

CHAPTER 7

THE NATIVE LAND COURT AT KAIPARA, 1865–73

7.1 INTRODUCTION

This report is a study of the operation of the Native Land Court in the Kaipara district during the years 1865–73. This period is commonly referred to by the Native Land Court as the ‘ten-owner’ period, because of the provision in the Native Lands Act 1865 which prevented the court from awarding title of blocks of customary Maori land to more than 10 owners.¹ This study, therefore, is an attempt to ascertain the extent of Maori land passing the court during this period, as well as to identify the injurious effects of the court process – and, in particular, the 10-owner system – on Kaipara Maori, especially in terms of land loss.

It should be stressed that this is an examination of events in Kaipara specifically and not the operation of the court in general. Nor is it an assessment of the Native Lands Act 1865 and its successors per se. This report is therefore a contribution to our understanding of land alienation and Treaty grievances in the Auckland district alone, although the themes raised here no doubt have application wherever the court operated.

The Kaipara district, for the purposes of this study, is the expanse of territory from the Waitakere ranges in the south to the Kaihu valley in the north, and from the Kaipara heads in the west to Pakiri in the east. It was within this area that the blocks of land fell that were investigated by the ‘Kaipara’ court. The size of this territory may be estimated at approximately 1.25 million acres.² This differs from the more compact area defined by Barry Rigby in his study of Kaipara Crown purchases, as that stretching around the Kaipara Harbour ‘from the Kaukapakapa south purchase near Helensville to Mangakahia and Dargaville in the north’ (see sec 4.1.1), and estimated by him as around 775,000 acres.³ The Kaipara court ‘district’ was bounded by those of Hokianga, Whangarei, Mahurangi, and Orakei.⁴

Time constraints have limited the range of sources used in this study. The primary source of reference is to the minute books themselves, from the first sitting in Tukapoto in June 1865 to the time of the enactment of the Native Lands Act 1873 – and the consequent end to the 10-owner period – at the end of that year. The minute books are of course problematic as reliable sources of information, as we have no

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1. The court could award blocks of 5000 acres or more to an entire tribe, but showed a marked reluctance to employ this provision.
 2. I am grateful to the Tribunal’s mapping officer, Noel Harris, for this calculation.
 3. Ibid, fig 11
 4. I am unaware of whether these districts were well-defined officially or somewhat loose arrangements. The Kaipara court dealt with a claim to the Whangateau block, for example, which is adjacent to Mahurangi (Kaipara minute book 2, p 84).

way of knowing the proportion of the discussion before the court that was recorded, as well as the veracity of the translation from Maori into English of the testimony of witnesses. Nevertheless, the minute books contain much information which is useful, and they provide a good deal of insight into the attitude of the court. They allow us, for example, to make a number of observations about the amount of land passing the court, the number of individuals for whom certificates of title were ordered, the amount of land being sold or restricted, the cost of surveys, and the roles played by various individuals. A number of other published primary and secondary sources have been used to support as well as fill out the information in the minute books, such as AJHR returns, local histories, and reports prepared by claimant and Tribunal researchers.

7.2 THE ADVENT OF THE NATIVE LAND COURT

Many historians have documented the inequities occasioned by the operation of the Native Land Court from 1865, but it is as well to recount here some of the more harmful aspects of the system. The court followed hard on the heels of the New Zealand Wars and proved itself, in Jamie Belich's words, 'an effective mechanism of subtle conquest'.⁵ Disputed land sales – such as that at Waitara which led to the war in Taranaki – had disrupted the Crown's land purchase plans, but rearranging Maori land ownership to remove the erstwhile obstacles was seen as a solution, in that the Native Land Court system ended communal Maori land ownership. It was, therefore, perceived as the means to overcome the most important barriers to the acquisition of Maori land.

The Native Lands Act 1865 established the Native Land Court as a tribunal for adjudicating on the ownership of Maori customary land and transmuting that ownership into a form cognisable under English law. The Act replaced the Native Lands Act 1862, under which the court had not yet been constituted nationwide because of the advent of the New Zealand Wars (although, as discussed below, Rogan appears to have invoked its provisions in Kaipara in 1864). The 1862 Act allowed for a large degree of input from local Maori leaders working as assessors in the court's decision-making, but the selection of Francis Dart Fenton as chief judge of the court in January 1865 was, as Alan Ward has put it, 'eventually to have a fateful influence on the whole future of Maori land legislation'.⁶ Fenton imposed a formal English-style court procedure, with decision-making essentially resting with the Pakeha judge, rather than the runanga-like system of adjudication in part provided for by the 1862 legislation.

5. James Belich, 'The Governors and the Maori, 1840–1872', in Keith Sinclair (ed), *The Oxford Illustrated History of New Zealand*, Auckland, 1990, p 94

6. Alan Ward, *A Show of Justice: Racial 'Amalgamation' in Nineteenth Century New Zealand*, Auckland, 1973, p 180

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The 1865 Act expressed in legislation Fenton's conception of the court, and opened the way for the wholesale alienation of vast amounts of Maori land. Under the legislation, any one Maori could bring a claim for the investigation of title to a block of land owned in common by a whole tribe. Then, once the judge had made his decision as to ownership, title was awarded to 10 or fewer owners, with the allowance for blocks larger than 5000 acres to be awarded to an entire tribe being almost completely disregarded. Claudia Orange considers that the 1865 Act 'effectively severed the threads of Crown protection and nullified the treaty's second article'.⁷ The Crown, for its part, abandoned its own purchasing of Maori land⁸ and ended its pre-emptive rights, thus leaving Maori vulnerable to the almost unfettered predations of settler land-purchasers. According to Ward:

The Maori people were consequently exposed to a thirty-year period during which a predatory horde of storekeepers, grog-sellers, surveyors, lawyers, land agents and money-lenders made advances to rival groups of Maori claimants to land, pressed the claim of their faction in the Courts and recouped the costs in land. Rightful Maori owners could not avoid litigation and expensive surveys if false claims were put forward, since Fenton, seeking to inflate the status of the Court, insisted that judgments be based only upon evidence presented before it.

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The system invited not co-operation but contention between parties who – although the Court frequently divided the land – could win all, or lose all, on the Judge's nod. It ushered in an era of bitter contesting, of lying and false evidence. The legalistic nature

7. Claudia Orange, *The Treaty of Waitangi*, Wellington, 1987, p 179

8. The rationale behind this was that the end to pre-emption would expedite the alienation of Maori land, thus ending the necessity for Crown purchases. The Crown resumed land purchasing with a vengeance in the 1870s, however, under Julius Vogel's immigration and public works policy.

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of the Court also instituted a costly and tedious paraphernalia of lawyers, agents, legal rules and precedents – a morass in which Maori floundered for decades, frittering away their estates in ruinous expenses and still all too often not getting equitable rewards.⁹

Often legitimate claimants to blocks of land were unaware that their lands were being investigated by the court until it was too late and the court had awarded title to a minority of those rightfully entitled, or even those with a much inferior claim to the land. Where Maori were aware that others were pursuing claims to their lands through the court, they could face considerable expense in travelling to the place of sitting in order to be heard. Many of those who brought claims to the court did so solely because they had arranged to sell the land, yet any rightful owners who opposed the sale might become so indebted in opposing the sellers' claims before the court that, in due course, they were forced into the position of sellers themselves. Since Maori land could become security for debts, the 'predatory hordes' would encourage Maori indulgence in liquor and goods as an indirect route to acquiring Maori land. Similarly, surveyors held a lien on Maori land where their charges had not been met, and could be awarded the certificate of title to a block of land by the court in lieu of their payment.

