

## CHAPTER 9

# THE MAORI LAND COURT IN HAURAKI, 1865–71 – A CASE STUDY

### 9.1 Introductory Notes

This section provides a case study of investigations of title by the Maori Land Court in the Hauraki region, from 1865 to 1871.<sup>1</sup> The points that have been raised in the previous two sections will be further illustrated and discussed. Other issues or points of interest will also be made.

The Hauraki region has been chosen simply because the author has a general understanding of the history of this area.<sup>2</sup> It is, moreover, a region with an extremely vital and dynamic Maori history and it has a complex history throughout the colonial period. A brief review of the region's background will shortly be provided.

The minute books of the Maori Land Court provide one of the most important sources of information on the question of Maori land tenure and the way the court investigated that tenure. They contain a wealth of statements by Maori well-versed in their cultural practices (it should be stressed that most court sittings heard evidence in Maori, which was then translated). These statements are often accompanied by whakapapa – histories that had been passed down through the generations, deliberations on more recent events, and indications of land usage and occupation. They also contain explanations or discussions on the 'general rules' of tenure. The reader's attention should be directed to a recent collection of references to such statements.<sup>3</sup>

In terms of the evidence presented before the Maori Land Court, it can be argued that despite obvious differences of culture, the court was an environment not

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1. The transcription of the minute books has been done as accurately as possible. However, mistakes may exist. These could either be the result of poor handwriting, bad spelling in the original text, or entirely the author's fault. Moreover, the research done in these minute books has been at best cursory (three weeks), and comments or arguments about the material discussed in the minute books should be treated with caution. Material has been selected to provide examples – interesting cases that illustrate certain points, show the use of particular types of evidence, the existence of certain contradictions or conflicts, and so on. This report does not in any way claim to have the authority to support particular interests, and the discussions in this report should not be used to do so. It is the operation of the court, the institutional culture if you like, that is under scrutiny, not the 'truth' of particular tribal claims to rights.
  2. See Hutton (1995).
  3. 'Customary Maori Land and Sea Tenure: Nga Tikanga Tiaki Taonga O Nehera', Wellington, Ministry of Maori Affairs, 1991

## 9.1 The Crown's Engagement with Customary Tenure

unfamiliar to Maori. It has been well-documented that disputes over tenure were traditionally resolved in a public venue (that is, the marae), that issues were debated, that different rights were demonstrated, that each side took turns in debate, replying to the case of the other. This is not to say that Maori confused the court with their own marae (that would be foolish), but that the Maori cultural milieu lent itself to debate and contestation, the recitation of history and genealogy, and the striving through argument to assert superior rights. It was perhaps no wonder that a common objection to the court was the employment of Pakeha legal expertise:

The Natives are almost universally opposed to the employment of English counsel in contested cases. They say that these know nothing of Maori law and custom, and only protract the sittings and increase the expenses of the court. If one side employs them, the other must do the same; but they would like to see them altogether excluded from practising in the Court.<sup>4</sup>

This would suggest that at times Maori captured the expression of evidence in the court environment, presenting what they considered valid arguments and contesting what was considered false. Indeed, as will be detailed, a close reading of the early minute books of the court shows a wide range of evidence, stories, and the like, many of which appear to reply to distinctly Maori concerns.

Furthermore, the minute books reveal an interactive aspect of the court environment. The judge sometimes asked for evidence or comment from the floor, individuals spoke as representatives of wider groups, interjections occurred, and sometimes the evidence of individual speakers was harshly criticised. Indeed, it would be rash to suggest that Maori only said what the judges wanted to hear (although there is certainly a case for this position after approximately the first decade of the court's operation).

Therefore, we should take very seriously statements made in early court sittings as illustrative of more general principles of Maori land tenure. However, this should not be confused with the weight that the court may have given to such evidence.

Moreover, the presentation and reception of evidence may have been the only part of the court process that reflected Maori practice. As Smith pointed out, the court took a radical departure from Maori custom when apportioning 'relative interests' in land and when determining succession. Indeed, as commented in the previous section, when the court procedures were completed and a number of Maori had received individual title to fee-simple land, the legal nature of their relationship to that land was changed fundamentally, as was their economic and political relationship with members of their community.

What follows, therefore, is the product of a close reading and analysis of the first four minute books of both the Hauraki and Coromandel Maori Land Court (while broadly speaking the entire region was known as 'Hauraki', the court kept separate records for sittings around Coromandel). A selection of cases have been taken to

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4. Colonel Haultain to McLean, 'Papers Relative to the Working of the Native Land Court Acts, and appendices relating thereto', 18 July, 1871, AJHR, 1871, a-2a, p 7

illustrate what the author felt were discernible trends in the minutes. Unfortunately, these cases have been taken somewhat out of context (although some comments on context will be made).

The trends are as follows:

- (a) the correspondence between the types of evidence used in early sittings and that which has been discussed in the previous two sections as the ‘principles or ‘take’ of Maori land tenure;
- (b) the court’s acceptance of relatively thin evidence if the land did not appear to be disputed;
- (c) the resolution of differences, disputes, overlapping rights, and the like, prior to or during the investigation of title;
- (d) the difference in treatment by the court of land that was disputed and land that was not disputed, and the court’s general inability to deal with disputed land; and
- (e) the fostering of individualistic tendencies in Maori society and the simplification of the tribal landscape.

## 9.2 The Tribal Landscape in Hauraki – A Brief Background

The Hauraki tribal landscape was, from some point in the eighteenth century, dominated by the Marutuahu confederation, within which were four iwi: Ngati Maru, Ngati Paoa, Ngati Tama-te-ra, and Ngati Whanaunga. All iwi traced ancestry to an apical ancestor, Marutuahu, son of Hotunui, who was of Tainui descent. However, there were a number of other tribal groups who were either defeated in battle, driven out, or subdued, or alternatively, married into, and thus retained a presence in the region. At times, hybridised communities appear to have been created. Among these were Ngati Huarere, Ngati Hei, Ngati Koi, Uri o Pou, and Ngati Hako.

By the nineteenth century, the Hauraki tribal landscape was enormously complicated as a result of these numerous conflicts and migrations, and the enormous value of the Hauraki region in fisheries, waterways, timber, and similar assets. Different hapu retained rights to a number of lands, fisheries, and tribal highways, the boundaries of which sometimes overlapped. James Mackay commented that Hauraki:

was held by four divisions . . . the holdings of these divisions of people were all interlaced, here a strip, there another strip, and perhaps a long patch belonging to another tribe.<sup>5</sup>

Drummond Hay, a land purchase commissioner, wrote in the late 1850s that:

the numerous small lands into which the land is sub-divided, and which frequently have to be treated for separately; the irregular boundaries, which bring lands strag-

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5. AJHR, 1891, g-1, p 39

## 9.2 The Crown's Engagement with Customary Tenure

gling into each other, often entailing the necessity of dealing with two tribes at once, a proceeding always hazardous, and not unfrequently fatal to the success of a negotiation: all tend to increase the difficulties, and render negotiations unusually tedious.<sup>6</sup>

Indeed, multiple and overlapping rights were also exercised over the sea. As has been noted, the subject of rights to the sea and fisheries is not discussed in this report. However, the following statement by James Mackay about the nature of Maori rights over the Thames tidal flats illustrates the wider complexity of Maori land tenure in the Thames region:

The Natives occasionally exercise certain privileges or rights over tidal lands.<sup>7</sup> They are not considered as the common property of all Natives in the Colony; but certain hapus or tribes have the right to fish over one mud flat and other Natives over another. Sometimes even this goes so far as to give certain rights out at sea. For instance, at Katikati Harbour, one tribe of Natives have a right to fish within the line of tide-rip; another tribe of Natives have the right to fish outside the tide-rip. The lands contained in the schedule of the [Thames Sea Beach] Bill are probably the most famous patiki (flat fish) ground in New Zealand, and have been the subject of fighting between various hapus of the Thames Natives. At the present time the right to fish there is vested almost exclusively in the Ngatirautao hapu of the Ngatimaru Tribe. I may also mention, as showing the curiosities of Native custom, that some three or four years ago a European was brought up before me charged with shooting curlew on this mud flat. I told the Natives that there was no law for that. 'Why', they said, 'this is a preserve (rahui) of ours, and the right to shoot these birds is only given to two or three members of the tribe, and they can only shoot them at certain seasons of the year.' The Natives probably consider that they have the right to fish over these flats, and to get pipis from them. As to pipis, any person might gather them, although as to other fish there would be an exclusive right. That is how it originally stood in 1864. There were a number of fishing stakes there, in different places on the flat.<sup>8</sup>

Here we can see a range of use rights – rights that may be held by the tribe, or rights that are limited to particular individuals. Moreover, Mackay appears to have been aware of the changing and historical nature of these rights. He was quite particular in stating that '*At the present time* the right to fish there is vested almost exclusively in the Ngatirautao hapu . . . ' (emphasis added).

With initial European contact, Hauraki suffered badly. Ngapuhi and other Northland iwi first acquired muskets, and a series of raids launched by Ngapuhi in the early 1820s caused an almost total evacuation of the Hauraki people into the Waikato region. Because of kinship between Hauraki iwi and Ngati Haua, the refugees were allowed to settle on lands around Maungatautari. However, inter-iwi relations quickly soured and after the battle of Taumatawiwi (c1825), the Hauraki

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6. Ibid, p 145

7. 'Occasionally' is perhaps an understatement. Indeed, Mackay's subsequent comments appear to contradict this perception.

8. James Mackay, under examination by the Select Committee on the Thames Sea Beach Bill, AJHR, 1869, f-7, p 7

tribes returned to their lands. This meant a new reassertion of tenure over the old landscape, and some of the tribal landscape was redrawn.

Continuous contact with Europeans through the 1830s (missionaries, traders, and the spar trading vessels) saw the growth of various small settlements, especially in areas where resources were being worked by Maori for Europeans. Hapu shifted to Coromandel Harbour, the Waiheke Channel, and Mercury Bay to take advantage of new opportunities and gain access to European shipping. However, when Auckland was founded in 1840, these settlements again changed. Agricultural use of the few flat areas of land in the region flourished to support the produce trade into Auckland. By the 1850s, European economic activity in the region had expanded. Timber mills were built at Kapanga and the Waiau, and the Government attempted to purchase land, albeit with limited success. In 1852, gold was discovered at Coromandel and a short but energetic gold rush followed. Political tensions between Hauraki and the Crown consequentially increased during the 1850s, and many Hauraki hapu participated in the newly-founded King movement.

However, by 1863, Hauraki was divided in its reaction to the Government's invasion of the Waikato. Some hapu fought with the Kingites, others remained in Hauraki as neutrals, a few supported the Government. After the war an uneasy peace settled over the region. European economic interests slowly moved back into the north of the region, causing new changes and further altering the tribal landscape. By 1865, the time of the first title investigations of the Maori Land Court, Maori residing in the area known as the Upper Thames had established a Kingite aukati, or boundary, seeking to keep European interests at bay. Here the complications of hapu rights could mean, for example, that land of hapu or even whanau residing in the north of the Coromandel Peninsula could border lands of those residing many miles distant.

This overlapping of social, political, and economic concerns, and the intermingled rights to land from earlier times created complications for the Maori Land Court.

### **9.3 The Correspondence between the Types of Evidence Used in Early Sittings and the 'Principles' or Main 'Take' of Maori Land Tenure**

It is interesting to note the style of evidence presented in the very early cases of the court, cases where it might be assumed that Maori had not yet tailored evidence to reply to judicial preferences. A number of cases, if taken together, showed a distinctly similar format. In the Hauraki and Coromandel minute books, mention was often made of the conquest or initial acquisition of the land from one of the 'original' inhabitants. A whakapapa was then recited, showing the descent from an apical ancestor and other facts of occupation would be mentioned. These latter facts might have included aspects of more recent history. This indicates, as suggested in the previous two sections, a strong correlation between the codified 'principles' of

### 9.3 The Crown's Engagement with Customary Tenure

Maori land tenure and the deployment of the understanding of that tenure by Maori in the court.

For example, at the title investigation for the Kapanga block, the very first case recorded in the Coromandel minute books (held on 18 July 1865) Pita Taurua, after reciting a whakapapa, stated:

These ancestors that I have named have held undisputed possession of this land ever since it was conquered from the Ngatihuarere, no one ever attempted to dispossess them. I have lived on this land since my childhood. My title is undisputed. It was I who first gave the Pakehas permission to dig gold on this land. A half caste named Mr Gregor has a claim upon this block, which he derives from his mother, but to settle the matter I have arranged to give him two pieces of land which will [?] be surveyed, one piece is at Huaroa, the other at Taumatawahine. My tribe have an interest in this land but they leave me to deal with it. The Certificate of title is to be issued in my name.<sup>9</sup>

Three other witnesses appeared in court and simply stated that Taurua was correct. H Monro, the presiding judge, issued a certificate of title for Taurua. The minutes suggest that a number of witnesses were present, the court asking 'Are you all agreed that the Certificate for this piece of land shall be in the name of Pita Taurua only? Reply – We are.'

The title investigation of the Mangatangi block, one of the first cases recorded in the Hauraki minute book, illustrates both a range of evidence and a claim by Maori who had subsidiary rights to those of the dominant group.<sup>10</sup> The hearing began with the statement of Hauai. Hauai listed the different claimants but stated that 'These are the only claimants. Tapiati has no claim'. It should be assumed that Tapiati was in court. Hauai then stated that:

I belong to the Urikaraka, a section of the Ngatipaoa. . . . The ancestor from whom I derive my claim is Putohi. [Whakapapa given.] The land belonged in former times to the Waikua [sp?] tribe, Putohi obtained it by conquest. I have lived and cultivated on the land, and my father lived there before me. The old settlement marked on the plan is one of ours. It is called Ahipupu. No one else ever lived on, or cultivated this land. Tapiata never lived upon it, or any of his ancestors. His father was a Ngatipaoa.<sup>11</sup>

Hauai was then cross-examined by Tapiata. The questions that Tapiata asked are not revealed in the minutes. Hauai stated that:

Te Rako built the first house at te Ahipupu. He died not long ago. He was one of my matuas. Your relations live at te Ahipupu as retainers (Tangata) of Te Raki. They had no right to the land.

Hatara Ngakete then spoke. He repeated what Hauai stated and corroborated the whakapapa. He then stated with certain force that:

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9. Coromandel minute book 1, pp 1–3

10. Hauraki minute book 1, 19 December 1865, pp 2–9

11. Ibid

No one has ever disputed their claim. We have always lived and cultivated on this land, we have never been interfered with. Tapiata's matuas resided on the land, they were bought out of the bush by our father Te Pukeroa to work for him. No one has any claim upon this land except those whose names are on the application.

