

CHAPTER 12

SURVEYS

Note: A report on surveys and survey costs is being compiled by the Crown Forestry Rental Trust. It was expected to be completed in time for the writing of this chapter but was not available at the time of writing. The research and drafting of this chapter was undertaken by Dr Keith Pickens.

12.1 Introduction

During the first two decades of settlement it was apparently not always the practice to survey land before it was purchased. The area to be purchased would be described by reference to the features of the landscape which formed its boundaries. The parties might walk around these boundaries. Holes might be dug, or posts erected. Where the area being purchased was very large, the boundaries might be pointed out from a position on some higher ground. Sometimes rough maps were sketched, and attached to the deed of sale.¹ Later proper surveys would be made, at the expense of the new owners.

This way of doing things ceased in the 1860s, with the coming of the Native Land Court. Thereafter Maori land was surveyed prior to a hearing of the Court, although section 71 of the 1865 Act did allow the Court to proceed without a survey if it wished to do so. However, according to the Native Lands Acts 1862 (s 13) and 1865 (s 25) a survey was required before a certificate of title could be issued.

If the land, having passed through the Court, was then partitioned, further survey was necessary before new certificates could be issued. The sub-division of land among the heirs of the original owners required yet more surveys to be made, and more certificates issued.

The underlying purpose to all of this was to replace tribal or customary tenure with individualised tenure, so that for all practical purposes Maori land titles would become indistinguishable from European land titles. At every stage of this process, the issuing of a certificate of title could lead immediately to alienation, and very often land was surveyed and passed through the Court so that a prior agreement to buy or sell could be given legal effect. Yet while there was a close association between surveys and the issuing of titles, and between the issuing of titles and alienation, it was not a necessary association: land could be surveyed, passed

1. AJHR, 1891, sess 2, g-1, pp 31–33, paras 421–436; Waitangi Tribunal, *The Te Roroa Report 1992*, Wellington, Brooker and Friend Ltd, 1992, p 51

through the Court, and not be alienated. At the same time, the intention was that the new system of Maori land titles would facilitate land alienation, and over subsequent decades these expectations were more than satisfied.

The system of individualised land titles, which was the end result of the process that began with surveys, was also intended to assist Maori agricultural progress, and did so to some extent. But the complexities of the titles created under the Native Lands Acts (see ch 7), and the lack of development capital, often frustrated Maori efforts at farming.

Evidence presented to the 1891 Native Land Laws Commission suggested that before the 1860s the cost of surveys was borne by the purchasers. After 1865, however, the Maori owners generally paid.² But not always: the Crown paid for the 1872 survey of the Kuketauaki block, to the south of the Manawatu River, for example.

12.2 Legislation

The two requirements, that there must be a survey before land could be passed through the Native Land Court, or dealt with in any way by the Court, and that ordinarily the Maori claimants or owners must pay for these surveys, were repeated from one piece of Maori land legislation to the next, along with a variety of different provisions designed to ensure that the survey costs were paid.

The Native Lands Act 1865 (s 68), for example, provided that:

it shall be lawful for the Court to order that the Crown Grant issuable in pursuance of such certificate shall be delivered into the possession of such surveyor who shall have a lien thereon and may detain the same until his lawful charges as aforesaid shall have been paid.

A similar provision, allowing the crown grant or certificate of title to be withheld until survey fees had been paid, was repeated in the Native Lands Act 1867 (s 34). The Native Land Court Act 1880, contained the same provision in section 42. Withholding the certificate, of course, prevented the owners from leasing or selling the land, and thus provided them with a strong incentive to pay the survey charges. By the 1880s, however, far more stringent methods of ensuring that survey charges were paid were in force.

At various times after 1862 there was authority for the Government to pay survey charges and to recover the money from the owners.³ One method was by way of a mortgage over the land.⁴ This technique was refined further in 1886 (s 86) by the

2. Native Lands Act 1865, sections 38, 68, 71

3. Native Land Act 1862, section 28; Native Land Act, 1865, section 77; Native Land Act, 1873, section 69; Native Land Court Act 1880, section 40; Native Land Court Act 1886, section 84; Native Land Court Act 1894, section 65.

4. Native Lands Act 1867, section 35; Native Land Court Act 1886, section 85; Native Land Court Act 1886 Amendment Act 1888, section 25; Native Land Court Act 1894, section 65; Native Land Laws Amendment Act 1895, section 56; Native Land Laws Amendment Act 1897, section 4

addition of interest to the capital amount owed. Between 1888 and 1894, possibly because of the economic depression, mortgages were for a term of only one year.