9. Ward, pp 185–186

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Regardless of the circumstances leading to a block of land being considered by the court, there was no guarantee – once title had been awarded to the 10 or fewer owners, and exchanged for a Crown grant – that it would remain in Maori possession for long. Those awarded title to the blocks were usually chiefs and hapu leaders, who may well have been mandated by their tribe to receive title on behalf of the group. But this trustee function was not recognised by statute and was thus open to habitual abuse. As Claudia Geiringer has pointed out in her study of the operation of the court in Muriwhenua, it was a contradictory state of affairs indeed for the court to be charged with ascertaining ‘by such evidence as it shall think fit the right title estate or interest of the applicant and of all other claimants to or in the land’ while, at the same time, awarding an alienable title to 10 or fewer owners.¹⁰ The Waitangi Tribunal has already commented that ‘it is patently clear that the award to a few, to the disinheritance of many was demonstrably wrong.’¹¹ In effect, the interests of the vast majority of rightful owners were completely disregarded, and, as Geiringer points out, if a trustee relationship between the chiefs and their people existed, it did so in spite of the court system, and not because of it.¹²

10. Claudia Geiringer, ‘Historical Background to the Muriwhenua Land Claim, 1865–1950’, claim Wai 45 record of documents, doc F10, 1992, p 74. This apparently inquisitorial function was vitiated by Fenton’s aforementioned insistence on the use solely of evidence presented in court.

11. Waitangi Tribunal, *Orakei Report 1987*, Wellington, Brooker and Friend Ltd, 1987, p 32

12. Geiringer, p 78

7.3 THE KAIPARA DISTRICT: A BACKGROUND

Sittings of the Kaipara court from 1865–73 were held in Tukapoto, Te Awaroa, Helensville, Maungawetere, and Te Tanoa. The Kaipara court dealt primarily with land in the rohe of the Ngati Whatua tribe and its various hapu, as well as touching upon Ngapuhi, Parawhau, and Te Roroa territory in the north. The information in the minute books, however, cannot be reliably used to show respective hapu interests in the Kaipara area. These were presumably overlapping and fluid, and individuals could be granted land in quite separate areas, whether claiming these areas through the same or distinct descent lines. Nevertheless, we can observe that Te Roroa interests were centred around present-day Dargaville and north into the Kaihu valley; Parawhau were awarded land inland to the east towards Tangiteroria; the largest Ngati Whatua group, Te Uri-o-hau, received land around all sides of the Kaipara Harbour; Ngati Rango were centred in the east around Cape Rodney and present-day Warkworth; while the Taou and Mangamata hapu were awarded title to blocks south of Helensville to the Waitakere Ranges.¹³

Of course, it is more accurate to state that various chiefs, who represented these groups, were awarded title to the blocks brought before the court. For example, to

13. Te Taou and Te Uri-o-hau are generally seen as hapu of Ngati Whatua, but it is not the intention of this report to enter into any debate on inter-hapu relations. For example, Te Taou chief Te Otene Kikokiko told the court that ‘the ancestors of the Taou tribe are distinct from that of the Ngati Whatua – foreign tribes would call us all Ngatiwhatuas but we ourselves know the distinction’: Kaipara minute book 2, p 130.

speak of Parawhau is largely to speak of Te Tirarau. Similarly, Te Hemara Tauhia represented Ngati Rango in the eyes of the court. The 10-owner period secured to the chiefs a new-found status (to be discussed in the following section) as, more often than not, sole owners of tribal land with the legal power to alienate that land without reference to the rest of the tribe. So who were these chiefs?

Blocks passing the Kaipara court were frequently awarded to a small circle of chiefs, many of the most regular of whom – Te Otene Kikokiko, Paora Tuhaere, Te Keene Tangaroa, Paikea Te Hekeua, Arama Karaka Haututu, Parore Te Awha, Te Tirarau, Te Hemara Tauhia, Pairama Ngutahi, Manukau Rewharewha, Matikikuha, Paraone Ngaweke, and Wiremu Reweti – were included in a Government list published in 1870 of the principal chiefs of the Kaipara region.¹⁴ Most of these names also feature in the unpublished ‘Register of Chiefs’, dating from around 1865 and held in National Archives in Wellington.¹⁵ Rigby observes that the leaders cited in the register as the most important chiefs were often those who had most assisted the Government in its purchases of Kaipara land. Similarly, he notes that those employed by the court as assessors tended to be recorded as ‘cooperative’ chiefs who had also assisted in land sales, or were praised for their adoption of European customs.

14. AJHR, 1870, A-11, p 4

15. Register of chiefs, MA 23/25, NA Wellington. The Kaipara section has been cited and reproduced in full in table 8.

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Generally, the Crown's relations with the Kaipara chiefs were good. After earlier periods of war with their Ngapuhi neighbours to the north, Ngati Whatua appear to have been keen to sell land to the Crown in the interests of their own security. Likewise, the Crown was interested in creating a buffer of Pakeha settlement between Ngapuhi and Auckland. In 1857 John Rogan was appointed district land purchase commissioner and travelled widely in Kaipara, inspecting land Maori wished to sell.¹⁶ As the Waitangi Tribunal has noted, Rogan 'did not need to resort to pressure tactics. Between 1854 and 1861 over a quarter of a million acres were purchased.'¹⁷

Between 1862–65 about 1000 non-conformist¹⁸ settlers arrived in Auckland to settle around the Kaipara Harbour in a number of special settlements in the Paparoa, Oruawharo, Matakoho and Komokoriki blocks, all recent Crown purchases. These settlers, known as Albertlanders, had their main settlement at Port Albert on the Oruawharo River. Local Maori appear to have been particularly welcoming of these Pakeha, extending hospitality at every opportunity. Shortly after their arrival, the first Albertlanders were welcomed by Paikea Te Hekeua and Arama Karaka Haututu with a large feast. Paikea told his guests:

16. C M Sheffield, *Men Came Voyaging*, 1963, p 48

17. Waitangi Tribunal, *Te Roroa Report 1992*, Wellington, Brooker and Friend Ltd, 1992, p 40

18. English protestants who did not accept a national church.

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I now have my heart's desire. . . . I have sold large blocks of land to the Government so that my Pakeha brothers may live by me in good friendship and peace. We are all the children of the great Queen Victoria. You are my Pakehas, and I and my tribe will be ever ready to protect you with our bodies. You have much to teach us, and you may learn many things from us that will be useful to you. May we be brothers for ever. That is the wish of Paikea.¹⁹

Two other incidents demonstrate the good relations between Ngati Whatua and the Crown in Kaipara leading up to the 1865–73 period. After the outbreak of the Waikato War in 1863, and the corresponding apprehension on the part of the Government that Maori north of Auckland would attempt to open a second front in the war, a number of Kaipara chiefs (including Paikea, Arama Karaka, Matikikuha, Manukau Rewharewha, and Wiremu Tipene) placed a message in the *Albertland Gazette*, offering words of reassurance about their intentions towards their new neighbours:

This is a word to our beloved friends, the Pakehas, at Oruawharo, Matakoho, Paparua, Mangawai, and in all Kaipara.

Some of you may have heard false reports concerning the Maoris and their plans for the future. Do not think we have forgotten our promise made to you in the beginning and at the feast of Otamatea. We have united ourselves to you with feelings of love and good faith.

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We do not share the feelings of those foolish tribes who are sending away their Pakehas, and with them all wisdom and useful knowledge. We do not wish to return to the customs of ignorance and darkness which we left far behind, but rather to reach to those heights of knowledge which our friends the Pakehas point out to us.

If there be confusion in the North or South of this island, we have no sympathy with these things, but desire to live as in the days that are past; that is, in the light.

