

Te Roroa Claim

1 Te Ao Hou (The New World)

1.1 Tauwi (Newcomers)

Take 1

Ta Ao Hou (The New World)

1.1.1. Tauwi (Newcomers)

The Te Roroa claim is a direct outcome of the responses of four leading rangatira to the expansion of European trade, settlement and Christianity in their areas in the nineteenth century. Their names are Parore Te Awha, Te Rore Taoho, Tiopira Kinaki and Hapakuku Moetara. Brief stories of their lives up to 1875 are included here as they illustrate the movement of people from community to community in pursuit of European trade as well as mahinga kai. Furthermore they illustrate early Te Roroa initiatives in selling land and the extent to which they were willing to sell. By the 1870s, each of these chiefs was based in the respective kainga from which he exercised his mana over the territory of this claim.

Te Roroa occupied the hinterland of two of the northern harbours visited by commercial shipping from the late 1820s, the Hokianga and the Kaipara. A lively shore-based trade in kauri timber, pork and potatoes and ship building developed in the Hokianga in the 1830s and was expanding into the Kaipara by 1840. Wesleyan mission stations were established in the Hokianga at Mangungu in 1828, at Pakanae in 1837 and at Tangiteroria in the Kaipara in 1836. French Roman Catholic missionaries arrived in the Hokianga in 1838. {FNREF:0-86472-088-2:1.1:1} As Te Roroa had familial connections to both areas, contact with Europeans prior to the 1870s "would have been unavoidable, though in general contact tended to be restricted to those of rank in Te Roroa" (B34:att 1).

The most devastating development in the early years of European contact was the intensification of rivalry, shifting alliances and warfare between Ngapuhi and Ngati Whatua and their hapu, not only for traditional purposes but for the lion's share of the European trade. The greatest defeat, inflicted on Ngapuhi, was at Moremonui in 1807. Among those who escaped was Hongi Hika. He became the leading musket trading chief in the Bay of Islands, and embarked on a number of successful war expeditions against the southern tribes. In 1819 a group of Te Roroa led by Tuwhare, son of the warrior chief, Taoho, joined an expedition south to Te Whanganui-a-Tara and the Wairarapa. In 1825 Hongi avenged Ngapuhi's defeat in the battle of Te Ika-a-Ranganui. Both sides suffered heavy losses, but Hongi's party was victorious. Ngati

Whatua were captured or fled.

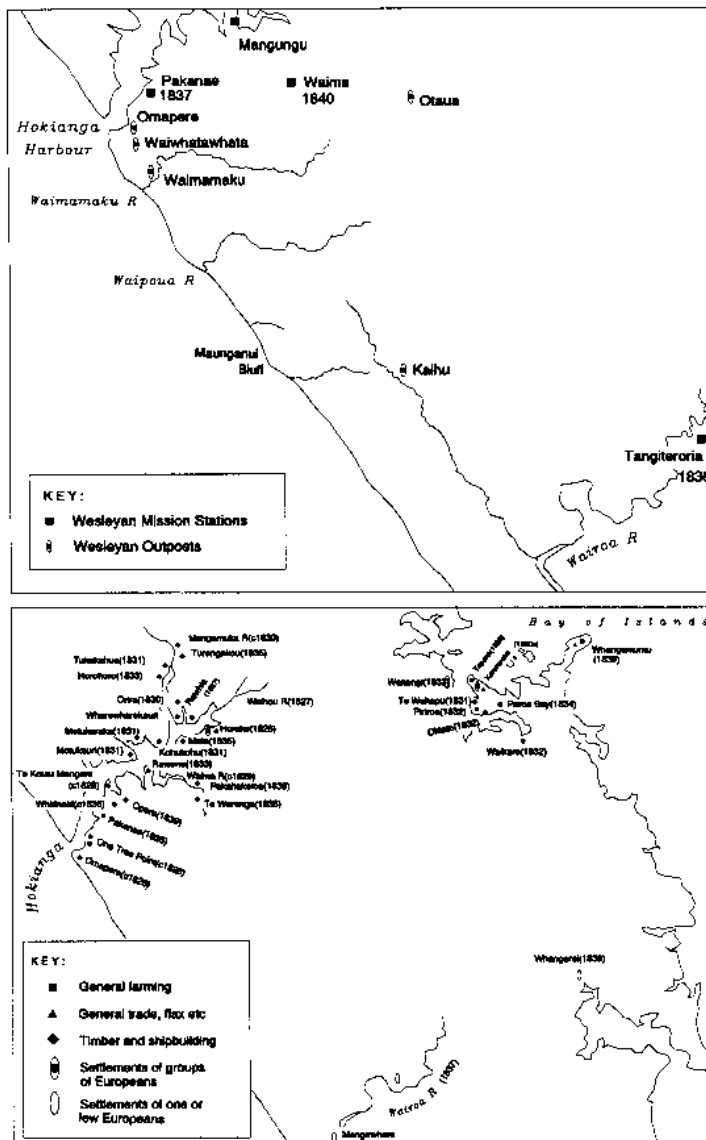


Figure 6: Wesleyan missions and European trade and settlement. Source: Centennial historical atlas map collection, Cartographic collection Alexander Turnbull Library, Wellington; A H McLintock ed *An Encyclopaedia of New Zealand* (Wellington, 1966) vol 2 p 44

Although only two Te Roroa chiefs were at Te Ika-a-Ranganui and there were no Te Roroa casualties, "Te Roroa and N'Whatua were one" (A4:433). Following the defeat of Ngati Whatua, Parore Te Awha, a Ngapuhi relative of Te Roroa, later claimed that he protected a party of 70 Te Roroa men, women and children at Kaihu and they all went to live at Waipoua (E2(a):14). The main body of Te Roroa under Taoho went to their kainga at Waimamaku and stayed there for many years. With them was Taoho's son, Te Rore Taoho, and grandson, Tiopira Kinaki.

Parore Te Awha was born at Mangakahia about 1795. {FNREF:0-86472-088-2:1.1:2} On his father's side he was descended from Te Ponaharakeke, of Ngati Rua-Ngaio hapu ki Whanganui, a renowned Ngapuhi chief. His mother, Pehirangi, was a granddaughter of Whakakaaria of the Ngai Tawake and Ngati Tautahi hapu of Kaikohe and Ngapuhi, and was a second cousin of Hongi Hika. As a consequence of disputes between the descendants of Toa's first wife, Waitarehu, and his third wife, Te

Hei, Parore's grandfather had been driven out of Waipoua and had gone to live at Mangakahia. His reduced circumstances gave rise to the pepeha, "Te Kuihi kai raupo" (the pukeko eating raupo) and his people became known as Te Kuihi.

