Rangahaua Whanui District 5b

POVERTY BAY

SIÂN DALY

February 1997

Working Paper : First Release

WAITANGI TRIBUNAL

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FOREWORD

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

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

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

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

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THE AUTHOR

Tena koutou. My name is Siân Daly. I am a Pakeha of Irish and Norwegian descent. My family live in Christchurch. In 1991, I graduated from the University of Canterbury with a Bachelor of Arts (with honours) in history. Since 1991, I have lived in Wellington, and I began working for the Waitangi Tribunal in mid-1994. In May 1995, I was commissioned to write the Rangahaua Whanui report for the Gisborne (Poverty Bay) district. I commenced the research for this project in July 1995, and have worked on the report intermittently since that time. During this period I have also been responsible for facilitating claims in the Gisborne and East Coast districts. I continue to be involved in these facilitation tasks, and in research for claims in these regions.

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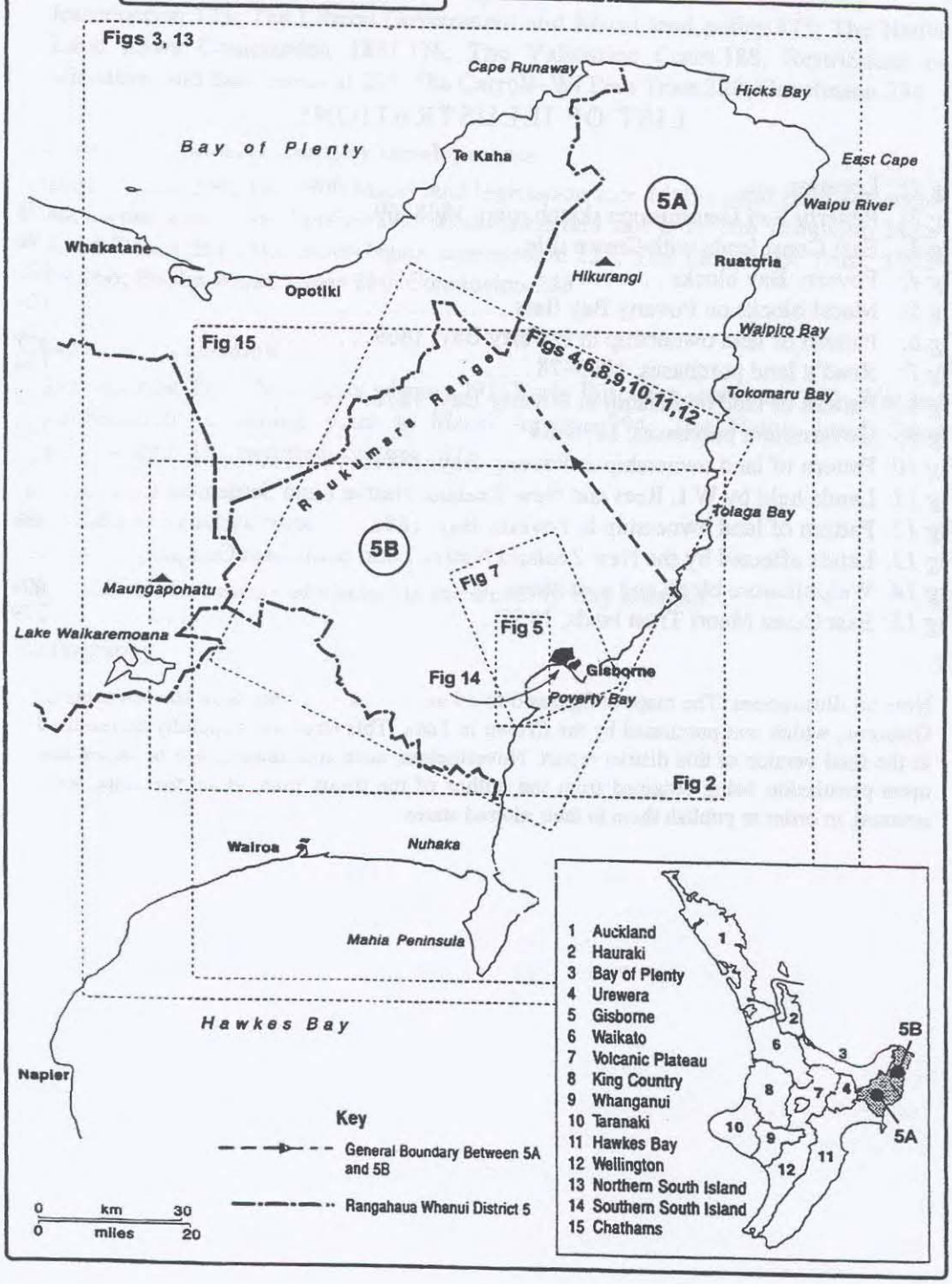
Note on illustrations: The maps at figures 6 to 10 and figure 11 do not show the township of Gisborne, which was purchased by the Crown in 1868. This error will hopefully be rectified in the final version of this district report. Nevertheless, such amendments will be dependent upon permission being obtained from the author of the thesis from which the maps were sourced, in order to publish them in their altered states.

FIGURE 1: LOCATION



INTRODUCTION

This report is one of a series of district reports commissioned by the Waitangi Tribunal as part of its Rangahaua Whanui project. The project had its inception in 1993, and was designed to provide basic material on the causes and impact of land and resource loss within an historical context. It was felt that such reports would give an overview of the wide-ranging issues that were often common to claimants in specific geographical areas, or districts. The reports were to provide an historical review of Crown policy and action within these districts as a contextual framework for both single issue and major claims. They were expected to be broad surveys, based to a large degree on secondary sources, and it was envisaged that they would help to highlight issues requiring more detailed claimant research (see app i).

Initially, the districts covered by these reports were defined by means of the local government and catchment area boundaries. Thus, district 5 stretched from Paritu on the coast at the southern point, to Cape Runaway at the north, and inland to the boundaries of the Urewera and Bay of Plenty districts, running along the inland line of the Huiarau and Raukumara mountain ranges. Although these are still the general boundaries of district 5, it became necessary to divide the district into two separate sections: the northern East Coast (district 5a), and the Poverty Bay district (district 5b). Although there are some similarities in the histories of these two districts, in the course of research for the present report the very material differences in the experience of land and resource loss between the two areas have become evident. The division of the Gisborne district into Poverty Bay and the East Coast must be regarded as a matter of some expediency as one report could not have sufficed as an overview for both areas. There will, however, be a degree of overlap in some of the issues raised in both reports, as there is with the report for the Wairoa district (11c) written by Joy Hippolite. The degree of overlap in terms of historical issues, and to some extent interests in land, is reflected in the partial boundary marked on the location map (see fig 1) between the two parts of district 5.[1] This extends roughly from Gable End Foreland inland towards Arowhana. It is not intended that this report draw any conclusions regarding the proper boundaries between hapu and iwi. The boundary thus marked must therefore be regarded as a general one only, and it is expected that the district 5b report will similarly extend a vague boundary south of the one depicted here.

The main iwi dealt with in this report are those of the Poverty Bay district, being Te Aitanga a Mahaki, Rongowhakaata, and Ngai Tamanuhiri, although other groups will be mentioned where pertinent. Thirteen claims have been registered with the Waitangi Tribunal from the Poverty Bay district, three of which have been settled, and two of which relate to contemporary matters. A summary of the claims within this district can be found at appendix ii. It is hoped that the following report

1. This map also shows the relative areas covered by maps found in the main body of the report.

will highlight issues for further research that will be of relevance to most of the remaining historical claims in the area. Claimants are invited to make submissions, after reviewing the text of this report, that might add to the accuracy and scope of the report in its final form.

Poverty Bay is an area of flat, fertile land on a flood plain crossed by three rivers that enter the sea at two points, on opposite sides of the bay. The remainder of the district consists of rough hill country. At one time the coastal area of the flood plain boasted an elongated lagoon, known as Awapuni, and this was still in existence into the early twentieth century. The bay area traditionally supplied many areas of mahinga kai. Crayfish could be caught off the coast of Titirangi, and the reefs and tidal flats contained large quantities of shellfish. Many species of fish could be caught in the bay and Waiohiharore, later to form part of the Gisborne township site, was a favoured fishing ground, as Kawhai gravitated to the fresh water of the spring that seeped into the sea at that point. Pigeons, kaka, and pukeko, were commonly found on the flats, and many ducks lived by the rivers and on Awapuni lagoon. Creeks that fed into the rivers were crossed by eel weirs, and whitebait could be found in the tidal waterways when in season. Taro, kumara, and other vegetables were grown in small cultivations on the flats.[2] The hill country was once covered in stands of native bush, but clear-felling and burning off during the late nineteenth century denuded the slopes. Consequently, serious land slips are now a common occurrence in the region. The hill country is now used for pastoral farming and forestry, with several Crown forests existing in this area. The most valuable land is that on the Poverty Bay flats. Maori now own only a tiny proportion of this land, which is mainly in private European ownership.

The Poverty Bay district is difficult to give accurate historical figures for in terms of areas of land or Maori population. The officials who compiled the sources used in the compilation of this overview report have constantly altered the boundaries of the counties and districts they give figures for, and this has resulted in confusion as to the distinct area referred to. Often sources will refer to figures for the East Coast including Wairoa and the entire area up to East Cape. It has been virtually impossible to find figures referring to the Poverty Bay district on its own, and it has therefore been necessary to quote the approximate figures as they appear in the sources. These figures should be used with caution as they do not necessarily provide strictly accurate summaries for the district on its own account. In the later chapters of the report, however, most figures given for this area come from estimations based on the Cook County, which in 1907 covered the area from Paritu inland to Maungapohatu, north to a point in the Raukumara ranges and east to the coast at Marau Point, north of Tolaga Bay. These figures are therefore approximate to those of the Poverty Bay district as defined in the general terms used in this report and can be considered relatively accurate. A more detailed mapping project will be required, based on current cartographic information, in order to provide an accurate cartographic background for the historical claims within this district. It should also be noted that the maps contained in this report are not intended to

2. Anne Salmond, *Two Worlds: First Meetings Between Maori and Europeans 1642–1772*, Auckland, Viking (Penguin Books Ltd), 1991, p 119

provide such detailed and accurate information, but are intended as a visual aid in following the pattern of land alienation, and to illustrate points raised in the text.

The area covered by the Cook County was given in 1908 as 1,319,014 acres (533,804 hectares), and the Poverty Bay district, for the purposes of our inquiry, can be stated to cover an approximate area of 1,100,000 acres.[3] At 1860, the Crown had acquired only 57 acres of this, and European old land claims amounted to only 2200 acres. By 1907, 946,600 acres (383,089 hectares) of Cook County had been acquired by the Crown and private European interests, leaving 372,414 acres (150,715 hectares) of Maori land, most of which was either leased or held as part of the East Coast Trust. Although Maori were to receive some of this land back in incorporated ownership in later years, more land would be alienated through sale and public works takings. In a 50-year period, approximately 75 per cent of the tribal estate had been alienated. The purpose of this report is to examine how this occurred, and to identify some of the issues surrounding that land loss. In broad terms, this report discusses these issues in a chronology stretching from prior to 1840 into the mid-twentieth century.

The first chapter presents a brief description of the early history of the district, outlining in very broad terms the traditional history of the Maori groups that claimed tangata whenua status in Poverty Bay at 1840. This chapter is based on secondary source material, and is intended to provide an introduction to the iwi discussed in later chapters of the report, as well as some general information about their origins. Chapter 2 begins with an account of the first recorded contact between Maori on this part of the coast and Europeans, describing Captain Cook's visit there in 1769. Thereafter it continues with the story of early European settlement in the area from the 1820s to 1860, and examines the effects that this settlement had on Poverty Bay Maori. At the end of this period, only 57 acres had been sold to the Crown at Turanganui, and no other purchases had been acknowledged by local Maori. Instead they repudiated previous land transactions with Europeans in the area, even going so far as to threaten to turn these people out of the district. This was something that they clearly felt at liberty to do if they so chose, and they were, at that time, also entirely capable of enforcing such an ejection of the European squatters on their land.

Chapter 3 deals with the East Coast wars, and the confiscation of lands in Poverty Bay. By 1869, the Crown had purchased another 1000 acres for the site of Gisborne township, under circumstances that indicate Maori agreed to such a sale under some duress. The Government had also retained 56,161 acres of land acquired from Poverty Bay Maori during 1868 in a forced cession that was tantamount to confiscation. This chapter recounts Government attempts to confiscate Poverty Bay lands before 1868, and the events leading up to the eventual cession late in that year.

Chapter 4 continues the discussion of issues surrounding the confiscation of lands and, therefore, only covers a brief period in chronological terms. The return of lands following confiscation is dealt with in this chapter, along with subsequent

3. Acreage is given as boundaries of the territory ceded to the Crown in 1868, see map information at figure 2.

Maori discontent. There was considerable protest over the method by which land was returned, especially when it became clear that 150,000 acres had been returned to owners in joint tenancy. The excess of land taken by the Crown, survey issues, and rewards of land to other tribes out of the confiscated blocks, all became sources of grievance. There was open protest when the Poverty Bay Commission resumed its sittings during 1873. These protests, led by Henare Matua, a repudiationist from Hawke's Bay, are discussed in conjunction with the return of lands by that commission in tribal blocks – a quick clean-up of the lands remaining that was undoubtedly prompted in part by the obvious Maori dissatisfaction and unrest. Later efforts by Maori to seek redress for their grievances concerning the confiscations, and the two commissions of inquiry that looked into the complaints, are also examined.

Chapter 5 describes some of the activities of the Native Land Court after 1873, and traces the rapid alienation of Poverty Bay lands to the Crown and private purchasers in the period 1870 to 1889. This is a chapter containing a considerable amount of confusing detail, and it is hoped that with the help of a series of maps some general patterns of changing ownership can be established to demonstrate how land was rapidly alienated following individualisation of tenure in the Native Land Court. There is a great deal of research required into the specifics of some of the issues discussed in this chapter, especially those connected with the Government's purchase of lands in the area and the fate of reserves set aside for Maori as inalienable.

In chapter 6, issues affecting land in the district under the Liberal Government are explored. A detailed discussion of the Rees commission findings in 1891, and the evidence given to that commission at its sittings in Gisborne, has been undertaken. Other developments that affected the region, such as the Validation Court's activities and the Carroll–Wi Pere Trust, have also been considered at some length. There are some weighty topics raised in relation to the developments mentioned above, the issue of restrictions on alienation of Maori land for example, and although some effort has been made to discuss these and make some sense of them, there are many gaps in these analyses and many questions which arise out of them. Further research into these areas will certainly help to clarify many issues, especially regarding the Validation Court's activities in Gisborne. A report written for the Crown Forestry Rental Trust on the East Coast Trust which has been completed in a draft form, may fill some of these gaps. The report, by Kathy Orr–Nimo, was not available at the time this district report was written, but the additional information it supplies on the Validation Court and the East Coast Trust lands will be incorporated into a final version of the district 5b report.

The final chapter attempts to discuss some of the developments affecting Maori land in Poverty Bay during the twentieth century. It is by no means a comprehensive look at these developments though, and further reports on twentieth-century issues will be needed for the region. The land legislation of the early 1900s is discussed, as are the land councils and boards that were set up under these laws. The further fragmentation of Maori title, and the continued alienation of small blocks through sale, consolidation of Crown interests, and public works takings, are examined. The Stout-Ngata commission's findings on Cook County

lands at 1907 are considered in some detail, and the figures supplied by this commission provide an excellent overview of the land situation in the Poverty Bay area at the turn of the century. Finally, in the last of three sections in this report dealing with the lands that became part of the East Coast Trust, the trust administration and the eventual return of lands to Maori in incorporated ownership are also outlined.

The conclusion brings together some of the main points explored in the text of the report, and highlights areas identified in previous chapters as those worthy of further research. Although it has been reiterated throughout the report that certain sections are heavily reliant on particular secondary sources, it is fitting to state in this introduction that a debt of gratitude is owed to those people noted at the beginnings of each chapter, whose work has been of immeasurable importance in the compilation of this overview.

LIST OF ABBREVIATIONS

AJHR	*Appendices to the Journals of the House of Representatives*
AJLC	*Appendices to the Journals of the Legislative Council*
app	appendix
ATL	Alexander Turnbull Library
BPP	*British Parliamentary Papers: Colonies New Zealand* (17 vols, Shannon, Irish University Press, 1968–69)
ch	chapter
doc	document
fol	folio
JHR	*Journal of the House of Representatives*
JICH	*Journal of Imperial and Commonwealth History*
JPS	*Journal of the Polynesian Society*
JWDHS	*Journal of the Whakatane and District Historical Society*
MA	Maori Affairs
MA-MLP-W	Maori Affairs – Maori Land Purchase Department – Wellington
NA	National Archives
NZG	*New Zealand Geographer*
NZJH	*New Zealand Journal of History*
NZLJ	*New Zealand Law Journal*
NZPD	*New Zealand Parliamentary Debates*
p, pp	page, pages
pt	part
RDB	*Raupatu Document Bank* (139 vols, Wellington, Waitangi Tribunal, 1990)
ROD	record of documents
s	section (of an Act)
sec	section (of this report, or of an article, book, etc)
sess	session
TNZI	*Transactions of the New Zealand Institute*
VUWLR	*Victoria University of Wellington Law Review*
vol	volume
Wai	Waitangi Tribunal claim

CHAPTER 1

MAORI OCCUPATION PATTERNS PRIOR TO 1840

1.1 INTRODUCTION

The purpose of this chapter is to introduce the main iwi of the Poverty Bay district, in order that the reader of this report might more easily identify the groups involved in later discussion and have some broad appreciation of their origins. Secondary source accounts have been used to draw a broad picture only of the iwi that have lived in the area, and those that continue to do so. These sources have often presented conflicting accounts of the deeds of different ancestors, and in these cases all accounts are given. Many hapu will not be named specifically in this, or indeed in later chapters of this report. It is not implied that those hapu that are named have any greater interests in the land than others of the tangata whenua of the Gisborne region. In the text which follows many Maori names and place names have been hyphenated. This has not been continued throughout this report, and is only adopted in accordance with the nineteenth-century sources from which the names have been taken in this instance. It is hoped that any errors of fact or emphasis presented in this chapter will be rectified through the evidence provided by claimants and tangata whenua of Gisborne in the course of their own research.

The three main tribal groups that now reside in Poverty Bay and claim tangata whenua status are Te Aitanga a Mahaki, Rongowhakaata, and Ngai Tamanuhiri. As with most areas, there are differing origin traditions of iwi in and around Poverty Bay, leading to complex tribal histories. Common ancestry and extensive intermarriage within these groups have resulted in a degree of fluidity of hapu boundaries. In gathering material for this chapter, it has seemed that the definition of iwi groups as the predominant form of Maori social identity and structure is something of a modern phenomenon. In the area in question, social identity and interaction seems to have occurred mainly on the basis of hapu. The expansion, contraction, division, or migration of hapu units have resulted in the development of the present dominant iwi of Poverty Bay. A hapu-based social organisation would help to explain the confusion, obvious in a variety of primary source material, experienced by nineteenth-century Europeans in distinguishing between hapu and tribal groups. The tribe as a whole would become important only at certain times, especially when there was a significant threat or insult offered by a group from another tribe or locality.

1.2 TURANGANUI A KIWA

Throughout the nineteenth century, official sources continued to refer to this region as Turanga or Turanganui, rather than using the name, given by Cook, of Poverty Bay. Turanga is a shortened version of the Maori name for the bay area, Turanganui a Kiwa, 'the standing place of Kiwa', named after the ancestor who is claimed by some to have been the navigator of the Takitimu canoe, and by others as the tohunga on Horouta. In Mackay's *Historic Poverty Bay* it is suggested that the name resulted from Kiwa having settled in the area after travelling on foot from Mahia, where the Takitimu was temporarily beached.[1] The same area is said to have been known as Turanganui a Rua, after either Ruawharo, tohunga of the Takitimu canoe, Ruamatua, chief of Hawaiki, or Ruapani, principal chief of the region in the sixteenth century.[2]

1.3 TOI AND WHATONGA

Toi, known as Toi-kai-rakau or Toi-te-huatahi, is said to have arrived in New Zealand around ad 1150; his son Whatonga and his people arriving shortly thereafter. The descendants of Toi and Whatonga absorbed the original inhabitants through conquest and intermarriage. The group of tribes descended from these men divided into different areas and became known as Te Tini o Toi (sometimes referred to as Te Uri o Toi).[3]

D R Simmons, in his book *The Great New Zealand Myth,* has expressed the view that the supposed arrival of Toi and Whatonga in the twelth century is not supported by available evidence. The Toi of Bay of Plenty tradition is a figure of the thirteenth or fourteenth centuries, while the Arawa Toi dates from the late thirteenth century. Simmons contends that the Toi of Arawa tradition is not the Toi who appears in genealogies as the father of Rauru and Whatonga. The Bay of Plenty and East Coast traditions are fairly consistent in placing Toi at approximately 24 generations ago and this, according to Simmons, gives a more likely arrival date, making the Toi migrations to New Zealand almost contemporaneous with those of the 'fleet' canoes.[4] Regardless of the date of Toi's arrival, it seems likely that new arrivals in the Poverty Bay area soon asimilated these people and those whom Best referred to as the Mouriuri or Maruiwi.[5]

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1. J A Mackay, *Historic Poverty Bay and the East Coast, North Island, New Zealand*, Gisborne, J G Mackay, 1949, p 5
2. Ibid, pp 5–6
3. Tairawhiti Maori Association, *Echoes of The Pa, Proceedings of the Tairawhiti Maori Association for the Year 1932*, Gisborne, 1932, p 16
4. Simmons, *The Great New Zealand Myth: A Study of the Discovery and Origin Traditions of the Maori*, Wellington, A H & A W Reed, 1976, p 100
5. Mackay, p 1

1.4 THE HOROUTA AND TAKITIMU CANOES

The two canoes from Hawaiki with which the Poverty Bay tribes and many of their neighbours primarily associate are Horouta and Takitimu. It has sometimes been asserted that these were alternative names for the one canoe.[6] This is refuted by several sources on the basis that Takitimu was tapu and could not therefore carry women or food, both of which Horouta is known to have carried.[7] Amongst those who agree that the two canoes were separate, some assert that Horouta arrived at New Zealand at an earlier period than Takitimu, which was contemporaneous with the arrival of that group of canoes including Tainui, Aotea, and Matatua. Others place the arrival of Horouta at the same time as Takitimu.

In his series of lectures entitled 'Rauru Nui a Toi', A T Ngata discussed the Horouta canoe area, which he referred to as extending from Te Paritu, south of Gisborne, around to Taumata-o-Apanui, in the Bay of Plenty. The Paritu boundary of this area excludes the Mahia peninsula, traditionally associated with the arrival of the Takitimu canoe.[8] Ngati Porou have regarded Takitimu as a relatively unimportant canoe in their history but it is this canoe with which Ngati Kahungunu primarily associate. Ngati Porou regard Toka-a-Taiau, a rock which lay at the mouth of the Turanganui River, prior to the construction of the Port of Gisborne, as their southern boundary. Ngati Kahungunu sometimes claim this same rock as their northern boundary and that of the Takitimu canoe area.

Poverty Bay was the point from which most of the people of Hawke's Bay, the East Coast, and the Bay of Plenty spread, and the tribes of these areas all have traditions regarding their early history in the Gisborne area[9]. They trace their descent to one of the Takitimu and Horouta canoes, and very often both, although one will usually be regarded as the more important of the two.

1.4.1 Horouta

Kahungunu tradition states that Pawa was the captain of Horouta and Kiwa was the tohunga of that canoe. J H Mitchell has written that the Horouta canoe reached New Zealand around 100 years before the main body of canoes, which arrived around 1350.[10] Horouta called at different places along the East Coast until it was beached at Gisborne. Kiwa was the first to set foot on the land, according to custom. The place was thereafter known as Turanganui a Kiwa, or the standing place of Kiwa and the name was later extended to include the whole of the Poverty Bay flats area. Pawa named the river Te wai-o-Pawa, 'the water of Pawa' (now known as the Waipaoa River), and the hill past Muriwai was named Te Kuri a Pawa

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6. S Locke, 'Historical Traditions of Taupo and East Coast Tribes', *Transactions of the New Zealand Institute*, vol 15, 1882, p 448
7. J H Mitchell, *Takitimu: A History of Ngati Kahungunu*, Wellington, A H & A W Reed, 1944, p 24; E Tregear, 'Kiwa the Navigator', JPS, vol 7, no 26, 1988, p 111
8. A T Ngata, Rauru-Nui-a-Toi Lectures, Porourangi Maori Cultural School (1944), Gisborne, H K Ngata, 1972, p 3
9. Tairawhiti Maori Association, *Echoes of the Pa*, p 7
10. J H Mitchell, p 22. According to Mitchell, Toi and Whatonga arrived 200 years prior to the arrival of the fleet, making the approximate date of their migration ad 1250.

after his dog, Whakao, that whined softly when lost in the bush, thus giving its name to Pipi-Whakao ('the whining of Whakao').[11]

According to Mitchell, Pawa returned to Hawaiki leaving his daughter Hine-akua, who had married the son of Kiwa, Kahutuanui. Hine-akua's mana eventually fell to Ruapani, the paramount chief of the whole of the Poverty Bay area in his time and arguably one of the most important figures in the genealogies of the Poverty Bay tribes. Ruapani's influence extended beyond Turanganui-a-Kiwa to the Huiarau range beyond Waikaremoana.[12] Horouta is claimed by Ngati Porou as the canoe of their migration and they trace their descent to the ancestress Hine-akua, through the children she produced with Kahutuanui, son of Kiwa.

In the Matarohanga-Best manuscript, the Horouta canoe is spoken of as belonging to Pawa, Ira, and Tai-kehu. It was, by this account, named for the speed of the canoe Takitimu, and both arrived in New Zealand in the same period. Horouta struck rocks at Tukerae o Te Kanawa and broke up, losing her stern section. Pawa went inland to look for wood for a new stern section and, as there were no men to pull it out of the high inland country, he floated it down on a river created from his own urine; the Wai-paoa River.[13] The two histories given by Nepia Pohuhu (translated by White) and Paratene Okawhare are slightly more detailed but are composed along similar lines. In White's translated version of the Horouta story, the canoe brought kumara and kowhai, and was cast onto rocks at Te rae o Kanawa at the mouth of the Ohiwa River. There Hinekauirangi, sister of Ira, left the boat and others soon followed her onto land. All then went into the forest to search for food. They came out at Maungatapere and Maungahaumia where they intended to find a piece of wood to make a new stern piece for the canoe. Subsequently, they travelled to Muriwai and Wherowhero where they stopped and collected food. Hinekauirangi planted her kumara roots in the ground at Manuwaru. Ira, her brother, after spending some time residing at Turanganui, went on to Pakarae and built a pa there.[14]

Paratene Okawhare's version related that Ngati Ira of Hawaiki were fighting over trees and kumara cultivations, so some of them appropriated the Horouta canoe from its owners (Hikitapua, Tamakawa, and Tuakarikawa) and after it was loaded with kumara, kowhai and mapou, they sailed from Hawaiki. From this point the story is related as earlier. After Pawa had urinated a river in order to transport the new stern piece of the canoe to the coast, the people came out of the bush at Whangara and settled at Muriwai, where Hinekauirangi planted her kumara in the ground called Manawaru. Ira soon moved to Pakarae, where Paikea also later arrived and settled. Ruawharo and Tupai came in the Takitimu canoe to see Paikea and bring an offering of kumara. These two wanted to murder Ira because his father Uenuku had once insulted Ruawharo by allowing him to be thrown into a fishing net. Paikea, however, would not allow such vengeance to be taken for events that had occurred in Hawaiki, so Ruawharo and Tupai returned to Patea. Ira and Paikea soon moved on to live at Uawa.[15]

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11. Ibid, p 22
12. Ibid, p 23
13. Simmons, pp 132–133
14. Nepia Pohuhu MS, (translated by White), cited in Simmons, p 134

Mitchell stated in 1944, that the story of the Muriwai landing of Horouta was one of recent origin and without historical background. Ngai Tamanuhiri of Muriwai (who inherited the mana of Tahu-Potiki, descendant of Paikea, through Tamanuhiri) apparently have no such tradition.[16] Nevertheless, traditions of settlement at Muriwai need not be discounted on the basis of Mitchell's argument. Ngata believed Muriwai to have been the last resting place of the Horouta canoe.[17] Te Kani te Ua has also recounted the story of the arrival of the two canoes Horouta and Takitimu, saying that the river Waiapu was named after the bailing of water from Horouta after it struck rocks, and that the kumara plantation was at Whakararanui. Pawa received word of Takitimu having landed further south and ordered the canoe to continue on while he travelled overland. He soon arrived at Temata, a high ridge in the Mangatu area, and here while performing incantations to avert evil, Pawa urinated a stream, Te Mimi o Pawa, which turned into the Motu River. This river was named after the pause in his incantation caused by his urinating, and the Wai-paoa River was named after the 'scattering' of his water. Te Kani also recorded that some of the crew settled at Tokitoki, on the Patutahi block.[18]

1.4.2 Takitimu

Kahungunu also claim descent from Horouta, but the main canoe of their migration was Takitimu, the tapu canoe captained by Tamatea-Ariki-Nui who left the canoe at Tauranga and married Toto, a descendant of Toi-kai-Rakau[19]. After this, Takitimu continued to trace the coast of the North Island under the captaincy of Tahu-potiki (or Tahu-matua), the younger brother of Porourangi. They named Whangara, north of Gisborne, after the place called Whangara in Hawaiki. The hill next to the Turanganui River was named Titirangi after the pa of that name in Hawaiki.[20] The tohunga of the Takitimu canoe, Ruawharo, left it at Mahia Peninsula (Nukutaurua).[21] According to some accounts the final resting place of the Takitimu canoe was Murihiku, at the lower end of the South Island.

According to Thomas Lambert in *Old Wairoa*, descendants of Ngati Kahungunu and of Ngai Tahu, claim that Tamatea-mai-Tawhiti (Tamatea-Ariki-Nui) was the captain of the Horouta canoe, and that he came with his brother Rongokako. He gave Ruawharo as the captain of Takitimu, and with him Tupai. Tamatea-pokai-whenua, father of Kahungunu, is identified as the son of Rongokako and the nephew of the Tamatea who captained Horouta.[22] In this, as in other areas, Lambert's account seems somewhat confused. Yet another account has been given

15. Paratene Okawhare MS, cited in Simmons, pp 135–137
16. Mitchell, p 23
17. A T Ngata, 'A Brief Account of Ngati Kahungunu Origins', Rauru-Nui-a-Toi Lectures, Porourangi Maori Cultural School (1944), Gisborne, H K Ngata, 1972, p 24
18. Te Kani te Ua, 'The True History of the Canoes of Kiwa and Pawa', MS (undated), Gisborne Museum, V F Box 993, pp 1–2
19. Mitchell, p24
20. Ibid, p 42
21. Ibid, p 43
22. T Lambert, *The Story of Old Wairoa and the East Coast District, North Island, New Zealand*, Dunedin, 1925, pp 257, 261

by E Tregear (collected from Wi Pere), who gave the chief of Takitimu to be Kiwa, who travelled with his son Kahutuanui and others, among them Matua-tonga, Matua-iti, and Rua-wharo. Rua-wharo was, according to this account, the owner of Takitimu. He had won the canoe by muru from subject tribes in Hawaiki.[23] Samuel Locke seems to have believed that the Tamatea of the Takitimu canoe was himself the father of Kahungunu, and that the Rongokako who sailed was actually the father of the Takitimu Tamatea rather than his son.[24] This would not fit into the genealogical sequence which makes Kahungunu and Ruapani the contemporaries they seem, by all accounts, to have been.

1.5 PAIKEA

Another very important ancestor of the East Coast tribes, most especially Ngati Porou but also Ngai Tahu who migrated to the south, and the Poverty Bay tribe of Rongowhakaata, was Paikea. This ancestor is sometimes said to have arrived from Hawaiki on the back of a taniwha, but is also occasionally given descent from Toi-kai-rakau.[25] It would seem that details of Paikea's arrival in New Zealand are somewhat cloudy although William Colenso, in relating the story of Ruatapu and Paikea in *Transactions of the New Zealand Institute 1881*, wrote that Paikea was the son of Uenuku and brother of Ruatapu. The latter was, however, the son of a slave and was consequently of inferior rank to his brothers. Ruatapu devised a way of gaining redress for an insult paid him by Uenuku (concerning Ruatapu's inferior rank) which involved drowning his brothers when at sea in the canoe of their father. Only Paikea survived the sinking of the canoe, making land again at a place called Ahuahu, by chanting a long spell which gave him strength enough to swim the long distance. This particular event is supposed to have occurred on the East Coast of the North Island between Table and East capes. Paikea took a wife at Ahuahu named Parawhenuamea and they had several offspring; Marumuri and others. Later, Paikea travelled to Whakatane where he took as a wife Te Manawatina, and eventually to Waiapu where he married a woman named Hutu, who bore Pouheni.[26]

The Hutu referred to in Colenso's account was identified by John White as Huturangi, daughter of Whironui and his wife Araiara (Whironui was the captain of the Nukutere canoe, significant in the history of Ngati Porou). Huturangi and Paikea had Pouheni who then married Nanaia and bore Porourangi, eponymous ancestor of Ngati Porou.[27] In Ngata's lecture series it was stated that in Ngati Porou tradition Paikea married Huturangi, who bore Pouheni. Pouheni then married Mahanaiterangi and bore Tarawhakatu, whose offspring included Nanaia. It was through Nanaia's cohabitation with Niwaniwa that Porourangi and Tahupotiki were born.[28] Simmons relates that in the Ngati Porou tradition, as recorded in the

23. E Tregear, JPS, vol 7, no 26, 1898, pp 111–112
24. S Locke, *Transactions of the New Zealand Institute*, vol 15, 1882, p 448
25. W E Gudgeon, 'The Maori Tribes of the East Coast of New Zealand', JPS, vol 3, 1894, pp 211–212
26. W Colenso, 'Historical Incidents and Traditions of the Olden Times, Pertaining to the Maoris of the North Island (East Coast), New Zealand', *Transactions of the New Zealand Institute*, vol 14, 1881, pp 17–24
27. J White Manuscript, cited in Simmons, p 126

Matarohanga-Best manuscript, Paikea did not land at Ahuahu in New Zealand, but in Hawaiki where Ahuahu was the site of Te Pakaroa, the Pa of Ira and Ruawharo. According to Simmons, Paikea's landing place in New Zealand was at Whangara.[29]

1.6 RUAPANI AND KAHUNGUNU

1.6.1 Ruapani

Mackay wrote in *Historic Poverty Bay* that Ruapani was seven generations from Hine-a-kua, daughter of Paoa (Pawa), and Kahutuanui, the son of Kiwa. He stated further that the descendants of these two married with the offspring of Paikea and Toi and that Ruapani himself had three wives and 25 children.[30] Gudgeon also placed Ruapani eighth in descent from Paoa (Pawa).[31] This placement would make him a contemporary of Kahungunu, fourth in line from the captain of Takitimu, if Horouta arrived in New Zealand approximately 100 years prior to Takitimu. At the time of Kahungunu's migration to the East Coast in the early sixteenth century (ad 1500 to 1525), Ruapani was the principal chief of Turanganui-a-Kiwa. His pa, called Popoia, was on the western bank of the Waipaoa River (between Ormond and Kaiteratahi).[32]

1.6.2 Kahungunu

Tamatea-pokai-whenua, the father of Kahungunu, was so named due to his extensive travelling in the North Island. According to Mitchell, Kahungunu was born at Kaitaia, but grew up in Tauranga after his father and family were driven away from the former place.[33] This Tamatea was the son of Rongokako, son in turn of the Tamatea (Ariki-Nui or Mai-Tawhiti) who captained the Takitimu canoe from Hawaiki.[34] In the Rauru-Nui-a-Toi lectures, Ngata asserted that Tamatea-a-Muriwhenua (Tamatea-pokai-whenua) married Iwipupu, a daughter of Ira (Ira-kai-Putahi) who came from the Poverty Bay area. These two had Kahungunu and a daughter named Iranui.[35] Iranui married Hinangaroa, a descendant of Porourangi.[36]

In an article published in *Transactions of the New Zealand Institute* during 1882, Locke referred to an incident in Tauranga when Tamatea and his son braided the hair of Iwi, Kahungunu's mother, into a fishing net, causing great insult. They were expelled from Tauranga and settled at the pa Wharepatari, where Tamatea married Ruatai. Eventually both proceeded to Turanga and to Hawke's Bay where they quarrelled and separated. Kahungunu returned to Tauranga which he again left after

28. A T Ngata, lecture 2, Rauru-Nui-a-Toi Lectures, p 5
29. Simmons, p 133
30. Mackay, p 3
31. Gudgeon, JPS, vol 6, p 177
32. *Echoes of the Pa*, p 12
33. Mitchell, pp 74–75
34. Ibid, p59
35. A T Ngata, lecture 1, Rauru-Nui-a-Toi Lectures, p 12
36. J B W Robertson, 'The Evaluation of Maori Tribal Tradition as History', JPS, vol 3, no 71, 1962, p 300

being struck over the head by his sister Whaene following another incident with a fishing net.[37] Locke's account of the Kahungunu story seems to mix different stories together and the result is somewhat confused. According to Gudgeon, Whaene was a son of Tamatea, who along with Kahungunu is an ancestor of Te Aitanga a Mahaki.[38]

Ngati Kahungunu tradition states that Kahungunu stayed with his sister at Opotiki for some time before travelling down the East Coast to Whangara. He visited Titirangi pa on the hill next to the mouth of the Turanganui River, from which place he saw the smoke from the fires at Popoia, the pa of Ruapani on the Waipaoa River. Kahungunu visited Ruapani and accepted the offer of the principal chief's daughter, named Rua-rere-tai, as a wife. He settled there with his wife for a time and they had a daughter named Rua-herehere-tieke.[39] Following this there occurred what Ngata has described as a 'bewildering' series of intermarriages between the families of Ruapani and Kahungunu.[40]

1.6.3 Intermarriage

Following his marriage to the daughter of Ruapani (either Rua-rere-tai or Ruarauhanga)[41] Kahungunu travelled to Whareongaonga where he married two daughters of Pa-nui, Hine-puariari and Kahukura-waiaraia. With his second wife he had a son named Powhiro, and with his third he had two sons named Tuaiti and Potirohia.[42] Later, at Tawapata on the Mahia Peninsula, he married Rongomaiwahine, the former wife of Tama-taku-tai. Together these two famous ancestors of Ngati Kahungunu had five children: three sons (Kahukura-nui, Tamate-kota, Mahakinui), and two daughters (Rongomai-papa and Tauhei-kuri).[43] Gudgeon pointed out that it is not clear how Kahungunu gained the right to live in the Turanga and Mahia districts, but his mana may already have been known to East Coast chiefs and the legitimacy of his acceptance as a leading chief in these areas would only have been increased through his marriage alliances.[44]

All of Kahungunu's children by Rongomai-wahine, who has been seen as Kahungunu's principal wife, moved to Turanganui a Kiwa and intermarried with the people of that place.[45] The eldest son, Kahukuranui, married Ruatapu-wahine, a daughter of Ruapani, and settled at Waerenga-a-hika. This couple had two sons, Rongomai-tara and Rakai-hikuroa.[46] Kahukuranui took Tu-teihonga, the widow of Tu-pouriao of Otatara pa, as his second wife. They had two children also, Hine-manuhiri and Rakaipaaka. His third wife was Hine-kumu who bore a son,

37. Locke, TNZI, vol 15, 1882, pp 449–451
38. Gudgeon, JPS, vol 3, 1894, p 213
39. Mitchell, p 76
40. Ngata, 'A Brief Account of Ngati Kahungunu Origins', p 27
41. Ibid, p 27, Ngata believed there to be some dispute over which of Ruapani's daughters Kahungunu married, namely, Rua-rere-tai or Ruarauhanga; Mitchell, p 116, in Mitchell's account Ruarauhanga was the daughter of Ruapani by Rongomai-papa, daughter of Kahungunu
42. Mitchell, p 7
43. Mitchell, p 80
44. Gudgeon, JPS, vol 3, p 213
45. Robertson, JPS, vol 3, no 71, p 300
46. Mitchell, p 94

Tamanuhiri.[47] Tamatea-kota married a daughter of Rongowhakaata, (the prominent ancestor of the people of the Te Arai/Manutuke area), Rongo-Kauae, and these two were the parents of Kahatapere, whose two sons were murdered by Tupurupuru, grandson of Kahukuranui, causing the fighting which would lead to the expulsion of the Ngati Kahungunu peoples from Turanganui a Kiwa.[48]

According to Mitchell, Mahakinui had no offspring, but Rongomai-papa married Ruapani in his old age and she bore Ruarauhanga who was the mother of Tupurupuru, mentioned above.[49] Lastly, Mitchell has written that Tauhei-kuri married her cousin Tama-taipunoa in order that peace should be made after an attack by Tama and his elder brother on Kahungunu's pa at Mahia.[50] Tauhei-kuri and her husband settled at Waikohu, and apparently had two children, Tawhiwhi and Mahaki. Mitchell identifies this Mahaki as the eponymous ancestor of Te Aitanga a Mahaki of Poverty Bay.[51] Ngata believed that it was possible for all three of the tribes of Poverty Bay; Te Aitanga a Mahaki, Rongowhakaata, and Ngai Tamanuhiri, to claim descent from all 10 of Kahungunu's children, indicating the extent of common ancestry within these groups.[52]

1.7 MIGRATIONS FROM TURANGANUI A KIWA

The next period in the history of the Poverty Bay district involves the breaking away of various hapu and the development and expansion of newly-powerful hapu. The period is marked by migrations of groups from the area as a result of fighting, exile, overcrowding, and the struggles for power typically involved in the development of a society. In these early times, such changes occurred within hapu groups. Through these migrations and movements, the larger and more modern tribal groupings evolved, and the iwi of Poverty Bay at 1840 established their hegemony over the area. It was primarily the events of the seventeenth century (inter and intra-hapu struggles and the migration of the Ngati Kahungunu peoples from the area) that led to the establishment of the present tribes as tangata whenua of Poverty Bay.

Hapu boundaries were altered as a consequence of conquest and the exile or voluntary migration of particular groups. Boundaries also changed through the gifting of land, to cement peace or as reward for the services of allies.[53] Certainly, from the late sixteenth century, and throughout the seventeenth century, the Poverty Bay population was thrown into upheaval through various struggles for power within the region. These struggles occurred amongst the direct descendants of Ruapani and Kahungunu. The extensive intermarriage between the main groups in

47. Ibid, p 96
48. Ibid, p 116
49. Ibid, p 116
50. Ibid, pp 81–82
51. Ibid, pp 82, 116
52. Ngata, 'A Brief Account of Ngati Kahungunu Origins', p 28
53. Ibid, p 20

the region involved all of them in an inevitable struggle to inherit the mana whenua of the great chief Ruapani.

The first of the major fights of this period which is documented in the available source material, arose over the murder of Rironga, the son of Moeahu, by Tuaiti. Tuaiti, who was Kahungunu's son by his third wife, Kahukura-waiaraia[54] (and was thus the grandson of Tuira-a-rangi, principal chief of the people of Wairoa), had married a daughter of Moeahu named Moetai, and these two lived at Ruru-tawhao in upper Wairoa.[55] Rironga was apparently killed and eaten by his brother-in-law but no reason for this action is given in any of the accounts of the story. Moetai suspected foulplay although Tuaiti denied any responsibility for the disappearance of her brother. She duly warned another of her brothers, Tu-whaka-oma, who returned to Turanganui to gather a taua together.[56] The taua was led by Rongowhakaata[57], who had married another of Moeahu's daughter's by the name of Kakahu-po.[58] Tuaiti was killed and Moetai was taken as a second wife by Rongowhakaata when they returned to Turanganui.[59]

Following this raid, Kahungunu heard of the death of his son and came from Mahia to Wairoa to join the taua of Ngati-Rutanga, led by Weka-nui, who were travelling to Turanganui to avenge the murder of Tuaiti. A battle was fought on the Muhunga block at Kai-whaka-reirei (the site of present-day Ormond) and Kahungunu's party were the victors, taking two pa.[60] In Gudgeon's account the battle is referred to as Kahi-te-reirei and the two pa were those of Tuaiti, whose tribe were dispersed.[61] At this time, Pou-whare-kura, a woman of mana, was captured and became the fifth wife of Kahungunu.[62] According to Lambert, sections of Ngai Tahu were involved in this battle and survivors subsequently migrated south to Whanganui-a-Tara.[63] Gudgeon mentioned that this was not the first of the Ngai-Tahu migrations to the south as Tahu-matua had earlier gone south to Wairau, only returning at the news of the death of his brother, Porourangi. It was at this time that Tahu-matua took the wife of Porourangi, named Hamo, who bore him Tahu-muri-hape.[64]

Two major events followed involving migrations of Ngati Kahungunu from the Turanganui area. Although it is not entirely clear which of these migrations occurred first, Mitchell infers that the migration of Rakai-hikuroa's people to Heretaunga (Hawke's Bay) preceded that of Rakaipaaka to Nuhaka.[65] This seems

54. Mitchell, p 83
55. Gudgeon, JPS, vol 5, 1896, p 9
56. Lambert, p 265
57. See section 1.8.2 for a genealogy of Rongowhakaata
58. Mitchell, p 84
59. Ibid
60. Ibid; Lambert, p266
61. Gudgeon, vol 5, p 9. Gudgeon may be confusing two separate incidents, one being the raid on Tuaiti by Rongowhakaata's party and the second, the subsequent battle at Kai-whaka-reirei.
62. Lambert, p 266
63. Lambert, p 266. Ngai Tahu were at that time resident at Muriwai and were most likely involved in the fighting as allies of the Rongowhakaata and Moehu contingent. If the battle was indeed fought at Muhunga it seems likely that many of the hapu of Turanganui were involved in the fighting.
64. Gudgeon, pp 9–10
65. Mitchell, p 109

most likely as it would explain why no aid was given to Rakaipaaka and Hine-manuhiri when attacked by a taua led by Mahaki, considering that Tupurupuru was the principal chief of the area and would have been an obvious ally while he was alive.[66]

Rakai-hikuroa was the son of Kahu-kuranui by his first wife, Rua-tapu-wahine, and thus the grandson of both Kahungunu and Ruapani. Pukepoto, the pa of his son Tupurupuru, was on the western side of the Waipaoa River, opposite Waerenga-a-hika.[67] Tupurupuru was the principal chief of Turanganui until threatened by the mana of the twin sons of Kahutapere, son of Tamatea-kota (a son of Kahungunu). Tupurupuru reputedly killed the boys, and revenge was sought for these murders by their father.[68] In *Echoes of the Pa*, an account of these events named Rakai-hikuroa himself as the murderer of the two boys, and it was further stated that when Kahu-tapere confronted Rakai-hikuroa over the disappearance of his sons a fight ensued, resulting in the slaying of two more of the sons of Kahu-tapere.[69] Kahu-tapere sought assistance in the fight against Rakaihikuroa and his son from his cousin Mahaki, whose people joined the taua against Tupurupuru's pa. Tupurupuru was killed by Whakarau, the son of Mahaki and Hine-tapuarau. Whakarau had married Huruhuru, the sister of the dead twins.[70] After this defeat Rakai-hikuroa and another of his sons, Taraia, and Te Aomatahari (grandson of Tahito-tarere, chief of Ngai Tahu of Muriwai, who was killed in the fighting that resulted from the murder of Te Rironga[71]) led the remainder of their people to Mahia and from there to Hawke's Bay.[72] In *Echoes of the Pa*, these events have been dated at ad 1600.[73] As a result of the ejection of Rakai-hikuroa and his people, Whakarau (whose descendants are known as Nga-potiki) and his brother Ihu took over the lands formerly owned by Rakaihikuroa and Tupurupuru.[74] According to Mitchell, Rakaipaaka, the brother of Rakai-hikuroa, declined to join their migration, although it was only a short time later that he too would be expelled from Turanganui.[75]

In approximately 1630 the next migration occurred, involving the families of Rakaipaaka and his sister Hine-manuhiri, the grandchildren of Kahungunu through his son Kahukuranui and second wife Tu-teihonga.[76] Rakaipaaka lived at Waerenga-a-hika and his influence extended over a considerable area to the Te Arai River.[77] Hine-manuhiri also lived at Waerenga-a-hika. The exile of these two came about as a result of the killing of a dog named Kauari-hua-nui (or Kauere-huanui) that belonged to Tu-te-Kohi. Apparently this action was the result of an exchange of insults involving the dog, between Tu-te-Kohi and Rakaipaaka, at a feast held at

66. Ibid, p 26
67. Ibid, p 106
68. Lambert, p 275; Mitchell, pp 107–108
69. *Echoes of the Pa*, pp 32–33; Mackay, p6, Mackay indicated in *Historic Poverty Bay* that the murder of the twins, while performed by Turupuru, was instigated by Rakai-hikuroa.
70. Mitchell, p 108
71. Ngata, 'A Brief Account of Ngati Kahungunu Origins', p 14
72. Mitchell, p 109; Lambert, pp 288–289; Gudgeon, JPS, vol 6, 1897, p 179
73. *Echoes of the Pa*, p 13
74. Ibid, p33
75. Mitchell, p109
76. *Echoes of the Pa*, p 13
77. Mitchell, p 97

Tu-te-Kohi's pa near Gisborne. One of Rakaipaaka's people, Whakaruru-a-nuku, later killed the dog and ate it to avenge the insult.[78] Tu-te-Kohi sought revenge on Rakaipaaka and in light of a grievance that was held towards Rakaipaaka by Mahaki (over one of Rakaipaaka's men having slept with his wife) these two formed a taua, aided by Tu-te-Kohi's brothers Rongomai-mihiao and Rongomai-wehea from Uawa.[79]

At the battle of Whenua-nui, the party of Rakaipaaka and Hine-manuhiri were overcome, but Rakaipaaka's life was spared owing to his position as the first cousin of Mahaki. He and his sister were driven out of Turanganui along with their remaining people. Hine-manuhiri went inland to Wairoa and Ruapani lands at Manga-aruhe, where they built the pa named Te Mania.[80] Rakaipaaka went south to Mahia for a time. Ensuing battles between these people and Ngai-Tauira of Wairoa established Ngati Kahungunu in that area. Rakaipaaka and his people established themselves at Nuhaka. Ngati Rakaipaaka, a hapu of Ngati Kahungunu living in that area, are descended from this ancestor.[81]

It is also worth mentioning the troubles that soon beset the children of Iranui, sister of Kahungunu, who had become the second wife of Hingangaroa. Iranui was known as Te Wahine-iti, the lesser wife. By Hinangaroa she bore three sons: Taua, Mahaki-ewe-karoro, and Hauiti.[82] Hauiti fought his elder brothers in four different battles, and with the help of his son, Kahukuranui, defeated them and drove them out of Uawa. A vendetta began between the brothers which continued into the next generation, eventuating in the descendants of Mahaki and Taua migrating north and into the Bay of Plenty area.[83] Mahaki, leader and ancestor of Te Wahine-iti of Waiapu Valley, married Hinemakaho and the child of these two, named Paparu, married Tamarata and had three children: Ratunuku whose descendants married with Turanga people; Hineka, who married Tamaihikitiaterangi, a chief of Whangara and Turanga; and Whatukai, ancestor of Tiopira Tawhiao (Ngariki-kai-putahi of Muhunga),[84] a chief of Te Aitanga-a-Mahaki. Te Wahine-iti were eventually absorbed into Ngati Porou.[85] Descendants of Mahaki also make up sections of Whanau-a-Apanui of the Bay of Plenty.[86]

Taua migrated to Te Kaha (Bay of Plenty) and married into the Ngariki tribe, thus becoming an ancestor of Te Whanau-a-Apanui.[87] Ngata gave Taua as the Ngati Porou element in Whanau-a-Apanui; Mahaki and wife Hine-makaho as ancestors of Ngati Porou proper; and Hauiti as principal ancestor of Te Aitanga-a-Hauiti of Uawa.[88] Hauiti established himself at Titirangi pa on Kaiti hill, Turanganui.[89] He

78. Mitchell, p 98; Gudgeon, JPS, vol 5, p 10; Lambert, p 266
79. Mitchell, p 98
80. Ibid, p 26
81. Mitchell, pp 98–99; Gudgeon, JPS, vol 5, p 11; Lambert, p 266
82. Ngata, lecture 4, p 8
83. Ngata, lecture 5, pp 2–3; the feud between the sons of Iranui and also between the sons of Taua and Hauiti, namely, Apanui and Kahukuranui, are documented in Colenso, *TNZI*, vol 13, pp 43–46
84. Gudgeon, JPS, vol 6, p 2. Tiopira Tawhiao appears at the bottom of Gudgeon's genealogical table for Ngariki.
85. Gudgeon, JPS, vol 3, p 216
86. Ngata, lecture 4, p 17
87. A Mahuika, 'Nga Wahine Kai-Huatu O Ngati Porou: Female Leaders of Ngati Porou', MA thesis, Sydney, 1973, p 47; Gudgeon, JPS, vol 3, p 216

became involved in the constant fighting in the district as the descendants of Kahungunu were being forced out by the Ruapani element. It is possible that he may have received the wound that led to his death in one of these battles.[90] On the death of Hauiti, his son Kahukuranui was left to consolidate the position of the group that would be known as Te Aitanga-a-Hauiti, which had interests in the land from Titirangi northwards to Tolaga Bay. He took a wife from Turanga, Hinekahakura, a descendant of Ruapani, and also Hinetuere from Whangara, and a third, Tawhipare, from Waiapu, in order that links should be firmly established with tribes of all the surrounding areas.[91] It was Te Aitanga-a-Hauiti that ejected the tribe Ngati Ira from their lands.[92]

1.8 THE TRIBES OF POVERTY BAY AT 1840

1.8.1 Te Aitanga a Mahaki

According to Mitchell, Te Aitanga a Mahaki drove Pukaru, son of Ruapani, and his children off the land at Turanganui-a-Kiwa and thus they, along with Rongowhakaata people, established their claim to that area through conquest.[93] The reasons for such actions are not made clear and it would seem that if Tupurupuru, as Mitchell has suggested, inherited the mana of Ruapani in Poverty Bay, the direct descendants of Ruapani must already have migrated inland by that time. Lambert spoke of Te Aitanga a Mahaki as once having owned all the lands between the Motu, Hangaroa, and Waimata rivers.[94] In 1894 this still appears to have been the case.[95]

According to Mitchell also, Mahaki married Hine-tapuarau, who was the daughter of Kahukuranui (son of Kahungunu and uncle of Mahaki).[96] At the time of the ejections of Kahungunu's descendants referred to earlier, Mahaki lived at Pa Werawera which was situated on the Waikohu block, inland from Turanganui.[97] After the killing of Tupurupuru, Mahaki's sons Ihu and Whakarau occupied the conquered lands on the western side of the Waipaoa River. The descendants of Whakarau are known by the hapu name Nga Potiki and have continued to occupy the Waituhi block, which Whakarau gained through these events.[98] It was as a result of the defeat and migration of the people of Rakaihikuroa, and slightly later, that of Rakaipaaka and Hine-manuhiri, that Mahaki and his descendants gained sole ownership of Ruapani's former lands.[99] Mitchell has written that in subsequent

88. Ngata, lecture 4, p 13
89. Ngata, lecture 5, p 11
90. Ibid, p 13
91. Ibid, p 14
92. Gudgeon, JPS, vol 3, p 216; Ngata, lecture 5, p 16
93. Mitchell, p 26
94. Lambert, p 257
95. Gudgeon, JPS, vol 3, p 213
96. Mitchell, p 116
97. *Echoes of the Pa*, p 33
98. Ibid, pp 33–34
99. Mitchell, p 116; *Echoes of the Pa*, p 32

years, Te Aitanga a Mahaki extended their 'right and mana' over the area, becoming the most powerful of the Poverty Bay tribes.[100]

There was, apparently, continuous fighting amongst Te Aitanga a Mahaki in the latter half of the eighteenth century. In *Echoes of the Pa* it was suggested that this fighting, beginning at Mapouriki, arose over an eel weir. Rongowhakaata eventually entered into the fray as sections of Te Aitanga a Mahaki sheltered with them, and some were reported to have been killed and eaten. In the fighting which ensued between these two tribes, Te Aitanga a Mahaki were apparently the victors.[101] In 1894, Gudgeon described this tribe as the largest of those in Poverty Bay. He gave them as descendants of Tamatea Pokai-whenua, through his sons Kahungunu and Whaene, but also from the Ngariki, and a group he referred to as 'ancient peoples'.[102] The Ngariki originally inhabited the Waipaoa Valley at Mangatu.[103] When Gudgeon wrote his series of essays on the East Coast tribes in the 1890s he estimated the number of remaining Ngariki in Poverty Bay at approximately 20, the original tribe having intermarried with Te Aitanga a Mahaki.[104] Ngariki kai-putahi of Poverty Bay are connected with the Ngariki who made up sections of the tribes of the Bay of Plenty.[105]

The general boundaries of Te Aitanga a Mahaki are as follows: to the north the border follows the Waimata River, although there are considerable interests held by this group in blocks beyond this boundary, such as in the Kaiti block; to the west the boundary of Mahaki lands is roughly in a line with Arowhana; in the south west they border with Tuhoe as their boundaries extend to the Huiarau ranges and Maungapohatu; and southward Mahaki lands meet those of Rongowhakaata at the Repongaere and Tangihanga blocks, lands in which Whanau a Kai hapu of Te Aitanga a Mahaki have interests.

1.8.2 Rongowhakaata

Lambert has written that Rongowhakaata, the eponymous ancestor of the present tribe, married three daughters of the chief Moeahu, descended from Kiwa.[106] According to Gudgeon there are several genealogies given for Rongowhakaata, most of which are contradictory. He claimed that Rongowhakaata was descended from an 'ancient people' of whom there is no record. It is possible, however, that he was descended from Paikea, earlier known as Kahutia-te-rangi.[107] Ngata believed Rongowhakaata to have come from Uawa, and to have migrated to Turanga where he married the daughters of Moeahu, descendants of Ruapani.[108] His people then occupied the area between the Turanganui and Waipaoa rivers.[109] His grand-

100. Mitchell, p 116
101. *Echoes of the Pa*, p 14
102. Gudgeon, JPS, vol 3, p 213
103. Gudgeon, JPS, vol 5, p 2
104. Gudgeon, JPS, vol 6, p 186. Present day Ngariki, who have been known under the hapu name of Ngariki kai-putahi, now claim separate tribal identity to that of Te Aitanga a Mahaki.
105. A C Lyall, *Whakatohea of Opotiki*, Reed Ltd, Wellington, 1979, pp 13–18
106. Lambert, p 254
107. Gudgeon, JPS, vol 3, p 211
108. Ngata, lecture 4, p 9

daughter, Tupuhikai, married Hurumaiterangi, son of Hingangaroa by his first wife.[110] Thus, links were re-established between Rongowhakaata's family and the people of Uawa.

Gudgeon stated that through the marriage of Rongowhakaata with the daughters of Moeahu, arose the tribe that took his name as well as Ngati Ha and Ngati Pukenga of Opotiki.[111] Among the leading ancestors of Rongowhakaata were Rua-roa and Rongomaire, sons of Ruarauhanga (or Rua-rere-tai), first wife of Kahungunu and daughter of Ruapani.[112] Gudgeon mentioned hapu descended from Ruapani residing at Te Reinga Falls, by the hapu names Ngati-Hine-hika and Ngati Pohatu. Ngati Hine-hika apparently had interests in land on both sides of the Hangaroa River and the left bank of the Ruakituri River, and resided at Te Reinga Falls. It was to this place that the Wairoa people fled when attacked by Te Heuheu and Te Whatanui in 1828.[113] Some 40 years later, Te Kooti Arikirangi would also use this route in his escape into Tuhoe country.

By the 1860s, the area in which this ribe had interests extended well beyond the limits given by Gudgeon, as a result of extensive intermarriage with other groups including those in upper Wairoa, Waikaremoana, and the area of Whakapunake and Te Reinga Falls. The boundaries of Rongowhakaata with Mahaki are those mentioned above, where the Patutahi block meets Tangihanga. Rongowhakaata lands also border on those of Ngai Tamanuhiri where the Pakowai block meets the Maraetaha block at Muriwai. To the south and south east, Rongowhakaata meets Ngati Kahungunu (Ngati Rakaipaaka to the south-east). Their west-south west boundaries are between the hapu of the Te Reinga-Ruakituri area with Ngati Kahungunu–Ngati Ruapani of Waikaremoana.

1.8.3 Ngai Tamanuhiri

Ngai Tamanuhiri have formerly been known by the tribal name of Ngai Tahupo. They are descended from the younger brother of Porourangi, Tahu-Potiki, who took his brother's widow as a wife and had Tahu-murihape.[114] Herein lies their connection with Ngai Tahu who formerly resided in the area around Muriwai. Following the migrations of most of Ngai Tahu from Poverty Bay, sections remained of those descended from Tahu-murihape, and these intermarried with other tribes establishing descent lines from Kahungunu and Ruapani. Mitchell has written that Tamanuhiri was the son of Kahukuranui, the son in turn of Kahungunu, by his third wife Hine-kumu.[115] Through Kahukuranui this tribe have links with sections of Ngati Kahungunu.

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109. Ibid, p 212
110. Ngata, lecture 4, pp 8–9
111. Gudgeon, JPS, vol 5, p 2
112. Ibid, p 8
113. Ibid, p 181. The hapu of Rongowhakaata who owned land around this area associate more closely with their ancestor Ruapani whilst those owning land at Te Arai and the Patutahi block on the Poverty Bay flats associate with Rongowhakaata, the eponymous ancestor.
114. Ngata, lecture 2, p 7
115. Mitchell, p 96

Gudgeon believed Tamanuhiri to have been a son of Rakai-hikuroa and thus the grandson of Kahukuranui and Rua-tapu-wahine, daughter of Ruapani.[116] In one of his genealogies he showed Tamanuhiri as fourth in descent from Tahu-murihape, through Raka-roa, Uenuku, and Rakai-toto-awa.[117] He also described how Tamanuhiri migrated to Hawke's Bay with his brother Taraia, and Rakaihikuroa, his father.[118] Mitchell's genealogies show Tamanuhiri as descended from Tahu-murihape through the alliance of Rakai-totorewa (child of Uenuku) and Rua-kahutia (child of Tamatea-upoko), both two generations from Tahu-murihape.[119] It is possible that there were two men named Tamanuhiri who lived in Poverty Bay at around the same period, one of them a minor son of Rakaihikuroa who left the area in the mid-seventeenth century. Considering that Ngai Tamanuhiri do claim descent from Kahungunu's children, these two figures are likely to be the same man although the available source material gives a different impression. It is certain, at least, that the Tamanuhiri descended from Taru-murihape is the eponymous ancestor of Ngai Tamanuhiri.

At 1840 this group, known at that time as Ngai Tahupo, still occupied the Muriwai area and had interests in land from Muriwai south to Paritu, including Te Kuri o Pawa (Young Nick's Head). Ngai Tamanuhiri's present boundaries are the same as these, and they are neighbours to the tribes of Rongowhakaata and Ngati Kahungunu (Rakaipaaka at Wharerata).

1.9 INTER-TRIBAL CONFLICT IN THE NINETEENTH CENTURY

During the 1820s and 1830s, the Maori population of the North Island was on the move as parties armed with muskets swept downwards from the north in several waves. Although this activity had a dramatic effect on the tribes of Poverty Bay and their boundaries were undoubtedly threatened, these appear to have remained the same at 1840 as they were before the onset of severe inter-tribal conflict. Several taua of Nga Puhi attacked the East Coast beginning in 1818, and attacks on the tribes of the Bay of Plenty caused a corresponding wave of attacks by Whakatohea on the tribes of Poverty Bay.

Nga Puhi chief Te Wera Hauraki joined with Ngati Maniapoto and Waikato people in an attack on Rongowhakaata in 1818. Aided by Ngati Kahungunu, Rongowhakaata fought Te Wera's war party on the banks of the Waipaoa River.[120] They suffered a defeat there due to their lack of muskets at that time. In *Takitimu*, Mitchell referred to a raid on the Wairoa-Mahia section of Ngati Kahungunu in 1824 by a combined force of Nga Puhi, Waikato, Whakatohea, and Tuhoe which attacked pa at Nuhaka, Pukekaroro, and Titirangi, where Ngati Kahungunu and their Poverty Bay allies were defeated.[121] Te Wera later made peace with Te Kani a

116. Gudgeon, JPS, vol 6, 1897, p 179
117. Ibid, p 184
118. Ibid, p 179
119. Mitchell, Appendix ii
120. Lambert, pp 299–300

Takirau and travelled to Mahia where he undertook to protect Ngati Rakaipaaka, and others of Ngati Kahungunu, from further attacks by central North Island tribes. In 1826, Te Wera was attacked by Te Heuheu Tukino of Te Arawa and others of Ngati Paoa. He was aided by Rongowhakaata, many of whom died in the siege of Pukenui Pa. The attack was given up after two months and the besiegers returned home.[122] In 1828, Te Wera aided Rongowhakaata and Te Aitanga a Hauiti in their attack on Ngati Porou of Tokomaru Bay.[123]

Apparently Ngati Kahungunu, Te Aitanga a Mahaki, and Whanau a Kai hapu were often adversaries of Whakatohea of Opotiki at this time (although sometimes sections of them would be allied to that group).[124] Lyall contends that groups from the Bay of Plenty, Poverty Bay, and the central North Island were continually crossing boundaries into each others territory at this time. He writes:

> In the main, the fights were between marauding war parties or parties seeking food, both animal and human. Judging, however, by the extent of Ngati-Rua involvement, it looks as though they had definite territorial ambitions which saw them actually in occupation south of their own lands for varying periods. Before this there was the expedition to the Mahia peninsula by combined tribes, in which Whakatohea participated.[125]

Ngati Rua made several incursions into Mahaki territory in the years before 1830. Lyall believes these attempts to occupy lands south of their borders were in response to pressure on their territory from Ngati Maru and Ngapuhi.[126]

In the early 1830s (possibly 1832), Whakatohea travelled to Te Muhunga following a battle with Ngati Porou and Whanau-a-Apanui at Wharekahika. Nga Potiki hapu of Te Aitanga a Mahaki (descended from Whakarau, son of Mahaki) allied themselves with Whakatohea against other sections of their tribe. Under Tahore, Te Aitanga a Mahaki attacked Whakatohea and Nga Potiki at Muhunga, aided by a group of Ngai Tai who were already in the area, and Whanau-a-Apanui. Whakatohea and Nga Potiki, left Muhunga and went on to Kekeparaoa where the situation developed into a siege, both parties being well armed with muskets by this time. Whakatohea eventually surrendered and the leader of the Nga Potiki group was killed for his acts against Te Aitanga a Mahaki.[127] Another attack was made on Poverty Bay later in the 1830s (between 1833 and 1834) in which Whakatohea gained some initial success and settled at Wairoto near the Waikohu–Matawai block, but they were eventually repelled by Te Aitanga a Mahaki and returned to the Bay of Plenty. By this time the northern raids had ceased and Christianity was beginning to have an impact on the fighting. Whakatohea resumed occupation of their own lands.[128]

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121. Mitchell, p 163
122. Lambert, pp 302–304
123. Mackay, p 77
124. Lyall, p 113
125. Ibid pp 116–117
126. Ibid, p 119
127. Ibid, pp 119–120
128. Ibid, pp 120–121

At the time of these events there were only a handful of Europeans living in Poverty Bay. To all intents and purposes, they lived among Poverty Bay Maori under the patronage of the various chiefs and were involved, therefore, in the social upheavals of those people. Indeed, J W Harris, an early flax trader and settler, was present at the siege at Kekeparaoa.[129]

1.10 CONCLUSION

The inadequacy of some of the secondary source accounts used in the compilation of this introduction to the early history of the people of Turanganui a Kiwa, is fully acknowledged. It is hoped, however, that this chapter has provided, for the purposes of this report, an adequate background to the Maori inhabitants of the region at 1840. By this time those hapu which made up the three iwi Te Aitanga a Mahaki, Rongowhakaata, and Ngai Tahupo (Ngai Tamanuhiri), had firmly established themselves as tangata whenua of their rohe. The later sections of this chapter have briefly outlined the inter-tribal wars of the 1820s and 1830s in order to demonstrate how these iwi defended their mana whenua in the rohe against a series of challenges from other tribal groups. The next period of this region's history involves the development of European settlement in the area, and the challenges Maori faced as a result of this, especially in terms of their ownership of the lands they had retained by military strength for at least two centuries prior to 1840.

129. Ibid, p 120; Mackay, 'Joint Golden Jubilees: Life in Early Poverty Bay', *Gisborne Times*, May 1927, pp 52, 29. Barnet Burns, a European sailor, was involved in a variety of battles in this period as and when 'his chief' required his assistance.

CHAPTER 2

EARLY EUROPEAN SETTLEMENT

2.1 INTRODUCTION

Many of the Europeans introduced in the course of this chapter were to become prominent landowners in Poverty Bay in later decades, and their names will reappear frequently in the course of this report. Similarly, some of the prominent Maori in the district's modern history are also first mentioned within the context of early European settlement. Some of these men and women would later be land sellers. Others would resist land sale and repudiate the transactions that had already taken place. Within the period that this chapter covers, Maori readily responded to the challenges presented by early contact with Europeans with a strength and resilience that was inextricably linked to their mana whenua and their continued control of their own resources. The first of these challenges was presented by the arrival in the district of European traders and whalers, who were soon followed by missionaries. The adoption and adaptation of Christianity by Poverty Bay Maori preceded, by a narrow margin, their entry into the European economy through trading and business activity, in which they immediately excelled. Throughout, there was a continued reliance primarily on their own social and political institutions rather than those introduced along with the entry of Government officials to the district. The final section of this chapter deals with the Maori repudiation of all European old land claims in the late 1850s and early 1860s. Following the East Coast wars of the 1860s and the confiscation of Poverty Bay lands, to be dealt with in chapters 3 and 4, the Maori domain which this district had been was unfortunately to end, despite the efforts Maori had made to maintain it during the early settlement period.

2.2 THE ARRIVAL OF CAPTAIN JAMES COOK

James Cook's ship *Endeavour* anchored off the mouth of the Turanganui River on 8 October 1769. According to J S Polack, the ship had been mistaken for a giant bird by local Maori.[1] This account seems to indicate that the first contact between Poverty Bay Maori and Europeans became something of a mythologised event within local Maori lore. As a party from Orakaiapu pa came to the foreshore with the apparent intention of taking the ship by force of arms, it seems unlikely that

1. J S Polack, *New Zealand: Being a Narrative of Travels and Adventures During a Residence in that Country Between the Years 1831 and 1833*, 1838, vol 1, p 15

they were really quite so gullible as Polack would have us believe. Unfortunately, the first contact of the two peoples on this part of the coast was not to be peaceable, and the events that were to unfold there must certainly have added to the unfavourable impression of the bay area, that led to its unfortunate naming by Cook and his fellow travellers.

When Cook and some of his men first ventured onto land, those Maori who had been gathered on the shore immediately ran off. Later, the sailors were attacked by a party of Maori men when they attempted to make contact by walking up to a group of whare near the beach. During this attack, shots were fired by one of Cook's party, killing one man, identified by Gisborne historian J A Mackay as Te Maro, of Ngati Oneone (hapu of Te Aitanga a Hauiti). This was clearly the first instance of gun-fire ever experienced by Poverty Bay Maori, but they do not appear to have been deterred by it as the following day a well-armed party met three boats of Cook's men on the same shore, forcing Cook to return to his ship. He then landed the marines who, marching with a Union Jack before them, attempted to establish friendly relations with the local inhabitants and get provisions. These efforts were not fruitful though, as the local warriors seemed only to be interested in obtaining firearms either through barter or theft. When one man, Te Rakau, grabbed the firearm of one of the Europeans and waved it triumphantly over his head, he was shot. Still brandishing the stolen weapon, he retreated some way up the beach. At this point he was shot again, and dropped to the ground. The Maori party then began to advance, and further shots were fired at them, wounding two or three. They then withdrew, and Cook's party returned again to the *Endeavour*.[2] This latter party of warriors was apparently Rongowhakaata from Orakaiapu pa, who had come with the idea of taking the ship anchored in the harbour.[3]

This was not the end of the troubles. Over the next days, Cook's men shot and killed four more men and captured three boys from a fishing boat out on the bay. These three were later returned to shore, where they laid gifts of clothes they had been given on the body of Te Rakau that still lay on the beach. The boys, it would seem, were also of Rongowhakaata, judging by the descriptions of where they wished to be landed when returned to shore, and by their attitude towards Te Rakau's body. Cook gave the name Poverty Bay to this place because he was unable to obtain anything there in the way of provisions.[4]

Cook apparently also remarked on how unfavourable the bay was for sailing vessels, calling it 'wild riding for a ship'[5]. Joseph Banks recorded that the bay was completely without shelter. This was to remain a significant problem for later trading and settlement, and contributed to the slow pace of European settlement of the district in the ensuing years. Banks was apparently struck with guilt over the deaths that had occurred in Poverty Bay, and with good reason perhaps, as historians W H Oliver and J M Thomson have written in *Challenge and Response*,

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2. Mackay (ed), *Joint Golden Jubilees*, Gisborne Times Jubilee Handbook, Gisborne Publishing Co, 1927, pp 3–4
3. Ibid, p 6; Mackay, *Historic Poverty Bay*, p 28
4. Mackay(ed), *Joint Golden Jubilees*,p 8; Mackay, *Historic Poverty Bay*, p 40
5. W H Oliver and J M Thomson, *Challenge and Response*, East Coast Development Research Association, Gisborne, 1971, p 13

a study of the Gisborne and East Coast regions, that these first meetings with Europeans would cause lasting bitterness among local Maori. Regardless of how quickly the bitterness of cross-cultural contact manifested itself, Cook's visit to Turanganui a Kiwa seems an unfortunately appropriate forerunner to later encounters between the two peoples on this part of the East Coast. As Oliver and Thomson write, the 'meeting of cultures is cruel, and the first shots have long echoes'.[6]

2.3 WHALERS AND TRADERS

Although Europeans were probably visitors to the East Coast from the early nineteenth century, documented settlement of the area began with the shore traders who lived along the coast from the early 1830s.[7] J W Harris was sent to Poverty Bay by the Sydney traders Montefiore & Company in 1831, along with George White (Barnet Burns), and Tom Ralph who were to help establish trading stations along the East Coast. Flax was the main trading commodity, and while Harris was stationed at Poverty Bay, White traded at Mahia, and Ralph at Wherowhero. Other traders soon followed and trade was brisk as the Maori desire for muskets, and later other European commodities, provided an impetus for this developing relationship.[8] These shore traders were enabled to remain in isolated areas only through the patronage of certain chiefs. They lived according to Maori laws and custom as the East Coast was at this time a completely Maori world. Oliver and Thomson write that the traders did not form communities, and even the three traders sent to Poverty Bay went to live in different parts of the district in order to conduct business with a wider group of Maori. Chiefs often deliberately kept the traders apart in order to prevent rivalry between different hapu. The flax trader's life was a somewhat isolated one in terms of contact with other Europeans, and also insecure considering their fundamental lack of power within the Maori community.[9] The chief who gave protection to Harris in these early days in Poverty Bay was Paratene Pototi, also known as Paratene Turangi.[10]

Some of these traders became the founders of the European community at Turanganui and were those who brought old land claims before the land claims commissioner in 1859 (and later the Poverty Bay Commission of 1869). These old land claims are the subject of discussion later in this chapter (see sec 2.9). Men such as J W Harris, Thomas Halbert, Robert Espie, William Brown, and Peter Simpson all married Maori women, or at least cohabitated with them for a time, producing a number of part-Maori children. It was these alliances that formed the beginnings of the European community in Poverty Bay. In 1832 or 1833, Harris married a woman of rank, Tukura, first cousin of Rawiri Te Eke, and these two had part-Maori children, for whom allowance was made in land gifted to Harris.[11] Peter Simpson

6. Ibid, p 14
7. Ibid, p 19
8. Mackay (ed), *Joint Golden Jubilees*, p 49
9. Oliver and Thomson, p 20
10. Mackay, *Historic Poverty Bay*, p 98

who arrived in 1831 and traded at Muriwai also had a part-Maori child, but later married a European woman.[12] In 1834, Thomas Halbert took up residence at Muriwai and married his second wife, Pirihia Konekone of Te Aitanga a Mahaki, who later left him and went to live with Raharuhi Rukupo, who also adopted Halbert's child from that liaison. The child of another of Halbert's marriages, this time with Riria Mauaranui of Te Aitanga a Mahaki, was Wi Pere, who became a major political figure of the region in the late nineteenth century. Halbert's fifth marriage was to Kaikeri of Rongowhakaata. This alliance produced seven children, among them Keita, who married settler James Wyllie, and was a prominent land-seller in subsequent decades. A sixth marriage was to Maori Pani, another Rongowhakaata woman, whose previous marriage to Tiopira produced a girl who would become the wife of prominent settler James Woodbine Johnson.[13]

When the flax trade dwindled these men turned to whaling, and some small European communities began to develop around the coastal whaling stations. Harris set up the first whaling station at the mouth of the Turanganui River in 1837, later moving it to Papawhariki. Espie set up a station at Mawhai, Tokomaru Bay, and a newcomer George Clayton was whaling at Waikokopu in 1838.[14] The communities that developed around these whaling stations were at best unstable, with people passing through regularly. At worst they were the scene of the type of vice and debauchery that horrified the newly-arrived missionaries, who were concerned at the detrimental effect such settlements would have on local Maori.[15]

Whaling and trading continued in the area, but those who had been resident for some time soon began to turn to farming as a secondary occupation. Harris began farming on the block of land called Opou which was one of the parcels of land he later registered as an old land claim. He had a trading station on this land, situated on the banks of the Waipaoa River. He brought three mares to work on the land in 1839, as well as importing some cattle. By 1841, substantial buildings including a two-storey trading store had been constructed on the block.[16]

2.4 EFFECTS OF EARLY SETTLEMENT ON POVERTY BAY MAORI

Maori had been trading potatoes and pigs for muskets and ammunition in the 1830s, and they entered into the flax trade with enthusiasm. The presence of the few European traders was therefore welcomed, and was also viewed as a matter of some prestige within the Maori community. This circumstance appears to have allowed these men some flexibility in terms of their behaviour, despite the obvious constraints placed on them through their patronage by the local chiefs, on whose protection they were quite clearly reliant. Harris was almost certainly exaggerating

11. Ibid, p 100
12. Ibid, pp 103–104
13. Ibid, pp 104–105
14. Mackay (ed), *Joint Golden Jubilees*, p 51
15. Oliver and Thomson, p 21
16. Mackay, *Historic Poverty Bay*, p 101; Oliver and Thomson, p 21

when he stated that he was 'monarch, practically, of all he surveyed'. Nevertheless, notwithstanding the obvious arrogance of such a statement, it is probably true that such an impression was encouraged by the importance his trading role bestowed on him within the Maori community. There were limits to what would be tolerated from the European residents though. When Harris struck the son of Paratene Turangi over the head there was a general clamour for his punishment, but after commenting on the severity of the offence the chief concluded by saying that nothing more could be expected from an 'ignorant pakeha'. Harris was quite clearly perceived to be of significant value to the chief, who therefore allowed him to be let off by virtue of his ignorance of Maori custom.[17]

According to Bishop W L Williams, Maori abandoned their own cultivations at the height of the flax trade, which peaked in 1831.[18] It must be taken into account, however, that these years were also those of constant raids by taua from the north, and cultivations may well have been abandoned to some extent because of this constant military threat. It is known that Maori were cultivating maize and potatoes and breeding pigs for export in the mid-1830s.[19] By the late 1840s, wheat was widely grown in the area, and the first sheep were introduced either by Anaru Matete or William Williams in 1850.[20] East Coast Maori were also heavily involved in off-shore whaling, and McLean reported in 1851 that he had found about 150 Europeans and twice that many Maori associated with the whaling station at Mahia.[21] Maori involvement in trade continued to develop throughout the 1840s and 1850s, and as they began to purchase their own trading schooners to ship produce to Auckland, the relationship between Maori and Pakeha became more difficult. Nevertheless, the trading relationship continued to be of extreme economic importance to both groups. It would seem that Maori of Poverty Bay were not often without produce for consumption or trade, and their quality of life was relatively high, despite the observation made by Mrs Stack during the late 1850s, that on her arrival in Poverty Bay she saw 'some of the most wretched, poverty-stricken Maoris [she had] yet seen'.[22]

Throughout the period of the 1830s to the 1860s, the East Coast was undoubtedly a Maori domain. The development of European settlement in the district was extremely slow and settlers remained quite isolated. Poverty Bay can not be seen to have similarly isolated its Maori inhabitants, however, and Maori awareness of developments in other districts was considerable. They keenly observed, for instance, the pace of European settlement in Hawke's Bay. With remarkable speed, Maori of the East Coast developed the economic skills and education required in order to participate in what was clearly a new system. The late 1830s also brought Christianity, and a further adaptation by East Coast Maori of European ways and incorporation of these into the Maori world. The missionaries also brought the Treaty in 1840, and although many East Coast chiefs signed the document, it is not

17. W L Williams, 'East Coast Historical Records', *Poverty Bay Herald*, Gisborne, 1932, p 5
18. Ibid
19. Mackay, *Historic Poverty Bay*, p 124
20. Mackay (ed), *Joint Golden Jubilees*, p 52
21. Mackay, *Historic Poverty Bay*, p 147
22. J W Stack, *Further Maoriland Adventures*, Dunedin, Reed, 1938, p 191

at all evident that they fully understood that the British intended this to pave the way for full-scale settlement of the country. As far as Poverty Bay Maori were concerned, the Queen and her Government had no authority in their rohe, despite the European presence there. Clearly the European traders and settlers were welcome to live in their area, but only as long as some good came of this relationship for Maori. It was equally clear that these Europeans fundamentally had no rights other than those bestowed on them by the Maori community in which they resided.

2.5 MAORI CHRISTIANITY: MISSIONARY ACTIVITY ON THE EAST COAST

The introduction of Christianity had a profound effect on Maori of the East Coast in the late 1830s, an effect which continued into the next decades as Christianity was incorporated into the Maori world. Oliver and Thomson believe that Christianity, changed by Maori even as it brought about change, functioned in Maori society by easing transition while it encouraged further entry into the European world.[23] They write:

> Maori acceptance of Christianity has three characteristics: it occurred in a social structure only marginally and indirectly affected by cultural change, with Maori themselves as the most important propagators of the new ideas and practices, and bringing about the alteration of a total society, not of a fragment. The motivation behind the acceptance of the new is to be found within the needs of Maori individuals and Maori society.[24]

That Maori themselves were the primary motivators in the initial rush of support for Christianity is demonstrated by the scale of early conversion, which occurred so rapidly under the influence of Maori teachers, the visits of missionaries in the 1830s being too intermittent to have had such an overwhelming effect.[25] Indeed, the missionaries who came to the East Coast were themselves swept along on the wave of enthusiasm they found there for the new religion. Missionaries first visited the Coast in 1834 in order to investigate sites for possible mission stations in the area, while also returning East Cape Maori formerly captured and sold as slaves to Nga Puhi.[26] These were the first native teachers and agents of early conversion, among them Taumata a Kura who, writes F Porter, with:

> . . . Bible in one hand, musket in the other . . . prepared the way, giving to Christianity a prestige, an elan, an exciting belief in that talisman of East Coast Christianity, 'the book', which by themselves the European missionaries would not have achieved.[27]

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23. Oliver and Thomson, p 27
24. Ibid, p 28
25. Ibid, p 29
26. K M Sanderson, 'These Neglected Tribes: a Study of the East Coast Maoris and their Missionary, William Williams, 1834–1870', MA Thesis, University of Auckland, Auckland, 1980, p 2

The Church Missionary Society decided that a mission should be established at Turanga (Poverty Bay) in 1837, and in 1838 three native teachers were left there, and a further three in Waiapu, until such time as a missionary arrived permanently.[28] In April 1839, William Williams came to select a site for the new station, which it was decided should be at Kaupapa, south west of Turanganui. Chapels had already been built in Waiapu under the direction of the three native teachers there, and at Poverty Bay, Williams was met by the teachers in a new chapel at Pa-o-Kahu. In early 1840, Williams returned with his wife Jane and some of their children, and settled at the mission station, initially a raupo whare without doors or windows.[29] Williams estimated that at this time regular instruction was given to about 1500 Maori, and books were in great demand.[30] By 1841, Williams believed some 8600 were attending instruction on the East Coast, out of a total population of approximately 16,000 to 18,000.[31] Williams's population estimates are probably well below the accurate figure for this entire area, especially as he made an estimate of 12,000 for the Poverty Bay area in 1848. Nevertheless, K M Sanderson also notes that Williams never mentioned total population numbers in his journals, only recording estimates of smaller areas.[32] Oliver and Thomson have quoted a figure for the area from Mahia to the East Cape, made up from missionary estimates in 1844, of 20,000. They believe, though, that this is too high, and subject to the errors common in such compilations of estimated population numbers.[33]

It is Sanderson's view that the main reason behind Maori conversion on the East Coast was one of prestige. Sanderson believes that the prestige Christianity gave them in the eyes of other Maori, along with the trappings which such a conversion brought with it (such as books, the ability to read and write, the connection to the power of the Christian Atua, and access to European goods through the missionary), were powerful inducements. This prestige must be seen to be part of the reason that the Maori teachers, originally men of little or no mana, held such high standing in the Maori community during these years.[34]

As part of this conversion process, Maori did give up old traditions in favour of new ones. For example, tattooing was abandoned, as was the usual practice of settling disputes by force of arms, although there were many close incidents over the next two decades in Turanga. Cannibalism was a thing of the past, and there was a decrease in the practice of haka. Burials were carried out in a Christian manner most of the time, although the Christian practices were adapted to fit with Maori custom as far as possible. The firing off of muskets and holding of great feasts at tangi were still common practice, much to the chagrin of the missionaries.[35]

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27. F Porter (ed), *The Turanga Journals 1840–1850: Letters and Journals of William and Jane Williams, Missionaries to Poverty Bay*, Victoria University Press, Wellington, 1974, p 40
28. Sanderson, 'These Neglected Tribes', p 4; Porter (ed), p 63
29. Mackay, *Historic Poverty Bay*, pp 162–163
30. Ibid, p 163
31. Sanderson, 'These Neglected Tribes', pp 6, 15
32. Ibid
33. Oliver and Thomson, p 51
34. Sanderson, 'These Neglected Tribes', pp 8–10
35. Oliver and Thomson, p p34–35; Sanderson, 'These Neglected Tribes', pp 27–30

Sanderson sees this process less as an abandonment of old beliefs and customs than an incorporation of new ones into the existent Maori belief system.[36]

Not surprisingly then, when Maori began to react against the Church it was with a return to old customs, but also through an adherence to various cult movements, or sometimes to Catholicism. These reactions were a result of Maori expectations of what Christianity could provide not being adequately fulfilled. By late 1842, according to Sanderson, there was a general falling off in support for Christianity. One of the main expectations which the religion failed to fulfil was that of curing or preventing illness and death. In 1845, Williams was blamed for killing the sick at Tutukorohe with his medicine. When sickness and death began to seem uncontrollable, Maori returned to their own spirituality and rejected Christianity.[37]

Some Maori chiefs simply saw Christianity as a threat to their power, that was based on traditional Maori values. These chiefs, in rejecting Christianity, were able once again to exert some influence over their own people. Rongowhakaata chiefs Kahutia and Whata reinstituted the practice of tattooing in 1847, and carried this on for some months despite the disapproval of Te Aitanga a Mahaki Christians. Following this, the same two chiefs took up Catholicism in direct opposition to Williams, inviting a Catholic priest to debate which was the 'true Church' with the Church Missionary Society missionary at a public meeting.[38]

Sanderson believes that the profession of Christianity was the norm for Maori on the East Coast by 1850. Despite the reaction against Christianity demonstrated in the 1840s and the existence of some cult movements around the Te Reinga area in the 1850s, which involved kuia acting as mediums to the spirits of the departed and communicating with them by whistling, it would seem that Christianity was relatively entrenched in the Maori world by the late 1850s.[39] The missionaries were, however, not the venerated figures they had once been, and the Maori form of Christianity had become an amalgam of old and new customs, with temporal and spiritual considerations.

2.6 WILLIAMS AND THE LAND QUESTION IN THE 1840s

One of the responsibilities of missionaries in outlying areas was to obtain signatures to the Treaty of Waitangi. During 1840, William Williams persuaded 41 chiefs to sign the document at different places on the East Coast. On 8 May 1840, Williams wrote to Willoughby Shortland stating that he had received a copy of the Treaty from Henry Williams, on which he was to append the signatures of chiefs in the area between East Cape and Ahuriri. He noted that he had also received a bale of blankets for distribution to these chiefs. He wrote:

> I am happy to inform you that the leading men in this Bay have signed the Treaty and I have no doubt but that all the rest will follow their example. In about a week I

36. Sanderson, 'These Neglected Tribes', p 18
37. Ibid, pp 55–58
38. Porter (ed), pp 432, 461, 490, 530, 543–545
39. Ibid, p 582

> expect to proceed to the East Cape, but it will be the latter end of July or August before I shall again see the natives of Wairoa . . . The Blankets have been given at the rate of one to each chief and it will require at least sixty more to complete the bounty throughout.[40]

It would seem that Williams gathered only 41 signatures rather than the 70 or 80 he had anticipated. These signatures were obtained in Turanga and the East Cape as plans to get chiefs to sign south of Poverty Bay were apparently abandoned. Many leading chiefs refused to sign the document, but there does not seem to have been any widespread movement against it. Paramount chief Te Kani a Takirau, while refusing to sign the document himself, allowed his Tolaga Bay house to be used for the meeting and signing of the Treaty by other chiefs. Twenty-four signatures were attained by Williams between 5 and 12 May 1840 at Turanga, from representatives of Rongowhakaata hapu Ngati Maru, Ngati Kaipoho, Ngai Tawhiri, and Ngai Te Kete. Te Aitanga a Mahaki chiefs signed from the hapu of Nga Potiki, Ngati Wahia, Ngati Matepu, Te Whanau a Taupara, and Te Whanau a Kai. Visitors to the district also signed, for instance Eruera Wananga of Nga Puhi, and Matenga Tukareaho of Ngati Rakaipaaka (from Nuhaka). One signatory is identified as belonging to Ngai Tahupo.[41]

The signing of the Treaty had no immediate repercussions on the East Coast. That the signing of that document meant anything to Poverty Bay Maori in terms of their ownership and control of their lands, or that it had any significance in terms of the authority of the Government over them, did not become an issue for some years. It is difficult to identify exactly what meaning Poverty Bay Maori took from the Treaty, as it must have seemed to them that there was no question of their having complete and undisturbed control of their own land and resources at this time, especially as there was no Government officer on the East Coast and very few Europeans (at 1840 only around 100).[42] Their willingness to sign must therefore be attributed to the fear of possible future land loss through private purchase for a nominal consideration, of the type that was already occurring in other areas, especially in the Hawke's Bay district. Williams would undoubtedly have warned chiefs about such a possibility, and promoted the Treaty on the basis of a Crown undertaking to protect Maori land against such European speculators. It would not have been seen by these chiefs as an agreement to accept the Government's authority over their lands and people. As will be seen later, they saw such authority as existing only over those areas in which the Crown itself had purchased land, and substantial Crown purchase and European settlement would be required before the Government could extend its authority into this district in any real way.[43] In his report on the Ahuriri Purchase, Vincent O'Malley has questioned whether Maori who signed the Treaty understood that Crown pre-emption meant that the Government would have exclusive rights of purchase, and further, whether it was

40. Governor to Secretary of State, cited in Porter (ed), p 113
41. Claudia Orange, *An Illustrated History of The Treaty of Waitangi*, Wellington, Allen & Unwin, 1990, pp 152–153
42. Oliver and Thomson, p 25
43. Vincent O'Malley, 'The Ahuriri Purchase', overview report commissioned by the Crown Forestry Rental Trust, 1995, Wai 201 ROD, document J10, p 33

adequately explained that such a provision was designed to more effectively promote colonisation.[44] Considering the attitude of Poverty Bay Maori towards the idea of European settlement on a large scale in their rohe, their readiness to sign the document can hardly have been based on such an understanding of it. In the light of Reverend Williams's concerns regarding the sale of Maori land and any increase of European settlement of the East Coast, highlighted in the following pages, his explanation of the sentiments behind the Treaty must have been along lines which reassured them of their ability to protect their lands if they signed the agreement.

Land transactions did take place in the 1830s, and continued to do so into the 1840s despite the operation of the pre-emptive provision in the Treaty. These transactions were not, as W L Williams observed, 'investigated by the constituted authorities' and were therefore, in the eyes of the Government, not valid purchases.[45] Initially, Europeans who took up residence in Poverty Bay as traders, whalers, and farmers do not appear to have experienced any major difficulties in attaining land, possibly because of their alliances with local Maori women.[46] Later though, when these transactions were registered with the Old Land Claims Commission as applications for Crown grants, the Maori response was to repudiate the sales, clearly indicating that, by 1859 at least, local Maori did not regard them as permanent alienations through purchase. According to Sanderson, there was considerable opposition to land sale among Maori on the East Coast as early as 1840, and they watched closely the land sale activity in Hawke's Bay.[47]

For William Williams the possibility of large-scale purchase of land from Maori for a nominal payment was a matter for deep concern. He wrote from Tauranga on 8 January 1840 to Edward Marsh, stating:

> Europeans are trying to buy the land in every direction, or rather to cheat the natives out of it by procuring their signatures to documents prepared by lawyers in Sydney, which without being duly explained to the natives are to wrest from them their land for a nominal consideration . . . In proceeding to Turanga it is my intention to buy as much land as may suffice for the inhabitants and I also hope to take the same step at Waiapu and Wairoa . . . [48]

Shortly after his arrival in Turanga, Williams was made aware of the large-scale purchases which W B Rhodes claimed to have made of an area between Port Nicholson and Ahuriri, and also between Wairoa and Table Cape, for all of which he had paid £85 in property.[49] Apparently Rhodes made these 'purchases' from Maori who had no interests in the land, and Williams recorded that there was general opposition to the sales among East Coast Maori, many of whom would have had interests in these lands. In February 1840, Rhodes attempted to purchase

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44. Ibid, pp 41, 39–40
45. W L Williams, p 16
46. Oliver and Thomson, p 71. Oliver and Thomson suggest further that it is possible these men took Maori wives in order to facilitate their acquisition of lands.
47. Sanderson, 'These Neglected Tribes', p 93
48. W Williams to E Marsh, 8 January 1840, cited in Porter (ed), *Turanga Journals*, pp 77–78
49. Sanderson, 'These Neglected Tribes', p 93; Williams, 19 February 1840, cited in Porter (ed), pp 83–84. Williams lists the goods given as payment, which included items of clothing, hoes, blankets, and iron pots.

a thirty-mile long and six-mile wide strip of land from Opotiki to Turanga, causing considerable consternation among Maori of Poverty Bay. On 10 February, Williams held a meeting, attended by six Europeans and most of the principal chiefs, in order to prevent the sale. Williams informed those Maori present that Rhodes intended to buy the whole district, and warned them against allowing any such sales. He proposed that they sell the land to him, on behalf of the Church Missionary Society, so that it could then be held in trust for them and succeeding generations. He agreed that the Church Missionary Society would give £200 in goods as payment for the sale, and recorded that:

> The chiefs then gave me the boundaries of the land being names of 218 places with the list of principal proprietors. During the time of the meeting, one of the Europeans manifested a good deal of irritated feeling, and intimated that I would draw the anger of all the Europeans upon me. There will be without doubt much disappointment among many who have contemplated purchases in this district, which is the finest I have seen in New Zealand.[50]

Thus Williams supposedly ensured that Maori would retain the thirty-by-six mile strip from Turanganui to Opotiki. A rumour that several ships were about to arrive from Cook Strait containing settlers apparently caused quite a panic in the days following this arrangement, and Williams felt that those who had been inclined to support the sale of land to Europeans would no longer do so.[51]

Williams made a similar type of agreement with Maori at Wairoa, but these agreements were not legitimate as Gipp's proclamation on 14 January 1840 had stated that unless accompanied by a Crown Grant, title to land would be rendered invalid.[52] Williams turned to official channels in an effort to stop claims by Rhodes from being recognised by the appropriate authority. He petitioned the Queen and requesting an inquiry into the legality of the land deals.[53] No action seems to have been taken on this, but when Rhodes brought his claims before the Old Land Claims Commission most of them were disallowed (see sec 2.9). Further private land transactions were carried out between Maori and settlers in the area supposedly purchased by Williams, but these were of a type determined by Maori. As Sanderson points out, it was only when Pakeha attempted to legitimise these transactions from a European point of view that Maori felt their control over the land was threatened.[54]

The willingness of Poverty Bay Maori to enter into the agreement proposed by Williams is a demonstration of the influence he already had with Maori of the East Coast. Missionaries did come under suspicion, perhaps not surprisingly, due to their role as de facto Government representatives in such isolated areas as the East Coast, and due also to their own land dealings. James Stack was required to return the deed he had obtained to 10 acres of land for his mission at Rangitukia when a rumour circulated that this was part of a plan for the Government to get hold of the Waiapu

50. Williams, 10 February 1840, Porter(ed), p 82
51. Williams, 12 February 1840, Porter (ed), p 82
52. Sanderson, 'These Neglected Tribes', p 94
53. O'Malley, 'The Ahuriri Purchase', pp 23–24
54. Sanderson, 'These Neglected Tribes', p 95

district.[55] Williams was himself the subject of some suspicion in the late 1840s as Poverty Bay Maori became increasingly aware of the scale of land loss in other areas of the North Island, especially in southern Hawke's Bay.[56] He reported to the Church Missionary Society on 15 November 1845 that he had:

> met a large body of natives on their way from Taupo in the centre of the island, and they were circulating in every village the report which had just reached them from Taranake, that the whole country was about to be taken from them by the Government. They seemed to eye me in consequence with extreme suspicion though I assured them that the Govt Would not depart from the stipulations of the Treaty of Waitangi.[57]

In an editorial note to the comments by Williams, Francis Porter suggests that Maori were aware of what had been contained in the 1844 Select Committee report, which found that the Treaty of Waitangi was both 'ambiguous' and 'inconvenient' in its assumption that Maori had proprietary rights over lands which were unoccupied by them. The report recommended that all 'waste' land should, by virtue of British sovereignty, be vested in the Crown.[58] Williams wrote to George Clarke, Protector of Aborigines, to express concern at the trouble such a policy would cause, even in an area as quiet as Turanga.[59] When George Grey arrived in Auckland in November 1845 to take up the governorship, his instructions were that proprietary title to lands must be registered within a specified time period. Identifiable 'waste land', namely, that land not registered, would become the property of the Crown. A waste land tax would apply to European and Maori alike, and Grey was urged to speed up the process whereby pre-1840 European claims to land were settled (the Land Claims Commission).[60]

Strict pre-emptive rights of the Crown were reinstituted by Governor Grey and private land dealings became a punishable offence (fines were introduced). Maori were now, theoretically, prohibited from leasing their lands to private parties. Vincent O'Malley makes the comment that:

> if the prohibition on direct land sales might have been justified with reference to Article Two of the Treaty, the prohibition against Maori leasing their lands, or rights to timber and minerals, was arguably in direct contravention of the very same Article, since it denied Maori their rangatiratanga over their possessions. Moreover, this had clearly been done in order to remove an impediment to the Crown's acquisition of Maori land at rates which would allow it to further the colonization process at the expense of Maori.[61]

Maori in Turanga were not immediately affected by such a situation, as there was at this time no obvious Government interest shown in the purchase of lands in the

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55. Ibid
56. Ibid, pp 116–117
57. W Williams to CMS, Wellington 15 November 1845, in Porter (ed) *Turanga Journals*, pp364-365
58. Porter (ed), footnote 74, pp 365; pp 366–367
59. W Williams to G Clarke, 10 May 1845, cited in Sanderson, 'These Neglected Tribes', p 82
60. Porter (ed), pp368–369
61. V O'Malley, 'The Ahuriri Purchase', p 55

area, and there were still very few Europeans resident on the East Coast. Nevertheless, a knowledge of the implications of Government activity in other areas and the problems which ensued for those Maori caused much unease among them. This unease continued to build into the next decade, and in combination with their increased temporal knowledge and economic progress, resulted in a clear rejection of the Queen's authority, and conflict between Maori and European in the district.

There was considerable sympathy expressed for Ngapuhi by Turanga Maori during the fighting in the Bay of Islands in the mid 1840s. Sanderson believes that, apart from some kinship links, this sympathy arose out of concerns over land and trade. Europeans on the East Coast were concerned at the idea that the trouble might spread, as race relations were already strained, but the numbers of Pakeha were clearly not regarded as a threat by Maori in Turanga at this time. Threats were made to send the Europeans away, but there seems to have been no real trouble because of the lack of any direct threat to the interests of local Maori.[62] In this period, missionaries were regularly suspected of being involved with the Government, as is demonstrated by a report from James Stack to the Church Missionary Society on 25 June 1846, in which he stated that Williams, Stack, and Baker were to be ejected from the district because they were believed to be in league with the soldiers. Local Maori would not allow a road between the mission stations of Stack and Kissling to be improved, as it might aid European military movements in the area.[63]

The missionaries were subject to continued suspicion throughout this period, and Williams expressed deep concern at the way in which the possible seizure of 'waste lands' would affect Maori. In July of 1847, he wrote to the Church Missionary Society stating that if such a policy was adopted, and the Treaty abandoned, there would be considerable opposition from all Maori. He wrote:

> The natives will make common cause, and the opposition raised will be fearful! Heke and others who have been in the minority, will now be looked up to as patriotic leaders whose cause has been right from the first. The general feeling among the white people who have been living singly or in small parties among the natives is, that there will be no safety for them . . . The natives I fear will wage deadly warfare with all white people.[64]

Williams also mentioned the suspicion that such a contravention of the Treaty would cause to fall upon the missionaries, saying:

> Many of us were actively engaged in procuring signatures to the Treaty of Waitangi. There was even then a strong feeling of suspicion which was encouraged by many evil disposed persons. This we combated with success by a reference to the words of the Treaty, which were too plain and simple to admit of a double meaning . . . But now the natives will be told that the Treaty was a form of words without

62. Sanderson, 'These Neglected Tribes', pp 80–81
63. J Stack to CMS, 5 June 1846, cited in Porter (ed), p 387
64. W Williams to CMS, 12 July 1847, cited in Porter (ed), pp 435–436

> meaning, and they will naturally think that the missionaries have deceived them for some sinister purpose. [65]

Instructions to Governor Grey in late 1846 had requested that boundaries be fixed, land registered, and that 'aboriginal districts' be set aside where native custom could be maintained. These instructions were in direct contravention of the provisions contained in the Treaty of Waitangi with respect to Maori land. Grey pointed out to the Secretary of State in April 1847 that any attempt to forcibly deprive Maori of their 'wild lands' would lead to war. His official response to the instructions of December 1846 was that land purchase by the Crown for a nominal payment would make enough land available, as long as these purchases were carried out well in advance of settlement so that Maori would not ascertain the real value of their land and demand higher prices.[66] It was this policy that was carried out under Grey – a policy that was to seriously affect the attitude of Poverty Bay Maori as colonization and settlement approached ever nearer in the 1850s. Williams left the Poverty Bay mission for some three years, returning in 1853 only to find that the land problem had grown worse, and that the suspicion which attached to him as an ally of the Government in its schemes to deprive Maori of their lands was stronger than ever before. Indeed, in 1855 there were rumours that Williams was involved with the Crown in a plan to attain Maori land by means of their extinction.[67]

2.7 BREAKDOWN OF RACE RELATIONS DURING THE 1850s

Williams left the East Coast in October of 1850 to spend three years in England. In his absence the Poverty Bay mission was taken over by Thomas Samuel Grace. Williams had discouraged Maori from becoming involved in the European economy, advising for instance against the purchase of a trading schooner by a group of Poverty Bay Maori in 1848.[68] His reasons for so doing were to stop Maori from becoming too 'worldly' and losing a focus on their Christianity, and also to protect them from exploitation and from becoming acquainted with European vices – the negative aspects of 'civilisation'. Despite his discouragement, however, by the 1850s, Poverty Bay Maori were already heavily involved in trade and agriculture, and their material prosperity was steadily increasing. T S Grace believed it was necessary to encourage this and to help them to gain the knowledge required to survive and actively participate in the European system. As large-scale European immigration to the East Coast was seen as both inevitable and imminent, Grace set about increasing local Maori knowledge of European economic principles.[69]

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65. Ibid, p 436
66. Porter (ed), pp 466–467
67. Sanderson, 'These Neglected Tribes' pp 139–140
68. Williams, 2 May 1848, cited in Porter (ed), 1974, p 490
69. Sanderson, 'Maori Christianity on the East Coast 1840–1870', NZJH, vol 17, no 2, 1983, pp 169–170

By 1846, wheat growing by Maori was widespread in Poverty Bay, and they continued to grow it ever more successfully for export in the 1850s. It was the chief export in this decade as the gold rushes in Australia created a market for food exports through Auckland, for which the East Coast was one of the major suppliers.[70] Maori began to purchase their own trading schooners, and there was a considerable increase in the cash income of the population, evidenced by expensive and lavish entertainments for visitors, more sophisticated tastes in food and European goods, and further investment in stock and equipment. Horses were more common in this decade, and Oliver and Thomson estimate that in the late 1850s there were about 400 owned by local Maori. The use of the plough spread in this period also, and larger flour mills were built by Maori. Requests by East Coast Maori for loans to buy trading vessels regularly arrived at the offices of the Native Department. Eight such vessels were owned by Waiapu Maori in 1852, and by 1861, five operated from Poverty Bay.

