

The Pouakani Report 1993

5 The Native Land Court and Land Purchases 1867-1883

5.1 Introduction

In December 1866 Governor Grey paid a personal visit to Te Heuheu and was very hospitably received. Grey commented effusively on his vision of future harmony and prosperity in a report to the Colonial Office:

I consider the Native population to be now in a better state than I have ever previously known it I feel sure that the European population, finding from my journey that they can again safely traverse the interior of the country, will begin to spread into all parts of it, developing the great resources of valuable districts which are now but little known, and the advance of this Northern Island in wealth and population will consequently be very rapid.

In this advance in wealth and prosperity the Native population, who are extensive landholders, will largely share, and I feel quite satisfied that New Zealand, now ceasing to be any drain upon the resources of Great Britain, will be regarded as one of the most tranquil and valuable portions of the Empire. {FNREF:0-86472-117-XA:5:1}

From the late 1860s the operations of the Native Land Court and land purchase agents, both Crown and private, reached into the Taupo district. However, while Pakeha settlement evolved slowly in the Taupo district, the "King Country" remained "closed" behind the aukati through the 1870s.

Waitangi Tribunal, Department of Justice, Wellington.

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5.2 The Native Land Court

In the Native Lands Act 1862 parliament waived the Crown right of pre-emption in the Treaty of Waitangi and legislated for the establishment of courts for ascertaining and defining Maori rights to their lands. The rationale for this was set out in the preamble to the Act:

And whereas it would greatly promote the peaceful settlement of the Colony and the advancement and civilization of the Natives their rights to land were ascertained defined and declared and if the ownership of such lands when so ascertained defined and declared were assimilated as nearly as possible to the ownership of land according to British law.

The Native Land Court did not come into operation until after the appointment of Chief Judge Fenton in January 1865 and the passing of the Native Lands Act 1865.

By the late 1860s the court, sitting in different towns, was hearing applications for investigation of title to blocks of land. Any Maori person(s) could lodge an application to claim title to tribal lands, and many were aided and abetted by would-be purchasers, both government and private. The court required a plan to identify the block under investigation and accepted evidence in court from claimants listed in the application, and any counter claimants who also appeared in court. Because hearings often went on for several weeks, people had to stay in the town where the court was sitting.

A graphic description of the impact of Native Land Court sittings is provided in E Beer and A Gascoigne's account of Cambridge, derived from contemporary Waikato newspapers in the early 1880s. Auckland speculators provided the impetus for the land dealing which went on around the Cambridge court:

It was this new wealth, seeking investment south, which now lent such animation to the Waikato towns and crowded the shabby precincts of the Native Land Court at Cambridge. Money, then as now, was attracted to land as safe investment.

If there was anyone who stood apart, in that day, from the ranks of the avid speculators, the greed of traders or the clumsy efforts of well-intentioned administrators, there was indeed ample reason for the pained wonderment of such an observer.

The Treaty ... had guaranteed the natives possession of their lands under the Queen. This then was the sorry, if strictly legal aftermath. A

European Court carefully taking down every name which might conceivably be involved in the ownership of each parcel of native land; the entire act, as we now see it, in one stroke, a violent disjuncting of a whole people's conception of land tenure. A communal system, which based an ancient lifestyle, cut up neatly into the segments of a European economic individualism. Outside, the temporary shops of the traders were burdened with the cheap goods which were the inducement, in effect, to a simple people to barter a patrimony.

Little wonder then that the scene was animated, that the Maoris were there in hundreds, and Europeans, clutching documents, in scores. Or that as night fell in the town, on the days of session, there should be drunkenness on the unformed streets, brawls and a revelry of the hour

It is recorded that at some of the Court sessions there would be up to 2000 Maoris encamped on the flats beyond the Karapiro bridge and at old native watering places on the opposite side of the town known as Moon's Creek. Such vacant sections as were not already offering sustenance to mobs of thin ulcerated horses, were also requisitioned. The streets abounded with hordes of mangy collarless dogs. Buildings for the accommodation of Maoris had been erected on land opposite the Duke of Cambridge hotel and behind the offices of [lawyers] Whitaker and Sheehan. Full of life and activity, the camps were always a source of wonderment to casual visitors who rode over from neighbouring towns

A correspondent, writing in February 1881 said: 'At present the town of Cambridge is all bustle, babble and excitement. The only thing I can compare it to is the diggings in the first flush of a gold discovery. Hotels, apartments "to let" are all chock full Our dusky friends show a little more wisdom in their generation as they have all come provided with tents which are scattered all over the township and its environs

'The hotel bar and bar parlours are a caution to look at. Day and night they are thronged with Maoris, male and female, young and old. What a glorious opportunity for some apostle of temperance to ply his profession'. {FNREF:0-86472-117-XA:5:2}

M P K Sorrenson described the impact of the Cambridge Native Land Court and land purchase operations around the margins of the King Country:

The allegiance of many of the bordering tribes to the King party, with its strong anti-land-selling league, had prevented the successful conclusion of most European negotiations for almost ten years after the end of the wars. But, by 1880, concentrated individual dealings carried out by Government and private agents had broken down much of the opposition. Large blocks of land were being taken before the Court, sitting continuously at Cambridge. As several European parties had

secured interests in single blocks, there was fierce competition to secure favourable decisions of the Court. Storekeepers at Cambridge, working in collaboration with purchase "rings," used the Court sittings to "harvest" the money advanced by purchasers. Then the purchasers were in a good position to finalise transaction

Where the competition was between the Government and private parties the results were just the same. Ten years of competition for the 250,000 acre Patetere block, at the head of the Thames Valley, was only resolved when the Government withdrew its interests in 1882 and virtually handed the block over to a private company. Court sittings for this land were held at Cambridge with the Maori claimants suffering from prolonged sittings and the demoralising atmosphere of the township. {FNREF:0-86472-117-XA:5:3}

The Patetere purchases extended south to include the Whakamaru block across the Waikato river from Pouakani block.

A title was eventually granted in the names of individual Maori, and each person was then free to dispose of his or her interest in a block of land individually. The chiefs and other leaders were given little special consideration. For example, the attitude of the Native Land Court toward Tawhiao and the King Movement was made clear on several occasions. In Cambridge, Judge Monro opened a court sitting on 27 May 1879 and, as the Waikato Times reporter put it, "The King and the law were brought face to face, and the issue was never doubtful". Te Ngakau, on behalf of Tawhiao, objected to the court proceeding. Judge Monro, who "exhibited admirable composure and firmness" ruled:

We know no Rangatiras nor slaves in this Court. Men here are all alike. Natives put in their claims, and I am here to hear them, and decide. I cannot know you, Tutua [low-born person], more than any other man. The Court can take no cognizance of Tawhiao. {FNREF:0-86472-117-XA:5:4}

Te Ngakau was advised he would have to pursue his claim as an individual, along with all the other individual claimants. The court was then adjourned until 2 pm that afternoon:

The natives assembled, and Te Ngakau, starting up, addressed them, stating that the Court should be closed. All the claimants to the block under consideration strenuously objected and a fierce and hot discussion ensued. Matters looked very serious at one period. Time was passing rapidly, and, at 2 o'clock it was certain the Court would order Te Ngakau to leave if he persisted in "talking against time." At about 12.15, Major and Mrs Wilson came to talk to Te Ngakau, and induced him to reconsider his position. After a great deal of talk, he agreed to urge his claims as an ordinary suitor, and abandon his obstructiveness. When the Court was opened at 2 o'clock, he did not appear, and business proceeded as usual. {FNREF:0-86472-117-XA:5:5}

People in the Taupo district were required at various times to attend court sittings in Cambridge, Rotorua, Napier and Wanganui. Living away from home for long periods, reliance on overpriced food from local storekeepers, temptations of grog-sellers, and the inevitable consequences of indebtedness, the poor living conditions and vulnerability to infectious diseases, all contributed to massive social disruption of Maori communities of the central North Island. A member of parliament commented:

I believe we could not find a more ingenious method of destroying the whole Maori race than by these Courts. The Natives come from the villages of the interior, and have to hang about for months in our centres of population They are brought into contact with the lowest classes of society, and are exposed to temptation and the result is a great number contract diseases and die Some little time ago I was taking a ride through the interior and I was perfectly astonished at hearing that a subject of conversation at each hapu I visited was the number of natives dying in consequence of attendance at the Native Land Court at Wanganui. {FNREF:0-86472-117-XA:5:6}

The intention of parliament in setting up the Native Land Court had been to establish a structure to regulate land sales, to establish Maori titles in a form cognisable in British law before land was sold, and avoid the kind of disputes over land at Waitara which had led to the wars in Taranaki. Henry Sewell stated in parliament in 1870:

The object of the Native Lands Act [1865] was twofold: to bring the great bulk of the lands of the Northern Island which belonged to the natives ... within the reach of colonisation. The other great object was, the detribalisation of the natives - to destroy if it were possible, the principle of communism which ran through the whole of their institutions, upon which the social system was based, and which stood as a barrier in the way of all attempts to amalgamate the Native race into our own social and political system. It was hoped that by the individualisation of titles to land, giving them the same individual ownership which we ourselves possessed, their social status would become assimilated to our own. {FNREF:0-86472-117-XA:5:7}

In 1877, Mr Whitaker, land speculator, lawyer and member of parliament stated it was:

absolutely essential, not only for the sake of ourselves, but for the benefit of the Natives, that the Native titles should be extinguished, the Native customs got rid of, and the Natives as far as possible placed in the same position as ourselves. {FNREF:0-86472-117-XA:5:8}

In his analysis of the effects of the Native Lands Act 1865 and the large amount of legislation on Maori land over the next three decades, Ward took a different view:

The Maori people were consequently exposed to a thirty-year period during which a predatory horde of storekeepers, grog-sellers, surveyors, lawyers, land agents and money-lenders made advances to rival groups of Maori claimants to land, pressed the claim of their

faction in the Courts and recouped the costs in land. Rightful Maori owners could not avoid litigation and expensive surveys if false claims were put forward, since [Chief Judge] Fenton, seeking to inflate the status of the Court, insisted that judgments be based only upon evidence presented before it.