In childhood, Parore was taken to Kaihu, and later, for safety, to Kaikohe. By 1821 he was living in Whangarei with his wahine matua, Tawera, daughter of the warrior chief, Kukupe of Te Kuihi, and half-sister of the toa, Te Tirarau and Te Ihi who supported Hongi Hika, and sister of Taurau Kukupa. After participating in the 1821 Ngapuhi taua to Tamaki and Thames which led to retaliation, Parore, with his wife and father-in-law, moved to the Waipoua valley. But they were not welcomed by Te Roroa who were then living principally at Maunganui Bluff and Opanake. Indeed their chief, Taoho, set up a rahui at Maunganui Bluff as a boundary mark between the two groups.

In 1825, Parore was warned of a pending attack by a Ngapuhi taua on Ngati Whatua ki Kaipara and went along the beach to Te Kopuru where a hui was held and Ngapuhi were dissuaded from invading Te Roroa territory. Whether Parore was at Te Ika-a-Ranganui is unclear. But after Ngati Whatua were defeated in 1825, he is said to have remained at Waipoua "principally on account of Hongi's mana". {FNREF:0-86472-088-2:1.1:3}

Although Parore participated in Pomare's ill-fated raid in Waikato in 1826 and the Girls' War in the Bay of Islands, he was more a trader than a warrior. J S Polack who visited his pa, Te Kauri, at Waipoua in 1832, found him "in the prime of life, possessing a countenance remarkably pleasing; his stature was tall ... he had an air at once noble and dignified, from the habitual exercise of authority". {FNREF:0-86472-088-2:1.1:4} He was engaged in the flax trade at Kaihu and the spar trade in Hokianga and keenly desired to have Pakeha residing in his settlements for trading purposes. Although the people at Waipoua had acquired iron, cloth, tobacco and muskets and were growing introduced crops which they desired to exchange for trade goods, Waipoua was too isolated to become a trading centre. One reason Parore moved to Kaihu and the northern Wairoa may well have been to grow crops and participate in the Kaipara provision and timber trade.

Parore's move to Kaihu is said to have been a consequence of his being involved in a fight with Te Roroa at Waiwhatawhata over a woman about 1835, during which Maratea was killed. It was Maratea who had shot Hongi Hika in 1827 causing his eventual death at Whangarei on 3 March 1828. Maratea had been living at Pakanae under the protection of the leading chief of the south Hokianga, Moetara Motu Tangaporutu, of Ngati Korokoro. Parore withdrew to his pa at Waipoua which was attacked in retaliation, but after one day's fighting Moetara made peace. About a year later, in 1836, Parore left Waipoua never to return (A4:422-434).

With the spread of peace and Christianity, Ngati Whatua, who had fled or been captured after Te Ika-a-Ranganui, gradually returned home. Waimamaku was regularly visited as an outpost by Wesleyan missionaries from Pakanae. Baptised Maori teachers converted people in the Kaipara before a mission station was opened. Outposts such as Kaihu were visited regularly. Parore and 200 others were converted in 1839.

Te Roroa living in the south Hokianga and Waimamaku returned unmolested to Waipoua and Kaihu. Among those who returned to Kaihu was Te Rore Taoho, uncle of Tiopira Kinaki. Both uncle and nephew became contestants against Parore Te Awha in future land deals in the area.

Te Rore Taoho, son of Taoho and his second wife, Koata, was born about 1810 at Pokapu, Taoho's pa on the upper Kaihu stream, from which his mahinga (places where food is produced) were worked (E2(a):157). "A wanderer very much given to war" (B4:37), he was at Kaihu when Te Ika-a-Ranganui was fought, then for some years at Waimamaku and Waipoua. But he returned to Kaihu several times to hold it against Parore's attempts "to get it" (E2(a):157-159, 163). Opanake became his permanent base and he became the leading chief in the upper part of the Kaihu valley. He dug gum at Maunganui, and before the time of the Waikato war, put 200 gum diggers from the Hokianga on the land (B34:att 1; E2(a):159).

Tiopira Kinaki was the son of Te Rurunga and Te Rore Taoho's half sister, Te Taua (A4:431). He was born about 1819-1820 at Tarawapoaka, Kaihu, a kainga of his maternal grandfather, Taoho. His father was killed at Poneke (Wellington) on Tuwhare's expedition (E2(a):157) and his early education was undertaken by his grandfather, Taoho, as befitted a child of high rank. After they moved to Waimamaku he almost certainly came under the influence of the Wesleyan missionaries, learnt to read and write in his own language and was baptised "Tiopira" (Theophilus).

As a youth he was present at Waiwhatawhata when his maternal uncle was slain (A4:432-433). After Parore Te Awha left Waipoua his mother returned to Waipoua to live. Three years later Tiopira Kinaki and Te Roroa from Waimamaku followed. The first potatoes they planted at Waikara were pulled up by Parore. They then planted kumara which he did not pull up (A4:434-435).

After this, Governor Hobson came and Tiopira went to the Hokianga to see him. He was also at Waikara when the governor's emissary, Captain Symonds, passed through (A4:435). He was probably too young to sign the Treaty but he supported the kaupapa. During Hone Heke's war, he fought alongside his cousin, Hakaraia. According to tradition, he and F E Maning, the Pakeha-Maori who became a Native Land Court judge, were comrades in arms (C12(a):8).

During the war he went to Waimamaku and married a woman of rank and great beauty, his second cousin, Marara Mahuhu. Their marriage merged three blood lines from Toa and provided a symbolic link between the three Te Roroa kainga, Kaihu, Waipoua and Waimamaku. Their eldest children were born at Waipoua.

In 1850 Tiopira moved to lower Waihou on the Hokianga to assist his wife's Te Rarawa relatives in the timber trade and became known as Tiopira Rehi (expert). By the close of the 1860s he was based at Whenuahou, Waipoua, but he continued to live and work at Waimamaku, Kaihu, Kawerua, and Maunganui Bluff, the latter two being summer residences where canoes were built and fish caught and dried. Te Roroa engaged in gum digging and small-scale trading at Kawerua under Tiopira's chiefly management. His cousin, Hapakuku Moetara, directed economic activities at Waimamaku, and his uncle, Te Rore Taoho, at Kaihu and Maunganui Bluff (E2(a):156 passim).