It causes us sorrow that some tribes will walk in the darkness of war but our determination is to keep trouble far from the peoples of Kaipara.²⁰

While the wording undoubtedly owes much to the Reverend William Gittos, who helped the chiefs prepare the message, the intention to dispel any unease or distrust

19. J L Borrows, *Albertland: The Last Organised British Settlement in New Zealand: An Account of Brave Endeavour, Disappointment, and Achievement, North of Auckland on the Shores of the Kaipara Harbour*, 1969, p 85

is clear. A willingness to sell land was perhaps the easiest way for Maori to win Pakeha confidence, and it is just as well to bear these earlier sentiments in mind when considering the amount of land passing the court after 1865. As Rigby notes, Ngati Whatua chiefs had already offered numerous expressions of loyalty to the Crown at the Kohimarama conference in July and August 1860, often couching these in terms of their willingness to sell land.

In 1864, however, Kaipara Maori had the opportunity for a more tangible show of support for the Crown when 200 Waikato prisoners, taken at the battle of Rangiriri in November 1863, escaped from their internment on Kawau Island and made their way to the Kaipara area. Despite attempts by the Waikato Maori to enlist support, Ngati Whatua refused to shelter them and bade them to go in peace.²¹

20. *Ibid*, pp 86–87

21. Borrows, pp 88–92; *Te Roroa Report 1992*, p 40

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On the other hand, the Government's presence in Kaipara had slowly been increasing from the mid-1850s, particularly in terms of land purchases. As discussed, Rogan was appointed district land purchase commissioner in 1857, and took up many of the responsibilities carried by Fenton during his time as resident magistrate in Kaipara from 1854–56. After the murder of two settlers in December 1863, Rogan was elevated to the position of resident magistrate early the following year. In 1864 he was also appointed a judge of the Native Land Court.²² Both Fenton and Rogan appear to have cultivated profitable relations with the Kaipara chiefs. Fenton acquired lands belonging to Te Keene Tangaroa on the South Head peninsula, which he named 'Crosland' in memory of his home district in Yorkshire.²³ Rogan, for his part, purchased the 515-acre Makiri block from Ngati Whatua, despite having just presided over the investigation of title. According to one local history:

Te Keene and other Kaipara chiefs saw the wisdom of having Judge Rogan, then boarding with a settler, established in a residence at Te Makiri. There he would be handy both to Auckland, fount of administrative and military knowledge sought by Ngatiwhatua, and to Kaipara, his sphere of activity.²⁴

Among his other 'business' interests in the region, Rogan also obtained 160 acres from the Crown's 1858 purchase of the Te Ika-a-Ranginui block.²⁵

It seems Kaipara Maori leaders were generally enthusiastic about the advent of the court. After Rogan was appointed resident magistrate, Te Otene Kikokiko gifted the Crown land at Te Awaroa for the purpose of a courthouse. Rogan himself convened the court, including Wiremu Tipene and Te Keene Tangaroa as assessors,

22. Sheffield, pp 47, 62, 65

23. Ibid, p 47

24. Ibid, p 72; see also Kaipara minute book 1, p 75

25. *Centennial of Kaiwaka: Ratau o Kaiwaka, 1859–1959*, Kaiwaka Centennial Association, pp 20–21

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as early as June 1864 to hear Maori claims to Otamateanui and Te Pua a Mauku,²⁶ both of which he awarded to Te Otene.²⁷ When a new courthouse was built in Helensville in 1865, the surrounding fence was constructed from timber given by Te Tirarau.²⁸ Maori realised the court could be used to advantage in some cases, and old warrior chiefs such as Te Tirarau and Parore Te Awha were now content to continue their erstwhile battles with their Te Roroa and Te Uri-o-hau neighbours in court, pursuing mana rather than a title they could alienate.²⁹ As the Waitangi Tribunal has noted:

26. Otamateanui, of 396 acres, and Te Pua a Mauku, of 67.5 acres, had already been sold by Te Otene and Ngati Whatua to John McLeaod, the Pakeha founder of Helensville, and his brother Isaac respectively.

27. Sheffield, pp 64–65; Ward, p 180

28. Sheffield, p 66

29. See the entries for Parore and Te Tirarau, *Dictionary of New Zealand Biography*, vol II, pp 377–378, 526–527 respectively, and the *Te Roroa Report 1992*, p 44.

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Maori used the Hokianga and Kaipara courts to settle disputes and decide ownership for their own purposes. These included defining areas of land for leasing rights to cut timber and flax and dig gum for sale to Europeans, a welcome source of annual income; also, for leasing or selling small blocks to European traders for depots, stores and residences.³⁰

In 1865, however, Maori could have had little idea of how the court system would destabilise Maori society, or of the extent to which it would expedite the alienation of their lands. According to the Tribunal, neither Te Roroa nor Ngati Whatua ki Orakei realised initially that the ‘trustee’ concept was insecure ‘and that the ten owner system would disinherit all those whose names were not included [in the certificate of title].’³¹

7.4 THE 10-OWNER SYSTEM AND ‘TRUSTEESHIP’

In all, the Kaipara court under judges Rogan and Monro ordered certificates of title for 145 blocks of land (totalling 273,431 acres) from 1865–73. This is set out below.

30. *Te Roroa Report 1992*, p 41

31. *Ibid*, p 44; see also *Orakei Report 1987*, p 2

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Acreage	Number of blocks	Acreage	Number of blocks
0–9	13	1000–1999	16
10–49	15	2000–4999	12
50–99	15	5000–9999	5
100–249	27	10,000–19,999	2
250–499	15	20,000–50,000	5
500–999	14	none given	6

A total of 456 names were ordered for these titles, at an average of 3.1 names per certificate. However, the number of individuals who actually appeared on the titles was only 209. Obviously, some individuals featured very often, as shown in the table opposite.

In other words, the 20 names listed above – less than 10 percent of all 209 individuals named on certificates of title – accounted for 37.3 percent of all 456 separate awards made by the Kaipara court. Over 60 percent of those awarded land by the court (128 out of 209 individuals) featured only once each. As discussed, the most frequent recipients all featured in the 1870 Government list of the principal chiefs of the region, which also gave the population of the Kaipara district –

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stretching from Orakei to Kaihu – as 705.³² An 1874 return gave the population of the Kaipara district (excluding Orakei) as 1,313.³³ Thus, the 209 individuals awarded land by the Kaipara court from 1865–73 may equate to roughly 15–30 percent of the

Names appearing most regularly in court orders:

Arama Karaka Haututu	24	Mata Tira Koroheke	8
Paikea Te Hekeua	12	Pera Tare	7
Te Otene Kikokiko	12	Te Wiremu Reweti Te Whenua	7
Paora Tuhaere	9	Paora Kawharu	7
Te Tirarau	9	Apihai Te Wharepouri	7
Paraone Ngaweke	9	Parore Te Awha	6
Matini Murupaenga	8	Ngawaka Tautari	6
Te Hemara Tauhia	8	Wiremu Marua	5
Pairama Ngutahi	8	Mihaka Makoare	5
Kiwara Te Ro	8	Hone Waiti Hikitanga	5

Others:

32. AJHR, 1870, A-11, p 4

33. AJHR, 1874, G-7, p 4

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9 individuals	4	34 individuals	2
18 individuals	3	128 individuals	1

overall number of persons who lived in the area during these years. However, since 128 of these people had certificates ordered for them only once, and a further 34 only twice each, it becomes apparent that the vast majority of Kaipara Maori (admittedly including minors) either received no grants of land or at best one or two during the 10-owner period, despite the fact that certificates for 145 claims totalling over 270,000 acres were awarded by the court. Moreover, the most frequent grantees were often either the sole recipient of title or shared the title with only one or two others, regardless of the block's size. Similarly, Geiringer observes that, in Muriwhenua, Judge White frequently awarded title to fewer than 10 owners, and often to only one.³⁴