The introduction of the new form of Native Land Court was also to have grievous effects on Maori society. It set up a body of self-proclaimed experts who had to try, and frequently failed, to interpret Maori custom The system invited not co-operation but contention between parties who - although the Court frequently divided the land - could win all, or lose all, on the Judge's nod. It ushered in an era of bitter contesting, of lying and false evidence. The legalistic nature of the Court also instituted a costly and tedious paraphernalia of lawyers, agents, legal rules and precedents - a morass in which the Maori floundered for decades, frittering away their estates in ruinous expenses and still all too often not getting equitable awards. {FNREF:0-86472-117-XA:5:9}

The Native Land Court first sat in the Taupo district at Oruanui in 1867. Over the next 15 years almost every block investigated was subject to some sort of negotiation outside the court for sale or lease. From a review of the Taupo minute books it appears that the Native Land Court sat in the Taupo district at the following times:

Table 5.1: Native Land Court sittings in Taupo district

Date	Judge	Taupo Minute Book
28 October 1867*	Monro	1/1-12
6-15 April 1868*	Monro	1/15-90
17-21 April 1868	Monro	1/91-127
5-6 March 1869*	White	1/128-136
8 March 1869*	Smith	1/137-214
28-30 March 1872*	Rogan	1/215-241
20-27 August 1877	Rogan	1/242-307; 2/1-10
1-11 December 1880	Symonds, O'Brien	2/10-51
30 March-20 May 1881	Matting	2/52-201
21 May-4 June 1881	Macdonald	2/202-247
1 December 1881 -		
31 January 1882	O'Brien, Williams	2/249-284; 3/1-68
9-13 December 1884	Macdonald	4/1-32
14 January 1886	Brookfield, Scannell	4/34 ff

The sittings marked with an asterisk were held at Oruanui, the rest were in the court house at Taupo town (Tapuaeharuru). The hearing beginning on 14 January 1886 was the investigation of title of Tauponuiatia block which is described in chapter 8. The minutes of rehearings of Tatua block, at Cambridge, in June 1882 and Rangipo Waiu block, at Upokongaro in the Whanganui district, in March to April 1882 are recorded in Taupo minute book 3.

In the first two decades of operation in the Taupo district, the Native Land Court was inextricably bound up with the process of purchase of Maori lands. The contests between rival factions in the court were further complicated by the conflicts in loyalties toward the King Movement, tribal and hapu allegiances, and a desire to avoid further trouble by co-operating as far as possible in a court system imposed by legislation. Many Taupo people also had land interests which required their attendance at other courts held in Cambridge, Rotorua, Napier and Whanganui district, and they were sometimes required to be in two places at once. Major Scannell, the resident magistrate who had arrived in Taupo in 1869 in charge of the armed constabulary station, reported in May 1883 that several large blocks in which local Maori had interests were before the Native Land Court in Cambridge. {FNREF:0-86472-117-XA:5:10} "Obstruction" to the trigonometric survey of the Taupo district had ceased, and construction of a road from Tokaanu through Rangipo (the Desert Road) was proceeding "chiefly by Native labour". He also reported that Tawhiao and his party had passed through on their way to the Whanganui district. On their return journey they stayed "a short time at Tapuaeharuru and Oruanui, but did not receive an enthusiastic reception". Scannell also reported a lot of illness among children and old people which he described as "illnesses inherent to their mode of living". Although more food crops had been planted than usual, in expectation of feeding crowds expected at the next hearing of the Native Land Court, Scannell commented that food was grown only for consumption, not for sale:

Any money they may become possessed of is got by the sale of land, and that, as soon as got, is in the greater number of cases squandered in drink. The Natives at the northern end of the lake are parting with their lands wholesale. It will, I think, be necessary to prevent by some means their being able to part with the whole, as, if it is left in their power to do so, they will certainly in time sell it all. They are getting into that stage that they must have money, and will not work for it whilst any land available for disposal is left. At present those on the eastern and southern shores are not selling so freely; they lease the greater part of the lands they wish to dispose of. {FNREF:0-86472-117-XA:5:11}

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5.3 Land Purchase

The government land purchase officers C O Davis and H Mitchell reported in July 1875 on their activities in the Taupo district:

where we were met by the chiefs Topia Turoa, Matuahu, Te Heuheu, and Paurini, accompanied by all the surrounding tribes. After a series of preliminary meetings were held at Tapuaeharuru, on the leases and purchases generally, local gatherings took place at Omatangi, Opepe, and Runanga, where we were offered some of the signatures of grantees of Runanga No. 2, and Tauhara middle. We arranged also a lease of Runanga No. 1, from certain counter claimants, and completed the title of the Taharua Block. Discussions relative to the Tatua leases, east and west, Mohaka, Oruanui, and Parekarangi, we were unable to complete, being suddenly summoned by the Under-Secretary to meet Hon. Native Minister [Sir Donald MacLean] at Maketu

During our present visit to Taupo, meetings have been held at various places regarding the Mohaka Block of 47,000 acres, which was partly settled before Sir Donald MacLean at Napier, one of us being present, Te Tatua, Tauhara North, Parekarangi, and Oranui [sic = Oruanui]. The tone of feeling with regard to all of these places was in favour of Government, and although Henare Matua and other Hawke's Bay celebrities have their written epistles and oral messages to Taupo Natives, stirring them up to oppose any attempt on the part of Government to secure lands in this district by purchase or lease, the machinations of the Napier chiefs proved unsuccessful, and their gratuitous opinions treated with profound indifference.