The Maori population of the district had decreased radically during the 1840s and 1850s. H S Wardell estimated the population from Mahia to the East Cape at 6800 in 1848. Donald McLean stated that in Poverty Bay alone there were only 2500 in 1851. The *Maori Messenger* gave a figure of 2000 for Poverty Bay in 1857, and Governor Gore Browne one of 1500 for the same district in 1860. Even when allowances are made for underestimation of population, these figures are well below those given by Williams in 1841 and other missionaries on the East Coast in 1844, and a decline of some proportions is evident.[71] Nevertheless, those remaining responded enthusiastically to what Oliver and Thomson refer to as the challenges of this population's 'transformed situation'.[72]

There was apparently widespread discontent over the low prices offered by traders during 1850, and relations between Maori and European in the Poverty Bay were seriously strained in 1851[73]. Although it was inevitable that Maori would have developed a better knowledge of the prices that could be attained for their produce, and were clearly doing so prior to the arrival of Grace, European traders and settlers blamed the new state of things on his influence. Price fixing had begun shortly after Grace's arrival. Although this was probably not due to his influence, as late as 1858 when the runanga fixed the price of wheat at 12 shillings per bushel, a petition to the Governor by traders and settlers complained that this was due to Grace's advice to Maori in 1851 to hold back their produce in order to force a price rise in Auckland.[74] J W Harris, the principal spokesperson for Poverty Bay's European population was Grace's most vocal detractor, and his letters to McLean during this period are full of complaints about Grace and the trouble he was allegedly causing.

In March of 1851, Grace had advised Maori to demand a payment in money for grazing rights rather than the former payment of one calf in return for the grazing of 40 head of cattle per year. The payment fixed was five shillings per year, per head of stock.[75] Harris and others settlers were enraged. Harris wrote to McLean in

70. W L Williams, p 18; Oliver and Thomson, p 55
71. Oliver and Thomson, p 51
72. Ibid, pp 55–58
73. Mackay, *Historic Poverty Bay*, pp 208–209
74. Ibid, p 209

June to say that the trouble had not subsided, and that Waaka Perohuka threatened to expel all Europeans from the area. He further complained that if the Government did not buy land in the area they would be forced to leave as no agreements with Maori were binding, except on Europeans.[76] The opposition to Grace was joined by other missionaries in the area, Charles Baker and Ralph Barker, who complained to the Church Missionary Society Committee about Grace's interference in the temporal affairs of the district. The committee, however, declined to investigate the matter.[77] Sanderson suggests that the opposition of Grace's fellow missionaries was driven by the fact that they ran cattle on Maori land and sold the same cattle to those whose grass had fed them, in return for provisions. Baker was often involved in disputes over payment, and in 1849 his cattle were taken by a group of Maori, possibly because he failed to pay an adequate price for grazing rights.[78] Baker's opposition to Grace may therefore have been due to his own exploitation of Maori, which Grace's influence now threatened.

A letter from Harris to McLean in September of 1851 stated that:

> A runanga has determined upon charging vessels a fee for entering the river . . . they would not let the schooner Wellington have water at a lower rate than 2/6 per bucket . . . Kahutia told me that he intended to resume my Turanganui property as, he said, I had had it long enough . . . They have sent a letter to the Governor asking for advice on the following matters: (1) What they are to charge per ton for all vessels entering the rivers; (2) what they are to charge for water; (3) what prices they should obtain for wheat (they want 10/- per bushel) and for pork; and lastly whether they should turn all the Europeans away. Nevertheless, they say (kind creatures that they are!) That they should be sorry to have to drive us away. They also wish the Government to appoint some person to arrange all difficulties which may arise here. This would be an excellent plan if they would abide by that party's decisions.[79]

It is clear from this correspondence that Poverty Bay Maori, concerned with retaining control of all their resources and receiving a fair price for the use of these by Europeans, were prepared to accept advice from the Governor on what would be fair for them to charge. More interesting still, is that they also seem to have been prepared to accept his advice on whether they should eject the settlers from their district. Oliver and Thomson believe that Grace did not create this movement as the same concerns are evident in other districts at this time.[80] Nevertheless, Grace's temporal advice was well timed to coincide with the Maori state of mind, and his influence on their sharper business dealings, if not their general attitude towards Pakeha in their rohe, must be seen as a contributing factor in the deterioration of race relations leading up to the East Coast wars.

However responsible Grace might have been for the development of the local Maori attitude to Europeans in business terms, he was in no way responsible for the

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75. Ibid, pp 209–210; Sanderson, 'These Neglected Tribes', p 99
76. Harris to McLean, 12 June 1851, cited in Mackay, *Historic Poverty Bay,* p 210
77. Sanderson, 'These Neglected Tribes', p 102
78. Ibid, pp 100–101
79. Harris to McLean, 10 September 1851, cited in Mackay, *Historic Poverty Bay,* p 210
80. Oliver and Thomson, p 70

concern over land sale which continued to increase amongst Poverty Bay Maori in the 1850s. As already noted, there was some concern over the sale of land in the 1840s. There were, however, very few land transactions in this period which could be referred to as outright sales. There were so few Europeans in the area and these experienced no difficulty in finding land to rent or squat on. The Government had shown no interest in the area, but this situation altered in the early 1850s. It was, believes Sanderson:

> the threat of greater colonization and the intrusion of government officials into their territory [that] forced [Maori] to take a more aggressive stance in asserting their ownership of the land and their autonomy.[81]

Although Harris had written to McLean in 1851 stating that Poverty Bay Maori wished to have the Government appoint someone to 'arrange all difficulties' that might arise between Maori and European, this does not seem to have been a common attitude, as the reaction to the district's first resident magistrate was to prove. Grace had encouraged Maori to charge rent for lands on which Europeans had been squatting. Sanderson writes that:

> Land which had been given to a European was still believed to belong to the Maoris, and many began to assert this ownership by demanding rent from those occupying such land. No exception was made for mission stations.[82]

This is made clear by the example given by Harris to McLean of Kahutia deciding Harris had been on the Turanganui land long enough and should now get off it. Also, the trouble that Wiliams experienced in finding land for a new mission station on his return demonstrates a definite change in local Maori attitudes towards the gifting of land, as we shall see later.

As settlers felt their position in Poverty Bay was ever more unstable they sought to buy land, and also encouraged Government purchase in Turanga and further European settlement in letters and petitions throughout this period. The Government now began to show some interest in the area, and in particular the Poverty Bay flats known as Turanga, which were regarded as fertile land ideal for the settlement of the ever-increasing European immigrant population.[83] Consequently, Donald McLean, then land purchase commissioner, paid a visit to the area in 1851 following a land purchase expedition to Hawke's Bay. Although he had not been given authority to actually negotiate with chiefs for the sale of land in Poverty Bay, McLean carried out initial discussions on the possibility of such sales. Te Waaka Perohuka, a Rongowhakaata chief, told McLean that while some Maori wished to sell land, others were bitterly opposed to the idea, and he also confessed to having sold some land to a European named Hatereti without the knowledge of others who had interests.[84] At Orakaiapu pa, Rongowhakaata chiefs spoke with McLean on the issue of Crown acquisition of land for a European township.

81. Sanderson, NZJH, 1983, p 172
82. Ibid, p 173
83. Sanderson, 'These Neglected Tribes', pp 112–113
84. Mackay, *Historic Poverty Bay*, p 178

Raharuhi Rukupo was opposed to any sale and expressed this in no uncertain terms to McLean. Older chiefs were more reasonable, and McLean suggested a further hui of all chiefs to discuss the township issue.[85]

Te Kani a Takirau, principal chief of Te Aitanga a Hauiti, and a prominent East Coast leader, came to meet with McLean and attend the discussions. Tahae, Rawiri Te Eke, and Raharuhi Rukupo opposed the establishment of a township, but Perohuka and Paratene Turangi were in favour. The meeting closed with an agreement to discuss the matter again in a couple of days as the chiefs were in disagreement with each other. McLean held talks with Te Kani regarding transactions in Hawke's Bay and the Wairarapa, and Te Kani advised McLean that purchases in those areas should precede any in Poverty Bay. He said that there were too many chiefs in Turanga and they were 'inclined to be childish', but that he would be in favour of a township in Poverty Bay if the chiefs so decided.[86] On a second trip to Poverty Bay later in the decade there was no further success in persuading the chiefs to sell land to the Government in order to facilitate settlement.

McLean's report of February 1851 on the East Coast negotiations related that the Turanga Valley contained about 40,000 acres of fertile land, that the bay gave 'tolerable shelter for shipping', and that 'a moderate outlay in blasting a few rocks' at the entrance of the Turanganui River would allow safe passage for ships of 100 tonnes. He estimated the Maori population at 2500, and the value of exports to be £2890 for the year. Maori reportedly had 100 horses and 150 head of cattle. The European population of 79 (and 25 part-Maori) apparently owned 202 head of cattle and 20 horses. He estimated that there was 150 acres under cultivation by Europeans, but no figures were given for land cultivated by Maori. On the subject of his land negotiations he reported that:

> The natives have held several meetings respecting the sale of their land, one of which was attended by Te Kaniotakirau, the great chief of the east coast, who, along with Mr Baker, junior, came from Tologa Bay to meet me; there is a disposition on the part of some of the chiefs to have a township, that they may more readily dispose of some of their produce, but they generally dread the idea of a gaol; as yet, I do not consider that they are sufficiently unanimous to enter into a formal treaty for the cession of their land, which they will probably be better prepared to do in the course of another year . . . I can easily foresee . . . that misunderstandings will continually arise in this Bay, until the native title is fairly extinguished to such land as may be required for grazing or other European purposes.[87]

Grace was absent from the district at the time of McLean's visit and on his return he noted in his journal that the land agent's presence in the area had caused a great deal of excitement amongst local Maori. He wrote that:

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85. Ibid, p 178–179; Oliver and Thomson, p 78
86. Mackay, *Historic Poverty Bay*, pp 179–180. Mackay notes that Te Kani probably referred to the saying 'Turanga rite tangata' (in Turanga all men are equal).
87. Donald McLean, 'Further Papers Relative to The Affairs of New Zealand. Despatches from Governor Sir George Grey', 20 February 1851, BPP, vol 9, pp 1–2

> The contact of Europeans with natives is, at present, the cold touch of death to the native . . . It appears to me iniquitous and illegal for a few natives, in order to satisfy their own selfishness, to sacrifice, (for the most trifling return) the inheritance of their children![88]

When the chiefs came to ask his opinion on the matter Grace informed them that he was in agreement with Archdeacon Williams that the land was 'tapu'.[89]

It would appear that the issue of land sale was a matter for much disagreement amongst Maori, and Grace referred to the offers made by Government land agents as the 'throwing of the apple of discord amongst them'.[90] Although the pressure to sell continued to increase, Maori of Poverty Bay held out against any large sales. Indeed, the increased pressure seems to have led to greater efforts to assert their ownership of the land. Although Williams was heartily welcomed back by Maori in 1853, it was not long before he was embroiled in land problems himself.

Since 1844, the mission station at Poverty Bay had been situated near Orakaiapu pa at Whakato, and was only eight acres in extent. Following his return in 1853, Williams planned to establish a new and larger station containing a Maori school and training college. There was a large area of land adjacent to the station at Whakato, and initially Rongowhakaata who met to discuss Williams's proposal for a school on the land seemed willing to gift the additional block. Not all members of the hapu Ngati Kaipoho would agree to giving over the land in which they had interests, and Williams threatened to shift the station altogether if all signatures could not be obtained. Some Rongowhakaata insisted that Williams remain, as it was still a matter of some prestige to have the missionary attached to the pa. In 1855, the matter was still not settled, and Whanau a Taupara hapu of Te Aitanga a Mahaki offered land at Waerenga a Hika if he would come and live there. Williams accepted this offer despite the subsequent agreement of all Rongowhakaata to allow him the block he had asked for. The block at Waerenga a Hika was 800 acres (Mackay gives 593 acres). When Whanau a Taupara discovered that the land would have to be Crown-granted they insisted on making the gift without the involvement of the Crown, and it was at this time that suspicions were again aroused as to Williams's involvement in Government attempts to wrest control of the land from Maori. In the meantime, Williams experienced further difficulty with Te Aitanga a Mahaki demanding higher prices than he was prepared to pay for the timber needed for construction of the new buildings, and he threatened not to move onto the land if they would not drop them.[91] A deed transferring the land to Williams on behalf of the Church Missionary Society was finally signed in April 1857, and the mission station was moved.

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88. T S Grace, 17 March 1851, S J Brittain and A V Grace (eds), *A Pioneer Missionary Among the Maoris, 1850-1879, (Being the Letters and Journals of Thomas Samuel Grace)*, G H Bennett & Co, Palmerston North, no date, p 11
89. Ibid
90. T S Grace, 'Report for the year ending December 31 1851', Brittan and Grace (eds), p 18
91. Mackay, *Historic Poverty Bay*, p 166; Porter (ed), pp 144–145, 582–183; Sanderson, 'These Neglected Tribes', pp 141–143; Sanderson, NZJH, 1983, pp 171–172; W L Williams, *East Coast Historical Records*, pp 21–22

2.8 THE QUEEN'S WRIT: GOVERNMENT AUTHORITY IN TURANGA

On his return in 1853, Williams had found that there had been a considerable increase in drunkenness amongst Maori, which he attributed to their increased 'worldliness' and contact with Europeans. The missionaries on the East Coast encouraged the intervention of the Government in order to counter the negative influence of the general lawlessness of Europeans in the area. This further opened them up to suspicion about their motives and involvement with the Government on the issue of land sales. Europeans in the area had been concerned at the absence of any Government agent on the East Coast to protect their interests, and although it had not been a problem until the late 1840s, the difficulties they began to experience in their relations with local Maori by that time had increased the perceived need for Government authority to be extended to the area. In 1847 and 1850, Harris had sent petitions on behalf of the settlers requesting that a Government officer be stationed at Poverty Bay. In 1847 this had followed the 'theft' of some of Harris's property, which was later returned. Williams was put in the position of mediator in many of the disputes between Maori and European, and recorded that the Europeans blamed some of the problems on him although it was their own 'outrageous conduct' that was the cause of their getting into 'hot water' with local Maori.[92] In letters to McLean and to the *Hawke's Bay Herald*, Harris reiterated the need for a magistrate. As previously noted, he had stated in 1851 that Maori also wanted someone to be appointed to 'take care of all difficulties', although it is likely that they intended such a person to control the Europeans and advise Maori on matters that concerned their dealings with the settlers.[93] It is less likely that Maori intended any Government-appointed official in their rohe to make decisions that would necessarily be binding on them. It is, however, true that some of the chiefs, concerned at the trade in liquor to younger Maori, petitioned for a resident magistrate in order to stop the traffic in alcohol from Auckland.[94]

Although some Poverty Bay Maori may initially have welcomed the idea of a Government officer in their area, they were soon to challenge the right of the Government to send one amongst them. Their first real contact with the Government had been through the visit of McLean in 1851, at which time an impromptu court was held to settle some disputes between Maori and Pakeha.[95] Under normal circumstances such disputes would have been settled by the missionary or the local runanga, which remained the real power in Poverty Bay despite the arrival in 1855 of Resident Magistrate Herbert Wardell. Oliver and Thomson write of 'the luckless' Wardell, that although he was used by Maori as a judicial backstop he was completely ineffectual as an expression of British authority.[96] Maori regarded or disregarded his decisions as they saw fit, and did not seem overly concerned by his presence. It would seem that he became simply

92. Williams, 10 May 1847 and 8 November 1847, Porter (ed), pp 431, 455–456
93. Harris to McLean, 10 September 1847, cited in Mackay, p 210
94. Oliver and Thomson, p 53
95. Mackay, *Historic Poverty Bay*, pp 199–200
96. Oliver and Thomson, p 78

another isolated European settler, subject to the whim of the Maori community in which he lived.

Wardell attempted to carry out his duties as best he could, and appointed several native assessors in 1856 to sit on cases affecting Maori. Chiefs Paratene Turangi, Kahutia, Rahuruhi Rukupo, and Rawiri Te Eke were given these positions. Local Maori began to use the court, although Wardell's role was one of mediator rather than judge, in a mode reminiscent of the missionaries before his arrival. He operated in combination with the system of runanga or komiti, whose decisions would often run counter to that of the British court. The various kinship loyalties of the assessors sometimes affected their objectivity, and further, punishment would not be carried out unless the one to be punished consented to it.[97] Wardell, although the symbol of Government authority and British law in Poverty Bay, was completely powerless to exert that authority, much to his own, and the settlers' frustration. His report on the East Coast in 1861, made following his withdrawal from the area, stated that Maori in Turanga:

> denied the right of the Government to send a Magistrate amongst them, on the ground that, as they had not sold their land to the Queen, the Government had no authority over them.

and also that:

> In fact they regarded the Queen as the head of a people occupying isolated portions of territory in the Island; with whom they had occasional intercourse: but as possessing – as of right – no authority over them.[98]

Despite the general attitude towards him, Wardell was able to secure the sale of a block of land for the magistrate's office at Turanganui. This was the first Crown purchase of land in the area for public purposes, and consisted of 57 acres at Makaraka (a block that was afterwards known as the 'government paddock'), for which Wardell paid £85 after long negotiations with Whanau a Iwi hapu. The deed, dated 29 January 1857, was signed by Kahutia and his wife, his brother Manahi, and two daughters Riparata and Kataraina, as well as their husbands and other relatives. On behalf of Donald McLean, Chief Land Purchase Commissioner, Wardell signed for the Crown.[99] No more land would be sold to the Crown in Poverty Bay until the Gisborne township purchase, some 10 years later.[100]

Despite his ability to purchase a small block of land for the Crown, the authority of Wardell and the law he represented were challenged continuously. He commented that Maori, although they used the court, 'yielded obedience [to the authority of the law] or refused it as it suited their purposes', as they clearly regarded all Europeans as resident in the area only on Maori sufferance.[101] Remarks

97. Mackay, *Historic Poverty Bay*, p 201; Oliver and Thomson, pp 62–63
98. H Wardell to Native Secretary, 20 September 1861, AJHR, 1862, E-7, pp 30–31
99. H H Turton, 'Deed No 488, Poverty Bay District', *Maori Deeds of Land Purchases in the North Island of New Zealand*, vol i, Auckland, 1877, pp 692-693
100. Mackay, *Historic Poverty Bay*, pp 181–182
101. 'Reports on the State of the Natives in Various Districts', AJHR, 1862, E-7, p 31

made by a correspondent to the *Hawke's Bay Herald* on 20 October 1858 (possibly J W Harris, who regularly supplied such letters), reveal something of the ludicrous and powerless situation in which Wardell found himself. The writer recounted a case in which Wardell fined a settler £10 for the sale of liquor to a Maori defendant. The money was not paid and some of the defendant's cattle were taken. At this point a group of Maori, including the defendant's wife, demanded compensation from the offender. When this was refused they broke down the fences on the Government property and drove off the resident magistrate's cattle instead. Wardell was unable to enforce his decisions, and indeed was unable to save his own cattle from being driven off his property as a result of this inability. This was lamented by the correspondent, who complained that the court only worked to punish minor offences committed by Europeans as Maori openly defied the court, using insulting language to Wardell both in the courtroom and outside it. It is interesting to note, however, that the incident related indicates that Europeans in the district were no more likely to abide by the magistrate's decisions than were Maori. Another situation was related in which Wardell, his clerk, a Maori woman, and her would-be abductor ended up in a tussle together on the courtroom floor – Wardell powerless to prevent the abduction from taking place.[102]

The events related seem to indicate that the situation had become ludicrous in the opinion of many Poverty Bay settlers. The correspondent asked:

> Why place a paid magistrate at the expense of the Colony of at least £500 a year in such a district – a district where he and his office are already scorned by the Natives.[103]

He also expressed the opinion that 'we manage the Natives better when left to ourselves. The court has now shared the fate of all scarecrows by being openly laughed at and defied by all parties'.[104] This was no doubt true, as at least prior to the arrival of the Government officer it had been possible to intimidate local Maori by threatening to bring the power of the Government down upon them.[105] No wonder, then, that these settlers should have been so disappointed in the effect that Wardell produced.

As already noted, the real power continued to reside in the runanga of local iwi. Oliver and Thomson state that in Poverty Bay, the smaller local institutions were supplemented by a runanga, representing the iwi of the district, with wider functions. Without impetus from Wardell, a body consisting of all the local chiefs and the assessors came together in the late 1850s. Most of this runanga's activities involved coping with the growing European settlement and the Government. It also dealt with economic business such as price fixing, and social problems such as the consumption of alcohol by Maori, introducing fines for offenders.[106] At a runanga held in May 1858, that Wardell reported as the biggest and most influential of his

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102. Mackay (ed), *Joint Golden Jubilees*, p 75
103. Ibid
104. Ibid
105. Oliver and Thomson, p 79
106. Ibid, p 66

time in the area, a discussion was held regarding the third edition of the Maori prayer book. It was complained that this edition contained a prayer for the Queen and her family rather than the older prayer which had been for the Rangatira Maori. Wardell reported on the speeches made at the meeting. Rutene Piwaka said:

> Let the Pakeha pray for Queen Victoria if they like; but we will not call her our Queen and Governor: it is by this that the Pakeha is putting the Queen above us as a potae . . .[107]

Paratene Pototi said in addition:

> We are not the remnant of a people left by the Pakeha; we have not been conquered; the Queen has her island, we have ours; the same language is not spoken in both . . .[108]

Kahutia finished by saying:

> Let the Magistrate be under the Queen if he likes; we will not consent to Her authority; we will exercise our own authority in our own country . . . I had the mana before the pakeha came and have it still.[109]

Wardell reported that not one speaker at the runanga spoke in support of the Queen's authority.[110]

A runanga met later in the year to discuss economic affairs, and it was decided to fix the price of wheat in accordance with the markets in Auckland and Hawke's Bay. Prices were also fixed for other produce, and for timber. Letters from settlers complained of being under 'tapu', describing the situation as 'stagnant' as trade came to a virtual standstill. These problems were blamed on the earlier influence of Grace, and petitions were sent to the Governor. A letter to the *Hawke's Bay Herald* in December 1858 reported that the idea had been mooted at the runanga that all Europeans be turned off the land they were living on and expelled from the district.[111] On 19 February 1859, it was reported that the runanga's laws were still in existence. The settlers decided that a charge would have to be brought against the resident magistrate or the situation would never improve. A public meeting of protest against the Magistrate was held, and settlers petitioned that Wardell had threatened some of the Europeans with removal from the land they occupied.[112] They requested that he be removed from the district. This would not be done until 1860, following the visit of Governor Gore Browne to the area. In the meantime, the issue of land came to the fore again with the visit of the land claims commissioner, Dillon Bell, in December of 1859, and the repudiation of all land purchases by Poverty Bay Maori under the leadership, it seems likely, of the runanga.

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107. AJHR, 1862, E-7, p 31
108. Ibid
109. AJHR 1862, E-7, p 31; Wardell, diary, 21 May 1858, cited in J Binney, *Redemption Songs: A Life of Te Kooti Arikirangi Te Turuki*, Auckland, Auckland University Press and Bridget Williams Books, 1995, p 37
110. AJHR, 1862, E-7, p 31
111. Mackay (ed), *Joint Golden Jubilees*, p 76
112. Ibid, pp 76–77

2.9 OLD LAND CLAIMS

In 1860, Commissioner Dillon Bell reported that there were three classes of old land claims in Turanga: 'purchases' made prior to 1840; land set aside for part-Maori children; and purchases made following Governor Gipp's proclamation of 14 January 1840. Collectively, all the old land claims in the Poverty Bay area amounted to less than 2200 acres, and only six of those that Bell sought to settle in 1859 were for transactions made prior to 1840. The remainder were for transactions made contrary to law during the period 1840 to 1855.[113] About 30 claims were originally registered with the Land Claims Commission. Of these original claims, about 20 were finally settled by Judges Monro and Rogan at the Poverty Bay Commission sitting in 1869.[114] Many claims had earlier been registered as 'disallowed' under the Land Claims Settlement Acts of 1856 and 1858 in the Land Claims Commission records, and some had simply been allowed to drop. It would seem, however, that even some of those that had earlier been disallowed were settled in 1869. Crown grants for these lands were issued after cases were heard by the Poverty Bay Commission, actually set up to ascertain the area to be confiscated following the East Coast wars and to return remaining lands in Crown-granted title to loyal Maori. By what authority this commission awarded lands to old land claimants who came before it is a controversial issue, especially considering the altered circumstances under which that commission was established, and this will be discussed further in due course.

2.9.1 Repudiation

A somewhat fragmented movement for the repossession of alienated lands had begun in 1851, and by 1858, Kahutia was leader of a strong redemption movement. The horses and cows given as payments by Uren and Espie for their properties at Makaraka, were quietly deposited in their stockyards, and Resident Magistrate Wardell was informed of the intention to return all such payments before Maori resumed their lands.[115] When Francis Dillon Bell, land claims commissioner, visited Poverty Bay in December 1859, the redemption movement had become one of repudiation under the leadership of Rongowhakaata chief Raharuhi Rukupo, of Ngati Kaipoho hapu. Bell reported that Kahutia, the principal land seller in the area, had confessed to wrongfully selling lands, and stated that he now wished to repossess the lands, especially as other interested parties had threatened him with exile from the region as a punishment. Bell was asked to value the improvements that settlers had made to properties in order that they could be compensated adequately and the lands repossessed. He wrote that:

> Most of the settlers, seeing the course things were taking, got alarmed and decided not to bring forward their claims at all, lest when the evidence came before me, their own witnesses should, as Kahutia had done, repudiate the sales . . . The settlers then

113. F Dillon Bell, memorandum, 24 February 1860, AJHR, 1860, E-1, p 5
114. Mackay, *Historic Poverty Bay*, p 138
115. Oliver and Thomson, p 72

> expressed a desire to abandon their claims to the Government, in the hope of some day getting a title; and I took the opportunity of pointing out, in claims arising since 1840, the absurdity of their calling upon the Governor to protect them and expecting the aid of the law to maintain their violation of it.[116]

Bell concluded his report by stating that he felt unable to settle the Poverty Bay claims, and that he had an unfavourable opinion of Maori in the region and had 'never heard anywhere such language used about the Queen's authority, Law, Government, Magistrates and the like.'[117] The repudiation movement continued into the 1860s, and Governor Thomas Gore Browne, who made his first visit to the area immediately following that of Bell, was given a somewhat icy reception by those involved in the movement.

The Governor reported that Maori in Turanga reclaimed all land sold subsequent to 1840, and that no argument could sway them from their resolve to repossess it. In addition, he stated:

> They objected to the Union Jack hoisted at the Magistrate's residence during my stay; said they should not recognize the Queen, and that unless I visited them for the purpose of restoring the lands which the Europeans had cheated them out of, they did not wish to see me; that I might return from whence I came, and take my English Magistrate with me.[118]

The journal entries of Mrs Stack at this time shed some added light on the events surrounding the Governor's visit of 11 January 1860. She wrote:

> Unfortunately Mr Dillon Bell, who had been down the East Coast settling the Government land claims, left behind him a legacy of ill will, and the Maoris had been told by ill-disposed Europeans that the Governor had come down to enforce Mr Bell's demands. This irritated the Maoris and prevented their reception of the Governor being as cordial as it otherwise would have been. Consequently, while welcoming the Governor, our Maoris told him that they hoped he would do what was right about their lands. The Governor put rather a wrong construction upon these words, owing to a note from Mr Bell, which he received on his arrival, in which the gentleman complained of the behaviour of the East Coast Maoris who, he said, were the most insolent people he had ever met with in New Zealand . . . As it was, [the Governor's] unfriendly bearing and threatening language roused their ill feelings, and will do much to increase the growing suspicion amongst the Maoris that the Government intends to deprive them of their lands by force.[119]

The resident magistrate was removed by the Governor in 1860, and was not replaced, the only Government official on the East Coast being stationed at Waiapu from 1861 as part of Grey's Runanga scheme, to which Poverty Bay Maori refused to be affiliated.

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116. AJHR, 1862, E-1, p 6
117. Ibid, p 6
118. Ibid, p 3
119. J W Stack, *Further Maoriland Adventures*, Dunedin , Reed, 1938, pp 217–218

Raharuhi Rukupo wrote to the Governor following his visit in 1860 reiterating that Kahutia had sold land without his consent, and that this amounted to theft. He asked why the land should not be returned if full payment was made to the Pakeha living on it. He requested that the Governor send Bell back to Turanga to arrange for the return of the land in question. [120] He wrote again, on behalf of the runanga, to Bell in 1861 saying:

> You say that in your opinion our words were harsh in the days of Summer, and that they were bitter words to our Europeans. Yes that word was bitter and this word is bitter. Its bitterness is that we do not wish that the land should be given up to you, but rather do you tell the Europeans to give us our lands back . . . Let the Europeans be merely squatters let the land for them be the buying of wheat, pigs, cattle etc . . . Friend, Mr Bell you say we were saucy to the flag of the Queen. No we were not saucy. We do not understand the meaning of your flag, nor do we know the people who shall take the Island, New Zealand . . . We do not know . . . our evil to the Governor, but we do remember that when the Governor came here all our words were about the land. We believed the Governor to be the head to receive both good words and bad. On that account we spoke to his face, right words and wrong. It was for him to make them clear to us, but before all the words were spoken he ran off.[121]

In 1864, Donald McLean wrote to the Native Minister to report that 30 horses had been rounded up as a payment for the improvements made on Espie's land in preparation for the return of Bell, and that requests were being made for the further investigation of the land claims.[122]

2.9.2 The claims and their settlement

In 1844, George Thomas Clayton registered two claims covering 1201 acres of Poverty Bay, supposedly purchased from Ko Pera Huka (Perohuka) in 1839.[123] William Williams noted in his journal on 27 January 1840 that Clayton had made an extensive purchase at the back of the mission station near Wherowhero, but had made a mistake in not buying from the real owners who objected to Clayton's occupation of the land. Williams proposed to buy the land himself from the rightful owners.[124] Clayton's claim to this land was eventually disallowed under the Land Claims Settlements Acts.[125] Robert Espie lodged two claims covering 130 acres, both originally disallowed. The Poverty Bay Commission, however, awarded 154 acres to Espie, and a grant was issued for land called Tutae o Rewanga on 9 January 1871.[126] Thomas Halbert made two claims to 1004 acres of land called Pouparae, which he claimed to have purchased in 1839 for £300 in goods. These claims were partially investigated by Bell in 1859, at which time witnesses gave

120. Raharuhi Rukupo to the Governor, 19 May 1860, OLC 4/21
121. Rahuruhi Rukupo to F D Bell, 25 March 1861, OLC 4/21
122. McLean to Native Minister, 10 August 1863, OLC 4/21
123. Claims 65d and 65k, Old Land Claims Register, vol 1; Curnin's Register, OLC 2/7, p 12; AJHR, 1863, D-14, p 8
124. Williams, 27 January 1840, Porter (ed), p 79
125. AJHR, 1863 D-14, p 8
126. Curnin's Register, OLC 2/7, p 20

evidence that the land was meant to be set aside for Halbert's part-Maori son Wi Pere, but Halbert sold the block to William Williams and J W Harris. Wi Pere, who opposed the claim before the Poverty Bay Commission, finally withdrew his opposition, and grants were issued in 1871 for 482 acres to Bishop W L Williams, and 10 acres to W Scott Greene as derivators.[127]

One hundred and fifty acres were claimed by J W Harris who apparently made his first purchase in 1831 of an acre of land by the Turanganui River, for which there was originally no deed. Harris had Paratene Turangi, Kahutia and others sign a written agreement of sale in 1840 when it became necessary for Europeans to legitimise purchases. A further two acres of land were claimed by Harris at Wai-o-ngaruawai, where the Taruheru and Turanganui rivers meet. A grant for 2 acres 1 rood 14 perches was issued in 1871 to G E Read, into whose hands the land had passed.[128] The other block of land which Harris occupied was the Opou property, surveyed at 57 acres and Crown granted to him on 8 July 1873.[129] All these 'sales' were repudiated in 1859 at the time of Bell's visit to Poverty Bay, and there was still considerable opposition before the Poverty Bay Commission over the Turanganui property. Paratene and Kahutia were dead by this time, and Paora, a younger brother of Kahutia, challenged Harris's claim saying that Harris had only been given permission to occupy the land. Some weight is given to this view of the agreement by Harris's own statement in a letter to McLean during 1851 that Kahutia had threatened to take the property back as Harris had 'been on it long enough'.[130] The claim was upheld by Henare Turangi, however, and the commission awarded title to Harris.[131]

Harris also laid claim to 150 acres of land called Papawhariki, on which he had established his whaling station. Harris stated that the land was gifted in trust for his two part-Maori sons, Edward and Henry. A grant of 112 acres of the Papawhariki land was made to G E Read as derivator in 1871.[132] A further gift in trust for Henry was apparently made of land called 'Te Toma' (150 acres). Before the land claims commissioner, E F Harris stated that the original deed of 1843 was signed by Paratene and Tamati Tokorangi, but when an attempt was made to settle on the land, partially-constructed buildings were burnt down by Renata and Hapapa, who had not received any of the progeny of a horse given by Harris as payment for the land.[133] Tamati Tokorangi, of Ngati Kaipoho hapu stated in addition that he had thought he and Paratene were the only owners of the land but had been mistaken, and there were now many opponents to the transaction. The opponents only objected to not having received any of the horses born from the mare given by J W Harris. Bell suggested that the claimants must sort out the problem of payment among themselves before title could be vested in the Harris children. [134] This block

127. Mackay, *Historic Poverty Bay,* pp 141–142; Curnin's Register, OLC 2/7, p25
128. Mackay, *Historic Poverty Bay,* pp 139–140; Curnin's Register, OLC 2/7, p 26; 'Return of claims settled since 1862', OLC 5/18,
129. OLC 5/18
130. Harris to McLean, 10 September 1851, cited in Mackay, *Historic Poverty Bay,* p 210
131. Mackay, *Historic Poverty Bay,* p 140
132. Curnin's Register, OLC 2/7, p 91; Claims 1355 and 1320, OLC 5/18
133. Statement of E F Harris before F D Bell, 31 December 1859, OLC 4/21
134. Statement of Tamati Tokorangi, and note by F D Bell, OLC 4/21

was also granted to G E Read after being surveyed as part of his claim to Matawhero iv.[135] Mackay seems to believe that similar problems had earlier arisen over the Papawhariki land when owners complained that not enough had been paid for it. When the matter came before the tribal runanga, Rawiri asked how many horses the mare given in this case had borne, and after being supplied with the information, said that the complaint should be dropped or Harris would give the land back in favour of all the horses.[136]

Strenuously opposed before the Poverty Bay Commission in 1869 were the claims of Captain W B Rhodes to a 300 acre block between the Karaua creek and the edge of Poverty Bay, as well as one and a half acres at Muriwai. The purchases were apparently made in 1840 by Cooper, Holt, and Rhodes, and it was claimed that the boundaries had been walked over by the sellers and European witnesses, afterwards being marked by means of charcoal and holes dug into the ground. The sale was made by Matenga Tamaioreao without the agreement of the chiefs, who were absent along with 200 of the tribe apparently negotiating the sale of some other land. Matenga admitted to having no right to sell the land. In an interesting twist that provides evidence of the complicating factors involved in the settlement of these claims by the Poverty Bay Commission, counter claimant Keita Wyllie stated that the land in question was given to her by Otene Te Whare prior to the East Coast wars. Rhodes submitted that such a transaction was illegal as Te Whare was a Hauhau, killed at the siege of Waerenga a Hika. Keita Wyllie maintained there was no proof of Te Whare having been a 'rebel' at the time the gift was made, but the commission awarded 1 acre 2 roods 23 perches to Rhodes on the basis of Te Whare's rebel status, and because he was named as one of the original sellers. Thirty acres of the area claimed was awarded to Raharuhi Rukupo, who claimed that the original sale was invalid as it was not made with the permission of all those with interests in the land.[137] The remainder, presumably, remained in the hands of the Government.

Some of the other awards made by the Poverty Bay Commission included those to W H Wyllie, who originally claimed 46 acres and was awarded 64 acres, granted in 1871; 51 acres to R Poulgrain; 25 acres to the trustees of A Dunlop; 17 acres at Huiatoa to the part-Maori children of Goldsmith; and 5 acres awarded to G E Read as derivator to the part-Maori claim of P B Yule.[138] At least three claimants were given awards far in excess of the acreage originally claimed. P Taprell claimed to have purchased one acre for £54 and was awarded 25 acres, while Thomas Uren's original claim of 170 acres had become 185 acres plus an additional 36 acres 23 perches on the grant of 1871. G E Read, notorious in Poverty Bay for his land dealings, was awarded 319 acres by the Poverty Bay Commission, partly as derivator to other original claims.[139]

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135. Claim 1355 (Harris), OLC 5/18
136. Mackay, *Historic Poverty Bay*, p 100
137. Ibid, p 141
138. Curnin's Register, OLC 2/7
139. Ibid; OLC 4/21

2.9.3 Controversy over the awards

Due to the number of years that had passed before these claims were finally settled, some pieces of land had passed through several hands, and the derivative claims made the original claims seem hopelessly tangled. Alfred Domett, land claims commissioner in 1871, noted that in many cases, proof of derivative title was sketchy, and the dates of deeds given to the Poverty Bay commissioners were often completely different than those in the land claims records. He complained that Judges Monro and Rogan only 'had informal documents or have attended to ''hearsay'' as no dates of deeds are given in some of their reports'.[140] In the absence of deeds supplied to the commission, it was often stated that original written agreements had either been destroyed in the burning of settlers' homes during 1868, or in the sinking of the *White Swan* off Castlepoint in 1862, along with other public papers.[141]

Domett was deeply concerned at the settlement of these claims by Monro and Rogan when deeds and papers were not forthcoming, and most would have been disallowed under the Land Claims Settlement Acts by virtue of the transactions having been undertaken illegally in the period after 1840.[142] Dillon Bell, in his report of February 1860, had commented that McLean had attempted to settle claims during his visit in 1851, but was prevented from doing so because of their illegality. Bell was forced to investigate these illegal purchases in 1859, as Maori wanted all claims looked into at that time.[143] In 1871 Domett was concerned to know by what authority and on what principles Monro and Rogan had settled the old land claims in Poverty Bay. A letter from the Secretary for Crown Lands to the Attorney-General asked whether the authority of the commission superseded the Land Claims Settlement Acts of 1856 and 1858. [144] The reply was that:

> certain natives ceded land to the Crown subject to certain conditions amongst other things contained in the Deed is a request by the ceding natives that the Gov will complete certain gifts of land made to certain Europeans by these natives. The Gov promised to do so, if the Commissioners found them to be correct. These therefore are promises which the Act of 1869 (PB Grants Act) authorizes the Gov to perform. This seems to settle the action taken by the Commission and will no doubt satisfy the Secretary for Crown Lands.[145]

Domett, it would seem, was still troubled by the abandonment of the original Acts for the settlement of such claims, and wrote expressing his concern to Judge W H Monro, Poverty Bay commissioner, who replied that awards were made according to particular cases and not in satisfaction of all claims which might arise:

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140. Note by Land Claims Commissioner, 13 April 1871, LC 71/54, OLC 4/21
141. Domett, memo, 1871, LC 71/65, OLC 4/21; Mackay, *Historic Poverty Bay*, p 138
142. Domett, memo, 1871, LC 71/65, OLC 4/21
143. Memo by the Land Claims Commissioner, AJHR, 1862, E-1, p 5
144. Domett to Attorney General, 1 April 1871, LC 71/265, OLC 4/21
145. J W Hulce, minute, 15 April 1871, LC 71/65, OLC 4/21

> excepting in so far as the claimants might be considered to have debarred themselves from future consideration by their failure to lodge claims made by them, but not produced in Court.[146]

In a note to Bell on 11 July 1871, Domett wrote that:

> Smith and Rogan, as Commissioners under an Order in Council 13 Feb 1869 made awards of various lands (subsequently authorized to be granted by Govt. By Poverty Bay Grants Act 1869) These awards give *Old Land Claimants* in many cases all the lands claimed by them *without* reference to conditions as imposed by the Land Claims Settlement Acts 1856–8. Of course this was a special advantage given to such claimants . . . I knew nothing about their proceedings or that they intended to meddle with Old Land Claims – though the works of their commission are general. Perhaps the claims are as well settled. But does it strike you anything should be done? [Emphasis in original.][147]

In a reply which speaks volumes about the attitude of Crown agents to the situation in Poverty Bay, while reflecting Bell's own experiences there in 1859, he advised Domett to let the matter drop, saying 'I would leave these alone. Ficie[?] non debuit factum valet; and we may wink at any little irregularity provided the ghosts of these claims do visit us no more'.[148] Such 'irregularities' abounded where the settlement of these claims was concerned – most of the transactions were illegal; most of them were not supported by written deeds; the acreage finally awarded was in some cases far in excess of that originally claimed; and the particular circumstances which the Poverty Bay Commission was set up to deal with in 1869 involved those Maori who opposed the claims having limited leverage due to their 'rebel' status. The most important 'irregularity' was perhaps the fact that these claims were still unsettled in 1869 because of the total repudiation of all 'sales' by Poverty Bay Maori when Bell attempted to hear the claims in 1859.

2.10 CONCLUSION

This chapter has covered a period in which extraordinary changes occurred for Maori of Poverty Bay. They did not resist these changes, but attempted to adapt them for their own benefit. Local chiefs sought to maintain their control over their own land and resources, and over their people. They managed this despite the various challenges they faced, including what appears to have been a significant depopulation of the district, brought about primarily through contact with imported diseases. Throughout the period, although they had recourse to the mediation of missionaries, and later the resident magistrate, they continued to rely primarily on their own social and political framework and institutions. There was no significant land sale during the first 40 years of European occupation in the area from 1820 to 1860. Only 2200 acres of old land claims would be awarded by the Poverty Bay

146. Monro to Dommett, 9 May 1871, LC 71/65, OLC 4/21
147. Margin note by Domett, 11 July 1871, OLC 4/21
148. Margin note by Bell, July 1871, OLC 4/2

Commission in 1869, and it is arguable that this amount was far in excess of that which Maori had agreed to part with, especially on a permanent basis. In any case, the legitimacy of these awards is highly debatable. It seems ironic that many of the claims that came before Bell in 1859 might well have been dismissed by him if not for the vehement repudiation of all the transactions by local Maori. This reaction resulted in Bell's subsequent attitude towards the people of Turanga, which prevented any return of the commissioner to continue his inquiries prior to the East Coast wars that were to alter the situation so radically, swinging the balance of power away from Maori and into the hands of the European claimants.

The Government had purchased only 57 acres for public purposes in Turanganui by 1860, and there would be no more sale of land to the Crown there for almost 10 years. Tension over the land issue continued to build, however, especially as events in Taranaki unfolded (as discussed in chapter 4). An 1864 runanga made clear its opposition to land sales, but some Maori expressed a wish to sell to the Government, and on trips to Hawke's Bay, settlers were apparently being encouraged by chiefs from Turanga to buy land from them. The desire to sell, as a way of making money, and the resistance to sale (and to further European settlement) were beginning to cause splits within Maori society in Poverty Bay. For the time being though, the numbers of Europeans in the district remained very small, and informal leases of land were the prevalent form of land alienation.

CHAPTER 3

WAR AND CONFISCATION, 1860–69

3.1 INTRODUCTION

Within the nine-year period that this chapter discusses there was to occur in Poverty Bay a significant alteration in the balance of power between Maori and European. Previously, Europeans had resided within a Maori domain, and had been unsupported to any great degree by the political and legal institutions of the colony. By 1869, though, political and military dominance had been transferred from Maori to the settlers. This transfer was poignantly signposted by the renaming of the original Maori settlement of Turanganui as Gisborne at the end of the decade, following the purchase of that land for the establishment of a European township. This township was purchased under circumstances determined by the threat of confiscation, and would become the nucleus of greatly-increased European settlement in the 1870s.

The following pages contain a discussion of the East Coast wars, and the attempts of Poverty Bay Maori to avoid open conflict within their district, followed by the lengthy arrangements made for a proposed confiscation of 'rebel' lands by the Government. The discussion of the legislative basis for this confiscation is heavily reliant on the report written by Vincent O'Malley for the Crown Forestry Rental Trust on the East Coast confiscation legislation and its implementation. The discussion of the reprisal raids carried out by Te Kooti on 10 to 14 November and later fighting between his followers and the Government, along with their allies Ngati Porou and Ngati Kahungunu, is similarly reliant on Judith Binney's book *Redemption Songs*. It was the events that followed the return of exiled 'rebels' from the Chatham Islands which were to finally remove any hope of Maori escaping the Government's confiscation of lands in the district. The forced cession of lands to the Government, and the various issues surrounding that cession, are discussed in the later sections of this chapter. By 1869, Crown lands in Poverty Bay amounted to over 57,000 acres. Land in private European ownership was still less than 3000 acres.

3.2 NEITHER KING NOR QUEEN

Poverty Bay Maori remained staunchly independent during the early 1860s, despite requests for their support in what they essentially regarded as foreign wars. Although Europeans living at Turanga felt that the sympathies of local Maori lay with the Kingitanga, the chiefs maintained a policy of neutrality throughout this

period. While Grey's runanga system was being tried in other districts, Poverty Bay was exempted from its operation due to the refusal of chiefs to 'legalise' their runanga within the Government scheme. Nevertheless, the 'unofficial' runanga continued to be a dominant political and social influence in the community. The Turanga correspondent for the *Hawke's Bay Herald* wrote in August of 1862 that local Maori were:

> decidedly averse to the settlers getting any further footing in Turanga. They profess to be Queen's men; but all their sympathies are with the Waikatos. I should not be surprised to see the King flag hoisted at any moment. We cannot disguise the fact that we are living under the rule of the runanga with which the laws of England have as much connection as with the laws of Timbuctoo.[1]

Harris wrote to McLean in June 1860 expressing his opinion that Maori in the district were in sympathy with the Maori King concerning attempts to stop land sales (and reclaiming that already sold), but not in terms of his authority.[2] Poverty Bay chiefs declined to send aid to Wiremu Kingi in Taranaki during 1860 because they felt that the men should remain at home to protect their own lands. The chiefs also declined to give a pledge to Hawke's Bay Maori that they would provide support should war develop over repudiation of land sales in that district, commenting that Ngati Kahungunu should not expect support from those who had 'acted with greater vision'.[3]

In April 1863, at a large meeting held to celebrate the opening of a church at Manutuke, the idea of a union of Maori under King Potatau was discussed, mainly due to the presence of delegations of the King's followers from Waikato, Tauranga, and Wairoa. Those Turanga Maori present at the meeting, being mostly Rongowhakaata, were in agreement with Anaru Matete when he told the Waikato people that an attitude of neutrality was the best policy in terms of dealings with the Government, and also that there was no better unity for Maori than that found in Christianity.[4]

This was of some comfort to Europeans in Poverty Bay as, even if not actively for the Government, local Maori were at least neutral. Although Waikato Maori did not find any recruits in Poverty Bay, their visits, and the continuing trouble in Taranaki and Waikato, did create some excitement in the district. An atmosphere of unease steadily increased throughout the early part of the decade.[5] When Colonel Whitmore visited Turanga in September 1864, it was made equally clear to him that local Maori would not join the Government forces. They told him they did not wish to have a resident magistrate (Wardell having been withdrawn in 1860), but preferred to continue with their own runanga without interference from the Government.[6] While the iwi of Poverty Bay consistently refused to give active

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1. *Hawke's Bay Herald*, 5 August 1862, in Mackay (ed) *Joint Golden Jubilees*, p 79
2. Harris to McLean, 20 June 1860, cited in Judith Binney, *Redemption Songs; A Life of Te Kooti Arikirangi Te Turuki*, Auckland University Press and Bridget Williams Books, Auckland, 1995, p 36
3. Mackay, *Historic Poverty Bay*, p 213
4. Oliver and Thomson, p 81; W L Williams, *East Coast Historical Records* p 33; Mackay, *Historic Poverty Bay*, p 213; Porter (ed) *Turanga Journals*, p 592
5. Oliver and Thomson, pp 81–82

allegiance to either King or Queen, Ngati Porou were more seriously divided on the issue. W L Williams commented that he and his father received uncivil treatment from Maori in Waiapu during early 1865, as it was believed that the missionaries were involved in facilitating European occupation of the land. At Pukemaire a speaker made the remark, 'E ngaki atu ana a mua; e toto mai ana a muri! - The party in front is clearing the way; the party behind is dragging along the newly shaped canoe' expressing the idea, according to Williams, that the missionaries had been involved in clearing the way for the Government's armies to take the land.[7] Several parties joined the fighting in Waikato, but support for the Kingitanga fell off in 1864 following several defeats. Ngati Porou had been divided on the issue of support for the Crown from the 1850s, but, in the opinion of K M Sanderson, by early 1865 they were 'tenuously united on the side of the government'.[8] It was the advent of Pai Marire on the East Coast during that year which caused the sharp divisions amongst Ngati Porou that would lead to civil war in that district and eventually to fighting in Turanga.

During 1864 there were some noticeable splits amongst Poverty Bay Maori though, and these involved the fragmentation of previous solidarity on the issue of land sales. Judith Binney writes that the first of the anti-land selling groups to split was the hapu Te Whanau a Iwi of Makaraka following the death of Kahutia.[9] Raharuhi Rukupo, a previous repudiationist, appears not to have made any attempt to stop three members of his own hapu from travelling to Hawke's Bay during 1864 in order to induce settlers there to take up land at Whataupoko for sheep-runs.[10] In the opinion of Binney, the deep divisions which Pai Marire caused amongst Maori in Poverty Bay should be seen in the context of the determination of some to maintain control over European settlement.[11] Perhaps these divisions should also be seen as evidence of a perceived loss of control over these processes and their future effects on Maori autonomy in the region. This perception and fear could only have been exacerbated by the divisions over land sales already apparent in the community, and the experiences of Maori in other areas, especially Taranaki and Waikato, at this time.

3.3 PAI MARIRE: PRELUDE TO WAR

Pai Marire emissaries were sent from Taranaki by Te Ua Haumene in early 1865 to gain adherents on the East Coast, and to bring, as a token to Poverty Bay chief Hirini Te Kani, the preserved head of one of the European soldiers killed at Taranaki in 1864.[12] The purpose of this ritual, says Judith Binney, was to seal a new

6. Ibid, p 67, 82; Porter(ed), p 593
7. W L Williams, *East Coast Historical Records*, p 34
8. Sanderson, 'Maori Christianity on the East Coast 1840–1870', NZJH, vol 17, no 2, October 1983, pp 176–177
9. Harris to McLean, 15 September 1864, cited in Binney, p 36
10. Mackay (ed), *Joint Golden Jubilees*, pp 97–98
11. Binney, p 37
12. Paul Clark, *'Hauhau', The Pai Marire Search for Maori Identity*, Auckland, Auckland University Press and Oxford University Press, 1975, p 19

unity under Pai Marire and a new 'king', who would accept and protect the teachings of the new faith. Hirini Te Kani, as successor to paramount chief Te Kani a Takirau, was being asked to accept this role.[13] The message that the emissaries Patara Te Raukatauri and Kereopa Te Rau were to bring to the East Coast was not to be a declaration of war with the settlers, and Te Ua had given instructions to them not to do anything to harm the Pakeha.[14] Their arrival in Poverty Bay was, however, preceded by the news that Reverend Carl Sylvius Volkner had been executed and decapitated at Opotiki, his eyes apparently swallowed by Kereopa.[15] This act served to horrify Europeans and Maori alike, transforming the intended message and instilling fear into the settler population of the East Coast. This effectively ensured that the religion could not be tolerated in the area by the Government or its Maori supporters. Thus, from the outset, the arrival of Pai Marire on the East Coast served to polarise the Maori population, and would ultimately allow Poverty Bay Maori to remain neutral no longer.[16]

The party under Kereopa arrived at Taureka on the outskirts of Turanga on 13 March. Patara and a large group from Taranaki joined them at Manutuke a few days later. William Williams had received several assurances from local Maori that the presence of Volkner's murderers would not be tolerated in the area, and he and the settlers were under the impression that Hirini Te Kani would meet with the party and send them away. Although Te Whanau a Kai hapu, of Te Aitanga a Mahaki, were not prepared to offer the mission at Waerenga a Hika a promise of security, approximately 300 Maori, mainly Rongowhakaata, were armed and waiting by 11 March.[17] Much to Williams's surprise and disgust, Hirini Te Kani did not order the party away from Taureka, although he did not accept the new faith, and Rongowhakaata invited the group to proceed through Patutahi to Whakato as their guests.[18] Hirini Te Kani does not seem to have felt that his position in the district was secure enough to order the emissaries away. Paul Clark, in his book *'Hauhau', The Pai Marire Search for Maori Identity*, makes the comment that this ambivalent response exacerbated the tension and rivalry among chiefs that already existed on the East Coast, as the conversion of some to the Pai Marire cult was a means by which they sought to assert their tribal or chiefly mana over rivals. He sees the large-scale conversion of Te Aitanga a Mahaki in these terms, especially vis-a-vis their traditional rivalry with Ngati Porou.[19]

Hirini Te Kani and Anaru Matete were urged by William Williams to order the Pai Marire group away from the area.[20] This they declined to do, and Hirini and others wrote to McLean in April to express their view that those who wished to talk with the proselytizers should be permitted to do so without interference as it was up to Maori to solve their own problems.[21] Hirini, Anaru Matete, and Raharuhi

13. Binney, p 3
14. Ibid, p 38
15. Clark, p 21; Mackay, *Historic Poverty Bay*,pp 215–216
16. V O'Malley, 'Report for the Crown Forestry Rental Trust on the East Coast Confiscation Legislation and its Implementation', Wellington, 1994, p 20
17. Sanderson, NZJH, October 1983, p 177
18. Sanderson, NZJH, 1983, p 177; W L Williams, p 36
19. Clark, pp 21, 22
20. W L Williams, p 37

Rukupo were at this stage still neutral. Nevertheless, this was a neutrality that leant more heavily towards the Maori cult than to the mission under Williams, who was deeply disturbed by the rapid conversion of Te Aitanga a Mahaki to the cult.[22] In the belief that Kereopa, Patara, and their party had 'sinister intentions' towards the missionary, Williams and his family moved from Waerenga a Hika to Napier in April.[23] At the same time Wi Tako and a party of anti-Hauhau arrived from Hawke's Bay in order to counter the influence of the proselytizers. Due to their presence Kereopa apparently left the district on the 13th, and Patara departed soon afterwards, travelling north.[24] By this time it was estimated that one-third of Turanga Maori had converted, amongst them Raharuhi Rukupo and Anaru Matete.[25] By July, Te Aitanga a Mahaki had mostly converted and approximately half of the Maori population of the district declared themselves Pai Marire. More converts would follow in the next months.[26]

Harris indicated the unease of settlers in Poverty Bay when he wrote to McLean on 10 April to suggest that a stockade be built at Turanganui, and that Read's trading vessels be detained for service in removing the settlers should trouble develop.[27] In May, Bishop Williams wrote to Rongowhakaata and suggested that if they must abandon their policy of neutrality it would be wiser to declare their allegiance to the Government. The letter received no response, but settlers were told by leading chiefs that no harm would come to them and that they should continue to live in the region as before. Despite conversion to the new faith, Poverty Bay Maori still sought to remain neutral in a political sense. When this position was no longer possible they chose either the 'rebel' or 'Kawanatanga' sides, though essentially remaining 'Kupapa' (neutral).[28] Manipulation of the situation in Poverty Bay by Mokena Kohere, Kawanatanga chief of Ngati Porou, during May brought about the division into semi-hostile factions within the district that the chiefs had previously sought to avoid. In a gesture of defiance against the niu poles and banners of the 'Hauhaus', Mokena erected a flagpole and flew the Union Jack on Titirangi hill; a prominent geological feature which dominated the Poverty Bay area. This was done with the consent of Ngai Te Kete, one section of those with traditional interests in the land. Hirini Te Kani, who shared these interests in the land, was incensed by this act because it amounted to a Ngati Porou claim to mana whenua in Turanga.[29]

The erection of the flagstaff angered most of Rongowhakaata, who were, on the whole, lukewarm towards Pai Marire, as well as Te Aitanga a Hauiti, many of

21. Hirini and others to McLean, 19 April 1865, McLean papers, ATL, cited in Clark, p 67
22. Porter (ed), *Turanga Journals*, p 595
23. W L Williams, pp 38–39
24. Mackay, *Historic Poverty Bay*, p 217
25. Binney, p 41
26. Sanderson, NZJH, October 1983, p 177
27. Harris to McLean, 10 April 1865, McLean papers, ATL, cited in Mackay, *Historic Poverty Bay*, p 219
28. Sanderson, NZJH, 1983, p 178
29. Binney, p 41. Binney comments that the erection of flags and flagstaffs were powerful statements to Maori of autonomy and legitimate claims to the land. The many niu poles erected at pa in Poverty Bay attest to this as Pai Marire was seen as a means of salvation for the land and people (Clark, p 22). It was because of the power of this image that local Maori objected so strenuously to the RM flying the Queen's flag over his residence in 1860 (Binney, p 41).

whom had joined the new cult.[30] Sanderson believes Mokena's action was a deliberate attempt to extend his influence outside of Waiapu. The action simultaneously ensured Mokena of Government support whilst forcing Turanga Maori to identify themselves in absolute terms as supporters or detractors of the Government rather than as kupapa.[31] This was due to the fact that it would not be possible for them to object to the erection of the flagstaff and its fortification on the traditionally important Titirangi hill by the Ngati Porou chief without appearing to rebel against the Government and its representative flag. In so doing they would identify themselves as Pai Marire and 'rebel' Maori. Indeed, Hirini Te Kani now threatened to join Pai Marire if the flagstaff was not removed, and built a new pa at the base of the hill in order to protect the bones of his father, Rawiri Te Eke, that were buried there.[32] Paratene Pototi (Turangi) and Te Waaka Puakanga, prominent Kawanatanga leaders, wrote to the Government complaining of the behaviour of Hirini Te Kani and Raharuhi Rukupo, and stated that the Queen's flag would be the cause of fighting at Turanga, further identifying the argument over the flagstaff as one of absolute loyalty or rebellion against the Crown.[33] Donald McLean arrived at Poverty Bay on 5 June and demanded an oath of allegiance from local Maori. Forty or 50 Maori gave this oath at the flagstaff pa on 7 June, but Hirini refused to give the oath while the flagstaff remained standing.[34]

There was an intensification of pa building in Poverty Bay at this time, some identifying strongly as Pai Marire while others remained Kupapa.[35] The atmosphere was tense as the district prepared for the possibility of war. The threatening atmosphere was added to by the outbreak of civil war between Ngati Porou Pai Marire and Kawanatanga factions in the month of June. Pai Marire emissaries had travelled north to Waiapu from Turanga in April. Throughout May, converts there expected to be visited by Patara. Rival pa sites were built by Hauhau and Kawanatanga groups, and most people carried weapons when travelling within the region. Patara's arrival at the 'rebel' pa at Pukemaire at the beginning of June sparked open conflict. [36] Mokena Kohere, Rapata Wahawaha and the Kawanatanga party suffered defeats at Mangaone, near Pukemaire, on 10 June, and at Tikitiki on 21 June, at which time the government sent arms and men to assist in the struggle against the Hauhau.[37] This situation made the possibility of Hauhau at Turanga avoiding a conflict with the Government still more unlikely as 'Pai Marire' on the East Coast became synonymous with 'rebellion'. Binney writes that there was much debate on the issue of whether Turanga Pai Marire should go to the aid of the Ngati Porou adherents. There were some who went to support their kin, and Wiremu Kingi and others went in order to attempt a negotiated peace during early

30. Sanderson, NZJH, October 1983, p 178
31. Ibid, p 178
32. Binney, p 44
33. Ibid, p 44
34. Binney, p 45; W L Williams, p 41; Mackay, *Historic Poverty Bay*, p 219
35. Binney, p 45 ; Sanderson, NZJH, 1983, p 179
36. O'Malley, p 25
37. Ibid, p 26; Mackay, *Historic Poverty Bay*, pp 220–221; James Cowan, *The New Zealand Wars: A History of the Maori Campaigns and the Pioneering Period, Vol ii: The Hauhau Wars, 1864–72*, Wellington, Government Printer, 1923, pp 118–122

September. A party of Te Aitanga a Mahaki were keen to avenge the death of prophet Raniera Rongakaheke, killed at Tokomaru.[38] Throughout this time though, most Pai Marire chiefs preferred to stay out of the Ngati Porou war in an attempt to stop the trouble from spreading to Turanga.

Ngati Maru, a large hapu of Rongowhakaata, had mostly converted to Pai Marire in early July.[39] A meeting of Kawanatanga consisting of only 100 people was held on 20 July at Whakato, from which Hauhau and Kupapa Maori were excluded.[40] On 23 July, a rival runanga of Pai Marire met to discuss the situation, and to reassure settlers who remained that they would not be harmed, and that war would only come to the district if the Government sent troops and brought Ngati Porou to fight with them.[41] Anaru Matete and others went to Harris and informed him that they had:

> joined the Hauhaus because we think that by so doing, we shall save our land, and the remnant of our people. We have no quarrel with the settlers. We are not bringing trouble to you but the Queenites are doing so.[42]

Harris was told that the Hauhau would not harm the settlers. They wished to remain at peace with the Pakeha, and to trade with them as before, although no more land would be sold.[43]

3.4 WAR COMES TO TURANGA

Poverty Bay Maori still wished to retain the status quo and avoid war in their district, but when 400 Pai Marire from Waiapu were driven south and sought refuge with their kin at the new pa at Waerenga a Hika on 14 September the situation was immediately altered.[44] It became clear that they would be followed by Government troops and Ngati Porou Kawanatanga; an eventuality which most chiefs had wished to avoid. Hirini Te Kani was now forced to ally himself with the Government by seeking guns and men from McLean, promising at the same time to share the weapons with Raharuhi Rukupo, thus indicating the somewhat ambiguous nature of his loyalties and adding to the unease felt by settlers under his protection.[45] Pa building and preparations for war intensified, but no action was taken in Turanga by the local Kawanatanga or Pai Marire factions. W L Williams wrote to McLean on 18 September that Hirini Te Kani had been informed by local Pai Marire that they wished the Kawanatanga party to remain quiet lest Ngati Porou come to fight them.[46] Neither faction in Turanga was keen for this to eventuate, although they

38. Binney, p 46; Oliver and Thomson, p 92
39. Ibid, p 45
40. Ibid, p 45; O'Malley, p 28
41. Binney, p 46
42. Diary of events, Poverty Bay, c July 1865, McLean Papers, ATL, vol 24, p 66, cited in Clark, *'Hauhau'*, p 22
43. Harris to McLean, 25 July 1865, McLean Papers, ATL, cited in O'Malley, p 22
44. Binney, p 46
45. Ibid, p 46
46. Williams to McLean, 18 September 1865, McLean Papers, ATL, cited in O'Malley, p 29

must have felt that it was inevitable. Mokena Kohere now offered to aid the Government in crushing the Pai Marire 'rebellion' in Turanga, and Henare Potae, who had led an abortive mission against the Hauhau refugees in late September, returned at the end of October with 30 men, stirring up the Rongowhakaata Pai Marire.[47] According to W L Williams they dared him to interfere with the refugees, and:

> declared that they should come as far as Makaraka by way of a challenge, and to show that they were not afraid of him. Raharuhi and others used very violent language, referring not only to Henare Potae, but to Europeans generally, advocating war to the knife. [48]

These events led settlers to abandon their homes and cluster around the pa at Turanganui and the newly-built redoubt at Kaiti, where military settlers sent from Hawke's Bay under Lieutenant Wilson plus 30 of the colonial defence force under Captain La Serre were now stationed.[49] The deserted homes were ransacked and looted by members of several hapu, among them Ngati Maru. These events were observed by Anaru Matete, although he did not actively participate in them.[50] Raharuhi Rukupo made an attempt to mediate, offering compensation to the settlers and sending gifts to the militia officers stationed at Te Poho o Rawiri, Hirini's new pa. These were refused, and Raharuhi was told that McLean would settle the matter when he arrived.[51] Clearly Raharuhi still sought to avoid the conflict that was now imminent. Vincent O'Malley notes that J E Fitzgerald, recently resigned Native Minister, informed McLean at this point that the Government wished to avoid hostilities in the area unless they were provoked by some Hauhau 'outrage'.[52] The general feeling of the settlers is hinted at in J D Ormond's statement to McLean that he wished to hear of war having broken out in Poverty Bay as 'we ought to give them a lesson whilst we have the force at hand to do it'.[53]

McLean arrived on 9 November at the same time as 260 Ngati Porou under Mokena Kohere and Rapata Wahawaha, fetched by Captain Read in one of his vessels, and 100 Forest Rangers under Major Fraser on the *Sturt*.[54] On 13 November, McLean issued an ultimatum to the 'rebels' that they should accept his terms for 'peace' or the pa at Waerenga a Hika would be attacked and the 'land of the promoters of disturbance' be confiscated.[55] His terms were non-negotiable and clearly impossible for Poverty Bay Maori to agree to, especially considering that many had turned to Pai Marire as a means of salvation from just the fate which McLean and the Government now attempted to foist upon them. McLean's terms were thus, according to W L Williams:

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47. O'Malley, p 29
48. W L Williams, *East Coast Historical Records*, p 45
49. Ibid, pp 44–45
50. W L Williams, p 45; Binney, p 47
51. Williams, pp 45–46 ; Binney, p 47
52. Fitzgerald to McLean, 10 September 1865, McLean Papers, ATL, MS Papers, 0032–0019, cited in O'Malley, pp 29–30
53. Ormond to McLean, McLean Papers, ATL, MS Micro 0535–076, fol 481, cited in O' Malley, p 30
54. Mackay, *Historic Poverty Bay*, p 222 ; Williams, p 46
55. Binney, p 48

> 1. That malefactors should be delivered up; 2, That Hauhauism should be renounced by all; and that they should take the oath of allegiance; 3, that they should pay a penalty in land; and 4, that they should give up their arms.[56]

Binney has commented that the tribes of Poverty Bay were being treated as rebels by the Government before they had become so.[57] Certainly, the terms offered by McLean left Turanga Maori in an impossible situation when it is considered that if they refused to accept them unconditionally there would be war, and the prospect of the confiscation of their land by the Government. If they agreed to the terms they would be forced to give up the land voluntarily to pay for a crime they had essentially not committed (as well as renouncing their Pai Marire faith). Such a loss of mana and autonomy could not have been seriously contemplated by the Pai Marire, nor was it. Fifty-three of Tamihana Ruatapu's party from the Kawanatanga pa at Oweta signed the oath of allegiance while many Ngati Maru declared their rejection of the terms by withdrawing to Patutahi and the Pai Marire pa.[58] Raharuhi Rukupo apparently told McLean that 270 Maori would come to take the oath on 14 November, but none arrived. McLean then extended the deadline until noon on 16 November, at which time the troops would move on the pa at Waerenga a Hika.[59] On that day buildings were seen to be burning at Waerenga a Hika as part of the mission station was set alight. McLean ordered Fraser to engage his troops with the rebels.[60]

In *Challenge and Response*, Oliver and Thomson have called the siege of Waerenga a Hika the 'hinge of fate' for Maori of the East Coast, as Pai Marire at Turanga were not to be allowed to maintain either their policy of neutrality or their autonomy.[61] The siege was to last one week, but the consequences for Poverty Bay Maori, 'rebel' and Kawanatanga alike, would be far-reaching as both paid the penalty in land demanded by McLean in his ultimatum of 13 November.[62] On 19 November, the besieged had been reinforced by Anaru Matete and a party of 200 from Patutahi carrying white flags with crescent moons and small red crosses in the upper corners.[63] These were initially thought to be flags of truce, but Fraser ordered his men to fire on them anyway as he believed 'no flag of truce should be respected carried by such a large body of armed men'.[64] Their fire was returned by the Pai Marire party who lost 30 men in the exchange.[65] On 20 November, a flag of truce was raised and an hour allowed for the burial of the dead. Two days later

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56. Williams, p 46
57. Binney, p 48
58. Ibid, p 48
59. Mackay, *Historic Poverty Bay*, p 222 ; Williams, p 46
60. Mackay, p 222
61. Oliver and Thomson, p94
62. O'Malley, p 32
63. Binney, p 51; Mackay, p 224; Williams, p 47; Cowan, pp 126–127; T W Porter, *The History of the Early Days of Poverty Bay: Major Ropata Wahawaha, The Story of His Life and Times*, Gisborne, *Poverty Bay Herald*, 1923, pp 12–13. Full details of the hostilities on the East Coast and of the siege are provided in these sources.
64. Fraser to McLean, 21 November 1865, 'Despatches from Major Fraser, Commanding Forces at Turanganui', AJHR, 1866, A-6, p 4
65. W L Williams, p 47

another flag of truce was raised, signifying the surrender of those inside the pa and the end of the siege.[66] Anaru Matete and 30 others escaped from the rear of the pa, while 200 men and 200 women and children were taken prisoner. These prisoners were kept at Kohanga Karearea redoubt or given into the hands of Kawanatanga Rongowhakaata at Oweta pa under Tamihana Ruatapu.[67]

According to Oliver and Thomson, the war in Poverty Bay was an inter-tribal one between Ngati Porou and sizeable elements of the Turanga tribes. They make the comment that the Hauhau, and later the Ringatu under Te Kooti, who have been traditionally caste in the role of aggressors, look more like victims.[68] Sanderson comments that the defenders of Waerenga a Hika did not see themselves as rebels, but fought only to defend their independence and their land against 'alien aggressors' – these being Ngati Porou in collusion with the Government.[69] Interestingly, on 23 November, Lieutenant St George recorded that Mokena Kohere had paraded the prisoners at 7am and:

> commenced a war dance over them. This Fraser stopped, and told Master Morgan that the prisoners were not his but belonged to us. Mokena was very wroth at this but did not say anything at the time.

Following this Raharuhi Rukupo complained that Mokena had looted his pa and stolen horses.[70] Clearly, some members of Ngati Porou saw this victory as one of their own over rival tribes, which presumably gave them the right to loot and destroy the property of the vanquished and others in the district. Harris angrily informed McLean that 'the Pai Marire have not done us one tenth of the damage inflicted by Morgan and his men'.[71] The half-heartedness with which the Turanga Kawanatanga participated in the siege against their kinsmen is evidence that this was not a fight between hostile factions within the tribes of Poverty Bay, but a war they did not want. Biggs, Fraser, and St George all complained about the ambiguous actions of most Rongowhakaata who fought with the Government troops, noting their lack of co-operation or readiness to actively engage in the fighting, as well as their constant smuggling of information to the Hauhau.[72]

3.5 EARLY PLANS FOR CONFISCATION

The general scheme for confiscation initially proposed in 1863 to 1864, which involved the establishment of military settlements in 'rebel' districts to ensure their safety and to bring all tribes under the rule of British law, was also proposed for the

66. Ibid, p 47
67. Binney, p 52; Mackay, p 224
68. Oliver and Thomson, pp 87–88
69. Sanderson, NZJH, October 1983, p 179
70. Diary of Lieutenant J C St George, 23 and 26 November 1865, cited in R de Zouche Hall, 'Maori Lands in Turanga 1865–1873, with particular reference to the Poverty Bay Commission 1869 and 1873', unpublished typescript, Gisborne, 1984, sec 1.5
71. Harris to McLean, 25 November 1865, McLean Papers, ATL, cited in R de Z Hall, sec 1.5
72. Binney, p 48

East Coast.[73] The confiscation of land in frontier districts in combination with the establishment of military settlements and the setting up of townships would, it was hoped, serve also to open up such difficult areas for European settlement. Poverty Bay was just such a frontier, but by 1866 the confiscation policy under the New Zealand Settlements Act 1863 had proved to be a failure for the Government in terms of the £3,000,000 of debt incurred and the ensuing financial crisis. The initial plan of recovering the costs of the war through the sale of confiscated land for colonisation had not worked as well in practice as it had appeared on paper.[74] In addition, Maori affected by confiscation were bitter about the vast areas of land actually taken by the Crown, and many, both rebel and friendly, had rebelled against the survey and occupation of additional lands. In their frustration with the compensation courts and their inability to stop what Belich has referred to as 'creeping confiscation', they became bitter opponents of the Government.[75] When the confiscation of lands on the East Coast was being discussed early in 1866, a form of confiscation less costly to the Government and more palatable to Maori was mooted. McLean had already discussed the possibility of obtaining a cession of land with loyalist chiefs of Ngati Porou during 1865. By 1866, he was considering, on the advice of William Williams and J W Harris, taking the whole area and returning Crown-granted portions to 'friendly' Maori. This, it was hoped, would solve the problem of contending claims, and would give Maori secure title to land on the same basis as settlers.[76]

W L Williams estimated that in early 1866 the Maori population of Turanganui was 1000, most of whom were Hauhau.[77] On 3 March, McLean arrived in Poverty Bay to arrange for the transport of Hauhau prisoners to Wharekauri (Chatham Islands). A meeting with the 'friendly' chiefs was hastily arranged to discuss the fate of the prisoners. McLean told them that he proposed the prisoners would be held on the Chatham Islands for a period of not much more than 12 months while the arrangements were made for the confiscation of land on the East Coast by the Government.[78] The chiefs agreed with the proposed measures, and four lots of prisoners totalling 328 men, women, and children were taken from Napier to the Chatham Islands.[79] Most of the prisoners deported were from Turanga, possibly because they were regarded as those most likely to cause trouble over the confiscation of lands within their rohe, which the Government clearly coveted because, as Biggs remarked, it was seen as 'the most valuable [district] and the one from which the Government will most quickly obtain a return'.[80] Maori in Poverty Bay were anxious about the Government's intentions, and in April a rumour was circulated that the Government intended to deport them all to the Chathams and

73. O'Malley, p 36
74. Ibid, p 42
75. O'Malley, p 43; Belich, *The New Zealand Wars and the Victorian Interpretation of Racial Conflict*, Auckland, Auckland University Press, 1986, p 204
76. O'Malley, p 47
77. Williams, p 49
78. Ibid, p 51
79. Mackay, *Historic Poverty Bay*, p 228
80. Biggs to H Halse, 5 January 1867, 'Poverty Bay Commission inwards correspondence received by Lands Department, MA 62/8, RDB, vol 131, p 50399, cited in O'Malley, p 48

divide their land between Ngati Porou and the Queen.[81] Not all Poverty Bay chiefs agreed to the deportation of their kin, and Raharuhi Rukupo stated that he would not agree to any land being given up to the Government.[82]

In the early part of 1866, private European interests began to compete with those of the Government in the area. In January, Biggs reported to McLean that G E Read and others were attempting to persuade Maori to sell their lands before they were confiscated.[83] Hauhau in the district were apparently quite willing to sell to European speculators, and some reportedly signed land over to their wives in order to sell it privately before the Government could take it.[84] Shipments of sheep arrived regularly from Napier to stock sheep runs on newly-negotiated pastoral leases.[85] There were already extensive sheep-runs on informal leases at Kaiti, Pukepapa, Te Karaka, and Muhunga. These leases had been negotiated at various times up to 1864. A large area at Whataupoko had been offered by relatives of Raharuhi Rukupo at Napier in that year to W Parker who was established on the land by the middle of 1865. Before their discharges in early 1866, Westrup, of the Forest Rangers, and Wilson, of the military settlers, had negotiated for Te Arai and Maraetaha. Three more sheep-runs were taken up in 1867, while the confiscation issue was still unsettled.[86] On 12 May the Native Minister's office published a notice in the *Hawke's Bay Herald* in an effort to stop these activities:

> Information having been received that arrangements are in progress for Leasing and Depasturing Stock upon certain Lands on the East Coast, which lands are liable to the provisions of the 'New Zealand Settlements Act', all persons concerned are informed that such proceedings are calculated to interfere with the suppression of rebellion on the East Coast and are hereby warned to abstain from carrying out such arrangements.[87]

This notice cannot have had any legal standing, as the district had not been proclaimed under the New Zealand Settlements Act, and the Native Land Act 1865 still had operational standing there. Until such time as the Government legislated for the confiscation of East Coast lands, Maori were free to deal with their lands as they pleased. Private individuals must also have been aware of this, as the negotiations for leases and sale of land in Poverty Bay continued. The Government still held the upper hand, however, in that the Native Lands Act 1865 declared any private transaction void where it was initiated before the extinguishment of native title by the Native Land Court. Consequently, Maori and settler alike were eager for an early sitting of the land court at Turanga in order that valid leases and titles could be arranged. The Government, needless to say, had a vested interest in preventing

81. Harris to McLean, Hawke's Bay Province inward letters, 66/587, cited in O'Malley, p 48
82. Mackay, p 229
83. Biggs to McLean, 4 January 1866, McLean Papers, ATL, cited in O'Malley, p 49
84. Biggs to McLean, 14 January 1866, cited in R H Truscott, 'Poverty Bay and Colonial Land Policy, 1865–1868', MA research essay, Auckland, University of Auckland, 1976, p 21
85. O'Malley, p 49
86. Hall, sec 2.3
87. *Hawke's Bay Herald*, 29 May 1866, cited in O'Malley, p 50

the Native Land Court from carrying out any business on the East Coast which might affect their acquisition, through confiscation, of the best land in the area.

3.6 THE OIL SPRINGS

Further complications were provided by the discovery of oil springs north of Te Karaka, in the Waipaoa Valley. News of the discovery of petroleum here, and at two other locations on the East Coast, spread rapidly, and groups backed by firms in Melbourne and Sydney began to apply for leases of the spring sites. Julius Vogel applied directly to Whitaker, Superintendent of Auckland Province, for 2500 acres at the Turanga site.[88] Whitaker immediately sent Henry Rice to the district to obtain title to the oil springs for the province of Auckland.[89] James Preece, a land purchase agent, had earlier been employed by J T Mackelvie of the Auckland firm Brown and Campbell to 'determine the nature and quantity of the oil, its owners, and their willingness to sell'.[90] Negotiations for the land on which the springs were located went ahead despite the fact that no title could be given until the Native Land Court sat. On the application of Preece, a sitting at Poverty Bay was scheduled for 12 September 1866.[91] Preece had apparently gained the agreement of all but one man to sell the Turanga lands to Brown and Campbell by July.[92] A Napier firm, connected with McLean, had also apparently entered into an agreement to work the springs jointly with the Maori owners.[93] Whitaker made an application to the Colonial Secretary in August for permission to negotiate for the oil springs prior to their passing through the Native Land Court. The request was agreed to, and a clause was added to the Native Lands Act 1866 enabling superintendents to make valid purchases of Maori land prior to certificates of title being issued. Rice was now instructed to outbid Preece, who still had to rely on his agreements with Maori being ratified once the court had awarded title.[94] Despite the offer given by Rice for £7000 on a 20-year lease of 6357 acres at Turanga, most owners remained firm in their agreement to sell the lands for £5000 to Preece, who had told them the Government intended to confiscate the land.[95] McLean urged the Government not to allow the Native Land Court to sit on the East Coast until confiscation had been initiated, and J C Richmond, Native Minister, asked Chief Judge Fenton to postpone the September sitting as it would cause embarrassment. Fenton refused, but the postponement was achieved due to notices not having been adequately proclaimed in Hawke's Bay. Preece complained that the postponement gave Maori the impression that the Government were keeping the court from sitting until they

88. Truscott, p 16
89. Ibid, p 17
90. Mackelvie to Brown, 7 May 1866, Mackelvie Papers, cited in O'Malley, p 67
91. O'Malley, p 51
92. Ibid, p 69
93. Truscott, p 17
94. O'Malley, p 71
95. Ibid, pp 71–72

could confiscate the land. The chief judge informed Richmond that notices had gone out for the next sitting in October.[96]

The land on which the springs lay was reported to be mostly Hauhau land, and it was something of a political embarrassment that the superintendent of the province of Auckland should be seen to be buying land from 'rebels'.[97] At this point Whitaker came to an arrangement with the central government which, although not officially documented, O'Malley believes involved the suspension of the Native Land Court sittings at Poverty Bay (following the inclusion of a clause in the Native Lands Act Amendment Act which enabled the Government to suspend the operations of the Native Lands Act within any district), as well as the inclusion of the clause in the Native Lands Act 1866 that allowed Whitaker to make valid arrangements with Maori before title was issued by the court.[98] It seems likely, though, that the Government suspended the activities of the Native Land Court for their own reasons which were substantially those stated by Preece, that is to say, to stall for time in which to confiscate the best land in the district. Significantly, they had already made attempts to postpone its sittings, and Chief Judge Fenton was unimpressed by the Government's insistence on 'interfering with the course of the law'.[99] The arrangement, however, also included the passing of the East Coast Land Titles Investigation Act 1866 that was drawn up at Whitaker's instigation. This Act would have allowed him to legitimately acquire the interests of 'rebel' Maori, as lands confiscated under the Act would be handed to the province of Auckland to administer as waste lands of the Crown.[100] The Government adopted Whitaker's proposals for the confiscation of land on the East Coast due to their need to draft alternative legislation to the New Zealand Settlements Act. Although they must certainly have been aware of the dubious motives he had for offering these suggestions, they broadly suited the Government's own requirements within the district, and the Act was pushed through the House at the end of the parliamentary session of 1866. [101]

3.7 THE EAST COAST LAND TITLES INVESTIGATION ACT 1866

The East Coast Land Titles Investigation Act 1866 was passed into law on 8 October 1866. The Act proposed that the Native Land Court should determine the title to lands claimed by Maori or Europeans in the area, whether or not Maori actually applied to the court for such an investigation (s 3a), and award certificates of title to those with interests in the land who were not engaged in rebellion (s 3b). Thus, the court could investigate title on its own initiative or upon application by the Crown regardless of the wishes of those entitled.[102] The Native Land Court

96. Ibid, pp 51–52
97. Truscott, pp 18, 19; O'Malley, p 72
98. O'Malley, p 53
99. O'Malley, p 52
100. O'Malley, p 73; Truscott, p 19
101. O'Malley p 75

would become the instrument of confiscation on the East Coast, and would operate in a manner directly contrasting the activities of the Compensation Court in areas under the operation of the New Zealand Settlements Act.[103] Lands of rebel Maori who would have been jointly entitled with loyal Maori were to be equitably partitioned and assigned to loyalists and the Government (s 3c). The court was authorised to ascertain what lands 'rebel' Maori would have been entitled to, and these lands would become lands of the Crown (s 4). Therefore, interested parties needed to prove to the court that the owners had been engaged in rebellion in order to deprive them of their title.[104] The Governor might set apart reserves for 'rebel' Maori out of that land which had become Crown land (s 6). The Governor might also set apart land for towns and reserve land for public utility (s 7). All land not reserved could be sold or let subject to terms and regulations set by the Governor in Council (s 8). Money arising from the sale of land in the district under the provisions of the Act was to be paid to the Colonial Treasurer, and would be 'applied towards meeting the expenses incurred in suppressing the rebellion' (s 9).

The Act made no provision for setting aside lands for military settlers or for transferring confiscated lands to 'loyal' Maori by way of remuneration for their services – the two things Richmond later stated that the Act was intended to do.[105] There were two immediate problems with the East Coast Land Titles Investigation Act 1866 that were to cause problems in 1867, and would lead to its amendment. Firstly, section 2 contained a drafting error that caused the Act to 'include' rather than 'exclude' all those engaged in rebellion as defined in section 5 of the New Zealand Settlements Act 1863. Secondly, in the schedule to the Act, the boundaries of its operation were said to be from 'Lottery Point' (Lottin Point) to the northern boundary of Hawke's Bay, to Maunga Haruru Range, and then in a line to Haurangi, to Purorangi, Hikurangi, and back to 'Lottery Point'. Lottery Point was non-existent, and Chief Judge Fenton reported to Richmond in July 1867 that Haurangi and Purorangi were unknown.[106]

There were more serious problems with the Act, however, and these became evident during 1867. Many in Turanga who had been labelled either 'loyal' or 'rebel' during the East Coast wars were closely related and had common interests in land. If only the land of 'rebels' was to be taken by the Crown, these lands would be peppered throughout the district in small blocks of varying quality. This would make the settlement of the area by military and other settlers a costly and difficult task, especially as much of the land on the East Coast was suitable only for larger pastoral holdings.[107] In addition, Poverty Bay Maori had never seen themselves in the absolute terms of 'loyal' or 'disloyal' foisted upon them by the wars, and as time went on, kinship links and common interests in retaining the land came to the fore once again.[108] The successful working of the Act of 1866 relied on the

102. East Coast Land Titles Investigation Act 1866; O'Malley, pp 57–58
103. O'Malley, p 56
104. Ibid, p 57
105. O'Malley, p 58
106. Fenton to Richmond, Auckland 11 July 1867, 'Correspondence between the Government and Judges of the Native Lands Court on the subject of the Sitting of the Court at Turanganui', AJHR, 1867, A-10d, p 4
107. O'Malley, p 80

willingness of Maori to provide accurate information on both customary ownership and their status as 'rebel' or 'loyal'. If they showed any disinclination to provide such information the process could not continue. There was such a disinclination, and it was caused by several things: the long wait for the land question to be settled; the activities of Reginald Biggs; and the inability of the Native Land Court to operate successfully at Poverty Bay.

Apparently the issue of the oil springs assumed less importance during 1867 because the process of deep boring that would be necessary to attain the oil was proven to be uneconomic.[109] There was still an eagerness for the Native Land Court to sit at Poverty Bay as many Maori wished to obtain Crown-granted title to their land. Nevertheless, they did not wish to provide the type of information required by Biggs, nor did they wish to facilitate the confiscation of their lands by the Government. Maori wanted the court to sit, but not as a means of depriving them of their land under the terms of the East Coast Land Titles Investigation Act.

3.8 REGINALD BIGGS AND THE ADMINISTRATION OF THE EAST COAST LAND TITLES INVESTIGATION ACT

Biggs had fought in Poverty Bay with the Hawke's Bay Volunteers during 1865. In November 1866, Captain Biggs was appointed as Crown agent on the East Coast to administer the confiscation of lands under the East Coast Land Titles Investigation Act. From 25 January 1867 he was also resident magistrate at Poverty Bay.[110] Biggs was involved in the decision to exile 'rebel' Maori from Turanga in 1865. This involvement, and his later advice to McLean in 1867 that the prisoners should not be allowed to return to their homes until confiscation of their lands was complete, almost certainly cost him his life on 10 December 1868 at the hand of Te Kooti. Biggs's appointment effectively superseded the authority of McLean on the East Coast, although the latter continued to have a considerable amount of influence there, and Biggs continued to consult him both officially and in a semi-private capacity. He was instructed to ascertain the names of all tribes entitled to land within the boundaries mentioned in the schedule to the East Coast Land Titles Investigation Act, and to supervise a survey of the area. Samuel Locke was appointed to conduct this survey.[111]

At this time the northern East Coast and Poverty Bay were essentially unmapped. Locke employed W A Graham as his assistant, and proceeded to survey the area systematically. Some areas had been surveyed during 1866, notably the oil bearing block Te Pakake a Whirikoka, surveyed by W F A McDonald, that was (strangely, considering the desire of both the general Government and Whitaker for its confiscation) outside the block as defined by the schedule to the East Coast Land Titles Investigation Act. During 1867, the 'confiscation boundary' was surveyed,

108. Binney, p 61
109. O'Malley, pp 75–76
110. Reginald Newton Biggs in *Dictionary of New Zealand Biography* vol 1, 1769–1869, Wellington, Allen and Unwin/Department of Internal Affairs, 1990, pp 29–30
111. Hall, sec 4.1

and the outer boundary was based on the 'outer limits of land to be claimed, as they progressively came into view'. Thus, in the case of Pukepapa, the furthest block to the north-west, its boundary ran along a tributary of the Waipaoa River. Perimeter surveys were completed first, and later those of individual blocks. The survey was begun at the northern end of the confiscation boundaries and was apparently 'undefined' to the south. The survey ordered by Biggs was stopped before July 1867, when a claim for the work completed was rendered to the Government for payment.[112] Biggs, in a letter to McLean, wrote that:

> The loyal natives are now getting their own (and a good deal of hauhau too) land surveyed. The Govt Surveying has been stopped for a time, but the surveyors have plenty of work to keep them employed for some time.[113]

Local Gisborne historian Robert de Zouche Hall has written that no precise evidence exists for what point the Government survey had got to at the time of its discontinuation. There is also no reference to the work having been resumed until 1869, when O L W Bousfield was employed to complete surveys of all claims south of the tribal boundary between Te Aitanga a Mahaki and Rongowhakaata, in preparation for the sitting of the Poverty Bay Commission in that year. In Hall's opinion it is doubtful whether the southern boundary of the confiscation area, set out in the schedule to the East Coast Land Titles Investigation Act, was ever surveyed as the Government survey was discontinued in 1867, and the final survey work completed by Locke and Graham was only to the southern limits of the blocks on which local Maori had lodged claims.[114]

O'Malley believes that Biggs clearly used 'the threat of coercion' in attempts to persuade Maori to cede their lands to the Crown.[115] Biggs was admittedly being pressured to achieve the desired result as speedily as possible, as long delays in implementing confiscation had caused opposition to the idea to intensify among both 'loyal' and 'rebel' groups. Biggs began to prepare for the confiscation of 'rebel' lands in Poverty Bay, hoping to be ready for the Native Land Court to sit under the provisions of the East Coast Land Titles Investigation Act as soon as possible. It became obvious very quickly, however, that such a cession would not be easy. He wrote to Halse in January that:

> The claims of the loyal and rebel natives are so mixed up that it is next to impossible to point out a single spot that belongs to either and when it is remembered that in the war on the East Coast that the nearest relations were fighting one against the other it must be evident that the difficulty of separating loyal from rebel land will be very great if indeed to be accomplished at all.[116]

It was Biggs's recommendation that the Government confiscate one large block and compensate loyal Maori with interests in the block if necessary. He advocated

112. Hall, sec 5.1
113. Biggs to McLean, 17 July 1867, cited in Hall, sec 5.1
114. Hall, sec 5.2 ,5.3
115. O'Malley, p 82
116. Biggs to Halse, 6 January 1867, MA 62/8, RDB, vol 131, pp 50394–50395

taking most of the district's agricultural land, the oil springs and a large portion of the land suitable for sheep-runs. Unfortunately, though, much of the block he thought the Government should take was not included in the boundaries set out in the schedule to the East Coast Land Titles Investigation Act.[117] On 4 February 1867, the Government suspended the operation of the Native Lands Act in Poverty Bay (under s 18 of the Native Lands Act 1866) until the schedule was amended to include these lands. Biggs instructed Locke to extend the surveys outside the boundaries given in the schedule in preparation for their inclusion in an amendment to the Act.[118]

At a meeting held on 12 April at Turanga, J C Richmond, Native Minister, suggested that a committee of six chiefs, representing the major hapu, should discuss the matter of land to be confiscated in the presence of Biggs. He informed the chiefs that if they did not cooperate, 'a harder law', presumably the New Zealand Settlements Act, would have to be used in their case.[119] According to James Wyllie, the offer of 3000 acres which had been made in December, was now increased to 60,000 acres of good agricultural land east of the Waipaoa River.[120] Biggs, however, did not find this acceptable and insisted on nothing less than 200,000 acres on both sides of the Waipaoa River.[121] This caused several 'friendly' Maori to complain (Paratene Turangi and others to Richmond, and Wi Pere and others to Grey) that Biggs had refused their offer and was demanding the lands of loyal Maori.[122] This caused even local settler J W Harris to comment to McLean that Biggs put loyalists on almost the same footing as Hauhau, and he considered him 'rather *too* unyielding [emphasis in original]'.[123] Biggs felt that he was being more than fair in these demands, and as Poverty Bay Maori were not willing to cooperate with the Government under the East Coast Land Titles Investigation Act, he suggested bringing the district under the New Zealand Settlements Act. Richmond agreed that the Act would be unworkable in the face of Maori opposition, and in a memorandum to Cabinet in April 1867, he suggested the implementation of the Settlements Act in order to attain the land required in the district for the immediate settlement of members of the Napier Defence Force. An Order in Council was prepared but was never put into effect, and Biggs's negotiations continued in the face of considerable opposition.

A sitting of the Native Land Court was scheduled for Turanganui on 3 July 1867, and Biggs reported that the prospect of the sitting had discouraged 'friendly' Maori from entering into any agreement with him as they hoped to secure Hauhau lands for themselves. In addition, he stated that they refused to give him the necessary information on customary ownership of the lands, and were now demanding that the Government pay for the oil spring sites and for land for the proposed township

117. O'Malley, p 83
118. Ibid, p 84
119. Ibid, p 91
120. Wyllie, letter, *Daily Southern Cross*, 22 May 1867, cited in O'Malley, p 91
121. Biggs to Native Minister, 20 April 1867, 'Poverty Bay Commission Inwards Correspondence', MA 62/8, RDB, vol 131, p 50373, cited in O'Malley, p 91
122. Wi Pere et al. To Grey, 19 April 1867, MA 62/8, RDB, vol 131, pp 50356–50357 and Paratene Turangi et al. To Richmond, 20 April 1867, MA 62/8, RDB, vol 131, p 50364, cited in O'Malley, p 91
123. Harris to Maclean, 20 April 1867, McLean Papers, ATL, cited in O'Malley, pp 91–92

at Turanganui.[124] The court, with Judge H A H Monro presiding, opened on 3 July, but it was necessary to adjourn until the following day when Biggs was due to arrive. Monro apparently reported to Fenton that about 500 Maori had assembled for the sitting and 'presented a scene of drunken riot'.[125] When the court again sat on 4 July, Biggs applied for an adjournment until the clerical error in section 2 of the East Coast Land Titles Investigation Act could be amended. He also claimed that he needed time to gather more evidence as Maori were withholding vital information from him, and he would now have to get it from those imprisoned on the Chatham Islands.[126]

Preece, who appeared as agent for some of the 'friendly' of Te Aitanga a Mahaki, claimed costs for his clients as the flaw in the Act was no fault of theirs, and also commented that as Biggs had been Crown agent on the East Coast for some eight months, the Government had been given ample time to collect evidence for their case. Monro was in agreement, and awarded costs to Te Aitanga a Mahaki and to some of Te Aitanga a Hauiti, for whom Rice appeared, but granted an adjournment of the court *sine die*, on the grounds of the error in the Act.[127] Although Preece made much of his clients having assembled for a sitting of the court only for it to be adjourned because of the failures of the Government, Hall reveals that Preece was not ready either, as there is no sign in the record of any claim within the Government survey boundary at that time. Cases to be heard involved the oil-bearing lands of Te Pakeke a Whirikoka, some land near Muriwai, William Greene's claim on Te Arakari near the mouth of the Waipaoa River, and Keita Wyllie's claim to Pukewhinau.[128]

In closing, Monro felt it necessary to attempt an explanation of the reasons for the adjournment to those Maori who had come to the court and had been confronted by obstacles to their having title to their lands secured for a third time. Monro's rather controversial public comments sparked off a debate in the House over the reasons for the court's adjournment and the East Coast land question.[129] Monro addressed the court to the effect that the Government had begun to survey land for the purposes of military settlement without reference to the owners of the land, while Maori had been prevented from carrying out surveys of land they wished to bring before the Native Land Court. He then spoke directly to those Maori present, stating that he had heard that Maori on the East Coast were told the 'Kooti Tango Whenua' (land-taking court) was to visit Poverty Bay, but that the present court was not the land-taking Compensation Court, even though its role was slightly different than in the north where it simply dealt with title to native land. He said that those Maori who had not engaged in rebellion would have their title awarded 'in

124. Biggs to Native Under Secretary, 7 June 1867, MA 62/8, RDB, vol 131, pp 50310, 50312, 50314
125. Fenton to Richmond, Auckland 11 July 1867, 'Correspondence between the Government and Judges of the Native Lands Court on the Subject of the Sitting of the Court at Turanganui', AJHR, 1867, A-10d, p 4
126. Monro to Fenton, Auckland 25 July 1867, AJHR, 1867, A-10d, p 4
127. Monro to Fenton, Auckland 25 July 1867, AJHR, 1867, A-10d, p 4; Report of Sittings of the Native Lands Court (from *Daily Southern Cross*, amended by Monro), AJHR, 1867, A-10d, p 6
128. Hall, sec 6.2
129. AJHR, 1867, A-10d, p 6; House of Representatives, 18 September 1867, NZPD, 1867, vol 1, pt ii, pp 950–960

proportion to the amount of land they were entitled to where it was jointly owned with rebels, who were to be deprived of their lands'.[130]

Richmond subsequently refused to pay the costs awarded to claimants by Monro, stating that the judge had exceeded his powers in so doing and in making a promise that no further adjournment of the court would take place on the East Coast, and he suggested that Monro liquidate the amounts himself.[131] Richmond severely rebuked the judge for his comments, stating that he was surprised at Monro's indiscretion in light of his 'familiarity with Maori tempers and modes of thought, but most of all, to the difficulties in pacifying the country to which you have been a witness'.[132] He continued:

> The Native Lands Court is not a proper place for indicating or promoting political opinions of any sort. The whole tone of your address is highly objectionable, as attempting to draw deep the distinction between the Court and the Government, with a view to extol the former at the expense of the latter . . . The Government do not discuss opinions as to their general conduct with respect to the East Coast Titles, and to their industry or otherwise in bringing them before the Court, opinions which you, as a Judge, seem to have expressed without a particle of evidence on the subject . . . I must also point out the gross impropriety of the implied statement that there is any Court properly called the 'Land-taking Court'. If any Court could be properly so called it would be precisely the Native Land Court, sitting under the East Coast Lands Titles Investigation Act, in which you were presiding. [133]

Richmond later came under attack in the House for his censure of the Native Land Court judge, and was forced to defend himself by stating that there was a Maori conspiracy to defeat the Legislature's policy which Monro's comments had only aided. He stated before the assembly that:

> The affairs of the East Coast were in a state of especial confusion, not by the fault of the Government, but through the conduct of the inhabitants, and . . . any loyal person, well acquainted with the affairs of the country, would have hesitated before allowing himself to bring the Government of the Colony into disrepute.[134]

Monro had reported that at the close of the court, Maori had held a meeting to get together a petition on the subject of the court's adjournment. This petition, signed by 256 Turanga Maori, was before the Public Petitions Committee by September, and the Government would again be forced to defend themselves in the face of this criticism.