34. Geiringer, p 75

As mentioned above, the rationale for fewer names appearing on the certificate was that the owners would act as ‘trustees’ for the tribe. In two specific cases, the court recorded that those awarded title to Mairerahi and Hoteo held the land ‘in trust for others’.³⁵ Undoubtedly, many Maori supported their chiefs assuming this role. For example, in the case of the Tuhirangi block, Arama Karaka informed the court that the tribe had consented to him, Paikea, and Pairama standing ‘as the three principal claimants in the land’.³⁶ Often legitimate claimants would explain to the court that they had ceded their interests to an individual to facilitate the tribe obtaining a Crown title to the land. This was sometimes explained as a practicality to allow for the land to be easily ‘dealt with’, which presumably means ‘sold’.³⁷ There were other reasons why the name of only one chief was placed on the title. In the Orakei case, for example (to venture slightly out of the Kaipara district), the lawyers for the competing parties agreed, as a compromise solution to the quarrel over which names should go on the certificate of title, that the name of the Ngati Whatua ‘paramount’ chief Apihai Te Kawau alone should go on the certificate.³⁸

The Kaipara court seems to have been largely guided by the evidence and advice of the principal chiefs that appeared before it. Most of the important decision-making concerning to whom title should be awarded seems to have taken place outside the courtroom. Claimants would state, for example, that they had ‘arranged among ourselves’ who the grantees should be,³⁹ that ‘an arrangement had been

35. Kaipara minute book 1, pp 12 (Mairerahi), 130 (Hoteo)

36. Kaipara minute book 2, p 83

37. See, for example, the case of the Opanake block, with regard to the selection of Parore Te Awha and Te Rore Taoho as the grantees, where Arama Karaka Haututu stated that ‘Two persons have been selected by the tribes, and only two so as to facilitate dealing with the land’: Kaipara minute book 3, p 52.

38. *Orakei Report 1987*, p 37

39. Kaipara minute book 2, p 66 (Te Nukuroa 1)

arrived at out of Court',⁴⁰ or that 'This piece of land has been settled by a Runanga'.⁴¹ The court would occasionally adjourn proceedings 'to allow the matter to be settled amongst the owners'.⁴²

Fenton, for his part, hoped that the chiefs would become a European-style landed gentry and that the colony would witness 'the conversion of the Maori nation into two classes, – one composed of well-to-do farmers, and the other of intemperate landlords'.⁴³ The disenfranchisement of so many Maori, whether potential or actual, certainly made Fenton's hope realistic. Rogan filed the following report on the Kaipara district to Fenton in 1867:

It is with much pleasure I have to state that the effects of the Native Lands Act on the welfare of the population of Kaipara, both Native and European, is better than I anticipated. The Natives were never in such a position before, and I am glad to say that they have as a rule sufficient sense to appreciate it. Pairama has an estate for which he receives £300 per annum. Arama Karaka, Manukau, and other chiefs, are leasing extensive runs to Europeans, who are in a position to carry out their agreements; and after the next sitting of the Court shall have been held, a large proportion of the lands in central Kaipara will be taken up and stocked.

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European farming was first introduced into Kaipara by yourself years ago, by presenting Pairama with a plough; afterwards the Government, through Mr McLean, gave ploughs to Tomairangi and Manukau, long before the Native Lands Act was passed. Te Hemara of Mahurangi has improved his property recently by fencing, and building a neat house with verandah and brick chimney, which may be said to have resulted from the sale of some of his land after certificates were obtained. Several weather-boarded houses have recently been erected by the Natives in Kaipara, and by my advice they are about to cause brick chimneys to be built. There is a marked improvement in the mode of living adopted by the chiefs. European articles of furniture are found in the houses about Otamatea; and I have frequently been astonished to see, at Paikea's and Arama Karaka's settlements, all the principal people living, while I have been there, quite in accordance with the manners of Europeans.⁴⁴

40. Ibid, p 145 (Ihumatao)

41. Ibid, p 165 (Kakatamanawha)

42. Kaipara minute book 1, p 165 (Te Ra Te Awa); see also Kaipara minute book 3, p 25 (Ngahokowhitu)

43. AJHR, 1867, A-1, p 4

44. AJHR, 1867, A-10A, pp 3–4

Indeed, Rogan's picture is of the chiefs profiting handsomely from the introduction of the Native Land Court system. As Ward observes, the chiefs were sometimes 'downright extravagant, living in flashy imitation of the settler gentry'.⁴⁵

Te Hemara's 'neat house with verandah and brick chimney' may have pleased Rogan, but the chief's lifestyle may well have come at a price to other Maori. As Wiremu Pomare, of Ngapuhi, told the Government in 1871:

There is a block of 2,537 acres of land at Puhoi Mahurangi, near the Hot Springs, belonging to Te Hemara and thirty-one others; it was heard in Court in January, 1866, and Te Hemara got the Crown grant in his own name; he has sold some portions of the land and mortgaged other parts, but the other owners have never received any portion of the money and have received no redress. The Court was asked in the first instance to insert all the names of the thirty-one that were interested, but it was subsequently arranged that Te Hemara's name only should be inserted. I was present on the occasion; it was one of the first pieces of land adjudicated upon by the Court. Te Hemara also sold a piece of land of eight acres called Orakorako, near Mahurangi, for which a certificate was granted to him alone at the same Court, and under similar circumstances he has sold the land and never gave the others a share of the money. The Pakehas often advise the Natives to get as few names as possible to a grant for the convenience of selling. I know that the law was amended on this point in 1867, but I would not allow the ten grantees to lease the land until it had been subdivided.⁴⁶

As Geiringer notes, the court assumed no responsibility for ensuring the 'trustees' evenly divided any payment monies for lands sold immediately after passing the court.⁴⁷ Two local histories record that Te Tirarau and Te Otene Kikokiko both evenly divided the proceeds of land sales amongst their people, with Tirarau even 'always taking the smaller amount'.⁴⁸ Similarly, Arama Karaka told the court that he had distributed the £125 received from the sale of the Pupuke block amongst all the owners.⁴⁹ However, while the minute books do not clearly reveal whether any owners defrauded the tribe of their legitimate interests, it is evident that the fear

45. Ward, p 213

46. *Return Relative to the Working of the Native Land Court Acts and Appendices Relating Thereto*, Government Printer, Wellington, 1871, p 35 (report ordered by the Legislative Council)

47. Geiringer, p 77

48. See Sheffield, p 65, re Te Otene sharing the proceeds of the sale of Otamateanui and Te Pua a Mauku, and E K Bradley, *The Great Northern Wairoa*, 1972 (1982), p 9, re Tirarau.

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existed that they would. When the certificate for the Kaitara 1 block was ordered for Arama Karaka Haututu on 7 January 1867, Pairama Ngutahi stated:

It is possible that the person entrusted with the Grant may abuse the power in which case there would be personal recrimination and the matter would end here, I speak in reference only to the Kaipara tribe.

Similarly, Henare stated:

49. Kaipara minute book 2, p 17

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There is no one to dispute this piece, the only evil likely to arise will be from the abuse of power in relation to the man in whose name the land is [vested] as mentioned by Pairama if he should abuse his power then we who are interested will search out the matter.⁵⁰

It is unclear what sort of ‘personal recrimination’ would follow for a ‘trustee’ who abused his or her power, but the trustees had the power to alienate land and beneficial owners therefore had no legal avenues for redress.

