixed up that it is impossible to deal with them as hapus”.²⁷⁵ Many other such remarks could be easily found, but on the other hand there are many cases where the Court makes no such comment, or thanks the parties for their clear and straightforward evidence. Sweeping generalisations that Maori were prone to make up practically anything in order to achieve success in the Court should in my view be avoided. My own (admittedly subjective) view is

²⁶⁶ (1868) 1C Otaki MB 273.

²⁶⁷ (1868) 1C Otaki MB [pagination]

²⁶⁸ (1868) 1C Otaki MB 221-2.

²⁶⁹ (1868) 1C Otaki MB 233-234.

²⁷⁰ (1887) 16 Waikato MB 307.

²⁷¹ (1882) 7 Waikato MB 371.

²⁷² Rohe Potae judgment, (1886) 2 Otorohanga MB 55-70, at 57; Boast, *Native Land Court*, vol 1, 1184.

²⁷³ Referring to the Rees-Carroll Commission of 1891: see *Report of the Commission appointed to Inquire into the Subject of the Native Land Laws*, [1891] AJHR G1.

²⁷⁴ Te Ti Rehearing case, (1891) 11 Tokerau MB 35-48, at 37; Boast, *Native Land Court*, vol 2, 678.

²⁷⁵ (1916) 3 Mokoia MB 85-91, at 85.

that Maori witnesses rarely fabricated evidence (after all, they were speaking before a large audience of many knowledgeable people); much more common was selectivity: not telling a complete narrative, but highlighting parts that seemed most significant at the time, and perhaps over-interpreting the events so highlighted.

Angela Ballara is, however, in my view correct in her explanation as to why evidence given in the Native Land Court was often contradictory:²⁷⁶

Of course it was contradictory. Not only were people telling stories from a particular hapū point of view, as they saw it, but from the particular, local set of knowledge of one of them from within an oral culture. The nature of oral culture was such that the story as taught in the whare puni at night sessions of korero was often, even usually shaped to promote a sense of pride in identity and in the achievements of ancestors, not in their lapses and failures. It was not told or learnt for the purposes of the Land Court. The expert tohunga might know a different, more comprehensive and more complex story, but that was not often shared with everyone.

Ballara also believes that evidence was contradictory because “it stemmed from a different cultural experience to that of the judge”; moreover “[i]n Maori terms it was not proper to the damage the cause of one’s kin, and it was ethical to do all that was possible, including suppressing evidence, to promote the case of one’s own people”.²⁷⁷ She notes that “[e]ven the most ‘respectable’, responsible and high-ranking chiefs were not above suppressing essential evidence if their case was not strong enough”.²⁷⁸ Outright lying to the Court was, in my view, uncommon, but tailoring historical narratives to the requirements of the case by downplaying or passing over certain episodes while giving prominence to others was frequent.

3.13 Rehearings

There was no formal appellate body for the Native Land Court until the establishment of the Native Appellate Court in 1894, but before that time Maori aggrieved by any decision of the Court could apply for a rehearing, and such applications and hearings became routine. Under the 1873 Act rehearing applications were made to the Governor in Council²⁷⁹ but under the 1880 Act applications for rehearings were made to the Chief Judge.²⁸⁰ From 1880-1888 the applications seem to have been dealt mainly in Chambers, or on the papers, although there are some instances of the applications being made in open court. Sometimes decisions to not allow a rehearing were reversed by the government, which ensured that special legislation was enacted requiring a rehearing to take place. Section 24 of the Native Land Court Amendment Act of that year required the Chief Judge to decide rehearing applications in open court and with the concurrence of the assessor.²⁸¹ The evolution of the Chief Judge’s functions generated yet further sequences of minute books dealing with the Chief Judge’s hearings as to whether rehearings should be granted. From this point it was a short step to the establishment of an appellate body. The Native Appellate Court was set up by ss 79-95 of the Native Land Court Act 1894. A right of appeal

²⁷⁶ Ballara, *Tribal Landscape Overview*, 608.

²⁷⁷ *Ibid*, 609.

²⁷⁸ *Ibid*, 610. In fact she gives Keepa Te Rangihiwini as an example, relying on the Waitangi Tribunal’s *National Overview*, Vol 2, p 225. Keepa admitted “to a later inquiry [into Horowhenua] his perjury without remorse, his reason being his friendship with a former ally, the wish to advance his take over that of Ngāti Raukawa rivals and the tribe’s firm arrangement for all witnesses to tell a unified and predetermined story to that end.” So far I have not located the primary source for these obviously important remarks.

²⁷⁹ Native Lands Act 1873 s 58.

²⁸⁰ Native Land Court Act 1880. s 47.

²⁸¹ See Waitangi Tribunal, *Te Urewera*, Wai 894 2017, 593; Native Land Court Act 1886 Amendment Act 1888, s 24.

was guaranteed rather than being based on a case-by-case determination by the Chief Judge. The new body was made of the Chief Judge sitting with two other judges of the Court drawn from panel of judges appointed to both bodies. This appellate structure is basically the same that operates today.

If the Chief Judge presided at an investigation of title, that caused difficulties once the law had become settled that rehearing applications were decided by the Chief Judge, as this would mean that the hief udge was being asked to have his own decision re-heard. This very problem arose in the case of the 1884 Maungatautari investigation, where Ngati Raukawa were disappointed by being unsuccessful in their claim to the mountain. The case was heard at first instance by Judge Puckey and Chief Judge Macdonald. Ngati Raukawa were deeply sceptical whether their rehearing applications could be successful in these circumstances, and indeed the applications were refused by Macdonald. This issue is discussed later in this report.

Rehearings were a cumbersome way of dealing with appeals, as they were indeed ‘rehearings’ in the strict sense of the word: the case was re-heard in full. In practice ways seem to have been found by the parties to manage rehearings so as to minimise time and expense, but certainly at rehearings the Court sat again to hear evidence, which at times could be just as extensive as the evidence heard at the original investigation. In fact the rehearing could take longer and require more evidence to be taken than the original case, although my impression is that that was not typical. A statistical study of how often rehearings led to significant changes to the original orders would be an interesting exercise (one I have not embarked on). Such an analysis would need to consider initial determinations by the Chief Judge that the case should be re-heard as well as the substantive outcomes at the rehearing. Sometimes no changes of any significance were made, sometimes there were important alterations. A complete reversal of the original determination was unusual and no doubt would have been mortifying for the judge who heard the case at first instance, but certainly happened as well: a famous example is the Te Aroha block, which was awarded to Ngati Haua by Judge Rogan in 1869 but to by Maning and Monro to Marutuahu at the 1872 rehearing. If evidence at the rehearing contradicted evidence given at the original investigation the Court could draw attention to this in the rehearing judgment, as in the Matahina rehearing in 1881:²⁸²

Mehaka Takapounamu called Pani [Aperaniko] Te Hura and Tamawhatu, who stated that the Ancestors of Ngati Hamua owned the part now claimed by his descendants, that it was continually occupied by them without disturbance to the present time (on reference to the evidence taken at the first hearing, we find that Whatanui of Hamua admitted their eviction by Ngati Awa).

The Native Appellate Court was first established by the Native Land Court Act 1894. Section 79 of the 1894 Act provided that there was to be “a Court of Record, called ‘The Native Appellate Court,’ which shall consist of the Chief Judge as the and such other Judges of the Native Land Court as the Governor may from time to time appoint”. As I have pointed out elsewhere, this was an appellate court done on the cheap, as no physically separate Court with its own library, staff etc. was established at the time, and indeed never has been.²⁸³ The 1894 Act provided that every registrar and clerk of the Native Land Court was deemed to be a registrar or clerk of the Appellate Court.²⁸⁴ The Native Land Court itself, had no permanent home, and had to suit wherever it could, in halls, sometimes even in taverns, or on other occasions using the resident magistrates’ courtrooms if the latter happened to be available. The lack of a permanent home and the absence of a proper system of reporting the Court’s decisions shows that the government desired to spend as little money on the Court as it could. The

²⁸² (1881) 2 Whakatane MB 265 (see below).

²⁸³ Boast, *Native Land Court*, vol 2, 35,

²⁸⁴ Native Land Court Act 1894, s 70.

Appellate Court came together only from time to time to deal with a particular appeal, and sat at “such times and places as the Chief Judge may from time to time by order direct”, the Court being constituted by any two of the Appellate Court Judges sitting together.²⁸⁵

3.14 Opportunity costs, an overview

Maori society was in a state of dynamic change in the course of the 19th century. It had always possessed its own internal dispute resolutions, which were adapted and supplemented in the course of the 19th century. Meetings to discuss land matters were commonplace, and frequent efforts were made to settle land issues.

Angela Ballara describes the attempts made to settle land issues in the “inland Patea” (Taihape) region in the early 1840s. In the 1820s, according to Ballara’s interpretation of events, Ngati Whiti and Ngai Te Upokoiri withdrew from this region and moved to the west coast. During the 1830s some Tuwharetoa hapu moved to the area. In 1844 the young Renata Kawepo, who had returned home from the Bay of Islands, met Mananui Te Heuheu Tukino at Manawatu and insisted that Tuwharetoa should withdraw. Mananui agreed; one result of this was that “Ngāti Pīkiahū and other hapū withdrew to Reureu, further down the Rangitikei River”.²⁸⁶ In 1860 the arrangements were formalised by a “great meeting” at Kokako, as described by Renata Kawepo:²⁸⁷

In the year 1860, March 22, a great meeting was held by the Maoris at Kokako, in the district of Patea. And I spoke my words in the hearing of that assembly, that the land be divided, and my word that day was agreed to. And at Pikitara my post called Whitikaupeka was put up.

It is also possible to interpret the various discussions involving Ngati Apa, Rangitane, and Ngati Raukawa over the Rangitikei Turakina and Te Ahuaturanga sales in this way, as one-off runanga or komiti to resolve boundaries and to agree on the areas that Rangitane and Ngati Apa could sell. Ballara refers also refers to the runanga “held in the 1850s and 1860 for Ngāi Te Upokoiri to formally return to Rangitāne the land they had been given west of the mountains, and for Ngāti Ruakawa to confirm its return”.²⁸⁸

As well as special komiti or runanga there was a practice of inviting senior and respected chiefs from outside the district to mediate or arbitrate in land disputes. In the case of the Horowhenua dispute attempts were made to resolve matters by bringing in respected rangatira from outside. The contending parties asked Ngatuere Tawhirimatea Tawhao, who lived at Greytown, and Te Peeti Te Aweawe of Rangitane to mediate. Others who were were asked included Wiremu Pomare, from the Bay of Islands, and Wi Parata of Ngati Awa. Another attempt was made in 1870, using the services of a rangatira from the Wairarapa named Heremaia. This arbitration is mentioned briefly in the evidence of John Jury (Te Whatahoro) given to the Horowhenua Commission in 1896, who was present at this meeting and was one of those deputed with the task of recording what was said.²⁸⁹ None of the attempts to mediate were successful and the matter was eventually adjudicated upon by the Native Land Court. No doubt many other examples could be found.

²⁸⁵ Ibid, s 88.

²⁸⁶ Ballara, *Iwi*, 286, citing citing 9 Napier MB 196 (evidence of Paramena Naonao re Mangaohane).

²⁸⁷ *Te Wananga*, vol 2, No 18, 4 Sept 1875, cited Ballara, *Iwi*, 285.

²⁸⁸ Ballara, *Iwi*, 287, citing (1868) 1D Otaki MB 486, 503, 506. (The speakers were Peti Te Aweawe of Rangitane and Pirimona Te Urukahika of Ngai Te Upokoiri, giving evidence as part of the Crown case in the first Himatangi hearing.)

²⁸⁹ 1896 AJHR G2, 238-9.

It occasionally happened that a particular matter might be referred to the Appellate Court (as opposed to the Native Land Court by statute. I have not counted up all the statutory references, but while statutory referrals of particular matters to the Native Land Court were routine, my impression is that such referrals to the Appellate Court were rare. One occasion where this did happen, however, very relevantly for this report, was in the case of the Horowhenua Block Act 1896. This statute referred a complex array of matters to the “Court”, which was defined for the purposes of the statute as the Native Appellate Court. Presumably this was done because of the interminable complexity and uncertainty of the legal issues relating to Horowhenua, and in order to obtain some finality and certainty. The various Appellate Court decisions relating to Horowhenua and its subdivisions are dealt with fully in a subsequent chapter of this report.

Maori were not asked whether they wanted to have a Native Land Court, and were not given any opportunity to design it. The decision to establish the Native Land Court was also a decision to ignore and to deny support to Maori attempts to devise their own solutions to land problems, solutions which were both innovative while at the same time solidly based in Maori society. This is not to say that Maori solutions were always successful (nor were the Native Land Court’s). Establishing the Court meant that other pathways were closed off.

3.15 The Crown and the Court

There has been a certain amount of debate as to whether the Native Land Court was truly deserving of the name of a “Court” in any objective sense. David Williams argued in his book *Te Kooti Tango Whenua* (1999) that the relationship between the state and the Court was so close as to be a breach of the constitutional doctrine of the separation of powers and argued that it was in a state of constant manipulation by officials.²⁹⁰ This is not how the Waitangi Tribunal has typically seen the Court, but it did so in its *Te Roroa Report* (1992), where the Tribunal remarked:

For the purposes of this claim, we regard the Native Land Court as an agency of the Crown by reason of the Court’s powers and agency being conferred by statute. Notwithstanding the separation of powers in administration, it is an arm of the Crown and of the State.

It cannot seriously be maintained that setting up an entity by statute means that it becomes an agency of the Crown. Merely because a Court has been established by statute does not, in my opinion, mean that it has to be an agency of the state (after all, the Waitangi Tribunal was established by statute). The point could be put somewhat differently, however. It might be argued that for all practical intents and purposes that the Native Land Court was a state agency because it in reality carried out Crown policy, for example, or because its judges were not usually qualified lawyers, or lacked true judicial independence, for example. Whether or not that is the case, the Waitangi Tribunal has not treated the Native Land Court as a state agency but as a Court. The Tribunal does not, for obvious reasons, purport to review decisions of the Native/Maori Land Court, although it does criticise particular decisions for various reasons. More typically the Waitangi Tribunal fixes its attention on the legislation and policies that underpinned the Native Land Court: the original Native Lands Acts, for example, certainly an action of “the Crown”(the-Crown-in-Parliament). This approach has given the Tribunal wide scope to examine the effects of the Native Lands Acts and their principal institutions. The issue of the the Tribunal’s role with respect to decisions of the Native Land Court has surfaced in many inquiries. It received full consideration in the Tribunal’s *Tarawera Forest Report* (Wai

²⁹⁰ D V Williams, *Te Kooti Tango Whenua: The Native Land Court 1864-1909* (Huia Publishers, Wellington, 1999) at 44.

411, 2003). This report was concerned with a decision by the Maori Land Court to amalgamate into a single title 40 land blocks located in the Bay of Plenty region. The Court found that there was no evidence that the Crown had interfered in the Court's decision-making, but it did find that the relevant jurisdictional provisions (ss 435 and 438 of the Maori Affairs Act 1953) were inconsistent with the principles of the Treaty of Waitangi.

At the opposite end of the extreme from Professor Williams are historians such as Alan Ward, who, far from seeing the Court as a department of state, see the Court, or at least Chief Judge Fenton, as far *too* independent, complaining of Fenton's "wilfulness and self-aggrandisement" and his reluctance to apply s 17 of the Native Lands Act 1867.²⁹¹

The Waitangi Tribunal did not operate in a functional sense as a department of state but rather as a Court, and at least in that sense truly was a Court. It showed a certain amount of judicial independence, especially under the leadership of Chief Judge Fenton. As noted, the Waitangi Tribunal has on the whole declined to treat the Court as an agency of the Crown but as a Court of law, and has not, for example, attempted to review particular decisions of the Court and making findings that the Court was wrong in law, i.e. the Native Land and Appellate Courts, without formally reviewing individual decisions.

However in this respect Ngati Raukawa's experience of the Native Land Court was somewhat unusual, and takes it out of the normal run of Maori experience with the Court. In a number of important cases the Crown was the direct and open opponent of Ngati Raukawa in the Court itself. In the all-important Himatangi case of 1868 Ngati Raukawa claims were countered by the Crown *in the courtroom*, represented by William Fox, a powerful politician and an experienced barrister. As will be seen, Fox cross-examined Ngati Raukawa and Ngati Kauwhata witnesses at length, went out of his way to mock and humiliate Ngati Raukawa's counsel, and – more importantly – the Crown had a direct stake in the outcome of the case. In the Rangitikei Manawatu case heard in the following year the same thing happened, except that the Crown was represented at that time by the Attorney-General, Sir James Prendergast. After the case Prendergast, as Attorney-General was involved in the making of a Proclamation which extinguished the Maori customary title to the lands within the boundaries of the Rangitikei-Manawatu block. Ngati Kauwhata, too, were directly opposed by the Crown, in their case in the Ngati Kauwhata investigation in 1881. How these situations came about will be explained in subsequent chapters of this report. Suffice to say that in this inquiry Maori were directly and openly opposed in the Native Land Court by very influential and powerful figures closely linked to the government of the day. This is something that makes the Crown's role with respect to Ngati Raukawa and Ngati Kauwhata in the Native Land Court somewhat unusual. Then again, the Crown does appear in the Waitangi Tribunal as well, certainly does cross-examine claimant witnesses, and may be said to have a stake in the outcome. What exactly the constitutional conventions here may be is not a matter that needs to be traversed. The Himatangi and Rangitikei-Manawatu cases are still unusual and atypical, and this makes Ngati Raukawa's experience of the Land Court unusual. In the Waitangi Tribunal, for example, the Crown is a kind of defendant. In the Rangitikei-Manawatu and Himatangi cases, the Crown was in *direct competition* with the claimants and sought to undermine or destroy their claims *as a competitor*, there being much at stake in the outcome of the case, that is how much of the block had

²⁹¹ Ward, *A Show of Justice: racial "amalgamation" in nineteenth century New Zealand* New Zealand, revised edition (Auckland University Press, Auckland, 1995), at 213. Ward's criticisms are cited and relied on by the Waitangi Tribunal in its *Orakei* report: Waitangi Tribunal, *Report of the Waitangi Tribunal on the Orakei Claim* (Wai 9, 1987). 35.

been acquired by the Crown in the form of the Wellington Provincial Government. What is important is the *atypicality* of Ngati Raukawa's experience.

3.16 The systematisation of doctrine

It was in the 20th century that the Court's formerly somewhat ad hoc approach to investigations of title was systematised into a clear body of settled doctrine, reducing the number of *take* to basically just three, and carefully defining the relationship between *take* and occupation. This process of systematisation and clarification was principally the work of Chief Judges Jackson Palmer and Jones.

An important example of this systematisation and simplification of doctrine is seen with the Titi Islands case (1910),²⁹² an investigation of title into the mutton-birding islands in the Foveaux Strait region. The investigation took place under special legislation, s 2 of the Land Act 1908. Chief Judge Jackson Palmer took the opportunity with this important case to set out the basic principles of a title investigation at length. The Court paid attention to three key elements of a title investigation: the "1840 rule", the various *take*, and the relationship between take and occupation. In my view Chief Jackson's statements markedly simplify and streamline the Court's actual practice as that had developed by around 1895. The Chief Judge's discussion of Maori custom ("might is right") is also something of a major oversimplification, not merely of the reality but also of the Court's actual interpretative practices. Nonetheless this judgment by Chief Judge Jackson Palmer is important as kind of codification or restatement of the Court's core doctrines.

The Court found it necessary to embark on this exercise because the applicants, while providing material relating to the supposed conquest of the region by Ngai Tahu some centuries before, had not provided the Court with very much information about how the land had been allocated and managed since that time. For this reason, "the Court is placed in a great difficulty in giving a decision and will have to rely upon what may be termed modern occupation".²⁹³ He then proceeded to set out a detailed analysis of the core aspects of investigation of title practice. The first component was identified by Chief Judge Jackson Palmer as a combination of the "might was right" rule and the "1840 rule".²⁹⁴

This compels the Court to briefly set out the law of ancient Maori Custom relating to land, which is as follows:- "Might was right" after that period when warfare broke out. This law of force continued until our civilised law came into existence and recognised the Maori titles as they then existed; from that time on the law of force ceased and no new title could be acquired by force. This period of time was fixed by the Land Court as 1840, and this fixture has been continually followed by the Court, and is now law. The law of force, therefore, compelled the tribe to hold their lands against outsiders down to 1840.

The Chief Judge went on to observe that "[t]wo ingredients were necessary to constitute native titles, viz., (1) 'Take' (right or root of title); (2) occupation".²⁹⁵ But he was not unaware of the complexities of Maori customary practice. The core problem before the Court was that while it might well be the case that Ngai Tahu had conquered the district centuries before, nonetheless the Court could hardly award title to all of Ngai Tahu in 1910. His suggestion seems to be that the "might is right" rule occupied only a kind of macro level, which was qualified by particular customary practices and rights to occupy on the ground exercised by individuals and smaller descent groups. Here there was a a myriad of rules and practices which almost defied analysis. These remarks seem to me to be very interesting

²⁹² (1910) Titi Islands MB 35; judgments printed in the *Southland Times* Issue 14351, 21 February 1910, p 7; *Timaru Herald* Vol XIII, Issue 14141, 26 February 1910, p 2.

²⁹³ (1910) Titi Islands MB 35.

²⁹⁴ Ibid.

²⁹⁵ (1910) Titi Islands MB 35.

observations, showing that Chief Judge Jackson Palmer's understanding is a relatively sophisticated one, or at least more sophisticated than might be thought at first sight.²⁹⁶

I cannot award these Islands to the whole of the Ngaitahu, because, although a tribe owned the whole lands of the tribe and all had to protect the tribal lands from aggression by outsiders, still the Maoris had intertribal laws relating to the right of occupation over particular parts by particular members of the tribe. These intertribal laws seemed peculiar to the European ideas; e.g. a man of standing might acquire an intertribal right of occupation from another member or members of his own tribe because his blood was spilled upon a particular place; or again, the right of occupation might change hands through the unfaithfulness of one of the member's wives. In fact, these intertribal laws re occupation are too numerous to mention here. None of these intertribal laws relating to occupation have been before the Court, nor have the facts relating to the same, and showing how the Titi Islands came into the occupation of certain persons of the Ngaitahu been placed before this Court.

It is significant that the Chief Judge refers to "intertribal laws" which are "too numerous to mention here". The problem for the Court in the Titi Islands case was none of this fine-grained local detail had been raised in evidence.

The Chief Judge's next point was that the Native Land Court did not create communal (or "communistic") titles:

In transmitting the Maori title into European title the Native Land Court, from its inception, has refused to give a European title to the proper occupiers under a "take" and reviving to the tribe its communistic tribal right. Once the European title is issued the occupiers under a proper "take" hold as tenants in common, fused from the tribal rights. So in the present case the title will issue to those who had "take" and "occupation," and they hold as tenants in common freed from the communistic tribal right.

He then went on to identify the three types of *take* recognised by the Court, and then proposed a remarkable attempt to codify the complex relationships between *take* and occupation.²⁹⁷

It may be noted there are three classes of title: - (1) "Take Tupuna" (ancestral); (2) "Take Raupatu" (conquest); (3) "Take Tuku" (gifts for or without consideration and either absolute or limited), but all three classes require occupation down to 1840. The Native Land Court has from earliest times laid down legal maxims in regard to "take" and "occupation," which are as follows: - (a) "Take," without occupation, gives no title; (b) occupation without "take" gives no title; (c) long occupation before 1840 is conclusive that it is founded upon a "take"; (d) uncontested occupation in 1840 is the strongest evidence of a "take," but may be rebutted by very strong evidence; (e) occupation since 1840 is presumptive evidence of uncontested occupation in 1840, but such evidence is weighed according to the length and strength of such occupation, and according to the weight given to it, so will it require stronger evidence to rebut it.

In Chief Judge Jones' view, then, the strongest claim was one which could be slotted into one of the three *take* and which was supported by occupation. In the case of longstanding pre-1840 occupation, a *take* was presumed.

Another major statement on the rules relating to investigation of title was that made by Chief Judge Jones in an important case relating to Ngati Mamoe interests in the Canterbury block heard in 1925.²⁹⁸ The issue before the Court was who was entitled to benefit should the government decide to offer compensation for the Canterbury (or Kemp's purchase) block, making the case a *de facto* title

²⁹⁶ (1910) Titi Islands MB 35.

²⁹⁷ (1910) Titi Islands MB 35.

²⁹⁸ (1925) 23A South Island MB (Ngai Tahu claims) 84-90.

investigation. Because, apparently, South Island Maori were unaware of the basic rules, Chief Judge Jones thought they needed to be explained to them. This would be unnecessary in the North Island, where these matters were “constantly discussed”. The Chief Judge’s statements on this occasion is just as important as that made earlier by Chief Judge Jackson Palmer as an attempt to restate and summarise Court practice. According to Chief Judge Jones:²⁹⁹

In investigating the title to Native land, the Court always proceeds upon well recognised lines. It usually ascertains who are the persons who had the right to possession at or about the coming law in 1840. There are slight divergences from this rule, which it is not necessary to cite here. The Maori must show how he became entitled to that possession, whether through descent from his forefathers, or by conquest [] some rightful owners, or by gift from persons entitled to make the gift.³⁰⁰ Sometimes the source of the title cannot be fully explained, but, if a tribe or section has been in possession for a considerable period, it is usually assumed, until the contrary is satisfactorily proved, that there is some right to ownership.³⁰¹ In any case, whether the title is by ancestry, conquest, or gift, Maoris claiming must support that claim by proof of occupation by or on behalf of the section of Maoris so claiming. Occupation is usually proved by residence and cultivation by some of the ancestors upon portions of the land, by the erection of Pas, whether for dwelling or fortification, by the burial of their dead upon the land, and by other acts of ownership, such as, laying down boundary lines; expelling intruders; declaring food reserves; and the like. In the hinterland and forest, where actual cultivation was impossible, there would be rat tracks and traps; bird snares; and berry gathering places, whilst in the swamps they would have their eel weirs, and their “kie-kie” plantations.³⁰² To all these outlying places a prior right of proprietorship was observed, and the trespass by strangers upon such preserves would inevitably lead to trouble. It was not, however, necessary that every member of the family should continuously occupy. He might desire to cultivate, or exercise rights over, some other part of his ancestors’ lands. Meanwhile, his parents, or near relatives, would still keep his rights existing or “warm” as the Maoris express it. In fact his “fire does not go out” until it is quite clear that by marriage or otherwise he has attached himself and his family to some other section of Maoris, and thereby abandons his right to his ancestral possessions. But his rights are not blotted out if he or his children return. Children’s rights, however, may be weakened by the actions of the parents. Later generations will find that any rights will not be recognised by the people on the ground that such rights have grown cold or “mataotao”.

It can be seen that there are a number of similarities to Chief Judge Jackson Palmers’s analysis in 1910, especially the reduction of “take” to three.

3.17 The ordinary Courts

Appeals from the Native Land Court were by way of rehearing until the establishment of the Native Appellate Court in 1894. The ordinary courts thus did not deal with appeals from the Native Land Court on matters of fact. Nonetheless cases relating to Maori land issues could certainly be brought before the ordinary courts, arising for example as applications for judicial review of a determination of the Native Land Court acting outside its jurisdiction, or by means of cases which tried title to land. Michael Belgrave has recently drawn attention to the pivotal importance of Maori engagement with the courts, meaning not simply the Native/Maori Land Court but the ordinary courts as well.³⁰³

²⁹⁹ (1925) 23 A South Island MB 88-90.

³⁰⁰ Here the Court is narrowing the range of *take*, and is stating what was becoming orthodoxy in the 20th century. Three such *take* are referred to here: descent, conquest, and gift.

³⁰¹ On the significance of occupation as the foundation of rights recognised in the Native Land Court see discussion in Vol 1, 181-188.

³⁰² A woody climber native to New Zealand (*Freycinetia banksii*). The fruit was a prized delicacy and the leaves were used for weaving food baskets etc.

³⁰³ Belgrave, *Historical Frictions*, 16-17.

Unlike New Zealand historians, Maori have been arguing about land and customary rights before the courts and commissions of inquiry right back to the 1840s. New Zealand historiography has tended to ignore this, concentrating instead on first contact, missionaries, warfare, and prophetic and political movements. However the court has been much more important than the battlefield. While adherence to the views of Te Kooti or Te Whiti or even Ratana was always limited, participation in court has been almost universal.

Most descriptions of the Maori land system in the 19th century focus on the Native Lands Acts and on the role of the Native Land Court as the principal legal institution. But there was a third component of the framework, this being the ordinary courts.³⁰⁴ The *New Zealand Law Reports* are replete with cases to do with Maori land matters. By my calculation there were 117 reported cases dealing with Maori land issues reported in the *New Zealand Law Reports* from 1872-1894, including 35 decisions of the Court of Appeal and one of the Privy Council.³⁰⁵ The cases are not about such issues of interest to contemporary jurists as the status of the Treaty of Waitangi or the law relating to Maori customary title. The issues were of a more technical and day-to-day kind. Reserves and reserved land was one fertile source of case law.³⁰⁶ Another was the legal relationship between Court orders and Crown grants.³⁰⁷ Endless legal questions arose about alienation of Maori land, including questions relating to the effect of alienation restrictions imposed by the Native Land Court or by the Crown, the extent to which those holding land under memorial of title were able to alienate their interests and the interpretation of the various statutory provisions dealing with this point, whether land could be alienated before the Native Land Court had issued its certificate of title, and numerous other vexed questions.³⁰⁸ They are, rather, concerned with the interpretation of the various Maori land statutes, the jurisdiction of the Native Land Court, the effects of the Native Lands Acts in such fields as bankruptcy and taxation, and the ability of Maori landowners to bring actions in tort, contract, and for breach of trust. The statutory law relating to memorials of title, which created a kind of half-way house between customary

³⁰⁴ For a full discussion of the role of the ordinary Courts in the construction of Maori land law see Boast, *Native Land Court* vol 1, 197-218.

³⁰⁵ The Privy Council case is *Donnelly v Broughton* (1891) NZPCC 566, concerned with Renata Kawepo's will and the Omaha block in Hawke's Bay. This was the first occasion when the Privy Council heard a case relating to Maori land. There were to be many other such cases.

³⁰⁶ See e.g. *R v Fitzherbert* (1872) 2 NZCA 143; *Johnston v Simeon* (1882) 1 NZLR 305 (SC).

³⁰⁷ *Attorney-General v Tipae* (1887) 6 NZLR 157 (CA).

³⁰⁸ Cases on alienation and alienation restrictions are very plentiful, and include *Re the Lundon and Whitaker Claims Act 1871* (1872) 2 NZCA 41; *Tully v Ngatuere* (1874) 2 NZCA 446; *Percy v McKay* (1876) 2 NZ Jur (NS) SC 9; *Kawatini v Kinross* (1878) 3 NZ Jur (NS) SC 149; *Meihana Takitu v Kinross* (1878) 4 NZ Jur (NS) SC 59; *Ex parte Locke* (1878) 4 NZ Jur (NS) 15; *Pateriki v Ormond* (1878) 4 NZ Jur (NS) SC 15; *Re Murimotu Block* (1879) OB & F (SC) 24; *Tinline v Mackay* (1882) 1 NZLR 181 (SC); *Ani Waata v Grice* (1883) 2 NZLR 95 (CA); *Hana Kaira v Hearn* (1883) 2 NZLR 66 (SC); *Wi Haronga v Coleman* (1883) 1 NZLR 374 (CA); *Re Makauri Block* (1883) 2 NZLR 259 (SC); *Te Waka Kawatini v Kinross* (1884) 3 NZLR 92 (CA); *Creditor's Trustees of Arekatera Te Wera v Walker* (1884) 3 NZLR 91 (CA); *Douglas v Sutton* (1884) 2 NZLR 339 (CA); *Buchanan v Ngatuere* (1885) 3 NZLR 255 (SC); *Hobson v Sheehan* (1885) 3 NZLR 230 (SC); *Re Nukumarū* (1886) 5 NZLR 120 (SC); *Walker v Wellington and Manawatu Railway Co* (1886) 4 NZLR 127 (CA); *Te Raihi v Grice* (1886) 4 NZLR 219 (CA); *Goldsmith v New Zealand Native Land Settlement Company* (1886) 4 NZLR 295 (SC); *Seymour v MacDonald* (1887) 5 NZLR 167 (CA); *Commissioner of Stamps v Abbott* (1887) 6 NZLR 38; *Apiata v Seymour* (1888) 7 NZLR 60 (SC); *New Zealand Native Land Settlement Co v Walker* (1888) 6 NZLR 677; *Wellington v Manawatu Railway Co v The Queen* (1889) 8 NZLR 133 (CA); *Moore v Meredith* (1889) 8 NZLR 160; *New Zealand Native Land Settlement Co Ltd v Hirini Whanga* (1891) 9 NZLR 399 (SC); *Re Aotea No 5 Block* (1891) 10 NZLR 129 (SC); *Re Stewart and Co, ex parte Piripi Te Maari (No 2)* 1892 11 NZLR 745; *Re Maungatautari No 4F Block* (1894) 13 NZLR 125 (CA).

ownership and legal ownership according to English law created complex legal uncertainties and a vast amount of litigation. Although Crown-granted Maori land had some confusions of its own, it was ‘memorial’ land (i.e. under the 1873 Act) and ‘s 17 land’ (i.e. under the 1867 amendment) which caused the most difficult legal problems and the most litigation. Yet another problem was the relationship between the Native Lands Acts and land transfer titles (‘Torrens’ titles) under the Land Transfer Acts and its amendments. (This issue continues to be problematic, as all practitioners in the field of Maori land law will be aware.)

Land blocks in the PkM region generally and Ngati Raukawa interests in land blocks in the Waikato were no exception to this, and there were indeed many such cases, some of which will be discussed in detail in the following chapters of this report. Some examples are *Creditors’ Trustees of Arekatera Te Wera v Walker* (1884),³⁰⁹ *Walker v Wellington and Manawatu Railway Company* (1886),³¹⁰ *Wellington and Manawatu Railway Company v The Queen* (1889),³¹¹ *Taonui Hikaka v MacDonald and Hitiri Te Paerata v MacDonald* (1889),³¹² *In re Maungatautari No 4F Block* (1894),³¹³ *In re Maungatautari Nos 1 and 2 Blocks* (1895),³¹⁴ *Warena Hunia v Meiha Keepa (Major Kemp) and others* (1895),³¹⁵ *In re Manawatu-Kukutauaki No 4B Block* (1897),³¹⁶ *In re Horowhenua, Subdivision No 14* (1897),³¹⁷ *Nicolson v Kohai* (1909)³¹⁸ and *In re Horowhenua Block, Division No 11* (1911). These are only the reported cases up to 1911 which are most obviously connected with the PkM region or with Ngati Raukawa interests in the Waikato and Taupo regions. There could well be others. Moreover these are only reported cases: there will also be many unreported ones.

Mostly these cases are concerned only with very technical points, or were in fact cases where neither the plaintiff nor the defendant was actually Maori (the issues related to contested land claims deriving from Native Land Court titles which had ended up in the hands of Europeans). But there were some cases of real importance. One of these was the decision in *Nicolson and others v Kohai and others* (1909) 28 NZLR 552 (SC, per Chapman J). In this case the plaintiffs (who were Ngati Raukawa), awarded an area of land by the Native Land Court on partition, brought proceedings seeking damages and an injunction against other Maori. As the Court title was still inchoate, individual owners not yet having been identified, Chapman J found that the proceedings were being brought by “the Ngatiraukawa Tribe”, which was not possible given that that “tribes” had no legal existence: “[a] tribe is not an entity known to the general law, and for all I know this tribe may include many hundreds of individuals, while as to many more it may be a doubtful matter to be ascertained by the Court whether they are members or not”. This is obviously an important ruling on the legal status of iwi in the New Zealand Courts. In a more specific sense, it was an adverse finding for Ngati Raukawa in this particular case and left them without a remedy.

The Horowhenua block was especially productive of litigation in the ordinary courts, partly because of the presence of Walter Buller on the scene, one of the country’s leading barristers, someone prone to sue anyone, at any time, for any reason. The most important decision touching on the

³⁰⁹ (1884) NZLR 3 CA 91

³¹⁰ (1886) 4 CA 127.

³¹¹ (1889) 8 NZLR 133 (CA).

³¹² (1889) 7 NZLR 642. Taonui Hikaka was a leading chief of Ngati Maniapoto, and Hitiri Te Paerata of Ngati Raukawa. The ‘MacDonald’ here is Chief Judge MacDonald of the Native Land Court. The case was concerned with applications by Ngati Maniapoto and Ngati Raukawa to re-hear the Taupouniatia block.

³¹³ (1894) 13 NZLR 125 (CA).

³¹⁴ (1895) 14 NZLR 125, 595 (SC and CA).

³¹⁵ (1895) 14 NZLR 71 (CA). This case related to the Horowhenua block.

³¹⁶ (1897) 15 NZLR 665 (CA).

³¹⁷ (1897) 16 NZLR 532 (CA)

³¹⁸ (1909) 28 NZLR 552 (SC, per Chapman J).

Horowhena block was *Hunia v Kemp* (1895), concerned with whether Keepa and Hunia held Horowhenua 11 beneficially or on trust, Keepa taking the position that he was a trustee and Warena Hunia claiming that he was a beneficial owner. The legal points in issue were very complex, including the applicability of the Statute of Frauds and the law relating to resulting trusts. It was held that Keepa and Hunia were indeed trustees, but there were further questions relating to the enforceability of the trust. *Hunia v Kemp* is discussed in detail below. Even more complicated was the case reported as *In re Horowhenua Subdivision 14* (1897)³¹⁹, which was concerned with the issue as to whether the owners of the various subdivisions of the Horowhenua block, following the Horowhenua Block Act 1896 and the various Native Appellate Court decisions required by the statute, were subject to any trust, the main problem being the cross-referencing to the Native Equitable Owners Act 1886 in the Horowhenua Block Act 1896.

It goes without saying that once Maori litigants stepped into the world of the ordinary courts Maori customary law completely ceased to be of any relevance. Cases were conducted according to rules of evidence and civil procedure that derived from the established practices of the English courts. The discourse of the New Zealand ordinary courts was the discourse of English law – the massive edifice of English common law and equity but as modified by New Zealand statutes. The case of *Hunia v Kemp* is a classic example. The parties to the case were two Maori rangatira. Nevertheless the case was basically an application of the English law of trusts, in which English legal textbooks such as *Story on Equity Jurisprudence* were cited and relied on in the judgment as were English precedents, some of them of hoary antiquity, of the Court of Chancery, the Chancery Division, the Court of Appeal and the House of Lords (*McCormick v Grogan*,³²⁰ *Haigh v Kaye*,³²¹ *Lincoln v Wright*³²² and so forth). The Court considered carefully whether the Statute of Frauds, enacted in the reign of Charles II, applied to the dealings of Keepa Te Rangihwinui and Warena Hunia with one another. Moreover these were questions that could be dealt with only by senior – and expensive – barristers. Although the Native Land Court saw itself as a Court of Maori custom, nevertheless points relating, for example, to the law of trusts or contracts certainly came up in the Native Land Court as well, as they do in the Maori Land Court today, and in which case the practice of the Native Land Court did not differ from the ordinary courts. (An example is Fenton's decision in *Kaitorete* (1868)³²³, concerned with the legality of Kemp's purchase in the South Island (1848), which largely turned on English law relating to parol contracts.)

I have argued elsewhere that today it is clear that Maori customary law is regarded by the New Zealand courts as a component of the body of law enforceable in this country, in much the same way as local customs were seen by the English courts as part of the Common Law of England.³²⁴ As the content, however, of Maori customary law is not known to the judges of and practitioners in the New Zealand courts, if such law is applicable in any given case, then the content of the law has to be proved in Court by means of evidence given by appropriately qualified experts, analogously to foreign law or local customs in England. However the receptivity of the New Zealand courts to Maori customary law is itself a complex historical development, and it is probably the case that most judges of the ordinary courts in the 19th century would have leaned towards Prendergast CJ's opinion in *Wi Parata v Bishop*

³¹⁹ (1897) 16 NZLR 532 (CA). In fact the parties were once again Keepa Te Rangihwinui and Warena Hunia.

³²⁰ LR 4 HL 82

³²¹ 41 LJ Ch 567, LR 7 Ch 469

³²² 4 DeG & J 16; 28 LJ Ch 705.

³²³ Fenton, *Important Judgments*, 31-42; Mackay, *Compendium*, Vol II, 211-216; (1868) 1B South Island MB 76; Boast, *Native Land Court* vol 1, NLC 418-437.

³²⁴ See *Public Trustee v Loasby* (1908) 27 NZLR 801; *Huakina Development Trust v Waikato Valley Authority* [1987] 2 NZLR 188, 215. See generally Boast, Erueti, and Smith *Māori Land Law* (2nd edition) (LexisNexis, Wellington 2004) 21-40.

*of Wellington*³²⁵ that Maori lacked any “settled system of law”, a pronouncement which is at odds with the requirement in all the Native Lands Acts that the Native Land Court apply Maori customs and usages.

³²⁵ (1877) NZ Jur (NS) SC 72ori

4. Narratives: Raukawa origins, migrations, and settlement

4.1 Introduction

The Kapiti Coast region has a long Maori history that goes back many centuries.³²⁶ The history narrated in this report begins in a different region with the establishment of Ngati Raukawa in the central and southern Waikato, thought to have occurred in the sixteenth century. This chapter will cover a number of matters. First, there will be a brief introductory survey of Raukawa's lands and traditional history, essentially to set the scene for the more detailed analysis to follow. The traditional history of Raukawa and its neighbours is a matter of vast complexity which one could spend a lifetime studying, although perhaps only to come to the conclusion that an objective and detached history is very difficult, if not impossible, and that one just has to live with the reality that different groups will have varying accounts of the same events. Whether the Waitangi Tribunal will really want to march and counter-march through all the old arguments about whether Ngati Raukawa conquered Ngati Apa, or whether Muaupoko were dependants of Te Whatanui remains to be seen. Numerous commissions of inquiry and Court cases have grappled with these issues, and much ink has been spilled over them, presumably without having much impact on the opinions of Ngati Apa, Ngati Raukawa, and Muaupoko people today.

There is a vast amount of material dealing with Ngati Raukawa traditional history, much of which has been transmitted to us today via the records of the Native Land Court, but which also be found written down in manuscripts and published texts. This colossal body of material, the oral tradition, was originally associated with schools of learning (whare wananga). There was a famous school named Miringa Te Kakara in Ngati Raukawa territory at the foot of Pureora mountain.³²⁷ Exactly when the traditional history as recounted in the great iwi narratives begins is uncertain, but it seems that the earliest group remembered in this traditional history in the centre of the North Island are Ngati Kuhupungapunga.³²⁸

It is now accepted that earlier attempts to analyse Maori social organisation in terms of a simple model by which iwi were subdivided into hapu, and hapu into whanau, has now completely broken down. The critique of this model has been both synchronic (that is, that the model fails to convey the full complexity of Maori social relationships) and diachronic (that the emergence of 'iwi' is in fact a comparatively recent historical process brought about by social, political and economic change, an approach associated particularly with the work of Angela Ballara.³²⁹) What Angela Ballara writes about

³²⁶ On this earlier history see Carkeek, *Kapiti Coast* 1-5,

³²⁷ Waitangi Tribunal, *He Maunga Rongo*, Wai 1200, 2008, 89:

We were also told of a nationally and tribally significant whare wananga, Miringa Te Kakara, that was formerly located in the western Taupo area, at the foot of Pureora mountain. The knowledge taught here in the 1800s to those of Ngati Tuwharetoa, Ngati Raukawa, Ngati Rereahu, and Ngati Maniapoto had been passed down carefully for generations. [Chris Winitana, brief of evidence on behalf of Ngati Tuwharetoa, 20 April 2005 (doc E32) p 3; Paranapa Otimi, oral evidence for Ngati Tuwharetoa, fifth hearing, 2 May 2005 (recording 4.3.5, track 1); Chris Winitana, oral evidence for Ngati Tuwharetoa, fifth hearing, 2 May 2005 (recording 4.3.5, track 4).

³²⁸ See Waitangi Tribunal, *He Maunga Rongo*, Wai 1200, 67: "[f]rom the oral evidence that has been handed down, some of the earliest inhabitants of the Taupo region were Ngati Kahupungapunga".

³²⁹ See especially Ballara, *Iwi*, Victoria University Press, 1998; also Ballara, *Tribal Landscape Overview, c. 1800-1900 in the Taupo, Rotorua, Kaingaroa and National Park Inquiry Districts*, Wai 1200 Doc#A65, September 2004, generally, but especially pp 172-279. The latter is a major work of scholarship in its own right and should be read carefully by anyone interested in the tribal landscapes of the central North Island. Occasionally

Maori society in general applies in full measure to the entity I refer to as “Ngati Raukawa”, in fact a very large complex grouping of hapu and whanau with evolving, varied, and overlapping identities:³³⁰

In the Central North Island, as in other districts, and before as well as after contact, Māori lives were moulded by multi-stranded whakapapa, hapū with more than one iwi affiliation, communities and settlements shared by multiple descent groups, and lands and resources claimed through an intersecting web of inherited, gifted or conquered rights (to mention only a few categories of land acquisition and control).

There are hapu such as Ngati Parekawa, for example, which can fairly be seen as *both* ‘Ngati Raukawa’ and ‘Tuwharetoa’, and – also illustrating Ballara’s remarks - a traditional community such as the village at Orakeikorako on the Waikato River seems to have a place where people belonging to Ngati Raukawa and Ngati Tahu lived together. In fact social organisation may well have been based around villages (residence-based communities) as much as it was based around iwi and hapu (kin-based communities, organised by descent). People of one hapu did not necessarily all live together in one place; and people of a number of hapu (or even ‘iwi’) might well live together in a single place of residence, which might sometimes have been very small or sometimes quite large. And hapu themselves were certainly not uncomplicated. To cite Ballara again:³³¹

In anthropological terms, the hapū was a cognatic descent group. The essential feature of such a group was that its members were all descended via either parent from a founding ancestor. But often this hapū founder found him or herself descended from multiple ancestors from different lines of descent. Sometimes quite major, long-descended hapū could trace to the earliest tangata whenua, and also to various ancestors arriving in the later canoes, or later migrating to the area where their ancestors were to be found. In this way the descent of hapū was often reckoned from multiple, diverse ancestral directions. In the affairs of the hapū, these links would be emphasized or glossed over as political circumstances dictated.

Ballara distinguishes between ‘ariki’, “persons of either gender held to be sacred, of supreme rank, but not necessarily ruling chiefs”³³² and ‘ruling chiefs’, rangatira, “who might also be ariki (e.g. Te Whatanui, Mokonuiārangi, Te Rangipūawhe), but often were not, that is, they were junior relatives of younger sons although still of high rank (e.g. Hōhepa Tamamutu, Hēnare Pukuatua)”.³³³ One individual might be both an ‘ariki’, recognised as such over a wide area and by many hapu, and a ‘rangatira’ whose effective authority might be much more restricted. One’s zone of authority, if I can put it that way, as ‘ariki’ and as ‘rangatira’ did not necessarily coincide, because the two varieties of chieftainship rested on different foundations, one based on tapu and links with the gods, the other connected with practical politics and effective authority in the day-to-day world.

I disagree or diverge from Dr Ballara in matters of detail but this in no way derogates from my admiration of her work. In this report I try to closely adhere to Dr Ballara’s analysis of Maori social organisation in the 19th century.

Ballara first published her ideas extensively in her book *Iwi*, Victoria University Press, Wellington, 1998. This was an extended critique of the static and hierarchical iwi-hapu-whanau model developed by Maharaia Winiata, Elsdon Best, and Sir Peter Buck. Ballara follows Roger Keesing in distinguishing between descent groups as categories, and corporate or effectively acting groups; on the whole she sees “iwi” as the former, and “hapu” as the latter: i.e. they are *not the same type of groups*.

³³⁰ Ballara, *Tribal Landscape Overview*, 178.

³³¹ Ibid, 181.

³³² Ballara op.cit., 198.

³³³ Ibid, 199.

Courts and Tribunals, as much as ethnohistorians like Ballara, now also emphasise the primacy of the hapu. In its *Muriwhenua Land Report* (1999) the Waitangi Tribunal states that “the political units of Maori society were the descent groups called hapu”:³³⁴

These were groups large enough to contribute to a fighting force, to uphold prestige in social exchanges, and to utilise resources best harvested by communal efforts. The structure of the hapu was constantly changing, dividing as numbers increased or fusing if, owing to war or famine, numbers were reduced. For that reason the several hapu of a district were related, as in Muriwhenua, and shared a common sense of history and destiny. Hapu were characteristically autonomous in local affairs and competitive with one another, but none the less would federate in times of trouble, or to confront outside forces. Individuals from several hapu also came together for any major expedition, from fishing to fighting in another territory.

As this indicates, while autonomous, hapu were not *merely* autonomous but, rather, operated within larger structures and entities. The fact that hapu operated within larger frameworks has also been emphasised by Angela Ballara and Judith Binney.³³⁵

Ballara has also shown that “the dominance of many of the major hapū in the period 1800 to 1850, began in the second half of the century to be submerged, at least in the eyes of Crown officials and other Europeans, in wider identities such as ‘Te Arawa’, Ngāti Tūwharetoa, ‘Wanganui’ [sic], Ngāti Awa’ and ‘Urewera””.³³⁶ While the judges of the Native Land Court were generally aware of the importance of hapu, they too conflated the complexities of Maori social organisation into large categories. An example is the use of the term “Ngati Awa” seen in many cases in the PkM region, which could basically mean any descent group from North Taranaki, including Ngati Mutunga and even Ngati Tama. Moreover population decline in the 19th century decimated many hapu, and sometimes hapu identity became blurred or lost.

4.2 Ngati Raukawa

Ngati Raukawa is (of course) part of Tainui, the *Tainui* waka usually said to have made its landing at Kawhia around 1300 AD. The early Tainui genealogies and their significance must be left to those with the requisite expertise. The more recent descent lines (from the time of Turongo) have been thoroughly studied by many knowledgeable people and are readily accessible in many publications. The ancestor Raukawa was born about twenty generations ago. He was a son of Turongo, a descendant of Hoturoa; his mother was Mahinaarangi (from the East Coast). There does not appear to be much information about Raukawa himself, and his life and times. He married married Tu-rongo-ihī of Te Arawa, a descendant of the famous Te Arawa ancestor Tia, and their children were three sons Rereahu, Whakatere, and Takihiku (all hapu names today) and a daughter named Kurawari. Rereahu married Rangiaanewa, (their child was Ihingarangi) and then married Hineaupounamu. The children of this second marriage of Rereahu’s were, as is well-known, Maniapoto, Matakore, Tuu-whakahekeao, Turongo-tapu-aarau, Te Io-waananga, Kinohaku, and Te Rongorito, meaning that Ngati Raukawa and Ngati Maniapoto are closely linked. (In fact Ngati Maniapoto and Ngati Raukawa are more closely connected in terms of descent than are Ngati Raukawa and Ngati Kauwhata, notwithstanding the tendency of Courts and commissions of inquiry to treat the latter simply as a hapu of Ngati Raukawa.) Maniapoto married three times, and the names of his children also form names of the hapu of Ngati Maniapoto. Raukawa’s other grandsons included Whaita, son of Kurawari, and Takihiku’s children Wairangi and Pipito. Wairangi Raukawa’s grandsons led the pivotal expansion of the Tainui peoples

³³⁴ Waitangi Tribunal, *Muriwhenua Land Report*, Wai 45, 1997, pp 28-29.

³³⁵ Ballara, *Iwi*, 161; Binney, *Encircled Lands*, 29.

³³⁶ Ballara, *Tribal Landscape Overview*, 191.

into the upper Waikato catchment area in the 16th century. Te Rauparaha, incidentally, was a descendant of Takihiku and Raukawa via Pipito.³³⁷

The rohe of Raukawa was originally given shape by the Waikato River. The upper Waikato River flows through the centre of the Raukawa rohe. Raukawa's territorial rights respecting both the river and their lands around it arise from their history of conquest, settlement and occupation of this region. The river was used for many purposes, including navigation along at least some reaches (a point that has acquired some significance in recent litigation over the legal status of the river bed). This report is not the place to present an abbreviated tribal history of Raukawa, which is of course one of the largest and most important iwi of the North Island. Raukawa "principally traces his whakapapa to the waka of Tainui through his father, Turongo, and Takitimu through his mother, Mahina-ā-Rangi".³³⁸ Probably the most dramatic event in the history of the iwi was the migration of large sections of it to the Horowhenua and Kapiti Coast region at the invitation of Te Rauparaha of Ngati Toa. Te Rauparaha was also Raukawa himself, and like Te Rangihaeata and Matene Te Whiwhi belonged to the Ngati Huia hapu of Raukawa. Today the iwi is divided roughly into two large sections, half remaining on their traditional lands in the South Waikato and the Central North Island, and the other half around Otaki and Levin. It seems that hapu chose to stay or to remain basically for political reasons linked to earlier conflict in the Maungatautari area.³³⁹ Angela Ballara has written that those hapu who went south "did not flee, but chose to leave", which is also Judge Mair's view in the Rohe Potae case in 1886 – although in other cases in the Land Court the history is read, as it happens, rather differently.³⁴⁰ Raukawa is, of course, a section of Tainui and have always had and still maintain close links with the Kingitanga movement.

Being such a large group it is natural that various hapu on their periphery will overlap with other groups, including Arawa, Tuwharetoa and Maniapoto in the north, and Te Ati Awa, Ngati Apa, Rangitane, and Ngati Toa in the south; in the north there are also connections with the people of Tauranga. The nature of political relationships, of the management of economic resources and the workings of customary law among Maori people of the North Island have been analysed fully by the Waitangi Tribunal in its report on the Central North Island Claims, and there is no need to traverse this here at any length.³⁴¹ As was typical in Polynesian societies (as, for instance, in Samoa or Tahiti), the landscape itself was densely culturally loaded; placenames recalled events and people and indeed an entire history which was everywhere around, and which was central to identity and politics. Within this elaborate cultural landscape groups were actually very mobile, "and moved from site to site, often on a seasonal basis, to take advantage of different resources around their rohe to organise exchanges".³⁴² Maori groups did not live in isolation; on the contrary, interaction was constant. Different parts of the Central North Island "became well-known for supplying prized resources".³⁴³ Reflecting the cultural density of the landscape, individual resource-gathering sites down to particular fresh-water mussel beds, bird-catching sites (including specific trees), timber-gathering places were all named and known.³⁴⁴ Bird-catching places were also differentiated by technique. What may have struck early European

³³⁷ See whakapapa of the descendants of Wairangi, in Te Rangihiroa, "Wairangi, an ancestor of Ngatiraukawa", *Journal of the Polynesian Society*, vol 19, No 4 (December 1910) 201-205.

³³⁸ Statement of Evidence of Huirama William Te Hiko, 28 Feb 2005, Wai 1200 Doc#D10, p. 2.

³³⁹ See Angela Ballara, *Taua*, 242.

³⁴⁰ Ibid. See also below, ch 12.

³⁴¹ See Waitangi Tribunal, *He Maunga Rongo*, Wai 1200, 2008, 89-123.

³⁴² Waitangi Tribunal, *He Maunga Rongo*, Wai 1200, 2008, 95.

³⁴³ Ibid, 99.

³⁴⁴ See the Waitangi Tribunal's illuminating remarks, in *He Maunga Rongo*, Wai 1200, 2008, 99.

visitors as an empty landscape, of undifferentiated streams and forests and lakes, was not perceived by Maori in that way at all.

4.3 Iwi Boundaries and Manawhenua

The complex iwi and hapu boundaries recognised by Maori custom have been replaced by what Professor Evelyn Stokes of Waikato University has described as a “seemingly irrational pattern of block boundaries” which can only be understood “by working back through the records of the Native Land Court”.³⁴⁵ This report does not profess to be a full examination of Raukawa traditional history, being concerned rather with aspects of the Crown purchasing and Native Land Court processes, but it may be useful to some readers to include some material on traditional history and boundaries. The approach taken here is simply to repeat the Waitangi Tribunal’s own comments about this, based as they are directly on oral testimony by Raukawa kaumatua and on the expert testimony of ethnohistorians such as Angela Ballara who have developed a sophisticated understanding of Maori social organisation, who are fluent in te reo Maori and who have a specialist knowledge of the source material.

Ngati Raukawa’s traditional title in the Waikato is founded principally on the concept of *take raupatu*. As noted, this report will not deal with traditional and ‘mana whenua’ history as such, but in order for the impact of war and confiscation to be properly understood it is obviously important to give some explanation of the earlier history of Raukawa and their strategic location in the south Waikato. Raukawa’s traditional history was summarised reasonably fully by the Waitangi Tribunal in its *Pouakani* report as follows (my apologies for this lengthy quotation, but it seems best to give the Tribunal’s interpretation as derived from the tangata evidence that it heard rather than to attempt to paraphrase or summarise it myself):

It was on the basis of the exploits of Wairangi and his brothers, the sons of Takihiku, and Whaita, son of Kurawari, that Ngati Raukawa established claims in the Waikato valley between Whakamaru and Lake Taupo. The following area was described in the evidence of Ngati Raukawa kaumatua as Te Pae o Raukawa:

Kite Waitere
Horohoro
Pohaturoa
Ko Ongaroto
Ko Whaita e
Nukuhau
Ki runga o Hurakia
Hauhangaroa
Titiraupenga
Arohena
Wharepuhunga
Titiraupenga
Whakamarumarū
Te Pae o Raukawa
Titiro atu kite Kaokaoroa o Patetere
Maungatautari
Ka titiro iho ki Wharepuhunga
Ko Hoturoa, Parawera
Kote manawa ra o Ngati Raukawa

³⁴⁵ Evelyn Stokes, 1999: “Tauponui a Tia: an interpretation of Maori landscape and land tenure”, *Asia Pacific Viewpoint* vol 40 No 2 pp 137-158.

The district of Raukawa is from Te Waitere, to Horohoro and Pohaturoa.
At Ongaroto is the house of the ancestor Whaita.
From Nukuhau to Hurakia on the Hauhangaroa Range,
From Titiraupenga Mountain, the horizon is the boundary of the district of Raukawa,

To the mountain Wharepuhunga and the marae at Arohena,
To the ranges of Whakamaru.
The view extends to the region of Te Kaokaoroa o Patetere,
To Maungatautari.
The view extends beyond Wharepuhunga to the ancestor Hoturoa, to the marae at Parawera.

Here stands the proud spirit of Ngati Raukawa.

Ngati Raukawa pushed up the Waikato valley from the Maungatautari area and displaced or absorbed the tribe called Ngati Kahupungapunga. John Grace suggested that Ngati Kahupungapunga had once occupied lands bordering Lake Taupo but had been dispossessed by Ngati Hotu and Ngati Ruakopiri who drove them north of Atiamuri where they remained undisturbed until destroyed by Ngati Raukawa. However, there is some doubt about the identity of Ngati Kahupungapunga as the following quotations indicate:

Of these people we have only a mere tradition of their former existence, for it is not known who they were, or when they came; we only know that about 300 years ago they occupied all the valley of the Waikato, from the Puniu river southwards to Te Whakamaru range on the borders of the Taupo country; viz. all the country subsequently occupied by Ngati Raukawa, for at that period the descendants of Hoturoa of the Tainui immigration were still in the Kawhia district, where they first landed, and had not crossed the Pirongia ranges which separated them from the Waikato country.

One of the most controversial points is just who those Ngati Kahupungapunga people were and where they came from. They are generally spoken of as being... [people] who had been driven from the west coast area around Kawhia by those who arrived in the Tainui canoe, finally taking refuge in the Waikato River valley between Putaruru and Atiamuri. There is in fact considerable doubt about their origin, although their eventual fall is fairly well documented. It now seems likely they were actually of Arawa descent but had lost their identity because of their position in the tribal social scale.

Kelly followed Gudgeon's account and considered that Ngati Kahupungapunga were remnants of the tangata whenua either absorbed or forced out by Tainui immigrants. In any case, their final extinction as a tribal identity was the result of the campaigns of Wairangi and Whaita of Ngati Raukawa. There are several different versions of a story which involved a woman whose death had to be avenged. The fighting, in a series of battles in the valley of the Waikato, culminated in the siege of the pa called Pohaturoa, at Atiamuri, and the final destruction of Ngati Kahupungapunga at Ongaroto. Ngati Raukawa continued the fight into the Horohoro district but were repulsed by Te Arawa.

Hare Reweti Te Kume provided the most detailed account of the conquest of Wairangi in his evidence before the Native Land Court in April 1868 supporting Hitiri Te Paerata's claim to the Tatu block on the eastern boundary of the Pouakani block. He acknowledged the occupation by Tia but considered the rights of the descendants of Tia and the tribes of Te Arawa to have been superseded by the conquest and occupation by Wairangi:

and chased as far as Matanuku and Kakapo (Ka patu a haeretia). The invading army now divided, one part went on to Kopuaroa and the other to Whakamaru killing the enemy. At

Whakamaru they beat them again and the remnant fled to Pohaturoa. Some were attacked and defeated by the other part of the army at the Waimahana. The two divisions joined at Pohaturoa, the fugitives had all fled thither and there they made a stand. The pursuers crossed the stream to Pohaturoa, each party fought very valiantly, the Ngatiwairangi were several times repulsed but in the end they drove back the others and captured their great 'toa' [fighting chief] Hikaraupi. The great stones [at Ongaroto] on which the bodies were cooked can be seen still. The remnant of the two [Arawa] tribes fled to Tuata. On the following day the N'Wairangi attacked them and gained another victory. Those that escaped fled to Horohoro, Patetere and other places. Part of the Ngatiwairangi army returned and the other part under Rahurahu, Wairangi's son, went to Tutukau and attacked the Ngatitahu, as they were connected with Kahupungapunga. Rahurahu stayed. Wairangi returned to Kawhia but shortly after came back again and fought the remnant of N'Kahupungapunga at Horohoro and te Pana o Whaita whither they had fled. He wanted to exterminate them. The Ngatitama and Ngatimanawa at this time had joined the Ngati Kahupungapunga. The remnants fled to Rotokakahi and Rauporoa where some were slaughtered by the Arawas as offerings to their gods when canoes were made and launched etc. The very few there still remained fled for shelter to Patetere and Whanganui. The Ngatiwairangi at this time took possession of the land described by Hitiri and occupied it.

Another useful summary from the Waitangi Tribunal is given in its recent *CNI* (Central North Island Report (2007):

The ancestor Raukawa was a direct descendant from Hoturoa, captain of Tainui waka. His parents were Turongo, eight generations down from Hoturoa, and Mahinarangi of Ngāti Kahungunu. He was born near Ōmahina (or more properly Ōmahinarangi) stream on the western side of the Kaimai range, not far from Tirau, as Mahinarangi journeyed towards the Waikato to join her husband.³⁴⁶ However, he grew up at Rangiatea, south of what is now Cambridge.³⁴⁷ In due course he married Turongoihi, who was descended from Tia, of Te Arawa waka, and they had four children, Rereahu, Whakatere, Kurawari and Takihiku. From these four are descended the iwi known as Ngāti Raukawa.

According to the evidence of Haki Thompson the rohe of Ngāti Raukawa is as follows:

It [begins] at Te Wairere, from Te Wairere to Tarukenga along Mount Ngongotaha, Tarukenga to Horohoro, from Horohoro to Nukuhau, Nukuhau to Karangahape ...[,] from here to Titiraupenga, Titiraupenga to Wharepuhunga, Wharepuhanga to Maungatautari and from Maungatautari back to Te Wairere.

Colin Amopiu explained that 'Te Wairere is on the boundary that separates Ngāti Haua from Raukawa and Raukawa from Ngāti Te Rangi and Te Arawa'. He went on to say that the area of Te Wairere is known as 'the beginning of Te Kaokaoroa o Patetere, a part of Raukawa'.

Mr Thompson told us that their rohe was first occupied by an earlier people, Ngati Kahupungapunga. In the generation of Raukawa's grandchildren, the daughter of Kurawari married Parahore, a chief of Ngati Kahupungapunga, but when she died at his hand, Ngāti Raukawa sought revenge. Under the leadership of Whaita (Raukawa's grandson) and his cousins Tamatehura, Wairangi, Upokoiti and Pipito they staged an attack. Victorious, they pursued the remnants of Ngāti Kahupungapunga to Horohoro and beyond, killing as many as possible. When their pursuit took them as far as Rotorua, though, Te Arawa took up arms against them and they retreated back to Horohoro. We were told that the full name for Horohoro is *Te Horohoroinga o ngā ringa o Tia* (the place where Tia washed his hands) and, from Mr Thompson's evidence, we gather that Ngāti Raukawa regard Horohoro

³⁴⁶ H Thompson, D9 and D9(a), pp 4-7; Jones and Biggs, *Nga Iwi o Tainui*, pp 72-3, para 6.14 [footnote in original]..

³⁴⁷ H Thompson, D9 and D9(a), pp 4-7; Jones and Biggs, *Nga Iwi o Tainui*, pp 72-3, para 6.15 [footnote in original]..

as the boundary between Te Kaokaoroa o Patetere and Te Pae o Raukawa. At Horohoro, Whaita, who was suffering from a boil and who had remained there, asked one of his men to kick him, to relieve the pain so that he could fight. The ploy was successful and Te Arawa were repulsed, To this day the place is known as 'Te Whana o Whaita' (the kicking of Whaita). The area is associated, he said, with Ngāti Kearoa, Ngāti Tuarā, and also Ngāti Huri, although he also said that it 'remains a boundary between Raukawa and Te Arawa'. Counsel for Ngāti Raukawa indicated that Ngāti Huri are a hapu of Ngāti Raukawa, She also said it was through the conquest of Ngāti Kahupungapunga that descendants of Raukawa have established right in the Central North Island region.

Another early people encountered by Ngāti Raukawa were Ngāti Tuarotorua, a kin group descended from the ancestor Turarotorua, who was a son of Marupunganui and grandson of Ika, all three of these having arrived on Te Arawa waka. Paul Tapsell mentions Ngāti Tuarotorua being pushed from Mokoia and the Lake Taupo area over into the Mamaku Range, where they intermarried with Ngāti Raukawa.

Closer to the western shore of Lake Rotorua, Mr Thompson mentioned Tarukenga and Ngongotaha as being not only the boundary, but also the connection between Ngāti Raukawa and Te Arawa. 'This is', he said, [74.] "one of the imaginary pou [house posts] of the Whare of Raukawa'. He particularly linked that marae with Ngāti Te Ngakau. As to the other pou, he said: 'The tungaroa is at Waotu, the poutokomanawa is at Ngatira'.

At Tutukau, a maunga near Orakei Korako, there was an attack on Ngāti Tahu and Ngāti Whaoa led by the Ngāti Raukawa chief Rahurahu (son of Wairangi and nephew of Tamatehura). Although initially successful, a later battle at Parukohukohu (sometimes Purukorukoru) in the Paeroa range resulted in a defeat for Rahurahu. We note that a direct link with those times was provided when the taiaha used by Rahurahu in the engagement was brought to our hearing. *It was through these incursions, and through their later kin links with groups such as Ngāti Tahu, that Ngāti Raukawa also came to have associations with western parts of the Kaingaroa area – in particular with what would become the Paeroa South, Toharakuri, and Tutukau blocks.* [emphasis added].

Further south in the Taupo area, there are more places of significance to Ngāti Raukawa. As we have already mentioned, they have described their rohe as stretching 'from Horohoro to Nukuhau, Nukuhau to Karangahape...to Titiraupenga' – Nukuhau being at the north of Lake Taupo, where the Waikato River flows out, and Karangahape being the large promontory that extends into the lake on its western side. We note, in particular, the reference to Te Pae o Raukawa going from Hatupatu rock (near Atiamuri, about a kilometre north of Pohaturoa) right to the lake itself. We also note Mr Thompson's comment about Karangahape where, he said, are to be found 'nga matimati Hura' (the scratch marks left by Tamatehura) – Tamatehura being another grandson of Raukawa.

Te Atunaitai was the son of Tamatehura's brother Upokoiti (and thus a cousin of Rahurahu). His stronghold was at Wharepuhunga (north-west of Mangakino) but he left there a war party, heading for Lake Taupo by way of Whakamaru. Continuing on down the eastern side of the lake, he arrived at a pa named Horotanuku (or Korotanuku), where he attacked and overcame the Ngāti Tuwharetoa chief Waikari and his people. He then moved on and besieged Whakaangiāngi, a pa of Te Rangiita between Motuapa and Motutere, but was wounded. In the ensuing peace that was arranged between the two leaders, Te Atainutai offered his daughter Waitapu as a wife for Te Rangiita – this being part of a 'tatau pounamu', or solemn peace contract. Te Rangiita and Waitapu then settled at Maraekowhai, on the western side of the lake.

Huirama Te Hiko explained that the hapu of Te Pae o Raukawa are Ngāti Whaita, Ngāti Wairangi, Ngāti Moekino, Ngāti Haa, Ngāti Te Kohera, Ngāti Tarakaiahi, and Ngāti Parekawa, and that they are located 'along the western side of Lake Taupo from Hurakia to the south heading north'.

4.4 Raukawa conquest of the Waikato Valley³⁴⁸

As can be seen from the preceding general accounts, Raukawa's traditional title to the upper Waikato Valley and Maungatautari derives from their conquest of Ngati Kahupungapunga. According to Gudgeon (1893):³⁴⁹

Of these people we have only a mere tradition of their former existence, for it is not now known who they were, or whence they came; we only know that about 300 years ago they occupied all the valley of the Waikato, from the Puniu river southwards to Te Whakamaru range on the borders of the Taupo country; viz. all the country subsequently occupied by Ngati-Raukawa, for at that period the descendants of Hoturoa of the Tainui migration were still in the Kawhia district, where they first landed, and had not crossed the Pirongia ranges which separated them from the Waikato country. This occupation of the Ngati-Kahupungapunga continued undisturbed until the days of Whaita, who as will be seen by the genealogy was contemporary with Raukawa, the ancestor from whom Ngati-Raukawa derive their name.

Ngati Manawa of the Rangitaiki plains may have been, as Gudgeon puts it, an "offshoot" of Ngati Kahupungapunga. According to the same source Tangiharuru, the ancestor of Ngati Manawa, formerly lived at Wharepuhunga (on the western side of the Waikato river adjoining Lake Arapuni); according to Gudgeon, however, Raukawa "now own Wharepuhunga".³⁵⁰

The history of the conquest is traversed in the evidence presented many southeast Waikato/North Taupo cases in the Native Land Court. An example is the Whakamaru-Maungaiti case of 1881, heard at Cambridge. The claimants, essentially the two large Raukawa hapu Ngati Whaita and Ngati Wairangi, gave their evidence, as was standard practice, at the end of the case. Ngati Whaita and Ngati Wairangi were represented by John Sheehan and Hamiora Mangakahia.³⁵¹ Their principal witness was Te Rangi Kare Piripia,³⁵² who gave his evidence on 16th and 19th April 1881 and who was then cross-examined at length by the counter-claimants or by their counsel.³⁵³ He based his claim – in his words - on "conquest, cultivation, occupation and burial places also on ancestral descent".³⁵⁴ He began his evidence, however, with a historical event: the origins of the conflict centuries earlier between Whaita and the other Raukawa chiefs and the former inhabitants of the region, Ngati Kahupungapunga. These events are believed to have occurred around 1580.³⁵⁵ The story is a still a well-known one amongst Ngati Raukawa people:³⁵⁶

³⁴⁸ On Raukawa and Ngati Kahupungapunga see especially Angela Ballara, *Tribal Landscape Overview*, 2004, Wai 1200 Doc#A65, pp 23-26.

³⁴⁹ W E Gudgeon, "The Tangata Whenua, or Aboriginal People of the Central Districts of the North Island of New Zealand", *Journal of the Polynesian Society* vol 2 (1893), pp 203-279, at 203.

³⁵⁰ Ibid, 205.

³⁵¹ See (1881) 6 Waikato MB 257. Sheehan had been Native Minister in the Grey Government from 1877-79. Hamiora Mangakahia became a prominent figure in the Kotahitanga parliamentary movement of the 1890s.

³⁵² This is the name of the witness as given in the later part of the minutes, but he seems to be the same person whose name is recorded as Kaiapa Te Rangi at the start of the case on 30 March 1881. The prima facie case was made by Kaiapa Te Rangi on behalf of Ngati Whaita and Hitiri Te Paerata on behalf of Ngati Wairangi: see (1881) 6 Waikato MB 255-7.

³⁵³ Te Rangi Kare Piripia's evidence in chief is at (1881) 7 Waikato MB 105-129.

³⁵⁴ Te Rangi Kare Piripia, (1881) 7 Waikato MB 105 (16 April 1881).

³⁵⁵ See Phillips, *Landmarks of Tainui*, 49.

³⁵⁶ Ibid, 105-6. Some of the place names given in the minutes have been corrected in the margins, but whether contemporaneously or not is unknown: I have given the original names in this transcription with the marginal corrections in square brackets. See also see W E Gudgeon, "The Tangata Whenua, or, Aboriginal People of the Central Districts of the North Island of New Zealand", *Journal of the Polynesian Society*, vol 2, 1893, 203-279.

I have already given my evidence in my prima facie case, in which I based my claim on conquest, cultivation, occupation and burial places. Korokore, Whaita's sister, married a member of the Kahupungapunga tribe, his name was Purahore, and the preserved birds of Ngati Kahupungapunga was ready for one year afterwards. They presented these birds to Korekore, she requested them to present them to Whaita the next year. Kahupungapunga preserved some again and presented them again, she told them to take them to Whaita. Some of the members of Kahupungapunga felt themselves degraded, they spoke to her husband and told him to kill his wife as they felt they were being degraded. He killed her and placed the body in the house and set fire to it. [Riwaia?], Korekore's slave set to catch rats in the bush had returned late at night and found the house burned. He went to search for his chieftainess [106] in the other whares, his search in vain, and returned to the burned whare where he found a portion of her burned body amongst the ashes. He also discovered that her skull had been fractured. He fled during the night to Whaita, Wairangi, Tamatehura and Upokoiti, those persons were living at Kakepuku,³⁵⁷ and told them his mistress had been murdered. A message was then despatched by Whaita and others to Kawhia where Ngati Raukawa were catching sharks. They returned with him with provisions for repayment in exchange for the preserved birds. They arrived at Kakepuku and after assembling there the war party started from that place. Te Pohue was the first pa attacked by [sic³⁵⁸] Ngati Kahupungapunga, the next was Kakeahiahi [Raohiahi?], both these pas was [sic] situated on the south side of the Waikato river. The next day they attacked the Waiu pa then Hapenui pa. They were taken and the persons occupying them killed. They had not eaten any of the bodies up to that time. They then crossed to Matanuku on the south side of the Waikato river near Waotu and attacked the Piraunui pa³⁵⁹. All these pas spoken of belonged to Ngati Kahupungapunga and they defeated that pa, [107] they then attacked the Whaiti [Pawaiti] pa, and defeated them there also, it was situated in the bush below Matanuku. They then attacked the Okeo [Hokio] pa³⁶⁰ and defeated them there also, they then went to the Puketotara³⁶¹ where they also defeated them and had eaten no bodies up to this time. They then extended their operations to killing people at Tokoroa and other places. The first pa they attacked was Mangamingi pa, Pipito was commander of the war party there, and defeated them there. They returned from it bringing with them a woman called Waipunga [Waipuna] on their way they met a chief of Kahupungapunga called Matanuku and killed him. The war party then joined the main army, when they all went along the war party [was?] called Te Rongoatuarau [Rangaotowaru]. When they reached the cave called Te Ano-o-kaitangata, it is situated between this block and Matanuku [Maraetai³⁶²], where they fought again with Ngati Kahupungapunga. They were fighting there three days on account of the rapids on each side of the cave and defeated them there. Kaimaterai, Te Aomakingi, and Tokoroa was [sic] killed there, a woman called Te Rauotehuia was also killed. They then went to Whakamaru. They arrived at Ahuroa pa. They again defeated them and burnt the bodies because it was the place where Korokore had been burned.

Who exactly Ngati Kahupungapunga were seems to be unclear. Angela Ballara has summed up some of the Minute Book evidence concerning them as follows:³⁶³

³⁵⁷ Name of a volcanic cone south of Te Awamutu.

³⁵⁸ This is an obvious error in the minutes, attributable probably either to a clerical mistake by the clerk or a mistake by the translator. Te Pohue was a Ngati Kahupungapunga fortress attacked by Ngati Raukawa, not the other way round.

³⁵⁹ This is the name of a famous fortress at Matawhana, now on the eastern side of Lake Arapuni. It was taken and occupied by Ngati Raukawa and the remains of the fortifications can still be seen. The name means 'the great stench'. See Phillips, *Landmarks of Tainui*, 51.

³⁶⁰ Hokio means 'the descent'. See Phillips, *Landmarks of Tainui*, 52. The site is well-known today. It overlooks Lake Arapuni and the remains of terraces and embankments can still be seen.

³⁶¹ Another pa site near Lake Arapuni on the Waikato river. It was also known as Omaruoaka. See Phillips, *Landmarks of Tainui*, 53. There are photographs of Piraunui, Hokio, Puketotara and Pohaturoa ('the great stone': the site of Ngati Kahupunga's last stand at Atiamuri) at *ibid*, 52-54.

³⁶² Marginal correction, but in fact the correction may be incorrect. Matanuku is also the name of a block as well as of a person. The witness may well have meant Matunuku, i.e. as a placename. Ana Kai Tangata is a placename near Arapuni.

³⁶³ Ballara, *Tribal Landscape Overview*, 23.

The first of these [Kahupungapunga]...was not a Toi people. They seem to have been contemporaries living in the inland districts at the time explorers from the Arawa canoe were first venturing inland. However, giving evidence in 1868, Hāre Rēweti Te Kume considered the first of the explorers to come inland was Tia, and that Ngāti Kahupungapunga came *after* him, and Ruakōpiri after that. He regarded them as an Arawa people (Taupō MB 1, p. 100, evidence of Hāre Rēweti Te Kume re Tatua). Hītiri Te Paerata, giving evidence in 1869, considered that while Ngāti Hotu were living from Tītūtaupenga to Taupō, Ngāti Kahupungapunga were living on the north side of the Waikato River. He also considered Ngāti Kahupungapunga to be an Arawa group.

But Ihikakara Kahuaō and Poihipi Tūkairangi both thought they came from the Tainui area, if not from Tainui ancestors, and that they were originally from Maungatautari (Taupō MB 1, p. 141, evidence re Te Tātua). Whiripō Te Puni did not know where they had come from, but said Ngāti Kahupungapunga had occupied both sides of the Waikato river, not just the north side (Waikato MB 6, p. 2, evidence of Whiripō Te Puni re Tokoroa). Grace considered they had occupied Horohoro and other lands for many generations before Tia arrived in Te Arawa (Grace, *Tuwharetoa*, 80, 84.)

This seems to amount to a highly significant division of opinion, and no doubt much may turn on whether one sees Ngāti Kahupungapunga as basically Te Arawa, or basically Tainui. This point must be left to those with the necessary expertise in traditional history and whakapapa. As Ballara says, however, whoever exactly they were “they were unfortunate”.³⁶⁴ They were first driven from Taupo by Ngāti Hotu and Ngāti Ruakōpiri and then from North Taupo and the Waikato by the cousins Wairangi and Whaita, Raukawa’s grandsons.³⁶⁵ Kahupungapunga made their last stand at Pohaturoa, at Atiamuri on the Waikato River. This conquest gave to Raukawa control of the lands along the Waikato and the battles with Kahupungapunga are well-remembered in Raukawa tradition to this day.

When the Native Land Court heard the Pouakani rehearing in 1890³⁶⁶ it treated the claim by Werohia Te Hiko (P Eketone, conductor) as the principal claim. She gave the prima facie claimant evidence on 9 December 1890.³⁶⁷ Werohia said that she lived at the village of Waipapa, located on the block, that she belonged “to Ngāti Raukawa and Ngāti Tuwharetoa” and that her hapus were “Ngāti Wairangi, Ngāti Moe, Ngāti Korotuhō, Ngāti Rakau and Ngāti Hinekahu”.³⁶⁸ She gave a number of boundary markers, including the Waikato river running to the boundary with the Te Tatua block to the east. She continued:³⁶⁹

I have a right to this land, also the hapus I have named through ancestry, conquest and permanent occupation. I claim through Moe, an ancestor. I am descended from that ancestor. I give genealogy down to myself. Moe had many other descendants.

The conquest was by Wairangi and his younger brothers also by Ngakohua over Ngāti Kahupungapunga Ngāti Ruakōpiri and Ngāti Hotu. Before the conquest the land belonged to these tribes. Afterwards Wairangi and Ngakohua took possession, their descendants have remained on the land ever since.

³⁶⁴ Ballara, *ibid*, 24.

³⁶⁵ Wairangi and Whaita were Raukawa’s grandsons via his son Takihiku and his daughter Kurawari: Ballara, *Tribal Landscape Overview* 24, citing Gudgeon, “Tangata Whenua”, 204; also Jones and Biggs, *Ngā Iwi o Tainui*, 138-143.

³⁶⁶ The judgment for this case is at (1891) 26 Waikato MB 195-209 and (1891) 27 Waikato MB 167-171, Boast *Native Land Court* vol 2 605-630. This rehearing was carried out under a special statutory jurisdiction pursuant to s 29 of the Native Land Court Acts Amendment Act 1889.

³⁶⁷ See (1890) 26 Waikato MB 28 (9 December 1890).

³⁶⁸ *Ibid*.

³⁶⁹ *Ibid*, 28-29.

She gave a whakapapa, which was copied down into the minutes, and went on to give further particulars of the conquest and of the names of kaingas and burial places on the block. The chiefs who took part in the conquest were, she said, Wairangi, Whaita, Pipito, Upokoiti, Ngakohua “and others”.³⁷⁰

4.5 Events in the Waikato in the early 19th Century: Overview

The complex political history of the Waikato in the decades before the Treaty of Waitangi cannot be traced fully here. Four main developments were of particular importance. These were the various conflicts within Tainui – essentially a conflict between central Waikato groups and Maniapoto on the one hand, and hapu of Ngati Raukawa, Ngati Whakatere and Ngati Kauwhata allied with West coast groups, including Ngati Toa and Ngati Koata on the other; the long-standing conflicts between Hauraki, allied with Te Arawa, against Ngati Haua and *their* allies, Ngaiterangi of Tauranga; the wars between Ngapuhi and Hauraki, which had a number of consequences for Ngati Haua and Raukawa; and, finally, the migration of sections of Raukawa, Ngati Whakatere and Ngati Kauwhata to the Kapiti region at the invitation of their allies and kin there, especially Te Rauparaha, Te Rangihaeata and other chiefs of Ngati Toarangatira who were also affiliated to the powerful Ngati Huia hapu of Ngati Raukawa. These events were very complex and are not easy to analyse and interpret. These already tense and unstable scene was to be significantly further disrupted by Nga Puhi attacks on Hauraki around 1821.

Aspects of these events were summarised by the Waitangi Tribunal in its report on the Central North Island claims:³⁷¹

In the early 1820s, hostilities in the Waikato-Maniapoto area caused Ngati Raukawa to withdraw south and east into Patetere and towards Taupo. There, says Dr Ballara:

after battles and peace-making with northern hapu of Ngati Tuwharetoa such as Ngati Rauhoto they were able to take refuge with the northern and north-western Taupo hapu kin to them, such as Ngati Parekawa and Ngati Te Kohera.

She later adds:

Many stayed with Ngati Wairangi in Pohaturoa, Waimahana, and other places, and others with Ngati Te Kohera at Waihora, Titirapenga, Waihaha, and Whanganui Bay in north-west Taupo.

Some sections even went as far as Hawke’s Bay in their search for a place to settle. However, they seem to have later returned to Taupo and ‘took refuge with Te Heuheu, Te Pahi of Nukuhau and other chiefs’. Some later moved on again, this time to Kapiti.

No doubt there are many complexities regarding these events, however. Aspects of this history became important in a number of Land Court cases, including the pivotal Wharepungu investigation of title, heard at Kihikihi in 1894.

The conflicts in the Waikato, the Kawhia region and the Maungatautari district were eclipsed by the descent of Hongi Hika and his forces, armed with muskets, on Hauraki and Waikato, in 1821-22.³⁷² The invasion was calamitous for the Waikato peoples, who suffered a major defeat and much loss

³⁷⁰ Ibid, 29.

³⁷¹ Waitangi Tribunal, *He Maunga Rongo*, Wai 1200, 2008, I, 75.

³⁷² On these campaigns, of which the chief events were the battles at Totara Pa, on the Firth of Thames, and at Matatakitaki on the Waipa, see e.g. Dorothy Cloher, *Hongi Hika: Warrior Chief*, Penguin Books, Auckland, 2003, pp 163-172. The Ngapuhi attacks, which were on Hauraki, Waikato, and Te Arawa cut across traditional patterns of alliance in the region, Ngapuhi struck also at Tuhoe around 1822, forcing them to retreat inland to Maungapohatu, just as Hauraki and Waikato retreated inland: see Binney, *Encircled Lands*, 44.

of life at the fall of Matakītaki, on the middle Waipa, in 1822. (Most accounts state that Ngāti Toa, allied to Raukawa, had already left the Kawhia region shortly before Hongi's attacks on Hauraki and about a year before Matakītaki.) A vivid, or at least florid, description of the Ngāpuhi attack³⁷³, given in typical Land Court idiom, can be found in the Puckey-McDonald judgment in the Maungatautari reinvestigation judgment in 1885:³⁷⁴

[W]hilst matters in the Waikato were wearing a more peaceful aspect, it was but the precursor of a more terrible storm. Hongi Hika, of Ngāpuhi, having now got firearms, sailed in his canoes from the Bay of Islands to Waitemata. He attacked and took Maunaina, a pa belonging to Ngātipoa [sic], at the Tamaki; after which he attacked the Totara, a pa of Ngātimaru at the Thames; then returning he sailed up the Tamaki, dragged his canoes across to the Manukau, went to Waiuku, took his canoes by way of Te Awaroa to Waikato. The country people felled large quantities of timber into the Awaroa Creek to obstruct his passage, but to no purpose. At length he arrived at Matakītaki, on the Waipa, near the mouth of Mangapouri Creek. All Waikato were in the pa – men, women, and children. A panic ensued, and about two thousand perished in the attempt to escape. After this, all the tribes and hapus, including Marutuahu, who had fled to the Waikato after the fall of Maunaina and the Totara, fled to the interior, leaving the valley of the Waikato without inhabitants. Amongst those captured at Matakītaki was Rahuruaki, wife of Te Kanawa. Proposals of peace were made through her with Waikato, which was finally cemented by Matire Toha, daughter of Rewa, being given in marriage to Kati, brother of Te Wherowhero, the great chief of Waikato. Hongi came no more to invade Waikato, though after the defeat of Ngātiwhātua at Te Ikaarangaui, he followed them up the Waikato to Otawhao, and then on to Pawaiiti, whence they doubled back to Horotiu Pa, which he reduced.

It is the immediate aftermath of the withdrawal of Ngāpuhi which was to cause such controversy in later years in the Land Court.

Before dealing with the events preceding, during, and after Ngāti Raukawa's journeys to "Kapiti" a cautionary note must be sounded about dates and chronology. Some dates are known because they were observed by Europeans (it is known, for instance, when Ngāti Mutunga invaded the Chatham Islands (1835-6) and when the battle of Kuititanga was fought (1839) but earlier dates, especially in inland areas, are typically uncertain. The problems have been clearly explained by Dr Ballara:³⁷⁵

Although the events below are recounted as a continuing saga, no guarantee can be offered concerning the order in which they occurred. Especially in the Taupō, Whanganui, and Kaingaroa areas, inland from the coasts, few events occurred that can be reliably tied to dates, since persons acquainted with the European calendar were notably absent before the 1840s. The succession offered is merely the best guess that can be offered from the collective opinions of Māori informants who thought that one event occurred before or after another. At times there seem to be just too many events in which particular chiefs like Tūroa, Te Heuheu Tūkinu and Te Whatanui took part to fit into any reliable schedule. Māori were giving evidence in the 1870s and 1880s and even later about events in the 1820s and later. In some of these they had participated as children, but more often they concerned their parents or grandparents and were based on hearsay. Precise times and sequences in such accounts are unattainable.

4.6 The first migrations to the Cook Strait region

³⁷³ It is probably more accurate to speak of an attack of Bay of Islands groups led by Hongi Hika.

³⁷⁴ Native Land Court judgment in Maungatautari reinvestigation case, 5 Sept 1884, reprinted in 1885 AJHR G-3, 3-7, at 5. These are well-known events. See also Crosby, *Musket Wars*, 105-113;

³⁷⁵ Ballara, *Tribal Landscape Overview*, 370.

In the 1820s there was a massive displacement of the peoples of the Waikato coast and North Taranaki: of Ngati Toa, Ngati Koata, Ngati Rarua, Ngati Tama, and Ngati Awa, and a little later of Ngati Raukawa.³⁷⁶ The migrations were in many respects part of the fall-out from the great battle of Hingakaka, fought around 1800, in which Waikato Maniapoto defeated a grand coalition of Whanganui, Ngati Ruanui, North Taranaki, Ngati Toa and Ngati Raukawa.³⁷⁷ The leading chiefs at Hingakaka included Pikau-te-rangi, of the Ngati Te Maunu hapu of Ngati Toa, and – on the victorious side – Te Rauangaanga, Te Wherowhero’s father. The great battle had important long-term consequences. It is significant that the roll-call of descent groups on the losing side at Hingakaka – Ngati Kauwhata, Ngati Raukawa, Ngati Koata, Ngati Toa, Ngati Rarua, Ngati Tama, Te Ati Awa, Taranaki, Ngati Ruanui, Nga Rauru – correlate with the groups who relocated themselves to “Kapiti” in the 1820s and 1830s.³⁷⁸ Ngati Toa, Ngati Rarua and Ngati Koata uprooted themselves from their ancient territories at Whaingaroa and Kawhia and went to the Kapiti coast and from there to parts of the South Island. Sections of Ngati Raukawa moved from Maungatautari to Taupo, Hawke’s Bay, and finally to the Kapiti Coast, Horowhenua and the Manawatu. Ngati Tama, Ngati Mutunga, Te Ati Awa and other Taranaki groups also journeyed to the Kapiti region and the South Island. These cycles of movement and displacement reached their farthest extent with Ngati Mutunga and Ngati Tama’s invasion and settlement of the Chatham Islands in 1835-36 and Te Puoho of Ngati Tama’s bold and reckless attempt to attack Ngai Tahu in Southland where they least expected it in 1837.³⁷⁹ These long-distance migrations are characterised by Ballara as “leapfrogging” migrations, by which descent groups would leave their traditional territories and pass through the lands of many descent groups to settle – or at least to attempt to settle – in areas far removed from their homelands. There are many examples of this in Maori history.³⁸⁰ By the time the migrations were over with, not only were Ngati Mutunga (and sections of Ngati Tama and Ngati Haumia) established on the Chatham Islands, but Ngati Toa, formerly of Kapiti, were at Porirua, Kapiti, Pelorus Sound and the Wairau Valley, Ngati Koata at Rangitoto, Ngati Rarua

³⁷⁶ On the background see H and J Mitchell, *Te Tau Ihu o Te Waka* vol. 1 (2004), pp 101-103.

³⁷⁷ On this great battle see Pei Te Hurinui, *King Pōtatau*, 1-18. Pei Te Hurinui dates the battle to about 1790; Ballara favours a later date.

³⁷⁸ See Ballara, *Taua*, 251. Consistently with her overall interpretation of Maori conflict, Ballara argues that the issues at stake at Hingakaka were not about land (no land changed hands as a result of the battle, at least not immediately); nor were any participants armed with muskets. “These wars were mainly about the many interrelating disputes over men of rank killed, curses, insults and slights that happened to coincide in time and space, issues addressed in one large, many-sided and complex battle”. Yet the battle undoubtedly had long-term consequences. Why do the groups on the losing side correspond so closely with the groups who migrated, in whole or in part, to Kapiti and beyond? There are perhaps two explanations, which do not necessarily conflict. One is that Hingakaka was the first stage in an expansion of central Waikato groups eastwards to the coast and westwards to Maungatautari, and that this continuing pressure caused many of these groups to move elsewhere. It may also be that the alliances made at Hingakaka continued to hold good, and that the establishment of one section of the alliance (Ngati Toa) at Kapiti created an incentive for other sections to move south in the knowledge that they would on the whole be well-received. (This did not always work out in practice, however, as the conflicts between Ngati Raukawa and sections of Ngati Awa in the 1830s show.)

³⁷⁹ Te Puoho was defeated and killed by Ngai Tahu at Tuturau in Southland, probably in January 1837, although the actual date of this engagement is unclear: see Atholl Anderson, *Te Puoho’s Last Raid*, Otago Heritage Books, Dunedin, 1986. 74-6. Te Puoho was shot dead by Topi Patuki of Ngai Tahu, after which the rest of the taua surrendered and were kept prisoner on Ruapuke. The highest ranked prisoner, Te Kiore, was returned to Otaki with his Ngai Tahu wife in about 1843.

³⁸⁰ See Ballara, *Taua*, 18 (here criticising A.P. Vayda’s ecological and economic analysis of warfare in Maori society):

Not all wars saw expansion into the territory of neighbours [which Vayda emphasises]. Groups displaced by war often migrated to distant lands. A feature of pre-contact Maori warfare which Vayda failed to document was the frequency of long-distance migration of whole descent groups, or more often sections of descent groups, into areas completely removed from their own, leapfrogging beyond the territories of other non-kin groups. These new areas were often already populated, and usually by non-kin, although sometimes a kin connection was used to effect an entrance. Migrations did not always provoke war.

in various parts of the northern South Island, Ngati Awa (that is, Te Ati Awa) at Waikanae, Arapawa, parts of the Marlborough Sounds, Wellington and other parts of the Northern South Island, Ngati Tama in many places as well (Port Nicholson, the Chathams, Nelson, Golden Bay), and Ngati Raukawa a solid presence around Otaki, in the Horowhenua region and in the Manawatu. Many smaller groups were caught up the same pattern of migration and settlement, an important example being Ngati Kauwhata of the Maungatautari region who re-established themselves in the Manawatu. This expansion, or displacement, came at the expense of the existing populations of the Cook Strait region, Horowhenua-Manawatu and the Chathams.

The migrations have been analysed comprehensively by Ballara.³⁸¹ The conflicts that gave rise to the migrations were not, in her view, conflicts between “the widest kin categories”, and they were “probably *not* brought on by a population explosion”.³⁸² The repeated cycles of conflict between Ngati Toa with sections of Waikato from the north and with other sections of Waikato from the east had become intolerable. These conflicts on the Waikato coast have their own rich complexities which need not be analysed in this report, the key event being the battle of Hingakaka.³⁸³ Ngati Raukawa and Ngati Kauwhata were allies of the Kawhia peoples at Hingakaka: the cycles of conflict in the Kawhia region intersected with the conflicts between Ngati Kauwhata/Ngati Whakatere/Ngati Raukawa and Waikato/Ngati Haua in the Maungatautari region (discussed further below).

Ballara downplays the significance of new factors such as muskets, the opportunity to trade with Europeans, and the effects of trade goods, and sees the wars in the early 19th century as deeply integrated with Maori cultural understandings of the purposes of warfare. Ballara argues that although the conflicts around Kawhia might appear at first sight to be conflicts over land and coastal territory, this was not really the case. Nor can these conflicts be called ‘musket’ wars in any meaningful sense: muskets played no significant role in the fighting at Kawhia at least until the time when Ngati Toa moved south to Taranaki.³⁸⁴ “Musket-and-powder raids were one of the instruments of dislocation in this period, but not its cause.”³⁸⁵ The situation was, rather, one where provocation and counter-attack had gone so far that a peaceful resolution was no longer possible. This seems a very convincing interpretation. As Ballara writes:

They [the escalating conflicts around Kawhia] were local disputes gone sour: disputes over resources, curses, insults and chiefly rivalry – all the usual potential causes of disputes between independent groups – which, it was intended, would be settled by war. As people of high rank and many kin connections were killed or captured, however, allies who were kin to them were brought in on both sides to assist in the relentless and inevitable search for utu, and the wars continued and expanded until they had reached intolerable levels. Something had to give. Te Rauparaha and Te Hiakai were among the leaders on either side who realised that these disputes had gone too far; healing the breaches by peace-making was no longer possible. The only solution was a radical physical and geographical parting of the combatants: the complete removal of those on one side, not just south into contiguous territory, but leap-frogging a long distance beyond the territories of any related kin. One effect of this drastic solution was that land changed hands. If these can be considered land wars, it is not through their causes but in their results.

³⁸¹ See Ballara, *Taua*, pp 278-314.

³⁸² Ballara, *Taua*, 281.

³⁸³ The dating of Hingakaka is controversial. Ballara finds the later date of 1807 most convincing: see Ballara, *Taua*, 286; as noted above, Pei Te Hurinui dates it to around 1790.

³⁸⁴ See Ballara, *Taua*, 282.

³⁸⁵ Ballara, “Te Whanganui-a-Tara”, 9-10.

On the other hand Ann Parsonson in her PhD thesis, while very well aware of the cultural dimensions of Maori warfare, also sees trade and European goods as important factors in explaining the shattering events of the early 19th century.³⁸⁶

Ngati Toa sources pay very close attention to the first major reconnaissance to the south made by Te Rauparaha and Te Rangihaeata in association with northern groups in 1819-20.³⁸⁷ This “great journey to the south was at least the third such taua he [Te Rauparaha] had undertaken, fitting them in between the Kāwhia campaigns”.³⁸⁸ The expedition was made by Te Rauparaha and Te Rangihaeata and others of Ngati Toa who joined a substantial contingent from the Bay of Islands led by the great chiefs Nene (Tamati Waka Nene), Patuone and Taoho. The principal reason Te Rauparaha went, according to Hone Kaora, was to obtain utu against Whanganui.³⁸⁹ This expedition, sometimes referred to Amiowhenua,³⁹⁰ is richly documented in both in manuscript and Minute Book sources.³⁹¹ The taua was victorious against the local people in a major battle at Pukerua Bay.³⁹² Ian Wards has written the taua “passed through Taranaki, Wanganui, the Rangitikei district, Otaki, the Wairarapa, and the Wellington districts, leaving a trail of destruction and death”.³⁹³ All the accounts mention how the invading force sighted a European ship passing through Cook Strait, and how they lit fires to attract the ship – which were ignored. Professor Bigg’s guess is that the ship was in fact Russian, part of Bellinghausen’s fleet which is known to have sailed through Cook Strait on 9 June 1820, which would fit quite well chronologically. None of this wealth of material gives any indication that any groups apart from Ngati Toa and Ngapuhi played any role in this first expedition, but this should not necessarily ruled out.

A key event which occurred on this first expedition was the marriage of Te Rangihaeata of Ngati Toa to a Ngati Apa woman named Te Pikinga (or Te Pekenga). She was captured during the

³⁸⁶ Ann R Parsonson, *He Whenua Te Utu (The Payment will be Land)*, (PhD thesis, University of Canterbury, 1978).

³⁸⁷ See Ballara, *Taua*, 301-303; also Waitangi Tribunal, *Te Whanganui a Tara me ona Takiwa: Report on the Wellington District*, Wai 145, 2003, 19. The Waitangi Tribunal summarises events as follows:

In 1819, a Ngapuhi-led taua (war party) armed with muskets raided Te Upoko o te Ika. Ngati Toa warriors, including the chiefs Te Rauparaha and Te Rangihaeata, joined the taua at Kawhia. The invaders fought with Ngati Ira at Te Whanganui a Tara, and they acquired knowledge of an area which from that time on would be coveted by Te Rauparaha, though none of the taua remained to occupy the land. This seems to have been the only pre-1840 fighting within the area that became the Port Nicholson block in which Ngati Toa were themselves involved. While accompanying this taua, Te Rauparaha noted the benefits of trade and safety offered by Kapiti Island. He also arranged the marriage of his nephew Te Rangihaeata to Te Pikinga of Ngati Apa in order to ensure future connections and welcome on Ngati Toa’s expected return to Te Upoko o Te Ika.

³⁸⁸ Ballara, *Taua*, 301.

³⁸⁹ (1886) 1 Otorohanga MB 356.

³⁹⁰ There were at least two such expeditions of this name, the first being the expedition of Bay of Islands, Hokianga, and Kawhia chiefs to the Cook Strait region and the Wairarapa, and a quite different expedition led by Kaipara and Waikato chiefs to Hawke’s Bay and the Wairarapa, returning via the west coast of the North Island. Amiowhenua means “to go around or circle around the land/country”: Ballara, *Taua*, 20.

³⁹¹ B Biggs (ed), “Two Letters from Ngaati-Toa to Sir George Grey”, *Journal of the Polynesian Society*, vol 68, 263, at 268, citing evidence of 11 December 1851; evidence of Matene Te Whiwhi, Himatangi case. (1868) 1 C Otaki MB 195-6; evidence of Matene Te Whiwhi, Kukutauaki case, (1872) 1 Otaki MB 135; evidence of Tamihana Te Rauparaha, Himatangi case, (1868) 1 C Otaki MB 372-3; evidence of Wi Parata, Ngarara West rehearing case, (1890) 10 Otaki MB 144-55. On the expedition as seen from Muaupoko’s perspective see Luiten, *Muaupoko* (A163), 15-16; Kawana Hunia (1872) 1 Otaki MB 60. See also Waitangi Tribunal, *Te Whanganui a Tara*, 19.

³⁹² Hone Kaora, (1886) 1 Otorohanga MB 356.

³⁹³ Wards, *Shadow of the Land*, 215,

southward journey of the taua at Purua (or perhaps at Oroua³⁹⁴). On the return journey from the Wairarapa Te Pikinga was according to some accounts one of those sent by Te Rangihaeata into the Ngati Apa at Te Awemate/Awamate to make peace (Hunia Te Hakeke said in 1868 that the person sent in was Te Pikinga's tungange, Arapata, along with a man named Te Ratatonu from Taranaki³⁹⁵). Peace was duly made, and then Te Pikinga was formally married to Te Rangihaeata, the marriage sealed by a gift of greenstone. I mention this event here not because Ngati Raukawa were involved in any way, but because of the consequences attributed to this marriage by various decisions of the Native Land Court. As will be seen, in the second Himatangi decision in 1869, Judge Maning placed particular weight on this marriage as a foundation for a supposed permanent state of friendship and amity between Ngati Toa and Ngati Apa, a view which was very disadvantageous for the Ngati Raukawa case, or it least it became so in Maning's somewhat contrived narrative (see below for a full analysis of this judgment).³⁹⁶ Te Pikinga was brought to Kawhia when the first expedition returned. The return journey was eventful, and there was heavy fighting at Whanganui.³⁹⁷ At Purua, near the mouth of the Whanganui, the taua was opposed by Whanganui people including the Te Ati Haunui-a-Paparangi rangatira Te Anaua (Hori Kingi Te Anaua), who was later to play a prominent role in Whanganui affairs in the 1860s.³⁹⁸

As far as I am aware, Ngati Toa never sought to rest their rights in the Kapiti region on this first taua, thinking of it rather as a raid, or expedition or foray, but not the foundation of title. That title derived, rather, from later events, such as the battle at Waiorua on Kapiti island, and other engagements on the mainland. The Ngapuhi chiefs who were involved in the expedition never asserted a claim to Kapiti based on conquest. As for Ngati Raukawa, although the possibility of a few participants with Ngati Raukawa links cannot be wholly discounted, Ngati Raukawa as such were not involved, and never laid much store by the first taua. On the other hand, William Fox, head of the Wellington Provincial government, and also the Native Land Court, were later to set very great store on this first taua, claiming that it was the foundation of Maori land titles and tenures in the entire region. This view, as will be seen, was eloquently pressed by Fox in the Himatangi case, and he was able to convince the Native Land Court to agree with him.

Te Rauparaha and Te Rangihaeata returned home after the taua to a scene of escalating conflict on the Waikato coast region. In one incident Te Rauparaha's wife Marore was killed when she went to attend a tangi in the Waikato, for which Te Rauparaha obviously had to retaliate.³⁹⁹

³⁹⁴ Evidence of Hunia Te Hakeke, (1868) 1D Otaki MB 511.

³⁹⁵ Evidence of Hunia Te Hakeke, (1868) 1D Otaki MB 511:

On the return of Rauparaha from Wairarapa they came by sea in canoes and landed at Rangitikei – at Pouate[erua?] on the other side of Rangitikei Rangihaeata said to Rauparaha I wish to send the 'tungange' of Pikinga (Arapata) go into the pa of Ngati Apa at Te Awamate. Arapata and Te Ratatonu (a Taranaki Toa of Te Rauparaha's) the husband of Topeora went to the pa and said "Tenei au e ora nei te ringa-ringa o Te Rauparaha".

³⁹⁶ Cross-ref to discussion of Maning judgment in ch [].

³⁹⁷ See T W Downes, *Old Whanganui*, (W.A. Parkinson & Co, Hawera, 1915 [Capper Press Reprint, Christchurch, 1976]), 119-124.

³⁹⁸ See Oliver, Steven. "Te Anaua, Hori Kingi ?-1868, Te Ati Haunui-a-Paparangi leader, assessor", *DNZB*, vol 1, 1990, 439-40.

³⁹⁹ Hone Kaora, (1886) 1 Otorohanga MB 357:

Te Rauparaha's wife, Marore, came over to the Waikato to attend a tangi. When Potatau and Te Kanawa-a-Tukeria heard of her coming, they proposed to kill her. They did so when she was in the Upper Waikato. When Te Rauparaha heard of her murder, he determined on consideration, to attack the nearest of the Waikato and Maniapoto and killed a chief called Moerua, in the Waipa valley.

On this incident see also responses by Te Rerenga to questions from the Court at (1886) 2 Otorohanga MB 20-22.

According to some authorities Marore was killed at the instigation of Te Wherowhero.⁴⁰⁰ In a further round of retaliation and counter-retaliation Te Rauparaha's younger brother Taungawai was captured and killed by Ngati Maniapoto.⁴⁰¹ The full details need not be traversed here, save to note that Te Rauparaha was able to convince the chiefs of the Kawhia groups (Ngati Toa, Ngati Rarua, Ngati Koata) that they should withdraw and relocate themselves at Kapiti.⁴⁰² As Alan Ward put it, "virtually all sources agree that a new phase of deliberate migration to and occupation of the south began about 1822, that it was initiated by Ngati Toa and that Te Rauparaha was the driving force among the Ngati Toa chiefs, increasingly under pressure in their struggles with Waikato and Ngati Maniapoto neighbours".⁴⁰³ In Ann Parsonson's view "Ngati Toa were convinced, and – with quite remarkable courage – turned their backs on the bleak future Kawhia seemed to offer".⁴⁰⁴ But it was "a difficult decision", and a number of Ngati Toa people, including one of Te Rauparaha's own brothers, and a number of Ngati Koata people preferred to remain.⁴⁰⁵

A number of the oral narratives give details of Te Rauparaha's attempts to find allied tribes to accompany Ngati Toa on the journey south. Tamihana Te Rauparaha said in 1868 that on his return from the first expedition Te Rauparaha went to see Tukorehu of Waikato, and proposed to him that he should join in Ngati Toa's expedition; Tukorehu declined.⁴⁰⁶ According to Matene Te Whiwhi (speaking in 1872) Te Rauparaha sought aid from various groups in the Waikato before returning to Kawhia from where he travelled south with the heke as far as North Taranaki before making his way to Taupo, Rotorua, and Tauranga. He asked again for aid, but without success.⁴⁰⁷

And Rauparaha went to Tukorehu, Potatau and all the chiefs of Waikato and he went to Raglan, Manukau and on to Hauraki to inform all the Tribes he was coming down here. He then returned to Kawhia and then came down this way with Ngati Toa to Waitara and from thence to Taupo, Rotorua and Tauranga and he asked Te Wharo Tupaea's father to come with him. He said he would not come. He said he did not want to leave the islands Motiti and Tuhua.

In 1994 Pateriki Rei also described Te Rauparaha's search for allies:⁴⁰⁸

⁴⁰⁰ Carkeek, *Kapiti Coast*, 11, relying on Smith, *Maori History and Traditions of the West Coast*, 33.

⁴⁰¹ Hone Kaora, (1886) 1 Otorohanga MB 357. This was followed by a peacemaking: Then the Ngati Hikairo and Maniapoto joined forces and attacked Te Arowe [Te Arawi] where they took prisoner Taungawai, Te Rauparaha's younger brother, and killed him. They spared two women of rank named Te Aka and Te Ruatahoro. They also killed a chief named Wherawhera. These had been killed outside the pah [Te Arawi], and the war-party then invested it. Te Rangituatea of Ngati Maniapoto took the two women back to the pah, after which a peace was concluded between them and Te Rauparaha. All this time Te Rauparaha was bent on occupying Wellington, and finally left Kawhia for the south with his people.

⁴⁰² There is a great deal of information on the fighting around Kawhia and Whaingaroa recorded in the Rohe Potae case in 1886, arising out of the claims by central Waikato groups such as Ngati Mahana and Ngati Naho to prove a claim to Kawhia on the grounds of the supposed conquest of Ngati Toa and Ngati Koata. See evidence of Mohi Te Rongomau (1886) 1 Otorohanga MB 164-185; Te Wheoro (1886) 1 Otorohanga 190-231; Anaru Manihera (1886) 1 Otorohanga MB 231-243. I have not thought it necessary to review this material in detail for this report, as Ngati Raukawa were not involved in the fighting around Kawhia. Further evidence can be found in the Manuaitu-Aotea case (judgment at (1887) 16 Waikato MB 304-139; Boast, *Native Land Court*, vol 1, NLC130, pp 1204-1216) and the Kawhia case (judgment at (1889) 6 Otorohanga MB 61-67; Boast, *Native Land Court* vol 2, NLC148, pp 379-387). On the conflicts at Kawhia see Ballara, *Taua*, 278-314.

⁴⁰³ Alan Ward, *Maori Customary Interests in the Port Nicholson District*, 1998, Wai 145 Doc#M1, 28.

⁴⁰⁴ Parsonson, *He Whenua Te Utu*, 158.

⁴⁰⁵ Parsonson, *He Whenua Te Utu*, 158.

⁴⁰⁶ Evidence of Tamihana Te Rauparaha, Himatangi case, (1868) 1C Otaki MB 373.

⁴⁰⁷ Evidence of Matene Te Whiwhi, Kukutauaki case, (1872) 1 Otaki MB 135.

⁴⁰⁸ Ngati Toa s 30 case, 20 Nelson MB 168.

And Te Rauparaha tried everything. He went to his people at Maungatautari for help but they chickened out and they went to Tauranga moana, he had relations there. They would not come and help. They went to Ngati Whakaue, Te Arawa to help, no, they were turned away, couldn't help him.

Te Rauparaha particularly sought the aid of Ngati Raukawa. A number of witnesses state that this, however, was after the main Ngati Toa migration had already begun. (Putting the various accounts together, he seems to have made two visits to Ngati Raukawa, one from Kawhia whilst Ngati Raukawa were still at Maungatautari, and another from Taranaki when a number of Ngati Raukawa hapu were in the Taupo area en route to Hawke's Bay.⁴⁰⁹) Nopera Te Ngiha said in 1868 that he was present when Te Rauparaha unsuccessfully went to seek aid from his Ngati Raukawa relatives, but that they, intent on their own expedition to Heretaunga (Hawke's Bay) declined to join him. Nopera then went back to the main group in North Taranaki but Te Rauparaha travelled south by a different route and rejoined the main party at Wanganui.⁴¹⁰

I came with Rauparaha from Kawhia in the second 'heke'. I went with Rauparaha to Waikato when he went to fetch his tribe Ngati Raukawa. Rauparaha said, "I am going to Kapiti: do you join me, and let us take Kapiti." Ngati Raukawa did not consent. [We] went on with Whatanui as far as Taupo. At Rotorua and Tauranga Rauparaha had asked Ngati Whakaue and Te Waru to join him and they had refused. Horohau heard []. Rauparaha left Ngati Raukawa on their way to Heretaunga and came on after us, Rangihaeata and others. Rauparaha came on to Rotoaira and to Whanganui. We went to Te Kaweka, after a short time left with Ngati Awa.

Some further details may be found in the evidence of Tatana Whautaupiko in the Ngakaroro 3B case (although he has Te Rauparaha going back to Taranaki rather than on to Wanganui):⁴¹¹

When he [Te Rauparaha] got to Taranaki with the great migration news reached him that the Ngati Raukawa were going to Napier. He said to his people, Ngati Toa, he would go after them. He took twenty men with him. He overtook them at Opepe. He told them, the Ngati Raukawa, that they had best come with him to this land [i.e. Kapiti]. They would not. Te Au was the one who said no. He said, who will follow the lead of a common person? Rauparaha and his companions felt very dark at that saying and they returned to Taranaki. Te Au was of Ngati Tuwhakahewa hapu. Each party went their own way.

The speaker may have been stressing Ngati Tuwhakahewa's repudiation of Te Rauparaha in order to make it clear that it was not Ngati Huia, Te Rauparaha's hapu within Ngati Raukawa, which rejected his proposal. It was Ngati Raukawa which was Te Rauparaha's preferred ally, but it was not to be some years before the chiefs of Ngati Raukawa changed their minds and came south to Kapiti. In this interval many of Ngati Raukawa travelled to Hawke's Bay.

A completely different picture of events was given by Matene Te Whiwhi in 1869, which has Te Rauparaha and Te Whatanui developing a coordinated strategy at Taupo:⁴¹²

Te Rauparaha went to Taupo where he made an arrangement with Te Whatanui. Te Whatanui was to come by the East Coast and Te Rauparaha by the West Coast meeting at Wairarapa. They went to kill the resident tribes. Te Whatanui did not reach Wairarapa but returned from Ahuriri. He was too cautious to come on.

⁴⁰⁹ The unsourced narrative in vol 6 of White's *Ancient History of the Maori* has Te Rauparaha meeting Ngati Raukawa first at Maungatautari and then subsequently at Opepe on the eastern side of Lake Taupo. He was rebuffed on both occasions. (White, *ibid*, vol 6, 34).

⁴¹⁰ Evidence of Nopera Te Ngiha, Himatangi case, (1868) 1 C Otaki MB 392.

⁴¹¹ Evidence of Tatana Whautaupiko, Ngakaroro 3B case, (1891) 16 Otaki MB 346-7.

⁴¹² Matene Te Whiwhi, evidence in second Himatangi case, MA 13/71, 14 July 1869.

There may be something in this, given that Ngati Raukawa and Ngati Toa seemed to have commenced their respective heke to Ahuriri and Kapiti at more or less the same time, and there are other accounts of Te Rauparaha travelling to Taupo to talk matters over with the chiefs of the Ngati Raukawa hapu. Matene Te Whiwhi usually gives high-quality and detailed evidence in the Native Land Court. All the same, this is certainly a variant reading of events. At the very least, however, as John Hutton has put, “the initiative taken by Te Rauparaha to move much of the population of Kawhia southwards (remembering that a few hapu remained) later offered Raukawa leaders a new set of strategic possibilities”.⁴¹³

The first stage of the Ngati Toa migration is sometimes referred to as ‘Te Heke Tahutahuahi’ or the ‘fire lighting’ expedition. Ngati Toa’s departure was a mixture of both push and pull factors – a combination of the pressure the Kawhia descent groups were under from their Waikato neighbours and the attractions of the Cook Strait area as a place to settle and trade with the Pakeha. Ngati Toa Minute Book sources indicate that this was a timed and strategic withdrawal rather than a flight in the midst of a battle. Tamihana Te Rauparaha, who presumably would have learned of the details from his father, says in fact Te Rauparaha “bade farewell to [the Waikato chiefs]” and then left, “about 340 men, besides women”:

They left Kawhia – burnt homes – wept, reached Taranaki, Ngati Awa country.

Some Waikato sources indicate that Te Rauparaha gifted the land around Kawhia to various Waikato groups.⁴¹⁴ Whether or not that is the case, in Ballara’s view it is clear that Ngati Toa left “with mana intact”.⁴¹⁵ Te Rauparaha “had avoided the defeat, capture and enslavement of his people”.⁴¹⁶ This was a withdrawal and a relocation, not an invasion, and Te Rauparaha seems to be careful to avoid unnecessary conflict on the long journey. In Taranaki Ngati Toa were joined by sections of Ngati Awa⁴¹⁷ who then accompanied them on the journey south. (Why they did so is not much discussed in the literature.) Matene Te Whiwhi says that the heke included “one hundred Ngati Toa” (this may be referring to the number of fighting men) and that “on reaching Taranaki they were joined by Ngati Awa - making up number to 500 or 600.”⁴¹⁸ This is a very substantial North Taranaki presence. Ann Parsonson believes that Te Rauparaha would have preferred not to have relied on Ngati Awa help “for the very simple reason that many of the Ngati Toa chiefs, notably the family of Te Peehi Kupe, the most senior chief – had close connections with the northern Ati Awa hapu: Ngati Rahiri, Ngati Hinetuhi, Kaintangata, Ngati Mutunga”.⁴¹⁹ Te Rauparaha, “who had no intimate relationship with Ati Awa, always felt uneasy with them, and it is obvious that he feared for his leadership of this strong numerous

⁴¹³ Hutton, *Raukawa* (2009), 115.

⁴¹⁴ See the discussion in Ballara, *Taua*, 309. Ballara argues that the cycle of conflict in the Waikato coast region had reached a point where Te Rauparaha saw no option but to withdraw: “The utu ‘debts’ became so serious that Te Rauparaha preferred to withdraw, taking his people and their allies with him”: *ibid*, 86.

⁴¹⁵ *Ibid*, 310.

⁴¹⁶ *Ibid*.

⁴¹⁷ The term ‘Ngati Awa’ needs to be used with some care. See the Waitangi Tribunal’s *Wellington* report at p. 20:

Rather like the conglomerate names for the Whatonga-decent groups (most notably ‘Ngati Kahungunu’), people from the Taranaki region were often lumped together under a common name (usually ‘Ngati Awa’ by outsiders. This has led to some confusion in the historical record. According to Professor Alan Ward, the name ‘Ngati Awa’ appears most often in the nineteenth-century literature and ‘generally refers to tribes of north and mid Taranaki’ – ‘It is often used inclusively of Ngati Mutunga and Ngati Tama.’ ‘Te Atiawa’ became more commonly used in the documentary record from the 1860s: ‘Its core reference seems to be the tribes on the north and south banks of the Waitara, southward to Nga Motu (New Plymouth) but exclusive of Ngati Mutunga and Ngati Tama’.

⁴¹⁸ Matene Te Whiwhi, Himatangi hearing, (1868) 1 C Otaki MB 192.

⁴¹⁹ Parsonson, *He Whenua Te Utu*, 160-161.

group within his tribe should be reinforced by their own relatives”.⁴²⁰ Rauparaha had prepared the way for the journey south by arranging for a group of Ngati Whakatere (who for some reason were living in North Taranaki) to make sure that canoes were ready by the time the heke reached Waitotara.⁴²¹ As the heke moved south of Wanganui it received a friendly reception from Ngati Apa (Te Rangihaeata’s wife Pikinga was, of course, Ngati Apa). According to Hohepa Tamaihengia (1868):⁴²²

[I] remember the going of Ngati Apa to Waitotara. Rauparaha and Ngati Toa was glad to see them and I was glad to see that chiefs of Ngati Apa had come to fetch us. We came to Rangitikei and lived with Ngati Apa as friends [for] two months.

According to Wirihana Hunia of Ngati Apa when the heke reached Waitotara it was attacked by Nga Rauru, and Ngati Apa had to actually rescue Ngati Toa and his people and bring them down to Rangitikei.⁴²³ The heke stayed with Ngati Apa for “a long time”.⁴²⁴ The expedition then left Ngati Apa territory and headed south. According to Kawana Hunia, Ngati Apa cautioned Ngati Toa to progress “quietly” through the peoples they encountered.⁴²⁵

4.7 Establishment of Ngati Toa and further migrations

However once the heke departed from Ngati Apa territory conflict began to build. In one incident on the journey Nohorua killed a woman of rank belonging to Muaupoko named Waimai⁴²⁶ (and perhaps other people), and in order to seek utu, Toheriri, chief of Muaupoko, invited Te Rauparaha to a feast at Papaitonga.⁴²⁷ Te Rauparaha went there with his family, where they were attacked and three of Te Rauparaha’s children were killed, his sons Te Rangihoungariri and Poaka and his daughter Te Uira. According to Wirihana Hunia, Poaka “was not killed then, but a man called Tamati Maunu caught Poaka, and he was afterwards killed”.⁴²⁸ Te Rauparaha himself and Te Rangihaeata’s father, Rakaherea, were only just able to escape. This event probably happened in or around 1823. Much can no doubt be said about this event but it is not necessary for the various contested interpretations to be explored in this report.⁴²⁹ It is clear, however, that Te Rauparaha never forgave Muaupoko for this. There was a long and grim struggle between Ngati Toa and Muaupoko.⁴³⁰ Quite possibly the event at Papaitonga

⁴²⁰ Parsonson, *He Whenua Te Utu*, 161. In support of this Parsonson notes that on an earlier occasion Te Rauparaha had once led a taua against Ngati Rahiri. Peace had been arranged by Nohorua, related to both sides.

⁴²¹ See evidence of Arapeni Tukuwhere of Ngati Whakatere, Kukutauaki case, (1873) 1 Otaki MB 164.

⁴²² Evidence of Hohepa Tamaihenga, Himatangi case, (1868) 1 C Otaki MB 399.

⁴²³ Wirihana Hunia, Horowhenua Commission, 1896 AJHR G2, 47.

⁴²⁴ Ibid.

⁴²⁵ Kawana Hunia, (1872) 1 Otaki MB 70.

⁴²⁶ Named variously as Wamai, Waimahi, Waimaia in the sources.

⁴²⁷ In 1896 Wirihana Hunia blamed Te Rauparaha for this killing: “When Te Rauparaha came on to the north of the Manawatu River, he caused to be killed an old woman belonging to the Muaupoko Tribe; he came on from there and camped at the mouth of the Ohau River”: 1896 AJHR G2, 47. He adds (ibid):

After Te Rauparaha had left the Manawatu to come on to Ohau, the Muaupoko discovered the old woman who had been killed; they saw her entrails; she had been eaten. The Muaupoko then collected together at Papaitonga, and they decided that they would fight Te Rauparaha. An expedition started from the Muaupoko, and fought and beat Te Rauparaha, and they called the name of that place Te Wi, at Ohau. Some of Te Rauparaha’s children were killed on that occasion.

⁴²⁸ Wirihana Hunia, Horowhenua Commission, 1896 AJHR G2, 47.

⁴²⁹ For Muaupoko’s perspective on what occurred see Luiten, *Muaupoko*, (A163, 17-18).

⁴³⁰ Wirihana Hunia, Horowhenua Commission, 1896 AJHR G2, 47:

After that, a war-party started out from Te Rauparaha to take payment for the death of his children and people, and they attacked this pa, called Waipata, but they did not succeed in taking it. After that Te Rauparaha dragged a lot of canoes up from the beach and brought them up to the Horowhenua Lake by the stream and then they attacked the pas Te Rauparaha and Wiremu Kingi attacked these pas – one pa called Waikiekie and the other called Te Rohoate Kawau. These pas belonged to the descendants of

was in fact not the only reason for the bitterness and ferocity of the conflict, but Ngati Toa always stressed the murders at Te Wi as a justification for their actions. Although, says Matene Te Whiwhi, peace was made with Ngati Kahungunu after Waiorua, “peace was not made with the people in this district on account of the murders committed at Te Wi and Ohau”.⁴³¹ Ngati Toa attacked Muaupoko’s island defensive pas at Waikiekie, Te Roha a Te Kawau, and Waipata, probably in 1823 (Ngati Toa and Muaupoko sources disagree on the numbers killed).⁴³² Around about this time Kapiti Island was occupied. At Waikanae the Ngati Toa chief Te Pehi’s children were killed in a night attack by Ngati Kahungunu according to some sources, or by Ngati Apa (led by Paora Turangapito) and Muaupoko according to others.⁴³³ Te Pehi then, evidently to ensure that the military balance would swing decisively in Ngati Toa’s favour, got aboard a whaling ship in Cook Strait and travelled to England to acquire guns. Nopera Te Ngiha says that at the fight with Ngati Kahungunu Te Rauparaha’s own gun was taken, and that Te Pehi “followed a vessel and overtook it – Pehi jumped on board and held on to the bulwarks – was taken away and was away four years”.⁴³⁴ He did not come back home until after the battle of Waiorua.⁴³⁵ This seems to indicate that until this time the invaders had few guns, and thus no particular technological advantage over the local people. At some point before the battle of Waiorua a number of the “Ngati Awa” people went back to Taranaki; whether they intended to stay or return is not clear. Other Ngati Awa remained and lived on Kapiti Island with Ngati Toa. The fighting with Muaupoko went on, and their chief Toheriri was killed.⁴³⁶

Anderson and Pickens say in their *Wellington District Rangahaua Whanui* report that at this time “matters appear to have been fairly evenly balanced” and that “small victories were scored by either side”.⁴³⁷ The key event marking the definitive establishment of Ngati Toa in the Cook Strait area is usually seen as the battle of Waiorua (probably 1824). Most writers emphasise the importance of this engagement as establishing Ngati Toa authority.⁴³⁸ The extent to which groups other than Ngati Toa were instrumental in achieving the famous victory has been a matter of debate.⁴³⁹ Matene Te Whiwhi

Pariri. They are still to be seen on the lake at some islands. Thirty of the Muaupoko were killed at those pas, and the Muaupoko fled in their canoes and were fired at as they went by Te Rauparaha and his people. After that fight Te Rauparaha went back to Kapiti. After he went to Kapiti he returned again and went to the other side of the Manawatu, and he began to kill the people of the Rangitane and Muaupoko, at Hotuiti. Te Rauparaha then returned again to Kapiti. The Ngatiapa felt very sorry about what had happened to Muaupoko, and they came forward. They came on to Waikanae and they fought there, and the Ngatitua were defeated by Ngatiapa and Muaupoko; and Te Pehi, a chief of Ngatitua, lost his son.

⁴³¹ Evidence of Matene Te Whiwhi, Kukutauaki case, (1872) 1 Otaki MB 144

⁴³² Luiten, *Muaupoko* (A163), 18

⁴³³ Wirihana Hunia, Horowhenua Commission, 1896 AJHR G2, 47.

⁴³⁴ (1868) 1 C Otaki MB 393.

⁴³⁵ Both Nopera Te Ngiha, who was at the battle himself, and Wi Parata state specifically that Te Pehi was away in England and missed the battle: (1868) 1 C Otaki MB 394; (1890) 10 Otaki MB 158.

⁴³⁶ Wirihana Hunia, Horowhenua Commission, 1896 AJHR G2, 47.

⁴³⁷ See Anderson and Pickens, *Wellington District*, Rangahaua Whanui District 12, 1996, 10.

⁴³⁸ For example Jane Luiten, *Whanganui ki Porirua*, Wai 52 Doc# A1, 1992, p. 5; McEwen, *Rangitane*, 97; Carkeek, *Kapiti Coast*, 23; Burns, *Te Rauparaha*, 36. The Waitangi Tribunal has accepted that “Waiorua broke the strength of the Whatonga-descent groups” although it “did not finish this resistance”: Waitangi Tribunal, *Whanganui a Tara*, 21. The battle is known as Whakapaetahi/Whakapaetai in the South Island.

⁴³⁹ This was a matter of considerable debate in the Waitangi Tribunal’s Wellington inquiry. Ngati Toa sources tend to stress that Ngati Awa had mainly returned home to Taranaki before the battle. Matene Te Whiwhi said that “we went to Kapiti”, and “Ngati Awa returned [home], leaving ten”: Matene Te Whiwhi, Himatangi case, (1868) 1 C Otaki MB 197. Tamihana Te Rauparaha wrote that once the invaders had settled at Otaki and Waikanae “some of the Ngati Awa then returned to Taranaki”: Tamihana Te Rauparaha, *Life and Times of Te Rauparaha*, 26. His account of the battle in *ibid* sees it as a Toa victory in which Te Rauparaha personally led the defence: of course it may be said that Tamihana Te Rauparaha would naturally seek to magnify his father’s role, which may be true, but which does not of itself mean that his account is untrustworthy. The Wellington Tribunal accepts (p 21) that “the victory undoubtedly enhanced the reputation of Te Rauparaha, who was regarded as the

and Tamihana Te Rauparaha emphasised that the battle was strictly a Ngati Toa victory and that “Ngati Awa” had returned home to Taranaki before the battle.⁴⁴⁰ Wi Parata, who was partly Te Ati Awa, stated in the course of his evidence in the Maraetakororo (Kapiti No 2) case in 1897 that the hapu who were engaged in the battle on the victorious side were Ngati Haumia (i.e. Ngati Toa), Ngati Koata, and Ngati Kuri.⁴⁴¹ Waiorua, he said, belonged to Te Rangihiroa and Te Pehi and it was their place of residence on Kapiti.⁴⁴² He said that his own grandfather, Te Rangihiroa, and the latter’s younger brothers took part in the battle.⁴⁴³ Anderson and Pickens note that “[t]here seems to be little certainty about which migrant tribes other than Ngati Toa were involved”.⁴⁴⁴ The battle is richly documented in the Otaki Minute Books although the details vary to some extent (again there is no need to discuss this in detail in this report). The battle is also described in the first of the two letters from Ngati Toa to Grey published by Biggs in the *Journal of the Polynesian Society* in 1959.⁴⁴⁵ This gives the tribal opponents of Ngati Toa as Ngati Apa, Muaupoko, Ngati Kahungunu, Rangitaane, Hamua, Ngati Tumatakokiri,⁴⁴⁶ Ngati Kuia, Ngai Te Heiwi, Ngati Whakamana and Ngai Tawake. Wirihihana Hunia said in 1896 that Te Rauparaha “defeated the united tribes of Wanganui, Ngatikahungunu, Ngatiapa, and Muaupoko”.⁴⁴⁷ Also prominent amongst the attackers, according to Tony Sole, were Nga Rauru and Ngati Ruanui, led by their chiefs Te Hanataua, Turaukawa, and Te Matangi-o-Rupe.⁴⁴⁸ Matene Te Whiwhi in 1869 said that the coalition attacking Ngati Toa was made up of “[Ngaruanui?], Ngatiapa, Rangitane, Ngatira, Ngatikahungunu, Ngatiapa from the Middle [South] Island, Ngatikuia, Rangitane from Wairau” and others.⁴⁴⁹ According to Matene it was all coordinated by Ngatiapa, Rangitane, and Muaupoko: “it was Ngatiapa, Rangitane, and Muaupoko who induced all these tribes to collect and attack Rauparaha”.⁴⁵⁰ The Ngati Toa letter to Grey names six individuals who were spared: Te Rimurapa and Te Kiwa of Ngati Kahungunu, and Tutepourangi, Tautioma, Tukihono and Waimea “from Whakatu and Motueka”. Te Rangimairehau of Ngati Apa asked to be spared because of his kin relationship to Te Pikinga (Te Rangihaeata’s Ngati Apa wife) but he was killed.⁴⁵¹ Ngati Raukawa, of course, were not involved, and were involved in events in the Waikato and in Hawke’s Bay around the time of the battle. The battle “spelt the beginning of the end of the resistance to the newcomers’ occupation of the Kapiti Coast at least as far north as the Manawatū River, and south to Te Whanganui-a-Tara”.⁴⁵² Following the battle,

heke’s main leader”. See also the discussion in Alan Ward, *Maori Customary Interests in the Port Nicholson District*, 1998, Wai 145 Doc#M1, 37-42. Ward’s overall conclusion (ibid, 42) is that:

I am reluctant to build a mountain of interpretation upon any one of the Land Court statements. All witnesses tend to advance the mana of their particular groups and, not surprisingly, blur one event of the southern migration with another. There is enough in the various sources, however, to indicate that a considerable number of Ngati Awa groups had remained at Kapiti and played an important role in helping sections of Ngati Toa repel the attack on Waiorua pa.

⁴⁴⁰ See preceding footnote.

⁴⁴¹ (1897) 31A Otaki MB 181 (9 September 1897).

⁴⁴² (1897) 31A Otaki MB 180 (9 September 1897).

⁴⁴³ (1897) 31A Otaki MB 181-2 (9 September 1897).

⁴⁴⁴ See Anderson and Pickens, *Wellington District*, 10.

⁴⁴⁵ See Biggs, “Two letters from Ngaati-Toa to Sir George Grey”, *Journal of the Polynesian Society*, vol 68, 1959, 263-76 (letter of December 11 1851).

⁴⁴⁶ Ngati Tumatakokiri were formerly a powerful descent group in the western part of Te Tau Ihu who in a process of disintegration by the time of Waiorua. See Ballara, *Te Tau Ihu*, 69-73.

⁴⁴⁷ Wirihihana Hunia, Horowhenua Commission, 1896 AJHR G2, 47.

⁴⁴⁸ Sole, *Ngāti Ruanui*, 132.

⁴⁴⁹ Matene Te Whiwhi, evidence in second Himatangi case, MA 13/113/71, 15 July 1869.

⁴⁵⁰ Matene Te Whiwhi, evidence in second Himatangi case, MA 13/113/71, 15 July 1869.

⁴⁵¹ Angela Ballara, “Te Pikinga fl. 1819-1834, Ngati Apa woman of mana”, *DNZB* vol 1 (1990) 479.

⁴⁵² Ballara, *Te Tau Ihu*, 25.

says Tamihana Te Rauparaha, “Rauparaha’s fame reached the South Island”.⁴⁵³ In 1869 Matene Te Whiwhi said:⁴⁵⁴

The army of this grand alliance was defeated. 200 were killed. After the defeat of the allies Te Rauparaha did not consider that he had any special enemy, because all these tribes together had not been strong enough for him. Rauparaha frequently visited the mainland after this.

According to Matene Te Whiwhi (1872) “the news of this went all over and the people knew that Rauparaha had defeated all these tribes”.⁴⁵⁵ According to Wi Parata Waiorua “was the fight that put an end to all fears about the occupation of the land”.⁴⁵⁶ Ngati Apa participation in the battle caused a deterioration in the reasonably friendly relations that had existed between Ngati Toa and Ngati Apa to this point. According to Ballara, “Ngati Apa retained their rangatira status because of the marriage alliance with Te Pikinga, but the relationship was under great strain”.⁴⁵⁷ In Ann Parsonson’s view “Te Rauparaha emerged from Te Whakapaetahi no longer a mere intruder, but an established occupant of the district”.⁴⁵⁸

Most importantly for the purposes of this report, the victory at Waiorua opened a path for other iwi to come south. According to Wi Parata, “when all the tribes had heard of this and that Ngati Toa had not been beaten, the first heke came down because the coast was clear”.⁴⁵⁹ As Jane Luiten has put it, “Ngati Toa’s victory sparked a decade of migration to the coast from Taranaki and Upper Waikato, the waves of tangata heke washing up at Kapiti varying in size and tribal configurations, and carrying too an array of relationships with each other and reasons for coming”.⁴⁶⁰ The defeat of the tangata whenua groups by Ngati Toa and their allies at Waiorua was widely seen as a significant event in the complicated world of Maori geopolitics. Undoubtedly Te Rauparaha was anxious to persuade allies he could trust to move to Kapiti, in particular Ngati Taukawa and Te Ati Awa. As Ian Wards puts it, “anticipating trouble, Te Rauparaha, as well as forming an alliance with the Ngati Apa, had persuaded a large group of the Taranaki Ngatiawa, who had also run foul of the Waikato, to come south to share the land with him.”⁴⁶¹ Wirihana Hunia said in 1896 that after Waiorua “the thought struck Te Rauparaha that he would call his tribe Ngatiraukawa to come and settle with him at Kapiti, so that they should establish themselves on the land from Manawatu right to Wellington, because he thought he had defeated the pas of the tribes of these lands, and therefore he had taken possession of them”.⁴⁶² But, said Wirihana, Te Pehi and others of Ngati Toa with kin connections primarily to Ngati Awa, preferred to invite groups from North Taranaki to come to Kapiti.⁴⁶³

The same idea occurred to Te Pehi, and he sent for his tribes in Taranaki and elsewhere to come down and locate themselves on this land with the tribes of Te Rauparaha. The Ngatiawa, and Taranaki, and Ngatiruanui then came.

⁴⁵³ Himatangi case, (1868) 1 C Otaki MB 372

⁴⁵⁴ Matene Te Whiwhi, evidence in second Himatangi case, MA 13/113/71, 15 July 1869.

⁴⁵⁵ Kukutauaki case, (1872) 1 Otaki MB 141.

⁴⁵⁶ (1897) 31A Otaki MB 181 (9 September 1897).

⁴⁵⁷ Ballara, “Te Whanganui-a-Tara”, 18.

⁴⁵⁸ Parsonson, *He Whenua Te Utu*, 166.

⁴⁵⁹ (1890) 10 Otaki MB 158-9.

⁴⁶⁰ Luiten, *Muaupoko* (A163), 21.

⁴⁶¹ Wards, *Shadow of the Land*, 216.

⁴⁶² Wirihana Hunia, Horowhenua Commission, 1896 AJHR G2, 47.

⁴⁶³ Wirihana Hunia, Horowhenua Commission, 1896 AJHR G2, 47.

If Wirihana Hunia is right, the seeds of the future conflicts on the Kapiti coast between Ngati Awa and Ngati Raukawa were being sown by these different invitations, explained by the divisions within Ngati Toa, part of which was oriented to Ngati Awa and the other to Ngati Raukawa.

Various groups moved south over the next ten years or so, principally from Taranaki (especially North Taranaki) and from the Maungatautari area (Ngati Raukawa, Ngati Kauwhata, Ngati Whakatere). The various heke to the south are abundantly documented in the Land Court records, but the process was a very complex one: producing an orderly account is next to impossible. Precise dating of even such key events as the battle of Waiorua is not easy, and it is usually only events for which there are contemporary European records which can be dated precisely. For example it is known that in October 1830 Te Rauparaha hired a vessel named the *Elizabeth* to take him and others to Akaroa, where the Ngai Tahu chief Te Maiharanui was captured and brought back to Kapiti to be killed. It is known also that Ngati Mutunga and Ngati Tama went from Port Nicholson to the Chatham Islands at the end of 1835. Other events have to be dated by reference to fixed points such as this. The history of the Kapiti coast and the Manawatu in the two decades before the Treaty of Waitangi is complex. Writing of Wellington harbour, which shared this complexity, Ballara has noted that between 1819 and 1836 it was invaded six times, and changed hands twice.⁴⁶⁴ Many people came south, went back north again, and returned (sometimes years later). Anderson and Pickens rightly note that the process of migration is “not easily delineated”; “[e]ach 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”.⁴⁶⁵ Many groups, moreover, did not remain in the Cook Strait region, but travelled on further afield to the South Island (Ngati Rarua, Ngati Koata, Ngati Tama, sections of “Ngati Awa”) or the Chatham Islands (Ngati Mutunga, Ngati Tama). Others moved around the Kapiti region. Ngati Tama lived in a number of places at different times, including Ohariu, Wellington Harbour, the Northern South Island, and the Chathams. Ngati Rangatahi lived in the Hutt Valley but later went to Te Reureu in the Rangitikei. If the descriptions of the migrations in this report seem somewhat untidy, this is a reflection of the complexity of the events and the nature of the evidence.

The first northern group to arrive was a joint force of Ngati Tama led by Te Puoho along with people of Ngati Whakatere (i.e. a section of Ngati Raukawa). “In the fourth year” (from what, exactly?), says Matene Te Whiwhi, “came Ngati Awa and Ngati Tama”.⁴⁶⁶ (By “Ngati Awa” here, Matene probably means in this instance principally Ngati Mutunga.) In his 1872 evidence Matene, however, said that after Waiorua Te Puoho of Ngati Tama “came from the North to see how we were getting on”; about seventy men came south on that occasion, Ngati Tama and Ngati Whakatere. Te Puoho “saw that we were all right” and went back; the following summer a large group of Ngati Whakatere and Ngati Tama came south: “they were now commencing to migrate”. Ngati Mutunga settled at Waikanae, and Ngati Tama at Ohariu, before both groups later moved on to Wellington harbour. The order of the various heke is confused.⁴⁶⁷ But if Matene Te Whiwhi is right, the first Ngati Raukawa-affiliated group to migrate south was actually Ngati Whakatere. It is this migration which appears to be that described by Henare Te Herekau in his interesting, albeit confusing, evidence in the Kukutauaki case (1872). He says that after conflicts involving Ngati Maru in the Taupo region (see next section) Ngati Whakatere travelled to Kapiti via Whanganui. He also mentions the death of a chieftainess of Raukawa named Hikitana at Whanganui, but it is not quite clear from his evidence whether this happened during the

⁴⁶⁴ Ballara, “Te Whanganui-a-Tara”, 9.

⁴⁶⁵ Anderson and Pickens, *Wellington Region*, 11.

⁴⁶⁶ (1868) 1 C Otaki MB 197.

⁴⁶⁷ For example Wi Parata says that after Waiorua Ngati Mutunga came south first, followed by Ngati Tama: (1890) 10 Otaki MB 158-9.

Ngati Whakatere migration or perhaps later. He says that Ngati Whakatere and the Ngati Tama stopped at Parekau in the Manawatu, where they found Ngati Apa, Muaupoko and Rangitane, whereupon they went inland, capturing and killing a Muaupoko chief named Te Rangihwinui and also taking a Ngati Apa pah at Oroua before going on to Kapiti.⁴⁶⁸ Perhaps there is a connection between this migration and the subsequent (unsuccessful) claim made in the Native Land Court by some Ngati Whakatere people to parts of Kapiti Island. Other Ngati Whakatere journeyed south later in association with Ngati Raukawa (see the chapter below on the Kapiti case).

In or around 1824, but after Waiorua, there was a major migration of “Ngati Awa” people (Te Nihoputa) led by Rere Tawhangawhanga and others, who settled in the Waikanae area.⁴⁶⁹ The table below summarises the various heke from a range of sources, probably an impossible task, given the number of variant accounts.⁴⁷⁰

Name of heke	Date	Sources/Remarks
1. First heke of Nga Puhi and Ngati Toa (sometimes referred to as Amiowhenua)	Circa 1819.	Biggs, “Two Letters”, 268; Matene Te Whiwhi, (1868) 1 C Otaki MB 195-6; (1872) 1 Otaki MB 135; Tamihana Te Rauparaha, (1868) 1 C Otaki MB 372-3; Travers, 75-79; Wi Parata, (1890) 10 Otaki MB 144-5.
2. Main migration of Ngati Toa. Named Te Heke-mai-raro but often referred to in two stages, Te Heke Tauhutu Ahi (the Fire-lighting expedition) and Te Heke-Tataramoa from Taranaki to the south. Ngati Toa are accompanied south by some of Ngati Tama, some of Ngati Mutunga and some of Ngati Awa. Some Ngati Awa people return to Taranaki.	1821-22	Well documented in MB sources: eg Nopera Te Ngiha, Himatangi case, (1868) 1 C Otaki MB 392; Matene Te Whiwhi, Kukutauaki case (19872) 1 Otaki MB 392. Toa sources tend to emphasise that the majority of Ngati Awa returned home to Taranaki before Waiorua: see Matene Te Whiwhi, Himatangi case, (1868) 1 C Otaki MB 197. See also H and J Mitchell, <i>Te Tau Ihu o Te Waka</i> , 107.
3. After Waiorua there is a migration of North Taranaki	1824	Matene Te Whiwhi, Kukutauaki case, (1872) 1 Otaki MB 141;

⁴⁶⁸ The relevant passage in the evidence reads (1872) 1 Otaki MB 155-156:

The Ngatiwhakatere they came accompanied by Ngati and Ngatitama [difficult to read, but it looks like ‘Ngatitama’ has been written twice here – maybe the second ‘Ngatitama’ should be ‘Ngatiawa’, but it is difficult to know]. They came to Manawatu, and stopped at Parekau. We found the Ngatiapa, Muaupoko and Rangitani [sic] here. The party went up the Manawatu to a place called Totara on the South of the River where they caught Rangihwinui a Muaupoko Chief, They went up Te Piaka and they caught Maru there and killed him. He was a Muaupoko chief, and they killed Rangihwinui. They then came down to their encampment and then up to Oroua. They caught Mokomoko there, a Ngatiapa, he was spared. They went to the Oroua. Tekatea was the place. They took a pah there. The people ran away from the Pah and two were captured, Rairawa and Kaiawa (Hunia’s mother). The party then went on to Kapiti. When they reached Ohau they went inland. Rangitaki was killed by Takare. They then went on to Kapiti and came back and killed Taheke at Horowhenua. They killed many others killed (sic) but he was the principal chief. He was caught in the bush. The party went away. All these killings were after the battle of Waiorua.

⁴⁶⁹ Reretawhangawhanga was the father of Wiremu Kingi Te Rangitake; they both signed the Treaty of Waitangi in 1840. See Ann Parsonson, “Te Rangitake, Wiremu Kingi ?-1882, Te Ati Awa leader”, *DNZB* vol 1, (1990), 499-502.

⁴⁷⁰ See Alan Ward, *Maori Customary Interests in the Port Nicholson District*, 1998, Wai 145 Doc#M1, 45-58.

people, usually known as Te Nihoputa (“The Boar’s Tusk”), led by Te Reretawhangawhanga and others. A Toa source refers to a preliminary visit by Te Puoho of Ngati Tama and then a larger North Taranaki migration. Ngati Whakatere were also part of this heke.		(1868) 1 C Otaki MB 197; Wi Parata, (1890) 10 Otaki MB 158-9.
4. Ballara states that after Nihoputa “another large party of people from the area between Waitara and Puketapu followed”.	1824-25	Ballara, ‘Te Whanganui a Tara’, 30, citing Shand as a source. No MB refs known to me.
5. Ngati Raukawa migrates south in three separate stages. Possibly accompanied by Ngati Kauwhata, but who also may have had various heke of their own. The usual order of the Ngati Raukawa hapu is (a) Te Heke Whirinui, led by Te Ahukarumu; (b) Te Heke Kariritahi, led by Nepia Taratoa, and (c) Te Heke Mai-i-raro, led by Te Whatanui.	1829-30	Abundantly documented in Waikato and in Otaki MBs
7. Battle of Taumatawiwi in the Waikato. Waikato and Ngati Haua defeat Marutuahu, and Marutuahu return to Hauraki.	1830	Abundant documentation.
8. Further migration by North Taranaki descent groups after the Waikato invasions and the battles at Pukerangiora and Ngamotu. These groups are therefore often referred to as Ngamotu and the heke as Tama Te Uaua.	1831	See Ballara, ‘Te Whanganui a Tara’; Anderson and Pickens, <i>Wellington</i> , 16.
7. Ballara refers to a final North Taranaki migration called Te Heke Paukena. This includes Te Awa, Ngati Ruanui and Taranaki groups.	1834?	
8. Battle of Haowhenua (Raukawa versus Ngati Awa)	1834	
9. Ngati Mutunga and some of Ngati Tama move to the Chatham Islands. Ngamotu establish themselves at Port Nicholson.	1835-6	

10. Battle of Kuititanga (or Kuhititanga) (Raukawa versus Ngati Awa)	1839	See evidence of Mawene Hohua, (1868) 1 C Wellington MB 63; Hemi Parae, (1868) 1 C Wellington MB 75-6; Hori Ngapaka, (1868) 1 C Wellington MB 12; Mohi Ngaponga, (1868) 1 C Wellington MB 7; Evidence of Wi Tako, in <i>Wi Tako v Manihera Te Tou</i> [Supreme Court reference to NLC], (1868) 1 C Wellington MB 63.
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4.8 Departure from Maungatautari by Ngati Raukawa, Ngati Whakatere and Ngati Kauwhata

One of the more important historical (or historico-legal) issues that Ngati Raukawa and Ngati Kauwhata had to confront in the Native Land Court was their departure from “Maungatautari”. While this was important in the Waikato, it was also important in cases in the PkM region as well, as it could matter a great deal whether Ngati Raukawa had withdrawn on their own terms from their home territories and/or maintained an ongoing presence there, or whether they had been defeated there and were essentially fleeing refugees. Maungatautari is of course a prominent mountain in the south Waikato, lying between Putaruru and Te Awamutu, but it is also the name of a historic region or district, including the area to the north of the mountain extending to the Waikato river as it flows past Horahora, Karapiro, and Cambridge. This region was split up into a number of different Native Land Court blocks, which were investigated at different times and which were the subject of numerous petitions, applications for rehearings and reinvestigations, and of a commission of inquiry into Ngati Kauwhata claims heard in 1881. The various cases and inquiries are discussed in some of the subsequent chapters of this report, and here I will focus only on the main lines of debate.

In brief, the key question is whether Ngati Raukawa, Ngati Whakatere, and Ngati Kauwhata *abandoned* “Maungatautari”, or whether they withdrew from the region only in part, leaving sufficient people behind to maintain ahikāroa (or, alternatively, or at the same time, leaving their interests in Maungatautari in trust to be managed in their absence). This is not only a matter of traditional history; it is an issue which is pivotal to many of the key cases in the Land Court that affect Ngati Raukawa and Ngati Kauwhata. The issue is more or less the same question as asking whether Ngati Raukawa intended to depart entirely from their lands in the Waikato, intending never to return, or whether they did not. Generally there is nothing to indicate any wholesale departure of all hapu affiliating to Raukawa, it being obvious that Ngati Raukawa maintain a strong presence in the southern Waikato to this day and have many marae there. Arguably this fact only changes the basic question to one of hapu: was it the case that the Ngati Raukawa and Ngati Kauwhata hapu of Ngati Raukawa abandoned “Maungatautari” completely? But putting the issue in this way only raises further questions. First, there is the risk that even framing the issue in quite this manner means amounts to utilising the Native Land Court’s own analytical framework. Secondly, it is also common knowledge that a number of Ngati Raukawa hapu (Ngati Huia, for example) have an established presence both in the PkM region and in the Waikato. It is safe to say that many people of Ngati Raukawa and Ngati Kauwhata descent today will have shares in land blocks in both regions.

In a sequence of cases which will be analysed in later chapters the Native Land Court developed and applied a particular historical interpretation which we can call the “Marutuahu thesis”. The argument is that when Hongi Hika and other chiefs from northern districts invaded Hauraki, Marutuahu retreated inland to (amongst other places) Maungatautari. At this point either (a) they found it

abandoned (Ngati Raukawa, Ngati Whakatere, and Ngati Kauwhata had left as a result of a sequence of defeats at the hands of Ngati Maniapoto, Ngati Haua, and Waikato groups), or, alternatively, (b) pressure from Marutuahu caused Ngati Raukawa and Ngati Kauwhata to move to “Kapiti”. In either event, Marutuahu remained in occupation for a time, until Ngati Haua, acting in concert with Waikato descent groups including Ngati Koroki and Ngati Kahukura, after a long struggle defeated Marutuahu at Taumatawiwi (1831). The Hauraki groups thereupon had to retire to Hauraki, and Ngati Haua, Ngati Koroki, Ngati Kahukura and other groups occupied Maungatautari by right of conquest.

It is not to be suggested that the “Marutuahu thesis” was made up by the Native Land Court, or that it is necessarily incorrect: only that it was the Court’s preferred option (which it did not always adhere to, however – as will be argued in other chapters⁴⁷¹). There is a great deal of evidence recorded in the Waikato and Hauraki MBs which supports this interpretation. For instance in the Pukekura case in 1868 Hori Puaou, who said he was of Ngati Haua and Ngati Kauwhata, but who seemed to be speaking in the former category principally, said that the land had been given up by Ngati Kauwhata to (I infer) Ngati Haua and that the owners and migrated south because they were afraid of the Hauraki tribes and Waikato.⁴⁷²

I know this land; I am of Ngatihaua and Ngatikauwhata; I was born at Tamahere; I did not hear the names mentioned by Te Raihi; Ngatikauwhata owned this land formerly; I claim the land through Ngatikauwhata having having given it up to myself and Te Raihi; Te Wharepakarau was the person who gave the land; the cession was made at Pukekura; I was a boy at that time, and I have lived there ever since; I am now an old man; the reason the land was given to us was on account of our relationship; after they did this they left the land and went South; the reason of their going was they were afraid of Ngatimaru, Ngatipaoa, Ngatitamatera, and Waikato tribes; we have cultivated here from that time to the present day; Ngatikoroki cultivated on the other end of the hill; I have lived on this land from my childhood, and have now grand-children living there; we claim this land through gift and relationship.

In this version the land was “given up” to Ngati Haua by Ngati Kauwhata, creating a claim to Maungatautari by “gift and relationship”.

The complex wars in the central Waikato from about 1800 until 1840 were frequently traversed in the Native Land Court in various Waikato, Hauraki, and King Country cases, creating an extensive body of material which various scholars have analysed thoroughly in order to work out the precise sequence of events and to try to explain and understand their causes. To do this is far from easy, as the events are very complex, and the evidence, although massive in total, is always presented in the Land Court in particular contexts and is often partial and incomplete. The basic narrative is developed in a nuanced and sophisticated form by Angela Ballara in her book *Taua*, in which she relies principally on evidence given in the Rohe Potae case (recorded in (1886) 1 Otorohanga MB) and in the 1881 Ngati Kauwhata inquiry, primarily that given by Waikato and Ngati Haua speakers, supplanted by some material recorded in White’s *Ancient History*. In Ballara’s synthesis, as at circa 1800 the western side of Maungatautari was dominated by Ngati Whakatere, “a numerous, independent people closely related to surrounding peoples.”⁴⁷³ Around this time a “grand alliance” began to take shape, whereby Ngati Whakatere, Ngati Raukawa, Ngati Takihiku, and (later) Ngati Toa were aligned against Ngati

⁴⁷¹ A very different interpretation is presented by Judge Mair and Paratene Ngata in the Rohe Potae decision of 1886, discussed in ch [] below. There are also cases relating to blocks in the southeastern Waikato (Tokoroa, Matanuku, Waotu, Patetere, Whakamaru-Maungaiti etc.) and the eastern King Country (Wharepuhunga), some of these blocks actually adjoining Maungatautari, which the Court awarded to Ngati Raukawa hapu: see chapter [], below.

⁴⁷² 1873 AJHR G3, 12.

⁴⁷³ Ballara, *Taua*, 235.

Maniapoto, the latter being linked in their turn with Ngati Haua and Waikato. Around 1800 the Maniapoto chiefs Tautari and Wahanui began to encroach on Ngati Whakaterere by constructing a pa at Hurimoana in the Ngahape area north-east of Otorohanga. Various severe *take* began to accumulate between Ngati Whakaterere and Ngati Maniapoto.⁴⁷⁴

The cycle of conflict that is relevant here begins around the end of the eighteenth century when Ngati Whakaterere became embroiled in conflict with Ngati Maniapoto, the two groups being very closely related. Wahanui and Tautari were the principal chiefs of Ngati Maniapoto, and Te Roha of Ngati Whakaterere. The main battles in which Ngati Whakaterere, and subsequently, their close relatives Ngati Raukawa were involved in were at Hurimoana (about 1812), Tangimania (about 1818), and Hangahanga (about 1822). These Waikato conflicts, as Angela Ballara has put it, “turned progressively more serious, and the pattern for the future of Taupō and Whanganui began to be set when Ngāti Maniapoto recruited Te Waharoa and Ngāti Hauā of Matamata as allies”.⁴⁷⁵ Although (in most accounts) having to lose ground to their enemies Ngati Whakaterere were very tough opponents and not easily dislodged. Acting in concert with Ngati Haua, Ngati Maniapoto defeated Ngati Whakaterere at Hurimoana (“overwhelmed by the sea”⁴⁷⁶), Ngati Whakaterere experiencing very severe losses. Ngati Whakaterere were defeated again at Tangimania, and at this point they retreated to a pa at Hangahanga belonging to their Ngati Raukawa kin, which was subsequently besieged by Ngati Haua and various sections of Waikato. Hangahanga was besieged for nearly two months. These battles took place before the invasions of Hauraki by taua from the Bay of Islands and other Northland groups upset whatever equilibrium there was in the Waikato by attacking Hauraki and driving Hauraki groups inland into the Waikato. A basic outline was given by Houa Wahanui, speaking in support of the Ngati Whakaterere claim to Rangitoto (eastern King Country) in 1898 said:⁴⁷⁷

The trouble with us [Ngati Whakaterere] began with that of Wahanui and Maungatautari⁴⁷⁸ against Te Roha, and Ngati Whakaterere.

Te Roha⁴⁷⁹ went to kill men wherever he found them and on his return he saw Tautari and Wahanui at Te [Raupehi]. There is a stream there called [132] Mangapehi and Te Roha jumped across the stream and generally bounced his elders Wahanui and Tautari, this was remembered when Ngati Paiariki and Ngati Whakaterere killed Ngati⁴⁸⁰ Paretokawa – then Tukorehu sent to Wahanui and Tautari at Puketarata to come and avenge their defeat. Wharekuta and Paeowhenua were kaingas of theirs also.

Then Wahanui called on Waikato, Maniapoto and Ngati Paoa to assist him and Tukorehu. They fought at Hurimoana and Te Roha was slain there, also Te Rangitakaroro, with a multitude of the Ngati Whakaterere. Then Waikato returned to their kaingas and Ngati Maniapoto to theirs, this avenged Te Roha’s insult to Wahanui and the murder of Paretokawa.

⁴⁷⁴ See Ballara, *Taua*, 238, for the details.

⁴⁷⁵ Ballara, *Tribal Landscape Overview*, 367,

⁴⁷⁶ Ibid.

⁴⁷⁷ Houa (Hona?) Wahanui, given evidence for Ngati Whakaterere, Rangitoto case, (1898) 31 Otorohanga MB 131-2 (2 Nov 1898).

⁴⁷⁸ Here name of a person, also known as Tautari, a leading rangatira of Ngati Maniapoto, Wahanui’s older half brother (Jones/Biggs, *Tainui*, 334, 335). He was the son of a Waikato chief named Irohanga, killed in a battle between Ngati Raukawa and Waikato at Maungatautari (hence the name): see Jones/Biggs, *Tainui*, 324, 325.

⁴⁷⁹ Chief of Ngati Whakaterere and regarded by all sides as a very brave and able man.

⁴⁸⁰ I am sure the ‘Ngati’ here is a mistake in the MB, as is clear from the context. The Paretokawa referred to here is a person, a woman, whose killing was an important *take* in the fighting between Ngati Maniapoto and Ngati Whakaterere: see Jones/Biggs, *Tainui*, 340, 341.

After this there was more fighting. Tangimania came next, long after Hurimoana, the reason was a man called Ririhoro [and?] Te [Uhunga?], they were Ngati Maniapoto and Ngati Whakatere were slain by the latter tribe. Ririhoro was a child of Huahua of Ngati Matakore.

The narrative is being very compressed here. Hurimoana⁴⁸¹ was about 1812 (or earlier), Tangimania about 1818. To resume his narrative:

Again Wahanui and Tautari raised a war party and Ngati Whakatere were defeated and Tuhimata[] slain with many others of note, this avenged the death of Ririhoro and Te Uhunga, the survivors fled to Ngati Raukawa ope at Pawaiti [usual spelling Paoaiti] and others fled to Taupo.

Those who fled to Pawaiti were Huiaki, Te Wheraro, Te [Tawha], [Motukurahurahi], and others.

Those who went to Taupo were Te Nawe and many others. Tangimania was the last fight. [Whakarekehoui?] was abandoned. The Ngatiraukawa Pa was Pawaiti and they used to come and assist the Ngati Whakatere in their battles.

This preliminary round of conflict between Ngati Maniapoto, Ngati Haua, Waikato, and Ngati Whakatere was described by many people, sometimes by very prominent rangatira, and is often recorded in the Court's minute books. No single account, however, describes all the main events, and of course speakers always tended to maximise the role played by their own descent groups. One the best and fullest descriptions is that by the Ngati Matakore and Ngati Maniapoto chief Hauauru in his evidence in the Rohe Potae case in 1886. He begins the story with Ngati Maniapoto planning to gain utu from Ngati Whakatere, the first step being to bring pressure on Ngati Whakatere by occupying some of their land. At this point, Ngati Haua, who had their own reasons for wanting to get even with Ngati Whakatere, formed an alliance with Ngati Maniapoto:⁴⁸²

I wish to state that a place called [Te Pokoro-tui?], was occupied before the fight at Hurimoana, and Wahanui occupied Haupehi in the same district. This was after the battle at [Panekakoe?], then they took their abode at Maungatoatoa and Tukorehu⁴⁸³ lived there at the time. Their object in going there was to avenge [Paretekawa's] death. When Ngati Haua heard of this they came over. But they had [283] a separate cause of their own for coming, viz to avenge Te Rangipakuru's⁴⁸⁴ death. The war parties then marched to Tangimania which they attacked. The attack failed and the expeditions returned home. The Ngatiwhakatere sallied from the pah and pursued them, and overtook them at Hurimoana after a long chase. A battle ensued. The Ngatihaua⁴⁸⁵ formed into three divisions, viz Ngatihaua, Ngatikoroki and Ngati[parengaopo?]. The Ngatiwhakatere were defeated and I will not deny that my ancestor Mahamahama showed the white feather, and left his younger brother[s?] to bear the brunt of the fight. The principal men wounded were Wahanui, speared in eight places, Muriwhenua Poepoe and Tautari; and Te Roha chief of the other side did this himself; he was a very brave man. None of the Ngatihaua, or Ngatikoroki, received any wounds, therefore I imagine they took very little part in the action. Wheh Te [Muha] [Otuhenga?] and [], two leading chiefs in the attack were also conspicuous for bravery, the former killed [Nawe] and the other killed Tungia. Soon after the battle Muringa killed Te Roha. Te Rangi-takaroro was captured by Ngati Haua.⁴⁸⁶ The mere that was shown in court the other day was said to have been used in this battle. The Ngatihaua pursued. So great was the slaughter and bloodspill that it was compared to a flood of water and was therefore called Hurimoana.

481 Hurimoana means "Sea-flood". See Jones/Biggs, 342, 343.

482 (1886) 1 Otorohanga MB 282.

483 Pehi Tukorehu, a leading rangatira of Ngati Maniapoto.

484 A woman of Ngati Haua, killed by Ngati Whakatere: see Ballara, *Taua*, 238.

485 The handwriting looks like 'Ngatiaua' – clearly from the context it is Ngati Haua that is being referred to.

486 Written as 'Ngahaua' in the text.

However, said Hauauru, this battle did not change the political situation:⁴⁸⁷

This battle however did not effect the conquest of that country, for the original people remained in possession of their former lands. The Ngatihaua then returned to their homes.

Ngati Whakatere wished to avenge their defeat and sought allies:⁴⁸⁸

To avenge this defeat Te Rawhiti went to Wakatane [sic] for succour where a party was obtained under the chiefs Kihī and Mokai. They reached Tangimania where they met some Ngatiraukawa under Hape and Ngati Raukawa under Hiki.

Elsdon Best, working from Tuhoe and East Coast informants, basically confirms this. Kihī and Mokai were chiefs of Ngati Pukeko (probably a separate group at that time, but today usually classed as a hapu of Ngati Awa). According to Best the request for aid came from Hape-ki-tuarangi of Ngati Raukawa.⁴⁸⁹

To return to Hauauru's richly detailed narrative, once Ngati Raukawa/Ngati Whakatere had obtained reinforcements from Ngati Pukeko, they resumed the fighting with Ngati Haua and co. At first they were successful:⁴⁹⁰

These forces marched to Horotiu, near Cambridge. A fight ensued with Ngatihauas who were defeated with loss. The allies then returned to their houses. The Ngatihaua did not then attempt to retrieve their defeat. Tautari was killed later at Poutama. Muriwhenua now sought assistance from Ngapuhis at Kaipara to avenge his death, and he was joined by a party who took their position at Mangatoatoa where the whole of Maniapoto were assembled, also Ngati Haua and Waikato. A war party of Ngapuhi⁴⁹¹ and Ngatiraukawa under Poumari-whetu attacked Maungatoatoa. Hare Wharara, a chief connected with Te [Wheoro?] and myself, was killed. The Ngapuhis then withdrew to Hangahanga. A large party of Ngati Maniapoto and Ngatihaua marched from Mangatoatoa to Tangimania. The Ngapuhis well armed with guns led the march, and before the main body arrived they stormed and captured the pah. My father was born soon after Hurimoana fight and it was after he had been tattooed that Tangimania was fought. When this pah was taken, many others were abandoned by the people who fled in fear of the Ngapuhis and their guns.

The next battle was at Hangahanga. Hangahanga was a Ngati Raukawa defended pa close to Maungatautari mountain. The defenders were Ngati Whakatere, Ngati Raukawa, and Ngati Kauwhata.⁴⁹² Hauauru Poutama gives the impression that this battle was immediately after Tangimania. He goes on:

The war party then proceeded to Hangahanga which they besieged. A Ngapuhi chief called Manaia was killed when on the palisades. The garrison [] by night after a hui, being forced by starvation. Te Kohe, an old chief of Ngatiraukawa was killed.

The wording here is rather garbled. What seems to have happened was that the garrison withdrew, leaving non-combatants behind, which was when Te Kohe was killed.

⁴⁸⁷ (1886) 1 Otorohanga MB 282.

⁴⁸⁸ (1868) 1 Otorohanga MB 282-3.

⁴⁸⁹ Best, *Tuhoe*, 427:

A considerable number of Ngati-Pukeko were living at Niho-whati and Te Rau-tawhiri,
⁴⁹⁰ (1886) 1 Otorohanga MB 284.

⁴⁹¹ This must be a mistake by the translator or the clerk; as far as I know Ngati Whakatere/Raukawa were not aided by Ngapuhi. See Ballara, *Taua*, 94; McBurney, *Ngati Kauwhata and Wehi Wehi*, 94.

⁴⁹² Tupotahi, Maungatautari (Manukatutahi ki Otautahanga) case, (1884) 13 Waikato MB, p 1.

They [meaning Raukawa/Whakatere/Kauwhata] retired to Paiwaiti on the E. side of the Waikato. In those days conquest of country was not so sought after as the capture of slaves and women. The Ngapuhis and Maniapoto after this returned to their homes, without kindling fires.

Ballara's narrative is a bit different. She suggests that by giving refuge to Ngati Whakatere, Ngati Raukawa became more deeply embroiled in the widening conflict: "in giving refuge to their Ngāti Whakatere kin in Hangahanga, Ngati Raukawa were drawn further into a quarrel which would soon see the withdrawal of many of them from the region, along with some Ngāti Whakatere".⁴⁹³ The siege of Hangahanga was a major confrontation, possibly including a group of "Nga Puhi" (i.e. not very precisely identified in the sources), present on the Waikato/Ngati Haua side.⁴⁹⁴ During the siege, a famous incident occurred, when Te Akanui of Ngati Maniapoto "began to feel compassion for the besieged".⁴⁹⁵ He assisted Ngati Raukawa and Ngati Whakatere to escape, who retreated to Hapuaroa, a Ngati Raukawa pa commanded by Te Whatanui, and also to Piraunui near Waotu. "This escape meant that Ngati Raukawa could say that they had not been defeated; their mana was intact, because Hangahanga had not been taken." At about this time, however, events were also in motion at Tamaki and Hauraki: "just after Ngāti Pāoa had been ousted from Maunaina⁴⁹⁶ and Mokoia by Hongi, Ngā Puhi and the other Bay of Islanders, and Ngāti Maru had been driven from from Te Totara near present day Thames."⁴⁹⁷ Hauraki groups began to retreat inland, "away from the battlefields, made tapu by the blood of their defeated kin, and away from the dangerous coasts which canoe-borne taua could reach".⁴⁹⁸ Ballara gives the impression that Hangahanga and the retreat of Marutuahu inland were roughly contemporaneous events: but were they?

To cut a long story short, following the death of a Ngati Raukawa chief named Te Whatakaraka, mentioned, as seen, by Aperahama Te Rangipouri and Ihaia Te Oriori, there was a peace-making at Paoaiti. This peace agreement at Paoaiti, also mentioned by Ballara, is important. It is described in some detail by Hona/Houa Wahanui in his evidence in the Rangitoto case. In his narrative Ngati Whakatere, following their defeats at the hands of Maniapoto, withdraw from Maungatautari, some retreating to Taupo and others seeking refuge with Ngati Raukawa (the narrative is a little garbled, not helped by difficult handwriting):⁴⁹⁹

Te Whatanui was in Taupo when the Ngati Whakatere and Ngati Raukawa lived in Pawaiti [sic]. Te Matiu was chief and also Te Puke ki [] and others of Ngati Raukawa in Pawaiti.

After the fighting at Tangimania while we were at Pawaiti Te [Akanui] and Wahanui went to Taupo. They went to Pokura and there saw Te Whatanui and Te [Purangi], Te Nawe, and there peace was made between Te [Akanui] and Te Whatanui, then these two Whatanui and Te [Akanui] returned. I remember some lines of a waiata sung by Wahanui on that occasion. Te Whatanui said [to?] Wahanui if you go to fight we will go together.

Then the Ngati Raukawa of Te [Akanui] came back to Pawaiti, [] Te Whatanui and Te Purangi.

After this Tukorehu Te [Akanui] and Wahanui and Hikiora went to Pawaiti and made peace with Ngati Raukawa and Ngati Whakatere – again. Then they all came together to Pukeponga, Te [] and Te Pukekihauriki were those who came, and others. At that place they all mustered and Peace was made

⁴⁹³ Ballara, *Taua*, 241.

⁴⁹⁴ Ballara, *Taua*, 241, relying on evidence of Hauauru Poutama of Ngati Maniapoto, Rohe Potae case, (1886) 1 Otorohanga MB 284.

⁴⁹⁵ Ballara, *Taua*, 241.

⁴⁹⁶ Ngati Paoa's fortress at Tamaki, near Panmure lagoon.

⁴⁹⁷ Ballara, *Taua*, 241.

⁴⁹⁸ Ibid.

⁴⁹⁹ (1898) 31 Otorohanga MB 133.

with Ngatimaniapoto from there they went to Rapaura and made peace with Waikato, Ngati Haua Ngati Paoa and others who were there and from that time there has been no trouble over these lands.

The peacemaking was described carefully by Hauauru Poutama in 1886:⁵⁰⁰

Tukorehu and Wahanui marched to Paiwaiti and concluded a peace with Ngatiraukawa, some of whose chiefs accompanied Tukorehu back, Te Horohoro, [Kiringautu], Te Puke, Te Aroa, Te Matiu being the principal ones. They met at [Pukepunga] the Ngatimatakore chiefs, also the [Ngatiweru] [Ngatihingarangi] and others. A final peace was here confirmed. The same chiefs of Ngatiraukawa afterwards came to Raupura to meet the Waikatos with their chief Te []. Then they went to Te Kotikoti where they met the principal Waikato and Maniapoto chiefs. Namely [Te Kaueru?], Potatau, Kukutai and others. The country was principally occupied and cultivated by Waikato. At the last place the terms of peace were also satisfied and the Ngatiraukawa chiefs returned home. No disturbance has since arisen between Maniapoto and the other tribes.

Nonetheless, in Ballara's view, Te Whatakaraka's death "was the catalyst for migration": from this point "from there many hapū of Ngati Raukawa and of associated peoples such as Ngāti Whakaterē, Ngāti Te Koherā and Ngati Kauwhata were to begin the exodus that led, eventually, via Taupō and an abortive attempt to settle in Hawke's Bay, to the Kapiti coast".⁵⁰¹ It is obvious to Ballara that not all of Ngati Raukawa did leave, and those that did left with mana intact:⁵⁰²

As was to happen in Kāwhia with the departure of Ngāti Toa, the peace agreement made at Pāoaiti about 1822 meant that Ngāti Raukawa were able to leave (in some cases several years later) with mana intact. They did not flee, but chose to leave. Many of their kin remained behind and Ngāti Raukawa maintained a strong presence in their homelands, although it was usually the descent groups with close ties to Ngāti Maniapoto and Waikato, or with Ngāti Hauā to the north, which felt secure enough to remain, often under the protection of chiefs such as Tūkorehu or Te Waharoa.

Aperahama Te Rangipouri of Ngati Haua said that Maungatautari belonged to Ngati Raukawa and Ngati Kauwhata "formerly".⁵⁰³ He said that his ancestors (Ngati Haua, Ngati Koroki and Ngati Kahukura) fought against Ngati Raukawa and took from them the Rangiaohia region and "one side of Maungatautari" (logically, the western side), forcing Ngati Raukawa hapu of that area to retreat south to Wharepuhunga (immediately to the south of Maungatautari). He claimed that his people also defeated Ngati Toa and took Kawhia from them, forcing Ngati Toa to move to "Kapiti". At this point Ngati Raukawa people living at Waotu on the southeastern side of Maungatautari learned of Ngati Toa's successful establishment at Kapiti. While – it is implied – Ngati Raukawa were pondering what to do, "Ngapuhi came". Ngati Maru pulled back inland, and attacked both the witnesses' people (Ngati Haua, Ngati Koroki, Ngati Kahukura) and Ngati Raukawa, killing an important man named Te Hou. Ngati Haua established themselves at Maungakawa, the prominent hill behind Cambridge. Ngati Raukawa was also attacked, and a chief named Te Whatakaraka killed by Ngati Maru. At *this* point, says Aperahama, "Ngatiraukawa then remembered that Te Rauparaha had taken Kapiti, and they went there to join him".⁵⁰⁴ Following the departure of Ngati Raukawa "Ngati Maru took possession of the whole district". The conflict at this point became one between Ngati Haua and Waikato groups (Ngati Koroki,

⁵⁰⁰ (1868) 1 Otorohanga MB 282-3.

⁵⁰¹ Ballara, *Taua*, 242.

⁵⁰² Ibid.

⁵⁰³ (1868) 2 Waikato MB 67.

⁵⁰⁴ (1868) 2 Waikato MB 68.

Ngati Kahukura, and others) against Ngati Maru, with (supposedly) Ngati Raukawa – and, by implication, Ngati Whakatere and Ngati Kauwhata – wholly out of the picture.

There was then a major showdown between Marutuahu and Ngati Haua and their allies. Aperahama says that “we came from Maungakawa to Pukekura to attack Ngati Maru, and fought them at Hauwhenua”⁵⁰⁵ where Ngati Haua/Waikato were defeated, losing thirty men. After various other collisions, Ngati Haua and Waikato “utterly defeated” Ngati Maru at Taumatawiwi: “we cooked and ate them; the remnant were saved and were led back to Hauraki; after this we took possession of the whole district”. The intense fighting between Ngati Maru and Ngati Haua leading up to Taumatawiwi is also described by witnesses in the Te Aroha case of 1868.⁵⁰⁶ Thus Ngati Haua and their allies held what might be called greater Maungatautari by conquest. Ngati Raukawa had gone to Kapiti; they played no role. The narrative here is that Waikato groups fought against Ngati Raukawa (perhaps specifically Ngati Whakatere is meant), forcing Ngati Raukawa to retreat south to Wharepuhunga; in other parts of Maungatautari were placed under pressure from Hauraki groups and abandoned the area: “Ngatimaru” then took possession of the “whole district” [Maungatautari] but were defeated in their turn by Ngati Haua and their allies at Taumatawiwi, following which the Hauraki groups were “led back” to where they had come from.

Ihaia Te Oriori presented essentially the same scenario, but introduces Ngati Paoa into the narrative, and pays little attention to Ngapuhi. He says that Ngati Paoa and Hauraki attacked Waikato and Ngatiraukawa, and that Ngati Raukawa in response pulled back from Maungatautari (north of the mountain) to Waotu (on its eastern side) and to Wharepuhunga (to the south). Ngati Maru and Ngati Paoa continued to harass Ngati Raukawa and Te Whatakaraka was killed; “Ngatiraukawa then went away to Kapiti”. The implication is that the cycles of conflict in the Waikato had caused Ngati Raukawa to leave. Then followed the conflict between Waikato/Ngati Haua with Ngati Maru, leading to the battle

⁵⁰⁵ i.e. Haowhenua.

⁵⁰⁶ See e.g. evidence of Mata Tahi of Ngati Haua, Te Aroha investigation of title, (1869) 2 Waikato MB 282-284:

Ngatiraukawa owned Maungatautari formerly – afterwards Ngati Maru had it – I heard from Ngatimaru that Maungatautari was theirs by conquest – I have heard that Ngapuhi had driven there and they took the land – Ngatihaua attempted to expel Ngatiraukawa – but Ngatipaoa and Ngati Maru finally expelled them and took Maungatautari. They did not appear at Cambridge to make claim to the lands at Maungatautari – they were too late – I did not hear that they wished to make any claim – because they drove away Ngatiraukawa and they took possession of the land therefore I said Maungatautari belonged to them – I claim the Aroha from conquest – including all its boundaries – Our [Ngati Haua’s] claim is that of conquest. Our first fight was at Horotiu – On account of my going to get my food they were angry – they killed one of us named Tuanui I went to get payment and shot Te [Ko] – I went to Maungakawa and left that land for them and they followed us to Maungakawa and plundered our property and food there also – I attempted to hold on – We played (?) and they were worsted – and finding that they shot Te Po Rangatira one of us – I then sought for payment and shot Tu Kariro – we did not quarrel afterwards – the Waikato then went to Taitai and slept at Maungatautari and Te Whakaete was murdered by the Ngatimaru – I then went to seek satisfaction – I was worsted at [Kaiaruhe?] – many of Ngatihaua were killed by Ngatipaoa and Ngatimaru – They took the heads of our slain and put them into our drinking places – I then sought for satisfaction and killed Takurua and 200 of the opposite side men women and children – they sought satisfaction and I killed two and hung them on a hinau tree – they returned and killed six persons who were catching eels belonging to Ngatihaua the seventh escaped – We then followed those persons who had killed the six persons – They were 340 – and fought them – They were defeated at Te Manutu – The chiefs who were killed were Te Kaokao – Te Maowha and Te Hiroa – Patene Puhata was saved because he was related to us – There were few escaped – The most were slain – After this I attacked them at Maungatautari – Ngatimaru and Hauraki tribes saw us and we fought at Taumatawiwi- We killed Te Pukeroa and they immediately fled – Those battles I have described were my conquests – The end was Taumatawiwi – From Taumatawiwi I knew that I should take Te Aroha.

of Taumatawiwi; “we then took possession of the land after this time i.e. our own lands at Horotiu, and Ngatiraukawa’s land at Maungatautari”.⁵⁰⁷

It is these narratives of a withdrawal of Raukawa/Whakatere/Kauwhata immediately before or around the same time as the arrival of Marutuahu which the Native Land Court preferred, at least in a significant number of cases, including most of the cases relating to the Maungatautari area specifically. In the Puahue decision of 1868, for example, Judge Rogan stated that “[i]t is undisputed that the Ngatiraukawa tribe left the district: that Ngatimaru took possession and were expelled by Ngatihaua and Waikato tribes”.⁵⁰⁸ The Commission of Inquiry into Ngati Kauwhata claims to Maungatautari read the history the same way, treating Ngati Kauwhata simply as a section of Ngati Raukawa. By 1828 the Maungatautari region had been abandoned: “it is proved to our satisfaction that petitioners did abandon possession in or about 1828; that neither they nor any person or persons on their behalf have ever returned to their district with a view of permanent occupancy, though one or two have made casual visits for a few months at a time and then returned to Kapiti”.⁵⁰⁹ According to the commissioners, “Ngati Maru, through their victories over Ngati Haua, became the owners of this whole district by right of conquest”. Ngati Haua, assisted by Ngaiterangi (Tauranga) attacked Ngati Maru, defeating them at Taumatawiwi, with the result that “that Ngatimaru left the district in the hands of Ngatihaua, who have ever since occupied”; moreover it is “distinctly stated that none of the Ngatiraukawa, except the few who were left behind, took part in that battle”.⁵¹⁰ And in the 1884 title investigation to Maungatautari (Manukatutahi Otautahanga) it was the same story: Ngati Maru “caused such of Ngatiraukawa as continued in occupation to vacate the land”; then “Ngatihaua, Ngatikoroki, and Ngatihourua, and their hapus, after having driven Marutuahu away from Maungatautari, dispossessed them and acquired the mana of the land”.⁵¹¹ As to the claimants, “we uphold the former decisions by this Court as to Ngatiraukawa having forfeited their rights by leaving the land”.⁵¹² In response to the argument put forward by Ngati Raukawa that not all of Ngati Raukawa migrated to “Kapiti” the Court responded:⁵¹³

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

This was not enough to give Ngati Raukawa rights at Maungatautari: “they merely occupied by sufferance such places as they did occupy after the land had changed owners, and that occupation having terminated no right now exists”.

Ngati Raukawa and Ngati Whakatere now gone, so it was said, or at least gone from “Maungatautari” (however that is defined) the issue now became that of deteriorating relations between Waikato and Ngati Haua on the one hand, and the refugees from Hauraki on the other. Ngati Maru and their allies, Ngati Pukenga, constructed a massive fortress called Haowhenua at Taumatawiwi (near Cambridge). The catalyst for the showdown between Ngati Haua/Waikato and Marutuahu was the

⁵⁰⁷ (1868) 2 Waikato MB 35.

⁵⁰⁸ (1868) 2 Waikato MB 95; Boast, *Native Land Court* vol 1, 476.

⁵⁰⁹ Ngati Kauwhata Claims Commission report, [1881] AJHR G2A, 4; Boast, *Native Land Court*, vol 1, 860.

⁵¹⁰ Ibid.

⁵¹¹ (1884) 13 Waikato MB 75; Boast, *Native Land Court*, vol 1, 1033.

⁵¹² Ibid.

⁵¹³ Supplementary Judgment relating to occupation by Raukawa, [1885] AJHR G3, 7; Boast, *Native Land Court* vol 1, 1034-35. This part of the judgment does not appear to be in the MB.

accidental death of a Waikato chief named Whakaiti at Haowhenua. After many complex events the final contest took place at Taumatawiwi, dated by Ballara to 1830 (after, that is, the arrival of the main heke of Ngati Raukawa people at Kapiti). Both sides at Taumatawiwi were well-armed with muskets.⁵¹⁴ Ballara sees Taumatawiwi as a victory for Ngati Haua and their allies, albeit “achieved at a very high cost”.⁵¹⁵ Marutuahu now left, Te Waharoa escorting them back home to Hauraki. The land now passed into the control of Ngati Haua and their Waikato allies. Ngati Haua now saw themselves as the rightful possessors of Maungatautari. They divided up the land, allocating some of it to other groups (such as Ngati Apakura).

Of course, it was agreed by Ngati Raukawa and Ngati Kauwhata speakers in the Native Land Cour that substantial numbers of their people did indeed migrate to “Kapiti”, as is richly documented in the Otaki, Waikato, and Otorohanga MBs. What Ngati Raukawa and Ngati Kauwhata rejected (and still reject, as far as I am aware) was any suggestion that they wholly abandoned their former lands at Maungatautari. In the 1868 investigations to Pukekura, Puahue and Maungatautari Parakaia Te Pouepa stated that conflicts between Ngati Raukawa and Waikato ended around 1824, after which Ngati Raukawa and Waikato lived peaceably together. When Ngati Raukawa groups left Maungatautari for Kapiti, they did not abandon the land but entrusted it to others. The land was left in possession of Ngati Kahukura, “i.e. Kuruaro, Te Tapae” (I am not sure if these are the names of places or of people). Parakaia adds that “we left it in possession of Te Toanga, and Taparoro, Te Iwihara, Te Pae, Pango, Te Amo, and Huka” (it is not clear whether these people were chiefs of Ngati Haua to whom the land was entrusted, or of Ngati Raukawa who elected to remain). Parakaia insisted that Ngati Raukawa was not driven away: “the word spoken at the time was – When we get guns, some of us will return to Maungatautari, and those who wish remain South will stop”. Parakaia also mentioned a marriage between a man of Ngati Kahukura (he did not name him) and a woman of Ngati Raukawa named Toia, which he saw as an important political fact. He said that Waikato fought with Hauraki, but “not with me” (Ngati Raukawa) – the implication being, how can there be a claim by conquest to an area if there had not been any actual fighting between the so-called conquerors and the original possessors where the latter had not abandoned their lands? Moreover, he said, there were Ngati Raukawa people living at Maungatautari at the time of the case (1868). Parakaia said that “the word of the chiefs of the other side was this – ‘We do not intend to keep the land, but if Ngatiraukawa returns we will give up the land and go to the other side of the country’; they invited us to return to Maungatautari, and the persons I have mentioned returned”.

In the same case Karanama of Ngati Raukawa said:⁵¹⁶

The reason of our going to Kapiti was to look after Europeans (aru i nga Pakeha); I left my wife and children at Te Whaotu;⁵¹⁷ I came back with others a year after, and took our friends away; we also left some behind to look after (tiaki) the lands at Maungatautari; and Te Whaotu; the person we left at Maungatautari was Wi Tamihana’s daughter.

Presumably the daughter of Wiremu Tamihana Te Tarapipipi referred to here is his eldest daughter Harete, who herself gave evidence in 1868 and also in the 1881 investigation to Ngati Kauwhata claims at Maungatautari. She said on the latter occasion that both her parents were of Ngati Kauwhata descent.⁵¹⁸

⁵¹⁴ Ballara, *Taua*, 245.

⁵¹⁵ Ballara, *Taua*, 262.

⁵¹⁶ Evidence of Karanama (in cxx), Pukekura case, 1868, 1873 AJHR G-3, 14.

⁵¹⁷ i.e. at Waotu, near Arapuni in the southeast Waikato.

⁵¹⁸ Harete Tamihana, Pukekura case, 1881 Maungatautari investigation, 1881 G-2A, 11.

In the 1868 Pukekura case, however, Matene Te Whiwihi said that when Te Ahu Karamu arrived, presumably returning from one of his trips to Kapiti, he found that Ngati Raukawa had been defeated by Ngati Maru at Piraunui. According to Matene Te Whiwihi, Ngati Raukawa were angry at being attacked by the Hauraki chief Taraia, who was related to Ngati Raukawa, and for this reason many people left and went to “Kapiti”. Matene said that no word was said about the land and that some of Ngati Raukawa remained in situ. He also described how Te Wherowhero went to Kapiti at the time when Te Rauparaha was released from his captivity in Auckland by Governor Grey, and it was at this time that Ngati Awa were invited to return to Waitara and Ngati Raukawa and Ngati Toa to return to the Waikato. In response to a question from the Court, Matene responded that Maori people “can return on their land after being absent thirty or forty years, but the *whakaau* is with the chiefs”.⁵¹⁹ And in the same case Te Rau Angaanga said simply “my hapu is Ngatitohae, through which I claim this land; we went to Kapiti of our own accord; we went to get guns; the Waikato chiefs invited us to return; there was no quarrel between us and Waikato; therefore they invited us to return”.⁵²⁰

This same debate was repeatedly played out in the various cases relating to Maungatautari, and no doubt is still debated today. That there were substantial migrations to Kapiti by Ngati Raukawa, Ngati Kauwhata, and Ngati Whakatere is not in doubt, but the circumstances of their departure and the implications that are to be drawn from the details have long been a matter of contention. Reading the evidence given by the Ngati Raukawa claimants in the 1868 cases relating to Puhue, Maungatautari and Pukekura, it is surprising that they did not make the obvious argument that many hapu remained in place in the Waikato, but rather placed emphasis on three other points: that Ngati Raukawa left of their own volition, that they had entrusted their lands at Maungatautari to particular people, and that they had been invited to return to the lands by Te Wherowhero and others, an invitation that some people chose to accept – and, as will be seen in a later chapter, was subsequently renewed in 1872. A distorting factor with the 1868 cases was that Ngati Raukawa people who had remained in the Waikato, supporters of King Tawhiao and branded as rebels against the Crown, played no role. Parakaia asked the Court to adjoin the Puhue case in 1868 so that this people had an opportunity to have a say, but the Court refused to do so. It must have been *obvious* that there was a large Ngati Raukawa population still present, who had fought at Orakau, and who remained living inside the King’s *aukati*. A great deal is known about their history, as it happens.

Matene Te Whiwihi in his evidence in the Puhue case (1868) emphasised Ngati Raukawa's sufferings at the hands of the musket-armed taua of Ngapuhi (“Hongi’s mana was powder and guns”, as Matene put it) and Ngati Whatua, and the debilitating conflicts with the Hauraki tribes.⁵²¹

These boundaries were held until Hongi's time. During his time Hongi held the power (mana). Hongi's mana was powder and guns. I do not know the cause of the Ngapuhi invasion. They came to Waikato. Ngapuhi and Ngati Whatua had guns and they came and fought Ngati Raukawa. The chief of Ngapuhi was called Manaia. Waikato collected together, but the mana was with Ngapuhi. Ngati Raukawa's pa called Hangahanga was attacked and after two months' fighting they were starved out and the pa was taken. There were none of the able-bodied men killed. Only the old men and women were taken. The strong men went away by night. Some of those who were related to Waikato were saved. Ngati Raukawa fled to Patetere and other places. Ngapuhi and Ngati Whatua returned. This ended that war. It happened about the time of the Rev. Mr Marsden's visit to New Zealand.

Ngapuhi returned after this under [77] Hongi. Hauraki was the first place attacked and all the Hauraki tribes were defeated by Ngapuhi. Hongi attacked and took Mauinaina Pa and Ngati Paoa were

⁵¹⁹ 1873 AJHR G3, 24.

⁵²⁰ Ibid, 23.

⁵²¹ Puhue case (Maungatautari), (1868) 2 Waikato MB 76-77.

defeated. He attacked [] Te Karaka Pa and Ngati Maru were defeated. He afterwards returned to Waikato and Matakītiki was taken and a thousand men were slain belonging to Waikato. All the tribes then retreated inland to Taupo. Ngati Raukawa were living there at this time and Waikato tribes retreated back on them.

The return of Ngati Raukawa and Waikato tribes was at the same time. Waikato went into their own country and Ngati Raukawa returned to Maungatautari. They made peace amongst themselves, their only thought was Ngapuhi. During this time the Hauraki tribes began to quarrel with Ngati Haua and Ngati Koroki. The cause was that the dominant (whakake) towards Ngati Haua and Ngati Koroki and Ngati Raukawa and Waikato [sic]. The quarrel against the Hauraki tribes increased and Tangiteruru was killed. Then the fighting began in earnest. A pitched battle was fought at Taumatawiwi and the Hauraki tribes were defeated. Waikato and Ngati Haua held the mana after this. Peace was made between the Ngati Haua and Waikato with the Hauraki tribes and Hauraki returned to Hauraki.

Ngati Raukawa I have heard were living at Maungatautari but not a great number.

The cause of Hauraki tribes attacking Ngati Raukawa was this (these tribes [78] have the same origin). Te Whatanui induced the Hauraki tribes to fight Ngati Raukawa and they attacked them at Te Kopua which was taken and they attacked Ngati Raukawa again at Piraunui. Ngati Raukawa were pouiri from their former defeat. They turned upon Hauraki and the Whatakaraka of Ngati Raukawa was killed. Ngati Raukawa had commenced before this time going to Kapiti to get guns. Te Rauparaha invited Ngati Raukawa to come and take the land belonging to Ngati Awa on account of one of Ngati Raukawa's chiefs named Te Poa having been killed by Ngati Awa. Te Ahu Karamu came and found that Ngati Raukawa had been defeated at Piraunui. Ngati Raukawa were pouiri at Taraia who was a relation of theirs attacking them. They said to him, "Waiho ki a koe te pakanga" and they left and went to Kapiti. There was no word said about the land. Some of Ngati Raukawa remained behind.

According to some Land Court evidence it was principally those sections of Raukawa living around Maungatautari who left for Kapiti, while those hapu based at Patetere or along the upper reaches of the Waikato mostly remained in situ. In fact Matene Te Whiwhi said as much in the Native Land Court in the Puahue case:⁵²²

Ngatiraukawa brought themselves here also on account of the word of Te Wherowhero; they have returned on the lands they held amongst Waikato, also the whole of their land on account of the word of Potatau; *the persons that live at Patetere, Auwhenua and Wharepuhunga live there permanently (tuturu); the persons for Maungatautari are at Kapiti*; they will come on the word of Potatau; I do not know anything about their having come here when Potatau told them; Kingi Hori and other men have visited on account of Potatau's word; the men who came are related to Waikato tribes, and therefore allow these persons who are related to them to look after the land; the persons who occupy the land now are "noho pokanoiho"⁵²³ (emphasis added).

However the migration was not a simple matter of everyone from Maungatautari going, and everyone from Patetere, Te Pae o Raukawa, Wharepuhunga etc. staying *in situ*. There was a strong North Taupo presence amongst the Raukawa groups that migrated to Kapiti. There were some people from other parts of the rohe – apart from the Maungatautari region, that is – who definitely went south. Sections of Ngati Kea and Ngati Tuara, Rotorua groups closely linked to Raukawa,⁵²⁴ accompanied the Raukawa hapu Ngati Kikopiri to Kapiti; before they went Ngati Kea and Ngati Tuara were living at Papahotu, at

⁵²² Matene Te Whiwhi, Puahue case. (1868) 2 Waikato MB; also 1873 AJHR G-3, at p 24.

⁵²³ Presumably noho pokanoaiho: I believe the meaning is something like squatting on the land or occupying it without any right.

⁵²⁴ Ngati Kea and Ngati Tuara are sometimes regarded as Arawa groups today, but my understanding is that matters are much more complicated than that.

Horohoro, not far from Rotorua.⁵²⁵ Some of Ngati Huia who have interests in north Taupo and the southeastern Waikato also migrated to Kapiti. Ngati Huia brought claims in the Native Land in the Waikato and also in the PkM region. And by the same token some people from Maungatautari stayed behind. There is Minute Book evidence which supports this; and certainly this is Raukawa's understanding of events today.

In the 1881 investigation of the Commission of Inquiry into Ngati Kauwhata claims to Maungatautari the debate was played out in much the same way, but with the focus on Ngati Kauwhata and Ngati Haua. Ngati Kauwhata speakers agreed that they had migrated to Kapiti, although there were variations in the details, some witnesses seeming to accept that Ngati Kauwhata and Ngati Raukawa travelled south together, and others insisting that they went there separately.⁵²⁶ One Ngati Kauwhata witness said that Ngati Kauwhata went to "Kapiti" "in search of provisions and guns"; while their lands at Pukekura "gave a certain kind of food...those lands at Kapiti gave us rare food, such as sharks, guns, and white men".⁵²⁷ The Ngati Kauwhata evidence in 1881 (which is reviewed in detail in a subsequent chapter) gives the impression of a complex sequence of departures and returns, which simply does not fit into a sequence of orderly *heke*.⁵²⁸ Ngati Kauwhata witnesses were concerned to show, as with Ngati Raukawa, that not all of the people had migrated: people came and went, perhaps even most people went, but nevertheless some Ngati Kauwhata people were always in place on the ancestral lands at Maungatautari. Ngati Kauwhata witnesses before the 1881 Commission insisted repeatedly that Ngati Kauwhata was present at the battle of Taumatawiwi, fighting alongside Ngati Haua (which is accepted by Angela Ballara in her detailed analysis of the complex events in the Maungatautari region in the early 19th century).⁵²⁹ Ngati Kauwhata claimants in the 1884 Maungatautari (Manukatutahi ki Otautahanga) title investigation also said that some of their people had continued to reside at Maungatautari throughout and had taken part in the fighting at Taumatawiwi.⁵³⁰ The Kauwhata presence

⁵²⁵ See Angela Ballara, *Tribal Landscape Overview*, Wai 1200 Doc#A65; Wellington MB 1H, 284; Otaki MB 1D, 449; Stafford, *Landmarks of Te Arawa*, vol 1, 77.

⁵²⁶ Takana Te Kawa says that "none of Ngatikauwhata went with Ngatiraukawa": Evidence of Takana Te Kawa, Pukekura case, Maungatautari investigation 1881, 1881 AJHR G-2A, 10 (in cxx). In his evidence in the Aorangi investigation of title, however, Tapa Te Whata says that "at the time of the migration from Maungatautari a part diverged at Rangitikei and came to Oroua": (1873) 1 Otaki MB 204. I am not sure what "main migration" he means, however. He could be referring to the Whirinui migration, usually regarded as the principal or main migration, in which case Ngati Kauwhata and Ngati Raukawa people would have travelled together, but perhaps he is referring specifically to a "main" Ngati Kauwhata migration.

⁵²⁷ Evidence of Takana Te Kawa, Pukekura case, Maungatautari investigation 1881, 1881 AJHR G-2A, 10 (in cxx).

⁵²⁸ Metapare Tapa of Ngati Kauwhata mentions a journey of about twenty people of Ngati Kauwhata to Kapiti with their chief, Te [Wharepakaru]: Pukekura case, Maungatautari investigation 1881, 1881 AJHR G-2A, 9. Rawiri Te Hutukawa mentions a journey of about 100 people of Ngati Kauwhata people to Kapiti who arrived there at the time of the battle of Kuititanga (1839): Pukekura case, Maungatautari investigation 1881, G2A, 10. He said that this was "a migration subsequent to the great one, which was long before" (ibid). Other Ngati Kauwhata people moved south even later. Muera Te Amorangi said he went to Kapiti "the year Awahou (Manawatu) was sold to the Crown (1886), ibid, 11.

⁵²⁹ Evidence of Reweti Kohu, Pukekura case, Maungatautari investigation 1881, 1881 AJHR G-2A, 9 ("Taumatawiwi was with Marutuahu. Ngatikauwhata took a part then with Ngatihaua; they were one – fighting against a common enemy"); evidence of Te Raihi (of Ngati Haua), ibid, 10 ("Ngatikauwhata were living at Pukekura then, and took part in the fight against Ngatimaru, and returned to it afterwards"); evidence of Rawiri Hutukawa, ibid, 10 (in response to questions from the Court he said that Ngati Kauwhata assisted Ngati Haua against Ngati Maru, and that it was the resident or remaining members of Ngatikauwhata who assisted to drive away Ngatimaru"). Ballara, basing this on MB evidence, is of the view that about 50 men of Ngati Kauwhata fought alongside Ngati Haua at Taumatawiwi.

⁵³⁰ Evidence of Hori Wirihana, Manukatutahi ki Otautahanga case, (1884) 12 Waikato MB 143 ("When the Ngati Maru were driven off my parents lived on this land"; it "was they who drove the Ngati Maru off (i.e. my grandparents), and others assisted in driving them away; they then lived on this land, on a part of it"; "Kauwhata

at Taumatawiwi is important because of the timing of the battle, usually dated to 1830 or 1831 – i.e. *after* the main migrations. They also tried to explain that a number of Ngati Kauwhata people remained in situ at Maungatautari who intermarried with Ngati Haua.⁵³¹ Many people thus had descent lines running from Ngati Haua tupuna as well as from Kauwhata who had never left the Waikato. Some witnesses made a point of saying that Te Waharoa himself, and thus his son Wiremu Tamihana, were partly of Ngati Kauwhata descent.⁵³² Some witnesses spoke of a “vessel” named *Kauwhata* which was purchased by Wiremu Tamihana specifically for the purpose of bringing back to Maungatautari the bones of Ngati Kauwhata people who had died at “Kapiti” (unfortunately the ship was wrecked before this could be accomplished).⁵³³ Ngati Kauwhata people, like Ngati Raukawa, also made much of the fact that they had been invited to return from “Kapiti” to Waikato, and indeed some of them had.⁵³⁴ When Tapa Te Whata was asked by the Court why Wiremu Tamihana had asked Ngati Kauwhata to return he said that he “asked us to return because he knew (1.) This land belonged to us; (2.) Because of our relationships”.⁵³⁵ None of this helped Ngati Kauwhata in 1881, as the Commissioners simply classed them as a hapu of Ngati Raukawa. As Raukawa had not been able to maintain claims to Maungatautari in earlier cases, by definition Ngati Kauwhata (in the view of the Commissioners) could not do so either. Although Ngati Kauwhata argued that they had been unable to attend the original title investigations for the Maungatautari blocks in 1868, the fact that Parakaia Te Pouepa of Ngati Raukawa had been there meant that Ngati Kauwhata *were* represented, supposedly because they were only a hapu of Ngati Raukawa. Ngati Kauwhata and Ngati Raukawa were alike unsuccessful in the 1884 case as well, for much the same reasons.

The departure of Ngati Raukawa and Ngati Kauwhata from Maungatautari has thus been the subject of endless contestation in the Native Land Court. Some points that do seem relevant to assessing this contestation are that the evidence in the Otaki MBs is very clear that Ngati Raukawa migrated to “Kapiti” in stages, and over a number of years. The idea of a sudden Ngati Raukawa withdrawal *en masse* can be discounted. Secondly, evidence that is extrinsic to the MBs indicates multiple contacts between Ngati Raukawa people living in the PkM region with their kin in the north, and the same is no less true for Ngati Kauwhata and Ngati Whakaterere. Another point is that the Native Land Court did not always accept the “Marutuahu thesis”, and in arguably the most important case the Native Land Court ever decided (the Rohe Potae decision of 1886) it did not.⁵³⁶ These points will be developed in subsequent chapters of this report and will be returned to in the conclusion.

There seem to be a number of issues with this analysis. First, is it applicable to the whole of Ngati Raukawa’s territories in the Waikato, and if not, to which parts of it? A variant of this question is to ask what exactly is meant by “Maungatautari”? Secondly, has sufficient attention been paid to

owned the land before the Ngati Maru came”); Ngarangi, Manukatutahi ki Otautahanga case (1884) 12 Waikato MB 164 (objects to the claim by conquest set up by Ngati Koroki, Ngati Haua et al in the Pukekura and Puhue cases “as we ourselves the owners of the land participated in the victory and took part in the battle at Taumatawiwi”).

⁵³¹ Evidence of Te Muera Te Amorangi, Pukekura case, Maungatautari investigation 1881, 1881 AJHR G-2A, 11: When “Governor Hobson arrived”, “Ngati Kauwhata who remained behind, lived here”; they “intermarried and lived with Ngati Haua”.

⁵³² Evidence of Hakiriwhi (Ngati Kauwhata/Ngati Haua), Pukekura case, Maungatautari investigation 1881, 1881 AJHR G-2A, 11 (Wiremu Tamihana was “a half-caste of Ngati Kauwhata”).

⁵³³ Evidence of Te Raihi, Pukekura case, Maungatautari investigation 1881, 1881 AJHR G-2A, 10; evidence of Pirihi Tomonui, *ibid*, 13.

⁵³⁴ Evidence of Tapa Te Whata, Pukekura case, Maungatautari investigation 1881, 1881 AJHR G-5A, 8 (“I heard – we all heard – the invitation to my father from the chiefs of Waikato to return. Te Wherowhero was one of those chiefs”).

⁵³⁵ *Ibid*.

⁵³⁶ See chapter [], below.

Ngati Raukawa's and Ngati Kauwhata's insistence that they did indeed leave people behind on the land sufficient to maintain ahikaroa? And thirdly, what weight should be attached to the various invitations made by Te Wherowhero and others to return? Rather than answer these questions here, given that so much of the material in this report has some bearing on them, they too will be returned to in the concluding chapters. cc

4.9 Ngati Raukawa at Taupo and Heretaunga (Hawke's Bay)

Ngati Raukawa did not up stakes from Maungatautari and head directly for Kapiti. If Ballara is right in seeing a peace-making at Paoaiti around 1822 as the starting-point for the withdrawal to the south, that still leaves an interval of some years before the arrival of Ngati Raukawa in large numbers at Kapiti (around 1828). As seen, according to some accounts, when Te Rauparaha asked Ngati Raukawa for assistance in Ngati Toa's journey to Kapiti, he found Ngati Raukawa at Taupo on the verge of leaving for Heretaunga. Ngati Toa migrated to Kapiti via Taranaki without them. In Matene Te Whiwhi's narrative in the 1869 Himatangi case, however, Te Rauparaha and Te Whatanui developed a deliberate strategy: Te Whatanui would lead his people down the eastern coast via Heretaunga to the Wairarapa and Kapiti, and Te Rauparaha would take the western route through Taranaki.⁵³⁷

In the Kukutauaki case of 1871-1872 Henare Te Herekau gave an account of events at Taupo, which is very interesting although also somewhat puzzling. Henare clarifies that the withdrawal of Ngati Maru inland did not cause conflict only at Maungatautari but also at Taupo. According to his narrative, following Waikato, defeated by "Ngapuhi" at Matakītaki, withdrew to Taupo, where they lived in a spirit of amity with Ngati Raukawa. Whether this implies that Ngati Raukawa had also partly withdrawn to Taupo at the time is unclear: Ngati Raukawa's traditional rohe includes much of North Taupo in any event, so he may have meant that Waikato went to live with Ngati Raukawa in the southern part of their traditional territories. "We lived in peace together and without suspicion."⁵³⁸ Satisfied, apparently, that the coast was now clear, "Waikato" returned home, but around the same time Ngati Maru attacked Taupo: "after that Ngati Maru fought at Taupo"; a "war party came down and attacked Rotoira (sic: Rotoaira).⁵³⁹ Ngati Maru withdrew, and then launched another attack in the Taupo district: "afterwards another Ngatimaru war party came down and they attacked Whangamata on the North side of Taupo." (As always, the chronology is vague, leaving anyone trying to reconstruct events from Land Court records uncertain about exactly what events are being referred to and how they fit together with others). Henare Te Herekau says that Rangitamata, a Taupo chieftainness was killed by Ngati Maru. Te Wharerangi (I am unsure if he is Ngati Raukawa or Tuwharetoa) then counterattacked, and Ngati Maru were defeated. They withdrew, and then launched another attack on Taupo, this time supported by Ngati Paoa. The chief Wharerangi was, he said, caught and killed by Ngati Raukawa, following which some of Ngatiraukawa tried their fortunes in the Whanganui region.

In her comprehensive evidence prepared for the Central North Island inquiry, Dr Ballara analysed the effects of Ngati Raukawa's sojourn at Taupo following the fighting at Hurimoana and Tangimania. One effect was to entangle Ngati Tuwharetoa in the escalating conflicts:⁵⁴⁰

This defeat of Ngāti Raukawa and their refuge among those hapū kin to them among the northern Taupō hapū kin to them among the northern Taupō hapū led to the involvement of those hapū and much of

⁵³⁷ Matene Te Whiwhi, evidence in second Himatangi case, MA 13/113/71, 14 July 1869.

⁵³⁸ Henare Te Herekau, (1872) 1 Otaki MB 154.

⁵³⁹ Henare Te Herekau, (1872) 1 Otaki MB 154.

⁵⁴⁰ Ballara, *Tribal Landscape Overview*, 367,

Ngāti Tūwharetoa in the tumultuous events surrounding the efforts of Ngāti Raukawa to find a new homeland.

Ngati Raukawa's efforts to establish themselves in Heretaunga were not a success. Heretaunga was a poor choice as a place to migrate to as it was engulfed in conflict at this time. There is a certain amount of material in the Minute Books on Ngati Raukawa's trials in Heretaunga, but mainly (as far as I have been able to find) from non-Raukawa sources.⁵⁴¹ That can probably be explained by the fact that Ngati Raukawa did not seek to utilise events in Hawke's Bay for pursuing claims to land there. In the 1868 Himatangi case Karaitiana Takamoana of Te Whatu-i-Apiti gave reasonably detailed evidence of the fighting in Hawke's Bay in which his people and Ngati Raukawa were engaged on opposite sides. Although a chief of Te Whatu-i-Apiti Karaitiana was closely linked to Rangitane through his father and was probably born in the Wairarapa. Karaitiana Takamoana was engaged in the fighting at Te Roto-a-Tara and Te Pakake (at Te Whanganui-a-Orotu) and was an eyewitness to the events he describes:⁵⁴²

Ngatiraukawa headed by Te Whatanui, Tarotea, Te Ahu Karamu, Te Matia and other chiefs came peacefully to Heretaunga – this was after Te Rauparaha had come here⁵⁴³ and before Colonel Wakefield came to New Zealand. Te Waru, of Ngatierangi,⁵⁴⁴ came to attack our pa at Te Pakake – we patu'ed [sic] – “Ka mate” – while they were being beaten Ngati Raukawa came and fired upon us – “kahore matou, i riri” – Ngati Raukawa went to “patu tangata” to Te Awa a Te Atua they were defeated there by Ngati Ngati Kahungunu.

Karaitiana appears to be leaving a lot out in this narrative, to say the least, and is skipping over the earlier phases of the conflicts in Hawke's Bay.⁵⁴⁵ The battle at Te Pakake is a well-known event. This was fought after Te Pareihe had led many of the people of Heretaunga to safety at Nukutaurua (Mahia). Some stayed behind and occupied a pa at Te Pakake located at Te Whanganui-a-Orotu (Napier Inner Harbour). Te Hapuku, Tikaitai and other “remainers” were defeated by Waikato (including Ngati Raukawa, according to Karaitiana) at Te Pakake. The battle was in 1824, in the same year as Waiorua. Amongst those captured at the fall of Te Pakake was Te Hapuku of Te Whatu-i-apiti; according to Ballara Ngati Raukawa exchanged him for some obsidian.⁵⁴⁶

To return to Karaitiana's narrative:⁵⁴⁷

They [Ngati Raukawa?] then went to another place – Te Puketapu and meantime built a “pa” – the chiefs of Ngatikahungunu then knew that they had come to take the land – “Katahi ka patua ka horo te pa” and

⁵⁴¹ The conflicts in Hawke's Bay in the 1830s had significant tenurial and political repercussions in the region. Perhaps the most important case in Hawke's Bay in which these events were traversed was the Porangahau rehearing of 1887 (Judgment at (1887) 14 Napier MB 77-78) which generated voluminous evidence. A key issue was whether the withdrawal of the local people of Porangahau (led at the hearing by Henare Matua) to Nukutaurua meant that they had abandoned their lands at Porangahau. They were opposed in the case by Te Whatu-i-apiti led by Te Teira Tiakitai and Airini Donnelly (Tonore). The fighting against Ngati Raukawa is traversed in the evidence, which I may not have time to review within the deadlines set for the completion of this report, but which would well reward investigation.

⁵⁴² On Karaitiana Takamoana see Angela Ballara, “Takamoana, Karaitiana ?-1879, Ngati Kahungunu leader, politician”, *DNZB* vol 1, 418-420.

⁵⁴³ To the Wellington region.

⁵⁴⁴ I assume this is a reference to Te Waru of the Te Whanau-a-Tawhao section of Ngaiterangi of the Bay of Plenty, and that the “Ngaterangi” here should be Ngaiterangi. It is known that Bay of Plenty groups were engaged in the conflicts in Heretaunga. Te Waru is the father of the well-known Bay of Plenty rangatira Hori Tupaea.

⁵⁴⁵ For a reliable narrative see Angela Ballara, “Te Pareihe ?-1844, Ngati Te Whatu-i-apiti leader”, *DNZB*, vol 1, 1990, 476-477.

⁵⁴⁶ See Ballara, “Te Hapuku, ? – 1878, Ngati Te Whatu-i-apiti leader, farmer, assessor”, *DNZB* vol 1, 443-445. Obsidian was a high prestige trade good in Polynesian culture for millennia.

⁵⁴⁷ (1868) 1D Otaki MB 443.

prisoners were taken – know the names – Whatanui’s wife and sons were taken prisoners – After this, Ngati Raukawa went away – and after this Whatanui returned to Heretaunga. Torowhakaero was killed – Whatanui’s wife and children were then given back and some of the other prisoners were given up and others – that expedition was by Pomare of Ngapuhi – Whatanui had applied to Ngapuhi – After this Waikato Ngatiraukawa – Te Heuheu and others came and took Te Roto-a-Tara ‘pa’ of Ngati Kahununu [sic], went back and returned – Ngatiraukawa with them – [Pehirehe] of Waikato was then killed – went back and returned – Pakake was then taken by Waikato – those who escaped went [45] to Te Mahia – Nukutaurua.

Karaitiana is here, although it may not be obvious, going back to events that occurred before Te Pakake, i.e. the battle at Te Roto-a-Tara, near Te Aute, which was fought around 1823 (i.e. before Te Pakake). Ngati Raukawa were engaged in both battles. Te Roto-a-Tara ranged Te Heuheu Tukino (Mananui), Ngati Raukawa, and others, maybe Nga Puhi as well, against Te Whatu-i-apiti and other Heretaunga groups led by Te Pareihe, Tiakitai and other chiefs. (This engagement was followed by the withdrawal to Nukutaurua and Te Pakake.)

There followed a series of events of bewildering complexity which ended up with Ngati Te Upokoiri living in the Manawatu, and Ngati Raukawa returning to the Waikato and/or moving directly to Kapiti from Hawke’s Bay.

A much clearer record of Karaitiana Takamoana’s evidence is preserved in the newspaper accounts of the evidence given in the Himatangi case and is as follows:⁵⁴⁸

When the Ngatiraukawa first came to Heretaunga – about the same time that Rauparaha invaded Cook’s Strait – they came peaceably. Te Whatanui, Nepia Taratoa, Te Ahukaramu and the other chiefs were with them. While they were there the Ngaiterangi under Te Waru, from Tauranga, came down and attacked us. They were repulsed. Ngatiraukawa took up their cause and fired upon us. But we made friends with the Ngatiraukawa. After this, the Ngatiraukawa commenced killing people. They attacked one of the Ngatikahungunu pas and were repulsed. Afterwards they took possession of Puketapu, one of the eel preserves. The Ngatikahungunu found that the Ngatiraukawa were bent on taking their land, and attacked them. They took the pa and captured many prisoners, including Te Whatanui’s wife and sons. Some time after that, Te Whatanui and the Ngatiraukawa returned to Hawke’s Bay. They killed Torowhakaero, a chief of Ngatikahungunu, by way of utu. Some of the prisoners were then given back, others were retained. The Wakato, under Tukorehu, assisted the Ngatiraukawa, on that occasion. At a subsequent period, their Ngatiraukawa and their allies attacked Rotoatara. They captured the pa but lost many of their chiefs. Having returned to their homes, they came down a second time under Pehirehi. The son of Pehirehi, the Waikato, was killed. There was a fight at Pakake, and that pa was taken by the invaders. They then returned to their homes. After this the Ngatiraukawa, with a section of Ngatiteupokoiri, came down again, and located themselves at Rotoatara. They were attacked by the Ngatikahungunu and driven out. Te Momo and other Ngatiraukawa chiefs were killed. All Te Momo’s children were taken prisoners. At the instance of Te Whatanui, the Ngatiapa, Rangitane, and Ngatiteupokoiri, went To Hawke’s Bay to seek utu. The war party returned after capturing some women. The Ngatikahungunu, after this, invaded the Upper Manawatu and attacked the Rangitane, killing the son of Te Hiriwanu. Then they invaded Wairarapa, and attacked the Ngatiawa, Captured the daughters of the great chief Te Wharepouru. After this, the Ngatikahungunu invaded Taupo.

4.10 Ngati Te Upokoiri in the Manawatu

⁵⁴⁸ Evidence of Karaitiana Takamoana, Himatangi case, *Wellington Independent* 7 April 1868 (Appendix 3.1.1.1).

Like Ngati Raukawa, Ngati Te Upokoiri also travelled to the Manawatu, in their case of course from Heretaunga. Their presence is best seen as a spin-off from the conflicts between Ngati Raukawa, Ngati Kahungunu, Ngaiterangi and Waikato in Hawke's Bay, which occurred roughly at the same time as Te Rauparaha and Ngati Toa were migrating to Kapiti. The story of this migration was narrated by Karaitiana Takamoana in the Heretaunga case:⁵⁴⁹

When the Ngatiraukawa and Ngatiteupokoiri retreated to Hawke's Bay, some of the latter retreated to Taupo, others came down to Manawatu. They took refuge here because they were related to Rangitane and Ngati Apa. They came to the land which they owned: also to see Te Rauparaha. They remained at Manawatu down to the time of the introduction of Christianity. I came to Rangitikei when the second instalment of the purchase money was paid by Mr McLean [1850].⁵⁵⁰ I am related to the Ngatiapa and Rangitane. I lived with the Rangitane at Puketotara about six months when Mr McLean asked me to return to Hawke's Bay. At that time the Ngatiteupokoiri were living at Moutoa, on the north bank of Manawatu, and at Rewarewa on the south side of the river. They had cultivations on both sides. There were about 200 of the Ngatiteupokoiri living at Oroua at that time. The Ngatiraukawa were also living at Moutoa. Their church was there. There were three hapus of the Ngatiraukawa there – Ngatiwhakatere, Ngatikauwhata, and Ngatirakau.

4.11 Ngati Raukawa arrives at Kapiti

Probably the biggest single migration to Kapiti was that of Ngati Raukawa proper. Nopera Te Ngiha summarises the years between the battles of Waiorua and Haowhenua as follows:⁵⁵¹

After this affair [Waiorua] Te Pehi returned (Turangapeke). Pakeha began to come. Other tribes came and Ngati Raukawa. Whatanui came to Kapiti. Tribes came down from all quarters to see the tribes who had got Pakehas. Ngati Raukawa and Ngati Awa came with others and settled at Otaki and Waikanae and Porirua like bees.

Before the migration of Ngati Raukawa from Maungatautari and North Taupo to Cook Strait there was another, somewhat confusing (at least to the author) episode of conflict between Ngati Raukawa and Whanganui, principally (it seems) in the upper Whanganui. According to Ballara, Ngati Raukawa's adventures in Whanganui connected with their tumultuous experiences in Heretaunga.⁵⁵²

Ngāti Raukawa turned their attention from settlement in Ahuriri and Heretaunga (Hawke's Bay) to using the Rangipō desert, the Maunganui-a-te-ao and Whanganui rivers routes to explore the possibilities of settling in the south as their Ngāti Toa kin kept inviting them to do. Ngāti Raukawa's use of these routes led to serious wars between Whanganui groups and Ngāti Raukawa, and brought ongoing consequences for Whanganui through invasions from the Kapiti coast.

Raukawa's migrations to the Cook Strait region derive, as Ballara notes, to a significant degree from their kinship links with Ngati Toa. The connections between Ngati Toa and Ngati Raukawa were (and are) close and long-standing. As Hohepa Tamaihengia, who belonged to both iwi, stated in the Native Land Court in the Himatangi case in 1868:⁵⁵³

⁵⁴⁹ Evidence of Karaitiana Takamoana, Himatangi case, *Wellington Independent* 7 April 1868 (Appendix 3.1.1.1).

⁵⁵⁰ Perhaps referring to McLean's purchase of the Ahuriri and other Hawke's Bay blocks in 1851,

⁵⁵¹ Evidence of Nopera Te Ngiha, Himatangi case, (1868) 1 C Otaki MB 394.

⁵⁵² Ballara, *Tribal Landscape Overview*, 368,

⁵⁵³ Evidence of Hohepa Tamaihengia, Himatangi case, (1868) 1 C Otaki MB 401.

Ngati Toa and Ngati Raukawa were connected from time immemorial.

It can come as something of a surprise to encounter minute book evidence which shows that some people in the 1860s thought of Te Rauparaha's primary affiliation not as Ngati Toa but rather as Ngati Raukawa. The evidence of Rawiri Te Whanui (Ngati Raukawa) given in the Himatangi case in 1868 is an example:⁵⁵⁴

Ngati Raukawa only [were] at that meeting. No chiefs of other tribes. Te Rauparaha was there - he is Ngati Raukawa. Don't know if he was of Ngati Toa and Ngati Raukawa. He was a chief of both tribes. He had equal mana over Ngati Toa and Ngati Raukawa.

In the Waiorongomai case (1869), Rota Te Tahiwai (Ngati Raukawa) stated that Te Rauparaha sent to Taupo "to fetch over *his people the Ngati Raukawa* to occupy the land."⁵⁵⁵

In their petition written in 1880 the Ngati Raukawa leadership described events as follows:⁵⁵⁶

When Te Whatanui came to Kapiti on a visit to Te Rauparaha, Te Whatanui first saw Europeans and guns. On the departure of Te Whatanui for Maungatautari, Te Rauparaha in bidding him farewell said, go, and when you see Ngatiraukawa bring them to live upon my land at Whangaehu, Rangitikei, Manawatu and Otaki. When Te Whatanui came with his people to live upon the lands they found it without inhabitants, that is the sea coast. All the people (Nga morehu i.e. remnants) of those tribes that had not been killed had gone to the bush, to the mountain, for fear of Te Rauparaha and his Tribes.

When Ngati Raukawa arrived they went to Kapiti to meet Te Rauparaha. *Te Rauparaha said that Ngatiraukawa were to locate themselves between Whangaehu and Kukutauaki* – the boundary of Ngatiawa, and were to include Turakina Rangitikei and Manawatu. Some of Ngatitoa belonging to Te Rauparaha and Te Rangihaeata also resided with Ngatiraukawa.

Ngati Raukawa's heke and their many vicissitudes beforehand and on the way south are, as one might expect, fully detailed in the Otaki and Waikato minute books.⁵⁵⁷ Matene Te Whiwhi gives a clear narrative of the circumstances of Ngati Raukawa's arrival in his evidence in the Himatangi case:⁵⁵⁸

6th year, 200 of Ngati Raukawa came down from Maungatautari and Taupo - Te Whatanui - Taratoa and others came to get powder and guns from the 'pakeha' - they returned.

7th year another party of Ngati Raukawa 60 in number - Te Ahu Karamu and Tuai Nuku, chiefs - went to Kapiti - Ngati Toa thought fit to give the land as far as Whangaehu because of the murder of Te Poa by Muaupoko at Ohau - Ngati Toa chiefs assented and gave Te Ahu Karamu the land "The land on which Te Poa was killed". Te Ahu Karamu returned - Te Rauparaha then told Ngati Awa to go to Waikanae and leave the land for Ngati Raukawa. At this time Ngati Apa, Rangitane and Muaupoko left the district and went to the Wairarapa. The Wairarapa people fought with them and besieged their settlements. After a year's absence they returned. Some of them went to Waitotara, some to Whanganui - some to Rangitikei and thence to their 'hunaonga'⁵⁵⁹ (Te Rangihaeata) (at Kapiti) who had taken Pikinga a Ngati Apa woman as his wife.

⁵⁵⁴ In the Himatangi case, at (1868) 1C Otaki MB 231:

⁵⁵⁵ Evidence of Rota Te Tahiwai (Ngati Raukawa), (1869) 1 G Otaki MB 99 (emphasis added).

⁵⁵⁶ Petition of Ngati Raukawa, 5 August 1880, MA 13/16 [Petitions of Ngati Raukawa]

⁵⁵⁷ See eg evidence of Hohepa Tamaihengia, Himatangi case, (1868) 1 C Otaki MB 398; evidence of Matene Te Whiwhi, Himatangi case, (1868) 1 C Otaki MB 376; evidence of Matene Te Whiwhi, Puahue case (Maungatautari), (1868) 2 Waikato MB 76-77. See also Waitangi Tribunal, *Te Whanganui a Tara*, 23.

⁵⁵⁸ (1868) 1 C Otaki MB 376.

⁵⁵⁹ son-in-law.

8th year Ngati Raukawa came in a whole body brought by Te Ahu Karamu - went to Kapiti to be near the 'Pakehas', on obtaining guns and ammunition came to Otaki. A Ngati Apa chief had been killed at Waitotara and then commenced fighting between Whanganui and Ngati Apa - Ngati Raukawa were then living on the other side of Rangitikei. Ngati Raukawa and Ngati Apa's war party went to Whanganui, met enemy at Turakina - Whanganui were beaten. Takarangi, father of Mete Kingi's wife, was killed. Ngati Apa ran away. Ngati Raukawa retrieved the day and beat Whanganui. This was the end of the fighting between Ngati Apa and Whanganui. [199.] The 'mana' of Ngati Raukawa was then established at Turakina. The greater part of Ngati Apa were with Rangihaeata at Kapiti, as descendants of Rangihaeata.

There were, then, according to Matene Te Whiwhi, three separate Ngati Raukawa heke. The first group was led by Te Whatanui and Taratoa, who came down to Kapiti to visit their kinsman Te Rauparaha and to get guns. The next year a smaller group led by Te Ahu Karamu came down, and while they were at Kapiti Te Rauparaha, with the possibly rather reluctant assent of the other Ngati Toa rangatira, decided to give to Ngati Raukawa the land as far north as the mouth of the Whangaehu river. At that time some of Te Ati Awa were living at Otaki, who were evidently told to move further south to Waikanae in order to vacate the land for Ngati Raukawa, which they (apparently) did. Matene Te Whiwhi gives particular emphasis to the killing of a Ngati Raukawa chief named Te Poa - although in one instance he says the killing was done by Ngati Awa, and in another by Muaupoko - as a principal reason for Te Rauparaha's decision to grant Ngati Raukawa a substantial amount of land. The following year the Ngati Raukawa main body came down, led by (says Matene) Te Ahu Karamu. (He seems to have lost sight of Te Whatanui; most accounts have Te Whatanui on the third heke.)

Tapa Te Whata of Ngati Kauwhata says that the "great heke" was led by Te Whatanui, and came from Maungatautari, travelling to Kapiti via Taupo and the upper Turakina river. However there was conflict between Whanganui people and Ngati Raukawa and a battle at Makakote, where the Ngati Raukawa chief Te Ruamaioro was killed. The story goes that when Ngati Raukawa surrendered, the Te Ati Haunui-a-Paparangi chief Te Anaua took pity on them and released them to Te Whatanui. As a result, when Ngati Raukawa captured Putiki Wharanui in 1829, Te Anaua and Te Peehi Turoa were allowed to escape unharmed.⁵⁶⁰ Ngati Raukawa certainly were engaged in fighting in the Whanganui region, and all the accounts mention the death of Te Te Ruamaioro, but whether this episode took place before, during, or after the principal Ngati Raukawa heke is unclear, or at least it is unclear to me. Most accounts have Ngati Raukawa migrating to Kapiti from the Waikato, giving the clear impression that following their defeats in Hawke's Bay Ngati Raukawa returned home to consider their options before travelling south via Taupo and upper Whanganui, but there is also evidence of some Raukawa people coming to Kapiti directly from Hawke's Bay.

According to Ngati Kauwhata sources, at Rangitikei Ngati Kauwhata and Ngati Huia diverged from the main body: Ngati Raukawa went to the coast, and Ngati Huia and Ngati Kauwhata through the forests to Rangitikei and into Ngati Apa territory, where they seems to have been hospitably received and stayed with Ngati Apa for a while at Paeroa (Parewanui). (I am unsure which of the Ngati Raukawa heke they diverged from, however.) After crossing the Rangitikei a section of Ngati Kauwhata broke off from the Ngati Huia-Ngati Kauwhata group and headed eastwards into the Manawatu. Ngati Kauwhata subsequently established themselves on the Oroua river (see below).⁵⁶¹ Assuming this is correct the rest of the heke came down the coast from Turakina or thereabouts and on to Kapiti. Perhaps

⁵⁶⁰ See Oliver, Steven. "Te Anaua, Hori Kingi ?-1868, Te Ati Haunui-a-Paparangi leader, assessor", *DNZB*, vol 1, 1990, 439-40.

⁵⁶¹ Evidence of Tapa Te Whata, Himatangi case, (1868) 1E Otaki MB 612; Evidence of Tapa Te Whata, Aorangi investigation of title, (1873) 1 Otaki MB 204-5.

Ngati Huia made the trip independently or rejoined the main group at some stage before reaching Kapiti to be welcomed by Waitohi and Te Rauparaha, For a time Ngati Raukawa stayed at Kapiti before moving north to consolidate their position in the Horowhenua. The migration was a migration of hapu, the various hapu making their own decisions as to whether they stayed with the main party, or broke off into different directions. Ngati Kauwhata were led by their chief Te Whata, and Ngati Huia by Te Auturoa.⁵⁶²

Tamihana Te Rauparaha stated that a group of Raukawa led by Te Whatanui had been staying at Heretaunga (Hawke's Bay) as guests of Karaitiana, but with an attack on Hawke's Bay by Te Waru of Tauranga Raukawa unwisely decided to attack their Kahungunu hosts. They were quite severely defeated and withdrew to their traditional tribal lands at Maungatautari.⁵⁶³ (These developments in Hawke's Bay have already been described.) While there Te Whatanui recalled Te Rauparaha's earlier offer to join the original main Ngati Toa heke south. This must be the third and largest Ngati Raukawa heke referred to by Matene Te Whiwhi and Tapa Te Whata, except that (confusingly) Matene says that the third and largest heke was led by Te Ahu Karamu (perhaps both chiefs were involved). Te Whatanui and others made their way to Kapiti.⁵⁶⁴

He then came to Rauparaha, came to Kapiti. That migration was called the "Whiri nui" - came to Rauparaha and bowed - acknowledging error. Rauparaha said, "It is well, come." Whatanui said, "We will come here. The thought is with you, Rauparaha." Rauparaha said, "If you come, I must be above you." Whatanui said, "Yes, quite right." Waitohi, Rauparaha's sister [said] "Haere mai! oku were were."

Which all sounds somewhat implausible: probably Tamihana is exaggerating this somewhat. Hohepa Tamaihengia's brief description of the meeting seems more likely.⁵⁶⁵

Ngati Raukawa congratulated Rauparaha on his 'toa' and having Pakehas with him.

However Tamihana Te Rauparaha's reference to Waitohi welcoming Ngati Raukawa is important and should not be overlooked. Waitohi was the daughter of Werawera of Ngati Toa and Parekohatu of Ngati Raukawa. While some sources give the impression that it was Te Rauparaha who invited Ngati Raukawa to journey south, others indicate that Waitohi played an important role, and there was indeed a tradition within Ngati Raukawa it was Waitohi's invitation. Te Manahi of Ngati Huia stated that Ngati Raukawa travelled at "at the desire of Waitohi"; "[h]ad Te Rauparaha called, the people would not have assented".⁵⁶⁶

Parakaia Te Pouepa's narrative in 1868. In which he mentions conflict in Heretaunga and Whanganui, was as follows:⁵⁶⁷

The 'take' of Ngati Raukawa was Hongi Hika's conquests. Whatanui went to Ahuriri from Maungatautari to take that place for Ngati Raukawa. After a time heard that Rauparaha was here at Kapiti. Party came to take Whanganui. Returned and began to talk about coming here. A party - called "Whirinui" - came. On the way heard Rereamai, a woman of Ngati Raukawa, had been killed at [] on the other side of Rangitikei. I believe I am related to her... We attacked Ngati Apa and Tawhiro was killed. Came on to Kapiti. Rauparaha then invited Whatanui and Hukiki to come and occupy this country between Turakina

⁵⁶² Tapa Te Whata, Himatangi case, (1868) 1E Otaki MB 612.

⁵⁶³ Angela Ballara provides a detailed narrative: see Ballara, "Te Whatanui", *DNZB* vol 1, 523-4, at 523.

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⁵⁶⁵ Evidence of Hohepa Tamaihengia, Himatangi case, (1868) 1 C Otaki MB 398.

⁵⁶⁶ Teremoana Sparks and W H Oliver, "Waitohi ?-1839, Ngati Toa and Ngati Raukawa leader", *DNZB* vol 1, 1990, 571; evidence of Te Manahi at the Ngakororo hearing, 1874(?) [CHECK]

⁵⁶⁷ (1868) 1C Otaki MB 200-201.

and Porirua. Te Roto Kara near Ohau and Te Whakapuni on the other side of Manawatu – near Te Wharangi – these appropriated by Hukiki – his party returned to Taupo. Whatanui assembled the Ngati Kauwhata at Paua iti [sic] Mangatotara and spoke of coming – a second party came to inspect the country and after that the “heke nui”. Hukiki, Whatanui and the Ngati Raukawa chiefs came in this ‘heke’ – came by Taupo to Turakina – fought Ngati Apa and took prisoners. Between Oroua and Rangitikei Ngati Apa were met and defeated. At Te Katoa Te Awahuri killed more Ngati Apa. Kete, a woman, was saved. Came to Manawatu, found Rangitane and killed some. Came to Kapiti. Rauparaha then wished us to destroy Muaupoko and Rangitane. No word about Ngati Apa. Attacked Rangitane – “pa horo”. Whatanui wished to spare the survivors. Ngati Apa invited to come out. Ngati Toa came to fight Muaupoko – “pa horo” – this was the last. “Kua mutu te patu”.

Parakaia, like Matene Te Whiwhi, speaks of three Ngati Raukawa heke, (1) the “Whirinui” heke from Maungatautari, (2) a second party which came to “inspect the country”, and (3) the “heke nui”, which came via Taupo and Turakina, led by Hukiki, Te Whatanui and others, which fought against and defeated Ngati Apa on the way south.

In a written document, composed originally in Maori in 1866 and translated by T C Williams and printed in 1868 Parakaia gives a very clear narrative of the Ngati Raukawa heke, again mentioning the three separate heke, and describes also their reception at Kapiti:⁵⁶⁸

When we of Ngatiraukawa at Maungatautari heard we came here, Whatanui, Hikiki, and Nepia Taratoa, to see what the land was like, and visit Ngatitoo. We saw that it was good, and returned in 1827. When Ngatiraukawa heard it was a good land, that there were Pakehas, another party came down to see the land, and returned in the year 1829. When the second party returned, Rauparaha instructed them to tell Ngatiraukawa to come down and occupy Rangitikei and Manawatu. We left Maungatautari, Patetere, and Taupo, and came to Kapiti, to the place where there were Pakehas: this is why we migrated to this place, that we might obtain guns and powder. We left in the month of May; in July we arrived at Turakina; there we attacked and defeated the Ngatiapas. We came on to Manawatu and defeated the Rangitane. We took possession then and there of the land in the year 1830. When we arrived at Otaki we divided the eel ponds; when we reached Waikanae the Ngatiawa were there – the Ngatitoo were at Kapiti; Ngatitoo all mustered at Waikanae to receive our party, Ngatitoo divided our party amongst them, each chief agreeing to act as host to a certain number. Rangihaeata received Aperahama Te Ruru and our party as his guests. In the month of August, 1830, each chief set apart a portion of their land to their several guests. The whole tribe of Ngatitoo agreed to this; they set apart each man a portion for his friend.

Once again there are three heke, two preliminary ones, and a major migration, dated by Parakaia to 1830. The third and largest heke was from “Maungatautari, Patetere, and Taupo” – i.e. it was not confined to Maungatautari – and it came via the Turakina river and fought against Ngati Apa on the way south. The three separate heke, then, are solidly established in the historical record. Parakaia’s narrative is interesting here in that it explains that the chiefs of Ngati Toa all agreed to individually act as hosts for different sections of Ngati Raukawa and set aside portions of land for each.

But there are variant accounts. Horomona Torenu (Ngati Raukawa and Ngati Whakaue), who gave very interesting and well-informed evidence in the Himatangi case (as part of the Crown case) in 1868, describes an “east” heke which came some time after “Whatanui’s heke”. On the occasion of this “east” heke relations with Ngati Apa were friendly (perhaps different hapu of Ngati Apa were involved):⁵⁶⁹

⁵⁶⁸ Letter or memorandum by Parakaia Te Pouepa, 23 October 1866, in T C Williams, *Himatangi Purchase* (1867), 9-11.

⁵⁶⁹ (1868) 1E Otaki MB 570.

Came here with a 'heke' of Ngatiraukawa – the 'east' heke between 1 and 2 years after Whatanui's 'heke' – I don't know anything of Whatanui's 'heke' – the land had been taken by Rauparaha – I came down the Rangitikei to Te Awamate – there were 200 men of my 'heke' – Mokomoko chief of Ngati Apa was there and Te Ata and Tutahu – we crossed to Pukepuke where we found Te Rua, chief of Ngatiapa and Tuawhea and Peketau (Ratana's father) – we came on to Otaki (Ngati Apa received us hospitably and gave us fernroot) – came on to Otaki – we found the first 'heke' of Ngatiraukawa here at the mouth of Otaki and 'tangi' with them – then the expedition to Kaiapohia – my 'heke' remained here to collect flax and cultivated here that year.

On the same occasion Kereopa Tukumarū of Ngati Raukawa said that he came to Kapiti from *Heretaunga* after the "great heke":⁵⁷⁰

I came here from Heretaunga after the great 'heke'. Patukohuru came with the "heke nui" – I came after.

[Heruihaua?] Wairaka, who gave evidence in the 1869 Rangitikei-Manawatu case describes yet another Raukawa heke around 1833 which took place between Whatanui's heke and the battle of Haowhenua (1834).⁵⁷¹

I am the son of Wairaka, a chief of Ngatiraukawa. I was living at Taupo, before the [He [] iraro]. Taraia, [], Te Riakim Taiaho and Pohotiraka, were the leaders of the party in which I came down – *after Te Wharanui's heke*. I came down [] Otairi, inland of Rangitikei. I was then a youth and carried a weapon. We caught some Ngatiapa at Rau[]. (Gave an account of the progress of the Heke in which he came.) The Ngatiapa did not resist our attacks upon them, I saw no Ngatiapa after this. We then came to Tawhirihoe where we slept. We saw more Ngatiapa who were without arms. They had been carrying food for Te Rangihaeata. We [] land was we came. My brother died and we buried him at [Hikungaroa. We left [] prisoners there to take charge of the dead. We slept there and came on to Otaki. *A year later after this the Haowhenua fight took place.* (emphases added)

Thus although there is widespread agreement in the sources that there were three Ngati Raukawa migrations, there were others, some preceding the main migrations – prominently Ngati Whakaterē's heke in association with Ngati Tama – and others afterwards. The process was a drawn-out and untidy one to some degree.

The two Ngati Raukawa chiefs mentioned most often in the primary source materials as instrumental in leading the the heke to the south are Te Whatanui and Te Ahu Karumu. Te Whatanui, who will be mentioned many times in this report, is the subject of a detailed entry by Angela Ballara in the *Dictionary of New Zealand Biography*, and his life and times are reasonably well-known.⁵⁷² He was the son of Tihao (Ngati Huia and Ngati Parewahawaha) and Pareraukawa, sister of Hape-ki-tu-a-rangi of Ngati Huia. He was related to Te Rauparaha and knew him well. Te Whatanui was regarded as a great leader of his people, and was involved in the heavy fighting in Heretaunga and Whanganui which preceded Ngati Raukawa's move to the Kapiti region. He is best-known for his generosity towards Ngati Apa, Rangitane, and Muaupoko, but notwithstanding this he was a redoubtable warrior and military leader. Te Ahu Karamu, on the other hand, is less often mentioned by historians and he tends to be overshadowed by Te Whatanui in the various accounts, but it is clear that Te Ahu Karamu was an important leader who played a key role in orchestrating Ngati Raukawa's migrations to the south. It was Te Ahu Karamu who led the first of the three main Raukawa migrations, sometimes given the name Te-kariri-tahi ("One cartridge"), and according to some sources it was Te Ahu Karamu who had the

⁵⁷⁰ (1868) 1E Otaki MB 582.

⁵⁷¹ Evidence of [Heruihaua] Wairaka, Rangitikei Manawatu case, MA 13/113/71, folios 502-03.

⁵⁷² Ballara, "Te Whatanui ?-1846, Ngati Raukawa leader", *DNZB* vol 1, 1990, 522-524.

responsibility of proposing to Te Rauparaha that Ngati Raukawa migrate to the south. According to White (1890).⁵⁷³

The object of Te-ahu-karamu coming at that time was to obtain the consent of Rau-paraha to allow the Nga-ti-rau-kawa to come into the Kapiti district. Rauparaha made no answer. To which Te-ahu-karamu added this request: "I did think we had laid our plans at the time you visited us at Maunga-tautari and at O-pepe (butterfly). Then we said, 'I am brave. I, the Nga-ti-rau-kawa can take possession of the Here-taunga (bind the bond of connection district). But now we admit that we were wholly wrong, and say that we, the Nga-ti-rau-kawa, are worth nourishing. We then thought we would refuse your offer, which would have been right; but, in refusing that, we have been punished. But if we, the Nga-ti-rau-kawa come and live near you at Kapiti, we will obey you".

As is typical, White does not give any source for his material. Who knows if the conversation went exactly like he says? The point is that it was Te Ahu Karamu who took the step of travelling to Kapiti to meet with Te Rauparaha. Te Ahu Karamu was still very much alive in the 1840s, and E J Wakefield, for one, came to know him very well. He notes that the rangatira that he refers to as "E Ahu" was the chief who led the first Ngati Raukawa party to Cook Strait. Afterwards, says Wakefield, Te Ahu Karamu "compelled" his people to migrate by taking the radical step of burning their houses at Taupo.⁵⁷⁴ He is certainly a key figure in Ngati Raukawa history.

4.12 Allocation of land and conquest

In the Paremata case (1868) Tamihana Te Rauparaha said that Ngati Raukawa hapu were allocated land from Kukutauaki to Rangitikei, with "Ngati Awa" to the south of them:⁵⁷⁵

He [Te Rauparaha] took possession of this country by conquest from Ngati Apa, Muaupoko, Rangitane, Ngati Kahungunu. Many years after the Ngati Raukawa heard of Te Rauparaha's conquest and came to join them.

This was before 1840. Rauparaha agreed to their occupying the land with him. *He gave a portion of the land to his tribe Ngati Raukawa from Rangitikei to Kukutauaki on the side of Waikanae* - and he lived on as a chief of Ngati Raukawa, he and Rangihaeata - and Ngati Toa went to Waikanae - Wainui - Porirua - Pukerua - Kapiti and Mana and Cloudy Bay to Taitapu. Ngati Toa gave a portion of the conquered land to Ngati Awa and they lived with Ngati Toa - and Ngati Raukawa remained with Te Rauparaha on this side to the north.

In his evidence in the Kukutauaki case, one of the most detailed of all the narratives which has come down to us, Matene Te Whiwhi states that the arrival of Ngati Raukawa's first heke coincided with a bout of fighting between Ngati Tama and Ngati Toa, as a result of which "Ngati Tama after this left Kapiti and went to Wellington". This passage also contains more detail on the decision of the Ngati Toa chiefs to require Te Ati Awa to abandon the land at Otaki.⁵⁷⁶

Whatanui, Te Heu Heu and a party came down to see Te Rauparaha at this time and fetched Ngati Kahungunu who lived at Wellington Heads to Porirua and Kapiti. Afterwards one of our party named Karewa was murdered by Ngati Tama. They then commenced fighting. Rauparaha did not want to fight.

⁵⁷³ White, *Ancient History of the Maori, his Mythology and Traditions*, Vol 6, *Tainui* (George Didsbury, Government Printer, Wellington, 1890), p 36. White's work, which certainly has its flaws, is sometimes too airily dismissed by modern scholars. For a fair assessment of White and his books (compilations, more exactly) see Michael P.J. O'Reilly, "White, John (1826-1891), Scholar, writer linguist, public servant", *DNZB* vol 1, 587-589.

⁵⁷⁴ Wakefield, *Adventure in New Zealand*, 223.

⁵⁷⁵ Paremata case, (1868) 1 B Otaki MB 57.

⁵⁷⁶ (1872) 1 Otaki MB 145-6.

We attacked and killed Ahetaka, a chief, and took the pah called Mainere. This was on Kapiti. There was another fight and we took the Pah, it was called Taipiro. Arare was the battle. Ngati Tama collected in two paha, Kahikatea and Oteho were the names. We attacked the Kahikatea and it was nearly captured when Pehitaka's daughter came to us and saw Rangihaeata, Rauparaha, and Topeora. Rauparaha told me to go into the Pah to stop the fighting. I went in and the fighting ceased and the war party outside dispersed. Ngati Tama after this left Kapiti and went to Wellington.

After this another party of Raukawa arrived. There were thirty of them. The chiefs were Ahukaramu, Kuruko, Tuhaimuku and others. When they arrived at Kapiti, Waitohi, Te Rauparaha's sister, spoke to them. All the Ngati Toa agreed that the Raukawa should come and live there as Waitohi had said. They wanted them to come on account of the murders at Te Wi and Ohau. Then Rauparaha gave the land to Ahukaramu, Kuruho, and Tuhainuku. This land was between Otaki on one side and [146] Whangaehu on the other. Ngati Awa at this time had possession of land about Ohau, Horowhenua, and Otaki.

When Ahukaramu and his people had appointed a day to return to Maungatautari all the Ngati Toa came to Ohau to say goodbye to them. They were told not to stay away long but to come back as soon as possible.

After that we came down from there to Otaki where the Ngati Awas were living. Rauparaha, Hiko, Tumia addressed Ngati Awa and told them to go away as they wanted all the land between Manawatu [sic] to be kept for Ngati Raukawa. Ngati Awa⁵⁷⁷ had cut up all the land. A chief of Ngati Awa Taingararu. There is a piece of land called after his belly. *Ngati Awa agreed to leave all the land between Otaki and Whangaehu to the Ngati Raukawa.* They agreed to abandon the land they occupied for the Ngati Raukawa. They then gave Rauparaha some food (porpoises). After this we returned to Kapiti. And in March we came to build a Pah for Ngati Raukawa at Otaki. In the following summer the Ngati Raukawa arrived and went straight off to Kapiti. They lived there for a year and a half.

A year after their arrival Rangihaeata and they went to Papaitonga and killed some of the Muapoko. They attacked Papaitonga and Horowhenua and killed Tukare and Paipai at Horowhenua. They killed Rautakitaki and others. There was a Ngati Raukawa living with Muaupoko. Te Pukeroa was his name. He ran away to Otaki. We then fixed that boundary at Otaki as between Ngati Raukawa on the north side and Rauparaha on the south.

Parakaia Te Pouepa stated that hapu of Ngati Raukawa moved from Kapiti to the Otaki District where they dug potatoes and made clearings, and scraped flax and harvested eels in the lakes. Parakaia Te Pouepa dated Ngati Raukawa's acquisition of the land between the Manawatu and Rangitikei rivers to 1830.⁵⁷⁸ In the Himatangi case Parakaia likewise dated the end of the fighting between between Ngati Raukawa and Ngata Apa to around 1830. He said that Ngati Apa now lived under the "protection" of Ngati Raukawa. There was a certain amount of contention within Ngati Raukawa over land entitlements, but the pre-invasion groups played no role in this:⁵⁷⁹

Ngati Raukawa then proceeded to apportion the lands at Manawatu and Rangitikei between themselves. In 1830 peace having been partially made Ngati Apa came and lived under the protection of Ngati Raukawa. All the land had been taken by Ngati Raukawa and Ngati Apa occupied only by their permission and under their protection. Ngati Raukawa disputed among themselves and Ngati Apa looked on. Four Ngati Raukawa hapus disputed about possession of Whakapuni. Ngati Apa took no part in their disputes for their right was gone. There were disputes between us also about land which forms part of

⁵⁷⁷ In the MB this is given as 'Ngati Apa', surely a transcription error. From the context it is clearly Ngati Awa who is under discussion.

⁵⁷⁸ Petition of Parakaia Te Pouepa, 4 July 1867, reprinted in AJLC App 5 p 8.

⁵⁷⁹ (1868) 1C Otaki MB 200-201.

my present claim – in 1835 or 1836 – this was a dispute between Ngati Upokoiri and Te Mateawa on one side and Ngati Rakau and Ngati Te One. The dispute was settled.

After moving to Otaki Ngati Raukawa fought the Whanganui people and were part of Te Rauparaha's successful assault on the Ngai Tahu stronghold of Kaiapohia.

Not everyone of Ngati Toa was pleased by Te Rauparaha's generosity to his Ngati Raukawa kin. This emerges in the account of Tatana Whataupiko in the Ngakororo 3B hearing in 1891 (who also emphasises the important role played by Waitohi, who was always a strong supporter of Ngati Raukawa):⁵⁸⁰

Rauparaha reached Kapiti and crossed to the other island. He obtained possession of the land and the Ngati Toa subdivided it. After they had been here some time an advance guard from Ngati Raukawa arrived (one cartridge). Rangiorehua among them, and Te Ahu Karamu. All were chiefs. They had an interview with Te Rauparaha. The latter and his sister, Waitohi, felt sorry for the Ngati Raukawa and told them they had better come and occupy this land. The Ngati Toa did not feel pleased at this. He [Te Rauparaha] was partly a Ngati Raukawa. This prevented Ngati Toa giving effect to their anger.

Other details were given by Nopera Te Ngiha (Ngati Toa) in his evidence in the Himatangi case. He said that when the Ngati Raukawa came south “they were in full force – perhaps 600”.⁵⁸¹ At that time, he said, the Ngati Apa numbered about 200 and were in occupation of the land between the Rangitikei and the Whangaehu. Rangitane at the time were also living in the region between the Rangitikei and the Manawatu Rivers but further inland. Rangitane “were not so numerous as the Ngati Apa”.⁵⁸² Muaupoko at the time of Ngati Raukawa's arrival were living to the south of the Manawatu, “but they claimed land north of Manawatu through their connection with the Ngati Apa ancestors”.⁵⁸³ By the time of Ngati Raukawa's arrival, Muaupoko's numbers had already been depleted by Ngati Toa's attacks on them.⁵⁸⁴ According to Nopera Te Ngiha, the Mateawa hapu of Ngati Raukawa was given land at Otaki by Te Rauparaha.⁵⁸⁵ Nopera said that Horowhenua was allocated by Te Rauparaha specifically to Whatanui (i.e. not to Ngati Raukawa generally). He said also that the Ngati Toa chiefs Tungia and Te Hiko gave Otaki to Kingi Ahoaho.⁵⁸⁶ Nopera Te Ngiha seems to have been making a distinction between land granted by Te Rauparaha personally (at Horowhenua to Te Whatanui and at Otaki to Mateawa) and land given by Te Rauparaha in concert with Ngati Toa more widely. According to Nopera, “[t]he land given by Te Rauparaha and the Ngatitoa stretched from Whakangutu to Poroutawhao – in the following divisions: Whakangutu to Waikawa – thence to Ohau, thence to Omahiti, and thence to Poroutawhao”.⁵⁸⁷ Nopera notes also that Te Rangihaeata of Ngati Toa gave land at Poroutawhao to Ngati Huia (of which hapu he was a chief, along with Te Rauparaha). The impression given by Nopera Te Ngiha's evidence is not of a single gift or grant by Te Rauparaha to Ngati Raukawa as such, but a sequence of specific grants, in which Te Rangihaeata, Te Hiko, and Tungia (and presumably the rest of the Ngati Toa were involved in various ways, either as donors in their own right, or as consultees), to Te Whatanui personally, to Kingi Ahoaho, to Ngati Huia, to Te

⁵⁸⁰ (1891) 16 Otaki MB 346.

⁵⁸¹ Evidence of Nopera Te Ngiha, Himatangi case, as recorded in the *Wellington Independent*, 2 April 1868 (Appendix 3.1.1.1).

⁵⁸² Ibid,

⁵⁸³ Ibid.

⁵⁸⁴ Ibid,

⁵⁸⁵ Ibid,

⁵⁸⁶ Ibid.

⁵⁸⁷ Ibid.

Mateawa, and others to a wider grouping of Ngati Raukawa hapu. The process was a complex and overlapping one.

The precise area allocated to Ngati Raukawa hapu and individuals was to become the focus of a great deal of dispute in the Native Land Court in later years. The southern boundary between Ngati Raukawa and “Ngati Awa” was certainly bitterly contested before 1840, with major battles at Haowhenua and Kuititanga, but as far as I am aware there was no important contestation about this boundary in the Native Land Court. The problem in the Land Court was the northern boundary, and in particular how far did it extend into the lands of Ngati Apa and Rangitane – and to what extent were those groups actually defeated in any event? Ngati Apa were to take the position that while they had an alliance with Ngati Toa, they did not recognise any Ngati Raukawa overlordship. This was accepted by the Native Land Court, and especially by Judge Maning in his judgment in the second Himatangi case (see discussion in ch [] below). However, as can be seen, Ngati Raukawa sources indicate that on the third heke there was fighting between Ngati Raukawa hapu and Ngati Apa after the heke had reached Turakina (in July 1830, according to Parakaia Te Pouepa). As will be seen, on some occasions Ngati Toa chiefs were prepared to accept that Ngati Apa had not lost the mana of their lands and that relations between Ngati Apa and Ngati Toa were generally good (Muaupoko was a different story).

The arrival of Ngati Raukawa gave Ngati Toa an important accession of strength, but at a price, in that while Ngati Toa was friendly to both Ngati Raukawa and Ngati Awa/Ngati Mutunga, relationships between the latter grouping and Ngati Raukawa were tense. Nor was everyone in Ngati Toa pleased to see extensive Ngati Raukawa settlement in the region.⁵⁸⁸ The tension increased with further Ngati Awa migrations later in the decade (the Ngamotu migration), which is discussed further below. Now, however, Te Rauparaha had the resources and manpower to concentrate on Te Tau Ihu, the source of the pounamu which Te Rauparaha had long prized. Ward summarises the position of Ngati Raukawa as follows:⁵⁸⁹

In the meantime, however, Ngati Raukawa helped Ngati Toa contain the Whanganui tribes and to attack Kaiapohia in Te Wai Pounamu. Te Whatanui did not, however, join in Ngati Toa’s relentless campaign against Muaupoko and Rangitane but agreed to peaceable sharings of the territory. Ngati Raukawa and Ngati Toa Land Court witnesses were later to state that Muaupoko were under Te Whatanui’s protection and mana.

There is not much information about the role played by Ngati Raukawa in the campaigns in Te Tau Ihu and against Ngai Tahu, but they were certainly involved in the fighting at Kaiapohia, and perhaps in other campaigns.⁵⁹⁰ However as far as I am aware Ngati Raukawa were not allocated any land in Te Tau Ihu by Te Rauparaha, nor did they assert independent rights of conquest there (as did, for example, Ngati Rarua, Ngati Tama, Te Ati Awa, and Ngati Koata). The conflicting rights of these groups, of Ngati Toa, and of the former occupants were productive of a number of important cases in the Native Land Court, for example cases relating to the Nelson Tenths lands, the Wakapuaka block near Nelson, and with regard to the Kawatiri block at Westport. (The Native Land Court’s report on Wkapuaka, which contains a great deal of information about traditional history, is reproduced in the Appendix,

The migration of many Raukawa people to the Otaki region was an event of great importance in the tribal landscape of central New Zealand. It certainly strengthened the position of Ngati Toa itself.

⁵⁸⁸ Evidence of Tatana Whataupiko, 16 Otaki MB 346; see also the discussion in Ward, *Maori Customary Interests in the Port Nicholson District*, 1998, Wai 145 Doc#M1, 61.

⁵⁸⁹ Ward, *Maori Customary Interests in the Port Nicholson District*, 1998, Wai 145 Doc#M1, 61-2.

⁵⁹⁰ Patricia Burns, *Te Rauparaha: A New Perspective*, (Reed, Wellington, 1980), 164.

The “Raukawa orientation” within Ngati Toa, although smaller than the Ngati Awa orientation led by Te Pehi and others, was powerful and influential, including as it did Te Rauparaha himself, Te Rangihaeata, Waitohi, Topeora, Matene Te Whiwhi, Wi Te Kanae, Rawiri Puaha, Wi Naera, and Tamihana Te Rauparaha. Many of these people saw themselves as Raukawa just as much as they were Ngati Toa, and some of them – such as Matene Te Whiwhi and Tamihana Te Rauparaha – not only retained close associations with their northern Raukawa kin but also continued to play an important role in events in the south Waikato, as this report will show. By the same token Grey’s kidnapping of Te Rauparaha was greatly resented by Raukawa people in the Waikato, as Dr John Johnson found when crossing the Patetere district in 1847. He stayed at an impoverished Raukawa village where he was not made particularly welcome and noted in his journal that “[t]hese Ngatirakaua [sic] were much displeased with the imprisonment of their chief Rauparaha, and told us that we intended to kill, stuff, ‘*wakapapaku*’, and send him to the Queen”.⁵⁹¹

4.13 Hapu North and South

Which hapu stayed, and which migrated? This can be deduced to some degree from the following table. In presenting this table in evidence, I must stress that it is *provisional*, that it is based on documentary sources (rather than on oral interviews), makes *no claim to definitiveness* and that it depends to a significant extent on research carried out by Dr Ballara for the Central North Island Waitangi Tribunal inquiry.

Table of Ngati Raukawa hapu names Waikato, Taupo, King Country etc.⁵⁹²

Hapū, Iwi	Wider Association	Area of Interest	Extant 1900
<i>Ngati Ahuru</i>	Ngati Raukawa	Te Kaokaoroa o Patetere	Extant ⁵⁹³
Nga Maihi	Ngati Raukawa=Tūhourangi, N Wahiao	Rotorua South	Extant 19C
Ngāti [Aueu]	Ngāti Raukawa	Rotorua West, Patetere	Extant 19C
<i>Ngati Ha</i>	Ngati Ruakawa	Te Pae o Raukawa	Extant
Ngāti Hinekahu?	Ngāti Raukawa	North Taupo, SE Waikato-Rohe Potae	Extant
Ngāti Hinemata	Ngāti Raukawa	Rotorua West, Patetere, SE Waikato-Rohe Potae	Extant
Ngāti Hineone	Ngāti Raukawa	Bay of Plenty coast, Rotorua North, Rotorua South, North Taupo, SE Waikato-Rohe Potae	Extant
Ngati Hinerangi	Ngati Raukawa	Te Kaokaoroa o Patetere	Extant ⁵⁹⁴
Ngāti Hoa	Ngāti Raukawa	SE Waikato-Rohe Potae	Extant
Ngāti Huia	Ngāti Whāita, Raukawa	North Taupo, SE Waikato-Rohe Potae; Te	Extant

⁵⁹¹ John Johnson, *Notes from a Journal* (1846-47), in Nancy Taylor (ed), *Early Travellers in New Zealand*, Oxford University Press, London, 1959, 148.

⁵⁹² Excerpted from Ballara, *Tribal Landscape*, 666-707, supplemented by the hapu lists in Hutton, *Raukawa*, 153-226. Hutton groups Raukawa hapu in the north into the four standard areas of Te Kaokaoroa o Patetere, Wharepungu, Maungatautari, and Te Pae o Raukawa. Where these areas are shown on the table; the hapu are thus listed both by Ballara and Hutton. Hapu listed only by Hutton are in italics. Hutton based his extensive report on Ngati Raukawa hapu on the records kept by the Ngati Raukawa Trust Board in Tokoroa. For the purposes of this table, if persons have chosen to register their names with the Board under a particular hapu name, then that hapu is treated as ‘extant’, whether this be a large number of persons or only a few.

⁵⁹³ Hutton, *Raukawa*, 160-161

⁵⁹⁴ Hutton, *Raukawa*, 161,

		Kaokaoroa o Patetere; Wharepuhunga	
Ngāti Huri	Ngāti Raukawa	SE Waikato-Rohe Potae; Waotu area; ⁵⁹⁵ Te Kaokaoroa o Patetere	Extant
Ngāti Kāhoro	Ngāti Raukawa	SE Waikato-Rohe Potae	Extant
<i>Ngati Kapaawa</i>	Tuwharetoa-Ngati Raukawa	Te Pae o Raukawa	Extant
<i>Ngati Kapu</i>	Ngati Raukawa	Te Kaokaoroa o Patetere	Extant
<i>Ngati Karewa</i>	Ngati Raukawa	Te Pae o Raukawa	Extant 19C? ⁵⁹⁶
Ngati Kikopiri	Ngāti Raukawa/Tuwharetoa	Kaingaroa, North Taupo, SE Waikato-Rohe Potae; Te Pae o Raukawa	Extant
Ngāti Kiri	Ngāti Raukawa	Bay of Plenty coast, Patetere, SE Waikato- King Country; Wharepuhunga	Extant
Ngāti Kiri (-ūpokoiti)	Raukawa/Tia	SE Waikato-Rohe Potae, East Taupo	Extant
<i>Ngati Kirihika</i>	Ngati Raukawa	Te Kaokaoroa o Patetere	Extant
Ngāti Kiritaratara	Raukawa/Tia/Tūwharetoa	SE Waikato-Rohe Potae, East Taupo	Extant
Ngāti Kiriwera	Ngāti Raukawa	Rotorua South, SE Waikato-Rohe Potae	Extant
Ngāti Korohe	Ngāti Raukawa	Patetere	Extant
<i>Ngati Mahana</i>	Ngati Raukawa	Te Kaokaoroa o Patetere	Extant
<i>Ngati Maihi</i>	Ngati Raukawa	Te Kaokaoroa o Patetere	Extant
Ngāti Mamako?/Mamaku?	Ngāti Raukawa	Northern Taupo	Extant 19C
<i>Ngati Mata-a-Rae</i>	Ngati Tahu-Ngati Raukawa ⁵⁹⁷	Te Pae o Raukawa	Extant
<i>Ngati Moe</i>	Ngati Raukawa, Ngati Ha	Te Pae o Raukawa; Pouakani	Extant
Ngāti Mōtai	Ngāti Raukawa	Patetere; Kaimai Ranges, Whaiti Kuranui, Te Kaokaoroa o Patetere	Extant
Ngāti Ngārongo	Ngāti Raukawa	North Taupo, SE Waikato-Rohe Potae	Extant 19C ⁵⁹⁸
<i>Ngati Parekawa</i>	Ngati Raukawa- Tuwharetoa	Te Pae o Raukawa; Mokai; West Taupo	Extant
<i>Ngati Parewhete</i>	Ngati Raukawa	Te Pae o Raukawa	Extant 19C? ⁵⁹⁹
Ngāti Pikiahu	Maniapoto/Raukawa	West Taupo, North Taupo, SE Waikato, Pātea, ⁶⁰⁰ Te Pae o Raukawa	Extant 19C
Ngati Poutu/Poutoterangi	Ngati Raukawa	Te Pae o Raukawa	Extant 19c

⁵⁹⁵ Hutton, *Raukawa*, 162.

⁵⁹⁶ See Hutton, *Raukawa*, 207.

⁵⁹⁷ See Hutton, *Raukawa*, 206:

Mata-a-rae was a descendant of Rahurahu nd Tahu (through Whakarangataua), and thus carries a significant Raukawa whakapapa. Today Ngati Mata-a-rae is principally seen as a Ngati Tahu hapu, with interests in the Tahorakuri and Reporoa areas. However, among the persons registered with the Raukawa Trust Board are a few who state their allegiance to Ngati Mata-a-rae, and thus who continue to acknowledge their Raukawa connections from that hapu.

⁵⁹⁸ Certainly ‘extant’ in the PkM region.

⁵⁹⁹ See Hutton, *Raukawa*, 211.

⁶⁰⁰ i.e. the ‘inland Patea’: the Taihape region.

Ngāti Puehotore	Ngāti Raukawa	SE Waikato-King Country; Wharepuhunga	Extant
<i>Ngati Rauhurahu</i>	Ngati Raukawa	Te Pae o Raukawa; Waimahana	Extent
Ngāti Rakau	[Ngāti Rakauwa ⁶⁰¹]	Pouakani block (North Taupo); Te Kaokaoroa o Patetere	Extant 19C
Ngati Rangiahia? ⁶⁰²	Ngāti Raukawa	Patetere	Extant 19 C
Ngāti Rereahu	Child of Raukawa, parent of Maniapoto ⁶⁰³	North Taupo, West Taupo	Extant
Ngāti Rongo?	Ngāti Raukawa	SE Waikato-Rohe Potae	Extant 19C
Ngāti Takihiku	Ngāti Raukawa	North Taupo, SE Waikato-Rohe Potae; Wharepuhunga	Extant
Ngāti Tamatehura	Ngāti Raukawa/N Tūwharetoa	SE Waikato/Rohe Potae	Extant 19C
Ngāti Tamatewhana	Ngāti Raukawa	Rotorua West, Patetere, SE Waikato-Rohe Potae; Te Kaokaoroa o Patetere	Extant 19C
Ngāti Tāpapa	Ngāti Raukawa	North Taupo, SE Waikato-King Country	Extant 19C
<i>Ngati Tarakaiahi</i>	Ngati Raukawa-Tuwharetoa	Te Pae o Raukawa	Extant
Ngati Te Apunga	Ngāti Raukawa	Te Kaokaoroa o Patetere	Extant
Ngāti Te Hinga	Ngāti Raukawa	SE Waikato-Rohe Potae	Extant
<i>Ngati Te Kohera</i>	Ngati Raukawa-Tuwharetoa	Te Pae o Raukawa	Extant
Ngāti Te Koroheke	Ngāti Raukawa	Patetere	Extant
<i>Ngati Te Ngakau</i>	Ngati Raukawa	Te Kaokaoroa o Patetere	Extant
Ngāti Te Rangi	Ngāti Raukawa	Patetere	Extant
Ngāti Te Rangitawhia	Ngāti Raukawa	Rotorua West, Patetere, Eastern Rotorua Lakes; Te Kaokaoroa o Patetere	Extant
<i>Ngati Te Rama</i>	Ngati Tahu-Ngati Raukawa ⁶⁰⁴	Te Pae o Raukawa	Extant
Ngati Te Takenga	Ngāti Raukawa	Rotorua West, Patetere	Extant
Ngāti Tokorahi	Ngāti Raukawa	Patetere	Extant
Ngāti Tuara	Tūarotorua s. of Tangaroamihi=N Whakaue, N Raukawa	Rotorua West, Patetere, Rotorua South	Extant
Ngāti Tūkōrari	N Tura/N Whakaue=N Raukawa	Rotorua West, Patetere	Extant 19C
Ngāti Tūkorohē	Ngāti Raukawa	Rotorua North, Rotorua West, Patetere; Te Kaokaoroa o Patetere	Extant
Ngāti Uri	Ngāti Raukawa	Rotorua West, Patetere	Extant
<i>Ngati Waenganui</i>	Ngati Raukawa/Waikato	Wharepuhunga	Extant
Ngāti Waihurihia	Ngāti Raukawa	North Taupo, SE Waikato-King Country?	Extant 19C
Ngāti Wairangi	Ngāti Raukawa=N Te Kohera	Rotorua South, North Taupo, SE Waikato-Rohe Potae;	Extant

⁶⁰¹ Ballara is uncertain about this group, but they must be the same group as Ngati Rakau in the PkM region.

⁶⁰² Ballara queries: same as Ngāti (Te) Rangitawhia?

⁶⁰³ Ballara appears uncertain whether to classify Ngati Rereahu as Ngati Raukawa or Ngati Maniapoto, and indeed they appear to sit in between to some extent; my understanding is that Ngati Rereahu are seen principally as Ngati Maniapoto. Ngati Maniapoto and Ngati Raukawa are closely connected in any case.

⁶⁰⁴ See Hutton, *Ngati Raukawa*, 218.

		Wharepuhunga; Te Pae o Raukawa	
Ngāti Waitapu	Ngāti Apakura/Raukawa	North Taupo, SE Waikato-King Country	Extant
Ngati Wehiwehi	Ngati Kauwhata/Ngati Raukawa	Te Kaokaoroa o Patetere	Extant 19C
<i>Ngati Werokoko</i>	Waikato-Ngati Raukawa	Wherpuhunga	Extant
Ngāti Whāita	Takihiku, Raukawa	Rotorua South, North Taupo; Te Pae o Raukawa	Extant 19C ⁶⁰⁵
Ngāti Whakatere	Ngāti Raukawa	North Taupo, SE Waikato-Rohe Potae ³ Whaerpuhunga	Extant

Table of Hapu of Ngati Raukawa in PkM region as recorded in MBs and other documentary sources

Hopuiti	Matakarapa ⁶⁰⁶
Mateawa	Himatangi, ⁶⁰⁷ Otaki township, ⁶⁰⁸ general vicinity of Otaki, ⁶⁰⁹ Ohau, ⁶¹⁰ Rangitikei, ⁶¹¹ Waikawa ⁶¹²
Ngati Hikitunga	Horowhenua, Muhunua, ⁶¹³
Ngati Huia	Otaki; ⁶¹⁴ between Horowhena and Manawatu estuary; ⁶¹⁵ Poroutawhao, ⁶¹⁶ Katihiku, ⁶¹⁷ Te Horo. ⁶¹⁸
Ngati Kahoro	Himatangi; ⁶¹⁹ Mangamahoe, ⁶²⁰ Horowhenua; Rangitikei; ⁶²¹
Ngati Kapu	Otaki, ⁶²² Pukekaraka, ⁶²³ Porauku ⁶²⁴

⁶⁰⁵ My understanding is that Ngati Whaita are certainly extant today. They have a marae at Ongaroto near the Waikato River.

⁶⁰⁶ *Census of the Maori Population* 1881 AJHR G3, 18.

⁶⁰⁷ (1868) 1C Otaki MB 317-18; (1868) 1C Otaki MB 333-335

⁶⁰⁸ (1867) 1B Otaki MB 8

⁶⁰⁹ Evidence of Nopera Te Ngiha, Himatangi case, *Wellington Independent* 2 April 1868 (“Te Rauparaha gave land near Otaki to Mateawa, a section of Ngatiraukawa” (Appendix 3.1.1.1).

⁶¹⁰ *Census of the Maori Population*, 1878 AJHR G2, 20; *Census of the Maori Population* 1881 AJHR G3, 18.

⁶¹¹ Evidence of Atereti Taratoa, MA 13/71, folio 506.

⁶¹² *Lyttelton Times*, Vol XXV, Issue 1686, 12 May 1866, Supplement p 2 (Report of Manawatu meeting, April 1866)

⁶¹³ *Census of the Maori Population* 1881 AJHR G3, 18.