We have felt it our duty to encourage, as much as possible, the desire of the Taupo tribes to educate their children, and we have impressed upon them the advisableness and necessity of setting aside for school purposes a portion of the money received from us for their lands. {FNREF:0-86472-117-XA:5:12}

In August 1875 Davis and Mitchell organised:

A series of meetings with the chiefs Poihipi Tukairangi, Hohepa Tamamutu, Hitiri te Paerata, Takerei, Ruha te Parangetungetu, Te Reweti Waikato, Te Papanui, Te Heu Heu, Hauraki, and others, regarding land claims on the west shores of Lake Taupo, Te Tatua on Waikato, Paeroa [Reporoa district], Kaingaroa, and other places; and

we succeeded in obtaining the necessary signatures to complete the conveyance of Tauhara North

In this month [September] likewise we completed and posted deeds of Tauhara Middle purchase, Tauhara North purchase, and Oruanui lease, accompanied by explanatory memoranda. Also in this month was held the great Taupo meeting relative to certain territory on the western shores of Lake Taupo, disputed on the one side by the Hau-Hau element, under the chiefs Hauraki, Te Tuhi, and others, and on the other by the friendly Natives under Te Heu Heu, Paurini, and Hohepa Tamamutu. Major Scannel [sic] was chosen president of the meeting, and the assessors ... were Te Kepa te Rangipuawhe and Arekatera te Puni. The evidence taken was most voluminous; the inquiry extended over fifteen days. The whole of the testimony adduced at this local Court was forwarded to the Hon. the Native Minister, for his information. {FNREF:0-86472-117-XA:5:13}

This evidence has not been located but this report suggests that the rival factions among claimants in west Taupo lands were already well established.

Not all the Davis and Mitchell arrangements went smoothly:

In the month of March [1876], Petera te Rangihiroa and other members of the Ngatihineuru tribe entered into a compact with Hawke's Bay Natives to repudiate the leases previously agreed to by themselves and Government.

The dissentients were spoken to by another purchase officer and reminded of their "duty". Meanwhile, Davis and Mitchell instructed two surveyors "to complete as speedily as possible the necessary surveys" so that titles could be finalised in the Native Land Court. {FNREF:0-86472-117-XA:5:14}

In their 1876 report Davis and Mitchell included a discussion of mana. Although they were explaining the "spirit of rivalry" among Te Arawa tribes, and the reasons for opposition to the Native Land Court and land purchase, the following remarks are indicative of how this issue was dealt with by these land purchase officers:

It has been our practice from the first to ignore the mana, because it professes to be perfectly distinct from the ownership of the soil, and moreover the assumed mana by these dominant tribes is repudiated by the genuine owners of the soil. It does seem strange indeed that in these times, when Maori rule is almost annihilated by European usages, that any chiefs or tribes in the Arawa country should be found to assert their mana and to base their pretensions on it, and this seems doubly strange when we take into consideration the fact that all the leading chiefs of the Arawa are receiving Government salaries, by which act they have to all intents and purposes virtually abandoned the Maori notions of authority. To retain their ancient rights of mana and to draw their Government salaries is perfectly incompatible, and to attempt usurpation by claiming to have mana now, when the great

majority of the people repudiate their assumption, is equally absurd. We do not go into the basis of this mana, as to how it comes to pass that one tribe should possess it and not another; but as far as we have been able to glean information, the mana question has arisen from the practice of the more powerful domineering over the weak; the power arising from birth, intellect, and other fortuitous circumstances. It will be seen by the above remarks that it would be quite out of place for us, as land agents, to recognise the mana of chiefs or tribes; and accordingly we have steadily adhered to our first determination, namely, to treat only with the recognized owners of the soil. The attitude assumed by us in this respect has induced the chiefs and tribes claiming mana to deluge the Government with letters and telegrams, in the hope that they would be able to extort money on the ground of this Maori mana, forfeited long ago and fully ignored by all parties. It may be remarked here that when Christianity was introduced into New Zealand all Maori slaves were emancipated, and every individual Maori was looked upon as the owner of his land, the chiefs having been disrobed of their mana power But should the adherents of this undefined Maori mana continue to exert their clamour, the matter may readily enough be set at rest by a series of Native meetings, aided by Government, as these simple tribunals would be the only effectual mode of settling this purely Maori supremacy. {FNREF:0-86472-117-XA:5:15}