An example of a direct allegation of the abuse of trust with respect to a ‘trustee’ is to be found in the evidence in the case of the Te Horo block in May 1869, where Wiremu Reweti stated that the eventual sole grantee, Maata Tira Koroheke:

held some money back that ought to have been given to us. I now come to oppose this piece of land. The money for all the land about the Awaroa that has been sold has been retained by Maata and I oppose this for that reason. I said I would not oppose her if when the money was paid for the land she would give us a portion of it . . . I went to Maata and she said why should a person of no importance like you speak to me . . . She was angry with me for applying for money . . . I am now fully aware of the wrong she has done me.⁵¹

Paora Tuhaere and Wiremu Te Wheoro felt that 25 names should be the maximum number allowed for a large block, thus ensuring that each hapu might be properly represented in the certificate. Eru Nehua argued that the names of all concerned should be entered on the title and, if these were considered too numerous, the land subdivided. ‘This is the opinion’, he ventured, ‘of all the Natives about Whangarei, who would be willing to pay the expenses of subdivision whenever they could get the money. If the present system is continued, the grantees should not have the power even to lease the land.’⁵² Paora Tuhaere himself appears to have been a particularly conscientious ‘trustee’, despite being amongst the privileged minority of chiefs who regularly featured in court orders for certificates of title. In the Orakei

50. Kaipara minute book 1, p 104

51. Kaipara minute book 2, pp 171–175

52. *Return Relative to the Working of the Native Land Court Acts*, pp 26, 34

case in 1868 he objected most strongly to Fenton's initial ruling on ownership, as he felt too many names had been omitted from the certificate, despite the fact that his own name appeared. Years later, when addressing the chiefs assembled at Orakei in 1879, he said:

It was the Native Land Court that took away the authority over the land from the land and put the authority in a Crown grant . . . if the land had remained under the old authority of your fathers there would have been no Crown grants, and your lands would not have been wasted.⁵³

Where only one owner was chosen (often by an out-of-court tribal runanga), however, there were those who felt they had been overlooked for quite other reasons. In the case of the Huarau block in May 1869, witnesses stated to the court that Heremaia Pahi should be named as the sole owner. Paraone Ngaweke, however, stated that:

I have heard what Arama Karaka said about this land being given to Heremaia. What he said is correct but Hereni has ignored me altogether. Although I have an equal claim to Heremaia through ancestry if they recognise me as regards this land I shall cease my opposition. Let Heremaia be called I should like to hear what he has got to say.

Heremaia, for his part:

recognise[d] Paraone as regards this land through ancestry but the Runanga decided that the 'tikanga' of this land should be left to me . . . If the land is decided in my favour I will sell it.

This seems to have sufficed for Paraone, who withdrew his earlier demand to have his name inserted in the Crown grant and consented that it be issued to Heremaia.⁵⁴ This example perhaps supports the Parsonson 'Pursuit of Mana' thesis that the Native Land Court was a stage upon which competing groups and individuals sought to have their mana recognised.⁵⁵ Indeed, Paraone was satisfied by

53. *Orakei Report 1987*, p 40

54. Kaipara minute book 2, p 163

55. Ann Parsonson, 'The Pursuit of Mana', in Oliver and Williams (eds), *The Oxford History of New Zealand*, 1981

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a simple acknowledgement of his ancestral rights in court, and did not seem perturbed that the recipient of the title, Heremaia, was about to sell the land anyway.

A similar example is the Te Opu block. Arama Karaka Haututu stated that a runanga had decided that the land would be sold to ‘the Pakeha’ and that he and Riria Rangaunu should be the grantees. Manukau Rewharewha stepped forward and objected ‘on the ground that the land belonged to the whole of them.’ That said, he immediately added ‘I now withdraw my objection in favour of Arama Karaka’.⁵⁶ It seems that, once he had asserted his interest in front of those assembled, Manukau could let the matter rest.

56. Kaipara minute book 2, p 170

7.5 ASSESSORS

Whereas the Native Lands Act 1862 envisaged a council of local Maori leaders working with a Pakeha judge in adjudicating on land ownership, the 1865 Act required the presence of only two assessors and, in 1867, this was reduced to one. At the first sitting in the district at Tukapoto on 26 June 1865 under judges Rogan and Monro, the Maori assessors were Wiremu Tipene Hawato and Winiata Tomairangi, the latter being a Rarawa chief from Oruapou.⁵⁷ Despite his role of assessor, Wiremu Tipene was granted title to the Puketotara block on 28 June 1865 and to the Te Whenuahou block on 15 August 1866; in fact, he even signed the minute book beneath the court order in his capacity as assessor.⁵⁸ No other instances appear of assessors approving certificates for themselves, although other assessors, such as Matikikuha Parakai, Pairama Ngutahi and Te Hemara Tauhia, were regular claimants and grantees.

Assessors were often not well regarded. In an 1871 submission on the workings of the court, Paora Tuhaere and Wiremu Te Wheoro stated that the assessors:

57. AJHR, 1870, A-11, p 4

58. Kaipara minute book 1, pp 27, 66

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are of no use, and have little or nothing to say to the cases that are being tried; they sit like dummies, and only think of the pay they are going to get. Wiremu Hikairo [of Te Arawa, who was assessor at Helensville in February 1871] is perhaps an exception, but he was taught at school. None of the other Assessors have done any good, and always support the side in which they have friends or other interest.⁵⁹

Te Wheoro resigned, after having acted as assessor at seven courts (including Te Tanoa in February 1868), to express his opposition to the operation of the court in general. Eru Nehua of Ngapuhi objected to the ‘invariable selection of chiefs as assessors. They should be men of good judgment, selected for their intelligence.’ He advocated a system whereby Maori could elect their own assessors.⁶⁰ In a similar vein, Wiremu Patene of Waikato stated that he had:

never heard the Maoris speak well of the assessors, and I do not like them myself, they are so partial and are deceivers. However, I would not like to see them done away with, but let us have just and intelligent men. . . . They need not necessarily be chiefs. I should not object to a man of lower rank than myself being appointed, if he were really able and intelligent.⁶¹

Geiringer points out that it is hard to tell exactly what contribution the assessors made. The failure of the assessor system, she argues, ‘is indicated by their silence.’⁶² Indeed, it is difficult to find any evidence of input by the assessors in the Kaipara minute books.

59. *Return Relative to the Working of the Native Land Court Acts*, p 26

60. *Ibid*, p 34

61. *Ibid*, p 36

62. Geiringer, p 83

7.6 SECTION 17

Under section 17 of the Native Lands Act 1867, the court was required to register the names of all the owners of a particular block of land in its records. The court was charged with ascertaining the interests:

of every person who and every tribe which according to Native custom owns or is interested in such land whether such person or tribe shall have put in or made a claim or not.⁶³

63. Cited in Geiringer, p 84

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This was a somewhat ineffectual statutory change, however, as the court largely ignored it and continued to make decisions based only on evidence presented before it. Furthermore, the 10 (or fewer) actual owners still had the absolute power to alienate land once it had been subdivided. Until that point, they could lease it for up to 21 years. The Kaipara court displayed a general reluctance to make use of section 17. Cases frequently ended with the comment ‘There was no satisfactory evidence to enable the Court to comply with Clause 17 of the Act of 1867’.⁶⁴

At times the court lightly dismissed its obligation to be proactive in registering names under section 17. For example, in the case of the Marunui block, Arama Karaka provided 39 names of rightful owners of the land, but added that ‘There may be twice twenty others’. Judge Monro noted that:

The names of all the persons interested in this block could not be obtained, to enable the Court to comply with clause 17. The principal witness stated that there might be forty more besides those named.