The petition, dated 9 July 1867, stated that Maori of Poverty Bay had not received any notification of the Government's intention to take their land at the cessation of hostilities in 1865 to 1866. They had assumed that punishment would consist of the deaths of their kin and the exile of prisoners, and lamented that:

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130. AJHR, 1867, A-10d, p 7
131. Richmond to Monro, 21 August 1867, AJHR, 1867, A-10d, p 8
132. Ibid, p 7
133. Ibid, pp 7–8
134. NZPD, 1867, vol 1, pt ii, p 957

> the blood shed has long since dried, during the two years which have passed; yet the word of the Government, that we are to be deprived of our lands, has only now come forth.[135]

The petitioners explained that they had assembled on two separate occasions in 1866 for the sitting of the Native Land Court, and only after the adjournment of the October 1866 sitting did it become clear that the land was to be taken from them. Complaining of the conduct of Biggs they stated that:

> Captain Biggs was urgent in asking us to consent to our land being ceded; then we consented to hand over a piece of land, it was a very large piece, leaving a piece for ourselves much smaller as compared with the other, the greater proportion of which belonged to ourselves, the Government Natives. But we gave our consent only because we were wearied at his constantly teasing us, and because of the many intimidating words of the Government used towards us; but he was not satisfied with what we had agreed to. What he wanted was, to get all the level country, and we might perch ourselves on the mountains. Thereupon we told him it must be left to the Land Court to give us relief; then he replied, he would bring the land-taking Court. This was the first time we had heard such a name for the Court and we were surprised . . . our Chiefs seek counsel from you to give us some relief, and save our lands.[136]

The Public Petitions Committee reported that it felt it was in the interests of the Colony that there be no further delay in deciding the lands to be forfeited to the Crown, and that the Native Land Court should be allowed to sit in the district as soon as possible. Apparently the committee had been given the impression that there were many Europeans eager to settle in Poverty Bay.[137]

3.9 THE EAST COAST LAND TITLES INVESTIGATION ACT AMENDMENT ACT 1867: OPPOSITION TO THE LEGISLATION

A Bill to amend the East Coast Land Titles Investigation Act was brought before the House at the end of August 1867. The only changes to the original Act were the correction of the error in clause 2 and an amended schedule, which now included the Waipaoa Valley within the boundaries of the Act's operation. This passed into law on 10 October 1867.[138] In the debate over the Bill an opportunity was taken by supporters of McLean to criticise Biggs's administration of the Act, and to suggest that if McLean had been left to handle the Government's affairs on the East Coast the whole question would have been settled 18 months previously. There were calls for the reappointment of McLean to negotiate a cession of lands on behalf of the Government.[139] Clearly recognising that Maori were unlikely to cooperate with

135. Petition no 9, Petitions Presented to The House of Representatives and Ordered to be Printed', AJHR, 1867, G-1, p 10
136. Ibid, p 10
137. Report of Public Petitions Committee, Petition no 9 1867, Le/1867, cited in Hall, sec 6.3
138. East Coast Land Titles Investigation Act Amendment Act 1867

Biggs on account of his 'bullying', the Government called in McLean to effect a settlement.[140]

At a meeting at Turanganui on 27 February, McLean made an unsuccessful attempt to get chiefs to cede a single block of land to the Crown in lieu of the Government's claims under the East Coast Land Titles Investigation Act.[141] Wi Pere and others still refused to agree to such a cession as it would be to the detriment of 'loyal' Maori. Speakers informed McLean that although they might once have agreed to such a proposal under pressure, they would no longer do so.[142] One speaker expressed the underlying sentiment thus:

> I will not let the land go – the time was when the fire was burning – now that the sore is healed – no. If you take the land, where are we to live.[143]

Hall has commented that this was hardly the time for the Government to attempt to achieve the result they hoped for by 'brow-beating', as the Native Land Court was scheduled to sit again in March under Judge G E Maning.[144] At this meeting, however, McLean did manage to secure for the Government 1000 acres for the purposes of establishing a township at Turanganui. A cession for this purpose had been considered over the course of a year and the block now ceded was a much smaller area than that put forward by Biggs in 1867.[145] The Government now agreed to pay £2000 for the township site, but no other cession of land was agreed to by the chiefs assembled.[146]

The Native Land Court sat again in March, by which time many East Coast Maori had decided to boycott the court as long as the East Coast Land Titles Investigation Act remained in force. Biggs began by applying for the court to investigate all claims within the boundaries given in the schedule to the Act Amendment Act 1867, but Judge Maning refused on the grounds that only those blocks advertised in the *Kahiti* were able to be heard at that time. Nevertheless, 72 of the 104 claims advertised were now withdrawn by Preece who stated that the claimants had no confidence in the Native Land Court sitting under the East Coast Land Titles Investigation Act.[147] Only four claims were actually heard by the court. When Turanganui 2, the block which the Government had just arranged to purchase for a township, came before the court Biggs presented the agreement and called witnesses to prove title. Judge Maning stated that this was not native land within the definition of the Native Lands Act 1865. The East Coast legislation was examined by the judge, who stated that it covered aboriginal and other British subjects, but that the agreement presented by Biggs was in favour of the Queen who was not herself a subject. Therefore the court could not consider the case.[148]

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139. House of Representatives, 10 September 1867, NZPD, pp 869–870
140. O'Malley, p 99
141. W L Williams, *East Coast Historical Records*, p 54
142. O'Malley, p 100
143. Hall, cited in AGG/HB, 2a, NA, sec 7.1
144. Ibid
145. Ibid
146. W L Williams, p 55; O'Malley, p 100
147. Native Land Court, Gisborne Minute Book, no 1, p 1, (Micro-ms 06–019, ATL), cited in O'Malley, p 100

As in 1867, the March 1868 sitting of the Native Land Court was followed by petitions from Maori of Poverty Bay and Waiapu. That Maori now refused to submit claims for investigation by the court was in marked contrast to their previous complaints that the Government was stopping them from doing so. Biggs, in letters to McLean during March, expressed the view that Preece and others were arranging petitions in order to prevent the Native Land Court from sitting until the General Assembly brought in legislation to the effect that no land should be taken on the East Coast. In the opinion of Biggs, it would now be a great injustice if land was not taken from Turanga Maori, despite the long delay in doing so, considering that land had already been ceded to the Crown in Wairoa 'where the rebels were not nearly so bad as these people'.[149]

The first of the petitions, from Maori of Turanga, was sent with a covering letter by Preece, who commented that the East Coast Land Titles Investigation Act 1866 and the East Coast Land Titles Investigation Act Amendment Act 1867 were 'repugnant to the most explicit and repeated instructions' of the British Sovereign. He also wrote that the Acts affected the private property of individuals, and had never been referred to the Crown for royal assent. Furthermore, wrote Preece, since 1866, Government agents had endeavoured to get Maori to cede a block to them knowing, presumably, that their title would be doubtful if obtained under the Acts mentioned.[150] In addition, he called the Governor's attention to the 'fact' that:

> a member of the Ministry went himself to the district and made demands on the Natives for land, threatening them with confiscation if they would not come to terms, and that nothing would satisfy them but to get the whole of the level land in the district, – a block well worth having, but not by such means; that the Natives would not accede to such demands, firstly because they were promised that no land in the district should be confiscated, and secondly because even if any ought to be taken, a large portion of the best of the block which the Government wanted belonged to persons who had never in any way engaged in the war. I would further state, that for the last twelve months the Natives in this district have been threatened with the New Zealand Settlements Act, and other proceedings, if they would not agree to give up the land wanted; they have been importuned and tormented in every possible way to come to terms, and agree to cede a particular block of land to the Government.[151]

In conclusion, Preece asked that the provisions of the East Coast Land Titles Investigation Amendment Act 1867 no longer be insisted upon, and that the Native Land Court be allowed to determine title of Maori land on the East Coast under the normal operation of the Native Land Acts.[152]

The petition itself, signed by Wi Haronga and over 100 others, complained that the prisoners taken from Poverty Bay had now been on the Chatham Islands for two and a half years, and some had died there. The petitioners felt that the Hauhaus had

148. Hall, sec 7.2
149. Biggs to McLean, 14 March 1868 and 27 March 1868, McLean Papers, private, ATL, cited in O'Malley, p 102
150. 'Petitions from East Coast Natives Relative to their Lands', AJHR, 1868, A–16, p 3
151. Ibid
152. Ibid, p 4

been severely punished, especially considering that they had committed no murders, and the disturbance in Poverty Bay had 'only lasted one week and ended for ever.' They stated that it was not until they made application to the land court to have their titles investigated that the Government sought to interfere with their lands. They wished to know why both Hauhau and loyalists in Turanga were to be so severely punished, and why land should be taken from them when 'the sin of the people has been long ago atoned'.[153] A second petition was signed by 1097 Maori from along the East Coast who complained that the 'fighting took place in times past', and that it had been Maori who had crushed the rebellion rather than the Pakeha unaided. The Government had 'tried coaxing, intimidation, and innumerable other artifices' to get Maori to give up their lands, but the petitioners did not believe they should be so punished. They requested that the Native Land Court should not operate under the East Coast Land Titles Investigation Act, but rather in its normal capacity on the East Coast. [154]

3.10 THE EAST COAST ACT 1868

Hugh Carleton moved that the East Coast Land Titles Investigation Act be repealed and introduced a Bill to that effect in August 1868. He believed that the numerously-signed petitions from Maori of the East Coast warranted the repeal of the Act, and stated his reasons for requesting this.[155] Firstly, he felt that if land was to have been confiscated this should have occurred long since, as Maori had now reoccupied their land, and it had been three years since the war which had lasted, in Poverty Bay, only one week. He observed that 'those people who had engaged in the rebellion had been more severely punished than any rebels in any other quarter of the island' by their incarceration on the Chatham Islands.[156] In addition:

> An Act was passed which made the very tribunal which the Natives had appealed to – the Native Lands Court – an instrument whereby the Government would obtain very large tracts of land; thereby confiscating by a side-wind, in direct opposition to the instructions of the Imperial Government, and in spite of an asserted promise made by the Governor that no land should be taken . . . [157]

Governor Grey had apparently made this promise in Poverty Bay early in 1866 when he visited the area with Te Ua.[158]

In response, Richmond argued that the Governor had never made such a promise to Maori at Poverty Bay, and that the Government had always intended the confiscation of 'rebel' lands, but this could not be done in the face of opposition by

153. Ibid, pp 5–6
154. Ibid, p 11 (Petition no 2 – Karauria Parura and others)
155. 19 August 1868, NZPD, 1868, pp 517–518
156. 26 August 1868, NZPD, 1868, p 39
157. Ibid
158. Ibid, p 38

friendly Maori in the district.[159] The Act, he admitted, had one serious fault in that it:

> attempted in an indirect manner to effect that which could only be treated as confiscation . . . No doubt it was an euphemistic Bill, inasmuch as it attempted to cover by a pretty name that which was absolutely confiscation.[160]

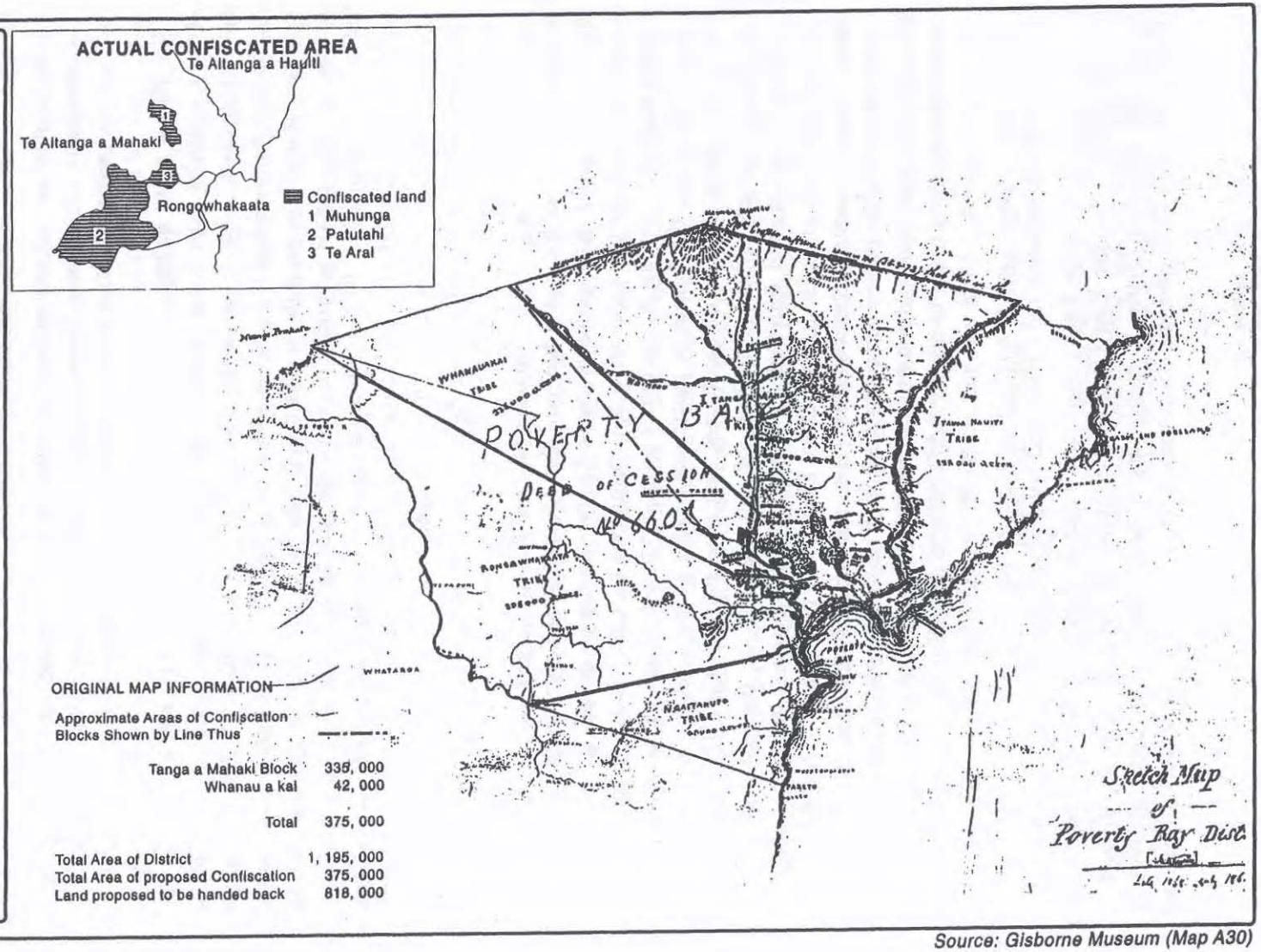
If the House were to repeal the Act, however, Richmond believed it would then have to consider how to compensate loyal Maori, and also what to do with the military settlers who were to be placed on the land. He felt that the Maori opposition expressed in the petitions was the result of 'land jobbers' and 'political peddlers' misinterpreting the legislation to Maori, in the hope of gaining land for themselves. For the Government to repeal the Act, he said, would be like 'retreating before a victorious foe'.[161] In Carleton's opinion, however, the Government's claim that they only wished to open up the district by peaceable means was 'called in common parlance "begging with a bludgeon"', and involved Maori being threatened with the 'Confiscation Act' if they would not cede their lands to the Crown. [162]

A number of members seem to have felt that a settlement of the land question on the East Coast was long overdue, and that Government policy in the area should indeed be revisited. Richmond succeeded in having the proposals for the repeal of the Act shelved on the basis of a Bill furnished by Chief Judge Fenton, which differed from the existing Act in that it proposed that a certificate of title be issued to loyal Maori for the whole of particular blocks where some of the owners had been in rebellion. The court would not be called upon to hand land over to the Government except where rebellion of the majority of the tribe made this expedient.[163] Richmond felt that the essence of the original Act remained, but would be less objectionable to East Coast Maori, and would help to 'disabuse their minds of the misconceptions they entertain as to the intentions of the Government'.[164] The policy of seeking cessions of land on the Coast was not to be abandoned though, and Richmond announced his intention to ask McLean to visit Poverty Bay again in order to obtain such a cession on behalf of the Government.[165]

The East Coast Act 1868 was passed on 20 October 1868. Under the provisions of the Act, the Native Land Court had the discretionary power to continue to divide the land of rebels between the Crown and loyal Maori, as it had been empowered to do under section 3c of the East Coast Land Titles Investigation Act, if it chose to do so.[166] Section 4(1) of the East Coast Act allowed the court to issue certificates of title for the whole of claims to customary owners who had not been involved in rebellion. Section 4(2) gave the court the discretion to issue title to part of the land

159. 3 September 1868, NZPD, 1868, p 149
160. 19 August 1868, NZPD, 1868, p 518
161. Ibid, pp 518–519
162. 3 September 1868, NZPD, 1868, p 158
163. O'Malley, pp 106–107
164. 3 September 1868, NZPD, 1868, p 146
165. Ibid, p 146
166. O'Malley, p 108

FIGURE 2: POVERTY BAY COMMISSION SKETCH MAP 1868 - 1869



Source: Gisborne Museum (Map A30)

to loyal Maori, and then to issue a separate title stating that this was land to which rebels, as defined by section 5 of the New Zealand Settlements Act, were previously entitled. Under section 5 of the Act, these would then become Crown lands.[167] Under the provisions of the new Act, rebels were still to lose their lands entirely, while the lands of loyal Maori were no more guaranteed to them than they had been under the repealed East Coast Land Titles Investigation Act. The Government had, however, stated its policy to pursue 'voluntary' cessions in the district rather than to claim the land under the law.[168] Events in Poverty Bay in the latter part of 1868 would provide an excellent opportunity for the Government to regain the upper hand in their negotiations with local Maori for such a cession.

3.11 TE KOOTI AND THE ATTACK ON POVERTY BAY

Te Kooti Arikirangi was part of the contingent of Rongowhakaata who fought on the Government side during the siege at Waerenga a Hika in 1865. Arrested on suspicion of spying at that time, he was again seized on 3 March 1866 and detained in Napier. Despite letters protesting his innocence and repeated requests for a trial, he was shipped along with other Rongowhakaata prisoners to Wharekauri (the Chatham Islands) on 5 June 1866. The exile of Te Kooti was urged by settlers such as G E Read and J W Harris, who wished to eliminate the competition he gave them through his independent trading activities. There was also some considerable dispute over lands at Matawhero, partly claimed by Harris, which would have given him reason for urging that Te Kooti be detained. There were also those among the Kawanatanga Maori of his own tribe who had personal reasons for desiring his exile, and these attitudes were conveyed to McLean and Biggs. Biggs was in Napier during early June, and insisted on the exile of all those Rongowhakaata still being held there as he was eager to be rid of 'potential troublemakers'. Te Kooti blamed Biggs for his exile and remembered with bitterness all of those, both European and Maori, who had been personally involved in the events leading to his imprisonment.[169]

It had originally been proposed that the prisoners would be returned within the space of one or perhaps two years, and a promise to this effect was verbally given to the exiles, as well as to the loyal chiefs who agreed to the imprisonment of their kin.[170] Biggs wrote to McLean in June 1867, informing him that he was encountering considerable obstruction on the part of Turanga Maori to his attempts to discover the names of those previously entitled to the land to be confiscated. He therefore advised that the return of the prisoners should be delayed until these difficulties had been overcome, and confiscation could be carried out.[171] On the basis of this advice it was decided by McLean that the exiles should remain on the

167. East Coast Act 1868
168. O'Malley, p 109
169. Binney, pp 54, 59, 62; O'Malley, p 111
170. Mackay, *Historic Poverty Bay*, pp 233–234
171. Biggs to McLean, 13 June 1867, 'Papers Relative to Prisoners and Guard at the Chatham Islands', AJHR,1868, A-15e, p 19; Binney, p 71

Chatham Islands for an indefinite period. The knowledge that they were not to be released, as promised, until their lands had been taken from them apparently increased the following of the millenarian faith that Te Kooti had founded on the island; the teachings of which were based on an identification with the Israelites and their deliverance from bondage in the Old Testament. By the end of 1867, Te Kooti had become the acknowledged leader of the disenchanted prisoners and his religious teachings provided the basis for their rebellion against captivity.[172] On 4 July, they captured the supply ship the *Rifleman* and sailed for Turanga, reaching Whareongaonga, south of Poverty Bay, on 10 July.[173]

On 12 July, messengers Paora Kate, Wi Mahuika, and senior chief Renata Whakaari were sent by Biggs to demand that the escapees surrender unconditionally, give up their arms and wait for the Government to decide on their future. Te Kooti made it clear that they would not surrender their arms, but wished only to travel peaceably through to Waikato, and would only fight if pursued and attacked.[174] The party left Whareongaonga on 14 July on the journey to Waikato, where Te Kooti proposed to dethrone the Maori King who was not the chosen of the Atua.[175] According to Williams, the 'friendly' Maori had informed Biggs that Te Kooti might have it in mind to come down the Te Arai River and 'cause trouble' in Poverty Bay.[176] Without waiting for advice on an appropriate course of action, Biggs moved to intercept Te Kooti, sending a force of 66 Europeans under Captain Charles Westrup to Paparatu, on the Te Arai River.[177] Te Kooti and the chiefs with him decided it would be necessary to fight, and ambushed the waiting army on 20 July, forcing them to retreat. A party of recruits from the hapu of Ngati Maru, led by Tamihana Ruatapu, apparently refused to come to the aid of the Government men, demonstrating a passive support for their kin that was relatively widespread amongst Rongowhakaata.[178]

There were further military engagements between the Government troops and Te Kooti's party at Te Koneke on 24 July, and at Ruakituri on 8 August; in both Te Kooti was successful[179]. He built a pa at Puketapu on the Ruakituri River and was there joined by upper Wairoa chiefs Te Waru and Nama, along with some of their followers. These chiefs wished to demonstrate their opposition to the confiscations in upper Wairoa, which Biggs had arranged. Specifically two blocks of Te Waru's tribal lands, Ruakituri and Waiau had not been returned as promised by the Crown after the settlement of 5 April 1867. The Government now attempted to negotiate with Te Kooti for his surrender and that of his followers, telling him that no further

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172. Binney, pp 70–72; O'Malley, p 111
173. Mackay, p 237; Williams, p 58. According to Judith Binney (p 86) landfall was made on the evening of Thursday 9 July.
174. Binney, p 90; Mackay, p 238
175. Binney, p 92; Cowan p 235
176. Williams, p 58
177. O'Malley, p 111; Binney, p 95
178. Binney, pp 95–96
179. Full, if somewhat biased, accounts of the pursuit of Te Kooti, the reprisal raid of November, and the siege at Nga Tapa are given in Mackay, *Historic Poverty Bay*; Cowan, chs 24,25, 28: Porter, *History of the Early Days of Poverty Bay*; and Williams, *East Coast Historical Records.* More contemporary appraisals of the events are to be found in Binney, *Redemption Songs*; and Belich, *The New Zealand Wars.*

action would be taken against them if they surrendered, and that some land would be found for them to live on wherever it could be obtained.[180] As he had been previously informed of plans to attack the stronghold at Puketapu, and possibly also considering the insult contained in the proposal to find lands for them to live on that were not necessarily their own, Te Kooti did not agree to these terms. In the opinion of Binney, land issues underlay all of the conflicts entered into at this time, and Te Kooti would have been aware of the pressure being put on Poverty Bay for the confiscation of his own and his followers' lands. It was this knowledge, and the fact that by October he was encircled at Puketapu (unable to proceed into Tuhoe lands without their consent and support – which they would not give until March 1869 – and inviting certain conflict with the Kingitanga if he entered the Rohe Potae) that led to his decision to return to Poverty Bay and 'reclaim the land'.[181]

Judith Binney has put forward a convincing argument for the idea that the murders of Europeans committed by Te Kooti and his followers (a party of around 250) between 10 and 14 November 1868 were specific executions of people, targeted either because of their military roles, and their involvement in the killing and exile of prisoners, or because they were living on land at Matawhero. These were Te Kooti's own lands, and the subject of a long and bitter dispute prior to his exile. Those Maori killed had been personally involved in his exile, or had taken the opportunity during his absence to dispossess him of his lands by attempting to sell them and cooperating with the Government over the land issue.[182]

During his exile both Captain Read and Biggs had taken land which Te Kooti had lived on and cultivated. Te Kooti and his brother Komene had earlier opposed Read's claims to Matawhero land.[183] There was conflict between Read and William Greene over a disputed boundary and also within Rongowhakaata over ownership and the right to transfer lands. Some land was 'sold' as soon as those who had objected were sent away to Wharekauri. A deed for the sale of a piece of land shows the sellers as Ngati Porou leader Mokena Kohere, Renata Ngarangi, and Piripi Taketake, husband of Harata Pohuru. These last two had laid claim to the block urged on by Read, but later sold it to Greene for £10 although they did not have legitimate interests.[184] As a result they were both killed by Te Kooti on 10 November. In addition, a 30-acre section in Read's Matawhero iv block of 319 acres (an old land claim) was contested by Te Kooti who denied the validity of the sale. This conflict had led to the raids on Thomas Bloomfield's home and cattle on the block, events given by Harris as reasons for the exile of both Te Kooti and his brother. Harris was himself involved in the dispute as Read had purchased half of Matawhero iv from Harris and his sons, knowing of the disputed component of Otoma. This was one of the blocks of which the 'sale' was repudiated in 1859 before Commissioner Bell.[185] Binney writes that the suppression of ownership

180. Binney, p 97, pp 99–100
181. Ibid, pp 97, 100, 103, 105
182. Ibid, pp 129–130
183. Ibid, pp 106–107
184. Ibid, pp 108–109
185. Ibid, p 109

rights of ‘rebels’ before the Poverty Bay Commission in 1869 served to further obscure the involvement of Te Kooti with the Matawhero lands.[186]

The events of 10 to 14 November unfolded in the following way. In the early hours of 10 November, two separate parties attacked the homes of Wilson and Biggs, both on disputed land at Matawhero. Thirty Europeans and part-Maori were killed on the Matawhero lands. There were also two men killed on leased land north-west of Patutahi Ford, in which Te Kooti could claim an interest. Houses on all of these properties were set on fire. Twenty-two Maori were also killed for specific reasons, mostly involving the attempted sale of disputed lands or because they had attempted to take such lands through the Native Land Court.[187] On 14 November, chief Paratene Pototi, Kawanatanga chief who had been actively involved in Te Kooti’s exile and had taunted him insultingly with cries of ‘go on the boat’, was executed at Oweta pa along with three other chiefs.[188] Many prisoners were taken over the course of these four days, and when Te Kooti returned inland he took with him 300 prisoners, some of whom were subsequently regarded by the Government as ‘rebels’ on the assumption that they had willingly agreed to go. In the pursuit and attack on Te Kooti at Te Karetu and Nga Tapa which followed, the Government again sought the aid of Ngati Porou and Ngati Kahungunu. This involvement would have an effect on future plans for the confiscation of lands on the East Coast.

A further possible cause Te Kooti might have had for the reprisals was the removal by force of Raharuhi Rukupo’s carved house at Manutuke, Te Hau Ki Turanga, that had been built in the years 1842 to 1843 in memory of Raharuhi’s brother, Tamati Waaka Mangere. This had been the meeting house of Te Kooti’s hapu, Ngati Kaipoho and Ngati Maru.[189] Biggs had arranged for the removal of the house after J C Richmond had visited in March 1867, in an attempt to achieve a possible cession of land in Turanga. According to R de Z Hall, who quotes from an 1888 speech by Richmond, he had attended a meeting of 600 Maori at which he had stated that he ‘promised to abandon any claims the Queen had over their lands on condition that they preserved peace and good order for the future’. After this, as ‘the meeting was in high delight’, he proposed taking the house which he had admired the previous day.[190] Raharuhi Rukupo would not give his consent to Richmond acquiring the house for the Government. In a petition of 8 July 1867, Raharuhi wrote that he did not consent to the taking of the house, but told Richmond it was for all the people to decide, at which point Richmond ceased urging him. Biggs then came to fetch the house, and dismantled it despite Raharuhi’s protests.[191] In answer to the Petitions Committee, Richmond stated that Biggs had paid £100 for the house, and that it could not have been removed without

186. Ibid,p 112
187. Ibid, p 121
188. Ibid, p 126
189. Ibid, pp 114–115
190. R de Z Hall, ‘Te Hau Ki Turanga: A historical re-statement’ unpublished typescript, 1980 (revised 1983), VF 993, Gisborne Museum, p 7
191. ‘Petition no 12, ‘Petition Of Natives At Turanga’, 8 July 1867, AJHR, 1867, G-1, p 12, RDB, vol 20, p 7939

the agreement of the Maori owners. He said further that Mokena Kohere of Ngati Porou had laid claim to the house and agreed to its removal. Mokena had remarked that, in his opinion, Rongowhakaata should not have been paid as all were Hauhau, and the house was 'one of the spoils of victory'. The Petitions Committee report stated that it should not be overlooked that the house and the land on which it stood belonged to rebels, and would be forfeited to the Government.[192] The £100 was paid to 10 unknown Maori, who were not among the crowd of 50 that gathered to protest at the demolition of the house. Captain Fairchild, who supervised the dismantling, later stated that he had taken the house against their will, and that they had come with a bullock team during the night to remove what was left of the house, so he had kept watch to prevent them from doing so.[193] In a telling letter to his sister, Richmond wrote:

> So far my East Coast dealings have not had brilliant success. The only great thing done was the confiscation and carrying off of a beautiful carved house with a military promptitude that will be recorded to my credit.[194]

Whether or not this was directly in the mind of Te Kooti at the time of the attack, it is an indication of the arrogance of Government officials in dealing with Turanga Maori at this time. This attitude would certainly have added to the demoralisation of Maori in this area, and helped to promote their support of Te Kooti.

3.12 THE POVERTY BAY CESSION

The events of November shocked European settlers in all areas, and increased the pressure for the immediate confiscation of 'rebel' lands and pacification of Turanga Maori in the interests of the colony. Many Maori in Poverty Bay were also fearful of further attacks, as the raid by Te Kooti had left nearly 30 Maori dead, and 300 had been taken prisoner. O'Malley believes that this fear led to the agreement to cede their lands to the Crown in return for military protection. Biggs was already writing to McLean in September, after the initial successes of Te Kooti, that the Maori had 'come to their senses' and now seemed eager to arrange a settlement of the land question.[195] Perhaps they also realised that the latest trouble left them with even less power to withstand the Government pressure for a cession of lands that had been unrelenting over the previous year or so. Indeed Biggs had written to McLean on 9 November 1868 that in the next day or two a meeting was planned at which he supposed Turanga Maori were going to agree to cede a significant block of 10,000 to 15,000 acres of flat land to the Government.[196] Apparently, Preece and James Wyllie had now begun to advise the tribes to cede some of their lands in order to finally settle the matter with the Government.[197] On 5 December, Wyllie

192. R de Z Hall, 'Te Hau Ki Turanga', p 8
193. Hall, 'Te Hau Ki Turanga', p 10; Binney, p 114
194. J C Richmond to Emily Richmond, 24 April 1867, cited in G H Scholefield (ed), *The Richmond-Atkinson Papers*, vol 2 , 1960, pp 241–242
195. Biggs to McLean, 28 September 1868, McLean Papers, ATL, O'Malley, p 114
196. Biggs to McLean, 9 November 1868, McLean Papers, ATL, MSS 32:162, cited in Binney, p 118

wrote to McLean suggesting that, considering that many owners of the land were now either dead, inland with the rebels, or loyal, the entire district should be ceded to the Government. Europeans, 'friendly' Maori, and prisoners of Te Kooti should be given Crown grants for lands in which they had interests. He told McLean that he was using his influence with the tribes in order to obtain such a cession.[198]

Richmond and Colonel Whitmore held meetings in early December to discuss the land question. Richmond later claimed that as the tribes of Poverty Bay had requested that a European armed force be placed at Turanga to defend the district, he proposed that they should cede land on which such a defence force could settle, at which point they had apparently (with the exception of one man) expressed their desire to cede all of their lands to the Government, out of which portions might be awarded to 'friendly' Maori by a commission of two Native Land Court judges.[199] Wyllie's influence must certainly have been decisive in persuading the chiefs to agree to this as it is a remarkably similar proposal to that which he put to McLean. The deed of cession was signed on 18 December 1868 by 279 chiefs from the tribes of Te Aitanga a Mahaki, Rongowhakaata, and the 'hapu' of Ngaitahupo. It gave up to Sir G F Bowen, Governor of New Zealand, all the lands lying within boundaries described as: along the sea coast from Turanganui to Paritu; inland to Te Reinga; along the Ruakituri River to its source; and along the line of Maungapohatu and Maungahaumi to Tatamoe; then to the sea at Turanganui by way of Pukahikatoa, Arakihi, Wakaroa and Rakuraku. All those with claims to lands within these boundaries were required to lodge these within three months, whereafter they would be adjudicated upon by a commission of judges of the Native Land Court. Valid claims would receive Crown grants, but the Governor would be entitled to reserve blocks for European and Maori military settlements, and to award Hauhau lands to loyal Maori as compensation if their lands were affected by such reserves. It was also apparently requested by the loyal chiefs that the claims of Europeans to blocks within the district be considered by the commission and grants awarded if they were found to be valid.[200]

3.13 THE POVERTY BAY COMMISSION 1869

Proclamations appeared in the *Gazette* on 13 February 1869 extinguishing native title over the lands ceded in the deed of 18 December 1868, and declaring that 'loyal persons' who lodged claims to lands within the ceded block by 18 March would have these heard by a commission headed by Native Land Court Judge John Rogan and Judge Henry Monro.[201] The commission was to ascertain whether claimants had done any of the things which constituted rebellion as defined by section 5 of the New Zealand Settlements Act. It was also instructed to inquire into

197. O'Malley, p 114
198. Wyllie to McLean, 5 December 1868, McLean Papers, ATL, cited in O'Malley, p 115
199. Richmond, 24 August 1869, NZPD, 1869, p 681
200. Poverty Bay Block in Poverty Bay District, Deed no 490, in H H Turton, *Maori Deeds of Land Purchases in the North Island of New Zealand*, vol ii, Wellington, Government Printer, 1877–1878, pp 694–699
201. *New Zealand Gazette*, 13 February 1869, pp 60, 238

alleged purchases by, and gifts of land to, Europeans within the boundaries; adjudicating and making awards as it saw fit.[202] W S Atkinson, resident magistrate in Poverty Bay from January 1869, was appointed as Crown agent before the commission, and was given more precise instructions for his role. He was to leave the mode of procedure entirely up to the commissioners, but was to ensure that enough land was secured by the Government to provide for the settlement of the defence force, and for Ngati Porou. He was also instructed to inquire into the loyalty of the claimants, and if those who had been 'actively or persistently disloyal' made any exorbitant claims he was to impress the fact of their disloyalty on the commissioners. Richmond stated to Atkinson, however, that it was not:

> the desire of the Government to be harsh in dealing with former rebels who have on the occasion of the last disturbances shown themselves friendly, and whose claims are within reason.[203]

This changed the definition of 'rebel' slightly to cover those who had supported Te Kooti in the recent disturbances, rather than those whose lands were to have been confiscated under the provisions of the East Coast Land Titles Investigation Act 1866 and the East Coast Act 1868. The rough sketch map at figure 2 shows a date from 1868 to 1869, but the map clearly shows proposed areas of confiscations prior to the events of late 1868. Interestingly, a much larger area was outlined for the Government to retain, all from the tribal lands of Te Aitanga a Mahaki and Whanau a Kai. That the area finally retained by the Government would consist primarily of the major part of Rongowhakaata's tribal lands shows how much the more recent events shaped the court's view of who were 'rebels'.

Atkinson received claims until 18 March. These were in three categories: those previously collected and surveyed by Preece and Graham; the European claims; and new Maori claims collected by Atkinson. These last were a Rongowhakaata claim south of their tribal boundary with Te Aitanga a Mahaki, in the Patutahi area, and supplementary claims to those in the lists of Preece and Graham. A large area was covered by the new claims including the sheep runs of Te Arai, Maraetaha, and Pakowhai, as well as part of Matawhero, where mingled tribal interests on the boundary had not been sufficiently examined when the block was entered on Preece's list.[204] All of the new claims were surveyed by O L W Bousfield. Hall has remarked that there was a considerable area still not covered by any claim by Maori occupiers of the land when the time period for lodging claims had lapsed. This land therefore legally remained ceded to the Crown, and without native title. The main area covered by claims was that on the Poverty Bay flats, south of the Te Arai River and west of Waipaoa, as well as a large tract of bush north of Te Arai.[205]

The Poverty Bay Commission opened on 29 June 1869 at Gisborne, the new township site at Turanganui. When the court opened again on the following day Atkinson announced that the Crown and Maori claimants had made an out-of-court

202. *New Zealand Gazette*, p 238; Hall 'Maori Lands in Turanga', sec 10.1
203. Richmond to Atkinson, 13 February 1869, MA 62/8, RDB, vol 131, p 50296
204. R de Z Hall, sec 10.1
205. Ibid, sec 10.2

arrangement, effected by himself, as Crown agent, and W A Graham (Preece's partner), representing Rongowhakaata and Te Aitanga a Mahaki. These tribes had agreed to give up to the Crown three blocks – Te Muhunga, Patutahi, and Te Arai, in consideration of which the Crown would waive all claims to the remaining lands in the original ceded area.[206] Te Muhunga was considered ideal for a military settlement, and it was supposed to contain '5000 acres more or less' subject to the subsequent survey of its boundaries. The block was later found to contain 5415 acres, and Wi Pere later claimed the excess on the basis that a promise had been given that any excess on survey would be returned to the original owners. The Patutahi block was unsurveyed, but later the acreage was estimated at 57,000 acres (50,756 on survey). Te Arai, adjoining Patutahi on the western side, was also unsurveyed, but was later discovered to contain 735 acres. The boundaries of all three blocks were later disputed, and many Maori (as well as some of the settlers) claimed that consent had been given for the Crown to have only 15,000 acres in equal portions of the three blocks. There was a considerable amount of confusion at the time of the commission's first sitting in 1869, regarding the total acreage to be taken by the Crown. The minute book of the commission estimated that the area would be about 62,735 acres, but the commissioners informed McLean that it was an area of 67,400 acres. Atkinson thought he had secured 50,000 acres, and the *Hawke's Bay Herald* reported that the Government had obtained 10,000 acres of flat land and 30,000 acres of hill country.[207]

Hall has advanced the theory, put briefly earlier, that the excess retained by the Crown was made up of an extensive area of hill country, that remained ceded to the Crown because no claims were made on it.[208] He believes that the principal reason for the large addition was to provide lands for Ngati Porou and Ngati Kahungunu as reward for their aid in defeating Te Kooti. Before the Native Land Court in 1877, one of the witnesses testified that Maori had made it clear to Graham, their representative in negotiations with Atkinson, that only 5000 acres in each of the three blocks would be given up.[209] W L Williams recorded in his journal that in conversation with Atkinson on 29 June 1869, he had ascertained that the agreement was to provide the Government with 5000 acres at Te Muhunga, 5000 at Patutahi, and 5000 on the Te Arai River, plus 40,000 acres of back country.[210]

These accounts are not incompatible except where the extra acreage of hill country is concerned. The inclusion of this must have been decided by the Crown agent without the consent of the tribes, possibly because he assumed that the 15,000 acres they referred to was for the three blocks on the Poverty Bay flats, and that as no claims to the rough back country had been lodged this would automatically remain Crown land. The foregoing conclusion is based on the reasoning given by Hall, and further research will be required before its accuracy can be tested. Additionally though, as previously noted, the southern boundary of the ceded block was undefined by survey, and the hill country blocks do not seem

206. O'Malley, p 123
207. Ibid, pp 123–124
208. Hall, sec 10.2
209. Papatu Case, 9 March 1877, Gisborne MB 3, p 374, cited in O'Malley, p 125
210. W L Williams, Journal vol 5, 29 June 1869, cited in Hall,'Maori Lands in Turanga', sec 11.1

to have been surveyed internally. This may have led to confusion over the extent of land over which claims were required to be laid, especially as the land on the flat was that primarily occupied and cultivated by Maori, and coveted by the Government. These ideas require some further exploration, a starting point for which would be an examination of the claims included in the schedules to the minutes of the Poverty Bay Commission. Unfortunately, the scope of this report has not allowed for such detailed research, and the hypotheses given above are therefore necessarily tentative. If Atkinson had, however, deliberately deceived the tribes over the amount of land to be taken, there seems no explanation for the fact that there were no objections raised before the commission when the boundaries of the blocks were read out.[211] Nevertheless, as the blocks were then unsurveyed, it is possible that the estimated acreage meant little to those Maori present, who were, according to Wi Pere, promised that any excess would be returned to the owners after survey. Additionally, Wi Pere also gave evidence in 1877 that Atkinson had threatened to remove the troops from Poverty Bay if the blocks he had asked for were not given up.[212] The issue of the acreage of land that was finally retained by the Government, as opposed to that which the tribes had agreed to give up, is dealt with in some detail within the following chapter. These discussions are in the context of the survey of lands before the 1873 sitting of the Poverty Bay Commission, and that of later commissions of inquiry into the cession and the extra land taken.

We now turn briefly to the issue of those lands outside of the three ceded blocks. It was supposed that all of this land would become the property of 'loyal' Maori, and according to the East Coast Act 1868, reserves should have been set aside for the 'rebels' who would become landless. Neither of these things eventuated following the out-of-court arrangement. Lands of loyal Maori within the ceded blocks were not replaced by Hauhau lands of equal value outside these blocks, and Hauhau were left in possession of their lands outside the area taken by the Crown.[213] The Poverty Bay Commission sat for 33 days between 29 June and 10 August, and heard claims covering 101,000 acres of the block ceded on 18 December 1868. Nineteen European claims over an area of 1200 acres were also adjudicated upon. Other unsurveyed lands were unable to be dealt with.[214] Many claims took less than half an hour, with leading claimants giving evidence of ownership by ancestry or occupation and naming co-claimants. Atkinson objected to very few on the basis of their being Hauhau, but when this occurred these names were struck out.[215] Few claims were contested by other groups and the result of this was that proof of entitlement through customary ownership was rarely required. The brief nature of many of the Maori claims brought before the commission is attributable to the fact that Graham settled most disputes prior to the appearance of the claimants. An example of this was the Maraetaha block of 14,622 acres, the

211. O'Malley, p 127
212. Gisborne MB 3, p 401, cited in O'Malley, p 127
213. W L Williams, *East Coast Historical Records*, pp 69–70
214. Rogan and Monro to Native Minister, 23 August 1869, 'Poverty Bay Commission Outward Letters', MA 62/6, RDB, vol 129, p 49650
215. Hall, sec 11.1

subject of dispute between Rongowhakaata and Ngaitahupo, for which Graham achieved an out-of-court settlement which involved the award of one part of the block solely to Ngai Tahupo and the division of the remainder of the block between the two tribes.[216]

Atkinson appears to have had a somewhat relaxed attitude to the exclusion of 'rebels', but Hall believes this may well have been because Graham had already excluded many of them from the lists of claimants before the cases were heard. Objections were raised in some cases, but Atkinson was noted as examining a claimant only once, alleging that the man had been an adherent of Te Kooti. The claimant denied this, but as he appeared to be 'almost deaf and seemed nearly idiotic with an impediment in his speech' his name was left out, and his share was awarded to his sister.[217] In Hall's opinion, it is likely that objections were usually made by the public, because inquiry was made in open court as to whether any name had been left out or if there were objections to those included. The overall impression is that nobody objected to the inclusion in awards of those who had clearly been accepted back into the Maori community since their 'rebellion' in 1865.[218]

The claim receiving most attention was that of the Repongaere block, partly Rongowhakaata land and partly that of Te Aitanga a Mahaki. Graham objected to the inclusion of one Hoera Kapueroa of Rongowhakaata who was, claimed Graham, a Hauhau who had consorted with Te Kooti. Atkinson rose to defend the man, stating that he had been taken prisoner by Te Kooti and according to James Wyllie, had warned Wyllie and others of the impending attack on 9 November. Others had stated that Hoera had been seen at Oweta pa armed with a sword at the time of Paratene Pototi's execution, but these accounts were countered by numerous witnesses who claimed Hoera had been unarmed at that time. The investigation of this case lasted for nearly one week, and Hoera was finally included in the award for the block. Archdeacon Williams had objected very strongly to Hoera's inclusion and to the partiality openly shown by the resident magistrate.[219] J W Harris was also incensed at the support given to the man by Atkinson, and wrote in a letter to McLean that Wyllie had reportedly told a group of Maori that:

> If they persist in raising objection to Hauhaus being awarded their land, he and Mr Atkinson will bring them in as Hauhaus . . . A gross abomination if true. Mr Wyllie is in Government employ and is Mr Atkinson's second-in-command so that any statement like this . . . is regarded as having some authority.[220]

Williams later wrote that the commission was more interested in whether Hoera had been associated with Te Kooti than in his status as a Hauhau. Under the terms

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216. H A H Monro, 'Poverty Bay Notes', 9 July 1869, Auckland Institute and Museum Library, ms 366, p 76, cited in O'Malley, p 129
217. Poverty Bay Commission, MB 1869, p 126, cited in Hall, sec 11.2
218. Hall, sec 11.2
219. Hall, sec 11.2; O'Malley, pp 129–130
220. Harris to McLean, 18 August 1869, McLean Papers, ATL, cited in Hall, sec 11.3

of the East Coast Act his exclusion from entitlement would have hinged on the latter but, wrote Williams, after his inclusion:

> it was considered useless to object to other names of those who had taken an active part against the Government in 1865, and titles to the rest of the blocks were settled without any question, as to whether or not any of the claimants had been Hauhaus. Most of the original owners of the blocks of land taken by the Government had been Hauhaus, but some few also of those who had strongly opposed the Hauhaus were largely interested in them, and were not compensated in any way for what was thus taken from them.[221]

Locke reported to Ormond in October 1869 that dissatisfaction over the way the commission had gone about awarding title to blocks was apparent amongst those who had been 'loyal' from the beginning.[222] The inclusion of those identified as Hauhau in 1865, but who had not adhered to Te Kooti, seems to be in keeping with the tenor of the instructions given by Richmond to Atkinson, and it must further be acknowledged that the requirement that rebels be excluded from titles more than likely determined the names of co-claimants put forward in most cases. This raises the question as to whether former Hauhaus were actively discouraged from claiming ownership.[223] As has been shown earlier, Te Kooti and other Chatham Island exiles were dispossessed, and traces of their former entitlement to lands were now obliterated by their total exclusion from the type of evidence given before the commission.[224]

The Poverty Bay Grants Act was passed on 3 September 1869 in order that the Governor could issue Crown grants to persons awarded title within the territory ceded in 1868. An amendment Act of 1871 vested legal estate in the lands described in its schedule from the dates of awards issued by the Poverty Bay Commission. This move was necessary in order to validate transactions completed after the awards made by the commissioners but prior to the issuing of Crown grants, many of which were still being prepared in 1871.[225] There are further issues surrounding Crown grants awarded under the provisions of this Act. About 150,000 acres of land was awarded to Maori by the Poverty Bay Commission, and a later Native Land Court sitting in 1870, in joint tenancy under the provisions of the Poverty Bay Grants Act 1869. The difficulties this form of title caused to Maori will be discussed in the following chapter.

3.14 AWARDS OF LAND TO NGATI POROU AND NGATI KAHUNGUNU

On 9 August 1869, McLean met with chiefs of Ngati Porou and Ngati Kahungunu and informed them that the land given up to the Crown in Poverty Bay would be

221. W L Williams, p 69
222. Locke to Ormond, 25 October 1869 'Reports from Officers in Native Districts', AJHR, A-16, 1870, p 11
223. O'Malley, p 131
224. Binney, pp 112–113
225. O'Malley, p 133

divided into three equal parts: the first for the Government, to settle the Defence force at Muhunga; the second for Ngati Porou at Patutahi, to which they had asserted a claim; and the third for Ngati Kahungunu at Te Arai.[226] It is interesting that McLean spoke of three equal portions at this point, when the area called Patutahi that the Crown finally retained was so much larger than the other two blocks. As we have seen, Poverty Bay Maori later maintained that they had agreed that the Government should have only 15,000 acres in three equal parts, and not the much larger area of over 56,000 acres. This issue will be explored further in chapter 4.

It would seem that the idea of rewarding the tribes with portions of the ceded land had been suggested at the time of Richmond's negotiations for a cession in December 1868. Archdeacon Williams recorded that the day before Richmond's meeting with the Turanga chiefs to arrange the cession, he had overheard a conversation which indicates that leaders of Ngati Porou and Ngati Kahungunu were cognisant of such a proposal. He wrote:

> There was a little korero after the tutawaewae, which I was in time for. Henare Tomoana said they had come to rapa utu for the death of the pakehas and that they had not come to take away the land. But Rapata Wahawaha said that he meant to take the land.[227]

The Government was undoubtedly keen to encourage some of the two tribes to establish a permanent presence in Poverty Bay in the interests of its continued security, especially as Te Kooti was still at large. The idea had been put forward by Biggs in 1868 that a settlement of Ngati Porou should be established in the Waipaoa Valley to maintain control.[228] On 28 September 1872, when McLean visited Port Awanui, Ngati Porou raised the issue with him, complaining that Ngati Kahungunu had been promised a portion of Patutahi. McLean informed them it had been decided after survey of the block that 10,000 acres at Patutahi would be given to Ngati Porou. Originally, as previously stated, it had been proposed that they and Ngati Kahungunu should receive 5000 acres each, and the Government a third and equal portion at Te Muhunga. Land had been promised to Ngati Kahungunu within the block, but they had proposed that their share of the lands be returned to Turanga Maori as an act of grace on their part. The Government would not agree to this arrangement, and suggested a payment in cash, in lieu of the lands. Although initially divided over the issue, they finally agreed to accept the money.[229] On 30 September 1873, Ngati Porou agreed to give up their claims to land at Patutahi in return for £5000, and Ngati Kahungunu signed a deed of agreement on 20 March 1874.[230] The subject of rewards for the loyalty of tribes other than those of Poverty Bay itself, in the form of these gifts of land, and the later payment of money in lieu of them, will be raised further in the course of the following chapter.

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226. 'Report of Native Land Claims Commission', AJHR, 1921, G-5, sess ii, p 19; Hall, sec 11.4; Mackay, *Historic Poverty Bay*, p 306
227. W L Williams, 8 December 1868, Journal vol 3, cited in Hall, sec 10.2
228. R de Z Hall, secs 9.1–9.2
229. Mackay, *Historic Poverty Bay*, p 306; O'Malley, p 136
230. O'Malley, pp 135–136

3.15 CONCLUSION

At the beginning of this period, the tribes of Poverty Bay still remained firmly in control of their own rohe, and held aloof from the troubles of iwi from other districts. By the mid-1860s though, their attitude towards all manner of outside interference in their activities, and their defiant behaviour towards a variety of Government officials, had earned them a reputation, amongst Europeans at least, as troublesome and impertinent. In short, they were regarded as rebellious. The unease that Europeans in the district had begun to experience at the attitude of Poverty Bay Maori during the late 1850s and early 1860s was further exacerbated by the advent of Pai Marire in 1865. Throughout the period leading up to the siege at Waerenga a Hika, most Maori in the district clearly sought to avoid open conflict, but events soon rendered the situation beyond their control. The siege, which has been referred to as 'the hinge of fate' for Poverty Bay Maori, lasted less than a week. The immediate repurcussions were to continue for the next eight years, and would result in the loss of 56,161 acres of land to the Government. This might not seem a significant loss when it is considered that the district as a whole contained just over 1,000,000 acres. Nevertheless, the Government had retained a large area of the best land in the district, and in 1882, members of Whanau a Kai hapu lamented that following the cession, and the return of their remaining land in joint tenancy, they were left with practically no land on the flood plain, where they had previously lived and cultivated, and members of the hapu were crowded onto a 50-acre block belonging to Wi Pere, or squatting on the lands of others. How this occurred will be examined in the next chapter.

CHAPTER 4

THE RETURN OF LANDS FOLLOWING CONFISCATION, 1869–74

4.1 INTRODUCTION

The main purpose of this chapter is to develop some of the issues arising from the previous chapter's discussion of the confiscation of Poverty Bay lands, and to explore the method by which the Poverty Bay Commission returned the remaining lands to Maori. The Government's original intention had been to return lands in individual title after the commission sittings, but as this chapter will reveal, such a task proved too difficult and time consuming. For a number of reasons, which will be explored hereafter, much of the remaining land was returned in tribal blocks, and the Native Land Court was left with the task of ascertaining individual title. There are several issues arising from the method by which the Poverty Bay Commission returned land at both the 1869 and 1873 sittings, and the nature of the title then granted. These are explored in the various sections of the following chapter. Although in chronological terms the later sections of this chapter leap over time periods still to be discussed, it seems appropriate, within the scope of the present subject, to deal with later commissions of inquiry into the confiscation of Poverty Bay lands and the matter of compensation for the excess of land taken. Other issues regarding Maori land dealing in the period following 1869 are explored in subsequent chapters.

4.2 THE NATIVE LAND COURT SITTING 1870

The work of the Poverty Bay Commission was far from over when it adjourned *sine die* on 10 August 1869. The blocks to be retained by the Crown had been ascertained, but surveys were incomplete, and much land still remained to be returned to its Maori owners. Despite this, J D Ormond, agent for the General Government on the East Coast, was of the opinion that there should now be no objection to lands within the district coming under the jurisdiction of the Native Land Court since the area to be retained by the Crown had been determined.[1] On 7 October, notice was gazetted of a sitting of the Native Land Court for 25 November 1870. Chief Judge Fenton was unsure about the jurisdiction of the court over lands within the ceded area, and wrote to McLean stating that all but

1. Ormond to Colonial Secretary, 17 September 1869, AGG-HB 4/3/171, cited in O'Malley, p 145

three applications for ascertainment of title to be heard at the proposed sitting were within the ceded territory. Fenton commented that the deed of cession and proclamation by Richmond in 1868 had extinguished native title over the lands. The East Coast Act of 1868 was set aside with the appointment of the Poverty Bay Commission, an award of land to the Crown was made, and an Act passed abandoning claims to land outside of the blocks thus awarded. Fenton asked McLean whether such an abandonment of the remaining lands annulled the effects of Richmond's 1868 proclamation.[2] The Attorney-General's opinion was that the court had no jurisdiction over these lands following the extinguishment of their native title.[3]

Rogan wrote to Halse stating that under the terms of the deed it was necessary for more than one 'commissioner' to adjudicate on lands within the territory as gazetted, and he therefore could not sit alone. He suggested that a temporary judge be appointed to sit with him to hear these cases as a 'make shift' measure if it were not possible to cancel the original notice proclaiming the extinguishment of native title.[4] McLean informed Sewell that only the block of around 50,000 acres, that was to be divided equally between the Crown, Ngati Porou, and Ngati Kahungunu, was to be excepted from the operation of the court, 'but any Poverty Bay land outside of it can be dealt with by the court in the usual manner except in so far as the block above referred to which may be 80,000 acres is concerned the *Gazette* notice may be either altered or rescinded that the court may proceed with its duties'.[5] Rogan, sitting as a Native Land Court judge, was instructed to proceed under the East Coast Act of 1868, and Colonial Under-Secretary, George Sissons Cooper, was to appear for the Crown on behalf of the Attorney-General. Cooper was authorised to:

> waive on the part of the Crown all objections to the Court adjudicating on the Title to the Lands included in the Cession of Dec 1868 except to the Lands granted under the Poverty Bay Crown Grants Act 1869 and included in the award of Rogan & Monro as Commissioners.

The court was to confirm the arrangement made in 1868 and all that was done with respect to that arrangement, especially the appropriation of certain lands to Ngati Porou and Ngati Kahungunu.[6]

The court proceeded to hear claims on 3 December. There were about twenty claims from around Manutuke that had not been surveyed or heard by the Poverty Bay Commission in 1869. These ranged in acreage, but some larger blocks from outside the ceded area were also heard at the sitting. Mr Cooper waived the Crown's objections to adjudication over the ceded lands, stating that should there

2. Fenton to Native Minister, 16 November 1870, MA 62/7 'Poverty Bay Commission Inwards Correspondence', RDB, vol 130, pp 49,867–49,869
3. Sewell to McLean, 26 November 1870, MA 62/7, RDB, vol 130, p 49,879
4. Rogan to Halse, 26 November 1870, MA 62/7, RDB vol 130, pp 49,880–49,882
5. McLean to H Sewell, 29 November 1870, MA 62/7, RDB, vol 130, pp 49,876–49,877. McLean's letter, in which the confiscated area appears to increase within the space of a couple of sentences from fifty to eighty thousand acres, indicates that there was no clear idea on the part of Government officials of how much land the Crown was to retain, even after the 1869 sittings of the Poverty Bay Commission.
6. McLean memorandum to G S Cooper, 28 November 1870, MA 62/7, RDB, vol 130, p 49871

be any objections by loyal Maori to the inclusion of other claimants on the basis of their actions having been those of rebellion (as described in section 5 of the New Zealand Settlements Act 1863), he would, on behalf of the Crown, object to the inclusion of such persons in awards if proof of their rebellion was given.[7] This was the same role that Atkinson had taken at the 1869 sitting of the Poverty Bay Commission – a role in which Cooper was apparently more vigilant than Atkinson.[8] On 8 December Gisborne Solicitor Joshua Cuff, who represented a claimant to blocks within the ceded area, objected to the proceedings of the court as it was not able to adjudicate over lands which were no longer held under native title. This was the case where the lands being brought before the court at that time were concerned, by virtue of the *Gazette* notice of February 1869.[9] No response was given to these objections, and Rogan continued to hear claims until 10 December when the court was adjourned *sine die*.[10] It is likely, as O'Malley has suggested, that the proceedings were brought to an early close due to the objections raised by Cuff, and the embarrassment that such proceedings could have caused the government. Although the East Coast Act 1868 gave the court additional powers on the East Coast, to exclude from certificates of title those who had done any of the things defined as rebellion in the New Zealand Settlements Act, it is not evident how this should have enabled the court to hear claims on land over which native title had been extinguished. The Crown's waiver of claims to these lands in court could not in itself have eliminated the force of Richmond's gazetted proclamation of 1868, and further, it seems extraordinary that the court, operating in contravention of the deed of 1868 which called for adjudication by two commissioners, should have been charged with the task of confirming that arrangement and all that was done under it.

After a delay of two years, a *Poverty Bay Standard* editorial offered the opinion that all proceedings of the court in 1870 were 'null and void', and that any endeavours to pass blocks of land through the April 1873 sitting of the court instead of before commissioners, as stated in the deed of cession, would be met with strenuous opposition by claimants. Objectors, the editor felt, would be 'justified in defending themselves against the persistently illegal action of the Government'.[11] The claims heard by Rogan in December 1870 were not revisited by the Poverty Bay Commission when it sat in 1873. Subsequently, in a legislated 'mop-up' that seems to have typified the Government's approach to legal, and other, problems regarding Maori land on the East Coast at this time, Parliament passed the Poverty Bay Land Titles Act in 1874. The main purpose of this Act was to eliminate any problems which might have occurred over the subsequent adjudication of a sole judge of the Native Land Court over lands returned by the commission without

7. Gisborne MB, no 1, pp 148–149, cited in Hall 'Maori lands in Turanga', sec 12.1
8. O'Malley, p 146; Hall, sec 12.1
9. These concerns were raised by Cuff in a letter to the Native Department on 24 November 1870, in which he stated that the terms of the deed had not been revoked by any subsequent agreement or Act, and the land in question was therefore not native land according to s 10 of the Native Land Act 1869. The court could not, therefore, adjudicate on the lands according to the stipulations of s 5 of the Native Land Act 1865. J Cuff to Native Department, 24 November 1870, MA 62/7, RDB, vol 129, pp 49,757–49,758
10. O'Malley, p 147
11. *Poverty Bay Standard*, 15 February 1873

further investigation of individual claims. The reasons for such measures are yet to be discussed in later sections of this chapter. Additionally though, the Act provided for the validation of titles awarded under the Poverty Bay Grants Act 1869 that might be questioned 'by reason only of any informality attending the issue of any such grant, or any irregularity in the times and manner in which the said judges or either of them held sittings as aforesaid, or by reason of the fact that one of such Judges sat and acted alone'.[12] In this way the 1874 Act allowed for the validation of title awarded by Judge Rogan at the 1870 sitting of the Native Land Court, in proceedings which were, as the *Poverty Bay Standard* had rightly pointed out in 1872, legally 'null and void'.

4.3 DISCONTENT GROWS OVER JOINT TENANCY

Crown grants awarded at the 1869 sitting of the Poverty Bay Commission, and issued under the Poverty Bay Grants Act 1869, were not completed until early in 1871. In the meantime deeds and agreements over the lands concerned had continued to be carried out. The Poverty Bay Grants Act Amendment Act 1871 provided for validation of such deeds and agreements by the vesting of legal estate in the grantees listed in the first and second schedules of the Act, from the dates of their inclusion in the awards of the commission of 1869. It was a consequence of the delay in receipt of grants that serious dissatisfaction over grantees being awarded title as joint tenants, rather than tenants in common, was only registered from 1872 onwards. This discontent, when added to various complaints about the proceedings of the Poverty Bay Commission, such as the inclusion of rebels in awards, the lack of reward given to loyal Maori of Turanga, and the Government's taking of land in excess of that agreed to, would lead eventually to active protests. These protests, encouraged by members of the Hawke's Bay Repudiation movement, accompanied the renewed sitting of the commission in August 1873, and will be discussed later in this chapter.

As joint tenants, those named in the grants held equal interests in the land awarded, and the title was subject to the law of 'survivorship' rather than that of inheritance by descent. The Honourable G R Johnson[13] reported to the Secretary for Crown Lands in 1872 that:

> the Maoris parties to the [deed of cession 1868] maintain that, according to the intention of that deed, the lands returned to them should be held by the grantees in the same proportions, as nearly as possible, as they were held in previously to the cession, and not in equal shares; – that such lands should be subject to the ordinary course of descent, and not to the rules of "survivorship"'; – and that the large blocks should be subdivided and the claims individualized; – and they complain that the intention has

12. Poverty Bay Land Titles Act 1874
13. G H Scholefield (ed), *Dictionary of New Zealand Biograph*, Wellington, Department of Internal Affairs, 1940, p 438. George Randall Johnson (1833–1919), along with his brother James Woodbine Johnson, had taken up 9300 acres of land at Maraetaha in the late 1860s. He was a member of the New Zealand Legislative Council from 1872 to 1892, after which time he returned to England.

> not been carried out; and, further, that the names of many men who have no just claim to the lands in question have been wrongfully inserted in the Crown grants.[14]

Johnson further reported that the true owners of the land had partly brought this last situation upon themselves by failing to oppose, and even giving support to, the claims of such men out of fear that 'unless there were many loyal claimants for the land, the Government would retain it all'.[15]

W H Tucker wrote to McLean on behalf of Turanga Maori in July 1872, stating that the real owners of blocks brought before the commissioners in 1869 had been advised to include as many names as possible to ensure that they would hold the land. This they had agreed to do, apparently assuming that when the land was divided the extra grantees would be apportioned very small interests only, in accordance with their relative entitlement.[16] They had regarded the proof of claims before the commission as a preliminary step only, and that the boundaries of each man's holding in the blocks would later be settled according to hereditary claim. But, Tucker wrote:

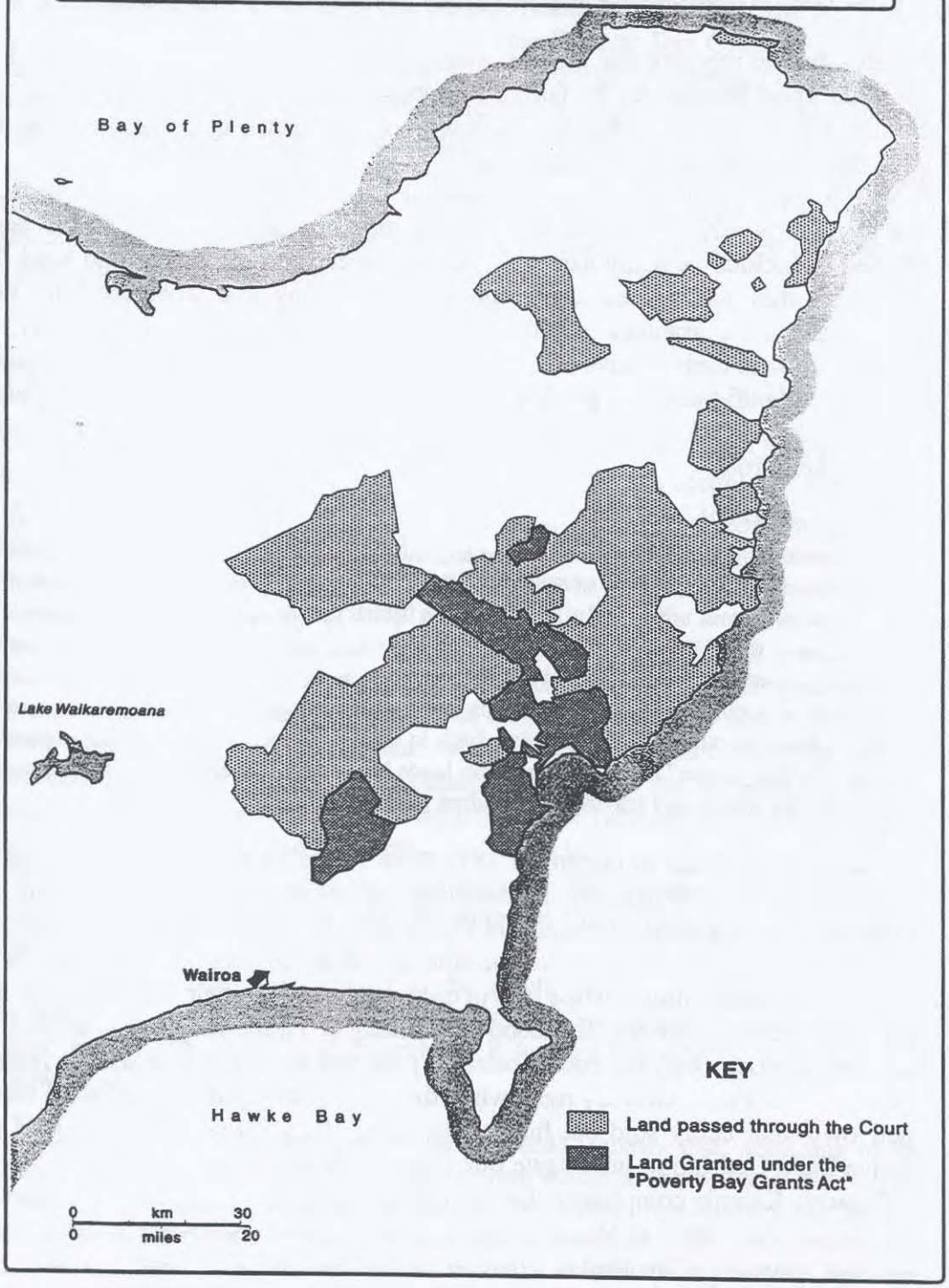
> through the arbitrary manner in which the Crown Grants have been issued they are all equal owners, it is impossible to define any man's land and their children or nearest of kin do not inherit; I know of one or two families left utterly landless and dependent on their relations who ought to have been quite independent. Now the native's argument is this. We gave up our lands for a time with full faith that the Government would perform their promise and return them: they have not done so, they have only returned us a portion of our possessions and that small right they have given us, we cannot leave to our children it is given back in such a manner as to be almost useless to us – Is this justice? is this giving us our lands back; no it is making a present of our lands to our slaves and leaving our children paupers.[17]

A letter to McLean in December 1872 from Petera Te Honotapu, Eparaima Te Angahiki, and Noa Whakatere, representing Ngaitekete hapu, claimed that on the instructions of Atkinson, Graham, and Wyllie in 1869, they had included in the lists given before the Poverty Bay Commission the names of persons other than those who were actually entitled to the land in order to strengthen their own claims to that land, and thus increase the likelihood of retaining it. Those people thus artificially included in titles, with the equal shares of joint tenants, were now selling land to which they had no customary right, while the true owners were compelled to watch their own land being sold out from under them. They asked for a sitting of the Native Land Court to re-investigate title to the lands already granted.[18]

Riparata Kahutia complained that through grants being made (under the Poverty Bay Grants Act 1869) to Maori as joint tenants, she now possessed in many cases less than a quarter of the land to which she should have been entitled, and she could

14. 'Papers Relative to Certain Causes of Dissatisfaction Amongst Natives of Poverty Bay', AJLC, 1872, no 9, p 3
15. Ibid
16. W H Tucker to Native Minister, 30 July 1872, MA 62/7, RDB, vol 129, pp 49,833–49,834
17. Ibid
18. Petera Honotapu, Eparaima te Angahiku and Noa Whakatere to McLean, 12 December 1872, MA 62/7, RDB, vol 129, pp 49,821–49,822

FIGURE 3: EAST COAST LANDS WITH CROWN TITLE 1877



Source: AJHR 1877, G-5

not even leave this land to her children. In an interesting expression of support for individualisation of tenure and the 10 owner rule, she wrote that she felt justified in saying:

> no intimation was given to us of the intention to issue joint tenancy grants on the contrary we at first imagined that ten names only would appear in each Grant and Messrs Preece and Graham actually commenced to select, on our parts, ten names from each of the Crown grants for that purpose . . . and we always believed that eventually the shares in the Blocks would be individualized.[19]

In September, Chief Judge Fenton had agreed that the complaints over joint tenancy were valid, and that an act would need to be passed to remedy the situation. He stated that he had never approved of the original 'transaction', and had refused to accept a commission under the deed of cession for that reason.[20] In the same month, G S Cooper indicated that any injustice done in the return of lands was due to the actions of Maori themselves in listening to the advice of 'interested and ignorant persons' rather than that of Government officers. He recognised, however, that 'although it is mainly the fault of the Natives themselves, they are suffering from a substantial hardship'.[21] In stating his opinion, that Maori had listened to the advice of others rather than that of Government officers, he clearly ignored, or was ignorant of, claims that the inclusion of many extra names on lists of owners was carried out on the advice of certain Government agents present in Turanga in 1869. Johnson had suggested that the large area of land not yet dealt with by the commission should be returned to Maori as soon as possible, to hold as tenants in common. Although the Hon Mr Johnson pointed out that the deed of cession did not specifically mention the individualisation of the land to be returned to Maori, he maintained that there were 'magnificent blocks of agricultural land lying idle, simply on account of the interests in them being undivided', and that a quick and inexpensive method should be found for subdivision and individualisation of interests to free up the remaining lands (for European settlement, rather than better Maori utilisation).[22] Despite all of the correspondence during 1872 and early 1873, and the fully admitted fact that the situation was a legitimate cause for dissatisfaction, the Government took no action towards alleviating the suffering of those who had been granted title as joint tenants. It would seem that they preferred to follow the advise of Prendergast, Attorney-General, that the lands could be partitioned upon agreement of all of the joint tenants in equal shares, and that the interests of grantees could be secured for their children not by will, but by deed of conveyance in trust.[23]

About 150,000 acres of land, including much of the best land on the flood plain and the surrounding low hill country, was awarded in joint tenancy during 1869 and

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19. Riparata Kahutia to Rogan, 12 December 1872, MA 62/7, RDB vol 129, pp 49,819–49,819
20. Memorandum from Fenton, 11 September 1872, MA 62/7, RDB, vol 129, p 49,843
21. Memo from G S Cooper, 21 September 1872, MA 62/7, RDB, vol 130, pp 50,086–50,087
22. AJLC, 1872, no 9, p 3
23. Memo from Prendergast, 17 March 1873, 'Dissatisfaction of Poverty Bay Natives on Account of Tenure of Land Awarded by Poverty Bay Commission', RDB, vol 131, HB 3/5, p 50,613, cited in O'Malley, p 149

1870.[24] These areas, along with other lands that had passed through the Native Land Court by 1877, are shown in the map at figure 3. This map clearly shows that the area of land in joint tenancy was significant. Section 12 of the Native Lands Act 1869 stated that any grant made under the Native Lands Act 1865 or the Native Lands Act 1867 should be deemed an award of title to grantees as tenants in common rather than joint tenants. Any grants made after the passing of the 1869 Act would also be to grantees as tenants in common, and undivided shares in land would no longer be deemed equal shares, unless this was specifically stated in the grant (ss 12, 14). The Native Lands Act did not have operational standing in Poverty Bay in 1869, and the Poverty Bay Commission made awards in joint tenancy under the Poverty Bay Grants Act 1869. This Act, although passed by the same session of Parliament as the Native Lands Act 1869, made no stipulation as to the method to be used in granting the remaining Poverty Bay lands to Maori. It did not stipulate whether grantees would be deemed joint tenants or tenants in common. The grants to Maori in this district as joint tenants were made, then, in something of a legislative vacuum. Although the Native Grantees Act 1873 extended the provisions of the Native Land Act 1873 to land granted under any other Act than the Native Lands Act 1865 or the Native Land Act 1873, and made grantees tenants in common rather than joint tenants, many equal and undivided shares in the land awarded in 1869 and 1870 in Poverty Bay had already been alienated.

4.4 REWARDS FOR LOYALTY: THE PATUTAHI BLOCK AND ITS SURVEY

As noted in the previous chapter, it was negotiated with Ngati Porou and Ngati Kahungunu that they should receive portions of land within the confiscated blocks as a reward for their loyalty to the Crown during the East Coast Wars and in the pursuit of Te Kooti. McLean met with chiefs of the two tribes on 9 August 1869, and it was agreed that Ngati Porou should receive a portion of Patutahi, while Ngati Kahungunu would be granted land out of the Te Arai block.[25] A third portion was to be retained by the Crown at Muhunga. Vincent O'Malley believes this division into three equal portions indicates that the figure of 15,000 acres, which Wi Pere and others claimed as the amount the tribes had agreed to give up to the Crown, was the correct one, especially when it is considered that in evidence given to the royal commission headed by H T Clarke in 1882, Henare Tomoana of Ngati Kahungunu also stated that the Government and Ngati Kahungunu were supposed to keep 5000 acres each.[26] This issue of the amount of land Maori agreed to cede to the Government, already mentioned in chapter three, will again be discussed in relation to the search for redress by Maori of Poverty Bay, dealt with later in the present chapter.

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24. Evidence of Wi Pere, 'Native Claims to Land, etc, Poverty Bay', AJHR, 1884, G-4, p 14
25. Mackay, *Historic Poverty Bay,* p 306; O'Malley, p 135
26. 'Native Claims to Land Etc, Poverty Bay', AJHR 1884, sess ii, G-4, p 1

There is a great deal of confusion surrounding the whole issue of relative claims over the agreed acreage of the Patutahi block to be confiscated. In a report which demonstrates this confusion, S Locke stated on 25 October 1869 that the block, sometimes known as the Ngati Porou-Ngati Kahungunu block, was estimated at 57,000 acres. He described about 3500 acres of the block as good level land, and the remainder as hilly (53,500 acres), apart from 400 acres of level land three miles up the Te Arai stream. Thus, he believed, approximately 8400 acres were suitable for settlement; 3900 acres of this being part of that promised to Ngati Porou and Ngati Kahungunu. He therefore proposed that if the numbers of the Defence Force it was proposed should be located at the military settlement, for which Muhunga was to be set aside, exceeded the land allotted, some arrangement should be made with the loyal tribes so as to allow settlement of the good land on the Patutahi block.[27] It is clear that Locke's acreages were estimated on the basis of the available sketch plan of the area at that time, but the indication that specific areas had already been allotted to the two tribes mentioned is interesting.

In the same report, Locke indicated that there was considerable dissatisfaction on the part of loyal Maori of Poverty Bay regarding the insertion of rebel names in the awards of the Poverty Bay Commission. He urged on the Government:

> the necessity of devising some plan by which those loyal chiefs, with their followers, who have been staunch from the commencement of the war on the East Coast in 1865, should be distinguished from the rebellious, and should feel that we keep our promises and appreciate their loyalty.[28]

Although Locke did not specifically mention who these loyal chiefs were, it is evident that he referred not to Ngati Porou or Ngati Kahungunu, who were already to be rewarded, but to the loyal chiefs of Turanga itself. Hall is also of this opinion, and mentions further that in 1867 Richmond had stated before the Public Petitions Committee that it was the intention of the Government to reward loyal Maori through confiscation on the East Coast. Hall believes that Richmond here also referred to Turanga Maori, given the context of his meeting at Turanga earlier in the year.[29] McLean, in a subsequent letter to Ormond referring to Locke's report, assumed that Locke spoke of the dissatisfaction of Ngati Porou and Ngati Kahungunu. He wrote:

> It is quite evident that the powerful Ngatiporou tribe on the one hand, and the Ngatikahungunu on the other, who aided in subjugating the Hauhaus of Turanga, have reason to be dissatisfied at finding many of the Natives, who have been the greatest opponents to peace, becoming, through the action of the Government, possessed of Crown Grants to land of considerable value, while the hereditary claims of the tribes referred to have been overlooked, and the valuable services they rendered in assisting to subdue the hostile Natives of that place rather ignored than recognised.[30]

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27. 'Reports from Officers in Native Districts', AJHR, 1870, A-16, p 11
28. Ibid
29. 'Minutes and report', Public Petitions Committee, petition no 9, 1867, Le/1867, cited in Hall, sec 13.1
30. McLean to J D Ormond, 18 November 1869, AJHR ,1870, A-16, p 1

This passage indicates what appears to have been a common attitude or misapprehension on the part of Government agents in general, but especially of McLean himself, that there were no loyal Maori of note among the tribes of Poverty Bay, and that Ngati Porou and Ngati Kahungunu had a greater claim to land in the area on the basis of their loyalty to the Crown rather than heredity.

McLean's deference to the counsel of chiefs from these tribes rather than to those of the Turanga chiefs on local affairs, especially with regard to the land question, would lead to serious discontent in the following years, as will be seen later in the chapter. It is clear that the promised rewards for loyal Maori of Turanga did not eventuate, as no reserves were given to them out of the confiscated blocks or anywhere else in the district. According to the evidence of Henare Tomoana, given before the commission of inquiry headed by H T Clarke in 1882, at McLean's request he had brought 123 men with him from Napier and Nukutaurua to assist in the defence of Turanga in 1869. This number was swelled by the arrival of 200 more from Napier, and rose to 400 with the addition of local men of Ngaitahupo and Turanga. He claimed that those present had been promised that 'Ngaitahupo, and other tribes who assisted the Government, should receive a portion of Patutahi.'[31] According to the evidence available Ngaitahupo do not appear to have had any of their lands confiscated[32], but they were not awarded any of the Patutahi lands as promised. As for the loyal men of Turanga; these men were 'rewarded'with the confiscation of their lands, and never received reserves that had been promised to them on a number of occasions.

By the end of 1869 then, the Crown was aware of the larger area contained in the Patutahi block, despite its remaining unsurveyed apart from a rough sketch plan produced before the 1869 sitting of the Poverty Bay Commission. McLean discussed the matter again with the two tribes concerned on 28 November 1872, at which time Ngati Porou expressed their dissatisfaction over the promise of land in the block to Ngati Kahungunu. Ropata Wahawaha stated that the whole block should be given to Ngati Porou, as he believed this land should be a reward for their services prior to the involvement of Ngati Kahungunu. If Ngati Kahungunu were to be given land, he felt that it should be taken from elsewhere. He and Henare Potae asked that the land be given over immediately to them in order that it could be leased and the proceeds go towards Maori schools on the East Coast. McLean told those assembled that 10,000 acres would be given to Ngati Porou, which the Government would agree to lease at a fair rental for the maintenance of their schools. He stated that although land had been promised to Ngati Kahungunu, Tareha and other chiefs had agreed to accept money in lieu of their claim.[33] McLean then met with Poverty Bay Maori at Gisborne on 30 November. A report of the meeting appeared in the *Poverty Bay Standard* on 7 December. Several complaints were made to McLean. The first of these was an objection to Road Boards in the district, which involved entry onto Maori lands. The comment was made that Europeans should do as they liked on their own land but stay off Maori land. More

31. AJHR, 1884, Sess ii, G-4, p 1
32. 'Notes of Native Meetings (East Coast and Bay of Plenty)', AJHR , 1874, G-1, p 3
33. *Poverty Bay Standard,* 21 December 1872; Mackay, p 306

important to the present discussion though, several requests were made for the Patutahi lands to be returned to Turanga Maori. The *Standard* related that:

> Wi Pere stated there were several complaints and asked for someone to instruct them in the law. He requested the sale of land to be stopped, and asked that Patutahi should be returned to them or their relatives . . . Tamihana Ruatapu asked for Patutahi on the ground that others whose land had not been taken had been Hau-haus.[34]

Other problems included the insertion of names in the Crown grants of those who were not really owners, who then proceeded to sell lands without the consent of the actual owners. McLean, by way of reply, mentioned that he had settled the amount of Patutahi to be given to Ngati Porou the day before (presumably at the meeting on 28 November) at 10,000 acres, to be taken out of the Crown's 57,000 to 60,000 acres of that block. He stated further that:

> They were correct in what they said about Crown Grants. The names of persons who were not owners had been inserted; they had promised to take charge of the land, instead of which some of them had sold it in opposition to the wishes of the real proprietors and had kept the proceeds of the sale. For this the Natives had chiefly themselves to blame as they committed these acts of their own accord.[35]

As discussed earlier, they had also done this on the advice of Government agents.

Nothing came of the meeting, therefore, and there was apparently something of a scramble for the Patutahi lands between various chiefs of Ngati Porou and Ngati Kahungunu. The claims of Ngati Porou leader, Mokena Kohere, are especially interesting in this regard. On 6 August he had written to McLean expressing his distress at McLean having discussed the Patutahi lands with Karaitiana Takamoana and Henare Tomoana of Ngati Kahungunu. He claimed that Patutahi ought to be given to him because it belonged to him and his ancestors. The basis upon which he made such an hereditary claim is not clear, but some clues may be found in his apparent status as protector of certain sections of Rongowhakaata following the East Coast wars. He wrote:

> Listen, Ngatiporou went to fight and received either six or three shillings a day as payment, Ngatikahungunu served on the same terms. I object to that land being given away in that manner, for it belongs to me and the Government are taking it away from under my feet . . . the law said that it would not seize the land of any person that was loyal to the Queen, please look up that law . . . Another subject I wish to mention is about those people who were deceived by the Government during the time of Messrs Atkinson and Richmond who told the Maoris that they should all sign a document or their land would be taken by the Government. I think this was meant to intimidate us, from what we see of it. This piece had better be left for the poor men and their name alone appear in the Crown Grant for this land. In my mind there is a wrong and that is this document which had better be destroyed as this is the only land that has been so dealt with . . . There are two hundred people whose names are inserted in the

34. *Poverty Bay Standard*, 7 December 1872
35. Ibid

> Crown Grant and three hundred women and children, this is a grasping law a number of names are set forth as owners of another man's property.[36]

The second section of the letter referred to the issue of Maori being advised to include as many names as possible in the lists of owners, especially those of loyalists, of which Mokena was one. It therefore seems strange that he should complain that the form of grant given (as joint tenants with equal shares), was a 'grasping law' as his shares in the block he speaks of would undoubtedly have been much smaller had they been granted in accordance with customary rights. More intriguing still is the manner in which he appears to deny the right of both Ngati Kahungunu and Ngati Porou to receive land at Patutahi, as they had been paid already for their services and the land should now 'be left for the poor men'. Presumably Mokena was similarly paid at the rate of three to six shillings a day. Mokena was present at the meeting on 28 November and stated there that he had previously had a discussion with Karaitiana Takamoana and Henare Tomoana over the Patutahi land, and told them that as it was Ngati Porou who had aided the government in the fighting at Turanga, he considered they alone were entitled to the lands.[37] Mokena appears to have been engaging in attempts to make sure that one way or another his interests would be protected in this, and other, land deals within the rohe.[38]

A report from the *Napier Telegraph* stated that at a subsequent meeting with Ngati Kahungunu chiefs in December, McLean had offered £3000 to the tribe to abandon their claim to the Patutahi lands. This was apparently refused as the news had reached them that Ngati Porou were to receive 10,000 acres and they now wanted a similar award.[39] Karaitiana had already made it clear that he would not settle for less than the entire block.[40] In the meantime, McLean and Locke began to make arrangements for the survey of the Patutahi block in preparation for the next sitting of the Poverty Bay Commission. McLean wrote a telegram to G S Cooper on 4 December which read:

> Capt Porter & Paora Parau & others accompany the surveyors to point out the boundaries. The Ngatiporou are to have 10,000 acres allotted to the Govt Ngatikahungunu including Ihaka Whanga's people . . . desire to give their portion of it to the Turanga people . . . do not know that they are all disposed to do so – I intend to purchase out their rights if I can and deal myself with the Turanga folks – No action is to be taken until all surveys are complete.[41]

36. Mokena Kohere to McLean, Waiapu, 6 August 1872, RDB vol 129, MA 62/7, pp 4984–4986
37. *Poverty Bay Standard*, 21 December 1872
38. R de Z Hall records that, according to the record of evidence in the Paokahu case, before the Native Land Court in 1880, it was claimed by Mokena, and Mohi Turei in support of his claim, that the mana of Rongowhakaata hapu, Ngati maru, had been ceded to Mokena after the 'rebellion' in order that he might save their land from confiscation. His claim to Paokahu was based on this vesting of mana never having been cancelled. Presumably Mokena believed that the argument stretched to Rongowhakaata as a whole. Although Paratene Turangi (Ngai Te Kete chief and friend of Mokena's) made the cession, Raharuhi Rukupo apparently had invited Mokena to live on the land. Hall states that Mokena and others had places of residence at Tapatahi; land in which Paratene had interests: Hall, 'Maori Lands in Turanga', sec 8.3.
39. *Poverty Bay Standard*, 28 December 1872
40. *Poverty Bay Standard*, 21 December 1872
41. McLean to G S Cooper, 4 December 1872, MA 62/7, RDB vol 129, pp 49,769–49,770

Indeed, Wi Pere later claimed that both Ngati Kahungunu and Ngati Porou had promised to return the land to Turanga Maori as 'an act of grace' or tohu rangatira[42], and Henare Tomoana later claimed that 'There was a proposal made by the old chiefs of Ngatikahungunu to hand back to the Turanga Natives that portion of Patutahi allotted to them. The Government disapproved of this, and proposed that they should be paid money'.[43] Instructions for the immediate survey of the block had come from G S Cooper himself on 26 November 1872, after receipt of a letter from C J Harrison, a Poverty Bay settler, who complained that he was unable to have a piece of land he wanted to lease passed through the Native Land Court. After having it surveyed, he was informed that it was part of the block which the Crown proposed to retain. Cooper wrote in an attached marginal note:

> I have constantly recommended . . . that the unsurveyed block of land which the Govt intend to retain out of the Poverty Bay cession of Dec 1868 – the Patutahi Block – should be at once surveyed and its boundaries marked on the ground in the clearest manner . . . It seems to me of the greatest importance that this should be done *before* a general amnesty is proclaimed, or else the right of the Govt to the Patutahi Block may I fear be in great jeopardy. I think the original dimensions of the Patutahi Block might very well be restricted in the back or South Western part of it, as the land in that part is of inferior value and is so broken as to be difficult of survey . . . As to the land referred to by Mr Harrison it is, as I believe quite outside of any land the Govt ever seriously intended to take, and it is a great injustice to the Maoris and intending settlers to keep it hung up so. [Emphasis in original.][44]

On 7 December tenders were called for the survey of Patutahi, and O L W Bousfield secured the contract. The block was said to contain 57,000 acres by S Locke but Maori complained that the boundaries shown on the plan were not correct. According to Mackay, the block was found on survey of its outer boundaries to contain 50,746 acres.[45] Correspondence on the survey between various Government agents tells quite an interesting story as to the shortfall in acreage from the earlier estimation, and how the figure of 50,746 acres was arrived at. Porter wrote to Locke on 16 January 1873 that he had finished pointing out the boundaries of the confiscated land and concluded that:

> As I have all along anticipated it will fall short of 57,000 acres by some 20,000, I conjecture. The lines on the map was sealed off by Mr Atkinson's orders without any previous idea or knowledge of boundaries or distances.[46]

Porter then wrote to Locke on 11 March, stating that the boundaries of the confiscated block had been extended to the Hangaroa River, but that if this was still

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42. 'Notes of Native Meetings (East Coast and Bay of Plenty)', AJHR, G-1, 1874, p 3
43. AJHR, 1884,Sess ii, G-4, p 10
44. C J Harrison to G S Cooper, 25 November 1872 and note by C S Cooper 26 November 1872, MA 62/7, RDB, vol 129, pp 49,772–49,774
45. Mackay, *Historic Poverty Bay*, p 307
46. Memo for Native Minister from Porter, 2 December 1873, re Extension of Boundaries of Patutahi Block; Porter to Locke, 16 January 1873, 'Papers relative to the Commission of Inquiry into charges against J Rogan, Judge Native Land Court, and J A Wilson, Land Purchase Officer', MA 11/1

insufficient to make up the required 57,000 acres no more could be obtained as 'the Govt [had] now received more than entitled by original agreement'.[47] A memo written in December 1873 by Dr Nesbitt, the Resident Magistrate at Gisborne, further stated that:

> Captn Porter informed me in January last that the boundaries of the block originally surveyed by Mr Bousfield contained only 30,000 acres and requested me to apply to Mr Ormond for instructions. Mr Ormond in answer to my letter ordered that the survey should be made so as to enclose 57,000 acres in accordance with certain boundaries suggested by Captn Porter.[48]

Finally, Locke wrote to McLean and proudly informed him that 'the original ceded piece only contained 31,301 acres but . . . Porter has managed to get 19,445 acres added to [the] Block'.[49] O'Malley believes this to have been done without Maori consent and in breach of the agreement of 1869.[50] Certainly, as Porter commented, the boundaries had been set by the agreement of Atkinson, Crown agent, and the commission in 1869. Porter claimed to have obtained the assent of owners of the block, Te Aitanga a Mahaki, Rongowhakaata, and the inland hapu Ngatikohatu, to an extension of the back boundary to the Hangaroa River and thence to Whakangauangau.[51] This seems highly unlikely considering the general attitude towards the confiscation of these lands among local Maori. Additionally, it seems inconceivable that those who had complained to Locke that the boundaries on the sketch plan were wrong should then agree to the extent of those boundaries in order to allow the Crown to retain an additional 20,000 acres. At any rate, Bousfield had not been convinced by the permission Porter claimed to have obtained from Maori, and originally refused to accede to any alteration in the boundaries.[52] Questions arise as to the necessity, from the Crown's point of view, of extending the boundaries still further so as to include within the block what could only have been more of the broken and practically valueless land referred to in Cooper's margin note of November 1872. Considering that Cooper felt the original boundaries might well be restricted because this land was of such little value, it can only be assumed that the extension of the boundaries was unnecessary and came about only as a result of the over zealous (and quite possibly self-serving) actions of Government agents on the East Coast. Porter himself had hoped to obtain a piece out of the block. His request was refused, however, because such a grant would 'open the door to a fresh class of claims' if allowed. Porter was promised instead a cash bonus on completion of the purchase of the Patutahi lands from Ngati Porou. He received £100 on completion of payments to that tribe on 24 November 1873.[53] Porou agreed to give up their claims to the Patutahi lands in return for £5000, and a

47. Porter to S Locke, 11 February 1873, 'Colonel T W R Porter, Papers and Outward Letterbooks', AD 103, Letterbook, no 2
48. Memo from Nesbitt, 2 December 1873, MA 11/1
49. Locke to McLean, August 1873, cited O'Malley, p 151
50. O'Malley, p 151
51. Porter to Nesbitt, 4 January 1873, MA 11/1
52. Ibid
53. H T Clarke to Porter, 16 September 1873, MA 11/1

deed to this effect was signed on 30 September 1873.[54] On 29 November McLean met with Ngati Kahungunu chiefs and informed them that, following a further sitting of the Poverty Bay Commission, it was now hopeless for Turanga Maori to expect the Patutahi Block to be returned to them. Ngati Porou had received money for their 10,000 acres, and as Ngati Kahungunu would have been given the same amount of land they should receive payment in two portions, £2942 5s 6d for Ihaka Whanga's men, and the remainder for the party at Heretaunga.[55] A further payment of £607 was made to others of Ngati Kahungunu on 20 March 1874 in lieu of their claims to the block, with an additional sum paid out in 1875.[56] Henare Tomoana, brother of Karaitiana Takamoana, later claimed that his hapu had not agreed to accept money for the land, and the royal commission in 1882 on the Patutahi lands recommended that they be awarded 435 acres at Poverty Bay.[57]

4.5 THE POVERTY BAY COMMISSION 1873

In the middle of February 1873, notice was given of a sitting of the Poverty Bay Commission on 15 April. Neither the commissioners nor the claimants were ready by this date and there was an adjournment until 5 August. The absence of Locke, acting as Crown Agent delayed the proceedings for another four days (Locke did not actually arrive until 14 August), but the commission finally opened its proceedings on 9 August, only to find that no Maori were in attendance and only one or two claims were preferred. Until 14 August, the commission opened and closed without claimants coming forward. On that day, however, 300 Maori led by Henare Matua, the Hawke's Bay repudiationist, gathered at the courtroom.[58] Henare Matua had been a Native Land Court assessor for Hawke's Bay and Waipukurau and in 1872, encouraged by Karaitiana Takamoana and two European members of the General Assembly, had promoted the repudiation of European land titles procured by means of fraud or pressure through the Native Land Court. He had been invited to the district in 1872 by Raharuhi Rukupo, a former Poverty Bay repudiationist of the late 1850s and early 1860s, but did not actually arrive in Poverty Bay until shortly before the scheduled sitting of the commission.[59]

On 23 July, the *Poverty Bay Standard* published an open letter from Kate Wyllie, a prominent land seller, to Rahuruhi Rukupo. She warned that it was a mistake to make land fairly sold to Europeans the subject of ideas of restoration or re-sale.[60] On the same day she took on Henare Matua in debate at Pakirikiri, where he was staying with Raharuhi Rukupo. In debate, Henare Matua accused Kate Wyllie of having sold her share of Te Kuri illegally as (according to the Native Land Act

54. H H Turton, *Maori Deeds of Land Purchases in the North Island of New Zealand*, vol 1, Deed no 493, pp 703–705
55. AJHR, 1874, G-1, pp 1–2
56. Turton, Deed no 496, pp 708–709; AJHR, G-4, sess ii, 1884, p 11
57. AJHR, G-4, sess ii, 1884, p 10
58. O'Malley, p 150
59. Hall, sec 14.3
60. Hall, sec 14.4

1867) individual interests in land could not be sold prior to partition by the Native Land Court. In response, Mrs Wyllie claimed that she had sold her interests in various blocks as was her right and had no intention of repudiating what were fair transactions. Raharuhi, she said, was the prime mover in this repudiation of former sales, yet he had himself led the way in the sale of the Matawhero and Makauri blocks, and she suggested that he should reflect on his own past actions. The report, probably written by James Wyllie who accompanied his wife to the meeting, stated that 'Mrs Where went into a lengthy exposition with reference to different sales of land, in order to show that the natives had disposed of them with their eyes open; and concluded by again telling Henare that his coming was for evil and not for good'. She said further that if Henare advised the people 'to litigation the lawyers will eat up the remainder of the land. Lawyers do not work through philanthropic motives; they work for their pay.'[61] Despite the remonstrances of Wyllie and her husband, Henare Matua gained several important allies in the short period before the commission opened. One of these was Paora Te Apatu, a Wairoa chief with local interests due to his links with Ngaitahupo. Another was Wi Pere, who quite possibly encouraged the belief that the confiscation of Muhunga and Patutahi was unwarranted, and helped to spread this belief among Maori in support of the proposed disruption of the upcoming commission sitting.[62]

Judge Monro spoke to those assembled on 14 August, and though admitting that the grievance with regard to previous awards having been to Maori grantees in joint tenancy was a legitimate one, he stated that the only way remaining land, not held under native title, could be restored to Maori ownership was to have it brought before the commission.[63] Henare Matua then intervened with a complaint that in this district 30 or 40 names were inserted in the grants rather than the ten allowed in other areas. All the land in the area had, he claimed, been handed over to him and he planned to go to Parliament with the grievances.[64] Indeed, a petition from 300 Maori of Hawke's Bay, Wairoa, Turanga, and Taupo was sent to the Native Affairs Committee in 1873, claiming that Maori in these areas had been misled into signing away their lands.[65] Paora Apatu then stated that he represented Maori from the area between Muriwai and Napier, who wished the confiscated land at Patutahi to be returned to their rightful owners, and the commission to cease its work. Wi Pere told the commission that the primary grievance was over joint tenancy, but also complained that the blocks confiscated were not in accordance with the area agreed to in 1869.[66] According to O'Malley, the commissioners and Locke underestimated the serious nature of the grievances, and dismissed the trouble as the result of intrigues by Sheehan and Russell (the repudiation movement's European supporters), Henare Matua, and some local settlers.[67]

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61. *Poverty Bay Standard*, 26 July 1873; Hall, sec 14.4
62. Hall, sec 14.4
63. Hall, sec 15.1; O'Malley, p 150
64. 'Poverty Bay Commission Minutes 1873', 14 August 1873, MA 62/4 , RDB vol 129, pp 49,542–49,543
65. 'Petition of 300 Maoris of Hawke's Bay, Wairoa, Turanga, and Taupo', AJHR ,1873, J-6
66. Hall, sec 15.1; O'Malley, p 151
67. Rogan to McLean, 9 August 1873, cited in O'Malley, p 151

The trouble was far from over, however, as when the commission reopened the following day, Henare Matua rose to state that he represented all the owners of blocks before the court, none of whom wanted their claims heard. The courthouse erupted when Kate Wyllie's Okirau claim, adjourned in 1870 before the Native Land Court, was called. The *Standard* reported that:

> Mr Commissioner Munro [sic] suggested that only those who were claimants in each case should remain in Court, and the Commissioners were advancing in a direction with reference as to who the other grantees were, when on a preconcerted signal from the crowd, the natives rose *en masse* and amidst cries of *korero parau* [false evidence] and *kokiri, kokiri,* effectually put an end to all hope of further business. Captain Richardson and his small force were active in their endeavours to eject the more prominent among the rioters, and got a little rough usage. In the scuffle Sergeant Shirley's head came in contact with a square of glass, the sound of which breaking, added to the tumult outside, and give rise to a suspicion that the Maoris really intended to carry out their threat, pretty freely expressed, of attacking the Courthouse and despoiling the maps and property of the Commissioners. [Emphasis in original.][68]

The courthouse was eventually cleared and the doors locked. Rogan and Monro immediately notified the Native Minister that though the commission might still carry on 'at the point of the bayonet', considering the current state of Maori feeling they felt that this would not be advisable, and would, in fact, 'probably be disastrous'.[69] McLean advised them to hear enough of the less important cases for the dignity of the commission to be preserved, and then to adjourn the proceedings indefinitely.[70] Late in August, the commissioners reported that the proceedings were quieter thanks to the presence of Ropata Wahawaha, who had come (apparently at McLean's request) to keep the peace through an assertion of his authority. More importantly perhaps, Henare Matua had left the scene, having achieved his purpose of halting the proceedings of the commission and raising the consciousness of the Government to the grievances of Turanga, and other, Maori. Wi Pere and others accompanied him to Wellington to lay their complaints before Parliament.[71]

Thus, on 26 August, a claim for the Waikohu block of 22,700 acres was brought forward by Panapa Waihopi and others of Te Aitanga a Mahaki. This area had been occupied as a sheep run since the original sitting of the commission (in 1872 by Hargraves). Wi Haronga stated that more than half of those on the list were Hauhau, but Locke did not object to their inclusion. Panapa Waihopi said he did not object to the inclusion of well behaved Hauhau in the grant.[72] Locke's position is explained in a letter to McLean in which he mentioned that if loyal Maori wanted to include their Hauhau relatives he would not object, partly due to the Government

68. *Poverty Bay Standard*, 16 August 1873
69. Rogan and Monro to Native Minister, 15 August 1873, MA 62/6 'Poverty Bay Commission Outwards Letters and Telegrams', RDB, vol 129, p 49,674
70. McLean to Poverty Bay Commissioners, 21 August 1873, 'Poverty Bay Commission Inwards Letters and Telegrams', MA 62/5, RDB, vol 129, p 49,627
71. Hall, sec 15.3
72. Ibid

having made no provision for them.[73] Three claims then came up within the confiscation boundaries. Two of these were brought by Te Aitanga a Mahaki claimants and were objected to by members of Rongowhakaata. The counter claimants objected to the hearing of the cases because these two, and the third block, were in the hands of Mokena Kohere.[74] The commissioners declined to hear any cases which were disputed or where the claimants were absent. On 9 September, the commission adjourned for a month owing to the difficulties it had experienced in its proceedings.[75]

When the court resumed on 19 November 1873 Wi Pere, speaking for all three of the Poverty Bay tribes, said that they wished all land within the ceded area to be returned to a committee of twelve to act as trustees, who would allocate the land 'for the benefit of the three tribes'. On 22 November, Locke appeared before the commission and stated that in consultation with the tribes, both loyal and otherwise, it had been agreed that the commission should return the remaining land, according to boundaries agreed during the negotiations, to those tribes as whole blocks.[76] Locke had apparently already told Archdeacon Williams of his plan for the return of the lands in tribal blocks which could then be taken through the Native Land Court.[77] The estimated areas finally awarded as tribal blocks were: 400,000 acres to Te Aitanga a Mahaki; 51,600 acres to Ngaitahupo; 5000 acres to Rongowhakaata; and 185,000 acres to sections of Rongowhakaata and Ngati Kahungunu, all of which covered an area of 1000 square miles. The apparently joint award of land to Rongowhakaata and Ngati Kahungunu is unexplained, although it might reasonably be assumed that this was a reference to those hapu of both tribes with interests inland towards Wairoa. The court finally closed on 24 November 1873.[78] As O'Malley has commented, the basis on which the boundaries of these tribal blocks was drawn up requires further research.[79] Questions arise, for instance, as to why Rongowhakaata, from whose tribal area the largest confiscation was made, was not compensated by the award of a larger tribal block outside the confiscated area. The boundaries of the tribal blocks though, were apparently worked out on the basis of customary occupation and usage, and did not take into account the new set of circumstances, brought about by the Government's confiscation of an area which appeared to have only a limited correlation to any 'rebel' lands. Rongowhakaata appear to have been seriously disadvantaged by the Crown's hasty sloughing off of the remaining Turanga lands, without any reserves being allocated to 'loyal' Turanga Maori, as was originally intended. It is demonstrably true that by this time the issue as to whether one was a rebel was both difficult to answer and slightly irrelevant,[80] but where this was to be established, the links to Te Kooti were those uppermost in people's minds. Considering the difficulties the commission had

73. Locke to McLean, August 1873, cited in O'Malley, p 153
74. Hall, sec 15.3
75. O'Malley, p 153
76. Ibid, p 154
77. Hall, sec 16.1; Poverty Bay Land Titles Act 1874
78. Hall, sec 16.2
79. O'Malley, p 155
80. Ibid

experienced at its earlier sitting in 1873, it is perhaps not surprising that the Government sought an easy solution to the return of lands in the area, and that this should have been quickly found when the commission resumed in November. O'Malley seems to grasp the truth of the matter in his comment that the Government had lost interest in the return of lands in Poverty Bay after it had received the blocks it sought, and completed negotiations with the loyalist tribes Ngati Porou and Ngati Kahungunu. Furthermore, in the opinion of Locke, all the good land in the district had already passed through the commission.[81] No changes appear to have been made with regard to the 150,000 acres of land awarded under joint tenancy by the commission in 1869, and in effect the Government's getting rid of the Poverty Bay problem, before the return of lands was effectively completed, demonstrates what can only be described as a mercenary attitude towards the attainment of valuable land in the area, and the problems which its own actions and legislation caused the former owners of that land.

The East Coast Act 1868 was to remain in force until 1891, so that the Native Land Court could continue to exclude claimants on the basis of their having been in rebellion, but the Act seems to have been ignored for the most part.[82] The Poverty Bay Land Titles Act 1874 was passed on 31 August of that year in order that Locke's arrangements for the return of lands in tribal blocks could occur without the further investigation of individual claims. Richmond's proclamation of 1869 which extinguished native title over the area was still a problem as the Native Land Court would remain unable to investigate the blocks or subdivide them. Section 2 of the Act provided that any person claiming an interest in land returned by the Poverty Bay Commission on 22 November 1873 could have their title investigated before the Native Land Court as if the native title had never been extinguished.[83]

Despite the closing of the commission and the return of lands, apparently undertaken in an amicable way with a minimum of dissent on the part of Poverty Bay Maori, the grievances expressed at the commission sitting in August were still very much alive. This was demonstrated at a meeting held by local chiefs with McLean in 1874, where additional concerns were also expressed regarding the interference in local affairs by loyalist chiefs from the two tribes to whom land had been awarded out of the confiscated blocks. Wi Haronga of Te Aitanga a Mahaki told McLean that if he had come to return land to Te Aitanga a Mahaki and Rongowhakaata, and to give them the power to administer their own affairs, it would be good. He referred to Henare Potae, Meiha Ropata, Mokena Kohere, and Paora Te Apatu as chiefs from other districts who should cease their interference in the affairs of Turanga. Wi Pere asked that the Government give back burial grounds taken as part of the confiscated blocks at Patutahi, Wahanui, and Kaikaitaratahi. He also claimed that the Turanga tribes should 'participate in the Patutahi money, and receive £5,000.'[84] Hoani Ruru stated that:

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81. Locke to McLean, 15 November 1873, [McLean Papers (private), ATL], cited in O'Malley, p 155
82. O'Malley, p 155
83. Poverty Bay Land Titles Act 1874
84. AJHR, G-1, 1874, pp 2–3

> The land belonging to Rongowhakaata was taken by the Government for the crimes of all the Hauhau of Turanga, and but a small portion of that belonging to Te Aitanga a Mahaki; Ngaitahupo did not lose any land, Paora Te Apatu and others had made application for the adjudication of lands within the "rohe potae"; Rongowhakaata did not, as their land had all been taken. I wish you to give me back a portion.[85]

In response to these complaints and those of Wi Pere and others over interference in their affairs, McLean stated:

> You, the people of Turanga, have not hitherto shown yourselves capable of managing your own affairs, although you talk largely of your powers. You could not do it even when your old chiefs of authority were alive; and you have always evinced a fickleness and a desire for change, without considering the consequences which would follow. When the Hau Hau doctrine came among you, you readily adopted it, and you were completely led away; now you express your jealousy because other chiefs are desired to come here. If you refer to the Ngatiporou chiefs I tell you they have a right to come here at any time, and will do so whenever requested. I have asked them to come here, and will do so again when I consider it necessary. You have no chiefs to whom any attention is paid; and the old proverb holds good, "Turanga tangata rite"; or Chiefs and all are of equal standing at Turanga. The land question has been satisfactorily settled by the Commission which recently sat here, and I am not prepared to make any further concessions in either land or money, as you may consider yourselves liberally treated.[86]

Such a statement clearly indicates the Crown's general attitude towards Poverty Bay Maori, expressed as it was on this occasion and others by McLean's misreading of the traditional proverb about the relative standing of men in Turanga. Clearly all Maori of Turanga were regarded by officials such as McLean, whose knowledge and standing among Maori of the East Coast was well respected in government circles, as one group with no differentiation between loyal and rebel, with chiefs 'to whom no attention was paid'. Questions might well be raised as to the Crown's obligation to retain Maori in the undisputed ownership of their lands and resources in the face of the deliberate (by McLean's own admission) allocation of land to, and the later importing of, chiefs from other districts to administer the affairs of the tangata whenua. Certainly this has been the subject of a long standing grievance among Maori of Poverty Bay.