A picture is therefore built of a dominant group that held strong title to the land. This group claimed to have let others reside on the land, but as 'labourers' only. This view is supported by Riria, who stated that 'Tapiata lived on the land by permission of Harata Ngakete, as a labourer of his'.<sup>12</sup> However, Tapiata then spoke. While acknowledging Harata's claim, he refuted the statement that he did not have a claim, and cited the actions of his ancestors. Tapiata concluded his claim with an emotional plea. Again, note the series of criteria under which the claim is made:

Tapiata on oath said, I have a claim upon this land which I derive from my ancestor Rewha, a chief of the Ngatipou, a section of the Waiohua. Rewha begat Rangiheihei, who was the mother of Irakehu and Te Painga . . . Hinepopo was the mother of Haia who was my mother: my father was Ihaka, a Ngatiporou. My ancestors [were] not killed or driven away when the slaughter of the Waiohua took place. They saved themselves by taking to the bush (rekereke). They have resided on this land. Rangiheihei, my ancestor first lived at Te Koheroa, she afterwards came to Te Wairotoroto and lived there some time, Wairotoroto is not far from Mangatangi; at this time they were living in the bush in concealment because of the slaughter of the Waihoua, the tribe having nearly been exterminated. When the fear of death was over they came to live on Mangatangi. The residence of the Ngatipou was at Ouirangi in Waikato. They owned all the land from Tauaki to this place, including their land Mangatangi. Rangiheihei did not reside on this land by permission of the conquerors, they resided there by her permission. The Urikarako people found her one day, gathering pipis, and asked her where she lived, she told them at Mangatangi. They went to see her place, and found that she had great cultivations there. They decided to occupy the place themselves, and thereupon apportioned land to Rangiheihei to cultivate, and also marked off places for themselves. The place marked off for Rangiheihei was Te Waka, a place on the Mangatangi stream. The Urikaraka marked off the boundaries. The land was marked off for a place for Rangiheihei to cultivate upon. I do not claim Waka alone. I claim over the whole of Mangatangi. The Ngaiwi were conquered but not wholly exterminated. Te Waka has only been deserted lately. I lived there myself. I was born there. I have no other land except this. I am living now at Harataunga, my wife is a Ngatiporou and it is on her account that I live there. If I lose this land I shall have no land of my own whatever. When I say that I claim over the whole of Mangatangi, I mean I claim a strip along the western boundary from the sea to the Kirikiri range.

Another counter-claimant, Waata Haungata, spoke. Stating a membership of Ngatipaoa, Waata claimed that:

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12. The term 'labourer' is most probably a poor translation of a Maori word, perhaps rahi, a term commonly used in Hauraki.

### 9.3 The Crown's Engagement with Customary Tenure

I do not dispute Ngakete's title but I also have a claim. Tapiata will give my genealogy. Ngakete and I are descended from the same ancestors. I reside at Waiheke. My claim is the same at Tapiata's, that is to say a strip along the Western boundary from the sea to Kiukiu. The men who laid down this boundary were Tuia and Karaipu. They are both dead, they died lately. They belonged to the Ngatirewha, Tapiata's tribe. The Urikaraka did not agree to this boundary. The boundaries were merely perambulated and pointed out by them to Tapiata and me, they were not marked off on the ground in any way. I have never resided on Mangatangi. I have never cultivated upon it. [Nukurewa] begat Te Whiringa who begat Hangata who begat Waatu Hangata (myself).

This claim appears to have been questioned as the court recorded in the minutes that 'The witness failed to connect Nukurewa with the ancestors of the Urikaraka who owned the land'.

Mata Ngapuhi then spoke, supporting Tapiata's claim as 'My claim to this land is derived from the same source as his', but explaining that this claim was not to the land in question. A further witness, Ahipene, informed the court that his claim had been waived because 'I have come to an arrangement with Ngakete about it'.

An unusual development then took place. Hoterene Taipari, a leading chief of Ngati Maru, attempted to lay a claim to the land. However, his claim was not supported by the other claimants, and indeed the court appears to have ignored it. As his statement indicates, his claim was made on a very general basis, that is, having claimed descent from the original tipuna of the entire Marutuahu confederation. He had not resided on the land, nor had his immediate ancestors. It could be argued that Taipari's claim had been made to test the court in some way, to see how far the court would accept ancestral rights. Taipari's recitation is, however, quite erudite. As the minutes record:

Hoterene Taipari, said, I have a claim upon Mangatangi. This is how I derive my claim. Hotu[nui] was our ancestor. He was one of those who came to New Zealand in the Tainui canoe. He went to the West Coast and took up his residence there, after a time he quarrelled with his people, and left. He came over to Whakatiwai, there he found the Ngaiwi and Ngatipou tribes. Ruahiore was the name of their chief. He invited Hotu to stay and gave him Whakatiwai as a place of residence. Moving himself to Wharekawa. When Hotu came he brought his tribe with him but left his wife and son behind. the land given to him were Waitakururu, Pukuokoro, Ohinumia, Te Hape, Koi Maine, Rangipo, Hauraki and Whakatiwai. After a time the Ngaiwi turned against Hotu and annoyed him in many ways. When Hotu's son Marutuahu grew up to manhood he came and joined his father, and subsequently took Ruahiore's two daughters to wife. Their names were Hinemoehau and Hineununga. By the latter Marutuahu had two sons, Te Ngako and Taurikapakapa . . . [whakapapa]. I have never lived upon Mangatangi, nor cultivated there. My father never lived upon it or used it in any way, nor my grandfather, nor my great grandfather. I cannot state the nature of my claim to this particular Block. (Further questions elicited no further information).

The court adjourned, and, when convened the next day, the counter-claim by Tapiata had been resolved. Tapiata informed the court that 'I have come to a

friendly understanding with Ngakete. I now withdraw my opposition. There will be no further disputing hereafter on my part'. Similarly, Maata Hangata withdrew his opposition – 'I have arranged with Ngakete, we are now friends. I withdraw my opposition. There will be no further dispute as far as I am concerned'. Hatara Ngakete then produced a list of the names that he wished to be placed in the Crown grant. The list included Tapiata and Waata Hangata. This case further illustrates the points made in section 3.5 below.

#### **9.4 The Court's Acceptance of Relatively Thin Evidence If the Land Did Not Appear to be Disputed**

In many cases the minutes indicate that the court was not presented with what we might now consider sufficient evidence to make a ruling. Indeed, the minute books are filled with cases that take only a page or two to conclude. On the face of it, this may suggest that the court had a lax approach to what was a serious matter. It may also suggest that individuals or groups who were interested in the land and who could present different evidence were not aware of the court hearings. Furthermore, it may suggest that a 'prior arrangement' had been made, and the court process was only a way to verify a sale or other agreement.

While any of these scenarios are possible, two facts make them less probable. Firstly, in contrast to the brief evidence presented in many cases, a large number of cases were strongly contested and the evidence presented in them could fill entire minute books. Secondly, a close reading of the minute books reveals that these two types of cases were frequently interspersed with one another. This would indicate something other than judicial lassitude, claimant dishonesty, or the absence of interested parties. Indeed, it could be that the reason that these cases were not disputed was exactly that – that their tenure was clear, and that the group advancing a claim did so with the knowledge of other groups. Moreover, because of the intermingling of different cases it could be suggested that the many individuals who attended disputed cases were also present in court for non-contentious ones. Such individuals would generally be assumed to have countered false or poorly-grounded claims.

This interpretation coincides with one of the conclusions drawn in the previous section – that some parts of the tribal landscape were covered by very strong, almost exclusive rights, and that these should be differentiated from other more contested parts of the landscape. The disposal of such rights may, of course, be subject to a group right of veto, but this would not necessarily be reflected in the proceedings of the Maori Land Court. However, a further question could be asked – if rights were securely held by a group, and if those rights were recognised by the wider community, was it necessary for the court to fully investigate the basis under which such rights were created? Given the possibility of misrepresentation by claimants and the security of certain rights, this is a difficult question to satisfactorily answer.