Monro evidently did not see fit to establish who the 40 others actually were. He also disregarded the testimony of Hone Waiti Hikitanga, who stated that ‘Arama Karaka has named the whole of those who are in any way interested in this piece of land. I know of no others.’⁶⁵

Similarly, in the case of Ahikiwi, Maka Te Haupu provided 36 names and stated ‘These are all who have an interest as far as I know’. However, Monro commented that ‘It was ascertained that the whole of the persons interested were not enumerated by Maka Te Haupu – satisfactory evidence could not be obtained’.⁶⁶ We can take it for granted that the minute books do not record the full discussion on the question of

64. See, for example, Kaipara minute book 2, pp 32 (Turakiawatea), 34 (Ihumatao), 49 (Paeroa), 50 (Matunui), 58 (Raekau), 62 (Tokatapu), 66 (Te Nukuroa 1 and 2), and 68 (Mangaiti).

65. Ibid, pp 53, 56

66. Ibid, pp 59–60

evidence for section 17. Nevertheless, it is apparent that the court made little effort to make use of this provision. Two of the few cases where it was used were the registration of the 66 owners of the Kaihu block in 1871 and the 27 owners of Pukehuia in 1873.⁶⁷

Geiringer observes that Judge White also tended to ignore section 17 in Muriwhenua, simply carrying on with his title investigations as before 1867.⁶⁸

7.7 RESERVES

Geiringer notes that, under the 1865 Act, judges had the option of recommending that blocks be made inalienable. From 1866, however, an amendment required the judge to designate reserves where the needs of claimants necessitated it. Section 20 of the 1867 Act required the court in each case:

to inquire and take evidence as to the propriety or otherwise of placing any restriction on the alienability of the land comprised in the claim or of any part thereof or of attaching any condition or limitation to the estate to be granted.⁶⁹

67. *Ibid*, pp 235–237; Kaipara minute book 3, p 17

68. Geiringer, p 85

69. Cited in Geiringer, p 105

Rogan, however, was unsympathetic to these requirements. With regard to the provision ushered in by the 1866 amendment, he stated that ‘I feel . . . persuaded that such measures will not be necessitated in the district of Kaipara.’⁷⁰ He even seems to have implied that the retention by Maori of their lands was undesirable, commenting while resident magistrate that ‘The Kaipara natives are proverbial for indolence and will never do ordinary labour so long as they have a block of land for sale.’⁷¹

In all, Rogan and Monro specifically designated blocks as restricted or inalienable in 24 separate cases, totalling 9820 acres. For the 21 cases where the acreage of the block was recorded in the court minutes, the average size of each ‘reserve’ was 468 acres. From the available information it appears that no more than three and a half percent of all land passed by the Kaipara court from 1865–73 was reserved from sale. In a number of cases the land was possibly made inalienable (except by lease for a period less than 21 years) pending subdivision only, whereafter the various owners would be free to sell their portions.⁷² In a couple of cases – Patotara and Puatahi – the court made no mention of restrictions despite the fact that Maori evidently retained these areas as reserves (see sec 7.8). Despite this, and the shortcomings of the minute books as full and reliable records, it suffices to say that the amount of land reserved by the Kaipara court was next to insignificant.

Restrictions were generally granted where they were requested,⁷³ but such requests were not frequent. Given the costs of survey and the subsequent need to sell

70. AJHR, 1867, A-10A, p 4

71. Cited in Dick Butler, *This Valley in the Hills: The Story of Maungaturoto, Brynderwyn, Bickerstaffe, Batley, Marohemo, Whakapirau*, 1963, p 96

72. The minute books do not record the reasons for such restrictions. Under section 17 of the 1867 Act, however, the power of the (up to) 10 owners named on the title to alienate was restricted pending subdivision, in that they could lease the land for up to 21 years but not sell: Geiringer, p 84.

land to defray these charges, this is perhaps not surprising. Restrictions were sometimes granted for the sake of young children. For example, the Kohekohe block of 10 acres was awarded to Te Puhi and Parore Te Awha and made inalienable on account of Te Puhi's children, despite Parore's claim in court that 'he was about to convey this land to a European'.⁷⁴ Heta Paikea's request that Te Tanoa be made inalienable was on account of the land being intended for a Maori town.⁷⁵ In the case of Aoroa No 2 (31 acres 1 rood 14 perches), the land was reserved because it had been given by Te Uri-o-hau and Ngatikawa for a Wesleyan mission station.⁷⁶ In the majority of cases no specific reason was given for the restrictions, but, where reasons were given, the provision of land as a sufficient endowment for the present and future needs of Maori, as envisaged by Lord Normanby in his instructions to Hobson, was not the primary consideration.

73. One example where this was not the case is the 1220-acre Papurona block, where Te Otene Kikokiko, one of the grantees, asked for the land to be restricted. No order to this effect was given: Kaipara minute book 2, pp 224, 227.

74. *Ibid*, p 19

75. *Ibid*, p 52

76. *Ibid*, p 215

The case of Pariraunui is also worth mentioning. Paora Kawharu of Te Taou, the sole recipient of title to the 66-acre block, asked that it be made inalienable. His agent, John Sheehan, however, ‘stated that Paora Kawharu was under a misapprehension he did not wish his land made inalienable’. Consequently, no restrictions were granted.⁷⁷

Paora Tuhaere and Wiremu Te Wheoro felt that 50–500 acres should be reserved for every Maori man, woman, and child, according to the land they held, and that while they might be allowed to lease some of it, they could not sell it on any account.⁷⁸ However, Hemi Tautari, of the Bay of Islands (who, incidentally, could ‘see no faults in the [Native Land Court] system’ at all, and who sat as an assessor at Helensville in April–May 1869), stated that ‘sufficient land is reserved for the Natives’ and that, ‘If the land is of good quality, five acres for each would be sufficient.’⁷⁹ This view was presumably not shared by many other Maori. Wiremu Hikairo favoured a minimum of 50 acres per person, while Wiremu Pomare and Wiremu Patene advocated the reservation of no less than 100 acres per person.⁸⁰

Fenton, by contrast, observed that:

As a great public question, I think it is admitted that the chief object of the Government of a Colony is as rapidly as possible to cause the waste lands to be brought into profitable occupation, by cattle and sheep first, but ultimately by the labour of a settled agricultural population. . . . If the quantity of land determined by the officers of the Crown as necessary to be retained by the Maoris, in the case of the final settlement of their claims under the Ngaitahu deed, is to be taken as a criterion,⁸¹ I think it will be found that the amount locked up, even in Hawke’s Bay, still exceeds their necessities.

77. Ibid, p 87

78. *Return Relative to the Working of the Native Land Court Acts*, p 26

79. Ibid, p 30

80. Ibid, pp 32, 36

81. Ngai Tahu were initially awarded only some 35,757 acres out of a tract of 34.5 million, roughly equivalent to a thousandth of their previous domain: Waitangi Tribunal, *Ngai Tahu Ancillary Claims Report 1995*, Wellington, Brooker’s Ltd, 1995, p 358. In 1868, Fenton increased the size of the reserves made under the Kemp deed from an average of 10 acres per person to 14 acres, and it is to this that he might well have referred: Waitangi Tribunal, *Ngai Tahu Report 1991*, Wellington, Brooker and Friend Ltd, 1991 p 508.