4.6 SEEKING REDRESS AND COMPENSATION

The appeals for redress of the grievances of Turanga Maori, especially members of Rongowhakaata, over the confiscation of their lands, began almost immediately and continued into the twentieth century. For those who had interests in the lands retained by the Government at Patutahi, the appeals were constant, in the form of petitions and cases before the Native Land Court. There is a substantial amount of

85. Ibid, p 3
86. Ibid

primary source material contained in both the Native Affairs Committee files and the minute books of the Gisborne Native Land Court, especially the minutes of the Papatu case hearing in 1877, regarding the issue of boundaries of the Patutahi block, and the excess of land taken by the Government. This material is both detailed and confusing, and the scope of the present overview does not allow its inclusion. It is certain, however, that a thorough examination of the material will shed greater light on the boundary and survey issues raised with regard to the confiscation of this land, in earlier sections of this report. For the present, a brief examination of the Papatu case, and the evidence presented there of Turanga Maori only having agreed to give up 15,000 acres of land to the Government, rather than the much larger area eventually retained, will suffice as introduction to the later commissions of inquiry into the confiscations, first in 1882, and later in 1921.

4.6.1 Papatu

Disputes over the boundaries of the Patutahi block were the focal point of this case, heard before Judge Rogan in March 1877. About 2000 acres of the Papatu block overlapped with the land the Government claimed out of Patutahi. Witnesses, including some settlers, testified that the Government had extended the survey of the land they were to retain beyond the stream, originally agreed as one of the block's boundaries, to the hill beyond, thus including the additional 2000 acres of Papatu, already leased by the Maori owners.[87] An account of the case appeared in the *Poverty Bay Standard and People's Advocate* for Wednesday 21 March 1877, where it was reported that Eruera Harete (E F Harris) had brought the case to the court in 1875 and then withdrew it in favour of settling the matter directly with the Government. McLean had referred the matter to Locke, who suggested the matter went before the court 'on the understanding that if the court decided against the Government, the land should be returned to the claimants'. Hoani Ruru stated in court that the survey of the block had originally been requested by H Harris and Hoani Ruru when an arrangement was made to lease the land to Harris in 1869. Hoani Ruru claimed that he had pointed out the boundaries of the block to the surveyor, Bousfield. The lease was signed prior to the first sitting of the Poverty Bay Commission in 1869, and the land was again surveyed in 1871 for the Government. The claimants had not discovered until 1874 that the Government claimed the 2000 acre portion of Papatu between the creek, called Wakahu, and the hill. The claimants insisted that the boundary of the block was at the creek when they spoke of it to Mr Locke. Locke, however, stated that Captain Porter, Mr Bousfield, and Wi Pere had arranged the survey of the ceded block, Kaimoe.[88]

It was here that the crux of the claimants' argument lay. They maintained that the block they agreed to let the Government take was that of Kaimoe, which they had believed to be around 5000 acres in extent. On survey this block was found to contain only 3500 acres, so they gave the Government a further 1500 acres 'to make up the amount first agreed upon'. Hoani Ruru said:

87. Minute book, Gisborne Native Land Court, no 3, fol 353, 368–405, 448, cited in O'Malley, pp 160–161
88. *Poverty Bay Standard and People's Advocate*, 21 March 1877, copy contained in MA 11/2 'Papers relative to the Royal Commission upon certain Native claims to land, etc, Poverty Bay'

> We never agreed that the hill should be taken as the boundary; the land had been leased to the creek before the Government survey by Mr Lock [sic] acting for the Government. Papatu was surveyed in 1869. By the Court, the 1500 acres was given afterwards to make up Kaimoe to 5000 acres; the creek was the boundary. I did not go to show the Government boundary; the names for that boundary were given at Turanganui to Messrs Atkinson and Graham. I was present, we surveyed for the lease first and the Government surveyed afterwards.[89]

The claimants maintained that the 5000 acres of the Kaimoe block was to make up one of the three 5000 acre blocks (a total of 15,000 acres) the Turanga tribes agreed to give up to the Government. Hapi Kiniha stated:

> We knew the land we gave as we named the boundaries. We agreed that Muhunga, Patutahi, and Arai should be given, what we understood was 5000 acres each. We all thought that these 1500 acres was to be the final settlement. Part of Westrup's run was Tapatoho. The Arai block started there and then crossed the river. The name Patutahi was on the maps.

Henry Harris, the part-Maori lessee, confirmed Hapi Kiniha's claims about the agreement with the Government to take only 15,000 acres. He said that he knew nothing about any arrangement to give up 57,000 acres. European settler, A F Hardy, gave evidence on the manner of the Government surveys that ties in with the discussion over the discrepancies in acreage of the Patutahi block contained in the previous chapter. He said:

> I have conversed with Mr Bousfield at the time of his survey for the Government, and again when making the actual survey of Patutahi. He has told me that when instructed to follow the Government line he had said that he had already surveyed for the natives to the stream for Harris's run, but that his instructions from the Government was to take it to the hill. He further said that from his impression of the original sketch map, land had been left out at the far end of the block, and that the Government had encroached at the Arai end of the block.[90]

As discussed in chapter three, it was generally agreed by the Government that the land at the back of the Patutahi block was rugged and of negligible value. It would have made perfect sense then, for instructions to have been given to encroach on the valuable land at the front end of the block, which lay on the fertile flood plain.

Evidence continued to be given until, on 27 June, Judge Rogan announced that although he found in favour of the Government in this case, the opinion of the Assessor differed for the first time since sittings of the Native Land Court had begun in Gisborne. As a consequence, judgment on the case had to be deferred and referred to the chief judge for decision.[91] On the same day, however, he sent a telegram to Locke stating that the Papatu case had been given in favour of the Government although the assessor had dissented. Locke received a letter from E F Harris in July informing him that as a decision had been unable to be made on

89. Evidence of Hoani Ruru, *Poverty Bay Standard and People's Advocate*, 21 March 1877, MA 11/2
90. Evidence of A F Hardy, *Poverty Bay Standard and People's Advocate*, 21 March 1877, MA 11/2
91. Gisborne Native Land Court , minute book 3, fol 448, cited in O'Malley, p 161

the case, the claimants would like to try and reach an amicable settlement with the Government on the points in dispute. Locke wrote a note to the under-secretary of the Native Department, Mr H T Clarke, which forwarded the misinformation supplied by Judge Rogan himself that the case had been decided in favour of the Government, and that the land definitely belonged to them.[92] When Clarke asked Rogan to explain the discrepancy between his telegram and the actual state of affairs, Rogan replied that there had been no discrepancy. He had felt the claimants had not proved their case and that the land belonged to the Government. His assessor had disagreed and by law, no decision could be arrived at. E F Harris had asked him to refrain from referring the matter to the chief judge until the claimants had tried to come to an arrangement with Locke.[93]

Although E F Harris now sought to settle the matter with Locke, as Government agent, the land was put up for sale, forcing Harris and other claimants to frantically petition Parliament. In petitions during 1878 Hapi Kiniha and others maintained that the 2000 acres of Papatu in dispute were worth £10,000. They claimed that McLean had promised them an enquiry into their grievances, but this had not eventuated. They requested payment of the £25 per acre that the land was worth, and an immediate investigation into the matter. The Native Affairs Committee heard evidence in support of these petitions in 1878, and reported that after taking the advice of Mr Clarke and Mr Locke they were of the opinion that the claimants had failed to establish a grievance.[94] The petitions did not stop though, and in 1880 the Native Affairs Committee recommended a commission to inquire into all the complaints regarding Patutahi.[95]

4.6.2 The 1882 Clarke commission

Henry Tacy Clarke, who was by this time a former under-secretary of the Native Department, headed the Commission on Native Claims to Land in Poverty Bay, set up on 7 August 1882. It was intended that the commission inquire into Harris's claim and six others relating to Patutahi, Te Arai, Waimata, and Muhunga blocks. Clarke reported his findings on 6 November 1882. Claims by Mohi Turei to land at Patutahi, Te Aitanga a Hauiti to £1400 in lieu of their supposed share in the block, Ngaitahupo to shares in the Waimata and Te Arai 2 blocks, were all unsuccessful. As previously mentioned though, Henare Tomoana and others of Ngati Kahungunu were awarded 435 acres out of Patutahi after convincing Clarke that they had not agreed to accept money in lieu of the land allocated to them.[96]

Harris had by this time dropped his claims to the 2000 acres of Papatu as it had already been sold by the Government. Instead, he joined with Hirini Te Kani and others in claiming the Tapatohotoho block of 522 acres that, he claimed, had been handed over to the Government for the purpose of establishing a military settlement

92. E F Harris to S Locke, 16 July 1877; Locke to Native Department under-secretary, date illegible, MA 11/2
93. Rogan to Under-Secretary H T Clarke, Gisborne 2 November 1877, MA 11/2
94. Petition of Hapi Kiniha and others , AJHR, 1878, I-3, nos 105–107, p 9 (minutes of evidence, LE 1/1878/6)
95. O'Malley, p 161
96. Ibid, p 16

for Ngati Porou. This had been done by Rapata Whakapuhia, who was not entitled to a share on the block.[97] Paora Parau of Ngati Konohi (Te Aitanga a Hauiti) swore that the land at Tapatohotoho was given to the Government for a military settlement. He said:

> I was here at the time a deed was signed purporting to be a deed of cession. Mr Richmond, the Minister, and Mr Atkinson, Resident Magistrate, asked us to sign the deed on the understanding that the land should be handed over to be protected as against outsiders. I know the land called Tapatoho. I know the reason that land was given to the Government. It was for the purpose of a military settlement. No barracks has ever been built upon it. There was a proposal made to cede a portion of the land as payment for the guilt of the Hauhaus. I have heard that five thousand acres of Te Muhunga, five thousand acres of Te Arai, and five thousand acres of Patutahi was ceded on that account.[98]

When questioned by Mr Locke as to whom those outsiders were from whom the land was to be protected, Paora Parau replied:

> I meant by other tribes against whom the Government were to protect our land, strange tribes who might desire to take it, as the inhabitants of the district had been killed. It was immediately after the fight at Waerengaahika that negotiations for ceding land to the Government were begun by Major Biggs. At the time when the division of these lands took place Mr Richmond stated that he would remove all the soldiers, and that the natives would have no protection against the Hauhaus. It was settled then that the piece of land referred to should be set apart as a site for a barracks . . . At the meeting held at Rawiri, on the other side of the river, it was decided to cede the land to the Government . . . The Government was asking for this land to be given as payment for the guilt of the Hauhaus; they claimed through the expense incurred in sending troops here. I do not know if the demand was made to carry out the conditions of the deed that had been signed. All I know is that it was demanded in payment for the Hauhaus.[99]

Locke stated that he believed Tapatoho to be identical with the Te Arai block. Clarke agreed with this conclusion, although Te Arai was actually found to contain 735 acres. Locke maintained that Te Arai was included in the Government survey of Patutahi, containing 50,746 acres.[100] Locke also claimed that there had never been any ‘decided intention’ to form a military settlement on the block. Such an idea, though, had been mooted in 1869 by Locke himself (see sec 4.4).

Harris claimed that in 1869 he had protested against his individual rights being prejudiced by the Deed of Cession of 1868, which he did not sign. He believed that as he and others of his hapu had not signed the deed of cession, they had not forfeited their rights to this land or any other in the Patutahi block. Clarke established that all the claimants in this case except for Harris and Rutene Te Eke

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97. ‘Report by H T Clarke upon certain Native Claims To Land, Etc, Poverty Bay’, AJHR, 1884, sess ii, G-4, p 4
98. Ibid, p 6
99. Ibid, p 7
100. Ibid

had signed the deed which ceded their land to the Government. Locke, in response to questions by Harris, stated that he considered the deed of cession to be binding on all those who signed it, and on all of the people of the district . He said he was aware that the claimants' rights to land were protected by the Treaty of Waitangi, and could not say whether they had forfeited those rights if they had not signed the deed of cession.[101] Clarke, in his final report on the case, held that the deed of cession was binding on all the members of Rongowhakaata as all individual interests were merged in those of the tribe in this question.[102] As O'Malley points out, regardless of Clarke's dismissal of the objections of those who had not signed the deed of cession, the fact that there were such non-signatories flies in the face of Richmond's claim to have obtained the 'unanimous' consent of all Turanga Maori.[103] Clarke concluded that the Tapatohotoho block, which Locke and he had decided was actually Te Arai, was given up absolutely to the Crown, and he therefore dismissed Harris's claims.

Wi Pere also brought three claims before the commission. The first of these concerned the Patutahi block. Wi Pere claimed, on behalf of Whanau a Kai hapu, that they had become almost landless because of the cession of those lands, and the return of remaining lands in joint tenancy. If the Government were to make some provision for his hapu, he was prepared to 'give up all contention with the Government with regard to those lands'. Indicating the very difficult situation in which some Poverty Bay Maori now found themselves, Wi Pere stated that:

> Myself and hapu have none of the flat land of Turanga. I myself have only fifty acres. Some of my hapu live on it; others are scattered about on lands belonging to others. I was entitled to large blocks of level land in Turanga, but now it has all passed into the hands of Europeans. It was through the law of joint tenancy that I only obtained the fifty acres. I have been a great sufferer through that law. Only for that law I should have had all the land I was entitled to through my ancestors, and my people would have had sufficient to maintain them . . . No portion of Patutahi was returned to the loyal Natives.[104]

Although the Poverty Bay Commission had investigated other blocks in the district and returned them:

> Only those Hauhaus who had returned to allegiance were admitted in the blocks investigated . . . I cannot say how many Hauhaus were excluded from those lands. After the deed of cession was abandoned, the Hauhaus were included in grants for lands to which they were entitled; but the lands are far back, and many of them have been sold to the Government. These people were asked by the Government Land Purchase Agents to sell, and the Natives consented to do so.[105]

This statement by Wi Pere reveals some very important issues require consideration in the light of further research. Firstly, those Hauhau still imprisoned in 1869 and

101. Ibid, p 8
102. Ibid, p 4
103. O'Malley, p 163
104. AJHR, 1884, sess ii, G-4, p 13
105. Ibid, p 14

1873 (in the Bay of Plenty) would have been excluded from awards made by the Poverty Bay Commission. The blocks of land in which these Maori would have been included were those areas that passed through the Native Land Court in later years. Generally these blocks were in the very rough inland country, of poor quality and difficult to farm or even lease. These holdings would have provided little or no return, especially once partitioning had begun to occur. The temptation to sell shares in these unproductive lands would have been hard to resist when the Crown began to purchase shares in these back-country blocks.

The second and third claims referred to the Muhunga block. Wi Pere applied for the land in excess of 5000 acres of that block, which he maintained should have been returned. He also applied for the return of Urupa on that block, and for a portion, called Waitawaki, to which he was personally entitled. In his evidence Wi Pere stated that three burial places were originally to have been reserved out of the Muhunga block but this had not occurred. These areas had now passed into the hands of Europeans and were being occupied by them. He said that many people were buried there.[106] Additionally, he stated that 15,000 acres were promised to the Government in three blocks, Patutahi, Te Arai, and Muhunga. Any amount found to be in excess after survey was to have been be returned. This also had not occurred. The agreement which Wi Pere claimed to have come to with Atkinson that the Waitawaki block, of 444 acres, would be returned to him, had also not been met.[107]

Once again the issue had been raised of the 15,000 acres ceded to the Government rather than the acreage eventually retained, but Clarke assiduously avoided addressing this more serious issue in favour of a narrow inquiry into the agreements and decisions of the Poverty Bay Commission. Although Muhunga apparently contained 5415 acres, Clarke calculated the blocks within it at 5324 acres, not including the 25 acres of burial reserves already allocated from the ceded block. He determined that Wi Pere be granted only 91 acres, including part of the Waitawaki block named ‘the Orchard’, and a further eleven and a half acres, and the balance of the bush reserve on the Waitawaki block. He accepted, however, that the Whanau a Kai hapu were experiencing hardship through landlessness, which he attributed to the law of joint tenancy. He therefore allocated 500 acres of reserves to that hapu (which Wi Pere later claimed to be of extremely poor quality and virtually valueless).[108]

The claimants who had brought cases before the commission after many years of petitions and appeals to the courts, can hardly have been satisfied with the narrow focus of Clarke’s inquiry, or his findings. Clarke relied heavily on official accounts rather than the evidence of the witnesses themselves, despite the concerns he expressed at discovering that one of the maps produced before the commission of 1869 had been altered subsequently, the original acreage figure having been erased and replaced with another following survey.[109]

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106. Ibid, p 13
107. Ibid,pp 14–15
108. AJHR, 1884, sess ii, G-4, p 2; O’Malley, p 164,
109. AJHR, 1884, sess ii, G-4, p 4

4.6.3 The Native Land Claims Commission 1921

Not surprisingly, Parliament continued to receive regular petitions from Poverty Bay Maori regarding the confiscated blocks. In 1920, three petitions relating to the Patutahi block, one having been lodged by Wi Pere and others prior to his death in 1915, were referred to the Native Land Claims Commission headed by the chief judge of the Native Land Court, Robert Noble Jones, and also including John Strauchon and John Ormsby. The petitions had related to the excess of 42,000 acres taken by the Crown when only 15,000 had been ceded. The commission was therefore instructed to inquire into this question rather than whether any cession of lands should have been demanded from the tribes at all.[110]

In its report, the commission noted that the map used by the Poverty Bay Commission in 1869 was a general one of the district and that although the supposed tribal boundaries were marked there was no clear indication of the 57,000 acres referred to by the commission as the area to be retained by the Crown. Furthermore, no record of the unsurveyed boundaries were kept in the minutes. [111] In discussing the discrepancies in the acreages of the blocks, and the Maori claims that 5000 acres each of the Patutahi (Kaimoe), Te Arai, and Muhunga blocks were the correct figures, the commission concluded that it was evident that there had clearly been some confusion as to the respective areas in the minds of the Poverty Bay commissioners. To demonstrate this they cited the minute book, where the Patutahi block was stated to be 'of very good quality'. They said that this 'would be a very fair description of Patutahi proper, not exceeding 5000 acres, but could in no way apply to the greater proportion of the 57,000 acres (or 50,746 acres as found on survey)'.[112] Contradicting the supposition of Locke and Commissioner Clarke in 1882 that Tapatohotoho was identical with Te Arai, the report stated that Te Arai was said to adjoin Patutahi on the western side. If the 735 acres referred to Tapatohotoho then it nowhere adjoined Patutahi proper, and only adjoined the remaining 50,000 acres to the east. The two blocks, then, could not be said to be the same. In terms of the excess acreage taken the commissioners reported that:

> The only explanation we can offer is that the Poverty Bay Commission, in error, adopted at some later date the outside tribal boundaries of the Rongowhakaata Tribe as showing the boundary of the land arranged to be given by that section of the people. This is the only way we can account for them taking nearly 51,000 acres from one tribe, and only 5395 from another tribe which, according to the records, contained an equal if not greater number of rebels, and owned a great deal more land than the first-named tribe. According to the Poverty Bay Titles Act, 1874, there was returned to Rongowhakaata 4000 acres, and to Aitanga-a-Mahaki 185,000 acres, out of the lands ceded to the Governor on the 18th December, 1868. Such a proceeding would be in direct conflict to Mr Richmond's assurance to His Excellency the Governor and his explicit instructions to Mr Atkinson.[113]

110. O'Malley, p 165
111. 'Reports of the Native Land Claims Commission', AJHR, 1921, Sess ii, p 16
112. Ibid, p 17
113. Ibid

The assurance and instructions referred to here were those that only sufficient land for military settlers and as a reward for loyal tribes should be secured for the Government out of the area ceded in the 1868 deed.

The commissioners, however, were still inclined to believe that something larger than 15,000 acres was intended to be awarded to the Crown. Although there was some evidence that Patutahi proper was only to be 5000 acres, they could find no such evidence that Te Arai was to be so confined. They said that to make it only 5000 acres and join it to Patutahi (Kaimoe), as the minutes proposed, would have made it an oddly shaped piece of land, and it would not then have covered the boundaries pointed out by Wi Pere. They supposed, though that Maori concerned might not have thought the boundaries they pointed out would cover more than 5000 acres.[114] O'Malley conjectures that this is the only obvious explanation for Poverty Bay Maori maintaining that they had only agreed to ceded 15,000 acres when they had clearly raised no objections to the boundaries of the blocks as stated before the 1869 sitting of the Poverty Bay Commission. Additionally, Wi Pere had apparently been confident that any excess found on survey would be returned to them, as per the agreement with Atkinson.[115]

The commissioners do not seem to have been aware of Locke's letter to McLean referring to the 19,445 acres deliberately added to the 31,301 acres of the Patutahi block already surveyed according to the boundaries given in 1869. Neither did they take into consideration the supposed agreement, often raised by Wi Pere during his lifetime, regarding the return of the excess acreage on survey. Nevertheless the commission agreed that the Crown had received far more land than either Poverty Bay Maori or the Government had originally intended. They felt that there was much to be said in favour of the Maori claim that only 15,000 acres was intended to be reserved for the Crown, but there was not sufficient conclusive evidence to find that this was in fact so.[116] They estimated that the Government had retained 56,161 acres instead of the 30,000 acres they should have retained, according to the boundaries of the block originally included in the Government survey by O L W Bousfield (see sec 4.4). This left a surplus of 26,161 acres. The Government had apparently returned 4214 acres of Arai-Matawai (to whom is unclear), 91 acres of Muhunga, and 500 acres of Patutahi, the last two awards having been made by the Clarke commission in 1882. Compensation had been paid to Pimia Aata for 1019 acres of the Raukakaka block, included in Kaimoe. When this 5824 acres was deducted from the 26,161, a balance of 20,337 acres remained as the figure that Poverty Bay Maori had been wrongly deprived of. The commission reported, however, that this excess would not have been the good flat land, which was expressly reserved for the Crown, but 'the hillier and less valuable land at the back (south and west) of Patutahi and Te Arai Blocks'. They added as a final remark that all of this land had already been sold by the Government in preceding years.[117] They offered no suggestions for compensation.

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114. Ibid, p 18
115. O'Malley, p 167
116. AJHR, 1921, sess ii, G-5, p 19
117. Ibid, p 20

4.6.4 Compensation

The Government did not dispute the findings of the Native Land Claims Commission, and section 33 of the Native Land Amendment and Native Land Claims Adjustment Act 1922 stated that the recommendations of the commission were still under consideration, and might or might not be given effect to. This section of the Act empowered the Native Land Court to determine the persons entitled to any relief that might be granted, upon application to the court of those that claimed an interest. The Crown reserved the right to determine what, if any, relief should be granted.[118] In 1923, the Native Land Court ruled that members of Rongowhakaata who could prove occupation were those entitled to any relief. Further hearings to draw up a list of beneficiaries then proceeded.[119] The Appellate Court later upheld this decision and dismissed a claim by Whanau a Kai.[120]

In 1928 the Government authorised the Native Land Court to reconsider the relative interests of the different tribes with interests in the Patutahi block, and to determine a reasonable level of relief for them.[121] The claimants argued for relief of 30 shillings per acre and 5 percent interest for 60 years. This made a total of about £122, 000. The Government, however, offered compensation of not more than two and a half shillings per acre, with no interest.[122] Finally, the court recommended in 1929 that £7500 compensation should be paid with 5 percent interest over 60 years; an additional £22,500.[123] Following petitions from members of Whanau a Kai regarding their relative interests in the Patutahi block, the court was authorised to reconsider Whanau a Kai claims lodged on the basis of their entitlement through membership of hapu and iwi with acknowledged claims to the block. Thirty eight Whanau a Kai members were subsequently included in the lists of owners.[124]

The claimants rejected as insufficient the sum of compensation recommended by the court, and a planned special commission, authorised by the Native Purposes Act 1935 to reassess the compensation to be paid, never eventuated. In 1938, the claimants indicated that they were prepared to accept £50,000. By 1950, Rongowhakaata had lowered the sum to £45,000, clearly willing to compromise in the hope of receiving a settlement after such a long delay. The Government responded with an offer of only £38,000 (£7500 plus 5 percent interest from 1868 to 1950). This lower figure was finally accepted by the claimants on 22 October 1950.[125] As Vincent O'Malley has already suggested, the issue of the adequacy of

118. Native Land Amendment and Native Land Claims Adjustment Act 1922, s 33
119. Inquiry under section 33 of the Native Land Amendment and Native Land Claims Adjustment Act 1922, from Gisborne MB 51, fol 140–152, MA1 5/13/189 'Patutahi Scholarship Fund, vol 1, 1920–1935', RDB, vol 65, p 24,991, cited in O'Malley, p 169
120. Appellate Court MB 22, Patutahi Decision, RDB, vol 65, pp 24,962–24,964, cited in O'Malley, p 169
121. Native Land Amendment and Native Land Claims Adjustment Act 1928, s 47
122. Chief Judge Native Land Court to Native Minister, 7 February 1929, MA 1 5/3/189, vol 1, RDB, vol 65, p 24,837, cited in O'Malley, p 170
123. RDB, vol 65, p 24,838, cited in O'Malley, p 170
124. Native Land Claims Amendment and Native Land Claims Adjustment Act 1930, s 30; Notes of Representations made to Minister of Maori Affairs, 24 May 1950, MA1 5/3/189, vol 3, 1950–60, RDB vol 66, p 25,532, cited in O'Malley, p 170
125. Memorandum for the Secretary to the Treasury, 3 July 1950, vol 3, 1950–60, RDB, vol , MA 1 5/3/189, p 25,525–25,526; Notes of Representations made to the Minister of Maori Affairs, 3 July 1950, RDB, vol 66, p 25,538, cited in O'Malley, pp 170–171

this settlement, which also goes directly to the question of the adequacy of the Native Land Claims Commission findings, is one that requires further consideration in the light of more detailed research.

4.7 CONCLUSION

Parliament had recognised the injustice involved in awarding land to Maori as joint tenants, and had changed the law in 1869 to one where awards were made to tenants in common. Despite this, 150,000 acres of land in Poverty Bay was granted in joint tenancy in 1869 and 1870. The reason for this oversight seems to have been that the Poverty Bay Grants Act 1869 did not stipulate the nature of grants to be issued under its provisions, and the Native Lands Acts did not have any operational standing in the district while the East Coast Act 1868 was still in force there. When dissatisfaction began to grow among local Maori over the joint tenancy issue, the Government accepted that there was a legitimate cause for grievance. Nevertheless, it took no action to alleviate the problem before the land had been sold. This is an important issue as these lands were among the finest in the district, and were also among the first to be sold outright to private European speculators.

Further detailed research will be necessary in order to unravel the question of the large additional area of land included in the Patutahi block that the Government retained. Nevertheless, it is evident that an extra 20,000 acres was added to the block on survey by Government officials in the district, who were fully aware that this was contrary to the original agreement. This addition seems to have been carried out without the knowledge or consent of Maori, whose complaints to McLean and others regarding the confiscation of their lands were largely ignored. Maori efforts to seek redress continued unabated in the following decades. The Native Land Claims Commission of 1921 does seem to have accepted the legitimacy of some of the grievances of Poverty Bay Maori. It saw their claim that the original agreement had involved the Government retaining only 15,000 acres rather than the much larger area that it eventually retained, as being worthy of consideration. The terms of the commission did not, however, include addressing the general question as to whether the confiscation of lands in the district was warranted, and thus their findings were limited to the excess of land taken.

The Government of the day did not challenge the findings of the 1921 commission with respect to the 26,161 acres of land that the Government had retained in excess of the amount to which, according to the commission, it was entitled. It was less than enthusiastic, though, to compensate Poverty Bay Maori for their loss. It would take until 1950 for the claimants to receive any compensation at all, and this a much smaller amount than they had hoped for. The adequacy of this compensation is an issue which should be considered in the light of further research.

CHAPTER 5

THE NATIVE LAND COURT AND LAND DEALING, 1870–89

5.1 INTRODUCTION

This chapter divides roughly into three different themes or parts, all of which relate to the operations of the Native Land Court on the East Coast, and to dealings in land within the Poverty Bay area. The first theme concerns the system within which the court functioned; the Native Land Acts, and their effect on Maori landowners in this district in particular. The second theme is that of both private and Crown purchase operations in Poverty Bay, and these sections deal in a general way with the normal practice of purchase in the region, using case studies and isolated examples to demonstrate a pattern. The third part of the chapter deals with the activities of W L Rees and Wi Pere from the mid 1870s to 1889, and their involvement with Maori land in the area through the Rees-Pere Trusteeships and the failed New Zealand Native Land Settlement Company. Throughout the chapter an attempt has been made to show the changing pattern of land ownership in the area, aided by the series of maps included. It must be said, however, that sections of this chapter are heavily reliant on the secondary source work of Alan Ward on the East Coast Trust, M P K Sorrenson on the Native Land Court, and B J Murton on land settlement in Poverty Bay.[1] This period in the history of Maori land in Poverty Bay was one of excessive activity and rapid change, and for the purposes of this over-view it was clear that to attempt a discussion of the period in any detail would have been more confusing than helpful. The excellent secondary sources available have fortunately made the task of providing a more general narrative an option, as pressure of time prevented indepth primary source research for any of the three themes already mentioned. Such primary research will still be necessary to provide a thorough understanding of this very important period in the history of Maori and their land in Poverty Bay.

The map at figure 4 shows blocks in the Poverty Bay district as determined by the Native Land Court, and the map at figure 5 shows blocks on the Poverty Bay flats. These maps are included for reference throughout this chapter, and those that follow, as many different blocks will be referred to in the text and it will often be helpful to the reader to be able to determine their location within the district.

1. A D Ward, 'The History of the East Coast Maori Trust', MA Thesis (History), Victoria University, Wellington, January 1958; M P K Sorrenson, 'The Purchase of Maori Lands, 1865–1892', MA Thesis (History), Auckland University College, November 1955; B J Murton, 'Settlement in Poverty Bay, 1868–1889, A Study in Historical Geography', MA Thesis (Geography), University of Canterbury, 1962

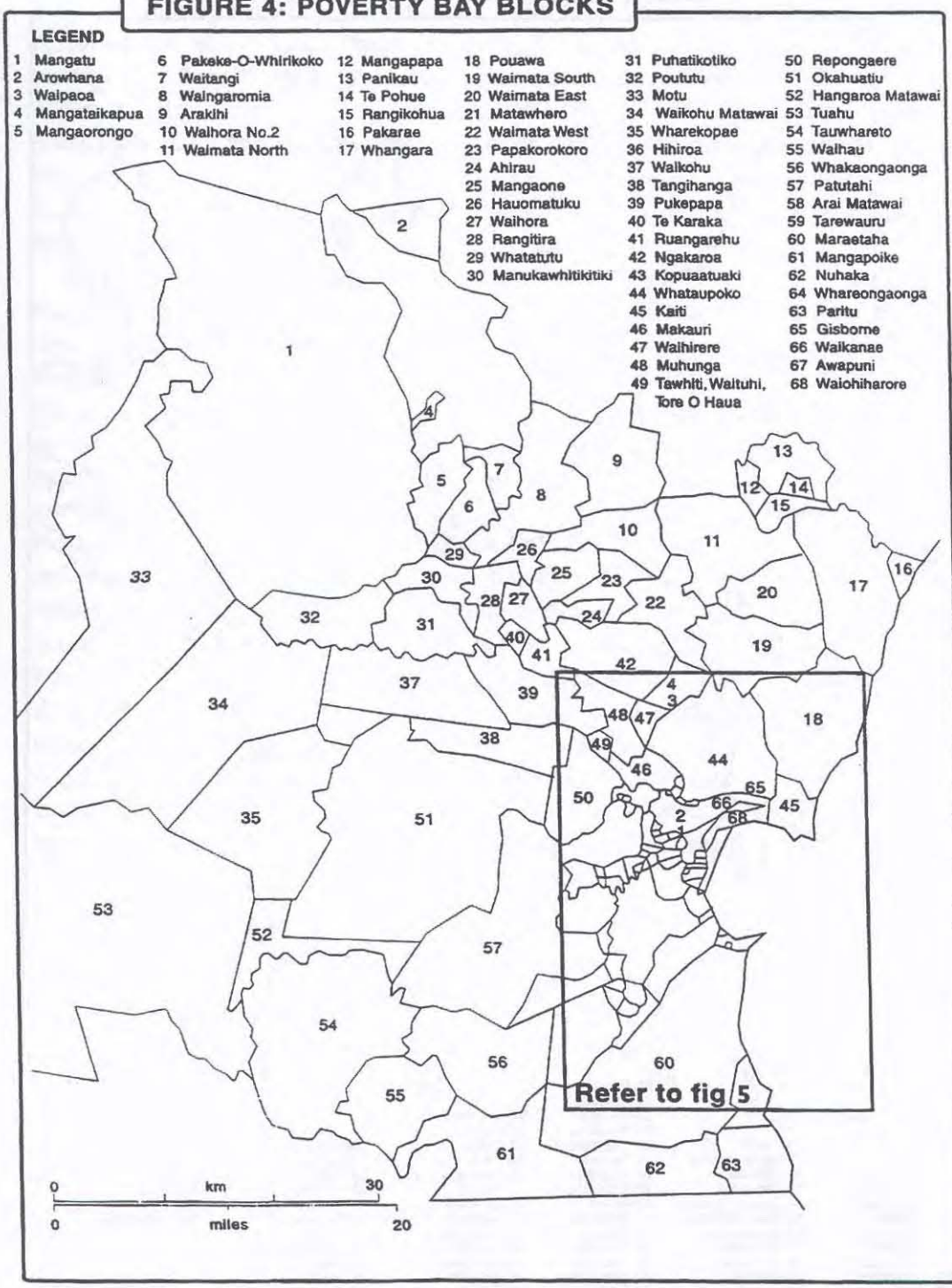
5.2 THE LAND SITUATION IN 1870

At the time of the 1869 sitting of the Poverty Bay Commission only a very small area on the flat and fertile land of the flood plain was claimed as having been purchased by Europeans. Considerably larger areas had, however, been leased during the 1860s for sheep runs. The Kaiti block of 4350 acres had been leased by Harris and Read as early as 1856, and was still in the hands of Read in 1870 at a rental of £20 per annum. G S Cooper had leased Pouawa (19,200 acres) in 1865. The Whangara block of 21,450 acres was leased to H R C Wallace and J Broadbent in 1867 at a rate of £280 in the first year, £300 for the next five years, £354 for another five years, and £372 per annum for a final five years. Information available on this particular lease shows that the Maori lessors could still fence and cultivate any portion of the block as long as fences were well maintained and did not disrupt areas in pasture grasses. Pigs were to be kept in sties during lambing, and Maori owners could keep only three dogs at their kainga. The lessee was allowed to kill any stray dogs or pigs, and was also permitted to clear timber and bush for use in house and fence building. Whataupoko, of about 20,000 acres, was leased to W Parker for 21 years at a rate of £200 per annum, and the Maraetaha block of the same area was held under lease by G R and J W Johnson from 1867. Te Arai (10,691 acres) was leased by Charles Westrup in 1867, but G R Johnson later obtained the freehold of the block which was taken by the Crown as part of the confiscated area. Repongaere (9900 acres) was held by Dodd and Peppard, two of the Europeans killed by Te Kooti's men in 1868. Settlers J B Poynter and C Evans leased the Ngakaroa block of 12,360 acres in 1867, while Arthur Kempthorne was on the 11,000 acres of Pukepapa. Captain Harris and John Fergusson leased some of Opou and its surrounding lands, although Harris also held some of this block by deed of gift dating from 1835. A smaller block of 3146 acres known as Ruangarehu was leased by G Scott in 1869.[2] Many of these leases were for pastoral land spreading outwards to the north and south west from the Poverty Bay flats, while the small area granted to Europeans by the 1869 commission was on the flats themselves.[3] All of these areas passed from leasehold to freehold once Maori title had been ascertained through either the Poverty Bay Commission or the Native Land Court.

Throughout the greater part of the period under review in this chapter, there was a fairly common method of acquiring Maori land that eventually led to the changeover from leasehold to freehold. Lessees would buy up the undivided shares of individual Maori owners, while continuing to lease the land, until such time as enough interests had been bought to compel a subdivision. At this point the European would retain a lease of part of the lands and the freehold of another part, while continuing the process of buying up individual interests in the portion still owned by Maori. In general, this process was one which created considerable difficulties and insecurity of title for the settler, and its effect on Maori was that of making the land court the centre of their attention, as disputes over ownership,

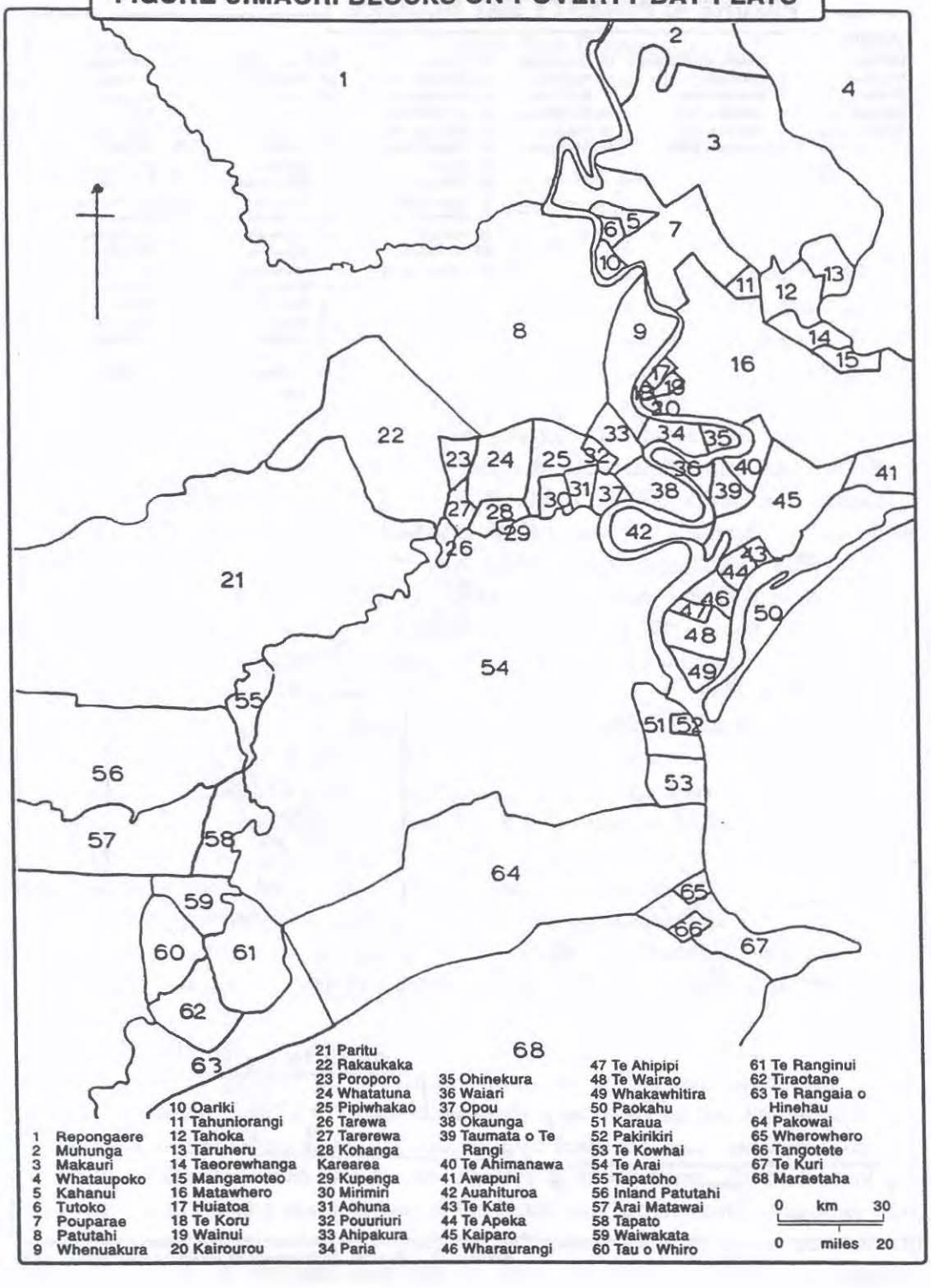
2. Details from Mackay, *Historic Poverty Bay*, pp 315–317
3. B J Murton, 'Settlement in Poverty Bay, 1868 to 1889, A Study in Historical Geography', MA thesis, University of Canterbury, Christchurch, 1962, p 30

FIGURE 4: POVERTY BAY BLOCKS



Source: B.J Murton, Settlement in Poverty Bay 1868 - 1889 M.A Thesis 1962

FIGURE 5:MAORI BLOCKS ON POVERTY BAY FLATS



continuous subdivisions of the same areas of land, and struggles between sellers and non-sellers were brought before it. Within 20 years many were landless as a result of the Native Land Court process and individualisation of title. Maori land purchase in Poverty Bay was a messy business, as this chapter will show, but as in other districts, the result sought after by settlers and government alike was eventually achieved, and by the turn of the century the greater proportion of the Poverty Bay district was in private European ownership. Additionally, a glut of Crown-held land still remained closed to settlement due to its inaccessibility and lack of value to prospective settlers.

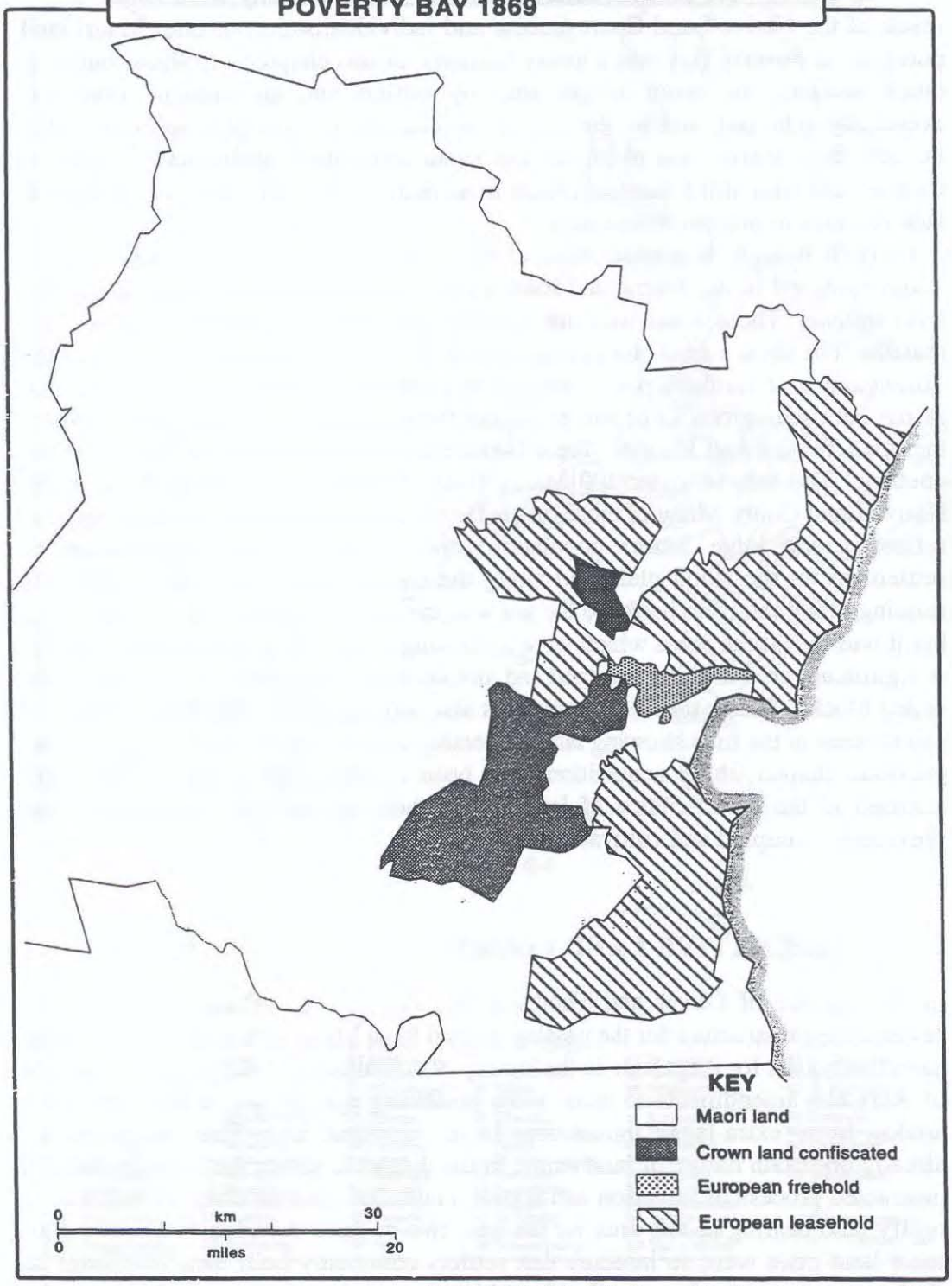
In 1870 though, European freehold land only covered a small area, and was mainly situated in the central and south western part of the fertile plain, and at the river mouths. These areas were the nucleus of future land purchase, for obvious reasons. The Crown-held blocks consisted of the township site on both sides of the Turanganui and Taruheru rivers, where they joined and flowed into the sea, as well as the confiscated blocks of Muhunga and the much larger Patutahi block, which included Te Arai and Kaimoe. These two areas were a mix of fertile plain and hill country.[4] The title to about 200 Maori blocks would be ascertained through the Native Land Court. Many of those on the flats were small and had multiple owners, reflecting the large Maori population, and the traditional concentration of settlement on the flood plain and along the coast. Clearly the area on the flats running along the river banks to the sea was the area of highest Maori population, but it was also these areas which were most sought after by settlers and the Crown. A significant area of this good land had already been acquired by the Crown in the ceded blocks. That a significant area was also already held in European leasehold can be seen in the map showing land ownership at 1869 (fig 6). As discussed in the previous chapter, these acquisitions had been at great cost to Maori, who later testified to the insufficiency of land left to them on the flats, which they had previously occupied and cultivated.

5.3 THE NATIVE LAND COURT

In the opinion of Oliver and Thomson, beginning in the 1860s the legislature devised a legal structure for the passing of land from Maori to European which ‘can have few equals for ineptitude in the history of colonisation’.[5] Certainly a multitude of Acts and amendments to Acts, some pertaining specifically to the difficulties arising from ‘extra-legal’ transactions in the Gisborne area. These added to the already uncertain nature of land tenure in the district to create the complicated and protracted process of litigation and appeal, claim and counter claim, which was to typify land dealing in this area for the next two or three decades. In Poverty Bay, most land titles were so insecure that settlers commonly built their dwellings on sleds so as to move them easily if trouble arose over their tenure of a particular piece of land. As we have seen, the Native Land Court’s powers under the Native

4. Ibid, p 30
5. Oliver and Thomson, *Challenge and Response*, p 99

FIGURE 6: THE PATTERN OF LAND OWNERSHIP IN POVERTY BAY 1869



Source: B.J Murton, Settlement in Poverty Bay 1868 - 1889 M.A Thesis 1962

Lands Act 1865 remained in force on the East Coast except where otherwise specified, by virtue of the East Coast Land Titles Investigation Act 1866 and its 1867 amendment. Nevertheless, the court was never able to adjudicate on any lands within the area outlined in the schedule to those Acts until 1873 (apart from one rather legally doubtful sitting in 1870). Although no lands passed through the court in this district under the Native Lands Acts between 1865 and 1873, the various provisions of those Acts are still of relevance as they were taken into account in the various pieces of special legislation passed for the East Coast in the late 1860s, and in the determination of title by the Poverty Bay Commission in 1869.

The Native Land Act 1862 had been passed with the intention of allowing direct purchase of Maori land by European settlers after its passage through the Native Land Court. The Crown gave up its pre-emptive right, and the Native Land Court was to transform customary land tenure into a more individual European style of tenure to ease the transfer of land directly from Maori to settler. The 1862 Act remained something of a dead letter due to the unsettled state of the North Island until, in 1865, the Government again felt it would be possible to set up the court and proceed with the system of private purchase. The 1862 Act was repealed and the Native Land Act 1865 passed, essentially along the same lines. The 1865 Act set up a court headed by European judges, with Maori assessors with an advisory role in matters of Maori custom. The number of Maori owners to be included in certificates of title was lowered from an original twenty to only ten.[6] As individual ownership of land was unknown in Maori society, the court proceeded to award individual ownership on the basis of usufruct rights as at 1840.

It was intended, under the provisions of the 1865 Act, that where the number of owners in any block exceeded ten, the land was to be awarded under the name of the tribe. Where the amount of land was less than 5000 acres, or the number of owners was less than ten, the names of those ten or fewer individuals could be placed on the certificate of title without the name of the tribe to which they belonged. The court, however, adopted the procedure of issuing all certificates to ten or fewer individuals rather than the tribe. The Commission on Native Land Laws 1891 recorded that this was done in the belief that these ten would act as trustees for the larger body of owners, even though the certificate stated that only those named were the owners of the land, and Crown grants were issued to them for an estate in freehold ‘unencumbered by trusts or conditions’.[7] It is a highly controversial question whether the ten named were intended to act as trustees. Chief Judge Fenton claimed in 1867 that he (and the court) had never believed this. He stated that a great number of the certificates already issued by the court were ‘in favour of individuals, and whether these are trustees put in for the purpose of sale on behalf of the tribe, or whether they are to be regarded as intelligent members of the tribe determined to possess freeholds for themselves, it is impossible to say’. Nevertheless, Fenton maintained, such trusteeships had never been the intention of the court.[8] Sorrenson believes that this state of affairs was brought about because,

6. M P K Sorrenson, ‘The Purchase of Maori Lands, 1865–1892’, MA, History, Auckland University College, November 1955, pp 21–23
7. ‘Report of the Commission on Native Land Laws’, AJHR, 1891, sess ii, G-1, p vii

as there were never ten or fewer owners according to Maori custom, the court was forced to either subdivide land until there were no more than ten owners in each block, or to ignore the claims of the rest of the tribe. The Native Land Act 1865 therefore served to dispossess the remainder of the tribe. Those named were granted title as joint tenants with equal alienable shares in the land. These interests were subject to the laws of survivorship, whereby on the death of a grantee his shares would pass to the other grantees rather than his descendants or natural successors.[9] This was the same form of tenure as that given to Poverty Bay Maori who had Crown grants issued under the Poverty Bay Grants Act 1869. Under that Act, however, the 10-owner rule did not apply, and equal shares were granted to long lists of owners rather than ten only.

The 10-owner rule ensured the expeditious passing of Maori land into European ownership. Moreover, the Native Land Act 1865, by repealing the Native Land Purchase Ordinance of 1846 which made private negotiations for Maori land illegal, effectively sanctioned private land transactions with Maori prior to the award of a certificate of title by the Native Land Court. Such transactions were now regarded as 'void but not illegal', and the 1865 Act thus sanctioned dealings which would lead to the types of disputes the land court system was created in order to avoid. As Sorrenson comments, it was European parties, in competition for blocks of Maori land over which agreement had been reached before they went through the court, who were largely responsible for the continuous litigation over claims of ownership which choked the courts in later years.[10] This was certainly true in the Poverty Bay region. Clause 47 of the Act also made provision for the purchase of Maori land on the basis of the certificate of title or memorial of ownership ordered by the court before the issue of a Crown grant gave the owners freehold tenure. This was the cause of many serious problems and disputes, as Maori had no more than a statutory alienable right before a Crown grant was issued, and had no enforceable rights over their lands. The resulting situation was especially typical of the Gisborne area, as Oliver and Thomson describe. They write:

> Private and government buyers alike thus acquired interests in Maori lands both before they came to the Court and before a crown grant was issued. Europeans could and did occupy large areas on a basis of such rights to much smaller portions, and the courts would not support Maori action for trespass if no crown grant had been issued. Further, whether or not crown grants had been issued, Europeans could ensure that the Court issued partition orders, cutting out the shares which they had acquired; sometimes honestly, sometimes deviously. The buying agents of the government followed the same procedures.[11]

Under the Act of 1865, once the land court had awarded a certificate of title to ten or fewer individuals, Europeans could then purchase, lease, or mortgage land

8. 'Report on the Working of "The Native Lands Act 1865" by the Chief Judge, Native Lands Court', AJHR, 1867, A-10, p 4; Dr Grant Phillipson, 'The Ten Owner Rule: A Selection of Official Documents with Commentary', August 1995, Wai 64, doc K13, doc 3
9. Sorrenson, pp 27–29
10. Ibid, p 30
11. Oliver and Thomson, p 104

directly through those 10 and ignore the rest of the tribe, and large areas of land passed out of Maori ownership in this way.[12] Poverty Bay Maori were spared this unenviable fate during the late 1860s, but considerable areas were taken up in those types of leases held to be void but not illegal under the provisions of the Act of 1865. Land awarded by the Poverty Bay Commission was dealt for by speculators and settlers, but the numbers of Maori awarded title under joint tenancy meant that the prospect of buying up all the interests in particular blocks was a good deal more difficult than it would have been if the 10-owner rule had applied, and as a result the pattern of land ownership in the region was slow to alter during the 1870s.

Under section 17 of the Native Lands Act 1867, certificates could still be issued to ten or fewer owners as representatives of a wider body of owners, but the names of all those with interests in the land were to be registered and listed on the reverse of the certificate. Land for which such certificates were issued could not be sold or mortgaged until it had been subdivided, but could be leased for a term of twenty-one years by the ten named on the front of the certificate. Nevertheless, certificates were rarely issued under this section of the Act. This was due partly to the necessity of further subdivision and individualisation of title before sale, and partly because it was left to the discretion of the court to issue certificates under this section, which it commonly chose not to do. For this reason it remained something of a dead letter.[13] This Act also gave Europeans permission to make advances of money to cover survey and other costs involved in taking land through the court. Such advances could be covered by a mortgage on the lands. Once a mortgage was given on the security of the lands they could not be alienated in any form without the mortgagor's consent.[14] Such mortgages, along with the extension of credit by European purchasers, lessees, and storekeepers, were common factors in land transactions on the East Coast, and it was by such means that Maori lessors and land owners were often pressured to have their land subdivided by the Native Land Court. The sale of alcohol to Maori was also an important part of the process in the early years of land purchase in Gisborne, as in other areas. Sorrenson points out that alcohol was one of the goods most often supplied on the credit of storekeepers. Maori intoxication was commonplace at land court sittings on the East Coast, and drunkenness was often used as an easy opportunity to get Maori signatures on deeds of conveyance.[15]

A further amendment to the Native Land Act was passed in 1869, under which grantees were to be named as tenants in common rather than joint tenants. This was supposed to have retrospective effect, except where grantees under joint tenancy had already alienated the land comprised in previous grants. The Act now required the court to define the relative interests of individual grantees, and sales could only take place if those who possessed the majority of the land's value were in agreement. Sorrenson suspects that the court may not always have applied these amended provisions.[16] Certainly, with respect to the 150,000 acres of land that was

12. AJHR, 1891, sess ii, G-1, p vii
13. Native Lands Act 1867, s 17; Phillipson, 'The Ten Owner Rule', doc 5
14. Sorrenson, pp 53–54
15. Ibid, p 57
16. Ibid, p 62

passed under joint tenancy in Poverty Bay, the amendment was of little help; that district being exempt from the operation of the Native Land Acts until after 1873, and the grants having been issued under a separate piece of legislation, itself only passed in 1869. The provisions of the Native Grantees Act 1873 extended the provisions contained in the Native Land Act Amendment Act 1869 to lands granted in joint tenancy under Acts other than the Native Land Act of 1865 and its amendments, except where grantees were made joint tenants for a specific reason.[17] The passing of the Act does not seem to have had any affect on the alienation of the 150,000 acres of Poverty Bay land granted in joint tenancy through purchase of the equal and undivided shares. Furthermore, as the question of whether the Native Grantees Act applied to Poverty Bay lands was raised in court cases during the 1880s, the effect of its passing must have been minimal in the district.

Fraudulent practices were rife in the process of direct European dealing for Maori land. In 1870 the Native Lands Fraud Prevention Act was passed in order to prevent abuses in the system. Under this Act, all land transactions which were not equitable, or involved purchase by means of the supply of liquor or firearms, and left insufficient land for the support of the previous Maori owners, would be deemed invalid. Trust (or frauds) commissioners were appointed to inquire into transactions and issue certificates of approval for all equitable transactions.[18]

The Native Lands Act 1873 took the individualization of Maori land tenure to it furthest extent yet, and this Act was to remain in force until 1886. After ownership of Maori land had been determined by the court, the name and description of the land was to be recorded on a memorial of ownership along with the owners, their hapu and the proportionate share of each. Every man, woman and child in the tribe that owned a block of land, however small that block might be, were to be listed on the memorial along with their relative entitlements. This would create enormous difficulties, as no such individual ownership existed within customary tenure. Negotiations for land were allowed on the basis of the memorial of ownership, but Europeans could not obtain freehold until the court had reviewed the transactions and declared that the European purchaser now held the land in freehold tenure. On the recommendation of the court, the Governor would then issue a Crown grant to that effect. Thus, the transfer of individual interests had to be proved to the satisfaction of the court before freehold would be given or a partition of the land ordered. In clauses 49 and 65 of the Act, the partition of interests between sellers and non-sellers was provided for. No transfer of land could take place unless the court was satisfied that the consent of all recognised owners had been attained, or the land was partitioned to cut out the land of the dissentient party.[19] European purchasers did not welcome this difficult procedure for purchase as, additionally, Maori owners had to apply for subdivision of the land and purchasers could not do so. In practice, it became easier for Europeans to negotiate with individuals for conveyance of their shares in land, and then to exert pressure on non-sellers to apply for partition, at which time the settler could cut out the interests they had

17. Native Grantees Act 1873, s 4
18. Sorrenson, p 63
19. Ibid, p 133

acquired.[20] This was the common method of land purchase in Poverty Bay during the 1870s and 1880s.

Such was the legislative situation with regard to Maori land when the Native Land Court began to serve its normal functions in the Poverty Bay district after 1873. The Government, having acquired large blocks in the area through confiscation, did not at first compete with private interests for the purchase of Maori land. Most blocks of Maori land in the district came before the court between 1873 and November 1877. There were in many cases several hundred owners listed on the memorial of ownership for a single block, and it was virtually impossible for any prospective purchaser to acquire all of the interests. As previously mentioned, it was therefore common practice for prospective purchasers to buy a few shares and lease or squat on the land, buying further shares when they could, in the hope of gathering enough to necessitate a subdivision.[21] Land purchase proved to be an expensive business as individual shares had first to be bought, followed by the payment of subdivision charges; survey and trust commissioner's fees; legal costs; and rates, amongst other possible expenses.[22] Disputes between European speculators in the same blocks were also problematic, and often expensive to resolve. B J Murton believes that these difficulties were the reason that most land transactions between Maori and settler took the form of leases during the 1870s.[23] It must also be considered, however, that Maori of the district were less likely to agree to the permanent alienation of still more of their tribal estate in the immediate aftermath of confiscation. Even so, there were many who were interested in making money from their individual interests in land rather than through the receipt of rents by the tribe or hapu, and these individuals were regular visitors to the Native Land Court. Oliver and Thomson have commented on the 'persistent litigiousness' of Poverty Bay Maori, which seems to have been more than matched by that of the European settlers of the district. They write that:

> Initially ex- or reputed Hauhaus tried (riotously on occasion) to repudiate all past transactions and prevent new ones. But quickly they found that their past careers did not (as the law supposed) invalidate their claims, so that they became the most enthusiastic negotiators, sellers and lessors. For such as these the Court's decisions were a way of re-establishing their rights, while the disappointed loyalists, who had been promised a share of the rebel's lands and received very little, at first held off from the Court and all its works.[24]

Following the awards of the Poverty Bay Commission, land speculators began to buy up the interests of owners in the smaller blocks on the flood plain, where it was easier to complete purchases in small lots without the problems attendant on those titles listing hundreds of owners for some of the larger pastoral blocks. Additionally, many negotiations for the purchase of these blocks had been begun

20. Ibid
21. B J Murton, pp 21–32
22. A D Ward, 'The History of the East Coast Maori Trust', MA thesis, Victoria University College, Wellington, 1958, p 10
23. Murton, p 32
24. Oliver and Thomson, p 103

prior to the sittings of the Commission, and were negotiated through tribal or hapu leaders rather than on an individual share basis. It was also reported that such transactions, which only remained to be confirmed once title had been granted, were in part negotiated when it was unclear how much land might be lost to the Crown as punishment for the actions of the Hauhaus.

5.4 PRIVATE DEALINGS DURING THE 1870s

The only Crown lands in the Poverty Bay district during the first half of the decade were the blocks which made up the Gisborne township, and the two confiscated areas of Patutahi and Muhunga. During this period the private land speculator was free to conduct transactions in Maori land without competition from the Crown. Despite the degree of activity in private dealing during this time, surprisingly little land was purchased outright, and the title to these ostensibly purchased lands was likely to have been insecure. Much land was, however, taken up in leaseholds. Those lands leased during the 1860s continued to be held under leasehold, while a large area was also newly taken up. B J Murton is of the opinion that many of these leases were probably illegal but gave the lessee a 'prescriptive right to the land'.[25] It is difficult to see how both could be the case. At the most, the leases would only have been seen as void, according to the Native Lands Act 1865 and the Native Land Act 1873. They were not, however, illegal as they could be validated when the land passed through the Native Land Court and it was determined that all owners agreed to the lease. It is clear from statements made by Maori, that there was some confusion in the minds of those who had newly become landowners with a right to part with their shares in land for money, over the way in which leases were legally to be carried out. Under normal circumstances though, most lease arrangements, however informal, seem to have been honoured by both parties. It was the practice of buying up individual shares at the same time as leasing that seems to have caused confusion and trouble, and led to insecurity of title for the purchaser.

Some of the new leases included that of the Okahuatiu block in 1873 by W S Greene, and Barker and McDonald's lease of part of the Kaiti block for 21 years at eight pence per acre. Samuel Locke took over the lease of the Waikohu block in 1874 (and by subdivision of interests in 1882 he and M Hutchinson had the freehold of the block for a consideration of five shillings per acre). Touchen and Cooper took up the lease of 18,000 acres at Mangataikapua in February 1874, while the Rangatira block was leased by C J and A C Harrison in 1875.[26]

Many lessees ran into difficulties when they discovered they had obtained leases in the same blocks from different Maori owners. An example of the problems that could arise was the disputed lease of the Whatatutu block during 1874. Four other settlers, as well as A C Arthur, had obtained leases in the same block. At a meeting of Maori at Pakirikiri in February, Wi Pere commented that Maori owners of land had no clear understanding of the system of land sales or mortgages and there were

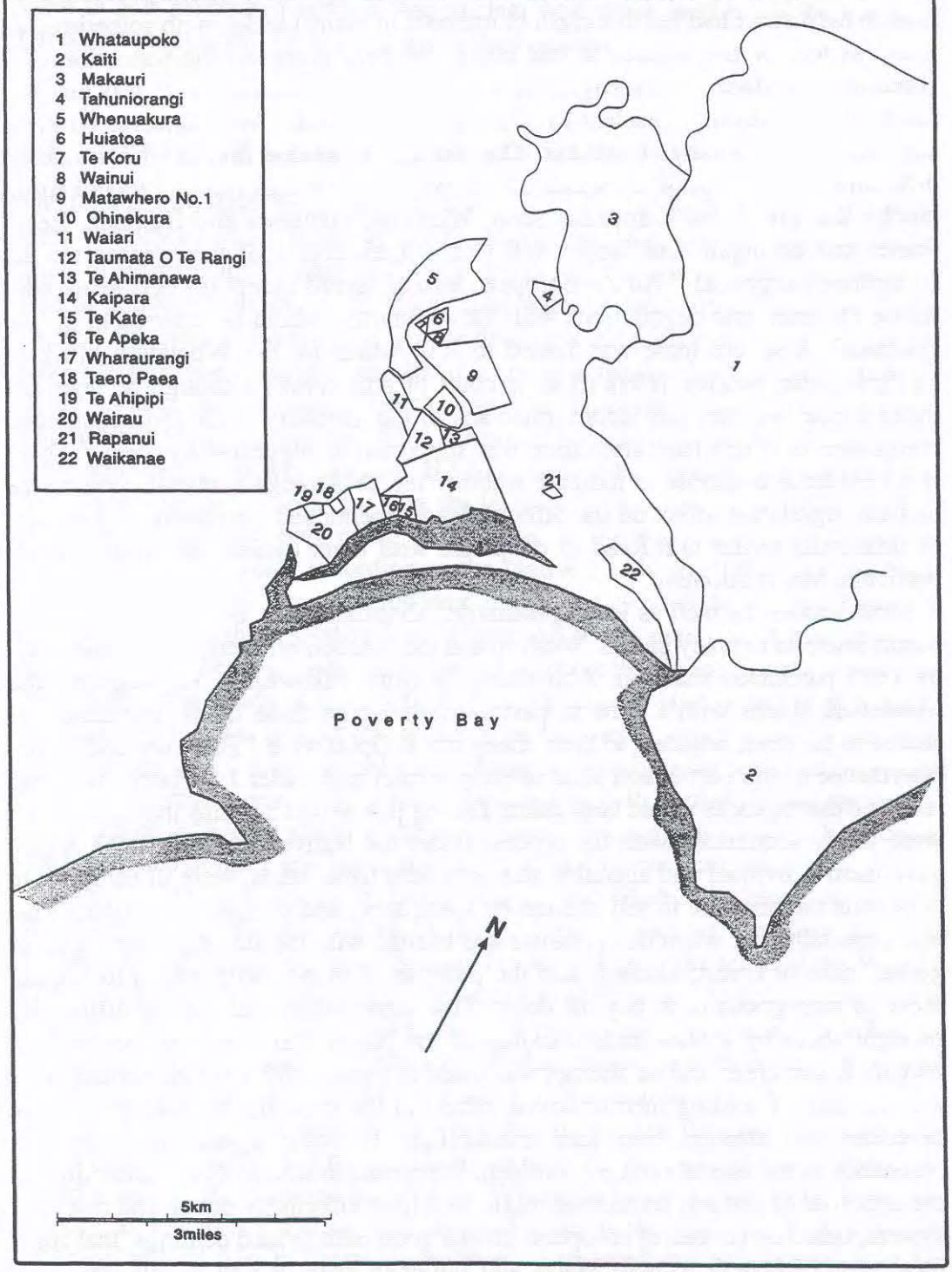
25. Murton, p 37
26. Mackay, *Historic Poverty Bay*, p 317; Murton, p 36

many leases that needed to be legalised. It was proposed that the Whatatutu block be submitted to a Maori committee in order to end the dispute over its lease.[27] The *Poverty Bay Standard* reported that the desire of Europeans to obtain possession of land in the district had led to a clash of interests in many blocks, with sometimes as many as four or five lessees in one block. Wi Pere proposed the formation of a committee of Maori to investigate such matters. A committee of 63 was elected, headed by Dr Nesbitt (Resident Magistrate), Pita Te Huhu, Wi Mahuika, Wi Pere, and others of Te Aitanga a Mahaki. The committee decided first to concentrate on difficulties arising out of the leases on the Whatatutu, Rangatira, and Rakaiketiroa blocks, and asked that Europeans Scott, Williams, Matthews and Harrison, Read, Fraser and Breingan, and Jacobs and Cuff submit copies of their leases for the committee's appraisal.[28] All the European lessees agreed except for G E Read, who refused to enter into negotiations with the committee, whom he referred to as 'the Hauhaus'. A secure lease was issued to A C Arthur for the Whatatutu block in 1875, by what Murton refers to as 'a court of arbitrators', although he does not make it clear whether this incorporated any of the members of the aforementioned committee, or if this later arbitration was supported or suggested by them.[29] There is no evidence available to indicate whether the Te Aitanga a Mahaki committee had any significant affect on the difficult leases mentioned, or whether the refusal of influential settler G E Read to cooperate with them caused the failure of this particular Maori initiative.

Most lessees, as well as land speculators, simultaneously bought up undivided Maori interests in many blocks. Westrup and the Johnson brothers, for instance, had by 1875 purchased shares in Ahipakura, Te Kuri, Pakowhai 1, Repongaere, and Maraetaha blocks with a view to pastoral farming on these lands. Purchasers of shares in the lands adjacent to their sheep run at Opou were J Ferguson and Henry Harris, one of the part-Maori sons of early whaler and trader J H Harris, who had received that block as an old land claim. During this period it seems that Maori who were newly acquainted with the process under the Native Land Act 1873, which gave them individual and alienable shares in their tribal lands, were ill equipped to cope with the pressure to sell exerted by speculators and prospective settlers. This was especially true when this pressure was exerted with the aid of lawyers; gifts of goods; lines of credit; alcohol; and the promise of money with which to acquire more of such goods or to pay off debts. That some Maori realised the difficulties brought about by a poor understanding of the Native Land Acts by Maori land owners is also clear, and an attempt was made to counter this with the formation of a committee of leading men to advise others in the tribe and to attempt to solve problems and disputes over land transactions. It would appear, however, that resistance on the part of certain prominent Europeans to submit their transactions to the appraisal of a Maori committee might well have effectively put an end to a local system, based on an idea of co-operation and good faith in land dealings, that could have been of benefit to both Maori and settler in Poverty Bay at this time. The

27. *Poverty Bay Herald*, 19 February 1874, cited in Murton, p 37
28. *Poverty Bay Standard*, 24 February 1874
29. *Poverty Bay Herald*, 12 March 1874, cited in Murton, p 37

FIGURE 7: READ'S LAND PURCHASES 1869 - 1878



Source: B.J Murton, Settlement in Poverty Bay 1868 - 1889 M A Thesis 1962

question arises as to how one European's refusal to cooperate could have meant the end of an initiative to which other settlers seemed willing to submit. That European was G E Read, whose speculation in land had provided him with the largest, and the most disputed, estate in the district.

5.4.1 Read's transactions

George Edward Read was the most prominent of the land speculators in Poverty Bay in this early Native Land Court period, and many of his transactions dated from the 1850s and 1860s. The intricacies and difficulties associated with incomplete and disputed title, claim and counter claim, leasehold and freehold of most of the lands in Read's estate, were to occupy the time of the Native Land Court in Poverty Bay into the 1880s. Although Read's estate was large, most of it consisted of title which was insecure and incomplete. He had purchased many shares in various blocks but had not often obtained undisputed ownership. By 1876, Read had leased or purchased interests in 29 blocks[30], many of which were small blocks near to his original freeholds at Matawhero, or fanning out southwards along the Awapuni lagoon to Manutuke (see map at fig 7). The Rongowhakaata lands along the lagoon seem to have been subdivided by agreement of the owners prior to the commission's awards, into small holdings with fewer owners, which made for easier negotiation with prospective buyers. Certainly the Maori owners of these seaward blocks on the plains appear to have been keen sellers, and Read purchased many of these small blocks outright in the early 1870s.[31] There were, however, at least three large blocks held by Read in partial freehold and leasehold. These blocks (Kaiti, Whataupoko, and Makauri) were to the north of Gisborne. Problems over insecure and disputed ownership, subdivision, and accusations of fraudulent dealings with respect to these blocks, continued into the mid 1880s.

Read's methods for acquiring land apparently consisted of offering a principal owner gifts of goods and small sums of money for the right of occupation, following which he would erect structures and fences as improvements to the land while acquiring the interests of other owners in the block.[32] Such methods created many problems, and Read's purchases were regularly challenged as to their legality and legitimacy. Wi Pere challenged Read with regard to one particular purchase, claiming that the consideration had been by way of alcohol and gunpowder, making it an illegal transaction under the Native Land Frauds Prevention Act 1870. He also claimed that some of those who had signed the agreement with Read had done so on behalf of others. Read simply ordered the complainants off his property, dismissing their challenge on the basis of his having in his possession a signed agreement.[33] It is not clear whether Read's agreement had been certified by the frauds commisioner, although there was one situated in Gisborne at this time. This was not an isolated case of dispute over Read's estate, as his ownership of several blocks was challenged both by Maori owners and by other Europeans who had

30. Murton, p 33
31. Hall, 'Maori Lands in Turanga', sec 13.2
32. Mackay, p 188
33. Ibid

speculated in the same land. At auction of his leaseholds and freeholds following his death in 1878, the legal representative of Maori objectors was present to warn possible purchasers that if their bids for these lands were accepted they would simply have bought for themselves 'a costly lawsuit'.[34]

Read's transactions are difficult to keep track of, and demonstrate perfectly the type of confusion that surrounded all such speculation in Poverty Bay during the period from 1869 to the 1880s. Some of these transactions are listed below, and the complicated nature of Read's estate can be seen more clearly in such a list than in the map of his land holdings (see fig 7). The interest of Hore Rarotonga in the Taro o Paea block was bought by Read in 1869, and he leased the block from Hoami Ruru in 1870. Te Ahipipi was mortgaged to Read in 1869, and eventually sold to him. Te Upoko o te Ika and the Te Koru block were purchased in 1869, the latter from Maraia Te Ao; the purchase being confirmed in 1872. He also purchased Matawhero 7 and the Rahanui block in that year, as well as obtaining a lease of the Waikanae block. Shares in the Pokiongawaka block were bought from Mere Karaka and others during 1869, and a lease of part of the land was obtained from Hoami Ruru in 1871. The Te Ahimanawa block was also leased by him, but he bought one out of five shares in the block in 1872. He leased the Kaiparo block in 1870, but by 1875 had purchased several interests in it. Another European, J C Harrison, also purchased shares in this block. Read leased Te Karaka from Matenga Toti and other owners after a mortgage in 1870, and transferred these leases to the lessee of the adjacent Pukepapa block in 1872. Huiatoa was conveyed to him by Goldsmith, who had received a Crown grant for the land in 1871. Individual shares in the Waiari block were bought up between 1870 and 1873, and the Apeka block was leased from Hoaru Ruru and the other owners in 1870. A further interest in the block was conveyed to Read in 1871. Read leased the Te Kati block in 1871, and purchased an interest in it during 1872. The three shares he had purchased in the Whenuakura block he onsold in 1875. He bought up a single interest in Taumata a Te Rangi in 1870, and bought the Wairau block from Tamihana Ruatahura and the other seventeen owners in the same year. Despite his best efforts, only one share out of nine in the Wharaurangi block was conveyed to Read during 1871. He had received a crown grant for Matawhero 4 in 1871, and also bought the Matawhero 1 block in two lots during 1870 and 1871, then proceeding to sell or lease portions of the Matawhero lands to other European settlers. He purchased Tahuniorangi from his brother in 1872, and obtained a single share in the Ohinekura block, as well as several shares in the Te Pakake o Whirikoko block.[35]

Two other blocks in which Read was dealing during the 1870s are deserving of special attention as illustrations of the typical pattern of private dealing in Maori land in Gisborne at this time, and the problems that ensued:

34. Ibid
35. All preceding information from Murton, pp 33–35

(1) *The Whataupoko block*

On 25 April 1871, a Crown grant was issued for the Whataupoko block of 19,200 acres to Raharuhi Rukupo and 47 others, as joint tenants under the Poverty Bay Grants Act 1869.[36] It had originally been leased in 1864 by W H Parker, but Read had acquired interests in the block prior to the sittings of the Poverty Bay Commission. By 1869 Raharuhi and others owed Read £1817 10s for goods from his store as well as monetary loans, and they mortgaged their land to him on 10 August 1869.[37] This mortgage was supplemented by a deed of sale on 1 May 1871 after an additional payment by Read of £734. He continued to buy up the equal shares in the block during 1871 and 1872, paying £50 each to 35 owners for their individual interests.[38] By the middle of 1872 he had purchased enough shares in the block to sub-lease it, with the promise of conveying a freehold to the sub-lessee when this was possible.[39] In the meantime, a lease of the land by Raharuhi Rukupo and 44 others to W H Parker was renewed in 1870 for a term of 16 years at £200 for the first six years, £300 for the second six years, and £400 for the remainder.[40] Owners were also selling their shares to speculators other than Read. On 24 May 1872 Pita Te Huhu conveyed his share in the block to R R Curtis, who also obtained a lease from Wi Haronga from the beginning of that year for 14 years at £60 per annum.[41] In the same year Read granted Parker a new lease of 1400 acres for a term of seven years at £21 a year (Parker had previously assigned his rights of lease to Read in 1871 for a consideration of £300). On 18 April 1872 Read also leased 1460 acres of the block to James Wyllie. Wyllie already held his wife's share in the block in trust for their children and he leased this to Parker. Curtis leased 50 acres to Strong and Bryant for 13 years from 1 September 1873 for a yearly sum of £25.[42] In 1874 Read sold to Curtis his right to the title of the block, consisting of 28 of the equal undivided shares purchased, the previous deed of mortgage, Parker's right of lease and 1000 sheep, for a total of £6000.Curtis then sold all his interests to Barker and Mc Donald who, by 1875, owned 14,000 acres of the block in freehold and 2000 acres in leasehold.[43]

This was not the end of the tangled skein of transactions affecting the Whataupoko lands. Nine pages of handwritten notes contained in the Whataupoko block file, a summary of transactions compiled in 1893, listed the conveyances by lease or sale of individual interests in the block, mortgages, trusts, on-sale of shares and sub-lease of sections by various European and Maori owners up to 1892. Indeed, sharp business practices and speculation in Maori land was not confined to Europeans. One Maori woman in particular, Riparata Kahutia, stands out at this time as a highly successful and enthusiastic speculator in land. Riparata Kahutia was a Te Aitanga a Mahaki woman of mana of Whanau a Iwi hapu. She also had

36. Whataupoko block file (1437a), MLC Gisborne
37. Whataupoko block file; Murton p 34
38. Murton, p 35; Hall, sec 13.2
39. Hall, sec 13.2
40. Whataupoko block file, MLC Gisborne
41. Ibid
42. Ibid
43. Murton, p 35; Mackay, p 318

strong links with Rongowhakaata by virtue of the descent of her father, Kahutia (who had sold land to prominent settlers and to the Crown during the 1840s and 1850s and was a leader of the movement to repudiate such sales from 1858), and with Te Aitanga a Hauiti through her mother.[44] She was thus the successor to Kahutia's mana and to a considerable amount of land scattered throughout the Poverty Bay area, and more especially, on the fertile flat land of the flood plain. Through her success in land dealings it is estimated that at her death in 1887 she was possessed of an estate twice the size of that to which she had been entitled by virtue of succession.[45] Riparata was included in the 1869 award of the Whataupoko block and was one of the principal non-sellers. Her husband, Mikaere Turangi, conveyed his interest to her, and she applied for subdivision of the block in September 1875. This was objected to by W Parker on the grounds that he was part owner of the block, and was still the lessee of a large part of it.[46] The block does not seem to have passed through the Native Land Court at this time for the purposes of subdivision. Further dealings complicated the title to the block in the second half of the 1870s. Additional shares were conveyed to Barker and McDonald, including that of Wi Pere in 1877. Various conveyances and mortgages between settlers such as Westrup, Gray, Barker and McDonald, and by Barker to the Bank of New South Wales during 1876, had made the situation appear almost impossible to settle by the time of Read's death in 1878.

At this point solicitor W L Rees and Wi Pere had begun their scheme of trusteeships for Maori land in the area, that was to develop into the New Zealand Native Land Settlement Company in 1880, discussed in some detail later in this chapter. Barker appears to have agreed to sell approximately 9000 acres to McDonald in January 1878. He made a further agreement to sell an unspecified amount of the land to Rees on 23 May 1878. A deed of conveyance dated 22 June 1878 shows that all of the Maori owners named in the original grant, as well as Barker himself, conveyed their interests in the block of 19,200 acres to W L Rees and Wi Pere 'to sell and dispose of or mortgage for the benefit of the above natives'. Rees then agreed to a mortgage with the Bank of New South Wales in the same month, and to sell part of the block to McDonald in August. Rees and Wi Pere then agreed to a mortgage with the National Bank of New Zealand for £3000.[47] Rees and others conveyed 2500 acres to Barker in trust in February 1879, along with a further 2200 acres by way of mortgage. One thousand acres was mortgaged to McDonald at the same time. Barker further mortgaged his interests to the Bank in that year. During April 1880, Rees and others conveyed 300 acres to Kate Wyllie, one of the Maori owners, and made a further conveyance of all the remainder of the block except 5402 acres to the trustees of Read's estate.

A subdivision of the block occurred in September, and the orders made by the Native Land Court at that time were objected to by M J Gannon, husband of Kate Gannon (previously Wyllie), as they affected his and his wife's interests in the block. The court awarded: 2500 acres (Whataupoko 1) to Percival Barker; 1000

44. R de Z Hall, 'Riperata Kahutia: Materials for a Biography', 3 November 1990, Gisborne Museum
45. Mackay, p 195
46. Whataupoko block file, MLC Gisborne
47. All above information Whataupoko block file, MLC Gisborne

acres (Whataupoko 2) to Allan McDonald; 1000 acres (Whataupoko 3) to Riperata Kahutia, Wi Pere, and W L Rees; and 302 acres (Whataupoko 4) to Kate Wyllie. A partition and conveyance of the Matakaitoki and Pou o Turanga sections of the block, amounting to 1600 acres, was carried out by Rees and Pere to Riperata Kahutia. The court awarded these lands to her, Mikaere Turangi and Hone Meihana. Soon afterwards, M J Gannon and Keita (Kate) Gannon applied for a rehearing of the case.

When the New Zealand Native Land Settlement Company was formed, Rees and others transferred the land held in trust by Rees and Pere to the company by deed of conveyance in December 1882. The settlement company then proceeded to mortgage the area held by them to Barker, and to the New Zealand Loan and Mercantile Company early in 1883. In July 1883 the settlement company applied for a further subdivision of the block. On 1 October 1883 Whataupoko 7 (500 acres) was awarded to C A de Lautour and M J Gannon in trust, to be conveyed to either Keita Gannon or the New Zealand Native Land Settlement Company according to the decision of the Supreme Court, in proceedings to be taken by Keita Gannon. Whataupoko 8 (1504.2 acres) was awarded to Charles Gray subject to a mortgage for £3000 in favour of P Barker, dated 3 April 1883. An award of 1500 acres of Whataupoko 5 was made to Riparata Kahutia, subject to a deed of mortgage by the settlement company to the New Zealand Loan and Mercantile Company dated 19 March 1883. Whataupoko 5a of 250 acres was awarded to Riparata Kahutia without restrictions. Whataupoko 6 (1000 acres) was awarded to the settlement company, subject to a mortgage to P Barker for £21,000 plus interest, and a second mortgage to the New Zealand Loan and Mercantile Company for £7500 plus interest. Whataupoko 1 (2950 acres) was granted to P Barker, and Whataupoko 9 (10,581 acres) to the settlement company subject to their mortgage to the New Zealand Loan and Mercantile Company. A further rehearing of the subdivision of the block was held in 1885, and in April of that year the grants of 1883 seem to have been confirmed, whilst taking into account transactions that had taken place in the intervening years in the various divisions of the block.

It is not difficult to imagine, when viewing the complicated history of the title to the Whataupoko block, that Maori and settler alike were often at a loss to determine who owned the land. Where the purchase of individual shares was concerned, in combination with a variety of leases, conveyances to second and third parties, mortgages, and resales, all occuring without the aid of subdivision by the Native Land Court, it is easy to see how disputes arose. Read had acquired part of the 19,200 acres of Whataupoko by virtue of the extension of credit to the owners, but was then required to purchase individual shares in the block, and as some refused to sell, he never attained the freehold of the block in its entirety. Additional European speculators in the same block also removed this possibility. Nevertheless, Read managed to sell the freehold of part of the block, as well as a sub-lease of part of it, to another settler for a considerable profit by 1874. Difficulties in ascertaining the relative acreages owned by various parties continued until 1885, when it eventuated that 10,581 acres were vested in the New Zealand Native Land Settlement Company, who would divide the land and resell it, and through circumstances still to be discussed, Maori would not receive any of the profits from

these later transactions. Whether Maori owners who sold their shares prior to the vesting in the settlement company were fairly paid for the land is difficult to ascertain because of the confusion surrounding these various transactions. Some clearly made an income from leases of parts of the block, while others were paid at the rate of about £50 for their undivided interests. Nevertheless, those who lost their title to the land in the original mortgage to Read undoubtedly did not receive the true value of their land in this transaction, and those who vested the land in the settlement company were also to lose that land without adequate recompense.

(2) *The Makauri block*

A grant for this block of 2930 acres was issued on 9 January 1871, and title was antevested from 12 July 1869, the date of an award made by the Poverty Bay Commission. Riparata Kahutia and 57 others were given the title to the land as joint tenants. Riparata and others leased the block to R R Curtis in 1870 for a term of 18 years, but Read began to buy up shares in the block from 1872. He bought the interests of Heni Whakamau, Wiremu Maki, Hirini Te Kani, and Raharuhi Rukupo among others in that year.[48] By 1875 he had purchased ten shares at £50 each.[49] Other Europeans such as the Johnsons, Westrup, and W H Tucker, began to purchase interests from 1873. There were also other leases entered into. Heni Te Auraki, for instance, leased her undivided interest to A F Hardy in June 1873 for a period of ten years. The usual mortgages also occurred – Kate Wyllie mortgaged her interest to Kincross and Graham to secure the payment of a sum of money in December 1873. By 1875 the situation with respect to ownership of the block was so confused that Riparata Kahutia applied for a subdivision.[50] Wi Pere laid claim to the northern part of the block whilst Riparata claimed the southern part. The block itself was a good source of income as it was largely covered by native bush, and Maori owners sold cutting rights to provide necessary timber for both Gisborne and the new Ormond township.[51] By adjudication of Judge Rogan in the Native Land Court at Makaraka, Riparata Kahutia and 14 other Maori owners, along with previous purchaser W H , received Makauri 14 of 1116 acres, whilst Read received 700 acres (Makauri 9, 11, and 12). Wi Pere and 29 others received Makauri 7 of 732 acres. Other awards were made to: Pimia Aata (71 acres of Makauri 1, and 24 acres as Makauri 6); Amiria Tipoki (49 acres, Makauri 2); Heni Te Auraki (50 acres, Makauri 3); Mere Hardy (48 acres, Makauri 5); and Kate Wyllie (96 acres, Makauri 4).[52] Apparently this subdivision soon fell apart on the basis of the continued speculation in shares by European parties, and also due to Read's failure to fulfil an agreement to honour the original lease by Riparata Kahutia to R R Curtis.[53]

Curtis appears to have signed over his lease to Read in 1876. Conveyances by lease and sale of interests in the block continued in the next couple of years. Read

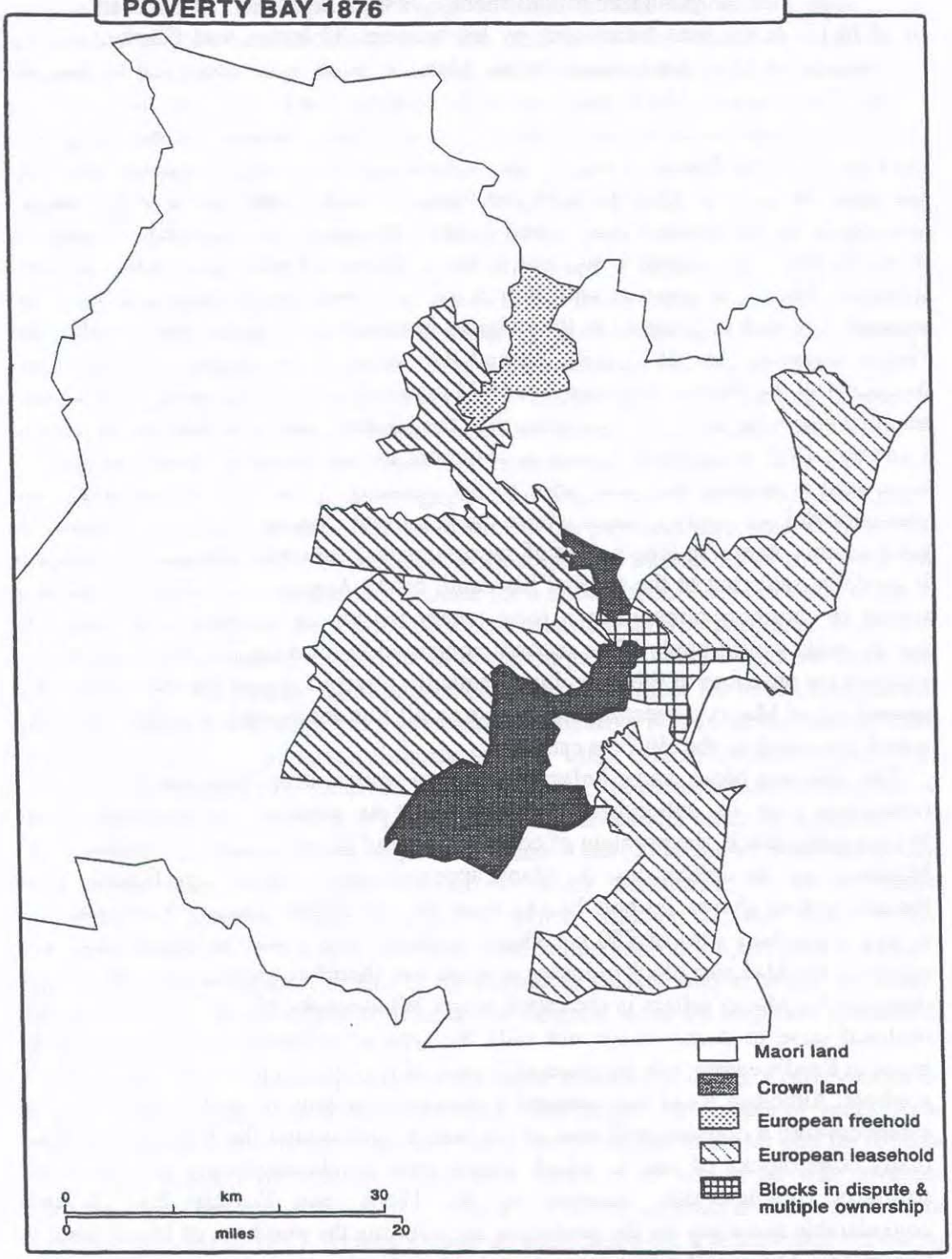
48. Makauri block file, no 288, MLC Gisborne
49. Murton, p 35
50. Makauri block file, MLC Gisborne
51. Hall, 'Riperata Kahutia', p 7
52. Makauri block file, (acreages are rounded figures)
53. Murton, p 59; Hall 'Riperata Kahutia', p 7

continued to be active in the lease and purchase of further interests and in 1876 he and others applied for another subdivision hearing, at which he was awarded 650 acres in severalty by virtue of purchase of further interests from owners of the block as awarded in 1871. Riparata made an application for a subdivision rehearing on 26 October 1877, at which time Wi Pere and others were given a certificate of title jointly with the purchaser of allotment 7, Joseph Harman.[54] After Read's death in 1878 his estate was taken over by his trustees, Coleman and Clarke, and by conveyance of 1881 his interests in the Makauri lands were conveyed to Samuel Locke. The Makauri block continued to be troublesome because of the continued purchase of individual interests in the remaining Maori-owned lots, and litigation over demands for Maori owners to pay compensation for improvements made by European lessees. In 1885 to 1886 the Makauri lands underwent a seven month hearing in the Supreme Court, when Locke challenged the succession rights of Areta Te Rito, who hoped to succeed to the interests of Paora Apatu who had died intestate. The legal question with which the court was faced concerned the joint tenancy awarded to grantees in the original Makauri block grant, and whether the Native Grantees Act 1873 (s 4), altered the status of the grantees in this case. Section 4 of the Native Grantees Act 1873 made those Maori granted land in joint tenancy under the terms of Acts other than the Native Lands Act 1865 or the Native Land Act 1873 henceforth tenants in common, except where the land had already been sold or tenants had died prior to the passsing of the Act. Additionally, the provision did not apply to cases where the grant was expressly made to grantees as joint tenants. Areta Te Rito's right of succession to Paora Apatu hinged on whether it could be said that at the time of his death on 10 August 1875 he held title as a tenant in common rather than a joint tenant (to whose succession the rules of survivorship would apply). The records contained in the Makauri block file do not indicate the outcome of this case, but eventually it would appear that all of this land passed out of Maori ownership apart from small lots amounting to about 100 acres which remained to the Wi Pere estate.[55]

The Makauri block came before the courts several times through appeals and rehearings over its subdivision. Although not as expansive in acreage as the Whataupoko block, the problem of complicated and disputed title was similar in the Makauri case. In neither case do Maori appear to have profited significantly from the sale of their shares. As both blocks were granted in joint tenancy, Read was able to pay a standard sum of £50 per share, as these were equal and undivided. The return on the Makauri block of lesser acreage was therefore greater in relative terms than that for Maori sellers in the much larger Whataupoko block. The case studies outlined serve to demonstrate, not only the typical problems associated with the lands in Read's estate, but the general system of private purchase in Poverty Bay as a whole. Although Read had attained a distinct monopoly in land dealing, and his estate covered a considerable area of the land in and around the Poverty Bay flats, many other blocks of land in which shares were purchased during the 1870s had similarly complex title histories by the 1880s, and Poverty Bay attained

54. Makauri block file, MLC Gisborne
55. Makauri block file, MLC Gisborne

FIGURE 8: PATTERN OF LAND OWNERSHIP IN POVERTY BAY 1876



Source: B.J Murton, Settlement in Poverty Bay 1868 - 1889 M.A Thesis 1962

considerable notoriety for the problems surrounding the purchase of Maori land by Europeans. The result was a large area held in disputed title (see fig 10), and this would later lead to a protracted process of validation of disputed and defective European titles during the 1890s.

Disputes were not confined to those between Maori and European though. There were also a number of blocks in which there were disputes among the Maori owners, generally over the issue of leases, or disputes between sellers and non-sellers. Such disputes usually resulted in subdivision of the block in question, the interests of disputing parties being partitioned. The Repongaere block, for example, originally containing 9900 acres, was granted to Tamihana Ruatapu and others under the Poverty Bay Grants Act 1869.[56] There was a settlement made on 4 March 1871 between Karaitiana Takamoana, on behalf of non-sellers in the block, and G E Read, in which Read was to pay £2500 for 4950 acres, while the other half was returned to Maori owners. The lease over the latter half was renewed for £100 per year. The owners of the block remaining in Maori hands applied for a subdivision in July 1875.[57] The land had been under lease since 1870 to one of the Johnson brothers, who presumably acquired the lease following the deaths of Dodd and Peppard, the original lessees, in 1868. Karaitiana Takamoana apparently managed the lease, but the other owners applied for a subdivision of the land as they were receiving none of the rent for the block. The court ruled, however, that as all the names of the owners appeared on the lease it could not agree to subdivide.[58] The block was eventually subdivided in 1883 into Repongaere 1, 2, 3, and 4. Repongaere 4, a block of 2784 acres, was granted to only nine out of the original 40 owners. This was further subdivided in 1899, only parts of it remaining Maori land (held by the Wi Pere Trust), as other shares had been sold.[59]

Another example is provided in the Maori Land Court files concerning the Okirau block. This land apparently belonged to a number of different hapu, not all of which agreed to its sale in 1857, as a result of which the block was bought back. In 1873, however, Rapata Wakapuhia sold to Read. Other owners objected to the sale, and at sittings of the Native Land Court in 1875 and 1876 they claimed that Rapata neither lived on nor cultivated that land when he sold it and had, therefore, no legitimate right to it. They had not openly objected to the sale because, as Petera Honotapu stated, they were ‘hauhaus and were no more considered than dogs in those days by the Government natives’.

5.4.2 Conclusion

At the end of 1876 the area of Poverty Bay held by Europeans in secure freehold title had not increased to any great degree, and in many blocks a few individuals only had sold their shares, sometimes to different Europeans. Subdivision through the Native Land Court was expensive and could be a long process, as is

56. Repongaere block file, 906a, MLC Gisborne
57. Ibid
58. Gisborne Native Land Court Minute Book, no 2, pp 249–252, cited in Sanderson ‘These Neglected Tribes’, p 209
59. Repongaere block file, MLC Gisborne

demonstrated by the example of the Makauri block examined in an earlier section. Nevertheless, if land was not subdivided Europeans who were part owners in a block could do nothing but squat on the land, and hope to attain a secure title in the future.[60] The Native Land Court did not sit in the district for two years following its temporary closure in November 1877, while some blocks awaited subdivision and title to others remained disputed. The absence of the Court from the area at this time served to increase the confusion surrounding the sale of Maori land in Poverty Bay at a time when settlers were beginning to look seriously at the region as other less geographically isolated, and more developed, districts were settled. Although there was little new freehold land during the 1870s, the alienation of Maori land by lease was considerable. By 1876 the Tangihanga block was the only Maori freehold land within what Oliver and Thomson describe as 'a leasehold sea',[61] and this can be seen on the map compiled by B J Murton (fig 8). European leasehold blocks fan outwards from the Poverty Bay flats to the north and south, and new leaseholds of blocks such as Mangataikapua, Pakake o Whirikiki, Whatatutu, Te Karaka, Okahuatiu, and Waikohu, enveloped the Tangihanga block as they spread inland.[62] At this time, as can be seen from the map, there was a considerable area on the flats held in disputed and multiple ownership. These blocks spread out from the Bay back to the new military settlement at Ormond on the Muhunga block.

Although there is little material available in the official sources researched for this report, that provides examples of Maori motives for selling their shares in land, some general reasons have already been provided, such as to acquire funds with which to purchase European goods, or as a way out of debt. Sanderson conjectures that many of the land sales of the 1870s (or the sale of undivided interests in land) were determined by sheer opportunism, but there were other factors involved such as the scarcity of food. In her opinion, it is likely that some, who might otherwise have kept their land, sold it in order to get money with which to buy food. In the Native Land Court during 1876, Wi Pere requested that all cases that were not concluded be adjourned for a period as the people attending the court had no food and 'if they are enabled to prove their claims they will soon dispose of their land for money to enable them [to] buy food, and some become thoroughly impoverished'.[63]

It is also difficult to determine the full effects of early private purchase on Maori sellers. The block files at Gisborne Maori Land Court contain no correspondence from Maori. If such examples of correspondence could be located they might offer some more direct evidence of the effects on Maori of these early sales to private purchasers. Although later sections of this report will identify that many Maori in this district became landless, and reliant on seasonal labour for their income, it is difficult to ascertain whether early sales, of the types outlined in the Read case studies, had a significantly detrimental effect during the 1870s, when there remained enough land to live on, and most land remained in European leasehold while individual shares were being purchased. The sale of one's share in a block while it was under lease would not have immediately deprived one of the land, and

60. Murton, p 40
61. Oliver and Thomson, p 104
62. Ibid
63. Gisborne Native Land Court Minute Book, no 3, p 222, cited in Sanderson, p 211

many sellers were probably able to continue on much as before, while gaining some extra cash or paying off a debt in the meantime. The long-term effects of such sales would not become obvious for some years yet, when large areas were converted finally from leasehold to freehold. In the meantime, the Government had begun to show an interest in land purchase in the district and it is to this Government purchase activity we now turn.

5.5 CROWN PURCHASES

The Government appointed J A Wilson as land purchase officer in the Poverty Bay district in 1874. Previously T W Porter had handled land transactions for the government in this area in conjunction with Locke, but the Government now wished to compete with private speculators in the Poverty Bay district for some of the larger blocks of land which were becoming available for sale and settlement. Sorrenson believes that the lack of Government land purchase prior to 1875 was primarily due to opposition from certain sections of Poverty Bay Maori following confiscation, and also because Government officials attempting to deal in land were hampered by the opposition of private parties.[64] During 1875, Sorrenson estimates that the Government purchased some 162,354 acres in the Poverty Bay district, followed by 6190 acres in 1876 and 63, 157 acres in 1877 (no figures are given for 1878).[65] The procedure for Government purchase of Maori lands appears to have been necessarily similar to that of private individuals in order to successfully compete with them. In the early stages of a purchase the Government officer would usually make a cash payment to those he considered to be the principal owners of the land. This was the equivalent of the consideration paid by private individuals prior to land being taken through the Native Land Court.[66] Although, as we have seen, such dealings were void under the Native Land Acts of 1865 and 1873, they were legislated for in the case of Government transactions under section 42 of the Immigration and Public Works Act Amendment Act 1871. This stated that it was lawful for the Government to enter into transactions for the purpose of acquiring land for ‘railways, special settlement, and mining’ prior to that land passing before the Native Land Court. As in the case of private deals, downpayments made by the Crown agent were often in the form of goods or orders on storekeepers, and the purchase officer maintained a receipt for such payments so that Maori would be bound to complete the sale to the Crown or repay the advances once the land in question had gone through the court.[67] Sorrenson comments that such payments in advance of the issue of certificates of title or memorials by the land court led to difficulties: ‘Purchase officials hurriedly paid deposits wherever they could find a few Maoris in favour of sale, or even where they requested ‘loans’ from the government officials’. He believes also that many Maori possibly did not

64. Sorrenson, p 78
65. Ibid, p 79
66. Ibid, pp 82–83
67. Sorrenson, p 83

understand the receipts signed in return for the grants of money or goods, and regarded the officials as 'fair game'.[68]

Before the land could be taken before the Native Land Court it was necessary to have it surveyed. The Government officer would usually arrange for this and deduct the costs of the surveys from the purchase price. If the ownership or the boundaries of the land in question was disputed, survey could be held up for some time and counter claimants often interfered with the survey in various ways. When the land did pass before the court, Government purchase officers would appear in order to promote the claims to title of those with whom they had entered into negotiations.[69] Sorrenson states that most Government purchase officers did have the skills required to choose the correct owners with whom to negotiate, and cites the example of T W Porter, native land purchase officer for the Waiapu County, who persuaded owners to take lands before the court prior to negotiating with them.[70] As it will be shown, however, this was not the case with J A Wilson, who was appointed to Gisborne in 1874. Additionally, Porter carried out most of his transactions in Waiapu rather than Cook County and only completed negotiations for land in Poverty Bay, previously begun by Wilson, following the removal of that officer from the employ of the Government Land Purchase Office on 31 December 1876.

After the passing of the Native Land Act 1873 (under which all listed owners of Maori land had to be in agreement before land could be alienated) the pace of Crown negotiations slowed considerably. Nevertheless, It was in this period that the Crown began to negotiate for land in the Poverty Bay district. T W Porter reported in 1876 that it was difficult to attain all of the signatures of owners and that this process entailed unnecessary delays and expense for the Government.[71] In Poverty Bay the process of leasing land while obtaining enough signatures to enable the land court to subdivide was practised by Crown and private individuals alike, as the task of getting the agreement of the numerous owners of blocks with crowded title was a slow and difficult task. In Poverty Bay there was also a great deal of opposition to Government purchase amongst private parties who were competing for the same lands. In the case of J A Wilson, the trouble and controversy which led to his dismissal was fuelled by the opposition of prospective private purchasers of lands in Poverty Bay for which he had negotiated. One of his opponents, R Cooper, a private purchase agent, backed by the considerable capital of speculators in Glasgow, continued to negotiate for lands at Tolaga Bay which Wilson had proclaimed as under negotiation by the Government under section 42 of the Immigration and Public Works Act Amendment Act 1871 (which should have prevented any private party from dealing for the lands while the proclamation remained in force).[72]

In a statement of land purchase for 1875 under the Immigration and Public Works Acts of 1870 and 1873 for the East Coast and Poverty Bay region, Wilson

68. Ibid, p 85
69. Ibid, p 87
70. Ibid, p 88
71. 'Purchase of Land from the Natives (Reports of Officers)', AJHR, 1876, G-5, p 10
72. Sorrenson, p 96

and Porter reported that a large area of land had been negotiated for in the area, but few negotiations had been completed as the blocks remained unsurveyed. Negotiations that had been completed in Poverty Bay are listed in the short table below.

Completed transactions for Poverty Bay reported 1875. Source: *Appendices to the Journals of the House of Representatives*, 1875.

Block	Area (acres)	Price	Lease or sale
Waihirere quarry	28	£114 5	Sale
Motu	67,980		Lease for 50 years
Waikohu–Matawai	43,479		Lease for 25 years

Stone from the Waihirere quarry was to be used to metal the roads in the new Gisborne township. For the East Coast and Poverty Bay as a whole, negotiations had been initiated for the purchase of 11 blocks estimated to contain 154,840 acres, and advance payments made on these of £3192 11s 11d. Prospective leases of 13 blocks were also in initial negotiation and the estimated total acreage of these was reported as 225,500 acres, on which advances had been made of £1579 2s.[73]

The statement on Government land purchase in the North Island up to June 1876 recorded that J A Wilson had negotiated for the purchase of a number of blocks in the Poverty Bay district. These are listed below in the table below.:

J W Wilson's negotiations, reported in 1876. Source: *Appendices to the Journals of the House of Representatives*, 1876.