⁶¹⁴ Map, Adkin, 127.

⁶¹⁵ Map, Adkin, 127.

⁶¹⁶ (1873) 1 Otaki MB 185; (1895) 26 Otaki MB 20; *Census of the Maori Population*, 1878 AJHR G2, 19; *Census of the Maori Population* 1881 AJHR, G3, 18; Evidence of Nopera Te Ngiha, Himatangi case (*Wellington Independent* 2 April 1868 (Appendix 3.1.1.1) (“The last named portion [Poroutawhao] was handed over by Te Rangihaeata to the Ngatihua”).

⁶¹⁷ *Census of the Maori Population*, 1878 AJHR G2, 20; *Census of the Maori Population*, 1881 AJHR G3, 18.

⁶¹⁸ *Census of the Maori Population* 1881 AJHR G3, 18.

⁶¹⁹ (1868) 1C Otaki MB 317-18

⁶²⁰ *Census of the Maori Population*, 1878 AJHR G2, 19.

⁶²¹ Evidence of Atereti Taratoa, MA 13/71, folio 506.

⁶²² Map, Adkin, 127.

⁶²³ *Census of the Maori Population*, 1878 AJHR G2, 20; *Census of the Maori Population* 1881 AJHR G3, 18.

⁶²⁴ *Census of the Maori Population* 1881 AJHR G3, 18.

Ngati Kikopiri	Ohau, ⁶²⁵ Otaki, ⁶²⁶ [Poukaiua], ⁶²⁷ Muhunua ⁶²⁸
Ngati Maiotaki	Otaki; ⁶²⁹ Rangitikei ⁶³⁰
Ngati Matau	Between Horowhena and Manawatu estuary, ⁶³¹
Ngati Moewaka	Otaki, ⁶³²
Ngati Ngarongo	Te Awahou, ⁶³³ south side of Manawatu between Foxton (Te Awahou) and Shannon, ⁶³⁴
Ngati Pare/Pari	Otaki, ⁶³⁵ [Poukaiua] ⁶³⁶
Ngati Parekowhatu	Horowhenua
Ngati Pareraukawa	Horowhenua, ⁶³⁷ southern side of Manawatu by the coast, ⁶³⁸
Ngati Parewahawaha	Himatangi, ⁶³⁹ Muhunua, ⁶⁴⁰ Matahiwi, ⁶⁴¹ Ohinepuhiawe ⁶⁴² Rangitikei ⁶⁴³
Ngati Pari/Pare ⁶⁴⁴	Te Awahou [Foxton], ⁶⁴⁵ Tuwhakapua, ⁶⁴⁶ Otaki ⁶⁴⁷
Ngati Poutu	Shannon ⁶⁴⁸
Ngati Pikiahu	Te Reureu ⁶⁴⁹
Ngati Rakau	Himatangi, ⁶⁵⁰ unsuccessfully attempt to occupy at Oroua but are driven away by Ngati Kauwhata, ⁶⁵¹
Ngati Takihiku/Tikihiku	Himatangi, ⁶⁵² South of Manawatu river near Shannon, ⁶⁵³ south side of Manawatu near Foxton (Te Awahou), ⁶⁵⁴

⁶²⁵ Map, Adkin, 127.

⁶²⁶ *Census of the Native Population*, 1878 AJHR G2, 20.

⁶²⁷ *Census of the Maori Population* 1881 AJHR G3, 18.

⁶²⁸ *Census of the Maori Population* 1881 AJHR G3, 18.

⁶²⁹ Map, Adkin, 127; *Census of the Maori Population*, 1878 AJHR G2, 20; *Census of the Maori Population*, 1881 AJHR G3, 18.

⁶³⁰ Evidence of Atereti Taratoa, MA 13/71, folio 506.

⁶³¹ Map, Adkin, 127.

⁶³² Map, Adkin, 127.

⁶³³ Adkin 145.

⁶³⁴ Map, Adkin, 127.

⁶³⁵ *Census of the Maori Population*, 1878 AJHR G2, 20.

⁶³⁶ *Census of the Maori Population* 1881 AJHR G3, 18.

⁶³⁷ Map, Adkin, 127; Adkin 429, describing Ngati Pareraukawa kainga at Wharekawa near the Manawatu;

⁶³⁸ Map, Adkin, 127.

⁶³⁹ (1868) 1C Otaki MB 317-318

⁶⁴⁰ *Census of the Maori Population*, 1878 AJHR G2, 20.

⁶⁴¹ *Census of the Maori Population*, 1878 AJHR G2, 19; *Census of the Maori Population*, 1881 AJHR G2, 18.

⁶⁴² *Census of the Maori Population*, 1878 AJHR G2, 19; *Census of the Maori Population* 1881 AJHR G3, 18.

⁶⁴³ Evidence of Atereti Taratoa, MA 13/71, folio 506.

⁶⁴⁴ (1868) 1C Otaki 349

⁶⁴⁵ (1868) 1C Otaki MB 349.

⁶⁴⁶ (1881) 5 Otaki MB 286

⁶⁴⁷ *Census of the Maori Population* 1881 AJHR G3, 18.

⁶⁴⁸ Hutton, *Raukawa*, 213:

In the early nineteenth century Ngati Poutu went to Kapiti during the hekenga, where they remain as an active hapu near Shannon today/ Ngati Poutu have maintained an active role in hosting the annual Poukai over the last thirty years, and return regularly to support Poukai and Kingitanga events at Pikitu, Rawhitiroa and Aotearoa Marae, and at Turangawaewae. Ngati Poutu is not presently an active hapu within Te Pae o Raukawa, although whanau and individuals remain conscious of their connections to them.

⁶⁴⁹ (1912) 63 Whanganui MB 51-2; *Census of the Maori Population* 1878 AJHR G2, 19.

⁶⁵⁰ (1868) 1C Otaki MB 304-5; (1868) 1C Otaki 311-12; (1868) 1C Otaki MB 322; Evidence of Amiria Taraoea, Himatangi case (*Wellington Independent* 26 March 1868 (Appendix 3.1.1.1)).

⁶⁵¹ (1890) 13 Otaki MB 340.

⁶⁵² (1868) 1C Otaki MB 309;

⁶⁵³ Map, Adkin, 127; Adkin, 136, mentioning Ngati Whakatere kainga named Te Ahitara near Shannon.

⁶⁵⁴ Map, Adkin, 127.

Ngati Te Au [Ngati Te Ao]	Ohau, ⁶⁵⁵ Himatangi, ⁶⁵⁶ Rangitikei, ⁶⁵⁷
	[hapu of Ngati Kauwhata] Himatangi region, ⁶⁵⁸ Ahuaturanga ⁶⁵⁹
Ngati [Te Koira] ⁶⁶⁰	
Ngati [Te Mania] ⁶⁶¹	
Ngati Te Rangi	Waikawa (between Otaki and Ohau), ⁶⁶²
Ngati Te Rangitawhia	Otaki. ⁶⁶³
Ngati Tuara ⁶⁶⁴	
Ngati Tukorehe (same as Ngati Korohe?: see preceding table)	Ohau, ⁶⁶⁵ Waikawa, ⁶⁶⁶ Otaki, ⁶⁶⁷ Kuku Beach. ⁶⁶⁸
Ngati Turanga	Himatangi, ⁶⁶⁹ Te Motuiti, ⁶⁷⁰ Tuwhakatupua ⁶⁷¹
Ngati [Tuwakahewa] ⁶⁷²	
Ngati Waihuruia	Otaki, ⁶⁷³
Ngati Wehewehi	[hapu of Ngati Kauwhata ⁶⁷⁴] Manakau, ⁶⁷⁵ Waikawa, ⁶⁷⁶ Awapuni, ⁶⁷⁷ beside Manawatu river, ⁶⁷⁸
Ngati Whakaterere	Shannon, ⁶⁷⁹ Poutu, ⁶⁸⁰ Mataihuka, ⁶⁸¹ Moutoa, ⁶⁸² Wharenamauku. ⁶⁸³

⁶⁵⁵ (1868) 1C Otaki MB 319

⁶⁵⁶ (1868) 1C Otaki MB 305; (1868) 1C Otaki MB 311-12; (1868) 1C Otaki MB 317-318; (1868) 1C Otaki MB 319; (1868) 1C Otaki MB 322; Evidence of Amiria Taraotea, Himatangi case (*Wellington Independent* 26 March 1868 (Appendix 3.1.1.1))

⁶⁵⁷ (1868) 1C Otaki MB 319

⁶⁵⁸ (1868) 1C Otaki 305

⁶⁵⁹ (1868) 1C Otaki MB 255-6

⁶⁶⁰ (1868) 1E Otaki MB 730

⁶⁶¹ (1868) 1E Otaki MB 73

⁶⁶² Map, Adkin, 127.

⁶⁶³ The only source I have for this hapu migrating south is Hutton, 170.

⁶⁶⁴ (1868) 1C Otaki MB 326

⁶⁶⁵ Map, Adkin, 127; Adkin 137, mentioning site of a Ngati Tukorehe hamlet named Anga-kakahi, pointed out by Arapata Te Hiwi in 1931.

⁶⁶⁶ *Census of the Native Population*, 1878 AJHR G2, 20.

⁶⁶⁷ *Census of the Native Population*, 1878 AJHR G2, 20.

⁶⁶⁸ Hutton, *Raukawa*, 174.

⁶⁶⁹ (1868) 1C Otaki MB 305; (1868) 1C Otaki MB 309; (1868) 1C Otaki 311-312; (1868) 1C Otaki 322; Evidence of Amiria Taraotea, Himatangi case (*Wellington Independent* 26 March 1868 (Appendix 3.1.1.1))

⁶⁷⁰ *Census of the Native Population*, 1878 AJHR G2, 19.

⁶⁷¹ (1885) 7 Otaki MB 40.

⁶⁷² (1868) 1E Otaki MB 73

⁶⁷³ Map, Adkin, 127.

⁶⁷⁴ See Hutton, *Raukawa*, 175:

Wehiwehi is a descendant of Whatihua whose progeny subsequently intermarried with descendants of Turongo, and more specifically with progeny of Raukawa. Ngati Wehiwehi has strong connections also to Ngati Kauwhata, of which they are sometimes described as a hapu, though the situation is complex.

⁶⁷⁵ Map, Adkin, 127.

⁶⁷⁶ *Census of the Maori Population*, 1878 AJHR G2, 20, *Census of the Maori Population*, 1881 AJHR G3, 18.

⁶⁷⁷ *Census of the Maori Population* 1881 AJHR G3, 18.

⁶⁷⁸ (1890) 13 Otaki MB 340.

⁶⁷⁹ Map, Adkin, 127; Adkin 475 (describing the Ngati Whakaterere village at Whakawehi near Shannon; the whareni there is named Poutu, the son of Whakaterere.

⁶⁸⁰ *Census of the Native Population*, 1878 AJHR G2, 19.

⁶⁸¹ Carkeek, *Kapiti Coast*, 124.

⁶⁸² *Census of the Native Population*, 1878 AJHR G2, 19.

⁶⁸³ Carkeek, *Kapiti Coast*, 124.

Patukohuru	Himatangi, ⁶⁸⁴ Te Awahou, ⁶⁸⁵ Matararapa, ⁶⁸⁶
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Ngati Kauwhata

Ngati Kauwhata	Awahuri, ⁶⁸⁷ Oroua/Aorangi, ⁶⁸⁸ Himatangi, ⁶⁸⁹ Manawatu river, ⁶⁹⁰ Papatere (mouth of Oroua river) ⁶⁹¹
Ngati Te Ihi Ihi	[hapu of Ngati Kauwhata] Himatangi region, ⁶⁹² Ahuaturanga, ⁶⁹³ Oroua ⁶⁹⁴
Ngati Wehiwehi (or Wehewehe)	[hapu of Ngati Kauwhata] Manakau, ⁶⁹⁵ Waikawa, ⁶⁹⁶ Awapuni, ⁶⁹⁷ beside Manawatu river, ⁶⁹⁸

The tables are not complete, in that further references could undoubtedly be found with further research, and the first table, extrapolated from Ballara's report for the Central North Island inquiry, focuses on that area and not on Maungatautari, which will probably mean that Ballara's own tabulation is not quite complete. Another point that needs to be made is that Ngati Kauwhata have a solid and well-attested presence in the Maungatautari area and are mentioned in cases too numerous to mention. It can be seen that a significant number of Ngati Raukawa hapu are in both lists, indicating that some hapu have a presence both in the north and in the PkM region at the present. These hapu have highlighted in bold in the tables, and are Ngati Huia, Ngati Kahoro, Ngati Kapu, Ngati Kikopiri, Ngati Ngarongo, Ngati Pikiahu, Ngati Rakau, Ngati Takihiku, Ngati Te Rangitawhia, Ngati Tuara⁶⁹⁹, Ngati Tukore (probably), and Ngati Whakatere. There are some hapu which are quite prominent in the PkM region but are apparently (relying here mainly on Ballara) no longer known in the Waikato. One of these, according to Hutton, Ngati Raukau, while well-known in the PkM region (they identified in archival material and other sources as one of the hapu entitled to receive allocations at Himatangi, has apparently disappeared in the Waikato.⁷⁰⁰ The case seems to be the same with Ngati Wehiwehi, who are connected to Ngati Kauwhata, although Hutton has noted that "[t]oday Ngati Wehiwehi has reinforced their connections with Te Kaokaoroa a Patetere, having recently built the whareniui named Wehiwehi at Te

⁶⁸⁴ (1868) 1 C Otaki MB 309; *Census of the Native Population* 1878 AJHR G-2, 19.

⁶⁸⁵ (1868) 1C Otaki 262; (1868) 1C Otaki MB 317-18.

⁶⁸⁶ *Census of the Maori Population*, 1878 AJHR G2, 19.

⁶⁸⁷ (1873) 1 Otaki MB 204; *Census of the Maori Population*, 1881 AJHR G3, 18.

⁶⁸⁸ (1868) 1E Otaki MB 612; (1873) 1 Otaki MB 204; (1878) 3 Otaki MB 159-60; (1891) 13 Otaki 340 ("on the banks of the Oroua River"); (1868) 1C Otaki MB 244; 245-6; 253-4; 254-5.

⁶⁸⁹ (1868) 1C Otaki MB 305; (1868) 1C Otaki MB 317-18; (1868) 1C Otaki MB 335; *Wellington Independent*, 14 May, 1868 (cex of Matene Te Whiwhi in Himatangi case).

⁶⁹⁰ (1890) 13 Otaki MB 347 "the cultivations of Ngati Wehewehe an Ngati KAuwahata were all along the banks of the Manawatu" (Hoani Te Meihana in Aorangi No 3 case).

⁶⁹¹ (1890) 13 Otaki MB 347.

⁶⁹² (1868) 1C Otaki 305

⁶⁹³ (1868) 1C Otaki MB 255-6

⁶⁹⁴ (1868) 1C Otaki MB 244; 245-6; 253-4; 254-5.

⁶⁹⁵ Map, Adkin, 127.

⁶⁹⁶ *Census of the Maori Population*, 1878 AJHR G2, 20, *Census of the Maori Population*, 1881 AJHR G3, 18.

⁶⁹⁷ *Census of the Maori Population* 1881 AJHR G3, 18.

⁶⁹⁸ (1890) 13 Otaki MB 340; 347

⁶⁹⁹ Today Ngati Tuara class themselves as a section of Te Arawa, but my understanding is that this group is also closely linked to Raukawa.

⁷⁰⁰ See Hutton, *Raukawa*, 222:

Rakau was the son of Ngakohua and brother of Parewhete (who married Wairangi). While Ngati Rakau is mentioned in the Native Land Court minute books in the nineteenth century, this hapu is not currently active [i.e. in the Waikato] and does not appear to have been for some time..

Ukaipo Marae”.⁷⁰¹ According to Hutton Ngati Pikiahu, who are connected with Reureu Reserve in the Rangitikei, “is not an active hapu in Te Pae o Raukawa, although individuals will still recognise lines of descent to them particularly through Ngati Huri”.⁷⁰² Ngati Poutu, similarly, are prominent in the PkM region but are no longer an active in the north (again relying on Hutton).⁷⁰³ I do not suggest that this at all definitive; all Ngati Raukawa people, or very nearly all, will have descent lines connecting them to both areas. The hapu in both lists are not, interestingly, tend not to be from Maungatautari. Ngati Huia are originally from North Taupo and the southeastern Waikato-King Country area; Ngati Kahoro from the southeastern Waikato, Ngati Ngarongo from North Taupo. In fact there is a strong North Taupo connection with Ngati Raukawa in the PkM region. This fits with Parakaia Te Pouepa’s statement that Ngati Raukawa people from Maungatautari, Patetere, and Taupo were on the third and final heke. As noted, Ballara’s list does not include Maungatautari hapu, but it is not at all the case that the Ngati Raukawa hapu in the PkM region overwhelmingly originate from Maungatautari, bearing in mind the point made earlier that Ngati Kauwhata’s connections with the Maungatautari area are solidly established.

4.14 Ngati Toa, Ngati Raukawa, Ngati Kauwhata, Ngati Te Upokoiri, and Rangitane in the Manawatu

Rangitane were in their heyday a large and powerful tribe with many hapu. Some of the tribe’s sayings are ‘Rangitane tangata rau’ (Rangitane with hundreds of men) and “Tini whetu ki te rangi, ko Rangitane nui ki te whenua” (Like the myriads of stars in the sky, great Rangitane on the earth).⁷⁰⁴ Rangitane seems to have been the dominant iwi in the grouping of tangata whenua tribes who fought against Ngati Toa and Ngati Raukawa and the other northerners. Rangitane are related to Muaupoko and Ngati Apa, and in Ngati Toa accounts the three tribes are often spoken of in, as it were, the same breath. On the other hand it should be recalled that Nopera Te Ngiha said in the Himatangi case that Rangitane lived between the Rangitikei and Manawatu Rivers but inland from Ngati Apa, and that Ngati Apa were were more numerous than Rangitane.⁷⁰⁵

Like other tribes Rangitane were perceived by Ngati Toa as defeated and subjugated tangata whenua.⁷⁰⁶

He [Te Rauparaha] took possession of this country by conquest from Ngati Apa, Muaupoko, Rangitane, Ngati Kahungunu.

But this claim, of course, applies only to Rangitane west of the ranges and in the South Island, and not to their principal domain around Dannevirke.⁷⁰⁷

⁷⁰¹ Hutton, *Raukawa*, 175.

⁷⁰² Hutton, *Raukawa*, 212.

⁷⁰³ Hutton, *Raukawa*, 213:

⁷⁰⁴ See J.M. McEwen, *Rangitane: a tribal history*, Heinmann Reed, Auckland, 1986, 232.

⁷⁰⁵ Evidence of Nopera Te Ngiha, Himatangi case, as recorded in the *Wellington Independent*, 2 April 1868 (Appendix 3.1.1.1).

⁷⁰⁶ Evidence of Tamihana Te Rauparaha, Paremata case, (1866) 1 B Otaki MB 57.

⁷⁰⁷ According to McEwen, op.cit., 132: “Following Waiorua, Te Rauparaha sent war parties up and down the coast killing and capturing fugitives from the fight. There is no record of these raids penetrating into Rangitane territory except near the mouth of the Manawatu River. A fact which is not generally realised when people speak of the subjugation of Rangitane by Te Rauparaha is that the principal domain of the tribe on the Dannevirke side of the Manawatu Gorge and further south, was not at any time invaded by Ngati Toa or their associated tribes and the Rangitane sub-tribes of that district could not by any stretch of the imagination be said to have been subjugated.”

In one incident, Pikinga, Te Rangihaeata's Ngati Apa wife, persuaded some Rangitane chiefs to come outside their fortress at Otuiti (or Hotuiti) to discuss peace terms with Ngati Toa, at which point they were attacked. Matene Te Whiwhi says that thirty Rangitane chiefs were killed on this occasion, although Te Awe Awe was spared.⁷⁰⁸ (He also briefly mentioned Hotuiti in his 1869 evidence in the Himatangi case: it was "a Rangitane pa" taken by Ngati Toa before Ngati Raukawa settled in the region.⁷⁰⁹) Ngati Apa then induced Ngati Hamua, a Rangitane-Kahungunu group from the Wairarapa, to counterattack Ngati Toa. Ngati Hamua made a surprise night attack on Ngati Toa at Waikanae; this was when Te Peehi's children were killed.⁷¹⁰ Some sections of Rangitane lived in the South Island, and Rangitane from both the North and South Islands formed part of the coalition which attacked Ngati Toa at Waiorua.⁷¹¹ After Waiorua, Te Ruaone, a South Island Rangitane chief, is said to have uttered a famous insult, threatening to crush Te Rauparaha's skull with a tukituki aruhe (a fern-root pounder); following this, Te Rauparaha attacked the Rangitane of the South Island and 'slated' them.⁷¹² After the establishment and consolidation of Ngati Toa and Ngati Raukawa it seems that Rangitane continued to live on at least some of their ancestral lands in the Manawatu. Ngati Raukawa claimed to have independently driven them off, but Tamihana Te Rauparaha disputed this:⁷¹³

Ngati Apa and Rangitane were living peaceably between Manawatu and Rangitikei on land alleged to have been sold to the Crown. I did not hear they were ejected by Ngati Raukawa - Ngati Raukawa were living on the banks of the Manawatu.

Matene Te Whiwhi accepted that Ngati Raukawa fought against Rangitane, but believed that it was a somewhat pointless exercise as Rangitane had already been defeated:⁷¹⁴

He [Te Whatanui] fought five times with Ngati Apa, Muaupoko and Rangitane. There were no pas for him to take and no battles for him to fight.

After this Rangitane and Ngati Raukawa must have reached an understanding. Rangitane were involved in the fighting at Haowhenua, as one of the groups who came to the aid of Ngati Raukawa (along with Tuwharetoa, Muaupoko, Ngati Apa, Ngati Maru, according to Nopera te Ngiha.⁷¹⁵) Since this time relations between Ngati Raukawa and Rangitane have been good.

In other accounts Ngati Whakatere, the first of the Ngati-Raukawa related group to reach Kapiti, played an important role in the conquest of the Manawatu region. In 1881 Te Moroate Kiharoa of Ngati Pari said that the first conquest was by Ngati Toa and Ngati Whakatere, following which the land was later cut up and allocated to various hapu of Ngati Raukawa:⁷¹⁶

⁷⁰⁸ Evidence of Matene Te Whiwhi, Kukutauaki case, (1872) 1 Otaki MB 139. For a slightly different version, see McEwen, *Rangitane*, 131.

⁷⁰⁹ Matene Te Whiwhi, evidence in Rangitikei-Manawatu case, MA 13/113/71, 15 July 1869.

⁷¹⁰ Ibid, 139.

⁷¹¹ Evidence of Tamihana Te Rauparaha, Himatangi case, (1868) 1 C Otaki MB 375. Nopera Te Ngiha says that "then a large body - Nga Rauru, Whanganui, Ngati Kahungunu, Ngati Apa, Rangitane, Muaupoko, and people from Middle Island - came to Waikanae."

⁷¹² Ibid, 376.

⁷¹³ Ibid, 386.

⁷¹⁴ Evidence of Matene Te Whiwhi, Kukutauaki case, (1872) 1 Otaki MB 152.

⁷¹⁵ Evidence of Nopera Te Ngiha, Himatangi case, (1868) 1 C Otaki MB 394.

⁷¹⁶ Te Moroate Kiharoa, Rewarewa case, (1881) 5 Otaki MB 286. This case did not result in a judgment because the Court found that Rewarewa was a part of the Tuwhakatupua block: see (1881) 5 Otaki 292. The block was claimed by Hemi Warena of Rangitane, and counterclaimed by Te Moroate [Kiharoa] of Ngati Pari (hapu of Ngati Raukawa).

I claim through my ancestry by conquest, when Ngati Raukawa came to these parts. The conquest I mention was of Ngati Toa and Ngati Whakaterere, they were the first tribes who conquered the whole district, after them Ngati Raukawa came, then this land was cut up by them. Te Rauparaha invited them – they then apportioned up the land amongst the separate families – and I occupied my portion. My lands were in this district.

In 1869 Matene Te Whiwhi dated Ngati Raukawa settlement of land between the Manawatu and Rangitikei rivers to after the battle of Haowhenua (1834), when sections of Ngati Raukawa moved north to land north of the Manawatu that they had “marked out”.⁷¹⁷

The Ngatiraukawa lived at Otaki but they went all over the land, as far as Manawatu. After the war between Ngatiraukawa and Ngatiawa – the last fight being Haowhenua – they went to the Rangitikei Manawatu Block. They remained there. They occupied the pieces of land they had marked out... They had a claim to the land North of Rangitikei as far as Wangaeahu.

Also to be taken account of here are the Ngati Kauwhata narratives relating to their settlement in the Manawatu. This happened at a comparatively early date, at the time of the Whirinui heke from Maungatautari, which appears to have included a significant component of Ngati Kauwhata people led by their rangatira Te Whata (father of Tapa Te Whata of Ngati Kauwhata, who will be frequently mentioned in this report). Ngati Kauwhata appear to worked quite closely with Ngati Huia, the two groups diverging from the main heke led by Te Whatanui, going across country to meet with Ngati Apa and then crossing the Rangitikei. A section of Ngati Kauwhata led by Te Whata went into the Manawatu, having a variety of encounters with Ngati Apa and Rangitane. The fullest narrative I have located so far is that by Tapa Te Whata in the first Himatangi case.⁷¹⁸

I live at Puketotara and Te Awahuri on Oroua – Ngatikauwhata – came with Te Whatanui and the great ‘heke’ – The heke started from Maungatautari and thence to Taupo thence to upper Turakina – from Turakina “ka wehea nga huarahi” – the Ngatiraukawas went out to the sea beach and we the Ngatikauwhata and Ngatihuia came across inland through the bush to Rangitikei – Te Auturoa was chief of Ngati Huia – I came with Ngati Kauwhata – we came down Rangitikei [612] on the North side – stayed at Paeroa a Ngati Apa settlement since called Parewanui, stayed there and crossed the Rangitikei to south side to Poutu – there my father wished to go inland to look for a “kainga” for himself and then we (a small party) went up the South bank of Rangitikei leaving the body at Poutu – went to Waituna thence to Parewharariki inland towards Oroua – at Parewharariki found Ngatiapa – a man and woman – we took them, the woman told us that the man, her “tane” was a “tangata kino he tangata makutu” and that if he was spared we should all die – he was therefore killed – went to Whakamoe takapu and caught some Ngati Apas there – there was no fighting – “he hopuhopu noa iho” went along the Kiwitea to Oroua on reaching Oroua went along the Kiwitea to Oroua on reaching Oroua we went up the river to Te Ruapuha and Waioteka thence to Oturoroki where we took more Ngati Apa prisoners – Te Whata asked one of the women – (Kete, a chief) “who are the chiefs of this land?” – She said “Te Hanea, Te Auahi and Te Raikokiritia” – Te Whata then said “If we see these men they shall be ‘hoa aroha’ of mine” he searched for these men but [615] did not find them – we then came down Oroua to Mangawhata – He (Te Whata) said that should be his place – he came on to Manawatu – there caught some Rangitane men near Puketotara, these men were killed – it was not Te Whata’s thought to kill them – it was through the Ngati Apa who had previously been taken – a consequence of old feuds between the Ngati Apa and Rangitane – we then went up Manawatu and surprised a Rangitane kainga Hakione – on the other side of Manawatu – took them and killed one of them

Tapa Te Whata gave a more abbreviated narrative in his evidence in the Aorangi investigation (1873):

⁷¹⁷ Matene Te Whiwhi, evidence in Rangitikei-Manawatu case, MA 13/113/71, 14 July 1869.

⁷¹⁸ Evidence of Tapa Te Whata, Himatangi case, (1868) 1E Otaki MB 612.

We derive our claim by conquest and gift. The father of Hamuera (Kokiri) gave it to us. At the time of the migration from Maungatautari a part diverged at Rangitikei and came to Oroua – at a place called [Pariwharariki?] where we made some prisoners. We arrived at Kiwitea and attacked the village. The people ran away. Kiwitea is not within the boundaries of the land I defined. We then crossed the river⁷¹⁹ on to this land – and came to a village. We made prisoners of their people. I have forgotten the name of the village. We did not kill all the people at [Pariwharariki?] – only one man was killed – he was a bad man – the people of that second village we spared likewise. We followed the course of the Oroua to Manawatu to the village of Tuwhakatupua – where we killed the people - we killed these people at the desire of the of the other people on the block with whom they were at envy – we then went on making raids on the villages on our way down the Manawatu River. We returned with the prisoners we had taken. At Te Rotonuihau where we sat down – We found some people there and we were addressed by Kokiri – the father of Hamuera – who said the only dowry I have to give with my daughters are the places Whakaari and Aorangi. This was addressed to Ngati Kauwhata.

Rangitane speakers in cases relating to Aorangi 3 (the Rangitane section of the Aorangi block, partitioned in 1871) stated that the land in the region had been taken by Ngati Raukawa/Ngati Kauwhata from whom they derived their rights. According to Horima Mutuahi (Rangitane) (speaking in 1890):⁷²⁰

When Ngati Kauwhata came onto this land the mana belonged to them – the land was returned to Rangitane by Tapa Te Whata and Kooro Te One, Pohe Te Ara, - these returned the mana to Hoani Meihana and Peti Te Aweawe – the three who returned the mana belonged to Ngati Kauwhata – Hoani Meihana and Peeti Te Aweawe made out the list of the names.

The political geography of the Manawatu immediately before the Treaty of Waitangi was described in detail by Hoani Meihana Te Rangiotu of Rangitane in 1890. In 1839 there was still a sizeable section of Ngati Te Upokoiri (of Heretaunga) living in the Manawatu:⁷²¹

When the Ngati Raukawa came I was about ten years of age – The evidence of Horomona and his witnesses is correct about Ngati Raukawa – The year 1839 was when the tribes ceased fighting and were at peace for one year – the Ngati Kauhata[sic] were living on the banks of the Oroua River then – Ngati Wehewehe [sic] were on the Manawatu river – Ngati Mairehau, Rangitane and Wiremu Kingi Te Aweawe were living with Ngati Wehewehe – Ngati Upokoiri were living on this land further up the Manawatu River to the eastward of the Block – Ngati Upokoiri were a hapu of Ngati Kahungunu – Ngati Rangi were living with Ngati Upokoiri – Ngati Hineaute were also living with Ngati Upokoiri – Te Hinga, Te Piki of Ngati Hineaute, Paro, Apiata, Matire, Tiwata – Poanga – Tutuere Tiweta – these were all living with Ngati Upokoiri at Te Awapuni – Tawhaki was the name of the house and it belonged to Tiweta – Ngati Upokoiri's Pa was close to the Manawatu River – many of the Ngati Raukawa tribes lived on the banks of the Manawatu commencing at the mouth of the Oroua Stream down to the sea.

And in the 1891 Aorangi 3 rehearing Hoani said:

⁷¹⁹ *i.e.* the Oroua River.

⁷²⁰ Horima Mutuahi, Aorangi case, (1890) 13 Otaki MB 335. That Hoani Meihana and Peeti Te Aweawe made out a written list of names indicates that the return of the land was after 1840. In 1873 the Native Land Court ratified a division of Aorangi already agreed upon beforehand, splitting the block into three sections (Ngati Kauwhata, a hapu of Ngati Apa, and Rangitane). The Aorangi block referred to here is on the eastern side of the Oroua. Ngati Kauwhata also had a reserve at Te Awahou on the western side, allocated to them in the complicated aftermath of the Rangitikei Manawatu Crown purchase of 1866.

⁷²¹ Evidence of Tapa Te Whata, (1890) 13 Otaki MB 340.

I have two very strong claims on this land, the handing of it back by Ngati Raukawa, and my ancestors' bravery in repelling invaders. I was asked by the Court⁷²² how much land would cover my right – I said 1,000 acres and the same for Te Peti.⁷²³

From these accounts it is clear that the Ngati Kauwhata presence in the Manawatu dates from the time of the main migration led by Te Whatanui, which included what must have been a substantial number of Ngati Kauwhata people and certainly the chief Te Whata. The Ngati Kauwhata contingent then divided from the main body, or, in Tapa Te Whata's detailed statement in the Himatangi case, from a group made up of Ngati Huia and themselves, and headed east into the Manawatu. Their continued presence at Aorangi must begin from this time.

⁷²² Referring presumably to the investigation of title of Aorangi in 1871: see chapter on Aorangi, below.

⁷²³ Referring to Te Peeti Te Aweawe of Rangitane.

5. Ngati Raukawa in the PkM region, circa 1830-1850

5.1 “The kindness of Whatanui”: Ngati Toa, Ngati Raukawa, and Muaupoko.

Probably the most pivotal point to be analysed in this chapter are the relationships between Ngati Toa, Ngati Raukawa, and Muaupoko. Essentially it is widely attested that after Te Rauparaha had allocated or awarded (or recognised) Ngati Raukawa claims, Te Whatanui, ignoring Te Rauparaha’s personal preferences, took Muaupoko under his protection and ended their persecution, following he himself lived with his people at Horowhenua. According to Nopera Te Ngiha, Horowhenua was given by Te Rauparaha specifically to Te Whatanui, rather than to Ngati Raukawa generally, thus giving Te Whatanui a special and personal interest there which was distinct from, but also linked to, his rights as chief of Ngati Raukawa. This would also have meant, presumably, that having given Horowhenua specifically to Te Whatanui in his own right, Te Rauparaha could not have interfered with Te Whatanui’s decisions about who could share Horowhenua with him and on what terms. There is an enormous amount of evidence testifying to Te Whatanui’s decision to take Muaupoko under his wing, so much so that in my opinion there are no grounds whatever for any doubt that something like this occurred. Even Judge Rogan in his Horowhenua judgment, which found in favour of Muaupoko, accepted that “[i]t would appear that Te Whatanui took the Muaupoko under this protection, and that he was looked up to as their Chief”. The Minute Book evidence will be reviewed in its place (suffice to say that Ngati Raukawa themselves always insisted that Te Whatanui ignored Te Rauparaha’s wishes and decided to spare Muaupoko). The sources on this point have been repeatedly collected by various commissions of inquiry,⁷²⁴ by T C Williams and other supporters of the Ngati Raukawa cause, and by historians such as T L Buick who are strongly sympathetic to Ngati Raukawa.

One of the earliest sources is E.J. Wakefield’s *Adventure in New Zealand*, published in 1845.⁷²⁵ According to Wakefield:⁷²⁶

Rauparaha then proceeded, with their⁷²⁷ assistance to crush the remains of the aboriginal tribes; and spared only the lives of the few *Muopoko* [sic] existing in that neighbourhood at the urgent entreaty of *Watanui* [sic], a great chief of the *Ngatiraukawa* to leave them as slaves for him.

Wakefield does not say who his informants were. But we know that he did meet Whatanui, living at his village at Horowhenua:⁷²⁸

We crossed a pretty lake close to the north of *E Ahu’s* [Te Ahu’s] settlement, called *Papai Tonga*, or “Beautiful South,” and walked over about four miles of rich level forest country, to the shore of another lake, called *Horowenua*, or “Landslip”. After I had fired one or two shots, a canoe came to us from a village at the further end, and bore us to the residence of *Watanui*, on the stream which drains the waters of the lake to the coast.

I slept here one night, and then proceeded, much impressed with the very chieftain-like bearing of *Watanui*. While he is known as a renowned leader in war, he also has the reputation of great mildness

⁷²⁴ See e.g. [1896] AJLC Appendix No 5 (*Report on Petition of Kipa Te Whatanui and 90 others relative to Lands at Horowhenua, together with a view of the evidence*).

⁷²⁵ Edward Jerningham Wakefield, *Adventure in New Zealand from 1839 to 1844; with some account of the British Colonization of the Islands*, 2 vols, (John Murray, London, 1845).

⁷²⁶ *Ibid*, Vol 1, p 118.

⁷²⁷ Ngati Raukawa’s.

⁷²⁸ Wakefield, *Adventure in New Zealand*, vol 2, 226.

and justice. He reminded me much of *Heuheu* in his kingly and herculean person, and his thorough gentlemanly manner.

Wakefield later met the Ngati Apa people, “who behaved with great kindness and regard to me”; he believed that they were “not above a hundred in number”.⁷²⁹

Another early source is a letter from George Clarke jun, Sub-Protector of Aborigines, sent to the Chief Protector, in June 1843 in which he describes the various iwi of the southern North Island.⁷³⁰ About Ngati Raukawa he has this to say:

The Ngatiraukawa migrated about eleven years ago in a large body from Maunga Tautari, in the Waikato district, through the invitation of Te Rauparaha, and completed the conquest of the country from Wangaehu to Otaki, completely annihilating the original tribes that Te Rauparaha had not reduced to subjection. In consequence of the intrigues of Te Rauparaha, they were involved in a war with the Ngatiawa Tribe. They are a powerful and warlike tribe, and have always remained the faithful allies and supporters of Te Rauparaha.

On 20 June 1844 C H Kettle, a surveyor, who had lived in New Zealand for three years, gave evidence before the Select Committee of the House of Commons on New Zealand.⁷³¹ In response to questions about the Manawatu district he he stated.⁷³²

3248. To whom does that belong?⁷³³ – To the Ngatiraukawa. It was taken by Rauparaha and Rangihaeata from three tribes who had possession of the river. They killed nearly the whole of those people; and when they got tired of eating human flesh they gave the land to Whatanui. This country is now claimed by him, and Rangihaeata and Rauparaha do not claim it at all.

3249. When was it that those two chiefs murdered the original possessors of the land? – Thirty or forty years ago one tribe was about three hundred strong, and now there are only thirty left; there was another tribe two hundred strong, and only twenty are left.

3252. Were they made slaves after the battle? – For a short time they were slaves when Rauparaha had the land; but when Whatanui had the land he set them at liberty.

3253. Is the last-named chief the person now claiming the land? – Yes.

3254. He set at liberty those who were slaves before? – Yes.

3255. And they live together? – Yes.

In 1850 H Tacy Kemp described Horowhenua as follows:⁷³⁴

Horowhenua distant from Ohau about five miles, is situated on the border of a lake of that name. The inhabitants are a remnant of the original occupants of the soil, called Muaupoko, and have been allowed

⁷²⁹ Ibid, 227-28.

⁷³⁰ Appendix to Report from Select Committee, House of Commons, on New Zealand; Extracts from letter to Chief Protector Aborigines from Sub-Protector Geo. Clarke, jun., reprinted in 1896 AJLC Appendix No 5, p 6.

⁷³¹ On Kettle see Brad Patterson, “Kettle, Charles Henry 1821-1862, Surveyor, public servant, farmer”, *DNZB* vol 1 (1990), 226-227. Kettle worked originally as a cadet in William Mein Smith’s survey corps. He was promoted to take charge of surveys in the Manawatu, and in May 1842 he led an expedition up the Manawatu River into the Wairarapa, returning to Wellington via the Wairarapa valley.

⁷³² Extracts from Notes of Evidence, Mr C H Kettle before Select Committee of the House of Commons, 20 June 1844, reprinted in 1896 AJLC Appendix No 5 p 6.

⁷³³ The Manawatu.

⁷³⁴ Extract from Notes taken by the Direction of the Government embracing Statistical Returns in connection with the Natives in the Districts of Port Nicholson etc., *New Munster Gazette*, 21 August 1850, 77, reprinted in 1896 AJLC Appendix No 5 p 6.

to remain there ever since the country was taken possession of by Ngatiraukawa. Horowhenua was the favourite residing place of the late Te Whatanui, one of the principal chiefs of Ngatiraukawa, and to him the individuals composing the tribe in a great measure owe their existence. It is also interesting, in skirting the lake, to see the remains of the old pas, and to hear the accounts given of the manner in which they were attacked and destroyed by Rauparaha.

In 1858 James Grindell, at that time an interpreter with the Native Land Purchase Department, wrote the following in his Journal:⁷³⁵

Ihakara offers for sale a block of some 10,000 or 12,000 acres at the Awahou, a very desirable situation for a township, on a navigable part of the Manawatu, and exempt from floods. I am satisfied his title to this block is just, although disputed for the present by Nepia Taratoa.

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 of which they ever afterwards retained possession.

In 1866 Parakaia Te Pouepa described the allocation of land to Ngati Raukawa as follows:⁷³⁶

Ngatitoo divided our party among them, each chief agreeing to act as host to a certain number. Rangihaeata received Aperahama Te Ruru and our party as his guests. In the month of August, 1830, each chief set apart a portion of land to their several guests. The whole tribe of Ngatitoo agreed to this; they set apart each man a portion for his friend. After that, the chiefs of our party assembled at Rangatira, on the Island of Kapiti. The chiefs Rauparaha and Rangihaeata said Rangitane and Muaupoko must be destroyed, on account of those tribes having murdered Te Hira and Te Pou. Muaupoko murdered them. Paetahi, the father of Mete (chief of Whanganui), was the instigator, he having incited Rangihiwini to murder Te Rauparaha (his people); this is the reason why we were told to destroy Rangitane and Muaupoko. Ngatitoo had given no cause for this; only one woman had been killed in a quarrel about a canoe.

We went from Otaki to fight with those people. The pa Hotuiti was taken, in the Manawatu country. Rangitane fell. We divided their land amongst us, to each man a portion. Ngatiapa were not interfered with. We then returned to Otaki. The men of those tribes whom we had enslaved were allowed to call in those who had escaped on former occasions, and we permitted them to dwell in our midst with their several masters. Each pointed out to his master, of Ngatiraukawa, their lands, which were possession of accordingly, and our people on their part gave of their goods to the survivors, guns, powder, axes, and hatchets.

There is a wealth of later testimony regarding Whatanui's "kindness". One interesting account is that given to Commissioner Travers in 1873 by Wi Tako Ngatata of Ngati Awa, who can be resumed to be a reasonably objective witness given the history of conflict between Ngati Awa and Ngati Raukawa on the Kapiti coast. Wi Tako's narrative introduces some other interesting details, notably the fact that Ngati Awa were of one mind with Te Rauparaha in planning to exterminate Muaupoko, and it was Te Whatanui who saved Muaupoko from both groups. Travers' record of his interview with Wi Tako is as follows:⁷³⁷

⁷³⁵ Extract reprinted in 1896 AJLC Appendix No 5 p 7.

⁷³⁶ Letter or memorandum by Parakaia Te Pouepa, 23 October 1866, in T C Williams, *Manawatu Purchase* (1867), 9-11.

⁷³⁷ See 1896 AJLC App 5, 28. Travers is here reading out from the notes of evidence he took from Wi Tako circa 1873.

Mr Travers.] Do you remember the occupation of the West Coast of this province by the Ngatiraulawa and Ngatiawa? – I recollect it.

Did you know the chief Te Whatanui? – I did.

Do you remember when he first went up to reside at Horowhenua? – I recollect it.

When was that? – It was before the Kuititanga. We were living at Ohariu, getting fern-root, along with old Tracha of the Thames, Te Whatanui, Warepori [sic], and other chiefs, and we went up to Horowhenua to get eels.

Do you remember anything about Te Whatanui laying down any boundaries? – I do not know about that. Tauwheki and his people have lived near Te Whatanui's place at Horowhenua; but I know nothing about laying down boundaries.

Did Te Whatanui take the Muaupoko under his protection? – If it had not been for Te Whatanui they all would have been killed by Ngatitōa and Ngatiawa.

Then he interfered to prevent their being killed? – Te Whatanui prevented their being attacked, or else there would have been no Muaupoko alive at the present day.

What was the reason why Te Whatanui did so? – Te Whatanui wanted to make them useful to him. Te Whatanui was not fighting with Muaupoko or Rangitane, or any of these tribes. We came down after that to Otaki to live. We used to go about between Otaki and Okehu and Ohau to get food. We then left Te Whatanui, whom we had considered as our chief up till that time, and came away to Whanganui.

Then Te Whatanui was considered a great chief on the coast at that time? – He was considered a very great chief, and his words were always respected. It was through Te Rauparaha that Te Whatanui was induced to fight against Ngatiawa. Rauparaha was very much afraid that the Ngatiawa would have the whole of the land, as they had got all of the land about Kapiti and the West Coast, and nearly the whole of the Middle Island. He became jealous, and managed to work on Te Whatanui so as to gain his assistance against Ngati Awa.

Another example is Kipa Te Whatanui's testimony to the Native Affairs Committee of the Legislative Council in 1896:⁷³⁸

17. How came they to be on this land, I mean the Muaupoko? – Te Rauparaha came up here and killed the Muaupoko by Waiwiri, all around the Horowhenua Lake; the Muaupoko ran into the bush towards the mountains. Te Whatanui afterwards called them back to stop by him. Te Whatanui thought it was not quite the right thing to keep the Muaupoko living as slaves under him, and he arranged that line [the reserve area set aside for Muaupoko at Horowhenua] so that they could live as *rangatiras* on the other side of the line.

18. They recognised the gift of Whatanui, and that the Muaupoko had a right to that portion of the block? – Yes; they wished to respect the arrangement made by Te Whatanui.

19. You say that the Muaupoko were in bodily fear of Te Rauparaha. What was the cause of Te Rauparaha's burning revenge against them? – The Muaupoko had murdered some of Te Rauparaha's people; I have already stated that they murdered some of his children at Ohau.

20. Did Te Rauparaha get any *utu* for his children who were murdered? – I have already stated that Te Rauparaha pursued the Muaupoko (that was after the murder referred to); he followed, and found them in some of their pas by the Horowhenua Lake; he killed some, and drove the rest out into the bush. At the time Te Rauparaha came and attacked the Muaupoko, Te Whatanui was living at Raumatangi by

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1896 AJLC Appendix No 5 p 12.

the stream. After this attack Whatanui sent his slaves out into the bush to seek the Muaupoko and tell them they might come down and live under him at Raumatangi. When the Muaupoko were collected and came down to where Whatanui was living, they asked him whether he would be as a *rata* to shelter them. He said, “Yes, only the rain from heaven could reach them; the hand of man could not touch them.” There has been on that land ever since.

It is interesting to note here that Kipa Te Whatanui did not claim that Muaupoko were Ngati Raukawa’s “slaves” or “vassals”. To him, the key issue was the location of the boundary. Within the agreed area Muaupoko lived as *rangatiras*: “he arranged that line so that they could live as *rangatiras* on the other side of the line”.

Many more references can be collected together referring to the settlement of Ngati Raukawa hapu and to Te Whatanui’s “kindness” – if that is what it was. Parakaia Te Pouepa, for example, referred to “the kindness and liberality” of Ngati Raukawa towards “those tribes whom we had conquered and whom were spared by us when Te Rauparaha urged us to destroy them all” (1867).⁷³⁹ Ngati Raukawa’s 1880 petition states:⁷⁴⁰

Te Rauparaha also told Te Whatanui to exterminate all the people of Ngatiapa, Rangitikei, Rangitaane and Muaupoko, that the land ought to be free for Ngatiraukawa and for his own tribe to live upon. Te Whatanui did not consent to those words of Te Rauparaha that the people should be killed. Te Whatanui said he did not consent to kill those tribes but that they must be spared. Te Rauparaha was sad, that Te Whatanui had determined to spare those tribes. Ngatiraukawa then took possession of these lands. Those tribes then came back to Ngatiraukawa on the land and resided amongst them, but having no right (*mana*) to the land and continued to do so until the arrival of [the] Treaty of Waitangi.

A longer account, full of much more circumstantial detail, was given by T C Williams to the Legislative Council in 1896. Admittedly this is a long time after the events in question, but Williams was Ngati Raukawa’s counsel in the first Himatangi case in 1868 and knew the people of Otaki and Horowhenua very well. He said that he got his information from the chiefs of Ngati Toa, Ngati Awa, and Ngati Raukawa, and I cannot see any particular reason to disbelieve him. Asked how Te Whatanui came into possession at Horowhenua Williams said:⁷⁴¹

He [Te Whatanui] came down in 1833, I think. He came down first with a strong body of men, having been invited to visit Rauparaha at Kapiti, and decided then to go and bring his tribe down. He then went to Maungatautari and brought down nearly the whole of the tribe – some remained at Maungatautari, but the great body came down with him. On their arrival they had a meeting at Kapiti when Te Rauparaha on behalf of the Ngatitoo and Ngatiawa⁷⁴² Tribes, gave the whole of the country from Kukutauaki to the Whangaehu to Te Whatanui. When Te Rauparaha handed it over, he said, “The whole of the remnants of the original inhabitants must be destroyed.” Te Whatanui then got up and, after thanking them for the land, said: “There is one matter I do not see my way clear to carry out – your desire that I should exterminate the remainder of the original inhabitants.” He said the country is a large one, there is plenty of room for them and my people. I shall let them live: leave them as servants for my people.” I was told this by the chiefs of Ngatitoo, Ngatiawa, and Ngatiraukawa, also by a Native of Hawke’s Bay. He told me he was a slave at Kapiti when Te Whatanui arrived. The way the Natives expressed it was, “The word

⁷³⁹ Petition of Parakaia Te Pouepa, 4 July 1867, reprinted in AJLC App 5 p 8.

⁷⁴⁰ Petition of Ngati Raukawa, 5 August 1880, MA 13/16 [Petitions of Ngati Raukawa]

⁷⁴¹ 1896 AJLC Appendix 5, Evidence of T C Williams, p 16.

⁷⁴² An interesting detail. Most accounts assume that Te Rauparaha was speaking only on behalf of Ngati Toa, but it is not at all implausible that he was on this occasion speaking for “Ngatiawa” as well – that is the earlier North Taranaki groups, including Ngati Mutunga, who had migrated south – obviously not the later “Ngati Awa” migration, sometimes referred to as the “Ngamotu” migration, which did not reach the Kapiti region until after Ngati Raukawa were already established in the area.

of Te Rauparaha went forth – all the remnants must be destroyed.” The word of Te Whatanui went forth, “Cease to kill; let the remnants live.” These were the words which saved these tribes against Te Rauparaha and his tribes. But they lived like *taurekareka* (slaves) among and protected by Ngatiraukawa. Whatanui’s people on coming down the country had caught some of the original owners. He then sent for these original owners, and told them to go to Ngatiapa, Rangitane, and Muaupoko and tell them the country was now his, that there would be no more killing, and they could now come out and settle down in their own homes among his people, and he would protect them.

Williams added that when Te Whatanui came into possession Muaupoko “were scattered over the country like the remnants of Ngatiapa and Rangitane; the Muaupoko especially were in hiding.” Asked what Te Rauparaha directed Te Whatanui to do when the land was allocated to Ngati Raukawa Williams responded:⁷⁴³

He was to exterminate all the weeds from off his field. This Whatanui declined to do, and he afterwards sent those they had caught on the way down and told them to tell their people the country was now his, and they could come out and settle amongst his people. He sent and told them the Muaupoko were to come to himself at Horowhenua. Nepia Taratoa was to have charge of the Ngatiapa, and other chiefs of Rangitane. Afterwards Rauparaha sent a party to kill the Muaupoko; they caught and killed four. When Whatanui asked them the meaning of this, they said Rauparaha had sent them to kill the Muaupoko. Whatanui was then very indignant, and told them to go back and tell Rauparaha and all the other chiefs that he had settled the Muaupoko there, and if they wanted to kill any more of them they must pass over his body.

In 1891 Octavius Hadfield described his first visit to Horowhenua in 1840:⁷⁴⁴

My first visit to Horowhenua was on the 8th Januray, 1840. I was taken there by Te Whatanui, who walked with from Otaki to Horowhenua on that day. Te Whatanui was the principal chief of the Ngatiraukawa. I stayed with him two days. He was then, without any question or doubt at all, the owner of the whole of that part of the country – the main block that was before the Court. The Muaupoko were then very small in number. They were in a state of slavery to Te Whatanui, and entirely under his command – catching eels for him, and doing anything for him that he thought proper to require of them. I was often afterwards among the Muaupoko; on several occasions I slept at the pa where they were. They described to me the house or the site of the house in which Te Rauparaha’s children were put to death, and which Rauparaha had escaped from. The Muaupoko then, to the best of my knowledge, put forth no absolute claim to the possession of that country.

After Ngati Raukawa had arrived at Kapiti they collaborated with Ngati Toa in further fighting against Muaupoko. Wirihana Hunia’s narrative of this period is very clear, albeit rather late (1896):⁷⁴⁵

Then the Ngatiawa came down to Kapiti and he [Te Pehi] planted his tribes down from Waikanae on to Wellington. Then the Ngatiraukawa came to Kapiti, and joined with Ngatitua. Then they attacked a pa belonging to the Muaupoko, and the Muaupoko were defeated. The name of the pa was Papaitonga. The chiefs killed on the side of Muaupoko were Paipai and Takerai, brothers; they are ancestors of mine. They were killed at Papaitonga, where Sir Walter Buller’s place is. After that fight Te Whatanui led an expedition down, and came to the Manawatu to a place called Karikari, and they attacked the Muaupoko there, and the Muaupoko were defeated, some being killed and some taken prisoners. Those who were captured were saved alive by Te Whatanui. Te Hakeke had heard that the expedition had reached Karikari. He went to visit Te Whatanui, and when he got there peace was made between Te Whatanui and Te Hakeke. Te Whatanui then released the women prisoners of Muaupoko, and let the remains of

⁷⁴³ 1896 AJLC Appendix 5, Evidence of T C Williams, p 17.

⁷⁴⁴ Evidence of Octavius Hadfield before the Native Affairs Committee, 12 August 1891, 1896 AJLC App 5, 35.

⁷⁴⁵ Wirihana Hunia, Horowhenua Commission, 1896 AJHR G2, 48.

the tribe that had been scattered, owing to Te Rauparaha's fighting, collect at Horowhenua, and sent to Muaupoko to say that peace was made. Te Whatanui's expedition came on, and came down to Horowhenua, and Te Whatanui found that Muaupoko had assembled, and he told them peace had been made. He said he had made peace with Te Hakeke and others, and had ceased to disturb Muaupoko. He would leave the killing of men to Te Rauparaha, he was not going to fight any more. "I will cherish men, instead of destroying them." Te Whatanui remained at Horowhenua, and made it a permanent residence; he remained to take care of and protect Muaupoko.

There are a number of important questions about this event, however, which need to be considered. One is that of timing. There was a delay between Ngati Raukawa's arrival at "Kapiti" and their settlement further north. This was not instantaneous. Ngati Toa and Ngati Raukawa evidence shows clearly that the migration of Ngati Raukawa hapu to the Cook Strait region was a drawn-out process, beginning with Ngati Whakatare's journey to the south with Ngati Tama on the second heke, followed by the three Ngati Raukawa some years later. Ngati Kauwhata sources indicate later migrations after the battle of Taumatawiwi. At what point in all this did Te Whatanui's "kindness" take place? Wirihana Hunia's narrative seems to indicate that prior to Te Whatanui's arrival on the third Ngati Raukawa heke, those of Ngati Raukawa who had already arrived at Kapiti continued to join with Ngati Toa in harrying Muaupoko. Te Whatanui, coming down on the third heke, decided independently of Te Rauparaha – indeed, according to Wirihana Hunia⁷⁴⁶, before the heke had even reached Kapiti – to take Muaupoko under his protection and live with them at Horowhenua. Most accounts, however, have Ngati Raukawa embarking on fighting with Muaupoko and Rangitane after the arrival of the third heke at Kapiti in 1830, and Te Whatanui taking the decision to place Muaupoko under his protection some time after that, putting an end to the fighting and not complying with Te Rauparaha's wishes. For example Kipa Te Whatanui in 1896 said that Te Whatanui was already living at Raumatangi when he intervened to offer protection to Muaupoko who were still had that time being harried by Te Rauparaha.⁷⁴⁷

A more difficult issue was, however, how this event was to be interpreted. It is at least clear that Te Whatanui saw himself as an independent leader. While the overall allocation of the land may have been decided by the Ngati Toa leadership in some way (whether primarily by Waitohi or Te Rauparaha or both of them, or by Waitohi, Te Rauparaha, and Te Rangihaeata, or by a wider group of Ngati Toa leaders) Te Whatanui did not allow Te Rauparaha to dictate what his policy should be with respect to the earlier groups still present on the land. Te Rauparaha was not an absolutist despot ruling the Cook Strait region, but a Maori chief operating within a Maori cultural framework.⁷⁴⁸

The interpretation of Te Whatanui's decision came up in many cases in the Native Land Court, most importantly in the Kukutauaki and Horowhenua investigations in 1872-3. In the Kukutauaki case Te Keepa Te Rangihwinui and others spoke of a "peacemaking" between Te Whatanui and Muaupoko, while persons speaking for Ngati Raukawa, such as Matene Te Whiwhi denied that there was a "peacemaking". Rather, Muaupoko were spared by the "kindness" of Te Whatanui: "I do not know of any peacemaking between Whatanui at the time of the killing of these people".⁷⁴⁹ What Matene

⁷⁴⁶ Cited at the beginning of this section: Wirihana Hunia, Horowhenua Commission, 1896 AJHR G2, 48.

⁷⁴⁷ 1896 AJLC App no 5, 12: "[at the time Te Rauparaha came and attacked the Muaupoko, Te Whatanui was living at Raumatangi by the stream. After this attack Whatanui sent his slaves into the bush to seek the Muaupoko and tell them they might come down and live under him at Raumatangi."

⁷⁴⁸ See Ballara, *Taua*, 61-62, emphasising that Te Rauparaha "was only chief among many all pursuing their own ends, and the complexities of the interaction among them suggest that he did not get his own way all, or even most, of the time. Events were shaped as often by the initiatives of other chiefs and other descent groups as by his."

⁷⁴⁹ (1873) 1 Otaki MB 149 (Kukutauaki case).

had heard of was “Whatanui’s kindness towards them, not his peacemaking.”⁷⁵⁰ He had said the same thing earlier in 1869 at the second Himatangi hearing in Wellington: “I don’t know that peace was made between the tribes; but Ngatiraukawa treated the Ngatiapa and Rangitane with kindness”.⁷⁵¹ (Unfortunately we do not know the Maori terminology that the various speakers were using.) A peacemaking was typically a formal process, carefully negotiated, where both parties retained their mana intact, and typically involved gift-giving (greenstone weapons, land) and sometimes arranged marriages.⁷⁵² Matene Te Whiwhi did not mean that hostilities continued; he meant that he had no recollection of any such formal peacemaking between Te Whatanui and Ngati Huia with Muaupoko. This point will be discussed further in ch 12, where the evidence in the two cases is reviewed in detail. It can be noted here, however, that Wi Tako Ngatata (as see above) was certain that there was no formal peacemaking between Ngati Raukawa and Muaupoko: Muaupoko had “a permission to visit”, and nothing like the formal return of lands in the Wairarapa occurred in the case of Muaupoko.⁷⁵³

There were those who believed that Te Whatanui’s decision could be explained by simple benevolence: that he was a kindly person. An example is T C Williams, who saw Te Whatanui as kind-hearted and generous, and who contrasted his character with that of Te Rauparaha:⁷⁵⁴

The Muaupoko tribal right was completely gone, and the few left alive were in the most wretched condition, existing up the mountains and in the forests when Whatanui arrived. Whatanui took compassion on them. He was a very kind man, the very contrast to Rauparaha.

Although Te Rauparaha and Te Whatanui were related, said Williams, “ver two men lived with greater contrast”: Te Rauparaha was “cruel”, but Te Whatanui “was just and kind-hearted”.⁷⁵⁵ Simply, Te Whatanui took pity on Muaupoko, and “determined from the first to save and settle these people down”.⁷⁵⁶

As Bryan Gilling has noted, however, “[o]ther dynamics were operating than simple ‘generosity’”.⁷⁵⁷ Explaining Te Whatanui’s actions on the basis that he was a noble and generous person is hardly convincing as a complete explanation.⁷⁵⁸ Of course it was not his children who had been killed by Muaupoko, and he was under no cultural imperative to seek *utu* against them; he was a powerful chief in his own right who was under obligation to comply with Te Rauparaha’s inclinations. An analysis by Angela Ballara provides some important clues as to the reality of Te Whatanui’s “kindness”

⁷⁵⁰ Ibid.

⁷⁵¹ Matene Te Whiwhi, evidence in Rangitikei-Manawatu, MA 13/113/71, 15 July 1869.

⁷⁵² See Ballara, *Taua*, 153-162.

⁷⁵³ Evidence of Wi Tako Ngatata, circa 1873, 1896 AJLC App 5 p 29.

⁷⁵⁴ 1896 AJLC App no 5, 19

⁷⁵⁵ Ibid.

⁷⁵⁶ Ibid.

⁷⁵⁷ Gilling, *Land of Fighting and Trouble*, 2.

⁷⁵⁸ See also Gilling, *Land of Fighting and Trouble*, 10.

Once again, these paragons are provided by Buick with no motivation for such leniency other than their innate goodness, which hardly squares with their previous history, nor their behaviour during their travel or on arrival in the region. Nowhere does he explain why they apparently mended their ways so dramatically upon settling in other tribes’ territory, nor why they would have risked incurring the displeasure of Te Rauparaha, whose sworn enemies they were”. I agree with this remark in general terms, save to note that it is clear that Te Whatanui was unconcerned about Te Rauparaha’s displeasure, and indeed Te Rauparaha let Te Whatanui have his own way with regard to the treatment of Muaupoko and others. The reasons lie also within Maori cultural practice.

to Muaupoko. Ballara interprets Te Whatanui's decision within a framework of Maori customary law and practice.⁷⁵⁹

Non-kin or remote-kin hapū groups could form part of the multi-hapū communities which were the typical unit for waging war. Often they might live in a client or subordinate relationship under the protection of the community's chief, after suffering some reverse of fortune which forced the to take refuge in territories other than their own or lose status within their own territory. For example, various Muaupoko hapū lived in such a relationship under the protection of Te Whatanui of Ngāti Huia, a branch of the iwi or people of Ngati Raukawa, for a while in the late 1820s and early 1830s. They were allies of Ngāti Huia in every subsequent war.

I am uncertain about Ballara's dates here (at what point in the 1830s did this relationship taper off?). However Ballara makes some important points, which serve as a corrective to many of the more simplistic or partisan accounts. Ballara appears to see the relationship between Muaupoko and Te Whatanui as something in between a formal peacemaking (and the associated rituals of gift-giving, diplomatic marriages and so on) and a mere act of grace and favour on the part of Te Whatanui. She stresses that the relationship with Muaupoko (or Muaupoko hapu, as Ballara is careful to emphasise), was one between Te Whatanui and his hapu, Ngati Huia, rather than with "Ngati Raukawa" as a wider grouping. Te Whatanui undoubtedly did live at Horowhenua, close to Muaupoko, and for this reason the Native Land Court awarded his family the paltry 100-acre Raumatangi reserve in 1873. Furthermore Ballara at least provides a possible explanation for Te Whatanui's conduct set firmly within a Maori cultural framework. Te Whatanui did not "spare" Muaupoko because he wanted to be nice to them – or because he was a kind person (although many visitors did indeed find him to be generally kindly and benevolent). Te Whatanui was a great Maori rangatira, who had fought in many battles. He may well have judged that it made better sense to give them shelter or refuge in order to acquire an addition of strength to his own hapu, Ngati Huia, and maybe to Ngati Raukawa more generally, and this was why he ignored Te Rauparaha's personal preferences. It is interesting that T C Williams has Te Whatanui declaring that he intended to spare (among others) Muaupoko to be "servants for my people".⁷⁶⁰ As seen, Wi Tako Ngatata was of the opinion that Te Whatanui wanted to make Muaupoko "useful to him".⁷⁶¹ Kipa Te Whatanui, on the other hand, said that Te Whatanui intended that Muaupoko lived "as rangatiras" within the reserve boundaries, but perhaps that is not incompatible with there being certain reciprocal expectations.⁷⁶²

Ballara is correct to point out that Muaupoko fought as allies of Ngati Raukawa in later conflicts. As will be shown in the next section, Muaupoko assisted Ngati Raukawa in the latter's conflict with Ngati Awa at Haowhenua (1834), as indeed did Rangitane and Ngati Apa. Parakaia Te Pouepa said that as persons living "in subjection" and "without authority" they were obliged to provide this support.⁷⁶³ In the Kukutauaki case (1872) Ihakara Tukumarū also said that Muaupoko fought on the Ngati Raukawa side at Haowhenua. While they had their own take for participating in the battle "Muaupoko and Rangitane had not sufficient mana to fight in separate bodies".⁷⁶⁴ Presumably he means they fought alongside Ngati Raukawa as part of the Ngati Raukawa squadrons in the battles.

⁷⁵⁹ Ballara, *Taua*, 68.

⁷⁶⁰ 1896 AJLC Appendix 5, Evidence of T C Williams, p 16.

⁷⁶¹ Evidence of Wi Tako Ngatata, circa 1873, 1896 AJLC App 5 p 29.

⁷⁶² 1896 AJLC App no 5, 12

⁷⁶³ Letter or memorandum by Parakaia Te Pouepa, 23 October 1866, in T C Williams, *Himatangi Purchase* (1868), 9-11.

⁷⁶⁴ (1872) 1 Otaki MB 129.

Te Whatanui lived at Horowhenua at Raumatangi and had a large meeting house there named Whare Puhunga, presumably named after the district of the same name just to the south of Maungatautari. Raumatangi was an area of close Raukawa settlement and was favoured for its rich resources and deep soils. It is significant that when Ngati Raukawa were later offered the Horowhenua 14 area (Papaitonga and inland) as compensation for their losses in the Horowhenua block it was rejected as being “too stony”: Raukawa wanted their compensatory land at Raumatangi where Te Whatanui had himself resided. Raumatangi is still partly in Ngati Raukawa possession to this day. The wharenuui was located on the north side of the Hokio stream, the dwelling houses being on the south side. Whatanui controlled the stream from the lake down to the coast (and its important eel fishery). (“Rau-matangi” is a name given to a kind of eel weir.⁷⁶⁵) He had another kainga at Kouturoa on the southern side of Lake Horowhenua.⁷⁶⁶ He also lived from time to time at Otaki, and had potato grounds at Aratanga on the Manawatu river, which were being looked after by his son “Billy” when E J Wakefield saw them in 1842.⁷⁶⁷ According to Matene Te Whiwhi “when the Ngati Raukawa migrated to this District Te Whatanui settled on Aratangata, he had a settlement on the land”.⁷⁶⁸ Te Whatanui died in 1846. By that time he had been converted to Christianity by Octavius Hadfield.⁷⁶⁹ He was succeeded by his sons Te Tutaki and then Te Tahuri. Matene Te Whiwhi said that “Tutaki continued to live on this land, on Aratangata, Oturoa, and other places on the block, he cultivated on it”.⁷⁷⁰ After Te Tahuri’s deaths things became more complicated, and rights at Raumatangi became disputed between the descendants of Te Whatanui’s sister Hitau and the Pomare family, descended from Pomare of Nga Puhī and Te Whatanui’s eldest daughter.

5.2 Te Whatanui’s and Taueki’s boundary

Te Whatanui and the Muaupoko rangatira Taueki arranged a formal boundary, which is described in detail by Kipa Te Whatanui in his evidence to the Native Affairs Committee of the Legislative Council in 1896.⁷⁷¹ His evidence describing this boundary and the significance of the name “Tauateruru” is as follows:

21. I understood the witness to say that this boundary-line was fixed by Whatanui on one side, and Tauwheki [sic] on the other side? – It was fixed between these two men.

22. The boundary-line locating the Muaupoko? – That is so.

23A. Can you give the Committee any reasons for fixing that line indicating that it should be so – any sign by which the line can be indicated; any marks? – Yes; there was a hold dug in the ground called “Tauateruru,” and the Muaupoko knew it; my people know it.

23. Has that word “Tauateruru” any particular meaning? – It was a figure of speech; they supposed they it placed their “bargain” in a position to be remembered.

⁷⁶⁵ Adkin, *Horowhenua*, 338.

⁷⁶⁶ Evidence of Kipa Te Whatanui, 1896 AJLC Appendix 5 p 13:

30A. *Hon the Chairman*: Where are the residences of the Whatanui people? – Whatanui’s large meeting house which was called “Whare Puhunga” was on the north side of the stream; the remainder of the houses were at Raumatangi. Whatanui had the stream all the way down from the lake to the coast where he used to get his eels.

31. His fishing-grounds, in fact? - Yes, his fishing-grounds. He also had another kainga at Kouturoa, on the south side of the Horowhenua Lake.

⁷⁶⁷ Wakefield, *Adventure in New Zealand*, vol 2, 227.

⁷⁶⁸ Evidence of Matene Te Whiwhi, Porokaiaia case, (1869) 1G Otaki MB 36.

⁷⁶⁹ Angela Ballara, “Te Whatanui ?-1846, Ngati Raukawa leader”, *DNZB* vol 1, 522-524, at 524.

⁷⁷⁰ Evidence of Matene Te Whiwhi, Porokaiaia case, (1869) 1G Otaki MB 36.

⁷⁷¹ 1896 AJLC Appendix No 5 p 12.

24. *Hon the Chairman*: Is that so? – It was like a bag with the top of it closed – “tau” was the string for closing the bag; “ruru” is the act of closing it up; they made up their mind their bargain would be closed up. They kept the agreement before them in this way so that the name would remind them always of the fact of making this bargain, and for their descendants to remember it.

The map at p 128 of G Leslie Adkin’s *Horowhenua* shows what must be this reserve area, a long thin strip running from the sea to the divide, with boundary markers at Te Ua-mairangi and Tauataruru [sic] on the south, and Nga Manu and Nga Tohorua on the north. The boundary bisects Lake Horowhenua, with Ngati Pareraukawa at Raumatangi to the south. (The area is enclosed within a much larger area, “Major Kemp’s 1873 boundary”, which forms the boundary of the Horowhenua block as investigated by the Native Land Court in 1873.) The reserve was well-known. In 1873 T C Williams stated that after agreeing to return lands to Ngati Apa and Rangitane (in 1848 and 1858) Ngati Raukawa retained about 425,000 acres, out of which “the Ngatiraukawa had already set aside for the Muaupoko a portion of country more than sufficient for their use and occupation near Lake Horowhenua”.⁷⁷²

Te Whatanui’s nephew, Watene Te Waewae, gave many further interesting details about this boundary line and how it had been formed to Commissioner Travers in 1873. The first major point that he made was that the boundary had been slightly adjusted very recently by himself and Pomare (Te Whatanui’s grandson), principally, it seems, to take account of a house built by Hunia Te Hakeke of Ngati Apa. According to Watene (the questions are those put to him by Travers):⁷⁷³

Do you, as representing Te Whatanui’s family, claim an interest in the general estate of the Muaupoko, or do you confine your claim to the land actually occupied by Te Whatanui? – I claim the whole of the land to the southward of the boundary laid down by Te Whatanui, but am willing to forego all to the mouth of a line since laid down by myself and Pomare, and which passed close to Hunia’s house.

Were Hunia and Kemp present when that boundary by you and Pomare was laid down? – No.

Who were there? – When Pomare came down, notice was sent to Hunia and Kemp by Wi Tako to come down and settle the boundary. They did not come on that occasion. Another notice was sent, but they did not come. A third notice was sent, but they did not come; so the boundary was laid down in their absence.

What led you to abandon Te Whatanui’s old boundary for the purpose of giving up this piece of land? – It was Pomare’s doing. It was simply a gift. There was no particular reason.

Had not Hunia built a house on the piece which was given up? – Yes,

How long had the house been there? – It was built in the same year that Pomare came down, about two years ago.

This minor adjustment aside, however, the boundary was permanent, clearly marked, and earlier attempts by Muaupoko to occupy land to the south of it had been checked:⁷⁷⁴

Previous to that, did Kemp or Hunia, or any of the Muaupoko, occupy land inside of Te Whatanui’s old boundary? – The Muaupoko came across on one occasion while Tutaki [i.e. Tutaki Te Whatanui] was alive, and made a clearing. When I heard of it I sent them off the clearing, and put in a post as a landmark on the boundary.

⁷⁷² Williams, *A Letter to the Right Hon W E Gladstone, being an Appeal on behalf of the Ngati Raukawa Tribe* (J Hughes, Wellington, 1873), 7-8.

⁷⁷³ 1896 AJLC App no 5, 27 (reprinting a document earlier prepared by Travers).

⁷⁷⁴ 1896 AJLC App no 5, 28.

Has Hunia been asserting a claim to this land for any length of time? – He did not assert any claim before the year 1870.

When did the Muaupoko make the clearing? – It was some time during Governor Grey's second administration that the Muaupokop came on the land to clear.

And since then Hunia has come and built the house? – Just early in 1870.

But before they came to clear there, had any claim been made on the part of Muaupoko to occupy inside Te Whatanui's boundary. We should have known if they had come across before.

In what manner did Te Whatanui lay down the boundary? – It was marked with posts.

By Te Whatanui? – Te Whatanui did it himself. He laid it down as a boundary between himself and Tauwheki.

Asked whether the posts could still be seen Watene replied:

Some of the posts put in by Te Whatanui are there now. Some have recently been dragged up by the Muaupoko. The posts were put in in Maor fashion; some a long way out of the earth, and others buried in the earth, so that they could not be detected, and serve as marks for future generations.

Assuming that the Native Land Court in 1873 intended to confirm the old Horowhenua boundaries arranged decades earlier by Te Whatanui and Taueki, Ngati Raukawa leaders described the old boundary in detail to the Court. Karanama Te Kaputai described the boundary markers as follows:⁷⁷⁵

I am a chief of Ngatiraukawa – I know the boundaries of the land to which we admit the Muaupoko have a claim – beginning at the southern boundary – Taueki and Whatanui's – commencing at Tawhitikuri – K[]koroaua thence to Pauateruru on the banks of the Horowhenua Lake *dividing the Lake Horowhenua* [emphasis added] thence to Waitui (Waitui is on the inland side of the Lake). Here my talk ceases. This is the piece reserved by Whatanui for Muaupoko. I know this because I was asked to join in laying out the boundaries by Whatanui.

To be particularly noted are: (a) it was the southern boundary which was agreed by Taueki and Whatanui, the other boundaries being adjusted later; (b) the boundary cut Lake Horowhenua in two, the southern half of the lake belonging to Ngati Raukawa; (c) Karanama knew of all of this from his own knowledge, as he was one of those asked by his chief Te Whatanui to mark out the agreed boundaries on the land.

On the same occasion Tamihana Te Rauparaha described this boundary:⁷⁷⁶

I am a chief of Ngatittoa, Ngatiraukawa and Ngatiawa Tribes – I see the tracing – This is the boundary laid down by Whatanui – the Southern boundary is from Tawhitikuri to the shore of the lake < and on to Weraroa > as described on the Plan – Weraroa is where the boundary turns and goes to Pouahua, turns again to Ngatokorua thence to Ngamana (a carved totara pole) near the beach. At the commencement of the Survey this pole was burnt by Muaupoko. I know of my own knowledge and from information I have received from Whatanui's child. I have been on these very boundaries for 30 years.

And, on the same occasion, Hohua Te [Ruinui], pointing out the boundaries on the plan before the Court, said:⁷⁷⁷

⁷⁷⁵ (1873) 1 Otaki MB 184.

⁷⁷⁶ (1873) 1 Otaki MB 184-5.

⁷⁷⁷ (1873) 1 Otaki MB 185 (emphasis added). The speaker was a chief of Ngati Huia living at Poroutawhao.

I see the plan. This is the land to which we admit the Muaupoko have a claim. This is Tawhitikuri on the South going to Kou[]korau to Pauateruru on the lake Horowhenua seaward side – *dividing the lake one side to Muaupoko and the other to Ngati Raukawa* – then it reaches the shore thence along a bush <through Poutahi> to Werararoa turns to the East to Pouahua thence to the beach by Ngamana. These boundaries were fixed by Whatanui the elder on the South. Whatanui Te Tahuri fixed the northern boundary. He was [*the*] son of the elder Whatanui. These boundaries include the houses and cultivations of the Muaupoko – they are all included. The southern boundary was fixed a long time ago, the other was lately. I was present when []⁷⁷⁸ boundaries were fixed.

These boundaries were important in the Horowhenua case of 1873 and are discussed further below.

5.3 Counterattacks at Whanganui

One of the more obscure episodes in the cycles of conflict after 1830 relates to fighting between Ngati Raukawa (assisted by Te Rauparaha and others) at Whanganui. One, unattributed, account of this is to be found in John White's *Ancient History of the Maori*:⁷⁷⁹

It was in the year 1829 that the Nga-ti-raukawa migrated to Kapiti, and this migration was called Te-heke-mai-raro (migration from below, or north); and the Nga-ti-raukawa began to cultivate food in the districts given to them by Rau-paraha. At this time another party of the Nga-ti-rau-kawa had been cut off, and only two of the party were saved alive. This act was committed by the Whanga-nui. A chief called Te-rua-maioro (the ditch of a stockade) had migrated from Wai-kato to Whanga-nui, and had been attacked and cut off save Te-puke (the hill) and Te-ao (the cloud). Rau-paraha had sent a message to Te-rangi-whakaruru (day of shelter in shade) to spare the lives of the chiefs of Nga-ti-rau-kawa; hence these two were saved in compliance with this request, and they were allowed to come on to the home of Rau-paraha at Kapiti. When the Nga-ti-raukawa had resided some time at O-taki they all assembled there in the presence of Rau-paraha, of whom they wished to ask a favour, which was, that a war party should be sent to Wha-nga-nui to avenge the death of Te-rua-maioro. After some time Rau-paraha consented to this request. A war-party left for Wha-nga-nui, including some of the Nga-ti-awaTribe, to attack the *pa* at Putiki-whara-nui (knot tied with a certain sort of flax), which was held by one thousand warriors twice told; for in those days the Whanga-nui were a numerous people. This *pa* was invested for two months before it was taken, and some of the defenders escaped up the Whanga-nui River. The chief Tu-roa (stand long) was not taken, nor Hori Kingi-te-anaua (the wanderer) who escaped by dint of power to run. Thus the Nga-ti-rau-kawa obtained revenge for their dead. This *pa* was taken in the year 1831, for which defeat the Wanga-nui tribes never obtained revenge.

There is also a brief account of the fighting at Whanganui in a document written by Parakaia Te Pouepa in October 1866. Parakaia sees the attack on Whanganui as a search for utu for the earlier deaths of Ruamaio and others of Ngati Raukawa:⁷⁸⁰

We then attacked Whanganui, on account of a murder committed by Whanganui. Fifty chiefs and Ruamaio, of Ngatiraukawa, had been murdered. Whanganui were defeated in two battles – one *pa* was taken (Patikiwharanui). Ngatiapa were with us in that fight. Ngatiraukawa made peace with those tribes in 1831. Turoa put a stop to the fighting/

These battles are mentioned by Angela Ballara, who has a somewhat different chronology. In her interpretation of events, Te Ruamaio of Ngati Raukawa was killed when Ngati Raukawa were besieged at Matakote on the Whanganui River in the early 1820s. Te Anaua of Whanganui released many of the Ngati Raukawa prisoners to Te Whatanui at Ranana. Ballara must see all this as happening

⁷⁷⁸ Illegible: it could be 'both' or perhaps 'such'.

⁷⁷⁹ White, *Ancient History*, vol 6, 35-6.

⁷⁸⁰ Letter or memorandum by Parakaia Te Pouepa, 23 October 1866, in T C Williams, *Manawatu Purchase* (1867), 9-11.

some time before the main Ngati Raukawa migrations to Kapiti. She dates the attack of Ngati Raukawa and their allies at Putiki Wharanui to 1829; because of their earlier clemency to Ngati Raukawa, Te Anaua and Te Peehi Turoa were allowed to escape.⁷⁸¹

5.4 The Ngamotu migration (1832)

The next key step in the history of the Cook Strait region was the sudden arrival of a substantial group of Taranaki refugees, who abandoned their North Taranaki homes after the fall of Pukerangiora to Waikato and the battle of Ngamotu. There had already been a strong “Ngati Awa” – in fact, often a Ngati Mutunga – presence in the Kapiti coast region for some years prior to this, but many of the North Taranaki groups had remained in their homeland. In 1831, however, Waikato invaded north Taranaki in force and the great fortress of Pukerangiora fell to the invaders in December. The Te Ati Awa chief Te Wharepouri managed to defeat Waikato in a second major battle and siege at Ngamotu, assisted by the Pakeha traders John Agar Love, Richard Barrett, and others. However Waikato’s return was now obviously only a matter of time: so many Waikato men had died at Ngamotu that the Waikato chiefs had no option but to obtain utu for their losses.⁷⁸² According to Evelyn Stokes the threat from Waikato led to a great deal of discussion amongst the North Taranaki groups about the desirability of moving to the Manawatu; by this time “[a]ll of the coastal settlements between Ngamotu and Mohakatino were abandoned for inland kainga in the bush”.⁷⁸³ After a final effort to gain revenge on Ngati Maniapoto at the battle of Motutawa (near Mokau), the Taranaki groups now went to Kapiti in their turn on what is often referred to as the Te Heke Tama-te-Uaua. This grouping, often referred to as “Ngamotu” after the battle, were Ngati Ruanui, Taranaki and Te Ati Awa and were led by their chiefs Te Puni, Te Wharepouri, Wi Tako Ngatata-i-te-rangi and others. This seems to have been a large migration (Ballara believes as many as 2000 people⁷⁸⁴). Some of the remaining Ngati Tama people went south at the same time⁷⁸⁵. North Taranaki was left more or less deserted. (However the departure of the Ngamotu groups did not put an end to fighting between Waikato and Taranaki peoples, which continued for some years.⁷⁸⁶) On their way south the heke was assisted by Te Hanataua of Ngati Ruanui at Ketemarae.⁷⁸⁷ This heke is referred to in the literature as the Tama-te-uaua, but as with most of the rest of these migration names the term is not much in evidence in the original sources. Matene Te Whiwhi simply refers to the “final heke” of “Ngati Awa” or states that “all the Taranaki tribes came down”. In any case, come down they did, not without difficulty⁷⁸⁸, settling initially with their “Ngati Awa” kin at the existing community at Waikanae led by Reretawhangawhanga and his son Te Rangitake (who had already been

⁷⁸¹ Oliver, “Te Anaua, Hori Kingi ?-1868, Te Ati Haunui-a-Paparangi leader, assessor”, *DNZB* vol 1 (1990), 439-440, at 439.

⁷⁸² Ballara, “Te Whanganui-a-Tara”, 22.

⁷⁸³ Evelyn Stokes, *Mokau: Maori Cultural and Historical Perspectives*, (University of Waikato, Hamilton, 1988), 74.

⁷⁸⁴ Ballara, “Te Whanganui-a-Tara”, 22.

⁷⁸⁵ Te Kaeaea, (1882) 1 Mokau-Waitara MB 7 (6 June 1882).

⁷⁸⁶ On the continued fighting in Taranaki after Pukerangiora see Sole, *Ngāti Ruanui*, 139-145; Stokes, *Mokau*, 75. There were major engagements at Mikotahi, Te Namu (1833), Te Ruaki (1834), and Ngateko, all in Taranaki. The fighting was between Waikato and Maniapoto on the one side, and Taranaki, Ngaruahine and Ngati Ruanui on the other. Te Wherowhero made peace with Taranaki at Hawera, but this peacemaking was not recognised by Ngati Maniapoto: in “the following year a war party led by Tukorehu and Taonui raided in South Taranaki, but this was apparently the last of the fighting between them” (Stokes, *Mokau*, 75).

⁷⁸⁷ Sole, *Ngāti Ruanui*, 134.

⁷⁸⁸ The Taranaki force fought against Whanganui on the southward journey. Ngati Awa’s Whanganui opponents included the great chief Te Anaua of Te Ati Haunui-a-Paparangi: see Steven Oliver, “Te Anaua, Hori Kingi, ?-1868, Te Ati Haunui-a-Paparangi leader, assessor”, *DNZB* vol 1, 1990, 439-40. The heke’s opponents also included Pehi Turoa and Te Heuheu: Sole, *Ngati Ruānui*, 135.

there for some years). There may in fact have been two separate Ngati Awa migrations at this time, not just one.

As always the precise timing is difficult to establish. It is quite clear that the arrival of the Ngamotu and other groups led to a serious collision with Ngati Raukawa. To modern eyes it would seem that conflict must have become more likely with the arrival of yet further groups: the Kapiti coast region was becoming overcrowded, which must have placed a strain on resources. Maori themselves interpreted the conflicts, as always, as clashes over mana brought about by a specific take. The immediate cause of the fighting occurred, it is said, when Te Whakaheke, a chief of Ngati Raukawa, killed a “Ngati Awa” man named Tawake discovered stealing food from his potato storage pit. In the Paremata case in 1866 Matene Te Whiwhi outlined the main events as follows:⁷⁸⁹

Then came the final heke of Ngati Awa [] who - Te Puni, Wharepouri, Rauakitua with Ngati Ruanui and Taranaki. This 'heke' instead of waiting to be fed by Ngati Raukawa, who left their places in fear, 'muru'd the food and Ngati Raukawa were [].

A chief of Ngati Raukawa, Te Whakaheke, went back to look after his food. He got to his place and found a man in his potato “rua” and killed him. His name was Tawake. This caused a war.

Ngati Awa drew off to Waikanae. We sent them away saying that [we?] would fight fairly. The war began [63.] and with varied success. It was not until after the war had been going on a long time that Ngati Toa and Ngati Raukawa became enemies. Chiefs of the Ngati Toa were killed. After this war Ngati Toa still occupied Kapiti.

In his evidence in the Kukutauaki case in 1872 Matene summarised events as follows:⁷⁹⁰

Two years after, all the Taranaki tribes came down. They came down and cut boundaries all over this district. They did not even wait when they came to Ohau for Raukawa to give them food. They helped themselves. [147] After this Ngati Raukawa retired to Otaki leaving their houses and food as they were. Taranaki tribes then went to to a place on the North bank of Otaki, the seaward of where the township is. Whakaheke went to Waitohu to see after his store of potatoes. He found Tawake in the hole where he kept his potatoes. This man was a Taranaki, so he killed him. The Taranaki tribes attacked Ngati Raukawa and they fought at the place where Dodd's house now stands at Otaki. The latter beat them and hung two of those they killed in the trees. They, Ngati Awa, were again defeated at Waikanae and the fighting went on.

In 1890 Wi Parata gave the following account:⁷⁹¹

After Kaiapoi was destroyed Ngatiawa and Ngatitua and Raukawa came back to this island. After that the news was brought that the great heke of Ngatiawa were coming down here. Ngati Mutu[nga] came from Waikanae, came on here⁷⁹² and were going on to Chathams. Rangihiroa told them [i.e. Ngati Mutunga] to go and live at Wellington in consequence of death of their sister after that Ngatiawa came and settled at Waikanae. After Ngati Awa were settled another Heke came down and trouble commenced [161]. This was Haowhenua it was caused by taking some potatoes and then Ngati Raukawa killed Tawaka in payment for potatoes and this caused trouble. From that a portion of Ngatitua remained with Ngati Raukawa but my ancestors joined the Ngatiawa.

⁷⁸⁹ Evidence of Matene Te Whiwhi, Paremata case, (1866) 1 B Otaki MB 62-63

⁷⁹⁰ Evidence of Matene Te Whiwhi, Kukutauaki case, (1872) 1 Otaki MB 146-7.

⁷⁹¹ Wi Parata, Ngarara case, (1890) 10 Otaki MB 160.

⁷⁹² Presumably Wi Parata means by 'here' Wellington, or Wellington harbour (the case was heard at Wellington).

The theft of the potatoes is a well-known incident and is often referred to in the MBs.⁷⁹³ If it seems a trivial incident today, that would not have been how Ngati Raukawa and “Ngati Awa” would have perceived it. Stealing potatoes was a provocative action and a challenge to Ngati Raukawa’s mana and authority.⁷⁹⁴ The killing of Tawake (the thief) would also have been something that Ngati Awa would have had to respond to, as Te Whakaheke, the man who killed him, will have known. But obviously there were wider issues at stake as well relating to the control of land and resources in the Kapiti region, which was now starting to become somewhat overcrowded, as indicated with numerous migratory groups. The fact that the cause of the war arose from a theft of potatoes could perhaps be interpreted as explaining the fighting as a conflict over resources expressed in a particularly Maori idiom: the traditional and the economic explanations of the tensions are not really in conflict. Another problem was that there had not been enough time for the land rights of the various groups to have become clear: “mana over the land and its people had been recently acquired through conquest and was open to challenge”.⁷⁹⁵ One response to this overcrowding was simply to leave, as Ngati Mutunga and some of Ngati Tama did when they moved on to the Chatham Islands in 1835. One notices in the sources a tendency to blur “Ngati Awa”, “Taranaki” or “Taranaki tribes”, and Ngati Ruanui. This blurring is a constant difficulty with the sources, especially those which recount events from the Ngati Toa and Ngati Raukawa point of view: to them, it seems, “Ngati Awa” could mean virtually any Taranaki (and especially North Taranaki) group, including Ngati Mutunga and even Ngati Tama, in the same way that “Ngati Kahungunu” meant all Wellington and Wairarapa descent groups.

In his evidence in the Kukutauaki case Ihakara Tukumarū gave a wider context for the fighting at Haowhenua, which arose not from the theft of potatoes only but from earlier conflicts between Tuwharetoa and Ngati Awa – this was why Te Heuheu became involved. His motive was not merely to provide support for Ngati Raukawa. According to Ihakara:⁷⁹⁶

About Haowhenua. Kemp states that he came down to save me. It was through Kemp and Heu Heu that this fight commenced. Heuheu and Turoa came from Whanganui to Otaki where the Ngati Raukawa [sic – were living?]. Tamati Te U was the name of their expedition. They went back to Whanganui. When they got to the place where they left their canoes they found that Ngatiawa and Ngatiruanui was party on the other side [sic]. Turoa and Heuheu were angry about their canoes and they had a battle on the North side of Whanganui River [this must mean that Turoa and Te Heu Heu jointly fought against Ngati Awa and Ngati Ruanui] Popo of Ngatituwharetoa was killed. Rangiopuka Whanganui⁷⁹⁷ was killed. Hone Mihi of Ngatiawa was killed. The party of Ngatiruanui and Ngatiawa went to Otaki and consumed our food. Ngatiraukawa were angry about their food and the consequence was the fight at Haowhenua. Heu Heu heard that Raukawa had commenced fighting and he came down to take the take the opportunity of avenging Popo’s death.

5.5 Haowhenua (1834)

⁷⁹³ Most sources say that a Ngati Raukawa chief named Te Whakaheke found a Ngati Awa man named Tawake in his potato pit and killed him, leading to an immediate collision between Ngati Raukawa and the Ngati Awa. See evidence of Matene Te Whiwhi, Paremata case, (1867) 1 B Otaki MB 62-63. Nopera Te Ngiha said that Ngati Toa, Ngati Awa, and Ngati Raukawa “[I]ived peaceably till the time of the Ngati Awa and Ngati Ruanui who stole the potatoes at Waitohu: found by Ngati Raukawa who killed the thief”: Nopera Te Ngiha, Himatangi case, (1868) 1C Otaki MB 394.

⁷⁹⁴ A number of Maori wars began with the theft of food, or perhaps rather with the retaliatory actions taken against the thief. Such conflicts could sometimes spiral out of control. A spectacular example in the Rotorua-Bay of Plenty region initially involving Ngati Rangiwewehi and Ngararanui but which pulled in many other groups on either side is given by Angela Ballara: see Ballara, *Taua*, 125.

⁷⁹⁵ Ballara, “Te Whanganui-a-Tara”, 24.

⁷⁹⁶ (1872) 1 Otaki MB 128.

⁷⁹⁷ ‘Whanganui’ is inserted here above the line.

Haowhenua was a fortified pa formerly belonging to Te Ati Awa, located on the southern side of the Otaki River, but which during the fighting was occupied by Ngati Raukawa.⁷⁹⁸ The “battle” at Haowhenua, conventionally dated to 1834,⁷⁹⁹ was principally a series of clashes and engagements between Ngati Raukawa and the “Nga Motu” North Taranaki descent groups and Ngati Ruanui that went on for about a year. It was “a tedious affair which proved conclusively that nothing was to be gained from open confrontation”.⁸⁰⁰ The fighting was “drawn out and complicated, involving at least four pā”.⁸⁰¹ The immediate *take* was the killing of Tawake by Te Whakaheke of Ngati Raukawa.

Ngati Raukawa were besieged within Haowhenua by “Ngati Awa” for some months. What was alarming about the conflict was its tendency to escalate, especially as, largely as a result of Te Rauparaha’s requests, Ngati Raukawa received aid from Taupo, Hauraki and Tainui and from Ngai Te Upokoiri (of Hawke’s Bay), as well as from Muaupoko and Ngati Apa. Whanganui were involved on both sides. According to the Whanganui chief Metekingi Paetahi, Whanganui, along with Ngati Apa, Muaupoko, and Rangitane all fought on the side of Ngati Raukawa, while “the Ngatiawa section of the Whanganui fought on the other side”.⁸⁰² Many others said that Ngati Apa participated in the fighting as allies of Ngati Raukawa. At the time of Haowhenua, according to Nopera Te Ngiha (Ngati Toa) Ngati Apa were living at Pukepuke, Kaikokopu, Koputara, and Te Whakapuni in the Rangitikei area. Ngati Apa did not associate themselves with Ngati Awa: “they [Ngati Apa] all fought on the side of the Ngati Raukawa”.⁸⁰³ According to Ballara Ngati Apa participated in order to gain utu for the son of the Ngati Apa chief Tipae, killed by Ngati Ruanui in a battle north of the Rangitikei. Ngati Ruanui, some of whom had accompanied the Ngamotu groups to Kapiti after Pukerangiora, were allied to “Ngati Awa” in the Haowhenua campaigns, and Ngati Apa concentrated their efforts on attacking the Ngati Ruanui/Taranaki fortress at Pakakutu.⁸⁰⁴ It seems that Ngati Apa, therefore, were willing allies of Ngati Raukawa but also had their own reasons for getting involved. Nopera Te Ngiha said that Rangitane also fought as allies of Ngati Raukawa.⁸⁰⁵

Haowhenua was a dangerous conflict, because alliance and kin connections could draw in many other groups from far and wide. It could perhaps be seen as a sequel to the Waikato-Ngati Awa confrontation at Pukerangiora. Te Rauparaha, literally under siege at Rangiuuru, near the Otaki River, sought aid from many places and many chiefs. According to Houa Whatanui (1898):⁸⁰⁶

⁷⁹⁸ Adkin, 1948, 150:

This former *pa* of Te Ati-Awa was situated, so far as can be determined, three-quarters of a mile south of the Otaki River...Haowhenua *pa* was situated, it is believed, at the top of a terrace at the south-eastern end of of the former Kuru-kohatu Clearing.

⁷⁹⁹ Anderson and Pickens, *Wellington District*, Rangahaua Whanui District 12, 1996, 15; Ballara, *Taua*, 348. The date of 1834 can be deduced from the fact that the fighting took place about one year before Ngati Mutunga migrated to the Chatham Islands, which occurred at the end of 1835.

⁸⁰⁰ Parsonson, *He Whenua Te Utu*, 174.

⁸⁰¹ Ballara, *Taua*, 348. There is a good account of the fighting in Sole, *Ngāti Ruanui*, 135-36.

⁸⁰² Evidence of Rakapa Kahoki, Himatangi case, as recorded in the *Wellington Independent*, 2 April 1868 (Appendix 3.1.1.1). This evidence was part of the Crown case.

⁸⁰³ Evidence of Nopera Te Ngiha, Himatangi case, as recorded in the *Wellington Independent*, 2 April 1868 (Appendix 3.1.1.1).

⁸⁰⁴ Ballara, *Taua*, 349, relying on evidence of Kawana Hunia, Himatangi case, (1868) 1D Otaki MB 518-19.

⁸⁰⁵ Ibid.

⁸⁰⁶ Houa (Hona?) Wahanui, giving evidence for Ngati Whakatere, Rangitoto case, (1898) 31 Otorohanga MB 134 (2 Nov 1898).

After this Te Rauparaha sent for all the tribes to go and assist him against Ngati Awa. Taonui went, and Te Ariki. When they had fought at Haowhenua Taonui spoke to those of the Whakatere who had fled to Taupo [i.e. from Maungatautari] and asked them to return to their lands.

Chiefs from far afield began to arrive at Kapiti, including such distinguished personages as Te Heuheu of Ngati Tuwharetoa, Taonui Hikaka of Ngati Maniapoto, and Taraia Ngakuti of Hauraki.⁸⁰⁷ Te Heuheu may have had his own reasons for becoming involved, as is discussed above. Ihakara Tukumarū described the different motives of the participants as follows:⁸⁰⁸

Heu Heu heard that Raukawa had commenced fighting and he came down to take the opportunity of avenging Popo's death. Turoa came down for the reason, on account [of] Rangiopukia's death. Muaupoko joined on account of the death of Ngaweki and [Tawhikerua] who were killed by Ngatiawa. Hoani [i.e. Hoani Meihana Te Rangiotu] and Peeti [i.e. Te Peeti Te Aweawe] joined us to avenge the death of Mahuri. Rangitane and Muaupoko could not have taken revenge for these murders without the help of Raukawa, my object to fight was different, it was about food and very little cause, none of Rangitane or Muaupoko were killed, or Whanganui, all that were killed belonged to Ngatiraukawa and Ngatituwharetoa. Muaupoko and Rangitane had not sufficient mana to fight in separate bodies, it was different about the Whanganuis. The tribes who came to assist me without having any cause of their own were Ngatimaniapoto, Ngatimaru under Taraia; and Tuhourangi.

As Luiten puts it, the conflict “mushroomed into a major confrontation involving many different iwi”.⁸⁰⁹ The conflict divided Ngati Toa and no doubt the conflict between Raukawa and Taranaki was regarded by Te Rauparaha as something he could well have done without. The background to the fighting and its course and outcome was explained in the Native Land Court in 1891 by Tamihana Te Hoia of Ngati Raukawa.⁸¹⁰

The first tribe who occupied the land was Ngati Toa and the second Ngati Raukawa. This land was pointed out by the Ngati Toa to their relatives of Ngati Raukawa. This piece this side of the river was pointed out to [Hingi?]. The other side of the river was pointed out by Te Rauparaha for Ngati Huia. Te Puoho pointed out the piece further inland to Ngati Pare and Ngati Whakatere. When the lands were so pointed out all the hapus of Ngati Raukawa occupied them. They had not been in occupation one year when the fight at Haowhenua took place. The people who fought against Ngati Raukawa were Ngati Ruanui and Taranaki. They wanted the land for themselves. The war continued for one year, down at Kohitere and at Kohitere. The Haowhenua is [] side of the river. After fighting for some time, Taranaki went to Taupo for assistance. When the three chiefs came they occupied the Rangiuru pa, Ruanui and Taranaki occupied a pa on the banks of the Otaki (Pakakutu). Te Awa and the other two [] were defeated. They returned to their kainga. Ngati Awa went to Waikanae. [] was used to grow food. After this the second migration arrived, principally Ngati Huias.

As noted above, Ngati Raukawa were aided by also by Muaupoko, Rangitane, and Ngati Apa at Haowhenua, as was pointed out by Parakaia Te Pouepa in 1866. But as always there are various ways this assistance can be interpreted. To Parakaia, Ngati Apa, Rangitane, and Muaupoko were subject tribes, and as such were bound to provide military assistance when required.⁸¹¹

Next came parties from Taranaki. Ngatiapa, Rangitane, and Muaupoko were living at that time in our midst, and joined with us in fighting against those tribes. Those tribes, Rangitane and Ngatiapa, though

⁸⁰⁷ Ballara, *Te Tau Ihu*, 126.

⁸⁰⁸ (1872) 1 Otaki MB 128.

⁸⁰⁹ Luiten, p. 6.

⁸¹⁰ (1891) 16 Otaki MB 346.

⁸¹¹ Letter or memorandum by Parakaia Te Pouepa, 23 October 1866, in T C Williams, *Himatangi Purchase* (1868), 9-11.

living in our midst, were living in subjection, without authority over the land land. They cannot refute this.

Hoani Meihana Te Rangiotu of Rangitane in his evidence in the Kukutauaki case in 1872 also noted that Rangitane and the other groups had assisted Ngati Raukawa at Haowhenua. Hoani Meihana sought to use this fact to show that Ngati Raukawa, Ngati Apa, Rangitane, and Muaupoko were all living peaceably together and that the assistance to Ngati Raukawa arose out of friendship. According to the full version of his evidence as printed in *Te Waka Maori*.⁸¹²

The fifth point of which I shall speak relates to the fighting at Haowhenua (Otaki), where the Ngatiawas and a section of the Ngatitao attacked the Ngatiraukawa. On that occasion our people befriended and assisted the Ngatiraukawa, lest they should be utterly destroyed by the numerous tribes who were there collected against them. The Muaupoko went from Horowhenua to assist them; the Rangitane and Ngatikahungunu from Manawatu; Ngatiapa from Rangitikei; and the Whanganui people from Whanganui.

Others saw the aid received from further afield as decisive. According to Horomona Torenuī, a Crown witness in the Himatangi case (1868):⁸¹³

Then the 'heke' of Ngatiruanui Taranaki and Ngatiawa came to Ohau and "ka putu e Ngatiraukawa" – Tawake Ngatiawa chief was killed – this was the Haowhenua business – when the Ngatiawa of Waikanae (the 1600) heard that this "pito" of them had been "patued" they came from Waikanae and built the Haowhenua "pa" – Ngati Raukawa fought and two Ngatiruanuis were taken to the "pa" and three of the Waikanae 1600 – Ngati Tuwharetoa – Te Heuheu – Waikato – Ngati Maru Whanganui Te Reanuku (Tohi's brother⁸¹⁴) Ngati Whakaue – we were there one year – we had been surrounded by the enemy when the succour arrived and saved us – there was a fight between these allies and Ngati Awa at Te Horo where Tupeotu and Te Hau Te Hore fell – Ngatiawa came back to Haowhenua a fight ensued and Te Hika of Ngati Whakaue fell

In this conflict Ngati Toa were divided. As Ian Wards has written (insightfully as always), "by this time [i.e. immediately before Haowhenua] the distrust between the Ngati Raukawa and the Ngatiawa had flared into open hostility, a situation that was aggravated not only by the accession to the Ngatiawa battle strength, but by the fact that the Ngati Toa were not unanimous in their attitude".⁸¹⁵ Te Rauparaha was a Raukawa chief, and he naturally took the part of Ngati Raukawa. Whose side Te Rangihaeata was on is unclear (the sources are conflicting), but given his close association with Te Rauparaha and with Ngati Huia it seems unlikely to me that he would have actively supported Ngati Awa (but then again his wife, Te Rongo, was Ngati Mutunga).⁸¹⁶ Perhaps he kept out of the whole affair. But another section of Ngati Toa, particularly Ngati Te Maunu, felt more inclined to support "Ngati Awa", more especially when the conflict began to spread and Ngati Raukawa sought and received aid from many other groups. Ngati Toa were closely connected both to Ngati Raukawa and "Ngati Awa", particularly to Ngati Mutunga, and thus through them to other Taranaki groups. Wiremu Piti Pomare (also known as Pomare Ngatata), chief of Ngati Mutunga, was married to Tawhiti, of Ngati Toa, although according to Ballara Pomare sent Tawhiti back to her people after Haowhenua.⁸¹⁷ Inia

⁸¹² "Hoani Meihana's address to the Native Lands Court at Foxton", *Waka Maori*, Vol 8, Issue 24, 24 December 1872.

⁸¹³ (1868) 1E Otaki MB 571.

⁸¹⁴ Possibly referring to Tohi Te Ururangi of Ngati Whakaue.

⁸¹⁵ Wards, *Shadow of the Land*, 217.

⁸¹⁶ See Ballara, *Taua*, 349. Wards believes that Te Rangihaeata sided with Te Ati Awa (Wards, *Shadow of the Land*, 217) but is in fact unclear who he supported.

⁸¹⁷ Ballara, "Pomare, Wiremu Piti", *DNZB*, vol 1, 348.

Tuhata of Ngati Mutunga, an important landowner in the Chatham Islands and a rangatira of Ngati Mutunga, was a grandson of Te Rau-o-te-Rangi of Ngati Toa (he said that "I belong to the Ngati Toa tribe, through my grandmother"⁸¹⁸). His mother, Mere Rangiaanu (Ngati Toa) married (i) Inia Tuhata the elder (Ngati Mutunga) and (ii) Wi Naera Pomare (Ngati Toa, Ngati Mutunga). Wi Naera Pomare, paramount chief of Ngati Mutunga, was a son of Te Rongo (Ngati Toa) by her first marriage to one Captain Blenkinsopp; Te Rongo's second marriage was to none other than Te Rangihaeata (she died at the Wairau, hit by a stray bullet, and it was for her sake that the enraged Te Rangihaeata exacted utu on the captives). Te Rau-o-te-Rangi, also known as Kawhe or Kahe, was a formidable Ngati Toa woman, one of only five women who were signatories to the Treaty of Waitangi in their own right, who was herself half Ngati Mutunga: her parents were Te Matoha of Ngati Toa and Te Hautonga of Ngati Mutunga. She married Jock Nicholl, a whaler, and in later years the couple ran a well-known inn at Paekakariki.⁸¹⁹ Wi Naera Pomare, who was thus half-Pakeha, half NgatiToa, was adopted by Pomare of Ngati Mutunga, presumably after the boy's mother died at the Wairau;⁸²⁰ Pomare succeeded Patukawenga as the leading chief of Ngati Mutunga and Wi Naera Pomare became chief of the tribe in his turn, and married (as stated) Mere Rangiaanu (Ngati Toa). Thus the connections between Ngati Toa and "Ngati Awa" were close and densely interwoven, but the so were they with Ngati Raukawa.

Alliances and sympathies were finely balanced, one reason why the whole affair was so destabilising and dangerous. Families could find themselves on different sides. Oriwia Hurumutu (speaking in 1868) said she was with Ngati Awa but her sister was with Ngati Raukawa:⁸²¹

We joined the Ngatiawa side- when Ngatiraukawa sent for allies in the North – my 'teina' Amiria Te Ruatahua was with Rauparaha on the Ngatiraukawa side – was wife to Te Matata – She is dead – she cam back from Ohau with the party who was fetched after Haowhenua.

A view of events from the perspective of the "Ngati Awa"-leaning section of the leadership of Ngati Toa is given by Nopera Te Ngiha in his evidence in the Himatangi case (1868):⁸²²

Ngati Awa from Waikanae then came up and attacked Ngati Raukawa in their pa at Otaki. Haowhenua was Ngati Awa's pa. Pakakutu was Ngati Ruanui's and Taranaki's pa. Fought with varied success: Ngati Raukawa invested. Te Heuheu (Taupo) heard, and came down - parties from Muaupoko, and Ngati Apa, Rangitane, Taraia (Thames) and [Nini?] - Tariki - Taonui - Te Heuheu (Taupo). I looked and said, This is Waikato. Te Tupe o Tu, Te Haukahoro killed. We then helped Ngati Awa to build a pa as Ngati Awa

⁸¹⁸ (1883) 2 Wellington MB 163.

⁸¹⁹ On Te Rau-o-te-Rangi see Eleanor Spragg, "Te Rau o te Rangi, Kahe", *Dictionary of New Zealand Biography* vol 1, 504; W.C. Carkeek, *Kapiti Coast*, Reed. Wellington, 1966, 140. She signed the Treaty at Port Nicholson on 29 April 1840. James Cowan describes Te Rau o te Rangi as follows: "a very fine and handsome woman. for she was straight and tall and deep bosomed, beautifully and generously proportioned and muscular of limb, a woman well fitted to mother warriors. She excelled in swimming and diving. No one on Kapiti, man or woman, was a more strenuous diver for shellfish: no one could fell a basket more quickly or remain under water longer; and in every swimming race she distanced her rivals, just as in later years she defeated all white sailors who challenged her": *Evening Post*, July 27 1912, cited in Cody, *Man of Two Worlds*, 12. Te Rau-o-te-Rangi was born at either Kawhia or Urenui and took part in Te Rauparaha's journey to Kapiti in 1821. Jock Nicholl left his whaling ship in Cloudy Bay and he and Te Rau-o-te-Rangi were married and living on Kapiti by 1832-33. The couple were much engaged in trade and were married by the Presbyterian minister at Wellington in 1841. Te Rau-o-te-Rangi was baptised by Hadfield in 1844 and became a supporter of the CMS. From 1845 Te Rau-o-te-Rangi and Jock Nicholls ran the tavern at Paekakariki and Sir George Grey came to know the family well.

⁸²⁰ See Angela Ballara, "Pomare, Wiremu Piti", *Dictionary of New Zealand Biography*, vol. 1, 348. Ballara says (ibid) that Wiremu Naera Pomara was Wiremu Piti Pomare's nephew. (Qu: is this correct? He would be his nephew, one assumes, in the sense of being his *wife's* nephew: that is that Pomare's wife, Tawhiti, was a sister of Te Rongo. This may be the case.)

⁸²¹ Evidence of Oriwia Hurumutu, Hurihangataitoko 2 case, (1868) 1D Otaki MB 568 (8 April 1868).

⁸²² (1868) 1 C Otaki MB 394-395.

was [395] related to Ngati Toa. Ngati Raukawa then suffered a reverse, before Kati Hiku. Peace was then made. Waikato went back and Otaki was built by Ngati Raukawa. Rauparaha was followed to Ohau and brought back by Te Hiko and returned to Kapiti with part of Ngati Raukawa. Horomona and his party: - and Nepia Taratoa with Haerewharara, went to Rangitikei. The fighting had ceased.

The interesting detail here is Te Rauparaha's decision to go north, getting as far as Ohau before he was "brought back". Evidence about the battle and Te Rauparaha's decision to go north is also given by Oriwia Hurumutu, who says he was on his way to Maungatautari:⁸²³

Haowhenua – Otaki 'pa' was left by Ngatiraukawa and Rauparaha and the 'pa' was burnt by Ngatiawa – I and my 'matua' followed Rauparaha to Ohau and stopped him from going, he was on the way back to Maungatautari – took Ngatiraukawa chiefs and Rauparaha back to Kapiti.

Another tradition, recorded by Dreaver in his history of the Horowhenua region, is that Te Rauparaha was on his way to live with his friend Te Heuheu at Taupo.⁸²⁴ Thus although there is reliable evidence that Te Rauparaha left the scene, there is no clear agreement on where he was going and what he was planning to do – whether that was to go to the Waikato (to retire? To gather reinforcements) or perhaps to live out his days with his friend Te Heuheu. It is unlikely that Te Rauparaha was planning on retirement, and in fact he had years of active leadership ahead of him. My guess is that he was planning on getting reinforcements, probably from those sections of Ngati Raukawa who were still in the Waikato, and that he was persuaded by Te Hiko that this was not necessary.

In general terms Haowhenua was inconclusive. Metekingi Paetahi of Whanganui said in 1868 that "Ngati Raukawa got the worst of it".⁸²⁵ Its inconclusiveness is best shown by uncertainty on the part of historians as to which side was victorious. Some historians see Ngati Raukawa as victorious, others Ngati Awa, but all agree that it was a finely balanced outcome. Ann Parsonson believes that Ngati Raukawa were undoubtedly the victors of this "unspectacular...militarily indecisive conflict" which left left Te Ati Awa "totally unsettled".⁸²⁶ Anderson and Pickens state that "the result was inconclusive, but...the greater honours probably lay with Te Ati Awa."⁸²⁷ Wards describes it as a "draw", after which "the visiting tribes left, and the Raukawa and Ngatiawa settled down to a form of resentful neutrality".⁸²⁸ Ballara believes that "the battle was inconclusive but Ngati Raukawa were the greatest losers; they felt constrained to withdraw, at least temporarily, from Otaki to Rangitikei".⁸²⁹ And contemporaries saw the fighting as inconclusive as well. According to Ihakara Tukumara (Ngati Raukawa), speaking in the Kukutauaki case (1872), '[w]e fought for some time with Ngatiawa but no victory gained on either side'.⁸³⁰ Stirling has claimed that "Te Rauparaha and some among Ngati Raukawa were so demoralised by their defeat that they decided to return to their northern homes, but were eventually persuaded by Te Rangihaeata and others to return" is to go too far: it is unclear whether Ngati Raukawa actually were defeated or demoralised.⁸³¹

⁸²³ Evidence of Oriwia Hurumutu, Paremata case, 27 June 1868, (1868) 1E Otaki MB 730.

⁸²⁴ Dreaver, *Horowhenua*, 30.

⁸²⁵ Evidence of Rakapa Kahoki, Himatangi case, as recorded in the *Wellington Independent*, 2 April 1868 (Appendix 3.1.1.1). This evidence was part of the Crown case.

⁸²⁶ Parsonson, *He Whenua Te Utu*, 175.

⁸²⁷ Anderson and Pickens, *Wellington District*, Rangahaua Whanui District 12, 1996, 16.

⁸²⁸ Wards, *Shadow of the land*, 217.

⁸²⁹ Ballara, "Te Whanganui-a-Tara", 24.

⁸³⁰ (1872) 1 Otaki MB 128.

⁸³¹ See Stirling, *Muaupoko Customaru Interests*, Wai 2200 Doc#A 182; Watangi Tribunal, *Horowhenua*, 101-2.

It seems fairly clear that *both* sides withdrew once the fighting had finally ended. According to Nopera Te Ngiha of Ngati Toa, Ngati Apa, who had supported Ngati Raukawa, went home after the battle. Ngati Raukawa went north with them as far as Ohau, “but the bulk of them were induced to come back to Kapiti”.⁸³² Metekingi Paetahi (Whanganui, a participant in the battle) said in 1868 that after the battle Ngati Raukawa went to Ohau.⁸³³ After the fighting it appears that the two sides prudently pulled apart, some Ngati Raukawa hapu abandoning Otaki for a time and retreating north to Ohau (and perhaps further afield), and the Ngatimaiotaki, Ngatiwaihurihia and Ngati Kapu hapu in turn moving to Otaki.⁸³⁴ Te Ati Awa and their allies fell back south to Waikanae, basing themselves at Kenakena on the Waikanae River. Some of Ngati Awa now regarded themselves as having land in the region in their own right, and not from any allocation by Te Rauparaha.⁸³⁵ After the battle many of Te Ati Awa left the Waikanae area completely and crossed the straits to settle in Totaranui, Arapaoa, and other parts of Te Tau Ihu, led by their chiefs including Huriwhenua, Reretawhangawhanga, Tamati Ngarewa, and Te Manu Toheroa.⁸³⁶ According to Wi Parata (Ngarara case) (1890) “[a]fter peace was made Ngati Awa broke and went to Arapawa [sic]”.⁸³⁷ In the same case Hohaia Pokaitara said that “[a]fter Houwhenua [sic] we all Ngatiawa went away to Arapaoa”.⁸³⁸

In my view Ian Wards was right to see the main outcome of Haowhenua as significantly adding to the complexity of the tapestry of iwi and hapu politics in the region: “[t]he various alliances that had been made combined with the normal movement of sub-tribes – every great chief had a number of such tribes under his cloak”- resulted in a good deal of temporary settlement, and there was a degree of movement between the Wellington district, Wanganui, and the central districts”. Ngati Tama, led by their chief Te Kaeaea, sought to take advantage of this fluid situation by trying to seize some land at Paremata for themselves, but Ngati Toa and Ngati Raukawa drove them off. Ngati Tama then settled for a time at a place near Ohariu before attempting to seize Mana Island, once again being driven off. Te Kaeaea received from Te Rangihaeata at this time the derisive nickname of Taringa Kuri (‘Dog’s Ear’).⁸³⁹ Ngati Mutunga, who had been living around Port Nicholson for about a decade, moved on to the Chatham Islands at the end of 1835, along with some of Ngati Tama. According to Wi Parata, Ngati Toa went to Port Nicholson to farewell Ngati Mutunga and gave them a greenstone mere as a parting gift.⁸⁴⁰

Ngati Mutu[nga] were left here [Port Nicholson] for Chathams. When Rauparaha heard they were going to Chathams they came here to bid them farewell. They Ngati Mutunga took with the mere of my ancestors and they have it to this day, but when the others went to other places they [i.e. Ngati Toa] gave

⁸³² Evidence of Nopera Te Ngiha, Himatangi case, as recorded in the *Wellington Independent*, 2 April 1868 (Appendix 3.1.1.1).

⁸³³ Evidence of Rakapa Kahoki, Himatangi case, as recorded in the *Wellington Independent*, 2 April 1868 (Appendix 3.1.1.1). This evidence was part of the Crown case.

⁸³⁴ Evidence of Rota Te Tahiwai, Waiorongomai case, (1869) 1 G Otaki MB 99.

⁸³⁵ Alan Ward, *Maori Customary Interests in the Port Nicholson District*, 105. As Ward notes, this was something that Te Rauparaha did not accept: “[i]n point of fact, although Ngati Awa were certainly challenging Te Rauparaha’s authority, he was resisting the challenges”.

⁸³⁶ On Te Ati Awa settlement in Te Tau Ihu after Haowhenua see Ballara, *Taua*, 380-3; Ballara, *Te Tau Ihu* 128-134. Other areas in Te Tau Ihu were settled by Ngati Rarua and Ngati Tama at the same time.

⁸³⁷ (1890) 10 Otaki MB 162. Arapawa (or Arapaoa) is a name for the whole of the Queen Charlotte Sound region, not just Arawapa Island.

⁸³⁸ (1890) 10 Otaki MB 102 (Ngarara West rehearing). On the Ngarara West case see Boast, *Native Land Court*, vol 2, NLC 165, 542-564.

⁸³⁹ Ballara, “Te Kaeaea, ?-1875, Ngati Tama leader”, *DNZB* vol 1 (1990), 455-57 (“Taringakuri, he turinga ki te kupu o Mokau [Te Rangihaeata]”).

⁸⁴⁰ (1890) 10 Otaki MB 162.

them no parting present only said good bye. Ngatiawa went to the other island, and were told what portions to occupy, then they lived on the land like chiefs, free men.

Ngati Mutunga and some Ngati Tama people went on to Wharekauri, which they seized in 1835-36.⁸⁴¹ (Subsequently, a few years after conquering and enslaving the Moriori people, Ngati Tama and Ngati Mutunga fought each other in the Chathams.⁸⁴²) Te Wharepouri and Te Puni moved with their Ngamotu people (and perhaps others of “Ngati Awa”) to Port Nicholson. According to Angela Ballara Ngati Mutunga formally transferred their lands around the harbour to their Ngamotu kin.⁸⁴³ Other sections of “Ngati Awa” remained at Waikanae, under the leadership of Te Rangitake (Wiremu Kingi), son of Te Reretawhangawhanga, and others. Tensions between “Ngati Awa” at Waikanae and Ngati Raukawa remained.

5.6 Further Ngati Raukawa settlement in the Rangitikei after Haowhenua

As noted, after Haowhenua many of Ngati Awa withdrew to Port Nicholson and the South Island. At the same time some Ngati Raukawa groups moved north and occupied lands in the area between the Rangitikei and Manawatu rivers. Nopera Te Ngiha said that after Haowhenua “Nepia Taratoa, Horomona, and others whose names have been mentioned, went on to Rangitikei.”⁸⁴⁴

Haerewharau and his son had gone on previously, but subsequently to the return of Ngatiapa. They went on to the Ngatiapa pas. The land which Horomona and the other Ngatiraukawas occupied was given to them by the Ngatiapa. The land north of Rangitikei was sold to the Crown by Ngatiapa.

This process of settlement was described in detail in evidence given in the Rangitikei-Manawatu case in 1869. According to Matene Te Whiwhi.⁸⁴⁵

After the war between Ngatiraukawa and Ngatiawa – the last fight being Haowhenua – they [meaning Ngati Raukawa] went to the Rangitikei-Manawatu block. They remained there. *They occupied the pieces of land they had originally marked out.* (emphasis added).

Later in his evidence on the same occasion he added:⁸⁴⁶

The Ngatiraukawa, immediately after Haowhenua, located itself, and hapus, in various places even on the other side of the Rangitikei. (Various hapu named as residents: Ngatiparewahawaha, Ngatikauwata [sic], Te Mateawa, Ngatiwehi, and Ngatirakau.) The resident tribes [*did*] not attempt to prevent them. These hapus remained in possession up to the time the Government came and down to the present time.

Rakapa Kahohi, Matene Te Whiwhi’s sister, also described in her evidence in the Himatangi case, along with many other interesting details, how Ngati Raukawa people went to the Rangitikei area after Haowhenua.⁸⁴⁷

When Rauparaha conquered these lands, they [Mgati Toa] did not drive the tribes out. The Ngatiapa were allowed to remain in possession of the Rangitikei country. The Ngatitoa made friends over Te

⁸⁴¹ See evidence of Wi Naera Pomare and Rakataau, (1870) 1 Chatham Islands MB 1-7.

⁸⁴² Evidence of Hirawana Tapu (1900) 2 Chatham Islands MB 160; Alexander Shand (1900) 3 Chatham Islands MB 50. See generally Michael King, *Moriori: A People Rediscovered* (Viking, Auckland, 1989); on the fighting between Ngati Tama and Ngati Mutunga at Wharekauri see *ibid*, 73.

⁸⁴³ Ballara, “Te Whanganui-a-Tara”, 28.

⁸⁴⁴ Evidence of Nopera Te Ngiha, Himatangi case, as recorded in the *Wellington Independent*, 2 April 1868 (Appendix 3.1.1.1). This evidence was part of the Crown case.

⁸⁴⁵ Evidence of Matene Te Whiwhi, Rangitikei-Manawatu case 1869, MA 13/113/71.

⁸⁴⁶ Evidence of Matene Te Whiwhi, Rangitikei-Manawatu case 1869, MA 13/113/71.

⁸⁴⁷ Evidence of Rakapa Kahoki, Himatangi case, as recorded in the *Wellington Independent*, 2 April 1868 (Appendix 3.1.1.1). This evidence was part of the Crown case.

Pikinga, the Ngatiapa woman whom Rangihaeata took to wife. The Ngatiapa assisted Te Rauparaha in the great fight at Kapiti [referring to Haowhenua?⁸⁴⁸]. They acted with bravery. I was not aware that there were any Ngatiapa slaves in the hands of Ngatitōa at that time, because Te Rangihaeata's mana rested on these people. I never heard of any battle between the Ngatiraukawa and the Ngatiapa. Te Ahukaramu came to Kapiti and afterwards left it. Waitohe [sic] said, "Let us go and get our own children". Ngatiraukawa came right on to Kapiti. They had been living at Kapiti several years before they came over to the mainland. They then came over to Otaki, and lived with Matene and the rest of us who had separated themselves from the Ngatitōa. They lived here many years. After the battle of Haowhenua, the Ngatiraukawa left Otaki. They then went to Rangitikei. It was not a thing consented to by Te Rauparaha. The portion given to Ngatiraukawa commenced at Manawatu and came on southward. Ngatiapa were at that time living at Rangitikei. They had been left there at the time of the heke, and had continued there. At that time the Rangitane were still living in Manawatu. I consider that it was right for the Ngatiapa to take part in the sale of the Rangitikei Manawatu block. It would not have been right for the Ngatiraukawa to sell the block alone. It was right that they should join the sale. The mana of Rangihaeata was over the Ngatiapa. His influence, through his marriage with a Ngatiapa woman, prevented the Ngatiapa from being placed under subjection.

In the Himatangi case Wi Tamehana Te Neke gave an account of Haowhenua and its aftermath from a Te Ati Awa perspective:⁸⁴⁹

I belong to the Ngatiawa and Taranaki tribes. I am related through my ancestors to the Ngatiapas. I came down with the third migration of the Ngatitōa. I have heard the evidence of the Ngatitōa witnesses. I can confirm it because I was a man at the time that the events related took place. I took part in the Haowhenua fight. The Ngatiraukawa were beaten and fled to Ohau and Manawatu. We, the Ngatiawa remained in possession. The Ngatiraukawa located themselves at Otaki, where they remained till the time of the Haowhenua fight. After that they located themselves on both sides of Manawatu. When they went to the other side, they did not destroy the mana of the Ngatiapa. They did not go up there fighting. They went as friends. The Ngatiapa held their own mana, and the Ngatiraukawa held their own mana. Ngatiraukawa never extinguished the mana of Ngatiapa. It would not have been right for the Ngatiraukawa to sell that land without the concurrence of the Ngatiapa. I recollect the Kuititanga battle. The Ngatiraukawa were beaten again. The mana of the Ngatitōa and the Ngatiawa over this country was equal. It would not be right for the Ngatiraukawa and Ngatiapa to sell that land without consulting Ngatitōa and Ngatiawa.

In the Rangitikei Manawatu case, Atereti Taratoa, daughter of the prominent Ngati Raukawa chief Nepia Taratoa, also spoke of Ngati Raukawa hapu moving into the land between the Rangitikei and the Manawatu after Haowhenua.⁸⁵⁰

Remember the going of Ngatiparewahawaha to Rangitikei, after Haowhenua. I went up there first. My father came up afterwards. The Ngatiapa collected together at Te Aua, at the request of my father. Knows Matene Te [Matuku] and his sister. At the time of the Hekewhirinui the latter was a slave. So was Matene Te [Matuku]. Matene was a chief of Ngatiapa. Ngatiparewahawaha, Ngati Kahoro, Te Mateawa and Ngatimaotaki came up in force after we had been two years in Rangitikei.

⁸⁴⁸ She may mean the battle of Waiorua, which is in my view unlikely: it seems to be well-attested that Ngati Apa were part of the coalition that attacked Ngati Toa at Waiorua.

⁸⁴⁹ Evidence of Wi Tamehana Te Neke, Himatangi case, *Wellington Independent*, 2 April, 1868.

⁸⁵⁰ Evidence of Atereti Taratoa, Rangitikei-Manawatu case 1869, MA 13/113/71 folio 506.

To similar effect was the evidence of [Heruihau] Wairaka, who said that while there was disputation when Ngati Raukawa went to the Rangitikei-Manawatu area after Haowhenua, this was inter-Raukawa disputation only.⁸⁵¹

After Haowhenua the Ngatiraukawa went to Rangitikei...The Ngatiraukawa located themselves on various places. They found the Ngatiapa at [Orepurehu?]/ My father set them to working – potting tuis. My mother’s brother [Taimaiawhio?] was there. He came back and found the Ngatiraukawa at Te Aratau[]. The Ngatiraukawa at this time had possession of all the Ngatiapa country as far as Turakina. I lived on a part of that country. There were disputes between various sections of Ngatiraukawa at that time about the land. The Ngatiapa had no voice in the quarrels. They were simply squatting on the land. I did not hear about the Ngatiapa holding any land on the South bank of the Rangitikei. I did not here the Ngatiapa claiming the land. Perhaps this was because the land was theirs originally. I know nothing about the Treaty, but I remember the Blankets. I did not know that they had any connection with the Treaty. I never heard the Ngatiapa claim the land before the introduction of Christianity.

In response to a question from the Court, he said also that while Ngati Raukawa buried their dead at three different places on the block, the Ngati Apa buried their dead at Parewanui.⁸⁵²

Parakaia Te Pouepa said in 1868 (Tawaroa 3 case) that after Haowhenua he moved north, but subsequently returned.⁸⁵³

3rd year [at Tawaroa] was the fight with Ngati Awa – after Haowhenua went to Manawatu – two years after came back and felled and planted.

In 1869 Parakaia successfully claimed a small area north of the Manawatu at Pareteao, notwithstanding the opposition of the Crown. Parakaia’s wife, [Wiriaka?] Hinewihi gave evidence that after Haowhenua her family, led by her father Parakaia Te Kuru, went to Pareteao, cleared land there while staying at Oroua before returning to Pareteao to plant their crops and to reside on the land.⁸⁵⁴ Hamuera Te Raikokiritia of Ngati Apa, who gave evidence as part of the Crown case in the first Himatangi hearing, gave in cross-examination the names of some of the Ngati Raukawa (presumably meaning the Ngati Raukawa chiefs) who went to the Rangitikei-Manawatu lands after Haowhenua. He also states that Ngati Kauwhata led by Te Whata were already living at Oroua at this time.⁸⁵⁵

I can tell the names of the Ngatiraukawa who were in the Rangitikei Manawatu block after Haowhenua – they were Nepia Taratoa, Haerewharara and Horomona – Taiaho (Nepia’s brother) Aperahama Te Huruwhuru – Rangimaru Wereta – Te Waha – Te Rongo – Te Kakahi. These are all I know of – they first went to Te Ika-te-Mate at Waituna up the Rangitikei – these were Parewahawaha – Te Whata chief of Ngati Kauwhata were living at Oroua before Haowhenua – they were but a small party – It was through my father Raikokiritia – that they went there – he was fond of Te Whetu because he was the man who caught my mother – I have admitted that we [Ngati Apa] ran in the bush for fear of guns – you ask Tapa Te Whata if he called me out of the bush.

⁸⁵¹ Evidence of [Heruihau] Wairaka, Rangitikei Manawatu case, MA 13/113/71, folios 503-504.

⁸⁵² Ibid, folio 505.

⁸⁵³ Evidence of Parakaia Te Pouepa, Tawaroa 3 case, (1868) 1D Otaki MB 549.

⁸⁵⁴ Evidence of [Wiraka] Hinewihi, Pareteao case, (1869) 1G Otaki MB 19:

After Haowhenua Parakaia Te Kuru (my father) and us came to Manawatu. We went to Oroua, stayed there, and made a clearing at Te [Kirikiri] near Himatangi. When the clearing was made Parakaia and Ihakara’s family came back to Otaki. After we had planted our clearing, Parakaia, Te Kuru, Hakopa, Kuha came and lived on Pareteao. This was after Haowhenua but before Kuititanga.

⁸⁵⁵ Evidence of Hamuera Te Raokiritia (Ngati Apa), Himatangi case, (1868) 1D Otaki MB 553-54 (in cxx by T C Williams).

The leading Ngati Raukawa chief of the Manawatu-Rangitikei region by the 1840s was Nepia Taratoa of Ngati Parewahawaha, married, according to E J Wakefield, to Te Whatanui's sister (Pareautohe?). He also happened to be Te Rauparaha's nephew. Nepia had cultivations on the southern bank of the Rangitikei river (there was a Ngati Apa kainga on the opposite bank). Wakefield travelled from the Manawatu to the Rangitikei in the company of Nepia's wife and brother; their potato-grounds were "about six miles up the eastern bank, opposite to the *pa* of the Ngatiapa".⁸⁵⁶ His Ngati Raukawa hosts "behaved with great kindness and towards me". Some sources give the name of the Ngati Raukawa community across the river from (presumably) Parewanui as Maramahoea. Wakefield crossed the river in a canoe to the Ngati Apa village: "[h]ere the whole of the *Ngatiapa* residing on this river, who are not above a hundred in number, have their abode".⁸⁵⁷ It is also very possible that the tensions between Ngati Apa and Ngati Raukawa which played an instrumental role in the Rangitikei-Manawatu purchase are connected with the movement of Ngati Raukawa people to the Rangitikei after Haowhenua.

5.7 Feast of the Pumpkins (c. 1834)

In or around 1834 a rather strange and tragic episode occurred when many Muaupoko died, either at Ohariu or at Wainui (near Waikanae) – depending on which version is preferred - despite Whatanui's warnings to Muaupoko to be careful. Accounts of this event were given by Te Peeti Te Aweawe and by Keepa Te Rangihiwini at [Kukuatauaki or Horowhenua?] hearing in 1872? [Carkeek's references say the Himatangi hearing, 1872] It was also described by Wirihana Hunia in 1896:⁸⁵⁸

Te Rauparaha was not satisfied; he still wished to get more revenge for the death of his children, and started once more to fight Muaupoko. Te Rauparaha went to Ngatiawa to assist him. He told them to get a large feast for Muaupoko and Rangitane, and to invite them to this feast at Waikanae, and when they came on their invitation to murder them. The Ngatiawa started to prepare this feast that they had got a new food – "all red inside" - which was very nice. Then the Rangitane and Muaupoko went down to partake of this feast, and when they got to Waikanae the Ngatiawa slaughtered them. Four hundred of the Muaupoko and Rangitane were killed on that occasion. When Muaupoko and Rangitane got to Otaki on that occasion, Te Whatanui cautioned them not to go on to Waikanae, as treachery was intended; but they did not pay any attention to what was said and went on, with the result that 400 were killed.

T C Williams gave the following description of this affair to the Native Affairs Select Committee of the Legislative Council in 1896:⁸⁵⁹

When Hunia of Ngatiapa, who had lately been acknowledged by the Government as the principal selling chief when the Manawatu-Rangitikei block was purchased – the block reserved by Ngatiraukawa for themselves after they had formerly restored 250,000 acres to Ngatiapa, and a similar large block to Rangitane⁸⁶⁰ - was giving his evidence in Court, in cross-examination, I asked him to give the story of the murder of these people at Wainui. I did this in order to show the utterly helpless position of these people, then living under the protection of the Ngatiraukawa. He told the story that Rauparaha sent messengers inviting them – Ngatiapa, Rangitane, and Muaupoko – to a feast at Wainui. They said they were going to make peace with them, and these people thought it was a compliment to them. When they reached Otaki, Whatanui, who was in his *pa* there – he had been at war with Ngatiawa, and had his great *pa* there – sent for them. When they came to him he said, "Where are you going?" They said, "We are going to Wainui for a feast." Whatanui was intimate with Rauparaha, and, of course, knew Rauparaha's

⁸⁵⁶ Wakefield, *Adventure in New Zealand*, vol 2, 227. This must have been Parewanui.

⁸⁵⁷ *Ibid*, 227-8.

⁸⁵⁸ Wirihana Hunia, Horowhenua Commission, 1896 AJHR G2, 48.

⁸⁵⁹ 1896 AJLC Appendix 5, Evidence of T C Williams, p 18. Williams also mentions this episode in his *Letter to the Right Hon W E Gladstone being an Appeal on behalf of the Ngati Raukawa Tribe* (J Hughes, Wellington, 1873), 7. For other accounts, see Burns, *Te Rauparaha*, 175-176; Carkeek, *The Kapiti Coast*, 31-2.

⁸⁶⁰ Williams is referring to the Te Ahuaturanga block.

mind regarding these people, and told them to go back, as he was suspicious of this feast. They seemed quite satisfied, and declined to go back, when Whatanui said, “The road is open, I cannot make you go back; but mind this, whilst you are amongst my people I am responsible for your safety. If you, after my warning, go past my boundary and anything happens to you, I am no longer responsible.” They went down to the Wainui pa, marched in, and sat down in a body. They expected great speechifying and feasting. For a short time there was great silence. The Ngatitōa and Ngatiawa sat there with their tomahawks concealed under their mats. Presently, at a signal from one of the chiefs, they rushed upon these people – some 150 or 200 men, women, and children – and literally hacked them to pieces, and they were all afterwards eaten. I may say, from what I could learn, that had Te Whatanui, instead of urging these people not to attend the feast, sent messengers and insisted upon all attending, they would all have met the same fate.

This event, Williams believed, showed “that had it not been for the protection of the powerful Ngatiraukawa tribe, they would all have been exterminated, or would have had to flee the district”.⁸⁶¹

Another account of this episode is admittedly very late, contained in Judge Harvey’s long report on Wakapuaka (1936). His account will have derived from Ngati Tama and Ngati Koata evidence given at this inquiry:⁸⁶²

When the Ngati Raukawa under Whatanui arrived and were given the land from Otaki northwards to the Manawatu, it caused them to come between Rauparaha at Kapiti and his most hated enemies, the Muaupoko and Rangitane, in the valley of the Manawatu and at Horowhenua Lake. In actual effect, also, Whatanui came between the rivals, because he took Muaupoko and Rangitane under his protection, promising them that in future “nothing but the rain from heaven would fall upon them”. This did not suit Rauparaha, who could not see, in anything less than the utter extermination of Muaupoko, an adequate revenge for the loss of his children. He could do, and did, nothing openly against Muaupoko, as Whatanui was his friend and ally, yet with characteristic genius for trickery and deceit he encompassed their destruction. Events leading up to the massacre followed a course based upon a strict observance of ceremonial. Firstly, Te Whetu (a Ngati Koata chief of note) returned a prisoner to Mahuri, a Rangitane chief living in company with a Raukawa chief on the banks of the Manawatu River. In return Te Whetu was presented by Mahuri with an eeling-place that he fancied. Next Te Puoho expressed a similar desire to have a similar eeling-station, and was given one by Mahuri. Te Puoho’s people thereupon collected a huge present of food for Mahuri’s people, so much above the value apparently of the eeling-station that Mahuri had to make a similar present of food to Te Puoho. Te Puoho then prepared for a feast at Ohariu (the point of departure for the South Island), at which it was announced that a new kind of food would be introduced (possibly melons, pumpkins, or vegetable marrows), and Mahuri and all the people of the district were invited to attend. When Mahuri reached Otaki on his way to the feast, he was warned by Whatanui and other Raukawa chiefs of the danger of venturing into such a hostile country as that beyond Waikanae. Mahuri’s reply was that “It is the boast of Puoho that he will not have his forehead smeared with blood”, meaning that he was above treachery and that he would be safe under the protection of Te Puoho. When Mahuri and his people arrived at Ohariu they were killed by Rauparaha’s Tribe. The friends of the victims did Puoho the honour of saying that he felt so disgraced by the action of Te Rauparaha that he “ran away to the South Island, where he was killed by the Ngaitahu.” It may likely have been more that neither Te Whetu nor Te Puoho did more than unwittingly supply Rauparaha with the opportunity he so much desired.

Te Puoho appears to have been as much surprised by what happened as (no doubt) Muaupoko were. Ballara describes the massacre at Ohariu (if that is where it took place) as “an odd affair, and it seems that Te Puoho had been tricked by others”.⁸⁶³ As Judge Harvey notes, there were those who believed

⁸⁶¹ Williams, *Appeal on behalf of the Ngati Raukawa Tribe*, 7.

⁸⁶² 1936 AJHR G-6B, p 8.

⁸⁶³ Ballara, *Taua*, 347.

that Te Puoho went to the South Island because of his shame over what happened at the feast, where he then led his extremely hazardous (and, in the end, fatal) attempt to attack Ngai Tahu in Southland.⁸⁶⁴ However there are other explanations as to why Te Puoho made this bold journey.⁸⁶⁵ The various narratives are full of inconsistencies, notably the place (Ohariu or Waikanae), the numbers who died (400, 150-200), and who did the massacring (Ngati Toa, Ngati Awa, or both). Why Ngati Awa would want to aid and abet this is unclear: they did not have any particular animus against Muaupoko as far as I am aware. Yet the narratives agree that this tragic event certainly happened, and all of them note that Te Whatanui did his best to warn Muaupoko and Rangitane of the risks they were running. Muaupoko were safe with Ngati Raukawa, but he could not guarantee their safety should they go further afield. This indicates a personal and specific protection of Muaupoko by Te Whatanui, and fits well with the other sources.

Wirihana Hunia (1896) saw this appalling event as essentially the end of the road for Muaupoko: whoever was left now went to Horowhenua and lived there.⁸⁶⁶

That was the end of the fighting of Te Rauparaha. After the death of Paipai, at Papaitonga, they had not been able to achieve any success as against their defeats by Ngatiraukawa, except once. The only revenge they got was the death of a man called Hautoki, belonging to Ngatiraukawa, who was killed by Te Rangihiahia, an ancestor of mine. This ended the fighting between Muaupoko, Ngatiraukawa, and Ngatitua. The Ngatiawa and Ngatiraukawa occupied the land between Manawatu and Wellington, none of the Muaupoko then remaining on the south part of these lands. There were no Muaupoko up by the Manawatu, but they had all gathered together at Horowhenua. Others had gone away to Rangitikei during the time that the fighting was going on; others had gone away to take revenge with the Rangitane. At the time of these fightings, Tangaru had gone away with his people to Rangitane and Wanganui to rest with his wife's people. The others of the Muaupoko stayed here. Others of the Muaupoko had gone to Arapaoa, on the other island; they were so frightened by Te Rauparaha.

5.8 Kuititanga, 1839

The tension between the Taranaki groups, or some of them, and Ngati Raukawa remained. In 1835, as noted, Ngati Mutunga, who had assisted in the invasions of Te Tau Ihu, but who had been living around Wellington harbour for about a decade, suddenly abandoned it and moved en masse to the Chatham Islands (Rekohu/Wharekauri), accompanied there by other groups: the Kekerewai, many of Ngati Tama, and Ngati Haumia.⁸⁶⁷ The invasion of the Chathams is also richly documented in the Land Court minute books.⁸⁶⁸ The Ngamotu group led by Te Wharepouri and Te Puni moved in turn to Port

⁸⁶⁴ See Atholl Anderson, *Te Puoho's Last Raid: The battle of Tukurau 1836-37* (Otago Heritage Books, Dunedin, 1986); Anderson, *The Welcome of Strangers: An ethnohistory of southern Maori A.D. 1650-1850* (Otago University Press, Dunedin, 1998), 87-89; Ballara, *Te Tau Ihu*, 136.

⁸⁶⁵ This is thoroughly discussed by Ballara: see Ballara, *Te Tau Ihu*, 135-136.

⁸⁶⁶ Wirihana Hunia, Horowhenua Commission, 1896 AJHR G2, 48.

⁸⁶⁷ On this see Waitangi Tribunal, *Te Whanganui a Tara*, 27.

⁸⁶⁸ See eg evidence of Toenga, Kekerione or Mangatu Karewa case, (1870) 1 Chatham Islands MB 6; evidence of Rakatau, *ibid*, 7. The Native Land Court awarded most of the land in the Chathams to Ngati Mutunga on the basis of conquest of the Moriori people (whose cultural norms regarding warfare were arguably quite different to those of mainland Maori): see judgments at (1870) 1 Chatham Islands MB 63-67; also Boast, *Native Land Court*, vol 1, NLC 48, pp 581-595. The Waitangi Tribunal reported on the Rekohu/Wharekauri/The Chatham Islands in 2001: Waitangi Tribunal, *Rekohu*, Wai 64, 2001. See also Bryan Gilling, "By Whose Custom? The Operation of the Native Land Court in the Chatham Islands?" (1993) 23 *Victoria University of Wellington Law Review* 45.

Nicholson,⁸⁶⁹ which is where they encountered the New Zealand Company officials on the *Tory* in 1839. The main area of “Ngati Awa” settlement was, however, not at Port Nicholson but at Waikanae.

It was here that the simmering resentment between Ngati Raukawa and the hapus of Te Ati Awa and the other North Taranaki descent groups flared again in 1839 when Ngati Raukawa attacked a Te Ati Awa pa called Kuhititanga, or Te Kuititanga. What caused it all is unclear. E.J. Wakefield, who was present at Waikanae on the afternoon of the battle, and who had spoken to whalers who had watched the fighting from their whaleboats out beyond the surf, describes the fighting as a “fierce and bloody contest”.⁸⁷⁰ (Kuhititanga is at Waikanae on the north bank of the Waikanae river near to where the river meets the sea, and not far from the old main Te Ati Awa pa at Kenakena.⁸⁷¹) Dieffenbach guessed that the main reason for Ngati Raukawa's jealousy of Te Ati Awa was that the latter, being based at Waikanae, were much closer to Kapiti and the commercial opportunities it provided.⁸⁷²

Several years ago the Nga-te-raukaua came from the interior, and formed a settlement on the sea-shore. The whole coast from Taranaki to Port Nicholson is a weather-beaten lee shore, and the only place where large ships can with safety anchor is the roadstead of Kapiti. Not satisfied with a settlement which they had formed at Otaki, they wanted to come nearer to this place of anchorage, for the advantage of trading, and their aim, during several years, has been to drive the Nga-te-awa from Waikanahi [Waikanae] which is opposite Kapiti.

The most detailed description I have encountered regarding this engagement is in the evidence of Wi Parata in the Ngarara West rehearing case (1890). By this time, as Wi Parata notes, many Te Ati Awa people of Ngati Hinetuhi, Ngati Kura, Ngati Rahiri, and Kaitangata hapu had moved to “Arapawa” (Arapaoa – i.e. Queen Charlotte Sound and adjacent areas. According to him, the fighting began immediately after Waitohi's tangi.⁸⁷³

It was not at all suspected Ngati Raukawa would entertain bad feelings towards Ngati Awa. When Ngati Raukawa went to funeral of Waitohi, Ngati Awa began to suspect they had some bad intention. When these mourners went back to Otaki, the Ngati Awa waited but as nothing transpired they ceased to take precautions. Some of the Ngati Awa young men had gone to spear Patiki, when the taua had actually started, and this small party of fishers had returned and got into their houses the fight commenced, the enemy rushing into the houses on them. Then Ngati Raukawa and Ngati Awa fought and the fight was called Kuhititanga and Ngati Raukawa were defeated.

All the hapus of Ngati Apa [sic - Ngati Awa?] were away, except Ngati Awa, a few of those were here but [the] majority had gone to Arapawa. Ngati Rahiri hapu there, majority had gone to Arapawa only a few remained. Ngati Hinetuhi, only a few were here - majority to Arapawa. Ngati Kura [were] the largest hapu of Ngati Awa, and about half went to Arapawa and half remained at Waikanae. Otaraua hapu all went to Arapawa. Kaitangata all went to Arapawa with [the] exception of my ancestor, Aukiore and his children, Kia and others. This Kuhititanga was assaulted by night and there were some slain on

⁸⁶⁹ See evidence of Mawene Hohua, (1868) 1 C Wellington MB 63; Hemi Parae, (1868) 1 C Wellington MB 75-6; Hori Ngapaka, (1868) 1 C Wellington MB 12; Mohi Ngaponga, (1868) 1 C Wellington MB 7; Evidence of Wi Tako, in *Wi Tako v Manihera Te Tou* [Supreme Court reference to NLC], (1868) 1 C Wellington MB 63.

⁸⁷⁰ Wakefield, *Adventure in New Zealand*, (1845), 1, 111.

⁸⁷¹ See the map in Carkeek, *Kapiti Coast*, 172.

⁸⁷² Ernst Dieffenbach, *Travels in New Zealand*, 1, 104.

⁸⁷³ Evidence of Wi Parata, Ngarara case, (1890) 10 Otaki MB 162-3, 164-6. The most comprehensive description in the secondary literature is in Carkeek, *Kapiti coast*, 55-63. Alan Ward has noted the significance of the death of Waitohi: “It is plausibly suggested by several writers his [Te Rauparaha's] prestigious sister Waitohi had kept the peace in the Horowhenua and Manawatu but that her death was the occasion for a release of pentup hostility. It is in fact suggested that the attack by Ngati Raukawa on Ngati Awa at Waikanae was planned at the tangihanga for Waitohi on Mana Island”: Ward, *Maori Customary Interests in the Port Nicholson District*, 107.

both sides but the greater number were Ngati Raukawa, and after that they invented another name for Ngati Kura that were in the pa they called it the Patupo.

Directly after this fight there was peace made. Others have spoken about Te Rauparaha coming and what he did. Rauparaha was Ngati Toa and Ngati Raukawa. He came to Rangihiroa and said, go and rub noses with your [166] people. Directly after this fight, they, the Ngati Kura, built a church. When they determined upon doing this Te Hiko thought the Ngati Rawa [sic - Raukawa?] would come back and commence fighting because they had refused to hear of Christianity. Pukehou. Captain Rhodes' vessel at this time was anchored off Kapiti. The Ngati Awa would not consent to sell Pukehou unless it should disturb the peace made, as Pukehou was on Ngati Raukawa land and Ngati Raukawa were there. Ngati Awa then sold Tiwapirau, not only settlement but all the land. They sold it for guns and ammunition. The payment of the land was made to Ngati Kura, Ngati Hinetuhi and Ngati [Kuri].

I never heard that the payment for this land was given to any of the Ngati Awa tribes. It was not till after Ngati Awa had embraced Christianity that they felt sure trouble of Kuititanga would not be revived.

The *Tory* turned up at Kapiti on the day of the battle. Dieffenbach saw the Te Ati Awa wounded and helped to tend them, and visited the scene of the battle, where the signs of the fighting were very clear: "trenches were dug in the sand of the beach, the fences of the village had been thrown down, and the houses were devastated."⁸⁷⁴ It emerges from Dieffenbach's account of the battle that Te Rauparaha may have connived at Ngati Raukawa's assault on Te Ati Awa. Dieffenbach's account, which tallies quite closely with that of Wi Parata (he also says the attack took place immediately after Waitohi's funeral on Mana), is as follows:⁸⁷⁵

It seems that the attack was concerted a few weeks ago at some funeral festivities celebrated in the island of Mana, in honour of Waitohi, a very old woman, who had enjoyed great renown as a prophetess amongst the different tribes. She was a relation of Rauparaha,⁸⁷⁶ and mother of Rangihaiata, another Nga-te-awa [sic] chief. At these festivities Nag-te-raukaua and Nga-te-awa had assembled together and committed some excesses killing several sheep belonging to a European, for the sake of the wool, which is in great request for interweaving in their mats. These festivals lasted several weeks, and during that time it was said Rauparaha concerted with the Nga-te-raukaua to make the attack, promising them his aid. On their return to Otaki they passed Waikanahi: the Nga-te-awa expected an attack; however, they passed quietly, but returned shortly afterwards. Early before daybreak they surrounded the village, and one of their number, entering a hut, asked a boy for a light. No New Zealander travels so early in the morning with friendly intentions, and the boy, knowing him to be one of their enemies, fired at him, and roused the tribe. The women escaped to the other village, to obtain aid, and the conflict began. The aggressors were defeated, and lost sixty men, amongst whom were several chiefs.

The Nga-te-awa buried their own dead; and they improved state of this tribe was shown by the fact that instead of feasting on the dead bodies of their enemies, they buried them, depositing them in one common grave, together with their muskets, powder, mats, &c., a generosity and good feeling as unusual as it was honourable to their character. The grave of their enemies they enclosed, and made it "tapu."

The complex politics of the region are shown by Dieffenbach's comments on Te Rauparaha's role and the (unsuccessful) efforts made by Te Hiko to prevent the fighting between "Ngati Awa" and Ngati Raukawa at Kuititanga:⁸⁷⁷

⁸⁷⁴ Ernst Dieffenbach, *Travels in New Zealand*, 1, 104.

⁸⁷⁵ Ibid, 104-5.

⁸⁷⁶ Actually, his sister.

⁸⁷⁷ Dieffenbach, *Travels in New Zealand*, 100-101.

He [Te Rauparaha] was very generally considered to have been the instigator of this contest, and the secret supporter of Nga-te-raukaua [sic]. However, he denied the charge, and said he wished for peace. There seemed, however, to be no reason to doubt the truth of the accusation, as he bears an old hatred to the Nga-te-awa, although belonging to the same tribe; *not, however, to that clan of it which was engaged in this fray* [emphasis added⁸⁷⁸]. At all events, Rauparaha seemed in this case to have played the dangerous game of keeping on good terms with both parties. He had gone out on the morning of the battle in his canoe towards Waikanahi [Waikanae] to await the issue, and perhaps partake of the spoil; but he returned when he saw that the Nga-te-awa defended themselves manfully against the superior force of the Nga-te-raukaua. Rauparaha is related to the latter, through his present wife; but many others of his clan, amongst them E Hiko [Te Hiko] and Rangihiroa, are more closely connected with the Nga-te-awa, and are unwilling to join Rauparaha in his enmity against them. On the morning of the affray Hiko had been sent for to prevent the battle. This chief, by his father Tupahi [Te Pehi] (who visited England), related to the Nga-te-raukau, and by his wife to the other tribes of the Nga-te-awa, and, from his relationship to both, is always chosen as peacemaker, for which office, moreover, he is well qualified by personal inclination and talent. In this case, however, he did not succeed, and soon returned to his own island.

Te Hiko's role in attempting to mediate arose out of his kin connections to both groups, Ngati Raukawa and "Ngati Awa", as well as his "inclination and talent" for these kinds of risky negotiations. His father, Te Pehi Kupe, was a direct descendant of Toarangatira, and his grandmother, Waipuna-a-hau, belonged to Ngati Hinetuhi, a North Taranaki descent group usually classed as a section of Ngati Mutunga; Te Hiko's wife was also connected to "Ngati Awa" in the broad sense. Ballara has described how the formalities of peacemaking were typically negotiated by persons of high rank connected to both warring groups, which Te Hiko's efforts demonstrate in this case.⁸⁷⁹ But peacemaking was not always successful, particularly where the groups in conflict, or one of them, felt that there was possible resolution of the matters at issue except by fighting. As Dieffenbach notes, on this occasion Te Hiko, notwithstanding his kin connections to both sides and his diplomatic skills, "did not succeed".

Edward Wakefield also gives a description of the engagement in his *Adventure in New Zealand*.⁸⁸⁰

As we approached Kapiti, which has a high peak in its centre, and is covered with forest to the water's edge, we made out some small islands lying off its southeastern extremity. These form a very excellent anchorage for a limited number of ships. A whaleboat from the easternmost island soon boarded us; and the 'headsman,' or commander of the boat, piloted us into an outer roadstead in twenty-two fathoms...He told us that a sanguinary battle had taken place at a village called Waikanae on the mainland, about three miles from our anchorage, the same morning. Many of the whalers had witnessed the contest from their boats outside the surf. We afterwards gathered the full particulars. The feast to which Te Wetu had told us he was going, had taken place on Mana, where the funeral obsequies of Waitohi, a sister of Rauperaha, had been celebrated by some thousand natives of different tribes. On this occasion, Rauperaha had killed and cooked one of the unfortunate Rangitane slaves, who brought him tribute from the Pelorus; and had share the flesh among his most distinguished guests. Among these were the Ngatiraukawa, a tribe who were induced several years before to come from the interior of the North Island in order to assist him in the conquest of these parts, and who were led by a renowned chief named Watanui, or "the Great Store." They commonly reside at Otaki, about twelve miles north of Waikanae, and had been incited by Rauperaha to annoy the Ngatiawa on their first arrival from Taranaki. Feuds, bloody wars, and a bitter hatred of each other, had been the consequence; and some of their old grievances had been revived by

⁸⁷⁸ i.e. although Te Rauparaha did indeed have kin connections with North Taranaki hapu, he did not with the more recently-arrived 'Ngamotu' group.

⁸⁷⁹ See Ballara, *Taua*, 153-162.

⁸⁸⁰ E.J. Wakefield, *Adventure in New Zealand*, 1, 110.

their meeting at Mana. Rauperaha cunningly fanned the flame; and mutual insults and recriminations followed, on the passage of the Ngatiraukawa past Waikanae to their homes after the feast. Shots were fired in defiance over their heads as they passed along the beach, and even some pigs which they were driving were taken and killed by the Ngatiawa. They prepared for a contest, were marshalled by their chiefs the same evening, and, by previous concert with Rauperaha, attacked the Waikanae pa at daylight.

Two rivers meet there, the Waimea and the Waikanae. A small out-lying village, situated on the sandy tongue of land between the two, sustained the first brunt of the attack. A Ngatiraukawa spy, who found a boy of ten years old awake in one of the huts, asked him for a light for his pipe, thinking him to make him believe he was a friend. His blood, however, was the first spilt; for the gallant little fellow took up a loaded musket and shot him dead on the spot. His friends now invested the village, which, with only about thirty men, held out until their friends from the main pa were roused by the firing and crossed the Waikanae to their assistance. A fierce and bloody contest ensued, ending in the retreat of the invaders, and their total rout along the sandy beach.

But whether Te Rauparaha really did “cunningly fan the flames”, as Wakefield claims, is debatable; Wi Parata in the evidence quoted above stresses Te Rauparaha’s role as a peace-maker. Tensions seemed to have reduced after this in any event. In 1843 Te Rauparaha, by this time living mainly at Otaki, made a gift of timber to Ngati Awa for the construction of their great church at Kenakena.⁸⁸¹ The gifted timber included a totara log 76 feet long which Octavius Hadfield and Te Rauparaha felled at Te Rauparaha’s forest preserve at Ohau. As Ballara puts it, Kuititanga was “the last war between Maori groups on the Kapiti coast”.⁸⁸² Ihakara Tukumarū said in the Kukutauaki case that, like Haowhenua, the battle was a draw, but it did at least settle the boundary between Ngati Awa and Ngati Raukawa at Kukutauaki.⁸⁸³

In 1839 the battle of Kahuitetanga [sic] was fought between us and Ngatiawa. This was also a drawn battle and the result eventually was that we laid down our boundary between our land and that of Ngatiawa at Kukutawhaki [sic]. A fight took place at Waikanae and the Raukawa retired as far as Kukutawhaki and Ngatiawa did not follow. Kukutawhaki was the winning post.

5.9 Ngati Raukawa and the Treaty of Waitangi

There is not much information about the Treaty signing process in the Otaki, Manawatu, and Rangitikei districts. The Treaty of Waitangi was sometimes remembered as the “blanket Treaty” by local Maori chiefs, from the blankets that were distributed to Treaty signatories by Henry Williams. Parakaia Te Pouepa in the Himatangi case in 1868 said he remembered the blankets being handed out by Williams, and that his understanding was that “the blankets were given as proof of the Queen’s love, and to prevent other chiefs taking this country”.⁸⁸⁴ When Williams gave out the blankets, “he [Williams] said it was to make the chiefs of New Zealand sacred to the Queen”.⁸⁸⁵ Only chiefs were given blankets. When asked by Fox whether those who signed the Treaty enjoyed exclusive mana in New Zealand, Parakaia said that he didn’t know.⁸⁸⁶ Others of Ngati Raukawa remembered the “blanket treaty”. Henare Te Herekau recalled that he was tattooed “at the time of the ‘Blanket Treaty’”.⁸⁸⁷ And Wirihiroi Te Angiangi

⁸⁸¹ Sundt, *Whare Karakia*, 98-99.

⁸⁸² Ballara, *Taua*, 353.

⁸⁸³ (1872) 1 Otaki MB 128.

⁸⁸⁴ Parakaia Te Pouepa, Himatangi case, 12 March 1868 in cxx by William Fox, as reported in *Wellington Independent*, 14 March 1868.

⁸⁸⁵ Ibid.

⁸⁸⁶ Ibid.

⁸⁸⁷ Henare Te Herekau, Himatangi case, 12 March 1868 in cxx by William Fox, as reported in *Wellington Independent*, 14 March 1868.

remembered that he was living in the PkM region when the “Blanket Treaty” was signed.⁸⁸⁸ Octavius Hadfield spoke about the signing of the Treaty in the same case, but he does not provide much detail:⁸⁸⁹

Has been living here since 1839. Was present when the treaty was signed. Witnessed the signatures of all the chiefs who signed between this [place?] and Wanganui. Mr Williams read the treaty over to them before they signed and answered their questions.

5.10 Ngati Raukawa and the New Zealand Company

In terms of political engagement, the most important development in the PkM region at the end of the 1830s and the early 1840s were the various ‘purchases’ by the New Zealand Company and with the complicated history of the Wellington Crown grant to the New Zealand Company and the fighting between Crown and Maori in the Hutt Valley. The New Zealand Company did not only carry land purchases, however dubious, it also brought out settlers from England and created new Pakeha communities at Wellington, Nelson, Whanganui, and New Plymouth. At Wellington, as Wards puts it, “the New Zealand Company had indeed formed what may be termed a self-governing republic”.⁸⁹⁰ The settlers at Port Nicholson set up a council headed by Colonel William Wakefield and set about appointing magistrates and constables. To the Crown, this was simply illegal, as the Wellington settlers well knew, but in order to give their new political community some kind of legal status they managed to persuade a number of Maori rangatira to ratify their “constitution”.⁸⁹¹ This “republic” of settlers was a new reality for Ngati Raukawa, Ngati Toa and the other iwi and hapu of the region, and a political problem for the colonial government at Auckland. Ngati Raukawa do have a connection with the New Zealand Company purchases, and with their investigation by Commissioner Spain, sent from England to investigate the New Zealand Company’s land claims at Wellington, Nelson, New Plymouth, Whanganui, and elsewhere. In an important assessment, Ian Wards sees Spain’s inquiries as “the first deliberate attempt to reconcile the promises of the Treaty of Waitangi with the colonisation plans of the New Zealand Company, and he came to Wellington determined to be as fair as possible, a determination that failed to produce satisfactory results because Wakefield met him with smooth words and secret opposition”.⁸⁹²

Spain’s inquiries were the subject of a great deal of scrutiny in the Waitangi Tribunal’s *Wellington Tenth*s and *Te Tau Ihu* inquiries and do not need to be explored here. The Company’s claims to land in the Manawatu will be inquired into by other historians involved in the Ngati Raukawa research programme.⁸⁹³ Although not forming part of the Company’s main claims as evidenced by the various deeds concluded in 1839, William Wakefield did claim on behalf of the New Zealand Company lands supposedly purchased from Ngati Raukawa in 1841-2. The stimulus for the Company’s attempts to acquire land in the Manawatu was Governor Hobson’s waiver of the pre-emptive rights of the Crown in Wellington, Wanganui, Taranaki and the Manawatu, provided that the Company could prove a valid purchase from the Maori owners.

According to Spain’s report on the Manawatu purchase, William Wakefield was informed by Hobson in September 1841 “that the local government would sanction any equitable arrangement he

⁸⁸⁸ Wiriharai Te Angiangi, Himatangi case, 12 March 1868 in evidence in chief, as reported in *Wellington Independent*, 14 March 1868.

⁸⁸⁹ Octavius Hadfield, Himatangi case, 13 March 1868 in evidence in chief, as reported in *Wellington Independent*, 17 March 1868.

⁸⁹⁰ Wards, *Shadow of the Land*, 49.

⁸⁹¹ Ibid, 50.

⁸⁹² Wards, *Shadow of the Land*, 219-220.

⁸⁹³ See in particular Anderson et al, *Crown Action and Māori Response*, ch 2.

might make to induce those natives who resided within certain limits to yield up possession of their habitations; but that no force or compulsory measures for their removal would be permitted”.⁸⁹⁴ On the slender basis of this Wakefield, accompanied by Halswell (the Protector of Aborigines), Captain Smith (the Company’s principal surveyor) went to the Manawatu in December 1841 to negotiate a purchase. They made a distribution of goods to local Maori, but was told that there were not enough. Some people wanted to be paid in money rather than goods. More goods were brought back by Wakefield at the end of January 1842, and a deed of purchase was signed by 36 people, principally Ngati Raukawa and including Te Whatanui. The sale was opposed by Te Rangihaeata, but at a hui at which he made his opposition clear to the Raukawa chiefs who were present his right to object was decisively repudiated by Te Ahu.⁸⁹⁵ According to E J Wakefield Te Ahu’s speech was as follows:⁸⁹⁶

“You have said that all the land is yours,” said he; “I do not know. Perhaps it is. You relate as an evil deed that I took upon myself sell *Manawatu* to the White Man. You say that it was not straight. Look at me! I *E Ahu* sold *Manawatu*. I alone, of my own accord. I came not to consult you. I was not good to do so; I am still not good to do so. I care not for your thoughts on the matter. You have described your pedigree and spoken much of your great name. I too had ancestors and a father. I have a name. It is enough; I have done.

Wakefield was of course writing to defend the purchase, and perhaps he is over-colouring the situation. Who can say? It is striking that Te Ahu’s words were very similar to what Ihakara Tukumarū was later to say about the sale of Te Awahou. By the end of 1842 a large area on the south bank of the Manawatu, extending as far as Lake Horowhenua and reaching to the foothills of the Tararua had been surveyed by the Company surveyors and divided up into farm sections.⁸⁹⁷

The transaction was subsequently investigated by William Spain, appointed by the British government in 1841 as land claims commissioner in New Zealand. Spain’s task was to decide whether the New Zealand Company was entitled to Crown grants in any of the areas that they claimed to have purchased (Nelson, Port Nicholson, Porirua, the Manawatu, Wanganui, and New Plymouth). Spain concluded that the New Zealand Company was not entitled to a Crown grant for lands purchased in the Manawatu (he made a similar finding at Porirua), a major blow to the New Zealand Company. Spain believed that the Company’s purchasing activities in the Manawatu went well beyond the scope of what Hobson had in mind in September 1841. The details of Spain’s investigation of the Manawatu transaction and of his unsuccessful attempts to carry out an arbitration in association with George Clarke jr. and Thomas Forsaith in 1844 will be covered by other historians. Spain in the end recommended an award for only 100 acres at a place at Horowhenua known as Te Taniwa.

The New Zealand Company’s attempts to purchase land from Ngati Raukawa in the Manawatu in the early 1840s thus had few immediate results, but the transactions were nevertheless important in a number of ways. Firstly, the Company’s efforts provided a precedent and a prelude to the later

⁸⁹⁴ *Reports by Commissioner of Land Claims on Claims to Titles to Land in New Zealand*, No 6: Manawatu, BPP, Vol 5, p 99.

⁸⁹⁵ I assume this is Te Ahu Karamu, often mentioned in the Minute Books. According to E J Wakefield, who became friendly with Te Ahu, “this old chief is of the highest rank in the *Ngati-raukawa* tribe, being of an older branch even than *Watanui*, though of the same family”; he was “the same chief who had led the first party from *Taupo* to the assistance of *Ruperaha* in subduing the aboriginal inhabitants of Cook’s Strait, and who afterwards compelled the rest of his tribe to embrace the conqueror’s offer of a location on the sea-coast, to reap the advantages of trade with the White man, by burning down the villages of *Taupo*” (Wakefield, *Adventure in New Zealand*, vol 2, 221-222).

⁸⁹⁶ Wakefield, *Adventure in New Zealand*, 224-5.

⁸⁹⁷ Knight, *Ravaged Beauty: An environmental history of the Manawatu* (2014), 60; and see reproduction of NZ Company Manawatu survey plan, *ibid*, 59.

purchasing activities of the Wellington provincial government. As Catherine Knight has pointed out in her environmental history of the Manawatu, New Zealand Company representatives who went to the Manawatu (including E J Wakefield, Colonel William Wakefield, Charles Heaphy, and William Mein Smith) quickly grasped the potentialities of the region for close settlement by Europeans.⁸⁹⁸ They were impressed both with the scenic beauty of the region (much of which has now been obliterated by the destruction of its forests and wetlands) and by its fine soils and obvious suitability for farming. They described the region in various letters and memoranda, and in E J Wakefield's case, in his book published in London in 1845. In 1841 Wakefield travelled about 15 miles upriver to a settlement where a group of whalers lived with their Maori wives. He describes the river and its surroundings as follows^{.899}

The river was deep but narrow, and the land on both sides level, and apparently very fertile; but the waters of extensive swamps drained sluggishly over the low banks in many places. Until near Captain Lewis' huts, the country was nearly clear of timber; and we enjoyed an uninterrupted view of the north-western face of the *Tararua* range over the high flax and reeds on the south bank. To the north the horizon seemed unbounded. Near the small dock-yard, forests of large timber began to line the banks; and in one of the finest groves we perceived the skeleton of a small vessel on the stocks, two reed-huts, a pig-sty, and a saw-pit.

This must have created a general awareness amongst the settler community of the desirability of acquiring the land between the Manawatu and the Rangitikei. The later Manawatu-Rangitikei purchase driven by Isaac Featherston, who earlier in his career had been closely linked with the New Zealand Company, can be seen as a completion of the long-delayed Company project to acquire the Manawatu for European settlement. Just as the settlers at New Plymouth had their eyes on Waitara, the settlers at Port Nicholson had their eyes on the Manawatu. Representatives of a self-styled republic of settlers at Port Nicholson had seen the Manawatu, and very much liked what they saw. In a way the origin of the Wellington provincial government's purchase of the Rangitikei-Manawatu lands began with the New Zealand Company's fragile purchase of 1841.

Secondly, a few people had taken out New Zealand Company land purchase orders at Te Awahou. Small European communities formed at Paiaka (temporarily) and at Foxton, leading to increased interaction between Maori and settlers in the area and the development of commerce and the leasing of land. In 1842 the Kebell brothers established a steam-powered timber mill at Haumearoa, on the north bank of the Manawatu opposite Paiaka. The mill was subsequently adapted to grind flour, Maori growers bringing their wheat for milling from a wide area; the flour was then shipped to Wellington.⁹⁰⁰ Flax grew plentifully in the region, and local Maori sold scraped flax to European traders which was sold in Wellington and exported to Australia. The foundations for the large-scale flax processing industry of the later 19th century were being laid. The PkM region was slowly becoming tied to global capitalism and imperial networks of trade and commerce. These developments led to significant changes in Maori material culture well before the arrival of the Native Land Court.

5.11 Ngati Raukawa and the conflicts between the Crown and Maori in the Wellington region, 1846

The mid 1840s saw a major transformation in southern part of the PkM region. Ngati Toa's position was dramatically changed in a critical four-year period from June 1843 to mid-1847. At the beginning of that period Ngati Toa, still led by their famous chiefs Te Rauparaha and Te Rangihaeata, was still a

⁸⁹⁸ Knight, *Ravaged Beauty: An environmental history of the Manawatu* (2014), 58-64.

⁸⁹⁹ Wakefield, *Adventure in New Zealand*, vol 2, 355-6.

⁹⁰⁰ Knight, *Ravaged Beauty*, 63.

formidable force in the Cook Strait region, despite all the changes, social and demographic, that had taken place over the preceding decade or so. The tribe was able to comprehensively defeat and scatter an attempt by the magistrates of Nelson to arrest the leading chiefs at the Wairau in 1843. The reality of Ngati Toa power was sufficient to cause considerable apprehension at Nelson and Wellington, especially after the Wairau affair. By mid-1847, however, Te Rauparaha was in the unlawful custody of the Governor in Auckland, Te Rangihaeata in exile at Poroutawhao, and Ngati Toa's lands at Porirua and the Wairau in the hands of the Crown. All this had been largely engineered by Governor Grey. These events have been well traversed in a number of books,⁹⁰¹ in the evidence prepared for the Waitangi Tribunal's Wellington Inquiry, and will also be traversed by other historians in this inquiry.⁹⁰²

After the engagement at Battle Hill in 1846 Ngati Raukawa played a role in the dramatic events connected with the pursuit of Te Rangihaeata by Crown and Ngati Awa forces after the battle, with the unenthusiastic participation of a section of Ngati Toa led by Rawiri Puaha. Ngati Toa seem to have split on very traditional lines, the same divisions that had occurred at the time of Haowhenua and Kuititanga, reflecting Ngati Toa's deep-seated structural ambivalence with many being most closely linked to Ngati Mutunga, Ngati Awa and Ngati Tama but with a key faction of the leadership with very close kin links to Ngati Raukawa. Those of Ngati Toa with kin linkages to Ngati Awa and Ngati Mutunga tended to lean towards the government, perceived, perhaps, by some as a kind of tribal ally of Ngati Awa. Although the transforming effect of the Crown's military escalation of early 1846 is critical to grasping the events of this time, older patterns of fissure and conflict continued to be relevant. The tribes of the region were deeply divided (indeed Elsdon Best believed that had they been able to combine they could easily "have wiped Wellington off the map, and left but the smoking ruins thereof"⁹⁰³, but there is no evidence that either Te Rauparaha or Te Rangihaeata had any such intention.) In some respects the campaigns of 1846 were a revival of the Ngati Toa-Ngati Awa-Ngati Raukawa conflicts of the 1830s. Te Rangihaeata received considerable support not only from the Wanganui and Taupo tribes, who were kin of Ngati Rangatahi in the Hutt Valley, but to some extent from his own Ngati Raukawa kin at Otaki and Ohau. He also, according to Best, sent for aid to Tiakatai, a leading rangatira in the Hawke's Bay region, but this was unsuccessful.⁹⁰⁴ By March Te Rangihaeata had been joined by "several Natives from D'Urville's Island, Queen Charlotte's Sound, and other parts of the straits".⁹⁰⁵ Those from D'Urville (Rangitoto) would have been Ngati Koata. The settler community at Wellington was quite aware of the tensions between the tribes and although Ngati Awa's offer of military assistance was certainly welcome there was some concern that it would lead to Ngati Raukawa involvement on the side of Te Rangihaeata. *The New Zealand Spectator* noted on June 3:

[T]he very alliance now formed with the friendly tribes of the Ngatiawas, however much we approve of it on principle may be turned to our disadvantage; for the emissaries of Rangihaeata will not fail to profit by the time lost by present delay, to revive the old jealousies and feuds existing between these tribes and the Ngatiraukawas, so as to obtain the active assistance of the latter tribes; and if those who have the conduct of affairs profess themselves unable with the force at their command unable to quell the rebellion

⁹⁰¹ In my view the best account of events at Wellington in the 1840s is still Ian Wards, *The Shadow of the Land: A Study of British Policy and Racial Conflict in New Zealand*, (Historical Publications Branch, Department of Internal Affairs, 1968). For some contemporary reflections on Wards' book see Jim McAloon, "Revisiting *The Shadow of the Land*", in Brad Patterson, Richard Hill and Kathryn Patterson *After The Treaty: The settler state, race relations, and the exercise of power in colonial New Zealand*, (Steele Roberts Aotearoa, Wellington, 2016, 20-39.

⁹⁰² See Anderson *et al.*, *Crown Action and Maori Response*, ch 3.

⁹⁰³ Best, *Porirua and they who settled it*, typescript, copy at Porirua museum library, p. 56.

⁹⁰⁴ Best, *Porirua and they who settled it*, typescript, copy at Porirua museum library, p. 56.

⁹⁰⁵ *New Zealand Spectator*, March 21 1846.

when there are only two hundred men opposed to them, what will be their position if Rangihaeata should succeed in obtaining a reinforcement from these tribes of from six to eight hundred men?

While it certainly does seem as if there was some kind of split or division in Ngati Toa, it also is important not to over-emphasise it. The leader of the pro-government party was Rawiri Puaha, who led a section of Ngati Toa against Te Rangihaeata at Pauatahanui and Horokiwi in 1846. Puaha was nevertheless very careful not to kill kinsmen on the opposite side, and a number of Crown officers - as well as Ngati Awa - were far from certain exactly whose side Rawiri Puaha was on.⁹⁰⁶

Ngati Raukawa were, like Ngati Toa, themselves divided into pro- and anti-government groups, the former connected with the Anglican chiefs. At Ohau Richard Taylor, who had met a number of Raukawa parties heading south to join Rangihaeata in March, heard while staying at Ohau that a large Raukawa party intended to join Rangihaeata, and he worked closely with Christian chiefs trying to prevent them from doing so. Taylor took part in a substantial debate between the war and peace parties, which he describes in his diary.⁹⁰⁷

Immediately after Prayers this morning we held a Council with all the Natives on the subject of the present war with the Europeans. The principal chiefs made some long and excellent speeches. One old man named Paora said if they went they must leave their books behind and give up their Ministers and return to their former evil courses, but said we have forsaken them because we know them to be bad, therefore now having turned to the living God we must remain firm in his service. One chief named Puke made a very long and excellent speech in a very droll and sarcastic tone he alluded to all the reasons urged by the advocates for War and refuted them.... Ihakara a teacher and chief made a very good speech after I had addressed them. He said don't forget this meeting and the day it was held the 9th of March. It is a great meeting and must not be forgotten. He was afraid many had double hearts though they all asserted that there was a Judas amongst them as there was a Judas amongst the Apostles. One only of the opposite party briefly addressed the meeting. He seemed afraid to avow his desire of War. I was much pleased with this meeting as I cannot but think it will have a very beneficial effect on the Natives of this part. They will say as Christians it was their duty to listen to their Ministers and they were determined to do so. I shook hands with some of the speakers and especially with Puke and told him his speech was a very good one, another said and was not mine a good one, and so on with them all. It appears now that my being not able to administer the sacrament service was ordered by a higher power for good. Had it been administered the week before as was my intention then this week's meeting would not have been held and many would have gone to the seat of War. I have also noticed that whenever the holy sacraments have been administered they are attended with a perceptible benefit to the recipients in confirming their faith and strengthening their good resolutions.

One sees again the readiness of Christian chiefs to accept that the Governor was on the side of Christianity and the Gospel; that those who took up arms in support of Te Rangihaeata would have to leave "their books (Bibles) and their Ministers behind". This is an impression that Taylor certainly took no steps to dispel. Taylor was perhaps too ready to assume that the "Christian" party had carried the day. By early June the *New Zealand Spectator* was reporting that the "rebels" in the Hutt Valley had "received a considerable accession to their numbers from the heathen natives of the Ngatiraukawas dwelling at Otaki".⁹⁰⁸

⁹⁰⁶ See the discussion in Wards, *Shadow*, 284-5.

⁹⁰⁷ Taylor diary, 9 March 1846, Ms 254/04, ATL. Taylor described the same event in a letter to Donald McLean on April 3: see Taylor to McLean, 3 April 1846, MS-Copy-Micro 535 ATL: "I held a large meeting at Manawatu on my Return from Wellington which was attended by all the chiefs of that river, the occasion of its being held was that one of their chiefs was going to join Rangihaeata with 30 of his followers, and after a great many speeches all most strongly in favor of sense they determined they as a body would sit still..."

⁹⁰⁸ *New Zealand Spectator*, 3 June 1846.

Ngati Raukawa declined to become involved in assisting with the pursuit of Te Rangihaeata and his force after the fighting at Battle Hill and in fact gave Te Rangihaeata protection at Poroutawhao. Rawiri Puaha's Ngati Toa were particularly concerned to learn the attitude of Ngati Raukawa, and in order to ascertain this a large meeting was held at Otaki on August 28 1846. Here Nohorua and other chiefs of Ngati Toa attempted to persuade Ngati Raukawa to attack Te Rangihaeata and the "rebels", holding them responsible for the disaster of Te Rauparaha's capture. Ngati Raukawa responded coolly to this argument. Te Rauparaha's capture "was the same as his death to them" but they did not have any quarrel with Te Rangihaeata and were willing to allow him and his people to cross their lands in peace.⁹⁰⁹ Te Rangihaeata's sister also spoke, urging the Ngati Raukawa to actively support Te Rangihaeata, but this too was rejected.⁹¹⁰ The meeting then ended under a "titanic heap of comestibles".⁹¹¹ Without Ngati Raukawa support Rawiri Puaha was unwilling to carry on with the pursuit, and in any case the Crown's Ngati Awa allies could not contemplate pursuing Te Rangihaeata through the Otaki region, occupied by their Ngati Raukawa enemies (with whom they had been engaged in serious hostilities in 1834 and 1839). This meant that the campaign was effectively over.

In early September Rawiri Puaha and his supporters returned to Porirua. Now safely in Ngati Raukawa territory, Te Rangihaeata ensconced himself at Poroutawhao, a swamp pa located between Levin and Foxton. This place, more correctly Poro-tawhao, belonged to Ngati Huia, Te Rangihaeata's and Te Rauparaha's Ngati Raukawa hapu, and was a place where Te Rangihaeata would have confidently expected support.⁹¹² There is, however, some evidence which indicates that Te Rangihaeata's presence caused further divisions within Ngati Raukawa and that Ngati Huia withdrew to Otaki for a time. According to Tatana Whataupoko speaking in 1895:⁹¹³

Te was Te Matia of Ngatiraukawa and all that hapu who wanted the Ngatihua to leave Poroutawhao and go to Otaki. The house that was built for Rangihaeata at Paeroa was called Nukunuku because of the remark made by Te Matia that Rangihaeata should move onward. Ngatihua left Poroutawhao and went

⁹⁰⁹ See Scott, [check ATL reference] 28 August 1846: "The Ngatitoas arrived early, when a very general meeting of the Otaki natives took place to receive them. The meeting was at first somewhat reserved on both sides, as was also the tone of their respective speeches, which in a very general, though candid, manner, expressed the views of both tribes. The meeting was addressed on the Ngatitoo side by Nohorua, a very old man, and near related to Te Rauparaha, Pukeko, Mohi, Te Rangi Korauata and Te Peko, a chief from Rangitoto [i.e. D'Urville Island: he must have been Ngati Koata]. The Ngatitoas urged the policy of attacking and driving the rebels out of this district, should they make their appearance there; imputing all the evil that had arisen to these parties, including the imprisonment of Te Rauparaha; and asking them what claim Rangihaeata had upon their sympathies, after the course he had pursued in leaving them and connecting himself with the Tauwheuhe or Wanganui people, and not to countenance their settlement amongst them, or evil would also shortly come on them; and also to consider that Te Rauparaha and two of his relations were, through the rebels' proceedings, imprisoned, and declaring that they, the Ngatitoas, intended to remain at peace with the Europeans. The Ngatiraukawa replied that they had in no way been the cause of or connected with these events. They had heard of them and remained thoughtful in the matter, not foreseeing the result to themselves, or from what quarter evil might arise. Their intention was to remain neutral, having as yet no cause of quarrel with Rangihaeata. If he arrived there, they should desire him to pass on in peace."

⁹¹⁰ W. Tyrone Power, *Sketches in N.Z.*, 32-33: "Rangihaeata's sister was present, and addressed the meeting in favour of her absent brother, making, at the same time, some very unparliamentary remarks on the aggressions of the pakehas, and the want of pluck of the Maories in not resisting them, as her illustrious brother was doing. An old chief requested her to resume her seat, informing her, at the same time, that she was the silly sister of a sillier brother, and no better than a dog's daughter. He then put it to the meeting whether pigs and potatoes, warm fires, and plenty of tobacco, were not better things than leaden bullets, edges of tomahawk, snow, rain, and empty bellies?"

⁹¹¹ Ibid.

⁹¹² On the meaning of the name, history and location of Poro-tawhao see Adkin, *Horowhenua*, 306-7.

⁹¹³ Evidence of Tatana Whatupoko, Manawatu Kukutauaki 7D2D case, (1895) 26 Otaki MB 20 (29 April 1895).

to Otaki owing to the invitation of Te Matia. The hapus who supported Te Rangihaeata were [Ngatitemania] and [Ngatituwakahewa].

When the fighting was over Te Rangihaeata remained at Poroutawhao, where Eyre, Richard Taylor and Grey sometimes visited him.⁹¹⁴ Grey took no further action to dislodge him, and indeed had no need to: his objectives had been achieved.⁹¹⁵

5.12 “Ngati Awa” return to Taranaki, 1848

There were yet further changes to the geopolitical situation in the PkM region in store. In 1848 Wiremu Kingi Te Rangitake led many of his people from Waikanae back to North Taranaki, where they settled on both sides of the Waitara river, abandoning their village at Kenakena near the mouth of the Waikanae River and the great timber church built there in 1842-43. Wiremu Kingi had decided to return as early as 1845, but was delayed because of the fighting between Maori groups and the Crown in 1846.⁹¹⁶ In 1882 (in the Mohakatino Parininihi case) Wi Tako spoke of the various invitations by Te Wherowhero and others to return and the “Ngati Awa” re-migration of 1848:⁹¹⁷

I have no claim on this land. I am a chief of Ngati Awa. I know that in 1848 some of Ngatiawa, Ngatitama, Ngati Pukerangiora came back from the South. These are all sections of Ngati Awa. They came because they were invited by Te Awaitara in 1839. After religious service the invitation was given. He and his friends went also to Waikanae, Kapiti and elsewhere. He came from Raglan and was of Ngatimahanga tribe. In 1842 Potatau and Gov. Hobson went with the same object and to buy land. Potatau gave an invitation to return and said there would be no more fighting. After this, Kiwi went; he was of Ngatimahuta and he died at Kawhia. He also invited the people to return. Waitara and Ngamotu were the lands sold by Te Wherowhero. The invitation was to all the different sections. From [Whakarewa?] to Mokau were the lands of Ngatitama. The people were invited to return to their ancestral lands. Potatau and Te Wherowhero⁹¹⁸ [13] were the chiefs who attacked Pukerangiora.

This re-migration was known as the Te Ruru Kai Ma Heke, and it was mainly conducted by sea. The missionary J F Riemenschneider, based at Warea, thought the Taranaki fleet an impressive spectacle:⁹¹⁹

Finally, on a very beautiful morning on 13 October [1848] the fleet appeared. On a wide front we saw the many white sails glide across the sea. I counted 31 large sailing canoes and two large [ship's] boats. The whole scene afforded a most imposing spectacle and more or less resembled a proper naval force in miniature, particularly since muskets were fired from many of the small craft. As soon as they had landed, a camp was erected for the 300 arrivals close to Warea. They only thought of setting sail again in order to camp at two more spots in Taranaki after they had eaten everything which had been given to them as a result of the hospitality of Warea and its surrounding villages.

On their return there were formal peacemakings between “Ngati Awa” and Ngati Maniapoto, as was described in the evidence given by Wetere Te Rerenga Takerei (1882):⁹²⁰

⁹¹⁴ Taylor, *Te Ika a Maui*, 339-40. Te Rangihaeata continued to oppose land sales to the Crown.

⁹¹⁵ As Wards notes: see *Shadow*, 288: “The Wellington settlement was secure, the whole area was pacified, and all approaches well garrisoned - for the moment there was no point in carrying out further operations.”

⁹¹⁶ Ann Parsonson, “Te Rangitake, Wiremu Kingi”, *DNZB* vol 1, 1990, 499-502.

⁹¹⁷ (1882) 1 Mokau-Waitara MB 12 (5 June 1882). The issue in this case was whether Ngati Maniapoto had ever agreed to allow Ngati Tama to re-occupy their lands at Poutama, a question that need not be traversed here.

⁹¹⁸ Sic – an obvious mistake by the interpreter or the clerk. Potatau and Te Wherowhero are of course the same person.

⁹¹⁹ Reimenschneider Journal, cited Peter Oetli, *God's Messenger: J.F. Riemenschneider and Racial Conflict in 19th Century New Zealand*, (Huia Press, Wellington, 2008), 102.

⁹²⁰ (1882) 1 Mokau-Waitara MB 23-4 (6 June 1882).

Potatau went South to fetch Rauparaha. On his return, he came overland to bring Wiremu Kingi's word to me. Potatau said to my father "Let Wiremu Kingi return to his land at Waitara". He asked me to let him return. Takerei agreed. Potatau said, W. Kingi is a good fellow: treat him well. So Takerei got food at Mokau. I came to Pukearuhe and cultivated, and was sent to fetch W. Kingi to Waitara.

On arriving here, - W Kingi and perhaps 500 people – we welcomed them. They came in parties and when they were seated, Kaka, one of our people spoke. Tikaokao also spoke, also Te Kaharoa. Then W. Kingi replied and sang a waiata signifying that he was afraid of Ngati Maniapoto. Takerei replied, Let the fire be put out. He also named a boundary, i.e. from Paraninihi. Food was presented, also guns, by Takerei to W. Kingi. He also said, I will stay to the north of the boundary; you remain to the South. This was the [red sea?] – from Paraninihi to Tahoraparoa.

Some of Ngati Tama returned to North Taranaki also. Te Kaeaea,⁹²¹, for example, said in 1882:⁹²²

My hapu is Ngatiwai of Ngatitama. I was born at Te Kawau. I went south in the year that Pukerangiora pa fell.⁹²³ My father was Poroua. He was a great chief. I returned here since Mr Whiteley⁹²⁴ was killed. I cultivated at Rapanui.⁹²⁵ I came back as a Chief. Rapanui is near the mouth of the Tongaporutu. I went where I liked. I found Ngati Maniapoto there.

The returning Ngati Awa settled on the south bank of the Waitara river. Their presence was seen as a source of instability by the government. The slow fuse which was to result in the Taranaki war in 1860 began to burn. Presumably to signal that his people had come back to Taranaki to stay Te Rangitake sent a large group back to Waikanae in 1851 to bring home the bones of his people who had been buried there.⁹²⁶ But a significant number of Ngati Awa people remained at Waikanae.

5.13 Waikato invites Raukawa to return to Maungatautari

After Te Rauparaha had been arrested and detained by Grey, he was eventually released and taken home in 1848 by three of the leading chiefs of the country, Te Wherowhero (later King Potatau), Taraia (of Hauraki) and Te Horeta (from the East Coast). On this occasion Te Wherowhero invited Te Ati Awa, Ngati Raukawa and Ngati Toa to return to their ancestral lands. The occasion was described some years later by Matene Te Whiwhi:⁹²⁷

⁹²¹ According to Angela Ballara the prominent Ngati Tama chief at Wellington Te Kaeaea, also known also as Taringa Kuri, died in 1875 and is buried at Petone: see Ballara, "Te Kaeaea, Ngati Tama leader", *DNZB* vol 1, 455-456. However the person giving evidence here is named Taringa Kuri Te Kaeaea Te Reweti, presumably a different person.

⁹²² (1882) 1 Mokau-Waitara MB 7 (6 June 1882).

⁹²³ 1831.

⁹²⁴ John Whiteley (1806-1869), Wesleyan missionary at Kawhia, later based in Taranaki, who was killed at Pukearuhe redoubt by the Ngati Maniapoto force led by Wetere Te Rerenga. See Graham Brazendale, "Whiteley, John, 1806-1869, missionary", *DNZB* vol 1, 1990, 590-1.

⁹²⁵ A place on the coast near Tongaporutu.

⁹²⁶ Ann Parsonson, "Te Rangitake, Wiremu Kingi ?-1882, Te Ati Awa leader", *DNZB* vol 1, (1990), 499-502, at 500.

⁹²⁷ Puhahue case, (1868) 2 Waikato MB 78; 1873 AJHR G3, 24. In cxx Matene says:

Ngatiraukawa brought themselves here on the word of Te Whero Whero; they have returned on the lands they held amongst Waikato, also the whole of their land on account of the word of Potatau; the persons that live at Patetere, Auwhenua, and Wharepuhunga live there permanently (tuturu); the persons for Maungatautari are at Kapiti; they will come on the word of Potatau; I do not know anything about their having come here when Potatau told them; Kingi Hori and other men have visited on account of Potatau's word; the men who came are related to Waikato tribes, and therefore allow these persons who are related to them to look after the land; the persons who occupy the land now are "noho pokanoaiho".

Ngati Raukawa lived at Kapiti until the commencement of the fight with the Europeans and Rangihaeata at Wairau. Potatau made his first visit then. Potatau did not say anything at that time about the tribes returning to their lands. Te Rauparaha was taken prisoner by the Pakeha and put on board a vessel. Afterwards Potatau, Tamati Waka and Kati went to Kapiti and Potatau and Tamati Waka took Te Rauparaha to Auckland. When Te Rauparaha was returned, Potatau, Taraia and Te Horeta went to Kapiti. They came to Otaki. All the tribes were gathered together to mihi over Potatau and Tamati Waka over Te Rauparaha being returned. All the southern tribes were gathered together: Ngati Raukawa, Ngati Toa, and Ngati Awa. Potatau stood up and said, Ngati Awa go back to Waitara, to your own lands. Waikato must not keep them. He said the same thing to the other tribes, that is to Ngati Toa and Ngati Raukawa. His word was, “me nuku a Waikato”. I don't know if this was the sentiment of the whole of the Waikato tribes but Potatau was the chief of Waikato. After this the word of Potatau was remembered by all the tribes.

Te Wherowhero's invitation to return is also described by Ngati Kauwhata witnesses in the 1881 Maungatautari inquiry. According to Tapa Te Whata.⁹²⁸

I heard – we all heard – the invitation to my father from the chiefs of Waikato to return. Te Wherowhero was one of those chiefs.

In the 1868 Maungatautari case Te Rei Te Paehua also referred to Te Wherowhero's invitation (and invitations by others):⁹²⁹

I am a Ngatiraukawa; I live at Otaki; I have to this land; I left this peaceably, and went to Kapiti; I was not there any length of time, when Te Awaitaia asked me to return to Maungatautari; afterwards, Te Whero Whero did the same; Kiwi and Te Roto did so likewise; some of our people came back on these invitations; some of those persons are dead, some are here; Kingi Hori, Te Matia, and Waretā returned, and Porokoru and Te Haunui gave them back the land; Hone Te Tihi, and Te Peina came to Ngatikoroki, and Te Ngongo gave Maungatautari up to them; these are the reasons why Ngatiraukawa are here today.

Parakaia Te Pouepa of Ngati Raukawa said in 1868 that “in 1842 (1848?) Potatau went to Otaki and invited Ngati Raukawa and Te Rauparaha to return to their lands”.⁹³⁰ In fact he said that Wiremu Tamihana also made the same invitation, although possibly he confused the dates:⁹³¹

After this Te Ngongo, Tuterangipouri, and Tamehana Te Waharoa asked Ngatiraukawa to return to Maungatautari, this was in 1848; this invitation did away with the conquest; this invitation was made by letter and by messages, and we did not know that Ngatihaua would oppose our getting the land, and the letters have been mislaid.

Parakaia continued:

In 1842 [48?], Potatau went to Otaki and invited Ngatiraukawa and Te Rauparaha to return to their lands; Ngatiraukawa agreed to this; the word was spoken that the lands should not be sold; Ngatiraukawa have not unto the present time.

There was a later delegation from the Waikato which went to Otaki in 1857:

In 1857 Porokoru and Haunui went to Otaki; these persons were chiefs of Ngatikouro; they went into the house where Ngatiraukawa were assembled, and asked them to return to their lands at Puahoe, Whanaki, Pukekura, Te Tarua, Hangahanga, Aratitaha, and Pukewhakaahu; Porokora said that that he would not

⁹²⁸ Tapa Te Whata, Pukekura case, Maungatautari Inquiry 1881, 1881 AJHR G-2A, 8.

⁹²⁹ Te Rei Te Paehua, Maungatautari case 1868, 1873 AJHR G3, 19.

⁹³⁰ Evidence of Parakaia Te Pouepa, Puahue case, (1868) 2 Waikato MB 69; also at 1873 AJHR G-3, 22.

⁹³¹ Ibid.

retain those lands; his word had no reference to the land at Maungatautari, on the Horohoro side, but Te Waharoa's had.

A delegation of Raukawa people from Otaki then returned to Maungatautari and remained there permanently:⁹³²

Porokuru (a?) returned with eleven of Ngatiraukawa; the chief men were Te Nguhioharakia, Ratiera, Hoera; Kawa and Hukarahi went afterwards, just before the commencement of the Waikato war; these men all died natural deaths during the war; their children all returned to Otaki, Te Ngongo told him to do so, and returned with Ngakuku, Te Tarehu, Herekana, Te Hepe, Te Uawaka, and some others; the men of my own hapu who came to Maungatautari were Te Rou and Te Hunopoko; Te Maunahara belonged to our party, and when they came he left Ngatihaua, with whom he had been living, and went to Aritataha, and lived there with those persons; the reason these persons are not in Court is that they have joined the Hauhau party; this is all I have to say respecting this map, let it be turned over....

In 1872 there was a renewed invitation to return. This is discussed in the chapter on the Himatangi block, below.

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Ibid.

6. Christianity and Custom

6.1 Introduction

Before 184 Maori lives and Maori tenures were of course governed by tikanga. As Angela Ballara has written, “this much at least is certain: in 1840, Māori did not stop conducting their lives by tikanga, a word which includes both rights and rules, and nothing in the Treaty of Waitangi required them to do so”,⁹³³ New Zealand, however, was a mission frontier long before it became a British colony (a striking contrast with the Australian colonies, where the situation was reversed.) The missionizing of New Zealand, however, was characterised by extreme confessional discord. It can be contrasted with the solidly Catholic Christianisation of Spanish America, the equally solidly Puritan and Congregationalist equivalent in New England, or the Orthodox conversion of Siberia. The Anglican Church Missionary Society (CMS), low-church and evangelical in its outlook, was the most important missionary presence in New Zealand but, and notwithstanding the fact, as Ian Wards has put it, “the Colonial Office favoured the Church Missionary Society concept of non-interference by any organised body other than that of the Society”,⁹³⁴ it did not have the harvest of souls in Aotearoa all to itself. The ‘confessionalization’ of western Christianity that has been its dominant characteristic since the Reformation and the Council of Trent was played out on this far-away frontier in the South Pacific.⁹³⁵ Most Protestant missionaries in New Zealand were from the British Isles, but the Catholic missionary effort, a very significant aspect of the history of Christianity in New Zealand, was almost completely French-dominated. Jean Baptiste François Pompallier was consecrated as Bishop of a vast territory in the Pacific in 1836, and from 1838 was based, like the CMS New Zealand mission, in the Bay of Islands in the north of the North Island.⁹³⁶ As in Australia, with settlement from the British Isles came Irish Catholic Christianity with all the heavy historical freight that entailed, but in the earliest decades of colonial settlement an Irish Catholic presence was negligible and the Catholic missionary effort in New Zealand and the western Pacific was wholly French-dominated, supported both by Rome and by the French government. New Zealand’s

⁹³³ Ballara, *Tribal Landscape Overview*, 173,

⁹³⁴ Wards, *Shadow of the Land*, 5.

⁹³⁵ The term ‘confessionalization’ is particularly associated with the German Church historian Heinz Schilling, who argues that in the 16th century the vast and ramshackle structure of Latin Christendom was replaced to “three to four confessional churches of Europe’s modern age: the Lutheran Church, the Calvinist/Reformed Church, the Tridentine Catholic Church, and the Anglican Church as a possible fourth one. Each of these claimed to be universal and the “old” or “evangelical” one; in fact, however, each of them, including Roman Catholicism, were new churches of and within early modern Europe”: Schilling, *Early Modern European Civilization and its Political and Cultural Dynamism*, University Press of New England, Lebanon, NH 2008, 19. Confessionalization is the process by which adherents of the various Reformation churches were schooled in the specific traditions of their Church and thus developed a sharp awareness of religious difference. On the historiography relating to ‘confessionalization’ see also generally J W O’Malley, *Trent and all that: Renaming Catholicism in the Early Modern Era*, Harvard University Press, Cambridge and London, 2002. For a reconsideration see Joachim Whaley, *Germany and the Holy Roman Empire: Vol 1: Maximilian I to the Peace of Westphalia 1493-1648*, Oxford University Press, Oxford, 2012, 498-511. The jurist most associated with an attempt to differentiate civil legitimacy from confessionalization is Samuel Pufendorf.

⁹³⁶ The leading study is Ralph M Wiltgen, *The Founding of the Roman Catholic Church in Oceania, 1825 to 1850*, Princeton Theological Monograph Series, Pickwick Publications, Wipf and Stock Publishers, Eugene, Oregon, 2010 (originally published by Australian National University Press, Canberra, 1979). This book covers the developments in Rome and in France that led to the establishment of the mission in detail. See also Kate Martin and Brad Mercer (eds), *The French in the Bay of Islands*, Matou Matauwhi, Russell/Kororareka and Rim Books, Auckland, 2011.

French connection is in fact long-standing and important.⁹³⁷ But for Ngati Raukawa, it was the CMS presence in the Waikato and at Otaki which really counted.

In New Zealand Catholics and Protestants competed against each other, but Protestants were themselves anything but united. The Evangelical/Lutheran divide, the core confessional split within European Protestantism, had some impact, but more significant were competing tendencies within the Church of England and the emergence of Wesleyanism in the British Isles.⁹³⁸ The “proliferating diversities” of English Protestantism were, and indeed, are, very much in evidence in New Zealand. Many Anglicans would not cooperate with the Wesleyan Missionary Society (WMS) or with the Congregationalist London Missionary Society (LMS).⁹³⁹ The Anglicans had their own divisions. There was a polarisation within Anglican ranks between the ordinary Church establishment, that which Catholics would call the secular church, and the powerful Anglican missionary body, the CMS, which had a very distinct ethos of its own. The CMS was established in 1799 by a group of upper-class evangelical Anglicans with little support, and indeed some real hostility, from the hierarchy in Britain: “[a] State Church found it hard to see the propriety of being a missionary church”.⁹⁴⁰ The approach of Henry Venn, the powerful Honorary Secretary of the CMS, to questions of ecclesiology and Church organisation was quite unlike that of a High Church Anglican such as Bishop Selwyn.⁹⁴¹ Selwyn’s relationships with CMS missionaries in New Zealand were notoriously difficult.⁹⁴² High Church Anglicans moreover felt compelled to tell anyone who cared to listen that the Wesleyans were not a proper Christian Church and they sometimes also went out of their way to oppose German evangelicals.⁹⁴³ Selwyn regarded Wesleyan ministers as little more than lay preachers. He also tried, without success, to have the Church of England made an into an established church in New Zealand: colonial politicians, who were mostly from the Liberal end of the political spectrum and admirers of Cobden and Bright rather than of Cardinal Newman or the Oxford movement, were not interested. All these divisions created a very complicated Maori confessional patchwork which remains significant, and which has indeed been added to by the arrival of newer confessional groupings on the scene, notably the Mormons. Maori have added to confessional variety by creatively inventing a number of churches

⁹³⁷ See generally John Dunmore (ed), *New Zealand and the French: Two Centuries of Contact*, Heritage Press, Waikanae, 1990.

⁹³⁸ See George I Laurenson, *Te Hahi Weteriana: Three Half Centuries of the Methodist Maori Missions, Wesley Historical Society of New Zealand*, Auckland, 1972. For a fascinating study of an early (and abortive) Wesleyan initiative in Aotearoa see J M R Owens, *Prophets in the Wilderness: The Wesleyan Mission to New Zealand 1819-27*, Auckland University Press/Oxford University Press, Auckland, 1974.

⁹³⁹ The LMS was not involved in missionary work in New Zealand, but was a pivotal presence in Tahiti, the Cook Islands, Samoa and New Guinea. It was largely a Congregationalist organisation.

⁹⁴⁰ Adrian Hastings, *The Church in Africa* (Oxford History of the Christian Church), Clarendon Press, Oxford, 1994, 245.

⁹⁴¹ See C. Peter Williams, “The Church Missionary Society and the Indigenous Church in the Second Half of the Nineteenth Century: The Defense and Destruction of the Venn Ideals”, in Dana L Robert (ed), *Converting Colonialism: Visions and Realities in Mission History, 1706-1914*, Eerdmans, Grand Rapids and Cambridge, 2008, 86-111. Williams shows here that the CMS was much more supportive of indigenous churches than were High Churchmen like Selwyn, arising out of the evangelical leanings of the CMS: “[e]vangelicals in the Church of England had long had an ecclesiology that owed more to notions of nationality and establishment than to Catholic order as understood by High Anglicans”; for evangelicals “the Reformation principle, *cujus regio eius religio* was not pragmatism but sound theology” (ibid 87).

⁹⁴² See Helen Garrett, *Te Manihera: The Life and Times of the Pioneer Missionary Robert Maunsell*, Reed, Auckland, 1991, 289-92.

⁹⁴³ See Peter Oettli, *God’s Messenger: J.F. Riemenschneider and Racial Conflict in 19th Century New Zealand*, Huia Publishers, Wellington, 2008, 90, describing the frosty relations between Riemenschneider, a German Evangelical, and the very High Church missionary at New Plymouth, William Bolland.

of their own.⁹⁴⁴ Finally it needs to be emphasised that many within the Pakeha community in early colonial New Zealand did not feel positively towards missionaries, of whatever variety. This was notably the case with the New Zealand Company hierarchy.⁹⁴⁵ Missionaries were seen as biased in favour of Maori and as opponents of settlement and the settler community. The ability of the missionary organisations to influence policy in Great Britain was widely resented.

6.2 First Ngati Raukawa contacts with Christianity

The advent of Christianity was seen by many Ngati Raukawa and Ngati Kauwhata people, as indeed for Maori people generally, as creating a kind of conceptual and chronological boundary, a before, and an after. Nicholas Thomas, writing of Fiji, notes that Christianity “was historicized to mark the Fijian transition from darkness to light”, and the same seems to have been true of New Zealand.⁹⁴⁶ Ngati Raukawa witnesses in the Native Land Court spoke of “Satan’s time” (the time before Christianity) or “after the “whakapono” (the Gospel). In a document written in 1866 Parakaia Te Pouepa saw the arrival of the Gospel as a turning point:⁹⁴⁷

Thus those tribes dwelt with us in the olden time. After that came the Gospel. Thus they were spared and became free. Fighting ceased in 1839. Mr Hadfield was the minister at Otaki, Mr Mason at Whanganui.

When Ihakara Tukumarū gave his opening statement in the Kukutauaki case in 1873 he listed a number of key historical events at the commencement of his evidence: the arrival of Ngati Raukawa in the southern North Island in 1830, the battle of Haowhenua, the arrival of Octavius Hadfield and the Christian mission, the battle of Kuititanga, and the Treaty of Waitangi.⁹⁴⁸ “I don’t know the year my parents came to Otaki, but it was after Christianity” Wiremu Kiriwehi told the Native Land Court in 1902.⁹⁴⁹ Christianity brought the message and the blessings of peace. Te Ara Takana of Ngati Kauwhata told the Native Land Court in 1890 that “Ngati Kauwhata lived at peace with Rangitane and Ngati Taurira after [the] introduction of Christianity”.⁹⁵⁰

Ngati Raukawa in the Waikato and in the Cook Strait region were early affected by the arrival of Christianity in Aotearoa. In 1833 a group of missionaries led by Henry Williams from the CMS base in the Bay of Islands visited Matamata, leading to the establishment of the CMS mission at Matamata run by Alfred Nesbitt Brown and his wife in 1835. This mission had a complicated history due to inter-tribal conflicts in the Bay of Plenty. Ngati Haua launched attacks on Maketu and on Rotorua, and, anxious about the retaliation that everyone assumed would inevitably fall on Matamata, Brown re-

⁹⁴⁴ These churches have fascinated New Zealand historians. See e.g. Judith Binney, *Redemption Songs: A Life of Te Kooti Arikirangi Te Kooti*, (Auckland University Press and Bridget Williams Books, Auckland, 1995); Judith Binney, Gillian Chaplin, and Craig Wallace, *Mihaia: The Prophet Rua Kenana and his Community at Maungapohatu*, (Oxford University Press, Wellington, 1979); Paul Clark, *Hauhau: The Pai Marire Search for Maori Identity*, (Auckland University Press, Auckland, 1975); Bronwyn Elsmore, *Like Them That Dream: The Maori and the Old Testament*, (Moana Press, Tauranga, 1985); Elsmore, *Mana from Heaven*, (Moana Press, Tauranga, 1989); Keith Newman, *Ratana Revisited: An Unfinished Legacy*, (Reed, Auckland, 2006); Karen Sinclair, *Prophetic Histories: The People of the Māramatanga*, (Bridget Williams Books, Wellington, 2002); Peter Webster, *Rua and the Maori Millennium*, (Price Milburn for Victoria University Press, Wellington, 1979). Much less attention has been paid to Maori in the mainstream Protestant churches, Maori Catholics, or Maori Mormons.

⁹⁴⁵ Gilling, ‘Land of Fighting and Trouble’, 21.

⁹⁴⁶ Nicholas Thomas, *In Oceania: Visions, Artifacts, Histories* (Duke University Press, Durham and London, 1997) 198.

⁹⁴⁷ Letter or memorandum by Parakaia Te Pouepa, 23 October 1866, in T C Williams, *Himatangi Purchase* (1868), 10.

⁹⁴⁸ (1872) 1 Otaki MB 12.

⁹⁴⁹ Wiremu Kiriwehi (1902) 43 Otaki MB 6 (Makuratawhiti No 9 case), 28 January 1902.

⁹⁵⁰ Evidence of Te Ara Takana (Ngati Kauwhata), (1890) 13 Otaki MB 357.

established the CMS mission at Tauranga instead. But one of his notable converts from the Matamata area was Wiremu Tamihana Tarapipi, Te Waharoa's son, who had close links with Raukawa. In August 1841 a Catholic mission was established at Matamata under a Father Seon, but Ngati Haua remained loyal to their Anglican chief and to the CMS, and the Catholic mission was soon moved to Rangiaowhia. Seon was one of a number of Catholic missionaries active in the Waikato and Bay of Plenty region at this time, who included Philippe Viard at Otumoetai and Jean Lampila at Whakatane. (One of the less appealing characteristics of the missionaries, Protestant and Catholic, was their relentless sectarianism: in fact one sometimes gets the impression that Protestant evangelicals would rather have seen Maori remain pagan than become Roman Catholic.⁹⁵¹) Wiremu Tamihana himself became the CMS teacher at Matamata but Brown travelled back and forth from Tauranga frequently. The chapel at Matamata "was thought to be the largest Maori building in the North Island at that time (1843-44); it was about twenty-five metres by fourteen metres, and was built entirely by the local Maori men".⁹⁵²

Despite the setbacks at Matamata Christianity, Protestant and Catholic, grew rapidly in the Waikato and the Bay of Plenty in the later 1830s and early 1840s.⁹⁵³ By the 1840s Christianity was well-entrenched amongst Raukawa in the Waikato, presumably because of their proximity to Matamata and their links with Wiremu Tamihana. In 1847 Dr John Johnson, on his way across the Patetere plateau, stayed at a poor and remote Raukawa village and found himself in a Christian community with its own chapel.⁹⁵⁴

Jan 3. We made Sunday a day of rest. The natives...are a remnant of the Ngatiraukaua tribe, who once possessed this district and Maungatautari, and who have been permitted to remain by the conquerors, probably from some intermarriages with them.⁹⁵⁵ They have been partially Christianized by the Church Missionary Society, and possess a small chapel, in which, at the summons of a bell, one of their teachers performed service.

Christianity was no less a presence in central New Zealand. As Dieffenbach noted, Christianity arrived in the Cook Strait area well before the formal establishment of the missions: the spread of the Christian faith and of literacy in Maori were to a large extent Maori initiatives; there are of course parallels elsewhere in the Pacific.⁹⁵⁶ There was no CMS (Anglican) mission in existence anywhere in the South Island until August 1842, when the Reverend Charles Reay arrived at Nelson. The nearest CMS mission base until that time was the Reverend Octavius Hadfield's mission at Otaki and Waikanae, established in 1839. The 19th-century ministers at the CMS/Anglican Rangiatea church at Otaki were Octavius Hadfield (1848-1870); Samuel Williams (1849-1853); Riwai Te Ahu (1865-1866); Amos Knell (1866-1867); and James McWilliam (1868-1901). Hadfield and Williams built up close links with the Ngati Raukawa people of the Otaki region and later gave evidence in their favour in the

⁹⁵¹ For an example outside the region, see Binney's description of the confrontation between William Colenso and Father Claude Baty at Waikaremoana in January 1842: Binney, *Encircled Lands*, 48-51. Compared to the large literature on the CMS missionaries (there are biographies of practically all of the CMS missionaries, in fact several biographies of a number of them, and much of their correspondence and papers has been published) the historiography of Catholic evangelisation in 19th century remains underdeveloped – probably because the source materials are more difficult to locate and will normally be held in France and in Rome. The Catholic missionaries belonged to the Marist society, "one of the numerous congregations and institutes which emerged after the destruction of traditional Catholicism in the 1790s by French revolutionaries": Breward, *A History of the Churches in Australasia*, (Oxford History of the Christian Church), Clarendon, Oxford, 2001, 48.

⁹⁵² Helen Hogan (translator and editor), *Renata's Journey; Ko te Haerenga o Renata*, Canterbury University Press, 1994, 85.

⁹⁵³ Breward, *A History of the Churches in Australasia*, 50.

⁹⁵⁴ John Johnson, *Notes from a Journal* (1846-47), in Nancy Taylor (ed), *Early Travellers in New Zealand*, Oxford University Press, London, 1959, 147.

⁹⁵⁵ Johnson is incorrect on both points.

⁹⁵⁶ See Ian Breward, *A History of the Christian Churches in Australasia*, Clarendon Press, Oxford, 2001.

Native Land Court. The arrival of the CMS in Te Tau Ihu was preceded by the establishment of the Wesleyan mission at Port Underwood (that of the Reverend Samuel Ironside⁹⁵⁷). This mission ministered to the large Ngati Toa community at Port Underwood which was led by Rawiri Puaha.

6.3 Arrival of the CMS at Otaki

Matene Te Whiwhi⁹⁵⁸ was the son of Rangi Topeora (Te Rangihaeata's sister), and was born before the heke to the south, and he worked closely with Tamihana Te Rauparaha (Katu). Tamihana Te Rauparaha was Te Rauparaha's son by his fifth wife, Te Akau – who was Tuhourangi – and is said to have been born at Pukearuhe in North Taranaki and carried as a baby to Kapiti⁹⁵⁹. Katu was present at the fall of Kaiapoi and was also present when Ngai Tahu attempted to ambush his father around 1833 (Katu describes the scene very vividly and fully in his biography of his father). Tamihana Te Rauparaha and Matene Te Whiwhi taught themselves to read by studying Maori translations of the Gospels. In 1839 two Wesleyan missionaries, Bumby and Hobbs, came to the region in 1839 bringing with them a number of former Ngapuhi captives who had been released from slavery and had converted to Christianity. Two of the former captives, Ripahau and Paul, stayed on at Otaki and tried to preach the Gospel there, but they were swiftly silenced and told that they and their books might be thrown in the sea. They went on to Waikanae where they were well received, and their message interested four key people, Matene Te Whiwhi, Tamihana Te Rauparaha, Te Hiko, and Wiremu Kingi.⁹⁶⁰ Tamihana and Matene then journeyed together to the Bay of Islands in 1839 to seek a missionary to come to the Cook Strait region and became close associates of the Reverend Octavius Hadfield. In his evidence in the second Himatangi case (1869) Hadfield recalled that he “was fetched by Tamihana Te Rauparaha and Matene Te Whiwhi, who came to the Bay of the Islands”.⁹⁶¹ The arrival of the CMS mission in the area was later described by Heni Te Whiwhi, Matene's daughter, in 1905 (when she was giving evidence on the events leading up to the gift of Whitireia):⁹⁶²

My father was Matene Te Whiwhi; he was one of the givers of the land at Porirua and of the land at Otaki. He was a Ngati Huia, a sub-hapu of the Ngati Raukawa; he was also Ngati Toa. Before the battle of Te Kuititanga, Matene Te Whiwhi and Tamihana Te Rauparaha decided to get a missionary of the Church of England to come and reside in the midst of Ngati Raukawa. They told the people of their intention, and said they were going to Paihia, Bay of Islands, to ask for one. The people endeavoured to dissuade them from going, fearing that Ngapuhi might do them harm for some early acts of Ngati Raukawa against Ngapuhi. They, however, did not heed their people's warning, as their desire to have a minister in their midst to preach and teach the gospel of Christianity to their people was great. They left for Paihia and saw the head of the mission there, and told him of their wish. Mr Hadfield was sent here, and he set up at Waikanae and Rangiuru (Otaki).

Wi Parata gave an interesting twist to this narrative when in evidence he gave to the Royal Commission on the Whitireia and Otaki Trusts in 1905 he said that Ngati Raukawa had decided to seek a missionary following their defeat at the Battle of Kuititanga:⁹⁶³

The first person who brought the news of the Gospel to these parts was a Maori, and Waikanae was the first place where he announced the Gospel. Ngatiawa were the people living there then, and Ngatitao.

⁹⁵⁷ On Ironside there is a useful biography by W A Chambers, *Samuel Ironside in New Zealand*, Ray Richards in association with the Wesley Historical Society, Auckland, 1982.

⁹⁵⁸ See W H Oliver, “Te Whiwhi, Henare Matene”, *DNZB* I, 528.

⁹⁵⁹ Steven Oliver, “Te Rauparaha, Tamihana”, *DNZB*, I, 507-8.

⁹⁶⁰ See Dreaver, *Horowhenua*, 30.

⁹⁶¹ Evidence of Octavius Hadfield, second Himatangi hearing, 1869, MA 13/71.

⁹⁶² 1905 AJHR G-5, p. 8.

⁹⁶³ 1905 AJHR G-5, 20.

After this trouble arose, known as the fight at Kuititanga; at that time Ngatiraukawa had not embraced Christianity. Ngatiawa and Ngatitōa only had done so. After the battle of Kuititanga, the Ngatiraukawa thought that they had been beaten because the Ngatitōa and the Ngatiawa were Christians. Tamihana Te Rauparaha and Matene Te Whiwhi went to Ngapuhi to get the new religion and a clergyman, and Mr Hadfield came and took up his residence at Waikanae. He went there because the people there had embraced Christianity. After that, Ngatiraukawa embraced Christianity.

Wi Parata's chronology does not quite fit, as it happens, but his view that Raukawa particularly wanted to have their own missionary in order to maintain parity with Ngati Toa and Ngati Awa seems very plausible. His testimony also indicates that the arrival of Christianity amongst Maori in the Cook Strait region in fact preceded the establishment of the CMS mission.

Hadfield, for his part, had been keen to go to central New Zealand, notwithstanding his own poor health and the fact that the region had a bad reputation at the CMS mission at Paihia.⁹⁶⁴ In 1839 Hadfield was 25 years old. Poor health had prevented him from obtaining a university degree in England, which meant he could not be ordained by the Church of England. However he found that the Church Mission Society would accept him for overseas service and that he could be ordained by W G Broughton, the Bishop of Australia.⁹⁶⁵ Hadfield travelled to Sydney, and then travelled to the Bay of Islands with Broughton on HMS *Pelorus*. Hadfield was ordained at Paihia on 6 January 1839 by Broughton, and also present at the ordination were Henry and William Williams and Robert Maunsell. Hadfield taught at the mission school but was critical of the unwillingness of most of the CMS missionaries to leave the Bay of Islands to go to other parts of the country. For his part Hadfield wished to move elsewhere, and the visit of Tamihana Te Rauparaha and Matene Te Whiwhi to Paihia provided him with the opportunity he wanted. Hadfield and Henry Williams travelled to the the Cook Strait region on the CMS vessel, the *Columbine*. They arrived in the region at the same time as William Wakefield and the the *Tory* – in fact the *Columbine* sailed into Port Nicholson just after Wakefield and the *Tory* had left after completing the Port Nicholson deed.⁹⁶⁶ Hadfield and Williams were amazed by the extent to which the Christian revolution had preceded them in the district, not only at Porirua and Waikanae but at Port Underwood as well. Henry Williams preached to large groups at Mana and at Waikanae. Williams then left Hadfield at Waikanae and set off – astonishingly – on foot to Tauranga. Hadfield was alone, with the nearest CMS missionary 300 miles away. He remained in the Otaki-Waikanae region until 1870, after which he became Bishop of Wellington and in 1889 Primate of the Anglican Church in New Zealand.

Hadfield was a very active person who travelled long distances on foot exploring the region. In his 1869 evidence in the Himatangi case he described how he walked as far afield as Taranaki, “collecting information as I went about the residence and numbers of the tribes”.⁹⁶⁷ In December 1840 Hadfield crossed Cook Strait and was gratified by the enthusiasm for the mission he found in Queen Charlotte Sound. He was much less gratified, however, to find to his surprise the Wesleyan missionary, Samuel Ironside, already *in situ* at Port Underwood and attracting large congregations of his own.⁹⁶⁸ Few missionaries were able to shake off denominational prejudices in New Zealand,

⁹⁶⁴ See Lethbridge, *Wounded Lion*, 39-40.

⁹⁶⁵ Ramsden, *Rangiatea*, 31.

⁹⁶⁶ On Henry Williams' journey and his reaction to the NZ Company transactions see Lawrence M Rogers, *Te Wiremu: A Biography of Henry Williams*, Pegasus Press, Christchurch, 1973, 141-45.

⁹⁶⁷ Hadfield evidence, Himatangi hearing 1869, MA 13/71.

⁹⁶⁸ Ironside is the subject of an excellent biography by W.A. Chambers, *Samuel Ironside in New Zealand*, Ray Richards, Manurewa, 1982. The CMS and the WMS did not always co-operate with each other; Hadfield in particular, as Jenny Murray points out (Murray, *op.cit.* 69) “did not acknowledge clergy other than those of the Anglican Church”. What Maori made of such sectarian jealousies is unclear.

prejudices they passed on sometimes to their Maori congregations. While Ngati Toa, Te Ati Awa and Ngati Raukawa on the north side of Cook Strait mostly became Anglicans, Maori at Cloudy Bay gravitated to Ironside's mission. This was an area of dense Maori and Pakeha settlement formed around the whaling industry. As a strict and committed Wesleyan Ironside's work revolved around the distinctive Methodist approach to missionary work, with its heavy emphasis on preaching, "classes" (religious discussion groups) and "love feasts". By the mid-1840s there was a substantial Ngati Toa Wesleyan community at Port Underwood and Cloudy Bay, headed by Rawiri Kingi (i.e King David) Puaha, one of the most important of the younger generation of Ngati Toa rangatira.⁹⁶⁹ In 1843 the New Zealand Company surveyor Barnicoat noticed the substantial Wesleyan chapel at Port Underwood, "a large Chapel about 70 feet by 40 feet neatly built in the Maori fashion",⁹⁷⁰ and there were other churches in Queen Charlotte Sound. Ironside's congregation was almost entirely Maori, and his journals often contrast his Christian Maori parishioners with the behaviour of most of the Pakeha residents of Cloudy Bay. Ngati Raukawa, by contrast, were solidly Anglican.

Katu took the name Tamihana (i.e. Thompson) when he was baptised by Hadfield in March 1841. Both Matene and Tamihana missed the Wairau affray as they were away on a long missionary journey amongst the Ngai Tahu of Murihiku (where their somewhat over-zealous Anglicanism had managed to annoy the local Methodist missionary James Watkin).⁹⁷¹ Both men were married on the same day, 11 September 1843, Tamihana to Te Kapu, daughter of Tawhiri (Raukawa) and Matene to Pipi Te Ihurape, with Hadfield officiating. The two lived as Christian gentlemen and adopted European styles of dress and aspects of material culture. In November 1845 William Williams was invited to visit Tamihana's house, which he did, finding it to be "neat with 4 glass windows and is intended to be divided into four rooms".⁹⁷²

Matene Te Whiwhi and Tamihana Te Rauparaha both spent some time at St John's College in Auckland, and in fact were there when Te Rauparaha, following his kidnapping by Governor Grey, was brought to Auckland on HMS *Calliope*. Te Rauparaha requested both young men to return home to their people, which they did. Along with Te Rauparaha himself Hoani Te Okoro, Wiremu Kanae, Watarauhi Nohorua, and Rawiri Hikihiki they both acted as donors of the 500-acre block at Whitireia. It seems likely that Tamihana and Matene were hoping to see an equivalent of St John's College at Auckland built at Whitireia. Tamihana's most amazing journey, however, was the one he made in 1851-2 when he travelled to England with William and Jane Williams and other members of the CMS mission and on 30 June 1852 he was presented to Queen Victoria. Tamihana was impressed with the British monarchy and began to develop the idea that Maori should have a monarchy of their own. He discussed this with his cousin Matene on his return, and the two made a number of journeys around the North Island making the case in favour of a Maori monarchy and ending the sale of land to the government. Matene Te Whiwhi was a prominent supporter of the building of the great house Taiporohenui, belonging to Ngati Ruanui, set up as a meeting place to discuss land issues.

Matene and Tamihana envisaged a new vision for their people based on peace, accommodation, partnership with the Crown and an association with the Church of England. They were prepared to acquiesce in formerly 'slave' tribes being able to sell lands to the Crown or later to press claims in the Native Land Court – although the latter institution must have sorely tested their friendship, given the fact that in the Himatangi case (1869-69: see below) the two cousins found themselves on opposite

⁹⁶⁹ Rawiri Puaha was a nephew of Te Rauparaha (Puaha's mother, Hinekoto, was an older sister of Te Rauparaha).

⁹⁷⁰ Barnicoat Journal, qMS-0139 WATL, entry for 22 April 1843.

⁹⁷¹ McLintock, *The History of Otago*, 123.

⁹⁷² Frances Porter (ed), *Turanga Journals*, 355.

sides. They wanted schools and saw the institution of a Maori monarchy as a peacemaking and unifying force. The exact details are hard to see clearly but taken together their actions do reveal a certain coherence and vision.

Tamihana Te Rauparaha and Matene Te Whiwhi, although proponents of the idea of a Maori king, worked hard to prevent the Taranaki and Waikato wars from leading to conflict in the lower North Island. They also attempted to mediate in the complex land disputes involving Ngati Raukawa, Ngati Apa and Rangitane over the Rangitikei and Horowhenua lands. The two chiefs, for example, accompanied Featherston when he went to meet Ngati Apa in February 1864. Featherston noticed that the two were regarded with considerable respect by Ngati Apa.⁹⁷³

The proceedings were opened by Governor Hunia, addressing a few compliments to Matini [sic] Te Whiwhi and Tamihana Rauparaha. The Ngatiapas recognized them as chiefs, and would to some convenient extent be guided by them, but as to Ihakara he was nobody, and they utterly ignored him and his people.

Tamihana was also a historian, who wrote a biography of his father which has to stand as one of the most remarkable texts written in the Maori language in the 19th century. Historians have been concerned to emphasise Tamihana's partiality for his father's achievements – which is true, and understandable – but seem unable to come to terms with Tamihana's book as the amazing literary monument that it is. Matene, too, was steeped in the history of his two iwi, Ngati Toa and Ngati Raukawa, and gave evidence in many cases in the Native Land Court in the PkM region and in the Waikato.

After Matene's death his daughter Heni, also a committed Anglican, became a prominent leader and spokesperson for her people. In 1905, when giving evidence before the Royal Commission into Whitireia and related lands she introduced herself in the following manner:⁹⁷⁴

My age is sixty-nine years; I was born at the time of the Battle of Haowhenua, which was, I think, between Te Rauparaha and his tribe against the Ngatiawa⁹⁷⁵....I was born at Cloudy Bay in the other island. My father was Matene Te Whiwhi; he was one of the givers of the land at Porirua and of the land at Otaki. He was Ngatihua, a sub-hapu of the Ngatiraukawa; he was also Ngatitoo.

6.4 Creating a Christian community: Christianity and land tenure at Otaki

Otaki was a specifically Christian Maori town from the beginning, set up near the existing village at Rangiuru. Evidence given in 1905 by Heni Te Whiwhi, Matene's daughter, describes the creation of a planned Christian community at Otaki by Hadfield and Bishop Selwyn, set up around 1845-1848. At first the mission in the Raukawa area was at Rangiuru, but it was then moved, as Heni Te Whiwhi describes:⁹⁷⁶

A place for him was built alongside of Rangiuru Pa. Ngatiraukawa were then living at Rangiuru Pa and Pakakutu Pa. I think Mr. Hadfield arrived here in 1846 [presumably after leaving Waikanae]. Apart from his house of residence, a church was built and also a school building. Mr Hadfield was here two years when Bishop Selwyn arrived. Bishop Selwyn saw that Rangiuru was not a good place to live in, and, after looking over the land in the vicinity of the Otaki Township, he suggested to Ngatiraukawa to leave

⁹⁷³ Featherston to Fox, 18 February 1864, 1864 AJHR E-3, 36.

⁹⁷⁴ 1905 AJHR G-5, 8.

⁹⁷⁵ It is interesting that Heni Te Whiwhi remembers it this way. It was essentially a conflict between the Ngatimotu sections of "Ngati Awa" and Ngati Raukawa; Ngati Toa were split over who to support.

⁹⁷⁶ 1905 AJHR G-5, 8.

Rangiuru and come and make their home in this locality. The Bishop next asked Ngatiraukawa to give land in this locality to other hapus of the Ngatiraukawa who were living in other parts, so that they could be near the church and the school. This Ngatiraukawa agreed to.

Hadfield and Selwyn took a lead in establishing a planned village settlement at Otaki, demonstrating the connections between individualisation of title and the cultural transformations that missionaries and others sought to bring about. The model community had the support of Governor Grey and the surveying of the town sections was done Captain T.B. Collinson of the Royal Engineers.⁹⁷⁷ Matene Te Whiwhi described this experiment in missionary-coordinated town planning at Otaki in evidence he gave to the Native Land Court at Otaki in 1868:⁹⁷⁸

The site of the township belonged to Ngatiraukawa. About 20 years ago [i.e. around 1848] at the suggestion of the Bishop New Zealand [Selwyn] and others we (the people of Otaki) set apart a piece of land as a township. It was marked off and subdivided into ¼ acre allotments by Mr Fitzgerald who was sent by the Government at our request – these were allotted among the persons interested. The tracing I produce shows the township as laid out by Mr Fitzgerald (tracing produced).

The allocation process was managed by Samuel Williams of the CMS:⁹⁷⁹

We used to have meetings to arrange the apportioning of the allotments. Mr S Williams proposed the arrangements and we agreed to them.

According to Matina Te Kikotuha (1868):⁹⁸⁰

My mother Waimatao came from Porirua formerly – she is dead – she was of Ngati Raukawa – came to her nephews before the Town was laid out to Pukekara near the [Cath]olic? chapel where her brothers children were – they gave her a piece of land of which this forms a part, she did not occupy – It was long after she came the Town was formed – The Bishop⁹⁸¹ arranged about the Town with the Chiefs of Ngati Raukawa – I have not heard any objection to the Town – my mothers' nephews did not object.

The model community at Otaki attracted a great deal of interest and comment in the 1840s. When Major Richmond went to Otaki in 1847 he found:⁹⁸²

the old pa deserted for the new village of 'Hadfield,' where it was most satisfactory to witness the industry that prevailed. All were busily engaged in constructing neat cottages; the old "Warre" being completely discarded; five or six weather-boarded barns were already erected, and a church in progress.

W Mein Smith, a surveyor for the New Zealand Company, noted the agricultural improvements at Otaki: "the soil at Otaki is very rich; the Natives are learning the use of the Plough. They produce large quantities of Wheat, Maize, Potatoes and Peaches...[and] possess a number of horned Cattle".⁹⁸³

⁹⁷⁷ Ramsden, *Rangiatea*, 127.

⁹⁷⁸ (1868) 1 B Otaki MB [17?] – check (3 July 1868).

⁹⁷⁹ Ibid.

⁹⁸⁰ Matina Te Kikotuha in Sections 56, 57, 58, 59, and 60 Otaki case, (1868) 1 C Otaki MB 299-304, at 300.

⁹⁸¹ She means Octavius Hadfield.

⁹⁸² Report of 26 July 1847 from Richmond to Grey, *BPP 1847-50* [899], Vol XLII 17-18, Encl. on No. 7, IUP/BPP 6, cited Don Loveridge, *'Let the White Men Come Here': The Alienation of Ngati Awa and Te Atiawa Lands in Queen Charlotte Sound*, research report commissioned on behalf of the claimants, 1999, Wai 785 Doc#A53, p 101.

⁹⁸³ W. Mein Smith, "Report on Cooks Strait &c &c &s", 25 Sept 1849, NZC 108/10 #28, cited Loveridge, *'Let the White Men Come Here'*, 102.

A key component of the Christian new town of Otaki was the establishment of a school, which Heni Te Whiwhi described in detail in 1905:⁹⁸⁴

The Bishop then asked Ngatiraukawa for the land for the endowment of a school here. This Ngatiraukawa agreed to, and the land was given. I did not hear from my father that the Bishop gave cattle to Ngatiraukawa as payment for this land. I think Ngatiraukawa left Rangiuru for this place in 1845. I think it was in 1851 that a building for the accommodation of boys for a boarding-school on a portion of the reserve was built, and I think the building was completed in 1853. The land was given to the Bishop because he told Ngatiraukawa that it would be the means of enabling their children to be taught all the learning that was taught to European children.

A visitor described the settlement in 1849, paying particular attention to the school and the Church:⁹⁸⁵

The Streets are wide, there are several excellent wooden buildings and some of them fitted up and furnished in a most comfortable manner. The Natives are building a new Church under the able superintendence of their excellent Pastor Mr. Williams. The building is very large, and has been constructed with immense labour...The School house, at present used also as a Church, contains two large rooms, one for the male children, the other for the females amounting, in all to about 200 scholars.

Not everyone was enthusiastic about the school, however, notably Wi Parata, who had been made to go to it. He was always scathingly critical of the education he received at the school, and later told a parliamentary select committee that “if I were to state the things that went on there you would not believe me”.⁹⁸⁶ Wi Parata said he learned nothing at the Otaki school. He was hoping to learn how to read and write in English, but the school only taught reading and writing in Maori, which Wi Parata did not need to learn: he had already been taught to do that by his mother. Most of the time the children at the school were engaged “in tilling the soil”.⁹⁸⁷

The other key component of the community was the great church, Rangiatea, built from 1848-1851, with its huge totara ridge pole some seventy feet long and its three pillars more than thirty-six feet high. Early drawings and photographs of the church show how it dominated the landscape for miles around. It must have seemed like a massive symbol of a new Christian Maori culture.⁹⁸⁸ According to Matene Te Whiwhi, Te Rauparaha came to live at Otaki so that “he should be near the house of prayer”.⁹⁸⁹ Another substantial and much-admired church was built by Ngati Awa at Reretawhangawhanga’s community at Kenakena (Waikanae).⁹⁹⁰ Timber for this church was provided by Te Rauparaha from his own forest preserve at Ohau, as a goodwill offering to his – and Ngati Raukawa’s – former opponents.⁹⁹¹ While Rangiatea survived until 1995, when it was destroyed by an

⁹⁸⁴ 1905 AJHR G-5, 8.

⁹⁸⁵ Loveridge, *Let the White Men Come Here*, 102. Loveridge discusses the attempt to set up a similar community in Queen Charlotte Sound at Waikawa Bay for Te Ati Awa. Te Ati Awa were persuaded to sell their land at Waitohi receiving in exchange a cash payment as well as surveyed lots at Waikawa Bay and a church. The project was anything but successful. Loveridge narrates the story of Waitohi and Waikawa Bay with great clarity and a wealth of documentation.

⁹⁸⁶ Evidence of Wi Parata to the Native Affairs Select Committee (14 July 1876), Le 1/1876/67.

⁹⁸⁷ Ibid.

⁹⁸⁸ On Rangiatea see Sharon Dell, “Rangiatea”, in Frances Porter (ed), *Historic Buildings of New Zealand: North Island*, (Cassell, Auckland, 1979), 255-259; Eric Ramsden, *Rangiatea: The Story of the First Otaki Church, its First Pastor, and its People* (Reed, Wellington, 1951); Richard Sundt, *Whare Karakia: Māori Church Building, Decoration and Ritual in Aotearoa New Zealand 1834-1863* (Auckland University Press, Auckland, 2010).

⁹⁸⁹ Evidence of Matene Te Whiwhi, Sections 56,57,58,59,60 case (1868) 1C Otaki MB 314.

⁹⁹⁰ On the church at Waikanae see Sundt, *Whare Karakia*, 98-104.

⁹⁹¹ Ibid, 98.

arsonist (but since rebuilt) the church at Kenakena did not long survive the departure of many Ngati Awa people for North Taranaki in 1848.

6.5 Evidence on oath

One way to assess the extent of Christianisation is by considering the extent to which people gave evidence on oath before bodies such as the Spain Commission and the Native Land Court. In 1866 and 1867, when the Native Land Court first began sitting at Otaki and receiving the evidence of Ngati Raukawa people, evidence was overwhelmingly given on oath.⁹⁹² Just one person at these earlier hearings was “cautioned to speak the truth”, presumably on the basis that he did not understand the meaning or nature of an oath.⁹⁹³ This may seem to be a minor or uninteresting point, but I would argue that this is not so.

First, the fact that testimony is almost overwhelmingly given on oath, demonstrates the extent to which Ngati Raukawa had become a deeply Christianised community by the 1860s. The fact that people giving testimony on oath might not always be 100% truthful is irrelevant in this context: what is important is that everyone understands the concept of sworn testimony. Secondly, the fact that Maori people could give, and were regarded as being capable of giving, sworn testimony in Court is an important clue to the origins and development of institutions for the investigations of land rights in New Zealand. The Native Land Court could not possibly have functioned without Maori testimony, which means that it was established on the assumption that Maori were Christians, and understood the significance of giving an oath in Court. That did not mean in reality that they necessarily did so, any more than non-Maori witnesses never gave false evidence. The significance of this is apparent when contrasted with Australia, where it was widely assumed that Australian aborigines were not Christians, could not understand the nature of an oath, could not understand the English language,⁹⁹⁴ and therefore could never give evidence in the Courts, either against Europeans or even in their own defence.⁹⁹⁵

An authoritative discussion of practice in the early New Zealand courts regarding Maori testimony is that by Shaunnagh Dorsett in her recently-published *Juridical Encounters: Māori and the Colonial Courts* (2017).⁹⁹⁶ In this book Dorsett has shown that Maori participated in the ordinary courts of the colony to a substantial extent, whether as prosecutors, plaintiffs, witnesses, and defendants (civil and criminal). Moreover, “[o]ne of the key matters which enabled Māori to engage so readily with the new settler courts was their ability to participate in the processes of those courts as witnesses”.⁹⁹⁷ One important component of Governor Fitzroy’s “exceptional regime” was the Unsworn Testimony

⁹⁹² E.g. evidence of Perenara Te Tewe, (1866) 1B Otaki 2, “being sworn” (6 July 1866); Oriwia Hurumutu, (1866) 1B Otaki MB 4, “being sworn” (6 July 1866); Horomona Toremi (1867) 1B Otaki MB 10, “sworn”, (2 July 1867); Nopera Te Ngiha, (1867) 1B Otaki MB 12, “sworn” (2 July 1867); Te Kepa Keri Keri, (1867) 1B Otaki MB 20, “sworn”, (4 July 1867); Pita Te Rakuma, (1867) 1B Otaki MB 20, “sworn”, (4 July 1868); Matene Te Whiwhi, (1867) 1B Otaki MB 22, “sworn”, (4 July 1866). Further evidence seems unnecessary. Sworn testimony was the norm in the Otaki Court, as it was elsewhere.

⁹⁹³ This was Ururoa Ripia, at (1866) 1B Otaki MB 5 (6 July 1866).

⁹⁹⁴ More probably the issue was the other way around: Europeans in Australia could not speak Aboriginal languages, and thus there was no way in which the procedure of requiring a witness to take an oath could have been practically carried out. This was less of an issue in New Zealand, and presumably the procedure in the Native Land Court would have been carried out in Maori.

⁹⁹⁵ This was a complex problem in the courts of the various Australian colonies. See e.g. Alan Pope, *One Law for All?: Aboriginal People and Criminal Law in early South Australia* (Aboriginal Studies Press, Canberra, 2011), 41-55.

⁹⁹⁶ Dorsett, *Juridical Encounters: Māori and the Colonial Courts 1840-1852* (Auckland University Press, Auckland, 2017).

⁹⁹⁷ Dorsett, *Juridical Encounters*, 128.

Ordinance (1844).⁹⁹⁸ This ordinance was made following an enactment made in Great Britain, the Colonial Evidence Act 1843, which had allowed the various colonies to pass local acts or ordinances relating to evidence (prior to this legislation relating to unsworn testimony made in New South Wales and Western Australia had been disallowed in London). Yet, as Dorsett notes, Maori people had been giving evidence in New Zealand courts and tribunals well before 1844. One reason was the land claims commissions of the early 1840s had specifically provided for Maori testimony – the commissions could not have functioned without it. Another was the common law rule known as the “pagan” or “infidel” – so-called - exception, by which people of other faiths, such as Muslims, were able to give evidence in British courts, which allowed witnesses to take the oath provided they believed in a god and understood that it was wrong to swear falsely. This exception had been developed in British courts in India.⁹⁹⁹ The other reason identified by Dorsett was that Maori had largely become Christianised in any case, and could and did take the oath. As noted above, certainly 1865 at Otaki Maori nearly universally took the oath.

6.6 Christianity and the Modification of Customary Law

The missionaries were an important agent of social change in the 1830s and 1840s. As Ian Wards has put it, “the missionaries, beyond question, held the confidence of the Maoris”.¹⁰⁰⁰ After all, “they had lived amongst them, bought or received land as a gift from them, christianised many of them, taught them the rudimentary principles of diversified agriculture, and of animal husbandry, and in short had won, and had deserved to win, their affection and their respect”.¹⁰⁰¹ Younger chiefs of Ngati Toa such as Tamihana Te Rauparaha and Matene Te Whiwhi were self-consciously 'Mihanere' - devout Anglicans. They were on close terms with the influential CMS missionary, Octavius Hadfield, who came to the region in 1839 and lived first with the Te Ati Awa at Kenakena (Waikanae) and then at Otaki with the Ngati Raukawa. The advent of the CMS mission in the area was described by Heni Te Whiwhi, Matene's daughter, in 1905:¹⁰⁰²

My father was Matene Te Whiwhi; he was one of the givers of the land at Porirua and of the land at Otaki. He was a Ngati Huia, a sub-hapu of the Ngati Raukawa; he was also Ngati Toa. Before the battle of Te Kuititanga, Matene Te Whiwhi and Tamihana Te Rauparaha decided to get a missionary of the Church of England to come and reside in the midst of Ngati Raukawa. They told the people of their intention, and said they were going to Paihia, Bay of Islands, to ask for one. The people endeavoured to dissuade them from going, fearing that Ngapuhi might do them harm for some early acts of Ngati Raukawa against Ngapuhi. They, however, did not heed their people's warning, as their desire to have a minister in their midst to preach and teach the gospel of Christianity to their people was great. They left for Paihia and saw the head of the mission there, and told him of their wish. Mr Hadfield was sent here, and he set up at Waikanae and Rangiuru (Otaki).

The CMS missionaries were products of English evangelical Protestantism, often somewhat Calvinist in its orientation – a Christian culture which has recently been brilliantly explored in depth by Andrew Sharp.¹⁰⁰³ The missionaries naturally had their own determined views on such matters as slavery,

⁹⁹⁸ An Ordinance for the Admission in Certain Cases of Unsworn Testimony in Civil and Criminal Proceedings 7 Vict. No. 16 (1844) (NZ).

⁹⁹⁹ *Omichund v Barker* (1744) Willes 538, 125 ER 1310.

¹⁰⁰⁰ Wards, *Shadow of the Land*, 40,

¹⁰⁰¹ Ibid.

¹⁰⁰² 1905 AJHR G-5, p. 8.

¹⁰⁰³ Sharp, *The World, the Flesh, and the Devil: The life and opinions of Samuel Marsden in England and the Antipodes* (Auckland University Press, Auckland, 2017). On the origins and history of the CMS see Kevin Ward and Brian Stanley (eds), *The Church Missionary Society and World Christianity*, (Eerdmans, Grand Rapids, Michigan, and Curzon Press, London) 2000.

infanticide, ‘Popery’, and the independence of the Church, arising from their own Christian evangelism and the great political causes of 19th-century England. Slavery was not abolished in the British Empire until 1833 (it is said in the Tribunal’s Rekohu Report that “slavery had been outlawed by an Imperial Act of 1807, but this incorrect¹⁰⁰⁴) or in the United States until Lincoln’s Emancipation Proclamation of 1863. There never was a formal emancipation process in New Zealand. On the whole the institution seems to have simply disintegrated, largely as a consequence of Christian teaching. New Zealand missionaries belonged on the whole to the Evangelical wing of the Anglican church which had played an important role in the great anti-slavery campaigns in England. Under missionary pressure, Maori iwi in the 1830s began to release their slaves - although one does find occasional statements in the Native Land Court Minute Books that slaves were released before the coming of Christianity, usually as an outcome of the ever-changing political relationships between the tribes.¹⁰⁰⁵ But undoubtedly Christianity often led to the release of captives:¹⁰⁰⁶

In consequence of Christianity having recalled them they [Ngati Toa] returned the child to its parents, and he went back to his parents and his having been taken was never cast in his teeth that he had been a prisoner.

On the other hand Tamihana Te Rauparaha revealed to the Native Land Court in 1873 that he still had an aged Muaupoko slave still living with his family. His name was Te Rei Rongomai of Muaupoko, originally caught by Te Rauparaha at Horowhenua, who had been living with the family for 30 years and presumably by 1873 was a familiar part of the household. Missionaries convinced rangatira that the time before Christianity was the ‘the time of Satan’, one of the worst aspects of which was the keeping of slaves. Nopera Te Ngiha of Ngati Toa told the Land Court in 1868:¹⁰⁰⁷

In Satan's time there were slaves, of the three hapus, at Kapiti. Satan's time was up to Mr Williams. [I] can't tell about ‘mana’ in the time of Satan.

Here, no doubt, Nopera was reproducing the teachings of the CMS missionaries he had encountered at Otaki. Samuel Marsden was one who believed that Polynesian societies before the arrival of missionaries were literally under the government of Satan, and he would not have been alone in this opinion.¹⁰⁰⁸

The missionaries held quite decided views about land tenure, and Maori customary law regarding land ownership. Hostile to slavery, they will have strongly disliked the notion of “slave tribes”. Certainly Hadfield and Samuel Williams worked hard to persuade the chiefs to recognise, in accordance with Christian concepts, the legitimacy of claims to land by defeated tribes. Not everyone was happy about this. Rangatira complained that under missionary influence some tribes became “whakahi” (insolent), questioning the accepted scheme of things. Parakaia Te Pouepa, who was the main claimant in the Himatangi case, told the Native Land Court in 1868:¹⁰⁰⁹

¹⁰⁰⁴ Rekohu Report, 2001, 63. What was abolished in 1807 was the slave *trade*. But this did not abolish the status of slavery in the British West Indies: it meant that the slave population thereafter came from children born into slavery. In the West Indies and in the American South the law was that all children born of a slave mother were the property of the owner of the mother.

¹⁰⁰⁵ See the evidence of Parakaia Te Pouepa of Ngati Raukawa, the main claimant in the Himatangi case, at 1868 1 C Otaki MB 231.

¹⁰⁰⁶ Evidence of Tamihana Te Rauparaha, Himatangi case, (1868) 1 C Otaki MB 165.

¹⁰⁰⁷ Evidence of Nopera Te Ngiha, Himatangi case, (1868) 1 C Otaki MB 397.

¹⁰⁰⁸ See Sharp, *The World, the Flesh and the Devil*, 219-220.

¹⁰⁰⁹ Evidence of Parakaia Te Pouepa (Ngati Raukawa), Himatangi case, (1868) 1C Otaki MB 203.

Ngati Raukawa were kind to Ngati Apa. If Whatanui had not saved them they would not have been spared. They were not 'whakahi' to Ngati Raukawa or they would not have been spared. Began to be 'whakahi' after the missionaries came - about 1842 - they began to be cheeky - hearing that ["Kahore he pouanga, he Rangatira?"]. Missionaries were here before 1840. Their preaching and the purchase of land from them by the Government about 1847 caused them to say the land was theirs.

Henare Te Herekau, also of Ngati Raukawa, said much the same:¹⁰¹⁰

Though the Christianity and the notice of government has raised these people out of their degraded position, if they had shown themselves before my hands were tied by the Gospel, I should have killed them or sent them off to some other Island.

Missionary influence was critical in the decision of the younger chiefs of Ngati Raukawa and Ngati Toa to acquiesce in Ngati Apa selling the Rangitikei Block to the government: "the young men, such as myself, Hakaraia and Matene Te Whiwhi, wished to follow advice of missionary [sic] and take the boundary to Turakina, and, after, to Rangitikei".¹⁰¹¹ On that occasion Samuel Williams - who officiated at Rangiatea church, Otaki, from 1849-53 - had been asked by McLean to assist in obtaining Ngati Toa and Ngati Raukawa assent to the sale. According to Williams:¹⁰¹²

I advised Te Rauparaha Te Rauparaha to show consideration to the conquered tribes living on the land and that they should consent to the sale of a portion of the country.

Williams emphasised his own role in convincing Ngati Raukawa to allow the sale:¹⁰¹³

I had strongly urged the Ngati Raukawa to curtail their boundaries and not hold useless tracts of land. I was the Minister of Ngati Raukawa. I preached to show kindness to the tribes whom they had conquered formerly.

Williams, by his own account, also played an important part in assisting the government and the selling party led by Ihakara Tukumarū of Patukohuru at the time of the Awahou block sale in 1858.¹⁰¹⁴ Rakapa Kahoki stressed that opposing the sale of the Rangitikei Turakina block could have led to a resort to arms, which was why Matene Te Whiwhi and Archdeacon Hadfield were in favour:¹⁰¹⁵

Ngatiapa ultimately gained their point – they were the principal sellers, only a few of Ngatiraukawa assented – Rangihaeata was not agreeable but he did not carry the opposition to a point because Matene [Te Whiwhi] and Archdeacon Hadfield were on the other side and many others interested had become Christians and he could not carry his point of an appeal to arms to prevent sale.

It is also significant, as the Native Appellate Court noted in 1912, that many Muaupoko who had abandoned the Horowhenua block did not return "till after Christianity had been established".¹⁰¹⁶ The main point that must be made is that acquiescence in land alienations by other iwi may not prove that the sellers had independent authority under Maori customary law, but rather that younger, 'Mihanere' chiefs had been persuaded that, in the new era of the Gospel, rigid insistence on Maori custom was no longer appropriate. That Ngati Raukawa in the end agreed that Ngati Apa could sell the Rangitikei to the government does not prove that the Raukawa chiefs conceded that Ngati Apa had a right to do so

¹⁰¹⁰ Evidence of Henare Te Herekau, (Ngati Raukawa), Himatangi case, (1869) 1 C Otaki MB 207.

¹⁰¹¹ Evidence of Rawiri Te Whanui, Himatangi case, (1868) 1C Otaki MB 231-2.

¹⁰¹² Evidence of the Rev. Samuel Williams, Himatangi case, at (1868) 1C Otaki MB 227.

¹⁰¹³ Ibid.

¹⁰¹⁴ (1868) 1C Otaki MB 267-269 (18 March 1868).

¹⁰¹⁵ (1868) 1D Otaki MB 415 (31 March 1868) (in cxx by Thomas Williams).

¹⁰¹⁶ Judgment of Native Appellate Court in Horowhenua 11B case, (1912) 3 Wellington ACMB at 265 (full text in Appendix 1.32).

according to Maori cultural norms, at least as these were applied to the political situation by Ngati Raukawa.

The complexities and confusions caused by the new discourse of Christianity are shown by the disputation between Ngati Raukawa and Ngati Apa over the Rangitikei-Manawatu lands that erupted in 1863. It was at this time that Ngati Apa demanded that Ngati Raukawa should vacate this region, and either go home to Maungatautari or at least move south of the Manawatu river. One reason that Ngati Apa gave for this was that with the coming of the Gospel and the law the old rules no longer applied: according to Ihakara Tukumarū “[t]he reason they gave for this was the introduction of the law [te ture] and the Gospel [te rongō pai] (i.e. as opposed to claim by conquest)”.¹⁰¹⁷ But Ngati Raukawa at the same time had offered that the region between the rivers could be split three ways between Ngati Apa, Rangitane, and Ngati Raukawa. In so doing they themselves thought they were complying with the new law: it was in conformity “with the law that we propose to divide the land in order that we may live at peace with each other”.¹⁰¹⁸ No agreement proved possible on this occasion.

This question also touches on the Treaty of Waitangi itself. Ngati Toa, Ngati Raukawa and the other tribes were, of course, Treaty signatories. It seems that the tribes signed after hearing Hadfield’s explanation that the mana of the Queen was to protect their lands, which can only have meant, to a tribe such as Ngati Raukawa, the titles to land recognised by Maori custom. Henare Te Herekau said:¹⁰¹⁹

I saw the signing of the Treaty of Waitangi. It was signed in 1840 at Rangiuru. Archdeacon Williams told us the meaning of the Treaty. He explained that it meant that the mana of the Queen was to be over the land as a protection from other nations, and as a protection for their lands. Ngati Raukawa then only had the mana [208.] over Rangitikei and Manawatu.

This was also the argument pressed by Thomas C Williams, son of Henry Williams of the CMS. Thomas Williams represented Ngati Raukawa in the first Himatangi hearing in 1868, and subsequently published a bulky work called *An Appeal to the Right Hon. W.E. Gladstone, being an Appeal on behalf of the Ngati Raukawa tribe* (1873).¹⁰²⁰ Williams was in no doubt that the Wellington provincial government’s purchase of the Rangitikei-Manawatu block (1866) “must be admitted to have been a distinct breach of Her Majesty’s Treaty of Waitangi”.¹⁰²¹ He concluded this remarkable work by appealing to Gladstone “under the full assurance that Her Majesty’s Government and the British people, whilst desirous of respecting and maintaining their Treaties with the great powers of Europe and the powerful people and government of the United States of America, would at the same time stoop as rigidly to respect a Treaty, although made with so insignificant a people as the aboriginal inhabitants of the islands of New Zealand”.¹⁰²²

6.7 Settlers, the Church, and Maori Land

By the time of the outbreak of the Taranaki war in 1860 Maori had had long been engaged with the Protestant missionary societies, Catholic missionary priests, and the various churches. New Zealand lacked an established church, and the complicated history of the Christian missions had resulted in a complex tapestry of Maori religious allegiance. This complexity was also true of the settler community, which included within it a strong strain of anti-clericalism, anti-clericalism being an important

¹⁰¹⁷ Memorandum by Ihakara Tukumarū, 23 May 1863, MA 13/109/69a (as translated by Walter Buller).

¹⁰¹⁸ Ibid.

¹⁰¹⁹ (1868) 1 C Otaki MB 207.

¹⁰²⁰ J Hughes, Wellington, 1873.

¹⁰²¹ Williams, *Letter to Gladstone*, 12.

¹⁰²² Ibid, 66.

component of nineteenth century liberalism, especially in Catholic countries where the church owned large areas of land, but to a lesser degree in Protestant countries as well. Colonial politicians like Featherston did not want to see Maori land passing into the hands of the Church. Legislation enacted by the General Assembly in 1858 prevented Maori from endowing land for the support of Maori clergymen.¹⁰²³

Protestant evangelicals, within and outside the Church of England, had been very prominent in a number of the great causes of the early 19th century, including the abolition of the slave trade (1807), the abolition of slavery (1834) and the status and treatment of native peoples, especially in southern Africa and Australia.¹⁰²⁴ Quakers in England had been active in such causes as prison reform, and American Quakers were hostile to slavery in the United States and did their best to aid Native Americans. This did not make them popular, needless to say, in the American South or on the western frontiers. By the 1860s the Christian evangelical enthusiasm of the 1830s which had underpinned the abolition of slavery and the Aborigines Committee report of 1837 confronted a rising tide of robust scepticism regarding the rights of indigenous peoples. Those who stood up for the native peoples of the British empire were often stereotyped as “Exeter Hall” people, Exeter Hall in London being a favourite gathering place of evangelical enthusiasts.

In New Zealand, some churchmen, such as Octavius Hadfield (who became Bishop of Wellington in 1870) or Bishop Selwyn, were vocal and prominent critics of the government’s Maori policies, especially of the Waitara purchase, the outbreak of the Taranaki war, and the land confiscations of 1865-1866. Hadfield and the Williams family were strong supporters of Ngati Raukawa against the Wellington provincial government, gave evidence on their behalf in cases in the Native Land Court, and wrote many letters to colonial newspapers denouncing government policy. (Hadfield, who married Henry Williams’ daughter Catherine in 1852, was essentially part of the Williams connection himself.) Opposition of this kind was not welcome to colonial politicians and to many in the settler community. When Ngati Raukawa people at Otaki tried to petition the Crown in 1860 asking for Governor Browne to be recalled following the outbreak of the Taranaki war, Hadfield was accused of orchestrating or even drafting the petition himself – which he denied, although he was strongly supportive of Ngati Raukawa’s right to petition.¹⁰²⁵ The close connections between Maori, the missionary societies, and the Anglican church were cruelly buffeted by the wars of the 1860s. Having accepted the teachings of the Gospel, Maori were unprepared for the behaviour of Crown forces during the Waikato war and by Bishop Selwyn’s ill-judged decision to take on the role as military chaplain.¹⁰²⁶ Colonial politicians resented criticism of their actions in Taranaki and the Waikato by evangelical circles in England, who were – as was widely known - in constant communication with Hadfield and his colleagues in New Zealand. The Williams clan were seen by many in the colony as an insufferably powerful and interfering pro-Maori clique, linked to even more powerful agencies in Britain such as the Aborigines Protection Society and their supporters in the House of Commons. There were other kinds of accusations. Hadfield was taunted in the newspapers for not having a university degree. He was accused by E G Wakefield of holding large areas of land “as a tenant under Maori landlords”, which Hadfield denied.¹⁰²⁷ The fact that Hadfield and other Anglican leaders supported the Ngati Raukawa case was explained by William

¹⁰²³ “Further Papers Relative to Native Affairs”, *Taranaki Herald*, Vol IX, Issue 428, 13 October 1860, p 4.

¹⁰²⁴ See generally Catherine Hall, *Civilising Subjects: Metropole and Colony in the English Imagination 1830-1867* (Polity, Cambridge, 2002).

¹⁰²⁵ See correspondence printed in the *Daily Southern Cross*, Vol XVII, Issue 1328, 1 September 1860, p 5.

¹⁰²⁶ See Belgrave, *Dancing with the King*, 19.

¹⁰²⁷ Letter of Octavius Hadfield, *Wellington Independent*, Vol XVIII, Issue 1978, 3 November 1863. Hadfield stated that he had not “the slightest interest, either direct or indirect, in a single acre of land in this Province”; moreover “I may add that I do not possess a cow or a sheep, nor have I any pecuniary interest in any”.

Fox as motivated by the desire of the Church to itself acquire land from Ngati Raukawa. Fox constantly insinuated this in his submissions and in cross-examination. This also had repercussions for the status of the Treaty of Waitangi, denounced by colonial politicians like Fox as a missionary project and as a device to protect missionary “land sharking”. (Missionaries were often criticised in the newspapers for dabbling in land speculation, but the claims were exaggerated: most missionaries acquired only small areas or no land at all.¹⁰²⁸)

Schools set up by CMS missionaries, including the Otaki school, were a favourite target of colonial politicians in New Zealand. Hadfield took the position that the Otaki school, as a private Christian foundation, was not accountable to the government or under its supervision. The *Wellington Independent* professed to be outraged by Hadfield’s stand and suggested that his opposition to Featherston’s regime in Wellington was prompted by a desire to shield himself and the Otaki school from public scrutiny.¹⁰²⁹

It appears that as a result of its [the general government’s] bounty and the liberality of the Natives, there is now a property consisting of about 800 acres of fertile land, 1000 fine woolled sheep, and 100 head of cattle in charge of a rev. gentleman who positively refuses to allow His Excellency the Governor’s Commissioners to inspect his Establishment, and who declines to recognise their official existence in any way. Has the General Assembly done nothing in the matter? Does the General Government intend to do nothing in the matter? His Excellency the Governor [Gore Browne] retains the management of Native affairs in his own hands. Will he patiently submit to the slap in the face which the Rev. Archdeacon Hadfield, the creature of his bounty and that of his predecessor [Grey], has administered?

Etc. In Australia, echoing this criticism, newspapers attacked the Anglican church for its support of Maori people in New Zealand. In 1860 the Melbourne *Argus* went so far as to claim that missionaries were to blame for the outbreak of the war in New Zealand.¹⁰³⁰

¹⁰²⁸ “The Alleged Missionary Land Sharking”, *Daily Southern Cross*, Vol XXIX, Issue 5036, 11 October 1873, p 3.

¹⁰²⁹ “The Native Schools and Archdeacon Hadfield”, *Wellington Independent*, 11 August 1858, p 2.

¹⁰³⁰ Robert Kenny, *The Land Enters the Dreaming: Nathanael Pepper and the Ruptured World* (Scribe, Melbourne, 2007), 18.

7. Pre-emptive purchasing and customary interests

7.1 The Crown pre-emptive purchasing system

The Native Land Court was not established until about two-thirds of the surface area of New Zealand had already passed out of Maori hands by means of Crown pre-emptive purchases. Until the establishment of the Native Land Court the combined effect of the two doctrines of Crown pre-emption and native title was that the only way that Maori land could be converted to a Crown-derived title was by means of an alienation to the Crown followed by a grant to a third party. Crown pre-emption was found in both the Maori and English texts of the Treaty of Waitangi and in the Land Claims Ordinance of 1841. As Ian Wards has pointed out, British colonial expansion “was at all times limited by the material resources provided in the first instance by the British taxpayer,”¹⁰³¹ This reality meant that the colonial government at times had to abandon pre-emption as not practicable. In 1844 Governor Fitzroy, strapped for cash and thus unable to purchase Maori land, set up a system of pre-emption waivers, which allowed settlers around Auckland to buy land directly from Maori around Auckland provided that a pre-emption waiver certificate was obtained in advance. This system, only intended as a temporary expedient, was scrapped by Grey and Crown pre-emption was then restated in Grey’s Native Land Purchase Ordinance of 1846. Crown pre-emption was later provided for at a more august constitutional level by s 73 of the Constitution Act 1852, an Act of the imperial parliament, which stipulated that “[i]t shall not be lawful for any Person other than Her Majesty ... to purchase or in anywise acquire or accept from the aboriginal Natives Land of or belonging to or used or occupied by them in common as Tribes and Communities”. The Native Land Purchase Ordinance remained in effect for good measure. Pre-emption was thus solidly provided for in New Zealand and was indeed the norm in all British colonies. Then, by what must be seen as an exceptionally radical step, it was in effect repealed in 1862.

As at 1862 much of the most important and valuable land in the North Island – in the Waikato, Taranaki, Hauraki, the Bay of Plenty, East Cape, Gisborne and much of the North Island interior was still held by Maori under their traditional customary law. It was these areas which were to be most affected by the new Native Land Court. The Native Lands Acts coincided with a new phase of Pakeha settlement in the 1870s, the settlement of the “great bush” of the North Island interior, especially southern Hawke’s Bay, the northern Wairarapa, as well as parts of the Waikato, Taranaki and the Bay of Plenty.¹⁰³²

Pre-emptive purchasing by the Crown and judicial investigation of titles by a specialist Court and converting them into freehold grants are at the opposite ends of the policy continuum. The first keeps the Crown at the centre of things practically and conceptually and can be seen as highly orthodox and traditional, while the second belongs to the world of nineteenth-century liberalism and has much in common with policies adopted by modernising commercial elites in the Americas and Hawaii. However Maori land policy does not neatly break down into a “Crown purchasing” phase before 1862-1865 and a “Native Land Court phase” thereafter. Judicial investigation into Maori land rights was not completely a novelty as at 1862. Alongside pre-emptive purchasing in the first decades of the colony’s history there had also been judicial investigations of various kinds into Maori land questions as well, and these created precedents for an institution such

¹⁰³¹ Wards, *Shadow of the Land*, ix.

¹⁰³² See G C Petersen, “Pioneering the North Island Bush”, in R F Watters (ed), *Land and Society in New Zealand: Essays in Historical Geography*, A H and A W Reed, Wellington, 1965, 66-79.

as the Native Land Court. (For one thing, Maori testimony had been of considerable importance in these earlier judicial inquiries.)

The earlier inquiries were mainly concerned with the claims of pre-Treaty European purchasers. The claims of the New Zealand Company to have acquired large areas in central New Zealand were investigated by a Land Claims Commissioner sent from England by the British government, William Spain, who began his inquiries at Wellington in May 1842. Spain laboriously worked through the Company's claims by means of public hearings, at which Maori chiefs such as Te Rauparaha of Ngati Toa gave testimony. Spain's inquiries very quickly became enmeshed in the complex political relationships between the New Zealand Company and the British government, and indeed in British parliamentary politics. There were also inquiries into smaller transactions made between Maori and traders, missionary societies – principally the Anglican Church Missionary Society (CMS) and the Wesleyan Missionary Society (WMS) – and land speculators before the signing of the Treaty of Waitangi. Some of these transactions, like the New Zealand Company transactions, related to land in central New Zealand (at Kapiti Island, for instance); others were in the southern parts of the South Island and there were some on the Waikato coast. However, the overwhelming bulk of these transactions were in Northland, around Auckland, and in the Coromandel Peninsula and the Hauraki Gulf Islands.

The smaller claims, like the large New Zealand Company claims, were also investigated by semi-judicial investigations and public hearings, although as with the New Zealand Company investigations the “claimants” were not Maori but European purchasers claiming to have fairly transacted with Maori. Most of these transactions dated from the 1830s, although some related to earlier decades. The so-called “first Land Claims Commission” investigated these claims at numerous hearings from 1841-1844, presided over by Commissioners Godfrey, Richmond, and FitzGerald. These investigations were mandated by the Land Claims Ordinance of 1841, s 3 of which directed the commissioners to inquire into “the mode in which such claims to land have been acquired, the circumstances under which such claims may be and are founded, and also to ascertain the extent and situation of the same”.¹⁰³³ The process had many flaws and problems, which have been comprehensively studied by Philippa Wyatt, Fergus Sinclair, Bruce Stirling, Leanne Boulton and others, and – with respect to claims in upper Northland – was commented on at length by the Waitangi Tribunal in its *Muriwhenua Land* report (1997). Nevertheless this process, and the separate New Zealand Company transactions process probably did establish a precedent for judicial investigation into matters of land title in both the minds of the government and (maybe) Maori as well. There was a further process of inquiry carried out by Commissioner Francis Bell from 1856-1863,¹⁰³⁴ overlapping with the first of the Native Lands Acts, also based to a significant extent on public hearings at which Maori gave testimony and which reviewed such matters as surveys, overlapping rights, and title extinguishment. There was also separate process of investigation into Governor Fitzroy's pre-emption waiver claims carried out by Commissioner Matson from 1844-1846.

The purpose of this chapter is not to review the various Crown purchases in detail, or to comment on the textual problems of the various deeds, but rather to focus on how the purchases

¹⁰³³ This ordinance replaced an earlier New South Wales ordinance: see Hickford, *Lords of the Land*, 141.

¹⁰³⁴ Bell's principal report was in 1862: See F D Bell, *Report of the Land Claims Commissioner*, 1862 AJHR D-10.

were perceived within Ngati Raukawa itself, and the impacts of Crown purchasing by deed on Ngati Raukawa internal politics and on the relations between the hapu of Ngati Raukawa on their neighbours. It can be said, however, that the pre-emptive purchasing system operated within a framework of assumptions made by officials, who believed that “the various tribes were ruled over by a discoverable hierarchy of greater and lesser chiefs”.¹⁰³⁵

This notion was especially attractive to officials looking for a comprehensible and comprehensive hierarchical body politic with which to negotiate land purchases.

But there had never been any kind of systematic analysis of Maori customary tenures before embarking on Crown purchasing. Octavius Hadfield thought that “[t]he British Government seems to colonise in a very empirical way”; there had been “no investigation of the laws, usages, and customs of the natives – no attempt made to suit the laws to their particular conditions”. Quite how the government “can expect to succeed is to me very marvellous”.¹⁰³⁶

7.2 Raukawa and Pre-emptive Purchasing

As Luiten notes, “[i]n the 18 years between 1848 and 1866, more than 800,000 acres were purchased by the Crown at both ends of the inquiry district, the Crown’s purchase activities arguably the principal focus of political engagement with hapu in this period”.¹⁰³⁷ This report is not a full account of Crown purchasing in the PkM region, which will be covered in other reports. My focus rather is on the political aspects of the purchases, especially with regard to the reactions to such purchases by Ngati Raukawa themselves. The purchases, and especially the Rangitikei-Manawatu purchase, finalised in 1866, are very well-documented: as Gilling has noted, there is a “veritable mountain of material” on the Rangitikei purchase alone.¹⁰³⁸ He has also noted that there is “a wide diversity of opinions and interpretations” about the latter, depending largely on whether it is, or is not, believed that Ngati Raukawa had sole rights to dispose of interests in the Manawatu-Rangitikei area.¹⁰³⁹ The focus here is not so much on the negotiations and the details of the purchases, but what Ngati Raukawa said and thought about them.

7.3 The Porirua Deed (1847)

The first pre-emptive purchase in the PkM region was the Porirua deed of 1 April 1847, by which Ngati Toa sold to the Crown an extensive area from Ohariu (Makara) in the south to Wainui (Paekakariki) in the north and bounded to the east by “the line determined by Mr Commissioner Spain for the Port Nicholson block”. Grey wanted this area for two reasons. The first was the fact that, as with the Wairau (or Port Nicholson itself, for that matter), the New Zealand Company had already sold sections at Porirua to the settlers. To Grey it was obvious that the settlers had to be placed in possession of the sections for which they had paid,¹⁰⁴⁰ which could only be done by means of an extinguishment of Ngati Toa's title by the Crown. This extinguishment had to be wholly separately done by the Crown as Commissioner Spain had repudiated the Company's Kapiti deed and had concluded that the Company

¹⁰³⁵ Ballara, *Iwi*, 70.

¹⁰³⁶ Hadfield to Church Missionary Society, Annual Reports and Letters to CMS, qMS-0895, cited Anderson et al., *Crown Action and Māori response*, ch 4.

¹⁰³⁷ Luiten, *Muaupoko* (A163), 49.

¹⁰³⁸ Gilling, Gilling, *Land of Fighting and Trouble*, vi.

¹⁰³⁹ Gilling, *Land of Fighting and Trouble*, 1.

¹⁰⁴⁰ Governor Grey to Earl Grey, 26 March 1847, Mackay, *Compendium*, vol. 1, 202.

was not entitled to a Crown grant at Porirua. The Porirua deed included most of the Porirua sections earlier sold by the Company. In Grey's words:¹⁰⁴¹

Under such circumstances I determined to purchase, on behalf of the Government, from the Ngatitōa Tribe, a large district of land surrounding Porirua, *including as much of the land which had previously been disposed of by the New Zealand Company as I could induce the Natives to alienate, thus meeting, as far as practicable, the specific claims of European settlers;*¹⁰⁴² and in addition to the land so acquired by the New Zealand Company, I determined to include within the limits of the purchased land a very extensive block of country to meet the probable prospective requirements of the Government and the settlers.

Grey also, however, had wanted Porirua for its strategic value:

...[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 the town of Wellington and its vicinity from evil-disposed Natives, as it was only by the occupation of the Porirua District that the various tracks leading across the woody mountains which lie between Porirua and Wellington could be effectively closed against an enemy.