Fenton opposed the introduction of compulsory restrictions, as he felt that Maori would not 'relish the power to make imprudent acts being taken away from them.'⁸²

Pakeha administrators may have had their reasons for not enforcing minimum reservations. As noted above, Fenton hoped a chiefly land-holding elite would grow from the 10-owner system, and was therefore presumably reluctant to agree to set aside significant holdings for every Maori. The retired Colonel Haultain, formerly Minister of Defence under the Stafford administration, echoed Fenton's views with his own July 1871 advice to Donald McLean that:

It is impossible to obtain from the Natives, any definite opinion as to the minimum quantity of land that should be reserved for each individual, and it must depend much on its quality and locality. But it would be no bad rule to lay down, that each Maori chief should have amply sufficient to maintain himself like an English gentleman, supposing him to put forth the necessary industry and energy for its cultivation.⁸³

Haultain's concern was with the chiefs rather than with the provision of a sufficient endowment for Maori generally.

82. *Return Relative to the Working of the Native Land Court Acts*, p 11

83. *Ibid*, p 8

Having regard to the future needs of all Maori in the area, it seems evident that the Kaipara court should have been more proactive in designating blocks of land inalienable. As mentioned, Patotara, the 53-acre reserve set aside out of the Crown's purchase of the Pukekaroro block in 1859, passed before Rogan and Monro in June 1865 with no order that it be restricted.⁸⁴ Title was awarded to Arama Karaka, one of the six signatories to the Pukekaroro deed of sale. Similarly, Puatahi was retained by Maori as a reserve but not deemed inalienable by Rogan when he investigated title in March 1866.⁸⁵ Whereas Patotara and Puatahi seem to have remained in Maori hands at least until 1886,⁸⁶ other lands that should have been reserved slipped away more quickly. For example, the 1633-acre Paraheke block was reserved from the sale of Oruawharo as a wahi tapu in 1860, but, when up for investigation of title before the court in 1866, was passed without restrictions despite Rogan being informed that the land was a 'sacred place'.⁸⁷ In 1869 it was purchased by Pakeha settlers anxious to link the Albertland settlements of Port Albert and Wharehine more closely, between which the block lay.⁸⁸ The pressure Maori must have been under to part with this land is a matter for speculation, but it may well have been a reluctant sale. One local history records that the reserve's 'extensive mangrove flats were the traditional eel-fishing grounds of the local Maoris.'⁸⁹

To leave Kaipara Maori with an equivalent to that retained by Ngai Tahu, as Fenton thought reasonable, was certainly to render them paupers. The Waitangi Tribunal has variously described Ngai Tahu's reserves as 'paltry and unproductive',

84. Kaipara minute book 1, p 40

85. *Ibid*, p 54

86. 'General Return of Native Reserves in the Auckland Provincial Land District', AJHR, 1886, G-15, p 8

87. Kaipara minute book 1, p 68

88. Sir Henry Brett and Henry Hook, *The Albertlanders: Brave Pioneers of the Sixties*, 1927, p 124

89. Borrows, p 123

‘woefully insufficient’, ‘niggardly’, and ‘pitifully small’.⁹⁰ Yet Fenton, Rogan and others presumably did not feel they were leaving Maori with next to nothing. As Geiringer has written with respect to Muriwhenua:

Most Pakeha officials, both inside and outside the Court room, acknowledged at least in theory the principle that Maori should not be left completely destitute. . . . In practice, however, the Court was not prepared to place any limits on the alienation of Muriwhenua land.⁹¹

7.8 LAND SALES

Claimants before the Kaipara court often stated that land for which they sought title had already been sold by them or was about to be sold, as set out in the table following.

Land already sold	Area (acres, roods, perches)	Buyer	Price
Wai o Mu	2a 0r 1p	Isabelle Nelson	£25
Te Whenua Hou	2a 1r 2p	Wiremu Tipene Hawato	£30
Taupaki	118a of 12,868	Government	
Hoteo	41,400a	Provincial government	£2300
Pupuke	50a	‘a European’	£125
Hautapu	147a	Hobbs	
Hatoi	10a	Bishop Pompallier	£10

90. *Ngai Tahu Ancillary Claims Report 1995*, pp 229, 358, 359

91. Geiringer, p 113

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Waima	10a	Hobbs	
Te Opu	794a	‘the Pakeha’	
Waikino 2	90a	‘the white man’	
Okapakapa	100a	Government	£50 advance
Pouto	10a	Government	£50

Land to be sold	Acreage	Land to be sold	Acreage
Hukatere	1060 out of 10,410	Pakaraka	137
Tumutumunui	125	Horehore	1732
Tungotungo	243	Tunatahi	167
Huarau	100		

Thus, with 19 examples recorded above, in over 10 percent of all claims passed by the court, those awarded title specifically stated that they had already sold the land in question, or were about to sell it. It is probable that the figure here is in reality much higher, and that recourse to the court to secure a legal title was invariably made in order to effect or complete a sale of land to a private purchaser or the Crown. Indeed, Judge White observed, with reference to Mangonui, that survey

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charges and other court expenses ‘deter the Natives from coming before the Court, unless they have previously agreed to sell the land.’⁹²

Indeed, information located elsewhere shows that a number of other blocks were sold to settlers within a comparatively short time of being investigated by the court. This is set out below (with further particulars of some blocks in the tables above).⁹³

Block	Area (acres , roods)	Year in NLC	Seller(s)	Buyer	Price	Year
Oahau	113a	1865	Arama Karaka Haututu	William Carr		1866
Mateanui	80a	1868	Arama Karaka Haututu	Joseph Masfield	£144 15s	1871
Huarau	100a	1869	Heremaia Pahi, Te Para Wairoa Waho	Joseph Masfield	£50	1871
Te Opu	795a	1869	Arama Karaka Haututu, Riria Rangaunu	Joseph Masfield	£590 10s	1877
Ahikiwi	1000a	1868	Maka Te Haupu, Mihaka Wharepapa,	William and Ernest Jackman	£2000	1872

92. AJHR, 1867, A-1, p 10

93. The sources used for this information are: Oahau, Mateanui, Huarau, Te Opu, Ahikiwi, Waikino 1, Waikino 2, Te Wairau: Butler, pp 75–76; Paraheke, Unuwahao: Brett and Hook, pp 124, 357; Makiri: Sheffield, p 72; Tunatahi: *Dictionary of New Zealand Biography*, vol II, p 110. Where these sources did not record the sellers, I have taken these from the lists of those awarded title in the minute books. Sheffield records that Te Otene and the Ngati Whatua tribe sold Makiri to Rogan, but title to the block was awarded by the court to Apihai Te Kawau.

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			Hirini Puhia			
Waikino 2	90a	1871	Arama Karaka Haututu	Jane Gloyn		1879
Waikino 1	50a	1871	Arama Karaka Haututu	Albert George Harvison		1881
Te Wairau	5a 3r	1873	Arama Karaka Haututu, Te Pepene Paki	William Montague		1881
Unuwahao	2800a	1866	Manukau Rewharewha, Pairama	E and T Coates		1868
Makiri	515a	1867	Te Otene et al	Judge Rogan		circa 1 865
Paraheke	1633a	1866	Matikikuha, Paikea, Rupua, Himana, Paratene Taupuki			1869
Tunatahi	167a	1871	Parore, Tiopera Kinaki, Te Rori Taoho, and seven others	Joseph Dargaville		1872

The sales recorded here may perhaps represent the tip of the iceberg. Records of private purchases of land from Maori are more difficult to trace than Crown purchases, but it would seem apparent that Kaipara Maori were on-selling many blocks to settlers only a short time after making claims to the land through the court. The following account of a Kaipara land purchase from W D Hay in *Brighter Britain* is perhaps somewhat colourful, but it gives something of the atmosphere and circumstances of the time:

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We had our korero with the chiefs, and arranged to purchase a block, or a section of a block rather, on the Pahi. We selected our location – from such and such a creek, and back from the river as far as such and such a range. We offered ten shillings an acre for it, the then market price. The chief said, ‘Kaipai!’ [sic] and so that was settled.