Block	Area (acres)	Total price	Amount paid at 1876	Lease or sale
Arakihi and Parariki	44,275	£4427 10s	£1071 8s	Sale
Te Ahimanawa	50	£5	£2	Sale
Waihora	16,474	£1647 8s	£504 12s 9d	Sale
Motu	48,862	£2120	£2078	Sale
Waikohu–Matawai	19,781	£1770	£1770 and £30 in incidental costs	Sale
Te Pohue	2000	£200	£10 2d	Sale
Mangarongo	2000	£200	£55	Sale
Waingaromia 3	5762	£576 4s	£20 10s	Sale
Wharekopae	30,000	£3000	£500	Sale
Rangikohua	1950	£195	£27 2s	Sale

73. 'Statement Relative to Land Purchases, North Island', AJHR, 1875, G-6, p 5

J W Wilson's negotiations, reported in 1876. Source: *Appendices to the Journals of the House of Representatives*, 1876.

Block	Area (acres)	Total price	Amount paid at 1876	Lease or sale
Mangapapa	1340	£134	£30	Sale
Waimata West	10,569	£1000	£487 16s 6d	Sale
Waimata North	10,000	£100 per annum	£61	
Waimata East	7000	£70 per annum	£37	Lease
Waimata South	17,000	£170	£150	Lease
Mangatu Matawai	46,000	£150	£132	Lease
Waipaoa Matawai	54,000	No rental fixed	£10	Lease
Te Paritu	12,142	£121 per annum	£316	Lease
Waikohu North	10,000	£100 per annum	£126	Lease
Totals for negotiated sales at 1876	183,063	£15,274 22s	£6584 32s 11d	
Totals for negotiated leases at 1876	156,142	£711 per annum	£832	

Wilson had negotiated for a total of 183,063 acres in sales, and 156,142 acres in leases, for which he appears to have offered just over one shilling per acre.

Wilson's purchase operations were in a state of disarray. Some purchases seemed near to completion or completed, as in the case of the Motu and Waikohu Matawai blocks, while others were nowhere near being ready for completion. In addition, none of the large area of land for which Wilson was dealing had passed before the Native Land Court, and much still remained unsurveyed. Considering the large areas that the Crown hoped to secure though, it is perhaps not surprising that there was opposition from private speculators who had hitherto monopolised the Maori land market. Their opposition is even less surprising when it is considered that all this land, while proclaimed as under negotiation by the Crown, was meant to be excluded from the sphere of private dealing. Such a situation, if frustrating for the speculator, must have left the prospective small farmer, who looked to Poverty Bay as an area being newly opened to settlement, in a hopeless situation for nobody knew how long it might be before the Crown lands would be available for settlement. At the same time, Porter was negotiating for the purchase of the Waitangi block of 1156 acres and Maungawaru of 15,000 acres, while J P Hamlin, native land purchase officer for the Hawke's Bay region, had nearly completed the purchase of Tauwheretoi (59,480 acres); Tuahu (20,000 acres); Hangaroa Matawai (12,959 acres); Whakaongaonga (19,739 acres); and Waihau (15,000 acres), blocks which fell within the Poverty Bay district towards Wairoa.[74]

74. Ibid, p 19

Wilson voiced his frustrations in a report of 1876 in which he accused both S Locke, District Officer, and J Rogan, Maori Land Court judge for the East Coast, of 'militating seriously' against his efforts to purchase land for the Government in the district. Charles Brown and Joseph Giles were appointed as commisioners to investigate the charges made by Wilson against Locke and Rogan, and the corresponding charges of negligence in making 'indiscriminate advances to Natives on land, by which . . . public money has been wasted' brought by Locke against Wilson.[75] In his report, written on 6 June 1876, Wilson stated that he had not been able to complete any of the transactions formerly in negotiation. He claimed that the Maori owners in the blocks concerned had repeatedly requested that the Native Land Court hear their claims, and that he had himself asked that the court hear the cases in which the land purchase office was interested during February 1876, as his plans would then 'be ripe for passing 23 blocks through the court containing 270,000 acres'. Nevertheless, not one of these blocks had yet been adjudicated on by the court. At Wilson's request the lands had been surveyed and amounted to 259,670 acres but only 68,588 acres of this amount had been so far gazetted for hearing, despite applications for hearing made by Maori owners.[76] Fifteen new blocks had been 'purchased' during the first half of 1876, amounting to 101,037 acres at an average price of 1s 10d per acre. Wilson stated that these lands were scattered throughout the district and were of 'good average' quality. Previous leases converted to purchases covered an area of 142,709 acres, and had been bought at an average of 1s 8¾d per acre. Of these, 68,652 acres had previously passed the Native Land Court and were now in Crown title. Wilson claimed that he had negotiated no new leases as he had found it possible to purchase and therefore 'invariably refused to lease'. On the 243,746 acres 'purchased' in 1876, Wilson had paid advances on lands not yet heard in court to the sum of £3291. He had also paid for those lands already through the court, a sum of £4175 12s 10d. Total payments on 'purchases' amounted to £7466 12s 10d, and advances on former leases £43.[77] The total area that Wilson claimed to have purchased and leased in the district was 594,882 acres.[78]

Wilson went on to complain of the powerful opposition to his land negotiations on the part of Europeans in the area with means and influence. He believed that these men had in view 'not merely the land interfered with but the supremacy in land purchasing'. Even more remarkable, he claimed, was the protection and aid such opposition had received from Judge Rogan and District Officer Locke. Locke had, Wilson stated, 'granted permission to execute surveys in favour of Europeans over extensive tracts of country at a time when he knew that I was negotiating the same and had paid considerable sums upon them'. Locke, supported by Rogan, had also defeated Wilson's attempts to obtain a proclamation under the Immigration and Public Works Act in order to stop these Europeans from interfering with the Government's purchases and leases.[79] Apparently Campbell, resident magistrate at

75. 'Land Purchases in Poverty Bay', AJHR, 1877, G-5, pp 15–16
76. Ibid, p 1
77. Ibid
78. Ibid, p 2
79. Ibid

Waiapu, had, under Locke's authority, caused land already leased by Wilson to be surveyed and the 'Natives of his party seized my surveyor's instruments, twice stopping the party'. Wilson wrote that:

> Mr Locke knew that I had acquired the land for the Government before he granted the permission to Mr Campbell's surveyor, and when I asked afterwards for an explanation he made a statement that I do not deem it expedient to repeat here. Mr Campbell, jun, as the agent or partner of his father, the Resident Magistrate, had been informed in writing, before he treated for the land or had paid money upon it, of the prior right of the Government; yet a higher bid was made, and Natives who had taken money from me were induced to go over to him, excusing themselves on the plea that we both were Government men.[80]

It was also Wilson's opinion that the Native Land Court and Judge Rogan gave preferential treatment to the hearing of cases in which land speculator G E Read was involved, citing as an example the gazetting by telegram of the surveys of Read and Cooper in the Waingaromia blocks, for which Wilson was also negotiating. The Government surveys of Arakihi and Parariki (part of the Waingaromia block) were completed in August 1875 and parts of the blocks were gazetted for hearing. Many of the Maori with whom Wilson had been dealing assembled at Waiapu for the court sitting on 10 March 1876, but the judge sent word from Gisborne that the court would be adjourned. On 14 March, a sitting was advertised to take place two days later at Makaraka. This meant that those who had travelled to Waiapu had only 48 hours' notice to return to Gisborne for the hearing of the Waingaromia case, while Read and Cooper's supporters were already there, not having gone to Waiapu. Wilson stated that he had European witnesses who would attest to the fact that 'Mr Cooper, a principal and manager, did deliberately frame his arrangements upon an assumed and asserted partiality of the court for Read'. He also complained that a third party was introduced by the court in the person of T W Porter who, Wilson believed, was acting for Maori with a claim upon Parariki. In Wilson's opinion, it was not for the land purchase officer of one district to interfere with the clients of an officer in another district, and nor should a judge request him to do so.[81]

In reply to these allegations, District Officer Locke stated that Wilson's claim to having 23 blocks of 270,000 acres 'ripe' for hearing was not correct, as few blocks had been gazetted before March 1876, while private parties had duly gazetted the blocks in which they were interested in the regular way. Mr Wilson, Locke claimed, was guilty of 'very gross neglect in the discharge of his duties'.[82] Locke explained in a memorandum on the report of Wilson, that the charges made by Wilson, with respect to Locke having allowed the private survey of 'large tracts of land' for which Wilson was in negotiation, gave the impression that this referred to a considerable portion of the 594,882 acres referred to in Wilson's report. This was, however, far from being the case, as the land referred to was that of Waingaromia,

80. Ibid
81. Ibid, p 4
82. Ibid

which contained 32,000 acres, and the Tuakau block of 19,388 acres. Locke explained that:

> The Waingaromia Block of 32,000 acres is situated at the back of the Poverty Bay district bordering on the Aitangahauiti or Tolaga Bay and Ngatiporou Native lands, and as is frequently the case with lands so situated, rival parties laid claim to it. Mr Wilson, who, I believe, has never seen the land, endeavoured to purchase it from one party, and Mr Cooper, a settler in Poverty Bay, from another, both laying claim to having been first in the field. Both parties desired that the land should be surveyed, but neither faction of the Natives was willing to give way to the other. As District Officer I enquired into the matter, and, although I had an acquaintance with the Natives and lands of the district extending over a period of twelve years I was unable to decide which party were the rightful owners. I then referred the matter to the Government, and received full authority for granting leave to both parties to survey their respective boundaries . . .[83]

Locke felt that Wilson had based his complaints on the difficulties surrounding the Waingaromia block, and that:

> Mr Wilson's whole idea from the first appears to have been that the Native Land Court should be used as an instrument for acquiring lands for the Government; my opinion being that the prestige of the Court should be maintained as an unprejudiced tribunal. If Mr Wilson, as land-purchase officer, neglected his duty by not taking proper care to investigate all questions relating to the ownership of Native lands before advancing public moneys, thereby involving the Government, he should himself bear the responsibilities, and not attempt to make the Native Land Court a scapegoat for his wrongdoing.[84]

With regard to the allegation that Locke and Rogan had conspired to defeat Wilson's attempt to proclaim land under the Immigration and Public Works Act, Locke stated that this was also in reference to the Waingaromia lands. He had perceived that such a proclamation over disputed lands would have caused serious unease and possible disturbance among Maori of the district, and wrote to McLean in May offering his opinion that to proclaim these lands under the Public Works Act would 'most probably be looked upon by the Maoris of the Ngatiporou District as buying land by Act of Parliament'.[85] In conclusion Locke stated that his actions with respect to the surveys of both the Waingaromia block and the disputed Tuakau block, leased by Mr Campbell, were taken with the preservation of peace in mind and with preventing Maori 'from taking it for granted that, rightly or wrongly, the Government was determined to take their lands'. The peace of the country, he believed, was more important than the purchase of 'a few thousand acres of a very rough country'. Nevertheless, the trouble which resulted from Wilson's indiscriminate payment of money for Maori lands was, he feared, far from over.[86] Rogan stated that he knew nothing of the 270,000 acres that Wilson regarded as

83. Ibid, p 5
84. Ibid
85. Ibid, pp 5, 8
86. Ibid, p 6

'ripe' for passing through the court. Since Wilson had arrived, 328,000 acres of land in Poverty Bay had passed through the court, nearly the whole of which was now occupied by Europeans. He said:

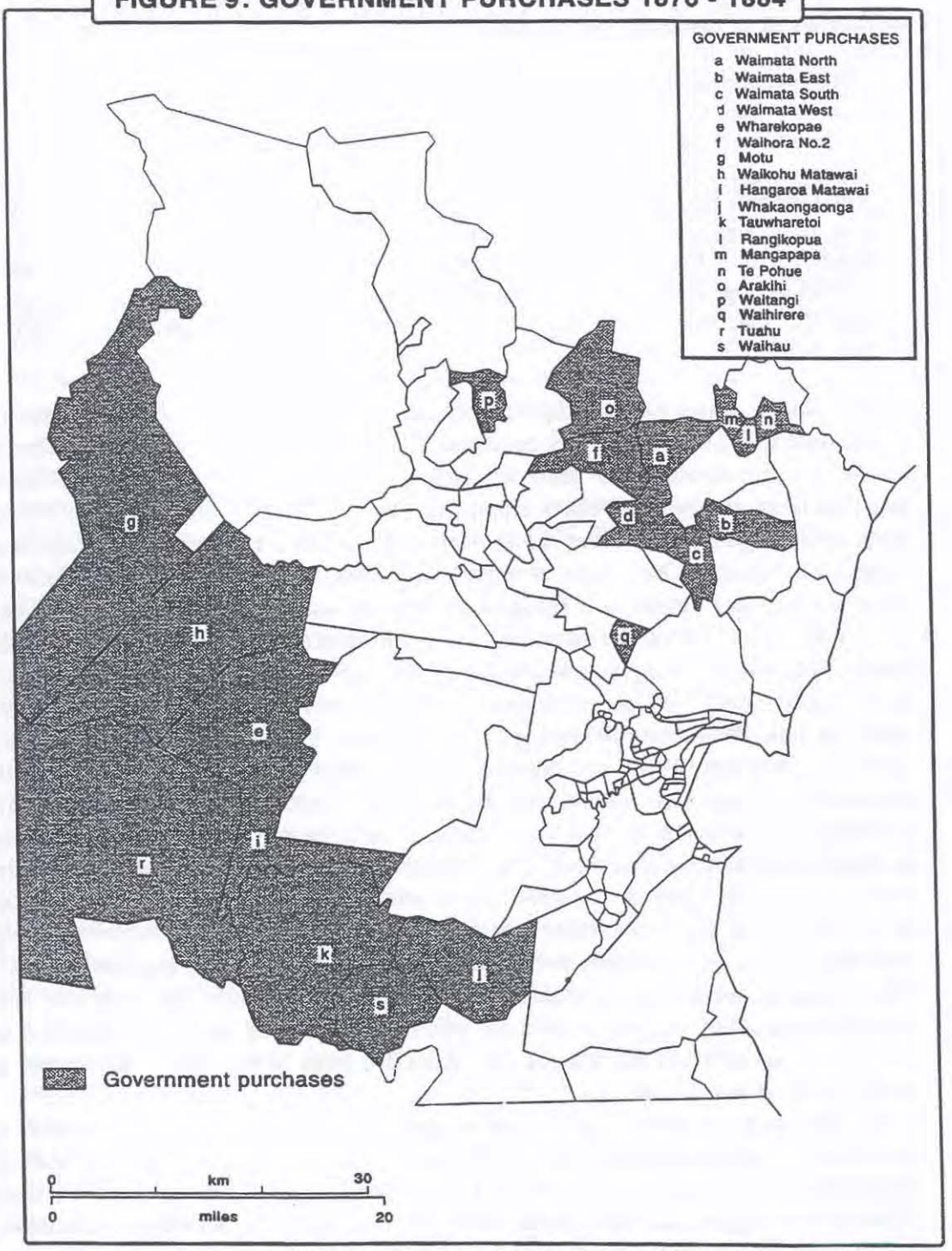
> I do not know whether Mr Wilson reckons any part of those 328,000 acres among the lands which he states he has acquired for the Government, but if so, the fact must be that he has advanced money to Natives who have turned out not to be the real owners of the land, and although money has been paid no land has been acquired in return. My own conviction is that this has been done to a very large extent, and that the real object of the unfounded charges which Mr Wilson has brought against me is to screen his own blunders in advancing money to Natives who have no real claim whatever to lands which they pretended to own.[87]

The report of Brown and Giles dismissed the charges of improper conduct on the part of Rogan and Locke, and concluded that Wilson had in fact paid money in some cases on land which the court awarded to Maori other than those with whom he had dealt. He had also made payments on land which was afterwards involved in serious disputes with regard to the title. These things, in the estimation of the commissioners, indicated 'a want of sound discretion on the part of Mr Wilson in carrying on his negotiations'.[88] They believed that rather than being guilty of the negligence of which Locke had accused him, Wilson's mistake was in his over-zealous pursual of land transactions in the district and of 'insisting too strongly upon some supposed prerogative right of the Crown, to which rival purchasers were expected to give way'.[89]

Wilson was dismissed at the end of 1876, leaving 50 blocks (38 for sale and 12 for lease) and a total of 483,000 acres still under negotiation. The majority of these had still not been gazetted for hearing by the Native Land Court. Of the blocks under negotiation for lease, only one block (Motu) was completed, while the Waikohu-Matawai block required only two signatures (those of Wi Pere and Arapera Pere) to complete it. 175,000 acres of proposed leases were still to be heard in the land court, for some of which blocks only one or two signatures of owners had been obtained.[90] Locke reported in May 1877 that of the 38 blocks Wilson stated as in the process of purchase, including Waikohu Matawai and Motu, the title for only one block had been attained, namely, the Tolaga Bay Township which Wilson had bought from Read. The 180 acres of Karamumono, which Wilson had stated was complete, actually still required the signatures of some of the husbands of the grantees, as did some of the other deeds which were partly signed. Locke stated that 50,000 acres in Wilson's return were actually in the Bay of Plenty district. Cooper, one of the private speculators mentioned above, laid claim to a further 50,000 acres, although this land had been proclaimed under the Public Works Act 1871, and caveats had been filed with the court. Another private speculator had acquired 7500 acres, leaving only 47,000 acres still in a position whereby negotiations could proceed (barring the Motu and Waikohu-Matawai

87. Ibid, p 8
88. Ibid, p 22
89. Ibid
90. Murton, pp 39–40

FIGURE 9: GOVERNMENT PURCHASES 1876 - 1884



Source: B.J Murton, Settlement in Poverty Bay 1868 - 1889 M A Thesis 1962.

blocks). Twenty-five blocks containing 182,000 acres were still to pass before the court and could afterwards be negotiated for.[91]

In a separate report as district officer for the East Coast, Locke wrote in 1877 that much land was now being acquired for the Government from Maori in the Cook County, and that once this land was opened up it would do much for the development of that area. He felt that:

> The sooner the bulk of the waste land now lying idle passes hands in some form the better. If, then, the reserves retained by the Maoris in the several blocks of land purchased were placed under some system – under the Native Reserves Act or otherwise – so as to prevent their being at once sold or mortgaged or leased for a long period without discretion, thus leaving the Natives quietly and permanently settled on these lands with Europeans around them, they would learn by force of example the benefit accruing from steady industry, and, not being any longer unnaturally excited by land-selling, &c, or living a useless, squandering life on the proceeds of these sales, &c, they would, if ever they are to rise in the scale of civilization, have a fair chance.[92]

The Native Land Court temporarily ceased operations on the East Coast in November 1877, but before this occurred several of the large hill country blocks, for which the Crown had been negotiating, came before it. Orders to issue memorials of ownership were withheld on the request of Locke and the Maori interested. Negotiations on the blocks were entrusted to J P Hamlin, land purchase officer for Hawke's Bay, who eventually succeeded in purchasing Tauwharetoi, Whakaongaonga, Tuahu, and Hangaroa Matawai, and it only remained for these blocks to come before the land court for the determination of reserves within them.[93] The blocks being negotiated for by the Crown on the East Coast remained in abeyance, along with all subdivisions and individualisation of title in Gisborne, until the land court resumed sittings in the district. The situation in Poverty Bay with respect to Maori land was highly confused at this point, and the Wilson versus Rogan affair had done nothing to improve the reputation of the district; now commonly regarded as an area where large sums of money were required in order to attain what usually amounted to an impossibly insecure title to land. When the court began to sit again during 1880, it was able to deal with over 350,000 acres of land for which the Government had negotiated since 1875.[94] Approximately 200,000 acres were eventually purchased by the Crown in Poverty Bay (see fig 9).[95] These blocks were mostly situated in the back hill country, but much of this remained closed to settlement for some years due to its poor quality and the lack of access by way of roads and bridges. About 60,000 acres of the Crown lands were to be set aside as native reserves.[96]

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91. 'Land Purchases from the Natives – Reports of Officers', AJHR, 1877, G-7, p 15
92. AJHR, 1877, G-1, p 12
93. Murton, p 43
94. Ibid, p 49
95. The map at figure 9 shows Government purchases from 1876 to 1884. This map is an indication only of blocks in which the Crown purchased, and the parts of the Tuahu and Waihau blocks actually retained by the Crown are not defined.
96. Murton, p 50

In conclusion, it would appear that a significant amount of money was paid in advances on land which the Crown did not succeed in purchasing. The year of greatest success for the Government in its purchase of Maori land in the East Coast-Poverty Bay region was 1880, when 239,734 acres were purchased and confirmed out of a total for the period 1879 to 1884 of 392,101 acres. Sorrenson has stated that after 1884 no more land was purchased by the Crown on the East Coast until 1892.[97] In Poverty Bay, the Crown had a considerable amount of land by 1881, much of which was to remain waste lands of the Crown into the next decade and beyond.

5.6 THE ACTIVITIES OF W L REES AND WI PERE, 1878–81

In general, as we have seen, private purchase in the Poverty Bay district under the Native Land Acts was fraught with difficulties for the settler. Although some individual owners could be persuaded to sell their interests, important members of tribes often refused to sell, and it was a long and expensive process to persuade all the many named owners in a block to sell their shares in order that a purchase could be completed. The only other option was to attempt, once again, to deal with the tribe as a whole, thus rendering the matter of obtaining all signatures of owners relatively painless. Such a system of tribal dealing was proposed by W L Rees, an Auckland lawyer and one of Sir George Grey's supporters, who entered Parliament after winning the Auckland City East seat in 1876. Rees proposed that the system of individual purchase via the Native Land Court be replaced by some sort of government directed purchase of Maori land.[98] He envisaged that chiefs of a tribe or an elected committee would deal with the lands of the tribe in accordance with the wishes of all owners, consensus for which would be ascertained through discussion of such matters in open meetings. This would mean that settlers wishing to buy a block of land need only apply to the committee or tribal leaders, thereby avoiding confusion and disputes of the type which were then common in the Native Land Court.[99] There were arguments against such a system, and these were provided by those who wished to continue with the individualisation of Maori land tenure. These critics of tribal dealing wanted to avoid communal ownership of land which, they felt, encouraged 'Maori landlordism', whereby Maori lived off the rents from leases and stopped settlers from owning and working their own land. Such a system, they argued, only encouraged sloth in the Maori, who should rather be encouraged through the individualisation of tenure to either sell his land or farm it himself, thereby rendering it useful.[100] Additionally, it was argued, with some legitimacy perhaps, that there was no longer any real tribal cohesion which would support tribal dealing in land. The chiefs were no longer possessed of enough authority to lead in such dealings and it had been shown that such men were capable

97. Sorrenson, p 117
98. A D Ward, 'The History of the East Coast Maori Trust', MA Thesis (History), Victoria University, Wellington January 1958, p 11
99. Ibid, p 12
100. Ibid, p 13

of selling their tribe's land and retaining the profits without the approval of the tribe as a whole.[101] Nevertheless, Rees felt that all that was required was a 'responsible agency' in the form of a committee with Maori representatives or Government officers to deal with land on behalf of the tribe. This agency could then farm the land, sell it or lease it with the agreement of the owners who would receive profits from those dealings in an equitable manner.[102]

Te Aitanga a Mahaki, as we have already seen, had begun experimenting with such an elected committee of leading men who would deal with land disputes and leases from early in 1874. This idea clearly arose from Wi Pere's awareness of the problems Maori were facing with regard to land dealing on an individual basis in Poverty Bay. His attempt to institute a committee to deal with such problems, with the permission of all those concerned, seems to indicate a desire to deal with land transactions in the area in a more tribal manner. It is perhaps not surprising then that when Rees came to Gisborne in 1878 he found a willing partner and supporter in Wi Pere, and a considerable amount of support for his scheme of tribal dealing among East Coast Maori. From 1878 to 1879, Rees and Pere called meetings of Maori land owners in the Poverty Bay area and persuaded many Maori to vest land in them as trustees. Rees claimed that this was in the area of about 400,000 acres and that the land was vested in committees of owners who Rees and Pere were to act with and for, they being named as trustees in deeds of trust over the lands.[103] Rees claimed, at public meetings and in the local press,[104] that once the Native Land Court had approved crown grants for blocks of land, these blocks would be conveyed to Rees and Pere in trust, and settlers could then deal with the trustees for land in the area, thus opening the East Coast to settlement (and securing fair prices for Maori owners) without the excessive litigation and fraud that had previously typified land dealings in the area.[105]

During 1879, Rees began to deal with such blocks as Maraetaha, Pakowhai and Whataupoko, over which there had been dispute since the early 1870s. The Whataupoko block has already been discussed in section 5.4.1(1). Titles to Maraetaha, Pakowhai, Te Kuri and Tangotete blocks, occupied by J W Johnson, were settled through an agreement reached in 1879, by which Johnson sold his shares in the blocks to Rees who then purchased the remaining Maori shares in trust. Maori were then to receive reserves, and Johnson was to get the freehold of about 20,000 acres, forming the larger part of the blocks.[106] The Te Kuri block, an area of about 783 acres (originally crown granted in 1872 to 92 Maori owners), was subdivided in the Native Land Court on 26 July 1880 in accordance with the agreement between Rees and Johnson. Three hundred acres were awarded to Johnson, 10 acres went to the trustees of Ema Maororo, and 10 acres became a

101. Ibid, p 12
102. Ibid, p 13
103. 'The New Zealand Native Land Settlement Company', AJHR 1891, sess ii, I-3a, p 1
104. Splits in local opinion towards the Rees–Pere trusteeships are echoed in the two Gisborne newspapers of the period. The *Poverty Bay Standard* supported Rees's policies while the *Poverty Bay Herald* favoured the opposing view which advocated the continued individualisation of tenure and breakdown of the tribal system (Murton, p 46).
105. *Poverty Bay Standard,* 15 February 1879, cited in Ward, p 17 and Murton, p 45
106. *Poverty Bay Standard,* 23 April 1879, cited in Murton, p 46

Maori reserve. The remaining 463 acres were not provided for by order of the Court, but were conveyed in trust to Rees and Wi Pere, and later transferred to the East Coast commisioner. The ten acres of reserve land also became East Coast trust land administered by the East Coast commisioner.[107] The story of the fate of these early trusteeships, and the administration of them by the East Coast commisioner is discussed over the course of this and following chapters. The Maraetaha block, or Te Kopua as it was also known, was 13,798 acres in extent. At its subdivision in 1880, 10,700 acres were awarded to J W Johnson, while Maraetaha 1a and 1b blocks, both of 250 acres, remained Maori land. The balance of 2598 acres was conveyed in trust to Rees and Pere. A further subdivision in 1901 saw 250 acres go to Murphy, a European settler, while 2303 acres were vested in the East Coast commisioner by transfer from Rees and Pere.[108]

During 1880, Rees set about promoting a private bill which was intended to ratify his dealings as trustee. The East Coast Settlement Bill, if passed, would have empowered the Maori block committees to deal with their lands and confirm the Rees-Wi Pere Trusts. It would also allow for partitioning of portions of blocks for those owners who did not wish to vest their land in the trustees. The bill also sought to remove the restrictions on alienation placed on Crown grants to Maori under the Native Land Act of 1867, which had restricted alienation to leases of up to 21 years. In the *Poverty Bay Herald* it was recorded that Rees promoted his scheme with claims that although the Crown now owned approximately 500,000 acres on the East Coast, its land was inaccessible and still locked to settlement. He stated that the 1,300,000 acres of land still owned by Maori on the East Coast (150,000 acres was held by Europeans in fee simple) could be settled without public expenditure or the establishment of a monopoly, by means of his scheme which the bill was intended to ratify.[109] According to Rees, Maori were vesting large areas of their land in the trustees, and European lessees were willing to give up their leases (with adequate compensation) in order to free up the land for Rees's settlement scheme. This consisted of plans to cut up the blocks into small lots which would be sold or leased to immigrant settlers on deferred payment plans. Maori seemed to support the plan because it offered the prospect of an immediate return of profit to them, whereas under the existing system the lease or sale of blocks as whole units provided small returns which were not always shared equitably among the owners. Rees was apparently confident of a steady supply of new settlers from various areas of Britain, and his communications with Belfast and other places indicated that many were keen to come to the East Coast as part of his settlement plan.[110]

The bill was not passed as there was increasing unease and suspicion among local settlers and also, apparently, some conservative politicians, with respect to the amount of control Rees and Wi Pere appeared to be gaining over Maori land.[111] Another blow came when Justice Gillies expressed his surprise, in the Native Land Court, that the trust commissioner (under the Native Land Frauds Prevention Act

107. Te Kuri block file, no 271a, MLC Gisborne
108. Maraetaha 1 block file, no 437, MLC Gisborne
109. *Poverty Bay Herald*, 26 April 1879, cited in Murton, p 47
110. W L Rees, The East Coast Settlement Bill 1880, cited in Ward, pp 18–19
111. *Poverty Bay Herald*, 2 March 1881, cited in Ward, p 19

1870) had approved a deed of trust for the Whataupoko block which appeared to grant too much power to the trustees over this Maori-owned land. Following this, in February of 1881, Rees applied to have the Pouawa block vested in himself and Wi Pere as trustees, despite the fact that not all the Maori owners had been located. It was proposed that the block be subdivided to provide a reserve for the Maori owners and an area to be sold to settlers. The court decided that the block could not be vested in anyone other than the Maori owners. Rees took the case to the Supreme Court where the decision of the Native Land Court was upheld, and it was also decided that under the 1873 Act any further alienation of land already vested in Maori owners had to be by way of 'true sale or lease' by the owners. Rees's trust deeds were, therefore, invalid as they were not true deeds of sale.[112] The Rees–Wi Pere trusteeship scheme was at an end, but Rees's involvement with the lands of Maori on the East Coast was far from over, as will be shown in the following section. Justice Gillies might be seen to have been rather over-anxious about what was another, but more effective, way of alienating Maori land to settlers, which also seemed to ensure proper reserves, a better profit, and closer involvement in the process for Maori owners. Nevertheless, as further discussion will show, his concern for the Maori owners of the land was prophetic in many ways, as much land in the district, conveyed to Rees and Wi Pere through their settlement company, would be lost with virtually no return to Maori owners.

In the meantime though, during 1879 and 1880 Rees had managed to clear up a number of problems over disputed lands. By September 1880 most of the disputes over lands remaining in Read's estate had been settled through subdivision and the negotiation between Read's trustees and Rees, acting as trustee for the Maori owners in the disputed blocks. An account of a meeting held at Waerenga a Hika in April was printed in the *Poverty Bay Herald* on 24 April 1880. At the meeting 300 Maori and about 30 Europeans gathered to discuss blocks of land being dealt with by Rees and Wi Pere. Maori present were preparing to sign trust deeds for Rees. Anaru Matete spoke on behalf of the Maori assembled who were, he said, the remains of Rongowhakaata, Te Aitanga a Mahaki, Ngaitahupo and Ngati Konohi. He told Rees and Pere that these Maori placed their land difficulties in the hands of the two men and asked that they 'act as men of honour' in dealing with the remnants of their tribal lands. To Coleman and Clarke, trustees for Read's estate, he said that the problems over Read's lands had existed for at least eight years and now that Rees had taken the matter up, the 'battle was still raging'. Read's trustees replied that they had been more than generous in the amount of land they had returned to Maori in the Matawhero 1 block. Rees stated that in the two years since Wi Pere and himself had begun acting as trustees, several disputes had been ended. The Kaiparo block dispute was settled, as were difficulties surrounding Whataupoko. The Maraetaha, Te Kuri and Pakowhai blocks had been settled. Kaiti and Pouawa were partially settled, and although the price of £25,000 to be paid to Douall for the block seemed a considerable sum, he felt that at least another £20,000 profit would be available for the Maori owners.

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112. *Poverty Bay Herald*, 4 February 1881 and 9 February 1881, cited in Ward, pp 20–21

Concerning the Paremata and Mangaheia blocks, Rees mentioned that an arrangement had been made to give Murphy a freehold of 2000 acres, leaving a reasonable acreage for subdivision and European settlement, along with reserves for Maori owners. The Okahuatiu block of 31,000 acres was being let at a rental of £250 per annum to Messrs Clark and Dobbie. Rees and Pere had made an arrangement to lease 12,000 acres to them, leaving 19,000 acres for Maori. Clark and Dobbie would then have the right to purchase 2000 acres at £1 per acre, and these arrangements would give Maori owners an income of £240 to £480 a year from rentals, with an additional area for their own occupation. Matawhero 1 block of 400 acres had been returned to Maori, and Rees had purchased Read's interest in Matawhero B block for £3500 with the agreement that all lawsuits concerning that block should cease. R R Curtis gave up his leases of Makauri and Taruheru plus his two shares in Taruheru for £400. Rees and Pere as trustees had purchased Cooper's interests in several blocks for £30,000 which also included taking over his loan of £28,000. It was agreed that the future disposal by sale or lease of the lands concerned would need to be discussed by the committees involved.[113]

The Matawhero lands are deserving of some attention, as the area was one in which disputes over ownership and legitimacy of sale dated from the 1850s, and still continued to plague Read's trustees in 1880. Matawhero 1 (1706 acres) was originally Crown granted to Hirini Haereone and others in 1871 under the Poverty Bay Grants Act of 1869. As stated above, 400 acres of this block were to be granted by Read's trustees to 45 Maori owners as compensation. In the Native Land Court on 6 March 1883 it was ordered that William Coleman and J F Clarke were to receive all of Matawhero 1, consisting of 1730 acres, but Wiremu Haronga was also to be granted an area of 100 acres out of the block. No record of any grant in fulfilment of the 400 acre arrangement appears in the block file, although there is mention of compensation of 353 shares made to 45 owners.[114] The question arises as to whether Read's trustees ever carried out their end of the agreement, as there was further litigation over the block in 1880. Matawhero B (No 5 block) of 730 acres was awarded to Riparata Kahutia and 20 others by Crown grant of 25 April 1871, after subdivision of the Matawhero lands.[115] Riparata Kahutia took E F Ward to court on 23 January 1879 over his alleged forgery of the trust commissioner's signature on an 1871 deed for Matawhero B. Although the charges were dismissed because evidence was not perceived to be sufficient to place Ward on trial[116], there was sufficient evidence to suggest that transactions concerning the Matawhero lands may not have been entirely legal or legitimate. In the Supreme Court hearing of *Macfarlane and Others v Rees* during February 1880, M J Gannon had stated that forgery in connection with sales of land in the Poverty Bay area was as 'common as conversation'. He also claimed that he could show the court plenty of such forgeries if the Matawhero B deeds were produced.[117]

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113. *Poverty Bay Herald*, 24 April 1880
114. Matawhero block file, MLC, Gisborne
115. Ibid
116. *Poverty Bay Herald*, 6 and 10 March 1880
117. *Poverty Bay Herald*, 10 February 1880

A further subdivision of No 5 block took place in 1883, and a crown grant was issued to the New Zealand Native Land Settlement Company (begun by Rees and others in 1881) for 68 acres, under the name of Matawhero No 5 West. Matawhero 5a (30 acres) went to Marara Whaipata; 5b1 (32 acres) to Mereana Paraone; 5b2 (13 acres) to Riparata Kahutia; and 5c (32 acres) to the settlement company. An inalienable reserve (5d block) was granted to Kataraina Kahutia, and 5e block was awarded to Henry Harris, part-Maori son of J W Harris, although this land passed to Europeans (A McKenzie, J Ferguson and J E Espie) on 15 October 1883. Compensation of £294 was apparently paid by the East Coast commisioner to seven of the original owners of Matawhero B in the early 1900s, although whether this was to compensate for lands lost in mortgagee sale or for the sale of the land to pay off other debts of the East Coast Trust is not clear. The block file records that all of Matawhero C (No 6) block, granted to 30 Maori owners in 1871, was conveyed to G E Read on 19 July 1870. Read apparently conveyed Takapu o Ruku (61 acres) and Wai o Parau (50 acres) back to Riparata and Kataraina Kahutia, as they had not agreed to the original sale. On 18 September 1880 Read's trustees received 428 acres of Matawhero C while Rees, on behalf of the Maori grantees, received the remaining 630 acres of the block.[118]

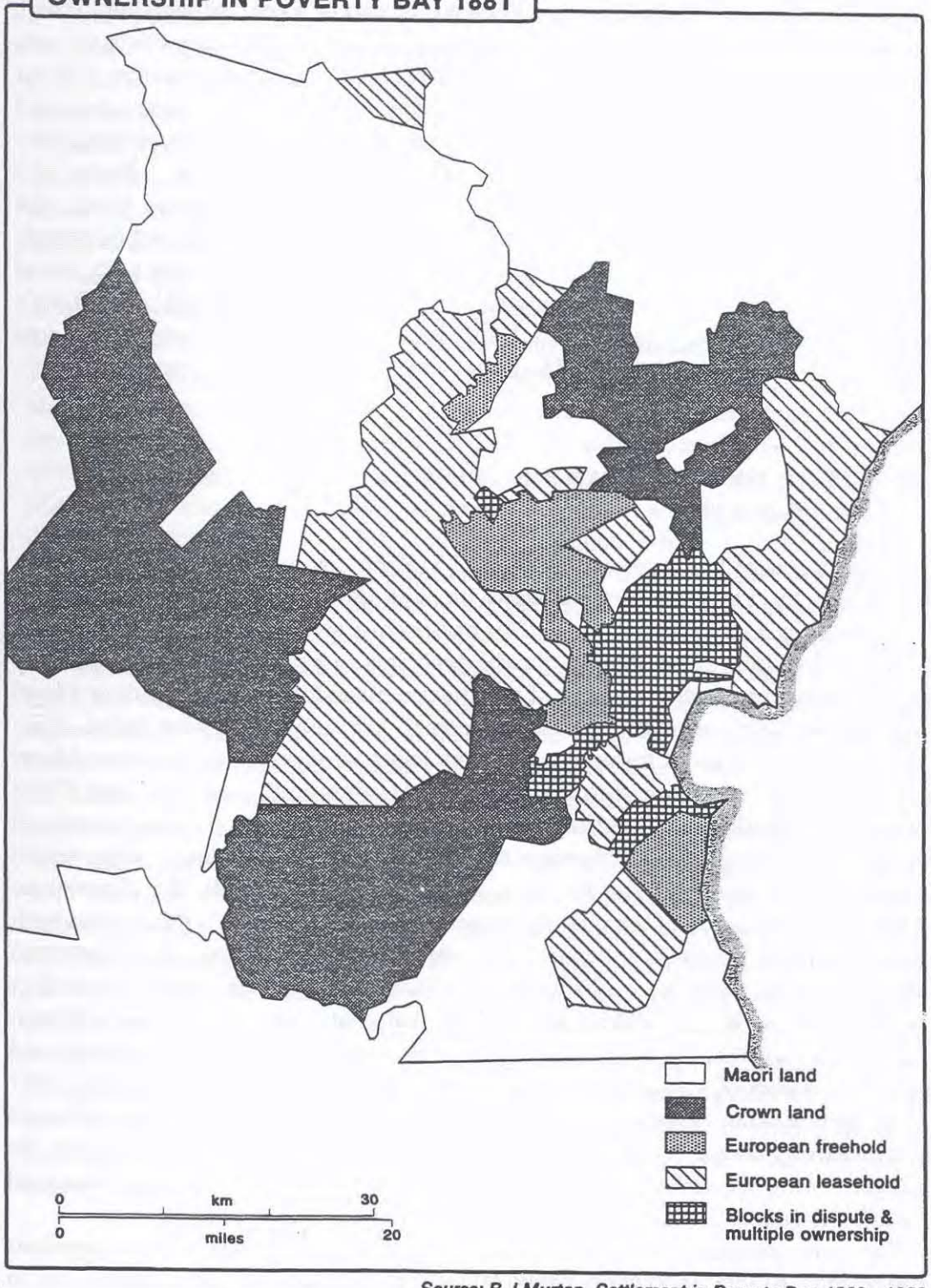
Although some of the foregoing information asumes an understanding of events and circumstances yet to be discussed in this report, it seemed important to include a chronology of how these circumstances affected the original transactions in the blocks used here as case studies. These later events are too complex to allow a simple explanation with reference to these case studies, and it is hoped that following a perusal of the remaining chapters, the reader may refer back to the case studies with a greater understanding of the details they reveal. It is perhaps pertinent to note here that the main purpose in including all the information provided has been to indicate that although Rees and Wi Pere sought to resolve disputes for both Maori and European parties, and to open the lands to settlement through their trusteeships, they were themselves to lead Maori owners of the blocks into further troubles through their involvement with these lands.

5.6.1 Conclusion

Through subdivisions of blocks in which Europeans had purchased shares that went through the court during 1880 and 1881, a considerable new area of European freehold land appeared in the Poverty Bay district. The Crown had also completed its purchases of the late 1870s. By this time remaining Maori lands were mostly small and scattered, although the large Mangatu block inland remained Maori land, restricted as to its alienation to leases of no more than 21 years. On the East Coast as a whole, the Crown now owned 720,000 of the total 1,900,000 acres due to the efforts of Wilson and Porter, land purchase officers. Land in European freehold was 530,750 acres while Maori retained 576,630 acres, mostly north of Poverty Bay.[119] Although no figures are available to determine how much of these acreages

118. Matawhero block file, MLC Gisborne
119. Murton, p 50

FIGURE 10: PATTERN OF LAND OWNERSHIP IN POVERTY BAY 1881



Source: B.J Murton, Settlement in Poverty Bay 1868 - 1889 M.A Thesis 1962

consisted of land in Poverty Bay per se, the map at figure 10 shows the overall pattern at 1881. Clearly, although Rees's involvement in settling previous disputes and allowing land to be given to Europeans in freehold title from 1878 to 1881, in conjunction with the sittings of the land court, had increased the area of European freehold land, significant areas of the district remained in leasehold only. Additionally, it can be seen from the map that despite Rees's best efforts, the area of land in disputed and multiple ownership had increased. At least part of this area was made up of blocks involved in the Rees–Wi Pere trusteeships and in the newly formed New Zealand Native Land Settlement Company.

It is to the activities of this next venture on the part of Rees, Wi Pere, and others that we now turn. Although Rees had maintained that his trusteeships scheme was intended to facilitate the easier transfer of Maori land to European settlers without the establishment of a monopoly in Maori land, Justice Gillies had been concerned that the operation was establishing just such a monopoly, and was jeopardising the interests of Maori owners of the lands involved. The trusteeship scheme was brought to an end on a legal point over the vesting of the Pouawa block, the Supreme Court declaring Rees's trust deeds to be invalid as they did not constitute true deeds of sale or lease by Maori owners. There was, however, still a degree of local confidence in Rees on the part of both settler and Maori in 1881, and Rees's renewed attempts to legitimise the scheme he had begun with the trusteeships met with considerable support from Maori who were persuaded to become involved.

5.7 THE NEW ZEALAND NATIVE LAND SETTLEMENT COMPANY

Rees had arranged in association with G M Reed for a group of settlers from Northern Ireland to settle on the Pouawa block in 1881, but the Native Land Court would not agree to a subdivision. The prospective settlers apparently waited in Gisborne for some three months for the problems to be resolved, but eventually they dispersed into other districts. Thus, Rees's plans for trusteeships over Maori land, and the settlement of those lands in small lots, seemed to have failed. Rees then hit upon the idea of forming a company to act as intermediary between Maori and prospective settlers within the system of existing land laws. The East Coast Native Land Settlement Company was registered in July 1881 in order to acquire Maori land through the 'voluntary association' of Maori owners, who would contribute their own land, and Europeans, who would put in funds, 'for the purpose of effecting settlement of the land by farmers, settlers, and others'.[120] Rees was both shareholder and solicitor of the company which also involved prominent European settlers in Gisborne such as G M Reed, W H Tucker, and C A de Lautour, as well as chiefs Wi Pere, Henare Potae, and Ropata Wahawaha. Despite this local focus, much of the company's support and financial backing came from Auckland and Rees's parliamentary supporters. The company changed its name in October 1881 to the New Zealand Native Land Settlement Company to reflect hopes of Rees's

120. *Poverty Bay Herald*, 5 July 1881, cited in Ward, pp 21–22

Auckland supporters for a wider field of operations.[121] The headquarters of the company were moved to Auckland in 1882, although its transactions remained confined to Maori land on the East Coast.[122]

The new company was to operate in much the same way as the previous trusteeships. Maori landowners would still assign their lands to the company, but in this instance they would themselves become shareholders, which Rees felt would bring the operation within the system of Native Land laws, as lands could be vested by deed of transfer in the company, while Maori owners retained involvement with the lands.[123] Once land had been surveyed and subdivided with the aid of capital invested by the European shareholders, inalienable reserves would be set aside for Maori owners and the remainder could be leased or sold at public auction. Maori would be paid for their land with a small sum of cash and the remainder in scrip or share certificates which, after the sale of land, could be exchanged for two-thirds of the nett profits from the transactions. It was proposed that the company would help Maori to secure Crown grants and put subdivisions through the Native Land Court, as well as developing the land, paying for roads, bridges, and public utilities in order to promote settlement by parties brought out from Britain for that purpose.[124] Some criticisms were made of the new company at its establishment which, as Alan Ward has pointed out, turned out to be somewhat prophetic. Firstly, Rees's business abilities were already in doubt following the failure of the trusteeships scheme and the Pouawa settlement fiasco. Secondly, it was questionable whether the company were aware of the costs that would be involved in such a scheme for transferring Maori land to Europeans if there happened to be Maori who objected to conveying their land to the company, or Europeans who claimed to have already acquired the land in question. And thirdly, it was surmised that when the Crown opened up the large areas of land they had purchased on the East Coast, the demand for land by settlers would quickly dissipate, leaving the company in severe difficulty.[125]

Despite these concerns the company began well with 125,000 acres having been deposited with it by the end of 1882. Court orders for freehold tenure of 11 blocks were received and subdivisions of 13 separate areas of land made.[126] A public auction of rural and urban allotments was held in Gisborne in November 1882 when 7000 acres of sections in the Pouawa block were sold for £2 2s 6d per acre and 300 acres of the Whataupoko block for £15 per acre.[127] The company's annual report for 1882 showed a nett profit of £10,129 12s 3d of which it was proposed to pay out £1444 6s 1d at a dividend of eight per cent. The remainder of the profits would be carried forward for future dealings[128]. This looked quite good on the surface, but the company had not paid off its overdraft of £10,000 with the Bank of New Zealand. As well as this, the balance sheet showed no payment of profit to the

121. Ward, p 22
122. Sorrenson, p 159
123. Ward, p 22
124. *Poverty Bay Herald*, 5 July 1881
125. *Poverty Bay Herald*, 18 July 1881, cited in Ward, p 24
126. *New Zealand Herald*, 31 August 1882, cited in Ward, p 25
127. *New Zealand Herald*, 29 November 1882, cited in Sorrenson, p 160
128. *New Zealand Herald*, 9 December 1882, cited in Sorrenson, p 160

Maori shareholders.[129] A petition from Ropata Taita and 151 others in 1883 requested a royal commission of inquiry into the activities of the settlement company, complaining that they had conveyed large tracts of land to the trustees and although the said trustees had received over £50,000 on account of these lands, the petitioners had received nothing and the trustees had refused to account for the money. They stated further that:

> the trustees also conveyed to the New Zealand Native Land Company (Limited) large estates belonging to the trust, nominally for the benefit of the owners, and induced some of the Native owners to commit perjury before a Trust Commissioner and Judges of the Native Land Court in order to obtain certificates to the deeds under the Native Lands Frauds Prevention Act; that the said Company, whilst paying large dividends to its shareholders, has given to the petitioners nothing but promises; that the said trustees and Company have acquired lands to the value of £500,000 without consideration, and have sold or mortgaged them to shareholders of the Company and other individuals . . .[130]

In 1883, the company's directorate changed to include more Auckland men. The previous involvement of East Coasters dwindled as the company appeared to become more concerned with speculation in Maori land and high finance, rather than what was important to its local shareholders, that being the continued settlement and development of Poverty Bay. By July 1883, only one local representative, in the person of Wi Pere, remained out of 17 directors in the company.[131] In that year the company presented to the House a private bill, entitled the New Zealand Land Settlement Empowering Bill, which sought to empower the native block committees to give valid title when alienating their own blocks so that the individual owners could not alienate the land by sale or lease without recourse to the committee. Another clause in the bill sought to have restrictions on the alienation of Maori land removed, as had been attempted in Rees's earlier East Coast Settlement Bill. This clause was motivated by the fact that the 164,000 acres of Mangatu block 1, 2, and 3, which were claimed by the company, were under restriction and could not be alienated except by lease of up to 21 years. Obviously this did not make subdivision and settlement an attractive option for prospective settlers. The company had applied for the removal of the restrictions by the Governor but this had been refused. Perhaps the most problematic clause, and the one which seems truly to indicate the swing towards sheer speculation in Maori land by a European-dominated company, was that which sought to empower the company to buy land directly from Maori for the purpose of improving it and selling it at profit, instead of having Maori owners lodge their land with the company as shareholders.[132] In debate over the bill, criticism was made of the company as a mere speculating organisation that sought to establish a monopoly on Maori land in the North Island. Bryce, Native Minister, who opposed the bill, read

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129. *New Zealand Herald*, 31 August 1882, cited in Sorrenson, p 160
130. Rapata Taita and 151 others, petition no 178, AJHR, 1883, I-2, p 13
131. Ward, pp 25-26
132. Ward, pp 27-28

the petition from East Coast Maori (quoted above) alleging fraudulent dealings by the company, and the bill was subsequently withdrawn.[133]

The prestige which the company had attained in Gisborne during the first couple of years of its operations had been severely damaged by the failure of the bill and the suspicion that it was simply an attempt to establish a monopoly over Maori land on the East Coast. Further damage was done to Rees's original plan for the company when Wi Te Ruke, one of the owners of the Paremata block in Tolaga Bay, took the company to the Supreme Court during 1884 in an attempt to get the memorandum of transfer of the block to the company overturned, because he had not been paid any of the promised dividends by the company.[134] The decision of Justice Richmond was that the transfer 'was truly a sale and that the property passed absolutely to the Company'.[135] As Alan Ward has commented, this decision seemed to belie Rees's claim that the company was an agency acting between Maori owners and purchasers, as in law it was now to be seen as a purchaser of Maori land even though the 'consideration' paid was in the form of share certificates or scrip and Maori were made shareholders in the company. This left those Maori who had deposited their land with the company in a potentially dangerous situation as it appeared they had relinquished their land, and control over its future sale and the profits from that sale, for what might amount to worthless scrip. The company now became simply another group of speculating Europeans, adding to rather than solving the problems existent in Maori land dealing under the native land laws. By the end of 1883, the company had been in possession of land to the value of £275,901. It had sold 20,000 acres to the value of £43,952, but the process of taking land through the courts, the costs of surveys, and cash payments to Maori owners placed a heavy burden on its small capital. It was eventually necessary to mortgage land to the Bank of New Zealand because the proceeds of sales in 1883 did not cover the overdraft of £58,050.[136] To make matters worse, the demand for land fell away between 1881 and 1884 with the onset of depression, and sales were also negatively affected by the uncertainty of title which now accompanied the company's land assets.[137] At auction in September 1884, only some small township allotments were sold, and only £4700 was received from sales in the following year.[138] Rees was declared a bankrupt in 1885, and the company had to write off £4126 10s 8d of his debts. In November 1885, it was decided that the company should be wound up.[139]

The continued efforts of the company to have land subdivided for sale during 1885 and 1886 were finally stopped by Ballance, Native Minister in the new Liberal Government, who asked the Native Land Court not to allow subdivision of land prior to alienation.[140] Under Ballance's Native Land Administration Act 1886,

133. NZPD 1883, vol 44, pp 413, 415, cited in Ward, pp 28–29
134. Ward, p 30
135. *New Zealand Herald*, 17 April 1884, cited in Sorrenson, p 163
136. *New Zealand Herald*, 7 November 1883, cited in Ward, pp 52–53
137. Sorrenson, p 163; Ward, p 33
138. *New Zealand Herald*, 25 September 1884 and 11 November 1885, cited in Sorrenson, p 163
139. *New Zealand Herald*, 11 November 1885, cited in Sorrenson, p 164
140. *New Zealand Herald*,11 November 1886, cited in Ward p 34

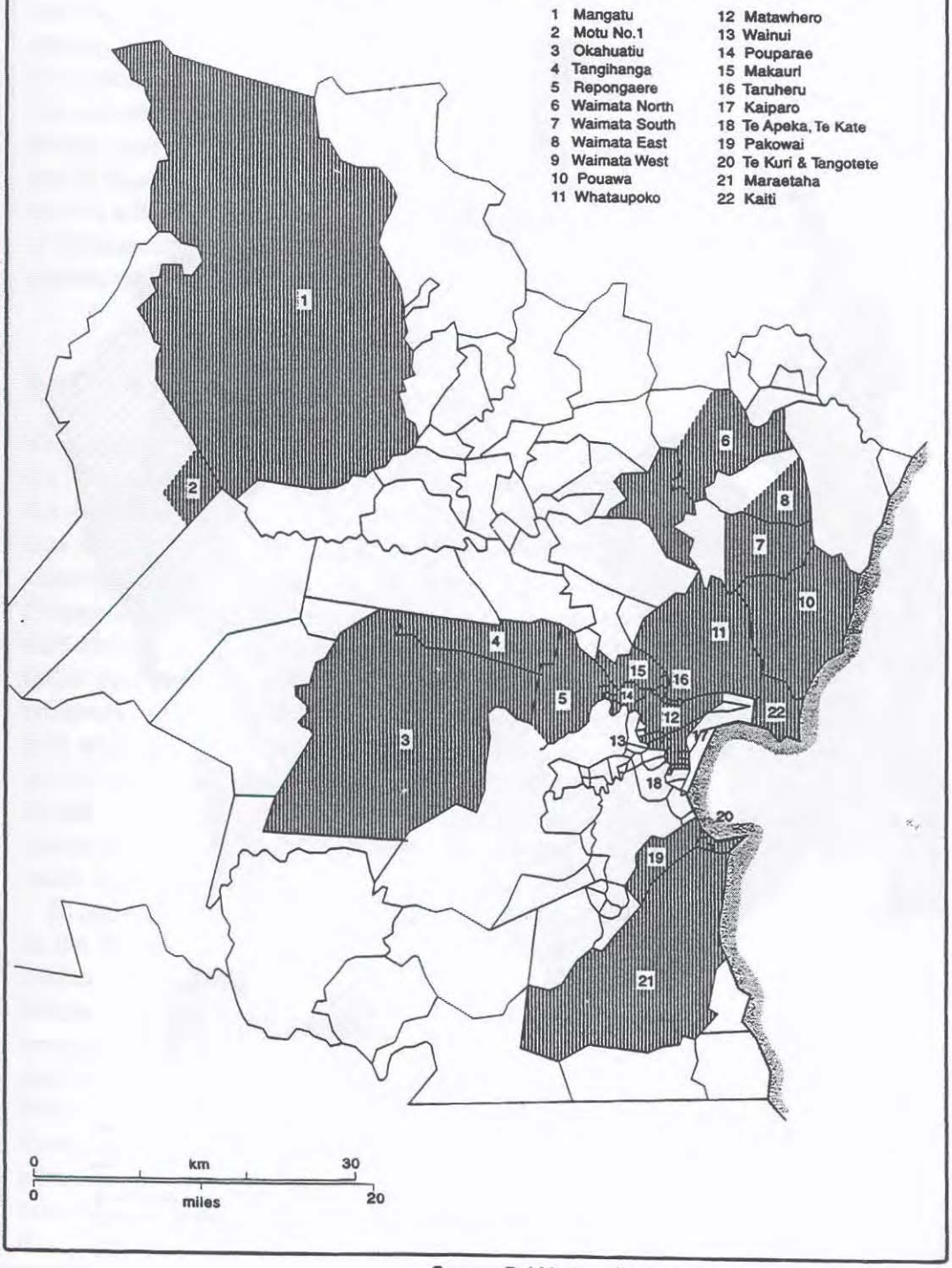
government pre-emption was reinstated, and this remained in force until the repeal of the Act by the Atkinson administration in 1888. The company was, therefore, left with around 200,000 acres of unsaleable and unproductive land on which the debt continued to increase.[141] In July 1888, it was finally announced that the ompany was finished. It had 130,000 acres of land ready for immediate sale (and about 250,000 acres in total assets), but its consolidated debt from rates, taxes, and interest charged on its mortgages to the Bank of New Zealand, amounted to approximately £130,000. The market values for land were extremely low when private purchase was reinstated in 1888, so there was no possibility that the debt could be realised.[142] European shareholders proceeded to escape the indebtedness of the company, retaining what they could in the form of the company's only cash assets which amounted to about £20,000. As the originally invested capital was around the £60,000 mark, their eventual loss was approximately £40,000. For reasons that are not clear, although they were undoubtedly motivated by a desire to attempt the salvation of their own land, Maori shareholders had apparently given a written guarantee in July 1888 that they would accept the sole burden of the consolidated debt. Additionally, a further £81,000 owed to them from the proceeds of previous sales was written off.[143] Although the Bank of New Zealand agreed not to foreclose on the mortgaged lands for a period of three years to give the Maori shareholders an opportunity to redeem their lands, the interest on the undeveloped lands would continue to mount, and they were eventually faced with losing their remaining lands to pay the debts of a company from whose previous sales of their land, presumably on their behalf, they had not seen any significant return. As the *New Zealand Herald* reported in 1890:

> the natives who gave up their land have never touched any money, and some of them have not even got the scrip which they were supposed to get . . . What has become of the money actually raised by sale of shares, or of blocks of land – for some land was sold for cash – nobody seems at present to know . . . A great deal has gone in salaries and expenses, but whoever got the money the natives assert they never had any. Their patrimony is gone, and they have no means of living.[144]

Sorrenson has stated that Maori who entered into Rees's scheme suffered the same fate as Maori who dealt with their land by other means, as the land was eventually lost through debts incurred in the process of attempting to prepare it for sale.[145] Nevertheless, Rees's schemes had been intended to avoid such an outcome. Alan Ward has argued that although the opinions of Maori who lodged their land with the company do seem to have been 'lightly regarded', there is no evidence that Rees was involved in swindling them through any dishonest handling of the company's finances.[146] Rees's schemes may have been well intentioned, but it was more than unfortunate for Poverty Bay Maori involved with the New Zealand

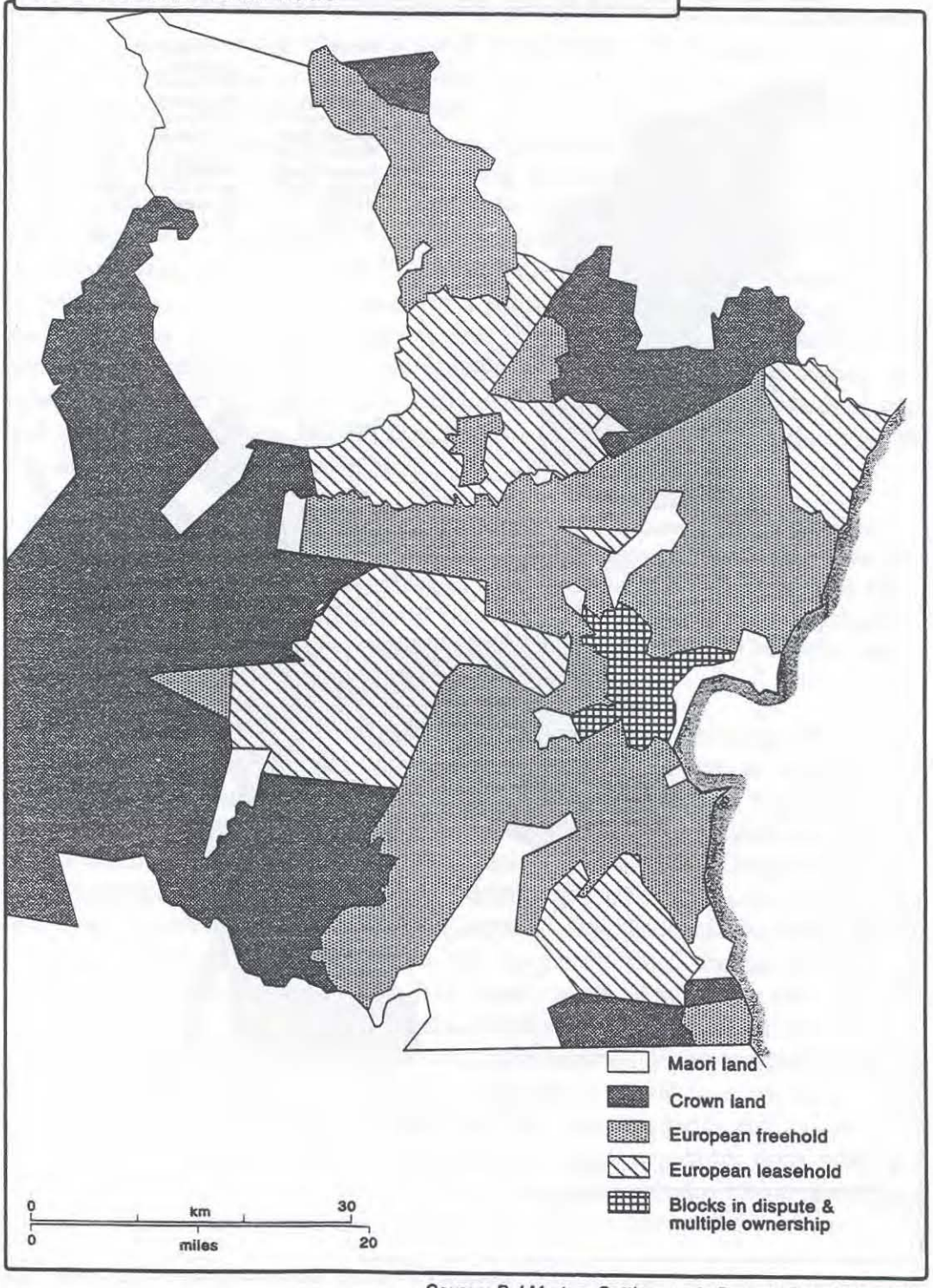
141. *NewZealand Herald*, 5 July 1888, cited in Ward, p 34
142. *New Zealand Herald*, 5 July 1888, cited in Sorrenson, p 164
143. Ward, p 38; Sorrenson, p 165
144. *New Zealand Herald*, 18 April 1890
145. Sorrenson, p 167
146. Ward, p 39

FIGURE 11: LANDS HELD BY W.L.REES AND NEW ZEALAND NATIVE LAND SETTLEMENT COMPANY



Source: B.J Murton, Settlement in Poverty Bay 1868 - 1889 M.A Thesis 1962

FIGURE 12: PATTERN OF LAND OWNERSHIP IN POVERTY BAY 1888



Source: B.J Murton, Settlement in Poverty Bay 1868 - 1889 M.A Thesis 1962

Settlement Company that the criticisms levelled at the company at its inception, in terms of Rees's lack of business ability and the likelihood of the company's failure, were borne out by later events. By way of criticism, it could certainly be said that the Europeans involved in the company took risks with the lands and livelihood of Poverty Bay Maori in a manner which indicates a scant regard for their rights and welfare. Furthermore, when the company became insolvent, those Europeans protected themselves by leaving both the debt and the prospect of certain loss of their remaining lands to the same Maori, to whom as shareholders, they surely had a responsibility both morally and ethically.

By 1889 then, the failure of the New Zealand Native Land Settlement Company had placed a considerable amount of Maori land in the district in danger of being entirely lost to the Maori owners, without any recompense. Additionally, profits to the extent of £81,000 owed to Maori from previous sales, were also lost to them. The extent of the area affected by these disastrous events can be seen in the map of blocks held by the New Zealand Native Land Settlement Company at figure 11. The fate of these lands is explored further in the course of the following chapter. We turn now to a brief outline of other purchasing activity from 1882 to 1889, and to some of the concerns expressed by Poverty Bay Maori with respect to land dealings in the district when visited by Native Minister Ballance during 1885.

5.8 THE LAND SITUATION 1882–89

This section is intended to provide some additional information as background to the altered pattern of land ownership in the Poverty Bay district at 1888 shown in the map at figure 12. The area of European freehold had increased still further from that shown in the map at figure 10, and the area of leasehold had decreased correspondingly. A considerable section of the disputed lands had now become European freehold, and areas of Maori land were few and scattered. Although the map shows the large Mangatu block as still Maori land, this was part of the lands under mortgage to the bank of New Zealand following the failure of the settlement company. Areas of leasehold, and parts of the disputed lands on the Poverty Bay flats were also New Zealand Settlement Company lands. When the areas of Maori owned land shown in the 1888 map are considered, it is not difficult to see what a disastrous prospect was the possible loss of the settlement company lands without compensation, as this would have seriously depleted the already dwindling tribal estate in Poverty Bay.

In May 1882, the Crown had received 2000 acres after subdivision of its interests in the Poututu block. Maori portions of the Crown-purchased blocks were also further subdivided in 1882 and 1883, and the New Zealand Settlement Company purchased some of these portions. Subdivision of European-purchased interests in various blocks also increased the area they held in freehold. Nevertheless, as later discussions will show, there were still many titles that were disputed or defective. With regard to the reserves allocated by the Crown in 1882 following purchase, there is no indication that these ever came under any type of reserves administration. It is not evident, either, that any restrictions were placed on the

alienation of these reserves. The general pattern in Poverty Bay seems to have been that where restrictions were placed on the alienation of Maori blocks after subdivision, these were easily removed for the purpose of further subdivision when European purchasers had continued to buy the shares of Maori owners. This subject is discussed in some detail in chapter 6 of this report, but more thorough primary source research would be required in order to establish the fate of the reserves left to Maori in the Crown-purchased blocks.

5.8.1 East Coast Maori meet with Ballance, 1885

In a meeting that provides evidence of Maori concerns regarding land matters on the East Coast during this period, representatives met with Native Minister Ballance at Whakato on 24 February 1885. Ballance was asked to consider the following matters: the election of Maori committees to administer various blocks of land; the exclusion of unoccupied lands, or those that had not yet passed before the Native Land Court from the payment of rates under the Native Rating Act; the alteration of the Duties Act to allow duties to be paid on leased land annually rather than in a lump sum; the cessation of the European custom of buying up individual shares in Maori land where there were numbers of owners; and the appointment of a royal commission to investigate grievances over Maori lands on the East Coast in accordance with existing laws and native custom. Maori representatives also wished to stop the system whereby the shares of minors could be sold by their trustees. They suggested that these shares be vested in Maori committees. Complaints were made about road construction under the Public Works Act, and it was stated that consultation of Maori landowners at the time of survey with respect to the best lines for roads to be taken through their land should be undertaken.[147] Wi Pere raised the matter of the continued purchase of shares in land to which restrictions on alienation applied. He used the example of the Whangara block, for which a certificate of title had been issued on 2 December 1870, by Judge Rogan, and the 136 owners were registered under clause 17 of the Native Land Act 1867. The block was originally 21,450 acres in extent.[148] Wi Pere complained that:

> The Native owners have represented to the lessee that this land has restrictions placed upon it, and they have asked him to desist from purchasing. While the present meeting has been going on this European has bought out certain shares; probably his object is to buy up all the shares, by which means the restriction can be done away with. If there is any person to take our part perhaps you will inform us – that is, to tell this European that he is acting illegally. The Natives are wearying of representing this matter to the European; he will not listen to what they have to say.[149]

He also stated that native interpreters were responsible for urging Maori owners of the block to sell. [150] In reply Ballance said that he did not agree with restricted land being dealt with in this manner, and that in the time that he had been Native

147. 'Notes of Native Meetings', AJHR, 1885, G-1, p 67
148. Whangara block file, no 1365, MLC Gisborne
149. AJHR, 1885, G-1, p 68
150. Ibid, p 69

Minister there had been no allowances made for the removal of restrictions. Certainly, Ballance's comment seems to be have been borne out by the fact that the New Zealand Native Land Settlement Company had been unable to have the restrictions removed on blocks for which they had applied to the Governor. He added that:

> The action of these people in buying shares is quite illegal. They can get no title and are only throwing their money away . . . Where restrictions have been placed on lands, those lands are in the nature of public trusts, and restrictions are placed on land so that the land shall not pass away from the Native people; and I say that any person who tries to get behind the law in that way is doing an illegal act. The only way that I can prevent Europeans from dealing in these lands is by adhering to my resolution that the restrictions shall in no case be lifted.[151]

Evidence from the Whangara block file shows, however, that the block was divided by the Validation Court in 1894. Whangara A, a block of 4500 acres, was granted to original lessee Charles Seymour for the purchased interests of Rawiri Maki and 57 others. Whangara B, of 3900 acres, also went to Seymour but in leasehold. By subsequent decrees of the Validation Court, dated 9 April 1896 and 23 February 1899, H C Jackson was appointed as receiver for the purpose of holding and managing Whangara subdivisions B1 to N, an area of 16,500 acres, on behalf of the owners. Whangara C block (3487 acres) was sold to meet liabilities on the lands.[152]

In conclusion of his speech to the Native Minister, Wi Pere said that even if the measures proposed by Maori present at that meeting were passed in the forthcoming session of Parliament, there would be no land left for them to apply to if the Native Land Court was allowed to continue to sit on the East Coast, because Maori of the district had only a little land left.[153] By the end of the decade the situation in Poverty Bay itself had become even more serious than when Wi Pere made these comments to Ballance.

A variety of issues were raised at this meeting between East Coast Maori and Ballance. Some of these will be revisited in the following chapters. For the purposes of the discussion contained in this chapter, it can be seen that the two decades of private and Crown purchase had left Maori with firm ideas about what they wanted to see changed. Obviously a greater degree of control over their own lands was desired by them in the form of Maori committees, which Rees had seemed to offer through his trusteeships and the later settlement company. The complaint about the continued purchase of individual shares in blocks with many owners is a powerful indication, especially when considered alongside the concerns about the purchase of shares in restricted lands, that Maori felt unable to control the insidious effect of such purchase on their continued ownership of lands in the district. Wi Pere's final comment poignantly demonstrates the feeling of relative powerlessness that these years of Native Land Court activity had left amongst Maori leaders. In stating that there was very little land remaining to Maori in the

151. Ibid, p 72
152. Whangara block file, MLC Gisborne
153. AJHR, 1885, G-1, p 68

district, and that unless Parliament acted soon before more land went through the court Maori in the district would be left completely landless, he clearly indicates the degree to which the situation was beyond the control of Maori leaders by that time. In the light of these comments, and the pattern of land ownership shown in the map at figure 12, it seems inconceivable that Europeans continued to complain that settlement of the area was being hindered by a lack of Maori land being made available.[154]

5.9 CONCLUSION

From the time the Native Land Acts came into force in Poverty Bay, the individualisation of tenure carried out through the Native Land Court had a swift and devastating effect on the tribal estate in Poverty Bay. This was not immediately made obvious because of the nature of purchase activity, and for some years Europeans continued to lease land in the district rather than own it in freehold. It is evident that Maori preferred to lease rather than sell, at the beginning of the period at least. Nevertheless, the sale of individual shares for reasons ranging from opportunism to debt repayment, mortgage, poverty, and lack of food soon whittled away at the ability of non-sellers to retain blocks in their entirety. Neither pressure from non-sellers nor restrictions placed on the alienation of blocks were sufficient to stem the tide of land sale. Although there is evidence that Maori began to think of ways to maintain some degree of control over the process through tribal and block committees like those originally planned by Rees and Wi Pere, their involvement in Rees's schemes seemed to have ended in disaster by 1889. Their hope of greater involvement in the controlled alienation of their own lands had resulted in great loss by that time, with the prospect of even further loss as the mortgage debt on their lands continued to rise.

Although the Crown had acquired over 200,000 acres of land in Poverty Bay, it had done this by employing similar methods to those of private land speculators. The Crown's purchases did not slow the pace of private purchase to any significant degree as its lands mostly remained locked to settlement during this period, and as greater numbers of settlers began to look to the East Coast for land, the desire for land and the pressure on Maori to sell increased exponentially with the passing years. One of the results of these years of chaotic purchase of individual shares by various lessees and speculators in Poverty Bay was the complex system of title that had to be unravelled by the Native Land Court at the subdivision of blocks. Despite the operation of the Native Land Court and the trust commissioner in the district, there remained many defective and disputed European titles to land by the end of the 1880s. During the following decade remedies would be sought for this problem in the form of special commissions and a Validation Court, which held numerous sittings in Gisborne in the process of validating such titles. The activities of this court and the issues surrounding its operation in Poverty Bay will be discussed in the next chapter.

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154. Murton, pp 61–62

CHAPTER 6

ISSUES AFFECTING MAORI LAND, 1890–1900

6.1 INTRODUCTION

In discussing the issue of Maori land in Poverty Bay during the period when the Liberal Government was in power, the local specifics must increasingly be discussed within a national and political context. In this era, Maori political groups began to coalesce in their reaction against land sale, and in protest over land legislation and the Native Land Court process. Government policy on Maori land began to affect the East Coast region in a more general way, reflecting national political trends. The Native Land Court was overshadowed during this period by such institutions as the Validation Court and Maori land councils, in an era marked by a plethora of legislated provisions for the closer European settlement of Maori land in the North Island. Several areas of importance to the further alienation of land in Poverty Bay are discussed, and as commissions of enquiry began to investigate areas of grievance, evidence is provided of the effects of land legislation and the excessive sale of land in the previous two decades in Poverty Bay. The Validation Court instituted under the Liberals was significant in its effect on the district, and for this reason it has been explored at some length, as has the issue of the removal of restrictions on alienation of Maori land. Finally, section 6.6 deals with the continuing plight of the New Zealand Native Land Settlement Company lands, as they were threatened time after time with mortgagee sale by the Bank of New Zealand. In the discussion of these subjects, this report is indebted to the previous work of other writers. Aroha Waetford's 'The Validation Court' (as yet unreleased), and Jenny Murray's *Crown Policy on Maori Reserved Lands and Lands Restricted from Alienation, 1840–1907*, both from the Waitangi Tribunal Rangahaua Whanui Series, have provided many helpful references for sections dealing with these issues. The discussion of the Carroll–Wi Pere Trust is heavily reliant on the work carried out by Alan Ward in his MA thesis on the East Coast Trust.

6.2 THE LIBERAL GOVERNMENT AND MAORI LAND POLICY

Maori land policy and administration under the Liberal Government was typified by two different sets of policies. The first of these was determined by pressure from

settlers for more land and involved the large-scale purchase of Maori land for close settlement in what Tom Brooking has referred to as a 'penultimate grab of farmable Maori land'. The Government purchased 3.1 million acres of Maori land between 1891 and 1911, mostly at artificially low prices (around six shillings per acre) brought about by the reimposition of the Crown's pre-emptive right. In the same period only 500,000 acres was privately purchased on the open market.[1] The second set of policies arose from the growing movement towards a greater degree of Maori involvement in the administration of their own lands. This partly came about as a result of increasing pressure from such Maori political groups as the Kingitanga, the Kotahitanga movement, and Ngata's Young Maori Party, all of whom were disturbed at the excessive loss of land. In part also, the Liberal Government was more able to adopt a slightly paternalistic attitude towards Maori retention of land resources by the turn of the century, as Crown purchase under the pre-emptive clause had ensured that a reasonable amount of land had already been made available to settlers. The movement resulted in the passing of Ngata's land legislation of 1900 and in his later schemes for the consolidation and development of remaining Maori land in the early twentieth-century. These developments will be discussed in the course of the following chapter. For now, it is sufficient to note that Carroll's 'taihoa' policy with respect to the sale of Maori land in the 1890s and Ngata's Maori Councils scheme both served to slow the pace of Maori land sale under the Liberals.[2] Much of the better farming land had already passed into European hands though, and in the case of the Poverty Bay district, this had occurred in the two decades following the entry of the Native Land Court into the area.

In 1894, the Liberal Government reintroduced full Crown pre-emption in order, supposedly, to protect Maori from unscrupulous 'land sharks', and to ensure that Maori land owners received a fair payment for their lands.[3] Nevertheless, the pre-1909 land legislation passed under the Liberal Government interlocked in a way that was intended to allow the purchase of Maori land to accelerate. Seddon was already able to boast in 1894 that the present Government was going to 'break the annual record for Maori land purchase' in that year.[4] The Liberals did not purchase land on a large scale in the Gisborne district, as most of the more valuable land had already been alienated, and there were still large areas of Crown land, purchased in the years 1876 to 1880, that remained unoccupied. The larger blocks still in Maori ownership in the area were those under the administration of the Carroll–Wi Pere Trust, and later the East Coast commissioner.

The authors of *Challenge and Response*, Oliver and Thomson, have estimated that in 1894 the Government partially acquired 16 blocks of Maori land in Gisborne, and nine in Waiapu, and over the remaining six years of the decade it purchased 141 blocks of varying sizes for an average price of two to four shillings an acre.[5] It is likely that many of the Gisborne acquisitions were in the nature of

1. Tom Brooking, '"Busting up" the Greatest Estate of All: Liberal Maori Land Policy, 1891–1911', NZJH, vol 26, no 1, April 1992, p 78
2. Ibid
3. Native Land Court Act 1894
4. Brooking, NZJH, April 1992, pp 82–83

public works takings, but without further extensive research this cannot be stated for certain. Research of block files held at the Gisborne Maori Land Court show that there were a number of Gisborne blocks which passed to the Government on subdivision in the 1890s. These were lands adjacent to those blocks which the Government had acquired prior to 1880, and consisted of portions equivalent to additional shares purchased after the original partitioning of the lands. For example, Tarewa 1 block of six acres was sold to the Government in 1896 following subdivision of the block by the land court in 1894.[6] The Crown's interests in Tauwharetoi No1block were defined on subdivision in 1897 and the Crown received subdivisions 1b (209 acres) and 1c (592 acres). Tauwharetoi 1d block was vested in the incorporated owners in 1908 and later sold.[7] Rangikohua 1 block (Pukekura) of 1500 acres had been vested in Tuta Nihoniho and others and made inalienable. The application of the owners for the removal of restrictions was later granted, and the block was subdivided in 1897. One block was then sold under the Native Land Settlement Act 1907, while the other went to a private purchaser.[8] The Whakaongaonga block had been subdivided in 1880, the majority of the land having been purchased by the Crown. Divisions of blocks No 2 in 1883, No 4 in 1886, and No 3 in 1897, saw further lands vested in the Crown. Whakaongaonga 2c was acquired by the Crown in 1896, and definition of the Crown's interests in blocks 2d to 2j on 4 August 1897 gave it a further 1736 acres. Miriama Kuhukuhu and others sold their 5½ shares of 22 acres each in block 2d, for which the Government paid £24, (four shillings per acre). In Whakaongaonga 2e the Government received an area of 343 acres in return for the purchase of 15½ interests for £97 (four shillings an acre). In 2g they claimed 131 acres or 6¼ shares from Hariata Wahapeka, Hirini te Kani and others, and the Maori owners of block 2g1 and block 2 were charged survey liens of £39. The Government received 396 out of a total of 1018 acres in block 2i, in 2j received 647 acres out of 1027, this being the equivalent of 31½ shares.[9] Waipaoa blocks 1 and 2 (2911 acres each) were acquired by the Crown after subdivision in 1889, and there was a further definition of its interests in blocks 3 to 10 in 1903.[10] Part of Waingaromia 3a, amounting to 536 acres was vested in the Crown on 10 May 1889. Shares in the original Waingaromia 3 block had already been acquired by the Government and it had received part of that block in 1881.[11] It is easy to see from these examples that the land court's activities during this period were primarily those of further subdividing land in this district, and also handling applications for successions to the interests of deceased owners of land. It was the Validation Court, however, that would be the focus of attention in Gisborne for the remainder of the decade.

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5. Oliver and Thomson, p 179
6. Tarewa block file, MLC Gisborne
7. Tauwharetoi block file, MLC Gisborne
8. Rangikohua 1 block file, MLC Gisborne
9. Whakaongaonga block file, no 1339, MLC Gisborne
10. Waipaoa block file, no 1258, MLC Gisborne
11. Waingaromia block file, MLC Gisborne

6.3 THE NATIVE LAND LAWS COMMISSION 1891

Concerned at the present state of Maori land law and the inefficiencies of the Native Land Court process, Ballance set up a commission of inquiry to investigate and report on possible legislative remedies. The Native Land Laws Commission (Rees commission) was instructed to highlight problems arising out of the Native Land legislation that had been in place since 1862, in particular the operation of the Native Land Court, as well as the alienation of Maori land in general. Following this, they were to make recommendations for the future administration of Maori land, eliminating or mitigating the difficulties previously identified. The commission sat in various places throughout the North Island from March to June 1891, and their findings were presented to Parliament later that year. Appointed to sit on the commission were William Lee Rees, of New Zealand Native Land Settlement Company fame (or notoriety), and James Carroll, the member for Eastern Maori, now also involved with the old settlement company lands as joint trustee with Wiremu Pere. Despite the Maori land problems they were both associated with on the East Coast, the opinions of Rees and Carroll with respect to Maori land legislation and administration were highly regarded by the Liberal Government. Rees's experiences with the settlement company, and as a lawyer who had dealt extensively with Maori land in the courts, as well as his own advocacy of the need for changes in land policy and administration, made him a highly respected expert on Maori land law among the Liberals.[12] Carroll's placement on the commission indicates a new willingness to take into account the opinions of Maori leaders, especially those who moved easily between the Maori and Pakeha worlds. It must also have been seen that Carroll's more pragmatic approach to Maori land issues would temper the idealism of Rees and thus more parties were likely to be satisfied with the consensus produced in their report. The third commissioner was former judge of the Native Land Court, Thomas Mackay, administrator of the West Coast settlement reserves in Taranaki.[13]

6.3.1 The report

Rees, who wrote a major part of the commission's report, took the opportunity to praise the concept of tribal dealing contained in the Native Land Administration Act 1886. This was perhaps not surprising as that legislation had been based on ideas that he had himself helped to formulate. The individualisation of title, as applied under the Native Land Act 1873, was identified as the primary cause of the confusion endemic in the system of private purchase by 1891.[14] The report criticised the fact that Parliament had, in 1873:

> deliberately passed a Native Land Act which established as the law of the land the individual system which Chief Judge Fenton had declared to be unknown and illegal, which Sir George Grey had inferentially condemned, and which Mr Justice

12. Ward, 'The History of the East Coast Trust', pp 53–54
13. G H Scholefield (ed), *A Dictionary of New Zealand Biography*, vol I, Department of Internal Affairs, Wellington, 1940, p 22
14. Sorrenson, 'The Purchase of Maori Lands', p 184

> Richmond, appointed by Parliament, impeached in the strongest terms. It may be that Parliament intended that the tribe should act – indeed, the statute itself from one point of view bears out this contention; but the wording of the law makes it imperative that every individual in the community shall specifically enter into every contract.[15]

Rees pointed out that it was intended, under section 24 of the Act, that it be the duty of the Native Land Court to ensure that inalienable reserves of 50 acres or more be set aside for every man, woman, and child in the district but that the tendency towards individualisation of tenure was 'too strong to admit of any prudential check' and no such reserves were set aside.[16]

Rees set about describing, based on the evidence given before the commission, the 'chaos' which had arisen through the individualisation of title under this Act and its amendments. Under this law, it was stated, the alienation of Maori land took its worst form. There were many owners in any one memorial of ownership who, eager to obtain the money necessary to buy European goods 'welcomed the paid agents, who plied them always with cash and often with spirits'. Left without adequate leadership, once provided by chiefs and tribal leaders, and without the strength which solidarity under that leadership had provided, they were able to be picked off by persuasive European land speculators and their agents. According to Rees, a few more years of the existing Native Land Court system would result in Maori becoming 'a landless people'.[17] It was not only in terms of the alienation of land that individualisation had proved troublesome to Maori though. It was contended in the Report that due to every owner, in a list often consisting of a hundred or more names, having an equal right to a piece of land, personal occupation of that land, and improvement and tillage of it, became an uncertain proposition for any owner. It was commented that:

> If a man sowed a crop, others might allege an equal right to the produce. If a few fenced in a paddock or small run for sheep and cattle, their co-owners were sure to turn their stock or horses into the pasture. That apprehension of results which paralyses industry cast its shadow over the whole Maori people.[18]

It was also posited in the report that Maori, who would speak honestly and impartially in their own runanga, would 'swear deliberately to a narrative false and groundless from beginning to end' when speaking before the Native Land Court. The Commissioners concluded that the existing land legislation had filled the courts with litigation and given rise to bitter debates, taken up the time of committees, flooded Parliament with petitions (more than a thousand from Maori in the ten years between 1880 and 1890), and had 'entailed heavy annual expenses for the colony'.[19]

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15. 'Report of the Commission Appointed to Inquire into the Subject of the Native Land Laws', AJHR, sess ii, 1891, G-1, p ix
16. Ibid, p x
17. Ibid, p x
18. Ibid, p i
19. Ibid, p xi

regard to the Native Land Court itself, the commission found that hearings now took much longer than formerly and fees had substantially increased. Adjournments and postponements of hearings were more frequent, and in general the court had become 'a European Court rather than a Native one'. The commissioners believed that the practice of concocting false claims which drove out the actual owners of land had been brought about by the court system itself. They commented that after years of occupation under a certificate issued by the court, the occupier might still be subject to litigation, sometimes followed by ejection, as the decisions of the court seemed never to be final. Members of the legal profession testified to the complete state of confusion that existed both in law and in practice where Maori land was concerned. The most often expressed Maori complaints about the court concerned: delays; expenses, fees and duties; enforced attendance at distant places with resulting poverty and demoralisation; perjury and false claims in court; uncertainty and injustices perpetrated by judges' decisions; the process of rehearings; political influences brought to bear on court proceedings and decisions; the non-residence of judges; the excessive cost of surveys (especially for subdivisions); and finally, the complete insecurity of title following adjudication.[20]

Specific complaints were made against the Government by Maori in all districts of the North Island in which the commission sat. Allegations were made that the Native Department and its agents had interfered with the surveys of land and in the decisions of judges of the Native Land Court in determinations of title. As a consequence many Maori now thoroughly distrusted the land court. Particular allegations were made by East Coast chiefs that the Crown had taken land to which it had no right by purchase or conquest.[21] A further complaint from East Coast Maori was that they had been detrimentally affected by the action of the government in making all the grantees under the Poverty Bay Grants Act 1869, joint tenants rather than tenants in common. The commissioners were of the opinion that:

> to confer a title upon the Maori which did not descend to his heirs or successors upon his death was a grievous wrong. It may be that it is too late to effect a remedy, but it should be tried.[22]

As demonstrated in chapter 5, the area of Maori land in Poverty Bay affected by joint tenancy under the aforementioned Act was significant, and this can be seen on the map at figure 3. Much of this land had, however, passed into European ownership by the 1890s.[23] That Maori continued to experience problems resulting from these grants is evident from this complaint in 1891, and from contemporary examples of litigation regarding successions to land so granted. It is even more clear from these comments that the granting of large areas of land in this manner was a continuing source of grievance for those Maori in Poverty Bay who had been

20. Ibid, pp xi–xii
21. Ibid, p xiii
22. Ibid, p xiv
23. Evidence of Wi Pere, AJHR, 1891, G-1, p 9

affected. Despite the Government's knowledge of the injustice before 1873, no direct action was taken to remedy the situation at that time.[24] No attention appears to have paid to the recommendation of the Rees commission either, although, no doubt, it was already too late to amend the damage done, as Rees and Carroll suspected it might be.

The issue of native trust deeds was also raised with specific reference to the Poverty Bay district. The commission commented that the Native Land Act 1873 had made it illegal for Maori owners to convey their land by way of trust. This ruling was upheld by the Supreme Court in the Pouawa case; the block being one of those in Poverty Bay conveyed in trust to Rees and Wi Pere. Despite its illegality, the Native Land Court had often, according to the evidence presented, permitted and sometimes advised Maori to put titles to large and/or valuable blocks in the names of a few owners to make the lands easier to administer. One such case in Poverty Bay was that of Mangatu 1, a block of 100,000 acres in extent.[25]

Rees referred to the Native Committees Act 1883 as a 'hollow shell' that gave Maori no real authority, and highlighted Maori requests for the resurrection of the Act in a form which would provide them with some real powers of self-government. The Native Land Administration Act 1886 was described as 'the one effort made by the Legislature to stay the individual dealing with Native lands'. Its failure was explained by two factors. Firstly, Maori perceived that the control of their lands would be taken from them and put in the hands of Europeans. Secondly, the provisions of the Act were optional and due to their distrust of the Crown's intentions, Maori refused to bring their lands under its operation. According to the evidence, the commission felt, all parties concerned were eager to return to the principle of tribal dealing despite the repeal of the 1886 Act. The commission proceeded to make some recommendations for a new legislated system, the basis for which would be Maori development through the dissemination of industrial knowledge to the younger generation, the establishment of extensive reserves, and the safe, speedy, and economic dealing in Maori land for the mutual benefit of all concerned.[26]

The report, in its stated remedies, reflected the personal views of Rees in indicating that the abandonment of the Crown's pre-emptive right under the Treaty of Waitangi had been a 'grave and serious error'. Carroll dissented on this point, believing that Maori should be able to deal with their land as they chose, and get the best possible price for land sold directly to settlers. He gave his views on the issue of pre-emption in a separate section of the report, stating that he did not see how the Crown could reacquire the right of pre-emption, renounced in the preamble to the Native Land Act 1862, without the full consent of Maori. This he believed they would not give, and he felt that any move of the Crown to again acquire that prerogative would only intensify Maori mistrust of the Government. Carroll pointed out that where the Crown had exercised a pre-emptive right, as in the King Country, Maori could not obtain a fair price for their land, receiving three shillings

24. See chapter 4, sec 4.3
25. 'Report of the Commission on Native Land Laws', AJHR, 1891, G-1, p xv
26. Ibid, pp xviii–xix

per acre rather than the £1 per acre they might have expected from private purchasers.[27] Thomas Mackay, the third commissioner, disagreed with the majority of the report and was in the process of drafting his own at the time of his death. Nevertheless, in the report by Rees, it was recommended that the Crown resume the right of pre-emption.

With respect to the validation of titles, Rees and Carroll suggested the setting up of a Native Land Titles Court with full power to validate titles when neither fraud nor illegality were involved.[28] It was proposed that the Native Land Court be remodelled to consist of a chief judge, five district judges, and five district commissioners or administrative officers rather than the existing court, which consisted of itinerant judges based in Wellington. It was proposed also that committees of Maori owners should be established for each block of land. These block committees were to report boundaries and ownership to a district committee under a district commissioner. The district committee would report on tribal and hapu boundaries of any block of land and list the owners. Where there was no dispute the district commissioner would issue titles, otherwise the district judge and two Maori assessors nominated by the parties involved, would hear the case. Proposals such as these were akin to those contained in the failed 1886 legislation. In addition, a Native land board would be set up with three Maori and three Government representatives. This board would act as trustee over Maori land and could sell or lease if so requested by the owners. The same board would arrange for survey and roading of any area in conjunction with the local block committees.[29] The Government was to be responsible for funding surveys, legal costs, and improvements, and this expenditure would be recouped by a percentage charged by the board on all Maori lands. Finally, the report stated that the proposed new laws should be imperative rather than optional.[30]

6.3.2 The Gisborne evidence

First to give evidence before the commission, which sat at Gisborne from 2 March to 7 March 1891, was Edward Francis Harris, licensed interpreter and land agent, and one of the part-Maori sons of trader and settler Captain J W Harris. He began by stating that the fees charged in the Native Land Court were oppressive, and if an owner could not pay the £1 per day which the court required for every day of a hearing, he would lose his chance to have his name inserted in the Crown grant for that land. He also said that the cost of subdivisional surveys was excessive and that in the Gisborne area there were a number of blocks which could not be subdivided without the whole of the land being swallowed by survey liens.[31] The value of land brought before the court on the East Coast was by Harris estimated to be between five shillings an acre and £10 per acre depending on the location of the block; coastal land being of greater value. He believed that there was, however, very little

27. Ibid, 'Note by Mr Carroll', pp xxvii–xxx
28. Ibid, p xxi
29. All above information, AJHR, 1891,G-1, pp xxi–xxiv; Brooking, NZJH, 1992, p 52
30. AJHR,1891, G-1, pp xxiv, xxv
31. Evidence of E F Harris, 'Minutes of Evidence', AJHR, 1891, G-1, p 1

of the more valuable land left.[32] It was Harris's opinion that Maori were not getting the full value of their land under the existing system. He felt that they should receive ample reserves out of their lands for their own occupation and be aided in the administration and utilisation of the remainder. In reply to a question from Rees regarding the possible Maori reaction to the passing of an Act which would allow the Crown to take charge of the unutilised lands presently held by Maori in that area, Harris said he thought such changes, if made hastily, would most certainly result in troubles.

Gisborne Solicitor, Francis Westbrook Skeet had acted for the applicants in nine Gisborne cases taken before Commissioners Edwards and Ormsby, appointed under the Native Land Court Acts Amendment Act 1889 to investigate disputed and invalid titles. He commented that in eight out of these nine cases the commissioners found that the transactions were of bona fide character but were unable to issue certificates validating the transactions due to technical breaches of the Native Land Act 1873. Skeet gave as an example the Whatatutu case, in which non-compliance with the requirement of the 1873 Act that every interpreter to a deed should sign the translation on the deed as well as the attestation to the deed, had prevented a certificate of valid title being given to the applicant although no exception had been taken to the translation itself. Another obstacle in this case had been that the deed itself, prepared leaving blank spaces for dates of alienation and the names of owners to be filled in as they were individually persuaded to sell, was 'a very material defect' in the legality of the transaction which the Edwards commission had no power to rectify.[33]

Another prominent Gisborne lawyer, Cecil De Lautour, who had been involved with the New Zealand Native Land Settlement Company in the 1880s, stated that he would be representing various clients in the upcoming sittings of the same commission. Some of these clients included the assets company, the Bank of New Zealand Estates Company, Mr Percival Barker, Mr Frederick Tiffen (all of whom would appear again before the Validation Court following its institution in 1892), and other prominent Gisborne landholders. He said:

> We have good reason to know, although I think it is a mistaken view, that the government will allow . . . presentation of applications to this Court, or the abstention from doing so, to operate as a mark of the *bona fides* or absence of *bona fides*. So that persons are compelled to make their applications to the Court, although in nine cases out of ten they know that the Court as constituted is perfectly ineffective to give them any relief . . . The Commissioners' (Messrs Edwards and Ormsby) Court has found itself compelled to hold that it cannot give relief in any case where there is the slightest technical defect in any deed, other than the defect in the number of owners signing. Having arrived at that decision, they have practically closed their Court, as, within my experience, it is a very, very rare exception that a deed can be found that will comply with the scale of exactitude that the Commissioners require.[34]

32. All indications are that the more valuable coastal land referred to by Harris was above the Poverty Bay district in Waiapu county.
33. Evidence of E F Harris, AJHR, 1891, G-1, p 4
34. Evidence of C De Lautour, AJHR, 1891, G-1, pp 5–6

The only tribunal at present available to those with defective titles was the Commission Court, and De Lautour felt that this court could not do the work required of it even if it were made more effective, as the work in that district alone would take a single judge or commissioner a considerably long time to complete. In his opinion, if all transactions made under memorial of ownership were deemed as valid as those under Crown grants the need for commissioners would be considerably less.

To demonstrate this, De Lautour cited the example of the Panikau block in Poverty Bay district, which had been divided into Panikau 1, 2, 3, 4, and 5. The purchaser acquired the majority of interests in all five blocks which meant that in all five it was necessary that the shares of dissentients and minors be divided out from those he had purchased. The partition was made by the land court without objection. Nevertheless, in making the division the land court had assumed that the title of the purchaser would be registered against the subdivision award made. The registrar of the Deeds Office also thought so and issued certificates of title to the purchaser. The subsequent decision made by the Supreme Court in the case of *Matthews v Brown (Paraone)* held that such registrations were technically illegal and that the court should instead have made new certificates of title, and indorsed on these orders of freehold tenure, from which the purchaser would derive his grants. This meant that despite the bona fides of the purchases, the title to the Panikau block was void. De Lautour commented that this was only one of a dozen such cases in the Poverty Bay district where the only difficulties arose out of technical defects in the Acts. In such cases as these, he felt that no commissioner should be necessary for the titles to be validated.[35] The Panikau case came before the Validation Court in 1893 and succeeding years. Although the defect in the Panikau case does seem to have been purely technical, it is to be presumed that the Edwards commission did not validate such purchases because they were, in point of fact, illegal according to legislation still in force. It was therefore, the safeguards provided by the legislation governing Maori land rather than the ‘scale of exactitude’ of Commissioners Edwards and Ormsby that prevented them from issuing certificates validating these titles.

It was certainly true that the process of purchasing land from Maori was full of pitfalls for both parties, and a purchaser of shares in any block could find himself spending much time and money, both in negotiating for purchase, and later in court, attempting to gain a valid freehold title to a proportion of the land equal to the shares purchased. In F W Skeet’s opinion, the cost of obtaining all the signatures required on Maori deeds of transaction was very high, and the process ‘hazardous’. He did not therefore, advise his clients to attempt the purchase of Maori lands as, under the present system neither party was justly served and Maori did not receive the proper value of the land, while the purchaser was ‘perplexed and surrounded by difficulties’.[36] He believed that there was still a large amount of valuable land in the East Coast district that was held under memorial of ownership and remained locked to settlement, but these lands were mostly situated in the Ngati Porou rohe. He

35. Ibid, p 7
36. Evidence of F W Skeet, AJHR, 1891, G-1, p 5

could not mention any large blocks in the vicinity of Gisborne, and even though Rees suggested that there were still the New Zealand Native Land Settlement Company lands, he stated that there was 'very little Native land in the district [Poverty Bay], unless you go back to the Whakapunake and Tahora blocks'.[37]

In his evidence, Wi Pere stated that Maori land was customarily held by hapu, and it was not within Maori custom for land to be held individually in separate blocks. He made the comment that, in rough country, if each owner were to have his land subdivided out the cost of survey, adjudication, and other expenses would amount to around five shillings per acre, although the land might be worth only three shillings per acre, and the total value would therefore be swallowed by expenses. He cited the Tahora block as an example, the title of which was ascertained at Opotiki in the Bay of Plenty. As a large number of Maori from the Gisborne area had been required to attend the hearing, he had provided for them as they had no money and the expenses for that hearing amounted to £200. A later rehearing was held in Gisborne and the expenses were less.[38] The Tahora block country was itself very poor land and although it was over 200,000 acres in extent and was now divided into hapu-owned areas, if it were to be subdivided individually, each owner would receive only about 50 acres each, and the land itself would not be sufficient to pay for the surveys required.[39]

It was his opinion that Maori should not have to pay the 10 percent 'native duty' on sales and leases and that all future sale of Maori lands should be prohibited. He proposed that if, out of a 100,000 acre block, between 50 and 60,000 acres were leased, the Maori owners should be encouraged to utilise the remainder through a scheme involving Government loans with low interest, designed specifically for making improvements on that Maori land and farming it. The money provided would be used solely for improvements made under the supervision of a Government officer, and should be repaid within a specified and fixed period of time. The Government officer would supervise the improvement of the land in consultation with a block committee, elected by the owners. After deciding to lease their land the owners could choose two or three of their number to work out, in conjunction with the officer, which parts of their land should be leased and which utilised by themselves in accordance with the aforementioned scheme.[40]

Wi Pere wanted the Native Land Court abolished and Maori committees given the task of enquiring into the title to land. Where there were large blocks of land with a great number of owners, he believed they should choose ten from among them to act in conjunction with a Government officer in dealing with the land. As examples of lands that should be dealt with in this way he mentioned Tahora

37. Ibid, p 5. In fact these blocks were in the Wairoa district. A greater part of the Tahora block had been purchased by the Crown but a considerable acreage was involved in the East Coast Trust in 1902.
38. This block was negotiated for by the Government prior to title being ascertained. The Land Purchase Officer gazetted it for hearing in Opotiki, possibly to ensure that as few of those entitled could appear in Court and have their name inserted on the title, thus making completion of purchase easier. It was common practice for the system to be manipulated by private individuals and Government agents alike in order to ensure that those to whom advances had been paid were those included on the certificate or memorial of ownership for the land.
39. Evidence of Wi Pere, AJHR, 1891, G-1, p 9
40. Ibid, pp 10–11

(210,000 acres) and Mangatu (164,000 acres).[41] The Mangatu block had originally been conveyed to only 12 out of the 70 or so owners as trustees. This had been done at the instigation of Wi Pere himself. Applications had been made to succeed to the interests of some deceased owners but these were refused, as the land was deemed to legally belong only to the twelve listed on the front of the certificate of title. Wi Pere expressed to the Rees commission his hope that a new system might be adopted whereby successors to the deceased might be appointed by the court as, if the present situation continued, he did not know into whose hands the land might eventually revert. All owners in the block, except for 25, had agreed that the land should be held in trust by the 12 named on the front of the certificate of title but the court had, at the time, regarded this as a voluntary arrangement on the part of the owners. Although all the names of those who assented and dissented to the trusteeship were recorded as owners, no such trust was legally declared and those Maori who signed, according to the law, were never made legal owners and therefore had no power to give such a deed of trust. Wi Pere wanted an Act to be passed restoring the position of ownership to all those named and their successors, while leaving the control of the land to the 12. Rees replied that the court had the power to appoint successors to the 12 trustees and these need not be relatives of the deceased but could be chosen by the people to act as trustees. The commissioners promised to recommend that something be done to make the trusteeship legal and reinstate the people to legal ownership of the block.[42]

Thomas William Porter was a militia officer, former land purchase officer, and at the time of the Rees commission, an officer of the Edwards–Ormsby commission. Porter believed the present system of Maori land laws to be 'thoroughly incomprehensible' and stated that the courts themselves never seemed to comprehend the different Acts under which they worked. Consequently there was no uniformity of practice in the Native Land Court and judges did not seem to feel themselves bound by the decisions of other courts on the same cases or points of law, but were guided only by their own experience in making decisions.[43] On the point of defective titles, Porter identified two different classes of cases which required investigation before being validated. He had previously been of the opinion that most cases were of a type where transactions were only technically wrong, but it had been his recent experience, in the Edwards commission court, that there were many cases in which the merits of the transaction were themselves in dispute. He said:

> I have formerly heard, although I did not think it was the case, that there were many cases in which the merits were in dispute; but since I have been attached to the Commission I have seen cases where Natives have been very considerably wronged. These cases should be investigated, and I believe there are a number which are still held back which require investigation. [44]

41. Ibid, pp 10–11
42. Ibid, pp 11–12
43. Evidence of T W Porter, AJHR, 1891, G-1, p 12
44. Ibid, p 12

With respect to the fees charged to Maori at court sittings, Porter commented that he had often felt ashamed at hearing of Maori having to pay £1 a day, which they often had to borrow. In Porter's opinion the present system of levying fees caused great hardship and he felt that although fees needed to be charged, Maori claimants should not be required to pay fees at the time of hearings.[45] When asked by Rees if he thought Maori would consent to a system whereby their lands were handed over to the government and thrown open for lease after reserves had been taken out, the profits of the leases to go to the owners, Porter replied that:

> Formerly they [Maori] believed the Government was everything, but now they see the Government makes fresh laws. There is no permanency in the dealings. The Governments change. The Natives would not part with the control of their lands.[46]

Porter also agreed with former witnesses, such as E F Harris and Wi Pere, that Maori would not benefit simply from the setting apart of reserves. Rather, they should be given assistance and encouragement in the area of farming and land utilisation.