## 9.5 The Crown's Engagement with Customary Tenure

Many cases illustrate these cursory investigations. For example, at the title investigation of the Te Ana block, the total evidence presented is as follows:

Maana Pereheireti (sworn): I belong to the Rapupo tribe, a hapu of the Ngatipaoa and Ngatihura. I reside at Whitianga. I own this land. Tarapa is a tamaiti of mine, Kaea is dead. Tarapa claims with me. The land is situated at Whitianga. The names of the persons we wish to be in the Crown Grant are: Maaka Pereheireti; Tarapa; Maihi Te Hiuaki; Te Kaokao; Hera Puna. They are all adults. Our title to the land is not disputed that I am aware of. This land was obtained by conquest by our ancestors in former times. We used to live on the land some time ago but have not resided there lately. We used also to cultivate there. The block has water frontage on three sides. On the fourth side the line has been cut on the ground.

Maihi Te Hinaki (sworn): I belong to the Rapupo tribe. This land was surveyed with my sanction. I am one of the claimants. The names proposed by Maaka as grantees are correct. Harata declined to have her name put in the Grant.<sup>13</sup>

In this case, no strong evidence of occupation was given by the claimants, only a statement that the land was occupied in the past. Of course, Maana may have told the truth, and it could be that the main right-holders had interests in other land that had demanded their attention in more recent years. Moreover, with widescale reductions in population lands that may have been visited regularly by hapu members could lie unused. On the other hand, the above statement appears to have offered little direct 'proof' to the judge that the land in fact belonged to the Rapupo tribe under Maori custom, except for the fact that no one contested the claim.

### **9.5 The Resolution of Differences, Disputes, Overlapping Rights, and so on, prior to, or during, the Investigation of Title**

It would be entirely wrong to suggest that Maori were helpless victims of the Maori Land Court during title investigations. Many of the court minutes reveal a process of ongoing negotiation and arrangement among Maori outside of the court environment. The subject or background of these negotiations is, unfortunately, something that is extremely difficult to ascertain. Similarly, the exact nature or conditions of the negotiations are likely to have varied enormously from group to group.

Nonetheless, it is clear that in many cases the court received but a small part of the potential information available. Here the court was tied to the dynamics of a wider, albeit localised, historical process – it was a ground on which the political strategies of different levels and parts of Maori society were played out. Interestingly, the minutes reveal that in the early period (and often in later sittings) the court was quite prepared to let these 'outside' arrangements stand.<sup>14</sup> In a way the court was pleased that complex problems had been 'resolved', however arbitrarily or

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13. Coromandel minute book 1, 16 October 1866, pp 49–50

14. Further study will be required in the later period (after c1879) to see if this practice was followed consistently.

quickly. Indeed, the court often directed competing claimants to come to their own arrangements. This practice also reflects the way that the court was willing to accept a wide range of evidence, or an almost total lack of convincing evidence, of rights to land, if those rights were not disputed.

These comments do not detract from the fact that the court changed irreparably the legal conception of Maori land, but they do show that the court was unaware of many ‘behind the scenes’ facts. That it was unaware of these facts (or simply did not care about them) further supports the argument that the court did not properly take into consideration, let alone respect, the dynamic nature of Maori society.

A number of cases taken from the Hauraki and Coromandel minute books illustrate these points. Firstly, the minutes of a title investigation to a block of land at Whangapoua called Opera show such an ‘outside’ agreement:

Mohi Mangakahia (sworn): I applied to have my title to Whangapoua investigated by the Court. This is the plan now produced. The large name of the land is Whangapoua, but the name of this particular block is Opera. The land has been a subject of dispute for some years past between us and Pita Taurua and party. Our dispute is now at an end. We have come to an amicable arrangement among ourselves, and have agreed upon the names that are to be in the Crown grant. They are there Mohi Mangakahia, Pita Taurua and Peneamene Tauui. We derive our claim to this land from our ancestor. It was owned formerly by the Ngatihuarere. The name of this ancestor from whom we claim was Ruawano. We are his descendants. We have always possessed this land, have built houses, lived and cultivated upon it. The three names which I have given represent all the parties interested in it.<sup>15</sup>

Secondly, the title investigation for the Matapaia block in Tairua shows the resolution of a dispute and the involvement of the civil commissioner, James Mackay. The minutes indicate how Mackay acted as an advocate, facilitating a negotiation, and later how he ensured that the dispute remained resolved. Again, this illustrates an extremely interactive dimension of the court process:

James Mackay (sworn): This land, Matapaia, has been in dispute for some time between Riwai Kiore, Pehimana Taira, Tautoro and Te Urumihia, and Miriama and Tikaokao. They have now agreed to sell the land and have come to an agreement among themselves as to the division of the money. The understanding is that the Crown Grant is [put] in the name of Miriama, and I am [unclear text] and retain it until the agreement which has been entered into have been carried out.

Miriama (sworn): The map produced is the map of Matapaia. This land has been in dispute for some time past between Te Kaukau and me on the one side, and Riwai Kiore and party on the other. We have now arranged the dispute. It is agreed that the Crown Grant shall be in my name, but that it shall be delivered to Mr James Mackay until the arrangement which we have entered into among ourselves will have been carried out. There is not another dispute about this land than the one I have named. It was I who pointed out the boundaries to the Surveyor. The lines have been cut on the ground and the [angles] pegged. It is bounded on the north and east by the Tairua

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15. Coromandel minute book 1, 16 October 1866, pp 43–44

## 9.5 The Crown's Engagement with Customary Tenure

harbour, on the South by the Pukauroharoha creek and by Native land, on the East by Native land and by the Pepe creek. This land has been in the possession of the tribe for generations. We have lived upon and cultivated it. No one has ever attempted to dispossess us.<sup>16</sup>

Moreover, this is an extremely clear case of a court award which bore no relationship to the actual fact of competing and overlapping customary claims. Mackay's role as broker, and the purely pragmatic agreement that ensued, served as a quick and sure way to prepare the land for sale.

The title investigation of Whakahau, an island at Tairua, was a further case in which Mackay participated and in which a negotiation outside of the court took place. The case can be understood using a number of these points. As detailed in section 3.3, the evidence presented illustrates a number of different forms – usage, ancestral occupation, the naming of a house, whakapapa, tribal history (defeat by Ngapuhi), and burial sites. The land had not been fully occupied by any of the claimants, although all stated that they had visited the land periodically. Most importantly, though, the minutes record what appears to be an impromptu cross-examination of a counter-claimant by one of the original claimants. The questions asked are extremely revealing, and certainly emphasise the importance of ancestral occupation. The full minutes of the case are as follows:

Ti Kaokao (affirmed): I put in the application to have the title to the island investigated. The owners are Miriama, Wikitoria, and me. We belong to the Ngatiwhakauku tribe, a hapu of Ngatituhukea. The residence of these tribes is at Tairua. The island lies off Tairua. We derive our claim to the island from our ancestor and also to Matuhua. The name of the ancestor was Te Whakaruku. He was the proprietor of these islands.<sup>17</sup> Miriama had better give our genealogy as I am unwell and she is better able to do so.<sup>18</sup>

Miriama Pukukauri: Te Whakaruku was the owner of these islands in former times. (The witness gave his genealogy). The descendants of Te Whakauku according to her were Wikitoria, Tikaukau, Miriama, Kauhau and Karauna Whakau. Te Whakauku lived on Whakahau and cultivated upon it. His descendants have continued to reside upon it. I lived there when a child and also since I have grown up. I also lived at Motuhua. Our title to both islands is the same. I don't know Motukoura. There are no other owners to these islands than these I have named and whose genealogy I have traced from the original owner Te Whakaiku.

[Cross-examined by] Hamiora Tu – This land never belonged to Haniu, nor to Waihao, nor to Te Whakakatiu.