From 1873 (and according to section 39 of the Native Land Act 1873), Maori had to guarantee that the survey costs would be paid, either with cash, or by transferring land to the Crown. The Native Land Court (under section 73) was also permitted to order that land be transferred to the Crown in payment of survey costs.

If the [Native Land] Court shall see fit, it may, on the application of the Inspector of Surveys, order that a defined portion, to be ascertained and agreed upon between the Inspector and the Native owners of any land so surveyed as aforesaid, shall be transferred by the Native owners to Her Majesty in satisfaction of any advances as aforesaid made for such owners either in respect of the same or any other land, and may include in the amount of money so to be satisfied all fees payable under this Act in respect of the same land or any other land owned by the same persons or tribe.

Section 7 of the Native Land Act Amendment Act, 1878, extended this power, allowing the Court to award land to private surveyors in payment of survey costs. A similar provision was contained in section 65 of the Native Land Court Act 1894.

12.3 Survey Regulations

Detailed regulations concerning how surveys of Maori land were to be conducted were set out in the rules of the Native Land Court and in the regulations relating to the survey of land issued by the Survey Department. In 1880, for example, the rules of the Native Land Court specified (rule 43) that surveys were to be in 'strict accordance with the New Zealand system of survey', as set out in the Regulations and Instructions of the Survey Department 1879. Some requirements that were specific to the survey of Maori land were then laid down. These included a provision (rule 44) that all boundary lines had to be 'distinctly marked on the ground'. This was to be done, when in forest scrub or fern, by cutting a clear line four feet in width. Ridge lines were to be marked, and large trees standing near the boundary lines and corner pegs blazed or 'conspicuously marked'.⁵ The Maori names of any natural features were to be ascertained, and placed on the maps, along with the locations of Maori villages, eel weirs, and the sites of battles or other locations of particular importance or significance to Maori.

The rules and regulations relating to the survey of Maori lands appeared to have been relaxed as the nineteenth century progressed. From 1886, where triangulations were available, it was not necessary to chain long lines.⁶ From 1897, while the external boundaries of a block were still to be distinctly marked, the boundaries of sub-divisions could be dealt with in the same way as section lines on Crown land.⁷

5. 'General Rules of the Native Land Court', *New Zealand Government Gazette*, 1880, vol 2, p 1705

6. 'Survey Regulations under the Land Act 1885', *New Zealand Government Gazette*, 1886, vol 1, pp 634–642

7. 'Regulations for Conducting the Survey of Lands in New Zealand', *New Zealand Government Gazette*, 1897, vol 1, pp 223–235

The rule that maps prepared for the use of the Native Land Court contain information about Maori cultural topography was retained from one set of regulations to the next, although by the 1890s it seems that less information of this kind was required in satisfaction of this provision than had been the case in the 1870s.

12.4 Commission on Native Land Laws 1891

The 1891 Commission on Native Land Laws uncovered many defects and abuses in the laws relating to the surveying of Maori land. Most of those who gave evidence accepted, in principle, that surveys needed to be made, but argued that some surveys were unnecessary and that others might have been carried out in less expensive ways. Everyone agreed, in particular, that the cost of sub-divisional surveys often exceeded the value of the land being sub-divided.⁸ Yet while sub-divisional surveys were singled out for most criticism, no one disputed the legitimacy of sub-dividing land on the basis of hapu rights or boundaries. Sub-divisions based on family or individual rights were, however, a different matter. Witnesses questioned not only the economics of these kinds of surveys, but also their underlying rationale, namely the desire to individualise Maori tenure. This was not in accordance with Maori custom.⁹ It was an entirely new thing.¹⁰ It was something that Fenton had invented.¹¹

Some of the witnesses felt that surveyors fees in general were too high, and Paratene Ngata wanted the employment of private surveyors, by factions of owners, stopped.¹² He mentioned cases where some of the owners of a block had commissioned a survey, and accepted a 'kick-back' from the surveyor. The surveyor then inflated his costs accordingly. In due course, the survey became a charge on all of the owners, some of whom may have been opposed to a survey, or even unaware that a survey was being made. Another common practice was for so-called 'native agents to act on behalf of surveyors. Their task was to persuade Maori owners to have their land surveyed, taking a fee from the surveyors when they were successful in doing so.¹³