Ngati Porou leader Paratene Ngata thought it necessary for a special court to be established which would be solely responsible for settling land disputes between European and Maori. There were a great many cases where:

> the Europeans claim to have acquired a certain interest and the Natives to retain a certain interest in the same block. The Europeans are persisting in the endeavour to get the native owners who have not assented to their leases or sales to so assent, and the Natives refuse, and there the trouble remains. With regard to these lands in dispute between Europeans and Natives, a law should be passed fixing a time when no other transactions could take place between the individual Natives and Europeans – to specify a time within which, if the transactions were completed, well and good, but, if not, that after that the parties would be debarred from doing so. If the transactions were not completed within the time specified, then the matter could be handed over to the Court to deal with it absolutely, and dispose of the difficulties as they then existed.[47]

Examined in Auckland on 16 March 1891, Hamiora Mangakahia, chairman of the East Coast Native Committee, proposed that existing Papatipu land (meaning that land still held in customary title) be allowed to remain in its existing state without being surveyed or taken through the court. He realised that there would be difficulties in such a scheme but commented that Maori now saw that 'great evils' befell them through the Native Land Court and the Survey department. He said further that he was:

> aware of the price that the New Zealand Government is paying in purchasing from the Natives – 2s 6d and 5d an acre are the prices given. Besides, when the Natives get their land surveyed, the survey of the block will in some cases amount to £500 or £600. That is only for the external boundary. Then come the internal subdivisional

45. Ibid, p 12
46. Ibid, p 13
47. Paratene Ngata, AJHR, 1891, G-1, p 21

> surveys, and these amount also to a very large sum, perhaps another £500 or £600. And then, before these subdivisional surveys are made, there are large sums to be paid by the Natives for Native Land Court fees, and for agency purposes, and for other expenses incurred; and all these outlays are to be met from the /- an acre that is derived from the sale of the land. Then, if the Natives sell, the proceeds of the sale are to go to pay these expenses, and the whole of the land is absorbed in this way, nothing being left for the Natives. This is the effect of the system that at present prevails. But the Maori is in this position: He does not know what to do, the laws having been passed under which he is to act. That is the reason why I think the Native lands should remain in their native state until some better course is discovered, and a simpler way of dealing with them.[48]

Hamiora Mangakahia agreed with the commissioners that Maori reserves should be cut out and made absolutely inalienable by sale or lease. He also felt that those Maori with sufficient skills to manage and farm land outside of those reserves should be provided with some assistance from the Government in the way of cash advances for improvements. He stated, however, that the money should not be given directly to those Maori, but disbursed in such a way as to ensure its use for improvements; proper accounts being kept of outlays with respect to the lands and if the debt on the land remained unpaid for a long period, interest at a moderate rate should then be charged. He was asked if he thought it a good idea for the government to retain a percentage of the proceeds from these lands (‘perhaps 10, 15, or even 20 percent’), after paying for initial surveys and court costs, in order to provide for schools and other services that district native committees deemed necessary for local Maori communities. In response he said that Maori had already done a great deal in the way of gifting land for schools and missionaries, and that considerable dissatisfaction and disputes had arisen from these gifts. If, however, the Government had carried out transactions for leasing of land for good return, he thought Maori owners might be prepared to allow them a commission for such services.

With respect to the leasing of land to private individuals, Hamiora pointed out that trouble often arose between Maori and European when Maori owners obtained advances on account of land from Europeans and said they would repay when the rent was due. Thus Maori became indebted and received only a small amount of rent to meet their liabilities. He suggested that it would be better for the Government to be the agent in obtaining leases, disbursing money for improvements on land to Maori, and retaining a certain percentage of the rent to recoup itself for the costs of administering the land.[49] Hamiora noted finally that Maori did not at present know the different effects of their holding title under memorial of ownership, certificate of title, or Crown grant. Due to the complicated nature of the land laws they were not aware that these types of title were relative in value and were consequently perplexed. He requested that the commissioners let Maori know what they reported to Parliament so that it would be clearly understood what was proposed in terms of changes to the present laws. Rees suggested that it

48. Hamiora Mangakahia, Auckland, 16 March 1891, AJHR, 1891, G-1, p 36
49. Ibid, p 37

would be a good idea to publish the report of the commission in Maori, perhaps in the *Kahiti* in order that it be circulated among communities.[50]

James Mackay gave evidence that 'insuperable' difficulties had been caused on the East Coast by the individualisation of title under the 1873 Act. He cited a case on the East Coast where upwards of 1300 owners appeared on a single certificate of title. In addition a 10-acre block of land on the west side of the Turanganui River, near to Gisborne township, contained 300 owners. He said:

> There are cases where the number of Natives brought in are so large that it is utterly impossible to get a title, because, even if you went about it with the utmost zeal, you would never complete it, the reason being that the Natives die off in large numbers on that coast, and for the interests of these people the names of successors require to be filled in. Under these circumstances it is impossible to complete the title.[51]

He did not consider that it was possible to completely subdivide Maori land into individual titles, as frequently they would be left with 'long narrow strips like roads', and in such cases as the 10-acre block in Gisborne which contained 300 owners, it simply could not be done. Blocks of land subdivided on an individual basis would not be fit for settlement in most cases.[52]

Some general problems were identified by the witnesses from the Gisborne–East Coast region. The oppressive nature of the court levying of fees from Maori was identified by more than one witness, as was the fact that the entire value of land could be swallowed up by survey liens on subdivisions. Both of these things were identified as causes of great hardship to Maori in the region. The further individualisation of title through subdivision was seen as a significant problem considering the many owners listed on many certificates of title. It was noted that complete individualisation of title was a sheer impossibility in many cases, and in others it would result in blocks so small they would be unfit for settlement and valueless. Some suggestions were made by witnesses as to a possible solution to the land problem faced by Maori. Both Maori and European witnesses suggested that absolutely inalienable reserves should be allocated to Maori for their occupation, and that they should be aided by the Government in farming and administering their other lands. Such suggestions were reflected in the main report of the commission but were not to be followed up by the Government, which was interested in attaining more Maori land for settlement rather than in aiding Maori to farm the lands remaining to them.

Pertinent to the following section on the Validation Court and its activities in the Poverty Bay district were the various comments on the Edwards–Ormsby Commission, set up to investigate defective titles. Gisborne solicitors Skeet and De Lautour both complained that the Edwards commission was thoroughly ineffective in providing any relief for the European claimants. They believed that although many cases had been of the type where the only defects had been technical ones rather than in the bona fides of the purchases, the commission's requirements

50. Ibid, p 38
51. James Mackay, Auckland, 16 March, AJHR, 1891, G-1, p 41
52. Ibid, p 44

had been too exacting to allow validation. Porter, however, was of the opinion that there were many cases in which the fairness and good conscience of the original transactions were in doubt. It was clear to him that there were two different types of cases, and that not all cases in the Poverty Bay district concerned mere technical defects. The Native Land Laws Commission, in the light of such evidence, recommended the setting up of a separate Validation Court to investigate such cases.

6.4 THE VALIDATION COURT

The negative effects of years of private purchasing were clearly being felt by all parties by the beginning of the 1890s, and on forming the Liberal Government in 1890, Ballance identified the validation of titles to land as a 'major issue confronting New Zealand'. Over 1,000,000 acres of privately-owned Maori land was still in disputed ownership in 1891.[53] The Poverty Bay district was one of the areas most seriously affected, and when the types of tangled transactions that typically led to an insecure European title to Maori land are examined, it is not difficult to see why the validation of titles was an issue of prime importance in the area. As we have seen, the Native Land Laws Commission advocated the setting up of a special court to perform the task of validating titles. A Bill to enable the Native Land Court to perform the tasks outlined by the commission was introduced in the form of the Native Land (Validation of Titles) Bill, brought before the House in the middle of 1892.

During debate on the Bill in September, A J Cadman identified its purpose as one of determining long outstanding disputes between European and Maori over land transactions. It was intended to give relief to those who had experienced difficulty in attaining a valid title through the 'technicalities' of various of the native land laws.[54] It was also intended that the Native Land Court be used for these purposes, while Parliament maintained the power of veto over the decisions of the judges who adjudicated on such cases. Cadman believed that if the courts handled the prospective work efficiently the backlog would be dealt with within one or two years.

W L Rees was critical of the apparent lack of gravity that the House afforded the subject of validation of titles. Rees had, in 1891, recommended a special tribunal to look into these matters and he felt that handing the task over to an already overworked Native Land Court was hardly an adequate solution to the problem. It is more than likely that he saw the court being tied up for a period well in excess of two years in dealing with these matters if subject to the same delays, postponements, and generally inefficient workings of the present court system. Indeed, as he brought to the notice of the House, the Native Land Court was at that time inundated with around 13,000 cases to settle, with more applications pouring

53. Tom Brooking, '"Busting Up" The Greatest Estate of All: Liberal Maori land Policy, 1891–1911', *New Zealand Journal of History,* vol 26, no 1, April 1992, p 83
54. NZPD, 1892, vol 78, 29 September 1892, p 103

in for investigation of titles, successions, and subdivisions. Rees considered that for the Native Land Court to attempt to deal with the matter of validating titles within one or two years would simply be 'trifling with the matter,[55] and further that:

> to send these cases to the Native Land Court would be to send them to persons totally incompetent to deal with them. Without wishing to speak disparagingly of the Judges of the Native Land Court, I say the Judges of that Court are hardly fit to perform the duties of ordinary Resident Magistrates, and yet they dispose of properties worth a quarter of a million of money perhaps in a couple of hours . . . I say such a thing amounts to robbery of the Native people. Who knows what Native-land legislation means? I have in my hand here No 8 of *Hansard* of this year, which shows that the Attorney-General, in introducing a Native Land Bill into the Legislative Council, stated that no living man could understand the Native-land legislation; that he did not understand the Bill . . . Such legislation is a mockery.[56]

Rees maintained that serious misinterpretations of the land laws by judges of the Native Land Court, and the series of mistakes and errors which resulted, had 'heaped calamities' upon Maori and it now required drastic measures to sort out the mess of present title to land. He did not, however, believe the Native Land Court to be an appropriate body to carry out these measures. He asked that the Bill, when it went before the Native Affairs Committee, have clauses added allowing for the appointment of a tribunal or commission separate from the Native Land Court to undertake the tasks outlined in the Bill.[57]

Hoani Taipua, the member for Western Maori, and Epairaima te Mutu Kapa, both opposed the passing of the Bill, being of the opinion that the proposed measure dealt only with the grievances of Europeans and not Maori. Taipua said:

> It is proposed by this measure to remedy the grievances from which Europeans suffer, and to right the wrongs of people who, in many instances, have trampled the law under foot. And yet it is proposed in this measure to right their wrongs and to relieve them of the disabilities of which they complain. It may be that the Maoris have been injured, and yet no measure has been introduced to remedy the wrongs under which they suffer. Some of the Europeans complain that they are not able to get their titles to land which they have purchased from the Natives. It so happens that these are lands upon which there were placed restrictions.[58]

After citing an example of such a case, Taipua concluded that the confusion that led to Europeans attempting to purchase restricted land arose from the uncertainty of the law. He advocated setting up Maori committees to lessen the burden of work in the Native Land Court. He felt that 'Natives had many complaints to make against the Government with regard to the nature of some of their recent land purchases' and therefore suggested that the scope of the Bill be extended to allow for the rectification of some of these wrongs.[59] In a pointed comment on the

55. NZPD, 1892, p 504
56. Ibid, p 511
57. Ibid, p 510, 512
58. Ibid, p 516
59. Ibid, p 516

political influence on proceedings in the Native Land Court, Taipua suggested that if the Government would not agree to give Maori the right to investigate their own titles through Maori committees, it should at least choose the most qualified people as judges and assessors in the Native Land Court rather than those 'who may belong to their own party'.[60] Eparaima te Mutu Kapa contended that although the Bill's title stated that it was a Bill to validate native titles, it seemed instead to be a Bill to deprive Maori of more of their land. If, as quoted in the House, 3,000,000 acres of incomplete titles were to be affected by the Bill, he feared that Maori would have very little land left to them, and felt that it would be most unwise to refer the troubles regarding Maori land back to the court responsible for causing them.[61]

The Native Land (Validation of Titles) Act, passed on 11 October 1892, was to be read in conjunction with the Native Land Court Act 1886 and its amendments, but sections 20 to 28 of the Native Land Court Act Amendment Act 1889, which provided for the appointment of commissioners to investigate invalid titles (namely, the Edwards commission), were repealed (s 3). The Act was intended to cover any deed, memorandum, or document signed prior to the passing of the Act, which dealt with alienations of any piece of land by way of sale, lease, or transfer of the whole or of the shares or interests of Maori owners. Those alienations considered by the Act could be incomplete, unregistered, or registered and since cancelled (s 4). If the court found that the transaction under investigation was fair and reasonable and not 'contrary to equity and good conscience', and if each of the Maori owners had been paid the share of the purchase money to which they were entitled, the court would issue a certificate specifying the block of land which was the subject of the certificate and those persons entitled to the benefits of the land. If more than one person was so entitled, they could be declared collectively or individually entitled (s 6).

Under section 7 of the Act the court was given the power to make a partition or to amend an existing one. These partitions would be considered as valid as those made by the Native Land Court after application under the terms of the Native Land Court Act 1886. Effectively then, the Validation Court could force a partition of land where no application for such had been made by the Maori owners. The court would refuse to issue a certificate on any of the grounds listed in section 10 of the Act. These grounds were: fraud or misfeasance on the part of any party claiming beneficial interest; the intention or endeavour to evade the provisions of the law; if the transaction's validation would contravene principles of equity and good conscience; or if the transaction was injurious to the interests of the native owners. All cases in which a certificate was refused were required to be reported to the Governor along with a report on the reasons for the refusal and a copy of the minutes of evidence from the case (s 8). Essentially, this seemed to offer some protection for Maori. Nevertheless, in practice no rigorous enquiry seems to have been made by early validation judges into whether transactions might have been injurious to Maori owners. Here as in the Native Land Court in general, the amount

60. Ibid, p 517
61. Ibid, p 517

of protection the law gave to Maori in practice was determined by the interpretation of that law by individual judges.

Section 9 of the Act identified the informalities with regard to legal technicalities of the Land Acts which were not to prevent certificates of validity being issued. This contained the core purpose of the Validation Act and included such irregularities in procedure as the inadequate signing of the deed of transfer; the removal of restrictions imposed on the land affected by the transaction, but only in respect of the time or manner of obtaining the Governor's consent to such alienations; and any irregularities in the procedure of the court, where doubt had arisen as to the court's power to make an order upon which the title to the land was based. Irregularity or doubt caused by misapprehension of the law, through inadvertence on the part of any of the parties to the transaction, or of their agents, or on the part of any judge or officer of the government, where there was no intention to evade the law on the part of the intended alienee or his agent, was not to interfere with the validation of a transaction if the Maori owners of the land had not been prejudiced. In all such cases the court would provide a certificate validating the transaction. Here again, the wording of the Act is somewhat ambiguous. Although it was implied that restrictions on alienation were not to be a barrier to gaining a valid title, this seems only to have applied in cases where application was in fact made and granted for the removal of those restrictions even if it was after the purchase had been made. It is not at all clear, though that this clause was given such a reading, as the vague nature of the language allowed for wider interpretation. It must be asked how it was to be ascertained whether any purchaser had 'intended' to evade the law in their transactions. Before the court, one could presumably swear as to one's ignorance of the law and nothing could disprove this except the testimony of Maori sellers or other owners of the land in question. In many cases the testimony of Maori objectors does not appear to have been given much credence, and Maori involvement in the proceedings of the court was never great. Vague also is the reference to Maori owners being 'prejudiced' by the transaction requiring validation and, as already noted, the possibility of such prejudice was not inquired into to any degree, possibly due to the rather subjective, and perhaps even amorphous nature of the issue.

A return of all certificates awarded, applications in respect of which certificates had been refused, and court reports on all cases were to be laid before both Houses of the General Assembly within ten days of the opening of each session. Confirmation by Act of the General Assembly was required before any effect could be given to the matters contained in the certificates (s 17). A stay of proceedings was immediately placed on any action with respect to matters regarding validity of transactions brought before the court until the matter had been investigated, reported on, and legislated for. Special provision was made for Maori to make application where they claimed interests or were entitled to some of the benefits of any contract made for any type of alienation of land, whether to the Crown or otherwise, if there was an allegation of the contract not having been carried out by reason of deviation from its terms. The court could inquire into the circumstances of such cases and report them to the General Assembly (s 19).

6.4.1 The 1893 Gisborne Validation Court

Judge George Elliott Barton presided over cases in Gisborne for a four-month period from 27 March 1893. Three months of this time was spent in the hearing of cases concerning the transactions of Frederick John Tiffen, of which 7359 acres were validated under the terms of the 1892 Act. The report of proceedings printed in the *Poverty Bay Herald* on 28 March and reprinted in the *Appendices to the Journal of the House of Representatives* for 1893 provides a full account of how the Act was put into practice under Judge Barton. To begin with, solicitor W D Lysnar had asked Judge Barton if he would accept copies of evidence submitted before Frauds Commissioner Booth to suffice as evidence for the present Validation Court proceedings, and also whether the certificate issued by Commissioner Booth would be acceptable as proof of the transaction's fairness and equity. Barton's opinion was that the showing of the bona fides of transactions was 'the substance at the root of the legislation' and he did not believe that the court could take the statement of any frauds commissioner as the foundation for a certificate of validation. He and his assessor were bound under the Act to investigate fully the bona fides of every transaction for themselves.[62] Barton said that he would be prepared to hear secondary evidence in those instances where the living witness was not available, provided that such evidence would be accepted in an English court but where primary evidence was available but suppressed, the court would look upon this as 'being itself an indication that the transaction is unable to bear full light'.[63] Thus, Barton gave early indications of his intention not to allow the Validation Court proceedings to gloss over possible frauds or discrepancies in the bona fides. It is unfortunate then, that his interpretation of the Act allowed transactions to be validated which were completely illegal in their inception.

On 17 April, Mr Day, counsel for the Maori objectors, asked that W L Rees be allowed to address the court. Rees questioned whether the Validation Court had the jurisdiction to hear Tiffen's application for a certificate validating his purchases in the Puhatikotiko 1 block. Barton stated the facts of the case as they pertained to this question. Tiffen was asking for validation of his purchases of 37 out of 70 shares in the block, which was held under memorial of ownership under the Native Land Act 1873. His purchases were made in contravention of sections 48, 49, and 59 of that Act.[64] As Tiffen's purchases were made from only some owners and all would not agree to the sale, the transactions were never brought before the Native Land Court under section 59. Therefore, commented Barton, these 'were purchases made in violation of the expressed condition under which the Natives held their land – namely, that they should not sell except in the manner prescribed'.[65] Rees had

62. 'Reports of Inquiries held under the Native Land(Validation of Titiles) Act, 1892', AJHR, 1893, G-3, p 3
63. Ibid, p 4
64. Section 48 provided for the inclusion on every memorial of ownership a condition that 'the owners had no power to sell'. Section 49 made the provision that the above condition would not preclude sale when all the owners on the memorial agreed. Section 59 stated that if all owners did not agree a Native Land Court judge could enquire into the transaction, but if the transfers were signed by all owners and the judge was satisfied that all understood they were parting with their rights to the land, the memorial would be forwarded to the Governor with a recommendation that a Crown grant be issued to the purchaser: AJHR, 1893, G-3, p 5.
65. AJHR, 1893, G-3, p 5

informed the judge that the decision of the Supreme Court in the case of *Poaka v Ward* had been that such purchases were invalid. Even without this, section 27 of the 'Validation Act' of 1889, which would have allowed for the validation of such purchases if they were made in good faith, was repealed by the Act of 1892. Presumably, Barton here referred to the section of the Native Land Court Acts Amendment Act 1889 that allowed commissioners to validate purchases where not all owners had signed, or where a subsequent change in the law had prevented the completion of the alienation, if those purchases were not contrary to principles of equity and good conscience (s 27). As we have seen from evidence given before the Rees commission in 1891, Commissioner Edwards had been unable to validate many such transactions which contravened the provisions of the 1873 Act. Indeed, Tiffen had previously taken these same cases before that commission and had been refused a certificate of validation.

It was true also, as Rees stated before Judge Barton, that section 27 of the 1889 Act had been repealed by section 4 of the Native Land (Validation of Titles) Act 1892, which stated only that the court could validate those purchases which 'intended to enable the alienee to obtain *by due process of law* an estate of freehold in fee-simple'(emphasis added).[66] Rees argued that this did not include transactions such as Tiffen's, which had been made in direct contravention of the law. Rees maintained that no section of the 1892 Act would cover Tiffen's cases, and if the court were to stretch the wording of the existing statute in order to include these unlawful purchases it would be 'usurping functions that [did] not belong to it' and legislating rather than interpreting.[67]

Judge Barton confessed that Tiffen's transactions did not come within the 'express' wording of any section of the Act, nevertheless:

> the whole history of Native Land Court reform proves that the chief object of the Legislature in passing validation statutes has been the validation of all honest and straightforward purchases, whether they are legal or illegal in their inceptions. [68]

Barton believed that the Act ought to receive the widest interpretation in order to become a workable Act for the validation of defective title, and observed that:

> uncertainties and insecurities [about the law] forced men into making illegal purchases. They were compelled to make them in obedience to the highest of natural laws – the law of self-preservation. Men who held under dubious Native Land Court titles (and all such titles were dubious), or who held under Maori leases of doubtful legality, were forced all over the country to enter the field in company with speculators and their agents, whose purchases, though illegal, ripened into indefeasible Land Transfer titles. The holders of doubtful Maori leases, or of titles defective by reason of technicalities which Native Land Court decisions were vainly supposed to have surmounted, thus found themselves ousted from their holdings if they abstained from entering into competition in purchasing, and it was not in human nature to expect that men so situated should sit still while others bought over their

66. AJHR, 1893, G-3, p 5
67. AJHR, 1893, G-3, p 5
68. Ibid, p 5

> heads the fruits of their industry and capital. The day when the first illegal purchase was allowed to pass through the Land Transfer office inaugurated the scramble of illegal purchases which necessitate these validations.[69]

Barton could not deny the force of Rees's argument in pointing out that the repealed section of the 1889 Act was intended only to be carried out by a judge with Supreme Court status, while the present validation Act made all Native Land Court judges also validation judges, and this meant that the provisions of the Act entrusted these duties to 'untrained and unprotected' laymen. Nevertheless, he felt that in giving a wide interpretation to the provisions of the statute there remained some protection in that the Act appointed Native Land Court judges only as agents of the Legislature to inquire into the cases and report to the Houses of Parliament. The Act was not in itself a validating Act but an 'inquiring and reporting statute'. Certificates issued under the Act were of no effect until confirmed by a subsequent Act of the General Assembly. Therefore, if they were to enquire into matters beyond their authority and Parliament considered the case reported on one in which it ought to take further action, it could do so regardless of the wording of the Act. He admitted that:

> such a doctrine as this would be a very dangerous one to apply to an ordinary statute conferring a right or giving a status, but this statute confers no right and gives no status. What we do is a mere shadow till Parliament chooses to give it substance by a further statute. [70]

Barton believed that in allowing a wide interpretation of the statute of 1892, the court would not hurt anyone, but under a narrow interpretation Tiffen would be deprived of land which had cost him over £12,000. He said that he had 'always maintained that courts exist to uphold men's rights and not to sacrifice them to worthless technicalities'.[71] It would seem though, that Barton did not include the rights of Maori as those which the court should protect. The proposition that nobody would be hurt by a wide interpretation of the Act was clearly false, as Maori owners of land illegally purchased could not be regarded as being otherwise served. In addition, if the Act was to be given this wide an interpretation, it was even more open to question where the line would be drawn between those purchases made 'equitably and in good conscience' and those deliberately made in contravention of the law. If concessions were to be made for the purchases of Tiffen, so could they be made in relation to the purchase of shares in violation of any of the legislated protections for Maori owners. Purchases in direct contravention of the law can hardly be seen as mere 'technicalities', and the validation of these illegal transactions opened the door for a flood of other such validations in the succeeding years of the Validation Court's activity in Gisborne. Maori were to be further disenfranchised by Barton's proposed interpretation of the Act, as it removed all hope of their protection through this or any other piece of earlier Maori Land legislation.

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69. Ibid, p 6
70. Ibid, p 7
71. Ibid, p 7

(1) *Puhatikotiko 1 block: judgment no 3, 15 May 1893*

Counsel for Maori owners of the block, Mr Day, maintained that if the court was to issue a certificate to Tiffen for these purchases it would be doing so without the sanction of any clause in the 1892 Act and in direct violation of some clauses. Barton continued to claim that it was the duty of the court to bend the provisions of the Act to meet the circumstances of such transactions as Tiffen's. Tiffen had apparently abandoned one of his claims and proceeded with 34 claims before the court. Day raised the objection that *Poaka v Ward* had declared the purchase of undivided shares under the 1873 Act unlawful. It was his contention that this court must also hold them to be unlawful as there was no statutory provision for their validation. Again Barton dismissed this legal argument on the basis of his wide interpretation of the provisions of the 1892 Act.

Secondly, Day objected to nine of the purchases on the basis that since the signing of the deeds of purchase by individual Maori owners the deeds had been 'altered in many material points'. This was a fact admitted by Lysnar, counsel for Tiffen, and the attested copies of the deeds lodged in the court under Justice Edwards (the Edwards commission) were materially different from their present condition. Day argued that it was the policy of English courts that if a deed that was to be relied upon was found to have been altered by the suitor, it could not be enforced against the opposing party as it was no longer the contract of that party. This law, according to Day, was designed to prevent persons in possession of documents from tampering with them.[72] Day insisted that as the deeds had been so seriously altered the court would be forced to treat them as void. The report of the judgment recorded that Day had shown that as the deeds originally stood prior to alteration:

> some had no Maori translation certified by the signature of the licensed interpreter indorsed upon them, others had no translation at all, none had any description of the land sold, some had no consideration on the body of the deed, some had no "duplicate" and in scarcely any did the duplicates agree in their text as required by law; on some the Frauds Commissioner's certificate was placed before the date when certain of the signatures now appearing on it were affixed, &c. On account of these things, and because none of these deeds had been submitted to a Judge of the Native Land Court for his assent under sections 59 and 60 of the Act of 1873, Mr Day insisted that the deeds must now be treated as absolutely void, and that the Court ought to refuse to recommend to Parliament as proper for validation the transactions on which such deeds were founded.[73]

The court did not take this view, believing that it was rather the transaction and not the deed which it was to investigate. If the transaction was found to be without fraud this fact would be certified to Parliament regardless of how wrong it may have been to have tampered with the deeds. Judge Barton conceded that the deeds were illegal but that this should make no difference to the court's estimation of the honesty of the original transaction. He stated that if the court was itself asked to

72. AJHR, 1893, G-3, p 8
73. Ibid, p 9

give Tiffen a title, it would be unable to do so due to the illegality of the deeds, but it was not faced with such a choice as it would be left to Parliament to decide whether Tiffen should actually receive a valid title.[74]

Objections to Tiffen's purchase of shares in No 1 block were raised in nine particular cases, in which the fairness and validity of the transactions themselves were questioned. The first of these was the case of Panopa Waihopi, who claimed that he had not been paid the consideration of £148 set out on the conveyance of his share in the block to his brother in law, Dan Jones. Jones then sold the share to McPhail for £45. McPhail sold the same share to Tiffen for £60. The court concluded that the alleged consideration of £148 paid to Panopa Waihopi was merely included on the conveyance to enable Jones to sell the share as agent for Panopa and that the sum was never actually paid to him. Panopa had, however, sworn before the trust commissioner, Mr Price, that the sale to Jones was a bona fide sale and that he had received all the consideration stated in the conveyance. In evidence before Judge Barton, Panopa claimed that he had made this statement to Commissioner Price in accordance with an arrangement made outside the courtroom with Jones, his brother in law. The actual consideration he had received from Jones was £10 and two horses. Barton's judgment was that Panopa had received all that he was entitled to although he did not receive the amount outlined in the conveyance. As Panopa had sworn that he had received the full conveyance and then assented to the resale by Jones to McPhail for £45, he was still bound to the sale and resale of his share. Barton therefore recommended that the transaction be validated.[75]

The second case was that of Hohepa Waikori. Hohepa's dog had killed nine sheep on a nearby station. The dog was confiscated and Hohepa was threatened with imprisonment. He had, therefore, offered to sell his share in Puhatikotiko 1 'in payment for the crime of his dog'. The value of the sheep was never given and the Court was not shown that any sum had been agreed upon as the value of the share. Hohepa signed a conveyance selling the share for £12, apparently the current price for shares in the No 1 block. Counsel for Hohepa stated that section 5 of the 1892 Act had not been complied with as Hohepa had not received the stated consideration of £12. The court certified that the transaction should be validated as Judge Barton believed that it was 'within the spirit and intent of this Act, although outside the words of section 5'.[76]

In the case of Hemi Tutoko it was stated by William Cooper that Hemi had owed him £45 15s 6d on a promissory note dated 30 July 1880. Hemi Tutoko came to Gisborne on 21 March 1882 to sell his share in this and another block in order to pay Cooper the amount then due. Cooper's statement was that Hemi had sold his share to a Mr Goudie and then paid him (Cooper) £20. Hemi Tutoko denied this, saying that his debt to Cooper was only £3 and that Cooper had received that amount from Goudie. It was his belief that the £3 was the full value of his share. Judge Barton believed this statement to be untrue as the price of shares at that time

74. Ibid, p 9
75. Ibid, p 9
76. Ibid, p 10

was £10 and both Hemi's wife and daughter had sold their shares at the same time to Goudie for that amount. Under cross-examination Hemi Tutoko stated that the agreement with Cooper had been that Hemi would pay him £10 and receive £7 back but that he now wished to repudiate this transaction and have his land back. Barton concluded that Hemi Tutoko had received £23 purchase money (presumably for the three shares sold) fully and fairly, and certified the transaction for validation.

In the case of Rena Parewhai, Tiffen's purchase was not certified for validation. Evidence was given that a judgment of the Supreme Court against Rena Parewhai meant that her individual share in the block, held under memorial of ownership under the 1873 Act, was seized and sold by the Sheriff to William Cooper in 1890. Mr Day argued that Rena Parewhai could not lawfully have sold her undivided share without the assent of the other owners. Section 88 of the 1873 Act prevented such a share being lawfully seized and sold by a sheriff under judgment of any court and even since the repeal of that section of the Act the share would still not be saleable by a sheriff without the assent and compliance as on a sale by the owner herself. Therefore, Day contended, the seizure and sale by the sheriff must be treated as unlawful. Judge Barton's decision was that the sheriff was a public officer deriving his right of sale from the law only. He was given the power to compulsorily convey estates under certain circumstances against the owner's will, but such power could only exist where the law gave it, and in this case it was not given to the sheriff and his sale could not be treated as a legal transfer of Rena Parewhai's interest. He said:

> This Validation Act would apply to sales voluntarily made by the parties themselves, unlawful it is true, but made *bona fide* and in an honest and straightforward transaction agreed to by all the parties at the time it was made. Rena Parewhai's was not such a sale. It was an illegal compulsory sale by a person who was not her agent, nor in any way empowered by law to sign for her.[77]

Barton's decision in this case shows some inconsistency in his approach to the question of legality as opposed to what he refers to as 'bona fide' transactions. There seems no material difference between this illegal sale and the illegal purchase by Tiffen of other shares, already certified for validation, other than its compulsory nature. The sheriff, as Barton pointed out, derived his right of sale from the law but in this case the law did not give him this power. Surely it must be seen to follow that Maori owners of the lands purchased by Tiffen similarly derived their right of sale from, and in a manner prescribed by, the law, in contravention of which the sales to Tiffen had been made.

Four shares in the No 1 block were claimed by Tiffen on behalf of minors. The first of these purchases was certified for validation. The second was the case of Mini Kerekere who was a married minor of 19 years of age. Mini Kerekere sold a share vested in his father Peka Kerekere as trustee to a European named Ferris. By the statutes then in force, the share of the minor was absolutely vested in the trustee with full powers of management and sale and the minor had no right whatever to sell. Ferris had full notice that Mini Kerekere was under age but still took his

77. Ibid, p 11

signature and paid him the purchase money of £12 while taking the 'unusual precaution' of inserting a clause in the statutory declaration signed by the seller that he was of full age. The report continued that:

> A few days after the sale Peka Kerekere, the father and trustee, having heard of the transaction, went to Mr Ferris, upbraided him for taking his son's signature to a transfer, and he (Peka) as trustee verbally repudiated it as a transfer of any interest in the share. The deed of sale signed by the minor was afterwards taken before a Fraud's Commissioner, and is alleged to have passed by him without any notice to the trustee, Peka Kerekere, and thus Peka Kerekere did not attend and resist the Commissioner's certificate being given.[78]

Day insisted that the transaction, once repudiated by the trustee was rendered void, but that even without this repudiation such a contract by a Maori minor was absolutely void and should not be confirmed simply because Mini Kerekere had not repudiated the sale in the seven years since the end of his minority. Indeed, Mini Kerekere claimed that he had not done so because he had not known he had any such right. Judge Barton's decision was that to certify in favour of this sale would be to 'tear up by the roots all the statutable provisions for the protection of Maori minors' (a statement that might be seen as ironic, considering his willingness to 'tear up the statutable provisions' for the protection of adult Maori land owners). Ferris, the judge said, had purchased the share from Mini Kerekere with full knowledge of his minority. He then 'pretended to disbelieve' the warning given him but took care that the declaration of sale stated that Mini Kerekere was of full age so that 'he could prosecute Mini for perjury in case Mini, when he reached majority, should repudiate the bargain'.[79] The purchase was not certified for validation. The third case of sale of a minor's share was also not certified on the grounds that the minor had sold a share vested in a trustee at the time.[80] In the fourth case of the sale of a minor's share, Wi Kihutu's share had been vested in Wi Mahuika as trustee, who had then sold the share to Mr Goudie but was never paid for it. The court granted that this fact would place the purchase outside of the fifth section of the Act. Nevertheless, the court was satisfied with the reason give by Goudie for postponing payment. Barton certified the transaction for validation on the condition that the purchase money was paid with interest at eight percent.[81]

(2) *Judgment no 5, 22 May 1893*

In Puhatikotiko 3 block, two cases of specific objection were raised by Day. The first was the case of Iopa te Hau, who admitted that he sold his share and signed the deed, but maintained that he agreed to a consideration of £20 for the share and not the £6 that appears on the deed. Although he signed a declaration before a solicitor for the purchase, there was nothing on the declaration at the time he had signed it to state that the consideration was to be £6. He declared that only £2 was paid to him

78. Ibid, p 12
79. Ibid, p 12
80. Ibid, Mutu te Ua's case, p 13
81. Ibid, Wi Kihutu's case, p 13

by Ferris on account of the £20. The court certified the sale for validation as Barton believed it had been adequately proven that Iopa had received the full £6 stated in the deed he signed. The second case of Mihaere Parahi involved the claim that the seller was a minor at the time of sale. The court was not convinced of this and certified the sale for validation. Barton stated that as these were the only two cases of purchases in the No 3 block presented on their individual merits he would certify all purchases made in that block.

There were 15 purchases made in the No 4 block, and only one was specifically disputed. All sales were certified by the court. In No 5 block the court certified all 26 purchases of 25 shares. In Puhatikotiko 7, Lysnar claimed 98 purchases on behalf of Tiffen, nine of which were specially objected to by Day. All of the sales but one were certified for validation, the exception being the seizure and sale of Rena Parewhai's share in the block by the Sheriff, which was not certified for the reasons given earlier in respect of her share in No 1 block.

(3) *Final judgment*

A final judgment was given on 27 June 1893 dealing with the partition of the Puhatikotiko lands. The non-sellers, Barton's judgment went, had agreed upon a division of the blocks and all opposition to the giving of statutory title to Tiffen was now withdrawn. The agreement had not been signed by all parties interested in the block though, and this meant that the voluntary agreement remained illegal under the system then in force, but the court certified the agreement for validation, the lands agreed upon to be given to Mr Tiffen and the remainder to be divided among the non-sellers in relative portions decided among themselves.[82] Barton then proceeded to admit that he had been in error in applying the 1892 Act to Tiffen's purchases. He had believed that the omission of words in the 1892 Act applicable to cases such as Tiffen's had been accidental, but on examining the debates in Parliament over the Bill he discovered that the words of the repealed 1889 Act had been omitted quite deliberately, as the government had not intended that any purchases 'illegal in their inception' should be validated in the Native Land Court. It had become clear to him that only those titles which had been rendered invalid through technical irregularities or changes in the law should be validated. It was in ignorance of these points that Barton had stretched the provisions of the Act to cover Tiffen's transactions, which were clearly not intended to be covered by them. Nevertheless, he felt that he could not now, 'in common justice to Mr Tiffen', stop the proceedings or refuse to send his recommendations on to Parliament for its consideration. In future, he stated, the operations of the court would be confined to those cases which came within the wording of the 1892 Act and no purchases made regardless of the statutory prohibition would be recommended for validation under this Act.[83]

82. AJHR, 1893, G-3, p 1
83. AJHR, 1893, G-3, pp 18,20

6.4.2 The Native Land (Validation of Titles) Act 1893

It soon became apparent to Government, in considering the cases brought before the Validation Court during 1893, that the existing Act was not as 'workable' as it had been hoped in 1892. A further Bill, the Native Land (Validation of Titles) Bill 1893 was debated during September. Concerns were raised as to the Government's purpose in introducing the new Bill. It was asked whether the Government intended to remove the safeguards provided in the 1892 Act. Seddon, in reply, stated that the greater jurisdictional powers to be supplied to Validation Court judges would improve those safeguards. There was some concern that power should not be given to any judge to validate transactions involving 'illegality or wrongdoing'. Seddon agreed and replied that such should not be the case if wider jurisdiction were to be given through the passing of the Bill before the House.[84] Carroll had stated at an earlier reading that the present Bill was not intended to assist speculation in Maori land, but to provide greater jurisdictional powers for the Validation Court in considering future cases, presumably of the type posed by Tiffen.[85] By virtue of the provisions contained in the Bill, the Hon Sir P A Buckley stated, the judges appointed to the Validation Court would have the authority to 'do almost anything which may be necessary' to settle outstanding disputes over title to Maori land.[86] Buckley continued that the present Bill would contain safeguards for the interests of Maori who complained of being kept out of their own lands through 'the actions of other courts, or, rather, through the blunders of other courts' in that Validation Court judges were to have the power to 'give finality to their decisions'. They would be able to validate titles obtained from Maori owners under the following conditions; that the agreement was one that would have been valid if between European parties, that the agreement was not contrary to 'equity and good conscience', that the agreement was fully understood at the time it was entered into and, that the consideration paid was reasonable 'at the time and under the circumstances'.[87] These requirements for the validity of title had the effect of removing the safeguards contained in the original Act, as no differentiation was now to be made between those transactions made between Europeans and those made with Maori for their land. This did indeed allow for the 'tearing up of all the statutory provisions' for the protection of Maori specifically contained in separate laws pertaining to Maori land. By the provisions of this Act all transactions of the Tiffen type could easily be validated.

The Native Land (Validation of Titles) Act 1893 was passed with some minor amendments on 6 October 1893. The Validation Court was now separated from the Native Land Court. Its judges were to be appointed for a term of three years with a salary of £1000 per annum, and could only be removed from the office in the same manner as a judge of the Supreme Court (s 4). The court had the power to call as witnesses all persons who were interested in the land in question, and all those claiming a right in it (s 6). The court was also empowered to determine the right and

84. 1 September 1893, NZPD, 1893, vol 81, p 565
85. 19 July 1893, NZPD, 1893, vol 79, p 591
86. NZPD, vol 82, 1893, p 312
87. Ibid, p 312

title of every person claiming the freehold or a lesser interest in land, or undivided shares in land which were in dispute, and it could 'bar and destroy' the title, right, or interest of those not found by it to be entitled. It could also determine the right to use and occupation of lands claimed, whether as to past, present, or future use and occupation. It would investigate all claims and demands for rent, unpaid purchase money, and other unpaid charges on land such as survey liens, mortgage claims, debts, and money demands made upon any party involved (s 7). As in the 1892 Act, the court would be empowered to partition the land claimed before the court in order to separate and define lands of persons not interested in the matters contested before the court (s 7). Under this Act, the Validation Court could validate any transaction entered into between European and Maori, or Maori and Maori, where the deed or agreement between parties was incapable of being enforced because it was not in accordance with the requirements of any repealed statute, or was forbidden by such statute (s 10).

It is an important point to note that under the provisions of section 11 of the 1893 Act, the court could not call into question the title of any land claimed by the Crown, nor could it validate any private purchase made while such land was proclaimed by the Governor in the *Gazette* or *Kahiti,* as land for which the Crown was in negotiation (s 11,12). Although the power of the court to validate purchases made in violation of alienation restrictions was not expressly mentioned in the Act, this was routinely done in the following years. The preamble to the Act mentioned Maori complaints that they were routinely deprived of their lands through claims by Europeans that they had the leasehold or freehold of them, and that no court existed whereby they could have their grievances redressed, and stated that Parliament had therefore passed an Act to endow a special court with powers to deal with and finally settle all conflicting interests, disputes and claims of ownership. Nevertheless, it does not appear from the evidence available that Maori ever gained satisfaction for their grievances through the operations of this court, which instead worked primarily in favour of European purchasers and wiped away most of the statutory measures which had previously existed in order to provide safeguards, meagre as they were, for Maori interests.

Despite the very doubtful legality of the Gisborne cases heard under the 1892 Act, all the cases recommended for validation by Judge Barton, despite his admission of error in the application of the Act to them, were confirmed by virtue of the Native Land Court Certificates Confirmation Act 1893. The check to his errors of judgement in these matters that he had thought would be provided by parliamentary review of the cases turned out to be insignificant, as Parliament simply agreed with his judgments, and ratified his errors through new legislation. Section 25 of the new Validation of Titles Act repealed the 1892 version and under section 26, no action or proceeding could be brought in any Court 'for the purpose of calling into question . . . the validity of any alienation . . . which may form the subject of inquiry under this Act (1892)' until the 1893 Act came into operation.

6.4.3 Gisborne cases under the 1893 Act

Judge Barton, now appointed as a Validation Court judge under the 1893 Act, again adjudicated on cases brought before the Gisborne court during 1894. A C Arthur applied for the validation of his title to Whatatutu blocks A (578 acres), C (164 acres), and block 1b (six acres). None of the Maori objectors, the original grantees, appeared in court on the hearing date, and all blocks were awarded to him. The original Crown grants were cancelled and new certificates of title were drawn up under the Land Transfer Act 1885.[88] According to the 'General Rules of the Validation Court', written up by Judge Barton and published in the *Gazette* on 1 March 1894, if objectors did not appear before the court, and the judge was satisfied that this non-appearance was not due to any neglect on the part of the applicant in bringing notice of the proceedings to the objector, the court could validate the transactions if the deed had been signed by all parties necessary.[89] Further research of the minutes of the Whatatutu case hearings may provide evidence that Arthur had informed all the objectors of the hearing. It seems strange that not one objector appeared to give evidence as to their reasons for objecting to Arthur gaining indefeasible title to these lands. Although it is possible that Maori objections to the purchases were spurious, only a detailed reading of the minutes of the case would shed any more light on this matter.

The purchase of Mokairau 2 block (1290 acres) was validated and a certificate of title issued to the Bank of New South Wales. None of the Maori objectors were present at the hearing of the case. [90] Andrew Reeves applied for the validation of 43 purchases of individual shares in the 2413 acre Uawa 2 block. No objectors were present. It was agreed that a subdivision of the block should take place and the applicant was awarded 322 acres named Uawa 2a. Another four sections were awarded to various non-sellers.[91] Charles Seymour applied for validation of 58 contracts for sale of interests in the Whangara block of 21,450 acres as well as seeking a decree charging the block with payment of £670 and interest at eight percent per annum for surveys done in 1880. In this case, W L Rees and Edward Rees were present to act as counsel for Maori owners of the block and Arthur Rees for an objector, Hirini Te Kani. W L Rees and Wi Pere were also represented by counsel for their own claims against the owners of the block as mortgagees of certain interests in Allotment no 47 of the Makauri block, for money advanced on behalf of the Maori owners in the Whangara block.[92] The court found that the contracts for sale of interests in the block to Seymour were:

> invalid and incapable of being enforced without the assistance of this honourable Court, by reason of their having been respectively made not in accordance with the requirements of the statutes (then in force but now repealed) regulating the sales of the said interests in the said block.[93]

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88. 'Dealings with Native Lands by the Validation Court at Gisborne', AJHR, 1894, G-2, pp 3–6
89. 'General Rules of the Validation Court', 1 March 1894, *New Zealand Gazette*, 1894, no 16, pp 334–340
90. AJHR, 1894, G-2, p 6
91. Ibid, pp 7-8
92. AJHR, 1894, G-2, p 8
93. Ibid, p 9

It has been noted in the previous chapter that Seymour purchased the shares in this block in contravention of the restrictions on alienation that were placed on the lands by Judge Rogan during the Native Land Court hearing of title in December 1870.[94] Ballance, when Wi Pere complained of this in 1885, assured a meeting of Gisborne Maori that such transactions were totally illegal and that anyone indulging in such purchases would never be able to get legal title. It is perhaps ironic then, that under the Liberal Government in which Ballance was a leading figure, legislation was passed giving the Validation Court the power to give a legal title to the very European whose activities had evoked this avowal from the Minister. It is not clear from the decrees of the judge whether the issue of restrictions was raised in open court, but Barton's decision as to the validity of the transaction was based on section 10 of the Act of 1893, which allowed that transactions could be deemed valid if they would have been so when contracted between Europeans, irrespective of their present form.[95] This meant that restrictions on alienation could be set aside by the Validation Court as if they had never existed.

Seymour was eventually awarded 4500 acres of the Whangara block in freehold (Whangara 1), and a 21-year lease of a further 3900 acres. His existing lease was cancelled, and all rent in arrears was to be paid by 1 July, at which time the new lease would commence. Additionally, Seymour was to be allowed to pasture his sheep on land outside his freehold and leasehold lands for a period of one year and nine months free of rent or other charges, claims and interference by Maori owners, but no indication of the reasons for this arrangement was given in the decree. The owners were still to be allowed onto the land in order to have surveys completed for subdivision and leasing of their lands, but only those not grassed and occupied by Seymour's sheep could be leased during this period. The remaining 16,950 acres of the block were to be divided between the Maori owners in later hearings of the Validation Court.[96] This was done at sittings in 1896 and 1899 and a receiver, H C Jackson, was appointed to hold the lands and manage them in trust for the owners. Whangara C block of 3487 acres was sold by the receiver to meet undefined liabilities on the lands. The receiver was removed from the divided blocks in a piecemeal fashion between 1904 and 1916. Owners, in several subdivisions, appear to have formed incorporations following the removal of the receiver.

Panikau blocks 1 to 5 also came before Judge Barton at this time through the application of Edward Murphy. All of these blocks had been before the Edwards commission, which had not been able to validate the purchases due to technical defects in the method of subdivision made by the Native Land Court during 1887, when Murphy sought to have his interests in all five blocks partitioned out from the interests of non-sellers.[97] No Maori objectors appeared at the Validation Court hearing and the decrees were given in favour of Murphy, partitions being made which awarded the majority of the acreage of each block to him.[98] The Panikau

94. Whangara block file, MLC Gisborne
95. AJHR, 1894, G-2, p 9
96. Ibid, p 10
97. See pp 13–14 (De Lautour's evidence to Native Land Laws Commission 1891)
98. AJHR, 1894, G-2, pp 11–14

block file held at Gisborne Maori Land Court shows that further subdivisions of the small blocks left to Maori owners occurred in 1905 and incorporations of owners were established in 1907 to the minimal acreage then left of the original block.[99]

Applicants Thomas, James, and Sydney Williamson gained validations of their transactions in Wharekopae 1b2 (3069 acres). No objectors were present and the court awarded the applicants 3067 acres of the block. In the Wharekopae 2 (3434 acres) case the purchase of 11 shares was claimed by the Williamses. Objectors Peti Morete and Peka Kerekere were present to represent the owners and non-sellers in the block. Other Maori owners presented to Barton their agreement to the subdivision of the land and 2174 acres were awarded to the applicants as block 2a. Wharekopae 2b of 1260 acres was also awarded to the applicants and the objectors were, in this case, given an undivided estate in fee simple of 210 acres out of the original Wharekopae 2 block.[100] As there was little detail provided in the reports of these cases, it is not clear why objections to the transactions were not upheld. An examination of the minute books would undoubtedly provide such detail.

Other blocks also came before the court at this time and the above are only a few examples. In very few cases did Maori objectors appear in court to challenge the process, and all applications for validation were successful. Notable was the hearing of the Paremata 1 block case brought by the Bank of New Zealand Estates Company. Some Maori objectors were present for this hearing, at which the company sought the validation of mortgages and contracts within the block. Carroll and Wi Pere, the trustees of the old settlement company lands sought cross relief, and the Maori owners of the block sought cross relief in the matter of specific agreements made with Rees and Wi Pere in 1882, and with the settlement company in 1888 for the mortgage of their land. The court found that the original 1882 agreement transferring freehold title to the settlement company, and the 1888 agreement for mortgage, were invalid as they were not made in accordance with the requirements of the statutes then in force. The court declared that the contracts were not contrary to equity and good conscience, and were made with the full understanding of the contracting parties. Carroll and Wi Pere were granted the estate in fee-simple of 7176 acres of the block. The trustees were ordered to sign a memorandum of mortgage to the Bank of New Zealand Estates Company which should be paid by 30 September 1894. The residual 1250 acres of the block was released from all claims of the estates company as was the agreement by Maori owners to vest these residual lands in Carroll and Wi Pere dated 17 February 1892.[101] The Validation Court was to play a very important part in the next phase of the continuing saga of the settlement company lands and would continue to be involved with them up to 1908 when the East Coast Trust was established. This further activity of the court will be explored within the scope of the discussions of the Carroll–Wi Pere trust and the East Coast Trust that follow.

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99. Panikau block file, MLC Gisborne
100. AJHR, 1894, G-2, pp 23–26
101. Ibid, pp 29–31

An amendment to the 1893 Act was passed in 1894, dealing mainly with issues surrounding the appointment of Validation Court judges. The Validation Court continued to hear Gisborne cases of a similar ilk to those of 1892 and 1893 in the following years and, as we shall see in the next section, several blocks, the purchase of which were extremely doubtful in legality, were vested in Carroll and Wi Pere by order of the court. It would be possible to make an accurate assessment of the amount of land certified for validation on the East Coast over the period of its activities there by collating the data available in the *Appendices to the Journals of the House of Representatives* returns. Although this has not been carried out for the present report, it is hoped that Aroha Waetford's work on the Validation Court for the Rangahaua Whanui project will provide such statistics. These will be included in the final published version of this report.

6.4.4 Conclusion

The details of cases before the Validation Court presented in the foregoing discussion have been those contained in reports published in the *Appendices to the Journals of the House of Representatives*. There has been less information available for cases in later years, and further primary research will be required into details of cases and the reasons for Maori objections to validations of title. Although the reports of Tiffen's cases show that Judge Barton was concerned with concentrating on the question of whether transactions were genuine, that this occurred in the ensuing years of the court's activities is less clear. Barton's wide reading of the 1892 Act opened the way for a further blurring, in practice, of the Act's already vague definition of legitimate transactions as those which were made equitably and in good conscience. The court put the onus on Maori objectors to prove that transactions were not bona fide rather than on the Eueopean purchasers to prove that they were. In later years the simple non-appearance of objectors was sufficient to convince the court of the validity of the transactions in question.

More important, perhaps, in assessing the role of the Validation Court is the issue of whether the judges of the court were, or should have been, statutorily required to consider whether transactions, however genuine, had been injurious to the interests of the Maori sellers. The Validation Court was not itself statutorily charged with the duty of ascertaining whether Maori had sufficient land left for their use and occupation when it removed restrictions on lands brought before it for validation of title. Nevertheless the question as to whether it should have been so charged is an important one. The following section deals with the issue of the removal of restrictions on the alienation of Maori land, and may help to answer such questions with regard to the Validation Court.

6.5 RESTRICTIONS ON ALIENATION AND THEIR REMOVAL

This section creates something of a chronological hiccup in this report, but it is necessary to review the history of these provisions in one place in order to make any sensible comment on the responsibilities of the courts, the trust commissioner,

and the Government in maintaining some protections for Maori in their ownership of the tribal estate. This issue is of considerable importance in looking at the processes though which Maori land was alienated in the Gisborne area. The tribal land base was severely depleted by the turn of the century, and this raises some questions as to how efficient the trust commissioner was in the performance of his duties, and how it happened that restrictions which had been placed on many blocks under the provisions of the Native Land Acts of 1865 and 1873 were removed on such a large scale.

Under section 17 of the Native Lands Act 1865, the court was able to take evidence on the propriety or otherwise of placing restrictions on the alienability of any block of land claimed by Maori, and report its recommendations to the Governor, the conditions then to be appended to the certificate of title, and forwarded to the Governor. Under the provisions of the Native Land Act 1873 (ss 21–32), this power was no longer given to the court. Instead, under that Act it was intended that in every district, certain lands were to be set aside as inalienable reserves. This was to be 'a sufficient quantity of land in as many blocks as [the District Officer] shall deem necessary for the benefit of the Natives in the district'. A 'sufficient quantity' was deemed to be no less than 50 acres per head for every man, woman, and child in the district (s 24). A 'local Reference Book' was to be drawn up showing intertribal boundaries, estimated acreage of tribal land, genealogy and names of hapu to which different portions of the tribal lands had descended (s 21). The reserves made would be calculated with the use of this information, and recorded in the same book for future reference (ss 22, 23). Unfortunately these provisions of the Act were, for the most part, ignored in practice in the Native Land Court, and as a result there was no effective power for the imposition of restrictions where these were applied for by Maori owners until section 3 of the Native Land Act Amendment Act 1878 restored the court's power to impose such restrictions.

Admittedly, section 48 of the 1873 Act decreed that memorials of ownership were to be issued with the condition that the owners of the said land could not dispose of the land in any way other than by lease of 21 years or less without agreement for renewal or purchase at a later time. This was held to be inoperative by virtue of section 49, however, which stated that nothing in the foregoing condition would preclude sale of the land where all the owners agreed, nor would it prevent partition where this was deemed necessary. It was this provision for partition which became all important in getting around the imposition of restrictions on alienation in later years. The listing of the many owners in any block on the memorial of ownership did slow the process of alienation, as discussed in chapter five of this report. It also had the effect of seriously fragmenting Maori land ownership in succeeding years as grantees multiplied through succession. In addition, as Bryan Gilling has commented:

> shares could be committed in advance by the owner's acceptance of takoha or tamana, a payment which effectively bound the recipient to the giver. As a result, the partition order soon became a favoured device of both Government and private purchasers. This placed non-sellers in a difficult position; they were often left with

> small, fragmented and uneconomic segments, which they could choose to retain, or they could capitulate and sell too.[119]

In Poverty Bay, such an approach was the most commonly used in attaining lands in freehold, and all indications are that this same approach was also followed in the case of restricted lands, where, once enough shares were illegally purchased, often by a lessee of the land, Maori sellers would be pressured to apply for a removal of the restrictions and a subdivision would take place.

There is evidence, however, that some judges did carry out the instructions issued to the court through sections 21 to 32 of the 1873 Act, or else independently continued to hear applications from Maori to have restrictions imposed on their lands, and recorded these applications for entry on certificates.[102] This is especially significant in the Poverty Bay district, as it was here, under Judge Rogan acting in combination with the district officer, Samuel Locke, that the provisions of the 1873 Act were carried out, and 31,500 acres were made native reserves in Cook County under clause 21 of the Act.[103] Rogan also appears to have placed restrictions on the alienation of further lands where these were requested, and block files held in the Gisborne Maori Land Court show that a number of blocks in the Poverty Bay area were restricted as to alienation after hearings in the land court under Judge Rogan during the early 1870s. In the return containing reports of district officers under the 1873 Act, Locke listed 25 blocks containing an acreage of 39,223 as those he had recommended as reserves under the provisions of the Act. He stated that the associated 'books of reference' were in his custody and that he had encountered 'little difficulty' in the performance of his duties under the Act. Nevertheless, he commented that since much land in both the Hawke's Bay and Poverty Bay districts had already gone through the court prior to 1873 'it would have been impossible to make reserves in accordance with either the letter or the spirit of the Act'.[104] He commented that in Wairoa and Cook counties there was a great deal of land already inalienable, having been passed through the court under clause 17 of the Native Lands Act 1865.[105] The return lists the following East Coast blocks as reserved under the Native Land Act 1873. The reference to blocks having been proclaimed or not proclaimed, although not explained in Locke's return, seems to indicate those blocks gazetted as reserves under the Act (s 30). Blocks that appear in the table in bold type are identifiable as within the Poverty Bay area. Locations, where known, are otherwise indicated.

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102. Jenny Murray, 'Crown Policy on Maori Reserved Lands and Lands Restricted from Alienation, 1840–1907', Waitangi Tribunal Rangahaua Whanui Series (first release) 1997, p 53
103. 'Maori Lands in North Island', AJHR, 1886, G-15, pp 12–13
104. Locke to Mr H T Clarke, 16 October 1877, AJLC, 1877, no 19, p 4
105. Ibid. The reference is to clause 17 of the Native Lands Act 1869 but this seems to be in error.

Reserves granted under the Native Land Act 1873 in Poverty Bay.
Source: *Appendices to the Journals of the Legislative Council*, 1877

Block	Area (acres rounded)	Status
Muhunga	25	Not proclaimed
Arai–Matawai	4214	Proclaimed
Okahuatiu 1a	108	Through court, not proclaimed
Okahuatiu 1b	32	Through court, not proclaimed
Whareongaonga	3128	Through court, not proclaimed
Te Reinga (Upper Wairoa)	3337	Not through court
Tauwharetoi	990	Not proclaimed
Whakaongaonga 1	3124	Not proclaimed
Whakaongaonga	30	Not proclaimed
Tauwharetoi	3000	Not proclaimed
Motu	500	Not proclaimed
Hangaroa–Matawai (Wairoa)	8300	Not proclaimed
Rua-a-taua	159	Not proclaimed
Tuariki	300	Estimated
Pakarae	2000	Estimated
Whakaongaonga	50	Not proclaimed
Mangahawini	6487	Surveyed, not through court
Waihoa	245	Through court, not proclaimed
Tongoiro	358	Surveyed, not through court
Te Mawhai	96	Surveyed, not through court
Marahea	456	Surveyed, not through court
Waikahua	147	Surveyed, not through court
Kaiaua	1442	Through court, not proclaimed
Te Kopuni	452	Through court, not proclaimed
Mangatuna	269	Surveyed, not through court

By 1883, one of these blocks, the Te Arai Matawai block of 4214 acres had come under the administration of the public trustee as a reserve under the Native Reserves Act 1882. In the 1883 report on native reserves it was recorded that no steps had been taken to utilise the block as the land was still occupied by Maori.[106]

The 1877 returns from district officers indicate that, in general, the provisions of the 1873 Act regarding the setting aside of reserves were not followed, in some cases because of the refusal of Maori to give up their ability to deal with their own lands as they pleased. In general, although Rogan and Locke made attempts to carry out their duties under the Act, the Native Land Court did not, or possibly could not, set aside at least 50 acres of reserves per head as instructed. The Government made no attempt to enforce these legislative provisions, that were meant to counter the effects of the land court process on the rapid alienation of Maori land, and to provide some long term protection for Maori interests. Perhaps it was felt that the provisions of the Native Land Frauds Prevention Act 1870 would continue to give some protection in the form of the appointed local trust (frauds) commissioners. These commissioners, one of whom was appointed to Poverty Bay in 1873, were supposed to enquire, at the time when transactions came before them for certification under the Act, as to the sufficiency of land left for the use and occupation of the Maori sellers. Instructions issued to the trust commissioners, however, indicated that the Government was not particularly interested in these officers being too diligent in the observance of such requirements. The Government wished to give some protections but not to slow the pace of alienation to European settlers to any great degree. Trust commissioners were instructed to give certificates in all cases where there was no illegality involved in the transaction and not to make their inquiries into the matter 'too minute'. Inquiry into the matter of sufficiency of land was the last duty listed in the instructions, and commissioners were told as part of the detail of this duty to refuse certificates if the price paid appeared to indicate improvidence on the part of Maori sellers. They were instructed to avoid travelling, where necessary to depute their duties to resident magistrates, and not to issue warrants for the appearance of witnesses in any case.[107] When seen in the light of these instructions, it seems unlikely that the office of trust commissioner provided any adequate protection for Maori from excessive land loss. Indeed, there is no evidence to support the proposition that, in the Poverty Bay district at least, such enquiries as to sufficiency of land were regularly made. There is some reason to believe that in Poverty Bay the trust commissioner neglected even to safeguard Maori from the very frauds and illegalities in land transactions that the 1870 Act was intended to prevent. The trust, or frauds, commissioner was most often mentioned in the ensuing years in connection to the many invalid titles, disputed ownership of lands, and accusations of fraud and illegality in land transactions that were so prevalent in the area.

The independent office of trust commissioner began to be phased out after the Native Land Frauds Prevention Act 1881 was passed, providing for the investigation of points required under the Act to be carried out in open court. By 1885, the judges of the Native Land Court were intended to carry out the former duties of these Government officers and the post was finally abolished in 1894.[108] It was now even less likely that due attention would be paid routinely to inquiries

106. 'Native Reserves in the Colony', AJHR, 1883, G-7, p 2
107. AJLC, 1871, p 162, cited Jenny Murray, p 47
108. Jenny Murray, p 50

about the sufficiency of land left to Maori land sellers in any district. Although the trust commissioners did not themselves appear to carry out such inquiries with any diligence, Native Land Court judges were already charged with many duties, and such inquiries would not be made as a matter of course simply because of the amount of time in which they involved the court. It might have been that the Native Reserves Act 1882 now provided sufficient protection against Maori landlessness. Its provision, under section 22, states that before altering or removing restrictions and conditions on any reserved land, the Native Land Court should:

> be satisfied that a final reservation has been made, or is about to be made, amply sufficient for the future wants and maintenance of the tribe, hapu, or persons to whom the reserve wholly or in part belongs . . .[109]

Under the same section, however, it only required the signature of a judge of the Native Land Court to remove restrictions and make the land alienable; the approval of the Governor being no longer required. Additionally, the court could now impose or remove restrictions on new grants issued when land was subdivided. This meant that, even where restrictions had been included on the original certificate of title for any block, on subdivision these limitations to alienability could be removed in the issue of new grants.[110] Jenny Murray suggests that this may have been a deliberate loophole, offering an indirect method of having restrictions removed without undue official scrutiny.[111] Whether deliberate or not, it certainly undermined the basic premise of the system of placing restrictions, which was that sufficient Maori land should be preserved to the owners, and the improvident alienation of excessive amounts of the tribal estate should be avoided. Thus by the end of the 1880s, although the structures for reserving Maori land through the placement of restrictions remained, their removal had become considerably easier. Both private individuals and the Crown made use of the system of purchasing shares, having subdivisions made, and thus removing restrictions over relatively large areas.

In the Poverty Bay area, applications for the removal of restrictions equate with the period of purchase typified by this piecemeal buying up of shares and numerous subdivisions in the Native Land Court. It was during this decade that much land in the area changed from European leasehold to European freehold. By the 1890s, the tribal land base was already very seriously depleted, most Maori land being in small uneconomical subdivisions on or around the flats and in larger, less valuable and undeveloped blocks in the rugged inland areas. It seems, from the evidence, that many Maori leaders were keen to hold their land under restrictions as a way of preventing the sale of undivided shares by individuals. This still occurred, however, and applications for the removal of restrictions on subdivisions were common, and always hotly disputed by non-sellers. At least three examples of applications to the Governor from Poverty Bay Maori have been discovered in Maori Affairs files dealing with the removal of restrictions, held at National Archives. No extensive search of these files has been undertaken, but such a search would undoubtedly

109. Native Reserves Act 1882, s 22
110. Ibid
111. Jenny Murray, p 70

reveal a great deal more of the situation in Poverty Bay with respect to this issue. interesting example from 1880 was an application from the Cook County Council requesting a general removal of restrictions from Kaiti and other large blocks in the county, as G M Reed had arranged with emigrants from Great Britain to arrive in February 1881 to settle on the blocks, of which W L Rees was trustee. The council urged upon the government the necessity of removing restrictions on alienation from Maori lands as defined in the 1873 Act, as these restrictions were 'an insuperable barrier to the settlement of large areas of land within the county'.[112] The settlement scheme referred to in the letter is that of W L Rees who, along with Wi Pere and G M Reed, failed in their bid to settle Poverty Bay lands they held in trust. This scheme failed because of other problems discussed in the previous chapter, but the restrictions in place over the land must also have been problematic where the proposed sectioning off and sale of large blocks was concerned. The attached minute written by Under-Secretary T W Lewis states that all applications for the removal of restrictions had to be considered upon their individual merits rather than as 'public policy from a local stand point'. In addition, there were other considerations such as the interest of the Maori owners and their successors, and it was necessary 'to see that they are not denuded of their lands and get a fair price for what they sell'.[113]

A second example was also provided by the Maori Affairs files on the removal of restrictions. The application, dated 27 April 1883 was signed by several owners of the Kahukuratara Block of 17 acres. These owners were Hapi Kiniha, in his own right and as successor to two other shares, Mere Wakaatere, Keita Tirohia, and Ani Patene, as sucessor to two other shares as well as her own. They asked for the removal of restrictions on this land as they lived elsewhere and had plenty of land for their occupation and cultivation. They stated that the land was 'right in the middle of land belonging to Europeans' so they did not want to live there.[114] In a further example, an enquiry into an application for removal of restrictions from the Puatae block was held by James Booth, resident magistrate at Gisborne, on 11 July 1883, following disputes over the matter. The petition asking for the removal was from Kataraina Kahutia and others. Apiata Te Hame stated that he did not consent to the removal of these restrictions and wished the land to remain inalienable. He said:

> My objection to the removal of restrictions is that if it was done some of the owners would sell. I object to the land being sold. There are no disputes about the land. I strongly object to the restrictions being removed. I asked the Court to make the land inalienable as a provision for us all. The persons whose names appear on the petition are relatives of mine. Kateraina is probably the person who instigated it. When this land passed the Court I conducted the case and I also made the application that restrictions should be placed on it. I never heard of this petition before. The name appended to the petition purporting to be my signature resembles my writing but I did not write it.[115]

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112. J Warren Clark and council to Native Minister, 12 October 1880, no 80/3599, MA 13/22
113. T W Lewis, minutes, 20 October 1880, MA 13/22
114. Hapi Kiniha and others to Native Minister, 27 April 1883, no 83/2097, MA 13/24

Kataraina Kahutia responded by saying that she remembered Himiona Te Kani coming to her to sign the petition. Himiona had wanted the restrictions removed so that he could be included in the title to the land. Although she had signed the petition, Kataraina now wanted some time to think the matter over. She also noted that two of those who had signed the application were not original grantees but successors to the interests of deceased owners. A third witness, Tamati Tiwhatiwha, stated that he wished the restrictions to remain permanently over this land. He claimed that nobody had informed him of the existence of this petition, and that some of those who had signed it were not original grantees but successors. The following day Kataraina stated that she no longer agreed to the removal of the restrictions on the block. James Booth recorded that Kataraina Kahutia, Tamati Tiwhatiwha, and Apiata Te Hame were the principal owners of the land and that they 'represented the feeling of all the Natives interested in the question' in refusing to allow the removal of restrictions on the Puatae block.[116]

This is a very interesting case and reveals several problems. The original grantees who had the restrictions placed on the block were undermined by the desire to sell of new owners who had succeeded to shares, and who had not been party to the original agreement to have the restrictions placed on the land. Additionally, there was an accusation of the forgery of the signature of at least one of the principal grantees on the removal application. Another principal grantee was not informed that the application was being made and Kataraina appears to have signed the petition without giving the matter much thought. Apparently, these three leading figures were able to speak for the majority of the owners, and although in the present case this enabled restrictions to remain in place, it is possible to see that in the opposite situation, two or three leading figures, who would have been included in the titles to a number of blocks, could easily demonstrate a sufficiency of other lands and say they spoke for the all the owners of a block in this same manner. Although it was often the lesser owners of lands who were the easiest to purchase shares from, it was also these owners who were first to be rendered landless through the lack of inalienable reserves, rather than tribal leaders.

Another interesting example concerned the Pukekura block (Rangikohua 1). Application was made by Tuta Nihoniho for the removal of restrictions on this land. T W Lewis asked Resident Magistrate Booth whether there were any reasons against granting the removal. Booth replied that this land was an isolated block surrounded by European freehold land. The restrictions were placed on it by the application of Tuta Nihoniho with the agreement of other grantees, as it had been thought at the time that the block was oil bearing. The grantees were now convinced that the land would be of no use to them and applied for the removal of the restrictions. Booth recommended that the removal be granted as there was a sufficiency of other land held by the grantees.[117]

Some considerable attention was given to the matter of restrictions by the government in the mid-1880s. Ballance, Native Minister in 1884, stated that he had

115. James Booth, notes, 11 July 1883, no 83/2097, MA 13/24
116. Ibid
117. T W Lewis to James Booth, 14 October 1883; Booth to Lewis, 2 February 1884, no 83/3309, MA 13/25, 13/26

observed that reserves were in the process of being alienated from Maori as applications for the removal of restrictions continued to pour into the Native Department, accompanied by 'the strongest recommendations from officers of the department in the various districts' saying that Maori applicants had a sufficiency of land elsewhere. He believed the removal of restrictions to be 'an improper use of power' and he intended not to consent to any further removals until the Legislature had established some definite and strict policy on the issue.[118] He said that:

> Those who are desirous of acquiring these reserves are not always content to wait until the restrictions are removed before commencing negotiations for obtaining them. In the great majority of instances the work is done, the purchase is completed, before the removal of restrictions, and even the money has been paid: and the purchasers wait until a favourable moment comes when they can bring sufficient influence to bear upon the Government, so as to have the restrictions removed.[119]

He then appointed G E Barton (later to become a Validation Court judge) as a special commissioner to investigate applications for the removal of restrictions in cases where negotiations had already been entered into with Europeans for the sale or lease of the lands. Barton held the commission from November 1885 to the end of 1886, when Crown pre-emption was temporarily reinstated. This meant looking into a backlog of 85 blocks where applications were already registered. Some of the blocks were in the Gisborne district but these are not specifically mentioned in Barton's 1886 report. Two very interesting comments were made by Barton in the body of his report. Firstly, he said that he had been required to ascertain whether purchasers of restricted lands had 'acted with good faith to the Maoris', but had found it difficult to ascertain the existence of improprieties in the conduct of purchasers or their agents owing to 'the disinclination of the Maoris brought before me for examination to disclose any misconduct, even although they had suffered from it'. This disinclination, he perceived as resulting from 'a vague fear that they might lay themselves open to criminal proceedings, ending in imprisonment and loss of character'. He had heard that threats of such criminal proceedings had been made to various Maori owners of the lands before him.[120] Secondly, Barton concluded his report with some harsh criticism of the office of the trust commissioner. He observed:

> I wish to make one observation, suggested by the evidence I have taken – viz, that the system of inquiry before the Frauds Prevention Commissioners is useless for the prevention of fraud while the 'Form C' which plays so prominent a part in proving before the Commissioners the *bona fides* of sale, is a positive cloak for fraud.[121]

The return of lands held under restrictions by Maori in the North Island, published in 1886, showed that all the Poverty Bay reserves set aside by Locke and Rogan were still in existence. This return was, however, probably outdated at publication

118. 1 November 1884, NZPD, vol 50, p 314
119. Ibid
120. 'Removal of Restrictions on Sale of Native Lands', AJHR, 1886, G-11, pp 1–2
121. Ibid, p 3

in 1886, as it had been partially compiled from returns of reserves in 1880 and 1882. Many of the lands listed were subdivided and sold; their restrictions being removed through various means in the Native Land Court and elsewhere. Indeed, evidence shows that in some cases these lands had already been vested in others, as some of the blocks mentioned in the table above had already become involved in the New Zealand Native Land Settlement Company. In addition to the above-mentioned category of reserves, the return also stated that parts of the Pakowhai block were held in trust for the benefit of certain Maori owners. Reserves made out of Crown-purchased lands, under the Government Native Land Purchase Act Amendment Act 1878, were two parts of Arakihi, being 400 and 728 acres respectively, one section of Waihau (1000 acres), and three parts of Waikohu–Matawai, amounting to 6000 acres. Arai–Matawai or Waimata (4214 acres) was granted as a reserve under the East Coast Act 1868, but this later became a reserve administered by the public trustee under the Native Reserves Act 1882. Tapoto, an area of 400 acres, was also reserved to Maori out of the Patutahi block, part of the Poverty Bay confiscated lands. The total acreage of land that had passed through the Native Land Court and was held by Maori as inalienable was estimated to be 255,695 acres in Cook County, and 563,444 acres in the whole of the Gisborne district.[122] This gives the impression that there still remained a considerable amount of unalienated land in the Poverty Bay area, but it must be added that the Gisborne district included the East Coast (Waiapu) and Wairoa counties, in which there remained large areas of unalienated Maori land. In the vicinity of Gisborne itself there was actually very little, even by this time. Additionally, as stated previously, it is indicated on page 1 of the return that lists of reserves gazetted under the Native Reserves Acts or under other special grants, were taken from previous returns, and there is no indication that there was any new investigation into which (if any) of these lands had since been alienated, or whether restrictions on their alienation had been removed.

By 1888, section 4 of the Native Land Act provided that Maori owners could alienate any land or share in that land. Under section 5 of the Act, existing restrictions on alienation could be removed or declared void by the Governor on the application of a majority of owners. Thus, any restrictions imposed by the court could now be annulled if the majority of the owners applied to it for such a removal. Previously a recommendation from the Minister for the Governor's consent had been required before any alteration to (or removal of) restrictions, but owners of restricted land could now decide to free the land up without having any specific transaction in view.[123] The Native Land Court Act 1886 Amendment Act 1888 had, at the same time, stated that the court could only make such a variation or annullment after a public inquiry by the court, notice of which had been previously published in the *Gazette* and *Kahiti*. No restrictions were to be varied or annulled unless the court was satisfied that, apart from the land on which application had been made for the removal of the restrictions, all of the owners had sufficient other lands belonging to them 'in their own right' for their use and occupation (s 6).

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122. 'Return of Maori Lands in North Island', AJHR, 1886, G-15
123. Jenny Murray, p 115

In a demonstration of the difficulties involved in the task with which the Native Land Court was thus charged, at the Waipiro court in 1889 an appeal was made against the absolute restrictions that had been placed on the block in the previous year. The applicant's lawyer argued that the judge had neglected to follow the 1888 Act and enquire as to the sufficiency of land holding of the owners. Judge Barton, stating that the Act was unworkable, granted the application for removal. He said that judges at rehearings could not be expected to close their court and spend time making 'active enquiries' about whether all the Maori owners of any particular block had other lands and if any of these were held under restrictions.[124] The practical difficulties involved in such an undertaking must be acknowledged, but there is a corresponding question as to what more appropriate time there could have been for such inquiries than when application had actually been made for removal of the restrictions at just such a rehearing as that adjudicated on by Barton.

In a shift of emphasis, it was now the case that on subdivision the court would only impose restrictions on the new titles where it was proved that the owners did not have a sufficiency of other inalienable land. As we have seen, the court did not have the resources to properly investigate such matters. It seems likely that considerations of sufficiency of other land tended to be glossed over in the process of subdivision, unless specifically raised by Maori owners. Section 13 of the Native Land Court Act Amendment Act 1888 stated that the court, after making orders under sections 20, 21, and 31 of the Native Land Court Act 1886,[125] was empowered to ascertain as to the sufficiency of inalienable land for each owner, and declare inalienable such land as the court deemed necessary for the support of any owner not shown to be possessed of such sufficiency.

As Jenny Murray has commented, the policy on removal of restrictions had always been inconsistent, and this inconsistency was compounded by the diverse approaches of Native Land Court judges in implementing that policy.[126] Although some judges required documented evidence of the ownership of other lands from all applicants for the removal of restrictions before allowing their removal, other judges were less careful to follow the letter of the law and even the fact that the insufficiency of land left to Maori sellers was an issue that could invalidate a title did not seem to concern them. As we have seen though, the Validation Court itself appears to have over-ridden such concerns in its validation of titles in the Gisborne area. A case in point is that of the Puhatikotiko block, originally awarded to seventy Maori in a memorial of ownership. As previously discussed, the purchaser (Mr Tiffen) brought a case for the validation of his illegal purchases of shares in the block before Judge Barton in 1892. Barton recommended a partition of the unsold part of the lands among Maori non-sellers, which occurred in 1893. Counsel for Wi Pere then applied to have the restrictions that had existed on the original memorial of ownership continued, arguing that the Validation Court had no power to remove or alter restrictions.[127] The case went before the Supreme Court where it was

124. G Dallimore, 'The Land Court in Matakaoa', MA Thesis (Social Anthropology) University of Auckland, Auckland, 1983, p 151, cited in Jenny Murray, p 116
125. Native Land Court Act 1886. These sections concerned conveyance of land to the Crown (s 20), to other Maori grantees (s 21), and general alienation to private individuals through the commissioner (s30).
126. Jenny Murray, p 117

decided that the conditions which restrained alienation of land included on every memorial of ownership could not properly be called restrictions in a final sense, as these conditions were ended when a Crown grant was issued on partition. A partition under section 7 of the Native Land (Validation of Titles) Act 1892, was a partition under the Native Land Court Act 1886, and the same rules applied. According to Judge Richmond this meant that restrictions were to be imposed on the new sections (or retained in effect) only if the court considered there was not a sufficiency of other inalienable land left to the owners.[128]

This decision is an important one in considering the Validation Court's role in validating purchases of shares in restricted lands. According to Richmond's appraisal, the Validation Court also should have been required to investigate the sufficiency of other lands before removing or placing restrictions. More importantly for the purposes of our present discussion, it is evident that by this time even the application of the Maori owners was not in itself sufficient to allow the placement of restrictions on land. It must be seen as a breach of Maori rights as individual land owners and citizens, that their applications for restrictions to be placed on their own land could be refused by any court. This was a significant undermining of Maori control over their own estate, and not only a failure to protect their rights and future land holdings, but a refusal to protect these things.

The return showing applications for the removal of restrictions for 1890 shows at least two cases where removals were granted on Poverty Bay blocks under section 5 of the Native Land Act 1888. The restrictions were removed from Whakaongaonga 5 (30 acres), granted in 1880, after application by Petera Honotapu. Mere Whakaangi had the restrictions removed from Pouawa 2e, a block of 98 acres. This land had been granted only the year before through subdivision.[129] In 1891, Peti Morete, Maraea Morete, and Hemaima Morete applied for the removal of restrictions on Waitangi 1s, a block of 675 acres, on which restrictions had been placed in a grant of 1889. Mere Whakaatere had restrictions, placed on her share in 1886, removed from the Ohinekura A block of five acres.[130]

T W Porter raised the issue of the placing or removing of restrictions on Maori land through the Native Land Court in his evidence before the Native Land Laws Commission of 1891. He believed the present system was unsatisfactory as the Court often complied with the request of a minority of owners that land be subject to restrictions. Porter felt that the objections of dissentients should be taken into account and their portions should be divided out and left free from restrictions, as under the present system lands were sometimes restricted from sale or lease and remained unused by the owners. Nevertheless, Porter also felt that the removal of restrictions should be based on the application of the majority of owners and the dissentients to such application should be allowed to retain their portion with restrictions. On the whole Porter felt that it was wrong to make restrictions with only a partial inquiry. He continued, 'The power of putting restrictions on land has been improperly used, and the Government have improperly used the power of

127. G E Barton, 20 July 1893, J1 94/173, NA, Wellington, cited Murray, p 122
128. Puhatikotiko block judgment in the Court of Appeal, 19 October 1893, J1 94/173, cited in Murray, p 123
129. 'Removal of Restrictions on Alienation of Native Lands, AJHR, 1890, G-3
130. 'Removal of Restrictions on Alienation of Native Lands', AJHR, 1891, sess ii, G-9

taking off these restrictions'.[131] Speaking before the same commission, James Mackay remarked on the subject of reserves:

> Formerly, under the Native Land Acts, restrictions could be put in the certificate of title. There is no such safeguard now under the Act. The Natives ask for a piece of land to be made inalienable, and it is done. But a few persons may wish to get this restriction taken off, and they manage to get it done. It only requires them to make the application and to state that all are agreed. The application was formerly made to the Governor, but is now made to the Native Land Court. There is no safe guard against fraud, except when the Natives go before the Trust Commissioner. He would ask them if all the parties interested had other lands, and in nine cases out of ten the applicants would lie and say they had lands elsewhere. Many an old Native who has no children will say, 'I am sick now; I am going to eat this land, and I am not going to leave it to the rest of the tribe.' Of course, it was to provide against this sort of thing that it was tried to impose restrictions. But if reserves were set aside, and the balance of the land clothed with a title, the natives would dispose of it.[132]

Thomas William Lewis was examined by the Rees commission in Wellington on 12 and 13 May. He had been private secretary to McLean from 1869, became Native Department under-secretary in 1879, and in 1885 was placed in charge of the Land Purchase Department. In Lewis's opinion, restrictions placed on the alienation of Maori land should not apply to the Crown but only to private individuals. Lewis commented that under the present law there was no such thing as absolute inalienability as any restriction could be removed by application to the court. In cases of purchase by the Crown, deeds of transaction did not need to be submitted to the trust commissioner for confirmation. In his opinion, although the Native Land Frauds Prevention Acts were passed for the protection of Maori, they did not have this effect. He believed that:

> in addition to the land duties and the other expenses that are already deducted by the purchaser from the price of the land paid to the Maori, the purchaser would necessarily allow himself a very liberal assurance fund to cover the risk of the result of the inquiry before the Frauds Commissioner; and I think it will be found…that lands are purchased from the Natives at very much below what would be the value of similar land in the hands of Europeans. And I consider that the Frauds Prevention Acts have certainly the effect of reducing the price of the land of the Maoris and so depriving the Natives of at least 25 percent of the monetary value of their land.[133]

In addition he stated that:

> generally speaking, the fact that in every case that goes before the Trust Commissioner the money has already been paid – that the purchase is practically complete – does not tend to make the Trust Commissioner's investigation all that it might be, supposing it was made before the money was parted with.[134]

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131. Lt-Col T W Porter, 16 March 1891, AJHR ,1891, G-1, pp 16–17
132. James Mackay, Auckland, 16 March 1891, AJHR, 1891, G-1, p 43
133. T W Lewis, Wellington, 13 May 1891, AJHR, 1891, G-1, p 156
134. Ibid, p 156

The trust commissioner was therefore not acting, necessarily, in the best interests of Maori. In conclusion, Lewis stated that the protection for Maori land offered by the Native Land Frauds Prevention Acts was infinitesimal compared to the price eventually paid by Maori in terms of the loss they made on the sale of their lands. Lewis felt that Maori thus received 'a pennyworth' of protection for something like a pound, and in his opinion the Native Land Court should issue certificates stating that individuals were the owners of other land prior to purchase. He stated that:

> The Native Land Court should before purchase certify as to the Maori having a sufficiency of other land for maintenance than that proposed to be sold: beyond that no other protection is necessary, and, at all events, it is not, I think, given by the Lands Frauds prevention Act.[135]

Although some of Lewis's comments show that he revealed the shortcomings of the Land Frauds Prevention Act and the trust commissioner out of motives that were less than philanthropic, his statements do reveal that it was essential for active enquiry to be made in court as to the sufficiency of other lands held by Maori land sellers. This was not being done in the court as a matter of course, and neither was it being undertaken by the trust commissioner. It must be assumed then, that these protections were not being afforded to Maori as the law had originally intended.

After the passing of the Native Land Court Act 1894, the court could remove restrictions if at least one-third of the owners agreed (s 52). There was no longer any land that was, in truth, inalienable, and restrictions were removed from this time onwards on a larger scale than previously. More often than not, by this stage, restrictions were being removed from small areas of partitioned land as these were, in turn, sold into European ownership. Wi Pere expressed his concern at this sale of small blocks before the Native Affairs Committee in 1898, saying that such sales should be prohibited. A Ngati Porou leader, Paratene Ngata, also complained of continued land sales, and stated that it was the desire of a majority of Maori that such sales should stop.[136]

In a very long 1905 return of applications for removal of restrictions, several Poverty Bay blocks appear, some of them recognisable as sections of lands listed as inalienable reserves in the 1886 return.

Applications for the removal of restrictions granted in Poverty Bay, 1899–1905. Source: *Appendices to the Journals of the House of Representatives*, 1905.

Applicant	Block	Areas (acres)	Application date	Date granted
Mere Whakaangi	Kaiti 72, 73, 74	3 roods	6 June 1896	15 February 189- (year uncertain)
Heni Tipuna	Manukawhitikitiki A3a	131	8 October 1897	4 July 1899
Wi te Hau	Pakarae 2a	1	2 December 1898	13 August 1899

135. Ibid, p 157
136. AJHR, 1898, I-3a, p 17, pp 59–65

Applications for the removal of restrictions granted in Poverty Bay, 1899–1905. Source: *Appendices to the Journals of the House of Representatives*, 1905.

Applicant	Block	Areas (acres)	Application date	Date granted
H Te Kani Pere and Mangatu Committee	Mangatu 1	20,000	28 February 1899	18 May 1899
Karaitiana te Eke	Kaiti 313, sec 2e	17	31 March 1900	16 October 1900
Mangatu Committee chairman	Mangatu 3 Mangatu 4	3680 6000	20 April 1900	29 October 1900
James Carroll and Wi Pere	Tahora 2g, sec 2; 2f, sec 2; 2c1, sec 3; 2c2, sec 2; 2c3, sec 2	61,118	13 November 1900	12 December 1900
Meti Pateriti	Whareongaonga C12, No 43	37	8 October 1901	22 September 1902
Maata te Kani and Te Eke Maki	Kaiti No 313, No 2f5	12	1 April 1902	10 September 1902
Herawaka Porter	Kaiti No 261	27	28 November 1903	13 June 1904
Thomas Bartlett and MereTauira	Whareongaonga C12 No 43	37	5 March 1904	22 May 1905

Applications that were refused were few in number over this period, but some were refused in the Poverty Bay district. One of these was the application of Wi Pere, whose name appears as an applicant for the removal of restrictions on all lands on the East Coast on 14 February 1897 (an interesting occurrence, considering his concern about the continued sale of small pieces of land, expressed publicly in 1898). This application was probably made primarily in order to free Carroll–Wi Pere Trust lands from restrictions, and it was refused for reasons that will be made clearer in the following section of this chapter. An application by the trustees of the Mangapoike block on 24 August 1900 for the removal of restrictions on Mangapoike 2a3, 2b, 2d, 2e, and A blocks, a total of 15,400 acres, were likewise refused. On 1 February 1901, Katerina T T Pere lodged applications regarding Kopuatarakihi 1d (988 acres), Kourateruhi 1d (64 acres), and Kaiaua 2d (255 acres) which were all refused. Eruera Taituha applied to have restrictions removed from Manukawhitikitik A, No 2, an area of 97 acres, but was refused.[137] Unfortunately the reasons for these refusals are not printed with the returns so it is impossible to evaluate the extent to which applications were refused on the basis of insufficiency of other inalienable lands. Interestingly, although there are a considerable number of applications in this return from Maori Land Boards, none appear from the Tairawhiti Maori Land Board.[138]

137. ‘Applications Respecting Native Land since the Passing of the Native Land Court Act, 1894‘, AJHR, 1905, G-4

The removal of restrictions on the sale of Maori lands in the Poverty Bay district is an important issue and one that requires more detailed research. This report does not contain much information on such removals during the 1890s, but this ommission would hopefully be remedied by further primary source research. James Carroll and Wi Pere, who were to take over the administration of the former New Zealand Native Land Settlement Company lands, were themselves to make several attempts to have restrictions on alienation removed from lands now managed by them, in order to sell them for the purposes of off-setting the overall debt on the Trust lands. These matters, among others concerning the involvement of the two men with these Maori lands, are discussed in the following section.

6.6 THE CARROLL–WI PERE TRUST

We now return to the discussion of the New Zealand Settlement Company lands, which were faced with mortgagee sale by the Bank of New Zealand in 1889. In this section, the Validation Court, discussed in section 6.4, and the removal of restrictions (sec 6.5) are both of considerable relevance. The Validation Court, as we shall see, was to have an important, if slightly unconventional, role to play in the continued administration of these lands, especially when a judge, in a move unprecedented by the general attitude of that court, recommended finally that the Government intervene to save Maori of the East Coast from the inevitable loss of their lands.

Returning to the story begun in chapter 5 then, when W L Rees returned from his unsuccessful attempt to round up prospective English settlers for the settlement company lands, he turned to the Government for help, asking them to take over the lands and cut them up for settlement. He hoped that by means of Government intervention, the mortgaged lands could be sold and the debt to the Bank of New Zealand paid off, after adequate reserves had been given to Maori owners, leaving a small profit for them. The lands were valued for the Government by Mr Aitken Connell, who submitted artificially low valuations. The Pakowhai and Paramata blocks were both valued at £10,000 each, although Rees claimed that these two blocks, with the stock on them and 10,000 sheep, could be sold for around £60,000.[139] Rees and Wi Pere did not therefore, press the Government for a transaction.[140] In 1891 the local position was extremely serious, and Rees and Wi Pere were required to give evidence before the Native Affairs Committee with regard to petitions concerning the activities of the settlement company on the East Coast. The total liability on the lands at this time was given as £241,168 for both shareholders and Maori owners, £150,000 of this being mortgages on the land to which the Bank of New Zealand Assets Company was entitled.

The Bank of New Zealand had accumulated a large estate through foreclosures on land made during the depression which it now found it necessary to realise. It

138. Ibid
139. 'Minutes of Evidence in Connection with Petitions relating to The New Zealand Native Land Settlement Company', AJHR, 1891, sess ii, I-3a, p 2
140. Ibid, p 2

had transferred many of its assets to an estates company, which foreclosed on the company lands in 1891, and set about subdividing them for sale at auction.[141] It was at this point that the Native Affairs Committee began to investigate the background to petitions they had received on the matter. The first was from Hemi Waaka and 30 others, relating to the Pakowhai block and other lands at Muriwai, and complained of the removal of land from their control in 1883 and its prospective loss, through the actions of the trustees, Rees and Wi Pere. The second petition was received from H E Johnston and others, and Henry Green and another, and prayed that as shareholders, they might be aided to carry out the original objectives of the company. The committee heard evidence on the matter during July and August 1891 and gave their recommendations on 18 September 1891, in which they stated that it was absolutely necessary for the Government to step in and take action to relieve the injured parties in the interests of the Maori owners and others with equitable rights.[142] With respect to the petition of Johnston and Green, the committee stated again that power should be given to the Government to take over the lands on behalf of the Maori owners, with a valuation of the land to be undertaken under the Public Works Act .[143] Although the Native Affairs Committee made these recommendations on 18 September, the parliamentary session ended on 25 September with no action being taken. The settlement company lands were offered for auction by the Bank of New Zealand Estates Company on 26 October 1891, with the exception of the Tawapata block, saved by Canon Samuel Williams, who bought the land back for its owners, who thereafter paid the local parson's salary.[144] Rees and Wi Pere attempted to delay the sale by lodging caveats against the estates company's title, challenging its right to sell the lands.[145] These actions did not, however, stop the sale and 34,000 acres of the company's lands, mostly those closest to Gisborne, as well as the Mangaheia block near Tolaga Bay were purchased for a total price of £62,000. This left about 64,000 acres of land in the inland hill country unsold, probably due to a lack of demand rather than any fears over the effects of the caveats, which had also been lodged on some of the lands sold. Nevertheless, in Alan Ward's opinion it was most likely this lack of demand for the lands that caused the bank to consider entering into an agreement with Rees and the Maori owners over the fate of the remaining lands and their possible redemption.[146]

A formal agreement was drawn up in February 1892 between the estates company, Rees, Wi Pere, and James Carroll. It was agreed that Rees would withdraw the caveats. All the mortgaged land, to which the settlement company had good title under the 1873 Act, would be transferred to Wi Pere and James Carroll as trustees. These men would arrange for the lease and farming of the lands, the proceeds of which it was hoped, would pay the remaining debt. A new mortgage

141. Ward, 'The East Coast Maori Trust', MA thesis, p 47
142. Petition no 274, AJHR, 1891, I-3, p 28
143. Petition nos 53, 63, AJHR, 1891, I-3, p 29
144. Minutes of Evidence, MA 26/7/4, pt I, p 101, cited in Ward, MA thesis, p 48
145. Nolan & Skeet memo to judge of Apellate Court regarding apportionment of General Reserve, 1950, papers of Nolan & Skeet, Solicitors, Gisborne, p 2, Gisborne Museum, cited in Ward, p 49
146. Ward, p 49

was set on the 64,000 acres of land for £58,000, the balance of the debt owed to the estates company after auction.[147] In addition the estates company laid claim to blocks of land for which the settlement company had paid some money but had only incomplete or disputed title. The trustees were to complete the title to these lands and bring them in as additional, or 'specific security' lands for the mortgage on the 64,000 acres of 'principal security' lands. The interest on the mortgage was, however, being charged at the rate of six percent by 1897.[148] Maori who had been involved in the initial scheme were now forced to bring in further lands in the attempt to redeem the lands originally vested in the settlement company. They now risked their loss also, in the face of a steadily rising debt at six percent interest. They could make no headway against the debt in the face of such a high interest rate, and the whole scheme must have seemed utterly hopeless to them, if not totally beyond comprehension.

The agreement contained a clause which directed Carroll and Wi Pere to pay £3500 of Rees's overdraft from funds of the trust estate. Alan Ward has questioned the equity of this arrangement on the basis that, as Rees had incurred personal loss through a scheme which was initiated by himself, there is no reason to suppose that the Maori owners of the trust estate lands should have been liable for his personal debts as well as those of the company itself. Wi Pere had also taken steps to protect his own interests, and this has been the cause of long-standing suspicion in the Gisborne area of his motivations and involvement with Maori land in that rohe. By agreement, all of the lands of the Wi Pere whanau not sold by the estates company in 1891 were transferred from the trust to Wi Pere alone, and this amounted to 2000 acres of valuable land on the flats and within 14 miles of Gisborne. In light of his agreement that additional lands should be pulled into the trust as additional security to the mortgage, Wi Pere's self-interested actions might be viewed less than favourably.[149] Nevertheless, it is perhaps not surprising, as other company shareholders were busily guarding their own interests and trying to recoup what losses they could, that Wi Pere also did the same, even if it meant indebtedness for more East Coast Maori.

It does not seem very likely, considering the state of things, that Maori owners of the lands to be brought in as additional security on the mortgage were going to agree to such a plan, and they do not appear to have been consulted about this plan before the agreement was made with the estates company. Although owners of the principal security blocks might well have given their agreement, the owners of the additional security blocks did not, and in many cases these owners challenged the right of the trustees to make their lands liable to the mortgage in the Validation Court.[150] As previously discussed, Judge Barton validated the 1882 and 1883 contracts by which the settlement company had acquired its estate from Maori owners, and the 1888 return of lands to Maori owners subject to the mortgage to the Bank of New Zealand. The later 1892 agreement between the estates company and

147. Ibid. This only adds to £120,000 rather than the £150,000 quoted to the Native Affairs Committee as the mortgage to the bank in 1891.
148. MA 1907/816, cited in Ward p 50
149. Ward, p51
150. MA 1907/816 [NA], cited Ward, pp52–53

the trustees (discussed above) was also validated and title was vested in Wi Pere and James Carroll. In 1895, the Validation Court confirmed the trustees' title to the Paramata block and executed a mortgage over it for £14,000 of the total debt to the BNZ. The court then began vesting more specific security blocks in the trustees and mortgaging them for specific sums of money. These included most of the lands on the Mahia peninsula and part of the Maraetaha block. In 1896 secure titles were awarded to Carroll and Pere in the Mangapoike (41,000 acres) and Maungawaru (34,000 acres) blocks through the Validation Court.[151]

The question arises as to how the Validation Court managed to give decrees validating incomplete transactions in these blocks in the face of opposition from the owners. Surely it must have been clear to judges of the Validation Court sittings at which these cases were heard that they severely endangered the future Maori ownership of the lands, threatening them with a severely depleted land base. The failure of the Validation Court to inquire into sufficiency of land for Maori occupation and use, and its role in furthering the cause of European settlement of Maori land rather than protecting Maori interests, is dealt with in earlier sections of this chapter.

In 1897, after failing to get any satisfaction as to their grievances in the Validation Court, Ngati Porou owners of the specific security blocks between Tokomaru and Hicks bays, north of Gisborne, sent a petition to the Government. The petition, from Wiremu Pokiha and 653 others, alleged that the lands which remained to them for their occupation, including those leased to Europeans, were placed 'under serious disadvantages' through the dealings of the New Zealand Native Land Settlement Company. The company had entered into negotiations for lands which had not passed through the Native Land Court, and the owners of which had not yet been ascertained when some of the tribe had received advances on these lands from the company. These negotiations were undertaken in Gisborne without the full knowledge of other Ngati Porou owners in the blocks. When the titles to these lands were investigated by the land court the majority of the 'vendors' were not included in the lists of owners. Dealings of this type were at that time prohibited by law, and the petitioners stated that the agreements and deeds in question had not been ratified by the trust commissioner under the Native Land Frauds Prevention Acts. Since 1883, the owners of these lands had not received any advances from the Company on account of survey charges, court fees, or rates payable on the lands.

Nevertheless, in December 1896 applications were lodged with the Validation Court at Gisborne by the Hon James Carroll and Wi Pere for validation of the transactions. This was the first time the owners had known that their lands had been mortgaged to the Bank of New Zealand by the settlement company, or that the bank's estates company had entered into an agreement regarding these lands with the Carroll–Wi Pere Trust.[152] The petitioners stated that they were ignorant of the

151. Counsel for the East Coast commissioner to chief judge of the Maori Land Court, in the matter of the *East Coast Commissioner vs Pakowhai, 1951*, Nolan & Skeet papers, Gisborne Museum, cited in Ward, pp 58–59

152. Translation of petition no 108, 'Report of Native Affairs Committee on petition of Wiremu Pakiha and 653 others', AJHR, 1897, I-3a, p 2

mortgage of 3 July 1888 prior to the gazetted applications made to the Validation Court in 1896. They said:

> We did not consent to or in any way countenance the said mortgage. We did not ask or agree that Mr W L Rees and Wi Pere should go to England in or about the year 1888 to raise money to enable our lands to be opened up and settled. We were not party to any arrangement in the year 1892 between the Bank of New Zealand Estates Company and Messrs Carroll and Wi Pere. We did not ask or agree that they should represent us in the arrangement then made, and we strongly condemn all these various transactions. And no document or writing whatever can be discovered embodying our consent to any of the said acts and dealings, done without the knowledge of us, the lawful owners of the said lands.[153]

In April 1897 the petitioners appeared before the Validation Court at Gisborne as objectors to the applications of Carroll and Wi Pere. In July 1897, the court dismissed the application concerning the Ngamoe block on the grounds that the Court did not believe its powers extended to investigating claims on lands, the title to which had not been ascertained at the time of the transaction before them. However, the court declared that it was open to the applicants to contest the validity of this decision before the Court of Appeal. The petitioners stated that many of their lands to which the Trusts Estate now sought valid title were affected by the decision of the Validation Court with respect to the Ngamoe block, but there were also many which were not so affected and which remained subject to proceedings in the Validation Court. The petitioners said, with respect to those lands, that they had received no money or other form of consideration from the company or its agents. They did not wish to place their lands under the management and control of the trustees as they had no confidence in the abilities of Wi Pere or James Carroll to administer these lands for the benefit of the owners. They feared that their lands would become ‘heavily encumbered’ through involvement in the trust.

In conclusion, the petitioners made some requests of the government in terms of what they wanted for their lands. These comments are interesting, not only with respect to the lands under threat by the mortgage of the trust estate to the Bank of New Zealand Estates Company, but in more general terms. They stated that they had:

> no desire to obstruct the settlement policy of this colony, and we have no desire to stand in the way of the Crown acquiring such of our lands as we cannot improve or settle, but the terms of purchase or alienation should first be arranged between the lawful owners and the purchaser; for we fear lest old transactions, unlawful, invalid and prohibited, be validated to our detriment, and the lands we now occupy pass into other hands and we be left landless like other Natives injured by the dealings of the said company, for we are a numerous people and have little land left for our support.[154]

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153. Ibid
154. Ibid, p 3

If members of Ngati Porou could make such a comment in 1897, it could be said with absolute certainty that the situation was considerably worse for Maori of Poverty Bay. The deleterious effects brought about by 20 years of land purchase had been followed by more land loss through the 1891 mortgagee sale by the Bank of New Zealand Estates Company of lands closest to Gisborne. Maori in Poverty Bay were still a numerous people, whose tribal land base (for all three iwi) had shrunk to some 300,000 acres, and much of this was still under threat through the mortgage to the estates company.

The Ngati Porou petitioners prayed that the jurisdiction of the Validation Court not be extended to claims where title had not been ascertained at the time of the transaction, and that money advanced by the company to Maori who were not included in the titles to those lands should not be deemed a charge against the lands. They asked that:

> the lands whereon our settlements and cultivations stand, which we are improving and attempting to farm and stock, be rendered absolutely inalienable, and reserved for the use of us and our children.

It was hoped that the House would not allow the control of their lands to be placed in the hands of any person, body, commission, or trustees, without the prior consent of the owners, and that the House might be sensible of the great expense entailed on the petitioners in defending their lands against the applications of Carroll and Wi Pere in the Validation Court.[155]

The Native Affairs Committee heard evidence on the matter during November and December of 1897. Carroll told the committee that under the 1892 agreement with the Bank of New Zealand Estates Company, the mortgage had been extended for a period of five years. For a year or two, he and Wi Pere had attempted to administer the lands in the trust estate as best they could, but they had no means of financing the operation of stocking and working the lands in order to produce any revenue. Carroll had made several attempts to be relieved of his responsibilities within the trust but legal authorities had informed him he could not divest himself of the position. Carroll and Wi Pere were forced to arrange with the estates company to carry on the working of the lands, with the company supplying accounts to the trustees every six months showing expenditure and profits.[156] According to Carroll, many of the block titles which they claimed before the Validation Court had been settled by mutual agreement of the Maori owners whom they represented but nothing had been done yet regarding the Waiapu lands. With respect to the claims of petitioners that they had not received any money or consideration for their lands from the settlement company, Carroll insisted that it was ‘a matter of notoriety’ that the company had advanced money to most of the hapu of Ngati Porou for ‘distinct blocks of land’.[157] He said that with the exception of one or two blocks most of the lands in question had passed through the Native Land Court. With respect to the blocks that had not been through the court at the

155. AJHR, 1897, I-3a, p 3
156. AJHR, 1897, I-3a, Minutes of Evidence, pp 4–5
157. Ibid, p 6

time of the transactions, Carroll believed that it was a matter for the Validation Court to decide whether the settlement company had any legitimate claim to those blocks.

Carroll admitted that it was probably true that the company had advanced no money to the Ngati Porou land owners for survey charges or court expenses. He said, however, that it was not true to say that the owners knew nothing of the activities of the company, as representatives from the coast came to Gisborne to discuss the lands in question.[158] In Carroll's estimation if, for example, the Company had paid £200 for a block and there were 150 owners, as the money had not been repaid and had accrued interest in the meantime, it would now be worth perhaps £500. This money, or the equivalent in land was now owed to the settlement company. The trustees would therefore, take the normal steps to bring those blocks to which they felt they had a partial claim before the Validation Court. If the court declared against them they would have no land to operate on but the Maori owners might compromise and allow them to cut out a portion of the land equivalent to the debt which would then go into the trust for 'the benefit of all'.[159] According to Carroll, he and Wi Pere had now decided to withdraw their claims to many of the blocks gazetted as it would cost too much to ascertain what the company's interests in them might have been. There were 20 or 30 blocks on which small advances had been paid and they were prepared to let that land go and trust that the owners would refund, with interest, the advances made. The Bank of New Zealand Estates Company still had a say in what lands were brought in to secure the mortgage to them though, and were far from happy with the abandonment of claims to some of these blocks. The solicitor for the estates company had not yet given approval to the withdrawal of claims to all of the blocks indicated by the trustees.