Hamiora Tu (sworn) I have a claim upon Whakahau and upon Motuhua, also upon Motuwharo. There is no such island as Motukuia. It has been a mistake of the person who wrote the application. Motuwharo is the proper name. I claim from my ancestor Tikauaitua. He lived at Tairua, and on Whakahau. He belonged to Ngatituhukea. This tribe is extinct as a tribe. They used to reside at Tairua and Whakahau. I do not know of Te Whakaiku, the ancestor named by Miriama. My ancestor lived there up to the

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16. Coromandel minute book 1, 17 October 1866, pp 54–56

17. Unfortunately the Maori word for 'proprietor' was not recorded.

18. Coromandel minute book 1, 18 October 1866, pp 57–61

time of Waihino. While Waihino lived on the land wahine visited the [poor text] [hapu]. . . . was mentioned as residing on Whakahau. Te Whakakahu also resided on the island with his tribe and on Tairua. The tribe was exterminated by Ngapuhi. At the time of the Ngapuhi invasion Te Whakakahu also resided on the island. The Ngapuhi killed some of the tribe on the island. Te Whakakahu died of natural death, after the Ngapuhi invasion. After the invasion some of the survivors went back to the island. Tutaimata went back. He was a [son] of Te Whakakahu and a teina of Tapu. He died at Te Raupuha, Whitianga, and was buried there. Rangiawhia lived on the island also. [Tihaka] never resided on it. He died young. Rangiawhia died at his pa, Tangoio, on Whakahau and was buried there. He was afterwards taken up and removed to Tauranga. It was fear of Ngapuhi which caused my tribe to leave the islands. I have been in the habit of visiting the islands for the purpose of fishing, but have never cultivated on them or on the mainland opposite. Rangiaohia and Tutaimata were the last of my tribe who lived and cultivated on the mainland. I was born during the flight from Ngapuhi. Mehaka was born at Tairua. He fled from Ngapuhi and was afterwards killed in battle at Tauranga. I have visited the islands constantly for the last twenty years and have built houses upon it.

[Cross-examined by] Tikaokao – I never cultivated on the island. I only used it as a fishing station.

Q – If you used Rangapuka as a fishing station would you claim it on that account?

A – That island is also mine.

Q – Did you ever build houses on the island?

A – I did.

Q – Did your mother ever live there?

A – My mother is a Ngatirangi. My father did.

Q – Did your father ever live there?

A – He did.

Q – Name the houses of your Tupunas?

A – The great house which stood at Taupiro was called Te Hore o te Wario.

[Cross-examined by] Miriama. – My work on Whakahau, being a tamariki was fishing for Hapuku. – My father lived at Taupoio. My mother did not belong to that place. I lived on the island after the death of my parents. I tuturu au ki reira.

[Cross-examined by] Peneamine Tairua – I was not born on the island but my fathers were.

Peneamine Tairua (sworn) – I have a claim upon Whakahau and [. . . .] . . . . . Our title is the same to both islands. I claim from my ancestor Te Wakamuku. Wikitoria is my mother. I am living now at Tairua, on the mainland opposite the islands. I have always heard that my father lived on the islands. We have never cultivated there. Our father did. The land is not fit to cultivate. We go there to get fish and shell fish. I never heard that any of the parties named by Hamiora Tu ever lived on the islands.

Court adjourned (resumed at 2 o'clock)

Mr James Mackay (sworn) – In the case of the islands Whakahau and Motuhou it has first been arranged out of court that Tekaokao, Miriama Pukukauri, Wikitoria Pututu, Peneamene Tairua, Kareao, Karauria Whakairi and Hamiora Tu are to be the grantees and that Hamiora Tu relinquishes his claim to Tairua.

Miriama stated that she was satisfied with the arrangement.

Hamiora Tu stated that he agreed to the arrangement.

## 9.5 The Crown's Engagement with Customary Tenure

Court inquired if any one had anything further to say or objection to make. Proclamation made and no objector appeared.

The court thus encouraged Maori to put aside differences or conflicting claims to land and come to 'agreements'. In a way this reflects the court's inability to deal with complex cross-claims and overlapping rights. It also shows a pragmatic approach by the court to the problem of 'interpreting' Maori land tenure. In such cases it appears that the court was not fully interested in the different ways that tenure operated: it simply wanted a solution. Unfortunately, the minutes of the above case make no mention of what deal Mackay arranged with Hamiora Tu. Indeed, if Hamiora's evidence was not fraudulent then the court's ruling did not reflect Maori custom at all – a 'solution' had been reached that was certainly convenient for the court, and perhaps convenient for Hamiora, but which did not follow any of the 'take' of Maori land tenure.

However, the court's encouragement of such settlements could also provide a way for Maori groups to 'work out' their tenure without the arbitration of European law. In many cases, this could be a preferable solution to a bad situation. Indeed, large blocks with multiple owners could have continued to function as they had done prior to the investigation of title, or at least until the process of partitioning, the further apportionment of 'interests', succession cases, and the like, fragmented the land into uneconomic shares.

In other cases, such a 'resolution' may only have been a preparation for a sale. For example, the investigation of title to the Whakanewha block on Waiheke Island was contested between a group of claimants led by Hoterene Taipari and another led by Mohi Te Hararei. After a number of statements by Taipari and others, Mohi replied:

This land belongs to me. This land was formerly in dispute, we fought for it, and they were driven away. I lived on the land. The people who lived on it formerly went to Hauraki. When we returned from Waikato in Gordon Brown's [Gore Browne's] time. I drove away the people who occupied the land and I lived on the land. . . . My fire is now burning on the land, my dead is buried there. I recollect the sale of the land formerly to the whiteman. The opposite party sold it to the whiteman the first time. Nikouina sold it. It is only lately that I have left the land, since the disturbance with the Government. I then left and came to Hauraki. The persons who own the land are myself and Ngatirakina of Ngatipaoa. Hoterene has not lived or cultivated or planted vines on this land, but on Kaiwhakarau. I rest my clam on this land from occupation and my strength (auaaua). I do not recognise Hoterene's claim.<sup>19</sup>

The opposing parties then left the court to try and settle the matter. After some time they returned, with the court minutes recording the following:

Mr Mackay stated that the opposing claimants had agreed out of Court that a Crown Grant be issued to Hoterene Taipari and Mohi Te Hararei and that the Crown

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19. Hauraki minute book 1, 13 December 1866, pp 37–40

Grant be delivered to Mr Mackay that he might see that all claimants be satisfied when the land is sold.

The opposing claimants were asked by the Court if they agreed to this and they each answered yes.

Again, a solution had certainly been reached, but this solution did not reflect any of the principles, or ‘take’, of Maori land tenure.

### **9.6 The Difference between Land that Was Disputed and Land that Was Not Disputed, and the Court’s General Inability to Deal with Disputed Land**

Disputes to land could, of course, be of many kinds. They may be as small as between whanau, or as large as those between iwi. Whatever the case, disputed land was where the court encountered the greatest difficulty when determining title. The minute books reveal a number of different types of disputes. There is no single way, however, that the court reacted to these disputes. It does not, at least in the first decade of operation, appear to have found a unified way of ruling on disputed land.