The surveyors and others with experience of surveying who appeared before the commission did not dispute that costs had been high in the past. This was because surveyors experienced great difficulty in getting paid for their work, and so they charged high fees, in the hope that at least some of the money would eventually be paid. But now, according to Harris, there was a Government scale of fees, and surveyors had no need to charge excessively.¹⁴

8. AJHR, 1891, sess 2, g-1, p 1, para 12; p 9, para 105; p 30, para 412; p 44, para 586; p 66, para 873

9. Ibid, p 2, para 17–23; p 9, para 105

10. Ibid, p 76, para 1016

11. Ibid, p 31, paras 427–428

12. Ibid, p 1, para 10; pp 19–20, para 246

13. R Daamen, P Hamer, and B Rigby, *Auckland*, Waitangi Tribunal Rangahau Whanui Series (working paper: first release), July 1996, p 284

14. AJHR, 1891, sess 2, g-1, p 1, para 9; p 30, para 412; p 33, para 461; p 67, para 891; p 69, para 940

The major Maori criticism, however, was that survey charges were simply another Native Land Court expense, all of which forced Maori into debt, and that Maori were then obliged then to sell land, or transfer it to the Crown, in order to discharge this debt. Pepene Eketone and Tokena Kerehi went further, and complained to the 1891 commission that the Crown was taking advantage of its preemptive rights in the Taupo district, in a way that prevented Maori from paying for surveys other than by the sale of land.¹⁵ This claim, that the Crown was manipulating the situation to its advantage, is supported by other evidence. First, Grace, who was very knowledgeable about the situation in the King Country and Taupo districts, said the same thing in his evidence to the commission.¹⁶ Second, there is ample proof that the creation of debts was, from a very earlier stage, seen by both Maori and Pakeha as a device that could be used to force the sale of land. Using survey liens in this way would have simply been a variation on a very well-known theme.

12.5 Survey Costs

There is general agreement that surveying was an expensive business, and a good deal of evidence to suggest that surveying costs were often excessive. But there seems to be no way of determining exactly how much money Maori paid out for the survey of their lands after the 1860s, or how much land was taken in settlement of survey fees, or whether the legislation provided any real protection against exorbitant charging, except by a block by block study.

While there is a good deal of data available about the costs of individual surveys, often on a per acre basis, simple comparison is not always possible.¹⁷ This is because survey costs were primarily determined by the terrain: it was always more expensive to survey hilly and rugged country than flat land. Whether Maori obstructed or supported a survey influenced costs as well.¹⁸ Before scales of fees were set by the Government, surveyors were apparently free to charge whatever they liked. According to evidence before the 1891 commission, they were inclined greatly to inflate their charges, since they often found it difficult to recover their costs, or so they claimed.¹⁹

There was provision in the legislation for Maori to challenge a surveyor's accounts.²⁰ When Paora Tuhaere disputed the fees Edward O'Meara sought for the surveys of a numbers of blocks in the Auckland district, the matter was referred to the Native Land Court. The result was that the overall total was reduced by more than half, and in some individual cases by as much as two thirds.²¹ O'Meara may or

15. Ibid, minutes of meetings, pp 3, 7, 13, 21, 47

16. Ibid, p 23, para 292

17. AJHR, 1879, sess 1, h-19; AJHR, 1886, c-1A; AJHR, 1888, c-1A

18. AJHR, 1879, sess 1, h-19, p 7

19. AJHR, 1891, sess 2, g-1, p 1, paras 9, 12; AJHR, 1891, sess 2, appendix to G-1, 'Minutes of meetings with Natives and others and correspondence', p 14

20. Native Land Act, 1865, section 69

21. Daamen et al, pp 282-283

may not have been typical of surveyors: there seems to be no easy way of finding out how often Maori discontent about survey charges led to actions under section 69, or with what success.

The normal method of claiming survey costs was to make application to the Native Land Courts for a lien to be registered against the title, and the gazettes of the period show that Government and private surveyors made many applications of this kind. Whether the Court subjected these applications to any kind of examination, or simply accepted them, is not known. Nor is it known how often the Maori owners objected, or what the results of these protests were likely to have been.