In their report in April 1876 Davis and Mitchell reviewed the potential of the Rotorua-Taupo district for pastoral farming, and attempts by potential runholders to gain access to these lands, many of whom were prepared to pay higher than government rates:

The Arawa country, as a whole, has been cried down as a "desert of pumice;" and those who profess to have great knowledge of soils, and their adaptation to grasses, speak loudly against the run-holders for taking up so dreary a country, and some of the local newspapers have criticised the action of Government for "wasting," as they say, "money on such deserts". It never has been proved, however, that these poor-looking pumice soils will not grow grasses, for the simple reason that no attempt has been made to try their capabilities. Some persons indeed, in their fool-hardiness, ploughed up certain places at Taupo and scattered grass seed, forgetting at the time that the plough-share should not have touched the soil, as it did not require to be made more porous by ploughing, but more compressed by rollers. One thing is certain that, in many localities where no plough-share has been introduced, fine clover and various other English grasses have embedded themselves in the pumice soil, and on some of the despised runs sheep are thriving remarkably well The late William Buckland [who had held a lease of north Taupo land], whose practical knowledge in agricultural pursuits was most extensive, often expressed his conviction that the very worst-looking pumice land of Taupo would be productive of English grasses some day, should the work be intrusted to competent and skillful persons

From the year 1866 up to 1872, various private individuals from both the North and Middle [South] Islands anxious to obtain runs in the Arawa country, treated directly with the Natives, and paid large deposits to the professed owners, contrary to law, so determined were they to gain possession, if possible, of the lands in question, notwithstanding the oft-repeated assertion that the whole of the country is a "silent, barren desert." In some instances sheep were placed on runs, but were driven hither and thither by antagonistic Maori claimants; and when any attempt was made to survey the lands, the surveyors were at once expelled by the Natives

The acquisition of these lands by lease, politically considered, is, without doubt, of paramount consequence, the country being intersected by roads and telegraph lines, accessible by coach and horse, and forming the area between the great centres of population in the North Island - namely, Wellington, Auckland, and Napier. Nor should the great importance of establishing permanent peaceful relations with the large Maori population of this district be overlooked, as it will tend materially to intimidate the action of less friendly Maori communities, and raise the confidence of New Zealand colonists. {FNREF:0-86472-117-XA:5:16}

At this stage Davis and Mitchell reported that they had arranged leases of four blocks in Taupo, a total of 40,000 acres, and two blocks making up 47,000 acres at Mohaka. The annual rentals on leases for the first seven years were one farthing per acre in the Taupo district. The Runanga No 1 and 2 blocks and Tatua block were under negotiation and already "applied for by run holders". It was also claimed that local Maori owners of these lands "are exceedingly desirous to see them in the occupation of settlers".

By the early 1870s land speculators had become interested in the north Taupo lands. The Crown had stepped in to regulate some of this activity and land purchase officers negotiated leaseholds of several large blocks in the Whakamaru-Tatua area. During the late 1870s and 1880s a number of blocks were investigated by the Native Land Court. By the end of 1883 the following private purchases were completed in the north-west Taupo district: {FNREF:0-86472-117-XA:5:17}

Table 5.2: Private purchasers in the north Taupo district

Date per acre	Name of Purchaser	Block	Area Total (acres)	Price price
4 June 1881 6.3/4d	R Graham	Wairakei	4203 750	3s
3 July 1883	J Grice and W Moon	Whangamata No 1	6830 1707	5s
29 December 1883 2s10.1/4d	J Grice and W Moon	Tatua West	38620 5500	

A substantial portion of the Whakamaru block, across the river from Pouakani, was purchased by the Patetere Syndicate in 1882, and then sold to the Thames Valley Land Company. The lands in Tatua West and Whangamata No 1 blocks, became known as "Grice's Freehold". W Moon was married to Karawhira Kapu, one of the subjects of investigation by the Tauponuiatia Royal Commission in 1889, and a claimant for land on the Pouakani block. Grice was also connected with the Thames Valley Land Company.

Waitangi Tribunal, Department of Justice, Wellington.

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5.4 The Tatua Block

The process of establishing a title to a block of land was long and tortuous, and complicated further when there were rival Crown and private purchase agents negotiating for the block. As an example, the transactions on Tatua block, on the eastern boundary of Pouakani block, will be outlined over the period from 1867, when it first came before the Native Land Court, until 1883, when title was established and Tatua West block was sold to Grice and Moon.