Firstly, the court may have been unaware that a dispute was in fact being settled. This included the well-recognised situation where particular parties to a dispute did not attend the court hearing, and whose potential claim was thus ignored. For example, in the title investigation of the Torehina block, the following minutes were recorded:

Hera Putea, on oath said, I claim Torehina. It belongs to me alone. Makoare merely sent in the application. I derive my claim from my ancestors from Whatihua. He was the owner of this land in former times. Whatihuia begat Tapa, who begat Raukurai, who begat Mauu, Mauu was my father. No one else has any claim upon this land. Whatihua was a chief of the Ngatitamatera. The land originally belonged to the Ngatihuarere tribe, the same that owned Kapanga. The piece of land now under investigation was ceded to Whatihua by Hikatiki, a chief of Ngatihuarere. The land has been held by the descendants of Whatihua ever since. Tapa, Te Raukura and Mauu have all in time occupied the land and cultivated upon it. Hohipoua has no claim upon this land, neither has Te Hira. They are both Paimariries and are at present up the Thames with the rebels. Hopihoua asserts that the land was given to him by Hori Te Waipare who is dead. I never sanctioned any such gift. Hori Te Waipare had no right to give away my land. Hopihoua now acknowledges my right. He told me this himself at Waihou. His words were that he gave back to me my land. Te Hira has no claim whatever.<sup>20</sup>

The court did not hear evidence from Te Hira, who may have presented another side to the argument, and it subsequently awarded the title to Hera Putea and others. But as Hera Putea had stated, Te Hira resided in the Upper Thames with ‘the rebels’ and was not in court that day. It may have been that Hera Putea’s claim to the land was

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20. Coromandel minute book 1, 11 December 1865, pp 27–30

## 9.6 The Crown's Engagement with Customary Tenure

secure, but that Te Hira, as a Kingite and an important rangatira, exercised some kind of control over the land, perhaps in working to prevent the sale of the land. Whatever the case, it appears that evidence on land that may have had been disputed was uncritically accepted by the court.

Other disputes could be extremely complicated, with the court hearing a wide range of evidence. In these cases, it appears that the court tended to make arbitrary rulings, supporting only one party, or insisting that the land should be divided into a number of separate blocks, each representing a collection of minimised rights. In these latter cases, the court appears to have believed in a process of 'equitable' resolution. A sign of such arbitrary behaviour comes when the court complains (often in judgements) of the contradictory evidence with which it was presented. While Maori were quite capable of presenting such evidence, such a situation may illustrate the court's inability to comprehend some of the meanings attached to such evidence, rather than a problem with the evidence per se.

Only one lengthy and contested case will be used to illustrate these points. This is not due to a shortage of such cases, but to the massive depth and complexity of the evidence that must be reviewed in order to comprehend the issues.

In the case of the title investigation of a block called Tangiaro (situated on the north west coast of the Coromandel Peninsula above what is now known as Cabbage Bay), initial inquiries by the court suggested that problems would develop. Because the hearing was one of the initial cases of dispute for the Hauraki court, the judge, Rogan, felt it necessary to make the following comments (they in part reflect how the judge saw his role):

On the occasion of the hearing of Tangiaro the Court informed the Natives that there was no plan of survey for its guidance, that a number of the Claimants had absented themselves but the Court had determined to proceed with the investigation, the case having been adjourned from Kapanga. It appears that the Tangiaro has been in dispute for many years, the opposing tribes being the Ngatimaru, the Ngatinaunau, on the one side, and the Ngatipaoa and the Ngatitamatera on the other. In order that disputes about land might be justly settled wise men of the European race framed the Native Lands Act. It has been asserted that the Government introduced the Native Land Act for the purpose of acquiring Maori territory. This is a mistake, for it [has been] brought into operation for the express purpose of putting down fighting amongst the Natives in respect to land disputes. In the present instance whatever the decision of the Court may be it is hoped that all parties will be satisfied, as this long [standing] difficulty will be settled according to law.<sup>21</sup>

A very rough summary of the different arguments can be made. It should be explained, however, that this case ran for a number of days, and approximately 40 pages of the second Hauraki minute book were filled with evidence, much of which is particularly detailed. What follows is thus a general synthesis of the main points. In particular comments made regarding conflict, and the history of this conflict have been studied.<sup>22</sup>

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21. The Tangiaro case was adjourned from Kapanga on 16 July 1867, see Hauraki minute book 1, p 89

The Ngatinaunau claim derived from their ancestor Tarawaikato. They argued that a number of their dead had been buried on the land, but only one member of the current hapu had been born there. Ngatinaunau also argued that they had held possession of the land before the Ngapuhi raids. Various events had taken place, perhaps the most important being the construction of two canoes from timber on the land, one of which was given to people on Great Barrier Island. A pa had also been built on the land. At the time of the Ngapuhi raids, the Ngatinaunau fled to Great Barrier Island where they received protection. When they returned they maintained a partial occupation of the land, cultivating patches (the majority of the hapu resided at Manaia, Coromandel Harbour, and other places). A lot of evidence of different times at which the land was visited or occupied was given. For example, Ngatinaunau elders stated that the land had been occupied at the time of Hobson, but that it was left at the time of FitzRoy. Others stated that they had built houses on the land and planted and cultivated there. Some time during the 1840s or early 1850s (although the dates are unclear), a group of Pakeha sawmillers and boat builders were invited onto the land by Ngatinaunau. Ngatinaunau argued that this was the first dispute that they had with Ngatipare, and that Ngatipare drove the Pakeha from the land and plundered their cultivations. The Ngatinaunau conceded that the Ngatipare had lived on the land for a period after the sawmillers were driven away. They also conceded that the dispute had gone on for some time since then. For example, Hohepa Paraone recalled that:

I used to live on it. Ten of us went there from Hauraki and took up our residence at the creek of Tangiaro. This was in the time of Mangakiekie. We went there because we heard that Ngatitamatera had gone there to plant seed potatoes. We went to pull them up and plant ourselves. We pulled up their seed potatoes. The Ngatipare in return pulled up ours.

However, their occupation had not been continuous, and in the late 1850s, the Ngatipare appear to have invited an itinerant group of Tuhourangi to reside on the land. This they did until the Ngatinaunau found out and drove all the Tuhourangi, but one family who was related to them, out. In all these cases the dispute drew in wider kinship connections. For example, Ngatipare had mobilised other members of Ngati Tama-te-ra, including the important rangatira Taraia, when they drove the sawmillers off the land, whereas Ngatinaunau mobilised other hapu of Ngati Whanaunga when they drove Tuhourangi away.

More contemporary aspects of the dispute were also detailed. It appeared that the Ngatipare had recently leased the kauri timber to the land in 1864, without consulting the Ngatinaunau, and thus a new confrontation was imminent. However, in this case, James Mackay, the civil commissioner of the region, suggested that the court ‘decide on the matter’. As Paraone recalled:

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22. See Hauraki minute book 2, principally pp 55–81. It should also be noted that the vast majority of the evidence presented in the court related to events that had taken place after 1840. If the court was following the 1840 rule almost all of this evidence would be considered irrelevant.

## 9.6 The Crown's Engagement with Customary Tenure

We heard that Ngatipare had sold the kauri on this land to the Pakehas. We objected and complained to Mr Mackay. We asked Mr Mackay to stop the cutting of the trees because they were ours and did not belong to Ngatipare.