Hapakuku Moetara was a son of Rewha, who took over the mana of his brother, Moetara Motu Tongaporutu, assumed his name, and signed the Treaty of Waitangi as Rangatira Moetara (C12(b):1; D11:2). In the 1820s and 1830s, Moetara Motu Tongaporutu resided at Pakanae, a strong, strategic position from which to control the south Hokianga European trade. After Te Ika-a-Ranganui, he had Ngati Whatua refugees living under him producing pork and potatoes; also access to land as far south as Maunganui Bluff, including Waimamaku and Waipoua. Realising the advantages of peace and Christianity, he was baptised before his death in 1838. {FNREF:0-86472-088-2:1.1:5} Hapakuku inherited his uncle's and his father's mana.

Through his mother, Te Hana, Hapakuku was connected to the senior line of Te Roroa (see appendix 6), and claimed interests in Te Roroa land. Both his uncle and his father were involved in a number of land transactions with Europeans before the Treaty. He and his relatives continued to sell and lease land between 1840 and 1875.

Accordingly, by 1870, the chiefs Tiopira, Hapakuku Moetara and Te Rore Taoho exercised the mana of the hapu in the areas where they lived - Waipoua, Waimamaku and Kaihu respectively. Although "their" areas can be separately identified, they nevertheless saw their interests as being collectively Te Roroa, as subsequent dealings with the Crown and Native Land Court will show. And it will be recalled that Parore Te Awha had moved to Kaihu in 1836. By 1864, when visited by the colonial secretary, he had established many acres of maize, kumara and potatoes, with several weather board houses, stock yards, granaries, barns and several iron ploughs and horse drays. {FNREF:0-86472-088-2:1.1:6} He was on Te Roroa's southern boundary,

in the area also occupied by Te Rore Taoho.

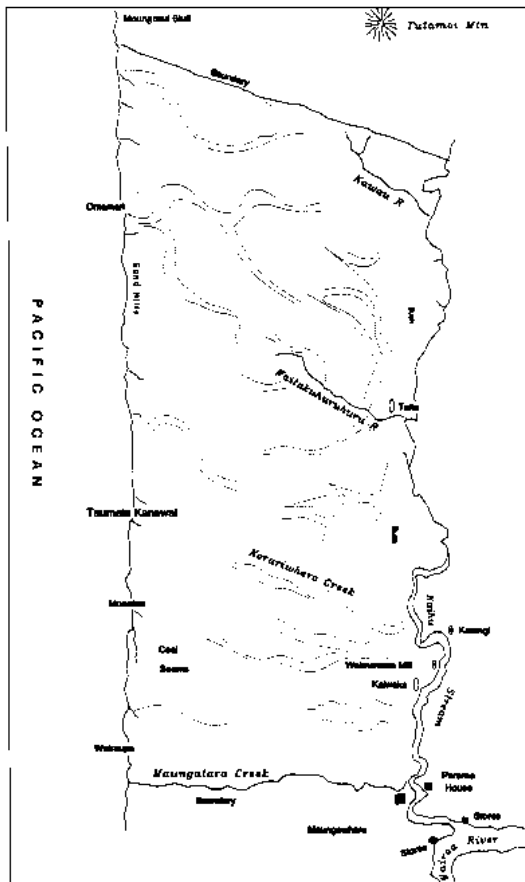


Figure 7: Tinn's "Plan of the Kaihu Estate". Source: J Ernest Tinn's *The Wonderland of the Antipodes* (London, 1873) p 70

At this time then, the kainga at Waimamaku, Waipoua and Kaihu were well established. Christianity had been accepted first as a result of Wesleyan missionaries and later through visits from Church of England clergy. On 11 January 1875, Saint Mary's church at Te Taita was opened on land set aside by Te Rore Taoho. The service was conducted in Maori and attended by all the community, including settlers from Wairoa. {FNREF:0-86472-088-2:1.1:7} The chiefs who later dealt with the Crown in respect of the lands, the subject of this claim, were accordingly familiar with the intentions of the Treaty and the guarantees by the Crown which it contained, and the Christian principles upon which the Treaty was founded.

Waitangi Tribunal, Department of Justice, Wellington.

Te Roroa Claim

1 Te Ao Hou (The New World)

1.2 Tuku Whenua (Pre-1875 Land Sales)

1.2. Tuku Whenua (Pre-1875 Land Sales)

Prior to the 1870s, Te Roroa land was too rugged and isolated to attract Crown or private purchasers but in the Hokianga and the Kaipara extensive areas were purchased. Three phases can be distinguished in pre-1870 land sales.

Before 1840 the land was "sold" to Europeans for trading depots and mission stations or speculation. Among the pre-1840 European land claims were 88 from the Hokianga and 43 from the Kaipara. Parore Te Awha was involved in about half a dozen of the Kaipara transactions {FNREF:0-86472-088-2:1.2:8}, including the sale of 1000 acres at Kaihu for English settlers who were shipwrecked. Commissioners appointed to investigate the old land claims invalidated many of the larger speculative claims, including the Kaihu claim.

From 1840 to 1862 the Crown exercised its exclusive right of pre-emption under the Treaty to purchase extensive blocks of Maori land. Governor Grey adopted a policy of buying land cheaply well in advance of the requirements of settlers, and before Maori realised its market value. His chief land purchase commissioner was Donald McLean, "a shrewd and strong-willed Scot". {FNREF:0-86472-088-2:1.2:9} He had been a sub-protector of aborigines and learnt Maori in the early 1840s. He later combined the office of chief land purchase commissioner with that of native secretary. A man with infinite patience and innate shrewdness, McLean excelled in negotiating purchases of large blocks of tribal land from chiefs, giving them presents, and exciting and taking advantage of their cupidity.

Initially Grey and McLean were concerned to preserve the peace and get the consent of the hapu in open dealings. But as the anti-land selling movement developed, and after Grey departed, McLean and his agents increasingly resorted to unscrupulous tactics to buy particular areas of land that settlers and land speculators wanted. Land in dispute was purchased from part owners and weak claimants willing to sell. Pre-purchase payments were made to some hapu leaders, who were promised Crown grants if the purchase was completed, in the hope they would persuade the majority of right holders to sell. {FNREF:0-86472-088-2:1.2:10} The purchase of the Waitara block by one of McLean's agents with his connivance led directly to the first Taranaki war in 1860.