The deed was signed by Rawiri Puaha, Nohorua, Mohi Te Hua, Matene Te Whiwhi, Tamihana Te Rauparaha, Nopera Te Ngiha, Ropota Hurumutu and Paraone Toangina for Ngati Toa and by Lieut-Col W.A. McCleverty on behalf of the Crown. It was not signed by either Te Rangihaeata (in exile at Poroutawhao) or Te Rauparaha, who was in Crown custody in Auckland. This transaction was part of a geopolitical process in the region which significantly undermined Ngati Toa power and prestige. Ngati Raukawa's lands were unaffected by the Porirua purchase. But now there was an area of growing European settlement on the Kapiti coast. The purchase gave to the government and the settler community direct access between Port Nicholson and the Kapiti coast. Shortly after there was to be a more direct encroachment to the north.

In 1848 the young Donald McLean scored his first big success at Whanganui, sorting out complex problems relating to boundaries and reserves and drawing up a new Whanganui deed which was executed at an elaborate ceremony in May.¹⁰⁴³ There had been conflict between settlers and Maori at Whanganui in 1847, and the iwi-hapu political mosaic at Whanganui, was in Ian Wards' view, even more complex than that at Port Nicholson.¹⁰⁴⁴ Whanganui, too, was a New Zealand Company settlement, which "automatically involved Whanganui in all the political and land problems that had bedevilled early settlement in Wellington".¹⁰⁴⁵ Ian Wards has indicated in his *The Shadow of the Land*, which contains a detailed account of political events at Whanganui in the 1840s, that McLean was successful in resolving land problems at Whanganui.¹⁰⁴⁶

The land question [at Whanganui] was settled without difficulty. Donald McLean was authorised by the Executive Council of New Munster to treat with the former rebels as if they not been engaged in rebellion against the Queen's authority, Carrying on where Symonds had left off in 1846, supported at every step

¹⁰⁴¹ Ibid.

¹⁰⁴² emph. added.

¹⁰⁴³ Luiten, *Whanganui ki Porirua*, 12-13.

¹⁰⁴⁴ Wards, *Shadow of the Land*, 301,

¹⁰⁴⁵ Ibid.

¹⁰⁴⁶ Wards, *Shadow of the Land*, 149. In its *Whanganui Land Report* (Wai 903 2015, at 238) the Waitangi Tribunal observes that "McLean's meetings with Whanganui Maori made this one of the better examples of Crown purchasing practice at the time". However, "his methods were far from perfect" (ibid).

by the Reverend R Taylor, from afar by Governor Grey, backed by the glitter of £1,000 in specie, McLean did not find it difficult to complete what most influential chiefs had been anxious to do two years earlier,

McLean plays an important role in the events covered in this report, including the Rangitikei-Turakina purchase of 1848-9, his efforts to manage the crisis in the Manawatu caused by the Wellington Provincial Government's Rangitikei-Manawatu purchase and the Native Land Court's Himatangi and Rangitikei-Manawatu decisions, and the steps he took to defuse another crisis in the PkM region, that resulting from the Native Land Court's Kukutauaki and Horowhenua decisions in 1873.

7.4 The Rangitikei-Turakina Purchase (1848-9)

Lieutenant-Governor Eyre and the Colonial Secretary were both delighted with this apparently skilful resolution of a particularly difficult problem at Whanganui,¹⁰⁴⁷ and McLean, who still at this time signed his official correspondence as a mere "Inspector of Police" was then entrusted with the task of buying the land in the Rangitikei and Manawatu areas. The Rangitikei-Manawatu was bitterly contested, and it was in fact this area, rather than the lands around Wellington, which was to become the major Maori land headache for the future Wellington Provincial government. One issue was whether Ngati Apa had rights to sell, and, if so, to where; their assertions were resisted, mainly by Ngati Raukawa but also by Ngati Toa. The issue of rights to sell was compounded by concerns about colonisation itself: what were the risks if the region became densely settled by Europeans?

While the older generation of rangatira, Rauparaha and Rangihaeata especially, insisted on what they saw as a strict application of Maori custom and denied that Ngati Apa had any rights to sell, a younger generation of missionary-influenced chiefs were willing to be somewhat less uncompromising. The lines of debate were explained by Rawiri Te Whanui (Ngati Raukawa) to the Native Land Court in 1868:¹⁰⁴⁸

Mr McLean spoke of his having been to Ngati Apa to hear about the sale of land from the other side of Rangitikei to Manawatu. Rauparaha was annoyed with McLean. "What - did you go to those slaves to talk about a sale?" - meaning Ngati Apa. He said they were people whom he had spared and they had no voice in such a matter. Ngati Raukawa agreed. After Mr McLean left [there were] runanga of Ngati Raukawa. At these meetings was fixed the boundary of the land not to be sold at Whangaehu. Opinion was divided. Some said at Whangaehu, some Turakina. Rauparaha said let it be at Whangaehu - he and other chiefs. The point was not decided. [There was] another meeting afterward and discussion about the boundary, Whangaehu and Turakina. The young men, such as myself, Hakaraia and Matene Te Whiwhi, wished to follow advice of missionary [sic] and take the boundary to Turakina, and, after, to Rangitikei. [It was] proposed to fix Rangitikei as the boundary of Ngati Apa's sale - old men still urged that [sic] - Matene and Hakaraia pressed their point and it was at last agreed to.

These interesting remarks make it clear that missionary advisers were influential in persuading the rangatira of the coalition tribes to abandon notions of "slave" tribes and conquest, and to acquiesce in land-selling. That the CMS mission at Otaki played an important role in the Rangitikei block sale is confirmed by other documents and by the testimony given by Octavius Hadfield and by Samuel

¹⁰⁴⁷ See Luiten, *op.cit.*, 13. In a memorandum sent to the Principal Secretary of the New Zealand Company on 31 July 1848 (NZC 3/8, 381, cited Luiten *op.cit.* 13) Eyre stated that "the whole arrangements appear to have been conducted by Mr McLean in so careful and satisfactory a manner and the Reserves have been so explicitly enumerated and so clearly marked out on the ground that it appears almost impossible that any future difficulties can occur in connection with them".

¹⁰⁴⁸ Evidence of Rawiri Te Whanui, Himatangi case, (1868) 1C Otaki MB 231-2.

Williams.¹⁰⁴⁹ It probably makes best sense to see Te Rangihaeata's efforts on this occasion as arising out of his recognised leadership of the anti-government non-selling factions within all the iwi in the coalition rather than as the champion of a specifically Ngati Toa interest, although no doubt the two roles overlapped.

The opposition of Rangihaeata to any sale, and the willingness of the younger chiefs to allow Ngati Apa to sell as far south as Rangitikei, is confirmed by McLean's correspondence sent at the time. In his report of 21 March 1849 to the Colonial Secretary, McLean notes:¹⁰⁵⁰

Rangihaeata, who had been for some considerable time, preparing large quantities of food for the Ngatitoas and other natives who were invited by him to this meeting was evidently calculating on their cooperation in opposing the right of the Ngatiapas to sell any land south of the Wangaehu river, this chief had also been led to expect that the Ngatiraukawas of Otaki and Manawatu would unite with him in opposing the sale of land as several influential members of the above tribe solicited Rangihaeata's intervention in preventing the Ngatiapa sale and requested him and his followers to sign a document embodying their determination to retain possession of all their lands.

As far as Ngati Raukawa were concerned, allowing Ngati Apa to sell the Rangitikei Block was a generous concession, not a recognition of a claim of right. "Rangitikei", said Parakaia Te Pouepa (1867), "a large extent of country, we restored to Ngatiapa".¹⁰⁵¹ Samuel Williams gave clear testimony in 1868 that at the time of the Rangitikei-Turakina sale Ngati Raukawa consented, after much discussion, to a boundary at Rangitikei: "the Rangitikei was then fixed as boundary": Ngati Apa, he said, gave the land north of the Rangitikei to Ngati Apa to sell, it being understood that Ngati Raukawa retained all the land south of the river.¹⁰⁵² It is significant that McLean thought it essential to obtain Ngati Toa and Ngati Raukawa assent before proceeding with the Rangitikei deed, which was then drawn up by McLean and signed by 200 people of Ngati Apa at Wanganui in May 1849. Te Rangihaeata was still far from happy, and tried up to the last minute to dissuade Ngati Apa from selling, to no avail.¹⁰⁵³ That left the southern section, the Rangitikei-Manawatu block, which was to be the subject of much dissension and litigation in the future.

Hearn has discussed this sale and the implications of Ngati Raukawa's acceptance of the Rangitikei river as the southernmost limit of Ngati Apa claims. He is probably right in his view that fixing the boundary at Rangitikei had different meanings for Ngati Apa, for the Crown, and for Ngati Raukawa. For Ngati Apa "the boundary was a pragmatic response that embodied no implications for the geographical scope of territorial claims".¹⁰⁵⁴ This is shown by Ngati Apa's willingness to sell land between the Rangitikei and the Manawatu. For the Crown it was "a pragmatic response intended to effect a sale and did not constitute any geographical limit to its purchasing ambitions" (this is undoubtedly the case).¹⁰⁵⁵ But in Hearn's view (and I agree) it was different for Ngati Raukawa:¹⁰⁵⁶

For Ngati Raukawa the selection of the Rangitikei River implied a great deal more: it constituted the boundary of the sale block but it may also have represented for the iwi the southern limit, with certain

¹⁰⁴⁹ See undated letter by Samuel Williams, reprinted at 1896 AJHR App 5, p 7; Evidence of Samuel Williams, Himatangi case, (1868) 1C Otaki MB 227-8.

¹⁰⁵⁰ McLean to Colonial Secretary, 21 March 1849, ATL qMS-1211.

¹⁰⁵¹ Petition of Parakaia Te Pouepa, 4 July 1867, reprinted in AJLC App 5 p 8.

¹⁰⁵² Samuel Williams, (1868) 1C Otaki MB 228.

¹⁰⁵³ McLean to Principal Agent, NZ Co, Wellington, 12 April 1849, in NZ Co 3/10, NA Wellington (copy in Luiten, *Whanganui ki Porirua*, Document Bank, II, 377-80.

¹⁰⁵⁴ Hearn, *One past, many histories* (A152), 113.

¹⁰⁵⁵ Ibid.

¹⁰⁵⁶ Ibid.

limited exceptions, to Ngati Apa's territorial claims. For Ngati Raukawa, the Rangitikei River embodied and expressed its view of the outcome of the pre-annexation civil wars and defined its relationship with the tribes it claimed to have conquered.

7.5 Rangitikei as an agreed boundary between Ngati Raukawa and Ngati Apa

It is an important component of Ngati Raukawa's grievances regarding the Rangitikei-Manawatu purchase that Ngati Raukawa and Ngati Apa agreed at the time of the Rangitikei-Turakina purchase that the boundary between the two groups was the Rangitikei (a proposition that David Armstrong rejects).¹⁰⁵⁷ This was a boundary that the Crown should have respected too. Rawiri Te Whanui – admittedly giving his evidence nearly two decades after the event – describes this agreement carefully in a letter he sent to Thomas Williams in 1867:¹⁰⁵⁸

Only when the Gospel came did the original owners begin to hold up their heads and exalt their heads, and so on till Governor Grey's time, in the year 1848, when Ngatiapa attempted to hand over to Governor Grey and Mr McLean all the land from Rangitikei to Manawatu. When Ngatiraukawa heard that Rangitikei was being sold they assembled to stop the sale of this side. *They agreed to allow the other side to be sold, on condition that Ngatiapa should abandon all claim to this side, to which Ngatiapa agreed.* Ngatiraukawa did not receive any of the money payment for the land, though it was through them having given their consent that the land was sold, and Ngatiapa got the money.

He said the same in his evidence in the Himatangi case (1868):¹⁰⁵⁹

It was then decided that Rangitikei should be the boundary – then they went to Rangitikei to finally fix the boundary ... it was the boundary 'tuturu' for the Ngatiraukawa and Ngatiapa – that it should be for Ngatiapa and Ngatiraukawa – neither to cross over – it was agreed that all on the other side was for Ngatiapa, and Ngatiraukawa on this side – Ngatiraukawa said 'If Ngatiapa sell, let them do so' – never heard that Ngatiraukawa asked for any money of Rangitikei [i.e. the Rangitikei-Turakina block] – money and land on the other side for Ngatiapa – land on this side for Ngatiraukawa only – Rauparaha agreed – Rangihaeata at first dissented but at last gave way – Ngati Raukawa established the boundary ... I heard that Ngatiapa accepted the boundary through Kingi Hori Te Anaua.

In his view, then, there clearly was an agreement. Kingi Hori Te Anaua, mentioned by Rawiri Te Whanui, was a leading chief of Whanganui who appears to have been influential in mediating this agreement. His role is also traversed in Parakaia Te Pouepa's evidence (in cross-examination by Fox):¹⁰⁶⁰

Further examined by Mr Fox: I recollect the sale of the land north of Rangitikei by the Ngatiapa to Mr McLean [in 1849]. The Ngatiraukawa had the "mana" over all that land; but the Ngatiapa sold the land and received all the money. The Ngatiraukawa gave up that land to the Ngatiapa. They did not consent to give up any land on this side. Hori Te Anaua [the principal chief of Wanganui] proposed that the Ngatiraukawa and Ngatiapa should hold the land on this side of the river jointly. On the question being put, [a section of the Ngatiraukawa] assented. The rest of the Ngatiraukawa dissented. The reply was "Yes—No." The Ngatipare were the first to reply. I was not present at the meeting of the Ngatiraukawa elders when they decided to divide the land. I only heard about it. I was at Manawatu at that time. There was a general meeting of the Ngatiraukawa at Otaki to arrange this matter. I am aware that the

¹⁰⁵⁷ Armstrong, *A Sure and Certain Possession*, 115.

¹⁰⁵⁸ Letter of Rawiri Te Whanui, 26 June 1867, in T C Williams, *Manawatu Purchase* (1867), 11.

¹⁰⁵⁹ (1868) 1C Otaki MB 233.

¹⁰⁶⁰ *Wellington Independent* 14 March 1868. The insertions in square brackets are in the newspaper. I have used the newspaper account here as it is clearer and easier to follow than Judge Smith's notes.

Ahuaturanga [“upper Manawatu block”] has been sold to the Crown. It was sold by the Rangitane and the Ngatiteupokoiri, a section of the Ngatikahungunu.

This must be referring to an earlier phase of the Ngati Apa-Ngati Raukawa discussions. Hori Te Anaua proposed that Ngati Apa and Ngati Raukawa should share the land between the Manawatu and the Rangitikei, but Ngati Raukawa would not agree to do that. This was then followed by an agreement to divide the land at Rangitikei.

More detail on the role played by Hori Te Anaua in settling the boundary was given by the Whanganui rangatira Kawana Paipai in the Himatangi case. His evidence narrates the story from the perspective of Whanganui, and is especially interesting and useful, and further confirms the existence of an agreement between Ngati Apa and Ngati Raukawa, mediated by Whanganui:¹⁰⁶¹

I live at Putiki, Wanganui. I belong to the Ngatihau tribe... I know the Rangitikei-Manawatu block. The Ngatiapa occupied that land at the time of the Ngatitua invasion. They [meaning Ngati Apa?] occupied that land from the time of our ancestors. We are closely related to them. The Ngatiapa had great mana over that land. Their mana in those days extended from Wanganui to Kapiti. When the Ngatitua came down, they beat the Ngatiapa, and then returned to their own country. When Te Rauparaha came the second time, he came peaceably. The Ngatiapa went up to Waitotara to meet them. The Ngatiapa received him in a friendly way, and told him to go down and take possession of Kapiti. Rangihaeata had already made Pikinga, a Ngatiapa woman, his wife. This was the cause of the good feeling. The Ngatiapa were at that time an independent people. Their fires were never put out. The Ngatiraukawa did not fight with the Ngatiapa when they came. They came down seeking homes. The Wanganui, Ngatiapa, Rangitane, and Muaupoko came down to fight on the side of Te Rauparaha and the Ngatiraukawa at the great Haowhenua fight. The Ngatiapa branch of the Wanganui went by canoe under Te Rangiukururu, to join the Ngatiapa at Waikanae. The Ngatiapa fought very bravely; but they got the worst of it in the fight, and retired to their own land, extending from Manawatu to Whangaehu. I took the Ngatiraukawa up with me, out of compassion – to save them from the bullets. Otaki was abandoned for a short time. The Ngatiraukawa were then allowed to locate themselves at Manawatu. They simply occupied the land – the mana remained with Ngatiapa, Rangitane, and Muaupoko. I took part in the meeting at Te Awahou, when McLean bought the North Rangitikei [i.e. Rangitikei-Turakina] block. The Ngatiapa at that time were, very anxious for pakeha settlers to occupy their land, and they agreed to sell the land north of Rangitikei to the Queen. There was much talk at that meeting about the boundaries. Hori Kingi Te Anaua stood up and said – “Listen Ngatiraukawa, Rangitikei is the boundary – on to Omarupapako and Pukehinau. Let Ngatiapa have their own land.” The Ngatiraukawa all said “Ae”, Hori Kingi spoke a second time. “Ngatiraukawa, do you consent to let Ngatiapa keep all the land as far as Omarupapako?” The reply was “Yes-No”. The voices of “Yes” were the loudest [i.e. there was a majority assenting.] Nepia was sorry when he heard that all the land was being given up, and he said: “Hori, what about your elder brothers, Aperahama and Kuruho, whose fires are alight?” Hori replied: “The thought is with me”. Therefore the Ngatiapa retained possession of their land from Rangitikei to Omarupapako. I have signed the deed of cession

Ngati Raukawa’s attempt to create a boundary at Rangitikei was echoed in their creation of a boundary in the Oroua area with Rangitane when the latter sought Ngati Raukawa’s agreement to sell the Te Ahuaturanga block. The principal architect of Ngati Raukawa policy on that occasion was Nepia Taratoa, Raukawa’s principal chief of the Rangitikei-Manawatu region. This is discussed further below.

7.6 Te Awahou purchase (1858)

¹⁰⁶¹ Evidence of Kawana Paipai, Himatangi case, *Wellington Independent* 2 April 1868 (Appendix 3.1.1)

The Te Awahou block, the area around Foxton, was sold by Ngati Raukawa people to the Crown in 1858/59.¹⁰⁶² The principal advocate for the sale with Ngati Raukawa was Ihakara Tukumarū, chief of the the Patukohuru hapu of Ngati Raukawa. A great deal of evidence about this purchase was given by Ihakara and others in the first Himatangi case of 1868. Ihakara emphasised that the land was Raukawa's to sell, and Raukawa's alone:¹⁰⁶³

Ihakara Tukumarū – sworn – lives at Te Awahou. Patukohuru¹⁰⁶⁴ - Ngati Raukawa – know the Awahou on the Manawatu, sold to Government – was living on that land when it was sold – I was the rangatira of the “hoko” – I sold it. I was “te ingoa nui o tera hoko”. [263] My “hapu” was living at Te Awahou when it was sold – Ngati Raukawa did not at first assent, long time discussing it before it was settled – “no te roa o te [tohenga] ka whakaae”. Mr Searancke was the person who paid the money – Ngati Apa did not sell that land nor Rangitane nor Kahununu [sic] nor Whanaganui nor Nga Rauru nor Ngati Awa nor Ngati Toa – I alone, the Ngatiraukawa.

Ihakara said that he was the leader of the selling party, and Nepia Taratoa of the non-sellers. Nepia Taratoa's opposition is mentioned also by Grindell, who noted in July 1858 that while Nepia opposed the purchase he would probably “come over to the land selling side, as he is aware that public opinion is becoming too strong to be resisted”.¹⁰⁶⁵ He described how the money for the sale was divided between Ngati Raukawa, Ngati Apa, and Muaupoko,¹⁰⁶⁶ but emphasised that it was he, and not they, who had the right to sell.¹⁰⁶⁷

I alone, the Ngatiraukawa, Hukiki Matenga (dead) and some living Horomona, Honi, Waharoa, Te Kerei, and young chiefs – Moroati, and Matene and Tamihana, - Te Matenga and Hukihuku are “kaumatuas”. My mana was above. I was at the head of the sellers and Nepia at the head of the non-sellers.

Samuel Williams described the sale and contention it caused within Ngati Raukawa (he “never saw Ngati Raukawa so much excited”) in detail:¹⁰⁶⁸

I know the Awahou block – but not the exact boundaries – I came here from Ahuriri in 1868 and saw [a] large body of Ngati Raukawa, men women and children and Mr McLean on the beach going to Manawatu – going to a meeting with reference to sale of Awahou block – passed on to Wellington and on my return to this place two distinct parties were assembled here – sellers and non sellers – both parties were excited – never saw Ngati Raukawa so much excited – neither party would meet or speak to the other.

Williams, who seems to have had a penchant for emphasising his own importance, explained to the Native Land Court the role played by himself in assisting the Crown and the sellers to ensure that the purchase proceeded successfully:¹⁰⁶⁹

[A]t Mr McLean's request I visited each party – finding that the principal part of the owners were wishing to sell – I advised the non-sellers to withdraw opposition – they explained to me that their objection was not only with reference to the land – they censured Ihakara for bringing persons not owning the land to

¹⁰⁶² On this purchase see Hearn, *One past, many histories*, 161-169.

¹⁰⁶³ Evidence of Ihakara Tukumarū, (1868) 1C Otaki MB 262-266 (18 March 1868).

¹⁰⁶⁴ Hapu of Ngati Raukawa; the hapu moved to Te Awahou about 1835 and also lived at Te Maire (near Shannon).

¹⁰⁶⁵ Grindell Journal, 1861 AJHR C-1, 278.

¹⁰⁶⁶ On Muaupoko and the Te Awahou purchase see Waitangi Tribunal, *Horowhenua*, 125; see also Hearn, *One Past, Many Histories*, 125. Hearn is of the view that not too much weight should be given to the fact that Muaupoko were given some of the money. As seen Ihakara was in no doubt that he “was the rangatira of the ‘hoko’”. No reserves were made for Muaupoko or Ngati Apa on this block as far as I am aware.

¹⁰⁶⁷ Ibid.

¹⁰⁶⁸ Evidence of Samuel Williams, (1868) 1C Otaki MB 267-9 (18 March 1868).

¹⁰⁶⁹ Ibid.

strengthen the party of sellers – some of them some of the owners also were with the non sellers – were also angry with Ihakara for his speech about “his plank” – looked upon it as a malicious act towards the tribe and feared evil consequences would result from the sale – *told them it was Ihakara’s business the bringing a lot of people to share his money* – and that while they might be afraid [268] 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 – *Ngati Raukawa laid great stress on the right of the tribe to prevent any small tribe from selling* – after considerable discussion they led me to believe that they would eventually allow the sale if I did not then press them for their consent – I took some of the principal men

In 1881 Searancke, land purchase commissioner at the time, described how the money from the sale of Te Awahou was distributed amongst all of Ngati Raukawa:¹⁰⁷⁰

The principal parties were Ihakara Tukumarū, Nepia Taratoa, and Hukiki, all of Ngatiraukawa. I saw the subdivision of this money – by Ihakara principally – into small sums for the separate hapus. I cannot remember all the subdivisions, but some was given to Ngatitōa, Muaupoko, and some to sections of Raukawa living up the Manawatu River. Some was set aside for the tribe living at Awahuri, and portion for the Natives of Rangitikei. Altogether, the money was broken up into seventeen parcels for the sections of the tribe.

When Te Awahou was sold care was taken over the boundary between the land sold and the land belonging to Ngati Rakau, Ngati Te Au, and Ngati Turanga, three Raukawa hapu living to the north in what would subsequently become the Himatangi block. Pitihira Te Kuru said in the Himatangi case that “Himatangi [is] to north of Te Awahou; the “boundary was settled on as a boundary for the Queen on one side and for the Maoris on the other”.¹⁰⁷¹ Immediately north of Te Awahou were the three hapu: “Ngati Rakau, Ngati Te Au, and Ngati Turanga are the ‘hapus’ who have occupied during the years I have lived there”.¹⁰⁷² According to Nirai Taraotea, the “boundary of the Queen’s land settled at the time of the sale of Te Awahou for the Queen on one side, the other for us, the three ‘hapus’ – some of our lands were included in the Awahou block”.¹⁰⁷³ Nirai described how marker posts setting aside land for the three hapu were positioned by Parakaia Te Pouepa and Samuel Williams working together; the posts were then used by the surveyors to mark off the Te Awahou boundary.¹⁰⁷⁴

A plan of the Te Awahou purchase block held at National Archives provides some useful additional information.¹⁰⁷⁵ This plan, signed by W L Searancke as District Commissioner for the Land Purchase Department, identifies three Maori reserves: at Te Awahou (Foxton) itself (36 acres, 2 roods, 3 perches), with a burial ground close by, Motoa (30a-1r-35p) and a burial ground at Whakawehe (34 acres). The survey was carried out by John Stewart. An inset on the plan identifies the subdivisions of the Te Awahou reserve, allocated to Ihakara Tukumarū and others of Ngati Raukawa:

Subdivisions of Te Awahou reserve block

Name of grantee or block number	Acres	Roods	Perches
Ihakara Tukumari	9	0	27
Keremeneta Porikapa	4	2	0
Arana Hana	4	0	25

¹⁰⁷⁰ 1881 AJHR G2A, [Ngati Kauwhata commission], 16.

¹⁰⁷¹ (1868) 1C Otaki MB 322.

¹⁰⁷² Ibid.

¹⁰⁷³ (1868) 1C Otaki MB 324-5.

¹⁰⁷⁴ (1868) 1C Otaki MB 325 (Nirai Taraotea); also (1868) 1C Otaki MB 323 (Pitihira Te Kuru).

¹⁰⁷⁵ Awa-Hou, Manawatu, Plan showing subdivisions, names of owners, government buildings, reserves, burials, swamps and bush, AAFV 999 Box 122 W36.

Natana Tao W[sic]	3	2	11
Kereopa	6	2	10
Teira and Miritana	1	1	25
Kuruho	2	0	0
Mohi	1	1	2
Porokuru	1	0	0
Nepia Taratoa	3	0	0
Burial ground at Te Awahou	1	0	5
Section B (pre-emptive right Kereopa)	1	1	5
Section C (reserve Nepia Taratoa)	0	2	12
Section D (“pre-emption right Native”)	1	1	18

As noted above, Nepia Taratoa had opposed the sale, but was allocated a small reserve area at Te Awahou of 3 acres. The plan shows also land owned, or claimed, by Pakeha settlers: F Robinson (281 acres), Rev j Duncan (91 acres), Amos Burr (100 acres adjacent to the Manawatu river), and T Kebbell. There were also some areas identified as set aside for the “half-caste children” of T U Cook at Te Awahou, Wirokino and at Te Paiaka. Two Maori burial grounds are identified, at Te Awahou and the reserve at Whakawehe. The landscape is identified too, with large areas of sand hills; also identified are “The Large Swamp” and “patches of bush”.

In 1869 Parakaia Te Pouepa brought a claim in the Native Land Court for a small block named Pareteao, which was either within, or adjacent to the Te Awahou purchase. Walter Buller, then a Resident Magistrate, was present in the Court and reported to Featherston that he did not find Parakaia’s claim very meritorious.¹⁰⁷⁶ Parakaia stated that at the time of the Te Awahou purchase he had agreed to take no part in the transaction provided that he obtain a reserve at Pareteao. According to Buller, Parakaia “swore very positively that he did not sign the Awahou deed of sale, and that the boundaries of the Pareteao claim, as marked out on the ground, were pointed out by him and agreed to by Mr McLean at the time of that sale”.¹⁰⁷⁷ Buller stated, however, that Parakaia’s name, attested by Searancke, could be clearly seen on the deed, and witnesses were called to show that Parakaia’s occupation was, in Buller’s words, “of the most remote and temporary character”.¹⁰⁷⁸ Thomas Cook gave evidence that he had leased land near Pareteao and had never seen Parakaia in the vicinity.¹⁰⁷⁹ Parakaia, for his part, said that he had been the first to occupy Pareteao after the battle of Haowhenua and that he had lived there for some time. His wife, [Wirika?] Hinemihi described how the land had been cleared and settled after Haowhenua: “after Haowhenua Parakaia Te Kuru and us came to Manawatu”.¹⁰⁸⁰ Judge Monro found for Parakaia, accepting Parakaia’s claim that he had lived at Pareteao after Haowhenua but before Kuititanga.¹⁰⁸¹

7.7 Wainui Purchase

The Wainui deed was a Crown purchase from Ngati Toa of a substantial block of land (about 30,000 acres) running from along the coast from a point just south of Paekakariki to Whareroa and running inland to the Tararua divide. The purchase was negotiated on behalf of the Crown by William Searancke, who reported the completion of the purchase to McLean on 6 July 1859:¹⁰⁸²

¹⁰⁷⁶ Buller to Featherston, 6 Feb 1869, MA 13/113/71.

¹⁰⁷⁷ Ibid.

¹⁰⁷⁸ Ibid.

¹⁰⁷⁹ (1869) 1G Otaki MB 19.

¹⁰⁸⁰ (1869) 1 G Otaki MB 19.

¹⁰⁸¹ (1889) 1G Otaki MB 27.

¹⁰⁸² See Searancke to McLean, 6 July 1859, 1861 AJHR C1, 285-6.

The Wainui block, about 30,000 acres, is a portion of the Waikanae District on the West Coast, having a frontage to the Westward of five and a-half miles, is principally heavily timbered land and apparently hilly, and about three thousand acres of open fern and marshy land, is valuable from its proximity to Wellington, and being on the road from Wellington to Wanganui. The Reserves appear to be large; but when the number of Natives resident within the boundaries is taken into consideration they could not in justice be made smaller. There are also two pieces of land (tracings of which are forwarded) within the boundaries, conveyed Deeds of gift to the half-caste children of John Nicol, and his wife Peti; and to Henry Flugent and his Native wife, in consideration of a residence of 28 years among them. I beg to recommend that Crown Grants should be given in these two cases.

The deed was signed by 95 people as vendors, most of them presumably Ngati Toa, and including some well-known people: Matene Te Whiwhi, Tamihana Te Rauparaha, and Wiremu Te Kanae. John and Peti (Betty) Nicol (Nicoll), referred to here, lived at Paekakariki and ran a well-known inn there; Peti Nicoll is better known as Kahe Te Rau-o-te-Rangi, of Ngati Toa and Ngati Mutunga. John ('Scotch Jock') Nicoll left his whaling ship at Cloudy Bay in 1829. The couple were friendly with Sir George Grey. Te Rau-o-te-Rangi's daughter married Inia Tuhata and then Wi Naera Pomare, who was the principal claimant for Ngati Mutunga in the Chatham Islands cases of 1870.

The consideration for the Wainui purchase was £850.¹⁰⁸³ The northern boundary of the block is described as commencing at "the mouth of of Whareroa", then running inland to a point known as Paparauponga to meet the western boundary of a Wairarapa block sold to the Crown by Ngati Kahungunu. Wainui was bounded by other Crown purchase blocks to the north and south (Waikanae and Porirua, respectively). Within the block were six reserve areas as well as the two allocations to particular individuals (Peti Nicoll and Henry Flugent). One of the reserves was the block which was the subject of this case, Whareroa, referred to in the deed as Ngapaipurua ("there is one place at Ngapaipurua from thence along the swamp till it strikes the Northern boundary, 280 acres"/ "ko tetahi wahi ki Ngapaipurua haere noa i te taha repo tae noa ki te rohe i te taha raro 280 eka").

7.8 "A barrier to the Rangitane claim": Te Ahuaturanga Purchase (23 July 1864), Ngati Raukawa and Ngati Kauwhata

This transaction is also fully covered by other historians.¹⁰⁸⁴ My focus here will be on the debates involving Ngati Raukawa, Ngati Kauwhata, Ngati Te Ihi Ihi and Rangitane over this important transaction. Ngati Raukawa's policy was the same here as with Ngati Apa and the Rangitikei-Turakina transaction: to waive rights and allow other groups to sell land on the understanding that there would be no further encroachments to the south.

At first reluctant, Ngati Raukawa adopted a conciliatory policy towards Rangitane in August 1858 when they agreed to waive any claims to the 250,000 acre Te Ahuaturanga block to the northeast and allowed Rangitane's sale to proceed. In Parakaia Te Pouepa's words, "Ahuaturanga, also a large extent of country, we restored to Rangitane".¹⁰⁸⁵ This was determined at a meeting at Raukawa, near the Manawatu gorge. According to J M McEwen, much of Te Ahuaturanga belonged to the Ngati Mutuahi hapu of Rangitane, who had been allies of Ngati Raukawa in conflicts with Ngati Kahungunu, and who had been in turn the target of retaliatory raids by Ngati Kahungunu: "[i]t would have been ungenerous

¹⁰⁸³ For the deed see *Turton's Land Deeds of the North Island*, Vol II, Wellington Deed No 23a, pp 129-131.

¹⁰⁸⁴ See Anderson, Green, and Chase, *Crown Action and Māori Response*, ch 5; Hearn, *One past, many histories*, 148-161.

¹⁰⁸⁵ Petition of Parakaia Te Pouepa, 4 July 1867, reprinted in AJLC App 5 p 8; also Searancke to McLean, 27 September 1858, 1861 AJHR C-1, 280.

indeed of Ngati Raukawa to have repaid Ngati Mutuahi by appropriating their land”.¹⁰⁸⁶ McEwen also mentions that there had been some Ngati Raukawa settlement in the area between the Manawatu River and the Tararuas in the Shannon and Tokomaru area, but Ngati Raukawa agreed to part with this as well in response to a plea from Te Aweawe contained in a song. McEwen gives the text and translation of this song in his book on Rangitane (“Ko he waiata a Te Aweawe tenei i a ia tonu ana i tona whenua kia whakahokia mai e Ngati Huia”¹⁰⁸⁷). McEwen sees Ngati Raukawa’s concessions over Te Ahuaturanga as exemplifying the good relations between Rangitane and Ngati Raukawa in modern times.¹⁰⁸⁸

The action of Ngati Raukawa reinforced the generally good relations between the tribes. In the bitter disputes between Ngati Raukawa and Ngati Apa over the Rangitikei Manawatu Block, which went on for some years, Hoani Meihana Te Rangiotū allied himself with Ngati Raukawa. In 1868 when a church was built in Te Rangiotū’s new village (later named after himself by the Government when he gave a site for a post office) the Rangitāne people looked back to Ngati Raukawa’s friendly actions and named the church Te Rangimarie (peace). This referred to the peaceful attitude of Ngati Raukawa, which the Rangitāne expressed in a proverb, “Te manawaroatanga o Ngati Raukawa ki te pupuri i te rangimārie, ārā i te whakapono (the steadfastness of Ngati Raukawa in clinging to peace and faith). The church still stands at Rangiotū next to the home of Te Rangiotū’s great-grandson, the late Wiremu Kingi Te Aweawe.

Much of the Minute Book and courtroom evidence supports this picture. In the Himatangi case Rakapa Kahoki (Matene Te Whiwhi’s sister said):¹⁰⁸⁹

The Rangitane were the first to express a desire to sell Ahuaturanga (Upper Manawatu Block). The Ngatiraukawa opposed the sale, but were unable to prevent it. They ultimately consented. This was because the land on this side of Manawatu and southwards was the only land given by Te Rauparaha to Ngati Raukawa.

Also in the Himatangi case Parakaia Te Pouepa said Rangitane had obtained Ngati Raukawa’s – and especially Nepia Taratoa’s – assent to the transaction.¹⁰⁹⁰ He tabled in evidence correspondence two documents: a letter from Ngati Raukawa to Hirawanu and Hirawanu’s response to prove the point (the letters were not copied into the minutes). W N Searancke recalled in 1881 Rangitane’s “joy” at regaining their ancient boundaries (if only for the purpose of selling the land enclosed within them to the government):¹⁰⁹¹

I remember my negotiations for the Ahuaturanga Block, and that I reported the steps to Government. I cannot recall the particulars. I remember stating that I wished to see Ngatikauwhata respecting this land as well as Ngatiraukawa; my arrangements were complete with the latter, and the joy of Rangitane at the recovery of their ancient boundaries.

Samuel Williams, typically emphasising his own importance, describes the discussions as follows:¹⁰⁹²

¹⁰⁸⁶ McEwen, *Rangitāne*, 144. Unfortunately McEwen gives no sources for this interesting information.

¹⁰⁸⁷ Ibid, 212. McEwen provides some fascinating details about how he found this text (ibid):

I came upon this song many years ago while sorting some papers lying on the floor of a cellar below Parliament Buildings occupied by the Department of Maori Affairs. The song was written on a piece of paper with nothing to indicate its origin or how it came to be there. There was a Rangitāne whakapapa and this song, with a note that they had been supplied by Rewanui Apatari. Rewanui was a daughter of Ereni Te Aweawe and a grand-daughter of Te Aweawe. Her husband was Henare Apatari, Senior.

¹⁰⁸⁸ Ibid, 145.

¹⁰⁸⁹ Evidence of Rakapa Kahoki, Himatangi case, as recorded in the *Wellington Independent*, 2 April 1868 (Appendix 3.1.1). This evidence was given in response to questions from the Court.

¹⁰⁹⁰ (1868) 1C Otaki MB 244.

¹⁰⁹¹ 1881 AJHR G2A, [Ngati Kauwhata commission], 17.

¹⁰⁹² (1868) 1C Otaki MB 159.

Ngatiraukawa had constantly asserted a claim as far as the range called Te Ahu o Turanga. At the meeting ... there had been warm discussions for 2 days – Hirawanu and some of the people – Hirawanu was expressing his determination to sell – I heard a Ngatiraukawa say ‘You build houses for Pakehas we will burn them and see who gets tired first’. I addressed Te Hirawanu as if I was Ngati Mutuahi and told him we had better go back to the other side and there listen to what was passing on this side – that as soon as we heard talk of selling we would then turn our faces and hold out our hands for a share of payment – I turned to Ngatiraukawa and asked what they would reply – Ngatiraukawa all said ‘Ae’ – turned to Hirawanu and asked him what he had to say. He said ‘kei akoe te whakaaro’ – understood that he assented to what I said...I advised Ngatiraukawa to withdraw their opposition to a large block lying useless to them ...

Williams added:

If I heard that the land had been sold by Rangitane without Ngati Raukawa getting any of the money – I should say Ngati Raukawa was generous and followed Whatanui, first preacher of peace.

Hoani Te Meihana, who was himself Rangitane, agreed that Ngati Raukawa had to assent to the Te Ahuaturanga purchase and that Parakaia Te Pouepa’s evidence on this was correct.¹⁰⁹³

I know Te Ahuaturanga, sold to Government. It was sold by Te Hirawanu. Have heard what Parakaia said about Hirawanu going to Auckland – it is true that I wrote to Ngatiraukawa to assent to selling land¹⁰⁹⁴ - had a meeting at Puketotara – Ngati Raukawa assented to the sale – proposed that Oroua should be the boundary – Ngati Kauwhata and Ngati Te Ihiihi did not consent to the boundary at Oroua.

There are, however, some other narratives which indicate that Rangitane sold the land at Ahuaturanga without reference to Ngati Raukawa. Significantly these narratives occur only in the Crown case in the Himatangi investigation, where of course it was the Crown’s strategy to attack Ngati Raukawa’s claims to mana and authority in the region between the Manawatu and Rangitikei rivers. Karaitiana Takamoana (Ngati Te Upokoiri) said in the Himatangi case that it was he who commenced the sale of Ahuaturanga, and that he “did not know that the Governor must first assent and then it will be right” and that he “did not hear that Ngatiraukawa settled the boundaries of Te Ahu o Turanga”.¹⁰⁹⁵ Peeti Te Aweawe said that “the assent of Ngati Raukawa was not required to the sale”, but he seems to have meant by that the consent of Ngati Raukawa as a whole was not required.¹⁰⁹⁶ He went on to say that “[t]he man who had a right was Tapa Te Whata he is Ngati Kauwhata”.¹⁰⁹⁷

One complexity of Rangitane history is the division between the eastern and western sections of this large and complex entity. Hoani Meihana Te Rangiotu and Peeti Te Aweawe belonged to the western section. According to Angela Ballara and Gary Scott:¹⁰⁹⁸

One of the problems with identifying the Rangitāne tribe as the main owners of the Seventy Mile Bush is that Rangitāne living [sic] east of the mountains were often bitterly resentful of the chiefs of Rangitāne living west of the mountains, such as Hoani Meihana Te Rangiotū, Peeti Te Aweawe and others. These chiefs, who were fighting land battles of their own against Ngāti Raukawa and other peoples who had invaded the west coast and established claims to land there, were often willing to sell the land east of the mountains for revenue, since they did not normally occupy land to the east of the ranges, and their claims were restricted to the tenuous one of common descent from Rangitāne. Numerous efforts were made in the land court battles for the block, to restrict ownership of the blocks to eastern

¹⁰⁹³ (1868) 1C Otaki MB 245-6.

¹⁰⁹⁴ He means that he wrote to Ngati Raukawa to secure their assent to Rangitane selling land.

¹⁰⁹⁵ (1868) 1D Otaki MB 417.

¹⁰⁹⁶ (1868) 1D Otaki MB 498.

¹⁰⁹⁷ Ibid.

¹⁰⁹⁸ Angela Ballara and Gary Scott, “Tamaki or the Seventy Mile Bush”, Wai 863 Doc# A18, 7.

descendants of Rangitāne such as Rangiwihakaewa, Irakumia, Parakiore and others. But they were doomed to fail, because Crown agents were happy, of course, to deal with willing sellers, and could fall back on the argument that Rangitāne were “all one tribe”.

The Ahuaturanga transaction directly affected Ngati Kauwhata at Oroua. The particular issue was Ngati Kauwhata settlement on the eastern side of the Oroua river. For this reason, Ngati Kauwhata/Ngati Te Ihiihi objected to the Oroua being taken as the western boundary of Ahuaturanga. As Hoani Meihana said in the Himatanga case, “Ngati Kauwhata and Ngati Te Ihiihi did not consent to the boundary at Oroua”.¹⁰⁹⁹ By this Hoani meant that Ngati Kauwhata and Ngati Te Ihiihi did not accept that the western boundary of the Te Ahuaturanga purchase could be the Oroua river as they had habitations on the eastern side (as well as on the western). Parakaia Te Pouepa in the same case said that a sticking-point in the negotiations between Ngati Raukawa and Rangitane over the latter’s right to sell Te Ahuaturanga was the determined opposition of Ngati Kauwhata/Ngati Te Ihiihi to losing their lands on the eastern bank of the Oroua. Nor were they interested in a joint sale. Parakaia said that “[i]t was proposed by me, Nepia [Taratoa] and Aperahama that the Oroua should be the boundary of a block to be sold jointly by Rangitane, Ngati Kauwhata and Te Ihiihi”, but “Ngati Kauwhata did not agree”.¹¹⁰⁰

The full story was given by the Ngati Kauwhata witnesses on the claimant side in the Himatangi case. Te Kooro Te One said it was true that after some debate Ngati Raukawa had agreed that Rangitane were allowed to sell as far west as the Oroua, but “we, Ngati Kauwhata and Ngati Te Ihi Ihi opposed and upset arrangement”.¹¹⁰¹ He continued:¹¹⁰²

In 1858, Hirawanu sent a message to Hoani Meihana of Rangitane about selling Te Ahu-o-Turanga – and Hoani came to see Nepia [Taratoa] at Te Awahou and told him and proposed a meeting at Puketotara. Nepia said “We will see about it.”

The meeting at Puketotara took place, and Ngati Kauwhata people living on the upper Oroua attended. The discussions were opened by Rangitane:¹¹⁰³

Rangitane opened the subject. “I¹¹⁰⁴ have joined Hirawanu in proposal to sell Te Ahu o Turanga – I have been under your feet¹¹⁰⁵ in the days gone by, now I am about to do something on my own account – I join in Hirawanu’s sale because he has brought this boundary “Ki tona aro aro” – Hoani and others said this – “This is merely a proposal, it is for you [Ngati Raukawa] to decide – all said the same.

Nepia Taratoa, Ngati Raukawa’s principal chief in the Manawatu-Rangitikei region agreed, and said that the boundary could be at Oroua, but at this point Ngati Kauwhata intervened.¹¹⁰⁶

Ngati Kauwhata said, “I am not willing that my land should be included in another man’s sale for Rangitane have no ‘mana’ over these places. The matter was not settled. Mangaone was proposed by Ngati Kauwhata and Te Ihi Ihi (further back from Oroua, higher up the Manawatu). Nepia was displeased because the matter was not settled.

Nepia Taratoa was presumably displeased because Ngati Kauwhata’s opposition meant that the objective of securing an arrangement with Rangitane which would block the latter from subsequently

1099 (1868) 1C Otaki MB 245-6.

1100 (1868) 1C Otaki MB 244.

1101 (1868) 1C Otaki MB 246.

1102 Ibid.

1103 Ibid.

1104 It must be Hoani Te Meihana who was speaking.

1105 i.e. under Ngati Raukawa’s feet.

1106 (1868) 1C Otaki MB 253-4.

encroaching further into Ngati Raukawa's lands had been frustrated. It is interesting that he does not seem to have felt that he could have overridden Ngati Kauwhata's and Ngati Te Ihiihi's objections.

This meant there had to be further meetings until a compromise could be hammered out. According to Te Kooro Te One:¹¹⁰⁷

[We] met again at Raukawa¹¹⁰⁸ – a large meeting - a great many of Ngati Raukawa went there – collected at Puketotara arranged about boundaries – at first Ngati Kauwhata did not assent, and that night assented to take boundary to Rotopiko between Mangaone and Oroua – Ngati Te Ihiihi were hardly pressed to this compromise.

Everyone eventually agreed to this compromise, which would preserve Ngati Kauwhata and Ngati Te Ihiihi's cultivations etc. on the eastern side of the Oroua, with the sole exception of Reihana, chief of Ngati Whakatere, whose concern was not the western but the southern boundary of Te Ahuaturanga. Presumably he was concerned to ensure that the purchase did not affect Ngati Whakatere's interests around Shannon. "At last it was settled." Hirawanu was grateful for the concessions that had been made:¹¹⁰⁹

Hirawanu expressed his gratitude for the concession of Ngati Raukawa in favour of his 'hoko' about which he followed the Governor about.

Nepia, revealing his overall policy, said that the boundary with Rangitane, just as it had been settled with Ngati Apa at the Rangitikei:¹¹¹⁰

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 Rangitikei, and now your wish is gratified "hei mutunga [tonu?] tonga tena mo to taha" – what remains is for me alone", other speakers of Ngati Raukawa to same effect – that it was to be a barrier to Rangitane claim".

There were yet further discussions before all the details were finally agreed on and the chiefs marked out the boundaries on Searancke's sketch plan.¹¹¹¹

This narrative is confirmed by Rangitane witnesses in other cases. Hoani Meihana described the discussions in great detail in his evidence in the Aorangi No 3 case (1890).¹¹¹² Interestingly, he says that he and his colleague Te Peeti Te Aweawe did themselves not agree to the Te Ahuaturanga sale,

¹¹⁰⁷ (1868) 1C Otaki MB 254-255.

¹¹⁰⁸ Near the Manawatu gorge.

¹¹⁰⁹ (1868) 1C Otaki MB 255,

¹¹¹⁰ (1868) 1C Otaki MB 254-255.

¹¹¹¹ Other Ngati Kauwhata speakers confirmed Te Kooro Te One's evidence. For example Te Ara Takana said ((1868) 1C Otaki MB 255-56):

Lives at Te Awahuri at Oroua – Ngati Kauwhata of Ngati Raukawa – heard evidence of Te Kooro – [I] was not present at meetings at Puketotara and Raukawa, was at the meeting at Te Awahuri – Kooro's evidence about what took place at that meeting is true – the consent to the boundary of Hirawanu and Rangitane – did not hear the first of the talk about the sale of Te Ahu o Turanga on the occasion of the Awahuri meeting I heard – Nepia asked Ngati Kauwhata – said, "I have assented to Oroua as boundary to Hirawanu and Rangitane – [] of Ngati Te Ihiihi – you must not bring boundary to Oroua, it is for me and Ngati Kauwhata to do that, the owners of the land" – I spoke next, will not assent to Oroua – take it back to Taonui (for Ngati Kauwhata have possession there) "I, O Nepia! Give this land to Hirawanu and Hoani – he may give it to his child or sell it, as he pleased – I don't admit Hoani in the piece which is 'wehe' by us from Ngati Kauwhata and Ngati Te Ihiihi – Others of us spoke and proposed Taonui – all assented – after it was settled, Nepia spoke the words referred to by Te Kooro "Ka ora tatou".

Other speakers who spoke (much more briefly) to more or less the same effect were Hoeta Te Kahuhui, Wirihana Te Angiangi, Takana Takoto, Paranihi Te Taum and Henare Te Herekau (ibid, 256-8).

¹¹¹² (1890) 13 Otaki MB 341-42.

indicating that the sections of Rangitane favouring the sale might not have been those living in the Manawatu. He said that the sellers were Rangitane, Ngati Apa, Ngati Tauira (Ngati Apa) and “the whole of Ngati Kahungunu”.¹¹¹³ He describes three meetings, at Puketotara, Raukawa, and Awahuri, all of which were in 1858. At the first meeting at Puketotara “nothing was done”.¹¹¹⁴ The next meeting was the one at Raukawa, but “Ngati Kauwhata were not present” and so nothing could be finalised.¹¹¹⁵ Finally there was the meeting at Awahuri, at which agreement was reached on the understanding that the boundaries would be changed.¹¹¹⁶

Nepia Taratoa then proposed there should be a meeting at Awahuri. All the chiefs of Ngati Kauwhata agreed to this. A meeting at Awahuri was held in the same year (1858). Ngati Kauwhata agreed that Hirawanu should sell some of the land.

Marker poles were positioned by Rangitane and the other tribes along the boundary to separate off the Aorangi block from the area to be sold to the government.¹¹¹⁷ According to Hoani Te Meihana, the land “on the banks of the Oroua River and across the Eastern boundary was for Ngati Kauwhata and Ngati Wehewehe”.¹¹¹⁸

The Ahuaturanga deed of cession was not signed until 18 August 1864. The sellers included Ngati Kauwhata, but the deed also shifted the boundary to the east to exclude land on the eastern bank of the Oroua, creating a narrow strip of land running approximately north-south eventually bounded by the Te Ahuaturanga Crown purchase block to the east (1864) and the Rangitikei-Manawatu block on the west (1866). This area was later given the name of Aorangi. Before the arrival of Ngati Raukawa and Ngati Kauwhata in the Manawatu this area originally belonged to Rangitane, with Ngati Apa to the north and Muaupoko the south.¹¹¹⁹ Ngati Kauwhata subsequently occupied the northern end of what became Aorangi closest to what is now Feilding as well as Oroua and Awahuri, on the opposite side of the river (later the Awahuri and Oroua reserves within the Rangitikei-Manawatu block). The resident groups, Ngati Kauwhata, a section of Ngati Apa, and Rangitane, partitioned Aorangi informally among themselves, and the partition was ratified by the Native Land Court at the Aorangi investigation of title in 1873 (see ch [] below). Whether Muaupoko had any rights in this area has been considered by the Waitangi Tribunal in its *Horowhenua* Report.¹¹²⁰ The presence of Ngati Kauwhata at the northern end of Aorangi, however, is beyond doubt, and derives from the original migrations of the Maungatautari and North Taupo groups in the 1830s. Ngati Kauwhata were (and, of course, still are) solidly established in the Feilding area, although their rights in land are by no means confined to that district.

To sum all this up, it seems that it is clear that Te Ahuaturanga was sold only on the basis of Ngati Raukawa agreement. This is what was said by Ngati Raukawa speakers in the Himatangi case, and was confirmed by Hoani Te Meihana but which is also verified by Samuel Williams’ evidence in that case and by Searancke’s later testimony in 1881. McEwen’s book also testifies to a tradition within Rangitane of the recognition of Ngati Raukawa’s generosity with this transaction. The contrary

¹¹¹³ Evidence of Hoani Te Meihana, Aorangi 3 case, (1890) 13 Otaki MB 341(25 April 1890).

¹¹¹⁴ (1890) 13 Otaki MB 341.

¹¹¹⁵ (1890) 13 Otaki MB 342.

¹¹¹⁶ Ibid.

¹¹¹⁷ Ibid.

¹¹¹⁸ Ibid.

¹¹¹⁹ (1895) 28A Otaki MB 192, per Alexander McDonald.

¹¹²⁰ Waitangi Tribunal, *Horowhenua*, 128. There are no written sources that indicate Muaupoko played any role. Stirling is of the opinion, however, that “it is virtually certain” Muaupoko would have been involved because of their close links with Rangitane, and because some Muaupoko persons were included in the Rangitane section of Aorangi. As noted the northern section of Aorangi was allocated informally to Ngati Kauwhata, the arrangement subsequently being ratified by the Native Land Court.

evidence comes from Te Peeti Te Aweawe and Karaitiana Takamoana in 1868, both giving evidence in support of the Crown case. Te Peeti Te Aweawe while denying Ngati Raukawa rights, nonetheless admitted those of Ngati Kauwhata (“[t]he man who had the right was Tapa Te Whata”). There is also abundant evidence from Ngati Kauwhata regarding their opposition to the Oroua being taken as the Te Ahuaturanga boundary, resolved in the end by excluding the Aorangi block from the area purchased. That the northern part of Aorangi was held Ngati Kauwhata, who were also the grantees of reserve blocks on the western side of the Oroua, is beyond doubt.

7.9 The Rangitikei-Manawatu Purchase

The Rangitikei-Manawatu Crown purchase, the “Crown” here meaning principally the Wellington Provincial government, is far and away the most important of the Crown pre-emptive purchases that affected Ngati Raukawa, Ngati Kauwhata, and Ngati Whakareia. It is covered in full later in this report, and was the pivotal context for the Himatangi and Rangitikei-Manawatu cases in the Native Land Court. The purchase covered a vast area lying between the Rangitikei and Manawatu rivers, from the coast until well inland.

7.10 Reserves within Crown purchases and the role of the Native Land Court

A number of land blocks considered in detail in this report began their tenurial history as reserves within the pre-emptive purchase blocks. The most important of these is Te Reureu, considered in full in ch []. Reureu, a block of considerable historic interest and importance, is located on the banks of the Rangitikei River near Kakariki and close to the regional centre of Marton. The block has a complex political and tenurial history and was the focus of a great deal of contention amongst the owners.

Reureu was originally a reserve within the Rangitikei-Manawatu block purchased by the Crown in 1866. There were 71 such reserves in the Rangitikei-Manawatu block in total, in addition to another four made by the Native Land Court on 16 October 1869. The reserves were given effect to by the Rangitikei-Manawatu Crown Grants Act 1873 and other legislation. These reserves are an important but little-known component of the tenurial history of the Manawatu and the Rangitikei. The full history of these reserves is covered in the report prepared by Mr Husbands for this inquiry and they will only be commented on in general terms here. Groups receiving reserve allocations included Ngati Kauwhata, Ngati Wehiwehi, Ngati Kahoro, Ngati Pikiahu, Rangitane, and Ngati Apa; some reserves were allocated to individuals such as Matene Te Whiwhi and Nepia Taratoa.¹¹²¹ (One reserve, about which it might be interesting to know more, was a grant of 100 acres to a group of “Waikato Natives” at the junction of the Makino and Mangaone streams.) Te Reureu (4,510 acres) was allocated to four hapu: Ngati Maniapoto, Ngati Pikiahu, Ngati Rangatahi, and Ngati Waewae, the latter being a section of Tuwharetoa. Ngati Pikiahu is a Raukawa hapu. Most of the reserves were quite small: the total allocation coming only to 23,966 acres. Te Reureu, however, was the largest of the reserves and turned out to be an area of valuable and fertile land very suitable for dairy farming.¹¹²²

This report does not deal with the full history of these reserves, a matter which the designers of the research programme have rightly considered to merit a full report in its own right and which has been carried out in exemplary fashion by Paul Husbands. Yet as the example of Te Reureu demonstrates, these reserves also interconnect with the history of the Native Land Court and Ngati Raukawa because (a) a number of the reserves were allocated to Raukawa hapu and individuals, and

¹¹²¹ See *Further Correspondence Relating to the Manawatu-Rangitikei Purchase* 1872 AJHR, Session I, F-8.

¹¹²² *Further Correspondence Relating to the Manawatu-Rangitikei Purchase* 1872 AJHR, Session I, F-8, 5.

(b) many of the reserve blocks – I am not sure if all of them were (perhaps many were sold before the establishment of the Court) were investigated by the Court. In the case of Te Reureu there was a sequence of investigations and appeals and the interaction between the Court, Ngati Raukawa and Te Reureu is an important component of the overall history of the effects of the Court on Raukawa in the PkM inquiry district. All of the reserves have complicated histories of their own.

Set out below is a list of the Rangitikei-Manawatu reserves based on a printed list of the reserves published in the *Appendices to the Journals of the House of Representatives* in 1872.¹¹²³ The spellings of names in this list as given in the AJHR are full of typographical and spelling mistakes. It has obviously been very carelessly reprinted from a handwritten document. Despite all of its flaws as a document I have decided to retain it in this report as it does at least give a full list of the reserves as these were understood to have been in existence at the time that the list was compiled. A reviewer of this report suggested that it would be best if the list were deleted, but I have decided to retain it for the reasons stated. The letter ‘u’ is often given instead of what should obviously be an ‘a’ – as in “Ngati Kauwhatu” (Ngati Kauwhata). The reserves are also listed in *An Epitome of Official Documents relative to Native Affairs and Land Purchases in the North Island of New Zealand*, which sometimes gives more plausible spellings of places and people. In this transcription I have corrected obvious errors (“Ngatikauwhatu”) and have replaced some other reasonably obvious errors – where I am unsure whether the *Epitome* or *AJHR* spelling is correct I have left the *AJHR* spelling unchanged and give the alternative spelling in a footnote. As can be seen there are a significant number of these reserves in the Rangitikei-Manawatu block, but most, Te Reureu aside, are very small. The list splits the reserve blocks into three categories: reserves set aside by McLean during his settlement negotiations from 1870-1872; reserves set aside by Featherston during the original negotiations over the Manawatu block; and reserve allocations made by the Native Land in the second Himatangi decision of 1869. The 1872 printed list is as follows:

*Schedule of Reserves Given to Natives in the Rangitikei-Manawatu Block, the Hon. the Native Minister:*¹¹²⁴

No.	Acres	Position	Owners
1	200	Mangawhata, Oroua River	Tapa Te Whata
2	50	Junction of Makino and Mangaone	Ngatikauwhata tribe
3,12	400	Junction of Makino and Mangaone	Ngatikauwhata tribe
4	1035	Kawa Kawa	Ngatikauwhata tribe
5	514	Reserve at Pukehou	Purchased from Natives
6	40	Rotonui a hau, on the Oroua River	Ngatikauwhata tribe
7,15,65	30	Tauranganui, on the Oroua River	Te Aru [Tukana]
8	50	Oau	Wirihari Te Angi Angi
9	40	Oau	Wirihari Te Angi

¹¹²³ 1872 AJHR F8
¹¹²⁴ i.e. McLean.

10	109	Kairakau, on the Oroua River	Matene Te Whiwhi ¹¹²⁵
11	200	Kopuni, on the Oroua River	Ngatikauwhata tribe
12		<i>Vide</i> No 3	
13	100	Adjoining 3 and 12	Waikato Natives ¹¹²⁶
15		<i>Vide</i> No 7	
15A	50	Above Kawa Kawa, on the Oroua River	Taimona
16	50	Near Small Farm Town	Anitu Pekhama
17	1100	Puketotara	Rangitane Tribe
18	500	Adjoining the Above	Hare Rukena
19	35 ½	Waipunoke, on the Oroua River	Hoani Meihana
20	10	Patanga, on the Oroua River	Kere
21	100	Mataihiwhi	Nepia Taratoa ¹¹²⁷
22	19	Mataihiwhi	Ahuretu ¹¹²⁸
23	100	Mataihiwhi	Winiatu ¹¹²⁹
24	124	Maramahoru Pa ¹¹³⁰	Ngatikahori Tribe ¹¹³¹
25	100	Near Maramahoru	Atereta Taratou ¹¹³²
26		<i>Vide</i> No 33	
27	50	Near Maramahoru	Kerenuhaua
27A	50	Near Small Farm Town	Wereta
28	615	Near Paku Rakateu	Ngatiparewaha Tribe ¹¹³³
29		Not settled; 8 acres at Koputara	

¹¹²⁵ A chief of Ngati Raukawa and also of Ngati Toa.

¹¹²⁶ It would be interesting to know who these “Waikato Natives” might be and why they have been allocated a reserve in this region.

¹¹²⁷ Nepia Taratoa is Ngati Raukawa, linked with Ngati Pare, Ngati Kahoro, and Ngati Parewahawaha. See Ballara, *Iwi: The dynamics of Maori tribal organisation from c. 1769 to c. 1945* (Victoria University Press, Wellington, 1998), 247.

¹¹²⁸ Atareta?

¹¹²⁹ Winiata?

¹¹³⁰ Apart from this document I cannot find any other references to this settlement.

¹¹³¹ This must be a misprint (of which this document has so many) for Ngati Kahoro, which is given correctly in other parts of the document. Ngati Kahoro is a hapu of Ngati Raukawa. See Ballara, *Iwi: The dynamics of Maori tribal organisation from c. 1769 to c. 1945* (Victoria University Press, Wellington, 1998), 247.

¹¹³² Atareta Taratoa? If so, she will be Ngati Raukawa.

¹¹³³ That is, Parewahawaha or Ngati Parewahawaha, hapu of Ngati Raukawa; Nepia Taratoa was their chief. See Ballara, *Iwi: The dynamics of Maori tribal organisation from c. 1769 to c. 1945* (Victoria University Press, Wellington, 1998), 247, 284.

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30	285	Ohinepuhiaroe [sic]	Hare Reweti and others
31	100	Mingirou	Aperahama
32	11	Near Waipunoke at the Oroua River	Hoani Meihana
33, 26	439	Poutu, near Makawai	Hare Reweti and others
34		Maramahoru, included in Maramahoru Reserve	Aperahama
35		<i>Vide</i> No 73, 10 acres for Hone Te Tehi	
36	3	Tawhirihoe	Ngatikahoro Tribe
37	102	Mangamatoi ¹¹³⁴	Te Peiria
38		Kaputara, 60 acres, not settled.	Matenga Te Matau
39	100	Awahou	Hunia
40	200	Te Kau Wau	Ngatuipu [Ngatiapa?] Tribe
41	87	Kaiko Kupu	Hunia
42	50	Near Waitoi	Hakaraia
43	1,000	Taurarua	Hamuera and others
44	20	Omanuku	Kawana Te Akeke
45	390	Pukepuke	Ngatiapa Tribe
46	400	Near Waitoi	Utuku and others
47	4,510	Te Reu Reu	The Ngatipikihau ¹¹³⁵ and others
48	77 acres	Rangitawa	Meta
49	35 ½	Awahou	Panapa
65	<i>Vide</i>	Ngapiro	Te Ara
	No. 7	Oroua River	Tokana
66	40	Ruahine, Oroua River	NgatikauwhataTribe
67	10	Te Maraoura, Oroua River	[blank in original]
69	211	Tokorangi	Surveyed by Mr Carkeek, under instructions of the Hon. the Native Minister

¹¹³⁴ Mangamahoe?

¹¹³⁵ Sic – Ngati Pikiahu, a hapu of Ngati Raukawa. The ‘others’ were Ngati Wehiwehi, Ngati Maniapoto, and Ngati Rangatahi.

Chapter 7. Pre-emptive purchasing and customary interests

72	100	Puketotara	Metapiri
73,75	110	Near Small Farm Town	100 acres for Te Pemu and others

Schedule of Reserves given to Natives in the Rangitikei-Manawatu Block by Dr Featherston

53	300	Awahuri	Tapa Te Whata
54	1,000	Paka Paka Teu	Huneu
55	500	Te Kau Wau	Ngati Apa Tribe
56	100	Te Kau Wau	Ratene (pre-emptive right to be paid for)
57	11	Awa Hau	Ngatiapa
58	3	Awa Hau	Hunia
59	13	Tawhirihoe	Ngatiapa Tribe
60	10	Waipori ¹¹³⁶	Ngatiapa Tribe
61	50	Tawhirihoe	Ihukuru
62	50	Matuihiwhi	Nepia Taratoa and others
63	147	Near Marawahoi	Horowanu
68	50	Near Marawahoi	Atareu
70	100	Ohinipuhinoe ¹¹³⁷	Harekewitu and others
71	1,066	Puketotara	Rangitane Tribe

Schedule of Reserves in the Rangitikei-Manawatu Block awarded by the Native Lands Court on the 16th October, 1869¹¹³⁸

No.	Acres.	Position.	Owners.
50	4,500	Awahuri	Ngatikauwhata Tribe
51	500	Oroua Bridge	Kooro Te One
52	200	Oau	Wirihari Te Angi
64	1,026	Mangawatoe ¹¹³⁹	Ngatikahoro etc.

¹¹³⁶ *Epitome* spelling Waipouri.

¹¹³⁷ *Epitome* spelling Ohinipuhiaroe, both of them mangled versions of the correct name, Ohinepuhiawe, located near Bulls and the location of Parewahawaha marae.

¹¹³⁸ i.e. following the Himatangi decision in 1869.

¹¹³⁹ *Epitome* spelling Mangamahoe.

Recapitulation of Reserves in the Rangitikei-Manawatu Block awarded to Natives

By whom awarded	Contents Acres
The Hon. the Native Minister	14,379 ½
Dr Featherston	3,361
The Native Lands Court	6,226
Total	23,966 ½

7.11 Evidence of Crown purchasing in the Native Land Court

Witnesses in the Native Land Court often discussed Crown purchases by deed during cases in the Land Court. They might do this as part of the overall historical context, to clarify boundaries, or to contest or criticise the Crown purchase, or to use the purchase as a way of providing contextual material to support a claim. Also seen as very important by Maori witnesses was the distribution of the money: who did the distributing, a pivotal matter, and to whom it was distributed.

In fact the Native Land Court's official position was that Crown purchase deeds were of doubtful probative value in proving customary rights in land. Fenton regarded such deeds as probative of precisely nothing. Merely because certain Maori had sold land to the government did not prove that they had any right to do so. In the *Orakei* decision of (1868), Chief Judge Fenton said that he would not hear any case in which either party was supported by the Crown: "I (speaking as an individual Judge of the Court), shall decline in future to proceed with any case in which the Crown's officer appears, either with or without reward, as assisting either of the suitors".¹¹⁴⁰ During the hearing he stated that the Court attached little probative value to Crown purchase deeds, and he reinforced this point at length in the very full *Orakei* judgment:¹¹⁴¹

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

¹¹⁴⁰ *Orakei*, (1868), *Fenton Important Judgments*, 53, 57; *Boast Native Land Court*, vol 1, 481, 498 (NLC43).

¹¹⁴¹ Fenton, *Important Judgments*, 53; *Boast, Native Land Court*, vol 1, 530.

The Native Land Court continued to regard Crown purchase deeds as of very slight probative value when it came to proof of which groups held customary rights. The Court made the same point in the important Porangahau Rehearing judgment in 1887.¹¹⁴²

The sale of land to the Government by Hori and Te Hapuku in former times, cannot be recognised as proof of the existence of a superior right, as it was no more than the assumption of an arbitrary power on their part, an assumption that was subsequently resented by the proprietary owners of the land and ultimately caused a serious quarrel. It was also these clandestine and arbitrary sales that led in part to the formation of the Land League in after years.

Nevertheless claimants continued to traverse Crown purchase deeds in evidence in many cases. As a case study of this the evidence given relating to the Ahuaturanga (1864) and Te Awahou purchases in the first Himatangi case at Otaki can be considered in detail. (The evidence given in Court on the purchases was usefully collected together in a long article in the *Evening Post* on 23 March 1868). With respect to Te Ahuaturanga Ngati Raukawa and their advisers used this purchase to clarify boundaries, and also wanted it recognised that they had consented to a division of the land allowing Rangitane to sell on the northern side of the boundary. As the evidence is summarised in the *Evening Post*.¹¹⁴³

At Mr Williams' request three reports of Mr Searancke's were read on the subject of Te Ahuaturanga purchase.

Rev. S. Williams deposed to Ngatiraukawa having given up the Ahuaturanga block to Rangitane to dispose of, also to his having in 1850 settled a disputed line between Ngatirakau (Parakaia's hapu) and Ngatetehihi. This line now forms the northern boundary line of Parakaia's claim before the Court.

Koore te Orre [sic] deposed to the discussions at the different meetings held at Puketotara, Raukawa, and Awahuri; that the division was fixed between Rangitane permissive rights and Ngatiraukawa retained lands.

Te Ara Takaua, Hoeta Kahuhui, Mirihirai Te Angiangi, Takana Tokoto, and Paranihi te Tau gave evidence to the same effect.

However, when it came to the Te Awahou purchase, where Raukawa were the sellers, the evidence was of a very different character – as proof that Ngati Raukawa did indeed have the mana to sell. This was relevant to the facts in issue in the Himatangi case itself, which is discussed fully in a later chapter of this report

¹¹⁴² (1887) 14 Napier MB 77-78 (27 August 1887) (Judge Mackay, Judge Scannell, Tamati Tautuhi, Assessor); Boast, *Native Land Court*, vol 1, 1245.

¹¹⁴³ “Native Land Court, Otaki”, *Evening Post*, vol IV, Issue 33, 23 March 1868, p 2. [Cross-check with MB pagination]

8. Confiscation in the Waikato and the Maungatautari case

8.1 Introduction¹¹⁴⁴

The project brief for this report requires me to “investigate Ngati Raukawa’s¹¹⁴⁵ experience with the Compensation Court”, and, in particular, to “provide a discussion and information regarding Raukawa individuals resident at Ōtaki being principal claimants in the Compensation Court”. This chapter is therefore concerned with the effects of confiscation under the New Zealand Settlements Acts (and their various amendments) on Ngati Raukawa, Ngati Kauwhata, and Ngati Whakatere. The obvious point to be made at the outset is that the New Zealand Settlements Acts did not apply to Ngati Raukawa ki te Tonga in a geographical sense. At no time were the New Zealand Settlements Acts ever applied in the PkM region, and at no time were Ngati Raukawa, Ngati Kauwhata and Ngati Whakatere land interests in this region ever confiscated under the confiscation legislation.

This does not, however, mean, that Ngati Raukawa *individuals* and *hapu* based in, or primarily in, the PkM region were left unaffected by confiscation (the same going for Ngati Kauwhata and Ngati Whakatere. Although Ngati Raukawa lands (and those of the connected groups) in the Kapiti-Horowhenua region were not targeted by confiscation, those in the Waikato and the King Country were. The effects of the confiscation on Ngati Raukawa in the PkM region is a subset of the bigger issue as to what extent the two parts of the iwi had become separate entities by the 1860s. It has already been argued that the process of separation was incomplete. It is very possible that Ngati Raukawa people living around Otaki still maintained links with their lands in the Waikato and the King Country. If those interests were extinguished by confiscation, then obviously Ngati Raukawa people, or at least some Ngati Raukawa people, living in the PkM region *were* affected by confiscation. How many people fell into this category, and how significantly they were affected, is difficult to say. What is known is that a considerable number of Raukawa individuals and groups based in the PkM region did in fact lodge claims with the Compensation Court sitting in the Waikato (11 such claims in all). The claims are in my view very important and interesting documents. They are considered fully below. Before doing so it is necessary to comment briefly on the effects of the Waikato and Tauranga confiscations on Ngati Raukawa lands.

This chapter adapts and utilises sections of my earlier report prepared for the northern section of Raukawa some years ago, but the discussion has been completely rewritten and restructured to consider these events from the perspective of Raukawa ki te Tonga. I should add that I do not intend to discuss in this report the general development of the law and policy relating to confiscation (raupatu) which the Tribunal has dealt with in other reports and which is the subject of a substantial published literature. Every attempt has been made to keep the discussion as closely-focused as possible.

Raukawa were affected by war and confiscation in two major theatres, in the Waikato and at Tauranga.¹¹⁴⁶ The first of these had by far the most important and dramatic impacts on Raukawa, but all the same it is important to not neglect the consequences of the Tauranga confiscation and the

¹¹⁴⁴ No attempt will be made in this chapter will deal with the issue as to what extent the PkM Tribunal has jurisdiction to consider issues relating to the Waikato confiscation, which is a matter for counsel and for legal submission.

¹¹⁴⁵ As in other chapters, when I refer to Ngati Raukawa in this chapter, this is meant in a wide sense and includes the experiences of Ngati Kauwhata and Ngati Whakatere. What goes for Ngati Raukawa for the purposes of the Waikato confiscation goes for Ngati Kauwhata and Ngati Whakatere and vice versa.

¹¹⁴⁶ On the Waikato war see Vincent O’Malley, *The Great War for New Zealand: Waikato 1800-2000* (Bridget Williams Books, Wellington, n.d. (2016). Also relevant is the Waitangi Tribunal’s recently-released *Rohe Potae* report which I have not had time to review for the purposes of this report.

Tauranga war. While Raukawa's role at Orakau is well-known, it is also the case that at least some Raukawa people fought against the government at Tauranga and would have been at the battles at Pukehinahina (Gate Pa) and Te Ranga.¹¹⁴⁷ These people lived mostly at Tapapa and Patetere - although some turned themselves in to the government in the Manawatu region, showing also the interconnections between the northern and southern sections of the iwi. No doubt there were many more people of Raukawa engaged in the Tauranga campaigns than are recorded in official documents.

There is no real need to belabour the injustice of the Waikato war and the Crown's confiscation policy, given certain concessions that the Crown has already made. These concessions and their significance have been usefully discussed and set in context by the Waitangi Tribunal in its *Hauraki Report* (2006) and no doubt are commented on fully in its *Rohe Potae Report* (First Release 2018).

8.2 Placing land under the mana of the King

Michael King has written that in the Waikato "the immediate function of the kingship was specific and practical":¹¹⁴⁸

It formalised a system of local government that had begun to evolve in the preceding years, Communities set up runanga or councils with local chiefs acting as magistrates with authority to imprison the offenders. Over these runanga lay the mana of the King and his council of twelve advisers.

Except that there were villages which also had runanga but which did not recognise the mana of the King. The village runanga movement and the Kingitanga movement overlapped but they did not coincide.

The Maori King movement and retaining control over land alienation were interconnected objectives. Efforts were made to pay off debts to Europeans to minimise the risk of further land losses. Those groups who affiliated with the Kingitanga politically also placed their lands under the mana of the King. The objective was to restore Maori authority over land alienation, although this did not necessarily involve a prohibition of land alienation to British settlers, especially not if such settlers were prepared to take land on leasehold (which in reality few were, one suspects). Ballara gives particular prominence to this aspect of the Maori King movement.¹¹⁴⁹

There were at least two decades from the late 1850s when the Kingitanga was regarded as holding the mana of the lands of those hapū which chose to join the King, a matter more often defined by whakapapa than ideological choice than is generally recognized. Pou or mountain markers of the King's mana were said, by the most committed Kingitanga adherents at least, to include not only Karioi near Aotea on the west coast of Waikato, Taupiri, Maungatautari, and Hikurangi in southern Waikato, but also Tongariro, Ruapehu, Tītīokura between Taupō and Hawke's Bay, Pūtauaki in the Bay of Plenty, Kaimanawa towards Tauranga, and Ngongotahā west of Rotorua [citing *Te Paki o Matariki*, 25 June 1893, p 3].

After 1869 the northern section of Ngati Raukawa took the step of removing some of their lands from the mana of the King and opening up their territories to road-building and land purchasing. It seems that it is no less important to understand why Raukawa withdrew their lands from the mana of the King as to why it was they decided to subject it to that mana in the first place. But it does not necessarily follow that withdrawing land from the mana of the King is incompatible with continued

¹¹⁴⁷ See *Return of Arms Surrendered by Natives*, 1864 AJHR E-6. Some of the Ngati Raukawa people recorded as having been engaged fighting the government at Tauranga are Rawire Te Raupika, Napuhi, "Wiremu", Hona, Makerine and Manihera.

¹¹⁴⁸ King, *Te Pua: A Biography*, 24.

¹¹⁴⁹ Ballara, *Tribal Landscape Overview*, 192-3.

political support of the Kingitanga. As Lindsay Head notes, sympathy for the King did not always translate into a willingness to place one's *land* under the King's mana. Raukawa did this for some years, but judging this strategy to be counter-productive for themselves, switched to a different policy. Government blandishments probably played some role in this decision, and certainly the government did not at all mind seeing key iwi such as Raukawa and Tuwharetoa going their own separate ways, but my judgment is that this should not be exaggerated. The Raukawa chiefs made up their own minds.

8.3 Ngati Raukawa ki te Tonga and the Kingitanga

This section will deal with support for the King movement amongst the southern sections of Ngati Raukawa. This is a neglected theme in New Zealand historiography. As has already been explained, at this time Ngati Raukawa, north and south, along with Ngati Kauwhata and Ngati Whakarewa, were very closely connected and events in the northern part of the rohe had repercussions in the southern end, and vice versa. The Kingitanga is often regarded as a Waikato, or at least northern North Island phenomenon, and it can come as something of a surprise to learn that places in the lower North Island, especially Otaki, but also Waikanae, the Manawatu and the Wairarapa were also centres of Kingitanga – and Pai Marire support. This is something of a 'lost' history. The history of the Kingitanga at Otaki and other places in the south has been discussed in some earlier books, including biographies of Octavius Hadfield and in Eric Ramsden's long and detailed account of the CMS Otaki mission, *Rangiatea* (1951).¹¹⁵⁰ But much more remains to be learned about this. There was also support for the Kingitanga amongst Ngati Awa at Waikanae, and amongst Muaupoko (albeit that many of Muaupoko also fought for the Crown under Te Keepa's command in various campaigns, including General Chute's "bush-scouring" campaign in Taranaki and later in the campaigns against Titokowaru (1868-69) and in Te Urewera (1870).¹¹⁵¹

At the outset of the New Zealand wars, following the startling news of Gore Browne's attack on Wiremu Kingi - which seems to have come as a complete surprise to many Maori - the various iwi of the Kapiti coast region met at Otaki and decided what action they should take. The feeling was that Wiremu Kingi's claims ought to have been submitted to a full investigation, and that the attack on him and his people was completely unjustified. Gore Browne's actions were deplored and it was decided to petition the Queen to have him recalled:¹¹⁵²

[T]he principal ground of our meeting at Katihiku in Otaki was the public announcement by the Governor of the War at Taranaki, on the 25th day of January 1860. Immediately after this, were the soldiers who had occupied Waitara. When we heard this we were all grieved; all these tribes were taken by surprise. Then all the tribes of this end (of the Island) were called together to consult as to what we should do, and a conclusion was come to. The conclusion was this: That Governor Browne ought to be recalled for this groundless proceeding of his in taking possession of Waitara without a complete investigation...

A petition was drawn up dated 3 May 1860 by which many individuals of Ngati Raukawa and the other southern tribes petitioned the Queen expressing their support for Wiremu Kingi at Waitara and asking for the recall of the Governor.¹¹⁵³ The petitioners were at a loss to understand why Gore Browne would

¹¹⁵⁰ Eric Ramsden, *Rangiatea: The Story of Otaki's Maori Church, its first Pastor and its People*, A H and A W Reed, Wellington, 1951.

¹¹⁵¹ See generally Waitangi Tribunal, *Horowhenua*, 155.

¹¹⁵² Memorandum from Ngati Raukawa to the General Assembly. 11 July 1860, *Further Papers Relative to Native Affairs*, 1860 AJHR E-1A, 155.

¹¹⁵³ Petition to Her Majesty from Parakaia Te Pouepa and others, *Further Papers relating to Native Affairs, 1860, AJHR E-1A*. Browne and H A Turton claimed however that the petition was instigated by the Reverend Octavius Hadfield.

launch an attack on, of all people, Wiremu Kingi, regarded by both Maori and European as a loyal subject of the Crown and as a chief well-disposed towards Europeans. Gore Browne however took action to prevent the petition from being forwarded, an action which itself became controversial, the subject of criticism from Octavius Hadfield and others. Raukawa and the other southern tribes for their part greatly resented this interference with their right to petition the Crown and complained about it to the General Assembly:¹¹⁵⁴

We have heard of the suppression of our letter which was written to the Queen concerning Governor Browne, that he should be recalled. We are much grieved that our letter should have been found fault with. We thought that it would not have been stopped by Governor Browne, inasmuch as he is the medium of communication with the Queen, and we are not novices in this work of writing to the Queen.

The progress of the war was closely followed at Otaki, and accordingly to W R Searancke the young men of Ngati Huia in particular hoped to travel to Taranaki to assist Wiremu Kingi. By late 1860 the fighting in Taranaki had caused a certain amount of tension and divided opinions in the Kapiti Coast region, tensions which were exacerbated by the government's land-purchasing efforts in the Horowhenua and Manawatu districts. Searancke's report of 29 August 1860 paints a vivid picture of the political situation at this time:¹¹⁵⁵

I left Wellington on Monday evening the 20th instant. At Paekakariki I found that the Natives who had emigrated with their chief Paramata to settle on the Middle Island, on some reserves there, had all returned, accompanied by about thirty of the Ngatihinetahi tribe from the South. These latter are all settled at Waikanae where they are busily employed planting potatoes, &c. At Waikanae the Natives are all anxiously looking forward to the arrival of Wi Tako and the Hutt Natives, (the women and children) left the Hutt yesterday.

The whole of the Waikanae Natives were absent from the village busily occupied clearing for their cultivations. They appear to be badly off for food, sulky, and uncommunicative. At Otaki village a few women and children only were to be seen, all the men being engaged on their plantations, and they appear to be working harder this year than usual, having between three and four hundred acres of wheat sown. The same activity prevails at all the smaller settlements between Otaki and Manawatu. From Manawatu southward to Taranaki there is a general sympathy among the younger men for the Natives at Taranaki, and there is an ill concealed anxiety to join them by many openly expressed.

This may be attributed to a natural desire for excitement together with the constant arrival of letters from Wi Kingi Te Rangitake and others at the seat of war, giving glowing accounts of their successes over the Europeans. These letters are principally addressed to the Ngatihuias, to a Chief of which tribe, Karanama, a letter arrived from Te Rangitake asking him why he did not come and see him; all the young men of this tribe are anxious to proceed to the seat of war, and I believe are only held in check by the influence of the old men.

The Natives at Waikanae have been invited by the Ngatihuias to join them, but until Wi Tako's arrival at Waikanae no decision will be come to. At present with some few exceptions the Waikanae Natives are opposed to any active measures.

¹¹⁵⁴ Ngati Raukawa to the General Assembly. 11 July 1860, *Further Papers Relative to Native Affairs*, 1860 AJHR E-1A, 155.

¹¹⁵⁵ *Reports from Officers in Native Districts* 1870 Searancke to McLean, 29 August 1860, *Commissioners' Reports relative to Land Purchases*, 1861 AJHR C-1, No 71, p 296/

The reference to Ngati Huia is interesting. Ngati Huia seem to have maintained a continued presence in the south Waikato and in Waikato-Kingitanga affairs and were subsequently awarded substantial interests by the Native Land Court in the Waotu North block, close to Maungatautari.

Despite the widespread sympathy for Wiremu Kingi, locally affairs remained very peaceful. Sympathy and a willingness to assist were one thing; violence locally between Maori and Pakeha quite another. Searancke, who seems to have been rather prone to seeing conspiracies and incipient insurrection everywhere, was nevertheless careful to stress local tranquility:¹¹⁵⁶

Amid all these feverish anxiety it is singular that with one exception there is not any apparent disposition to molest or the slightest appearance of any ill feeling towards the Europeans living amongst them. The exception is an appropriation by the Ngatihuias of about 200 sheep belonging to some Europeans at Manawatu and renting Maori land there. The sheep straying across the boundary of the land were seized by the Ngatihuias for the trespass, and notwithstanding repeated efforts made for their recovery are still in their possession....At Manawatu and up the river, the Natives are both quite and peaceable, and although the majority have given in their adherence to the King Movement, they have no present intention to do anything inimical to European interests.

Immediately after Orakau the government found that it had a number of Maori prisoners of war on its hands. A document held at National Archives in Wellington lists all those in government custody after Orakau, including prisoners taken earlier after Rangiriri and Rangiaohia. (At the time the list was prepared the prisoners were on board the prison hulk *Marion*).¹¹⁵⁷ The list usefully gives hapu and iwi affiliations. Of the 228 names, 12 are Raukawa (which compares with 45 Ngati Mahuta, 21 Ngati Haua, 18 'Tainui', 13 Ngati Te Ata, 12 Te Ngaungau, 12 Ngati Apakura, and 12 'Urewera'). Mostly, apart from the Urewera contingent, the iwi and hapu groups are of Waikato-Tainui affiliation, but there were some prisoners from further afield, including four men from Taranaki (Puketapu and Nga Mahanga), two from far-off Rongowhakaata, and two from Ngati Kahungunu. There were some Arawa among the prisoners as well, three 'Te Arawa', two Ngati Pikiao. Probably the Raukawa prisoners fell into government hands after Rangiaohia and Orakau, but some of course may have been at the earlier engagements at Rangiriri and elsewhere.

The events of the Waikato war will not be traversed in this report, but it seems likely that at a significant number of Raukawa and Ngati Kauwhata people from the southern North Island took part in the fighting. That Ngati Raukawa from the Waikato were engaged in the war is too well-known to require any emphasis here. It is no less well-known that Te Paerata of Ngati Te Kohera and his son Hone Teri died at Orakau, and his daughter Ahumai, sister of Hitiri Te Paerata (also at the battle) was wounded in the retreat. Ngati Raukawa people were also involved in the fighting around Tauranga. One way of assessing the extent of southern Ngati Raukawa involvement, and that of associated or closely linked descent groups such as Ngati Kauwhata and Ngati Tuara, is by considering official lists of individual Maori who surrendered themselves and their weapons to the government immediately after the conclusion of the Waikato and Tauranga wars in 1864. Such a list cannot possibly be complete: many of those who had fought against the government, for one thing, will have died in battle or of their wounds afterwards. Others will have chosen not to surrender, or may have done so later and their names were not recorded, and there may be no end of errors in the lists. Nevertheless such a listing is instructive.

¹¹⁵⁶ Ibid.

¹¹⁵⁷ G 13, Box 3, 100, [List of prisoners taken at Rangiriri]. In fact the list is not confined to prisoners taken at Rangiriri, but also includes Rangiaohia and Orakau prisoners, and at least some Ngai Te Rangi prisoners from Tauranga.

Table: Individuals identified as Raukawa, Ngati Kauwhata, and Ngati Tuara surrendering themselves and their weapons to the Crown in 1864 (source: 1864 AJHR E-6)

Date	Name	District where surrendered	Tribe	Residence	Arms Ammunition etc	Remarks
Oct 8	Parata Whare	Te Upper Waikato	Ngatiraukawa	Te Kopua		
July 12	Hone Ngahua	Manawatu	Ngatiraukawa	Pukekaraka		
July 13	Tapa Whata	Te Manawatu	Ngatikauwhata	Manawatu		
July 12	Aterea Toko	Te Manawatu	Ngatikauwhata	Manawatu		
July 12	Haratura Turanga	Manawatu	Ngatikauwhata	Manawatu		
July 12	Retemana Hopoki	Te Manawatu	Ngatikauwhata	Manawatu		
July 6	Nepia Maukiungutu	Manawatu	Ngatikauwhata	Rangitikei		
Aug 8	Arapeti Wharemakate	Te Manawatu	Ngatiraukawa			Returned from Waikato after Orakau defeat without his gun.
Oct 3	Hapimana Taikapuraa	Manawatu	Ngatiraukawa		A whalebone "Mere"	Engaged in the rebellion
June 13	Matenga	Rotorua	Ngatituara	Patetere	No arms	Has not been fighting
June 13	Weipeihana	Rotorua	Ngatituara	Patetere	No arms	Has not been fighting
July 12	Ihaia	Rotorua	Ngatituara	Patetere	A gun	
July 12	Te Muraine (?)	Rotorua	Ngatituara	Patetere	Ditto	
"	Te Puanga	Rotorua	Ngatituara	Patetere	Arms lost at Tauranga	
"	Ahitana	Rotorua	Ngatituara	Patetere	No arms	Has not fought
"	Taimona	Rotorua	Ngatituara	Patetere	Ditto	
"	Haiweana	Rotorua	Ngatituara	Patetere	Ditto	
"	Te Hira	Rotorua	Ngatituara	Patetere	Ditto	Arms lost at Tauranga

“	Manahi		Rotorua	Ngatituara	Patetere	Ditto		
“	Peneamine		Rotorua	Ngatituara	Patetere	Ditto		
“	Te Makarine		Rotorua	Ngatituara	Patetere	Ditto		
“	Hohua		Rotorua	Ngatituara	Patetere	Ditto		
Aug 23	Rawire Raupika	Te	Rotorua	Ngatiraukawa	Tapapa	No arms	Fought at Tauranga	
Aug 23	Perenara		Rotorua	Ngatiraukawa	Tapapa	Lost arms at Pokeno	Has been fighting	
Aug 23	Kaiapa		Rotorua	Ngatiraukawa	Tapapa	Ditto	Ditto	
Aug 26	Napuhi		Rotorua	Ngatiraukawa	Tapapa	No arms	Has been fighting at Tauranga	
Aug 29	Wiremu		Rotorua	Ngatiraukawa	Tapapa	No arms	Has been fighting in Waikato	
Aug 31	Hona		Rotorua	Ngatiraukawa	Tapapa	Lost arms at Tauranga		
Aug 31	Makerine		Rotorua	Ngatiraukawa	Patetere	Never had a gun	Has been fighting at Tauranga and Waikato	
Aug 31	Manihera		Rotorua	Ngatiraukawa	Patetere	Lost arms at Tauranga		
Sept 2	Kaiapa		Rotorua	Ngatituara	Motutawa	Lost arms at Orakau		

While obviously incomplete the above data is interesting in a number of ways. Firstly, it shows clearly that men affiliating primarily to Ngati Raukawa fought in the Tauranga campaigns, something that has been almost forgotten. My impression is that although Ngati Raukawa people generally retain a remembrance of participation at Gate Pa or at Te Ranga, this is not a strong tradition within Raukawa as a whole (at least not compared to the powerful historical legacy of the battle of Orakau). Yet in fact Raukawa participation in the Tauranga campaigns may have been just as extensive as their engagement in the Waikato war. It is also significant that Ngati Kauwhata and Ngati Raukawa individuals are listed separately.

Secondly, the figures show – obviously - that Ngati Raukawa and Ngati Kauwhata people from the Manawatu and Rangitikei also surrendered to the Crown. Of course, that does in itself prove that they fought in the wars, but, then, if they had not what would be the point in surrendering? It is possible that that people of these affiliations made their way to kin in that part of the country after the end of the Waikato campaign and then turned in themselves and their weapons, if they still had any, to the authorities, but it is no less possible that these were people who lived in the southern North Island, went north to fight against the Crown, and who then returned home and decided to turn in their weapons.

Some of the people in the list, such as Tapa Te Whata of Ngati Kauwhata definitely lived mainly in the Manawatu. The figures in fact reveal a significant level of participation in the conflict by Ngati Kauwhata people, who later surrendered themselves and their guns to the Crown in the Manawatu. This underscores the point made repeatedly in this report that at this time the two sections of Ngati Raukawa have to be considered together. The same goes for Ngati Kauwhata. Ngati Kauwhata, for their part, who were principally located on the Oroua River in the Manawatu at this time, certainly did not relinquish an interest in the traditional homeland in the north, as will be shown in other chapters of this report.

That Ngati Raukawa living in the PkM region continued to be closely engaged in the wider world of Maori politics and the Kingitanga (unsurprisingly) is shown by correspondence sent by J A Knocks, the Resident Magistrate at Otaki, to the Native Department in 1869-1871. (I assume that this correspondence and the questions that it raises will be traversed in other reports commissioned for this inquiry). Although Otaki itself remained relatively tranquil, there were areas in the Rangitikei and the Manawatu known to be places of “Hauhau” support (by this time anyone openly loyal to the Kingitanga was liable to be perceived as a “Hauhau”). For example on 13 December 1869 Knocks reported that Matene Te Whiwhi had returned to Otaki from Rangitikei, “where he was present at a meeting held by the Hauhaus at a place named Kakariki, at which was discussed the question of Hauhauism in opposition to the Government, when Wi Hapi showed a decided tendency to return to law and order”.¹¹⁵⁸ The so-called “Hauhau” at Rangitikei were strongly opposed to the Rangitikei-Manawatu block survey, indicating that opposition to the survey had something of a political edge: “Matene Te Whiwhi says he feels much displeased with the foolish opposition of the survey of the Rangitikei Manawatu block as expressed by the Hauhaus at the meeting.”¹¹⁵⁹ The same document shows also that Parakaia Te Pouepa (not regarded as a “Hauhau” one assumes) was also opposed to the survey, obviously a contentious matter.¹¹⁶⁰ In April 1870 Knocks reported that the “Oroua Hauhaus” (Ngati Kauwhata?) accompanied by others from the Manawatu, Poroutawhao, Ohau and Waikawa had arrived at Otaki for a meeting to discuss political and land questions.¹¹⁶¹ At the meeting a number of matters were traversed, including the election of Maori representatives to the House of Representatives (“Wi Parata quite pleased the meeting with his election speech”), the Rangitikei question (Matene Te Whiwhi and Karanama stifling Parakaia Te Pouepa’s attempts to bring this up), Wi Hapi’s journey to see Tawhiao, and the Horowhenua block.¹¹⁶² In May 1870 Knocks reported that a “Hauhau” messenger from had turned up in the region on his way to Waikanae and the Wairarapa.¹¹⁶³ In July he reported that Ngati Raukawa, both “Queenites” and “Kingites” had decided to go together to see Tawhiao at Tokangamutu, travelling there under arms just in case they should run into Te Kooti on the way.¹¹⁶⁴ So clearly the channels of communication between Tawhiao and Ngati Raukawa in the PkM region remained very much open.

¹¹⁵⁸ Knocks to USND, 13 December 1869, *Reports from Officers in Native Districts* 1870 AJHR A-16, p 24.

¹¹⁵⁹ Knocks to USND, 16 December 1869, 1870 AJHR A-16, p 24.

¹¹⁶⁰ Ibid. “They also asked him [Matene] to join them and Parakaia Te Pouepa in opposing survey of land which they consider is theirs”.

¹¹⁶¹ Knocks to USND, 4 April 1870, 1870 AJHR p 25: “I have the honor to report that the Oroua Hauhaus, accompanied by all from Manawatu, Poroutawhao, Ohau, and Waikawa, numbering about one hundred, arrived at Tainui Pukekaraka, Otaki, on Saturday. Today they and the Ngatiawa who have been at Katituku, Otaki, since Friday last, have assembled here in the village, at a house named Raukawa.”

¹¹⁶² Knocks to USND, 11 April 1870, 1870 AJHR A-16, 25: “Ihakara Tukumarū and Karanama Te Kapukai now inform me that at a consultation of Chiefs held last night at which Wi Hapi and Hauhaus party were present, it was agreed that the Ngatiraukawa Chiefs, both Queenites and Hauhaus, should go personally during the month of September next to see Tawhiao, for the purpose of ascertaining his intention about making peace; also to understand what is really meant by the contents of Manuwhiri’s letter of May last, addressed to the Ngatiraukawa Hauhaus, which is strongly objected to by both Hauhaus and Queenites.”

¹¹⁶³ Knocks to USND, 2 June 1870, 1870 AJHR A-16, 27.

¹¹⁶⁴ Knocks to USND, 4 July 1870, 1870 AJHR A16, p 33:

Ngati Raukawa were divided into “Queenites” and “Kingites”, it appears, at least to some extent, but the divisions were able to be contained.

In May 1871 Knocks reported some mysterious goings-on at Otaki:¹¹⁶⁵

On Monday, the 9th instant, during the night, while Wi Hapi was at Waikawa, about thirty Kingite Natives from Oroua, Ohau, and Waikawa, came to Pukekaraka, Otaki, where they formed a ring around the Kingite flagstaff representing Tainui, going through a certain form of incantation indicating why the Tainui portion of Kingism had failed, and returned to Waikawa the same night, in the most secret manner. It has since been rumoured about, and understood by the Natives here, that the failure of Tainui, as a supporter of Kingism, is to be attributed to their not joining in the war against the Pakeha.

This did not lead to anything, and Otaki remained tranquil. The New Zealand wars were in their final stages by 1871 in any case. One wonders whether whether the event described here was perhaps a manifestation of support for Te Kooti, or possibly for one of the other prophet leaders of the time.

8.4 The effects of confiscation on Raukawa lands (Waikato)

The Waikato war drove the iwi and hapu of the Waikato off their lands and in to the “King Country” (Rohe Potae). In January 1865 the Compensation Court was formally set up. The “inaccurately named” (as Professor Binney rightly observes¹¹⁶⁶) Compensation Court was initially provided for by sections 8-14 of the New Zealand Settlements Act 1863. The task of the Court was to determine “claims for compensation under this Act”.¹¹⁶⁷ By s 12 the Judges of the Court were given the same powers as resident magistrates in terms of controlling proceedings, compelling the attendance of witnesses and so on. The Court’s powers and functions were subject to constant adjustment and amendment. In essence, however, the Compensation Court was a sister institution to Native Land Court as constituted under the 1865 Native Lands Act. Both institutions were presided over by the same person, Francis Dart Fenton. Other judges, such as Rogan and Monro also overlapped. Procedure in the Compensation Court and the Native Land Court was similar in many respects – although the legal questions to be determined were different – and contemporaries were not always able to distinguish between the two.¹¹⁶⁸ Precedent developed in one jurisdiction was routinely applied in the other, notably the famous ‘1840 Rule’. The Court’s procedural rules were set out in an Order in Council of 16 June 1866.

From January until September 1865 the government issued a sequence of confiscation proclamations which collectively form the ‘Waikato confiscation’. The first of these was made on 5 January, relating to eight separate districts.¹¹⁶⁹ On 31 January further Waikato confiscation proclamations were gazetted, and at the same time the government issued a notification process by which ‘loyal’ Maori could make claims in the Waikato confiscated lands.¹¹⁷⁰ On 1 April Grey issued a proclamation made under s 5 of the New Zealand Settlements Act calling on a number of tribes to come in and give themselves up under penalty of losing all claims to compensation. A number of iwi and hapu were mentioned, including, significantly, Ngati Raukawa “on the Horotiu” (in order, presumably, to distinguish between Raukawa in the Waikato and Ngati Raukawa at Otaki: the former were now

¹¹⁶⁵ Knocks to Halse, 15 May 1871, 1871 AJHR F6B, No. 34, p 20.

¹¹⁶⁶ Binney, *Encircled Lands*, 100.

¹¹⁶⁷ New Zealand Settlements Act 1863 s 8.

¹¹⁶⁸ “Sitting of the Native Lands Court at Ngaruawahia, from an Occasional Correspondent”, *Daily Southern Cross*, Volume XXIII, Issue 2963, 23 January 1867, p 5. In fact this was a sitting of the Compensation Court.

¹¹⁶⁹ *New Zealand Gazette*, No. 1, 5 January 1865, pp 1-2 (the proclamations were in fact made on 29 December).

¹¹⁷⁰ *New Zealand Gazette*, No 3, 31 January 1865, pp 15-17.

officially branded as rebels, whereas the latter were not).¹¹⁷¹ The Proclamation stated that all persons belonging to the proclaimed tribes who were engaged in acts of rebellion who “shall refuse or neglect to so come in and submit themselves to accordingly will be debarred from all claims to compensation under the said Act”. As far as I am aware, no one of Raukawa “on the Horotiu” ever “came in and submitted themselves”: in fact, chances are that they had no knowledge of the proclamation in any case.

On 5 April the government made a proclamation that claimants for compensation in the East Wairoa, West Pukekohe, Middle Taranaki, Waitara South and Oakura blocks now had six months to lodge their claims.¹¹⁷² Following the death of the Reverend Carl Volkner at Opotiki on 2 March, Grey issued a proclamation against Pai Marire on 29 April 1865.¹¹⁷³ On 16 May a number of blocks in the Waikato and in South Auckland were confiscated, these being the East Wairoa (58,000 acres), Mangare (395 acres), Pukaki (210 acres), Ihumatao (910 acres), Kiri Kiri (2730 acres), Onewhero (34,335 acres), Whangape (20,000 acres), Kupa Kupa (9280 acres), Rangiriri (12,220 acres) and Mangawhara (4500 acres) blocks.¹¹⁷⁴ Confiscation at Tauranga followed on May 18.¹¹⁷⁵ On 7 June there was the huge Central Waikato confiscation. Some sites were set apart and reserved in accordance with the procedure set out in the New Zealand Settlements Act: e.g. the Onewhero, Whangape, Kupa Kupa, Rangiriri and Mangawhara blocks.¹¹⁷⁶ The last Waikato confiscation proclamation was on 2 September.¹¹⁷⁷

The Waikato confiscation thus moved in successive stages through proclamation of the boundary, proclamation of districts, selection of sites for colonisation, and proclamation of rebels who were unable to receive “sufficient” land. Stage One, Grey’s July 1863 proclamation, was in fact a general statement of Crown intention. It was not made pursuant to the New Zealand Settlements Act, or any other enactment come to that. Stage Two was the proclamation of a number of blocks close to Auckland as “districts” and sites “set apart and reserved for settlement”, done on 29 December 1864 (Patumahoe, Pukekohe, Pokeno, Tuakau, Waiuku North, Waiuku South and Tuimata Blocks), as well as the ‘military settlements’ block in the Waikato (also 29 December) and then two larger blocks near Auckland on 30 January (East Wairoa and West Pukekohe Blocks).¹¹⁷⁸ The Wairoa and West Pukekohe blocks, also near Auckland, followed suit on 13 January: these areas were also set aside as *districts* and as *sites reserved for settlement*.¹¹⁷⁹ The May proclamations were much more complex. On 16 May the Central Waikato Block was proclaimed as a *district* under the New Zealand Settlements Act (although it was not yet set apart and reserved as a site for settlement: that happened later.) The central Waikato block was a very large area of 577,590 acres which adjoined the substantial ‘military settlements’ block (316,600 acres).¹¹⁸⁰

The Waikato confiscation created a great deal of confusion. As Michael Begrave has recently pointed out, while the logic of the confiscation was “brutally simple”, the “implementation was complicated, contentious, and disastrous for the relationship between the Kīngitanga and the Crown,

¹¹⁷¹ *New Zealand Gazette*, 1865, 1 April 1865, p 67; see so IA 1, 1865/825, RDB 132, 50922-25.

¹¹⁷² *New Zealand Gazette*, 5 April 1865, 74-5.

¹¹⁷³ NZG No 14, 29 April 1865, proclamation date 22 April, [1865 NZG 129].

¹¹⁷⁴ See Schedule at 1865 AJHR D-13.

¹¹⁷⁵ Proclamation of 18 May 1865, *New Zealand Gazette*, 27 June 1865.

¹¹⁷⁶ Proclamation of 7 June 1865, *New Zealand Gazette*, No 19, 7 June 1865, pp 169-70.

¹¹⁷⁷ *New Zealand Gazette*, No 35, 5 September 1865, p 265.

¹¹⁷⁸ Proclamation of military settlements, NZG Jan 5 1865 [Original proclamation date 29 December 1864], 1865 NZG 1-2, also RDB vol 100 38112-3. These areas are simultaneously made districts and are also set aside for settlement.

¹¹⁷⁹ NZG 30 Jan 1865 [Original proclamation date 13 Jan], 1865 NZG 15; RDB 100, 38111-6; also IA 1865/264, RDB 38116-38119.

¹¹⁸⁰ See 1865 AJHR D13, 1.

especially in the Waikato”.¹¹⁸¹ A parliamentary select committee on confiscated lands chaired by Crosby Ward, which reported on 14 August 1866, drew attention to the intractable complexities of the Waikato confiscations and the near-impossibility of stating with any degree of precision how much land was actually available for settlement:¹¹⁸²

In the case of the confiscated lands in the Waikato District in the Province of Auckland, your Committee have drawn the greater part of their information from the records of the Compensation Court, and from returns and written opinions furnished by Mr C Heaphy and Mr J Mackay. The computation of the value and extent of these lands has been exceedingly intricate and complex. The number of claims, both Native and European, on these lands, the variety of objects to which they must be appropriated, the diversity of dealings which have already taken place, and the uncertainty of future dealings, have rendered the task of your Committee exceedingly difficult. In this case, as in that of Taranaki, the extent of land which may prove available for purposes of settlement can only be regarded as a probable conjecture; and, in addition, the area which it may be right to set apart from the most available lands for the residence of former owners who have been in rebellion but who may hereafter profess allegiance to the Queen, cannot be estimated by your Committee on any certain basis of authority.

Obviously a key question is to the extent to which the confiscation boundary included Ngati Raukawa and Ngati Kauwhata lands. It is almost impossible to state with any real certainty how much land in the Waikato actually was confiscated. In the case of Ngati Kauwhata and Ngati Raukawa the main reason for that lies in the fact that the confiscation boundary line on the northwestern side of Raukawa’s rohe cut through a highly contested region immediately to the west of Maungatautari (which was not of itself confiscated). The line cut in a southwesterly direction through the Moanatuatua swamp to Orakau and the Puniu, and then ran along the Puniu to the point where it flowed into the Waipa, and then veered northwest to Pironga and from there to the Whaingaroa (Raglan) harbour. No heed at all was paid to iwi and hapu boundaries. Raukawa and Kauwhata will have had some interests in this area. Saying exactly how much is complicated by the problem that Maungatautari was itself to be intensely contested in the decades to come. This aside, for the most part Ngati Raukawa’s lands in the Waikato were not confiscated. The effects of the confiscation proclamations were uneven, impacting on Waikato Maori most of all, on Ngati Raukawa to some degree, only slightly on Ngati Maniapoto, and not at all on Ngati Tuwharetoa. By the end of the 1860s, as Belgrave puts it, “a string of towns, redoubts, fortified positions and farms had been built along the edge of the confiscated line”, a line which would form the northern boundary of the independent Rohe Potae. The boundary was defined “not by Tāwhiao and the King Movement but by the confiscation and the militarisation of an agricultural frontier”.¹¹⁸³

8.5 Tauranga confiscation and Ngati Raukawa

Ngati Raukawa are not usually perceived as an iwi of the Tauranga region, but because the confiscated area at Tauranga ran so far back into the Kaimais certain Ngati Raukawa hapu were affected by this process. Raukawa hapu did advance claims to the Kaimai blocks in the Commissioners’ Court at Tauranga. Therefore the protracted aftermath of the Tauranga confiscation also forms part of the history of Raukawa’s engagement with war and confiscation.

At Tauranga the principle legal vehicle for the process of investigation and return of the confiscated lands was the two Tauranga District Lands Acts of 1867 and 1868. The 1867 Act contained a long preamble referring to (a) the original Tauranga confiscation proclamation of 18 May 1865; (b) Grey’s promise of 6 August 1864 that three-fourths of the land would be returned “after due enquiry”;

¹¹⁸¹ Belgrave, *Dancing with the King*, 15.

¹¹⁸² *Report of the Select Committee on Confiscated Lands*, 14 August 1866, 1866 AJHR F-2, p 1.

¹¹⁸³ Belgrave, *Dancing with King*, 15.

(c) the enquiries and arrangements that already been entered into with the “said tribe’ (Ngaiterangi); and (d) the doubts that had arisen “as to the validity of the said arrangements”. Section 2 of the Act validated “all grants awards contracts or agreements” already made since 18 May 1865 and “all grants awards contracts or agreements concerning any of the said lands hereafter to be made”. A lot of negotiations and out-of-Court settlements had been going on at Tauranga in a process that virtually defies unravelling. The legislation thus gave the government power to redraw the tenurial map within the confiscation boundaries more or less as it liked, and also retrospectively validated any failure to comply with the requirements of the New Zealand Settlements Act 1863 and its various amendments.¹¹⁸⁴ The legislation also set up the Tauranga Commissioner’s Court.

Operating under this legislation the Tauranga confiscation was dealt with by special commissioners, over a period that dragged on interminably until 1886. Progress was very slow until Herbert Brabant began to engage with matters from 1881-86.¹¹⁸⁵ In 1886 Brabant sent in his final report detailing the lands to be returned. One effect of the Tauranga District Lands Acts was that the Native Land Court only began to function at Tauranga after the confiscated block had been investigated and Crown-granted. “Returned” blocks subsequently became subject to the Native Lands Acts, and once the grants had finally been made the Court began to partition them and to make succession orders. The Court did not, however, begin its sittings at Tauranga until the mid-1880s. The earliest Tauranga minute books are an uninspiring and uninformative source, being mainly concerned with routine successions and partitions. The large-scale investigations of title found in other areas are missing, a serious problem compounded by the fragmentary nature of the records left by the various Tauranga commissioners. This has meant that the precise relationships between the various Tauranga iwi and hapu and customary rights in the region, certainly an area of dense, intricate and long-standing pre-European settlement, are very difficult to chart. It has also meant that the precise relationships between the various Tauranga hapu, and the relationships between hapu of Ngai Te Rangi and Ngati Ranginui with neighbours such as Waitaha and Ngati Raukawa are not well-documented in Court records. This is all the more to be regretted given that lines of descent and land rights at Tauranga, an area of dense and long-standing settlement, are extremely entangled and complicated. The gaps are only partly remedied by the fuller and more comprehensive evidence that begins to emerge at Tauranga after around 1900.

Ngati Raukawa hapu were involved in at least one of the Tauranga Commissioner’s decisions. This was the Kaimai block. Judge Brabant’s decision on the Kaimai block was reported in the *Bay of Plenty Times* on 18 August 1881.¹¹⁸⁶ Three Raukawa hapu feature in this judgement, Ngati Motai, Ngati Apunga (or Ngati Te Apunga) and Ngati Kirihika, all hapu of the eastern Kaimai area. Ngati Motai and Ngati Te Apunga were one of the seven principal claimants to the Kaimai block. Ngati Kirihika were counterclaimants and their claim was also admitted by the Court, at least to the extent of admitting individuals of Ngati Kirihika who lived within the Tauranga confiscation boundary. Ngati Apunga and Ngati Motai had been earlier awarded interests in the nearby Whaiti Kuranui No 5 block by the Native Land Court at Cambridge in 1880. According to Evelyn Stokes, these Ngati Raukawa groups need to be differentiated from Ngati Tokotoko and Ngati Hinerangi – who also played a role in the case – who form “a remnant of Ngamarama who had been pushed eastward by the expansion of Ngati Raukawa and Ngati Hau”.¹¹⁸⁷ These two groups also “had close kin relationships with Pirirakau and Ngati

¹¹⁸⁴ The background to the legislation is discussed in detail by O’Malley: see O’Malley, *Aftermath*, 18-19.

¹¹⁸⁵ O’Malley notes that by the beginning of 1879 only about one-seventh (19,734 acres) had been dealt with and 38,951 acres partially dealt with.

¹¹⁸⁶ *Bay of Plenty Times*, Issue 1079, 18 August 1881, p 3.

¹¹⁸⁷ Stokes, *Te Raupatu o Tauranga Moana*, 172.

Haua”.¹¹⁸⁸ According to Stokes “Ngati Tokokoko and Ngati Hinerangi, like some of the Ngati Raukawa hapu Ngati Motai, Ngati Kirihika, Ngati Pango maintained small settlements on the Tauranga side of the ranges.”¹¹⁸⁹ This shows that the Tauranga confiscation line undoubtedly did cut across the interests of a number of Raukawa hapu. Stokes notes also, by way of confirming this point, that although Raukawa were not allocated any reserves in the Tauranga confiscated block proper – arguably they should have been – one township section at Tauranga was allocated to Raukawa.¹¹⁹⁰

I have mentioned the Tauranga confiscation in this report only briefly as I am uncertain to what extent Ngati Raukawa people in the PkM region have connections with these three hapu and thus to what extent the Tauranga confiscation is of any relevance.

8.6 “We are grateful for this expression of your thoughts at a time when both Pakehas and Maoris are in gloom”: Ngati Raukawa and Ngati Kauwhata Claims to Waikato lands in the Compensation Court, 1864-5

The confiscated lands in the Waikato included land in which groups who had migrated to the Kapiti region had interests, including Ngati Raukawa and Ngati Kauwhata – yet another example of how the northern and southern sections of these groups remained intertwined and had interconnecting interests. This is an aspect of the complex history of confiscation which remains unexplored.x

The archives of the Compensation Court, formerly held at DOSLI Hamilton where they were found by Dr Evelyn Stokes of Waikato University, contain a set of applications made to Grey by Ngati Raukawa and Ngati Kauwhata people (and one from Ngati Toa) mainly dating from May-June 1864.¹¹⁹¹ (These months were the period between the battles of Orakau and Te Ranga). There are eleven separate claims in all, some of them on behalf of a large number of people. The first application was made on 30 April by Te Puingara and others, just a few weeks after Orakau, and the last by Parakaia Te Pouepa and his group on 2 February 1865 and 16 February 1865. All of these applications came not from the south Waikato but from the PkM region, although whether all of the Ngati Raukawa applicants listed necessarily resided only in the southern part of Ngati Raukawa’s rohe is impossible to know. The claims all relate to the Ngati Raukawa and Ngati Kauwhata rohe in the Waikato, some of them specifically to the Maungatautari area, but others much more generally to the whole rohe described by the traditional marker points. The obvious explanation for the claims all being made by Raukawa ki te Tonga is that Ngati Raukawa in the PkM region were not in “a state of rebellion” whereas many in the south Waikato obviously would fall foul of the provisions of the New Zealand Settlements Act.. Those manning the ramparts at Orakau would be perceived as rebels by the Compensation Court. But Ngati Raukawa people at Otaki, while very sympathetic towards Waikato and their Raukawa kin, had not on the whole become involved in the fighting. And the same is true of Ngati Kauwhata, most of whom by this time were living at Awahuri and who were not in a state of rebellion. A number of the applications, in fact, go out of their way to assert the loyalty of the applicants. The application by Ihakara Tukumarū and

¹¹⁸⁸ Ibid.

¹¹⁸⁹ Ibid.

¹¹⁹⁰ However the allocation of such blocks was not necessarily a reflection of customary interests: some were awarded to Arawa chiefs for example (my thanks to Vincent O’Malley for this point).

¹¹⁹¹ DOSLI Hamilton 4/25, Waikato Confiscations: Compensation Court: Claims and Correspondence: Ngati Raukawa Claims (Maungatautari District) 1864-1866, RDB 106, 40626-40695. The first was made on 30 April, only some weeks after Orakau; the last, that of Parakaia Pouepa and others, on 2 February 1865 and 16 February 1866.

others of 28 June ends by listing a large number of people all said to be Christian supporters of the Queen.¹¹⁹²

These people belong to the Church (faith: Hahi) and are under the law of the Queen.

Paora Taurua's application of 2 June 1864 makes a similar emphasis, referring to "we who are living here in the profession of Christianity and in loyalty to the Queen".¹¹⁹³ Merehira Taura signed off her application of 18 June "in the name of God and the Queen".¹¹⁹⁴

The various applications can now be summarised (my apologies for errors in transliteration, the documents not being at all easy to read):¹¹⁹⁵

(1.) Application of Te Puingara and others, 30 April 1864:¹¹⁹⁶ The claim was made by Hakaraia Te Puingira, Te Moroati Kiharoa, Te Aomarere Te Punairangiriri, Te Hira Te Matia, Riri Haukoraki and Te [Wahineoiroa]. This relates to lands in "the Taupo country", and states that the purpose of the letter is to inform Grey as to what lands belong to Matenga Te Matia and that "we his children and his grandchildren hand these lands over to you for safe-keeping". The boundary points given in the letter enclose a very substantial area. This application was the first of a batch of seven forwarded to Fox by the Native Department. Attached to this application is a Minute from Walter Buller addressed to "the Hon. Mr Fox" which states:

I forward seven Native letters (with translations) preferring Claims to land in the Taupo and Waikato country. It is admitted that the Ngatiraukawas have some legitimate claims – especially in the Country about Maungatautari – but their extent is not yet determined. It would take the whole of the conquered territory to meet the demands in these letters! Horomona after congratulating the Governor on his conquest puts in a modest claim for a piece "200 miles in length"! And Parakaia who considers himself a "small claimant" gives boundaries that include an area of about a thousand square miles!! Recommend that the letters be referred to the Special Commissioner and that the natives be informed accordingly.

By 'Special Commissioner' I assume this is referring to Compensation Court envisaged under the New Zealand Settlements Act, which had not yet been formally established.

(2.) Application by Parakaia Te Pouepa and Aperahama Te Ruru of 11 May:¹¹⁹⁷ This is simply a letter clarifying the arrangements with Grey:

To Governor Grey [Ki a Kawana Kerei].

Friend, salutations [E hoa, tena koe]. We now understand your intentions regarding the land of Maoris who have remained loyal. Mr Mackay told the Ngatitōa and Hohepa told me. The word was this. Let the Maoris describe the lands so that they may not be lost through the doings of the General. We are grateful for this expression of your thoughts at a time when both Pakehas and Maoris are in gloom. Friend, that word of yours about the land is very clear, and a letter will now be sent to you containing the names of the lands.

¹¹⁹² Application of Ihakara Tukumarū and others, 9 and 28 June 1864, RDB 40629-40634, at 40634.

¹¹⁹³ Application by Paora Taura and others of Ngati Kahoro, 2 June 1864, RDB 104, 40670.

¹¹⁹⁴ RDB 104, 40680.

¹¹⁹⁵ I would add that I have not attempted to transliterate, still less to locate, the various boundary markers identified in these applications, as many of the place names are completely unfamiliar to me. It would be very instructive to have the various boundary markers plotted out on a map, which could only be done by the CFRT mapping coordinator working closely with kaumatua to identify the various places.

¹¹⁹⁶ DOSLI Hamilton 4/25, RDB 106, 40643-650.

¹¹⁹⁷ DOSLI Hamilton 4/25, RDB 106, 40652-3.

This makes clear that Grey had invited Raukawa at Otaki, and Ngati Toa as well, to advise the government of their land interests in the Waikato so that they should “not be lost through the doings of the General” – that is to say, by the military subjugation of the Waikato by General Cameron and the British army.

(3.) Application by Paraone Te Manuka and others of Ngati Huia, 1 June 1864:¹¹⁹⁸

This is a claim by Ngati Huia and relates to the Maungatautari region (“we write you a letter about our claims at Maungatautari”). The letter gives a set of boundary reference points and the names of the claimants as “Te Paraone Te Mamaku, Pita Te Rakumia, Puhikaru, Hapi Wiremu (Kaupeka) in short all the Runanga of Ngatihuia” [“te Runanga katoa o Ngati Huia”].

(4.) Application by Te Roera Hukiki and others through Kauwhata, 1 June 1864:¹¹⁹⁹

This is a claim specifically to lands at Rangiaohia. Detailed boundary markers are once again given; “these are all portions of Rangiaohia”. The claim was made through the ancestor Kauwhata, his descendants among “the old men” being Matene Te Whiwhi, Tamihana Te Rauparaha (both Ngati Huia), Arapata Hauturu and others. That there should be a claim specifically to the Rangiaohia area is particularly interesting. This area was certainly included in the confiscation.

(5.) Application by Paora Taurua and others of Ngati Kahoro, 2 June 1864.¹²⁰⁰ This claim comes from the ‘Runanga of Ngatikahoro’. The claim relates both to a large area defined by boundary markers (“at Rangiaohia, Mangauika, Tumuakitahuna, Pukamapau, Paiatera, Nukuhau, Te Koroka, Te Kohu, and right away to the base of Maungatautari”) and another from the summit of Maungatautari (“another claim is from the summit of Maungatautari to Kuratongia, Te Ruiapuitao, Te Akatarewa”). Maungatautari is certainly included (“Friend that mountain is mine”). So is Rangiaohia. The claimants, all Otaki residents, seek financial compensation.¹²⁰¹

If you are willing to fulfil our desire in regard to this land give us sixpence (an acre) more or less as you may think best. The decision rests with you inasmuch as you have conquered all those lands. Friend we have nothing more to say about those lands.

(6.) Applications by Horoma Torenu and others of Ngati Kahoro, 9 and 15 June 1864.¹²⁰² This claim also comes from Ngati Kahoro, but from a different group seemingly – Horomona Torenu and 13 others. There are two separate letters. The first emphasises to Grey that “there is another side of Maungatautari, the side towards the East”. The letter goes on to say that “there is a proverb respecting Maungatautari, which is familiar to the Chiefs of this Island”, although for some reason the proverb is not translated. Again boundary points are identified, and then a claim is made for compensation at 6d. per acre:¹²⁰³

Friend the Governor, if you are disposed to give us sixpence, more or less, for these lands it is well, but it rests with you because you have conquered all the territory.

The second letter refers specifically to lands at Maungatautari, inadvertently omitted from the claim dated 9 June.

¹¹⁹⁸ DOSLI Hamilton 4/25, RDB 106, 40662-668.

¹¹⁹⁹ DOSLI Hamilton 4/25, RDB 106, 40689-694.

¹²⁰⁰ DOSLI Hamilton 4/25, RDB 106, 40669-672.

¹²⁰¹ Ibid, 40670.

¹²⁰² DOSLI Hamilton 4/25, RDB 106, 40675-676, and supplementary claim at ibid, 40677-78.

¹²⁰³ Ibid 40674.

(7.) **Application by Wipiti Hinerau and 18 others, 9 June 1864.**¹²⁰⁴ This claim also lists extensive boundaries in “the Maungatautari country” and is addressed to “our loving Father Governor Grey” (“Ki to matou matua aroha, ki a te Kawana Kerei, e pa tena koe”). The claim is made through an ancestor Aniwaniwa. The document is annotated by Buller:

Memo for the Hon Mr Fox: Further claims to land in the Taupo and Waikato Country, I refer the Government to my memo on a similar batch of papers forwarded by a previous mail; and I recommend, as before, that these letters be referred to the Special Commissioner, and that the natives be informed accordingly.

(8.) **Application by Merehira Taura and others, 18 June 1864.**¹²⁰⁵ This is another application relating to lands “at Maungatautari”:

I write to you concerning my piece of land at Maungatautari. I shall explain fully to you the boundaries of these lands. These are the boundaries (Here follows a detailed description). These are all the portions of land I have at Maungatautari. To my loving Father, Sir George Grey. From his servant in the name of God and the Queen. Merehira Taura (a woman).

(9.) **Application of Ropata Hurumutu and the Ngati Toa runanga of 23 June.**¹²⁰⁶ This claim simply states Ngati Toa’s former Waikato boundaries in broad terms, and then places the matter in the hands of the Governor, relinquishing Ngati Toa claims to the lands conquered by the Crown and then leaving it to Grey to make whatever acknowledgment he sees fit.¹²⁰⁷

(10 and 11.) **Applications by Ihakara Tukumarū and others of 9 and 28 June 1864.** Ihakara was the leader of the pro-government party at Otaki, and others to Grey on 28 June 1864.¹²⁰⁸

Salutations to you. We have received your letter – on the 26th of May – we have seen the justice of your word to us. You have asked us to give the names of our different pieces of land and the names of the claimants. It is good. Harken to the boundaries of our land. Commencing at Waihināu, thence to Maungakaretu, thence to Mataiterangi, thence to Rerewhakaupoko, thence to Pipinoke, thence to Mangatukutuku, thence to Wairakai [Wairakei?], thence to Motiotakupu, thence to Kapinga, thence to Takanga, thence to Whahawerawera, thence to Te Awakei, thence to Pukeingamarama, thence to Puketoki, thence to Mangatutu, thence to Tauranga, thence to Te Hura, thence to Te Kunui, thence to [Kohipo?], thence to Haereawatea, thence to Otawhao, thence to Te Awamutu, thence to Mapaukarakia, thence to Te Kohai, thence to Taupoingao, thence to Tumutumutu, thence to Totorewa, thence to Tauranga Kotuku, thence to Te Hunanga, thence to Taringae, thence to [Ripauparahi?], thence across Mangaohoi (stream, river) [40632] thence to Te Raparapa, thence to [Hurukahu], thence to Pikopiko, thence to Rahere, this is the summit of Maungatautari, thence to Hapuamaire, thence to Puketiritiri, thence to Omarupiri, thence to [Manuka? Mamuku?], thence joining at Te Waihināu, this is all, these are the boundaries we send that we may see them.

The claimants here, who were probably all resident at Otaki (I admit to not being certain of that) were:

These are the names of us the claimants.
Hanita Te Wharemakatea.
Rawiri Te Wanui

¹²⁰⁴ DOSLI Hamilton 4/25, RDB 106, 40635-40642.

¹²⁰⁵ DOSLI Hamilton 4/25, RDB 106, 40680-40681.

¹²⁰⁶ DOSLI Hamilton 4/25, RDB 106, 40682-40685.

¹²⁰⁷ RDB 106, 40684.

¹²⁰⁸ Ihakara Tukumarū and others to Grey, 28 June 1864, on DOSLI Hamilton 4/25, Waikato Confiscations: Compensation Court: Claims and Correspondence: Ngati Raukawa Claims (Maungatautari District) 1864-1866, RDB 106, at 40632.

Te Kepa Kerikeri
Rota Te Tahiwī
Te Wai [Wari?] Takere
Pirika Te Hunihanga
Akatohe Tipao
Pita Te Pukeroa
Parakaia Te Pouepa
Aperahama Te Ruru
Taituha [Taitaha?] Tamipehi
[Nekeria?] Te Wharewhiti
Harawira Te Whio
Tamatea Puhīwaero
Te Hira Te Taurei
Wiremu Hopihona Te Wharewhiti
Te Wiata [Niata?] Te Honui
Te Rei Pehi
Erueti Te Whiti
Hopa Tahaia
Hou Te Kaponga
Wereta Rarua
Tepehana Rarua [40634]
Te Pahi Hianga
Heta Te Rangihinganui
Te Manihera Te Rau
Matina Mahurenga
Hapeta Te Mahunga
Utiku Te Taunei
Inia Te Honu
Peniamine Te Hapupu
Maika Takarore
Tamati Pahika
Wiremu Te Huingangi
Ihakara Te Tukumarū

(12.) Application of Paroane Toangina and others, 1 August 1864.¹²⁰⁹ This claim relates to an extensive area in the Waikato on behalf of the descendants of the ancestor Hotumanea. The claimants here are Ropata Hurumutu, Mihipeka, and Pareturere (“who claims Kaitotehe”).

(13.) Further claim of Parakaia Te Pouepa, 16th Feb 1866.¹²¹⁰ This claim, made some time (18 months) after the last of the earlier claims, also made by Parakaia Te Pouepa, relates to lands on the southern sides of Maungatautari. The letter states:

This is a letter to inform you of parcels of land that were not included in the letter of claims for the South side of Maungatautari. Claims for the opposite side have reached the Government. The people have received the notice to go to Ngaruawahia but the Month and day the committee are to meet is not known. The end of that.

This is a separate matter, not connected with the claims in the last two letters. Fearing these claims might be lost on the day of the investigation of the lands of the peaceable Tribes taken place [sic] is the reason for writing, that this is the third letter should also go in on the day the investigation of Rangaiohia, Orakau, Waipa and Pukewhakaahu takes place. These claims are on the East side of Maungatautari going north to Te Tiku a Teihingarangi, where it ends.

¹²⁰⁹ DOSLI Hamilton 4/25, RDB 106, 40686-88. The application is annotated by Buller: “forwarded to the Hon. Mr Fox (thro his Honour the Superintendent). I have already expressed my opinion on the subject of these claims in former marginal notes.”

¹²¹⁰ DOSLI Hamilton 4/25, 16 Feb 1866, RDB 106, 40657-40660.

This is not quite all of the extant correspondence relating to these applications, as there are also some further letters on a Native Land Court file held at National Archives in Auckland.¹²¹¹ The documents include two further letters from Parakaia Te Pouepa at Otaki, one to Grey (May 11 1864)¹²¹² and another to the “Chief Assembly” dated September 10 1865.¹²¹³ There is also another letter, a general reminder letter about Ngati Raukawa claims in the Waikato dated 4 September 1865 (I am not sure who it is from).¹²¹⁴ This letter has some interesting annotations. One of them recommends “that the writers be informed that claim if they have any at all must be made at the Native Lands Court”. To this is appended “yes and that the letter has been transmitted to this Court. Send letter to Mr Fenton”. This indicates that as a result of the fixing of the confiscation boundary the Ngati Raukawa claims are no longer being treated as Compensation Court claims but rather as Native Land Court claims.

The correspondence relating to these applications are all documents of obvious importance. They were made very soon after Orakau (fought at the beginning of April) and strictly speaking are not applications to the Compensation Court at all, but are rather made directly to Grey himself seemingly at his suggestion. (The letter to Grey of 28 June 1864 sent by Ihakara Tukumarū and others cited above refers to having received a letter from Grey: “we have received your letter – on 26th of May – we have seen the justice of your word to us to give the names of our different pieces of land and the names of our claimants”¹²¹⁵). As noted above, although Raukawa were included in Grey’s 1 April proclamation, essentially branding the iwi as rebels, this was confined to Ngati Raukawa “on the Horotiu” [Waikato River]: it seems while branding Waikato Raukawa as rebels he was at the same time personally encouraging Ngati Raukawa people at Otaki to submit claims to land in the Waikato directly to himself. In fact the Compensation Court, although provided for by the 1863 Act, did not even exist at the time of most these applications.¹²¹⁶

In fact, most of these Ngati Raukawa/Kauwhata applications were sent to Grey before the Waikato confiscation was actually made, the main proclamations being on 17 December 1864 to 2 September 1865. These applications were made a very early stage in the confiscation process.¹²¹⁷ What seems to have happened is that in the case of the Raukawa claims it was decided by the Native Department that because Maungatautari did not actually fall within the confiscation boundary line the claims were redirected to the Native Land Court as claims in that Court – which led on to the 1868 hearings on Maungatautari and related blocks dealt with below. The confiscation boundary as finally surveyed did not actually include the Maungatautari area (although it did of course include Rangiaohia and Orakau). There seems to have been no outcome for these applications in the Compensation Court, but it is the case that the response to these applications was actually the *Native Land Court* inquiries into Maungatautari, Pukekura and Puhue that commenced in 1866. Fenton first sat as Native Land Court judge to deal with Pukekura – just north of Maungatautari – on 17 October 1866. Parakaia Te Pouepa was the principal Raukawa claimant. What this all looks like is that at some point the decision

¹²¹¹ MLC A 52(90) Box 40, Comp Court Auckland 1865, RDB vol 100, pp 38245-38501.

¹²¹² RDB 100, 38335-40.

¹²¹³ RDB 100, 38356-57.

¹²¹⁴ RDB 100, 38365-69

¹²¹⁵ Ihakara Tukumarū and others to Grey, 28 June 1864, on DOSLI Hamilton 4/25, Waikato Confiscations: Compensation Court: Claims and Correspondence: Ngati Raukawa Claims (Maungatautari District) 1864-1866, RDB 106, at 40632.

¹²¹⁶ The Court seems to have come formally into existence in January 1865. The Court’s procedural rules were set out in an Order in Council of 16 June 1866. The Court’s procedural rules and the 1866 Order in Council are discussed by Heather Bauchop: see Bauchop, *The Aftermath of Confiscation: Crown Allocation of Land to Iwi: Taranaki 1865-1880*, Wai 143 Doc#I18, pp 26-33.

¹²¹⁷ McCan, *Whatiwhatihoe*, 54.

was made to deal with the Raukawa Compensation Court applications to Maungatautari as Native Land Court investigations instead. Both processes, after all were more or less the same, and both were presided over by Fenton. The Maungatautari Land Court cases were in this sense an outcome of the Waikato confiscation process. This explains why it is that Ngati Raukawa and Ngati Kauwhata claims were never inquired into by the Compensation Court. In fact some of the claims were *not* confined to Maungatautari in the strict sense but extended beyond that into the Waikato, and it is thus very possible that there were Ngati Raukawa and Ngati Kauwhata interests in the confiscated block which indeed were raised at the time of the Waikato confiscation but which were never inquired into. A number of the claims, for example, refer specifically to Rangiaohia, which was certainly confiscated. Ngati Raukawa and Ngati Kauwhata were thus quite significantly short-changed by all these applications being treated as ordinary applications for investigation of title in the Native Land Court. The Ngati Raukawa and Ngati Kauwhata claims in the confiscated area around Orakau, Rangiaohia and Te Awamutu were never investigated at any point. As it happens – as will be seen – the Native Land Court hearings in 1868 did not turn out at all well for Ngati Raukawa either.

Ngati Kauwhata, for their part, participated neither in the Compensation Court nor in the first Native Land Court cases relating to land in the Maungatautari area. This will be dealt with further in the chapter on the Maungatautari blocks below. In short, however, Ngati Kauwhata were unable to participate in the Maungatautari Native Land Court case because they had to attend Court sittings in the Rangitikei. Ngati Kauwhata certainly felt aggrieved about their inability to have their interests in the confiscated blocks inquired into, and some of Ngati Kauwhata assumed that the special inquiry which took place into Ngati Kauwhata interests in Maungatautari in 1881 had something to do with the Waikato confiscation (which it did not). Ngati Kauwhata's representative at the 1881 Maungatautari inquiry (Alexander McDonald) stated that Ngati Kauwhata had been assured that their interests in the confiscated lands in the Waikato would be protected but that this had failed to occur. McDonald said that he personally had travelled to Auckland and had spoken to Fox, and Fox had reassured him that Ngati Kauwhata's lands in the Waikato would be unaffected by any confiscation. When some years later McDonald raised the issue again, he was told, probably by Richmond, that it was too late to inquire into the matter, and "the lands had been allotted to those entitled to compensation". Ngati Kauwhata thus had two grievances: (a) that they were unable to attend the investigations of title to Maungatautari, Pukekura, and Puahue, *and* (b) that their interests in the confiscated lands in the Waikato had never been inquired into.¹²¹⁸

8.7 Application on MA 13/113/71

¹²¹⁸ See Alexander McDonald's opening statement to the Ngati Kauwhata Maungatautari inquiry, 1881 AJHR G2A, 7-8:

A long time after there was war between the Natives and Europeans here in Waikato. In the beginning of it Ngati Kauwhata sent messages to Auckland from Kapiti (1863). I was sent. I went to the Government. Sir W Fox was the Minister. I said, "Should this be a great war, and confiscation follow, what will become of the lands of Ngatikauwhata and other persons living at Kapiti?" Mr Fox said, "Go and say to Kauwhata, 'Sit still; should confiscation be [] in Waikato their lands will be carefully sought out [Court: ascertained and protected]." I had a Maori companion. I said to him. "Let us see Manga [Rewi Maniapoto] and the other fighting chiefs, and hear what they have to say." Government told us we should find it impossible to do as we desired. We left for Wellington on Mr Fox's promise of protection for our lands in Waikato. We returned to Kapiti. In 1867 I asked the Government – Mr Richmond, I think, was then Minister – what should be done relative to the promise made to Mr Fox? He said the lands had been allotted to those entitled to compensation. I said, "We did not hear of the investigation which had held in Waikato." [McDonald is here presumably referring not to the title investigation to the Maungatautari blocks, but rather to the Compensation Court sittings in the Waikato.] He said, "Petition the Parliament." We then commenced our appeals for our lands which had gone by confiscation.

I have located another document on MA 13/113/71 referring to claims by various people resident at Otaki to lands within the confiscation boundaries in the Waikato. There is no supporting documentation relating to this and thus its context is unknown. The document is dated February 15 1870.¹²¹⁹

This list of our lands in Waikato, that were confiscated through the fighting between the pakeha and Waikato as follows:

Te Tumutumu. Orakau. Ngamoko. Pukekotahi. [Waetu?] (Waotu?). Whetukaraka. Kuamoā. Te Horo. Raupeti. Takapaukura. Te Arahurihuri. Otaotanui. Te-oramataii. Tawapeko. Taupingao. Tuwharekura. Korakonui. Te Ngotimatatou. Te Taniwha.

These are the names of the people to whom these lands belong:

Akuhata Tipao.

Ropata Te Ao.

Hoori Te Waru.

Hanita Te Wharemakatea.

Hema Te Ao.

Peene Araima.

Haani Te Punairangiriri.

¹²¹⁹ “List of our lands in Waikato”, Akatuhe Tipao and others, 15 Feb 1870, MA 13/71.

9. “Much disputing with our neighbours”: The Crown, Ngati Raukawa, and the Land Court: the Himatangi case 1868

9.1 Arrival of the Native Land Court at Otaki

This section focuses on the arrival of the Native Land Court at Otaki. It sets the scene for the remaining parts of this chapter and the following, which consider the relationship between the Native Land Court and Raukawa customary rights fully. To write a blow-by-blow narrative history of the Court’s sittings at Otaki alone (let alone narrating all Raukawa-related cases elsewhere) would be an extremely time-consuming project, and I have to admit being uncertain as to quite what it would reveal. The main issues and problems would end up being buried in a mass of detail. Nevertheless it does seem important and valuable to consider in some detail the very first years of the Court’s history at Otaki. The Native Land Court became such an important institution in New Zealand history that it is easy to forget that at first its impact was for some years quite slow. There was no rapid overnight transformation in 1865. With these early cases, however, we see the slow beginnings of a tenurial revolution that was going to turn Ngati Raukawa’s world upside down.

9.2 The first years of the Court at Otaki: A narrative

The impact of the Native Land Court on Ngati Raukawa was at first slow and hesitant, and indeed only three matters were considered at the Court’s first Otaki sittings, and all of them adjourned:

Table: First Otaki Sitting of the Native Land Court at Otaki (6-7 July 1866)

Case and Applicant	Date	Acres	Pagination	Judge and Assessor(s)	Key witnesses, objectors, and outcome
Perenare Te Tewe, re Te Waerenga	7 July 1866	3-4	(1866) 1B Otaki MB 2-4	Judge Smith, Te Keene, Tamihana Te Rauparaha	Perenare Te Tewe in support. Rangiharuru objects to adjournment; Eruera Te Matata objects. No survey; case is adjourned.
Oriwia Hurumutu, re Paremata	7 July 1866	Not stated in MB	(1866) 1B Otaki MB 4	As above	Adjourned as no other assessor is available
Ururoa Ripia, re Hurihanga Taitoko	7 July 1866		(1866) 1B Otaki MB 4	As above	Adjourned; no survey; Tamihana Te Rauparaha (assessor has an interest in the block)

The 1866 session was presided over by Judge T H Smith, with Te Keene (who must have been from outside the region in accordance with what was to become standard Native Land Court practice) sitting as Assessor. On 6 July Judge Smith announced that none of the cases set down for hearing could proceed as only one Assessor was present. "The 12th clause of the Native Lands Act was read and the sitting adjourned to 10AM July 7th."¹²²⁰

On 7th July the Court reassembled, with Tamihana Te Rauparaha, who of course lived locally, sitting as one of the two Assessors.¹²²¹ Very little was achieved at the sitting all the same, indicating a certain amount of hesitancy and lack of certainty about the new institution of the Native Land Court. Perenara Te Tewe asked for an investigation to a small parcel of land at Otaki which was unsurveyed but which had "been marked off with stakes".¹²²² He said that the land belonged to his "matua", and that his "matua" were Ngati Raukawa and that they "were brought here by Te Rauparaha and acquired lands here".¹²²³ The land, he said, had been "the subject of many disputes".¹²²⁴ Other people, he said, could substantiate the claim, but they were "at Rangitikei". He had not had the block surveyed as he thought it too small for a survey to be worthwhile. He accepted that the claim should not proceed and asked for it to be adjourned. Two people present in Court, Rangiharuru and Eruera Te Matata, both counter claimants, objected to the proposed adjournment, but as no surveys had been done, and no one seemed ready to proceed, the case was adjourned by agreement.

The next person to address the Court was Oriwia Te Hurumutu, also resident at Otaki, who claimed a block of land at Paremata (some distance away, of course). But this case could not proceed either, because – as Oriwia explained – Tamihana Te Rauparaha, sitting on the bench as an Assessor, was known to be opposed to the claim. This case obviously not proceed either: "[t]here being no other assessor of the Land Court present besides Tamihana, the Court decided that the case could not be heard".¹²²⁵

The third (and last) case heard at this rather inconclusive sitting of the Court concerned another small parcel at Otaki, an area of about two acres named Hurihanga Taitoko, claimed by Ururoa Ripia. His evidence gives a small window into the tenurial and social circumstances of Otaki in the mid-1860s:¹²²⁶

The land called Hurihangataitoko from the name of a house that stood on it. I lived in that house 20 years. It [took its name] from the name of a house that stood on it. I lived in that house 20 years. It is not now standing. The land is bounded by a swamp on two sides and at the ends there are stakes. I put in these stakes a year ago. They are still standing. All the people here know that land. I believe there are about 2 acres. It was measured before letting it to the European. It has been let to a European. The claim is disputed. Oriwia Hurumutu is a counter claimant. She came and protested against my staking off the land.

It can be seen that at first the impact of the Native Land Court at Otaki was very slight, that there was some contestation over property rights, and that Maori and Europeans were arranging informal leases amongst themselves. Because there was no proper survey, and because Tamihana Te Rauparaha, one of the assessors, was a member of the Court panel, it was decided to adjourn the

1220 (1866) 1B Otaki MB 1 (6 July 1866).

1221 (1866) 1 B Otaki MB 1 (7 July 1866).

1222 (1866) 1 B Otaki MB 2 (7 July 1866).

1223 Ibid.

1224 Ibid.

1225 (1866) 1B Otaki MB 4 (7 July 1866).

1226 (1866) 1B Otaki MB 5 (7 July 1866).

application.¹²²⁷ The first sitting of the Court at Otaki thus lasted for precisely two days, and achieved nothing whatever. This first sitting reveals, if anything, Ngati Raukawa uncertainty and hesitancy about the Court, as the lack of surveys indicates. There would have been nothing about this first sitting which would have given Ngati Raukawa people any indication of the scale of the tenurial revolution that was about to occur.

The slow beginnings of the Court’s presence at Otaki is revealed by the Court’s not returning to Otaki for nearly a year. The next sittings began on 2 July 1867, presided over by Judge T H Smith, once again, and with Ihaia Whakamainu and Parakaia Te Pouepa sitting as Assessors. (As has been discussed in ch 1, Parakaia was an important Ngati Raukawa rangatira living at Otaki.) This sitting, the only Native Land Court sitting at Otaki in 1867, was a little longer than the 1866 hearing, lasting from 2-13 July. Again there had been problems finding suitable Assessors from outside the district. Judge Smith felt it necessary to explain why Parakaia Te Pouepa was sitting as part of the panel:¹²²⁸

The Judge explained the reason why Parakaia sat in Court though a resident at Otaki and stated that the Court would consider any objection made to his sitting by any of the claimants or counter claimants and if considered reasonable the Court will postpone the hearing until another assessor could be found – that two Wairarapa assessors had been sent for – only one was present – but a second would shortly arrive – meanwhile in order to keep to the day fixed for holding the Court Parakaia had been requested to sit and the Court will proceed with any cases which the parties agreeable to have gone into by the Court so composed.

The overall mood seems to have been low-key and consensual at this early phase of the Court’s activities at Otaki. The cases were all to do with inter-community disputes over relatively small parcels. It must have seemed that the Court was no particular threat to the ordinary tempo of life at Otaki. Yet even at this stage some aspects of the Court’s procedure were emerging, including the insistence on formal survey plans and the general practice of ensuring that the Assessors were from outside the region.

The first case called related to the Waerenga block, one of the blocks considered in the preceding year. Perenara (or Perenaia) Te Tewe again appeared, giving his affiliation as “Te Mateawa of Ngatiraukawa”,¹²²⁹ who informed the Court that the block had now finally been surveyed, and he explained why no map had been made available at the preceding hearing (“The reason the plan was not sent before is that I did not understand that the maps were to be sent to Mr Fenton until the time I sent them.”¹²³⁰) He explained that his claim was opposed by Rangihaururu, and that “Te Peina is on my side – he is a joint claimant”.¹²³¹ The hearing was postponed until the map could be located. Oriwia Hurumutu’s claim to Paremata was called next (also adjourned from the previous sittings). Tamihana Te Rauparaha appeared and said that for his part he objected to Parakaia Te Pouepa sitting as an Assessor, and so the hearing had to be postponed until another Assessor arrived. The third case, Hurihangataitoko, was the third block adjourned from the previous sittings. Ururoa Ripia arrived and admitted the block still had not been surveyed. Told that this could only mean that his claim would be dismissed (in the sense that he would have to start again and make a fresh application) he said that he

¹²²⁷ (1866) 1 B Otaki MB 6: “The Court decided that the hearing ought to be adjourned to a future session of the Court for the reason that Tamihana who was sitting as an Assessor of the Court was interested in some degree as an opponent of Oriwia and secondly that as no survey had been made the claim could not be properly defined.”

¹²²⁸ (1867) 1 B Otaki MB 7 (2 July 1867).

¹²²⁹ (1867) 1 B Otaki MB 8.

¹²³⁰ Ibid.

¹²³¹ Ibid.

had measured it himself with a tape, and it covered about two acres. This was presumably regarded as insufficient, and the Court took an adjournment, but at least without dismissing the claim outright.

The Court then attempted to deal with the new applications, but progress was not at all rapid or easy in this unfamiliar and new environment. “Horomona Toremi and others” claimed a piece of land named Whakamaungaariki. This had not been surveyed either, again showing the lack of familiarity with the Court’s requirements at this early stage. Two people, Te Moroati and [Nerenana??] Te Paea opposed the claims, but after “explanation” by the Court these were withdrawn (and there is no further detail). Horomona then gave on oath a description of the boundaries of the block, and this case was adjourned as well.¹²³² The first case that actually resulted in an award by the Native Land Court at Otaki was the next one, a block called Te Rotowhakahokiriri, claimed by Horomona [Toremi?/Torenu?]. This block had been surveyed, but not according to the Court rules (it was on the wrong scale), but the Court was prepared to overlook this. Horomona gave some interesting details on the origins of his title.¹²³³

I claim this land occupied by my ‘matua’ on the coming from Maungatautari. Harewharara and his ‘teina’ occupied first – he was my mother’s ‘tungane’. Ngatitua ‘pana’d’ them to the children of Te Hiko, a Te Hua, a Te Koto; a Tungia, these chiefs came and put a stop to the work of the children and confirmed the land to my fathers. My fathers cultivated it and I have done so until the present time.

Horomona suggested that the land be vested in three persons (including himself), and said that he wanted the land to be inalienable (“I wish the land to be kept and not sold and am willing that the grant should contain a restriction to that effect”¹²³⁴). Nopera Te Ngiha of Ngati Toa supported Horomona’s claim. He said that he regarded the land as Horomona’s because “I have seen him clearing and cultivating there – his fathers cultivated it.”¹²³⁵) Charles Knight, surveyor, spoke last, and said that he had surveyed the land on Horomona’s instructions, that he did “not recollect that opposition was made to the survey” and that the survey had been paid for. The Court gave a brief judgment the following morning, making an order in favour of Horomona and his other two associates.

9.3 The Rangitikei Manawatu block: general background, conflict between Ngati Raukawa and Ngati Apa, and Featherston’s arrival in 1864

The first thing to note about the Himatangi case of 1868 (and the Rangitikei case of 1869) is their sheer scale, a marked contrast with the other early cases at Otaki analysed above. Ngati Raukawa found themselves catapulted from small-scale inquiries to sections at Otaki into a massive courtroom drama in which their customary rights were placed in issue in a highly forensic setting where they were challenged by William Fox, a powerful politician and barrister, who called witness after witness to challenge their claims. One troubling aspect of the case must have been the way in which Fox treated Octavius Hadfield and Samuel Williams, who Ngati Raukawa will have known well and regarded as trusted advisers.

The legal history of the Rangitikei-Manawatu block is an intricate story, as it involves the complicated Rangitikei Manawatu purchase mainly driven forward by Dr Isaac Featherston, Chief Superintendent of the Wellington Provincial Government. The cases of 1868 and 1869 were a component of the purchase, rather than the other way round. The purchase process and its principal

¹²³² (1867) 1B Otaki MB 10.

¹²³³ (1867) 1B Otaki MB 11 (2 July 1867). Punctuation of this passage in the MB is uncertain; I have done my best to make sense of it.

¹²³⁴ (1867) 1B Otaki MB 11.

¹²³⁵ (1867) 1B Otaki MB 12 (2 July 1867).

architect need to be traversed here briefly (the details can be left to other researchers, and it has already been thoroughly traversed in Bryan Gilling's report (2000)¹²³⁶. As Gilling notes, the purchase has been subject to "a wide diversity of opinions and interpretations, now as then".¹²³⁷

Isaac Featherston, the driving force behind the purchase, became the superintendent of Wellington Province in 1853, a position he held until 1871. He was a committed provincialist and a successful pastoralist, owning and leasing land in the Wairarapa and elsewhere. The Rangitikei Manawatu purchase was a provincial project from the beginning, although it needed to be rescued from the chaos that it caused by McLean and the general government after 1869 (not that Featherston was notably grateful for McLean's efforts). Wellington province was highly, even bitterly politicised, so much so that the Reverend Richard Taylor speculated that the Wellingtonians were kept "irritable" by the town's "high winds".¹²³⁸ Featherston was the representative of the province's new aristocracy, the pastoralists, who owned or leased large areas of land and who resembled the emerging 'squattocracy' of New South Wales. Wellington politics were characterised by a three-way division between the pastoralists, the commercial elite of Lambton Quay, and the working-class radicals who wanted cheap land to become available for the small settler. The latter exemplified a radical tradition with deep roots in the British Isles and which was later to become the official ideology of avowedly radical ministries such as the Grey government of 1877-79, to some extent of the Stout-Vogel government of 1884-7, and certainly of the New Zealand Liberals after 1891.

Strictly speaking, provincial governments had no authority to conduct land purchases from Maori, or power to extinguish customary title: this was a power reserved to the general government under the semi-federal system that existed in New Zealand at that time. Featherston, while remaining as provincial superintendent, was formally acting as a commissioner for the general government.¹²³⁹ The block was bitterly contested between Ngati Raukawa on the one hand and a coalition comprised of Rangitane, Ngati Apa, Muaupoko, Ngati Kahungunu and Whanganui groups on the other. Opposition to the Raukawa claims was spearheaded by Keepa Te Rangihwinui of Muaupoko ('Major Kemp'), who had been an important military ally of the government during the New Zealand wars.¹²⁴⁰ At stake in these cases was the entire political and tenurial situation in the Horowhenua and Rangitikei regions. More specifically, the key issue was whether the conquests and migrations of groups to the Kapiti region in the 1820s of groups formerly based in the Waikato (in particular Ngati Toa and Ngati Raukawa) had extinguished, whether wholly or partly, the customary titles of the former occupiers: Ngati Apa, Muaupoko and Rangitane.

Government land purchasing in the region was an important dimension to what became a difficult and multi-sided dispute. Contestation over land rights in the region long preceded the advent

¹²³⁶ Gilling, *'A Land of Fighting and Trouble': the Rangitikei-Manawatu Purchase*, Report for the Crown Forestry Rental Trust, May 2000.

¹²³⁷ Gilling, *Land of Fighting and Trouble*, 1. Gilling sees much of the older historiography, for instance Lindsay Buick's *Old Manawatu*, as biased in favour of Ngati Raukawa and uncritical of the Ngati Raukawa claim to conquest over the whole block. "There is a need to trace the relative importance of links with the tangata whenua in Maori acquisition of land rights...rather than merely counting battles and slaves" (ibid).

¹²³⁸ Richard Taylor, *Te Ika a Maui*, London, 1855, 217, cited Gilling, *'A Land of Fighting and Trouble'*, 37.

¹²³⁹ Gisborne to Featherston, 10 Feb 1871, Wellington Province, *Further Papers relative to the Rangitikei-Manawatu Block, Session XX* [AJHR A-04] "The purchase from the Natives of the land in question has been specially entrusted by the Legislature to the General Government, and as you, who have acted for many years as Commissioner under the Government for the negotiation of that purchase are well aware, exceptional difficulties of no ordinary magnitude embarrassed that negotiation."

¹²⁴⁰ Te Rangihwinui's main affiliations were to Muaupoko, through his father Mahuera Paki Tanguru-o-te-rangi, and to Whanganui groups through his mother Rere-o-maki.

of the Native Land Court. It had surfaced at the time of the Rangitikei/Turakina deed, drawn up by Donald McLean and signed by 200 people of Ngati Apa at Whanganui in May 1849.¹²⁴¹ Before signing the deed on behalf of the government, as discussed earlier, McLean met with the Ngati Raukawa and Ngati Toa leadership (a number of chiefs belonged to both groups) to discuss the transaction. At the discussions old-school rangatira such as Te Rangihaeata had flatly rejected any right on the part of Ngati Apa to sell land to the south of the Whangaehu river. Other, younger chiefs, some of them influenced by their commitment to Christianity and by their personal friendship with the Reverend Octavius Hadfield were, however, more conciliatory. These younger chiefs, who included Tamihana Te Rauparaha (Te Rauparaha's son), and Matene Te Whiwhi, both of them chiefs of the Ngati Toa and Ngati Raukawa tribes and both committed Christians, carried the day and it was agreed that Ngati Apa could sell down to the Rangitikei river.¹²⁴² Ngati Raukawa regarded this agreement as a concession, indeed a more than generous one.¹²⁴³

If anything attitudes within Ngati Apa and Raukawa hardened over the years. There were a number of disputes between the two groups over the land south of the Rangitikei. When Ngati Apa had first offered to sell the Rangitikei Block in 1848 the government, as Anderson and Pickens have emphasized, was eager to accept.¹²⁴⁴ Lieutenant-Governor Eyre followed a policy of doing everything he could to assist the New Zealand Company settlers, many of whom wanted to take up sections in the Rangitikei.¹²⁴⁵

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'. The Government was 'anxious only to meet the wishes of the New Zealand Company and if possible close this long open question'.

This set a pattern of continued close Crown involvement in inter-tribal politics in this region, which carried through right into the Native Land Court era, which saw the Crown actively taking sides in the Native Land Court in order to facilitate its purchasing activities.

The political dynamics were changing by the early 1860s. According to Walter Buller, the situation in 1863 was as follows:¹²⁴⁶

It appears that when the Ngatiapa, in 1849, surrendered to the Crown the land lying between the Whanganui¹²⁴⁷ and Rangitikei Rivers, they compromised the conflicting Ngatiraukawa claims of conquest by conceding to the latter the right of disposal over the territory to the south of the Rangitikei, with the mutual understanding that as the Ngatiraukawa had received a share of the payments, the Ngatiapa should in like manner participate in the purchase money of this block [Rangitikei-Manawatu] whenever the Ngatiraukawa should sell. With the lapse of years the Ngatiapa have come to regard their

¹²⁴¹ See Ray Fargher *The Best man who ever served the Crown? A Life of Donald Mclean* (Victoria University Press, Wellington, 2007) at 77.

¹²⁴² Samuel Williams, (1868) 1C Otaki MB 227-8; Rawiri Te Whanui 1C Otaki MB 232-3; letter of S Williams reprinted at 1896 AJLC 8.

¹²⁴³ Ihakara Tukumarua in his opening remarks in the Kukutauaki case at (1873) 1 Otaki MB 11-13.

¹²⁴⁴ Anderson and Pickens, *Wellington District*, 53.

¹²⁴⁵ Ibid, citing Eyre to Kelham, 23 April 1849, New Zealand Company (NZC) series 3/10, p 2, WNA; Eyre to Wakefield, 20 April 1849, McLean papers, MS 32 (137), p 3, ATL.

¹²⁴⁶ Buller to Mantell, 31 August 1863, MS 008-3 236, cited Gilling, *Land of Fighting and Trouble*, 69; also cited Buick, *Old Manawatu*, 171.

¹²⁴⁷ Presumably Buller means the Whangaehu.

claim as one of absolute right, in every respect equal to that of the present holders, while the latter always regarding the claim as one of sufferance, are now disposed to ignore it altogether.

It appears that by the early 1860s substantial areas in the Manawatu and the Rangitikei had been informally leased by Maori to settlers. Such leases were informal because they were a breach of the Native Land Purchase Ordinance 1846: only the Crown could extinguish Maori title. Colonial governments discouraged Maori from leasing land and lessors from taking up leases, sometimes threatening lessees with prosecution.¹²⁴⁸

According to Parakaia Te Pouepa, the really serious contention between Ngati Raukawa and Ngati Apa over the land between the Rangitikei and the Manawatu began in 1863, when "Ngatiapa came to disturb my people"; "they came with guns in their hands, my people also rose up with guns in their hands".¹²⁴⁹ There was widespread agreement that 1863 was the turning point, as indeed is clear from the documentary evidence which other historians will traverse in their reports.¹²⁵⁰ Te Koro Te One (Ngati Kauwhata) likewise said that the serious trouble between Ngati Raukawa and Ngati Apa began in 1863.¹²⁵¹ T C Williams likewise saw 1863 as the commencement of the dispute, the issue being the various informal leases in the Rangitikei area made by the chief Nepia Taratoa of Ngati Raukawa.¹²⁵²

That in 1863, a quarrel arose between the Ngatiapa and the Ngatiraukawa and Rangitane tribes, owing to the old Ngatiraukawa chief, Nepia Taratoa, having allowed the Ngatiapa and Rangitane to join in some of the illegal leases granted over portions of the block to the settlers (though in some of the leases they were not allowed to join). That after many months' delay, Mr Fox's government sent – to investigate the respective claims of the tribes – Dr Featherston, the Superintendent of the Province, who had previously secured the appointment of Land Purchase Commissioner, and who, shortly before, had informed his Provincial Council that he was not without hopes that he would soon be able to purchase the block, "as already serious disputes had arisen between the tribes resident in the district as to which tribe was entitled to receive the rents of the runs leased to Europeans".

Parakaia Te Pouepa wrote to Grey and to Fox asking that McLean be sent to investigate the dispute. McLean was willing to do so, but somewhat to Ngati Raukawa's surprise it was not McLean who came to meet them but Featherston (Featherston arrived in February 1864).. As T C Williams put in in his opening submissions in the Himatangi case, "[t]he Government agreed to send to Mr McLean, but Dr Featherston was sent instead".¹²⁵³ According to Parakaia Te Pouepa, "when he came we had ceased

¹²⁴⁸ For a discussion of the legal situation see Waitangi Tribunal, *Horowhenua*, 157. As the Tribunal points out, the Native Lands Act 1862 provided that lessees would not be liable to prosecution under the 1846 ordinance provided that the lessors had obtained a certificate of title from the Native Land Court before entering into a lease. This was presumably done to encourage Maori to bring their lands before the Court: once they had received a grant they were free to lease them privately.

¹²⁴⁹ Petition of Parakaia Te Pouepa, 4 July 1867, reprinted in AJLC App 5 p 8.

¹²⁵⁰ One of the more important documents is Walter Buller's memorandum on the Rangitikei land dispute of 5 August 1865, printed in *Correspondence Relating to the Manawatu block* 1865 AJHR E-2B, 5-7. In this report Buller writes that "the origin of this dispute is of remote date, and is involved in some obscurity" (ibid, 5). It was in 1863 that matters came to a head:

In the winter of 1863 the question was brought to an open issue, and the three tribes concerned – the Ngatiraukawa and Rangitane on one side and the Ngatiapa on the other – no longer contented themselves with merely asserting their conflicting claims, but took active and vigorous methods to enforce them, by building pas and preparing for intertribal war... For some time I held out to the Government a hope that the several parties concerned would consent to an adjustment of their differences by reference to a Court of Abitration, after the manner adopted in the case of "Tiraru v Matiu" (Kaipara District).

¹²⁵¹ (1868) 1C Otaki MB 286.

¹²⁵² T C Williams, *An Letter to the Right Hon WE Gladstone, being an Appeal on behalf of the Ngatiraukawa tribe* (J Hughes, Wellington, 1873), 8.

¹²⁵³ "Native Lands Court, Otaki", *Wellington Independent*, Vol XXII, Issue 2648, 14 March 1868, p 5.

from contention, and were patiently expecting the arrival of Mr McLean, the man whom we preferred to judge between us”.¹²⁵⁴ But all Featherston did “in his capacity of Judge was try and buy the land for himself, and to give his support to Ngatiapa, followed by his false statement that he saved these tribes from death”.¹²⁵⁵ Or as T C Williams put it in his Himatangi submissions, Featherston told Ngati Apa that Ngati Raukawa had agreed to an investigation; Ngati Apa (said Williams) would not agree, but instead offered to sell the land between the Manawatu and the Rangitikei, which Featherston agreed to “at once”.¹²⁵⁶ Alexander McDonald thought that the “dispute” was largely manufactured by Featherston: “he was personally and politically interested in promoting and keeping alive the intertribal quarrel, with the view of compelling both parties to agree to the sale to him of the land in dispute”.¹²⁵⁷

A very full description of the disputes over leasing, the arrival of Featherston, Ngati Apa’s offer to sell, and Featherston’s impounding of the rents was given by Te Kooro Te One of Ngati Kauwhata in his evidence in the first Himatangi case in 1868. The Court treated Te Kooro’s evidence as irrelevant to the issues in the case, but as Hearn notes, “the evidence went to the heart of the whole Rangitikei-Manawatu transaction”.¹²⁵⁸ It was anything but irrelevant. In this account the serious disputation likewise begins in 1863, when Ngati Apa (according to Te Kooro) started to become more assertive about the rents. Rangitane also played an important role in developments.¹²⁵⁹

Remember the commencement of dispute with Ngati Apa and Ngati Raukawa in 1863 – first cause was the leasing of land – in the first lease Ngati Apa was allowed to share, afterwards Ngati Apa did not consider the kindness of Ngati Raukawa and refrain from “rere nui ki runga i taua whenua”. Ngati Apa then came over Rangitikei to this side to cultivate – Ngatiraukawa let them seed – Ngati Apa then built ‘whare kura’ to hold meeting to devise means of ejecting Ngati Raukawa – Ngati Raukawa seized rent of a lease of Ngati Kauwhata and Ngati Parewahawaha – there was an enquiry and Ngati Apa were seen to be in the wrong – Ngati Apa spoke at that time of Ngati Raukawa going to Maungatautari [287] – Ngati Raukawa said let me first be [“whakawa’d”?] and if I am wrong then I may go – meeting then broke up – Hoani¹²⁶⁰ then came to our¹²⁶¹ place at Oroua – Ngati Raukawa were sore about words of Ngati Apa – Hoani asked us what we thought about it – we said, “Ngati Apa and we have been friends. Will we be strangers? We are angry about their taking the rent of 1862, and also about the lease of 1863, about which the dispute has arisen.” Hoani said – “wait – don’t be displeased – the rent will soon be due and you will see how Ngati Apa behaves; if badly, then do as you think proper,” – when the rents were due some of Ngati Kauwhata and Rangitane went to Parewanui to Ngati Apa – said “we are come for the rent of Taikoria that we may share it equally with you”, Ngati Apa said – “We will not agree” – this was said to Hoani Meihana – “if you had come by yourselves we would have consented but as you have come with Ngati Raukawa we will not consent”. After a time it was settled that they, Rangitane, should go with Ngati Apa to Whanganui to receive rent – but on reaching Whanganui Ngati Apa left Rangitane and Tapa on this side of river and went by themselves [288] to get the rent – Rangitane were angry.

Matters now began to escalate, requiring the intervention of Fox.¹²⁶²

¹²⁵⁴ Petition of Parakaia Te Pouepa, 4 July 1867, reprinted in 1896 AJLC App 5 p 8.

¹²⁵⁵ Petition of Parakaia Te Pouepa, 4 July 1867, reprinted in 1896 AJLC App 5 p 8.

¹²⁵⁶ T C Williams, opening submissions for Ngati Raukawa, Himatangi case, “Native Lands Court, Otaki”, *Wellington Independent*, Vol XXII, Issue 2648, 14 March 1868, p 5. In his 1873 *Letter to Gladstone* Williams writes: “That the Ngatiapa objected, but handed the whole block over to himself for sale to the Crown.”

¹²⁵⁷ Alexander McDonald, letter to the *Wellington Independent*, vol XXIV, Issue 2842, 12 June 1869, p 4.

¹²⁵⁸ Hearn, *One Past, Many Histories*, 264.

¹²⁵⁹ (1868) 1C Otaki MB 286-290.

¹²⁶⁰ Hoani Meihana, chief of Rangitane.

¹²⁶¹ Ngati Kauwhata’s.

¹²⁶² *Ibid.*

Rangitane returned to Puketotara – and Tapa went to Pikiahu Maniapoto (Ngati Raukawas) to get them to come and drive away cattle – were told that this affair must be settled carefully by the tribe – this was the cause of the talk about Ngatiraukawa going away to Rangitikei to occupy – Ngati Apa's evil being now manifest – Hoani [Meihana] and Hirawanu called a meeting of Ngatiraukawa 'hapus' at Puketotara – one cause was to settle – they also wished to show the distinction between themselves and Ngati Apa – wished to remain as their fathers had done in the kindness of Ngati Raukawa – that was the tenor of speeches – invited Ngati Raukawa to occupy Rangitikei – Mr Fox interfered to prevent hostilities – "have come to cultivate our land and if we are interfered with then we raise the gun but the muzzles are unplugged at present" – after this went to build a 'pa' at Tawhirihoe.

The Government was asked to arbitrate, and Featherston was sent:

After this sent a letter to the Government to ask for some one to "[whakawa?]" – not long after Dr Featherston appeared. When he came Ihakara told him why they had asked for an arbitrator – Dr Featherston said "It is a good plan, let me go and see your opponents and return to you" – he went to see Ngati Apa and advised them to consent to [289] an arbitration – Ngati Apa would not agree – he may have spoken more than once on return from Whanganui: then there was a final meeting of Ngati Apa at Rangitikei and then Dr Featherston failed to induce Ngati Apa to assent to 'whakawa' but they offered to sell him the land – we were told that Dr Featherstone said "Hand over the whole matter to me, land, guns, and all." Ngati Apa said "If you, Dr Featherston are not strong to take the land I will take it and I will be the 'Rangatira'". Dr Featherston then said "You can go back to Parewanui and leave the whole affair in my hands." Dr Featherston then came to Tawhirihoe and told the Ngati Raukawa that the whole matter was put in his hands – quarrel and all – and he asked Ngati Raukawa to "place the matter in my hands" – Ngati Raukawa chiefs [declined?] – I urged that the dispute should be settled – "It will be for the ['whakawa'] only to take my 'pakanga'" – Dr Featherston "An investigation of the title cannot take place because it is 'he whenua raruraru'" – "It will be better to sell it and let that piece be divided that both parties may be satisfied" – Ngati Raukawa did not consent. Dr Featherston then said "I will impound the rents for the leases which have been the cause of this disturbance".

This detailed narrative shows that in 1863 Ngati Apa had decided to try and push Ngati Raukawa off their lands between Rangitikei and Manawatu and had said something to the effect that Ngati Raukawa should go back to Maungatautari ("Ngati Apa spoke at that time of Ngati Raukawa going to Maungatautari"). Ngati Apa and Ngati Raukawa could not come to an agreement, the government was asked to arbitrate, and Featherston arrived. Featherston at first agreed to an arbitration, or so he said, but confronted by Ngati Apa's refusal to arbitrate and their simultaneous offer to sell the land, he then went back to Ngati Raukawa and informed them that the only way to end the dispute was for all parties to agree to sell.¹²⁶³ He also said he was now going to "impound" the rents. Featherston later claimed that he did this "to prevent the tribes fighting"¹²⁶⁴ but it is much more likely that his motive was simply to put pressure on Ngati Raukawa. The term "impound" conveys an idea of the rent monies being collected by the Crown and held in the Crown's name in some way, but this is misleading. In fact the lessees were told to stop paying rent. Hearn, who has examined this issue thoroughly, has suggested,

¹²⁶³ See Hearn, *One past, Many Histories*, 265. Hearn argues that Te Koro Te One's evidence shows that "Ngati Raukawa and Rangitane were prepared to enter into arbitration, that Featherston initially agreed (or reaffirmed Fox's original offer), but that in the face of both a challenge and an offer made by Ngati Apa withdrew that option and insisted upon sale and purchase as the only means of resolving the dispute" (ibid). Hearn also notes that Te Koro Te One's evidence is confirmed by an account in the *Wanganui Chronicle* which shows that Ngati Apa agreed to sell the land on condition that there was to be no arbitration: Hearn, ibid, citing "The Manawatu block", *Wanganui Chronicle*, cited in *New Zealand Herald* 20 June 1865, p 5. It is also confirmed by the letter from Ihakara Tukumarū discussed in the text.

¹²⁶⁴ (1868) 1D Otaki MB 644.

following an analysis of some later testimony by Buller, that "[i]mpounding this has very little to do with averting any conflict and everything to do with exerting financial pressure".¹²⁶⁵

Another eyewitness account of the disputation between Ngati Apa and Ngati Raukawa was given in the Himatangi case by Metekingi Paetahi, a rangatira of Whanganui, who said that it was he who suggested to Ngati Apa was that the best way to minimise the risk of a collision between the two groups was to sell the land. He also described how at his urging Hunia and the other Ngati Apa chiefs handed over to Featherston a gun and a cartouche box as a pledge that there would be no fighting.¹²⁶⁶

I took part in the Haowhenua fight. It was a war between the Ngatiraukawa and Ngatiawa. The Wanganui, Ngatiapa, Rangitane, and Muaupoko fought on the side of Ngatiraukawa. The Ngatiawa section of Wanganui fought on the other side. The Ngatiraukawa got the worst of it. They evacuated their pa afterwards and retired to Ohau. Some of them went to Rangitikei and squatted on the land. It was not known then whether they would escape being killed [meaning, presumably, by Ngati Awa]. They did not fight with the Ngatiapa nor put out their mana. They had been fighting on the same side as Ngatiraukawa [i.e. at Haowhenua]. At that time there were about 400 Ngatiapas living on the block between the Rangitikei and Manawatu rivers, which has been recently sold to the Queen. They were at that time occupying Pukepuke, Awahou, Tawhirihoe, and other places on the south side of Manawatu. They were also occupying Parewanui on the other side. They were also living at Oroua. Matene Te Matuku, a Ngatiapa chief, had previously been cultivating at Himatangi. His old cultivations were to be seen there. Ngati Apa occupied the places I have enumerated on the Rangitikei-Manawatu block, and many other smaller places, the names of which I don't know. I signed the deed of cession. I had claims in the block, so had my tribe. That was why we signed the deed. I am as closely related to the Ngatiapa as I am to the Wanganui tribes. I formerly held Ngatiraukawa slaves. The rest of my tribe also hold Ngatiraukawa slaves. It was I who first proposed the sale of the Rangitikei Manawatu block to the Queen. This was at the time of the Rangitikei dispute. Ihakara commenced his occupation by building a pa. Ngatiapa also built pas. We expected there would be fighting. After a month I and several other chiefs came out from Wanganui and tried intervention. We first went to the Ngati Te Ihiihi pa (Opopo) and then to the Ngatiapa pa (Awahou). I urged the tribes not to fight. Mohi, the Ngatiapa chief, in reply said "I will be killed before the land of my ancestors shall be taken from me." I told him I would not agree to any fighting, and that I was now going to fight Ihakara, in the Ngatiraukawa pa. Mohi consented, and I went accordingly. Ihakara said that he did not want to fight, but that he wanted the land. I then returned to Parewanui and advised the Ngatiapa to sell the land and put an end to the trouble. Hoani Hipango supported me. Mohi Mahi, Ratana, Hunia and the other Ngatiapa chiefs assented. I recommended the Ngatiapa to hand over to Dr Featherston a gun and cartouche box as a pledge that there would be no more fighting. The Ngatiapa then waited for Dr Featherston's coming. Dr Featherston afterwards came, attended by his interpreter, Mr Hamlin. The gun and the cartouchebox were handed over to him, and the negotiations for the sale of the block was then commenced. Dr Featherston then went on to Wanganui.

The first phase of the developments described by Te Kooro Te One and Metekingi (the disputation between Ngati Apa and Ngati Raukawa over lands south of the Rangitikei in 1863) is the subject of a contemporary document, this being a memorandum or letter written by Ihakara Tukumarū on 23 May 1863. This sheds much further light on the situation and indicates that more was at stake than the rents. Rather, Ngati Apa demanded that Ngati Raukawa abandon the Rangitikei-Manawatu lands completely, and should either go back to the Waikato or at the very least should retire south to

¹²⁶⁵ Hearn, *One Past, Many Histories*, 271.

¹²⁶⁶ Evidence of Metekingi Paetahi, Himatangi case, as recorded in the *Wellington Independent* 7 April 1868 (Appendix 3.1.1).

the Manawatu. In making this demand Ngati Apa were supported by some of the chiefs from Whanganui:¹²⁶⁷

On the 23rd May the Ngatiapa held a meeting at Parewanui to discuss the question of driving the Ngatiraukawa off the land lying between [sic – between?] the Manawatu and Rangitikei Rivers. The Ngatiapa were supported by some of the Whanganui people.

Ngati Apa had three suggestions for Ngati Raukawa, none of them very palatable:¹²⁶⁸

They made three proposals to the Ngatiraukawa – first that they should return to Maungatautari; second, that they should remove to the other side of the Manawatu River; third that they should give up to Ngatiapa the "mana" of the land.

Ngati Raukawa had no intention of doing anything of the kind, but countered with a statesmanlike counter proposal, which Rangitane agreed with but Ngati Apa did not:¹²⁶⁹

The Ngatiraukawa did not consent to either of these proposals. The reply of the Ngatiraukawa was this: - Let the land be divided into three portions, one for the Ngatiraukawa another for the Rangitane, another for the Ngatiapa. The Ngatiapa would not consent to the proposed division. The only tribe that consented to the new plan proposed by the Ngatiraukawa was the Rangitane.

For a long time the Ngatiapa and Ngatiraukawa disputed over the matter, the former claiming the whole land, the latter offering to divide it. But the Ngatiapa having persisted in their refusal, the Ngatiraukawa decided on taking their own course and allowing the Ngatiapa to take theirs.

Nothing could be resolved in the face of – according to this source – Ngati Apa opposition:¹²⁷⁰

Thus the dispute continued, the Ngatiapa grasping at all the land, the Ngatiraukawa offering to live side by side with them on their joint possessions.

The Ngatiraukawa proposed that these three tribes, the Rangitane, the Ngatiapa, and the Ngatiraukawa should live together on the land on equal terms and on enjoying equal shares. The Ngati Apa replied, "We do not consent – stand aside Ngatiraukawa! And leave our land". The reason they give for this was the introduction of the law [te ture] and the Gospel [te rongo pai] (i.e. as opposed to claim by conquest). The Ngatiraukawa replied, It is to conform with the law that we proposed to divide the land in order that we may live at peace with each other, The Ngatiapa still refused these terms.

The Ngatiraukawa on the other hand refused to move from the land – The Ngatiraukawa then said "Let negotiations terminate" and it was so.

The Ngatiraukawa people who attended this meeting were 107. They came from all parts of Rangitikei and from a part of Manawatu. Those people to the number of 107 appointed me, Ihakara Tukumarū, their spokesman on the occasion.

Ihakara's letter was translated and sent to Wellington by Walter Buller, who saw Ngati Raukawa's statesmanlike offer to share the land as a weakness and a concession which the government should exploit: "[t]he deliberate proposal made by the Ngatiraukawa that the three tribes should share and share alike must not be lost sight of when we come to the ultimate question of the division of

¹²⁶⁷ Memorandum in Maori by Ihakaru Tukumarū, 23 May 1863, MA 13/109/69a, citing English translation on file.

¹²⁶⁸ Ibid.

¹²⁶⁹ Ibid.

¹²⁷⁰ Ibid.

payment”.¹²⁷¹ There are other ways of interpreting this document. Ngati Apa were arguing that with the new law and the gospel the idea of title by conquest was over with, and that everyone could have their old properties back – which explains their suggestion that Ngati Raukawa should return home to Maungatautari. This was hardly a feasible suggestion to make in May 1863, with the Waikato war about to break out. Ngati Raukawa made a statesmanlike offer to split the land between the rivers three ways between Ngati Apa, Rangitane, and themselves, but Ngati Apa were not prepared to accept that. In so doing Ngati Raukawa themselves thought they were acting according to the law (te ture), and making yet a further concession in the interests of preserving peace and tranquillity. It seems that Ngati Apa were not able to expel Ngati Raukawa by force, and did not even try to do so. Instead the disputation became entangled with Isaac Featherston and the Wellington provincial government’s purchasing plans.

9.4 Featherston’s actions in 1864

In his memorandum to the Colonial Secretary to the Colonial Secretary (1864) Featherston gives the impression that his primary objective when going to the Rangitikei was to settle the disputation between Ngati Apa and Raukawa: “failing to induce them to agree to a compromise, I gave them to understand that the Queen’s government would not permit any fighting”.¹²⁷² Yet of course by this time the Rangitikei Manawatu block had already been exempted from the operation of the Native Land Court by the Native Lands Act 1862, which clearly indicated that the provincial government had long been interested in acquiring it. He told them (he says) that if any party fired a shot this would be treated as an act of rebellion against the Queen’s government. He “insisted” on both sides moving from the disputed block, except for a few persons from each side to mind the cultivations, and he took steps to impound the rents (“I would not allow the squatters to pay any rents until the matter was finally arranged”¹²⁷³). That Featherston refers to the tenants as “squatters” is revealing. (Strictly speaking, settlers and Maori were not legally able to arrange leases amongst themselves, this being a violation of Crown pre-emption.) Featherston goes on to say that the Ngati Apa “at once” agreed to his conditions, and indeed that they “formally handed over to me for sale whatever interests they might be found to have in the land”: quite why Ngati Apa would have been so enthusiastic about all this is unclear. Ngati Raukawa and Rangitane were more reluctant to depart from the block, but eventually “after considerable demur” agreed to do that and acquiesce also in the impounding of the rents, at the same time making clear “their determination neither to themselves sell the block, nor to permit the Ngatiapas to alienate any portion of it”.¹²⁷⁴ Then, says Featherston, “[t]he principal chiefs” of Rangitane and Ngati Raukawa changed their minds and came to the conclusion, conveniently for Featherston, that it would be best after all to sell the land to the government as a way of bringing the disputation to an end, Featherston implying in his report that this was their idea (they “some time since came to the conclusion that the only way of settling the dispute was by a sale of the Block”¹²⁷⁵). Featherston thought that the large payment to Rangitane (£12,000) for the sale of the “upper Manawatu” (Te Ahuaturanga) block was a very material inducement in convincing people to agree to the sale.

On 17 September 1864 Ihakara and some other rangatira wrote to Featherston advising that they were willing to sell. Those who signed the document, which was formally witnessed by Walter Buller

¹²⁷¹ Memorandum on *ibid* by Buller, who remarked also that the “admissions” in the document “are by far the strongest evidence I have yet met with in favour of the Ngatiapa pretensions”.

¹²⁷² Featherston memorandum, n.d. but presumably circa Sept 1864, *Papers relative to the Rangitikei Land Dispute* 1865 AJHR E-2, 3 (Featherston went to the area in February 1864). To similar effect see Featherston to Colonial Secretary, 21 August 1865, *Correspondence relating to the Manawatu Block*, 1865 AJHR E-2B, 3.

¹²⁷³ *Ibid*.

¹²⁷⁴ *Ibid*.

¹²⁷⁵ *Ibid*.

- indicating that the document was perhaps less than spontaneous - were Ihakara, Hoani Meihana (Rangitane), Wiremu Pukapuka (Ngati Raukawa), Noa Te Rauhihi (Ngati Raukawa), Hori Kerei Te Waharoa (Ngati Raukawa) and Te Rei Paehua.¹²⁷⁶ Although Ihakara Tukumarū was undoubtedly a leading rangatira, nevertheless this document cannot be said to indicate general agreement on the part of Ngati Raukawa to sell (Parakaia Te Pouepa and Matene Te Whiwhi are two obvious non-signatories). On 12 October Featherston met with a group of Ngati Raukawa and Rangitane "at Manawatu"; there were 12 or 15 chiefs there, as well as 20 or 30 of "inferior rank". Ihakara Tukumarū began the discussions with "a temperate speech" to the effect that those present were willing to sell "but that they still had to obtain the consent of the people", which would take some months.¹²⁷⁷ There was agreement amongst those present that Ngati Apa should have a share of the purchase money. Ihakara and some of the other chiefs pressed Featherston to allow them to continue receiving the rents, but Featherston refused: ("I pointed out that to do so would be a breach of faith with the Ngatiapas".) Featherston travelled on to meet Ngati Apa, where he met a much larger group of about two hundred people. Ngati Apa had made a lot of effort to amass a great deal of food for the Ngati Raukawa and Rangitane who had been invited to the meeting – the implication of Featherston's report is that they did not make an appearance. Ngati Apa were disappointed that matters had still not been settled, adding that they had no wish to receive their share of the rents "till a final adjustment had been effected".

So matters stood by late 1864. Featherston had not really settled anything and could be said to have aggravated matters by impounding the rents. Some of the "squatters" appear to have continued to make payments to Ngati Raukawa. In May 1865 M Noake R M advised the Native Minister that Hunia Hakeke of Ngati Apa had asked him to stop the runholders from paying the rents (i.e. that they had continued paying them to Ngati Raukawa).¹²⁷⁸ Hunia had said that unless they stopped paying them "war would be the result, and that immediately".¹²⁷⁹ Noakes believed that if hostilities did break out Whanganui chiefs would come to the aid of Ngati Apa. Noakes was worried about the settlers becoming drawn in to the disputation, "as the Ngatiraukawas threaten to detain their stock if the rents are not paid, while the Ngatiapas threaten to go to war with the Ngatiraukawas, if they receive them."¹²⁸⁰ As the rental incomes began to dry up, Ngati Raukawa, unsurprisingly exasperated, prepared to drive off the Pakeha settlers' stock.¹²⁸¹ Walter Buller (R.M., Wanganui) managed to prevent an immediate collision¹²⁸², but the underlying tensions remained. The situation became increasingly more complex and difficult to resolve. In August 1865 Buller reported that the contention between Ngati Apa, Ngati

¹²⁷⁶ Ihakara Tukumarū and others to Featherston, 17 Sept 1864, *Papers relative to the Rangitikei Land Dispute* 1865 AJHR E-2, 4-5

¹²⁷⁷ Featherston memorandum, n.d. put presumably circa Sept 1864, *Papers relative to the Rangitikei Land Dispute* 1865 AJHR E-2, 3.

¹²⁷⁸ M Noake to Native Minister, 11 May 1865, *Papers relative to the Rangitikei Land Dispute* 1865 AJHR E-2, 5.

¹²⁷⁹ Ibid.

¹²⁸⁰ Ibid.

¹²⁸¹ Noake to Native Minister, 1 June 1865, *Papers relative to the Rangitikei Land Dispute* 1865 AJHR E-2, 7

¹²⁸² Buller to Featherston, 22 June 1865, *Papers relative to the Rangitikei Land Dispute* 1865 AJHR E-2, 7-8 ("It will be gratifying to your Honour to learn that my mission has been attended with complete success, and that the three tribes have pledged themselves in the most emphatic terms not to molest the runholders, nor to impound or in any way interfere with their stock, and to let the payment of rents stand over, pending the final settlement of the full question in dispute.")

Raukawa, and Rangitane had become so complex that attempting to resolve matters on the basis of Maori customary interests was no longer possible.¹²⁸³

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.

Nevertheless, in 1868 and 1869, the Native Land Court, purportedly applying Maori customary law to land titles, did indeed attempt to grapple with the disputation by reference “to Maori law and usage”.

9.5 “You and Mr Buller concealed from us this great matter”: the Rangitikei-Manawatu purchase and the jurisdictional framework for the Himatangi case

The 1868 Himatangi case was heard under a special statutory jurisdiction. Section 31 of the Native Lands Act 1862 and s 82 of the Native Lands Act 1865 had specifically excluded the “Manawatu block”¹²⁸⁴ from the operations of the Native Land Court. The 1862 exclusion cross-referred to an earlier statute of the General Assembly, the Land Holders and Scrip Act 1858, which in turn related to the long-standing and thorny problem of the rights of the holders of New Zealand Company land orders within Wellington Province. The 1858 statute had allowed holders of such land orders to select land “within any blocks of land laid out by the New Zealand Company for selection at Manawatu or elsewhere” whenever – and this is the crucial thing – “the Native Title to such blocks shall have been extinguished”. As at 1858 there were still holders of New Zealand Company scrip who, for one reason or another, had been unable to select land in respect of which they had purchased rights of selection from the Company. The Wellington Provincial Government needed additional land for the land orders to be redeemed. The technicalities of this are a little murky, and I am uncertain why the additional land was necessary, but it must be because the amount of land available for Crown grants within the province was insufficient, even with the extended Wellington Crown grant of 1848, the Crown purchase of the Porirua block in 1847, and other Crown pre-emptive purchases. The section begins with a preamble referring to New Zealand Company scrip, and then states:

And whereas by reason of the indefinite extent over which the rights of selection so conferred as aforesaid may be held to run disputes may hereafter arise as to how far such rights would interfere with the operation of this Act and for the purpose of preventing such disputes it is expedient to define and limit the exercise of such rights in manner aforesaid mentioned.

As I read the provision, this means that a decision had been taken to limit and define the area in which the selection could now be made – i.e. the Manawatu (presumably irrespective whether this suited the holders of the remaining orders or not). Presumably some of these people will have been persons who had made selections specifically in the Manawatu following the Company’s – ultimately unsuccessful – attempt to purchase land there, but maybe some of them held land orders relating to land elsewhere which they could not now obtain. The complexities of this need further research.

The section goes on to provide:

¹²⁸³ Memorandum by Walter Buller R.M., on the Rangitikei Land Dispute, *Correspondence Relating to the Manawatu Block*, 5 August 1865, 1865 AJHR E-2B, 5.

¹²⁸⁴ On the context of this exclusion see Gilling, ‘*A Land of Fighting and Trouble*’, 92-93. Gilling comments that “[t]he possibility that an impartial judicial body might rule differently from Featherston, who was self-interested in getting a sale, or that when price was discussed a better deal might be struck with private purchasers rather than with a branch of the Crown, was thereby taken away from them” (ibid, 93).

BE IT ENACTED that all rights of selection by the said Act conferred upon the holders of land orders of the New Zealand Company within the Province of Wellington shall be exercised and exercisable within the Block of land called the “Manawatu Block” described in the Schedule to this Act whenever the Native Title to the said Block shall have been ceded to Her Majesty *and not otherwise or elsewhere* and the said Block shall accordingly be and be deemed to have been excepted from the operation of this Act and the Native Title therein shall *only be capable of being extinguished by Her Majesty* (emphases added).

The Native Lands Act 1862, which set the basic framework for all the subsequent Native Lands Acts, was a waiver of Crown pre-emption.¹²⁸⁵ The section did not simply mean that the Native Land Court could not hear cases relating to the excluded area. It meant also that Crown pre-emption remained in place for the Manawatu – i.e. the customary owners could not alienate the land except to the Crown, that only the Crown could extinguish the Native title in the area, and the grant of any estates in land – including leaseholds – by Maori within the proclaimed area were legally void. It is very likely that ensuring the leases granted by Ngati Raukawa and other groups to Pakeha runholders remained void was one of the main objects of the provision.

As well as excluding the Manawatu particularly, s 32 of the 1862 Act also excluded all pending agreements for the cession of territory:¹²⁸⁶

And whereas at various times agreements have been made between the Native owners of land in various Districts on the one part and officers duly authorised to make or enter into the same on the other part for the cession of Native Territory but such agreements are not yet completed and it is expedient for the completion thereof according to the intention of the parties thereto at the time of making or entering into the same.

Be it enacted that all Native Territory affected by any agreements so made or entered into whereof there is evidence in writing shall be and be deemed to have been excepted from the operation of this Act and such agreements may be carried to completion according to the intention of the parties thereto as aforesaid in like manner as if this Act had not been passed.

The exclusion of the Manawatu was a concession to the Wellington provincial government, whose parliamentary representatives were concerned about the effect of the abolition of Crown pre-emption on provincial revenues and who opposed the Native Lands Bill in the House.¹²⁸⁷ The provision was repeated in 1865, again with the support of the MHRs from Wellington Province. Section 88 of the 1865 Act was to the same effect as s 31 of the 1862 statute (s 83 of the 1865 Act also repeated s 32 of the 1862 Act). The proclaimed area was widely defined, and included an area *south* of the Manawatu River:

Bounded by a line commencing at the mouth of the Ohau River and passing with a bearing of 99 degrees to the Tararua and Ruahine Ranges to the source of the Oroua River thence by a line bearing 282 degrees to the Rangitikei River thence by the Rangitikei River to the sea coast thence by the sea coast to the commencing point.

The provincial government did not want to see the Manawatu block brought before the Native Land Court, but wished to retain the area for direct Crown purchasing in the same manner as this had been

¹²⁸⁵ Native Lands Act 1862, Preamble (“And whereas with a view to the foregoing objects Her Majesty may be pleased to waive in favour of the Natives so much of the said Treaty of Waitangi as reserves to Her Majesty the right of pre-emption of their lands”).

¹²⁸⁶ Native Lands Act 1862 s 32.

¹²⁸⁷ Gilling, *A Land of Fighting and Trouble*, 95-6; Anderson, Green and Chase, *Crown Action and Māori Response*, ch 6.

done before its establishment. Such purchases were carried out by the negotiation of a deed of purchase which would provide for a cash payment and the creation of reserves. Following precedents set by McLean in Whanganui and Hawke's Bay, Featherston's purchase related to a large area which contained multiple descent groups whose interests were left undefined, the purchase being effected by a single deed and a single cash payment. In the case of the Manawatu-Rangitikei purchase in 1849 McLean had "declined to permit the chiefs of different communities to proffer small areas of their own lands for sale" and instead had "insisted that the various independent groups of hapū should combine to sell their lands in one block".¹²⁸⁸ Featherston was trying to do the same, but he probably lacked McLean's negotiating skills. Such a process was always vulnerable to groups who had been left out from protesting and demanding a share of the money and/or reserves after the event, as occurred with the Ahuriri purchase in 1851. By the 1860s the Crown could no longer negotiate with a small coterie of chiefs but had to ensure the widest possible assent to the deed, and even so could face determined opposition from those who did not want to sell.

Ngati Raukawa, who wanted their interests defined before negotiations, had reacted to the exclusion of the Rangitikei-Manawatu block from the 1862 and 1865 Acts with considerable annoyance. The exclusion not only prevented them from asserting a title to the Manawatu block but forced them to deal with the Crown. In May 1865 M. Noake, RM reported to the Native Minister that he had attended a meeting in the Manawatu at which widespread concern was expressed about the exclusion of the Manawatu block from the 1862 Act (the 1865 Act was not enacted until October):¹²⁸⁹

I found the large Runanga house full; amongst them was Ihakara, Hori Grey and several other influential men. There was much talking. They expressed themselves much aggrieved that their lands were excluded from the Native Lands Act. They intimated their intention of petitioning the General Assembly, to have their lands brought under that Act.

The renewal of the exclusion was even less to Ngati Raukawa's liking. This can be seen from the blistering letter Ihakara Te Hokowhitukuri (aka Ihakara Tukumarū) sent to Featherston in June 1865:¹²⁹⁰

We have heard from the Pakehas that all the lands of this island have been thrown open...by this new law, and that our lands only are left in prison and that we are now just like pigs confined in an enclosure. As we view the matter our names are no longer upon our lands...Dr Featherston, great is my sadness, indeed all of us are sad.

We are grieved with you because you did not explain to us this law. When we met at Manawatu to talk with you respecting Rangitikei, on the occasion that I handed to you my meremere as a token of my absolute surrender of our land to you, you and Mr Buller concealed from us this great matter, and I only now hear of it from other Pakehas.

Parakaia Te Pouepa stated in his 1867 petition (one of two Ngati Raukawa petitions relating to the Rangitikei-Manawatu block sent to Queen Victoria in 1867) that "it was only the land of my people, of Ngatiraukawa, that was excluded from that Court"; in 1865 "my people petitioned the General Assembly to alter the law excluding our lands, that our titles might be investigated in a Court of justice, but the Assembly would not listen to them."¹²⁹¹ Ngati Raukawa's efforts to have the exemption removed

¹²⁸⁸ Ballara, *Taua*, 80-81.

¹²⁸⁹ Noakes to Mantell, 17 May 1865, *Papers Relative to Bringing Lands in the Manawatu District under the Operation of "The Native Lands Act, 1862"*, 1865 AJHR E2A, No 1.

¹²⁹⁰ Ihakara Te Hokowhitukuri to Featherston, 14 June 1865, 1865 AJHR E2, 9.

¹²⁹¹ Petition of Parakaia Te Pouepa, 4 July 1867, 1867 AJHR A19, p 6, reprinted in AJLC App 5 p 8. There was also a petition of Paranihi and Eruini Te Tau and others of Ngati Pikiāhu, Ngati Waewae, Ngati Manipaoto, and Ngati Hinewau (also 4 July 1867): see 1867 AJHR A19, p 4. The petitions are discussed fully in Anderson, Green and Chase, *Crown Action and Maori Response*, ch 7.

were given some prominence by Thomas Williams in his opening address for Ngati Raukawa in the 1868 Himatangi case. Their particular concern was that they were powerless to prevent Isaac Featherston’s negotiations to purchase the Manawatu-Rangitikei block. Had the ownership been defined in the Court, in – as Ngati Raukawa must have assumed – in their favour then the negotiations could not have proceeded. Ngati Raukawa, as Williams was also to explain, protested about the sale negotiations being proceeded with before the title had been investigated. They might have added that this was the very reason why the Native Land Court had been set up – to prevent purchasing from proceeding before the title had been ascertained, and to prevent another calamity like the Waitara purchase.

In April 1866 there was a large meeting of Ngati Raukawa at Hikaretu on the Manawatu River at which Featherston and Buller were present. According to a newspaper report “[a]bout 700 natives have been congregated there for nearly ten days, discussing the sale of the Manawatu-Rangitikei block”.¹²⁹² There were formal discussions for 5-6 hours each day, the intervals spent “in private negotiations with the leading chiefs of the various tribes, while the people feast and take part in canoe-races and other amusements”.¹²⁹³ When the meeting was opened Ngati Raukawa and Ngati Kauwhata were present “in full force”, as were Rangitane and Muaupoko and some representatives of Ngati Toa and Ngati Awa. Conspicuous by their absence was Ngati Apa, who had declared “that they would never consent to unite with the other disputants in a common sale”.¹²⁹⁴ The proceedings got off to a lively start “with an outburst of violent opposition from Kingites, Hauhaus, and distant claimants, and speeches of an unfavourable kind lasted throughout a great part of that day”.¹²⁹⁵ What was concluded is disputed. Tamihana Te Rauparaha sent a letter to the newspapers claiming that most of Ngati Raukawa were in favour of the sale.¹²⁹⁶ According to Rawiri Te Whanui, however, whose letter to the *Christchurch Press* (a newspaper he trusted) was widely reprinted, most of the Ngati Raukawa chiefs opposed the sale and continued to insist on the earlier agreement that Ngati Apa’s rights to sell came no further south than the Rangitikei.¹²⁹⁷ Rawiri named those who supported the sale as “Papa Rei, Horomona, Ihapara [sic – Ihakara], Wi Pukapuka, Noa, Paora, Horei Kerei, Tamihana Te Rauparaha, Watene, and Tamihana Whareakaka”.¹²⁹⁸ These were “the only persons who stood up in Dr Featherston’s presence and spoke in favour of the sale”. At the meeting Parakaia Te Pouepa read out some documents indicating that Ngati Raukawa agreed to let Ngati Apa sell down to Rangitikei, and that afterwards Te Ahu o Turanga “was given up” to Hirawanu. Having read the document aloud, Parakaia handed it to Buller, who refused to accept it. The majority supported Parakaia and opposed the sale: those who were opposed were “Aperahama Te Hurupara, Nepia, Aperahama Te Ruru, Epiha, Heremia, Hare Henu, Paranihi, Wirihariu, Henere Te Herekau, Keremihana, Pohutohu, Kepa, Arapata Te Whioi, and many other chiefs, with the tribes supporting them”.

In his 1867 petition Parakaia Te Pouepa described, from Ngati Raukawa’s standpoint, Featherston’s activities when negotiating the sale in the preceding year. In 1866 “Featherston came again, and made a determined effort to purchase our land”.¹²⁹⁹ Ngati Raukawa, said Parakaia, were not

¹²⁹² “The Manawatu”, *Lyttelton Times*, Vol XXV, Issue 1686, 12 May 1866, Supplement, p 2.

¹²⁹³ Ibid.

¹²⁹⁴ Ibid.

¹²⁹⁵ Ibid.

¹²⁹⁶ “The Manawatu Block”, *Evening Post*, Vol II, Issue 83, 17 May 1866, p 2: “The multitude of the Maori Chiefs have consented to sell all the land lying between the Rangitikei and Manawatu Rivers.”

¹²⁹⁷ Translation of letter by Rawiri Te Whanui to Fitzgerald (originally forwarded to the *Press* for publication), *Timaru Herald*, Vol V, Issue 110, 16 June 1866, p 6.

¹²⁹⁸ Ibid.

¹²⁹⁹ Petition of Parakaia Te Pouepa, 4 July 1867, reprinted in AJLC App 5 p 9.

interested. Featherston, said Parakaia, began to threaten Ngati Raukawa, reminding him that the people who had consented to the sale were also the Crown’s military allies.¹³⁰⁰

He then used the following threatening words to me and my people: “This land is in my hands: 800 of Whanganui, 200 of Ngatiapa, 100 of Rangitane and Muaupoko have consented. All these tribes went to fight with me against the tribes who are contending with the soldiers of the Queen. They have all agreed that the land shall be sold to me; they are the great majority – you are but a few. You shall not hold back this land.” When my people heard his threatening and taunting words they were overwhelmed (paralysed) with shame and fear. I replied, “Friend, what title have the hundreds of those tribes that you have enumerated to this land: only after investigation in a Court can this land be justly sold to you?” He replied, “Parakaia, the jurisdiction of that Court will never be extended to this land.”

Parakaia Te Pouepa and others continued to press for an impartial investigation of Rangitikei-Manawatu: “a number of us went to Wellington, to the Governor, to the Assembly, to the Ministers also, and entreated them to allow our titles to be investigated according to law”.¹³⁰¹ By “according to law” they had in mind the Native Land Court. In view of the current reputation of the Native Land Court in modern historiography this confidence might seem misplaced or naïve. But the Native Land Court was a new institution at this time. As discussed earlier, its initial impact at Otaki had not given any cause for concern to Ngati Raukawa. At any rate a public, judicial process seemed a better option than the alternative of some kind of an unofficial assessment of customary rights by Featherston himself.

On 13 November 1866 Featherston finalised the provincial government’s deed of sale principally with Ngati Apa relating to land south of the Rangitikei, but it was not clear whether the signatories of the deed actually had customary rights in the area, or, supposing that they did, what the extent and location of these interests might be. Featherston had not made any effort to define customary interests, whether of Ngati Raukawa, Ngati Apa, Muaupoko or any other group. Moreover no reserves were defined in the deed itself, which were left to be determined after the sale – a recipe for trouble.

The distribution of the money was left to the chiefs of the various groups to allocate. This was the only possible option as interests had not been defined, whether by the Native Land Court or by any other mean, except (and this an important exception) the identification of the “tribes” who had interests in the block as a whole. Featherston had presumably decided on this himself, and had also made a rough calculation as to the respective interests of the groups. He had decided, for example, to allocate £3000 to Ngati Kauwhata, £15,000 to Ngati Apa, £1,000 to Ngati Te Upokoiri (from Hawke’s Bay) and £600 to Muaupoko. In the case of Ngati Raukawa and Ngati Kauwhata the money was handed over to, respectively, Tamihana Te Rauparaha and Tapa Te Whata. In both these groups there were significant numbers of “dissentients” or “non-sellers”. The way the money was paid and distributed was described in the *Wellington Independent* on 22 December.¹³⁰²

Since the date of my last there has been considerable excitement over the division of the money. The tribes having appointed chiefs to receive their respective shares, and to sign receipts for the same, the sub-division of the money among the hapus and individuals of the various tribes was a matter with which the Commissioner had really nothing to do. At the urgent request, however, of the tribes themselves, Mr Buller remained at Parewanui. I believe he has attended all the principal meetings, and has generally assisted the natives with his advice, but the division of the spoil has been effected entirely by the Maori Runangas, and according to Maori rule. The leading chiefs, as is usual on such occasions, appear to have kept a very small share of the money for themselves, endeavouring to outrival each other in liberality to

¹³⁰⁰ Petition of Parakaia Te Pouepa, 4 July 1867, reprinted in AJLC App 5 p 8.

¹³⁰¹ Petition of Parakaia Te Pouepa, 4 July 1867, reprinted in AJLC App 5 p 8.

¹³⁰² *Wellington Independent*, 22 December 1866, Vol XXI, Issue 2457, p 5.

the clans dependent on them. I am told that Aperahama Te Hurahura – who for several months led the opposition, and whose acquiescence in the sale was considered absolutely necessary to the completion of the deed – although receiving, nominally, a sum of two thousand pounds as his individual share, retains only fifty. This is easily explained. The Maori chief prides himself in his self-abnegation when the interests of his sept or hapu are concerned. It is by this means that a chief secures the respect and affection of his people. By sacrificing his individual interests he obtains the devotion of the tribe, and maintains his personal influence.

I have no means of knowing positively, but I believe the distribution of the money has on the whole given satisfaction. There is one point to which I ought to refer, because it is highly creditable to the Ngatiraukawa section of the sellers. As has been frequently stated in your columns, Parakaia and a large number of Otaki claimants have been, and are still opposing the Rangitikei sale. Now, without pretending to pronounce on the value of those claims, I may state that the Ngatiraukawa generally regard them as remote and uncertain. Parakaia and his immediated clan (very few in number) have actually resided on the block, but the bulk of the Otaki claimants rest their claims on purely abstract grounds. It was naturally supposed that the Ngatiraukawa sellers, entertaining these views, would ignore the claims *in toto*, or, at any rate, deal arbitrarily with them. On the contrary – acting, I believe, on Dr Featherston's or Mr Buller's suggestion – they have acted with the utmost liberality towards the dissentients. They have decided on setting apart no less than one fourth of the Ngatiraukawa share for the satisfaction of the claims of dissentients! One thousand pounds has been forwarded through Tamihana Te Rauparaha to the dissentients at Otaki; five hundred pounds has been handed to Paora Pohotiraha of Waikawa, whose people are all opposed to the sale, and Tapa Te Whata of the Oroua has agreed to set apart out of the Ngatikauwhata share a sum of £3000, a sum of £1000 for presentation to Wiriharai and his party of dissentients, who recently came from Waikawa, and are now located on the block. It has been decided by the Ngatiraukawa chiefs, that if the dissentients should decline their liberality, the money shall be deposited in one of the Banks, and shall be left there till they are disposed to take it. For my own part, I think the Ngatiraukawa people concerned in this transaction have acted in a manner highly creditable to them; and if Parakaia and his supporters should refuse their generosity – they will, in future, deserve sympathy from no one. It is very certain that they will not have the sympathy of the neighbouring tribes, who regard the act as one of unexampled liberality.

My own idea is, that you will have nothing more of Maori opposition to the sale.

The Ngatiapa, having had several tribes to satisfy out of their share of (£15,000), have found considerable difficulty in meeting the claims of all concerned. The award of £2000 to the Wanganui tribes was readily accepted; so also was the award of £1000 to the Ngatiteupokoiri, a small section of Hawke's Bay claimants. The Muaupoko (numbering about 70) refused however to take the £500 offered to them. They ultimately accepted £600, and I think they are well paid. £5000 was handed over to the section of the Ngatiapa tribe, inhabiting the district north of Turakina. This left a comparatively small share to the Rangitikei section of the Ngatiapa, out of which the claims of the Rangitane tribe have to be satisfied. The share allotted them by Governor Hunia was refused by the Rangitane chiefs, and a long and rather angry discussion ensued, which was settled amicably however, last evening, the Rangitane consenting to accept £1300, with the understanding that they shall share in the arrears of rent (about £2000) now due to the Ngatiapa.

In December 1866 there was a meeting of Ngati Raukawa at Otaki at which all political factions within the community came together to affirm their rights in the block. According to the local resident magistrate (Edwards):¹³⁰³

¹³⁰³ Edwards (R.M., Otaki) to Native Minister, 17 December 1866, WP 3, 1866/727 [Maori Meeting re Manawatu-Rangitikei]

I have the honour to report that Wi Hapi and a following of about 100 men women and children arrived here this morning, his intentions are peaceful. A meeting of the Ngatiraukawa tribe consisting of Matene Te Whiwhi, Nepia, Parakaia, Tohutohu, [], Wi Hapi and others numbering in all about 300 was held here this evening. After some discussion it was determined to withhold from Sale that portion of the Rangitikei Manawatu block by those present at the meeting; they would prevent the Survey and hold possession peaceably if possible trusting to the law to protect them, if the law does not protect them they will lose their faith in the Pakeha and there would be a “second Waitara”. They have no intention of interfering with the sellers of the Manawatu block, but the portion they claimed as their own they would not sell under any circumstances. They professed to have held the meeting here to prevent individuals acting on their own account and to prevent a breach of the peace. Hauhau, Kingite and Queenite being anti sellers have determined to combine to prevent the sale of their portion of the Rangitikei land.

The same file records the speeches of Parakaia Te Pouepa and Matene Te Whiwhi and others on 19th December. Parakaia said:¹³⁰⁴

Parakaia stood up and said, Listen o Raukawa holding the land, not including the Hauhaus, I will not talk to them.

My reason for persisting in the Rangitikei dispute is the trifling of the Government with us. I thought this land would be carefully adjudicated upon, the right of the Ngatiapa would then be seen, and our wrong would be seen, it would then be correct for Featherston to give his money to his friends. But this kind of land purchase is to startle us, and find out our weakness of purpose. My word for this is, if Featherston is testing, let his attempt be returned to himself.

Another thought of mine – I am agreeable to the money being laid down, the anger of the Maoris is removed from us, our quarrel has gone to the Pakeha. My word is this, do not allow the [survey] chain to lodge down, rather, let there be no evil in the taking. If they persist, you roll up the chain and take it with you to be under care. The pakeha will not be as strong as us as we have sent many letters requesting an investigation but the Runangas would not consent. Why did the Ngatiapa not go? They did not go. We said to the Governor let Dr Featherston and his friends come to Wellington for investigation which was stopped by Dr Featherston to prevent Ihakara and his friends from going to Wellington – that is why I say have no consideration for the chain, throw it away.

As can be seen, Parakaia wanted the matter to be “carefully adjudicated upon”. There was also a great deal of Ngati Raukawa written protest about the transaction, before and after it was finalised. Henare Te Herekau and others, for example, protested to the Native Minister in a letter of April 30th 1866 that the land had already been divided up amongst themselves: “our lands have been marked off for this man and for that man, for this section and for this section and that section”.¹³⁰⁵ Parakaia Te Pouepa and others had already pressed for a Court to decide ownership: “let the court of judgment decide”.¹³⁰⁶ Parakaia also complained that Featherston had said that the tribes who wanted to sell had also, acting under the mana of the Queen, fought rebel tribes and that the land was now theirs and the government’s – almost as if it had been confiscated in some way.¹³⁰⁷ Ngati Raukawa constantly reminded the

¹³⁰⁴ Notes on *ibid*: “This is what was said at the meeting in Raukawa Otaki on the 19th December 1866”.

¹³⁰⁵ Henare Te Herekau and others to Native Minister, 20 April 1866, 1866 AJHR A-4, 3.

¹³⁰⁶ Parakaia Te Pouepa and others to the General Assembly, 1866 AJHR A-4, 9.

¹³⁰⁷ *Ibid*: “Another word of Featherston’s. We went together, we and these tribes to fight the rebel tribes under the authority (mana) of the Queen. They have consented to this, and I have agreed to their proposals, and this land has come into my hands. I hold it.” Henare Te Herekau and Hare Hemi Taihape similarly recalled Featherston saying: “There are 800 men of Whanganui, 200 of Ngatiapa, 100 of Rangitane and Muaupoko tribes which went with me to fight the bad tribes. They have agreed to sell: this land has become mine: I will give them the money”: Statement by Henare Te Herekau and Hare Hemi Taihape, 16 April 1866, *ibid* p 10. There thus seems to be a political dimension to this transaction, which presumably other historians preparing research reports for this inquiry will explore.

government that the agreed boundary was at Rangitikei, and that the other tribes had no right to sell land south of the river.¹³⁰⁸ Others of Ngati Raukawa complained about how Featherston had spoken to them in a manner that other Grey or Browne had never done – "that he would kick us with his feet, or would seize our lands close to Manawatu, even to all its branches".¹³⁰⁹ Ngati Raukawa were evidently unused to being spoken to in this way. No one connected with the Manawatu purchase in either the provincial or general governments could be unaware of the Ngati Raukawa protest.

Ngati Raukawa were divided over this purchase, however, and, as seen, some Ngati Raukawa had participated in the transaction and were included with the sellers. Ihakara Tukumarua can be seen as the most important of the pro-sale group within Ngati Raukawa. Parakaia Te Pouepa admitted that in December 1866 "Dr Featherston paid money to some of my own tribe, the great majority of whom had no title to our land".¹³¹⁰ Tamihana Te Rauparaha, who was in favour of selling, had written to Mantell (Native Minister) telling him to pay no attention to any complaints from Ngati Raukawa and stated that the land was being sold because it was disputed: "if it were not disputed, it would not be sold".¹³¹¹ He also claimed that those opposing the sale had political reasons for doing so – they were "Hauhaus" and "Kingites".¹³¹² There were some who opposed the sale at first but who later for various reasons changed their minds and signed the deed. Some changed their minds several times.¹³¹³ The most prominent opponents within Ngati Raukawa and Ngati Kauwhata seem to have been Parakaia Te Pouepa, Matene Te Whiwhi, Paora Pohotiraha, and Wiriharai (the latter was the leader of the Ngati Kauwhata non-sellers). While some Ngati Raukawa and Ngati Kauwhata people were sellers, opposition to the sale was, however, principally concentrated within Ngati Raukawa and Ngati Kauwhata – i.e. as opposed to Rangitane and Ngati Apa. (This is not to deny that those groups who did, generally speaking, assent to the deed – Rangitane, for instance - have issues of their own with respect to it, including the price, the distribution of the money, and the reserve allocations.)

While the interests of the signatories were cancelled by the purchase, subject to any reserves that might be made for them by the government, the key issue was the rights of the 'non-sellers' in the block, mostly Ngati Raukawa. The respective interests had to be calculated somehow. How many non sellers there were exactly is unclear, but there were a substantial number. On 20 March 1868 Thomas Williams as Ngati Raukawa's conductor tried to put into evidence in the Himatangi case a list of no less than 800 people of Ngati Raukawa who would not sign the deed of cession.¹³¹⁴ There were also a significant number of Ngati Kauwhata non-sellers. Featherston had wanted to fix Ngati Raukawa reserves after the deed was finalised, and also took the position that the Ngati Raukawa non-sellers could be compensated out a portion of the purchase price set aside for that purpose. However after the conclusion of the purchase the Raukawa non-sellers continued to object, and sent two petitions to Queen

¹³⁰⁸ Statement by Henare Te Herekau and Hari Hemi Taihape, 16 April 1866, *ibid* p 10 ("Ngatiapa were desirous of selling their land on a former occasion. Ngati Raukawa refused to let it be sold, and it was not sold. They permitted the opposite side of the River Rangitikei to be sold. It was sold to Governor Grey"); Statement by Parakaia Te Pouepa and others, 5-14 April 1866, *ibid* p 10 ("It is not a new thing for Ngati Raukawa 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").

¹³⁰⁹ Nepia Taratoa and others to Governor, 24 April 1866, 1866 AJHR A-4, 12.

¹³¹⁰ Petition of Parakaia Te Pouepa, 4 July 1867, reprinted in AJLC App 5 p 9.

¹³¹¹ Tamihana Te Rauparaha to Mantell, 25 April 1866, 1866 AJHR A-4, 6.

¹³¹² *Ibid*.

¹³¹³ See memorandum of Walter Buller, 4 July 1866, 1866 AJHR A-4, 36, describing the hesitations of Aperahama Te Huruhuru.

¹³¹⁴ (1868) 1C Otaki MB 291 – the Court would not allow the document to be produced, however.

Victoria on the matter in 1867.¹³¹⁵ As Gilling puts it, "a rain of letters blitzed down on the Native Minister and other authorities".¹³¹⁶

It was decided by the government to refer the question of the Rangitikei-Manawatu non sellers to the Native Land Court, and accordingly s 40 of the Native Land Act 1867 provided as follows:

The Governor may at his discretion refer to the said Court the claim of any person to or any question affecting the title to or interest of any such person within the boundaries as described in the second schedule hereto being the boundaries in a certain deed of sale to the Crown bearing date the 13th day of December 1866 and expressed to be a conveyance by Natives entitled to land within the district excepted from the operation of the said Act by section 82 thereof Provided that no claim by and no question relating to the title or interest of any Native who shall have signed the said deed of sale shall be so referred and the Native Land Court shall in the manner prescribed by the said Act investigate and adjudicate upon such claim and the interests in and title to any land so claimed.

There was a certain amount of confusion at the time over what exactly s 40 meant.¹³¹⁷ Section 40 of the 1867 Act clearly gave a particular priority to the Crown purchase deed of 13 December 1866, using the boundaries set out in the deed as the boundaries of the block(s) to be investigated. It should be noted as well that anyone who had signed the deed was not entitled to make a claim in the Court. The investigation was to be in "the manner prescribed by the said Act" – i.e. under the standard procedures of the Native Lands Act 1865.

This way of dealing with the issue meant, however, that the Court's determination would impact on how much land the Crown could plausibly be said to have purchased. The division between sellers and non-sellers was not evenly spread across the block, and it could not simply be divided pro rata: rather the non-sellers were concentrated amongst Ngati Raukawa. If the Court was prepared to accept that Ngati Apa, Muaupoko and Rangitane had retained substantial interests in the area, any such finding *de facto* increased the Crown share of the block (albeit, as noted, that there were also Ngati Raukawa sellers). If Ngati Raukawa had a customary title to the whole of Rangitikei Manawatu but were mostly non-sellers then the provincial government would have spent a lot of money to very little purpose. The provision thus had the effect of turning the case into a contest between the Crown and those persons with interests who had not sold their shares. Ngati Raukawa were only nominally pursuing a claim against Ngati Apa and the other groups in the Himatangi block, the first part of the Rangitikei-Manawatu block to go to hearing in the Native Land Court. Essentially their opponent in the case was the Crown, or to be more precise, the Wellington Provincial Government. This legal context must always be borne in mind when considering this pivotal case. The judges involved in the two Court decisions of 1868 and 1869, Rogan, Smith, Fenton, and Maning, obviously will have been well aware of this fact. On this occasion, at least, "the Crown" was a direct and active participant in the Native Land Court – as it was later to be in the inquiry into Ngati Kauwhata's rights at Maungatautari in 1881. Moreover the Rangitikei Manawatu purchase was common knowledge, as was the fact that Wellington Province had invested very heavily in the purchase. £25, 000 was a great deal of money. The jurisdictional situation that confronted the Native Land Court was unusual. Normally the Court would investigate land governed by Maori customary title. But here there was a purchase by the Crown, designed to extinguish the customary title (although no formal proclamation had yet been done).

¹³¹⁵ 1867 AJHR A19, 4-6.

¹³¹⁶ Gilling, *'A Land of Fighting and Trouble'*, 121. Many of these letters are printed in *Further Papers Relative to the Manawatu Block* 1866 AJHR A4.

¹³¹⁷ See discussion in Anderson, Green, and Chase, *Crown Action and Maori Response*, ch 7.

The Crown's role in the case meant also that the opposition to the Raukawa case was very well-prepared. The government must have invested a significant amount of resources in the case. The counter-claimant case at first instance was led by no less a person than William Fox, who lived in the Rangitikei region and who was one of the country's most powerful politicians, sometime Premier, and at the time of the case was the leader of the opposition.¹³¹⁸ Fox became Premier again in June 1869, his principal colleagues being Julius Vogel and Donald McLean. (Fox also happened to be a barrister.) Numerous witnesses were called in support of the counter-claimants, including local settlers and some rangatira of Ngati Toa and other tribes, which must have been a challenge to organise. The Rangitikei-Manawatu block had been a prominent political issue for some years before the case was heard, and was a matter of constant comment in the newspapers, especially in the *Wellington Independent*, strongly supportive of the sale. Parakaia Te Pouepa and Henare Te Herekau were well known to be prominent opponents of the sale, while Tamihana Te Rauparaha had written to the newspapers supporting it. Supporters and opponents of the transaction lined up against each other, with what degree of persuasion is unknown, in the Court, pitting for example Matene Te Whiwhi against Tamihana Te Rauparaha. There was a political element as well: there were supporters at Rangitikei for Tawhiao and the Kingitanga, who seem to have been the same people who pulled up survey pegs and destroyed a trig station after the Court had given its decision and the Manawatu block surveys began. It is going too far to say that opponents of the sale and support for the Kingitanga coincided. Parakaia Te Pouepa was a strong opponent of the sale, but was not (as far as I am aware) a supporter of the Kingitanga. (Any vocal supporter of Tawhiao by 1868 was simply characterised as a "Hauhau"). Nor was Matene Te Whiwhi – who gave evidence for the claimants – a Kingitanga supporter by this time, although both he and his cousin Tamihana Te Rauparaha had been prominent supporters of the idea of a Maori king in the later 1850s. But it does appear that there was certainly a complex political context to the Manawatu block affair and that willingness to sell land to the Crown and support for, and opposition to, the Maori king overlapped, and was perceived to overlap, between selling land to the Crown and an unwillingness to do so.¹³¹⁹

Ngati Apa and the groups linked to them and the Crown were in this sense allies in the case, an alliance that was reinforced by the fact that Ngati Apa and Muaupoko had formed a large part of the so-called 'Wanganui Contingent' who had fought on the government side during the New Zealand wars, led by the very able and formidable Keepa Te Rangihwinui. Kawana Hunia of Ngati Apa had also been one of the leaders of this force. Ngati Raukawa's political position during the wars had, however, been much more equivocal. Opinion at Otaki was divided, but certainly there was strong sympathy for the Maori King there and a degree of active support. Robyn Anderson and Keith Pickens believe that "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 the sale of the lands excluded from the 1848 sale".¹³²⁰

9.6 T C Williams' *The Manawatu Purchase Completed, or, The Treaty of Waitangi Broken*

¹³¹⁸ On Fox see Raewyn Dalziel and Keith Sinclair, "Fox, William 1812?-1893, Explorer, politician, premier, painter, social reformer", *DNZB* vol 1 (1990), 134-138. The authors note that Fox read law at the Inner Temple and was called to the Bar in 1842; he even wrote a "small treatise" on the law of contract.

¹³¹⁹ In a letter published in the *Wellington Independent* Tamihana Te Rauparaha (*Wellington Independent*, Vol XXI, Issue 2362, 17 May 1866, p 2) stressed the support of the chiefs of the various tribes of the region for the sale and pointed out that one of the causes of disputation about it was that "the Hau Haus also had increased in number at Rangitikei".

¹³²⁰ Robyn Anderson and Keith Pickens *Wellington District, Port Nicholson, Hutt Valley, Porirua, Rangitikei, and Manawatu* Rangahaua Whanui District Report 12 (Waitangi Tribunal, 1996) at 89.

In 1867 a pamphlet edited by Thomas Williams was published in Wellington *The Manawatu Purchase Completed or, The Treaty of Waitangi Broken*, and was reprinted in England in 1868.¹³²¹ The pamphlet is a mine of (albeit carefully selected) information, which I have drawn on frequently for the purposes of this report. The value of this collection of printed documents lies in the fact that it must have been compiled well before the commencement of the 1868 case. The collection, a somewhat wearying mass of documents and extracts, includes great deal of material on the Treaty of Waitangi, and on the purchase itself, including various letters and petitions from Ngati Raukawa. The collection includes some letters to Williams personally, from Matene Te Whiwhi for example. Williams’ argument was simple: the purchase was a breach of the Treaty of Waitangi. His understanding of the Treaty was, however, somewhat different from contemporary discourses relating to the Treaty which have been developed by the Courts and by this Tribunal. To Williams the Treaty was a guarantee that the chiefs and tribes retained the lands and property that they currently possessed – i.e. as at the time of the execution of the Treaty. As at 1840 Ngati Raukawa held the Rangitikei-Manawatu lands.

To Williams the Treaty had a personal and familial significance, as he emphasises in the preface to his pamphlet:¹³²²

As I hold the opinion, in common with many others, that the Treaty of Waitangi has been clearly broken by the Government of this country in their dealings with the Natives for the acquisition of the Manawatu block, and as I am the son of the Rev. Henry Williams above-named I need offer no apology for now coming forward to assist the Natives “on the north side of Cook’s Strait” in standing up for the rights gathered to them by the said Treaty.

Williams made it clear that he was not criticising the colonists, but only the government:

I bring no charge against the colonists, for whom, as a body, I, in common with Parakaia and many of his countrymen, have a great respect. I believe them to have been misinformed and misled. When I ask any intelligent Maori the question “who are to blame for the past and present state of things in New Zealand?” the reply is a ready one – “Ko nga kai mahi o to Kawanatanga.” When I am myself asked a similar question, my reply is the same – “the Government and the officers of the Government.”

9.7 Judge Rogan

Before progressing further with the analysis of the cases some comments about Judges Rogan and Smith may be useful. Rogan was probably the most important of the Native Land Court judges to deal with Ngati Raukawa lands in the late 1860s and early 1870s. He was the presiding judge in the Pukekura-Maungatautari-Puahue decision in the Waikato in 1868,¹³²³ sat with Judges Smith and White in the first round of the Rangitikei-Manawatu case in 1868,¹³²⁴ and co-presided, along with Judge Smith, over the Kukutauaki and Horowhenua decisions in 1873. He thus had a key influence in the main early cases impacting on Ngati Raukawa lands in both the Waikato and in the PkM region.

Rogan was not a lawyer.¹³²⁵ He was born in Ireland, and was started his career working for the Ordnance Survey in Ireland. He came to New Zealand in 1840 and was one of the Plymouth Company’s

¹³²¹ Williams and Norgate, London and Edinburgh, 1868.

¹³²² Williams, *The Manawatu Purchase Completed, or, The Treaty of Waitangi Broken*, (New Zealand Times, Wellington, 1867), Preface, pp i-ii.

¹³²³ Judgment at (1868) 2 Waikato MB 93-95; Boast, *Native Land Court* vol 1, NLC41, 462-477.

¹³²⁴ Judgment at (1868) 1E Otaki MB 717-723; Boast, *Native Land Court*, vol 1, NLC 46 (first-instance judgment at 568-570)

¹³²⁵ On Rogan see Boast, *Native Land Court*, vol 1, 127-128; Brian Byrne, *The Unknown Kaipara: Five Aspects of its History* (privately published, Auckland, 2002) at 353-396 (describing Rogan’s early days in the Kaipara region); Leanne Boulton, *Hapu and Iwi Land Transactions with the Crown in Te Rohe Potae Inquiry*

surveyors working at New Plymouth. At New Plymouth Rogan became friendly with Donald McLean, and Alan Ward has described Rogan as an "old friend" of McLean's.¹³²⁶ Rogan and McLean worked together on the surveys of Crown purchases and Maori reserves in Taranaki and in the Waikato coast. In my book on the Court published in 2013 I stated that "the links with McLean thus set Rogan apart from Fenton, and indicates that the factionalism and divided approaches towards Maori policy that characterised national politics were reflected also within the Court"¹³²⁷ and I see no reason to modify that assessment. The links with McLean were cemented when Rogan joined McLean's Land Purchase Department as a Land Purchase Commissioner. Rogan went to the Kaipara region in 1857 where he bought large areas for the Crown, sometimes running the Land Purchase Department in Auckland when McLean was away. Rogan subsequently acted for the Crown purchasing land in Taranaki and the Waikato, all the time working closely with McLean. Rogan's background, then, was in the fields of surveying and land purchasing for the Crown, working as a close associate with the chief architect of Crown pre-emptive purchasing in the 1850s (McLean, that is).

Rogan's judicial career began in 1864 when he became Resident Magistrate in the Kaipara district. As a Resident Magistrate in 1864 he heard two very early cases under the Native Lands Act 1862 relating to two Kaipara blocks, these being the first investigations the Native Land Court ever heard. Rogan seems to have been well regarded by Maori people of the Kaipara region. In 1865, following the remodelling of the Court in early 1865, he became a judge of the Native Land Court under the 1862 Act, and in February 1865 he became a judge of the Compensation Court. During the course of 1865 he was involved in the important Compensation Court cases in Taranaki and elsewhere, sitting with F D Fenton as presiding officer. His personal relationships with Fenton seem, however, to have been difficult.¹³²⁸

The obvious questions that arise with Rogan is how good a judge he was, and whether his connections with McLean and long years of work as a land purchase officer made influenced his impartiality in any way. As to the first question, Rogan's subsequent reputation as a judge with historians and the Waitangi Tribunal is certainly equivocal. It was Rogan who was responsible for one of the most-criticised of all Native Land Court judgments, the Chatham Islands decision of 1870 which awarded most of the archipelago to Ngati Mutunga while allocating to the surviving Moriori only scattered reserves.¹³²⁹ The Waitangi Tribunal in its *Rekohu* Report (2001) was of the view that "a different result would have followed if a Maori panel had been asked to decide this case".¹³³⁰ Rogan was also responsible for the Land Court decision relating to the Waiiau, Tukurangi, Taramarama and Ruakituri blocks in 1875, a decision which has been criticised by Judith Binney and by the Waitangi Tribunal in its *Te Urewera Report*.¹³³¹ Jurisdictional mistakes by Rogan with regard to the Waingaromia blocks near Gisborne resulted in long-standing legal processes which resulted finally in the Court of Appeal and Privy Council decisions in *Assets v Mere Roihi*. Those wanting to criticise Rogan as a judge

Inquiry District (Wai 898 [Rohe Potae Inquiry] Doc#A70, 2011). Boulton provides a wealth of information about Rogan's correspondence with McLean.

¹³²⁶ Ward, *An Unsettled History: Treaty Claims in New Zealand Today* (Bridget Williams Books, Wellington, 1999), 137.

¹³²⁷ Boast, *Native Land Court*, vol 1, 127.

¹³²⁸ See discussion in Boast, *Native Land Court*, vol 1, 128.

¹³²⁹ Rogan's original decision is at (1870) 1 Chatham Islands MB 63-67. On the Chatham Islands case see Boast, *Native Land Court*, vol 1, NLC48, pp 581-595; Michael King, *Moriori: A People Rediscovered* (Viking, Auckland, 1989) 123-134; Bryan Gilling, "By Whose Custom?: The Operation of the Native Land Court in the Chatham Islands" (1993) 23 VUWLR 45.

¹³³⁰ Waitangi Tribunal, *Rekohu* (Wai 64, 2001), 150.

¹³³¹ See Binney, *Encircled Lands: Te Urewera, 1820-1921* (Bridget Williams Books, Wellington, 2009), at 234.

would appear to have a significant amount of ammunition, in other words. He was certainly a very *experienced* judge, but perhaps his career shows up the shortcomings of the Crown’s selection process judges for the Native Land Court.

Many of the judgments that Rogan had a hand in are very abbreviated statements, which completely fail to analyse the evidence or weigh up the competing arguments for each side. This is certainly the case with the pivotal Kukutauaki and Horowhenua judgments of 1873, and not only those.¹³³² Each case generated a substantial volume of evidence which was in direct opposition on many key points, but it is impossible to be certain which witnesses were perceived as most important and why their evidence was preferred.

9.8 “I claim this land for Parakaia and his people under the Treaty”: preliminary points and Crown applications

The conferring of the special jurisdiction on the Native Land Court by the legislature soon led to an application for investigation of title to what was called the Himatangi Block, an area of 11,500 acres located on the western side of the Manawatu river adjoining the Te Awahou block at Foxton, the latter already sold to the government by Ihakara and his people in 1858. The claim had been referred to by the Court by the Governor General on the advice of a Minister of the Crown (I do not know which one).¹³³³ The principal applicant was Parakaia Te Pouepa of Ngati Raukawa. Parakaia, as explained in the introductory chapter of this report, was a chief of the Maungatautari area in the southeast Waikato, who moved to the Kapiti region during the period of the migrations in the later 1820s, leaving his lands in the Waikato in the possession of Ngati Kahukura.¹³³⁴ Mainly resident at Himatangi and then at Otaki, Parakaia was a committed Christian and was closely connected with Octavius Hadfield, the CMS missionary at Otaki, T C Williams, Matene Te Whiwhi, Rewiri Te Whanui and Te Herekau (both later ordained by Hadfield), and with Wi Parata.¹³³⁵ Parakaia was himself an assessor of the Native Land Court and he was also involved in many cases in his personal capacity, both as claimant and as witness.¹³³⁶ He did not appear in the Himatangi case simply in his own right, but rather led the case on behalf of those of Ngati Raukawa who were non-sellers at Himatangi. That essentially meant the Ngati Turanga non-sellers.

The case was presided over by Judges Rogan, T H Smith, and White, with Mitai Pene Tau (of Nga Puhi) and Ihaia Porutu as Assessors. About 300 Maori people were present on 26 February, mostly Ngati Raukawa people.¹³³⁷ The case generated a great deal of evidence, which was recorded in the Court’s minute books and in the newspapers. The evidence as given in the newspapers in the Himatangi case was been collated in full by Alex Boast and is set out in Appedix 3.1. The newspaper record is much fuller, and again a cautionary note must be sounded against relying on the Court’s minute books as a full and accurate record of what was actually said and done in the courtroom.

The Anglican establishment was also present in force at the hearing, including the Bishop of Wellington (Octavius Hadfield), the Rev Samuel Williams, and the Rev Mr De Bois. Moreover two of the principal witnesses for Ngati Raukawa in this case, Rawiri Te Whanui and Henare Te Herekau, were themselves Anglican clergymen. The fact that the Court was comprised of three judges and two

¹³³² For example the Horowhenua judgment of 1873 consists of just eight short paragraphs.

¹³³³ *Wellington Independent*, March 3 1868, p 4 (“Mr Hart was permitted to inspect the original application, on which, by advice of a Minister, the Governor had referred their claims to the Court.”)

¹³³⁴ See evidence of Parakaia Te Pouepa in the Pukekura case [1873] AJHR G-3, 13.

¹³³⁵ *Ibid.*

¹³³⁶ See e.g. the Huritini case, (1868) 1B Otaki MB 155-182.

¹³³⁷ “Native Land Court, Otaki”, *Wellington Independent*, 3 March 1886, p 4.

assessors was very unusual in itself: in normal circumstances an investigation of title at first instance would be heard by one judge and one assessor. This indicates very clearly the perceived importance of the case, and reinforces the sense that it was in a sense a one-off and rather atypical kind of investigation arising under special jurisdictional circumstances.

T C Williams said in his opening address that Himatangi was an area that belonged to “Parakaia’s hapu”, Ngati Turanga. The case was just the first of the various Ngati Raukawa non-seller cases. The claim before the Court was thus essentially a claim by Ngati Turanga, one of the occupying groups at Himatangi. The case was *not* – it must be emphasised – to the whole of the Rangitikei-Manawatu purchase block, which was far larger. Nor was the case about the distribution of the proceeds of the purchase: the money had already been paid out. On the other hand it was clear that much more was at stake than Himatangi itself. The case was obviously understood to have had implications for the title to the entirety of the block, explaining why both sides invested so much effort in the case (and the marked difference in scale between this case and the Native Land Court cases that Ngati Raukawa had so far experienced). If the Court found that Ngati Raukawa had no interests in Himatangi, then the Raukawa non-sellers could be forgotten about (they had nothing to sell). If on the other hand the Court found that Ngati Raukawa had title to Himatangi because they had conquered the whole of the region between the Rangitikei and Manawatu rivers, then the government had wasted the province’s money by paying large sums to people who had no interests.

A great deal of evidence was given on both sides, the case taking up forty sitting days, and the case was obviously perceived as a pivotal one. This was shown not only by the composition of the bench but by the fact that counsel for the Crown was William Fox. Walter Buller and Isaac Featherston were present as well. Ngati Raukawa did not have counsel. Their spokesman was Thomas Williams, who was the New Zealand-born son of the CMS missionary Henry Williams. Thomas Williams was not a lawyer, but he spoke Maori fluently and seems to have been an able and effective advocate. As he said in his closing submissions on 22 April, he “undertook to conduct the case for my clients, not because I considered myself competent to do so, but because they were unable to procure the services of a lawyer to be in attendance here”.¹³³⁸ Years later Williams told the Native Affairs Committee of the Legislative Council how he came to be involved in the case:¹³³⁹

I may state how I came to be acquainted with the past history of these people. When the Court sat at Otaki in 1867¹³⁴⁰, I attended the Court as I could speak the language and had heard a great deal of these people’s history. I thought I could be of assistance to their solicitor in getting up their case. The Judges arrived, Dr Featherston, and Mr. Hart, their solicitor. Mr Hart appeared, awaiting Sir William Fox, who had met with an accident. A day or two before the Court opened, the Natives came to me and said their solicitor, Mr. Izard, had written to me to say he would be unable to attend, and then asked me if I would take up their case. I declined: I said, “I am not a lawyer”. They had not time to engage another lawyer. The Court was opened next day, and as there was no help for it, I took the case for them: and I then, of course, had to go into their whole case. I got all the evidence I could. I got E.J. Wakefield’s journal, the reports of the Commissioners who had been buying land there, reports to the Chief Protector of Aborigines from his officers, reports from the agent of the New Zealand Company, from the Rev. Samuel Williams (who was living as missionary among these people in 1847), also from all the chiefs of Ngatitōia who had accompanied Te Rauparaha, and from the chiefs of Ngatiawa and Ngatiraukawa; relying chiefly

¹³³⁸ Williams closing submission, 22 April, *Evening Post* 25 April 1868.

¹³³⁹ 1896 AJLC App no 5, 16. The Committee was inquiring into Kipa Te Whatanui’s petition relating to Ngati Raukawa interests in the Horowhenua Block.

¹³⁴⁰ Perhaps Williams is making a mistake here (he means 1868), or perhaps he is referring to an earlier stage of the case.

on the evidence of the two former tribes, as they had no interest in the land the title to which was being investigated. I also got the evidence of Archdeacon (now Bishop) Hadfield, who was there in 1839.

His presence as conductor in the Native Land Court seems to reflect the strongly Anglican tenor of the Raukawa leadership. But of course Williams was not in the same league as Fox, as Williams himself recognised. Sometimes he made mistakes, getting into difficulties by calling evidence that the Court regarded as irrelevant.¹³⁴¹ On Friday March 20th Williams tried to put into evidence a list of 800 people of Ngati Raukawa who were non-sellers. Fox objected, and the Court asked Williams to explain "what bearing these lists have on the case before the Court".¹³⁴² Williams could not think of an explanation and withdrew the lists. He also had to put up with the banter and sarcasm of Fox. In his closing submissions Fox said:¹³⁴³

May it please the Court. Mr Williams yesterday commenced by appealing to the sympathies of the Court; and drawing a touching picture of himself as a sort of 'young man from the country,' who had unexpectedly met face to face with a great ogre of a Crown lawyer, who stood ready to put him down, and eat him up. Sir, if anyone has a right to claim the sympathies of the Court, it is I, and not Mr Williams. Six feet odd without his shoes; in robust health and the full vigour of mature age; strong enough to grapple, not only with the case before the Court, but with the biggest member of the sixteen tribes; born in New Zealand; brought up among the Native race; graduated in a Maori pa; better able to speak the Maori than the English language; versed in all Maori ways, and thoroughly acquainted with the Maori *tikanga*; having spent the last three years of his life in finding, if not creating, the materials for his clients' claims; is he not a champion worthy of such a cause, and thoroughly equipped at all points? On the other hand, who am I that I should fight with this Philistine?

It is significant that when Williams himself later applied on behalf of Ngati Raukawa for a rehearing, one of the grounds was that the claimants "were not represented by counsel" and that counsel for the Crown "was Mr W. Fox, a gentleman who has figured largely in the Ministries of this country, at one time as Attorney General, and who is now considered by many the 'coming man'".

In theory the counterclaimants were Ngati Apa, Rangitane, Muaupoko and the other groups opposed to Raukawa, but it seems to have been well-known to everyone involved in the case that the real counterclaimant was in effect the government. The court simply worked on the assumption that it was the Crown that was opposing the Raukawa claim and that it was calling witnesses from Ngati Apa and other groups to help make its case and to help maximise the interests of the Wellington Provincial Government in the block.

The case was heard in the Runanga House at Otaki. About 340 Maori people were present when the case began, mostly Ngati Raukawa.¹³⁴⁴ At the beginning of the case a Mr Robert Hart was Crown counsel, who made a number of applications for adjournment and who argued also that the case should not proceed until all of the claims of the Rangitikei-Manawatu non-sellers had been referred to the Court. On 26 February the Court convened in the "Runanga House" at Otaki. Hart asked to see the originating application (which apparently he had not seen before) "on which, by the advice of a Minister, the Governor had referred their claims to the Court".¹³⁴⁵ The Court was hesitant about allowing Hart to see the papers, but agreed he could do so. After considering them, Hart announced he would be seeking an adjournment. The Court went on to deal with some other business, and in the afternoon Hart

¹³⁴¹ See (1868) 1C Otaki MB 290.

¹³⁴² (1868) 1C Otaki MB 292.

¹³⁴³ Quoted in T C Williams, *A Letter to the Right Hon W.E. Gladstone being an Appeal on behalf of the Ngatiraukawa tribe*, (J Hughes, Wellington, 1873) p 1.

¹³⁴⁴ *Wellington Independent* 3 March 1868 (Appendix 3.1.1.)

¹³⁴⁵ "Native Land Court – Otaki", *Wellington Independent*, March 3, 1868, p 4 (Appendix 3.1.1).

renewed his application to adjourn the proceedings. At this point “Parakaia and the other natives with him, were called at the door of the Court”.¹³⁴⁶ Williams came forward, and, speaking in Maori, said that “he had been requested by Parakaia and his friends to appear as their agent”,¹³⁴⁷ and applied for an adjournment to the following day on the grounds that he only just arrived. Hart then renewed his application, and then produced an affidavit by Walter Buller R.M. (Buller was present in Court as part of the Crown team). From Buller’s affidavit it becomes clear that many of the sellers living north of the Manawatu had refused to attend the sitting of the Court at Otaki. Presumably many sellers will have been hesitant about the reception they might receive from Ngati Raukawa. Buller’s affidavit was as follows:¹³⁴⁸

In the matter of the claims of Parakaia Pouepa, Rawiri, Te Kooro Te One, and Te Ara Takaua:

I, Walter Lawry Buller, of Wanganui, in the Province of Wellington, Esquire, make oath and say – 1. From the month of October, in the year 1865, to the present time, I have been employed, on behalf of the Crown, in the negotiation for the purchase of the Rangitikei-Manawatu block, described in the second schedule of the Native Lands Act, 1867, and in completion of such purchase under the directions of the Commissioner for such purchase. 2. The majority of the natives who have as vendors executed the deed of sale mentioned in the said Act have their usual places of residence to the northward of the Manawatu River. 3. Many of these vendors who may be able to give material evidence negating, or limiting the extent of the claims above mentioned decline to attend the Native Land Court at Otaki. 4. In the present state of these claims I am unable to set forth the names of the witnesses for the Crown, whose presence is, or may be required in respect of the above mentioned claims.

But the Crown application for a change of venue was opposed by Williams on the basis that Featherston had threatened to intimidate Raukawa by calling on armed assistance from Ngati Apa. Williams “urged that the sittings had been fixed by the Government at Otaki, and that Parakaia and his witnesses were in attendance; and he stated, as an objection to removing the venue to Rangitikei, that Dr Featherston had endeavoured to intimidate the Ngatiraukawas by threatening to avail himself of the Ngatiapa arms.”¹³⁴⁹ This was denied by Crown counsel. Nevertheless it is clear at least that the Crown purchase had severely damaged relations between the iwi of the region, shown by Ngati Raukawa reluctance to attend a sitting of the Court at Rangitikei and the refusal of many vendors to show up at a Court sitting at Otaki.

The Crown application for transfer was refused by the Court, which gave an interim judgment on this point on 27 February 1868. The interim judgment, significantly, simply refers to the counter-claimant side as “the Crown”: (“the court gave its decision in the matter of the application of the crown for an adjournment”; the “Court has taken into consideration the application made by Counsel on behalf of the Crown”; “the alleged inconvenience of bringing witnesses appears to affect the claimants equally with the crown”¹³⁵⁰, and so on.) The Court rejected the Crown’s application for change of venue was refused the following day (all we know is that “the Court did not feel justified in changing the venue to Rangitikei”¹³⁵¹), but advised that it would now hear Hart’s application for an adjournment as to time. Hart argued that the Court lacked jurisdiction to hear the case and argued also that time should be allowed for all of the non-sellers’ applications to be lodged with the Court. In so arguing Crown counsel showed himself to be well aware of the importance the Himatangi case would set as a precedent. Hart

¹³⁴⁶ “Native Land Court, Otaki”, *Wellington Independent*, 3 March 1868, p 4 (Appendix 3.1.1).

¹³⁴⁷ “Native Land Court, Otaki”, *Wellington Independent*, 3 March 1868, p 4 (Appendix 3.1.1).

¹³⁴⁸ “Native Land Court, Otaki”, *Wellington Independent*, 3 March 1868, p 4 (Appendix 3.1.1).

¹³⁴⁹ “Native Land Court, Otaki”, *Wellington Independent*, 3 March 1868, p 4 (Appendix 3.1.1).

¹³⁵⁰ (1868) 1 B Otaki MB 101, 102 (Boast, *Native Land Court*, vol 1, 567-8).

¹³⁵¹ “Native Land Court, Otaki”, *Wellington Independent*, 3 March 1868, p 4 (Appendix 3.1.1).

argued that although the Governor had referred the case to the Court, he had no power to do so under s 40 of the the Native Lands Act 1867. The Court could not, or at least should not, hear the Himatangi case until all of the non-sellers’ claims had been lodged in the Court (Hart’s argument being clear proof that at this stage they had not been):¹³⁵²

Justice to the other claimants as well as to the Crown requires that the whole of the outstanding claims should be sent in, or that at least the extent of land claimed by each and the aggregate amount of land comprised in the whole of them, should be ascertained before the Court should proceed to ascertain the right of either claimant to a definite portion of the block.

But the Court refused to accept Hart’s argument. It was now too in the Court’s view late to raise a jurisdictional issue of this kind, which should have been thought of before the Governor’s referral.¹³⁵³ However “in order to give the Crown time to bring up witnesses” the case was adjourned until 11 March. The next day, however, Hart asked for a longer adjournment so to give the Crown time to prepare its case. Williams opposed this, and the Crown application was again refused. The case proper began at Otaki on March 11. There were still a number of preliminary points to be dealt with however, as will be seen.

9.9 Opening address by Thomas Williams

The case resumed on March 11 at Otaki. By now there were about 600 Maori people in attendance.¹³⁵⁴ At the start of the case on 11 March Williams began by addressing the Court in the Maori language, leading to the following exchange as recorded in the minutes:¹³⁵⁵

Mr Williams commenced to address the Court in Maori.

Mr Fox objected and applied to the Court to order that the proceedings should be conducted in English.

Mr Williams – objected and stated that Mr Hart on a former occasion assented to this course.

The Court declined to comply with the request of the counsel for the Crown giving reasons and ruled that the agent for claimants might conduct the case in Maori.

The record of this exchange is reproduced much more fully in the newspapers, however. Fox claimed that “throughout the British dominions” counsel were never permitted to address the Courts of Record in a “foreign tongue”:¹³⁵⁶

The agent for the claimants commenced to address the Court in Maori, when the counsel for the Crown raised an objection. He submitted to the Court that, in the first place, the Native Lands Court being a Court of Record, the addresses from the counsel, or advocate, on both sides ought properly to be in the

¹³⁵² “Native Land Court, Otaki”, *Wellington Independent*, 3 March 1868, p 4 (Appendix 3.1.1).

¹³⁵³ “Native Land Court, Otaki”, *Wellington Independent*, 3 March 1868, p 4 (Appendix 3.1.1_):

After an adjournment of an hour and a half, for deliberation, the Court refused to grant the postponement applied for, on the ground that this question should have been considered before the claims were referred to the Court by the Governor, in the exercise of his discretion: that the Court could not allow the supposed or admitted existence of other unsatisfied claims which may hereafter be referred to it to affect its decision in the matter: that the duty of the Court was to hear and determine the claims already brought forward irrespective of all others.

¹³⁵⁴ “Native Lands Court, Otaki”, *Wellington Independent*, Vol XXII, Issue 2648, 14 March 1868, p 5 (Appendix 3.1.1).

¹³⁵⁵ (1868) 1C Otaki MB 192. There is a much fuller record of the debate over the use of Maori in the case in the *Wellington Independent*, Vol XXII, Issue 2648, 14 March 1868, p 5 (Appendix 3.1.1).

¹³⁵⁶ “Native Lands Court, - Otaki”, *Wellington Independent*, March 11, 1868 (Appendix 3.1.1).

English language; secondly, that it was scarcely courteous to the Crown that the European agent for the Native claimants should be allowed to address the Court in a language of which the gentleman representing the Crown was ignorant, especially when (as in the present case) the agent for the natives, was equally conversant with English and Maori. The learned counsel said that in the absence of authorities to which it might be necessary to refer, and which might not be immediately accessible to the Court, he would not press the legal objection, although he believed he was right in stating that in no other Court of Record throughout the British dominions was it the practice to allow counsel to address the Court in a foreign tongue.

Fox added that in any case if Williams was allowed to address the Court in Maori this would cause inconvenience for both the Court and the Crown. (In fact, both Smith and Rogan, and of course the assessors, spoke Maori fluently.) Williams responded that Hart had not objected earlier, pointing out in addition that Walter Buller, who was sitting next to Fox as part of the Crown team, also was fluent in Maori and could “detect any discrepancy in the interpretation and call attention to it”. The Court’s principle reason for refusing the Crown’s application, interestingly, was that the Maori assessors did not understand English:

The Court ruled that as the Bench was composed partly of Native Assessors, to whom the English language would be unintelligible, it would be a fair concession to allow the agent for the claimants the privilege of addressing the Court in the Maori language.

Before getting fully underway, and after saying that he he hoped that that the Court would not be too strict with him, given that he was not a lawyer, Williams asked the Court whether he should produce a full list of the owners of the block immediately, or whether this could be produced later in the proceedings. The Court told Williams that this was required immediately, and Fox wighed in to insist on this as well “lest after the judgment of the Court had been given in the present case other claimants should spring up, and so on, *ad infinitum*.”¹³⁵⁷ Williams, caught unprepared, asked for an adjournment, and was given half an hour to complete the list. This inflexibility seems very unfair. Compiling a full list of dissentient non-sellers was never going to be easy. After the half hour’s adjournment had gone by Williams handed in his original list, with a few minor corrections (all he would have had time to do) and the case went on.¹³⁵⁸ Anyone who regarded themselves as having interests in Himatangi and being a non-seller but who was not on Williams’ list now had their interest in effect cancelled, at least at this stage. The claimants comprised “Parakaia Te Pouepa, and fifteen other natives, all of the Ngatitiranga hapu of the Ngatiraukawa tribe”.¹³⁵⁹

Fox now proposed that a complete copy of the Rangitikei-Manawatu deed be produced, and called Walter Buller to produce it. Another preliminary issue was the claim made by Ngati Raukawa that many of those who had executed the December 1866 deed had been drunk, the implication presumably being that the signatories had been plied with liquor by the government at the time, or that those who had signed it would not have done so if they had been sober. Buller, who had witnessed the signatures and the marks on the deed, gave evidence that this was not true.¹³⁶⁰

I am a Resident Magistrate. Am acting under direction of Land Purchase commissioner for purchase of Rangitikei block. I am acquainted with the deed of purchase held by you¹³⁶¹ purporting to be the deed of sale of land between Rangitikei and Manawatu. I witnessed every signature or mark. In other cases there

¹³⁵⁷ Ibid (*Well. Independent*) (Appendix 3.1.1).

¹³⁵⁸ Ibid (*Well. Independent*).

¹³⁵⁹ Ibid (*Well. Independent*).

¹³⁶⁰ (1868) 1 C Otaki MB 193-194. The version in the *Wellington Independent* record of the case is slightly different but to the same effect (see Appendix 3.1.1)

¹³⁶¹ That is, the Court – the deed had been produced in evidence.

were other witnesses. Deed dated December 13th put in to court. I wish to state on my oath with reference to the signatures and marks here that in every case the persons signing were sober. It has been said that in some cases the persons signing were drunk. That is not true.

How Buller could be so sure is unclear, but even if the signatories were sober that obviously did not dispose of the issues of whether they had a right to sell, the Crown had a right to buy, and the extent of the interests acquired by the provincial government.

Williams then finally went ahead and opened the claimant case, addressing the Court in the Maori language. The address in Maori language has not survived, but the minutes do record a disjointed summary of his opening submissions in English. Williams' main emphasis was on the process of land acquisition in the region by the Crown after 1840 and in particular Ngati Raukawa's agreement to allow Ngati Apa to sell land to the north of the Rangitikei, their strong preference for an investigation of title by the Native Land Court, notwithstanding the exclusion of the block under the 1862 and 1865 Acts, and their disinclination to take part in Featherston's purchase:¹³⁶²

Mr Williams – addressed the Court in opening the case of claimants – history of coming of Ngatiraukawa – in 1840 treaty of Waitangi – the land was Ngatiraukawa's – Ngatiapa were living on the other side of Rangitikei – lived to 1846 and 1847 – Ngati Apa wished to sell – McLean bought – Ngatiraukawa wished to keep from Rangitikei to Turakina – 'runanga' of Ngatiraukawa – agreed to give Te [Anaua?] – Ngatiraukawa and Ngatiapa – 'Ae kahore'¹³⁶³ – money for Rangitikei sold by Ngatiraukawa – Te Ahu o Turanga referred to Ngatiraukawa by Government – given by Ngatiraukawa to Rangitane – 1858 Ahu o Turanga sold to Government – Rangitane received money and gave to Ngatiraukawa – 1858 Awahou sold by Ngatiraukawa – 1854 Ngati Apa leasing on this side of Rangitikei – sent back by Ngatiraukawa – mill at Makohai. Mohi asked for land of Nepia Taratoa – granted three years for £60 – leases of other lands with Ngati Apa as joint Lessees – proceeds of loans – in 1863 Ngatiraukawa suspicious at death of Nepia – proposed arbitration – Mr McLean chosen – Dr Featherstone [sic] came instead – 1862 Native Land Act – exception of Manawatu block.

Featherstone proposed to buy and Ngatiraukawa knew why land was excepted. 1865. Application to assembly¹³⁶⁴ to remove restrictions – refused – meeting of Ngatiraukawa to hold land – a few agreed to sell – 1866. Featherstone went to Takapu – meeting of the tribes – Ngatiraukawa Ngatiapa &c were present – 6 tribes – agreed to sell – Some of Ngatiraukawa assented – majority wished for investigation – Featherstone said NL Court had no jurisdiction – price agreed at £25,000 – Ngatiraukawa applied to Govt for investigation before payment of money – December 1866 meeting at Parewanui to pay £25,000 – few of Ngatiraukawa went.

A much fuller translation of Williams' address in Maori was, however, printed in the *Wellington Independent* on 14 March. It can be seen to be an over-coloured and tendentious narrative in many ways, but a detailed critique of it would seem to be unnecessary. The newspaper version at least allows us to gain a full understanding of the Ngati Raukawa case in 1868. Williams' narrative of the various heke to the south is very clear, and although over-simplified is accurate and informative. Significantly the judge's notes make no reference to Williams' impassioned remarks on the Treaty of Waitangi at the end of his address:¹³⁶⁵

Court! Parakaia and his friends thank the Government and the Assembly for allowing their claims to be brought into the Native Land Court. This may be regarded as a step in the way of the instruction of the

¹³⁶² (1868) 1C Otaki MB 194-195.

¹³⁶³ "Yes no".

¹³⁶⁴ i.e. to the House of Representatives.

¹³⁶⁵ "Native Lands Court, Otaki", *Wellington Independent*, Vol XXII, Issue 2648, 14 March 1868, p 5 (see Appendix 3.1.1).

Maori people. It will show that no land can be claimed by the Crown unless all the Maories are satisfied. There are eight tribes who are party to the sale. It is said that these tribes are at enmity with each other. I deny this accusation. I assert that all these tribes are loyal subjects of the Queen. The Ngatiraukawa non sellers say they are willing to accept the decision of the Court whether for or against them. The only fear on the part of the Ngatiraukawa and the Ngatitua is that the deed of cession may be accepted as establishing the claim of the Muaupoko and other tribes.¹³⁶⁶

This land belonged originally to the Ngatiapa, Rangitane, and Muaupoko. These tribes were conquered by the Ngatitua, Ngatiraukawa, Ngapuhi, and Ngatiawa. I will relate how this came about. Hongi Hika visited England. He was astonished and delighted with the civilisation and greatness of the English people. He was introduced to King George, and shook hands with him. He said to him, Sire, why have you these thousands of soldiers and these great vessels of war. The King replied that they were to enable him to extend his conquests, and to bring other parts of the world under his dominion. Hongi said "Your words are good. When I return to New Zealand I shall follow your example." He asked the King for guns. The King gave him guns and powder.¹³⁶⁷ When Hongi returned to New Zealand he armed his tribe, the Ngapuhi, and made war against other tribes. After this, Tamati Waka Nene, a Ngapuhi chief, visited Te Rauparaha, and upbraided him with not following the example of the King of England. The Ngapuhi then invaded the southern part of the Island,¹³⁶⁸ and were followed by the Ngatitua, who, after their conquests, settled at Kapiti. After that came Ngataua¹³⁶⁹ and Ngatiwhakaterere, a hapu of the Ngatiraukawa. They made further conquests, and settled at Waikanae. The Ngatiraukawa of Taupo heard of this, and came on a visit to Te Rauparaha and returned. Afterwards another party came down. Te Rauparaha told them to go back to Taupo and Maungatautari, and bring down the whole of their people to occupy these lands. In 1830 the Ngatiraukawa came down. They conquered the Ngatiapa at Rangitikei. They conquered the Rangitane at Manawatu. They settled themselves at Kapiti. After this Te Rauparaha sent them back to attack the Rangitane and Muaupoko again. My witnesses will give you further particulars.

Williams claimed that the Rangitikei region was settled by Ngati Raukawa around 1835.

In the year 1835, Rangitikei was finally settled by Ngatiraukawa. Of the conquered tribes some were living in captivity. Te Rauparaha's command was that all these people should be killed, but Ngatiraukawa saved them.

Williams went on to discuss the Treaty of Waitangi:

The treaty of Waitangi was brought here in 1840. In that year the tribe who had possession of the land was the Ngatiraukawa. The Ngatiapa were residing on the other side of Rangitikei, so also were some of the Ngatiraukawa. Those of the Ngatiapa and Rangitane who were on this were in a state of captivity. The piece for which a claim is now before the Court, was at that time occupied by Parakaia's hapu. The treaty of Waitangi guarantees the tribes in all their possessions. Accordingly these tribes were by the treaty guaranteed in possession of this land.

Williams' next subject was the Rangitikei-Turakina purchase:

¹³⁶⁶ This is very plausible, and is an interesting remark: i.e. Ngati Raukawa and Ngati Toa saw the Crown's actions as undercutting their mana.

¹³⁶⁷ George IV did nothing of the kind, although it seems that Hongi and the King did have conversations about weapons. Hongi acquired guns and powder at Sydney on the return voyage. It is sometimes said that Hongi paid for the guns by selling the gifts that the King had given him, but Hongi's biographer doubts this: see D U Cloher, *Hongi Hika: Warrior Chief*, Viking, 2003, 146-7.

¹³⁶⁸ This is a garbled reference to the first taua, sometimes known as Amiowhenua, in which Te Rauparaha and Te Rangihaeata of Ngati Toa participated.

¹³⁶⁹ Sic – this must be a misprint in the newspaper for Ngati Tama. It is widely-recorded that this taua was made up of Ngati Tama and Ngati Whakaterere.

They continued to reside there till the years 1846-47. At this time the Ngatiapa evinced a desire to sell land. Mr McLean was at that time the Land Purchase Commissioner. The Ngatiraukawa, after much deliberation, decided on leaving at the disposal of the Ngatiapa the land north of Rangitikei River. The Ngatiraukawa attended Mr McLean's meeting at Te Aruhura. The chiefs of Ngatiraukawa, addressing Mr McLean on that occasion, told him he might buy the land north of the Rangitikei from the Ngatiapa, but that the land south of the Rangitikei would be retained by the Ngatiraukawa. Hori Kingi te Anau asked the Ngatiraukawa chiefs "Do you consent to the land north of the Rangitikei being sold by the Ngatiapa? The two or three hundred of the Ngatiraukawa who were present, replied "Yes". Hori then asked, "Do you keep the other side for yourselves and the Ngatiapa jointly?" They replied "Yes-No". The Ngatiraukawa did not receive any share for the payment for the land south of the Rangitikei river. The Ngatiapa ought not to interfere with this land. They sold the other side.

He then went on to discuss the Te Ahuaturanga transaction and Rangitane:

After that, the Rangitane expressed a desire to sell the Ahuaturanga (Upper Manawatu) block. They went to Mr McLean and to the Governor to talk about the sale. They went to Auckland. Mr McLean and the Governor said: "It will not be right for you to sell without the consent of Ngatiraukawa." The Ngatiraukawa chiefs again deliberated and decided on letting the Rangitane have the disposal of this land. They handed it over to Hirawanui, the Rangitane chief. The Rangitane afterwards sold this land to the Crown.

Then came the Te Awahou transaction, involving Ngati Raukawa themselves:

In the year 1858, the Ngati Raukawa sold the Awahou (Lower Manawatu) block to the Crown.

Williams summed all this up by emphasising that Ngati Raukawa had shown "three separate acts of kindness":

I will show that the Ngatiraukawa has shewn three separate acts of kindness to these tribes. 1st. They saved them from being killed by the Ngatitoo. 2nd. They allowed the Ngatiapa to sell the land north of Rangitikei. 3rd. They allowed the Rangitane tribe to sell the Ahuaturanga block.

Then came disputation over leasing, which Williams explained in detail:

In the year 1854, the Ngatiapa came to lease the lands on this side of Rangitikei. When the Ngatiraukawa heard of this they interfered and prevented this. In the year 1857, the Ngatiraukawa expressed a desire to have a flour mill built at Makowhai. The Ngatiapa asked to have share in it. The Ngatiraukawa consented, arranging that Ngatiapa should collect a part of the money. As the Ngatiapa could not raise the necessary funds, Mohi, their chief, asked Nepia Taratoa, to allow them to take a piece of the land, so that he might raise money by the leasing of it. Nepia consented, and agreed to let Mohi lease the land for three years, in order that he might raise £60. Mohi consented to this arrangement. Afterwards, when some more of their lands were let, the names of some of the Ngatiapa were introduced. My witnesses will give you further particulars. The Ngatiraukawa continued their system of kindness by allowing Ngatiapa to share in the rents. The Ngatiraukawa, also, whether wisely or not, listened to the advice of their Ministers – "Children, love one another." I will show the Court that there was nothing in this matter of Leases. They were all illegal, and therefore had no effect in law.¹³⁷⁰ In the year 1863, the Ngatiraukawa, on the death of Nepia, began to be suspicious that the Ngatiapa coveted the land. The fact that they shared in the rents was now brought forward as a claim to the land. The Ngatiraukawa were angry, and threatened to drive the Ngati Apa away. These tribes quarrelled and the Ngatiraukawa asked the Government to find someone to arbitrate.

¹³⁷⁰ Williams must mean they were illegal because the native title had not yet been extinguished, meaning that Maori could not transfer to Europeans a leasehold estate.

Ngati Raukawa were expecting that McLean would be sent to arbitrate, but in fact the person sent was Isaac Featherston:

The Government agreed to send Mr McLean, but Dr Featherston was sent instead. I omitted to say that in 1862 the Native Lands Act was passed, and all that land between Ohau and Rangitikei was exempted from its operation. In 1864 the person who was sent to investigate the Rangitikei affair arrived. He told Ngatiapa that Ngatiraukawa had consented to an investigation. The Ngatiapa refused to agree, but offered to sell the land to him. He at once agreed to this; and the Ngatiraukawa then found why it was their land had been excepted under the New Zealand Act.¹³⁷¹ In 1865 the Ngatiraukawa petitioned the Assembly to repeal the clause. The Assembly did not agree to this. In 1865, they agreed that the land should be purchased, and Dr Featherston was sent up to buy it. The bulk of the Ngatiraukawa refused to sell. In the year 1866 Dr Featherston met all the tribes at Te Takapu. The tribes represented at that meeting were – Ngatiapa, Ngatiraukawa, Ngatitua, Rangitane, Muaupoko, and Wanganui. There were six tribes present. Five of those tribes consented to sell Rangitikei to Dr Featherston, the Commissioner. Some of the Ngatiraukawa who were present consented to the sale. The majority of the Ngatiraukawa asked to have an investigation of title previous to any sale. The Commissioner replied that it could not be taken into Court. Dr Featherston then intimated that he was prepared to purchase the land, as there was an overwhelming majority in favour of the sale. Dr Featherston and the chiefs of these then arranged that £25,000 should be the price of the land. After the Takapu meeting some of the Ngatiraukawa went to the Governor, then to the Government and the Assembly, and remonstrated against the money being paid before the investigation of title. They would not listen. In the [sic] 1866 these tribes assembled to meet the Commissioner at Parewanui, in order to receive the purchase money. Only a few of the Ngatiraukawa – who were in possession of the land under the Treaty of Waitangi – were present at the meeting.

Williams commented ironically that Featherston had decided to conclude a new treaty of his own devising:

The treaty at that meeting was a new treaty between Kawana Hunia, Dr Featherston and others. I will show the Court that the Queen's Treaty of Waitangi was trodden underfoot by Dr Featherston. I am also much grieved because the treaty was broken by the Governor, by Ministers, and the Assembly. I now wish to ask the Court whether the treaty has any authority or not? The name attached to that treaty is that of Victoria, Queen of England. By that treaty the Queen guaranteed to the Ngatiraukawa and the Ngatitua, the sole possession of the Rangitikei-Manawatu block. I want the Court to show that the Treaty of Waitangi was not a "Sham" or a "Treaty of Blankets". Let it be shown that the treaty was a true one, and that the Queen did not attach her name to a false treaty. I claim this land for Parakaia and his people under the treaty. They were in possession when the treaty was ratified. It is therefore their land now.

It seems clear from this that Featherston was reluctant to allow the Native Land Court to become involved. The majority of Ngati Raukawa wanted an investigation, but Featherston had made it clear that the Court had no jurisdiction. Ngati Raukawa, for their part, wanted to have the land investigated in the Court before the transaction was completed – but Featherston, ignoring this, went ahead and concluded the purchase anyway.

Williams then went on to call the witnesses for the claimants, beginning with Matene Te Whiwhi. The first part of the claimant case dealt with the general traditional history of the region and Ngati Raukawa settlement. He then called evidence dealing with various specific issues in turn: the Turakina-Rangitikei purchase of 1849 and Ngati Raukawa's concession in allowing Ngati Apa to sell land as far south as Rangitikei, before moving on to the Te Ahuaturanga and Te Awahou purchases, the disputation between Ngati Raukawa and Ngati Apa over rents, and finishing up with some aspects of

¹³⁷¹ Sic – presumably the Native Lands Act is meant.

the Rangitikei-Manawatu purchase of 1866. The claimant evidence is reviewed in the next three sections.

Table: Himatangi decision No 1, 1868: Claimant witnesses

Name	Date	MB reference	Affiliation ¹³⁷²	Nature of evidence
Claimant case opened (Williams)	11 March 1868	(1868) 1C Otaki MB 194-195; <i>WI</i> ¹³⁷³ March 14 1868		
Matene Te Whiwhi	11 March 1868	(1868) 1C Otaki MB; <i>WI</i> March 14 1868	Ngati Raukawa	Describes Raukawa heke in detail. Describes the three Ngati Raukawa heke. The mana over the land as far north as the Whangaehu River was with Ngati Raukawa. In cxx by Fox: Parakaia’s hapu were living at Himatangi; as at 1840 it was a large hapu of about 100 people.
Parakaia Te Pouepa	12 March	(1868) 1C Otaki MB 200-206; <i>WI</i> March 14 1868	Ngati Raukawa Ngati Turanga	Describes heke and conflicts among the iwi at Kapiti. In 1840 Ngati Apa were living with Ngati Kauwhata at Oroua, and some were Nepia Taratoa. Ngati Apa had no mana over the land. Cxxd by Fox on Ngati Apa cultivations, eel-catching places, and places of residence.
Henare Te Herekau	12 March	(1868) 1C Otaki MB 206-8 <i>WI</i> March 14 1868	Ngati Raukawa Ngati Whakatere	Says he came to the region on Whirinui heke. Muaupoko, Rangitane, Ngati Apa conquered. These tribes have been raised up by Christianity and the notice of the government. Speaks “generally in corroboration of Parakaia’s evidence”. ¹³⁷⁴
Wirihana Te Angi Angi	12 March	(1868) 1C Otaki MB 208-9 <i>WI</i> March 14 1868	Ngati Raukawa Ngati Kauwhata	Supports other witnesses. Came with the first heke of Whatanui. Was present when the “Blanket Treaty” was signed (i.e. the Treaty of Waitangi).
Henare Te Waiatua	12 March	(1868) 1C Otaki MB 209-10 <i>WI</i> March 14 1868	Ngati Raukawa	Was born at Maungatautari. Came in the third heke. His hapu had Ngati Apa and Rangitane slaves. The three tribes (Muaupoko, Ngati Apa, Rangitane) had no mana over the land at 1840.
Rawiri Te Whanui	12 March	(1868) 1C Otaki MB 210-211	Ngati Raukawa Ngatimaiotaki	Born at Maungatautari. Came with second heke of Whatanui. Supports previous witnesses
Octavius Hadfield	13 March	(1868) 1C Otaki MB 211-216 <i>WI</i> 17 March 1868	-	Arrived at Otaki 1839. Ngati Raukawa possessed the land from Kukutauaki to Turakina under the mana of Te Whatanui. No Ngati Apa living on the block except at Tawhirihoe. “No Ngati Apa settlements

¹³⁷² Sometimes witnesses give both an iwi and hapu affiliation; where they do that I have included both. Sometimes no affiliation is recorded, and here I have made an educated guess from the context. After a witness had already given evidence and given their affiliation, they did not usually repeat this when giving evidence again later on in the case; here I have gone back to the affiliation given when first speaking.

¹³⁷³ *Wellington Independent*

¹³⁷⁴ *Wellington Independent*, 14 March 1868.

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				except their fishing settlements." Cxxd by Fox on Church lands.
Walter Buller (RM, also acting under direction of LPC for Rangitikei block	12 March	(1868) 1C Otaki MB WI 17 March 1868	-	Describes the purchase deed and the payments made at Parewanui. "A point having been raised as to what tribes had signed the deed, the agent for the claimants put Mr Buller in the witness-box and subjected him to a long examination as to the circumstances which led to the purchase of the Rangitikei-Manawatu block, as to the part he had taken in the transaction, and as to the precise manner in which the signatures were obtained." ¹³⁷⁵
Wi Parata	13 March	(1868) 1C Otaki MB 220-221 WI 17 March 1868	Ngati Awa Ngati Toa	Says he signed the deed in knowledge that Ngati Awa had no right. Buller induced him to sign. Payment of £1,000. Children in his house in Waikanae also signed the deed. ¹³⁷⁶
Matene Te Whiwhi [2]	13 March	(1868) 1 C Otaki MB 221-2	Ngati Raukawa	Describes conflicts in the Wairarapa between Ngati Toa, Ngati Awa and Ngati Kahungunu
Hoani Meihana Te Rangiotu	14 March	(1868) 1 C Otaki MB 222-227 WI 17 March 1868	Rangitane	Has heard the evidence of Archdeacon Hadfield and agrees with it. In 1840 Ngati Apa and Ngati Raukawa lived together at Pukepoto before 1840(in cxx). Muaupoko, Ngati Apa and Ngati Kahungunu had no mana over the land. Ngati Raukawa were in occupation. Ngati Raukawa were kind to Ngati Apa (223). In cxx by Fox says that he derived his mana from the Ngatiraukawa on the introduction of Christianity, and that Rangitane had their mana restored to them by the kindness of Whatanui. Was a signatory to the deed of cession. Signing the deed meant handing over the mana to the Queen.
Samuel Williams	14 March	(1868) 1C Otaki MB 227-231 (WI 17 March 1868)	-	Lives at Te Aute, Describes his role in the Rangitikei-Turakina block sale (1848). Assisted McLean to obtain Ngati Raukawa agreement. Was not present at the signing of the deed but was present at some of the discussions. Ngati Raukawa relinquished their mana over the land from Rangitikei to Turakina. He urged Ngati Raukawa to curtain their boundaries.
Rawiri Te Whanui (2)	14 March	(1868) 1C Otaki MB 231-233	Ngati Raukawa Ngati Maiotaki	Describes discussions at Otaki about allowing Ngati Apa to sell to Rangitikei. The older chiefs did not permit this, but younger leaders are prepared to accept missionary advice and modify the boundaries. The Rangitikei was a 'tuturu' boundary, and it was agreed that Ngati Apa and Ngati Raukawa would not cross the boundary: "it was agreed that all on the other side was for Ngatiapa, and Ngatiraukawa on this side".