The strong impression is, however, that during the 1860s and 1870s there was little Government regulation of surveyors fees, and that as a consequence the fees charges were often excessive and sometimes exorbitant. This is not to suggest, however, that when Government scales came in survey charges ceased to be a burden. Several of the witnesses to the 1891 commission seem to regard Government scales as a worthwhile reform, but still felt that surveying charges were too high.²²

Surveying of the external boundaries of blocks prior to taking them through the Native Land Court appears to have involved, relatively speaking, moderate surveying costs. Arguably, these kinds of surveys were of most benefit to Maori. None of those who gave evidence before the 1891 commission felt that surveys of this kind were unnecessary; no one could see any way to reduce the costs. It seems that the Crown did sometimes pay for surveys of this kind, and it also appears that it sometimes paid for surveys of blocks which it particularly wanted to purchase.²³ At this stage it is impossible to say what proportion of the total cost of the original block surveys may have been borne by the Crown. No doubt it varied from district to district.

Because tribal domains differed in size, because survey costs related to issues like accessibility, and because the information about surveys is far from complete, it is not possible to make fine judgements about the impact of survey charges on one tribe compared to another. For example, the Stout Ngata commission reported that Ngati Maniapoto had lost nearly 40,000 acres in survey costs, presumably a reference to land ordered by the Court to be given up in settlement of survey charges.²⁴ This was a quite small portion of the total Ngati Maniapoto domain, but there were probably other Ngati Maniapoto lands sold 'voluntarily' as well, in order to obtain the money to pay off survey and other Native Land Court debts. The quality of the land that went to pay survey charges is a factor as well. Apart from land, if the tribe had any cash reserves, or rental income, this would have had to be dipped into as well. There seems to be little hope of ever establishing exactly what Ngati Maniapoto, or any of the other tribes, paid for the benefits of having expensive and not always very accurate surveys made, so that their titles to land might be converted into a European form.

22. AJHR, 1891, sess 2, g-1, p 1, para 9

23. AJHR, 1892, c-1, p 34

24. AJHR, 1907, g-1b, p 10

Research on the cost of surveys with respect to Tuwharetoa land, around Taupo, produces a similar picture. The acreage of land taken for survey charges is more or less known, but how much other land had to be sold during the course of the century to meet sub-divisional survey charges cannot be determined.²⁵ From examples given to the 1891 commission, up to 50 percent of a block might have to be sold to meet survey and other Native Land Court charges.²⁶ What is also obvious from this research is that little if any notice was taken of Maori grievances concerning survey liens, or of Maori suggestions as to how a fairer system might be developed. There is also evidence to suggest that some 'creative' accounting went into the calculation of the Taupo district survey liens, possibly to the advantage of the Maori owners.²⁷ It is difficult to say for certain since the basis on which decisions were made cannot now be determined. It may not have been apparent at the time either. There seems to have been little real consultation with Maori over these matters. Yet while apparently arbitrary decisions were being made about the amount of land that would be taken for survey changes, the surveys themselves were either incomplete or inaccurate. Maori still had to pay for them nonetheless. Apart from the expense, the need to re-do surveys greatly delayed the issuing of titles. Secure title was the singular advantage, according to the legislation, that a survey and Native Land Court hearing was meant to confer. In the case of Pouakani and some of the other Tuwharetoa lands, the whole process, from the conducting of a survey to the eventual issuing of a certificate, producing mainly delays, uncertainty, and extra expense.

Some undifferentiated data on survey costs for the period 1910 to 1930 was given to the House by Ngata in 1932.²⁸ According to the information he supplied, the Crown had incurred £611,480 in survey charges over the 20 years in question, of which £321,212 had been recovered via deductions from rents or purchase monies. Of the £290,268 balance outstanding (£199,044 principal, £91,244 interest) it had been decided to write off about £82,000, comprising principal and interest, and another £33,000 was to be satisfied by transferring Native land to the Crown, leaving an amount of around £115,000 outstanding. Ngata gave no breakdown of these figures by tribe or district, although the amounts written off related to North Island districts, where consolidation schemes were in place.²⁹ Nor was any information provided about the purpose of the surveys in question, but most of them must have been sub-divisional surveys of one kind or another. The salient fact, however, is that Maori had been charged over £600,000 in survey costs between 1910 and 1930, of which half had been paid by 1930. The Crown's contribution was to write off about 14 percent of the total amount, or about 28 percent of the amount left outstanding in 1930.