Throughout the period of British imperial responsibility for Maori affairs, 1840-1862, Hokianga and Kaipara chiefs, with whom Te Roroa were closely connected, continued the strategies of friendship and hospitality they had adopted towards the pre-1840 settlers. They willingly sold land to the Crown in the hope that more Europeans would come and live among them and provide an abundance of goods and

services. During the war in the north and the Waikato war, they remained at peace. In 1864 the Kaipara chiefs refused to shelter 200 Waikato prisoners who had escaped from Kawau Island.

After the war in the north, government policy was to place a buffer zone of European settlement between Ngapuhi and Auckland. This matched Ngati Whatua's desire to have more settlers and townships, a greater abundance of trade goods and protection from Ngapuhi, their traditional foe. In the Kaipara area, John Rogan, the district land purchase commissioner, assisted by the Wesleyan missionary Reverend William Gittos, did not need to resort to pressure tactics. Between 1854 and 1861 over a quarter of a million acres were purchased. Among the local land sellers were Parore (A18:18) and Tirarau. {FNREF:0-86472-088-2:1.2:11} Tiopira participated in the sale of the Arapohue block, northern Wairoa, in February 1859 (H59; I8:1 & appendix 1). Tiopira, Hapakuku Moetara and Te Rore Taoho participated in the sale of the Tunatahi block by Parore to J M Dargaville (E2(a):150-151).

After control of native affairs and land purchase policy were taken over by ministers representing settler interests, the 1862 and 1865 Native Lands Acts were passed, initiating a new phase of direct purchasing by private individuals as the Crown abandoned its right of pre-emption. A Native Land Court, presided over by a European judge, was set up to ascertain Maori rights to land and to issue certificates of ownership to those whose title was ascertained. Purchases were made from those named on the certificates, which could then be exchanged for Crown grants. The object was two-fold: colonisation and land individualisation. The Native Land Court became the chief instrument of the policy of assimilation, and greatly facilitated the purchase of the bulk of Maori land in the North Island (A19:23, 52).

Any Maori, regardless of rank, could apply to the court to investigate his or her title to a block of land. All other Maori with claims in the same block were then forced to come to court to defend their interests. Anyone absent from court was simply disinherited.

Under the 1865 Act, the court was supposed to establish the ownership of the blocks and to issue titles. In practice, to avoid the cost of divisional surveys, Judge Fenton awarded whole blocks to ten "owners", whose names were selected by arrangement out of court. In law, the ten were absolute owners with individual property rights, not tribal trustees. They could mortgage and sell the ancestral land of their tribe and hapu without reference to them (A19:33-35).

Amending legislation in 1867 required the court to determine all owners of a block regardless of whether or not they put forward a claim, and to enter all owners' names, not just the ten on the certificate, in the court records (E2:22). The assent of the majority of owners in value was required to a sale. In practice, the court treated the shares of owners as equal because it could not do anything else (A19:38-39).

If one or more of the owners died before a sale was completed, any person claiming an interest in the deceased's estate could apply to the court for a succession order. There was a high death rate among owners in the late nineteenth century and most died intestate. Furthermore, the court adopted the New Zealand practice of giving all the children equal shares in an estate. In other words, in determining succession, the

court disregarded Maori custom and failed to take rank, sex or place of residence into account. The eventual result of succession orders was extreme fragmentation of ownership rights (A19:40-45). As we shall see, this was what happened in the Waipoua No 2 block after it was reserved for Te Roroa. There was little protection for a hapu's land base under Fenton's ten-owner system.

John Rogan organised and presided over the first sitting of the Native Land Court in the Kaipara in 1864. F E Maning was appointed to and based at the Hokianga in 1865. In the late 1860s neither the government nor private individuals were greatly interested in investing in large blocks of rugged, isolated Te Roroa land. Provincial economies were severely depressed and Auckland speculating interests looked to the Waikato, where land had been confiscated for military settlement.

Maori used the Hokianga and Kaipara courts to settle disputes and decide ownership for their own purposes. These included defining areas of land for leasing rights to cut timber and flax and dig gum for sale to Europeans, a welcome source of annual income; also, for leasing or selling small blocks to European traders for depots, stores and residences. We shall now look briefly at the various blocks of land which came before the court in these circumstances. These will indicate the nature and extent of Te Roroa's experience in land deals before the 1875-1876 hearings, out of which this claim arose.

In 1870, S Campbell surveyed land at Waimamaku, Wairau, and Koutu at Kawerua for local chiefs. On 10 October 1870 Judge Maning investigated titles for the Waimamaku (2650 acres) and Wairau (2539 acres) blocks. Wahi tapu were cut out on the survey plans (D2:1-3). The court made the land inalienable except by lease for 21 years (D1:8). A certificate of title for Waimamaku was awarded to Tiopira Rehi (Kinaki) and nine others. A list of 120 persons interested as owners was registered, as required by s17 Native Lands Act 1867 (D2:16-22).

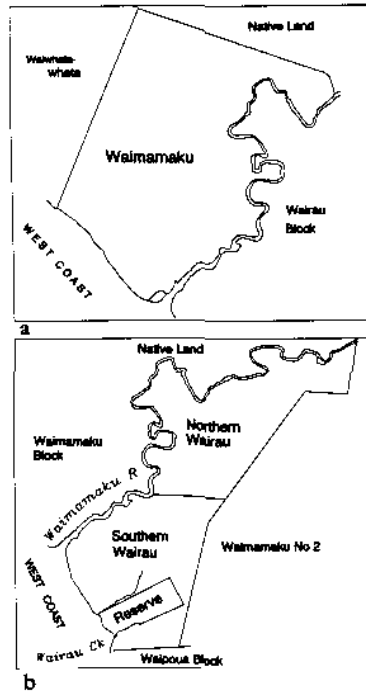


Figure 8: Diagrams of Campbell's survey plans of Waimamaku and Wairau blocks, September 1870 (a) from Campbell's survey plan of Waimamaku block, ML 2014 (b) from Campbell's survey plan of Wairau block, ML 2012. Source: Department of Survey and Land Information, Auckland

In respect of the Wairau, a certificate of title was issued to Hapakuku Moetara and nine others and a list of 54 owners was registered (D2:10-15). The Wairau block was said to have been put through the court to determine title for a flax lease (D1:42).