¹³⁷⁵

Wellington Independent, 13 March 1868.

¹³⁷⁶

Matene Te Whiwhi (2)	14 March	(1868) 1C Otaki MB 233-234	Ngati Raukawa	Was also present when McLean came to Williams' house at Otaki and was involved in the debate. Favoured bringing the boundary to Rangitikei
Henare Te Herekau	14 March	(1868) 1C Otaki MB 234-236	Ngati Raukawa	Was present at the meeting at Te Awahou between Ngati Apa and Ngati Raukawa discussing the sale of the Rangitikei block. It was agreed that the boundary would be Rangitikei
Paranihi Te Tau	16 March	(1868) 1C Otaki MB 237-238	Ngati Pikiahu, Ngati Raukawa	Lives at Te Reureu. Was involved in discussions with McLean about the inland boundary of the Rangitikei block. Objected to boundary being at Otara. McLean fixed inland boundary at Te Houhou by agreement of Ngati Raukawa and Whanganui chiefs.
Parakaia Te Pouepa (2)	16 March	(1868) 1C Otaki MB 238-240	Ngati Raukawa, Ngati Turanga	Describes disputes with Ngati Apa over waerenga, ¹³⁷⁷ presumably south of the agreed Rangitikei boundary.
Katene Waihou	16 March	(1868) 1C Otaki MB 240	Ngati Parewahawaha, Ngati Raukawa	Agrees with Parakaia's testimony about disputes over waerenga. Agreement reached between Ngati Apa and Ngati Raukawa.
Aperahama Te Huruhuru	16 March	(1868) 1C Otaki MB 241-2	Ngati Parewahawaha, Ngati Raukawa	Describes disputation between Ngati Apa and Ngati Raukawa over waerenga
Hare Hemi [Taharapi]	16 March	(1868) 1C Otaki MB 242-3	? check	Describes meeting at Te Awahou and disputation between Ngati Apa and Ngati Raukawa
Parakaia Te Pouepa (3)	16 March	(1868) 1C Otaki MB 243-5	Ngati Raukawa	Describes discussions relating to the boundary of the Te Ahuaturanga block; boundary fixed at Oroua. Rangitane had to obtain Ngati Raukawa's consent to sell Te Ahuaturanga to the Crown. Stresses importance of Nepia Taratoa. Mentions meeting at Te Horo in 1858.
Hoani Meihana (2)	16 March	(1868) 1C Otaki MB 245-6	Rangitane	Describes the discussions over the Te Ahuaturanga boundary. Says that the south and southwest boundaries were fixed by Ngati Kauwhata and Ngati Whakatere. In cxx says that some of Ngati Raukawa and Ngati Kauwhata signed the deed.
Samuel Williams (2)	17 March	(1868) 1C Otaki MB 249-252 (WI 26 March 1868)	-	Te Ahuaturanga purchase. Emphasises his personal role in achieving agreement. Says that Te Ahuaturanga had been the subject of a "warm" discussion at Otaki about 1847. Ngatiraukawa had asserted their rights as far as Te Ahu o Turanga.
Te Kooro Te One	17 March	(1868) 1C Otaki MB 252-255 (WI 26 March 1868)	Ngati Kauwhata Ngati Raukawa	Lives at Puketotara. Te Ahuaturanga purchase. Has heard Parakaia's evidence about the fixing of the Oroua River as a boundary between Ngati Raukawa and Rangitane. Agrees with this. Nepia Taratoa proposed that the Oroua River should be the voundary.

¹³⁷⁷

Clearings for cultivations.

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Te Ara Takana	17 March	(1868) 1C Otaki MB 255-6 (WI 26 March 1868)	Ngati Kauwhata Ngati Raukawa	Te Ahuaturanga purchase; disputation between Ngati Kauwhata and Ngati Te Ihiihi. Raukawa consented to Oroua boundary but Ngati Kauwhata did not agree; matter settled at a meeting at Te Awahuri
Hoeta Te Kahuhui	17 March	(1868) 1C Otaki MB 257 (WI 26 March 1868)	Ngati Kauwhata	Describes meetings at Puketotara regarding Oroua boundary
Wirihana Te Angi Angi	17 March	(1868) 1C Otaki MB 257 (WI 26 March 1868)	Ngati Kauwhata	Has heard evidence about meetings; was present at meeting at Te Awahuri; agreed to boundary of Te Ahuaturanga block
Takana Takoto	17 March	(1868) 1C Otaki MB 247	Ngati Kauwhata	Assented to Te Ahu o Turanga block; would not have assented if he had known that Rangitane would cross it
Parinihi Te Tau	17 March	(1868) 1C Otaki MB 257-8 (WI 26 March 1868)	Ngati Kauwhata	Same evidence as previous witness
Henare Te Herekau (3)	17 March	(1868) 1C Otaki MB 258 (WI 26 March 1868)	Ngati Raukawa	Was present at meeting at Puketotara. Agreed that Oroua would be the boundary between Ngati Raukawa and Rangitane. Ngati Kauwhata objected. Was not present at the Te Awahuri meeting.
Parakaia Te Pouepa (4)	17 March	(1868) 1 Otaki MB 258-260 (WI 26 March 1868).	Ngati Raukawa	Gives evidence on Te Awahou sale (1858). The sale was first proposed by Ihakara. Describes discussions within Ngati Raukawa and with McLean. Some money was paid to Ngati Apa, Ngati Toa, and Muaupoko
Hami Hemi Taharape	17 March	(1868) 1C Otaki MB 261-2	Ngati Raukawa	Speaks on Te Awahou sale. Has no distinct recollection of the meetings which preceded the Te Awahou sale – there were so many of them. Ihakara sold the land; he sold all his land between the Rangitikei and Manawatu rivers. The tribe opposed the sale, and for some time the sale was in abeyance. All Ihakara's claims are within Te Awahou. Was at the meeting when money was paid for Te Awahou. Ngati Toa and Ngati Apa were there. Only Ngati Raukawa had a right to sell.
Ihakara Tukumarū	18 March 1868	(1868) 1C Otaki MB 262-66	Ngati Raukawa	Te Awahou sale. He was the head of the selling party, and Nepia Taratoa of the non-sellers. Paid money to Ngati Apa, Rangitane, and Muaupoko.
Samuel Williams (3)	18 March	(1868) 1C Otaki MB 267-269	-	Speaks at length on Te Awahou sale. Describes divisions of opinion within Ngati Raukawa on the sale.
Henare Te Herekau	18 March	(1868) 1C Otaki MB 269-270	Ngati Raukawa	Describes how he frustrated a Ngati Apa attempt to lease land on the Ngati Raukawa side of the Rangitikei by driving off the tenant's sheep.

Chapter 9. "Much disputing with our neighbours": The Crown, Ngati Raukawa, and the Land Court: the Himatangi case 1868

Miritana Te Rangi	18 March	(1868) 1C Otaki MB 270	Ngati Raukawa	Assisted in driving off the sheep.
Hoani Meihana Te Rangiotu (3)	18 March	(1868) 1C Otaki MB 270-272	Rangitane	Describes dispute between Ngati Apa and Ngati Raukawa over the construction of a mill at Makowhai
Punipi Te Kaho	18 March	(1868) 1C Otaki MB 272	Ngati Kahoro, Ngati Raukawa	Dispute of over the mill at Makowhai
Miritana Te Rangi (2) (recalled)	18 March	(1868) 1C Otaki MB 273	Ngati Raukawa	Mill dispute
Henare Te Herekau (4)	18 March	(1868) 1C Otaki MB 273	Ngati Raukawa	Mill dispute
Parakaia Te Pouepa (5)	18 March	(1868) 1C Otaki MB 272	Ngati Raukawa, Ngati Turanga	Mill affair; Nepia Taratoa agreed to lease land for mill to Ngati Apa for three years; Parakaia very displeased at the time
Hoani Meihana Te Rangiotu (4) (recalled)	18 March	(1868) 1C Otaki MB 274	Rangitane	Mill dispute; dispute occurred around 1861
Parakaia Te Pouepa (6) (recalled)	18 March	(1868) 1C Otaki MB 275-7	Ngati Raukawa, Ngati Turanga	Disputes between Ngati Apa and Ngati Apa over leases
Mihi Te Raotea	18 March	(1868) 1C Otaki MB 278	Ngati Raukawa?	Leasing disputes at Himatangi
Parakaia Te Pouepa (7)	19 March 1868	(1868) 1C Otaki MB 279-80	Ngati Raukawa, Ngati Turanga	Leasing issues in 1852-53
Aperahama Te Huruhuru	19 March	(1868) 1C Otaki MB 279-80	Ngati Raukawa	Leasing disputes
Amiria Taraotea	19 March	(1868) 1C Otaki MB 281-2	Ngati Rakau, Ngati Raukawa	Leasing disputes
Pitihira Te Kuru	19 March	(1868) 1C Otaki MB 282-4	Ngati Raukawa	Leasing and boundary disputes
Henare Te Herekau (5)	19 March	(1868) 1C Otaki MB 284	Ngati Raukawa	Skipwith lease. Was opposed to the whole of the Manawatu being leased as runs.
Te Kooro Te One (2)	19 March	(1868) 1C Otaki MB 285	Ngati Kauwhata	Leasing issues.
Samuel Williams (4)	19 March	(1868) 1C Otaki MB 285	-	Skipwith lease. The government was opposed to Ngati Raukawa leasing their lands.
Te Kooro Te One (3)	19 March	(1868) 1C Otaki MB 286	Ngati Kauwhata	Comprehensive evidence about disputation between Ngati Raukawa and Ngati Apa over rents; role played by Rangitane in the dispute; arrival of Featherston to mediate; Ngati Apa offer to sell; Raukawa decline; Featherston decides to impound the rents. The Court queries whether the evidence is relevant to any of the issues before the Court.

Chapter 9. "Much disputing with our neighbours": The Crown, Ngati Raukawa, and the Land Court: the Himatangi case 1868

Hoani Meihana Te Rangiotu (5)	20 March 1886	(1868) 1C Otaki MB 291	Rangitane	Produces letter to Featherston.
Henare Te Herekau (6)	20 March	(1868) 1C Otaki MB 292-3	Ngati Raukawa	Speaks about a dying declaration made by Paratene relating to interests in the Himatangi block
Parakaia Te Pouepa (8)	20 March	(1868) 1C Otaki MB 293-99	Ngati Raukawa, Ngati Turanga	Also speaks about Paratene's declaration. Gives detailed evidence on the boundaries between Himatangi and the Te Awahou block
Amiria Taraotea	21 March	(1868) 1C Otaki MB 304-309 (WI 26 March 1868)	Ngati Raukawa	Describes boundaries of Himatangi block and identifies the owners of Himatangi as Ngati Rakau, Ngati Turanga, Ngati Te Au, all hapu of Ngati Raukawa
Parakaia Te Pouepa (9)	21 March	(1868) 1C Otaki MB 309	Ngati Raukawa, Ngati Turanga	Ngati Rakau, Ngati Te Au, Ngati Turanga, and Ngati Takihiku a branch of Ngati Patukorohu were owners, Gives names of owners belonging to Ngati Te Au, Ngati Rakau, Ngati Turanga who were owners in Himatangi.
Hare Hemi Taharape	21 March	(1868) 1C Otaki MB 317-321	Ngati Raukawa	Describes boundaries and gives detailed evidence of customary interests in Himatangi and Te Awahou area. Himatangi belongs to the three hapu Ngati Turanga, Ngati Te Au, Ngati Rakau. Not all of Ngati Te Au have interests at Himatangi: Nepia's section do not, but they interests at Rangitikei, Ohau and Omarupapako. Ngati Kauwhata have land adjoining Himatangi.
Pitihira Te Kuru	21 March	(1868) 1C Otaki MB 322-24	Ngati Raukawa	Describes fixing of boundaries between what became the Te Awahou purchase and Himantangi; the owners of Himantangi are Ngati Rakau, Ngati Te Au and Ngati Turanga. Some of Ngati Te Au are at Rangitikei (Nepia) and Ohau (Piahana).
Nirai Taraotea	21 March	(1868) 1C Otaki MB 324-26	Ngati Raukawa	Describes fixing of boundary between Te Awahou block and the land at Himatangi belonging to the three hapu – posts put in to mark boundaries.
Miritana Te Rangi	24 March	(1868) 1C Otaki MB 330-331	Ngati Raukawa	Describes Himatangi boundaries. Also describes boundary of Ngati Kauwhata in the same region. He cultivated at Himatangi at the time of the conquest but afterwards moved to Rangitikei and has no claim at Himatangi. Says that the Ngati Raukawa "were for keeping the land and not selling" (p 331).
Kapereriera Te Mahirahi	24 March	(1868) 1C Otaki MB 331-2	Ngati Raukawa	Boundaries. Himatangi belongs to the three hapu. The boundary of Ngati Kauwhata runs from Whitirea on the Manawatu River and goes towards Paepae
Akapita Te Tewe	24 March	(1868) 1C Otaki MB 333-335	Te Mate Awa, Ngati Raukawa	Boundaries. Te Awahou boundary. Produces sketch maps.
Te Koro Te One	24 March	(1868) 1C Otaki MB 335-38	Ngati Kauwhata	Boundaries. Describes boundary issue between Ngati Kauwhata, Ngati Te Ihi Ihi and Ngati Turanga

Henare Te Waiatua	24 March	(1868) 1C Otaki MB 338-9	Ngati Rangī, Ngati Raukawa	Lives at Taonui in the Orua district. Boundaries.
Wirihana Te Angi Angi	24 March	(1868) 1C Otaki MB 339	Ngati Raukawa	Boundaries.
Octavius Hadfield (2)	24 March	(1868) 1C Otaki MB 340-341	-	Boundaries. In <i>cxx</i> Hadfield says that “Mr McLean purchased on no principle”.
Rewiti Te Kohu	24 March	(1868) 1C Otaki MB 341	Ngati Te Ihi Ihi, Ngati Raukawa	Boundaries
Walter Buller	24 March	(1868) 1C Otaki MB 341-42	-	Re a claim that a person who was deaf and dumb received a payment from the government for interests in Rangitikei-Manawatu
Henare Te Herekau (6)	24 March	(1868) 1C Otaki MB 342-43	Ngati Raukawa	As above.
Moroati Kiharoa	25 March	(1868) 1C Otaki MB 348-49	Ngati Pare, Ngati Raukawa	Payments for Rangitikei-Manawatu
Claimant case closes				

9.10 Evidence and cross-examination of Matene Te Whiwhi and Parakaia Te Pouepa

One feature of the case was that Ngati Toa witnesses were involved on both sides, with Matene Te Whiwhi giving evidence for Ngati Raukawa and Tamihana Te Rauparaha for the the Crown. Ngati Kauwhata were also divided. Te Kooro Te One gave evidence for the claimants, speaking on three separate occasions. He gave a very full description of the disputes at Himatangi and of Featherston’s actions.¹³⁷⁸ But Tapa Te Whata of Ngati Kauwhata gave evidence for the Crown, incidentally giving detailed and useful evidence of Ngati Kauwhata’s first settlement of the Manawatu.¹³⁷⁹

Matene Te Whiwhi, who affiliated to Ngati Raukawa and Ngati Toa, was the first person to give evidence in the case (11 March)¹³⁸⁰ According to the *Wellington Independent*, not much interested in the details of tribal history, “Matene Te Whiwhi, a chief of the Ngatitōa, gave a long, but rather disconnected account of the migrations and conquests of the Mgatitōa and Ngati Raukawa tribes”.¹³⁸¹ Matene gave detailed evidence relating to the migrations of Ngati Toa and Ngati Raukawa to the Kapiti region in the decades before the Treaty (in which he himself had participated as a young child). He described a sequence of migrations of Ngati Raukawa people to the Kapiti region some years after Ngati Toa were already established there, and Ngati Toa’s gift of a large area as far north as Whangaehu to Ngati Raukawa. He also says that Ngati Apa, Rangitane, and Muaupoko decided to abandon the district and move to the Wairarapa, but were repulsed.¹³⁸²

6th year, 200 of Ngati Raukawa came down from Maungatautari and Taupo Taupo – Te Whatanui – Taratoa and others came to get powder and guns from the ‘pakeha’ – they returned.

¹³⁷⁸ (1868) 1C Otaki MB 286-290.

¹³⁷⁹ (1868) 1E Otaki MB 612-613.

¹³⁸⁰ See (1868) 1C Otaki MB 195-199.

¹³⁸¹ *Wellington Independent*, 14 March 1868, p.5. (Appendix 3.1.1)

¹³⁸² (1868) 1C Otaki MB 197-199.

7th year another party of Ngati Raukawa 60 in number – Te Ahu Karamu and Tuai Nuku, chiefs – went to Kapiti – Ngati Toa thought fit to give the land as far as Whangaehu because of the murder [198] of Te Poa by Muaupoko at Ohau – Ngati Toa chiefs assented and gave Te Ahu Karamu the land “The land on which Te Poa was killed”. Te Ahu Karamu returned – Te Rauparaha then told Ngati Awa to go to Waikanae and leave the land for Ngati Raukawa. At this time Ngati Apa, Rangitane and Muaupoko left the district and went to the Wairarapa. The Wairarapa people fought with them and besieged their settlements. After a year’s absence they returned. Some of them went to Waitotara, some to Whanganui – some to Rangitikei and thence to their ‘hunaonga’¹³⁸³ (Te Rangihaeata) (at Kapiti) who had taken Pikinga a Ngati Apa woman as his wife.

8th year Ngati Raukawa came in a whole body brought by Te Ahu Karamu – went to Kapiti to be near the ‘Pakehas’, on obtaining guns and ammunition came to Otaki.¹³⁸⁴ A Ngati Apa chief had been killed at Waitotara and then commenced fighting between Whanganui and Ngati Apa – Ngati Raukawa were then living on the other side of Rangitikei. Ngati Raukawa and Ngati Apa’s war party went to Whanganui, met enemy at Turakina – Whanganui were beaten. Takarangi, father of Mete Kingi’s wife, was killed. Ngati Apa ran away. Ngati Raukawa retrieved the day and beat Whanganui. This was the end of the fighting between Ngati Apa and Whanganui. [199] The ‘mana’ of Ngati Raukawa was then established at Turakina. The greater part of Ngati Apa were with Rangihaeata at Kapiti, as descendants of Rangihaeata.

In Matene Te Whiwhi’s view Ngati Raukawa had the mana over the land as far north as Whangaehu. According to the *Wellington Independent* Matene concluded “by stating that, at the date of the Treaty of Waitangi, the “mana” of the Ngatiraukawa was established over the land as far north as the Whangaehu River, and that, at this period, the Ngatitiranga, the hapu to Parakaia belongs, were established at Himatangi”.¹³⁸⁵ He was cross-examined by Fox on the date of the Treaty of Waitangi and on who was resident at Himatangi in 1840. As the cross-examination was summarised in the *Wellington Independent*:¹³⁸⁶

The Treaty of Waitangi was signed in 1840. I don’t recollect the exact date. I don’t know how much of the land Parakaia’s hapu occupied. We had no surveys in those days. I don’t know what the boundaries were. I simply know that they were living there. It was a large hapu at the time, numbering about a hundred, besides women and children. I someone pointed out a portion of the land claimed and said, “That does not belong to the Ngatitiranga.” I could not say whether he was right or not. The Ngatikauwhata lived in the neighbourhood.

Parakaia Te Pouepa, Williams’ next witness (12 March) gave a full account of the various battles fought by Ngati Raukawa with Muaupoko, Rangitane and Ngati Apa as they moved into the region, briefly mentioning Ngati Raukawa’s expeditions to Hawke’s Bay and Whanganui before taking the decision to move to the PkM region. According to the *Wellington Independent*, the Court asked Parakaia to keep the narrative as short as possible, but he insisted on telling the full story.¹³⁸⁷

Parakaia Te Pouepa. Lives at Otaki. Belongs to the Ngatitiranga hapu of the Ngatiraukawa tribe. The witness then commenced to give a history of the migrations of his tribe. The Court suggested that the witness should confine himself to the history of the final migration upon which the Ngatiraukawa rest

¹³⁸³ Son-in-law.

¹³⁸⁴ Matene Te Whiwhi is presumably referring to the Te Whirinui expedition, which according to Ballara was led by Te Whatanui. Ballara dates this to 1828 or early 1829: see Ballara, *Taua*, 342.

¹³⁸⁵ *Wellington Independent*, 14 March 1868, p.5. (Appendix 3.1.1)

¹³⁸⁶ *Wellington Independent*, March 14 1868 (Appendix 3.1.1).

¹³⁸⁷ *Wellington Independent* March 14 1868 (Appendix 3.1.1)

their claim of conquest. The agent for the claimants agreed; but Parakaia insisted on telling the whole story from the beginning, and was accordingly allowed to proceed.

Like Matene Te Whiwhi Parakaia Te Pouepa indicates that there were three separate heke of Ngati Raukawa and confederated groups, although the details vary somewhat. If I am understanding Parakaia's evidence correctly he describes firstly the earliest of the the three heke, leading by Whatanui. He may be suggesting that this first heke came from Hawke's Bay via Whanganui.¹³⁸⁸

[I live at] Otaki – [I affiliate to] Ngatiraukawa Ngatituranga – 'take of Ngatiraukawa was Hongi Hika's conquests¹³⁸⁹ - Whatanui went to Ahuriri¹³⁹⁰ from Maungatautari to take that place for Ngatiraukawa – after a time heard that Rauparaha was here at Kapiti – party came down to take Whanganui – a party called Whirinui¹³⁹¹ came – on the way heard Reremai a woman of Ngatiraukawa had been killed by Ngati Apa at [Kainanga] on the other side of Rangitikei – I believe I am related to her – five generations – same ancestor – we attacked Ngati Apa and [Tawhio¹³⁹²] was killed – came on to Kapiti – Rauparaha then invited Whatanui and [201] Hukiki to come and occupy this country between Turakina and Porirua – Te Rotokara near Ohau and Te Whakapuni on the other side of Manawatu – near Te Wharangi. These appropriated by Hukiki.

Other Raukawa heke came afterwards:

Whatanui assembled the Ngatikauhata [sic] at Paua iti Mangatotara and spoke of coming. A second party came on to inspect the country came on to inspect the country and after that the 'heke nui'. Hukiki, Whatanui and all the Ngatiraukawa chiefs came in this heke – came by Taupo to Hurakina – fought Ngati Apa there and took prisoners – between Oroua and Rangitikei Ngati Apa were met and defeated. At Te Katoa Te Awahuri killed more Ngati Apa. Kate, a woman, was saved. Came to Manawatu and found Rangitane and killed some. Came to Kapiti. Rauparaha then wished us to destroy Muaupoko and Rangitane. No word about Ngati Apa. Attacked Rangitane. "Pa horo." Whatanui wished to spare the survivors. Ngati Apa invited to come out. Ngati Toa came to fight Muaupoko. "Pa horo". This was the last. "Kua mutu te patu". Ngati Raukawa then proceeded to apportion the lands and Manawatu and Rangitikei among themselves.

Te Whatanui had been "kind" to Ngati Apa; if "Whatanui had not saved them they would not have been spared".¹³⁹³ Parakaia said that it was because of the influence of missionaries that Ngati Apa had recently begun to reassert themselves. This was the reason that now "caused them to say the land was theirs".¹³⁹⁴ The three Ngati Raukawa who occupied Himatangi had disputed about their rights amongst themselves, but this was none of Ngati Apa's affair: Ngati Apa "took no part in these disputes for their right was gone".¹³⁹⁵

Parakaia Te Pouepa was cross-examined at some length by Fox over the Rangitikei-Turakina purchase and other matters. Parakaia insisted that Ngati Apa had only been able to sell land north of the Rangitikei to the Crown because Ngati Raukawa had decided to acquiesce in their doing so

¹³⁸⁸ (1868) 1C Otaki 200.

¹³⁸⁹ Meaning presumably that it was the dislocation caused by Nga Puhi attacks in Hauraki etc was the underlying cause of Ngati Raukawa's migrations.

¹³⁹⁰ Hawke's Bay, or more specifically area around Napier. For a modern account of Ngati Raukawa's efforts to settle in Hawke's Bay in the 1820s see Ballara, *Taua*, 341-2.

¹³⁹¹ Parakaia may be scrambling events here – according to Ballara 'Te Whirinui' was the last and largest of the Ngati Raukawa heke led by Te Ahu Karamu.

¹³⁹² Probably correctly Tawhiro, of Ngati Apa: see Ballara, *Taua*, 342.

¹³⁹³ (1868) 1C Otaki MB 203 (12 March 1868).

¹³⁹⁴ (1868) 1C Otaki MB 203 (12 March 1868).

¹³⁹⁵ (1868) 1C Otaki MB 202 (12 March 1868).

("Ngatiraukawa allowed the Ngatiapa to sell that land north of Rangitikei"¹³⁹⁶). Parakaia accepted that there were various cultivations and pa belonging to Ngati Apa in the general region, but stated that they (Ngati Apa) "were not permanently settled"; "Ngatiraukawa were continually driving them off".¹³⁹⁷ In re-examination by Williams he said that although some of Ngati Apa lived south of the Rangitikei, it was Ngati Raukawa that held the mana: "[t]he "mana over the land on this side of Rangitikei rested with the Ngatiraukawa in 1840, although the Ngati Apa were living with them".¹³⁹⁸ Fox questioned Parakaia about the Treaty of Waitangi, which Parakaia remembered for its associations with the distribution of blankets by Henry Williams.¹³⁹⁹ (As other historians have pointed out, next to nothing is known about the discussions that took place in this region regarding the Treaty.) Baiting a trap for Parakaia, Fox asked him further about the Treaty of Waitangi, and in particular whether slaves who had lost their mana would ever be asked to sign a Treaty with "so great a potentate" as Queen Victoria. Parakaia responded that there was no reason why slaves or chiefs who had lost their mana would be asked to sign the treaty, and Fox asked that this response should be "carefully noted" by the Court.¹⁴⁰⁰ Fox, who was on the whole contemptuous of the Treaty of Waitangi, was presumably planning to show that if Ngati Apa etc had signed the Treaty (as they did) then that would show they had retained their mana over the land. Fox also entangled Parakaia in a debate about mana:¹⁴⁰¹

In reply to another question, he admitted that "It did not follow that because the Ngapuhi tribe had carried the natives into captivity, the Waikato tribe had lost its 'mana' over the land. In case of conquest, the loss of 'mana' could not extend to those of the tribe who were not reduced to personal slavery. But if the conquerors took actual possession of the conquered land, and lived upon it, the vanquished tribe would have no "mana".

There were other exchanges which have been referred to elsewhere in this report, in particular about the Rangitikei-Turakina transaction. Parakaia said that Ngati Raukawa had the mana over the land north of the Rangitikei, but that "Ngatiapa sold the land and received the money".¹⁴⁰² Ngati Raukawa "gave up" the land between the Rangitikei and the Turakina to Ngati Apa. He said also that before the sale there were Ngati Raukawa people living to the north of the Rangitikei. "After the sale they crossed over to this side."¹⁴⁰³

9.11 Other claimant evidence

¹³⁹⁶ (1868) 1C Otaki MB 295 (12 March 1868). Or as recorded in the *Wellington Independent* (14 March 1868):

Further examined by Mr Fox: I recollect the sale of the land north of Rangitikei by the Ngatiapa to Mr McLean in 1849. The Ngatiraukawa had the "mana" over all that land; but the Ngatiapa sold the land and received all the money. The Ngatiraukawa gave up that land to the Ngatiapa. They did not consent to give up any land on this side.

¹³⁹⁷ *Wellington Independent*, 14 March, 1868 (Appendix 3.1.1).

¹³⁹⁸ Ibid (re-examination by T C Williams).

¹³⁹⁹ Ibid (*Well. Independent*, 14 March) (Appendix 3.1.1):

I recollect about the blankets (presents when the treaty of Waitangi was signed). I understood that these blankets were given as the proof of the Queen's love, and to prevent other chiefs taking this country. The blankets were given by the father of Mr T C Williams. When he gave the blankets he said it was to make the chiefs of New Zealand sacred to the Queen. Those who took the blankets signed the treaty. There were only chiefs who received blankets, I don't know whether those who signed enjoyed the exclusive "mana" in New Zealand.

¹⁴⁰⁰ Ibid (*Well. Independent*) (Appendix 3.1.1).

¹⁴⁰¹ Ibid (*Well. Independent*) (Appendix 3.1.1).

¹⁴⁰² Ibid.

¹⁴⁰³ Ibid.

Henare Te Herekau, Wirihana Te Angiangi, Henare Te Waitua, and Rawiri Te Whnanui then gave their evidence, which supported that given by Parakaia Te Pouepa. Rawiri Te Whnanui's evidence is important in proving that there was an agreement between Ngati Raukawa and Ngati Apa over the Rangitikei River was an agreed boundary: neither would cross over. This evidence has been discussed earlier.

Williams called some rangatira of neighbouring iwi to testify in Ngati Raukawa's favour. One was Hoani Te Meihana Te Rangiotu of Rangitane, who lived at Puketotara. Hoani, who spoke about about a number of matters at various times throughout the case, said it was true "that when the Treaty of Waitangi was signed Ngati Raukawa had the mana over the land":¹⁴⁰⁴

It is true that when the Treaty of Waitangi was signed Muaupoko had no mana over the land at that time. Ngati Apa – same. Ngati Kahungunu same. Ngati Raukawa had the mana and tikanga before 1840 and at that time.

Hoani Te Meihana was subjected to a long cross-examination by Fox, but he did not resile from his evidence in chief. As reported in the *Wellington Independent*:¹⁴⁰⁵

I have signed the deed of cession. I knew that signing the deed meant handing the "mana" over to the Queen. By signing the deed I parted with my "mana". I did, when the dispute as to the title arose in 1863, assert on behalf of myself and the Rangitane, "mana" over the land. I referred just now to the exclusive "mana" of the Ngatiraukawa. I derived my "mana" from the Ngatiraukawa on the introduction of Christianity. My "mana" was of an inferior degree to that of Ngatiraukawa. All the Rangitane had "mana" restored to them through the kindness of Ngatiraukawa.

Ngati Raukawa were also supported by the local Anglican church establishment. Octavius Hadfield gave evidence in support of the Ngati Raukawa claim:

I came to this place in 1839 – I was here when the chiefs of the district up to Whanganui signed the treaty – saw all signatures – Mr Williams explained the treaty and answered questions till they were satisfied – Ngati Toa at Porirua – Ngati Awa at Waikanae – Nati Raukawa Ngati Apa Rangitane were here – 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 three miles this side of Waikanae up to Turakina – Mua Upoko were here living at Horowhenua – Rangitane were living [212] in the neighbourhood of Oroua – Ngati Apa were living on the other side of Rangitikei on to Turakina except a small fishing settlement at the mouth of the river – "kainga o Taratoa" – I always understood that Muaupoko were living in subjection under Whatanui – were living at Horowhenua under the 'mana' of Te Whatanui – to the best of my knowledge Mua Upoko had no 'mana' over the land at that time.

At this point, as recorded by the *Wellington Independent*, Hadfield took issue with the interpreter over the status of Muaupoko:¹⁴⁰⁶

Archdeacon Hadfield objected to the word "mokai", used by the interpreter. It was an offensive term. It did not follow that because they [Muaupoko] were under subjection they were "mokais" or slaves. The interpreter then rendered the words in Maori thus, "living under the *mana* of the Ngatiraukawa tribe".

¹⁴⁰⁴ (1868) 1C Otaki MB 222.

¹⁴⁰⁵ "The Manawatu Purchase: Investigation of the Dissentients' Claims", *Wellington Independent*, 17 March, 1868.

¹⁴⁰⁶ "The Manawatu Purchase: Investigation of the Dissentients' Claims", *Wellington Independent*, 17 March, 1868 (Appendix 3.1.1).

Hadfield continued, in reference to Muaupoko:¹⁴⁰⁷

To the best of my belief Muaupoko had no "mana" over the land at that time. I have been in the habit of travelling over the block of land lying between the Rangitikei and Manawatu rivers, alleged to have been purchased by the Government, and have seen many parts of it. In 1840 the Muaupoko were not living on that land. I am not quite so clear in reference to Rangitikei, but I understood in 1840, from Te Puke, a leading Ngatiraukawa chief, that they were living there under the protection of Te Whata, of the Ngatikauwhata.

Which seems to indicate that a community of Muaupoko were protected by Tapa Te Whata at Oroua in much the same way as Te Whatanui did at Horowhenua. Hadfield went to speak of Rangitane and of Ngati Apa:¹⁴⁰⁸

I believe that the Rangitane had not at that time any "mana" whatever over the land which is alleged to have been purchased by the Government.¹⁴⁰⁹ There were no Ngatiapa natives living on the block at the time, with the exception of the fishing station already referred to. I did not see any other "kaingas" of theirs on the block.

In a somewhat acrimonious cross-examination Fox challenged Hadfield's command of the Maori language as at 1840, but Hadfield responded that he had been "competent to discuss those questions when I went over that block".¹⁴¹⁰ Fox then tried to imply that the CMS had a vested interest in the land, implying that this was the reason for Hadfield's support of the Ngati Raukawa case. Hadfield's response to this was that negotiations had commenced with Nepia Taratoa and others for 10,000 acres to be set aside as an endowment to support the training of Maori for the Anglican clergy, but that the land proposed to be set aside, while within the Rangitikei Manawatu block purportedly acquired by the government, was not at Himatangi. Hadfield said also that at first the negotiations had been only with Ngati Raukawa, but that the Bishop of Wellington, had suggested that Ngati Apa should be consulted about the proposed transfer of land to the Church of England. They had been consulted, and had agreed.¹⁴¹¹

¹⁴⁰⁷ Evidence of Octavius Hadfield, 13 March 1868, evidence in chief, as reported in *Wellington Independent*, 17 March 1868.

¹⁴⁰⁸ Ibid.

¹⁴⁰⁹ From the context Hadfield is referring only to the Rangitikei-Manawatu block, not to Te Ahuaturanga.

¹⁴¹⁰ "The Manawatu Purchase: Investigation of the Dissentients' Claims", *Wellington Independent*, 17 March, 1868. The full exchange was as follows (ibid) (Appendix 3.1.1):

Cross-examined by Mr Fox: I had been in New Zealand just twelve months when I came to this district. I never have had a perfect mastery of the Maori language. [The Rev Archdeacon objected that this was not a fair question: that although it was generally admitted that the learned counsel for the Crown was an eloquent speaker, he would probably consider it an unpleasant question – "Are you eloquent?" Mr Fox replied, that although possessing now a perfect knowledge of Latin, he would feel no difficulty in answering such a question as this – "What progress had you made in Latin during your first six months at school?"] I am really not a proper person to judge what my attainments were. I think I was, however, competent to discuss those questions when I went over that block. I had given my whole mind to the acquisition of the language for one year.

¹⁴¹¹ "The Manawatu Purchase: Investigation of the Dissentients' Claims", *Wellington Independent*, 17 March, 1868:

In reply to a question from the counsel for the Crown – Witness said: Before he went to England the Bishop of New Zealand asked him if he could obtain from the natives a grant of land for the support of a native ministry. On his return from England, he saw Taratoa, who agreed to it. Taratoa said he would consult the other natives. He received letters on the subject from the natives. At a subsequent meeting with the natives, he suggested that the block to be set apart should be 10,000 acres. [The witness then proceeded to detail the subsequent steps that had been taken in this matter.] In reply to further questions, the witness stated that the proposed block of 10,000 acres was comprised within the boundaries of the

Later in the case Hadfield spoke again about land boundaries. When cross-examined by Fox, Hadfield was very critical of McLean's land purchasing practices: "Mr McLean purchased on no principle."¹⁴¹² Samuel Williams, who lived at Te Aute at this time, gave evidence on a variety of different subjects, and appeared repeatedly throughout the case. When he spoke for the first time he focused on the sale of the Rangitikei block. Williams narrated how McLean came to see Williams at Otaki about the transaction, and the role that he (Williams) played in persuading Ngati Raukawa and Ngati Toa to agree to the sale of the land north of the Rangitikei. He said:¹⁴¹³

Live at Te Aute - Clergyman of the Church of England – Know the Rangitikei river by crossing it – I was present at some of the discussions which took place about sale of Rangitikei Block – that land was sold to Mr McLean in 1848 or 1849 – I was then living at Otaki – I saw Mr McLean – called on me at my house at the beginning of negotiations – he asked me to assist him in obtaining the assent of the Ngati Raukawa and Ngati Toa to the sale – at that time the Ngatiraukawa were assembled in numbers at my house preparing timber for the church – after a short conversation with me Mr McLean came out to Ngatiraukawa.

Te Rauparaha and others were strongly opposed to the sale, but after much debate the "moderate ones" prevailed and it was agreed the land could be sold as far south as the Rangitikei:¹⁴¹⁴

Rauparaha got up and spoke indignantly of the idea of the commissioner proposing to buy of Ngatiapa. McLean explained that he had not purchased of Ngati Apa but had come to consult them – he had no intention of buying it without their consent – McLean left them to discuss the matter among themselves – I advised Te Rauparaha to show consideration to the conquered tribes living on the land and that they should consent to a sale of a portion of the country – spoke of "maumau" – [228] they did not consent at once – a strong opposition for a long time to sale of an acre – tribes had frequent discussions – at first said should not sell this side of Whangaehu, after were willing to let sale to Turakina – a long time before the moderate ones were listened to, who proposed to let the land be sold to Rangitikei – after Ngati Raukawa agreed to this they went in a body to Rangitikei to see Mr McLean and Ngati Apa – I did not go to that meeting – I heard particulars from those who were there – I believe the terms of the sale were concluded – I believe the money was paid afterwards at Whanganui – I was told that.

Ngati Raukawa understood the boundary was now Rangitikei:¹⁴¹⁵

I have heard that Mr McLean did give Ngati Toa for lands which he purchased at Kawhia. Mr McLean purchased on no principle. Whakaaria and Himatangi were both talked about as lands for the Church at the time of the meeting at Moutoa. Neither was fixed upon.

The Rangitikei was then fixed as boundary and that given to Ngati Apa to sell – I was told that Ngatiraukawa had given the land to Ngati Apa and that they intended to retain this side of Rangitikei – I was told that Ngati Raukawa told Ngati Apa that they might think to be the better for selling the land but they thought it would be poverty – you may then be glad to come to us who have kept our lands for

land alleged to have been purchased by the Government. He stated also that on the death of Nepia Taratoa he had been to look at the land, in company with the Bishop of Wellington, Mr Robinson, and Nepia's son. The Bishop suggested that Ngatiapa be communicated with on the subject. The witness had previously only consulted the Ngatiraukawa. Accordingly some of the Ngatiapa were brought into Nepia's settlement. The witness explained the whole matter to them, and they went away assenting to the arrangement. Does not recollect his ever having talked on the subject with the natives at Turakina.

¹⁴¹² (1868) 1C Otaki MB 340-41.

¹⁴¹³ (1868) 1C Otaki MB 227. Williams was managing the Te Aute estate at this time. On Samuel Williams see Mary Boyd, "Williams, Samuel 1822-1907, Missionary, farmer, educationalist, pastoralist", *DNZB* vol 1, 1990, 596-7.

¹⁴¹⁴ (1868) 1C Otaki MB 227-8.

¹⁴¹⁵ (1868) 1C Otaki MB 228.

means of support, you will then see it would have been wise to keep the land – the boundary was that of the land over which the Ngatiraukawa had relinquished their ‘mana’ and which they permitted to be sold.

Samuel Williams emphasised his own role in convincing Ngati Raukawa to allow the sale:¹⁴¹⁶

I had strongly urged the Ngati Raukawa to curtail their boundaries and not hold useless tracts of land. I was the Minister of Ngati Raukawa. I preached to show kindness to the tribes whom they had conquered formerly.

And he made the same point again in cross-examination by Fox:

Heard that Ngati Toa originally conquered country – heard that there were battles. Ngati Raukawa – Ngati Toa gave the country to Ngati Raukawa – Rangihaeata and Rauparaha were recognised as Ngati Raukawa at the time of the sale of Rangitikei – Neither Rangihaeata nor Te Rauparaha assented to the giving up the ‘Mana’ of Ngati Raukawa – Rangihaeata urged Ngatiraukawa to drive out Ngati Apa – they told me they abstained from interference out of respect to me.

Williams may have had something of a tendency to exaggerate his own importance. He nevertheless was seen by Thomas Williams (his nephew, of course) as a valuable witness who the Court could be expected to pay attention to, and he gave evidence on a number of occasions throughout the claimant case, speaking for example on the Te Awahou block sale and the divisions it caused (and his own role in assisting the Crown and the selling party led by Ihakara Tukumarū),¹⁴¹⁷ and on the disputes over leases between Ngati Apa and Ngati Raukawa.¹⁴¹⁸

Williams’ account of McLean’s visit and the discussions that ensued at Otaki were backed up with a wealth of detail by Rawiri Te Whanui, who explained the divided opinions of the Ngati Raukawa leadership about whether Ngati Apa should be allowed to sell land as far south as Rangitikei. Rawiri said that he remembered McLean coming to Otaki and a meeting that took place at Williams’ house. At this first meeting only Ngati Raukawa were present, including Te Rauparaha (who Rawiri regarded as a rangatira of Ngati Raukawa):¹⁴¹⁹

Mr McLean spoke of his having been to Ngati Apa to hear about the sale of land from the other side of Rangitikei to Manawatu – Rauparaha was angry with McLean – “What did you go to those slaves to talk about sale” – meaning Ngati Apa – he said they were people whom he had spared and they had no voice in such a matter – Ngati Raukawa agreed – Rauparaha only spoke and Ngati Raukawa assented.

McLean then left, but the discussions went on, and eventually after many of Ngati Raukawa relented and agreed that Ngati Apa could sell the land down to Rangitikei:¹⁴²⁰

After McLean left runanga of Ngatiraukawa – At these meetings was fixed the boundary of land not to be sold should [be] at Whangaehu – opinion divided – some said at Whangaehu some Turakina – Rauparaha said let it be at Whangaehu – he and other chiefs – point was not decided – another meeting afterwards and discussion about the boundary Whangaehu and Turakina. The young men as myself – Hakaraia and Matene Te Whiwhi wished to follow advice of Missionary and take the boundary to

¹⁴¹⁶ Ibid.

¹⁴¹⁷ (1868) 1C Otaki MB 267-269 (18 March 1868).

¹⁴¹⁸ (1868) 1C Otaki MB 285 (19 March 1868).

¹⁴¹⁹ “Recollect coming of Mr McLean to Otaki about sale of Rangitikei – don’t recollect the year – meeting at Mr Williams’ house near the Church – Ngati Raukawa only at that meeting – no chiefs of other tribes – Te Rauparaha was there – he is Ngati Raukawa – don’t know how he was of Ngati Toa and Ngati Raukawa – he was a chief of both tribes – he had equal mana over Ngati Raukawa and Ngati Toa – he had equal mana with Whatanui with Ngatiraukawa”: (1868) 1C Otaki MB 231.

¹⁴²⁰ (1868) 1 C Otaki MB 232-3.

Turakina, and, after, to Rangitikei – proposed to fix Rangitikei as the boundary of Ngati Apa’s sale – old men still urged that – Matene and Hakaraia pressed their point and it was at last agreed to – it was then decided that Rangitikei should be the boundary – then they went to Rangitikei to finally fix the boundary – I did not go – I refer to the Ngati Raukawa of Otaki – I don’t know who of the Ngatiraukawa of Manawatu meant – it was a boundary ‘tuturu’ for the Ngati Apa and Raukawa – neither to cross over – It was agreed that all the other side was for Ngati Apa, and Ngati Raukawa on this side.

The purpose of this evidence in the Himatangi case was that Ngati Apa had agreed that the boundary was at Rangitikei, and that even that was a concession on the part of Ngati Raukawa. The hope was of course that this would show that Ngati Apa had no right to sell anything south of the agreed Rangitikei boundary. But it is also significant testimony about the debate that went on within Ngati Raukawa in the late 1840s and the role played by a younger generation of leaders who wished to make concessions under missionary advice.

There was also a great deal of evidence called by Williams on the Te Ahuaturanga purchase. A number of Ngati Kauwhata speakers described the fixing of the boundary between Ngati Raukawa and Rangitane in 1858 and their own concerns about the boundary. Samuel Williams also gave evidence about Te Ahuataranga, and about the “warm discussions” between Rangitane and Ngati Raukawa over this area:¹⁴²¹

Hirawanu was expressing his determination to sell – I heard a Ngatiraukawa say ‘You build houses for Pakehas we will burn them and see who gets tired first’.

There was also evidence led on the Te Awahou block, sold by Ngati Raukawa people to the Crown in 1858. Ihakara, who had led the pro land-selling group emphasised that the land was only Ngati Raukawa’s to sell. Awahou is the area on the coast just to the north of the Manawatu river, roughly the area around Foxton: it directly adjoined the Himatangi block. He emphasised that the land was Raukawa’s to sell, and Raukawa’s alone (ch 7).¹⁴²² Samuel Williams, coming to the witness stand for a third time, described the sale and contention it caused within Ngati Raukawa in detail (see ch 7 above).¹⁴²³

There was substantial evidence on Featherston’s Rangitikei Manawatu purchase. Moroati Kiharoa, for instance, said that some people who sold the deed and received payment had no land rights in the Rangitikei Manawatu block. According to Moroati Kiharoa:¹⁴²⁴

I had heard that other hapus – Nga Rauru, Ngati Kahununu [sic] and others of my “hapu” [Ngati Pare of Ngati Raukawa] who have land signed deed – I believe Thompson [i.e. Tamihana Te Rauparaha] has signed – he has no land there – none at all – Ngati Toa have no land there now – It is Mr Buller and Mr Featherston plan to get people to sign who have no land – we were not asked if we had land there; if we had been, we should have said we have none; our names were signed without being asked.

The abundant evidence given in this case on the Rangitikei Manawatu purchase has already been addressed in other parts of this report.

9.12 Claimant evidence relating to hapu interests at Himatangi

¹⁴²¹ Evidence of Samuel Williams, (1868) 1C Otaki MB 250 (17 March 1868)

¹⁴²² Evidence of Ihakara Tukumarū, (1868) 1C Otaki MB 262-266 (18 March 1868).

¹⁴²³ Evidence of Samuel Williams, (1868) 1C Otaki MB 267-9 (18 March 1868).

¹⁴²⁴ Evidence of Moroati Kiharoa, (1868) 1C Otaki MB 349.

Williams also called a great deal of evidence relating to boundaries and customary rights at Himatangi specifically (which, as explained earlier, was a medium-sized block adjoining the Te Awahou purchase block (1858), Te Awahou being the area around Foxton and Foxton beach). Most discussions of the Himatangi case to date skip over this evidence as being of minor interest, but it is in fact very valuable and rich in ethnohistoric detail. The evidence for this area north of the Manawatu indicates a dense overlay of Ngati Raukawa hapu interests: Patukoruhu, Ngati Te Au, Ngati Rakau, Ngati Turanga and Ngati Te Ihi Ihi – as well as Ngati Kauwhata, who had interests nearby. Himatangi was bounded by the Manawatu River, and there lagoons adjoining the river where eels were taken, There was general agreement that Himatangi belonged to the three Ngati Raukawa hapu of Ngati Rakau, Ngati Te Au, and Ngati Turanga, and a wealth of testimony to this effect. For example, Amiria Taraotea said:¹⁴²⁵

I know the land under investigation – Himatangi – I know the boundaries – South boundary is the Queen’s boundary¹⁴²⁶ from Omarupapako to Pakingahou boundary – “Whakaritia” before and up to the sale by Ihakara, Paratene and Parakaia and Ngati Raukawa – by Ngati Raukawa I mean all the Ngatiraukawa chiefs – it was marked by “pou” and at the time of the sale [305] by Ihakara¹⁴²⁷ it was again marked by “pou” – marked by a “rohe pumau”¹⁴²⁸ for us for the land to be sold and as “rohe” to Ihakara – us¹⁴²⁹ I mean Ngati Rakau, Ngati Turanga and Ngati Te Au – the Himatangi adjoining the Awahou block was owned by these three “hapus” – there was no other “hapu” interested.

She also mentioned the boundaries with Ngati Kauwhata, who also had interests in this area:¹⁴³⁰

There was a dispute about that “rohe”¹⁴³¹ with Ngai Kauwhata and Ngati Te Ihi Ihi – there was a post put in at Whitirea¹⁴³² - that post marks the present boundary – before that “pou” was put in we had land above Whitirea – both parties claimed the land on both sides of the present boundary – witness names persons present at fixing boundary adding the name of Henare Te Herekau.

The *Wellington Independent* record of Amiria’s evidence is much easier to follow, and gives a great deal of information about Ngati Raukawa settlement and land boundaries at Himatangi. Such richly detailed and precise information about life and relationships in a traditional Maori community in the 1860s is not easily come by, and Amiria’s evidence is of outstanding clarity and ethnohistorical importance. She also describes fully the divisions between those who took money from the Crown and those who would not:¹⁴³³

I know the boundaries of the Himatangi block. The Queen’s boundary, from Pakingahau to Omarupapako is the boundary on one side. That boundary was fixed before the sale of the Awahou Block. It was fixed by all the Ngatiraukawa chiefs. It was marked by posts. It was a boundary for those three hapus – Ngatiteao, Ngatirakau, and Ngatituranga. There was a dispute between Ngati Kauwhata and Ngatiteihiihi. Whitireia, on the Manawatu River, was the boundary fixed by Mr Williams. There was a post put in there at that time. It still forms a boundary post. We had land on the other side of Whitireia previous to that time. Our claim was disputed by the other hapus. Mr Williams settled the dispute. The inland boundary was fixed by Here, Paratene, Parakaia and Te Kooro. The boundary was marked by

¹⁴²⁵ (1868) 1C Otaki MB 304-5.

¹⁴²⁶ Meaning the boundary of the land purchased by the Crown in 1858 (Te Awahou block).

¹⁴²⁷ Ihakara Tukumarū.

¹⁴²⁸ Fixed boundary.

¹⁴²⁹ Underlined in original.

¹⁴³⁰ Ibid, 305.

¹⁴³¹ I am unsure whether Amiria is referring to the Te Awahou block boundary, sold to the Crown (Ihakara being a driving force behind the marking off of Te Awahou and its sale) or the boundary between the three hapu of Himatangi and Ngati Kauwhata (the latter, more probably).

¹⁴³² A point on the north side of the Manawatu river.

¹⁴³³ *Wellington Independent* 26 March 1868 (Appendix 3.1.1).

posts. I did not see this done. The western boundary starts from the Queen’s land and runs on to Motuiti, and thence to a point near Paepae, where it meets the other boundary. Papepae is the name of a lagoon where eels are caught, and of the land adjoining. I have been along one part of the boundary – from the Queen’s land to Motuiti, the Manawatu river is the other boundary. Our three hapus became possessed of that land before Archdeacon Hadfield came here. That land does not belong to Ihaka Tukumarū, I know his hapu – we are related. We took possession together. Ihakara’s hapu lived on that land for two years. We went there together and cultivated the ground. Our houses were on our cultivations. We lived at first at Puketotara, and then removed further down the river, to a place on the other side where our cultivations were. Our houses and our settlement were at Puketotara. Our cultivations were on the other side of the river. After this, Ihakara’s hapu moved down to Te Awahou. They did not return to Himatangi. Those who owned this land with PARAKAIA were – Paora Taraotea (whose name is also Ngatuna), Te Mete Tekuru, Rangiheuwea. These were the old men. The two last named ones are dead. Paora Taraotea is still living; also Parakaia Te Pouepa, Pitihira Te Kuru, Te Roera Rangiheuwea, Te Roiri, Rangiheuwea, Nirai Taraotea, Te Hemara Mataaho, Nikora Te Utahi, Pirika Te Puhī, Ihaka Te Mataaho, Wi Te Mataaho. I am another – Amria Taraotea. There are others whom I represent – Mirika (a woman) and Kihiring Taraotea, my brother. There is another woman – Horiana. Mirika is Parakaia’s wife. Another man is Ihaka Ngamura. Taharuku is another. Also, Arapeta Te Kaupai, Kipa Te Whitu, and Arapata Whioi. Kirione is another. These I have enumerated are all adults. There are some old men, and some old women like myself. I have omitted the names of those who shared in the purchase money – Paratene, Onepukupuku, and others. There are some young men who have taken money. Kaikoiwi has taken money. He is an adult. Parakene Onepukupuku came to Himatangi for the first time last year. He came from Maungatautari. [Witness then gave evidence respecting moneys received by the “young men” out of the payment for the Rangitikei-Manawatu block]. Paratene left his land to me. Paratene was related to our hapu – the Ngatirakau – and to the Patukohuru. Paratene held the land jointly with this hapu. Our three hapus did not agree to the sale of the land to Dr Featherston. Himatangi belongs solely to our three hapus. None of the other hapus have any claims there.

Parakaia Te Pouepa agreed that the land belonged to the three hapu, and in fact named the principal individuals of Ngati Turanga, Ngati Te Au, and Ngati Rakau associated with Himatangi, but also said that Patukohuru had interests as well:¹⁴³⁴

Ngati Patukohuru was with the three hapus – Ngati Rakau – Ngati Te Au – Ngati Turanga and Ngati Tikihiku¹⁴³⁵ a branch of Patukorohu – those were the ‘matuas’ of Te Mateawa.¹⁴³⁶

Table: Persons named by Parakaia Te Pouepa as having interests in Himatangi as at 1868:¹⁴³⁷

Name of Ngati Raukawa hapu	Names
Ngati Turanga	Parakaia Te Pouepa, Te Roera Rangiheuea, Te Roiri Rangiheuea, Nikora Te Utahi, Arapata Te Whioi, Te Ranganui, Eruera Te Whioi, Pineaha Te Mahau Ariki, Hakopa Te Mahau Ariki, Hemi Kupa Nga Pohoi, Paiura Te Korohino.
Ngati Te Au	Pitihira Te Kuru, Wereta Te Waha, Hamuera Te Whango, Hakopa Te Tehe, Paratene Onepukupuku (doubtful new arrival), Te Pori, Kipa Te Whitu.
Ngati Rakau	Paora Taraotea, Nirai Tamaotea, Te Hemara Te Mataaho, Ihaka Ngamura, Ihaka Te Mataahou, Wi Te Mataahou, Pirika Te Puhī, Taharuku, Hori, [Kihirinui?] (youth), Arapeta Te Kaupae.

¹⁴³⁴ (1868) 1C Otaki MB 309.

¹⁴³⁵ Presumably referring to Ngati Takihiku, a well-known Ngati Raukawa hapu in the North Taupo-Rohe Potae area. Ngati Takihiku and Ngati Whakaterere were the two representative Ngati Raukawa hapu in the Rohe Potae case of 1886.

¹⁴³⁶ Name of Ngati Raukawa hapu with interests at Otaki and Himatangi.

¹⁴³⁷ Parakaia Te Pouepa, (1868) 1C Otaki MB 311-312.

Parakaia also named the women with rights in the block: Amiria Taraotea, widow of Paratene Taupiri (who gave extensive herself, which is cited above); Mirika Te Kuru, wife of Parakaia; Rihi, wife of Roera; Ruruhira, wife of Pitihira; Kotiporo, wife of Taraotea; Oriwia, wife of Hemara Te Mataaho; Neta, widow of Porangi; Horianana, wife of Roiri; Torori, wife of Nikore Te Utahi; Tohi, wife of Tahoraku; Rangitorewa, wife of Kaikoiwi; Makareta, wife of Pineaha Te Moehau Ariki; Riria wife of Wireta Te Waha; Rahea, daughter of Te Whioi; Ema, wife of Hakopa Te Mahau Ariki; “also others whom he cannot recollect”. The rights of the three hapu (Ngati Turanga, Ngati Te Au/Ao, and Ngati Rakau to Himatangi are solidly established by the evidence.

9.13 The Treaty of Waitangi was “the work of missionaries and landsharks, and missionary landsharks”: The Crown case

Fox gave a long opening address on 27 March, which was published in full in the newspapers.¹⁴³⁸ It was a masterly presentation - comprehensive, eloquent, and zealously attacking every aspect of the claimant case. Fox claimed that the Crown case was supported by the leading chiefs of numerous important tribes as opposed to a few “common men” of one tribe and a “picked body” of clergymen.¹⁴³⁹

I will only preface my statement with a single word of caution to the Court, which is this. The witnesses I shall bring before the Court will not be a few “tutua” or common men of one tribe, nor even a picked body of careful trained office bearers in the Church; but they will be almost without exception the great leading chiefs of the several tribes on the West Coast, the men who have themselves taken the most active part in the wars and other public events which have marked the history of the period in which they have lived, and who are familiar with all the land titles of their respective tribes.

The submission was in part a lengthy historical presentation of the various migrations to the Cook Strait region, beginning with Te Rauparaha’s first expedition with Patuone and other Northland chiefs (which he wrongly dated to about 1825). The historical narrative, needless to say, was not an objective description but pushed the story in a particular direction – this being the continued independence of Ngati Apa. “Ngatiapa”, he said, “have continued to exercise undisputed acts of ownership up to the present time”.¹⁴⁴⁰ Fox denied that there had ever been any conquest by either Ngati Toa or Ngati Raukawa of the land between the Manawatu and the Rangitikei, apart from some limited settlement by particular hapu.¹⁴⁴¹

The Ngatiraukawa did not encroach on Himatangi till about 1841-2. Up to and in 1840 the Ngatiapas were living in force on Himatangi, and Ngatiraukawa at Opiki on the south bank. They know nothing of the date of the Treaty of Waitangi, but they know this was the state of things in the year of the great fight of Kuititanga, which occurred on Waikanae beach at the time of the arrival of Colonel Wakefield. Hapurona saw that fight and saw the pakeha doctor land and attend the wounded. The year after that fight the status of the tribes on the disputed block was as described.

During all this time there was never any taking possession by Ngatiraukawas or Ngatitoas of the land between Manawatu and Rangitikei, except to the limited extent mentioned. Archdeacon Hadfield and other witnesses who describe the Ngatiraukawa as dominating over that territory in 1840 either mistake the dates altogether or tell what is false.

¹⁴³⁸ “The Manawatu Purchase: Native Lands Court – Otaki: Mr Fox’s opening address for the Crown”, *Wellington Independent*, Vol XXII, Issue 2655, 31 March 1868, p 4.

¹⁴³⁹ Ibid (see Appendix 3.1.1)

¹⁴⁴⁰ Ibid.

¹⁴⁴¹ Ibid.

It was an important aspect of the Crown case that Ngati Apa operated independently from Ngati Raukawa, and Fox placed heavy emphasis on this in his opening submissions:¹⁴⁴²

Evidence will be given of the independence, tribal and territorial, of the Ngatiapa in 1840, and subsequently. The following facts will be shown – That in 1816 they signed the Treaty of Waitangi, at Oahuru, in the disputed block, receiving the customary blankets. Hunia Te Hakeke, who is now in Court, saw his father sign; Hamuera and Mohi Mohi, both of whom are still living, and will come forward to give evidence of the fact, signed the treaty and each of them received a blanket, which has been described by some of the natives as "payment for their name," and by others as "a pledge of the Queen's aroha." Other Ngatiapa chiefs who are since dead – Turangapito, Rawiri, and others – signed that treaty. The Rev. Mr Williams found them at Oahuru, a fighting pa in the Lake Kaikokopu – a place which, when asked about it, Archdeacon Hadfield and other witnesses did not know to exist, TheRangitane did not sign because they were far inland, and Mr Williams did not bring his blankets to them.

Much has been made of the Ngatiraukawas possessing Ngatiapa slaves. The Ngatiapa also possessed Ngatiraukawa slaves, so did the Ngatikahungunu.

Fox did not conceal his scorn for Hadfield and the CMS mission, referring somewhat nastily to the former as "a dignitary of the Church, whose unfortunate irritability of temper is only equalled by his inability to conceal it".¹⁴⁴³ Fox undoubtedly had a particular animus against Hadfield and the Church Mission Society, probably arising out of a long-standing hostility towards missionaries on the part of the New Zealand Company, giving the Crown case a notably anticlerical tone.¹⁴⁴⁴ (Fox had long been an admirer of Wakefield and his theories about 'systematic colonisation', and he had never had any time for the Treaty of Waitangi, denouncing it one occasion as "shallow, flimsy sophistry".¹⁴⁴⁵) The Himatangi hearings, and Fox's behaviour during them have been vividly described by Ross Galbreath in his biography of Buller:¹⁴⁴⁶

Buller sat in the court through the six-week hearings as Williams argued passionately for the rights of Parakaia and his people to undisturbed possession of their land; and Fox used all his barrister's skill to deny that they had any right to the land at all. Fox revelled in the combative role in the courtroom or in Parliament. He attacked his opposition with invective, sarcasm and innuendo. In the court he labelled Parakaia as an "omnivorous land shark" and decried his main Pakeha supported, Archdeacon Hadfield, as a "harmless monomaniac". When Williams appealed to to the Treaty of Waitangi with its guarantee of undisturbed possession of Maori land, Fox poured scorn upon him. The Treaty, said Fox, was "a great sham", and, in a snide reference to Williams's family, "the work of landsharks and missionaries, and missionary landsharks".

When giving his closing submissions at the end of the hearing, Williams thanked the Court for its courtesy for hearing him, but he refused to give any thanks to Fox:¹⁴⁴⁷

I do not thank counsel for the Crown for any courtesy, for I have received none from him; on the contrary, he has unnecessarily interrupted me, whilst I have only entertained towards the learned counsel feelings of deep commiseration.

Table: Crown evidence in Himatangi case

¹⁴⁴² Ibid (*Wellington Independent* version).

¹⁴⁴³ Ibid (*Wellington Independent* version).

¹⁴⁴⁴ Ballara, *Iwi*, 68.

¹⁴⁴⁵ On Fox see Raewyn Dalziel and Keith Sinclair, "Fox, William, 1812-1893, Explorer, politician, premier, painter, social reformer", *DNZB* vol 1, 134-8.

¹⁴⁴⁶ Galbreath, *Walter Buller: The Reluctant Conservationist* (G P Books, Wellington, 1989, 72.

¹⁴⁴⁷ Williams closing submissions, 22 April 1868, *Evening Post* 25 April 1868.

Name		Date	MB reference	Affiliation ¹⁴⁴⁸	Nature of evidence
Crown case opened (Fox)		27 March 1868			
Tamihana Te Rauparaha		27-28 March 1868	(1868) 1C Otaki MB 372-378’ (1868) 1D Otaki MB 379-391 (<i>WI</i> 2 April 1868)	Ngati Toa	Comprehensive historical narrative, emphasising Ngati Toa conquests and Ngati Toa friendship with Ngati Apa. Te Rauparaha always dealt with Ngati Apa as an independent group. The Ngati Apa mana was greater than that of Ngati Raukawa. Cross-examined at length by Williams.
Nopera Te Ngiha		30 March	(1868) 1D Otaki MB 391-398 (<i>WI</i> 2 April 1868)	Ngati Toa	Comprehensive historical narrative. Agrees with the evidence of Tamihana Te Rauparaha. Describes the attack on Ngati Toa at Waikanae by Ngati Apa, Rangitane, and Muaupoko. Ngati Raukawa led by Whatanui came to Kapiti because of the fame of Te Rauparaha. Describes the Haowhenua conflicts and Kuititanga Long cross-examination by Williams.
Hohepa Tamihengia		30 March	(1868) 1D Otaki MB 398-403	Ngati Toa	Came in heke with Te Rauparaha. Can remember the arrival of Ngati Raukawa. Ngati Apa were living at that time between Manawatu and Rangitikei. Their fires were burning then and still are. In cxx: has signed Rangitikei-Manawatu deed.
Rakapa Kahoki (sister of Matene Te Whiwhi)		31 March	(1868) 1D Otaki MB 412-147, (<i>WI</i>) 2 April 1868	Ngati Toa, Ngati Raukawa	Belongs to Ngati Toa. Ngati Toa, and in particular, Te Rangihaeata, had the mana over Rangitikei. Describes the relationship between Ngati Toa and Ngati Apa, stressing the Te Rangihaeata-Te Pikinga marriage. Discusses Te Ahuaturanga transaction, initiated by Rangitane, Ngati Raukawa opposed the purchase but could not prevent it.
Te Karira Turua		31 March	(1868) ID Otaki MB 417-421	Ngati Toa	Came south on Te Rauparaha’s heke. Te Rauparaha’s allocation of land to Ngati Raukawa went only to the Manawatu (417). Has never heard of any “great battles” between Ngati Apa and Ngati Raukawa (418). Te Rauparaha and Te Rangihaeata were with Ngati Raukawa at Haowhenua on account of their whaea.

¹⁴⁴⁸ Sometimes witnesses give both an iwi and hapu affiliation; where they do that I have included both. Sometimes no affiliation is recorded, and here I have made an educated guess from the context. After a witness had already given evidence and given their affiliation, they did not usually repeat this when giving evidence again later on in the case; here I have gone back to the affiliation given when first speaking.

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Wi Tamihana Te Neke		31 March	(1868) 1D Otaki MB 421-425 (WI 2 April 1868)	Ngati Awa and Taranaki.	Lives at Waikanae. Related through his ancestors Ngati Apa. Says that Ngati Raukawa were defeated at Haowhenua: "they went away to Manawatu Ohau and Rangitikei and afterwards we we left and went away quietly to Waikanae" (421). It was right for Ngati Toa and Ngati Awa to receive some of the purchase money for Rangitikei-Manawatu. Witness has received a payment.
Kawana Paipai		31 March	(1868) 1D Otaki MB 425-429	Te Ati Hau	Lives at Whanganui. Describes fighting in the Whanganui region between Whanganui peoples and Ngati Raukawa. On the second heke Te Rauparaha in friendship; "Pikinga was now with Rangihaeata" (425). Ngati Raukawa simply occupied; the mana was with Ngati Apa and Muaupoko. Speaks also on land boundaries.
Me Te Kingi Te Rangi Paetahi		1 April	(1868) 1D Otaki MB 436-443	Ngati Apa and Whanganui	After Waiorua Te Rauparaha went to see Te Rangihauku, and made peace. When Te Pehi returned from England he wanted to use his guns against Ngati Apa – he took a pa of Ngati Apa's at Rangitikei but that was the end of the fighting. The Rangitikei Manawatu land was sold to avoid the rarururu (441).
Karaitiana Takamoana		1 April	(1868) 1D Otaki MB 443-449	Ngati Kahungunu	Describes the conflicts between Ngati Raukawa and Ngati Kahungunu groups in Hawke's Bay. Ngati Raukawa and their allies were eventually driven out of Hawke's Bay. Describes the settlement of Ngati Te Upokoiri in the Manawatu. Discusses Te Ahuaturanga purchase, and says that the sale was urged by Hirawanu; he 'did not hear' that Ngati Raukawa settled the boundaries of Te Ahuaturanga.
Paramena Te Naunau		2 April	(1868) 1D Otaki MB 455-462 (WI 2 April 1868)	[Te Pane Iri?]	Lives at Patea (i.e. Taihape region). Describes events in the Manawatu involving Ngati Raukawa and Ngati Te Upokoiri
John Tiffin Stewart		2 April	(1868) 1D Otaki MB 462-465 (WI 2 PApril 1868)	-	Surveyor employed by the Wellington Provincial government. Prepared the tracing before the Court. Says that he only saw small cultivations at Himatangi. The Maori living on the block now are Ngati Rakau. There may be other cultivations inland of the river.

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Matene Te Matuku		2 April	(1868) 1D Otaki MB 465-472	Ngati Apa	Has lived at Himatangi; was at Haowhenua battle. Ngati Raukawa did not cross the Manawatu until after Haowhenua. Was also present at Te Kuititanga. Ngati Apa had cultivations between Oroua and Manawatu. Received money from the Rangitikei Manawatu sale. Says that Ngati Raukawa stole his land and cultivations. In cxx admits that he has no houses or cultivations at Himatangi. Ngati Apa were 'patu' by Ngati Raukawa. Ngati Apa were defeated by Ngati Toa before Ngati Raukawa came (468).
Amos Burr		3 April	(1868) 1D Oaki MB 473-485.	-	Pakeha settler living at Manawatu. Has earlier given evidence before the Spain Commission. Ngati Apa were in possession of the Rangitikei Manawatu block. The lower Manawatu was in possession of Ngati Raukawa (474). It was not the case that Ngati Apa had no mana. Ngati Rakau occupied land around Opiki. Ngati Upokoiri "were a numerous and industrious tribe, they were the prime occupiers of Manawatu" (475). Nepia Taratoa opposed the sale of Te Awahou. Parewahawaha were at Te Awahou, but this was not their main place of residence; these were at Ohau and Waikawa (477).
Peti Te Aweawe		3-4 April	(1868) 1D Otaki MB 485-502.	Rangitane	A somewhat different perspective from Hoani Meihana (also Rangitane) who gave evidence for the claimants. Rangitane caught birds and eels at Himatangi. It was Rangitane who placed Ngati Te Upokoiri on land in the Manawatu. Denies that Ngati Raukawa had mana at Rangitikei. It was not necessary for Rangitane to obtain the consent of Ngati Raukawa for the sale of the Te Ahuaturanga block.
Pirimona Te Urukahika		4 April	(1868) 1D Otaki MB 502-506	Ngati Te Upokoiri	Rangitane allocated land in the Manawatu to Ngati Te Upokoiri.
Herewini Tawera		4 April	(1868) 1D Otaki MB 506-509	Ngati Te Upokoiri	Remembers the battle at Roto-a-Tara, Ngati Raukawa did not come to Himatangi until after Haowhenua (p 506)
Hunia Te Hakeke (Kawana Hunia)		6-7 April	(1868) 1D Otaki MB 510-531, 536-548	Ngati Apa	Lengthy and richly detailed evidence on the inter-tribal history. The mana of Ngati Apa as a whole extended to the Manawatu River. Names hapu of Ngati Apa that had land rights south of the Manawatu river. Describes in detail the first

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					<p>taua of Te Rauparaha, Te Rangihaeata and Northland groups, Te Rangihaeata's marriage to Te Rangihaeata and the peacemaking that resulted from this (probably the most detailed description there is). Ngati Apa assisted Ngati Raukawa at Haowhenua because if Ngati Raukawa were defeated Ngati Awa would attack Muaupoko (p 514). Lengthy cxx by Williams.</p>
Isaac Featherston		7 April.	(1868) 1D Otaki MB 534-536	- [Wellington provincial superintendent]	Produces documents relating to the Rangitikei-Manawatu purchase.
Hunia Te Hakeke (recalled)		7 April	(1868) 1D Otaki MB 536-548	Ngati Apa	Cxx by Williams and rx by Fox. Questioned about fighting at Pikitara. Discusses fighting at Poutu between Ngati Apa and Ngati Toa, and says that Ngati Toa were defeated, following which peace was made between Ngati Apa and Ngati Toa. Ngati Raukawa arrived after this (540). Peace was made between Ngati Toa and Ngati Apa but not between Ngati Toa and Muaupoko. When Ngati Te Upokoiri returned to Heretauanga "they left their lands to Te Peeti and me and Ahu o Turanga to Te Hirawanu. The land returned by Ngati Upokoiri belongs to Ngati Apa and Rangitane jointly.
Ratana Ngahina		8 April	(1868) 1D Otaki MB 552-557.	Ngati Apa	Supports the evidence of Hunia Te Hakeke. Gives details of eel ponds belonging to Ngati Apa. The hapu of Ngati Apa who have interests at Himatangi are Ngati Taura and Ngati Tai. Fox tries to put a question to him whether Parakaia was in the habit of claiming land that does not belong to him, but the question is not allowed. In cxx denies that Ngati Apa came back to Rangitikei with the permission of Ngati Raukawa (555).
Hamuera Te Raikokiritia		8 April	(1868) 1D Otaki MB 557-565	Ngati Apa	Remembers the time of the "blanket treaty" (558) (i.e. the Treaty of Waitangi). Was a Christian teacher. Williams brought the Treaty of Waitangi to Tawhirihoe, where Hamuera signed it ("Mr Williams did not tell me it was the treaty": p 558). Says that "Ngati Apa ran away but not clean away", probably referring to Te Whatanui's arrival (562). Names Ngati Raukawa chiefs who were in the Rangitikei after

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					Haowhenua: Nepia Taratoa, Haerewharara, Horomona, Taiaho (Nepia's brother), Aperahama Te Huruhuru and others.
Horomona Torenui		9 April	(1868) 1D Otaki MB 570-581	Te Patutukituki, Ngati Raukawa, and Ngati Whakaue	Was with Nepia Taratoa at his death. Describes the 'east' heke of Ngati Raukawa and gives detailed evidence about the battle of Haowhenua and its aftermath. Describes the fighting between Ngati Apa and Ngati Raukawa as allies against Whanganui. Describes how land was allocated to Ngati Raukawa by a number of different Ngati Toa chiefs (i.e. not only Te Rauparaha).
Kereopa Tukumarū		9 April	(1868) 1E Otaki MB 581-589	Te Patukohuru, Ngati Raukawa	Accompanied Williams with the Treaty of Waitangi. Ngati Raukawa and Ngati Apa occupied between Rangitikei and Manawatu. Did not hear of any "great fighting" between Ngati Apa and Ngati Raukawa. Both Ngati Apa and Ngati Raukawa had mana over the land. The land's principal value lay in its eel fisheries. In cxx he says that neither Ngati Apa nor Rangitane had any land on the southern side of the Manawatu (585). Says that he and Ihakara sold Te Awahou (Foxton) to the government and that "Te Awahou belonged to us" [585]. Cxx at length by Williams (this cxx is of high importance).
Ihakara Tukumarū		11 April	(1868) 1E Otaki MB 592-613	Ngati Raukawa	
Tapa Te Whata		13-14 April	(1868) 1 E Otaki MB 613-625; 630-635	Ngati Kauwhata	Describes heke of Ngati Raukawa and Ngati Kauwhata to Kapiti. Says he came to Kapiti with Whatanui and the "great heke". Describes Ngati Kauwhata breaking off from the main migration party and going into the Manawatu.
Mr Young		15 April	(1868) 1E Otaki MB 640	-	Reads various documents into the record.
Walter Buller		16 April	(1868) 1E Otaki MB 641-2	-	
I E Featherston		16 April	(1868) 1E Otaki MB 642-648	-	Says he was requested to go to Rangitikei in 1863 to settle the disputes between Ngati Raukawa and Ngati Apa; discusses impounding the rents. In cxx says he could not remember whether he was a land purchase commissioner at the time. Says that he impounded the rents to "prevent the tribes

					fighting” (p 644) and that all the tribes agreed to this step.
Walter Buller (2)		16 April	(1868) 1E Otaki MB 648-652	-	
Ratana Ngahina (2)		17 April	(1868) 1E Otaki MB 656-671	Ngati Apa	Very detailed evidence on leases
Kawana Hunia (2)		18 April	(1868) 1E Otaki MB 673-677	Ngati Apa	
Crown case closes					

The Ngati Raukawa claim had been based on conquest, occupation, their complete domination of the region, and their own kindness and generosity, in some instances overriding Te Rauparaha’s wishes. The Crown painted a very different picture of the tenurial history of the region.¹⁴⁴⁹ The Crown structured its case around the argument that Ngati Apa were independent allies of Te Rauparaha. The Crown case deployed a great deal of Maori evidence, but it was principally from Ngati Raukawa’s neighbours, and given by people who had signed the deed of cession. The Crown case was supported by, amongst others, Tamihana Te Rauparaha, Te Rauparaha’s son. Usually Tamihana Te Rauparaha and Matene Te Whiwhi, both of them chiefs of both Ngati Toa and Ngati Raukawa, worked together on most matters of importance, but in this instance they were on opposite sides. Fox called Tamihana Te Rauparaha as his fist, and perhaps as his star, witness. Tamihana’s evidence was essentially an interpretation of events as seen from the perspective of Ngati Toa. Tamihana stated that Raukawa’s mana arose only from the gift of land made by his father, and that the mana of Ngati Apa and Rangitane remained intact.¹⁴⁵⁰

Rauparaha lived peaceably with Ngati-Apa. Rauparaha had conquered these lands. They were in possession of their lands beyond Manawatu. Ngati Raukawa went to Manawatu. Ngati Apa ‘mana’ was greater than that of Ngati Raukawa – the Ngati Raukawa ‘mana’ was their gaining their land by Rauparaha’s direction – Ngati Apa should join in sale. Rangitane also had their mana – don’t know anything about Muaupoko. Knew Himatangi when my father went about there. I know that Te Raotea lived at Opiki on this side of Manawatu about 1840 – know Parakaia. Rauparaha after his conquests left these people in possession of their lands – Ngati Apa on this side of Rangitikei.

Or, according to the *Wellington Independent* version:¹⁴⁵¹

On resuming, the counsel for the Crown called, Tamehana [sic] Te Rauparaha, who gave a long account of his father’s career, and related particularly the events of the two invasions by him of Cook’s Strait, in order to show that he acquired the supreme “mana” of that country. When this story was concluded, he was specifically questioned by Mr Fox on the following points and gave these answers.

1. Rauparaha, when the fighting was over, always treated the Ngatiapas and other resident tribes as friends on an independent footing.
2. He never abolished their “mana” over their own lands, or interfered with their occupation of them.
3. The “mana” of the Ngatiapa, Rangitane, and Muaupoko, continued to exist in full over the land between the Manawatu and the Rangitikei, and they occupied the lands of their ancestors.

¹⁴⁴⁹ Of course all claimant groups in the Native Land Court sought to maximise their interests in the block before the Court, as of course did Ngati Raukawa in this case. What makes the case unusual was that of one contending parties was in effect the Crown.

¹⁴⁵⁰ (1868) 1D Otaki MB 377-378 (27 March 1868).

¹⁴⁵¹ *Wellington Independent*, 2 April 1868 p 3 (Appendix 3.1.1).

4. The Ngatiapa “mana” was always greater than that of the Ngatiraukawa, If the latter had offered to sell that land without the Ngatiapa that would not have been right.
5. He again affirmed the “mana” and occupation of Ngatiapa and other resident tribes; and said that his remark applied from the period of his father’s conquests, before 1840, till now.
- 6.

Tamihana was somewhat disparaging of Ngati Raukawa, dismissing them as Te Rauparaha’s “kai mahi” (food workers, with the specific responsibility of catching eels) and soldiers. Ngati Apa’s mana, he said, was greater than that of Ngati Raukawa – but Muaupoko only had mana “within their fences” at Horowhenua, the boundary here having been settled not by Te Whatanui but rather by Te Rauparaha himself.¹⁴⁵²

Tamihana Te Rauparaha was cross-examined by Williams. Although no match for Fox when it came to cross-examination skills, nevertheless he did manage to inflict some damage on the counter-claimant case. Tamihana insisted at first that “he did not hear” that Ngati Apa had ever been ejected by Ngati Raukawa. (This would have been in the form of a response to a question in cross-examination from Williams, something like “Did you ever hear of Ngati Apa being ejected by Ngati Raukawa” – “No”.) But he also said in response to further probing from Williams that “the great chiefs of Ngatiraukawa and Ngati Toa” had “returned that land to Ngatiapa”.¹⁴⁵³ He said he was at a meeting at Te Awahou when this happened. “I was present at Te Awahou”, he said, it was there “that Ngatiraukawa and Ngatitoo returned the land *on the other side of Rangitikei and this side of Rangitikei up to Manawatu*”.¹⁴⁵⁴ If the land had been returned, it obviously first had to have been lost.

The cross-examination was recorded in full in the *Wellington Independent*:¹⁴⁵⁵

Tamehana was recalled and Cross-examined by Mr Williams. As I have already stated to the Court, the Ngatiapa were beaten by Ngatitoo and Ngapuhi on the first invasion of this district; but they retained their independence. Their “mana” remained with them. There were none taken prisoners. They were saved alive and left on their own place. The invaders left them. This was owing to the great generosity of my father. I did not hear that the Ngatikahungunu suffered great loss at the hands of Ngatitoo at Wairarapa. The resident tribes on this coast were left in quiet possession of their lands when Te Rauparaha returned to Kawhia. The Ngatiraukawa were as much slaves as the Ngatiapa. They are defeating themselves now, for they are “digging up the bones of their ancestors” [raking up the old wars]. Peace being made, the Ngatiapa went to live with Ngatiraukawa as guests, not as slaves, and came back peaceably to their own homes. They went from motives of friendship. The greenstones to which I refer were in the possession of the Ngatiapa. The greenstone was not found in a natural state here, but in the Middle [i.e. South] Island. My father came to get greenstones from Ngatiapa, Rangitane, and Muaupoko. They were given up to him peaceably. The owners of the greenstones were not killed. The Ngatiapa guests came back with Ngatitoo on the occasion of the second invasion. The greenstones were then left behind as pledges of good feeling. Leaving these guests to remain quietly on their land, Te Rauparaha came on to Kapiti. They became double-hearted afterwards, and began to suspect that Te Rauparaha had a design on their lands. My father was surprised and attacked at Ohau. He was defeated there. Te Rauparaha left those tribes to occupy their lands quietly. The Muaupoko were punished by my father [in retaliation for the Ohau attack]. The blow he struck was a light one. I don’t know how many were killed – only a few. My father was attacked at Papaitonga near Ohau. It was a murder [balance of cross-examination is omitted: see Appendix 3.1.1]

¹⁴⁵² (1868) 1D Otaki MB 385 (27 March 1868).

¹⁴⁵³ (1868) 1D Otaki 386 (27 March 1868).

¹⁴⁵⁴ Ibid.

¹⁴⁵⁵ *Wellington Independent*, 2 April 1868 p 3 (Appendix 3.1.1).

Nopera Te Ngiha was another Ngati Toa chief called by Fox, who placed particular emphasis on the marriage of the Ngati Toa chief Te Rangihaeata to Te Pikinga of Ngati Apa. He stressed, too, that it was Ngati Toa who had conquered the region: “Did the Ngatiraukawa”, he asked rhetorically, “gain any battle or take any ‘pas’ of the Ngatiapa upon which it should be said they had destroyed the Ngatiapa ‘mana’?”¹⁴⁵⁶ Nopera te Ngiha was cross-examined at length by Williams. He was also interrogated by the Court itself, and gave a clear statement of the tribal geopolitics of the region in the about the time of the Ngati Raukawa migrations, perhaps about as clear and reliable a description as could have been obtained at the time of the case (in fact the Court congratulated Nopera Te Ngiha on his evidence). According to the *Wellington Independent*:¹⁴⁵⁷

By the Court. When the Ngatiraukawa arrived, the Ngatitooa were very numerous. - perhaps 400. A large number of Ngatiawa – perhaps 600 – went to Kapiti to cultivate. There were only about 100 of us (Ngatitooa) left at Kapiti when the united tribes attacked us. When the Ngatiraukawa came down they were in full force – perhaps 600. The Ngatiapa numbered about 200 at that time. They were occupying the whole of the land lying between Wangaehu and Manawatu. The Rangitane were within the same boundaries, but they held the inland country. I don’t know how many the Rangitane numbered at that time, but they were not as numerous as the Ngatiapa. The Muaupoko were living on this side of the Manawtu river, but they claimed land north of the Manawatu through their connection with the Ngatiapa ancestors, There were about a hundred of the Muaupoko at that time. Tanguru was their chief. The number of this tribe had been considerably lessened by our attacks upon them. The Ngatiapa pa, in which Te Rauparaha and his people were entertained for two months was Te Awamate, near the mouth of Rngitikei river. It was the pa of Te Ahuru. At the time of the commencement fight, the Ngatiapa were living at Rangitikei – on the block that has been sold to the Crown, and on the other side of the river. The Ngatiraukawa at that time were living at Otaki. The portions of the ceded block at that time occupied by the Ngatiapa, were Pukepuke, Kaikokupu. Koputara, and Te WHakapuni. None of the Ngatiapa joined the invaders [this seems to be referring to the time of the fighting between Ngati Awa and Ngati Raukawa at Haowhenua]. They all fought on the side of the Ngatiraukawa. Rangitane also fought on the side of the Ngatiraukawa. After the fight the Ngatiapa returned. On the return of the Waikato allies, the Ngatiraukawa went up with them as far as Ohau. The bulk of them were induced to come back to Kapiti. After this, Nepia Taratoa, Horomona, and the others whose names have been mentioned went on to Rangitikei. Haerewharuru and his son had gone on previously, but subsequently to the return of Ngatiapa. They went on to the Ngatiapa pas. The land which Horomona and the other Ngatiraukawas settled was given to them by the Ngatiapa. The land north of Rangitikei was sold to the Crown by Ngatiapa [referring to the Rangitikei-Turakina purchase]. The Ngatitooa were not a party to that sale. Horowhenua was the land allotted by Te Rauparaha to Te Whatanui. The Muaupoko were living there at that time. Te Rauparaha gave that land to Te Whatanui, not to the whole Ngatiraukawa tribe. Te Rauparaha gave land near Otaki to Te Mateawa, a section of Ngatiraukawa. The land given by Te Rauparaha and the Ngatitooa stretched from Whakangutu to Porotawhao [isc] – in the following divisions: Whakangutu to Waikawa thence to Ohau, thence to omahiti, and thence to Porotawaho. The last-named portion was handed over by Rangihaeata to the Ngaitiuhia. [The Court instructed the Interpreter to inform the witness that he had given his evidence in a clear and straightforward manner.]

Tamaihengia, also of Ngati Toa, said that Te Rauparaha’s allocation to Ngati Raukawa had only gone as far north as Poroutawhao, which is south of the Manawatu River.¹⁴⁵⁸ This was completely at variance with Matene Te Whiwhi’s evidence. Quite how the Crown had been

¹⁴⁵⁶ (1868) 1D Otaki MB 395. Or, as recorded in the *Wellington Independent*, 2 April 1868: “Ngatiraukawa have compared me to Muaupoko. The Ngatiapa lived on their land and had “mana.” Did the Ngatiraukawa ever take any pas of Ngatiapa, Rangitane, and Muaupoko? How then can they say that they destroyed the “mana” of the Ngatiapa?

¹⁴⁵⁷ *Wellington Independent* 2 April 1868 (Appendix 3.1.1)

¹⁴⁵⁸ (1868) 1 D Otaki MB 339-403.

able to muster this solid phalanx of Ngati Toa chiefs to support its case (in effect) against Ngati Raukawa is unclear. In Tamihana Te Rauparaha’s case the answer seems clear: he was a supporter of the Rangitikei-Manawatu sale, and could hardly support the Ngati Raukawa case now.¹⁴⁵⁹

Fox questioned his witnesses in ways designed to put the witnesses in as bad a light as possible, as the following exchange shows (relying here on the newspaper version of the evidence rather than the abbreviated notes in the minutes):¹⁴⁶⁰

Mr Fox then put the following question to witness [Ratana Ngahina, of Ngati Apa]: “Did you ever hear that Parakaia, one of the claimants in the case, was in the habit of going about claiming other people’s land?” The President of the Court stopped the question.¹⁴⁶¹ Mr Fox said he must insist on the right to put the question. One of the fairest ways of testing the truth of evidence was to test the character of the witnesses; and if he could prove that Parakaia was known all through the tribes as an inveterate landshark, it went far to throw doubts on his present claim. He (Mr Fox) thought he had a right to complain of the readiness of the Court to interpose to stop him. The agent on the other side had been allowed to put all sorts of irregular questions and enter on all sorts of irrelevant examination without the Court noticing it. He contended that he was in perfect order, and must insist on his right to follow up the line of examination he had begun. He requested that the Court would make a note of its [sic] objection. The Court admitted the right of counsel to take the proposed line, but persisted in its objection to the form of the question. Mr Fox then asked the witness: “Did you ever hear any proverb about Parakaia, common among the natives on this coast?”

The Crown called many others to support its case, including Kawana Paipai and Mete Kingi from Whanganui, Karaitiana Takamoana of Ngati Kahungunu, Paramona Te Naunau of Ngati Upokoiri, Hunia Te Hakekeke and Matene Te Matuku of Ngati Apa, and Peeti Te Awe Awe of Rangitane. Their evidence tended to stress that Ngati Raukawa lived only on the coast, and that their occupation north of the Manawatu was quite recent, occurring only after the fighting with “Ngati Awa”. Kawana Paipai (Whanganui) laid heavy emphasis on Ngati Raukawa’s dependence on Whanganui hapu.¹⁴⁶² Peeti Te Aweawe of Rangitane gave evidence on 3-4 April.¹⁴⁶³ His evidence emphasised Rangitane’s freedom

¹⁴⁵⁹ On 17 May 1866 the *Wellington Independent* printed the following letter from Tamihana Te Rauparaha (*Wellington Independent*, Vol XXI, Issue 2362, 17 May 1866, p 2):

Friend, I have a word for you to print in your newspaper in contradiction of what Parakaia Te Pouepa and Henare Te Herekau have said concerning Rangitikei – their words having been printed at Canterbury – in Mr Fitzgerald’s newspaper.

According to my view the words of Parakaia and Henare Te Herekau are totally false. The multitude of the Maori chiefs have consented to sell the land lying between the Rangitikei and Manawatu Rivers. The proposal to sell Rangitikei was made some years ago. The cause of dispute (or trouble) was, that many *hapus* were claiming that land. The Hau Haus also had increased in number at Rangitikei. At the meeting at Te Takapu, Manawatu, on the 16th day of April, it was settled (or agreed) that this land should be absolutely sold to Dr Featherston. Dr Featherston agreed to the words of the multitude of chiefs belonging to the Ngatiraukawa, the Ngatitua, the Ngatiapa, the Whanganui, the Rangitane, and the Muaupoko (tribes) that the price should be £25,000. The sale of the land, lying between the Rangitikei and Manawatu Rivers, is now finally settled. In Maori, the last sentences of this paragraph are]: Kua whakaae mai ano a Takuta Petatona ki nga kupu a nga rangatira tokomaha o Ngatiraukawa, o Ngatiapa, o Whanganui, o Rangitane, o Muaupoko, kia utua ki nga pauma moni £25,000. Na, kua tuturu rawa tenei ki te hoko i taua whenua ki Rangitikei ki Manawatu.

The *Independent* also printed the original Maori text of the letter on 19 May: *Wellington Independent*, Vol XXI, Issue 2363, 19 May 1866, p 5.

¹⁴⁶⁰ *Wellington Independent*, Vol XXII, Issue 2666, 11 April 1868 p 5.

¹⁴⁶¹ i.e. because it is a leading question, permissible in cross-examination but strictly forbidden in evidence-in-chief.

¹⁴⁶² (1868) 1D Otaki MB, 425-430, 436-443 (31 March-1 April 1868).

¹⁴⁶³ (1868) 1D Otaki MB 485-502.

of action at all times. He said that Rangitane caught birds and eels at Himatangi. He said also that it was Rangitane who placed the Hawke's Bay group, Ngati Te Upokoiri, on land in the Manawatu. He stated also that there was no general right held by Ngati Raukawa as a whole to land north of the Manawatu River, just some sections, including Ihakara and his people; Tapa Te Whata and Ngati Kauwhata; Tamihana Whakaturupohira and his people, Ngati Te Ihiihi; Horomona Torenu, Aperahama Huruhuru, and Nepia Taratoa and his tribe, Ngati Parewahawaha. Peti went over a number of other matters much commented on in the evidence, including the lease to Skipwith and the boundary marker pou at Whitirea on the Manawatu. He also described the contention between Ngati Raukawa and Rangitane over another lease (Robinson lease). Peti said that he and Ngati Apa and half of Ngati Raukawa and Whanganui and Ngati Toa and some of Ngati Awa sold the Rangitikei-Manawatu block to the Crown. He denied that Ngati Raukawa had mana over the land at Rangitikei and said that it had not been necessary for Rangitane to obtain the assent of Ngati Raukawa to sell the Ahuaturanga block to the government, and insisted that Ngati Raukawa as such did not have a right at Te Ahuaturanga but that on the other hand Ngati Kauwhata did.¹⁴⁶⁴

Te Hirawanu sold Te Ahu o Turanga. I fixed the boundaries. At first I and my tribe were not willing to sell all that – did not approve of sale by Hirawanu – When Ngati Raukawa saw that I had assented they came also – The assent of Ngatiraukawa was not required ... for the man 'mana' was with Rangitane and Hirawanu. Ngatiraukawa had no right. The man who had a right was Tapa Te Whata he is Ngati Kauhata.

Probably the most important Maori witness called by Fox was Hunia Te Hakeke (Kawana Hunia) of Ngati Apa, who gave evidence on 6-7 April. Hunia Te Hakeke said that he was primarily of Ngati Apa but affiliated also to Rangitane and Muaupoko.¹⁴⁶⁵ He claimed that the mana of Ngati Apa went as far south as the Manawatu River, with some Ngati Apa hapu having rights even further south (Ngati Kokohu, Ngati Tapuiti, Ngati Pouwhenua, Ngati Kura, and Ngati Maikuku). He described in very great detail the first heke led by chiefs from Tai Tokerau and by Te Rauparaha and Te Rangihaeata of Ngati Toa. His evidence provides a wealth of information on the marriage to Te Pikinga to Te Rangihaeata and the peacemaking that was made between the Ngati Toa chiefs and Ngati Apa that resulted from this marriage, the gift of greenstone made by Ngati Apa and the other formalities.¹⁴⁶⁶ The wealth of detail indicates that this is an important and reliable account, but it must be borne in mind that the evidence was being called by Crown counsel for a particular reason, i.e. to show the strength of the relationship between Ngati Toa and Ngati Apa as a way of weakening the claims to land north of the Manawatu by Ngati Raukawa.

Another witness called by Fox was Amos Burr, a settler living in the Manawatu area who seems to have had a very good knowledge of the district. Burr stated at the beginning of his evidence that he had earlier given evidence to Commissioner Spain. Burr stated that as far as he was aware Ngati Apa lived entirely independently and were not subordinate to Ngati Raukawa in any way:¹⁴⁶⁷

The Ngati Apa claimed and were in possession of country between Rangitikei and Manawatu especially at fishing places along the coast. It would not be true if any person were to say that Ngatiapa had no 'mana' – it would not be true. Nepia distinctly told me that Ngati Apa were the original owners of the land and I always found what he said was true. I should say it was not true that Ngati Apa were living in

¹⁴⁶⁴ (1868) 1 D Otaki MB 498.

¹⁴⁶⁵ (1868) 1D Otaki MB 510.

¹⁴⁶⁶ See (1868) 1D Otaki MB 511-512.

¹⁴⁶⁷ See (1868) 1D Otaki MB 474 (3 April 1868).

subjection to Ngatiraukawa. I asked for a guide from here¹⁴⁶⁸ to take me to Whanganui. Ngatiraukawa said they were afraid of Ngatiapa and I had to go to Nepia about it – Ngatiapa were quite independent, equally with any other tribe on the coast. If anyone were to say that Ngatiraukawa were in possession of all the country from Kukutauaki to Turakina I should say it was absurd – when I first went up there were no occupiers but there were old potato gardens there – I was up in 1845, but I speak more particularly of 1846.

Burr made it clear that – in his opinion – he had a much better understanding of how things were on the Kapiti coast than did the CMS missionaries. He claimed that Hadfield had only a poor knowledge of the Manawatu.¹⁴⁶⁹ Cross-examined by Williams he continued to insist that “I know more about these tribes than the missionaries”.¹⁴⁷⁰ This seems very unlikely; indeed it is an absurd claim. Hadfield in fact constantly travelled around a vast region from the northern South Island to Taranaki and was in constant contact with a network of Maori teachers. Hadfield was to describe his travels in detail in his evidence given in the Rangitikei case in the following year (see below). According to his biographer, “[b]y the end of 1842, therefore, Hadfield had made himself familiar with the whole of the central part of New Zealand, from South Taranaki to Cloudy Bay, and from Southern Hawke’s Bay to Nelson”:¹⁴⁷¹

No other Pakeha had such a knowledge of both Pakeha aspirations and Maori interests. He even had a good knowledge of the whaling communities, especially those who had married Maori wives on both sides of Cook Strait.

One witness who affiliated to Ngati Raukawa was Kereopa Tukumarū, who gave his evidence on 9 April. He was cross-examined by Williams, highly effectively it would seem, making numerous admissions that were quite damaging to the Crown case:¹⁴⁷²

[582] I came here from Heretaunga after the great ‘heke’. Patukohuru came with the “heke nui” – I came after – I don’t know about Ngati Raukawa coming as a defeated tribe [583] to seek protection of Rauparaha – Ngatiraukawa were not a defeated tribe – they were an “iwi Rangatira” – I can’t say whether Rauparaha and Whatanui had equal “mana” – I have heard from the old men that Rauparaha invited Ngatiraukawa to come here – I heard that Rauparaha gave Ohau to a relation of mine – Other lands may have been given to Ngatiraukawa by Rauparaha I don’t know that he invited them to come and occupy this – I did not hear that Rauparaha mentioned Kukutauaki as a boundary for Ngatiraukawa – We did take captives of Ngatiapa when we came but they were not taken in any great battle – I did not hear there were ‘pas’ when my tribe came in the “heke” – I did not here – I was here at the Haowhenua affair but I was young – I did not here about peace being made at Haowhenua but at Waimea – This was before Ngatiraukawa left Otaki – Immediately on our return from Waimea we went to Ohau and Ngati Awa went to Waikanae – Perhaps it was arranged by the “kauamtua” who know? – Patu Kohuru were at were at Manawatu long before Haowhenua, catching eels – Matene was cultivating at Himatangi at the time when [584] I went to Manawatu before Haowhenua – his crops were taken and eaten by us when we went from Ohau after Haowhenua – Matene was there he was at Rangitikei.

Kereopa states, then, that Ngati Raukawa were not in retreat when they came to the PkM region, that they took Ngati Apa captives, that the Patukohuru hapu of Ngati Raukawa was occupying land in the Manawatu before Haowhenua, and that Matene was cultivating land at Himatangi before the battle of Haowhenua.

¹⁴⁶⁸ Otaki. Burr is probably describing the situation around 1845-1846.

¹⁴⁶⁹ (1868) 1D Otaki MB 477 (3 April 1868).

¹⁴⁷⁰ (1868) 1D Otaki MB 478.

¹⁴⁷¹ Christopher Lethbridge, *Wounded Lion*, 87.

¹⁴⁷² (1868) 1E Otaki MB 582 (9 April 1868).

Fox also called Featherston and Buller, who both gave evidence on the Rangitikei-Manawatu purchase, on Featherston’s decision to impound the rents, and on the disputation between Ngati Apa and Ngati Raukawa. Featherston said that he had impounded the rents at Tawhirihoe “to prevent the tribes fighting – it was done with the assent of all the tribes – the rents were to be paid when the whole question of the purchase should be settled”.¹⁴⁷³

Towards the end of the case Fox asked to have the cultivations on the Himatangi block surveyed, which he said was of “vital importance to the case of the Crown”.¹⁴⁷⁴ Fox saw such a survey of all the old and new cultivations as relevant to determining “the exact area of the land which Parakaia might be entitled to a certificate for”, a revealing remark, but also indicating a certain inconsistency as there was no suggestion that the sellers were being compensated only for the loss of their cultivations. It shows, nevertheless, that a “waste lands” theory of Native title was at the back of Fox’s mind. Fox complained to Rogan and Smith that the surveyor he had sent had been refused admittance by the Ngati Raukawa residents. The Court thought Fox’s application for a while, and responded as follows:

The Court, after much deliberation, said that the exact area could not affect the case, the relative positions of the cultivations might; that it felt it had no authority under the Native Land Act to grant such an order, and could not commit itself, but suggested that as Mr Williams’s authority had been required by the resident natives, that he would probably have no objection to give it. Mr. Williams had only then heard of the survey, or anything about it; that he had no authority to give such an order without Parakaia’s consent; on asking Parakaia he readily assented, and Nirae te Raotea accompanied the surveyor on his immediate return to Manawatu.

9.14 “Rangitikei is the vineyard, Ngatiraukawa are like Naboth”: Closing submissions: 22 April

Closing submissions were heard on 22-23 April, Williams speaking first, and then Fox. Both addresses were reprinted in full in the newspapers. Williams, who spoke in Maori, began by thanking the Court for its courtesy (a thanks he pointedly declined to extend to Fox). Williams’ address was a valiant but somewhat unstructured and rambling defence of Parakaia’s rights at Himatangi, liberally studded with scriptural references, as might be expected from a member of the Williams family. He referred, for example, to the story in the Old Testament (2 Kings) relating to King Ahab, his wife Jezebel, and Naboth’s vineyard (possibly the earliest compulsory taking of land in recorded history). Williams deployed this ancient narrative as follows:

There is a story often alluded to by the monitors, that of Ahab and his wife Jezebel. They wished to obtain possession of the vineyard of Naboth. They put Naboth to death and took his vineyard. A monitor came to King Ahab and said the monitors are a bad lot, they must be put to death. Rangitikei is the vineyard, Ngatiraukawa are like Naboth.

Many people today might be mystified by this allusion to Naboth’s vineyard, but this would not have been the case in the Christian and Biblically-aware culture shared by Maori and Pakeha in 1868. Williams’ core argument was essentially that as at 1840 Ngati Raukawa held Himatangi (and other lands north of the Manawatu) according to Maori custom, that Ngati Raukawa were a kind and generous people who had trusted to the law, and their rights were protected by the Treaty of Waitangi.¹⁴⁷⁵

Matene Te Whiwhi has told the Court how Ngatiapa were defeated, and about Rauparaha sending for Ngatiraukawa to occupy his conquests, that Rauparaha said the mana of all these lands was to be with

¹⁴⁷³ (1868) 1D Otaki MB 644.

¹⁴⁷⁴ “Native Lands Court, Otaki”, *Evening Post*, Vol IV, Issue 55, 18 April 1868, p 5.

¹⁴⁷⁵ *Ibid.*

Ngatiraukawa. Matene Te Whiwhi has told the Court that Ngatiraukawa alone were in occupation at the time of the Treaty. Archdeacon Hadfield has stated that Ngatiraukawa were in undisputed possession at the time of the Treaty.

Williams protested against Fox's cynical dismissal of the Treaty of Waitangi, and linked the Treaty and Ngati Raukawa possession together in a sustained piece of rhetoric:¹⁴⁷⁶

The counsel for the Crown, or rather I should say, the objector to Parakaia's claim, has stated that the Treaty of Waitangi is a blanket treaty.

This was meant quite literally, and it was how a number of witnesses described and remembered the Treaty of Waitangi: it was the blanket treaty because everyone who signed it was given a blanket. Williams went on:¹⁴⁷⁷

If the name attached to that Treaty had been the name of any ordinary person, the name of a Superintendent, or a Land Purchase Commissioner, it might be called a blanket treaty; but the name attached to that Treaty was the name of Queen Victoria, the great Queen of England. If that Treaty was taken about by a missionary, and blankets were given, it was not the fault of the Maoris. Among the papers brought before the Court by the learned counsel, there is an account of the Kohimarama Conference, containing a speech made by one of the chiefs present, in which he says that blankets were given them, but inside that blanket was a fish-hook: they took the blanket and were caught with the fish-hook.

Possibly misunderstanding the point made about the fish-hook at Kohimarama, Williams continued:¹⁴⁷⁸

Perhaps the counsel for the Crown does not know that when the hook caught the Maori it also caught the land, and that the hook is now embedded in the land at Himatangi. Dr Featherston tried to detach it at Takapu, but he failed: he tried again at Parewanui, but he failed, and the learned counsel will find that he will fail also. Fox's closing address, given on April 23, was not recorded in the MB (the usual practice was not to record closing addresses). Fox's closing, in which the sarcasm and rhetoric never let up for a moment, was the work of an experienced barrister and parliamentary speaker delivered in full Victorian rhetorical style. The address was recorded in a pamphlet printed at Wellington and was published in full in the *Wellington Independent*.¹⁴⁷⁹ This seems to show that the speech was not merely prepared for the courtroom but with a much wider audience in mind.

Fox began with a torrent of biting (and, it must be conceded, funny) sarcasm directed at Williams and proceeded to argue that the overly lax procedure of the Native Land Court had allowed the case to be dragged out pointlessly:¹⁴⁸⁰

The Agent for the Claimants commenced his first address to this Court by thanking the Government and the Assembly on the part of his clients, for allowing their claims to be brought before the Court. I am afraid sir that the Court will not reciprocate the sentiment – it will hardly thank Mr Williams and his clients for having indicted (inflicted?) their claims upon it. The period during which this investigation has continued, very nearly coincided with the ecclesiastical season of Lent; and I think, sir, that this Court,

¹⁴⁷⁶ Ibid.

¹⁴⁷⁷ Ibid.

¹⁴⁷⁸ Ibid.

¹⁴⁷⁹ William Fox, *The Rangitikei-Manawatu Purchase: Speeches of William Fox, Esq, Counsel for the Crown, Before the Native Lands Court at Otaki, Together with other Documents* (William Lyon, Wellington, 1868); also *Wellington Independent* 28 April 1868 ("Mr Fox's Speech on the Manawatu Purchase: Native Lands Court – Otaki Thursday April 23")

¹⁴⁸⁰ Fox closing address, *Wellington Independent*, 28 April 1868,

and all who have had the misfortune to attend it during the last forty days, will long remember these six weeks as the blackest Lent they ever kept – distinguished by the greatest abstinence from all pleasurable emotions, and by the highest penance ever undergone. I fear that the protracted and irrelevant cross-examination of the Agent on the other side, will long haunt our memories as the recollection of some grim and horrible nightmare. I cannot help expressing my regret that the forms of procedure in this Court did not prevent the claimants from presenting their claim in such a form as to lead to that result.

Fox compared Williams’ case to a “bundle of dirty linen”:¹⁴⁸¹

The Agent on the other side, untrammelled by any rules of pleading, tumbled his case into the lap of the Court like a bundle of dirty linen from a laundress’s basket, leaving the Court to disentangle the heap, reduce it into shape, and “get it up” as best it might.

Th real problem, Fox insisted, was Native Land Court procedure. The Court is sometimes criticised today for being procedurally rigid and inflexible. That was not Fox’s view.¹⁴⁸²

If the practice of this Court had been analogous to that of the Supreme Court, and the parties had been compelled by pleadings antecedent to settle the precise issues, I believe that the case of Parakaia and others might have been settled in about as many days as it has taken weeks to dispose of.

This was just rhetoric. After all, Fox had called large numbers of witnesses himself, and had engaged in prolonged cross-examination too.

Fox went on to deal with his first principal substantive argument, which was the Court’s “1840 rule”. Perhaps surprisingly, Fox was fiercely critical of the 1840 rule, going so far as to accuse the Native Land Court (and Chief Judge Fenton in particular) of an act of the “highest presumption” in establishing it in the first place. Fox attacks the “rule” as an excess of the Native Land Court’s jurisdiction, as illogical, and as being in conflict with “Maori law.” Fox’s attack on the 1840 rule perhaps confounds some of the assumptions of the present day about the so-called “rule”, in that in this Himatangi case we find Crown counsel attacking the 1840 rule at length and counsel for the Maori applicants defending it. The explanation, of course, is that it suited Fox’s purposes to attack the “1840 rule” because Ngati Raukawa’s case was founded on the claim that as at 1840 it was Ngati Raukawa which held the mana over the Rangitikei-Manawatu lands. Entangled in this was the way in which the guarantees of the Treaty were understood by such supporters of the Treaty as the Williams family: the Treaty guaranteed to the chiefs and tribes of the country the rightful possession of whatever lands they happened to possess as at the time of the Treaty, no more and no less. As to the 1840 rule, it may be questioned whether Fox truly grasped the content of the ‘rule’ as it was understood by Fenton, given that Fenton’s primary concern was to give no scope for post-1840 claims to be based on conquest. This need not be pursued here. What is significant is that Fox was creating a foundation for minimalising the interests of Ngati Raukawa and maximalising those of Ngati Apa (and, thus, those of the Crown). According to Fox:

The Native Lands Court has thought it proper to fix a specific period for the establishment of native title, and has taken the year 1840, as its limit; making occupancy at that period as its principal if not its only test of ownership. “Having found it absolutely necessary” says Chief Judge Fenton,¹⁴⁸³ to fix some point of time at which the title, as far as this Court is concerned must be regarded as settled; we have decided that that point of time must be the establishment

¹⁴⁸¹ Ibid.

¹⁴⁸² Ibid.

¹⁴⁸³ Fox is referring to Fenton’s *Oakura* decision of 1866 ([1886] AJHR A13, Fenton *Important Judgments* 9-12, Boast *Native Land Court* vol 1 281-311).

of the British Government in 1840; and all persons who are proved to have been the actual owners or possessors of land, at that time must be regarded as the owners or possessors of those lands now; except in such cases where changes of ownership or possession have subsequently taken place with the consent express or tacit of the Government or without its actual interference to prevent these changes." If the British sovereignty had made an entire change in the character of native tenure, both for the future and *ex post facto*, such a rule might have had some show of reason. But since the Court still respects the Native law of ownership, as it existed in and long previously to 1840, and decides between claimants in accordance with native law, there is not a shadow of reason for fixing a period of limitation either at 1840, or at any other date. And I do not hesitate to say, (I speak with all possible respect for the Court,) that in affecting to fix a period of limitation beyond which any Maori subject of her Majesty shall not prove a title based on Maori law, the Court has been guilty of an act of the highest presumption, and has entirely exceeded its legal power. No authority but that of Parliament can fix a period of limitation beyond which any British subject shall be debarred from asserting and giving proof of his title. The Supreme Court of New Zealand could not do it: the Courts at Westminster could not do it; and I defy any one to cite any instance in the history of English law in which a party has been debarred from prosecuting his legal rights by lapse of time, except where the limit has been imposed by Act of the Legislature. For any Court to assume to itself the right of fixing a limit is to arrogate to itself legislative power; and it is certainly not authorized by any of the enactments of the Legislature of the colony creating this Court.

Unexpectedly endorsing more recent jurisprudential thought, Fox went on to reject Fenton's claim that Maori law was based on "force". That, said Fox, was simply not so (again, Fox's argument perhaps confounds contemporary expectations).¹⁴⁸⁴

But I contend further that the ground on which the court has based this decision, involves a most transparent fallacy. "The conclusion at which this Court has arrived," says Chief Judge Fenton, is that before the establishment of the British government the great rule which governed Maori rights to land was force;" and therefore the Court affects to put Maori title for the future on a better basis. If this is meant to apply to the Maori in any special sense, different from other nations, it is practically untrue. Look at the great Waikato tribes, who for centuries have continued to occupy the very lands on which their ancestors settled on their first migration to the country. Look at the Ngapuhi, the Arawa, the Ngatiporou – (I might mention all the larger tribes of New Zealand), holding on to their lands by ancestral descent for a long lapse of years. In what sense can it be said that their title is based on force? It may be maintained by force; but how in that respect does it differ from the territorial possession of the great nations of Europe, maintained by standing armies? Have not those nations for 1000 years and down to this day, been engaged in military aggression on each other and perpetual attempts, often successful, to conquer each others' territory?

After more in like vein, Fox urged the Court to not make its decision on any narrow consideration of which group happened to be in possession as at 1840.

At that period [i.e. 1840] 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 land were evidently in a state of fusion: old political landmarks were broken down; new ones were hardly yet defined or established. "In those days of Satan," said one of the old witnesses, "the tribes were fighting with each other. I cannot say where

¹⁴⁸⁴ Fox closing address, *Wellington Independent*, 28 April 1868.

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, momentarily in abeyance, had never been abandoned or transferred. Sir, I beg most respectfully to protest against the assumption of such power by this Court. Its judgment ought not to be based on any narrow and restricted examination of actual possession in 1840: but ought to be founded on a wide historical review of the period going back at least to the time of Rauparaha's first invasion. It has been found impossible to lay the subject before the Court in an intelligible shape without going back to that period; every witness asked to give testimony has invariably commenced with Rauparaha's "taua" as the root of the whole transaction, and I most respectfully urge this Court to do the same.

It should be apparent that the Crown case rested on a particular historical reading, which placed primary emphasis on the first expedition by Te Rauparaha in association with the Bay of Islands tribes as the pivotal event from which all customary rights in the PkM region derived. In fact, this is a misreading: that first expedition should rather be seen as a preliminary exploratory foray. By focusing on that, Fox allowed no scope for any kind of title by conquest on the part of Ngati Raukawa in association with Ngati Toa and other groups. It also gave him scope to place full emphasis on the establish of peace between the leadership of the taua with Ngati Apa, including Te Pikinga's marriage to Te Rangihaeata. The Crown theory in the Himatangi case, as in the subsequent Rangitikei-Manawatu case, was essentially a *historical* theory, one which the Native Land Court was to fully adopt in its Rangitikei-Manawatu judgment, as will be seen.

It was also pivotal to the Crown theory to diminish or downgrade the rights of Ngati Raukawa as mere intruders, which, following a long review of the credibility of the witnesses on both sides, Fox proceeded to do, training his venom on the three Ngati Raukawa hapu of Himatangi but in effect making an argument which applied to Ngati Raukawa interests at Himatangi only, but throughout the entirety of the Rangitikei-Manawatu block:¹⁴⁸⁵

It is perfectly clear that the occupation of the three Ngatiraukawa hapus, at whatever date it commenced or existed, originated simply in intrusion and was a mere encroachment. If so it could confer nothing even in the character of possessory right beyond the absolute limits of the ground intruded upon.

Building to his conclusion, Fox reminded the Court of the wider implications of its decision, i.e. the validity of the Rangitikei-Manawatu Crown purchase itself (which, after all, was what this vitally important case was in reality about:

In conclusion, I trust the Court will in this case do strict justice between the parties. Courts of arbitration are too often in the habit of splitting the difference, without regard to the strict rights of the litigants. It is easy to be liberal with other people's property. But this is not a Court of arbitration, and there are grave reasons why no such liberality should be exercised in this case; in other words. Why the claimants should receive not an acre more than they have proved a title to. A body of 1700 natives who affect to have sold the land in question to the Crown, watch with intense interest a decision which may vindicate their honour, or cover them with shame and confusion. The credit of the purchasing Government and of the Commissioner is no less at stake.

Fox was openly asking the Court to decide in favour of the sellers, the Wellington Provincial Government, and Featherston.

¹⁴⁸⁵ Ibid.

9.15 Himatangi decision, 1868

The Court gave its judgment at the end of April. Well aware of the significance of the case, it made it clear that the case was one of great importance in the wider region:

We have found it impossible to give a decision in this case without first determining an important question raised in the course of this investigation, that of conflicting tribal claims asserted by the Ngatiraukawa one [sic] one side and the Ngatiapa and the Rangitane on the other to the country lying between the Manawatu and Rangitikei rivers. We consider that there is sufficient evidence before the Court to enable us to decide this question of tribal right and by recording our decision on this point in the present judgment we indicate a principle which may be conveniently and justly applied by this court in dealing with *other cases of claims in the Rangitikei Manawatu block*¹⁴⁸⁶ which have been or may be referred to it (emphasis added).

That "principle" was essentially that of the importance of occupation as creating the foundation for a legitimate title to land. Ngati Raukawa were undoubtedly in occupation "before the period of the establishment of British Government". The Court did not, then, accept Fox's claim that the Ngati Raukawa hapu at Himatangi were merely "intruders". This was also shown by the role played by Ngati Raukawa in various land transactions and leases after 1840. However it was also true that "the original occupiers" had never been "absolutely dispossessed" nor that they had "ceased on their part to assert and exercise rights of ownership". Ngati Apa and Rangitane had certainly been "weakened" by the Ngati Toa invasion led by Te Rauparaha. But being "weakened" and having their mana wholly extinguished were not the same thing. Rather Ngati Apa and Rangitane "were compelled to share their territory with his powerful allies the Ngatiraukawa and to acquiesce in *joint ownership*" (emphasis added). Interests were *equal*. The Court found 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".

As well as finding that interests in the Rangitikei-Manawatu block were shared, the Court found as well that the Ngati Raukawa interests were not held by the entire iwi but rather only by those hapu that were actually in occupation north of the river:

The tribal interest of Ngatiraukawa we consider vested in the section of the tribe which has been in actual occupation to the exclusion of all others.

It has been proved to the satisfaction of the Court that Parakaia and his co-claimants comprise that section of the Ngatiraukawa tribe which has acquired rights by occupation over the Himatangi block. The tribal interest vests solely in them – the claim preferred on behalf of Ihakara and the Patukohora founded upon temporary occupation we do not admit.

It was hardly unusual for the Court to hold that a block was held by particular hapu: that indeed was its standard practice, as Gilling has pointed out.¹⁴⁸⁷ But the Court was not consistent on this occasion, because its findings with respect to Ngati Raukawa on the one hand and Ngati Apa on the other are different: it found in favour of three specific Ngati Raukawa hapu on the one hand but for the whole of Ngati Apa and Rangitane on the other. No attempt was made by the Court to differentiate the Ngati Apa and Rangitane rights by hapu. Parakaia and his co-claimants amounted to a total of 27 people, two of whom the Court disqualified as they had signed the deed of cession. That meant that Ngati Raukawa,

¹⁴⁸⁶ As pointed out above, the case was not concerned with the *whole* Rangitikei Manawatu block, just a part of it.

¹⁴⁸⁷ Gilling, *Land of Fighting and Trouble*, 186.

or rather a group of Ngati Raukawa individuals, were awarded 5,500 acres, half of the block less 2/27. This was conditional on a proper survey being submitted within six months.

Although the Court was well aware of the significance of the case, it cannot be said that its judgment was in any way equal to the situation. It was a very brief statement, which completely failed to review in any depth the large amount of testimony it had heard. Who was the more reliable, Octavius Hadfield, or Amos Burr. Matene Te Whiwhi and Parakaia Te Pouepa, or Tamihana Te Rauparaha? The Court does not say. Why exactly were the interests "shared"? How could the interests of Ngati Raukawa on the one hand and Ngati Apa and Rangitane on the other hand be equal? What is there in the evidence of Ngati Raukawa that they ever saw themselves as having a shared interest? (As far as I can see, the answer is – nothing.)

Quite what the decision actually meant for the rest of the Manawatu-Rangitikei block was not obvious. It was a compromise decision, which like many compromises, pleased no one.¹⁴⁸⁸ The immediate reaction seems to have been one of puzzlement. There were still a number of further cases still to be heard. The *Wellington Independent*, a strong supporter of the Manawatu-Rangitikei purchase, was at first disappointed by the decision and saw it as unhelpful.¹⁴⁸⁹

The Judgment of the Native Lands Court, whose sittings have just been closed at Otaki, will create a general feeling of surprise and dissatisfaction. It is not of so much consequence that Parakaia and his twenty-six co-claimants have been awarded 5,500 acres in the Himatangi block, as that the Judges have laid down a principle relative to the tribal title of the Manawatu block, which asserts that the Ngatiraukawa tribe and the original owners (the Ngatiapa-Rangitane) possessed equal interests in, and rights over, the land in question, at the time when the negotiations for its cession to the Crown were entered upon.

The key problem was the further pending claims. As the *Independent* could see, "[w]hat applies to the Himatangi block, and to Parakaia's claim upon it, will apply with equal force to the whole of the land purchased by the Government, and to the claims of the Ngatiraukawa non-sellers who happen to be *in occupation* of different portions of it" [italics in original]. The province faced "a most dismal prospect of future litigation". The *Independent* also complained of the brevity and conclusory nature of the judgment.¹⁴⁹⁰

The Judges of the Court are careful not to inform us of the *data* on which their decision is based. "They consider that there is sufficient evidence before this Court to enable them to decide the question of tribal right," but they do not sum up the evidence and point out how it warrants such a conclusion.

One can readily sympathise with this criticism of the decision, at least.

On further reflection, however, the *Wellington Independent* concluded that the case was a reasonably good outcome for the provincial government. The decision divided Himatangi roughly in half, and indicated that claims to the rest of the Rangitikei Manawatu block would be made on the basis of occupation only. Moreover Ngati Raukawa had failed to show that they had title to the whole area on the basis of conquest. The *Independent* made another attempt to guess the implications of the decision on 7 May.¹⁴⁹¹ Although at first sight "this decision may appear disappointing", on "careful consideration" it "cannot be considered on the whole as being unsatisfactory":

¹⁴⁸⁸ See Gilling, *Land of Fighting and Trouble*, 186.

¹⁴⁸⁹ *Wellington Independent*, Vol XXII, Issue 2674, 30 April 1868, p 3.

¹⁴⁹⁰ Ibid.

¹⁴⁹¹ "General Summary", *Wellington Independent*, Vol XXIII, Issue 2677, 7 May 1868, p 6.

The great point in dispute was really whether the general purchase of the whole district – some 250,000 acres – by Dr Featherston for £25,000 should hold good. Dr Featherston, acting as Land Purchase Commissioner on the part of the Government, bought the land for the province from five tribes, resident and non-residents, and obtained to the consent of the sale of three-fourths of the residents of of the Ngatiraukawas. Now a certain number of the latter tribe, including Parakaia and his coadjutors, were dissentients to the sale; and the decision of the Court not only sets their claims at rest, but indicates how all others of a similar character – of which there are ten – are to be settled.

The pivotal points were that Ngatiapa had been found to have rights in the block (“[t]he dissentient Ngatiraukawas insisted that the other leading tribe, the Ngatiapa, had no tribal title to the land, whereas the Court decided that they had”) and that “only those dissentient Ngatiraukawas who are *actually residents* [emphasis added] shall be entitled to claim any award of land”. This simplified matters greatly:

The great bulk of the Manawatu district is properly speaking unoccupied, and should be considered under Ngatiapa tribal title. The portions to which a title by *occupation* can be shown in resident dissentient Ngatiraukawas cannot, we trust, be very large. The decisions in the remaining ten cases of claimants yet to be heard will fix the exact amount, and then all the balance of the land will pass to Dr Featherston under his purchase deed.

Thus in the newspaper’s view probably only comparatively small areas of the Rangitikei Manawatu block could now be allocated to Ngati Raukawa based on occupational rights.

This appears to be a reasonably good analysis of the likely outcome, had the Court proceeded to deal with the balance of the existing claims in the way indicated. Raukawa would have had to prove hapu interests over the remaining parts of the Rangitikei-Manawatu block. Whether the *Wellington Independent* was right in thinking that these could amount to comparatively small areas is, perhaps, debatable. Ngati Raukawa, or more precisely Ngati Raukawa hapu (as well as Ngati Kauwhata) could well have ended up with substantial areas. This was not, however, how the rights of the non-sellers with respect to the rest of the block was to be determined. Meanwhile the issue of the unpaid rents continued to fester, and in fact took a new course as some of the lessees took the position that they no longer needed to pay any rent to Maori. Some of the Ngati Raukawa non-sellers began to seize cattle belonging to settlers:¹⁴⁹²

9.16 Application for a rehearing

Some historians, as noted, see the Court’s decision as a compromise that pleased no one.¹⁴⁹³ Ngati Raukawa’s response seems to have somewhat stronger than that. According to Octavius Hadfield, “a feeling of despair seemed to come over Ngati Raukawa when they heard the judgment”.¹⁴⁹⁴ Ngati Raukawa asked their conductor, Thomas Williams, to apply for a rehearing. There was some newspaper criticism of the suggestion that Ngati Raukawa were about to apply for a rehearing, which led to a letter to the *Wellington Independent* on 9 May by Hadfield. Hadfield’s letter indicates that Ngati Raukawa and their advisers were pondering not merely a rehearing, but also proceedings in the Supreme Court and even an appeal to the Privy Council:¹⁴⁹⁵

In your leading article of the 7th instant, while alluding to the possibility of an appeal from the judgment of the Native Lands Court on the Himatangi case, you make the following remark. – “If the application

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¹⁴⁹³ According to Galbreath “[a]fter listening to the interminable arguments the judges, to no-one’s satisfaction, split the difference and awarded Parakaia an area at Himatangi”: Galbreath, *Walter Buller*, 72.

¹⁴⁹⁴ Letter by Octavius Hadfield to *The Wellington Independent*, Vol XXIII, Issue 3698, 25 June 1868, p 4.

¹⁴⁹⁵ *Wellington Independent*, Vol XXVIII, Issue 2679, 12 May 1868, p 4.

for a rehearing is judged either by law or common sense, it will be decisively refused." Allow me to say that this looks very like an attempt on your part to prejudice the public on a matter which is still unsettled. The Government will not be influenced by what you deem "either law or common sense." I beg leave further to say that an application will be made to the Government, in accordance with the provisions of the Native Lands Act, 1865, for a rehearing of the Himatangi case. It is not unlikely that a case may also be tried in the Supreme Court. Anyhow, unless the native owners of the land obtain what they consider justice, they will not rest contented without an appeal to the Privy Council.

The rehearing application, drafted by T Williams, is dated 7 May. It is an interesting document:¹⁴⁹⁶

1. I have the honour to enclose a letter to myself from Parakaia and others written a few days since requesting me to apply for a rehearing of their claim to the block of land known as Himatangi, being a portion of the Rangitikei-Manawatu country alleged to have been sold to the Crown.
2. I have now the honour in accordance with my instructions to appeal on behalf of Parakaia and others against the decision given in their case by the Judges of the Native Land Court at Otaki and to apply for a rehearing of their claim to the Himatangi block of land.
3. Parakaia and his people ground their application for a rehearing 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 the block should now be taken from them and returned to Ngatiapa and Rangitane the "vanquished survivors".
4. Whereas the question before the Court during the investigation was the claim of Parakaia and others to Himatangi the Court in giving judgment decided the tribal title to the whole of the country lying between the Rangitikei and Manawatu rivers on the block.
5. Parakaia and his people [object?] to this that Himatangi is not necessarily a portion of such block but rather a portion of their part 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. In support of which view of the case I beg to quote from Mr Grindell's report respecting the Manawatu country dated 31 July 1858. "When the Ngatiraukawa first established themselves in the country each division of the tribe took possession of certain tracts as their share of the conquest, of which they forthwith became the sole proprietors of which they ever afterwards retained possession."
6. According to the judgment of the Court the the Ngatiapa and Rangitane were compelled to acquiesce in a joint ownership with Ngatiraukawa. Admitting this as put by the Court (rather it might be argued a mild way of putting it) the Ngatiraukawa have some years since formally returned to Ngatiapa and Rangitane large blocks of land viz. North Rangitikei and Te Ahuaturanga, reserving the remainder for the use and benefit of certain hapus of their tribe, and considered themselves thenceforth relieved from any joint ownership with these two tribes and entitled to be left in undisputed ownership of such remainder.

Here the applicants are making the point that if it was true that Ngati Apa and Rangtane were joint owners with Ngati Raukawa, then the two former groups had had large areas returned to them already, i.e. Rangitikei-Turakina and Te Ahuaturanga. That was more than enough to account for their joint ownership. The rest should belong to Ngati Raukawa.¹⁴⁹⁷ The petition continues:

¹⁴⁹⁶ Williams to Colonial Secretary, 7 May 1868, MA 13/73B [Correspondence regarding the Manawatu-Rangitikei Purchase].

¹⁴⁹⁷ On this point see also Hearn, *One past, many histories*, 437.

7. I beg leave to quote in support of this application from a memorandum [of?] ministers in reply to the Aborigines Protection Society dated 5th May 1864 and signed "William Fox":

4th. As regards the confiscation of Maori lands, against which a protest is raised, Ministers beg to make the following observations. In the first place it is a custom which has always been recognized by the Maoris themselves. In their wars, a conquered tribe not only forfeited its lands, but the vanquished survivors were reduced to a tributary position, and large numbers to personal slavery. The Government of New Zealand have always recognized such a title as valid; and a very large proportion, if not an absolute majority of the purchases of land from the Maoris have been made on the basis of a recognition of this right of conquest.

8. I would also beg leave to quote from Dr Featherston's admirable speech delivered in the House of Representatives on the 7th August [1863] when speaking upon the subject of the Waitara purchase. After quoting the second article of the Treaty of Waitangi he said: - "It follows that whatever rights especially [traditional?] the Natives possessed at the time the Treaty was made the Government is bound to respect and preserve inviolate."

9. I would further beg leave to quote from the Judgment given in the compensation court in the cases of the non-resident claimants at []:¹⁴⁹⁸

We do not think it can be reasonably maintained that the British Government came to this Colony to improve Maori titles, or to reinstate persons in possessions from which they had been expelled before 1840, or which they had voluntarily abandoned previously to that time. Having found it absolutely necessary to fix some point of time at which the titles, as far as this Court is concerned, must be regarded as settled, we have decided that that point of time must be the establishment of the British Government in 1840, and all persons who are proved to have been the actual owners or possessors of land at that time, must (with their successors) be regarded as the owners or possessors of those lands now.

10. In the Judgment declared at Otaki on Monday 27 April in the Himatangi case is the following: "Looking at the evidence it is clear to us that before the period of the establishment of British Government the Ngatiraukawa tribe had acquired and exercised rights of ownership over the territory in question." further viz: "It has been proved to the satisfaction of the Court that Parakaia and his co-claimants comprise that section of the Ngatiraukawa tribe which has acquired rights by occupation over the Himatangi block". [next line missing on photocopy] four of the Ngatiraukawa sellers were called by the learned counsel¹⁴⁹⁹ and that two of them contradicted very much of what had been stated by other witnesses for the Crown. That Tamihana Te Rauparaha swore positively that he and his father had no slaves of Ngatiapa and Rangitane, that he never saw any of them in slavery, that during an [ensuing?] sitting of the court on another case wherein he was himself concerned he states that he and his Father had forty slaves from Ngatiapa, Rangitane, Muaupoko and the tribes on the Middle Island. A long list of slaves can be produced respecting which there was then no "joint ownership". The insolent demeanour of Ngatiapa to the Ngatiraukawa of late years, is a clear proof that they must have been very much [enslaved?] to have ever submitted to any "joint ownership".

11. I may call attention to the fact that the claimants were not represented by counsel whereas the counsel for the crown was Mr. W. Fox, a gentleman who has figured largely in the Ministries of this country, at one time as Attorney-General, and who is now by many considered the "coming man".

¹⁴⁹⁸ Williams is quoting from Fenton's ruling as the president of the Compensation Court in *Oakura* in 1866: see Fenton, *Important Judgments*, 4; Boast, *Native Land Court*, vol 1, 291-2. This statement is usually regarded as the classic formulation of the '1840 rule'.

¹⁴⁹⁹ i.e. Crown counsel (Fox).

12. As it is not my intention to appear again on behalf of the natives, I have the honour to suggest that any communication in reply may be addressed to Parakaia Te Pouepa, at Otaki.

One of Williams' main points is that the Court *should* have applied the '1840 rule' but did not. It is significant that he cites Chief Judge Fenton's definition of the rule in the 1868 Compensation Court case on the Oakura block in Taranaki, as indeed Fox had in his closing submissions (but in order to attack it). The suggestion is that had the Court actually made the effort to assess political realities as they were in 1840 it should have found for Ngati Raukawa. However no less important was point 4: "Whereas the question before the Court during the investigation was the claim of Parakaia and others to Himatangi the Court in giving judgment decided the tribal title to the whole of the country lying between the Rangitikei and Manawatu rivers on the block." In other words the Court had not confined its remarks solely to Himatangi, of no great importance in itself (McLean later decided that Parakaia Te Pouepa and his people should have it all), but had issued a judgment with implications for the *entire* Manawatu purchase block of hundreds of thousands of acres. And yet it seems clear that all parties involved in the case were well aware of its wider general significance.

The rehearing application was referred to the judges who had heard the case. The judges, unsurprisingly, defended their position and maintained that there was nothing to show that Ngati Apa had ever been conquered by Ngati Raukawa. Their response was brief (14 May 1868):¹⁵⁰⁰

The reasons put forward by Mr Williams in support of his application for a rehearing of the Himatangi case appear to us altogether insufficient. We do not think that any legitimate ground for such an application exists.

The only reason given in the letter signed by Parakaia and others in asking for a rehearing is that they are dissatisfied with the decision of the court.

Parakaia failed to prove that he and his people had held sole possession in the Himatangi Block or that they obtained it by conquest. The boundaries of the block claimed by them were shown to have been fixed at a recent date and had no existence in the year 1840.

We considered it necessary to form an opinion on the question of tribal title to the country lying between the Rangitikei and Manawatu Rivers before giving a decision on the particular claim to Himatangi and we thought it desirable to record that opinion in our judgment. [emphasis added]

It was not shown that the Himatangi block as defined and described in the evidence formed a portion of the 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 the conquest of Ngati Apa and Rangitane by Ngati Raukawa or any forcible dispossession of the former by the latter of the country lying between the two rivers.

The other portions of Mr Williams' letter do not appear to us to require notice.

The application for a rehearing was thereupon declined. Presumably as a result of the refusal of a rehearing Ngati Raukawa's remaining Rangitikei-Manawatu applications were withdrawn by Williams in May 1868.¹⁵⁰¹

¹⁵⁰⁰ Memorandum on Mr Williams' Letter Applying for a Rehearing on Behalf of Parakaia Te Peneha [sic] and Others for a Rehearing of their Claim to the Himatangi Block, 14 May 1868, MA 13/73B.

¹⁵⁰¹ *Memorandum on the Rangitikei-Manawatu Land Claims* [by Walter Buller, R.M., Deputy Commissioner] 1870 AJHR A-25, 3: "After the withdrawal of the Rangitikei-Manawatu cases, at the instance of the Agent for the claimants, and by permission of the Judges, at the sittings of the Native Land Court, in May, 1868, some months elapsed without anything being done towards a settlement of the disputed claims."

However there is also correspondence relating to further hearings of some kind in June. Ngati Raukawa representatives must have raised an issue as to where another Court should sit and who should preside, as is apparent from a letter from Halse to the Ngati Raukawa non-sellers of 6 July 1868.¹⁵⁰²

The Governor and Ministers have considered your speeches and the written statement which you handed in. They have assented that the claims which have not been heard shall be brought before the Court.

However:

The Government, however, does not order at what place the Court shall sit, nor what judges shall preside. The statement will be sent to the Chief Judge, and the Court will decide for itself where it is right and fair that it should sit, and whether Mr Fenton shall preside. The Government are very willing that he should come and have great confidence in him, as they have in Mr Smith. The claimants must consider that there are always two sides in a quarrel; and if a Judge is brought to please one side, that very fact is likely to displease the other.

There was also a proposal to refer the issue to arbitration, mentioned in Buller's memorandum written in 1870. I am not certain when exactly this was (Buller does not say), and in any case this initiative went nowhere.¹⁵⁰³

Williams and Hadfield had received a great deal of adverse criticism in the newspapers regarding their role in their case, and Williams hit back by alleging political interference in the affair. He had also published (in 1867) a long pamphlet on the case, printed at Wellington called *The Manawatu Purchase Completed: The Treaty of Waitangi Broken*.¹⁵⁰⁴ This remarkable text preserves a great deal of documentation, much of it translated from Maori, some of which has since been lost, including letters and memoranda written by Parakaia Te Pouepa and other chiefs. Williams, as he in in the Court, claimed that the Manawatu purchase was a breach of the Treaty of Waitangi. In so arguing he emphasised also his own family's connection to the Treaty.¹⁵⁰⁵

The Reverend, now Archdeacon, Henry Williams, in 1840, translated the Treaty of Waitangi, "and repeated in the native tongue, sentence by sentence," all Governor Hobson said. He afterwards, requested by Governor Hobson, "fully authorised thereto by Her Majesty's instructions conveyed to him by here principal Secretary of State," obtained the signatures to the Treaty of all the principal chiefs on the North side of Cook's Straits, as far as Whanganui.

As I hold the opinion, in common with many others, that that the Treaty of Waitangi has been clearly broken by the Government of this country in their dealings with the Natives for the acquisition of the Manawatu block, and as I am the son of the Rev. Henry Williams above-named I need offer no apology for now coming forward to assist the Natives "on the north side of Cook's Strait" in standing up for their rights guaranteed to them by the Treaty of Waitangi.

¹⁵⁰² Halse to Ngati Raukawa, 6 July 1868, *Copy of Reply to Application of Non-Selling Ngatiraukawa Claimants for the Hearing of their Cases in Wellington*, 1868 AJHR A-19, 1. The document exists in Maori and in English. The source does not reprint the original letter from Ngati Raukawa.

¹⁵⁰³ *Memorandum on the Rangitikei-Manawatu Land Claims* [by Walter Buller, R.M., Deputy Commissioner] 1870 AJHR A-25, 3: "A proposal was afterwards made on behalf of the Native claimants, and agreed to by the Government, that the question should be left to the decision of three arbitrators, - one to be nominated by the Natives, another by the Commissioner, and a third by the Government. The Natives named His Honour Mr Justice Johnson, who, on being applied to, declined to act in that capacity, and the proposed arrangement accordingly fell through."

¹⁵⁰⁴ T C Williams *The Manawatu Purchase Completed: The Treaty of Waitangi Broken* (Printed at the office of the *New Zealand Times*, Wellington, 1867).

¹⁵⁰⁵ *Ibid*, Preface, at i-ii.

I bring no charge against the colonists, for whom, as a body, I, in common with Parakaia and many of his countrymen, have a great respect. I believe them to have been misinformed and misled. When I ask any intelligent Maori the question "who are to blame for the past and the present state of things in New Zealand?" the reply is a ready one – "Ko nga kai mahi o te Kawanatanga." When I am myself asked a similar question, my reply is the same – "the Government and the officers of the Government".

The document speaks for itself and is a testament to the importance of the Treaty of Waitangi in the solidly Church of England Williams family. Williams' views contrast markedly with those of William Fox as expressed in the course of the Himatangi case. It is not anachronistic to project the discourse of breaches of the Treaty into the past, as in fact some prominent Pakeha families were doing precisely that in the 1860s.

10. Rangitikei-Manawatu case 1869 and its aftermath

10.1 Introduction

This chapter deals with the Rangitikei-Manawatu case of 1869. This case was connected with, but was distinct from, the Himatangi case of 1868. The 1869 case was concerned with all of the remaining non-sellers' claims in the Rangitikei Manawatu block. Both cases related to the 1866 purchase, therefore, but were concerned with different Ngati Raukawa non-seller claims. Technically speaking the 1869 case was not a rehearing of the 1868 Himatangi case. In some respects, however, it was a rehearing in reality (if not formally) as the 1869 case dealt with rights in the whole of the Rangitikei Manawatu block generally, and the 1869 decision in effect annulled the findings of the 1868 Court with respect to Ngati Raukawa hapu rights in Himatangi. The 1869 decision was a decidedly worse result for Ngati Raukawa than the 1868 decision.

10.2 Referral to the Native Land Court, 1869

There is some evidence to suggest that the government was itself confused as to the respective rights of the various parties claiming interests in the Rangitikei Manawatu block. In early February J C Richmond sought legal advice from James Prendergast as to whether the Native Land Court could be "required to act upon a reference of questions affecting the interests of the Crown in the Manawatu block" under s 40 of the Native Lands Amendment Act 1867.¹⁵⁰⁶ Prendergast did not think that was possible: the word "claim" in s 40 means, he thought, "a claim to land over which the the Native title has not been extinguished, and the Crown can have no such claim".¹⁵⁰⁷ Richmond presumably wanted to know whether the Crown itself could be the applicant and have its interests in the block defined, but all that had happened so far was that the Court had made an inquiry into Himatangi, and even that had not been finalised. The whole of the Rangitikei-Manawatu block was still under Maori customary title and, Himatangi aside, still had to be investigated. Alternatively, Richmond wanted to know there was any way in which a reference of the non-sellers' claims could "formally and distinctly" clarify the Crown's interest, or at least that of the sellers. Prendergast did not think that could be done either, but advised that an investigation of the non-sellers' claims would "incidentally" clarify the rights of the non-sellers. The non-sellers themselves had no standing to appear as parties in any case that might be brought.¹⁵⁰⁸

In June 1869 the Governor referred 'all questions affecting the title or interests' of all the Maori non-sellers in the block to the Native Land Court:¹⁵⁰⁹

After considerable delay, a further reference of all unsatisfied claims to the Native Lands Court for final adjudication was made by the Governor in Council; and as it was understood that the Natives were particularly anxious to have their case heard before Messrs. Fenton and Maning, these Judges were induced to hold a special sitting at Wellington for that purpose.

¹⁵⁰⁶ Richmond to Prendergast, 15 February 1869, MA 13/113/71.

¹⁵⁰⁷ Annotation by Prendergast on *ibid*, 16 February 1869.

¹⁵⁰⁸ *Ibid*.

¹⁵⁰⁹ *Memorandum on the Rangitikei-Manawatu Land Claims* [by Walter Buller, R.M., Deputy Commissioner] 1870 AJHR A-25, 3.

There were ten claims outstanding.¹⁵¹⁰ In July the Native Land Court sat to deal with the matter, presided over by Chief Judge Fenton, along with Judge Maning and with Ihaia Porutu as Assessor.¹⁵¹¹ Williams was now no longer involved for Ngati Raukawa (he had explained in the application for a rehearing that he was not going to appear again for Ngati Raukawa). At the second hearing Ngati Raukawa were represented by W L Travers, a prominent Wellington barrister, instructed by Octavius Hadfield “and other gentlemen”.¹⁵¹² The Attorney-General, James Prendergast, appeared for the Crown, “instructed by Mr W. Buller R.M. of Wanganui, who negotiated the purchase”.¹⁵¹³ Technically this was a further investigation into the interests of the non-sellers in the whole of the Rangitikei-Manawatu block whose claims had not been dealt with in the earlier decision. These included Akapita, Te Kooro Te One (Ngati Kauwhata), Rawiri Te Wainui (Rawiri Te Whanui?), and Te Ara Takana.¹⁵¹⁴

The case, a matter of great public interest, was closely followed in the newspapers, but not quite so closely as the 1868 case. In fact, public interest seems to have dropped away to some extent. The issues raised and the evidence given were along the same lines as at the first instance hearing in 1868.¹⁵¹⁵ The Fenton-Maning court came to similar conclusions as had Judge Smith and his colleagues in 1868, and found that “the Ngatiraukawa tribe has not, as a tribe, acquired any right, title, interest or authority in or over the block of land which has been the subject of this investigation”. Judge Maning played a key role in the case and in the drafting and the delivery of the Court’s final decision.¹⁵¹⁶ Maning’s role emerges from the following article in *The Wellington Independent*, which prefaced the publication of the full text of the rehearing judgment:¹⁵¹⁷

Anything from the pen of so popular a writer as the author of “Old New Zealand” would be read with interest both here and in England. There is a charming freshness and originality in his style, while his extensive knowledge of Maori history and character – the result of more than forty years’ residence in the country – entitles his opinions to the utmost consideration. Apart from this, Mr Maning is regarded

¹⁵¹⁰ Akapita Te Tewe and others to Hikungarara; Keremihina Wairaka to Tawhirihoe; Paranihi Te Tau to Reureeu Pukekokeke; Pumipi Te Kaka to Makowhai; Wiriharaia Te Angiangi and others to Kaikokopu; Henare Te Waiatua and others to Oroua; Hare Hemi Taharape to Omarupapako; Rawiri Whanui to Kakanui; Te Kooro Te One to Mangatangi; and Te Ara Takana to Awahuri. See table 8.1. in Hearn, *One past, many histories*, 461.

¹⁵¹¹ Regarding the appointment of Fenton and Maning, Gilling has pointed out that the claimants had wanted them to hear the case, and although “a great fuss has been made of this fact on occasion” in fact “since Rogan, Smith and White had heard the Himatangi case, they were the only other two judges of the court, other than H.A.H. Monro, who was much more junior”. Presumably Ngati Raukawa wanted Fenton and Maning because they had not sat on the earlier court and would hopefully be relied on to give an independent opinion.

¹⁵¹² *Hawke’s Bay Times*, Vol 14, Issue 797, 9 August 1869, p 3, reprinting article in the *Wellington Independent* (no date given).

¹⁵¹³ *Hawke’s Bay Times*, Vol 14, Issue 797, 9 August 1869, p 3, reprinting article in the *Wellington Independent* (no date given).

¹⁵¹⁴ Rawiri Te Wainui [Te Whanui?] to Rolleston, 2 November 1867, MA 13/73B, cited Anderson and Picken, *Wellington Region*, 124.

¹⁵¹⁵ Wellington Native Land Court, Notes of Evidence, Rangitikei-Manawatu Claims, MA 13/113/71

¹⁵¹⁶ Governor Bowen to Granville, 17 November 1869, *Further Despatches from the Right Hon the Secretary of State for the Colonies and His Excellency the Governor* 1870 AJHR A-1B, 55: “Mr Maning, the Judge who delivered the final decision, is the well-known author of “Old New Zealand,” a book which is generally held by all competent critics to contain a very graphic and correct picture of the customs and character of the Maoris in times preceding British colonization. The judgment delivered by him will in itself be found an interesting page of Maori history”.

¹⁵¹⁷ *Wellington Independent* (Vol XXIV, Issue 2895, 28 September 1869) at 2. The *Independent* tended to support Featherston and the provincial government. It is hardly necessary to emphasise that the *Independent’s* opinions with respect to Judge Maning’s accurate understanding of Maori history and character should not be taken at face value. (In fact it could well be said that Hadfield, who had resided in the area for many years, had a far better understanding of the political and tenurial relationships of the various groups than was possessed by either Fenton or – especially – Maning.)

by those most competent to judge, as the best living authority on all questions of Maori title to land. On this account he was selected by the Chief Judge to assist him in the investigation of the long-vexed Manawatu question; and during the hearing of the case Mr Fenton, on more than one occasion, paid a tribute to the more extensive experience of his brother judge. We feel, therefore, more than ordinary pleasure in placing before our readers *in extenso*, the final judgment of the Native Lands Court in the Manawatu case, as delivered by Mr Maning on Saturday last. It presents the whole matter in so clear and intelligible a manner, and contains so much information of a historical kind, that it will amply repay a careful perusal.

The same article repeated the criticisms that had earlier been made of Octavius Hadfield, suggesting that he was uninformed on the realities of Maori customary title and hinting that the Anglican Church had meddled in the case in order to protect a grant of lands made to it by Ngati Raukawa:

One broad conclusion is deducible from these facts; and it is this: that the block was fairly purchased from the rightful owners three years ago, and that consequently the province has been wrongfully kept out of possession for that period, at a cost, calculating the interest on the purchase money alone, of £9000. Apart from this actual loss, the material progress of the province has been checked, colonization hindered, and the West Coast district thrown back, to an extent that cannot well be estimated. And we hesitate not to say that the whole blame rests on those who, whether in sincerity or not, have advised the Ngatiraukawa to oppose the purchase. Whether the opposition of Archdeacon Hadfield and his friends was in any way connected with the grant of 10,000 acres promised to the Church by the Ngatiraukawa tribe, or whether it was the result of ignorance is not for us to say. Some will attribute their action to the former cause; but the more charitable of our readers will place them in the category of those “Europeans not much acquainted with the peculiarities of Native custom” to whom Mr Maning, in his judgment, refers.

The second hearing was a major case by any standard, as can be seen from Governor Bowen’s report to the Colonial Secretary of 17 November (he may perhaps be conflating the Himatangi and Rangitikei Manawatu cases):¹⁵¹⁸

The trial occupied no less than forty-five (45) days, during which eighty-four (84) witnesses were examined. The Attorney-General appeared for the Crown and Mr Travers (one of the leading Counsel at the New Zealand Bar) for the dissentients. The able and experienced Chief Judge has informed me “that the case was very well got up; that the assiduity and intelligence of Counsel on both sides was were very remarkable; that the evidence was conclusive; and that there remained no doubt in the mind of any of the members of the Court as to the judgment”.

10.3 Evidence in the Rangitikei Manawatu case

As is noted in ch 2, the evidence for the second hearing is not in the Otaki MBs but exists in the form of loose-leaf notes held on MA 13/113/71 at National Archives Wellington (as well as in the newspapers, which followed the case closely). Thomas Travers opened the claimant case on 14 July 1869. Travers was clearly a capable barrister, but he does not seem to have quite as good a grasp of the earlier history compared to Thomas Williams. The notes preserved on the file do not give the impression that the submissions were very lengthy. Travers’ account of the early stages of the history is a bit garbled (or at least the notes are). Still the main outlines are clear. Travers claimed that when “Ngapuhi accompanied by Te Rauparaha came down south” the district north of Rangitikei and south of Manawatu was “beaten”:¹⁵¹⁹

¹⁵¹⁸ Bowen to Granville, 17 November 1869, 1870 AJHR A-1B, 55.

¹⁵¹⁹ Thomas Travers, opening submissions, MA 13/113/71 (14 July 1869).

The war party returned. The Ngatiraukawa¹⁵²⁰ decided that the country should be again invaded. Ngatitōa and Ngatiraukawa joint conquest took place in pursuance of this arrangement, and there was a consequent occupation. The conquest was complete. There was an absolute subjugation.

After, this, however, Ngati Toa met with “reverses” and “Ngatiraukawa came to their rescue”.¹⁵²¹ He also mentioned the 1840 rule, which, meant essentially “no squatting subsequent to 1840 to establish title”.¹⁵²² Travers argued that “Rauparaha with the aid of his allies succeeded in completely subjugating the Ngatiapa and Rangitane tribes”. There was a conquest which was “complete within the rules of Maori custom”. Travers argued that there was nothing that indicated any kind of formal peacemaking between Ngati Apa and Rangitane on the one hand and Ngati Toa and Ngati Raukawa on the other. With a peacemaking “the ceremonial was a very important one”, evidence of which is lacking:¹⁵²³

No evidence of any such formal establishment of peace. Ngatiapa were allowed to remain in occupation of their land – on sufferance.

Although Ngati Apa and Rangitane fought alongside Ngati Raukawa (Travers must be referring to Haowhenua, although he is not recorded as saying so) they did not participate as “independent allies”.¹⁵²⁴

They were not recognized by the assailing forces, consisting of Ngatiawa and Ngatitōa: for the Ngatitōa divided and fought on both sides.

Ngati Raukawa “permitted” Ngati Apa to occupy land north of the Rangitikei, and Rangitane in the upper Manawatu, and the sale of the Rangitikei-Turakina block was “by permission” of Ngati Raukawa. Other points Travers made in openings were that Ngati Raukawa hapu took possession of specific blocks (i.e. settlement was by hapu in defined areas); that occupation of these areas has been maintained until the present day; that the test for occupation has to be as at 1840; that there was no occupation of the Rangitikei-Manawatu block by Ngati Toa; and that those persons of Ngati Raukawa who had signed the Rangitikei-Manawatu deed had no right to do so “without the common consent of the tribe”.¹⁵²⁵

Travers’ first witness was Matene Te Whiwhi. He stressed the links between Ngati Toa and Ngati Raukawa (“[t]hese two tribes come from one ancestor”¹⁵²⁶). He reminded those present that he had known both Te Rauparaha and Te Whatanui personally. Ngati Raukawa and Ngati Toa “were associated in their Waikato fighting”.¹⁵²⁷ Once again Matene Te Whiwhi went over the history of the Ngati Toa and Ngati Raukawa migrations, albeit with some novel variations. He claimed, for instance, that Te Rauparaha and Te Whatanui developed a coordinated plan to move south to Wairarapa and Kapiti, Te Rauparaha taking his people down the east coast and Te Whatanui the west. The plan

¹⁵²⁰ This is either a mistake by Travers or by whoever was taking the notes.

¹⁵²¹ MA 13/71 (14 July 1869).

¹⁵²² Ibid.

¹⁵²³ Ibid.

¹⁵²⁴ Ibid.

¹⁵²⁵ On 10 August 1869 Travers sent a note to the Wellington independent which concisely sets out his argument: (“Manawatu Land Dispute, Wellington Independent, Vol XXIV, Issue 2874, 12 August 1869, p 2):

We say that Ngatiapa were the original possessors of the land in question. That they were completely conquered and reduced to subjection by Ngatitōa and Ngatiraukawa. That they completely lost their dominion over the land, and that they have never regained it. That Ngatitōa abandoned their interest in the conquered country in favour of Ngatiraukawa. That certain hapus of Ngatiraukawa occupied in pursuance of conquest. That if any of the Ngatiapa acquired rights subsequently to the conquest they were merely such individuals as actually occupied, and that were absorbed into Ngatiraukawa or the occupying hapus.

¹⁵²⁶ Evidence of Matene Te Whiwhi, Manawatu-Rangitikei case, MA 13/113/71.

¹⁵²⁷ Ibid.

foundered because of the difficulties Ngati Raukawa encountered in Hawke's Bay, and they had to go back to the Waikato. Te Whatanui was "too cautious to come on".¹⁵²⁸ The suggestion that there was a coordinated plan for Ngati Toa to travel by a western route and Ngati Raukawa by an eastern is not mentioned in many other sources. (The more usual narrative is that Te Rauparaha invited Ngati Raukawa to travel south with Ngati Toa, but that the Ngati Raukawa chiefs, intent on their own plan of invading and settling Heretaunga, declined to do so.)

Matene described Waiorua (1824) as "a great event" and a "great battle".¹⁵²⁹ A "great alliance was formed against Rauparaha in order to crush him". There was "a great battle and all these tribes were defeated".¹⁵³⁰ In response to questioning from the bench, Matene amplified his comments:¹⁵³¹

[Ngaruanui [sic]], Wannganui, Ngatiapa, Rangitane, Ngatira, Ngatikahungunu, Ngatiapa from the Middle Island, Ngatikuaia, Rangitane from Wairau were among the attacking force. It was Ngatiapa, Rangitane, and Muaupoko who induced all these tribes to collect and attack Rauparaha. The army of this grand alliance was defeated. 200 were killed. After the defeat of the allies, Rauparaha did not consider that he had any equal enemy, because all these tribes together had not been strong enough for him. Rauparaha frequently visited the mainland after this.

After Waiorua, there were no great battles between Rauparaha and the resident tribes, because they had all gone away to the mountains. They came down in a body. They searched for the people of the land and found them in the mountains. This was six years after the fight at Kapiti.

Ngatiraukawa chiefs – Whatanui, Nepia Taratoa, Te Ahukaramu and others.

The Ngatiraukawa did not take actual possession at that time, but they marked off the land for themselves. The land had been handed over [to?] Te Whatanui and other chiefs. The Ngatiraukawa afterwards returned to this land when they became possessed of guns and powder. They lived at Otaki. The Ngatiapa at this time were living in different places. A hundred were with Rangihaeata – some with Ngatiraukawa – others had gone to Wanganui. They ceased to have anything to do with this land. The reason for the dispersion was that they had been to Wairarapa and that they had been driven back. Te Whatanui treated the Ngatiapa, Rangitane, and Muaupoko with kindness. I don't know what Ngatiraukawa did with theirs.¹⁵³² I know what we, the Ngatitoa, did with ours: Te Hakeke and Hunia Te Hakeke living with me. Te Hakeke was a great chief in his own tribe. Te Hakeke worked for me. The Rangitane went inland of Manawatu. Have remained at Manawatu among the Ngatiraukawas. It may have been two years or three years after the advent of Ngatiraukawa that they occupied the land.

The Ngatiapa went back to their own country, but it was not [correct?]. The Ngatiraukawa lived at Otaki, but they went all over the land, as far as Manawatu. After the war between Ngatiraukawa and Ngatiawa – the last fight being Haowhenua – they went to the Rangitikei Manawatu Block. They remained there. They occupied the pieces of land they had marked out. The Ngatiraukawa made their appearance first at Turakina. They had a claim to the land North of Rangitikei as far as Wangaehu. I don't know that peace was made between the tribes; but Ngatiraukawa treated the Ngatiapa and Rangitane with kindness.

Others who gave evidence for the claimants included [Heruihau] Wairaka and Atareti Tarataoa, the daughter of Nepia Taratoa, who both focused on Ngati Raukawa settlement in the Rangitikei-Manawatu area. Octavius Hadfield also gave evidence. Perhaps mindful of the assertions by Amos Burr in the

¹⁵²⁸ Notes of evidence, Manawatu-Rangitikei case, 14 July 1869, MA 13/113/71.

¹⁵²⁹ Ibid.

¹⁵³⁰ Ibid.

¹⁵³¹ Ibid.

¹⁵³² Presumably meaning 'their' Ngati Apa, Rangitane, and Muaupoko.

Himatangi case that he had a better knowledge of the Maori of the region than the missionaries, Hadfield was careful to describe his travels and the records he had made.¹⁵³³

I have lived at Otaki. I came there first in 1839. I was fetched by Tamihana Te Rauparaha and Matene Te Whiwhi, who came to the Bay of Islands. Matene, at that time, was considered the most influential chief on Cooks Straits.

10.4 Crown case

Prendergast opened the Crown case by claiming that Ngati Raukawa had not conquered the Rangitikei-Manawatu lands from Ngati Apa:¹⁵³⁴

Conclusive evidence would be placed before the Court that there never was anything in the nature of a conquest by the Ngatiraukawa – that there never was a single fight between that tribe and the Ngatiapa – and that the claimants have never had possession of the land in dispute.

Ngati Raukawa, he said, had come to Kapiti “humbled and dispirited” following defeat in Hawke’s Bay and at Whanganui, and, “dreading an incursion of the powerful Waikato tribes” came to Kapiti as “fugitives” seeking protection of Te Rauparaha and the Ngati Toa. Ngati Toa, meanwhile, had become allied to Ngati Apa. According to Prendergast:

He would show that previously to the coming of the Ngatiraulawa a firm friendship and alliance had been formed between the Ngatitoo and the Ngatiapa, which had been cemented by the marriage of Rangihaeata with Pikinga, a Ngatiapa woman of high rank – that the Ngatiapa and Rangitane had never been disturbed in the possession of their lands north of the Manawatu – and that the irruption of the Ngatiraukawa in the manner described in no way affected the relations then subsisting between the Ngatitoo and the Ngatiapa.

Ngati Raukawa did not obtain a “footing” on the block until after the “Horowhenua fight” – it must be Haowhenua that is meant – following which “small parties” of Ngati Raukawa led by Te Whata and Nepia Taratoa “squatted” on Ngati Apa’s land “cultivating the same ground, living in the same pas, and fishing in the same lagoons”.¹⁵³⁵ This “squattening” by Ngati Raukawa was with the “tacit assent” of Ngati Apa, who were backed by the “numerous and powerful” Whanganui tribes. Ngati Apa, led by Te Hakeke, came to the aid of Ngati Raukawa at the time of the “Horowhenua” (Haowhenua) battle, fighting “not as a tributary tribe, but as an independent body, under their own chief and general”. At the time of the Treaty of Waitangi Ngati Apa were “absolute possession” of the whole of the Rangitikei-Manawatu block, subject only to the “small permissive holdings” acquired by “by the Ngatiparewahaha and other hapus of Ngatiraukawa”. When the area began to be leased “the negotiations were conducted by the Ngatiapa: some of the leased were in their own names exclusively – others were granted by themselves and Ngatiraukawa, acting jointly – while in one or two of them the Rangitanes also took part”.

Prendergast was about to call Tamihana Te Rauparaha as his first witness when the Court interposed and said that it would not be necessary for the Crown witnesses to be examined whether the Ngati Apa had been reduced to a “position of slavery and dependence” as the claimants “had entirely failed” on that point – an indication to the parties as to which way the wind was blowing. The Crown evidence then proceeded.

10.5 Preliminary judgment (August)

¹⁵³³ Evidence of Octavius Hadfield, MA 13/113/71.

¹⁵³⁴ *Wellington Independent*, Vol XXIV, Issue 2872, 7 August 1869, p 2.

¹⁵³⁵ *Ibid.*

Before Maning gave the final judgment of the Court on 25th September the Court released an interim judgment towards the end of August. According to the *Wellington Independent* (4 September):¹⁵³⁶

“The Estate belongs to the Ngatiapa”. Those were the words of Chief Judge Fenton, and they are, in fact, an epitome of the judgment that was delivered last week. That one sentence contains the most complete answer to all that has been said about the Ngatiraukawa “conquest and dominion,” and proves conclusively that Dr Featherston purchased the block from the rightful owners. Not only is it a triumphant vindication of that purchase, but it gives the lie to statements that for several years past have been industriously circulated by the opponents of the purchase.

The ‘judgment’ released at this stage was in fact a formal response to a set of issues submitted to the Court by the agreement of counsel. This document was reproduced by Walter Buller in his memorandum on the Rangitikei-Manawatu land claims written in 1870:¹⁵³⁷

1. Did Ngatiraukawa, prior to the year 1840, by virtue of the conquest of Ngatiapa, by themselves or others through whom they claimed, acquire the dominion over the land in question or any or what part or parts thereof?

The Court. – No.

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

The Court. – The words “subsequently to conquest thereof” must be erased. Ngatiraukawa, as a tribe, has not acquired any rights over the estate. The three hapus of Raukawa, Ngatikahoro, Ngatiparewahawaha, and Ngatikauwhata, have, by occupation, and with the consent of the Ngatiapa, acquired rights which will constitute them owners according to Maori custom. These hapus retained such rights in January, 1840. There is no evidence before the Court which should cause it to limit these rights to any specified piece or pieces of land.

The Court is not quite clear whether the hapu Ngatiteihiihi should also be included, and will, if the parties desire, hear further evidence with respect to that hapu.¹⁵³⁸

3. Were the rights of Ngatiapa, or any of them, completely extinguished over the said lands so acquired by conquest and occupation, or over any and what part thereof; or did they, in January 1840, have any ownership according to Native custom over the said land, or any and what part or parts thereof?

The Court. – The rights of Ngatiapa were not extinguished, but they were affected in so far as the above three hapus have acquired rights.

4. Was such ownership of the Ngatiapa hostile to, independent of, or along with, that of the Ngatiraukawa, or any and what hapu or hapus thereof?

The Court. – The ownership of the above three hapus was along with that of the Ngatiapa.

5. Have the Ngatiapa, or any of them, since January, 1840, acquired, by occupation or otherwise, any and what ownership, according to Native custom, of the land so acquired by Raukawa, or any and what parts thereof?

¹⁵³⁶ *Wellington Independent* (Vol XXIV, Issue 2885, 4 September 1869) at 4

¹⁵³⁷ 1870 AJHR A-25, 3. There is a hand-written version on MA 13/113/71.

¹⁵³⁸ Buller adds that “[f]urther evidence was accordingly adduced, and it resulted in the exclusion of this hapu”.

The Court. – Does not require answering.

6. What person, if any, of the said Raukawa Tribe (if the said tribe acquired ownership), or what persons of any hapu or hapus thereof which acquired ownership, if any, over the said land or any part thereof, in January 1840, have not signed or assented to the cession of to the Crown of the land owned by them?

The Court. – Cannot be answered yet. By Ngatiapa is meant all Ngatiapa, including those persons called half-castes – Rangitane (properly so called) and Ngatiteupokoiri are included.

Having issued this preliminary determination, the Court then worked its way through the list of about 500 claimants, taking down additional evidence, and came up with 62 names. At a suggestion from Travers Fenton “adjourned the Court for a week, to afford any of the defeated claimants, who might wish to do so, an opportunity of bringing forward any fresh evidence in support of their defeated claims”.¹⁵³⁹ The date for the reconvening of the Court was subsequently extended until 25th September. Meanwhile a round of negotiations began in the Rangitikei region to reach some kind of arrangement about how much land the admitted Ngati Raukawa claimants should receive. A figure of ten acres each was proposed by Ngati Apa, and it was then increased to 100. It appears that some Ngati Raukawa accepted this, while others did not, or were not present at the discussions. Some of the claimants said “they would take nothing except at the hands of the Court”.¹⁵⁴⁰

The Court sat, according to appointment, on the 25th September. Mr McDonald [now the accredited Native Agent for Ngati Raukawa] did not attend, nor was any fresh evidence adduced on behalf of the rejected claims. Ratana Ngahina, and Hakaraia Koraho, of Ngatiapa, and Hoeta Kahuhui, of Ngatikauwhata, were examined by Judge Maning as to what had taken place at the various meetings in the district, and further Native evidence was taken as to the absolute requirements of the hapus for whom provision was about to be made.

At this point Judge Maning then read his final judgment, giving the full reasons for the Court’s abbreviated decision given some weeks earlier. It is this decision of Maning’s which is reprinted in Fenton’s *Important Judgments* published in 1879.

10.6 Analysis of the Maning Rangitikei Manawatu judgment

In my view it is pivotal to examine the final 1869 judgment very closely and in depth. Hence the closely-focused (and unfortunately rather lengthy) discussion which follows. Maning’s judgment begins by noting that the case has been brought by Akapita under the 1867 Act to “certain lands between the Manawatu and Rangitikei rivers”.¹⁵⁴¹ The Court noted that the claim was grounded on (a) conquest (“by the Ngatittoa tribe under their chief Te Rauparaha, who subsequently gave, or granted, the land to the Ngatiraukawa tribe, his allies”); or (b), alternatively, “under any right which it may be proved to the Ngatiraukawa tribe, or any sections or hapu of that tribe, may have acquired either by occupation or in any other manner”.¹⁵⁴²

The Court explained carefully the role of the Crown in the whole affair:¹⁵⁴³

The claim by Akapita is opposed by the Crown, who have purchased from Ngatiapa, on the grounds that the original owners, the Ngatiapa, have never been conquered, and that the Ngatiraukawa *as a tribe*

¹⁵³⁹ 1870 AJHR A-25, 3.

¹⁵⁴⁰ 1870 AJHR A-25, 4.

¹⁵⁴¹ Fenton, *Important Judgments*, 101; Boast, *Native Land Court*, vol 1, 571.

¹⁵⁴² Ibid.

¹⁵⁴³ Ibid.

[emphasis added] have not acquired any right or interest whatever in the land, and, moreover, that the land claimed by Akapita is now the property of the Crown, having been legally purchased from the right owners.

Why the emphasis here on Ngati Raukawa “as a tribe”? This can only mean that if there was a conquest of the according to Maori custom, then the whole of Ngati Raukawa (assuming that the conquest was the work of the entire iwi) would be owners of the block, certainly a very inconvenient outcome. Moreover if the land had been conquered, then the people the government had paid money to will have little, or even no, right to the land, and the provincial government will have wasted its money and there would be no land in the region for the provincial government to sell. No doubt the political fallout from the settler community would have been severe, as will have been the financial loss. Fenton and Maning will have been aware of these realities, and the remarks of the Court cited here show that they were.

The Court then moves on to its historical analysis, which takes up most of the judgment (essentially it is a historical narrative). Its starting point is that in 1818 “or thereabouts” Ngati Apa were the possessors of the land in question. Maning next moves on to the first of Te Rauparaha’s journeys to the Kapiti region, which he made in concert with a number of chiefs from the Bay of Islands region. (There is a great deal of information about this first expedition in the Wellington and Otaki MBs and in many other sources). The Court says that after “a series of battles, onslaughts, stratagems, and incidents attendant on Maori warfare”¹⁵⁴⁴ Te Rauparaha and his “Ngapuhi allies” had “succeeded in possessing himself of a large territory to the north and south of Otaki”. This is certainly overstating things, as it happens – most sources, the Native Land Court in later cases (as will be seen) and modern scholarship inclines to the view that it was not really until the battle of Waiorua in 1824 that Ngati Toa hegemony was convincingly established. Maning goes on to describe the first expedition, probably more correctly, as an “inroad”. Te Rauparaha, says the Court, now “returned to Kawhia with the purpose of collecting the remainder of his tribe” and “of inviting the whole tribe of Ngatiraukawa to come and settle on the territory which he had but then but partially conquered” – also perhaps overstating matters, and certainly glossing over many complexities.

On the way home the invading force had to cross Ngati Apa territory. The Court gives some prominence to what supposedly happened at this point:¹⁵⁴⁵

It is to be observed 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 when advancing to the southward; 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.

The Court then notes that Te Rauparaha went back to Kawhia, where he “mustered his tribe and some other followers” and again “marched south”, with the intention of “permanently occupying and securing the conquest of the country which up to this time he had merely overrun”.¹⁵⁴⁶ The judgment then turns to focus on Ngati Raukawa’s journey south. No real attempt is made to sort out or clarify the various Ngati Raukawa migrations, or to analyse the difficulties in reconciling the various accounts given in evidence. The Court simply notes that “soon afterwards strong parties of Raukawa came from time to time to Kapiti”, partly “to examine the new country which had been offered to them, but chiefly, it would appear, moved by the reports which they had heard that gunpowder and firearms were

¹⁵⁴⁴ Fenton, *Important Judgments*, 102; Boast, *Native Land Court*, vol 1, 571.

¹⁵⁴⁵ Fenton, *Important Judgments*, 102; Boast, *Native Land Court*, vol 1, 572.

¹⁵⁴⁶ Ibid.

procurable at the place from European traders”. Interestingly, given the emphasis placed on this in many of the Waikato cases, there is no suggestion that these Ngati Raukawa “strong parties” were refugees, or were in flight from Maungatautari, or anything of the kind – Maning seems to think that what counted were Te Rauparaha’s invitation and the prospect of guns and trade with Europeans.

The entire judgment is structured around a core assumption, which is that Te Rauparaha and Ngati Toa were in a state of permanent alliance and friendship with Ngati Apa throughout the whole period, commencing with Te Rangihaeata’s marriage to Te Pikinga (Te Pekenga). Thus, according to the judgment, when Te Rauparaha invited Ngati Raukawa to come south, peace had by that time been made between Te Rauparaha and Ngati Apa, “thereby waving [sic] any rights he might have been supposed to claim over their lands.¹⁵⁴⁷ According to Maning, “friendly and confidential relations undoubtedly were maintained by Te Rauparaha and his tribe and the tribe of Ngatiapa”.¹⁵⁴⁸ Examples of conflict between Ngati Apa and Ngati Toa, in accordance with this overall framework, are explained away.¹⁵⁴⁹ Maning also makes much of Ngati Apa being allowed to acquire firearms at Kapiti, suggesting that Te Rauparaha’s overall strategy was to ensure that Ngati Apa and Ngati Raukawa were a check on each other (which, it has to be admitted, is the kind of thing that Te Rauparaha would do, but the Court is very vague on the chronology, and seems to suggest that at no time was there *any* significant conflict between Ngati Apa and Ngati Toa).

Thus the meta-narrative of the judgment, if it can be put that way, is of friendly relations between Te Rauparaha and Ngati Toa generally with Ngati Apa – as the Crown contended. This allows the Court to explain away evidence of conflict between Ngati Apa and Ngati Raukawa. This point is at the analytical core of the judgment and needs to be analysed carefully.

Thus Maning notes that when Ngati Raukawa were on “their way South” they had to pass through Ngati Apa territory. On their southward trek Ngati Raukawa did indeed kill or make prisoners of some Ngati Apa “stragglers”. These unlucky stragglers were those who “had lingered imprudently in the war track” at a time when “the prudent but brave war chief of the Ngati Apa had withdrawn the bulk of the tribe into the fastness of the country”.¹⁵⁵⁰ These attacks on mere stragglers, and Ngati Raukawa’s “nominal” claim to possession were, however, of no importance in the overall scheme of things. Why not? Firstly, according to Judge Maning, although Ngati Apa may have been weakened, they remained “still unconquered, and a considerable portion of their military force still maintained themselves in independence under their chief Te Hakeke”.¹⁵⁵¹ Secondly, these (supposedly) random killings did not disturb the overall relationship between Ngati Toa and Ngati Apa, one of peace and friendship. In explaining this apparently strange inconsistency on Te Rauparaha’s part of overlooking Ngati Raukawa’s attacks on his friends the Ngati Apa, Maning brings his own purported expertise into Maori ways of thinking into play (and arguably buries the issue under a mass of contorted prose).¹⁵⁵²

To Europeans not much acquainted with these peculiarities of Maori thought and action, the destruction by these passing parties of Ngatiraukawa, of individuals of the Ngatiapa tribe – a tribe with whom

¹⁵⁴⁷ Fenton, *Important Judgments*, 103; Boast, *Native Land Court*, vol 1, 573.

¹⁵⁴⁸ Ibid.

¹⁵⁴⁹ Ibid. The Court emphasises that Ngati Toa and Ngati Apa had generally good relations, “which were only broken off, more by accident than design of either party, in consequence of a few men of the Ngatiapa having been killed in an attack made by Ngatitua and others on a fort belonging to the Rangitane tribe in which these Ngatiapa men happened to be staying at the time, and whose death was afterwards avenged by the Ngatiapa – after which peace was again established between them and Te Rauparaha and the Ngatitua tribe”.

¹⁵⁵⁰ Fenton, *Important Judgments*, 102; Boast, *Native Land Court*, vol 1, 572.

¹⁵⁵¹ Fenton, *Important Judgments*, 103; Boast, *Native Land Court*, vol 1, 573.

¹⁵⁵² Fenton, *Important Judgements*, 103, Boast, *Native Land Court*, vol 1, 573.

Rauparaha was then on peaceful and even friendly terms, - their destruction by parties who were not only allies of Rauparaha, but who were then actually in expectation of receiving from him great benefits in the shape of grants of land, and above all the opportunity of trading for firearms, may appear a strange inconsistency, and not to be reconciled with the fact of the people so treated being in any other position than that of helpless subjection, and not – as has been seen – in alliance with the paramount chief, Rauparaha; but to those who know what the state of society (so to call it) was in those days, and have noted the practical inconsistencies arising therefrom, this matter presents no difficulty. The Ngatiraukawa parties would, as a matter of course, act as they did without anticipating any any reference whatever to the matter by Te Rauparaha, to whom they were bringing what he most wanted, a large accession of physical force, and who would not therefore have quarrelled with them at this time for such a small matter as the destruction of a few individuals, no matter who they were, provided they were not of his own particular tribe. It was the pride and pleasure of the Raukawa to kill helpless stragglers whom they might fall in with on their march; it was customary under the circumstances; and being able also to do it with impunity, they were, according to the morality and policy of those times, quite within rule in doing so.

Ngati Apa would “not blame the Ngatiraukawa in the sense of their having done anything wrong” as they would have done the same; moreover they “would also fully understand why the paramount chief Rauparaha could not notice the matter”.

Partly, then, Te Rauparaha’s willingness to overlook Ngati Raukawa’s attacks on Ngati Apa can be explained by Maori custom and practice. Ngati Raukawa took “pride and pleasure” in killing “helpless stragglers”, and Ngati Apa would have done the same had they been in the same position. This, Maning implies, is how Maori behaved. Who cares about a few “helpless stragglers”? It was not only that, however. Ngati Raukawa were bringing to Te Rauparaha “what he most wanted”, i.e. “a large accession of physical force”, another reason for overlooking their behaviour towards Ngati Apa.

Maning now moves on to the Rangitane people, who he brackets not with Ngati Apa but with Muaupoko. On his first expedition, according to Maning, Te Rauparaha found “a party” of Rangitane who were living amongst the Ngati Apa – i.e. not on their own lands, which were “adjacent to, but distinct from, those of Ngati Apa”.¹⁵⁵³ These Rangitane people (i.e. those living on Ngati Apa territory) then, in association with Muaupoko, by means of a “treacherous stratagem” together “very nearly succeeded in in killing Te Rauparaha who barely escaped by flight, leaving four of his children, and all, or very nearly all, of his companions dead at the place they were attacked”. This event happened after Ngati Apa had warned Te Rauparaha of “the treacherous designs of the Rangitane and others”.¹⁵⁵⁴ These killings meant that Te Rauparaha’s relationships with Rangitane (supposedly) were quite different from those with Ngati Apa. The effect of “the very nearly successful attempt by the Rangitane” meant that Te Rauparaha was prevented from “extending to them the same favourable consideration which he done to the Ngatiapa”. He pursued them “with persistent and vindictive warfare, slaughtering a great proportion of their fighting men, breaking their military force, and driving them from place to place whenever opportunity offered, during which operations we lose sight of them on this block”.¹⁵⁵⁵ This certainly sounds like “conquest”. Thus Rangitane and (presumably) their supposed accomplices, Muaupoko – Maning only mentions Muaupoko in passing, however, and seems to have little awareness of them – thus apparently *were* conquered. Maning now has to explain away how it is that Rangitane were living on the block at Puketotara, which he achieves by claiming that these people were not really Rangitane at all, but Ngati Apa “half castes”!¹⁵⁵⁶

¹⁵⁵³ Fenton *Important Judgments* 104; Boast, *Native Land Court*, vol 1, 574.

¹⁵⁵⁴ Ibid.

¹⁵⁵⁵ Fenton, *Important Judgments*, 104; Boast, *Native Land Court*, vol 1, 574.

¹⁵⁵⁶ Fenton, *Important Judgments*, 105; Boast, *Native Land Court*, vol 1, 575.

I am therefore of the opinion that in the decision to be given as to the ownership of the whole block, these people holding land within the Ngatiapa boundaries by virtue of their Ngatiapa blood, should be held to be members of the Ngatiapa tribe and have all the rights which may accrue to them from that position, and that when the Ngatiapa tribe is spoken of for the purpose of the decision it shall be understood to include these Rangitane half castes.

Having thus – rather too neatly, in my view – disposed of Rangitane in this manner, Maning returns to the main narrative, the relationship between Ngati Apa and Ngati Raukawa. Maning believes that once “the whole Ngati Raukawa arrived”, they did not immediately disperse over the “conquered country” but remained for about three years at Otaki, Waikanae, and Kapiti, where they apparently kept themselves busy “manufacturing flax and producing other commodities for sale to the European traders”.¹⁵⁵⁷ They carried on doing so until they had accumulated a sufficient stockpile of guns and powder. This achieved, Ngati Raukawa split up, and “each section went to, and took possession of, and settled on, that particular portion or district of the conquered country which had been granted or allotted to them by the paramount chief Rauparaha”.¹⁵⁵⁸ However, says Maning, at the same time Ngati Apa had also been arming themselves with firearms with Te Rauparaha’s full knowledge and consent: both Ngati Raukawa and Ngati Apa now had guns. Maning sees this as a pivotal point.¹⁵⁵⁹

This fact has has a very significant though indirect bearing on the questions at issue, as it seems evident that had Rauparaha intended to depress or subjugate the Ngatiapa tribe, he would on no account have allowed or offered facilities to their war chief Hakeke in coming to Kapiti with parties of his young men to procure those arms, which, were it not for the friendly relations subsisting between them, would have made the Ngatiapa formidable even to Te Rauparaha himself.

Maning sees Te Rauparaha’s willingness to allow Ngati Apa to have firearms as a part of a masterly geopolitical strategy on Te Rauparaha’s part.¹⁵⁶⁰

The policy, however, of Te Rauparaha was evidently, from the beginning, after having the Ngatiapa feel his power, to elevate and strengthen them as a check on his almost too numerous friends the Ngatiraukawa, whom, were it not that they were bound to him by a great common danger, created by himself in placing them on lately conquered lands, he would never have trusted. He has also evidently had the intention, and succeeded in it, after having made peace with his enemies in the South who were not likely to attack him again, of setting up both tribes, Ngatiraukawa and Ngatiapa, as a barrier against his far more dangerous enemies in the North.

Judge Maning insists that at no time did Te Rauparaha, when “granting or allotting lands to the different sections of the Ngatiraukawa tribe” ever grant to them “any lands within the boundaries of the Ngatiapa possessions between the rivers Rangitikei and Manawatu” (or anywhere else). With respect to Ngati Apa lands, Te Rauparaha had “never claimed or exercised the rights of a conqueror”. He was, after all, (says Maning) on terms of “perfect alliance and friendship with them”. There was, however, *some* Ngati Raukawa occupation of the land by just three Ngati Raukawa hapu – Ngati Parewahawaha, Ngati Kahoro, and Ngati Kauwhata (i.e. Maning sees Ngati Kauwhata simply as a Ngati Raukawa hapu, and has no sense of the differences between Ngati Kauwhata and Ngati Raukawa). According to Maning, Ngati Parewahawaha and Ngati Kahoro were allocated land on the block *by Ngati Apa*. (These two groups were “very simply invited to come by the Ngatiapa themselves, and were placed by them in

1557 Ibid.

1558 Ibid.

1559 Fenton, *Important Judgments* 106; *Boast Native Land Court* vol 1, 575-6.

1560 Ibid.

a position which, by undoubted Maori usage, entailed upon the incomers very important rights, though not the rights of conquerors".¹⁵⁶¹) The Ngati Kauwhata story was a little different.¹⁵⁶²

The third hapu, the Ngatikauwhata, appears to have come in under slightly different circumstances. The lands allotted to them by Rauparaha were on the south side of the Manawatu river, the lands of the Ngatiapa were on the north, and, to quote the very apt expression of one of the witnesses, "they stretched the grant of Rauparaha and came over the river;" the facts appearing to have been in reality to have been that they made a quiet intrusion on to the lands of the Ngatiapa, but offering no violence, lest by so doing they should offend Rauparaha.

Thus these three "hapu" had rights on the block, deriving from occupation. Ngati Raukawa generally, *as a tribe*, had none:

And the Court finds also that the Ngatiraukawa tribe has not, as a tribe, acquired any right, title, interest or authority in or over the block of land which has been the subject of this investigation.

Having reviewed the judgment, some more general points of analysis can be made.

1. *The judgment is primarily a historical discussion.* Maning's judgment is to a very significant degree a historical narrative. In ch [] of this report, I drew attention to the Native Land Court's confidence in its own ability to assess competing accounts of complex and much-debated events and turn them into a narrative text, a famous example being Fenton's judgment in the *Orakei* decision of 1868.¹⁵⁶³ Not all the judgments of the Court were of this character, certainly – most of them were very brief and abbreviated statements (e.g. the Kukutauaki and Horowhenua decisions of 1873), but a number of the Court's most important judgments in its first years of operation are indeed essentially historical discussions. As noted in an earlier chapter, Fenton published his *Important Judgments* in 1879 because he thought that the texts were historically, rather than legally, interesting.

Another example of such a judgment, also written partly or wholly by Maning, is the Native Land Court's *Te Aroha* rehearing judgment of 1871 (and thus roughly contemporary with with the Himatangi rehearing judgment of 1869).¹⁵⁶⁴ The same tendency to construct a historical narrative is likewise evident in the *Te Aroha* case, which was concerned principally with the battle of Taumatawiwi and the complex relationships between Marutuahu and Ngati Apa in the "musket wars" decades. Both judgments are written in a somewhat literary and ornate style, intended for a wide Pakeha audience, and both construct the history in a smooth linear mode in which all countervailing evidence is absorbed into the narrative and explained away. Thus evidence of conflict between Ngati Apa and Ngati Raukawa is explained by Maning as merely random attacks on "stragglers" which Te Rauparaha, supposedly a firm ally of Ngati Apa, would have been happy to overlook as a matter of no importance. There is, above all, no sense in the judgment that there might be competing interpretations of the same events which

¹⁵⁶¹ Fenton, *Important Judgments* 107; Boast, *Native Land Court*, vol 1, 576.

¹⁵⁶² Fenton, *Important Judgments*, 107; Boast, *Native Land Court*, vol 1, 576-577. It would be interesting to know what Ngati Kauwhata people today would make of this. Judge Maning's narrative appears to have virtually nothing in common with what Ngati Kauwhata say about their own history in either the cases relating to Aorangi or at the investigation of Ngati Kauwhata claims to Maungatautari in 1881 (see relevant sections, below).

¹⁵⁶³ (1868) 2 *Orakei* MB 355; Fenton, *Important Judgments* 53-96; Boast, *Native Land Court*, vol 1, NLC 43, 481-540.

¹⁵⁶⁴ Fenton *Important Judgments* 109-113; Boast, *Native Land Court* vol 1, NLC 57, 653-682. This is the *Te Aroha* rehearing judgment, which reversed Judge Rogan's decision at first instance. The rehearing judges were Maning and Monro, but the very lengthy text and overblown style of the judgment has all the hallmarks of Judge Maning. This judgment, too, is essentially a lengthy historical narrative.

just cannot be easily harmonised. It is very doubtful that an ethnographer or anthropologist would construct such a confident narrative today.

2. *Not a legal discussion.* Arising out of the first point is a second: the judgment is not particularly lawyer-like. This case was presented by James Prendergast and W L Travers, both able lawyers, who would certainly have made elaborate opening and closing arguments. There is no attempt in the judgment to review in any detail the arguments made by each side, analyse inconsistencies in the evidence and explain which account is preferred, and why and so on. This leaves the historian with a mass of evidence and the Court's own master narrative: it is very difficult to connect the two.

3. *Denigration of Ngati Raukawa and praise of Ngati Apa.* It is noticeable that Maning sees Ngati Apa positively and Ngati Raukawa somewhat negatively. Maning writes of the "brave and prudent war chief of Ngati Apa"; Ngati Apa were "a brave and sturdy race". Ngati Raukawa are at times characterised as "ruthless invaders" and passing adventurers. I admit to being uncertain as to whether this is of any particular importance. It could be said that Maning's judgment, while posing as a neutral historical text, is actually nothing of the kind. As it happens, Fox's opening submissions in the Himatangi case are rife with sarcastic references to Ngati Raukawa.

4. *Centrality of the Ngati Toa-Ngati Apa relationship.* The judgment is built around the supposedly positive and friendly relationships between Ngati Toa, Te Rauparaha particularly, and Ngati Apa, dating from Te Rangihaeata's marriage to Te Pikinga on the first preliminary expedition. Without wishing to go into details here, it can be said that the Ngati Toa-Ngati Apa relationship was rather more complex than that. For example it seems clear that Ngati Apa, or at least some Ngati Apa hapu, were definitely part of the coalition which attacked Ngati Toa at the battle of Waiorua on Kapiti Island in 1824. The Ngarara West decision of the Native Land Court (1890), discussed at the end of this chapter, presents a much more complex picture. The most striking thing today about Judge Maning's narrative, much acclaimed by the settler community of Wellington in its day, is its very crudity, obvious to anyone who compares it with a richly-textured modern account of the same events such as that presented in Angela Ballara's *Taua*. Maning would not, however, have had to go very far to find evidence which ran counter to this thesis – for example Rawiri Te Whanui's evidence given at the first Himatangi hearing about Te Rauparaha's displeasure at McLean entering into negotiations with Ngati Apa over the Rangitikei block.¹⁵⁶⁵

The judgment gives a historical narrative which, as should be clear from the preceding discussion, is both crude and untenable, and which even overlooks the three hapu of Himatangi traversed in the 1868 judgment, who had in the view of Rogan and Smith undoubted rights there. The 1868 decision was an even worse outcome for Ngati Raukawa than the 1868 Himatangi decision. Although the 1869 Rangitikei-Manawatu judgment is much longer than the 1868 Himatangi judgment, both are alike in failing to review the evidence in any kind of detached and judicial manner. The judgment was undoubtedly what Featherston wanted. This does not prove that the decision was a result of manipulation behind the scenes, but I would not rule that out. Still more likely is the probability that Maning was sympathetic to the provincial government's aspirations in any case, and would not have needed any manipulation. I do not believe that as a rule judgments of the Native Land Court were ordinarily driven by political considerations, but this probably one occasion when it probably was.

¹⁵⁶⁵ "Rauparaha was angry with McLean – "What did you go to those slaves to talk about sale" – meaning Ngati Apa – he said they were people whom he had spared and they had no voice in such a matter": (1868) 1C Otaki MB 231.

The judgment was well-received by many. According to the *Wanganui Herald* Maning's judgment was "masterly" and showed "how perfectly just is the arrangement about the Manawatu land question".¹⁵⁶⁶ It showed "most satisfactorily" that the Ngati Apa were the "original possessors". Although Te Rauparaha invited Ngati Raukawa to come and settle on his "newly acquired lands", because he had "made peace with the Ngatiapa, he could not confer upon the Raukawas any title to the land of his allies".

10.7 Formal orders for the Rangitikei block and the aftermath of the Native Land Court decisions

The formal order of the Court (omitted from the reprinted judgment in Fenton's *Important Judgments*) was as follows:

ORDER OF COURT

It is ordered that a certificate of land [sic] shall be issued for the following blocks of land, namely:

	Acres
To the Ngatikauwhata people, mentioned in List A annexed hereto:	4,500
To the Ngatikahoro and Ngati Parewahawaha mentioned in List C annexed hereto	1,000
To Te Kooro Te One One and others mentioned in list B annexed hereto	500
To Wiriharai Te Angiangi	200

as marked in the survey plan before the Court, all of which blocks shall be inalienable for the period of twenty-one years from the date of this order [etc.]

The steps between the formal judgment and the extinguishment of Native title over the *whole* Manawatu block are outlined in a valuable precis of the relevant documentation prepared by H D Bell in 1874. According to this document, following the release of Maning's judgment, Featherston immediately contacted the General Government asking for the native title over the whole Rangitikei-Manawatu block be declared extinguished. Provincial governments had no authority to do extinguish native title themselves. Gisborne, the Colonial Secretary, referred this to the Attorney-General, who responded that the awards to the non-sellers first had to be defined clearly. Featherston then sent Prendergast a tracing of the boundary of the lands awarded by the Court. This was apparently sufficient. "Mr Gisborne thereupon asked the Attorney-General whether the extinguishment of the Native title might now be declared, and a consultation (not recorded in writing) took place between the Government and that officer on the subject".¹⁵⁶⁷ It was decided that the formal proclamation of extinguishment could now be made.

Gazettal of the extinguishment of Native Title over the entirety of the "Manawatu block" followed on 16 October 1869, barely a month after Maning's decision, and was printed in the *Wellington Independent* on 19 October. The block was estimated to cover 220,000 acres. Excluded from the proclaimed area were the various reserves "as shown in the plan filed in the Native Land Court, and referred to in the order of the said Land Court made on the 25th day of September 1869". The gazettal made no mention of the Himatangi block, and as a result the findings of the 1868 Court with respect to

¹⁵⁶⁶ *Wanganui Herald*, Vol 3, Issue 718, 30 November 1869, p 2.

¹⁵⁶⁷ H D Bell, *Precis of Papers relating to Manawatu purchase*, 1874 AJHR H-18, 5.

Himatangi were in effect nullified. Far from finalising the Manawatu-Rangitikei transaction, the proclamation of extinguishment created resistance and confusion instead.

Native title extinguished, and the reserves apparently defined, the Wellington provincial government then commenced the survey of the block, or least it tried to. The provincial government was given immediate notice that the surveys would be opposed.¹⁵⁶⁸ On 18 November Koro Te One, Tapa Te Whata and others of Ngati Kauwhata wrote to the general government from Awahuri advising that the surveyor in the Oroua area, Stewart, had been sent away and that “we are not clear about the judgment of the Court, or about the notice that the Native title has been extinguished”.¹⁵⁶⁹ They had heard that title to the whole of Manawatu-Rangitikei block had been extinguished that thought that there must have been some mistake.¹⁵⁷⁰ Unsurprisingly Maori people could not fathom how the government can have claimed to have acquired the whole region when it was well-known that there were still many non-sellers who had not received or had declined Featherston’s money. The survey of the block provoked considerable resistance from Ngati Raukawa. There were other acts of resistance, including an unsuccessful attempt to steal Buller’s signed copy of the purchase deed.¹⁵⁷¹

On 22 November Featherston raised the matter of the obstructed surveys when opening a session of the Provincial Council at Wellington:¹⁵⁷²

I regret to inform you that the same parties by whose unprincipled opposition the settlement of this question has been so long delayed and the peace of the province so repeatedly jeopardized, are still persisting in their attempts to excite the Natives to prevent the survey of the land.

Kingite supporters at Rangitikei were particularly opposed to the survey, indicating that opposition to the survey and political dissent were connected to some extent. (On the other hand it seems to have been widely believed in Wellington that the “missionary party” was behind the obstruction of the surveys, which was presumably a calumny.¹⁵⁷³) A group of people led by Miritana Te Rangi¹⁵⁷⁴ tried to

¹⁵⁶⁸ H D Bell, *Precis of Papers relating to Manawatu purchase, 1874 AJHR H-18, 5.*

¹⁵⁶⁹ Koro Te One, Hoani Meihana and others to McLean, 18 Nov 1869, *Evening Post*, Vol V, Issue 248, 27 Nov 1869, p 2.

¹⁵⁷⁰ *Ibid.* The full text of the letter as reprinted in the newspapers is as follows:
Awahuri, 18 Nov 1869

To Mr McLean

This is an explanation of ours to the Government. We have turned back Mr. Stewart, surveyor. The reason we turned him back was lest we should get into trouble. Because we are not at all clear about the judgment of the Court published on the 25th Septmeber, nor about the proclamation of the Government which says that the native title has been extinguished over this block of land at Rangitikei. We feel certain that these proclamations were based upon an erroneous belief on the part of the Court and of the Government, that all the rightful owners of the land agreed to the purchasing work and the reserve work of Dr, Featherston. But it is impossible for us to write all the reasons for which we turned back Mr. Stewart; but he will explain the goodness and clearness of our speech to him. Our desire is that you should send hither some clear person, that you may quietly hear all our reasons for turning back Mr Stewart, surveyor.

The letter was signed by Koro Te One, Hoani Meihana, Mekeruke Te Aewa, Epiha Te Moanakino, Reupene Te One, Taimona Pikauroa, Hakaraia Whananeke, Te Ara Te Tahora, Takana Te Kawa, Tapa Te Whata, Peite [sic] Te Awe Awe, Kerei Te Panau and Hoeta Kahuhui.

¹⁵⁷¹ *Wellington Independent*, 23 December 1869, p 2.

¹⁵⁷² H D Bell, *Precis of Papers relating to Manawatu purchase, 1874 AJHR H-18, 6.*

¹⁵⁷³ *Press*, Vol XV, Issue 2601, 23 November 1869, p 2: “The Manawatu natives have stopped the surveying of the block, and ordered the surveyors off. The influence of the missionary party is supposed to be at the bottom of the affair, which is expected to be soon arranged.”

¹⁵⁷⁴ He is referred to here simply as Miritana, but he is obviously the same person as Miritana Te Rangi who gave evidence in the Himatangi case: see (1868) 1C Otaki MB 330-331. On that occasion he said he had formerly lived at Himatangi but had then moved to Rangitikei. He told the Native Land Court that the Ngati Raukawa “were for keeping the land and not selling”: (1868) 1C Otaki MB 330.

obstruct the survey. Miritana (or Meritana) was Ngati Raukawa lived at Matahiwi on the Rangitikei Rivet, and had formerly given evidence for the claimants in 1868. Presumably he is the same person who was allocated a part interest in the Te Awahou reserve along with a certain 'Teira'.¹⁵⁷⁵ He seems to have had a liking for direct action, describing in the Himatangi case how he had helped to frustrate a Ngati Apa attempt to lease land south of the Rangitikei by driving the tenant's sheep back across the river.¹⁵⁷⁶ He had also worked for the government as a policeman.¹⁵⁷⁷ At Rangitikei, where the surveyors were trying to mark off one of the Ngati Apa reserves, pegs were pulled out by the Ngati Raukawa protesters and a trig station was demolished. The obstructions to the surveys are described in a telegram sent to Featherston from Whanganui on 28th November (unfortunately I cannot decipher who it is from, although it is probably from H Jackson):¹⁵⁷⁸

I regret to report the survey at a dead []. Before the surveyors returned to their work yesterday the opponents had completely obliterated the survey lines through the bush – by felling large trees across and along it – they tore down the station from [it?] and there is no means of taking bearings without it. Jackson says it is impossible that the survey can be carried through in the face of this opposition except by force. There are about 50 Ngatiapa already on the ground and the Turakina men will arrive tomorrow.¹⁵⁷⁹ They are prepared for anything but my instructions are to avoid a collision. It would not take much now to bring them to blows.

Ngati Apa were not there to protest about the survey, but rather to defend it against Ngati Raukawa objectors. The document continues:

Alex McDonald gave me notice this evening in the hearing of several Europeans that if the survey be recommenced Monday he will be there with his natives and will report [sic – resort?] to violence. He says that he received by the overland mail yesterday a letter from Mr Travers advising the natives to turn the surveyors off whatever the consequences. I told him that no threats of the kind would intimidate me that I should recommence the survey Monday morning and that if he interfered he would do so at his peril. Although cautioned he repeated the threatening language vowing that he would himself “attack the first pakeha that might dare to venture across on Monday” – of course much of this is bounce but you will see that in the present temper of the Ngatiapa the position is critical. We shall proceed on Monday of course. If obstructed how are we to act? We should master them in a trial of strength but it might break the peace. It would be easier to provoke blows than to stop them. Favour me with specific instructions.

It may seem surprising that any lawyer would advise resistance to a survey. According to H D Bell Travers said only that all lawful proceedings would be taken to resist the decision of 25 September.¹⁵⁸⁰ But of course it is indeed quite lawful in ordinary circumstances to resist a survey when the surveyors are trespassers. The ejection of the surveyors was a considered move, and taken after having obtained legal advice. A translation of Travers' letter, which must have originally been written in Maori, was printed in the *Wellington Independent* on 2 December 1869. The letter was actually written in February 1867, but it seems to be the same letter that was being circulated in late 1869. Perhaps a translation of the letter into Maori was being circulated, and this Maori version was retranslated into English for publication in the newspaper. It is an interesting document:¹⁵⁸¹

¹⁵⁷⁵ See AAFV 999 Box 122 W36.

¹⁵⁷⁶ See 1868 1C Otaki MB 270 (18 March 1868).

¹⁵⁷⁷ *Wellington Independent*, 23 December 1869, p 2.

¹⁵⁷⁸ Telegram to Provincial Superintendent, Wellington, 28 November 1869.

¹⁵⁷⁹ Presumably to support the survey?

¹⁵⁸⁰ H D Bell, Precis of Papers relating to Manawatu purchase, 1874 AJHR H-18, 5-6.

¹⁵⁸¹ “The Survey of the Manawatu Block”. *Wellington Independent*, Vol XXIV, Issue 293, 2 December 1869 p 3.

(Translation). If Dr Featherston's surveyors should go upon the land of Rawiri Te Wanui [sic], it will be right to turn them off; but this must be done quietly (or peaceably). If the surveyors should persist, drive them off again, using a little more force, but not resorting to any violence, lest it should cause a disturbance (or breach of the peace). If anyone should be summoned before a Magistrate for driving off the surveyors, in this peaceful manner, let it be urged that the land is in dispute, and that the title to the land can be investigated in the Supreme Court only.

This is another course: to summon the surveyors before the Supreme Court for trespass on that land.

Travers warned protesters to be careful, pointing out that it would be wrong to take the survey instruments as that "might give them grounds for legal action". If anyone wanted to bring proceedings against the surveyors in trespass, Travers would be happy to help: "[i]f anyone is anxious to commence an action for trespass, let him give me the plan". He also emphasised that the survey would be a trespass only with respect to the non-sellers: "[I]et me clearly understand, that none of the natives, whose names appear in the paper that was given to me, have signed the deed of cession". No violence should be used when expelling the surveyors: "let it be done mildly".

Some types of surveys are, however, placed in a privileged position. The Chief Surveyor of Wellington Province laid an information against Miritana and two other people for a breach of the Trigonometrical Stations Act, a statute which made it a criminal offence to obstruct authorised trigonometrical surveys (albeit that this does not actually appear to have been a general trigonometrical survey, but a survey of reserve boundaries for Ngati Apa: perhaps it was both at once). Miritana did not comply with the summons, and a bench warrant was issued by Walter Buller R.M. for his arrest. Buller went to the Rangitikei with a police constable to carry out the arrest, accompanied by William Fox who wanted to have a "friendly talk" with the local people.¹⁵⁸² Miritana was soon apprehended at Rangitikei, "in spite of strong local opposition".¹⁵⁸³ The scene was described in the *Wellington Independent*:¹⁵⁸⁴

On arriving at Middle Rangitikei it was ascertained that Miritana and the other two offenders were at Matai Iwi, about four miles lower down the run. Thither Mr Buller and the constable proceeded, with some half dozen friendly sellers (Ngatiapas), one of whose reserves was under survey when the station was destroyed. They found the offenders in the Runanga house, supported by some *forty or fifty Ngatiraukawa hauhaus* [emphasis added], just arrived from Ohau and Otaki. Mr Buller explained his case at length, and called on Matini Te Whi Whi [sic], the leading Otaki chief, to direct Miritana to surrender, Matini did so, and Miritana was about to give himself up, when a well-known ruffian, who as all along been a prominent leader of the opposition, who formerly tried to steal the signed purchase deed from Mr Buller, raised the cry of "Rescue".

A spectacular brawl now broke out:¹⁵⁸⁵

Instantly the *melée* became general; the constable held on to his man on one side, the rescuers on the other; he was dragged here and there; the women yelled, and some of them stripped and went into the fight; a number of Ngatiapas came rushing in to the aid of the constable; fists and hedge stakes were freely used; and a complete Homeric battle raged for more than half-an-hour. At last an unexpected ally came to the aid of the law. Old Parakaia whom our readers will remember as the claimant in the celebrated Himatangi case, rushed in, and laid about him like a lion; and finally by his aid, and resolution of M'Nulty [the constable], who hung on to his prisoner amidst a perfect torrent of blows, victory was achieved – the

¹⁵⁸² *Wellington Independent*, 23 December 1869, p 2.

¹⁵⁸³ *Memorandum on the Rangitikei-Manawatu Land Claims*, 1870 AJHR A25 (Walter Buller), 8.

¹⁵⁸⁴ *Wellington Independent*, 23 December 1869, p 2.

¹⁵⁸⁵ *Wellington Independent*, 23 December 1869, p 2.

rescuers gave in, and Miritana was carried off in triumph on horseback – Parakaia and the other chiefs giving an undertaking that the other offenders should voluntarily appear at Wanganui.

Miritana and two other persons, Pineaka and Wereta Kimate, were brought before the resident magistrate's court at Whanganui in early December. All three pleaded guilty, but their solicitor asked for leniency on the grounds that they had misunderstood Travers' letter of advice and had not realised that the survey was a trigonometrical survey. According to a report in the newspapers:¹⁵⁸⁶

H. Jackson, the chief surveyor of the Province of Wellington, charged three natives – Miritana, Pineaka, and Wereta Kimate – with a breach of the Trigonometrical Stations Act, 1862, in that they had knowingly wilfully removed and destroyed certain survey marks on the Rangitikei-Manawatu Block.

Mr Perham conducted the case for the Crown, and Mr. Roberts defended the prisoners.

The three prisoners, by their counsel, pressed for the maximum penalty in the case of Miritana, who had been the ringleader of all the opposition, and had in every way in his power annoyed the surveyors and impeded their work. In the other cases Mr Perham asked for a mere nominal punishment, in order to vindicate the law, these men having acted under the direction of Miritana.

In support of the plea put forward by prisoners, Mr. Roberts called Mr Alexander Macdonald, who, on being sworn, said – I know the accused by sight; I have on his behalf consulted Mr Travers respecting the survey; I have heard the charge against him this day; I know the prisoner was acting in accordance with Mr Travers' advice in resisting the survey.

By Mr. Perham – I received that opinion on Friday before last; he did not give me an opinion some two years ago; I have been acting as agent for the natives for some time, and took Mr Travers' opinion on their behalf; Mr Travers' opinion is not a fortnight old; Mr Travers' advice was that the natives would be justified in obstructing the survey of a certain block; the natives were not aware they were obstructing a trigonometrical survey.

After a few minutes' deliberation the Bench fined Miritana in the maximum penalty of £25 and costs 16s 6d, to be paid forthwith; and on confession that he had not sufficient goods whereon to levy was committed to the common gaol of Wanganui for three calendar months.

The two other prisoners were fined one shilling, the costs being remitted. They forthwith paid the fine and left the Court. The Bench intimated that in all future cases of the kind, the maximum penalty would be inflicted.

Alexander McDonald, who was a long-term adviser to Ngati Raukawa and Ngati Kauwhata, was himself prosecuted for counselling persons to act in breach of the statute, and was fined £30. Once out of jail Miritana went home to the Rangitikei (in August 1876 the *Wanganui Herald* reported that the "once famous" Miritana was busy building a "handsome" church near his home at Matahiwi¹⁵⁸⁷). It was widely hoped that his arrest and detention would have the desired effect. "This decisive action on the part of Government", wrote Walter Buller, "put an end, for the time, to all opposition on the part of the Natives".¹⁵⁸⁸ But in fact this did not turn out to be the case.

Knocks (RM, Otaki) reported in December 1869 that "Matene Te Whiwhi says he feels much displeased with the foolish opposition of the survey of the Rangitikei Manawatu block as expressed by the Hauhaus"¹⁵⁸⁹ – by this time "Hauhau" meant anyone who was a known Kingite supporter. (However

¹⁵⁸⁶ "The Manawatu Survey", *Evening Post*, Vol V, Issue 260, 11 December 1869, p 2.

¹⁵⁸⁷ *Wanganui Herald*, Vol X, Issue 2849, 3 August 1876.

¹⁵⁸⁸ *Memorandum on the Rangitikei-Manawatu Land Claims*, 1870 AJHR A25 (Walter Buller), 8.

¹⁵⁸⁹ Knocks (RM, Otaki) to USND, 16 December 1869, 1870 AJHR A-16, p 24.

Parakaia Te Pouepa, no “Hauhau”, was no less opposed to the survey.¹⁵⁹⁰) The situation is described in a memorandum - looking back over the complicated events since the Court’s decision in 1869 - by the Colonial Secretary (W Gisborne) to Featherston of 10 February 1871:¹⁵⁹¹

Certain of the Natives, acting on the instigation of European advisers, resisted not only the execution of the surveys of the blocks awarded to them by the Court, but also the trigonometrical and detailed surveys of the rest of the blocks. After repeated stoppages, the conviction of McDonald and Miritana... appeared to have resulted in their acquiescence, the surveys proceeded far towards their completion, and seemed to be a fair prospect of their being completed without obstruction. Unfortunately in this stage the Natives were advised by Mr Travers, the solicitor who had conducted their case in the Land Court, that they would be justified in turning off the surveyors, *because they had not been treated fairly in the Land Court* [emphasis added], and further suggestions of an inflammatory character were made to them by him, through their agent Mr McDonald. The result was the determined and much more determined obstruction of the surveys, and the expressed resolution of all the dissentient Natives, particularly Miritana, to resist the occupation of the district by the Government as long as one of them should live.

The delays caused by the obstruction of the surveys were a serious matter for the provincial administration, which was struggling financially, and which desperately wanted to have its title to the block completed.¹⁵⁹² In Hearn’s view, “[t]he sale of the Manawatu lands constituted the Provincial Government’s last chance for solvency”.¹⁵⁹³ It had already sold parts of the block to third parties. In 1868 it sold 5,000 acres in the Ohakea area to the Hutt Small Farm Association.¹⁵⁹⁴ In June 1871 the provincial government issued a proclamation withdrawing all Crown lands in Wellington Province from sale, and the restriction was not removed until 26 February 1872.¹⁵⁹⁵ Featherston and his colleagues in the provincial government felt deeply frustrated, and they tried to bring pressure on the general government to do something about the Manawatu. Costs were continuing to mount. (By September 1870 the provincial government was complaining that the costs caused by the surveys (and their continual interruption) was more or less the same as the revenue raised from the sale of land within Rangitikei-Manawatu block to Pakeha settlers.¹⁵⁹⁶) It appeared that the Manawatu purchase was not going to be the solution to the province’s economic and political problems after all.

Meanwhile, there had been an important political shift in national politics when in June 1869 William Fox became the Premier, with Julius Vogel as Colonial Treasurer and Donald McLean as Native Minister. The government’s intentions were demonstrated by Vogel’s celebrated June 1870 financial statement (his second), whereby the new government’s borrowing and development programme was outlined to a stunned House of Representatives. The programme rested on the three

¹⁵⁹⁰ Ibid. “They also asked him [Matene] to join them and Parakaia Te Pouepa in opposing survey of land which they consider is theirs”.

¹⁵⁹¹ Gisborne to Featherston, 10 Feb 1871, 1872 AJHR G40, 17.

¹⁵⁹² On Wellington province’s financial crisis see Hearn, *One past, many histories*, 440-440-442.

¹⁵⁹³ Hearn, *One past, many histories*, 459.

¹⁵⁹⁴ M H Holcroft, *The Line of the Road*, 7. The secretary was was Henry Sanson.

¹⁵⁹⁵ Annual Report of Crown Lands Commissioner for Wellington Province, 16 April 1872, *Wellington Independent*, Vol XXVIII, Issue 3486, 1 May 1872, p 1.

¹⁵⁹⁶ Waring Taylor (Deputy Superintendent, Wellington Province) to Colonial Secretary, 26 February 1870, 1872 AJHR G-40 (*Claims of the Province of Wellington against the Colony: Manawatu Purchase*) p 3:

It is not my intention to enter upon a discussion of the question of injury sustained by the Province, by the delay in obtaining peaceable possession of its Manawatu lands, beyond stating that, although legally entitled to an estate of half a million acres, a very large proportion of which is some of the finest land in the Northern Island, the amount realised from sales within that block, up to the present time, has not much more than covered the loss sustained to the survey work from Native interruptions; and that the Province has been entirely prevented from carrying out those large works of road-making, immigration, and settlement upon which its progress and prosperity so depend.

main pillars of public works – that is, ports, roads and railways – immigration, and expanded land purchasing.¹⁵⁹⁷ In his statement to the House, Vogel expressed the hope that Maori would take up work on the new roads “with avidity” and that a policy of immigration and economic development “will do more to put an end to hostilities and to confirm peaceful relations, than an army of ten thousand men”.¹⁵⁹⁸ The government intended to spend no less than £10 million on its development programme, financed by borrowing on the London market. The plan naturally attracted widespread public interest. The development plan was, in part, a peace plan as well. Years after, in 1893, Vogel was to claim that the “Public Works Policy”, far from being the “outcome of a speculative desire to obtain the expenditure of a large quantity of borrowed money” in fact “seemed to the Government the sole alternative to a war of extermination with the natives”.¹⁵⁹⁹ That was an exaggeration. But certainly strategic roads, settlement, immigration, and peace, especially peace with the Kingitanga, were all part of the same design, all supported by borrowed money. According to Dr Anderson, “the immediate objective of government policy, in the early 1880s, was to open up the entire central North Island district to settlement.”¹⁶⁰⁰ Or as Adams, Te Uira and Parsonson put it, while Tawhiao wanted to have the Waikato restored, the Government “wanted to ‘open’ the centre of the island to communications, trade and settlement”.¹⁶⁰¹ Finance and parliamentary leadership was Vogel’s task. Peace and land purchasing was McLean’s. Immigration, development and peace with Maori all interlocked. One of the objectives of immigration was simply to “swamp” the North Island interior with useful and loyal British settlers who would outnumber Maori and help to nullify the risk of rebellion against the government.¹⁶⁰² James Belich has written that this phase of the country’s settlement was the last ‘swamping’.¹⁶⁰³

McLean took the posts of Native Minister and Minister of Defence. McLean lived on his station at Maraekakaho in Hawke’s Bay and had been the dominant figure in the province for much of the 1860s. Here his main preoccupations had been the development of his province and East Coast Maori politics. In the 1860s he had run his province almost as an independent fiefdom, where he had invested a great deal of effort in building up a party of pro-government rangatira, a policy which included making financial advances to selected chiefs to help them out of the maze of debt and financial confusion in which so many had become entangled.¹⁶⁰⁴ One of McLean’s tasks as Native Minister was to settle what was referred to in the newspapers as the “Manawatu difficulty” – that is, the problems the Wellington provincial government was having in getting its all-important purchase surveyed and sold. But McLean was a busy man and had his hands full with a number of key national policies, including ending the continued fighting in the North Island, attempting to negotiate a settlement of some kind with the Kingitanga, remodelling the Native Land Court (its operations were causing significant concern in Hawke’s Bay, McLean’s home province), abandoning confiscation (“an expensive mistake”, in McLean’s opinion), and many other issues.¹⁶⁰⁵ The most important of these issues was the King

¹⁵⁹⁷ See Dalziel, *Julius Vogel*, 104-5.

¹⁵⁹⁸ (1870) 6 NZPD 108.

¹⁵⁹⁹ The quotation is from Vogel’s paper *New Zealand, its Past, Present and Future*, read at the Imperial Development Conference, 4 December 1893, London, p. 4, cited by Dalziel, *Julius Vogel*, 106.

¹⁶⁰⁰ Anderson, *Whanganui Iwi and the Crown*, 2004, Doc#A71, 16.

¹⁶⁰¹ Adams, Te Uira and Parsonson, “Kingitanga and the ‘Opening’ of the King Country”, 100.

¹⁶⁰² On “swamping” see Belich, *Making Peoples*, 249-257.

¹⁶⁰³ See Belich, *Making Peoples*, 34.

¹⁶⁰⁴ Alan Ward has noted McLean’s policy of advancing loans to and underwriting the debts of influential Hawke’s Bay rangatira (see Ward, “McLean, Donald”, *DNZB*, vol 1, 1990, 256).

¹⁶⁰⁵ Ray Fargher, *The best man who ever served the Crown? A Life of Donald McLean* (Victoria University Press, Wellington, 2007) 302.

movement.¹⁶⁰⁶ This, and the war with Te Kooti were a higher priority for McLean than helping the Wellington provincial government out of its problems in the Manawatu, problems largely of its own making, and it took McLean nearly a year to visit the Manawatu after he had promised the provincial government he would do so. The provincial government was unhappy about the delay, and also with what it saw as Buller's inaction over the survey obstructions.¹⁶⁰⁷

One problem with the constant utilisation of the term "the Crown" in Waitangi Tribunal reports and in the research reports prepared for the Tribunal is that this can obscure the differences between various political authorities. In this case the issue is the respective roles of the Wellington provincial and the national ("general") governments, and the interchanges between them. The Wellington provincial regime wanted, above all, to get its hands on as much of the Rangitikei-Manawatu block as soon as it could, and with as few reserve allocations to Maori as possible, to finish surveying it, and to sell it for the best prices it could get. The provincial authorities reasoned that they had already spent a substantial amount of money on buying the land, and believed also that the only reserve allocations that Maori were entitled to were those made by the Native Land Court in its second Himatangi decision. The Himatangi block itself was not treated as reserve, notwithstanding the first Himatangi decision, and title to it had been wholly extinguished too, at least in the provincial government's eyes. The provincial government stood upon its legal rights: in its view the native title had been lawfully extinguished in favour of the province, and the task of the general government was to enforce the province's legal entitlement.¹⁶⁰⁸ To be sure the provincial and general governments shared the same general objectives. Both wished to encourage British settlement. When Featherston was conducting the Rangitikei-Manawatu purchase negotiations he was not only the provincial superintendent but was also a land purchase commissioner of the general government. Both regimes saw the purchase as very desirable and indeed in 1864 Fox had expressed his thanks to Featherston for his "laborious exertions".¹⁶⁰⁹ The general government under Fox and Vogel initiated an ambitious programme of expanded immigration, settlement of the bush zones of the lower North Island, and road and railway construction all financed by extensive borrowing. One aspect of its development programme was the construction a strategic coast-to-coast road from Foxton to Napier via the Manawatu gorge.¹⁶¹⁰ Notwithstanding the differences between the general and provincial governments, Isaac Featherston went to London in 1869 as Agent-General for the New Zealand government with the special responsibility of promoting emigration from Britain to New Zealand.¹⁶¹¹ The general government, however, had to be aware of the wider political and strategic context at a time when a dangerous conflict with Te Kooti was still underway in the central North Island and the Ureweras and while there was a great deal of uncertainty over the the policies of King Tawhiao and his supporters in the Rohe Potae. McLean did not want to endanger the fragile peace that had returned to most of the North Island after a decade of war. A new conflagration in the Manawatu

¹⁶⁰⁶ Fargher, *Best man who ever served the Crown?* 313. Fargher points out that the government's "immediate concern was with the King movement". In September 1870 McLean prepared a Cabinet paper on this subject. To McLean "[f]ull recognition of the influence and power of the King was essential" (ibid).

¹⁶⁰⁷ Halcombe (Provincial Treasurer) to Featherston, 15 May 1871, 1872 AJHR G-40, 11-12.

¹⁶⁰⁸ McLean was very cautious about imposing British law on Maori. See Fargher, *Best man who ever served the Crown?* 314, discussing McLean's Cabinet memorandum of September 1870:

As Maori were designated British subjects, it had been argued that no separate system of laws could be allowed. McLean dismissed this view as 'mere theory'. It would encourage the colonists to expect the Queen's writ to be enforced throughout the country, and would exasperate the large section of Maori who, he believed, denied the right of any foreign power to exercise jurisdiction over them.

¹⁶⁰⁹ Shortland to Featherston, 15 March 1864, ACIH 16195 WP3/15 64/599, cited Hearn, *One Past, Many Histories*, 273.

¹⁶¹⁰ Catherine Knight, *Ravaged Beauty: An environmental history of the Manawatu* (2014), 83.

¹⁶¹¹ On Featherston as Agent-General see Rollo Arnold, *The Farthest Promised Land: English Villagers, New Zealand Immigrants of the 1870s* (Victoria University Press/Price Milburn, 1981) 36-62.

was something that McLean was anxious to avoid. Gisborne (Colonial Secretary) summarised the various options confronting McLean as follows:¹⁶¹²

Three courses were open to the [general] Government; 1st, to suppress the resistance by force. This would probably have resulted in a serious disturbance, involving not only the disputed district but the adjacent settled district of Rangitikei. And even if such a result were escaped, it was certain that so long as such resistance continued, the peaceable occupation of the district by settlers would be impossible, and that the settlement of the other block on the Manawatu River would be greatly retarded, if not absolutely stopped.

2nd. To suspend the surveys, prohibit the occupation of the district by Europeans, and let time bring a cure. This clearly would have been a most losing game, leaving the Natives in possession of the whole district, and abandoning for years all hope of its colonization.

3rdly. To effect some such compromise as has since been arrived at. The last was clearly the only course which could wisely be adopted.

Problems with the surveys had continued. In early January a trig station at Mt Stewart was demolished.¹⁶¹³ In February King Tawhiao intervened, ordering the resistance to the surveys to stop. The king sent a letter to the leading Ngati Raukawa objector and prominent Kingitanga supporter, Wi Hapi, to the following effect: - "Ngati Raukawa agreed to let the Court decide, and they must now accept the decision. Let the Ngatiapa have their land, and do not interfere, hapus."¹⁶¹⁴ Tawhiao, it appears, did not want a major conflagration in the Manawatu any more than the government did. Following receipt of the letter Wi Hapi arranged a meeting between Ngati Apa and Ngati Raukawa for the following month.¹⁶¹⁵ Probably this intervention by the King played a far greater role in calming matters down than the arrest and detention of Miritana in December. It was humiliating for the settler community that King Tawhiao had the power to control the situation while the government did not. The *Wellington Independent* lamented that "[i]t must be humiliating to the pride of every Englishman to feel that a few words, written probably on a dirty scrap of paper, and published under the sign manual of the *soidisant* Maori King, are received with a submission that our own Government feels itself powerless at present to enforce".¹⁶¹⁶ The surveys were able to proceed until the end of March, but when the survey teams tried to commence operations at Te Reureu the pegs were pulled up by "Hapa and Akewa" and the surveyors ordered away.¹⁶¹⁷ The overall situation was a very confused one, with the provincial surveyors under the management of Walter Buller, but with Buller working for the General Government. The resistance to the surveys was for a range of reasons, including opposition to the survey as a whole, or opposition to the survey of reserve boundaries because the reserves were perceived as too small or in the wrong place. Then there was Himatangi, half of which had been awarded to Ngati Raukawa hapu by the Native Land Court in 1868 but title to which had purportedly been extinguished by the 1869 proclamation. At Himatangi Parakaia Te Pouepa had the survey pegs pulled up in May, explaining his reasons in a letter to McLean on 18 May 1870:¹⁶¹⁸

¹⁶¹² Gisborne to Featherston, 10 Feb 1871, 1872 AJHR G40, 17.

¹⁶¹³ H D Bell, *Precis of Papers relating to Manawatu purchase*, 1874 AJHR H-18, 5.

¹⁶¹⁴ "The Manawatu Survey", *New Zealand Herald*, vol VII, Issue 1893, 15 Feb 1870, p 6.

¹⁶¹⁵ "The Manawatu Survey", *New Zealand Herald*, vol VII, Issue 1893, 15 Feb 1870, p 6.

¹⁶¹⁶ *Wellington Independent*, 26 Jan 1870, reprinted *New Zealand Herald*, vol VII, Issue 1893, 15 Feb 1870, p 6. This comment was also probably a swipe at McLean and the Fox-Vogel government, reflecting the views of the Wellington provincial government.

¹⁶¹⁷ H D Bell, *Precis of Papers relating to Manawatu purchase*, 1874 AJHR H-18, 5.

¹⁶¹⁸ Cited H D Bell, *Precis of Papers relating to Manawatu purchase*, 1874 AJHR H-18, 9.

This is a word, give heed to it. Not one little bit of the Himatangi claim will be given up to the Government. But perhaps you had better go into the matter again. I and all the people wish you to go into the question respecting this land, and then an amicable settlement will be arrived at.

On 31 May 1870 the *Wellington Independent* printed a long letter from Alexander Macdonald on the Manawatu purchase and on Ngati Raukawa's resistance to the surveys. Macdonald, who seems to have relished controversy, was his usual eloquent self:

In September 1870 the surveys were again interrupted, this time by Ngati Kauwhata at Awahuri. The incident, and the debates within Ngati Kauwhata, were reported in detail in the *Wanganui Herald* on 21 September:¹⁶¹⁹

We regret to have to report another interruption of the survey on the Manawatu block. On Tuesday, the 13th inst., a native named Richmond pulled up twenty-five transverse pegs near Awahuri pah. On Saturday last, Kooro te One sent to Mr Downes and said he wanted to speak to him. Mr Downes went and found the Ngatikawhata [sic] natives assembled in Matthew's whare. Mr A. McDonald was requested to act as interpreter, and Hepi, Matien's¹⁶²⁰ wife, commenced by saying that the pulling up the pegs was not the act of the tribe. They would not object to the traverse of the river, as part of the general survey, but would not allow any lines to be cut across their land.

Kooro to Oni [sic – Kooro Te One] repeated Hepi's statements, and, in addition, told Mr Downes to cease work and go away, as the Ngatikawhata [sic] would not allow any survey of the block. This was the deliberate resolution of the whole tribe. He then asked if the surveyor would go away or promise not to cut any boundary lines. Herini, Kooro's wife's word was not only for me, but for all surveyors to cease surveying Ngatikawhata [sic] land.

Teara te Tahu repeated as above, especially mentioning Wihitara reserve, and Kooro's reserve, in fact any reserves on the Ngatikawhata claim. The traverse of the river had nothing to do with them, it began and ended anywhere.

Matien [sic] said the Ngatikawhata, one and all, would not allow any survey attempting to restrict them to any particular boundary.

Takana said his reason for objecting was that the parties had not agreed – the question of the title was not settled, it was not competent for one disputant to cause the land to be surveyed, it was at first allowed because the Court had given time for tribal division. No objection then remained to obstruct the general survey of the block. (Mr. Downes here objected as it was beyond his power to hear or answer any question of title.)

Timona said, stop your work today, and leave to-morrow,

Ariti Kihu did not approve of survey; stop work.

McLean held an important meeting with the Ngati Raukawa at Manawatu in November 1870.¹⁶²¹ The meeting made the widespread dissatisfaction with Featherston and his proceedings only too clear. To resolve the "difficulty" McLean decided that additional reserves had to be made in addition to those set out in the Court order and the gazettal of 16 October. In November 1870 McLean negotiated an agreement with the Ngati Raukawa non-sellers, Ngati Raukawa being represented by their agent

¹⁶¹⁹ "Interruption of the Survey at Manawatu", *Wanganui Herald*, 21 September 1870, Vol IV Issue 966, p 2.

¹⁶²⁰ Sic – must be a misprint for 'Matiu's'.

¹⁶²¹ The primary documentation for the meetings with McLean is on Notes of Meeting, Manawatu, MA 13/72A. The meeting is discussed in detail in Anderson, Green, and Chase, *Crown Action and Maori Response*, ch 8.

Alexander McDonald (who was to continue to play an important role in Ngati Raukawa and Ngati Kauwhata affairs until the late 1880s). McLean sent a telegram to the government on 24 November.¹⁶²²

You will be glad to hear that the main difficulties of the Manawatu question have been removed. The Ngati Kauwhata non-sellers and their agent, Mr A McDonald, signed a deed yesterday relinquishing all further claim and opposition, on having certain land adjoining award of the Court made over to them. The extent given in this particular instance has been 1,500 acres. Other reserves of considerable extent have been made in different parts of the block: no settlement could be effected without doing so. Today I intend to complete arrangements with the rest of the non-sellers, and settle other details. Afterwards I have to meet the Ngati Pikiāo¹⁶²³ who reside on the inland part of the block, opposite Mr Fox's. The question has been a most difficult one, but I have endeavoured to make the best arrangements I could to secure the future peaceable occupation of the district by both races.

It was reported in the newspapers that a deed had been concluded with the non-sellers “relinquishing all further claims to the land, or opposition to the occupation of the block”; the “whole question may now be considered settled, and the Wellington province will be at length able to arrange for the occupation of the much coveted Manawatu block”.¹⁶²⁴ (As it happens, this was a little optimistic. Disputes about the surveys were still continuing in October 1871, now for the non-performance of McLean's promises.¹⁶²⁵)

McLean, a busy man, had other matters to deal with, and from December 1870 into early 1871 the finalisation of the reserves was left to H T Kemp, one of McLean's officials, who made further reserve allocations of about another 4,000 acres. This made the total reserve allocation 23,966 acres.¹⁶²⁶ This seems to have settled matters on the ground. However the provincial government was anything but pleased by McLean's efforts (and even less with Kemp's). On 9 February 1871 Featherston – who had been away in England - complained on his return to McLean about his actions in setting aside additional reserves in his cherished purchase without bothering to consult the provincial government:¹⁶²⁷

¹⁶²² H D Bell, *Precis of Papers relating to Manawatu purchase, 1874 AJHR H-18, 10*. The same document gives a lengthy newspaper extract of the same date (newspaper not identified) which states:

We have received the following particulars from the Government. Meetings held at Manawatu, Parewanui, Te Awahuri, Oroua, and Rangitikei were very satisfactory. After these meetings were over the non-sellers came to terms, ceded all their rights, and withdrew all opposition, in consideration of certain new reserves being made for them.

Mr. McLean, in arranging with the Natives, gave them distinctly to understand that he did not intend to open up the question of the purchase by Dr Featherston, or the decision of the Native Land Court. Those matters must be considered as concluded, and all that he desired was to effect a settlement of boundaries and extension of reserves as would remove all future difficulties to the peaceable occupation of the European settlers.

The arrangements with the non-sellers of the three admitted *hāpus* having been completed, it is expected that the whole question, without reference to Parakaia's claim at Himatangi, will be settled for an extent of land not larger than was claimed by one section of the non-sellers. When it is considered that the Natives are making considerable advances in cultivation, the question of an additional few thousand acres to settle them down to industrial pursuits should not be objected to, as it is in every way calculated to promote the peaceable settlement of the district.

¹⁶²³ So the document says. Were there Ngati Pikiāo people resident in the Manawatu?

¹⁶²⁴ “Settlement of the Manawatu Difficulty”, *Hawke's Bay Herald*, Vol 15, Issue 2008, 25 November 1870,

p 2.

¹⁶²⁵ *Evening Post*, Vol VII, Issue 204, 4 October 1871, p 2:

The survey of the Manawatu block has been stopped by the natives. The non-performance of Mr McLean's promises assigned as the reason. The surveys are waiting for orders from Wellington.

¹⁶²⁶ H D Bell, *Precis of Papers relating to Manawatu purchase, 1874 AJHR H-18, 12*. Bell's calculations are as follows: made by the award of the Native Land Court, 6,226 acres; made by Featherston, 3,361 acres; made by McLean and Kemp, 14, 379; total 23, 966 acres.

¹⁶²⁷

I find that you have given away to sellers, non-sellers, and parties excluded by the Native Land Court, some 12,000 acres of the Manawatu. Kemp, by whose authority nobody knows, has since given away another 4,000 acres. Part of the land given away is swamp, sandy, and not of much value, but by far the greatest portion is the choicest and most valuable land in the whole block. I deny the right of the Government thus to deal with the Provincial estate.

Featherston complained in the same document that the Cabinet had “refused to admit this claim, or any claim whatever”.

The province’s grievances were set out at length in a later memorandum by the provincial treasurer (Halcombe) of 15 May 1871.¹⁶²⁸ The provincial government grumbled about Buller’s management of the surveys, and with the time it had taken McLean to turn his attention to the simmering crisis in the Manawatu:

I may also state that we object to the term “settlement of the dispute” when referring to the obstructions offered by the Natives to the Surveyors on this block, and the removal of those obstructions...The Provincial Government always recognized that, after the proclamation by His Excellency’s Government of the extinguishment of the Native title, all interference with the survey parties could only be held as being entirely illegal, provocative of a breach of the peace, and punishable with a fine or imprisonment.

The provincial government had agreed to place the management of the surveys under Walter Buller, but his actions, or inaction rather, had not been at all to the provincial government’s liking either:

From that time the whole of the survey work on the block was left under the direction of Mr Buller, who, acting, we presume, under the directions of the General Government, simply withdrew the survey parties from all those parts of the block where opposition had been offered, was threatened, or was by him supposed likely to arise; and to all the remonstrances of the Provincial authorities against this inaction, the sole reply was that it would be unwise to provoke a breach of the peace, and that Mr McLean would shortly visit the district.

McLean, no doubt exasperated by Featherston’s tone, responded at length on 15th February 1871. Essentially Featherston was told to stop complaining and that the provincial government should consider itself lucky.¹⁶²⁹

To effect any arrangement of the Manawatu question, which would lead to the peaceful occupation of this district by Europeans, it was absolutely necessary that additional reserves should be made for the Natives. With the exception of 1,800 acres adjoining the award of the Native Land Court at Oraua [sic], the greater part of the reserve made by me is composed of sand hills, swamp, and broken bush. I have written to Mr Kemp for an explanation of his reasons for increasing the extent of land which was deemed sufficient for the tribes living opposite to Mr Fox’s, and I hope soon to get his report...I had no conception when I undertook the duty that the question was surrounded by so many difficulties – not the least among them being an attempt on the part of a considerable section of the sellers to repudiate the sale altogether. The non-sellers whose claims were reconsidered by the Court, computed the area to which they were entitled at 19,000 acres, besides which they sought compensation for losses and for expenditure of time in vindicating their titles. These claims were all reduced to the lowest extent which the Natives would accept.

Indeed, instead of complaining the provincial government should feel pleased with the outcome.¹⁶³⁰

¹⁶²⁸ Halcombe to Provincial Superintendent, 15 May 1871, 1872 AJHR G40,

¹⁶²⁹ McLean to Featherston, 15 Feb 1871, 1870 AJHR G-40, 11.

¹⁶³⁰ Ibid.

Under these and many other adverse circumstances, and taking in to consideration how troublesome and expensive the delay in settling these disputes had been to the interests of Wellington, I did my utmost on behalf of the Province and Colony to bring about as reasonable and adjustment of these interminable questions as could possibly be effected, consistently with a peaceable occupation of the district by European settlers...I therefore feel surprised and disappointed that you propose to protest against the action taken in the matter, as interfering with the Provincial estates, especially as the Government did not move till subjected to considerable pressure from the people of the Province.

On the whole McLean *had* managed to defuse the issue. McLean was thus right to tell the provincial government to stop complaining. In fact there had been a risk that the sellers might repudiate the whole transaction.¹⁶³¹ Nevertheless the provincial authorities did not feel the least grateful and instead sought compensation from the general government for the land that McLean and Kemp had set aside as reserves. As well as sending his telegram to McLean, Featherston sent a much longer formal letter to Gisborne (Colonial Secretary) on 26 January 1871.¹⁶³² In this letter Featherston objected strongly to what he saw as further concessions to Maori, nor did he think that the peace of the province would have been endangered if more “vigorous action” had been taken against those who had obstructed the surveys. Featherston said that the provincial government now wanted compensation at the rate of £1 per acre.¹⁶³³ Gisborne responded testily on 10 February at some length, pointing out that settling the matter had been far from easy, given the complex problems over the surveys, and pointing to the benefits that Wellington province had received from McLean’s efforts.¹⁶³⁴

Under these circumstances, the Native Minister, at the request of the Provincial authorities, personally undertook the negotiation of the question, and, after great trouble, succeeded in settling it and removing all dissension. I have his authority for saying that if he had on that occasion failed, the result in all human probability, would have been the indefinite postponement of quiet possession of the lands in dispute – a postponement disastrous to the interests of the Province of Wellington.

The general government’s view was that Wellington Province was not inclined to any compensation at all, and that the provincial authorities should be thankful for McLean’s efforts on their behalf. Besides, the reserves were not worth much: McLean had decided it was “necessary to make the additional reserves to which you refer, and much of which, as you admit, is land of a worthless character”.¹⁶³⁵

Nevertheless the Wellington provincial government formally claimed the substantial sum of £41,655 4s 2d “exclusive of surveys” as “compensation for lands given by Mr McLean to Natives, being portions of the Manawatu and Rangitikei Block, after the Native title had been declared extinguished”.¹⁶³⁶ The compensation claims were eventually settled by arbitration in 1874 (the arbitrator was H D Bell, who derived his powers from s 5 of the Rangitikei-Manawatu Crown Grants Act 1875).¹⁶³⁷ Bell agreed with McLean and Gisborne, and did not think that Wellington province should

¹⁶³¹ McLean speaking on Rangitikei-Manawatu Grants bill, 1872 NZPD 889 (“He found a large section of the Natives, both of those who had sold and of those who had not sold, together with those whose rights had been recognized but who had received a portion of the purchase money, anxious to repudiate the whole transaction”.)

¹⁶³² Featherston to Gisborne, 26 January 1861, reprinted in H D Bell, *Precis of Papers relating to Manawatu purchase*, 1874 AJHR H-18, 12-13.

¹⁶³³ H D Bell, *Precis of Papers relating to Manawatu purchase*, 1874 AJHR H-18, 5.

¹⁶³⁴ Gisborne to Featherston, 10 Feb 1871, Wellington Province, *Claims of the Province of Wellington Against the Colony: Manawatu Purchase*, 1872 AJHR G-40.

¹⁶³⁵ *Ibid.*

¹⁶³⁶ *Statement of Claims made by the Province of Wellington against the General Government* 1872 AJHR G40B, 1.

¹⁶³⁷ The statute is discussed below. Section 5 provided that “[t]he Honorable Sir Francis Dillon Bell is hereby appointed to be arbitrator, to consider and decide what compensation (if any) shall be paid to the Province of

receive any compensation. In fact he thought the whole issue of “compensation” was absurd: “it is idle to represent the interests of the two Governments as other than absolutely identical”.¹⁶³⁸ Not long afterwards the provincial governments were all abolished in any event.¹⁶³⁹

The provincial government soon sold a large part of the purchase, 106,000 acres centred on the Oroua valley, to a British corporate body called the Emigrant and Colonists’ Aid Corporation (London), headed by the Duke of Manchester (the block sold was known as the “Manchester block” for this reason).¹⁶⁴⁰ The corporation had been set up to assist unemployed working men and farm labourers in England to migrate to the colonies. The New Zealand government was keen to assist with the plan, which fitted with the Fox-Vogel-McLean regime’s plans of encouraging immigration and the construction of ports, roads, and railways. The Corporation sent a representative to New Zealand, Colonel Feilding, and negotiations with the government were concluded in 1871, given formal effect by a deed of 26 September between the Governor and the Corporation. The provincial government did well out of the transaction, selling the land 15s. per acre, (i.e. three times what it had paid for it).¹⁶⁴¹ The financing of the project involved complex negotiations between the General Government, the Wellington Provincial Government, and the Corporation. The New Zealand government covenanted to reserve and set aside the 106,000 acres, the land being set apart under Part 6 of the Immigrants and Public Works Act 1870 and Part IX of the Immigrants and Public Works Act 1871. It also agreed to pay for the passage of the migrants from Great Britain to New Zealand. The Corporation agreed to bring out to New Zealand and settle 2000 immigrants within the next seven years. The first settlers under this scheme arrived in the Manawatu in 1874. Three towns were laid on the block – Feilding, Ashhurst, and Halcombe.¹⁶⁴² By 1877 there were 1600 settlers on the Manchester block.¹⁶⁴³ Although the General and Provincial Governments had their disagreements, the two appear to have collaborated closely with respect to the Manchester block project and its complex financing through the issue of debentures,

Wellington on account of such lands so taken and awarded to the Natives under promises or arrangements made by the Honorable Donald McLean.”

¹⁶³⁸ 1874 AJHR H-18, 2:

It is abundantly clear that if the extent of the reserves had not exceeded 3,000 or 4,000 acres, nothing would have been said about them. But, in my opinion, the difference between that amount and the amount actually granted affords no ground for claiming “compensation” as against the colony. It is idle to represent the interests of the two Governments as other than absolutely identical; it is certain that they agreed to act in concert; and no argument tending to fix on either Government separately a special responsibility for Mr. McLean’s interposition, or a special liability for its results, can, I think, have any force.

It is impossible for me to agree in the remonstrances of some members of the General Government, amongst themselves, against that Government “mixing itself up in the Manawatu difficulty.” The General Government could not possibly escape being mixed up in it. It would have been no use, if the obstruction to the survey had ended in actual conflict and loss of life, for the General Government to say that it was all the fault of the Province. Ministers, in fact, took the only step that could have been taken consistently with common sense, when they determined to try for an amicable settlement with the Natives.

¹⁶³⁹ The Abolition of Provinces Act came into force on 1 November 1876. Provincialism “disappeared from New Zealand’s political landscape with little more than a whimper”: André Brett, *Acknowledge No Frontier: The Creation and Demise of New Zealand’s Provinces*, (Otago University Press, Dunedin, 2016) 234.

¹⁶⁴⁰ There is a very large file on this sale, LS 221/1 [Papers concerning the Manchester Block, Feilding, July 1871-October 1886]. See also *Papers Relating to Agreement with the Emigrant and Colonist’s Aid Corporation* 1872 AJHR D-11; *Further Papers relative to the Agreement for the Emigrant and Colonist’s Aid Corporation, London, for the Purchase of Land at Manawatu and the Introduction of Immigrants* 1872 AJHR D-11A. The full text of the deed is at 1872 AJHR D-11, 5-8.

¹⁶⁴¹ G C Petersen, *Palmerston North: A centennial history* (Reed, Wellington, 1973), 195.

¹⁶⁴² Knight, *Ravaged Beauty: An environmental history of the Manawatu* (2014), 79. See also Rollo Arnold, *The Farthest Promised Land* (Victoria University Press/Price Milburn, Wellington, 1981) 158-159.

¹⁶⁴³ M H Holcroft, *The Line of the Road*, 9.

indicating that when it came to the broader policy of encouraging settlement in the Manawatu the objectives of the two governments were essentially the same.

A key strategic policy of the Fox-Vogel-McLean government was the creation of a strategic east-west road linking Whanganui with Napier, this to be an axis of European settlement including the new towns of Feilding and Palmerston. In early 1872 Fox described these objectives in lyrical terms and making the government's plans very clear:¹⁶⁴⁴

Regarded as a great national work, the importance of the trunk road connecting the East and West Coasts can hardly be too highly estimated. Certainly there is none in the Northern Island which can be considered of more consequence; and as a means of opening up a magnificent country for settlement it is unsurpassed....The great road I have been describing runs through the heart of it, and will be the base of all the other lines which may be hereafter constructed. It will bring Wanganui and Napier into easy connection of two days or two and a half. It will feed Wellington with the produce of the fine districts from which, though politically connected, it is now geographically severed... The occupation of this country has hitherto been retarded by a variety of causes, among others the non-extinction of the native title. That difficulty has however neem overcome by purchase regarding by far the larger part of the country described, and will no doubt soon be got rid of in the remainder.

In March 1872 McLean had written to the Provincial Government recommending that in addition to the various reserves Parakaia and his people may as well be allocated the whole of the Himatangi block, notwithstanding the obstruction of the surveys (strictly speaking, this would have disentitled them to their share of Himatangi):¹⁶⁴⁵

A judgment of the Native Lands Court delivered on April 27th 1868 on Parakaia's claims decided that Parakaia and his co-claimants were entitled to a certificate in their favour for one half, less two twenty-sevenths of the Himatangi Block conditionally to these parties causing a proper survey of the award to be made within six months.

It appears that this proviso has not been carried out; but I should feel inclined, with your Honour's concurrence, to the opinion that it would hardly be judicious to take advantage on technical grounds of the non completion of the survey within the presented time, as the natives though acquainted with the decision, were not aware of its stringency, and did not anticipate that any penalty would be enforced in consequence of their neglect.

I further have to point out to your Honour that the half allotted to Parakaia contained the best portion of the block and that any part of it which reverts to the Government is of almost a valueless character. I am certain that your Honour will agree with me that in these matters it is better to exercise a liberal policy which set at rest difficulties incident to them than to keep open a disputed question for the sake of some land of but little value.

In this case I should feel disposed if your Honour's views coincide with mine to allow the claimants to have the whole of the block.

This letter reveals clearly that the original Himatangi case was not about Himatangi at all, or at least, that it was only incidentally about Himatangi as such. The actual Himatangi block in issue in 1868 was merely a small fragment of a much larger issue, the rights of Ngati Raukawa within the whole of the Rangitikei-Manawatu purchase, as became obvious with the Rangitikei-Manawatu case in 1869. What the provincial government wanted was have its purchase validated, and this had been achieved. By the

¹⁶⁴⁴ Notes Made by the Hon. W. Fox (Premier of New Zealand) on the Public Works in the Manawatu District, Jan 12, 1872, printed copy on LS 221/1, Archives NZ Wellington

¹⁶⁴⁵ McLean to Superintendent, Wellington Province, 30 March 1872, MA 13/75 [Rangitikei-Manawatu: Wellington Provincial Land Purchasing Records]

time McLean and Kemp had made their reserve allocations and the wrangling over costs between the provincial and general governments had been settled by arbitration the 1868 and 1869 decisions of the Native Land Court had long receded into the background.

10.8 Legal problems and the enactment of the Rangitikei-Manawatu Crown Grants Act 1873

On 22 September 1873 the House enacted legislation allowing new grants to be made to fulfil the arrangements made in the Manawatu by McLean and Kemp (an Act “to enable the Governor to fulfil certain Agreements made with Aboriginal Natives, and to execute Grants to them of certain Lands in the Province of Wellington”). The Preamble to the statute recited the background events in a carefully composed neutral way, referring to the adjustment of disputes between Maori and the government:

Whereas disputes have been for some time pending between the Government of the Colony and certain persons of the Aboriginal Native race who claimed to be proprietors of certain lands in the districts of Rangitikei and Manawatu, in the Province of Wellington: And whereas certain of such disputes were some time since adjusted by Isaac Earl Featherston, and certain other of the said disputes were some time since adjusted by the Honorable Donald McLean, acting for the said Government, and it was agreed that certain lands in the said districts should be granted by the Crown to certain Natives in fee-simple, and that certain other lands should be reserved for the benefit of certain Natives: And whereas it is expedient that an Act should be passed for the purpose of giving effect to the arrangements so agreed upon:

Why exactly special legislation was necessary to do this was unclear (why could the Crown not simply make grants out of the land the Native title to which had already been extinguished?). The Crown does not need statutory authority to make Crown grants: it can simply make them. Perhaps the legislation was mainly aimed at the Wellington provincial authorities to stop them from making difficulties about any additional reserve awards. The purpose of the legislation, in any event, was clearly to retrospectively validate the various grants relating to the Rangitikei-Manawatu reserves, “for”, as the Preamble says, “the purpose of giving effect to the arrangements so agreed upon”.

10.9 Historical significance of the decisions

These cases (meaning the decision at first instance and Maning’s judgment in the second case) is a pivotal one in the history of the Manawatu-Rangitikei region, and a key instalment of the complicated history of the Rangitikei-Manawatu block. The case had significant repercussions for other blocks heard in the region, in particular the Kikutauaki and Horowhenua blocks (see below), and the four decisions indeed make best sense when analysed together as a group. What makes this case stand out is the very direct role played by the Crown. The counterclaimant was in effect the Wellington Provincial Government and it was represented by a former Premier, and Premier-to-be, William Fox at first instance and by the Attorney-General (Prendergast) at the hearing presided over by Fenton and Maning. Ngati Raukawa were supported by former prominent members of the CMS mission, notably Octavius Hadfield and Samuel Williams (as well as their advocate T C Williams), and in a sense the case had elements of a clash between Church and State. The case is thus of great historical importance. The Court did not deny that certain Raukawa hapu had interests, and this is consistent with the Court’s standard approach which was to emphasise the rights of hapu as the dominant land-owning collectivities. Essentially the Native Land Court found that Ngati Raukawa’s *only* interest in the block related to a restricted group of hapu who had rights based on occupation which in turn derived from Ngati Apa agreement, or acquiescence.

The cases were divisive in all sorts of ways, one of which, much-noticed at the time, was that Tamihana Te Rauparaha and Matene Te Whiwhi ended up giving evidence for opposite sides.¹⁶⁴⁶ (However Tamihana must have changed his mind about this, because in 1871 he and others petitioned parliament complaining about what he saw as the violent and intolerable behaviour of Ngati Apa, who, well armed with weapons supplied by the Crown, had driven Raukawa people out of their homes at Horowhenua.¹⁶⁴⁷) These cases do seem to interconnect with the Waikato confiscation and the Maungatautari cases in some way, quite apart from the fact that the same claimants – such as Parakaia Te Pouepa and Matene Te Whiwhi – appear in both (with Parakaia also a claimant for confiscated lands in the Waikato). While some in the south Waikato claimed that Raukawa had forfeited all claims around Maungatautari (and, it would follow, in the confiscated area) by migrating south, some in the Foxton to Otaki region, Ngati Apa in particular, went so far as to argue that Raukawa had no rights at all in that district, and that their *only* lands were those belonging to them in the south Waikato. (This was not a position which either the government or the Land Court, or, needless to say, Raukawa, accepted.) There was also the problem of the Raukawa-Ngati Apa boundary, an issue which the Crown was itself involved in because it was a purchaser of land from Ngati Apa – without those rights being defined – which meant that the Crown had a political imperative to back the claims of Ngati Apa and diminish those of Raukawa. The dispute between ‘Ngati Apa’ and ‘Raukawa’ in the Native Land Court in the 1860s and 1870s was in reality a battle between Raukawa and the government, which played a very active role in the cases. Significantly the government was also involved in the Maungatautari cases, and when Ngati Kauwhata tried to advance claims to the Maungatautari blocks before a Commission of Inquiry in 1881, Major William Mair appeared before the Commissioners to oppose the claims on behalf of the Crown.

The Court’s decision did not, however, bring the issue of the Rangitikei-Manawatu block to any immediate resolution. Ngati Raukawa continued to be extremely dissatisfied with the outcome and continued to resist government efforts to take control of the block and survey it into sections for settlement. In December 1869 the *Nelson Examiner* reported that “the Manawatu purchase has not, unfortunately, ceased to be a ground of anxiety, and become a territory for colonization”. Although the government had “proclaimed the native title extinguished” one group of objectors “now, in plain terms, repudiates the transaction” while “another party of malcontents” intended referring the case to the Supreme Court.¹⁶⁴⁸

As was discussed in earlier sections of this report, the Raukawa hapu around Otaki in the early 1860s had a great deal of sympathy for Wiremu Kingi’s cause in Taranaki and also for the Kingitanga in the Waikato, especially so after the invasion of the Waikato in 1863. These political developments, however, interconnected with the existing disputes between Ngati Apa, Rangitane and Raukawa. The government did not want to see the New Zealand wars spreading into central New Zealand (nor did most Maori of the region), but tensions nevertheless ran high in the region in the 1860s. As Anderson and Pickens put it, “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”.¹⁶⁴⁹ The southern Raukawa hapu found themselves in general disfavour with the

¹⁶⁴⁶ *Evening Post*, vol IV, Issue 41, 1 April 1868, p 2: “After Mr Fox had concluded his address for the Crown, he called as his first witness Tamihana Te Rauparaha (son of the late Te Rauparaha) who gave evidence of the invasion by Ngatitotoa, and of Ngatiraukawa migration, substantially the same as that given by Matene Te Whiwhi and other witnesses for Parakaia [Te Pouepa], with this exception that the whole was an attempt to disparage Ngatiraukawa, who he stated were slaves of his father’s.”

¹⁶⁴⁷ *Nelson and Examiner and New Zealand Chronicle*, Volume XXX, Issue 52, 28 October 1871, p 7.

¹⁶⁴⁸ *Nelson Examiner and New Zealand Chronicle* (Vol XVIII, Issue 102, 22 December 1869) at 2.

¹⁶⁴⁹ Anderson and Pickens, *Wellington District*, 89.

Crown: “the war in Taranaki” – and, I would add, the Waikato war – “further shifted the distribution of power among the Rangitikei-Manawatu tribes towards the older occupiers who generally supported the Government and had long advocated the sale of the lands excluded from the 1848 sale”.¹⁶⁵⁰ This became even more pronounced with the Kukutauaki and Horowhenua cases.

10.10 North and South

To revert to one of the main themes of this report, movement and interchange between the northern and southern sections of Ngati Raukawa was near-constant. W H Grace reported in 1879 the section of Ngati Raukawa in the Waikato is “constantly receiving accessions from their brethren in the South”.¹⁶⁵¹ Ngati Raukawa chiefs living in the PkM region such as Enoke Te Rauhihi and Karanama Te Kapukai attended meetings in the Rohe Potae, where they would have interacted with Waikato-RRohe Ptai Raukawa leaders such as Hitiri Te Paerata, Te Rei Paehua, Whiti Patato, Te Rangitutia, Arekatera Te Wera others.¹⁶⁵² There is no reason to think that this interchange between north and south was only one way.

What can certainly be said is that Raukawa’s experience of the Court was an exceptionally crushing and punishing one, and this becomes particularly apparent if – following one of the main themes of this report – Raukawa’s experiences, north and south, are treated cumulatively.

April 1868: The Native Land Court gives judgment in the **Himatangi** case.¹⁶⁵³ Ngati Apa are found to have equal rights with Raukawa in this block, meaning that half of the block passes to the Crown. The Court also finds that Raukawa as an iwi had no rights in the block at all – only certain Raukawa hapu. This is a catastrophic defeat for Raukawa.

November 1868: Pukekura case in the Native Land Court.¹⁶⁵⁴ The block is claimed by Ngati Haua who are opposed by Raukawa led by Parakaia Te Pouepa. Parakaia withdraws his claim.

November 1868: Maungatautari case.¹⁶⁵⁵ Parakaia withdraws claim.

November 1868: Puahue case. Raukawa are unsuccessful.

August-September 1868: Hearing of the Rangitikei-Manawatu Case at Wellington. Judges Fenton and Maning give judgment on 25 September.¹⁶⁵⁶ The argument was almost entirely focused on Te Rauparaha’s intentions with respect to Ngati Raukawa and Ngati Apa. The Court again finds that Ngati Raukawa as an iwi had no rights in the block, which went to Ngati Apa, although three Ngati Raukawa hapu (Ngati Parewahawaha, Ngati Kahoro and Ngati Kauwhata had rights in the area by occupation).

4 March 1873: The Native Land Court (Judges Rogan and Smith) gives judgment in the **Kukutauaki** case.¹⁶⁵⁷ The Court finds that sections of Ngati Raukawa have title in the block

¹⁶⁵⁰ Ibid.

¹⁶⁵¹ W H Grace to USND, 22 July 1879, *Further Reports from Officers in Native Districts*, 1879 AJHR G-1A, 1.

¹⁶⁵² Ibid, 2.

¹⁶⁵³ (1868) 1e Otaki MB 719-20; also reprinted in the *Evening Post*, 29 April 1868.

¹⁶⁵⁴ Pukerua Case, Native Land Court, reprinted in *Report from Mr James Mackay, Jun.*, 1873 AJHR G-3, 12-17.

¹⁶⁵⁵ Maungatautari case, Native Land Court, reprinted in *Report from Mr James Mackay, Jun.*, 1873 AJHR G-3, 17-20.

¹⁶⁵⁶ See Fenton (ed), *Important Judgements*, 101-108.

¹⁶⁵⁷ The judgment is reprinted in Fenton (ed), *Important Judgments*, 134-35.

“together with Ngatitōa and Ngātiawa, whose joint interest is admitted by the claimants”.¹⁶⁵⁸ Two areas are excluded, however. These are:

- (a) *Horowhenua* (“a portion of the block, the boundaries whereof are not yet defined, situate at Horowhenua, claimed by the Muaupoko tribe, of which they appear to have retained possession from the time of their ancestors, and which they continue to occupy”¹⁶⁵⁹); and
- (b) *Tuwhakātupua* (“a portion of the block at Tuwhakātupua, on the Manawatu river (boundary not defined), claimed by a section of the Rangitane tribe, whose interest therein is admitted by the claimants”¹⁶⁶⁰).

5 April 1873: The Native Land Court gives judgment in the **Horowhenua** case. The Court finds for Muaupoko and rejects the Raukawa claim to this block.

Were Raukawa merely unlucky – or is there more to it than that? One interesting piece of evidence is a somewhat astonishing conversation that Grey had with Parakaia Te Pouepa, who was the Raukawa claimant in both the Maungatautari and the Himatangi blocks, two years previously in November 1866. What gives particular interest to the record of the discussions is that Parakaia Te Pouepa wrote down his own record of what was said and had it published in the *Wellington Advertiser* in May 1867. The whole of the discussion is reproduced below:¹⁶⁶¹

This is what was said about Rangitikei –

Governor Grey – Parakaia, the reason why I have sent for you is that I am alarmed. Trouble is near; this is what I fear, and why I wished to learn what you think about Rangitikei. I am much alarmed. Hostilities are now likely to take place at our end of this Island. What I now desire is that you should consent to the sale of Rangitikei – give it up to Dr. Featherston. If you persist in retaining it you will quarrel among yourselves about it.

Parakaia – You do well to be alarmed at the probability of hostilities, but go and talk to Featherston [i.e. Isaac Featherston, Wellington Provincial Superintendent]. What has been said about fighting does not proceed from me; that threat of fighting came from Featherston’s friends.

Governor – Those tribes, Wanganui, Ngātiapa, and Ngatikahununu, are angry because you refused to sell Rangitikei. I am grieved, very much grieved about this, Parakaia.

Parakaia – I was not aware that those tribes intended to fight. It must be Dr Featherston having offered them money caused them to be elated, and act in that way. What right would men have to go from this to Taranaki to fight? Should we think of going to fight about the land belonging to the men of Ahuriri, as you say Ngatikahununu [sic] are coming over here to the country of these tribes without any cause, for the purpose of stirring up strife; besides, it is not my business to lecture those tribes, it is your duty to admonish them.

¹⁶⁵⁸ Ibid, 134.

¹⁶⁵⁹ Ibid, 135.

¹⁶⁶⁰ Ibid.

¹⁶⁶¹ Wellington Advertiser, 11 May 1867, reprinted in T C Williams, *A Letter to the Right Hon W E Gladstone being an Appeal on behalf of the Ngati Raukawa Tribe*, J Hughes, Lambton Quay, Wellington, 1873, Appendix pp 134-37.

Governor – Don't be headstrong, Parakaia; if you are obstinate you will only be drawing other people into trouble. You resemble a man hauling on to the rope of a canoe, until suddenly it is smashed on a rock. You are also drawing the Government into a war there.

Parakaia – I am not responsible for that war (which you imagine will come); that talk about fighting comes from Featherston's friends.

Governor – If you will yield to what I advise, just sign your name to the deed of cession, and say to the people – "I have assented to sell this land to the Government. Featherston will take care that my piece of land shall be excluded from the block which is alienated, as well as the lands of those who are opposing the sale." And say to Featherston, "Have their lands excluded from the alienated portions". This is a prudent course to adopt. Sign your names to the deed, that your own pieces of land may be secure; these will not then be touched.

Parakaia – Why have you not hitherto advised me during these months that have elapsed? Had you spoken then I could have communicated what you said to the tribe for their careful consideration, which possibly by this time might have been agreed to; but the day of trouble about Rangitikei is near at hand – it is too late now to deliberate with my tribe. Besides, had I been dealing with McLean (who understands these questions) instead of Featherston, I might be induced to think there was some feasible plan in what you two propose. For Featherston made me a similar offer; I declined it. He pressed me to consent to the sale of Rangitikei, and promised me money. I declined it, and said, "I am not a servant working for hire;" no master said to me "retain your land;" I retain it of my own accord.

Governor – Parakaia, *you possess land in many parts of this Island – you have lands at Maungatauri and elsewhere. Give up this particular piece of land to the Government, in order that the Government may treat you with consideration, in reference to your claims to those other lands* [emphasis added].

Parakaia – Stay! One thing at a time. You are now confusing the matter in hand with irrelevant allusions to other land claims.

Governor – What I meant was, that the course of the Government might be clear; in my opinion that is right.

Parakaia – I said to you some months ago, speak out your mind; do not remain silent, lest your silence be taken advantage of by Dr Featherston as a consenting to his evil doings. Had you spoken then, what you now aim at might have been accomplished; but now I am taken aback, I am not clear what to do. I said earnestly on a previous occasion, Governor, speak out your mind.

Governor – My son, I did speak before; nevertheless I now speak again distinctly. I am right in what I now propose; you are blaming me for refusing to attend to it.

Parakaia – What can I do? Can I break a tough tree? The tribe has come to a determination not to sell. I have no power to alter their resolution, I might now, perhaps, influenced by fear of you, give a hasty and useless assent to sell; but what then.

Governor – If you fear me, give your assent. I am a wrathful Governor; assent.

Parakaia – If it were Maori anger I should be afraid; but it is a Governor who is angry. I trust he will soon see he is angry without just cause.

Governor – My words are good; you are a madman; you ought to be sent to the lunatic asylum at Karori.

Parakaia – You ought to send Featherston to the madhouse at Karori. I am no madman. The land on one side of this block has long since been ceded to you; you heard then that there was a determination to retain this portion. Subsequently Governor Browne and McLean endeavoured to purchase it, but we refused to sell. Those other tribes did not take it from us at that time. You have obtained both the Lower and Upper Manawatu Blocks; this is comparatively a small portion which we are retaining. Let Nepia, Takana, Hoeta, Wiriharai, and all the other owners of the various portions first give their assent to the sale; my assent will then follow and be of use; but for me to venture to take the lead, and give a futile assent to the sale, is beyond my power. There is fixed determination not to sell Rangitikei. I can do nothing in the matter. With reference to what you say about fighting, we have nothing to do with that; it is for the Governor to put that down.

This document does seem to indicate an interconnection between the ‘southern’ and the ‘northern’ cases.

10.11 Tawhiao’s invitation to Ngati Raukawa to return to the Waikato, 1872

The Kingitanga leadership – Tawhiao himself, Rewi Maniapoto and others – who had been watching the Land Court’s inquiries into the Maungatautari blocks in the Waikato with great concern, invited all the Raukawa hapu living at Otaki to return to their ancestral lands at Maungatautari in 1872. Letters were sent to Otaki by Tawhiao and Rewi. This request led to days of anxious debate at Ihakaretu, a village on the Manawatu river, in September. Raukawa at Otaki were already split into Kingite and Queenite factions, the former led by Whiti Patato and the latter by Ihakara Tukumarū.

Why did Tawhiao and Rewi make this proposal at this time? Tawhiao’s request could have been a response to Waikato Raukawa’s decision to remove their lands from the mana of the King and open them up to telegraphs, roads, and the Land Court. Tawhiao and Rewi were struggling to stabilise the eastern border of the independent Rohe Potae, and they may have thought that bringing the rest of the iwi home to Maungatautari at the King’s invitation might have strengthened the King’s position with respect to the Government and to the northern part of Raukawa. What Hitiri Te Paerata and other rangatira of the northern part of the iwi might have thought about this step is unclear. It does appear that the invitations were sent directly from the Rohe Potae to the recognised leaders of both parties at Otaki, without Waikato Raukawa playing any role. Such a step would have been a head-on challenge to the government and the Land Court, given that the Maungatautari blocks had already been investigated, awarded to the Queenite sections of Ngati Haua, and leased out. Either Rewi and Tawhiao were planning to simply defy the Court rulings or alternatively they might have been hoping that the case could be reopened and Raukawa admitted to the titles. If that was the strategy then the problem was that the Court would in all probability apply its 1840 rule and refuse to recognise as owners those sections of Raukawa who had migrated south prior to 1840.

James Booth described the opening of the discussions in a report to the Native Department:¹⁶⁶²

The first subject brought on for discussion was an invitation from Tawhiao (Maori King) and Rewi Maniapoto to Whiti Patato (Wi Hapi) and another from same parties to Ihakara Tukumarū, and all the hapus of the Ngatiraukawa Tribe, to return to their land at Maungatautari and to leave this district. This

¹⁶⁶² Booth to Assistant Native Secretary, in *Further Reports from Officers in Native Districts*, 1872 AJHR F-3A, 33.

subject was gone into very fully, Whiti representing the King party, and trying to induce the tribe to migrate, arguing as one reason for doing so that all the land now occupied by the Ngatiraukawa is being sold, and that a considerable portion of it is claimed by the Muaupoko, Rangitane, and Ngatiapa Tribes.

Whiti Patato (who is apparently the same person as Wi Hapi mentioned in Knocks' reports) said this:¹⁶⁶³

After a time, when the land is all sold, you will all want to go to the Kuiti. Let the poor men go with me. But let the men who are trying to obtain Crown grants for their lands stay here, and contend with the Muaupoko, Rangitane and Ngatiapa tribes. If you like to go it is well; if, on the other hand, you wish to stay here in poverty, do so.

Henare Te Herekau saw himself as a "government Native" and did not wish to return, but he eloquently expressed his dismay over what he saw as the collapse of the local political consensus after 1860. Since then there had been nothing but bitter divisions between Queenite, Kingite, and those who tried to stay neutral, as well as endless conflict and tension over land – and the Manawatu block in particular - and the continued and alarming fall in the numbers of the people. Alcohol, as well, was undermining local communities. For once we have a real window into the divisions and politicisation within the Maori world as seen from the inside.¹⁶⁶⁴

You have all heard the resolutions which have been read to this meeting. Some of the speakers with reference to the 4th resolution have said, What evil do you see in Hauhauism? Listen! The Ngatiraukawa tribe is declining very rapidly. A good work was carried on in this tribe from the year 1841 to the year 1860. For twenty years we lived in peace; some of the chiefs who took a part in those good works during twenty years are still living. In the year 1860 quarrelling commenced. The tribe was broken up into three parties" 1st, Kingites, 2nd, Kupapas (neutrals); 3rd, Government Natives. Amongst these several parties there were some evil and some good. We had much disputing with our neighbours on account of sale of the Rangitikei-Manawatu block; this has led to estrangement. Then again, we Government Natives have had a great evil to contend against – I mean strong drink. Between drink and Hauhauism nothing but the bones of the tribe remain; the flesh and blood have been destroyed. Return to me the cultivations of the soil.

Here again the importance of trying to see Raukawa's 19th century history as an integrated whole is made clear. What made Rewi's and the King's proposals soappealing to many at Otaki was because of Raukawa's troubles in the Land Court in their region. Raukawa had already experienced a significant defeat with regard to the Himatangi block, and its rehearing, and had another defeat in store with Horowhenua in 1873.

However, to most of Raukawa the thought of uprooting themselves *en masse* from the Manawatu and Rangitikei districts and going to live with Tawhiao inside the Rohe Potae had little appeal. Moving north was forcefully opposed by Ihakara, as Booth reported to the Native Department.¹⁶⁶⁵

In reply, Ihakara Tukumarū, and the other chiefs representing the Government party, stated most emphatically their refusal to entertain the idea of leaving this part of the country. They said that similar invitations had been sent at different times, and generally responded to by a portion of the tribe; that the invariable result had been to induce those men who had gone to take up arms against the Government,

¹⁶⁶³ Translation of Notes of a Meeting held at Ihakaretu, on the Manawatu River, from Friday the 6th of September to Tuesday 10th September, attachment to Booth to Assistant Native Secretary, in *Further Reports from Officers in Native Districts*, 1872 AJHR F-3A, 33.

¹⁶⁶⁴ Ibid, p 36 (Henare Te Herekau, 9 September 1872).

¹⁶⁶⁵ Booth to Assistant Native Secretary, in *Further Reports from Officers in Native Districts*, 1872 AJHR F-3A, 33.

and bring trouble on themselves. Ihakara, as Whiti's superior chief, said "I forbid your going to Waikato to stay there; you can only be allowed to go on a visit, and return."

There was a lot more further discussion, especially about the Hauhau faith. To many the issue was seen in primarily religious terms: commitment to the King meant also affiliating with Pai Marire, a step that many Raukawa people felt they could not take. As Ihakara put it, "this Government of which I here propose is not that of England, or of New Zealand, but it is the Government of Heaven".¹⁶⁶⁶ According to Booth's report of the discussions the pro-government chiefs stated that they intended to rely on the Government to protect Raukawa's interests at Maungatautari:¹⁶⁶⁷

The friendly chiefs, by way of reply, stated that they should appeal to the Government to protect their interests in the Maungatautari country; they are going to send by this mail the boundaries of land (unconfiscated) which they claim, together with a list of the claimants.

This trust was misplaced. Maungatautari will be considered fully in another chapter of this report. Suffice to say that nothing was done to protect Ngati Raukawa's and Ngati Kauwhata's interests there: quite the reverse.

10.12 Himatangi Grants Act 1877 and owners' lists

Not everyone who has written about Himatangi appears to be aware that nearly the whole of the 1868-69 Himatangi block was eventually allocated in full to the Ngati Te Au, Ngati Turanga, and Ngati Rakau in 1877-79. This section deals with the return of Himatangi to Maori ownership, the fixing of owners' lists in 1879, and the various applications for rehearing that resulted. (As this is one of the more obscure and less commented-on aspects of the history of Himatangi the relevant documentation will be set out in full).

The Himatangi block of 1868/69 covered about 11,000 acres, of which, as will be recalled, a bit less than half was awarded by Rogan and Smith to the three hapu. Notwithstanding this finding of the Court, following the second Himatangi decision (which seems to have been treated as a de facto rehearing overruling the first) the first Himatangi decision had been ignored and the entirety of the 1868 block had been included in the proclamation extinguishing native title over the Rangitikei-Manawatu block made on Prendergast's advice on 16 October 1869. The only reserves excluded from the original surveys were those set out in the 1869 formal order of Court. McLean, however, as well as his reserve allocations, had recommended that the three hapu should have all of Himatangi. Nothing seems to have been done to give effect to this; but meanwhile the three hapu had remained in occupation. Nor, as it transpired, had they been repaid any of the back rents impounded originally by Featherston at the start of the negotiation and now still owed to the non-sellers.

On 24 August 1875 Pitihira Te Kura wrote to McLean and H T Clarke asking that Himatangi be returned to the three hapu (Parakaia Te Pouepa had died by this time).¹⁶⁶⁸ The Himatangi people engaged Walter Buller as their solicitor (certainly an able lawyer, whatever else might be thought of him), whose informative letter to Clarke (Under Secretary of the Native Department at this time) reveals the full story of what had happened with Himatangi since the title investigations:¹⁶⁶⁹

¹⁶⁶⁶ Translation of Notes of a Meeting held at Ihakaretu, on the Manawatu River, from Friday the 6th of September to Tuesday 10th September, attachment to Booth to Assistant Native Secretary, in *Further Reports from Officers in Native Districts*, 1872 AJHR F-3A, 33.

¹⁶⁶⁷ Ibid.

¹⁶⁶⁸ Pitihira Te Kura to H T Clarke and Sir Donald McLean, 24 August 1875, MA 13/68/37b.

¹⁶⁶⁹ Buller to Clarke, 22 March 1876, MA 13/68/73b.

Sir Donald McLean is quite familiar with the history of the Himatangi claim. The claim was originally made by Parakaia and the other dissentients from the Rangitikei-Manawatu Purchase. It was heard before the Native Land Court at Otaki in April 1868. Out of a block of 12,000 acres claimed, one-half less 2/27 was awarded to Parakaia Te Pouepa and those claiming with him, subject to a proviso that the land so awarded should be surveyed (at the cost of the claimants) within six months from the date of such order.

For reasons which it is unnecessary to refer, the period of six months was allowed to lapse without any survey being made, Parakaia never ceasing to urge his claim to the whole of the Himatangi Block. After the final hearing of the Rangitikei-Manawatu case before the Native Land Court in Wellington [i.e. the 1869 decision], *the whole of Himatangi was included in the proclamation extinguishing Native title* [emphasis added].