25. Waitangi Tribunal, *The Pouakani Report 1993*, Wellington, Brookers Ltd, 1993, ch 12

26. AJHR, 1891, sess 2, g-1, minutes of meetings, p 13

27. *The Pouakani Report*, pp 211, 215

28. NZPD, vol 234, 1932, p 664

29. AJHR, 1932, g-7, pp 1, 3

12.6 Remedies

Land first came before the Native Land Court for original investigation of customary title or ownership. Because the history of the land was the main sort of evidence that the Court took into consideration when determining ownership, the Court required that the survey maps contain as much information as possible about Maori place names and historical sites, anything that would help the Court determine the pattern of tenure in the past, or at least from 1840. No doubt the surveyors built the cost of this extra map work, which supplemented the oral evidence given to the Court by claimants, into their fees.

Apart from the question of ownership, a central issue in these kinds of hearings was where the boundaries between one tribe's land and that of another lay or, possibly more often, where hapu boundaries ran. Before the 1860s, Maori land was held on a tribal basis, and the boundaries of the tribal domains, let alone the internal boundaries between different sections of each tribe, changed with shifts in tribal politics, allegiances, and movements. After 1862, the thrust of the legislation was to clearly fix the outer boundaries of these rohe, and then to progressively cut them up into defined areas, each of which would have a list of known owners. Hence the requirement that survey lines be physically cut on the ground, at considerable expense if the country was very rugged or covered with bush or scrub. Each stage of this sub-division process ordinarily meant that new maps had to be prepared, and more boundaries cut. The ultimate objective was to be complete individualisation: one owner, one surveyed plot of land. But only seldom, perhaps even rarely, (except in the case of the smallest blocks), did sub-division reach this final stage. Mostly it was a pseudo-individualisation, by which individual interests in an undivided block were defined. These interests were negotiable. Commonly, the Crown would buy them up and eventually ask for its accumulated interests in a block to be defined on the ground. This would necessitate a survey, and partition of the block between the Crown and the remaining Maori owners. If the Crown had no interest in making further acquisitions in the block, any later sub-division (and surveying) would be driven by the Maori owners.

How were tribal and hapu boundaries determined? The practice after 1865 was simply for rival groups to argue about them in the Native Land Court, using the survey map as their text. If after the Court had made its decision the existing map needed revision of some kind, this work would have to be put in hand before a certificate of title could be issued.

Many of the witnesses before the 1891 commission felt that proceedings of this divisive and expensive kind could be done away with if questions of boundaries and ownership were settled by Maori among themselves, before the block was taken through the court.³⁰ Once boundaries had been settled they could simply be drawn on maps, without any need to go to the expense of cutting them on the ground. Creagh (a surveyor) gave as an example the Kinehaka East block, where, he said, 'they ought to run their subdivision . . . by trigonometrical work, so as to incur only

30. AJHR, 1891, sess 2, g-1, p 32, para 436; p 52, para 679; p 60, para 820

a trifling expense. Of course, in making such a recommendation I am speaking against my own interests'. Drawing lines on a map was said to be the way things had been done during the first few decades of European settlement. Rogan reported that something like this had been done on the East Coast within recent memory, at a time when the Government could not afford to carry out full surveys. Gwynneth, another surveyor, felt that marking boundaries on the ground was necessary only when Maori land was acquired for settlement purposes. Otherwise, paper boundaries would suffice.³¹

There were some, however, who expressed doubts about the idea that boundary matters, and possibly those relating to ownership as well, could be left to runanga to settle. Preece, for example, considered that while in the past Maori had been able to resolve matters of this kind themselves, the ability to do so had been lost because of the way in which the Native Land Court operated.³² Pepene Eketone, who claimed to be speaking on behalf of the Tuwharetoa chiefs, also had doubts about the feasibility of a return to the past.³³ Hiraka Ti Rongo provided the commission with a practical example of the difficulties involved in getting even closely related hapu to settle disagreement over land among themselves, although he seemed to see some merit in the suggestion nonetheless.³⁴ Mary Tautari, Wi Katene, and Aperahama Te Kune, on the other hand, were just some of the Maori witnesses who felt that Maori would do a better job of defining boundaries than the Native Land Court.³⁵

The suggestion that possibly tribal boundaries, but certainly hapu or sub-divisional boundaries, could be represented inexpensively by drawings lines on maps was not taken up by the Government in 1891. But it is possible to see what might have happened if this practice had been adopted. During the early part of the 20th century the legislation in operation did allow subdivision orders to be based on sketch maps. The results were not always satisfactory. For example, the acreages awarded by the Court could not always be found when the land was eventually surveyed, and complicated adjustments had to be made.³⁶ The lesson was plain enough: subdivisions based on map work alone had to be verified on the ground by survey. It might be possible to delay a full survey, but in the end it was an unavoidable expense, and one that had to be incurred if titles were to be settled and secure.