A good summary of the occupation of Ngatinaunau and the recent history of the land is found in the following evidence by Pineha Pumiko (the minute book should be read for the full evidence):

[Under cross-examination by C O T Davis]. I belong to Ngatinaunau and reside at Manaia. I know Tangiaro. I recognise it as shewn on this plan. I am a claimant from my ancestor Tuawhakarere. I heard that in the first governors time my tupunas and people were living at Tangiaro. Afterwards I resided there myself in 1854. Forty of the Ngatinaunau lived on this piece at that time. I am quite certain they lived there at that time. For after Christianity we had the Prayer Books and knew dates. We remained at Tangiaro from 1854 to 1857 and then came to Manaia. It was about the year before the Tuhourangi were placed there. There were none of the Ngatipare on the land from 1854 to 1857, The Ngatipare were planting potatoes, kumaras and corn during those years. We never gave the Ngatipare any of the produce, neither did they take any. After we came away in 1859 the Tuhourangi were placed there. When the Tuhourangi were put in possession we were at Manaia. They were placed there by Ngatitamatera and Ngatipare. The piece which belongs to Tamatera is Okahutai. That piece is theirs. [Hanuwera] and Karauria are tika on their piece Parakete. When we heard that Tuhourangi were on Tangiaro in 1859 we expelled them. All left except Pare and his children. We allowed them to stay because they were related to Reweti. Pare is now present, he will corroborate what I now say. When Tuhourangi left in 1860 we went, some of us, to Cape Colville, the rest of us remained at Tangiaro, on the piece now before the Court. Thirty stayed on Tangiaro, twenty went to Porhatu (Cape Colville). I was one of those who went. I had a house and cultivation at Tangiaro and used to live permanently there. . . . We were living on the land from 1860 to 1862. Ngatipare never appeared in that time. They were then at Cabbage Bay. They never appeared or sent messages. We left Tangiaro in 1863 when the war broke out. We came to Manaia to reside. We left through fear. No one was left to [kai]tiaki Tangiaro. In 1864 Honana took the Pakeha on the land. Those who are on it now. When we heard of it we proposed to drive them off but Mr Mackay and [Kitahi Te] Taniwha prevented us and proposed that the Tine [Court] should now settle it. By the Tine I mean the NLCourt. . . . [Cross-examined] by Preece . . . The quarrel was about some pakeha that Mangakiekie took on to the land. The Ngatitamatera were under the impression that Mangakiekie had sold Okahuteia to them. . . . The Ngatipare never occupied the land after the quarrel about the Pakehas.

In contrast, the Ngatipare claimed the land through occupation before the time of Mangakiekie and prior to the Ngapuhi raids. Their principal spokesperson, Tahana te Tiaka gave the following evidence. Note, though, his concession that both parties had occupied the land in more recent times:

I have seen the map of Tangiaro. I have a claim on it. I derive my title from Toarauawhea not connected with the ancestor [of] Ngatinaunau. The land belonged in former times to Ngatihuarere. The whole peninsula. Mahunga conquered the land

from them and took possession. Mahanga was from the West Coast. He took a wife a woman of Ngatitamatera named Te Akatawhia, their son was Toarauawhea. [whakapapa] Mahanga occupied Tangiaro and grew kumaras and Taro. His descendants lived on it up to the time of Tupaea and Potiki. I never lived on it. We left at the time Motukahakaha pa was taken. It was taken by Ngatitamatera. It was occupied by Ngatinaunau. It was taken in Tupaea's time. Both Ngatinaunau and our people left at that time. Potiki did not live on this land. The land remained uncultivated until Mangakiekie came from the Barrier to Manaia and shortly after placed some pakehas on it who were driven off by us. We saw no natives there. Had there been any there would have been a fight. After ejecting the pakehas we came back to near Manaia. After the time of the quarrel each party went on it for two years and cultivated small pieces to take possession and then left. The land remained unoccupied till the time of the quarrel between Te Waka and Moananui when we located the Tuhorangi on it. The Tuhorangi remained 3 years on the land. That is they planted 3 seasons. They left the place on account of one of the people having shot himself accidentally at Cabbage Bay. Some of their people persuaded them to go. They were not expelled by Ngatinaunau. I have heard what the other side said. I know nothing of Pene. He is not one of those we placed on the land.

Tahana te Tiaka also disputed the Ngatinaunau argument that they had occupied the land both during the early 1860s and previously, after the expulsion of the saw-millers:

No one lived on the land besides Pene. None of the Ngatinaunau lived on it. The statement they have made about living on the land from 1860 to 1863 are incorrect. They only did as we did – went on to the land planting a little and then came away. There was no one on the land after that till we let it to the Pakehas. We are living on it now. . . . When Mangakiekie planted food after placing the pakehas on the land we pulled the food up and planted in turn. The Ngatinaunau pulled that up. The next time we planted was when we placed Tuhorangi on the ground. It would have taken an hour to have gone from where we lived to Tangiaro. It is correct that Okuhutai belongs to Ngatitamatera and Parakite belongs to Hamuera and others. This piece of land belongs to us not to Ngatinaunau. When the Ngatinaunau returned from the Barrier they did not reside at Tangiaro or Poihakeru. They never occupied it. I was waiting for them to do so, to fight them.

This case gives, therefore, a very good indication of tribal mobility through the first part of the nineteenth century. In such a situation, tenure was particularly problematic, and rights appear to have been maintained in a number of fashions. In the case of Tangiaro, both sides of the disputes placed non-hapu groups on the land, and both sides disputed this placement, driving the occupiers away. Much of the conflict appears to have been quite dangerous, although no one was killed. Indeed, Riwai Te Kiore conceded that:

Then we and our party went to Tangiaro. We found none of the Ngatipare there. Our party made a clearing and planted seed and came away. They stayed two weeks felling and two weeks planting. We left no one behind least the Ngatitamatera should kill them. . . . When Ngatinaunau went the Ngatitamatera kept out of [the] way. When

## 9.6 The Crown's Engagement with Customary Tenure

Ngatitamatera went, Ngatinaunau kept out of the way. Had they met there would have been a fight.

This suggests that neither side was able to enforce their claim by 'take raupatu', or that if a claim under 'take raupatu' were made, a bloody confrontation would have occurred and one hapu would have been defeated.

Perhaps the most poignant comments of the conflict came from Te Moananui. Although he was connected to Ngati Tama-te-ra, he was of sufficiently high standing to be able to take a somewhat distant perspective. The minutes record the following:

Tamumeha Moananui affirmed. I belong to the Ngatitamatera and reside at Mata-riki. I know Tangiaro. It belongs to Ngatinaunau and Ngatipare. The land is disputed. It is an old ancestral dispute. I know of Mangakiekie having located some Pakehas on the land. The Ngatipare objected and the pakehas were expelled. I went with the party who ejected them. The pakehas left. The Ngatipare demanded payment for the timber the pakehas had cut. The pakehas paid in guns. They were living at Oneura. After the pakehas left the land there were disputed between the two tribes. The land was not occupied after that until the time of the quarrel between Te Waka and me when it was occupied alternately by both tribes – neither party resided permanently. Both parties resided with the Tuhourangi at different times. They never met. The Tuhourangi asked Ngatitamatera for some land. They gave them leave to live on this to dig gum, etc. They were located there during the time of the Taranaki war. I lived at Waiaro Moehau from the Taranaki war till the Waikato war (1860–63). Waiaro is about four hours walk from Tangiaro. The Ngatinaunau did reside at Tangiaro. Ko te noho ki Tangiaro he noho haere. Ko to Kainga tuturu ko Poihakura. They built houses on Tangiaro and cultivated land during the period that they were living on it. The Ngatipare did the same. The Ngatipare were residing at Cabbage Bay and used to go to Tangiaro and cultivate with the Tuhourangi. The Tuhourangi left after the Waikato war with the Ngatimaru, Ngatinaunau and Ngatitamatera. The Tuhourangi left the land in possession of Ngatipare.