Buller went on to explain how he had opposed the inclusion of Himatangi in the proclaimed area, citing a key passage in Bell's report on the dispute between the general and Wellington provincial governments. Bell had expressed some surprise that notwithstanding Buller's objections the survey of the purchase, including Himatangi, had nevertheless proceeded. Buller added:¹⁶⁷⁰

The Manawatu Natives (and I presume with truth) that Sir Donald McLean redressed this apparent injustice by promising to restore to Parakaia's hapu the land awarded by the Court. They state further that Sir Donald at an interview with Parakaia, consented, as an act of grace, to give back the whole of the original block of 12,000 acres, the portion excluded by the Court being practically of little value for purposes of European settlement (chiefly sand ridges).

Buller had found that the Lands Department had made no attempt to survey and sell Himatangi:

On enquiry at the Office of the Commissioner of Crown Lands, I found that the land had been reserved from sale, owing to a similar impression there.

Himatangi had not however not been marked off on the plans in any way, either as a reserve or in surveyed blocks for sale.¹⁶⁷¹

In April 1876 Buller, as the lawyer for the three hapu, sent a tracing of the Himatangi block to the Native Department. Until this time it appears that still nothing had been done to formalise the status of Himatangi, which seems to have been treated as a de facto reserve. In April 1876, for example, Hera Hangahanga had applied to the Native Land Court to succeed to Parakaia Te Pouepa's interest in the block. The MB, however, was noted "No grant Dismissed",¹⁶⁷² indicating that the title was still undefined. It is clear from Buller's letter that the three hapu had continued in occupation and wanted to have a legal title to the full 11,000 acres.¹⁶⁷³

According to promise I forward herewith a tracing of the Himatangi Block as claimed by Pitihira Te Ruru and others (Parakaia's hapu) all of which has been reserved from sale by the Provincial authorities.

I may add that the Natives have continued to squat on the portion which was not included in the award of the Court. The total area is 11,000 acres, as shown on the tracing.

Clarke sent Buller's letter on to McLean, noting that Buller had "put the Himatangi case very clearly" and pointing that he (McLean) had "held out some hope to Parakaia that he should at least have what

¹⁶⁷⁰ Ibid.

¹⁶⁷¹ Ibid; also Young to Clarke, 28 March 1876, MA 13/68/73b ("It is not marked off at all on their [the provincial government's] plans. It is at present unsurveyed land.")

¹⁶⁷² (1876) 3 Otaki MB 120 (13 April 1876).

¹⁶⁷³ Buller to Clarke, 19 April 1876, Himatangi Closed Correspondence File OTI 69, Maori Land Court, Whanganui

the Native Land Court awarded".¹⁶⁷⁴ In 1877 the government offered to the three hapu six thousand acres of land at Himatangi by way of settlement. Pitihira Te Kura, the principal spokesperson for the three hapu, along with other people rejected the government's offer. They insisted on receiving the full 11,000 acres.¹⁶⁷⁵

Foxton, Jan 19 1877.

To the Government,

Friends, salutations to you. Dr Buller has arrived hither and publicly read to us the letter of the Government offering to subdivide six thousand acres of the Himatangi Block for us. Hearken, we decline to accept Six thousand acres, what we desire is that all the Eleven thousand acres be given back to us; then we will all be satisfied, that all that eleven thousand acres be returned to us.

The representatives of the three Himatangi hapu were annoyed that the government had recently entered into a settlement with Ngati Kauwhata but was apparently not willing to do so with them.¹⁶⁷⁶

Consider! You have satisfied all the desires of Ngatikauwhata; why then should you not agree to our application to have all our land returned to us. We the hapus who were quiet and peaceable do not have our claims admitted by you, while those of the hapus who participated in the money are, inasmuch as you have given Ngatikauwhata a large sum of money? While our application is refused.

On the same day Pitihira Te Kuru and 35 others of the three hapu sent an additional letter to the government raising another issue: the impounding of the rents, for which they had never been compensated.¹⁶⁷⁷

Friends, we have finished our letter about the land, that is Himatangi and this is another having reference to the rents.

Hearken! Through the trouble in connection with Rangitikei Dr Featherston caused all the rents of the land to be withheld, so that none should be forthcoming (to us) from the Europeans up to the day at Warekura when the money for the sellers twenty five thousand pounds was paid, and three thousand pound or thereabouts for the rents, but the money due to the non-sellers for back-rents one thousand pounds or thereabouts was kept back by Dr Featherston.

[NB Bullers's comment about the real purpose of retaining the rents.]

In 1877 new legislation was enacted to deal with the still unresolved problem of the Himatangi block: this was the Himatangi Grants Act (20 November 1877). The legislation provided that the whole of the Himatangi block (that is, the 11,000-acre block before the Court in 1868 and 1869) should be returned to the three hapu found to be the customary owners: Ngati Te Au, Ngati Turanga, and Ngati Rakau. As seen, McLean had already concluded that the whole block should be allocated to the customary owners, essentially as a reserve within the Rangitikei-Manawatu block. The 1877 statute was an Act to:¹⁶⁷⁸

¹⁶⁷⁴ Clarke to McLean, 25 March 1876, MA 13/68/73b.

¹⁶⁷⁵ Pitihira Te Kuru and others to "the Government", 19 Jan 1877, Himatangi Closed Correspondence File OTI 69

¹⁶⁷⁶ Ibid.

¹⁶⁷⁷ Pitihira Te Kuru and 35 others to "the Members of the Ministry" ("Ki nga minita o te kawanatanga kei Poneke"), 19 Jan 1877, MA 13/68/37b.

¹⁶⁷⁸ Himatangi Crown Grants Act 1877, long title.

authorize the Native Land Court to ascertain the Shares of Members of the Ngatiteau, Ngatitiranga, and Ngatiraukau Hapus in the Himatangi Block, part of the Rangitikei-Manawatu Block, and to subdivide the said Block; and to authorize the Governor to issue Crown Grants.

The Preamble to the Act referred to the deed of 13 December 1866, and stated that Himatangi should “in equity and good conscience” be returned to the three hapu:

Whereas the block of land described in the First Schedule hereto, known as Himatangi, forms portion of the land comprised in a certain deed of sale to the Crown, bearing date the thirteenth day of December, 1866, and expressed to be a conveyance by Natives entitled to land within the district excepted from the operation of “The Native Lands Act, 1865,” by the eighty-second section thereof, and now known as the Rangitikei-Manawatu Block: and whereas the Ngatiteau, Ngatitiranga, and Ngatiraukau hapus in the Ngatiraukawa tribe of aboriginal natives were, by Native custom, the owners of the said Himatangi Block, and they did not join in the said sale, and did not receive any of the purchase-money therefor, and in equity and good conscience the said Himatangi Block ought to be given back to the said hapus.

Section 3 of the 1877 statute gave the Native Land Court power to determine the owners of the block:

3. Upon Act coming into operation, Governor in Council to direct Native Land Court to ascertain shares of owners: The Governor shall, immediately after this Act comes into operation, by Order in Council, direct the Court forthwith to proceed, in any manner it shall deem best, to ascertain, by such evidence as it shall think fit, whether admissible in a Court of ordinary jurisdiction or not, the share or shares to which member of the Ngatiteau, Ngatitiranga, and Ngatiraukau hapus of the Ngatiraukawa tribe of aboriginal natives is interested, according to Native usage and custom, in the said Himatangi Block. The decision shall be published.

Following the enactment of the 1877 Act the necessary Order in Council was made in May 1878 directing the Court to determine the shares of the three hapu.¹⁶⁷⁹ The Court dealt with the ownership lists for Himatangi in November 1879. The Court, sitting at Foxton, was presided over by Judge Heaphy, another judge without legal qualifications but who was a very skilled surveyor and draughtsman.¹⁶⁸⁰ After lists of owners from the three hapu had been handed in to Court, Arona Te Hana (an Anglican clergyman) made an application on 24 November 1877 to have his name added to the list of owners for Himatangi. His application was adjourned to allow the Court to have a copy of Featherston’s 1866 deed made available to the Court. According to the minutes:¹⁶⁸¹

Arona Te Hana having applied to Judge to have his name in the Himatangi and this Court not having the original deed of cession was unable to compare it with the names given in by the persons on Friday. The whole of the document with deed of Cession having been sent for examination the case would stand adjourned until the Court returns from Palmerston.

The Court wanted to check if anyone seeking to be placed in the list of owners as part of the memorial of title was one of the original sellers of Rangitikei-Manawatu (if so, then they had no entitlement under the 1877 Act). As it happened Arona had signed Featherston’s deed and had no entitlement, and as soon as he saw his signature on the document he withdrew his application. On 3 December:¹⁶⁸²

¹⁶⁷⁹ T W Lewis to Fenton, 4 May 1878, Himatangi Closed Correspondence File OTI 69

¹⁶⁸⁰ Heaphy had only a short tenure as a Native Land Court judge, from 1877-1880, and died soon after retiring from the bench. Heaphy was an experienced surveyor and an accomplished artist and an explorer of note; he had a varied official career and “was part of McLean’s firmly controlled network of subordinates, bound to him by loyalty and patronage” (Michael Fitzgerald, “Heaphy, Charles, 1820-1881, Draughtsman, artist, surveyor, explorer, soldier, public servant”, *DNZB*, vol 1, 1990, 181-183, at 182).

¹⁶⁸¹ (1879) 4 Otaki MB 120 (24 November 1879).

¹⁶⁸² (1879) 4 Otaki MB 138.

Renata Ropiha asked if the necessary documents relative to Rangitikei Manawatu purchase had arrived and wished the claim gone on with and finished today.

Deed produced by Mr O'Neill.

Arona Te Hana stated that it was his signature to the deed of sale and therefore had no more to say.

Court informed Natives that it would be necessary to compare the names of those given in with those in the Deed of Cession.

List of names as given in being read – several names were found to be included in the Deed of Cession.

Court adjourned until next day in order that Lists, as handed in could be compared with signatures (1700) in Deed to see that no name in Lists were in deed of purchase.

The following day the various lists were formally presented in evidence, by Pitihira Te Kuru for Ngati Te Au, Rori Rangiheuea for Ngati Turanga (in two separate lists: 18 and 29 names) and by Renata Ropiha for Ngati Rakau (two lists: 16 names and 15 names). Only the names of adults were entered into the Court records. One person wanted to be taken out of the Ngati Turanga list and be added to the Ngati Turanga list instead, which was agreed to. The Court clerk then copied out the lists into the minutes. This did not quite finish the matter, as there was further debate about relative interests and the respective shares that should be allocated to each hapu. The block was partitioned into five strips of land running east to west, to Ngati Te Au (one subdivision), Ngati Turnaga (two subdivisions) and Ngati Rakau (two subdivisions).¹⁶⁸³

On 16 March 1880 Reweti Te Hiko and 11 others applied to Chief Judge Fenton for a rehearing of Himatangi. The principal issue raised was the size of the block, which should have been 11,781 acres, not 11,000. The missing 781 acres had been taken by the government for some reason:¹⁶⁸⁴

This is an application of ours about our piece of land, Himatangi; that it should be reheard, as the judgment of the Court was not right. The Court divided the land eleven thousand acres for the Maoris, and seven hundred and eighty one were taken by the Government. That is one reason.

Secondly, the names of children who had not arrived at the age of twenty-one years. That these children were put in as successors to deceased persons it would have been well. But as it was they were put in while their parents were alive, their parents wishing to get a large portion of the land.

Thirdly, the division lines of each hapu were not properly laid off, viz of Ngaituranga, Ngatiteau and Ngatirakau. The outside boundary was surveyed; the Court laid off the subdivisional boundaries, and that is the reason of its being wrong.

For these reasons the application of some of these hapus for a rehearing is a right one on account of these errors.

Reweti Te Hiko (and 11 others).

But Judge Heaphy did not think a rehearing was justified:¹⁶⁸⁵

¹⁶⁸³ See plan on MA 13/68/73b.

¹⁶⁸⁴ Reweti Te Hiko and others to Fenton, 16 March 1880, Himatangi Closed Correspondence File OTI 69, Maori Land Court, Whanganui (English translation of original letter in Maori).

¹⁶⁸⁵ Heaphy to Fenton, 4 June 1880, Himatangi Closed Correspondence File OTI 69; also on MA 13/68/73b.

1st. The 11,000 acres was all that the “Himatangi Crown Grants Act” remitted to the Court to deal with. The Claimants before the sitting of the Court had consented to that area.

2nd. The Court was very careful to to inquire into [nonage] and other disability. Every name submitted was subjected to scrutiny as to the age of the person. This was in open court and with a full attendance of claimants.

3rd. It was also inquired if the head of a family should receive a share for himself, and one for each adult child, as against the solitary share of a man without children, and it was decided that he should receive but one share; enquiry was made in this direction, and the lists made out accordingly.

4th. The division lines were [schemed?] by the natives and drawn by myself in open court. All expressed their satisfaction until about a fortnight after the judgment, when it was found by the natives that only 11,000 acres were included within the lines.

I have already reported more fully on this case. I cannot recommend a rehearing.

Heaphy’s report enclosed a memorandum from Walter Buller, who had acted as counsel for the three hapu during the hearings. Buller did not think that a rehearing was justified either:¹⁶⁸⁶

I was counsel for the claimants in the Himatangi case heard at Foxton, and had every reason to be satisfied with the painstaking manner in which the Court investigated the whole matter.

Evidence on oath was taken in the case of every claimant as to his or her being of full age and not under disability of any kind, and at the same time a most careful scrutiny was made of the seventeen hundred names attached to the Rangitikei-Manawatu deed of cession, for the purpose of [elimination from the list of claimants those who had sold to the Crown. I remember that the Revd. Arona Te Hana declared himself a non-seller, and that on the production of the original deed of sale, he recognized his signature, acknowledged his mistake, and withdrew his claim. The same thing happened in the case of Hariata [Hamareta] and one or two others. The enquiry was most patient and exhaustive, and my Native clients left the Court expressing themselves perfectly satisfied. Nothing has been said to me since by any of them as to a rehearing, nor am I aware of any possible ground for such an application.

Roiri Rangiheuea and others stated that they claimed in excess of the 1100 acres shown on the Official Map, and I think the plan prepared by Mr Alzdorf and produced at the hearing made the area of the Block 11700 acres. But I explained to them that all the Himatangi Crown Grants Act gave back to the three hapus, and consequently all the Court had jurisdiction to deal with, was the Block of 11000 acres described in the Schedule thereto.

P.S. I may add that several of the claimants asked to have their childrens’ names included, and the Judge refused the application in every case on the grounds that it would make the shares disproportionate besides being opposed to a principle laid down by the Court.

This was not quite the end of the Himatangi affair. On 1 August 1880 Pitihira Te Kuru applied to Fenton asking the Court to rehear Himatangi in order to have Kepa Parakawa’s name added to the list of owners. Although he had “great mana over Himatangi” his name had been left out for some reason.¹⁶⁸⁷ Fenton asked Heaphy to comment, who advised that there was no reason to re-open the Himatangi case:¹⁶⁸⁸

This is the second application for a rehearing in this case, and is a good instance of the manner in which natives will, under the existing law and regulations, ask for a rehearing for trivial reasons.

¹⁶⁸⁶ Buller to Heaphy, June 3 1880, Himatangi Closed Correspondence File OTI 69; also on MA 13/68/73b

¹⁶⁸⁷ Pitihira Te Kuru to Fenton, 1 August 1880, Himatangi Closed Correspondence File OTI 69.

¹⁶⁸⁸ Heaphy to Fenton, 11 Sept 1880, Himatangi Closed Correspondence File OTI 69.

Heaphy went on:

I may respectfully submit that as long as the law and Regulations allow natives to ask for rehearings without the deposit of expenses of such rehearings they will do so on these insufficient pretexts. In three cases out of four some party to a suit obtains less land than he had expected, and if can simply by writing a letter, and incurring no expense, obtain the chance of a rehearing and the possibility of a more favourable decision he will naturally do so, entailing a vast amount of trouble to us and unsettling the matter amongst themselves.

10.13 Epilogue: the *Ngarara West* decision (1890)

The Ngarara block was first investigated in 1873 and was vested in Wi Parata and seven others of Ngati Awa.¹⁶⁸⁹ In 1874 some of the block was purchased by the Crown (Maunganui block), the balance of the block (29,500 acres) being known as Ngarara West. The block was partitioned in 1887 and was eventually reheard in 1890 following a petition to Parliament by Inia Tuhata and others in 1888. In 1890 the Native Land Court acting under the Ngarara and Waipiro Further Investigation Act 1889 then conducted a lengthy reinvestigation of the Ngarara West block, also in the PkM inquiry district.¹⁶⁹⁰ Neither Ngati Apa nor Ngati Raukawa, as it happens, were involved in this case, which was concerned with the issue of which sections or hapu within the broader grouping of “Ngati Awa” (Te Atiawa) were entitled to interests in the block, albeit with Wi Parata pressing the case for a Ngati Toa claim. The block had been partitioned in 1887, but the partition was not well received by local people and was the subject of a petition to the Native Affairs Committee.¹⁶⁹¹ The reinvestigation began at Wellington in 1890 and ran, off and on, for about six months, with the various parties all represented by counsel. It was an important case about valuable land. Many well-informed people spoke at length, including Wi Parata, the two sisters Mere Pomare and Jane Brown, Octavius Hadfield, and Inia Tuhata (Inia Tuhata, who owned significant land interests in the Chatham Islands, was a personal and political opponent of Wi Parata). Once again the Court was provided by a large amount of material on the various migrations to Kapiti in the 1820s and 1830s which fill many pages of the minute books. Wi Parata, especially, gave lengthy testimony on this subject. Wi Parata sought to demonstrate that the entire block had been effectively conquered by Ngati Toa, and that only a part of the block had been allocated to Ngati Awa, the balance remaining in Ngati Toa possession (this argument was rejected by the Court).

The details of this case do not matter for the purposes of this report. What is interesting are that the Court analyses some of the same events in the Himatangi case, but in fact in a very different way. For example the marriage between Te Rangihaeata and Te Pikinga, which Maning makes so much of in the second Himatangi decision, is described in this way:¹⁶⁹²

¹⁶⁸⁹ (1873) 2 Otaki MB 211-213 (3 June 1873).

¹⁶⁹⁰ Judgment at (1890) 12 Otaki MB 3-30; Boast, *Native Land Court*, vol 2, NLC 165, 542-564.

¹⁶⁹¹ The partitions are at (1887) 7 Otaki MB 253-258 (14 May 1887); see also [1889] AJHR G-1.

¹⁶⁹² (1890) 12 Otaki MB 9; Boast, *Native Land Court*, vol 2, 551. I certainly do not mean to suggest that the decision in *Ngarara West* offers a completely reliable guide to complex events in PkM region in the decades before the Treaty of Waitangi – no decision of the Land Court does that. The Court’s characterisation of Te Pikinga as Te Rangihaeata’s “slave wife” is misleading too, if by that the Court means that she had that status permanently. Generally, however, the Ngarara decision presents a more reliable and detailed description of the various heke than does the Himatangi judgment, which is crude in the extreme.

For a reliable modern interpretation by a skilled ethnohistorian who is deeply familiar with the sources, including (but not limited to) the minute books of the Native Land Court, see Angela Balla, *Taua*, 315-354. In this authoritative discussion Balla explains that the in the fighting between the taua and Ngati Apa at Purua in 1819 Te Rauparaha’s group captured Te Pikinga and her brother, later known as Arapata Hiria. Ngati Apa were defeated at this point, but certainly not conquered: “Ngāti Apa was a numerous iwi with many hapū, most of

Whilst the expedition was on its way southward a Pa at Rangitikei belonged [sic] to Ngatiapa was attacked and taken and a woman of rank named Pikinga was captured by Te Rangihaeata the nephew of Te Rauparaha who made her his slave wife. She was afterwards instrumental in making peace between Ngatiawa and Ngatitōa and in securing the neutrality of the latter to a certain extent.

Ngati Apa were by no means always at peace with Te Rauparaha. In fact Ngati Apa was part of the coalition of local groups which attacked Ngati Toa at the battle of Waiorua in 1824.¹⁶⁹³

Some time after the occupation of Kapiti Island by Ngatitōa and those left of Ngatiawa a strong body of the dispossessed tribes assisted by Ngatiapa, Wanganui, Ngatikahungunu and others assembled and landing on the Island attacked Ngatitōa but were defeated with great slaughter at Waiorua and the fugitives pursued in canoes to the mainland and after this fight the former occupants appear never to have rallied sufficiently to make any concerted effort to drive out the invaders.

According to the Court there *was* a conquest of the region, carried out by Ngati Toa, Ngati Raukawa and “Ngati Awa” acting in concert.¹⁶⁹⁴

Meanwhile the contingent of Ngatiraukawa promised to Te Rauparaha before he left Kawhia had arrived and taken possession of the lands about Otaki. We find – when the conquerors were settled down – , the Ngatitōa residing at Kapiti, the Ngatiawa at Waikanae and about Wellington and the Ngatiraukawa at Otaki. Some of the people principally Ngatiawa had also crossed the Straits and settled on the Coast lands about Picton, Collingwood, and Nelson ultimately extending as far as the Chatham Islands.¹⁶⁹⁵ It must be remembered that throughout the conquest or acquisition of the lands mentioned neither of the tribes could be said to be the dominant one. Neither Ngatitōa, Ngatiawa, nor Ngatiraukawa could be said to have of themselves conquered the lands they occupied. It was essentially a joint conquest and each tribe was entitled to the part they appropriated.

Much of the judgment was concerned with the conflicts that broke out amongst the conquering groups, especially between “Ngati Awa” and Ngati Raukawa, and the major battles at Haowhenua in c. 1834 and at Te Kuititanga in 1839. But perhaps the most interesting observations made in this case relate to claims by occupation as such. The Court in *Ngarara* was ceptical as to whether claims to land titles by exclusive occupation made any sense in the Kapiti region. What may make sense in some regions might not in others. The Kapiti region was characterised by extreme volatility in the years from 1830-1840, with many migrant groups moving into the region from the north and where much remained in a state of uncertainty and flux.¹⁶⁹⁶

With regard to these hapu claims which have been brought forward so often and urged so persistently following no doubt the custom in other Blocks where hapu claims have long been established; we think from the very nature of the acquisition and occupation of the land up to 1840 that any claim made under

which had not yet encountered the taua” (Ballara, *ibid*, 155) Ballara describes what happened on the return journey (*ibid*, 155):

On their way back from Wairarapa, Te Rangihaeata sent Te Pikinga, Arapata Hiria and Te Rātūtonu (a Taranaki husband of Te Rangihaeata’s sister, Topeora) into the Ngāti Apa pā ‘Te Awemate’ (or Te Awamate). Peace was made, after Ngāti Apa made sure that Te Rauparaha had power to restrain the whole taua. Te Pikinga was taken by Te Rangihaeata in a chiefly marriage alliance (rather than as a slave wife), and she was presented with a fabulous slab of greenstone called Te Whakahiamoe as a taonga (treasured possession) for her husband.

¹⁶⁹³ (1890) 12 Otaki MB 12; Boast, *Native Land Court*, vol 2, 552. This is in fact correct – Ngati Apa were amongst the attackers (and ultimately the defeated). See Ballara, *Taua*, 335. I am following Ballara in her dating of the battle, sometimes suggested to have been in 1826.

¹⁶⁹⁴ *Ibid*, 12-13; Boast *Native Land Court*, vol 2, 552-3.

¹⁶⁹⁵ The Court is here bringing Ngati Mutunga within the general framework of “Ngati Awa”. Ngati Mutunga and Ngati Tama arrived in the Chatham Islands at the end of 1835.

¹⁶⁹⁶ (1890) 12 Otaki MB 18; Boast, *Native Land Court*, vol 2, 557.

this head to any particular section of the land to the entire exclusion from that part of the other hapus, is altogether untenable. As we have already shown a portion of the Ngatiawa tribe came and settled on the land, there was no exodus from their original location of any one hapu, some of each remained and some came away, they could not all at once spread over the land, to do so meant exposing themselves to possible annihilation in detail, they all congregated in two or three pas for mutual protection and cultivated around in common as most convenient and so they remained till Christianity was introduced and English law established, the time when it is attempted to be proved the hapu rights were established and recognized by long continued custom.

The Court continued:¹⁶⁹⁷

Even at the so called allocation of the land to the different hapus if such were ever made which is more than doubtful it is acknowledged by all the witnesses sometimes very reluctantly that no boundaries were named, and that such was the case is quite in accordance with native custom. In similar cases where a tribe has conquered a tract of territory, the consequences are at first – as they were here obliged to be – on their guard and keep together but after a time they spread out, the members of a hapu keeping together and where no boundaries are laid down, custom eventually establishes a recognized one. Here nothing of the kind could take place, the parties were continually at feud either with the original owners or amongst themselves up to the time of the Treaty of Waitangi.

In my opinion the *Ngarara* court has come to a much sounder understanding of the realities of settlement and occupation in the PkM region than Court did in the Rangitikei-Manawatu decisions and in the Kukutauaki and Horowhenua decisions to follow. In basing decisions simply on occupation in these earlier cases, arguably the Court was pursuing a mirage.

¹⁶⁹⁷

Ibid.

11. Ngati Whakaterere: Kapiti Island, Kaihinu West, and other blocks

11.1 Ngati Whakaterere

Whakaterere was one of the three sons of Raukawa (the others were Rereahu - father of Maniapoto by his second marriage - and Takihiku; their sister was Kurawari). According to Ballara, although Ngati Whakaterere originated as a hapu of Ngati Raukawa, “by 1800 Ngāti Whakaterere were a numerous, independent people closely related to surrounding peoples” living in the wider Maungatautari region.¹⁶⁹⁸ Ngati Whakaterere became involved in conflict with Waikato and Ngati Haua, leading to the battles at Hurimoana and Tangimania (c. 1818) (a significant battle involving Ngati Maniapoto and Waikato and their Ngati Whatua allies on one side, and Ngati Whakaterere, Ngati Raukawa, Ngati Paeariki, Ngati Toa, and Ngati Takinga other the other). After Tangimania Ngati Whakaterere were subsequently given refuge by their Ngati Raukawa kin; however, writes Ballara, “[i]n giving refuge to their Ngāti Whakaterere kin in Hangahanga, Ngāti Raukawa of the Maungatautari district were drawn further into a quarrel which would soon see the withdrawal of many of them from the region, along with some Ngāti Whakaterere”.¹⁶⁹⁹ (This is not, however, Ngati Raukawa’s own opinion, or, no doubt, Ngati Whakaterere’s, nor was it always accepted in the Native Land Court). Ngati Whakaterere are a prominent hapu of Ngati Raukawa and today are associated with Maungatautari and Wharepuhunga, and as a part of Ngati Raukawa ki te Tonga especially with the Shannon region (Poutu). (Ngati Whakaterere ki te Tonga have recently been in the news for objecting to the Horowhenua District Council’s plan to pump wastewater on to land near Poutu marae).

But it is also the case that some of Ngati Whakaterere arrived in the Kapiti region some years *before* the main Ngati Raukawa migrations. As seen above, in his 1872 evidence in the Kukutauaki case Matene Te Whiwhi said that after Waiorua Te Puoho of Ngati Tama “came from the North to see how we were getting on”; about seventy men came south on that occasion, Ngati Tama and Ngati Whakaterere. Te Puoho “saw that we were all right” and went back; the following summer a large group of Ngati Whakaterere and Ngati Tama came south (Te Nihoputa migration): “they were now commencing to migrate”.¹⁷⁰⁰ This would in fact make Ngati Whakaterere the first of the Ngati Raukawa-related groups to travel south, acting generally in concert with Ngati Tama. (That Ngati Whakaterere arrived in the Kapiti region before the main Raukawa migrations is supported by Henare Te Herekau’s evidence and also by Wi Parata in the Kapiti Island case, as is discussed below.) Ballara dates this Ngati Whakaterere-Ngati Tama migration to 1825.¹⁷⁰¹ After their arrival in the Kapiti region Ngati Whakaterere fought against Muaupoko and assisted Te Rangihaeata in the fighting with Ngati Apa.¹⁷⁰² It is likely that others of Ngati Whakaterere travelled south later with the various Ngati Raukawa heke and perhaps independently as well.

In the Kukutauaki case in 1872 Araperi Tukuwhare of Ngati Whakaterere said that Ngati Whakaterere had an even earlier presence and played an important role in the main Ngati Toa heke. In his account, after Te Rauparaha had failed at the meeting at Taupo to convince Ngati Raukawa to accompany him to Kapiti, Te Rauparaha then travelled down the Whanganui with a party of Ngati Whakaterere. He left Ngati Whakaterere at Whanganui and instructed them to get the canoes ready for the

¹⁶⁹⁸ Ballara, *Taua*, 235.

¹⁶⁹⁹ Ibid, 241.

¹⁷⁰⁰ Matene Te Whiwhi, evidence in Kukutauaki case (give page ref).

¹⁷⁰¹ Ibid, 339.

¹⁷⁰² Ibid.

main party. If I understand the narrative correctly, Te Rauparaha then travelled north to meet the main party, and when it came on to Whanganui the canoes were ready to get the people to the other side of the river. The Whanganui river was a significant natural obstacle and canoes would be needed to cross it. Some time later the Ngati Whakaterere-Ngati Tama migration took place.¹⁷⁰³

Ngati Whakaterere, as well as advancing a claim to Kapiti Island, had land rights in many places in the PkM region. Their main settlement (or one of their main settlements) was at Hikaretu, about ten miles up the Manawatu River from Foxton. In 1872 they were engaged in negotiating a sale of their interests in the Kaihinu West block, an area in the Tararua ranges which they claimed conjointly with Rangitane. They had close relations with Rangitane in the upper Manawatu. In giving evidence in support of the Ngati Raukawa claims to the the Manawatu-Kukutauaki block, Huru Te Hiaro of Rangitane described the fighting between Rangitane and Ngati Whakaterere, the peacemaking that followed, and his support of Ngati Whakaterere claims to land on the Wairarapa side of the Tararuas.¹⁷⁰⁴

Ngati Whakaterere, like Ngati Raukawa and Ngati Kauwhata, faced legal complexities arising from their migrations to the south. The Native Land Court was no less inconsistent on this issue with respect to Ngati Whakaterere than it was with regard to Ngati Raukawa generally. Ngati Whakaterere interests in the Rohe Potae (King Country) block were addressed specifically in the Court's 1886 judgment in that case (Judge Mair; Paratene Ngata assessor). Ngati Whakaterere and Ngati Takihiku were treated by this Court essentially as sections of Ngati Raukawa and were in fact the two main Raukawa-related groupings treated as claimants. The King Country block was (quoting from the judgment) "claimed jointly by five tribes, or sections of tribes – that is to say, by Ngatimaniapoto, Ngatihikairo, *Ngatiwhakaterere*, Ngatitakihiku (these last two being hapu of Ngatiraukawa), Ngatituwharetoa and Ngatirangatahi (a section of Whanganui)".¹⁷⁰⁵ The issue was whether *Ngatiwhakaterere* were conquered by Waikato, which Ngati Whakaterere denied: "with reference to the alleged conquest by Waikato of *Ngatiwhakaterere*, the claimants set forth that the war in which that tribe were defeated at Hurimoana, and sometime afterwards at Tangimania, was waged against them by Tukorehu, Tautari, and Wahanui, their own relatives, assisted, they admit, by Ngati Haua as allies in punishment for the murder of Paretekawa; that it was quite a family affair having no bearing on the land; that peace followed, and that several years elapsed before *Ngatiwhakaterere* migrated to the South; that some of them remained and are still in occupation, and that the fires kept burning by Hauauaru and Irihapeti represent the occupation of *Ngatiwhakaterere*, *Ngatimatakore*, and *Ngatimaniapoto*, but not *Ngati Haua*".¹⁷⁰⁶ The Court on this occasion rejected any suggestion that Ngati Whakaterere and Ngati Raukawa were conquered by Waikato: "[t]he bulk of *Ngatiraukawa* and *Ngatiwhakaterere* did at different times on the invitation of their relative, Te Rauparaha, go to Kapiti and acquire land, but some remained and kept the fire burning, while those who at various times returned were permitted to re-enter and enjoy full possession without any hindrance or interference; consequently there was no conquest of the land".¹⁷⁰⁷ (This decision is discussed fully in a later chapter.)

¹⁷⁰³ Evidence of Araperi Tukuwhare, Kukutauaki case, (1872) 1 Otaki MB 164-166:

The *Ngatiraukawa* separated from Rauparaha and went to Hawke's Bay. *Ngatiwhakateri* [sic] accompanied Rauparaha from Whanganui and he left there and said get the canoes ready and when you hear of me at Waitotara then come there. When he came to Okupe the canoes came down the river.

They were *Ngatiwhakaterere* and they let him go on to Kapiti. These chiefs returned to Kapiti and remained there, and when it came to the time when Rauparaha showed his affection

¹⁷⁰⁴ (1872) 1 Otaki MB 166-167.

¹⁷⁰⁵ (1886) 2 Otorohanga MB 55; Boast, *Native Land Court*, vol 1, 1183.

¹⁷⁰⁶ (1886) 2 Otorohanga MB 59; Boast, *Native Land Court*, vol 1, 1185.

¹⁷⁰⁷ (1886) 2 Otorohanga MB 66; Boast, *Native Land Court*, vol 1, 1188.

However, Ngati Whakaterere failed as claimants in the Rangitoto case in 1898. Rangitoto, a section of the larger Rangitoto-Tuhua block, was an investigation of one of the largest of the Rohe Potae partitions. This case pitted Ngati Whakaterere against Ngati Matakore (Matakore was a younger brother of Maniapoto, and Whakaterere was their uncle). This case, discussed in more detail in ch [], is yet another in which the rights of those who had migrated to the Kapiti region to maintain claims to their ancestral lands in the north was put in issue. The evidence deals in some depth with the conflicts mentioned above, including the battles at Tangimania and Hangahanga. The case was presided over by Judge Gudgeon, who awarded the land principally to Ngati Matakore. He found that Ngati Whakaterere *had* been defeated and migrated south: “[t]he result of these battles was that the whole of the true Ngati Raukawa and Ngati Whakaterere migrated from their lands and took shelter with other tribes until after many years they found their way to Kapiti from which very few of the Ngati Whakaterere have ever returned”.¹⁷⁰⁸ It was the case that Ngati Whakaterere had been invited to return to their ancestral lands in the north, but (according to Judge Gudgeon at least) “it is admitted that the Ngati Whakaterere were invited to return but what they thought of these [numerous?] invitations can only be inferred from their behaviour for they took no notice of them until Tawhiao joined in the request then indeed certain of the Ngati Whakaterere did return and went to live with Tawhiao at Whatiwhatihoe for some years and only took up their residence at Rangitoto about [1858?].¹⁷⁰⁹ We have here the Native Land Court being completely inconsistent on a key point of historical interpretation. The Court’s inconsistency on Maori history is one of the main themes of this report.

11.2 The Kapiti Island Investigation (1874)

Kapiti Island has a long history of Maori settlement. The island has played a central role in Ngati Toa history since their arrival in the Cook Strait region in the 1820s. The battle of Waiorua was fought on the island, probably in 1824. Ngati Toa’s associations with the island are well-known, and need not be traversed in this report. Later the island became a centre of the whaling industry. William Wakefield, visiting Te Rauparaha at Kapiti in 1839, thought that “the whaling establishment here is most complete and very superior to those of the poor shore parties we have seen”.¹⁷¹⁰ The largest of the Kapiti stations was Jillet’s station at Waiorua Bay, and in 1846 between 50-60 Europeans lived there. Kapiti Island was subject to several Old Land Claims, mostly relating to the whaling activities that had taken place on and around the island during the first four decades of the nineteenth century. These claims included those made by Joseph Toms, William Mayhew, Thomas Evans and the joint claim of Daniel Cooper, James Holt and William Barnard Rhodes. The claims largely failed, apart from a small area at the south end of the island of some 617 acres that was awarded by Commissioner William Spain to Mayhew.

In 1874 the island came before the Native Land Court. The cases were somewhat complex, as the island had been surveyed into five separate blocks, heard by the Court as a group; some of the blocks were contested, others not. The case was heard under the Native Lands Act 1873. The hearings began at Otaki on 17 April 1874. The chief Wi Parata spoke first, and asked that the case be transferred to Waikanae, but his application was opposed by Matene Te Whiwhi and Tamihana Te Rauparaha. The Court then proceeded to work its way through the five cases, beginning with Kapiti No 3 Block, or Kaiwharawhara (375 acres). It was claimed by Hemi Kuti and his mother, Waitaora Te Kanawa. Hemi said that he lived at Otaki, that his mother belonged to Ngati Toa and to Ngati Raukawa, and that he claimed the land through his mother, who was a co-claimant with him.¹⁷¹¹

¹⁷⁰⁸ (1898) 31 Otorohanga MB 373; Boast, *Native Land Court* vol 2, 910.

¹⁷⁰⁹ (1898) 31 Otorohanga MB 374; Boast, *Native Land Court* vol 2, 910.

¹⁷¹⁰ Wakefield, Journal, ATL qms2102, entry for 16 October 1839.

¹⁷¹¹ (1874) 2 Otaki MB 403 (17 April 1874).

However there was a counter-claim to a part of Kaiwharawhara advanced by Henare Te Herekau on behalf of Ngati Whakaterere. Henare said that Ngati Whakaterere had come to Kapiti “shortly after Ngatitooa and before Ngatiraukawa”.¹⁷¹² In the 1840s, he said, his group had left the island to be near the CMS churches at Waikanae, Otaki and Pukerua Bay, but they continued to visit their old kaingas on the island. In 1850, according to Henare, everyone left the island.

Te Watehi[?] identified himself as also being of Ngati Whakaterere, who had cultivated the land before leaving. He supported Henare and asserted that when he ceased occupying the land he ‘did not leave the land, I retained my hold on it. No one disputed my right to occupy’. Questioned by Hemi Kuti, he agreed that ‘in old times’ Ngati Toa had occupied the land, but stated that he himself had done so “at the time of the second migration”, (i.e. Te Nihoputa). He added that “at the present time Kapiti is Ngatitooa’s and mine also”. Te Watehi admitted that Wi Parata was leasing the land now and that although he claimed his burial ground he himself leased no land. He stated that he had received his land from Whanga, who was Ngati Raukawa, not from Ngati Toa.

However Wi Parata rejected Henare Te Herekau’s claim.¹⁷¹³

Re Henare Herekau’s objection. I have to say, during the time of my knowledge with respect to this land, I knew nothing of him or heard of him prior to Haowhenua.¹⁷¹⁴ I heard one old man say that Wharemauku and Mataihura were given to Ngati Whakaterere. This land Kapiti belonged to Ngatitooa who came from Kawhia. Ngati Whakaterere came from Maungatautari, they Ngati Whakaterere came with the Ngatitama migration. It was not at the time of Christianity that Kapiti was abandoned, it was prior to Haowhenua by the people named by Henare. At the time of embracing of Christianity Ngati Whakaterere had left. This place Kapiti was a place of refuge. The cultivations named by Henare were only used by them during the time they lived on the island, and not as permanent places of abode. In 1840 Henare and his people had left and were occupying the mainland. At the Foxton Court it was stated that Ngati Raukawa had no right to the island.

Wi Parata thus agrees that Ngati Whakaterere were from the Maungatautari region and that they had travelled south in association with Ngati Tama. Matene Te Whiwhi gave evidence that the land belonged to a hapu named Ngati Tera. A number of groups had spent time on Kapiti, but the durable presence was, in his view, Ngati Toa: “[a]fter Kapiti was used as a place of refuge by all the tribes, Ngati Toa alone remained”. On 18 April the Court issued a brief judgment ordering a memorial of ownership to Kapiti No 3 to Hemi Kuti and his group.

The Court dealt next with Matene Te Whiwhi’s own claim to Rangatira Kapiti No 4. He said that “[t]he first people who arrived at Kapiti were Ngati Toa, 2nd Ngati Tama and then Ngati Awa”. According to Matene, the Taranaki groups had left Ngati Toa on the island when they moved on to Port Nicholson. Then at the time of the battle of Haowhenua, Ngati Toa had divided, with Nohorua and others going on to Cloudy Bay in the South Island while Kapiti was left to “Te Rauparaha and Te Rangihaeata, to Tamihana and to me”. There was a counterclaim to the island from a different section of Ngati Toa led by Ropata Hurumutu, which resulted in the generation of some pages of evidence. Wi Parata also gave evidence with respect to this block, supporting Matene’s claim. This block was allocated by the Court principally to Matene Te Whiwhi and Tamihana Te Rauparaha.

¹⁷¹² (1874) 2 Otaki MB 405 (17 April 1874).

¹⁷¹³ (1874) 2 Otaki MB 409 (18 April 1874).

¹⁷¹⁴ Haowhenua is the name of a pa belonging to Ngati Awa and is the name given to a battle, or series of battles, between Ngati Raukawa and Ngati Awa in 1834: see Ballara, *Taua*, 349.

Waiorua, or Kapiti No 5, the northern end of the island, was heard next, claimed by Wi Parata and Ropata Hurumutu. There was a considerable amount of contestation over this section, which seems to have been an intra-Ngati Toa dispute. Wi Parata said:¹⁷¹⁵

Ngatitoo considered that they had established themselves, the other tribes were defeated. Ngatitoo considered themselves the conquerors of the Country. Ngati Toa considered that they had conquered and obtained possession of the land [and] divided and occupied other places on the mainland and across Cook's Straits. After that division my ancestors lived permanently on the land. At the time I arrived at the years of discretion I saw them on the land. This was at the time of the Kuititanga. They were living at Waiorua together with the whalers. Whalers were living at Kahuoterangi and my parents were living with the whalers. There were no other Maoris on the land. These old men occupied up to the time the whalers ceased to use it as a whaling station.

There were counterclaims by Ngahuka Tungia and others of Ngati Toa and Ngati Koata. Ngahuka asserted an interest derived from his parents:¹⁷¹⁶

I live at Porirua. I claim the land under investigation. I claim the whole. When Ngatitoo came we lived at Waikanae, Ngatitoo crossed over to Kapiti, they occupied Kapiti and cut it up. I stayed at Te Kahuoterangi, my fathers went over there. I had not arrived at years of discretion then. My parents also lived at Te Ngaioipiko. Te Rere was a permanent boundary of my parents and no other persons were on the land. The dispute relative to this southern boundary, Te Rere, is only of a very late period. The persons who were on this land were Tungia my father, Maki Te Hua and Te Tahuarehu. These persons' possession was not disturbed by anybody.

Kapiti No 5 was allocated by the Court to Wi Parata, "excepting 50 acres at Kahuoterangi for Ngahuka Tungia, 2 acres for burial grounds about Ngaioipiki for Rene and 4 acres South of Waiorua for Mary Niccol, daughter of John and Betty Niccol". Finally Maraetakororo, or Kapiti No 2, was awarded to Hare Reweti Tangahoe, Te Ohu and others; Te Mingi, or Kapiti No 1, was allocated to Tamihana Te Rauparaha (see orders below).

11.3 Later history of Kapiti Island

The later history of Kapiti is intricate, with a number of partitions and private sales. By the 1890s there was growing public support for the acquisition of Kapiti Island as a wildlife sanctuary, following the precedents set with the acquisition of Little Barrier and Resolution Islands by the Crown for this purpose, although as it happens Kapiti was in a heavily modified state by this time. Lessees ran sheep on the island, and in 1894 the Wellington Acclimatisation Society released game birds and (incredibly) Tasmanian Black opossums on the island. Special legislation facilitating the acquisition of the island as a public reserve was enacted in 1897.¹⁷¹⁷

11.4 Kaihinu West

The Kaihinu blocks are outside of the PkM inquiry district and are in the Wairarapa inquiry district. Kaihinu is named after a chief of Rangitane, killed when Ngati Raukawa attacked Rangitane at Tuwhakatupua.¹⁷¹⁸ The Kaihinu 1 and 2 blocks were investigated in 1871 and were allocated principally to Rangitane but also including some owners from Ngati Whakatere/Ngati Raukawa.¹⁷¹⁹ So far I have

¹⁷¹⁵ (1874) 2 Otaki MB 438-9.

¹⁷¹⁶ (1874) 2 Otaki MB 440-441 (21 April 1874).

¹⁷¹⁷ Kapiti Island Public Reserve Act 1897.

¹⁷¹⁸ Adkin 1948, 168.

¹⁷¹⁹ See Stephen Robertson, *The Alienation of the Seventy Mile Bush (Wairarapa)*, 2001, Wai 863 (Wairarapa Inquiry) Doc# A27, 77-8; also (1871) 2 Wairarapa MB 44-45.

not found much information about this block, but it is clear from official correspondence that Ngati Whakaterere have strong associations with it. According to a report from James Grindell (Native Land Purchasing Officer) dated 2 July 1872:¹⁷²⁰

I then went on to Foxton, and on the 20th, accompanied by Mr Alzdorf [survey], I visited the Ngatiwhakaterere section of Ngatiraukawa, at Hikaretu, a settlement some ten miles up the river from Foxton. These are the people to whom an advance of about £200 worth of provision has been made on account of Kaihinu West block. I had no difficulty whatever with them. They were anxious for the survey to be commenced at once, and ready to point out their boundaries when required. I arranged with them that Mr Alzdorf should at once commence the survey of this block (which adjoins the Ahu-o-Turanga block acquired by the Government).

¹⁷²⁰ Grindell to McLean, 2 July 1872, 1873 AJHR G8, 33.

12. Aorangi and Ngati Kauwhata

12.1 Ngati Kauwhata in the Manawatu

Ngati Kauwhata are from the Maungatautari area, and played an important role in the sequence of cases relating to Maungatautari (as will be discussed in a later chapter). Their history is entwined with that of Ngati Raukawa and Ngati Whakatere, but Ngati Kauwhata have always maintained their own separate identity. The ancestor Kauwhata is not, as it happens, a descendant of Raukawa, although it is the case that Kauwhata and Raukawa have an ancestor in common.¹⁷²¹ Ngati Kauwhata have their own hapu: those mentioned by Angela Ballara are Ngati Hinepare, Ngati Tahuri, Ngati Wehiwehi, Werokoukou and Ngati Ruru.¹⁷²² All three groups migrated south but also maintained a presence in the north; all three participated in cases in the Native Land Court both in the PkM region and in the Waikato. Ngati Kauwhata's lands in the Waikato were principally in the Maungatautari region, meaning the area to the north of the mountain of the same name and extending to the Waikato river (and perhaps beyond). They also have connections with the Rangiaohia area and (as seen above) made a claim to the Compensation Court in 1864 to lands within the Waikato confiscated block around Rangiaohia.¹⁷²³ As with Ngati Raukawa, not all of the people migrated south, and it is well-attested that Ngati Kauwhata who had remained in the Waikato fought alongside Ngati Haua as allies at the battle of Taumatawiwi in 1831.¹⁷²⁴ Ngati Kauwhata were counterclaimants against Ngati Raukawa in the 1884 Maungatautari case (see below). Some more details about their history will emerge in this chapter.

The accounts of Ngati Kauwhata's migration to the Manawatu and other parts of the PkM region are many and various, and it is sometimes difficult to reconcile the various accounts, but the general outline is clear. Ngati Kauwhata's presence at Oroua and Aorangi (the area around Feilding today) is long-standing and derives from the time of the main migration of Ngati Raukawa, when Ngati Raukawa and Ngati Kauwhata travelled south together. Tapa Te Whata described the migration in detail in the first Himatangi case¹⁷²⁵ and more briefly in the Aorangi title investigation (see below). He said in the Himatangi case that lived at Puketotara and Oroua and that he had travelled south originally with Te Whatanui and the "great heke" which left from Maungatautari.¹⁷²⁶ The Ngati Kauwhata contingent was led by Te Whata, Tapa Te Whata's father. When the expedition reached Turakina it divided, with the main party under Te Whatanui proceeding down the coast while Ngati Kauwhata and Ngati Huia

¹⁷²¹ Tawhao, who is Raukawa's grandfather and Kauwhata's great-grandfather. My understanding is that this connection would not of itself be sufficient to treat Ngati Kauwhata as a hapu "of" Ngati Raukawa. Angela Ballara sees Ngati Raukawa, Ngati Whakatere, Ngati Te Kohera (of north Taupo) and Ngati Kauwhata as "associated peoples" (Ballara, *Taua*, 242). In fact Ngati Maniapoto are more closely related to Ngati Raukawa than are Ngati Kauwhata. See also Ballara, *Iwi*, 146:

Kauwhata himself was not descended from Raukawa; they did have a common Tainui ancestor in Tāwhao, the grandfather of Raukawa and the great-grandfather of Kauwhata, but came from the separate lines of the half-brothers Tūrongo and Whatihua. But one remote common ancestor could not make the descendants of Kauwhata members of Ngāti Raukawa. That was only possible if Raukawa was the ancestor of Kauwhata by a direct line of descent.

After discussing Mākereti Papakura's explanation of the centrality of descent, Ballara continues (ibid, 148):

By this criterion Ngāti Raukawa and Ngāti Kauwhata were separate peoples. Their separate descent lines and separate but equal status are important to the subsequent history of the latter.

¹⁷²² Ballara, *Iwi*, 148.

¹⁷²³ DOSLI Hamilton 4/25, RDB vol 106, 40689-694.

¹⁷²⁴ As Ngati Kauwhata witnesses to the 1881 Maungatautari commission make clear (see Maungatautari chapter below); also Ballara, *Taua*, 245: "Waikato formed up in tribal blocks, with Te Waharoa and Ngāti Hauā assisted by about 50 Ngāti Kauwhata (those who had not migrated south) on the left, close to the Waikato River; Ngāti Te Rangi were in the centre and Waikato on the right".

¹⁷²⁵ (1868) 1E Otaki MB 612.

¹⁷²⁶ Ibid.

diverged from the main party and went inland “through the bush to Rangitikei”.¹⁷²⁷ They stayed for a while at the Ngati Apa village then known as Paeroa (later Parewanui) before setting off again, travelling along the north side of the river downriver to Poutu. Here they crossed to the opposite bank, where Te Whata decided to go exploring inland:

There my father wished to go inland to look for a kainga for himself and then we (a small party) went up the South bank of Rangitikei leaving the body at Poutu – went to Waituna thence to Parewharariki inland towards Oroua.

Tapa Te Whata similarly said in the Aorangi case (1873) that at the time of the migration from Maungatautari Ngati Kauwhata diverged from the main body at Turakina and went eastwards into the Manawatu, laying a foundation for a title to Aorangi by conquest (see below). The details he gives of Ngati Kauwhata acquiring land there are essentially the same as the evidence he gave five years earlier in the Himatangi case. Some other details and variant accounts are given in the evidence given by Ngati Kauwhata witnesses at the hearings into Maungatautari in 1881 (see ch [], below). On this occasion Metapere Tapa said that the some of Ngati Kauwhata first went south to Taupo, where some remained while about “twenty of Ngatikauwhata went on to Kapiti, leaving the rest behind”¹⁷²⁸ (who presumably went south later). Tahana Te Kawa said on the same occasion that he was born at Rangiaohia and travelled south as young child with his father, and that “none of Ngatiraukawa went with Ngatikauwhata” (i.e. there was no joint migration).¹⁷²⁹ This differs from Tapa Te Whata’s account. In cross-examination he (Tahana) said that Ngatikauwhata travelled south “in search for provisions and guns” and that Te Rauparaha invited them to come: he “promised us food and guns and everything else”.¹⁷³⁰ While the land at Pukekura “gave a certain kind of food” the lands at Kapiti “gave rare foods, such as sharks, guns, and white men”.¹⁷³¹ Kereama Paoe said that he was born at Te Awamutu but that his father “did not accompany the first expedition under Tapa’s father”; rather “he went after the fight at Taumatawiwi” (1830).¹⁷³² Once again the attempt to impose a tidy order of large tribal migrations to the south breaks down: there were many comings and goings it seems. There seems to be no reason not to accept Tapa Te Whata’s basic narrative, which is not inconsistent with other people of Ngati Kauwhata staying on until the victory at Taumatawiwi – or with some Ngati Kauwhata remaining in the Waikato. The Ngati Kauwhata accounts insist that Ngati Kauwhata did not flee from Maungatautari, that some stayed behind, that people went back and forth, and that Waikato leaders invited Ngati Kauwhata to return and that some people acted on this invitation and returned (for more details see the discussion of the 1881 Maungatautari inquiry below).

Evidence given by Te Ara Takana of Ngati Kauwhata in 1890 points to an established tradition within Ngati Kauwhata of acquisition of title by conquest and of the ameliorating consequences of the coming of Christianity to the Manawatu:

All the land from Rangitikei to Otaki was taken by Ngati Raukawa. Ngati Kauwhata lived at Oroua and at Manawatu. My mana was all over Aorangi on both sides Oroua River. Ketu and Aonui ancestors of Raikokiritia were taken prisoners. The land was taken and the people were enslaved. When Raikokiritia got back his mother he surrendered his interest to Ngati Kauwhata. The claims of Ngati Kauwhata were conquest – making people slaves – and the surrender of Raikokiritia. His evidence is not true that I and

¹⁷²⁷ Ibid.

¹⁷²⁸ 1881 AJHR G-2A, 9.

¹⁷²⁹ Ibid, 10.

¹⁷³⁰ Ibid.

¹⁷³¹ Ibid.

¹⁷³² Ibid.

my brother gave him the land. Ngati Kauwhata lived at peace with Rangitane and Ngati Tauira after introduction of Christianity.

By the time of the 1873 investigation Ngati Kauwhata/Ngati Wehiwehi had long been established at Oroua/Awahuri/Aorangi. Others had tried to encroach on their rights there, but Ngati Kauwhata had been strong enough to drive them off. This included some hapu of Ngati Raukawa. Hoani Te Meihana said in 1890 that Ngati Rakau had tried to dislodge Ngati Kauwhata from Aorangi, but were unsuccessful.¹⁷³³ Also Ngati Te Upokoiri, based for a time at Awapuni, had tried to take possession of Ngati Kauwhata's "eel pahs" at Oroua but were driven away.¹⁷³⁴ Te Ara Takana said in 1890 that Ngati Kauwhata saw off all comers:¹⁷³⁵

My parents worked at Oroua. Nepia Taratoa and others commenced occupying the northern portion of this land and I went to live further up the Oroua. Matiu and Te Paki came to put sheep on the land – they were Ngati Raukawa – my mother ordered them off and they went away – after them came Ngati Whakaterere and they were served the same – we threw their potatoes into the river – Rangihacata had also attempted to disturb us but was repulsed – the Ngati Toas also – Ngati Kauwhata then held the land in peace.

Ngati Kauwhata had to struggle against the odds to convince the Native Land Court and persons in authority that they had a separate identity from Ngati Raukawa, although they were connected to them in terms of whakapapa (although no more so than other groups who are perceived as distinct, including Ngati Maniapoto) and had a shared history. However this varied depending on whether the cases related to lands in the Waikato or in the Manawatu. Lands in the Manawatu were allocated to Ngati Kauwhata as such with no difficulty, but it was a different story in the Waikato. In the Manawatu they were a well-established presence and the Court seems to have had no difficulty in recognising them, usually seeing Ngati Kauwhata as linked to Ngati Raukawa, and they feature in many cases in the PkM region. Their main area of settlement was the Oroua/Aorangi area but they were not confined to this region, also having interests on the north bank of the Manawatu river near Te Awahou (Foxton), just outside the boundaries of the Te Awahou purchase block.

The 1870 census records 210 people affiliating to Ngati Kauwhata living on the Oroua River, the principal community leaders being identified as Tapa Te Whata, Reupena, and Te Kooro Te One.¹⁷³⁶ The 1881 census, however, records that 40 people affiliating to Ngati Kauwhata living at Awahuri, a massive discrepancy probably explained to some degree by the vagaries of recording the Maori population and hapu/iwi affiliation.¹⁷³⁷ Awahuri was a reserve block within the Rangitikei-Manawatu purchase block; Aorangi block was on the other (western) side of the Oroua. The following is a description of the Ngati Kauwhata community at Awahuri in 1877 by R Ward, the Resident Magistrate at Marton:¹⁷³⁸

With regard to Ngatikauwhata residing at Awahuri, on the Oroua Stream, I have to state that this hapu has obtained Crown grants for 6,250 acres of land out of the Rangitikei-Manawatu block. On this they have located thirty-four European families, chiefly on leases for twenty-one years, in some cases with

¹⁷³³ Evidence of Hoani Te Meihana (1890) 13 Otaki MB 340-41 (25 April 1890).

¹⁷³⁴ Evidence of Hoani Te Meihana (1890) 13 Otaki MB 340-41 (25 April 1890).

¹⁷³⁵ Evidence of Te Ara Takana, Aorangi No 3 case, (1890) 13 Otaki MB 357.

¹⁷³⁶ 1870 AJHR [search A to Js online Tapa Te Whata]

¹⁷³⁷ Census of the Maori Population 1881, 1881 AJHR G3, 13. The 1874 census lists 215 Ngati Kauwhata people living at Awahuri and Oroua in the Rangitikei (*Approximate Census of the Maori Population, 1874 AJHR G-7, 17*).

¹⁷³⁸ R Ward to Under-Secretary, Native Department, 25 May 1877, *Reports from Officers in Native Districts 1877 AJHR G-1, 19-20, at 20*.

purchasing clause, and in a few instances by absolute sale of the land. One of the grantees, Takaua Te Kawa, has just completed a handsome and expensive bridge over the Mangaone Stream, for the use of himself and his European tenants. As a part settlement of the claims of Ngatikauwhata to land sold by various tribes to Government, the hapu has obtained a steam thresher and engine, costing nearly £700....The hapu is looking forward to a sitting of the Native Land Court to issue titles to the remainder of their land, on the south side of the Oroua Stream. I may say Mr A. Macdonald, on behalf of Ngatikauwhata, has received a very large number of applications from Europeans wishing to lease or buy locations on this block as soon as the title is settled. It is considered this block will carry from fifty to eighty families, with from 100 to 200 acres each. The estimated area of the block is about 10,000 acres. With regard to education, at Awahuri there is a school established under the Native Schools Acts, but the European tenants and settlers are moving for a school under the Education Board of the Provincial District of Wellington. Tapa Te Whata has presented the Education Board with a piece of land whereon to build: it is therefore as yet a question whether there shall be two schools or only one. The hapu is looking forward to a considerable breadth of crop next season, as they are anxious to provide employment for their steam thresher. As to stock, I have to state that the Natives here have as many as the land they retain in their own hands will carry.

The leader of the community at this time was Tapa Te Whata, a direct descendant (he said) of Kauwhata. In the Ngati Kauwhata Maungatautari investigation in 1881, Tapa said that he was born in the Maungatautari district (at Pukekura) and travelled south with his father, Te Whata, when he (Tapa) was “very small”.¹⁷³⁹ He told the same body that he had “never heard” that Ngati Kauwhata “is a section or hapu of Ngatiraukawa”.¹⁷⁴⁰

This chapter relates in particular to the Aorangi block in the Manawatu. Ngati Kauwhata claims to Maungatautari are explored elsewhere in this report. Aorangi is a long sliver of land on the eastern side of the Oroua River, bounded by the Te Ahuaturanga Crown purchase block to the east and the Rangitikei-Manawatu block on the west. This is the area that was set aside at Ngati Kauwhata’s insistence during the prolonged discussions over the Te Ahuaturanga sale between Ngati Rauakwa and Rangitane (this is described in the chapter on the earlier Crown purchases above). Before the arrival of Ngati Raukawa and Ngati Kauwhata in the Manawatu this area originally belonged to Rangitane, with Ngati Apa to the north and Muaupoko the south.¹⁷⁴¹ This is presumably the 10,000 acres that Ward is referring to when he states that the Ngati Kauwhata were “looking forward to a sitting of the Native Land Court to issue titles to the remainder of their land” which they planned to sell or lease to European farmers. Ngati Kauwhata already had a Crown-granted title to Awahuri on the opposite side of the Oroua. However Ngati Kauwhata’s interests were not confined to Te Awahou. They also had land at near Himatangi, adjoining the Himatangi block investigated by the Native Land Court in 1868. On that occasion Te Koro Te One, one of the principal chiefs of Ngati Kauwhata, gave evidence about boundary disputes in the Himatangi-Te Awahou area involving Ngati Kauwhata, Ngati Te Ihi Ihi (a hapu of Ngati Kauwhata according to Ballara) and and Ngati Turanga (of Ngati Raukawa).¹⁷⁴²

12.2 “I told [McLean] that I would never agree to the sale as Ngati Kauwhata and Ngati Wehewehe had still the mana”: the context for the 1873 investigation

The fullest discussion of the context of the 1873 Aorangi title investigation is the lengthy evidence given on this subject by Hoani Te Meihana (Rangitane) in the Aorangi No 3 case in 1890.¹⁷⁴³ By 1870

¹⁷³⁹ 1881 AJHR G-2A, 8.

¹⁷⁴⁰ Ibid.

¹⁷⁴¹ (1895) 28A Otaki MB 192, per Alexander McDonald.

¹⁷⁴² See (1868) 1C Otaki MB 335-338 (24 March 1868).

¹⁷⁴³ (1890) 13 Otaki MB 342-344 (25 April 1890).

Aorangi was shared informally between Ngati Kauwhata, Ngati Tauira, and Rangitane. In that year, says Hoani, some of Ngati Tauira and Rangitane went to Napier and tried to sell Aorangi to the Crown without reference to Ngati Kauwhata:¹⁷⁴⁴

In 1870 Ngati Tauira and Rangitane rose up and went to Napier. They asked the Government to purchase the land that was left,¹⁷⁴⁵ the whole of Aorangi.

However the would-be sellers were found out:¹⁷⁴⁶

Peeti Te Aweawe¹⁷⁴⁷ saw what they were up to. He spoke to the chiefs of Ngati Kahungunu. He told them who were the owners of this land. Karaitiana Takamoana was angry with Ngati Tauira and Rangitane and objected to their selling. Karaitiana wrote to us telling me the tribes were trying to part with this land to the Government. Letter handed in dated 28th March 1870 – informing me that Tiwata was trying to sell portion of the land in the SW corner, also that portion on the banks of the Oroua River across to Taonui Stream was to be sold – but that no money had passed from Government.

Obviously those who tried to sell land to the Crown could be monitored by the chiefs who would write to other chiefly leaders about what was happening. It is also interesting that Hoani Te Meihana still had and was able to produce to the Court Karaitiana Takamoana's letter written twenty years earlier. Honai Te Meihana must have kept an archive of his correspondence and could retrieve important documents when he needed them. Te Peeti Te Aweawe's intervention must have checked the would-be sellers, who returned to the Manawatu from Napier in August 1870.

Ngati Kauwhata then called a meeting at Awahuri to propose a formal division of the land. Given the context as explained by Hoani Te Meihana this must have been done to prevent the groups from selling parts of the land that did not belong to them. According to Hoani Te Meihana:¹⁷⁴⁸

The larger meeting at Awahuri was called by Ngati Kauwhata and held on the 8th August 1870 for the purpose of dividing the Aorangi land. I was not present. Several chiefs of Ngati Kauwhata arrange for this division. Hamuera Raikokiritia and Kerei Pana spoke to Ngati Kauwhata. This land [i.e. Aoriangi 3, the southernmost section] was not mentioned then. The Upper and Middle Divisions were decided upon and their owners. The Hungarea boundary was also fixed. It was arranged that Ngati Tauira should have middle and Ngati Kauwhata upper.

Hoani Te Meihana recounts that in 1872 there was another attempt to sell the land and that he had to personally intervene by discussing the situation first with Booth and then with McLean:

In 1872 Rangitane and Ngati Tauira went to Wanganui to try and sell portion of their lands. Rangitane sold the land to the northward in the Aorangi Blocks. Peeti and I also went to Wanganui in March 1872. We objected to what the tribes were doing and told Mr Booth not to part with any money as Ngati Ngati Kauwhata and Ngati Wehewehe still held the mana over the land. The Government agents were Major Kemp and Mr Booth.

I went to see McLean in Wellington. I told him I would never agree to the sale as Ngati Kauwhata and Ngati Wehewehe had still the mana over this land. Sir Donald McLean said I was right. I also said I wanted to preserve this land. I sent in an application for investigation of title in the same year. The Court was held in Foxton in 1873.

¹⁷⁴⁴ (1890) 13 Otaki MB 342.

¹⁷⁴⁵ i.e. left from the Te Ahuaturanga purchase (1864).

¹⁷⁴⁶ (1890) 13 Otaki MB 343 (25 April 1890).

¹⁷⁴⁷ Of Rangitane.

¹⁷⁴⁸ (1890) 13 Otaki MB 343

This is the case discussed in the next section.

12.3 “We derive our claim by conquest and gift”: Aorangi investigation of title, 1873

Table: Aorangi Title investigation 1873

Name	Date	Role in Case	Iwi/hapu affiliation	Evidence
Tapa Te Whata	17 March 1873	Claimant	Ngati Kauwhata	Gives opening statement, Describes boundaries. Land has belonged to Ngati Kauwhata for 30 years. Claims by conquest. Land has been divided.
Hamuera Te Raokiritea	17 March 1873	Counter claimant	Ngati Apa	Objects to Tapa’s remarks. Objects to Ngati Kauwhata claim by conquest. The land is his. It has been shared with Tapa.
Kawana Hunia	17 March 1873	Counter claimant	Ngati Apa	Objects to claim by conquest. Presents a lengthy counter-narrative. Ngati Kauwhata captured a woman of Ngati Apa by strategy; Ngati Apa retaliated etc.
Hoani Meihana	17 March 1873	Counter claimant	Rangitane	Discusses a runanga held at Awahuri in 1870. The land was divided by agreement into 3 parts
Eru [Pahitangata]	17 March 1873	Claimant?	Ngati Kauwhata	Of Ngati Kauwhata and Wehiwehi. The subdivision is not a fair one.
Kawana Ropiha	17 March 1873	Counter claimant	Ngati Apa	Has objections regarding boundaries in the middle section (division between Ngati Taura and Ngati Kauwhata)
Peeti Te Aweawe	17 March 1873	Counter claimant	Rangitane	Objects to the subdivision made by the Runanga
Te Kooro	17 March 1873	Claimant	Ngati Kauwhata	Says the division was a fair one, made deliberately “with love and affection for one another”
James Grindell	18 March 1873	Crown		Appears for the Wellington Provincial Government. Produces the Ahuaturanga deed. Objects to Tapa’s boundary on behalf of the Crown

Hoani Meihana	18 March 1873	Counter claimant	Rangitane	Responds to Grindell. Says that the Te Ahuaturanga boundary was disputed
Te Kooro	18 March 1873	Claimant	Ngati Kauwhata	Red line on plan should be the boundary. The boundary can be adjusted with McLean
James Thompson	18 March 1873	Surveyor		Produces plan of Oroua
Eru Patutangata	19 March 1873	Counter claimant?	?	Objects to names in list
Kawana Hunia	19 March 1873	Counter claimant	Ngati Apa	Will apply for a rehearing

In 1873 the Native Land Court, presided over by Judge Rogan, and sitting at Foxton, investigated the title to the Aorangi block. As noted, Hoani Te Meihana said that in order to preserve the land – i.e. to prevent it from being sold – he had decided to bring an application in the Native Land Court to have the title investigated. Hoani said that he persuaded the Court to adjourn the Aorangi hearing for two days to give Ngati Kauwhata time to arrive.¹⁷⁴⁹ By the time of the case Ngati Kauwhata, Ngati Taurira, and Rangitane had occupied the block together for some years, and there was a great amount of intermarriage. Some time shortly before the case the three groups had agreed to partition the block amongst themselves. The 1873 case was opened by Tapa Te Whata, chief of Ngati Kauwhata, who said:¹⁷⁵⁰

I belong to the Ngati Kauwhata and live at Oroua. I claim a portion of the land...Previously I claimed over the whole block but I have lately arranged with Ngati Taurira¹⁷⁵¹ to reduce my claim as I have described it.

Tapa gave a boundary line, cutting (I infer) east to west across the surveyed plan of the block, the line beginning at Kairakau and running across the block to Waikuku, enclosing the northernmost part of Aorangi closest to Feilding. Tapa Te Whata said that he wanted an order for the land as described, and that that the area enclosed by his boundary was occupied by Ngati Kauwhata: “we have cultivations and kaingas on this land”. He said that he lived at Awahuri, “but my cultivations are on the Block”. The original right of Ngati Kauwhata derived, in his view, not from occupation but from conquest and gift. He went on to narrate the circumstances of both. Tapa Te Whata, who died in 1893, played a key role in nearly every Land Court case affecting Ngati Kauwhata from the 1860s to the 1880s.

Tapa Te Whata explained on this occasion that when Ngati Kauwhata (he does not on this occasion clarify whether this was in company with Ngati Raukawa or was a separate Kauwhata-alone journey) migrated from Maungatautari one section of the people diverged from the main body at Rangitikei and went eastwards into the Manawatu.¹⁷⁵²

We derive our claim by conquest and gift. The father of Hamuera (Kokiri) gave it to us. At the time of the migration from Maungatautari a part diverged at Rangitikei and came to Oroua – at a place called [Pariwharariki?] where we made some prisoners. We arrived at Kiwitea and attacked the village. The

¹⁷⁴⁹ (1890) 13 Otaki MB 343.

¹⁷⁵⁰ (1873) 1 Otaki MB 204.

¹⁷⁵¹ Hapu of Ngati Apa.

¹⁷⁵² (1873) 1 Otaki MB 204-5.

people ran away. Kiwitea is not within the boundaries of the land I defined. We then crossed the river¹⁷⁵³ on to this land – and came to a village. We made prisoners of their people. I have forgotten the name of the village. We did not kill all the people at [Pariwharariki?] – only one man was killed – he was a bad man – the people of that second village we spared likewise. We followed the course of the Oroua to Manawatu to the village of Tuwhakatupua – where we killed the people - we killed these people at the desire of the of the other people on the block with whom they were at envy – we then went on making raids on the villages on our way down the Manawatu River. We returned with the prisoners we had taken. At Te Rotonuihau where we sat down – We found some people there and we were addressed by Kokiri – the father of Hamuera – who said the only dowry I have to give with my daughters are the places Whakaari and Aorangi. This was addressed to Ngati Kauwhata.

The Ngati Kauwhata claim was objected to by Hamuera Te Raikokiritia of Ngati Apa, and by Kawana Hunia, Hoani Meihana (Rangitane), Eru Tahitangata, Kawana Ropia, Te Peeti Te Aweawe (Rangitane) – and, for good measure, by James Grindell on behalf of the Wellington provincial government, who objected to “certain boundaries”.¹⁷⁵⁴

Hamuera Te Raikokiritia spoke next, who said that he objected to “Tapa’s statement as to having acquired this land by conquest”.¹⁷⁵⁵ But generally most people in Court were there in a spirit of compromise, including Tapa Te Whata himself (who had said he wished to claim part of the block only). Te Peeti Te Aweawe (Rangitane) asked permission for an adjournment so that all parties could retire “and endeavour to settle the matter out of Court”.¹⁷⁵⁶ Hoani Meihana (Rangitane) then addressed the Court briefly and said that he admitted the Ngati Kauwhata claim over the whole, “but in 1870 a division of this land was made in Runanga but all the people interested were not present and therefore did not agree”. Kawana Hunia spoke next, and gave a lengthy narrative statement going over the same events described by Tapa Te Whata but interpreting them very differently. He seems to have been wasting his time. Hoani Te Meihana later recalled that “the list of the names and the division of the land were arranged outside”.¹⁷⁵⁷ After further discussion the Court approved a partition of the block which split it into three separate sections. Aorangi No 1, the northernmost part (7,256 acres) was allocated to Ngati Kauwhata; Aorangi No 2, in the centre, to Ngati Taurira (of Ngati Apa), and Aorangi No 3 to Rangitane. The list of names for Ngati Kauwhata was handed into Court by Te Koro Te Ono. Stirling has shown that two Muaupoko individuals were included in the title to Aorangi 3 (the Rangitane subdivision).¹⁷⁵⁸ All parties present in Court agreed to this arrangement – with the significant exception of Kawana Hunia. On 19 March 1873 he announced that he intended to apply for a rehearing. The written agreement between the three groups on which the 1873 judgment was based was returned by the Court to Alexander McDonald for safekeeping.¹⁷⁵⁹ Following the hearing the three groups held a meeting and decided that the judgment of the Court was correct.¹⁷⁶⁰

12.4 “The division was made as our parents would have wished, and the tribes lived under the law and the faith”: Aorangi rehearing, 1878

This compromise agreement was soon challenged, however. A rehearing application was lodged by Ngati Apa in August 1873, resulting eventually in a rehearing in 1878. There seems to have been a certain amount of discord over the block in the interim. When Ngati Kauwhata attempted to have their

¹⁷⁵³ i.e. the Oroua River.

¹⁷⁵⁴ (1873) 1 Otaki MB 205.

¹⁷⁵⁵ (1873) 1 Otaki MB 206.

¹⁷⁵⁶ (1873) 1 Otaki MB 206.

¹⁷⁵⁷ Evidence of Hoani Meihana Te Rangiotu, Aorangi 3 case, (1890) 13 Otaki MB 343 (25 April 1890).

¹⁷⁵⁸ Stirling, *Muaupoko Customary Interests* 18; Waitangi Tribunal, *Horowhenua* 143.

¹⁷⁵⁹ Alexander McDonald, (1895) 28A Otaki MB 194.

¹⁷⁶⁰ Ibid.

section of Aorangi surveyed in 1876, James Thompson, the Government surveyor, was obstructed by Wirihana Hunia, Warena Hunia, and some others, who took Thompson's survey chains away. This resulted in proceedings in the Resident Magistrate's Court in Bulls on the information of Alexander McDonald (who had a close association with Ngati Raukawa, Ngati Kauwhata and with Hoani Te Meihana's section of Rangitane, and who was to be Ngati Kauwhata's advocate when their claims to the Maungatautari block in the Waikato were investigated in 1881):¹⁷⁶¹

In the Resident Magistrate's Court, at Bull's, on Friday, 6th October, before Major Willis R.M., Wirihana Hunia, Warena Hunia, Kawana Ropiha, and Potariki Patuwahakairi, were charged, on the information of Alex. McDonald, of Awa-Huri, with having, on the 13th September last, wilfully obstructed and hindered one James Thompson, Government Surveyor, in the execution of his duty, by forcibly removing two chains from him. Mr. Booth, district officer, stated that an application had been made by the owners of the Upper Aorangi Block, asking for a survey of it¹⁷⁶²; and also for a subdivisional survey. He had recommended the survey to be made, and Mr. Thompson, Government Surveyor, was sent to do the work required. In cross-examination, Mr Booth stated that the Upper Aorangi Block contains 7256 acres, and was awarded to the Ngatikauwhata tribe by the the Native Lands Court. To his knowledge a petition had been sent by the Ngatipa [sic – Ngati Apa] to the Native Minister protesting against the award of the Native Lands Court, and asking for a re-hearing. After hearing evidence, the Magistrate decided that a breach of the Act had been committed by illegally removing the chains, and sentenced Wirihana Hunia and Potariki Patuwahakairi to a fine of £5 each and costs, and Warena Hunia and Kawana Ropiha to a fine of £1 each and costs. Mr Cash¹⁷⁶³ gave notice of appeal.

The obvious explanation for this incident is that the Ngati Apa applicants for a rehearing (i.e. the group led by the Hunias) – at which they strongly repudiated Ngati Kauwhata's claim to any land at Oroua – wished to prevent Ngati Kauwhata from surveying the land awarded to them before the rehearing had occurred. Ward's report cited earlier shows that Ngati Kauwhata, living mainly on the Awahuri reserve, hoped to survey their part of Aorangi for sale or lease to Pakeha farmers, at least in part. Thompson, the surveyor mentioned in the newspaper account, appeared at the 1878 rehearing of Aorangi and produced the survey plans to the Court.

There was a large attendance at the rehearing in 1878. According to Alexander McDonald (speaking in 1895) "all the tribes attended" and "Europeans were excluded".¹⁷⁶⁴ Tapa Te Whata opened the rehearing case as follows:¹⁷⁶⁵

The land was originally belonging to other people when I took possession of it. I recognise the land as shown on the plans, the land included in my application commenced at Ohungarea on the Oroua and went on as far as Ruapuha. I originally claimed the whole block. My ancestors came here in the old Maori times and they took the mana over this land. They were in arms at the time. The people of this land were not exterminated by them but they were not able to drive my parents off. They acquiesced in my parents' application. After that the original inhabitants endeavoured to take this land but my parents preventing their doing so. After that they cleared and cultivated it along the whole of the river bank, they had the principal cultivations over the land. After that Land Purchases commenced. My parents were parties in their own right. The Ahuaturanga and Rangitikei and Manawatu were lands they were parties to the selling. Afterwards the land was divided between the hapus at my insistence. My subdivision of Aorangi was approved by the Native Land Court at Foxton in March 1873 as shown on the plan of Upper Aorangi (sheets 1, 2, and 3). 7256 acres was awarded to me as my portion. If I had made no subdivision according

¹⁷⁶¹ "Southern Items", *New Zealand Herald*, Vol XIII, Issue 4661, 21 October 1876, p 6.

¹⁷⁶² i.e. by Ngati Kauwhata.

¹⁷⁶³ Cash was the solicitor who acted for Ngati Apa and associated groups in the Kukutauaki and Horowhenua cases.

¹⁷⁶⁴ (1895) 28A Otaki MB 194.

¹⁷⁶⁵ (1878) 3 Otaki MB 159-60.

to my cultivations my friends would have had no land, that is to say Ngatauera and Hone Meihana.¹⁷⁶⁶ The division was made as our parents would have wished and the tribes lived under the law and the faith, this was before 1873.

There were a number of objectors. The principal ones were Hoani Meihana Te Rangiotu of Rangitane, Kawana Hunia (who was at the investigation in 1873, and who said he would apply for a rehearing on that occasion), Hamuera Te Raikokiritea¹⁷⁶⁷ (Ngati Apa), Major Keepa, Tapita Matena (Ngati Apa), as well as some others. The rehearing was the result of another effort to assert the interests of the pre-1820s migrations people of the region, spearheaded once again by Keepa and Kawana Hunia. They had a two-fold objection to the original consent order. Firstly, they were unhappy that Ngati Taurira had been the only section of Ngati Apa to have been allocated interests in Aorangi No 2. Secondly, they argued that Ngati Kauwhata should not have been allocated any interests in Aorangi at all. Keepa and Hunia did not challenge the allocation of Aorangi No 3 to Rangitane – in fact Hunia said as much. Although Keepa and Hunia were presenting a case for Ngati Apa, Warena Hunia also noted that Muaupoko had formerly occupied land along the Oroua River, as did Hoani Meihana.¹⁷⁶⁸

Hoani Meihana Te Rangiotu, however, was happy with the existing arrangement and did not want it altered. He gave a detailed description of the tenurial history of Aorangi:

I belong to the Rangitane. I live on the land now before the Court. I live at Oroua Bridge. There are three parties before the Court. Before the subdivision of the land by the natives I had authority over all this land. The first subdivision was at Awahuri. The second was at Foxton, which was a confirmation of the first. The Court heard the case on myself [sic] and Tapa Te Whata, we wished the subdivision confirmed or annulled. I said I would reduce my claim by making a boundary at Orungarea on the Oroua – to a place called Kotuku. I said to the Court that the land remaining from Orungarea to Kairakau is for Ngatiapa, that is for Ngatitauera¹⁷⁶⁹ section of it and the remaining portion (upper) is for Ngatikauwhata. After that I stated my claims to the land. I didn't state the original claim because everyone knew I had it from my parents. I stated to the Court the claims that I had with Ngatiapa and Ngatikauwhata. The three tribes lived and cultivated over the land and that led to subdivision. It was not done under ancestral title but by voluntary arrangement. If Ngatiapa had been our opponents we should have had to show ancestral title in arranging a subdivision. After I had told the Court all my case I stood back to allow any objectors to come forward. The Court approved the subdivision. There were only two persons out of 8 tribes present who stood forward. Kawana Hunia and Keepa were the two, They said the subdivision was wrong because all their claims were included in Ngatikauwhata. The Court overruled their objections. I claim the portion awarded to me. *I want no alteration made* [emphasis added]

Hoani's evidence seems to have decisive. Judge Symonds gave a brief decision on 28 March 1878.¹⁷⁷⁰ He could see no reason for interfering with the existing partition. The Court "informed the parties that Rangitane, Ngatikauwhata and a section of Ngatitauere ([Ngati Tauri]) are entitled to the land called Aorangi and the decision made at Awahuri as arrived at by the Natives themselves is considered by the Court as conclusive".¹⁷⁷¹ The Aorangi block serves as a kind of foil to the complexities of the Horowhenua block. In Aorangi the three groups, Ngati Kauwhata, the Ngati Taurira section of Ngati Apa, and Rangitane had agreed to let bygones be bygones and had decided amongst themselves to split the block into sections. This arrangement was confirmed by the Native Land Court in 1873 and again at the rehearing in 1878. Kawana Hunia and Keepa had attempted to destabilise this arrangement – in

¹⁷⁶⁶ i.e. of Rangitane.

¹⁷⁶⁷ This man's name is spelled in a rich variety of ways in the Otaki MBs – I am not sure which is correct.

¹⁷⁶⁸

¹⁷⁶⁹ i.e. Ngati Taurira.

¹⁷⁷⁰ (1878) 3 Otaki MB 182 (28 March 1878).

¹⁷⁷¹ Ibid.

Hoani Meihana's words "[t]here were only two persons of 8 tribes present who stood forward" to object (Kemp and Hunia) – but without success.

In his 1878 report, R M Ward, the Resident Magistrate at Marton, presented a generally optimistic picture of the Maori people of the Rangitikei. He noted that one cause for optimism was the settlement of the land dispute at Aorangi:¹⁷⁷²

I have the honour to state that, on the whole, the Natives of my district have never been in a more peaceful, orderly, and satisfactory condition than during the last twelve months. The settling of the Aorangi land disputes at the last sitting of the Native Land Court at Palmerston, the termination of other land difficulties and causes of trouble at Otaki, the opening up of the railway lines, and of roads throughout the district, have all tended much to cause the present gratifying state of things.

No doubt Ward was painting too rosy a picture. Even so it is significant that he instances the Land Court's 1878 decision (which did not interfere with the three-way division of Aorangi the local people had decided on themselves) as a progressive development.

In their report on the Ngati Kauwhata claims to Maungatautari in 1881 the commissioners (one of whom was a Land Court judge) claimed that Ngati Kauwhata did not actually exist except as a hapu of Ngati Raukawa, and treated Ngati Kauwhata's assertion of a separate identity as merely a courtroom tactic.¹⁷⁷³ And yet in the Aorangi case the Native Land Court had no qualms about awarding Aorangi North to Ngati Kauwhata as such. The inconsistencies of the Native Land Court, and its lack of institutional memory, are once again apparent.

12.5 Ngati Kauwhata claims inquiry 1881

In 1881 Ngati Kauwhata were engaged in a major case in the Waikato relating to the Maungatautari, Pukerua, and Puahoe/Puahue blocks on the south bank of the Waikato river near Cambridge (blocks originally investigated in 1868). The claim was led by Tapa Te Whata, who travelled to the Waikato in 1881 with many of his people for the hearings, which were heard by a special commission of inquiry following repeated petitions from Ngati Kauwhata for a rehearing of the three blocks. Ngati Kauwhata's principal argument was that they could not attend the original Waikato hearings in 1868 because they had to attend hearings in the Rangitikei region at the same time (i.e. the first Himatangi case of 1868). Ngati Kauwhata had been assured by the government that the Maungatautari cases would be adjourned, but this was never done. In 1881 Ngati Kauwhata were at last given an opportunity to state their case to their lands in the Waikato. The 1881 investigation is described fully below in the chapter on Maungatautari, as the complicated investigations in 1881 need to be set in the context of the tenurial history of the Maungatautari investigations from 1867-1884. The 1881 investigation into Ngati Kauwhata claims proved to be a disaster for Ngati Kauwhata and effectively ended their efforts to assert a title to their ancestral lands in the Waikato (see below) They made another attempt to do so in the Maungatautari investigation of 1884. On that occasion the Court rejected Ngati Raukawa's claims to Maungatautari, by by treating Ngati Kauwhata as a hapu of Ngati Raukawa rejected theirs as well. The

¹⁷⁷² RM Ward to USND, 1 May 1878, in *Reports from Officers in Native Districts*, 1878 AJHR G1, 16.

¹⁷⁷³ See 1881 AJHR G2A, 5; Boast, *Native Land Court*, vol 1, 861-2:

We now come to the question whether or not the petitioners had an opportunity of attending the Court in November, 1868; and here will be found the reason why they are so anxious to put themselves forward as a distinct and separate tribe, and not to be considered as a hapu of Ngatiraukawa. They allege that they never authorized any one to appear on their behalf at the Native Land Court held at Cambridge in November, 1868, and that the application to Mr Richmond in 1868 was made by Ngatiraukawa, and not by them.

1884 investigation and its impacts on Ngati Raukawa and Ngati Kauwhata is also discussed fully in a later chapter.

12.6 Aorangi 3 hearings 1890-1895

Aorangi 3 was the southernmost section, allocated to Rangitane in 1873. This part of Aorangi was the subject of a sequence of cases in the Native Land Court in 1890-1895. The cases arose from disputation within Rangitane and did not affect Ngati Kauwhata directly, but because one section of Rangitane (that led by Hoani Te Meihana Te Rangiotu) rested their claims partly on their relationships with Ngati Kauwhata the cases need to be covered here. The cases were concerned with the partitions of Aorangi 3 and with relative interests.

On 5 May 1890 the Native Land Court, presided over by Judge Trimble and sitting at Palmerston North, gave judgment in a contested partition/relative interests case relating to Aorangi 3. The owners were divided into two camps, one led by Hoani Meihana Te Rangiotu and Peeti Te Aweawe, and another section of Rangitane, led by Wi Mahuri, that argued that hapu rights within Rangitane had revived following the 1873/1878 partitions. The argument had implications for relative interests within the block. Hoani Meihana argued that the land had been allocated just to himself and Te Peeti Te Aweawe by Ngati Kauwhata, and that everyone else admitted to the title had been at their discretion. The others, so it was said, had been admitted solely on the basis of “love” (aroha). Presumably the point of this argument was that decisions about partition boundaries and relative interests were a matter for Hoani Meihana and Te Peeti to decide. The opposing group rejected this, needless to say. The Native Land Court, deeply sceptical of the arguments of both sides, set out the arguments of the the contending parties at the beginning of its decision:¹⁷⁷⁴

The parties interested in Lower Aorangi, called also Aorangi No 3 and containing 4925 acres have divided themselves into two large sections. The first of these numbers 41 Grantees led by Hoani Meihana and the second consists of 47 grantees. It was proposed by the first party to take to themselves 3875 acres and to give the other 47 persons or their representatives 1050 acres. It was thought to justify this inequality on the ground that the mana of Ngatiraukawa lay upon the land until 1873 when it was transferred to Hoani Meihana and Peeti Te Aweawe and that these two persons then admitted the 86 grantees only from love. The contention of the representatives of the other 47 grantees was that upon the land becoming vested in the Rangitane tribe the Hapu rights and distinctions were revived.

Again one can see the Court’s general (but not universal) tendency to conflate Ngati Kauwhata with Ngati Raukawa. It may seem strange to claim that persons in a list of owners had been admitted from “love”, but in fact “aroha” claims were not that unusual in the Native Land Court. Sometimes persons would be admitted to an owners’ list not because they had any customary right but on the basis of love or affection (usually people who had married into a hapu, or although unrelated to the hapu had lived amongst the people and had become part of the community, or who had helped the claimants with their land claims). The judges of the Court were highly ambivalent about this practice.¹⁷⁷⁵

¹⁷⁷⁴ (1890) 13 Otaki MB 369 (Judgment in Aorangi 3 case, 5 May 1890).

¹⁷⁷⁵ See Boast, *Native Land Court*, vol 1, 159. Some judges allowed names to be put in on the basis of aroha, or at least declined to interfere; others were reluctant to do so. The main problem with such admissions in the Court’s view was that it could lead to relative interests problems in future. This is shown by the Owahaoko D case (Taihape region), a relative interests case relating to the very large (101,000 acres) Owahaoko D block heard in 1893. At an earlier hearing Ngati Whiti had agreed to admit Winiata Te Wharo and others on the basis of “aroha”, out “of good-will toward him, for his assistance rendered to defeat the Ngatiteupokoiri claim” (1893) 27 Napier MB 1B (7 July 1893). In the Court’s words, Winiata and his people “were put in out of ‘Aroha’, a practice often adopted by Natives when furnishing their lists of names to be affirmed by the Court, but one which causes a good

Hoani's Te Meihana and others of his group argued in 1890 that they had been the recipients of the allocation from Ngati Kauwhata and in this way sought to strengthen their claim against their opponents within Rangitane. Thus one of Hoani's witnesses, Horima Mutiahi, said that "[w]hen Ngati Kauwhata and Ngati Wehewehe came onto this land the mana belonged to them":¹⁷⁷⁶

The land was returned to Rangitane by Tapa Te Whata and Kooro Te One, Pahi Te Ara, - these three returned the mana of the land to Hoani Meihana and Peti Te Aweawe – the three who returned the mana belonged to Ngati Kauwhata – Hoani Meihana and Peeti Te Aweawe made out the list of names.

Hoani Te Meihana also gave evidence to similar effect, describing comprehensively the earlier history of the land, its acquisition by Rangitane, the arrival of Ngati Raukawa (i.e. Ngati Kauwhata), and the political geography of the region as at 1839. He said that when the Ngati Raukawa arrived at Oroua he was about ten years old, and that Horima Mutiahi's evidence was correct.¹⁷⁷⁷ He mentioned conflict over the block between Ngati Kauwhata and the Ngati Raukawa hapu Ngati Rakau, and gave details about Ngati Te Upokoiri, from Hawke's Bay, who in 1839 were living at Te Awapuni and who had unsuccessfully tried to interfere with Ngati Kauwhata's rights at Aorangi. Hoani insisted that the mana over Aorangi lay with Ngati Kauwhata. He also gave detailed evidence about the Te Ahuaturanga block sale and Ngati Kauwhata's opposition to it until their rights along the Oroua had been safeguarded in 1858. Te Ara Takana of Ngati Kauwhata gave evidence in support, and said that formerly Ngati Kauwhata had an interest in Aorangi 3 but not now: "the mana is now with Hoani Meihana".¹⁷⁷⁸

The Court distrusted both claims and instead divided the block into roughly equal sections for the two contending Rangitane groups.¹⁷⁷⁹

The case was reheard in 1891 before Judges Mair and Scannell, and the same arguments were made. Hoani Meihana Te Rangiotu once again evidence:¹⁷⁸⁰

I have two very strong claims on this land, the handing of it back by Ngati Raukawa, and my ancestors' bravery in repelling invaders. I asked by the Court how much land would cover my right – I said 1,000 acres and the same for Te Peti. The Court awarded the southern part to myself and my hapu – And I gave all my ancestral rights and names, but this is all written in the Court records.

The rehearing Court declined to intervene:¹⁷⁸¹

The partition of the Aorangi Block was made at a Court presided over by Judge Trimble at Palmerston North in favour of certain persons as owners in that parcel called Aorangi No. 3G made on the 31st May 1890. A rehearing of that award on the application of Wi Mahuri and others where they claimed that the descendants of Pokai were entitled to be included among the owners having claims in those parts called Ngawhakaraua and [Tuterimu?] was ordered, and the claims heard in this Court.

The Court is of the opinion on the evidence adduced that the claim has not been sustained, and it is therefore dismissed and the previous order confirmed – a certificate dating back to the original certificate in favour of the persons named in that Certificate will be made and issued when an approved plan is endorsed thereon.

deal of after trouble, if precaution is not taken at the time to determine the quantity to be allotted to persons admitted in this manner" (ibid). In the Owahaoko case the Court fixed Winiata's interest itself (1,000 acres).

¹⁷⁷⁶ (1890) 13 Otaki MB 335.

¹⁷⁷⁷ (1890) 13 Otaki MB 340 (25 April 1890).

¹⁷⁷⁸ (1890) 13 Otaki MB 357.

¹⁷⁷⁹ Judgment at (1890) 13 Otaki MB 369-372.

¹⁷⁸⁰ Hoani Meihana, Aorangi rehearing, (1891) 14 Otaki MB 237 (13 April 1891).

¹⁷⁸¹ Judgment in Aorangi 3 rehearing, (1891) 14 Otaki MB 293, 18 March 1891 (Judge Mair, Judge Scannell).

This was not the end of this issue, and in 1895 the matter came up again in the Native Appellate Court, presided over by Judges Butler and Edger.¹⁷⁸² This was a special rehearing based on the washing-up Bill of the preceding year, s 12 of which related to Aorangi.¹⁷⁸³ Alexander McDonald explained the procedural history of Aorangi to the Appellate Court as follows:¹⁷⁸⁴

It has been established that the Rangitane tribe occupied the district, having on the North the Ngati Apa and on the south the Muaupoko. Wars were going on, as in other districts, without affecting the ownership of the land. Intermarriage had taken place in these tribes, also with Ngati Kahungunu.

This was the position there would be [193] family divisions which would be well-known, these hapu divisions would be affected only in course of time by intermarriage. Then came the invasion by Te Rauparaha. This was not an absolute conquest, but disturbed the occupation by the Rangitane. So that in 1869 in Ngawhakaraua number one we find Hoani claiming the land for a section of Ngati Raukawa together with some of the Rangitane (Minute Book 1G fo 58 and the land was awarded to 26 of Ngati Raukawa and 15 of Rangitane. Then in Ngatiwhakaraua No 2 (Book 1F) Hoani gave evidence for himself and Putere Tiwete alone. In August 1870, there was a meeting at Awahuri, Ngati Raukawa and Rangitane took part. At that time it was shown that Aorangi had been jointly occupied by these three peoples, and that the occupation had been very much mixed up, so that they could not be separated, but a partition was agreed on, the Rangitane was to have Lower Aorangi, the Ngati Tauira were to have middle Aorangi, and the Ngati Raukawa the upper part. An agreement was signed to that effect. Hoani had not been present at that meeting nor was Major Kemp. This agreement was objected to by Keepa and Kawana Hunia, but Hoani consented. The question was the right of the parties to make such agreement. The Court fully confirmed the agreement and sealed it, but afterwards returned it to me. After five years the case was reheard, but objection was made only as regards upper Awahuri. All the tribes attended. Europeans were excluded. After a long enquiry, the former judgement founded on the agreement was confirmed. The agreement was again returned to me for custody. After the judgment there was a meeting of the natives and the judgment was pronounced to be right. From that time the Rangitane have occupied Lower Aorangi. But there was a difficulty in making partitions as the land had been disturbed for thirty years. At the first partition in 1890 (13. fo. 56¹⁷⁸⁵) Hoani for the first time set up a personal title on the ground of a gift from Ngati Raukawa. This was disallowed on the ground that no such right had been set up in 1873 or 1878. But the land was dealt with as Rangitane land.

¹⁷⁸² Aorangi 3G rehearing, judgment at (1895) 28A Otaki MB 288-295.

¹⁷⁸³ Native Claims and Boundaries Adjustment and Titles Empowering Act 1894, s 12.

¹⁷⁸⁴ (1895) 28A Otaki MB 192-93.

¹⁷⁸⁵ i.e. (1890) 13 Otaki MB 56 (see above).

13. Troubles without end: The Kukutauaki and Horowhenua Blocks 1873-1900

13.1 Introduction

The Horowhenua block has already been mentioned earlier in this report, but its history is so complex and intricate that there is no option but to treat it at length, and in a separate chapter. To save the reader having to go back and forth between different chapters, the 1873 Horowhenua decision is analysed fully here, as it is the foundation for all of the later difficulties and complexities over this block. This introduction will analyse (a) the original title investigation of 1873; (b) the agreements of 9 and 11 February 1874; (c) the 1886 partitions; (d) the partition of Horowhenua 11 in 1890; (e) the effect of the Supreme Court decision in *Hunia v Kemp* (1895)¹⁷⁸⁶; (f) the report of the Horowhenua Commission (1896); (g) the effect of the Horowhenua Blocks Acts of 1895 and 1896; (h) the Native Appellate Court decision of 1898 relating to Horowhenua 14; (i) the 1898 Native Appellate Court decisions relating to Horowhenua 11 and other subdivisions;¹⁷⁸⁷ (j) the Horowhenua Block Act Amendment Act 1906; (k) the 1908 decision of the Native Land Court; (l) the effect of s 12 of the Native Land Claims Adjustment Act 1910; and (m) the decision of the Appellate Court in 1912 (arguably the most important of all the decisions); and (n) later developments relating to this block.

The pivotal difference between the Himatangi cases of 1868-69 and the Horowhenua and Kukutauaki cases in 1873 was that the former were essentially a clash between Ngati Raukawa and (nominally, at least) Ngati Apa, with Muaupoko being more or less ignored by both sides, while the 1873 cases (and particularly the Horowhenua case) were a conflict between Muaupoko and Ngati Apa on the one hand and Ngati Raukawa on the other. Te Rauparaha of Ngati Toa had had his own personal reasons for hating the Muaupoko people of the Horowhenua region, and most accounts seem to agree that were it not for the Raukawa chief Whatanui's decision to take Muaupoko under his protection, the Muaupoko could well have been obliterated as a people. As Te Whatanui was a close friend and colleague of Te Rauparaha, the latter acquiesced in his decision, following which Muaupoko returned to their ancestral lands at Horowhenua where they lived under the protection of Te Whatanui. This basic narrative is widely documented in statements by Ngati Raukawa and Ngati Toa witnesses, is accepted by Muaupoko themselves,¹⁷⁸⁸ and is repeated in the findings of numerous courts and commissions of inquiry,¹⁷⁸⁹ as well as in secondary sources too numerous to mention. Thus the principal political change between 1869 and 1873 is a resurgence in the political presence (and fortunes) of Muaupoko.

Keapa Te Rangihwinui played an important role in the events leading up to and following the Kukutauaki and Horowhenua blocks. He was the son of Tanguru (Mahuera Paki Tanguru-o-te-Rangi) of Muaupoko.¹⁷⁹⁰ He had lived mainly in the Whanganui region. When asked by the Horowhenua Commission in 1896 as to the "tribes do you claim to represent as chief he replied "[t]he Muaupoko,

¹⁷⁸⁶ *Warena Hunia v Meiha Keapa (Major Kemp)* (1895) NZLR 669 (CA).

¹⁷⁸⁷ (1898) 40 Otaki MB 44-194 [check]; (1898) 40 Otaki MB 205-219

¹⁷⁸⁸ See the decision in Horowhenua 11B41 (1910) 51 Otaki 153-54. In this case Hone McMillan as conductor for the Taueki family claimed a larger proportion of the interests in this partition on the basis that it was the chief Taueki, who, on behalf of Muaupoko, had made peace with Te Whatanui and had "saved the people".

¹⁷⁸⁹ See, eg., *Report of the Horowhenua Commission* 1896 AJHR G2, 4 (after Muaupoko had been "practically driven off their land" Te Whatanui, who was "either a connection, or, at any rate, a great friend, of Te Rauparaha" settled near Lake Horowhenua; "for some reason or other Te Whatanui took compassion on the remnant of Muaupoko, used his influence with Te Rauparaha and obtained that chief's promise not to further molest the Muaupoko", after which the latter "gradually drifted back on to the land where they lived under the protection of Te Whatanui").

¹⁷⁹⁰ Waitangi Tribunal, *Horowhenua*, 42 (see whakapapa at *ibid*).

Rangitane, Wanganui, Ngararau, and others”.¹⁷⁹¹ In my view it is clear that Te Keepa saw himself as a chief of Muaupoko, and did his best to protect their interests at all times.

13.2 “Much ill feeling”: Disputation between Muaupoko and Ngati Raukawa and the failure of arbitration 1855-1873

Disputation between Ngati Raukawa (more specifically, the Ngati Huia hapu of Ngati Raukawa) and Muaupoko over boundaries had gone on for decades before the Court investigated the Manawatu-Kukutauaki and Horowhenua Blocks in 1873. It cannot be said that the disputation was caused by the Native Land Court, although it is probably the case that the Court’s decisions aggravated it. A full account of the contention was given by the Appellate Court in its decision relating to the Horowhenua 11 block in 1898. This document is a very interesting illustration of the Maori practice of inviting high-ranking chiefs from outside to investigate into and arbitrate troublesome land disputes (it also illustrates how intractable such disputes could sometimes be, and the lack of success of such efforts to mediate). In the case of Horowhenua outside chiefs invited to arbitrate were Ngatuere Tawhirimatea Tawhao of Ngati Kahungunu and Te Peeti Te Aweawe of Ngati Kahungunu. But the dispute remained unresolved, and tensions flared, especially after a number of house-burnings. According to the Appellate Court the disputation was in two phases. The first was over the northern boundary of the Muaupoko reserve block around 1855.¹⁷⁹²

It seems advisable in the first place to give a brief history of the various circumstances which have happened in connection with the aforesaid Block which resulted finally in the matters in dispute being brought before the Native Land Court in 1873. The first dispute between the Ngati Raukawa and Muaupoko took place in 1855. Muaupoko on that occasion tried to expel Ngatihua from Poroutawhao. Maerua at that time was the boundary between Ngatihua and Te Whatanui. Muaupoko attempted to shift it further to the Northward but Ngatihua drove them back, they then attempted to make an eel pa at Ngatikorua but this was destroyed by Te Kotuku. Himiona [45] of Muaupoko tried to restore it but was prevented from doing so. A meeting was afterwards convened by Ngatihua and Epiha Te Kuini proposed that the rohe should be fixed at Te Kaikatea at Te Maerua. This was agreed to and no further disturbance took place until 1867. Then Hoani Puhi of Muaupoko made further trouble about the boundary¹⁷⁹³ by trying to shift it to Ngatokorua. It was afterwards agreed between Muaupoko and Ngati Huia to refer the boundary dispute to the arbitrament of Ngatuere¹⁷⁹⁴ and Peeti Te Aweawe¹⁷⁹⁵. When the parties met Ngatihua wanted to fix the boundary at Maerua and Muaupoko contended for Ngatokorua. Ngatihua then proposed to fix it midway between the two places. Peeti Te Aweawe proposed that the matter in dispute be left for himself, Ngatuere and [Kaiwiri Wanui?] to settle and it was finally agreed that the boundary between Ngatihua and Muaupoko should be fixed from [] on the Coast to a place called Matapihi on the Tararua range. An Agreement was then made in writing in writing and signed by the Muaupoko. No further disturbance took place until 1869 when another inquiry [46]

¹⁷⁹¹ 1896 AJHR G-2, 24.

¹⁷⁹² (1898) 40 Otaki MB 44-194, at 44-48. This decision was one of a number of Appellate Court decisions relating to the various subdivisions of the Horowhenua block carried out pursuant to the Horowhenua Block Act 1896.

¹⁷⁹³ The ‘boundary’ of what, however? Perhaps this is referring to an agreed boundary at Horowhenua setting aside an area for Muaupoko.

¹⁷⁹⁴ I assume this refers to the Ngati Kahungunu leader Ngatuere Tawhirimatea Tawhao of Ngati Kahukura-awhitia of the Greytown area, regarded as a person of great authority; according to Angela Ballara “to his own people he was the embodiment of mana and tapu”: see Ballara, “Ngatuere Tawhirimatea Tawhao ?-1890, Ngati Kahungunu leader”, *DNZB* vol 1, (1990), 316-318, at 318.

¹⁷⁹⁵ Te Peeti Te Aweawe, chief of Rangitane. See M H Durie, “Te Aweawe, Te Peeti ?-1884, Rangitane leader”, *DNZB*, vol 1, (1990), 442-3.

was made and an agreement arrived at between the parties. This arrangement was disturbed by Kemp and Hunia.

The boundary fixed at the first enquiry was from Oiao to Ngatokorua and thence to Matapihi on the Tararua range, but this was afterwards altered.

The second, and much more serious dispute, occurred in 1869 and was concerned with the southern boundary.

The trouble with Muaupoko about the Northern boundary took place in Te Whatanui Tutaki's time.

In 1869 a dispute arose between the Muaupoko and the Ngatiraukawa about the position of the Southern boundary of the Horowhenua block. The Muaupoko obstructed the survey with the view to bringing the dispute about the rights of the parties to the land before the Native Land Court.

It was agreed between the parties to the dispute to refer the question to the decision of Wi Pomare one of the lineal descendants of Te Whatanui who was then expected from the North but meanwhile in January 1870 the Muaupoko burned some houses which excited the Ngatiraukawa.

In April 1870 a meeting was held at Horowhenua. The Runanga sat for 12 days but as neither side could agree about the boundaries [47] it was decided to refer the question to Wi Pomare.

In June 1870 Wi Pomare arrived from the North and proceeded to arbitrate but his decision was not listened to.

On the 28th June 1871 Te Watene Tiwaewae's house was burned by an armed party under Kawana Hunia. This further exasperated the Ngatiraukawa. In July 1871 a suggestion was made that the dispute should be submitted to the mediation of Chiefs from the Napier district, no action however was taken and it was afterwards proposed that the question should be referred to the decision of a Runanga of Europeans and Natives, the decision to be final.

During the month of August, a large meeting was held at Kakariki in the Rangitikei district when it was proposed to leave the matter in Mr McLean's hands.

Subsequently Kemp and Hunia were induced by Mr McLean to leave Horowhenua and the matter in dispute to be settled by Arbitration.

Nothing was done, and matters remained in the same unsatisfactory state until the Block was taken [48] before the Native Land Court in 1873.

As can be seen, there were a number of attempts made to arbitrate the disputation by bringing in respected rangatira from outside, including Ngatuere Tawhirimatea Tawhao, who lived at Greytown, and Te Peeti Te Aweawe of Rangitane. Wiremu Pomare, from the Bay of Islands, who I believe is Te Whatanui's grandson, was also asked to arbitrate. There was also an attempt made in 1870, using the services of a rangatira from the Wairarapa named Heremaia. This arbitration is mentioned briefly in the evidence of John Jury (Te Whatahoro) given to the Horowhenua Commission in 1896, who was present at this meeting and was one of those deputed with the task of taking notes as to what was said. This manuscript record was produced in evidence to the Commission.¹⁷⁹⁶

¹⁷⁹⁶ 1896 AJHR G2, 238-9. Hoani Te Whatahoro Jury, also known as John Alfred Jury and John Alfred Te Whatahoro Jury was of Ngati Kahungunu and became a prolific writer and Maori scholar and a member of the Polynesian Society. He provided a great deal of information to Pakeha scholars such as S Percy Smith and T W Downes, not always receiving due acknowledgment. From 1870-1877 Jury was living in Whanganui where he

As the Appellate Court points out, there had been a great deal of disputation for many years over the boundaries for many years and relations between Muaupoko and Ngati Raukawa became increasingly tense in the 1860s, but the contention over the southern boundary dated only from 1869. It was in January 1869 that Whatanui Tutaki, last surviving son of Te Whatanui, died. Thomas Roach of Ngati Raukawa asserted in 1896 what was presumably common knowledge that there had been no disputes over the southern boundary until “after the death of Whatanui [Tutaki]”; at this point, around 1870, “the trouble began”.¹⁷⁹⁷ Whatanui Tutaki’s widow was Riria Te Whatanui. Te Whatanui’s direct descendants were two grandchildren, Wi Pomare (the son of Rangingangana, Te Whatanui’s daughter, who married Pomare of Nga Puhī), and Te Riti, Te Whatanui Tutaki’s daughter. The two grandchildren, Wi Pomare and Te Riti, were married to each other and had children of their own, but the Pomare family did not live at Horowhenua – although they certainly maintained a close interest in Horowhenua affairs from a distance – but in North Auckland. Wi Pomare, son of Pomare and Te Rangingangana, was essentially Ngapuhī too.

There was also the family of Te Whatanui’s sister, Hitau, who did live at Horowhenua. Her son was Watene Te Waewae, who was also Ngati Raukawa (Ngati Parewahawaha); his nieces were Karaina Nicolson and Ngawiki Tauteka, likewise descended from Hitau. (These family complexities are an important component of the Horowhenua story). The flashpoint for the sudden rise in tension between Ngati Raukawa and Muaupoko was the lease of a part of Horowhenua to an established old settler, Hector Macdonald. In 1869 Karaina and Tauteka (Watene Te Waewae’s nieces) told Hector McDonald that the lease had expired and that a new lease was required; the rent should be paid to them. McDonald refused to do so. Here wider iwi politics came in to play. Muaupoko were of the view that while they did not object to McDonald leasing his land from Whatanui and then from Whatanui Tutaki, they strongly objected to Hitau’s granddaughters, not direct descendants of Te Whatanui, interfering in the matter of the McDonald lease, demanding the rent and otherwise asserting ownership. As McDonald put it in a letter to William Fox (the Premier at this time), Muaupoko “say they are the owners of all Horowhenua, with Whatanui, and will not admit any one but Whatanui’s daughter and her husband [Watene] to be the owners of Horowhenua”.¹⁷⁹⁸ By objecting, Muaupoko were asserting interests outside the old Muaupoko reserve block agreed upon long ago by Te Whatanui and Taueki. The disputation over the lease, seemingly a minor matter, touched on relationships between Ngati Raukawa and Muaupoko generally. Ngati Apa and their chief Kawana Hunia became involved in the contention, further raising the political temperature and increasing Ngati Raukawa’s ire.

W T L Travers interviewed Watene Te Waewae in 1873 and read out the full text of this interview before the Native Affairs Committee of the Legislative Council in 1896. Watene, Te Whatanui the elder’s nephew, told Travers that he was living on the same land as had been formerly occupied by Te Whatanui, and claimed a right to do via Te Whatanui: “Te Whatanui was my uncle”.¹⁷⁹⁹

worked as a scribe and interpreter, and sometimes did advocacy work in the Native Land Court. It appears that by 1870 it had become the practice for scribes to record what was said at Maori arbitrations. Jury said that “there were three of us writing – myself, Piripi Mahamaha, and Hamuera Tu Tangata Kiu” (ibid). Those who spoke included Watene, Tauteka (Matene Te Whiwhi’s wife), Kererikau, and Henare Te Herekau. What became of the manuscript produced in 1896 I do not know. There is scope for research on Maori efforts to arrange formal arbitrations and mediations of this kind. On Jury see M J Parsons, “Jury, Hoani Te Whatahoro, 1841-1923, Ngati Kahungunu scholar, recorder, interpreter”, *DNZB*, vol 1, 1990, 214-15.

¹⁷⁹⁷ 1896 AJLC App no 5, 22.

¹⁷⁹⁸ McDonald to Fox, 25 October 1869, 1871 AJHR F-8, p 5.

¹⁷⁹⁹ 1896 AJLC App no 5, 27.

Watene told Travers that he went to Horowhenua in 1847 and had been living there ever since. He explained his relationship to Pomare as follows:¹⁸⁰⁰

Did not one of Te Whatanui's daughters marry Wiirewire Pomare, of Ngapuhi? – Te Whatanui's daughter was married to Pomare's father.

Then, Wirewire Pomare is a grandson of Te Whatanui? – Yes...

Does he claim any interest in the land of Te Whatanui? – I admit that he has a claim there. I am the older branch of the same family, and I am in occupation of the land. This keeps his claim good, as well as my title.

In other words, then, Watene Te Waewae's continued occupation of land was pivotal in that it maintained ahikaroa for all of Te Whatanui's descendants. Watene was the direct representative and successor to Te Whatanui himself. This will have been widely understood by all parties in the events that were about to unfold. Direct attacks and attempts to intimidate Watene Te Waewae and drive him away, as indeed was soon to occur, amounted to a massive challenge to Te Whatanui's family and indeed to Ngati Raukawa generally. Ngati Raukawa in a wider sense would have felt under an obligation to protect this key area at Horowhenua were it ever to be challenged. This is shown by a further exchange in Travers' interview of Watene:¹⁸⁰¹

The Horowhenua affair was a subject of intense concern and discussion within Ngati Raukawa. At a meeting held at Otaki in April 1870 at which both "Kingite" and "Queenite" supporters within Ngati Raukawa were present, the issue of how to respond to what was perceived as escalating pressure over Horowhenua from Ngati Apa (and Kawana Hunia in particular) was traversed. Matene Te Whiwhi was present, and described what had transpired to the local resident magistrate (Knocks). Ngati Raukawa seemed to have been divided about what they should do. According to Knocks:¹⁸⁰²

Te Roera Hukiki, Te Watene, and Moihi, all of Horowhenua, got up one after the other, and denied that Ngatiapa had any claim to Horowhenua, or any right to come there to arrange disputed boundaries; that they the owners of the land, now that Te Whatanui is dead, would not meet Kawana Hunia, nor allow him to alter the boundary line fixed by the original Te Whatanui.¹⁸⁰³ That if Kawana Hunia came armed, they had arms, and would resist the Ngati Apa.

Ihakara said: I have come on purpose to meet Kawana Hunia and to settle the Horowhenua dispute, and I think the Ngatiraukawa would not do well to remain away.

Henare Herekau said: I do not believe Ihakara, he told me some untruths about our land at Manawatu: be careful how you deal with the Horowhenua dispute.

The meeting became confused, some of the Ngatiraukawa chiefs saying they would meet the Ngatiapa at Horowhenua, others declaring they would not.

In 1871 tensions between Ngati Apa and Ngati Raukawa reached breaking point. The contention had now become a general one between Muaupoko (linked to Ngati Apa) and Ngati Raukawa over land boundaries at Horowhenua. A long report in the *Daily Southern Cross* describes how a house

¹⁸⁰⁰ Ibid.

¹⁸⁰¹ 1896 AJLC App no 5, 28.

¹⁸⁰² Knocks to USND, 11 April 1870, 1870 AJHR A-16, 25.

¹⁸⁰³ This is an important clue as to what was happening. This is a clear reference to an earlier boundary set by Te Whatanui for Muaupoko. It appears that a concerted campaign was underway to alter the earlier boundary, and that Ngati Apa and Kawana Hunia had become involved.

at Horowhenua belonging to Watene Te Waewae, Hitau's son and Karaina and Ngawiki's uncle, had been burned down by Ngati Apa led by Kawana Hunia:¹⁸⁰⁴

Great excitement prevails among the various hapus of natives scattered along the West Coast in consequence of the attitude assumed by Kawana Hunia and his Ngatiapa, and Kepa or Kemp and his Whanganuis, in conjunction with the Muopoko [sic], with regard to the disputed land at Horowhenua. About three weeks ago these chiefs and about twenty of their men went armed to the whare of Watene Tawaewae and ordered him off his land, himself, his wife, and another of the owners named Te Witi. They of course refused to go, when the Ngatiapa set fire to the whare, the owners of it being then inside, and refusing to come out. They were pulled out of the burning house, and, after using many threats and brandishing his revolver, Hunia and his men departed to the Muopoko settlement, near at hand, where he has since constructed a pa. This pa is composed of an outer line of strong palisades with rifle-pits and earthworks within, and a large whare is sunk in the ground so as to be out of the line of fire of any enemy who may attack the fortification. A large supply of potatoes, corn, &c., has been carted within, and every preparation made for war.

These highly provocative steps, that is, burning down Watene's house and the construction by Hunia of a fortified pa at Horowhenua, led to "great excitement" amongst Ngati Raukawa. This was of course *inevitable*, as Hunia would have known. The imponderable question is, of course, why did he (or he and Kemp) decide to behave in such a provocative way? The newspaper account continues:¹⁸⁰⁵

Meanwhile messengers were sent to the various hapus of Ngatiraukawa, with information of what had occurred, and great excitement was the consequence of the news. There is no doubt that had such an outrage been committed some few years ago, war, quick, and sudden, would have been, the inevitable result; but times are greatly changed with the Maoris, and the old custom of taking immediate 'utu' is tempered by a wish to know the feeling of the pakeha on the subject. Telegrams were sent and letters written to Mr. McLean, and what he would say was, and is, the principal topic of conversation among Ngatiraukawa. It speaks much for the influence of Mr. McLean that a tribe who, unlike their opponents, the Ngatiapa, have not been considered as great allies of the pakeha, should thus restrain their natural impetuosity and defer to the opinion of the European. Ngatihua, of Porotawhao, the nearest neighbour of the Muopoko, and a hapu of Ngatiraukawa, furbished up their double-barrelled and single-barrelled guns, and are building a pa for the defence of their women and children should Hunia meditate an attack in that direction. Guard is kept at night and every precaution used to prevent surprise.

Ngati Apa were well-armed:

It is asserted that Ngatiapa are armed with Enfield rifles, the property of the Government, lent to them while they were fighting the Hauhaus. It is certain they are well armed, and a day or two subsequent to the burning of the whare some of them went to Rangitikei and returned with a number of rifles. Hunia has a needle-gun, which is said to have cost him £15. I am awfully puzzled where he got it from, when I know the present laws regarding the sale of arms to natives. The land in question originally belonged to the Muopoko, who were conquered by the Ngatiraukawas, under the leadership of Whatahanui, who saved their lives, and marked out a portion of land for them to live on. They were thus, according to Maori custom, slaves of Whatahanui, and all their land became the property of the conquerors, who were behaving with a leniency and generosity unfrequent among Maoris in saving their lives and giving them land to reside on. The land given them had well-defined boundaries laid out; but, encouraged, no doubt, by their success in Rangitikei, the Ngatiapa, who are related to the Muopoko, now wish to get back all the land taken from Muopoko by Ngatiraukawa which is held and in the occupation of Watini and other descendants of Whatahanui. For some years past Ngatiapa have been very insulting and bounceable towards their old conquerors, the Ngatiraukawa and there is no doubt that now they are well armed they

¹⁸⁰⁴ *Daily Southern Cross*, vol xxvii, 31 July 1871, p 5.
¹⁸⁰⁵ *Ibid*,

would like to repay them for all the indignities and defeats received at their hands in former years. Major Edwards was at Horowhenua, on the part of the Government, last week, and Ngatiapa spoke very fairly, and seemed perfectly satisfied to leave the matter to arbitration ; but the same evening that the Major left they threatened to dig up the body of old Whatahanui [sic], and burn it. Thus the matter stands.

The situation was potentially explosive. Ngati Raukawa were not likely to acquiesce in the situation, and if conflict broke out it would in all probability rapidly escalate as the contending parties sought allies. The newspaper account also alludes to Ngati Raukawa's rapidly-declining numbers, which added to the unpredictability of the situation:¹⁸⁰⁶

Ngatiapa and Muopoko, in their pa at Horowhenua, say they mean fighting, and will have the land. Ngatiraukawa, with grounded arms, await the decision of McLean, and refuse to give up land won by the bravery of their fathers. If Hunia and Kemp refuse to leave Horowhenua and submit the matter to arbitration, as is the wish of Ngatiraukawa, then war between the parties is imminent if not inevitable. With regard to the strength of the two parties, it is very hard to decide, as it is very uncertain what tribes would be dragged into the affair. Ngatiapa have the advantage in arms, but Ngatiraukawa are or were the best fighting men. Ngatiraukawa are not so numerous in this part of the coast as they were, and all their old fighting men are dead. They will have to contend with a different class of combatants to the fathers of the present Ngatiapa, who, as Kemp says, when Ngatiraukawa beat them, 'had nothing but a stick,' and so the latter came from the North with guns, and swept all before them.

As can be seen, Ngati Apa (and perhaps Muaupoko) had decided to take the initiative on this occasion. The newspaper article gives the strong impression that the possession of firearms had changed the balance of power in the region. They had now decided to reassert themselves and "now they are well armed they would like to repay them [Ngati Raukawa] for all the indignities and defeats received at their hands in former years". Whether they actually had their much talked-of Lee Enfield rifles with them on this occasion is unclear (other reports suggest that they had "revolvers"). They were certainly armed, however. J T Edwards, the R.M. at Otaki, certainly saw a military disparity when he was sent to investigate the Horowhenua troubles in July: "[t]hat 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, has been the cause of their remaining passive under the great provocation they have received".¹⁸⁰⁷ In fact Ngati Raukawa had guns of their own, and probably could have given a good account of themselves (Victorian New Zealand was generally innocent of gun control.)

Watene Te Waewae had informed all Ngati Raukawa of the attack and the house-burning.¹⁸⁰⁸ Matene Te Whiwhi sent a telegram on 30 June 1871 to McLean stating that Watene's house had been burned by Hunia and Keepa who had come there "with their guns"; "this matter has made Ngati Raukawa very much distressed".¹⁸⁰⁹ Keepa told the Horowhenua Commission in 1896, however, that it was solely Kawana Hunia who was responsible for burning the houses: asked by the Commission why Hunia did this Kemp responded that he did not know, that he had told the Muaupoko to create no disturbance on the land, and that he was not present when the houses were burned.¹⁸¹⁰ In any event McLean responded to Matene that it "is natural that you should feel distressed" and "the matter should be taken before the judicial tribunal, so that the matter may be properly inquired into".¹⁸¹¹ At this time the dispute was still fairly localised, confined to the southern side of Lake Horowhenua. J.A. Knocks,

1806 Ibid.

1807 McLean to Edwards, 6 July 1871, *Papers relevant to Horowhenua*, 1871 AJHR F-8, p 16.

1808 Watene to Ngati Raukawa, 28 June 1871, *Papers relevant to Horowhenua*, 1871 AJHR F-8, p 14.

1809 Matene Te Whiwhi to McLean, 30 June 1871, *Papers relevant to Horowhenua*, 1871 AJHR F-8, p 14.

1810 1896 AJHR G-2, 25 (Keepa Te Rangihiwiniui).

1811 McLean to Matene Te Whiwhi, 30 June 1871, *Papers relevant to Horowhenua*, 1871 AJHR F-8, p 14.

an official of the Native Department based at Otaki, reported to McLean on 2 July that Hunia and Kemp were only supported by a part of Muaupoko, the rest “more or less with the Ngatiraukawa”.¹⁸¹² He added that “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”, and that “they have built a war pa, and keeping military guard”. He did not personally think that “anything serious will come of it”. This seems to have been a very poor assessment of a still-developing process which could easily become explosive and have widespread repercussions. Major J T Edwards (RM, Otaki) was instructed by Halse to find out what was going on at Horowhenua, and on 4 July he telegraphed Bell (Acting Native Minister):¹⁸¹³

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 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 settling the difficulty.

In 1896 Keepa’s recollection of events was that following the house-burning “[t]he Ngatiraukawa made a descent on Hunia and his people, and they [i.e. Ngati Apa] retired to their own country”; Kawana Hunia “went by himself and fled” and then Ngati Raukawa the “attacked the Muaupoko” (although no one was actually killed.¹⁸¹⁴ Keepa blamed Hunia for the trouble: “[i]t was not the Ngati Raukawa who brought this disturbance about; it was in consequence of the action of Kawana Hunia”; it “was our fault”.¹⁸¹⁵

There were various proposals to find a way to resolve matters. In early July there was talk of referring the matter to a runanga. Edwards advised McLean that Ngati Apa were agreeable to this course, as was Matene Te Whiwhi.¹⁸¹⁶ In 1896 Keepa recalled that Wi Parata helped to mediate matters.¹⁸¹⁷ It seems clear that McLean had no particular interest in Horowhenua as such: his only objective was to prevent a collision and keep the peace. McLean supported the runanga idea:¹⁸¹⁸ “The course of referring the dispute to a runanga appears to be the best mode of settlement, and I hope it will be adopted.” (McLean was no admirer of the Land Court, and does not appear to have been wedded to that as a solution.) Edwards sent a full report to McLean on 10 July, which seemed to indicate that matters were settling down somewhat and the runanga project was gaining ground.¹⁸¹⁹

On my arrival at the Muaupoko Runanga House I met the disputants, and after listening to their complaints, I proposed the matter should be referred to the Native Land Court. Against this course I found a strong feeling, which I was unable to dispel... Finally both parties agreed to submit the matter to a runanga, to be presided over by two Europeans to be appointed by the Government, and to be held at Otaki or Horowhenua. I would suggest this meeting should be held as soon as may be, and should be men in whom the Maoris have faith, and who have knowledge of Maori tenure.

¹⁸¹² Knocks to McLean, 2 July, *Papers relevant to Horowhenua*, 1871 AJHR F-8, p 15.

¹⁸¹³ Edwards to Bell, 4 July 1871, *Papers relevant to Horowhenua*, 1871 AJHR F-8, p 15.

¹⁸¹⁴ 1896 AJHR G-2, 24 (Keepa Te Rangihwinui). Pressed by Walter Buller as to whether any guns were discharged or whether there was only a show of fighting, Keepa responded that after Ngati Apa and Kawana Hunia had fled, “Ngati Raukawa came on to the Muaupoko” but at that point Edwards sent for the Assessors and others to meet at Horowhenua. Keepa was not there at the time, but afterwards learned from Richard Woon that the dispute had been resolved, at least for the time being (*ibid*).

¹⁸¹⁵ 1896 AJHR G-2, 24 (Keepa Te Rangihwinui).

¹⁸¹⁶ Edwards to Bell, 6 July 1871, *Papers relevant to Horowhenua*, 1871 AJHR F-8, p 15.

¹⁸¹⁷ 1896 AJHR G-2, 25 (Keepa Te Rangihwinui).

¹⁸¹⁸ McLean to Edwards, 6 July 1871, *Papers relevant to Horowhenua*, 1871 AJHR F-8, p 16.

¹⁸¹⁹ Edwards to McLean, 6 July 1871, *Papers relevant to Horowhenua*, 1871 AJHR F-8, p 17.

As for the matter of the house-burning, that “can only be settled by an appeal to the law” Edwards thought.

Notwithstanding this talk of runangas and appeals to the law, however, tensions were still running high, and on 11 July Knocks sent a telegraph to Wellington to the effect that Watene had called for immediate assistance, as the Ngati Apa were now planning to murder him, and that Matene Te Whiwhi was finding it difficult to restrain Ngati Raukawa people at Otaki from going to Horowhenua.¹⁸²⁰ McLean sent Edwards to Otaki to mediate. Meanwhile Octavius Hadfield, now Bishop of Wellington, who of course had strong personal connections with Ngati Raukawa, had been anxiously telegraphing McLean (who was at Napier) expressing his alarm about the goings-on at Horowhenua and Otaki.¹⁸²¹ Hadfield thought it was important that Edwards should remain on the scene at Otaki, and McLean agreed. Despite a great deal of conflicting information being sent to McLean, it seemed that tensions were subsiding, but then on 18 July Edwards telegraphed him that Ngatiraukawa were building a counter-pa at Poroutawhao (although it is interesting how he put it).¹⁸²²

I have been to Horowhenua. Kemp and Hunia, with twenty-five armed followers, are still there. Ngatiraukawa are amusing themselves by building a pa at Poroutawhao.

This was not “amusing” but was actually an indication that the disputation was spreading, Poroutawhao being some distance away to the north (about four miles from Kemp’s pa) and on Ngati Huia lands (Poroutawhao was the place gifted to Ngati Huia by Te Rangihaeata and was where Rangihaeata retreated to in 1846). The military pa at Poroutawhao could block off any attempt by Keepa and Hunia to return home to the Rangitikei and Whanganui. There was a real risk of the confrontation at Horowhenua spreading. According to a report in the *Nelson Examiner* (and no doubt in other newspapers) on 29 July it seems that events at Horowhenua had led to political consequences as far afield as the Waikato. The challenge to Ngati Raukawa mana at Horowhenua could easily spin further out of control to involve Ngati Raukawa in the Waikato, prominent Kingite supporters at the time. Raukawa of the Waikato were fairly intensely aware of what was happening in the Rangitikei and the Manawatu, and vice versa.¹⁸²³

A very serious danger has arisen, and is not yet removed, at Horowhenua, between Rangitikei and Otaki, on the West Coast. The trials before the Native Lands Court having ended in establishing much larger claims by the Ngatiapa, than the Ngatiraukawa had allowed, the former tribe, aided by the well-known chief, Kemp, and some of the Wanganui men, have extended those claims yet further, and visited Horowhenua, a place for many years occupied by Ngatiraukawa, where they destroyed some whares, and where both parties began preparations for strife. The aggressors carried Government rifles, but Government have not felt themselves in a position, even if they were disposed, to interfere. They have sent down Major Edwards to take up his quarters on the ground, as a pacificator, till the arrival of Mr. McLean who has promised to come as soon as his duty on the East Coast will allow. The aggression in this case is distinctly on the side of Ngatiapa, but as they are locally the stronger party, and as they were favourable to the sale of Manawatu, which their opponents, the Ngatiraukawa, resisted, no difficulty was felt in declining interference on their behalf. The Ngatiraukawa of the West Coast have, however, been orderly and peaceful for a long time, and have finally submitted to the judgment of the Lands Court and the terms of the Government, and they are not unnaturally aggrieved that a proceeding so unprovoked as that of Ngatiapa and Kemp, should be met with no more than a warning, to the aggrieved party, against

¹⁸²⁰ Knocks to Cooper, 11 July 1871, *Papers relevant to Horowhenua*, 1871 AJHR F-8, p 18.

¹⁸²¹ Hadfield to McLean, 13 July 1871; McLean to Hadfield, 13 July 1871, *Papers relevant to Horowhenua*, 1871 AJHR F-8, p 18.

¹⁸²² Edwards to McLean, 18 July 1871, *Papers relevant to Horowhenua*, 1871 AJHR F-8, p 18.

¹⁸²³ *Nelson Examiner and NZ Chronicle*, Issue 26, 29 July 1871, p 5.

violence. Non-interference on the part of soi-disant authorities does not approve itself to the minds of half-civilized men, and the Ngatiraukawa though weak on the coast, have many allies up the country. From a totally different source we learn that the Ngatiraukawa Maungatautari, Upper Waikato, received Mr. Locke, a Resident Magistrate and confidential agent of the Government, in a temper that bodes mischief if the excuse should arise. Mr. Locke, it is rumoured, was in personal danger, although the published reports say nothing of this, but talk only of a postponement of the meeting. We are not able to say whether this temper is in any way connected with the grievances of their fellow-tribesmen on the coast, but it indicates a readiness to take up their quarrel should it come to extremities. The Ngatiraukawa of Upper Waikato, are in intimate relations with the King's immediate adherents, whose disposition does not grow more friendly as they gradually die out, but the reverse. Other rumours of accession to the side of mischief from unexpected quarters are too vague to be alluded to, except as warnings against over-confidence. (It was probably to some of these that the telegram was due which appeared in the Wellington Independent, containing the statement, at present most improbable, that Ropata, the Ngatiporou warrior, was making some terms of his own with TeKooti whom he is out to pursue. The condition of the vast majority of the Maoris is however eminently unsatisfactory, and any departure from a quiescent attitude by Government, or any reduction of the Defensive force by the Legislature, would set the country ablaze. The Defence force is the best present security of the North Island.

This document is very revealing, both of the still-jittery state of the colony in the early 1870s, but also of perceptions of Raukawa at Otaki and of connections between the two sections of the iwi at this time. It indicates also that the Government tended to look the other way when it came to Kemp's and Ngati Apa's behaviour, mainly because Ngati Apa were willing to sell their lands to the government. (The article says this explicitly, as can be seen: "as they [Ngati Apa] were favourable to the sale of Manawatu, which their opponents, the Ngatiraukawa, resisted, no difficulty was felt in declining interference on their behalf".) According to the article, also, Ngati Apa "aided by the well-known chief, Kemp, and some of the Wanganui men, have extended those claims yet further, and visited Horowhenua, a place for many years occupied by Ngatiraukawa, where they destroyed some whares, and where both parties began preparations for strife". The newspaper article is also interesting in suggesting close connections between Ngati Raukawa in the Waikato and in the PkM region, and of the readiness of the northern section of Ngati Raukawa to "take up the quarrel" of their southern kinsmen, a possible readiness made all the more risky by the adherence of the northern section of Ngati Raukawa to the Kingitanga. The newspaper article is, admittedly, only that, and may be reflecting only suspicion and rumour, but nevertheless it is interesting that a colonial newspaper found it plausible that issues arising in the PkM region could potentially have very wide political implications.

In September Walter Mantell raised in the Legislative Council his concerns about events at Horowhenua, and about the failure of the government to ensure that Keepa and Hunia returned their weapons. This seems to have been part of a general attack on the Maori policy of the Fox-Vogel-McLean government. Mantell had formed the impression that the possession of the latest rifles had of itself induced Keepa's supporters to settle an "old quarrel":¹⁸²⁴

Within the last few days there had been laid on the table reports of Native officers in Native districts, which appeared to bring the report with regard to Otaki down to the 15th May, 1871...How it happened that, after the arrangement of 1875, Native militiamen, or Natives holding arms from the Government, were enabled to retain possession of them until the very possession of them excited them to try to recollect whether there was or was not some neighbour with whom there there was an old quarrel to settle, was more than he could pretend to understand...In 1865 the Natives in question, especially Hunia and Kemp, applied to him at Wanganui, when he held the office of Native Minister, to cause arms and ammunition to be issued to them, but he declined to give an order of the kind unless on the same terms

¹⁸²⁴ NZPD 1871, Vol 10, 597-8.

on which arms were issued to Europeans, namely, that they should enrol their names on the militia list as militiamen, and be subject to the same discipline and orders as other militiamen. After some little demur, they agreed, and he then referred them to his colleague, Major Atkinson, with whom any further arrangements with regard to the issue of arms were carried out.

At Horowhenua there had been dark talk of curses, and of Whatanui's bones being dug up and thrown into the lake. Statements of this kind were extremely risky as they could easily lead to serious violence. Nothing of the kind seems to have happened but what is undoubted is that Kemp was responsible for the construction of a significant fortified base at Pipiriki near Horowhenua lake. In 1903 James Cowan was shown around the remains of the fortifications by Te Rangimairehau of Muaupoko, who was one of those at Pipiriki in 1872-3:¹⁸²⁵

Another place of historic associations is the old Pipiriki Pa, on a grassy ridge on the mainland (western side of the lake). This pa was built about 1872 by the late Major Kemp and his Muaupoko for defence against the Ngatiraukawa Tribe in a quarrel over the ownership of the land. The old Chief Te Rangimairehau, whom I took round the lake with me in the boat to point out and name the various localities, was in the pa from 1872-3 with a strong force of Muaupoko, who had about three hundred rifles. Two rows of totara palisading then encircled the pa, but all that remain now are the trenches and earthen parapets, on a hill about 50 ft. Above the lake, This was for the protection of the women drawing water from the lake for the garrison.

13.3 Explaining events

As has been explained, Watene Te Waewae's occupation at Raumatangi was crucial in maintaining the rights of Te Whatanui's descendants at Horowhenua, rights as defined by the old boundaries and which included on the Raukawa side of the boundary half of Lake Horowhenua and the Hokio stream. Moreover all Raukawa hapu would have felt themselves under an obligation to react if others attempted to drive Watene off. Thus the burning of Watene's house, and the attempts to intimidate him and his family were very risky acts. How, then, to explain the behaviour of Kemp and Hunia at this key juncture?

Two scenarios are possible. One is that Hunia and Kemp thought that they could get away with it, and that Ngati Raukawa would not be able to effectively respond. It cannot possibly be assumed that Hunia and Kemp had no idea that Ngati Raukawa would react in some manner: it was unthinkable that they would not. But perhaps Ngati Raukawa, declining in numbers, lacking the fancy new weapons possessed by Kemp's supporters, and politically in a weak position as being suspected of Kingitanga loyalties by the government, would have to back down - which would be a tremendous boost in the mana and prestige of Kemp, Hunia, Muaupoko, and Ngati Apa. The other possibility is that Te Keepa and Hunia were actually trying to provoke a major conflict *deliberately*. Had a shooting war broken out at Horowhenua, perhaps Ngati Raukawa might have decisively defeated, assuming that the government would get involved in the conflict, particularly if it escalated to the extent that Ngati Raukawa in the Waikato became engaged, and in so doing re-start the conflict between the Crown and the Kingitanga. The only outcome could be the decisive defeat of Ngati Raukawa and perhaps the confiscation of their lands.

There is no evidence either way, and the only thing that does seem clear is that Kemp and Hunia were acting for a reason, and must have known that Ngati Raukawa would react sharply to their efforts to seize the initiative at Horowhenua. I find it hard to believe that Keepa would have wanted to restart a

¹⁸²⁵ J Cowan to Superintendent, Department of Tourist and Health Resorts, 1 Sept 1903, in 1908 AJHR H-2A, 1-2.

war with the Kingitanga. He will have been aware that McLean was trying to dampen down tensions and was negotiating with Tawhiao. Whether Te Keepa approved or disapproved of this is unknown, but he must have realised that the government was probably unlikely to be willing to become engaged in renewed conflict. The more likely scenario is that Te Keepa and Hunia were assuming they could get away with it: provoking a showdown which Ngati Raukawa would have to walk away from, with all the loss of mana that would entail. Keepa's and Hunia's actions seem on the whole to have been carefully modulated acts of symbolic intimidation: burning down the house, constructing a pa, and marching and drilling in the streets of Foxton in 1873. Nobody actually died or was hurt during the stand-off.

13.4 Crown objectives and surveys

The Fox-Vogel government was very interested in purchasing further land in the area between Waikanae and the Rangitikei. Behind the applications for investigations of title to the Kukutauaki and Horowhenua blocks lurked the state, notably James Grindell, an employee of the Native Department seconded to the provincial government to manage Crown purchases and surveys in the region.¹⁸²⁶ Most groups were prepared to sell at least some of their lands, but before this could be done titles had to be fixed by the Native Land Court. To achieve this important prerequisite to land purchasing Grindell worked to coordinate applications to the Court and to prepare a survey that could be used during title investigations. By May 1872 all of the various groups of the PkM region still in possession of lands held under customary title had prepared applications to have their lands investigated by the Native Land Court. On 31 May Grindell reported that he had attended meetings all along the West Coast, and had received "from each hapu written applications to the Land Court to have their claims investigated in respect of the whole of the land on the West Coast, extending from Manawatu River and the Ahu-o-Turanga block on the north to the Crown land south of Waikanae".¹⁸²⁷ Grindell's view was that once the titles had been investigated by the Court "[e]ach hapu would be in a position to sell to the Government without fear of the interference of others"¹⁸²⁸ and some valuable land could certainly be acquired, at least in inland areas. Maori were willing to sell land in the Tararua ranges, which they did not particularly want (nor, presumably, did the government), but Grindell was optimistic that "a strip along the base of the hills can be acquired at once, stretching from point to point of the spurs and taking in many valuable valleys and gullies suitable for purposes of settlement".¹⁸²⁹ Grindell saw the constant disputation over lands and boundaries as a serious obstacle to the government being able to purchase more land in the region: "[i]t is quite apparent that they are generally desirous of selling their waste lands at the present time, but an immense amount of jealousy and suspicion exists amongst the various claimants and tribes in reference to each other's claims and boundaries".¹⁸³⁰

Grindell had managed "with much difficulty" to persuade the various groups to agree to a survey. An "exact survey" of the district was not necessary. What was needed was a "good topographical map with all prominent points and names clearly marked".¹⁸³¹ On this map "the various claims can be marked off in Court with the help of the surveyor". Presumably this map, arranged and paid for by the government, was the one the Native Land Court was to have before it when the Kukutauaki and Horowhenua blocks were investigated later in the year. The Muauapoko-Ngati

¹⁸²⁶ On Grindell's activities see also Anderson, Green, and Chase, *Crown Action and Māori Response*, ch 9.

¹⁸²⁷ J Grindell to McLean, 31 May 1872, *Reports from Officers engaged in the Purchase of Native Lands* 1873 AJHR G-8, 32.

¹⁸²⁸ Ibid.

¹⁸²⁹ Ibid.

¹⁸³⁰ Ibid.

¹⁸³¹ Ibid.

Raukawa boundary continued to be a flashpoint. After Muaupoko had agreed to send Grindell their applications for title investigation to their lands at Horowhenua and to have the land surveyed he was sent another letter from Muaupoko “threatening to break the chain of the surveyor if he persists in surveying the land in dispute between them and the Ngatiraukawa”.¹⁸³² This was followed by another letter containing the application to the Court, pointing to a division of opinion within Muaupoko. Grindell reported that he hoped to meet with Muaupoko to arrange matters.

Grindell then reported on the 2 July that he met with Tamihana Te Rauparaha and other Ngati Raukawa people at Otaki. Grindell was told that it was Ngati Raukawa’s preference to not proceed with subdivisional boundaries at this stage: “I found the Natives generally opposed to any subdivisional boundaries being boundaries being surveyed between the claims of the various hapus, the idea being to unite as a whole against the Ngatiapas and other tribes opposed to them, with a view of getting their right as a tribe to the entire coast district first investigated by the Land Court, before entering into any disputes relative to minor internal claims amongst themselves”.¹⁸³³ For this reason Ngati Huia resident at Otaki had told the surveyor (Thompson) to stop his survey inland of the Otaki river and go back to surveying along the coastline. Grindell refused to allow this as it would cause a delay to the government’s land purchasing plans.¹⁸³⁴

I assumed a decided attitude in the matter, and told them that the Court would certainly not sit until we had prepared a proper map for its guidance, and that if this were not done, the whole question would remain open and unsettled as before, in which case the Government could not buy any land which they might wish to sell. I insisted that the survey should be so made as to enable us to cut the country up into blocks if so required at the sittings of the Court. I explained that there could be no objection to their taking up the question as a tribal right, but that we must have the map so prepared that each section could go in for its own claims at the same sitting of the Court, so as to save the expense of a second survey, and loss of time.

In fact it was not really necessary to have the subdivisional boundaries surveyed, and Grindell in his earlier report had stated that all that was necessary was a topographical map on which the boundaries of the various claims could be pointed out by the surveyor. But as the government was paying for the survey there was not much that Ngati Raukawa could do if they wanted to have the “tribal” title determined. Grindell carried his point and Ngati Raukawa promised not to interfere any further with the surveys.

Grindell then went to see the Muaupoko at Horowhenua, and found that the survey was even more strongly opposed. Some Ngati Apa and Ngati Kahungunu were also there. Warena Hunia had been at Horowhenua but had left shortly before Grindell arrived. Grindell was told that these groups claimed the whole coast, and that Ngati Raukawa had no right to claim anything. Grindell’s report is a valuable window into a highly charged and politicised scene. The dispute was no longer merely about boundaries, or about Te Whatanui’s land at Horowhenua, but had developed into an aggressive challenge to Ngati Raukawa generally.¹⁸³⁵

On Thursday, the 13th, Mr. Dennan, surveyor, arrived per coach, and on the 14th, I arranged for him to carry on the work south of Otaki, upon which Mr. Thompson had been engaged. The latter gentleman I instructed to traverse the beach north of the Otaki river, whilst I proceeded to Horowhenua with Mr. Alzdorf, to ascertain the feeling of Te Muaupoko in reference to the survey of the internal boundaries in

¹⁸³² Ibid.

¹⁸³³ J Grindell to McLean, 2 July 1872, *Reports from Officers engaged in the Purchase of Native Lands* 1873 AJHR G-8, 33.

¹⁸³⁴ Ibid.

¹⁸³⁵ Ibid.

that locality, in dispute between them and the Ngatiraukawa. It was my intention to set both these gentlemen at work at once at Horowhenua, if I found the Muaupoko willing for the survey to proceed. I arrived at Mr. Hector McDonald's house, at Horowhenua, on Saturday, the 15th, and on Monday morning, accompanied by that gentleman and Mr. Altdorf, I proceeded to the Muaupoko settlement. I may here mention that Mr. McDonald, who possesses considerable influence with the Natives in that district from his long residence amongst them, has used every endeavour to bring the Muaupoko to reason, and to induce them allow the surveys to proceed. I spent the whole of that day reasoning with these people. Kawana Hunia, of Ngatiapa, had been there, but had left the day before (Sunday). Some of his people, however, were present, also Ngatuere, of Wairarapa, and some of the Ngatikahungunu people.

The claims made had now become very uncompromising:¹⁸³⁶

They claimed the whole coast from north to south, and said the Ngatiraukawa had no right to any part of it. They 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.

Grindell spoke to the Muaupoko chief, Te Rangirurupuni, who said that he had no objection if Watene surveyed the boundary claimed by him at Horowhenua, but this caused further argument amongst Muaupoko and Grindell decided not to press the point and instead to discuss the survey issue with Keepa. He also had a meeting with the Rangitane chiefs Peeti Te Awe Awe and Huru Te Hiaro as well as with Hoani Meihana Te Rangiutu. Characteristically, it seems, the Rangitane leadership took a much more moderate position than Muaupoko and Kawana Hunia:¹⁸³⁷

They strongly condemned the course adopted by Muaupoko, and declared their intention of reasoning with Kawa Hunia on the subject. Hoani Meihana said that since my last visit he had spent some days at Horowhenua discussing the question with them; that they had then authorized him to forward an application to the Court for the investigation of their title, which he did through me.

McLean directed Grindell to return to Horowhenua; returning there on the 18 July he was disappointed in not meeting Keepa, but he did have a meeting with Kawana Hunia. It was agreed by Ngati Apa and Muaupoko that the survey could proceed, and also that Ngati Apa and Muaupoko could arrange surveys of their own if they so chose (as far as I am aware this did not happen, as there was only one survey map before the Court when the hearings began). Grindell described the discussions and the installation of marker posts along the coast:¹⁸³⁸

I spent Tuesday and Wednesday in discussing the question with him [Kawana Hunia], and I found him much more reasonable than I expected he would be. He asked me a number of questions in the presence of the people assembled respecting the surveys, the intentions of the Government, &c., and my answers, which embodied the meetings I had used at previous meetings, he said were satisfactory. It was then finally settled that all opposition to the survey by Ngatiraukawa of the claims at Horowhenua, or elsewhere on the coast, should be at once withdrawn on the condition that Te Muaupoko also should be permitted to point out their boundaries wherever they chose, even on lands occupied by the Ngatiraukawa, and that the same should be shown on the map, together with those of Ngatiraukawa. I said the Ngatiraukawas had no objection to such an arrangement, and I offered to conduct a party of them, with Mr Thompson, surveyor, to erect posts at the points claimed by them, as boundaries along the beach to the Government land, south of Waikanae. I told them the beach had been already chained as far as Ohau, but from that point they could accompany the surveyor in chaining to Manawatu. This was agreed to, and a party of five or six were chosen by Kawana Hunia to accompany me southwards as far

1836 Ibid.

1837 Ibid.

1838 Grindell to McLean, 20 July 1872, 1873 AJHR G-8, 34.

as Wainui and Waikanae block (that being the government boundary), to erect posts on the beach. Accordingly, on Thursday, I returned to Otaki, and on the following morning they joined me at that place. Here I explained to Matene Te Whiwhi and others what arrangements I had made with Te Muaupoko, and afterwards introduced to them the party of Muaupoko and Ngatiapa, who had accompanied me from Horowhenua. They (Muaupoko and friends) appeared somewhat shy and reserved, but they were cordially welcomed by Ngatiraukawa, who shook hands with them all round, and rubbed noses in the usual Maori manner. Matene Te Whiwhi assured them that the Ngatiraukawa did not object to their surveying where they chose, that they intended to leave the whole question of their right and title to English law, and that they were very glad indeed that Kawana Hunia had at last adopted their view of the case, and so the matter was amicably arranged.

Grindell advised that a sitting of the Native Land Court “be advertised, at once, for November next, at Otaki”. The surveys proceeded.

13.5 “Not acquired by conquest”: Investigation of Title to Manawatu-Kukutauaki (1872-3)

The Manawatu-Kukutauaki (or simply Kukutauaki) block was investigated in late 1872; the claimants were Ngati Raukawa and the counterclaimants were Ngati Apa, Muaupoko, Rangitane, and sections of Whanganui and Ngati Kahungunu (who referred to themselves as the “five tribes” in the course of the evidence). The area before the Court was the whole region stretching from the Kukutauaki stream (the boundary with Ngati Awa) to the Manawatu River.¹⁸³⁹ As should be clear from the preceding sections of this chapter, the case was proceeding in a highly-charged political – and indeed, military – situation. The case began on 13 November 1872, with Hari Wirikaki as conductor for Ngati Raukawa. As by this time had become standard practice in the Native Land Court, the claimants (Ngati Raukawa) made preliminary opening statements to establish a prima facie case, following which the counterclaimants gave their evidence, the claimants then giving the remainder of their evidence in chief last.

Before the case proper commenced, however, a number of other matters were traversed. Ngati Raukawa had instructed a prominent Wellington barrister, P A Buckley, to appear for them. When he applied to the Court for leave to appear, some of the counterclaimants objected, notably Hoani Meihana of Rangitane.¹⁸⁴⁰ There was (as discussed in an earlier chapter of this report) some debate about whether Buckley should be allowed to appear or not, ending in the Court’s ruling that Buckley could remain to “watch the case” on Ngati Raukawa’s behalf, but “without interfering”.¹⁸⁴¹ Of course Buckley could still have advised his clients out of Court about how to manage their case, or how to rebut points made by the counterclaimants, or point out key questions that needed to be put in cross-examination, which itself shows the practical difficulties about excluding counsel from the Native Land Court. No one could stop Maori from getting legal advice if they wanted to and were prepared to pay for it. And in fact the counterclaimants seem to have had a lawyer on the scene as well, a Mr Cash.

This did not end the preliminary sparring before the case could proceed. Kawana Hunia himself said that he had nothing to say about counsel, but he objected to the case being heard at all. (This was Keepa’s wish as well, as will be seen). On 7 November Rogan and Smith delivered a little lecture to Kawana Hunia regarding his objection to the case being heard:¹⁸⁴²

The Court informed Kawana Hunia that it could not listen to his protest against proceeding with the investigation. The Native Land Court was established by law and natives had a right to bring their claims before it. If any person claimed land that did not belong to him the Court was open to those who disputed

¹⁸³⁹ 1896 AJHR G-2, 24 (Keepa Te Rangihiwiniui).

¹⁸⁴⁰ (1873) 1 Otaki MB 1.

¹⁸⁴¹ (1873) 1 Otaki MB 5.

¹⁸⁴² (1873) 1 Otaki MB 6.

the claim and the Court would hear both parties but 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. The Court could not listen to a mere protest against its jurisdiction and would proceed with the claim set down for hearing.

What the Court said to Kawana Hunia was what it usually said to anyone who appeared before it to object to a hearing taking place. Rogan had said much the same to emissaries from King Tawhiao who objected to cases proceeding in the Waikato: the Court was established by law, and had a duty to hear the cases before it.¹⁸⁴³ Protests were a political matter. Those who protested and then withdrew ran the risk of the case proceeding without them, and if they later changed their minds and asked for the case to be reheard their chances of actually obtaining a rehearing could be slim (as Keepa himself found to his cost in a later case in the upper Whanganui region.¹⁸⁴⁴). (I have even found one occasion when the Court fined a prominent rangatira of Ngati Maniapoto who walked out of the Court in protest in one of the Tauponuiatia hearings, the Court having ordered a police constable to bring him back.¹⁸⁴⁵) On this occasion Keepa was not satisfied with the Court's remarks to Kawana Hunia, and on 12 November he made his own statement to the Court, asking the hearing to be adjourned (in effect) *sine die*.¹⁸⁴⁶

I now wish to make a statement. The word of the Tribes Ngatiapa, Rangitane, Muaupoko, Ngati Hau, Wairarapa and Hawke's Bay. These tribes apply for an adjournment to a future period. We have all decided to ask for this. We wish to have time to consider our course, whether a good one or a bad one. When we have agreed we will bring the matter before the Court again. My people consider that there are three persons interested in the land. The Court is outside, is not one of three alluded [to]. I am one of the persons. Ngatiraukawa is the other. Money is the other, that is the money that the Government has advanced on some of these lands. We therefore consider it is right to ask for time to consider this matter. There is also a dispute amongst our own party which is not settled. I therefore apply for an adjournment. I wish to state that I do not wish to interrupt the Court.

¹⁸⁴³ For example in the Te Aroha case in 1869 Tarapipipi Te Aukati appeared before the Court as a representative of King Tawhiao and said that the "Crown Grant of the King has been placed upon it" (the block before the Court), and that he (Tarapipipi) had "been appointed by our King too look after the land over which he has influence, therefore I appear to stop the investigation": see (1869) 2 Waikato MB 253-254. Rogan responded that this was a political matter for the government, and that the case had to proceed: (1869) 2 Waikato MB 254 (26 February 1869):

The Court stated – that it had nothing to do with this protest – it had been taken down and would be laid before the Government. That Notice had been sent all over the Island that the land would be investigated, that the Court had its own duties to perform consequently the investigation would go on notwithstanding the protest.

Many of those present thereupon left the Court: "Most of the Ngatipaoa – Ngati Tamatera and Hauhau natives left the Court on the invitation of Tarapipipi Te Aukati". The case then went on without them, Rogan giving a judgment in favour of Ngati Haua (there was a subsequent rehearing of Te Aroha where Rogan's decision was reversed by Chief Fenton and Judge Maning).

¹⁸⁴⁴ In the Rangiwaia case (1893). Here Keepa strongly objected to the case being heard (it was his policy at that time to ensure that lands in the upper Whanganui remained uninvestigated and continued to be administered by Maori customary law. The Court again took the position that it had a duty to hear the case ([t]he Court said that it saw no reason for dismissing the application of Nika Waiata and others, and ordered the case to be proceeded with, in accordance with the law": (1893) Judge Ward MB 23. Keepa and all his supporters then walked out of the Court, as they had threatened they would do, and the case went ahead. Following the decision a number of parties, Keepa included, sought a rehearing, but this was refused: Keepa and his supporters "had full opportunity of laying their claims before the Court, and they refused to take advantage of it"; that they have now repented of it is not a sufficient reason for allowing them a further opportunity by granting them a rehearing": see *Whanganui Herald* (Vol XXVII, 24 October 1893, at 2; Boast, *Native Land Court*, vol 2, 786.

¹⁸⁴⁵ In the Maraeroa case: see (1886) 5 Taupo MB 81. The chief in question was Taonui Hikaka. On this incident see Waitangi Tribunal, *Pouakani Report*, (Wai 33, 1993) at 149.

¹⁸⁴⁶ (1872) 1 Otaki MB 8.

As will be seen, many persons recalled Keepa and his armed supporters patrolling the streets of Foxton in military uniforms during the Horowhenua case and it is important to set Keepa's actions in the context of his remarks here: that he did not want the case to proceed at all. Keepa tended to dislike the Native Land Court on principle, and in his later years he continued to be involved in alternative approaches to the Court, via the "Kemp's Trust" programme he set up in the 1880s, or his later plan to have land in the upper Whanganui remain on Maori customary title. Presumably if the Court did not sit, then there could be a negotiation between Ngati Raukawa and the counterclaimants, and there are many reasons for thinking that one of Keepa's aspirations was to negotiate a settlement with Ngati Raukawa - but from a position of strength and Muaupoko and Ngati Apa assertiveness. Having failed to stop the cases from proceeding, he perhaps then fell back on his strategy of a display of military force (this will be discussed further when I come to the Horowhenua decision).

In any event, other counterclaimant leaders, in particular Hoani Meihana and Te Peeti Te Aweawe of Rangitane disassociated themselves from Keepa's remarks. Rangitane seem to have stood somewhat to one side of Keepa and Hunia. Te Peeti Te Aweawe said that he was not interested in an adjournment and said he wanted "to contend with the Raukawa".¹⁸⁴⁷ Moreover "there are no Rangitane but us here, Keepa has all his Tribe with him",¹⁸⁴⁸ Clear contemporary testimony that Keepa had many of his supporters with him (and also testimony that Peeti Te Aweawe did not seem to like this much, or at least that he saw himself as unfavourably circumstanced compared to Keepa. Ngati Raukawa, for their part, insisted that the case should proceed.¹⁸⁴⁹ Hari Wirikaki, mindful of Keepa's recent actions, said that Ngati Raukawa "did not take the same course as Kemp when he built a pa and burnt the Maori houses at the Horowhenua".¹⁸⁵⁰ This was the reason why Ngati Raukawa had decided to bring the case before the Court. Ngati Raukawa wanted the case to be heard; their witnesses were present and were ready to proceed. In its *Horowhenua Report* (2017) the Waitangi Tribunal has commented that "any tribe which refused to participate in it [the Court] did so at the risk of losing all legal rights in their lands"¹⁸⁵¹ and this is certainly the case: once a hearing had been gazetted and was being proceeded with, not participating was risky if attempts to convince the Court to adjourn the proceedings had failed. In the case of Horowhenua, however, Ngati Raukawa wanted the case to proceed, and not all of the counterclaimant groups were averse to that. Ngati Raukawa wanted the case to proceed because they were tired of all the tensions and disputation and were hopeful that the Court would be able to devise an authoritative and fair solution. Ngati Raukawa did not refuse to participate, they actively wanted to participate, and pinned their hopes on getting a fair outcome in the Court.

The Court refused to allow any further adjournments and the case began. As was standard practice, the claimants (Ngati Raukawa) began by proving a prima facie case, the standard requirement. Two opening statements were given, one by Henare Te Herekau, and a much longer address by Ihakara Tukumarū. He commenced his address to the Court as follows, also resting the Ngati Raukawa claim on conquest.¹⁸⁵²

I belong to Ngatiraukawa Tribe. I live at Manawatu. We claim this land by right of conquest. I am able to state a portion of the grounds on which we claim the land. Te Rauparaha, Ngatiawa, [Ngatiwh?].¹⁸⁵³

¹⁸⁴⁷ 1872) 1 Otaki MB 9.

¹⁸⁴⁸ Ibid.

¹⁸⁴⁹ (1872) 1 Otaki MB 9. The speaker is Hari Wirikaki, the conductor.

¹⁸⁵⁰ Ibid.

¹⁸⁵¹ Waitangi Tribunal, *Horowhenua*, 173.

¹⁸⁵² (1872) 1 Otaki MB 11 (13 November 1872).

¹⁸⁵³ I cannot make out the name here in the MB text. Ihakara seems to listing the main migrations in chronological order.

After the arrival of these Tribes the Ngatiraukawa came. I arrived here in the year 1830 (that is Ngatiraukawa).

Ihakara went on to emphasise the role played by Ngati Raukawa in the earlier negotiations with the Crown:

It was in 1834 we fought with Ngatiawa.¹⁸⁵⁴ Bishop Hatfield [sic] arrived and we fought with Ngatiawa at Kuitanga. In 1840 was the Treaty of Waitangi. In 1843 the negotiation between Wakefield and the Ngati Raukawa about the land. During the negotiation at the Southern end of the Manawatu I never heard the voice of Rangitane, Muaupoko and Ngatiapa. I heard that the negotiations were controlled solely by Ngatiraukawa Chiefs. The Ngatiawa raised no objection to these negotiations. The names of the chiefs who were parties to the negotiations [were] Whatanui, [Whatitoa] and [].¹⁸⁵⁵ The names of the chiefs who objected to the sale were Ihakara Tukumarū [meaning himself, presumably], Paori Tukupurua. I returned to my lands on the other side of Manawatu.

That is, Te Ati Awa *did* object, and there was also a division of opinion within Ngati Raukawa. However, according to Ihakara, Rangitane, Muaupoko and Ngati Apa played no role in the negotiations at this time.

I never heard whether whether Rangitane, Muaupoko, or Ngatiapa were in favour of selling or not, they had nothing to do with it, either one way or the other. The negotiations were conducted by Raukawa. They were also [oppositional?] after Mr Wakefield, Mr Spain came to me. Mr Spain offered me £100 if I would part with the land. I told him I would not agree to his proposal. He went back and took his money with him.

Following these opening remarks the various counterclaimant groups were invited to announce themselves to the Court (“Objectors challenged and counterclaimants”). Hori Meihana of Rangitane at this point said that he appeared as a co-claimant with Ngati Raukawa: “I do not wish to oppose them they have been here many years”.¹⁸⁵⁶ On 16 November Keepa Te Rangihwinui said that he would conduct the counterclaims of the “five tribes” opposing the Ngati Raukawa claim: Muaupoko, Rangitane, Ngati Apa, Whanganui, and Ngati Kahungunu. But on Monday 18th November Hoani Te Meihana, who had earlier said that he did not wish to oppose the Ngati Raukawa claim, said that he was now going to appear to conduct the case for the counterclaimants (i.e. instead of Keepa). This came immediately after Mr Cash had sought leave to appear as counsel. Ngati Raukawa had objected to this (not surprisingly, as their own counsel, Buckley, had been objected to by some of the counterclaimants) and Cash’s application had been refused by the Court. A further application for an adjournment being refused, Hoani Meihana made an opening statement or submission commencing the counter-claimant case.

Table: Kuketauaki case 1872-3: evidence

Name	Date	MB reference	Affiliation	Nature of evidence
Te Keepa	12 November 1872	(1872) 1 Otaki MB 8.		Applies for an adjournment of the whole case <i>sine die</i> . Hoani Meihana and Te Peeti Te Aweawe of Rangitane do not support him, and Ngati Raukawa oppose the application. The application is refused and the case proceeds
Claimant opening of case				

¹⁸⁵⁴ Referring to the battle of Haowhenua.

¹⁸⁵⁵ Blank space in original document.

¹⁸⁵⁶ (1872) 1 Otaki MB 13.

(Hari Wirikaki, conductor)				
Henare Te Herekau	13 November 1872	(1872) 1 Otaki MB 11	Ngati Raukawa	Opening Statement No 1: Knows the boundaries of the block. The survey line is incorrect with respect to the boundary with Crown land to the south.
Ihakara Tukumarū	13 Nov 1872	(1872) 1 Otaki MB 11-12	Ngati Raukawa	Opening Statement No. 2. Lives at Manawatu. Claims by conquest. Describes various land purchases.
Counterclaim (“Five Tribes”) (Hoani Meihana conductor)				
Hoani Meihana (conductor)	13 Nov 1872	(1872) 1 Otaki MB 20-22; also published in <i>Te Waka Maori</i> 24 Dec 1872	Rangitane	Opens the case for the counterclaimants. They claim the land on the basis of ancestry. Ngati Raukawa settled peacefully in the area and there was no conquest.
Keepa Te Rangihiwini	19-22 Nov	(1872) 1 Otaki MB 23-66	Muaupoko, Rangitane, Ngati Apa, Whanganui, Ngati Kahungunu	Begins by giving his descent from Kupe. “All Kupe’s descendants who are in this part of the country are interested in this land.” Keepa gives very detailed and comprehensive evidence on traditional history. Describes the Ngati Toa migrations from basically a Whanganui perspective, mentioning the marriage to Te Pikinga, the killing of Te Rauparaha’s children by Muaupoko, the killing of Te Pehi’s children etc. “The defeats which I suffered were not fair it was all through treachery” (p 27). Describes fighting at Rotoaira in the Taupo region, Raukawa settlement, the “feast of the pumpkins” incident (35), Haowhenua (36), Cmr Spain’s investigations of the NZ Company Manawatu purchase (41) and other land dealings.
Kawana Hunia	23 and 25-27 Nov	(1872) 1 Otaki MB 66-99	Ngati Apa	Comprehensive historical evidence, essentially supportive of Keepa.
Hamuera Te Raikokiritia	27-28 Nov	(1872) 1 Otaki MB 99-104	Ngati Apa “and the other Four tribes”.	Describes Haowhenua battle. There was no conquest of the “five tribes” by Ngati Toa, Ngati Awa, or Ngati Raukawa.
Hakaraia Rangipouri	28 Nov	(1872) 1 Otaki MB 104-5	Affiliates to “the five tribes”	Agrees with the evidence of Keepa and Hunia. Ngati Raukawa never gained the mana over the land.
Peeti Te Aweawe	28-29 Nov	(1872) 1 Otaki MB 105-116	“the five tribes”	Says that Keepa’s evidence is correct and “some” of Hunia’s. Describes the Ngati Raukawa migrations and the three heke, with Te Whatanui on the first and the third. The heke were (i) Hekewhirinui, (ii) [Kareretahi], (iii) [Terekukakuka?]. Whatanui made peace on two separate occasions. Describes the “feast of the pumpkins” incident in detail, including Te Whatanui’s warning to Mahuri. Very detailed evidence about particular Ngati Raukawa hapu and their relationships with Rangitane and other groups. Discusses Ahuatūranga and other land purchases.

Kerei Te Panau	29 Nov	(1872) 1 Otaki MB 116-117	“five tribes”	Briefly discusses relations between Ngati Wehiwehi and Rangitane. (Hard to fathom the significance of this.)
Karaitiana Korouoterangi	29 Nov	(1872) 1 Otaki MB 117-119	Ngati Hamua and the “five tribes”	Gives an interpretation of events from a Ngati Kahungunu perspective. Gives a whakapapa showing descent from the ancestor Rangiaraira. His people were never defeated by Ngati Awa, Ngati Toa, or Ngati Raukawa. Ngati Raukawa did not gain a title by conquest.
Matiaha Mokai	29 Nov	(1872) 1 Otaki MB 119-120	Ngati Kahungunu and “the other tribes”	Focuses on conflict between Ngati Awa (led by Te Wharepouri) and Ngati Kahungunu; comments on Ngati Kahungunu withdrawal to Nukutaurua
Ihaia Whakamaru	30 Nov	(1872) 1 Otaki MB 120-122	Ngati Kahungunu	Discusses land sales in the Wairarapa. Objects to Ngati Raukawa claims, especially to land in the Tararuas.
Hoani Meihana	30 Nov	(1872) 1 Otaki MB 123-124	Rangitane	Explains that he decided to oppose the Ngati Raukawa claims because Ngati Raukawa refused to admit him. If Ngati Raukawa had allowed him to claim jointly he would not have opposed their claim.
Claimants				
Ihakara Tukumarū ¹⁸⁵⁷	2-3 Dec	(1872) 1 Otaki MB 124-135	Ngati Raukawa	Discusses the earlier land transactions, including Te Awahou and the Rangitikei-Manawatu purchase. Says that the Te Awahou sale was done openly” “there was no secret about it, it was done openly” (128) Gives a detailed description of the battle of Haowhenua and the events that led up to it. Explains that a number of the groups who supported Ngati Raukawa at Haowhenua had their own take; others did not. Although Muaupoko and Rangitane took part, they “had not sufficient mana to fight in separate bodies”. Dismisses Kemp’s claim that he (Kemp) came down to Haowhenua to save Ngati Raukawa
Matene Te Whiwhi	3-5 Dec	(1872) 1 Otaki MB 135-154	Ngati Toa, Ngati Awa and Ngati Raukawa	Lives at Otaki. Gives lengthy and comprehensive evidence on the Ngati Toa and Ngati Raukawa migrations and conquests. Describes the battle of Waiorua (p 140), also refers to the fighting in the South Island. Describes conflicts between Ngati Awa and Ngati Raukawa (i.e. Haowhenua and Kuititanga): “neither party can be said to have gained the victory” (147)
Henare Te Herekau	5-6 Dec	(1872) 1 Otaki MB 154-164	Ngati Raukawa	Describes conflicts in the Waikato with Ngati Maru, and conflicts in the Whanganui area. Detailed evidence on fighting between Ngati Raukawa and Ngati Apa/Muaupoko. Cross-examined at length by Hoani Meihana
Arapeni Tukuwhare	6 Dec	(1872) 1 Otaki MB 164-166	Ngati Whakatere	Presents material on the migrations and conflicts in the Manawatu from the standpoint of Ngati Whakatere. In cxx by Hoani Meihana rejects any suggestion that Rangitane held the

¹⁸⁵⁷ The witness is identified in the minutes as Ihakara Whakamaru, but it is also noted that the evidence is a continuation of the evidence given at the beginning of the proceedings as part of the prima facie case – i.e. Ihakara Tukumarū.

				mana of the land. “You were constantly crying for some land that I allowed you to have some” (166)
Huru Te Hiaro	6 Dec 1872	(1872) 1 Otaki MB 166-167	Rangitane	Supports the evidence of the Ngati Raukawa witnesses. Places emphasis on the peace makings between Ngati Raukawa and Rangitane. States that Ngati Raukawa mana derived partly from conquest and partly from gift (166).
Francis Robinson	6 Dec 1872	(1872) 1 Otaki MB 168-169	-	A settler living at Manawatu since 1843. Ngati Raukawa had possession of the mouth of the Manawatu. Ngeotiated with Ngati Raukawa chiefs for his various leases.
Thomas Cook	7 Dec 1872	(1872) 1 Otaki MB 169-172	-	Ngati Raukawa were the principal people living on the block; others were living there but in subjection to Ngati Raukawa. Mentions Commissioner Spain’s Court – none of the 5 tribes made any objection to the NZ Company’s transaction. Describes Te Rangihaeata’s opposition to Ngati Raukawa’s leasing land.
Wiremu Tamihana Te Neke	7 December 1872	(1872) 1 Otaki MB 172	Ngati Awa	Lives at Waikanae. Agrees with evidence given by Ihakara Tukumarū, Matene Te Whiwhi and Henare Te Herekau. Ngati Awa and Ngati Toa have mana from Kuketauaki to Tuwhakatupua.
Claimant case closes				
Survey evidence				

Hoani Meihana’s principal argument was that Ngati Raukawa did not conquer the land. Rather, the accent was placed on a peaceful and friendly settlement by Ngati Raukawa, a settlement which left the mana of the “five tribes” intact (but not, it must be assumed, without Ngati Raukawa acquiring rights by occupation.) He began his address by stating that the five tribes claimed the land by ancestry:¹⁸⁵⁸

I will state the claim of these Tribes to the land. They claim this land as having derived it from their ancestry. Their ancestors were the owners, it then descended to others from them to the people now present in Court. When our ancestors first came here they settled on this land, from Whanganui to the Kahungunu country.

Hoani then skips over all the events between Te Rauparaha’s first reconnaissance in 1819-20 and Te Whatanui’s arrival. He proceeds to argue that Ngati Raukawa, as such, did not conquer the area but peacefully settled in the region. In so doing Hoani Te Meihana recognises that the initiatives for peaceful settlement came from Te Whatanui, but he places much emphasis on discussions said to have taken place between Te Whatanui and the Ngati Ira chief Te Kekerungu. Perhaps in this way he was trying to devise an argument that was as conciliatory as possible to all parties:¹⁸⁵⁹

I know nothing of the Pahs they have taken or battles they have won at which I was defeated or through which my land was taken from me by Ngatiraukawa. All that I know is that this Tribe came here peaceably.

¹⁸⁵⁸ (1872) 1 Otaki MB 20 (18 November 1872).

¹⁸⁵⁹ (1872) 1 Otaki MB 20 (18 November 1872).

Hoani Te Meihana amplified his argument by claiming that when Te Whatanui made his first visit to the Kapiti region he entered into friendly relations with Kekerengu “a great Chief of these Tribes”. Te Whatanui, according to Hoani Te Meihana, then returned home and later returned south leading many Ngati Raukawa people with him. On his return “he found these Tribes in a state of peace according to friendly relations he had entered into with Kekerengu”. It has to be said that this does not seem to be very plausible, or at least that it is an unusual viewpoint. Te Kekerengu, son of Tamairangi of Ngati Ira, was a captive on Kapiti Island. Assuming it is the same person being referred to, Te Kekerengu seduced one of Te Rangihaeata’s wives and then fled to the South Island, where he was subsequently killed – although by whom is not clear (some sources claim he was killed by Ngai Tahu in retaliation for all the troubles he brought down on their heads). At any rate he is an unlikely figure for Te Whatanui to be having discussions with.

According to Hoani Te Meihana, although negotiations had already taken place between Te Whatanui and Kekerengu, there was a complication when the main body of Ngati Raukawa arrived. Some of the Ngati Raukawa hapu took a different route through the region than the main group led by Te Whatanui. (This is almost certainly correct, as a number of other accounts – especially those given by Ngati Kauwhata - say this too.) Those sections of Ngati Raukawa who travelled separately from Te Whatanui through the region started killing some of the local people. Te Whatanui then intervened to ensure that the peace agreement negotiated with Te Kekerengu remained undisturbed.¹⁸⁶⁰

Whatanui himself came along the coast. Some of his Hapus came a different way through the Country. They came upon some places where men and women were living. They were defenceless places. They killed them. Whatanui at this time was coming along the Coast. They [and others?¹⁸⁶¹] had gone across the Country. These people came on further and killed some others who were living there. When they arrived at upper Manawatu they found some places where people were living. They killed a few of them. The people living at these places were quite ignorant that any danger would happen to them. These people¹⁸⁶² joined Whatanui and went down the coast, to Waiwere, Ohau, Waikawa, and Kapiti. When the Ngatiapa and Rangitane

There is a full translation of Hoani Meihana’s statement printed in *Te Waka Maori* on 24 December 1872. He denied that Ngati Raukawa had ever fought against Rangitane, and rejected any suggestion that Ngati Raukawa had a claim by conquest. The land that Ngati Raukawa now occupied had, he said, been given to them by Muaupoko, Rangitane, and Ngati Apa.¹⁸⁶³

The fourth point which I shall notice has respect to the claims by conquest of Ngatiraukawa. I am altogether ignorant of their ever having fought against us (as they assert) in respect of this land now the subject of inquiry, Their chief, Whatanui, never fought against us, Their battles were fought on the Heretaunga side, which district they were ambitious of obtaining. But the Ngatikahungunu defeated them, destroyed their fortified places, and made prisoners of their women and children – they were thoroughly beaten there and forced to retreat to this coast. When they arrived here they treacherously slew (or murdered) a few persons who were living in isolated spots about the bends of the rivers, as has been shown to the Court by our witnesses. Three of our tribes then arose to take vengeance, (Muaupoko, Rangitane, and Ngatiapa), and they proceeded to Te Karekare, on the Manawatu, where they fell in with the Ngatiraukawa party who had committed the murders. On seeing the war-party great fear and dread came upon them lest they should be punished for their evil doings, and they straightaway liberated some women of whom they had made prisoners, and begged that peace might be made with them, Peace was

¹⁸⁶⁰ (1872) 1 Otaki MB 21-22 (18 November 1872).

¹⁸⁶¹ Text not quite legible here.

¹⁸⁶² Meaning the Ngati Raukawa groups who went inland, as is clear from the context.

¹⁸⁶³ “Hoani Meihana’s address to the Native Lands Court at Foxton”, *Waka Maori*, Vol 8, Issue 24, 24 December 1872.

therefore concluded at Kaekare, as the Court will see by the evidence before it. This was the reason they were allowed to remain here not only undisturbed but cherished and befriended by our people, and land apportioned to them, as the Court has been informed. Raumatangi was given by Tauweki [sic] to Te Whatanui; Tawhati of Muaupoko gave Poroutawhao to Ngatihuiua; Te Hiaro of Rangitane gave Tokomaru to Ngati Whakatare; Te Awewe of Rangitane gave Manawapou To Rangihewea, and Te Mahuri of Rangitane gave Taonui to the Whetu of Ngatiraukawa. In addition to this other lands were given to Ngatiraukawa at Oroua and Rangitikei at their own request, which lands are still occupied by some of their hapus.

This is quite different to the standard Ngati Toa and Ngati Raukawa narratives, by which Raumatangi, or rather Horowhenua was allocated to Te Whatanui by Te Rauparaha and Poroutawhao was allocated by Te Rangihaeata to Ngati Huiua, his own hapu within Ngati Raukawa.

The principal counterclaimant was of course Keepa, who began to give his evidence for the counterclaimants on 19 November. He testified that he lived in Whanganui and that he belonged to “Muaupoko, Rangitane, Ngatiapa, Whanganui and Ngatikahungunu”.¹⁸⁶⁴ He said that his ancestor’s name was Kupe, “the first man who came to New Zealand”, and gave a whakapapa showing his descent from Kupe.¹⁸⁶⁵ He added that “[a]ll Kupe’s descendants who are in this part of the Country are interested in this land”.¹⁸⁶⁶ Keepa’s evidence, including his cross-examination, is substantial, accounting for 44 pages of the minutes (19-22 November). He commences his historical narrative by stating that “[i]n the days of our ancestors there was no dispute between Ngatiraukawa and myself, the common enemy was the Waikatos”.¹⁸⁶⁷ Here Keepa is reaching back to the late 18th and early 19th century and to the participation of Whanganui groups on the side of Ngati Raukawa and Ngati Toa at Hingakaka; of course it was Waikato who were victorious on that occasion. He described the various migrations of the northern groups from the perspective of Muaupoko and Ngati Apa, paying a great deal of attention to the expedition led by Patuone and other northern chiefs in which Te Rauparaha participated. He was careful to give due weight to Te Pikinga’s role in the story: Pikinga “was taken prisoner in the first coming of the war party, she was a Ngatiapa, this woman was taken up to Kawhia and came down with them when Rauparaha came the second time.”¹⁸⁶⁸ He also emphasised that Ngati Apa rescued Ngati Toa and Te Rauparaha from Whanganui during the main heke. After being “fetched” by Ngati Apa Te Rauparaha and his people were at Rangitikei for some months before moving south. Keepa’s evidence was structured around the friendship between Ngati Apa and Ngati Toa and retention of mana by the former.

He claimed that Ngati Raukawa left their homelands in the Waikato because they had been defeated (in fact he was most insistent on this):¹⁸⁶⁹

In those days Ngati Maru were the enemies of Raukawa. Ngatitua Ngatitama were at this time at Kapiti; Ngatimaru attacked Ngata Raukawa and killed [Wata] Kakara, the Raukawa then left and came down this way. I wish it understood that it was on account of Raukawa being defeated that they came down here. They did not come down of their own accord.

¹⁸⁶⁴ (1872) 1 Otaki MB 22 (19 November 1872).

¹⁸⁶⁵ (1872) 1 Otaki MB 23 (19 November 1872).

¹⁸⁶⁶ Ibid.

¹⁸⁶⁷ (1872) 1 Otaki MB 23 (19 November 1872).

¹⁸⁶⁸ (1872) 1 Otaki MB 25

¹⁸⁶⁹ (1872) 1 Otaki MB 29. This is a very important point, and one that Ngati Raukawa do not accept. In the Maungatautari case in 1884, as the Native Land Court put it, Ngati Raukawa were no less insistent “that Ngatiraukawa went in peace to Kapiti”: (1884) 13 Waikato MB 68. See discussion of Maungatautari cases, below.

In cross-examination he denied that Ngati Raukawa had any rights within the Horowhenua block:¹⁸⁷⁰

I object to Ngatiraukawa claim over land shown on the map. I swear that Ngatiraukawa did not take any land. Ngatiraukawa have no part of this land shown on the map, they are merely squatters. We did not consent to the occupation by Ngatiraukawa of the land shown on the map. We have been driving off the Ngatiraukawa continually, and by doing so we have been able to bring it before the courts. According to Maori custom 50 years occupancy gives no mana over the land. I don't know where you get the fifty years from – if any of my tribe were to take land the original possessors would drive them off, if they were strong enough – although such lands as refer to were taken before the establishment of government those who took the land could be driven off now – I know the Ngatiraukawa obtained Crown grants for portions of the land on which they were living, I am living on a portion of it now, and we have always been telling Ngati Raukawa to go away – I have driven Ngatiraukawa off and I am doing it now.

The 1840 rule, it seems fair to say, did not have much significance for Keepa.

Kawana Hunia gave evidence next, to similar effect, followed by Hamuera Raikokiritia of Ngati Apa. Like Keepa and Kawana Hunia, he denied emphatically that Ngati Raukawa had ever conquered the Horowhenua district, and he stressed peacemaking and accommodation instead:¹⁸⁷¹

I live at Rangitikei and belong to Ngatiapa and the other four Tribes. I know the land shown on the plan. Ihakara states he acquired by conquest. He came down in Whatanui's party. Whatanui and Ngatiraukawa did not find me here too lazy to look after myself. He found all the five Tribes at enmity with Rauparaha but when he came here he made peace. He induced the people in this place to live in peace and they continued to do so. I think it is not right, that Ihakara should not say he conquered. If he had found the people unprepared it might have been different. We Ngatiapa are a great Tribe. We always consent to receive good advice when it is given to us. The Court has heard what we have done. I deny that this land was taken by conquest. Through the stories invented by Rauparaha and Ihakara they come forward and make these statements. Peace was not fully made when Ihakara came afterwards. A murder was committed by them of which evidence has already been given. All the people in this block and up to Whanganui agreed to live in Peace from Wellington to Whanganui, all the Tribes in the District agreed to live in peace together. When Ihakara found we were living in a state of Peace he thought he would revenge some of his former defeats. He went to Whanganui to take revenge for his defeat at Ruamiero. He did not put down the Whanganui at all. He went and came back and they had as much power as before he went.

Relationships between Whatanui and Ngati Apa were friendly:

Whatanui was always on friendly terms with our people and requested them to assist him in taking revenge for his losses, and he went to Hawke's Bay to get payment for a defeat he suffered there, my brothers were his companions. After he settled for his losses he came back here again. On his return from his expeditions he lived here quietly with us. Ihakara did not urge to fight when we offered to do so. If he had fought against us and had conquered us then he could of said that he had obtained this land by conquest. We did not fight it out to the end with Ngatiawa, Ngatitooa, and Ngatiraukawa because Watanui interposed to make peace.

The terminology that Hamuera uses here (“making peace” – I am unsure what the Maori equivalent would be, and it always important to remember that the record in the MBs is a translation, the reliability of which is uncertain) is not neutral. “Making peace” is not the same thing as defeating, or conquering,

¹⁸⁷⁰ (1872) 1 Otaki MB 55. This is evidence in cross-examination. As was standard practice, the questions are not recorded and instead the answers are written out in the MB as a continuous narrative.

¹⁸⁷¹ (1872) 1 Otaki MB 99-101. I have inserted some full stops and commas here to (I hope) clarify the sense.

and then magnanimously deciding to spare the survivors. Undeclared contestants make peace, victors dictate the terms, whether merciful or otherwise, to the conquered.

Hamuera continued:

Three out of the five tribes, who are not living on the block, deny that our title has ever been extinguished over the block.¹⁸⁷² I will now speak about this after Wakefield came here in 1843.

After the battle of Haowhenua Ngatiraukawa occupied¹⁸⁷³ the land between Horowhenua and Rangitikei. They did not come to take land, they came because they were hungry after the fight at Haowhenua. They came to where they could grow food, that is why they went to live among the Ngatiapa and the Rangitane. There was one hapu of them who were provided with a small piece of land by [my] father. Some of the hapu of Ngatiraukawa who were at the Rangitikei on their way to Taupo. Those who were provided with land by my father were Ngatikauwhata.¹⁸⁷⁴ Those pieces that were given to those two hapus were included in the sale of the Rangitikei Block.

Last to speak for the counterclaimants was Hoani Meihana, who gave evidence (rather than submissions) at the end of the claimant case on 30 November. He said that when Ngati Kahungunu sold land on the other side of the Tararuas they shared some of the purchase money with rest of the five tribes. For example when Te Hapuku sold land at Heretaunga (referring presumably to the Hawke's Bay deeds negotiated by McLean in 1851) "the proceeds were shared amongst the five tribes".¹⁸⁷⁵ Admittedly Ngati Raukawa got some of the money as well, but that was because of "the generosity of these Tribes"; Ngati Raukawa "were allowed to have a share of the money on account of their living quietly as friends".¹⁸⁷⁶ In cross-examination by Ngati Raukawa's conductor, Hoani said that he had decided to support the counterclaimants because Ngati Raukawa had refused to admit him as a co-owner: "Ngatiraukawa have cast me off; they won't admit me so I oppose them". If Ngati Raukawa had allowed a joint Rangitane-Ngati Raukawa claim "I would not have come forward to oppose them".¹⁸⁷⁷ He did not assert that Ngati Raukawa had no rights in the region: "I admit the claims of certain of the Raukawas [they?] have claims over the land there is no reason why I should not do so".

The claimant case began with the evidence of Ihakara Tukumarū, who spoke first about the Tuwhakapū boundaries and the Himatangi case of 1868. He mentioned the Te Awahou sale, which of course related to land north of the Manawatu River, a sale in which he had himself been instrumental: "there was no secret about it, it was done openly".¹⁸⁷⁸ He also gave evidence about Haowhenua and Kuititanga (which I have discussed in an earlier chapter). Evidence was also given on behalf of the claimants by Matene Te Whiwhi, who said he belonged to "the Ngatitōa, Ngatiawa and

¹⁸⁷² An interesting remark in itself. Who does he mean? Presumably he is including his own people, Ngati Apa, as one of the groups whose title had not been extinguished.

¹⁸⁷³ Again, note "occupied", i.e. not "conquered". It would be interesting to know what Maori term Hamuera used here.

¹⁸⁷⁴ In the text is written something like "Ngatikiwhata" followed by a blank space. In the margin has been written "Ngatikauwhata". This, by the way, is not what Ngati Kauwhata say! Tapa Te Whata stated that Ngatikauwhata came south with the main Ngati Raukawa migration and diverged from it at Rangitikei towards Manawatu. See chapter on the Aorangi block, below.

¹⁸⁷⁵ (1872) 1 Otaki MB 123 (30 November 1872).

¹⁸⁷⁶ Ibid.

¹⁸⁷⁷ (1872) 1 Otaki MB 126 (2 December 1872).

¹⁸⁷⁸ (1872) 1 Otaki MB 128.

Ngatiraukawa”.¹⁸⁷⁹ Matene was insistent that he had never heard of any formal peacemaking; rather Muaupoko were spared by the “kindness” of Te Whatanui.¹⁸⁸⁰

I do not know of any peacemaking between Whatanui at the time of the killing of these people. It was at a much later period when I heard of Whatanui’s kindness towards them, not his peacemaking. I swear most solemnly that I know nothing of the peacemaking between Whatanui and Muaupoko. All I know is that it was the kindness of Whatanui not a peacemaking. As for what Piripi Rangiatuhua said in Wellington respecting peacemaking he used a wrong word, it was his own composition. I never heard of any peacemaking between Rangihaeata and Muaupoko. I don’t wish you to think I’m concealing anything but I never heard it. No one ever heard of the sticks being broken between Rangihaeata and Muaupoko. I only heard of a peacemaking from Karanama. Rangihaeata was a near relative of mine as was Rauparaha. How is it I never heard of it from them.

Henare Te Herekau also gave detailed evidence, covering events in the Waikato around the time of Ngati Raukawa’s departure and also events in the Manawatu, focusing in particular on Ngati Whakaterere. (His evidence has also been discussed in an earlier chapter.) Araperi Tukuwhare of Ngati Whakaterere spoke about Ngati Whakaterere’s migration to the Manawatu. His response to Hoani Te Meihana’s cross-examination was dismissive, even brutal:¹⁸⁸¹

I heard what Ihakara and Matini [sic] said. Their evidence is correct. I have heard the objections raised to this land by the original proprietors but what do I care for them. I don’t know anything about your attempting to drive us off the land. I don’t heed anything that was about driving us off the land in Wakefield’s time because I had possession of the land myself. All the land within these boundaries is mine. Our mana and conquest extend from Wangaehu to Tawhitikuri. You were constantly crying for some land that I allowed you some. I have ceased to attend to your cryings.

Although the counterclaims of the “five tribes” were conducted by Hoani Meihana of Rangitane, Huru Te Hiaro, also of Rangitane, gave evidence supporting Ngati Raukawa. He said that Ngati Raukawa rights to the land stemmed from conquest and gift, and that he had admitted Ngati Whakaterere people into a block of land in the Tararuas he claimed in the Native Land Court:¹⁸⁸²

I am a Rangitane. I know this land now before the Court. I am connected with the five tribes. I claim an interest in this land. These killings described by the witnesses for Ngatiraukawa did take place. After the killing was the peacemaking. After the peacemaking the people in this District made friends with our parents. During the time they were friends they obtained part of the land by conquest, and part of it my parents gave them. They obtained part by conquest and part by gift. There is also land the other side of Tararua which I took before the Court at Masterton and admitted some Ngatiwhakaterere and judgment [was] in their favour. The part given to the Ngati Whakaterere by our parents is marked out on the plan as the Ngati Whakaterere claim. In the time of our ancestors were one tribe with the Ngati Kahungunu but now we are separate and I don’t admit their claims this side of Tararua.

At the end of the claimant case two local settlers gave evidence, Francis Robinson and Thomas Cook. Both lived in the Manawatu and had held leases from Ngati Raukawa to land on the northern side of the Manawatu at Te Awahou. Robinson said that he had arrived in the region in 1843 and had been told that Ngati Raukawa had possession of the land to the north of the Manawatu River, and had power to lease the land.¹⁸⁸³ Robinson went to the Manawatu with Colonel Wakefield, who apparently told him that if he could make arrangements to lease land with the local people, he (Wakefield) would

¹⁸⁷⁹ (1873) 1 Otaki MB 135.

¹⁸⁸⁰ (1873) 1 Otaki MB 149.

¹⁸⁸¹ (1873) 1 Otaki MB 166 (6 Dember 1872).

¹⁸⁸² (1872) 1 Otaki MB 166-167.

¹⁸⁸³ (1872) 1 Otaki MB 168.

“confirm” it.¹⁸⁸⁴ He negotiated with Ngati Raukawa for two separate leases, the first in 1843 and the second in 1845, both relating to land north of the river. In cross-examination by Hoani Meihana he said that he never anything of the “five tribes” on his arrival in 1843. He had heard of a Ngati Apa presence on the land north of the Manawatu: “I heard of some huts they burnt at Rangitikei but not on this land here”.¹⁸⁸⁵

Thomas Cook was a settler living in Foxton. He said that around 1843 “[t]he Ngatiraukawa were the principal people on the block”.¹⁸⁸⁶ Others lived there too, but they “were under subjection to Ngatiraukawa”. He said that Colonel Wakefield made his purchase just before his (Cook’s) arrival. He recollected Commissioner Spain’s inquiry and said that as far as he knew none of the “five tribes” played any role in the proceedings. He said, however, that when he took a second lease in 1864 that was from both Ngati Apa and Ngati Raukawa and that Robinson took his lease from “the same parties”.¹⁸⁸⁷

At the end of November, while the Native Land Court sittings were still going on in Foxton, Governor Bowen, soon to be on his way to Melbourne to take up his new position as Governor of Victoria, paid a visit to the town on his way back to Wellington from the Manawatu. It seems to have been something of an occasion, and the Court adjourned early for the festivities. “Although the Native Land Court was holding its usual sittings, the moment it became known that it became known that the Governor was about to enter the town an application was made by both parties for an adjournment till next day, and the Maoris proceeded *en masse* to greet his Excellency.”¹⁸⁸⁸ The whole of the Pakeha and Maori communities were present, and it seems to have been an enjoyable occasion for all concerned, but the political overtones were all too apparent:¹⁸⁸⁹

On the arrival of the Governor on the ground he was greeted with three hearty cheers from Major Kemp’s (Te Kepa’s) natives, who were there waiting. After a short time the Ngatiraukawa were seen approaching from their camp, all dressed in the native style. When they came up they began a war dance, which was followed up by the Ngatiapas and the other tribes under Major Kemp.

This was followed up by a number of speeches to the governor from either side, some of them rather politicised, Keepa’s especially:

Salutations to you, O Governor! We are very glad to see you here today. When we went to Wellington to conduct Mete Kingi to the Parliament, we saw you there, and you told us you had heard about the battle of Moutoa, and about the famous places, Hikurangi and Whakari (White Island). You told us to extinguish the fires of White Island, and let the people go in peace to Hikurangi, meaning that you desired evil to be put down on the East Coast. Farewell o Governor! You know that we have borne arms in your service. The cause of the troubles that have existed in this island have come from this end of the island.¹⁸⁹⁰ I am also from this end of the island, but I have not been the cause of trouble to other tribes. I have not wandered about slaughtering other tribes, as has been done by other chiefs, but when you ordered me to take up arms for the Queen and the law, I obeyed you cheerfully.

1884 (1872) 1 Otaki MB 168.

1885 (1872) 1 Otaki MB 169.

1886 (1872) 1 Otaki MB 170.

1887 (1872) 1 Otaki MB 170.

1888 *Wellington Independent*, Vol XXVII, Issue 3668, 30 November 1872, p 3.

1889 *Ibid.*

1890 This is probably aimed at Ngati Raukawa, perhaps suggesting that Raukawa bore some responsibility for the establishment of the Kingitanga.

Kemp took this opportunity to accuse Ngati Raukawa of planning to sell the land in Horowhenua and returning to Maungatautari (indeed Tawhiao *had* invited Ngati Raukawa to return just a few months prior to this, the invitation causing a serious debate within the iwi¹⁸⁹¹):

Here is another point. I believe that the Ngatiraukawa intend if they get this land to sell it and retire to Maungatautari. You will see whether they will not do this. If it turns out as I say then you will know my prophecy is true. You now see that I wear your colours, but the Ngatiraukawa do not wear your colours. You have doubtless heard evil reports about me, but they have grown out of my proceedings about my land. It is your doing that fighting has ceased and you have honoured Te Pokiha Taranui, Mokena Kohere, and myself by presenting us with the swords which her Majesty sent out for us.

Keepa's speech is a reminder of how significant the wider political context will have been to contemporaries. He is here reminding the governor of his military assistance to the Crown: "you now see that I wear your colours, but the Ngatiraukawa do not wear your colours". The newspaper states also that Kemp was present "with his natives", whoever they may have been. It has to be said that Keepa was in no position to point the finger at Ngati Raukawa about land selling. Whatever Keepa's strategy was, it was certainly not one of trying to prevent land from being sold to the Crown – it is more likely that that he wanted to ensure that if any land in the Horowhenua region was sold, that this would be controlled by Muaupoko. Keepa had himself assisted the government with land purchasing around Whanganui, and in 1871 McLean had appointed him as a land purchase commissioner for the purchase of the Pare Karetu block of 65,000 acres, located between the Rangitikei and Turakina rivers.¹⁸⁹² This block had been offered to the government by Warena Hunia on behalf of Ngati Apa.¹⁸⁹³

Other speeches were just as pointed. Hohepa Te Raro, of Ngati Kahungunu, courteously farewelled the Governor and then added that he "should like also to bid farewell to Ngatiraukawa": "[t]ake them with you, but leave me my land". In reply Tamihana Te Rauparaha said he was "glad" to hear Keepa speaking in such a straightforward way, but added that "there is nothing in what he says about our going to Maungatautari". "We shall," he said, "remain here by the graves of our fathers." Karanama Te Kapukaiotu spoke about Ngati Raukawa's commitment to peace, and more besides:

I am preaching peace; I have forsaken the devil and all his works, and have embraced Christianity. When Governor Fitzroy came to see us he told us to send our children to school, so that they might be well brought up. There was trouble during Governor Grey's administration. Governor Grey told Major Kemp (Te Kepa) to go out and fight against the insurgent tribes. The Governor asked me to do the same, but I said – Let others fight. Kemp speaks about his land claim, but you are not a Judge of the Native Land Court. The Judges are here present, so are the Assessors, and the lawyers, who will try the claim of Kemp and myself. Our meeting today is for the purpose of bidding you farewell. The goodwill of all the tribes in this island will accompany you wherever you go. If a sword-bearing Governor shall come after you he will not hurt me; I am not an evil doer. As for what Kemp says about serving you, he does it because he is paid for it; you have given him a sword and a uniform, but I am not in your pay. I now bid you farewell, and I hope that the next Governor will be as good as you are.

Judgment in the Kukatuaaki case was given by the Court at Foxton on 4 March 1873. The judgment was very brief, and completely fails to analyse the evidence given to the Court in any depth. The positions of the parties are simply stated in the most general terms: "the Ngatiraukawa Tribe asserting an exclusive ownership founded on conquest and on continuous occupation from a period anterior to the Treaty of Waitangi", and the "Five Tribes" who "contend that Ngatiraukawa had acquired

¹⁸⁹¹ See ch 9, above.

¹⁸⁹² McLean to Kemp, 4 December 1871, 1873 AJHR G-8, 35. The document states that Keepa was to be paid £1 per day for his services, and that Woon would assist him with the negotiations.

¹⁸⁹³ Fitzherbert (Superintendent, Wellington Province) to McLean, 22 Nov 1871, 1873 AJHR G-8, 35.

no rights of ownership over the said block and that the land belongs to them as inherited from their ancestors and is still retained in their own possession”. From this the Court moves directly to its conclusion.¹⁸⁹⁴

That sections of the Ngatiraukawa Tribe have acquired rights over the said block which according to Maori custom and usage constitute them owners thereof (with certain exceptions), together with Ngatitua and Ngatiawa whose joint interest therein is admitted by the claimants.

Ngati Raukawa were thus successful in their claim to Manawatu-Kukutauaki. The Court, however, admitted only “sections” of Raukawa to the title, along with Ngati Toa and Ngati Awa (i.e. Te Ati Awa) “whose joint interest therein is admitted” into the title. The Court did not, however, accept that Raukawa’s rights derived from conquest but rather from “occupation with the acquiescence of the original owners”. The Court continues (emphases are added).¹⁸⁹⁵

That such rights were *not acquired by conquest but by occupation with the acquiescence of the original owners*.

That such rights had been completely established in the year 1840 at which date sections of Ngatiraukawa were in undisputed possession of the said Block of land, excepting only two portions thereof, viz

1. A portion of the block, *the boundaries whereof are not yet defined*, situate at Horowhenua claimed by the Muaupoko tribe of which they appear to have retained possession from the time of their ancestors and which they continue to occupy.

2. A portion of the Block at Tuwhakatupua on the Manawatu River (boundaries not defined) claimed by a section of the Rangitane Tribe, whose interest therein is admitted by the claimants.

Ngati Raukawa thus had “possession”, along with Ngati Toa and Ngati Awa. The Court here applies the “1840 rule” (“that such rights had been completely established in the year 1840”) but does not describe or analyse the relationships between the claimants and the counterclaimants as at 1840 – or at any other time, come to that – in any detail at all.¹⁸⁹⁶ As can be seen, Judges Rogan and Smith found that the Raukawa title was founded not on an independent Raukawa conquest of the region, but rather on the basis of occupation. No explanation was given, however, as to why the claim on the foundation of conquest was rejected by the Court. The brevity of the judgment is exceptionally frustrating for the historian. There is no analysis, for example, of the conflicting testimony as to whether or not there was a peacemaking. The notion of “occupation with the acquiescence of the original owners” is a little difficult to fathom. Why would Muaupoko simply “acquiesce” in the occupation of their lands by Ngati Raukawa in the absence of a conquest, or at least of a loss of control of some kind?

The poor quality of the judgment may simply be a reflection on the judges of the Court and the vagaries of the Native Land Court process. In fact Judge Rogan was quite capable of writing a reasonably detailed and well-reasoned judgment when he wanted to. He had done so in the hearing of the Te Aroha block block in 1869, where he awarded the block to Ngati Haua (admittedly his findings

¹⁸⁹⁴ (1873) 2 Otaki MB 177; Boast, *Native Land Court*, vol 1, 700.

¹⁸⁹⁵ (1873) 1 Otaki MB 178; Boast, *Native Land Court*, vol 1, 700-701.

¹⁸⁹⁶ Ironically it is possible that had the so-called “1840 rule” been applied with any strictness, this could have been favourable to Ngati Raukawa. It seems clear that there had been a shift in political power in favour of Ngati Apa/Muaupoko *after* 1840 – or at least that is the impression given in contemporary documentation such as the newspaper articles cited in the text.

were reversed when the block was reheard).¹⁸⁹⁷ Perhaps the judges felt that the least that was said, the better. The rejection of a claim by conquest meant that Raukawa hapu were legally entitled to such areas as they actually occupied, but of course the same was true for Muaupoko (and less importantly in the case of this block), Rangitane. The judgment was very incomplete, as it did not attempt to define the Muaupoko interest “at Horowhenua”.

It is unsurprising that Rogan did not accept a claim to the block by a general conquest of the whole region by Ngati Raukawa, as this would have run counter to the Native Land Court’s own findings in the Himatangi case (where Rogan was one of the presiding judges). To accept a claim by conquest now would be tantamount to saying that both the Himatangi and the Rangitikei-Manawatu cases were wrongly decided. There had either been a general conquest, or there had not been. To say that the land south of the Manawatu had been conquered but that only certain hapu had rights north of the river would have made no sense. In 1872 the fall-out from the Rangitikei-Manawatu case and the Crown purchase of the land north of the Rangitikei still had not been resolved.

Following the reading of the decision on 4 March – which was received in “perfect silence”¹⁸⁹⁸ - there was an interchange between counsel for Ngati Raukawa (Buckley) and for the “five tribes” (Cash). Hori Meihana asked his lawyer to make an application on behalf of the “five tribes”, and Cash asked the Court to grant an adjournment so that his clients could consider the effect of the decision. The adjournment application was repeated the following morning, which Buckley only reluctantly agreed to (“the Ngatiraukawa have exercised great forbearance hitherto”). Cash then mentioned some letter that Te Keepa had just received. The Court granted an adjournment for a few days, and on the following Monday Cash came to the point: he wished to inform the Court that the “five tribes” were going to seek a rehearing of Kuketauaki. Buckley on behalf of Ngati Raukawa asked for an order in compliance with the judgment, and also asked the Court to clearly define the boundaries of the two excluded sections (i.e. Horowhenua and Tuwhakatupua). Obviously his clients would want to know this, as the effect of the judgment could not be understood without knowing the size of the two excluded areas:¹⁸⁹⁹

Mr Cash [counsel for the ‘five tribes’] said that after a careful consideration his clients have come to the conclusion to appeal to the Governor in Council for a Re-hearing of the case.

Mr Buckley [counsel for Ngati Raukawa] applied for an Order in compliance with the judgment – and asked for the Court to proceed and define the boundaries of the Blocks referred to in the judgment as Numbers 1 [Horowhenua] and 2 [Tuwhakatupua] excepted from the Ngatiraukawa as owners – and gives notice to the other side that he will do so.

Mr Cash said that he could not see on what grounds Mr Buckley made his application – as the desire of his clients is to reconsider the proceedings up to this present – and considers that the intimation he has made on behalf of his clients with reference to their intention to apply for a rehearing is sufficient ground for the Court to stay proceedings.

Mr Buckley said that he would urge the Court to proceed and make an order – which is necessary before the Court can be affected by the intimation that an order for the issue of a Certificate of Title shall be made before an application for rehearing can be entertained.

¹⁸⁹⁷ Rogan’s judgment is at (1869) 2 Waikato MB 300-304; Boast, *Native Land Court* vol 1 549-550. The rehearing was presided over by Judges Maning and Monro: for the rehearing judgment see Fenton, *Important Judgments*, 109-133; (1871) Hauraki MB 249, 257; Boast, *Native Land Court*, vol 1, 657-682.

¹⁸⁹⁸ “Native Land Court”, *Evening Post*, 10 March 1873, p 2.

¹⁸⁹⁹ (1873) 1 Otaki MB 181-2 (10 March 1873).

Ngati Raukawa were thus only partially successful. They did acquire a title to Manawatu-Kukutauaki, which was perhaps the main thing. But the failure of their claim to assert a title by conquest left them vulnerable to assertions of title by occupation by other groups on the grounds of occupation. The Court stated specifically that the undefined portion “situate at Horowhenua” was claimed by Muaupoko and “*of which they appear to have retained possession*”.

13.6 “The sword of the law”: the Horowhenua Block Investigation, 1873

On 13 March 1873 Buckley, Ngati Raukawa’s barrister, made an application before the Court asking when it would be ready to proceed with the investigation of the Horowhenua block.¹⁹⁰⁰ He made a similar request the following day, and asked the Court to proceed with the investigation of title to Horowhenua on the 25th March.¹⁹⁰¹ It was Ngati Raukawa, then, who – through their counsel - pressed the Court to proceed to deal with the Horowhenua block. The case began on 25th of March, which is significant in itself, as this was just a few weeks after judgment had been given in Kukutauaki. The Kukutauaki and Horowhenua cases were not really separate cases at all. They were the first and second instalments of a single case in reality.

As far as Ngati Raukawa were concerned, the Horowhenua block included the old reserve area set aside by Te Whatanui and Taueki, which Ngati Raukawa did not contest and intended to honour. Kipa Te Anaru recalled in 1896 that Muaupoko applied for the whole block, whereas Ngati Raukawa did not: “they stuck to the old lines of Whatanui and Tauwheki”.¹⁹⁰² Asked whether Ngati Raukawa recognised “the gift of Whatanui, and that the Muaupoko had a right to that portion of the block”, Kipa Te Whatanui replied: “Yes; they wished to respect the arrangement made by Te Whatanui”.¹⁹⁰³ On the same occasion Kipa Te Whatanui explained how the boundaries of the Horowhenua block were fixed.¹⁹⁰⁴

47. How came the Horowhenua Block to be applied for in one compact block? – There was another block applied for about the same time called the Manawatu-Kukutauaki Block.

48. How was this piece excepted from that larger claim? – The Northern boundary of Horowhenua is shown in the plan, and was laid down in the plan by Whatanui, separating Ngatihua,¹⁹⁰⁵ a hapu of Ngatiraukawa, from Te Whatanui and his Muaupoko; the southern portion, according to their application, was also laid off by Te Whatanui. The whole of that block he claimed for himself and his Muaupoko; these boundaries had been laid off before the Court.

49. Was the survey sent in when the application was made? – No; it was not surveyed, but it was laid off by them.

50. According to well-known natural boundaries? – Yes.

¹⁹⁰⁰ (1873) 1 Otaki MB 195 (13 March 1873): “Mr Buckley said he would like to be informed when the Court would probably be at liberty to proceed with the investigation of Title to the block of this name which[Horowhenua] which was excepted from the land in respect of which judgment was given yesterday.” (No response is recorded).

¹⁹⁰¹ (1873) 1 Otaki MB 197 (14 March 1873): “Mr Buckley renewed his application of yesterday, viz., to ascertain when the Court would be prepared to take the land excepted by the judgment already delivered – and asked that the investigation or the application in respect of the Block excepted (Horowhenua) might entertained on Tuesday (week) – the 25th instant.”

¹⁹⁰² 1896 AJLC 13 (Evidence of Kipa Te Whatanui).

¹⁹⁰³ Ibid.

¹⁹⁰⁴ 1896 AJLC 13 (Evidence of Kipa Te Whatanui).

¹⁹⁰⁵ Spelled ‘Ngatihunia’ in the document, an obvious misprint.

Before the case proper began on 11 March Ngati Raukawa speakers carefully explained the boundaries of the existing Muaupoko reserve (as arranged by Te Whatanui with Taueki). The boundary was marked out on the plan before the Court, and Rogan and his colleagues were taken through the boundaries over and over again by Karanama Te Kaputai, Tamihana Te Rauparaha, Hohua Te Rui[nui?], Ihakara Tukumaruru and Watene Ti Waewae. This was obviously seen as a matter of great importance. As far as Ngati Raukawa were concerned, there was no issue about the land enclosed within the boundary: Muaupoko could have it, it was rightfully theirs, including the northern half of Lake Horowhenua. It was explained that the southern boundary of the old reserve were exactly the same as arranged decades before by Te Whatanui and Taueki, and that the northern boundary had been delimited again on two recent occasions, in 1858 and 1869 (the same boundary markers on each occasion). As noted, the Ngati Raukawa speakers were careful to emphasise that that the Muaupoko-Ngati Raukawa boundary divided the lake from east to west, the northern half belonging to Muaupoko and the southern to Ngati Raukawa.¹⁹⁰⁶ Hohua Te [Ruinui] said that the boundary had the effect of “dividing the lake one side to Muaupoko and the other to Ngati Raukawa”.¹⁹⁰⁷ The Raukawa section included the kainga at Raumatangi and the Hokio Stream. The boundaries “include the houses and cultivations of the Muaupoko – they are all included”.¹⁹⁰⁸

It is therefore clear that Ngati Raukawa assumed that having succeeded on the Kukutauaki case, all that needed to be done to complete matters was to prove the boundaries of the two reserves (Horowhenua and Tuwhakaturua) and the case would be over, Ngati Raukawa having no objection to these two areas being awarded respectively to Muaupoko and Rangitane. This is why Buckley on 12 March asked for an order for all of Kukutauaki-Manawatu with the exception of the two reserve areas. As it is put in the minutes, Buckley “now asked for an order by to the Ngatiraukawa as a tribe for the land shown on the map with the exception of the pieces at Horowhenua and Tuwhakaturua which we admit to belong to Muaupoko and Rangitane in terms of the judgment”.¹⁹⁰⁹ Ngati Raukawa conceded the Muaupoko and Rangitane claims, which did not require to be proved. Having heard Buckley’s application the Court closed down for the rest of the morning, and returned at 2pm that afternoon to announce a rather different plan. Ngati Raukawa found that the Court was not prepared to issue a tribal title to all of Kukutauaki-Manawatu (i.e. minus Horowhenua and Tuwhakaturua) as sought, and as defined on the plan before the Court.¹⁹¹⁰

The Court does not see its way to make the Order asked for, as to do so would amount to a decision on ex parte evidence on the question of the land owned by Muaupoko at Horowhenua.

By this the Court meant that it could not make a final determination as asked because the only evidence it had heard on the boundaries had been from Ngati Raukawa. Muaupoko had to be heard on the point as well. Perhaps Muaupoko agreed to this boundary, and perhaps not. This was to be a turning point in the case.

The Court suggested instead that a much larger area than that included in the old boundaries be cut out of Kukutauaki-Manawatu. The proposed area was enclosed within a “line drawn from the mouth of the Waiwiri Stream [which runs out of Lake Papaitonga] to Pukemoremore on the Tararua Range and a line drawn from Waingairoa to Ngatokoria thence in a line to the Pouotehuia thence in a line parallel

¹⁹⁰⁶ Evidence of Hohua Te Rui[nui], (1873) 1 Otaki MB 185; Karanama Te Kaputai (1873) 1 Otaki MB 185.

¹⁹⁰⁷ (1873) 1 Otaki MB 185.

¹⁹⁰⁸ Ibid (Hohua Te Rui[nui]).

¹⁹⁰⁹ (1873) 1 Otaki MB 189.

¹⁹¹⁰ Interim decision, (1873) 1 Otaki MB 190.

with the South Boundary to Tararua range”. This would allow Ngati Raukawa to have their tribal title to the rest of Kukutauaki to the north and the south. The Court added:¹⁹¹¹

In proposing that this block should be excluded from the order for certificate to be applied for we do not intend to indicate any opinion as to the ownership of the excepted portion beyond that that expressed in the judgment already given nor is it our intention by the line proposed to be drawn to fix the boundaries of the land owned by Muaupoko. Our object is merely to excerpt a portion of the block as will include the land in respect of which we think the Muaupoko may yet be heard as claimants.

Rogan and his colleagues indicated that if this approach was agreed to, the Court would make the tribal title award applied for to the rest of Kukutauaki-Manawatu.¹⁹¹² Buckley, not seeing the danger this exposed his clients to, readily agreed, “on the understanding that the excepted lands are still to be considered as Native Lands and that my clients may contest the title to them at any future period whenever they may come before the Court”.¹⁹¹³

The Horowhenua case proper began when Buckley asked the Court to make an order in favour of Ngati Raukawa for the Horowhenua block:¹⁹¹⁴

Mr Buckley said he now requested to be informed whether the Court would entertain his application to make an order in favour of the Ngatiraukawa for that block of land excepted from the Judgment of a previous date for which they had be [sic] considered to make out a prima facie case.

This could have two possible meanings: that awarding the block to Ngati Raukawa was just a formality, or that the earlier evidence given in the Kukutauaki case was sufficient to make a prima facie case to Horowhenua, thus putting the other parties in the position of counter-claimants, usually a tactical disadvantage in the Native Land Court¹⁹¹⁵ (the second seems more likely). On the same occasion, Cash, who practiced law in Marton (he was not in the same league as Buckley), and who had acted for the “five tribes” in the Kukutauaki case, asked for a brief adjournment as he had not yet had an opportunity to “grasp the case”.¹⁹¹⁶ The MB notes:¹⁹¹⁷

Court decided that the Ngatiraukawa had established a prima facie case and that the opposition would proceed in the position of counterclaimants.

Because the Court accepted that Ngati Raukawa had established a prima facie case no preliminary statement was necessary and the Court moved directly to the case of the counterclaimants. As with Kukutauaki, Keepa Te Rangihwinui spoke first for the counterclaimants. On this occasion he stressed his Muaupoko connections: “I belong to Muaupoko and live at Horowhenua and Whanganui”.¹⁹¹⁸ He said that he knew the land set out on the plan and that “it was generally called Horowhenua”.¹⁹¹⁹ Keepa went on to describe in detail the settlements, cultivations etc. on the block, and stated that Ngati Raukawa had not occupied it: “I never heard of any other Ngati Raukawa than

¹⁹¹¹ Ibid, 191.

¹⁹¹² Ibid.

¹⁹¹³ (1873) 1 Otaki MB 192,

¹⁹¹⁴ (1873) 1 Otaki MB 244 (25 March 1873).

¹⁹¹⁵ Because this gave the claimants the opportunity to give evidence in rebuttal of that of the counter claimants; the counter claimants did not get this opportunity, although they could of course cross examine.

¹⁹¹⁶ Ibid.

¹⁹¹⁷ Ibid.

¹⁹¹⁸ (1873) 1 Otaki MB 245.

¹⁹¹⁹ Ibid.

Whatanui living on this land”.¹⁹²⁰ Years later, however, Keepa admitted that his evidence in 1873 was something less than the whole truth. This emerged in the Native Appellate Court hearing relating to Horowhenua 14.¹⁹²¹

I have admitted that in the Court of 1873 our lawyers advised us all to tell the same story. I was new to Courts at that time. I had previously been a fighting man, and wished to fight still. We were advised to go on a particular line, and followed it. I don't know whether it was true or false; I accepted it as they gave it to me. I swore what I considered I was justified in answering to.

Both the Horowhenua Commission and the Native Affairs Select Committee hearing the petition of Kipa Te Whatanui in 1896 found that Kemp had given false evidence in 1896.¹⁹²²

Keepa was cross-examined by Buckley. Most unusually the cross-examination is recorded in full (i.e. questions and responses) in the MB. The questioning is as follows:¹⁹²³

- Q:** You were born this side of Manawatu?
- A:** Yes. I do not know in what year. At [Tawhiki?]. I think I am about 48. At the time of Haowhenua I was strong and able to go about.
- Q:** How long since Muaupoko ceased to cultivate at [Orotitakiroa?]
- A:** We have not ceased.
- Q:** Have they the exclusive right to fish pipi on the beach?
- A:** The Ngati Raukawa go.
- Q:** Have the Muaupoko ever prevented them?
- A:** All I know is they go there.
- Q:** Where is Otaewa?
- A:** I was wrong on the other map – I have placed it correctly on the sketch.
- Q:** Who planted the trees?
- A:** Rewiri [Anita] [illegible name]
- Q:** Do you occupy that place still?
- A:** Yes the houses are still standing.
- Q:** Was it not by Whatanui's permission that you lived near Pipiriki?
- A:** Was it Whatanui's land that I should give his permission.

¹⁹²⁰ (1873) 1 Otaki MB 255. But what did Keepa mean by this? That Whatanui lived alone with his family on the block? Surely not. He may have meant that Whatanui was the principal Ngati Raukawa chief who lived at Horowhenua, which seems to have been correct in fact. E J Wakefield met Te Whatanui at Horowhenua around 1841. Te Whatanui lived there in a *village* of which he was chief.

¹⁹²¹ *The Horowhenua Block: Minutes and Proceedings in the Native Appellate Court under the Provisions of the Horowhenua Block Act 1886 in relation to Division 14 of the said Block*, 1897 AJHR Session II, G2, 28 (cxx by McDonald).

¹⁹²² See 1896 AJLC Appendix 5 pp 2-3, citing findings in pp 2-3 of the Horowhenua Commission Report.

¹⁹²³ The cxx is at (1873) 1 Otaki MB 257-8. I have reformatted it slightly for the purpose of clarity.

- Q:** Were they a strong tribe then?
- A:** They were not very big.
- Q:** Were the Muaupoko a formidable tribe in the time of the [] Whatanui? – and able to maintain their independence?
- A:** I was strong at that time.
- Q:** Were you able to visit Rauparaha, Ngati Raukawa, Ngati Toa, Ngati Awa?
- A:** [no answer recorded in MB]
- Q:** Did not Whatanui take Muaupoko under his protection and save them from Rauparaha and others?
- A:** I was killed by Whatanui by strategy.
- Q:** Did not Whatanui mark out a place for you?
- A:** No.
- Q:** Did Whatanui mark out that place and allow you to live there? [Buckley is presumably pointing to the map before the Court].
- A:** No.
- Q:** Where did you cultivate outside that line?
- A:** They cultivated years ago and still do outside.
- Q:** Is there anyone outside now?
- A:** [Koturoa?] is one, but they are all ours (pointing).¹⁹²⁴
- Q:** Did Whatanui lease any of this land,
- A:** Yes and cattle were killed.

What must have been happening during the cross-examination is that Buckley is pointing to the boundaries of the land set aside for Muaupoko by Te Whatanui: (“did Whatanui mark out that place and allow you to live there?”). In his evidence to the Native Affairs Committee in 1896 Kipa Te Whatanui described this same area as the boundary “drawn by Te Whatanui and Tauwheki [sic]” with the boundary post named Tauateruru, the meaning of which he described on that occasion (see above, ch []).

Tamihana Te Rauparaha gave evidence in support of the claimants, which can be contrasted with his evidence in support of the Ngati Apa/Crown case in Himatangi. As Te Rauparaha’s son he was in a position to speak with some authority on his father’s relationship with Ngati Raukawa. Tamihana insisted that Te Rauparaha allocated Horowhenua to Te Whatanui and the Muaupoko people “in the character of slaves”; they bore the same relation to Te Whatanui “as the eels in the weirs”.¹⁹²⁵

¹⁹²⁴ “Pointing” is written in the MB. What is happening in Court is that the survey plan of the Horowhenua block is positioned where all can see it, and on it has been marked an area set aside by Te Whatanui at Horowhenua. Buckley is asking whether Muaupoko cultivate anywhere outside this line.

¹⁹²⁵ (1873) 2 Otaki MB 26.

I am a chief of Ngati Toa and am son of Te Rauparaha. I know the land described by the plan before the Court. When Te Whatanui migrated he settled on this land. My father gave all this place Horowhenua to Whatanui and the people living there in the character of slaves. The right relative to Horowhenua was with Whatanui. Whatanui lived there consistently and the Muaupoko bore the same relation to him as the eels in the weirs. Whatanui retained hold of the land. We went and saw Te Whatanui with his slaves and with Muaupoko at Raumatangi. These few people (Muaupoko) were preserved by Whatanui. His father would have killed the lot of them (they were hidden). [27] The Muaupoko had Ngati Raukawa living on both sides of them and were living in their pas. [Naumuiti??] was one. The Muaupoko had no status at the time of Haowhenua, they were only living as slaves.

Ngati Raukawa did not share the money from early land transactions with Muaupoko.¹⁹²⁶

Up to the time of the payment by Wakefield the boundary was at Raumatangi. Raukawa did not give them (Muaupoko) so much as a pipe or a pin or a bit of tobacco or a ring. Also payment of another white man called [Hughes?] who paid £10 on account of land at Raumatangi. Muaupoko got no portion of it.

After Hadfield arrived Te Whatanui allocated to Muaupoko a reserve within defined boundaries.¹⁹²⁷

At that time the time of Mr Hadfield Whatanui (old) gave Muaupoko a piece of land the boundary of which is now described¹⁹²⁸ - out of consideration. That time the boundary was agreed upon by Whatanui and Ngati Huia from Ngamana to Ngatokorua. That was the boundary between Ngati Huia and Muaupoko. They have since lived peaceably up to the time of the letting to McDonald.

Tamihana then describes events after Whatanui's death.¹⁹²⁹

After the death of the elder Whatanui the arrangements relative to land matters were left with his three children. They gave directions to Muaupoko to carry eels for them to Otaki. There are persons who can enumerate those who were permitted of Muaupoko to live in his (Whatanui's) presence. Two Whatanuis were left and the right over this land was left with Whatanui Tutaki. When Tutaki's time commenced the leasing [sic]. I do not know the first year it was let to McDonald. I heard that there was some arrangement about the land to the North of [Tauateruru] that there should be a division of the money – between Whatanui and Muaupoko. Roera Hukiki took the money south of Waiwiri. [28] Whatanui Tutaki received the money between Waiwiri and Tauateruru. Ngati Huia and Muaupoko received the money north of that. Muaupoko took as far as [Ngamanu?] boundary and Ngatihuia above that. To my knowledge Muaupoko had no mana there whatever, they were permitted to catch eels – although that – there was no meaning in that, the catching of eels.

According to Tamihana the troubles over the block were recent:

Only up to the time of Hunia's coming¹⁹³⁰ to build Kupe and the burning of Watene's house that I knew of any assertion of right – and it was then I wished to commence operations [and] fight against them. The [roads?] first made were by Rangihaeata and to the administration of Sir G Grey. It is only in latter days this trouble has ensued in Hunia's time, before that Muaupoko and Raukawa lived peaceably together. Raukawa respected the word of Whatanui's that they should bear with these people and live with them. Up to these times Raukawa permitted them [] the rent for their piece of land. I know nothing about the giving of any portion of this above towards Tararua – all I know is the lower part. The trouble at Mahoenui was quite of a late period. About three years ago Muaupoko commenced, pulled up the potatoes. We agreed that the matter should be referred to Mr McLean. We did not interfere and this is

¹⁹²⁶ (1873) 2 Otaki MB 27.

¹⁹²⁷ Ibid.

¹⁹²⁸ I assume that Tamihana means that the boundary of Te Whatanui's reserve was indicated on the plan before the Court.

¹⁹²⁹ (1873) 2 Otaki MB 27-8.

¹⁹³⁰ In the margin at this point is written '1869'.

why we took no action in the matter – but allowed it to be decided by the law – had it been according to native custom we would have shot them at once.

Tamihana Te Rauparaha was cross-examined by Cash, the lawyer for the counter-claimants.

You are a chief of Ngati Toa? – Yes.

And a Native Assessor? – Yes.

Are you still an Assessor? – Yes.

Do you include the country round the lake in your father's gift to Whatanui? – Yes, all the Horowhenua – because it was the only good place to obtain eels.

Cash asked Tamihana about slavery:

You said the Muaupoko were your slaves, did they perform any services for you? – Yes, I have one now on my station.

What did they do for you? – They cultivated for Te Whatanui about Pipiriki and other places.

Since the times of Whatanui have Muaupoko done any services for Raukawa or Ngatitua? – They would at the direction of Whatanui's children.

Have those directions of Whatanui's children ever been given or obeyed? – Yes I am not clear about any particular instance, but I am constantly hearing about it up to the present time.

What is the name of your slave? – Te Rei Rongomai, he is the son of Muaupoko chief.

How long has he been living with you? – 30 years.

How did you get this slave? – Rauparaha caught him at Horowhenua.

In what way? – May have been after a fight.

Can you tell the time and manner of his taking? – No.

Are there no others besides Te Rei who live on your land in the capacity of slaves? – Yes a Ngati Apa man named Te Hira Kahinga.

Do you ever pay these men any money? – Yes I give them money when I have it to buy clothes etc.

A description of the scene at Foxton was published in the *Wellington Independent* on 5 April, when the Horowhenua proceedings were nearing their end. It provides a rare glimpse into the social realities of the Kukutauaki and Horowhenua sittings:¹⁹³¹

The sittings of the Native Land Court are gala days for the people of Foxton. Dealers of all descriptions reap a harvest then, but the "whisky mills" get most grist. The place then is alive with natives, and a remarkable appearance they present to anyone unaccustomed to Maori gatherings. Since the month of November last, several sittings of the court have been held to determine the ownership of the Horowhenua block, a piece of land stretching from the Manawatu river to the Waikanae, and from the ridge of the Tararua range to the sea. It is about the last extensive area on the coast over which the native title has not been extinguished, and it has all been surveyed at the cost of the Government. The Court is presided over by Judge Rogan, from Kaipara, Judge Smith, and a native assessor from Auckland. Latterly Mr Woon has been acting as interpreter, but Mr T. Young filled that office during the settlement of the

¹⁹³¹ "Stray Notes on the West Coast", *Wellington Independent*, Vol XXVIII, Issue 3770, 3 April 1873, p 3.

most important case.¹⁹³² The dispute was between the Ngatiraukawa (the most powerful tribe in the district) the Ngatiawa and Ngatitoo, who claimed the block by right of conquest. Ihakara and Matene Te Whiwhi were the principal men on that side. The claims were opposed by the Muapoko [sic], Rangitane, Ngatiapa, Wanganui, and Ngatikahungu [sic], whose chief men are Major Kemp (Kepa) and Kawana (Governor) Hunia. Mr Buckley represented the claimants and Mr Cash those who opposed. The evidence extended back about half a century, and like all native evidence was painfully prolix; but at times some startling glimpses were given of the old mode of life and before Christianity arrested the tide of savagery. The mass of evidence laid before the Court seemed to consist of bloody battles, treacherous massacres, and adulterous doings, the whole forming a highly coloured, if not very pleasing picture. It is unmistakable, however, if the evidence can be relied upon, that the natives along that coast and on the Island of Kapiti were at that period exceedingly numerous. One witness stated that he saw a line of canoes stretching from the main land to Kapiti; and another described a desperate battle in which over 800 were slain, not a single warrior being left on one side. The bulk of the evidence went to show very clearly that the Muapoko and other tribes occupied the territory pretty much on sufferance, if not in actual slavery; and the result was that the Court adjudged the Ngatiraukawa and co-claimants the rightful owners of about nine-tenths of the disputed block. Although two lawyers were employed, statute law appears not to have formed an element in the proceedings, but at times sharp conflicts of wit took place. It appears, however, that the claimants were exceedingly well satisfied with the watchfulness and ability displayed by Mr Buckley; and no doubt this promising young lawyer has had reason to be equally pleased with his clients, as his fee is said to consist of a block of 2,000 acres of beautiful land, a large slice being estimated as worth £3 per acre. In any case it is a noble fee, as the land is very fair to look upon. The Court is still investigating claims to a small piece¹⁹³³ of the large block; but the real business has been disposed of, and it is probable that all the business before the Court will be wound up by the end of this week. Some three or four hundred natives from the extremities of the province are gathered at Foxton, and are located in two gipsy-looking camps about half a mile apart, the intermediate space being covered with horses. This is not more than half the number that gathered at their first sittings, the period during which one publican is said to have taken £1800. The natives must have got rid of their superfluous cash then, for they are very impecunious just now. It was through knowing this probably the Provincial Government sent up about £15000 by the Inspector of Police to Mr Grindell to advance to the natives in anticipation of any sales they might make, which there is no moral doubt they are certain to do.

If the narrative of Rod A. McDonald, a local settler whose father gave evidence in the 1873 case, can be trusted, the most significant developments happened outside the courtroom.¹⁹³⁴ According to this source, it was generally assumed by all present that Buckley's cross-examination of Keepa had broken the counterclaimants' case.¹⁹³⁵ (The McDonald family was concerned about this, as they were worried that Raukawa would have to sell all their land to cover Buckley's costs, and thus they would lose their lease.) But things then took a different turn.¹⁹³⁶

Next day, however, was to provide a dramatic surprise. The case was practically finished, and the verdict a foregone conclusion, when Kemp rose in the body of the Court and told the judges in unequivocal language, that if they gave the verdict against him he would bring his 400 Wanganui warriors down to the Horowhenua, and neither the Raukawa nor the Government would put him off the land.

In response, says McDonald, Judge Rogan adjourned the hearing, and travelled to the Horowhenua lake area to inspect the land. (As has been explained in an earlier chapter, the Native Land Court did from

¹⁹³² The Kuketauaki case.

¹⁹³³ i.e. Horowhenua.

¹⁹³⁴ Rod A McDonald and Ewart O'Donnell, *Te Hekenga: Early Days in Horowhenua*, (G H Bennett & Co., Palmerston North, 1929), 142-146.

¹⁹³⁵ Actually judging by the transcript it does not seem hugely devastating. I have reproduced the entire cxx in the text.

¹⁹³⁶ McDonald, *Te Hekenga*, 142.

time to conduct site visits, so there was nothing particularly unusual about an inspection.) McDonald was, he says, present when a crucial conversation occurred between Judge Rogan and Keepa Te Rangihiwiniui.¹⁹³⁷

What occurred after this is open to severe criticism – and capable of many excuses. Judge Rogan adjourned the Court for three days, and came down to Horowhenua to personally look over the land in dispute. With the other Judges, Major Kemp, and a large party of Court officials and others, he arrived at our place for lunch...My brother Hector accompanied the official party to the beach. They rode south, and when they reached the Waiwiri creek, Kemp drove a stick into the sand.

“This is where I want the boundary,” he said. “From here to the top of the mountains.”

They rode north again, and at Te Karangi, he drove in another peg, cutting off the angle where the line had formerly run south-west from Ngatokorua to Namana, at the beach beyond the Oioao flat, and making a straight line from the sea to the sky-line.

The narrative is a compelling one, but the problem with McDonald’s account is that it is completely uncorroborated.

Whether Kemp ever openly threatened the Court in quite the way McDonald suggests is unclear. There is no mention of this in the MB record itself, which would normally record an outburst of this kind had it actually taken place. (For example when emissaries from King Tawhiao appeared in Waikato cases demanding that the Court desist from the hearing the case, this would be recorded in the minute books, as happened in the Te Aroha investigation – also heard by Rogan – in 1869.¹⁹³⁸) I have searched manuscripts and newspaper records and so far have not found any contemporary evidence that Kemp openly threatened the Court in the way that Macdonald suggests. In his evidence to the Native Affairs Committee of the Legislative Council in 1896 Te Rei Parewhanake of Ngati Raukawa was asked about the Horowhenua case of 1873 at which he had been present. He said that Keepa was there “as chief of Muaupoko to oppose the claim” and said that “I do not know that he threatened anybody”.¹⁹³⁹ However on the same occasion Kipa Te Whatanui said that Keepa and his people were “all armed, and were intimidating both the Court and the Ngatiraukawa people” and that “Kemp stated openly outside the Court that if the Court gave a decision against him he would spill blood on the block”.¹⁹⁴⁰ Neville Nicholson of Ngati Raukawa confirmed this on the same occasion, describing how Kemp “was to be seen in his regimental uniform, wearing his sword, and marching about Foxton”¹⁹⁴¹ when the Horowhenua case was being heard. Nicholson also recalled Keepa making threats:¹⁹⁴²

It was at this time [during the Horowhenua hearing] that Major Kemp said if the decision were given against him somebody would suffer – that blood would flow. Then we (the Ngatiraukawa) heard that Major Kemp brought 500 men and 500 guns, and declared that if the decision went against him we (the Ngatiraukawa) would be fired on. Then the Ngatiraukawa chiefs – Matene Te Whiwhi and Karanama – told Ngatiraukawa to be on their guard, and Karanama said that notwithstanding the fact that Kemp was a major in Her Majesty’s service, and the guns belonged to the Government, he (Karanama) would stand as major for Ngatiraukawa according to Maori custom.

¹⁹³⁷ Ibid, 142-3.

¹⁹³⁸ (1869) 2 Waikato MB 254; Boast, *Native Land Court* vol 1, 545.

¹⁹³⁹ 1896 AJLC Appendix 5 (Report on Petition of Kipa Te Whatanui relative to lands at Horowhenua), p 20.

¹⁹⁴⁰ 1896 AJLC Appendix No 5, 14.

¹⁹⁴¹ See 1896 AJLC, Appendix No 5, 32.

¹⁹⁴² Ibid.

Nicholson was questioned about Kemp's behaviour by the 1896 Legislative Council Committee:

3. *Hon. Mr Swanson.* Do you wish 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? – Yes; that is what I believe.

4. You believe he wanted to bounce the Court? – Yes; I believe that not only the Court but the Government was afraid.

5. And that the Court gave a decision for quietness sake? – I have always been of the opinion that the reason we lost our land was that not only the Court but the Government was intimidated. Because Sir Donald McLean told us that if he should grant us a rehearing as applied for by us Kemp was sure to fight; and that is why I say that, from that time to the present, I have always been of opinion that it was the attitude of Major Kemp which caused the Court to give that decision.

This evidence was given a long time after the event, but there is in my opinion no reason to think that Kipa Te Whatanui and Neville Nicholson were making it up. The Native Affairs Committee of the Legislative Council which heard Kipa Te Whatanui's and Neville Nicholson's evidence in 1896 was in no doubt: that "threats and intimidation were resorted to by Kemp during the sitting of the Court".¹⁹⁴³ Also material is that in 1903 Te Rangimairehau of Muaupoko informed James Cowan that in 1873-3 he was one of those inside the pa built at Pipiriki on the western side of Lake Horowhenua where there was a "strong force of Muaupoko, who had about three hundred rifles".¹⁹⁴⁴ There is no reason to think that Te Mairehau was making this up either, which indicates that that Te Keepa had a substantial body of armed supporters to draw on; moreover that given (1872-73) correlates with the Kukutauaki and Horowhenua hearings. There is some contemporary evidence which does indicate that Kemp was in uniform and was present in Foxton with "his natives" (he told Governor Bowen that "you will now see that I am wearing your colours", going out of his way to emphasise that Ngati Raukawa were not¹⁹⁴⁵). If Keepa did not actually make threats inside the courtroom, then according to the evidence it is clear in my view that he made his presence felt outside it. The evidence from Ngati Raukawa witnesses indicates that Keepa was making his point to the Court, to Ngati Raukawa, and to the government. Keepa will have known full well that the case was perceived as pivotal and would be the focus of widespread attention. He will also have known that he was a prominent national figure and that the government was very much in his debt. Failing to prevent the case from proceeding, it seems that Kemp carried on with the marching and parading, which he must have been doing for a reason. Did his continued military display, however, actually explain the Court's decision? Certainly Neville Nicholson was in no doubt about that, and it is likely that other Ngati Raukawa people would have thought the same. The Court will have been aware of the wider political context of the case, which Keepa's behaviour would only have underscored. (Admittedly the Horowhenua dispute was, however, a notorious affair and had regularly been reported in the newspapers for some years, so the judges of the court could hardly *not* have been aware of the implications of the case and its wider context, irrespective of what Kemp did during the hearings). There is nothing to show that Ngati Raukawa were intimidated in the sense that were afraid to give evidence in the Court, or that Keepa's military display influenced what they said.

One possibility is that Keepa was making a point primarily to the government. That he was making a principled statement in opposition to land-selling can be discounted: in early 1873 Keepa was

¹⁹⁴³ Ibid, p 3.

¹⁹⁴⁴ J Cowan to Superintendent, Department of Tourist and Health Resorts, 1 Sept 1903, in 1908 AJHR H-2A, 1-2.

¹⁹⁴⁵ *Wellington Independent*, Vol XXVII, Issue 3668, 30 November 1872, p 3.

working closely with James Booth in organising the sale of the Pikopiko block and others near Whanganui to the government.¹⁹⁴⁶ In 1890 Hoani Te Meihana noted that when various individuals of Rangitane and Ngati Taurira attempted to sell parts of the Aorangi block to the government they went to Whanganui to see the “Government agents Major Kemp and Mr Booth”.¹⁹⁴⁷ Kemp may have been reminding the government that he was an important military ally (hence the wearing of military uniforms) - notwithstanding the fact that the last phase of the New Zealand wars was more or less over by 1872: but then contemporaries could not be sure about that. This wider political context has to be borne in mind. It will be recalled that in 1866 Isaac Featherston had used similar tactics to threaten Ngati Raukawa over the Rangitikei-Manawatu purchase when he reminded Ngati Raukawa many of Whanganui, Ngati Apa, Rangitane and Muapoko had consented to the sale and “[a]ll these tribes went with me to fight against the tribes who are contending with the soldiers of the Queen,” words seen by Ngati Raukawa at that time as highly threatening.¹⁹⁴⁸ Both Featherston and Kemp had been involved in General Chute’s notorious bush-scouring campaign in Taranaki in early 1866.

Keepa will have been indicating as well that a finding adverse to the counterclaimants was likely to provoke resistance and a good deal of further trouble in an already volatile dispute. It is interesting that when Keepa sought an adjournment at the start of the Kuketauaki case he claimed to speaking of behalf of “the Tribes Ngatiapa, Rangitane, Muaupoko, Ngatihau, Wairarapa and Hawke’s Bay”, trying to give the impression that he and his followers had widespread support throughout the lower North Island. This not entirely bluster by any means. Keepa did have powerful supporters, not only the Hunia family of Ngati Apa but also with such powerful chiefs as Hori Kingi Te Anaua of Te Ati Haunui-a-Paparangi and Te Peeti Te Aweawe of Rangitane. The latter is a particularly important figure. Te Aweawe was a long-standing friend and ally of Te Keepa and possessed considerable political clout in his own right. Like Keepa, Te Aweawe had fought as an ally of the government in the New Zealand wars and was a long-standing opponent of Ngati Raukawa land claims in the Manawatu (his statue stands in the square in Palmerston North). Keepa can be seen seeking to maximise the political risks for the government, and was perhaps hoping that the government would intervene behind the scenes with the Court’s decision in some way. Moreover it seems from Nicholson’s later testimony that McLean was seriously concerned about the risk of a conflagration if Keepa found himself provoked, so if this was his strategy perhaps it was successful. Judge Rogan, as is pointed out above, knew McLean well and had been a close colleague of his for many years, and may even have decided the way he did in order to avoid violence, which could have gone very badly for Ngati Raukawa.

Another possibility, however, which deserves serious consideration, is that Keepa was not acting according to European cultural norms at all, but strictly in accordance with Maori ones. Keepa said quite openly in the Native Land Court that it was his intention to drive Ngati Raukawa off the block. To put it another way, perhaps, he was seeking to restore Muaupoko mana now that the means was available to do that, and was acting in a manner that a chief of Muaupoko would have done before the Treaty of Waitangi. Arguably, as far as Keepa was concerned, he had formed an alliance with a powerful new entity, i.e. the government, which had enabled his people to display impressive military uniforms, military drill, and prestigious new weapons. This was a new accession of strength by Muaupoko, and there was no reason not to use it to try to overawe Ngati Raukawa – who – arguably –

¹⁹⁴⁶ Booth and Kemp to Under Secretary for Public Works, 16 July 1872; Booth to Under Secretary for Public Works, 30 December 1872; Booth to Under Secretary for Public Works, 9 January 1873 (“Major Kemp and myself have this day negotiated the purchase of a block of land containing 3,000 acres, known as Pikopiko, and situated about twelve miles from the town of Wanganui; also an adjoining block of 310 acres called Moetahanga”), *Reports from Officers engaged in the Purchase of Native Lands* 1873 AJHR G-8, 30-31.

¹⁹⁴⁷ (1890) 13 Otaki MB 343.

¹⁹⁴⁸ Petition of Parakaia Te Pouepa, 4 July 1867, reprinted in AJLC App 5 p 8.

were tainted by their kinship links with Ngati Raukawa in the north, known supporters of the King, opponents of the government and its allies at Orakau, and stigmatised as rebels by the Crown. Angela Ballara has described the various forms of ritualised warfare that were often utilised in Maori society, and perhaps there were aspects of this in Kemp's challenges outside the Court, and marching his men around Foxton in military formation – but stopping short of any actual violence (but reminding Ngati Raukawa that if it came to an armed confrontation they would fare very badly). Looked at in this way, perhaps his actual target really was Ngati Raukawa, and perhaps also Muaupoko itself – rather than the Land Court or the government.

It is also possible that Keepa, having taken his soldiers through a number of dangerous campaigns far from home, and during the course of which doubtless a number of them had died, felt a chiefly obligation to assist them now that the wars were winding down. Or at least he had to be seen to be doing his best in a very public manner so that he could not be reproached for failing to do his utmost. These are all speculations, admittedly, but I believe that it is important to try to form a clear understanding of what Keepa was trying to achieve, and that placing him in his particular cultural and historic circumstances offers some way of achieving that. Arguably Keepa behaved the way he did, because as he saw things, he had to.

13.7 “The Court gave away all our eel-weirs, houses, cultivations etc that we had occupied for sixty years”: the Horowhenua judgment 1873

In its judgment, given on 5 April (one month after the Kukutauaki judgment) the Court accepted that Whatanui had taken Muaupoko under his protection: “the Muaupoko were glad to avail themselves of the protection of a powerful Ngatiraukawa chief against Te Rauparaha, whose enmity they had incurred”.¹⁹⁴⁹ However, although “Te Whatanui took the Muaupoko under his protection” and he was “looked up to as their chief”, nevertheless “it does not appear that the surrender of their land by the Muaupoko was ever stipulated for as the price of that protection, or that it followed as a consequence of the relations which subsisted between that tribe and Te Whatanui”.¹⁹⁵⁰ Muaupoko may have been protected, but they remained in occupation: as was typical in the Land Court, occupation was treated as the primary foundation of a claim. This finding was also consistent with the earlier Kukutauaki decision, which found for Raukawa on the basis of occupation rather than conquest. Looked at in this way, the Kukutauaki decision was a severe blow for Raukawa in rejecting a title by conquest; had that claim been substantiated then perhaps Muaupoko would have received reserves in the same way that Moriori did in the Chatham Islands cases in 1870. A finding of title by conquest did not always mean that the Native Land Court had no options with regard to the interests of the surviving original inhabitants. In the Horowhenua case, in fact, the Court had that option ready to hand, because Te Whatanui already *had* set aside a carefully delineated reserve for Muaupoko. But by now the definition of the Horowhenua block had changed, to mean not the old reserve agreed to by Te Whatanui and Taueki, but rather the much larger block excepted from the earlier Kukutauaki award. Ngati Raukawa remained puzzled as to how this could conceivably have happened, especially given the fact that the block that Muaupoko had originally applied for had used the old customary boundaries. Kipa Te Anaru was questioned on this very point in 1891.¹⁹⁵¹

34. Can you explain to the Committee how it is that the boundary-line as shown on the plan certificated to Kemp is different from the plan of the block applied for by the Muaupoko in 1872? – The judgment was given in 1873. Mr Kemp had a lawyer – I think it was Mr Hart. He applied to the Court to shift the

¹⁹⁴⁹ (1873) 2 Otaki MB 54; vol 1, 706.

¹⁹⁵⁰ Ibid.

¹⁹⁵¹ 1896 AJLC Appendix 5, 13.

boundary further south to Waiwiri Stream, so as to include the Papaitonga Lake, and the Court allowed it to be done.

35. How could it be done if, as I understand, the boundary as applied for by the Muaupoko had already been decided in the judgment awarding the south side to Ngatiraukawa? – I do not know how that happened; but that is what we complain of; that is one of our grievances.

In Horowhenua Raukawa were granted only a small reserve at Raumatangi of 100 acres, an area supposedly gifted to them by Muaupoko. (According to the Appellate Court in 1912, Raumatangi, located next to Lake Horowhenua, was where Te Whatanui lived, so this was certainly an important area for him.¹⁹⁵²) The 1873 Court thought this to be sufficient recompense for Raukawa's interests in the *whole* of the Horowhenua block:

We find, further, that Te Whatanui acquired by gift from Muaupoko a portion of land at Raumatangi, and we consider that this claim at Horowhenua will be fairly and substantially recognized by marking off a block of 100 acres at that place, for which a certificate of title may be ordered in favour of his representatives.

It is to be noted that the Court believed that Te Whatanui received this area of 100 acres as a gift from Muaupoko. The rest of the block, covering about 52,000 acres, was awarded to Muaupoko under s 17 of the Native Land Amendment Act 1867. Ngati Raukawa found that their properties on the southern side of the lake and along the Hokio were stripped from them: as Kipa Te Whatanui was later to put it, “[t]he Court gave away all our eel-weirs, houses, cultivations, &c that we had occupied for sixty years”.¹⁹⁵³ The block was vested nominally in Keepa Te Rangihwinui, with 143 other names endorsed on the back of the certificate. This finding, like that in the Manawatu Kuketauaki case, was in some respects incomplete. The Horowhenua Commission of 1896 was somewhat critical of the Native Land Court's actions in 1873: in the former's view “the Court did not, as it seems to us it should have done, ascertain the particulars of the interests of the persons named in, and on the back of, the certificate which it ordered to issue”.¹⁹⁵⁴

We are fortunate in that *The Wellington Independent* contains a very full account of the immediate aftermath of the case, when Major Kemp provided beer and champagne to all parties - including William Fitzherbert,¹⁹⁵⁵ the superintendent of Wellington province, Judge Rogan, and the victorious Muaupoko and the defeated Ngati Raukawa. My apologies for this very long quotation, but it is valuable in bringing vividly to life the scene at Foxton and the respective positions of the various parties. More than that, however, it is a reminder both of how powerful and prominent a figure Keepa was and of the wider political dimensions of the conflict at Horowhenua. Kemp, as will be seen, did not miss the opportunity to describe Ngati Raukawa as “usurpers” and to remind everyone present of his role as an ally of the Crown in the wars. Ngati Raukawa stressed their commitment to peace, Christianity, and the rule of law, but Te Peeti Te Aweawe was able to say that he and Keepa had actively fought against Hauhau “superstition” and the defence of the Christian faith:¹⁹⁵⁶

[Following the release of the judgment] Mr Rogan then stated that on Monday morning he would accompany some of the natives to Tuwhakatapua for the purpose of examining the land in dispute in that locality, and that the Court would in consequence be adjourned till the following Tuesday – the 8th instant.

¹⁹⁵² (1912) 3 Wellington ACMB 265.

¹⁹⁵³ 1897 AJLC Appendix 5, 34.

¹⁹⁵⁴ 1896 AJHR G2, 4.

¹⁹⁵⁵ Fitzherbert replaced Featherston as superintendent in 1871, when Featherston became Agent-General for the New Zealand government in London.

¹⁹⁵⁶ “The Native Lands Court”, *Wellington Independent*, Vol XXVIII, Issue 3776, 10 April 1873, p 3.

The Court was crowded with natives when the judgment was given; but not a single audible remark was made, and all retired quietly and orderly when the Court rose.

His Honour the Superintendent and Mr Bunny having arrived from Palmerston on the previous evening on their way to Wellington, were staying at the Foxton Hotel, where they were visited, shortly after their arrival, by the principal chiefs of both parties – some to prefer sundry requests, and others for the purpose of simply tendering their respects. It had been the intention of his Honour to start for town early in the morning, but at the pressing request of Major Kemp, backed by that of Judge Rogan, he promised to delay his departure for a few hours for the purpose of meeting the natives. Accordingly after the Court had risen on Saturday Kemp's party assembled in great numbers on the low hill just opposite the Manawatu Hotel, whilst the Ngatiraukawa and their friends mustered immediately in front of the building. A table and a number of chairs borrowed from the landlord, Mr Whyte, were placed in the open space between the parties for the accommodation of His Honour and party. Meanwhile a cart load of casks of beer and cases of champagne, purchased by Major Kemp at the Foxton Hotel, were deposited on the ground for the regalement of all. The sparkling contents of one of the cases was speedily set out on the table for the refreshment of his Honour and the gentlemen who attended him....His Honour and party having taken their seats at the table, Major Kemp approached, and, striking the cases of champagne with a light switch, said they were for the Superintendent, the Judges of the Court, and the other European gentlemen present. Then, in like manner, he touched the casks of beer, and called out the names of all the tribes present, for whose use he said they had been provided. Judge Rogan then coming forward, and lightly tapping the cases with his whip, said that in the name of the Europeans present he thanked the Major for his liberality, and begged to be allowed to transfer them (the cases) to the tribes assembled; whereupon arose a great shout of approval and delight from the thirsty throats around. The gentlemen at the table then arose and, standing with hats off, drank to His Honour's toast of "Health to Major Kemp and general union and prosperity to all the tribes present," a toast which was received with great satisfaction by all the natives.

Major KEMP then, addressing his Honour, said he was sorry he was not in a position to receive him in a more befitting manner. Had he been at his own home (Wanganui) he would have entertained him in better style. It had been said by those whose interest it was to defame his character that he was an evil disposed man, and that he was desirous of breaking the peace, but he would assure his Honour, as he had already assured Governor Bowen on the occasion of his visit to Manawatu, at the last sitting of the Court, that he had no such intention; that no troubles of that nature would ever arise from any action which he might still consider it necessary to take with respect to the lands around him – the lands which had been the possessions of his fathers, and from them inherited by himself and his people. Those lands had been usurped by the Ngatiraukawas; he had now received back through the Court but a small portion of them; and whatever course he might adopt with respect to the remaining portion would be strictly according to English law – of this his Honour might rest satisfied. It was his (Kemp's) business to uphold the law, not to break it. It had been said that he was a man of war – a man of the sword; but he would say his sword had been unsheathed against rebels and Hauhaus who sought to disturb the peace of the country and subvert the authority of the Queen. He was still the same Kemp that he had ever been. So far from entertaining hostile intentions against the tribes opposed to him on this land question, he had gone to some considerable expense in providing the treat which he had that day given to them all as a token of his good will and peaceable intentions. He further assured his Honour of the high esteem in which he held him, and the great respect which he entertained for him as the chief magistrate of the province and the worthy successor of Dr Featherston, and reiterated his determination that no act of his should cause trouble to the Government. In conclusion, pointing to his horse which stood near, he requested Mr Rogan to accept of it as a mark of his esteem.

Next to address the assembled throng was Te Peeti Te Aweawe. Te Aweawe was a prominent chief of the Ngati Hineaute hapu of Rangitane who had long opposed Ngati Raukawa's claims to land in the Manawatu. He had fought in the New Zealand wars as an ally of the Crown in Taranaki and in the

fighting with Titokowaru. He knew Te Keepa well and was an active supporter of Kemp's efforts to regain Horowhenua.¹⁹⁵⁷

PEETI TE AWE [sic], of Rangitane, spoke next. His speech was principally a reiteration of the sentiments expressed by Kemp. He said they had always been opposed to anarchy and strife in the country; they had contended against Hauhaus and Hauhau superstition in defence of the Christian religion, and they were not now going to turn round and pursue an opposite course. He then led off in a song, in which he was accompanied by all the natives present, the burden of which was their respect and love for the Superintendent as the representative of law and order. He then intimated their intention of taking further legal steps in respect of the lands awarded to Ngatiraukawa by the Court.

Te Peeti Te Aweawe's last remark can only have meant that Rangitane, Muaupoko and the other allied groups intended to apply for a rehearing of the Kikutauaki case – and would have been so understood by Ngati Raukawa.

Ihakara Tukumarū and others of Ngati Raukawa spoke next:

IHAKARA TUKUMARU, an influential chief of Ngatiraukawa, said they were pleased to see His Honour among them, but they were sorely grieved and disappointed at the decision given by the Court respecting the lands of the Whatanui at Horowhenua. However, he would not enter into that question now, but would seriously pledge his word that the Ngatiraukawa, on their part, and their allies, would never commit a breach of the peace, whatever else they might decide upon respecting this Horowhenua dispute. The law which they revered was a divine law which came from Heaven – “Peace and goodwill to men” – and to this they would adhere, as they had ever done. They had a saying amongst themselves that “a servant lived in safety;” and they would be servants of the pakeha – that is, they would submit to their laws.

RAKAEA, sister of Matene Te Whiwhi, said she had regarded the Word of God, which says – “If thine enemy hunger, feed him; if he thirst, give him drink, for in so doing thou shalt heap coals of fire upon his head.” And she had fed them and gave them drink – some two hundred of them – but they had made no recompense.¹⁹⁵⁸

MATENE TE WHIWHI then said that whatever troubles or complications might in future arise the only sword Ngatiraukawa would unsheath would be that of the law, not war. [RAKAPA [sic] (his sister), looking askance at Mr Rogan, here interposed a remark that the sword of the law was much heavier and afflictive to bear than the other.] Matene then went on to say that when he was at Waikato lately, with Mr McLean (the Hon the Native Minister), he had exhorted the Waikatos to lay aside the sword, and to appeal to the law only for the settlement of all their difficulties, and that he would continue to uphold the same principles amongst his own people.

Fitzgerald then spoke, his words translated into Maori by Grindell, saying how pleased he was “to hear Major Kemp, who held a commission in her most gracious Majesty's service, and who was known to be a brave and intelligent officer, making so public a declaration of his peaceful intentions”. He also expressed his pleasure at the orderly and decorous conduct of the parties during the hearings (perhaps he had not heard of Keepa's military display). He also said that the welfare of Maori and European was equally important to him. This was all well received, but then tempers flared between Tamihana Te Rauparaha and Keepa:

¹⁹⁵⁷ On Te Aweawe see M H Durie, “Te Aweawe, Te Peeti ?-1884, Rangitane leader”, *DNZB* vol 1, 1990, 442-443.

¹⁹⁵⁸ To whom is Rakaea referring when she quotes this scriptural injunction? She may well mean Muaupoko, who Ngati Raukawa sheltered and gave, as it were, food and drink.

TAMIHANA TE RAUPARAHA then said it was not from fear that the Ngatiraukawa had refrained from burning houses in their turn, as Ngatiapa had done at Horowhenua, but simply for the preservation of peace. He said he had asked the Government to recall the arms with which they had supplied Kemp's party and leave them to fight it out (if fight they must) with their own arms. He said that Kemp, being commissioned to carry a sword, should not have threatened to use it, as one time he did, against the Ngatiraukawas.

These remarks of Tamihana did not please Kemp, who declared he used his sword against rebels when the Ngatiraukawas rendered no assistance whatever to the Government, but were ready to run into the bush. The dispute between them was here stopped by others; when his Honour rising proposed, "The continuation of the good will and union at present existing between both races in this province, and the happiness, health, and prosperity of both." This toast was drunk with great glee by the natives, who in their turn proposed "The Queen and Royal Family." And so ended the interview.

Ngati Raukawa regarded the Horowhenua decision as disastrous. As Ihakara Tukumarū put it, they were "sorely grieved and disappointed". Their trust in the objectivity and fairness of the Native Land Court must have taken a severe blow (shown to some degree by Matene Te Whiwhi's sister "looking askance at Mr Rogan"). Probably most Ngati Raukawa would have accepted an allocation of some land around at Horowhenua to Muaupoko, especially the land within Taueki's and Te Whatanui's old boundary, but the allocation of the entire Horowhenua block to the counterclaimants only have been a surprise and a major blow. The 100-acre reserve at Raumatangi was neither here nor there. Kipa Te Whatanui later said that it was "simply land for a cemetery".¹⁹⁵⁹ The decision placed a large slab of Muaupoko land running from the sea to the Tararua right through the middle of Ngati Raukawa's lands with Otaki to the south and Ngati Huia isolated to the north. There were a number of applications from Raukawa for a rehearing and numerous complaints.¹⁹⁶⁰ But Judges Rogan and Smith opposed a rehearing. In their opinion Raukawa had failed to show any reason why the case should be re-heard; moreover "[b]oth claimants and their opponents were represented by counsel in the conduct of the case in Court, and there is no reason to believe that any evidence which would throw light upon the matter was wanting".¹⁹⁶¹ When Raukawa turned to Chief Judge Fenton to approve a rehearing they were told they were out of time.¹⁹⁶²

Returning to a point made in an earlier chapter, the poverty of the conceptual language employed by the Native Land Court in both the Kuketauaki and Horowhenua cases is very apparent. The Court worked within its simplistic binary categories of "conquest" and "occupation". There was no room for a more subtle analysis, or one more attuned to the complex interrelationships between the various groups or to the equally complex ideas of Maori custom. No anthropologist was at hand to give the Court any advice on this – indeed the modern discipline of anthropology did not exist in 1873. It is safe to say that no modern ethnohistorian or anthropologist would ever attempt to analyse the interrelationships between Muaupoko, Ngati Raukawa, Ngati Apa or Rangitane through such a crude lens as the conquest/occupation dichotomy. There was no "conquest" in the sense that Muaupoko had been completely obliterated by Ngati Raukawa and reduced to serfdom and slavery as Ngati Mutunga

¹⁹⁵⁹ 1896 AJLC App. No 5, 34.

¹⁹⁶⁰ There are a large number of Raukawa complaints on MA 75/14 (assuming this file has not been dismantled by National Archives staff).

¹⁹⁶¹ Memorandum, Judges Rogan and Smith, 3 June 1873, MA 75/14, cited Bryan Gilling, *Ihaia Taueki and Muaupoko Lands: An Interim report*, research report commissioned by the Ihaia Taueki Trust, 1994, Wai 52 [Muaupoko Land Claim Inquiry] Doc#A4, 53-54.

¹⁹⁶² Te Watene Tiwaeae and others, 8 December 1873, MA 75/14, cited Bryan Gilling, *Ihaia Taueki and Muaupoko Lands: An Interim report*, research report commissioned by the Ihaia Taueki Trust, 1994, Wai 52 [Muaupoko Land Claim Inquiry] Doc#A4, 54.

had done to the Moriori people in the Chatham Islands (also, significantly, a case decided by Rogan, which perhaps gives some idea of what he was looking for). On the contrary, Te Whatanui had decided to protect Muaupoko and allow them to live more or less unmolested (hence it was a matter of “occupation”). As a legal historian I claim no expertise in anthropology, still less in Maori customary law. I would argue nevertheless that if there was no “conquest” in the Chatham Islands sense, nevertheless it was the case that Te Whatanui had committed an act of great generosity of spirit when he did not have to, an act that guaranteed Muaupoko their survival. That there was some kind of generous and noble action on his part, an action which in fact became well-known and widely spoken of, is undoubted. This, it seems, is much more than mere occupation, and maybe there is appropriate terminology in the Maori language to categorise this relationship precisely. Ethnohistorians have their own particular kinds of discourse to characterise relationships of this kind, and might use terms such as “encounter zones” or “middle grounds” to analyse the complexities of these relationships. But these more complex ways of understanding did not exist in 1872, or at least they played no role in the thinking of the judges of the Native Land Court.

Although the Court places heavy emphasis on occupation, in fact the judgment, curiously, says next to nothing about *actual* occupation of the Horowhenua block. No information is given in the judgment about who is actually living where. As will be seen, in fact Ngati Raukawa people were living at numerous places all over the Horowhenua block, and continued to do so after the decision. It simply cannot be the case that Ngati Raukawa lived in two separate clusters, with the various hapu in the Otaki region to the south, and Ngati Huia to the north in a kind of splendid isolation, with a block of Muaupoko people in the middle occupying from the sea to the Tararuas.

Relations between Ngati Raukawa groups and Muaupoko, already tense enough, now began to break down further – notwithstanding Keepa’s beer and champagne. As the Appellate Court put it in 1912, “great trouble arose between the Natives – pas being built and shots fired”.¹⁹⁶³ (In 1908 the Native Land Court, in the judgment that gave rise to the 1912 appeal, had said that the 1873 decision “caused so much ill feeling that open warfare was resorted to”.¹⁹⁶⁴) In a pamphlet published in 1896 Alexander McDonald remembered that “Ngati Raukawa were extremely dissatisfied equally with the small section awarded to the family of Te Whatanui and the large area awarded to Muaupoko”.¹⁹⁶⁵ Ngati Raukawa did not acquiesce in being allocated a mere hundred acres, but instead attempted to retain more of the block by force.¹⁹⁶⁶ In retaliation in December 1873 some houses on land occupied by Ngati Raukawa people residing at Horowhenua (but on the land awarded to Muaupoko) were burned down by Kawana

¹⁹⁶³ (1912) 3 Wellington ACMB 252. According to the report of the Horowhenua Commission of 1896 (1896) AJHR G2, at 4-5:

At the time of, and subsequent to, the sitting of the Court in 1873 a number of the Ngatiraukawa were residents on portions of the land awarded by the Court to Muaupoko. The certificate having been ordered to issue, the Muaupoko acting under Kawana Hunia (Kemp being absent in Wellington) burned the houses of some of the Ngatiraukawa on the Horowhenua Block, and considerable excitement existed amongst the Natives. Pas were built and the members of the Ngatiraukawa Tribe assembled to assist their relatives whose houses had been burned; but, through the intervention of Sir Donald McLean, hostilities were prevented.

¹⁹⁶⁴ (1908) 49 Otaki MB 203A (21 July 1908).

¹⁹⁶⁵ Alexander McDonald, *A True History of the Horowhenua Block*, reprinted in 1897 AJHR G2, 2, 144-152, at 145.

¹⁹⁶⁶ Ibid: “Ngati Raukawa, therefore, attempted to take and hold possession of more than the 100 acres allotted to them”: 1897 AJHR G2, 145.

Hunia and his men, and the potato crops dug up (15 December).¹⁹⁶⁷ Alarming news from the Cook Strait region was printed in newspapers all over the country. On 17 December the *Herald* reported:¹⁹⁶⁸

Further information from Horowhenua is not quite satisfactory. After the disputants had consented to refer the dispute to the Government the some of the natives on both sides refused to recognise the arrangement, and much bounce and threats were used. Mr Commissioner Booth thought it desirable to sleep in Muaupoko camp during the night. Shots were fired at a whare, but nobody hurt. The Ngatiraukawa insist on the case being re-heard by the Lands Court. A reply is to be given by the Government in two days. Bodies of armed natives are arriving, and orders given to ferrymen not to cross any natives carrying arms. Puke, a Ngatiraukawa chief, who refuses to listen to reason, has issued a challenge to the Muaupoko tribe to fight on Wednesday. The Government hope to maintain peace, and are using all means to do so.

On 13 January 1874 the *Wanganui Chronicle* reported that while Kawana Hunia was “now quiet” conflict had broken out between Muaupoko and Ngati Raukawa:¹⁹⁶⁹

The Ngatiraukawa and Muaupoko are fighting at Horowhenua.

Mr Booth narrowly escaped being shot.

Hunia remains quiet at Parawanui, but wishes the Government to prevent Watene from erecting a pah on his land.

It is thought that the consequences will be serious.

To add to the tension Kawana Hunia of Muaupoko and Keepa Te Rangihwinui and their respective supporters had a serious quarrel amongst themselves. Faced with a serious breakdown of law and order in the Kapiti-Horowhenua region the government intervened again. Te Rei Parewhanake recalled in 1896 that following the disputation that broke out between Ngati Raukawa and Ngati Apa after the decision McLean went to Otaki, and “told them that they must stop that; that the Government did not like them to behave in that way”.¹⁹⁷⁰ McLean went on to devise a compromise, one which was to create controversy in its turn.

13.8 “To Major Kemp alone”: Formal orders in 1873

Before examining the 1874 settlement, or purported settlement, it is necessary to consider what happened legally to the Horowhenua block immediately after the decision, as this has important consequences for the intricate developments in the 1890s. The formal order was made by Judge Rogan on 10 April 1873.¹⁹⁷¹ The order was made on a printed form at the top of which “Native Lands Acts 1873 and 1874” have been crossed out and replaced by “1865” and “1867”.¹⁹⁷² In the body of the order it is stated that “it was ordered that the names written on the back hereof being the names of all the persons found by the Court to be Registered in the said land be Registered in the Court”. A separate document orders that a certificate of title for the Horowhenua block of 52,000 acres be issued to Keepa Te Rangihwinui, and there is a separate order for Raumatangi.¹⁹⁷³ On the obverse site of the certificate is a long list of names

¹⁹⁶⁷ *Star*, Issue 1809, 15 December 1873, p 2.

¹⁹⁶⁸ *New Zealand Herald*, Vol X, Issue 3775, 17 December 1873, p 2.

¹⁹⁶⁹ “The Horowhenua Dispute: Fighting Going on between the Tribes: Booth Nearly Shot: Hunia Quiet”, *Wanganui Chronicle*, Vol XVII, Issue 6288, 13 January 1874) p 2.

¹⁹⁷⁰ 1896 AJLC App no 5, 20.

¹⁹⁷¹

¹⁹⁷² Copy of Horowhenua order 10 April 1873, MA 75/4.

¹⁹⁷³

on which the number “143” is noted and the list has been sealed by the Court and signed by Judge Rogan.¹⁹⁷⁴ An authoritative analysis of the aftermath is provided by Prendergast C.J. in the Supreme Court decision in *Hunia v Kemp*.¹⁹⁷⁵

The grounds upon which the plaintiffs claim the relief are that they and those on behalf of whom they sue, together with the defendant, in all 143, were, in 1873, found by the Native Land Court to be the persons interested in a block of Native land called “Horowhenua,” containing about 52,000 acres. The number of persons found to be interested being over ten, a certificate of title, followed by a Crown grant, could not be ordered to be issued, but the Court had to make its order under the 17th section of “The Native Land Act, 1867”: consequently the names of all those interested – 143 in number – were registered¹⁹⁷⁶ as owners, and a certificate ordered to be issued; and it was ordered, by the consent of the others, to be issued to Major Kemp alone.

This meant that there was just one “certificated” owner (Keepa) and 143 “registered” owners. Alexander McDonald thought that Keepa was in effect the only owner illustrating just how unfamiliar with the workings of the Native Land Court system the Muaupoko people were:¹⁹⁷⁷

The ignorance of the Muaupoko people showed itself in various ways: (1.) In giving into the Court the list of names awarded to their tribe, the residents allowed many names of non-resident relatives and other persons to be included, who would not have been admitted by the Court if the least objection had been made to them. (2.) Instead of nominating ten persons, or as many different families, for the certificate ordered to be issued to them, which they might have done, they allowed a certificate to be issued to one person only – Major Kemp. (3.) As it afterwards transpired, they carelessly omitted to include forty-four names which ought to have been included.

However Keepa was later to say that he was careful to ensure that he became a trustee at the time of the 1873 case:¹⁹⁷⁸

I was trustee for the land in 1873 to prevent it being sold. I was careful because I had seen the evil of the ten-grantees system.

As Prendergast CJ noted, the actual certificate was not issued until 1881.¹⁹⁷⁹

In 1881 the certificate was issued, one name only being therein – that of Major Kemp – the others with Kemp who were found to be interested being the registered owners.

Prendergast CJ stated that the 1873 order created a trust, at least up to the time of partition. By this time this had become the standard interpretation of an order made under s 17 of the 1867 amendment.¹⁹⁸⁰

Major Kemp thereby became in effect a trustee for the other persons interested – the 143 – until subdivided amongst them. In such cases, until subdivision, the owner whose name is placed in the body of the certificate has certain limited powers of leasing. Although it is not expressly so provided in the 17th section, there can be no doubt that the person named in the certificate, if he leased, would hold the proceeds not for himself alone, but as well for the rest of the registered owners: in what proportions could

¹⁹⁷⁴ Ibid.

¹⁹⁷⁵ (1895) 14 NZLR 71, 72-73.

¹⁹⁷⁶ By ‘registered’ here, Prendergast can only mean that their names were noted or endorsed on the certificate, which on its face recorded Keepa as the owner.

¹⁹⁷⁷ Alexander McDonald, *A True History of the Horowhenua Block*, reprinted in 1897 AJHR G2, 2, 144-152, at 145.

¹⁹⁷⁸ Keepa Te Rangihwinui evidence, Native Appellate Court investigation into Horowhenua 14, 1897 AJHR G2, 38.

¹⁹⁷⁹ (1895) 14 NZLR 71, at 73.

¹⁹⁸⁰ Ibid.

not be determined without further recourse to the Native Land Court. The amount of the interest of each is not material. It is certain that from 1873 to 1886 Major Kemp's position was that of a trustee for the rest of the 143.

In legal terminology the legal owner was Keepa, holding in trust for the other 143, who held equitable interests. It is interesting that Prendergast seems to be of the view that if there were more than ten owners in any given Native Land block, then s 17 of the 1867 amendment would have to apply, and all the owners would have to be 'registered' (i.e. recorded or listed) on the back of the certificate. In fact the Native Land Court made many orders allocating land to ten (or indeed, fewer) owners when it must have been obvious that the owners were representative only in the period between the enactment of the 1867 amendment and the final disappearance of the ten owners rule in 1873.

As Keepa was the legal owner of the whole Horowhenua block there were complex legal problems when it came to dealing with the block (selling or leasing it), or partitioning it, because everything depended on Keepa himself. The general legal position was that, in the case of "s 17" land, the legal owner, on the front of the certificate (the "certificated" owner), was the trustee for the "registered owners" endorsed on the back of the document. While it is often claimed that titles granted by the Native Land Court did not create trusts, this is in fact inaccurate. Ten-owner grants under s 23 of the Native Lands Act 1865 did not of itself create trusts, certainly, a defect that was remedied by the Native Equitable Owners Act 1886. Land in this category became Crown-granted, once a grant (or a Land Transfer Act certificate of title, which *is* a Crown grant) was issued: ten owner land was Crown granted land held in fee-simple by the co owners as tenants in common. Section 17 orders, however, *did* create trusts. "Memorial" land under the 1873 Act was different again, and created a kind of *sui generis* legal regime that was somewhere between a legal and a customary title, and was the subject of endless litigation. Section 17 land was explained by Alexander McDonald in 1896 in his paper on the Horowhenua block as follows:¹⁹⁸¹

Now, there are some things about a certificate under the 17th section of the Native Land Act of 1867 which should be borne in mind: (1) Not more than ten persons can appear on the face of any certificate; all other persons ascertained by the Court to be interested on any block of land are to be "registered" in the Court. (2) It has been on several occasions determined by the Supreme Court that every "certificated" owner is a trustee for himself and the persons "registered" in the Supreme Court in respect of the same land. (3.) The Act itself limits the power of the "certificated" owner, so that he may only lease the whole or any part of the land for not more than twenty-one years; he cannot sell the land, nor any part of it. (4.) The persons "registered" were, so far as the Native Land Court was concerned, under complete disability. They could make no application in respect of the same land to the Native Land Court, nor could they make any demand on the "certificated" owner in respect of rents, nor in respect of anything else in connection with the same land.