What was found to be the case in the 1910s would have been doubly so in the 1890s, when far more land was in the process of being sub-divided, and the potential for paper boundaries to give rise to conflict, confusion, and complications was, accordingly, much greater.

When the commission reported, its principal recommendation was for a Native land board, supported by local committees, that would take over the leasing and

31. Ibid, p 30, para 412; p 60, para 820, p 72, para 983

32. Ibid, pp 115–116, paras 1557–1560

33. Ibid, minutes of meetings, p 8

34. Ibid, minutes of meetings, p 54

35. Ibid, p 76, para 1065; minutes of meetings, pp 21, 50

36. AJHR, 1913, g-9, p 3

management of Maori land. Questions of boundaries and ownership would be left to Maori committees and runanga to settle, with only intractable cases going to the Native Land Court for hearing. Tribal and hapu boundaries would be defined by natural features, thus avoiding the need for expensive and elaborate surveys. Sub-divisional surveys would be much simplified as well. Money for surveys would be advanced to the Board by the Government, and recovered by the Board from the rental income it would administer.³⁷

12.7 Surveys after 1891

Judging by the legislation that followed, few of the 1891 commission's recommendations found favour with the Government; certainly none of the proposals that would have allowed Maori to have a major role in determining the ownership of land and the boundaries between tribes or among hapu. Surveys continued to be conducted basically in the same way, and Maori continued to pay, or at least be liable, for surveys required by the Native Land Court.

The problems that had been evident from the beginning persisted, and new ones emerged. For example, in the 20th century the question of road access became one of the issues that had to be considered when sub-dividing land. Legislation in 1909 provided for what amounted to a prior survey to determine where roads should be made, before land was sub-divided. Maori, however, were disinclined to pay for these kinds of surveys in advance, and moreover, if the results of the roading survey did not suit them, they were inclined to abandon the application to sub-divide.³⁸

Another new problem was the basis upon which sub-divisional surveys would be made. The Native Department wanted Maori blocks subdivided in a way that suited the contours of the land and the need for road access: the owners wanted the land divided according to traditional claims and rights.³⁹ According to an interdepartmental conference in 1930, the Court seems to have favoured the Maori viewpoint. The result was a large number of sub-divisions too small to be economical farming units, and often of awkward shape as well, and so difficult to fence.⁴⁰ No doubt the processes of individualisation and alienation worked to produce this outcome as well.

Another difficulty was that the passage of time had produced undivided blocks, with many owners, all of whom would need to have their interests defined by the Court, and their portion surveyed, before titles could be issued, and the land alienated, leased or otherwise dealt with. The costs involved exceeded the value of the land, so nothing could be done; the land remained locked up, unable to be used by either Maori or Pakeha.⁴¹ In due course, the systems of trusts and incorporations

37. AJHR, 1891, sess 2, g-1, pp xxiv–xxv

38. AJHR, 1913, g-9, p 3

39. *Ibid.*, p 3

40. AJHR, 1932, g-7, p 4

41. AJHR, 1913, g-9, p 3

overcame this problem of multiple title or ownership to a large extent, by removing the necessity for each individual owner to be involved in decisions about the land or for sub-divisional surveys.

12.8 1930 Interdepartmental Conference

By 1930 the policies of individualising titles, and requiring Maori to pay for the pre-requisite surveys, had produced, in a number of districts, heavy Maori debts, and many small, widely dispersed and uneconomic individual or family sections. There were also undivided blocks of land which could not, under existing law, be dealt with in a cost-effective way. In these districts, the land remaining to Maori was of such poor quality that it could not support the burden created by survey liens, a burden which increased year by year, as interest charges accumulated. As Treasury put it to the Minister of Finance, security for the survey liens, that is to say, productive, and/or valuable Maori land, was 'partially non-existent', which meant that any legal remedies the Crown might have were in practice 'unenforceable. In the opinion of Treasury, the Native Land Settlement Act, 1909, was defective. This legislation had allowed substantial sums, advanced to cover survey costs, to be secured against assets of little value. The Native Land Court was also to blame: it had acted in ways 'divorced from commercial responsibility' and had not taken ordinary precautions, such as to require deposits. Nor had it had taken the 'economic capacity' of the land with which it was dealing into consideration.⁴² In future, Treasury advised the minister, the Crown's financial exposure must be adequately protected before land was surveyed for partition. The Land Department's suggestion was that all surveys should be paid for in advance.⁴³