On 28 June 1871, Maning adjudicated on the Koutu block, consisting of 3 acres 3 roods and 20 perches (B16:1; C12(a):9; H60:8-9). The Koutu hearing was in fact a trial run to the contest between Tiopira and Parore for the title to Maunganui-Waipoua, which Te Roroa lost but Parore failed to win. Maning signed court orders recommending to the governor that the land be inalienable by sale, that Tiopira Rehi and Peneti Pana be appointed trustees, with power to lease for a period not exceeding 21 years, and that the right to make and maintain a public road be reserved to the Crown (H60:2-3).

Maning later noted "Te Koutu was only taken into Court to test ... the right to a large tract of country ..." (B16:16; C12(a):9; H60:8-9).

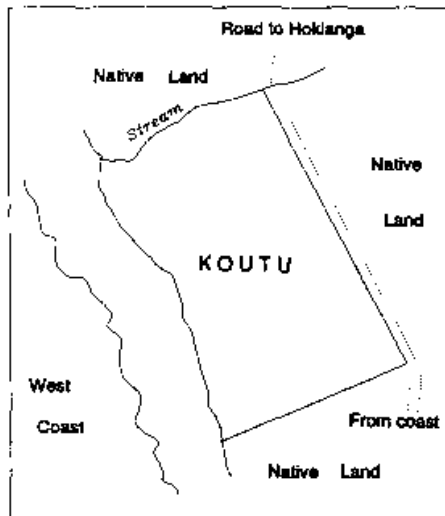


Figure 9: From Campbell's survey plan of Koutu, M.I. 2193, December 1870. Source: Department of Survey and Land Information, Auckland

The claimants identified the larger tract as the Waipoua block (C7:9). In their view, Tiopira almost certainly was indebted to Maning for the strategy of taking Te Koutu into court to test the right to Waipoua (C12(a):9).

What Maning and Te Roroa clearly wanted was a tribal trust, not absolute title for ten owners, but the attorney-general ruled that the issue of a certificate of title to a tribe contravened the law (B16:37-38). Presumably his ruling was made under s23 Native Lands Act 1865, where a title could only be issued to a tribe or iwi for areas in excess of 5000 acres (C12(a):9), and regardless of s17 Native Lands Act 1867, which authorised the court to award titles to trustees for the whole tribe, provided all its members were named in the court records (I1(c):40). Chief Judge Fenton therefore cancelled the court order but pointed out it was "very advisable that a certificate, of some sort, should issue" (B16:34-36).

The attorney-general then suggested a new certificate of title be issued to Tiopira and Peneti under s17 of the 1867 Act and that they afterwards make a declaration of trust (B16:32-33). Fenton signed a new certificate of title in favour of Tiopira Rehi (Kinaki) and Peneti Pana on 26 July 1872 and requested the Native Minister to furnish him with a form of declaration of trust (B16:16, 29-30; C7:att 2.3-2.4; C12(a):10). The undersecretary of native affairs procured a skeleton draft but presumed the persons interested in the land would settle among themselves how and when it would be executed (B16:24; C12(a):9). Consequently the matter was left in abeyance. No Crown grant for Te Koutu was issued and no declaration of trust was executed (C12(a):9; H60:8-9).

Te Roroa were to be doubly disadvantaged when they put the larger Waipoua block through the court. First, they had no Crown grant to support their claim against Parore (C12(a):9). Secondly, they had no tribal trust to serve as a model for reserving Waipoua No 2 block for the hapu. Having failed to accommodate a trust structure in

the Native Land Court system, Te Roroa rangatira had perforce to fall into line with the court's ten-owner system and try to use it to their own advantage.

We shall now look briefly at their attempts to get legal titles to the Kaihu, Opanake and Waimata blocks, as in effect these were trial runs for Waipoua which is part of the area involved in this claim.

In February 1871, a claim for a 43,700 acre block of land in the Kaihu valley, was brought in the Kaipara court by Parore Te Awha, and contested by Tiopira Kinaki. There was no doubt in the mind of the court that the land belonged to the descendants of Toa, and a certificate of title was awarded to Tiopira Kinaki, Te Rore Taoho, Parore Te Awha and seven others, and a list of 66 names registered under the Native Lands Act 1867 (E2(a):2-20). In 1873 the Opanake block of 14,457 acres was investigated and Te Rore Taoho and Parore Te Awha were named as owners to represent the hapu. They then leased timber rights to a sash and door company for £2000 for a period of 50 years (E2(a):111-112 passim). Tiopira also contested Parore's claim to the Waimata block, which the court awarded to Parore in 1875 (B34:att 2).

These early contests between Parore Te Awha and Tiopira and/or Te Rore Taoho in the Native Land Court were a continuation of traditional rivalries and warfare between Ngapuhi and Te Roroa. They were fought to establish mana and to share in a valuable source of new wealth in the market economy, rather than to sell the land to Europeans. Although only ten or fewer people were named on the titles, from a Te Roroa perspective they were representatives of the hapu, not absolute owners. As yet Te Roroa did not fully appreciate that the ten owner system would disinherit all those whose names were not included.

Until the government resumed large scale purchasing in the 1870s, most Te Roroa land remained in customary title. Te Roroa were thus spared the worst of the frauds and unfair practices experienced by the tribes who sold extensive areas of land directly to private purchasers under the ten owner system and later supported a movement to repudiate these sales. Before extensive areas of Te Roroa land were sold to the Crown, lingering European concern for Maori interests had produced some amendments to the native land legislation.

The Native Lands Frauds Prevention Act 1870 made provision for trust commissioners, authorised to disallow any Maori land transactions contrary to equity or in contravention of any trusts, or if liquor or arms formed any part of the consideration (E2:23).

The Native Land Act 1873 required the names of every single person found to have rights in a block of land to be named on memorials of ownership. If the majority requested it, their proportionate shares were to be determined. This enabled the court to partition the interests of owners (A19:52-53; E2:5-11). As we shall see in the cases of Waipoua No 2 and Taharoa, this was a major step along the road to individualisation of title and the destruction of tribal organisation, which led to piecemeal purchasing of individual interests and facilitated Crown purchasing of

native reserves.