Shortly before the block was partitioned in 1886, McDonald provided detailed advice to the Secretary of the Wellington and Manawatu Railway Company on the effect of a s 17 order (which many modern historians, myself included, have not fully grasped):¹⁹⁸²

The Title to the Horowhenua is a certificate under the 17th Section of the Native Land Act 1867. This is a very peculiar form of title. Under it there are two classes of owners, viz "Certificated owners" and "Registered owners". The position of the "Certificated owners" is practically that of Trustees with large and important powers, but not the power of sale. The position of the "Registered" owners is practically

¹⁹⁸¹ Alexander McDonald, *A True History of the Horowhenua Block*, reprinted in 1897 AJHR G2, 2, 144-152, at 145.

¹⁹⁸² Alexander McDonald to Secretary, Wellington and Manawatu District Railway Company (extracts), 26 January 1886, MA 75/4. McDonald was advising the railway company at this time.

that of Wards or Infants without any powers at all. The Act (1867) specially provides that neither the whole nor any part of the land held under this form of title can be sold *until it shall have been subdivided*.

In the case of Horowhenua there is only one “Certificated” owner – Major Kemp – and there are 150 “Registered” owners.

The position of Major Kemp is therefore that of a Trustee with very large powers; and the position of the 150 co-owners is that of Wards or Infants.

But neither the whole nor any part of the land can be sold until *after subdivision*.¹⁹⁸³

13.9 T C Williams’ *Appeal on behalf of the Ngati Raukawa Tribe* (1873)

Shortly after the 1873 decision T C Williams, who had represented Ngati Raukawa at the first Himatangi case in 1868 and who was the son of Henry Williams of the CMS, published in Wellington a remarkable pamphlet titled *A Letter to the Right Hon W E Gladstone, being an Appeal on behalf of the Ngati Raukawa Tribe*.¹⁹⁸⁴ The text is in form a letter to Gladstone (who can say if he ever saw it?), but it is fact an impassioned defence of Ngati Raukawa and an indictment of how (as Williams saw it) of how they had been treated. Williams seems to have become obsessed by what he saw as the Ngati Raukawa grievances, and as well as this publication frequently had long letters on the matter published in the newspapers. Added to the “letter”(72 pages) is appendix of 163 pages containing an enormous amount of material – extracts from books, official reports, and correspondence both public and personal – deployed to support his case. The text is a well-argued and powerfully-written indictment of government behaviour with respect to Ngati Raukawa. It is hardly an objective narrative and is in fact highly partisan, a piece of advocacy rather than a historical narrative, but it is certainly packed with detail and makes a number of important matters clear.

Henry Williams, T C Williams’ father, had of course been responsible for translating the Treaty of Waitangi, and Williams’ publication, as well as defending Ngati Raukawa, is also a defence of the Treaty (which in his view the government had seriously breached with respect to Ngati Raukawa). Williams had had to endure extremely snide personal remarks from Fox during the Himatangi case, as well as on the “missionary interest” and on the Treaty of Waitangi. To Williams the Treaty of Waitangi was a sacred text, and something of a personal and family commitment:¹⁹⁸⁵

Though “graduated” myself “in a Maori pa,” my father was as much an “Englishman by birth and education” as the Hon. Mr Fox; unlike Mr. Fox, in his youth he fought and bled under old England’s flag; and to no man, I believe, was the honour of old England dearer to him, and, though men like the Hon. Mr Fox may speak contemptuously of the Treaty of Waitangi, saying, “no doubt it was a great sham,” my father would not have consented to translate the Treaty of Waitangi in 1840, and to “repeat in the Native tongue sentence by sentence” all Governor Hobson said when he “assured the Natives in the most fervent manner that they might rely implicitly on the good faith of Her Majesty’s Government in the transaction,” nor would he have consented to be the bearer of the Treaty to the Native chiefs on both sides of Cook Strait, did he not believe that the Treaty was intended to be other than “a great sham.”

Williams saw the Treaty as essentially a land guarantee, protecting the lands of the tribes exactly as they stood at the time the Treaty was executed. As at 1840 Ngati Raukawa were the largest and most powerful tribe in the region, and held (he believed) all the land from the Kikutauaki stream to the Whangaeahu – a title which the New Zealand government was obliged to respect. Ngati Raukawa were

¹⁹⁸³ i.e. partition.

¹⁹⁸⁴ J Hughes, Lambton Quay, Wellington, 1873.

¹⁹⁸⁵ Williams, *Appeal on behalf of the Ngati Raukawa Tribe*, p 1.

“undisputed owners” of this land in 1840, and possessed a “title to the land at that time that no man would have dreamed calling in question”. He summed up his overall argument as follows:¹⁹⁸⁶

My case is this. A people when savages and independent were merciful to the prostrate. They are afterwards led to embrace Christianity and to subject themselves to the Dominion of a Christian Queen. Their having been merciful when savages was the cause of their ruin under the Christian’s rule! My case is one of unscrupulous Anglo-Saxon greed and oppression triumphant over peaceable Maori submission.

Williams begins his “letter” with a historical narrative, describing the history of the migrations and stressing Ngati Raukawa’s beneficence towards Muaupoko. He mentions the “feast at Wainui” (i.e. the event known in other sources as the “feast of the pumpkins”), which he sees as further proof that had it not been for the protection of Te Whatanui, Muaupoko would have been exterminated by Ngati Toa. Williams emphasises as well Ngati Raukawa’s willingness to compromise with Ngati Apa and Rangitane over the the Rangitikei and Te Ahuoturanga blocks – “two large blocks, mostly of fine country, amounting to 500,000 acres”,¹⁹⁸⁷ which were “quietly returned to their original possessors – the Ngatiapa and Rangitane tribes – by their old masters, the Ngatiraukawa, the far more powerful and numerous tribe”. This action had left to the Ngatiraukawa about 425,000 acres, out of which the Ngatiraukawa had already set aside for Muaupoko a portion of country more than sufficient for their use and occupation, near the lake Horowhenua”.¹⁹⁸⁸

Williams traced the origins of the conflict between Ngati Raukawa and Ngata Apa/Rangitane to the leases granted by Nepia Taratoa. In 1863 “a quarrel arose between the Ngatiapa and the Ngati Raukawa and Rangitane tribes, owing to the old Ngatiraukawa chief, Nepia Taratoa, having allowed the Ngatiapa and Rangitane to join in some of the illegal leases over portions of the block to settlers (though in some of the leases they were not allowed to join)”. Featherston arrived, supposedly to settle the dispute, but in reality (Williams implies) in furtherance of a pre-existing plan to purchase the land.¹⁹⁸⁹ Williams has to admit that Ngati Raukawa had been unwise in allowing Ngati Apa to share in the rents: “that Ngatiraukawa (some of them) having allowed these people to join in their leases, though a generous, was, no doubt, a very unwise act, and, like all their acts of generosity shown to the original possessors, has been made free use of against them by the Government, and in a Court of law.”¹⁹⁹⁰ Williams adds the interesting detail that shortly after Featherston had claimed that the purchase would prevent bloodshed, “Featherston accompanied General Chute in his expedition up the West Coast, taking with him the Ngatiapa and their allies, when they were supplied with a large quantity of arms and ammunition”.¹⁹⁹¹ (Also present on this “bush-scouring” expedition, although Williams does not say so, was Keepa Te Rangihwinui.)

Williams was also critical of the Native Land Court’s Himatangi decisions of 1868 and 1869. Rogan and Smith’s finding in the first Himatangi case that the occupation of the Manawatu-Rangitikei block was a shared one was, in Williams’ view, (perhaps) right. However, “such ruling, admitting it to be the correct one”, should have, “looking to the numerical strength of the tribes”, awarded the whole

¹⁹⁸⁶ Ibid, 2.

¹⁹⁸⁷ Ibid, 7.

¹⁹⁸⁸ Ibid, 7-8.

¹⁹⁸⁹ Ibid, 8.

¹⁹⁹⁰ Ibid, 33.

¹⁹⁹¹ Ibid, 9. Chute’s campaign (Jan-Feb 1866) is one of the more notorious in the New Zealand wars, and is bitterly remembered by Ngaruahine to this day (as I can testify). Williams would have known of this notoriety, and hence is being ironic about Featherston’s expressed wish to prevent bloodshed – before, that is, setting off on a very destructive expedition with Chute. Keepa Te Rangihwinui was engaged in this campaign leading part of the Native Contingent in Chute’s force. For a detailed account of the campaign see Ron Crosby, *Kupapa: The bitter legacy of Māori alliances with the Crown* (Penguin Random House, Auckland, 2015) 286-295).

of the Rangitikei-Manawatu and also the Rangitikei (1849) and Te Ahuaturanga (1864) blocks to Ngati Raukawa – except of course Ngati Raukawa had already acquiesced in the sale of the latter two blocks by Ngati Apa and Rangitane. The real problem with the Rogan-Smith judgment was its second major finding: that the interests of Ngati Raukawa were confined to the “section of the tribe which has been in actual occupation, to the exclusion of all others”. The effect was, says Williams, that “many members of the tribe who owned land in the block had been thrown out”.¹⁹⁹²

Williams was aware of the importance of setting cases in the Waikato and in the PkM region side by side to assess the cumulative impact of the Native Land Court on Ngati Raukawa and to expose its inconsistencies:¹⁹⁹³

I beg to state that the Ngatiraukawa were never driven away, as has been stated, from the homes of their fathers in the Auckland Province, many members of the tribe having remained there throughout after the migration. That by a judgment given by the Native Lands Court at Cambridge, in Waikato,¹⁹⁹⁴ all members of the tribe who migrated to Cook Strait are excluded from participating in the lands of their fathers (the greater portion of such land having been taken possession of by one tribe after they had left it; taken from that tribe again and occupied by another) – the Court considering “that a tribe having conquered, and having undisputed possession of a district for many years previous to the foundation of the Colony, and up to the present time, are, according to Native custom and justice, entitled to be recognized as the proprietors of the land.” That their land is also taken from them in Cook Strait, because – “though having conquered and having undisputed possession of the district for many years previous to the foundation of the Colony” – the Judges of the Native Lands Court had discovered a flaw in their title. I, myself, heard Chief Judge Fenton say in Court, “These men (the Ngatiraukawa) had a perfect right to kill these people, and eat them too if they liked, but they did not do so; they are men, they are still alive.” He afterwards said to Mr Travers, the counsel for the Natives, “The fact is, Mr Travers, it appears to me the flaw in your title is that they did not kill and eat all these people.” The Ngatiraukawa losing this land [COMPLETE]

13.10 “To certain of the descendants of Whatanui”: the agreement or compromise of 1874, and Ngati Raukawa protests

There were a number of meetings between McLean, Keepa Te Rangihwinui and the Ngati Raukawa leadership in early 1874. Tensions were still running high, and when McLean asked Kawana Hunia to meet him at Otaki, Kawana, worried that he might be shot by the Ngati Raukawa, declined to go to Otaki unless the government provided an armed escort (McLean did so).¹⁹⁹⁵ McLean, anxious to settle the matter and preserve the peace,¹⁹⁹⁶ decided that (as the Native Appellate Court was later to put it) “it was the descendants of Te Whatanui who were chiefly concerned in the question at issue with Muaupoko and that they were the proper persons to negotiate with for a settlement of the difference”.¹⁹⁹⁷ McLean held a meeting with the descendants of Te Whatanui on 13 January. Te Watene Te Waewae was “the chief spokesman and he narrated all the troubles that had occurred between the Ngatiraukawa and Muaupoko from the death of Whatanui Tutaki in 1869”.¹⁹⁹⁸ On 17 January 1874 it was reported in

¹⁹⁹² Ibid, 11.

¹⁹⁹³ Ibid, 11-12.

¹⁹⁹⁴ Williams is referring to the Pukekura/Puahue/Maungatautari judgment (1868) 2 Waikato MB 93-95.

¹⁹⁹⁵ Evidence of John Stevens, Horowhenua Commission, 1896 AJHR G-2, 220.

¹⁹⁹⁶ Ibid: “I assume he (McLean) did apprehend a real difficulty, for the reason that he was extremely anxious that everything should be done to prevent a recurrence of the firing which had taken place.”

¹⁹⁹⁷ (1898) 40 Otaki MB 209.

¹⁹⁹⁸ (1898) 40 Otaki MB 209.

the newspapers that a peaceful settlement had been negotiated between Ngati Raukawa and Muaupoko. According to the *Wanganui Chronicle*:¹⁹⁹⁹

Otaki. Jan 16. Peace has been made between the Ngatiraukawa and Muaupoko tribes. Kawana Hunia is at Otaki on his way to Wellington and is well received by the Ngatiraukawa. Yesterday the Ngatiraukawa promised to assist in repressing crime and outrage, and uphold the law. Later in the evening a cartouche box filled with ammunition was presented by a chief of the Ngatiraukawa to the Native Minister as a token of having relinquished all idea of fighting. The supremacy of the English law may now be considered more thoroughly established on this coast than it has ever been.

The last statement in the above report is revealing, as well as being needed to be taken with several grains of salt. On January 20 1874 Kawana Hunia, having made his way to Wellington, was arraigned at the Wellington Magistrate's Court on two charges of arson.²⁰⁰⁰ McLean sent a telegram from Otaki on 16 February 1874 announcing a settlement of the Horowhenua dispute (the disputation was in fact to drag on interminably for decades, but was at least mainly confined to courtrooms).²⁰⁰¹

In 1896 Keepa Te Rangihwinui described in detail the conversations he had with McLean at this time (i.e. in early 1874). Keepa recalled that the discussions happened in Wellington about the same time that Kawana Hunia had been arrested. Having learned of his arrest Keepa and assuming that Hunia was in prison, Keepa went to Wellington, only to find that Hunia "had been released on bail by a Ngati Raukawa chief".²⁰⁰²

When I got there some of the Ngatiraukawa were there; there were Horomona Toremi, Te Puke, Watene Ti Waewae, Matene Te Whiwhi, and others. They had gone there to sell land. I went to the Native Office and met McLean. He said, "You had better come to my house and have some dinner with me," and I went. After we had finished our dinner McLean said to me, "The reason I asked you to come here to talk to me was that I want you to give me a piece of Horowhenua."

52. Did he say what for? – "I then said, "Why should I give you a piece of land?" He did not answer my question at first, but said, did you not speak a word to Pomare?"²⁰⁰³ I thought to myself, Pomare has been speaking to McLean, and that is the reason he has asked me to come here." I said, "Yes, I did speak to Pomare in 1872. You want me to give you a piece of land in consequence of what I said to Pomare?" I thought Pomare was a very crafty man. I said, "Pomare is a crafty man." What I said I said as to a gentleman, and I wanted him to act as such to me. McLean then said, "I want you to give me some land." I said, "How much do you want? I will give you 1,200 acres, and that, added on to the other hundred, would make 1,300 acres."

53. What was this other hundred acres? – That was a piece of land awarded by the Land Court, which sat in 1873.²⁰⁰⁴

As a result of the discussions two separate agreements were negotiated and signed on 9 and 11 February. These agreements are an important component of the Horowhenua block story and were

¹⁹⁹⁹ *Wanganui Chronicle*, (Vol XVII, Issue 6292, 17 January 1874) p 2; to the same effect, *Evening Post* (Vol IX, Issue 282, 16 January 1874) p 2.

²⁰⁰⁰ *Wanganui Chronicle*, Volume XVII, Issue 6205, 21 January 1874, p 2.

²⁰⁰¹ The telegram was printed in the *Evening Post*, Vol IX, Issue 282, 16 January 1874, p 2.

²⁰⁰² 1896 AJHR G-2, 26, (Keepa Te Rangihwinui).

²⁰⁰³ Te Whatanui's daughter Rangingangana married Pomare II of Ngapuhi. The latter died about 1850, and I assume the "crafty" Pomare referred to here by Keepa is Pomare II's son, and Te Whatanui's grandson. The Pomare family were to become the principal heirs of Te Whatanui, meaning that most of the owners of the Raumatangi block (as it became) were not resident at Horowhenua. See discussion of 1895 Appellate Court decision, below.

²⁰⁰⁴ i.e. the 100 acres at Raumatangi, referred to in the Horowhenua judgment.

repeatedly referred to by various later courts and commissions of inquiry. According to the Native Appellate Court in 1908, it was at these discussions that Ngati Raukawa decided to abandon any idea of seeking a rehearing of the Horowhenua block – for very good reasons:²⁰⁰⁵

Urgent demands were made for a rehearing but it was pointed out to persons making this request that of a rehearing was granted for the Horowhenua Block that it would also be necessary to grant a rehearing for the larger block known as Kuketauaki, stretching between Kuketauaki and Manawatu as Muaupoko had made an application to that effect.

(As seen above, immediately after the Kuketauaki decision was delivered, counsel for the “five tribes” had indeed announced that he intended to apply for a rehearing.) The agreements seem to have calmed things down significantly at the time, but their interpretation was later to become a matter of serious difficulty.

The actual legality of the agreements was doubtful. The land remained “s 17 land”, meaning that the legal owner was still Keepa, and indeed only Keepa. The list of “registered” owners remained as before, and did not include Ngati Raukawa. Alexander McDonald, writing in 1896, was sure the agreements were unlawful: “although this agreement was *ultra vires*, it satisfied the parties, and the disturbance ended for a time”.²⁰⁰⁶ By the first agreement of 9 February (as the Appellate Court puts it) “certain members of the Ngatihikitanga, Ngatipareraukawa, Ngatiparekowhatu, and Ngatikahoro hapus of the Ngati Raukawa Tribe, received £1050 in recognition and final extinguishment of their claims along the Southern boundary of the block and were to receive also certain reserves between the Papaitonga Lake and the sea”.²⁰⁰⁷ The reserves were described in the agreement as “certain reserves hereafter to be surveyed between the Papaitonga Lake and the sea; these reserves being made with the full consent of Keepa Te Rangihiwini to whom this block in question, being part of the Horowhenua Block, was awarded by the Native Land Court”.²⁰⁰⁸ The size of the reserves was not defined, storing up a problem for the future.²⁰⁰⁹ (As a kind of aide-memoire here – unfortunately the story continues to get progressively more complicated – this can be noted as *1874 Agreement 1* (four hapus): £1050 plus the *Papaitonga* reserves in what was to become Horowhenua 11.) This agreement was not with the descendants of Te Whatanui but with the four hapu, who are often referred to in the sources as Te Puki’s (or Te Puke’s) people.²⁰¹⁰

The second agreement, made on 11 February 1874, was with “Te Whatanui’s people”, who were to receive an area of land of 1300 acres²⁰¹¹ adjacent to Lake Horowhenua in addition to the reserve

²⁰⁰⁵ (1898) 40 Otaki MB 208. The Muaupoko rehearing application is mentioned in the evidence of Alexander McDonald given to the Horowhenua Commission in 1896: see 1896 AJHR G2, 73: “Kawana Hunia and, I believe, others of those registered persons made application to the Court to have a rehearing, or to have the title altered in some way; they were dissatisfied with the existing title”.

²⁰⁰⁶ Alexander McDonald, *A True History of the Horowhenua Block*, reprinted in 1897 AJHR G2, 2, 144-152, at 145.

²⁰⁰⁷ (1912) 3 Wellington ACMB 252. The full text of the deed of 9 February 1874 is printed in *Turton’s Deeds* and in the Horowhenua Commission’s Report: see 1896 AJHR G2, 9. The deed was executed by Matene Te Whiwhi, Aohau Nikitini (Nicholson), Keraipe Te Puke, Ngawiki Tuainuku, Horomona Toremāi, Kipihana Te Kanaroa, Watene Te Waewae, Tamihana Te Rauparaha, Nerehana Te Paea, Rakapa Topeora and Rakera Kipihana on behalf of “the Ngatihikitanga, Ngatipareraukawa, Ngatiparekowhatu, and Ngatikahoro hapus of Ngatiraukawa Tribe”.

²⁰⁰⁸ Citing from the deed as reprinted at 1896 AJHR G2, 9.

²⁰⁰⁹ 1898 AJHR G2A, 2.

²⁰¹⁰ 1896 AJLC App no 5, 30

²⁰¹¹ It seems clear to me that this must be regarded as in addition to the existing Raumatangi reserve of 100 acres set aside for Ngati Raukawa in 1873 in the Horowhenua case. That area was already deducted from the award to the counterclaimants, and was not therefore available for Keepa Te Rangihiwini to give to Ngati

area at Raumatangi already set aside as a reserve for Ngati Raukawa in the Horowhenua judgment of 1873. McDonald This agreement (which can be noted as *1874 Agreement 2* (Te Whatanui's descendants): *Horowhenua Lake* reserve) is as follows:²⁰¹²

I, Keepa Te Rangihiwini, on behalf of myself and the Muaupoko Tribe whose names are registered in the Native Land Courts as being the persons interested in the Horowhenua Block, hereby agree 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 three hundred acres (1,300) the position and boundaries to be fixed by actual survey. The said piece of land to be conveyed in such a manner as will prevent its alienation by sale or mortgage by the persons to whom it is to be conveyed.

When the Horowhenua block was partitioned in 1886 Kemp told the Native Land Court that McLean had asked him to set aside this reserve area for Ngati Raukawa.²⁰¹³

According to Parakaia te Pouepa the £1050 was paid by Kemp to Matene Te Whiwhi, Tamihana Te Rauparaha, Rakapa Topeora and some others.²⁰¹⁴ But there were those within Ngati Raukawa who did not think that the rightful owners the area south of the old Whatanui-Taueki boundary ever were compensated. That, at least, was Kipa Te Anaru's opinion (1891). He said also that when surveyors came to survey the new (Papaitonga) boundary, Ngati Raukawa people living south of the old boundary protested and drove the surveyors away:²⁰¹⁵

38. To whom did Kemp give that money? – To Matene Te Whiwhi, Tamihana Te Rauparaha, Rakapa Topeora, and some others.

39. *Hon Mr Jennings.*] Were they empowered to receive it on behalf of the tribe? – No, they were asked by Kemp to come from Otaki into Wellington. He paid them the money here. Those persons whose names are given came to Wellington.

40. Are they prominent members of the tribe – those persons you mentioned? – Yes; they were the principal men of the tribe.

41. *Hon. the Chairman.*] Were those men who received the money the owners of this strip of land? – If their right to a piece of the ground had been tried neither Te Whiwhi nor Tamihana Te Rauparaha would have been proved owners. Puke Karaipi was one of the rightful owners of that piece; there are other rightful owners of that strip who did not receive any payment.

42. *Hon. Mr. Jennings]* Did they make any protest in regard to the sale of that portion of the land? – *They turned off the surveyors whom Kemp sent to survey the southern boundary* (emphasis added).

43. That was a protest against the sale? – Yes.

44. *Hon the Chairman.*] Is there any one that can give evidence in support of your statement? – Te Rei Parewhananake was one of those who went to turn them off.

Raukawa. However most of the sources describe the area as being 1200 acres, assuming that the extra 100 was the existing Raumatangi reserve. Alexander McDonald believed that under McLean's mediation "Major Kemp promised on behalf of the Muaupoko people that 1,200 acres should be added to the Ngatiraukawa 100 acres": 1897 AJHR G2, 145.

²⁰¹² As reprinted at 1896 AJHR G2, 9.

²⁰¹³ 1896 AJHR G2, 131 (evidence of Judge Wilson).

²⁰¹⁴ Petition of Parakaia Te Pouepa, 4 July 1867, reprinted in AJLC App 5 p 8.

²⁰¹⁵ 1896 AJLC Appendix 5, 16.

On the same occasion in 1891 Heni Te Rei also gave evidence, and Kipa Te Anaru questioned her herself. She confirmed that there had been protests about the survey of the new boundary (“my husband was one of those who came to dispute that boundary”²⁰¹⁶) and pointed out that none of the persons who sold the land between the old and new boundaries were in the certificate of title (I am not sure what “certificate” is being referred to here – presumably the Horowhenua certificate)

Te Rei Parewhanake was also one of those who protested about the survey of the new boundary. His evidence, also given in 1891, is pivotal testimony:²⁰¹⁷

17. *Kipa Te Whatanui.*] When Muaupoko and Ngatiraukawa were having this dispute, did you hear that Sir Donald McLean came to Otaki? – Yes; when the Government heard there was trouble between these people, Sir Donald McLean came up there.

18. What did Sir Donald McLean say? – He told them that they must stop that; that the Government did not like them to behave in that way.

19. What did he say to Te Ngatiraukawa? – When Ngatiraukawa agreed to desist, he asked some of them and Te Whatanui’s people to come to Wellington.

20. What, then, was arranged between them? – When Ngatiraukawa and Te Whatanui’s descendants came to Wellington, Major Kemp’s people were here; and Sir Donald McLean asked Kemp to give 1,300 acres, and Major Kemp agreed to give it to Sir Donald McLean, and the Government gave £1,050 for that part of the land at Waiwiri which had been wrongly included in Horowhenua.

21. *Hon. the Chairman.*] Who was the £1,050 given to? Were the 1,300 acres, as well as the £1,050, all given to Te Whatanui’s people? – The 1,300 acres was given to Te Whatanui’s people and the £1,050 paid to Te Puki and others.

22. Who was Te Puki? – He belonged to another hapu of Ngatiraukawa, nor to Te Whatanui’s hapu.

23. This strip of land was to be thrown in as a supplement to the Horowhenua Block? – It was so added by the Court; but that piece of land was really outside the Horowhenua Block, and belonged to Ngatiraukawa.

By “outside the Horowhenua block” Te Rei Parewhanake means outside the *former* Horowhenua block. The “piece of land” was the area in between the southern boundary of the old (Whatanui-Taueki) boundary and the boundary as fixed by the Court in 1873.

24. *Kipa Te Whatanui.*] Do you think that those persons had a right to receive that money, seeing that their names were not in the certificate?²⁰¹⁸ – No, they had no right. The Court of 1873 had awarded that land to Kemp, and these people had no right, therefore, to take the money for that land.

25. Do you think it was right of the Court, to first award that piece of ground to Ngatiraukawa at the sitting of the Court in 1872, and then to award the same ground afterwards to Major Kemp in 1873? – No, that was not right.

26. Were those persons who sold Waiwiri in the certificate for any part of that Waiwiri land? – No; those persons who sold were not in that certificate. [21]

2016 Ibid.

2017 Ibid, 20-21.

2018 Meaning, presumably, the Horowhenua certificate.

27. Was that the reason why that sale was objected to at the time and up to the present time? – Yes; they objected from that time up to the present.

28. When Kemp had that boundary line at Waiwiri surveyed, did anybody go up to object to it? – Yes; I went up and I stopped the survey. It was being carried on by Mr Booth, who was acting on behalf of Major Kemp.

29. Did you go up yourself, or had you companions? – There were others with me, and it was I who stopped the survey. I asked Booth to send for Major Kemp to send for Major Kemp, so that he might come there and have the boundary discussed and properly arranged at Rakauhamana or somewhere, and Mr Booth agreed to that.

This evidence confirms that a number Ngati Raukawa people living in the area between Hokio and Waiwiri were opposed to the 1873 agreement, referred to by the Commission as the sale of Waiwiri, and indeed attempted to prevent it being surveyed.

Further evidence about the opposition of local people to the survey of the southern boundary is provided by Hura Ngahue of Ngati Maihi, in evidence given to the Native Appellate Court in 1897:²⁰¹⁹

I lived at Muhunua with Te Puke from time of Court [meaning in 1873] until the survey was made. I remember the survey of Waiwiri; I was there. We spoke of the boundary being wrong before survey was made, and determined to resist the survey. I accompanied Te Puke to mouth of Waiwiri Stream when Kemp put up his post there. We made threats against Kemp then.

At this point Hura Ngahue makes a critically important point:

Kemp told us that that if we allowed the surveys to be made he would provide reserves; that is why we allowed it to proceed.

That is, Kemp made the decision to allocate reserves in the Waiwiri area in order to deflect opposition to the survey of the southern boundary of the Horowhenua block. The significance of this is that it might have some bearing on the size of the reserves the opponents of the survey were hoping to get – an issue which was to arise later with the Horowhenua 11 case in the Appellate Court in 1897-8.

Thus to conclude, as a result of the agreements, Ngati Raukawa had: (a) the Papaitonga reserves (in what was later to become Horowhenua 11), in addition to the payment of £1050 (the four hapu), (b) 1300 acres at Lake Horowhenua (later Horowhenua 9) (descendants of Te Whatanui), and (c) Raumatangi, the 100 acres originally excluded by the Horowhenua decision in 1873 (descendants of Te Whatanui). These allocations were to four Ngati Raukawa hapu and to “certain of the descendants of Te Whatanui” (the meaning of the latter turned out to be a problem in itself). The deal seems at this distance to be a very poor one for Ngati Raukawa, whose interests at Horowhenua were now reduced to the 1300 acres and the Papaitonga reserves. Why did they agree to McLean’s package? One answer has been suggested already: any attempt to have the Horowhenua block reheard or reinvestigated risked similar demands by Muaupoko for a reinvestigation of Kuketauaki. Perhaps many Ngati Raukawa people had concluded that it was too risky to expose whatever territories they now possessed to the vagaries of the Native Land Court. The other answer, however, is that at least some Ngati Raukawa people, notably those actually living in the wedge of land between the old and the new boundaries, did not agree to it: they protested, and drove the surveyors away.

²⁰¹⁹ 1898 AJHR G-2A, 5.

The Waitangi Tribunal in its *Horowhenua* report is critical of these agreements, and of the Crown's failure to consult with any of the registered owners before making its agreement with Te Keepa (true, perhaps, but no one seems to have consulted with Ngati Rauakwa people in residence either). Perhaps the Crown and the Ngati Rauakawa chiefs assumed that Te Keepa had authority to make the agreement on behalf of Muaupoko, as he apparently said he did. The Tribunal also notes that Te Keepa was offered some powerful inducements by the Crown to enter into the arrangement: that the Crown would pay for the Horowhenua surveys, and Te Keepa would be awarded some land of his own in the Muhunua block. I have not researched the evidence relating to these inducements myself, but it is of course not unlikely that McLean would offer inducements of this kind. Apparently, also, although the sum of £1,050 was paid to Matene Te Whiwhi and others by the government, the sum was charged against the Horowhenua block as an advance on purchase.²⁰²⁰ The actual mechanics of the Crown's arrangements with Te Keepa, however, do not appear to have any impact on the justice of Ngati Rauakawa's own claims to Horowhenua, a point for legal argument probably. The Tribunal observes:²⁰²¹

If the Crown believed that Ngāti Rauakawa's rights had not been or correctly recognised by the court, then its duty under the Act was to order a rehearing. Alternatively, after the six-month period for a rehearing had expired, it could have obtained special legislation to refer this long-running dispute back to the court or to an intertribal rūnanga, or even to a body like the 1873 Hawke's Bay Native Lands Alienation commission (which had a mix of Māori and Pakehā commissioners).

There could have been a problem with a rehearing, however, in that Horowhenua was intimately linked with the larger Kikutauaki block, and it might have been necessary to rehear both. There is the further point, not addressed by the Tribunal in its *Horowhenua* report, that there was in fact a community of Ngati Rauakawa people in occupation at Raumatangi whose land was sold over their heads by the Crown, a group of chiefs, and Te Keepa all acting together. Any suggestion that as at 1873 the only Ngati Rauakawa people living in the Raumatangi area were Te Whatanui's immediate family is obviously wide of the mark.

13.11 Ngati Rauakawa on the Horowhenua block after 1873

In fact there is evidence that after the decision of 1873 and the settlement of 1874 Ngati Rauakawa people continued to live at various places all over the Horowhenua block. The block was not formally partitioned until 1886, but even after that had occurred it seems that Ngati Rauakawa continued to live at Horowhenua, paying little attention to the formal boundaries, which do not seem to have been formally defined on the ground in any case. Walter Buller pointed out to the Native Appellate Court that "Whatanui's people" had carried on "squatting" at Raumatangi after the decision of 1873, which was one of the reasons why they wanted the additional area negotiated in 1874 to be located there rather than at Waiwiri on the southern edge of the Horowhenua Block.²⁰²² In fact in 1896, 23 years after the Horowhenua and Kikutauaki decisions, Ngati Rauakawa people were still living all over the Horowhenua block, considering that they had a perfect right to do so, and were basically ignoring the 1873 Horowhenua decision. This is shown by evidence given by Kipa Te Whatanui in 1896.²⁰²³

51. *Hon Mr Jennings.*] This Kipa signs for ninety others. Are they residing on this block? – No; not all of them. Some of them are living on the land still. Those people who have signed this petition are not all

²⁰²⁰ Waitangi Tribunal, *Horowhenua*, 193, citing Luiten, *Political Engagement* (Wai 2200 doc#A163), 193.

²⁰²¹ Waitangi Tribunal, *Horowhenua*, 194.

²⁰²² 1897 AJHR Session II G2, 4.

²⁰²³ 1896 AJLC, 13 (evidence of Kipa Te Whatanui).

claimants to that block. They signed to support me in my claim, to say that they consider my claim a just one.

52. How many are there members of the tribe who lay claim to this piece? – I think there would be about fifty of them who could be termed Whatanui’s people.

He had made the same point at greater length in 1891²⁰²⁴

The Chairman: Are you now living on the land? – Yes, we are living there now.

On the 100 acres, I presume? – No; we are living on the land generally. Te Whatanui’s descendants are living there now, permanently, for sixty years. The 100 acres was simply land for a cemetery.

Are you living there with the consent of the people who got the land? – No; we are living there under the right we obtained from Whatanui.

But, if you lost the land in 1873 by a decision of the Native Land Court, and if the place was burnt down by Hunia so that the people were nearly roasted alive, how can you say that you have lived there ever since and live there now? – We have never admitted the judgment of 1873. We have continued to protest against it. We have lived on the land ever since. We obtained absolute possession of this land by conquest prior to the Treaty of Waitangi. Te Whatanui leased this land to Hector Macdonald, and Muaupoko never made any objections. They are living there now.

Now? – Formerly. Hector Macdonald, to whom the land was leased, is now dead but his children are still in possession.

Are they half-caste children or Europeans? – They are Europeans. They are living on small portion which Te Whatanui set apart for them. They are still living there, but, of course, they have looked upon Major Kemp as their landlord.

On the same occasion (1892) Te Aohau Nicholson said that “up to the present time we have been in continual occupation of the said land”, referring mainly to the land between the old and Native Land Court Horowhenua boundaries; “[a]ll our cattle and sheep are still running there”.²⁰²⁵

13.12 Kawana Hunia and Keepa Te Rangihwinui, 1879

One interesting document, albeit one rather difficult to interpret, is a letter from Kiri, Ngapere, Makere and Hariata – who from the context, must be Muaupoko - which was translated and printed in the *Manawatu Herald* on 8 August 1879. The letter reveals deep divisions between Keepa and Kawana Hunia, and also makes a few remarks about Ngati Raukawa. Thus, the letter is a reading of events as seen from the perspective of the Muaupoko supporters of Keepa.²⁰²⁶

SIR - A letter in your paper of 25th July seems to be against the Horowhenua natives, and backing the Ngatiraukawa and Kawana Hunia about the troublesome matters at Horowhenua. Whoever backed that letter which appears in your paper, knows but very little about the matter, as he says there is a large reserve given by Sir Donald McLean to some natives; there was no such thing completed. He also states that this reserve was fenced and used by the natives, which is also untrue. Mr Baker, or whoever informed this paper, should not work upon one side of a question. He should cross the river to see also what was on the other side of a question. This fence he talks about is on the Horowhenua natives’ land. He mentions Rangi, a Ngatiraukawa, who is simply living on Muaupoko land. The reserve that is mentioned is simply a promise, which is like pie-crust – easily broken. The Ngatiraukawa tribe had forgotten Horowhenua

²⁰²⁴ Ibid, 35, reprinting evidence given before the Native Affairs Committee, 12 August 1891.

²⁰²⁵ 1896 AJLC, Appendix 5, 38.

²⁰²⁶ “The Horowhenua Dispute”, (*Manawatu Herald*, Vol 1, Issue 96, 8 August 1879) p 1.

until the little uncultivated bounce Governor Hunia showed himself at Horowhenua. *He led several of the Ngatiraukawa by the nose to believe he had power to divide the Horowhenua Block to who he liked* [emphasis added].

All this is done to offend Major Kemp, chief owner of the block, who is backing Muaupoko against all Hunia's movements, and taking it all through. Hunia has but very little, or no right at all, to Horowhenua. When fighting was between Ngatiraukawa and Muaupoko about the Horowhenua Block, Kawana Hunia, as usual, led them into the danger, and as soon as Ngatiraukawa fired a shot, and fighting commenced, the great man Hunia bolted to Rangitikei, and left poor innocent Muaupokos to be fired at not only by Ngatiraukawas, but by a half dozen different tribes.

Major Kemp is the man who is to be looked to. He is the man who gained Horowhenua, and got Hunia under his thumb. Neither Hunia nor Ngatiraukawa have much to back them into Horowhenua. Major Kemp is well supported, and the principal owners of the Ngatiraukawa, also the said Rangi, is trusting to Major Kemp as to what he does in Horowhenua. If you want to know about Horowhenua, just apply to some one who knows something about it. Don't look at one side of the question.

The document opens a window into a complicated political situation, that much as certain, but what else can be said? The inter-Maori political situation was seemingly a three-fold one, i.e. Ngati Raukawa, Muaupoko (led, or represented, by Keepa) and Ngati Apa (Kawana Hunia). It may be that some within Ngati Raukawa had developed an understanding that interests in Horowhenua could be shared between Ngati Raukawa and Ngati Apa, to the detriment of Muaupoko. But, interestingly, "the principal owners the Ngatiraukawa" were "trusting to Major Kemp as to what he does in Horowhenua". [Certainly the suggestion that Ngati Apa and Ngati Raukawa were allied or were working together in some way is supported by some other evidence, included the evidence of Rev Samuel Williams in the original Himatangi case But the evidence is sketchy. The principal impression conveyed by the sources is of a Muaupoko (Kemp) and Ngati Apa (Hunia) combination against Ngati Raukawa,

13.13 Horowhenua Partition (1886)

The next step was the partition of the Horowhenua block by the Native Land Court in 1886. As 's 17 land' it had been impossible to partition it unless Keepa, as the sole legal owner, applied for it: no one else could do so in the circumstances. Once the land was partitioned, however, and new orders made for the various partitions, the existing s 17 trust would probably cease to exist, and the land would become something like Maori freehold land as that is understood today. Keepa had been reluctant to apply for a partition for this very reason.²⁰²⁷ Alexander McDonald later claimed that the reason why Keepa eventually decided to apply for a partition was to facilitate the sale or transfers of parts of the Horowhenua block to the Crown (4000 acres), the Wellington-Manawatu railway company (76 acres), to Basil Sievwright, a lawyer in Dunedin (in fact he was a partner with Sir Robert Stout) (800 acres), to the 44 Muaupoko people omitted by the Court in 1873, and the 1,200 acres to Ngati Raukawa. It was legally impossible for these transfers to be carried out without partitioning the land, and the only person who could apply for a partition was Keepa. This was all explained in McDonald's pamphlet published in 1896. This pamphlet was published with the aim of showing that the partitions were made with the express purpose of conferring full freehold titles on Kemp and Hunia, which is (in my view) very unlikely to have been the case, and indeed Kemp always maintained he was a trustee, but even so McDonald's narrative throws a good deal of light on why the partitions were made:²⁰²⁸

In the beginning of the year 1886 I was employed by the Wellington-Manawatu Railway Company to obtain a valid freehold title to the railway-line through the Horowhenua Block. But the title to the block

²⁰²⁷ See Alexander McDonald's pamphlet at 1897 AJHR G2, 145-46.
²⁰²⁸ Ibid.

being, as I have said, a certificate under the 17th section of “The Native Land Act, 1867,” it was clearly impossible to obtain a valid freehold title to the railway-line unless the sole “certificated owner,” Major Kemp, could be induced to apply to the Native Land Court for partition of the block under the Division Act of 1882.²⁰²⁹

McDonald says he went to see Keepa and discussed with him the effects of obtaining the necessary partition order to enable a transfer of land to the railway company: the s 17 trust would be destroyed, or at least McDonald and Kemp were of that view. (Chief Judge Prendergast was *not* of that view, as will be seen.)

The partition orders were made by Judge Wilson, acting not under the 1886 Act, however, but under the Native Land Court Act 1880 and the Native Land Division Act of 1882.²⁰³⁰ The block was split into a number of partitions, but nearly all of them were allocated to Keepa Te Rangihwinui in various capacities – in exactly what capacity was to be the source of much further trouble – the main exceptions being Horowhenua 12, issued to Ihaia Taueki, No 11, awarded jointly to Kemp and Hunia, and Horowhenua 9 (the Raukawa portion, issued to Keepa as well, but on the understanding it would be transferred to the descendants of Te Whatanui). The minutes are, as it happens, extremely disorderly, replete with crossings-out and corrections (I have studied them carefully, but confess to being defeated in my attempt to transcribe them). The Horowhenua Commission of 1896 was astonished by the chaotic state of the record. Its report complains that the 1886 minutes “show alterations of numbers until it is impossible to say positively to what subdivision number the evidence opposite it refers” and that the record was replete with “alterations and interlineations manifestly made at a different time and by a different hand to that which wrote the original minute”.²⁰³¹ All too true, the problem not being helped by the fact that the presiding judge in 1886, Judge Wilson, had thrown his own personal minute books away (as he was in fact quite entitled to do, but other judges kept theirs and allowed them to become part of the public record of the Native Land Court).

For Ngati Raukawa the most important aspect of the partition was the creation of Horowhenua 9, the 1200-acre block allocated to Te Keepa in trust for the descendants of Te Whatanui. This gave effect to the agreement of 1873 (nothing had been done to give any effect to it until this point, and obviously Horowhenua had not been partitioned at all). Judge Wilson recalled in 1897 that Te Keepa had not wanted to give effect to the agreement, but that he had changed his mind about it after McLean died. According to Wilson’s testimony “Kemp stated to the Court that he wanted a partition made for that piece of land, because when Sir D. McLean was alive he had asked Kemp to set apart 1,200 acres for Whatanui’s descendants, but that he (Kemp) had not consented during McLean’s lifetime, but that now his friend was dead he wished to comply with his wishes”.²⁰³² If this was the reason Te Keepa had been in no hurry to give it effect, given that McLean died in 1877. Although the agreement was for 1300 acres Keepa had decided that since Te Whatanui’s descendants had already received 100 acres at Raumatangi 1200 acres would suffice.²⁰³³

²⁰²⁹ Native Land Division Act 1882.

²⁰³⁰ For the partition orders see (1886) 7 Otaki MB 187-196. Judge Wilson stated in his evidence to the Horowhenua Commission of 1896 that he gave the applicants a choice as to what legislation they wanted to proceed under, given that the 1886 Act had only just been passed, and that they chose to proceed under the earlier legislation: see 1896 AJHR G2, 130.

²⁰³¹ (1896) AJHR G2, p 3.

²⁰³² 1897 AJHR Sess II G2, p 5.

²⁰³³ Ibid (Judge Wilson): “[t]he original area was to be 1,300 acres but, as Whatanui’s descendants had already received 100 acres, I believe Kemp considered 1200 would be sufficient”.

The block was partitioned as follows:²⁰³⁴

Table: Partitions of Horowhenua Block by Judge Wilson, 1886:

No.	Acres (A. R. P.)	Owners	Remarks ²⁰³⁵
1	76. 0. 0.	Meiha Keepa Te Rangihwinui	For railway-line.
2	3,988. 2. 32	Meiha Keepa Te Rangihwinui	To be sold to the Government
3	11,130. 0. 0.	Ihaia Taueki and 105 others	
4	512. 1. 20.	Hiroti Te Iki and 29 others	
5	4. 0. 0.	Tamati Taopuku and Topi Kotuku	
6	4,620. 0. 0.	Meiha Keepa Te Rangihwinui	To be transferred to certain persons omitted from the original title.
7	311. 3. 15.	Waata Tamatea, Te Peeti Te Aweawe, and Hoani Meihana	
8	264. 3. 15.	Mere Karena Te Mana-o-tawhaki, Ruahoata, and Karena Taiawhio	
9	1,200. 0. 0.	Meiha Keepa Te Rangihwinui	To be transferred to the descendants of Te Whatanui
10	800. 0. 0.	Meiha Keepa Te Rangihwinui	To be sold to defray debts of £2,800 incurred by Meiha Keepa
11.	14,975. 0. 0.	Meiha Keepa Te Rangihwinui and Warena Te Hakeke	Since declared by the Supreme Court in 1894 to be held in trust for the beneficial owners
12.	13,127, 0. 0.	Ihaia Taueki	
13.	1 square foot	Wiremu Matakara	
14	1,200. 0. 0. ²⁰³⁶	Meiha Keepa Te Rangihwinui	Claimed by Meiha Keepa to have been allotted as his share of the subdivision, but now alleged by some to be held by him in trust for other registered owners.

Judge Wilson, who had presided in 1886, gave evidence to the Horowhenua Commission of 1896 and was interrogated closely as to what had happened at the time of the partitions. Wilson's evidence makes interesting reading. He stated that the 1886 minutes were only a bare record of the orders made, and were not a full record of what had been stated in Court. Judge Wilson added that he had indeed recorded all that had been said and done much more fully in his own minute books, but that he had later thrown these away. ("I destroyed them; they were my private property".²⁰³⁷) He also said

²⁰³⁴ Here I am relying on Schedule A of the Case Stated for the Supreme Court by the Native Appellate Court in 1897: see 1897 AJHR G2, 137-140, at 140. The "remarks" are those by the Native Appellate Court in the Case Stated.

²⁰³⁵ i.e. by the Native Appellate Court on the Case Stated.

²⁰³⁶ This was the *first* area set aside at the partition for Ngati Raukawa at Ohau in fulfilment of the 1874 agreement, but which Ngati Raukawa did not want, and instead received the 1,200-acre area at Raumatangi (next to the existing 100 acre reserve) as Horowhenua 9. Horowhenua 14 was originally Horowhenua 3, but later became Horowhenua 14.

²⁰³⁷ 1896 AJHR 133. The judges' minute books and the Court minute books were distinct (there were separate Assessors' minute books as well); the Court minute books were a public record, kept by the clerks of the Court, but it was up to the judges whether they kept their own minute books or left with them with the Court. Some of the judges' minute books have indeed survived and have become part of the part of the public record (such as Judge Ward's minute books). Judge Wilson was quite within his rights to throw his own minute books out, but it is unfortunate that he chose to do so. Judge Wilson for his part said that he regretted not preserving his notes: "I may say that I only destroyed my notes when I ceased to be a Judge, and the time for appeal had long expired, and I could not foresee that they would be wanted; I very much regret it now"; 1896 AJHR G2, 137. The loss of the judge's minute books was also noted by the Supreme Court in *Hunia v Kemp* (1894) 14 NZLR 71 (SC and CA), at 79. Judge Wilson gave some further information about the destruction of his notes in 1897: see 1897 AJHR Session II G2, 2:

that the partition orders made in 1886 were a voluntary arrangement which in his view the Court was required to give effect to without making any inquiry: with respect to the partition the Court was merely “sitting administratively, and in no other way”.²⁰³⁸ The Chairperson, no doubt unsure that he could believe what he was being told, asked Judge Wilson about this very closely, asking him whether he “merely carried into effect what you were satisfied was the verbal arrangements made by the Natives outside, and did not go on to explain the effect of this” (Judge Wilson: “That was so”).²⁰³⁹ He said also that when he asked Keepa “who were the parties interested” the Court “was told to mind its own business”.²⁰⁴⁰ The Commissioners had a lot to say about this in their report, and could not fathom why Judge Wilson could ever have thought he had no jurisdiction to make an inquiry. Not only was this “erroneous”, it was in fact “the duty of the Court to ascertain who were the persons interested in each subdivision, and to take care that if a title issued in the name of any one of such persons, the title was subject to such conditions and restrictions as would prevent a fraudulent holder of that title depriving those interested with him of their lands”.²⁰⁴¹

The luckless Judge Wilson had to give evidence again about what had happened in 1886 at the Horowhenua 14 Appellate Court hearing in 1897, and was once again subjected to a gruelling cross-examination. (This time the issue was about whether Te Keepa acquired Horowhenua 14 absolutely or on Trust.) A key point was whether the Court had at any time made an order vesting Horowhenua 3 (i.e. Horowhenua 14) in Te Keepa on trust for the descendants of Te Whatanui, and Judge Wilson was sure that he had not done this: had he done that, then Te Keepa would have taken the block on trust, the very thing that Buller was strenuously contending against. Wilson was also sure that he had not been aware that it had been proposed at first that the 1200 acres was to be at Waiwiri.

An authoritative explanation of the 1886 partitions is that set out in the 1897 case stated by the Native Appellate Court to the Supreme Court.²⁰⁴² The relevant parts of this document for Ngati Raukawa are as follows:²⁰⁴³

9. The Court on the 1st of December [1886] confirmed two out of three of the orders previously made on the 25th November – viz., the order for the railway-line, and the order for the parcel comprising 1,200 acres on the southern side of the block at Ohau intended for the descendants of Te Whatanui, in consequence of a fresh arrangement entered into out of Court during the interval – that a similar locality should be set aside in another locality for the same purpose. Accordingly, in pursuance of the said arrangement, and in conformity with the terms of the agreement between Sir Donald McLean and Major Kemp – that the 1,200 acres to be set aside for the descendants of Te Whatanui should be near the Horowhenua Lake (a circumstance that was not known on the 25th November, when the first parcel of 1,200 acres was set aside for that purpose at Ohau) a parcel of land, comprising 1,200 acres, was set aside at a place called Raumatangi, adjacent to the Horowhenua Lake and numbered 9, and accepted by the descendants of Te Whatanui, who were present at Palmerston North at the Court of 1886.

I trusted entirely to my own notes, which I kept several years, along with about a hundredweight of notes of other blocks, and then burnt them. I saw no reason for keeping them, as I was no longer a Judge, and the time for rehearing having long expired. I treat my private papers in the same way, and have done so for the last thirty years. It is different now; the Judge’s notes go into the Registrar’s strong-room.

2038 1896 AJHR G2, 131.

2039 1896 AJHR G2, 131.

2040 Ibid.

2041 1896 AJHR G2, 5.

2042 This formed part of the proceedings in *In re Horowhenua 14* (1897) 16 NZLR 582.

2043 1896 AJHR G2, 137.

10. This parcel was ordered by the Court during the afternoon of the 1st December in the name of Keepa Te Rangihiwini for the purpose referred to in the last preceding paragraph.

11. The reason for setting apart another parcel of 1,200 acres at Raumatangi – namely, No. 9 – was because certain of the descendants of Te Whatanui had disapproved of the 1,200 acres first selected for them at Ohau – namely, No. 3²⁰⁴⁴ – on the 25th November.

Keepa explained what happened with regard to the 1200 acres in 1886 in his evidence before the Native Appellate Court in 1897:²⁰⁴⁵

I have said that the land I first offered to descendants of Whatanui was at Ohau. When they refused that, I gave it to them at Raumatangi.

Walter Buller explained what happened with respect to the two blocks in his opening address in the Himatangi 14 Appellate Court case in 1897. On that occasion Buller was trying to show that Te Keepa was awarded s 14 in his own right and not as a trustee for Muaupoko, and for this reason the precise timing of events in 1886 was important. At all costs Buller was trying to avoid the possibility of any resulting trust for Muaupoko (not an issue that concerns Ngati Raukawa directly):²⁰⁴⁶

In 1874 Kemp agreed on behalf of the tribe to give a certain area to the descendants of Whatanui. This piece was to be at Raumatangi, close to the lake, where Whatanui's people had been squatting. No. 9 adjoins Raumatangi, whereas No. 14 is at the extreme southern end of the block, abutting on Lake Waiwiri. No.9 came before the Court in the morning of the 1st December as No.3, but there was some difficulty as to the boundaries, and the final order was not made till the afternoon, when the boundaries had been adjusted. It was then called No. 9, and was put in Kemp's name for conveyance to the descendants of Whatanui. No. 14 was not awarded to Kemp until the 3rd December following. If the counter-claimants could prove that No. 14 was awarded to Kemp for the descendants of Whatanui they would no doubt establish a resulting trust to Muaupoko, but they cannot do this.

Another detailed narrative was given by Te Aohau Nikitini (Nicolson) on the same occasion, which allows events to be seen from a Ngati Raukawa perspective. Nicolson had to go to a great deal of trouble to get the 1,200 acres positioned at Raumatangi (which he thought he had been agreed to previously):²⁰⁴⁷

I was in Palmerston a week or more before the Court opened. I knew at Wanganui before we went to the Court that the 1,200 acres was to be cut off for us by the Court. I knew myself that the 1,200 acres was to be at Raumatangi, but when we reached Palmerston we heard it was going to be at Ohau. It was on that account that I called a meeting of the descendants of Whatanui, and asked Kemp to attend it....It was then I ascertained that definitely that the Muaupoko had decided to locate our section at Ohau. I was dissatisfied and did not consent. I wired Lewis²⁰⁴⁸ about it after the meeting because Kemp was determined that we should not have the land near the Hokio Stream. Lewis arrived in Palmerston before the sitting of Mangakahia's Court.²⁰⁴⁹ We had conversations about the 1,200 acres. I told him that Kemp

²⁰⁴⁴ Subsequently renumbered as Horowhenua 14.

²⁰⁴⁵ 1897 AJHR Session II G2, 27.

²⁰⁴⁶ 1897 AJHR Session II G2, 4. In Buller's opinion, "when Muaupoko allowed Kemp to become legal owner of No. 14 Kemp was not thereby constituted a trustee for the descendants of Te Whatanui unless Kemp consented to be a trustee and the Muaupoko consented to give No. 14 to Te Whatanui's descendants and they accepted the gift" (ibid).

²⁰⁴⁷ 1897 AJHR Session II G2, 69.

²⁰⁴⁸ Presumably T W Lewis, Under-Secretary of the Native Department.

²⁰⁴⁹ i.e. the partition court. Hamiora Mangakahia was the Assessor at the start of the case; Judge Wilson the presiding judge. It is interesting that Nicolson remembered the court at first as "Mangakahia's court"; it may have Mangakahia who in reality ran the hearing. However Hamiora Mangakahia, who was a very experienced assessor

wanted us to take the land at Ohau, and asked him to urge Kemp to place the land near Raumatangi. I did not hear Lewis speak to Kemp about the 1,200 acres.

Nicolson tried (unsuccessfully) to bring the matter to the Court's attention:²⁰⁵⁰

I was present at Mangakahia's Court on the 25th November. The parcels before the Court on that date were – the railway-line, the township, and the parcel of land at Ohau. I know it was the Ohau section because I saw it delineated on McDonald's tracing, and I heard also that the land was on the south side of the block. There was nothing said in the Court on that date about the 1,200 acres at Raumatangi. I stood up to ask the Court to place the land at Raumatangi, near our kainga. The Court did not entertain our objection to the land at Ohau. It would not listen to me. I think the Court made an order in favour of Major Kemp on the 25th November. Kemp applied for it in his own name to enable him to fulfil his agreement with McLean as to the descendants of Whatanui. I heard Kemp make the application in the words I have given.

Other evidence records that Judge Wilson had threatened to commit Ngati Raukawa people to prison at the partition hearings. Kipa Te Whatanui said in 1897 that when he and Te Aohau Nicolson had tried to bring forward Ngati Raukawa's claims at the partition hearings Wilson wanted to know if their names were in the certificate. They said they were not, whereupon "he [Wilson] said to us, 'You are not to interfere with the proceedings of this Court; if you persist I will commit you to prison'".²⁰⁵¹ Te Aohau (same person as Neville Nicholson) said the same before the Native Affairs Select Committee in 1892. The Judge, he said, "took no notice of what we said"; and indeed "[t]he Judge and ourselves had some high words about the matter, and the Judge said he would put us in gaol if we continued".²⁰⁵²

I told him he was quite at liberty to do so. I told him to send telegram to the Government, asking if it was wrong what I had done. Mr Lewis replied that I was quite right in creating that trouble in the Court, because it was an old standing grievance.

However after further discussions Nicolson was able to ensure that the 1200 acres was placed at Raumatangi.²⁰⁵³

I then left the Court with the intention of sending a wire to the Government, as I believe we had been unfairly treated. As I went to send a telegram I saw Lewis, and asked him to send for the agreement, because I knew the terms of the agreement. He sent for the agreement.²⁰⁵⁴ Next morning, or the morning after, he came to our house, and told me he had received it, and that I was right about the parcel of land being near the Horowhenua. We went to the hotel, and he showed me a telegram containing the substance of the agreement, and said he would see Kemp about it. After that I saw Kemp; he told me he had seen Lewis, and that it was settled. I remember Kahui Kararehe's Court. Don't know date it opened, but it was about a week after the first opening. I was present when it opened. The Raumatangi section was the first was the first section of 1,200 acres brought before it. Lewis sent for us to come and arrange about the

who had a thorough understanding of the law and the Court process had to leave the hearing as his wife was ill. Judge Wilson recalled that "I sent for another Assessor, who arrived in a few days. His name was Kahui Kararehe; he was an inexperienced Assessor."

²⁰⁵⁰ 1897 AJHR Session II G2, 69.

²⁰⁵¹ 1896 AJLC Appendix 5, 34.

²⁰⁵² 1896 AJLC Appendix 5, 38 (I suggest that the date of 1896 printed on *ibid*, 37, preceding Te Aohau's evidence, is in fact a misprint for 1892)

²⁰⁵³ *Ibid*. Judge Wilson recalled in 1897 that Lewis "came and took the 1,200 acre block out of the hands of the Court": 1897 AJHR Session II G2, 5.

²⁰⁵⁴ This must be referring to the original agreement with McLean in 1874.

boundaries of No. 9....There was nothing said in Court about the Ohau section,²⁰⁵⁵ but I heard Wirihana say outside the Court that it could go back to the people, as we had selected the Raumatangi section.

Horowhenua 3, the piece at Ohau, which Ngati Raukawa did not want, ran basically from Lake Papaitonga (also known as Lake Waiwiri) along the southern boundary of the Horowhenua block to the Ohau River, and included the lake. Later renumbered as Horowhenua 14, it was sold and leased in 1892 by Keepa to none other than Sir Walter Buller, Keepa's lawyer, and became the Papaitonga estate. Buller's acquisition of this piece of Horowhenua for himself became a political scandal. This was why the origins of the block were so closely inquired into by the Native Appellate Court in 1897, and in many other proceedings beside.

Finally, reference can be made to the Native Appellate Court decision on Horowhenua 1(14 April 1898). This makes something else clear: that during the discussions a copy of the 1874 agreement came to light, which showed clearly that Keepa had already agreed that the 1200 acres should be placed at Raumatangi – another reason for abandoning the earlier plan of allocating the land to Ngati Raukawa at the southern boundary of Horowhenua. This shows also that Te Keepa had wanted to set aside the 1200 acres at Papaitonga because it directly adjoining Ngati Raukawa land immediately to the south in the Kukutauaki block:²⁰⁵⁶

At this stage of the proceedings two parcels of 1,200 acres each had been allotted for the descendants of Te Whatanui – one on the southern boundary, adjacent to Ohau, set apart on the 25th November and numbered 3, and the other near the Horowhenua Lake, set apart on the 1st December and numbered 9. The reason for setting apart the first parcel near Ohau was because Meiha Keepa and the Muaupoko were desirous of locating the descendants of Te Whatanui alongside the Ngatiraukawa land, with a view to prevent tribal disturbances taking place with the Muaupoko. The people concerned, however, declined to accept the land in that locality, as, independent of it being of inferior character, it removed them from the part of the block where Te Whatanui and his people had always resided for a long period of years; and while the discussion was taking place between them and Meiha Keepa about shifting the 1,200 acres elsewhere the agreement of 1874 came to hand which fixed the position near the Horowhenua Lake, and this led to the requisite area being subsequently placed in the locality described in the said agreement, leaving the other parcel of 1,200 acres first selected adjacent to the southern boundary to be afterwards disposed of.

Of particular importance for Ngati Raukawa, then, was the 1300 (or 1200) acre portion that Keepa had agreed to set aside for Te Whatanui's people in 1874. The 100-acre difference depends on whether it was agreed that the figure of 1300 acres was *inclusive* or *exclusive* of the existing reserve at Raumatangi, already set aside by the Native Land Court for Te Whatanui's people in the Horowhenua decision of 1873. As has been seen, Keepa's recollection in 1896 of the discussions he had with McLean at Wellington in 1874 was that the 1300 acres at Raumatangi was inclusive of the 100-acre reserve.²⁰⁵⁷ This block was given the name Horowhenua 9 in 1886 and ended up, as seen, being positioned next to the existing Raumatangi reserve set aside in 1874, giving a contiguous area of 1300 acres, Ngati

²⁰⁵⁵ i.e. the block which became Horowhenua 14 at Ohau, which Ngati Raukawa did not want.

²⁰⁵⁶ Decision of Native Appellate Court re Horowhenua 14, 14 April 1898, *The Horowhenua Block: Minutes and Proceedings and Evidence in the Native Appellate Court under the Provisions of the Horowhenua Block Act 1896*, 1898 AJHR G-2A, Appendix K, at 157.

²⁰⁵⁷ 1896 AJHR G-2, 24 (Keepa Te Rangihwinui). Pressed by Walter Buller as to whether any guns were discharged or whether there was only a show of fighting, Keepa responded that after Ngati Apa and Kawana Hunia had fled, "Ngati Raukawa came on to the Muaupoko" but at that point Edwards sent for the Assessors and others to meet at Horowhenua. Keepa was not there at the time, but afterwards learned from Richard Woon that the dispute had been resolved, at least for the time being (ibid).

Raukawa arguably being short-changed to the amount of 100 acres.²⁰⁵⁸ (Raumatangi is on the seaward side of Lake Horowhenua.) Raukawa interests in the former 1873 Horowhenua Block post-partition thus were (i) Raumatangi, excluded in 1873 (100 acres); (ii) Horowhenua 9 (1200 acres); and (iii) an undefined entitlement to reserves at Papaitonga within Horowhenua 11, the large block of approximately 15,000 acres vested by the partition court in Keepa and Warena Hunia. These entitlements attached to different sections of Ngati Raukawa: Raumatangi was supposed to be for the “descendants of Whatanui”, as was Horowhenua 9 (now also at Raumatangi); but the reserve entitlement at Papaitonga in Horowhenua 11 was for the “four hapus” (i.e. because these groups were compensated by the cash payment of £1050 plus the Papaitonga reserves entitlement as agreed to by Keepa on 9 February 1874).

Thus to recapitulate, there were two separate 1,200 blocks within the [partition, 1200 acres at Raumatangi, Horowhenua 9, and 1200 acres at Papaitonga, Horowhenua 14. Horowhenua 14 was to become a storm centre of controversy due to its eventual acquisition from Te Keepa by Walter Buller, a complex story but one which does not affect Ngati Raukawa directly.

13.14 Descendants of Te Whatanui or Descendants of Hitau: the Appellate Court Horowhenua 9 decision (1895)

A new and strictly inter-Ngati Raukawa issue now developed over Horowhenua 9, the block at Raumatangi next to the Raumatangi reserve. Horowhenua 9, like Raumatangi, belonged to the descendants of Te Whatanui – but what did this mean, and in particular did this include the descendants of Hitau, Te Whatanui’s sister? By this time the *direct* descendants of Te Whatanui, often referred to in the sources as “the Pomare party” was mainly comprised of persons no longer resident, the resident owners mainly being the descendants of Hitau (often referred to in the Court as “Nicholson’s party”). Te Whatanui’s eldest daughter, Rangingangana, had married Pomare II of Ngapuhi: this explains why the descendants of Te Whatanui were not residents, mainly living in Auckland and the Bay of Islands. Pomare II died around 1850. Wiremu Pomare, their son I assume and Te Whatanui’s grandson, though mostly resident in Auckland and the Bay of Islands, seems to have a very important role regarding the management of Horowhenua 9 behind the scenes. His nephew (?), Ru Rewiti, told the Horowhenua Commission in 1896 that his uncle Pomare was constantly corresponding with Keepa about Horowhenua 9. Ru Rewiti’s testimony indicates that the Nicholson family were living on the area that became Horowhenua 9, and that Muaupoko ran sheep on it.²⁰⁵⁹ Between 1874 and the 1886 partition the land was in a kind of limbo, but even after that was in an ambiguous position because relative interests had never been defined.

Following a decision of the Native Land Court relating to Horowhenua 9 dealing with relative interests, the issue of relative interests as between the direct descendants of Te Whatanui and the descendants of Hitau was taken on appeal and came before the Native Appellate Court sitting at Otaki in early 1895. Evidence was again given on the pre-1840 history of the PkM region, the first

²⁰⁵⁸ This is all fully explained in the 1912 judgment at (1912) 3 Wellington ACMB 262-3; see also 1896 AJHR G-2, 10:

In 1886 the Muaupoko set aside 1,200 acres in pursuance of the agreement with Sir Donald McLean. This is what is now Block XIV. The Ngatiraukawa objected to the situation of this land, and therefore a section near Lake Horowhenua was set aside. This section appears, though we can get no direct evidence on this point, to have been in a different situation to that in which No.9 now is: and ultimately Section 9, as now existing, was laid off containing 1,200 acres. There is no permanent water except swamp on this subdivision, and it will be noticed that the land does not touch either the Hokio Stream or the Horowhenua Lake, from which places a considerable amount of the food supply of the Natives comes.

²⁰⁵⁹ See 1896 AJHR G-2, 240.

Horowhenua case, and the arrangements made in 1874, the main speakers being Neville Nicholson, Wiremu Pomare, and Keepa Te Rangihiwini. The Court’s jurisdiction to hear this case was conferred by an Order-in-Council (I have not so far succeeded in locating the exact details). The Court seems not to have been aware of the complexities of the Horowhenua titles: as far as I can understand, the legal ownership of Horowhenua 9 still was still vested in Keepa, subject to his obligation to transfer this to the descendants of Te Whatanui.

Table: Evidence given before Native Appellate Court, 1895

Witness	Appellants or Respondents	Reference	Date	Notes
Neville Nicholson	Appellants	(1895) 28A Otaki MB 32-35	23 Jan 1895	Full history of Horowhenua and the earlier arrangements made with Keepa and McLean
Alexander McDonald	Appellants	(1895) 28 A Otaki MB 46-48	23 Jan	Describes meetings after 1886 partition
Louis Davis	Respondents	(1895) 28 A Otaki MB 53-58	23 Jan	Married to Keepa’s daughter. Describes the meetings after the 1886 partition
Wiremu Pomare	Respondents	(1895) 28A Otaki MB 58-67	23 Jan 1895	Lives at the Bay of Islands. His daughter Heni is married to Keepa. He is Whatanui’s grandson (? –check). Lived at Horowhenua after 1870
Keepa Te Rangihiwini	Respondents	(1895) 28A Otaki MB 68-80	25 Jan 1895	Gives full history of the Horowhenua block partitions

The principal issue, however, was one of interpretation: did the “descendants” of Te Whatanui include the descendants of Hitau? This issue had not been raised at the relative interests case at first instance, but was raised at the appeal. The judges of the Appellate Court (Chief Judge Davey, Judge Butler) thought that in ordinary usage it probably did not, but because the point had not been raised at first instance it could not now be raised at appeal.²⁰⁶⁰

It is perhaps doubtful whether they [the descendants of Hitau] are “descendants” according to the European meaning of the term. We think the Order in Council should have empowered the Court to enquire and determine who were the persons entitled under the Deed of Gift upon which the Order in Council was founded. It is probable that if this objection had been raised at the first hearing Court after hearing the evidence would have made a special report with a view to the wording of the Order in Council being reconsidered. As however Wi Pomare’s party did not wish at the first hearing to dispute the right of the descendants of Hitau to be admitted we have not thought it right to allow that question to be raised for the first time in the Appellate Court.

²⁰⁶⁰ (1895) 28A Otaki MB 101.

The Pomare family then applied in the Supreme Court for a writ of prohibition, arguing that under the Order in Council the Appellate Court had no jurisdiction to make an order in favour of the descendants of Hitau. The case was argued on 18 July and Prendergast's decision, upholding the argument of the Pomares, was given on 27 August.²⁰⁶¹

13.15 *Hunia v Kemp and Ngati Raukawa*

Questions now arose over the effects of the 1886 partitions, and especially over Horowhenua 11, the large block of 14,975 acres vested in Keepa Te Rangihiwini and Warena Hunia. In 1888 Keepa and Warena Hunia obtained a Land Transfer Act certificate of title for Horowhenua 11, which stated that they were the sole owners.²⁰⁶² In 1890 Horowhenua 11 was partitioned by the Native Land Court (Judge Trimble) into two sections, i.e. between Keepa and Hunia (Horowhenua 11A and 11B). It seems that no new Land Transfer Act certificates of title were obtained for Horowhenua 11A and 11B following the partition. Both parcels were very valuable. In his 1894 petition Keepa said that in 1890 he insisted in the Native Land Court that the land was held in trust and that Warena Hunia admitted it.²⁰⁶³ Keepa's insistence that he was still a trustee, even after the partition, is consistent with his reluctance to apply for a partition in the first place: while the land was 's 17 land' there was already a trust in place. The issue now was, seeing that the block had been partitioned in 1886 and again, in the case of Horowhenua 11, in 1890 between Te Keepa and Hunia, whether the trust still existed.

Keepa, "being dissatisfied with the proceedings of the Native Land Court",²⁰⁶⁴ sought a rehearing of the partition, which took place at Otaki on 9 May 1891.²⁰⁶⁵ On the face of it, Hunia and Keepa were now the legal owners of Horowhenua 11 (as partitioned), which of course included the whole community where Muaupoko actually lived, their cultivations, burying places and so on. Ngati Raukawa *also* had interests in Horowhenua 11 as well (i.e. the Papaitonga reserves, still undefined). Keepa, who had sought the rehearing, "again insisted upon the trust, and protested against the land being dealt with by the Court as the private property of the two trustees".²⁰⁶⁶ In this Keepa "was supported by the general body of owners then present in the Court".²⁰⁶⁷ The rehearing court felt that it could do nothing about the partition as it only had jurisdiction to deal with the relative interests of Keepa and Hunia, and on that point there was no reason to interfere with Trimble's 1890 partition. But the judges presiding over the 1891 case (Mair and Scannell) could see very well that something was now

²⁰⁶¹ *Wiremu Pomare and others v Piukanana and others* (1895) 14 NZLR 340 (SC).

²⁰⁶² The Land Transfer Act certificate was dated 19 July 1888, naming Keepa and Hunia sole owners of Horowhenua 11. This is noted by the Appellate Court in 1891: see (1891) 15 Otaki MB 122. The fact that the Land Transfer Act certificate of title was issued only to Keepa and Warena Hunia is not, of course, incompatible with a trust: the Land Transfer system records only legal owners. If they had sold the land at that point to a bona fide purchaser, however, the purchaser's title would be unaffected by the trust and the purchaser would acquire the full beneficial ownership. However (supposing a trust existed) the beneficiaries would still have their *in personam* rights against Keepa and Hunia. I have not (so far) found any information as to why Kemp and Hunia obtained Land Transfer Act certificates of title in 1888.

²⁰⁶³ See 1894 AJHR J-1 (Keepa's petition), 2:

At the sitting in February 1890, notwithstanding that the trust in the said lands was insisted on by Major Kemp and admitted by Warena Hunia, the Native Land Court proceeded to partition the said lands as though the same were held by them in their own right, and, after causing a valuation of the estate to be made, divided the said block into two parcels, called Horowhenua No 11A, valued at £13,392, and Horowhenua No 11B, valued at £12,244, and awarded them to Major Kemp and Warena Hunia respectively.

²⁰⁶⁴ 1894 AJHR J-1, 2.

²⁰⁶⁵ (1895) 15 Otaki MB 122-124; Boast *Native Land Court* vol 2, NLC174, 631-635 (Judges Mair and Scannell, R M Campbell, Assessor).

²⁰⁶⁶ 1894 AJHR J-1, 2.

²⁰⁶⁷ *Ibid.*

seriously amiss with Horowhenua 11. It is clear from the judgment that the members of the Court made a site visit to the block, and would have seen with their own eyes that Horowhenua 11 was where the community actually dwelt and cultivated, and that they were at risk of having their property sold out from under them to a bona fide purchaser. The Court thought the matter should be brought to the attention of the Chief Judge of the Native Land Court:²⁰⁶⁸

But although the Court in making these orders is confining itself to the matters within its jurisdiction, it feels bound to add that from what has transpired during the hearing the case as well as what it has seen during the inspection of the block it is very evident that the issue of the order in the name of Meiha Keepa Te Rangihiwini and Warena Te Hakeke was a severe loss to the Muaupoko tribe.

The partition order *followed by the Land Transfer certificate* (emphasis added), made those two the sole legal owners, of a piece of land which up to that time was a part, and the most important part, of the tribal estate of Muaupoko, where from time immemorial they lived and cultivated. It is not within the province of the Court to inquire how or for what purpose the certificate for that parcel was issued in the names of two persons only, but the Court feels that under the circumstances it is its duty to lay such facts as within its knowledge before the Chief Judge, in order that if any application is made on the subject he would be in a position to advise on whether it would be desirable to institute further enquiry into the whole matter with a view to ultimate justice being done to all parties.

What happened after this judgment is set out in Kemp's petition of 1894.²⁰⁶⁹ "Finding the Native Land Court powerless to help them,"²⁰⁷⁰ Keepa then petitioned parliament. The Native Affairs Committee reported that the land that "a trust was understood to be created when the Horowhenua Block No. 11 was vested in Major Kemp and Warena Hunia".²⁰⁷¹ Keepa petitioned parliament again in 1891, which came to the same conclusion. Various measures were taken to protect the status quo, first by legislation (Native Land Court Amendment Act 1891) and then by the interesting device of the government making a nominal payment to Keepa and then proclaiming the block under the Native Land Purchases Act 1892, which prevented the block from being sold.²⁰⁷² By his 1894 petition Te Keepa asked parliament to enact special legislation to empower the Native Land Court "to inquire into the alleged trust, and, if satisfied on such inquiry that such trust exists, to ascertain by its ordinary methods who are beneficially entitled, and in what shares or proportions".²⁰⁷³

Keepa also brought proceedings against his former co-owner, Warena Hunia in the Supreme Court, "claiming that Major Kemp and the defendant [Warena Hunia] should be declared trustees of two blocks of land now known as Horowhenua 11A and 11B, and formerly forming one block, Horowhenua No.11, of about 14,900 acres, and valued in 1890 at about £25,000".²⁰⁷⁴ As well as a

²⁰⁶⁸ (1891) 15 Otaki MB 123-24; Boast, *Native Land Court* vol 2, 634.

²⁰⁶⁹ *Petition of Major Kemp Te Rangihiwini*, 1894 AJHR J.1.

²⁰⁷⁰ *Ibid*, 3.

²⁰⁷¹ *Ibid* (reprinting Native Affairs SC report, 1890).

²⁰⁷² The full details are set out in Kemp's petition, 1894 AJHR J1, paras 18-19, p 3.

²⁰⁷³ The reference to "ordinary methods" here must be to the procedure set up by the Native Equitable Owners Act 1886 and which was retained and extended by s 14(10) of the Native Land Court Act 1894. See R P Boast, *Native Land Court*, vol 2 (2015), 139-140.

²⁰⁷⁴ (1895) 14 NZLR 72, per Prendergast CJ. See also 1894 AJHR J-1, 4:

An action has been commenced by Major Kemp and other members of the Muaupoko Tribe in the Supreme Court...against Warena te Hakeke (otherwise called Warena Hunia), in which the plaintiffs pray, *inter alia*, that the trust may be affirmed by the decree of that honourable Court; that an inquiry may be had by reference to the Native Land Court as to who are the persons entitled under the original certificate of title; that Warena te Hakeke may be restrained by injunction from selling, transferring, or charging the said lands or any part thereof; that the certificate of title issued to Major Kemp and Warena Hunia be declared void as against the plaintiffs and othe members of the Muaupoko Tribe in possession

declaration of trust, Keepa asked the Court to grant an injunction against Hunia to prevent him selling or mortgaging the land in the interim, and sought that the Land Transfer Act certificates of title be cancelled and that Warena Hunia be dismissed as a trustee. The case was heard in the Supreme Court sitting at Wanganui in October (10-14 October 1894) and in Wellington on 16-17 November. Keepa had to take out a mortgage on Horowhenua 14 to pay for his legal costs in advance to pay his lawyer, W.B. Edwards (usually Keepa's legal adviser was Walter Buller). Buller assisted Edwards with the case, however, and also arranged the mortgage over Horowhenua 14, which Buller was himself leasing from Keepa. Buller paid Edwards £500, drew up the mortgage, and then persuaded Judge Ward, the Trust Commissioner, to approve the mortgage under the Native Lands Fraud Prevention Act. As Ross Galbreath puts it:

After Buller and Keepa swore and declared that there was no trust on Horowhenua 14, he agreed to give the required certificate. Buller and the others then all rushed off in time to the Supreme Court, to argue there was a trust of Horowhenua 11.

While the case was pending, Warena Hunia had sold part of "his" section of Horowhenua *to the government*. As Ross Galbreath puts it, "[e]arly in the case, there was a sensation in court when Hunia's Pakeha friend, Donald Fraser, revealed that the Government had already made a payment of £2,000 to Hunia for the State Farm, despite assurances in Parliament that no money would be paid until clear title to the land was obtained".²⁰⁷⁵ Prendergast C.J. gave his decision on Dec 17 1894 and was in little doubt that both Keepa and Hunia were trustees. Prendergast's starting point was that when the Horowhenua title was first created in the Native Land Court in 1873 under s 17 of the Native Land Amendment Act 1867, the block was vested formally in Keepa as the certificated owner with 143 "registered" owners. Keepa became a trustee for the other 143 at that point: "in effect a trustee for the other persons interested – the 143 – *until subdivided amongst them*" (emphasis added).²⁰⁷⁶ Prendergast pointed out that if, for example, Keepa had leased any of the block, he could not pocket the rental income but would have to account to "the rest of the registered owners". "It is certain that from 1873 to 1886 Major Kemp's position was that of a trustee for the rest of the 143".²⁰⁷⁷ That was because it was 's 17 land' during that time.

Most of Prendergast's judgment concentrated on the partition of the block by Judge Wilson in 1886. He found that the partition was made under s 56 of the Native Land Court Act 1880, which allowed the Court to give effect to voluntary arrangements made amongst the Maori owners.²⁰⁷⁸ Also relevant was s 10 of the Native Land Division Act 1882, which allowed partitions of "s 17 land". In any such partition all "all the persons registered as owners" shall "be treated as owners in the division, though an application shall be sufficient if made by a majority of those named in the certificate". Thus any partition of the Horowhenua block would require treating the 143 people named in the certificate as owners as well. As Kemp was *already* a trustee for the 143, it would have to be shown that when the block was partitioned those persons gave up their interests to Hunia and Kemp and allowed them to become legal owners. There was nothing that indicated anything of the kind. Prendergast saw it as

of the block at the time of the issue of the said certificate of title; and that Warena te Hakeke, who now claims to be the absolute owner, may be dismissed from the trusteeship.

2075

Galbreath, *Walter Buller: The Reluctant Conservationist*, 202.

2076

Ibid, 73.

2077

Ibid. Keepa did not deny this of course: he accepted he was a trustee.

2078

Section 56 of the Native Land Court Act 1880 provides as follows:

56. Court may give effect to voluntary arrangements: It shall be lawful for the Court, in carrying into effect this Act, to record in its proceedings any arrangements voluntarily come to amongst the Natives themselves, and to give effect to such arrangements in the determination of any case between the same parties.

important that many of the “registered” owners were actually present at the partition hearings in 1886. There was a meeting of these people on the day that the orders were made. Alexander McDonald, who on this occasion was representing the railway company, gave testimony that he was at this last meeting and that nothing was said about the land being vested in Hunia and Keepa on trust, or that the word “kaitiaki” was used by anyone. But this was not sufficient to show that those of the 143 named individuals intended to *give up* the existing trust burdening Keepa’s title. Prendergast was “certain” that “nothing was done at this last meeting that the persons interested in the land – the registered owners – intended to give up their beneficial interests in it to Major Kemp and the defendant”.²⁰⁷⁹

The Horowhenua 11 title established at the 1886 partition was, in Prendergast’s view, subject to the existing trust. Although the block was vested at that time in Keepa *and* Warena Hunia, that meant only that Warena Hunia became a trustee as well, along with Keepa. It was true that Wirihana Hunia, Warena’s elder brother, objected to Keepa’s name going into the title alone. But the objection did not destroy the trust. Prendergast concluded that “the objection made [by Hunia] was not against Lot 11 becoming beneficially owned by Major Kemp alone, but was to Kemp’s name alone appearing in the order and certificate”.²⁰⁸⁰ There was insufficient evidence to support Hunia’s claim that he became a beneficial owner at the partition or that all the others persons named in the certificate ever agreed to this. The objection was merely to Keepa being the sole trustee. Prendergast thought that the clinching point was that Keepa was quite willing to allow his own name being left out of the order and that any other name could be put in instead, clearly indicating that he was a trustee and that this was generally understood.²⁰⁸¹

Prendergast also referred to Judge Wilson, who had given evidence in the case. Although (unfortunately) Wilson had thrown his minute books away, nevertheless he felt confident in saying that some kind of a trust was being established, not a vesting of Horowhenua 11 in Keepa and Hunia in their own names:²⁰⁸²

I have not yet referred specifically to the evidence of Mr Wilson, who acted as Judge at the Court; unfortunately he had destroyed the notes he had taken at the hearing of the application for subdivision; but he is clear as to the impression produced upon his mind by what took place in his presence, and that this impression is that the persons interested in consenting to the order to the two were arranging for something in the nature of a trust, and not a beneficial ownership to the two.

²⁰⁷⁹ (1895) 14 NZLR 78.

²⁰⁸⁰ Ibid.

²⁰⁸¹ Ibid, 78-9:

If the Hunia family were, through the elder brother, asserting a right to be half-sharers, or sharers at all beneficially (other than with all the other Natives), it is inconceivable that more should not have been said by way of assertion of right than Mr Macdonald is able to depose to. The conclusion I arrive at, even on Mr Macdonald’s evidence, is that up to the time of the objection made by the defendant’s elder brother it was well understood by him and all others interested that if the order was made in Kemp’s name alone Kemp would become owner, not beneficially, but for all the registered owners, or, at any rate, a large number of them, and that the objection did not convey to anyone any more than that the position proposed to be given to Kemp should not be so given, but should be shared with Kemp by the defendant’s brother or some one agreeable to him. I, however, give credit to the plaintiffs’ witnesses when they say that upon the objection being made Major Kemp was willing that his name should be left out of the order and that any other name should be put in. If this evidence is accepted it is conclusive that the additional person was not to be a beneficial owner.

²⁰⁸² Ibid, 79.

The defendants raised some other arguments, in particular an argument based on the Statute of Frauds, but Prendergast rejected this.²⁰⁸³

Who was the trust for? Prendergast thought the answer was clear: the beneficiaries of the trust even after the partition were still the persons named in the certificate. He did not think “that those who were, under the voluntary arrangement, awarded land on the ground that they were by mistake shut out of the certificate of 1873 are entitled to participate in the trust”.²⁰⁸⁴ He may perhaps have meant Ngati Raukawa, or more precisely the descendants of Whatanui, by this. Ngati Raukawa did participate in the voluntary arrangement approved by the Native Land Court in 1886 (they received Horowhenua 9, or more precisely it was vested in Keepa to be transferred to the descendants of Te Whatanui), but at no time were they “registered” owners. There was thus no trust implied for the descendants of Te Whatanui. This arose from the fact that in Prendergast’s view the foundation for the trust were the orders made by the Court in 1873 under the Native Lands Amendment Act 1867, which stayed in place after the partition. Prendergast did not feel able to remove Warena Hunia as a trustee, but he did say that both Hunia and Kemp had to account for any money they may have received from Horowhenua 11A and 11B whether by sale, lease, or otherwise.²⁰⁸⁵ Hunia had to pay costs on the highest scale.

One puzzling aspect of the case is that Hunia and Keepa were not holders merely of Native Land Court titles. They were in fact the registered owners of Horowhenua 11 under the Land Transfer Act as well, which arguably might have conferred indefeasible titles on them. However it is well known that titles under the Land Transfer Act do not record interests in equity, so presumably even as registered co-owners Hunia and Kemp would have remained burdened by the trust. The risk was that if they had sold the land, as they were legally entitled to do, the *purchaser* would have gained full legal title (if he or she was a bona fide purchaser without notice of the trust). As far as I can see, the decision in *Hunia v Kemp* would not have actually changed this outcome, although in on-selling Hunia and Te Keepa would have been acting in breach of trust and would have been liable to the trustees in damages. This is all basic indefeasibility law, and would be the law today. The register records legal interests and not equitable interests (restrictive covenants are in a special position) but this does not of course mean that a registered proprietor is not bound by a trust, whether express, resulting, or constructive.

Warena Hunia appealed Prendergast’s decision to the Court of Appeal. The appeal was argued in April 1895, and the judgment of the Court of Appeal was given by Denniston J. on May 17. The Court of Appeal thought that it was obvious that it could never have been intended that Keepa and Hunia were the beneficial owners of Horowhenua 11 and could do with it whatever they pleased.²⁰⁸⁶

The Muaupoko, a small tribe of Natives, 148 in number, are found entitled to some 52,000 acres of land. Four thousand acres of this is allotted to Kemp, in terms absolutely, but admittedly in trust, to carry out a previously-arranged sale to the Crown. Other lands are similarly allotted to satisfy various outside claims and interests. A complimentary allotment of a large quantity of barren and comparatively worthless land is, in accordance with Native practice, made to the nominal chief and various other persons. One hundred and three Natives, the *de facto* owners and possessors, receive each a separate allotment of 105 acres of bush land. These various allotments exhaust all the land excepting 15,207 acres,

²⁰⁸³ The Statute of Frauds, today replaced by the Contracts Enforcement Act, requires that certain types of contract be evidenced in writing. In brief, the argument was that Hunia had not signed any document declaring or manifesting a trust, and thus no trust can have come into exist which affected his rights as owner. Prendergast dismisses this for two reasons (a) implied trusts of the kind arising in this case are not subject to the Statute of Frauds; (b) the Statute of Frauds may not be taken advantage of to work a fraud. For Hunia to claim that he owned his half of Horowhenua 11 in his own name would be to work a fraud against the persons named in the certificate.

²⁰⁸⁴ (1895) 14 NZLR 83.

²⁰⁸⁵ Ibid, 84.

²⁰⁸⁶ Ibid, 91.

the subject of this suit. On this the members of the tribe resided. On it were situated their houses and improvements and their burial-places. It contained the Horowhenua Lake, a main source of their livelihood. Four years later this portion of the block was valued by the Court for partition at over £25,000. It is this land which which on defendant's contention the Natives agreed spontaneously, unanimously, and cheerfully to hand over to Kemp and the defendant absolutely and unconditionally, in recognition of some undefined claims of Kemp and the defendant's family for service alleged to be rendered. The absurdity of such a proposition will be apparent to any one in any way familiar with Maori feelings and methods.

The Court of Appeal thus agreed with Prendergast C.J. that Warena Hunia's claim to beneficial ownership of Horowhenua 11 could not be entertained. But the Court of Appeal parted company him on the issue of the trust.

Prendergast had been of the view that not only did Hunia and Keepa hold Horowhenua 11 on trust, but the trust was one that could be enforced. There existed a defined class of beneficiaries, the 143 persons named in the certificate, although various inquiries still needed to be made.²⁰⁸⁷ The Court of Appeal did not agree. The trust could not be for the 143 named persons, because "such a trust would be unnecessary".²⁰⁸⁸ This was because it was "unnecessary to create trustees to do what it was the object of the Court to do immediately and effectively had the parties desired it".²⁰⁸⁹ The beneficiaries of the trust were not the 143 named persons, but Muaupoko as such.²⁰⁹⁰

On the whole, the conclusion we come to is that the land was confided to Kemp and Hunia on the understanding that they were to hold it for the benefit of all the members of the tribe, according to Maori custom; that the main object was to prevent alienation by any individual member, and that the land was to be administered very much on the principles on which the property of a tribe was held and dealt with before the introduction of English law.

Once the land was partitioned and vested in Kemp and Hunia, new trusts were created which were *different* from the trust that had lasted from 1873-1886 (i.e. from investigation to partition, while the land remained as 's 17' land: after partition it no longer had that status).²⁰⁹¹ The beneficial class, then, was the whole "tribe", Muaupoko, the Court perhaps forgetting that at least part of the land was to be transferred to the descendants of Te Whatanui. Such a trust could not be enforced:²⁰⁹²

[W]e think it follows that the trust is one which, in the event of disagreement either among the *cestuis que trust*²⁰⁹³ and the trustees, or between the trustees themselves, could not be enforced or administered by a Court. It is too vague and indefinite. There is too large a personal element in it to permit its execution by an impersonal body like a Court....In the present case one of the trustees – falsely and fraudulently, as the Chief Justice finds, and as we also conclude – denies the existence of any trust, and claims to hold

²⁰⁸⁷ Ibid, 83.

²⁰⁸⁸ Ibid, 92.

²⁰⁸⁹ Ibid, 92-93. By this the Court of Appeal means that as owners holding under the equivalent of a memorial of title they would be able to apply to the Native Land Court to partition out their shares: this would not be something that the trustees could determine.

²⁰⁹⁰ (1895) 14 NZLR 94.

²⁰⁹¹ I have done my best to explain clearly here the complexities of the Native Lands Acts, which have taken me many years to understand (assuming that my understanding is correct), but I am not sure that a reader who is not actually a trained lawyer will be able to understand the decision in *Hunia v Kemp* even so. The fact that the Chief Justice and the Court of Appeal disagreed about the effects of the 1886 partition is itself revealing. How most Maori people were supposed to fathom the differences between Crown-granted land, s 17 land, and memorial land, and the effects of partition orders on s 17 land I have no idea, but as Alexander McDonald explains, Kemp himself understood this very well.

²⁰⁹² Ibid.

²⁰⁹³ i.e. the beneficiaries.

the land, or a moiety of it, as absolute owner. If that were all it could be rectified by his removal by the Court. But, as has been said, the nature of the trust is such is such that in our opinion it is too indefinite for recognition or enforcement, and must be taken to have failed.

There *was* a trust, but it had.... “failed”. What now? It did not mean that Hunia and Kemp were the absolute owners after all. “Wherever the Court fastens upon any person the character of a trustee he cannot on the non-declaration or failure of the trust claim for himself the beneficial interest”.²⁰⁹⁴ In such a case “there is a resulting trust for the testator or grantor”. So the trustees now “hold the land for the parties in whom, and the extent to which, the property in the land was before the allotment – that is, for those Natives who, but for their consent to the allotment, would have their rights ascertained and defined by the Land Court”. It was a distinction without a difference: “[p]ractically the result will be the same as the trust had been that insisted on by Mr Edwards” (Edwards was Keepa’s barrister). But in fact perhaps there is a difference. As Keepa had already agreed to transfer certain interests to Ngati Raukawa by the two agreements made in 1874, Ngati Raukawa, or rather the descendants of Te Whatanui and the four hapu, were included within “those Natives who, but for their consent to the allotment, would have their rights ascertained and defined by the Land Court”. Those rights were in fact defined at the 1886 partitions, after all, when Horowhenua 9 was vested in Keepa to be transferred to the descendants of Te Whatanui, and perhaps, too, the same can be said of the four Ngati Raukawa hapu entitled to the Papaitonga reserves within Horowhenua 11.

The Court of Appeal thought that there would not be a problem with the enforceability of the resulting trust. The Supreme Court, in enforcing the resulting trust could state a case to the Native Land Court under s 96 of the Native Land Court Act to determine who were the persons whose land was subject to the partition in 1886. (Why the Court of Appeal thought this would be any easier to determine than “all the members of the tribe” is, I must admit, not clear to me). There was then, a trust after all, albeit not quite the one put forward by Keepa’s lawyers.

Following the reading of the Court of Appeal decision on 17 May, C B Morison, Warena Hunia’s barrister, sought leave to appeal to the Privy Council, which was granted.²⁰⁹⁵

On the application of Mr C.B. Morison, leave was given to appeal to the Privy Council, and stay of proceedings was granted on security being given to the satisfaction of the Registrar.

It can be added here that the Horowhenua Commission of 1896 was also in no doubt that the vesting in Keepa and Warena Hunia was *on trust*, notwithstanding Warena Hunia’s insistence that he owned it absolutely. The Commission’s views are difficult to disagree with.²⁰⁹⁶

In 1886, the land being in Kemp’s name as nominal owner merely, this block was cut out by the subdivision Court and a certificate of title directed to issue in the name of Kemp and Warena Hunia, the younger son of Kawana Hunia. It is impossible now to ascertain why this was done – the evidence is conflicting, and we cannot place any reliance on what either side says. Warena Hunia contends that this land was given to himself and Kemp as absolute owners, unhampered by any trust or obligation; but he admits that, as a Maori chief, he ought to provide for poor members of his hapu of the tribe; he claims that his position towards them is the same as that which exists amongst Europeans, that the duty cast upon him was exactly the same duty, and no greater, than is cast upon the rich to provide for the poor amongst us; and without prejudice to the position he has taken up, he has put in a list of those whom he is willing to provide for. We are of opinion that his claim cannot for a moment no evidence which points

²⁰⁹⁴ (1895) 14 NZLR 95.

²⁰⁹⁵ *Manawatu Herald*, 21 May 1895, p 2.

²⁰⁹⁶ 1896 AJHR G2, 11.

in the remotest degree to Kemp and Warena Hunia being entitled to this large block of land which contained the pas, cultivations, burying-places, and fishing-grounds of the tribe.

13.16 Horowhenua Commission Report, 1896

The Horowhenua Commission, comprised of commissioners James C Martin, R Bush and J C McKerrow, began taking evidence on 10 March 1896 and reported on 25 May.²⁰⁹⁷ The Commission's principal finding was that the grantees of the Horowhenua subdivisions (Keepa and Warena Hunia) were for the most part trustees (as the Court of Appeal had already concluded). The first issue the commissioners were required to investigate was "the existence and nature of any trust or equitable obligation or undertaking, express or implied, affecting the said block, or the proceedings thereof, in the hands of Keepa Te Rangihwinui and Warena Te Hakeke".²⁰⁹⁸ Their conclusion on this pivotal point was that excepting subdivisions 1 and 10, all the other subdivisions were held on trust, Horowhenua 9 on trust for Ngati Raukawa, and the remaining sections on trust for Muaupoko.²⁰⁹⁹ Horowhenua 9, the Raukawa section, was held on trust for certain persons of Ngati Raukawa set out in the third schedule of the report.²¹⁰⁰

The Commission's inquiries resulted (yet again) in a staggering amount of material, much of it going over well-ploughed ground, and featuring some familiar names: Keepa Te Rangihwinui, Warena Te Hakeke (Warena Hunia), Alexander McDonald, Neville Nicholson (Te Aohau), Walter Buller, and Judge Wilson. A number of lawyers were involved (Buller, Morison) and the ubiquitous Alexander McDonald as a de facto lawyer, and the investigation appears to have been highly adversarial, with lengthy cross-examination and re-examination of witnesses by counsel. The scale of the investigation is shown by the full list of witnesses, some of them Ngati Raukawa people.

Table: Witnesses before Horowhenua Commission, 1896.

Witness	Date (1896)	Affiliation etc.	Page No.	
1. Meiha Keepa (Major Kemp)	10 March	Muaupoko, Rangitane, Wanganui, Nga Rauru and others	24-34	Is a chief of Muaupoko, Rangitane, Wanganui, Ngarauru and others. Describes Horowhenua case, partition boundaries etc.
2. Warena Te Hakeke	11 March	Ngati Apa, Muaupoko	35-47	Son of Kawana Hunia, grandson of Kawana Te Hakekeke, Describes 1873 case, partitions, etc
3. Wirihana Hunia	12-13 March	Muaupoko, Ngati Apa	47-61	Of Muaupoko and Ngati Apa. Describes early conflicts between Ngati Raukawa and Muaupoko, disputation between Ngati Raukawa and Muaupoko at Horowhenua.
4. Peter Bartholomew	13 March	Sawmill owner, Levin	61-64	Timber lease at Horowhenua
5. Donald Fraser	13 March	Local resident; advises Hunia family	64-72	Knows Hunia family well, describes disputation at Horowhenua and block partitions
6. Alexander McDonald	13-14 March	Adviser to Ngati Raukawa	72-87	Detailed evidence on Horowhenua partitions

²⁰⁹⁷ *Report and Evidence of the Horowhenua Commission*, 1896 AJHR G-2.

²⁰⁹⁸ *Report and Evidence of the Horowhenua Commission*, 1896 AJHR G-2, 16.

²⁰⁹⁹ *Ibid.*

²¹⁰⁰ *Ibid*, Schedule No.3, at 22 (Wharatini, Hitau, Tauteka, Kararaina, Watene Ti Waewae, Erena Te Rauparaha, and Te Wiiti).

Chapter 13. Troubles without end: The Kuketauaki and Horowhenua Blocks 1873-1900

7. Te Rangi Mairehau	14 and 16 March	Muaupoko	87-99	Describes amiowhenua expedition, other aspects of traditional history, 1886 partitions
8. Raniera Te Whata	16 March	Muaupoko	100-103	Lives at Horowhenua, describes dispute between Ngati Raukawa and Muaupoko in 1874
9. Makere Te Rangimairehau	16 March	Muaupoko	103-107	Disputation between Ngati Raukawa and Muaupoko at Horowhenua, Horowhenua partitions
10. Te Rangi Mairehau (recalled)	16 March	Muaupoko	107	Horowhenua boundaries, whether Keepa was a trustee
11. Keri Tomu	16 March	Muaupoko	107-111	Lives at Horowhenua, Keepa's role, whether trustee etc.
12. Hector McDonald	16 March	Sheepfarmer, Horowhenua (lessee of Te Whatanui and Keepa).	111-118	Lessee of land at Horowhenua, Te Whatanui was lessor, Distribution of rental payments by Keepa.
13. Kerehi Tomu (contd)	17 March	Muaupoko	118-121	Leasing and boundaries at Horowhenua
14. Hector McDonald (contd)	17 March	Sheepfarmer	121-124	Names of Muaupoko hapu, lease at Horowhenua
15. Raraku Hunia	17 March	Muaupoko	124-5	Lives at Horowhenua, born at Rangitikei, speaks about Taueki; role of Keepa (whether trustee etc.)
16. Hoani Puihi	17 March	Muaupoko	125-30	Traditional history, Haowhenua battle, Keepa, rental monies etc.
17. John Alexander Wilson	31 March	Native Land Court Judge	130-140	Was judge at time of Horowhenua partition (1886), describes partition in detail
18. Hoani Puihi (contd)	31 March	Muaupoko	140-145	Allocation of proceeds of land sale
19. Waata Tohu	1 April	Muaupoko	145-148	Is in Horowhenua certificate; Horowhenua partitions
20. Patrick Sheridan	1 April	Head of Native Land Purchase Dept	148-155	Role of Native Department, Cron proclamations at Horowhenua
21. Waatu Tohu (contd)	1 April	Muaupoko	155	Ruinga and other children of Puakiteao
22. Paki Te Hunga	2 April	Muaupoko	155-158	Is in Horowhenua certificate, allocation of rents
23. Donald Fraser (2)	2 April	Local resident; advises Hunia family	158-160	Horowhenua partitions; role of Te Keepa
24. Neville Nicholson (Te Aohau)	2 April	Ngati Raukawa	160-163	Is familiar with Native Land Court process, Disputes at Horowhenua
25. Alexander McDonald (rx)	2 April	Adviser to Ngati Raukawa	163-164	Boundary maps, list of owners
26. Tamihana Te Hoia	2 April	Ngati Raukawa	164-166	Lived at Poroutawhao, describes Horowhenua dispute, he house called Kupe was built by Kawana Hunia and Hoani Puihi
27. Himiona Kowhai	2 April	Muaupoko	166-169	Ngati Pari hapu of Muaupoko, was at partition hearing in 1886, Te Keepa's intentions
28. Meiha Keepa (contd)	4, 7, 8 April	Whanganui, Muaupoko etc,	169-194	Allocation of 1200 acres to Te Whatanui, 1886 partition. Very lengthy evidence.
29. John McDonald	8 April	Sheepfarmer (brother of Hector McDonald)	194-291	Rental payments at Horowhenua

30. Neville Nicholson (Te Aohau)	9 April	Ngati Raukawa	201-215	Lives at Whanganui, Describes Te Whatanui's residence at Horowhenua and elsewhere, disputes at Horowhenua
31. Meiha Keepa (rxd)	10 April	Whanganui, Muaupoko etc.	215-216	List of owners in Horowhenua 11
32. Neville Nicholson (contd)	10 April	Ngati Raukawa	216-220	Papaitonga reserves, Rights of Ngati Parewahawaha, Nepia Taratoa was their chief, Horowhenua and Kuketauaki cases
33. John Stevens	10 April	M.H.R.; at one time Kawana Hunia's adviser	220-221	Adviser and assistant to Kawana Hunia in 1874. The risk of violence between N Raukawa and Muaupoko in 1874 was very real. Kawana Hunia had an armed escort provided by the government to get through N Raukawa territory
34. Heni Te Rei	10 April	Ngati Raukawa; daughter of Matene Te Whiwhi	221-222	Lives at Otaki; agreement between McLean and Keepa re reserves for Ngatiraukawa, Hapu rights at Horowhenua
35. Neville Nicholson rxd	10 April	Ngati Raukawa	222	Payment by McLean, leases at Horowhenua, distribution of rents at Horowhenua
36. Raiha Puaha	10 April	Ngati Toa, Ngati Raukawa	222-3	Lives at Porirua, remembers trouble between Muaupoko and Ngati Raukawa in 1874
37. Tamehana Te Hoia rxd	10 April	Ngati Huia, Ngati Raukawa	223-225	Is chief of Ngati Huia, lives at Poroutawhao, Boundaries and disputes at Horowhenua
38. Kipa Te Whatanui	10 April	Ngati Raukawa	225-6	Whatanui and Te Rauparaha were both "fighting men", Whatanui gave shelter to Muaupoko; events and boundaries at Horowhenua
39. Hene Kipa	13 April	Born in Bay of Islands; wife of Kipa Te Whatanui	226-230	Born in Bay of Islands; Pomare; Events and disputes at Horowhenua
40. Rora Hakaraia	13 April	Muaupoko, Keepa's sister	230-31	Knew old Whatanui", Whatanui did not work, his slaves worked, Eel pas at Raumatangi, people at Horowhenua
41. Rangi Mairehau rxd	13 April	Muaupoko	231-4	Keepa and Ngati Raukawa reserves, 1874 troubles
42. Hoani Puihi rxd	13 April	Muaupoko	234-5	Raukawa reserves, Whatanui family, has heard of gift from Taueki to Whatanui
43. Ropata Ranapieri	13 April	Ngati Raukawa	235-6	Claims land at Waiwiri
44. Neville Nicholson rxd	13 April	Ngati Raukawa	236	Ohinekakiao investigation
45. Robert Ward	15 April	Judge of Native Land Court	236-38	Was Trust Commissioner at time when Buller took a mortgage over Horowhenua 14 in order to advance Keepa money for legal costs. Did not inquire whether the land was subject to a trust.
46. John Jury (Whatahoro)	17 April	Ngati Kahungunu, professional scribe and interpreter	238-9	Was present at meeting at the house Kupe in 1870 when Heremaia, from the Wairarapa, attempted to mediate between Ngati Raukawa and

				Muaupoko. Took notes of what was said at the meeting and produces them to the Commission.
47. Ru Rewiti	17 April	Descendant of Te Whatanui	239-240	Principally about the relations between the descendants of Te Whatanui (Pomare family, principally), and Neville Nicholson and his group. Says that his uncle Pomare was constantly corresponding with Keepa about Horowhenua 9. Says that there was no formal acceptance by the descendants of Te Whatanui of the 1874 agreement.
48. Te Rangimuirehu (presumably same person as Makere Te Rangimairehau?)	17 April	Muaupoko	241	Horowhenua 6 list of owners
49. Raniera Te Whata rxd	17 April	Muaupoko	241-2	Wants to have her grandchild Rahira Arahira added to the lists. Her grandchild was born before the 1873 hearings
50. Sir Walter Buller	21 April	Barrister	242-258	Is Keepa's legal adviser, Leases at Horowhenua and elsewhere
51. John Broughton	21 April	Muaupoko	258-9	Partition hearing in 1886
52. Sir Walter Buller rxd	22 April	Barrister	259	Produces letter
53. Rangi Mairehau rxd	22 April	Muaupoko	259	Addition to list of owners for Horowhenua
54. Hakaraia	22 April	Muaupoko	260	Claims to be a successor
55. Eparaima Te Paki	22 April	Muaupoko	260	List of names for Horowhenua 6
56. Winarate Raorao	22 April	Muaupoko	260	List of names for Horowhenua 6
57. Kerehi Tomu rxd	22 April	Muaupoko	260-1	Ownership lists
58. Hori Wirihana	22 April	Muaupoko	261	Ownership lists
59. Hoani Puihi rxd	22 April	Muaupoko	261	Ownership lists
60. Makere Te Rou rxd	22 April	Muaupoko	261	Ownership lists
61. Hema Hemare	22 April	Muaupoko	261	Ownership lists
62. Kerehi Tomu rxd	22 April	Muaupoko	261	Ownership lists
63. Rora Korako	22 April	Muaupoko	261	Ownership lists
64. Emiri Ngahakawa	22 April	Muaupoko	261	Ownership lists
65. Te Puke	22 April	Muaupoko	262	Ownership lists
66. Pene Te Kara	22 April	Muaupoko	262	Ownership lists
67. Hema Henara	22 April	Muaupoko	262	Ownership lists
68. Winera Te Raorao	23 April	Muaupoko	262-3	Ownership lists
69. Mohi Rangi Mauriora	23 April	Muaupoko	263	Ownership lists
70. Hoani Puihi rxd	22 April	Muaupoko	263	Ownership lists
71. John Broughton rxd	22-23 April	Muaupoko	263	Details of trust account
72. Te Rangi Mairehau	23 April	Muaupoko	263	Ownership lists
73. Paki Te Hunga	23 April	Muaupoko	263	Objections to ownership lists
74. Kerehi Tomo rxd	23 April	Muaupoko	263	Ownership Lists
75. Raraku Hunia	23 April	Muaupoko	264	Ownership lists
76. Te Rangi Mairehu rxd	23 April	Muaupoko	264	Ownership lists

77. Nakere Te Rou	23 April	Muaupoko	264-5	Ownership lists
78. Kerehi Tomo rxd	23 April	Muaupoko	265	Ownership lists
79. Hoani Puihi rxd	23 April	Muaupoko/N Kahungunu	265	Ownership lists
80. Paki Te Hunga rxd	23 April	Muaupoko	265	Ownership lists
81. Hoani Puihi rxd	23 April	Muaupoko	265	Questioned about a person in Horowhenua ownership list
82. Warena Hunia rxd	23 April	Ngati Apa	265- 266	Questioned about rights of Hakaria Haratiera
83. Rangi Mairehau rxd	23 April	Muaupoko	266	Questioned about a person in list of owners
84. Makere Te Rou	23 April	Muaupoko	266	Rights of a person in list of owners
85. Ruihi Wuunu	23 April	Muaupoko	266	Place of residence at Horowhenua
86. Makere Te Rou rxd	23 April	Muaupoko	266	List of owners
87. Pirihiira Hautapu	23 April	Muaupoko	266	List of owners
87. Ngatahi	23 April	Muaupoko	266	Is wife of Ihaia Taueki, lives at Horowhenua
88. Rehepi Tamaki	23 April	Muaupoko	267	Name on list of owners
89. Winara Te Raorao rxd	23 April	Muaupoko	267- 268	Name on list of owners
90. Rai Raikoritia	23 April	Ngati Hou hapu	268	Wife of Hamuera, lives at Parawanui
91. Raniera Te Whata rxd	30 April	Muaupoko?	268	Name on list of owners
92. Makere Te Rou rxd.	30 April	Muaupoko	268	List of owners
93. Raraku Hunia rxd	30 April	Muaupoko?	268	Name on list of owners
94. Makere Te Rou rxd.		Muaupoko	269	Name on list of owners
95. Eperaima Puke rxd.	30 April	Muaupoko	269	List of owners
96. Paki Te Hunga rxd.	30 April	Muaupoko	269	Name on list of owners
97. Makere Te Rou rxd.	30 April	Muaupoko	269	Name on list of owners
98. John Broughton rxd.	30 April	Muaupoko?	269- 270	Name on list of owners
99. Rawinia Ihaia	30 April	Muaupoko	270	Is Ihaia Taueki's wife. She told Ihaia the Commission was sitting
100. Te Rangi Mairehau	30 April	Muaupoko	270- 271	Ownership of Horowhenua 14
101. Makere Te Rou rxd	30 April	Muaupoko	271	Role of Te Keepa as a caretaker
102. Raniera Te Whata rxd.	30 April	Muaupoko	271	Keepa's rights in Horowhenua 14
103. Kerehi Tomu rxd.	30 April	Muaupoko	272	Keepa's rights in Horowhenua 14
104. Hopa Te Piki	30 April	Muaupoko	272- 273	Horowhenua 14
105. Mohi Rakuraku	30 April	Muaupoko	273- 274	Keepa's statements in 1891
106. Pene Tikera rxd.	30 April	Muaupoko	274	Horowhenua 14
107. Hector McDonald rxd.	30 April	Farmer	274- 275	Understands Maori; was at meeting at Pipiriki at which Keepa spoke; Horowhenua 11 block

108. Waata Muruati	30 April	Muaupoko	275-276	Was at meeting in 1886 at Horowhenua; role of Keepa
109. Rawinia Ihaia	30 April	Muaupoko	276	Was at Pipiriki meeting
110. Hoani Puihi rxd.	30 April	Muaupoko	277	Kemp's name should be in Horowhenua 11 and 12
111. G. Marshall	30 April	Solicitor	277	Lease to Peter Bartholomew
112. Peter Bartholomew rxd	30 April	Settler	277-278	Leased timber-cutting rights from Keepa
113. Sir Walter Buller rxd.	30 April	Barrister	278	Keepa's commercial dealings
114. George Richardson	30 April	Engineer and former Minister of Lands	279	Produces report
115. Alexander Simpson	30 April	Land valuer	279	Value of Horowhenua blocks
116. John Bell	30 April	Land value	279	Value of Horowhenua blocks

13.17 Kipa Te Whatanui's Petition and the Legislative Council Report, 1896²¹⁰¹

In 1896 the Native Affairs Committee of the Legislative Council inquired into a petition of Kipa Te Whatanui and 96 other people relating to Ngati Raukawa interests in the Horowhenua block. The petition, in the Committee's words, complained "that Major Kemp and the Muaupoko obtained possession of Te Whatanui's land at Horowhenua by means of false evidence, and that the land was wrongly awarded to Kemp and Muaupoko by the Court in 1873, and prays that part of the Horowhenua Block may be again adjudicated upon".²¹⁰² Evidence was given to the committee by Kipa Te Whatanui, J.A. Jury, Heni Te Rei, T C Williams, Te Rei Parewhanake, Thomas Roach, W T L Travers, Tamihana Te Hoia and Neville Nicholson. The Committee also considered a number of documents, and evidence given to the House of Representatives in 1891 by Kipa Te Whatanui, Octavius Hadfield, Akapita Te Tewe Tewe and in 1892 by Kipa Te Whatanui. There had been a number of attempts made already by Ngati Raukawa to have the Horowhenua case reheard, in 1890, 1892, and 1894.²¹⁰³ The petitioners did not think that Ngati Raukawa issues with respect to Horowhenua had been adequately traversed by the Horowhenua Commission. Kipa Te Whatanui said "[t]he Commission told me that they had not power to grant a rehearing of the block – that their inquiry was limited to the time since which the block was awarded to Major Kemp by the Court".²¹⁰⁴ The petitioners' grievance, as Kipa Te Whatanui put it, was "that the Native Lands Court had wrongly taken away the land which belonged to Te Whatanui, the land which belonged to Te Whatanui by reason of the conquest by Te Rauparaha and by occupation".²¹⁰⁵

In his evidence before the Committee Kipa Te Whatanui explained that from Ngati Raukawa's perspective the principal grievance relating to Horowhenua was not concerned not so much with the partitions in 1886 but rather with the 1873 Horowhenua decision itself.²¹⁰⁶ Kipa explained that the 1873 Court had allocated to Muaupoko not merely the area within the agreed reserve boundaries but the entirety of the larger Horowhenua block. Muaupoko claimed the whole block, whereas Ngati Raukawa did not: "they did not include the whole of the Horowhenua; they stuck to the old lines of Whatanui and Tauwheki [sic]".²¹⁰⁷ Questioned by members of the Committee as to how it was that the boundary of the Horowhenua block had moved southwards to Waiwiri in the course of the hearing, Kipa said that

²¹⁰¹ 1896 AJLC App no 5.

²¹⁰² 1896 AJLC App no 5, 1.

²¹⁰³ Evidence of Kipa Te Whatanui, *ibid*, 11.

²¹⁰⁴ *Ibid*, 12.

²¹⁰⁵ *Ibid*.

²¹⁰⁶ Evidence of Kipa Te Whatanui, *ibid*, 12.

²¹⁰⁷ Petition of Parakaia Te Pouepa, 4 July 1867, reprinted in AJLC App 5 p 8.

Ngati Raukawa did not consent to this and that he could not explain how it could have happened.²¹⁰⁸ Others who gave evidence to the Committee were J A Jury, Heni Te Rei, T C Williams, Te Rei Parewhanake, Thomas Roach, W T L Travers (who read out material that he had collected for McLean in 1871), Tamihana Te Hoia, Kereopa Tukumarū – by this time the last of those who had been on the migration from Kapiti who was still alive – and Neville Nicholson. The evidence earlier given by Kipa Te Whatanui, Octavius Hadfield, and Akapita Te Tewe before the Native Affairs Committee in 1891 and by Kipa Te Whatanui and Te Aohau in 1892 was also printed in the Appendix. This evidence has been drawn on in other parts of this report. This is one of the most important investigations conducted into Ngati Raukawa interests in the Horowhenua area, and the corpus of evidence produced is substantial.²¹⁰⁹

Ngati Raukawa speakers insisted throughout that Muaupoko had lived under Te Whatanui's protection and that Muaupoko's right to the land within the boundaries originally laid down by Te Whatanui and Taueki was not disputed. Kipa Te Whatanui and J A Jury said, however, that Muaupoko were in no sense "slaves" of Ngati Raukawa. Kipa said that Te Whatanui's intention was that Muaupoko should live "as rangatiras" within the agreed boundary.²¹¹⁰ Jury, asked by the committee whether Muaupoko lived "in a state of slavery" responded that "[t]here was no question of that, for they lived on their own ground; they kept their own ground, and fought on their own ground".²¹¹¹ It was also made clear to the committee that the promised 1200 acres agreed to at the partition in 1886 still had not been formally transferred in any way to Ngati Raukawa and was still in the possession of Keepa.

The Committee's report, (2nd September 1896) was strongly supportive of Ngati Raukawa and was convinced they had a valid grievance. As well as the evidence given before it, the Committee also took into account a paper read by Sir Walter Buller before the New Zealand Institute in 1894. The report states that there was "an abundance of evidence" to prove "the occupation of the country by Te Whatanui and the Ngatiraukawa".²¹¹² The report was strongly critical of the Native Land Court's 1873 Horowhenua decision. The committee noted also that "Te Whatanui's people do not wish to disturb the Muaupoko on that part of the Horowhenua Block which was allotted to them by Te Whatanui", and "regretted that the order of reference to did not empower the Horowhenua Commission to come to any decision affecting the position of the block prior to the decision of the Court in 1873".²¹¹³ Echoing the findings of the Horowhenua Commission, they found that some of the evidence given by Kemp and other witnesses in 1873 was false.²¹¹⁴ The committee found further that "there will always remain a constant sense of injustice in the minds of these people, unless a rehearing is granted."²¹¹⁵ Such a

²¹⁰⁸ Evidence of Kipa Te Anaru, 1896 AJLC App 5 p 13.

²¹⁰⁹ The evidence recorded in the minutes of evidence annexed to the report is given by Kipa Te Whatanui, 14 August 1896 (pp 11-14); J A Jury, 14 August 1896 (pp 14-15); Heni Te Rei, 14 August 1896 (pp 14-16); T C Williams, 20 August 1896 (pp 16-20); Te Rei Parewhanake, 21 August 1896 (pp 20-21); Thomas Roach, 21 August 1896 (pp 21-22); W T L Travers, 24 August 1896 (pp 22-30); Tamihana Te Hoia, 27 August 1896 (pp 30-31); Kereopa Tukumarū, 25 August 1896 (pp 31-32); Neville Nicholson, 31 August 1896 (pp 32-33), Kipa Te Whatanui, Native Affairs Committee 1891, 12 August 1891 (pp 33-34); Octavius Hadfield, Native Affairs Committee 1891, 21 August 1891 (pp 35-36); Akapita Te Tewe, Native Affairs Committee 1891, 21 August 1891 (pp 36-37); Kipa Te Whatanui, Native Affairs Committee 1892, 28 July 1892 (p 37); and Mr Te Aohau, 29 July 1896 [sic – 1892?] (pp 37-39).

²¹¹⁰ 1896 AJLC App no 5, 12

²¹¹¹ 1896 AJLC App no 5, 15.

²¹¹² Ibid, p 1.

²¹¹³ Ibid, p 2.

²¹¹⁴ Ibid, p 2, referring to pp 2 and 3 of the Horowhenua Commission's report.

²¹¹⁵ 1896 AJLC Appendix 5, p 2.

rehearing had to be designed in such a way as to go behind the 1873 Horowhenua decision: a failure to do so “will be futile and only render confusion worse confounded”.²¹¹⁶ In short:

1. That when the case was heard in 1873, Te Whatanui’s people had been in peaceable occupation for more than forty years, their boundaries clearly marked out on the ground.
2. That false evidence was submitted to the Court in 1873.
3. That threats and intimidation were resorted to by Kemp during the sitting of the Court.
4. That while it was provided by the Native Land Court Acts that there should be an appeal for a rehearing, a rehearing was so applied for, but no rehearing was ever granted.

Any rehearing, moreover, should not disturb the 100-acre award at Raumatangi, or the 1,200 acres in Horowhenua 9.²¹¹⁷

13.18 Horowhenua Block Act 1896

The 1896 Act attempted to resolve the vast problems of Horowhenua by conferring special investigatory powers on the Native Appellate Court, but it was a complex statute, prolix and poorly drafted, which was to generate some new confusions. The Act begins with a long preamble which states (in essence) that the purpose of the statute was to give effect to the recommendations of of the Horowhenua Commission. The Act then goes on to give the Native Appellate Court²¹¹⁸ power to reinvestigate the ownership of various subdivisions of the Horowhenua Block (Divisions 6, 11 – minus the “State Farm Block”, 12, and 14) *under the Native Equitable Owners Act 1886*.

The Act dealt with Horowhenua 9 (the Ngati Raukawa section as awarded by the 1886 partition) in a somewhat different way. For Horowhenua 9, where the issue was who could be included in the class of descendants. The statute dealt with this problem by stipulating in s 8 that various people affiliating to Ngati Raukawa were entitled to have a Certificate of Title issued to them by the District Land Registrar. But there were complexities, because the Appellate Court was given power to determine who in *addition* to the names set out in Schedule were “equitably entitled” to an interest in Horowhenua 9. Section 8 also vested the State Farm block in the Crown (s 8(b)), The section also provided a settlement of the claims of Kawana Hunia of Ngati Apa in Horowhenua 9 (another Horowhenua issue, one which I have lacked the time, the space, and the energy to explore). The section reads:

8. Description of certificates to be issued in lieu thereof. The Registrar is hereby directed to issue Land Transfer Certificates as follows, namely:-

(a) A certificate of Title for Division Nine aforesaid in the names of the persons specified in the Third Schedule hereto, and of such other persons, if any, as may by the [Appellate] Court be declared to be equitably entitled.

(b) The certificate of title to be issued for Division 9 shall also include and vest in the persons named in the Third Schedule all that piece of land, being part of Division Eleven, containing eighty acres more or less, the boundaries of which are described in the Fifth Schedule hereto. [remainder of section omitted]

²¹¹⁶ Ibid.

²¹¹⁷ Ibid, 3.

²¹¹⁸ The statute refers throughout the powers of “the Court”, deemed by s 2 to mean “the Native Appellate Court, as provided by “The Native Land Court Act, 1894”.

The Act also made specific provision for the Ngati Raukawa interests in Horowhenua 11 (s 8(d), which gave power to the Appellate Court to inquire into who were the persons of Ngati Hikitunga, Ngati Pareraukawa, Ngati Parekohatu, and Ngati Hikitunga entitled to interests in the reserves (Papaitonga reserves) referred to in the agreement made with Keepa of 9 February 1874. The Appellate Court, acting under s 8(d) gave its judgment on Ngati Raukawa interests in Horowhenua 11 on 19 September 1898.²¹¹⁹ This judgment is analysed in full later in this chapter.

13.19 The 1897 Appellate Court hearings: overview

There is such a wealth of material printed in the AJHRs and recorded in the Otaki MBs relating to the various Appellate Court and related proceedings that a detailed chronology is essential. There was a sequence of large scale interlocking inquiries, statutes, parliamentary debates, and decisions of the Native Land Court and Native Appellate Courts from 1895-1899, not all of which are equally important from the perspective of Ngati Raukawa. Not all of this vast amount of material can be analysed in full in these report, but most of the main steps in the process have been, and much of the evidence that was generated from these inquiries has been drawn on in earlier chapters. The tables below set out the main steps that followed from the enactment of the Horowhenua Block Act 1896 The first of these two tables sets out the main JHR references and the second is a chronology.

Table: AJHR materials relating to Horowhenua 1896-1898

AJHR and/or Otaki MB reference	Dates	Section	Comments
1896 AJHR G-02: <i>Report and Evidence of the Horowhenua Commission</i>	Evidence: 10 March-1 May 1896	All partitions	Main report leading to recommendations relating to the various partitions
1896 AJHR I-8 <i>Reports of Reporting Debates and Printing Committee on Certain Revisions made in the Evidence attached to the Report of the Horowhenua Commission</i>	16-17 July 1896	Whole block	Additional material to above
1896 AJLC App 5 1-39	2 Sept 1896	Raukawa interests in Horowhenua	Decides that Ngati Raukawa are entitled to a rehearing of Horowhenua
1897 AJHR I3B: <i>Report of the Native Affairs Committee on the Horowhenua Block Act Amendment Bill together</i>	13 July 1897	Whole block	Recommends Horowhenua Block Amendment Bill proceed without amendment

²¹¹⁹ Judgment at (1898) 40 Otaki N 205-219 (Appendix 1.27).

<i>with Minutes of Proceedings</i>			
1898 AJHR G-2A	9 April 1897-31 July 1897	Horowhenua 11	Prints evidence relating to Ngati Raukawa and Muaupoko interests in Horowhenua 11 Contains Judgment of Appellate Court relating to Horowhenua 14, and decides that this block was vested in Keepa absolutely and was not subject to any trust (14 April 1898).

Table: Principal Statutes, Cases, Etc after 1896 relating to Horowhenua

Legal Development	Date	Citation
Horowhenua Block partitioned	1886	(1886) 7 Otaki MB 187-196
Land Transfer Act CT naming Keep and Hunia sole owners of Horowhenua 11	19 July 1888	Noted by Appellate Court at (1891) 15 Otaki MB 122
Rehearing of partition of Horowhenua 11 by Native Appellate Court, applied for by Keepa	9 May 1891	(1891) 15 Otaki MB 122-124; Boast, <i>Native Land Court</i> , vol 2, NLC 174, 631-635.
Supreme Court decision in <i>Hunia v Kemp</i> (Prendergast CJ)	17 December 1894	(1894) 14 NZLR 71 (SC)
Native Appellate Court decision relating to Horowhenua 9	5 Feb 1895	(1895) 28A Otaki MB 101-103 [descendants of Te Whatanui v. descendants of Hitau]
Court of Appeal decision in <i>Hunia v Kemp</i>	17 May 1895	(1895) 14 NZLR 71 (CA)
Supreme Court decision (Prendergast J) in <i>Wiremu Pomare and others v Piukanana and others</i>	27 August 1895	(1895) 14 NZLR 340 (quashes Native Appellate Court decision of 5 February)
Horowhenua Block Act 1895	31 October 1895	[appointing Royal Commission]
Horowhenua Commission Report	25 May 1896	1896 AJHR G2
Native Affairs Committee reports on Kipa Te Whatanui's petition	2 September 1896	1896 AJLC App No 5 pp 1-39.
Horowhenua Block Act 1896	17 October 1896	[New certificates to be issued, Native Appellate Court to carry out

		inquiries, State Farm block vested in the Crown, etc]
Appellate Court investigation of Ngati Raukawa claims in Horowhenua 11 (i.e.the Papaitonga reserves) and cases of Muaupoko objectors	9 April 1897-31 July 1897	1898 AJHR G-2A, 1-153
Supreme Court decision in <i>In re Horowhenua Subdivision 14</i> (Prendergast CJ)	12 November 1897	(1897) 16 NZLR 582. Full transcript of proceedings in 1898 AJHR G2. ²¹²⁰ Case stated by Native Appellate Court printed in full in 1897 G2 136-141
Supreme Court decision in <i>Public Trustee v Buller</i> (Denniston J)	4 Feb 1898	(1898) 16 NZLR 513. The Public Trustee was not personally liable to pay Buller's and Keepa's costs.
Native Appellate Court decision Re Horowhenua 14 (decides that Horowhenua 14 vests in Keepa absolutely)	14 April 1898	1898 AJHR G2A, 156-184
Native Appellate Court decision re Horowhenua 11 (principal decision: Muaupoko interests)	15 September 1898	(1898) 40 Otaki MB 44-194
Native Appellate Court decision re Horowhenua 6	19 September 1898	(1898) 40 Otaki MB 196-205
Native Appellate Court decision re Ngati Raukawa claims in Horowhenua 11 (Judge Mackay, Judge Butler	19 September 1898	(1898) 40 Otaki MB 205-219

The period after 1895 was one of intense activity in the Native Land and Native Appellate Courts at Otaki, generating a bewildering array of cases, including appellate proceedings. In the following table tabulates the cases by Minute Book volume in 1895-1896. There is simply too much material for all of it to be reviewed, analysed and excerpted for the purposes of this report. Only major cases are included.

Table: Key to Otaki MBs 1895-1896

Name of case	Pages
(1895) 26 Otaki MB (27 April 1895-1 June 1895)	
Partition Ngakororo 2F	(1895) 26 Otaki MB 1-16

²¹²⁰ *The Horowhenua Block: Minutes of Proceedings in the Supreme Court, and Judgments on the Special Case Stated by the Native Appellate Court, 1898 AJHR G2.*

Manawatu Kuketauaki 7D2D	(1895) 26 Otaki MB 17-26
Ngakororo 2F reserve	(1895) 26 Otaki MB 27-28
Manawatu Kuketauaki 7D2D partition	(1895) 26 Otaki MB 28-43; 59-90; 92-115; 117-148; 150-162; 164-181; 185-194; 197-204; 206-212; 216-228; 231-248; 249-273; 278-297; 303-311; 315-319; 327-375.
(1895) 27 Otaki MB (3 June 1895-29 July 1895)	
Manawatu Kuketauaki 7D2D partition	1-11; 28-86; 99-110 (Judgment); 119-125 (owners' lists)
Takapuwahia partition (Hohepa Horomona and others)	144-203; 215-272; 274-288; 293-324; 327-380.
(1895) 28 Otaki MB (30 July 1895-20 September 1895)	
Takapuwahia partition and Town sections	1-35; 45-67; 68-97; 99-155; 157-171; 172-361; 369-384
(1895-6) 28A Otaki MB (17 Jan 1895-15 March 1896) (Appeals and rehearings)	
Oturoa rehearing	(1895) 28A Otaki MB 1-27; Judgment at (1895) 28A Otaki MB 86-87
Horowhenua 9 rehearing	(1895) 28A Otaki MB 27-80; Judgment at (1895) 28A Otaki MB 101-102; Lists of names 148, 188
Aratangata rehearing	(1895) 28A Otaki MB 81-86;
Kaiwhara Kapiti rehearing	(1895) 28A Otaki MB 89-101;
Ngakororo 2F Reserve rehearing	(1895) 28A Otaki MB 132-147; 155-161; 176-187;
Ngakororo 3C Appeal	(1895) 28A Otaki MB 149-153; 162-175
Aorangi 3G Rehearing	(1895) 28A Otaki MB 192-288; 288-295 (Judgment)
Horowhenua 3A3 Appeal	(1895) 28A Otaki MB 296
Takapuwahia Appeal	(1895) 28A Otaki MB 315 (Judgment)
28B Otaki MB (14 Feb 1896-21 Jan 1897)	Whole volume made up of small partitions, successions, confirmations of alienation etc. heard by Judge Brabant at Palmerston North

	(perhaps Judge Brabant's personal MB later added to the Otaki sequence)
(1895-6) 29 Otaki MB (Sept 1885-5 March 1896)	
Takapuwahia town sections	(1895-96) 29 Otaki MB 1-15
Manawatu-Kukutauaki 7D2D	(1895-96) 29 Otaki MB 132-190

13.20 “The measure of corruption of the Horowhenua block”:the Horowhenua 14 imbroglio and Ngati Raukawa: Supreme Court and Appellate Court decisions 1897-8

The Horowhenua 14 case began before the Appellate Court sitting at Levin on 25th February 1897, presided over by Judges Butler and Mackay. This case was concerned with whether Horowhenua 14 was awarded to Keepa at the 1886 partition on trust or as an absolute owner. If the Appellate Court found that Keepa took the block as an absolute owner then his suspended Land Transfer Act certificate would be restored to him. The block was also subject to a caveat on the title lodged by the Crown. . At the beginning of the case Baldwin, counsel for Nepia Pomare and other descendants of Te Whatanui, attempted to participate in the case. He said his clients opposed a certificate of title being granted to Kemp in Horowhenua 14 “or to others in any of the other sections”.²¹²¹ Buller objected and said that Baldwin’s clients had no standing to participate. Baldwin argued in response that his clients were entitled to claim under the Native Equitable Owners Act 1886 and that “the inquiry could not be confined to any particular persons or hapus”. The following exchange then took place before the Appellate Court.²¹²²

Sir W. Buller again contended that the jurisdiction of the Court was limited to the persons whose names appeared in the certificate of 1873 and the forty-eight added by Parliament, unless an application had been made in the time allowed, and they were confined to certain reserves agreed by Kemp in No. 11.

Mr. Baldwin suggested that if the Court was in any doubt, a case should be stated for the opinion of the Supreme Court as to whether the provisions of the Equitable Owners Act were to be confined to the Muaupoko.

Mr. Stafford: If the Act is to be construed as Mr Baldwin wishes, the Court would have to go back to 1873 and reinvestigate the title to the land. This would be monstrous. The Act assumed that the persons in the certificate were the *cestuis que trustent* [beneficiaries].

Mr Baldwin: I am now instructed to act for Kipa Te Whatanui, who has sent in an application. We claim that Major Kemp is a trustee for certain Ngatiraukawa.

Mr A Mc Donald asked to be allowed to appear for Himiona Kowhai. Suggested that any one should be allowed to set up a claim provided that they were to pay for costs of Court.

Sir W. Buller objected.

Mr Baldwin still claimed that all persons who could prove that Kemp was their trustee in 1886 and 1873 could come in.

²¹²¹ 1897 AJHR Session II G2, 1.

²¹²² Ibid, 1-2.

Mr Stevens: The Legislature never contemplated making the land *papatupu*. Kemp could not have been a trustee for the Ngatiraukawa, because none of them were in the lists.

Many key points of substance underpin this exchange. Baldwin's argument was that had there been proceedings under the Native Equitable Owners Act directly Ngati Raukawa would have been able to participate, and Buller's response was that the reference to the Native Equitable Owners Act was limited to the persons in the original certificate and those who had been added to it (in which Ngati Raukawa did not feature). More broadly, the question was whether parliament had intended to reopen the Horowhenua title to a *de novo* reinvestigation of the ownership. The case is not an untypical example of the complex legal problems relating to Maori land and the Native Lands Acts that clogged the ordinary courts at this time, and which required expensive legal acumen to analyse and resolve in Supreme Court proceedings.

The Appellate Court, however, concluded that Ngati Raukawa had no right to participate in the case as their names were not in the certificate:

It is clear to the Court that its jurisdiction is confined to the persons who appear in the certificate of 1873 and the forty-eight persons. Mr Baldwin appears to rely too much on the provisions of the Equitable Owners Act. Those provisions are only imported into this Act for certain purposes, which are clearly set out in section 4 of the Horowhenua Block Act.

A return journey to the Supreme Court was now necessary. To resolve this issue the Native Land Court stated a case to the Supreme Court, which was heard in early November 1897. The Supreme Court's decision is reported as *In re Horowhenua, Subdivision No 14* (1897).²¹²³ The issue, to repeat, was essentially whether the Appellate Court was able to go behind the orders made on subdivision in 1886 and admit anyone else, Ngati Raukawa for instance, into the title and thus into the trust – in effect a rehearing *de novo* of the whole title. But the Supreme Court held that it was not intended by the legislature that the Appellate Court could go behind the 1886 orders. The issue was whether Kemp held Horowhenua 14 absolutely or as trustee for the certificated owners as at 1886; the Appellate Court could not reach further back than that and bring other names into the trust. And one can see the logic in the Supreme Court's position: it is indeed hard to imagine that parliament intended that the decision of 1873 could be undermined in this way.

To understand the point at issue it is necessary to return to the language of the statute and in particular the reference to the Native Equitable Owners Act. (Readers uninterested in legal complexities might prefer to skip over this section). The key section was s 4 of the Horowhenua Block Act 1896. This said:

To enable *cestuis que trustent* [i.e. beneficiaries] to become certificated owners of certain portions of the said blocks, the provisions of the said Act [i.e. the Native Equitable Owners Act 1886] ...shall...apply to Divisions Six, Eleven (less portion known as the State Farm at Levin, containing one thousand five hundred acres, as hereinafter dealt with), Twelve, and Fouteen of the said block.

This meant, simply, that the Native Equitable Owners Act of 1886, which as it happens had been repealed by this time, was deemed to apply to Horowhenua 6, 11, 12, and 14. The Native Equitable Owners Act had been set up to allow the Court to admit additional owners into former "ten owner" blocks arising under the Native Lands Acts 1865. The 1886 Act was a belated attempt to undo the damage caused by the ten owners rule in force from 1865-1873. If it could be shown that the ten owners (or, often enough, fewer than ten) were in actuality trustees, then others with a valid interest in the block

²¹²³ (1897) 16 NZLR 582.

could be admitted as tenants in common along with the existing grantees. Typically the Native Land Court in equitable owners cases did not need a lot of convincing that the original ten owners were trustees: this was usually assumed. The real issue in such cases was who should be admitted into the title. It was to this reference that Prendergast J fastened on when deciding this case. As he puts it:²¹²⁴

If it had been intended by the Legislature that the Native Appellate Court should ascertain whether or not the Native Land Court had, in its subdivision, proceeded in due course of law, the main and substantial provision would not have been, as it is, that the Appellate Court should proceed under, and exercise the jurisdiction conferred by, the Native Equitable Owners Act. That Act was passed for the purpose of ascertaining whether, in any given case, a person, though appearing on the title to be absolute owner, had when obtaining that title been intended to hold not for himself alone, but for others, or for himself and others. That is, admitting the validity of the title of the apparent owner, the Court was to inquire whether, though the person named in the title appeared to be

Denniston J was of the same view.²¹²⁵ To put it simply, the Native Equitable Owners Act allowed the Court to *add* people to the title, but not to *go behind* an existing title and investigate it afresh. By grafting the Native Equitable Owners procedure onto the Appellate Court's special jurisdiction to investigate some of the Horowhenua partitions the legislature was sending a clear signal, or a signal that was clear to Prendergast C J at least, that the Appellate's Court's powers did not extend to a full reinvestigation. In fact the 1896 Act did not even presuppose there was a trust at all - a point emphasised by Denniston J.²¹²⁶ A full reinvestigation of the 1873 Horowhenua decision was what many Ngati Raukawa people wanted, but the 1896 Act did not give it to them.

The Supreme Court decision meant that Ngati Raukawa could not participate in the Horowhenua 14 case any further, which went ahead with an inquiry into a very different issue: whether at the 1886 partition Horowhenua 14 had been vested solely and absolutely in Keepa. This of itself is not an issue that impacts on Ngati Raukawa, and there is no need to pursue it in any depth here. In short, however, the Appellate Court concluded in the course of an elaborate judgment that Keepa was indeed the sole owner of the block, which meant amongst other things that he could legally mortgage it to Buller. On partition *two* 1200 acre blocks came into existence, one at Ohau/Papaitonga and the other at Raumatangi. The first was the land Raukawa were first offered, but rejected; the other block was what they were offered and elected to take instead. The first block, first named Horowhenua 3 and then renamed Horowhenua 14 was at the centre of the immensely long Appellate Court decision in 1898.²¹²⁷ The case proceeded as guided by the responses given by the Supreme Court on the case stated. The latter had considerably narrowed the issues before the Appellate Court "to ascertain whether there was any, and if so, what, intended trust; and if a trust, then for whom".²¹²⁸ Horowhenua 14 was vested by the partition court solely in Keepa, but it was argued that this was on *trust* because it was an alternative site to be allocated to Ngati Raukawa: "it is in respect of the second appropriation that the theory of trust has been raised by the opponents of Major Kemp, the contention being that, although the section was placed in his name, it was intended as an alternative choice for the descendants of Te Whatanui, as it was not fully known while the Court was sitting whether they had definitely consented to accept the

²¹²⁴ (1897) 16 NZLR 535.

²¹²⁵ Ibid, 540.

²¹²⁶ Ibid, 539. Denniston J thought that the Act had to be read, in effect, to mean "To enable the *cestuis qui trustent*, if any", although he added that it "might have been better to use clearer language" (ibid).

²¹²⁷ Decision of Native Appellate Court re Horowhenua 14, 14 April 1898, *The Horowhenua Block: Minutes and Proceedings and Evidence in the Native Appellate Court under the Provisions of the Horowhenua Block Act 1896*, 1898 AJHR G-2A, Appendix K, at 156-184..

²¹²⁸ Ibid, 158.

other section near the lake”.²¹²⁹ Mostly the case was concerned with a minutely detailed examination of the precise sequence of events at the 1886 partition, a task not made easy by the disorderly state of the minutes and the loss of Judge Wilson’s own records.

The Appellate Court was certain of Te Keepa’s motivations all along, which was to restore to Muaupoko as much of their lands and status as he could. For this service he was entitled to expect the gratitude and esteem of Muaupoko. By his “energy and determination” Te Keepa had “re-established his people”.²¹³⁰ For this reason “he is entitled to very great consideration for the incalculable benefit he has gained for the Muaupoko in recovering for them so large a portion of their original tribal estate (fully 25,000 acres), as well as enabling them to regain their tribal status”.²¹³¹ Muaupoko had nothing to complain about with respect to Keepa.²¹³²

It has been stated that one reason why it was deemed necessary to cause an inquiry to be held into the matters relating to the Horowhenua Block was that a great injustice had been done to the Natives; *but, whoever may have been injured by anything that has been done, it is certainly not the Muaupoko.* [emphasis added]

In this inquiry Muaupoko have in fact found plenty to complain about with regard to Keepa, criticisms which the Tribunal has to a significant extent accepted (albeit without hearing Ngati Raukawa’s side of the story to date), but it is important to bear in mind that at the time Te Keepa was seen, and must have seen himself, as Muaupoko’s benefactor and protector. The precise question for the Appellate Court, however, was not Keepa’s intention, but the Court’s in 1886 (the partition court presided over by Judge Wilson): did the evidence show that the Native Land Court meant to encumber him with a trust? The Appellate Court thought not. Taking all the circumstances into account, “the Court is of opinion that the Native Land Court in 1886, in making its on the 3rd of December in favour of Meiha Keepa te Rangihwinui for Section 14, fully intended to vest the said section in him as sole beneficial owner”. This meant that Keepa was free to deal with Horowhenua as he pleased. As Galbreath notes, “Keepa’s position was upheld, and Buller’s with it”.²¹³³

The Appellate Court did not release its decision until 14 April 1898. In the interim there had been some further developments. On 11 August 1897 the Public Trustee’s case brought against Buller under s 10 of the 1896 Act collapsed. Counsel for the Public Trustee was forced to concede that there was no evidence of fraud and that judgment had to be entered for the defendants (Keepa and Buller). The Public Trustee was ordered to pay their costs, £335 8s 3d for Buller and £3 9s for Keepa. John McKenzie, Liberal Minister of Lands, and Buller’s principal political, and it is perhaps to say, personal, opponent (he had attacked Buller’s dealings in the House more than once²¹³⁴), was livid. Galbreath has

²¹²⁹ Ibid, 159.

²¹³⁰ Ibid, 183.

²¹³¹ Ibid.

²¹³² Ibid.

²¹³³ Galbreath, *Walter Buller*, 239.

²¹³⁴ One such attack had occurred in October 1895, with McKenzie charging Buller with robbing Maori of their interests in Horowhenua. Buller had retaliated with typical brio by writing to Seddon demanding to know whether McKenzie’s attack was sanctioned by the rest of the government, and by writing directly to McKenzie challenging him to repeat his words in some context where they would not be covered by parliamentary privilege: see “The Horowhenua Block: The Minister of Lands’ Attack on Sir W. Buller: Sir Walter replies”: *Poverty Bay Herald* Vol XXII, Issue 7472, 28 October 1895, p 2. Buller had also tried to persuade the Horowhenua Commission to subpoena McKenzie to give evidence before it, and thus providing Buller with an opportunity to cross-examine him, but the Commission had refused to do so: *Nelson Evening Mail* Vol XXX, Issue 86, 13 April 1892, p 2,

found a savagely critical memorandum sent by McKenzie to Seddon in which he trenchantly sets out his views about the Appellate Court, the Supreme Court, and Sir Walter Buller:²¹³⁵

...in my opinion the Appellate Court & the Supreme Court between them have frustrated the intentions of Parliament & set the Act at defiance,,it will be my duty to recommend to Cabinet certain proposals of a most drastic nature in connection with our Courts. The non-acceptance of these recommendations by yourself and my other colleagues may be the cause of some trouble...I have no wish at this stage to continue in public life and before retiring I could defend myself to some purpose and make it very unpleasant for the Chief Justice and also the Native Land Court judges...

I consider Buller is too much for everyone concerned in this matter. He has had too long an experience and gained too much knowledge of Native Affairs and doing Natives out of their land and in this case has succeeded admirably all along. With his knowledge and the weight of his purse of gold he has been able to accomplish wonders & it only now requires the Chief Justice to put his stamp of legality upon this dealing and thus fill the measure of corruption of the Horowhenua Block.

The Public Trustee refused to pay the costs, whereupon Buller, whose legal audacity knew no bounds, brought writs of sale in the Supreme Court against the real and personal assets of the Public Trustee. These proceedings to seize the property of the Public Trustee in order to enforce the costs awards against Buller and Keepa, were a manoeuvre which created another complex legal problem which had to be resolved in the Supreme Court, and which led to yet another judgment.²¹³⁶

The day after the release of the Horowhenua 14 Appellate Court decision on 14 April 1898 Keepa Te Rangihiwini died, urging the Maori people in his ohaaki to hold on to the remaining lands at all costs. In the last part of his life he had been actively engaged in trying to prevent the Native Land Court from investigating land in the upper Whanganui. His tangi was held at Putiki, attended by thousands of people, Maori and Pakeha. He died owing £6,810 to Sir Walter Buller, an issue which led to yet further investigations and reports brought about Buller's personal and political enemies. Much of the debt related to Buller's legal fees (as well as loans etc.): "Buller had charged Keepa his usual ten guineas a day, plus costs, for all his attendances at the Horowhenua Commission, the Native Appellate Court, the Supreme Court and all the other hearings".²¹³⁷

If anyone was the victor in the Horowhenua chaos, it was Sir Walter Buller. Buller now set about getting his title perfected to the part of Horowhenua 14 that had been alienated to him in freehold; Buller also pursued the government for his costs. Buller's fight with the government over Horowhenua was far from over. In May 1898 Buller was back in the Supreme Court, seeking "a mandamus to compel the issue to him of a certificate of title to him of 11 acres in the Horowhenua Block and also a title to Kemp on which should be registered plaintiff's mortgages and leases."²¹³⁸ There is no need here, however, to pursue the Horowhenua 14 business any further. Although Ngati Raukawa had attempted to intervene in the Horowhenua 14 Appellate Court case, they had been unable to do so. Suffice to say that Buller was victorious in the end. In May 1899 he obtained title to all of Horowhenua 14, including beautiful Lake Papaitonga. According to Buller's biographer:²¹³⁹

²¹³⁵ McKenzie to Seddon, 11 August 1897, Seddon 2/25m cited Galbreath, *Walter Buller*, 233.

²¹³⁶ (*Public Trustee v Buller* (1898) 16 NZLR 513 (15 and 16 December 1897; 4 Feb 1898), Denniston J ruled, no doubt very much to the Public Trustee's relief) that the Public Trustee could not pay costs out of the Public Trustee Office account for proceedings under the 1896 Act, that the office furniture and other chattels of the Public Trust Office could not be seized in execution under a judgment for such costs, and that the Public Trustee was not personally liable for such costs.

²¹³⁷ Galbreath, *Walter Buller*, 241.

²¹³⁸ *Wanganui Herald*, Vol XXXII, Issue 9449, 30 May 1898, p 3.

²¹³⁹ Galbreath, *Walter Buller*, 244.

The past few years had been a strain [for Buller]. It showed in his face; he had aged and looked his full sixty years, But he had turned back all the attacks, all that McKenzie and his cohorts could throw at him. A weaker man would have buckled, but Buller fought them all to a standstill and walked away.

He “walked away”, of course, with Lake Papaitonga, and Horowhenua 14. But there were others who were unable to walk away. In 1899 the newspapers reported that Wikitoria Keepa of Putiki, Keepa’s daughter and only child, was petitioning parliament seeking compensation for the expenses (£6810) incurred by Keepa’s estate relating to the Horowhenua litigation.²¹⁴⁰ Hone Heke Rankin, Member for Northern Maori, assisted Wikitoria with her case.

Finally, as a coda to the story of Horowhenua 14, it is important not to forget the role of the government. To cite Galbreath again:²¹⁴¹

The Government really was in no position to take a high moral tone and to accuse Buller of pursuing his interests at Keepa’s expense. After all, McKenzie had taken good care to ensure that the costs of the Horowhenua Commission were charged to Keepa and the Muaupoko, and took one more piece of Horowhenua land in settlement of that debt. Throughout the affair, Muaupoko were the losers; ostensibly the issue was to save them from being defrauded of their land, but once Buller and McKenzie entered the ring, the land went all the faster,

13.21 Horowhenua 11 (Ngati Raukawa Claims): Evidence

As well as Horowhenua 9, the block set aside for the descendants of Te Whatanui, there was also the issue of Ngati Raukawa and Muaupoko interests in Horowhenua 11. For this matter, the relevant provisions were s 4 and s 8(d) of the 1896 Act. This generated yet another complex case, with an enormous quantity of evidence, heard at Levin in April 1897.²¹⁴² Unlike the Horowhenua 14 case, this case is – at least in part – directly concerned with the rights of Ngati Raukawa. Much of the evidence, however, was concerned with inter se disputation within Muaupoko, which it will not be necessary to explore in detail for present purposes.

To understand what this case was about, it is important to recall the two agreements in 1874, one which related to the descendants of Whatanui, and the other agreement which promised to establish reserves for four hapu of Ngati Raukawa (Ngati Hikitunga, Ngati Pareraukawa, Ngati Parekohatu, and Ngati Kahoro, the reserves to be located near the Papaitonga stream.) Also very relevant is Section 8 of the Horowhenua Block Act 1896, which cross-refers to the agreement of 9 February 1874. Section 8 states the District Land Registrar is directed to issue:

A certificate of title for such part of Division Eleven as the Court shall order to be vested in the members of the Ngatihikitnga, Ngatipareraukawa, Ngatiparekohatu, and Ngatikahoro Hapus of the Ngatiraukawa Tribe which the Court shall consider entitled to the reserves provided for by an agreement signed by Meiha Keepa, dated the ninth day of February, one thousand eight hundred and seventy four. The Court is hereby empowered to make such order on the application of any Native claiming under the said agreement, provided such application be lodged with the Registrar of the Court at Wellington within one month after the passing of this Act.

Table of Evidence: Horowhenua 11 Inquiry, 1898 [Ngati Raukawa interests only]

²¹⁴⁰ *Wanganui Herald*, Vol XXXIII, Issue 9835, 30 August 1899, p 2.

²¹⁴¹ Galbreath, *Walter Buller*, 241,

²¹⁴² The evidence relating to Ngati Raukawa interests in Horowhenua 11 is reprinted in *The Horowhenua Block: Minutes of Proceedings and Evidence in the Native Appellate Court under the Provisions of the Horowhenua Block Act, 1896*, 1898 AJHR G-2A.

Name of Witness	Date and reference ((1898) AJHR G-2A	Affiliation	Summary of Evidence
Claim of Ngati Hikitunga, Ngati Pareraukawa, and Ngati Parekohatu (Hapu of Ngati Raukawa) (Morison)			
Opening address by Morison	9 April 1897; pp 2-3	-	Introduces case; explains the differences between the two agreements of 1874. Says that the reserves must be “substantial”
Neville Nicholson (Te Aohau)	9 April; pp 3-4	Ngati Pareraukawa	Ngati Pareraukawa claim south of the Mahoenui boundary. Describes Ngati Raukawa occupation of the land between Waiwiri and Mahoenui. Muaupoko did not occupy south of the boundary at Mahoenui until recently.
Heni Te Rei	9 April 1897	“I am the daughter of Matene Te Whiwhi”	Says that the boundary from Rakauhamama to Mahoenui was laid down by Topeora and Whatanui “as a boundary between them”. The land to the south of this line belonged to Te Rangihaeata’s people. Gives names of eel pas
Hura Ngahue	10 April 1897	Ngau Maihi	Lives at Papaitonga. Describes cultivations at Mahoenui near Lake Papaitonga. Can remember the houses being burnt at Kohuturoa. Names eel pas (pa tuna) on the Waiwiri Stream. Extensive cross-examination.

13.22 Horowhenua 11 (Ngati Raukawa claims): Judgment

The Appellate Court gave a separate judgment relating to Ngati Raukawa claims in Horowhenua 11 at Otaki on 19 September 1898.²¹⁴³ We have, therefore, another judgment to analyse. This case arose, as stated, from s 8(d) of the Horowhenua Block Act 1896, which directed the Appellate Court to find who were the persons of the four hapus entitled to share in the Papaitonga reserves under the Kemp-McLean agreement of 9 February 1874. The hearing was contested, with senior counsel present. The four Ngati Raukawa hapu were represented by Morison, but they were were opposed by Muaupoko, who were represented by JN Fraser, the cchameleon-like A McDonald, and the ubiquitous Sir Walter Buller. Buller had the audacity to argue at this late stage that the 1874 agreement was “ultra vires” (which is arguably not a correct use of that expression) because it had been made “without the authority of the people” (i.e. Muaupoko).²¹⁴⁴ It had of course made between McLean and Keepa, Keepa representing Muaupoko and McLean assuming that Keepa was acting in that capacity).

In so arguing, Buller and his colleagues were seeking to widen the terms of the inquiry substantially. The Appellant Court did not take up this point, no doubt because the Court had been directed by s 8(d) to base its findings on the 1896 agreement, the Court presumably feeling that for that reason it was now too late in the day to treat the agreement as void. The agreements, as the Appellate

²¹⁴³ (1898) 40 Otaki MB 2015-219 (Appendix 1.27).

²¹⁴⁴ (1898) 40 Otaki MB 207.

Court put it, “were made by the Native Minister as Arbitrator in the matter in final settlement of all claims of the members of the Ngatiraukawa tribe who were in dispute with the Muaupoko about their relative rights”.²¹⁴⁵ The implication here, I believe, is that the agreements could not now be relitigated. Morison too, however, sought to widen the scope of inquiry by leading evidence which pointed to widespread occupation of the whole of Horowhenua by the four hapu. The Appellate Court was not inclined to go down this path either.

The Court reviewed the historical background thoroughly, in particularly the original Horowhenua decision, pointing out that Ngati Raukawa had applied for a rehearing, which had been considered “inexpedient to grant”.²¹⁴⁶ The Appellate Court saw the case as essentially being limited to the size and location of the reserves for the four hapu. The Court was also disinclined to widen the scope of the case in favour of Ngati Raukawa (meaning that if Muaupoko today have concerns about the Court’s reluctance to expand the scope of the case, so also might Ngati Raukawa have concerns). As the Appellate Court put it:

It will be seen therefore that so far as the Ngatiraukawa were concerned that having agreed to leave the matter in dispute to the arbitrament of the Native Minister and having finally accepted the terms offered they have no further right to consideration beyond the fulfilment of the terms of the said Agreements and on these terms being fully effectuated the question so far as they are concerned is terminated.

The rest of the judgment deals specifically with the size and location of the reserves. The Court was of the view, given the historical context, the reserves could only be quite small. The Court decided that 200 acres would be sufficient, to be located at the mouth of the Waiwiri stream. The balance of the judgment is as follows: The Royal Commission recommended in their Report of the 26th May 1896 that in place of laying off reserves of small area between Papaetonga and the sea that would be of little benefit to the owners, it would be preferable to appropriate the parcel of land between number 9 and the Hokio Stream in satisfaction of the terms of the Agreement of 7 February 1874 made with the four hapus of Ngati-[214]-raukawa, but the recommendation has been rendered impossible of being given effect to owing to the provisions “The Horowhenua Block Act 1896” Subsection b of Section 8 directing that the Certificate of Title to be issued to Division 9 shall also include and vest in the persons in the Second Schedule to that Act all that parcel of Division 11 containing 80 acres more or less the boundaries of which are described in the fourth Schedule to the Act.

The Commissioners were evidently of opinion that the rational construction to be put on the terms of the Agreement relative to the setting apart of Reserves to the westward of Papaetonga, that the reserves were intended to be parcels of small area and not open to the supposition that it was intended that such reserve should include the major part of the land between Papaetonga and the Sea.

According to the evidence the places occupied by the Ngatiraukawa between Mahoenui and Waiwiri was a cultivation at Mahoenui and some places for fishing purposes at [Otauwhaowhao] [Kakawhau] [??] and a kainga at the mouth of the Waiwiri Stream. These were the places occupied by the members of the three hapus. [215]

There appears to have been only one person belonging to Ngatikahoro entitled to any right viz [Harumona?] Tareni and his right according to the evidence consisted of an eel weir at Waiwiri.

It is stated that Kemp gave Harumona Tareni a right to fish at [Kakawhau] [??] but if the concession was made prior to the decision of 1873 in favour of Muaupoko to that part of the Block it could not be of much avail as their right at that date had not been admitted.

²¹⁴⁵ (1898) 40 Otaki MB 112-113.

²¹⁴⁶ (1898) 40 Otaki MB 207.

Kemp stated in evidence that when he was asked by Mr McLean to sign the Agreement consenting to have the Reserves being made he was under the impression it referred to a reserve for Ngatiraukawa at the mouth of the Waiwiri Stream and one for the Ngatihua but²¹⁴⁷ the Ngati would not consent to.

According to the evidence given by [Hura] Ngahue the rest of the eel weirs appear to have been in the Waiwiri Stream.

It is evident that the expression in the agreement of 1874 between Papaetonga and the Sea did not apply to the old cultivations at Mahoenui although it might [possibly?] by straining the expression be supposed to apply to the occupation at Otawhaowhao and [Kakawhau[]??], but if Mahoenui is excluded the area occupied at the other places was very limited as the occupation about fisheries is usually confined to a few acres.

According to the terms of the Agreement of 1874 with the four hapus any reserves to be made were to be located between Papaetonga and the Sea.

It is plain, therefore, that the reserves to be made are limited to that locality and the expression used in the Agreement means that, and nothing more.

It cannot be considered to mean either that all the land to the westward of Papaetonga and the Sea was to be excepted but that certain reserves were to be made within the localities named.

The original occupation of the Ngatiraukawa of certain parts of the land is not of much importance excepting so far as it affords a clue to a certain extent to the localities where the reserves were probably intended to be, as all the rights of the hapus enumerated in the Agreement of the 7th day of February 1874 are extinguished under the terms of that Agreement within the [217] boundaries described, excepting to the Reserves stipulated for to the westward of Papaetonga.

The areas of this land lying immediately to the Westwards of Papaetonga and the Sea probably approximates over 800 acres, and the reserves have to be made within the Area referred to.

The Court is of opinion that the [] quantity that could possibly have been contemplated to provide for the reserves in terms of the Agreement could not have exceeded [200] acres and it has been decided to allot that quantity for the purpose. A reserve of that area will therefore be laid off starting on the Southern boundary of the Block at the beach at the mouth of the Waiwiri Stream and [] “

NgaNgati Raukawa must have thought that with this judgment that would be the end of their connections with the interminable litigation over Horowhenua. That did not turn out to be the case. There were still developments to come, including a few interesting surprises.

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Sic – that?

14. Turnaround: the 1912 Appellate Court Horowhenua case

14.1 The 1908 and 1912 Horowhenua Cases and Ngati Raukawa: Introduction

These cases were concerned with the Horowhenua 11B block, of 132 acres. How this additional 132 acres had come into being is another intricate piece of the the larger jigsaw puzzle of the Horowhenua block. For reasons that are unclear, the Horowhenua Block Act of 1896 provided both for the reserves in Papaitonga and the sea²¹⁴⁸ and added an area of 80 acres to Horowhenua 9.²¹⁴⁹ The Native Land Court in 1908 summarised the complex developments with regard to this parcel in 1908:²¹⁵⁰

After a full enquiry by the Royal Commission the Horowhenua Block Act 1896 was passed to give full effect to that report and here the matter would have ended were it not for the fact that another Commission (Judge Seth-Smith) afterwards appointed to make further enquiries, reported that subsection (b) of Section 8 of the Act of 1896 should be repealed because it failed to give effect to the Report of the first Royal Commission on a very material particular, namely that it would be absurd to lay off Reserves between Papaitonga and the sea. It also reported that in lieu of the Reserve between Papaitonga and the sea the piece of land mentioned in Section 8 of the Act of 1896 should be included in the title to Number 9 Block (see Legislative Council paper No. 6 of 1906). To put the matter briefly the Ngati Raukawa were by this latter commission's award to get the land now before the Court but were to give up the 210 acres between Papaitonga and the sea. In passing the Act (1906) to give effect to this later award Parliament for some reason did not attempt to disturb the title to the 210 acres and as a short road to the solution of the difficulty preferred to enact that the court should deal equitably in the matter. *Thus the issue now before this present Court is reduced to the question of how much land should the Muaupoko receive out of the Reserve now before us [Horowhenua 11B] to compensate them for the 210 acres near Papaitonga.* In fixing the localities of the lands to each tribe the Court has endeavoured to protect the present occupation of each tribe.

As the Court points out, yet another Horowhenua Block Act enacted in 1906 had given the Native Land Court special jurisdiction to investigate title to the 132 acres.²¹⁵¹

Acting under the 1906 amendment, the Court sat to investigate title to Horowhenua 11B in 1908. The case was heard at Levin and was presided over by Chief Judge Jackson Palmer. The case began, then, as an inquiry into how much land *Muaupoko* should receive in exchange for the failure to cancel Ngati Raukawa's title to the 210 acres between Papaitonga and the seacoast. The Native Land Court in 1908 partitioned the land, awarding most of it to *Muaupoko*.²¹⁵²

²¹⁴⁸ Horowhenua Block 1896 s 8D.

²¹⁴⁹ Ibid, s 8B, adding an area of 80 acres to Horowhenua 9:

The certificate of title to be issued for Division Nine shall also include and vest in the persons named in the Third Schedule all that piece of land being Part of Division Eleven, containing eighty acres, more or less, the boundaries of which are described in the Fifth Schedule hereto.

This provision, plus Schedule III, were *repealed* by the Horowhenua Block Amendment Act 1906. The effect of the repeal is something of a legal puzzle, but essentially it created an area of 132 acres which must logically have belonged to *Muaupoko* (the setting aside and vesting in Ngati Raukawa having been terminated).

²¹⁵⁰ (1908) 49 Otaki MB 203B.

²¹⁵¹ Horowhenua Block Act 1906 s 2, adding new para 8(b) to Horowhenua Block Act 1896, giving the Native Land Court power to "ascertain what Natives are equitably entitled to to the land described in the Second Schedule hereto, containing approximately 132 acres, and the relative share or interest of each of them, and to make an order accordingly".

²¹⁵² (1908) 49 Otaki MB 203C.

In regard to these two Blocks the Ngati Raukawa receive the land mentioned in the First Schedule amounting to about 47 acres in addition to the 210 acres already received at Papaitonga, total about 257 acres: the Muaupoko receive about 85 mentioned in the Second Schedule.

The Court did not think it could by this stage depart from the precedent set by the 1873 case and all that had gone on since:²¹⁵³

The Court considering itself bound by the reports, statutes and awards mentioned in the premises deems that a fair and equitable distribution of this land will be that the Ngati-Raukawa should receive the land mentioned in the premises deems that a fair and equitable distribution will be that the Ngati-Raukawa should receive the land mentioned in the First Schedule and that the Muaupoko should receive the land mentioned in the Second Schedule.

However, much the most extraordinary dimension of the whole Horowhenua affair was now about to occur. As the Native Appellate Court put it in 1912:²¹⁵⁴

By the “Native Land Claims Adjustment Act 1910” Section 12 the Native Appellate Court was given jurisdiction to hear an appeal from the orders of the Native Land Court made in pursuance of the said decision, and for the purpose thereof directed to proceed as if the Horowhenua Judgment of 1873 did not affect this particular portion of the block, and to give “due weight” to the occupation thereof since 1840 by any claimants or the ancestor of any claimant thereto.

The further piece of legislation the Court was referring to, s 12 of the Native Land Claims Adjustment Act 1910, gave power to the Native Appellate Court power to re-hear the 1908 decision relating to the 132 acres.²¹⁵⁵ However s 12(2) changed the rules of the whole Horowhenua ball-game entirely:

For the purposes of the proceedings under this section the Court shall proceed *as if the judgment of the Native Land Court given in the year 1873 on the investigation of title to the Horowhenua Block did not affect the land referred to* in the last preceding subsection, and shall give due weight to the occupation of any such lands since 1840 or the ancestors of any claimant thereto.

As the Appellate Court was to remark, “[t]his matter therefore comes before us under entirely different conditions to those obtaining when it was heard by the Native Land Court.”²¹⁵⁶

14.2 The 1912 rehearing: evidence and submissions to the Appellate Court

There was not a great deal of evidence at the 1912 rehearing. Neville Nicholson, who had taken the lead in petitioning parliament for redress, gave evidence for the appellants (i.e. Ngati Raukawa) and Wirihihana Hunia (jr.) for the respondents (Muaupoko). Neville Nicholson spoke to the history of the block and the boundaries between Ngati Raukawa and Muaupoko at Raumatangi.²¹⁵⁷

Neville Nicholson (sworn) said I know the land in question – since infancy I know it. My mother was Kararaina who was mentioned before the Commission. She is a descendant of Hitau and a relative of Whatanui. The occupation has been continuous since Hitau’s time. I remember the Commission which

²¹⁵³ Ibid.

²¹⁵⁴ (1912) 3 Wellington ACMB 259.

²¹⁵⁵ Native Land Claims Adjustment Act 1910, s 12(1):

On the appeal of any person interested made within six weeks after the passing of this Act, the Native Appellate Court shall have jurisdiction to hear and determine an appeal made under section two of the Horowhenua Block Amendment Act, 1906, in respect of the lands described in the Second Schedule of that Act, and to exercise in respect of that appeal all or any of its powers under Part II of the Native Land Act 1909.

²¹⁵⁶ (1912) 3 Wellington ACMB 259.

²¹⁵⁷ (1912) 3 Wellington ACMB 202.

sat at Levin in 1896. No Ngati Muaupoko occupied before that time.²¹⁵⁸ The Commission visited the land to look for traces of occupation.

14.3 The Court's 1912 judgment

The Appellate Court begins with a review of the legal history of the land, beginning its narrative with the Kuketuuauaki decision of 1873 and then moving on the Horowhenua decision in the same year. The result of the latter was that the Court “issued under the Native Lands Acts 1865 and 1867 a certificate of title in the name of Meiha Keepa Rangihiwini and directed that the names of 143 persons be registered as owners of Horowhenua”.²¹⁵⁹ Then, says the Appellate Court, following the refusal of Ngati Raukawa’s application for a rehearing, “great trouble arose between the Natives”; “pas were built and shots fired”. This led to McLean having to intervene; he “induced the leading Ngatiraukawa to come to Wellington”, had Kawana Hunia arrested and Major Kemp “sent for”.

The Court goes to describe the two agreements of 9 and 11 February 1874. As the Court states, the first agreement, relating to the southern boundary, was of no relevance to the current proceedings. It was the second agreement, where Kemp agreed to transfer 1300 acres to Ngati Raukawa (more precisely, to the descendants of Te Whatanui), which mattered.²¹⁶⁰

Now it is quite clear that the first agreement was made with the Ngati Raukawa claiming the Southern end of the Block and has nothing to do with the matter before us. It is the document dated the 11th February 1874 that we are concerned with.

The Court then described the 1886 partitions, noting in particular the creation of Horowhenua 9 and Horowhenua 11 and the partition of Horowhenua 11 in 1890 into Horowhenua 11A (Kemp) and 11B (Warena Hunia). The block before the Court was in Horowhenua 11B. The Court briefly referred to the Horowhenua Commission and then moved on to the 1896 Act insofar as it impacted on the land now before the Court, noting in particular that the Native Appellate Court was authorised to define the persons beneficially entitled to Horowhenua 9 and the District Land Registrar had been directed to issue LTA certificates of title for (a) Horowhenua 9, and (b) “the members of the Ngatihikitanga, Ngati Pareraukawa, Ngati Parekohatu, and Ngati Kohoru hapus of the Ngati Raukawa Tribe it considered entitled to the reserves provided for in the aforesaid agreement signed by Meiha Keepa on 9th February, 1874”.²¹⁶¹

This Act, it will be seen, provided that the Whatanui’s party should have a Land Transfer Title for subdivision 9 and this area of 132 acres, and that distinct Ngati Raukawa hapus should have an area in subdivision 11 in satisfaction of the promised reserves between Lake Papaitonga and the sea.

Next came the Appellate Court’s decision relating to Horowhenua 11 in 1898:

The Appellate Court sat and made an order [257] declaring 81 persons to be the owners of the residue of subdivision 11, after deducting therefrom the State Farm, an area of 210 acres for the above-mentioned 4 hapus, the piece now in dispute, a sandy area of 2158 acres, the Horowhenua lake and a reserve round it. The 210 acres for the four hapus mentioned was named 11A1 and the residue of 11 was called 11A.

Further partitions followed:

²¹⁵⁸ Presumably referring to the parcel of land before the Court.

²¹⁵⁹ Ibid, 254.

²¹⁶⁰ Ibid, 256.

²¹⁶¹ Ibid.

On the 19th October 1898 11A was partitioned by the Native Land Court into numerous divisions, one of them 11B41m in the names of 78 of the above-mentioned 81 owners, being the portion adjoining subdivision 9, this disputed portion, and that part called Raumatangi.

This block 11B41 has been further subdivided and it is to be noted here that as the disputed 132 acres were cut out of the original subdivision 11 by the Act of 1896 all the orders, including and subsequent to the Native Appellate Court's order declaring the owners of subdivision 11 and other subdivisions have been fixed as to shares and areas on the understanding that this 132 acres was no longer part of the property of persons bringing their claims on the original judgment of the Native Land Court.

The next step was the Horowhenua Block Amendment Act 1906:

Ten years after Whatanui's people had by virtue of the said Act of 1896 been given a title to this disputed area section 2 of "The Horowhenua Block Act Amendment Act 1906" repealed that provision of the former Act providing for the issue of such title, directed the issue of a title to Mrs McDonald for about 8 acres, and authorised and directed the Native Land Court [258] to ascertain what Natives were equitably entitled to the balance of this area, containing approximately 132 acres, and the relative share or interest of each of them, and to make an order accordingly upon receipt whereof the District Land Registrar was empowered to issue a certificate of Title.

Acting under the 1906 Act the Court sat again, and split the 132 acres, as we have seen, and awarding most of it to Muaupoko:

In 1908 the Native Land Court made the necessary inquiry and after hearing the parties awarded 47 acres to the Ngatiraukawa (Mr Nicholson's party) and 85 acres to Muaupoko (Wirihana Hunia's party).

The Judgment of this Court shows

(1) That it considered itself bound by the Horowhenua decision of 1873 save and so far as the agreement, or compromise, of 1874 affected the same.

(2) That it took what appears to us to be a mistaken view of the said compromise, as did also the Horowhenua Commission (see page 11 of the Report), that is to say, it assumed that the people entitled to the reserves between Papaitonga and the sea were the same as those entitled to the gift of Meiha Keepa Rangihwinui of 1300 acres.

(3) Acting upon this view the Court believed that the Act of 1896 had by error directed titles to issue for the Reserves between Papaitonga and the sea as well as this area, instead of giving effect to the Commission's report, suggesting a title for this piece in lieu of title for the Reserves.

(4) The Court therefore deducted from this area a portion sufficient to identify the Muaupoko for the loss of the 210 acre Reserve and [259] awarded Ngatiraukawa the residue.

Then came the further statutory change in 1910.

It is quite clear and was admitted at the hearing before us that the persons entitled to the 210 acre Reserve were certain Ngati Raukawa hapus whilst the people were entitled to the 1300 acres under Meiha Keepa's gift were a distinct party deriving their rights through or under Te Whatanui and that the Native Land Court proceeded upon a mistaken view of the facts. By the "Native Land Claims Adjustment Act 1910" Section 12 of the Native Appellate Court was given jurisdiction to hear an appeal from the orders of the Native Land Court made in pursuance of the said decision, and for the purpose thereof directed to proceed as if the Horowhenua Judgment of 1873 did not affect this particular portion of the block, and to give "due weight" to the occupation thereof since 1840 by any claimants or the ancestor of any claimant thereto.

The 1910 amendment, however, changed matters fundamentally. The 1912 case came before the Court under “entirely different conditions”²¹⁶² than was the case in 1908. The Appellate Court was “to some extent” a Court of first instance, as it was now able to proceed as if the original 1873 judgment did not exist. This meant, in particular, that the Appellate Court could now consider the agreements of 1874. The Appellate Court distinguished carefully between the two. The “first first portion of the agreement relating to the payment of £1050, the reserves between Papaitonga and the sea, and the extinguishment of the Ngatiraukawa claim in the Southern portion of the block near Mahoenui have nothing to do with this part of Horowhenua”. It was intended to settle only claims south of the Mahoenui boundary. But with respect to the claim under Whatanui there was “no agreement or compromise at all”, merely “an undertaking” by Keepa to transfer an area of 1300 acres near the lake to the descendants of Te Whatanui.

Looked at in this light it would seem to follow that the gift must be of land awarded to Kemp or his tribe, and that the 1300 acres were to be in addition to the 100 acres at Raumatangi; but, although it may well be, that Nicholson and his party understand it as being a promise to give them 1300 additional acres, yet the evidence before the Horowhenua Commission and the Native Appellate Court of 1897 satisfies us [261] that the Muaupoko regarded it as only 1200 acres over and above the Native Land Court’s award to the Whatanui party.

In any case how could this be a binding compromise of claims which the Court had heard and decided, a rehearing whereof had been refused. It was simply a gift which the Whatanui party were to have made to them, and although they may have thought 1300 acres was promised, they were never in a position to insist in getting that area. The title was in Kemp’s name as trustee for the Muaupoko, he was the person making the gift, which in any case required the assent of his tribe, the Ngatiraukawa application for a rehearing had been refused and he was in a position to refuse, and the Whatanuis had to take what they could get.

They did succeed however in having a piece cut out for them near the Lake, though a different location was first put before the Court of 1886, but at no time were they in a position to insist on getting the additional 100 acres that they claimed.

The Court minutes of the first December, 1886 set out the situation of the 1200 acres as under:

It is located on the South side of the stream Hokio but it is to be adjoining the 100 acres on the South and West sides of the stream (already granted to the Whatanui known as Raumatangi) lengthwise, the land will go in the direction of the sea, if it is to be a straight line (the Northern boundary) in no place approaching within two chains of the stream at the nearest point, to a graveyard [262] named Owhenga, then by a line of right angles from the Eastern to the Western boundary of Owhenga, thence by a line of rights angles to the East line 60 chains, then by a line [Eastward] 160 chains, thence by a line to the Southern corner of the 100 acres lot awarded Raumatangi block show in the tracing.

This subdivision 1200 acres is made as prayed.

These minutes support Aohau Nicholson’s evidence that the portion now in dispute was intended to be included in the 1200 acres now called No 9 and was only omitted therefrom by order of the surveyor for the above description would cover it all except the two chains along the Hokio stream.

²¹⁶² Ibid, 259.

The plan now endorsed on the order for No 9 shows that subdivision adjoins Raumatangi on the South side only, and that this 132 acre portion adjoins it on the West. The minutes quoted above distinctly say No 9 was to adjoin Raumatangi on the South and West.

Meiha Keepa himself stated before the Horowhenua Commission that his gift was made, not to settle any trouble between Muaupoko and the Ngati Raukawa, but because of an old understanding between Whatanui I and Taueki, a prominent chief of Muaupoko.

Even had the judgment of 1873 still been the foundation of the title to this area we do not think this gift could have been regarded as an [263] estoppel but since the effect of that decision has been removed and the position of the parties entirely changed we are confident that it cannot be considered as such in this case.

The question has been raised as to what constitutes a conquest effective to pass the ownership of land from the defeated to the victorious party according to Native idea [sic] and custom.

The Native Appellate Court has laid it down that it is not only necessary to vanquish the enemy in battle but to occupy the land and to continue to hold it or exercise rights of ownership over as against all outsiders. According to Maori usage it was necessary that the conquering tribe should hold possession of the conquered territory in order to establish a valid claim or title to it and nothing but occupation and the inability of the original owners to recover possession made the title of the conquerors complete. If a portion of the conquered tribe escaped their claim held good to so much of the land as they had courage to occupy within their tribal boundary. If it were a complete conquest then the survivors would be taken as slaves, and although they might be permitted to occupy parts of the land, it would be as slaves to the others, and their occupancy would be that of their owners, and so they would have no right but that their owners allowed them. In some cases where the conquest has not been of the complete character described above, terms have been made between the contending parties, whereby the stronger has obtained a portion of its defeated opponents' lands, and in some cases [264] the weakened tribe has been incorporated in the stronger.

Has there been a conquest and subsequently occupation and exercise of the rights of ownership in this case?

Having reasoned its way to this point, then, the Appellate Court found itself able to reinvestigate the underlying issue, the same issue that had been there all along: had there, indeed, been a conquest of Muaupoko, by Ngati Raukawa? If it might seem surprising that this question could be posed all over again in 1912, so long after the original decision in 1873, the Court's answer was to prove even more surprising. The Appellate Court went on to point out that the story of the migrations of Ngati Toa and Ngati Raukawa to Kapiti were some of the "best authenticated events" in Maori history. Many books had been written on the subject, but much of the existing literature seemed to the Appellate Court to be highly partisan. The matter had to be considered afresh:

The story of Te Rauparaha's invasion of the South Western portion of the North Island and the migration of the Ngati Raukawa tribe from the interior to assist him are some of the best authenticated events in Maori history and the doings of Te Rauparaha, Te Whatanui and the tribes of Ngatitua, Ngatiawa and Ngatiraukawa, and their connections with the Horowhenua block, have attracted the attention of European writers to a greater extent than almost any other Native matters. Most of these writers however seem to us to have been either strong partisans or else to have attached too great weight to the mana of the chiefs mentioned or to have lost sight of the great weight and importance attaching to occupation.

The Court, having satisfied itself that the key question was not “the mana of the chiefs” but rather “occupation”, the latter always being a decisive factor in the Native Land Court, which typically decided cases on a time-honoured combination of *take* and occupation. In the view of the Appellate Court, it was now time to abandon “preconceived ideas” and proceed in an objective way and taking all the relevant evidence into account:

We have therefore endeavoured to rid ourselves of any preconceived ideas founded on such writings and to form our conclusions entirely on the evidence contained in the minute books and records and that given before the Horowhenua Commission and this Court. From this evidence we have gathered that Te Whatanui and Te Rauparaha joined Te Rauparaha at his invitation and as his allies – that Te Whatanui passed several times backwards and forwards between his ancestral home in the interior of the North Island and this Coast, bringing down with him warriors as reinforcements for Te Rauparaha and finally the main body of his [265] people. That he and his Ngati Raukawa joined in attacks on the Muaupoko and the practical destruction of that tribe.

The Appellate Court was certain that the often-narrated presentation by which Muaupoko were saved from obliteration because of the Te Whatanui-Taueki agreement was correct:

Had it not been for the peace made by Te Whatanui with Taueki, the chief of Muaupoko, at Karekare, the remnant would have been annihilated. By arrangement with Te Whatanui, who allotted them a portion of Horowhenua, Taueki gathered together all the fugitive Muaupoko who desired to return, but a number had fled to the South Island and did not again appear on this block till after Christianity had been established.

The portion of the land allotted to Taueki adjoined the Poroutawhao boundary on the North and extended South to a place called [Tarateruru] on the Horowhenua Lake.

Whatanui protected the Muaupoko from the attacks of Te Rauparaha and settled himself at Raumatangi on the shores of the Lake. During his lifetime the Muaupoko never attempted to dispute the boundary and were never in a position to do so. Years after his death disputes arose and the boundary was submitted to a committee of the tribes and they fixed it at the Hokio stream.

It is clear that Whatanui’s people were the owners of the rights of fishing in the Hokio Stream, and there is not a particle of doubt, that the Ngati Raukawa in 1840 were the absolute masterful owners of the block. It is certain that the Muaupoko were not in that position nor had they any rights to which the Ngati Raukawa to which the Ngati occupants would [NOT? – check original] have assented.

Meiha Keepa speaks of land being given by [266] Taueki chief of Muaupoko to Te Whatanui and states the boundaries, the Northern one being the Hokio Stream.

It is far more probable that the Muaupoko, being mere fugitives unable to make head against a strong tribe such as Whatanui’s, submitted to a boundary put forward by Whatanui.

The real story is that Whatanui sent for the remaining Muaupoko,²¹⁶³ gave them [a] portion of Horowhenua to live upon, and promised them protection from their enemy Te Rauparaha.

This view is supported by Muaupoko evidence given before the Native Appellate Court of 1897, though the minutes of the Horowhenua Commission and the Land Court records of the earlier hearings supply full details. Wirihana Hunia for instance said that Te Whatanui had taken the whole land – all the Ngati Pariri²¹⁶⁴ portion had gone to Te Whatanui – that he had hear from his father, Ngatiapa, Rangitane,

²¹⁶³ Comma added to clarify the sense.

²¹⁶⁴ Hapu of Muaupoko. It is not clear from the original text what is paraphrase and what is a quotation in this sentence.

and Muaupoko that the Muaupoko lived under Te Whatanui – that his father denied before the Court in 1873 that there was any conquest, or that Muaupoko were ever in subjection – that his father was a man of great spirit and very tricky – that Kawana Hunia knew the land had been conquered when he said it had not – that he would never admit it in 1873 that it had been conquered although he told him that it had.

Himiona Kowhai also said that all the people lived at Te Rae o Te Karaka because the land south of the Hokio was completely under Whatanui's mana and he mentioned [267] Tamati Maunu, Rewiri and Hanita as being the only Muaupoko who cultivated South of the Hokio but they also live at Te Rae o Te Karaka which is north of the Tauateruru line.

Himiona also supports the Ngati Raukawa witnesses in saying that the son of Te Whatanui leased the whole land south of the Hokio himself.

There is also evidence of other Muaupoko as well as Himiona that the Muaupoko bought from the Whatanuis the right to use two eel weirs in the Hokio Stream and that until then the Muaupoko did not fish there.

Wirihana Hunia also spoke of cultivations belonging to Whatanui and Kouturoa and other places about Hokio – also at Otaewa.

The Native Appellate Court in its judgment given on the 14th April²¹⁶⁵ after a long and careful inquiry sets out:

that Kemp found the remnant of the tribe in a very unsatisfactory position – as a people they had been conquered by Te Rauparaha and his allies and afterwards succoured by Te Whatanui, but had never regained their independence as a tribe. Kemp by his energy and determination, re-established his people, and considering all the circumstances, he is entitled to very great consideration for the incalculable benefit he has gained for the Muaupoko in recovering for them so large a portion of their original tribal estate (fully 25,000 acres) as well as enabling them to regain their tribal status.

Kemp's actions above referred to were [268] of course not taken till many years after 1840, and we are not concerned with them at present further than this,²¹⁶⁶ that the above statement by Judges knowing the history of this district so well and after hearing lengthy evidence strongly supports our opinion that there was an effective conquest in respect of at any rate that portion of Horowhenua No. 11 lying to the South of the Hokio stream and including Raumatangi No. 9 and this disputed portion.

It also appears to us that there was no attempt to dispute the occupation of the Whatanui party for some years before or many years after 1840 and that though later on their peaceful occupation was disturbed that to a very great degree at least was the result of the Native Land Court decisions and the condition of affairs at the end of the Maori Wars. We think the fact that the evidence of Kemp and others upon which the Horowhenua decision was founded has been seriously affected by evidence by evidence by themselves and other Muaupoko witnesses at later hearings and the above quotation from the Native Appellate Court's decision are sufficient justification for our preferring our own conclusions to those of the Court of 1873.

According to Wirihana Hunia's evidence before us there were no residences or cultivations by anyone on this 132 acres in 1863 when he left Horowhenua and only Macdonald's house and cultivations in 1873. This is strongly denied by his opponents but assuming it to be correct it is undoubtedly a fact that Macdonald was looked on as Te Whatanui's [269] tenant. Tauteka Katene certainly wrote to Kemp

²¹⁶⁵ The Court is referring to the Appellate Court's Horowhenua 14 judgment printed at [1898] AJHR G2A 156-184.

²¹⁶⁶ Comma inserted.

in 1881 asking permission to build on a spot selected by her that was being objected to, but at that time Kemp was the legal owner by virtue of the judgment of 1873. Moreover, Kemp telegraphed in reply that no one had a right to interfere with her. Prior to the seventies at any rate Muaupoko never attempted to cultivate or build there and we doubt if Himiona Kowhai's house was erected before the Commission of 1896.

As in our opinion this particular area of 132 acres was at the year 1840 held by Te Whatanui and his people under an effective conquest, - and as it was not only within the Tauateruru boundary but South of the Hokio Stream, and close to Te Whatanui's residence, - as the right to take the fish from from the Hokio belonged to Te Whatanui from before 1840 till his death, - as Macdonald held the lease as the Whatanuis' tenant for years without interference by Muaupoko, as Whatanui's people were the first to build there after 1840 and have been there ever since, and between the years 1896 and 1906 held an absolute title to the land by virtue of the Horowhenua Block Act 1896, and we think it just and equitable that the whole of the disputed area should belong to them.

In conclusion we wish to make it clear that our finding of an effective conquest does not necessarily cover a greater area than would be compensated for by the Government's payment of £1050 under the compromise of 1874, and the awards of Raumatangi, Subdivision 9, the Waiwiri Reserves, and this 132 acres. It has not been part of our duty to consider more than that.

We would be justified in reading the direction in the section to give "due weight" to occupation since 1840 as enabling us to award an area to persons whose occupation commenced after the Horowhenua Commission's report in 1896.

Anyone who built on this land after that, did so with his eyes to the fact that the Whatanui party were likely to obtain a title.

The Commissioners distinctly state that there were no Muaupoko houses on this portion, but, as there is some conflict of evidence on this point, we propose to give the respondents the benefit of any slight doubt we may have in the belief that the appellants will be generous enough not to object to an award sufficient to cover the house and improvements of Himiona Kowhai.

Our decision is that the appellants' party should receive the whole of the area in dispute with the exception of five acres to go to the persons for whom Sir John Findlay appeared.

The 1912 decision was, and can only be described as, a complete turnaround. It might be argued that the turnaround was in fact statutory and occurred at the point when the 1910 amending Act stipulated that the Appellate Court, when determining the appeal from the 1908 Native Land Court decision was free to proceed on the basis that the 1873 Horowhenua decision had never been made. But the legislation merely vacated the 1873 decision, leaving it up to the Appellate Court to come to whatever conclusion it thought best fitted with the evidence. The Appellate Court could theoretically have come to the same conclusions as the 1873 decision. But it did not. It found, rather, that there was a claim by Ngati Raukawa on the basis of conquest (take raupatu) and allocated the entirety of the area before the Court to Ngati Raukawa. The fact is that the 1873 decision and the 1912 decision are completely at odds. By finding as it did in 1912, the Appellate Court is certainly establishing that the 1873 decision was wrong. What is at stake with this, is not merely an example of the Native Land Court's inconsistency. If the Native Land Court was wrong in 1873, then the whole edifice of the rest of the Horowhenua complexities falls to the ground with it, in particular Judge Wilson's partitions in 1886 and all the chaos that they called. The narrative that the Appellate Court in 1912 was of course the same narrative that Ngati Raukawa had adhered to all along, and the narrative that their supporters, such as that set out in T C Williams' *Appeal on Behalf of the Ngati Raukawa Tribe* (1873) had also adhered to all along.

Even if this analysis is not accepted, as I think it should be, a further point remains, which is that particular historical interpretations by the Native Land Court can have lengthy and very serious consequences. Once a particular interpretation had been made, it could prove very difficult to retreat from. One avenue of retreat, a rehearing, had been refused to Ngati Raukawa after the decision. There was no other avenue provided by the Native Land Court system for correction or amelioration, and there was no Appellate Court until 1894. Ngati Raukawa's inability to obtain a rehearing has to be seen as key, if not, fateful step in the Horowhenua story. The 1873 decision was the foundation for the 1886 partitions. Correcting the problems caused by the partitions *without* revisiting the original decision on which the partitions had been based generated a staggering amount of complexity and trouble. The partitions and the later investigations simply cemented the original flawed decision of the Native Land Court more firmly into place. In 1912, the Native Land Court, via its appellate court, corrected itself. It was, however, too little, too late.

14.4 The 1912 Horowhenua Decision becomes a precedent: Raumatangi inquiry (1926) and investigation

An important component of the Land Court's work in the first half of the twentieth century was the reports to the Chief Judge prepared on an ad hoc basis to inquire into specific Maori historic grievances, many arising from events in the 19th century (including 'old land claims' in Northland, reserves in pre-emptive Crown purchases, and the effects of the Fenton agreement at Rotorua – and the Horowhenua block). The trigger of these investigations was usually a parliamentary petition from Maori people raising concerns about a particular matter. Such petitions had to run a complex procedural gauntlet of investigation by the Native Affairs Committee at parliament, parliamentary legislation, a special inquiry by the Native Land Court (or occasionally, the Appellate Court), and a review of the Court's report by the Chief Judge. By no means were the Chief Judges invariably supportive of their colleagues' findings: for example many of Judge Acheson's findings in Northland were repudiated by the Chief Judge, invariably meaning that no further action would be taken. If the Chief Judge reported favourably, this could mean that further legislation was necessary to give effect to the findings of the Court, and it could also mean that further hearings by the Court might be necessary to fix lists of beneficial owners, finalise compensation, determine to whom compensation should be paid, and so on. The process involved a lot of hearings by various bodies, beginning with the Native Affairs Committee at parliament, at which petitioners were often represented by such specialist counsel as D.G.B. Morison, followed by the hearings before the special tribunal, if one one was set up, followed by yet further hearings if the special tribunal decided these were needed. The process was cumbersome, time consuming, and often characterised by amateurish decision-making, but nevertheless it did provide a mechanism of a sort for the redress of historic grievances.

The formal pivot of the process was the various annual "washing up" Bill, another dimension of the legislative labyrinth relating to Maori land issues. These statutes, enacted every year, were referred to as Native Land Amendment and Native Land Claims Adjustment Acts, and in later years more simply as Native (or Maori) Purposes Acts. These annual legislative *mélanges*, no doubt seen by most politicians as routine fare of no political interest or significance, made endless changes and adjustments to boundaries and titles and directed all kinds of investigations and inquiries. An example is the Native Purposes Act 1937. The Act amended various other technical statutes, and gave legal effect to numerous tenurial alterations and adjustments. Section 12, for example, allowed portions of the Hinewhaki West block to be set aside as a Native Reservation, and s 14 extended the time limits for making valuations for renewals of leases under the West Coast Settlement Reserves Act 1882 (the West Coast reserves were a fertile source for legislative tinkering of this kind). Section 16 allowed the Chief Judge to refer the various petitions listed in the Schedule to the Native Land Court for an inquiry and

report, and 9 such petitions were listed, relating to various land blocks scattered the length and breadth of the country. It was these investigations which resulted in the various reports to the Chief Judge. There are many of these “Reports to the Chief Judge”, some of them quite brief, but many which are very substantial. Acheson’s report in the Takapau block inquiry runs to 7 closely-printed pages. Judge Harvey’s report on Whakapuaka, at 59 pages (including appendices and maps) is a monograph in its own right.

Following a petition to the Native Affairs Committee by Rere Nicholson, Section 34 of the Native Land Amendment and Native Land Claims Adjustment Act 1925 directed an enquiry into Raumatangi, the 100-acre block set aside by Judge Rogan in 1873 in favour of the descendants of Te Whatanui. Raumatangi, to repeat, adjoined Horowhenua 9 (the Raukawa allocation) and was on the western side of Lake Horowhenua. Judge [Gilfedder?] conducted an inquiry at Levin on 27 and 28 April 1926. Gilfedder reported to Chief Judge Jones as follows:²¹⁶⁷

When the title to this Raumatangi Block was being investigated, along with a considerable area of the Horowhenua Block, in 1873, there was much ill-feeling and a good deal of quarrelling between the Ngatiraukawa and the Muaupoko hapus in the district; and the Native Land Court, in order to effect a compromise and allay inter-tribal hostility, awarded the greater part of the Horowhenua Block to Major Kemp for his Muaupoko people, and gave Raumatangi, containing 100 acres, to Te Whatanui and those Ngatiraukawa who were claiming under him. Subsequently a list of names was submitted, and it was ordered that a certificate of title be issued to the following: Waretini; Waretini Tuainuku; Ranginui, Whioi; Teri Tuainuku; Honi Witi; Ngawiki; Hitau; Matene; Hukiki. A certificate of title was issued accordingly on the 27th June, 1881.

The Horowhenua commission recommended that the title of Raumatangi should be in the names of seven persons: (1) Waretini; (2) Te Wiiti; (3) Ngawiki (Tauteka); (4) Kararaina; (5) Watene te Waewae; (6) Hitau; (7) Erena te Rauparaha. These names correspond with those in the former orders when duplicates are omitted and those without occupatory rights are removed. Nothing was done to give effect to the recommendations of the Commission in respect of that part of its report that deals with the title to Raumatangi. As there were errors and probably irregularities connected with the consideration and passing of the list of persons entitled to be included in the certificate of title, I recommend that authority be conferred on the Native Land Court to determine the persons properly entitled to the Raumatangi Block.

Although Chief Judge Jones did not quite agree with some aspects of Judge Gilfedder’s report he nevertheless agreed that the title to Raumatangi needed to be reinvestigated.²¹⁶⁸

PURSUANT to section 34 of the Native Land Amendment and Native Land Claims Adjustment Act, 1925, I forward herewith the report of the Court hereon. I think that it errs in two respects: (1) I can find nothing in the report of the Horowhenua Commission of 1896 which shows that the Commission made any recommendations as to the title of this block;²¹⁶⁹ (2) I cannot find anything to warrant the allegation that Raumatangi was awarded to effect a compromise. The land covered by the compromise to settle disputes was Horowhenua No. 9 Block, and that was awarded some years afterwards. However, I agree with the Native Land Court that the matter should be reopened. I therefore recommend that the application for investigation of title of Raumatangi be reheard.

²¹⁶⁷ 1926 AJHR G-6E.

²¹⁶⁸ 1926 AJHR G-6E.

²¹⁶⁹ Chief Judge Jones seems to be quite wrong about this: see 1896 AJHR G-2, 8-11, 22. Raumatangi is discussed under the heading of Subdivision No 9. In fact under this heading, at pp 8-9, the report of the Commissioners states specifically that “The Court of 1873 set apart, for certain of Te Whatanui’s descendants, a block of 100 acres known as Raumatangi.”

Following Judge Gilfedder's investigation and Chief Judge Jones's recommendation that Raumatangi should be reheard, legislation was enacted in 1926 directing a rehearing.²¹⁷⁰ The legislation specifically declared that the Native Land Court's 1873 Horowhenua decision insofar as it related to Raumatangi was in effect annulled. The 1926 legislation directed the Native Land Court to investigate the title to Raumatangi on the basis that it was not bound by the 1873 Horowhenua decision, that decision, of course, having found that the Horowhenua block, excluding the Raumatangi reserve, belonged to Muaupoko and thus rejecting the Ngati Raukawa claim to the entirety of the block by conquest. Given that this earlier finding had been vacated by statute, the Court here had a free hand in deciding title to Horowhenua as a whole, Raumatangi included. The Native Land Court, presided over by Judge Gilfedder, sat at Levin in November 1926, and once again the eventful history of the Horowhenua in the decades before and after the Treaty of Waitangi was traversed at length in evidence before the Native Land Court. The Court gave its Raumatangi judgment on 12 November 1926. It is short enough to be quoted in full:²¹⁷¹

[96] This is an application in pursuance of section 18 of the Native Land Amendment and Native Land Claims Adjustment Act 1926 which authorises the Court to reopen the proceedings for the investigation of title of the Raumatangi Block and to ascertain and determine the names of the persons who according to Native custom were at the time of such investigation the owners of the said Raumatangi Block and to define the relative interests in which the persons so found are entitled and to amend the title of the said land accordingly. The Court shall not be bound by a finding of the Court dated the 5th day of April 1873 so far as it affects the said Raumatangi Block."²¹⁷²

A good deal of evidence has been tendered both by the interested parties and by independent witnesses but this Court sees no good reason to dissent from the findings of the Horowhenua Commission of 1896 and the Native Appellate Court of October 25th 1912 (3/251)²¹⁷³ or from the recorded and generally accepted facts of history.

During the first quarter of the 19th century the Horowhenua part of the Coast from the mountains to the sea was occupied by the Muaupoko Natives amongst whom were a few Ngati Apas and Rangitanes. In the early twenties of last century Te Rauparaha a famous fighting chief of Kawhia came down with a strong force of Ngati Toa and Ngati Raukawa followers, overran the country and finally established himself in his stronghold on Kapiti Island. He may be said to have held [97] sway over the coast of the mainland from the Rangitikei down to Wellington. Owing to a treacherous attempt to assassinate himself and his family at Papaitonga he wreaked terrible revenge on his Muaupoko foes and would have exterminated them had not Whatanui I, a great Ngati Raukawa leader protected them from Rauparaha and Rangihaeata. See page 4 of the *Report of the Horowhenua Commission* of 1896,²¹⁷⁴ see Travers' *Life of Te Rauparaha* 1873, and Bevan's *Reminiscences of a Colonist* in 1845. Rauparaha never lost an opportunity of oppressing and persecuting the Muaupoko who fled to the wooded mountains or to the swamps near the Manawatu – only a remnant of them being allowed to live at Horowhenua as the slaves

²¹⁷⁰ Native Land Amendment and Native Land Claims Adjustment Act 1926, s 18.

²¹⁷¹ (1926) 58 Otaki MB 1926-1927.

²¹⁷² Unclear where quotation marks open. The decision of 5 April 1873 is the Court's Horowhenua decision.

²¹⁷³ The Court is referring to the Native Appellate Court decision of 1912 recorded in (1912) 3 Wellington ACMB 251-70.

²¹⁷⁴ 1896 AJHR G-2, 4. The Commission here states:

The Muaupoko, having been practically driven off their land, a Ngatiraukawa chief – Te Whatanui – settled on or near the Horowhenua Lake; he was either a connection, or, at any rate, a great friend, of Te Rauparaha, the chief of the Ngatitōa. For some reason or other Te Whatanui took compassion on the remnant of the Muaupoko, and being able to speak for his own tribe, used his influence with Te Rauparaha and obtained that chief's promise not to further molest the Muaupoko. Te Whatanui then promised the Muaupoko his countenance and protection, and they gradually drifted back on to the land where they lived under the protection of Te Whatanui.

and tributaries of Whatanui (Travers). “Te Whatanui took us under his protection and promised that nothing should reach us but the rain from heaven.” (Major Kemp.) “Rauparaha was anxious to exterminate Muaupoko. When they came to Horowhenua they came like wild dogs; if they had been seen they would have been caught and killed but Te Whatanui shielded them” (Matene Te Whiwhi). The Muaupoko were then in no position to make gifts and Mr Waitai prudently declined to set up a Muaupoko case. Te Whatanui as an ally of the conquering Rauparaha had a right through “Raupatu” and this “take” was fortified through the occupation of himself and his son Whatanui Tutaki and of the children of Hitai and Maiarewa. The Whatanui family of the Ngati Raukawa were in possession in 1840 when the Queen’s writ began to run through the land. Since that time some of his descendants have occupied it intermittently, others scarcely at all though their bones are buried in the general “urupa”. The descendants of Whatanui No 1, Hitau and Maiarewa are entitled through conquest and their shares awarded according to their occupation.

The Court thus found that Raumatangi belonged to the descendants of Te Whatanui as chief of Bgati Raukawa at the time of the conquest, and also to the descendants of his sister Hitau. The case was decided on a completely different basis from the 1873 decision, which can be seen to have been wrongly decided. It needs to be recalled that in its 1912 decision relating to Horowhenua 11B the Court had already come to the conclusion that the 1873 case had been wrongly decided, and the Raumatangi decision of 1926 follows suit.

Travers, author of the biography of Te Rauparaha mentioned in Gilfedder’s judgment, is the same W.T.L. Travers who argued Ngati Raukawa’s case in the Native Land Court in the second Himatangi hearing of 1869.²¹⁷⁵ Although he had not been able to convince Judge Maning on that occasion that Ngati Raukawa had a title by conquest, ironically his book helped to achieve that outcome with Judge Gilfedder in the same court nearly half a century later.

14.5 Interpretation: The Native Land Court and inter-Maori conflict

As will have been obvious to anyone who has read this chapter, the Horowhenua and Kuketauaki area, where Ngati Raukawa and Muaupoko overlap, was a zone of intense and complex conflict between the two groups. The conflict reaches back into events that took place in the decades before the Treaty of Waitangi.

As a starting point, I believe that a Pakeha academic historian such as myself should be hesitant about passing judgment on the rights and wrongs of inter-Maori debate about matters of traditional history and boundaries. This can be left to others. Probably the Waitangi Tribunal will itself be hesitant about making any kind of determination on this matter, and is far more likely to take the position that Ngati Raukawa, Ngati Apa, and Muaupoko will all have their tenaciously-held interpretations of events and the location of boundaries. But this report is a report about the Native Land Court, and so the key question (and an appropriate one for me to explore) is the extent to which the Native Land Court complicated or aggravated matters. There are a number of aspects to this I have commented on this already at various stages of this report, and will revisit this in the conclusions. There have been many criticisms of the Native Land Court made by historians and the Waitangi Tribunal over the years. What I hope this report has shown, I hope, is that the Court often sat in judgment on historical events, could make mistakes in doing so, and could indeed be wildly inconsistent. It is the serious consequences of these inconsistencies which has been one of the principal issues in the preceding pages of this report, and in the following chapters. The next sections of this report will now examine the impacts of the

²¹⁷⁵ On Travers see Winsome Shepherd, “Travers, William Thomas Locke 1819-1903, Lawyer, magistrate, politician, explorer, naturalist, photographer”, *DNZB* vol 1, 1990, 547-8.

Court, its interpretations, and its inconsistencies, in another part of the tribal territories of Ngati Raukawa, Ngati Kauwhata, and Ngati Whakaterere.

15. Maungatautari, Ngati Raukawa, and Ngati Kauwhata: 1868-1907

15.1 Introduction

The pivotal tenurial event in the Waikato of the 1860s was of course the Waikato confiscation of 1865. As Michael Belgrave puts it “[t]he confiscation of Māori land behind the lines of the invasion would overshadow all the following negotiations between the colonial government and the Kīngitanga”.²¹⁷⁶ One of the thorniest problems was the Native Land Court, which King Tawhiao and his advisers wanted to see excluded from the Waikato. The Native Land Court began its sittings in the Waikato soon after its full establishment in 1865. The Maungatautari cases, immediately east of the confiscation line, were heard in 1868. McCan sees the Land Court as posing particular threats for the Maori King movement. One reason was that “individuals could now sell without chiefly consent”,²¹⁷⁷ but perhaps an even more significant consequence arose out of the Court’s standard 1840 rule. The Kingitanga, “formed after that date, was thus not recognised, and Tawhiao had no more standing with the court than any other chief”.²¹⁷⁸ This is a key point. Any process of settlement with the Kingitanga which gave a major role to the Native Land Court by definition would be disadvantageous for the King, possessing no customary interest that the Court would recognise, while by the same token it would be advantageous to traditional hapu and iwi groups.²¹⁷⁹ The Native Land Court by its very nature was a profound threat to new post-1840 political formations such as the Maori King movement. This point will be returned to in the concluding section of this chapter dealing with the 1886 hearings.

This is but one of the issues dealt with in this chapter, which focuses of course on Raukawa itself, and on those blocks in which Raukawa asserted interests the fate which was most closely entangled with the Waikato confiscation and the post-war emergence of the independent Rohe Potae. This chapter also endeavours to assess Raukawa’s experience in this regard as a whole. Many Ngati Raukawa people from the Maungatautari region migrated south to the Manawatu-Horowhenua region. They continued to attempt to assert interests in their original homeland while at the same time having to deal with a major tenurial imbroglio in the region where they were now living. Raukawa had to deal with a courtroom war on two fronts. Ngati Kauwhata, who had Native Land Court cases of their own to deal with relating to their lands in Aorangi block in the Manawatu, similarly struggled to assert interests in the Maungatautari blocks in the Waikato. They were able to obtain a rehearing of the original cases in 1881, and also made an appearance in the investigation of the separate Maungatautari block in 1884.

The Native Land Court was reasonably independent from Government and it would be wrong to see it as a passive instrument of government policy. Nevertheless the judges and Crown officials shared a common set of assumptions and at a local level would have known each other well. Crown officials certainly did give advice to some local chiefs about how best to manage their affairs in the Court. For example in November 1870 Poihipi, the chief at Taupo, was disappointed to lose a Native Land Court case against Raukawa, and so J D Ormond – who was the Provincial Superintendent of

²¹⁷⁶ Belgrave, *Dancing with the King*, 13.

²¹⁷⁷ McCan, *Whatiwhatihoe*, 68.

²¹⁷⁸ Ibid.

²¹⁷⁹ As Loveridge notes (see *The Crown and the Opening of the King Country*, 65) – as he rightly points out “[t]he fact that the Four Tribes did not speak for [all] of the hapu connected with any of the iwi involved was also a factor tending towards disruption as time went on – particularly in the Native Land Court, which did not recognise (and indeed was unable by statute to recognise) any interests or entities which were not ‘customary’ in derivation.”

Hawke's Bay, certainly a very senior and powerful position – felt it necessary to give Poihipi some helpful advice:²¹⁸⁰

Old Poihipi is very sore about some land at Niho-o-te-Kiore being awarded by N.L. Court to Ngatiraukawa. I have sent on a letter from him asking a re-hearing. You should look at what he says. His complaint is that he the staunch friend is put on one side and our opponents [i.e. Raukawa] rewarded. Some notice had better be taken of his letter.

Why did Ngati Raukawa descent groups bring their cases to the Land Court at all? They were no under legal obligation to do so. This is a complex problem. Court titles did bring certain benefits, in terms of ability to alienate and lease. Boycotting the Court altogether was hardly an option. As Robyn Anderson has found (writing of the Upper Whanganui) there is evidence that shows that judges and officials rarely had any sympathy for groups who had lost interests in land by staying away from the Court on principle.²¹⁸¹ This must have been widely understood. But in the case of the Maungatautari blocks, for Ngati Raukawa the issue was less that of the consequence of staying away than of managing to convince the Court that Ngati Raukawa had interests at Maungatautari at all.

15.2 The Maungatautari Region

Maungatautari is an impressive mountain, of volcanic origin, which dominates the south Waikato landscape, easily visible from Tokoroa, Putaruru, and Te Awamutu. The mountain is still covered in indigenous forest on its summit, and a dominant landform in the south Waikato. Maungatautari, as Angela Ballara has put it, is “the heartland of Ngati Raukawa ancestral territory”.²¹⁸² In 1881 Alexander McDonald, then representing Ngati Kauwhata, tried to convey something of the special importance of Maungatautari to the Native Affairs Committee at parliament and the need to take special care over investigating title to it (special care that was lamentably absent, in his view):²¹⁸³

I would also ask leave to point out to this Committee that the particular land in question in this case was ancestral land that to a certain extent is regarded as a sort of home, the sort of spot that gives to one's country a local habitation and a name. Maungatautari and that part is necessary to these people and and it is always necessary in the determination of the title to that country to exercise more care than is ordinarily necessary and than was done in this case.

The mountain was also a natural boundary marker, no doubt because of its size and prominence in the Waikato landscape. It was, for example, one of the boundary points of the King Country region when the first attempts at negotiating some kind of settlement between Rewi Maniapoto and the other chiefs of the region and the government began in 1879.²¹⁸⁴ However, ‘Maungatautari’ is also the name of a district, as well as the mountain proper. When Ngati Kauwhata, Ngati Whakaterere, or Ngati Raukawa people said that they came from Maungatautari, that did not mean that they lived on the mountain, but rather the lands around it. The region lying north of the mountain and bounded by the Waikato river as it flows from Horahora to Cambridge was also “Maungatautari”.

²¹⁸⁰ J D Ormond to McLean, 30 Nov 1870, MS-Group-1551, ATL, Woodley DB 79.

²¹⁸¹ Anderson, *Whanganui Iwi and the Crown*, 11-12.

²¹⁸² Ballara, “Te Whatanui”, *DNZB* vol 1, 522-4, at 522.

²¹⁸³ Ngatikauwhata Land Claims Commission, Le 1/1881/5, RDB 3, 864-924, at 870.

²¹⁸⁴ *Wanganui Chronicle*, (Vol XXI, Issue 4045, 21 May 1879), p 2 (“The boundaries asked for by Rewi may be thus described: - Commencing at Pukeruhe, or White Cliffs; and from Whangaroa to the west bank of the Waipa, and continuing thence to Pahi and Maungatautari; thence to Taupo, including lands unsold at the back of Taranaki, extending inward to White Cliffs; and that this land be surveyed and put through the Court, and leased, but prohibited from the sale...”).

Ngati Raukawa have well-documented associations with the Maungatautari area. For example Piraunui, Hokio and Puketotara are ancient fortresses on the close to Lake Arapuni formerly belonging to Ngati Kahupungapunga which were taken by Raukawa during their conquest of the region and then refortified and extended by themselves. According to Phillips:²¹⁸⁵

Before it was attacked by the war party of Te Whaita in the campaign against Ngati Kahupungapunga, the great fort of Piraunui may have been known as Motu Kakapo. After its capture its name was changed because it is said that the warriors who captured it hurled many of the inhabitants over the cliffs which gave the place its strength, and their bodies were left there to rot.

Other pa in this district which were taken in the same campaign were Hokio, Pawaiti and Puketotara. It is said that at this stage Tamatehura suggested that those captured should be enslaved and left to reside in the district so that they could be employed in hunting and preserving birds for the victors, but that Te Whaita refused to spare them lest they unite with the Arawa people to the east and thus become formidable foes of Tainui.

Gudgeon says in his account of the campaign that after Piraunui and the neighbouring pa were taken, the victors, who later became known as Ngati Raukawa, drove the enemy before them to Mangamingi, where Pipito slew the Kahupungapunga chief Matunuku (hence the name of that place).

From here the war party proceeded by the old warpath, called the Rongootuarau, to Te Ana Kai Tangata where the hunted tribe, assisted by the roughness of the country, made their first vigorous stand and fought for three days. Most of them were however killed, including the chiefs Kaimatirei, Te Amomakinga, Tokoroa and Te Rauotehuia.

The Ngati Raukawa now advanced on Te Whakamaru range and there stormed Te Ahoroa pa; all the slain were burned for the reason that Korokore had been so treated at this place.

Later Raukawa themselves fought to defend Piraunui:²¹⁸⁶

In due course Ngati Raukawa were themselves obliged to fight desperately to defend Piraunui when they were pursued there after the fall of Hanga Hanga and Okiri. Ngati Raukawa were also attacked at Piraunui by Ngati Marutuahu, but it is not clear whether the pa was captured. If it was not, it was probably abandoned when the majority of Ngati Raukawa followed Te Rauparaha in the great migration to Kapiti.

An excellent description of Piraunui is given by L W Delph and Gilbert Archey in the *Journal of the Polynesian Society*. In the two hundred years which followed its conquest by Ngati Raukawa the pa was greatly extended; the original fort of Ngati Kahupungapunga had probably occupied only the headland end of the ridge where the cliffs fell sheer on both sides. Given these long and well-documented historic associations it may seem surprising that Ngati Raukawa were so often unsuccessful in their Native Land Court claims in the Maungatautari district.

The meaning of 'Maunga-tautari' is apparently somewhat obscure. According to John White the word 'tautari' refers to the "upright sticks to which are bound the small battens to which the reeds are fastened on the inside of a Maori house".²¹⁸⁷ There seems to be little doubt that Maungatautari became part of Raukawa's lands following the invasions led by Whaita and others. Ngati Raukawa today see their boundary in the northwestern sector of their rohe as running roughly from Titiraupenga (behind Whakamaru) to Maungatautari. White says that the "Maungatautari district"²¹⁸⁸ was "owned by

²¹⁸⁵ Phillips 1989 51.

²¹⁸⁶ Phillips 1989: 54

²¹⁸⁷ White, *Ancient History of the Maori*, V, 256.

²¹⁸⁸ Whatever that means! This could be a large area indeed. What is meant by the "Maungatautari district" and how far westwards into the confiscated area does it extend?

the Ngati-rau-kawa and Nga-ti-kau-whata” and that “the war for the possession of that place was of ancient origin”.²¹⁸⁹ In the decades immediately before the Ngapuhi attacks on Hauraki there was conflict between Waikato proper, on the one hand, and Raukawa and Ngati Kauwhata on the other, over Maungatautari; and at the same time Waikato were engaged in conflict with Kawhia groups including Ngati Toarangatira over that region. This meant that Raukawa, Ngati Kauwhata and Ngati Toa and cognate groups were engaged in conflict with the central Waikato groups, and this earlier history is key to understanding Ngati Toa’s migration to Kapiti and to Te Rauparaha’s invitation to his Raukawa kin and allies to join him there.

15.3 Waikato cases in the 1860s

Cases involving Ngati Raukawa lands in the Waikato began in 1866, with the Hineura case (1866), claimed by Te Raihi of Ngati Haua who told the Court that the land had formerly belonged to Ngati Raukawa but they had left for Kapiti. The Court (Judges Monro and Assessors Hori Te Whetuki and Hori Tauroa) vested the block in ten owners.²¹⁹⁰ Horahora, a block near Maungatautari, was investigated by the Native Land Court at Cambridge in 1867.²¹⁹¹ Judge Rogan was the presiding judge. The block was claimed by Piripi Whanatanga of Ngati Koroki, on the ground of conquest over Marutuahu.²¹⁹²

We claim the land from the fighting with Marutuahu – by conquest – Taumatawiwi was taken and the Hauraki natives were driven away – we occupied the land – we thus became possessed of it – Ngatiraukawa owned the land before the Hauraki people – after they were driven away we occupied it into the present time – no Ngatiraukawa natives live on the land now.

This was an uncontested case, and the Court allocated the land to Ngati Koroki. Ngati Koroki, however, “had agreed that Parakaia’s name should be included in the Crown grant”. This “Parakaia” is of course Parakaia Te Pouepa, chief of Ngati Raukawa at Otaki. The circumstances as to how Parakaia’s name was included in the grant were later described in the evidence of Major Wilson in the 1881 investigation into the Ngatikauwhata claims to Maungatautari (see below).²¹⁹³

Table of cases affecting Ngati Raukawa lands in the Waikato region heard by the Native Land in the 1860s:²¹⁹⁴

Block	Location	Court Sitting	Year
Hineura	Te Kaokaoroa o Patetere	Waikato	1866
Kiwitahi	Te Pae o Raukawa	Waikato	1866
Mangapouri	Te Kaokaoroa o Patetere	Waikato	1866
Okoroire	Te Kaokaoroa o Patetere	Waikato	1866
Waipa	Te Kaokaoroa o Patetere	Waikato	1866
Horahora	Maungatautari	Waikato	1867

²¹⁸⁹ White, op.cit., 254.

²¹⁹⁰ (1866) 1 Waikato MB 14-15.

²¹⁹¹ Judgment at (1867) 1 Waikato MB 152-53: Boast, *Native Land Court*, vol 1, 394-395.

²¹⁹² (1867) 1 Waikato MB 152, Boast, *Native Land Court*, vol 1, 395.

²¹⁹³ (1881) AJHR G-2A, 16.

²¹⁹⁴ Based on the table in Young and Belgrave, *Raukawa and the Native Land Court*, 17. I have altered this slightly by adding Maungatautari block, and reclassifying the Horahora case to the Maungatautari area.

Puketutu	Maungatautari	Waikato	1867
Puahue	Maungatautari	Waikato	1868
Pukekura	Maungatautari	Waikato	1868
Maungatautari	Maungatautari	Waikato	1868
Tatua West	Te Pae o Raukawa	Taupo	1868

15.4 The Te Aroha cases

The Te Aroha rehearing case, reported in Fenton's *Important Judgments*,²¹⁹⁵ did not involve Raukawa directly, but it was an important step in the Native Land Court's construction of Waikato and Hauraki history and as such needs to be considered. Te Aroha was a key case, and was essentially a struggle between Ngati Haua and Marutuahu. The case was a significant defeat for Ngati Haua. The Native Land Court (Judges Maning and Monro) concluded that after the battle of Taumatawiwi Marutuahu did pull back from from "the Horotiu and Maungatautari lands" but even so did not relinquish their interests in the Te Aroha area to Ngati Haua. In the course of the decision, however, Maning and Monro took the position that Raukawa had abandoned their lands in the region and had migrated south to Kapiti, a huge simplification of a much more complicated reality. This reflected the Court's earlier determination in the Maungatautari case (see below) and it became a kind of *idée fixe* in the Native Land Court underpinning all its major decisions in the region. Arguably this was very unfair to Raukawa, who never got a chance to explain their side of the story. Waikato Raukawa were not represented in the 1868 cases relating to Maungatautari, as will be seen, nor were they a party in the Te Aroha case. This did not stop the Court from making a number of assumptions about their history, as the following passage shows:²¹⁹⁶

The question at issue...is...not a question between individuals, but between the great Marutuahu and Waikato tribes, of which parties the sectional tribes, Ngatimaru and Ngatitumutumu, of the Marutuahu confederation, and the Ngatihaua, of Waikato, seem to be the most particularly interested. Before reviewing the evidence more particularly bearing on the question at issue, it is desirable to take a short glance at the history of the two tribes for a few years preceding the battle of Taumatawiwi...It appears, then, that the tribes or *hapu*, who are collectively known as Marutuahu, and who oppose the Ngatihaua in this claim, did, some eight or ten years before the battle of Taumatawiwi, evacuate their own proper territory or district on both sides of the Firth of the Thames, and came and settled at Horotiu, in Waikato, by permission or invitation from the Waikato people; they also took possession of a large adjoining district, which had shortly before been occupied by the Ngatiraukawa tribe, *but who had been driven off, and who had gone in search of new possessions for themselves to the South.*

The Maungatautari cases involved, and were to involve, a consideration of the same events, but looked at from the perspective of debate between Ngati Haua and Raukawa rather than Ngati Haua and Hauraki. The Court over a sequence of cases built up and developed an interpretation of events which saw Marutuahu as being pushed inland to Maungatautari and adjacent areas by Ngapuhi; Marutuahu being defeated at Taumatawiwi; Ngati Haua then taking possession of Maungatautari; but – according

²¹⁹⁵ Fenton (ed), *Important Judgements delivered in the Compensation Court and Native Land Court*, 1879, 109-33. Fenton gives no indication that the decision was actually a rehearing of an earlier decision given by Judge Rogan, who came to the opposite conclusion.

²¹⁹⁶ Te Aroha decision, in Fenton, *Important Judgments*, 110-111.

to this case – Marutuahu nevertheless retaining possession of the Te Aroha area. Ngati Haua’s taking possession of Maungatautari was specifically noted in the Te Aroha judgment:²¹⁹⁷

The Marutuahu having departed, the Ngatihaua came at once into possession of the lands at Horotiu and Maungatautari, which their opponents had occupied for several years, more as combatants struggling for possession than as established owners, and the Ngatihaua were certainly so far gainers by their departure.

This analysis was consistent with that subsequently developed in the Maungatautari cases, as will be seen.

15.5 Maungatautari-Pukekura-Puahoe investigation, 1868

In 1866-1867 Fenton’s Compensation Court had worked its way through its Waikato caseload, beginning its hearings at the King’s former capital at Ngaruawahia in January 1866. Fenton, now in his role as Chief Judge of the Native Land Court, then went to Cambridge with Assessors Hetaraka Nero and Hemi Matini in October 1866 to hear the Maungatautari and other Waikato Land Court cases. The tenorial situation in the Waikato was very fluid at this time as the confiscation boundary had still not been surveyed. (The survey of the confiscation boundary line in this area, slicing its way across the southeastern Waikato, heedless not only of iwi and hapu boundaries but also of the local geography, had turned out to be a protracted nightmare for the Survey Office at Auckland and the source of endless uncertainty in the Waikato.²¹⁹⁸) James Mackay, Civil Commissioner at Auckland, nervous about the risk of Fenton awarding titles to land that had actually been confiscated by the government, directed R C Mainwaring, Resident Magistrate in the Waikato, to turn up in Court to explain to Maori people present in Court the difference between confiscated and unconfiscated lands and the respective functions of the two Courts.²¹⁹⁹ But the hearings ran into political difficulties in any case, as Maori groups trying to get to Court were stopped on the roads and turned back by the “Hau Haus”, that is to say Kingite supporters. A group of Arawa claimants, intending to make their own claim to Maungatautari, were stopped on the road by (in Mackay’s words) “certain lawless persons of the Ngatiraukawa and Waikato tribes”.²²⁰⁰ The Maungatautari cases had to be adjourned.

After a further adjournment in 1867,²²⁰¹ the Maungatautari cases were finally heard at Cambridge in 1868. The Court heard claims relating to three adjoining blocks, which were given the names Puahue (or Puahoe), Pukekura, and Maungatautari proper. The Maungatautari block referred to here is distinct from the larger Maungatautari block investigated in 1884 (see below). The three blocks

²¹⁹⁷ Ibid, 121.

²¹⁹⁸ See Theophilus Heale to Native Minister, 17 January 1868, DOSLI Hamilton 5/35, RDB 41139-41180. It is apparent from Heale’s report that the uncertainty over the boundary caused years of confusion.

²¹⁹⁹ James Mackay, Civil Commissioner’s Office, Auckland, to R C Mainwaring, Resident Magistrate, Whatawhata, 10 October 1866, DOSLI Hamilton, 5/35 [Correspondence re Southern Boundary of Waikato confiscation and jurisdiction of Native Land Court 1866-68], *Raupatu Document Bank* [RDB], vol 107, 41139-41180, at 41166-41168.

²²⁰⁰ Mackay to Fenton, 10 October 1866, *ibid*, RDB 107, 41175-41177.

²²⁰¹ See (1867) 1 Waikato MB 118-120 (23 November 1867). The application for an adjournment on this occasion was made by Arawa claimants and by Parakaia Te Pouepa (Ngati Raukawa) who lived at Otaki. According to Judge Rogan at (1867) 1 Waikato MB 120:

Parakaia and other persons of the Ngatiraukawa and Arawa tribes had requested that the investigation of the lands in the Maungatautari district which had been Gazetted for hearing might be adjourned. There are other applications to the same effect. The Arawas say the road is aukati [closed, barred]. Parakaia and the other natives desire to have time to to bring all the natives on their side who have claims to appear in Court. This land has been advertized twice for hearing, the Waikato tribes have appeared according to the Notice. Parakaia and his friends have had notice yet the [sic] did not bring their friends with them. Notwithstanding the Court consents to the adjournment least [sic] it be said that all the Waikato tribes were here but the other parties who had claims could not come to the Court.

in issue were in fact all located to the north and northeast of the mountain proper, that is on the Cambridge side, and the northern boundary of all three was the Waikato confiscation boundary. The 1868 Maungatautari block was bounded on its eastern side by the Horohoro block. All three 1868 “Maungatautari” blocks were surveyed as required by the Native Lands Acts 1865. The investigations were heard by Judge Rogan and essentially the cases were primarily a contest between Ngati Haua and Ngati Raukawa, who were of course neighbouring iwi of the southern Waikato.²²⁰² A complicating factor, however, was that many of the Ngati Haua claimants also claimed on the basis of their descent lines from Kauwhata. Thus Irihia Te Kauae, one of the claimants, said that “I am a Ngati Haua; I am also related to Kauwhata”.²²⁰³ Claims to Pukekura were mainly on the basis that the land had formerly belonged to Ngati Kauwhata, and that it now belonged to Ngati Haua and to those of Ngati Kauwhata who had remained.²²⁰⁴

Witness	Date	Reference	Affiliation	Key points
PUKEKURA CASE				
Claimants				
Te Raihi	3 rd Nov 1868	1873 AJHR G3, 12	Ngati Kauwhata and Ngati Haua	Recognises plan; survey was made by Mr Campbell
Campbell	3 rd Nov 1868	1873 AJHR G3, 12	- (Surveyor)	Produces the plan; authorised to make the survey by Te Raihi and others; Hote Tamihana, Parihi, Tamati Pou, Parakaia and others pointed out the boundaries.
Te Raihi	3 rd Nov 1868	1873 AJHR G3, 12	Ngati Kauwhata and Ngati Haua	The land formerly belonged to Ngati Kauwhata; the land belongs to Ngati Haua (himself, Piripi, Horomona, Hakiriwhi, Irihia, and others); it also belongs to resident Ngati Kauwhata (Huka, Te Waka Ngai, Meretana, Hori Pua, Harete Tamihana Te Waharoa). “Ngati Kauwhata went to Kapiti and the land became mine” (p 12). He is also related to Kauwhata
Hori Pua	3 rd Nov 1868	1873 AJHR G3, 12	Ngati Haua and Ngati Kauwhata	Ngati Kauwhata were the former owners; Ngati Kauwhata gave up the land to himself and to Te Raihi; after this “they left the land and went South: (p 12) Ngati Kauwhata left because they “were afraid of Ngatimaru, Ngatipaoa, Ngatitamatera, and Waikato tribes”; he and his family occupied and cultivated in this area.
Te Hakiriwhi	3 rd Nov 1868	1873 AJHR G3, 12	Ngati Haua?	Claims by conquest and descent; the land belonged to Kauwhata; He “destroyed the persons who lived at Pukekura –

²²⁰² The evidence in the three cases is reprinted in James Mackay, *Report from Mr James Mackay, Jun*, [1873] AJHR G-3, although the judgment is not. See also (1868) 2 Waikato MB 22-80 for the evidence.

²²⁰³ 1873 AJHR G3, 12.

²²⁰⁴ See e.g. Te Raihi, 3rd November 1868, 1873 AJHR G3, 12:

Ngatikauwhata, of Ngatiraukawa, owned this land; it now belongs to myself and others; their names are – myself, Piripi, Horomona, Hakiriwhi, Irihia, Hori Wirihana, Hemi Kokako, Parakaia, Mihi Karaka, Te Waata, Te Reweti, Te Hura, Te Ngirangira – *these are Ngati Haua* [emph added]. The present claimants to the land *belonging to Ngatikuwhata* [sic] are – Huka, Te Waka Ngai, Meretana, Hori Pua, Harete Tamihana Te Waharoa – these are all the claimants I recognise; Ngatikauwhata went to Kapiti, and the land became mine

				myself and Ngati Mru did”; the “other side went away to Kapiti from fear of being killed” ; the land was left unoccupied; Te Raepakuru “then remembered there were descendants of Kauwhata living among Waikato” and the land was given up to himself; “Ngati Kauwhata have not returned to live on the land”/
Irihia Te Kauae	3 rd Nov 1868	1873 AJHR G3, 12-13	Ngati Haua, also related to Kauwhata.	

The cases were something less than fully representative, either of Ngati Haua or Ngati Raukawa. Ngati Kauwhata from Kapiti were not present at all, although they had longstanding interests in these blocks. As will be discussed later in this chapter, Ngati Kauwhata did not attend because they had to attend the Himatangi block hearings, and were under the impression that the Pukekura, Puhue and Maungatautari cases were going to be adjourned. In the 1881 inquiry into Ngati Kauwhata’s interests in Maungatautari Ngati Kauwhata speakers also made it clear that Parakaia Te Pouepa had no authority to represent Ngati Kauwhata. Metapare of Ngati Kauwhata said:²²⁰⁵

I have heard of Parakaia, he belonged to Ngati Raukawa. He was a chief man of that tribe. Parakaia had no connection with us. I heard that he was at Court here in 1868. We were told that Court would be adjourned. I did not hear what he said at that Court. We asked to have it postponed. Parakaia did not tell Ngatikauwhata that he would appear here on their behalf. He had no authority from Ngatikauwhata.

Takane Te Kawa (Ngati Kauwhata) said the same thing:²²⁰⁶

I have heard of Parakaia Te Pouepa. He was not sent by Ngatikauwhata to represent their claims in Cambridge Court in 1868. He had no authority from any of us to appear as our agent. I heard from Parakaia that he was coming to that Court.

The claimants appear to have been mainly from the smaller, pro-government (‘Queenite’) party within Ngati Haua, led by the two chiefs Te Raihi and Hakiriwhi Purewa. The counterclaimants were Ngati Raukawa, but – this is particularly to be emphasised – not Raukawa from the Waikato, who were regarded as rebels, but Ngati Raukawa from Otaki, led by the prominent ‘Mihanere’ (Anglican) Otaki rangatira Parakaia Te Pouepa. Parakaia was also a driving force behind the earlier Compensation Court applications. Not present in Court, then, were the larger Kingitanga section of Ngati Haua, formerly led by Wiremu Tamihana, and the Waikato section of Ngati Raukawa, led by Hitiri Te Paerata, Hori Ngawhare and other chiefs. Both these groups stayed away in the main, or perhaps may have been prevented from attending. There is evidence that people at the time realised that the hearings could not possibly be fully representative, given the political situation in the Waikato, and that they asked the Court to desist. Years later, when giving his evidence at parliament in 1881 on Ngati Kauwhata’s second rehearing petition Major Te Wheoro (Ngati Naho) – who was MHR for Western Maori at the time - said that he had urged the Court in 1868 not to proceed with the case.²²⁰⁷

²²⁰⁵ 1881 AJHR G-2A, 9.

²²⁰⁶ Ibid, 10.

²²⁰⁷ Statement by Major Te Wheoro to Native Affairs Committee, 29 July 1882, Le 1/1881/5 (RDB vol 3, 917-18). Te Wheoro is a key figure in Waikato history, and was a key intermediary between the government and the Kingitanga with close links to King Tawhiao. On Te Wheoro see Gary Scott, “Te Wheoro, Wiremu Te Morehu

In 1868 I was present at the sitting of the Native Land Court referred to. I said to the Court at that time, concerning all the lands outside the Government [i.e. confiscation] boundary: “Do not investigate them now, let them be.” I said further: “All the chiefs of people that are present at this Court, all the principle chiefs, are away”; they were away on the Hau Hau [meaning, here, essentially Kingitanga] side. The Court agreed to leave uninvestigated the Ngati Maniapoto’s land at Puniu; it consented not to investigate it. My idea in asking the Court to reserve these lands from investigation was that I thought it was not a good time. I thought the best time to have these lands investigated into would be when we had become friendly with those who had separated from us, and when they could have an opportunity of coming in and being present at the investigation of that land.

A representative of the King, Tana Te Waharoa, (Wiremu Tamihana’s son) came to the Court to protest at the Court’s dealing with certain blocks on the other (unconfiscated, that is) side of the aukati line, including Maungatautari presumably, but the Court ignored this. As the reporter for the *Daily Southern Cross* put it – who was very sympathetic to the Kingite viewpoint on this issue – put it, “[t]he protest was, of course, disregarded, and the business went on”.²²⁰⁸ Nor is it clear that the cases were overwhelmingly supported by Ngati Raukawa ki te tonga either.

In court the Ngati Haua claimants then pressed a claim on the basis of take raupatu (‘conquest’), arguing essentially that Marutuahu of Hauraki, driven inland by the attacks of Ngapuhi in the 1820s, had taken possession of the Maungatautari region, either defeating Raukawa or alternatively moving into land left vacant by Raukawa’s withdrawal to the Cook Strait region. Then, it was argued, Ngati Haua had crushed the Hauraki groups at the battle of Taumatawiwi around 1831, giving them a claim to Maungatautari on the basis of conquest. According to Aperahama Te Te Rangipouri of Ngati Haua (Pukekura case):²²⁰⁹

I know this land Pukekura – the proper owners are Ngatihaua – Ngatikoroki – and Ngatikahukura I am a Ngatihaua; I live at Taupo, I went there on account of my wife; I know this land, Pukekura; the proper owners are Ngatihaua, Ngatikoroki, and Ngatikahukura; it belonged to Ngatikauwhata and Ngatiraukawa formerly; my ancestors fought with Ngatiraukawa, and took Rangiaohia and one side of Maungatautari; Ngatiraukawa went to Wharepuhanga [sic]; Kawhia belonged to Te Rauparaha; we took it, and he went to Kapiti; the Ngatiraukawa heard of this, they were at Te Whaotu;²²¹⁰ after this Ngapuhi came; and Ngatimaru and other tribes came here from fear of Ngapuhi; they lived here; they killed one of us called Te Hou; we went to Maungakawa²²¹¹, and this place we are now upon was taken by Ngatimaru; Ngatimaru killed the Whakaete; Ngatiraukawa lived at Purakanui; Ngatimaru attacked them, Te

Maipapa ?-1895, Waikato leader, assessor, soldier, native commissioner, mediator, politician, diplomat”, *DNZB* Vol 1, 1990, 524-526.

²²⁰⁸ “Protest by the Maori King Against the Native Lands Court”, *Daily Southern Cross* (Issue 3538, 17 November 1868) at 3. The newspaper report does not clarify which blocks were being referred to, but the Puhue, Pukekura and Maungatautari cases were certainly heard in November, so it is a reasonable inference that these blocks, and perhaps some others, were the ones that the King and advisers were concerned about. The reporter went on to note that “[i]t is well known in many cases that the owners of these lands are living amongst the Kingites, and that the others, who put the lands in Court, have only comparatively slight claims”:

But the Kingites will not compromise themselves by coming before the Native Lands Court, and state, besides, that they are afraid of their personal safety if they come to our towns. In the absence of the great owners, the land is granted to others, who sell it, and the next thing the real proprietors hear is that some pakeha is fencing it in.

²²⁰⁹ (1868) 2 Waikato MB 37-38 (4 November 1868); James Mackay, *Report from Mr James Mackay, Jun*, [1873] AJHR G-3, 15. The semicolons come from the version of the evidence as reprinted in the AJHR, which I have retained as it helps to clarify the sense.

²²¹⁰ Waotu, near the Waikato river south of Arapuni. Waotu was one of Raukawa’s principal communities and in the later 19th century became a large village with numerous hotels and sawmills. Today it is an isolated country village in the South Waikato far from any of the main roads.

²²¹¹ The prominent hill east of Cambridge.

Whatakaraka was killed; Ngatiraukawa then remembered that Te Rauparaha had taken Kapiti, and they went there to join him; Ngatimaru then took possession of the whole district. We came from Maungakawa to Pukekura to attack Ngatimaru, and fought them at Hauwhenua [sic]; we were defeated, and lost thirty men; we attacked them afterwards and defeated them; they fought us afterwards and we defeated them at Te Kaweitiki, at Maungakawa; they then returned to Maungatautari; on their return they killed some of our people who were living where Cambridge now stands, they killed, cooked and ate thirty of our people; Te Waharoa and other chiefs of Waikato then joined us; we attacked them at Taumatawiwi, and utterly defeated them; we cooked and ate them; the remnant who were saved were led back to Hauraki; after this we took possession of the whole district.

In this schema, then, Ngati Haua attack Raukawa and drive them off from Rangiaowhia and at least parts of Maungatautari; Raukawa from the Maungatautari area retreat to the upper Waikato and Wharepungu; Ngapuhi then attack Hauraki, and Hauraki retreat inland and fight with Ngati Haua and with Raukawa; Raukawa at this point depart for Kapiti, abandoning their rights around Rangiaowhia and Maungatautari; and in the last act of the drama Ngati Haua, eventually linking up with Waikato, defeat Ngati Maru and the Hauraki tribes at Taumatawiwi. So, although there had been conflict between Ngati Haua and Raukawa, in fact the Ngati Haua claim rested primarily on their defeat of Ngati Maru, who had previously defeated Raukawa, and on the withdrawal of the latter to Kapiti. And the point was clarified by another Ngati Haua witness, Parakaia Te Korako, who said in the same case:²²¹²

I am a Ngatihaua; I claim this land from conquest; I own conjointly with Te Raihi and others; my only claim is from conquest of Ngatimaru; I did not take the land from Ngatiraukawa; our fighting with Ngatiraukawa was in former times.

A variation in the Ngati Haua evidence was to see the main owners in Pukekura as Ngati Kauwhata, rather than Raukawa strictly speaking. Hori Puaou, speaking primarily for Ngati Haua, though he was also Ngati Kauwhata himself, said this:²²¹³

I know this land; I am of Ngatihaua and Ngatikauwhata; I was born at Tamahere; I did not hear the names mentioned by Te Raihi; Ngatikauwhata owned this land formerly; I claim the land through Ngatikauwhata having having given it up to myself and Te Raihi; Te Wharepakarau was the person who gave the land; the cession was made at Pukekura; I was a boy at that time, and I have lived there ever since; I am now an old man; the reason the land was given to us was on account of our relationship; after they did this they left the land and went South; the reason of their going was they were afraid of Ngatimaru, Ngatipaoa, Ngatitamatera, and Waikato tribes; we have cultivated here from that time to the present day; Ngatikoroki cultivated on the other end of the hill; I have lived on this land from my childhood, and have now grand-children living there; we claim this land through gift and relationship.

It can be seen that here the essence of the case was there was some kind of grant or gift to the claimants, rather than a defeat of Ngati Maru. But there is a similarity with the other evidence: Kauwhata went to Kapiti because of pressure from Hauraki and the Waikato tribes.

The Ngati Koroki narrative was essentially the same as Ngati Haua's. In the same case Ihaia Tioriori,²²¹⁴ chief of Ngati Koroki, explained the traditional history in this way:²²¹⁵

I am a Ngatikoroki; I claim this land; Ngatiraukawa owned the land formerly; Ngatipaoa and Hauraki Tribes fought with us and also with Ngatiraukawa; we left Horotiu, and Ngatipaoa took possession; we

²²¹² Pukekura Case, (1868) 2 Waikato MB 40 (4 November 1868); [1873] AJHR G-3, 16.

²²¹³ Ibid, 12.

²²¹⁴ Tioriori was a well-known figure and was prominent in Waikato Maori politics at this time. There is no entry on him in the *Dictionary of New Zealand Biography*.

²²¹⁵ Pukekura Case, (1868) 2 Waikato MB 35 (4 November 1868); [1873] AJHR G-3, 15.

went to Rangiaohia and Maungakawa; Ngatiraukawa went to Wharepuhunga; I came from Rangiaohia to Maungakawa; Ngatiraukawa went to Te Whaotu [sic]; Ngatimaru and Ngatipaoa followed Ngatiraukawa; Te Whatakaraka and Hereara were killed; Ngatiraukawa then went away to Kapiti. The land was taken possession of by Ngatimaru and Hauraki Tribes; after Ngatiraukawa went away, Ngatimaru and Ngatipaoa fought with us; we were defeated twice; Ngatipaoa left Horotiu and took possession of Maungatautari; they then attacked us at Maungakawa and we defeated them; they then came back and killed some of us who were living at Hamilton; we afterwards attacked and defeated them. After this Te Waharoa joined us, and we defeated Ngatimaru at Taumatawiwi; Ngatimaru and Ngatipaoa were then led back to Hauraki; we took possession of the land after this, *i.e.*, our own lands at Horotiu, and Ngatiraukawa's land at Maungatautari, and we have held possession to the present time, *i.e.* Ngatikoroki and Ngatihaua have. Some time ago Te Waharoa and other chiefs invited Ngatiraukawa to return and leave Kapiti. Their answer was, "He aha te ngako o te oneone kia hoki mai Ngatiraukawa; they did not accept the invitation.

The Ngati Koroki account is similar to Ngatihaua's, although there are some differences. Ihaia Tioriori gives prominence to Ngati Paoa's role in the story, while Aperahama Tu Te Rangipouri does not even mention them. Ihaia also makes particular mention of Te Waharoa's invitation to Ngati Raukawa to return to the southern Waikato and their refusal to do so. But essentially the Ngati Koroki and the Ngati Haua story is basically the same.

Ngati Raukawa argued that on the contrary by no means did all of Ngati Raukawa and Ngati Kauwhata actually migrate, at least some people remaining in situ, and in any case Ngati Raukawa at Otaki had been invited to return to their ancestral lands by Tawhiao and the Kingitanga leadership. Parakaia Te Pouepa said:²²¹⁶

I am a Ngatiraukawa; I claim the land for three hapus, Ngatiraukawa, Ngatikauwhata, and Ngatiharua; I know this land, Pukekura; the places I claim are, Taurau, Motoa, Parapara, Tapaekairangi, Waipapa, Puahue; I claim this land with others, viz myself, Te Watene Karanamu, Te Rau, Te Wireti, and Hirawanu; these are all that I recollect; the fight between Ngatiraukawa and Waikato ended in 1824, and then Ngatiraukawa and Waikato lived together in peace; Ngatihaua and Ngatimaru lived together peaceably at Horotiu; Ngatikauwhata lived here and at Hinuera; In 1828, Ngatikaukura²²¹⁷, and Ngatiharua lived here, and at Tauaroa; in 1829, Ngatiraukawa went to Otaki; Ngatikaukura left this land; myself, and my uncle, Mataurua, my father's elder brother, left the land in the possession of Ngatikaukura, *i.e.*, Kuruaro, Te Tapae, and all the lands in the map; we left it in the possession of Te [28.] Toanga, and Tapararo, Te Iwihara, Te Pae, Pango, Te Amo, and Huka; these are the only persons I know who were left in possession of the land; I do not know of the fighting mentioned by Te Raihi, and Hakiriwhi; were were not driven away; the word spoken at the time was – When we get guns, some of us will return to Maungatautari, and those who wish to remain South will stop; in 1841, Ngatikaukura came to look after Ngatihina, and they came to us; their word was that they would look after (tiaki) this land; they took a woman of Ngatihua to wife, and returned to this land; her name was Toia; I have heard that she has a child who has grown up; it is perhaps alive at the present time; this land belonged to this woman; her eldest child is Te Raungaanga, who is present in Court; his mother died here; these are all the persons I recognised, to whom the land was given; as regards the fighting with Ngatimaru, I did not see that fight; we had gone South at that time; as regards the fighting Waikato have mentioned, it was not with me, but with Ngatimaru; Ngatiraukawa used to come back to (hokihokimai) Whareturere; Ngatikoroei [Ngati Koroki?] invited Ngatiraukawa to come back; Te Uwawaki was the chief of Ngatiraukawa who visited Ngatikoroki; Te Raukaka was [29.] another; there are many of the Maungatautari people living at Maungatautari; Raukaka is an old man of the tribe, and is living amongst

²²¹⁶ Pukekura Case, (1868) 2 Waikato MB 27-29. Native Land Court, reprinted in James Mackay "Report from Mr James Mackay, Jun" [1873] AJHR G-3, 12-17, 13.

²²¹⁷ That is, Ngati Kahukura.

Ngatikoroki; Herekana is another, who returned from Kapiti; Hakopa, Hori Ngawhare, Hoani Makaho, did so likewise; the word of the chiefs of the other side was this – “We do not intend to keep the land, but if Ngatiraukawa returns, we will give up the land and go to the other side of the country;” they invited us to return to Maungatautari, and the persons I have mentioned returned.

Some of this, admittedly, is obscure, but the main points of difference between Ngati Raukawa on the one hand and the Ngati Haua and Ngati Koroki accounts on the other are clear enough. It is noticeable that Parakaia’s overall argument is that Raukawa, as he puts it, “were not driven away”, but went south to “get guns”. While there had been conflict between Waikato and Raukawa, this was – according to Parakaia Te Pouepa – all over with by 1824, after which Raukawa and Waikato “lived in peace”. On leaving the Maungatautari region, the land was made over to certain representatives, some of whom – it seems – went to Otaki themselves, taking a Raukawa woman back to Maungatautari as a wife. Many others also returned – but were not in Court because they were “Hauhaus”. Ngati Raukawa, it was said, played no role in the conflicts between Hauraki and Waikato.

Matene Te Whiwhi, as always, gave a clear and detailed narrative (Puahoe case), which distinguished between different phases of the attacks by Ngapuhi, the first of which was led by Manaia. He also distinguishes amongst several different withdrawal and returns by Waikato and by Ngati Raukawa. After the first Ngapuhi invasion led by Manaia Ngati Raukawa withdrew to Patetere, still within their rohe; after the attack led by Hongi and following the battle of Matakītaki “all the tribes” went inland to Taupo.²²¹⁸

I am a chief of Ngatiraukawa; I live at Otaki: the land in these boundaries belonged to Ngatiraukawa; I have been told that the boundaries of our land were (but I do not consider them as such at the present time), commencing at Pukehina, going straight to Pirongia and Kawhia, also going across Waikato to Waiharakeke; the back boundary was Wairere, and going inland from that river; these boundaries were held until Hongi’s time; during his time Hongi held the power (mana); Hongi’s *mana* was powder and guns; I do not know the cause of the Ngapuhi invasion; they came to Waikato; Ngapuhi and Ngatiwhatua had guns, and they came and fought with Ngatiraukawa; the chief of Ngapuhi was called Manaia; Waikato collected together but the mana was with Ngapuhi; Ngatiraukawa’s pa called Hangahanga was attacked, and after two months’ fighting they were starved out; and the pa was taken; there were none of the able-bodied men killed; only the old men and women were taken; the strong men went away by night, some of those who were related to Waikato were saved; Ngatiraukawa fled to Patetere, and other places; this ended that war, it happened about the time of the Rev. Mr Marsden’s first visit to New Zealand.

But there were further waves of assault from the northern tribes:

Ngapuhi returned after this under Hongi: Hauraki was the first place attacked, and all the Hauraki tribes were defeated by Ngapuhi; Hongi attacked and took Mauinaina Pa, and Ngatipaoa were defeated; he attacked and took Te Karaka Pa; and Ngatimaru were defeated; Hongi then went back; he afterwards returned into Waikato, and Matakītaki was taken, and a thousand men were slain belonging to Waikato; *all the tribes then retreated inland to Taupo* (emphasis added); Ngatiraukawa were living there at this time, and the Waikato tribes retreated back upon them; the return of Ngatiraukawa and Waikato tribes was at the same time, Waikato went into their own country, and Ngatiraukawa went into Maungatautari; they made peace amongst themselves; their only thought was Ngapuhi; during this time Hauraki tribes began to quarrel with Ngatihaua and Ngatikoroki, the cause was that they domineered (whakake) towards Ngatihaua, and Ngatikoroki, and Ngatiraukawa; and Waikato; the quarrel against the Hauraki tribes increased, and Tangiteruru was killed; then the fighting began in earnest, a pitched battle was fought at Taumatawhiwhi, and the Hauraki tribes were defeated; Waikato and Ngatihaua held the mana after this; peace was made between Ngatihaua and Waikato with the Hauraki tribes, and Hauraki returned to

²²¹⁸ 1873 AJHR G3, 24 [correlate with Waikato MB equivalent]

Hauraki; Ngatiraukawa, I have heard, were living at Maungatautari, but not in great numbers; the cause of Hauraki tribes attacking Ngatiraukawa was this (these tribes have the same origin), Te Whatanui induced the Hauraki tribes to fight Ngatiraukawa, and they attacked them at Kopuru, which was taken, and Ngatiraukawa were defeated; they attacked Ngatiraukawa again at Piraunui; Ngatiraukawa were “pouri” from their former defeat; they turned upon Hauraki, and the Whatakaraka, of Ngatiraukawa, was killed.

While all of this was going on, Ngati Raukawa had already begun travelling to Kapiti to get guns.

Ngatiraukawa had commenced, before this, going to Kapiti to get guns; Rauparaha invited Ngatiraukawa to come and take the land belonging to Ngatiawa on account of one of the Ngatiraukawa chiefs, named Te Poa, having been killed by Ngatiawa; the Ahukaramu came and found that Ngatiraukawa had been defeated at Piraunui; Ngatiraukawa were “pouri” at Taraia, who was a relative of theirs, attacking them; and they said to him, “Waiho ki a koe te Pakanga” and they left and went to Kapiti; there was no word said about the land, some of Ngatiraukawa remained behind; Ngatiraukawa lived at Kapiti until the commencement of the fight with the Europeans and Rangihaeata at Wairau; Potatau made his first visit then.

On 7 November 1868 Parakaia Te Pouepa formally withdrew the Raukawa claims to Maungatautari proper and Pukekura (though not to the Puahue block).²²¹⁹ Why he did this is unclear. Parakaia sought also to have the Puahue case adjourned.²²²⁰

Parakaia objected to the claim being investigated on the grounds that some of the owners were away amongst the Hauhau.

But the case proceeded, with Ngati Haua being treated as the claimants and Raukawa as counterclaimants. The issues were essentially the same as in the other two blocks. As before the main claimants were Ngati Haua, but there were also claims by Ngati Apakura (whether these formed part of the Ngati Haua claim or were distinct from it I am unsure of). Ngati Haua people who had given evidence in the preceding cases spoke again, and to similar effect, claiming the area by take raupatu on the basis of driving off Hauraki groups, Ngati Paoa and Ngati Maru. Raukawa counter-argued, once again, that they had never been driven away by Ngati Haua, that some of Raukawa remained behind, and that Raukawa had in any event been invited to return to Maungatautari by Te Wherowhero. Te Wherowhero’s invitation “did away with the conquest” said Parakaia Te Pouepa.²²²¹ He said also that while Ngati Haua and Ngati Paoa had certainly fought with each other, this was not over Maungatautari.

Much was said in the three cases about the rights of groups who were with the King and who were as a result not present in Court. The relevant evidence was well summarised by James Mackay in his 1873 report on Maungatautari on the killing of Timothy Sullivan. Sullivan was one of a group of farm labourers working on land at Maungatautari leased by Edward Bain Walker and his colleague (Douglas) from the Ngati Haua grantees: while constructing a roadway the men were attacked, and Sullivan was killed.²²²² This attack caused panic amongst the settler community in the south Waikato. Mackay, sent to investigate the attack, concluded that the murder was political, arising out of tensions

²²¹⁹ (1868) 2 Waikato MB 83 (7 November 1868); [1873] AJHR G-3, 16-25; at 25:

Parakaia Te Pouepa, on behalf of Ngatiraukawa claimants, addressed the Court. In his address he stated that he, on behalf of the claimants on his side, renounced their claim to Pukekura and Maungatautari on behalf of the resident claimants, but not so on Puahoe; that he wished the investigation of Puahoe should be closed, as some of the owners were King Natives, and he wished to ascertain their opinion towards Ngatiraukawa.

²²²⁰ (1868) 2 Waikato MB 56.

²²²¹ *Ibid*, 22.

²²²² On this event see Belgrave, *Dancing with the King*, 65-76.

within Ngati Haua. He saw the root cause of the attack as the Court investigation of 1868. Mackay noted that some people had turned up in Court claiming to represent Kingite supporters and supposedly agreeing that the blocks should go to the Queenite groups, but in his view this was all probably stage-managed.²²²³

There was a large amount of evidence given in the Court that there were a number of Natives who had claims to the land living with the King party at Tokangamutu, but at the same time some persons *calling* themselves Hauhaus appeared in Court and said “they were willing that the land should be granted to the friendly Natives, and the Hauhaus had given up all claim to it”. Te Rewiti Waikato, in his evidence on the Puahue case, says “he belongs to Ngatihaua, Ngatiruru, Ngatikoura and Te Werokoko (hapus). There are a number of persons living with the King who have a claim to this block”. Afterwards he says, “I am the only person of the three hapus I have mentioned (Ngatiruru, Ngatikoura, and Te Werokoko), the rest are among the King Natives. They have heard of the survey: it has been done two years. They have said that ‘I should carry the case through the Court.’ Their word is ‘Mau tau mahi’ (you may do your own work)” – a very ambiguous phrase. “I sent them word of the investigation, and they agreed I should carry the case into the Court”. Waata Tahi, another Ngatihaua claimant says: – “I have heard Te Reweti’s statement; it is correct. The whole of the hapu mentioned by Te Reweti own this land. The absent claimants are away with the King; they have consented to the investigation of this land; they have made this statement themselves to us. There are a hundred men in all who have claims to this land. The King’s party have given the land over to us.[”] Hoani Pakura, one of the Ngatiapakura claimants, says – “Most of Ngatiapakura are here (about thirty), the rest are with the King (about twenty). We have informed them of our intention to have the land investigated, and they made no objection.”

There was much more to the same effect. Mackay, clearly, was dubious about statements that those belonging to the King party were happy with the case proceeding. In fact, as seen, King Tawhiao’s emissary had requested that the cases *not* proceed.

The Court gave judgment on the three blocks on 9 November 1868. The Court’s orders essentially vested all three blocks in Ngati Haua. The Court began by noting that Parakaia had formally withdrawn the claims to Pukekura and Maungatautari (“[t]he claim preferred by the Ngatiraukawa tribe who reside at Otaki to the land called Pukekura and Maungatautari containing respectively 8393 acres and 5491 acres respectively having been formally abandoned by Parakaia”²²²⁴), and made orders vesting these blocks in Te Raihi and others (presumably people of Ngati Haua). Parakaia’s request for an adjournment of the Puahue case was refused.²²²⁵

With regard to Parakaia’s application for an adjournment of the hearing to Puahue after all the claimants and counter-claimants had been heard; it may be stated that an offer was made to Parakaia to adjourn the Maungatautari cases if he and his people would return to Rangitikei; but this he declined: to accept the application therefore cannot now after hearing be admitted. The reason now assigned by him is not in the opinion of the Court sufficient reason for granting the application.

The reason put forward by Parakaia, as noted, was that some of the owners were “away among the Hauhau”, meaning of course that were in the King Country with Tawhiao and would not, or had not been able, to come to the Court.

The Court went on to summarise Ngati Haua’s case as claimants.²²²⁶

2223 [1873] AJHR G-3, 2-3.

2224 (1868) 2 Waikato MB 93; Boast, *Native Land Court* vol 1, 475.

2225 (1868) 2 Waikato MB 94; Boast, *Native Land Court*, vol 1, 475.

2226 (1868) 2 Waikato MB 94-95; Boast, *Native Land Court*, vol 1, 475.

The claimants to Puahue acknowledge that the land formerly belonged to Ngatiraukawa who left the District about 40 years ago in consequence of continual war between the Ngatimaru and Ngatiraukawa tribes: subsequently Ngatimaru occupied the District and a war issued between the Ngatihaua and Ngatimaru tribes which resulted in the defeat of the latter tribe who returned to the Thames and the country has been held by Ngatihaua to the present time. This claim is therefore simply of right by conquest followed by constant occupation.

Against this Ngati Raukawa argued that they had an ancestral title the land, that they were “not driven away from the country” and also that they had been invited to return by Te Wherowhero and other chiefs of Waikato. Rogan found for the claimants.²²²⁷

It is undisputed that the Ngati Raukawa tribe left the district: that Ngatimaru took possession and were expelled by Ngatihaua and Waikato tribes. It is also clear that the Ngatiraukawa did not avail themselves of the alleged invitation of the Wherowhero as they still remain in occupation of the land to which they migrated. They now request the Native Lands Court to give them repossession; but the Court considers that a tribe having conquered and having undisturbed possession of a District for many years previous to the foundation of the Colony and up to the present time are according to Native custom and in justice entitled to be recognised as the proprietors of the land. The decision of the Court is therefore in favour of the Claimants.

The outcome of the cases had serious implications for Ngati Raukawa, given the serious blow of the Himatangi judgment around this time. The cases had an interesting aftermath. On 12 November the Court made its determination as to who should be the ten owners entered into the titles for the blocks – the ‘Ten Owner Rule’, so-called, being the prevailing practice at the time. According to James Mackay, “[I]etters were read which were handed in by the claimants containing a list of the names required for that purpose”.²²²⁸ In the case of Pukekura the grantees were Te Wata Tahi, Hareta Tamihana (or Tamehana), Reweti Waikato, Hakiriwhi, Hori Pua, Pirihi Whanatangi, Hemi Kokako, Wiremu Te Whitu, Pirihi, and Hori Winihana – all Ngati Haua ‘loyalists’. With respect to Puahue those named in the grant were Te Rewi Waikato, Hori Pohepohe, Hori Wirihana, Tarika Te Hura, Hoani Pakura, Mata Kaora, Wini Kei, Winiata, Aramete Te Waharoa, and Ropata Te Ao, the two lists overlapping slightly (Te Rewi Waikato and Hori Winihana were in both). What is interesting, however, is that in each case the ten were stated in the Court records to be trustees, holding the blocks in trust for those persons declared owners on 9 November.²²²⁹ At this time it seems that the exact effects of the Native Lands Act of 1865, still a comparatively recent statute, were uncertain. In any event the ten grantees were treated as absolute owners of the land, which Mackay saw as problematic in the case of these three blocks. Given the large number of people not in court this was one situation where it might have been better to issue a tribal title. Failing that, the block should be partitioned and the names of the correct owners could then be inserted into the partitions.²²³⁰

I do not see how the Native Land Court could, according to the strict rules of law and evidence, have decided otherwise than was done in these cases, as it was not to be expected that the Judges could ascertain the names of all the absentee Hauhaus; but the difficulty might, perhaps, have been overcome by the issue of tribal certificates.

²²²⁷ (1868) 2 Waikato MB 95; Boast, *Native Land Court*, vol 1, 95.

²²²⁸ [1873] AJHR G-3, 2.

²²²⁹ (1868) 2 Waikato MB 162, 163 (Pukekura and Puahue).

²²³⁰ [1873] AJHR G-3, 3.

The only practical way to solve the difficulty, as the law at present stands, appears to be, for the grantees to apply to the Native Land Court to sub-divide the property, thus cancel the Crown Grants issued for the blocks and have new grants made out in the names of the right persons.

On the whole the “loyalist” group of Ngati Haua prevailed in these cases. Mackay believed that at least in the case of Puahue and Pukekura the grants that were ultimately issued were “entirely in favour of the loyal portion of the claimants” [i.e. Ngati Haua].²²³¹ It appears that Raukawa people of the Waikato and North Taupo areas played little or no role in the cases, nor did large sections of Ngati Haua. On whose authority Parakaia Te Pouepa decided to withdraw the claims to Pukekura and Maungatautari blocks is unknown. As noted, Ngati Kauwhata people insisted to the 1881 Maungatautari Commission that Parakaia had no authority whatever to represent Ngati Kauwhata at the 1868 hearing.

In 1871 the Native Land Court issued titles for two blocks known as Maungatautari 1 and 2 (2,185 acres and 2,306 acres). This was a partition of the Maungatautari block heard in 1868. The Court orders were subject to a proviso that the Crown grants, when issued, should vest the legal estate in the ten owners of the two blocks as at 18 April 1871, and the Court also recommended that the grants should be inalienable for a period of 21 years.²²³² These blocks were leased out by the owners to Messrs. Robert and Graham, who later purchased the freehold from the owners; these interests were then sold to Sir James Ferguson (the colonial governor) and he in turn sold them to the New Zealand Loan and Mercantile Agency. Attempts to further partition the blocks became bogged down in various complex disputes, and they were not further partitioned until 1889, that is until after the remaining Maungatautari block was heard in 1884 (Ngati Raukawa’s efforts to have their interests in this block failed disastrously, as will be seen.) The transactions involving Robert and Graham and Sir James Ferguson were however enmeshed in complex legal problems arising out of the alienation restrictions, resulting eventually in litigation which went to the Supreme Court and the Court of Appeal in 1895.²²³³ This litigation is analysed in a later part of this chapter.

In 1872 William Mair reported that the loyalist section of Ngati Haua who had been successful in Court in 1868 had greatly angered the Kingite part of the iwi by leasing a large part of the 1868 Maungatautari block for “a very small sum per annum”.²²³⁴ The principal lessor was Hoterini Te Waharoa. When reproached by his brother Tana and other leaders of the Kingite section of Ngati Haua Hoterini had shrugged his shoulders and had replied that nothing now could be done about it and that “if you disturb the pakeha, I shall be sent to gaol”.²²³⁵ Pukekura and Puahue were leased to a Captain Wilson, who in turn sub-let the blocks to Walker and Douglas, who ran cattle on the land.²²³⁶

15.6 The Crown, Ngati Raukawa and the Kingitanga in the 1870s

A. Introduction

Some years ago Keith Sorrenson insightfully wrote about the political situation in the south Waikato in the late 1860s and early 1870s:²²³⁷

2231 “Mackay to McLean, 10 July 1873” [1873] AJHR G-3, 2.

2232 See *In re Maungatautari Nos 1 and 2 Blocks* (1895) 14 NZLR 125 (SC) at 126.

2233 *In re Maungatautari Nos 1 and 2 Blocks* (1895) 14 NZLR 125 (SC); 595 (CA).

2234 “William Mair (Native Agent, Alexandra) to Under-Secretary, Native Department, 1 August 1872”, in *Further Reports from Officers in Native Districts* [1872] AJHR F-3A, No 28, at 27.

2235 *Ibid.*

2236 See Mackay’s report [1873] AJHR G3, 3.

2237 Sorrenson, “Maori King Movement”, 49:

At first the Europeans seemed to be gaining the upper hand. Tamihana's defection from the King party enabled [Josiah] Firth to breach the land league and secure a foothold in the Matamata district. Further inland, W T Buckland claimed to have secured a lease from Ngatiraukawa, and Walker and Douglas leased some more land from a section of Ngatihaua near Cambridge. This was 'the little edge of the wedge' but, before the Europeans could drive it home, a series of skirmishes brought the border almost to a state of war. In 1870 two Europeans were murdered by King party supporters on the King's side of the border. The victims were a gold prospector named Lyons, who ignored the King party ban on prospecting, and a surveyor named Todd, who was surveying disputed land. Then in 1873 there was another murder, this time as a direct result of the land transactions. Sullivan, an employee of Walker and Douglas, was shot when working on the land they had leased across the border. Porokutu, the alleged murderer, who was a supported of the King, had a claim to the land but refused to attend the Court sitting or accept the Walker and Douglas lease. He had warned them repeatedly of the consequences of occupation. The irate military settlers of Cambridge and Te Awamutu were anxious to avenge Sullivan's murder by invading the King Country but McLean, now Native Minister, refused to allow the Government to be dragged into more military campaigns or to deviate from his conciliation policy. Once the excitement had died down, purchase transactions were quietly resumed and the King party, anxious to avoid war, made no further resort to violence.

In the case of Raukawa specifically, clearly some kind of major shift in alignment took place after 1869. This section will analyse in detail the developing relationship between Raukawa and the Government in the 1870s. The overall context was that of the Crown's policy of seeking to carefully detach iwi from the Maori King movement. Interestingly, similar developments can be observed elsewhere. A close parallel with Raukawa is the upper Whanganui, also closely associated with the Kingitanga during the wars. As Steven Oliver has noted, "most upper Whanganui Maori supported the Maori King movement and later the Hauhau, or Pai Marire, movement".²²³⁸ In the 1870s the chiefs of the region began to engage in a process of rapprochement and re-engagement with the Crown. As Robyn Anderson has stated, during the wars of the 1860s lower Whanganui people hand tended to ally themselves with the Crown, whereas "the upper Whanganui people, led by chiefs such as Hori Patene, the Turoa whanau, and Te Mamaku, had supported the Catholic Church, the Kingitanga, the Pai Marire, and Titokowaru".²²³⁹

As a consequence, settlement had been largely confined to the lower reaches of the river but, by the 1870s, the upper river people were more willing to deal with government and the land market. The change in disposition was signalled by two of the most important Kingitanga rangatira of the district, who reached a new accommodation with the Crown and expressed a new acceptance of settlement. Te Mamaku took Crown advances on Kirikau and Retaruke, and escorted prospecting parties into the Tuhua district. Topia Turoa engaged with survey and the Native Land Court, at Murimotu and Rangipo-Waiu. Both men were given official positions and found their way onto the government's payroll where they joined a growing number of Whanganui chiefs.

During the 1870s the Fox-Vogel-McLean government was engaged in a process of carefully disengaging those iwi who supported the Kingitanga – Upper Whanganui, Tuwharetoa, Raukawa, Maniapoto – from King Tawhiao. The government was cautious and was careful not to rush things, probably because (as Michael Belgrave has put it) "[u]ntil the mid-1870s, the objectives of 'opening up the King Country' had little urgency, as vast areas of the rest of the North Island were made available for settler occupation through purchasing of Māori land by the Crown and private individuals".²²⁴⁰

²²³⁸ Steven Oliver, *Taumatamahoe Block Report*, Wai 903#, 2003, 11.

²²³⁹ Anderson, *Whanganui Iwi and the Crown*, 2004, A71, 4.

²²⁴⁰ Belgrave, *Dancing with the King*, 9.

The Rangitikei-Manawatu purchase was one of the most important of the Crown purchases at this time, helping to ease the pressure on the general and provincial governments to find lands for settlement.

The negotiations with Ngati Raukawa were part of a long process that led in the end to the isolation of the King, the negotiations of the 1880s and then to the King Country (Aotea), Taupouiaia and Waimarino investigations of title in 1886. Oliver writes that “[t]he Crown interest in acquiring land in the central and upper Whanganui district was part of a general policy of purchasing Maori land, but also provided the opportunity to begin the opening of the land from which the Government was excluded by the aukati of the King movement”.²²⁴¹ The same combination of policies operated in the southeastern Waikato. In the 1870s McLean’s field officers (such as Richard Woon on the Whanganui, or Locke at Taupo) sought to persuade iwi of the benefits of closer association with the government and economic development. Robyn Anderson has drawn attention to this:²²⁴²

Government officers promoted an assimilationist ideal of adoption of European manners and customs to Whanganui Maori, and a ‘careful, judicious, and wise administration’ of their ‘superabundant land’ which, they promised, would make them ‘rich men’.²²⁴³ Leaders such as Te Keepa – and Turoa, too – accepted the premise that closer settlement, rising land values, education and adoption of European farming techniques were crucial to the continued welfare of their people. By this the stage, engagement with the Native Land Court was recognised as an essential, if often fraught, step towards this goal: it was the prerequisite of a cordial and profitable relationship with the Crown; a means of bringing in settlers and the benefits of employment, trade, roads and railways; and a source of capital for fencing, stock, and land development as well as the necessities of life.

I would add however this was mainly part of a political strategy. In any case the outcomes were far from the beguiling prospects dangled before the chiefs – the real outcomes were only the Land Court, land loss and impoverishment. In these respects the experience of Upper Whanganui and Raukawa were essentially the same.

B. *First overtures, 1869-70.*

One early action was taken by Raukawa themselves when in March 1869 they ordered the Pai Marire prophet Kereopa out of their area; in fact Kereopa was apparently told that if he carried out his threats to attack settlements in the Waikato Raukawa would shoot him themselves.²²⁴⁴ Kereopa left, apparently planning to join up with Te Kooti. (This was before Te Kooti reached Taupo.) Some months later the newspapers began to report that Raukawa were interested in opening discussions with the Crown. In June 1869 the *Daily Southern Cross* reported that Raukawa appeared “anxious to cultivate friendly relations with the pakeha, and contemplate having a thorough survey made of their land, and settling the titles, so as to be able to hold it distinctly apart from the surrounding tribes”.²²⁴⁵ The same article reported the case of a settler who had leased land from Raukawa but who had never taken up his lease because of the “native troubles”; now, however, “satisfied with the friendly intentions of the tribe” he

²²⁴¹ Steven Oliver, *Taumatamahoe Block Report*, 2003, 21.

²²⁴² Ibid.

²²⁴³ Woon to Native Under-Secretary, 22 May 1877, *AJHR*, 1877, G-1, p 17 [fn in original].

²²⁴⁴ *Daily Southern Cross*, vol XXV, Issue 3643, 23 March 1869, p 3:

The Ngatiraukawa natives living at the settlements at Waatu [Waotu], Otearua, and Wakamaru [Whakamaru] were summoned to attend the meeting, and the result of the conference is reported to have been a decision to order Kereopa to leave the locality. He was likewise informed, at the same time, that if any act of hostility were committed in the Waikato, or if he attempted an attack upon any settlement, he would be shot by the Ngatiraukawa.

²²⁴⁵ *Daily Southern Cross*, Volume XXV, Issue 3710, 9 June 1869, p 3,

was taking up possession. Also in June the *Evening Post* reported the gratifying news that “the Ngatiraukawa tribe, living beyond Cambridge, have given notice to the Europeans that the aukatis are removed, and that the whole country is opened”:²²⁴⁶

We understand, on good authority, that within the last few days a number of chiefs of this tribe have invited the Europeans to visit the country between Cambridge and Napier, the communication between these places being now perfectly open.

But these early efforts by Raukawa, or by some Raukawa rangatira at least, were put on hold with Te Kooti’s sojourn through the central North Island in the second half of 1869.

At the time of Te Kooti’s traverse of Raukawa’s rohe in 1870 the Fox-Vogel government began to make tentative approaches towards Raukawa, still regarded as die-hard Kingites at the time, in order to gain their agreement to construct a telegraph line and roads through their lands to connect Taupo with Rotorua and Cambridge. On the Raukawa side the principal point of contact was Hitiri Te Paerata, who showed an early willingness to come to some arrangement with the government; discussions were at first brokered by the Hawke’s Bay Provincial Government, now led by John Davies Ormond, and his principal supporter and agent Samuel Locke, who was the resident magistrate at Taupo. On 1 January 1870 Ormond, writing from Napier, reported to McLean that Raukawa and Tuwharetoa seemed willing to consider the construction of the telegraph: “I will see what Hitiri and the Ngatituwharetoa have to say to it if they agree it could be pushed on from Tapuaeharuru to Waimahana and from there you [the Native Minister] would have to arrange”.²²⁴⁷ As seen in the preceding chapter, while Te Kooti was able to attract some Raukawa support in the Tapapa area, influential Raukawa leaders such as Hitiri Te Paerata and Nini disliked and distrusted Te Kooti – perhaps arising initially from the latter’s behaviour towards Tawhiao – and passed information about his movements to Samuel Locke at Taupo. Ironically then one of the architects of a rapprochement between Raukawa and the Crown may have been Te Kooti.

In October 1870, with Te Kooti now gone from the region, Ngati Raukawa and Tuwharetoa gathered at Tapuaeharuru (Taupo) and expressed their interest in maintaining friendly relationships with the government and supporting the construction of roads through their district.²²⁴⁸ On 20 October Ormond reported to McLean that “Locke and Bold [Bold was a road engineer and surveyor] are on their way to Tapuaeharuru [Taupo] and from what I can learn from Hamlin and Poihipi there will be no difficulty in arranging for the Rotorua road and that in my opinion will be a great point gained – once get Ngatiraukawa properly started the next thing will be a request from them to make the road from Patetere to Cambridge”.²²⁴⁹ The meeting seems to have gone reasonably well and the discussions to have been friendly but Ormond was left unsure whether Raukawa actually would get involved in the road-building programme; however he consoled himself with the thought that having Raukawa at a meeting with the government at all was a hopeful sign. Clearly Raukawa and the government were still regarding each other warily:²²⁵⁰

The Taupo meeting has not ended in very much. Locke thinks he has done great things but I have doubts myself whether Raukawa will go at the road works. I hope they will and if they do we have to thank old

²²⁴⁶ *Evening Post*, Vol V, Issue 117, 28 June 1869, p 2.