Asked about the appeal that the trustees had lodged against the decision of the Validation Court regarding its lack of jurisdiction over the trustees' claim to the Ngamoe block, Carroll stated that until the courts had made a decision on their appeal the trust could not express an opinion on the legitimacy of their rights in that block, the transactions for which had been undertaken prior to the determination of title by the Native Land Court. He agreed that making advances on blocks that had not been through the court was an illegal act, but maintained that the Validation Court's purpose was to 'make valid what had been a violation of the law', although it was up to the court to decide upon the equities of each case.[160] In response, Mr Monk (of the committee) offered the opinion that the actions of the company in carrying out such transactions were 'altogether illegal' and quite 'wicked'. He continued:

> It [the company] entered into a transaction in connection with this land, and never submitted the transaction to the Trust Commissioner, who might have advised that the whole thing was illegal, and that which has ended so disastrously to the Natives might have been prevented. I do not know if the Validation Court has recognised this, and thrown the case out because of that illegality – that serious illegality.[161]

158. Ibid, p 6
159. Ibid, p 6
160. Ibid, p 7

Carroll was at pains to convince the committee that, in general, the character of the settlement company's transactions were in conformity with the law, and remarked that this petition had only come about because the Maori owners of the blocks to which the trustees intended to abandon their claims, still remained fearful that the estates company would press to have these lands brought in to the mortgage. Carroll had advised the petitioner himself to continue with the petition so that there could be discussion of the whole issue and an explanation given. This is an additional indication that Rees, Wi Pere and Carroll still hoped to get the government to intervene and take over the lands. Discussion in this forum of the problems they faced at least ensured that attention would be focussed in Parliament on the plight of the East Coast lands.

The interest on the mortgage to the Bank of New Zealand continued to be charged at six percent. The trustees had managed to convince the bank to make an advance of money to them in order to improve some of the lands but the revenue produced to that date was a mere £4000.[162] As Alan Ward has commented, the trust estate could not be farmed or leased without capital and it was not likely that any private source would lend money to Maori for such an unlikely return. The trustees were forced to increase the mortgage to the bank or sell some of the land in the trust estate in order to pay for surveys, improvements, and subdivisions. The money to pay for costs incurred in securing title to the additional security blocks could only be raised by an extension of the total liability to the Bank of New Zealand Estates Company.[163] The revenue stated by Carroll was less than the interest accrued, but Carroll was of the opinion that with adequate advances made for improvements on the lands, the revenue from them would increase to a sufficient level to pay off the interest. The Validation Court proceedings had caused delays in the efficient administration of the trust estate, and had been a considerable financial burden to the trustees in the preceding two years.

The Native Affairs Committee reported on 16 December 1897 that it found the imputations cast on the characters of both the Honourable James Carroll and Wi Pere in the petition before them to be without foundation. Nevertheless, the petition and the evidence heard by the committee had convinced them that a state of affairs existed on the East Coast regarding Maori land, which 'ought not to exist, and certainly ought not to be allowed to continue'. They believed the situation to be injurious to the Maori owners, the trustees, the creditors, and the public, and they recommended that the Validation Court should cease its work with respect to the lands mentioned in the petition. It was suggested that a competent person be appointed to make inquiry into:

> all matters necessary to prove liability of lands and persons to the debts of the late Land Settlement Company, and the extent of such liability, and the capabilities of the land belonging to or connected with the Estate for settlement.

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161. Ibid, p 8
162. Ibid, p 8
163. Ward, pp 58–59

This person was to report back to Parliament with some suggestions for the winding up of the affairs of the late company and the utilisation of its estate.[164]

Shortly after this report by the Native Affairs Committee, Rees wrote to Seddon suggesting that Judge Batham of the Validation Court be appointed to carry out the suggested inquiry, but no further action was taken by the Government in the meantime.[165] Batham clearly felt some concern at the amount of land being pulled in as additional security for the settlement company's liability to the Bank of New Zealand, although Barton and Gudgeon, earlier judges of that court, had granted titles to the trustees despite the often questionable nature of the trustees' claims to the land. Their reasoning was that the whole estate had a chance of being redeemed through the addition of good land with a value marginally in excess of the mortgage. Judge Batham, however, regarded such a policy as reckless, especially when it was considered that the debt on the land rose as fast as the value of the securities in the trust increased. He refused to allow any further transactions without first having proof that the trustees could make use of what resources they already had to reduce the debt.[166] Under Judge Batham, no further charges against the land were allowed, and no further specific securities were permitted to be added to the trust estate. Neither would any of the expenses incurred by Carroll and Wi Pere be allowed to be charged against the estate. Batham also put a stop to the mortgaging of the Tahora and Maraetaha blocks to the Bank of New Zealand Estates Company, the papers for which were being prepared under the prior order of the Validation Court, which vested those blocks in the trustees. In short, the judge was not convinced that these blocks, or any of the other specific security lands, were under any legal obligation to contribute to the mortgage.[167]

Earlier discussion of the Validation Court has revealed that the court did not tend to act in favour of Maori land owners. This situation must, therefore, be seen as both unprecedented and unusual. Not surprisingly then, it was also highly unpopular. The trustees claimed that Batham's decisions left them in a hopeless position, without enough revenue to pay off the debt to the bank. They also claimed that the estates company would have proceeded to farm the good lands, but could not do so as Batham would not allow the costs of stocking and fencing to be added as charges on the land. Interest and rates charged on the lands meant that the debt continued to rise steadily. Carroll and Wi Pere complained that the Validation Court had exceeded its normal jurisdiction in meddling in the trust's affairs and assuming a supervisory role in this matter.[168] Batham informed Seddon, Premier and Native Minister, that he had reversed the policy of previous Validation Court judges with regard to the trust estate. Having come to the same conclusion as the trustees, that Government intervention in the affairs of the trust estate was the only hope for saving these East Coast lands, he strongly recommended such a course of action.[169]

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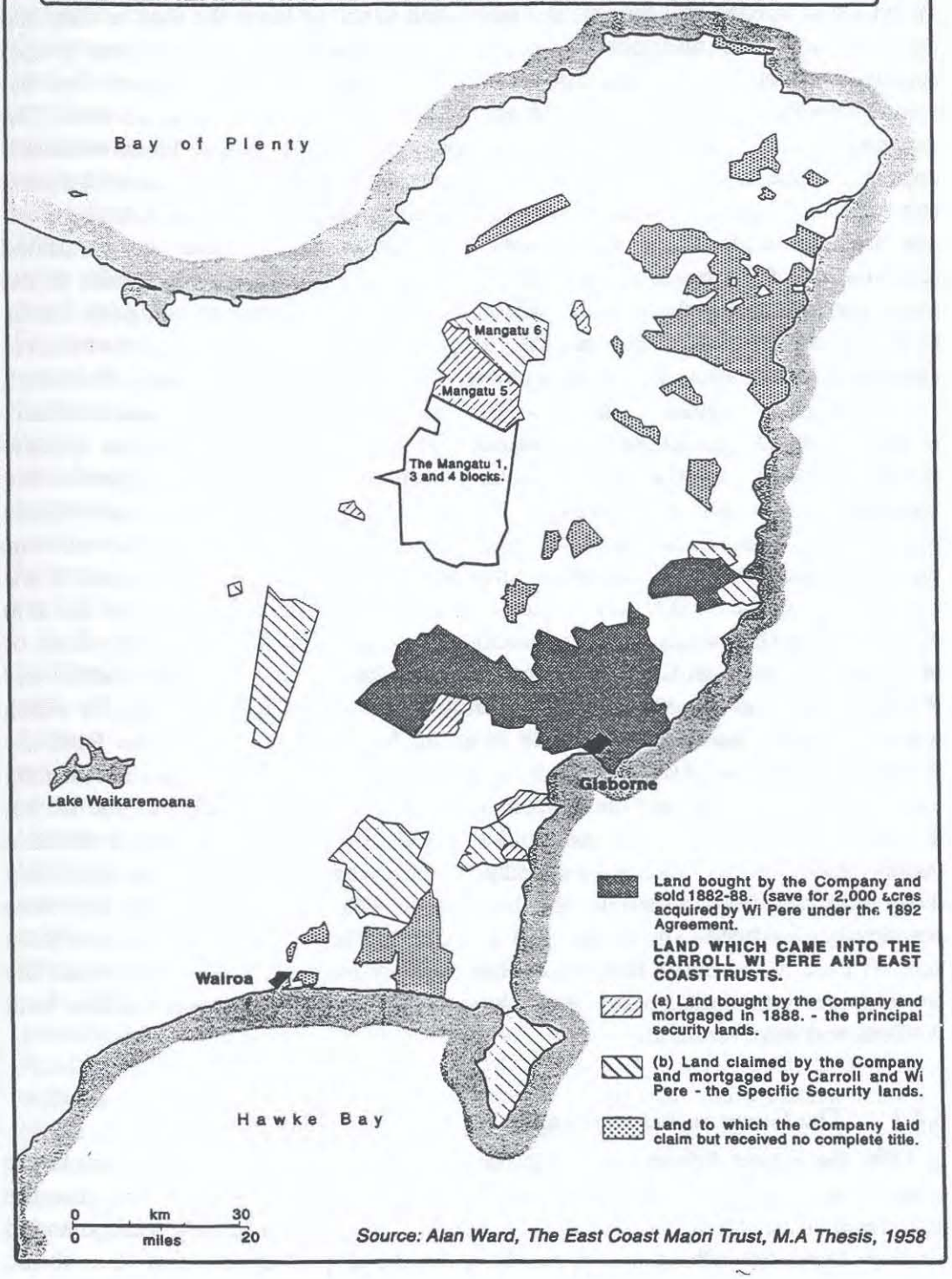
164. AJHR, 1897, I-3a, p 1
165. Kathy-Orr Nimo 'The East Coast Trust', draft Report for the Crown Forestry Rental Trust, 1996, p 65
166. MA 1907/816, cited in Ward, p 62
167. PBH, 15 February 1899, cited in Ward, p 62
168. PBH, 2 February 1899, cited in Ward, p 63
169. Memorandum from Justice Batham to Minister of Native Affairs, 4 August 1897, MA 1907/816, cited in Ward, pp 63–64

FIGURE 13: LANDS AFFECTED BY THE OPERATIONS OF THE NEW ZEALAND NATIVE LAND SETTLEMENT COMPANY



Source: Alan Ward, The East Coast Maori Trust, M.A Thesis, 1958

Carroll, Wi Pere, and the receiver of the trust lands, H C Jackson, came under attack in February 1899 at the Validation Court sitting at Gisborne, when W D Lysnar alleged that the trustees had failed to sell or lease the land as they had been directed, had misapplied money owing to Maori, and had not kept proper accounts of the trust's finances. During the seven-day investigation into the Carroll–Wi Pere Trust that followed, the whole messy situation became clear. The mortgage was in default and interest charges continued to mount. Rates were still unpaid, and the accounts which were supposed to be kept by the estates company had been lost. The trust's debts were increasing at the rate of about £4000 a year. The trustees made out a clear case that lack of capital, and the continued involvement of the Bank of New Zealand Estates Company in the affairs of the trust, had prevented them from redeeming the old settlement company lands. Lysnar could not sustain any specific charges against the trustees and the receiver and Batham sympathised with the trustees' position to a certain degree. The court, as a result, gave judgment in favour of the defendants.[170] A fortnight later the Bank of New Zealand, mortgagee in possession of both the principal and the specific security lands (the estates company having been wound up in 1898), applied to the Validation Court for the power to sell the Paramata, Maraetaha, and Mahia blocks.[171] In a situation which the benefit of hindsight allows us to see was inevitable, the worst fears of Maori petitioners seemed about to be realised in the loss of not only the 64,000 acres which had remained from the sale in 1891 but also the additional or specific security blocks amounting to a further 62,000 acres of Maori land on the East Coast.[172] It must certainly have been galling for Carroll and Wi Pere, but it was devastating for the Maori owners of the additional blocks which had been pulled into the trust estate in an ad hoc manner since 1892. Both the principal and addtional security lands can be seen on the map at figure 13. This map also shows how much land the Carroll–Wi Pere Trust made a claim to but did not receive title to, as well as the lands sold between 1882 and 1888, mostly situated in Poverty Bay. Surely it must have appeared to the owners of these blocks, especially those that had been added to the trust since 1889, that their land had been pointlessly sacrificed. The whole business that had begun so hopefully with Rees and Wi Pere in the early 1880s had gone steadily from bad to worse. Unless the Government intervened, many East Coast Maori would very soon become both landless and impoverished.

6.6.1 The Government intervenes

In 1891 the Native Affairs Committee had expressed the opinion in relation to the petition from Hemi Waaka and other owners of the Pakowhai block, that the Government should step in and assist in relief.[173] The parliamentary session ended six days later and nothing was done, the matter being presumably forgotten about. In 1896, when it must have been clear to Wi Pere and James Carroll that the trust

170. PBH, 2, 6, and 15 February 1899, cited in Ward, p 66
171. PBH, 23 February 1899, cited Ward, p 68
172. Ward, p 68
173. 'Reports of Native Affairs Committee', AJHR, 1891, I-3, p 28

estate was foundering as the old settlement company had, Wi Pere introduced a bill to Parliament seeking assistance. The East Coast Native Land Board Bill sought to install a board of trustees with the power to borrow money both from the Government and from private sources in order to develop, lease and sell the trust's land. Robert Thompson, leader of the Opposition, reminded the House of Rees's involvement with the lands and indicated that Carroll and Wi Pere were a continuation of the company which Rees had started and they should not be given any assistance to continue their dealings. Maori were also prejudiced against the bill though, and Seddon noted a petition from nine Maori protesting against the bill. They did not wish to see the land pass out of the hands of Carroll and Wi Pere into those of a Pakeha board as they felt, not without just cause, that this would only result in further loss of control of those lands and their eventual sale. In general, the Government had no wish to 'entrench or create extensive powers for men with vested interests in Maori land', and Seddon stated that it was not for the Government to appoint members of a board or trustees in what was essentially a private monopoly of land.[174] Although the House was willing for the bill to be discussed further, it was a requirement that bills which affected private estates be recommended by the Supreme Court for consideration by Parliament before this could occurr. This bill had been given the recommendation of a Validation Court judge only, and as this was not deemed to be sufficient by the Legislative Council, the bill lapsed.[175]

In the meantime Judge Batham had written to Seddon outlining the situation on the East Coast in some detail, and suggesting ways in which the bank debt might be paid off and the land redeemed. The Premier was now aware of the potential damage which might be done to the district if the present situation was allowed to continue unchecked. Nevertheless, there were some fundamental problems involved in any government assistance to the trust. Firstly, any appearance of the Government giving assistance to its political favourites, Carroll and Wi Pere, would undoubtedly arouse suspicion in the opposition and lead to probable political embarrassment. In addition, settlers were not likely to look kindly upon the use of public money to enable Maori to hold on to land which, in settler opinion, was being poorly utilised while it remained in their hands.[176]

In 1898, Gisborne citizens formed a committee to lobby Parliament in order that something be done about the lands in the area still remaining locked to settlement. Another bill seeking Government intervention was drawn up by Rees and Wi Pere with the support of the Gisborne committee, and both Maori and Pakeha residents of the district. This bill sought a body corporate with the power to accept, by way of trust, any undeveloped Maori land in the district (including the Carroll–Wi Pere Trust lands). This body would have the power to borrow on mortgage in order to develop and farm the lands in its trust.[177] Encouraged by the fact that this bill sought to farm the lands while they remained in Maori ownership, East Coast Maori gave their support to the proposal in the form of petitions from 1302 Maori. Gisborne

174. NZPD, 1896, vol 94, pp 37–38, 279, cited Ward, pp 71–73
175. Ibid, p 279, Ward, p 73
176. Ward, pp 76–77
177. Ibid, p 80

local bodies also expressed their support of the bill. Nevertheless, the Native Affairs Committee, to whom the bill was referred, rejected the principle of farming under mortgage rather than sale of the lands and recommended that an alternative bill be drafted empowering Carroll and Wi Pere to sell enough of the estate to pay off the mortgage to the Bank of New Zealand and end the business.[178] Clearly there were concerns, among those who sat on the Native Affairs Committee, that a new board would run into the same problems as the trustees had in handling the trust lands efficiently enough to pay the mortgage and redeem the lands for Maori owners.

The member for Hawke's Bay, Captain W Russell, was also of the opinion that to preserve Maori land and farm it under corporate ownership would be inefficient. Instead, he favoured a quick solution to the problem by selling some of the lands and returning the rest to Maori divided into small individual sections.[179] In making this proposal Russell demonstrated not only a clear disregard for the well-documented evidence of the hardships caused by such exaggerated individualisation of Maori tenure, but an ignorance of the type of lands in question, which were totally unsuited to subdivision of this type, and could not have been farmed in the small lots he recommended. Carroll protested that if the land was sold to pay the mortgage in this way no land would be left for Maori. He insisted that Maori were not ready to compete with European farmers in the manner suggested by Russell's recommended course of action. Despite this Seddon had been offered, by the Native Affairs Committee's recommendations, a way for the Government to intervene in the matter, but only to wind up the affairs of the trust. He brought in a new bill which authorised the sale of the estate to pay the mortgage. The bill was given its first reading on 28 September but was not given any urgency. By 27 October Russell had asked the Minister of Lands to see if the lands were suitable to be brought into the land for settlement scheme by which the Liberal Government was purchasing large estates for subdivision and close settlement. The parliamentary session ended within four days, Seddon's East Coast Bill being scrapped along with other minor matters that were left unresolved.[180] There was no more said in the next session of the idea that the Government might purchase the lands for immediate settlement, perhaps because inquiries made by the Minister of Lands had shown the land to be rugged, difficult of access and entirely unsuited to close settlement. Fortunately for the Maori owners of the trust lands, the close of the parliamentary session before the bill was dealt with had narrowly averted the final loss of the remaining trust lands.[181]

Although Rees and Wi Pere continued to push for some Government assistance, the trust continued as before for the next three years. The Bank of New Zealand sought, and received from the Validation Court, the authority to sell off the Paramata and Mahia lands, but Rees assured Maori owners that the government would intervene before this occurred. In 1901, the bank informed the trustees that if the mortgage was not paid before January 1902 it would be forced to sell the

178. 'Reports of Native Affairs Committee', AJHR, 1898, I-3, p 13, Ward, pp 81–82
179. NZPD, 1898, vol 104, p 192, Ward, pp 28–83
180. Ward, pp 84–85
181. Ward, p 85

lands, as the debt was rising year by year with no headway being made against it.[182] Rees assured the bank that he was about to secure new mortgages and pay the bank's debt so the sale was delayed until February. He then lodged an injunction in the Supreme Court restraining the sale, alleging malfeasance on the part of the Bank, which had failed to keep proper accounts of the indebtedness of the individual blocks, or to provide accounts to the trustees.[183] Until the case was heard at the April session of the Supreme Court, the bank could not proceed with any sale. In April, however, the court dismissed Rees's injunction. Accounts taken by order of the court revealed that the debt now sat at £137,000. The bank was given permission to proceed with the sale in 28 days after the hearing.[184] Doubts raised about the validity of the old estate company's title to the land acquired in 1891 through the process of 'buying in' under the Supreme Court and the subsequent Validation Court orders, caused further delays and the sale was put off until 29 August.[185] The bank was offering for sale 126,000 acres of the principal and specific security blocks, and as the demand for land was high at this time the prospects were good from the bank's point of view, if not from that of the Maori owners and the trustees of the estate.

The chairman of the directors of the Bank of New Zealand then met with Sir Joseph Ward, acting Premier at the time, and Colonial Treasurer. The bank's chairman, Frederick de Carteret Malet, asked Ward to sponsor a Bill placing the Carroll–Wi Pere Trust estate in the hands of a body with the power to develop the estate along the same lines as the bills proposed in 1896 and 1898. Such a solution would, Malet said, cause less hardship to Maori owners of the lands, and would offer the bank a surer return than a mortgagee sale. This turn of events had come about because Rees had approached Malet in an attempt to get the bank to join forces in lobbying the Government for its intervention. Malet was keen to cooperate, as the undeveloped state of the land, doubts as to the validity of the bank's title to it, the forced nature of the sale, and the bad feeling that this engendered in the community, all lowered its potential sale price and made the bank's prospects of realising the debt less certain.[186]

Ward was persuaded to act by Malet and the trustees, and on 22 August 1902, only one week before the sale, he introduced the East Coast Native Trust Lands Bill. Under the terms of this bill, the sale was to be stopped and the land was to be vested in a board appointed by the Governor in Council. The board would have greater power to borrow money and improve the land than the previous trustees. With improvements, it was hoped that the land would yield a profit from farming and would bring a far greater return than the immediate sale of unimproved lands. The bank had suggested that under the Bill the board should be given indefeasible title to the land in order that it might mortgage, lease or sell it.[187] A select committee

182. Memo from Nolan & Skeet to the judge of the Apellate Court, re the apportionment of General Reserve, 1951, p 1, cited Ward, p 88
183. PBH, 21 April 1902, cited Ward, p 88
184. PBH, 23 and 24 April 1902, cited Ward, p 89
185. Nolan & Skeet, memo, p 1, cited Ward, p 89
186. Ward, pp 90–91; AJHR, 1902, I-14
187. Ward, pp 92–93

was appointed to consider the Bill. When examined by this committee, Carroll stated that he wished to see Maori retain a connection to the land and suggested that the lands be vested in the Gisborne Maori Council, which had been appointed under the 1900 Act.[188] The committee instead recommended that the board be specially appointed to the task in order to get the requisite business ability for such a project. Concerns were still expressed in the House that anybody appointed to administer these lands would be likely to encounter the same problems that the trustees had, and there were continued suggestions that the sale of the estate would at least ensure that these lands would be opened for settlement.[189]

Although members of the House of Representatives and the Legislative Council expressed their concern and irritation at the undue haste with which the East Coast Native Trust Lands Bill was being pushed through, there was good reason for this haste as the mortgagee sale of the East Coast lands was scheduled for 29 August. The Act, which was to take immediate effect, was passed on 28 August 1902 and stopped the sale. Carroll sent a telegram to the mayor of Gisborne which, in a relieved tone, expressed his hope that now the East Coast district would at last be freed from the 'prejudice, litigation, and eddies of opposition' which the long and difficult history of the settlement company lands had brought upon it.[190] The board, established under the provisions of this Act, would probably need to sell off some of the principal security blocks to pay off the bank debt, and it was hoped that, at least, the specific security blocks might be saved through new mortgages and leases to Europeans.[191] As we shall see in the following chapter, the story was far from over. These lands continued to be a focus of attention on the East Coast for many years to come, first under the control of the East Coast Trust Board, and thereafter under the East Coast commissioner until their return to Maori incorporations in 1953.

6.7 CONCLUSION

The last 10 years of the nineteenth century involved a further fragmentation of Maori land ownership as successions and subdivisions turned blocks into successively smaller and less economic sections. During this period the Native Land Court was primarily involved in this process of fragmentation, which often resulted in the further sale of unutilised partitions of land. The main focus of attention in the Gisborne area was on the Validation Court as well as the continuing saga of the failed settlement company, and the fate of the mortgaged lands which had been vested in it. Although James Carroll and Wi Pere did their best to redeem the lands, as more blocks were brought into the trust by means of the Validation Court in order to service the debt, they could make no headway against the mortgage which continued to mount steadily over the years. The Gisborne lands involved in the trust as principal securities were mostly alienated in mortgagee

188. 'Report of East Coast Native Trust Lands Bill Committee', AJHR, 1902, I-14, pp 9–10
189. Ward, pp 92–93
190. PBH, 28 August 1902, cited Ward, p 95
191. Ward, p 97

sales by the bank, but by 1902 the Government had finally agreed to intervene in order that the specific security blocks, added to the trust in an ad-hoc manner of doubtful legality, might be saved.

The Native Land Laws Commission had been critical of the individualisation of tenure carried out under the Native Land Act 1873, which had created chaos and hardship for Maori owners and Europeans seeking to gain freehold title. The Native Land Court itself was heavily criticised by both Maori and Pakeha witnesses before the commission. The burden imposed by heavy court fees, and the hardship caused by the necessity of Maori travelling to sittings held in other districts, was noted by several Gisborne witnesses. It is clear from the evidence given in Gisborne that little valuable land was left to Maori there, and the difficulty caused by the subdivision of land into sections of little economic viability was made very plain. Although the commission's report suggested that the Native Land Court should be remodelled, and Maori land boards and block committees be instituted to handle the investigation of titles and boundaries, as well as recommendations for leasing, none of these suggestions were carried out by the government. Instead, Rees's plan for the reimposition of the Crown's pre-emptive right was followed, and a special court was set up to deal with the confirmation of incomplete or disputed European titles. Neither of these measures was of benefit to Maori.

Cases mentioned in 1891 as having been unsuccessful in their bid for validation before the Edwards commission surfaced again in the course of the Validation Court sittings, where they now received the valid title sought by the European claimants. Under the Native Land (Validation of Titles) Act 1892, only titles rendered invalid through technical defects rather than fraud or illegality were intended to be confirmed. Nevertheless, Judge Barton, when challenged in Gisborne over the court's jurisdiction respecting the cases of Frederick Tiffen, gave the provisions of the Act an interpretation that was nowhere justified in either its language or intention; a fact which he later acknowledged. His error, though, resulted in the validation of transactions completely illegal in both process and inception. Many of the deeds produced before the court contained no Maori translation and no description of the land sold. In some cases the duplicates of the deed differed markedly in text from the original, and the certification made by the Gisborne frauds commissioner was often placed on the deed before signatures of sellers were added. It is easily arguable that these transactions should never have been ratified, but once they were the way was clear for a flood of similar validations by the court under the 1893 Act, drawn up in response to the difficulties experienced in the Gisborne court. This later Act gave the court wider powers and made its decisions absolute and final; Maori having no recourse to any court of appeal.

The Validation Court was primarily intended to serve the interests of Europeans who had purchased Maori land illegally, and although the preamble to the 1893 Act gave it as an Act which would allow Maori to have their grievances redressed, this did not occur. Maori objectors often do not even appear to have been notified or summoned to the court after 1893, although the general instructions of the

Validation Court required that the judge be satisfied that such absences did not occur as a result of neglect to so notify on the part of the applicant. The Validation Acts and their implementation by the court simply served to remove any protections for Maori against the illegal purchase of their lands that had been contained in previous land legislation. Validation Court was itself often involved in the validation of purchases of restricted lands, and in the process of partition of areas left to Maori it removed these restrictions as a matter of course. Although a significant area had been reserved to Maori in the Poverty Bay district by Judge Rogan and District Officer Samuel Locke under the Native Land Act 1873, much of this land was alienated in succeeding years, some with the restrictions removed through application, and others through illegal purchases, which were later validated. The trust commissioner's presence was no check to the excessive alienation of land, nor to the removal of restrictions or sale of reserved land. He did not always ensure that Maori sellers had sufficient other lands before he certified transactions. As James Mackay pointed out to the Native Land Laws Commission in 1891, Maori could simply lie and say that they had other lands and this would satisfy the trust commissioner, who was in no position to adequately investigate the truth of such statements, nor did his official instructions advocate the rigorous performance of this task.

From 1888 onwards applications for the removal of restrictions increasingly went through the Native Land Court, which was not under any obligation to go outside the narrow question of whether the owner had sufficient other lands. This was easily stated in the Native Land Court, which was not equipped to carry out any extensive enquiries. The court was then empowered to remove restrictions on land without a prior arrangement for the sale or lease of the land having been entered into, and from this time on constant amendment of the law on restrictions meant that the concept of inalienability was increasingly eroded. Restrictions could be requested and the court would place them on titles, but a minority of owners could then apply for their removal. Although the law had originally been intended to give protection to Maori, it can easily be seen that in practice it did not do so. In the 1890s the elimination of restriction provisions for subdivided land further undermined the idea of large blocks being retained intact through the placement of those provisions. The Liberal Government continued to avoid any strict enforcement of restrictions on alienation of Maori land, as this would have interfered with their policy for its purchase and close settlement.

This chapter has contained an outline of the Carroll–Wi Pere Trust, set up to administer the indebted lands of the failed New Zealand Settlement Company. Despite continued efforts to secure some Government aid in saving the trust lands, 34,000 acres, mostly in the Poverty Bay district, had already been sold by the Estates Company in 1891, and the Bank of New Zealand again threatened the mortgagee sale of the unimproved blocks administered by James Carroll and Wi Pere. The debt continued to rise at an alarming rate, and it was not at all offset by the addition of further East Coast lands to the estate, which were also threatened with sale,despite their not having been a party to the original mortgage. The

Government finally intervened to halt the sale of the lands, but only after Premier Ward had been persuaded to act by Sir Carteret Malet, the chairman of the bank. The forthcoming report by Kathy Orr–Nimo on the East Coast Trust should be of considerable help in clarifying some of the issues surrounding the Validation Court's involvement with the trust, and other issues raised in this chapter. That report was not available when this material was written, although some minor details have been included on the basis of a brief look at a draft at the last minute. It is envisaged that any new information supplied by her East Coast Trust report will be incorporated into a final version of this report on the Gisborne district.

CHAPTER 7

TWENTIETH-CENTURY DEVELOPMENTS

7.1 INTRODUCTION

This chapter seeks to highlight issues of importance for Maori of Poverty Bay in the early twentieth century. This will be done in a general way only, as there is a need for a great deal more research on this later period. A report dealing with the social impact of land loss on Maori in this area is required, as the present report is unable to supply anything but the merest hint of such issues. In this chapter Maori in Poverty Bay, and their land, are discussed within a national context of heightened Maori political activism and the general movement towards greater Maori political autonomy. In this period, Maori expressed the desire to farm their own land, administer that land, and have a greater level of control over their own social and political sphere. There are three sections of this chapter which are reliant on the earlier work of other historians for their substance. The Rangahaua Whanui report of Don Loveridge on Maori land boards was especially helpful in the creation of a review of the Tairawhiti Maori Land Board. Cathy Marr's comprehensive research on Public Works legislation was used intensively in the section dealing in a general way with those issues, and once again, a debt of gratitude is owed to Alan Ward, whose East Coast Trust material has been much relied on in the course of this report.[1]

7.2 THE 1900 MAORI LAND LEGISLATION

East Coast Maori had shown a propensity for forming themselves into block committees during the 1870s and 1880s. For this reason the government's proposals for the formation of official Maori committees during the 1880s and again in 1900, were greeted with a degree of enthusiasm. The block committee system that W L Rees and Wi Pere had attempted as part of their scheme for the settlement of East Coast lands in the 1880s provided something of a blueprint for later initiatives in the administration of Maori land taken by the Liberal Government. The passing of the Maori Land Administration Act 1900 and the Maori Councils Act 1900 seemed to provide some legitimate provisions for greater

1. Donald M Loveridge, 'Maori Land Councils and Maori Land Boards: A Historical Overview, 1900 to 1952', Rangahaua Whanui series, Waitangi Tribunal, Wellington, December 1996; Cathy Marr, 'Public Works Takings of Maori Land, 1840–1981', Report for the Treaty of Waitangi Policy Unit, December 1994; Alan Ward, 'The History of the East Coast Trust', MA Thesis, University of Auckland, Auckland, 1955

Maori self-government and a greater degree of involvement in the administration of their own lands. In effect, however, the legislation did not give these powers, and Maori were again to be disappointed.

The Maori Councils Act simply worked to place the impetus on Maori themselves for health reform, the improvement of housing and sanitation, and education, both technical and agricultural, without providing adequate funding, resources, or supervision from the Government once the councils were in place. Although councils were empowered to make by-laws governing a variety of issues, especially concerning the protection of mahinga kai, there was nothing in the Act to state that any government agency would enforce such laws. The councils could make by-laws, therefore, but were not given sufficient powers backed by continuing central government support to ensure that they were carried through. In addition, the Maori councils tended to be given as little power as possible in order that they should not interfere with the existing local authorities, with which real power on the local level remained.

7.2.1 Committees in the 1880s

During the 1880s, W L Rees and Wi Pere had advocated the greater involvement of Maori in the administration of their own lands through a system of block committees much like that which they had instituted on the East Coast. The thinking behind attempts during the latter half of the nineteenth century to incorporate the Maori propensity for organising committees or local runanga into the system of Maori land administration, though, was not always characterised by the (arguably) more philanthropic motives of men like Rees and Pere. On the whole, such attempts met with limited success. As Sorrenson has commented, New Zealand policy and legislation, in the latter nineteenth century, was 'intended to facilitate the settler acquisition of Maori land, and under a system of legal equality.'[2] This was associated with the idea that Maori would, by virtue of this process and their closer contact with settlers who took up their land, be assimilated into European society, themselves settled on reserves of land sufficient for their occupation and use. Consequently, there had been no serious thought given to any type of long-term recognition of tribal authority or Maori self-government. Maori were increasingly dissatisfied with the system of land legislation which left them with little control over their lands, and the Native Land Court process, through which these ancestral lands passed out of their hands into those of the Crown and the settler. In the two decades prior to the turn of the century, although attention was again focussed on the idea of Maori involvement in land administration, the overwhelming political pressure was that of the settlers who wanted land. The committee system proposed during this period was to be ineffectual, as both Maori and Pakeha generally saw official Maori committees as a means of expediting the transfer of Maori lands to the Crown and European settlers.

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2. M P K Sorrenson, 'Colonial Rule and Local Response: Maori Responses to European Domination in New Zealand Since 1860', JICH, vol 4, no 2, 1978, p 130

Ballance had made an attempt to institute a committee system to aid the sale or lease of Maori land in 1883, when he drew up a Bill proposing that Maori committees be set up to assist the Native Land Court. Ballance's Native Committees Act 1883, allowed committees to 'discuss matters of land and report decisions to the Native Land Court'.[3] Maori had already expressed, through petitions and in meetings with Government representatives, their dissatisfaction with the Native Land Court process, and their belief that they could determine their own tribal and hapu boundaries more effectively. Ballance's Act seemed to provide an opportunity for them to do this, but under the provisions of the Act their legal authority was limited and 'the districts they covered were so vast that Maori communities could place no confidence in them.'[4] Additionally, the Native Land Court itself tended to ignore committee decisions and generally treated these bodies with 'contempt'.[5] Following the failure of the 1883 Act, Maori continued to agitate for district committees which would act as 'courts, local government bodies, and agricultural corporations',[6] a level of Maori self-government which remained unpalatable to most Pakeha settlers and politicians alike.

In 1886, Ballance succeeded in having an Act passed 'which he hoped would meet Maori aspirations but still make land available for settlement.'[7] The Native Lands Administration Act 1886 took up the ideas of Rees and Pere with respect to the re-institution of the principle of tribal dealing in land through a system of elected committees. It was supposed that this type of dealing, rather than with the multiple owners of blocks, would avoid the overwhelming difficulties experienced by prospective purchasers of Maori land.[8] Ballance's Act empowered block committees, elected by the owners, to decide on the terms under which parts of their land might be sold or leased. These lands would be passed on to a Crown-appointed commissioner who would alienate the land according to the instructions of the committee. The income from these alienations would be distributed to the owners following the deduction of fees by the commissioner.[9] Direct purchase by settlers was prohibited and all land for sale or lease to private purchasers was to be directed through the district commissioner and auctioned. Direct purchase by the Crown, however, was still permitted without the aid of the block committee. Maori did not take up the opportunity of placing their land with the district commissioner as, once they had done so, their control over it ended. They were deeply suspicious of legislation which suggested that they hand their land over to one Government-appointed Pakeha. As there was nothing in the Act to compel them to do so, they

3. R J Martin, 'Aspects of Maori Affairs in the Liberal Period', MA thesis, University of Auckland, Auckland, 1956, p 82
4. Alan Ward, 'Whanganui ki Maniapoto: Preliminary Historical Report for Wai 48 and Related Claims', Wai 48 ROD, doc A20, Waitangi Tribunal, Wellington, 1982, p 39
5. R J Martin, p 82
6. J A Williams, *Politics of The New Zealand Maori: Protest and Cooperation, 1891–1909*, Auckland University Press–Oxford University Press, Auckland, 1969, p 8
7. Ward, 'Whanganui Ki Maniapoto', 1982, p 81
8. Alan Ward, *A Show of Justice: Racial 'Amalgamation' in Nineteenth Century New Zealand*, University of Toronto Press, Toronto, 1974, pp 296–297
9. Donald M Loveridge, 'Maori Land Councils and Maori Land Boards', p 8

chose not to. Indeed, very little land was ever entrusted to block committees in the intervening two years between the Act's passage and its repeal in 1888.[10]

In the opinion of Alan Ward, the motives behind the Act were placed even further in doubt by the involvement and support in its passing of men like Rees and Wi Pere, whose involvement with Maori land using similar schemes was proving, at that moment, rather detrimental to Maori of the East Coast. Wi Pere's personal accumulation of political influence and land through his involvement with the New Zealand Settlement Company made him the subject of added suspicion by many Maori. Interestingly, James Carroll vigorously opposed the Act's passing, representing these fears on the part of Maori, especially those on the East Coast.[11] The repeal of the Native Lands Administration Act 1886 by the Native Lands Act 1888, following persistent lobbying, restored the system of private purchase and direct dealing by settlers.

7.2.2 Pressure from Maori political movements

During 1890 and 1891, meetings were held in several districts including Waiomatatini on the East Coast, at which Maori leaders attempted to form some type of unified political movement for Maori self-government. A separate Maori Parliament was proposed in a petition to the Queen in 1891, but there was no success in attaining official recognition for such a scheme. During 1892 it was decided at intertribal meetings that a Maori Representative Council would be founded without the permission of the Government.[12] Maori leaders from around the North Island agreed to form a kotahitanga, or union which would present tribal and intertribal grievances to the Government and protect Maori rights under the Treaty. They established a Maori parliament with electoral districts based on tribal boundaries. The first session of the parliament was held at Waipatu, near Hastings in June 1892. From 1893 to 1902, the parliament met annually at various places around the North Island, including Pakirikiri, near Gisborne. The final meeting was held at Waiomatatini on the East Coast.[13] The Government resisted allowing the group any official status or powers though, and the Maori parliament's Federated Maori Assembly Empowering Bill 1893, which sought to allow them the power to form a Maori Assembly which would appoint committees of local government for Maori districts, received no attention in the House.[14]

From 1894, the year that Crown pre-emption was reintroduced, the degree of political pressure from Maori protest movements increased, many prominent Maori leaders becoming involved in the widespread Maori reaction against land sales and the Government's outwardly paternalistic monopoly, in a bid for greater Maori control over their own affairs. Maori leaders from the East Coast were prominent in the Kotahitanga movement. Former repudiationist and member for Eastern Maori,

10. Ward, *A Show of Justice*, p 297; Loveridge, pp 9–10
11. Ward, *A Show of Justice*, p 297; 'Wiremu Pere, 1837–1915', *Dictionary of New Zealand Biography, Volume One 1769–1869*, Allen & Unwin–Department of Internal Affairs, Wellington, 1990, p 381
12. J A Williams, pp 51–52
13. Ibid, pp 54–55
14. Ibid, p 55

Henare Tomoana, represented the Hawke's Bay region, and Wi Pere, Eastern Maori member after 1894, represented Poverty Bay. As J A Williams has commented, many of the most important leaders of the movement came from districts which had been settled for a generation or more. Local Maori committees on the East Coast were represented by Mohi Te Atahikoia from Hawke's Bay, Pene Te Uamairangi, and Raniera Turoa, chairman of the local Maori committee in Gisborne.[15]

Not all East Coast Maori were supportive though. Apirana Ngata referred to the Maori parliament as 'crude and ridiculous', and advocated instead a concentration on the improvement of Maori education and agriculture, views which would be developed by the Young Maori Party. Not surprisingly, European attitudes to the Kotahitanga movement did not tend to be favourable, and the Maori parliament's proposals were often openly ridiculed.[16] Politicians such as Cadman, Ward, Carroll, and Seddon, attended the Maori parliament and in an attempt perhaps to placate the members, asked them to suggest ways of solving the Maori land question. Seddon told them that they should not call their meetings a parliament as they were only runanga and reminded them that there was only one Parliament, which was not likely to abandon control of Maori or their lands to a body of chiefs.[17]

In 1895 the Maori parliament worked out a manifesto which presented their opposition to the present system of Maori land laws to the Government. A 'warning to tribes' was issued by Maori members of parliament Wi Pere, Hone Heke, and Ropata Te Ao. The manifesto effectively told Maori to boycott the Native Land Court, stating that they should:

> Cease to sell or lease the land. Neither pass it through the Court, subdivide, nor define individual shares from the commencement of the present. If you will be brave and patient for one year then at last you will reap some reward, inasmuch as the bad laws enacted by the present Government for the native people will fail.[18]

The boycott, temporarily effective in most North Island districts including the East Coast, initially halted the work of the land court. The King movement also joined in this action, proving that Maori dislike of the Native Land Court and concern at excessive land loss was a unifying political force. Nevertheless, Maori who had already had their land pass through the court continued to sign transactions with the government for their lands. In June 1895 the Governor assured Parliament that 'the acquisition by the State of Native Land [was] in no danger of being arrested'.[19] As a concession to private purchasers, the Government amended the Native Land Act in 1895 to provide for the waiver of pre-emption in individual cases by order in council. After three years of Crown purchasing under pre-emption and the continuation of private dealings as well, the Kotahitanga movement had come to see the abolition of all Maori land purchase as the only way of saving the remaining lands. They stated this in a petition to the queen in 1897, in which they said that they had given up 60 million acres of land and now wanted to retain the

15. Ibid, pp 57–58
16. Ibid, pp 64–65
17. Ibid, p 66
18. *New Zealand Herald*, 6 February 1895, cited in J A Williams, p 72
19. NZPD, LXXXVII, 20 June 1895, p 2; J1 895/435, cited in J A Williams, p 73

remainder for their own use. Although they were willing to lease surplus lands, they asked for the right to reserve their surviving lands forever, prohibiting sale to either the Crown or private individuals, so that there would be sufficient land for Maori to farm in the future.[20]

The Kotahitanga movement had hoped to gain official sanction of their parliament as well as a system of tribal and district committees. By the late 1890s, as it seemed unlikely that the separate parliament would be recognised, Maori leaders began to look towards the proposed committees as a more acceptable means of gaining some type of Maori autonomy. The committees proposal also had a greater degree of support from Europeans in the Government and in the community at large. Carroll attempted to persuade Premier Seddon to implement the proposals of the 1891 Native Land Laws Commission with respect to committees. The ideas of the Young Maori Party on the institution of some type of Maori health reform programme provided a more acceptable justification for the creation of committees, and eventually Carroll, aided by the pressure of other Maori Members of Parliament, the Kotahitanga movement, and Ngata's Young Maori Party, managed to bring about a change in Government policy that resulted in the 1900 legislation.[21] How much this change was determined by the developing paternalism towards Maori in the political climate, resulting from the availability of land after some years of Crown purchase, is a question open to debate.

7.2.3 The legislation

The political negotiations that led to the passing of the legislation went on from 1897 to 1900. Seddon introduced the Maori Land Administration Bill in 1899, which gained the immediate approval of Maori members of Parliament, basically because it encouraged Maori to lease rather than sell their remaining land. Opposition to the Bill came from those politicians who advocated 'free-trade' in Maori land and its further individualisation and sale to Europeans.[22] The free-traders found nothing so abhorrent as the idea of 'Maori landlordism' and consequently they disliked the concentration on leasing contained in the legislation. The preamble to the Maori Land Administration Act 1900 stated Carroll's hopes that through this Act:

> the residue (about five million acres) of the Maori land now remaining in possession of the Maori owners should be reserved for their use and benefit in such wise as to protect them from the risk of being left landless . . . [while] in the interests both of the Maoris and Europeans of the colony . . . provision should be made for the better settlement and utilisation of large areas of Maori land at present lying unoccupied and unproductive . . . [23]

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20. 'Native Affairs Committee Report on the Native Lands Settlement and Administration Bill', AJHR, 1898, I-3a, p 113
21. G V Butterworth, 'Maori Land Legislation: The Work of Carroll and Ngata', *New Zealand Law Journal*, no 242, August 1985, p 244
22. Martin, pp 70–72
23. Maori Lands Administration Act 1900, preamble

The Maori Land Administration Act 1900 provided for the establishment of six Maori land councils in the North Island which could ascertain ownership of lands, arrange partitions and successions, and appoint trustees, orders for which would be issued by the chief judge of the Native Land Court, providing there was no appeal made within two months. Papatupu block committees would make investigation into the ownership and boundaries of blocks, 'having due regard to Maori customs and usages'. The Act imposed restrictions on the lease and sale of land, owners having to prove that they had sufficient land left for their maintenance and support. Papakainga certificates would be issued for reserves for occupation and use, and these lands would be made inalienable. The vesting of lands in the land councils was to be voluntary, and the council could administer any land held by ten or more Maori owners on application of those owners. The Crown was permitted to complete any purchases already in the process of negotiation before pre-emption was abolished. [24]

The other piece of legislation passed at this time was the Maori Councils Act 1900, the preamble stating that the Act was intended for:

> the establishment of some simple machinery of local self-government, by means of which such Maori inhabitants may be enabled to frame for themselves such rules and regulations on matters of local government or relating to their social economy as may appear best adapted to their own special wants . . . [25]

The Act intended that councils consisting of one official and six to twelve elected Maori members would be responsible for ascertaining and providing for the local observance of rights, duties and liabilities of Maori tribes, communities, and individuals in relation to all social and domestic matters. They were also responsible for the suppression of 'injurious Maori customs', the promotion of education, and the promotion of the health and welfare of the Maori inhabitants of their district. They were instructed to compile statistics on the health of Maori in the district, the movement of the population, the extent of land cultivated, and the causes of any disease among the population, amongst other things. They could make by-laws concerning the health of the inhabitants of pa and villages, the enforced cleaning of houses, the prevention of drunkenness, and the regulation of the proceedings of tohunga, as well as the protection of eel weirs, oyster beds, and fishing grounds. The protection and control of burial grounds and recreation grounds was also under the councils' control. The councils were to operate as boards of health and had the power to carry out sanitary works and make and enforce sanitary rules. They could also strike rates and enforce fines.[26] The boundaries of the 19 Maori council districts corresponded quite closely with tribal areas so the councils tended to be formed along tribal lines.

This Maori Councils legislation was as much a failure as previous committee legislation had been, as it did not provide Maori with any real power. The councils soon became little more than health inspecting bodies. Maori quickly lost faith in

24. Maori Land Administration Act 1900
25. Maori Councils Act 1900, preamble
26. Maori Councils Act 1900

them on a political level, and they began to disintegrate after 1904 through lack of interest and lack of resources. Evidence from the Poverty Bay area shows that some progress was made in the area of sanitation and improved conditions in pa and villages, but the plans of the Kotahitanga movement were hardly served by the institution of the councils, and as the Maori parliament had been disbanded when it seemed that effective local government would be given to Maori, there was little reaction to the demise of the legislation.

7.3 MAORI POPULATION AND SOCIO–ECONOMIC STATUS

By the end of the nineteenth century the Poverty Bay district had become predominantly European. In Cook County, Europeans now outnumbered Maori at the proportion of four to one. Further north in Waiapu county the proportion was one European to five Maori. This indicates how much land was in European ownership in Poverty Bay as compared with the northern East Coast. Perhaps more simply, it also reflects the fact that the main township on the coast was that of Gisborne, still the principal point of arrival and departure by sea, and the hub of local business, trade, politics and society. The European population tended, therefore, to cluster around it. Maori were still numerous though, living on their small amounts of remaining land and in villages which were usually situated on reserved land. Oliver and Thomson have pointed out that there was still a considerable social distance between the two populations at this time, with Maori and Pakeha meeting as claimant and counter-claimant in the land courts, as employee and employer on the sheep stations, as landlord and tenant on leased land, and in other similar types of socially structured relationships.[27]

In the census return for 1891, Mr Booth, the Resident Magistrate at Gisborne recorded that there were 1328 Maori in Cook County (figures which included Wairoa) and 2313 in Waiapu. He stated that Maori could generally get work in the winter months bush-felling and clearing, and in summer were occupied in shearing and preparing grass seed. He commented that many Maori owned sheep and were comfortably well off.[28] The annual sheep returns published in the same year show that the total number of sheep owned in the county of Cook was 642,890, an increase of 36,250 from 1890. Out of the 270 owners of sheep in the county though, 119 owned only 500 sheep or less and only three farmers owned flocks of over 20,000. Of the sheep owners listed, 81 Maori names appear although many of these were from the areas north of Gisborne. A number of Maori were running small individual flocks of sheep at Tiniroto, Tolaga Bay, Awanui, and Muriwai. James Carroll, for example, had 1700 sheep on his property at Matokitoki, Gisborne, while Eparaima Hoera and Tamati Kouri had 700 on their Whareongaonga land. The Settlement Company was at that time running 14,400 sheep on the Wainui and Kaiti blocks. Wi Pere and Peka Kerekere were reasonably big sheep farmers, running 15,854 sheep on land near Gisborne and 2000 on Poututu. Wi Pere also had

27. Oliver and Thomson, p 163
28. 'Reports from Officers in Native Districts', AJHR, 1891, G-5

1600 sheep at Rakaikiteroa.[29] In the five years since the previous census of 1886, the Maori-owned sheep numbers for the county had more than doubled, to almost 50,000, while the numbers of Maori-owned cattle and pigs had decreased. The acreage of communally-cultivated land in Cook County, which had been 1700 in 1886, fell to one-third of this, while land in individual cultivation rose from 500 to 6300 acres,[30] indicating the growth of farming on small subdivided sections of Maori land as the land court process continued to further fragment Maori land ownership.

According to the 1896 census there were 5734 Europeans in the Cook and Waiapu counties, less than 500 of them in the latter. Nearly half of this number, 2334, lived in the borough of Gisborne itself. There were 1402 Maori living in Cook County, and in Waiapu, 2393.[31] The census figures for 1901 show a rise in population with 1803 Maori in Cook County, and 2474 in Waiapu. In Cook County at this time Maori owned 18,090 sheep, 491 cattle, and 1084 pigs. In individual cultivation were 501 acres: 351 acres of maize; 78 acres of potatoes; and 72 acres in other crops. In communal cultivation were a mere 347 acres: 204 acres of potatoes; five acres of wheat; and 138 acres in other crops.[32] The returning officer, John Brooking, stated that Maori numbers in the East Coast district were on the increase and that their general health was good. Excessive drinking had declined and the only noticeable occurrence had been in the towns at the recent election of Maori councils. In cases where the breeding of sheep was carried on by hapu he believed it worked well, but in some cases where individuals ran sheep on hapu owned land and retained the profits, there was considerable dissatisfaction. He had observed that young Maori men in Waiapu county earned considerable sums of money from seasonal work, such as bush felling, but that as their employment did not run through the entire year they spent part of it completely reliant on the financial support of their elders.[33]

In 1906, there were 1759 Maori recorded as living in Cook County, a small but probably insignificant drop from the 1901 figure, while the Waiapu figure had risen to 2611. An area of 7715 acres was cultivated individually; 6714 of this in sown grasses. Only 229 acres was cultivated communally by this time, in potatoes and other crops for subsistence purposes. Maori owned 15,385 sheep, 794 head of cattle, and 845 pigs.[34] The sub-enumerator for the Poverty Bay district, Mr A R Wyllie, did not give any explanation of the drop in the figures for sheep ownership and cultivation from 1901. He recorded that where Maori had lived primarily in raupo huts prior to 1901, such were now scarcely to be seen, and wooden houses were prevalent in most Maori villages. Most meeting houses had been raised on blocks and given floors and extra windows. Maori children in the district regularly attended school, and the men worked on the local sheep stations as shearers and wagon drivers, or were employed in bush-felling and road-making.

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29. ‘The Annual Sheep Returns’, AJHR, 1891, H-15
30. Oliver and Thomson, pp 175–176
31. Ibid, p 147
32. ‘Census of New Zealand, The Maori Population ‘, AJHR, 1901, H-26b, p 21
33. AJHR, 1901, H-26b, pp 12-13
34. ‘Census 1906, Papers Relating to the Maori Population’, AJHR, 1906, H-26a, p 31

The potato crops had failed in 1906 due to an attack of blight, and it was unknown whether Maori would see the year out with the small amount they managed to save. A R Wyllie commented that although Maori villages did not need the same systems of sanitation as European townships, especially as they were mostly situated close to the sea or on the banks of rivers and streams, they did have a problem with water supply, but lately the Maori council had begun to reserve certain portions of streams for the purpose of obtaining unpolluted water for household use. The general health of Maori in the district had improved with the advent of the Maori councils, Mr Wyllie observed, and he believed that the birth rate had also risen.[35]

By 1911, the county of Waikohu had been severed from that of Cook, resulting in a slightly altered census return. Nevertheless, the two counties taken together showed an increase of 177 in the Maori population. There was an increase also in acreages of Maori land in cultivation with 58 acres more of potatoes, 74 acres of maize, and 11,238 more acres of sown grasses.[36] In Cook County alone the total Maori population was 1424, and the area in cultivation by individuals was 26,502 acres; 25,702 acres of this in grasses, showing a marked increase from the previous census return, indicating that Maori were quick to ascertain what were the latest cash crops and to adapt their cultivation practices to suit. In addition, the return to the type of economic initiative shown by Poverty Bay Maori in the 1850s might be indicated here, as the years of intense land court activity and intensive land sale which had previously engaged all their attention were at an end. The number of sheep owned by individuals was given as 47,984, horses as 1771, cattle and dairy cows as 2515, and pigs as 695.[37]

The population over the period surveyed appears to have been relatively stable, increasing in small amounts every year. In *Challenge and Response,*Oliver and Thomson point out that food shortages were often linked to floods, droughts, and other natural disasters,[38] but during the years under review sheep running and subsistence farming steadily increased, indicating that the Maori economy was slowly improving again after forty or fifty years of social confusion and economic difficulty created by the East Coast wars, the confiscations, the land court, and large scale purchase of land. It could be said though that the figures are slightly misleading, as Stout and Ngata reported in 1907 that Poverty Bay Maori did not seem to take to farming on the same scale as Maori further north. The commission referred to Maori in the Cook County as being depressed by the loss of nearly 400,000 acres of land. They believed Maori in the district to be ‘dispirited and lacking in initiative’ as a consequence of this land loss.[39]

The settler population of the East Coast had doubled between 1891 and 1906, and it was to increase again from 6000 to 25,000 in the 30 years between 1906 and 1921. Gisborne itself doubled its population between 1901 and 1906. There was an accompanying push for the opening up of more Maori land in the region, and calls

35. AJHR, 1906, H-26a, pp 14–15
36. ‘Census of the Maori Population’, AJHR, 1911, H-14a, pp 10–11
37. AJHR, 1911, H-14a, p 20
38. Oliver and Thomson, p 170
39. ‘Native Land and Native Land Tenure: Interim Report of Native Land Commission on Native Land in the Counties of Cook, Waiapu, Wairoa, and Opotiki’, AJHR, 1908, G-iii, p 6

for the compulsory taking of Maori land under the Lands for Settlements Acts to be sold to new settlers.[40] It should not be assumed from the census figures that all Maori in Gisborne were comfortably off and farming their own land while subsidising their income with seasonal labour. This was far from being true it seems, as many Maori men were by the turn of the century wholly dependent on performing waged labour for station owners to support themselves and their families.[41] In 1926, in the first census to record separate figures for urban Maori, there were reported to be 359 Maori living in the township of Gisborne. Oliver and Thomson state that this process of urbanisation continued to accelerate as the decades passed, many Maori migrating out of the region to other larger urban centres as the shortage of land and opportunities intensified.[42]

7.4 FURTHER LAND SUBDIVISION AND SALE

To understand the significance of the growth in individual cultivation and the corresponding decrease of communal cultivation shown in the census data provided in the previous section, it is important to see the correlation between these trends and the fragmentation of Maori land in Poverty Bay into small individual holdings. As discussed in chapter , the Native Land Court was integral to the continuation of this process of further individualisation of tenure and it continued to be active in this area in the post-1900 period. Its activities were mostly of a similar type to those outlined in chapter six. Most subdivisions in this later period were further to partitions that had already been carried out in the later years of the nineteenth century. Up until the 1930s, the process involved the division of blocks into very small pieces, many being alienated by sale. Later, these small individual holdings, often less than ten acres a piece, were consolidated under the Manutuke or Waiapu consolidation schemes, and the owners incorporated.

The Poroporo block file gives a good example of the manner in which land was further fragmented and sold off. At subdivision in 1915 it was decreed that owners listed as one to 201 on the original grant were entitled to shares in Poroporo 1, of 1050 acres. Owners listed one to 190 had shares in No 2 block, an area of 3850 acres. There were also 57 owners listed for No 3 block (300 acres); 872 owners of No 4 (846 acres); 294 owners in No 5 block (840 acres); 664 owners of No 6 (3707 acres); and 190 owners of the 4900 acres in Poroporo 7. The Crown laid a claim for £109 for the survey of the original block, liable to five years worth of interest at five per cent. This meant that a total of £137 was owed, the lien to be apportioned over blocks 1 to 6. An area of 17 acres of Poroporo No 2 was taken under the Public Works Act 1908 for a road, and £75 of compensation was to be distributed by the Tairawhiti Maori Land Board to the beneficial owners. Poroporo blocks A1 to A15, B1, and No 4 block were consolidated in 1931 under the Waiapu Consolidation Scheme. An injunction order was taken out on Poroporo blocks 2

40. Ibid, pp 180–183
41. Ibid, pp 189–190
42. Ibid, p 190

to 6 in 1923 to prevent owners from removing any timber on the land until the consolidation schemes were completed and Crown and Maori interests had been defined. The Crown acquired blocks 3 to 6 under the scheme. Poroporo blocks 1a and 1b became European land through sale in 1969, as did other smaller subdivisions.[43]

In the case of the Tarewa lands, first partitioned in 1894, Tarewa 1, a block of about six acres, was sold to the Crown in 1896. Tarewa 2, of a similar acreage, passed to the Crown in 1910. Tarewa 3 block was subdivided in the Maori Land Court in 1907. An area of eight acres was sold to the Government for experimental farming in 1941, and the Crown received No 3a in a land exchange in 1951. Eventually only 19 acres were left to the remaining Maori owners in small lots, and this land was subject to consolidation.[44]

The small Pakirikiri block of 30 acres was divided by the Native Land Court in 1924 as part of the Manutuke Consolidation scheme, and blocks 2 and 3 became European land.[45] A subdivision of the Arai Matawai (Waimata reserve) block subject to consolidation resulted in Arai Matawai A (16 acres) and B (955 acres). [46] The Waihora 1 block was subdivided in 1886, resulting in Waihora blocks A to E. Waihora blocks B and D were sold to Europeans, while blocks A, C, and E were incorporated in 1903 and 1904. Waihora 2 was divided into 2a to 2c2. Blocks 2c1b and 2c2 became Crown land by proclamations of 1926 and 1922 respectively. Block 2a, 2b1a, and 2b2c were sold to individual purchasers.[47]

The Pakarae block was partitioned in 1889 and subdivided sections were made inalienable. Pakarae block 1d was later deemed European land by decree of the Validation Court in 1896, going to the Bank of New South Wales by order of that court. Block 1b was sold, and blocks 1a and 1c were incorporated in 1915. Block 2a was sold after restrictions were removed in 1899, and block 2B (333 acres) was granted as inalienable to 32 owners. It was further subdivided in 1915; 2b1 going to the Crown and 2b2 being incorporated. Block 2e was sold, and block 2c of 162 acres was awarded to the incorporated owners as inalienable Maori land.[48] The Papakorokoro block file contains a distressing list of subdivisions and alienations by lease or sale to Europeans that stretches from its original granting under restrictions in 1883, through its first subdivision in 1896, into the early decades of the twentieth century.[49]

These four examples should be sufficient to demonstrate the manner in which small blocks of Maori land were further fragmented and sold into European ownership in the twentieth century. The individualisation of tenure, and the Native Land Court process, once begun was difficult to halt until it had resulted in the complete disintegration of the tribal estate and its almost total loss. The block files held at the Gisborne Maori Land Court tell a depressing story of continuous sale,

43. Poroporo block file (790a), MLC Gisborne
44. Tarewa block file, MLC Gisborne
45. Pakirikiri block file, MLC Gisborne
46. Arai–Matawai block file, 46c, MLC Gisborne
47. Waihora block file, MLC Gisborne
48. Pakarae block file, MLC Gisborne
49. Papakorokoro block file, MLC Gisborne

applications for succession to sections of land as small as one or two acres out of original blocks of hundreds of acres, and applications for succession to lands which had long since been sold. There are also many examples of public works takings of the small remaining Maori sections of blocks, where although compensation was paid, very little land was left to Maori owners. The issue of public works takings will be discussed briefly at section 7.8 of this chapter. It is evident from the small amount of research done for this section that further research is required into the impact of the Consolidation schemes of the 1920s and 1930s on the Poverty Bay region. Through these schemes more land seems to have passed to the Crown in an area where the Maori land estate was already vastly diminished.

7.5 THE TAIRAWHITI MAORI LAND BOARD

The Tairawhiti Maori Land Council was one of those set up under the Maori Land Administration Act 1900 (discussed at section 7.2.3). The land councils were intended to be self-supporting bodies, and were reliant on the collection of fees for the performance of the various administrative tasks they had taken over from the Native Land Court, as well as the revenue generated by the leasing of lands vested in them. There were no substantial amounts of land vested in them during the first years of their operation though, and consequently they had minimal resources with which to continue their operations. By early 1903, the total income of all the land councils was only £253, and this had risen only to £768 by October of 1905.[50] In their general report of 1907, royal commissioners Stout and Ngata asserted that the 1900 Act had been doomed to failure because Maori were unwilling to put their lands under the control of the land councils. The reasons for this had been, firstly that Maori did not wish to be deprived of their authority in the management of their estate, and secondly:

> Experience had not convinced them of the stability of legislative enactments, and they suspected that the new policy was only another attempt to sweep into the maw of the State large areas of their rapidly dwindling ancestral lands'.[51]

Additionally, according to the Stout–Ngata commission many Maori still felt that they were more likely to get the full value of their land through private dealing rather than by vesting their land in a body such as a land council.[52] Considering the previous experiences of some East Coast Maori, who had vested their lands in a corporate body to arrange leases or sales on their behalf with disastrous results, it is not so surprising that many should have been loath to vest lands in the Tairawhiti Maori Land Council, at least until it had proven that it was capable of administering the lands without causing any loss or indebtedness to the owners.

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50. 'Expenses in Connection with the Administration of Native Lands under the Maori Lands Administration Acts', AJHR, 1903, G-8, p 2; AJHR, 1905, G-8
51. 'Native Lands and Native Land Tenure: General Report on Lands Already Dealt With and Covered by Interim Reports', AJHR, 1907, G-1c, p 6
52. Ibid

Nevertheless, there was a gradual increase in the lands vested in these bodies in 1904 and 1905. In 1904 some 76,493 acres were vested in the councils, 1122 acres of this in Tairawhiti. In 1905 the total area under their control increased again, with another 61,494 acres being vested, 700 acres on the East Coast.[53] If there was little enthusiasm for the scheme shown by Poverty Bay Maori, there was a somewhat different attitude on the part of settlers who clearly hoped that the land councils would open more land in the area for settlement. This attitude was demonstrated by the publication of two or three editorials in the *Gisborne Herald* during February 1903 which called for a local Poverty Bay land board. The general tenor of these calls are indicated by the fact that only the month before, the editor had urged the Government to make the East Coast Trust lands immediately available for settlement.[54]

Under the Maori Land Settlement Act 1905, the land councils were converted to land boards, and the previous inclusion of elected Maori members was discontinued. Under this Act the compulsory vesting of Maori land in boards was introduced. Unoccupied and unused lands were to be compulsorily vested in the boards, which would have the power to administer the lands, reserving any portion for the Maori owners they might consider necessary. The rest of the land was to be surveyed and subdivided into allotments and then leased for terms of not more than fifty years.[55] This new compulsion was to be used as a method of having 'waste lands' vested in the boards and opened to European settlement. Any surplus land which was regarded by the Native Minister as 'not required or not suitable for occupation by the Maori owners' could be compulsorily vested in the Maori Land Board.[56] Native Minister Carroll had wanted the whole of the North Island to be covered by this section of the Act, but there was opposition to this proposal in the House and from members of the Native Affairs Committee. W H Herries, for instance felt that compulsory vesting was:

> not fair to the Maoris, and . . . [was] a gross violation of the Treaty of Waitangi, because it practically confiscates their lands; it takes the land away for fifty years . . . [and] practically, it means that they part with their land forever.[57]

In order to have the compulsory vesting of land tested it was instituted in two districts only, these being Tokerau and Tairawhiti.[58] These districts were to be exempt from the fresh purchases of Maori lands by the Crown, which the government was authorised to resume in the other five Maori land districts, until 1908.[59] A total of 85,185 acres was compulsorily vested in the Tairawhiti Maori Land Board under section 8 of the 1905 Act between 1906 and 1909, the greater

53. Loveridge, p 37
54. *Gisborne Herald*, 4, 18, and 21 February 1903; 12 January 1903, Gisborne Library
55. Maori Land Settlement Act 1905, s 8; B R Gilmore, 'Maori Land Policy and Administration during the Liberal Period, 1900–1912', MA thesis, University of Auckland, Auckland, 1969, pp 35–36
56. Maori Land Settlement Act 1905, s 8; Loveridge, p 44
57. NZPD, 1905, vol 135, pp 707–708
58. Maori Land Settlement Act 1905, schedule
59. Maori Land Settlement Act 1905, ss 20–25. All Government purchases between 1900 and 1905 had been in negotiation since 1899. Loveridge, p 45

percentage of this in the years 1906 and 1907.[60] This amounted to 87.1 per cent of the total amount of land vested in the Maori land boards as a whole during this same period.[61]

The 1905 legislation was a good example of the manner in which the Liberal Government's Maori land policy wavered between paternalistic principles of the type contained in the preamble to the Maori Lands Administration Act 1900, which stated that the remaining five million acres of Maori land should be reserved for the use and benefit of Maori owners, and the policy aimed at the opening up of large estates to small farmers. The 1905 Act sought to appease both sides, by providing land for lease to settlers while it remained in the ownership of Maori, vested in the land boards.[62] This was Carroll's 'taihoa' policy at work, a policy that between 1900 and 1907 saw various pieces of Maori land legislation passed in a continuing effort to stave off the further ill-effects on Maori of full-scale purchase under free-trade conditions or Crown pre-emption.

In reviewing the work of the Tairawhiti Maori Land Council up to May 1906, its president, Colonel T W Porter, reported that East Coast Maori had not worked as well with the council as had been expected or intended under the 1900 legislation. He remarked that they had used the body as an agent in private dealings, or to get titles to papatupu land without having to pay the usual court fees. No land had been vested in the land council for its administration, nor had any been publicly let by it during its term of office. No papakainga certificates had been issued.[63] The Tairawhiti Maori Land Council had clearly not been much involved in the administration of Maori land on the East Coast, but had simply carried out those functions which used to be handled by the land court.[64]

By 1907, though, even the departure from voluntary vesting contained in the 1905 Act was not sufficient to allow enough Maori land onto the market to satisfy public demand, and calls were being made for the confiscation of large areas of Maori land under the Land For Settlement Act 1894, which had provided for the compulsory acquisition and breaking up of the great European estates.[65] Oliver and Thomson believe that such sentiments expressed by Europeans in the Gisborne area at this time were to create lasting tensions between Maori and Pakeha living on the Coast.[66] The Government was forced to bow to pressure and in 1907 the Stout–Ngata commission was set up to investigate what lands remained to Maori, and which of these were not being occupied and profitably utilised. Once this inventory was compiled the commission was to recommend lands which could be thrown open to European settlement. The Stout–Ngata commission and its findings with respect to the wider Poverty Bay region (Cook County) will be discussed in detail in section 7.6. Before the commission had completed its task, however, the Native

60. Loveridge, pp 45–46
61. Loveridge, p 47
62. Gilmore, pp 40–41
63. Porter's report on the Tairawhiti Maori Land Council, 31 May 1906, MA 19/13 [NA, Wgtn], cited Gilmore, p 96
64. Gilmore, pp 96–97
65. P Webster, 'When the King Comes to Gisborne – A Maori Millennium in 1906', *Journal of the Whakatane and District Historical Society*, 1967, p 49
66. Oliver and Thomson, p215

Land Settlement Act 1907 was passed on the basis of information supplied by the commission in its interim report of that year. By virtue of this Act, half of the Maori land vested in the boards was now to be sold and half leased.[67] The East Coast Trust lands were exempted from the provisions of the Act.[68] As Gilmore has commented, the 1907 Act saw 'taihoa' recede in political importance as more attention was paid to settler demands for the freehold of Maori land. In restricting the term of leasehold to fifty years the future Maori farming of their own land was envisaged, but no efforts were made to help Maori develop and farm their own lands at this time.[69]

Cook County lands vested in the Tairawhiti Maori Land Board. Source: *Appendices to the Journals of the House of Representatives*, 1908

Block	Owners	Area	Status
Hangaroa–Matawai	5	504	leased for 21 years
Waimata East 2	78	205	leased for 21 years
Waimata South 2	58	298	leased for 21 years
Kaiaua 2a	14	285	leased for 21 years
Kaiaua 2b	17	224	leased for 21 years
Kaiaua 2c	16	191	leased for 21 years
Hauomatuku 2a, 2b, 8a, 9b, and 9c	49	320	leased five years for timber
Kumukumu	25	55	leased five years for timber
Rangatira 3a, No 1	7	83	leased five years for timber
Tapuihikitia C (part)	44	285	leased five years for timber
Total		2325	

Most of the land vested in the Tairawhiti Maori Land Board was in Waiapu county, as there was very little land in Cook County that could be said to be 'lying idle'.[70] Indeed, the Stout–Ngata report stated that out of a total of 53,221 acres vested in the Tairawhiti Maori Land Board by 1908, only 2325 acres was in the Cook County.[71] Many private leases of lands in Poverty Bay, amounting to 29,433 acres, were approved by the board though, and these are presented in the table at schedule six in the Stout–Ngata report on Cook County.[72] The activities of the land board were, therefore, still of some importance in the continuing alienation of Maori land in the district. Nevertheless, the remaining land in Poverty Bay that was still owned by

67. Native Land Settlement Act 1907, s 11
68. Ibid, s 3
69. Gilmore, p 69
70. *Poverty Bay Herald*, 13 July 1906
71. AJHR, 1908, G-iii, p 4
72. Ibid, p 13

Maori in large and unimproved blocks was already vested in the East Coast Trust Lands Board during the years in which land was to be compulsorily vested in the Tairawhiti Maori Land Board, and this body will be discussed in section 7.6. The sale of 17,491 acres of land by the Tairawhiti Maori Land Board occurred between 1911 and 1914. The remainder of the period up until 1926, in which the land board continued to operate, was mainly spent in administering the lands still vested in the board and leased through it.

7.6 THE STOUT–NGATA COMMISSION

The situation with respect to Maori land in Poverty Bay at this time was highlighted by the investigations and report of the Stout–Ngata Commission during 1907. In 1904, Premier Seddon had stated that before any comprehensive system for the administration of Maori land could be developed, a stock-taking of all Maori lands would need to be undertaken. After this, the Government could open up 'every acre not required by the Maoris for their occupation and support'.[73] Native Minister James Carroll set up a royal commission to inquire into 'Native Lands and Native Land Tenure' and set aside a sufficiency of Maori land for their maintenance and support, while throwing open for European settlement the balance of the land not occupied or used by the Maori owners. The commission, appointed in January 1907, consisted of Sir Robert Stout, chief justice of New Zealand since 1899, and Apirana Ngata, the member for Eastern Maori. Stout had been a supporter of Ballance's reforms in the 1880s. The appointment of Ngata, described by Gilmore as a 'stalwart opponent of individualization of Maori land and a firm believer in giving the Maori people the maximum opportunities to enable them to work their own lands' would be likely to play down the negative effects of the Government's proposals for the temporary alienation of their lands when presenting these ultimata to Maori owners.[74]

The instructions to the commission referred to large areas of Maori lands, some unoccupied and others 'partially and unprofitably occupied', and it was said that it would be of benefit to both Maori and European if provision were made for these lands to be profitably occupied, cultivated, and improved. The commission was instructed to report on the best methods for making this possible.[75] They were to ascertain what areas of Maori land were unoccupied or unprofitably occupied, the nature of the owners' title and the interests affecting the title, and following this, how such lands could be utilized and settled 'in the interests of the native owners and the public good'. They were to report on: which areas should be set apart for the Maori owners' individual occupation, or as communal lands for the tribe; how much would be required for future occupation by descendants or successors of the owners; and which parts were available for immediate settlement by Europeans, with adequate safeguards for the prevention of 'subsequent aggregation of such

73. 'Financial Statement by the Colonial Treasurer, the Right Hon RJ Seddon', AJHR, 1904, B-6, p 245
74. Gilmore, pp 49-50
75. AJHR, 1907, G-1, pi

areas in European hands'. They were also asked to report on how the existing institutions and systems for dealing with Maori land could be adapted for the purposes listed above.[76] The Department of Lands compiled a detailed list of Maori lands in the North Island which covered 956 blocks and 4,975,444 acres and gave such information as the name, value per acre, and present utilisation of the blocks. Approximately one half of the lands on the list were already leased, or under negotiation for lease, and the commission eventually enquired about and made recommendations on 2,040,878 acres .[77]

The commission stated that they had no doubt that the legislation of 1894 to 1900 had:

> by tying the hands of the Crown in the further acquisition of Native lands, by restricting the leasing of those lands and by substituting a system depending for its success on the willingness of the Native owners to vest areas in the administrative bodies constituted, created a deadlock and a block in the settlement of the unoccupied lands. On the other hand, the vigorous settlement of Crown lands under the Land Act and the Lands for Settlements Acts exhausted the available supply of lands suitable for close settlement. The agitation of 1904 and 1905 forced the Crown once more into the field to resume its purchases, forced Parliament to sanction the compulsory vesting of lands in the Maori Land Boards, and reopened the free leasing of Native Lands.[78]

While the commission was still sitting, the Government passed the Native Land Settlement Act 1907, containing a clause which proposed that half of all land vested in the land boards be subdivided and sold, rather than leased. If the commission was to suggest that large areas of unoccupied Maori land be vested in the boards by virtue of its being unoccupied or unprofitable, half of that land would now be liable for sale. The compulsory nature of such vestings resulting from the commission's inquiries now became potentially confiscatory. Stout and Ngata commented on the offending section of the Act, saying that they were,

> of the opinion that the full effect of this provision was not clearly seen by the Legislature, else we feel sure it would not have been enacted into law, and we have no doubt that now we have pointed out the position the Government and the Legislature will both consent to an alteration of the existing law . . . [79]

Indeed, as the commissioners noted themselves, the provision was discriminatory and amounted to a confiscation of Maori lands. Don Loveridge maintains that Stout and Ngata indulged in a 'polite fiction' in stating that they were sure the Government was unaware of the effect of the provision, as it was evident that the Government had bowed to political pressure in the passing of this piece of legislation.[80] The provision remained in force though and it is therefore slightly unclear why Maori should have chosen to cooperate with the commission in

76. AJHR, 1907, G-1c, p 1
77. Loveridge, p 52
78. AJHR, 1907, G-1c, p 7
79. AJHR, 1908 G-1f, pp 1–2
80. Loveridge, p 74

providing information which would have led to the permanent alienation of part of their 'unused' lands. It has been contended that Maori viewed cooperation with the commission as the lesser of two evils. In cooperating they could ensure that at least some of their lands would be preserved. Ngata was reported to have told Maori in Hawke's Bay that if they did not do as the commission asked, 'directly our backs are turned the Crown will seize all your lands'.[81]

7.6.1 The Stout–Ngata report on Cook County

The commission produced an interim report on land in the counties of Cook, Waiapu, Wairoa, and Opotiki on 18 February 1908. The report dealt primarily with the Cook County lands but included the other areas in so much as they contained lands vested in the East Coast commissioner under the East Coast Trust Lands Act 1902 and its amendments. A separate report on land in Waiapu county was written and issued on 18 January 1908. The area of Cook County was given as 1,319,014 acres in extent. Of this, 946,600 acres had been acquired by the Crown and individual Europeans. The balance of 372,414 acres was Maori land, and this included land held in trust for them. The area of land from the other three counties which was included in the latter category amounted to 92,339 acres.[82] The commission reported on the remaining Cook County lands held by Maori in separate sections, beginning with those administered by the East Coast Trust. Their findings are outlined below.

(1) *East Coast trust lands*

The commission recorded that in 1902, when the East Coast Trust Lands Act came into operation, the lands vested in the East Coast Trust Lands Board totalled 244,985 acres. The debt due to the Bank of New Zealand stood at £156,383, and there were additional debts of £16,000 built up by the trustees, through expenses such as c ourt costs. A board was constituted with powers to lease, sell, or mortgage the lands for the purpose of redeeming at least some of them and paying the bank debt within two years. In August 1905 the board announced the payment of the debt, and in August 1906 other outstanding claims were met. The process of adjusting accounts between the blocks in the trust, determining the Maori beneficiaries in certain reserves, and the opening up for settlement of the balance of the lands in the estate, was then left to be dealt with.

The commission identified the area of trust land sold as 51,870 acres, and the area retained for beneficiaries as 186,388 acres. Out of this, 60,768 acres had been leased, and 33,786 acres set aside as Maori reserves. The balance of 91,834 acres was still available for Maori occupation or lease to Europeans. The commission noted that much of this land did not lie in Cook County and the Maori beneficiaries of the trust lands lived at Opotiki, Mahia, Nuhaka, and Wairoa. The lands were, in 1908, being newly administered by a commissioner, rather than the old board. He

81. Butterworth, 'Maori Land Legislation', NZLJ, vol 242, 1985, p 246
82. 'Native Land and Native Land Tenure: Interim Report of Native Land Commission, on Native Land in the Counties of Cook, Waiapu, Wairoa, and Opotiki', AJHR, 1908, G-iii, p 1

was to be assisted by the Validation Court to open up the balance of the estate to settlement by way of sale or lease. The bulk of the undisposed lands in the Trust were in the backblocks and were difficult of access.

The commission noted that in the course of their investigations the owners of the Mangaokura block, in Waiapu county, had stated that they wished the block to be reserved for Maori occupation and leased to one of the beneficiaries of the trust. The commission was, however, 'of the opinion that the land [was] not suitable for Maori occupation, and that it should be leased to the general public'.[83]

Trust lands set aside for the use and occupation of Maori. Source: *Appendices to the Journals of the House of Representatives*, 1908

Block	**Area**	**Value (£)**	**Remarks**
Mangapoike 2b	3024	£4500	bush land, occupied and partly improved
Mangapoike 2d	1419	1000	bush land, occupied and unimproved
Maraetaha 2, sec 6 (part)	2608	6500	bush land,occupied and partly improved
Pakowhai, sec 4	374	1600	bush land,occupied and partly improved
Paremata 1, sec 73, 73a	115	80	native village
Paremata 2	89	2700	native village
Paremata 3	1224	9800	occupied as sheep farm, partly improved
Tahora 2 (part)	24,453	32,000	bush land, small portions occupied, nearly all unimproved
Tangotete 1	5	75	native village
Tangotete 2	75	1125	native village
Te Kuri	400	6000	native village
Total	33,786	67,380	

(2) *Whangara block*

The second area of land where specific issues were raised before the commissioners was the Whangara block, which had previously been before the Validation Court. The area of this block still remaining in Maori ownership was 12,325 acres, only 679 acres of which had not been leased to Europeans. The block had been divided into Whangara blocks B to N2. The receiver, H C Jackson, was administering most sections of the block by decree of the Validation Court in March 1899. The area leased was 11,646 acres at an annual rent of £683. The commission regarded the rental as low compared with present day values, but the land had been leased when land values were low throughout the country, and when prices for wool and mutton were at their lowest. The leases were for 21 years without right of renewal. One lease for 3960 acres was due to expire in 1915, while the rest would fall in around 1921 to 1922. In 1906 the land and income tax paid on the property amounted to

83. AJHR, 1908, G-iii, p 2

£80, or nearly one eighth of the revenue. This was felt to be excessive, and it would only increase as the years went on unless Parliament adjusted the matter. The salary of the Receiver was £46 in 1906 and the office expenses came to £27. This made the total costs of administration £64, or nearly 10 per cent of the revenue. The commission noted that the owners of the block complained that they had not seen any accounts from either the receiver or the court since the receiver was placed over the block.[84]

(3) *Mangatu 1 block*

The approximate area of the block was 100,000 acres, and the owners were constituted a body corporate by the Mangatu No 1 Empowering Act 1893. By consent 20,000 acres, known as Mangatu 1A, was cut off and incorporated in the Wi Pere Trust Estate as security for loans from the Bank of New Zealand. The balance of Mangatu (79,296 acres) was vested in three trustees: Commissioner of Crown Lands for Hawke's Bay, the Hon Wi Pere, and Mr H C Jackson. The return showed that 47,726 acres had been leased at an annual rent of £2377. The leases were sold by public auction and the term was 21 years with a covenant to pay the value of improvements (not exceeding £2 15 s per acre) at the end of the term, or alternatively to give a right of renewal on the lease for a further twenty-one years at a rental mounting to the current rate of interest at that time on the value of the land, less the amount for improvements.

The unleased sections amounted to 32,020 acres. The trustees, in accordance with the instructions of the owners, had borrowed £18,000 for paying off existing liabilities and for providing a sum of £8000 for improving portions of the land. The land reportedly carried excellent milling timber in large quantities. One of the trustees informed the commission that although many efforts had been made to lease the lands, the want of access had prevented any satisfactory offers from being made. The 250 Maori owners complained that no accounts had been rendered to them and they were consequently ignorant of the financial position of their estate. One of the trustees, Mr Jackson, stated that the accounts were sometimes discussed with owners at public meetings. Now that the whole of the liabilities on the estate had been gathered into one debt and money provided for improvements, the trustees were planning to have their full accounts rendered and audited so the improvements to be made on the unleased blocks could be 'begun afresh'. The commissioners' report stated that the position of the estate required further investigation and a careful audit of the accounts should be undertaken before further complications arose.[85]

(4) *Wi Pere Trust Estate*

A new trustee was to be appointed to administer that portion of the Mangatu lands incorporated in the Wi Pere estate. The present trustee, Mr W G Foster would be removed and a new trustee appointed as set forth in section 47 of the Maori Land Claims Adjustment and Laws Amendment Act 1907. The commission felt that

84. AJHR, 1908, G-iii, pp 2–3
85. Ibid, p 3

'very great care' should be taken in appointing this new trustee.[86] The schedule gave a list of lands in the Wi Pere Trust Estate which included lands in the Kaiti, Whataupoko, and Makauri blocks. The estate included further sections of Waimata, Manukawhitikitiki 2 and 3, Okahuatiu, Repongaere, and Karaka blocks. Puhatikotiko 6b, Tangihanga 1a, Pukepapa A and F2, and Poututu A2 to A4, and B2, B6, and C3, were also vested in Wi Pere. In addition 20,000 acres of Mangatu 1 block was now vested in the Wi Pere trust. This made up a total of 38,168 acres of land in Poverty Bay owned by the Wi Pere trust.[87]

(5) *The Tairawhiti Maori Land Board*

The area of Cook County shown as vested in this board was 2325 acres, out of a total 53,221 acres under its management. The major part of the lands vested in the board were in Waiapu (20,963 acres) and Wairoa (26,033 acres) counties. With the exception of Maungawaru 4, the board had surveyed and valued all of the lands vested in it and was preparing them for settlement. It was hoped the lands would be on the market at the beginning of the bushfelling season. The board would be setting aside portions for leasing solely to Maori. The board had also been appointed as receiver for blocks recently leased with its approval, amounting to 34,172 acres, the bulk of which was in Waiapu county. The board had approved leases of 29,434 acres in Cook County, 35,375 acres in Waiapu, and 8564 acres in Wairoa, giving a total of 73,373 acres. Applications were pending for approval to leases of a further 3204 acres. The commission noted that the board had taken great care to ensure that all leases were in accordance with the law, and commented on the fact that on the East Coast it was normal practice to incorporate the owners of lands it was proposed to lease. After incorporation the elected committee took the necessary steps to lease and would-be lessees could then deal with a compact committee of three to seven members rather than a multitude of owners. The commission regarded this form of leasing as one which was both expeditious and growing in popularity with Maori. They found that the system secured negotiators a guarantee of title with the minimum of expense in conducting negotiations. [88]

(6) *Lands under lease*

The commission noted under this heading that Mangatu 3, of 3680 acres, and Mangatu 4 of 6000 acres were vested in the same trustees who administered Mangatu 1. Mangatu 3 was leased by auction in 1901 on the same terms as the subdivisions of Mangatu 1 already mentioned. The annual rent was £81, increasing to £122 during the next seven years, and to £163 for the last seven years of the term. Mangatu 4 had not been leased, but there was a proposal to borrow £5000 for the purpose of improving and working it as a farm for the owners. Assets on the Mangatu 3 and 4 blocks amounted to the annual rental of £81. The liabilities were £240 for trustees' salaries, £47 for the rent of offices for seven years, £1849 mortgage and interest due, and incidental costs of nearly £7. These did not include

86. Ibid
87. Ibid, p 12
88. Ibid, p 4

W L Rees's costs. Mr Jackson told the commission that the Maori owners of Mangatu 4 wanted to work the land themselves, and had agreed to borrow the sum of £5000, one half of which would be required to discharge the debt on the land, the remainder to be available for farming operations. The annual interest charged would be at least £250, while the salaries of the trustees and other administrative costs were likely to be around £100 per year. The commission believed that the estate would soon be involved in great difficulties and were concerned that the trustees should not be led to adopt the system of financing which had wrecked the New Zealand Native Land Settlement Company.

There were a total of 375,082 acres of Maori land administered in trust for Maori owners in Poverty Bay, not including those lands in the Wi Pere Trust Estate, and the value of these various estates was estimated at not less than £500,000. The commission noted that their investigations had revealed four separate systems of administration for these different trust lands (as outlined above),with three different staffs and sets of offices. They stated that these separate administrations had arisen, not because it was felt that they were necessary, but 'through the peculiar circumstances of Native Land titles' in this district. In their opinion, all the lands held in trust should be administered by one body. The functions of the East Coast lands commissioner in respect of lands reserved for Maori occupation could, they believed, be performed by the Maori Land Board, and the administration of such lands adapted to conform to Part 2 of the Native Land Settlement Act 1907. With respect to the balance of the trust lands that were not yet disposed of, the leases were all similar, and the power of sale vested in the East Coast commissioner could also be exercised by the Maori Land Board. They also maintained that the Mangatu and Whangara lands could be administered by the Maori Land Board with the help of a competent accountant and receiver.[89]

(7) *Balance of native lands*

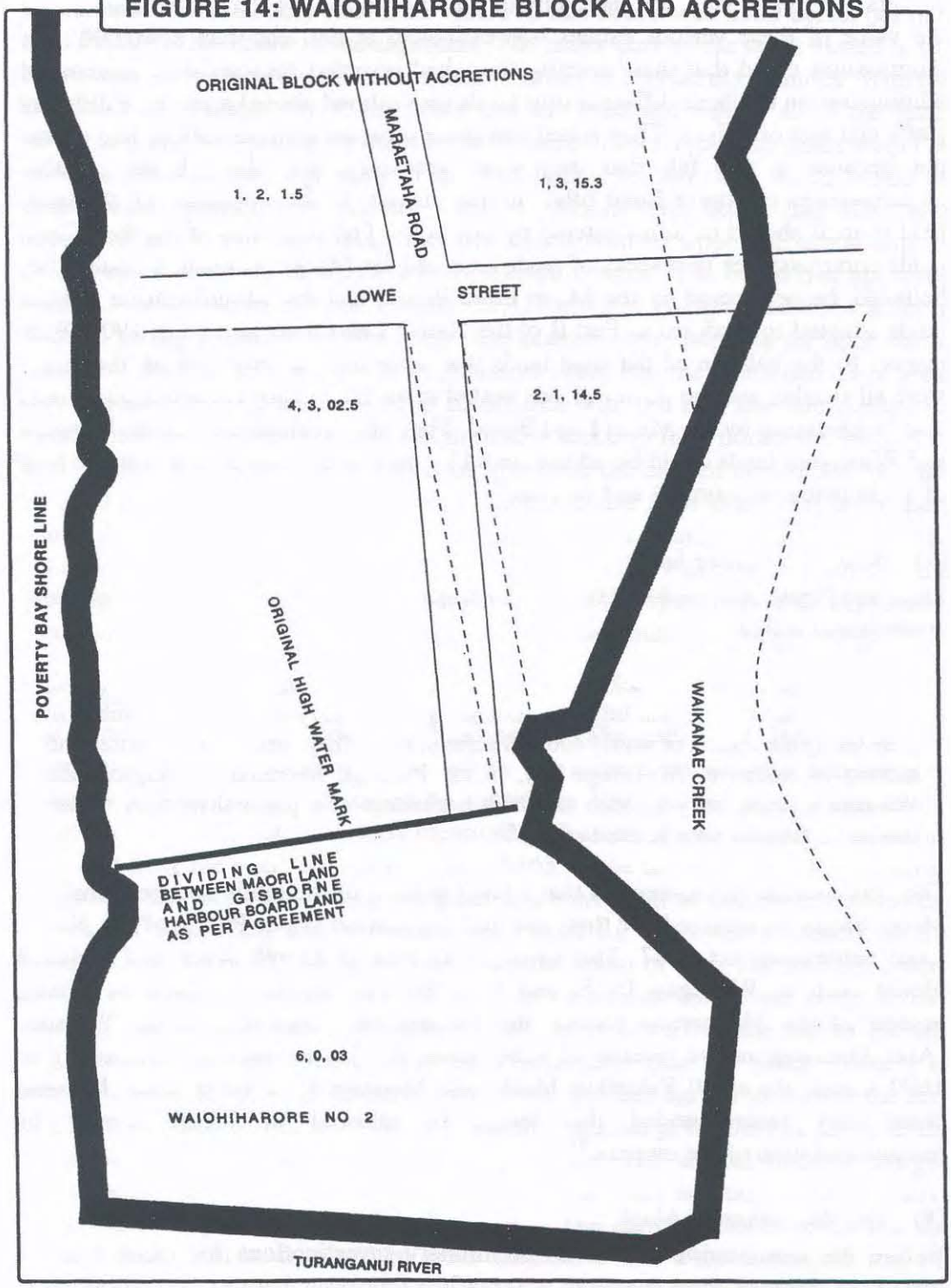
Stout and Ngata observed that farming by Maori in Cook County did not seem to be commission stated:

> It is not that the Maoris lack the capacity or desire to farm their lands, but they have been depressed by constant litigation, extending over twenty years, which resulted in their losing the control of nearly 400,000 acres of land. They seem to be dispirited and lacking in initiative. At Tolaga Bay, in the Puninga, Maraetaha, Mangatu, and Waimata districts, may be seen the small beginnings of a pastoral industry, which should be fostered even at this late day.[90]

The commission recommended that a large portion of the lands now remaining in Maori hands be reserved for their use and occupation under Part II of the Native Land Settlement Act 1907. This involved an area of 23,998 acres, and included blocks such as Whangara D, E, and K2a, Pouawa blocks occupied by Maori, several of the Mangatuna blocks, the Puhatikotiko subdivisions, the Waimata (Arai–Matawai) native reserve of 4186 acres, the Tuahu reserves (amounting to

89. Ibid, pp 5–6
90. Ibid, p 6

FIGURE 14: WAIOHIHARORE BLOCK AND ACCRETIONS



Source: AJHR 1908, G-111

1600 acres), the small Pakirikiri block, and Mangatu 4, of 6000 acres. In some cases they recommended that leases be allowed to Maori lessees by recommendation of the owners.[91]

(8) *The Waiohiharore block*

Before the commission closed its preliminary investigations for Cook County, Maori in Poverty Bay brought a specific complaint before the commission concerning the Waiohiharore block in the township of Gisborne. The area had been gazetted by the Government as required for railway purposes, following which the government took possession of part of the area gazetted. The Native Land Court then fixed the compensation money as payable to the owners, and the Government paid the money to a trustee. The trustee then deducted a commission for making the payments to the owners, a proceeding that was apparently sanctioned by the Native Land Court, but the commission were unable to ascertain by what authority of law the court did so. Stout and Ngata concluded that the full amount of compensation should have been paid to the owners, and that the Government should now see that such was done.

The balance of the land had remained under *Gazette* notice although the Government intimated that it did not require the north-eastern part of the land. An agreement was then made between the Maori owners and the Gisborne Harbour Board, that the board should pay £550 for the gazetted land that had not actually been taken by the Government. The agreement stated that the part of the land called Waiohiharore 2 of approximately six acres, (the area lying east of the line shown in the map at figure 14) together with all present and future accretions to it caused by the receding sea, or by any other means, was to be obtained by the Gisborne Harbour Board. The public road known as Lowe Street was to be extended to the high water mark at Waikanae beach, and the road would be vested in the Gisborne Borough Council. It was understood that out of any further accretions to the land lying west of the line on the map (that area owned by Maori), the board would be entitled to a strip of two chains in width for a public road along the foreshore of the beach. It was further agreed that all accretions to the land lying west of the line on the map and all future accretions to that land made by the receding sea, or by harbour board works, would be 'conveyed and assured' to the Maori owners of the land, except for that part required for the extension of Lowe Street.[92]

The agreement between the owners and the board had contained the proviso that when the deed was validated by Act of Parliament the purchase money would be paid out. The agreement was never validated by Parliament but the board had, however, obtained a grant from the Crown of the area lying between the Maori owned land and the sea (the accretions). The commission could not ascertain how such a grant had been made as there was no statutory authority for it. They noted that the only power for the Governor to issue a grant to a harbour board without the passing of a special Act was under the Harbours Act 1878, which enacted that land

91. Ibid, pp 15–16
92. Ibid, p 7

reclaimed from the sea by a harbour board may be so granted.[93] The commission continued that:

> It does not appear to us that this land was reclaimed by the Harbour Board, and the agreement with the Natives calls it an accretion. If the accretion was gradual, it would belong to the Native owners; if sudden it would belong to the Crown; but in no case can it be said, if it were an accretion, to be the property of the Harbour Board. We have asked the Board what their view is of the position, and they have replied to us that they consider the agreement to be at an end. If the agreement is at an end then it is clear that the Natives ought to have the land for which they have received no compensation handed back to them, and steps should be taken by the Government to set aside the Crown grant to the Board, in order that the Native's rights to the accretions should be determined unencumbered by the grant from the Crown. It is most unfair that the Board should block the Natives' access to their land from the sea, and obtain a grant without notice to them and without an opportunity to them of contending that this land belongs to them from a gradual accretion.[94]

Further research would be required to discover whether anything was done to remedy this situation and to revest the accretions to the Maori part of the land in the Maori owners. Unfortunately time has not allowed for such an investigation at this point.

(9) *Summary of findings*

Lands under lease.
Source: *Appendices to the Journals of the House of Representatives*, 1907

Land	**Area (acres)**
East Coast Trust lands	60,768
Whangara block	11,646
Mangatu 1	47,726
Lands vested in Maori Land Board	2325
Approved by Maori Land Board	29,434
Other leases (exclusive of Wi Pere Trust Estate)	20,653
Total area leased	172,552

93. Ibid, pp 7–8
94. Ibid, p 8

Land set aside for Maori occupation. Source: *Appendices to the Journals of the House of Representatives*, 1907

Land	**Area (acres)**
East Coast Trust lands	33,786
Whangara block	679
By the commission (schedule 7A)	23,999
Total	58,464

Lands available for settlement. Source: *Appendices to the Journals of the House of Representatives*, 1907

Land	**Area (acres)**
East Coast Trust Lands (for lease or Maori occupation)	91,834
Mangatu 1	32,020
Total area	123,854

Summary table. Source: *Appendices to the Journals of the House of Representatives*, 1907

Land	**Area (acres)**
Lands under lease	172,552
Lands set aside for Maori occupation	58,464
Lands available for settlement	123,854
Lands to be further considered and reported on	71,715
Wi Pere Trust Estate	38,168
Total area of Maori land dealt with	464,753
East Coast Trust lands not in Cook County	92,339
Maori land of all classes in Cook County	372,414

The commission pointed out that the large area shown as available for settlement was mostly included in one or other of the trusts. Some of the lands were inaccessible at that time and would therefore, not come onto the market until roads were constructed into the interior of the district.[95]

On the face of it the figure of 372,414 acres might appear to be a reasonable amount of land remaining to Maori in Cook County. It must be considered,

95. Ibid, p 7

however, that this was now all that remained to them of the 1,319,014 acres that county contained. The amount of this land that remained in Poverty Bay itself is not specifically stated, but would have been lower than the figure given for the Cook County as a whole, as the county covered areas outside of the Poverty Bay district (an extra 2000 or so acres). In addition, much of the land stated as in Maori ownership was not actually in their control at that time, being either under lease or part of the East Coast Trust.

The East Coast Trust lands by this time represented the only large areas of land in this area still owned by Maori. Nevertheless, control of the lands remained out of their hands, and for reasons that will be made clear in the following section, these lands did not provide a financial return for their owners.

7.7 THE EAST COAST TRUST, 1902–54

We resume the story of the East Coast Trust lands in 1902, when a trust board was set up under the East Coast Native Trust Lands Act 1902 consisting of three members, all prominent Gisborne men: John Harding, John McFarlane, and Walter Shrimpton.[96] Under the provisions of the Act the bank could not sell any of the lands comprised in the securities without the consent of the board. This prohibition would remain in effect until 31 August 1904, after which time the bank could sell the whole or any of the lands without consent to recover the mortgage.[97] The board could subdivide, sell, or let any of the lands mortgaged to the Bank of New Zealand and could borrow money on the security of the land in order to develop the estate.[98] The chief judge of the Native Land Court was directed to ascertain, upon application, whether any other land vested in the trustees or in any other native body corporate, should be brought in as extra security lands to relieve the principal security, and if so, to apportion relative charges on those lands. [99] Other lands held in trust in the Tairawhiti district could be transferred to the board by deed signed by a majority of the trustees or beneficiaries of that land.[100] Initially, by section 12 of the Act, Carroll and Wi Pere (the trustees) were to have a continued role in the board's activities in order to safeguard the interests of the Maori owners. Under that section any alienation of lands vested in the board, or measures for their management and improvement had to be first agreed upon by the trustees by deed.[101]

96. Ward, p 99
97. East Coast Native Trust Lands Act 1902, s 4
98. Ibid, s 9
99. Ibid, s 10
100. Ibid, s 11
101. Ibid, s 12; Ward, pp 99–100

In their 1903 report, the board complained that this requirement was rendering them powerless to properly manage the 244,985 acres of trust lands. From that report the blocks which made up the trust are shown in the following table.

Principal Security Blocks. Source: *Appendices to the Journals of the House of Representatives*, 1903

Block	**Area (acres)**	**Status**
Mangatu 5	20,075	unoccupied and unimproved
Mangatu 6	20,075	unoccupied and unimproved
Motu 1	2000	unoccupied and unimproved
Mangaokura 1	2027	unoccupied and unimproved
Okahuatiu 2	15,190	occupied by Bank of New Zealand Estates Company and partly improved
Pakowhai (part)	5013 2r 9p	occupied by Bank of New Zealand Estates Company and partly improved
Whataupoko sec 20	3 1r 30p	
Matawhero B or 5 (part)	33 1r 38p	held by Bank of New Zealand Estates Company
Matawhero 1 (part)	182 1r 38p	held by Bank of New Zealand Estates Company
Total area	64,602 2r	

Specific security blocks (held under decrees of the Validation Court). Source: *Appendices to the Journals of the House of Representatives*, 1907

Block	**Area (acres)**	**Debt**	**Status**
Mangaheia 2d	5997	£9596 11s 4d	leased to Somerville and others, partly improved.
Paremata	7112 3r 22p	£23,670 2d	occupied by Bank of New Zealand Estates Company
Maraetaha 2 (sec 4, Te Puru)	3991 3r	£11,433 0s 6d	occupied by Bank of New Zealand Estates Company, partly improved
Moutere 2, sec 1	194 3r	£363 19s 2d	leased to Mr Ormond
Tawapata North 1, no 1a	2096	£2545 0s 11d	leased to Mr Walker, rent not determined
Tawapata North 2	1995	£2545 11d	leased to Mr Walker, rent not determined
Tawapata South 1	4376 2r 5p	£5726 1s 9d	occupied by Bank of New Zealand Estates Company, partly improved
Total	27,948 6p	59,364 15s 6d	

There were also some blocks not subject to the mortgage. These were: Te Kuri; Tangaotete blocks 1 and 2; Maraetaha 2 and 2a: Mangapoike and Mangapoike 2; Mangawaru; and Tahora. The area of these blocks amounted to 152,435 acres. The Tahora block had a separate mortgage on it of £2500. This was being foreclosed and the sale of the block was to take place on 30 January 1904, conducted by the registrar of the Supreme Court. The board felt that they were unable to stop this from happening as the general debt of the trust lands stood at approximately £156,383. There were additional debts of £15,906, part of this debt being the Tahora mortgage.[102]

Carroll and Wi Pere were reluctant to allow the outright sale of any of the specific security lands, but they agreed to allow 3000 acres of Paremata to be sold and the rest of the block to be leased. They also consented to the sale of the whole of Maraetaha 2. Nevertheless at the time the board were writing their report, W L Rees, solicitor for the trustees, had placed a caveat on both of the Paremata and Maraetaha 2 blocks 'to protect his claim against the trustees for costs, charges, and expenses', thus blocking the further procedure of the board. The board therefore recommended that changes be made in the administration of the estate that would effectively shut the Maori trustees out of the decision making process.[103] In December, however, the trustees agreed to the sale of certain lands. In early 1904, just over 31,000 acres of the trust lands were sold, consisting of Okahuatiu 2 block (and its livestock) and parts of the Paremata and Maraetaha lands, the proceeds of which were £79,250. The bank received £72,301 of this amount towards the reduction of the bank debt. The area of 2380 acres in the Paremata block was leased and the rent would pay for charges and interest on the block with the surplus being used as a 'sinking fund' to redeem the existing mortgage. In addition, 23,380 acres of the Mangapoike blocks were leased, and the rental was to go, in part, to the beneficiaries.[104] The board planned to offer the bulk of the Tahora block for lease and sell a small part of it, and they negotiated new mortgages on the Tahora and Mangapoike lands of £12,742, the proceeds to be used to pay off some of the debts and charges accumulated by the trustees prior to 1902.[105]

The bank agreed, on application by the board, to extend the term of suspension of the mortgagee sale of the estate until 31 March 1906 to allow the board to realise the debt. The board also applied to the bank to reduce the amount of the debt, which had doubled through interest, and also to reduce the rate of interest then being charged. This the Bank agreed to do in the understanding that the debt would be paid on or around the specified date of 31 March 1905. The board promptly sold another 9000 acres, consisting of the Tawapata and Moutere blocks on the Mahia peninsula, part of the Pakowhai block and some sections in Matawhero 1 and 5. They paid £126,772 of the debt in June 1905 from the sales' proceeds, receiving a

102. All above information from 'Interim Report of the East Coast Native Trust Lands Board', AJHR, 1903, G-9, pp 1–2
103. Ibid, p 3
104. 'Report, Balance Sheet and Statement of Accounts of the East Coast Native Trust Lands Board', AJHR,1904, G-6, p 1
105. Ibid, p 2

rebate from the bank of £20,000. By 1905 the whole of the 1902 debt to the bank of £159,029 had been repaid.[106] By the reckoning of the Board in 1905, 59,041 acres of the bank securities were saved from sale. These were the Mangatu 5 and 6 blocks, Mangaokura 1, part of the Pakowhai block, Whangawehi 1b and 1c, Maungawaru 2, Whataupoko section 20, Te Kuru, and Tangotete 1 and 2.

The 374 acres of Pakowhai were part of the principal security to the bank, but to meet with the wishes of the beneficiaries of the block the board had reserved this piece for Maori and withheld it from sale. The owners of the Motu 1 block had also saved their lands from sale by redeeming the land and paying off the debt to the bank themselves.