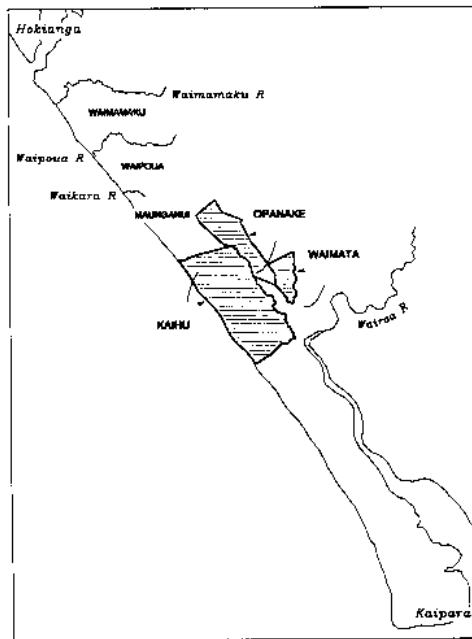


Figure 10: Diagram of Kalhu, Opanake and Waimata blocks.
Source: Department of Survey and Land Information, Wellington

To bring some order into the prevailing system of amateurish and uncoordinated surveys, the office of inspectorate of surveys had been established in 1867 (E2:22-23; A13:22). Under the Native Land Act 1873 surveys became the responsibility of government surveyors acting under the Native Department and had to be officially authorised and approved. The liability for survey charges was against the land to be secured. If those named on memorials of ownership were unable to pay cash, payments would be deducted from the proceeds of sale.

The 1873 Act further provided for district officers to be appointed, to make preliminary inquiries into the good faith of claimants and arrangements for setting apart inalienable reserves, at a ratio of no less than 50 acres each, for every man, woman and child. They were also to compile genealogies and maps of tribal boundaries.

The Crown land purchases out of which this claim has arisen, were made under the 1873 Act, but, as we shall see, most of the safeguards it provided against fraud and unfair practices broke down.

Waitangi Tribunal, Department of Justice, Wellington.

Te Roroa Claim

1 Te Ao Hou (The New World)

1.3 Nga Taukumekumetanga (Points at Issue Between Crown and Claimants)

1.3. Nga Taukumekumetanga (Points at Issue Between Crown and Claimants)

Three points of issue arose between Crown and claimants with respect to the evidence on pre-1875 contacts between Te Roroa and Europeans; first, the extent to which the claimants' tupuna were involved in the market economy; secondly, the extent to which they were involved in land deals; and thirdly, whether there was any indication they wanted to sell land prior to the arrival of Crown land purchase agents (B34:att 1-3; H28:20-21; H48:1-7).

All the rangatira who later sold extensive areas of Te Roroa land to the Crown were involved peripherally in commercial and land transactions before 1875, particularly Parore Te Awha and Hapakuku Moetara who lived in close proximity to harbours and European trading establishments. Tiopira Kinaki and Te Rore Taoho were based well away from European settlements and mixed districts, in Maori districts only occasionally visited by Europeans. They moved seasonally to work their mahinga and periodically to engage in the timber and gum trade. All these rangatira were generally well-disposed to European settlers and to the government. Hapakuku Moetara, like his father Rangatira Moetara, was an assessor in the resident magistrate's court and presumably understood English. Tiopira Kinaki's son, Rewiri, was literate in English and transacted business for his father. Parore Te Awha employed a scribe.

The Crown submitted that Parore Te Awha and Tiopira Kinaki:

were very likely to have been aware of the market value of their lands in 1874, the meaning of land alienation in a European context, the value of kauri gum and timber, and the difference between a partial and a total [land] alienation. (H48:7)

Counsel for claimants dismissed this submission as "simplistic and baseless". Involvement in one or two land transactions did not mean that they understood the English law concept of fee simple and the Native Land Court system. Nor did it mean that they understood that when land and appurtenances were purchased by the Crown, all Te Roroa links with the land were severed (I6(a):3-4).

In our view, the Crown simply failed to understand the nature and extent of change and development and land sales that occurred in the early years of western contact. {FNREF:0-86472-088-2:1.3:12} In the mid 1870s Te Roroa was still essentially an independent Maori hapu occupying and using ancestral land mainly for traditional purposes, but also to extract or produce products to exchange for European trade goods. Te Roroa rangatira, like the old chief in Maning's Old New Zealand, were willing to sell or lease small portions of land to Europeans in the expectation

that they would obtain a continuing supply of goods and services; also to lease flax and timber cutting rights to Europeans for cash. Land was under the mana of rangatira who managed the use of its resources and distributed the proceeds from any commercial or land transactions. Money did not become a major medium of exchange until the 1870s, when the Crown purchased extensive areas of land, and when the gum industry was boosted by the discovery of the use of gum in varnish manufacturing and people began to buy rather than produce foodstuffs. {FNREF:0-86472-088-2:1.3:13}

Although Te Roroa rangatira had considerable experience of bartering their products and exchanging their labour to acquire European goods and services, they would hardly have appreciated the potential market value of their kauri timber and gum, which were becoming major exports of the Auckland province. Nor would they have appreciated that extensive overseas public and private borrowing in the Vogel period would lead to a land boom. Their tribal economy was changing and developing but it had not been submerged by settler capitalism. The province of Auckland was still a dual economy and society.

By 1875 Parore Te Awha, Hapakuku Moetara, Tiopira Kinaki and Te Rore Taoho had had some experience of putting land through the Native Land Court. But the court system had failed to accommodate the kind of tribal trust structure they wanted and they had had to fall into line with the court's arrangements to award titles to ten or fewer owners, and try to work this system to their own advantage. But they would hardly have realised at this time that those named on certificates of title and memorials of ownership were not hapu trustees or representatives but absolute owners. Only Parore Te Awha and Hapakuku Moetara had had much experience in land selling.

The claimants were of the opinion that when the possibility of future large scale land transactions was raised by Crown land purchase agents, the hapu itself was unwilling to sell. They cited a statement made by one agent that, in the Kaipara district:

It had been with great difficulty that the natives had been induced to sell their land. No tribe wished to be the first to break the tapu of the land by selling. (B34:att 3)

There is strong evidence that the rangatira who negotiated with the Crown land purchase agents in 1874-1875 were willing to sell land. They were not only establishing their mana over the land by selling it but were also tempted by cash payments and the prospect that more Europeans would settle among them and that the government would provide them with roads and schools. Their concept of land selling was essentially reciprocal in nature, a new form of traditional gift exchange and hospitality. In return for letting land go they would receive goods or cash, but the transaction did not end there. In Maori terms there was a continuing obligation to give, to return and to receive:

Ko maru kai atu, ko maru kai mai, ka ngohe ngohe. (Giving in abundance, receiving in abundance everything is going well.) {FNREF:0-86472-088-2:1.3:14}

They expected that the government would provide works and services, and the settlers would bring an abundance of trade goods. Small mixed communities would develop, and friendly co-operative relationships between Maori and settler would prevail.