²²⁴⁷ Ormond to McLean, 1 January 1870, MS-Group-1551, ATL (Woodley DB p 4).

²²⁴⁸ *Daily Southern Cross* (Auckland), 27 October and 5 November 1870, cited Hearn, *Raukawa, land and the Crown*, 42.

²²⁴⁹ J D Ormond to McLean, 20 Oct 1870, MS-Group-1551, ATL, Woodley DB 54.

²²⁵⁰ J D Ormond to McLean, 28 Oct 1870, MS-Group-1551, ATL, Woodley DB 60.

Pohipi [Tukurairangi, Tuwharetoa chief at Taupo] for working them round. The fact of the Ngatiraukawa coming to a Govt. meeting is by no means a bad sign.

Just to be talking was something. Work on the road indeed began, but Ormond remained cautious about expecting much support active involvement from Raukawa, and in November he informed McLean:²²⁵¹

Locke and Bold are starting the Roads from Taupo towards Tauranga. The Niho-o-te-kiore road is no doubt the line. The Waikato can be bridged there with a 25 ft. span; and the whole line is described as very easy, and as opening some good country. I do not expect Ngatiraukawa to do much yet at road work; and when I give you Locke's over sanguine expectations, I make the allowance I know you are sure to. I am inclined to think, however, there will be no opposition to carrying the road right through to Rotorua; and the Rotorua Natives are already pressing for work between the Lake and Niho-o-te-kiore.

That is, even if Raukawa decided to not get involved in road construction work themselves, at least they would not block construction of the road from Taupo to Rotorua. Ownership of Niho-o-te-kiore (I am not sure where this is, near Atiamuri probably) was however disputed between Raukawa and Arawa.²²⁵² Notwithstanding that particular problem, by the end of November Ormond had decided to formally contract Raukawa to build the Niho-o-te-kiore section of the Taupo-Rotorua road. Obviously the lure of road-building work was proving tempting to Raukawa.²²⁵³

At Taupo the road work is going on all right. Ngatiraukawa have been constantly communicating with me asking for work on the Niho o te Kiore road and I have told Bold to lay it off and let it to them. We shall see directly whether they are in earnest.

C. *Firming up the Relationship: Early 1871*

In January 1871 Ormond reported to McLean that Raukawa had joined forces with the 'friendly Taupo natives' to renounce the King and to allow the construction of roads. This was good news from the government's standpoint. According to the *Daily Southern Cross*:²²⁵⁴

A telegram was received by the Government from Mr Ormond, Superintendent of Napier, conveying the satisfactory intelligence that the Ngatiraukawa at Waikato, with all the principal chiefs, have joined the Taupo friendly natives, and will work at the road by Niho o te Kiore, and carry it through. The people who have surrendered say they have renounced the Maori King and all his works, and have joined the Queen's side, and that they will promote our works in future. As these natives come from Patereta [sic: Patetere], Waiota [sic: Waotu], and other settlements close to Waikato, and have always hitherto been strong King's men, their joining us at the present time possesses no ordinary signification. It is considered that their adhesion will stop any attempt at (hindering?) progress, and will presently open up the country to Cambridge for road and telegraph extension.

²²⁵¹ J D Ormond to McLean, 8 Nov 1870, MS-Group-1551, ATL, Woodley DB 66.

²²⁵² J D Ormond to McLean, 18 Nov 1870, MS-Group-1551, ATL, Woodley DB 74.

²²⁵³ J D Ormond to McLean, 30 Nov 1870, MS-Group-1551, ATL, Woodley DB 78.

²²⁵⁴ *Daily Southern Cross*, vol xxvii, Issue 4193, 21 January 1871, p 3. Also J D Ormond to McLean 15 Jan 1871, McLean Papers, MS-Group-1551, ATL, Woodley DB 101:

Telegrams from Taupo to the effect that Ngatiraukawa have joined our people and declared against the King's work. I need not enlarge on this as I will telegraph particulars tomorrow – Ngatiraukawa vote for employment on the road works which I shall arrange at once – if we can only get that Tribe to work properly with us we shall soon have the Telegraph and Road through to Cambridge through their country by way of Patetere...

Through 1871 Locke continued to meet Raukawa to discuss progress with road-building and the telegraph, reporting back via telegraph to Ormond at Napier, and Ormond then forwarding on the intelligence to McLean in Wellington. On 26 April Ormond reported:²²⁵⁵

Whilst at Taupo Locke is to go on to Niho o te kiore to meet Ngatiraukawa and have another talk with them. He will ascertain how far they are inclined to push the Telegraph and Road through their own Country – excluding of course the disputed country beyond. Also he is to arrange the terms for a direct mail to Cambridge...Perenera Tamahiki is the man who wants to undertake it. He belongs to Paerata's people and works through Maihi and Hori Ngawhare. I incline to think he will succeed with it.

To McLean and Ormond the principal focus of their interest in Raukawa was the extent to which the Raukawa chiefs could be persuaded to support government policies of isolating Tawhiao and Waikato, constructing strategic roads and telegraph lines through the centre of the North Island, and opening up the interior to close settlement. These policies interconnected. J D Ormond for example saw the completion of the mail route between Taupo and Cambridge as something that would put “another very long nail into the Maori King's coffin”.²²⁵⁶ For their part Raukawa leaders like Hitiri Te Paerata, Perenera Tamahiki, Maihi Te Ngaru and the old chief Hori Ngawhare were interested in developing a relationship with the Crown, hoping for economic benefits and the end to years of isolation in the middle of the North Island. As always Maori leaders mistook Crown overtures as the signal for a on-going partnership based on mutual accommodation; officials such as Ormond on the other hand tended to think in terms of Raukawa “joining us” or “coming on to our side”.²²⁵⁷ A chief such as Perenera was described by Ormond to McLean as “a clever useful fellow.”²²⁵⁸

On 7 February 1871 Ormond met personally with with a group of Raukawa led by Maihi Te Ngaru, who were on a visit to Ngati Kahungunu people at Napier. This must have been a very interesting conversation. Maihi told Ormond that Ngati Raukawa had been “with the King from the first” and had been “against us in every fight”.²²⁵⁹ But now they had changed their minds. Maihi Te Ngaru said to Ormond “that now he saw it was hopeless continuing the struggle and gave in”. He added that “for the future he and his people were in our hands and wished to work with and for us as the Taupo Natives are”. But clearly other Raukawa people felt differently:²²⁶⁰

Whilst Marsh [i.e. Maihi] was with me I got a telegram from Perenera, and Ihaia Te Ia, saying Aukatis were being established by the King at different points on the West side of the Waikato river and that Ngatihaua and Ngatiraukawa were employed to guard them. Marsh explained this was another section of Ngatiraukawa and he sent a telegram to his own people addressed to Waotu and Tapapa directing them to [“tahoto Keiraro”?]. He said further that Waikato is gathering against expected attack from us and that the whole thing rested with Rewi Maniapoto. If he declined to back Waikato he would have to submit and give up the murderers.

²²⁵⁵ Ormond to McLean, 26 April 1871, McLean Papers, MS-Group-1551, ATL, Woodley DB, 161.

²²⁵⁶ J D Ormond to McLean, 1 May 1871, McLean Papers, MS-Group-1551, ATL, Woodley DB, 165.

²²⁵⁷ See e.g. Locke to McLean, 25 July 1871, McLean Papers, MS-Group-1551, ATL, Woodley DB 198-201 (referring to Raukawa):

I don't see much difficulty if care be used in carrying our way entirely in Patetere and that would separate the Thames and other natives from the King party and then if we can work on for a year or so without involving ourselves with Waikato, the Thames side with a judicious course of opening and settling up will be done for and and Waikato will be ready for working on.

²²⁵⁸ J D Ormond to McLean, 26 April 1871, McLean Papers, MS-Group-1551, ATL, Woodley DB, 162.

²²⁵⁹ J D Ormond to McLean, 8 Feb 1871, McLean Papers, MS-Group-1551, ATL, Woodley DB 126.

²²⁶⁰ Ibid (Woodley p 127).

This indicates not just division within Raukawa but that Tawhiao was attempting to reconfigure the eastern boundary of the Rohe Potae along the Waikato river, meaning in practice that most – although not all - of Raukawa’s lands fell outside the boundary.

Another point to emphasise is that while to some extent Raukawa, or at least substantial sections of Raukawa, and Tuwharetoa were both moving towards an accommodation with the government at this time, this did not of itself mean that relationships between Raukawa and Tuwharetoa were particularly good at this time. Former disagreements between the two groups were now being exacerbated by the actions of the Native Land Court in the North Taupo area. In March 1871 Ormond advised McLean that “Poihipi and our Taupo friends are very jealous if Ngatiraukawa their land claims and altogether there seems strong feeling of jealousy between them”.²²⁶¹

Another useful development – from the Government’s perspective – occurred in 1871 when Perenara, of Raukawa, contacted Ormond at Napier and offered to set up a regular mail service from Taupo to Cambridge.²²⁶² Ormond was still unsure about Raukawa’s plans, not having heard anything from them for a few months – Raukawa were clearly still pondering what they should do – and responded to Perenara gratefully accepting his offer but subject to the agreement of Raukawa as a whole. So matters were still uncertain by early 1871.²²⁶³

Friend, I have received your telegram on the subject of the mail to Cambridge, and I am glad that you have displayed such energy in doing the works of the Government, so I wish you to thoroughly understand my acts....This is my word about the mail. I wish you to know that you are the person to whom I have decided to give that work. However, will you tell me now, before that work is commenced, what the mind of Ngatiraukawa is, because, while I do not wish to upset our arrangement, still, on the other hand, I am not willing to commence this work before the consent of the tribe is given to it.

Crown strategy was essentially based on the diplomatic objective of undercutting Tawhiao’s support by dealing directly with the King Country chiefs, including the leading rangatira of the key iwi of Maniapoto, Raukawa, and Tuwharetoa. In a letter from J D Ormond to McLean in January 1871 the overall strategy appears clearly.²²⁶⁴

If you can succeed in separating Maniapoto or even a section of them from the Waikatos it will be a great thing. From what I learn through Taupo Rewi is thoroughly in with the King party and as active in promoting mischief as Manuhiri himself.

The government had to walk warily. Crown officials were aware that the political situation was delicate; although willing to talk to the Kingitanga iwi, particularly if that meant detaching them from Tawhiao, it was also important to not antagonise rangatira who had allied themselves with the government: as H T Clarke put it to McLean in January 1871, “we have, as you know, a very delicate part to play between the friendly Natives and the Hau Haus. We must not on any account, allow the idea to get the possession of the Friendlies, that we have been making use of them to serve our own ends”.²²⁶⁵

²²⁶¹ J D Ormond to McLean, 3 March 1871, McLean Papers, MS-Group-1551, ATL, Woodley DB 132; also Ormond to McLean, 18 March 1871, McLean Papers, MS-Group-1551, ATL, Woodley DB, 145: “There is great jealousy between the Taupo Natives and Ngatiraukawa”.

²²⁶² J D Ormond to McLean, 12 April 1871, in *Papers Relative to Surrender of Rebel Natives and Expeditions in Search of Te Kooti*, 1871 AJHR F1, 19. Ormond refers to “a telegram sent by me to Perenara, a young chief connected with Ngatiraukawa, who wrote offering to carry a mail to Cambridge from Taupo”.

²²⁶³ Ormond to Perenara Tamahiki, 12 April 1871, in *Papers Relative to surrender of Rebel Natives and expeditions in search of Te Kooti*, 1871 AJHR F1, Encl 2 in No 32, p 20.

²²⁶⁴ J D Ormond to McLean, 15 Jan 1871, MS-Group-1551, ATL, Woodley DB 94.

²²⁶⁵ H T Clarke to McLean, 24 January 1870, McLean Papers, MS-Group-1551, ATL, Woodley DB p 18.

D. *Government policy towards Raukawa by mid-1871*

Then in July 1871 at a meeting with Samuel Locke at Te Whetu Raukawa gave their ‘adhesion to the Government’ and formally removed their part of the aukati line. This, for many, brought to an end nearly a decade of isolation. Some Raukawa rangatira had not even seen any Pakeha since the start of the Waikato war. According to the *Daily Southern Cross*:²²⁶⁶

Our readers have already been apprised by telegraph of the successful result of the meeting held at Te Whetu, on the 5th and 6th inst. The Ngatiraukawa tribe gave in their adhesion to the Government, and removed the aukati between Niho-o-te-kiore and Cambridge. The track to Napier may consequently now be travelled with safety, but the questions of road formation, the telegraph, and mail, are to be discussed at a meeting to be held at Te Waotu in the course of a few months. The meeting at Te Whetu was attended by a deputation from the King party, and Watene, Heta, and other members of it opposed the opening of the road vigorously, but, owing to Mr. Locke's firmness, unavailingly. The importance of detaching the Ngatiraukawa from the King party cannot be too highly estimated, and Mr. Locke's success considerably disheartened the Waikato chiefs, who were present at Te Whetu, as the greater part of the Ngatiraukawa tribe have been for years staunch adherents of the King. Mita Rauganui and other Hauhau chiefs from Te Waotu had not conversed with Europeans since 1862.

Locke's own report on this important meeting with Raukawa is preserved in the McLean papers at the Alexander Turnbull Library. This was the first time that Locke had met a number of the Raukawa chiefs, showing the extent to which the iwi had been isolated for a number of years. The principal Raukawa chief at this time was Hori Ngawhare, a quiet elderly gentleman Locke thought:²²⁶⁷

I was sorry on my return from Auckland to find that you had gone to Wellington. The bad weather at Taupo and Patetere detained me longer than I should otherwise have been away – and it being the first time I had met many of the Maoris I there saw, I was extra careful to remain until matters had been explained and also to become as far as possible acquainted with them. Hori is a quiet old man of the old stamp and seems anxious to go peaceably to his grave. He must have been a very fine man in former times. The other chiefs, Ranginui, Mita and Maihi Te Nata are as you know young men and without much mark about them. I found the Waikato men to be very fine looking fellows, clever but very quiet in their behaviour. Heta spoke well, but I should think him to be an oily gentleman. Watene acted as straightforward as any of them and told me if care were used his place would be visited in a year or two in the same way as Wa-o-tu was now. A man named Tumuhia spoke in the strongest manner and used the worst expressions, saying that he would kill anyone that crossed the boundaries for the purposes of leasing etc. in the same way that Todd had been killed. Iraia Te Hapuaru alias Te Waru spoke remarkably well, as a chief – but strongly opposed to the Government. *From the manner in which the Ngatiraukawa are mixed up with the Waikato tribes it is difficult to say what course they might take should that portion of the Waikatos who have been expelled from their land with their relatives manage to get up a row, but I think that at all events a large portion of the tribe would be with us, especially those on the right bank of the Waikato* [emph added]. I don't see much difficulty if care be used in carrying our way entirely in Patetere and that would separate the Thames and other natives from the King party and then if we can work on for a year or so without involving the Waikato, the Thames side with a judicious course of opening up and settling will be done for and Waikato will be ready for working on. The Tohu rangi [sic] at the Horohoro want to sell land to the Govt. for a settlement... I have forwarded a report of my meeting

²²⁶⁶ *Daily Southern Cross*, vol xxvii, Issue 342, 15 July 1871, p. 2.

²²⁶⁷ See e.g. Locke to McLean, 25 July 1871, McLean Papers, MS-Group-1551, ATL, Woodley DB 198-201 (referring to Raukawa):

I don't see much difficulty if care be used in carrying our way entirely in Patetere and that would separate the Thames and other natives from the King party and then if we can work on for a year or so without involving ourselves with Waikato, the Thames side with a judicious course of opening and settling up will be done for and and Waikato will be ready for working on.

with Ngatiraukawa and also a general report for the year. *The Waikatos complained about leases at Maungatautari* [emph added]. They want to get up a cry for sympathy some how.

Meanwhile, on 2 July 1871, Major William Mair reported from Alexandra (Pirongia) that, inter alia, Raukawa have “formally announced that they were for the “Government” and claimed the right to deal with their own lands, and with the construction of roads, &c., without reference to Tawhiao”.²²⁶⁸ He also reported that “the present conciliatory policy of the Government, while being the least expensive, has most effectually weakened the King party, and has removed a great deal of the soreness that existed between them and the Europeans. At the same time it must be admitted that there are influences at work to prevent a friendly settlement”. Clearly mid-1871 was a significant turning-point. Again with Mair’s report can be seen the real point of McLean’s policy, which was one of isolating Tawhiao by dealing directly with the leadership of the Kingitanga tribes. McLean and Ormond and their trusted officials and agents in the field such as Mair and Locke all were in accord.

Shortly after the July meeting with Locke, in August, H T Clarke wrote a very revealing letter to McLean, very much along the lines of Locke’s report, which makes government policy even more clear:²²⁶⁹

My dear McLean

I arrived here [Auckland] by “Lord Ashley” on Friday night. I hope to be back to Tauranga early next week, although I am in a state of great tribulation – I came home to find my wife ill in bed of a malady which may terminate in worse than death. This and my not being very bright makes me miserable. I wish enough that you could see your way clear to establish my head quarters at Tauranga again. The air of Auckland is almost enough to sicken any one. However I am in your hands, do what is best and I must not grumble.

I have telegraphed up to Mair to come down. Te Wheoro and party have not yet gone to Te Kuiti – and independently of the fact that I want to get the Tauranga Land matters settled before planting commences. I should like to see him and recommend a course of action for him to follow, so as in no way to compromise the Government. After all his great object will be to listen and not to talk, and to leave matters to the discretion of the Government. Mair is (I gather from a private letter from him) very sanguine that a better state of things – and a better understanding with the Waikato party will be the result. All our friends (Maori) in the Waikato are of the same opinion.

It is necessary for the Waikatos to consider their position. The pacific policy of the Government is fast detaching the independent tribes who were, if not active supporters, warm sympathizers of the Waikato party – the defection of the Ngatiraukawa is a great blow to all Waikato schemes cutting them off as it does from the Bay of Plenty and Urewera districts. The Pirirakau too are very lukewarm in their loyalty to Tawhiao – and I am quite cheered with the general aspect of affairs – Peace is all we want and the “King party” will fall away and become a thing of the past – I believe that the Waikato party see this, and want to come to an understanding with us – now – I do not advocate the idea of courting their favour – let all the appeals come from them and do not let us thrust ourselves forward.

Various aspects of these discussions and documents need to be emphasized. Clearly the Pakeha community in Auckland and the Waikato were well aware of the significance of “detaching” Raukawa from the Kingitanga (shown by the newspaper report), and this was government policy as well. Samuel Locke was a close associate of McLean’s, and it was clearly McLean’s policy to weaken Tawhiao by concentrating on the iwi bordering the Rohe Potae’s most vulnerable and most ill-defined boundary, its

²²⁶⁸ Mair to Under-Secretary, Native Department, 2 July 1872, in *Reports from Officers in Native Districts*, 1872 AJHR F-3.

²²⁶⁹ H T Clarke to McLean, 28 August 1871, McLean Papers, MS-Group-1551, ATL, Woodley DB 211-214.

eastern side. It was deliberate policy to concentrate on Raukawa and to put aside dealing directly with the Kingitanga for the time being: to officials such as Samuel Locke and H T Clarke, as can be seen, it was important to entangle Raukawa in discussions with the government as this would help isolate the “Thames natives”, Urewera, and the Bay of Plenty from the King. Road-building was an appealing prospect for Raukawa, as it created not only the roads, useful in themselves, but provided the opportunity for paid employment. It is noteworthy also that Kingitanga representatives were present at the meeting. They could no doubt see the significance of the decision of the Raukawa chiefs to follow their own independent path. No wonder that Watene and Heta opposed the road construction plan “vigorously” and that they were “disheartened” by the outcome of the discussions. The documents reveal also that leasing of land outside the aukati line in Raukawa territory in the south Waikato was very controversial and was not at all to the liking of “Waikato” (meaning, here, the King and his advisers), and that Raukawa were themselves feeling their way forward at this time: not all within Raukawa evidently favoured a rapprochement with the government at this stage. If there was any kind of show-down between the government and the Kingitanga Locke did not feel confident about predicting what Raukawa might do.

E. *The Waikato River as a Boundary*

By August 1871 government policy seems to have moved to one of using the Waikato river as a boundary between that section of Raukawa’s lands still remaining under the mana of the King and the rest of their rohe, open for land sales, leases, roads, telegraphs and so forth. This is documented in a letter sent to McLean by Ormond. Referring to the Te Whetu meeting with Locke, Ormond proceeds:²²⁷⁰

I am quite sure the Te Whetu meeting did good and will bear fruit. In my correspondence which I carefully keep up with Ngatiraukawa and Taupo I keep alive that question of the King keeping the West bank of the Waikato and leaving the East bank to us and it is being seriously discussed.

This is an important clue as to government thinking, and in fact this encapsulates what Crown policy towards Raukawa lands would mainly be down to the time of the ‘Great Blocks’ investigations of title in 1886. However some land on the western side of the Waikato had already gone through the Land Court by this time (in the Maungatautari area): the Maungatautari, Puahue and Pukekura blocks were all investigated at Cambridge in 1868. (These blocks are pivotal and are discussed later in this report). However from this time on the Waikato river basically *was* a boundary further south, and it formed part of the boundary of the Taupouiatia block when that finally went through the Native Land Court in 1886. Other Raukawa lands on the Western side of the river formed part of the Aotea or King Country block, also investigated in 1886. This meant that Raukawa’s lands were mostly outside the King’s mana but with a substantial area still ‘inside’, a situation which was to carry on for another fifteen years.

F. *Further meetings in 1872*

In 1872 the Government kept on with its policy of engagement with Raukawa. McLean monitored matters very carefully. As Alan Ward put it in *A Show of Justice*, “McLean and his officers took time over the work of diplomacy, never pressing the disaffected tribes too hard, but ensuring that every advantage was taken of their disenchantment with war, Hauhauism or the King movement”:²²⁷¹

Over a period of twelve months Locke and McLean secured first the laying aside of arms by a majority of the Taupo and Ngatiraukawa people, then their acceptance of arbitration in disputes and finally their consent to admit roads and telegraphs. The effects of pacification in one district were cumulative, success

²²⁷⁰ Ormond to McLean, 6 August 1871, MS-Group-1551, ATL, Woodley DB 208.

²²⁷¹ Ward, *Show of Justice*, 230.

in one district encouraging Maori in others to resume friendly relations with Government and settlers. Between 1870-3 most of the leading ‘rebels’ outside Ngatimaniapoto territory made their peace.

Ward simplifies matters somewhat, but his analysis is right in its essentials.

McLean thought it might help matters if Locke informed McLean about the supposedly positive relations between Raukawa in the Otaki area and the Crown. On 25 January McLean sent from Whanganui the following cable to Locke at Taupo:²²⁷²

It may have a good effect with the Ngatiraukawa to tell them that those living in Rangitikei have been to see me and settled up their land disputes and are on the best of terms with the Government. They are letting contracts for road work which supplies them with carts and ploughs and implements. Intimate to the Ngatiraukawas on behalf of the Government whatever you deem most judicious with reference to the point at which the bridge to cross [the Waikato River] is to cross. I need not add more on this subject as you will be the best judge of what to say. From what I gather from Tauranga it will not be long before something can be done from the Cambridge end.

And a few days later he told Locke it would be a good idea for him to stay around Taupo for a while to keep in contact with Raukawa, although with so many meetings going on Locke might have to be “cut into pieces” to get to them all.²²⁷³

I think it very important that you should remain at Taupo for a time and keep up correspondence with the Ngatiraukawa, as you think it would be judicious to let [Gilbert] Mair with his party of Te Arawas settled at Niho o te Kiore. If I cut you into pieces portions of you might attend the different meetings to which you are invited, but it is unnecessary at present to decide to which one to go. Pohipi complains that they only see you occasionally at Taupo, he has gone back full of a desire to cover Taupo with Pakehas.

Raukawa had a number of internal meetings at around this time at which the possibility of better relationships with the Crown was discussed. There is a document preserved in the McLean papers in the Alexander Turnbull Library that indicates that this policy had widespread, if guarded, support. It is dated February 1st 1872 and is a memorial or memorandum in Maori which was signed off by Karanama and other Raukawa rangatira and which was then presumably sent on to McLean. A series of meetings were held at Raukawa communities at Whakamaru, Ngawehenga, Hingatiraha and Tirau²²⁷⁴ at which cautious approval was given to road-building, obviously seen as a vitally important issue.²²⁷⁵

February 1 1872. Today we welcome the completion of our take to convert our relations to the plans of the government which consists of opening the roads so new lines may be laid down. As a result, everyone

²²⁷² McLean to Locke, 25 Jan 1872, McLean Papers, MS-Group-1551, ATL, Woodley DB 256.

²²⁷³ McLean to Locke, telegraph, 30 Jan 1872, McLean Papers, MS-Group-1551, ATL, Woodley DB, 259-261.

²²⁷⁴ This meeting at Tirau is probably the same one referred to in a long memorandum from John Wilson at Cambridge sent to McLean on 18 March 1872, McLean Papers, MS-Group 1551, ATL, Woodley DB 268-284. According to this document:

No. 1 enclosure is from Ngatiraukawa; who held a large meeting at Tirau, about 25 miles from Cambridge, on the subject of roads from Taupo. You will perceive that they are all, in that quarter, friendly. A spirit of opposition, however, manifested itself shortly after; resulting in the meeting, of which No. 2 arises, and in the subsequent deputation, consisting of Rewi and Te Ngakau, to Capt. Mair’s party at Te Niho-o-te-Kiore.

This is a bit obscure, but seems to suggest that following Raukawa’s own internal process Rewi Maniapoto and Te Ngakau went to visit Mair to express their opposition on behalf of the Kingitanga to roads being constructed through Raukawa territory.

²²⁷⁵ Memorandum from Tirau, 1 Feb 1872, signed by Karanama et al, McLean Papers, MS-Papers-0032-0696A-04, Woodley DB 262-266.

agreed, chiefs and all. However they have claimed that thorough organization and consideration would be upheld. On 16 January 1872 we arrived at Whakamaru this is where our discussions began. We also travelled to Ngawehenga and Hingatiraha before arriving at Tirau and all all agreed to the plans that were discussed. I have written the names of the chiefs who agreed from Whakamaru, Te Paerata from Ngawehenga agreed, Hori Ngawhare from Hingatiraha agreed, so did Parawera Te Rangikapoto and also Hona Korouaputa of Tirau. Hoera Herekaua, Pita and Kere Those from Whatiwhati who participated in the discussions were Wiremu Hauma and Penetana, both agreed. Those from Kokaho were Mourea (Tengapawarae) and Te Irirangi, they too agreed. On the 30th day of January 1872 Arekatera Te Puni and his Pakeha friend who was an elite soldier arrived. Arekatera's word was spread amongst the multitude who congregated in Tirau. The discussions consisted of opening the new road from Rotorua stretching to Tapapa and secondly the Ngati Raukawa land plans to be given to him. The congregation did not accept his request. However, the proposal for the road was accepted by Ngati Raukawa; they were not in favour of having an outsider prepare their lands. From Karanama Te Whakaheke Kapereia Mahirahi Enoke Te Wano Aterea Tauehe Tamate Ranapiri & Co.

Who Arekatera's 'elite soldier' friend was ('tona hoa pakeha he rangatira hoia') I am unsure. Now that Raukawa were thinking about what to do their lands no doubt various people were interested in giving them the benefit of their advice. As can be seen, however, Raukawa were not inclined to trust Pakeha outsiders with the delicate business of managing their lands.

In February 1872 Maihi Te Ngaru, Hitiri Te Paerata, Perenara, and Ngatio were present to represent Raukawa at a meeting at Ohinemutu of the Arawa tribes, Ngaiterangi, Raukawa and Ngati Awa with H T Kemp, Civil Commissioner at Tauranga.²²⁷⁶ One of the features of the meeting was the opening of Ngati Whakaue's new house, Tamatekapua, at Ohinemutu.²²⁷⁷ Maihi Te Ngaru and Ngatio suggested that a suitable route for a new road would be from Ohinemutu to Te Whetu.²²⁷⁸

Maihi Te Ngaru and Ngatio, of the Ngatiraukawa, proposed a line of road from Ohinemutu to Te Whetu, as being beset by fewest difficulties, from a Native point of view. Captain Turner has applied for authority to personally inspect the line proposed. After which he will be able to give an opinion as to whether it will suit the views of the Government.

On April 12 of the same year Raukawa and Tuwharetoa met with Governor Bowen at Tapuaeharuru (Taupo). Bowen, who had replaced Grey in 1868, was a well-meaning Anglo-Irish aristocrat who invested much effort in travelling about the country to meet the Maori in the hope of building better relations between the tribes and the Crown. McLean and Ormond, however, regarded Bowen's efforts sourly, seeing him as a bumbling and interfering amateur. Ormond, in fact, regarded Bowen as an "ass" and recommended that McLean should "keep him at the Pheasants – that is more in his line".²²⁷⁹ McLean was appalled by Bowen's plans to visit Tawhiao, fearing that this might undo years of careful diplomacy. Be that as it may, both Raukawa and Tuwharetoa welcomed Bowen

²²⁷⁶

Perenara says:

We heard at Taupo that the determination to erect this house was come to after Petera's return from the King, and that it was the result of an interview with Tawhiao; that it was the intention of Petera to bring the King's *mana* to Rotorua. Your explanation is quite different. I quite concur in the views you have expressed.

H T Clarke to Under-Secretary, Native Department, in *Further Reports from Officers in Native Districts*, 1872 AJHR F-3A, 5.

²²⁷⁷

H T Clarke to Under-Secretary, Native Department, in *Further Reports from Officers in Native Districts*, 1872 AJHR F-3A, 7.

²²⁷⁸

H T Clarke to Under-Secretary, Native Department, in *Further Reports from Officers in Native Districts*, 1872 AJHR F-3A, 6.

²²⁷⁹

Ormond to McLean, McLean papers, 4 May 1872, MS 1304 ATL. My congratulations to Ray Fargher for finding this hilarious reference. See Fargher, *Best man who ever served the Crown?*, 317. Fargher's discussion of McLean's relations with Bowen is outstanding – see *ibid* 316-19.

effusively at Taupo and the discussions were very warm and friendly. They were no doubt pleased that the Governor had made the effort to travel to the remote centre of the North Island to come and see them. Taupo was not the easiest of places to get to in 1872. Perenara Tamahiki and Rutene (and maybe others) spoke for Raukawa and pledged loyalty to the Crown.²²⁸⁰ The following day Bowen met Raukawa again at a large meeting at Orakei Korako, where he was greeted warmly by a number of Raukawa rangatira: Hohepa Taupiri, Tuiri Rangihoro, Hare Matenga, Aranui, and Raukawa's senior chief, Hori Ngawhare, "from the Waotu Patetere". The Governor was again given a very friendly and warm reception.²²⁸¹

In July William Mair noticed a distinct general decline in Kingite-Queenite tensions in the Waikato region generally. The *aukati* boundaries were highly porous as far as the Maori population was concerned. Mair noted "the great cordiality" that existed between "the friendly chiefs and the King party", although he also felt that some of the "friendly" chiefs were not above trying to keep tensions alive in order to maximise their own importance.²²⁸² On 1 August 1872 William Mair reported specifically on political relationships between Ngati Haua, Raukawa and Ngati Hinerangi. His report is a very revealing and interesting document. A number of points emerge: the tensions between the Queenite and Kingite sections of Ngati Haua, Raukawa's efforts to maintain friendly relations with Ngati Haua, tensions over the Maungatautari lands, and resentment on the part of both Raukawa and Ngati Haua at Ngati Hinerangi's selling certain lands to Josiah Firth. Also of interest is Mair's observation that Raukawa were moving to fix their boundaries, presumably with a view to beginning the process of taking their lands through the Native Land Court, and the fact that much of Raukawa's land was occupied by "refugee Waikato". One would certainly like to know more about this latter point (presumably the area referred to would be that part of Raukawa's lands that lay west of the Waikato and within the *aukati*):²²⁸³

I have the honor to report my return from visiting the Ngatihaua and Ngatiraukawa, inhabiting the country on both banks of the Waikato River, above Maungatautari.

The former [sic: latter?] are, I find, rapidly shaking off their connection with the King party, but at the same time they endeavour so do it [sic] in such a manner as still to keep up friendly relations with them. In spite, however, of their efforts to keep on good terms, I notice a growing feeling of jealousy on the part of their Hauhau neighbours, Ngatihaua. With a view to try their position, Ngatiraukawa propose during this month to hold a meeting at Te Waotu, to fix their boundaries, as a great deal of the land claimed by them is occupied by refugee Waikato.

After describing some difficulties he and his brother Gilbert had in crossing the *aukati* lines and carrying guns, Mair describes disagreements between the Kingite and Queenite sections of Ngati Haua over the vexed question of Maungatautari:²²⁸⁴

Great discontent exists among the Hauhau Ngatihaua, in consequence of the dishonest practices of the Kupapa section in reference to the tribal lands; for instance, a large part of the Maungatautari was let some time ago by Hoterini Te Waharoa for a very small sum per annum, and I heard his brother, Tana,

²²⁸⁰ Summary of the speeches delivered at Tapuaeharuru, April 12, 1872, in *Further Reports from Officers in Native Districts*, 1872 AJHR F3A, 11; see also Keith Sinclair, *Kinds of Peace*, 53.

²²⁸¹ See Locke to McLean, 6 May 1872; Summary of Speeches delivered at Orakeikorako, 13 April 1872; in *Further Reports from Officers in Native Districts*, 1872 AJHR F3A, 8-9, at 9; 12-13, at 12.

²²⁸² Mair to Under-Secretary, Native Department, 2 July 1872, *Reports from Officers in Native Districts*, 1872 AJHR F3, No 6, 8.

²²⁸³ William Mair (Native Agent, Alexandra) to Under-Secretary, Native Department, 1 August 1872, in *Further Reports from Officers in Native Districts*, 1872 AJHR F-3A, No 28, p 27.

²²⁸⁴ *Ibid.*

Te Kata, and other chiefs tell him that “he had stolen the land of the tribe, and that the lessee should never enjoy the use of it.” Hote shrugged his shoulders and said, “It cannot be helped now, and if you disturb the pakeha, I shall be sent to gaol”.

Both Ngatiraukawa and Ngatihaua are very indignant at the reported sale by Ngatihinerangi to Mr Firth of the lands leased by him from the late Wiremu Tamihana. I did not consider it my business to make enquiries in the matter, as I believe the land has passed the Land Court, and that the settlers hold a grant or certificate.

Ngatiraukawa complain of the infrequency of communication with the Government. To remedy this in a measure, I would propose the appointment at Te Waotu of a *karere* to carry letters to and from Cambridge weekly. This would be a step towards the establishment of a mail through to Taupo.

McLean kept steadily on with his policy. On 6 August 1872 Raukawa met with McLean at Te Aotea at which those present resolved “to secede from the King, and proceed to define their own boundaries without reference to the Maori King or his advisers”.²²⁸⁵ On this occasion McLean brought with him a young Ngati Raukawa chief from Otaki who advised his northern kindred to make their peace with the government, which seems to have influenced the outcome. The *Daily Southern Cross* thought that McLean’s negotiations with Raukawa had been “eminently successful”.²²⁸⁶ Tawhiao and Rewi Maniapoto seem thereupon to have countered by inviting all of the Raukawa people at Otaki to return to their ancestral lands at Maungatautari.²²⁸⁷ Had the southern section of Raukawa returned to Maungatautari at this point that would have given Tawhiao a significant accession of strength and might have countered the northern part of the iwi’s decision to cautiously commence a programme of engagement with the Crown. Raukawa at Otaki, at this time immersed in a bruising struggle against Ngati Apa and the government in the Land Court, certainly thought about returning. But we can only speculate about what might have happened. After some heart-searching debate Raukawa at Otaki decided to stay put. The northern half of the iwi’s engagement with the Crown continued. But there were still evidently tensions and disagreements within Raukawa. In April 1873 the *Herald* and the *Waikato Times* reported considerable dissension over road-building, although the *Waikato Times* played down the rumours of imminent fighting within Raukawa over the construction of the road to Taupo. How exactly the matter played itself out within Raukawa is hard to know, although possibly dissension over this may correlate with ‘Kingite’ and ‘Queenite’ factions within the iwi.²²⁸⁸ The Kingitanga leaders themselves felt despondent and angry about Raukawa’s political reorientation at this time.

G. Analysis

Given the existence of the independent Rohe Potae, Raukawa occupied a pivotal position with respect to the government’s programme to construct a strategic road network which would connect Auckland and Wellington, Auckland and Napier, and the Waikato with Tauranga. Their willingness to allow road-

²²⁸⁵ *Daily Southern Cross*, Vol XXVIII, Issue 4681, 24 August 1872, p 2.

²²⁸⁶ Ibid.

²²⁸⁷ Booth to Assistant Native Secretary, in *Further Reports from Officers in Native Districts*, 1872 AJHR F-3A, 33.

²²⁸⁸ See *Waikato Times*, 10 April 1873, p 2:

The following telegram appears in the *N.Z. Herald* of yesterday; it emanates from our contemporary’s Alexandra correspondent: - “Ngatiraukawa intend fighting among themselves immediately, respecting a road being made to Taupo. There is great excitement in the neighbourhood and district. It is not surmised how the affair will end, or whether there is likely to be bloodshed. Gold has been found in the neighbourhood of Ngatiraukawa, specimens of which are in the hands of Tawhiao. There is to be a great native meeting at Te Kuiti on the 28th of April. The Governor, Native Minister and all pakehas are invited to the meeting”. This is very startling news, as regards the fighting; we are tolerably certain that the correspondent has jumped at a conclusion, or rather has been cajoled by native “bounce”.

building must have come as a relief to McLean and the other members of the government. Other iwi also decided to agree to the road-building programme. Ngaiterangi and the other Tauranga tribes, also Kingites, agreed after some debate to allow a road to build across their lands to the Raukawa boundary and from there on to Cambridge, to connect with the road being built across Raukawa territory.²²⁸⁹ But by the same token Raukawa's actions severely strained their relationship with Tawhiao and his advisers. There were rumours in 1871 that Waikato was actually planning to attack Ngati Raukawa. Hans Tapsell said this to H T Clarke in July, Tapsell being "very anxious about the Ngatiraukawa", but the reliability of this is uncertain.²²⁹⁰ But there is little doubt that there was much tension and disagreement. King Tawhiao and the Kingitanga chiefs were very displeased to learn of Pakehas taking up leases of land from Raukawa outside the confiscation line in the south Waikato.²²⁹¹ Raukawa chiefs were in a difficult position: while wanting to build relationships with the Government they were also nervous about offending Tawhiao and the Kingitanga. The wild card represented by Te Kooti, still being pursued through the central North Island at this time, added to the general uncertainty.

15.7 Land speculators and the Crown proclamation of 1873

With the ending of the wars and Raukawa's expressed willingness to allow road-building, telegraph line construction and land transactions both private land speculators and the government became involved in land-purchasing in the south Waikato, to some extent in competition with each other. In the Patetere area there was a very complicated process of land acquisition from Raukawa in which both the private sector and the government were involved. This report will not be dealing with Patetere directly, which has already been traversed in any event in the two reports by Dr Gilling²²⁹² and Dr Hearn, but the main developments need to be explained briefly.

The key figure in the early 1870s was a land speculator named Edward Torrens Brissenden, who in the early 1870s started buying up interests in the Patetere area, apparently with the intention of leasing the areas at least until such time as the lands had passed through the Native Land Court and the shares he had bought on behalf of himself or others could be partitioned out. Brissenden had links with a man named Drummond Hay and both were connected a syndicate known variously as the Waikato Land Company/Association,²²⁹³ the Ngatiraukawa Land Purchase Association, or the Ngati Raukawa Land Company. William Moon, based at Cambridge, worked with Brissenden and Hay. There is

²²⁸⁹ *Daily Southern Cross*, Vol XXVIII, Issue 4722, 12 October 1873, p 3:

The meeting [at Rangiwaia] was brought to a close by Mr. Clarke (for Mr. Turner) telling the Natives that, as the Ngatiraukawa were willing that the road should pass through their land, and no obstacle being put in the way, the road will at once be surveyed as far as the Ngatiraukawa boundary. The opposition on the side of the Ngaiterangi will shortly be withdrawn.

²²⁹⁰ H T Clarke to McLean, 14 July 1871, McLean Papers, MS-Group-1551, ATL, Woodley DB 192

²²⁹¹ See J D Ormond to McLean, 21 July 1871, McLean Papers, MS-Group-1551, ATL, Woodley DB 196: From what I hear from Locke he managed very well with Ngatiraukawa and left Hori Ngawhare and old Maihi Te Ngaru together in the same hut. Hori told Locke he was anxious to push Govt. matters through but was afraid of Waikato. Other Ngatiraukawa living still further in the King country said the same and all including the Waikatos made no secret that Waikato wants a "take" to quarrel upon. The principal grievance at present is that Pakehas are leasing land outside the confiscated boundaries.

²²⁹² Bryan D Gilling, *The Purchase of the Patetere Block 1873-1881: An Exploratory Report*, 1992, Wai 255 Doc#A1, Wai 1200 Doc#A36.

²²⁹³ On the Waikato Land Association, see Stone, *Makers of Fortune*, 178-79. The driving force behind this entity was Thomas Russell, prominent Auckland lawyer and financier, who entered into partnership with Frederick Whitaker in 1861: "together they built up one of the most flourishing practices in the country, with extensive business interests, especially in land speculation" (ibid, 172). Russell, who moved to England in 1874, formed a syndicate with Whitaker, D L Murdoch, and William Steele to develop the Piako swamp lands; the syndicate then floated the Waikato Land Association in England in 1879, which bought the Piako Swamp estate from the syndicate at a "gross overvaluation" (ibid, 178).

certainly plenty of evidence to show that in the early 1870s Brissenden and his colleagues were paying out sums of cash to various Raukawa individuals at Cambridge, probably during Land Court sittings. For example on 18 June 1873 Brissenden paid Hitiri Te Paerata £9 relating to land between Whakamaru and Waotu, and there were many payments of a similar character to other individuals.²²⁹⁴

On 10 March 1873 Brissenden drew up a lease for the 100,000 acre Tokoroa block, still uninvestigated at this time, from from Eruera Te Haotu, Hakapa Ngapaka, Tireni Hangina, Matenga Te Tiaki, James D.Hape, Karanama, Turuhira, Aperahama Te Kume, and Hemopo Hikarahui.²²⁹⁵ This, however, occurred shortly after the murder of Timothy Sullivan at Pukekura at a time when the political situation in the south Waikato and the King Country was still very delicate. As has already been noted, the Kingitanga leadership was opposed to leasing in the south Waikato beyond the limits of the Aukati. It seemed for a time that there might be renewed conflict between the Crown and the Kingitanga, although fortunately it never came to that. In April the *New Zealand Herald* and the *Waikato Times* reported rumours that Raukawa had reached the point of fighting amongst themselves “respecting a road now being made to Taupo” which would have run through the Tokoroa block now leased to Brissenden and his colleagues.²²⁹⁶ At the end of April Raukawa people complained to James Mackay, Agent for the General Government in the Waikato, about ‘friendly’ (kupapa) Maori surveying their lands, and about a week later the *Taranaki Herald* reported major trouble brewing between the Kingitanga chief Parakatu – or Purukutu - and Raukawa over control of land alienation in the south Waikato. (Purukutu was a party to the killing of Sullivan at Pukekura.) According to the newspaper report Raukawa were “determined not to be ‘bounced’ and to do what they please with their own country”.²²⁹⁷ At the end of May it was then reported that “the Ngatiraukawa have been warned that a kupapa will be killed at Te Waotu, if the survey there is not at once stopped”.²²⁹⁸ These contentious surveys seem to have been connected with Brissenden’s purchasing activities.²²⁹⁹

However, the situation is more complex than it appears, because there is evidence – recently found by Suzanne Woodley – which indicates that Brissenden was also working for the government in some capacity or other, or, at least, that he was certainly reporting to McLean. This emerges from a letter sent by Brissenden to McLean in Dec 1873:²³⁰⁰

I found on my arrival here [Auckland?] that a ring had been formed for the acquiring of native lands in opposition to Government. They represent considerable capital. I have mixed freely with members of the ring, and as they think, that I am in opposition to the Government they addressed themselves to me openly for advice etc. It is useless for me to go into particulars more than to state they are now a disorganized party, and at a meeting yesterday, they concluded to suspend operations, and recall their negotiators, and others connected with the venture, so they are out of the field, I am satisfied that no more companies will be formed for the same purpose in this part of the Province....

I have received letters from Wm. Moon on behalf of himself and Drummond Hay, speaking in strong terms, and with threats against the Government, this makes me feel uneasy about the Ngatiraukawa

²²⁹⁴ W Moon to E T Brissenden, 8 August 1873, MA 13/63a, cited Gilling, *Purchase of Patetere Block*, 5.

²²⁹⁵ Hearn, *Raukawa, Land, and the Crown*, 53; H H Turton, *Epitome*, 591-592.

²²⁹⁶ *Waikato Times*, 10 April 1873, p. 2.

²²⁹⁷ *Taranaki Herald*, Vol XXI, Issue 2096, 7 May 1873, p. 2.

²²⁹⁸ *Daily Southern Cross*, vol XXIX, Issue 4915, 27 May 1873, p 3.

²²⁹⁹ The reason why I infer that is because when later in the year the government stepped in and prohibited the Land Court from sitting in the region Brissenden claimed to have stopped the surveys after Sullivan’s death “at very great loss and inconvenience”: Brissenden to McLean, 12 September 1873, MA 13/63a, cited Gilling, *Purchase of Patetere Block*, 7. It seems reasonable to infer that the surveys that Brissenden halted and those that were causing such protest in the South Waikato between Kingites and Queenites (including, seemingly, factions within Raukawa itself) were the same surveys.

²³⁰⁰ Brissenden to McLean, 20 Dec 1873, MS-Group-1551, ATL (Woodley DB 425-428).

people and I shall therefore leave here for the Waikato in a day or two, and endeavour to make things safe.

The implications of Brissenden working as a kind of double agent, or infiltrator, on behalf of the Crown are a little hard to assess. It does indicate that the government saw itself as engaged in a stealthy conflict with powerful private interests in a competition to purchase land in the south Waikato. The policy of the Fox-Vogel-McLean government was to expand the role of the government as purchaser in the Central North Island by using leases to effectively pre-empt private purchasers and by shutting down the Native Land Court in the region partly with a view to preventing private purchasers from being able to complete their purchases in the Native Land Court. In the 1880s, as will be seen, a period of retrenchment, the Crown withdrew from the scene to some extent, relinquishing the interests it had acquired in Patetere, and leaving the field open in the Waikato to Land Companies and to other private buyers.

In 1873 the government decided to construct a railway line from Mercer to Taupo. Macky has dated this decision to June 1873, when McLean sent a memorandum to George Burton, one of his field officers, instructing him to commence large-scale land purchasing in Taupo and Rotorua.²³⁰¹ Also in June 1873 Vogel told parliament of the government's plans to construct a railway route south from Mercer, and in July James Mackay arrived in Taupo to assess railway routes from Taupo to Cambridge.²³⁰² This route would have taken the railway route across Raukawa lands, so this factor may be part of the explanation for Crown purchase negotiations with Raukawa after 1874. Macky has suggested that the decision to construct the line was at least in part political, arising out of the aftermath of the Sullivan murder in 1873 and the Crown's delicate relations with the Kingitanga.²³⁰³ In the end no railway was built to Taupo, although a line was eventually constructed across Patetere to link Rotorua with Hamilton and Auckland via Tirau and Putaruru, across a significant part of Raukawa's lands. In any event Crown purchasing got under way in the central North Island in June 1873, when two government purchase agents, C O Davis and Henry Mitchell, began working in the region. They commenced working for the Crown in June and the arrangements were finalised in writing on 23 October. Davis was a gifted scholar of the Maori language who had opposed the invasion of the Waikato, and his colleague Mitchell was a surveyor.²³⁰⁴ At first Davis and Mitchell concentrated on lease negotiations, but this was not because the government had any interest in ending up as a tenant of Maori land: as Macky puts it "[t]he Government's purpose in entering leases was to ease the process of purchasing the leased land in the future".²³⁰⁵ The leases all contained clauses forbidding alienation to

²³⁰¹ Memorandum by Donald McLean, 6 June 1873, HB 3/5, cited Macky, *Crown Purchasing in the Central North Island District*, para. 87.

²³⁰² (1873) 14 NZPD 140, 28 July 1873; Mackay to McLean, 19 July 1873, MS Papers 0032, ATL, in Kathryn Rose Supporting Papers [CNI], cited Macky *Crown Purchasing* para 88.

²³⁰³ See Macky *op.cit.*, paras 89-91. Macky is unsure why the proposal was dropped, but in any case the Crown certainly did proceed to open negotiations for a wide area of land: "by the time the Government decided not to proceed with a railway to Taupo, it was already engaged in significant land purchase negotiations in the CNI district" (*ibid.*, para 91).

²³⁰⁴ For background on Davis and Mitchell, see especially Macky, *Crown Purchasing in the CNI District*, paras 102-113.

²³⁰⁵ Macky, *Crown Purchasing in the CNI*, para 199. And in fact Davis and Mitchell said as much to Ormond: see Davis and Mitchell to Ormond, 23 August 1873, MA-MLP 1, 1873/159, Rose Supporting Papers 856-7, cited Macky *op.cit.*

We may be permitted to state here that the lease of these lands to the Government will we consider render purchase hereafter if desirable comparatively easy in as much that time and opportunity will thereby be afforded for the final adjustment of hapu and tribal claims which at present in the majority of cases, present an almost insuperable barrier in the way of extinguishing the Native title, while the inalienation clauses inserted in all the leases, together with the political and commercial relations arising out of these

private purchasers, and it is best to see such Crown leases as a de facto imposition of Crown pre-emption on a block-by-block basis. Mostly these Crown leases were in the Rotorua and Kaingaroa districts but there some in the North Taupo area - Oruanui (30,142 acres); Tauhara Middle (96,000 acres); and Tatua West (25,000 acres) – and others squarely in the heart of Raukawa lands (Waipa, Te Tokoroa and Ngutuwera blocks).²³⁰⁶

On 20 August 1873 the Crown suspended the operation of the Native Lands Act across a substantial section of the Central North Island, and this suspension was repeated in September 1874, relating this time to the Native Lands Act 1873.²³⁰⁷ This event again seems to mainly relate to the conflict between Crown and private interests.²³⁰⁸ Belgrave, however, links the proclamation to the murder of Sullivan at Maungatautari in 1873: “the closing down of the Native Land Court through an isolated act of violence had been a victory for the Kingitanga”.²³⁰⁹ The proclamation remained in effect until 1877. The proclaimed area was colossal (it was the same for both the 1873 and 1874 proclamations), in the Raukawa area running from “Titiraupeka; thence North-east to [the] Waikato River; thence down the said river to the southern boundaries of land adjudicated upon by the Native Lands Court,²³¹⁰ following along the said southern boundary lines to their termination; from thence to Wairere; thence along the west-south-west boundary of the Tauranga confiscation”. This would have placed all of Raukawa’s lands within the proclaimed area. The suspension meant that the Native Land Court could not sit within the proclaimed area, which (as Macky puts it) “made it impossible for private interests to complete land transactions, and effectively re-established a Government purchasing monopoly in the Bay of Plenty and Taupo Districts”.²³¹¹ However the Government, while principally motivated out of a desire to block private competition, was also worried about the risks of civil disturbances among Te Arawa if the Court proceeded with hearing cases in the Central North Island. McLean told Parliament in August 1874 that “the Government did not impose these restrictions simply from any desire to obtain extension of territory”.²³¹² Rather, “they did so on political grounds and from political reasons”; “the Government would not shrink from the responsibility attached to questions which might affect the peace of the island”. The proclamation thus affected Raukawa lands in the Taupo and Bay of Plenty districts for four years, but the effects do not appear to have been very significant. Crown purchasing from Raukawa progressed very slowly in any event. It was *private* purchasing which

transactions wil, it seems to us, place the Government in a position to accomplish with comparative ease, whatever ends of public moment it may have in relation to these waste lands.

²³⁰⁶ See 1874 NZG 633-6. The effect of the leased blocks being listed in the *Gazette* meant that they became subject to s 3 of the Immigration and Public Works Act 1873.

²³⁰⁷ The 1873 proclamation was based on s 4 of the Native Lands Act 1867 and the 1874 proclamation on s 6 of the Native Lands Act 1873.

²³⁰⁸ See Macky, *Crown Purchasing in the CNI*, para 181-2. Macky notes that he had not found “any extant records preceding the suspension of the Act in August 1873 that explain the reason [for] this suspension”. However some years afterwards, Mitchell told a Royal Commisison that “this was done to discourage the interference of private individuals with Government negotiations” (Evidence of Henry Mitchell to Royal Commission of Inquiry into Claims of Messrs B J Chaytor and J C Chaytor in Otamarakau Block, 23 Feb 1881, MA-MLP 1, 1891/353, cited in Macky, *ibid*). Macky notes also that in August 1874 Davis and Mitchell reported to Ormond that one of the great obstacles to their success was “the formidable opposition we have had to encounter from private agents with their surveyors & c in various parts of the country”: David and Mitchell to Ormond, 23 August 1873, MA-MLP 1, 1873/159, in Rose Supporting Papers p 856, cited Macky, *ibid*.]

²³⁰⁹ Belgrave, *Dancing with the King*, 76.

²³¹⁰ My guess is by this is meant the Maungatautari block boundary.

²³¹¹ Macky, *Crown Purchasing in the CNI*, para 180.

²³¹² (1874) 16 NZPD 981 (26 August 1874). Macky is sceptical as to whether was the principal reason, however. He notes in particular that the 1873 and 1874 suspensions “extended over a much wider area than that which would have been required to ensure that the Native Land Court did not spark any feuds in the Te Arawa district” [Macky, *op.cit.*, para 189]. (The text of the two Proclamations can be found at 1873 NZG 475-6 and 1874 NZG 632.)

resulted in by far the greater part of the alienation of Raukawa's lands, except, that is, areas within the King Country, which became subject to a different kind of pre-emptive regime in 1884.

In 1880 William Searancke, former resident magistrate in the Waikato, began working for the Auckland syndicates who were buying up sections of Patetere. According to Sally Maclean Searancke "collected the signatures of those who were awarded a share of the block at the May 1880 sitting of the Native Land Court at Cambridge".²³¹³ There is some evidence which indicates that the Land Companies operating in the South Waikato competed with one another in making pre-investigation purchases, leading in turn to the Companies backing rival claimants in the Cambridge Court. The Court's investigation of the Waotu North block (November 1882; part-rehearing March 1883) resulted in a parliamentary petition and in the course of the inquiry by the House Chief Judge Macdonald was called to give evidence. A key issue that came up in the course of the discussions was pre-investigation purchasing. Macdonald was asked whether such negotiations "prove an inconvenience to the Court in the investigation of title", to which he replied:²³¹⁴

I think they are the cause of nineteen-twentieths of the difficulties. The Maoris amongst themselves have a pretty shrewd idea to whom the land belongs. There may be cases, such as in this district, where, by reason of mixed occupation, extraordinary difficulty may arise, and they may have doubt themselves – may not have accurate information as to the ownership. But generally they have a pretty shrewd idea of how things stand, and would not fight so bitterly as they did at Cambridge if they were not supported and urged on by purchasers.

The Land Court judges were no fools, and could not have been unaware of what was going on all around the Courtrooms during the sittings. Presumably they felt that there was not much they could do about it. In fact Auckland businessmen and their legal advisers were in Court at Cambridge, day after day, while the cases were going on.

15.8 Waotu: A brief portrait²³¹⁵

The principal Ngati Raukawa Waikato community in the 1870s and 1880s was at Waotu, about 45 miles south of Cambridge, now a prosperous if somewhat isolated country district between Tokoroa and the Waikato river, but at this time apparently a reasonably substantial place. (Having grown up at Tokoroa myself I have to admit, like most people in Tokoroa, that I had no idea that Waotu was ever a place of any importance.) Today there is not much to be seen at Waotu except a number of farmhouses and an attractive country school, originally established in 1886; Clara Haszard, a survivor of the 1886 Tarawera eruption, was the first teacher.²³¹⁶ The school was originally a Native School and Arekatera Te Wera (Rogowhitiao Te Puni) played a prominent role in its establishment. Also to be seen is a monument to Arekatera on top of a hill known as Heteri, and the former Te Raparahi hotel, now converted into a homestead. These days the Waotu Valley is part of the South Waikato dairy region and the scenery is typical of the area. Pikitū marae is close by, and Maungatautari is also nearby on the other side of the Waikato river, now flooded as Lake Arapuni.

²³¹³ Sally Maclean, "Searancke, William Nicholas", *DNZB* vol 2, 446-7, at 447.

²³¹⁴ 1883 AJHR I-2A, Minutes of Evidence, 17-18 and 25 July 1883, pp 4-13.

²³¹⁵ On Waotu see especially Ruthana Begbie and others, *Te Waotu School and District Centennial Magazine, 1886-1986*, Putaruru, 1986 [Begbie et.al., *Te Waotu School*].

²³¹⁶ I have learned these details from a visit to Waotu in November 2009; see generally Begbie et.al, *Te Waotu School*].

In the early 1870s Waotu (or Te Waotu) was known as the settlement of the prominent Raukawa chief Hori Ngawhare²³¹⁷ and it seems to have developed into Raukawa's best-known and most important village. Waotu is close to the famous ancient fortress of Piraunui, indicating that this area had always been an important place of settlement. Although today Waotu is somewhat off the beaten track, as it were, this was not the case in the 1880s, when the main road from Hamilton to Taupo went from Cambridge and then to Waotu (it was about a day's journey by coach from Cambridge to Waotu), where tourists could stay overnight in a hotel and then travel on to Taupo. There seem to have been a number of settlements clustered together: a map drawn up around 1880 shows a number of hapu boundaries intersecting around Waotu: Ngati Huia, Ngati Kapu, Ngati Huri, Ngati Maihi, Ngati Hineone, and Ngati Mutu. The area was dense with urupa, tracks, homes, marae, named areas of bush, and roads going in all directions.²³¹⁸ In the general election in 1887 25 people voted at Waotu (compared with 22 at Taupiri, 25 at Lichfield, and 47 at Tamahere²³¹⁹). Waotu is repeatedly mentioned in the newspapers as Raukawa's main settlement as a matter of course: ("Te Wheoro left here for the Te Waotu meeting. A row is expected there."²³²⁰) Waotu was a centre of the timber industry and there were a number of sawmills in the area. In 1886 for example the Waikato Timber Company had several sawmills at Waotu which cut building and bridge timber, posts and so forth.²³²¹ Significantly some of the inter-hapu disputation in the Native Land Court at Cambridge was concerned with the location of areas of bush within particular blocks or subdivisions of blocks around Waotu, which probably indicates that valuable timber-cutting rights were at stake, with owners leasing lands to sawmillers.²³²² In the 1880s the two leading citizens seem to have been Arekatera Te Wera and Harry Symonds (Hare Teimana), both of whom were hotel-keepers and to some extent political rivals. The hotels seem to have been very substantial and high-quality establishments catering to the stagecoach traffic travelling to Taupo and Rotorua.

Tawhiao stayed at Waotu when he visited Raukawa in 1883. The *Waikato Times* reported that "a large number of Natives, principally Ngatiraukawas, have been gathering at Waotu for the past few days in order to be present at Tawhiao's meeting there on Monday next, the day appointed by that personage for the gathering".²³²³ Maori present in the Land Court "left there immediately after the adjournment of the Court...and took a large quantity of *kai* and *waipiro* with them in order to give the king and his party a suitable reception".²³²⁴ As noted, the village had a number of hotels (there are none there today). Harry Symonds was a prominent figure, "a well-known half-caste and proprietor of an hotel at [Waotu]", who was prosecuted in 1883 ("Another case at Waotu", according to the *Waikato Times*²³²⁵) for selling liquor without a licence. Harry Symonds was also engaged in numerous cases in the Native Land Court at Cambridge. His was not the only hotel at Waotu: Arekatera Te Wera was also a hotelier and a "Mr Isaacs" ran another one, and he too seemed to have fallen foul of the liquor laws.²³²⁶ Waotu was connected by road, of a sort, to Lichfield, but it was apparently unpredictable: in 1884 a Mr Heavy, proprietor of the hotel at Lichfield, was drowned while driving his horse and buggy across the

²³¹⁷ *Daily Southern Cross*, Vol XXVII, Issue 4341, 14 July 1871, p 2.

²³¹⁸ See map in *Te Waotu School and District Centennial Magazine*, 1986, 26-27.

²³¹⁹ *Te Aroha News*, Vol V, Issue 222, 1 October 1887, p 4.

²³²⁰ *Daily Southern Cross*, Vol XXIX, Issue 4992, 23 August 1873, p 3.

²³²¹ Advertisement, *Waikato Times*, Vol XXVII, Issue 2194, 31 July 1886, p 3.

²³²² As in the Waotu No 1 case: see *Waikato Times*, Vol XIX, Issue 1625, 2 Dec 1882, p 2. There were two main parties in Court, one group represented by Walter Buller and the other by John Sheehan (both nationally prominent barristers). The main point at issue was allocation of ownership of an area of bush.

²³²³ *Waikato Times*, Vol XX, Issue 1678, 7 April 1883, p 2.

²³²⁴ Ibid.

²³²⁵ *Waikato Times*, Vol XX, Issue 1657, 17 Feb 1883, p 2.

²³²⁶ *Wanganui Herald*, Vol XVII, Issue 5079, 5 June 1883, p 2.

creek between Waotu and Lichfield: “the buggy and horses were found stuck in the creek” but “no traces of the driver have been discovered”.²³²⁷ Waotu also was fairly often mentioned in the newspapers for disputes about surveys, especially over the contentious Waotu South block, typically under headings such as “Native Difficulty at Waotu”, or something similar.²³²⁸

Discerning key social trends from the diverting material to be found in the newspapers is not easy. The fact that there were sawmills at Waotu indicates that by the 1880s Raukawa people were already moving into the paid workforce: it seems hard to imagine that with a number of sawmills clustered around the main Raukawa settlement many Raukawa men would not take the opportunity to work in the mills. The fact that Waotu is mentioned so often in the newspapers and other settlements so rarely could also point to a concentration of Raukawa’s declining population compared to the more dispersed patterns of previous decades. In June 1886, however, the completion of the rail link between Morrinsville to Lichfield, some miles to the east of Waotu, saw the beginning of the decline of the community, leading to declining patronage at the Waotu hotels and eventually to their closure. The post and telegraph office at Waotu, established in February 1886, was closed around 1910.²³²⁹

15.9 Investigation of Ngati Kauwhata Claims to Maungatautari (1881)

A: Preliminaries

The first major challenge to the 1868 Maungatautari decisions came from Ngati Kauwhata. Ngati Kauwhata had repeatedly petitioned parliament over Maungatautari, arguing that they had not been able to attend the 1868 hearings as they had had to attend sittings of the Land Court in their own area relating to the Rangitikei block. In July 1877 Ngati Kauwhata once again petitioned parliament regarding the blocks that had been investigated in 1868, that is Pukekura, Puahoe, the area that had become Maungatautari 1 and 2 (following partition in 1881) and a block known as Ngamoko No 2 (I do not know how this particular block originated). The essence of the Ngati Kauwhata claim was that the Minister of Native Affairs, J C Richmond, had told them to attend a sitting of the Native Land Court at Bulls which was scheduled at the same time as the Pukekura, Puahue etc. cases at Cambridge. Specifically, in August 1868 the petitioners said that they had received copies of two *Kahitis*, one of which advised that the Court would be sitting at Cambridge on November 3rd 1868 and the other that it would be sitting at Bulls on November 4th.²³³⁰ The petitioners were involved in cases at both sittings. According to the petition they then wrote to the Native Minister asking him “Are we to remain to attend the Court at Rangitikei, or are we to go to the Court at Cambridge?”²³³¹ Richmond told them to attend the Rangitikei hearings and assured them that the Cambridge hearings would be adjourned. Then, “a long time afterwards”, “they heard that no adjournment of the Cambridge Court had taken place, and that the land to which they had claims had gone to other people”. On applying for a rehearing they were then told that the time limit for a rehearing had expired and that the matter had to be placed before

²³²⁷ *Grey River Argus*, Vol XXXI, Issue 4880, 16 May 1884, p 4.

²³²⁸ “The Native Difficulty at Waotu: Obstructing the Surveyors”, *Waikato Times*, Vol XXII, Issue 1802, 24 January 1884, p 2.

²³²⁹ See *Te Waotu School and District Centennial Magazine*, 1986, 20:

In June 1886 the railway line was extended from Morrinsville to Lichfield opening up the development of Tirau (called Oxford at that time), Putaruru and Lichfield. Prior to the 1880s Taupo, being on the natural route way between Auckland and Wellington, constituted the centre of the North Island. Two old coach roads ran to this town – one from Rotorua and the other from Cambridge. These roads provided the chief means of communication for the Te Waotu district until the completion of the railway line to Lichfield. The once extensively used coach trail though the area became deserted.

²³³⁰ See 1881 AJHR G-2A. 1.

²³³¹ *Ibid*.

parliament. Hence the petition. They had an able and indefatigable advocate, Alexander McDonald, who – as it happens – was Ngati Raukawa at Otaki’s legal adviser as well. This seems to have been one of a sequence of petitions, but in 1877 the Native Affairs Committee reported favourably on it.

The Maori Affairs Committee reported favourably in August of that year. The Committee accepted the argument of the petitioners that they did not attend the 1868 Cambridge sittings because the government had asked them to be present at the Rangitikei hearings.²³³²

That it is clear that the petitioners did not attend the Court in Cambridge, in consequence of a request from the Government that they should remain at the Rangitikei Court, a distinct assurance that the claims before the Cambridge Court in which they were concerned being adjourned being made by the Government at the same time. That the Committee are of opinion that the petition discloses a real grievance, arising out of circumstances which do not attach any blame to petitioners. That the Committee is not in a position to say whether or not the petitioners have any real claim to the lands which were dealt with, as they allege, to their prejudice at the Court at Cambridge. That it appears that most of the land claimed by the petitioners has been alienated to Europeans by the persons in whose favour the judgment of the Cambridge Court was given, and therefore it will be impossible to reinstate them in possession; but the committee would recommend such legislation this session as will enable the Native Land Court, or other competent tribunal, to determine whether the petitioners did own any portions of the lands referred to, and if so, to what extent, and that it should be left to the Government to determine in which way any claims which they may be found to have had shall be satisfied.

Following a sympathetic report from the Committee in 1877 enabling legislation was passed allowing the Native Land Court to conduct a special inquiry into the Ngati Kauwhata claims.

The Ngati Kauwhata inquiry, heard at Cambridge and at Kihikihi, related to five blocks of land in the Maungatautari area, Puhue, Pukekura, Ngamoko No 1 (wherever that might be) and Maungatautari 1 and 2, the latter two being partitioned out of the original Maungatautari block in 1871. (It did not include, then, the *remaining* “Maungatautari” block to the south, which was still not investigated at this time: this did not happen until 1884.) A group of about 40 Ngati Kauwhata people, including Tapa Te Whata, travelled to the Waikato from the Manawatu for the hearing along with their adviser Alexander Macdonald, and on 26 January there was a large meeting at Maungatautari which appears to have been principally with Ngati Kauwhata and Ngati Haua. Those present from Waikato and Ngati Haua included Te Raihi, Hakiriwhi, Te Oriori, and Te Ngakau. Te Raihi and Hakiriwhi were chiefs of Ngati Haua. Te Oriori, I assume, must have been the son of the famous Ngati Koroki chief Te Oriori who died at Maungatautari in 1867, and Te Ngakau was Tawhiao’s private secretary at this time. The newspaper report does not indicate that there was a Ngati Raukawa presence at the meeting, but this cannot necessarily be ruled out. The *New Zealand Herald’s* correspondent was present at the discussions, and on 1 February the *Herald* printed a detailed (and somewhat sarcastic) account of what was said:²³³³

A meeting of natives took place on Wednesday last, 26th instant, out at Maungatautari, to meet the Ngatikauata [sic] tribe, from Manawatu. The meeting was, as I understand, preliminary to the sitting of the Commissioners on the 1st February to inquire into certain claims made by the above-mentioned tribe on the land lying between Cambridge and Alexandra, extending northwards to Hamilton and southwards over the Patetere lands, a truly modest claim for natives of a few hundreds of thousands of acres; their first claim to be brought before the Commissioners being on the Pukekura block, of about 12,000 acres. The meeting was attended by Te Raihi, Hakiriwhi, Tioriori, Te Ngakau, of the Ngatihaua tribe, also by

²³³² 1881 AJHR G-2A,

²³³³ “Native Meeting at Maungatautari”, *New Zealand Herald*, (Vol XVIII, Issue 5993, 1 Feb 1881) p 6.

several chiefs from Waipa River. Of the Ngatikauata tribe about 40 were present, shepherded by Mr A. Macdonald as their agent and advocate. This gentleman opened the proceedings by informing the natives of the object of the meeting, namely, to explain to them that “his tribe” had come to make their claim good to certain lands formerly held by them (about 40 years previously) by having the lands claimed placed in the same position as they were previously to 1868, when they were adjudicated upon by the Native Land Court, *i.e.* to have the adjudication then made cancelled. The leading men of “his tribe” followed much in the same strain, *viz.*, that the Crown grants or certificates of titles on all the lands claimed as formerly owned by them would have to be destroyed, &c. It is needless to say that the Ngatihauas and other natives present smiled at this idea, and in their reply maintained their right to dispose of the lands in question, and showed no disposition to give way to or assist them, but that they, the claimants, had full liberty to do the best they could do for themselves, and that they would reserve anything they had to say when before the Commissioners.

The subject then dropped, and other interesting matters in reference to Ngamako (Tole’s land), the Horahora block, and Aniwhaniwa bridge were discussed by the natives assembled. These settled an interesting discussion on various well-roasted joints of beef, pork, and potatoes took place, which closed the day’s amusement.

On the following day the subject was again brought forward by Mr A. Macdonald and tribe, to the surprise of the resident natives, when the Ngatikauata claim was more strongly urged, but was met by the natives at once, who admitted having sold the lands claimed, and also by Te Ngakau, who made a speech of upwards of an hour in which he gave a complete history of the Ngatikuata [sic] tribe and their migration southwards, the cause of the migration and the manner in which they unreservedly made over their lands to certain natives of the Ngatihaua tribe. Te Ngakau’s speech was a complete master-speech of native eloquence, and was listened to most attentively by the whole of the natives present, and completely put a stop to any further discussion.

Nevertheless, Ngati Kauwhata, undaunted, pressed on with their case, which commenced a few days later.

B. Commencement of the inquiry

The Commission opened its hearings at Cambridge on 1 February 1881 at the Magistrate’s Court building, but so many people were present that the hearing had to be adjourned to the Cambridge Public Hall nearby. Ngati Kauwhata were faced with the problem that the judges of the Native Land Court who dealt with Waikato cases on the whole disliked claims to Waikato blocks being advanced by groups that had migrated south before 1840, and in fact Judge Monro had in 1879 been publicly critical of southern groups attempting to do this.²³³⁴ Such claims were also evidently unpopular with local Maori and Pakeha. The Commissioners were F M P Brookfield, a judge of the Native Land Court, and Henry Tacy Kemp. (As this was not a Native Land Court hearing, there was no Maori assessor.) Alexander McDonald, Raukawa’s tireless and energetic representative, appeared for Ngati Kauwhata. He was opposed by Major William Mair, who appeared for the Crown (the Ngati Kauwhata claim was opposed by the Crown, but for what reason is unclear.²³³⁵). There were also the “opposing natives”, presumably the original grantees and their descendants. As in 1868, local Maori people had difficulty in grasping the complicated differences between the various judicial bodies that heard cases dealing with their lands, and in fact it seems that some local people thought that the purpose of the Commission was to look into

²³³⁴ See *Wanganui Herald* (Vol XII, Issue 9431, 28 May 1879) at 2: “Judge Monro’s strictures on the conduct of the Wellington natives claiming lands which their forefathers had deserted years ago met with great approval from both natives and Europeans”.

²³³⁵ Like Peter McBurney, I am puzzled as to why the Crown was there: McBurney, *Ngāti Kauwhata and Ngāti Wehi Wehi in Te Rohe Potae*, 2013, 427-8.

the grievance of the Waikato confiscation in some way. Many of those who spoke referred to the Waikato confiscated lands and their hopes that the Court would be able to grant some redress. Hoeta, for example, stood to “salute the Court, the Waikatos, and the Ngatiraukawas” and said:²³³⁶

We have been looking for this day all these years. We have to-day seen each other's faces. I will reveal our reasons for coming here. 1. For the confiscated lands. 2. For the lands adjudicated upon in my absence.

Tapa Te Whata, who was the lead claimant for Ngati Kauwhata, said to the Court that “[t]hough you do not salute me, I salute you”. He continued that “the first thought will be of confiscated land, and the second of the lands wrongfully taken away by adjudication during my absence”.²³³⁷ Tapa had fought on the Kingitanga side during the New Zealand wars, as presumably all parties present in Court would have known full well.²³³⁸ Kereama Paoe also mentioned the confiscated land:

I salute the Court – the substance of the request to the Government, Give a careful consideration to our claims to land given in our absence – some of us were absent, we lived at great distance. This is the evidence of our claims being heard to the lands being given by the Court in our absence. In 1863 I asked for a Court to investigate our claims to the confiscated lands.

Others in court who identified themselves as belonging to “Waikato” also raised the matter of the confiscated lands, evidently under the impression that the Commission was able to deal with the confiscation in some way – whereas in fact it could deal only with a number of specific Native Land Court blocks.²³³⁹ This shows again how difficult it was for many Maori people to fathom the differences between special inquiries, ordinary Land Court cases, Compensation Court sittings and so on. It also shows that Ngati Kauwhata had a broad agenda of seeking redress for all of their lands in the Waikato, including those lost by confiscation – although in fact the Commission had jurisdiction only over the Maungatautari blocks already investigated by the Native Land Court.

There was fairly wide (although not quite unanimous) sympathy for the Ngati Kauwhata position and for reopening the titles. Hakiriwhi, present at the earlier meeting with Ngati Kauwhata on 26 January (and who was in fact the main Ngati Haua claimant in 1868), supported the Ngati Kauwhata claim. He welcomed Tapa Te Whata, the main Ngati Kauwhata claimant, and indeed agreed with him that Ngati Kauwhata were entitled to have their case heard.²³⁴⁰ Other people from Waikato were also supportive – at least to the extent of agreeing that Ngati Kauwhata were entitled to make their case.²³⁴¹ Te Raihi was aware that Ngati Kauwhata had two separate issues: their inability to attend the Maungatautari investigations, and the Waikato confiscation itself:²³⁴²

Ngatikauwhata have two claims – the confiscation by the Queen and the decisions of the Court in 1868. The Court sat at Ngaruawahia to hear confiscated lands in 1867 (about). Some of Ngatiraukawa remained here. I include myself with them.

²³³⁶ [1881] AJHR G-2A, 6.

²³³⁷ Ibid.

²³³⁸ Tapa Te Whata is known to have surrendered to the government in the Manawatu on 13 July 1864: see “Return of Arms Surrendered by Natives” [1864] AJHR E-6 at 14.

²³³⁹ Rihia Te Kauae “of Waikato” [1881] AJHR G-2A, at 7. He said that “McDonald and his people” had no right to speak about Pukekura and the other blocks; but “[w]hat I say is, Commence to adjudicate on the confiscated land in the Waikato”.

²³⁴⁰ Statement by Hakiriwhi, *ibid.*, 7.

²³⁴¹ See *ibid.*, statements by Hori Karaka (“of Waikato and Ngatikauwhata”), Tuwhenua (Waikato and Ngati Haua), Heni Mohi (Waikato), Harete Tamihana (Ngati Haua) and Te Raihi.

²³⁴² *Ibid.*, 7.

Major Te Wheoro, speaking before the Native Affairs Committee after the 1881 Commission had reported, had this to say (indicating a slightly different, but not unsympathetic, perspective):

Now, I have heard lately that the Ngatihaua admit the right of Ngatiraukawa²³⁴³ through them. I do not know on what grounds they admit their claims, but I have heard the Ngatihaua express themselves that they admit these claims. The grounds of the Ngatikauwhata's claim I cannot tell, because that land was left by them under very exceptional circumstances. Their real claims I cannot tell, but I think their application is based on two grounds, first that Te Waharoa in his time invited them to come back, and secondly that Wi Tamihana also asked them to come back. At one time I was most eager to oppose the claim of Ngatikauwhata, but in consequence of the majority the Waikato people admitting their claim, I allowed my feeling to subside. Why the Waikato people admit their claim is because of the word of Te Wherowhero and Te Waharoa.

The Ngati Kauwhata investigations attracted some interest in the press. On 5 February 1881 the *Taranaki Herald* reported:²³⁴⁴

The Commission re Ngatiwata [sic] lands is sitting at Cambridge this week. The natives from Kapito, near the Wanganui, claim a share in the lands sold to Walker and others, alleging they were not consulted. Alick McDonald, Rangitikei, appears for the claimants.

The Commission did not sit only at Cambridge. The Commissioners travelled around the Waikato collecting evidence as well. In February 1881 the *Waikato Times* reported the departure of the Commissioners for Te Awamutu to examine witnesses:²³⁴⁵

The Ngatikauwhata Commissioners left this morning for Te Awamutu. There they propose examining Rewi and other witnesses. McDonald and his natives accompanied them.

C. Evidence at the Inquiry

This was a complex case, as the attached table of evidence makes clear. The case was structured around the three separate blocks originally investigated in 1868.

Table of Evidence: Ngati Kauwhata Inquiry, 1881 [Pukekura case]

Name of Witness and reference	Party (Appellants or Crown)	Date	Affiliation	Summary of Evidence
Macdonald opens appellants' case [1881] AJHR G2A, 7		2 Feb		
Tapa Te Whata [1881] AJHR G2A, 8-9	Appellants	2 Feb 1881	Ngati Kauwhata	Born at Pukekura. Direct descendant of Kauwhata. Ngati Kauwhata are a separate people. Ngati Kauwhata also had lands within the Waikato confiscated block, including interests at Rangiaohia. Ngati Kauwhata never abandoned their lands in the Waikato.

²³⁴³ As far as I can make out the text, it looks as if “Ngatikauwhata” has been crossed out here, and replaced by “Ngatiraukawa”, presumably contemporaneously. Te Wheoro then goes on to talk specifically about Ngati Kauwhata. It is possible that Te Wheoro was making a distinction here, and insisted on the correction, but it is difficult to be certain. Or he may have simply conflated Ngati Raukawa and Ngati Kauwhata.

²³⁴⁴ *Taranaki Herald*, Vol XXVIX, Issue 3651, 8 February 1881, p 3.

²³⁴⁵ *Waikato Times*, Vol XVI, Issue 1348, 19 Feb 1881, p 2.

				Waikato invited Ngati Kauwhata to return. Waikato do not oppose the Ngati Kauwhata claim. In cxx: Ngati Kauwhata were a “great tribe”. Questioned by Court on invitations to return etc.
Reweti Te Kohu [1881] AJHR G2A, 9	Appellants	2 Feb 1881	Ngati Kauwhata	Descended from Kauwhata via Wehiwehi. His father living at Kapiti told him that Kauwhata have lands in Maungatautari region.
Metapare Tapa [1881] AJHR G2A, 9	Appellants	2 Feb 1881	Ngati Kauwhata	Son of Te Wharepakaru, chief of Ngati Kauwhata. His father went on an early journey to the Kapiti region, leaving his lands at Pukekura in trust. Parakaia Te Pouepa did not represent Ngati Kauwhata at the original investigation of title hearings in 1868.
Takana Te Kawa [1881] AJHR G2A, 9-10	Appellants	2 Feb	Ngati Kauwhata	Born at Rangiaohia and travelled to Kapiti region as a young child. Emphasises the invitations made by Waikato inviting Ngati Kauwhata to return. His parents returned to the Waikato and died at Rangiaohia. Parakaia did not represent Ngati Kauwhata at the investigation of title in 1868.
Kereama Paoe [1881] AJHR G2A, 10	Appellants	2 Feb	Ngati Kauwhata	Born at Te Awamatu. His father went to the Kapiti region after Taumatawiwi (1830). Ngati Kauwhata always intended to return.
Te Raihi [1881] AJHR G2A, 10	Appellants	2 Feb	Ngati Haua, but also a descendant of Kauwhata.	A close relative of Wiremu Tamihana. Wiremu Tamihana wished Ngati Kauwhata to return. Mentions a vessel bought to bring the bones of Ngati Kauwhata back from “Kapiti” to the Waikato. Ngati Kauwhata and Ngati were allies in the conflict with Ngati Maru. Questioned by Court on previous statements. Seems to suggest that resident Ngati Kauwhata were included in the Maungatautari Crown grant.
Rawiri Te Hutukawa [1881] AJHR G2A, 10	Appellants	3 Feb 1881	Ngati Kauwhata	Went to “Kapiti” at the time of the battle of Kuititanga (1839). Some of Ngati Kauwhata still remained. Pukekura was never taken by Ngati Maru; those of Ngati Kauwhata who did not migrate south assisted Ngati Haua against Ngati Maru.
Te Muera Te Amorangi [1881] AJHR G2A, 11	Appellants	3 Feb 1881	Ngati Kauwhata	Born in the Waikato; went to “Kapiti” in 1866. Ngati Kauwhata supported Ngati Haua at Taumatawiwi etc.; Ngati Kauwhata who remained behind in the Waikato lived with and intermarried with Ngati Haua.
Hakiriwhi [1881] AJHR G2A, 11	Appellants	3 Feb 1881	Ngati Haua	Of mixed Ngati Haua and Ngati Kauwhata descent. Pukekura belongs to Ngati Kauwhata. Wiremu Tamihana was himself partly Ngati Kauwhata. Closely interrogated by Mair and the Court over inconsistent statements made in 1868 at the investigation of title. Endeavours to explain complexities of Ngati Kauwhata and Ngati Haua descent lines.
Harete Tamihana [1881] AJHR G2A, 11	Appellants	3 Feb 1881	Ngati Haua and Ngati Kauwhata	Eldest daughter of Wiremu Tamihana. Said both her parents were of Ngati Kauwhata descent. She said that she had given evidence in 1868, and that if Tapa Te Whata “and his

				friends” had been present in 1868 they would have received a share in the proceeds of the land. Questioned by the Court on inconsistencies between her 1868 and 1881 testimony.
Mereta Ngarangi [1881] AJHR G2A, 12	Appellants	3 Feb 1881	“of Ngati Kauwhata, from Hinepare”.	Was born at Pukekura; never went to Kapiti; has always lived at Pukekura; her mother told her that Pukekura belonged to Ngati Kauwhata and Tapa’s people have a proper right to Pukekura.
Hori Puao [1881] AJHR G2A, 12	Appellants	3 Feb 1881	Ngati Kauwhata/Hinepare	Was born in the Waikato. Was present at the 1868 Court. If Tapa and his people had been at Court they would have been admitted. He did not mention Ngati Kauwhata because “Waikato interest was too strong”. Parakaia did not represent Ngati Kauwhata. Cxxd by Crown and questioned by the Court on inconsistencies between 1868 and 1881 evidence.
Tapa Te Whata (recalled) [1881] AJHR G2A, 12	Appellants	3 Feb 1881	Ngati Kauwhata	[recalled]. Emphasises that Parakaia Te Pouepa had no authority to speak for Ngati Kauwhata at the 1868 investigations.
Te Raihi (recalled) [1881] AJHR G2A, 12	Appellants	3 Feb 1881	Ngati Haua	[recalled] Was not a grantee in Pukekura. Has sold his interests in Ngamoko and Maungatauri
Hakiriwhi (on former oath) [1881] AJHR G2A, 12	Appellants	3 Feb 1881	Ngati Haua	Has sold all his shares.
Alexander McDonald [1881] AJHR G2A, 12	Appellants	3 Feb 1881		McDonald is the conductor of the Ngati Kauwhata case, but is here giving evidence. He had been assured personally by Richmond that the Maungatautari cases would be adjourned. Parakaia Te Pouepa had no authority to represent Ngati Kauwhata at the 1868 investigations.
Appellants’ case closed for Pukekura				
Te Ngakau (“as an expert”) [1881] AJHR G2A, 12	Expert witness	3 Feb 1881		Discusses Potatau’s invitation to return etc.
Mair opens Crown case for Pukekura				
Rihia Te Kauae [1881] AJHR G2A, 13-14	Crown	4 Feb 1881	Ngati Haua	There was no separate allocation of land made to Ngati Kauwhata by Te Waharoa after the battle of Taumatawiwi. Ngati Kauwhata were not involved at Taumatawiwi. Pukekura was allocated by Ngati Haua to Te Wiwini.
Reone Te Kui [1881] AJHR G2A, 14	Crown	2 Feb 1881	Ngati Haua	If anything, seems to support the Claimant case. Says that “Ngatikauwhata were a distinct tribe from Ngatiraukawa, and equal with them.”
Pirihi Tomonui	Crown	2 Feb 1881	Ngati Haua	Confusing evidence, but also supportive of Ngati Kauwhata in some respects. States that

[1881] AJHR G2A, 14-15				not all Ngati Kauwhata migrated south. Also agrees that Wiremua Tamihana was of Ngati Kauwhata descent. Mentions the ship <i>Kauwhata</i> .
Ihaia Te Oriori [1881] AJHR G2A, 15	Crown	4 Feb 1881	Ngati Koroki and Ngati Haua, "but principally Ngati Haua"	Wiwini and Ngati Kauwhata fled from Pukekura "through fear occasioned by the battle of Kaipaka". They went to Maungakawa. Waikato was defeated by Ngati Maru at Haowhenua. Ngati Maru were defeated at Taumatawiwi. Ngati Kauwhata returned after this battle. Their claim is made justly.
Piripi Te Whanatangi [1881] AJHR G2A, 15	Crown	7 Feb 1881	Ngati Koroki, Ngati Haua	Claims parts of Pukekura by conquest. Has occupied the land since defeating Ngati Maru. Te Wiwini and others of Ngati Kauwhata have also resided on Pukekura down to the present. Ngati Kauwhata and Ngati Raukawa were "generally considered one people". Kauwhata could not have returned "without the invitation of Waharoa and Tamihana, because it was through my side and our bravery that the land was retaken".
Major Wilson [1881] AJHR G2A, 16	Crown	7 Feb 1881		Has lived in the region since around 1864. Has leased land in the Maungatautari area. Describes earlier hearings 1867-68. No true Ngati Kauwhata were left behind when they went to Kapiti. It was the general impression in 1868 that Parakaia represented all the southern tribes. Has never heard of Ngati Kauwhata except as a hapu of Ngati Raukawa.
W N Searancke [1881] AJHR G2A, 8-9	Crown	7 Feb 1881		Formerly a Land Purchase Commissioner. Knew Parakaia very well from the time of the Te Awahou purchase. Describes the distribution of the Te Awahou purchase money. Parakaia came to the 1868 hearing with about 30 other people. He said he represented all of the Ngati Raukawa tribe. Agrees with the views about Maori custom given by Major Wilson. Believes that "the principal parties in a battle would take all the land conquered, notwithstanding the former occupation of that land by some of the allies".
Hori Wirihana [1881] AJHR G2A, 17-18	Crown	8 Feb 1881	Ngati Kahukura and Ngati Haua	Claims Pukekura through ancestry and conquest. Describes in detail the fighting between Marutuahu and Ngati Haua. Te Waharoa sought and obtained the assistance of Ngai Te Rangi of Tauranga against Marutuahu and Taumatawiwi was fought, "Marutuahu were defeated and Ngatihaua victory was complete." After the battle the land came back to its former owners. His wife (Heni) is Ngati Kauwhata. She was opposed to the survey of Pukekura. Parakaia Te Pouepa appeared for Ngati Raukawa. He did not say he appeared for Ngati Kauwhata.

McDonald opened the case, beginning with Pukekura, and called Tapa Te Whata, chief of Ngati Kauwhata as his first witness. Tapa said that he was of Ngati Kauwhata, was a descendant of Kauwhata in the male line, and that he was born at Pukekura.²³⁴⁶

I heard that I was born at Pukekura. I was very small, but I remember my father going to the South. Te Whata is dead. I am his only surviving child. I heard my father say that Pukekura belongs to Ngati Kauwhata... We have other places here, but Pukekura is our principal place.

He emphasised that Ngati Kauwhata were a separate people from Ngati Raukawa.²³⁴⁷

Waikato was a general name applied to all the peoples living in the district drained by the river. I have heard of Ngatiraukawa, Ngatimaniapoto, of Ngatihaua, of Ngatiwhakaterere. I have never heard that Ngatikauwhata is a section or hapu of Ngatiraukawa. My father said Ngatikauwhata had possessions here distinct from Ngatiraukawa.

He also emphasised that Ngati Kauwhata held lands within the Waikato confiscated block.²³⁴⁸

My father explained to me that the lands that the lands marked on the plan I sent to Government were Ngatikauwhata. Pukekura is within the land marked; *so is land which has been confiscated* [emphasis added].

Ngati Kauwhata never abandoned their lands in the Waikato region.²³⁴⁹

When my father went away he did not give up his possessions in Waikato. He went backward and forward.

A further point that Tapa thought important to mention in his opening statement were the invitations made by Waikato inviting Ngati Kauwhata to return.²³⁵⁰

I heard – we all heard – the invitation to my father from the chiefs of Waikato to return. Te Wherowhero was one of those chiefs. Potatau went to Kapiti. I cannot say the year – before the death of my father. He died in 1861. Te Wherowhero, Kiwitahi, Porokuru and Haunui – these people went to Kapiti. I did not see Tamihana Tarapipipi at Wellington. I heard he went there. I heard of his words to Kauwhata. They were an invitation to Kauwhata to return to Waikato. Since then I have seen the Waikato chiefs. I saw them once at Te Kuiti in 1872; that was the second time. I don't know the year Tamihana went to Wellington. Had we seen Tamihana in Wellington he would have marshalled us back here, instead of going as he did by sea.

Finally Tapa stressed that his claim was supported by Waikato.²³⁵¹

I have never heard Waikato chiefs express any desire to disconnect us from the land here. It is on their consent that we found our claim. In 1872 the Waikato chiefs gave me the mat I now wear in token of my ownership and right. Tawhiao and Manga gave me this mat. All the chiefs were at Te Kuiti when they acknowledged my claim to Rangiaohia. I have never heard any opposition to our claim.

2346 Ibid, 8.
2347 Ibid.
2348 Ibid.
2349 Ibid.
2350 Ibid.
2351 Ibid.

Mair, representing the Crown, cross-examined Tapa Te Whata, but failed to obtain any damaging admissions. Tapa told Mair that Ngati Kauwhata was once a “great tribe”:²³⁵²

Ngatikauwhata were a distinct people from ancient time. They were a great tribe. They counted 800 or 1,000 fighting men in ancient times. These are the lands of Ngatikauwhata which I have marked on the map. Ngatihaua had their land at Maungakawa. Ngatihaua know where their lands are. Ngatiapakura know where their possessions are. Ngatikoroki can point out their own lands.

Tapa Te Whata was also questioned by the Court. The Court seems to have been interested in two points: the invitations to return, and the extent to which Ngati Kauwhata moved back and forth from the Waikato to the Manawatu.²³⁵³

Tamihana asked us to return because he knew (1.) This land belonged to us; (2.) Because of our relationships. We never returned to cultivate food – our relatives did that for us. We have planted food at Pukekura and Rangiaohia – i.e. some of us who went to Kapiti – I did not. I can’t name the year. It was before Wi Tamihana went to Wellington. We frequently came to plant food here and returned again. On the last occasion were were overtaken by the Waikato war.

Reweti Kohu spoke next, making a brief statement in support, and was followed by Metapare Tapa, who spoke principally about Ngati Kauwhata’s journey to the south. Metapare said he was the son of Te Wharepakaru, who was (he said) Ngati Kauwhata’s leading chief. He spoke of a journey to the Kapiti region made by about twenty Ngati Kauwhata people, including Te Wharepakaru, the rest of the people remaining behind.²³⁵⁴ He said that his father left his lands at Maungatautari to a chief named of Ngati Kauwhata named Te Wiwini (also known as Murupara) in trust. Recalled by the Court he said that Ngati Haua and Ngati Kauwhata had never fought each other, and that Ngati Kauwhata fought alongside Ngati Haua at the battle of Taumatawiwi “against a common enemy”, i.e. Maratuahu.²³⁵⁵ He also emphasised that when Parakaia Te Pouepa of Ngati Raukawa brought the claims to the Maungatautari, Pukekura and Puahue blocks he did not represent Ngati Kauwhata, and that Ngati Kauwhata had thought that the hearing would be adjourned: “He had no authority from Ngatikauwhata.” Others of Ngati Kauwhata were to make the same point.

Takana Te Kawa said that he was born at Rangiaohia and that he travelled to the Kapiti region (the term Kapiti seems to be used generally here to mean the wider region, not Kapiti Island) with his father, Te Kawa. He said that the term “Ngati Kauwhata” was mainly used in the Kapiti region, while in the Waikato the people were referred to by the names of Kauwhata’s children (Ngati Wehiwehi, Ngati Hinepare). Like Reweti Kohu, he said that he had never heard of any fighting between Ngati Haua and Ngati Kauwhata, nor had he heard “the Waikato chiefs forbid the return of Ngati Kauwhata, but, on the contrary, they have called on us to return”.²³⁵⁶ He said that when when Porokuru and Haunui went to the Kapiti region to invite Ngati Kauwhata to return “my parents and friends returned with them, and lived and died at Rangiaohia, but that he returned “to Kapiti”. Like Reweti Kohu he insisted

²³⁵² Ibid, 8-9.

²³⁵³ Ibid,

²³⁵⁴ Ibid, 9: “My father told me of his going to Kapiti. He went with all the other chiefs of Ngatikauwhata. They left here and went to Taupo; about twenty of Ngatikauwhata went on to Kapiti, leaving the rest behind. Wharepakaru was one of the twenty. There was no Government in New Zealand then. I am speaking of the first expedition (about 1828-29).”

²³⁵⁵ Ibid (in response to questions from the Court): “The fights you allude to were long previous to this time [i.e. that the journey to Kapiti was some time *after* the fighting between Ngati Kauwhata and Ngati Haua]. I never heard of the Ngatihaua and Ngatikauwhata fighting against each other. Taumatawiwi was with Marutuahu. Ngatikauwhata took a part then with Ngatihaua; they were one – fighting against a common enemy.”

²³⁵⁶ [1881] AJHR G-2A, 10.

that Parakaia Te Pouepa did not represent Ngati Kauwhata at the 1868 title investigation. His response to Mair's cross-examination yielded some interesting replies.²³⁵⁷

Ngati Kauwhata went to Kapiti in search of provisions and guns. Rauparaha invited us and promised us food and guns and everything else. Pukekura and the land here gave a certain kind of food, but those lands at Kapiti gave us rare food, such as sharks, guns, and white men. None of Ngatikauwhata went with Ngatiraukawa. I do not know whether Waikato had guns then; Ngapuhi had. I do not know whether Ngatipaoa and Ngatimaru had firearms then. Some of Ngatikauwhata returned to Pukekura and planted. My father was one who returned. Te Kawa was another, Hoera Pokorahi, Panitaua, and Rangitaiki and Hone. Te Wherowhero's invitation was given with the intent that we should all return.

Kereama Paoe gave evidence to basically similar effect as the preceding witnesses.

McDonald's next witness was not Ngati Kauwhata but Ngati Haua: Te Raihi, a close relative of Wiremu Tamihana, who lived at Tamahere. He said that "Te Waharoa and Tamihana had such affection for Ngati Kauwhata that they invited them to return". He mentioned also a "vessel" named *Kauwhata* which was "bought for bringing the bones of the people (my fathers) who had died at Kapiti to Pukekura"²³⁵⁸ – unfortunately it was wrecked before this could be done. He was then closely questioned by the Court about his role in the 1868 hearings. He said that he had appeared in 1868 "for the resident Ngatikauwhata" and who had been engaged "in giving the names for the Crown grant". When his earlier statements at the 1868 hearing were read to him from the minutes, he said that "I said the names were all I then recognized, because those who had gone to Kapiti put in no appearance".²³⁵⁹ He added (further testimony to the bewildering complexity of the situation).²³⁶⁰

Ngatimaru were our enemies at Maungatautari. Ngatimaru took Horotiu. I do not know that they took Pukekura. They were afterwards driven away by us. [Further statement read, and admitted by witness.] Ngatikauwhata were living at Pukekura then, and took part in the fight against Ngatimaru, and returned to it afterwards. We looked on Maungatautari as ours by conquest at that battle. I then lived at Pukekura and Maungatautari – sometimes at one place, sometimes at the other. I never lived at Pukekura by right of conquest, only at Maungatautari. I do not know the term conquest can be applied to Pukekura. I claim my interest from ancestry – from Kauwhata.

The next Ngati Kauwhata witness was Rawiri Te Hutukawa. He said he now lived at Kapiti, and he mentioned yet another Ngati Kauwhata migration south, about one hundred people who arrived at the time of the battle of Kuititanga (fought between Ngati Raukawa and Ngati Awa) in 1839; "this was a migration subsequent to the great one, which was long before".²³⁶¹ Some of Ngati Kauwhata still remained. He said that after Taumatawiwi Ngatihaua lived at Maungatautari (presumably meaning the 1868 Maungatautari block), but not at Pukekura: "Ngatikauwhata and Ngatihinepare lived on Pukekura, and they have held possession of it to the present day".²³⁶² In response to questions from the Court, he said that Pukekura was never taken by Ngati Maru, that Ngati Kauwhata assisted Ngati Haua against

²³⁵⁷ Ibid.

²³⁵⁸ 1881 AJHR G-2A, 10.

²³⁵⁹ Ibid.

²³⁶⁰ Ibid. There is much to disentangle here. First, Te Raihi is unsure if Ngati Maru ever actually acquired Pukekura. He then says that Ngati Maru were driven away by "us", but that the "us" is inclusive of Ngati Kauwhata, and that "we" – similarly including Ngati Kauwhata, it appears – then regarded Maungatautari as "ours" by conquest (of Ngati Maru). He is unsure whether the term "conquest" can be properly applied to Pukekura, and that he derived his own rights at Pukekura through his own descent from Kauwhata.

²³⁶¹ 1881 AJHR G-2A, 10.

²³⁶² 1881 AJHR G-2A, 10-11.

Ngati Maru, and that “it was the resident or remaining members of Ngatikauwhata who assisted to drive away Ngatimarū”.²³⁶³

McDonald’s next witness was Te Muera Te Amorangi, who said he was “of Ngatikauwhata, from Wehiwehi”. He said he now lived “at Kapiti”, having moved there “the year Awahou (Manawatu) was sold to the Crown (1866)”. He said that he “shared in the Wehiwehi lands at Kapiti”. Like others of Ngati Kauwhata he insisted that Ngati Kauwhata and Ngati Haua were allies. When “Governor Hobson arrived”, “Ngatikauwhata, who remained behind, lived here”; they “intermarried and lived with Ngati Haua”.²³⁶⁴

McDonald next called Hakiriwhi, who had given evidence in 1868 for Ngati Haua. He said on this occasion that he was of “Ngatihaua and half-caste of Ngatikauwhata”, that he lived at Tamahere and that he was a chief of Ngati Haua. He said that Pukekura belonged rightfully to Ngati Kauwhata. He also mentioned that Wiremu Tamihana was himself partly Ngati Kauwhata: he was “a half-caste of Ngatikauwhata”.²³⁶⁵ His evidence resulted in some very complicated exchanges between himself, Mair, McDonald, and the Court over his earlier statements in 1868 and about the relationships between Ngati Haua and Ngati Kauwhata. In the course of cross-examination he said that when Ngati Kauwhata migrated south they handed their lands over to Ngati Haua in trust, i.e. for Ngati Kauwhata. But he also said that Ngati Haua and Ngati Kauwhata were closely interconnected in any case.²³⁶⁶

Also giving evidence for Ngati Kauwhata was Harete Tamihana, Wiremu Tamihana’s eldest daughter. She said that she had heard of Pukekura, and that both her parents were Ngati Kauwhata. Again the complexity and subtlety of the Maori customary system is apparent. She said she was present at the Court in 1868, and that “[h]ad Tapa and his friends been present they must have shared in the land, as will be apparent by my statements then”. She was then interrogated by the Court on the

²³⁶³ Ibid, 11. That Ngati Kauwhata fought as allies of Ngati Haua and Waikato generally at Taumatawiwi against Marutuahu is widely recognised. See Ballara, *Taua*, 245. The significance of this lies in the timing. Taumatawiwi was fought in 1831, i.e. after the main migrations of Ngati Raukawa, Ngati Kauwhata and Ngati Whakarete to the PkM region. Ballara notes that about 50 men of Ngati Kauwhata (“those who had not migrated south”: *ibid*, 245) fought at Taumatawiwi.

²³⁶⁴ Ibid.

²³⁶⁵ Ibid.

²³⁶⁶ Ibid. In cross-examination Hakiriwhi said to Mair that “Ngatikauwhata said they went to Kapiti to obtain guns, and for white men” and that when they did so “they handed their land over to us”, meaning Ngati Haua: Wharepakaru said to Wiwini, “We leave the land to you.” He then went away, and we have quite understood that ever since – that is, to hold for them. Wiwini belonged to Ngatihaua half-castes of Ngatikauwhata. Wiwini according to Maori custom was a real Ngatihaua, and we are also Ngatihauas.

One gets the impression of Hakiriwhi struggling to explain the complexities of Maori descent lines to an uncomprehending audience that thought in terms of clearly differentiated groups (“Ngati Haua”, “Ngati Kauwhata”). He seems to have meant that when Ngati Kauwhata left, their lands were entrusted to certain people who remained who were of mixed Kauwhata-Haua descent lines, but who also were regarded as people in authority in Ngati Haua. This is further confirmed, in my view, by further remarks that Hakiriwhi made to the Court: (*ibid*).

Tamihana’s invitation was because of their natural right. The sanction of Tamihana and Waharoa was not necessary. Wata Taha was a half-caste Hinepare and Haua; so also were Reweti Waikato, Hori Pua, Piripi Whanatang, Hemi, and Wi Te Whitu. It would be said that the Kauwhatas who remained from Kapiti migrations were Ngatihauas. *Te Waharoa would not be an owner in Pukekura as a Ngatihaua, but as a Kauwhata* (emphasis added). Title would not be lost by occupation (by consent) of strangers. Had Waharoa been alive at the first hearing, Ngatikauwhata would have received a share of the proceeds of the land. Tamihana and Waharoa always retained their affection to any member of Kauwhata who returned, though he were ever so humble.

inconsistencies between her testimony in 1868 and what she was saying now.²³⁶⁷ McDonald went on to call people of Ngati Kauwhata descent who were still living in the Waikato, Mereta Ngarangi and Hori Puaio, who both said they were of Ngati Kauwhata descent, that they had always lived in the Waikato, and that Ngati Kauwhata had rightful claims to Pukekura.²³⁶⁸ Hori Puaio, however, was another witness who was challenged both by the Crown and by the Court that there were conflicts between what he said in 1868 and what he was saying in 1881.²³⁶⁹ He also said that Parakaia Te Pouepa's intention was to drive "us" off the land, "us" meaning, it seems, Ngati Kauwhata.²³⁷⁰

Tapa Te Whata was then recalled by the Court, and was asked about whether Parakaia Te Pouepa had any authority to represent Ngati Kauwhata in 1868. Tapa was adamant that he did not:²³⁷¹

I was at Kapiti, in 1868, when the Court sat here. I know Parakaia. He is not Ngatikauwhata. He is Ngatiraukawa. These tribes were not connected. There is no connection between them. I remember Parakaia leaving Kapiti to attend Cambridge Court in 1868. I know he brought forward Ngatikauwhata claims then, but he did so on his own account – he did not represent me. I would not be pleased to receive from Parakaia what he had no authority to obtain for me. Had we engaged him as our agent it would have been right, but there was no reason why we should.

The Court also recalled Te Raihi and Hakiriwhi, and asked them what they done with their shares in the various blocks. Te Raihi said he had sold his shares in Maungatautari Ngamoko, and that he was not a grantee in Pukekura. Hakiriwhi admitted that he had sold all his interests in Puhue, Maungatautari, Pukekura and Ngamoko. The final witness for the claimants in the Pukekura case was Alexander McDonald himself, who explained that Richmond had assured him that the Maungatautari cases would be adjourned, and who once again emphasised that Parakaia Te Pouepa had no authority to speak for Ngati Kauwhata – indeed, that it was news to him that Parakaia had indicated that he was representing Ngati Kauwhata in 1868.²³⁷²

The end of the day's business was closed by an interesting discussion on the invitations made by Te Wherowhero and others suggesting that Ngati Kauwhata return to the Waikato. Te Ngakau, speaking "as an expert" asked Tapa Te Whata to identify precisely the land which Ngati Kauwhata had been invited to return to. Tapa Te Whata said that they had been invited to return to Rangiaohia and Pukekura. Te Ngakau agreed that this was correct, and added some points about such invitations to return and Maori custom. What he appears to have suggested is that if land had really been conquered, then an invitation to return to the displaced groups could not return them to their former rights. Unfortunately the record seems a little garbled, and it is hard to understand clearly what Te Ngakau means, or what he is saying about Ngati Kauwhata's rights.²³⁷³ He seems to be suggesting that because

²³⁶⁷ Ibid, 11:

I am one of the grantees by descent from Kauwhata. I had no other claim. I well remember my statement at that time. I did not say I claimed by conquest; that statement applied to Maungatautari. A portion of Maungatautari was included in the Pukekura Block. To that portion was my claim by conquest. My claim to Pukekura proper was from ancestry, others claimed by conquest. [Statement at former hearing read.] What I have said to-day is that I was ignorant of the proceedings of the Native Land Court in those days. That was my first examination by a Court. I was without knowledge. I was sworn, but I did not understand an oath. This is the true statement. That was a wrong statement.

²³⁶⁸ Ibid, 12.

²³⁶⁹ See *ibid*, 12.

²³⁷⁰ In his evidence in chief Hori says that "Parakaia's intention was to drive us off the land, and he did not appear on behalf of the absent Ngatikauwhata" (*ibid*, 12.)

²³⁷¹ Ibid, 12.

²³⁷² Ibid, 12.

²³⁷³ See *ibid*, 12. According to the document:

Ngati Kauwhata had left Pukekura peaceably, and that because Ngati Kauwhata who had remained in the Waikato had reconquered the land, then those who had left had a right to return.^{cc}

Mair then began the Crown case to Pukekura. In opening the case for the Crown he said:

Major Mair said on behalf of the Crown he would bring evidence to show that the decision of the Native Land Court was a just one – that when Ngatikauwhata went away through pressure and on the invitation of Rauparaha, the trust reposed in the resident friends had been destroyed by Ngatimaru – that Ngatihaua retook it without the assistance of the emigrants; that because Ngatikauwhata did not come as invited they lost their interest, except in the discretion of the last conquerors; and that the Native Land Court awarded the land to those who had possession of it, and who had the mana.

It is interesting how Mair frames the Crown case. He does not appear to be denying that the land had been placed in a sort of trust (“the trust reposed in the resident friends”). The land was retaken by Ngati Haua, and the “trust” had been “destroyed” by the Ngati Maru occupation. The last conquerors had a “discretion” as to who could own the land, but because Ngati Kauwhata did not return they “lost their interest”. Mair is thus implying that had Ngati Kauwhata from the Manawatu been at the 1868 hearings they would have been unsuccessful in any case.

Mair’s first witness was Rihia Te Kauae, who (I assume) was Ngati Haua. He described in some depth the events that led up to the battle of Taumatawiwi. (Rihia was not an eyewitness: he said was still a young child at the time of the battle). Rihia denied that Ngati Kauwhata were involved in the battle of Taumatawiwi (while the claimants said that they were.²³⁷⁴) The main thrust of his evidence, however, was that Te Waharoa did not make any separate allocation of land in the Maungatautari region to Ngati Kauwhata.²³⁷⁵

At the time of the division and after an especial piece was marked off for Ngatiapakura; this was because we had defeated them at Rangiaohia, and wished to make peace with them. This we did, and gave this piece to seal it... Another portion was cut off was set off for Ngatikoura, Ngatiruru, Te Patukoukou, Ngati Parehaehaeora. These pieces were cut off from the whole reconquered block. The boundary of these began at Puahoe to Aratitaha. This Puahoe is the land “Puahoe” as known to the Court. Maungatautari and the rest of the country we kept for ourselves – that is, for Ngatikoroki and Ngati Haua. Te Waharoa, the father of Wi Tamihana, was the person who divided this land. Te Ngoungou assisted him. Te Ngoungou was of Ngatihaua. Rawhirawhi and and Te Tiwha were other presiding chiefs of Ngatihaua. I do not know that Waharoa gave any land to Ngatikauwhata; that means he did not do so.

[Te Ngakau]: That statement is true. Porokuru said to Maungatautari. Potatau said “No. Te Waaka will be disturbed; rather let them go to Pukekura”. Potatau said it all remains with Tamihana. That is why I know that they are right. Had they lost their land by conquest the word of Potatau would not restore them to their rights. I understand that the return of Ngatikauwhata, under the circumstances, was improper. All that land belongs to me. The right of conquest would abolish claims of claims of Ngatikauwhata when it was in possession of Ngatimaru, but when Ngatimaru were driven off by a portion of Ngatikauwhata those who left previously would be privileged to a share of the success in the discretion of the last conquerors, the Kauwhata. Potatau invited them back because they left Pukekura in a peaceable manner. Had they left the land because of any disturbance they could not have returned; but, on the other hand, had they left in peace they could have returned in the face of Potatau, or against Potatau’s will, or if Potatau had forbidden them.

²³⁷⁴ See also Ballara, *Taua*, 245.

²³⁷⁵ 1881 AJHR G-2A, 13.

Te Waharoa did not do so because Ngati Kauwhata were no longer a presence in the area. However, some of his evidence presents a more complicated picture. Pukekura was allocated to Te Wiwini, who in fact *was* Ngati Kauwhata.²³⁷⁶

Pukekura was allocated to Te Wiwini by Ngati Haua. Te Wiwini said, “Pukekura for me, if you like, because it was my ground”; but I was not aware that Te Wiwini had any previous right. Had Te Waharoa not consented, he could not have gone there, notwithstanding his former right.

He also says that Ngati Kauwhata did remain behind, but they became “absorbed” by Ngati Haua.²³⁷⁷

Ngatikauwhata, who remained behind, were entirely intermingled with us, that is, were absorbed in Ngati Haua.

That is, some “Ngati Haua” people had mixed Ngati Kauwhata/Ngati Haua descent lines, which is also what some claimant witnesses said. The issue was the significance of this. The claimant case was that such people had rights on Pukekura through their Ngati Kauwhata links and that mana remained intact. The Crown case, presumably, is that Ngati Kauwhata as such no longer had a presence in the Maungatautari region.

The Crown’s next witness, Reone Te Kui, is something of a puzzle. Reone’s evidence seems somewhat confused, but on the whole was supportive of Ngati Kauwhata. Reone said, for example.²³⁷⁸

Maungatautari had been taken by Marutuahu from Ngatiraukawa; we added it to our first possessions. Pukekura was included in the reconquest. At the time of Marutuahu’s conquest there were no Ngatikauwhata living at Pukekura. Some of them were living there when we retook it. After our conquest Ngatikauwhata had possession of Pukekura. When we were fighting with Ngatimaru, Ngatikauwhata could not live at Pukekura, lest they should be killed. They joined with us.

And the same could be said of the next Crown witness, Pirihi Tomonui, in who response to questions from the Court had this to say:²³⁷⁹

When Wi Tamihana got a ship to fetch back Ngatikauwhata was the first I heard of that name Kauwhata. That is the only word I heard of Ngatikauwhata. Of the Ngatikauwhatas who remained here Murupara²³⁸⁰ was the chief man. Pukekura belonged to the Ngatikauwhatas who remained behind. Wiwini would have the discretion of restoring the claims of those who left and went to Kapiti. Ngatihaua could not have interfered with the return of those emigrants. The word of Waharoa would be the occasion of the return of Ngatikauwhata. Had Wi Tamihana not been a Ngatikauwhata they could not have come back.

Ihaia Te Oriori, of Ngati Koroki and Ngati Haua, was openly supportive of Ngati Kauwhata’s claim. After Taumatawiwi Ngati Kauwhata returned and had every right to do so. It is hard to see this as helping Mair’s case.²³⁸¹

Te Waharoa assembled the people against Marutuahu in Haowhenua. Ngatihaua was defeated. Our heads, the heads of our slain, were brought here and put into the Marutuahu *hangi* and stood up as spectacles. The we turned around and killed Takurua and 1,000 of Marutuahu. Marutuahu then returned to avenge the death of Takurua, and suffered another defeat. We fought another battle, and Marutu [isc] was fought also; then came Tsumatawiwi, when we retook Maungatautari, Pukekura, and the surrounding

2376 Ibid.
2377 Ibid.
2378 Ibid.
2379 Ibid.
2380 Also know as Te Wiwini.
2381 [1881] G-2A, 15.

country. *Ngatikauwhata returned to live at Pukekura, and we lived on Maungatautari and adjacent parts, and also on Pukekura. The rights of Ngatikauwhata emigrants were preserved by the resident Ngatikauwhata and because they left peaceably and were invited to return by Wi Tamihana, who provided a vessel for them to come in. The Ngatikauwhata who went to Kapiti make their claim justly.* [emphases added].

More helpful to the Crown case was Major John Wilson, who said that he had lived in the area since 1864 or 1865 and that he had often acted as an interpreter. He had leased parts of the three blocks, and he described the earlier investigations in 1867-68. He pointed out that Parakaia Te Pouepa's name had been included in the Crown grant for Pukekura, and Ropata Te Ao-s (also Ngati Raukawa) in Puahoe. He said that it took days of argument before Ngati Koroki were prepared to put Parakaia Te Pouepa's name in the Crown grant for Horohoro. Ngati Kauwhata were merely a hapu of Ngati Raukawa, and Ngati Raukawa had been ably represented by Parakaia Te Pouepa at the 1868 title investigations:²³⁸²

Maori conquerors usually assert their whole right, and Ngatikauwhata who remained sided with Ngatihaua against Parakaia and Ngatiraukawa in Pukekura...Parakaia said he represented Ngatiraukawa. We heard not of Ngatikauwhata as Ngatikauwhata, and as a separate people. It was the general impression that Parakaia was representative of all the southern or Kapiti tribes. I had never heard of Ngatikauwhata as a tribe or other than as a hapu of Ngatiraukawa.

But other Crown witnesses did not agree. In questioning from the commissioners, Hori Wirihana (of Ngati Haua) said that in fact resident Ngati Kauwhata and Ngati Haua joined forces *against* Parakaia Te Pouepa in 1868, which was quite true:²³⁸³

I did not hear Parakaia say at the Court of 1868 that he appeared for Ngatikauwhata. I heard him say he appeared for all Ngatiraukawa of Kapiti. Parakaia's claim on Pukekura was by Ngatiraukawa. Raihi and others opposed him; the half-caste Ngatikauwhata's here opposed him also. Parakaia and his Ngati Raukawa friends lost their case. Parakaia called witnesses from amongst his own people. The Ngatikauwhata half-castes here were on the same side and working on the same side in concert with the resident Ngatihauas against Parakaia.

D. *Report of the Ngatikauwhata Commission*

Notwithstanding a degree of Ngati Haua and/or Waikato sympathy, the Ngati Kauwhata evidence, and the support given to Ngati Kauwhata's case even by some of the Crown witnesses, the Ngati Kauwhata claim did not fare at all well. The Commissioners reported in March 1881.²³⁸⁴ They found that "prior to the year 1840 the petitioners, whether known as Ngatikauwhata or Ngatiraukawa, had lost all their right, title, and interest to the district known as Rangiaohia, which included Maungatautari Nos 1 and 2, Pukekura, Puahoe and Ngamako No.2".²³⁸⁵ The Commission began by accusing Alexander McDonald, representing Ngati Kauwhata, of having told his clients that in the event of a favourable finding for

²³⁸² [1881] AJHR G-2A, 12.

²³⁸³ [1881] AJHR G2A, 18.

²³⁸⁴ [1881] AJHR G-2A and Native Office "Correspondence Relating to the Ngati Kauwhata Claims Commission" [1881] II AJHR G2B.

²³⁸⁵ [1881] AJHR G-2A, 5.

Ngati Kauwhata all Crown grants would become void.²³⁸⁶ McDonald, for his part, denied this.²³⁸⁷ The Commissioners lectured Ngati Kauwhata that whatever the outcome of the inquiry, “in no possible way could the Crown grants be upset, and that all the petitioners could obtain (if anything) would be compensation in either money or land from the government”.²³⁸⁸ In any event the Commission took the same view of events as had the former Land Court cases, i.e. that Ngati Haua had rights to Maungatautari by rights of conquest and that all rights in the area, whether Ngati Raukawa or Ngati Kauwhata had been extinguished.²³⁸⁹ The commissioners believed that “the fact of the exodus to Kapiti is undisputed” as “is also the fact of their leaving some of their friends on the land”.²³⁹⁰ The Crown argued, however, that notwithstanding the fact that Ngati Kauwhata left “friends” in place, nevertheless those who had left “lost all right and interest” in the land. This was for two reasons: because Ngati Kauwhata ceased to occupy, and because the land passed to Ngati Haua by conquest.

The Commission agreed with the Crown on both points. The Commissioners believed that Ngati Kauwhata abandoned the area around 1828, and that “neither they nor any person or persons on their behalf have ever returned to their district with the view of permanent occupancy”. The best that could be said was that “one or two have made casual visits and then returned to Kapiti”. Meanwhile in the Waikato Ngati Kauwhata had supposedly disappeared as an entity: “those who were left behind at the time of the exodus “were only those who had intermarried with other tribes, and by that means, so to speak, become absorbed and ceased to have any separate existence as a distinct tribe”.²³⁹¹ The Commissioners went on to discuss the conflicts between “Ngatimaru” and Ngati Haua. The Marutuahu invasion resulted in the complete extinguishment of Ngati Raukawa rights in the Maungatautari region: (“and even supposing that Ngatiraukawa had at that time any rights, such rights would cease upon that conquest”). Indeed the Commission was highly sceptical, it seems, as to whether there really was a separate Ngati Kauwhata identity, and in fact suggested that the assertion of this identity was to a large extent a matter of courtroom tactics. It was merely a device to allow Ngati Kauwhata to say that they were not present at the investigation of title in 1868.²³⁹²

We now come to the question whether or not the petitioners had the opportunity of attending the Court held in November, 1868; and here will be found the reason why they are so anxious to be put forward as a distinct and separate tribe, and not to be considered as a hapu of Ngatiraukawa. They allege they never authorized any one to appear on their behalf at the Native Land Court held at Cambridge in November, 1868, and that the application to Mr Richmond in 1868 was made by Ngatiraukawa, and not by them. It will be found on reference to the papers relating to this matter, and also in the petition relating to the House of Representatives, that everything has been done in the name of Ngatiraukawa, and a reference to the evidence taken by us will show that several of the parties who now repudiate all connection with Ngatiraukawa are those that signed that petition, and are therein described as being members of that tribe.

Ngati Kauwhata, like Raukawa in earlier and later phases of the round of investigations, argued that when they left Maungatautari they did so in a “quiet peaceable manner” and went to Kapiti “where they

²³⁸⁶ Ibid, at 2: “Before entering upon our formal report we beg to call the attention of your Excellency to the fact that Mr McDonald, who has conducted the correspondence of with the Government on account of the petitioners, has led not only the petitioners, but also the Natives who were declared by the Court sitting in 1868 to be the owners of the several blocks an interest in which is claimed by the petitioners, to believe that, should our report be favourable, all Crown grants which have been issued respecting these blocks, and all subsequent dealings with the land, will thereby become void, and that the land will revert to them as joint owners.”

²³⁸⁷ “Alexander McDonald to Native Minister, 8 July 1881” [1881] AJHR G2B, 2.

²³⁸⁸ [1881] AJHR G-2A, 3.

²³⁸⁹ Ibid.

²³⁹⁰ 1881 AJHR G-2A, 4.

²³⁹¹ Ibid.

²³⁹² [1881] AJHR G2A, 5.

could obtain better food and also guns and ammunition, and, moreover, “that they left with an intention to return, and left some of their friends on the land” some of whom were still there up to the time of the Court sittings of 1868.²³⁹³ The Crown and the Ngati Haua owners argued in reply that the petitioners lost all their rights by failing to remain in occupation and also “on account of the land becoming the possession of Ngatihaua by right of conquest”.²³⁹⁴ The Commissioners accepted the evidence of Ngati Haua, who continued to press their title to the area on the basis of *take raupatu*, the ‘conquest’ being, however, the defeat of Hauraki at the great battle of Taumatawiwi at which Ngati Haua and their allies Ngaiterangi of Tauranga fought Ngati Maru. This took place after Raukawa abandoned Maungatautari. The Court treated Ngati Kauwhata as affiliated to Raukawa and continued with the same interpretation of the events of the 1820s and 1830s that it had done all along.

The Commissioners, as noted, rebuked McDonald for allegedly stating in a public meeting at Maungatautari shortly before the hearings that if the Commission made a favourable recommendation that would make the Crown Grants made in the interim invalid. In fact it was suggested that because of this a number of witnesses had falsified their testimony.²³⁹⁵

Before closing this report we cannot avoid expressing our regret that the statement as to what the effect of our report, if favourable to the petitioners, would probably have upon the Crown Grants should have been made to the Natives generally and impressed upon their minds, as we are informed it was, by Mr. McDonald at a meeting held at Maungatautari a few days before we commenced our investigation, because we have no doubt that it caused many of the Natives to give statements before us directly contrary to those which, on reference to the records of the Native Land Court, we find were made before that Court in 1868.

This was a very serious allegation, both against McDonald and against the claimants. McDonald was outraged when he got to find out about it, and complained to the Native Minister about the matter. He complained also that the findings of the Commissioners were contrary to the weight of evidence given in the case.²³⁹⁶

Summary

The Maungatautari area was a bitterly contested area before the Native Land Court, and this report of the the Ngati Kauwhata Claims Commission is an important part of the history of this matter. The core problem was the effect of Raukawa (and Ngati Kauwhata) migrations to the Kapiti region in the 1820s on titles to land in their home territory in the southern Waikato around Maungatautari. Raukawa and Ngati Kauwhata maintained that they had not relinquished rights in this area. Other Waikato groups argued that Raukawa and Ngati Kauwhata had either abandoned the area or alternatively had been forced to flee due to pressure from Hauraki groups who had in turn been driven inland as a result of attacks by Nga Puhi. Hauraki had in turn been defeated by Ngati Haua and other sections of Waikato at the battle of Taumatawiwi, thus giving them a title to Maungatautari on the basis of *take raupatu*. It was this latter version of events which the Native Land Court preferred, as seen in a number of cases, although the Court in its *Rohe Potae* case in 1886 was to read the history in a way which was more favourable to Raukawa (see below).

²³⁹³ Ibid, 4.

²³⁹⁴ Ibid.

²³⁹⁵ Ibid, 5.

²³⁹⁶ A McDonald to Native Minister (Bryce), 8 July 1881, 1881 AJHR G-2B, pp 1-2; Memorandum by Mr. A. McDonald for the Hon the Native Minister, re Report of Commissioners on Ngatikauwhata claims, *ibid*, p 2.

Before the 1881 commission Ngati Kauwhata argued strenuously that they were distinct from Ngati Raukawa, but the Commissioners were not convinced by this and indeed went so far as to suggest that this differentiation was nothing more than a courtroom strategy. The Court stated also that other parties in Court stated that they had never heard of Ngati Kauwhata as a distinct and separate iwi from Raukawa. For their part Ngati Kauwhata have continued to maintain their distinctiveness to the present day. The case is also another example of the problems that could be caused by cases affecting one group being heard at different places at the same time. Here Ngati Kauwhata had faced cases affecting them in both the Rangitikei region and in the south Waikato and had sought the advice of the Government as to which case they should attend. The government advised them to attend the case in the Rangitikei, which they did, only to find that orders substantially affecting their interests had been made in the Waikato court.

An excursus: invitations to return and the '1840 rule'.

The '1840' rule has already been described generally in the preceding chapter on the Native Land Court. As seen, Ngati Kauwhata witnesses before the 1881 commission repeatedly emphasised the various invitations made by Waikato leaders inviting Ngati Kauwhata to return. Repeatedly mentioned in the evidence was an invitation made by Te Wherowhero, and a journey made by Te Wherowhero himself, Wiremu Tamihana and others to "Kapiti" inviting Ngati Kauwhata to return. It seems that some people indeed availed themselves of the invitation and went back to the Waikato. Witnesses were able name some of those had returned following Te Wherowhero's invitation, including their own parents. ("My father was one who returned. Te Kawa was another, Hoera Pokorahi, Panitaua, and Rangitaiki and Hone. Te Wherowhero's invitation was given with the intent that we should all return."²³⁹⁷) Moreover the invitations were made because Ngati Kauwhata retained rights to their land in the Waikato: they were not asked to return as strangers, or exiles, or people who had abandoned their land. As Hakiriwhi (Ngati Haua) put it, "Tamihana's invitation was because of their natural right".²³⁹⁸

15.10 Ngati Kauwhata have another try: Native Affairs Committee hearing, 1882

McDonald tried again with a Ngati Kauwhata petition attacking the findings of the Commission, heard at Parliament in July 1881, but this too was unsuccessful.²³⁹⁹ On 28-29 July 1882 the Native Affairs Committee heard the Ngati Kauwhata petition attacking the Ngati Kauwhata commission report. Alexander McDonald, representing Ngati Kauwhata, and Major Te Wheoro both gave evidence. McDonald argued that "the opinion expressed by the Royal Commission in this case appears to me to be directly contrary to the evidence then before the Commission". McDonald was confronted with a considerable amount of hostile questioning about his alleged advice to Ngati Kauwhata that the Crown grants would become void should Ngati Kauwhata succeed.²⁴⁰⁰ McDonald claimed also that no senior Waikato chiefs were present at the 1868 hearings:²⁴⁰¹

Now it is proved in this evidence before this Commission that all the principal Chiefs of Waikato were absent from the investigation in 1868. Tawhiao was absent. Rewi was absent. The sons of Tamihana Tarapipipi were absent. All the principal chiefs of Waikato were absent. In fact there were no principal chiefs at all present in the investigations in 1868. Therefore in my view, and I directed the whole of my

²³⁹⁷ Takana Te Kawa, at 1881 AJHR G-2A, 10.

²³⁹⁸ 1881 AJHR G-2A, 11.

²³⁹⁹ Ngatikauwhata Land Claims Commission, Le 1/1881/5, RDB 3, 864-924, 869.

²⁴⁰⁰ Ngatikauwhata Land Claims Commission, Le 1/1881/5, RDB 3, 864-924.

²⁴⁰¹ Ngatikauwhata Land Claims Commission, Le 1/1881/5, RDB 3, 864-924, 869.

evidence before the Commissioners to that, the decision of the Court in 1868 was bad in consequence of the absence of persons who could give evidence as to the ownership of the land.

McDonald explained that the block was still held under restricted Crown grant.²⁴⁰²

The position of the land now is [871.] that it is held under restricted Crown grant and is inalienable without the consent of the Governor. I understand the Governor has not yet given his consent to the alienation of the land and therefore it is still in the Governor's power to keep the land in its present position.

Major Te Wheoro told the Committee that he believes that the Native Land Court should not have inquired into Pukekura and the other blocks in 1868 given that so few Waikato chiefs were present in Court at the time. The Committee made no recommendation.

15.11 Maungatautari (Manukatutahi Otautahanga) Investigation (1884): Background

In 1884 there was another large scale and complex Maungatautari case heard by the Native Land Court. The 1884 Maungatautari case, however, related to a quite different block from the three blocks in 1868 and which were the subject of the 1881 Ngati Kauwhata claims commission. The 1884 Maungatautari block, known also as Manukatutahi Otautahanga, was much larger than its 1868 namesake.

By the time of the 1884 investigation the political situation on the North Island frontier had changed radically since 1881. From the end of the Waikato war the independent King Country, or Rohe Potae, Professor Belich's independent Maori state in the middle of the North Island "two-thirds the size of Belgium" which "not all historians have noticed" had maintained its precarious independence.²⁴⁰³ But its boundaries had been slowly contracting. The Rohe Potae was most vulnerable on its eastern boundary, the location of two large and important iwi, Raukawa and Tuwharetoa, and during the 1870s the government had slowly but successfully achieved its goal of detaching the lands of both groups from the mana of the King. Then in 1881 King Tawhiao crossed the aukati frontier line and met with William Mair, the Crown's representative on the Waikato frontier, and he and the men with him placed their guns before Mair to symbolise peace and reconciliation. This dramatic event was followed by a sequence of complex negotiations between the colonial government and the chiefs of the former King Country. Essentially the government continued with its former strategy of seeking to detach the King Country tribes and their lands from the King: the negotiations were with Ngati Maniapoto and the other iwi of the King Country, including Raukawa, rather than with King Tawhiao who found himself politically sidelined by the discussions.

While most historians have focused attention on the negotiations between the two successive Native Ministers, John Bryce and John Ballance, and the King Country chiefs, an equally important process was a *rapprochement* between the Kingite and Queenite parties within Maoridom. The decision to take Maungatautari through the Court was made at a large meeting held at Kihikihi in April 1884.²⁴⁰⁴ But the matter was contentious. The *New Zealand Herald* printed a detailed report on the meeting at Kihikihi on 19 April a few days later, which reveals the close links between – but also the differences

²⁴⁰² Ngatikauwhata Land Claims Commission, Le 1/1881/5, RDB 3, 864-924, 870-71.

²⁴⁰³ James Belich *The New Zealand Wars* (Auckland University Press, Auckland, 1986) at 306. Belich notes that the independent King Country statelet may have covered as much as 7,000 square miles.

²⁴⁰⁴ *New Zealand Herald*, Vol XXI, Issue 6997, 21 April 1884, p 5 ("It was decided at a large native meeting held here [Kihikihi] to hold the Land Court on the 22nd, and to put the Maungatautari Block through".)

between – Rewi Maniapoto and the Ngati Raukawa leadership. The matter was clearly a matter of high politics within Waikato:²⁴⁰⁵

A large meeting was held at Kihikihi on April 19, to discuss the advisability of putting the Maungatautari Block through the Court at its sitting, fixed for the 22nd inst. The principal speakers were Te Ngakau, Heoti Tamihana, Tupotahi, Rewi Maniapoto, Huirama Te Puke, Aperahama Te Rangitutia²⁴⁰⁶, and others. Te Ngakau spoke in the double capacity of owner of the land and representative of Tawhiao. He advised all the persons who had made application to the Court to withdraw such application until the return of Tawhiao.²⁴⁰⁷ The most of the speakers referred to Tawhiao's manifesto, before he proceeded to England, that no applications for survey should be made, and no Courts should be held in his absence. Maungatautari was one of the blocks specially mentioned by him, and they acquiesced in his desire. They therefore would not consent to the hearing of the Maungatautari case being proceeded with. Whereupon Tupotahi stood up, and addressing Rewi and the other speakers, accused them of deceit, for the desire expressed by them that the case should not go on was that of their mouths only, whilst in their hearts their sole desire was that the case should be proceeded with. Aperahama Rangitutia then rose and read copy of an application to the Chief Judge of the Native Land Court by Hitiri Te Paerata and others, asking that no notice should be taken of applications made by natives to stop the hearing of the Maungatautari case. The speaker asked Rewi how he could explain the fact of his now endeavouring to stop the Court, seeing that his protogés and henchmen, Hitiri Te Paerata and others, had sent the letter to the Chief Judge. Rewi replied that he was in perfect ignorance of the existence of the letter referred to till that moment, and characterised it as a "kohuru" (murder) on him and the tribes. The meeting terminated by Te Ngakau producing a paper to be signed by the applicants for the hearing of the case as gazetted, withdrawing their applications, but when it came to the matter of signing their names to the withdrawal, instead of doing so the applicants withdrew one by one from the meeting, showing clearly that their hearts were not in stopping the hearing of the case.

What stands out about this round of the seemingly interminable hearings is that Rewi Maniapoto appeared in the Court as the principal claimant, but claiming not so much on behalf of Ngati Raukawa but *as* Ngati Raukawa. Rewi organised the surveys before the case started. The Court decided to select Rewi Maniapoto and his people as the main claimants because they had paid for the survey plan: "the plan before the Court had been made at their instance".²⁴⁰⁸ No doubt the plan was that by Rewi lending his name and prestige as applicant on behalf of Raukawa, justice would finally be done with regard to the Maungatautari blocks. The application in Rewi's name might also serve as a recognition of the unity and commonality of purpose of the 'Four Tribes'. Two years later these groups were to participate as allies in the Rohe Potae investigation of title.

The hearing of the reinvestigation had been preceded by a certain amount of dispute as to where the Court should sit. Ngati Haua wanted the Court to sit at Cambridge. Hakiriwhi stated that "that the Maungatautari case should be heard at Cambridge and there only". Ngati Raukawa said that they did not mind where it sat; other groups wanted the case heard at Kihikihi – which was the venue eventually

²⁴⁰⁵ "The Native Land Court and the Maungatautari Case", *New Zealand Herald*, Vol XXI, Issue 6999, 23 April 1884, p 6.

²⁴⁰⁶ A leading chief of Ngati Raukawa at this time, who led the claims of Ngati Mutu to the Waotu Block.

²⁴⁰⁷ Tawhiao was in England at this time, leading a deputation to present a petition to Queen Victoria seeking to have the Treaty of Waitangi honoured. He was unable to meet the Queen, but did have a meeting with Lord Derby, secretary of state for the colonies in the Liberal government headed by W E Gladstone. See R T Mahuta, "Tawhiao, Tukaroto Matutaera Potatau Te Wherowhero ?-1894, Maori King, Waikato leader, prophet", *DNZB* vol 2, 1993, 509-511.

²⁴⁰⁸ *Ibid*, 3.

chosen by the Court. Disputes such as this over the venue of Court sittings were of course very frequent in the Native Land Court.²⁴⁰⁹

The block in issue, known both as Maungatautari and as Manukatutahi ki Otautahanga is, as noted, different from the Maungatautari block investigated in 1868 (along with Puahue and Pukekura. The 1884 block was somewhat larger than the three 1868 blocks combined. It took in the whole of the actual mountain and stretched a considerable distance eastwards. Immediately to the south of the 1884 block was the Rohe Potae, the ‘King Country’, still uninvestigated at this time. Judith Binney has used the term ‘encircled lands’ to characterise the ‘encirclement’ of the rohe potae of Tuhoe, and the ‘King Country’ was no less encircled to the east and south by Land Court blocks (and by the Waikato confiscation line, which cut diagonally from Karapiro in a southwesterly direction before turning northwest at the southernmost point of Puahue. The 1884 Manukatutahi-Otautatahanga block was bounded on the east by a stretch of the Waikato river around Arapuni. Ngati Raukawa’s principal community in the region at Waotu was very close to the eastern boundary of Manukatutahi-Otautatahanga. These points of geography are important, as the 1884 block was to the south of the 1868 blocks and very close to Raukawa communities at Waotu and Wharepuhunga: indeed it actually bordered the Waotu North block, which had already been allocated by the Native Land Court to Ngati Raukawa hapu.

15.12 Maungatautari (Manukatutahi Otautahanga) Investigation (1884): Opening statement and counterclaimant evidence

For the first time all groups with an interest in the wider Maungatautari region had a real opportunity to participate. The original 1868 hearings had been made when essentially the only parties before the Court were the Queenite sections of Ngati Haua and the Otaki section of Ngati Raukawa. The remainder of Ngati Haua, of Raukawa and other groups with an interest were at that time rebels living under the mana of the King and played no role in the Native Land Court, whether from choice or for other reasons. The original cases were a prime example of the interconnections between the Waikato wars and the Land Court. But now it was 1884 and the political scene had changed, as the Court itself pointed out:²⁴¹⁰

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

The case, on and off, lasted for “many months” – Chief Judge Macdonald’s words – opening at Kihikihi on 23 April 1884 and ending on 7 November of the same year with the issue of the various certificates of title.²⁴¹¹ This was the biggest investigation of title to Maungatautari so far. It is also the most complex, generating a great deal of evidence contained in vols 12 and 13 of the Waikato MBs. But for some reason there was not a lot of evidence given by Ngati Raukawa themselves; the main claimant witnesses seem to have been essentially Maniapoto people (including Rewi Maniapoto), with one person giving claimant evidence essentially belonging to Ngati Apakura – the latter group also being counterclaimants. The evidence is very difficult to fathom, and there seems to be no evidence which clearly and unambiguously states the Ngati Raukawa case. The evidence is summarised below:

Table: Evidence in Manukatutahi ki Otautahanga (Maungatautari) investigation of title, 1884.

²⁴⁰⁹ *Waikato Times*, Vol XX, Issue 1666, p 2.

²⁴¹⁰ Judgment of NLC, reprinted in 1885 AJHR G-3, 3-7, at 6.

²⁴¹¹ Chief Judge Macdonald to both Houses of the General Assembly, 1885 AJHR G-3, p 1.

Name of witness	Date	MB ref	Affiliation	Content of Evidence
Opening statement				
Ngata [Paiwaka], aka Ngata Maniapoto	28 April 1884	(1884) 12 Waikato MB 136-37	Claims by descent from Raukawa	Prima facie case. “Ngati Maniapoto is my hapu” (136). Gives boundaries. Claims by descent from Raukawa and permanent occupation. Parts of the block belong Ngati Kapu, Ngati Koroki and Ngati Kauwhata. Says that he is “unable to give my genealogy from Raukawa” (p. 137)
COUNTER-CLAIMANTS				
Counterclaim by N Kauwhata (Hori Wirihana)				
Hori Wirihana [CC: Ngati Kauwhata]	29 April – 1 May 1884	(1884) 12 Waikato MB 142-149	Ngati Kauwhata, Ngati Matau.	Lives at Maungatautari. Ngati Kauwhata, Ngati Hinepare, Ngati Kahukura, Ngati Matau. Claims the whole block. Provides two whakapapa, one setting out his own descent from Kauwhata and the other showing the connection between Ngati Raukawa and Ngati Kauwhata via Tawhao. Says that Kauwhata owned Maungatautari before the Ngati Maru invasion, that his grandparents helped to drive Ngati Maru off, and that their descendants are still in occupation. In cxx says he admits the rights of Ngati Koroki through ancestry, but not by conquest
[Wariana] Te Ahu Karanamu [CC: Ngati Kauwhata]	2-3 May	(1884) 12 Waikato MB 151-156	Ngati Werokoko (Ngati Kauwhata) and other hapu	Evidence in support of the Ngati Kauwhata claim by occupation. Provides whakapapa, lists dwelling places. The land at Maungatautari was divided by Kauwhata, which is why Ngati Haua and Ngati Koroki occupied parts of it (153). Raukawa have a claim to Maungatautari. Hangahanga pa belonged to Ngati Raukawa and Ngati Kauwhata (153). After Raukawa were defeated at Okiwi they left the district and went to Kapiti. Waikato did not occupy the land after Raukawa left.
Tarahuia [CC: Ngati Kauwhata]	3 May	(1884) 12 Waikato MB 156-158	Ngati Kauwhata, Ngati Maniapoto	Gives names of kaingas, produces whakapapa. Says “my only ground of claim is through ancestry” (158).
[Maraia Epi] [CC: Ngati Kauwhata]	3-5 May	(1884) 12 Waikato MB 158-162	Ngati [Pareteuake?], Te Werokoko, Ngati Kauwhata	Lives at Mangakopara. Describes settlements and cultivations. Has heard that the boundaries of the block are “the ancestral estate of Kauwhata” but cannot describe the boundaries (160). Other hapu also live on the land, Ngati Koura, Ngati Parehaehaeora, Ngati Ruru, Ngati Kahukura, Ngat Werewere etc. Does not know whether Ngati Haua were living on the land, “I did not know that Ngati Maru ever took Maungatautari by conquest” (160)

Ngarangi	5 May	(1884) 12 Waikato MB 162-164	Not stated, but must be N Kauwhata	Lives at Mangapiko, has lived at Maungatautari. Was at Tauranga at the time of Pukekura investigation and could not attend. N Kauwhata have ancestral rights at Maungatautari. Objects to the claim by conquest as set up at Pukekura and Puahue “as we ourselves the owners of the land participated in the victory and took part in the battle at Taumatawiwi” (164)
Counterclaim by Ngati Koroki, Ngati Werewere, Ngati Kahukura etc [Atutahi Hone].				
Piripi Whanatangi	6-8 May	(1884) 12 Waikato MB 165-185	Ngati Koroki	Lives at Maungatautari. Claims by ancestry and conquest of Ngati Kauwhata. Says conquest was carried out by Ngati Koroki, supported by Waikato, N Whatua, and N Pehi, Kauwhata by N Raukawa, [Taupopipi?]. Te Arawa, Urewera, N Pukeko and N Maru. Refers to battles of Tangimania and Hangahanga, the latter was the principal pa of N Raukawa. N Raukawa “fled by night, and left the pa” (166). Describes fighting between N Raukawa and N Maru. Whatakaraka and Te Hereara of N Raukawa were killed by N Tamatera/N Maru, and N Raukawa then went to Kapiti. Hauraki occupied Maungatautari (168). Describes fighting between Waikato/N Haua and N Maru in great detail.
Counterclaim by Hakiriwhi Purewha (Ngati Koura etc)				
Rauki Uta	12-14 May	(1884) 12 Waikato MB 185-203	Ngati Koura, Ngati Werewere and other Waikato groups	Belongs to Ngati Koura. Claim is by occupation and conquest. The conquest was by Ngati Haua, Ngati Koroki, Ngati Koura and others. Ngati Maru left Hauraki on account of the capture of Totara pa and the Ngapuhi invasion. Hauraki “stopped at Horotiu and Maungatautari and Te Rore” (185). Describes conflicts between Ngati Maru and Waikato groups/Ngati Haua. Describes occupation of Maungatautari by Waikato groups and Ngati Haua. Te Waharoa was the most prominent chief of the time.
Hakiriwhi Purewha	14-17 May	(1884) 12 Waikato MB 203-224	Ngati Koura etc.	Claims by conquest of Ngati Maru. Provides full details of Nga Puhi invasions, and the fighting between Waikato groups/Ngati Haua with Ngati Maru in the Waikato.

Karauria Ngamu	19-23, 27-28 May	(1884) 12 Waikato MB 225-251	Ngati Koroki	Belongs to Ngati Koroki. Claims the land by a dual conquest, “first of all against Kauwhata and Raukawa, then the conquest at Taumatawiwi over Marutuahu” (225) Had not heard of a peace-making between Raukawa and Ngati Maniapoto, but had heard of one between Raukawa and Waikato. Gives detailed evidence of the fighting between Waikato and Ngati Maru. Very extensive cross-examination.
Hakiriwhi Purewha	28-29 May	251-255		Claims the land by conquest of Marutuahu at Taumatawiwi. Objects to Ngati Koroki claim “as regards boundaries, because they are claiming more than their share” (p 253)
Counterclaim by Te Puke (Ngati Koura etc)				
Te Aweroa	30, 31 May, 2-4 June	(1884) 12 Waikato MB 255-269	Ngati Koura, Te Aweroa, Ngati [Parehaehaeora]	Claims the land before the Court on the grounds of ancestry, conquest at Taumatawiwi, and permanent occupation. The hapus who have a claim are Ngati Koura, Ngati Te Aweroa, Ngati Parehaehaeora, Ngati Ruru, Ngati Wanganui, Ngati Pareteuaki, Ngati Takao, Ngati Parewaru, Ngati Warirere. The ancestor he claims from is Raukawa. Gives boundaries of area claimed. Names kaingas, eel weirs etc. Opposes Ngati Koroki claim. Denies that Ngati Raukawa have any claim to the land. His people were involved in battle of Taumatawiwi fighting against Marutuahu.
Robert Hooper	4-5 June	(1884) 12 Waikato MB 270-272	[Native Medical Officer, formerly resident at Orakau]	Was formerly stationed at Orakau. Appears to support Te Puke’s claim.
Hohaia Ngahiwi	5-7, 9-12 June	(1884) 12 Waikato MB 273-292	Ngati [Kuakatoa?]	Supporting evidence.
Nikorima Rarowera	12-13 June	(1884) 12 Waikato MB 292-297	Ngati Koura	Claims land on the Orakau side of Maungatautari
“Mr Swanson’s case” (Ngati Apakura)				
Te Kamaka	14, 16-21, 23-24 June	(1884) 12 Waikato MB 297-326	Ngati [Hinetu]	Lives at Whatiwhatihoe. Richly comprehensive and detailed evidence dealing with the conflicts and alliances from Hingakaka onwards. Ngati Hinetu and Ngati Apakura are one people. Objects to the Ngati Raukawa claim because they had been defeated by Ngati Apakura and their allies, and objects to the Ngati Raukawa claim by occupation because

				they did not occupy after their defeat (p 309). Sees the battle of Taumatawiwi as basically irrelevant (p 309).
Ngara	24-28, 30 June	(1884) 12 Waikato MB 326- 343	Ngati Apakura	Lives at Whatiwhatihoe. Claims Maungatautari “through Conquest, permanent occupation, and on account of a Curse” (328). Objects to Rewi Maniapoto’s claim but also objects to Te Puke’s claim and Hakiriwhi’s claim (both Ngati Koura) – he never saw any Ngati Koura settlements on the block – also says that Ngati Haua do not have a right at Puahue (329).
Ngahautaua	1-3 July.	(1884) 12 Waikato MB 343- 350.	Ngati Apakura	Lives at Whatiwhatihoe, but before that had lived in the King Country. Objects to all the claims except his own, but admits that Tioriori and Pokai have a right (334). Recites to the Court the song sung at the coronation of the King at Rangiaowhia.
Penetana	3 July	(1884) 12 Waikato MB 350	Ngati Apakura?	Was present at the hearing of Puahue at Cambridge (1868). “I gave evidence in that case, but I forget the tenor of it. What I said on that occasion, I had been instructed by Reweti Waikato. I am quite sure I was sworn on that occasion. The reason why I was instructed as mentioned, was in order to get our case over as soon as possible.” (350)
Haimona Patara’s case (Ngati Haua)				
Tuwhenua Te Tiwha	4-5, 8-12, 14-15, 22 July.	(1884) 12 Waikato MB 351- 359; 361- 385	Ngati Haua	Lives at Tamahere. Claims the land by conquest (of Marutuahu) and by occupation. Gives very detailed historical evidence in support of his claim by occupation and conquest, but is careful to emphasise that Ngati Haua did not evict Ngati Raukawa (p 351). Ngati Raukawa withdrew from Maungatautari and Marutuahu occupied, who were defeated in their turn.
Harete Tamihana	22-26, 28 July	(1884) 12 Waikato MB 385- 397		Daughter of Wiremu Tamihana. Gives supporting evidence for the Ngati Haua claim. Attended Archdeacon Brown’s school at Tauranga. Gives a whakapapa showing her descent from Kauwhata (p. 386). “Haua the ancestor had no land of his own” (386). Says that as to Ngati Koroki’s case the land already awarded to them (i.e. in the 1868 cases) should be taken into account in determining their award. Claims the whole block.
Wiremu Te Whitu’s case (Ngati Kourua)				
Ngakau		(1884) 12 Waikato MB 398- 408		

Maraea Epina		(1884) 12 Waikato MB 409-10		Procedural evidence re additional grounds of claim (i.e. by the claimants)
CLAIMANTS				
Te Winitana Tupotahi		(1884) 12 Waikato MB 410-417; (1884) 13 Waikato MB 1-45		
Ratima [Whakaehe? ²⁴¹²]	Ngati Ngaho, Ngati [Ngahia]	(1884) 13 Waikato MB 46-47		
Rewi Maniapoto (Manga)	Ngati Raukawa, Ngati Maniapoto, Ngati Kauwhata ²⁴¹³	(1884) 13 Waikato MB 47-64		
Judgment of Court		(1884) 13 Waikato MB 65-76	5 Sept	

As can be seen from a glance at the table, the Native Land Court here followed its standard title investigation procedure, with the claimants making an opening preliminary statement, followed by the various counterclaimant groups, with the claimants giving evidence at the end. The claimant was Rewi Maniapoto, no less, claiming on behalf of Ngati Raukawa. The hearings took place at Kihikihi, presided over by Chief Judge Macdonald. Sitting with him were Judge Puckey and Waata Tipa, the Assessor, who was later to be accused of bribery. As this was a first instance hearing it is not clear why Macdonald was there – it would not have been standard practice for the Chief Judge to sit with the first instance judge on a title investigation case. This must have been because the case was seen as being especially significant. However as it was to turn out, Macdonald's presence was to prove problematic, as he was simultaneously the sitting judge and the Chief Judge, and it was the Chief Judges who had the responsibility of ruling on rehearings.

On 22nd April the Court opened the case, and Rewi Maniapoto addressed the Court first.²⁴¹⁴ According to the record:²⁴¹⁵

Rewi Maniapoto stated that when Tawhiao left for England, he (Rewi) handed over the matter of his application in respect of Maungatautari to Tawhiao, but that it would be for the applicants to deal with the matter of their applications – as for himself, he was not going to press the application.

Te Ngakau requested case to stand over until Tawhiao's return, as he believed Tawhiao was interested.

²⁴¹² This name is written in the minutes only once, in the margin of (1884) 13 Waikato MB folio 46, and very difficult to make out.

²⁴¹³ This is the order given by Rewi in this case: "I belong to Ngati Raukawa and Maniapoto, also Kauwhata": (1884) 13 Waikato MB 47 (21 August 1884).

²⁴¹⁴ (1884) 12 Waikato MB 134.

²⁴¹⁵ Ibid.

But Macdonald was not interested in the political sensitivities:²⁴¹⁶

The Court informed natives if one single applicant wished to go on, it would hear and determine case.

The case, unsurprisingly, went ahead:²⁴¹⁷

Ngakau asked if a rehearing would be granted.

Chief Judge replied, “that would depend on the merits of the case”.

After further discussion, the Court decided to take claim 37 (Manukatutahi ki Otautahanga) (of Aug: 21/82) application by Rewi and others.

The claimant case was conducted by Hare Teimana. The opening statement was given by Ngata [Paiwaka]/Maniapoto, who gave the standard opening evidence, describing the boundaries and his iwi/hapu affiliations. He said that his hapu was Ngati Maniapoto, but that he claimed the land through Raukawa, but added: “I am unable to give my genealogy from Raukawa”.²⁴¹⁸ Although he claimed the whole block he said that Ngati Kahu, Ngati Koroki, and Ngati Kauwhata had interests in the block too.²⁴¹⁹ The confused opening statement was emblematic of the general confusion that pervaded this case from beginning to end. Then as was standard the counterclaimants identified themselves. There were no less than 29 separate claimant groups, including Ngati Kauwhata, Ngati Haua, Ngati Koroki, Ngati Koura, Ngati Werewere, and even Ngati Raukawa hapu, acting in opposition to the main claim, and various criss-crossing combinations of these. Everyone must have sensed that this was far too many counterclaimant claims, and once all the counterclaimants had been recorded in the minutes the counterclaimants asked for an adjournment until the next day so there was time to rearrange the counterclaimants into something more manageable. The number of counterclaimants was somehow brought from 29 down to eight. These are listed in the minutes as the cases led by (1) Hori Wirihana (Ngati Kauwhata), (2) Atutahi Hone (Ngati Koroki and other groups), (3) Hakiriwhi (Ngati Koura and others), (4) the claim represented by a Mr Swanson, a solicitor presumably (Ngati Apakura), (5) Te Puke (Ngati Koura), (6) Haimona Patara (Ngati Haua), (7) Wiremu Te Whitu, (8) Rangitatia.²⁴²⁰ But the counterclaims still criss-crossed in various ways and some of them are not easy to follow.

Ngati Kauwhata were the first of the counterclaimants to be heard. The claimant was Hori Wirihana, who gave evidence himself along with four other people, [Wariana] Te Ahu Karanamu, Tarahuia, [Maria Epi], and Ngarangi. Hori Wirihana said he lived at Maungatautari, and affiliated to Ngati Kauwhata, Ngati Hinepare, Ngati Kahukura, and Ngati Matau. He produced a whakapapa showing his own personal descent from Kauwhata, and another explaining the relationship between Tawhao, Turongo, Raukawa, and Kauwhata.²⁴²¹ He claimed through “ancestry, Conquest, and permanent occupation.”²⁴²² The principal ancestors were Kauwhata and Tawhao (Tawhao being the ancestor that Ngati Raukawa and Ngati Kauwhata have in common). Ngati Kauwhata had never left Maungatautari and they had assisted to drive Ngati Maru away:²⁴²³

²⁴¹⁶ Ibid.

²⁴¹⁷ (1884) 12 Waikato MB 135.

²⁴¹⁸ (1884) 12 Waikato MB 137.

²⁴¹⁹ Ibid.

²⁴²⁰ (1884) 12 Waikato MB 144,

²⁴²¹ See whakapapa at (1884) 12 Waikato MB 142 and 143.

²⁴²² (1884) 12 Waikato MB 142

²⁴²³ (1884) 1 Waikato MB 143.

When the Ngati Maru were driven off, my parents lived on this land. It was they who drove the Ngati Maru off (i.e. my grandparents), and others also assisted in driving them away; they then lived on this land, on a part of it. Kauwhata owned the land before the Ngati Maru came, i.e. before the incursion.

Other Kauwhata speakers said the same thing. [Wariana] Te Ahu Karamu said that “the descendants of Kauwhata live at Maungatautari”; they “have lived there from previous to the Waikato war, and up to this time”.²⁴²⁴

The various Waikato counter-claimant groups had some issues amongst themselves regarding boundaries, but essentially the counter-claimant narrative in the 1884 investigation was a familiar one, claiming ownership by conquest (either of Marutuahu, or of both Ngati Raukawa/Ngati Whakatere/Ngati Kauwhata and Marutuahu). Karauria Ngamu of Ngati Koroki, giving evidence in supporting of Hakiriwhi Purewha’s counter-claim, said:²⁴²⁵

I belong to Ngati Koroki. I come from Maungatautari. I know the land before the Court, and have a claim to it through my conquest, first of all against Kauwhata and Raukawa, then the conquest at Taumatawiwi over Marutuahu by which we obtained possession of this land. It previously belonged to Ngati Raukawa.

Karauria said that he had never heard of a peace-making between Ngati Raukawa and Ngati Maniapoto, but there had indeed been a peace-making between Ngati Raukawa and Waikato:²⁴²⁶

I never heard of a peace-making between Raukawa and Maniapoto, but I heard of such between Raukawa and Waikato. The chiefs of Waikato were Haututu (son of Te [Kanaeoa?]) and Te Ngongo, those of Ngati Raukawa Te [Hiwi?/Heoi?] remember no others. That was not a peace-making with the view of the land being given back. The peace-making was after the taking of Hangahanga pa. I never heard of Ngati Raukawa making over Maungatautari to Ngati Maniapoto. When Marutuahu came, the whole of this part of Maungatautari had been taken (meaning all this side of the river²⁴²⁷), but they were still occupying their land on the other side, but Ngati Maru did attack Ngati Raukawa when they came, and took possession. When Ngati Maru settled upon Maungaraurari, they obtained actual possession, they lived there a long time, and many of their dead are buried there.

Karauria gave a detailed account of the battle of Taumatawiwi and of the events leading up to it. The battle was fought between Waikato (including Ngati Haua) with their Ngati Te Rangi allies on the one side and Marutuahu on the other (there was also fighting around the same time between Waikato and Ngati Paoa, allied with Marutuahu, Ngati Paoa being defeated by Waikato separately.²⁴²⁸) The battle was a comprehensive defeat for Marutuahu. Peace was made. Marutuahu were escorted by Ngati Haua part of the way back to Hauraki via Matamata, and Ngati Paoa were escorted to the Waikato to the Waikato river by Ngati Koroki.²⁴²⁹ Some of the Waikato evidence was very lengthy – Te Kamaka of Ngati Hinetu, speaking on behalf of the Ngati Apakura claim spoke for over a week, tracing events in great detail from the time of the battle of Hingakaka onwards. His emphasis lay not on the defeat of Marutuahu at Taumatawiwi, but rather on the earlier cycles of conflict between Waikato, Ngati Haua and related groups and Ngati Raukawa/Ngati Kauwhata.²⁴³⁰

²⁴²⁴ (1884) 1 Waikato MB 151 (2 May 1884).

²⁴²⁵ (1884) 12 Waikato MB 225 (19 May 1884).

²⁴²⁶ (1884) 12 Waikato MB 225, 19 May 1884.

²⁴²⁷ The hearing was at Kihikihi. The witness means that land in the Maungatautari area south and west of the Waikato River was taken by Marutuahu, Ngati Raukawa retaining their lands east of the river.

²⁴²⁸ (1884) 12 Waikato MB 227. Karauria gives the impression that Ngati Paoa were not with Marutuahu at Taumatawiwi.

²⁴²⁹ (1884) 12 Waikato MB 228.

²⁴³⁰ (1884) 12 Waikato MB 309 (17 June 1884).

I object to Ngati Raukawa claim because they were defeated by us, and driven away, and I object to their claim by occupation, inasmuch as they did not occupy the land after their defeat. I never heard that the land was given back to Ngati Maniapoto and Waikato by Raukawa. I heard Potatau went to Kapiti to invited Raukawa to come back, but they declined on account of the poorness of the land. There was a song sung by Raukawa, expressive of their wish to return, but of their shame to do so. Raukawa did not return. I deny that the battle of Taumatawiwi affected the titles to land in this block, because when Marutuahu came, I was already in possession.

At the end of his evidence he gave song about Ngati Raukawa being too “shy” to return to the Waikato, which was carefully copied (in Maori) into the minutes (“Commemorating the Ngati Raukawa disinclination to return to the homeland through modesty”, said to have been composed by Te Whatanui).²⁴³¹

Some of the counterclaims seem particularly difficult to understand. I found that made by Te Puke of Ngati Koura and groups (supported by Te Aweroa, Robert Hooper – a medical officer formerly based at Orakau – and by Hohaiia Ngahiwi and Nikorima Rarowera especially confusing.) As far as I can tell the claim relates to allocation of land after Taumatawiwi. Counterclaimants opposed Rewi Maniapoto’s claim and also the other counterclaims. Ngati Apakura speakers for example, who lived at the Kingitanga community at Whatiwhatihoe, challenged not only Rewi Maniapoto’s claim but also the various claims made by Ngati Koura.²⁴³² As the Ngati Apakura speakers came from Whatiwhatihoe, and because some of them mentioned Potatau, it seems that that the Ngati Apakura claim was essentially a Kingitanga one, asserting rights based on the earlier pre-Taumatawiwi conflicts when Waikato were led by Te Rauangaanga. (One of the Ngati Apakura speakers, Ngahautaua, who said that he earlier lived “under Tawhiao” in the King Country,²⁴³³ recited a song “expressive of peace and goodwill – this was the coronation of the King at Rangiaowhia”²⁴³⁴). It cannot have been easy for the judge and assessor to make sense of it all.

The Ngati Haua case was based on the defeat of Marutuahu and Taumatawiwi, thus differentiating their claim from that of Ngati Apakura. Ngati Haua’s main speaker was Tuwhenua Te Tiwhi of Ngati Haua, whose evidence was both lengthy and rich in detail. His evidence allows the differences between the counterclaimants to be examined in more depth, as the counterclaimants in this case were anything but a united front. Tuwhenua Te Tiwha began giving his evidence on 4 July 1884. He said he belonged to [Hauwhenua] and that he lived at Tamahere.²⁴³⁵ He claimed on the basis of conquest, but qualified this very significantly:²⁴³⁶

I have a claim to the land, through conquest and permanent occupation (Conquest = Marutuahu) and also of Ngati Raukawa, *but it must be distinctly understood that we did not evict them* (emphasis added).

²⁴³¹ See (1884) 12 Waikato MB 325. In the margin is written “Style ‘Early Maori’, Composer Whatanui, Key None, Time None.”

²⁴³² See evidence of Ngara, (1884) 12 Waikato MB 331 (25 June 1884):

I object to Rewi’s claim because it was my tribe [*that*] took the land by conquest – neither again does he live on any part of the land. I object also to Te Puke’s and Hakiriwhi’s claims as set up by them, because they did not assist in the conquest of this land. I never saw any settlements there of Ngati Koura, Ngati Parehaehaeora nor Ngati Ruru, they must have gone there more recently. I agree that Ngati Koroki have a certain amount of claim, inasmuch that they assisted us in the Conquest, but deny that they have any claim through Taumatawiwi, or the alleged boundaries.

²⁴³³ (1884) 12 Waikato MB 347 (2 July 1884).

²⁴³⁴ (1884) 12 Waikato MB 344 (1 July 1884).

²⁴³⁵ (1884) 12 Waikato MB 351.

²⁴³⁶ Ibid.

Tuwhenua Te Tiwha's evidence was concerned principally with events that took place immediately before Ngati Raukawa and Ngati Kauwhata withdrew (in his narrative) and travelled to Kapiti. His evidence was essentially that although there had been conflicts between Waikato/Ngati Haua with Ngati Raukawa/Ngati Kauwhata, nevertheless it was the pressure from Hauraki that led to Ngati Raukawa's withdrawal (if I understand the evidence correctly). He spoke about the battle at Hangahanga, and gave detailed evidence as to the groups involved in the fighting. Ngati Raukawa and Ngati Kauwhata withdrew from Hangahanga undefeated:

The tribes Haua, Raukawa, and Kauwhata lived separately at the time of that war. Raukawa and Kauwhata lived at Maungatautari after the war and Haua at Horotiu. The pas occupied by Raukawa were Tarua, Hangahanga, [Taumanui] and others of which they had several. I can give the names of some of those who took part in the siege of Hangahanga – viz. Ngati Haua and all its hapus – all Waikato – Ngati Whatua – Ngati Te Ata – Ngati Apakura – Ngati Maniapoto and others of which I cannot remember. Ngati Raukawa and Ngati Kauwhata were our mutual enemy at Hangahanga – the pa was evacuated, one old man (Te [Kowhe]) and a young girl being the only ones left. The siege lasted probably two or three months.

He rejected Ngati Apakura's claim to Maungatautari completely:²⁴³⁷

I never heard of any objection by Ngati Apakura or any other hapu to Te Waharoa's gift of land, and as for myself I only hear of it now for the first time. I deny that Ngati Apakura ever took the land – they never dispossessed Ngati Raukawa, neither did Ngati Haua take any of the land. I heard that the boundary spoken of was laid out after Taumatawiwi.

That is, it was Taumatawiwi, the defeat of Hauraki by Waikato and Ngati Haua, which was the key event. And it was pressure from the Hauraki groups which persuaded Ngati Raukawa to withdraw:²⁴³⁸

Sometime previous to the death of Tuanui, Marutuahu had taken possession of Maungatautari, occupying the pas Ngatokoi and Haowhenua. They had a large settlement at Wharikiriki and Aratitaha. Whilst they were living at these places Te Hiwi of Ngati Tamatera went to Tauranga. They took part in some fighting against Ngaiterangi, there the pa at Te Papa was taken, some of the people of that pa belonged to Ngati Paoa, and some of them were killed. When the news came, Ngati Paoa attacked Te Kopua pa because Ngati Raukawa who occupied it, were closely related to Ngati Tamatera – the pa was taken. After this a force of Ngati Paoa fought Ngati Raukawa at [Parikawau?] – that was a pa, it was taken, some of the chiefs being killed – thence they returned and fought Ngati Raukawa at Piraunui. Ngati Raukawa then left for Kapiti. The chiefs killed there were Te [Hereara] and Whatakaraka.

As can be seen then, there is a degree of variety in the counterclaimant narratives. Some of them lay primary emphasis on the earlier cycles of conflict before Taumatawiwi (Ngati Apakura, for example). Others see Taumatawiwi as the decisive event, a defeat of the Marutuahu who had occupied land formerly belonging to Ngati Raukawa. Ngati Haua witnesses said that Ngati Raukawa withdrew because of the deaths Te Whatakaraka and others at the hands of Ngati Paoa, this happening before Taumatawiwi. It was the Ngati Haua version of events which the Land Court accepted. The other main variant was the Ngati Kauwhata counterclaim, according to which Ngati Kauwhata were held the whole block and themselves fought as allies of Ngati Haua at Taumatawiwi.

15.13 Claimant evidence in 1884

The most puzzling aspect of this case is that, notwithstanding that it rejected all Raukawa claims to Maungatautari proper, there was essentially no claimant evidence given by anyone from Ngati Raukawa

²⁴³⁷ (1884) 12 Waikato MB

²⁴³⁸ (1884) 12 Waikato MB 357.

in the strict sense. The three claimant witnesses, of whom the most important was Rewi Maniapoto, all primarily affiliated to Maniapoto/Waikato. One might expect to see evidence about Raukawa occupation of the land, but that was not how the claimant case was organised. Rewi could of course say that he was a descendant of Raukawa, which in whakapapa terms is obviously correct, but the same is true for anyone affiliating to Ngati Maniapoto: it is both true and also somewhat beside the point.²⁴³⁹ It is significant that in the Rohe Potae case in 1886, the Ngati Raukawa claims were founded on descent from Whakaterere and Takihiku, with the Maniapoto claim being made separately.

15.14 Maungatautari (Manukatutahi Otautahanga) Investigation (1884): Judgment

On 6 September the Court gave judgment at Kihikihi, excluding Raukawa and awarding the land to Ngati Haua and Ngati Koroki.²⁴⁴⁰ According to the *Waikato Times* the winners “were jubilant” at the decision.²⁴⁴¹ The Court held once again that Raukawa had forfeited their rights to Maungatautari when they left the area, thus confirming its earlier decisions.²⁴⁴² The Court’s judgment was printed in full in some newspapers (in *The New Zealand Herald* for instance²⁴⁴³), indicating perhaps the importance of the Maungatautari area – it having been in the news to a significant extent for some years - but then it was not unusual at this time for Land Court judgments to be printed in full in the newspapers.) The Court found that “as to claimant” – that is, Rewi Maniapoto, “we uphold the former decisions by this Court as to Ngatiraukawa having forfeited their rights by leaving the land”.²⁴⁴⁴ The case was in form an application for investigation of Maungatautari with Rewi as claimant. The *prima facie* case was made out “by calling Ngata, who claimed that the land belonged to his ancestor, Raukawa, and that it had been held by his descendants to the present time without interruption”.²⁴⁴⁵ Ngata “also admitted the right of certain other hapus, also that a portion of the block belonged exclusively to Koroki and Kapu”.²⁴⁴⁶ There were a number of counter-claims, from Ngati Kauwhata, from some Waikato groups (Ngati Koroki, Ngati Koura, Ngati Apakura), from Ngati Haua, and – just to add to the confusion – from some other sections of Raukawa. All these groups gave their particular accounts of the pre-1840 events to back up their various claims to the block. Mostly they were variations on the general theme that Raukawa abandoned Maungatautari, which was then occupied by Hauraki, who were in turn defeated by Ngati Haua, or Ngati Koroki, or by others in combination.

The Court saw its judgment as an important one, and it was published as a pamphlet, something the Court only did occasionally.²⁴⁴⁷ The Court begins its judgment with an analysis of the cases of the claimants and the counter-claimants, noting that the preliminary case had been made out by Ngati Raukawa, and that the thirty-odd counterclaims had been reduced down to eight. These were: 1. Ngati Kauwhata; 2. Ngati Koroki; 3. Ngati Koura; 4. Ngati Koura, Ngatiparihaehora, and a section of Ngati Raukawa; 5. Ngati Apakura and Ngati Hinetu; 6. Ngati Haua; 7. Ngati Koura and another section of Ngati Kauwhata; 8. Ngati Takihiku. Even so, the claimants and the counter-claimants were criss-

²⁴³⁹ i.e. because Maniapoto was Raukawa’s grandson via Rereahu.

²⁴⁴⁰ The judgment is at (1884) 13 Waikato MB 65-76, and it was also printed in 1885 AJHR G3, 6-7 and in various newspapers. See also Boast, *Native Land Court*, vol 1, NLC 108, 1020-1035.

²⁴⁴¹ *Waikato Times* (Vol XXIII, Issue 1899, 6 September 1884) at 2.

²⁴⁴² Supplementary Judgment in Reference to Occupation by Raukawa, in “Notes on the Maungatautari Case by the Chief Judge, Native Land Court” [1885] AJHR G-3 at 7.

²⁴⁴³ “The Maungatautari Case”, *New Zealand Herald*, (Vol XXI, Issue 7127, 19 September 1884), p 3. This is a full text of the Court judgment.

²⁴⁴⁴ *Ibid*, 6.

²⁴⁴⁵ Judgment of NLC, reprinted in 1885 AJHR G-3, 3-7, at 3; also (1884) 13 Waikato MB 65.

²⁴⁴⁶ *Ibid*.

²⁴⁴⁷ *Native Lands Court. The Maungatautari Case: Judgment delivered at Kihikihi on September 5, by Chief Judge Macdonald and Judge Puckey* (Wilson and Horton, Auckland, 1884).

crossing to some degree. So, for example, although the claimants were essentially Ngati Raukawa, there were some Ngati Raukawa claimants in two of the counter-claimant groups ((4) and (8)) and there were two Ngati Kauwhata claimant groups. These kinds of complicated criss-crossing claims and counterclaims were not unusual in major title investigations in the Native Land Court by this time; they had become the norm, if anything.

Ngati Kauwhata claimed to be entitled to the whole block by ancestral right, but said also that this was shared with Raukawa:²⁴⁴⁸

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

As the Court put it, summarising the Ngati Koroki claim, “after the main migration of the main body of Ngatiraukawa to Kapiti and Taupo”, Marutuahu, “driven out of their own country by Ngapuhi under Hongi” took “Maungatautari” – meaning the district, not just the mountain – and including the block before the Court. Later followed the battle of Taumatawiwi, “when Ngatihaua and its allies defeated Marutuahu”, after which Ngati Koroki, Ngati Haua and the other groups took possession of Maungatautari. The only real variant on this story amongst the counterclaimants was that of the Ngati Kauwhata claim led by Hori Wirihana, who said that the whole block had in fact belonged to Ngati Kauwhata, but in which it was argued also that Ngati Kauwhata had participated as allies against Marutuahu at Taumatawiwi.²⁴⁴⁹

Ngati Raukawa for their part argued that they had ancestral title and occupation and that they never lost title to Maungatautari at any time. Ngati Raukawa argued that after the battle of Hangahanga they formally handed over their lands to Maungatautari to Tukorehu, Te Wherowhero and others, and that they later returned it to the whole of Ngati Raukawa. At this point some Ngati Raukawa people came from Pawaiti “and remained in occupation until their death, when they were succeeded by other descendants, whose representatives are still in coccupation”.²⁴⁵⁰ A key part of the Ngati Raukawa argument was that they “went in peace to Kapiti”.²⁴⁵¹

The Court summarises events as follows:²⁴⁵²

A general concentration of tribes and hapus now took place at Kihikihi, Otawhao, Kaipaka, Ngamoko and other places about Kihikihi, for mutual protection against Ngapuhi; all the hapus remaining in occupation until Potatou [sic] went to take up his abode at Manuka [Manukau?], when most of them returned to their former kaingas, whilst the Patukoko, Ngatinaenae, and Ngatiparehaehaeora continued to live at Kihikihi and Otawhao. We have already referred to Marutuahu; they came as fugitives from

²⁴⁴⁸ Ibid.

²⁴⁴⁹ (1884) 13 Waikato MB 66; Boast, *Native Land Court*, vol 1, 1033:

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

²⁴⁵⁰ (1884) 13 Waikato MB 68; Boast, *Native Land Court*, vol 1, 1028.

²⁴⁵¹ (1884) 13 Waikato MB 68; Boast, *Native Land Court*, vol 1, 1028.

²⁴⁵² 1885 AJHR G3, 5-6.

Hauraki and settled at Horotiu and other places with Ngatihaua and Ngatikoroki. Some trouble arising between the Tangatawhenua and the Heke, Ngatihaua went from Horotiu to Kawhehitiki (Maungakawa), whilst Ngatikoroki determined to go to Kawhia, but accepted the invitation of Ngatiapakura and settled at Kaipaka. Here they remained for a time till trouble arose between them and the Ngatihinetu, a hapu closely related to Ngatiapakura. A skirmish took place, and several of Ngatikoroki were killed, some of the dead being mutilated with adzes. When news reached Ngatihaua, they came and attacked the Ngatiapakura pa, Kaipaka, whilst many of the warriors were at Ngamotu eel-fishing. Amongst the slain was Rangianewa, a woman of very high rank. Ngatihaua did not attack Taurangatahi, the pa of Ngatihinetu. We are told Te Paewaka interceded in its behalf. Immediately on the fall of Kaipaka, those of Ngatiapakura, who had been at Ngaroto, and the Ngatihinetu, from Taurangatahi, went to Kawhia. After being there some time, some of the great chiefs of Waikato brought them back to Rarowera with a strong escort, and it was intended that Ngatihaua should be attacked in their pa at Kawehitiki, in order that satisfaction might be had for Rangianewa's death. And now we come to a point in dispute as to whether or no Te Waharoa did or did not give up Rangioahia to Ngatiapakura as satisfaction for Rangianewa's death. It appears to us highly probable that Te Waharoa did give the land as stated, inasmuch as the Ngatihaua were not attacked. It is also equally clear that Ngatiapakura and Ngatihinetu were allowed to occupy Rangioahia without molestation. Shortly after Pomare's disastrous expedition to Waikato, the second migration of Ngatiraukawa, known as "Te Hekewhirinui," took place, which was followed by the death of Te Hiwi at the hands of the Ngatierangi [sic: Ngaiterangi], and whilst Ngatiraukawa were at Tauranga getting vengeance for his death, Ngatimaru attacked and took Te Kopua pa; then there was trouble between Ngatimaru and Ngatiraukawa on account of Te Whaha, a Ngatimaru, having been killed by Te Whatakaraka. It was alleged that this was settled, and Ngatimaru got satisfaction by killing Te Uhunga. Soon after this, the third migration of Ngatiraukawa, known as Kariritahi, occurred. Then followed the attack by Ngatimaru on Ngatitama and Ngatitahu at Parikawaru; and when this *ope* of Ngatimaru were returning they killed Te Whatakaraka at Piraunui. Te Whatakaraka's remains were carried to Taupo, and the last great migration took place, some of the Ngatiraukawa going to Kapiti and the rest to Rotorua. Ngatimaru now took possession of Maungatautari, and lived at Ngatokoi and Haowhenua, a large pa, so named because of the large extent of ground it covered, whilst Ngatipoa lived at Kaipaka (near Maungakawa), not the pa of the same name which belonged to Ngatiapakura.

Then followed the battle of Taumatawiwi, where Ngati Haua, led by Te Waharoa, defeated Ngati Maru, around 1830 or 1831, by which – according to Ngati Haua – Ngati Maru lost control of Maungatautari and Ngati Haua acquired it. Raukawa, for their part (so it was said) had left and had abandoned all rights to Maungatautari.

The Court accepted that earlier conflicts between Ngati Raukawa and Waikato groups before the arrival of Marutuahu had not affected Ngati Raukawa's – and Ngati Kauwhata's ownership of Maungatautari. "It is admitted on all sides that Ngatiraukawa and Ngatikauwhata were the owners of Maungatautari and the land surrounding it."²⁴⁵³ Their title remained intact until Ngapuhi's assault on Hauraki and Marutuahu retreating inland. Marutuahu certainly then did displace Ngati Raukawa at that point in the Court's view. Although Marutuahu were refugees in retreat from Ngapuhi, nevertheless they "by force of arms caused such of Ngatiraukawa as continued in occupation to vacate the land before the Court".²⁴⁵⁴ Marutuahu were then in turn displaced displaced by Waikato groups: "we find that Ngatihaua, Ngati Koroki, and Ngatihouru, and their hapus, after having Marutuahu away, dispossessed them [Ngati Raukawa] and acquired the mana over the land, which they have retained ever since". As the Court put it, "the claims by ancestry" were "extinguished by *take raupatu*".²⁴⁵⁵

²⁴⁵³ (1884) 13 Waikato MB 68; Boast, *Native Land Court*, vol 1, 1028.

²⁴⁵⁴ (1884) 13 Waikato MB 75; Boast, *Native Land Court*, vol 1, 1033.

²⁴⁵⁵ (1884) 13 Waikato MB 75; Boast, *Native Land Court*, vol 1, 1033.

The Court concluded as follows:

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

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

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

In October Puckey and Tipa released a supplementary judgment relating specifically to Raukawa interests in Maungatautari. The Court found that although it was true that some Raukawa people had remained behind at Maungatautari, they had only done so “on sufferance” and that this did not create a title that the Court felt it could recognise. The Supplementary judgment was reprinted in the *Waikato Times* on October 7:²⁴⁵⁶

The Court sat at 10 o'clock, when his Honour delivered the following supplementary judgment in the Maungatautari case: - The Court has already given judgment as regards ancestral title over this block. Our present decision, therefore, simply applies to the alleged occupation of parts of the land before the court by some of descendants of the original owners Ngatiraukawa. It appears from the evidence before us that after the Ngatimaru had driven away the Ngatiraukawas some few persons did not migrate. They lived at Wharepuhunga, and sometimes on this block, and a short time before Taumatawiwi. They sought shelter at Otawahao [Otawahao?] and that after Taumatawiwi Marutuahu having returned to Hauraki they resumed occupation which continued to the war in Waikato, 1864, when they removed to Wharepuhunga and other places which do not appear to be possessed or occupied by Marutuahu. The question before us is, was this occupation (the original title having been destroyed), sufficient to entitle these persons, to class among the owners. Our answer is, that it is not, and we say so on this ground, that they merely occupied by sufferance such places as they did occupy after the land had changed owners, and that occupation having terminated no right now exists. In such case nothing but continuous occupation could confer a right to the use of the sites of the whares and the cultivations, but that could give no right to the land whatever beyond that so occupied. That occupation once terminated the right to occupy ceases to be.” His Honour intimated to the natives that they would be given until Saturday week to arrange the subdivisions among themselves. In case they did not succeed before then the court would take in hand to settle for them.

This is a very disadvantageous and rather unfairly over-interpreted reading of events from Raukawa’s viewpoint. The Court in fact accepts that some Raukawa people remained in occupation on what, after all, were their ancestral lands at Maungatautari. Marutuahu were defeated at Taumatawiwi, and the Court does not clarify on whose “sufferance” Raukawa remained on the block. The block was not awarded to Marutuahu, it should be recalled, but to Ngati Haua, on the basis that they defeated

²⁴⁵⁶ *Waikato Times*, Vol XXIII, Issue 1912, 7 October 1884, p 2; also *Notes on the Maungatautari Case by the Chief Judge, Native Land Court*, 1885 AJHR G-3, 7.

Marutuahu and had then settled the now-empty Maungatautari lands. Does the Court mean that Raukawa remained at the “sufferance” of Ngati Haua? This seems a little hard to accept: surely Ngati Haua would have accepted that Raukawa would have had every right to remain *in situ*. The Court – unless I am misunderstanding its meaning – also appears to be suggesting that although Ngati Raukawa may have acquired some rights by remaining *in situ* at Maungatautari, they had subsequently lost even these limited rights by withdrawing south to Wharepuhunga during the Waikato war. This seems particularly harsh. Were Raukawa non-combatants required to remain at Maungatautari at the risk of their lives and properties at the time of the invasion of their lands by the British army in order to not lose title in the Land Court? Indirectly this was a way of punishing Raukawa for being on the wrong side during the New Zealand wars.

By this time, nearly twenty years on from the original case, and some sixty years after the events in issue, the Land Court had built up over a sequence of cases a particular picture of Hauraki and South Waikato history which underpinned the tenurial structure of the entire region. In this construction of events the invasions of Ngapuhi and the displacement of Hauraki groups such as Marutuahu played a central role. This was adverted to by the Chief Judge in his own report to Parliament on the case in 1885, following a number of complaints about the decision, in which he noted that “the decision... was not only amply supported by the evidence in the case itself, but is upheld by uniform and unquestioned previous decisions of the Court”, citing here the Waipa, Hinuera, Horahora, Maungatautari 1 and 2, Pukekura, Puhue and Te Aroha cases.²⁴⁵⁷ These blocks had been partitioned and much land had been sold to the Crown and to private buyers. A finding by the Court that the Marutuahu/take raupatu theory was untenable would have had major implications given that the same interpretation underpinned these other cases. That others apart from the Court and the parties were well aware of this is shown by the probable bribing of the Assessor in the case a by representative of the Waikato Land Companies.

The Court decision, which essentially only sketched in rights by iwi and hapu affiliation, was then followed by the usual interminable process of identifying lists of names to go into the titles. In the case of Maungatautari the process of working out the lists went on for weeks. In September the *Waikato Times* reported:²⁴⁵⁸

The Natives are still engaged wrangling over the list of names ... The Maungatautari block consists of about 60,000 acres; the division of the spoil will represent about 50 acres to each. The case is expected to be finished in about a fortnight.

On 21 October the partitions were completed. There were, however, accusations of improper behaviour by the Assessor. According to *The New Zealand Herald*:²⁴⁵⁹

The Court gave judgment in the subdivision in the Maungatautari case this morning. The Ngatikoroki were awarded about 25,000 acres; the Ngatikoura, 2000 acres; Hauama Te Puke, 1450 acres; and the balance, about 21,000 acres, was awarded to Ngatihaua. The above judgment has given general dissatisfaction, because the Native Assessor, wife, and children were found to have been put in the Ngatikoroki list of names, and he afterwards took part in subdividing the block.

15.15 “Friend, this is wrong, this is very disgraceful”: Protests, Partitions, Petitions (1884-1907)

But in the meantime those disappointed by the Court decision were pressing for a rehearing of the whole case. Raukawa groups could not understand why – yet again – they had lost the case. Numerous

²⁴⁵⁷ Chief Judge Macdonald to both Houses of the General Assembly [1885] AJHR G-3 at 1.

²⁴⁵⁸ *Waikato Times* (Vol XXIII, Issue 1907, 25 September 1884) at 2.

²⁴⁵⁹ *New Zealand Herald* (Vol XXI, Issue 7154, 21 October 1884), p 5.

documents attest to widespread confusion and dismay about the Court's findings. On 6 September 1884 Wahanui sent a letter to Ballance stating that the the decision was "bad" and asking for a rehearing. Wahanui made the point that others were to make subsequently: "inasmuch as the Chief Judge himself presided at the original hearing he will not consent to a rehearing".²⁴⁶⁰ It was the Chief Judge who decided rehearing applications, but in this case, for some reason, the Chief Judge had been one of the two presiding judges. T W Lewis, in forwarding the letter to his Minister, thought that Wahanui had made a very good point; he had "hit upon a very weak and unsatisfactory point in Native Land Court procedure".²⁴⁶¹

Under the present law the Chief Judge alone can decide upon applications for rehearing. Having himself presided in the Maungatautari cases – Wahanui argues that he [Macdonald] is not likely to grant a rehearing. The inconsistency is evident and while the law is at present the Chief Judge should not sit in rehearing cases.

Lewis wrote to the Court on 10 October asking whether any applications for rehearings had been received, but was informed that as the titles had not been finalised no rehearing applications could be entertained.²⁴⁶² (Whether that was correct as a matter of law is something I have not had time to check.)

Lewis and Ballance were the recipients of a number of rehearing applications in the following weeks, although the government could not do much more than forward the papers on to the Chief Judge. On 16 October "Whiti" (this must be Whiti Patato of Ngati Raukawa) and the "Committee of all Raukawa" wrote to Ballance ("Parani") asking for a rehearing. The Committee wanted a new judge and assessor to hear any rehearing that may be granted. The judge should be chosen in Wellington and the assessor should be "selected from the Ngati-Kahungunu or Ngaitahu tribes" – i.e. from as far away as possible.²⁴⁶³ They said that there was now "a great deal of trouble with the lands adjudicated upon".²⁴⁶⁴ This preliminary request was then followed up by a lengthy and detailed petition of 24 October 1884 which reveals widespread Ngati Raukawa dissatisfaction with paractically every aspect of the Puckey-Macdonald judgments, as well as with the way the Court had managed the case.²⁴⁶⁵ Their underlying argument was that the decision had been given "without cause" against Ngati Raukawa "the permanent occupiers of the land on the West and South side before fight at Taumatawiwi and down to the present time".²⁴⁶⁶ This must mean that the fundamental problem with the Court's decision was that it had accepted the usual Marutuahu narrative for lands that it did not apply to: to the mountain itself, which directly adjoined land that unquestionably belonged to Ngati Raukawa.

²⁴⁶⁰ Wahanui to Ballance, [6] September 1884 (there is only a translated extract on the file), MA 13/81/48a, Part 1.

²⁴⁶¹ Lewis to Ballance, 6 Sept 1884, MA 13/81/48a, Part 1.

²⁴⁶² Lewis to Macdonald, 10 October 1884, MA 13/81/48a, Part 1.

²⁴⁶³ Whiti and the Committee of all Raukawa to Ballance, 16 October 1884, MA 13/81/48a, Part 1. Whiti and his colleagues contrasted Macdonald's decision with Fenton's earlier judgments.

²⁴⁶⁴ Ibid.

²⁴⁶⁵ Ngati Raukawa petition seeking a rehearing, 24 October 1884, MA 13/81/48a, Part 1. This is an important document and was seen to be at the time. The original is of course in Maori, and the Maori text was in fact printed by the government printer. There is a translation of the petition on the file. It begins by stating that "We object to that decision given by the Native Land Court upon investigation of the title which was conducted at Kihikihi/E whakahe ana matou kit e whakatau o Te Kooti Whenua Maori i runga i te whakawa kua oti ne te whakahaere i Kihikihi" (using the official translation).

²⁴⁶⁶ Ibid ("No te mea i hinga noaiho matou he tangata noho o tuturu ki tenei whaitu a o tenei maunga o Maunga Tautari, kit e taho Rato. Ki te taha whaka te Tonga, i mua no atu o Taumatawiwi, a, tae noa mai ki enei rangi.")

The petitioners were unhappy with the ways in which the Court had grouped together the various claims at the beginning of the case. They claimed also that Ngati Raukawa had been caught off guard and had not been able to open the case correctly.²⁴⁶⁷

It was through the wrongful manner in which this hearing was conducted and through the mistake in having our case amalgamated with general case of the main tribe of Ngatiraukaw – Ngatiraukawa who are living in different localities, what caused a lot of trouble to us the people whose fires were burning on the ground was the suddenness with which the case for the claimants was called on, and there was confusion at the outset.

The petitioners said that at the start of the case, Hare Temania as conductor for the claimants had asked for more time to prepare the opening the case, as he had only that morning been formally authorised to conduct the claimant case. Judge Puckey had refused to allow this, and for this reason Hare, forced to proceed before he was ready, called on Ngata to do the opening address. “[H]e [Ngata] was not duly elected to do so, it was done on the spur of the moment.”²⁴⁶⁸ Ngata said that his iwi were Ngati Maniapoto and Ngati Raukawa, but his claim was only an ancestral claim from Raukawa. The petitioners seem to mean that essentially the opening statement amounted to a Ngati Maniapoto claim, not a Raukawa claim in the strict sense, which could explain why Ngata said, as noted above, that he could not actually give his descent from Raukawa (which does seem odd).²⁴⁶⁹ Ngata, said the petitioners, confused things when he was asked by the Court to state the names of the hapu who had claims:²⁴⁷⁰

His claim was only an ancestral one from “Raukawa”, he also gave the names of his hapus having a right to this land, namely Ngati Paretekawa, Te Werokoko, Ngati Pareteuaki, Ngati Naenae, and also added the names of Ngati Koura, Ngati Parehaehoro, Ngati Kauwhata, Ngati Ruru, Ngati Apakura, Ngati Rangimahora as also having an interest in his claim.

The petitioners argued also that although a number of individuals tried to set up separate claims for various Ngati Raukawa hapu, these efforts were frustrated by the way in which the various claims and counterclaims were amalgamated together by the Court. One person did try to resist as best he could: this was Rangitutia, who was claiming on behalf of Ngati Takihiku (a major subdivision of Ngati Raukawa), but he eventually gave up because of the pressure placed on him by other parties, or so the petitioners seem to be suggesting; moreover he was under the impression that he would be able to make a statement when “the main case” had been heard.²⁴⁷¹ The petitioners also complained about some other aspects of the management of the case by the Court. In particular Ngati Raukawa never got an opportunity to lead evidence on their continued occupation of Maungatautari proper, the Court treating their claim as essentially ancestral rather than occupation-based: “up to the conclusion of the case for the claimants no opportunity was given to us whose fires burn there and who permanently occupied the country on the western and southern side of the Maungatautari Mountain to make a statement”²⁴⁷².

²⁴⁶⁷ Ibid. The translation may be garbled and does not quite convey what the claimants were trying to say. The Maori text is: Na runga i te pohehe ki te whariki i o matou keehi ki raro o te keehi nui o te iwi nui tonu, o Ngatiraukawa o Ngatiraukawa ki nga whai katoa. Tetehi take i tino raro ai matou te iwi ahi ka, i karangatia a ohoreretia te Keehi mo te tahi ki nga kai tonu, a, raruraru tonu mai i te tuheratanga.”

²⁴⁶⁸ Ibid. The petitioners complained that “Ngataa stood up to give evidence and stated that the Waikato and Ngatimaniapoto were his tribes” (“Ka tu a Ngataa, ka korero ko Waikato, ko Maniapoto”).

²⁴⁶⁹ (1884) 12 Waikato MB 144.

²⁴⁷⁰ Ngati Raukawa petition seeking a rehearing, 24 October 1884, MA 13/81/48a, Part 1

²⁴⁷¹ Ibid: “But Rangitutia stood out a long time with his case on behalf of Ngati Takihiku, it was only through the urging of different individuals and the people as a whole and his being told that he and others of his party would have an opportunity of making a statement when the main case was made that he gave way.”

²⁴⁷² Ibid.

There were some other aspects of the case that troubled Ngati Raukawa. One was that it was wrong in principle for the Chief Judge to sit on a first-instance hearing, given that it was the Chief Judge who decided whether rehearings should be allowed.²⁴⁷³ They also had many concerns about how the evidence had been translated, given that Chief Judge Macdonald apparently did not understand the Maori language. Usually the evidence would be translated as it was given, but for some reason this was not done.²⁴⁷⁴ They had heard from their “European friends” that the failure to translate the evidence properly was contrary to English law. Moreover the petitioners gained the strong impression that for much of the time Chief Judge Macdonald’s attention was elsewhere:²⁴⁷⁵

We are positive that there was a great deal that the Chief Judge never heard because while he was in Court a great deal of his time was taken up in attending to matters outside of the case that was being adjudicated upon in his presence. We therefore assert most strongly that there was only one Judge acting in that Court, namely Mr Puckey, as his colleague was unacquainted with the Maori language.

Ngati Raukawa, no strangers to the Native Land Court, thought that the whole conduct of the case was bizarre:²⁴⁷⁶

It is now for the first time that such investigation as that conducted by the Court that sat at Kihikihi has ever been seen.

Their final complaint was the most serious of all: that the Assessor, Waata Tipa was not impartial, as shown by the inclusion of his wife and children in the Ngati Koroki list of owners, Ngati Koroki being one of the main counterclaimant groups. Much of the rest of petition was taken up with much circumstantial detail supporting this allegation, or as otherwise pointing to the Assessor’s lack of impartiality.

Aperahama Te Rangitutia himself wrote to Ballance on 27 November, making many of the same points.²⁴⁷⁷ He also stated that the evidence had not been properly interpreted, that Chief Judge Macdonald did not understand Maori and that the Assessor was not impartial and was in fact Ngati Haua. Aperahama mentioned the problems he had in trying to present Ngati Raukawa’s perspective to the Court. He said that Judge Puckey had persisted in getting him (Aperahama) to merge his case with Rewi Maniapoto’s case, which had turned out to be problematic:

Later on Rewi’s case diverged from ours though derived from one common ancestor for he and his advocate Tupotahi were partly Ngatimaniapoto while we have no connection with Ngati Haua. We had a good case if it had been conducted in Court, because we were in continued occupation of this land down to the time of the Waikato war. Rewi lost his case because he did not occupy the land and we with him because our case had been amalgamated with his.

The most interesting feature of Aperahama’s petition are a number of comments he makes about the history of Ngati Raukawa, which must be indicative of what he would have wanted to convey to the

²⁴⁷³ Ibid (“With respect to the Chief Judge, it was not right that he should have taken part in the first hearing of purely Native Land before the Native Land Court, seeing that we object to the Judgment given for this land Maungatautari, and we also have to apply to the person who gave that judgment.”)

²⁴⁷⁴ Ibid. (“Another strong objection that we have is to the action of of the Interpreter to the Court at Kihikihi who did not act rightly, as he did not interpret what took place in Court and who can tell what was left out by him or what reached the ears of the Chief Judge.”) I am not sure what happened procedurally – perhaps the Interpreter simply made written notes.

²⁴⁷⁵ Ibid.

²⁴⁷⁶ Ibid.

²⁴⁷⁷ Aperahama Te Rangitutia to Ballance, 27 November 1884 (original in Maori, citing English translation on file).

Court if only he had been able. He said that it was simply untrue that Ngati Raukawa had ever been defeated by Ngati Maru, and that Ngati Maru and Ngati Raukawa were in fact closely related. Ngati Maru “had no claim on this land, they lived there on sufferance”. Moreover “the statement that the Ngatiraukawa emigration was a complete one and that no one was left on the land is untrue, there were many who occupied the land down to the time of the fighting with the pakehas”.²⁴⁷⁸

It was not only Ngati Raukawa who expressed concern at the Court’s findings. On 14 October 1884 the New Zealand Herald printed a letter from “Maniapoto”, which rejected out of hand any right of the counterclaimants to Maungatautari on the basis of the defeat of Marutuahu at Taumatawiwi. The historical interpretation set out in this document is more or less the same as Ngati Raukawa’s. The only record of this document I have been able to locate is the printed translation in the newspaper:²⁴⁷⁹

Friend, - Greeting! This is a notice from us that you may insert it in the newspaper, so that the peoples of these islands, both Europeans and Maoris, may know matters in respect to Maungatautari, to Manukatutahi, and to Otautahanga blocks of land. This is a word of explanation, that you may have some knowledge in relation to these lands. Our ancestors were the rightful owners, our fathers also, and we are still the owners. The Court that sat at Kihikihi gave judgment in favour of another people, who had no right whatever to that land, the grounds for this decision being the conquest of Marutuahu at the battle of Taumatawiwi. Our word of reply to this is, we do not recognise in the conquest of Marutuahu any plea affecting us, or our fathers, or the lands in question. Secondly, Marutuahu resided with Ngatimaniapoto at Waipa, and some at Mokau, and some at Haowhenua. The motive which impelled them to reside at these places was dread of the Ngapuhi armies, and those who lived with Ngatimaniapoto were peaceably entertained; but those who lived with the Ngatihaua were attacked, they having quarrelled about food of the cultivations. This is what our ancestors said about this quarrelling for food – a great ado, which causes discomfort in the system not satisfying the hunger created, the quantity being but small. The killing of the people, put forward as a claim, was not on account of land, but on account of food. Therefore, we disapprove of this claim set up; and secondly, the assessor is a near relation of the Ngatihauas, and the names of his wife and children are in the list of names for the Crown grant of Maungatautari; and this is the reason why we earnestly pray for a re-hearing of Maungatautari.

(Signed) NGATIMANIAPOTO. Kihikihi, October 7, 1884

There seem to have been various other petitions which are not on the file I have located at Archives New Zealand. Ngati Whaita, a key Raukawa hapu, pointed out for their part pointed out that that they “never were conquered or migrated”.²⁴⁸⁰ Chief Judge Macdonald had to have a separate hearing on 12 February 1885 at which all those who wanted to were allowed to speak to their applications. As well as complaints about the correctness of the Court’s findings there were also a number of allegations about the probity and appropriateness of the assessor (Waata Tipa), including the sensational allegation that he had been bribed with £200, paid to him by a Mr Moon – who worked at Cambridge for the various South Waikato Land Companies – and also (as seen) that that the Assessor’s wife and children had been placed on the list of Ngati Koroki owners and (further) that he should never have been chosen as assessor in the first place, “because he was our enemy in old fightings”.²⁴⁸¹

There was a separate hearing dealing with the bribery accusation against Tipa presided over by Chief Judge Macdonald heard at Cambridge on 21 February 1885. Tipa himself did not attend, the Court

²⁴⁷⁸ Ibid (“Ko te heke o Ngati Raukawa i kiia nei i heke katoa kaore he tangata i mahuetia ki te whenua nei he hori rawa tena korero he maha noa ihi nga tangata i noho a noho tonu tae noa mai ki te whawhai pakeha.”)

²⁴⁷⁹ “The Maungatautari Block”, *New Zealand Herald*, Vol XXI, Issue 7418, 14 October 1884, p 5.

²⁴⁸⁰ Notes on the Maungatautari Case by the Chief Judge, Native Land Court, [1885] AJHR G-3.

²⁴⁸¹ Ibid.

having no power to subpoena him. Receipts signed by Tipa proving loans made to him by Moon were produced and impounded by the Court. According to the *New Zealand Times*.²⁴⁸²

At the Cambridge Native Land Court, this morning, before Chief Judge Macdonald, the matter of the alleged bribery of a native assessor, named Waata Tipa was gone into at considerable length. All those concerned, excepting Tipa, were in Court. Captain Blake produced two receipts signed by Tipa. One was dated Kihikihi, May 10, 1884, for £20, received from William Moon as a loan, which, the receipt said, was to be repaid; and the other was dated Ngaruawahia, November 12, 1884, for £25 cash lent. These were the only receipts. He had shown Symonds that one of the sums had been repaid, and the other was expected to be repaid also. He considered Hare Symonds had abused his confidence in the matter. The Court impounded the two receipts. His Honour said the matter was one of criminal concern, and cautioned those interested against making statements unnecessarily. After a somewhat personal discussion, the Court adjourned.

T W Lewis, head of the Native Department, was troubled about the allegation of bribery made against Tipa, and on the 17 June 1885 wrote a note on the file about the matter to his Minister (Ballance).²⁴⁸³

Of late years rumours have been frequent of the Land Court Assessors being influenced in their decisions by bribes of one sort or another – but in no previous case has so direct a charge been made against Waata Tipa. The matter is of so serious a nature that I think special enquiry by Royal Commission should be made, and that the Commissioners should be gentlemen of position and judicial experience and not connected with the Native Land Court.

All the Ngati Raukawa rehearing applications, as they had feared, were declined by Macdonald. The argument that the Court was wrong to find that Marutuahu “acquired land over Maungatautaru and compelled Ngatiraukawa to vacate: was, said Macdonald, “amply supported the evidence” and was “upheld by uniform and unquestioned previous decisions of the Court”.²⁴⁸⁴ The only rehearing application that was allowed was one from some Ngati Haua people relating to a mistake in the owners’ lists. Macdonald cannot have been pleased about the complaints made about him personally. Counsel for Ngati Raukawa in the 1907 Appellate Court hearing (A L D Frazer) later made this point explicitly: “Judge Puckey was deciding Judge at original hearing but Chief Judge Macdonald sat with him and it was to him we had to apply for a rehearing”.²⁴⁸⁵ As to the allegations against the assessor, Chief Judge Macdonald actually found that that it was certainly the case that Moon had paid money over to the assessor (“I...assume that the monetary business, whether loan or gift, was intended by Mr Moon to affect the Assessor’s mode of dealing with his judicial duties”)²⁴⁸⁶, grounds enough, one might think, for the decision to be revisited. Macdonald did not believe so because in his opinion “substantial justice [was] ... done by the decision”.²⁴⁸⁷ The other accusation against the Assessor, that members of his own family had gone into the list of owners, was also true. Here again Chief Judge Macdonald did not think this was sufficient reason for upsetting the decision given the months of hearing time invested in the case and which would have to be done all over again if the rehearing application were to be allowed.²⁴⁸⁸ As for Ngati Whaita, who truly said that they were neither conquered nor had they migrated,

2482 *New Zealand Times*, 21 February 1885, clipping on MA 13/81/48a, Part 1.

2483 Memo, Lewis to Ballance, 17 June 1885, MA 13/81/48a, Part 1

2484 1885 AJHR G-3, 1-2.

2485 Per counsel for appellants (A L D Frazer), Maungatautari Appeal, (1907) 33 Waikato MB 334.

2486 *Ibid*, 3.

2487 Chief Judge Macdonald to both Houses of the General Assembly [1885] AJHR G-3 at 3.

2488 *Ibid*, 3.

Chief Judge Macdonald said that “did not set up any claim at any stage of the case, except as they were represented by Rewi [Maniapoto], if they were represented”.²⁴⁸⁹

The rejection of the rehearing applications was a bitter blow to Ngati Raukawa. Aperahama Rangitutia, Whiti Patato and others – 61 people in all - sent a letter to Ballance from the Ngati Raukawa community at Aotearoa (immediately to the south of Maungatautari mountain, as it happens) expressing their disappointment:²⁴⁹⁰

Friend, Greeting: We have seen a notification in the *Kahiti* by the Chief Judge that he has dismissed the applications for another hearing of Maungatautari. I said to you [Ballance] at Kihikihi “If a rehearing is not granted, what will you do?” I said if it is not granted I shall submit it to you for adjudication, you said Yes.

This is our word to you – be strong in granting a rehearing of Maungatautari, on the grounds that were submitted in the first petition of Ngati Raukawa. This is also a new reason, which was mentioned to the Chief Judge at Cambridge, viz: the payment of the Assessor by Mr Moon. Friend, this is wrong, this is very disgraceful (E hoa ka kino tenei he kohuru tenei).

The disputation over Maungatautari simmered on. In 1886 there was in fact an armed confrontation between two Raukawa hapu and Ngati Haua over sections of Maungatautari. In May the *New Zealand Herald* reported as follows:²⁴⁹¹

It will be remembered that some time ago, the title to the Maungatautari block was adjudicated upon by the Native Lands Court, and awarded to certain natives. Rewi, who was a claimant, was excluded, with the members of the Ngatiraukawa tribe. The persons who were adjudicated to be owners have since, we understand, been negotiating for a sale for a portion of the block. Hearing this, certain members of the Ngatiraukawa tribe, who have hitherto been residing at Te Waotu, have within the last few days determined to assert their ownership by squatting on the land, and have taken up their abode on Maraukatutahi. This course of action may lead to considerable complication and difficulty.

Ngati Huri and Ngati Maihi, two Raukawa hapu, built a fortified pa at Maungatautari, and Ngati Haua commenced firing at them in October (taking care, it seems, to ensure that no one was actually hurt). These events were described in the *Waikato Times* on 14 October (“Native Disturbance at Maungatautari”):²⁴⁹²

The Ngatihaua on the other hand have for the last week been making hostile demonstrations, assembling in large numbers and firing guns in the direction of the pa day after day, with a view to intimidate their antagonists. So far the matter has only been a case of “bounce” on the part of Ngatihaua and passive resistance on the Ngatiraukawa side.

Formal orders by the Crown relating to Maungatautari were made in May 1885.²⁴⁹³

Re the Maungatautari Block, the Gazette just out announces that as to part awarded to Ngatihaua, a rehearing on one point only is ordered; as to the rest of the block the title was ascertained on May 7th, and dealing will have to be prohibited under the Act of 1883 on June 16th.

²⁴⁸⁹ Ibid, 2.

²⁴⁹⁰ Aperahama Rangitutia, Whiti Patato and 59 others to Ballance, 20 July 1885 (original in Maori, citing English translation on file).

²⁴⁹¹ “Natives Take Possession of Maungatautari Block”, *New Zealand Herald*, Vol XXIII, Issue 7636, 13 May 1886, p 5.

²⁴⁹² “Native Disturbance at Maungatautari” *Waikato Times* (Vol XXVII, Issue 2226, 14 October 1886) at 2.

²⁴⁹³ “Maungatautari”, *New Zealand Herald*, Vol XXII, Issue 7340, 29 May 1885, p 5.

The “Act of 1883” was probably the Native Alienation Restriction Act of 1884. Meanwhile the Land Court had carried on dealing with Maungatautari, partitioning it into many smaller blocks.²⁴⁹⁴ There was a division of the block more or less immediately in 1884 and another major partition hearing in February 1885.²⁴⁹⁵ These partitions were subdivided in turn. The Maungatautari surveys took some years to be completed.²⁴⁹⁶ The Court dealt with the survey liens for Maungatautari on 16 June 1885,²⁴⁹⁷ and again in 1888²⁴⁹⁸ and on various other occasions. In 1886 section of 2400 acres of Maungatautari was “cut off ... for expenses”.²⁴⁹⁹ These routine post-investigation partitions were described from time to time in the newspapers. An example is the following report in *The Auckland Star* on 10 July 1886:²⁵⁰⁰

At the Native Land Court yesterday Takuira Papanui, on behalf of the Taupo natives asked that the hearing of the big blocks be taken here. On the application of Hone Thompson the individual interest of Mama Ponehe, 112 acres in the Maungatautari block, No 4A, was cut off. This block of 1,000 acres was awarded to the family of William Thompson.²⁵⁰¹ Several successive [sic] claims were heard. Mr Mackay applied to have the Pukekura and Puahue blocks (in which Messrs Price and Co are interested) heard. Mr A McDonald opposed the application, pointing out that difficulties existed respecting the titles. The Court said notice must be given in the usual way. Several natives applied for adjournment, in order that they might discuss amongst themselves when the big block should be heard. The Court granted an adjournment until Saturday.

A routine day in the Native Land Court, in other words. The Court split Pukekura into thirteen partitions in December 1887, and soon after 14 subdivisions were cut out of Puahue. There were the usual complexities over survey liens and so on. According to the ever-vigilant *Waikato Times*:²⁵⁰²

At the sitting of the Native Land Court on Tuesday, Judge Puckey issued orders of 18 sub-divisions of the Pukekura Block. The parties in Puahoe then applied for an adjournment to settle amicably the balance of the subdivisions in their block. They were, however, unsuccessful in the attempt, and yesterday the Court was asked to settle the matter in dispute. After hearing the claimants Judge Puckey gave judgment in terms of the allocation submitted by Mr Fraser, and orders were then made for fourteen sub-divisions. The Court then adjourned Mr Gwynneth’s application for liens for the survey of the Maungatautari until the 10th of January, when a similar application by Mr A.B. Stubbing for Puahoe subdivision will also be heard.

The Native Land Court dealt with an important partition and relative interests case relating to Maungatautari 3A and 3C in December 1889.²⁵⁰³ Ngati Raukawa and Ngati Kauwhata, shut out of the titles, could of course do nothing about the partitioning, surveying, and alienation of the Maungatautari lands, although no doubt some Raukawa people gained admittance to the titles on the basis of marriage or inheritance or other individual connections. The more dealings with the land there were following the

²⁴⁹⁴ Ibid.

²⁴⁹⁵ (1885) 13 Waikato MB 265-268; 272-274; 279-282; 284-289; 292-340; 342-375.

²⁴⁹⁶ The principal file on the Maungatautari surveys seems to be BAAZ 1108, 30a/1056, Archives New Zealand, Auckland. Judging by the amount of documentation the Maungatautari surveys have substantial intricacies of their own.

²⁴⁹⁷ (1885) 13 Waikato MB 205-06.

²⁴⁹⁸ (1888) 6 Otorohanga MB [20 Waikato MB], 13-17; 18; 20-21]; see also newspaper clipping (unsourced, pres. *Waikato Times*), on BAAZ 1108, 30a/1056 (ANZ Auckland). At the latter Gwynneth appeared in the Native Land Court and asked through counsel for liens to be fixed on the Maungatautari titles. The Court indicated that the orders sought would be made but declined to make orders for costs against the Maori owners.

²⁴⁹⁹ “Native Lands Court, Kihikihi” *Waikato Times* (Vol XXVII, Issue 2188, 17 July 1886) at 2.

²⁵⁰⁰ “Kihikihi Native Land Court”, *Auckland Star* (Vol XVII, Issue 160, 10 July 1886), at 2.

²⁵⁰¹ i.e. Wiremu Tamihana.

²⁵⁰² *Waikato Times*, (Volume XXIX, Issue 2408, 15 December 1887), p 2.

²⁵⁰³ (1889) 9 Otorohanga MB/23 Waikato MB 25; 40-41; 46; 47-62; 67-69.

1884 investigation the more difficult it became to unwind, as everyone must have realized. The surveys were done by a well-known engineer/surveyor named John Gwynneth on contract, presumably with the Court or with the Native Department, and very substantial survey liens were accumulated as the various partitions were done.²⁵⁰⁴ The surveyor sought additional reimbursement for “delay” – i.e. obstruction of the surveys – but this was contested by the Survey Department.²⁵⁰⁵ If Maori opposed or obstructed a surveyor this could result in additional survey costs being imposed on the land. Certainly there were substantial debts, and in December 1889 Maungatautari 5A was partitioned to cover debts.²⁵⁰⁶

The bribery accusation against Waata Tipa was reinvestigated by Judge H G Seth-Smith in 1886. Seth-Smith found the charge of bribery to be unfounded.²⁵⁰⁷ The hearing took place in the Resident Magistrate’s court in Cambridge. Hare Teimana of Raukawa (Harry Simmonds) gave evidence against Tipa. It is not easy to fathom the matter now, but the truth of the matter seems to be that while Moon had certainly loaned money to Tipa, which was admitted on all sides, there was no actual evidence of a “bribe” in the strict sense – i.e. payment being conditional on a particular outcome in court. Moon admitted lending money to Tipa but denied bribery: “there was no understanding between us that the repayment was conditional on the way in which the case was decided”.²⁵⁰⁸ The money had been repaid. Even so, the fact that the Assessor in the case had borrowed money from a representative of the Land Companies at Cambridge who had an interest in the outcome of the case is nevertheless questionable. If this was not technically a “bribe”, it certainly was a conflict of interest. Moon and Tipa were undoubtedly close acquaintances.

There were also simmering tensions within the groups who had been successful at the 1868 and 1884 cases. In 1889 the Court partitioned Maungatautari 1 and 2 (i.e. the 1868 blocks), but this was a fraught affair in itself, as well Maungatautari 3 (a subdivision of the 1884 block). Some hint of the complexities is apparent from a detailed report in the *Waikato Times* on 14 December 1889 (it is to be noted that the applicant for partition was actually a finance company, of which more below).²⁵⁰⁹

The Native Land Court, sitting at Cambridge, was occupied during the whole of Tuesday taking evidence as to the sub-division of blocks Nos. 1 and 2 at Maungatautari, for which the Loan and Mercantile Company have applied. The Court was adjourned from Tuesday until Thursday, so that the judge could inspect the ground. The Native Assessor, Paratini, was warned that there would be trouble, caused by Tawhiao’s followers, if the Court officials went on the ground; however, Judge Mair, in the interests of the non-sellers, thought it necessary that he should see the land, and accordingly he, with the assessors, and Messrs W.M. Hay and J.M. Frazer, visited the block on Wednesday morning. There was no opposition shown; indeed, on the other hand, the natives gave information as to the various points in the boundaries, and the sub-divisions have been made so as to include the whole of the burial grounds, cultivations and settlements in the land which has been awarded to the native non-sellers. On the return

²⁵⁰⁴ Numerous calculations can be found on BAAZ 1108, 30a/1056 (ANZ Auck). I have not had an opportunity to analyse the liens in total but the sums accumulated were certainly very substantial (thousands of pounds, in fact).

²⁵⁰⁵ See Donald Stubbing, Assist Surveyor, Auckland, to John Gwynneth, 6 August 1887, BAAZ 1108, 30s/1056 (ANZ Auck):

I have received your account for “obstruction” this morning, and am greatly surprised at the amount of it, for in the correspondence with this office, though you have made one or two references to delay due to Maoris nothing like this has been hinted at. Still, however, if the charges are legitimately due to Maori obstruction, I shall be prepared to certify to them or a portion of them.

²⁵⁰⁶ (1889) 9 Otorohanga MB/23 Waikato MB 26.

²⁵⁰⁷ “Charges of Bribery against Certain Native Land Court Assessors” [1886] AJHR G-13. The evidence for this inquiry is intact and can be found on MA 13/81/48a. I have not analysed it in any detail.

²⁵⁰⁸ Ibid.

²⁵⁰⁹ “Native Land Court”, *Waikato Times* (Vol XXXIII, Issue 2719, 14 December 1889) p 2.

of the judge and his party, Tawhiao was met half way between Cambridge and Maungatautari. The buggies were stopped, and the King seemed very glad to meet Major Mair, and was very friendly with him. There is no doubt that through the tact shown by Major Mair, and his disposition to act fairly with all parties concerned, this long standing matter of the sub-division of Maungatautari Nos. 1 and 2 has at last been satisfactorily settled.

On Thursday the Court was engaged with the application of the Ngatiwhakia and Ngatiwhare hapus, for the subdivision of Maungatautari No. 3a. In the first case, the evidence has been closed; but, in the second, through a witness (Makarini) having had a fit, the Court was compelled to adjourn until yesterday morning. Mr J.M. Frazer appears for the Ngatikoroki against any sub-division of the block being made, on the ground that the land proposed to be sub-divided is the remnant of the tribal land, and the people desire to hold it as a reserve. Nearly the whole of yesterday was taken up with the sub-division of Maungatautari No. 3, which will probably be finished tomorrow.

The same events and the outcome of the partition hearings were described in rich detail in the *New Zealand Herald* on 17 December:²⁵¹⁰

The subdivision of the Maungatautari blocks Nos 1 and 2, which has been pending for some fifteen years, has been settled at last. These blocks are classic land in Maori history. It was here that the great battle of Taumatawiwi was fought in 1830, so graphically described by the late Judge Manning in his judgment on the Aroha block, 1871. On Tuesday, in the Cambridge Native Land Court, the question of the subdivision [CONTINUE]

Table: Maungatautari Hearings and Partitions 1866-1889²⁵¹¹ (Principal Hearings in Bold)

Block Name	Minute References	Book	Date of Commencement	Pages	Notes
Maungatautari	(1866) 1 Waikato MB 50		17 Oct 1866	1	Title Investigation
Maungatautari	(1867) 1 Waikato MB 118-121		23 Nov 1867	3	Title investigation
Maungatautari	(1868) 1 Waikato MB 42-56; 93-96; 203.		4 Nov 1868	17	Title investigation. Judgment, 93-96
Maungatautari	(1868) 2 Waikato MB 316-317; 343		17 Dec 1869	1	Title investigation and inclusion of names
Maungatautari 1 and 2	(1871) 3 Waikato MB 29-31		18 April 1871	2	Partition of Maungatautari 1 and 2 blocks
Maungatautari	1881 AJHR G-2A²⁵¹²		1 February 1881		Ngati Kauwhata Investigation
Maungatautari	(1882) 8 Waikato MB 252-254		22 Nov 1882	2	Title Investigation? Arranging case

²⁵¹⁰ “The Maungatautari Blocks”, *New Zealand Herald*, (Vol XXVI, Issue 9550, 17 December 1889), p 6.

²⁵¹¹ This table has been extracted from John Hutton, *Raukawa: Traditional History Summary Report*, May 2009, Appendix 1 (based in turn on the Maori Land Court database provided by the University of Auckland.) Citation style has been altered slightly, some details have been omitted, and some other investigations, including the the 1881 Ngati Kauwhata investigation and the 1907 appeal have been added.

²⁵¹² No MB ref located.

Maungatautari	(1883) 10 Waikato MB 144-145; 216	9 Mar 1883	1	Place of sitting
Maungatautari	(1884) 13 Waikato MB 13, 173-186	12 Feb 1884	13	Title Investigation and Rehearing. Hearing arguments for having case reheard.
Manukutahi Otatautahanga (Maungatautari)	(1884) 12 Waikato MB 134-358; 361-417	22 April 1884	270	Title investigation and rehearing.
Manukutahi Otatautahanga (Maungatautari)	(1884) 13 Waikato MB 1-76	7 Aug 1884	75	Continued from Waikato MB No 12. Adjourned to Cambridge.
Manukutahi Otatautahanga (Maungatautari)	(1884) 13 Waikato MB 79-83; 84; 121; 122; 139-164; 169	17 Sept 1884	31	Arranging lists; decision re ancestry 99-100; Decision re resident Ngati Raukawa; orders; lists of owners and trustees. See also Reel 223 Judge Puckey MB No 4, 78-99.
Maungatautari	(1884) 4 Judge Puckey MB 109-111	20 Oct 1884	2	Partition
Maungatautari 5A ²⁵¹³	(1884) 13 Waikato MB 170	12 Nov 1884	0	Title Investigation. Order; see also Reel 223 Judge Puckey MB No 4, 112.
Maungatautari 3B, 4, 3A	(1885) 13 Waikato MB 265-268; 272-274; 279- 282; 284-289; 292-340; 342-375.	17 Feb 1885	93	Partition.
Maungatautari	(1885) 13 Waikato MB 205-206	16 June 1885	1	Title investigation. Survey charges.
Maungatautari	(1885) 13 Waikato MB 207-208	6 Aug 1885	1	Rehearing and title investigation. Dismissed, applicants not present.
Maungatautari	Maungatautari No 3A Maungatautari No 5A	14 Dec 1885	1	Appointment of Trustees. See also Reel 219 Judge O'Brien MB No 11 p 37.
Maungatautari Otautahanga (Maungatautarui) No 3B	(1885) 13 Waikato MB 259	15 Dec 1885	1	Partition. See also Reel 219 Judge O'Brien MB No. 11 44-45.

²⁵¹³ The adjusted area of this partition, bounded by the Awapikopiko Stream on its northern side, was 1776.022 acres: see plan on BAAZ 1108, 30a/1056. It was in turn partitioned into Maungatautari 5A1A, 5A1B, 5A1C, 5A1D, 5A1E, 5A1G, and 5A2.

Maungatautari No 4	(1885) 13 Waikato MB 260-262; 265-268; 272-274.	16 Dec 1885	17	Partition. See also Reel 219 Judge O'Brien MB No 11 pp 45-46; 49-50.
Maungatautari No 6A	(1886) 13 Waikato MB 411-412.	2 July 1886	1	Partition
Maungatautari No 4	(1886) 13 Waikato MB 412-414	2 July 1886	2	Succession
Maungatautari No 4G	(1886) 13 Waikato MB 424-426	6 July 1886	2	Partition
Maungatautari No 4H	(1886) 1 Otorohanga MB /14 Waikato MB 2-7; 15; 16-19; 25-28.	7 July 1886	11	Partition Orders: see also (1886) 6 Judge Mair MB 200, 201, 204.
Maungatautari No 4A	(1886) 1 Otorohanga MB/14 Waikato MB p 9	8 July 1886	0	Partition
Maungatautari No 4G	(1886) 1 Otorohanga MB/14 Waikato MB 9	8 July 1886	0	Partition
Maungatautari No 3A	(1886) 1 Otorohanga MB/14 Waikato MB 14	13 July 1886	0	Partition
Maungatautari No 4F	(1886) 1 Otorohanga MB/14 Waikato MB 24-25	15 Jul 1886	1	Partition
Maungatautari No 4G Sec II	(1886) 1 Otorohanga MB/14 Waikato MB 28	16 Jul 1886	0	Partition. See also (1886) 6 Judge Mair MB 211-213
Maungatautari 6A Maungatautari 6B	(1886) 1 Otorohanga MB/14 Waikato MB 28	16 Jul 1886	5	Partition. See also (1886) 6 Judge Mair MB 211-213.
Maungatautari 5A, and 4, Whaiti Kuranui 2E West	(1887) 8 Judge Mair MB, 62-66	10 Jan 1887	4	Survey. Native Land Court Act 1881 s 81; survey orders.
Maungatautari 4A, 4A1, 5A	(1887) 16 Waikato MB 373-74	2 Dec 1887	1	Survey. See also (1887) 10 Judge Puckey MB 97.
Maungatautari No 4	(1888) 6 Otorohanga MB/20 Waikato MB 13-17; 18; 20-21.	10 Jan 1888	1	Survey. Various blocks.
Maungatautari 5A	(1889) 9 Otorohanga MB/23 Waikato MB 26	4 Dec 1889	0	Partition, to pay debts.
Maungatautari 3A, 3C	(1889) 9 Otorohanga MB/23 Waikato MB 25; 40-41; 46; 47-62; 67-9	4 Dec 1889	29	Partition and relative interests; judgment p 67-71; list of owners 72-79; see also (1889) 10 Judge Mair MB 309; 313-326.

Maungatautari 5B, 6B1, 6B, 6A1, 6A	(1889) 9 Otorohanga MB/23 Waikato MN 33-34	5 Dec 1889	1	Surveys. See also (1889) 10 Judge Mair MB 303-304.
Maungatautari No 1	(1889) 9 Otorohanga MB/23 Waikato MB 39-40, 42; 47; 71	9 Dec 1889	2	Partition. For sale. See also (1889) 10 Judge Mair MB 308.
Maungatautari No 2	(1889) 9 Otorohanga MB/23 Waikato MB 42-44; 47; 71-72.	10 Dec 1889	2	Partition. MZ Loan and Mercantile; Orders 71-2. See also (1889) Judge Mair MB 311-312; 314; 327.
Maungataurari Appeal	(1907) 33 Waikato MB 334-369; judgment at 370	27 March 1907	36	Appeal from 1884 investigation under s 27 of Native Land Claims Adjustment and Laws Amendment Act 1906

15.16 Maungatautari 1 and 2: Alienation restrictions, the 1887 Native Affairs Committee Investigation, and the Supreme Court and Court of Appeal decisions (1895).

There was yet another official investigation into Maungatautari in 1887, this time relating to alienation restrictions in the Maungatautari 1 and 2 blocks.²⁵¹⁴ These two blocks, partitioned in 1871, from the 1868 Maungatautari block were quite separate from the large block known as ‘Maungatautari’ investigated in 1884.²⁵¹⁵ The evidence given to the Native Affairs Committee sheds some light on the involved tenurial history of Maungatautari in the years after 1868. Sir James Fergusson, living in England at the time, petitioned parliament in 1887 seeking a Crown grant to Maungatautari free of any restriction on alienation. After taking evidence from T W Lewis, Under-Secretary of the Native Department, Sir Julius Vogel and Sir Frederick Whitaker, the Native Affairs Committee directed that “the Crown grants should be issued in accordance with the recommendation of the Court”.²⁵¹⁶ Fergusson was in fact a former Governor of the Colony.

The circumstances were more than a little involved, but are worth pursuing as these events do shed some light on the original investigations of Maungatautari in 1868²⁵¹⁷ and on the interrelationship between the Maungatautari cases and the Waikato confiscation. Following the 1868 investigations, Maungatautari was subject to a number of partitions. Maungatautari 1 and 2 passed the Native Land Court in 1871,²⁵¹⁸ and both parcels were then made subject to alienation restrictions by the Governor (at that time the Native Land Court had no power to impose restrictions on alienation, but the Governor was able to do so following a recommendation from the Court²⁵¹⁹). The grantees, who, as seen, belonged

²⁵¹⁴ *Native Affairs Committee: Report of the Petition of Sir James Fergusson, Together with Minutes of Evidence and Appendix*, 1887 AJHR I-3B.

²⁵¹⁵ By the 1880s it was the Native Department’s practice to differentiate Maungatautari 1 and 2 from the ‘other’ or the ‘larger’ Maungatautari block (i.e. the block reinvestigated in 1884). This too had been partitioned and alienated in various ways.

²⁵¹⁶ AJHR I-3B, 1.

²⁵¹⁷ (1868) 2 Waikato MB 42-56; 93-96 (Judgment); 203.

²⁵¹⁸ (1871) 3 Waikato MB 29-31 (18 April 1871).

²⁵¹⁹ Native Land Act 1865, s 28. These developments are also set out in the Supreme Court decision in *In re Maungatautari Nos 1 and 2 Blocks*, (1895) 14 NZLR 125, at 125-6:

On the 18th of April, 1871, the Native Land Court adjudicated, under “The Native Land Act, 1895,” upon the Maungatautari Nos 1 and 2 Blocks, containing 3,185 acres and 2,306 acres respectively, and ordered that certificates of title should issue for these blocks in favour of certain Natives, with a proviso that the

to the 'Queenite' section of Ngati Haua leased Maungatautari 1 and 2 to a syndicate at Auckland, "Messrs Maclean" (Robert and Maclean), who also bought up a number of the interests in the blocks. Maclean et al sold their interests in turn to a Mr Robert Fergusson of Auckland, presumably a relative of Sir James Fergusson, and Robert Fergusson bought up further interests in Maungatautari from the 'owners', that is, the ten Ngati Haua 'Queenites' in the Court title for each of the two blocks, acquiring eight out of ten shares in all.²⁵²⁰ This is probably another example of the links between purchasers, land sellers and factional disputes in the Court so characteristic of the south Waikato at this time. By the time of the petition Sir James Fergusson had taken over the whole of the property in liquidation of the debt between himself and Robert Fergusson, but was unable to get a good title to the land which would enable him to partition out his share between himself and the remaining non-sellers in the block.

As indicated Sir James Fergusson was a former Governor, and it seems that while he was Governor the then purchasers and lessees had at that time asked Sir Donald McLean for the restrictions on the title to be removed, and McLean had apparently agreed. In fact the process of removing a restriction on alienation was by means of a recommendation from the Minister to the Governor, so that when Every Maclean (no relation of Sir Donald, it seems) asked for the restriction to be removed, strictly speaking McLean had made a recommendation to Sir James Fergusson recommending removal of the restriction. Then shortly afterwards Every Maclean sold his interests to Robert Fergusson (I am not clear about the relationship between Robert Fergusson and Sir James, but I assume they are members of one and the same family). But for various reasons the restriction never had been removed, with the bizarre result that the ex-Governor, who had spent a lot of money on his Maungatautari lands after acquiring them from Robert, was now petitioning the Government seeking that Sir Donald McLean's original undertaking to Every Maclean – in fact an agreement to make a recommendation to himself – be honoured. No wonder the members of the Commission were nonplussed by all this. Sir Julius Vogel, who also gave evidence to the Committee, believed that Fergusson was not actually personally involved in purchasing the property at the time, that Every Maclean asked for the recommendation to be made and thus there was no "impropriety" involved,²⁵²¹ which may be technically right – I admit to being unsure about this – but the circumstances do seem unusual, to put it mildly.

Crown grants, when issued, should vest the legal estate in the Natives as from the 18th of April, 1871 (the date of the order). The Court further recommended that the Crown grants should make the lands inalienable either by sale, gift or mortgage, or by lease for a longer period than twenty-one years. Certificates of title were issued.

In the year 1873 Messrs. Robert and Maclean, who had leased the two blocks from the Natives, and who were desirous of purchasing the freehold, inquired from the Government whether the recommended restrictions were likely to be imposed. In reply they received a telegram, dated the 31st of December 1873, from the Under-Secretary for Native Affairs, to the effect that there was no objection to alienation, and that the Governor would be recommended to remove the restrictions at once. Acting upon this telegram, the lessees completed the purchase of the greater number of the shares in both blocks from their respective owners. The deeds of conveyance executed by the Native vendors, dated the 31st of December, 1873, were duly certified by the Trust Commissioner under the Native Lands Frauds Prevention Act. In 1879 the interests so acquired were purchased by Sir James Ferguson, by whom, in 1883, the legal estate was conveyed in trust to the New Zealand Loan and Mercantile Agency Company (Limited).

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Memorandum by Frederick Whitaker, 8 December 1887, 1887 AJHR I-3B, 2.

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See 1887 AJHR I-3B, 9:

On the 5th January, 1874, the assurance was given by the Native Minister, in his capacity of Native Minister, by letter, and the month previously it was given by telegraph. I feel perfectly certain that at that time Sir James Fergusson was not in any way in treaty for this property, and had not proposed to buy it. That is my conviction, though I am not able to adduce any proof. Having said so much, I may say, further, that, if Sir Donald McLean gave an assurance that the Governor would remove these restrictions, Sir

The evidence given to the Native Affairs Committee reveals, in fact, that there had been no Crown grants issued in respect of Maungatautari No 1 and 2; as there were no grants the alienation restrictions could not be, and had not been, taken off the blocks.²⁵²² The narrative is too complicated to be gone into at length here, but one of the reasons for the grants not being issued was the disputed state of the Maungatautari titles. The lease and purported sale to Every Maclean by Hakiriwhi and the other Ngati Haua Queenite owners had been very unpopular in the local Maori community. The evidence given to the 1887 Committee included three important letters which are revealing as to the substantial local resentment over these transactions.

The first of these three documents was a telegram from Major Te Wheoro of 15 January 1874.²⁵²³

The Maungatautari people are angry on account of the European's cattle which are running there; they belong to Mr. Every Maclean. The land has been sold by the people whose names were in the grant, those outside the grant were opposed to selling the land. They are at present living there, together with some of the Hauhaus. They are displeased on account of the sale of that land, because it is disputed and causes trouble. Hakiriwhi, Te Rahi, and others whose names were in the grant sold the land. I am annoyed at the haste with which the assessors passed his block through the Court, and permitting it to be sold, knowing at the same time that it would cause trouble. I spoke to them myself on the subject, and advised them to let it remain in abeyance for the present, but they were very persistent. It will be said thereafter that this trouble arose through the action of those connected with the Government.

The second document, to similar effect, was sent to McLean by Hori Kukutai and 39 others from Cambridge on 5 January 1874.²⁵²⁴

The Hon. D. McLean, Native Minister. – Greetings to you. This is a word from the tribe, hapu and all the people who were not included in the Crown grants of Weraateatua No. 1, Owhareture No. 2, and Maungatautari. Those lands were made inalienable by the Court for the benefit of the tribe, and they have now been sold, by those persons whose names were inserted in the Crown grant, without the knowledge of the tribe; who knew nothing of their work; also of their writing an application for the restriction to be removed. It is only now within this month that it has been discovered. The said proceedings were not at the instigation of the tribe, but at their own – the said grantees – in order to secure the money for themselves; for some of those who are included in the grant do not live on the land, and that is why they are so anxious that trouble should come upon those who are living permanently on the land, and all those who have claim to it. It is not as though the land belonged to one hapu, or ten persons, but to the tribe in general, according to the claims of each respective hapu. Now trouble has fallen on those whose names do not appear in the grant. We have no land anywhere else, and that was why the Court made it inalienable, for the maintenance of the tribe. Now that this trouble has befallen us in consequence of the said land being sold, we request you not to grant the removal of the said restrictions placed upon that land by the court. Do not let the sale of this land be the cause for having the restrictions removed from the lands. If lands under restriction are treated in this way, then it will be said that the law has no authority, and it will remain a cause of trouble with the tribe, and it will also be said that all dealings with respect to Native lands would be like this, and that restrictions can be removed by sale. It would be right enough if all the persons outside the grant agreed to it. We, the undersigned, consider that the said restrictions should not by any means be removed. Do you send us a reply, so that we may know. – From us all, HORI KUKUTAI and 39 others. Cambridge, 5 January 1874.

James Fergusson being Governor, and intending to purchase the property, that would be an obvious impropriety.

²⁵²² See 1887 AJHR I-3B, 3:

²⁵²³ Reprinted at 1887 AJHR I-3B 3.

²⁵²⁴ Ibid, 3-4

There is a third letter, also from Hori Wirihana, who fronted the Ngati Kauwhata case in 1884, sent not to the Native Department, however, but to Chief Judge Fenton on 3 August 1874 (Fenton sent it on to the Native Department). The same point is made:²⁵²⁵

Friend, we have received your letter, in which you say that the decision rests with the owners of the land. Friend, the land and the dead persons belong to us conjointly with those guardians of Maungatautari Nos 1 and 2. The guardians of the land have acted wrongly, and the tribe (400 in number) are in difficulty, caused by those twenty persons who are now applying to have the restrictions removed from Maungatautari Nos 1 and 2. Friend, do not consider the guardians alone, but the tribe. This is all.

The correspondence reveals an often-overlooked aspect of the ten-owner's rule: the ability of grantees to apply for, or to agree to, the removal of alienation restrictions in defiance of the interests or wishes of larger collectivities or kin-groups. It is significant that Hori Wirihana refers to the owners of Maungatautari 1 and 2 as "guardians" (I have not been able to locate the Maori original of the letter).²⁵²⁶ It is also clear that the lease, the attempts to remove the alienation restrictions, and – it would follow – any sale of the land was objected to by the general community of owners. The correspondence reflects a division of opinion mainly within Ngati Haua, but the same would go for Raukawa and Ngati Kauwhata, also excluded from the titles and thus powerless to prevent the land from being sold. The efforts that Raukawa and Ngati Kauwhata made separately to obtain a reinvestigation certainly verify this.

The alienation restrictions and Crown grants respecting Maungatautari 1 and 2 remained in a state of confusion for years. To analyse the exact legal nature of the interests that Every Maclean and then Fergusson had acquired by means of purchasing of interests from Maori owners of investigated but ungranted land in Maori ownership would tax the skills of any property lawyer.²⁵²⁷ (Indeed the matter ended up in the Court of Appeal as it happens.²⁵²⁸) A considerable amount of correspondence between the Government, Chief Judge Fenton, and Robert Fergusson (who lived at Cambridge) built up over the years. In 1874 Fenton was unwilling to endorse the Court certificates of title "under the apprehension of future difficulties",²⁵²⁹ which would have meant that no Crown grants could have been issued. By March 1882 still no grants had been made, and thus there was no legal basis for removal of the alienation restrictions. Fergusson had leased the area in the interim, but was still expecting the government to honour its original undertaking to Every Maclean to cancel the alienation restrictions imposed in 1870. Fergusson argued that the initial reason for the government's hesitation – this being the volatile situation brought about by the murder of Timothy Sullivan by Purukutu and others in 1873 – had receded into the past and there was now no longer any reason to delay the removal of the alienation restrictions (Fergusson evidently being unaware that the deeper and more problematic matter was the non-existence of the Crown grants).

In September 1882 Fenton finally endorsed the Native Land Court certificates of title to Maungatautari 1 and 2 and sent them to Wellington, which were subject to the Court's original recommendation that alienation restrictions apply. The Court certificates were unaccompanied by any explanation from Fenton as to the delay, which seems to have irritated some members of the

²⁵²⁵ Hori Wirihana to Fenton, 3 August 1874, reprinted in 1887 AJHR I-3B, 4.

²⁵²⁶ "Guardians" is likely to be a translation for "kaitiaki".

²⁵²⁷ Presumably they would have some kind of equitable interest only, if that. Legal title to the 'owners' would have been conferred with the issue of the Crown grants, but – unbeknownst to either Maclean or Fergusson, that had not happened.

²⁵²⁸ *In re the Maungatautari Nos 1 and 2 Blocks*, (1895) 14 NZLR 595.

²⁵²⁹ Fenton to McLean, 12 September 1884 [sic: this seems to be a misprint for 1874], AJHR I-3B, 4.

Committee.²⁵³⁰ The Court had not conducted any separate inquiry as to whether the alienation restrictions should, or should not, remain in place. Another aspect of this somewhat tangled matter is that the original recommendations relating to the alienation restrictions, made by Judge Monro in 1871²⁵³¹, had been for absolute rather than conditional restrictions. Apparently it was invariable practice for the government to simply endorse any recommendations as to alienation restrictions, although of course the government did have a statutory discretion whether to accept them or not. So had McLean and H T Kemp, who had agreed to the original waiver of the restrictions, been aware of the nature of the proposed restrictions from the Court they presumably would never have agreed to waive the alienation restrictions in the first place.²⁵³²

The Committee recommended that Crown grants should issue but subject to the Court's recommendations as to alienation. I am not exactly certain as to the effect of this, but presumably the Committee meant that Crown grants should issue but subject to the permanent and absolute alienation restriction. Where that left Ferguson, who had of course acquired a large equity in the block, is unclear, but presumably the findings of the Committee would have been far from satisfactory as far as he was concerned. For present purposes, however, there are two things to note. These are (a) that the Maungatautari 1 and 2 blocks, notwithstanding the Court investigation in 1868, were in a state of complete legal uncertainty between the first and second investigations of title, being investigated but ungranted, and subject to alienation restrictions which, although recommended by the Native Land Court, had not in fact been placed on the title but which could not be removed either; (b) that there was intense local opposition to the lease, alienation, and waiver applications on the part of resident Maori who were not included in the original 'ten owner' lists as fixed in 1871.

There is one additional, and distinct point that emerges from the correspondence relating to this affair, which is that some of the successful Maungatautari 'grantees', that is to say Ngati Haua Queenites, had also received substantial interests in the Waikato confiscated block from the Compensation Court. It could well be argued that the Kingite section of Ngati Haua and Raukawa had been doubly disadvantaged by being excluded from both.

This was by no means the end of the story however. What happened next can be reconstructed from the litigation in the Supreme Court and Court of Appeal that took place in 1895. In 1888 Crown grants were finally issued to the title-holders for the two blocks as fixed on partition in 1871, containing restrictions on alienation as recommended by the Native Land Court in its 1871 orders. The grants were then registered under the Land Transfer Act on October 2nd 1888, thus making the titles indefeasible under New Zealand's ordinary property law. At this stage eight of the ten owners in Maungatautari 1 and eight of the ten in Maungatautari 2 had privately sold their interests, but given that the interests had been sold, strictly speaking, in defiance of an alienation restriction, the transfers had no legal validity. The next step, however, was an unusual one: for some reason or other the grants were then cancelled

²⁵³⁰ See 1883 AJHR I-3B, 5.

²⁵³¹ The two alienation restrictions were identical, relating to the separate Maungatautari 1 and 2 blocks; each stated:

Upon hearing the parties, and upon the evidence taken, it was ordered that the presiding judge do report the opinion of the Court that it is proper to place the following restrictions and conditions on the estate to be granted in the above-named block – that is to say, that the whole block be made by the Crown grant inalienable by sale, gift or mortgage, or by lease for a period for a longer period of more than twenty-one years.

Monro had struck out from the form the words "except by and with the consent of the Governor", meaning that the recommendation was for an absolute restriction. See 1887 AJHR I-3B, 8.

²⁵³² Ibid.

and then re-issued, but *minus* the alienation restrictions.²⁵³³ This must have been as the result of some kind of protest by the transferee who must have been wanting to partition out its share in the blocks. Indeed virtually as soon as the new grants were issued the New Zealand Loan and Mercantile Agency proceeded to the Native Land Court, partitioned out its shares (in 1889), and then sought to have the sale documents and the partition orders registered on the title, in effect trying to get for itself the status of legal transferee of most of the interests in the blocks. Doubting the legality of all this, the District Land Registrar then refused to register the partitions (1895), and it was this decision which led to the proceedings against the District Land Registrar being brought by the New Zealand Loan and Mercantile Agency Company - this being the body which had acquired Fergusson's interests in Maungatautari 1 and 2.

The Supreme Court (per Conolly J.) held that there was no reason why the documents should not be registered. The full legal formalities need not be traversed here. In brief, Connolly J. stated that given that there were Crown grants, without restrictions, on the register, and given the well-established rule that the Courts cannot annul Crown grants "for matter not appearing on the face of it, excepting in a proceeding for that purpose", the existing grants were conclusive. "The previous Crown grants, containing restrictions, must be taken as if they had never existed."²⁵³⁴ The Court also rejected the argument that the new grants could not retrospectively validate the formerly void transfers from the owners.²⁵³⁵ The Registrar nevertheless took the case to the Court of Appeal, which upheld the Supreme

²⁵³³ See the narrative at (1895) 14 NZLR 125, at 126-7:

On the 26th of September, 1888, Crown grants for the two blocks of land were issued to the ten Native grantees of each respectively, nine of whom in No. 2 Block, and eight of whom in No. 1 block, had conveyed their interests as above. These grants contained restrictions against alienation similar to those recommended by the Native Land Court. They were registered under the Land Transfer Act on the 2nd of October, 1888. In January, 1889, they were returned to the Commissioner of Crown Lands, Auckland, who had been instructed to forward them to the Crown Lands Office, Wellington. On the 9th of April, 1889, the Under-Secretary of Crown Lands, Wellington, wrote to the Registrar of Deeds, Auckland, informing him that these Crown grants of the 26th of September, 1888 (referred to in the letter as "incorrect Crown grants"), had been duly cancelled, and two new corrected ones issued in lieu of them. The new grants, dated the 5th of April 1889, were issued on the 25th of April, 1889. They were counterparts of the former grants, with the exception that they contained no restrictions on alienation. On the 17th of December, 1889, the Native Land Court issued partition orders under "The Native Land Court Act, 1886," in favour of the New Zealand Loan and Mercantile Agency Company (Limited), for the shares in the two blocks which had been purchased from the Native owners.

The deeds of conveyance and the partition orders affecting the two blocks were tendered for registration in February, 1895. The District Land Registrar refused to register these instruments, alleging their invalidity on the grounds, - 1. That at the time the conveyances were executed the land in question was subject to the recommendation by the Native Land Court that the grants should be issued subject to restrictions. 2. That Crown grants were subsequently issued and registered under the Land Transfer Act containing the restrictions recommended by the Native Land Court. 3. That these grants antevested the legal estate to the 4th of April, 1871, this being a date prior to the execution of the conveyances. 4. That the second set of Crown grants was void because there was no authority for the cancellation by the Governor of the first set of grants. 5. That, even assuming the cancellation to be lawful, the act of cancellation did not destroy the restrictions which had been adopted, it not being necessary (though perhaps a duty) that the restrictions should be inserted in the grants. 6. That a recommendation that restrictions be imposed prohibited alienation until such recommendation had been ignored by the Governor. Thereupon this summons was taken out on behalf of the New Zealand Loan and Mercantile Agency.

²⁵³⁴ (1895) 14 NZLR 125, 128

²⁵³⁵ Ibid:

It was contended that the issue of the Crown grants antevesting the title did not validate previous transactions; but the contrary has been distinctly decided in *In re The Pirau No. 2 Block*, 10 NZLR 125, following *In re "The Landon and Whitaker Claims Act, 1871"* 2 NZCA, 41, 56. Even if the recommendation by the Native Land Court amounted to a restriction, such restriction was put an end to

Court decision without even hearing argument from the respondents to the appeal. In the Court of Appeal there was a more detailed legal argument put forward by Gully, counsel for the District Land Registrar, who argued that the reissue of the grants without the restrictions was a breach of the Crown Grants Act 1886, but this too was rejected.²⁵³⁶ Prendergast C.J. said that he was “quite unable to understand the action of the District Land Registrar”.²⁵³⁷ Prendergast C.J. also stated that if the Crown had deliberately failed to honour its promise to cancel the alienation restrictions that would have been “a gross breach of faith as between the Crown and the parties who had been dealing with the Natives.”²⁵³⁸ But in fact the Crown had rectified the situation. The partitions had to be registered, in his view, and the other Court of Appeal judges agreed.

In point of strict law the case was, I would say, rightly decided. However the legal discourse which enveloped this matter left no space to consider the broader context and the overall justice of the situation. In essence a small group of owners, having acquired legal title at the expense of others with interests in the block, had sold their interests to European speculators in breach of an alienation restriction. The titles to land so acquired, after a sequence of transactions, were in the end validated by a regrant which was accepted as valid by the Courts. By this time the original owners of the land had been left behind: the legal dispute did not involve any Maori party whatever, but rather was between a third-party transferee and the District Land Registrar. It would be interesting to know more as to why the District Land Registrar was so reluctant to accept the legal validity of these particular partitions, and thus cloak them with the strict protection of the Land Transfer system. However the documentation has not come to light and all there is to go on at present are the reported cases. The upshot of it all was that the bulk of the interests in the Maungatautari 1 and 2 blocks passed into the hands of a Finance Company.

Ngati Raukawa, however, had still not given up on the struggle. There was still some major rounds to go.

15.17 Maori Land Claims Royal Commission 1905

Ngati Raukawa had continued to protest about the loss of Maungatautari. Petitions were lodged with the Native Affairs Committee at parliament in 1887 and with the Native Minister in February 1890, without any effect.²⁵³⁹ Then in 1904 a Royal Commission was set up under s 11 of the Maori Land Claims Adjustment and Laws Amendment Act 1904 to inquire into various petitions. The commissioners were G B Davy, Chief Judge of the Native Land Court, Judge Scannell, and Apirana Ngata. One of the numerous matters they were asked to investigate was Maungatautari, the subject of a further petition by Hare Teimana and 277 others of Ngati Raukawa. (1905)²⁵⁴⁰ This petition was careful to draw attention to the inconsistencies in the Land Court decisions, contrasting its findings in the 1884 Maungatautari case with its later decisions relating to Wharepuhunga and other blocks close to Maungatautari. This petition was strongly supported by both sections of Ngati Raukawa, many of the

by the Crown grants; and since those grants antevest the title to the date when the recommendation was made, the restriction recommended was put an end to from that date, or, in other words, to be considered as never having existed. *In the Puhatikotiko No. 1 Block* 12 NZLR 31 is conclusive upon this point.

²⁵³⁶

In re the Maungatautari Nos. 1 and 2 Blocks, (1895) 14 NZLR 595.

²⁵³⁷

Ibid, 596.

²⁵³⁸

Ibid, 597.

²⁵³⁹

See Grant Young and Michael Belgrave, *Raukawa and the Native Land Court*, 2010, Wai 898 #A85, 213-214.

²⁵⁴⁰

See 1905 AJHR G-1, 8-9. The full text of the petition can be found on MA 13/82/48b, Part 2 (Hare Temania and 277 others).

petitioners residing at Otaki, Ohau, and Porirua and others living at Waotu in the southeast Waikato.²⁵⁴¹ The petition, a lengthy document, is obviously the outcome of careful planning; collecting together the names of hundreds of Ngati Raukawa people living in the Waikato and in the PkM region cannot have been easy. The petition shows too how the Native Land Court's decision of 1884 rankled with many Ngati Raukawa people.

The petition set out all the familiar arguments, but also made the additional point that the 1884 decision was seriously in conflict with other decisions of the Court, and in particular with the Rohe Potae decision of 1886. Since 1884 the Rohe Potae decision (1886) and other King Country cases made the inconsistencies even more glaring. According to the petitioners:²⁵⁴²

We referred the Commission to the decision of earlier Courts in reference to the lands adjoining Maungatautari on the western side. In the Courts of the 'Sixty's [sic] these adjoining lands were awarded, *inter alia*, to our people on the Take of ancestry. In the following years the Native Land Court investigated the Te Waotu block. This land adjoins Maungatautari on the Eastern side. It was awarded under our Take of ancestors, namely Raukawa.

The petitioners referred also to the Court's findings in the Wharepuhunga and Rangitoto cases, both of them Rohe Potae partitions immediately to the south of Maungatautari in which Ngati Raukawa had been successful. The petition was accompanied by an anonymous "memorandum" which looks like it has been drafted by a lawyer, which develops the same argument.²⁵⁴³

Since the investigation of title to the Waotu Block lying to the West of Maungatautari, was investigated and *inter alia* awarded to Ngati Raukawa, the claim of conquest not being raised. In 1886 the huge area known as the Rohepotae was investigated, among the claimants being Ngatiraukawa as such, and their claims by ancestry to portions of that land immediately adjoining Maungatautari – in fact divided by only a survey line – were admitted and supported by the chiefs of Ngatimaniapoto, Ngati Hikairo, Ngati Tuwharetoa and the Whanganui section.

And yet again Ngati Raukawa were unsuccessful. The report of the Commissioners traverses the legal history of Maungatautari, which should be familiar to anyone who has managed to read this chapter of my report to this point. The petitioners through their counsel (Fraser) had raised two main issues: the refusal of a rehearing, and the inconsistencies in the decisions of the Native Land Court (instancing Wharepuhunga and Rangitoto). The Commissioners were unpersuaded. They believed that no one who had read the judgment of the 1884 Court could doubt that the Court's findings were correct.²⁵⁴⁴ Moreover, the "Royal Commission which sat in 1881, to inquire as to certain claims of a branch of Ngati Raukawa calling itself Ngati Kauwhata had previously – in respect of a portion of Maungatautari which had been severed from the original block as Maungatautari Nos 1 and 2 – had come to the same conclusions."²⁵⁴⁵

As to the argument about inconsistency, the Commissioners had a ready answer:²⁵⁴⁶

²⁵⁴¹ Appended to the petition is a useful typescript listing the names, place of residence, and hapu affiliation of the petitioners. The first page of the document is missing, unfortunately. Of the 242 names that remain of the file, 84 people live at Otaki, 46 at Ohau, 18 at Porirua, 18 at "Muhawa" (Muhanoa?), 6 at Manakau, and 64 at Waotu (*ibid*).

²⁵⁴² *Ibid*.

²⁵⁴³ Undated memorial (typescript) attached to petition of Hare Temania and others, *ibid*.

²⁵⁴⁴ 1905 AJHR G-1, 8.

²⁵⁴⁵ *Ibid*.

²⁵⁴⁶ *Ibid*, 8-9.

That a people which retains any considerable portion of its lands cannot be called a conquered people may be conceded. But there may be a complete conquest of a portion of its territory, and this is undoubtedly what is claimed in the present case. It is indisputable that after the migration to Kapiti, Maungatautari was occupied in force by Marutuahu, who built pas there, and held it against all comers up to time of Taumatawiwi.

The Stout-Ngata Commission also inquired into Maungatautari in 1905. It is interesting that the Ngati Raukawa people at Otaki, nearly 40 years after the original investigation of title, continued to assert an interest in Maungatautari, obviously still a nagging problem.²⁵⁴⁷

At Cambridge, the Native Lands Commission concluded on Saturday. The block in dispute is Maungatautare [sic], consisting of 50,000 acres, but native owners only contest half that number. The Commission will report to Parliament, and should members consider the report warrants it, the Native Land Court or other tribunal will try the case. This is only one of twenty-one cases of a similar nature in the North Island. Otaki and Waikato natives are interested.

15.18 Native Appellate Court Maungatautari decision, 1907

The 1905 Commission led to yet another Raukawa petition (Hema Te Ao and two other people), in which it was stated – yet again – that Raukawa had never been defeated by Ngati Maru, nor had all of Raukawa migrated to the Kapiti region. This petition led to another investigation into Maungatautari in 1907, but which time much of it had already been alienated.²⁵⁴⁸

The appeal case began at Cambridge on 19 March 1907 and was presided over by Judges Jones and Rawson. The case was in form an appeal from the 1884 Maungatautari case, Hema Te Ao of Ngati Raukawa being the appellant. Ngati Haua and Ngati Koroki were the respondents. The opening of the case was described in a local newspaper, the *Waikato Independent*. The case generated intense interest amongst the local Maori community, unsurprisingly.²⁵⁴⁹

The Native Appellate Court to deal with the above block, is holding its sittings in the Victoria Hall, Cambridge.

A large number of natives are concerned, and the points at issue are very interesting. The appellants are members of the Ngati Raukawa tribe, the original owners of Maungatautari, but who were held by the Native Land Court to have forfeited their right by leasing the land [the reporter has clearly misunderstood the points at issue]. The title was investigated in 1884. The Court then decided against the present appellants, who applied to the Chief Judge for a re-hearing, which re-hearing was refused. *It is asserted that the decisions in regard to adjoining blocks are inconsistent with this one* [emphasis added]. The matter came before the Native Committee last year, and they recommended that the matter be referred to the Government for enquiry; hence the present proceedings.

At yesterday's sitting, Mr A.L.D. Fraser, M.H.R., who appears for the appellants, finished his address, and the Court then adjourned until to-day.

Mr A. Pepetone and two other natives appears for the Ngatihaua and Ngatikoroki tribe.

Mr Bryers is acting as assessor, and Mr W.E. Goffe interpreter.

²⁵⁴⁷ "Land Commission", *Hastings Standard*, Vol VIII, Issue 4878, 10 April 1895, p 3.

²⁵⁴⁸ See judgment at (1907) 33 Waikato MB 369.

²⁵⁴⁹ "The Maungatautari Block: Native Appellate Court", *Waikato Independent* (Vol V, Issue 351, 21 March 1907) p 5.

No new evidence was called, and the case proceeded essentially by legal argument only. Lengthy submissions were presented by both sides, which have been recorded in full in the minute book. Frazer began by explaining to the Appellate Court that the case was an appeal from the 1884 decision and the question was now “whether my clients [Ngati Raukawa] were a defeated people and as such lost their rights to this land as found by that Court”.²⁵⁵⁰ Frazer went on to note that the Maungatautari block originally covered about 50,000 acres, but that by the time of the appeal “there is left about 20,000 acres, the other portion having been sold”.²⁵⁵¹ He then described briefly the procedural steps that had led to the appeal.²⁵⁵²

The parties at original hearing [1884] were Koroki, Haua and Raukawa. Court decided latter were defeated people and lost rights in land. Chief Judge Macdonald was Chief Judge at that time. Judge Puckey was deciding Judge at original hearing but [the] Chief Judge sat with him and it was to him we had to apply for a rehearing. We have since endeavoured to obtain a rehearing by every means in our power. Rehearing has been promised us by every Native Minister or compensation in lieu thereof.

Frazer’s principal criticism of the 1884 decision was that Ngati Raukawa had no opportunity to lead evidence on occupation. Ngati Raukawa lost the case on the threshold issue of “Conquest” or “No Conquest”.²⁵⁵³ Defeat on this point meant that Ngati Raukawa “had no opportunity to show in that Court continued occupation and exercise of rights of ownership”.²⁵⁵⁴

The legal argument at the appeal is of great interest and importance, as it is concerned centrally with with the main theme of this chapter, the inconsistency of Native Land Court practice with respect to Ngati Raukawa rights in the southeastern Waikato. Frazer traversed the cases in great detail and attempted to make plain the inconsistencies in the Court’s decisions. Frazer argued that “Maungatautari” was in fact quite a large area comprised of a number of blocks which were treated in a variety of ways by the Native Land Court.²⁵⁵⁵

“Maungatautari” covers a large area of land outside this particular block – blocks all around it, though given other names, were really part of it. “Horohoro” included a Ngati Raukawa amongst its owners. Another adjoining block Ngamuka had Ngatiraukawa amongst its owners. “Puahue” another adjoining block is in same position, Heni te Ao being an owner. Waotu on the east is also decided and Raukawa admitted, the “raupatu” not being set up amongst them. Wharepuhunga to the South [is] divided from Maungatautari by a survey line only. There Raukawa also claimed there [sic]. The Judgment included Ngatiraukawa as such in that and Rangitoto Block. Ngatihaua and Ngatikoroki opposed in those cases on same grounds as in this case. Hurimoana fought about 180[9?], Tangimania about 1828, Hangahanga and Taumatawiwi immediately previous and in 1830. Those were the fights set up in Maungatautari as showing conquest by Ngatihaua and Ngatikoroki. The same also set up in Wharepuhunga etc. The N.L. Court and Rehearing Court held in these latter blocks that these fights were not conquests while in Maungatautari the N.L. Court held they were.

The outcome was described, not very impartially, by the *Auckland Star*.²⁵⁵⁶

Judges Jones and Rawson gave the decision of the Native Land Court yesterday afternoon on the Maungatautari block, of 15,000 acres, which the Ngatirakawa [sic] Tribe are endeavouring to wrest from the Ngatihawa [sic] and Ngatikoroki tribes. The matter was decided on in 1884 by the Court, and was

2550 (1907) 33 Waikato MB 334 (23 March 1907).

2551 Ibid.

2552 Ibid.

2553 (1907) 33 Waikato MB 336.

2554 Ibid.

2555 (1907) 33 Waikato MB 335-336 (23 March 1907)

2556 “Maungatautari Block”, *Auckland Star*, Vol XXXVIII, Issue 75, 28 March 1907, p 4.

reopened in 1904, when a Royal Commission reported against the Ngatirakawa being admitted, and the Court yesterday upheld the verdict of 1884, so this finally decides the matter, and the Maungatautari natives should be left in peace. Costs (£15) were given against the Ngatirakawai [sic]. There is great rejoicing at Maungatautari.

This was the final major step in the complicated sequence of hearings relating to the Maungatautari area (the full sequence is set out above). Following on from the 1884 decision there were numerous partitions. The Court's decision was extremely controversial, and resulted in a sensational accusation that the Assessor, Waata Tipa, had been bribed. The Court did not deviate from its standard interpretation of southeast Waikato history: i.e. that the land had been conquered by Ngati Haua and their allies, and that Raukawa, having migrated to the Cook Strait region, could not assert an interest in the block. In fact the Native Land Court's interpretation of events in this case was not at all consistent with its approach in other blocks, such as Tokoroa, Whakamaru, and Matanuku, where the Court allocated the blocks to Raukawa unhesitatingly.

16. Inconsistencies in the Native Land Court: Southeast Waikato blocks circa 1879-1886

16.1 The Native Land Court at Cambridge

Shortly after its establishment the Native Land Court began to deal with cases in the Waikato and Taupo districts. The principal “Court town” for the South Waikato was at Cambridge. Large parts of the Waikato had been confiscated under the New Zealand Settlements Acts, but some large areas had not been. These lands were open to Court investigation as soon as the government or private sector buyers could tempt their Maori owners to bring their lands before the Court. Many cases relating to the southeastern Waikato lands ended up being heard at Cambridge. Today Cambridge is a quiet and rather picturesque Waikato town close to Hamilton, highly respectable and faintly English-looking with its deciduous trees, parks, and colonial church buildings. It has, however, had a more interesting and certainly less reputable history than its present appearance might indicate.

In the period from the end of the Waikato war in 1864 until the so-called “opening” of the King Country in the mid-1880s Cambridge, just inside the Waikato confiscation boundary, was in a highly strategic location. To the south and the east stretched a large area of unconfiscated Maori land extending almost to Taupo and Rotorua, in the possession primarily of Ngati Haua and Ngati Raukawa. The Court’s Cambridge sittings began as early as 1866, presided over initially by Chief Judge Fenton (who in the same year presided over the Compensation Court’s Ngaruawahia hearings). In 1868 the Cambridge court heard cases relating to blocks immediately adjacent to the confiscation boundary in the Maungatautari area. The Court decided to use Cambridge as its main Waikato base and Maori people thus began to flock to Cambridge when the Court was in session.

Cambridge was originally a military redoubt and when the first Cambridge cases began facilities were limited. In 1866 Maori attending the Court had to sleep outside the redoubt in the fields:²⁵⁵⁷

More than 150 Natives attended the Court, and were compelled, during the time the Court sat, to sleep in the fields, as the officer in command, Captain Clare, would not allow any of them to come inside the redoubt, to occupy the many vacant huts there.

However this soon began to change as Cambridge evolved into a centre of what was known at the time as “the native trade”. Throughout the 1870s and especially in the 1880s, Cambridge became notorious as the principal “Court town” of the Waikato. The Court was at its height in Cambridge roughly from 1879-1886. It declined in importance after the large blocks in the southeastern Waikato had been investigated. After 1886 the Court moved south into the King Country, where Otorohanga became a busy Court town from 1886 to around 1900. Cases continued to be heard at Cambridge after 1886, but not as regularly.

In the mid 1870s title investigations to Ngati Raukawa lands in the central North Island were frozen as a result of government actions. On 20 August 1873 the Crown suspended the operation of the Native Lands Act across a substantial section of the Central North Island, and this suspension was repeated in September 1874, relating this time to the Native Lands Act 1873.²⁵⁵⁸ This event again seems

²⁵⁵⁷ *Daily Southern Cross*, 24 October 1866, p 5.

²⁵⁵⁸ The 1873 proclamation was based on s 4 of the Native Lands Act 1867 and the 1874 proclamation on s 6 of the Native Lands Act 1873.

to mainly relate to the conflict between Crown and private interests.²⁵⁵⁹ The proclamation remained in effect until 1877. The proclaimed area was colossal (it was the same for both the 1873 and 1874 proclamations), in the Raukawa area running from “Titiraupeunga; thence North-east to [the] Waikato River; thence down the said river to the southern boundaries of land adjudicated upon by the Native Lands Court,²⁵⁶⁰ following along the said southern boundary lines to their termination; from thence to Wairere; thence along the west-south-west boundary of the Tauranga confiscation”. This would have placed all of Raukawa’s lands within the proclaimed area. The suspension meant that the Native Land Court could not sit within the proclaimed area, which (as Micahel Macky puts it) “made it impossible for private interests to complete land transactions, and effectively re-established a Government purchasing monopoly in the Bay of Plenty and Taupo Districts”.²⁵⁶¹ However the Government, while principally motivated out of a desire to block private competition, was also worried about the risks of civil disturbances among Te Arawa if the Court proceeded with hearing cases in the Central North Island. McLean told Parliament in August 1874 that “the Government did not impose these restrictions simply from any desire to obtain extension of territory”.²⁵⁶² Rather, “they did so on political grounds and from political reasons”; “the Government would not shrink from the responsibility attached to questions which might affect the peace of the island”. The proclamation thus affected Raukawa lands in the Taupo and Bay of Plenty districts for four years, but the effects do not appear to have been very significant. Crown purchasing from Raukawa progressed very slowly in any event. It was *private* purchasing which resulted in by far the greater part of the alienation of Raukawa’s lands, except, that is, areas within the the King Country, which became subject to a different kind of pre-emptive regime in 1884.

A great deal is known about the Cambridge sittings of the Court in the 1880s. This is because such careful attention was paid to the Court’s activities by the newspapers. The Cambridge cases in the 1880s were covered on a more or less day-to-day basis by the *Waikato Times*, published in nearby Hamilton. The *Waikato Times* provides a massive amount of material on the realities of the Native Land Court process which I have only sampled here. From the columns of the *Waikato Times* it becomes clear that by the 1880s Cambridge was not merely a venue for the Court sittings. Rather it was the centre of an entire commercial system that had grown up around title investigations and partitions in the Court. The actual hearings and judgments were in fact just the tip of the iceberg of a network of lawyers, Maori agents, land agents, conductors (kaiwhakahaere), and tavern-keepers and storekeepers.²⁵⁶³ Cambridge was also a base for a number of the South Waikato land colonisation companies, strategically positioned Cambridge close to the Court and to the large throngs of Maori people in attendance. During the

²⁵⁵⁹ See Macky, *Crown Purchasing in the CNI*, para 181-2. Macky notes that he had not found “any extant records preceding the suspension of the Act in August 1873 that explain the reason [for] this suspension”. However some years afterwards, Mitchell told a Royal Commission that “this was done to discourage the interference of private individuals with Government negotiations” (Evidence of Henry Mitchell to Royal Commission of Inquiry into Claims of Messrs B J Chaytor and J C Chaytor in Otamarakau Block, 23 Feb 1881, MA-MLP 1, 1891/353, cited in Macky, *ibid*). Macky notes also that in August 1874 Davis and Mitchell reported to Ormond that one of the great obstacles to their success was “the formidable opposition we have had to encounter from private agents with their surveyors & c in various parts of the country”: David and Mitchell to Ormond, 23 August 1874, MA-MLP 1, 1873/159, in Rose Supporting Papers p 856, cited Macky, *ibid*.]

²⁵⁶⁰ My guess is by this is meant the Maungatautari block boundary.

²⁵⁶¹ Macky, *Crown Purchasing in the CNI*, para 180.

²⁵⁶² (1874) 16 NZPD 981 (26 August 1874). Macky is sceptical as to whether was the principal reason, however. He notes in particular that the 1873 and 1874 suspensions “extended over a much wider area than that which would have been required to ensure that the Native Land Court did not spark any feuds in the Te Arawa district” [Macky, *op.cit.*, para 189]. (The text of the two Proclamations can be found at 1873 NZG 475-6 and 1874 NZG 632.)

²⁵⁶³ Advertisement, *Waikato Times*, Vol XVI, Issue 1389, 28 May 1881, p 1.

hearings there was a “Native encampment” at Cambridge where most Maori people stayed, although those who could afford it sometimes stayed in the town’s numerous hotels. Other towns were jealous of Cambridge’s brittle prosperity based on the Native Land Court. The citizens of Tauranga and Rotorua would have liked to see more of the “native trade” coming their way. In thanking Fenton for having some important cases transferred from the Cambridge Court to Rotorua in 1883 the *Bay of Plenty Times* commented that “we would remind our friends at Cambridge that they have had pretty well a monopoly of Land Courts for the last three years, and it is high time that the publicans, storekeepers, and camp followers of that inflated wooden hamlet should rely more in future on their own resources than on those of their neighbours”.²⁵⁶⁴ The *Bay of Plenty Times* looked forward to the day when “the surplus wooden tenements of that spectral and ere long to be deserted township” would be re-erected at Rotorua. The “native trade”, it appears, was really worth having.

Court hearings were important events, especially large-scale investigations of title and important partitions, and often many Maori people were present at the Cambridge hearings, sometimes returning home from time to time.²⁵⁶⁵ Mostly Maori attending the Court at Cambridge were from the Waikato region, but occasionally – depending on the blocks being heard – they might come from further afield, including Rotorua, Maketu, and even the East Coast.²⁵⁶⁶ Ngati Raukawa and Ngati Kauwhata people from the Manawatu and Otaki regions also came to the hearings at Cambridge and other Court venues in the Waikato. As will be seen, forty Ngati Kauwhata people from the Manawatu travelled to Cambridge to attend the Maungatautari Ngati Kauwhata reinvestigation in 1881. Large numbers of people were in attendance from time to time. When Chief Judge Fenton opened the 1880 Cambridge sittings “there was a large attendance of natives”.²⁵⁶⁷ When the Ngati Kauwhata Commission opened its hearings at the Magistrate’s Court building in Cambridge in 1881 so many people were present that the hearing had to be adjourned to another venue. In May 1881 Major William Mair found that the always difficult task of completing the Maori census was made even worse by so many Waikato Maori people being on the road to Cambridge to attend the Court sittings.²⁵⁶⁸ When the Crown claim in Patetere was about to be heard at the Cambridge court in February 1881 it was expected that over a thousand people would be present.²⁵⁶⁹ On 24 February 1881 the *Waikato Times* reported that “the attendance of natives was very large, and considerable interest appeared to be taken in the proceedings”.²⁵⁷⁰

Admittedly large large attendances were not a universal rule: some cases were much more important than others. Sometimes partitions and other less exciting cases were heard in nearly empty courtrooms. While the Te Whetu No. 2 case was slowly its way through the Court in January 1883 “very few natives” were present.²⁵⁷¹ At times Maori people found it difficult to get to the Court. It sometimes happened that in some succession cases the applicants did not make it to the Court at all, in which case the applications were dismissed for non-appearance.²⁵⁷² The vagaries of the weather in the South Waikato could make it difficult for people to get back and forth: “few Natives have returned from

²⁵⁶⁴ *Bay of Plenty Times*, Volume XII, Issue 1483, 24 Jan 1883, p 2.

²⁵⁶⁵ See e.g. *Waikato Times*, Volume XX, Issue Issue 1646, 23 January 1883, p 2:

A large number of natives have cleared out of Cambridge to their respective kaingas, and the Court is consequently not so crowded as hitherto.

²⁵⁶⁶ “Natives Lands Court”, *New Zealand Herald*, Vol XVII, Issue 5787, 4 June 1880 p. 5.

²⁵⁶⁷ *New Zealand Herald*, Vol XVII, Issue 5766, 11 May 1880, p 5.

²⁵⁶⁸ Mair to Under-Secretary, Native Department, 13 May 1881, 1881 AJHR G-3, 3: “the Natives in this part of the colony were all on the move to attend the Native Land Court at Cambridge”.

²⁵⁶⁹ *Waikato Times*, Vol XVI, Issue 1348, 19 Feb 1881, p 2.

²⁵⁷⁰ *Waikato Times*, Vol XVI, Issue 1350, 24 Feb 1881, p 2.

²⁵⁷¹ *Waikato Times*, Vol XX, Issue 1649, 30 Jan 1883, p 2.

²⁵⁷² See e.g. *Waikato Times*, Vol XXI, Issue 1789, 22 December 1883, p 2: “The attendance of the natives was very small, and most of the cases were dismissed for non-appearance”.

Waotu, owing to the nature of the weather” the *Waikato Times* reported in April 1883.²⁵⁷³ On other occasions Maori present in Court would ask for adjournments. The Court was normally prepared to briefly suspend proceedings for a day or two at the request of those present in order to allow people to attend a tangi²⁵⁷⁴ or to go to political meetings at Whatiwhatihoe and elsewhere.²⁵⁷⁵ When the Patetere cases were being heard in 1881, local Ngati Raukawa leaders asked the Court to adjourn in order to allow those in Court to welcome people arriving from the south.²⁵⁷⁶

Today Judge Symonds fixed to proceed with Messrs Dilworth and Howard’s Whaiti and Kuranui block, but Teimana and the Ngatiraukawa chiefs applied for an adjournment until tomorrow, in order to give a reception to the natives of the same tribe from Kapiti. There is a great feast to-day, and presents of food and liquor have been made by the natives of the district to the visitors.

Presumably the people from “Kapiti” were there for the hearings.