[Map 5.1](#)

Te Tatua block was investigated by the Native Land Court at its first sitting in the Taupo district, at Oruanui on 28 October 1867. Hitiri Te Paerata and others claimed title on behalf of Ngati Raukawa. The evidence taken was contained in only ten pages of the minute book and an order for a certificate of title was made in ten names to be issued "if within nine (9) months the above-named persons shall furnish a proper survey thereof". {FNREF:0-86472-117-XA:5:18} These names included Ihakara Kahuaio for Ngati Rauhoto and representatives of Ngati Tama, Ngati Ruingarangi, Ngati Te Urunga and Ngati Pakau. The court did not sit again until 17 April 1868 at Oruanui, when more evidence on Tatua was heard. Ihakara Kahuaio stated:

This is a block of land which we are anxious to lease. The owners of the land have agreed that it shall be heard as a whole, the outer boundary only being given. The tribes interested in the block are Ngatitama, Ngatihuarere, Ngatiruingaarangi, Ngatirauhoto, Ngatiteurunga, Ngatikaretoto, Ngatitewhetu, Ngatipakau, Ngatihingaawatea, Ngatikikopiri, Ngatitutetawha, Ngatihinerau and Ngatimoeiti: The [principal] men of these tribes have consented to this arrangement. {FNREF:0-86472-117-XA:5:19}

All these tribes were of Te Arawa and Tuwharetoa descent. Hitiri Te Paerata objected "on behalf of Ngatitekohera, Ngatiwairangi, Ngatimoekino and Ngatiha" to the western portion of the block being included, claiming this from the Ngati Raukawa ancestors Wairangi, Upokoiti and Whaita. {FNREF:0-86472-117-XA:5:20} After hearing evidence on 18, 20 and 21 April, the court ordered in favour of the ten names produced by Ihakara Kahuaio who "said that all persons interested had agreed among themselves as to the Grantees". {FNREF:0-86472-117-XA:5:21}

Te Tatua block was before the court again at Oruanui on 5 March 1869 when Judge White gave notice of a rehearing by Judge Smith. Meanwhile the hearing of Kaingaroa block proceeded, with the same groups of protagonists, led by Ihakara Kahuaio and Hitiri Te Paerata. This block was also first heard on 28 October 1867. On

8 March 1869, Judge Smith arrived and began a rehearing of Te Tatua which continued through the following Monday 9 March to Saturday 13 March. Ihakara Kahuaio voiced his objection to a rehearing which had been sought by Hitiri Te Paerata:

I object to the rehearing and decline to proceed with my claim. It has been twice adjudicated upon before. The first time the Certificate ordered by the Court was not issued because there were eleven names. This was not my fault. The second time my opponent Hitiri was heard and judgment given in my favour. I do not know why there should be a rehearing. {FNREF:0-86472-117-XA:5:22}

The first hearing of Te Tatua had been under the Native Lands Act 1865 which restricted the number of owners in a block to ten or fewer. The court then explained that a rehearing must be ordered by government, by an order-in council published in the New Zealand Gazette:

It was also explained that if the claimants wished to withdraw their claim they could do so, but the land would revert to its original position, all former proceedings of the Court being annulled by the order for rehearing. The Counter claimants might if they thought proper hand in an application for investigation of the title to the land owned by them. {FNREF:0-86472-117-XA:5:23}

Poihipi Tukairangi supported Ihakara Kahuaio's comments but both agreed to proceed with the hearing:

This land has not been surveyed. (Mr Heale put in a map of a trigonometrical survey of the district on which the land is situated showing the boundaries of the Tatua Block) Witness [Ihakara Kahuaio] traced boundaries of claim as sketched in application. {FNREF:0-86472-117-XA:5:24}

Ihakara Kahuaio then proceeded to trace his ancestry from Te Arawa waka through Tia. Hitiri Te Paerata based his claims on the Ngati Raukawa ancestors, Wairangi and Whaita.

Judgment was given on 15 March 1869 that Ihakara Kahuaio and his party were not entitled to the whole block exclusively, that Hitiri Te Paerata and his party had also established rights which pre-dated the arrival of Ngati Raukawa, that is from Ngati Kahupungapunga and Ngati Hotu. The block was divided into east and west. Tatua East was granted to Ihakara Kahuaio and others. Tatua West was granted to:

Hitiri Te Paerata and his party ... on the condition that the names of Ihakara Kahuaio and Irihei Rangimatani shall be included in the list of grantees, or that some other arrangement be made by which their interest shall be recognised and secured. {FNREF:0-86472-117-XA:5:25}

On 16 March an order was made for Tatua East listing the names of Ihakara Kahuaio and nine others, subject to their providing "a proper survey and certified plan" within 12 months. The court also "ordered that the Presiding Judge do report the opinion of the Court that it is proper to restrict the alienability of the land". The fees ordered were six days for investigation of title £3, cost of certificate and Crown grant, £1 each, making a total of £5. {FNREF:0-86472-117-XA:5:26} For Tatua West block, Hitiri supplied a list of ten names but this was withdrawn because of "misunderstanding having occurred amongst the claimants". {FNREF:0-86472-117-XA:5:27} No order was made for Tatua West.

Tatua East block came before the court again on 28 March 1872:

Ihakara Kahuaio said, it was ordered at a former sitting of the Court that a Crown Grant would be issued for this land if we made a proper survey of it.