An interdepartmental conference considered the situation, and recommended that the Crown take over part of the survey debt. Treasury supported this recommendation on the grounds that the economics of the situation allowed no other option. It was also justifiable on other grounds. On one hand it would promote land development and settlement. On the other, it was a measure of 'Native welfare'. But Treasury did recommend that the write-off should not 'be regarded as a precedent with respect to areas yet remaining to be dealt with.'⁴⁴

12.9 Native Land Act 1931

The Native Land Act 1931, contained provisions intended to deal with some of the difficulties that had emerged since 1909. Section 144 directed that the Court should avoid the creation of sub-divisions of unsuitable size or shape. Section 117 allowed the Native Land Court to lay out road lines when considering partition applications.

42. AJHR, 1932, g-7, pp 1-2

43. Ibid, p 7

44. Ibid, p 1

Section 494 allowed surveys for roading purposes to be charged against the land. There were several provisions that allowed the Court to award land to the Crown in satisfaction of survey charges. Section 500 provided that survey charges were to bear interest. Other sections directed that all surveys of Maori land were to be made by the Crown, and that existing survey liens were to remain in force.

Fundamentally, this legislation continued the position that had existed since the 1860s: land would continue to be individualised; there would be surveys; Maori would pay for them; land would be an acceptable form of payment.

12.10 Conclusion

The question of surveys cannot readily be separated from the issue of the operation of the Native Land Court. If Maori wanted to assert or protect their interest in the Court, they necessarily incurred survey charges. From 1865, any claimant or group of claimants, often prompted by a purchaser, could bring a claim in the Court. The 'objectors' (who might in fact be the customary right holders) were obliged to defend their interest. Sometimes they went to the expense of hiring their own surveyor. Survey costs, moreover, were usually made a charge on the land, and all of the owners had to bear their share, even if the survey had been carried out without their knowledge or consent.

Maori themselves, of course, as time went on, saw the need to define their interests for farming or other developments. The movement to sub-divide land into whanau interests sometimes derived from disputes and arguments over the distribution of rental income. These Maori-initiated surveys also served the interest of the Crown and private purchasers. Lacking other revenue Maori commonly had to sell or give up more land to meet their obligations. Moreover, the law facilitated constant partitioning of blocks for piecemeal purchase, following acquisition of a sufficient number of undivided interests. This was a divisive and underhand practice itself, much of the time, and the survey charges involved, especially in steep bush clad country, were often very high, and might be more than the land was worth. In the twentieth century the various agencies controlling Maori land (and the owners themselves) continued to charge the land with survey costs when it was often uneconomical to subdivide at all. The Crown's regular use of partitioning for the purpose of purchasing underlay much of the expense of surveys.

Generally, Maori did not object to surveying as such: rather they challenged particular surveys from time to time, to assert a claim. They objected, regularly, however, to the cost, and the way the Crown took land in lieu. Surveying was an essential step in the Crown-mandated process by which land held under Maori customary tenure was to be converted into Crown grants. As such, it was a requirement imposed on Maori, in the same way as the Native Land Court was imposed. Arguably, since it was the Crown, (and private purchasers) who insisted on this conversion, and who obliged Maori to resort to the Native Land Court accordingly, the Crown (or private purchasers) should have paid all or most of the survey costs

involved, especially when the immediate (and intended) outcome was alienation of the land involved. Even if the legal requirement to survey land is seen as a legitimate expression of Kawanatanga serving the public interest, the settler government presumably should have shouldered most of the cost.

There seems to be no easy way of determining how much land was taken to pay survey charges, or was sold to pay for surveys. The issue would also be more clear cut if the Crown had not sometimes paid for surveys, or written off survey charges. It is possible that close examination of the circumstances of these cases may help define more cogently what the Crown's treaty responsibilities were with respect to surveying. In the meantime, the issue is best seen in the context of the Crown policy to do away with customary tenure, the operation of the Native Land Court, and the alienation of over 94 percent of the land.