Lands of the trust not liable to the mortgage had also been sold during the period from 1902 to 1905 to pay off the £20,600 in legal costs and other charges incurred by the trustees prior to the board's inception, and to fund improvements to the Estate in the way of surveys and roading. These lands, around 14,000 acres in area, were parts of the Maraetaha 2 and 2a blocks, and 10,000 acres of Tahora 2. Fresh mortgages amounting to £12,742 had been taken out by the board, £10,000 of which was still outstanding at August 1905.[107] Rees had claimed £3500 and Wi Pere £2000 from the estate.[108] Of the original trust estate, 187,000 acres remained and these lands were subject to mortgages to new creditors. In 1905 the debt of the Estate stood at £21,080 and these mortgages lay most heavily on the Wairoa lands, Mangapoike and Tahora. After making reserves for Maori owners (26,469 acres), the board leased 3000 acres in the Paramata block near Tolaga Bay. They also leased nearly 23,000 acres of Mangapoike and 18,000 of Tahora.[109] It was hoped that the rentals from the 61,811 acres of the trust lands under lease would yield a steady return of around £4573 and reduce the remaining mortgages. This left a balance of 99,157 acres which the board planned to partly reserve, partly sell, and partly lease 'for the benefit of the Natives'.[110] It might have seemed that now that the task of repaying the debt to the bank was complete, the trust could have been dissolved and the lands be returned to the Maori owners, but there was still the problem of the adjustment of accounts within the trust and the settlement of claims against the trustees to be dealt with.[111]

Section 22 of the Maori Land Claims Adjustment Act 1906 decreed that the board should be dissolved and replaced with an East Coast commissioner. It also outlined the reason for the adjustment of accounts in stating that, as the charge on the trust had been borne by some lands in greater proportion than others it was necessary to 'adjust the equities of the beneficiaries of the several lands'. The Validation Court was empowered to enquire into what proportion of the debt to the Bank, and other claims paid as well as management costs, ought to have been borne by each block individually, and adjust the accounts accordingly. In this task the Validation Court was apparently not to be bound by the normal rules of a court of

106. 'Report of the East Coast Native Trust Lands Board', AJHR, 1905, G-9, pp 1–2; Ward, p 100
107. Ibid, pp 2–3
108. Ward, pp 100–101
109. AJHR, 1908, G-8, p 2, cited Ward, p 101
110. 'East Coast Native Trust Lands Estate', AJHR, 1905, G-9, p 3
111. 'Report of the East Coast Native Trust Lands Board', AJHR, 1906, sess ii, G-8, p 1

law, nor to the rules of equity normally applied to cases of mortgage by Europeans. The commissioner was to abide by every decision of the Validation Court and carry out the necessary adjustments.[112] In its 1906 report the outgoing board stated that in the past year only one block of land had been disposed of. This consisted of parts of sections 3 and 6 of Maraetaha 2, which the Gisborne Borough Council had acquired for a waterworks reserve.[113] The board went out of office in February 1907 and the Validation Court set about adjusting the trust's accounts in July 1908.[114]

It was this need for a long-term adjustment of finances within the trust that caused much misunderstanding and discontent among Maori beneficiaries and created a tense relationship between them and the East Coast commissioner in the ensuing years. Wi Pere wrote to the outgoing trust board in February of 1907 with a proposal for the winding up of the trust's affairs, suggesting that the unproductive Maungawaru block (34,000 acres) should be sold, the Muriwai and Paremata lands be returned to Maori owners, rents from the Wairoa blocks already leased be paid to the beneficiaries, and Mangatu 5 and 6 be divided and given as compensation to those Maori whose lands had been wholly sold off to pay the mortgage. In this way, Wi Pere felt, no Maori would be left landless.[115] Sections of the unproductive Mangatu 5 and 6 blocks, which were unsuited for subdivision into small holdings anyway, were hardly fair compensation for the loss of more fertile and valuable lands such as Okahuatiu, but Wi Pere at least recognised the need to alleviate the growing problem of Maori landlessness in the district, and to compensate those who had borne an unfairly large burden in the payment of the debt to the Bank of New Zealand. Nevertheless, even he does not seem to have appreciated the necessity of the large scale readjustment of internal debt between the blocks of land in the trust estate.

7.7.1 The Validation Court and the adjustment of trust finances

The adjustment scheme was decided upon by the Validation Court under Judge Jackson Palmer during 1908 and charged the specific security blocks with the amounts awarded against them by that court in the 1890s. Sums were then added where there were specific charges against a particular block and a share of the general expenses of the board administration. The total of the charges on the specific security lands left £75,034 of the trust's liability to fall on the principal security blocks which had originally been mortgaged by the settlement company. The purchase prices of the blocks sold were subtracted and the remaining £21,690 was charged against the principal security blocks that remained within the trust's ownership. These were Mangatu 5 and 6, Mangaokura 1, and part of the Whataupoko block – around 82,000 acres, all within the Poverty Bay area.[116] This left some blocks with sums in credit (creditor blocks) and some with debts to pay

112. Maori Land Claims Adjustment Act 1906, s 22
113. AJHR, 1906, sess ii, G-8, p 1
114. AJHR, 1908, G-8, p 1
115. Wi Pere to Trust Board, 11 February 1907, Misc papers of the East Coast commissioner, cited Ward, pp 110–111
116. Ward, p 104

(debtor blocks) within the trust. The adjustment meant that some blocks which had not been brought into the debt repayment between 1902 and 1905 were now debtor blocks, charged with an allotted share of the original debt. It could not be expected that those debtor blocks which now had substantial debts to the trust would be able to pay these sums too quickly as this would cause substantial hardship and more land would be lost through sale and mortgage. The creditor blocks could therefore not be paid the sums owed to them until the trust had attained the finances through the payment of charges against the debtor blocks. It was determined that the trust would arrange the lease or farming of the trust lands, and the revenue produced by the debtor blocks would be used to pay off their internal debt to the creditor blocks.[117]

The court's decision as to how the adjustments should be made was as follows. The present mortgages of £21,000 should continue over the same blocks. The debt of Mangaheia 2 (£2459) was already paid through rental from the lease of the block. Debts on Maungawaru 2 (£5001) and Maungawaru 3 (£1044) should be defrayed by the sale, mortgage, or lease of the blocks. If there were any surplus remaining from sale this should be allocated equally among the beneficial owners (less the cost of a determination of beneficiaries by the court). Tahora 2's debt of £482 was to be raised by a mortgage. There was already a mortgage of £6000 on Tawapata South 1. The debt of the block in the adjustments was a further £5190. Annual rents from the leases of the block brought in £600 which the court regarded as sufficient for the payment of interest on the continued mortgage and eventual redemption of the land. Whangawehi 1a owed £836 but there was already a mortgage on the block of £1000 for general trust purposes. The court suggested that the existing mortgage be transferred to the block on its own account for development of the block, or a fresh mortgage be raised, which would gradually be paid through the payment of rents or profits. Whangawehi 1b and 1c were charged with £2231. The commissioner was advised to sell, mortgage, or lease the lands in order to liquidate the debt. The existing lease on the land had approximately eight years to run but would not realise enough to pay the interest charges. Any deficiencies in the realisation of any of these blocks was to be borne by Mangatu 5 and 6 and Mangaokura 1, the blocks charged with the principal security debt. It was left up to the discretion of the commissioner as to whether Mangaokura 1 should be sold, mortgaged, or leased in order to defray its indebtedness of £1324, and Mangatu 5 and 6 were to be similarly dealt with as they bore the bulk of the debt burden to the tune of £19,865. The court decreed that the commissioner should annually adjust the trust's accounts to spread the debt evenly among the blocks An interest of five per cent was to be charged to both debtor and creditor blocks until such time as the adjustments were completed.[118]

T A Coleman, the East Coast commissioner, reported in 1908 that the trust's present mortgage lay at £21,000. Rents received amounted to £5115 and most of this amount went to pay liabilities on the individual blocks leased. The amount of £540 was paid to beneficiaries. Coleman had begun the process of improving and

117. Ibid
118. AJHR, 1908, G-8, p 3

farming trust lands, clearing blocks and stocking them. Clearing, fencing, bushfelling and other improvements were mostly undertaken by the Maori owners of the blocks affected. Since 31 March two new blocks had been added to the trust Estate. These were Maraetaha 1d (Te Kopua) of 2303 acres, and Whaitiri 2 of 412 acres. A portion of Te Kopua was already cleared and being farmed by the 'Native Committee' (presumably the block committee).[119] Although Maori were eager to gain some help in beginning to farm the land they seem to have been unclear on why the lands could not be returned to their control and their understanding of the need for a long term adjustment of accounts between the blocks was limited. This created friction, which continued throughout the next 47 years, and possibly had its beginnings in the lack of involvement of Maori owners in the original Validation Court process of adjustments. As the reported decisions of the Validation Court in 1908 show, Maori were not required to be present and therefore did not observe the process or come to fully comprehend its necessity. They do not seem to have been adequately consulted in the matter. The report stated that:

> The Court held its inquiry on open Court, commencing on the 20th July, 1908, due notice of the sitting having been given. Besides members of the Bar representing various groups of beneficiaries, a large number of Natives appeared; but it soon became apparent that the latter could give no assistance to the Court, and after the first day they took no active part.[120]

Lysnar, acting for Maori owners of nine of the creditor blocks, raised some formal objections on the adjustments as they affected these lands, maintaining that they should be released from the trust and returned to Maori owners. Judge Palmer believed it was beyond the court's jurisdiction to recommend such a return of lands. A further objection was lodged by Mr Hutchinson on behalf of the beneficial owners of Maraetaha 2a, sections 2 and 3, in which he claimed that the Maori owners objected to the charges on the block for advertising of sale, sale expenses and legal expenses in connection with a sale of the lands which they claimed was illegal. They were at that time preparing a case to take before the Supreme Court with reference to the illegality of the sale of Maraetaha lands by the board and therefore also objected to the legal costs incurred through the administration of that sale.[121] Judge Palmer dismissed these objections, stating that no part of the bank debt had been charged against these sections of land and the other charges debited seemed 'on their face' fairly chargeable.[122] Maori owners of the trust lands were, therefore, bound to see their lands remain under the control of a European commissioner, in some cases, for the rest of their lives.

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119. AJHR, 1908, G-8a, p 1
120. AJHR, 1908, G-8, p 1
121. Ibid. Appendices B, C, D, and E, pp 4-7. The Supreme Court found that the sale by the board was legal, cited in Ward, p 106.
122. Ibid, pp 1–2

7.7.2 Maori discontent over the trust administration

It must have seemed to many Maori owners of trust lands that their lands were in fact lost to them. By this time the land had been in the hands of others for 30 years, and they would remain so for a further 40. In the Gisborne area, only a small amount of Maori land remained. This land held in trust, therefore became extremely important and its management was a continuing focus of attention and discontent among local Maori.

There was, however, a new element in the trust administration of these lands in the period following 1907, as the commissioner was empowered to borrow money on the open market in order to develop and farm the lands under his control.[123] Maori had hitherto had great difficulty in successfully improving and farming their own lands through the unavailability of finance which was offered to Europeans in their farming endeavours. Although the trust lands were still beyond their control, Maori would eventually benefit from the return of lands improved and successfully farmed, but this was difficult for Maori to envisage in 1908.

There were still more complaints by Maori owners in the next few years. Owners of the Mangaheia and Paremata lands petitioned Parliament in 1909, protesting over the mortgaging of their lands, and asking that these be removed from the trust's administration. [124] In the same year Rangi Thompson and 111 others sought the removal of the Te Kuri block from the trust and an incorporation of its owners to manage the lands. [125] In 1910, Hetekia Te Kani Pere asked for compensation to be paid for the sale of Okahuatiu 1a. A previous petition about the same block of land in 1905 alleged that he and 27 other owners had been wrongfully deprived of their land.[126] In 1913, Hamahona Pohatu petitioned for an inquiry to be held into the trust administration of the Maraetaha 10, Te Kuri 1, and Tangotete 1 and 2 blocks around Muriwai. They wanted the lands to be returned to an incorporation of owners for their own cultivation and residential purposes.[127] In 1919, there were a number of petitions from Maori owners of the Tahora and Mangapoike blocks complaining that, as most of their lands had been leased by the board and commissioner, they no longer had enough land left for their own settlement. They sought a reapportionment of relative interests and boundaries and some relief from the problem of shortage of land for their own inhabitance.[128] Matenga Waaka and 34 others petitioned Parliament in 1921 to request that a lease of the Te Kuri and Tangotete blocks arranged by the East Coast commissioner not be allowed to proceed.[129] The Native Affairs Committee declined to make any recommendations on some of these petitions from the Maori owners of trust lands, although it sometimes referred the matters to the Government for consideration and inquiry.

It is clear from the number and type of petitions presented to Parliament by Maori owners of trust lands that the withholding of these lands from Maori and the

123. Ward, p 107
124. 'Reports of Native Affairs Committee', AJHR, 1910, I-3, p 8, Ward, p 108
125. Ibid
126. AJHR, 1910, I-3, p 3; AJHR, 1905, I-3, p 18
127. 'Schedule of Petitions', JHR, 1913, p xxvi, AJHR, 1913, I-3, p 7, Ward, p 108
128. 'Report of Native Affairs Committee', AJHR, 1919, I-3, pp15-17 &p21, Ward, p108
129. Ward, p 108

harsh system of administration required in order to finally free all the lands from debt caused great hardship to many of those Maori affected. This administration did not allow for Maori involvement in administering or farming their own lands as part of the trust, nor did it provide regular payments of rentals and dividends to beneficiaries. These hardships and the indebtedness of lands which had never been party to the original Settlement Company mortgage to the Bank of New Zealand, and even more confusingly, those lands which were never part of the scheme of mortgage repayment in the period from 1902 to 1905, must have been the cause of great misery, bitterness, and confusion for many East Coast Maori. For those in Poverty Bay the situation was even more dire as these lands, in many cases, were the last vestiges of the tribal estates.

The Maraetaha 1d (Te Kopua) and Whaitiri 1d blocks are notable in this respect. These blocks had been vested in Rees and Wi Pere as trustees before the setting up of the New Zealand Native Land Settlement Company, but they were not brought into that scheme as many of the Rees-Wi Pere trust lands were. Nevertheless, the blocks still became mortgaged to the Bank of New Zealand and although Maori owners attempted to farm the land, an inefficient manager meant that their endeavours were less than successful. The blocks remained under the trusteeship of Rees and representatives of the Maori owners until the trustees finally agreed to vest them in the East Coast commissioner according to the provisions of section 11 of the 1902 Act.[130] Two petitions from owners in the block demonstrate the differences in opinion that existed among Maori with respect to the administration of their lands by the East Coast commissioner. In 1909, Matenga Waaka and 57 others sought an inquiry into the block through a petition to Parliament.[131] Matenga Waaka had lived on his 100 acre share of Te Kopua for many years when he discovered that his land was no longer his to control after being told by the East Coast commissioner, the new administrator of that block, not to cut down any timber on it. In response to his protests the Maori priest was then warned that if he did attempt to remove timber on the property he would be charged with trespassing on the land.[132] Nevertheless, Pera Waaka and other owners of the block also petitioned Parliament, stating that they wished the lands to remain as part of the trust estate, under which they would be farmed successfully. The East Coast commissioner had promised them some new housing and as the land was already indebted and in danger of being lost it was indeed a wise move to vest it in the trust, set up to redeem other lands in the area which were similarly affected. The petitioners were right to believe that vesting in the East Coast commissioner was probably the only way to save their land, which was as the petitioners stated, 'the last remaining to us . . . [so] that we and our descendants might have something to look upon.'[133]

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130. *East Coast Commissioner v Pakowhai*, MA, bound volume, Gisborne Museum, p 142, cited Ward, p 109
131. AJHR, 1909, I-3, p 12
132. Matenga Waaka to East Coast commissioner, 24 September 1909, Papers of the East Coast commissioner, cited in Ward, p 109
133. Petition to Native Minister regarding the Maraetaha 1d block, 7 October 1910, Papers of the East Coast commissioner, cited Ward, p 110

Many of the complaints made by Maori owners of trust lands in the period after 1908 grew out of a dissatisfaction with their own role, or lack of a role, in farming their own lands. The Mangapoike owners had sought assistance to farm their own lands in 1906, and by 1909 they were petitioning Parliament on the subject of their land having been developed and leased to Europeans, the Maori owners being shut out from their own attempts to farm and having too little land to live on and cultivate themselves.[134] Indeed, Maori often became farm labourers and shearers on their own lands, employees of the tenants. The resulting dissatisfaction among Maori led to repeated requests for the trust lands to be released to incorporations of Maori owners who would then farm the lands. According to Alan Ward, the problem was that Maori owners would have found successful farming on any large scale a virtual impossibility compared with the trust commissioner. He could borrow public money in order to farm the land on behalf of Maori, whilst Maori groups could not borrow in this manner. Even the Maori land boards did not at this time have the statutory power to borrow money from the public trustee for the purpose of farming Maori land.[135]

Further discontent arose out of the continued whittling away of the estate's lands through sale or lease by Commissioner Coleman. The Whangawehi 1a block, 980 acres of good land, was sold for £6000 in 1911, and after the debt on the block was paid the owners were left with £5000.[136] The sale had apparently been requested by the Maori owners who were eager to make a profit off their remaining land.[137] In the opinion of Alan Ward, Coleman should never have sold the land, regardless of the request or agreement from the couple of owners concerned.[138] Certainly, the issue must be raised in terms of a question as to the responsibility of the East Coast commissioner, appointed by Act of Parliament, to ensure that those Maori whose lands were vested in him, were not left landless through any action of the commissioner or themselves in relation to the trust lands. Was the commissioner obliged, by virtue of his position, to make sure that all beneficial owners of trust lands retained at the least, sufficient reserves out of land sold or leased? Stout and Ngata recorded 33,786 acres of trust lands as reserves in 1908, but the allocated reserves were clearly insufficient in some cases, and it is uncertain that further reserves were being made out of the blocks sold after that time, although 91,834 acres were supposedly either to be leased or set aside for Maori.[139]

Out of the Tahora block a further 7000 acres was sold in 1920 to pay the new land tax which was weighing very heavily on the lands and absorbed all revenue from rents. The Mangatu blocks 5 and 6 had an enormous charge against them after 1908 of £19,865, but they were remote and undeveloped, and the difficulties that would have been involved in improving them made them a burden on the trust. They were put up for sale and purchased in pieces from 1913 onwards. In addition, the large and more remote and unproductive Maungawaru block was also offered for sale in

134. AJHR, 1906, I-3; AJHR, 1919, p 16, cited in Ward, p 115
135. Ward, p 114
136. AJHR, 1912, G-3, p 1, cited in Ward, p 119
137. Kirinini to East Coast commissioner, 7 April 1911, Misc Papers of the ECC, cited Ward, p 119
138. Ward, p 119
139. AJHR, 1908, G-iii, pp 15-16

1913 to offset the heavy rates charged on the land. At the same time Commissioner Coleman had increased the mortgage on the trust lands from £21,000 in 1908 to £58,090 in 1918, and a further overdraft with the Bank of New Zealand was extended to £36,024.[140] Although these extensions of credit were necessary in order to continue developing and farming the lands, the rising debt and the sale of more land produced increasing resentment among Maori beneficiaries.

7.7.3 Trust administration, 1920–34

Chief Judge Rawson of the Native Land Court became East Coast commissioner from 1920 to 1933 and John Harvey, Native Land Court Registrar at Gisborne, took over the day to day running of the trust. The external debt of the trust was standing at £118,529 in 1921, a state of affairs which Harvey, not surprisingly, regarded with some concern. The debt on individual blocks was also rising, as the debtor blocks were not making enough in rentals to pay the interest on their debt as well as their part of the trust's administrative costs and the land tax.[141] Harvey continued to sell off the more unproductive debtor blocks, Mangatu 5 and 6 and Maungawaru being put on the market again. Mangaokura, a principal security block, and Whangawehi were also put up for sale, but the sale of most of these lands did not occur until 1930. In the meantime authorisation was given, in the Maori Land claims Adjustment Act, 1922, for the rate of interest charged on the debtor blocks, as set by the Validation Court in 1908, to be downgraded from compound to simple interest.[142]

Despite the effective economising of Harvey, there was not much headway made against the debts built up in Coleman's time as commissioner. In 1927 Harvey sought a further adjustment of the trust's accounts which was carried out by the Native Land Court. All the blocks which were supposed to pay the principal security debt had been sold but the debt still amounted to £45,000 in 1930.[143] The creditor blocks now bore all the new mortgages and the debtor blocks contributed interest payments into the reserve to pay off the principal security debt. The trust lands continued to be farmed and real money from the profits of this activity was also applied to paying off the bad debt of the old principal security blocks.[144]

An area of 14,000 acres of Mangatu 5 and 6 blocks returned to the trust in a partially improved state after W D Lysnar defaulted on his payments for the land and the trust foreclosed. This area, Mangaotane station, became the biggest farm handled by the East Coast commissioner. A further 20,000 acres of the Mangatu lands, former trust lands held by the Wi Pere Whanau for some years, were bought back by the commissioner for £24,420, and again became part of the trust estate.[145] Despite Harvey's effective management of the trust estate its external debt was £120,000 by the time that he left office; the rise due in some part to the effects of

140. AJHR, 1908, G-8, p 2; AJHR, 1920, G-3, p 2, cited Ward, p 120
141. 'East Coast Native Trust Lands', AJHR, 1921, G-3, Ward, p 122
142. Ward, pp 123–124
143. 'East Coast Native Trust Lands', AJHR, 1930, G-3, p 2
144. Ward, p 127
145. Ward, pp 130–131

the depression.[146] Petitions from Maori continued to be sent to the Native Minister during this time, demonstrating their incomplete understanding of the necessity of the adjustment of finances or the manner in which the system operated between the creditor and debtor blocks. Unfortunately, in 1932 Harvey was forced to stop the payment of dividends to beneficiaries, which in a time of depression was of some hardship to those who had come to rely on them. As a consequence there were renewed demands for the revesting of creditor blocks in Maori owners. A petition from the Kahungunu Association in 1932 stated that there was widespread dissatisfaction on the part of owners concerning the administration of the trust. There were complaints that the trust not only refused to pay dividends but also that Maori managers and workers were not being employed enough on the trust farms. Nevertheless, the work of the East Coast Commission was praised by the Royal Commission on Native Affairs in 1934.[147]

7.7.4 Trust administration, 1934–51

As Maori had pressed for a change of administration, and because Ngata wanted the trust to be concluded as soon as possible, a new fulltime resident commissioner, Mr J S Jessep, was appointed. At the beginning of Jessep's administration, the issue of greater Maori involvement in the management of their lands arose in the form of a petition from Turi Carroll and 102 others, stating that Maori owners had been 'without a voice' in the control of the trust lands for some 32 years. Now they wanted a system of block committees to be set up which would be consulted by the commissioner on issues such as the employment of men on the trust farms, and in decisions as to whether any block should be leased, farmed, or mortgaged. They also sought the establishment of separate accounts for each block, with blocks bearing their own liabilities and not the mortgages of other blocks in the trust.[148] Jessep refused to allow the setting up of committees with any more than an advisory role, as he felt that Maori block committees with any other statutory powers would tend to be obstructive in the placing of any fresh mortgages on creditor blocks and the further development of the estate. Committees were now elected on all blocks under gazetted regulations, with advisory powers on topics referred to them by the commissioner, who was now required to provide the committees with a statement of accounts and advise them of any changes made with respect to their own block's finances.[149]

Throughout the 1930s petitions continued to flood into the Native Minister's office seeking the reintroduction of the payment of dividends, and the return of lands so that Maori owners could farm them on their own account. There were complaints that while the owners of the lands were poor, Jessep payed himself an annual salary of £2000, and ran the trust from flash new offices in the centre of Gisborne township.[150]A petition from Maori at Muriwai sought a release of some of

146. 'East Coast Native Trust Lnads', AJHR, 1934, G-3, p 1, Ward, p 132
147. Ward, p 137
148. ECC 161, petition of Turi Carroll and 102 others, cited Ward, pp 141, 142
149. Ward, p 144
150. Petitions contained in MA 26/7, Ward, pp 148–152

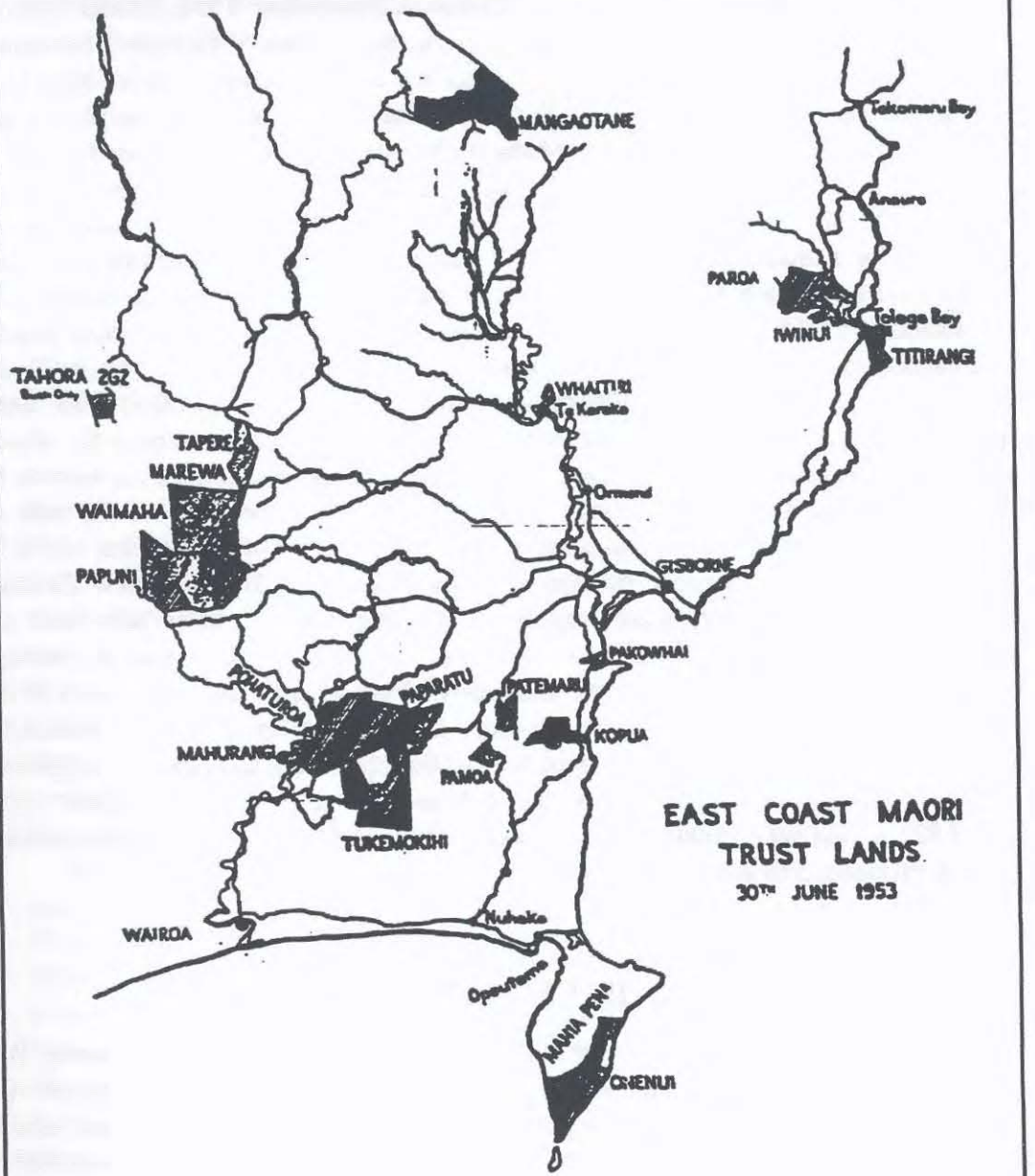
the Pakowhai block from the trust as the pa was becoming overcrowded and more land was required to allow the village to spread.[151] Alan Ward believes that Jessep had neglected to fully explain the workings of the trust to the beneficiaries and that he regularly disregarded the interests of the owners in the management of the trust. Maori called for the end of the trust and the return of their lands.

In 1941, as a result of a petition received from 116 Maori of Muriwai seeking the release of their block from the trust, a commission of inquiry was set up to investigate the affairs of the trust and to ascertain whether a change in the administration was required. [152] The commission heard a variety of complaints and queries from Maori owners, including why more could not be done to pay them dividends, or at least provide them with regular employment on the farms and adequate housing. Greater power was requested for the block committees in order that owners might be consulted on the management of their own land. Over the course of this inquiry many questions were answered and the way in which the trust administration worked was fully explained. For this reason much of the previous Maori discontent died away, or was at least less often expressed in the form of petitions and complaints to the Maori Affairs Department.[153] This situation was undoubtedly aided by the greatly improved prosperity of the trust by 1947 as well as the institution of a council consisting of the chairmen of each of the block committees. With the support of Jessep, this body was set up to meet regularly and discuss the affairs of the trust and advise on its administration. It was hoped that through this council, Maori owners would learn all the problems of the trust and prepare for the management of their own lands when they were released from the trust's administration. The East Coast Maori Trust Lands Council first met in April 1949 with Turi Carroll as its first chairman. Its powers were largely consultative but it was also able to make grants or donations to needy Maori, subject to the approval of the Minister of Maori Affairs. Jessep now had to get the council's approval for any increase in the limit of the overdraft, and the general atmosphere of the trust administration on the East Coast greatly improved due to its involvement.[154]

The result of development work on the trust stations, and the steady rise in wool and fat stock prices during and after the Second World War, was a rapid rise in the profits from the trust farms. By 1939 the principal security debt had finally been paid off leaving only the external debts gathered under Coleman's administration. These stood at £119,000 in 1934, and were completely paid by 1945.[155] Dividends were again being paid to beneficiaries from 1939, and in total from 1908 to 1953 Maori owners received £450,570 in dividends, an average per year of £10,000.[156] Although this seems like a reasonable sum, the numbers of Maori beneficiaries were considerable, and the payment of dividends had only been carried out sporadically. Maori owners had still lost a great deal of possible revenue from their lands over this long period. The trust was now ready to be wound up, however, and

151. MA 26/7/27, pt 1, Ward, p153
152. MA 26/7/34, pt 1, Ward, p156
153. Ward, pp 157–158
154. Ward, pp 161–162
155. *Te Ao Hou*, vol 2, no 4, p 8, cited Ward, p 165
156. *Gisborne Herald*, 8 December 1951, cited Ward, p 165

FIGURE 15: EAST COAST MAORI TRUST LANDS 1953



Source: Alan Ward, The East Coast Maori Trust, M.A Thesis, 1958

a general reserve account was set up to prepare for the costs of such a process. This account contained £47,000 by 1953.[157] There were estimated to be 8000 Maori owners directly affected by the East Coast Trust in 1951, eagerly anticipating the return of their lands in their improved state.[158] The number of beneficiaries had been significantly reduced when the 108,664 acres of the Mangatu lands were returned to their owners in a body corporate in 1947, the farms to be run by an elected committee.[159]

7.7.5 The trust is wound up

The major legal problem to be faced in the winding up of the trust was whether further compensation than that awarded by the Validation Court in 1908 should now be paid to the owners and former owners of those blocks which had borne more of the burden in the payment of debts left by the settlement company and the Carroll–Wi Pere Trust. Some blocks had been sold in their entirety. It was an issue to be considered whether compensation should be paid for these blocks out of the general reserve account, and indeed whether the trust could be held responsible for the sale of certain lands. It was difficult to work out which blocks should receive recompense and in what proportions. The East Coast Trust Lands Council, the staff of the trust, and the Maori Affairs Department decided to bring legal proceedings to settle the question of to whom the East Coast commissioner was legally responsible in terms of compensation. These proceedings, *East Coast Commissioner v Pakowhai*, were held in the Supreme Court in November 1951. Maori owners agreed that those whose blocks had been sold in the process of salvaging the estate should receive compensation of 20 shillings for every pound worth of land lost. These payments would be made from the general reserve and from the assets and revenue of the Mangaotane station (Mangatu 5 and 6).[160] This gesture on the part of Maori owners of the remaining trust lands was described in Parliament as one of aroha, and it must certainly be seen as such in the light of comments made by the Member for Eastern Maori in 1948 who had stated that the owners of land sold could have no claim to the trust's assets, and that nothing could be done for them.[161]

A total of £59,505 was paid to the descendants of Maori owners in most blocks sold since 1902, principally the Pakowhai and Paremata blocks, at Muriwai and Tolaga Bay respectively. Mangaotane Station, on which £11,000 had been borrowed in order to supplement the compensation money supplied from the trust's general reserve account, was set up as a separate trust. Shares in the trust were to be allocated to Te Aitanga a Mahaki, who had endured heavy loss in the sale of Mangatu blocks 5 and 6, Okahuatiu 2, Motu 1, and the Whataupoko block.[162] Although the rights of those owners of lands sold by the Bank of New Zealand Estates Company in 1891 were considered, it was felt that these owners were not

157. 'East Coast Maori Trust Lands', AJHR, 1952, G-3, p 14
158. *Gisborne Herald*, 8 December 1951, cited Ward, pp 168–169
159. Ward, p 174
160. *ECC v Pakowhai*, MA, bound volume, p 535, Ward, p 179
161. NZPD, 1948, vol 280, p 448; NZPD, 1951, vol 301, p 2507, cited Ward, p 179
162. Maori Purposes Act, 1951, first schedule, pt 1

entitled to compensation by the trust as their lands had been lost before the salvage attempts had commenced under the Carroll–Wi Pere Trust.[163] In 1953, Part 1 of the Maori Purposes Act instructed the Maori Land Court to determine beneficial owners in all the blocks, and the trust was to be liquidated, the lands being placed in the hands of incorporated bodies of Maori owners. Nearly 110,000 acres (106,821 acres) were finally handed over in July 1954 to 24 new incorporations, which proceeded to farm the lands in their own right.

7.8 PUBLIC WORKS ISSUES

Some claims to the Waitangi Tribunal lodged by Maori from the Poverty Bay district have concerned public works takings. This section is intended to provide some general observations on how public works issues have affected Maori land in the district, especially during the twentieth century when only a small amount of land remained in Maori ownership, and to highlight the issue as one requiring further research.

Public works legislation in the 1870s was designed to facilitate the acquisition of land for a national programme of public works. Predominantly this involved the acquisition of Maori land, and although not all 'takings' were compulsory in nature, the issue is of some importance in the Poverty Bay area, especially in the later years of the nineteenth and into the twentieth centuries. During the 1870s and 1880s there were few acquisitions of Maori land in Poverty Bay made specifically for the purpose of public works, but the Immigration and Public Works Act 1870 was used by Native Land Purchase officers for the acquisition of large areas for settlement (see chapter 5). Cathy Marr has commented that from this time onwards amendments to the legislation widened the definition and scope of public works for which land could be taken, and from this time up to 1981, public works legislation contained no provision for the active protection of Maori interests. In addition, the Government increasingly conferred land taking powers on local bodies without ensuring that those bodies had regard for Maori interests.[164]

Takings of Maori land that were made with some regularity in the Poverty Bay district were those for roads and railways. From 1862 the law provided for the compulsory taking of land for roads without compensation. The Native Lands Act 1865 gave the Governor the right to reserve five per cent of land granted to Maori for the purpose of road construction, the power to cease 10 years after the issue of the Crown grant.[165] There was no provision for compensation or consultation, and the rights of the Crown were automatically inserted in every Crown grant issued by the Native Land Court. The provisions were, according to Cathy Marr, clearly discriminatory against Maori, as the right to take land from Maori extended for a much longer period than applied to any other Crown granted land. Although it might have been the case that Maori interests were served by the making of roads it

163. MA 26/7/36, Ward, pp 180–181
164. Cathy Marr, 'Public Works Takings of Maori Land, 1840–1981', report commissioned by the Treaty of Waitangi Policy Unit, 1994, p 12
165. Native Lands Act 1865, s 76

was unlikely that road making would have been carried out at the request of Maori communities, and the provisions were more often used to open up more Maori land to European settlement. Rather, these provisions were intended to meet the needs of settlers without concern for Maori interests.[166] Under this clause though, land occupied by buildings or cultivations was not to be taken.Under the Native Land Act, 1873, such land could be taken, but compensation was payable.[167]

By virtue of the Native land Act 1873, the same conditions with regard to roads applied to land required for railway construction. Under section 73 of the Public Works Act 1876, no compensation was to be paid for land required for roads or railways when this right to make a road was reserved to the Crown.[168] In 1878, due to pressure from European members of the General Assembly, the time limit for such takings was extended to 15 years, and this also applied to all lands granted where the previous ten year limit had not expired.[169] In 1882 these powers were extended to cover land held under Certificate of Title or Memorial of Ownership.[170] Two separate Acts contained clauses dealing with the taking of Maori land for roading in 1886. The Native Land Court Act 1886 contained an additional provision for the taking of Maori land to provide private access to partitioned land.[171] The Native Land Administration Act provided for the deduction of costs for roading from purchase money or rent before it was distributed to Maori owners. These costs could be paid by a transferral of land to the Crown.[172] The Public Works Act 1894 confirmed earlier provisions for the taking of land for roads and railways. The previous assent of the Governor in Council was required before any land occupied by pa or villages, cultivations or burial grounds could be taken for roads, but such lands could still be taken for other public works purposes.[173]

By 1907, although the same provisions contained in previous legislation were continued, Maori land boards could now lay off roads for settlement and no land was to be offered for sale or lease unless it was satisfactorily roaded and bridged. The costs for such works were to be repaid out of revenue from the land at four per cent interest.[174] The Native Land Act 1909 consolidated previous provisions for takings. The Native Land Court could lay out road lines which the Governor would proclaim as public roads vested in the Crown (s 117). Land which was vested in Maori land boards was to be subdivided and road lines laid off (s 240), and the board was duty bound to construct roads and bridges (s 241). Advances would be made to boards for the preparation of land for settlement, to be repaid at four per cent interest out of the revenue from the land (s 274). Under section 309 of the Act, roads could be laid out on land for Maori settlement, and the Governor could, without payment of compensation, lay out and proclaim roads over customary land (s 387). An area of up to five per cent of Maori freehold land could be taken for

166. Marr, p 57
167. Native Land Act 1865, s 76; Native Land Act 1873, s 106
168. Public Works Act 1876, s 73
169. Native Land Act Amendment Act 1878, s 14; Marr, p 59
170. Public Works Act 1882, s 23
171. Native Land Court Act, s 92
172. Native Land Administration Act, s 37
173. Public Works Act 1894, ss 91, 95; Marr, p 60
174. Native Land Settlement Act 1907, ss 12, 39

roads without compensation for up to 15 years from the making of a freehold order (s 388), and all existing rights to take Maori land for roads were preserved (s 389).[175] These provisions remained unchanged until 1927, at which time the right of taking land without compensation was abolished by section 30 of the Native Land Claims Adjustment Act 1927.

Cathy Marr points out that the court relied on the wide legislative meaning of 'railway' where takings for these purposes were concerned. Large areas of land could be taken for various uses associated with the railway without the payment of compensation, as long as this was no greater than five per cent of the total area.[176] Maori complaints began to be made through petitions to Parliament and through their representatives in the House as the years went by. They were unhappy at the discriminatory effect of the provisions for takings of Maori land and especially at the lack of consultation required. It was, however, the use of the taking powers at a local level which caused most problems. Maori complained that local authorities always chose Maori land on which to construct roads rather than European owned land, and that roads were surveyed through Maori land 'without the slightest consideration for the Native interests'.[177]

Cathy Marr contends that the provisions allowing Maori land to be taken for roads and railways without compensation quickly became discriminatory in practical effect, as the time period during which the right could be exercised was greater for Maori land than for general land, and the lack of compensation payable contravened recognised requirements for public works takings at the time. Additionally, Maori land became a target for taking authorities as some of it could be acquired without payment and without the formalities of notice and consultation required in other land takings. Local taking authorities generally seem to have bent the rules and avoided protections and compensation even where these provisions applied. Through this legislation the Crown failed to ensure basic protection for Maori, in that it was not necessary to show that compulsory takings were really necessary or that roads constructed were in the interests of both Maori and Pakeha in the community. In 1927, when the right was abolished, the Native Minister of the time openly admitted that the right had operated in a discriminatory manner towards Maori.[178]

Oliver and Thomson have pointed out that rate income was not sufficient for local body works in most parts of Poverty Bay and the East Coast during the 1880s, and road making was therefore a major state responsibility. In the 1890s as more land was required for settlement, the surveying and laying out of roads intensified.[179] It was in this period that Maori complaints about road making became more evident, although in Poverty Bay Maori distrust of the road boards was well documented in the *Poverty Bay Standard* from their inception. At a meeting between East Coast Maori and Native Minister Ballance in 1885, Wi Peiwhairangi of Ngati Porou read a list of requests to the Minister prepared at an

175. Native Land Act 1909
176. Marr, p 63
177. NZPD, 1888, vol 56, p 609, Marr, pp 54–65
178. Marr, pp 67–68
179. Oliver and Thomson, p 204

earlier meeting of East Coast Maori. On the issue of the taking of land for roads he said:

> With reference to the power now exercised by the Government and by County Councils in taking roads over Native lands, before making such roads let application be made to the Native owners as to the best line to be adopted.[180]

Further to this, Ruka te Aratapu spoke at some length on the issue, stating that he knew of several instances where roads could have been taken through Maori land by much shorter lines, except that:

> the surveyor, having full authority, followed a much longer route, and the consequence was that a much larger quantity of our land was taken for the road. Of course if there are any difficulties in the way of the road being taken straight, it would be quite different; but I am speaking of cases where the line has been made unnecessarily long . . . Some of our people have been sent to gaol on account of having obstructed the surveyors laying out the roads in this manner. It arose this way: The road had already been laid off, but the surveyor, having full authority no doubt to do so, came and made a deviation of that road. Some of us went to the surveyor and represented that we ought to have been consulted in the matter, but he would not listen to us. The Natives took away the tools belonging to the surveyor; they were brought up for it and had to pay £40.[181]

Apparently one of the offending party paid the fine, whilst the other Maori involved were sent to gaol. Ballance asked if the road in question was a country road or a government road, and was told that it was a country road. In reply Ballance stated that in the case of county council roads, Maori must bring the 'proper pressure to bear' on council representatives, but in the case of government roads he would ensure that greater consultation occurred between road makers and the Maori councils he was at that time attempting to set up.[182]

In more general terms, the public works legislation tended to be discriminatory towards Maori and from the 1880s, Cathy Marr contends, it confirmed the marginalisation of Maori and the domination of settler interests.[183] Provisions dealing with the taking of Maori land for government works in the Public Works Act 1882 contained explicit discrimination against Maori. All Maori land, whether Crown granted or customary, was stripped of traditional protections available to all owners of land in the 1870s, although these protections continued over European land. There was now no requirement for permission prior to the entry of surveyors onto customary land when it was required for government works, and consent was only required from persons occupying the land for entry onto land in cultivation, which could have meant the European lessee of that land. Although these provisions were supposedly not available to local authorities, it is difficult to tell

180. 'Notes of Native Meetings', AJHR, 1885, G-1, p 67
181. Ibid, p 70
182. AJHR, 1885, G-1, p 72
183. Marr, p 90

whether this small protection was of any significance in practice. At any rate, local authorities could get around this by having the Government take land for them.[184]

Rating Acts passed in 1882 provided for the rating of Maori land, whether held under Crown grant or customary title. Notice of rates were to be gazetted and if they were not paid within a specified time, the Governor could make them a charge against the land. Maori members of Parliament criticised the Crown and Native Lands Rating Bill in the House, stating that roads and railways brought within five miles of Maori land were usually made by compulsion and had not been requested by Maori.[185]

The Public Works Act 1889 continued to extend the taking powers of local authorities, as land taken by the government for railways could be vested in a local authority for a road, and county councils could delegate responsibilities to road boards.[186] All compensation claims were to be determined by the Native Land Court and sittings for compensation were to be gazetted. Under the provisions of the Public Works Act 1894, the previously separate sections on takings of Maori land now applied to all local authority takings as well as those of the Government. The definition of public work included: surveys; railways; roads; gravel pits; quarries; bridges; drains; harbours; canals; river work; and water works; as well as mining pits. Also included were telegraphs, fortifications, rifle or artillery ranges, lighthouses, or any building or structure required for any public purpose or use, including lands necessary for the use and enjoyment of the same. A public work now also included lands for lunatic asylums, schools, and any associated uses. Takings of Maori land for railways and defence were excluded from the ordinary provisions of public works takings, which included protection for landowners such as requirement for notice, restrictions on entering orchards without written consent, and the right to have objections to takings heard. The provisions allowed for purchase by agreement as well as compulsory taking. Procedures for the disposal of surplus land also contained a provision for offer-back at valuation price to the original owner, then adjacent owners, and thereafter sale at public auction. The compensation provisions were also similar to previous legislation, all claims being heard by the Native Land Court. [187] The taking of land for scenery and recreation purposes was contained in the main Public Works Act and reiterated in the Scenery Preservation Act 1903. This Act provided for the taking of reserves under the Public Works Act, compensation for which would be paid to the public trustee to invest, income from it being paid to the persons entitled.[188]

Thus, by the 1880s and 1890s public works provisions reflected the general pattern of legislation which was aimed at the furtherance of settler interests at the expense of those of Maori. Public works even began to encroach on reserves set aside for Maori as a result of large scale loss of land. As Marr has stated:

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184. Ibid, p 94
185. NZPD, 1882, vol 43, pp 703, 716, 829, cited Marr, p 95
186. Public Works Act, 1889, ss 5, 14
187. Public Works Act, 1894, Marr, pp 97-98
188. Scenery Preservation Act, 1903, ss 3, 4, 5(2)

> Governments did not recognise any need to preserve remaining tribal land from public works takings or to ensure successive takings for different purposes were not having the effect of steadily encroaching on remaining land or reserves. As the scope of public works changed Maori land also came under new threats. For example, in many areas Maori had chosen reserves that allowed them access to traditional food supplies such as coastal strips. These were originally agreed to as they were not good farm land. However when scenic reserves became a public works concern, many of these reserves were compulsorily taken for this purpose and the justification was often that the land was not suited to farming anyway.[189]

In the Poverty Bay district this is made evident in a variety of examples. A reserve of part of the Waikanae block was granted to Te Aitanga a Mahaki by the Poverty Bay Commission in 1869 in order to provide them with continued access to the sea. This reserve was taken under the provisions of the Public Works Act in later years. In the Patutahi block, confiscated in 1868, a reserve of section 91, Block vii was awarded to Anaru Matete and other members of Whanauakai in 1918 under the Native Land Claims Adjustment Act 1910, on the basis of their claim before the Clarke commission in 1882 on the confiscation of the Patutahi lands. In 1915, sections 65 and 66 were taken under the Public Works Act for the East Coast main Trunk Railway. The reserve of section 91, block vii was divided in 1921 after a partial taking for a road. Further subdivided lots were later alienated.[190]

Whenuakura C block was taken for road and railway purposes in 1914. Although compensation was paid in this case, there was a lessee on the block and half of the compensation was paid to him, with the remainder payable to the owners. The whole area of the main Whenuakura block had been sold, block C being the last piece of the original block still in Maori ownership.[191] The whole of the Waiohiharore 2 block was taken for railway purposes. The 10 acres had originally been awarded to Rutene te Eke and 335 others in June 1875. The block was taken for railway purposes by notice in the *Gazette* of 1900, and as stated in the Stout–Ngata report of 1908, vested in the Gisborne Harbour Board. An application for compensation for blocks 2 and 1d, also taken for railway purposes, was lodged in 1904. A portion of around five acres of No 2 block was to be re-conveyed by the Crown to Maori and this was done in 1912. By 1915, however, the whole area was recorded as being taken and compensation assessed.[192] Although it has not been possible within the scope of the present report, further research is necessary into the details of these, and other, public works takings in the Poverty Bay district.

Public works takings also revealed a notable lack of consultation with Maori, as demonstrated by the complaints of Maori to Ballance in 1885. This was partly encouraged by the legislation, but, according to Marr, the separation of Maori and Pakeha communities, and racism, was also of significance in the lack of communication, especially at the local level.[193] She also notes that in many cases public works projects were influenced by political pressure and local interests,

189. Marr, pp 107–108
190. Patutahi SD, sec 91, block file, Gisborne MLC
191. Whenuakura block file
192. Waiohiharore 2 block file (1241)
193. Marr, p 108

particularly in the late nineteenth century when railways were expected to result in economic prosperity for a district. These were often built in areas where they were not really required, and Maori land was most often used.[194]

In later years the application of town planning processes were an issue in Gisborne. An example is provided in Maori Affairs files of the Gisborne City Council wanting to acquire 321 acres of the Paokahu blocks on the outskirts of the city in 1970. The council announced that it wanted to have all the land between the main road and the beach designated as a refuse tip and then take it under the Public Works Act. They intended that the land should be used as a recreation area for golf courses, camping sites, and a lagoon. Maori owners of the land called a meeting at which they raised their objections to the plan. The Mangatu Incorporation, which had some interests in the land, offered to act for the owners in ensuring that the land remained in Maori ownership. The Incorporation complained to the Minister about the council proposal, stating that they suspected the council wanted to get the land zoned as a tip in order to depress its value for compensation. The quantity of land to be taken was more than would be required for a tip, and it was clear that the tip was only intended for temporary use. The owners told the Minister of Maori Affairs that there was very little Maori land remaining in the vicinity of Gisborne, and they asked for his assistance in opposing the taking, while offering to lease to the council the amount of land required for a tip.[195] Maori Affairs officials informed the council that it was 'extremely bad tactics' to publicise the fact that they intended taking the land before a public meeting was held. They also expressed surprise at the council wanting a tip so close to the beach and the city. They suggested that the council lease the land if it was absolutely necessary to site the dump there. The council replied that the land was wanted for eventual recreation purposes and it needed the extra land in order to lease it and help to offset the outlay required in establishing the tip.[196]

Lawyers for the incorporation described the problems Maori had with the town planning process. The blocks in question were near the beach and the situation with respect to them had also occurred with other Maori land in the district through the use of town planning processes. Maori still owned coastal areas in the district in an unimproved state. Their land was now almost the only land left in such areas that was not already subdivided or used for holiday homes. It was therefore a prime target for proposed reserves. The Incorporation stated that they owned land that would be very valuable if subdivided but these areas had been covered by designations for car parks and proposed reserves, for which no compensation was payable. The present situation, they claimed, was a classic example of what town planners and local bodies were doing to remaining Maori land, in a situation that amounted to a worse 'land grab' than in the old days. They stated that this was causing much dissatisfaction among local Maori.[197] The Gisborne City Council

194. Marr, p 110
195. Letter to Minister, 27 November 1970, MA1, 32/2/1, vol 1, cited Marr, p 198
196. District Office Gisborne to Maori Affairs Head Office, 7 December 1970, MA 1, 32/2/1, vol 1, cited in Marr, p 98
197. Letter to Minister of Maori Affairs, 8 April 1971, MA 32/2/1 vol 1, Marr, pp 198–199

applied to the Cook County Council for planning permission to zone the whole area as a rubbish dump, and hearings began in 1972.

In the lead up to the hearings other issues became apparent. The Cook County Council had taken land adjacent to that which it was now proposed should be taken, for the construction of Centennial Drive road. No compensation had been awarded, as the council had persuaded the land court that the road would provide protection and open up access to the adjoining Maori land that could be developed as seaside allotments. Much of that land was now required for a rubbish tip site, and the owners at least wanted to retain a strip of land near the beach for future residential development. The owners protested that the taking of land for a road without compensation, together with the present proposal, amounted to 'a massive land grab of remaining Maori land in the area'. A later newspaper article reported that councillors had stated that the proposed site was 'Maori land, useless for production and an objection would therefore be unreasonable'.

Apparently the site had previously been an important pa site, with burial grounds and other important wahi tapu, as it had been closely settled and an important food gathering area, and its proposed use as a rubbish dump was anathema to local Maori. Objections were also raised that only around 50 acres would be required for a tip, and the taking of more than 300 acres was unreasonable. There was some concern that the dump might pollute the beach and streams that crossed the land. The Cook County Council eventually approved the zoning of 50 acres at the rear of the blocks for a tip, a decision which the Gisborne City Council immediately appealed before the Planning Appeal Board. They wanted the whole 321 acres, including the front strip which the county council had reserved, included in the zoning. The appeal was dismissed in 1973 on the basis of environmental concerns rather than those of the Maori ownership of the land. In 1973, when the file was discontinued, it was uncertain whether the city council were going to use their taking powers under the Public Works Act in order to gain more of the land.[198]

It is clear from this example that town planning processes have had an adverse impact on Maori land in this district, and there is evidence of a lack of adequate consultation and communication with Maori owners, as well as a lack of respect for their concerns about the possible usage of land taken. As noted previously, there is a need for more research on public works issues in Poverty Bay, most profitably on a claim by claim basis. There is, however, sufficient evidence to indicate that Maori in this area, as in other districts, have not been well-served by the public works legislation or the exercising of taking powers by the Government and local bodies, and this has been the cause of lasting bitterness amongst some Gisborne Maori.

7.9 CONCLUSION

Although it might have been expected that Maori on the East Coast would have greeted the formation of Maori councils and Maori land councils with some enthusiasm, given their strong involvement in the political movements that had

198. Correspondence and papers, MA 32/2/1, vol 1, Marr, pp 199–200

pressed so hard for their institution, the Maori councils formed under the legislation soon disintegrated through lack of support, and the amount of land vested in the land councils in the early years of their operation was negligible. The councils were not effective in providing any real powers for Maori autonomy though, and Maori throughout the North Island soon came to realise this, and went back to organising themselves through the more traditional and unofficial systems of tribal and hapu meetings.

The body which resulted from amendments to the Maori Land Administration Act of 1900, the Tairawhiti Maori Land Board, was only to have any significant area of land vested in it during the years of compulsory vesting on the East Coast. In terms of Poverty Bay itself, however, the amount of land administered by the board was extremely small, as most land remaining in the area, and not involved in the East Coast Trust, was occupied or under cultivation by Maori themselves. Out of the total 53,221 acres vested in the board on the East Coast only 2325 acres was in Cook County, itself a slightly larger area than Poverty Bay. In terms of land remaining to Maori in the area at 1908, when the Stout–Ngata commission made their inquiry, there was only 372,414 acres of Maori land in Cook County out of an estimated 1,319,014 acres for the whole of the county. A total of 946,600 acres had been alienated in a fifty year period. This amounted to nearly 75 per cent of the area. More land would be alienated over the ensuing years. Significantly also, at this time and for the next 36 years, a large part of the remaining 25 per cent would be involved in the East Coast Trust, and beyond the control of its owners.

In terms of population, by the turn of the century Maori in Poverty Bay were already outnumbered four to one by Pakeha settlers. The region grew in prosperity, as Pakeha successfully ran sheep and farmed on the lands purchased from Maori. Maori themselves increased their cultivation, but on small individual holdings rather than the common cultivations of earlier times. As land ownership was further fragmented, many Maori came to hold individual title to sections as small as one acre. Many Maori were already landless and totally reliant on wage labour on the sheep stations, and other seasonal occupations, for their financial support. In later years, consolidation and incorporation would mean that more land was held in common, but these incorporated lands were not usually those on which Maori could live and farm. More Maori began to live permanently in the township of Gisborne, or left the district for other townships by 1911.

The East Coast Trust, when it was finally wound up in 1953, gave back to incorporated groups of Maori on the East Coast substantially improved and valuable lands. A success story perhaps, but one which involved an expensive and tragic trade-off in terms of other Maori lands that were lost irredeemably through mortgagee sales. In a gesture of aroha, Maori owners of returned blocks agreed to pay compensation to those who had suffered the earlier sale of their lands without any recompense. Nevertheless, the compensation was still small, and there was nothing for the former owners of lands sold in 1891, before the salvage operations had begun. As many of the lands sold were Poverty Bay blocks, the activities of the New Zealand Native Land Settlement Company and its aftermath must be seen as having had negative repercussions both in the short and long terms for Maori of

Poverty Bay, as they resulted in much hardship over a number of decades, and the very serious loss of parts of the tribal estate.

Further research is required on a number of the issues discussed within this chapter. A consideration of socio-economic issues and the impact of land loss on Poverty Bay's Maori population should be undertaken. There is also a great deal of further detailed research needed into public works takings in the district, and other developments of the twentieth century such as the consolidation schemes during the 1920s and 1930s in order to guage the affect of these on remaining Maori land, and on Maori of the district themselves.

CHAPTER 8

CONCLUSION

8.1 INTRODUCTION

This report was intended to provide an historical overview of land alienation in the Poverty Bay (Turanganui a Kiwa) district. Some complex issues have been discussed within this overview, and many questions remain to be answered on the basis of further research. Parts of this report have relied on key secondary sources for their substance, and consequently some conclusions or analyses of material have been based on those given by other researchers and historians. There are a number of conclusions given within this report which the existing evidence supports, while other hypotheses proffered may require further research in order to confirm or deny them. These conclusions and hypotheses, as well as points needing further attention, are outlined below.

Most problematic, within the story related in the body of the text, has been any attempt to categorically state Maori attitudes or to give an explanation for their actions at any given time. Official records have provided the basis for much of this report and for most of the secondary sources used in its research. Maori actions and reactions are therefore explained via the commentary and opinions of Europeans, whose objectivity may often have been affected by personal or political agendas. The absence of a strong Maori voice within this report is regrettable, but it is to be hoped that with the help of submissions on this work by Maori claimants and through the work of claimant researchers with access to Maori sources, the balance can be redressed. Despite these acknowledged limitations, in defence of the research presented here, an effort has been made to provide as balanced an overview as possible of the events related within this report.

8.2 THE TANGATA WHENUA

The tribal histories of this region, that are broadly related in the course of chapter 1, are extremely complex, and it is perhaps something of a distortion to amalgamate all group and sub-group identities into discussion of the three main tribes or even simply ‘Maori of Poverty Bay’. It has often been difficult to differentiate between groups, however, and many of the effects of land alienation as well as the methods of alienation have been similar for all Maori in the district. It is envisaged, though that claimant research and evidence will involve a breakdown of the main groups into hapu and whanau, allowing a deeper analysis of the effects of many of the

events discussed in the text of this report. For the most part, claims registered with the Waitangi Tribunal from this district have been on behalf of one or more of the three iwi given in this report as tangata whenua at 1840. These were Te Aitanga a Mahaki, Rongowhakaata, and Ngai Tamanuhiri (Ngai Tahupo). Te Aitanga a Hauiti, although not specifically dealt with in this report, also had rights in the Uawa district from Titirangi northwards, and there is some crossover of interests in land and intermarriage between the constituent hapu of all these groups. Nevertheless, the three iwi primarily dealt with in this report were tangata whenua in 1840 and continue to be acknowledged as such today.

8.3 EARLY EUROPEAN SETTLEMENT

In the early period of European settlement, the Poverty Bay region was a Maori domain. European whalers and traders resided in the area only through the patronage of certain chiefs, who saw the presence of these Europeans in the community as a useful means of trading, as well as a matter of some prestige. These traders essentially had no rights other than those which the chiefs bestowed on them, and they lived in the Maori community according to its rules and social norms. It is evident from some of the statements made by European residents even at this early stage that their perception of their rights and relative importance was somewhat different than that of the Maori with whom they resided.

By the 1850s, when concern over the sale of land had begun to increase perceptively, the situation had altered. Although Poverty Bay was still a Maori domain, the Christianity brought to the region by missionaries had affected both the spiritual and social lives of the district's inhabitants. One of these effects was a development of Maori numeracy and literacy (sometimes in English, though usually in Maori). This soon led to active participation in the European economy, with local Maori becoming involved in trading and whaling, and sailing their own schooners full of produce to the markets in Auckland. This was a period of some hope and prosperity for Maori then, marked by a positive response to the challenges they faced through the process of colonisation.

Maori understandings of land alienation and of the Treaty of Waitangi are not easy to pin down during this period. Nevertheless, as Maori from this region travelled extensively, they would have been well aware of developments in Hawke's Bay, and concern over land sale had begun to increase, leading to the complete repudiation of all previous transactions in land before the land claims commissioner in 1859. These repudiations may indicate that Maori had never understood these early alienations (that formed the basis of old land claims by European settlers) to be absolute or permanent. Letters written during the 1850s certainly expressed such an understanding of the situation. Nevertheless, that local Maori understood the permanent nature of land sale by the 1840s is demonstrated

by their reaction to the attempts of W B Rhodes and others to purchase large areas of the district.

The missionary William Williams also impressed the danger of such sales on local Maori and probably encouraged them to sign the Treaty of Waitangi as a way of protecting their lands against such European speculators. Although support for the document was slight (only 41 signatures being attached for the whole area) there was no active protest against it.

There was a deterioration of relations between Maori and European during the 1850s and early 1860s when settlers began to attempt the purchase of land on a large scale, turning from whaling and trading to farming. They also sought the validation, under European law, of personal land transactions formerly undertaken between certain settlers and their Maori patrons. Maori were concerned to retain control over their land and resources, which led to the local runanga charging for the use of waterways, grazing rights, and other resources. There were numerous discussions on the issue of European residence in the area and a desire to throw all Europeans out of the rohe was sometimes expressed. Maori were at this time becoming more economically successful in their own right, and their own schooners regularly took local produce to the markets in Auckland. This was a time of growing prosperity for Poverty Bay Maori associated with their entry into the colonial market. This entry was marked by its initiative, its enthusiasm, its profitability and success.

Europeans in the district felt their position to be unstable at this time, especially as they wanted to buy land but Maori would not sell. They applied in earnest to the Government to purchase land in the area, and McLean visited with this purpose in mind, only to be rejected. Although Maori in the district were wary of land sale they were prepared to enter into arrangements for informal leases with private individuals. They were much more concerned to avoid the acquisition of their land by the Government, and their distrust of the Government's motives extended to suspicion of the missionaries in the area. The first Government agent to be placed in the area, Mr H Wardell, was actively repelled by local Maori, who challenged the Government's right to send him there, and expressed the belief that because the Crown had acquired no land in the area it had no authority over them. The power in the region still resided in the runanga. This was clearly demonstrated by that body's levying of payment for grazing rights and the use of local roads by settlers. It was confirmed by the complete repudiation of all old land claims before Commissioner Bell in 1859.

These old land claims were repudiated by Maori and also disallowed by the commission on the basis that they had mostly been carried out in contravention of the pre-emptive right of the Crown after 1840. They would be heard again in 1869 though, and due to the much changed circumstances by that time, local Maori had effectively lost the power to repudiate the purchases as the 'right' was by that time transferred to Europeans in the area rather than Maori (due to their rebel status). The claims were all awarded and Crown grants were issued to the settlers. The legitimacy and fairness of such grants must be regarded as doubtful under the circumstances.

8.4 WAR AND CONFISCATION: A TURNING POINT IN MAORI FORTUNES

It can be seen that Poverty Bay Maori remained staunchly independent up to and during the 1860s, when disturbances had begun to break out in other areas of the North Island. When Pai Marire came to the area, Te Aitanga a Mahaki converted almost en masse but Rongowhakaata in the main stayed aloof from the movement. It was manipulation of the situation by Ngati Porou chiefs, when Pai Marire from the fighting on the East Coast fled to Poverty Bay, rather than any active rebellion on the part of Maori in Turanga, which led to the siege at Waerenga a Hika. This was a turning point in the fortunes of Poverty Bay Maori, the Government drawing up legislation to deal with the confiscation of large areas of the best land on the Coast. Nothing had been done by 1869 when Te Kooti returned from the Chatham Islands and attacked Poverty Bay but these events forced the hand of local chiefs who were pressed into a 'cession' of the entire district from which the Government would retain a portion in payment for the costs of repressing the 'rebellion'.

It is evident from maps drawn up in 1868, and discussions at the time, that it was the Te Aitanga a Mahaki group of 'rebels' who were primarily to be punished for their 'rebellion' in the form of land confiscation. Te Kooti's activities of November 1869 changed the emphasis to punishment of Rongowhaakata, or at the very least ensured that their 'loyalty' to the Government during 1865 was overlooked. There was no new legislation to specifically cover the new set of 'rebellious' activities though, and it is also arguable that most of those punished with the loss of their land for Te Kooti's raids were actually prisoners of Te Kooti's party rather than active participants in the hostilities. Excessive pressure from Government agents such as Atkinson, and the threat of the withdrawal of military protection for the inhabitants of the district, led Poverty Bay chiefs to cede all their lands to the Government, with the agreement that all would be returned to them in Crown granted title, except for 15,000 acres which the Crown would retain in three blocks (Patutahi, Muhunga, and Te Arai).

The Poverty Bay Commission sat in 1869 with the primary purpose of dividing out the Government's share. This share ended up as 56,161 acres, a significant increase from that which Maori claimed to have promised. The fact that the agreement for the Crown's share was made out of court before the commission sat and was a verbal understanding makes it extremely difficult to ascertain the degree to which the Crown agents acted with duplicity in confiscating the much larger area. At any rate, through a number of different manoeuvres, they managed to get another 20,000 acres added to the Government's portion of the Patutahi block on survey. This explains some of the discrepancy from the original figure quoted, but more research is required if this difficult issue is ever to be fully explained.

The portions retained by the Government were to come primarily out of the lands of Rongowhakaata, only 5000 acres being retained from Te Aitanga a Mahaki, who made up the majority of the original 'rebels'. Additionally, the lands which the Government kept were the most valuable of Rongowhakaata's lands, and came out of a smaller tribal estate than that of Te Aitanga a Mahaki. It is easy to see that Rongowhakaata bore an unreasonably large burden for the troubles of the previous

years in the loss of so much of their land. The Poverty Bay tribes, including those members who had been loyalists, also lost their political autonomy, as the Government refused henceforth to actively consult Poverty Bay chiefs on matters directly concerning their people and their lands, preferring to discuss the affairs of the Poverty Bay tribes with Government allies from Ngati Porou and Ngati Kahungunu. This state of affairs was galling to the Poverty Bay chiefs, who were consistently told that this situation had arisen because they were 'rebels', that their chiefs were traditionally of no importance, and that the Government did not regard their complaints as legitimate. Ngati Porou and Ngati Kahungunu, to make matters worse, had been granted lands out of the Patutahi block as reward for their allegiance to the Government in the recent troubles. These tribes agreed to take money from the Crown as compensation for the lands, which the Government retained, paying the two tribes £5000 each. Loyalists from within the Poverty Bay tribes were not similarly rewarded despite promises to this effect having been made to them by Government agents on a number of occasions.

From this time onwards, Turanganui, the previous Maori settlement, was known as Gisborne; the Government having purchased it shortly before Te Kooti's return under circumstances which place the 'purchase' quite clearly in the category of a 'forced cession'. Although money was paid for the lands it is evident that pressure in the form of the threat of confiscation was the primary reason Poverty Bay Maori agreed to sell some land for a European settlement – something that they had previously refused to do. The title to this land was never properly ascertained because it was purchased before the arrangements surrounding confiscation. Therefore, important details about the history of the land, the location of urupa and wahi tapu, were never recorded and this information was lost to descendants of the original Maori owners.

8.5 THE NATIVE LAND COURT PROCESS

The name change of the township reveals much about the way in which the tide had turned for Maori in the area. The Native Land Court now moved in to complete the process of individualisation of tenure, to destroy traditional tribal structures and social frameworks, to cause impoverishment and eventual landlessness. If Maori were crushed by the confiscation of their land, the process that followed was almost completely debilitating. Land returned by the 1869 sitting of the Poverty Bay Commission had been returned in joint tenancy, allowing it to be sold off rapidly to European speculators. The majority of this land had been permanently alienated by the 1890s. It is significant that this also impacted most seriously on Rongowhakaata, whose lands were the first to be returned by the commission. All their prime arable land on the flood plains was taken up by settlers. The rest of the lands were returned to Maori in tribal blocks by the 1873 commission, who were faced with insurmountable problems in ascertaining individual title, and were plagued by the activities of those Maori who protested against the commission and repudiated the cession of land to the Crown.

In the 1870s, the Native Land Court was to ascertain ownership of most Poverty Bay blocks, and award these lands in individual and undivided shares. The process then began which was to result in the district's complete notoriety in the next couple of decades as an area where title to land was so confused, and the litigation over disputes so continuous, fierce, and expensive that it was unwise for Europeans to attempt the purchase of Maori land there. In later years there would be a number of different stop-gap measures introduced by the Liberal Government to validate European titles and award these lands to them. In short, the effects of the land court on Maori in this area followed a similar pattern to that in other districts. Poverty, debt, the persuasion of individual and lesser owners in land to sell their shares, led to the continuous subdivision of blocks into smaller and smaller holdings in order to separate out the shares of the European purchaser.

The Government had itself operated in the same manner as private purchasers in paying sums of money to those who claimed to be principal owners in land prior to its passage through the Native Land Court. The land purchase officers then exerted pressure on those listed as owners of blocks to sell their undivided interests, until such time as enough shares had been purchased to make a subdivision of the block a necessity. Through these methods, the Crown acquired over 200,000 acres of land in Poverty Bay from 1876 to 1884. Partitioning of further Crown interests in Poverty Bay blocks continued into the twentieth century. Although the Government acted in the same manner as private speculators and used the same methods, it also used the provisions of the Immigration and Public Works Acts to stop European individuals from purchasing interests in blocks for which the Crown was negotiating. This amounted to a mild form of pre-emption, as it prevented Maori from getting a better price for their land from private speculators once they were locked in to a sale to the Crown by the initial payment of money by the land purchase officer.

There are various issues associated with this period of land alienation in Poverty Bay that require further investigation, such as the removal of restrictions on alienation of Maori land. Many purchases in this district were made in violation of restrictions and these purchases were later validated. The fact that no Maori reserved land was safe from purchase activity and that these illegal purchases were later approved must be seen as highly questionable. The activities of the Validation Court are similarly an area requiring more research and analysis not only into the particulars of cases brought before the court but also into the lack of emphasis put on Maori opposition to these validations. The onus was put on Maori objectors to validations of European titles to prove to the court that the purchases in question had not been made in a manner both equitable and 'in good conscience'. If Maori did not appear in court, which they often did not for a variety of reasons, the transactions were automatically validated without requirement of proof of the bona fides by the European claimant. The stipulation that the transactions must have been made in 'equity and good conscience' was irresponsibly vague and open to a wide variety of interpretations by presiding Judges, as the dubious nature of validations of title to blocks awarded to the Carroll-Wi Pere Trust attests.

8.6 THE TWENTIETH CENTURY

By the twentieth century, less than 25 percent of the original tribal estate remained, much of this either leased or tied up with the East Coast Trust, and out of the control of the Maori owners. For all they knew these lands could have been permanently alienated at any time, as the earlier New Zealand Native Land Settlement Company and Carroll-Wi Pere Trust had allowed Poverty Bay blocks to be sold in mortgagee sales by the Bank of New Zealand. There were already many Maori in the area who were completely landless and reliant on the proceeds from waged labour for the support of themselves and their families. The social impact of the large-scale sale of land both to the Crown and to private interests cannot be under-estimated in its importance. Maori whose land was later incorporated, although they may have remained owners, were owners among hundreds who could not farm or occupy the land. Receiving only very small dividends, these beneficial owners were essentially landless, and often resided in the city of Gisborne or elsewhere. This continues to be the case, but more contemporary social research is required into these matters.

Oliver and Thomson in their book *Challenge and Response*, summed up the general effect of European settlement on Poverty Bay Maori in the broad statement that in the 1850s the monopoly of Captain Read stood for a significant transfer of economic power, followed by a transfer of military power in the 1860s, and of political power in the 1870s. It seems clear though that the transfer of power, both economically and in a political sense, from Maori to Pakeha was inextricably linked to the transfer of land. The turning point for this transfer came with the confiscation of Poverty Bay lands in 1869. Although it was officially referred to as a 'cession' of Poverty Bay lands to the Crown, it can only be seen as a confiscation of those lands by the Government. It was referred to as such by politicians and Government officers at the time, and it was known as such by both Maori and settlers in the district. Although this occurred under separate legislation than confiscations in other areas of the North Island, it was carried out with reference to section 5 of the New Zealand Settlements Act in terms of the definition of rebellion. It was also instituted by the Government with the same purposes in mind as in other confiscations. These were the punishment of rebels, the reparation of costs incurred in the wars, and the appropriation of land for military settlers. After the confiscation of a large area of good land which was to be sold to settlers, and the purchase of land for the establishment of a European township, the nucleus of increased settlement was established in the former Maori domain of Poverty Bay. The tide of land sale and settlement could not be stopped from this time onwards. The individualisation of tenure carried out through the Native Land Court process must be seen as having had appalling consequences for Poverty Bay Maori who were no longer equipped with the resources necessary to control the rapid alienation of individual shares in land. That confusion reigned in the matter of land laws and land matters in the district is evident, and that this confusion was far more detrimental to Maori land owners than to European purchasers is similarly evident.

Various instances outlined in the course of this report show that successive governments were similarly negligent in their duty to protect Poverty Bay Maori from the perpetration of injustices on them and the excessive loss of their land and

resources. That Government agents often ran rough-shod over the Maori right to tino rangatiratanga has also been demonstrated. The confiscation of land in Poverty Bay was without doubt the single most tragic and damaging event in the history of Maori in this district and it led, in the fashion of falling dominoes, to the subsequent alienation of the greater part of their tribal estate, leaving many landless and impoverished.

APPENDIX I

PRACTICE NOTE

WAITANGI TRIBUNAL

CONCERNING the Treaty of Waitangi Act 1975

AND Rangahaua Whanui and the claims as a whole

PRACTICE NOTE

This practice note follows extensive Tribunal inquiries into a number of claims in addition to those formally reported on.

It is now clear that the complaints concerning specified lands in many small claims, relate to Crown policy that affected numerous other lands as well, and that the Crown actions complained of in certain tribal claims, likewise affected all or several tribes, (although not necessarily to the same degree).

It further appears the claims as a whole require an historical review of relevant Crown policy and action in which both single issue and major claims can be properly contextalised.

The several, successive and seriatim hearing of claims has not facilitated the efficient despatch of long outstanding grievances and is duplicating the research of common issues. Findings in one case may also affect others still to be heard who may hold competing views and for that and other reasons, the current process may unfairly advantage those cases first dealt with in the long claimant queue.

To alleviate these problems and to further assist the prioritising, grouping, marshalling and hearing of claims, a national review of claims is now proposed.

Pursuant to Second Schedule clause 5A of the Treaty of Waitangi Act 1975 therefore, the Tribunal is commissioning research to advance the inquiry into the claims as a whole, and to provide a national overview of the claims grouped by districts within a broad historical context. For convenience, research commissions in this area are grouped under the name of Rangahaua Whanui.

In the interim, claims in hearing, claims ready to proceed, or urgent claims, will continue to be heard as before.

Rangahaua Whanui research commissions will issue in standard form to provide an even methodology and approach. A Tribunal mentor unit will review the comprehensiveness of the commission terms, the design of the overall programme, monitor progress and prioritise additional tasks. It will comprise Tribunal members with historical, Maori cultural and legal skills. To avoid research duplication, to maintain liaison with interested groups and to ensure open process:

(a) claimants and Crown will be advised of the research work proposed;
(b) commissioned researchers will liaise with claimant groups, Crown agencies and others involved in treaty research; and
(c) Crown Law Office, Treaty of Waitangi Policy Unit, Crown Forestry Rental Trust and a representative of a national Maori body with iwi and hapu affiliations will be invited to join the mentor unit meetings.

It is hoped that claimants and other agencies will be able to undertake a part of the proposed work.

Basic data will be sought on comparative iwi resource losses, the impact of loss and alleged causes within an historical context and to identify in advance where possible, the wide ranging additional issues and further interest groups that invariably emerge at particular claim hearings.

As required by the Act, the resultant reports, which will represent no more than the opinions of its authors, will be accessible to parties; and the authors will be available for cross-examination if required. The reports are expected to be broad surveys however. More in-depth claimant studies will be needed before specific cases can proceed to hearing; but it is expected the reports will isolate issues and enable claimant, Crown and other parties to advise on the areas they seek to oppose, support or augment.

Claimants are requested to inform the Director of work proposed or in progress in their districts.

The Director is to append a copy hereof to the appropriate research commissions and to give such further notice of it as he considers necessary.

Dated at Wellington this 23rd day of September 1993

Chairperson
WAITANGI TRIBUNAL

APPENDIX II

SUMMARY OF CLAIMS IN THE POVERTY BAY DISTRICT

AS AT 30 JANUARY 1997

Wai 91

Claimant: Lewis Ruihi Moeau, on behalf of Rongowhakaata, Te Aitanga-a-Mahaki, and proprietors of Mangatu blocks, trustees for Paokahu and Kopututea owners
Claim received: 13 April 1987
Claim regarding: Section 28, block IV Turanganui Survey District (301.546 hectares)

Issues
This land, formally covered by water, was vested in the Crown under the Reserves and Other Lands Disposals Act 1953. The claimant wished that the land be retained by the Crown and not transferred under the State Owned Enterprise Act 1986 until the question of customary ownership was resolved.

Wai 129

Claimants: Sue Te Huinga Nikora, Te Atauoterangi ii (Ngati Porou paramount chief), Wiremu Tamati Kirena, on behalf of Ngati Porou Mt Hikurangi Lands Claims Committee and Te Awemapara Trust, for hapu of Ngati Porou
Claim received: 14 November 1989
Claim regarding: The East Coast area from Tihirau mountain in the north to Mohaka River in the south

Issues
The claim deals with the failure of Crown to safeguard Ngati Porou rights to and interests in their lands, forests, marine and mineral resources, and culture. The claimants state that the confiscation of lands on the East Coast was illegal and unjustified as hapu of Ngati Porou were 'loyalist'. The claimants also state that the individualisation of land tenure and Crown granting of title after the 'rebellion' of Te Kooti, the manipulation by Crown agents, and the negligence of the Crown resulted in loss of 1.6 million acres of ancestral lands. The claimants believe that they have been prejudicially affected by the enactment of a variety of legislation listed in the statement of claim.

Wai 163

Claimants: Pani M Hawkins (Missie Hawkins) for the descendants of William Walker and Kararaina Whaanga
Claim received: 30 July 1990

Claim regarding
The land rights of Ema Whakamoraro, mother of William Walker. The claimants seek to have the Waitangi Tribunal investigate the means by which the land rights were transferred to George Walker, how the rights to the land that came from her to her son William were alienated, and the Crown's involvement in the alienation of the land. This claim concerns part of the Maraetaha block which also bounds on Te Kopua and the Maraetaha land of settler James Woodbine Johnson within the Gisborne district.

Wai 274

Claimants: Eric John Tupai Ruru on behalf of Te Aitanga a Mahaki and the shareholders of the proprietors of Mangatu blocks
Claim received: 24 February 1992

Claim regarding
Acquisition by the Crown of Maori freehold lands belonging to proprietors of Mangatu 1, 3, and 4 blocks. This is an area of 8521 acres described in a schedule attached to the statement of claim. (blocks xi, xii, xv, svi, Arowhana survey district, and blocks iii and iv, Mangatu survey district). Claimants state they have been prejudicially affected by the acquisition of these lands by the Crown for the purposes of establishing a permanent state forest under the State Forests Act 1949, known as the Mangatu State Forest. They claim that the acts, policies, and ommissions of the Government leading to the acquisition of the land in 1962 have been contrary to the principles of the Treaty. As the state forest is Crown land available for the settlement of Te Aitanga a Mahaki claims within the rohe, they request that the Waitangi Tribunal recommend its return to the iwi.

Wai 283

Claimants: Eric John Tupai Ruru for Te Aitanga a Mahaki, and Tutekawa Wyllie for Ngai Tamanuhiri, and Peter Gordon for Rongowhakaata
Claim received: 26 March 1992

Claim regarding
The iwi of Turanganui a Kiwa have been prejudicially affected by the enactment of a variety of legislation designed to enable the Crown to confiscate lands in the district, and to grant the ceded land to the Colonial Defence Force and 'loyalist' Maori. The claimants state that they have been prejudicially affected by the Poverty Bay Land Titles Act 1874, which authorised the Native Land Court to investigate title to the remainder of ceded territory returned to the iwi and not adjudicated on by the Native Land Court. Additionally, they state that they have been prejudicially affected by the acquisition of Maori land in the rohe by the Crown under the Immigration and Public Works Act 1871, the Native Lands Act 1873, and its amendments. The claimants feel believe that the Government Native Land Purchase Act 1877 and the Native Land Purchase Amendment Act 1878 were also contrary to the principles of the Treaty of Waitangi.

Wai 323

Claimant: Joseph Anaru Hetekia Te Kani Pere, on behalf of Te Whanau O Wi Pere and others (Te Whanau a Kai, hapu of Te Aitanga a Mahaki, and Rongowhakaata)
*Claim received***:** 10 November 1992

Claim regarding
Lands taken from Wi Pere and his people in 1869 due to his identification by the Crown as an 'active rebel'. It has, according to the claimant, been established that Wi Pere was not involved in any rebellion against the Crown. Te Muhunga and Patutahi blocks were 'ceded' to the Crown and as part of the confiscation of Te Muhunga the Crown proposed to take Whararaki, Wairereha, Waitawaki, and Tehapua blocks. Atkinson announced before the Poverty Bay Commission that it had been arranged between himself as Crown agent and Mr Graham, on the part of Maori, that the Crown should take these blocks in satisfaction of their rights over 'rebel' lands. The claimant states that the survey of the Muhunga Block was inaccurate and inconsistent with arrangements discussed with chiefs. The acreage ceded was to have been only 5000 acres, but 5595 was taken. The claimant also states that the Waitawaki block of 444 acres was Wi Pere's ancestral land and was not to have been included in the ceded area as arranged by himself as one of the principal negotiators with the Crown for confiscation. It is claimed that Atkinson, Crown agent, had verbally undertaken to address the matter of the discrepancy between the acreage promised and that which the Crown retained, but he had never acted on this promise. The claimant seeks a declaration that the Crown took the land wrongfully and also a determination of his and other claimants rights in the block.

Wai 337

Claimants: Rapiata Darcy Ria for Te Runanga o Turanganui a Kiwa (Rongowhakaata, Te Aitanga a Mahaki, Ngai Tamanuhiri)
Claim received: 17 December 1992

Claim regarding
The former Maori freehold land contained in Awapuni blocks 1f, 1e, and 1a, taken under the Public Works Act 1894 for the purposes of a public cemetery on 4 March 1902. This land now comprises that known as Watson Park and its surrounds. Compensation of £961 4s 10d ($1922.48) was paid on 20 June 1903 after a decision made in the Maori Land Court. The claimants state they have been prejudicially affected by these acts of the Crown and also by the enactment of the Reserves and Other Lands Disposal and Public Bodies Empowering Act 1913, by which the purpose for which the land was taken was changed from that of a cemetery to a public reserve for general utility in order that the land be retained by the local body and not returned to the owners. The claimants state that this action by the Crown was contrary to the principles of the Treaty and that the Gisborne District Council was now seised of an estate in fee simple for general utility purposes. (Certificate of title 4b/410). The claimants ask that the Tribunal recommend the return of the land and any other relief it considers appropriate.

Wai 347

Claimant: Tutekawa Wyllie, for himself and descendants of Ngai Tamanuhiri (with support of Ngai Tamanuhiri Society Incorporated and Muriwai Marae Committee and Te Runanga o Turanganui a Kiwa)
Claim received: 30 March 1993

Claim regarding
The claimants stated they were likely to be prejudicially affected by the granting of any applications for coastal permits by the Gisborne District Council, under section 93(2) of the Resource Management Act 1991, to Engineering and Works, Gisborne District Council, for the purpose of discharging municipal wastewaters into the Bay from 1800 metres off shore at Midway Beach and to Port Gisborne Ltd, for the purpose of dredging the Port of Gisborne and dumping the material into the bay. The claimants requested that the Tribunal consider these and any other applications for coastal permits as part of their submission if these were likely to affect their Tamanuhiritanga, tino ranagtiratanga mana moana within the boundaries of Kopututea to the north and Paritu to the south. The claimants stated that, contrary to the Treaty, their rights to tino rangatiratanga had not been protected. They claimed that their taonga mana moana had been depleted through the destruction of taunga ika, mataitai, and mahinga kai and could not be restored. They asked for adequate compensation for these losses through acts and omissions of the Crown and county councils operating under the legislation of successive governments. This will not be a matter for hearing by the Waitangi Tribunal as claimants have recourse to remedies under the Resource Management Act 1991.

Wai 351

Claimants: Janette Honey Waitai and Ruby Whaea o Mere Baty on behalf of themselves and the iwi represented by Te Runanga o Turanganui a Kiwa (Te Aitanga a Mahaki, Rongowhakaata, and Ngai Tamanuhiri).
Claim received: 1 June 1993

Claim regarding
The transfer by the Crown of Te Puni Kokiri Mortgage Portfolio to Housing New Zealand. The claimants state that they have been prejudicially affected by the Crown's failure to; actively consult with them or their runanga prior to the transfer of their mortgages to Housing New Zealand, actively protect their housing mortgages provided by the Crown, and to actively protect their homes acquired by way of Crown housing mortgages by transferring those mortgages from Te Puni Kokiri to Housing New Zealand. The claimants wish the Tribunal to address the issue of whether their houses are taonga under the terms of the Treaty. They submit that 'taonga' is an extremely broad term and is inclusive of Crown mortgages to Maori or homes acquired by way of these mortgages.

Wai 390

Claimants: Hone Meihana Taumaunu for Te Runanga o Paikea, Runanga of Te Aitanga a Hauiti and its constituent hapu
Claim received: 22 September 1993

Claim regarding

The rohe of Te Runanga o Paikea which overlaps that of Te Runanga o Ngati Porou and includes all the land, waterways, coastline and sea to the east of Turanganui and Waimata rivers, encompassing Te Toka a Taiau to the south and Tauwhareparae and Nuhiti to the north. The claimant states that the beneficiaries of Te Runanga o Paikea have been prejudicially affected by the Public Works Association Act 1889 and its subsequent amendments, under which the Crown-appropriated Maori land for public works in the rohe of Te Runanga o Paikea, of which only a small part continues to be used for the purpose for which it was taken. Also, the Native Lands Fraud Prevention Act 1870, under which Maori were protected from fraudulent dealings over their land, although such dealings within the rohe passed through the Native Land Court despite the protection of the Act. Under part 24 of the Maori Affairs Act 1953, land was acquired by the Board of Maori Affairs to set up farming operations which Maori owners would take over, but all monies spent on the land constituted a lien on the land and Maori owners were required to take out section 460 loans to repay the monies spent on the land. In the 1870s sales of Maori land to the Crown were conditional on reserves being maintained in perpetuity but these reserves were subdivided and sold. Crown Agents did not always hand over payments from the Crown to the sellers of land and the Crown adopted the policy of making pre-payments to secure the blocks prior to adjudication by the Native Land Court thus reducing Maori bargaining power and ensuring terms acceptable to the Crown. The Native Land Act 1909 consolidation schemes resulted in land not included in the schemes (and considered too small to farm or use productively) being deemed uneconomic by the Crown, who then purchased these lands. Crown purchase deeds used the word 'riihi' meaning lease, but these were in fact outright sales. Maori of Te Aitanga a Hauiti did not realise they were selling their land because of the use of the word riihi. Under the Native Land Court Act 1873, Maori land was individualised and as a result individual owners were pressured into selling, the mana of hapu and iwi to control their lands was denied, there were delays in all signatures being obtained, and where this happened the Crown had its interests determined and the Native Land Court partitioned a portion of the land for the Crown. The Crown purchased Maori land for no more than one to three shillings per acre, survey and court costs were charged to the land and to Maori by the Native Land Court. These liens effectively acted as a mortgage and land was sold if costs were not paid. It is, therefore, submitted by the claimants that large areas of land in the rohe were subjected to acts and omissions of the Crown and its agents.

Wai 499

Claimants: Tanya Parearau Rogers for the Executrix of Mangatu Shares and Ngariki Kaiputahi o Mangatu

Claim received: 28 March 1995

Claim regarding

The claimants state they have been prejudicially affected by the Crown's acquisition of Maori freehold lands belonging to Ngariki Kaiputahi, being Mangatu blocks 1, 3, and 4, for the puposes of establishing a state forest under the Forests Act 1949. They claim that the acts, policies and omissions of the Crown resulting in their acquisition of Mangatu 1 were contrary to the principles of the Treaty of Waitangi. They claim that the whole of these Crown lands should be available for the settlement of the historical grievances of Ngariki Kaiputahi arising from the acts of the Crown which resulted in the cession of that tribe's

land. They ask that the Tribunal recommend that Mangatu 1,3, and 4 be returned to Ngariki Kaiputahi, and that they be given any other relief the Tribunal should think appropriate.

Wai 507

Claimant: Owen R Lloyd for Ngariki Kaiputahi hapu and Trustees of Ngariki Kaiputahi Whanau Trust

Claim received: 26 April 1995, amended statement of claim Ngariki Kaiputahi Whanau Trust, 5 September 1995

Claim regarding

Claimant states that Ngariki Kaiputahi have been deprived of their tino rangatiratanga over lands, forests and reserves, mountains and mana due to the individualisation of title and the activities of the Native Land Court especially the 1881 decision (that which granted land to Wi Pere). The claimant states that the Government allowed claims by other groups to land at Mangatu in the early 1900s, and it awarded shares to the new claimants by deducting them from those who were already entitled. Some of the new owners were given the biggest shares. The Government passed legislation which made it difficult for the court to determine the real owners of the land. The claimants also complain of the instructions given to Crown Agents to use every means to prevent the inclusion of Hauhau in lists of claimants to the Poverty Bay Commission of 1869, which resulted in the true owners of lands being afraid to apply for the ascerttainment of title. The claimants state that their tipuna Pera Uetuku and his son Te Hira were wrongfully imprisoned at Wharekauri on the Chatham Islands as Hauhau supporters, and were thus made subservient to those in power. Mangatu, the claimant states, was sold due to a mortgage debt. The claimants ask that the Crown returned Mangatu to Ngariki Kaiputahi.

Wai 518

Claimants: Stanley Joseph Pardoe, on behalf of Te Aitanga a Mahaki, Rongowhakaata, and Ngai Tamanuhiri.

Claim received: 21 June 1995, registered as per directions 26 June 1995

Claim regarding

Surplus Crown lands in Gisborne city and wider tribal areas of the iwi named above. The claimants state that they have and will be prejudicially affected by the failure of the Crown's protection mechanism for surplus Crown lands and the Crown's failure to protect surplus Crown lands capable of being returned to the iwi should their claims be accepted by the Waitangi Tribunal. It is claimed that the Government has failed to consult with the iwi in relation to the disposal of lands within their tribal area, and has knowingly disposed of surplus Crown lands in advance of investigations by the Tribunal. The claimants seek from the Tribunal a declaration that the Government's policy is inconsistent with the principles of the Treaty of Waitangi, and they ask that the Tribunal recommend that the Government halt the sale of all surplus Crown lands, including the Gisborne Intercity bus depot and workshop, until it has actively consulted with the iwi regarding a satisfactory protection for surplus Crown lands in the rohe.

BIBLIOGRAPHY

PRIMARY SOURCES

Unpublished

Official

Gisborne Maori Land Court
Arai Matawai block file
Panikau block file
Pakarae block file
Pakirikiri block file
Papakorokoro block file
Patutahi SD section 91 block file
Poroporo block file
Rangikohua 1 block file
Tarewa block file
Tauwharetoi block file
Waihora block file
Whakaongaonga block file
Waiohiharore 2 block file
Waipaoa block file
Waingaromia block file
Whangara block file
Whenuakura block file

Gisborne Land Transfer Office
Poverty Bay Deed Registers

Gisborne Museum
Hall, R de Z, papers, 1831–1910
Lysnar, W D, papers, 1892–1940
Mackay, J A, papers, 1900–52
Te Kani te Ua, 'The True History of the Canoes of Kiwa and Pawa', undated ms, VF, box 993

Maori Affairs files, National Archives
MA 11/1, Papers Relative to the Commission of Inquiry into Charges against J Rogan, Native Land Court Judge, and J A Wilson, Land Purchase Officer
MA 11/2, Papers Relative to the Royal Commission Upon Certain Native Claims to Land, Poverty Bay, 1882
MA 11/3, Papers Relative to the Removal of Alienation Restrictions on the Sale of Native Lands, 1886
MA 13/22–13/26, Files Relating to the Removal of Restrictions on Alienation of Land
MA 13/34, Gisborne Township Papers
MA 13/94, Waingaromia Block, Poverty Bay, special file
MA 62/4, Poverty Bay Commission: Minutes of the Commission Continuing its Inquiries 1873
MA 62/5, Poverty Bay Commission: Inwards Letters, 1867–73
MA 62/6, Poverty Bay Commission: Outwards Letters, 1867–73
MA 62/7, Poverty Bay Commission: Inwards Correspondence received by Native Department, 1869–80

MA 62/8, Poverty Bay Commission: Inwards Correspondence received by Lands Department

Newspapers
Gisborne Herald
Hawke's Bay Herald
Poverty Bay Herald
Poverty Bay Standard
Poverty Bay Standard and People's Advocate
New Zealand Herald

Unofficial
McLean papers, MSS Alexander Turnbull Library

Army Department Series Files
Porter, T W R, Colonel, Papers and Outward letterbooks, Army Department Series 103

Old Land Claims Series
OLC 2/7, Curnin's Register
Old Land Claims Register vol I
OLC 4/21, Poverty Bay Claims
OLC 5/18, Return of Claims settled since 1862

Published

Official
Appendices to the Journals of the House of Representatives
Appendices to the Journals of the Legislative Council
British Parliamentary Papers
New Zealand Gazettes
New Zealand Parliamentary Debates
New Zealand Statutes
Raupatu Document Bank

Grace, T S, *A Pioneer Missionary Among the Maoris, 1850–1879, (Being the Letters and Journals of Thomas Samuel Grace)*, S J Brittan & A V Grace (eds), G H Bennett & Co, Palmerston North

Polack, J S, *New Zealand: Being a Narrative of Travels and Adventures during a Residence in that Country between the Years 1831 and 1833*, vol 1,1838 (reprinted 1874)

Porter, T W, 'The History of the Early Days of Poverty Bay: Major Ropata Wahawaha, NZC, MLC: The Story of his Life and Times', *Poverty Bay Herald*, Gisborne, 1897

Porter, T W, *Legends of the Maori and Personal Reminiscences of the East Coast of New Zealand*, 1925

Richmond, J C, *The Richmond–Atkinson Papers*, vol 2 , G H Scholefield (ed), 1960

Stack, J W, *Further Maoriland Adventures* (Mrs Stacks Journals), Dunedin, Reed, 1938

Turton, H H, *Maori Deeds of Land Purchases in the North Island of New Zealand*, vols 1 and 2

Williams, Reverend William, *The Turanga Journals 1840–1850: Letters and Journals of William and Jane Williams, Missionaries to Poverty Bay*, Porter, F (ed), Victoria University Press, Wellington, 1974

SECONDARY SOURCES

Unpublished

Theses

Butterworth, G V, 'The Politics of Adaptation: The Career of Sir Apirana Ngata, 1874–1928', MA thesis, University of Auckland, Auckland, 1969

Davies, B L, 'The Incorporations of the East Coast', MA thesis, University of Canterbury, Christchurch, 1937

Drummond, R J H, 'The Origins and Early History of Ngati Porou', MA thesis, University of Canterbury, Christchurch, 1937

Gilmore, Barbara, 'Maori Land Policy and Administration During the Liberal Period, 1900–1912', MA thesis, University of Auckland, 1969

Mahuika, A, 'Nga Wahine kai-hautu o Ngati Porou: The Female Leaders of Ngati Porou', MA thesis, Sydney, 1973

Martin, R J, 'Aspects of Maori Affairs in the Liberal Period', MA thesis, Victoria University of Wellington, 1956

Murton, B J, 'Settlement in Poverty Bay, 1868–1889', MA thesis, University of Canterbury, Christchurch, 1962

Neal, K S, 'Maori Participation in the East Coast Wars 1865–1872: Local Politics and Greater Commitments', MA thesis, University of Auckland, 1976

Sanderson, K M, 'These Neglected Tribes: A Study of the East Coast Maoris and Their Missionary, William Williams, 1834–1870', MA thesis, University of Auckland, 1980

Sorrenson, M P K, 'The Purchase of Maori Lands, 1865–1892', MA thesis (History), Auckland University College, Wellington, November 1955

Turnbull, M R M, 'An Inquiry into the Conduct of the East Coast War, 1865–1869', MA thesis, Victoria University of Wellington, 1947

Ward, A D, 'The History of the East Coast Maori Trust', MA thesis, Victoria University of Wellington, 1958

Booklets and papers

Hall, R de Z, 'Maori Lands in Turanga 1865–1873, with particular reference to the Poverty Bay Commission 1869 and 1873', unpublished typescript, Gisborne, 1984

———, 'Te Hau Ki Turanga: A Historical Re-statement', unpublished typescript, 1980 (revised 1983), VF 993, Gisborne Museum

———, 'Riperata Kahutia: Materials for a Biography', unpublished typescript, Gisborne Museum

Ngata, A T, 'Nga Rauru nui a Toi', The Porourangi Maori Cultural School Lecture Course, lectures 1–7, 1944

Truscott, R H, 'Poverty Bay and Colonial Land Policy, 1865–1868', MA research essay, Auckland, University of Auckland, October 1976

Published

Books

Belich, J, *The New Zealand Wars and the Victorian Interpretation of Racial Conflict*, Auckland, Auckland University Press, 1986

Binney, Judith, *Redemption Songs; A Life of Te Kooti Arikirangi Te Turuki*, Auckland, Auckland University Press & Bridget Williams Books, 1995

Clark, P, *Hauhau: The Pai Marire Search for Maori Identity*, Auckland, Auckland University Press, 1975

Cowan, J, *The New Zealand Wars: A History of the Maori Campaigns and the Pioneering Period*, 2 vols, Wellington, Government Printer, 1922–1923

Dictionary of New Zealand Biography, Volume One, 1769–1869, Wellington, Allen and Unwin/ Department of Internal Affairs, 1990

Dictionary of New Zealand Biography Volume Two, 1870–1900, Wellington, Allen and Unwin/ Department of Internal Affairs, 1993

Dictionary of New Zealand Biography, G H Scholefield (ed) vols 2 and 3, Department of Internal Affairs, Wellington, 1940

Kent, I, *The East Coast Maori War*, Napier, Cooke, 1907

Kenway, P T, *Pioneering in Poverty Bay (NZ)*, London, John Murray, 1928

Lambert, T, *The Story of Old Wairoa and the East Coast District, North Island, New Zealand*, Dunedin, Coulls, Somerville, Wilkie, 1925

Lyall, A C, *Whakatohea of Opotiki*, Wellington, Reed Ltd, 1979

Mackay, J A (ed), *Joint Golden Jubilees: Life in Early Poverty Bay, Trials and Triumphs of its Brave Founders*, Gisborne, *Gisborne Times* Jubilee Handbook, Gisborne Publishing Company, May 1927

———, *Historic Poverty Bay and the East Coast, North Island, New Zealand*, Gisborne, J G Mackay, 1949

Mitchell, J H, *Takitimu, A History of Ngati Kahungunu*, Wellington, A H & A W Reed, 1949 (Te Rau Press reprint, 1990)

Oliver, W H, and Thomson, J M, *Challenge and Response: A Study of the Development of the Gisborne East Coast Region*, Gisborne, East Coast Development Research Association, 1971

Orange, C, *An Illustrated History of The Treaty of Waitangi*, Wellington, Allen & Unwin, 1990

Pool, I, *Te Iwi Maori: A New Zealand Population Past, Present and Projected*, Auckland, Auckland University Press, 1991

Salmond, A, *Two Worlds: First Meetings Between Maori and Europeans*, Auckland, Viking Press, 1991

Simmons, D R, *The Great New Zealand Myth: A Study of the Discovery and Origin Traditions of the Maori*, Wellington, Reed Publishing, 1976

Ward, Alan, *A Show of Justice: Racial 'Amalgamation' in Nineteenth-Century New Zealand*, Auckland, Auckland University Press, 1973

Williams, J A, *Politics of The New Zealand Maori: Protest and Cooperation, 1891–1909*, Auckland, University of Washington Press, 1969

Williams, W L, 'East Coast (NZ) Historical Records', *Poverty Bay Herald*, Gisborne, 1932

Articles

Brooking, Tom, '"Busting up" The Greatest Estate of All: Liberal Maori Land Policy, 1891–1911', *New Zealand Journal of History*, vol 26, no 1, April 1992, p 78

Butterworth, G V, 'Maori Land Legislation: The Work of Carroll and Ngata', *New Zealand Law Journal*, no 242, 1985

Colenso, W, 'Historical Incidents and Traditions of Maoris of the East Coast', *Transactions of the New Zealand Institute*, vols 13–14, 1881–82

Gilling, B, 'Engine of Destruction? An Introduction to the History of the Maori Land Court', *Victoria University of Wellington Law Review*, vol 24, no 2

Gudgeon, W E, 'The Maori Tribes of the East Coast of New Zealand', *Journal of the Polynesian Society*, vols 3, 5, 6, Wellington, 1984

Locke, S, 'Historical Traditions of Taupo and East Coast Tribes', *Transactions of the New Zealand Institute*, vol 15, 1883

Murton, B J, 'Changing Patterns of Land Ownership in Poverty Bay', *New Zealand Geographer*, vol 22, no 8, 1966

Robertson, J B W, 'The Evaluation of Maori Tribal Tradition as History', *Journal of the Polynesian Society*, vol 71, no 3, September 1962

Sanderson, K, 'Maori Christianity on the East Coast 1840–1870', *The New Zealand Journal of History, vol* 17, 1983

Sorrenson, M P K, 'Colonial Rule and Local Response: Maori Responses to European Domination in New Zealand Since 1860', *Journal of Imperial and Commonwealth History*, vol 4, no 2, 1978

Sorrenson, M P K, 'Land Purchase Methods and their Effect on Maori Population', *Journal of the Polynesian Society*, vol 65, 1956
Tregear, E, 'Kiwa the Navigator', *Journal of the Polynesian Society*, vol 7, no 26, June 1988
Webster, P, 'When the King Comes to Gisborne – A Maori Millennium in 1906', *Journal of the Whakatane and District Historical Society*, 1967

Booklets and papers

Blair, M, *The Land of Toi – Maori Research*, 1947
Hall, R de Zouche, *Gisborne and the East Coast Local History Sources*, Gisborne, 2nd edition, 1984
Laurie, J (ed), *Tolaga Bay: A History of the Uawa District*, H B Williams Memorial Library, Gisborne, 1991
Lawson, L, *Wharekahika: A History of Hicks Bay*, 1986
Nihoniho, T, *Narrative of Fighting on the East Coast*, 1913
Tairawhiti Maori Association, *Echoes of the Pa*, Gisborne, 1932

Waitangi Tribunal and associated reports

Loveridge, Donald M, *Maori Land Councils and Maori Land Boards: An Historical Overview, 1900 to 1952*, Waitangi Tribunal Rangahaua Whanui Series (first release), December 1996
Marr, Cathy, *Public Works Takings of Maori Land, 1840 to 1981*, Report for the Treaty of Waitangi Policy Unit, December 1994
Murray, Jenny, 'Crown Policy on Maori Reserved Lands and Lands Restricted from Alienation, 1840–1907', Waitangi Tribunal Rangahaua Whanui Series (first release), 1996
O'Malley, Vincent, 'The Ahuriri Purchase', overview report for the Crown Forestry Rental Trust, Wellington, April 1995
———, 'Report for the Crown Forestry Rental Trust on the East Coast Confiscation Legislation and its Implementation', Crown Forestry Rental Trust, Wellington, February 1994
Phillipson, G, 'The Ten Owner Rule: A Selection of Official Documents with Commentary', report for the Waitangi Tribunal, Wai 64 record of documents, doc K13, August 1995
Waetford, Aroha, 'The Validation Court', Rangahaua Whanui research series (unreleased)
Waitangi Tribunal, *Report of the Waitangi Tribunal on the Orakei Claim*, Wellington, Department of Justice, Waitangi Tribunal, 1987
Ward, Alan, 'Whanganui ki Maniapoto', preliminary historical report for Wai 48 and related claims, report for the Waitangi Tribunal, Wellington, 1982