Despite the persistence of traditional notions of reciprocity in Te Roroa's concept of land sales, there is little doubt that they appreciated that Europeans regarded land as private, conveyable property and land-selling as permanent alienation. The public investigations of pre-1840 land claims, the award of title to 2560 acres to bona fide purchasers and the Crown's appropriation of any surplus had amply demonstrated the meaning and consequences of selling land to Europeans. Discussions on land matters at treaty signing meetings and anti-land selling meetings had indicated a painful awareness that after they had eaten the tobacco and worn out the blankets they received for their land, they had nothing left. The erection of fences and cases in the resident magistrate's court against Maori for wandering stock and trespass drove this home.

A clause in the original deeds for McLean's early purchases, which were written in Maori and translated into English, spelt this out. It expressed the sorrow of the chiefs at bidding farewell to land inherited from their forefathers, with its rivers, lakes, streams, stones, grass, plains, forests, good and bad places, and everything above and below the surface of the land and connected with the land. The deed for the 9500 acre Arapohue block, signed on 2 February 1859 by Tiopira Taoho (Kinaki) and 20 others, described the land in this fashion, but omitted the earlier expression of sorrow in assigning it to the Crown "as a lasting possession absolutely for ever and ever" (I8:app 1).

No such clause was included in the standard form of deed written in English for the sale of a block of "land with appurtenances" by those named on certificates of title and later memorials of ownership ordered by the Native Land Court. In the simplified Maori version, land and appurtenances were translated into "whenua". The claimants, as we shall see later, submitted that Te Roroa chiefs with limited experience, like Tiopira Kinaki, would have expected kauri to be specifically referred to in certificates of title and memorials of ownership if it was being transferred with the land.

It seems to us that there is no way of knowing for certain exactly what Te Roroa understood they were selling when they first encountered the Crown land purchase agents at Waimamaku in 1874. As one of the claimants, Alex Nathan, explained in a statement he made after consultation with his kaumatua, where the title to land is lost, the spiritual dimension to mana whenua (prestige and authority over land), which transcends simple ownership, is retained:

If that were not the case, the territorial pepeha and the traditional stories about those places would not be maintained. The tupuna would have considered that the fires in respect of these lands had gone out. (D27:5)

He also pointed out another aspect to mana whenua which is a central issue in this claim and is illustrated by a lot of evidence we were given about how Te Roroa used and still use the natural resources of the forest, the lakes, the rivers and the seacoast for food, medicine, building supplies and other purposes, even though they are on Crown land:

Our people have always claimed the right to do these things even though the land was in Crown title. Our manawhenua gives us this right. The Waipoua forest [sold to the Crown in 1876] is as much a taonga, and as much a link with our past, as are our

wahitapu. It is important to our mana as forest people and it is important to the maintenance of our way of life. We have always used the forest for physical and spiritual sustenance, even after the so called sale of 1876.

... The natural resources that our people have harvested for centuries are also contained within the area encompassed by these places. We claim the right to protect and manage our wahitapu and to harvest those resources because of our manawhenua. (D27:7-8)

These concepts of mana whenua and mahinga kai are basic to this claim. Underlying them is the concept of people belonging to the land, rather than the land belonging to people:

no individual or group "owns" the land, but rather ... the land "owns" them

... The concept of belonging to the land rather than the land belonging to the individual is demonstrated by ... pepeha [proverbs], typical of the method used by Maori speakers to identify themselves. Their identity stems not simply from their tupuna by descent, but from the land to which the individual and his people belonged

... The history of a people is denoted both by reference to the land, and the successive generations indicated by whakapapa. Ancestral land is the place where our tupuna were born, lived, died and left their marks. The proverb indicating this is:

"Kei raro i te tarutaru, te tuhi o nga tupuna"

"the signs or marks of the ancestors are embedded below the roots of the grass and herbs"

... It follows that the link between the person and the land by virtue of their history can never be erased

... "nga tapuwae o nga tupuna" ["footsteps of our ancestors"] remain on the land forever. The fires never go out.

... Our manawhenua depends upon our maintaining and keeping warm these taonga within our tribal rohe. Our manawhenua survives because, we maintain them and keep them warm. (D27:4-6)

The claimants' evidence showed that their tupuna continued to exercise their manawhenua and work their mahinga on Crown owned land and land it had disposed of to Europeans.

When their access to and control over mahinga kai and wahi tapu were curtailed by the enforcement of laws designed to protect public and private property, they protested under article 2 of the Treaty. It seems to us that Te Roroa's concept of land sales in the mid-1870s was a mixture of Maori traditional and European capitalist notions. The Crown's submission that Te Roroa in selling land to the Crown in 1876 exercised their right under article 3 of the Treaty in accordance with the principle of

options is far removed from Te Roroa's concept of land-selling, which embodies the traditional notion of gift exchange.

Waitangi Tribunal, Department of Justice, Wellington.

Te Roroa Claim

1 Te Ao Hou (The New World)

1.4 Rohe Potae (Boundaries)

1.4. Rohe Potae (Boundaries)

We have already seen how Te Roroa used place names as boundary markers on "oral maps" (see above, p 17). Particulars of this claim allege that agents of the Crown failed to carry out arrangements made by vendors with land purchase agents and surveyors with respect to external boundaries of land sold or reserved from sale. Such failures stemmed from the different ways used by Maori and European to delineate boundaries, which will be briefly examined here.