The I[n]spector of Surveys said he wished the natives to know that his parties of surveyors were not bound to survey their lands on their application but that if a party were in the district and the survey was not opposed, the survey would be made on their application, but this would not interfere in any way with the rights or privileges of the natives to employ any surveyor to do their work. {FNREF:0-86472-117-XA:5:28}

The court ordered that the former order to issue a certificate of title be carried out when a satisfactory plan was produced.

The Tatua blocks did not come before the court again until 20 August 1877. The minute book entry is terse: Tatua West, "not surveyed, adjourned to a future sitting". {FNREF:0-86472-117-XA:5:29} On 25 August, Hitiri Te Paerata produced a list of ten names for Tatua West. Te Hira objected to this list, firstly because he had not written it, and secondly he had received a letter stating:

that the Government had suspended the operation of the Native Land Court on this block. Mr C.O. Davis explained that the letter had been written at the time the proclamation to that effect had been in force and which has since been rescinded. {FNREF:0-86472-117-XA:5:30}

Ihakara Kahuaio also objected, accusing Hitiri Te Paerata of including names of people who did not truly represent the claimants. Because this inquiry began before the passing of the Native Lands Act 1873, which required all names be included in a title, the restriction to ten names appears to have continued:

The Court intimated that this list of names would be received but as no map was before the Court an order would not be made at this sitting, but when a plan was produced an order for the issue of a Memorial of Ownership would be made in favour of the persons named in Hitiri's list and if made in any other place but Taupo it would be notified to Te Hira and Ihakara to give them an opportunity of protesting against the decision.

Hitiri requested that the survey of this land be instigated by the Court. The Court stated that the survey had been ordered by the Judges who heard the case. {FNREF:0-86472-117-XA:5:31}

In June 1877, Henry Mitchell, the land purchase officer working with C O Davis, had reported that he had obtained "a general consent" for the survey of Te Tatua and Te Hukui blocks which would be carried out as soon as the district surveyor, Captain Turner, who was based at Tauranga, could arrange for a surveyor:

The survey of Tatua is very anxiously looked for by the section who were decided by the Court in 1869 as the owners (Hitiri Paerata, Te Papanui and party), and who, in 1874, leased the land to the Government. But there is also a considerable opposition to the survey from sections ignored by the Court and by us, the Government Land Purchase Agents. This opposition consists of a Hauhau section, who are supposed to uphold the King's policy of anti-leasing or selling land, and of a Queenite section, headed by old Poihipi Tukairangi, who professes to ignore the judgment of the Court, because no survey was permitted by the Natives within the twelve months allowed by the Court on issuing its interlocutory order. Claims have now been sent in to the Chief Judge, so that the interlocutory order of 1869 may be sustained, or else a fresh investigation take place. But before either of these courses can be taken the survey must be made. I intend meeting all the sections interested in the Tatua, with the District Officer, and hope to clear away the opposition which has so long existed in a settlement of the disputes regarding the ownership of this tract of country. {FNREF:0-86472-117-XA:5:32}

There was still no completed survey of the Tatua blocks when Tatua West came before the court again on 3 December 1880. An application for succession to interests in the block was dismissed: "Found to be not surveyed and no order was issued". {FNREF:0-86472-117-XA:5:33} On 4 December the application of Ihakara Kahua and others received similar summary treatment:

An interlocutory Order made in 1868 to have survey sent in before expiration of 12 months, this has not been done and the Court stated that they had better send in a new application when the land has been surveyed. Dismissed. {FNREF:0-86472-117-XA:5:34}

Another rehearing of the Tatua block began in the Native Land Court at Cambridge before Chief Judge MacDonald and Judge Puckey on 1 June 1882, and continued until 29 June. This hearing was different in that the parties were represented by Pakeha lawyers, among them Mr Sheehan and Dr Buller. The case began with some confusion over the status of a plan produced by the surveyor Mr Gwynneth. The chief judge questioned why the plan had not been sent directly from the surveyor general. Gwynneth responded:

The S/G sent it to me as there was a lien on the land. The Court sent the plan to me saying I was to receive it as the lien had not been paid, it came to me with your sanction. I can produce the plan in a few minutes

if wanted. I have taken this course because the Native Land Court will not register liens. {FNREF:0-86472-117-XA:5:35}

The chief judge said he could wire the surveyor general to ask if a plan had been made. Hamiora Maungakahia then said:

The Maoris are not clear in this case as the Court usually produces its own map, this is a new departure to us, a surveyor producing a map of his own. {FNREF:0-86472-117-XA:5:36}

There was a map hanging in the court room but this turned out to be Tatua East which caused further confusion. The court was adjourned while a telegram was sent to the surveyor general, and it was confirmed that Gwynneth's plan was an approved one. When the court resumed at three o'clock in the afternoon, the chief judge restated the situation, noting, "There is a great deal of trouble in reference to liens". Gwynneth refused to produce the plan until the lien was settled. The chief judge mentioned that was an issue to be sorted out with the surveyor general: "if the survey was made without the Surveyor General's order then no lien can exist". Gwynneth still refused, as he considered possession of the plan security for his lien. The lawyer, Sheehan, requested an adjournment after the court threatened to prevent Gwynneth from doing any further survey work for the court. An adjournment until next day was granted. Gwynneth did eventually produce the plan but only after he had received a guarantee that his lien of £279 4s 3d would be paid. The court remarked:

as it is the law that no surveyor can have a lien on what is clearly the property of the court, and in advising you to give up the plan I was doing you no injustice. I am glad you have acceded to my request. Anyone refusing to appear on a summons in future will be subpoenaed each day and fined £20 on each occasion till plan is produced. It is a general caution to others similarly situated. Mr Sheehan guarantees the account on behalf of his clients. {FNREF:0-86472-117-XA:5:37}