Nor was it only the Maori community that took an interest in the hearings. The cases at Cambridge were seen as nationally significant and were reported as far as away as Otago. The progress of the cases was monitored carefully by the newspapers, especially by the *Waikato Times*, for the simple reason that as far as the Pakeha community was concerned there was a direct correlation between investigations completed in the Court and lands coming on to the market for private purchase.²⁵⁷⁷ Many non-Maori people were in town as well during the cases, mostly because they had interests of some kind in the blocks being investigated.

A significant illustration of the commercial importance of the Native Land Court occurred in 1881 when the Trustees of the Cambridge Public Hall decided to seek to have the Crown pay them rent for the period when the Hall was used for the forthcoming year’s sittings. One public-spirited citizen, a Mr Raynes, wrote to the *Waikato Times* to protest against the folly of this course, which might, he thought, have the disastrous consequence of driving the Court out of Cambridge:²⁵⁷⁸

I presume it is hardly necessary to point out the monetary and commercial benefits which the township derived from the presence of upwards of a thousand natives, besides European visitors interested in the various blocks, and officials connected with the business of the Court. But probably the fact may not be generally known that the persons who are now foremost in preferring this claim against the Government for rent, are the very men who derived the lion’s share of the profit and advantages arising from the holding of the Court in the Public Hall. That such a claim is now made is calculated, I think, to raise some doubts in the mind of the Chief Judge of the Native Lands Court as to the expediency of holding another Court in Cambridge, and thus the selfish greed of the persons preferring a claim for rent may not only result in a commercial injury to the township, but may recoil on their own heads. Though my own business renders me practically independent of the native trade, I should be sorry to see it diverted to

²⁵⁷³ *Waikato Times*, Vol XX, Issue 1680, 12 April 1883, p 2.

²⁵⁷⁴ *Waikato Times*, Vol XVI, Issue 1364, 29 March 1881, p 3 (“On the application of Mangakahia, the Land Court adjourned till tomorrow, as the natives are attending a tangi over the native drowned on Sunday.”)

²⁵⁷⁵ *Waikato Times*, Vol XIX, Issue 1610, 28 October 1882, p 3.

²⁵⁷⁶ *New Zealand Herald*, Vol XVIII, Issue 6012, 23 February 1881, p 5.

²⁵⁷⁷ This is obvious, but see e.g. the *Evening Post*, Vol XX, Issue 161, 13 July 1880, p 2:

The Native Land Court at Cambridge is about to close its proceedings, which will have a great effect in advancing the prosperity of Auckland. About 400,000 acres of land have been dealt with – an immense stretch of country comprehending the Upper Waikato District, and extending to Taupo and over into the Tauranga District. The blocks which have been under the view of the Court have been Whaiti and Tauranui [sic – Kuranui?], comprehending 140,000 acres, and no part of this is embraced by Government proclamations prohibiting all dealings or rendering them illegal, so purchasers have not that difficulty to deal with.

²⁵⁷⁸ Letter by Audus Raynes to *Waikato Times*, Vol XVI, Issue 1398, 18 June 1881, p 3.

Kihikihi or elsewhere, and therefore I am prepared at once to erect at my own cost, a substantial building, affording ample accommodation for 600 people, if the Government will accept the use of the same free of rent for the next sittings of the Land Court.

This is a highly revealing document. Having the Court in town was good for business, and the ‘native trade’ was a vital part of the local economy. That the proposed special-purpose courtroom needed to be big enough to accommodate up to 600 people is a commentary on the scale of the cases in its own right.

Nationally prominent barristers such as John Sheehan, former Native Minister in the Grey Government, and Walter Buller, who had a very large Native lands practice, routinely appeared in the big cases that went through the Cambridge Land Court (Whakamaru, Waotu, Waotu North and other blocks).²⁵⁷⁹ Buller, for instance, represented Arekatera Te Wera in the Waotu block case in 1882.²⁵⁸⁰ Sheehan acted for the section of Ngati Raukawa that was prepared to refund the Crown for advances made in Patetere, “the value thereof appropriated by the Government in land”; he was opposed by another section of Raukawa represented by James Mackay and Hamiora Mangakahia.²⁵⁸¹ Sometimes the barristers were there to represent Pakeha interests in the various blocks, that is to say, as purchasers either of whole blocks or sections of them: (“Mr Sheehan watching the case on behalf of certain Europeans interested”²⁵⁸²). In 1882 Buller, along with F A Whitaker, were at Court in Cambridge during the Matanuku block hearings “watching the European interest”.²⁵⁸³ The Court routinely partitioned blocks between European purchasers and non-sellers,²⁵⁸⁴ just as in the case of Crown purchasing it would partition between Crown and non-sellers’ portions. Partitioning of blocks between sellers and non-sellers was something that purchasers, or their lawyers, would want to scrutinise carefully.

The cases could often be very complex, and could necessitate very long closing addresses by counsel after the evidence had been heard, the evidence often being tested by prolonged cross-examination.²⁵⁸⁵ Sometimes just the cross-examination of a single witness could last for an entire day. This demanded specialist legal skills. However a lawyer such as Sheehan did not appear only on the large investigations of title; he also managed routine business such as successions and ‘subdivisions’ (partitions) too.²⁵⁸⁶ Many cases were run by Maori “conductors” (kaiwhakahaere), experienced para-legals who were in reality de facto Maori barristers. The Government sometimes played a role in the cases as well, and would be represented in Court by a Government Agent, usually Major William Mair for cases in the Waikato. In some of these cases, including the Tokoroa block and the various subdivisions of Patetere there was a complex interplay between the government as purchaser and private purchasing, the latter typically being conducted by the agents for the various Land Companies and

²⁵⁷⁹ See e.g. *Waikato Times*, Vol XX, Issue 1650, 1 Feb 1883, p 3:

The Te Whetu case was before the Court to-day. Harry Symonds was called as a witness on behalf of the claimant Mahi, and examined by Mr Sheehan and Arekatera.

²⁵⁸⁰ *Waikato Times*, Vol XIX, Issue 1604, 14 October 1882, p 2.

²⁵⁸¹ “The Native Lands Court, Cambridge: The Patetere Block”, *Waikato Times*, Vol XVI, Issue 1350, 24 Feb 1881, p 2. Hamiora Mangakahia was a very skilled and prominent conductor but he later became disillusioned with the Native Land Court system and one of its most prominent critics.

²⁵⁸² *Waikato Times*, Vol XVI, Issue 1357, 12 March 1881, p 2.

²⁵⁸³ *Waikato Times*, Vol XIX, Issue 1601, 7 October 1882, p 2.

²⁵⁸⁴ *Waikato Times*, Vol XVII, Issue 1434, 10 September 1881, p 3:

Orders in subdivision were made in favour of the European purchasers for the portion acquired by them, and to the non-sellers for the balance in the following blocks: - Te Whetu, Kokako, Mangakarata, and Te Pukerunga.

²⁵⁸⁵ *Waikato Times*, Vol XX, Issue 1680, 12 April 1883, p 2: “the addresses of counsel in the Whakamaru rehearing finished today, at 12 o’clock; when the Court adjourned till 2 o’clock, tomorrow, to consider their decision”.

²⁵⁸⁶ *Waikato Times*, Vol XX, Issue 1663, 3 March 1883, p 2.

associations. At Cambridge, however, the government was just one of many parties involved in just some of the cases: in most cases and in most blocks the government played no role, and was not active as a purchaser. The Native Land Court at Cambridge was mainly a private sector world.

As well as the barristers, judges, conductors, Crown Agents and Court officials there were the native agents and who managed things behind the scenes. The reason why so many people attended the hearings was not necessarily so they could take part in the cases directly as parties or witnesses but rather to be on hand to be included in the lists of owners, compiled out of court once the principal hapu or ancestral names had been settled by the Judge and the Assessor. The Court would often adjourn the hearings so that details such as boundary lines and ownership lists could be settled out of Court, this work usually being done by the native agents. Newspapers frequently referred to this process, which could be very time consuming (“all lists for the Waotu case are not yet complete”²⁵⁸⁷). A great deal of the business of the Native Land Court was done informally outside the Courtroom.²⁵⁸⁸ Counsel would ask the Court to adjourn so that the agents could compile lists of names outside the courtroom: for example “on the application of Mr Mackay, the Court adjourned till the following morning, to allow the agents to complete certain lists of names”.²⁵⁸⁹ Or on another occasion (Whaiti Kuranui No 2), on the application of the conductor, McDonald, “an adjournment was granted to allow of the matter being considered outside”.²⁵⁹⁰ The frequency of out of court settlements and agreements means that it is not always safe to rely on the Court records and minutes as conveying a complete picture of the process. Much of the real debate and title arranging took place behind the scenes, out of sight and not recorded in the Court’s minute books. There is no record of the details of these negotiations, and exactly how the process of name-identification worked is unclear.

What *is* clear, however, is that a lot of drinking seems to have gone on during the hearings. Successful claimants would sometimes treat one and all to drinks in the taverns. When judgment was given in the Waotu No 1 case in 1882 the jubilant successful claimants “disbursed £100 in liquor, so the whole place is in a fair way of becoming a scene of dissipation”.²⁵⁹¹ During the Court hearings a lot of cash was circulating amongst Maori, and this would only have come from the (mainly) private purchasers, including the representatives of the various land companies and associations. This adds to the likelihood that very often the real point of the cases was to secure titles not so much for Maori, but for purchasers from Maori, whose shares would be cut out at the subsequent partitions.

Many watched the goings-on in Cambridge critically. To a Radical-Liberal newspaper such as the *Wanganui Herald*, which was run by John Ballance, later to become Native Minister in the Stout-Vogel government (1884-7) and then Liberal Premier in 1891, the Cambridge Court was simply as a nest of corruption. This view was one aspect of a critique of commercial and financial interests dominating and profiting the Maori land market at the expense of ordinary settlers. “Land rings”, acting

²⁵⁸⁷ *Waikato Times* Vol XX Issue 1656, 13 February 1883, p 2.

²⁵⁸⁸ See e.g. *Waikato Times*, vol XVI, Issue 1386, 7 April 1881, p 2:

The business done on Tuesday was not of any public importance, the Court only sitting for a short time and adjourning in order to allow of the agents to settle boundaries, &c., outside.

Or, to give another example, *Waikato Times*, Vol XVI, Issue 1362, 24 March 1881, p 2:

The agents handed in lists of claimants for the different subdivisions of the Whaiti [sic] Kuranui Block, and an adjournment was then made to mark off the boundaries. On resuming, orders were made for Nos 2B and 5A.

The Court was adjourned for the day to allow the lists of names in respect of subdivision 4 being arranged.

²⁵⁸⁹ *Waikato Times*, Vol XVI, Issue 1360, 19 March 1881, p 2.

²⁵⁹⁰ *Waikato Times*, Vol XVI, Issue 1361, 22 March 1881, p 2.

²⁵⁹¹ *Hawera and Normanby Star*, Vol III, Issue 353, 24 November 1882, p 3.

in collusion with their political friends in the conservative Hall-Bryce government were engaged, according to the *Herald*, in dubious dealings behind the scenes which would lead to the land being locked up in the hands of speculators and financiers to the detriment of the “small man” and close settlement. The Patetere block was perceived as an invidious example of this.²⁵⁹² How accurate this picture might be is difficult to say, but certainly the judges of the Cambridge court were well aware of the fact that private business interests were really driving many of the cases. As will be seen, prominent Auckland businessmen were openly seen in Court all the time. Clearly they were not there accidentally or just to enjoy the repartee. It seems to have been common knowledge what the effects of any particular award in the Court were for private purchasing interests.

In 1880 William Searancke, former resident magistrate in the Waikato, began working for the Auckland syndicates who were buying up sections of the Patetere block. According to Sally Maclean Searancke “collected the signatures of those who were awarded a share of the block at the May 1880 sitting of the Native Land Court at Cambridge”.²⁵⁹³ There is some evidence which indicates that the Land Companies operating in the South Waikato competed with one another in making pre-investigation purchases, leading in turn to the Companies backing rival claimants in the Cambridge Court. The Land Court judges were no fools, and could not have been unaware of what was going on all around the Courtrooms during the sittings. Presumably they felt that there was not much they could do about it. In fact Auckland businessmen and their legal advisers were in Court at Cambridge, day after day, while the cases were going on.

In 1883 Piripi Whatuaio petitioned parliament seeking a rehearing of the Waotu South No 2 Block. This was – as happened all too often - a dispute between contending Raukawa hapu. As John Sheehan, who gave evidence to the Committee, put it, “while in the case of Waotu South the tribal title in favour of Ngatiraukawa was almost without dispute, yet as amongst the subdivisions of Ngatiraukawa there was a lot of disputing as to which particular hapu owned the property”.²⁵⁹⁴ Piripi complained that the Court had awarded Waotu 2 to Ngati Hurikapu, instead of the rightful owners who – according to him – were a group known as Ngatingarongo.²⁵⁹⁵ The Native Affairs Committee took evidence on the petition in July 1883, presided over by Colonel Lawrence Trimble.²⁵⁹⁶ One issue related to the role of lawyers in the Native Land Court, which has already been traversed in an earlier chapter. Another key issue related to the various land companies active in the Waikato at this time and their role in Court proceedings.

Piripi Whatuaio complained, essentially, that the Court paid no attention to him because he was not associated with any of the powerful groupings in the Court represented by “the lawyers” and by “the company” and that he had not been able to properly present his case to the Court. Piripi freely admitted that he had been a “Hauhau”, that it was the first occasion in which he had ever appeared in the Court, and that “I am quite an ignorant person in those matters”.²⁵⁹⁷ Asked by the Committee what “company” he was referring to, Piripi responded that it was “the company that is at Cambridge”, agreeing that it was the entity represented by John Sheehan in the case. The role of private purchasers

²⁵⁹² See *Wanganui Herald*, Vol XIV, Issue 4029, 21 December 1880, p 2..

²⁵⁹³ Sally Maclean, “Searancke, William Nicholas”, *DNZB* vol 2, 446-7, at 447.

²⁵⁹⁴ 1883 AJHR I-2A, 15.

²⁵⁹⁵ Ngati Huri and Ngati Kapu are today classed as separate hapu; perhaps the reference to Ngati Hurikapu is in any case a reference to Ngati Huri specifically. Ngati Huri are indeed especially associated with the Waotu area. Ngati Kapu, also closely affiliated with Waotu, are today an active hapu in the Otaki region. See Hutton, *Raukawa*, 151-152. The name Ngatingarongo is not one that I have encountered.

²⁵⁹⁶ *Native Affairs Committee: Report on Petition of Piripi Whatuaiao, together with Minutes of Evidence*, 1883 AJHR I-2A.

²⁵⁹⁷ 1883 AJHR I-2A, Minutes of Evidence, 1.

standing behind the competing factions in the Court and of the various land companies is thus made obvious. Piripi Whatuaio complained also that his hapu had been resident on the land, but that all of their land had been handed over by the Court to Ngatihurikapu, who had in fact (he claimed) migrated to Kapiti but who had then returned, while his own hapu had been remained in situ and had not journeyed south. Asked by the Committee how long his hapu had been living on their lands at Waotu, Piripi replied that that they had always remained there and that “they have never come away in the different migrations from that part of the country”. When raided by Waikato they had withdrawn “but have gone back a short time afterwards”, whereas “those hapus to whom this land was awarded by the Court came away to Kapiti in the olden days, and stayed at Kapiti in the Ngatiraukawa descent from Waikato, and had only recently gone back”.²⁵⁹⁸

While the Committee gave the judges and barristers a very fair hearing, it remained critical of the workings of the Court. The barristers were questioned at length about the way in which legal fees in the Native Land Court were calculated and paid. The Court itself did not escape criticism. In particular the Committee did not see how it could express an opinion on the merits of Piripi Whatuaio’s petition because of the poor quality of the Court’s written decision:²⁵⁹⁹

The Committee is of opinion that the practice of previous Judges of the Native Land Court in giving their judgments with their reasons at length, so that all might see they were in accordance with law and justice, was a very proper one; and the Committee regret that they cannot express an opinion as to whether the allegations in the petition are correct or not, as the Judges of the Land Court have given no reason whatever why they decided against the petitioner, thus affording the Committee no data to go on.

More generally, “in view of probable legislation on questions of this kind”, the Committee recommended that the Government consider the question of Native Land Court practice generally, and recommended that all of the evidence given be printed. This report may have been one of the reasons for the introduction of legislation in 1883 prohibiting lawyers from appearing in the Court. Sheehan and Buller were closely linked with the various Land Companies and other purchasers and were themselves key components of the entire system by which competing groups of purchasers ended up in competition in the Native Land Court through Maori proxy groups. Piripi Whatuaio testified that Sheehan had tried to persuade him to join with his party in the Court, but he had declined because the group represented by Sheehan were in fact land-sellers, whereas he wished to retain the land, and indeed that Sheehan had offered him money on behalf of his clients.²⁶⁰⁰

²⁵⁹⁸ 1883 AJHR I-2A, Minutes of Evidence, 2.

²⁵⁹⁹ 1883 AJHR I-2A, 1.

²⁶⁰⁰ 1883 AJHR I-2A, Minutes of Evidence, 2:

Major Te Wheoro:] Did Mr Sheehan, the lawyer, make any application to you before the judgment was given? – Mr Sheehan came to me, and asked me to consent to become one of his party.

Did the lawyer tell you what he required you for? – He asked us to make one case of it; that is, join our case with the case of those whom he represented.

On what grounds? – He said it would be better for each case if they joined as one. He represented them and conducted the case for them.

What sort of Natives were those represented by Mr Sheehan; were they land sellers? – Yes; they were land-sellers, and they also claimed the land as belonging to themselves.

Was anything said to you about this sale of the land, supposing you got it? – Mr Sheehan did propose that we should all sell the land; but I said no, I will not sell.

Mr Tawhai:] Was that what Mr Sheehan meant by asking of you to associate your party with his? Was it for the reason that he wanted to purchase that land, and was that why you refused? – My answer was that I did not want to sell the land to him, that I wanted to keep it for myself.

Mr Hobbs:] Did Mr Sheehan ever offer you any money on account? – Yes; he did say that I could get money from the company on that land.

One issue that was considered in the evidence was the extent to which parties in the Land Court at Cambridge (and elsewhere) were proxies for rival groups of purchasers. Strictly speaking the Native Land Court could take no account of who was a seller and who a non-seller but was required simply to investigate the title. However, in reality the close links between selling and Court investigations were in fact notorious, obvious to everyone, and especially so in the Cambridge Court. It was not that the Court favoured one party or the other, but more that the pressures of land-selling and land-buying exacerbated, magnified and even gave birth to disputes. The following interesting exchange between Bryce and Chief Judge Macdonald makes this all too clear:²⁶⁰¹

Hon. Mr. Bryce.] You have used the terms “seller” and “non-seller”. Are you not aware that the law takes no cognizance of sales before the investigation of titles? – I am. When the first case came on I said publicly that we knew nothing of sellers or buyers, but that, simply for the purpose of convenience, to distinguish between one set of persons and another, we would adopt the terms sellers and non-sellers.

I quite understand you merely used the terms for convenience. Still, there must have been something implied; and was there not the implication that negotiations had been going on for purchase, and, in fact, that something had been paid to a portion of the claimants? Was not that implied in the terms? – Clearly. That came out pretty clearly. Non-sellers were allowed to have the pick of the land.

I am going to ask you a question to which I attach great importance myself, and my saying that may perhaps make you more careful in answering. I want to ask you if you find that these previous negotiations for so-called purchases, which are not recognized by the law, prove an inconvenience to the Court in the investigation of the title? – I think they are the cause of nineteen-twentieths of the difficulties. The Maoris amongst themselves have a pretty shrewd idea to whom the land belongs. There may be cases, such as in this district [i.e. the south Waikato], where, by reason of mixed occupation, extraordinary difficulty may arise, and they may have doubt themselves – may not have such accurate information as to the ownership. *But generally they have a pretty shrewd idea of how things stand, and would not fight so bitterly as they did at Cambridge if they were not supported and urged on by purchasers.* [emphasis added].

John Sheehan, for his part, agreed that competing purchasers standing behind the parties in Court was certainly a problem. He thought it was not at all unusual for four or five “antagonistic negotiations” to be going on by the time a block was investigated, but he thought that the problem was magnified by the difficulties caused by the Court’s own practices, the long hearings, the difficulties and costs of living in the Court towns, and the long journeys that some people had to make to get to the sittings:²⁶⁰²

The next cause of expense is this: I think there are members of the Committee who know that if you ask a Maori in regard to any particular particular block of land within fifty miles of where he is living he will reply emphatically, “Naku” – it belongs to me, although he may have, upon investigation of the title, not a shadow of foundation to claim. Europeans coming to a district where a block of the kind is situated, and desiring to lease or purchase, as the case may be, each party so desirous of investigation fortifies himself as a rule with an interpreter; negotiations go on, moneys are paid, and each interpreter and agent, through the whole course of the negotiations, solemnly assures him that the persons with whom he is dealing are the only persons entitled to succeed at the Court, so that by the time the case has reached the Court for investigation there may be four or five antagonistic negotiations in respect to the same block of land. Each European, of course, backs up that particular case which will make the title of his people good, and the Natives themselves are compelled to defend their respective titles in self-defence, because they have eaten so much money on account of the block, and that, in the event of their failing to succeed,

²⁶⁰¹ 1883 AJHR I-2A, Minutes of Evidence, 6.

²⁶⁰² 1883 AJGHR I-2A, 16-17.

they might be obliged to have recourse to the operation performed by one the other day at Cambridge – filing their schedule [filing in bankruptcy, I assume Sheehan means].

So far Sheehan agrees with Chief Judge Macdonald, but he goes much further and attributes many of the problems to the Court process itself.²⁶⁰³

Following up that point, another cause of expense, which has, I believe, been pointed out in the printed report the Chief Judge, arises in this way: the holding of Courts to deal with a large amount of business; so that it will happen, as in the case of the Cambridge Court, that applications as old even as seven or eight years come before the Court for the first time for investigation, and the Court therefore extends over six months or eight months, as in the case of the Cambridge Court. The Natives who have to attend the Court, who are either claiming or asserting a claim to the land, of course, must come into the European township where the Court is held. To give the Committee some idea of the length to which some of them have to travel to attend a Court, I will mention that at the Cambridge Court there were people from the Bay of Islands in the north, and from as far as Otaki in Cook Strait, Tauranga, Maketu, Napier and I think there were one or two from the South Island. Every case cannot be taken at once, and those whose cases come on later at the sitting of the Court have to live in the meantime. As a rule they are people without means, and they have to obtain what are called *raihanas*, that is, orders for the supply of food, which are generally obtained from the particular European or Europeans with whom the applicant for the rations is dealing for his land. I should say that two-thirds of the who attend a big Court like that subsist in that way. A few of the people living, say, from twenty-five to fifty miles from the locality where the Court are more provident. I knew several cases of the kind where these people brought their food with them, and from time to time, as the food was exhausted, fresh supplies were brought in again from the settlement to which they belonged. The great bulk of the people subsist during the sitting of a Court in the way I first mentioned.

Sheehan described also the work of a special category of Native agents who were known as ‘blackmailers’.²⁶⁰⁴

Another cause of expense, more especially of recent years, is the development of a special class of people who attend the Court, who are known familiarly as blackmailers. A person in that line of business can, without the slightest trouble, protract an honest and straightforward negotiation for the sale or lease of Native land to an indefinite period. He has only to get to his way of thinking two or three grantees of the block, at an expense of, say, £10 or £15, with an almost absolute certainty that he will receive a hundredfold from the European, who is powerless to refuse.

It has already been mentioned that Auckland business leaders were seen from time to time in the Native Land Court at Cambridge. At the hearing of the Whaiti-Kuranui block in November 1881 “a large number of Europeans, including Messrs E.B. Walker, Williams, Dilworth, Howard, F.A. Whitaker (a Hamilton lawyer), Grace and Campbell were present, together with the interested natives, and their friends”.²⁶⁰⁵ This was not the only occasion when prominent business leaders were in the Court. In 1882 a certain Major Jackson, “one of the provisional directors of the proposed Auckland Native Land Settlement Company” was at Cambridge when the Matanuku block was passing through the Court.²⁶⁰⁶ F A Whitaker was in Court with Walter Buller keeping an eye on things on the same occasion. Most of these people were prominent leaders of the Auckland business and financial community. James Dilworth was an Auckland businessman and accountant who had made a fortune from commissariat

²⁶⁰³ Ibid, 16-17.

²⁶⁰⁴ Ibid, 17.

²⁶⁰⁵ *Waikato Times*, Vol XVII, Issue 1461, 12 Nov 1881, p 2.

²⁶⁰⁶ *Waikato Times*, Vol XIX, Issue 1601, 7 October 1882, p 2.

contracts during the New Zealand wars. John Howard was the latter's partner in certain business undertakings relating to the Whaiti-Kuranui block in the southeastern Waikato.

The Whaiti-Kuranui block was not merely of passing interest, but was at the centre of a complex property speculation in which most, perhaps all, of these influential individuals were involved in some way. There was a surge in the formation of land companies in the United Kingdom and in Auckland in the period in the years from 1879-1883, as Professor Stone has pointed out. As Young and Belgrave point out in their report on Ngati Raukawa and the Native Land Court (i.e. in the Waikato) "the ready availability of substantial sums of capital raised in London facilitated the transactions which enveloped a substantial part of the Raukawa rohe in the 1870s and were finalised in the Native Land Court in the 1880s".²⁶⁰⁷ A number of these were involved in Maori land-buying in the Waikato.²⁶⁰⁸ Some Maori found the complex financial and commercial entanglements caused by "the companies" at Cambridge burdensome and stressful, and looked to the Native Land Court to assist them. When the Native Court investigated the Tokoroa block in 1880 a number of Raukawa leaders thanked the Court for the care that it had taken with the evidence and for the clarity and fairness of its findings. One chief, Aperahama, said that his heart was "exceedingly grateful"; "my head has been lifted up by the Court; and pleased at the Government releasing me; also at the removal of the hands of the Companies from me".²⁶⁰⁹

16.2 Ngati Raukawa cases in the Cambridge Court and the rights of persons living in the PkM region

In the early 1880s the Native Land Court sitting at Cambridge investigated numerous large land blocks in the southeast Waikato, awarding them, with little demur, to hapu of Ngati Raukawa. Some of these blocks directly adjoined Maungatautari, or were not far away. Ngati Raukawa in the Waikato's main community at this time was at Waotu, just a short distance from Maungatautari but on the eastern side of the Waikato River.

An example of a Waikato block awarded by the Native Land Court to Ngati Raukawa is the Tokoroa block, investigated at Cambridge in 1880. The main claimant groups were various Ngati Raukawa hapu living in the vicinity (but most of which also have had a presence in the PkM region), including Ngati Whaita and Ngati Wairangi. There were also some claimant groups from the Rotorua and Kaingaroa regions, Ngati Kea and Ngati Manawa. There was no suggestion in this case that Ngati Raukawa had failed to maintain a presence in the Waikato, but the Court professed itself hostile to allowing individuals who had moved away to other regions being included in the list of owners. The Ngati Raukawa claimants themselves prepared lists which did not distinguish between persons living in the Waikato and those residing at "Kapiti", but which were put together on the basis of descent from Ngati Raukawa ancestors. Judge Symonds was displeased.²⁶¹⁰

In this case, the Court accorded time to make arrangements for a voluntary solution of the difficulty. You failed to do so. In fact you brought in a list of names containing the names of all the descendants of Tamatewhaua, Tamatehura, Whaita, Wairangi, Upokeiti and others: *not discriminating between those who kept their fires burning on the land, and those who went to other parts of the country, such as Kapiti, Tauranga, Rotorua, and elsewhere.* [emphasis added]. These are not entitled to any consideration.

²⁶⁰⁷ Young and Belgrave, *Raukawa and the Native Land Court*, Wai 898 Doc#A85, 9.

²⁶⁰⁸ *Makers of Fortune: A Colonial Business Community and its Fall* (Auckland University Press, Auckland, 1973), 183.

²⁶⁰⁹ (1886) 6 Waikato MB 5-6.

²⁶¹⁰ (1880) 6 Waikato MB 4-5; Boast, *Native Land Court*, vol 1, 831.

The claimants themselves, obviously, saw no reason to make this distinction, or perhaps it was not practicable to do so. The Court's opinion, however, was that those individuals who had kept their fires burning were "the only people who should be admitted into this block; that is, those who kept possession²⁶¹¹ when the exodus to Kapiti and elsewhere took place; when the land was left desolate, and, but for the bravery of those who remained behind as 'food for Waikato', it must have fallen into other hands". Nevertheless the Court made its award in fairly open-ended terms, awarding Tokoroa to those of "Ngatitamatewhaua, Ngatitamatehura, Ngati Whaita, Ngati Kea, Ngati Manawa who kept their fires burning upon this land, and such of other hapus as are connected with them by marriage as they choose to admit".

In April 1881 the Court gave judgment on the Whakamaru Maungaiti block, a large block of 90,000 acres adjoining the Waikato River. The case generated a significant amount of evidence on Ngati Raukawa traditional history, recorded in vols 6 and 7 of the Waikato MBs. A number of Ngati Raukawa hapu claimed the block, and Ngati Kea (Rotorua) and Ngati Manawa counterclaimed. The principal claimants were Ngati Whaita and Ngati Wairangi, and their main witness was Te Rangi Karepiripia, who gave extensive evidence on 16 and 19 April 1881,²⁶¹² basing his claim on "conquest, cultivation, occupation and burial places and also on ancestral descent". He described the early conquests by Whaita and other Ngati Raukawa chiefs over Ngati Kahupungapunga, which probably occurred in the sixteenth century.²⁶¹³ The Court awarded the block to the claimants, Ngati Whaita and and Ngati Wairangi, and groups associated with them:

In the opinion of the Court this land belongs to Ngatiwhaita, Ngatiwairangi, Ngatiparehinu, [], Ngatimoe, Ngatipakau, and such others whom they admit are incorporated with them by Marriage or Native Custom who have kept their fires burning on the land.

Another block in the same region is Matanuku, investigated at Cambridge in 1882. The hearing was presided over by Chief Judge Fenton and Judge Williams, and involved inter-Ngati Raukawa contention amongst a number of hapu. The issue was not whether the land belonged to Ngati Raukawa in a general sense, but – as so often in the Native Land Court – to which descent groups in particular. Once more the issue arose as to whether persons affiliating to the admitted ancestors but resident at "Kapiti" could be placed in the owners' lists. In his judgment Fenton observed that "[t]he question of the absentees had been definitively settled in 1866, and that decision has been sustained on repeated subsequent occasions: and by various Judges".²⁶¹⁴ Fenton's remarks were the subject of some discussion between counsel, claimants, and the Court:²⁶¹⁵

Dr Buller desired to be informed whether the rule laid down by the Court yesterday would be held to extend to the Exclusion of persons, who – having remained on the land during the troubled period, and helped to hold it for the tribe, had subsequently gone away for lengthened periods or visits to others of their tribe, at Kapiti and elsewhere. There were only three to whom this question referred.

The Court replied that the rule that was laid down was that those who had abandoned the land in the time of danger, were abandoned by it. Those who had evaded or neglected their duty of assisting

²⁶¹¹ Underlined in original.

²⁶¹² (1887) 7 Waikato MB 105-129.

²⁶¹³ Phillips, *Landmarks of Tainui* (Tohu Publishers, Otorohanga, 1989), 49.

²⁶¹⁴ (1882) 7 Waikato MB 375; Boast *Native Land Court* vol 1, 993. The 1866 decision referred to must be Fenton's own Compensation Court judgment in *Oakura*, where Fenton first elaborated the "1840 rule": "having found it absolutely necessary to fix some point in time at which the titles, as far as this Court is concerned, must be regarded as settled, we have decided that that point must be the establishment of the British Government in 1840": 1866 AJHR A13, 4; Boast, *Native Land Court*, vol 1, 291.

²⁶¹⁵ (1882) 7 Waikato MB 337-8; Boast *Native Land Court* vol 1, 994-5.

in the military defence of their tribal estate, - were to be held as having forfeited all right, to participate in it.

The list of names was formally put into Court by Aperahama Te Kume, who said:

I put in this list of names of those who have a right to be on the Certificate of Title for Matanuku. It contains also three names of men who have been absent on Kapiti; but they did not go away during the troubled time (with Heke Whirinui) but subsequently on visits and have since returned to Matanuku. These names are marked on the list with a cross.

All the names were admitted.

Another such block is Waotu North. Judge Williams gave judgment on 25 November 1884, awarding the block to Ngati Raukawa. Waotu North is a substantial block of 14,000 acres located to the northeast of Tokoroa. The main claimant this time was Araketera, or Hare Katera, of Raukawa (Ngati Huia), who conducted the case. Ngati Huia, the successful claimants, were nevertheless by this time mostly based at Otaki, and an attempt was made to set aside for them a share of the block. But this seems to have sunk into a mire of confusion and litigation, another illustration of Arekatera Te Wera's tangled web of affairs. The story is told in part in the *Waikato Times* (September 1884). It is interesting to note that Ngati Raukawa living in the Waotu area were "anxious to give a portion of their share to their Kapiti relations (who are really the rangatiras of their tribe)":²⁶¹⁶

Arekatera and others v Patetere Land Company

Those concerned in this case, which is now sub judice, will be surprised to learn that Arekatera has been withdrawn from the action, which a few days ago was before the the Supreme Court in his name. Arekatera, it appears, has been made to consider the question of cost, which up to the present has been very considerable, and as the case is anything but finished, the ultimate cost, were the case allowed to proceed, would, we understand, be something enormous. The case, we might state, is one of a very peculiar character, and the cause of action arose in the disputed title of a certain 1000 acres of land at Waotu. There are two sections of the Ngatihua tribe, one section residing at Kapiti and one at Waotu, By a ruling of Judge Fenton the Kapiti people having left their lands in time of trouble forfeited their right thereto, and consequently the court could not recognise their claim. The resident Ngatihua, when adjudged owners of a portion of the Waotu, being anxious to give a portion of their share to their Kapiti relations (who are really the rangatiras of their tribe) arranged that 1000 acres should be vested in three people only, that it might be more readily conveyed to the Kapiti section. This was done, and the Court was cognisant of the transfer of this 1000 acres to the Ngatikapiti. , Subsequent to the transfer being made, an arrangement was entered into between Ngatimaihi and Ngatihua, whereby the divisional boundary between the two tribes was altered. The Court cut off another 1000 acres, and to avoid complication made it the same number (No. 1C) as the original thousand acres. After the order was made the three natives concerned confirmed the deed of gift, and the land was purchased by the Europeans. For various reasons, which are generally known to the Cambridge public, especially those concerned in the case, the three natives afterwards attempted to repudiate the transfer to the Kapiti people, and applied that the transfer to the Europeans should be set aside, the alleged grounds being that the position of the 1000 acres having been altered, the land acquired by the Europeans was not really the land originally given by the resident Ngatihua to the Kapiti.

These cases (and there were a number of others) show that the Native Land Court had no difficulty in accepting that lands to the south and east of Maungatautari belonged to hapu of Ngati Raukawa. Thus – as is of course well known – many of Ngati Raukawa obviously did not migrate to

²⁶¹⁶ *Waikato Times*, Vol XXIII, Issue 1901, 11 September 1884, p 2

“Kapiti”. Difficulties arose, however, when compiling lists of owners. The Native Land Court resisted allowing persons resident at “Kapiti”, particularly those who had left during the fighting over Maungatautari, to be added to the owners’ lists, “[T]hose who had abandoned the land in time of danger, were abandoned by it.” Where Fenton got this rule from is unclear – perhaps it was of his own devising. But it could be hard to apply in practice. What about those who had stayed on during the conflicts but had then left before 1840, and had since returned? These, it seems, could be allowed. Tidy rules could be difficult to apply.

17. Ngati Raukawa and the Rohe Potae and Taupouiatia investigations

17.1 Introduction: King Tawhiao returns from exile

Native Land Court surveys and title investigations were already cutting into the western and northern perimeters of the Rohe Potae by the late 1860s. Attempts by the Kingitanga to stop the cases from proceeding proved unavailing. In a number of instances in the southern and eastern Waikato in the 1870s emissaries of King Tawhiao arrived in the Native Land Court to object to cases being heard, arguing that the land was under the mana of the King. When the Court sat at Cambridge in November 1868 to hear the Pukekura, Maungatautari and Puahue blocks a representative of the King, Tana Te Waharoa, (Wiremu Tamihana's son) came to the Court to protest at the Court's dealing with blocks on the unconfiscated side of the aukati line. The protest was duly noted and the case went on. A similar protest was made in the Mangauika investigation on the northern boundary, also in 1868, although in this instance the case was not proceeded with – for other reasons – and was not heard again until 1886.²⁶¹⁷ There was yet another Kingitanga objection made in Court at the commencement of the Te Aroha case in 1869. Rogan noted the objection, and proceeded with the case. Objections from Kingitanga representatives were invariably met with a response from the judges that political relationships between the Kingitanga and the government were not a matter for the Court, and that the Court was under a legal duty to hear the cases before it.

Later in the 1870s, Ngati Raukawa in the Waikato became detached from the Kingitanga to some degree, at least to the extent of concluding that their lands on the eastern side of the Waikato lay outside the King Country properly speaking, and that they were free to put these blocks through the Native Land Court without further reference to either King Tawhiao or the other Potae Tribes. (This was still to leave substantial amounts of Raukawa land within the Rohe Potae boundary.) On April 12 1872 Raukawa and Tuwharetoa met with Governor Bowen at Tapuaeharuru (Taupo). Bowen, who had replaced Grey in 1868, was a well-meaning Anglo-Irish aristocrat who invested much effort in travelling about the country to meet the Maori in the hope of building better relations between the tribes and the Crown. McLean and his colleague Ormond, however, regarded Bowen's efforts sourly, seeing him as a bumbling and interfering amateur. Ormond, in fact, regarded Bowen as an "ass" and recommended that McLean should "keep him at the Pheasants – that is more in his line".²⁶¹⁸ McLean was appalled by Bowen's plans to visit Tawhiao, fearing that this might undo years of careful diplomacy. Be that as it may, both Ngati Raukawa and Tuwharetoa welcomed Bowen effusively at Taupo and the discussions were very warm and friendly. They were no doubt pleased that the Governor had made the effort to travel to the remote centre of the North Island to come and see them. Taupo was not the easiest of places to get to in 1872. Perenara Tamahiki and Rutene (and maybe others) spoke for Raukawa and pledged loyalty to the Crown.²⁶¹⁹ The following day Bowen met Raukawa again at a large meeting at Orakei Korako, where he was greeted warmly by a number of Raukawa rangatira: Hohepa

²⁶¹⁷ On Mangauika see Husbands and Mitchell, *Native Land Court in the Rohe Potae*, 48-9; the evidence is recorded in (1868) 2 Waikato MB.

²⁶¹⁸ Ormond to McLean, McLean papers, 4 May 1872, MS 1304 ATL. My congratulations to Ray Fargher for finding this hilarious reference. See Fargher, *Best man who ever served the Crown?*, 317. Fargher's discussion of McLean's relations with Bowen is outstanding – see *ibid* 316-19.

²⁶¹⁹ Summary of the speeches delivered at Tapuaeharuru, April 12, 1872, in *Further Reports from Officers in Native Districts*, 1872 AJHR F3A, 11; see also Keith Sinclair, *Kinds of Peace*, 53.

Taupiri, Tuiri Rangihoro, Hare Matenga, Aranui, and Raukawa's senior chief, Hori Ngawhare, "from the Waotu Patetere". The Governor was again given a very friendly and warm reception.²⁶²⁰

As Paul Husbands and James Mitchell note, [t]he leaders of the tribes who supported the 1883 application [for for an investigation of title to the Rohe Potae block] had not, as is sometimes supposed, been cut off behind a rigid boundary of the King Country (known as the 'aukati') as court operations affected land and people across its boundary through the 1870s and early 1880s".²⁶²¹ To the government this block of autonomous territory was an affront to its claimed de facto and de jure sovereignty over the national territory. There was a more practical and immediate issue, however, this being the completion of the main trunk railway line from Auckland to Wellington. It was not possible to travel by train through the North Island from the national capital to what was already becoming the country's economic and financial hub and largest city. The line stopped at the northern and southern frontiers of the independent King Country. (Extension of practical sovereignty and strategic rail links are in any case aspects of a single goal of state-building and modernisation in any event.) Tourism was another goal, as the Waitangi Tribunal has recently pointed out. The creation of Yellowstone National Park in the United States seems to have created a link in the public imagination between tourism and spectacular geothermal features, which New Zealand had in plenty and which it was hoped that tourists might want to travel to by rail. In the centre of the North Island, within the Rohe Potae – but within the section of it belonging to Tuwharetoa – stood the great volcanic mountains of Ruapehu, Ngauruhoe and Tongariro. As the Tribunal has (in my opinion correctly) observed, "[t]he Crown's priorities in our inquiry district – to obtain as much land as possible, including land for tourism assets, for the purpose of scenery preservation, and land for the railway – informed the Crown's engagement with ngā iwi o te kāhui maunga throughout the 1870s and 1880s".²⁶²² One of the most important outcomes of the process of title investigation in the lands of the former Rohe Potae from 1886-87 was the establishment of Tongariro National Park, the nation's first, and a UNESCO world heritage site today. This is to anticipate.

The key initiative was taken by Tawhiao himself, who together with 500 to 600 followers, many of whom were armed, crossed the aukati line in August 1881 to meet W G Mair at Alexandra. The King and 77 of his followers placed their guns on the ground before Mair at a formal ceremony which the latter then described in his report of 31 August:²⁶²³

Tawhiao stepped back and Wahanui came forward, and, addressing me, said, "Do you know what this (pointing to the guns) means, Major Mair? This is the result of what Tawhiao said to you, that there would be no more trouble; this means peace." I replied, "It is clear. I call to mind the words Tawhiao uttered, at Tomotomowaka (Kopua), that there should be no more fighting. This is the day that we have all been waiting for. We now know that there will not be any more trouble; it has all passed away, and good days are in store for us.

Tawhiao said:²⁶²⁴

²⁶²⁰ See Locke to McLean, 6 May 1872; Summary of Speeches delivered at Orakeikorako, 13 April 1872; in *Further Reports from Officers in Native Districts*, 1872 AJHR F3A, 8-9, at 9; 12-13, at 12.

²⁶²¹ Husbands and Mitchell, *Native Land Court in the Rohe Potae*, 44.

²⁶²² Waitangi Tribunal, *National Park*, Wai 1130, 2013, 225.

²⁶²³ Report by W G Mair, 31 August 1881, 1881 AJHR G-9, No 8, pp 3-4, cited Loveridge, *The Crown and the Opening of the King Country*, 18-19.

²⁶²⁴ Adams, Te Uira and Parsonson, "Kingitanga and the 'Opening' of the King Country", 104, citing a personal communication to those authors from Robert Mahuta. Adams et. al. go on to note that "it was this tongi of Tāwhiao that Te Puea drew on in World War I when Waikato and Ngati Maniapoto refused to be conscripted into the armed forces".

Ko te pakanga i runga i tēnei motu, kua rite ki te kōkā harakeke.

Ko te tangata whakāra pakanga a muri ake nei, ko ia tona hei utu.

Warfare in this land has ended just like the withered flaxbush.

He who raises war hereafter, shall die.

This event should not be seen in any sense as a surrender or capitulation, but rather as a peacemaking. Nor did this historic step mean that issues between the Crown and the King had been resolved. In fact the next few years were taken up by an intensive round of discussions and negotiations, in which there were three major players, the Government, the King, and the leaders of the various iwi of the King Country, including Maniapoto, Tuwharetoa and Raukawa.

Following the events at Pironkia Mair and Tawhiao toured the Waikato, visiting “all the Pākeha towns that had been built on raupatu land”, where he was received with great hospitality and where he everywhere spoke of peace and the need to heal the breaches of the past.²⁶²⁵ The following January and February (1882) Tawhiao paid an official visit to Auckland, where on 1 February he had a meeting with the Premier, Sir John Hall. The discussions were very friendly, but vague on details: neither the King nor the Premier wished to push things along too fast.²⁶²⁶ Tawhiao told Hall very specifically that future negotiations should be with him and with him alone: “do not pay heed to anybody else, and if any of the Waikato or Hauhau should visit Auckland and say anything about me or my policy, do not pay any heed to them”. Hall told Tawhiao that there would be further discussions between the King and the Native Minister, John Bryce – who some weeks previously had theatrically led an invading force of volunteers and Armed Constabulary into Parihaka – and Tawhiao invited members of the Government to a meeting to be held at Whatiwhatihoe (set for March, but which was later put off to May). However, while as noted nothing specific was settled between Tawhiao and Hall, later in February there was a very different meeting held in the Waikato between Bryce and Rewi Maniapoto.²⁶²⁷ Rewi seems at this discussion to have made a clear trade-off between conceding to the Crown’s sovereignty in return for very specific guarantees over land. Rewi had concluded by this time that it was land that really mattered, and said to Bryce specifically that “[i]f the land that remains to them is secured to them, then both races can live under one law”.²⁶²⁸ That settled, Rewi and Bryce then moved to the subject of the Native Land Court. Rewi agreed that the entire King Country block should be investigated in one large scale investigation of title by the Native Land Court, an absolutely key concession as far as the government was concerned, although it seems that Rewi was under the impression that the Court investigation would be of a special or provisional character and that the land within the King Country would remain

²⁶²⁵ Adams, Te Uira and Parsonson, “Kingitanga and the ‘Opening’ of the King Country”, 104-5.

²⁶²⁶ On this meeting see Loveridge, *The Crown and the Opening of the King Country*, 19-20; Loveridge’s main source is a report of the discussions in the *New Zealand Herald* for 1 Feb 1882. Hall told Tawhiao that the Government “did not in any way interfere with him and his people so long as they wished to remain living by themselves” and that it “wished to live on the most friendly terms with them, and to work with Tawhiao in promoting the welfare of his followers”. Hall also told Tawhiao, however, that “there could be only one sovereign in the country, and they all, both Maoris and Europeans, lived under the shadow of her law”. Hall’s caution is shown by a meeting that took place in Auckland at this time between Hall and the Auckland Chamber of Commerce. The latter body was very keen to see rapid progress with the construction of the main trunk railway through the King Country, but Hall insisted that the government tread very carefully; there were “difficulties” that “required to be treated with very great caution and judgment”: “Deputation to Ministers”, *New Zealand Herald*, 3 February 1882, cited Loveridge *Crown and the Opening of the King Country*, 21.

²⁶²⁷ See Loveridge, *Crown and the Opening of the King Country*, 21-25. Loveridge remarks that “in the event...the King was pre-empted”.

²⁶²⁸ On the discussions see *New Zealand Herald*, 23 February 1882; *Waikato Times* 25 February 1882 (cited Loveridge, *Crown and the Opening of the King Country*, 22).

protected. Rewi may well not have foreseen the consequences that such an investigation might lead to, and it seems that there may have been a certain amount of obfuscation on Bryce's part. Newspapers of the day were, however, hopeful that the agreement would lead to rapid alienation of land in the central North Island.²⁶²⁹

In May 1882 a major hui took place at Whatiwhatihoe presided over by the King and his advisers. This was a great event preceded by much careful planning, and many matters were discussed. As noted above, Tawhiao had invited members of the government to attend when he had his meeting with the Premier in Auckland at the end of February. This meeting was of great interest not just in the Maori world but amongst Pakeha as well, and the discussions received "intensive"²⁶³⁰ coverage in the newspapers, especially in the *Waikato Times* and in the *New Zealand Herald*. The newspapers reported the debates on the whole respectfully and sympathetically,²⁶³¹ but not always were the reporters able to grasp or explain the significance of what was being said. The meeting, or sequence of meetings, more accurately, was held in part to find a way forward in terms of forging new and better relationships with the government – this being the keynote of King Tawhiao's "proposals" speech of 15 May²⁶³² - but another goal was to initiate a process of rapprochement between Kingites and Queenites and end the divisions within Maoridom. Leading Queenites such as Te Wheoro and Paora Tuhaere (Paora had earlier hosted Tawhiao during his visit to Auckland) as well as prominent Kingitanga leaders such as Rewi Maniapoto were present and spoke at the meeting.

At one part of the proceedings Raukawa played a prominent role. This seems to have been principally a meeting of the southern iwi with Tawhiao, including the southern section of Raukawa, although people from the south Waikato section of Raukawa may have been present as well. The Raukawa representatives were described by the *Waikato Times* as presenting "a very civilised appearance, and were undoubtedly a well-dressed and intelligent-looking lot of men".²⁶³³ Te Whete [sic] Patoto of Raukawa "advanced to the centre of the marae carrying a white flag, upon which was fixed an oil portrait of Tawhiao". As always it is not too easy to grasp what was being said and its significance from the garbled accounts in the newspapers. Speeches for the tangata whenua were given by Hauauru of Maniapoto and Rewi Maniapoto; in reply Kiharoa Te Moroati (Raukawa), Major Te

²⁶²⁹ See Editorial, *New Zealand Herald*, 23 February 1882.

²⁶³⁰ Loveridge, *Crown and the Opening of the King Country*, 33. Loveridge covers the discussions in detail, at *ibid* 32-37. Not every aspects of the wide-ranging discussions will be discussed here: emphasis is primarily given to the role played by Raukawa.

²⁶³¹ See *Waikato Times*, 13 May 1882, p 3; 18 May 1882, p 2.

²⁶³² See Loveridge, *The Crown and the Opening of the King Country*, 33-4, citing "The Kingite Meeting", *New Zealand Herald*, 15 May 1882; Report by R S Bush (Resident Magistrate, formerly Native Agent at Raglan), 27 May 1882, 1882 AJHR G-4a, 2. Tawhiao's proposals were then set out in a letter to the Speaker to the House of Representatives, 24 May 1882 (see NZPD vol 41 p 645, set out as "Tawhiao's Proposals"):

Let the work of surveys, let leasing, let sales, let the making of roads, and the Native Land Court in the district which belongs to me and the people of my tribes, be stopped for the present. Shortly they may be commenced, when the parliament and the chiefs of our people have agreed upon some mutual settlement between the Europeans and those people who, under me, are called the King party.

Secondly, I say let a Parliament meet in Auckland, so that when they assemble for their work they may be close to us, and that we may enter that Parliament ourselves and quietly discuss matters in difference between us and the Europeans.

Note that Tawhiao here is seeking that the Native Land Court be "stopped for the present" in the King Country (whereas the preceding February Bryce and Rewi agreed that the Land Court should play a role in resolving title to the King Country). The suggestion of a special meeting between parliament and the King was never acted on.

²⁶³³ *Ibid*, 13 May 1882.

Wheoro and Karanama Te Kapuai (also Raukawa) spoke. Karanama seems to have spoken somewhat sharply to his Kingitanga hosts.²⁶³⁴

Karanama Te Kapuai, a chief of the Ngatiraukawa, said he had something which he intended calling the king, and his party to account for. What did it signify if they were great chiefs? They were also chiefs. He would ask them when speaking not to conceal their thoughts, but to express them openly. What he had got to say to them they would not be able to refute. What signified the man who spoke last? He may consider himself a great chief, but they [the Ngatiraukawas] were great chiefs also. The Waikato chiefs were merely resting on Rewi and himself. He had nothing to blame the other tribes for. It was only the Waikatos.

But Rewi and Tawhiao seem to have taken this in good spirit; Rewi “answered with a waiata” and finally, to end the opening speeches, Tawhiao himself spoke, asking why Karanama had come there. Following this there was a large-scale presentation of mats by Raukawa to Tawhiao, which were piled at the base of the flag-pole. Tawhiao in turn behaved as a gentleman and a rangatira should by liberally giving away the ceremonial mats to other people, including “to some of his European friends”.²⁶³⁵ Typically the exact significance of what is being said and done is hard to fully understand. A number of Pakeha were present at this hui, including Major Wilson, Frederick Whitaker, and William N Searancke.²⁶³⁶

The oratory and the generous gifting and redistribution of mats, the presence of influential chiefs on either side of the Kingite-Queenite divide all point to a political event of real magnitude, and this seems to be an effort at mending the divide and welcoming Tawhiao back to the Maori world beyond the aukati. But there was still a lot of uncertainty and divided opinion. A speech made some days later by Paora Tuhaere seems to have annoyed Rewi somewhat, and Te Wheoro had to admit that “there was such a diversity of opinion on matters that it was almost impossible for him to know what to do”.²⁶³⁷ Tawhiao, having returned to Waikato, was now landless, and this was emphasised by Ahipene Kaihau of Ngati Te Ata, a longstanding supporter of Tawhiao: “he would not consent that Tawhiao should be placed in difficulties”.²⁶³⁸ He later added:

It is all very well for people who have got both land and food to talk, but what are we Waikatos to do, who have neither, having only the air to live on.

The Southern groups, including presumably Raukawa, then “suggested that the Waikatos should not keep Tawhiao entirely to themselves, but that he should move among them”. Finally the Reverend Samuel Williams spoke, saying that he had heard that the road to the Waikato was now open and that he had come to see those who had been known to his father “in the time of Matakītaki”.

So a great occasion, certainly, even if the exact nature of the discussions is a little hard to penetrate. Now that the independent Rohe Potae had come to an end, Raukawa ki te Tonga had come to meet him and Queenites and Kingites were trying to forget old divisions, although evidently this was

²⁶³⁴ Ibid.

²⁶³⁵ Ibid.

²⁶³⁶ On Searancke see Sally Maclean, “Searancke, William Nicholas”, in *DNZB* vol 2, pp 446-7. Searancke was Resident Magistrate in the Waikato from 1865-1877, when he was dismissed by John Sheehan, Native Minister in the Grey government, as part of a politically-motivated programme of eliminating former appointees and supporters of Donald McLean. Searancke then began work as a general land agent and licensed interpreter at Hamilton and was involved in the negotiations over the Patetere block.

²⁶³⁷ *Waikato Times*, 18 May 1882, p 2.

²⁶³⁸ Ibid.

not easy. This political event may however have impacted on the long-running drama over the Maungatautari blocks.

Following his visit to Auckland in 1882 Tawhiao toured the North Island, visiting numerous iwi, including Ngati Raukawa. Prominent chiefs such as the upper Whanganu chief Topia Turoa accompanied him. He was well-received everywhere. When he was in Taupo “a ball was got up in honor of the King’s visit...but he could not appear at the festivities”.²⁶³⁹ Tawhiao stayed at Waotu, Raukawa’s principal Waikato settlement, in April 1883, holding a meeting “of a formal nature”.²⁶⁴⁰ The Native Land Court sitting at Cambridge adjourned its proceedings so that as many Raukawa people who wanted to could go home to meet Tawhiao. The *Waikato Times* commented sardonically that Tawhiao was expected to travel on to Cambridge from Waotu but “as there is a large supply of *kai* and *waipiro* at Waotu to be got through, we expect his stay there will be longer than intended”.²⁶⁴¹ Later Tawhiao was persuaded to head a delegation carrying a petition to the British government.²⁶⁴² Tawhiao reached London in July 1884, where he was met by Sir John Gorst, former government representative in the Waikato and now a prominent Radical-Tory Member of Parliament, and where he later met Lord Derby, the Colonial Secretary, and the Aborigines Protection Society (the latter body always a prominent critic of the confiscation programme in New Zealand). Tawhiao seems to have been kindly and respectfully received. But he was unable to see Queen Victoria, and Tawhiao’s mission returned to New Zealand, in Keith Sinclair’s words, “empty-handed”.²⁶⁴³ Once back in New Zealand Tawhiao continued to tour the country in order to promote Maori unity and self-government, and in 1885 he visited Northland (including Waitangi).²⁶⁴⁴ Meanwhile the government and the King Country tribes had been engaged in complex discussions.

17.2 Background to the 1886 Rohe Potae case

The way in which the original 1886 investigation of title was carried out with respect to the Rohe Potae block proper was an outcome of the negotiations carried out in the early 1880s between the Rohe Potae leadership and successive governments. These negotiations and their background have now been very fully considered as a result of new research carried out for the Waitangi Tribunal’s Rohe Potae (King Country) Inquiry.²⁶⁴⁵ (The documentary research has also been supplemented by a considerable volume of testimony given by representatives of the various iwi with interests in the King Country region at two week-long hearings before the Waitangi Tribunal in November and December 2012.) The discussions, concentrated within the years from 1881-1885, decisively changed the political landscape. They were a three-sided process which involved the King Country leadership, principally the chiefs of Maniapoto, upper Whanganui, and Ngati Raukawa; King Tawhiao and his advisors (who soon found themselves marginalised from the process), and the government, or rather two successive governments: the conservative regime led by Sir John Hall that took over from Grey in 1879, and the Stout-Vogel

²⁶³⁹ *Whanganui Herald*, Vol XVII, Issue 5033, 10 April 1883, p 2.

²⁶⁴⁰ *Waikato Times*, Vol XX, Issue 1682, 17 April 1883, p 2.

²⁶⁴¹ *Ibid.*

²⁶⁴² See Arthur Gordon to Secretary of State for the Colonies, 16 July 1881, 1882 AJHR A-1, No 2; Pei Te Hurinui Jones, “Maori Kings”, in Erik Schwimmer (ed), *The Maori People in the 1960s*.

²⁶⁴³ Sinclair, *Kinds of Peace*, 191.

²⁶⁴⁴ See Judith Binney, “Ani Kaaro”, *DNZB* vol 2.

²⁶⁴⁵ Don Loveridge, *The Crown and the Opening of the King Country, 1882-1885*, Research report commissioned by the Crown Law Office, 2006, Wai 898 Doc#A41; Loveridge, *The Crown, the Four Tribes and the Aotea Block 1885-1899*, Research report commissioned by the Crown Law Office, 2011. Wai 898 Doc#A68; Cathy Marr, *Te Rohe Potae Political Engagement 1864-1886*, Research report commissioned by the Waitangi Tribunal, Wai 898 Doc#A78, 2011; and Helen Robinson and Paul Christoffel, *Aspects of Rohe Potae Political Engagement, 1886-1913*, Research report commissioned by the Waitangi Tribunal, 2011.

ministry of 1884-1887.²⁶⁴⁶ A key step in the negotiations was the ‘Four Tribes’ petition of 1883, usually seen as the most single important document in the process – notwithstanding that the original has been lost.²⁶⁴⁷ The Waitangi Tribunal sees this petition as articulating “the chief’s conditons for letting the railway go through [the Rohe Potae].”²⁶⁴⁸ The petition related to a very substantial district, including not only just about all of Ngati Maniapoto’s lands as well as about half of the tribal demesne of Tuwharetoa, that section of Raukawa’s lands to the west of the Waikato river, and a significant slice of the upper Whanganui valley. The petitioners, who included the Maniapoto chief Wahanui, asked that they be “relieved from the entanglements incidental to employing the Native Land Court to determine our titles to the land” and asked for legislation “to secure our lands to us and our descendants for ever, making them absolutely inalienable by sale”. In asking to be relieved from the “entanglements” that were “incidental” to the Native Land Court the Rohe Potae leadership had in mind the Cambridge Court, and were presumably concerned not only with the usual direct and indirect costs of the hearings but also with the involvement of private land purchasing syndicates behind the scenes which were so characteristic of the Cambridge court. The chiefs sought also that they be able to “fix the boundaries of the boundaries of the four tribes”, and indeed of all other entitlements as well, that is of “the hapu boundaries in each tribe, and the proportionate claim of each individual”. The petitioners, in Loveridge’s summation, were asking essentially for a “special district”.²⁶⁴⁹

The terminology used indicates that the Native Land Court may not have been opposed as such, but it does not necessarily follow that the petitioners were in favour of Crown-granted freeholds or anything resembling memorials of title under the Native Lands Acts 1873. They sought, rather, the aid of the government in lending its authority to the boundaries and subdivisions as defined by the chiefs themselves, and asked also that that the government confirm the boundaries so established by persons “vested with power to confirm our arrangements and decisions in accordance with law”. Alienation as such was not opposed; rather the request was for land to be alienated *only by lease* and by public auctions. An application for the investigation of title for the Rohe Potae block was filed in December 1883.²⁶⁵⁰ The application was then followed by an exchange of letters between the chiefs and S. Percy Smith, Assistant Surveyor-General, which was then followed by three major government surveys of the block in 1884-5: a trigonometric survey, a survey of a possible railway route through the King Country, and a survey of the exterior boundary of the block for the purpose of its investigation by the Native

²⁶⁴⁶ Whether there was, or was not, such an agreement, raises a number of historical questions: (a) who was the agreement between (it is not enough, in my opinion, to simply say that one of the parties was ‘the Crown’ and to leave it at that, given that two quite different governments and two different Native Ministers, John Bryce and John Ballance, were involved, and the contracting party or parties on the Maori side must be delineated very carefully); (b) in what texts or documents is the agreement embodied – bearing in mind that at least two key documents, the original of the 1883 “Four Tribes” petition and Tuwharetoa’s 1883 petition have both disappeared - and what is the role of the oral tradition in documenting whether such an agreement existed, what its content was, and in understanding whether it has been adhered to; (c) when was the “agreement” or “compact” finalised (not a simple matter either); (d) what its content was (what was promised); and (e) whether it has been breached. Then there is the legal issue: what is the constitutional and legal significance of what was agreed: to what extent, perhaps, should it be seen as a treaty, or at least a treaty-like text, in its own right?

²⁶⁴⁷ The petition is printed in 1883 AJHR J-1 (“Petition of the Maniapoto, Raukawa, Tuwharetoa, and Whanganui Tribes”). As the original document is lost it is not known who the original signatories were. The petition was well-received by the House, although there was perhaps a tendency in this to focus on the more palatable aspects of the document, especially the fact that the chiefs appeared to be taking action independently of the King, while ignoring other, less welcome, aspects, notably the insistence on avoiding the Native Land Court: see Anderson, *Whanganui Iwi and the Crown*, 17.

²⁶⁴⁸ Waitangi Tribunal, *National Park*, Wai 1130, 2012, 259 .

²⁶⁴⁹ Loveridge, *Crown and the Opening of the King Country*, 86.

²⁶⁵⁰ On the 1883 application see Husbands and Mitchell, *Native Land Court in the Rohe Potae*, 38-9. The original of this document has not yet been located either and seems to be lost.

Land Court.²⁶⁵¹ Whether the 1883 application can in fact be seen as an application to have the whole of the Rohe Potae investigated and partitioned according to the time-honoured practice of the Native Land Court is very doubtful. Rewi Maniapoto saw it as an application for an exterior boundary survey only, and it is likely that the other chiefs assumed the same.²⁶⁵²

The ‘Four Tribes’ petition, however, conveyed a sense of a unanimity of opinion which was more apparent than real. On 21 August 1883 a substantial counter-petition drafted by King Tawhiao’s advisers was sent to parliament, challenging the “Four Tribes” petition and claiming the Rohe Potae for the King. More people, in fact, signed the Kingite counter petition than the “Four Tribes” petition.²⁶⁵³ While the “Four Tribes” petition had been enthusiastically received by parliament, the counter petition was however quickly confined to oblivion. Moreover there were difficult issues about boundaries. What exactly was the “Rohe Potae” or the “King Country”? In one sense the “Four Tribes” petition marks a final abandonment by the Rohe Potae chiefs to assert any control over Raukawa lands to the east of the Waikato river. At a hui at Taupo in 1877 Rewi Maniapoto had continued to press for the inclusion of all of Raukawa’s lands within the Rohe Potae, asking for the boundary to run from Horohoro to Atiamuri, which would have taken the outer perimeter practically to Rotorua. At the same meeting, however, the Raukawa chiefs had rejected this in no uncertain terms. They “asserted their determination to deal with their ancestral lands of Tokoroa in whatever way they deemed best, and requested that the question of ownership be settled by the Native Land Court, and the roads opened, declaring that such was the full and matured policy of the large majority of the Raukawa tribe”.²⁶⁵⁴ It could well be the case that by 1883, after having had plenty of experience of the realities of the Court sittings at Cambridge, Raukawa had had cause to think again about the Native Land Court. Raukawa were, after all, now one of the ‘Four Tribes’ now pressing for an alternative to the Court in the Rohe Potae. In any event the 1883 petition defined the eastern boundary of the block in the Raukawa river as the Waikato river, with the effect that most of the Raukawa tribal territory was outside the boundary, but some still remained inside; this was later partitioned out in 1892 as the large Wharepunga block of about 133,000 acres. There is certainly evidence that many within Raukawa continued to ally themselves strongly with King Taw hiao and were very unhappy with the drift of events; nor should it be too readily assumed that a willingness to engage in dialogue with the government was perceived by all Raukawa people as incompatible with continued loyalty to the Maori King movement.

17.3 Rohe Potae title investigation (1886)

The King Country or Rohe Potae block, also known as the Aotea block, was certainly the largest block (1,650,000 acres) the Court ever dealt with. The block abuts on the southern boundary of the Waikato confiscated block and the 1886 case was one of the last acts in the drama of the history of the Waikato war and the independent King Country. The case arose out of a complex process of negotiation between the New Zealand government and the King Country rangatira, which is the subject of a number of research reports prepared for the Rohe Potae inquiry, and which need not be traversed here. The formerly independent King Country had until this time been completely closed to the Court, although there had certainly been a number of investigations along its periphery, including Whakamaru-

²⁶⁵¹ Husbands and Mitchell refer to this exchange as the ‘1883 survey agreement’. The area that was surveyed by Lawrence Cussen for the Native Land Court (ML 5031) covered an area of about 3.5 million acres, an area significantly larger than the area finally investigated by the Court as the Rohe Potae block in 1886: see Husbands and Mitchell, *Native Land Court in the Rohe Potae*, 24.

²⁶⁵² See discussion in Husbands and Mitchell, *Native Land Court in the Rohe Potae*, 43.

²⁶⁵³ The original of this document is also lost. See however 1883 AJHR 12, Petition No 492, also Loveridge, *Crown and the Opening of the King Country*, 89-90.

²⁶⁵⁴ *Whanganui Herald*, Vol XI, Issue 2886, 24 March 1877, p 2.

Maungaiti (1881); Mohakatino ki Parininihi and Mokau Mohakatino (1882); Matanuku (1882); Maungatautari (1884) and others. In 1886 three massive cases relating to the formerly independent Rohe Potae (King Country) passed through the Native Land Court: Waimarino, Taupouiatia, and this case, the King Country or Rohe Potae block proper. These last three cases could not have happened at all without the long process of negotiation between the government and the Rohe Potae leadership that lasted from 1881-1885 and resulted finally in the chiefs agreeing to an exterior survey of the block and investigation by the Native Land Court.

The Rohe Potae investigation was presided over by Judge William H (Major) Mair, a veteran of the New Zealand wars, former Native Agent at Alexandra, and an experienced Land Court judge, who had heard cases at Maketu, Rotorua and other places. Maniapoto had objected to Mair, unavailingly, claiming that he was a “Waikato pakeha” – i.e. that he would be biased in favour of Waikato – and had tried to get G T Wilkinson appointed instead (Ballance, the Native Minister, had told Maniapoto “curtly” that Mair had been appointed and that was the end of the matter).²⁶⁵⁵ It was true that Mair had built up good personal relations with Tawhiao during the years of the latter’s exile in the Rohe Potae. King Tawhiao himself, who lived at Whatiwhatihoe, was not prepared to attend any court held at Otorohanga and went to Tauranga during the Rohe Potae hearings, apparently to distance himself from the case.²⁶⁵⁶

The applicants for title to this vast area were a coalition who styled themselves the “five tribes”: Ngati Maniapoto, Ngati Raukawa, Ngati Hikairo (of Kawhia), Ngati Tuwharetoa, and ‘Whanganui’. Hearings began on Monday 2nd August. Wahanui spoke first as the representative of the ‘five tribes’.²⁶⁵⁷

Wahanui said they were prepared to go on with the case and had appointed a conductor, and he would give evidence.

Sworn. I live at Alexandra. My tribe is the Ngatimaniapoto. I have a general knowledge of the Rohepotai [sic] block. I and my tribe have a claim on this land. The five tribes mentioned in the gazette are the five tribes who have claims in this land, that is ‘Hikairo, ‘Maniapoto, ‘Raukawa, ‘Tuwharetoa [sic] and ‘Whanganui’.

He then gave a description of the external boundaries of the block and mentioned two of the principal ancestors by way of introduction to the case, Turongo (from whom both Raukawa and Maniapoto were descended)²⁶⁵⁸ and Tuwharetoa. Wahanui’s address had the purpose of introducing the case on behalf of the claimants, the “five tribes”, following which the various groups of counterclaimants announced themselves in turn. The counterclaimants were (in order of announcement) (a) Tuiao Ihimaera, representing the Ngati Haua people of the Whanganui region (not to be confused with Ngati Haua of the southern Waikato); (b) Te Ngakau, who claimed the whole block on behalf of “several sections of the Waikatos”²⁶⁵⁹; (c) Major Wiremu Te Wheoro, who advanced a claim to Kawhia on “behalf of the

²⁶⁵⁵ “The Native Lands Court” from A Correspondent *Waikato Times* (Vol XXVII, Issue 2196, 5 August 1886) at 3.

²⁶⁵⁶ Ibid.

²⁶⁵⁷ (1886) 1 Otorohanga MB 46.

²⁶⁵⁸ As Wahanui explains at (1886) 1 Otorohanga MB 48, where he states, in response to a question from Paratene Ngata, the Assessor, that “I wish to repeat that Turongo was my principal ancestor who begat Raukawa who begat Rereahu who begat Maniapoto”, and so on, listing the line of descent down to himself. He identifies Turongo and Tuwharetoa as the two main distinct ancestors, identifying that section of the block associated particularly with the latter (ibid, 47). He states here that “these are the principal ancestors, but there are others who proceed from them. There are other claims to this block which I will presently describe”: (ibid).

²⁶⁵⁹ (1886) 1 Otorohanga MB 50 (3 August 1886).

people of Kawhia and the Waikatos generally”²⁶⁶⁰; (d) Haimona Patara, who claimed a large area in the northeast section of the block on behalf of Ngati Haua (of the south Waikato) and Ngati Koroki; (e) a claim by a Mrs Reynolds to a section of the block based on descent from an ancestor named Te Kanawa and “also by gift to my ancestors from Te Kanawa himself to my ancestors Te Tuhi”²⁶⁶¹; (f) Harete Tamehana, who claimed the whole block, based on descent from Te Kanawa²⁶⁶²; (g) a claim by Te Ana Tohiroa, of Ngati Maniapoto, “Ngati Matokori”²⁶⁶³ and Ngati Unu to lands around Pirongia and Kakepuku; (h) Te Tumuhuia, who brought a claim to the eastern section behalf of Ngati Hourua and Ngati Naho based on conquest of Raukawa and other groups and also by gift; (i) Rangitopenga, on behalf of Ngati Matakore and other groups, to various parts of the block; (j) Kautuita, who made a claim on behalf of Ngati Wairere, Ngati Pare and other groups to certain parts of the block; (k) Keremete Taunuku of Waikato (Te Were Koruru and other hapu), who claimed Wharepuhunga and other areas in the eastern part of the block on the basis of conquest of Raukawa; (l), Wiremu Te Whitu, who brought a claim to Kawhia on behalf of Ngati Mahana and other groups; and (m), Enoka, who brought a Maniapoto claim to Kawhia on behalf of Ngati Rora and other hapu. The counterclaims thus overlapped with each other and also with the main claim by the “five tribes”, although during the course of the hearings it became clear that much of the block was not actually contested. The two most problematic areas turned out to be Kawhia, and the claims by Wiremu Te Wheoro and others on the basis of the alleged conquest of Ngati Toa and Ngati Koata; and the claims by various groups to the eastern part of the block on the basis of alleged conquests of Raukawa, the original owners. The judgment is mainly directed to these points.

The case was heard in a “large and commodious” courthouse at Otorohanga “on a site near Taonui’s kainga” specially built for the hearings by the local Native Committee.²⁶⁶⁴ Construction of the buildings had begun as early as May.²⁶⁶⁵ The actual hearing of the evidence in this colossal case took nearly three months (58 sitting days), “[a]n enormous mass of evidence” as the *Waikato Times* described it, which required “a most patient and protracted hearing”.²⁶⁶⁶ The proceedings were distinguished by considerable oratorical prowess, and the claimant case was very carefully designed. The solemnity and importance of the occasion was obvious to all concerned. The ebbs and flows of the evidence were followed closely in the newspapers, fully alive as they were to the importance of this great case. On 12 August it was reported in the *Waikato Times* that the Court was “still at work”, the “various natives entertaining their claims to the various blocks”.²⁶⁶⁷ The *Waikato Times* noted that “a great number of natives” were at the hearings and commented that “the wonder is that they do not endeavour to house themselves at least in a temporary manner”.²⁶⁶⁸ Stores were set up near the Court where Maori could buy provisions while the case ran on. Closing addresses were given on 14 and 15 October, with the counterclaimants summing up first (Tumuhuia, Katuita, Haimona Patara, Hori Whiriana, Wiremu Te Whitu, Major Wiremu Te Wheoro, Harete Tamehana and Aparahama Patene), and then Mita Karaka “in reply, for claimants, then addressed the Court”²⁶⁶⁹, speaking for over two hours. According to the *Waikato Times* “[a] most noteworthy feature” of the case came at its end with “the exceedingly able

²⁶⁶⁰ (1886) 1 Otorohanga MB 50 (3 August 1886).

²⁶⁶¹ (1886) 1 Otorohanga MB 52 (3 August 1886).

²⁶⁶² (1886) 1 Otorohanga MB 53 (3 August 1886).

²⁶⁶³ Usually spelled Matakore today.

²⁶⁶⁴ “Native Land Court at Otorohanga” *Waikato Times* (Vol XXVII, Issue 2230, 23 October 1886) at 2.

²⁶⁶⁵ “Editorial” *Waikato Times* (Vol XXVI, Issue 2160, 13 May 1886) at 2 (“Large buildings are in course of construction at Otorohanga for the accommodation of those interested in the Land Court to be held there”).

²⁶⁶⁶ “Native Land Court at Otorohanga” *Waikato Times* (Vol XXVII, Issue 2230, 23 October 1886) at 2.

²⁶⁶⁷ “Alexandra News” *Waikato Times* (Vol XXVII, Issue 2199, 12 August 1886) at 2.

²⁶⁶⁸ Ibid.

²⁶⁶⁹ (1886) 2 Otorohanga MB 54 (15 October 1886).

and exhaustive addresses made by Major Te Wheoro, the principal counter-claimant in the Kawhia portion, and the one in reply by Mita Karaka, the conductor for the claimants, both of whom spoke for upwards of two hours”.²⁶⁷⁰ As appears to have been standard practice, the closing addresses were not recorded in the minutes (unfortunately).

17.4 Evidence in the 1886 case

As the Rohe Potae case was one where the claims advanced by Waikato and Ngati Haua to have conquered the lands of Ngati Whakatere and Ngati Raukawa failed spectacularly, it is important to review the evidence and the Court’s judgment with some care. The evidence given in the case is tabled below. The evidence is extensive, and the case took about three months to be heard, but it is not particularly lengthy for such a massive block. Ngati Rauakwa themselves, strangely, did not give any evidence, but allowed Rewi Maniapoto, Wahanui Hikaka, Hone Kaora and others to give evidence which at least to some extent was on their behalf. Even so, it seems strange that Hitiri Te Paerata or some other Ngati Raukawa leader did not give evidence. The case was concerned with large-scale interests only, however. The evidence given is tabulated below. There were eight counterclaimant groups in all who actually gave evidence. The claimants were the “five tribes”, who included Ngati Raukawa.

Table of Evidence: Rohe Potae case 1886

Name of Witness and references	Party (Claimant or Counter-Claimant)	Date	Affiliation	References and summary of evidence
Opening statements				
Wahanui Hikaka	Claimant	2 August 1886	Ngati Maniapoto	(1886) 1 Otorohanga MB 46-8. Gives general opening statement for the prima facie case, naming the boundaries, the principal ancestors (Turongo, Raukawa, Rereahu, Maniapoto and others.)
Tuao Ihimaera	Claimant	2 August	Ngati Haua [of Whanganui]	(1886) 1 Otorohanga MB 48-49. Lives at Taumaranui. Describes boundaries. Gives ancestors: Toakohuru, Tamahina, Tapaka, Tamakehu and others.
Counterclaimants				
Tumuhia counterclaim (Waikato)				
Tumuhia	Counter-claimant (Tumuhia claim)	5-6 August	Waikato	(1886) 1 Otorohanga MB 62-73. Describes conflicts in Maungatautari region circa 1800-1839 between Ngati Maniapoto, Waikato and Ngati Haua on one side and Ngati Whakatere and Ngati Raukawa on the other.
Te Ano-a-te-Rangi	Counter-claimant (Tumuhia claim)	6-7 August	Ngati Naho	(1886) 1 Otorohanga MB 75-82. Claims by conquest of Ngati Raukawa, Ngati Whakatere, and Ngati Takihiku. Describes Huriomoana and other battles.
John Davis	Counter-claimant	7-8 August	?	(1886) 1 Otorohanga MB 87-88. Discusses boundary issues

²⁶⁷⁰ “Native Land Court at Otorohonga” *Waikato Times* (Volume XXVII, Issue 2230, 23 October 1886) at 2.

	(Tumuhia claim)			
Kautuita counterclaim (Ngati Pare etc)				
Kautuita	Counter-claimant (Kautuita claim)	9 August	Ngati Pare, Ngati Weriweri, Ngati Waikai	(1886) 1 Otorohanga MB 89-94. Claims parts of the block at Rangitoto and Wharepungunga. Has rights to these areas by conquest, the conquests being of Ngati Whakatere and Ngati Raukawa
Haimona Patara counterclaim (Ngati Haua etc.)				
Haimona (or Hamiona) Patara	Counter-claimant (Hamiona Patara claim)	10-11 August	Ngati Haua, Ngati Koroki	(1886) 1 Otorohanga MB 95-108. Lives at Maungakawa. Claims large parts of the block on the grounds of conquest of Ngati Whakatere. Describes how Ngati Raukawa were allowed to escape from Hangahanga by night by Te Akanui, who was related to Ngati Raukawa, the escapees taking refuge at Hapuaroa and Piraunui. Maungatautari was occupied by Marutuahu, who were defeated in turn by Ngati Haua, led by Te Waharoa, and by Waikato.
Tuwhenua	Counter-claimant (Hamiona Patara claim)	11-12 August	Ngati Haua	(1886) 1 Otorohanga MB 108-116. Lives at Tamahere. Claims Maungatautari by conquest, of Ngati Whakatere at Hurimoana, and also by conquest of Marutuahu.
Keremeta Tahunuku counterclaim (Waikato, Ngati Kauwhata, other groups)				
Keremeta Tahunuku	Counter-claimant (Keremeta Tahunuku claim)	12-14 and 16 August	Ngati Maniapoto and Waikato, hapus are Te Werokoko, Ngatipareteauki, and Ngati Koura.	(1886) 1 Otorohanga MB 116-133. Lives at Maungakopera near Maungatautari; claims part of the block. Claims the land on the basis of gifts made by “Ngatiraukawa and Ngatiraukawa half-castes” (117) and claims also by ancestry and occupation.
Hori Wirihana	Counter-claimant (Keremeta Tahunuku claim)	17 August	Ngati Kauwhata, Ngati Kahukura, Ngati Hinepare and other groups	(1886) 1 Otorohanga MB 134-138. Describes the conquests by Ngati Raukawa of Ngati Kahupungapunga; principal ground of claim appears to be on the basis of a gift made by Te Puke of Ngati Raukawa.
Rihia Te Kanarae counterclaim				
Rihia Te Kanarae	Counter-claimant (Wiremu Te Whitu claim).	18 August	“all Waikato”	(1886) 1 Otorohanga MB 142-157. Lives at Maungakawa. Claims a part of the block. Is the son of Te Hunga (Ngati Haua), killed by Haerehuka at Rotorua in 1835. Describes fighting between Ngati Haua and Te Arawa, to whom Ngati Raukawa were allied, after Te Hunga’s death, and also earlier battles with Ngati Whakatere and Ngati Raukawa at Hurimoana, Hangahanga. Ngati Maru

				defeated Ngati Whakaterere and Ngati Raukawa at Te Waohi and Piraunui and Te Whatakaraka was killed, after which Ngati Raukawa and Ngati Whakaterere “fled to Kapiti” (145), some taking refuge at Rotorua. Describes further fighting between Ngati Maru and Ngati Haua. Presents Taumatawiwi as principally a victory for Ngati Haua and their allies “Ngatiarangi” (Ngaiterangi). Ngati Maru are escorted to Hauraki. Ngati Haua then occupied the country.
Harete Tamihana counterclaim (Waikato, Ngati Haua)				
Mohi Te Rongomau	Counter-claimants (Harete Tamehana claim).	23-25 August	Ngati Mahana	(1886) 1 Otorohanga MB 164-185. Evidence relates to claims by Waikato to Whaingaroa (Raglan) and Kawhia on the basis of the conquest of Ngati Toa and Ngati Koata. Provides a great deal of detail on these campaigns, leading eventually to Ngati Toa and Ngati Koata’s withdrawal to Kapiti.
Harete Tamehana ²⁶⁷¹	Counter-claimants (Harete Tamehana claim).	26 August	Ngati Haua, Waikato	(1886) 1 Otorohanga MB 186-190. Claims land at Kawhia and around Kawhia harbour.
Te Wheoro counterclaim (Ngati Naho, Waikato groups)				
Major Te Wheoro	Te Wheoro claim	26 August-6 Sept	Ngati Naho, Ngati Nahia, Waikato	(1886) 1 Otorohanga MB 190-254. Te Wheoro’s claim related to Kawhia, about which he provides comprehensive and richly detailed evidence. Te Wheoro was expecting to be supported by other witnesses but they failed to attend, perhaps because they had been persuaded not to by Tawhiao, but Te Wheoro pressed his case in any event. ²⁶⁷²
Mihi Rihi Pepene counterclaim				

²⁶⁷¹ The Court in its judgment refers to her as Harete Te Waharoa. I assume she is Wiremu Tamihana’s daughter.

²⁶⁷² See (1886) 1 Otorohanga MB 190 (26 August 1886):

Te Wheoro wished first to say that he had arranged for a number of witnesses to give evidence in his case, but that owing, he thought, to Tawhiao’s influence, the principal ones had not put in an appearance. He was determined, however, to proceed, though he stands alone. He cannot say what is the reason of their absence. He did not think it was because they had no claims, but he believed it was to influence an adjournment to Alexandra, in which he was confirmed by the receipt of two letters asking for such an adjournment; but as the Court has decided to remain here, he would now open his case on the authority given him by the chiefs, and also does this in accordance with the gazette notice. Had he not appeared he would have lost the case, which would probably have been won by Maniapoto and others. He was inclined to think the request to adjourn a reasonable one, but as Maniapoto succeeded in keeping the Court here, he would submit. In conclusion he said his witnesses were quite new to court usage, and he proposed to conduct the case through.

Pita Taua	Counter claimants (Mihi Rihi Pepene's case)	7 Sept 1886	Ngati Mahuta, Ngati Po and others	(1886) 1 Otorohanga MB 254-260. Evidence in support of a claim to an area at Kaipiha. Claims by gift and occupation.
Aperahama Patene	Counter claimants (Mihi Pepene's case)	7 Sept 1886	Ngati Po?	(1886) 1 Otorohanga MB 258-9. Supporting evidence for the Mihi/Rihi Pepene's claim to Kaipiha
Claimants				
Wahanui Hikaka	Claimants	10 Sept	Ngati Maniapoto	(1886) 1 Otorohanga MB 262-271. Is unable to complete giving his evidence due to illness. Discusses the main ancestors, giving particular emphasis to Turongo. In cxx he says that he fought against Ngati Raukawa, but it was a "family quarrel" (266). Says that he is unaware that Ngati Maru ever engaged with Ngati Raukawa at Wharepuhunga. He says he is "prepared to support to a certain extent the Ngati Raukawa claims so far as their descent from Turongo is concerned" (270).
Hauauru	Claimants	13-22 Sept	Ngati Matakore, Ngati Maniapoto	(1886) 1 Otorohanga MB 271-331. Comprehensive evidence. Claims Rangitoto, Purakia, Tuhua, Hauhangaroa, Titiraupenga, Wharepuhunga etc by ancestry and constant occupation. His principal ancestor is Turongo. (Turongo-Raukawa-Rereahu-Maniapoto etc.) Claims also through Rora, d. of Maniapoto. A great deal of information about the early history of Ngati Maniapoto, sacred omens, ancient marks, burial places, eel weirs, bird snares, whitebait, canoes, famous houses, the flax trade. Gives a comprehensive political history of relationships between Ngati Maniapoto, Ngati Toa, and Ngati Raukawa.
Hone Kaora	Claimants	23 Sept 4 October	Ngati Hikairo	(1886) 1 Otorohanga MB 332-401. Evidence relates to Ngati Hikairo settlement at Kawhia. Gives evidence on ancestry, pa sites, mission buildings, settlements, sacred and other landmarks, sacred stones, ships, surveys, roads, and traditional history, including the withdrawal of Ngati Toa.
Wetere Te Rerenga	Claimants	4-6 Oct	Ngati Maniapoto; "connected with many other hapus"	(1886) 1 Otorohanga MB 401-404; (1886) 2 Otorohanga MB 1-22. Lives at Mokau. Evidence relates to the history of the SW section of the Rohe Potae. Gives descent from Turongo-Raukawa-Rereahu-Maniapoto, etc. In questioning from the Court states that Ngati Toa left Kawhia after a peace-making.
Te Oro Te Hoko	Claimants	7-9 Oct	Ngati Maniapoto	(1886) 2 Otorohanga MB 23-37. Lives at Te Kopua. Gives descent from Turongo-Raukawa-Rereahu-Maniapoto-Te Kawa etc. Describes places on the block.
Wahanui Te Hikaka	Claimants	11-12 Oct	Ngati Maniapoto	Completes cross-examination

Judgment of Court				
Judge Mair, Paratene Ngata Assessor		20 Oct		(1886) 2 Otorohanga MB 55-70

Mair and Ngata gave judgment on 20 October 1886, just five days after closing submissions. The two principal issues of substance they had to deal with were the complex claims in the Kawhia area and the rights of Raukawa in the eastern Rohe Potae in view of the counter-claims by Waikato. Mair and Ngata essentially awarded the whole block to the five tribes (Maniapoto, Raukawa, Tuwharetoa, Hikairo, Whanganui), but excepting a number of specific areas, including the Taharoa block at Kawhia, which were awarded to particular parties before the Court. On 26 October the *Waikato Times* reported that the Court's decision had given "pretty general satisfaction" – except, that is "of those whose claims were dismissed".²⁶⁷³ The claims of the 'five tribes' were thus principally upheld. Central Waikato groups did not do at all well, but then again it is safe to say that many people, then and now – especially Ngati Maniapoto, Ngati Toa and Raukawa – would not disagree with the Court's historical interpretations. The Rohe Potae hearings were run sensitively and tactfully by Mair and Ngata, but as Paul Husbands and James Mitchell point out in their report on the Native Land Court in the Rohe Potae region the 1886 hearing did not provide the people of the region with a title they could actually use.²⁶⁷⁴

If the 1886 'Rohe Potae Judgment' represented a significant victory for the Ngati Maniapoto, Ngati Hikairo and Ngati Raukawa claimants over the Waikato counter-claimants, the fruits of that victory were decidedly mixed. Although confirming their rights to the lands to the north and east of the original Aotea-Rohe Potae Block, as well as around Kawhia, the judgment of the Court had brought the Rohe Potae leaders little nearer to securing effective Crown-recognised tribal title or authority over their lands.

The issue that needs to be singled out from the Rohe Potae case here is Mair's (and Ngata's) analysis of Raukawa's traditional history. This is a matter of great significance, as Mair's reading of events was radically different from that of the Court in the Maungatautari cases. In the Rohe Potae case Waikato groups and Ngati Haua attempted to run the same argument that had succeeded in the Maungatautari cases, i.e. that Marutuahu had taken possession of Raukawa territory who had lost their mana over it; that Waikato groups had defeated Marutuahu, and thus that Raukawa's former lands belonged to Waikato on the basis of *take raupatu*. The argument was now extended further south, into the Wharepuhunga section of the Rohe Potae, but it was in essence the same as before. Mair and Ngata did not accept it. There was also an odd claim made by Keremata Tahunuku of Te Werokoko, Ngatipareteuaki and Ngatikoura, arguing that there had been no conquest of Maungatautari by Waikato and Ngati Haua, but that Te Puke and other Ngati Raukawa rangatira and Pehi of Ngatimaniapoto had gifted the land to his matuas to hold the land for Ngati Raukawa, which his people were still doing. This claim failed also, but some of the evidence given in support of it is very interesting.

Evidence was given by Waikato and Ngati Haua witnesses to more or less the same effect as given earlier in the 1868 and 1884 Maungatautari cases, and as in the Ngati Kauwhata inquiry of 1881. Ngati Maniapoto did not press a claim by conquest but claimed only on the basis of ancestry and shared occupation. Various witnesses spoke in support of conquest-based claims to Maungatautari, retelling the familiar accounts of the conflicts involving Ngati Whakatere, Ngati Raukawa, Ngati Haua, Waikato,

²⁶⁷³ "Mr Wilkinson's Report on the Judgment" *Waikato Times* (Vol XXVII, Issue 2231, 26 October 1886) at 2.

²⁶⁷⁴ Husbands and Mitchell, *The Native Land Court, land titles and Crown purchasing in the Rohe Potae district, 1866-1907*, 2011, Wai 898 Doc#A79, 152.

and Ngati Maru at Maungatautari. (As it happens Maungatautari was not actually included in the Rohe Potae block, as it had already been investigated, but the argument now was that the conquest extended to Ngati Raukawa interests in the Rohe Potae west and south of Maungatautari). For example Kautiuta gave the following account of the defeat of Ngati Whakaterere:²⁶⁷⁵

I will now describe the conquest of this first block. The cause that first led to the conquest was to avenge the death of Haruru and Te Kanahi, who was killed by Ngatiwhakaterere. Another cause was to avenge the death of Rangipukaru, who was also killed by them. He belonged to Ngatihaua. The army that was sent against them fought their first battle at Hurimoana, and comprised Ngatihaua and their hapus; Ngatiwairere and their hapus; [Ngatikourua?] and their hapus; the enemy were defeated and their pah captured. Te Rohi, one of the principal Ngatiwhakaterere chiefs was killed by Te Rerenga of Ngatiwairere. The name of the weapon that was taken from him is in our possession; the name of it is Te Wai-a-Maori. The chief killed by Ngatihaua was Te Rungi-tukaroro who belonged to Ngati Whakaterere. He was killed by Haua. When they were defeated, the Ngatiwhakaterere fled to Whakarekeone and were pursued to that place and again defeated. Their survivors fled to Kapiti. This completed the conquest by us of their lands. I have been told that that some of the conquerors occupied the land soon after and that Hauauru was the chief appointed to hold it in possession, which he has done to the present time on behalf of all the others. When the land was cleared of Ngatiwhakaterere the Ngatihaua and other hapus came on the block to clean flax for commerce.

And with respect to Ngati Raukawa:

The second block.²⁶⁷⁶ I will now speak with respect to that block. The same causes that led to the avenging of Te Haruru and Te Kahani's death applies also to this. The pah Hangahanga situated about a mile outside the block was attacked and taken, the Ngatiraukawa being driven off. The principal chief of Ngatiraukawa who fell was Te Wehi-o-te-rangi; he was killed by Poukawa who belonged to Ngatiwairere and Ngatipare. The enemy fled and took up a position at Piraunui, on the other side of the Waikato. Some of Ngatiraukawa occupied an island in the Waikato, called Kopua. Te Marutuahu attacked Kopua and defeated them; the survivors fled to Piraunui. Te Marutuahu pursued them there. They retreated from there to Paoaiti. Te Wakakaraka was the last principal chief of Ngatiraukawa that was killed here. All the survivors of the enemy then retreated or fled to Kapiti. The Marutuahu tribes claimed the conquest of the whole country and occupied Maungatautari and the surrounding country. Marutuahu is another name for Ngatimaru and those hapus who occupy the Thames. After this Marutuahu were attacked by Ngatihaua, Ngatiwairere, and their hapus and were vanquished at Taumatawiwi and took flight to their native district of Thames and Hauraki. The Ngatihaua and our people now claim this country by right of conquest having as I have shown driven off [92] Marutuahu and have occupied this land ever since, living at Maungatautari and the surrounding districts. Some of Ngatiraukawa who intermarried with the resident natives and were called half-castes, were allowed to live at Wharepuhunga on sufferance, not because they had any right by conquest. They afterwards moved to Maungatautari to be near the Pakehas. Porokoru allowed them to live at Wharepuhunga. After the Waikato war some of our people occupied the land within the block and built whares and made cultivations.

In cross-examination Kautiuta emphasised that the defeats of Ngati Whakaterere and Ngati Raukawa enabled him to claim Wharepuhunga, i.e. a large section of the eastern Rohe Potae south of Maungatautari.²⁶⁷⁷

The claimant evidence was given by Wahanui Hikaka, Hauauru, Wetere Te Rerenga and Te Oro Te for Ngati Maniapoto and Hone Kaora for Ngati Hikairo, . Wahanui was unwell, and the Court had to be adjourned for a few days so he could attend, but after speaking for a day he had to retire again

²⁶⁷⁵ (1886) 1 Otorohanga MB 89-91.

²⁶⁷⁶ Wharepuhunga.

²⁶⁷⁷ Ibid, 93.

because of illness, and the Maniapoto case was carried at length by Hauauru, and in the face of a great deal of cross-examination by the counter-claimant conductors. Wahanui described the boundaries and the ancestors, and was then cross-examined, principally about the claims by Waikato groups and Ngati Haua to the Ngati Whakatere and Ngati lands around Maungatautari (which, as Wahanui correctly noted, was outside the Rohe Potae block). The cross-examination, as is standard, does not give the questions but frames the evidence as a continuous narrative:²⁶⁷⁸

The cross-examination of Wahanui by Tumuhia is recorded as follows:²⁶⁷⁹

I say decidedly these five hapus have occupied this block from the time of Turongo. Some of Ngatiraukawa went to Kapiti; some remained. I cannot say where those who remained actually lived; but Hauauru knows. I know the fight at Piriaka, it was between Ngatiraukawa and Maniapoto. I know the battle at Hurimoana, it was fought between Ngatiraukawa and Wahanui who was a noted man; and great chief of Ngatimaniapoto. Ngatiwakatere [sic] were also engaged. I also know the Tangimania fight. The war party consisted of Maniapoto. I do not know the precise spot where the fight occurred. I cannot say if the war party took up a position at Mangatoatoa belonging to Tukorehu. I say that the atua speak through the lightning to the people on the land.

Kauhiuta then attempted to cross-examine Wahanui but seems not to have got very far. It was news to Whatanui that Ngati Raukawa had been driven away from Wharepuhunga by Ngati Maru, as had been claimed (Wharepuhunga is a large area of the Rohe Potae immediately to the south of Maungatautari). Ngati Whakatere had never abandoned the district:

Yes, I absolutely claim the land in the block, and also power over the people. I maintained my claims undisturbed from the time of Turongo, that no attempts were made to question them until now when you and others have come into court to contest them. This is the first attempt. Every chief of rank with his people have interests in the block; but you have none. The five tribes have each their respective claims which are recognised by each other. I laid down the boundaries of the Rohepotae when I came away from Whatiwhatihoe to prepare them for the court; I was anxious to bring the land under the law to have it Crown granted. I believe the Ngatiraukawa [] land at Wharepuhunga but it is at the tail-end of their claims on this side. I cannot say what part Ngatiwakatere [sic] claims. I did not say they lived somewhere on the block, but I cannot say where. I cannot say when Ngatiraukawa first settled at Wharepuhunga. Perhaps you know, but I do not. I fought against Ngatiraukawa, but it was a fight between two brothers or a family feud. I am not aware the Ngatimaru were engaged with Ngatiraukawa at [267] Wharepuhunga. If the Ngatiraukawa were driven off by Ngatimaru, it may be true, but I am not aware of it. I never attended the courts on lands outside this block. I have been told of the fight at Hurimoana. It was a family feud between Wahanui and others. The Ngati Whakatere did not vacate the country, but retaliated at a battle called Wharawhara. The Ngatiwhakatere did not leave on that occasion, and some are still in the district, and some are now present in court.

In response to questions from Haimona Patara, Wahanui said that he had “never heard that the Ngatiraukawa, on their leaving, handed any of their lands to Ngatimaniapoto”.²⁶⁸⁰ He refused to be drawn on events that happened outside the Rohe Potae:²⁶⁸¹

I will not say where I was at the time of the Ngatimaru invasion; that question is outside the block. I cannot be responsible for what Tupoki may have said about the subdivisions. I know nothing about the subdivisions of Maungatautari; they have no connection with this block. I cannot say why Ngatiraukawa should have gone south after a peace had been concluded. I make no reply to your question about

²⁶⁷⁸ (1886) 1 Otorohanga MB 268-270.

²⁶⁷⁹ (1886) 1 Otorohanga MB 265-6.

²⁶⁸⁰ (1886) 1 Otorohanga MB 269.

²⁶⁸¹ (1886) 1 Otorohanga MB 270.

Taumatawiwi, it is outside the block. I am prepared to support to a certain extent the Ngatiraukawa claims so far as their descent from Turongo is concerned. The northern boundary is the confiscation line, [saved?] at the point of the bayonet with Major Te Wheoro's assistance.

As Wahanui was too unwell to return to the Court to complete his cross-examination, the claimant case was resumed on 13 September by Hauauru, who said he belonged to Ngati Matakore and Ngati Maniapoto. He claimed on the grounds of ancestry, constant occupation, "and power to hold against all comers".²⁶⁸² He gave details of his descent from Turongo, Raukawa, Rereahu, Maniapoto, and Te Kawa, and also via Maniapoto's daughter Rora. He gave lengthy details proving occupation (pahs, sacred omens, ancient marks, burial places, bird snaring stations, eel weirs and so on), before moving on to tribal history and onto some very familiar ground: the fighting around Maungatautari, Ngati Toa's migration to the south, and Te Rauparaha's invitation to Ngati Raukawa. Again we here of Hurimoana, Tangimania, and of the bravery of Te Roha of Ngati Whakaterere. Hauauru's evidence, to me at least, is compelling in terms of its vividness, clarity, and comprehensiveness, especially on the fighting between Ngati Maniapoto and Ngati Whakaterere (discussed in an earlier chapter).

The Court, as noted, found for the "five tribes", the claimants. The Court sums up the issues relating specifically to Ngati Raukawa as follows:²⁶⁸³

As the claims set up by Te Tumuhua, Kaukiuta, Haimona Patara, and Wiremu Te Whitu are similar in all respects except that their boundaries vary a little, and as they are of one tribe, we will group them together. These counter-claimants set forth that when the Thames tribes, under the general designation of Marutuahu, established themselves at Maungatautari they took possession of, and exercised mana over all the Ngatiraukawa territory; that when the Ngatihaua, Ngatihourua, and other Waikato tribes defeated the Thames people at the great battle of Taumatawiwi (in 1831) this country passed into the hands of the victorious Waikatos, who thereupon occupied it; that with reference to the W portion of their claim, that is land on the W side of the Mangatutu stream, war having been made on the Ngatiwhakaterere by Waikato to avenge the death of Te Rangipakaru of Ngat Haua, and also in revenge for the murder of Paretekawa, the grand-mother of Pehi Tukorehu, Ngati Whakaterere were successively defeated at Hurimoana, Tangimania, Whakarehoni and Hangahanga, and were, like Ngatiraukawa, compelled to leave their country and move to the South, whereupon the Waikato took possession, had the boundaries defined and have held the land ever since mainly by their connections of Ngatimatakore, that is by the descendants of the brothers Tautari and Wahanui who took part in the conquest and who are now represented by [59] Hauauru and Irihapeti.

But this was disputed by "the claimants" (including Ngati Raukawa):

Against this the claimants say: That the wars between the Waikato and the Marutuahu did not in any way affect the country south of Maungatautari and of the Puniu river as it never passed into the possession of Marutuahu; that Ngatiraukawa were not driven out of the country; that those who went to Kapiti did so at the urgent and repeated request of Te Rauparaha to assist him in consolidating his conquests there, and that they did not go until after a permanent peace had been established with Waikato as well as with Ngatimaniapoto; that those members of Ngatiraukawa who remained have not been disturbed in their occupation and have exercised rights of ownership, such as canoe building &c.; that Waikato never lived at Wharepungu, the principal kainga on the land and they have never had the mana of it.

Moreover, with reference to Ngati Whakaterere specifically:²⁶⁸⁴

²⁶⁸² (1886) 1 Otorohanga MB 272.

²⁶⁸³ (1886) 2 Otorohanga MB 58-9; Boast, *Native Land Court* vol 1, 1185.

²⁶⁸⁴ (1886) 2 Otorohanga MB 59; Boast, *Native Land Court* vol 1, 1185.

With reference to the alleged conquest by Waikato of Ngatiwhakaterere, the claimants set forth that the war in which that tribe were defeated at Hurimoana, and sometime afterwards at Tangimania, was waged against them by Tukorehu, Tautari, and Wahanui, their own relatives, assisted, they admit, by Ngatihaua as allies, in punishment for the murder of Paretekawa; that it was quite a family affair, having no bearing on the land; that peace followed, and that several years elapsed before Ngatiwhakaterere migrated to the South; that some of them remained and are still in occupation, and that the fires kept burning by Hauauru and Irihapeti represent the occupation of Ngatiwhakaterere, Ngatimatakore and Ngatimaniapoto, but not Ngatihaua; and, lastly, the claimants state that there had been no general occupation of any part of this block by Waikato until they sought refuge on it during the Waikato War in 1864, excepting short sojourns of some of the chiefs with connections of Ngatimaniapoto and Ngatimatakore, on which occasions those who died were always removed by their friends to their own burial places in Waikato.

Mair and Ngata's conclusions on the traditional history are quite different from the general approach taken in the Maungatautari and Te Aroha cases. There was no conquest.

That with regard to question A: The bulk of Ngatiraukawa and Ngatiwhakaterere did at different times, on the invitation of their relative, Te Rauparaha, go to Kapiti and acquire land there, but some remained and kept the fire burning, while those who at various times returned were permitted to re enter and enjoy full possession without hindrance or interference, consequently there was no conquest of the land.

As to the gift:

Further, that there was no gift of any portion of it, and that the Waikato tribes never exercised mana over this land, but merely resided on it temporarily as refugees, and that such occupation does not confer any rights.

With respect to the Kawhia claims, Mair also rejected any suggestion of a conquest of Ngati Toa: "Te Rauparaha and his people went away quietly at a time when there was no fighting".

This seems on the face of it to be completely at odds with what the Native Land Court said in other cases. An example are the following remarks of F M Brookfield and H T Kemp in the report of the Ngati Kauwhata Claims Commission in 1881:

As to point (b) the evidence taken is somewhat voluminous, and also exhaustive. We find that for some years before the exodus the Ngatimaru Tribe, through fear of the Ngapuhi, had come to live among the Ngatihaua and Ngatiraukawa in the district called Rangiaohia, and had so lived in a friendly and peaceable manner; but after the lapse of a few years various quarrels took place between Ngatihaua and Ngatimaru, which resulted in sundry skirmishes in which sometimes one tribe had the advantage and sometimes the other. And it was during the time of these skirmishes that the whole of Ngatiraukawa, with the exceptions previously mentioned, left and went to reside at Kapiti; and in our opinion they left not only in order to obtain better food and ammunition, but principally because, being few in number, they feared they would be attacked by Ngatimaru and altogether exterminated. (See also Rewi's statement on this point.)

Thus in one case the Native Land Court is asserting that the whole of Raukawa moved south (and that they were "few", and feared extermination), and in another that enough remained behind to keep the fires burning and to maintain customary interests.²⁶⁸⁵ The two cannot stand together.

Admittedly the Rohe Potae case did not include Maungatautari, leaving open the possibility that what holds good for Wharepungua does not necessarily hold good for the Maungatautari area. (This was the position taken in the Maungatautari Appellate Court decision of 1907, as seen). It was

²⁶⁸⁵ 1881 AJHR G-2A, 4.

not however argued in the Rohe Potae case that the supposed abandonment by Ngati Raukawa and Ngati Whakatere of their lands in the north was confined to Maungatautari (an argument which would not have been useful to the counter-claimants, obviously). The argument that the Waikato groups put up in the Rohe Potae case was basically identical to that put up by Ngati Haua and other groups in the Maungatautari blocks: that Marutuahu had driven Raukawa off, and that following Waikato's defeat of Marutuahu they had acquired Raukawa's former lands on the basis of take raupatu. Mair evidently did not believe it. The Rohe Potae case was a massive investigation at which a great deal of evidence was given, whereas the opportunity for Raukawa to participate in the 1868 cases and in the Ngati Kauwhata inquiry had been limited. Moreover the Rohe Potae inquiry was not driven by competing groups of purchasers, as no private purchasing was allowed in the Rohe Potae area and the Crown purchasing programme in that area had not yet begun, a contrast with what was common knowledge at the Cambridge Court. These are reasons for trusting more to the findings of the Rohe Potae case than the others. The outcome of the case was a reasonably good one for Raukawa, given that Raukawa groups were recognised as amongst the prima facie owners of the enormous Rohe Potae block. However the case did not deal with relative interests or attempt to partition the block. How much of the Rohe Potae would end up being allocated to Raukawa remained uncertain. This was not finally determined until the Wharepuhunga block case in 1892, in which things did not go quite so well for Ngati Raukawa. This is to anticipate, however.

17.5 Afermath of the Rohe Potae decision

The next stage of the Rohe Potae case was the preparation of the lists of owners of the Rohe Potae block and the various subdivisions of it that the Court had ordered. Work on this phase of the case went on for some months, but the references in the minutes are very sparse: "Ngatihikairo list read and passed",²⁶⁸⁶ "[t]he cases of Te Ngakau, Harete, Te Whitu and Horihana were all considered and met with strong objections from various parties. All dismissed".²⁶⁸⁷ The lists themselves, as finally approved, take up 76 pages of the minutes.²⁶⁸⁸ The block by this point was divided into Korakanui (2000 acres), Te Taharoa (which was allocated to people affiliating to Waikato, Ngati Toa, Turonga and Maniapoto), Te Awaroa (Ngati Kiriwai and Ngati Maniapoto), Kawhia (Ngati Ngahia, Ngati Mahuta, Ngati Hikairo), Kaipiha (2000 acres on the Waipa allocated to Mihi Pepene and 10 other people), and finally the Rohe Potae Block proper (Ngati Maniapoto, Ngati Pourahui, Ngati Rora, Ngati Whakatere, Ngati Uekaha, Ngati Unu, Ngati Te Kanawa, Ngati Ngutu, Ngati Tahinga, Ngati Kinohaku, Ngati Werawera, Ngati Peehi, Ngati Urumia, "Te Rerenga's list of names", "Ngati Raukawa and their hapus", "Ngati Matakore and their hapus", "Ngati Hikairo and their hapus", and "Whanganui and their hapus"). There were thus separate lists for Ngati Whakatere and for Ngati Raukawa. All blocks were subject to restrictions on alienation. But as always a major investigation such as this was not the end of a process but rather the beginning of further rounds of partitions and investigations. These lands were to have a very complex subsequent history.

When the Rohe Potae block was investigated it was already subject to a pre-emptive regime under legislation enacted in 1884, which basically continued in effect until 1900.²⁶⁸⁹ The investigation of title was followed by a long sequence of further hearings into various subdivisions of the Rohe Potae block, partitions strictly speaking, but often in effect investigations of title, with many cases necessitating the recording of large quantities of supplementary evidence and –in some instances –

²⁶⁸⁶ (1886) 2 Otorohanga MB 77 (1 November 1886)

²⁶⁸⁷ (1886) 2 Otorohanga MB 80 (5 November 1886).

²⁶⁸⁸ (1886) 2 Otorohanga MB 85-161. The lists are dated 5 November 1886.

²⁶⁸⁹ Native Land Alienation Restriction Act 1884.

lengthy judgments by Mair and Ngata. These sub-blocks included Otorohanga-Orahi, ²⁶⁹⁰ Hauturu, Kinohaku West, ²⁶⁹¹ Kinohaku East, Rangitoto-Tuhua, Kaioa, Tokanui, Maungarangi, Ouruwhero, Orahi, Pukeroa-Hangatiki, Puketarata, Pirongia, Kawhia, ²⁶⁹² Kakepuku-Pokuru, ²⁶⁹³ Wharepuhunga, Rangitoto, and numerous others. Some of these blocks were very substantial: Rangitoto-Tuhua covered 630,835 acres. ²⁶⁹⁴ (It was in turn repeatedly re-partitioned.) Crown purchasing and partitioning between Crown and non-sellers' shares followed, and often repartitions as the Crown purchasing system ran on in the usual manner. In 1907 the Stout-Ngata Commission was critical of the endless partitions and subdivisions arising from government purchasing in the Rohe Potae. The blocks to the west of the main trunk railway were, in the Commission, "minutely subdivided according to the Native ownership, and in consequence of Crown purchases". ²⁶⁹⁵ In fact, Stout and Ngata stated, "[w]e are not aware of any Native district, which until 1888 was closed to the law-courts, where the Native Land Court has been so active and where subdivision has proceeded so far as in this portion of the Rohe-Potae". ²⁶⁹⁶ Subdivision of the huge Rangitoto and Rangitoto-Tuhua blocks, east of the railway, took a lot longer. Crown purchasing within the former Rohe Potae began under the Liberals in 1892 and proceeded at a very rapid rate.

The Crown purchasing programme within the Rohe Potae was thus on a massive scale, carried out under a pre-emptive regime. The Stout-Ngata commission was very critical of Crown policy and regarded the whole region as having been under-valued. ²⁶⁹⁷

The average price paid to the owners was 4s. per acre. We are not aware that any allowance was made for milling-timber growing on the different blocks, and must assume that the price paid was on the surface value, computed upon the agricultural and pastoral possibilities of the soil. While restricting private alienation, Parliament had reserved the right of the Crown to purchase "on such terms as might be agreed upon between the Crown and the owners". This was the fiction. In practice the Crown bought on its own terms; it had no competition to fear; the owners had no standard of comparison in their midst, such as the rents of land under lease or profits from farming might have afforded; they had been reduced by cost of litigation and surveys, by the lack of any other source of revenue, to accept any price at all for their lands. The price paid was a recognition of the aboriginal rights, and a necessary step in the extinction of those rights, but the Government kept steadily in view the welfare of the Colony. The price was, in our opinion, below the value. It was the best possible bargain for the State. It was in accordance with the will of Parliament, and it opened up a vast territory to the land-seekers. The Executive, no doubt, conceived it was furthering the interests of general settlement, even [if] it rated too low the rights of the Maori owners and its responsibilities [sic] in safeguarding their interests.

17.6 Taupouuiatia (1886)

On 31 October 1885 Te Heu Heu Horonuku applied to have the Taupo-nui-a-Tia block separated from the Rohe Potae block. This step came as a surprise to many people. In his report of 15 May 1885 to the Native Minister Henry Mitchell described his "considerable surprise and consternation" at Te Heuheu's application. ²⁶⁹⁸ There is evidence that Lawrence Grace, M.P. for Tauranga and Te Heuheu's son-in-law,

²⁶⁹⁰ Judgment at (1888) 5 Otorohanga MB 32-40 (1 October 1888)

²⁶⁹¹ Judgment at (1888) 5 Otorohanga MB 110-112 (24 October 1888)

²⁶⁹² Judgment at (1889) 6 Otorohanga MB 61-67 (12 March 1889)

²⁶⁹³ Judgment at (1889) 6 Otorohanga MB 311-325 (8 June 1889) (this case is to be included in Volume 2).

²⁶⁹⁴ (1888) 5 Otorohanga MB 140

²⁶⁹⁵ R Stout and A T Ngata "Native Lands in the Rohe-Potae (King Country) District" [1907] AJHR G1B at 2.

²⁶⁹⁶ Ibid.

²⁶⁹⁷ Ibid, 4.

²⁶⁹⁸ Bargh, *Volcanic Plateau*, 67.

played an influential role in this decision. On 6 January 1886 Lawrence Grace reported to the Native Minister (Ballance) on the discussions he had had with the Tuwharetoa leadership during 1885. Grace listed a number of matters of public importance that had been discussed:

1st. The acquirement on behalf of the Crown of lands in the interior of the North Island, as near as possible to the Main Trunk line of railway now in the course of construction by the Government.

2nd. That the Ruapehu, Ngauruhoe and Tongariro mountains and the principal thermal springs in the Taupo Country be made inalienable reserves.

3rd. That every endeavour should be made to settle the Native tribes of Taupo permanently on portions of their tribal lands which can only be done by passing their lands through the Court and individualising their titles as thoroughly as possible.

4th. That a Land Court be ordered to sit at Taupo to enable the Natives to give effect to these objects.

But Objective 3, passing the lands through the Native Land Court on a basis of “thorough individualisation” was the very *last* thing the King Country rangatira had wanted in 1883, however. They were well aware of the various social evils and rapid land-selling that the Native Land Court brought in its wake, and were determined to avoid these consequences in the King Country.

Grace informed Ballance that he had told the Tuwharetoa chiefs that they should sever their lands from the Rohe Potae and submit them to the Court for separate investigation as one large sub-block:²⁶⁹⁹

during which, as the investigation progressed, the establishment of titles, the apportionment of reserves, and cessions of land to the Crown could all be satisfactorily decided and settled once and for all, thus enabling them to turn their attention to the improvement of their own social welfare and condition.

Subsequently, with the objective of following up the course above sketched out, the Natives of Taupo had meetings, and on the 31st of October last as you are aware, in the presence of one of your land purchase officers and in the presence of Major Scannell R.M. Taupo, they signed and sent in to the Native Land Court a claim for those of their lands which they claim under their great ancestor Tuwharetoa, containing about two and half millions of acres, more or less, in the centre of the North Island called “Taupo-nui-a-Tia block”.

Lawrence Grace also had some ideas as to how land purchasing within Taupo-nui-a-Tia should be conducted:²⁷⁰⁰

I would suggest that the purchase of lands within the tribal boundary be entrusted to reliable and experienced persons or agents who, under control of the Land Purchase Department, would undertake to acquire the land at a commission which would include any payments found necessary to meet the cases referred to.

The “reliable and experienced” purchase officer, presumably working on commission as suggested, and who controlled the key Crown acquisitions in Taupo-nui-a-Tia in 1886-1887, was to be none other than Lawrence’s brother, W. Henry Grace. The evidence points to some plan or arrangement in which the Grace family played an important role – both in planning the process, and in implementing it. Subsequently the activities of the three Grace brothers, Lawrence, John and Henry, were to cause

²⁶⁹⁹ Cited Bargh, *Volcanic Plateau*, 67.
²⁷⁰⁰ Ibid.

widespread complaint, and there were claims that W.H. (Henry) Grace, especially, had been involved in a number of dubious or fraudulent dealings.²⁷⁰¹

The initial investigation of title to Taupouiatia commenced in January 1886.²⁷⁰² Much of the area of the Block had formerly been within the 'Rohe Potae' as defined in the petition of the Four Tribes in 1883, but which had been cut out and reinvestigated separately. The 1883 Four Tribes petition seeking a single investigation of the whole of the Rohe Potae included the western sections of Raukawa and Tuwharetoa lands. This process of investigation and the negotiations that led to it was certainly one of the outcomes of the New Zealand wars and the Waikato confiscation, and it had implications for Raukawa given that some of their lands were inside the 1883 boundaries, that they were one of the petitioning iwi, and given that the Court did indeed find them to have lands within the Aotea block boundary in the Rohe Potae investigations in 1886. Had the process as originally envisaged in 1883 actually taken place then the exclusion of Maniapoto and Ngati Raukawa – and perhaps Whanganui – could not have occurred. Thus the decision to proceed with a separate investigation for Taupouiatia (a political decision) and the exclusion of Raukawa (a judicial one) had very serious outcomes for Raukawa.

The Native Land Court, sitting at Taupo, and presided over by Judges Scannell²⁷⁰³ (the resident magistrate at Taupo, and a friend of the Grace family - who played a key role in the hearings) and Brookfield. commenced hearing Taupouiatia on 14 January. John Grace was interpreter. Stirling has commented that "if Scannell's suitability was doubtful, that of John Grace was certain; he should not have been interpreter for this court".²⁷⁰⁴ Judge Brookfield was only present for the first three weeks of the hearings, and was then removed.²⁷⁰⁵ There seems to be no information on the official record as to why that may have happened, although the ostensible reason seems to have been "economy" (but Stirling is sceptical).²⁷⁰⁶ Hitiri Te Paerata of Ngati Raukawa, had his own opinion, which was that Brookfield had been removed "because he would not play into Mr Grace's hands".²⁷⁰⁷ Bruce Stirling, who has inquired closely into these events, believes Hitiri's allegation to be "worryingly plausible".²⁷⁰⁸ Not the least remarkable aspect of this was the ex-judge's decision to become Hitiri Te Paerata's legal adviser and to assist him in challenging legal determinations made by himself as judge.²⁷⁰⁹

William Grace was there as well, to "watch the government interests". What interests might they be? Stirling suggests (very plausibly, in my view):

This is a puzzling statement, given that no interests had yet been acquired there, but presumably Grace meant that he was there to ensure that the Rohe Potae was broken up, that the land was awarded to those of Ngati Tuwharetoa who had indicated a willingness to deal with the government with respect to land

²⁷⁰¹ J King, Auckland, to Sir George Grey, 19 June 1886, GNZ MSS 204(2), Auckland Public Library, cited Stirling, *Overview*, 911-12.

²⁷⁰² Anderson, 64.

²⁷⁰³ Stirling has raised the issue as to whether Judge Scannell "was an appropriate person to sit on Taupo claims" (see Stirling, *Taupo-Kaingaroa Overview*, 904). Scannell was the former resident magistrate at Taupo and there were allegations that Scannell was a known associate of Lawrence Grace. As Scannell was the magistrate at Taupo it is more than likely that the Grace brothers would all have known him well.

²⁷⁰⁴ See Stirling, *Taupo-Kaingaroa Overview*, 904. This was because, in Stirling's judgment, Grace had too many conflicting interests and moreover did not always interpret impartially.

²⁷⁰⁵ For a full discussion of this see Stirling, *Taupo-Kaingaroa Overview*, 929.

²⁷⁰⁶ See Stirling, *ibid*, 934-5.

²⁷⁰⁷ Taupouiatia Commission Minute Book, MA 71/1. 170, cited Stirling, *op.cit.*, 935.

²⁷⁰⁸ *Ibid*, 936.

²⁷⁰⁹ See Stirling *op.cit.*, 935.

purchasing, and that land was secured as payment for the costs the government had incurred in surveying the boundaries of Taupouiatia, and subsequently its composite blocks.

The Taupouiatia application generated virtually no evidence. Te Heuheu gave his evidence on 16 January, and on 22 January the Court gave judgment in favour of Ngati Tuwharetoa and Te Heuheu. Hitiri Te Paerata and Taonui did not get to Taupo until the 18th and were unable to give evidence. Ngati Tuwharetoa, in the absence of any counterclaims, won their case. At this point, then, Tuwharetoa had a judgment in their favour but title had not yet been fully determined. Hearings and partitions carried on throughout the year. During the hearing Te Heuheu altered his claim²⁷¹⁰ from the area within the red line boundary to a yellow line boundary on plan ML 59995D; this alteration was done as a result of the out of court discussions between Ngati Tuwharetoa and Ngati Maniapoto (at W H Grace was present) as a compromise after Ngati Maniapoto had failed to persuade Te Heuheu to withdraw the case.²⁷¹¹

When the Court at Taupo began hearing Taupouiatia in January the Native Land Court at Cambridge was dealing with the Maungatautari partitions. Ngati Raukawa people in Court asked for the Cambridge Court to adjourn so that they could get to Taupo. Judge Gill was sitting at Cambridge at the time. What happened then was recorded by the *Waikato Times*:²⁷¹²

The Maungatautari No. 4B, which was adjourned from Friday, was called.

Hote Thompson, one of the parties interested, said that many of his people wished to attend the Taupo Court, where they had very large interests. They could not conveniently attend both courts. He asked therefore that the Cambridge Court should adjourn till after the business at Taupo was finished.

Te Whenua opposed the application. His people, the Ngatihorua, had stayed in Cambridge, hoping to arrive at a settlement. He asked that the business should at once proceed.

Te Wheoro said so far as those he represented were concerned, they were perfectly willing that the court should either adjourn or proceed. If the court signified what it intended doing the people might come to some arrangement among themselves. The court should not listen to everybody's views, particularly those who had no interest in the business.

His Honour said that the Taupo Court could not interfere with this court. He could not see why the people interested in the Cambridge Court should want to go to Taupo. If they desired an adjournment they would have to apply to the Chief Judge.

The case was then called, and after a few words between his Honour and Major Te Wheoro the evidence was proceeded with.

At the very least the Cambridge Court was being less than helpful. The consequences would turn out to be very severe for Raukawa.

²⁷¹⁰ As Stirling notes, however, these actions did *not* mean that Te Heuheu confined his claims in any kind of absolute way to the lands within the yellow line on ML 59995D. "Te Heu Heu himself did not withdraw his claims to the areas named; he simply withdrew them from the current Taupouiatia claim. One implication of this might be that Taupouiatia was intended to represent an area of core, or exclusive, Ngati Tuwharetoa claims, while acknowledging that some border areas outside Taupouiatia might need to be shared with neighbouring hapu and iwi. To some extent this was confirmed by subsequent claims made by Te Heu Heu within the adjacent Aotea block, as well as the drawn out claims of rival hapu to Mareroa, Hurakia and Pouakani": Stirling, *Taupo-Kaingaroa*, 911.

²⁷¹¹ W H Grace gave evidence about what was discussed to the Taupouiatia Royal Commission in 1889: see Waitangi Tribunal, *Pouakani Report*, 118; Stirling, *Taupo-Kaingaroa*, 91-12; Grace's evidence is in the Taupouiatia Royal Commission Minute Book MA 71/1, 68-9. Archives NZ Wellington.

²⁷¹² *Waikato Times*, Vol XXVI, Issue 2108, 12 Jan 1886, p 2.

Since the Taupo Court did not issue its final judgment until September of the following year, there cannot have been a formal Crown grant/Land Transfer Act certificate of title issued at this point. Presumably individuals affiliated with Ngati Tuwharetoa would have had only an equitable (not a legal) title at this point, and given that one wonders why it was so necessary for the Native Land Court to prevent representatives of other groups from gaining admittance to the title. For a period of eighteen months the Court worked its way through a process of partition of the various subdivisions of Taupouuiatia, all of these being done without surveys. The Waitangi Tribunal reviewed aspects of this process in its *Pouakani Report* (1993), which focused primarily on survey problems in the Taupouuiatia west block lying to the south of the Waikato River, the main development being s 29 of the Native Land Court Acts Amendment Act 1889 which very significantly altered the legal boundaries of the Taupouuiatia block.²⁷¹³

The plan before the Court at the time of the investigation was titled “Map of Taupo-nui-a-Tia Block”, now ML 5995D. This plan is signed by S P Smith as assistant surveyor general, which follows a note “Approved as a sketch map only”.²⁷¹⁴ According to M. Cox, who prepared a report for the Waitangi Tribunal on survey issues for the Pouakani claim in 1989, the plans used by the Taupo Court in 1886 were in fact the same survey plans made by L Cussen, F Edgecumbe and W Spencer from January-June 1884 to mark out the Rohe Potae boundary. According to Cox:²⁷¹⁵

At Kihikihi in December 1883 it was agreed between Mr Bryce, the Native Minister, and the Maori representatives, that a survey of the whole [Rohe Potae] block be made at a cost of £1600. This [was] to include the Taupouuiatia area. Survey commenced on 8 January 1884 and was finished on 30 July 1884 except for a portion of the Mokau-Mohakatino Block, where [a] dispute over the eastern boundary required further court hearing.

The resulting plans are in five sheets numbered 5995 A to E...These plans were approved as *sketch* plans only and were used by the Maori Land Court at Taupo at its sittings on 14 January 1886 to investigate the title to the land within the RohePotae of Tuwharetoa.

Thus neither the exterior boundary plan of nor any of the subdivisions were fully surveyed at the time of the hearings. The Court was able to deal with this major sequence of investigations and partitions on the basis of sketch plans because of the particular provisions of the Native Land Court Act 1880. The Taupouuiatia block boundaries were to cause extremely complex survey problems when the time came to mark out of the ground the sketch plan boundaries connected by the various boundary points referred to in Court – an issue that the Waitangi Tribunal has reported on in its report on the Pouakani claims.

As for Raukawa specifically, the effects of the Taupouuiatia process were very significant, as essentially – as indicated above – Raukawa as such were excluded from this entire vast area. Hitiri Te Paerata “and friends” had not been able to take part in the opening sessions of the case because, as he explained in his 1888 petition, they had “been detained by a Criminal Libel case at Cambridge and when we arrived at Taupo we found that the Court had fixed the Rohe Potae and given judgment in favour of Te Heuheu and others through their descent from Tia and Tuwharetoa as ancestors”.²⁷¹⁶ When

²⁷¹³ See discussion in Waitangi Tribunal, *Pouakani Report*, 130-31. Section 29 of the 1889 Act followed as a result of the Taupouuiatia Royal Commission, 1889 AJHR G-7. The legislation took approximately 63,000 acres out of Taupouuiatia.

²⁷¹⁴ For a full analysis of the various plans and boundaries see Waitangi Tribunal, *Pouakani Report*, 116-119.

²⁷¹⁵ M Cox, *Pouakani Claim: A Report on Survey Aspects*, 1989, Wai 33 A25.

²⁷¹⁶ Hitiri Te Paerata to Chief Judge, Native Land Court, Cambridge, 18 January 1888, Taupouuiatia Closed Correspondence file, Te Kooti Whenua Maori, Rotorua [citing translation on file]. This petition is a key document and has been transcribed in full and is in Appendix IV of this Report.

they got to the Court Hitiri and his people told the Court that (in Hitiri's words) "the Rohe Potae as laid down by Te Heuheu as a western boundary for the Taupo nui a Tia Block was wrong and pointed out that it took in a lot of land belonging to the Ngati Maniapoto and the Ngati Raukawa".²⁷¹⁷ At the start of the case, as Angela Ballara has noted, Te Heuheu Tukino handed in a list of 141 (or 142) hapu, which were duly entered into the Court records.²⁷¹⁸ The list as originally handed in has some perhaps surprising inclusions (Ngati Manawa, Ngati Hineuru), and also a number of Ngati Raukawa hapu: Ngati Te Kohera, Ngati Whaita, Ngati Wairangi, Ngati Whakatere, and others, indicating perhaps a reasonably flexible stance on Horonuku's part. By no means did all the groups on Te Heuheu's list trace their primary lines of descent from Tuwharetoa or Tia.²⁷¹⁹ However, later in the hearings all of these hapu were taken out again, as Hitiri Te Paerata was later to complain: "Taupo-nui-a-Tia was awarded by the Court to 142 hapus and amongst these were 23 hapus belonging purely to N'Maniapoto and N'Raukawa and these were afterwards struck out when it was found that they were in no way descended from Tia and Tuwharetoa the ancestors given by Te Heu Heu as entitled to the Block".²⁷²⁰

Te Heuheu's action was seen as major set-back by the other Rohe Potae chiefs. Tawhiao himself tried to persuade Horonuku to change his mind.²⁷²¹ Taonui Hikaka of Ngati Maniapoto went to Taupo, arriving late as he had been subpoenaed to attend the same case in the Resident Magistrate's case at Cambridge as had Hitiri Te Paerata. (It does seem at the very least odd that the leading chiefs of two key iwi affected by the Taupouiatia case – Taonui of Maniapoto and Hitiri Te Paerata of Raukawa should *both* have been summonsed to a case in the Magistrate's court at Cambridge which was in any case only adjourned and then removed to the Supreme Court, but which kept the two chiefs cooling their heels in Cambridge at the crucial moment when the key ancestors for Taupouiatia were being fixed at Taupo.) Taonui later said that when he and Hitiri finally got to Taupo he tried to persuade Horonuku to withdraw his application. Horonuku refused to do so. Taonui described what happened in his evidence to the Taupo-nui-a-Tia investigation in 1889:²⁷²²

The gazette for the Taupo Court reached me at Otorohanga. I called a meeting, which decided that I should go to Taupo, but I was summonsed to go to Cambridge. The Taupo Court was to sit on January 14 and I had to attend at Cambridge on January 11. I went to Cambridge with Hitiri, Tena Wata, Kapu, Ngakuru, and Mr Moon. We sent a telegram to the Court at Taupo, asking to leave the western part of the land till we could reach Taupo. The case at Cambridge was called on January 11 and adjourned to the 15th when it was adjourned further to the Supreme Court in April.

We left for Taupo on January 16 but the Court had opened there on Jan 14. We reached Taupo on the 18th. Tawhaki told me that the Taupouiatia case had been closed. On Jan 19 we had a meeting with Te Heuheu [Horonuku] and others outside the Court. I said, let the whole of Rohepotae, including

²⁷¹⁷ Hitiri Te Paerata petition, 1888, *ibid*.

²⁷¹⁸ Ballara reproduces the hapu list (Ballara, *Tribal Landscape Overview*, Wai 1200 Doc#A65; Wai 1130 Doc#A2), at 143, following (1886) 2 Taupo MB 41-2.

²⁷¹⁹ See Ballara, *op.cit.*, 143-4:

Many of these hapū had lines of descent from Tūwharetoa or Tia but also from Tainui or other non-Arawa ancestors, such as Raukawa; Ngāti Te Koherā was one such. Others came from other Arawa figures such as Kurapoto and Apa: Ngāti Apa themselves, Ngāti Maruwahine and Ngāti Hineuru spring to mind. Others again had no or weak connections with Tūwharetoa or Tia, such as Ngāti Huarere (a hapū of Ngāti Wahiao), Ngāti Manawa (the descendants of Tangihāruru and Apa-hāpai-taketake), Ngāti Pikiāhu (a hapū of mixed Ngāti Maniapoto and Ngāti Raukawa descent which had come under the mana of Mananui Te Heuheu Tūkino by the 1840s), Ngati Taoi (a hapū of Tūhourangi/Uenukukōpako) and Ngāti Te Āpiti (a hapū of Rangitihi/Tūhourangi).

²⁷²⁰ Hitiri Te Paerata petition, 1888, *ibid*.

²⁷²¹ H Mitchell to Lewis, 15 May 1886, MA-MLP 1, 1905/54 (Box 73).

²⁷²² MA 71/7 [Taupouiatia Commission: Minutes of Evidence].

Taupnuiatia, be investigated at the same time, but Te Heuheu would not consent, though I said a great deal to him at that meeting.

The Tauponuiatia hearing almost immediately caused astonishment and protest at the unsatisfactory nature of the hearings and the obvious role played by the Grace brothers in managing and manipulating the proceedings. A key document which evidences this is a memorandum located by Bruce Stirling held in the Grey collection at the Auckland Public Library, forwarded by one J. King to Sir George Grey from an anonymous “reliable source”.²⁷²³ Whoever sent this memorandum seems to have been connected with the Ngati Maniapoto chief Taonui, who of course was unhappy about the case proceeding in any event. This document does show concern at quite an early stage in the process about the quality of the Court (“one of the judges (Brookfield) does not understand the Maori language and the other, major Scannell A.C. [who was appointed at the express wish of L.M Grace being an intimate friend of his] has but a slight knowledge of it”), about the role of the Graces generally and about the links between Lawrence Grace in particular and the government (“it is reported that there is a secret compact between the government and Mr L M Grace that he is to receive a large commission on all land that his brother William...purchased for Government in the King Country along the Main Trunk Line”).

Many of the protests that were subsequently received relating to Tauponuiatia seem to focus not so much on the initial hearing but rather on the subsequent subdivisions, pointing to a lack of a general understanding that the Court decision about the boundary was going to translate immediately into a sequence of major partitions, fixing of lists of owners, and the setting aside of substantial Crown awards. Bruce Stirling, who has reviewed the evidence more comprehensively than anyone else, states:²⁷²⁴

Not only did they [i.e.affected hapu] have to endure the costs and inconvenience of a lengthy hearing sitting at a venue where much food had to be imported, but some were required to be in several places at once to defend their land interests. A lengthy sitting was underway simultaneously at Whanganui, which many southern Taupo and Whanganui hapu had to attend as their lands adjacent to Tauponuiatia were being heard there. Many were thus unaware that the Tauponuiatia case had quickly moved on from defining the tribal block and the constituent hapu who owned it, to dividing up the block and allocating it to selected individuals of those hapu.

The Tauponuiatia decision had major consequences, for with the Court’s findings that the whole area within the boundary belonged to Ngati Tuwharetoa, none but Ngati Tuwharetoa hapu could participate in the process of partition that now commenced.²⁷²⁵ Hapu not on the list found that they were shut out of the partition hearings that occupied the Court, off and on, until September of the following year. Those most affected by this were Ngati Maniapoto, Ngati Raukawa, and Ngati Kahungunu. Stirling notes that when the Court reconvened on 27 January Hitiri Te Paerata of Ngati Raukawa told the Court that Raukawa ought to be a tupuna for at least some parts of Tauponuiatia. The Court told Hitiri that judgment had been given, and therefore nothing could be done. Raukawa found that in trying to claim

²⁷²³ J King, Auckland, to Sir George Grey, 19 June 1886, GNZ MSS 204(2), Auckland Public Library, cited Stirling, *Overview*, 911-12.

²⁷²⁴ Stirling op.cit., 939.

²⁷²⁵ Those most affected by this were Ngati Maniapoto, Ngati Raukawa, and Ngati Kahungunu. Stirling notes that when the Court reconvened on 27 January Hitiri Te Paerata of Ngati Raukawa told the Court that Raukawa ought to be a tupuna for at least some parts of Tauponuiatia. (Hitiri Te Paerata had not been able to attend the Tauponuiatia case at Tapuaeharuru as he had been summoned to attend the Magistrate’s Court at Cambridge). The Court told Hitiri that judgment had been given, and therefore nothing could be done.

interests in subdivisions of Taupouuiatia such as Pouakani they had to face the near-impossible task of relying only on their lines of descent from Tuwharetoa and Tia, as Hitiri explained in his petition.²⁷²⁶

In bringing forward our claims to Pou-a-Kani, Hora-Aruhe and Waihaha-Hurakia Blocks we were placed at great disadvantage through being compelled to set up our cases on lines of descent from Tia and Tuwharetoa instead of from our proper ancestor Raukawa – trying to fit in things with the ruling of the Court in favour of the ancestors Tia and Tuwharetoa – this together with so many of our proper hapus being struck out prevented us from giving strong additional evidence in support of our claims.

The exclusion of Raukawa as an ancestor interfered with us giving a thoroughly clear statement of our case from the time of our true ancestor down to our own, being barred from stating in correct order our occupation and our landmarks step by step from Raukawa's time from generation to generation down to us who are now living on the land.

There were numerous petitions relating to the Taupouuiatia block, and the government took action by setting up a Royal Commission, the Taupouuiatia Commission, in 1889.²⁷²⁷ Although some of the petitions had related to the southern portions of Taupouuiatia,²⁷²⁸ the commission, however, dealt only with the western boundary of the Taupouuiatia block. As an outcome of its findings a number of blocks within the Taupouuiatia boundary were withdrawn from Taupouuiatia and had to be reinvestigated. The restricted ambit of the Taupouuiatia Commission has been emphasised by Dr Anderson:²⁷²⁹

[The report of the Native Affairs Committee] resulted in a partial reconsideration of the case, under the Taupo Royal Commission, in 1889, but that inquiry did not include a reconsideration of the title in the gifted, or nearby southern blocks. What the Taupouuiatia Royal Commission did show was the existence of considerable suspicion about the role of the Grace brothers in both the hearings and the purchase of Taupouuiatia lands. W.H. Grace was accused of having influenced the court interpreter and having tampered with witnesses, more especially Te Heuheu, but the Commission considered these comments to have been unsubstantiated. The Commission made the added comment, however, that: 'Whether a Government officer, should have mixed himself up in any way with matters in dispute between the Natives themselves may be a question for the Government to determine.

17.7 Pouakani reinvestigation, 1891

²⁷²⁶ Hitiri Te Paerata petition, 1888, *ibid*.

²⁷²⁷ See *Report of the Royal Commission Appointed to Inquire into Certain Matters Connected with the Hearing of the Taupouuiatia Block*, 1889 AJHR G-7. Hitiri Te Paerata's complaints were as follows (*ibid*, 2-3):

A. That he was prevented by his absence in Cambridge, at the opening of the Native Land Court at Taupo, from setting up Raukawa as one of the ancestors through whom he claimed interests within Taupouuiatia, in addition to Tia and Tuwharetoa.

B. That the Native Land Court had declared that the Ngatiwairangi, named as one of the eighteen hapus owning the Taupouuiatia West Block, was Ngatiwairangi-Parehwhete, and that the Ngatiwairangi, to whom the Pouakani Block – a part of the said Taupouuiatia West Block – was awarded by the Court, did not belong to that section of the hapu.

C. That the hapus Ngati te Kohera and Ngatiparekawa, whom he had set up in his counterclaim as having an interest in Pouakani, as well as the Ngatiwairangi, Ngatimoe, and Ngatikorotuhou, set up by the claimants, were wrongfully rejected by the Native Land Court from the main portions of the block.

D. That his personal claim to be included as an owner in Pouakani was also wrongfully rejected by the Court.

E. That Mr W H Grace, the Government Land Purchase Agent, improperly interfered in the Court, and actively and openly supported the parties opposing him and his people in the above-mentioned claims.

²⁷²⁸ See Anderson, *Tongariro National Park*, 73-74. Petitions relating to the southern parts of Taupouuiatia were received from Te Huiatahi himself (supported by Te Keepa) and Hepi Pikirangi.

²⁷²⁹ Anderson, *Tongariro National Park*, 74.

Introduction

The very substantial Pouakani (also known as Horaaruhe or Hora-Aruhe Pouakani) block is bounded by the Waikato River to the north. To the east are the Tatua West²⁷³⁰ blocks and to the south and southwest are the Tihoi and Maraeroa blocks, these all being subdivisions of Taupouuiatia also. To the northwest is Wharepuhunga, one of the largest of the partitions of the Rohe Potae block. The Whakamaru Maungaiti block, investigated separately at Cambridge in 1881 and awarded to a group of Ngati Raukawa hapu, lies on the opposite (northern) side of the Waikato river to Pouakani.²⁷³¹ Pouakani has an exceptionally involved history and is a block of considerable significance. It was in its own right the subject of an inquiry by the Waitangi Tribunal reported on in 1993.²⁷³² The name Pouakani comes from a boundary marker (Te Pou-a-kani), and Horaaruhe was the name of a village, which according to the Waitangi Tribunal is “a name probably associated with a fern ground (aruhe)”.²⁷³³

Pouakani was originally a subdivision of the huge Taupouuiatia West block,²⁷³⁴ cut out of the Taupouuiatia block²⁷³⁵ in early 1886 and split into five large sub-blocks (Pouakani, Maraeroa, Tihoi, Tuhua-Hurakia-Waihaha and Hauhungaroa-Karangahape-Waituhi). The Native Land Court gave its initial judgment for Taupouuiatia on 22 January 1886, fixing the ancestors as Tuwharetoa and Tia and their descendants. Taupouuiatia West was partitioned out on 12 March 1886. Maraeroa was partitioned out of Taupouuiatia West on 24 March, and Pouakani was partitioned out of Taupouuiatia West the following year. The partitioning out of Taupouuiatia West and the further partitions of its subdivisions, especially Maraeroa,²⁷³⁶ caused a great deal of controversy at the time. The judgment with respect to Pouakani occurred a little later in the Taupouuiatia sequence (9 February 1887).²⁷³⁷

Pouakani was reheard pursuant to a special statutory direction set out in s 29 of the Native Land Court Acts Amendment Act 1889. The section was enacted following the report of the Taupouuiatia Commission (17 July 1889)²⁷³⁸ and the Supreme Court decision in *Taonui Hikaka v Macdonald and Hitiri Te Paerata v Macdonald*.²⁷³⁹ The section essentially cancelled the existing titles for Pouakani and Maraeroa, and thus allowed for them to be reinvestigated by the Native Land Court. The government, however, excluded itself from this reinvestigation. The legislation made no reference to the Pouakani No. 1 block, and also specifically excluded any interests belonging to the Crown. Pouakani No 1 was a large area of 20,000 acres awarded to the Crown on 19 September 1887 for the payment of survey and other costs. Pouakani No 1 was surveyed by William Cussen in 1890 (ML6036A) and stayed in Crown ownership.²⁷⁴⁰ The rest, as the Waitangi Tribunal has put it, was “put back into the melting pot”.²⁷⁴¹

²⁷³⁰ The original Tatua block was one of the first investigated in the Taupo district, at Oruanui on 28 August 1867. On Tatua see Waitangi Tribunal, *Pouakani Report*, Wai 33, 1993, 71-78.

²⁷³¹ Judgment at (1881) 7 Waikato MB 183-4 (23 April 1881).

²⁷³² Waitangi Tribunal, *Pouakani Report*, Wai 33, 1993.

²⁷³³ *Pouakani Report*, 13.

²⁷³⁴ (1886) 4 Taupo MB 353-354 (12 March 1886).

²⁷³⁵ The Court gave its initial judgment on the parent Taupouuiatia block on 22 January 1886: (1886) 4 Taupo MB 68; vol 1100-1101.

²⁷³⁶ Judgment at (1886) 5 Taupo MB 82-83 (24 March 1886), vol 1, 1132-33. Maraeroa was allocated by the Court “to Ngati Karewa as descended through Tuwharetoa”: (1886) 5 Taupo MB 83; vol 1 p 1133. This was objected to by Ngati Raukawa and Ngati Maniapoto.

²⁷³⁷ (1887) 4 Judge Scannell MB 288-9.

²⁷³⁸ (1889) AJHR G-7.

²⁷³⁹ (1889) 7 NZLR 642.

²⁷⁴⁰ On Pouakani No 1 see David Alexander, *The Award of Pouakani 1 to the Crown*, research report commissioned by the Crown Law Office, 1989, Wai 33 Doc#B5; Waitangi Tribunal, *Pouakani Report*, Wai 33, 1993, 207-209.

²⁷⁴¹ Waitangi Tribunal, *Pouakani Report*, Wai 33, 1993, 131.

Reinvestigation, 1891

The rehearing Court treated the claim by Werohia Te Hiko (P Eketone, conductor) as the principal claim. Werohia Te Hiko gave the prima facie claimant evidence on 9 December 1890.²⁷⁴² Werohia said that she lived at the village of Waipapa, located on the block, that she belonged “to Ngati Raukawa and Ngati Tuwharetoa” and that her hapus were “Ngati Wairangi, Ngati Moe, Ngati Korotuhou, Ngati Rakau and Ngati Hinekahu”.²⁷⁴³ She gave a number of boundary markers, including the Waikato river running to the boundary with the Te Tatu block to the east. She continued:²⁷⁴⁴

I have a right to this land, also the hapus I have named through ancestry, conquest and permanent occupation. I claim through Moe, an ancestor. I am descended from that ancestor. I give genealogy down to myself. Moe had many other descendants.

The conquest was by Wairangi and his younger brothers also by Ngakohua over Ngati Kahupungapunga Ngati Ruakopiri and Ngati Hotu. Before the conquest the land belonged to these tribes. Afterwards Wairangi and Ngakohua took possession, their descendants have remained on the land ever since.

She gave a whakapapa, which was copied down into the minutes, and went on to give further particulars of the conquest and of the names of kaingas and burial places on the block. The chiefs who took part in the conquest were, she said, Wairangi, Whaita, Pipito, Upokoiti, Ngakohua “and others”.²⁷⁴⁵ She explained her descent from Moe, “a descendant of Tuwharetoa”,²⁷⁴⁶ and her descent from Wairangi through Te Hoka and Takiura. In effect then, her claim was both a Tuwharetoa claim and a Raukawa claim, the Tuwharetoa claim by ancestry from Moe and the Raukawa claim by conquest by Wairangi and his associates. Werohia gave the boundaries of the portion owned by Moe and his descendants but stated also that “the greater portion came under the conquest”.²⁷⁴⁷ She referred also to a number of pas and kaingas: Waipapa, Horaaruhe, Tuhatahara, Te Waimahana, Te Ruatangata, and Kaiwha. She also mentioned a kainga named Hapotea, “a large kainga” which had a number of whares, “one of which was weather board outside and kakaho²⁷⁴⁸ inside” which “was built as a whare karakia”.²⁷⁴⁹ She said also that there was a boundary running through the block that had been agreed to by Wairangi (for Raukawa) and Moe (for Tuwharetoa): “the first boundary I gave was laid down by Wairangi and Moe”.²⁷⁵⁰ Werohia asked for “an order in favour of self and the hapus I have named”.²⁷⁵¹

The principal evidence for the claimants was given at the end of the case, as was standard practice, after the counterclaims had been heard. The principal speaker was the Raukawa chief Te Rangikaripiripia, who had earlier given evidence in the Whakamaru case in 1881. He gave a very detailed account of the conquest of the region by Whaita, Wairangi and other Raukawa chiefs centuries before and their defeat of the earlier peoples (Ngati Hotu and Ngati Kahupungapunga). Werohia, who

²⁷⁴² See (1890) 26 Waikato MB 28 (9 December 1890).

²⁷⁴³ Ibid.

²⁷⁴⁴ Ibid, 28-29.

²⁷⁴⁵ Ibid, 29.

²⁷⁴⁶ Ibid, 30.

²⁷⁴⁷ Ibid, 29 – meaning, the conquest by Wairangi, Whaita, Pipiti, Upokoiti, Ngakohua etc.

²⁷⁴⁸ Thatched

²⁷⁴⁹ (1891) 26 Waikato MB 255.

²⁷⁵⁰ Ibid, 30. She added that “[t]he part of the block owned by Moe was permanently his, another witness will give evidence in regard to it”.

²⁷⁵¹ Ibid.

had given the prima facie evidence at the beginning of the case, was recalled and gave some additional evidence about burial grounds and about the rights of the ancestor Moe.

Hitiri Te Paerata, who had long campaigned for an inquiry, appeared in this case as a counterclaimant. Hitiri said that although he had applied for a rehearing on the basis that the root of title was from Raukawa, in fact “Raukawa had no title whatever” and that he had “yielded to pressure from Rewi and others”. Given Hitiri’s lengthy campaign of protest over the Taupouiatia investigation this seems difficult to credit. One possibility, as appears from the repartition judgment, is that Hitiri had become particularly concerned about the interests of his people in the Kaiwha area. At any rate Hitiri too gave a great deal of detailed evidence about resource-gathering and kaingas in the Pouakani area. Kaingas he mentioned included Owairenga, Kaiwha, Te Waimahana (which was situated on both sides of the Waikato River), Horaaruhe and a fortified pa named Te Pa o Te Ata, which, he said, belonged to Ngati Te Kohera and Ngati Parekawa.²⁷⁵²

This was a very lengthy and complex case which was characterised by a great deal of cross-examination, especially with respect to the various boundaries. The principal outcome was that the claimants, in particular the Raukawa hapu Ngati Wairangi, were allocated the largest interests in the block. The Court then proceeded directly on with a repartition of Pouakani; this generated further contestation in the Court and a significant amount of additional evidence. Evidence was also given by William Cussen, who carried out the repartition survey. He said that Hitiri Te Paerata and some others objected to the survey in the Kaiwha area and only allowed it to be carried out under protest.²⁷⁵³ The partition judgment was given on 4 August. Specific allocations were made to Hitiri Te Paerata and others, the residuary interests – the largest section of the block – going to Ngati Wairangi.

17.8 Wharepuhunga and Ngati Raukawa

Wharepuhunga is the name of a mountain in the King Country located southwest of Maungatautari and to the southeast of Te Awamutu. The mountain is an important boundary marker for Ngati Raukawa on the western side of their rohe. The Wharepuhunga block was a subdivision of the Rohe Potae block. It is a very large block and is the easternmost part of the Pohe Potae, bordered in part by the western bank of the Waikato river, and abutting on the Taupouiatia block. It is bounded on the west by other subdivisions of the Rohe Potae: Tokanui, Korakonui, Rangitoto A and Rangitoto Tuhua B. Wharepuhunga forms part of the rohe of Raukawa.

Wharepuhunga was seen at the time as an important case, and it is referred to frequently in the newspapers. The *Auckland Star* reported the outcome of the case on 19 May as follows:²⁷⁵⁴

In the Native Lands Court at Kihikihi, Waikato, judgment has been delivered by Judge W.E. Gudgeon and Assessor P. Mataiwhea in the Wharepuhunga case. The Wharepuhunga is a valuable block of land containing 133,720 acres, situate between Kihikihi and Lake Taupo, The investigation into the ownership of the block was held in consequence of a Government survey lien of £344 10s against the block. Claims were set up by Te Pachua, on behalf of the Ngatiwhakatere tribe, Areta Kapu on behalf of a section of Ngatiraukawa, and by 33 hapus of the Ngatitakihiku tribe, claiming an exclusive right over the block. Rangitutia (Ngatiraukawa) also claimed for himself and his friends the exclusive right over the whole territory. The Court found that the Ngatiraukawa tribe had emigrated to Kapiti from Wharepuhunga in order to avoid the natural consequences of a conquest by force of arms commenced by Waikato and

²⁷⁵² See (1891) 26 Waikato MB 44-45. For a helpful summary of the evidence relating to kainga, burial places etc. on the Pouakani block see Waitangi Tribunal, *Pouakani*, Wai 33, 1993, 38-45.

²⁷⁵³ See (1891) 27 Waikato MB 166-67 (4 August 1891).

²⁷⁵⁴ *Auckland Star*, Vol XXIII, Issue 118, 19 May 1892, p 5.

Ngatimaniapoto, and subsequently by Ngatimaru, and so relinquished their ancestral homes. The ancestral right of Ngatiraukawa over the land ceased when the chief Te Whatanui, having collected the scattered members of his tribe at Taupo, marched men, women and children to Kapiti, prior to 1840. It was found that the descendants of Kohika and Kawhia had a good claim to the land, and 465 shares, each of about 287 acres, were awarded.

The newspaper here correctly emphasised a major feature of this case, which is a resuscitation of a particular approach to Raukawa traditional history found in the Maungatautari and Te Aroha cases(although which is absent in numerous other blocks and also in the Rohe Potae case itself).

At around the same time as the case the Native Minister in the Liberal government, A J Cadman, visited Kihikihi where he met with Ngati Raukawa. Raukawa wanted redress for their long-standing grievances over the Maungatautari block, and they also asked the government to desist from purchasing of undivided share interests in Wharepuhunga as this was the only large area of unalienated land that the iwi had left. Cadman's response to these requests is very revealing:²⁷⁵⁵

The Hon. Mr Cadman and party arrived at Kihikihi at one o'clock this afternoon, and in the evening had a meeting with Ngatiraukawa. After the usual speeches and greetings the following requests were made: First, for a rehearing of the Maungatautari Block; second, that the Government will refrain from purchasing interests in the Wharepuhunga Block, as the Raukawa would be left practically landless if they did; third for a re-hearing of the Korakanui Block.

These requests are supported generally by natives.

Other requests were also made for a road from Kihikihi through the Wharepuhunga block to Taupo (opposed by principal speakers), repairs to road from Waotu to the bridge over the Waikato river, and for a bridge over the Puniu River, so as to give access to Te Puhi station.

In reply, the Minister said he was unfortunate in his visits to districts comparatively unknown to him inasmuch as he found he was asked to grant old claims rejected by previous Ministers. *Re* Maungatautari, Ministers had no power to grant a rehearing. He believed a Parliamentary inquiry had already been held and other inquiry was refused. If so, he could hold out very little hope. He could only promise on his return to Wellington to go carefully into the matter, and if the statement made that evening were borne out he would endeavour to have the case reopened. *Re* Wharepuhunga, he was asked to stop Government purchase. They might as well ask a creek to stop running as expect natives to refrain from selling. The Government were besieged by natives waiting to sell. A hundred thousand acres of native land had been purchased within the last twelve months, and the Government could have easily have doubled the area if funds had been available. He wished to point out this: The Government only desired to purchase surplus land, their object being to settle and cultivate. They were just as pleased to see natives do this as Europeans. He would ask the natives if they had the whole of the block of a hundred and thirty thousand acres could they cultivate it? Would they even cultivate the ten percent of the reserve? Were they prepared to pay rates and taxes as Europeans did towards roads, etc.?

Cadman's comments were the standard refrain when ever Maori asked the government to desist from purchasing undivided shares in a particular block.

In 1907 the Stout-Ngata Commission commented on Wharepuhunga as follows:²⁷⁵⁶

Wharepuhunga. The area of this block was originally 131,266 acres or thereabouts. The Crown has purchased in all 54,311 acres (after deducting a reserve of nearly four thousand acres made out of purchased land for settlers), and the Native owners now hold 76,955 acres. The latter area includes a

²⁷⁵⁵ *Auckland Star*, Vol XXXIII, 6 May 1892, 6 May 1892, p 3.

²⁷⁵⁶ *Supplementary Report on Native Lands*, 1907 AJHR G1D, 1-2.

reserve of 3,776 $\frac{3}{4}$ acres already referred to. The Native portion is held in twenty-two subdivisions (including the reserve). The accompanying schedule and plan show the scheme of the partition. Exclusive of the reserve, the Native portion is in three main blocks. The Northern Block is reported to be of good quality and suitable for close settlement. Two of the main kaingas are on this Northern Block – namely, Karamu and Waireka. The Eastern Block, which consists of Subdivisions 15, 16, 18, and 19, is of inferior quality, although portions of 16 are fair. Aotearoa, the largest of the Ngatiraukawa kaingss, is on 16. The whole of the Southern Block, consisting of Subdivisions 6,8, 10, 13, 17, and 20 is poor land.

In 1920, however, the *Dominion* reported further extensive Crown purchasing in Wharepuhunga and in nearby sections of Rangitoto Tuhua:

The Government has completed the purchase of three areas of native land – two areas of 10,650 acres and 2092 acres in the Wharepuhunga Block, and another of 2609 acres in the Rangitoto Tuhua Block, all in that part of the country popularly known as the King Country. The Wharepuhunga land is not far from the place where the head works of the Arapuni hydro-electric scheme will be established. All the land is open fern country. The next step towards releasing this land for settlement is to gazette it Crown land, and this will probably be done in the Gazette of this week.

17.9 Rangitoto (1898)

In 1898 another major Courtroom battle took place over a large Rohe Potae sub-block. This time the block in issue was the Rangitoto subdivision of the Rangitoto-Tuhua block, originally partitioned out of the parent Rohe Potae block in 1888.²⁷⁵⁷ Rangitoto was contested between two closely-related groups, Ngati Whakatere and Ngati Matakore.²⁷⁵⁸ Matakore was a younger brother of Maniapoto and Ngati Matakore are usually classed as a section of Ngati Maniapoto; Ngati Whakatere, on the other hand, are closely connected to Raukawa and are often (not always) regarded as a section of Ngati Raukawa, or at the very least as close kin of Ngati Raukawa. (Whakatere was a son of Raukawa.) The case is concerned, in a sense, with the extent of the overlap between Ngati Maniapoto and Raukawa within the Rohe Potae, but, as was so often the case with the recognition of Raukawa interests in the Native Land Court, this was complicated by the events of the turbulent ‘musket wars’ era and by the migration of Raukawa-related groups to the Kapiti region in the 1820s. As discussed in earlier chapters of this report, Ngati Whakatere migrated, in whole or in part, along with various sections of Raukawa, to the Manawatu-Otaki area in the 1820s, and appear in Native Land Court cases in that region, for example in making a claim to a section of Kapiti Island in 1874 (see chapter on Kapiti, above).²⁷⁵⁹

The Rangitoto case began on 1 February 1898 at Otorohanga. The claimants (Ngati Matakore) handed in a list of names but do not appear to have given the standard opening statement and the case

²⁷⁵⁷ (1888) 5 Otorohanga MB 107, 140, 151, 157-158.

²⁷⁵⁸ This closeness is shown by the affiliations of the main speaker for Ngati Whakatere in this case, Te Paehua. In this case he describes himself as affiliating to the ‘tribe’ Ngati Whakatere and the hapu Ngati Karewa. But in the Maraeroa case in 1886 he said his ‘tribe’ (presumably the translation used in the minutes for ‘iwi’) was Ngati Matakore and his hapu were Ngati Karewa, Ngati Poutu, Ngati Whakatere and Ngati Pikiahu: see (1886) 5 Taupo MB 59-60 (24 March 1886): “My tribe is Ngati Matakore. My hapus are Ngati Karewa – Ngati Poutu – Ngati Whakatere – Ngati Pikiahu. I claim this block [Maraeroa] on behalf of hapus mentioned above. I claim through ancestry and occupation, my occupation has been from time of my ancestors to present time.”

²⁷⁵⁹ (1874) 2 Otaki MB 411; (1874) 2 Wairarapa MB 74, 76. Ngati Whakatere advanced a claim to a part of the Kaiwharawhara block on Kapiti (claimant: Henare Te Herekau). This claim was opposed by Wi Parata and others and was unsuccessful: see (1874) 2 Otaki MB 409 (18 April 1874).

was effectively begun by Te Paehua (or Te Paihua) for the Ngati Whakaterere counterclaimants. He said that his tribe was Ngati Whakaterere and his hapu Ngati Karewa.²⁷⁶⁰ He added:²⁷⁶¹

I know the land title to which is being investigated and I have a claim by ancestry to the land. The ancestor through whom I derive my right is Whakaterere. The only other take I have to the land is occupation from the time of the ancestor Whakaterere to now.

He then gave a whakapapa which was copied down into the minutes setting out a line of descent through Raukawa, Whakaterere, Poutu, Raekauri and Poutu and others to himself.²⁷⁶² He then set out boundary lines in a manner very typical of Native Land Court evidence but in very great detail, with 62 numbered landmarks which presumably correspond to points identified on an ML plan before the Court. These boundaries, Te Paehua explained, were survey boundaries, not traditional boundaries:

Here I have quoted surveyed boundaries. I do not mean that those surveyed lines were the ancient boundaries of Whakaterere, they were Te Heu Heu's boundaries.²⁷⁶³ I never admitted the correctness of that boundary. The Wharepuhunga boundary was the boundary of²⁷⁶⁴ Whakaterere and of Takihiku. The boundary of Korakanui was a court award not a tribal boundary. The Tokanui boundary is a tribal boundary.

Te Paehua then went on to list and describe kaingas, pa, and food-gathering places on the block at a level of detail not often seen in the records of the Native Land Court. The case and its outcome was described in the *Hawke's Bay Herald* on 16 March 1898:²⁷⁶⁵

The Native Land Court, which has been sitting at Otorohanga, in the King Country, for some time, has given judgment in regard to the ownership of a large portion of the Rangitoto Tuhua block. This block is the last portion of Rohe Potae or the King Country, the original title to which remains to be decided, and the judgment referred to deals with the northern portion of the block, situated in the vicinity of Mangaorongo, and lying between Kihikihi and Otorohanga and the Rangitoto range. This portion is many thousand acres in extent.

The Rangitoto-Tuhua block in all covers an area of 600,000 acres, taking in the centre of the King Country. The judgment of the Court in regard to the northern portion of the block is that the land is awarded to the Ngatimatakore tribe, who are a section of the Ngatimaniapoto.

The case for this tribe was conducted by Mr J H Edwards, who is on his mother's side a member of the Ngatimatakore. The opposing unsuccessful party was the Ngatiwhakaterere tribe.

Both tribes are closely related, the chiefs of both being descended from common ancestors. The grounds on which the Matakore people were awarded the land were ancestry and right of conquest. They had held the land for many generations, and had driven out the Ngatiwhakaterere at the beginning of this century by force of arms. The Ngatiwhakaterere migrated south, but afterwards returned when peace was made, and were allowed to settle on a portion of the land by their former conquerors, but the Matakore held this only on sufferance.

²⁷⁶⁰ (1898) 31 Otorohanga MB 61 (1 Feb 1898).

²⁷⁶¹ Ibid.

²⁷⁶² The whakapapa is at (1898) 31 Otorohanga MB 62.

²⁷⁶³ Te Paehua must be referring here to the contentious western boundary of Taupouuiatia.

²⁷⁶⁴ i.e. between.

²⁷⁶⁵ *Hawke's Bay Herald*, Vol XXXIII, Issue 10865, 16 March 1898, p 2.

The Court was presided over by Judge Gudgeon. The block in question contains some valuable pastoral land, mostly open fern country. The native title to a large portion of the Rangitoto Tuhua country has yet to be decided by the Court.

The Court found for Ngati Matakore and rejected the claims of Ngati Whakaterere on the basis that the latter had been defeated and had abandoned their lands at Rangitoto in the 1820s. The Court found also that part of the land belonged to a third party, Ngati Rereahu – who took no role in the case – and set aside part of the block for further investigation: “[w]e are of opinion that the land between the two boundaries is the land of Ngati Rereahu and will therefore exclude it from this case”. The Court was prepared to admit those of Ngati Whakaterere who had moved from Rangitoto but who had since been invited to return by Ngati Matakore and who had maintained permanent occupation. Probably the Court’s principal objective was to exclude from the owners’ lists those of Ngati Whakaterere who had gone to the Kapiti region before 1840 and who had not returned.²⁷⁶⁶

The remainder of the block east of a line commencing at Te Rerenga a Moko [] south to source of Maungamaire thence to Tutukirangi and Pukeokahu the court awards to the Ngati Matakore who have occupied this Block under the conquest and also to such persons of the Ngati Whakaterere tribe as shall have returned by the invitation of those who conquered the land and shall have permanently occupied it from the time of their return.

The successful claimants were directed to include in their lists “all those people *whether in opposition to them or not* whom they may know to be entitled under the conquest”.

The chief significance of the decision (as opposed to the evidence) is that once again the Court had to confront the issue of the rights of Raukawa and Raukawa-related groups who had migrated south to the Manawatu-Otaki-Kapiti region in the 1820s and who now pressed claims to lands in the southeast Waikato and the King Country. In the Rangitoto decision Judge Gudgeon was also very critical of much of the evidence given at the main Rohe Potae investigation of 1886, Rangitoto being of course a subdivision of the Rohe Potae block. In fact Gudgeon seems to believe that much of the evidence given in 1886 was deliberately orchestrated and manipulated specifically to deny Waikato rights in the region by conquest.²⁷⁶⁷

In all of these cases under the Rohe Potae we are brought face to face with the fact that in order to keep out the Waikato tribes it was deemed necessary to deny all conquests and tell as many falsehoods as might be necessary.

Whether or not that is the case, it is certainly very apparent that Waikato groups fared poorly in the 1886 Rohe Potae decision of Judge Mair and Paratene Ngata.

In the Rangitoto case the Court made a distinction between two different kinds of Maori conflict, apparently sourced in Maori custom, between a “riri whanaunga” and a “riri tuarangi”:²⁷⁶⁸

In a riri Whanaunga outside tribes with guns are not imported into the quarrel, in fact it is of the very essence of a Riri Whanaunga that strangers should be kept out. In this case they were dragged in wherever they could be found. As Hare Teimana said in his address all the world rose against them.

The conflicts in issue in this case were definitely in the second category, in the Court’s opinion.

²⁷⁶⁶ (1898) 31 Otorohanga MB 381.

²⁷⁶⁷ (1898) 31 Otorohanga MB 377.

²⁷⁶⁸ Ibid, 378.

18. The Validation Court and Ngati Raukawa

18.1 1893 Act

In 1893 the government set up a wholly new judicial body, the Validation Court, given wide powers to inquire into and correct blocks with defective titles. It was an institution set up to protect purchasers and to provide a kind of “fast track” method of resolving disputed titles. That this was a serious problem is beyond doubt. According to Professor Brooking about 1,000,000 acres of land were in disputed ownership in 1891.²⁷⁶⁹

There had been a sequence of incremental steps that had led up to this enactment.²⁷⁷⁰ In 1885 John Ballance, Native Minister in the Stout-Vogel government, had appointed G E Barton, a prominent barrister (later to be Judge Barton of the Native Land Court and the Validation Court), to inquire into and report on the removal of alienation restrictions where European purchasers had already entered into negotiations for sale or lease.²⁷⁷¹ Sections 20 to 28 of the Native Land Court Amendment Act 1889 (16 September 1889) set up a system of Commissioners who were given power to inquire into alienations of interests in Maori land. One of the Commissioners was to be Maori.²⁷⁷² It seems clear from the way in which these provisions were structured that the key task of the Commissioners was to deal with situations where titles deriving from legal interests created by the Native Land Court could not be registered under the Land Transfer Act. The key section was s 27, where the connection between Native Land Court titles and the Torrens system is made obvious:

27: Technical defects: If the Commissioners shall find that any intended alienation of land cannot be registered, or is liable to be or has been impeached because such alienation of land being under memorial of ownership or Native Land Court certificate did not include the whole of the signatures of the Natives owning under such memorial of ownership or Native Land Court certificate, or that the completion of such intended alienation was prevented by a subsequent alteration of the law, and that the transaction was entered into in good faith, and was not in any way contrary to equity and good conscience, and that the agreed purchase-money has been properly paid, they may sign a certificate to that effect, and thereupon such intended alienation shall be deemed to be valid and effectual from the date of the instrument purporting to effect such alienation, or from such other date as the Commissioners may determine, *and such instrument may thereupon be registered under “The Land Transfer Act, 1885”* [emphasis added].

What this legislation achieved, however, is uncertain; probably not a great deal in view of the repeated alterations and experiments that followed.

The Poututu Jurisdiction Act, also enacted on 16 September 1889, gave power to the Native Land Court – as opposed to Commissioners, that is - to consider the interests of a number of parties in the Poututu block (also near Gisborne, the place where everything that could go wrong with Maori land

²⁷⁶⁹ Tom Brooking, “‘Busting Up’ the Greatest Estate of All: Liberal Maori Land Policy, 1891-1911, *New Zealand Journal of History*, vol 26, no 1, April 1992, 78-98.

²⁷⁷⁰ For an analysis of the background see Bryan Gilling, *The Validation Court: Crown, Judiciary, and Maori Land 1888-1909*, Report for the Crown Forestry Rental Trust, 1999, (Wai 814 Doc#A7). Gilling emphasises that the validation issue was brought to a head by a number of decisions of the ordinary courts, including *Re the Kotarepaia Block* (1884) 3 NZLR 54 SC, *Seymour v Macdonald* (1887) 5 NZLR 167 CA, *Matthews and Others v Paraone and Others* (1889) 7 NZLR 528 CA, and *Poaka and Others v Ward and Smith* (1890) 8 NZLR 338 CA. The net effect of these decisions was to create severe risks for private purchasers of Maori land (especially of memorial land) where the purchases had been carried out in breach of alienation and other restrictions in place at the time of the transactions.

²⁷⁷¹ See Gilling, *Validation Court*, 24-25.

²⁷⁷² Native Land Court Acts Amendment Act 1889, s 20.

titles unfailingly did go wrong). The Poututu Jurisdiction Act was a one-off, relating to just a single block. Even this cautious effort by the legislature, once it had come under the scrutiny of the very able but perhaps somewhat obsessive – and certainly tireless and wordy – Judge Barton, turned out to be riven with manifold complexities. The real author of the confusion, however, was not Judge Barton but W L Rees, who typically developed complex arguments about the wording of the legislation and the extent of the Court’s jurisdiction in furtherance of the goals of his clients, Wi Pere and others, who were fighting to keep their great land trust project alive. Barton was able to come to some conclusions, but the interminable Poututu affair only underscored the difficulties inherent in the validation issue and the need for an effective solution.

A special commission (the Edwards-Ormsby commission), set up under s 20 of the Native Land Court Acts Amendment Act 1889, was established by the Native Minister (Mitchelson) in 1889. Edwards was a prominent barrister, and Ormsby was Maori (described in the newspapers as a “well-known half-caste of Waikato”²⁷⁷³, he was in fact Maniapoto and had devoted a great of effort to make the Kawhia Native Committee function effectively). The Edwards-Ormsby commission had a chequered history and was clouded by some constitutional controversies over Edwards’ appointment to the Supreme Court bench. It began its Gisborne sittings in May 1890, and went on to investigate some East Coast blocks although whether any of these inquiries were ever actually completed is unclear.²⁷⁷⁴ The commission was disbanded by the Liberal government at the commissioners’ own request in March 1891.²⁷⁷⁵

The Liberals government’s own inquiry, the Rees-Carroll commission of 1891, also drew attention to the issue of risky titles. The commission found that it was “doubtful whether a single title resting upon the Native Land Act 1873 and its many amendments can be upheld”; so “unstable is the foundation upon which they rest, so mistaken the principle which legislation has compelled the people to submit to, that the most sacred rights of property are jeopardized, and the welfare and means of subsistence of large numbers of the community are endangered”.²⁷⁷⁶ It was recommended, as seen, that a new Native Land Titles Court be set up to deal with the problem. The Court should be made up of three judges, one of whom should be Maori, and should be empowered to confirm titles in the absence of fraud. Instead, the government decided to confer a new jurisdiction on the Native Land Court (i.e. as opposed to setting up an entirely new body), essentially following on from the precedent set by the Poututu Jurisdiction Act of 1889. This step was taken with the Native Land (Validation of Titles) Act 1892, enacted on 11 October 1892. The Act was described in its short title as an “Act to provide for Inquiry into Incomplete Dealings with Native Land”. It essentially gave the Court broad powers to investigate and inquire into cases where purchasers had been unable to perfect their titles after having purchased interests in land deriving from titles created by the Native Land Court (s4). Section 4 of the 1892 Act stated: Section 5 of the Act empowered the Court to inquire into any such case. The Court’s task was essentially to ensure that the transaction was bona fide: “[i]f it shall appear to the Court that the transaction in respect of which such inquiry is held is fair and reasonable, and not in any way contrary to equity and good conscience, and that each Native owner has received the share to which he is entitled of the purchase-money or other consideration agreed upon...the Court may give a certificate to that effect”. The Court was to transmit its findings to the Chief Judge. To actually grant a remedy, however, required an Act of Parliament: s 17 provided that the certificate could not be delivered to any

²⁷⁷³ *Otago Daily Times*, Issue 8741, 1 March 1890, p 2.

²⁷⁷⁴ See *Poverty Bay Herald*, Vol XVII, Issue 5941, 23 December p 2, and 5942, 24 December 1890, p 2.

²⁷⁷⁵ *Poverty Bay Herald*, Vol XVIII, Issue 6016, 12 March 1891, p 2.

²⁷⁷⁶ 1891 AJHR G-1, xii. For a full discussion of the Edwards-Ormsby commission and the Rees-Carroll commission’s discussion of the validation problem see Gilling, *Validation Court*, 33-38.

person or to be “capable of registration” until it had been “confirmed by [an] Act of the General Assembly”. In this sense the 1893 Act is something of a retreat from the powers given to the Commissioners under the 1889 amending Act, where, as seen, transactions validated by the Commissioners could proceed directly to registration.

The process was thus a cautious one, hedged about by restrictions, and requiring confirmation by Parliament. The emphasis placed on “registration” in s 4 and in s 17 is a significant clue as to the real objectives of the legislation. Since the effective establishment of the Torrens system in New Zealand in 1870 it was government policy to bring as much land as possible under the new system of Torrens titles. Such titles, with the exception of those obtained by fraud, were guaranteed by the state and were no longer subject to the vagaries and complexities of the rules of the Common Law relating to title to land. Land or interests in land purchased from Maori, however, often could not be “perfected” – that is, they could not be registered under the Land Transfer Act because of doubts about their legality, problems with surveys, and a host of other complexities. That meant that there was a risk of a class of land titles emerging based on conveyances of interests in Maori land (i.e. on interests deriving from the Native Land Court) which were in European ownership but which were *outside* the Torrens system, not protected by the Land Transfer Act, and thus at risk of actions in the ordinary courts invoking common law principles such as the *nemo dat* rule. This could subvert the whole system of safe and clear titles that the Land Transfer legislation was supposed to achieve. Strictly speaking all interests in land outside the Torrens system were merely interests in equity and only became legal interests once registered. Titles outside the system were thus vulnerable, and would remain vulnerable even when on-sold to third parties.

Whether simply imposing yet another function on the Native Land Court to deal with the vexed problem of imperfect titles made any sense at all had been widely debated in parliament. W L Rees had much to say on this issue when the 1892 Bill was being debated. The proposed machinery was, he said, “in no way adequate” and was merely “trifling with the matter”. The Native Land Court already had a backlog of 13,000 cases, which was only going to get worse; moreover the Native Land Court was “confessedly a very weak Court, which is confessedly unable to overtake its proper work, which is confessedly exercising powers that have continually to be set right by the Supreme Court and Court of Appeal”.²⁷⁷⁷ Rees went on to instance a number of cases which had generated huge costs and had taken years to be dealt by the Court, including Omaha, Puhatikotiko, and Awarua. (Rees was involved in some of these cases himself, as it happens; on the other hand he had himself chaired the 1891 Native Land Laws Commission and, as it proved, was vindicated by the decision made the following year to create a wholly new judicial body.) Sir George Grey had also weighed in to the discussion, arguing that the Bill served to protect the interests of wealthy capitalists at the expense of the small settler. The Maori members had also opposed the legislation, Hoani Taipua (Western Maori) quite accurately observing that the legislation dealt only with grievances of Europeans.²⁷⁷⁸

The 1892 legislation turned out to be riddled with confusions and complexities which were elaborately and lengthily exposed by Judge Barton in his decision relating to the Puhatikotiko blocks near Gisborne. The key issue was the scope of the 1892 Act, and in particular whether the legislation allowed titles to be validated when a purchase happened to be in breach of a provision of the native

²⁷⁷⁷ (1892) 78 NZPD 504.

²⁷⁷⁸ (1892) 78 NZPD 516-17. For a full analysis of the debates in the House and in the Legislative Council see Gilling, *Validation Court*, 43-53. A curiosity of the debates is that Carroll insisted that those making decisions under the new legislation would *not* be the existing judges of the Native Land Court, insisting that it was “the intention of the Government to appoint some special persons – call them Commissioners or anything you like as long as you get the proper men, capable of fulfilling the office”: (1892) 78 NZPD 631.

lands legislation at the time of the transaction and where that provision had since been repealed. If the answer to that question was ‘yes’, then that gave the Act a potentially very wide application and allowed the Court to cure a wide range of defective titles; if ‘no’, then correspondingly the ambit of the legislation was very substantially narrowed. In the first of his Puhatikotiko judgments Judge Barton thought that the correct answer was ‘yes’; in the last of these he reluctantly reversed himself and concluded that the correct answer had to be ‘no’. Thus he concluded in the end that “[i]n future the operations of this Court will be confined to such cases as come within the words of the Act of 1892, and suitors will therefore understand that no purchases made regardless of statutory prohibition can henceforth be recommended for validation under this Act”.²⁷⁷⁹ However the Puhatikotiko affair had exposed the limitations of the 1892 legislation as a means of validating titles.

Following his Puhatikotiko decision Judge Barton stated a case on certain legal points which ended up in the Court of Appeal in October.²⁷⁸⁰ It appears that Judge Barton was then asked by the government to draw up a new Act and to consult widely with the business community and the legal fraternity in Gisborne and Napier while doing so.²⁷⁸¹ While the Validation Court was to have jurisdiction over the whole country, it appears from the role played by Judge Barton and commercial and legal circles on the East Coast that it was particularly designed with this region in mind.

18.2 Native Land (Validation of Titles) Act 1893

The Native Land (Validation of Titles) Act took matters to the next logical step, and created an entirely new Court, styled the Validation Court, to deal specifically with title validation cases. The new Bill was debated in the House in September 1893. Sir Patrick Buckley (the Attorney-General) told the House that the Validation Court judges would have the power to “do almost anything which may be necessary” to settle disputed titles.²⁷⁸² The new Act was described in its short title as “An Act to provide for a Court of Inquiry into Purchases and Leases of Native Lands”. It had jurisdiction “over lands situate within any Native Land Court district that the Governor may hereafter proclaim to be within the jurisdiction”.²⁷⁸³ The 1893 Act set up a completely new Court, the “Validation Court”, which had wide and sweeping powers to “validate” disputed titles. It was empowered “upon the application of any Native or European claimant” to “inquire into, settle, and determine *finally and conclusively* (subject only to the right of appeal herein provided) all disputes, rights, titles, and interests whatsoever concerning the said lands or any of them” (emphasis added).²⁷⁸⁴ The Validation Court was given full power to call whatever witnesses it needed and for the production of all documents (“even where the same are filed or recorded or otherwise lodged in any public office or registry”).²⁷⁸⁵

Its jurisdiction was couched in the widest of terms.²⁷⁸⁶ Essentially its task was to inquire into disputed interests (“to hear and determine the right, title, and interest of any person claiming the freehold, or any lesser estate or interest”) and to settle them for good (“to hear, settle, and determine the

²⁷⁷⁹ [1893] AJHR G-3, 20.

²⁷⁸⁰ *Auckland Star*, Vol XXIV, Issue 248, 19 October 1893, p 8, *Press*, [Christchurch], Vol L, Issue 8618, 20 October 1893, p 6. The decision is reported as *In re Puhatikotiko No. 1 Block* (1893) 12 NZLR 131.

²⁷⁸¹ “The Validation Court”, *Poverty Bay Herald*, Vol XX, Issue 6832, 20 November 1893, p 4. See also Orr-Nimmo, *East Coast Maori Trust*, 70. As Orr-Nimmo points out (*ibid*), there is no indication of any consultation with Maori.

²⁷⁸² NZPD, vol 82, 1893, p 312.

²⁷⁸³ Native Land (Validation of Titles) Act 1893, s 3

²⁷⁸⁴ *Ibid*. In Orr-Nimmo’s view “the powers given to the Validation Court were very sweeping indeed”: Orr-Nimmo, *East Coast Maori Trust*, 71.

²⁷⁸⁵ *Ibid*, s 6.

²⁷⁸⁶ See *ibid*, s 7.

right to the use and occupation of the said lands or shares in lands claimed before the Court”). The Court could validate and decree the performance of practically anything: “the performance of any deed, agreement, contract, or memorandum of contract, or imperfect obligation or authentication entered into between Europeans and Natives, or between Natives and Natives, concerning any lands or interests in lands to which any Native a party to said deed, agreement, contract, or memorandum of contract was then entitled *under any statute now repealed*”.²⁷⁸⁷ The Court’s decrees were required to be laid before Parliament, which was free to reject them.²⁷⁸⁸ If it took no action, the decree was deemed to be valid and indeed had the force of law: the Court’s decree was “final and conclusive” and “shall not be hindered or interfered with or lessened in its effect by any other Court whatsoever”.²⁷⁸⁹ This was strong stuff. The Act was designed to cut through the Gordian knot of Maori land titles by setting up a new and powerful body to deal with them which would be subject to a minimum of interference. The possibility of judicial review by other Courts was closed off as much as possible. But there is one marked exception to all these wide and far-reaching powers:

11. Court may not validate private purchases of land after notice published of prior rights of the Crown: The Court shall not have power to call in question the title of Her Majesty to any land claimed by the Crown, nor to validate any transactions for the purchase or lease of any Native land entered into by any person, corporation, or company after the publication of and during the subsistence of a notification in the *Gazette* or *Kahiti*, in terms of any Act heretofore or hereafter to be in force, giving notice that he²⁷⁹⁰ proposed to enter upon negotiations for the acquisition of the said land for Her Majesty.

The Crown, as can be seen, was exempt.²⁷⁹¹ This must have been to ensure that Maori could not use the Act to impeach dubious purchasing practices by the government. Nor did the Act have any application once a particular block had been proclaimed as being subject to Crown purchase. The Validation Court soon became an important institution.. It was of particular importance in the Gisborne region (see ch 9 below), but there are certainly Validation Court decisions in other districts as well.

18.3 The Validation Court becomes operational

A full study of the Validation Court is beyond the scope of this report, and would in any case require a very substantial amount of archival research. In this chapter the aspiration is only to traverse the kinds of cases the Court was required to deal with, and to comment briefly on how it functioned.

Judge Barton became the Validation Court judge in December 1893, after a certain amount of haggling about his salary, and one of his first tasks was the drafting the Court’s rules. The Rules of Court were published in the *New Zealand Gazette* on 1 March 1894. The Rules required applications to be in English, with a Maori translation. The Judge had to be satisfied that notice had been given of the proceedings (Rule 18). The Validation Court sat with an Assessor, as did the Native Land Court, and Rule 5 required that no final decree or order of the Validation Court was valid without the concurrence of the Assessor.

In 1894 parliament enacted the Native Land (Validation of Titles) Amendment Act of that year, which allowed Native Land Court judges to also act as Validation Court judges. This was not what had been originally envisaged, or at least not envisaged by Barton, who had planned for a wholly new and separate court run by himself. There was some opposition to opening up the Validation Court to the

²⁷⁸⁷ Ibid, s 10.

²⁷⁸⁸ Ibid, s 16.

²⁷⁸⁹ Ibid, s 13. However decisions of the Court could be appealed to the Court of Appeal: s 21.

²⁷⁹⁰ “He” meaning the Governor.

²⁷⁹¹ See Daly, *Poverty Bay*, 201.

Native Land Court bench in parliament, not only from the opposition but also from Sir Robert Stout, who was firmly of the view that the Validation Court and the Native Land Court had quite separate functions. The government justified the new approach on the grounds of expediency and cost. But allowing some of the Maori Land Court judges to wear a second hat as judges of the Validation Court undermined the legislation to a significant extent. As Bryan Gilling has pointed out, “the problems with which the Validation Court was created to deal sprang in large part from mistakes made by the Native Land Court and the operations of the system associated with it; they were thus arguably interested parties in the Validation Court’s proceedings”.²⁷⁹²

What the Validation Court actually did, or was supposed to do, was to validate invalid titles and contracts and thus facilitate the registration of affected titles under the Land Transfer Act. The Court was there not to legitimise fraud, but to overcome problems arising from *technical* invalidities. The outcome of any case in the Court was an order or decree validating the title (or transaction, as the case may be).

18.4 Resourcing the Court

Judge Barton kept up a running and very public feud - with the government over the resourcing of the Court, including his own salary, ability to claim travel expenses and so forth. On one occasion in May 1894 Barton refused to continue hearing cases until a Court clerk had been lawfully appointed, Barton never being someone to shy away from confrontation with the state. Barton’s point was that it was illegal for the same person to act as Registrar and Court clerk; the government referred the issue to the Law Officers who advised that this was not illegal at all. Barton was told to stop complaining.²⁷⁹³ On another occasion, reported in newspapers all over the country, Barton read out to the bar at Gisborne correspondence between himself and the government relating to stoppages from his salary. The judge also wrote a lengthy letter on the subject to the government, forwarded to the *Poverty Bay Herald* in which he alleged that “throughout the two years during which I have presided over the Validation Court, the Department have kept up an uninterrupted series of contests with me, which greatly impeded the progress of my Court, and went near to paralysing it altogether”.²⁷⁹⁴ The Government’s untoward behaviour, the judge complained, had seriously injured his health.

The government had no wish to spend more money than it had to on the Court, notwithstanding the political importance of the title validation issue. Barton wanted the Court to have its own specialist staff, but the government, perhaps suspecting that Barton was engaged in a certain amount of empire-building, regarded this as waste of money. In fact it was government policy that the expenses of the Court should be met out of the Court fees. As the Prime Minister (Seddon) put it in 1894, “Government considers that all costs in connection with the Court should be defrayed out of fees, as it would be grossly unfair to call upon the taxpayers of the colony to find money to make good titles for those who had wilfully or in ignorance violated the law”.²⁷⁹⁵ Maori, for their part, were disappointed by the Validation Court, and complained that it progressed matters much too slowly and was too expensive.²⁷⁹⁶

18.5 Hearing cases

²⁷⁹² Gilling, *Validation Court*, 99.

²⁷⁹³ “Judge Barton and the Government”, *Auckland Star*, Vol XXV, Issue 113, 12 May 1894, p 2.

²⁷⁹⁴ *Poverty Bay Herald*, Vol XXIII, Issue 7579, 7 March 1896, p 3.

²⁷⁹⁵ *Poverty Bay Herald*, Vol XXI, Issue 6952, 10 April 1894, p 2.

²⁷⁹⁶ See *Timaru Herald*, Vol LX, Issue 2032, 17 March 1896, p 3, reporting a visit of the Minister of Lands (McKenzie) to Wairoa, where he met a “large native deputation”.

After 1894 the Validation Court was staffed by the judges of the Native Land Court, but not all of the Native Land Court judges were also judges of the Validation Court. Procedure was more formal than the Native Land Court, and seems to have been mainly by way of affidavit (sworn statements) which the deponents could be cross-examined on if need be. Parties were often represented by counsel, often quite senior members of the bar. Legal arguments about the extent of the Court's jurisdiction were common. Cases could be very hard-fought at times, even vituperative, especially over cases relating to the East Coast trust blocks.

The bulk of the Validation Court's caseload was at Gisborne. Essentially it was the special function played by the Court of investigating titles before blocks were added to the East Coast Trust lands which explains the unusual role played by the Court at Gisborne, a function which came to an end in any event once Judge Batham took control of the Gisborne Court in 1898.²⁷⁹⁷ But the Validation Court did issue judgments in other places as well, including Auckland,²⁷⁹⁸ Thames (Kuaotunu No. 3)²⁷⁹⁹ Hastings, New Plymouth,²⁸⁰⁰ Otaki,²⁸⁰¹ and Wellington. (Or, more accurately, judges at these places on occasion heard applications and made decisions under the additional powers as judges of the Validation Court). Apart from Gisborne, however, the flood of cases predicted to eventuate did not occur. No less than the Native Land Court, the Validation Court was constantly harassed by review applications in the ordinary Courts (notwithstanding the widely-phrased language used in the 1893 Act.) One example is the decision *In re Tahora* (1901),²⁸⁰² which was concerned with the issue of whether the Court had the power to order the withdrawal of a caveat, but which raised the broader question of whether the Validation Court could have any functions relating to a block once it had issued its decree. (The case was part of the ongoing quest by Rees and Wi Pere to charge the Tahora blocks with the costs of the East Coast trusts, including Rees' legal fees.²⁸⁰³)

18.6 The Validation Court at Otaki

The Validation Court played the role in a complex dispute, or rather a series of complex disputes, between Kereama Pita and Messrs Stuart and Davies over the Manawatu-Kukutauaki 7D3 block, the subject of a Validation Court ruling in 1898.²⁸⁰⁴ The case, heard under the 1893 Act (see above), was concerned with a purchase, or purported purchase, made in 1881. Counsel for the applicants (Gully) sought validation of "an Agreement made between the Applicants and Kereama Pita or Kaiaho and others of all the interests of the said Kereama Pita in the abovementioned Block which said Agreement bears date the 30th November 1881".²⁸⁰⁵ But Kereama Pita, the supposed principal vendor, appeared to

²⁷⁹⁷ This arose from the terms of the agreement between the Bank of New Zealand and the trustees in 1892.

²⁷⁹⁸ On Auckland cases see Waetford, *Validation Court*, 101-2; Gilling, *Validation Court*, 112-115. These were cases in the Auckland region, not at Auckland specifically, and were heard principally in 1895 by Chief Judge Davy with John Ormsby as Assessor. Four applications were heard and validation decrees issued: Mangapukahukahu, Tuhirangi, Pohatua and Whakarupe. These were comparatively small blocks in Northland and Hauraki.

²⁷⁹⁹ *Auckland Star*, Vol XXVI, Issue 272, 15 November 1895, p 3 (Kuaotunu No. 3 Block). Kuaotunu is on the east coast of the Coromandel Peninsula north of Whitianga. The case concerned an application by the Kauri Timber Company for the validation of a lease made in 1885.

²⁸⁰⁰ See Gilling, *Validation Court*, 117-118.

²⁸⁰¹ *Auckland Star*, Vol XXX, Issue 110, 11 May 1899, p 9, referring to an appeal to the Court of Appeal relating to a Validation Court decision at Otaki given by Judge Mackay; the parties to the appeal were Kereama Pita and Stuart and Davies. This must be the decision reported as *Kereama Kaiaho v Stuart and Davies* (1899) 17 NZLR 753; 1 GLR, 190 (CA). See also [1901] AJHR G2A (Pukehou 5G1).

²⁸⁰² (1901) 20 NZLR 643, 4 GLR 125 (CA).

²⁸⁰³ See the discussion of this case in the *Evening Post*, Vol LXII, Issue 14, 16 July 1901.

²⁸⁰⁴ Re Manawatu-Kukutauaki 7D3 (1898) 40 Otaki MB 1-19 (Judge Mackay).

²⁸⁰⁵ (1898) 40 Otaki MB 1.

oppose the applicant; he too was represented by counsel (Menteath). Much of the surviving material from the Validation Court is of a pro forma kind and is somewhat lacking in interest, but this is not the case with this decision. Judge Mackay wrote a complex judgment which is a window into the complicated world of Ngati Raukawa's dealings with private purchasers in the PkM region.

The judgment of the Validation Court relating to Manawatu Kukutauaki is given in full in Appendix 1.26. Manawatu Kukutauaki 7D was a block of 12,626 acres. Some of it was sold to the Crown (2,226 acres) and the balance allocated by the Court in May 1873 to 53 Ngati Huia people, "ten of whom were selected to be entered in the body of the were selected to be entered in the body of the Certificate and the other 43 to be enrolled as owners".²⁸⁰⁶ A title order was made under s 17 of the 1867 Act. What happened next is only sketchily described in the Validation Court judgment, but it seems that in 1880 the block was partitioned into a number of subdivisions. Manawatu-Kukutauaki 7D3, part of the residue of the block and vested in all of the owners on partition, was then sold on 30 November 1881, or at least that is the date of the agreement for sale and purchase. There were 53 owners at the time.

The original transaction was one made between Stuart and Davies and Kereama Pita (aka Kereama Kaiaho) "and others", but Kereama himself, who seems to have been the principal vendor, opposed the application. His barrister made an array of arguments, some of them quite technical and others less so, demonstrating if nothing else that the value of the land and the interests at stake must have been high. These will have been expensive proceedings. Kereama's counsel argued – amongst other things - that the land was inalienable at the time, that the translation of the contents of the agreement was informally made, that the transaction was not one ordinarily enforceable in the Supreme Court, and that (no doubt the real issue) "the price was inadequate".²⁸⁰⁷ Probably the most interesting argument, however, was that "Kereama Pita was entrapped into signing the Agreement under the impression that he was signing a timber lease only".²⁸⁰⁸ The sale seems to have been of Kereama's interest only, and this must have been the legal point at issue – i.e. the purchasers had sought to acquire an interest which had not been separately partitioned out. The Validation Court applied a strict evidentiary standard relating to fraud, and was of the view that fraud had not been shown. Nor was the fact that the price paid by Stuart and Davies may have been inadequate any reason to set aside the sale. As the Validation Court put it:²⁸⁰⁹

The rule of law as to fraud holds good in equity, that fraud is never to be presumed, it must be proved either expressly or by necessary implication excepting in certain circumstances which do not apply to this transaction.

There is no case where a mere inadequacy of price has been held sufficient to set aside a transaction.

A bargain may be hard and unconscionable, and yet valid, unless the inadequacy of the price is such as shocks the conscience, and amounts in itself to conclusive evidence of fraud in the transaction.

In this case however the price paid appears to have been a reasonable one all circumstances considered.

²⁸⁰⁶ (1898) 40 Otaki MB 3.

²⁸⁰⁷ (1891) 40 Otaki MB 3.

²⁸⁰⁸ Ibid.

²⁸⁰⁹ (1898) 40 Otaki MB 18.

The Validation Court dismissed the Vendors' arguments and decided instead that the purchase should be validated: the Court held "that the Agreement entered into on the 30th November 1881 between Keramea Pita sometimes called Kereama Kaiaho for the sale to Messrs Stuart and Davies of all his interest Block of Land known as Manawatu Kukutauaki 7D Section 3 at the rate of £1 per acre be validated."²⁸¹⁰ As explained above, a decree of the Validation Court had powerful effects, and meant that the transaction was in effect unchallengeable. What Kereama wanted to do in this case was to prevent such a decree being made, but he was not able to do so, the Court setting a high threshold for opposing claims to validation claims to succeed. Stuart and Davies got what they wanted.

The Validation Court will probably not be a major focus of this inquiry, and yet it was a significant component of the blockade of statute by which Maori landowners were surrounded. The Validation Court was not set up to protect the interests of Maori (obviously) but nor was it set up with the interests of the Crown particularly in mind (albeit that Crown purchases of Maori land interests could not be called in question by the Court). The Act was set up explicitly to protect the interests of private-sector purchasers and private capital, as the Manawatu-Kukutauaki 7D3 case shows.

Kereama appealed Mackay's decision to the Court of Appeal in 1899, unsuccessfully. According to the *Auckland Star*:²⁸¹¹

In the Appeal Court to-day, in the case of Kereama Pita (appellant) and Stuart and Davies (respondents), an appeal from the decision of Judge Mackay, in the Validation Court at Otaki, to enforce specific performance of an agreement, Judges Denniston and Connolly gave judgment dismissing the appeal, Judge Edwards dissenting. The case is one of considerable importance, involving native land title.

The case was reported as *Kereama Kaiaho v Stuart and Davies* (1899)²⁸¹² and is of interest as one of the few reported appeals to the Court of Appeal from the Validation Court.

18.7 Disappearance of the Validation Court

The validation issue was laid to rest not by the Validation Court but by the decision of the Privy Council in *Assets v Mere Roihi* in 1905.²⁸¹³ By this time the Validation Court had ceased to be an institution of any real importance and had lost much of its separate identity: it was seen simply as the Native Land Court exercising a separate statutory function. The last really important case the Validation Court carried out was its decision in 1908 relating to the East Coast Trust Lands Estate. In this case the Court, presided over by Judge Jones, carried out the very difficult task of calculating the inter se debit and credit balances of the East Coast Trust blocks (This was a one-off, carried out under special legislation enacted in 1906.²⁸¹⁴ In 1908 the Validation Court was given some further special functions by another one-off enactment, the Validation Court Empowering Act 1908, directing it to inquire into some specific blocks where the Native Land Court had made some jurisdictional errors when making partition orders.²⁸¹⁵ In 1909 s 437 of the reforming Native Lands Act of that year transferred the Validation Court's functions to the Native Land Court and the former body ceased to exist. Its demise seems to have been unnoticed and unlamented.

2810 Ibid.

2811 "The Appeal Court", *Auckland Star*, Vol XX, Issue 110, 11 May 1899, p 9.

2812 (1899) 17 NZLR 753; 1 GLR 190 (CA).

2813 [1905] AC 176.

2814 Maori Land Claims and Laws Amendment Act 1906 s 22.

2815 These blocks were Matakītaki, Te Kōpi, Kawakawa, Manawatu-Kikutauaki 3(2), Manawatu-Kukutauaki 7D2D, and Paerau. On this Act see Gilling, *Validation Court*, 141-2.

19. Te Reureu and other reserve blocks and the Native Land Court

19.1 Introduction

This chapter is concerned with the Native Land Court and Maori reserves in the PkM inquiry district. The reserves are of course the subject of a separate report by Paul Husbands which deals fully with reserves north and south of the Manawatu river. This chapter concentrates on the role of the Land Court with respect to these reserves.

19.2 Relative interests

Cases concerning relative interests were becoming an increasingly significant component of the Native Land Court's workload around the turn of the century. The proliferation of cases about relative interests is probably also a sign of the increasing pressure on the Maori land corpus which had continued to contract rapidly in the face of accelerated Crown purchasing by the Liberal government after 1891. Relative interests cases were concerned, as is probably obvious, with the relative shares of individual owners: i.e. whether some owners should be entitled to receive larger interests in a block than others, or whether lists of owners should be remodelled to give individuals or (more usually groups or classes) of owners more substantial shares than other individuals, groups, or classes. It needs to be understood that what was at stake in cases of this kind was not classes of owners grouped by strictly formal categories (e.g. whether minors should have larger shares than adults) but rather by customary categories: whether owners affiliating to ancestor or hapu *x* should have a greater interest in the block than ancestors affiliating to hapu *y*. Relative interests cases, in other words, were often fought out on the basis of Maori custom. As such they could often be very contentious, resembling in some respects investigations of title in a new guise. The impression one gets from the minute books is that titles were in a constant state of remodelling in the first half of the twentieth century.

Section 24 of the Native Land Act 1909, the basic jurisdictional provision, gave to the Court, *inter alia*, jurisdiction to:²⁸¹⁶

determine the relative interests of the owners in common, at law or in equity, of Native freehold land, whether any of those owners are Natives or Europeans.

Relative interests came before the Court in a variety of ways. Sometimes with an investigation of title a list of owners would be prepared for the whole block, but without the Court defining relative interests at that stage, leaving this for future determination. This could mean that decades could go by before relative interests were finally fixed. Or, the Court might fix ancestors for the block on investigation, but *without* preparing lists of owners or determining relative interests amongst the hapu at that time, which would have to be adjudicated upon later. If a block was partitioned, hapu awarded title to the parent block might argue in the court that they were entitled to a larger share of the partitioned block than they had been in the original investigated block. Cases of these kinds were commonplace, and routinely generated complex appeals. (Examples of such cases or appeals are the Whakapoungakau appeal (1910),²⁸¹⁷ the Court's investigation of relative interests in Okahukura 6 (1911),²⁸¹⁸ the Whangaparaoa

²⁸¹⁶ Native Land Act 1909 s 24 (1)(b). Section 27(1) (b) of the Native Land Act 1931 is to the same effect.

²⁸¹⁷ (1910) 8 Auckland ACMB 90-92.

²⁸¹⁸ (1911) 1 Tokaanu MB 309-318 (18 October 1911).

appeal (1912);²⁸¹⁹ and the Waitangi and Te Haumingi appeals (1914),²⁸²⁰ relating to nearby blocks in the Rotoiti area. There were, however, cases of a more difficult and extraordinary nature where the Court found itself called upon to deal with relative interests. For example in a case relating to the Urenui 2, 25 and 26 blocks the Court had to fix relative interests in some of the Crown-granted West Coast Reserve blocks in Taranaki.²⁸²¹ In this instance, following a meeting called by the government at Wellington, the Crown had originally agreed to an award of 1300 acres in Taranaki based on a calculation of 16 acres per head for absentee Ngati Tama owners living in Wellington and the South Island. By the time of the case all the earlier documentation had been lost and the Court had to in effect reinvestigate the block and determine relative interests *de novo*. Or it could happen that the Court was directed by statute to determine relative interests in a particular block. This happened in the case of the Te Haroto block in Hawke's Bay (1911), where legislation enacted in 1910 required the Court to inquire into an area of former Crown land at Te Haroto which the government had decided to return to Ngati Hineuru people who were already in occupation of it.²⁸²² On other occasions the Court was directed by statute or by Order-in-Council to fix relative interests for the purposes of allocating compensation for land acquired or taken by the Crown. Examples example of such cases relates to the Patea Reserves (1912)²⁸²³ and the Te Rereu case (also 1912).

19.3 Legal Issues: Crown Grants, Reserves, and the Native Land Court

Before proceeding further with the discussion, the Rangitikei_Manawatu Crown Grants Act 1873 should probably be revisited. The Act provided a kind of fast-track method for Crown-granting reserves within the Rangitikei-Manawatu Crown purchase block. Probably the Wellington Provincial government wanted to have done with making the reserves as fast as possible to allow Native title to be proclaimed and for surveys to be finalised. The Preamble to the statute, (described in its short long title as "An Act to enable the Governor to fulfil certain Agreements made with Aboriginal Natives, and to execute Grants to them of certain Lands in the Province of Wellington, and for other Purposes" states:

WHEREAS disputes have been for some time pending between the Government of the Colony and certain persons of the Aboriginal Native race who claimed to be proprietors of certain lands in the districts of Rangitikei and Manawatu, in the Province of Wellington: an whereas certain of such disputes were some time since adjusted by Isaac Earl Featherston, and certain other of the said disputes were some time since adjusted by the Honorable Donald McLean, acting for the said said Government, and it was agreed *that certain lands in the said district should be granted by the Crown to certain Natives in fee-simple, and that certain other lands should be reserved for the benefit of certain Natives [etc.]*

The words in the Preamble have been highlighted to emphasise that the reserves within the Rangitikei-Manawatu block were to be Crown-granted immediately to their owners in fee simple. Thus any grant was a fee simple grant taking its force from the statute itself. But the Act was vague as to how the owners were to be ascertained. Section 2 of the Act merely stated that "[i]t shall be lawful for the Governor to fulfil and carry into effect the agreements hereinbefore mentioned in reference to the said lands, whether such agreements are evidenced by any writing or not" (i.e. thereby avoiding the effect of the Statute of Frauds). Clearly the Native Land Court was to have no role in the determination of the owners: that seems to have been left to officials on the spot. Section 4 of the Act authorized the Governor

²⁸¹⁹ (1912) 8A Auckland ACMB 43-45 (19 July 1912).

²⁸²⁰ (1914) 1A Rotorua ACMB 25; (1914) 1A Rotorua ACMB 25-6.

²⁸²¹ (1911) 18 Taranaki MB 331-337 (21 March 1911).

²⁸²² (1911) 62 Napier MB 307-8.

²⁸²³ (1912) 20 Taranaki MB 20-23 (28 March 1912)

“to reserve or grant the said lands agreed to be reserved for such purposes and for the benefit of the Natives”. As can often happen with hasty legislation, many thorny problems were stored for the future,

The majority of the reserves with which this chapter is concerned (Te Reureu is an example) arose from the Crown pre-emptive purchasing process. Reserves were set aside by the government’s land purchase officers during the course of purchasing negotiations, which would then be defined by survey and set aside by a Crown Grant. Of course lands investigated by the Native Land Court and awarded to claimants by means of a Land Court certificate of title were *also* set aside by Crown grant, but as (or more accurately, what was later known as) Native or Maori freehold land. Reserves typically begin as Crown grants directly or immediately and not from a title investigation by the Land Court, although the Land Court would usually be given jurisdiction over reserves subsequently by statute or Order in Council, and could partition them, determine relative interests and so forth. For example, in one case relating to relating to Crown-granted reserves in Taranaki, *Re Urenui, 2, 25 and 26 Blocks*²⁸²⁴ the Court was directed by Order in Council to determine relative interests in the Urenui 2, 25 and 26 Blocks near Waitara. These blocks were Crown-granted reserves arising out of the aftermath of the Taranaki confiscation. In this instance, following a meeting called by the government at Wellington, the government agreed to an award of 1300 acres in Taranaki based on an award of 1300 acres in Taranaki based on a calculation of 16 acres per head for absentee Ngati Tama owners living in the South Island and Wellington. Years later the documentation relating to the names of the grantees had been lost, and so the Court was directed by the Order in Council to in effect investigate the block and determine relative interests *de novo*. This is an example, then, of a special inquiry by the Native Land Court to investigate a reserve set apart by the government many years before.

Complexities do not end there. The Court could also make reserves in a title investigation decision, and such reserves might be Crown-granted too. So there is no completely clear boundary line between Maori reserve blocks and Maori freehold blocks, but all the same they *are* different in the sense that in the case of reserves there usually will not have been an originating title application by the Land Court. For the purposes of discussion this can be thought of as the basic distinction.

Why does the reserve/Maori freehold distinction matter? Usually the key issue is the extent of the applicability of Maori custom. Related to this is a land-status issue. Is a reserve Maori freehold land, or is it general land? It could matter a great deal whether succession rights were governed by Maori custom or by the general law, it often being argued in the Native Land Court that in the case of Crown-granted blocks it was the latter which applied. This issue continues to surface in the Maori Land Court even now, often in the case of regranted confiscated land. It is at the heart of all the problems about the Reureu block, as will be shown later in this chapter. The Native Land Court was required to make its decisions on the basis of Maori customary law (admittedly it may often have done so imperfectly, and it could be asked whether the Native Land Court was actually properly enabled to make its decisions on that basis). This will not be traversed here. Generally, allocations by the Native Land Court were founded on the basis of Maori custom as determined by Maori custom as applied by the Court, but in the case of a Crown-granted reserve the initial owners were fixed not by the Court but by *the Crown*. Years after the original allocation this could become a serious problem.

An example, the decision in *Re Pekamu Aterea Deceased* (1909), relating to one of the Rangitikei-Manawatu reserves, can be considered.²⁸²⁵ This decision will be returned to below when the legal problems relating to Te Reureu are discussed.

²⁸²⁴ (1911) 18 Taranaki MB 331-337 (21 March 1911).

²⁸²⁵ *Re Pekamu Aterea Deceased* (1909) 60 Whanganui MB 263.

The *Re Pekamu* case was concerned with rights of succession in one of the Manawatu-Rangitikei reserves. The case was decided under the Native Land Court 1894. The decision unfortunately does not make it clear which Manawatu-Rangitikei reserve was in issue, but was probably Maramaihoa. The original Crown grant to the reserve was made on 21 October 1879. The precise question was whether the succession was governed by Maori custom or by the “laws of New Zealand”. Section 2 of the relevant statute, the Native Land Court Act 1894 defined “successor” as:²⁸²⁶

“...the person who, on the death of any Native, is, according to Native custom, or, if there be no Native custom applicable to any particular case, then according to the law of New Zealand, entitled to the interest of such Native in any land or personal property.”

Counsel for one Ruera Te Nuku argued that because the reserve was originally Crown-granted “Native custom” had no application, meaning that “the law of New Zealand” applied, which had the effect that the interest passed to Ruera (the judgment does not fully explain why that might have been the case). The Court, however, rejected this argument, doing so by means of a historical analysis of the Rangitikei-Manawatu reserve blocks. The Court took the position that the particular grant here – and which must also be the case for all the rest of the Rangitikei-Manawatu reserves – was “simply a return to the natives of the land they claimed was not intended by them to pass under the deed”.²⁸²⁷ The Court thought that “it was intended that they should receive back what they had formerly held and are the same rights as between themselves”.²⁸²⁸

In other Words the Governor by his grant merely rectified the omission from the deed of sale of any reservations to the natives over portions of the block. In other lands so granted under this Act the Native Land Court has ascertained successors according to Native custom and we have decided to follow that course.

It followed that rights of succession were governed by Maori custom and the application to succeed by Ruera Te Nuku failed. The interests of the deceased were instead awarded to Ratima Pekamu, Wiremu Pekamu, and Te Mura Pekamu. These people, represented by Hone McMillan, were “the next of kin on the father’s side”²⁸²⁹ and were entitled to the land on the basis of Maori custom. According to Judge Rawson:²⁸³⁰

By the Act the Governor was empowered to fulfil these agreements and to issue grants from the Crown of the lands agreed to be granted in fee simple to the several persons in the opinion of the Governor entitled to the same and to make the Reserves agreed to be made. This all points in the direction of the Grant being simply a return to the natives of land they claimed was not intended by them to pass under the deed of purchase. They appear from the official records to have claimed the return under their rights according to Native Custom – and the Crown recognised these rights. We think it was intended that they should receive back what they had formerly held and are the same rights as between themselves. In other words the Governor by his grant merely rectified the omission from the deed of sale of any reservations to the natives of their rights over portions of the block. In other lands so granted under this Act the Native Land Court has ascertained successors according to Native custom and we have decided to follow that course.

This case thus deals with an important point of succession law, i.e. whether the succession was to be governed by Maori custom or by the ordinary law, the Court analysing and relying on the definition

2826 Native Land Court Act 1894, s 3 (definition of “successor”). See also Native Land Court Act 1894 s 46.
2827 (1909) 60 Whanganui MB 262.
2828 Ibid.
2829 (1909) 60 Whanganui MB 261.
2830 Ibid, 262-3.

of “successor” in the Native Land Court Act 1894, and is also an interesting historical analysis of the Rangitikei-Manawatu reserves. At a general level, the case demonstrates that, unlike in Australia, Crown grants do not of themselves extinguish customary titles. For immediate purposes, however, the pivotal point is that the Court treats interests in the reserve as being governed by Maori custom, and would therefore be *unequal*. As will be seen, a different course was to be followed at Te Reureu.

19.4 Te Reureu: Introduction

The rest of this chapter is taken up with a discussion of the Reureu reserve as a case study. Reureu was originally a reserve block with the Manawatu-Rangitikei purchase and is one of the 71 blocks referred to in the official list of reserve blocks printed by the government in 1872.²⁸³¹ It is located on the banks of the Rangitikei River not far from Marton (but on the other side of the river near Kakariki). Reureu has had a complicated tenurial history.

Te Reureu was the largest of the Rangitikei-Manawatu reserve blocks (4,510 acres) and was allocated by McLean to four hapu: Ngati Maniapoto, Ngati Pikiahu, Ngati Rangatahi, and Ngati Waewae. Ngati Waewae is a section of Ngati Tuwharetoa, Ngati Pikiahu is a hapu of Ngati Raukawa, and Ngati Rangatahi is either a hapu of, or at least is associated with, Ngati Maniapoto. Te Reureu was not only the largest of the reserves; it also turned out to be an area of valuable and fertile land very suitable for dairy farming.²⁸³²

Ngati Waewae had interests both at Te Reureu and also in the Taupo region, in the same way as Ngati Raukawa and Ngati Kauwhata had rights in the PkM region and also at Maungatautari. Ngati Waewae’s customary interests at Te Reureu seem to be longstanding. They were also involved in Land Court cases in the Taupo region. Ngati Waewae and other Ngati Tuwharetoa hapu, were, for instance, the applicants for an investigation of title to the Tokaanu block in 1911.²⁸³³ According to the Native Land Court on that occasion, “[t]he Ngati Waewae went away [i.e. from Taupo] to the Rangitikei District to prevent the sale of their lands by the Ngati Apa”.²⁸³⁴ In the Tokaanu case, those groups opposing the Ngati Waewae claim argued that on their return to Tokaanu from Rangitikei (i.e. Reureu, presumably) they had failed to take up permanent residence and thus could not claim at Tokaanu. The Court agreed and rejected Ngati Waewae’s claim.²⁸³⁵

19.5 A reserve for who?: Mackay’s investigation in 1884

Reureu was investigated by Commissioner Mackay and reported on by him in 1884. A copy of his report – the original was apparently destroyed in the parliamentary buildings fire²⁸³⁶ – was tendered in evidence in the Native Land Court in 1912, and fortunately was reprinted verbatim. Mackay gave a detailed review of the legal history of the reserve. It appears from this that no formal titles had been issued to the reserve by 1882:²⁸³⁷

In effecting a settlement Mr McLean found it necessary to allot the natives an additional quantity of land to the extent of 14,379 acres. Titles have been already issued for 30 of the reserves so made; and the

²⁸³¹ 1872 AJHR F8.

²⁸³² *Further Correspondence Relating to the Manawatu-Rangitikei Purchase* 1872 AJHR, Session I, F-8, 5.

²⁸³³ Judgment at (1911) 2 Tokaanu MB 105-118.

²⁸³⁴ (1911) 2 Tokaanu MB 110.

²⁸³⁵ (1911) 2 Tokaanu MB 111-112.

²⁸³⁶ So says the Native Land Court its long judgment on Te Reureu in 1912: see (1912) 63 Whanganui MB 251.

²⁸³⁷ (1912) 63 Whanganui MB 251. (The Court’s judgment, including Mackay’s report, consists of a printed version of the text originally published in the *Whanganui Herald*.)

investigation of the ownership to the remainder had been referred to the Commissioner under Royal Commission dated 22-5-82; and one of the chief objects of enquiry was to determine the title to or interest in any such reserve in such a manner than²⁸³⁸ will give effect to the intention for which the said lands have been set apart.

The issue that confronted Mackay was who the reserve was meant to be for – i.e. the four hapu, or alternatively whether the “reserve was a general one, made for the benefit of all the natives who had suffered through the decision of the Court in 1869, in regard to the Rangitikei-Manawatu block.”²⁸³⁹ There were four sets of claimants before Mackay: (a) Ngati Parewahawaha,²⁸⁴⁰ (b) Ngati Kahoro²⁸⁴¹ and Ngati Waiotahi; (c) Ngati Whiti;²⁸⁴² and (d) the four resident groups, i.e. Ngati Pikiahu, Ngati Waewae, Ngati Maniapoto, and Ngati Rangatahi. Ngati Parewahawaha and Ngati Kahoro, both Raukawa, argued that the reserve was made for all groups residing on the Rangitikei-Manawatu block. Ngati Whiti argued that they were the original owners. The four resident groups on the other hand claimed Te Reureu on the grounds of “possession and being the parties for whom the land was set apart by Mr McLean”.²⁸⁴³ This was obviously an important question. Reureu stood out from the other reserve blocks because of its size, so the suggestion that it was for general benefit had perhaps a degree of plausibility. Mackay nevertheless concluded that it belonged to the four resident groups. He began with the establishment of the reserve by Kemp in November 1870:

On 26-11-70 the Manawatu difficulty was finally settled at a large meeting held at Te Reureu; and Kemp, an officer of the Native Department, was instructed by McLean to lay off the reserve at Reureu for the resident natives to include their houses and cultivations along the banks of the river Rangitikei, but not to extend the inland boundary beyond the front range of hills. In carrying out his instructions Kemp found it necessary to lay off about 4000 acres at Reureu, at which the Provincial Government recommended,²⁸⁴⁴ and called on McLean for explanation. In reply to which under date 15-7-71 he stated that he had written to Kemp for explanation of his reasons for increasing the extent of land which was deemed sufficient for the tribes living opposite Mr Fox’s.

Mackay drew attention to McLean’s own comments on Te Reureu:

Writing on the subject of reserves in the Rangitikei-Manawatu block under date 6-3-72, McLean alludes to the Reureu Reserve as follows:-

One of the chief difficulties respecting boundaries has been the definition of the back boundary of the Reureu Reserve²⁸⁴⁵ The extent of land claimed by the occupants of this reserve, amounting to about 20,000 acres, was confined by me on a former occasion, within certain limits which were supposed to contain 3400 acres, but after my departure the natives claimed upwards of 10,000 acres, in addition to my awards. Kemp conceded 3000 acres more, but I have been able to narrow the reserve to 4400 acres by giving compensation in money and agricultural implements to the amount of £550.

2838 Sic – that?

2839 (1912) 63 Whanganui MB 251.

2840 Hapu of Ngati Raukawa associated particularly with Parewahawaha (Ohinepuhiawe) marae in Bulls.

2841 Hapu of Ngati Raukawa.

2842 Referring presumably to Ngati Whiti or Ngati Whitikaupeka, iwi of the Taihape region.

2843 (1912) 63 Whanganui MB 251.

2844 Sic – this may be a misprint. The context seems to indicate that the the Provincial Government must have demurred, or objected, rather than recommended, presumably because the reserve area was too large (as far as the Provincial Government was concerned, that is).

2845 In original newspaper text.

In further reference to the setting apart of Reureu Reserve, McLean, when moving the second reading of the Rangitikei-Manawatu Crown Grants Act, 1872,²⁸⁴⁶ alluded, inter alia, to the setting apart of Reureu Reserve. After detailing the action taken in setting apart reserves for the natives in other parts of the block, he states:-

In addition to the various other natives occupying these lands there were 200 or 300 from the Waikato who held the inland portions of the block. They had held these for upwards of 30 years, and although their rights were not recognised by the Native Land Court, they still claimed the right to occupy, and it was evident they were not to be easily dispossessed of the land they had held for so long a period of years. In fact, they were resolved to hold their own. Their demands were very excessive indeed, amounting to 18,000 or 20,000 acres of land, but eventually they were satisfied by 4400 acres being allowed to them, and by certain payments for abandoning their seaward cultivations.

A careful consideration of all the circumstances in connection with the setting apart of Reureu reserve, tends to show that the only logical conclusion that can be deduced from the various allusions made by McLean relative to this reserve, is that it was *intended exclusively for the persons who were in occupation of the land in 1870, to whom the houses and cultivations belonged* [emphasis added] There does not appear to be the least justification for the assertion that it was intended to be a general reserve in the lower part of the district, as all the reserves had been made for the resident natives in that locality. Neither could the enlarged area be considered to establish a contrary opinion as the increase was attributable to the fact of Kemp having intended a larger area in the reserve that²⁸⁴⁷ was first contemplated owing to the difficulty experienced in confining the demands to narrow limits.

The Ngati Whiti also pressed a claim on the basis of ancestral rights (like Ngati Pikiahu, Ngati Waewae, Maniapoto, and Ngati Rangatahi) but unluckily for them, Commissioner Mackay concluded that they (Ngati Whiti) did not have any such rights, Ngati Whiti claim on the grounds of ancestral rights was, in Mackay's view, misconceived.

The application of the members of Ngati Whiti hapu to be considered as owners of the reserve cannot be entertained as it was proved in evidence they left the district and located themselves at Patea²⁸⁴⁸ in 1848, over 20 years before Reureu Reserve was made.

Commissioner Mackay divided the land as follows:

	acres
Ngati Pikiahu and Ngati Waewae (to have between them in proportion to numbers)	2250
Ngati Maniapoto and Ngati Rangatahi (to have between them in proportion to numbers)	1960
Total as per original survey	1450

Mackay's decision, then, was that Te Reureu was deemed to belong to the hapu in occupation as at 1870 when the reserve was established, and was not for the general benefit of all those affected by the Rangitikei-Manawatu purchase. This was not by any means to be the end of the contention at Reureu.

19.6 Legal issues at Te Reureu

It is easy to see why there should be contention over Te Reureu. The core problem was the general inadequacy of the reserves that had been set aside. As lands in the Rangitikei and the Manawatu were

²⁸⁴⁶ Sic. This is a misprint. The Act was enacted in 1873 (37 Victoriae 1873 No 26).

²⁸⁴⁷ Sic – than?

²⁸⁴⁸ Given that this is referring to Ngati Whiti, the 'Patea' referred to is the 'inland Patea' district, so-called, i.e. the Taihape region.

surveyed off and allocated to settlers the scattered reserve areas were all that was left for Maori living in the region. It is hardly surprising that Ngati Raukawa hapu living in the area sought to gain admission to Te Reureu, and it is not surprising either that the resident occupants, having cleared and developed the land themselves, would have resisted this. Both sides were trapped in their own historical realities, the root cause being the initial reserve allocation in the wake of the Himatangi decision of 1869.

As European settlement spread across the wider region contention over the reserves within the various pre-emptive purchase blocks became more pronounced, a clear sign that there was increasing pressure on the reserve blocks. As well as the contestation over Te Reureu, similar issues arose in the 1880s amongst Ngati Raukawa's neighbours, Ngati Apa, in regard to the reserves within the adjoining Rangitikei-Turakina block, completed by McLean in 1849. (The area purchased covered about 260,000 acres, with about 38,000 acres of reserves, for which Ngati Apa were paid £2,500.) In 1888 there was a major battle in the Native Land Court over the Te Riwai reserve block. The case related to an area of just 3 roods, 32.9 perches [convert to metric] within the 900-acre reserve block.²⁸⁴⁹ The Court's decision, as it happened, turned out to be only advisory, as the Court had no jurisdiction over the reserve, "the proper steps for so bringing it under the Court's jurisdiction not having been taken".²⁸⁵⁰ The case reveals considerable dissension over who was entitled to have a share in the land amongst the resident Ngati Apa.

In the same year (1888) there was another courtroom collision over the Ruatangata reserve, also within the Rangitikei-Turakina Crown purchase block.²⁸⁵¹ Ruatangata was first investigated at Whanganui in January 1867.²⁸⁵² Hardly any information is recorded in the MB, as was not untypical at that time. The block was claimed by Aperahama Tipae on behalf of Ngati Apa. Kawana Hunia, who has featured on many occasions in this report, produced a copy of the Rangitikei-Turakina deed of 1849 and informed the Court that the land had been reserved to Ngati Apa in the deed.²⁸⁵³ The Court ordered that a title be issued to "Aperahama Tipae and the tribe of Ngatiapa to a piece of land at Ruatangata in the district of Whanganui containing 8650 acres". Because the land was a reserve as defined by the Native Lands Act 1866²⁸⁵⁴ the Court made a recommendation that Ruatangata should be "held by Aperahama Tipae in trust for the whole of the Ngatiapa tribe for the benefit of himself and the said tribe", recommending also that Ruatangata be inalienable. In the 1880s, however, there was complicated disputation over this block, resulting in litigation in the ordinary courts and ending up in the Court of Appeal, as well as in the Native Land Court, over whether the land was held by Aperahama Tipae on trust, part of a wider legal issue about the effects of a conflict between a Crown grant and the records of the Native Land Court.²⁸⁵⁵

²⁸⁴⁹ Judgment at (1888) 14 Whanganui MB 58-65; see also Boast, *Native Land Court*, vol 2, NLC145, pp 359-373.

²⁸⁵⁰ (1888) 14 Whanganui MB 58.

²⁸⁵¹ (1888) 14 Whanganui MB 296 a-c; see also Boast, *Native Land Court*, vol 2, NLC 146, 364-373.

²⁸⁵² (1867) 1 Whanganui MB 158-159 (28 Jan 1867) (Judge Smith, Wi Tako and Ihaia Whakamaru, Assessors).

²⁸⁵³ (1867) 1 Whanganui MB 159 (28 Jan 1867).

²⁸⁵⁴ Section 3 of the Native Lands Act 1866 defined certain categories of land to have the status of a reserve.

²⁸⁵⁵ *Attorney-General v Tipae* (1887) 6 NZLR 157 (CA). The case was concerned with the effects of a conflict between the grant and the Native Land Court certificate, essentially a forerunner of more recent controversies over conflicts between Land Transfer Act certificates of title and the records of the Maori Land Court (i.e. because a Crown grant and the first Land Transfer Act title relating to a particular parcel of land are one and the same). It was argued that the Crown grant for Ruatangata reserve was on trust, whereas there was no mention of any trust in the certificate. Tipae sought to have the Crown grant revoked for this reason, something that the Courts are always very reluctant to do. The Court of Appeal refused to revoke the grant, and held that the trust could be

The issue confronting the Native Land Court in 1888 over Ruatangata was essentially the same as that before Commissioner Mackay in the case of Te Reureu: was the land set aside for the customary owners of Ruatangata specifically, or whether it was held for the benefit of the whole of Ngati Apa? The Court, in the course of a lengthy and carefully reasoned judgment, divided the parties into groups. The first were the representatives of the hapu of the Ruatangata area specifically: “those who maintain with Aperahama Tipae that being members of certain hapus, from from remote ancestral times to the present have occupied the land and are now occupation, they have by virtue of such occupation and ancestral right a very large claim on the land”.²⁸⁵⁶ The second, “the party claiming under the deed of cession”, claimed that “on the cession of the land, and the reserve made for the whole tribe, the ancestral and occupational claims were abolished, a new tenure established, and that the rights of all the members of the tribe, except certain allowances for rank, are equal”.²⁸⁵⁷ The Court carefully analysed the wording of the 1849 deed, both in English and Maori, and concluded that at least on its face the Ruatangata reserve was set aside for all of Ngati Apa. The Court also took into account what had been said about the Rangitikei deed by Te Wunu Te Ahuru and Hamuera Raekoritia in a case relating to a neighbouring block, Matapihi No.2. The Court found that the land belonged to all of Ngati Apa, a very different outcome from Commissioner Mackay’s conclusions relating to Te Reureu.²⁸⁵⁸

We are of opinion that the clause in the deed of cession reserved the lands between the Wangaehu and Turakina Rivers for the whole of the Ngatiapa people and not for any particular section of that tribe; that such was the general belief up to the time this Block passed the Court in 1867. That the award in that case was in pursuance of the provision of the Deed of Cession²⁸⁵⁹ reserving those lands for the whole tribe and also the whole tribe was admitted as a matter of right and not from “Aroha”. Now, as to the question of the share of the land which ought to be awarded to each, we have decided that the lands between the Wangaehu and Turakina rivers were reserved for the whole tribe. We are also of opinion that it was intended and expected that the whole tribe would, after an interval of three years from the sale – time enough for all preparations for removal and settling – take up residence there. Had they done so, as they had a perfect right to do, no doubt the whole reserve would have been portioned out among the different hapus, in areas based, probably, on the numerical strength Had they done so, as they had a perfect right to do, no doubt the whole reserve would have been portioned out among the different hapus, in areas based, probably, on the numerical strength of each; the only advantage the occupants could claim, would be that by virtue of such occupancy they were entitled to the first choice, and would probably elect to retain so much of their own settlements as was consistent with the due allocation of the others. Owing to causes, into which it is unnecessary to enter, no general settlement of the land took place at the time intended or after, but the rights of the non-occupants were not forfeited thereby. They asserted those rights at the first opportunity, and when the whole were admitted into Ruatangata we cannot see that any one section of the tribe could claim a greater right than the other.

Moreover shares in the block were *deemed to be equal*:

All went in on equal terms. At the sale, on the general distribution of the purchase money, all shared alike irrespective of the extent of their ownership in the lands actually sold. All former claims were done away with and a new state of affairs established giving no one part of the tribe a greater right than the others; this was expected to be carried out, and was carried out so far as Ruatangata is concerned. What was done afterwards in the other parts of the reserve, where from various causes a different course was pursued, could not affect what had already been done in Ruatangata. It must be taken into consideration

enforced in the ordinary courts if need be. The Native Land Court decision in 1888 made the issue irrelevant in holding that the block was reserved for the whole of Ngati Apa in any event.

²⁸⁵⁶ (1888) 14 Whanganui MB 296; Boast, *Native Land Court*, vol 2, 368.

²⁸⁵⁷ Ibid.

²⁸⁵⁸ (1888) 14 Whanganui MB 296; Boast, *Native Land Court*, vol 2, 373.

²⁸⁵⁹ i.e. the Rangitikei-Turakina deed, 1849.

also that the terms on which this land is held are altogether different from the usual incidents of native tenure. Had the tribe settled on these lands at the time intended and certain parts set apart for each hapu, each man would be entitled to a certain share of the land and no more, and this share was all he could transmit to his descendants, however numerous. In allocating the shares we cannot, therefore, include the children of living parents as entitled to separate interests, the heads of families can only be considered. In the same way brothers and sisters claiming from a common parent, can only be allowed one share. We are of opinion that subject to these conditions the shares should be equal, and the lists of names will be arranged accordingly, when a partition of the land based on these grounds will be made, and partition orders made and issued when the requirements of the Native Land Court Act, 1886, and Amendment Act, 1888, are complied with. The holdings of the present occupants to be disturbed as little as possible, consistent with the due carrying out of this judgment.

In fact the disturbance to “the present occupants” must have been extremely significant.

19.7 Background to the 1912 Te Reureu decision: Judge Ward’s decision (1895) and the Appellate Court decision of 1896

No Crown grant for Te Reureu was made following Mackay’s 1884 report. According to the Native Land Court in 1912 the reason for this was because “Mr Mackay’s report, it appears, was never considered complete as to the list of names, as after he had closed his enquiry some natives followed him and stated that some names had been omitted from the lists handed in”. In 1895 Judge Ward conducted another investigation into Te Reureu, and encountered “much disagreement amongst the members of the four hapus”.²⁸⁶⁰ The main issue was a conflict between Ngati Pikiahu and Ngati Waewae on the one hand and Ngati Maniapoto and Ngati Rangatahi on the other, but there was also a dispute between Ngati Pikiahu and Ngati Waewae *inter se*. They disagreed about the names to be included in the lists, and apparently “a native who was so strenuous in his objections as to snatch away a list that was being handed in, had to be arrested and imprisoned for contempt of Court”.²⁸⁶¹

As noted, Mackay’s report was never given effect to, and no grant was issued.²⁸⁶² The case then went to the Native Appellate Court in 1896, which heard evidence on the boundary between Ngati Pikiahu/Ngati Waewae and Ngati Maniapoto/Ngati Rangatahi. The Appellate Court found in 1896 that there was no reason why either of the two contending sections should have a larger share of the reserve:²⁸⁶³

We must hold that the only take to the land was the gift by the Crown and we are satisfied from the documents on the file as well as from evidence throughout that the gift was made to the people then occupying – and given to those persons as owners in common of the whole reserve.

There is nothing to show that the Ngati Maniapoto and Ngati Rangatahi hapus should be restricted to the cultivations and kaingas they were occupying and using forming a comparatively small portion of the whole reserve; whilst the Ngati Waewae and Ngati Pikiahu, who were occupying an area not much larger, should have the whole of the remainder.

²⁸⁶⁰ (1912) 63 Whanganui MB 251

²⁸⁶¹ (1912) 63 Whanganui MB 251

²⁸⁶² So says the Native Land Court in the Reureu No 1 case, (1912) 63 Whanganui MB 251-252, at 251.

²⁸⁶³ As quoted at (1912) 63 Whanganui MB 251.

We are of opinion that all the members of the hapus actually [occupying when the reserve was made are entitled to *equal rights* [emphasis added] as amongst themselves]²⁸⁶⁴ but on making a partition regard will be had to the parts actually in use by the different hapus at the present time.

The Appellate Court decision was essentially to equalise interests at Te Reureu on the basis that all the members of the hapus actually occupying when the reserve was made are entitled to equal rights". The Appellate Court may have been hoping to reduce the contention amongst the four groups but the Appellate Court's decision seems to have made matters worse. The four groups were then told to prepare their lists of names, but the disputation continued.²⁸⁶⁵

Both factions having been admitted with equal individual shares, it became a question, apparently, which side could command most names in order to get the larger share. Lists were handed in and many names in all were objected to. Before the Court had proceeded to inquire into the objections to these names, the natives came to an agreement amongst themselves that Ngati Maniapoto and Ngati Rangatahi should take 1650 acres and Ngati Waewae and Ngati Pikiahu the residue, 2546 acres. (River encroachment having accounted for the balance of the original gift, 404 acres.) The area for each side having been fixed, the names were quickly passed, without further question; and the final order made for all the names handed in (including those at first objected to) to hold in equal shares.

It should be noted that the lists of names were prepared on the basis of *equal undivided shares*. Some time after this people belonging to Ngati Waewae and Pikiahu applied to the Chief Judge for a rehearing, arguing that names had been placed in the lists by mistake, out of order, and in duplicate; moreover some the names put into the lists were of deceased persons. The application for a rehearing was refused as "there was no jurisdiction to hear it,"²⁸⁶⁶ resulting in a petition to parliament and finally to a statutory direction to the Court to investigate the matter yet again.²⁸⁶⁷

The 1912 case was concerned with the relative interests of the owners of Te Reureu No 1 as directed by s 6(c) of the Native Land Claims Adjustment Act 1910, which directed that "[t]he Court shall have jurisdiction to enquire into the allegations made in petition 424, 1910, in respect of Te Reureu No. 1 block, and if necessary, to amend the list of owners of the definition of relative interests". The petitioners and applicants to the 1910 Court had argued that there was a host of problems with the Te Reureu No 1 ownership lists. It was complained that some of the names in the list were of persons who did not affiliate to Ngati Pikiahu or Ngati Waewae, or that they were of persons who did not reside on the land before 1870 (the cut-off date), that some of them were of persons who had never even seen Te Reureu, or had interests in other Rangitikei-Manawatu reserves, or "persons who died before reserve was given".²⁸⁶⁸

Again the question must be asked as to what was generating the constant disputation at Te Reureu. A number of factors were in play. Firstly the unusual tenorial history of the block yoked together kin groups from different parts of the country (although of course Ngati Raukawa and Ngati Maniapoto do have many ancestral connections). That the owners appear to have split into two groups, one basically Ngati Raukawa and the other basically Ngati Maniapoto is not altogether surprising. But probably economic issues were more important. Another factor is the value of the land at stake: as

²⁸⁶⁴ The two lines comprising the words in square brackets have been wrongly transposed in the newspaper – I have corrected this here.

²⁸⁶⁵ (1912) 63 Whanganui MB 251

²⁸⁶⁶ (1912) 63 Whanganui MB 251

²⁸⁶⁷ Native Land Claims Adjustment Act 1910, s 6(c), which gave the Native Land Court jurisdiction to enquire into the allegation made in Petition 424, 1910, in respect of the Te Reureu No. 1 block, and if necessary, to amend the list of owners of the definition of relative interests.

²⁸⁶⁸ (1912) 63 Whanganui MB 251-2.

emphasised at the beginning of this chapter, Te Reureu was a valuable parcel of high quality land close to the Rangitikei river and very suitable for dairy farming. Dairy farming requires both high capital investment and unremitting toil, making clear titles unusually important. A great deal was at stake. Finally there is the general issue of the decline of the Maori land base, which accelerated significantly in the 1890s. Maori people, still overwhelmingly living in the countryside, were facing a contracting land base just when the steep population decline of the 19th century was at last beginning to reverse itself. But there was another issue, as will be seen.

19.8 The 1912 Te Reureu No 2 decision

According to the Native Land Court in 1912:²⁸⁶⁹

The authority for the enquiry just held is Section 6(c) of the Native Land Claims Adjustment Act, 1910.

After analysing the various grounds of complaint (i.e. that persons were in the lists who had no right to be there) the Court emphasised that “[a]ll natives whose names are included in the order of Appellate Court have been represented at this inquiry; and the Court has heard evidence as to the rights of each individual whose inclusion in the order is challenged”. The Court then stated that it was reluctant to interfere with the Reureu titles:²⁸⁷⁰

The Court is, as a general principle, strongly averse to the reopening of matters long since settled under the authority of law, and would have grave doubts concerning the propriety of interfering with the title in this case, as established in 1896, but for this fact viz.: The terms of the Appellate Court’s interim decision state that the reserve is for “all the members of those hapus actually occupying when the reserve was made in equal shares,” while the final order includes a large number of names which had been challenged as having no right, but which were not objected to after the agreement between the rival parties as to area was arrived at. That Court made no enquiry to ascertain whether the names submitted had the qualifications stated in the interim decision to be necessary, because natives had not persisted in their objections to the names after the agreement was reached. It appears therefore that the natives themselves, not the Court, are responsible for the confusion....

However, the 1912 Court thought it was necessary to adjust the relative interests, and that “an injustice has undoubtedly been done to the real owners by the admission of large numbers of others for equal shares with themselves”.²⁸⁷¹

From a careful study of the evidence tendered at this enquiry, and the evidence on accord of the earlier investigations, the Court is of opinion that the terms of the interim decision of the Appellate Court are a fair and equitable determination of the question but that those terms have been departed from by the inclusion of certain names of persons who had not the qualification therein required; and that an injustice has undoubtedly been done to the real owners by the admission of large numbers of others for equal shares with themselves.⁵⁵

A number of complex adjustments to the Te Reureu titles were made, and drew up fresh ownership lists which were copied into the minutes. The effect of the 1912 Native Land Court decision was summarised as follows by the Appellate Court in 1929 as follows:²⁸⁷²

As a result of its inquiry the Court admitted into the title 7 persons who were not included in the Appellate Court’s order, stating that it was undisputed that that these persons were Ngati Pikiahu or Ngati Waewae and were residing on the block in 1870 as leading residents of those hapus and therefore that justice required that their names should be added to the list. On the other hand it struck out four duplicate names in the Appellate Court order the names of three persons shown to be dead and so held not to be entitled to inclusion.

²⁸⁶⁹ (1912) 63 Whanganui MB 251-2

²⁸⁷⁰ Ibid.

²⁸⁷¹ Ibid.

²⁸⁷² (1929) 10 Whanganui ACMB 503.

19.9 The 1929 Appellate Court decision in context

In 1929 Te Reureu No. 1 was back in the Native Appellate Court, which heard the appeal from the 1912 case. The appeal was heard at Whanganui and was presided over by two experienced judges, Chief Judge Jones and Judge MacCormick. It was heard under the Native Land Act 1909. The principal appellant was Taite Te Tomo who seems to have been calling for a full reinvestigation or readjustment of Te Reureu No.1. In its report on the appeal the *New Zealand Herald* described Taite Te Tomo as “one of the best known figures in the Rangitikei, and one of the finest contemporary Maori orators”.²⁸⁷³ Taite Te Tomo had been “heading the present agitation for a readjustment” and he and his supporters sought to have no less than 140 names taken out of the ownership lists.²⁸⁷⁴ Taite Te Tomo was opposed by Te Heuheu Tukino Iwikau of Tuwharetoa. According to the *New Zealand Herald*:²⁸⁷⁵

Opposing the petition is Iwikau, a grandson of the great chieftain whose name he perpetuates. He, also, is a well-known Rangitikei Maori. So widespread are the interests involved, and so numerous are the parties affected, that native interest interest in the Reureu is very great, and the hearing at Marton on March 16 is being keenly anticipated.

The appeal failed, but the Appellate Court made a number of important points in its judgment. (Taite Te Tomo is the subject of an entry by Angela Ballara in the *Dictionary of New Zealand Biography*.²⁸⁷⁶ It seems necessary at this point to try to drill deeper into quite why it was that the Te Reureu blocks, particularly Te Reureu No 1, proved to be so troublesome.

Why were there so many disputes and so much litigation in the Native Land and Appellate Courts? The value of Te Reureu as a well-developed and attractive farming area, and the unwise decision to allocate it to four separate descent groups were part of the reason. The groups of owners at Reureu affiliated to large and important iwi: Tuwharetoa, Ngati Maniapoto, and Ngati Raukawa. That may have been a factor. In fact the real problem, as the Appellate Court put it in this 1929 judgment, speaking of the problems with the Reureu titles, “this position was obviously brought about by the [Appellate] Court’s [1896] ruling of equal shares which meant that the hapu having most names would have the largest award”.²⁸⁷⁷ The problem with equal shares was obviously that relative interests at Te Reureu would easily become distorted within the community of owners, an recipe for tension and litigation, magnified by the wide kin connections of the groups involved. In the absence of a relative interests amongst the four hapu at Te Reureu, or at least among the two happu in Te Reureu No 1) each hapu would struggle to find as many names as possible amongst the residents who could be affiliated to the relevant ancestor: the more affiliated persons, the bigger the interest. Also Ngati Raukawa, Ngati Tuwharetoa, and Ngati Maniapoto overlap and interconnect to a marked extent, given that Maniapoto is a descendant of Raukawa in any case. These interconnections must have added to the difficulties.

The equality of shareholding derived directly from Te Reureu’s status as a Crown-granted reserve block. More care should arguably have been taken with the establishment of the reserves and the calculation of those entitled to interests. The original grantees would simply have been fixed by the land purchase officer, without involvement by the Native Land Court. The Court may have been an imperfect institution, but it did at least enable open and public hearings into land titles. Because Te Reureu derived directly from a Crown Grant, the only *take* that anyone had to this block, according to the 1896 Appellate Court decision, was the “gift” from the Crown. But Te Reureu was not a “gift” in any meaningful sense. It was merely a Crown-granted reserve. Reserves were an integral component of the consideration for the land that the Crown acquired, no different from the cash that was paid. Because of its status, persons with interests in Te Reureu theoretically derived them directly from the Crown, and thus (so it was reasoned) customary interests and customary titles could not arise. These distinctions

²⁸⁷³ “Native Land Dispute: Reureu Block Rights: Prolonged Litigation: Valuable Rangitikei Area”, *New Zealand Herald*, Vol LXIII, Issue 19248, 10 February 1926, p 13.

²⁸⁷⁴ Ibid.

²⁸⁷⁵ Ibid.

²⁸⁷⁶ Angela Ballara, “Te Tomo, Te Taite 1871/72?-1939, Ngati Tuwharetoa and Ngati Raukawa historian, politician”, *Dictionary of New Zealand Biography*, vol 4, 1998, 518-19.

²⁸⁷⁷ (1929) 10 Whanganui ACMB 502.

cannot have occurred to, and would have made no sense to, the Maori “vendors”. Surely their assumption would have been that the Crown was paying them money, and allocating them a reserve, because they *did* have customary interests.

But on this point, as on so many others, the Native Land Court was not consistent. Although the Appellate Court decided the interests were equal, in other cases arising under the Rangitikei-Manawatu Crown Grants Act the Court determined interests on the basis of Maori custom. The *Re Pekamu Ateara* case has already been discussed above. As noted, that case was also concerned with a Rangitikei-Manawatu Crown Grant, probably Maramaihoia. *Re Pekamu Ateara* was a succession case, where the issue was whether the succession was governed by “Maori custom” or by “the laws of New Zealand,” an issue which often arose with respect to the complex statutory provisions relating to Maori land interests (see s 2 of the Native Land Court Act 1894). It was argued that because the reserve, was, like Te Reureu, Crown-granted that Maori custom should not apply. This was essentially the same issue as to whether blocks in Te Reureu were equal or according to Maori custom, albeit put in a somewhat different way.

In *Pekamu Ateara* after a careful perusal of the Rangitikei-Manawatu Crown Grants Act 1873 (see above) Judge Rawson found (as cited above)²⁸⁷⁸ that the grants under the Act were “simply a return to the natives of land they claim [which] was not intended to pass under the deed of purchase”. Rawson did not see the Crown-granting of a reserve under the statute as an extinguishment of Native title in the reserve. Using modern Native title phraseology, the language of the statute was not, in my view, sufficiently “clear and plain” for that purpose. Judge Rawson, one of the most able of the Native Land Court judges (he later became the Native Trustee) is correct, and in my view the Appellate Court decision of 1896 is wrongly decided. It can be noted as well that Judge Rawson was of the view that in a number of other cases relating to Rangitikei-Manawatu Crown-granted blocks successors had been determined according to Maori custom.

Te Taite Te Tomo and his colleagues must have been puzzled as to how it could be that interests in Te Reureu No 1 were deemed to be equal and be according to Maori custom in other reserves. This discrepancy must be a significant part of the explanation for the constant litigation and trouble over Te Reureu. It appears that Taite Te Tomo wanted to have interests in Te Reureu recalculated *de novo* and on the basis of Maori custom. He was more than justified in trying to obtain this. The 1929 Appellate Court refused to allow the appeal, as noted. The Court could see there was something wrong with the Reureu titles but felt that it was now too late to return to any original status quo.²⁸⁷⁹

While we are not prepared to say that sitting as a Court of first instance we would have made quite the same definition of the relative interests as the lower Court for the reason that certain discrepancies appear, which however may be capable of explanation, yet as an Appellate Tribunal we cannot hold that they have been so clearly demonstrated to be wrong as to justify our setting them aside. Indeed no attempt has been made to show this.

Moreover, there was another problem. Much of Te Reureu had by this time been sold.²⁸⁸⁰

Moreover apart from the fact that about 1/6 of the block has been sold, it is far from certain that any benefit would result to the defendant’s hapu if the title were reinvestigated *de novo*. Therefore having regard to the comparatively small interest awarded to the persons to whom the appellant objects and the very great expense that would be curtailed by a fresh investigation we would be quite unable to direct that, even if we had power to do so. It is quite clear, however, that we have no such power. The legislature does not give that power to the Native Land Court and it follows that this Court as an Appellate Court also has not the power.

2878 (1909) 60 Whanganui MB 262-3.
2879 (1909) 10 Whanganui ACMB 505.
2880 Ibid.

19.10 Summary and conclusions on Te Reureu

Again, the core problem was the Native Land Court's unreliability and inconsistency, as it was with all the problems with Maungatautari and with Horowhenua. In the case of Reureu the Appellate Court decided that shares were equal in 1896, and then corrected itself in 1929. The 1896 decision itself conflicted with other Native Land Court decisions heard around the same time. Many critics of the Native Land Court have condemned it as inflexible and dogmatic. It can be more plausibly argued that the problem was its hesitancy, proneness to error and confusion, arising from the near-impossibility of the task it had been directed to carry out while at the same time lacking the resources and expertise that it needed.

20. The Judicial Construction of Ngati Raukawa History in the Waikato: A Summary

20.1 Introduction

I have done my best to locate the principle Land Court cases involving Ngati Raukawa and Ngati Raukawa hapu in the Waikato, the King Country, and the Taupo region. This is to reinforce the point made above that claims by Ngati Raukawa to lands in these regions were routine, and were repeatedly inquired into by the Native Land Court. This shows the inconsistencies between the Land Court's approach in the Maungatautari cases discussed in preceding chapters and with a large array of other cases in the same region.

20.2 Principal Cases:

(a) *Pukekura, Maungatautari and Puahue* (1868) 2 Waikato MB 93-95, 9 November 1868, Judge Rogan, Hemi Tautari, Assessor (Raukawa claims to Maungatautari blocks are unsuccessful or withdrawn; blocks allocated to Ngati Haua and other groups on the basis of conquest of Marutuahu and abandonment by Raukawa.)

(b) *Tokoroa* (1880) 6 Waikato MB 4-6, 18 June 1880, Judge Symonds and Hari (Hare, or Hori) Riwhi, Assessor (Investigation of title to Tokoroa block of 51,500 acres, allocated to Raukawa hapu and others.)

(c) *Patetere* (1881) 6 Waikato MB 114, 2 March 1881, Judge Symonds, Hori Riwhi, Assessor 844-847). (Crown application to determine relative interests in Patetere area between Tokoroa and Rotorua, appears to mainly involve Raukawa hapu.)

(d) *Ngati Kauwhata Claims* (1881): Puahue, Pukekura, and Maungatautari, [1881] AJHR G2A, 14 March 1881, Judge Brookfield and Henry Tacy Kemp, Commissioners (Special inquiry into Ngati Kauwhata claims in the Maungatautari area; Ngati Kauwhata are unsuccessful on the grounds that they were part of Raukawa – which Kauwhata denied – and Raukawa rights in the area had been extinguished when they went to Kapiti).

(e) *Whakamaru and Maungaiti* (1881) 7 Waikato MB 182-184, 23 April 1881, Judge Symonds, Judge Macdonald, Hare Riwhi, Assessor (Investigation of title to large block of 90,000 acres between Tokoroa and the Waikato River, allocated to Raukawa hapu).

(g) *Matanuku* (1882) 7 Waikato MB 370-375, 10 October 1882, Chief Judge Fenton, Judge Williams, Hori Riwhi Assessor (Block of 18,884 acres between Tokoroa and Waikato River: allocated to Raukawa hapu.)

(h) *Whakamaru Rehearing* (1883) 11 Waikato MB 93-95, 13 April 1883, Chief Judge Macdonald, Judge Puckey, Herewini Te Toko, Assessor (Rehearing of Whakamaru case; disputation between Raukawa hapu).

(i) *Maungatautari* (1884) 13 Waikato MB 65-76, [1885] AJHR G3, 3-7, 5 September 1884, Chief Judge Macdonald, Judge Puckey, Waata Tipa, Assessor (Investigation of title to Maungatautari block; relationship to area investigated in 1868 is unclear; principal claimant is Rewi Maniapoto claiming for Raukawa, Raukawa are unsuccessful and block goes to Ngati Haua and other groups.

- (j) *Tauponuiatia* (Initial Determination), (1886) 4 Taupo MB 68, 22 January 1886, Judge Scannell, Judge Puckey, Nikorima Poutotara, Assessor (Fixes ancestors for Taupouuiatia and all its subdivisions as Tuwharetoa and Tia; Hitiri Te Paerata of Raukawa asks for Raukawa to also be included as an ancestor, but the Court does not do so.)
- (k) *Taupouuiatia West* (1886) 4 Taupo MB 353-254, 12 March 1886, Judge Scannell, Judge Brookfield, Nikorima Poutotara, Assessor (Hitiri Te Paerata appears and counterclaims for Raukawa and also gives very extensive evidence; Court vests land in hapu identified by Te He Heu Horonuku).
- (l) *Maraeroa* (1885) 5 Taupo MB 82-83, Judge Scannell, Judge Brookfield, Nikorima Poutotara, Assessor (Partition of Taupouuiatia West, Ngati Matakore, Ngati Whakatere, Ngati Potu and Ngati Pikiahu counterclaim, Court vests block in Ngati Karewa as descended through Tuwharetoa.)
- (m) *Rohe Potae (King Country/Aotea)* (1886) 2 Otorohanga MB 55-70, 23 October 1886, Judge Mair, Paratene Ngata Assessor (Court allocates block to the ‘five tribes’, including Raukawa; Court holds also that “the bulk of Ngatiraukawa and Ngatiwhakatere did at different times on the invitation of their relative, Te Rauparaha, go to Kapiti and acquire land there, but some remained and kept the fire burning, while those who at various times returned were permitted to re-enter and enjoy full possession without hindrance or interference: *ibid*, 65-66).
- (n) *Pouakani* (1887) 4 Judge Scannell MB 288-9. (Relates to Pouakani, large section of Taupouuiatia West)
- (n) *Pouakani* (1891) 26 Waikato MB 195-209, 7 May 1891, Judge Puckey, Huirama Tukariri, Assessor (**vol 2 NLC []**). (Reinvestigation of Pouakani section of Taupouuiatia West pursuant to s 29 Native Land Court Acts Amendment Act 1889: judgment very difficult to follow; block is allocated to Raukawa hapu and hapu of mixed Raukawa-Tuwharetoa ancestry).
- (o) *Wharepuhunga, New Zealand Herald*, 18 May 1892, Judge Gudgeon, P Mataiwhea, Assessor (**vol 2 NLC []**). (Relative interests decision relating to Wharepuhunga (133,720 acres), partition of Rohe Potae block; allocated to Raukawa; cases is concerned with relative interests of Raukawa people who remained in the region and of those who migrated to Kapiti).
- (p) *Rangitoto* (1898) 31 Otorohanga MB 365-381, Judge Gudgeon, Pirini Mataiawha/Mataiwhea, (Contested hearing between Ngati Whakatere and Ngati Matakore relating to Rangitoto, largest subdivision of Rangitoto-Tuhua; block is allocated to Ngati Matakore; Judge Gudgeon decides that a principal reason favouring the Ngati Matakore case is Ngati Whakatere’s move to Kapiti.)

21. River boundaries and the Himatangi block: the 1941 Himatangi 3A1/Tuwhakatupua case

21.1 Introduction

Although this issue is not formally a part of the research commission, I feel it is important to draw to the attention of the Tribunal and the claimants to an important decision of the Native Land Court relating to the title of the bed of the Manawatu River decided in 1941. As far as I am aware this case has escaped the attention of commentators so far. The decision makes it clear that where a parcel of Maori freehold land is bounded by a river (the Manawatu, for instance), the boundaries of the Maori land block include the bed of the river *ad medium filum aquae*. Most practitioners in the field of Maori land law, such as myself, have assumed all along that this must be the case, as evident from the various decisions relating to the Whanganui River (discussed below), but even so it is significant to have a lengthy decision of the Native Land Court setting out this principle in full. It is also to be noted that the parties involved in the case were Ngati Raukawa, who were the owners of Maori freehold land on either bank. The hapu of Ngati Raukawa who were involved in this case were the long-recognised hapu of Himatangi: Ngati Rakau, Ngati Te Ao (or Te Au) and Ngati Turanga. The decision is included in Vol 2 (Appendices) of this report.

This 1941 case, as noted, was concerned with the ownership of river beds. Two Maori land blocks, Himatangi 3A1 and Tuwhakatupua were on opposite sides of the Manawatu river. The issue was whether the titles to the two blocks were bounded by the shore of the river, or whether the titles extended to the middle of the river (“*ad medium filum aquae*”). Declarations were sought from the owners that their land titles extended to the mid line of the Manawatu. The Native Land Court concluded that the Maori Land Court titles to the two riverine blocks definitely extended out to the mid line of the Manawatu. The relevant section of the Manawatu river at Tuwhakatupua and Himatangi was not tidal (that is, it was not foreshore), and neither was it navigable. It was important that the river was not “navigable” because the beds of “navigable” rivers were vested in the Crown by s 14 of the Coal Mines Amendment Act 1903. This provision, although technically repealed, is preserved by s 354 of the Resource Management Act 1991. The effects of the statutory vesting of the beds of “navigable” rivers in the Crown was important in the Native Land Court and Native Appellate Court decisions relating to the Whanganui River and has recently received the sustained attention of the Supreme Court in the two *Paki v Attorney-General* decisions of 2012 and 2014.²⁸⁸¹ The “navigability” issue was not relevant to this case, which was concerned strictly with the applicability of the *ad medium filum aquae* rule to Maori freehold land blocks.

The Native Land Court was of the view that the traditional distinctions in English law between the bed of a river and the water flowing over it had little relevance to Maori perceptions: “[T]he Native mind would not so much conceive the river as the soil beneath it but rather as water and the extent of the space covered or occupied by that water.”²⁸⁸² This difference in perception did not of itself affect the outcome: “the result would be the same in effect however as our view of our view of the ownership of the land of the river.”²⁸⁸³

21.2 Himatangi and the Himatangi Crown Grants Act: A Reprise

²⁸⁸¹ *Paki v Attorney-General* [2012] NZSC 50, [2012] NZLR 277; *Paki v Attorney-General (No 2)* [2014] NZSC 118, [2015] 1 NZLR 67. On the *Paki* decisions see 611-615.

²⁸⁸² (1941) 33 Wellington MB 301.

²⁸⁸³ *Ibid.*

Another issue that arose in this case was the effect of the Himatangi Crown Grants Act 1877. This enactment was not relevant to Tuwhakatupua, but was important with respect to Himatangi 3A1. It may be helpful here to give a brief summary of the complex legal history of Himatangi, which has been traversed in the earlier chapters of this report. The Himatangi block was originally investigated in 1868 under s 82 of the Native Lands Act 1865.²⁸⁸⁴ The 1868 decision was a pivotal one, as it in effect related to customary interests within the entirety of the vast Rangitikei-Manawatu purchase block (of which Himatangi was only a relatively small subdivision). The Court (Judges Smith and Rogan) found that interests in the Rangitikei-Manawatu block were shared between Ngati Raukawa and Ngati Apa, but found also that the Ngati Raukawa interests in Rangitikei-Manawatu were held not by Ngati Raukawa as a whole but by the chief Parakaia Te Pouepa and his co-claimants. The Court heard a great deal of evidence about customary interests at Himatangi, evidence which made it clear that the resident hapu were Ngati Te Ao (or Te Au), Ngati Rakau, and Ngati Turanga. The 1868 case was swiftly followed by the second Rangitikei-Manawatu case heard at Wellington in 1869, the Court presided over by Judge Maning and Chief Judge Fenton, which came to more or less the same conclusions as had been earlier reached in the Himatangi case of 1868 (1869).²⁸⁸⁵ Shortly after the 1869 decision the Crown issued a proclamation, gazetted on 16 October 1869, extinguishing the Maori customary title to the entirety of the Rangitikei-Manawatu block, with the exception of certain reserves set out in an Appendix to the 1869 decision, leaving uncertain the status of Himatangi itself, the subject of the earlier 1868 decision. The two decisions and the gazettal provoked widespread resistance, principally by Ngati Raukawa, and subsequently a programme of mass resistance by Ngati Raukawa and other groups when the Wellington Provincial Government attempted to survey the boundaries of the Rangitikei-Manawatu block and the various reserves. As seen in earlier chapters, the situation became of such seriousness that the central government intervened, and McLean, the Native Minister, assisted by H T Kemp, proceeded to have numerous meetings with Maori people in the Manawatu to arrange a settlement. The Manawatu crisis also strained relationships between the Wellington Provincial Government and the national ('General' Government, the former critical of what it perceived as McLean's excessive generosity towards Ngati Raukawa and the other groups in the Manawatu. There were further negotiations with regard to Himatangi (the 1868 block), a block of about 11,000 acres of which somewhat less than half had been allocated to Parakaia and his co-claimants by the 1868 (Rogan-Smith) decision. In the course of his negotiations with Manawatu Maori, McLean had recommended that the whole of Himatangi should be awarded to the groups represented by Parakaia Te Pouepa: Ngati Te Au, Ngati Rakau, and Ngati Rakau, all three groups being hapu of Ngati Raukawa. The claim of these three hapu to Himatangi was taken up Walter Buller. By 1876 the status of Himatangi still remained unclear, but Buller pressed the claims of the three affected hapu very effectively, and in the end the Himatangi problem was resolved by legislation. The Himatangi Crown Grants Act 1877 provided that the whole of the Himatangi block (the 11,000 acre block before the Court in 1868) should be returned to the three hapu, in effect as a reserve within the Rangitikei-Manawatu block. Section 3 of the 1877 Act gave the Native Land Court power to ascertain the relative interests of Ngati Te Au, Ngati Turanga, and Ngati Rakau in Himatangi, which following an Order in Council, Judge Heaphy proceeded to fix in November 1879.²⁸⁸⁶ Judge Heaphy partitioned Himatangi into five strips running east to west (Himatangi 1-5) which were allocated amongst the three hapu, Ngati Te Au (one subdivision), Ngati Turanga (two), and Ngati Rakau

²⁸⁸⁴ (1868) 1C Otaki MB 717-723

²⁸⁸⁵ Fenton, *Important Judgments*, 101-108.

²⁸⁸⁶ (1878) 4 Otaki MB 138.

(two). This 1941 case was concerned with Himatangi 3, but as the Court noted, “the circumstances surrounding all the divisions are alike and apply equally to each division”.²⁸⁸⁷

21.3 Analysis of the River Title Issue in the 1941 Case

The complicated legal history of Himatangi was very relevant to the outcome of the case and the Native Land Court’s reasoning. But the two riverine blocks had somewhat different histories, because the Tuwhakatupua title derived from a Native Land Court title investigation directly, while Himatangi 3A1, although also deriving from a Land Court title investigation (the Himatangi case of 1868) was most immediately derived from the Rangitikei-Manawatu purchase deed and the Himatangi Crown Grants Act 1877. With Tuwhakatupua, the issue in this case was whether the Native Land Court when investigating the original Tuwhakatupua title would have been assuming that the *ad medium filum* rule applied, whereas in the case of Himatangi 3A1 it was the Rangitikei-Manawatu Crown purchase deed which had to be interpreted, and in addition the 1877 statute.

We can begin with Tuwhakatupua and the Native Land Court. The 1941 Court noted that the individualization of Maori land arose from the English common law rules relating to property as well as from New Zealand statutes. The 1941 Court thought that at the time when the riparian blocks were first investigated it is “a fair and reasonable assumption” the judge “at least subconsciously” would have assumed that title to a riparian block would extend to a river bed *ad medium file aquae*.²⁸⁸⁸ Moreover, the *ad medium filum* rule was not dissimilar from Maori conceptions of property, “as it was not unusual for the Natives to look upon the rivers traversing or bounding their as being allied to the possession of the land on their banks as a means of access to the land and as a source for food supplies”.²⁸⁸⁹ Essentially there was no difference between how Maori perceived rivers and how they would have perceived forests: both provided food resources for those whose lands were attached to them.

The Native Land Court analysed carefully whether or not the investigating Court would have acted on the assumption that titles to riverine blocks would have extended to the mid-line of the river, and concluded that the investigating Court must have acted on that assumption. This is an important ruling, and stands for the proposition that all investigated Maori land blocks bounded by a river extend include the river bed *ad medium filum*.

With regard to Himatangi, the issues were different. As far as the Rangitikei-Manawatu Crown purchase deed was concerned, the Court thought it was certain that “the Crown representatives would certainly assume that the purchase covered the rights of the Natives to the soil to the middle line thereof”.²⁸⁹⁰ Moreover, “it is equally certain that they would have the presumption *ad medium filum aquae* in their minds so far as that presumption might properly apply”.²⁸⁹¹ This, too, is an important finding, and means that Crown purchase deeds bounded by rivers extinguish the customary title (inter alia) to the mid lines of any such rivers. It followed that when the Himatangi block was returned to Maori ownership subject to the Himatangi Grants Act, the Crown must be deemed to have returned what it acquired, and so the bed of the Manawatu River where it bounded the Himatangi block was also returned *ad medium filum aquae*. In the Court’s words:²⁸⁹²

²⁸⁸⁷ (1941) 33 Wellington MB 302.

²⁸⁸⁸ Ibid.

²⁸⁸⁹ Ibid.

²⁸⁹⁰ (1941) 33 Wellington MB 302.

²⁸⁹¹ Ibid.

²⁸⁹² (1941) 33 Wellington MB 302.

Now whatever the Crown acquired was given back to the Natives when the Himatangi Block was returned to them, so that Block was returned to them, so that if the Crown acquired the land *ad medium filum aquae* it is suggested then it returned to the Natives everything that it had previously obtained from them – that is the land *ad medium filum aquae*. The river at the place affected is neither tidal nor navigable – there does not therefore appear to be any good reason why the Crown should not pass with the possession of the soil of the river in this case – but if the Crown acquired possession of the river then it gave it back to the natives and it would be included in the Crown Grants issued pursuant to “The Himatangi Crown Grants Act Act” 1877. There was nothing to rebut the presumption and thus no reason to find that grants made under the Himatangi Crown Grants Act did not pass title to the mid-line of the river.

21.4 Why this case is important

The 1941 Himatangi-Tuwhakatupua is important as the final instalment in the long tenurial history of the Himatangi block, the Himatangi block being a central focus of this report. It also shows how the after-effects of a Native Land Court title investigation could have profound importance for Maori landowners many years after the original investigation of title. The case is a final demonstration, if a final demonstration were needed, of the pivotal significance of major Land Court title investigations to Maori people generally and to Ngati Raukawa and its constituent hapu in particular

22. Concluding remarks

It is not possible to summarise a large report such as this, based as it is on years of primary research, to a few short conclusions. I have tried to write the fullest and most completely-referenced account that I could, but it will up to counsel involved in this inquiry to make whatever use of this report they wish, and to translate its arguments and conclusions into the formal discourses of Treaty breach and legal submissions.

Nonetheless, there are some broader themes that have underpinned this report as a whole, and it may be helpful if I restate some of these here. Firstly, most obviously, and most importantly, the effects of the Native Land Court – considered as Court and as process – were colossal, and impossible to underestimate in the case of Ngati Raukawa. It was the Native Land Court which found (in effect) in favour of the Crown in the Rangitikei-Manawatu and Himatangi cases, the Native Land Court which found against Ngati Raukawa and Ngati Kauwhata in their attempts to gain legal recognition for their interests in the Maungatautari lands, and it was the Native Land Court which found against Ngati Raukawa in the Horowhenua case. The effects of these pivotal decisions took decades to become fully apparent, and Ngati Raukawa's efforts to correct or mitigate the consequences of these decisions took a vast amount of effort and constitute a major component of the modern history of Ngati Raukawa. That history cannot be understood without taking into account the Native Land Court decisions discussed in this report.

This report has taken the reader on a lengthy and complex journey through a sequence of Native Land Court cases relating to Ngati Raukawa, Ngati Kauwhata and Ngati Whakatare.

One of the purposes of this report is to synthesize (or attempt to synthesize) the early history of Ngati Raukawa and the other groups in two different regions, the southern Waikato, in particular the region traditionally known as “Maungatautari” in the widest sense, an imprecise expression; and secondly, in the region referred to, with equal imprecision, as “Kapiti”. Both of these place-names represented larger regions, for “Maungatautari” does not mean just the mountain of that name, and nor is “Kapiti” confined to Kapiti Island. The idea underpinning this report was to give full attention to Ngati Raukawa's Land Court experiences in both of these regions.

When first embarking on this project, which is one of the most time-consuming, challenging, and complex of any I have attempted, my first thought was that it could be constructed around some basic organising ideas. This framework included my belief that Native Land Court cases, and certainly the most important ones, were often an inquiry into *history* – into events that had at times happened decades, or much longer periods sometimes, before the date of the hearing – one example of this history being the cycle of war and conflict between Ngati Raukawa and their hapu, and that of their related and connected groups such as Ngati Kauwhata and Ngati Whakatare, with other Waikato peoples including Ngati Haua, Ngati Apakura, Ngati Koroki, and others. Apart from “Maungatautari” the other principal zone of conflict and engagement was “Kapiti” (in the widest sense), likewise a history of conflict, but also immigration, settlement, and conquest by groups from outside the region – the groups being Ngati Toa, Ngati Tama, “Ngati Awa”, Ngati Raukawa and associated groups (Ngati Kauwhata, Ngati Whakatare and others). This history of migration and settlement has been described in the Native Land Court, and sometimes also in manuscript and printed publications, by many people who had been participants in the events they described. These events included the migrations themselves, all of which were complex and had eventful histories, the process of settlement, political relations between iwi and hapu, and battles at Haowhenua, Kuititanga, and elsewhere.

One way of making sense of the large amount of material in this report is to treat the principal Native Court cases discussed in the pages as inquiries into history, i.e. as historical inquiries. Mostly the Native Land Court has been criticized from the standpoint of its engagement with Maori customary law. That is certainly a key issue. But it can also be examined critically from the perspective of its engagement with Maori history. How reliable was its construction of Maori traditional history, and to what extent did the Court build up its own standard narratives in various cases and to what extent were these recycled in other cases? Did the Court get its historical narratives wrong and did it have to revise them? What can be said, is that the Court not only interpreted and synthesized Maori custom, it also interpreted and synthesized Maori custom itself (the two certainly interconnect). As this report has (I hope) shown, the Court did, for example, create a narrative of events in the southern Waikato in the 19th century, and it did rework and re-use this framework in a number of cases, much to the detriment of Ngati Raukawa and Ngati Kauwhata.

In this report I have tried to provide as thorough and as fully-referenced narrative of this history as I can, but also the history of the Native Land's engagement with the history (my report is a narrative about narratives). I have tried also to synthesise and understand the traditional history itself, using the techniques of ethnohistorical research using the Native Land Court records as source material, techniques which were originally pioneered by Dr Angela Ballara. I have tried to make the process of inquiry into the Court records as methodologically rigorous as I can by tabulating and summarising all of the evidence in the main Land Court cases, by trying to make sure that the sources used were reliable and full records of what was actually said and argued, and by citing the original sources fully and comprehensively. This has meant that this report is full of lengthy extracts from primary sources, but in my view this was essential, because the claimants themselves and those charged with making arguments in the Waitangi Tribunal on their behalf, needed and deserved to have a full and reliable foundation to support their claims and arguments. I use the word 'foundation' deliberately, as it is not my role to provide neatly-packaged arguments and submissions but an evidentiary foundation for argument.

Readers of this report will no doubt come away from the text with a strong impression of the sheer complexity of the traditional history and also of the complexity of the Native Land Court's engagement with that history. Such an impression of complexity would be correct, as there is no easy way to package and simplify this history or reduce it to a few basic points. If the impression of complexity is the principal impression one has today, similarly the history would have been no less complex to actually live through. What can it have been like for Ngati Raukawa people to live through the endless maze of litigation, argument, and politics in which the Horowhenua lands became entangled? – just to take one example. The same is no less true of the lands at Maungataurari and of the Rangitikei-Manawatu block and its various reserves.

No less complex was the law relating to Maori lands in the 19th century. A very clear demonstration of its intricacy is the sheer power and influence that Walter Buller was able to achieve because of his mastery of the intricacies of Maori land law, a terrain on which no one, Maori or Pakeha, was able to challenge him. It will be recalled that Sir John McKenzie, the powerful Minister of Lands in the Liberal government had to admit that Buller was “too much for everyone concerned in this matter” [Horowhenua].²⁸⁹³

He has had too long an experience and gained too much knowledge of Native affairs and doing Natives out of their land and in this case has succeeded admirably all along. With his knowledge and his purse of gold he has been able to accomplish wonders.

²⁸⁹³ McKenzie to Seddon, 11 August 1897, cited Galbreath, Walter Buller, 33.

Buller was an extraordinary figure, a barrister who was a complete master of litigation procedure, and with an unrivalled grasp of every intricacy of the Native Lands Acts. This legal facility and knowledge was certainly something that made Buller “too much”. This is a testament to the uncertainty and complexity of the law in itself.

Many Maori groups in the 19th century had encounters and difficulties with the Native Land Court and with the Native Lands Acts. What, though, is the relationship between the state, “the Crown,” and the Native Land Court? The Waitangi Tribunal does not review or overturn decisions of the Native Land Court, The Tribunal is not an appellate body. The Tribunal deals with the Native Land Court as a historical process, and tends to avoid reviewing individual decisions. One possible way of sheeting home the Native Land Court system to “the Crown” is to argue that the Court actually *is* “the Crown”, merely an agency of the state, hardly deserving the name of a court of law at all. Some may wish to argue exactly that in this inquiry. The Tribunal has usually taken the position that because the state was responsible for the Native Lands Acts as an emanation of government policy then the policy itself and the legislation giving effect to it can be seen as Crown actions. This is just as true of the PkM inquiry district as anywhere else in the country. But what is distinctive about the cases studied in this report is that the Crown was the *direct* opponent of the iwi and hapu of Ngati Raukawa and Ngati Kauwhata. This makes their engagement with the Court somewhat unusual and atypical and gives their experience a distinctive character. In the Himatangi and Rangitikei-Manawatu cases, especially, the Crown had a *direct* and *immediate* stake in the outcome of the case. This is a pivotal point in my view.

One aspiration of this report is to document three massive cycles of case law in the Native Land Court (Himatangi/Rangitikei-Manawatu, Kukutauaki/Horowhenua, and Maungatautari) as richly and as thoroughly as the available source materials allowed. This involved in turn analysing and summarising the evidence in these cases as carefully as I could.

A last aspect of this report that can be noted here is that strenuous efforts have been made to make available to all parties and the Tribunal itself as complete a version of the evidence given in the cases as was possible. The point has been made earlier in this report that the newspaper records of the Himatangi case, the biggest of the cases in terms of volume of evidence, are on the whole much fuller than what is found in the Court minute books. Much time and effort has been invested in transcribing the newspaper records and in putting them into a sequence; it is hoped that this work will be judged useful.