[Cross-examined by] Davis. I remember when you were at Wairo. When I made peace with waka. When Enoka of Ngatinaunau said aloud that he and his people would go back to Tangiaro. Pana te Putu objected to it till the Wairo dispute was settled. At the same time Taraia gave the Tuhourangi permission to go to Tangiaro to [her] part of it to Okahutai and to range about Moehau and elsewhere to dig gum. I have heard that the Rahui was disputed. Hata Paka belongs to Ngatipare. Parakete belongs to him and Karauria. Parakete is another place altogether. I have always heard that Tangiaro belonged to Ngatipare. I heard from the old people. E tika awa Tarawaikato Katahi ano au Ka rongu kua hokona a Toarauawhea. Both Ngatinaunau and Ngatipare cultivated on the part occupied by the Tuhourangi – titiro atu titiro mai – but both parties lived in dread of fighting. When Tuhourangi left Tangiaro at the time we all left. Penetamahiki and one or two remained there. The Ngatipare remained at Umangawha and afterwards went on to Tangiaro and placed pakehas there. There was subsequently a dispute about the timber. No 'ope' went – i korekotia kautia – Mr Mackay said that the dispute should be decided by the Ture.<sup>23</sup>

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23. See Hauraki minute book 2, pp 75–76

From Te Moananui's evidence we can see that the tenure over the land was in fact a long-standing problem. If Te Moananui was right, neither side had a clear claim, although both had claims.

How, then, was the court to deal with this problem? The court simply awarded the land to Ngatinaunau. No detailed explanation was given. In the minutes it appears that the Ngatinaunau were able to mobilise more individuals to speak on their behalf, but they were also described as a small tribe. The court's decision appears, therefore, to have been quite arbitrary. Indeed, two later investigations of blocks bordering on Tangiaro saw Ngatinaunau and Ngatipare put aside their differences, neither wishing to endure a long court battle.<sup>24</sup> Each took possession of different blocks, thus sharing the land.

### **9.7 The Fostering of Individualistic Tendencies in Maori Society and the Simplification of the Tribal Landscape, Both by Maori and by the Court**

As has been suggested in the previous section, some Maori rights to land were held with a strong degree of exclusivity, even if those rights were subject to a group right of veto against a transfer to outsiders. The minute books of the Maori Land Court suggest, however, that particular individual or family rights were, at times, advanced in the court environment at the expense of the tribal or group right. Of course this kind of 'individualism' is exactly what the court was designed to foster, and it could be argued that the court made possible the expression of an already existing tension within Maori social structures. But, at least in the Coromandel region, there is also room to argue that changing conditions of the colonial environment created a situation in which these rights could be advanced.

More specifically, it can be argued that hapu were able to use the court to 'secure' their control over various parts of the tribal landscape, overriding lesser or older use-rights that existed in the land, and perhaps circumventing wider tribal powers of veto. This is not individualism in a European sense – hapu or whanau identity remained strong – but it is a departure from some of the wider kin-group functions of earlier years. In Hauraki at least, such structural changes corresponded to the increase in large-scale extractive industries such as goldmining and kauri milling, where the importance of hapu control over resources grew.<sup>25</sup> Of course, hapu typically worked in closely-related clusters which were themselves difficult to separate, but under the colonial economy, when say rents were distributed, the exclusivity of particular hapu appears to have been strengthened (it remains to be seen if an even greater degree of individualism occurred after about 1880). Evidence would suggest that it did because land scarcity increased and succession cases in the Maori Land Court further divided 'relative interests'.

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24. See Coromandel minute book 2, 5–6 June 1871, pp 57–59, 67 for title investigations of Tangiaro 2 and Tangiaronui blocks.

25. See Monin (1995)

Another point should be made. The explanation for such changes does not appear to rest solely with an 'assertion of mana'.<sup>26</sup> Rather, such changes can be associated with wider structural changes and the effects these had on different levels of Maori social organisation. Indeed, through the late 1860s and early 1870s, Hauraki Maori were strongly divided over the question of how they should deal with the opening of land for goldmining, and in other relationships they had with the Crown. Many hapu kept their lands closed, while other lands were opened. This division did not happen purely as a result of inter-Maori conflict (the Crown played an important part in fostering division) but such divisions were reflected in hearings of the Native Land Court. For those hapu who embraced rather than detached themselves from the colonial economy, the association with highly-capitalised extractive industry opened up a new set of economic and social relationships.<sup>27</sup> These relationships enabled a certain rearrangement of the tribal landscape and thus a reinterpretation of tenure.

One example (among many) will illustrate this point. In the 1870 title investigation to a block called Waitekuri, an individual called Hoani Te Kiripakeke 'made a claim to be put in the Grant'.<sup>28</sup> The main claimants all objected to this counterclaim. They had already given their whakapapa to the court and stated a history of occupation. However, from the minutes it appears that Hoani had attempted to advance an older and valid, but less secure right to the land. Moreover, it appears that Hoani acted contrary to a relatively recent arrangement among the different owners. The latter part of the minutes record the following:

Hoani Te Kiripakeke on oath stated. I live at Kapanga. I am a Patukirikiri. I claim from an ancestor. Our joint ancestor is Kapetaua [whakapapa given showing joint ancestry] . . . My ancestors and parents lived on this land and I am living on the land at the present time, myself and all the Patukirikiri have cultivated on this land. Our elders are dead and we remain. My residence is at Matariki. We have ceased to cultivate on Waitekuri about 2 years. The only one of our hapu who has stopped to cultivate there is Paora Matutaera and he is at Opitonui. I have no witnesses to call as they have all objected to my claim.

Kapanga Te Arakuri stated that Hoani Kiripakeke's claim was merely as a member of the tribe of Patukirikiri.

Pita Taurua stated [that] Hoani had no claim to Waitekuri but merely from relationship to us. His places at Whangapoua is at Otanguroa. He sold the timber. Opitonui was Paora's piece. Waitekuri is our piece. The land has been divided among the members of the tribe, it remains with us if Hoani receives any of the payment for the timber or not.

The Court stated that Hoani's evidence was not supported by any other person and in fact he was opposed by every other person who had a claim, and therefore the claim would be disallowed.

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26. See Parsonson (1981)

27. Neither alternative was entirely autonomous. Kingite regions retained economic, if not political, relationships with colonial society, while non-Kingites often functioned within their own economic systems.

28. Coromandel minute book 2, 25 January 1870, pp 5–7

In ‘traditional’ terms Hoani’s claim appears quite strong. He was a member of the same hapu, his parents lived on the land and he also cultivated the land. However, his claim was rejected by the other claimants with the comment ‘The land has been divided among the members of the tribe, it remains with us if Hoani receives any of the payment for the timber or not’. This could be, therefore, an example of a process whereby Maori simplified or adjusted their tenure, or simply made pragmatic arrangements, because of the presence of the Maori Land Court and other economic factors. That is, there were a number of agreements made prior to the existence of the court, agreements in which secondary rights were traded off or neutralised, leaving only those with strong and obvious rights to claim the land. The result was a kind of fragmentation or realignment of rights.

The reference to timber sales is important. When receiving rentals for kauri timber, hapu appear to have divided their interests into de facto ‘blocks’, perhaps easing the problem of apportioning rentals. In this case the court’s investigation of title was clearly influenced by such an arrangement. Hoani was criticised for receiving rentals for another block and also claiming to Waitekuri. Indeed, Hoani himself stated that ‘I have no witnesses to call as they have all objected to my claim’.

The problem, therefore, was the coexistence of a current arrangement and a long-term right. Hoani, however, was not supported by his close kin, and the court clearly believed that the group right outweighed Hoani’s individual right. But did it? Hoani was no doubt aware that his rights could be changed at a later date, at least under Maori systems of tenure. But the court’s award of freehold tenure would exclude him from making such a reassertion of rights.

In a way this case shows that Maori tenure was itself evolving, adjusting to circumstance and necessity. In such a situation, Maori would themselves have debated the constitution and reconstitution of their tenure as social and political realignments occurred. This made the position of the Maori Land Court doubly problematic. Maori tenure was not just an expression of idealised ‘principles’ or ‘take’, but a system that Maori themselves contested. In any case, the transformation of this tenure into freehold title under English law would have halted such an evolution.