There was some further discussion of the status of plans and then it was made clear that while the Tatua block had been in court three times before (the earlier application having been dismissed because the requirement for survey had not been complied with), "This will be heard as a new case". The court then adjourned again.

The hearing of evidence began in earnest on 4 June and occupied 19 sitting days. On Thursday afternoon, 21 June, the minutes record:

A long discussion here ensued as to the desirability of the case proceeding, Dr. Buller contending that the first judgment given is the proper one, and if that former judgment be not confirmed (or equivalent) he intends at once applying to the Supreme Court etc. etc. {FNREF:0-86472-117-XA:5:38}

[Map 5.2](#)

The court was adjourned to the following Saturday 23 June:

Hipirini Te Whetu: Expressed an opinion that the Court and the legal fraternity have had all the say in the Tatua Court.

Aperahama Te Kume: We do not understand the action of the Court at the present time. When Tatua was 1st called the Court said the block w[oul]d be taken as an entirely new case at wh[ich] we were agreeably surprised. Suddenly there is a new departure. Where have these laws been hidden?

The 1st hearing took place under another Judge, and there has been a fresh Judge in each successive hearing. This present is the 4th adjudication. Which of all these will the Court adopt?

Chief Judge: The present position comes about thus. As you are aware the title of this land has been investigated previously. When this present one commenced, for some time afterwards, until I raised the question the o[the]r day, everyone was of opinion that all the previous judgments were bad, owing to investigations having gone on without a previous survey. I have since thought those judgments were not bad (as regards survey). The next question was the consequences etc. One gentleman says that the first judgment is good only, another says 2nd alone is good ... Hipirini can say that none of former judgments are good and yet another party say that 1st and 2nd are bad, but 3rd good (in parts), so the different grounds on wh[ich] these opinions are based, I will not trouble you. Now it w[oul]d have been the duty of C[our]t to say wh[ich] of them was good, but it so happens that all say (excepting Arekatira Hipirini) that if you don't conduct present proceedings we shall take case to Supreme Court. Therefore this Court replies if you can get the Supreme C[our]t to relieve this C[our]t of present difficulties, I shall be very glad, but before that event it w[oul]d be necessary I should assume certain views on the matter, so that it may be clear, and that brings me to the views on the question which I have written down and wh[ich] follow.

Dr Buller: Your Honour is aware I intend to move for a writ of Prohibition asking why your Honour should not give effect to the first judgment (writ of mandamus).

Chief Judge: The Certificate in re Tatua East will be in favour of Judge Rogan's order of August 25th 1877. {FNREF:0-86472-117-XA:5:39}

This last comment created further confusion because the Tatua East order was made on 28 March 1872 by Judge Rogan. {FNREF:0-86472-117-XA:5:40} The Tatua West block was before Judge Rogan on 25 August 1877 but no order was made on that date as no survey had been done. {FNREF:0-86472-117-XA:5:41} The chief judge also noted that fees would "be returned in case it is decided that this present sitting was not considered necessary". {FNREF:0-86472-117-XA:5:42}

Court was adjourned until Monday morning 25 June, when Hare Teimana began by asking for a further adjournment:

to enable him and others to make preparations for the forthcoming Court at Rotorua which is advertised for the 28th inst. we also wish to give our attention to our plantations, as the season is getting late. {FNREF:0-86472-117-XA:5:43}

The chief judge responded:

I will advise the presiding Judge of the Rotorua Court to postpone any business for a week or two after the 28th instant to enable all interested parties to have a little preliminary time. {FNREF:0-86472-117-XA:5:44}

The court was then adjourned till 12.30 pm. The lawyers consulted variously with their clients and each other and during the afternoon reported some "arrangements" made. The court resumed again briefly on 26 June and Sheehan reported arrangements were agreed on the southern part of the block. On 29 June orders were made for Whangamata No 1 (6830 acres) 6 owners, Whangamata No 2 (2300 acres) 243 owners; and Whangamata No 3 (200 acres, strictly inalienable) in the same 243 owners. {FNREF:0-86472-117-XA:5:45} On 3 July 1883 Whangamata No 1 block was sold to Grice and Moon. The Tatua West block was ordered sometime later and sold on 29 December 1883 to Grice and Moon. Exactly what arrangements were made outside the court in Cambridge were not recorded in the Taupo minute books.

We turn now from this illustrative case study of the Tatua block to the broader perspective shown in [map 5.2](#).

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