One of the claimants explained the Maori way of doing this in his evidence:

Throughout our history, territories were defined by naming various landscape features and in this way the general boundaries were established. The features which define the border are referred to as "rohe potae"

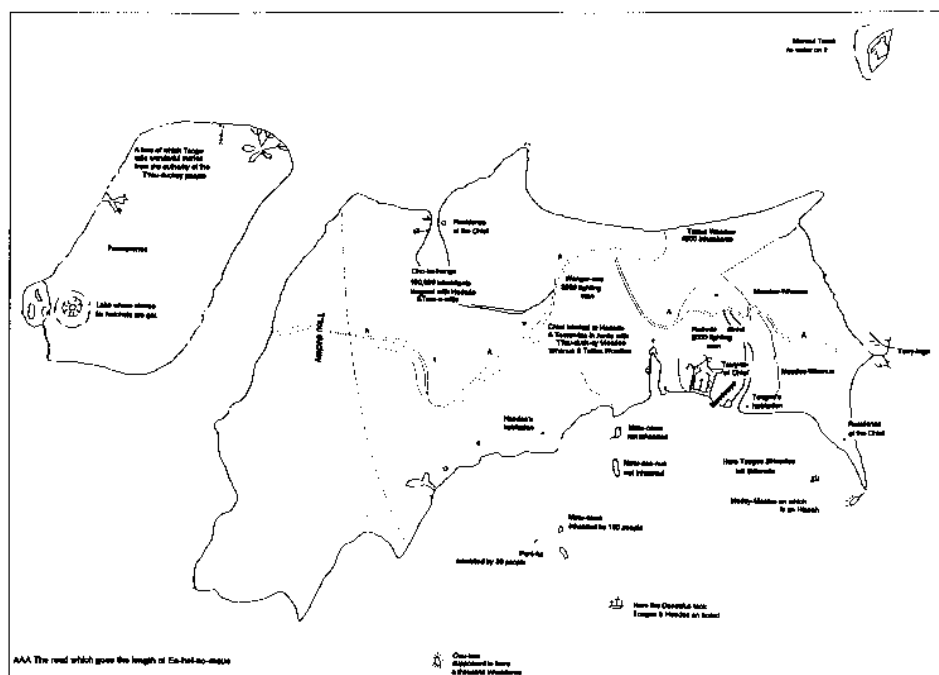
... Subdivision within these general boundaries ... established the rohe of the various hapu/iwi. In "borderlands" such as Waimamaku-Waipoua-Maunganui, disputes between competing groups were frequent. Pouwhenua and Rahui were often erected at various places on the boundaries ... (D27:3)

The Maori concept of "an oral map" is based on "the survey pegs of memory", that is, the place names and stories told and re-told about them. {FNREF:0-86472-088-2:1.4:15} In the pre-1840 period of land selling, chiefs pointed out or walked over the boundaries of the land they were willing to sell and which they had probably discussed and settled among themselves. Pre-1840 deeds were usually drawn up in simple English and interpreted and transacted at open meetings. This made them "easily memorable" and improved their "chances of survival in the oral record". {FNREF:0-86472-088-2:1.4:16}

Boundaries were described in great detail in the evidence given to the old land claims commissioners by reference to natural features of the landscape. In the 1840s and early 1850s, McLean and his land purchase agents continued to negotiate land purchases with the chiefs on the ground and in open tribal meetings, but employed surveyors to draw rough sketch maps which were annexed to deeds of sale. Though care was taken, at least initially, to show these maps to chiefs and to explain the boundaries described in the deeds to them, they were only rough indications of the area being sold. {FNREF:0-86472-088-2:1.4:17} They either ran along rivers and the

sea coast, or were straight lines drawn between named places.

Figure 11: Tuki Tahua's map of New Zealand, 1793. Source: Cartographic collection, Alexander Turnbull Library, Wellington



Under the Native Land Court system, survey plans had to be produced in court and annexed to certificates of title and deeds of sale. External boundaries of blocks and reserves were also described in schedules. Vendors pointed out traditional boundary markers to land purchase agents and surveyors on the ground and observed surveying parties cutting lines through the bush. If the survey plans produced in court and placed on land deeds had delineated boundaries by Maori place names they would have understood exactly what areas of land they were selling. But straight lines, chained links, co-ordinates and acreages shown on survey plans had little meaning to them. Their understanding of boundaries was based on detailed topographical knowledge not trigonometrical data.

On site visits and at tribunal hearings, we found that Te Roroa still delineate boundaries by oral boundary markers, that is, by pointing out Maori place names on the ground or a map, and relating stories about them. From the evidence we have been given, both oral and written, it seems to us most unlikely that Te Roroa land sellers in the 1870s could read maps. Rather, they depended on oral arrangements they made with surveyors and land purchase agents and the lines they saw being cut through the bush (D12:5).

Waitangi Tribunal, Department of Justice, Wellington.

Te Roroa Claim

1 Te Ao Hou (The New World)

1.5 He Whakarapopoto (The Conclusion)

1.5. He Whakarapopoto (The Conclusion)

Te Roroa's way of life was little changed by the early 1870s despite their participation in the south Hokianga and northern Wairoa timber and kauri gum trade and their acceptance of Christianity and the Treaty. Being isolated and distant from European settlements and mixed districts, they were willing to lease and sell land they did not need for their own purposes to acquire more trade goods, Pakeha neighbours and government works and services. Before the Crown land purchase agents began to close in on their territory, it seemed that Te Roroa would continue to change and develop peacefully and progressively. But they lacked any awareness that there was a fundamental conflict between their desire to sell land and participate in the market economy and their retention of traditional concepts of mana whenua and mahinga kai. They believed that:

Whatungarongaro te tangata toitu te whenua

(People come and go but the land endures)

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{FNTXT:0-86472-088-2:1.3:13}13 B W Marshall, "Kauri Gum Digging, 1885-1920: A Study of Sectional and Ethnic Tensions", MA thesis, University of Auckland, 1968, pp 26-27 passim cf Pat Hohepa, A Maori Community in Northland (Auckland, 1964) pp 40-41. For a general view of how little Maori life changed in the nineteenth century see Ann Parsonson "The Expansion of a Competitive Society: A Study in Nineteenth Century Maori Social History" New Zealand Journal of History, vol 14, no 1, April 1980, pp 45-60

{FNTXT:0-86472-088-2:1.3:14}14 A Maori pepeha quoted by Martin O'Connor, op cit, pp 19-21

{FNTXT:0-86472-088-2:1.4:15}15 On the Maori concept of an "Oral Map" see He Korero Purakau Mo Nga Taunahanahatanga A Nga Tupuna: Place Names of the Ancestors, A Maori Oral History Atlas (Wellington, 1990) p xiii; see also D12:2.

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{FNTXT:0-86472-088-2:1.4:17}17 James Cowan Sir Donald McLean: The Story of a New Zealand Statesman (Dunedin, 1940) pp 36-37 passim

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