Then we got up the Government surveyor for the district, and to it we went with billhook and axe, theodolite and chain, fixing the boundaries and dimensions of our slice of forest. Said the surveyor, after plotting and marking a map. ‘There you are! Two thousand and twenty-one acres, two roods and a half!’ ‘Right’, said we; and proceeded to the next business.

A Land Court was held by the Crown official at Helensville. Thither proceeded the Ngatewhatua [sic] chiefs, with the surveys and maps of the section we had chosen. They make out their claim to the land, according to established usage [sic], and receive a Crown grant as a legal title. This is then properly transferred to us in lieu of our cheque. Various documents are signed and registered, and we stand the proud possessors of so much soil and timber; while the Maoris make tracks straight to the hotel, with much rejoicing.⁹⁴

Just how wisely Maori used the money they received from land sales is unclear. Keith Sorrenson has observed that, while in town attending court sittings, Maori lived in squalor and ‘frequently spent long periods intoxicated as they squandered the money advanced by purchase agents’.⁹⁵ Obviously, many publicans and storekeepers were equally well versed in encouraging Maori to indulge and thus run up large debts, which could be recouped in land. The image of Maori wasting purchase moneys on alcohol is slightly misleading, therefore, as much of the shopkeepers’ and publicans’ trade was done on credit. Nevertheless, a local history records that the settler Joseph Masefield’s store at Batley (Oahau) was flourishing, in part because Maori ‘were selling large blocks of land to the government’ and, after every sale, ‘the store would be invaded by practically the whole tribe and they would buy nearly all Masefield’s stock.’⁹⁶ A constant source of distress to the Methodist missionary in Kaipara, William Gittos, apparently, was ‘his inability to

94. Quoted in Butler, pp 59–60

95. Keith Sorrenson, ‘Land Purchase Methods and their Effect on Maori Population, 1865–1901’, *Journal of the Polynesian Society*, vol 65, 1956, p 191

96. Sheffield, p 137

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teach the Maori people thrift, and a sense of responsibility where their property was concerned.⁹⁷

Whether Kaipara Maori squandered purchase monies or ran up large debts, however, is largely beside the point. The court system, under which Maori could be exploited into selling their lands, which required attendance at distant sittings for long periods, and which handed alienable titles to a small number of individuals, only encouraged social disruption and profligacy. Rogan wrote in 1868 that:

The immoderate use of tobacco and spirits, their uncleanly habits and perhaps more than all, indolence, is amongst other things the great cause of the gradual, but certain decay of the natives in Kaipara in particular and New Zealand generally.⁹⁸

97. *Ibid*, p 100

98. Cited in Butler, p 105

At a court sitting in March 1871 Rogan canvassed Kaipara Maori opinion about the sale of alcohol. Apparently, ‘20 people only’ advocated teetotalism. They were led by the Christian Arama Karaka who, Rogan noted, was reminded by Tirarau that he was not an abstainer himself.⁹⁹

Advice to the court from claimants that they had already sold land or were about to do so was sometimes accompanied by a rejoinder to the effect that the land was quite superfluous to the sellers’ requirements (see, for example, Arama Karaka’s comments in the cases of Marunui, Tumutumunui and Pakaraka).¹⁰⁰ In the case of the Tungotungo block, Te Waaka Tuaia informed the court that he wished:

no restrictions to be placed on this land as it is already arranged to sell it we have land besides this for cultivations.

The Court explained to Te Waaka the reason of asking questions with respect to restrictions was that in Hawkes Bay Grants had been issued to the Natives without restrictions and they disposed of those lands and afterwards blamed the Court for not making restrictions it was therefore necessary that the Court should hinder the Natives from becoming paupers . . .

Te Waaka: I understand what you say but in respect of this land neither he nor his ancestors had ever cultivated on it.¹⁰¹

Rogan’s expression of concern to hinder Maori ‘from becoming paupers’ is his only one recorded in the minute books.

The index to Turton’s Deeds reveals a total of only six Crown purchases in the Kaipara district of lands that had passed the court during the 10-owner period. With the establishment of the court in 1865 the Crown ended its right of pre-emption and disbanded its Native Land Purchase Department.¹⁰² It recommenced the large-scale acquisition of Maori land in the 1870s, however, under Vogel’s immigration and public works policy. Another reason for the low number of Crown purchases is

99. *Ibid*, p 97

100. Kaipara minute book 2, p 53; Kaipara minute book 3, pp 14, 15

101. Kaipara minute book 1, p 136

102. Ward, p 185

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probably that the Crown had already purchased such a large amount of Kaipara land prior to 1865, as outlined by Rigby. The six purchases recorded by Turton are set out below.

Deed no	Block and acreage	Area (acres, roods)	Date	Price
186	Taupaki (part)	118a	18 September 1867	£59
187	Owhetu	523a 3r	23 November 1871	£100
188	Marunui	2160a	8 March 1873	£270
189	Pouto	10a	5 December 1873	£50
190	Pakiri	20,000a of 31,400a	12 May 1874	£1600
191	Arakioire	470a	26 October 1874	£10

The Pakiri purchase was a drawn-out affair which was originally commenced in 1858. Some dispute seems to have led to it being renegotiated and, eventually, two-thirds of the 31,400-acre block was purchased from two of its three owners. In February 1873, Hori Te More agreed to sell his 10,666-acre share for £1000 and Arama Karaka Haututu and John Sheehan, as trustees for the owner Wiapo Te Whakaotinga, a minor, agreed to sell for the same price.¹⁰³ On 11 May 1874, however, Government land purchase agent E T Brissenden was able to confirm to the Under Secretary of the Native Department that he had ‘at last succeeded in

103. Lieutenant-Colonel Thomas McDonnell (land purchase commissioner) to Honourable Dr Pollen (general government agent), 26 February 1873, *Epitome*, p 112

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clearing away the many obstacles attending the purchase of 20,000 acres of the Pakiri Block' for a sum of £1650 (£1600 to the owners and £50 to 'outside claimants'). Brissenden stated that he had also acquired Owhetu for £100.¹⁰⁴ The third owner of Pakiri, Rahui, refused to part with her share of the block. Brissenden was quite satisfied with the purchase price as the block contained 'several thousand acres of fine alluvial soil' and offered 'the best site that could be found north of Auckland for a special settlement'.¹⁰⁵ Interestingly, the Pakiri block had originally been 'reserved' for the Albertland settlement, but was later rejected in favour of the Matakohe and Paparoa Crown purchases on the Arapaoa River,¹⁰⁶ perhaps because the purchase could not be finally effected.

While not recorded by Turton, the Crown also purchased the 41,400-acre Hoteo or Tauhoa block. The court minutes for the time of its investigation in January 1867 record that it had been 'disposed of . . . lately to the Provincial Government.'¹⁰⁷ Rigby notes that the final acquisition of Hoteo – a 'very significant area joining Upper and Lower Kaipara purchases' – does not appear to have been completed until 1868.

104. Brissenden to H T Clarke, 11 May 1874, *Epitome*, p 145

105. Brissenden to Clarke, 30 May 1874, *Epitome*, p 146

106. Borrows, p 27

107. Kaipara minute book 1, p 56

7.9 SURVEYS

Survey charges were detailed for 52 blocks totalling 118,196 acres. Charges for these blocks amounted to a total of £3052, or an average of sixpence an acre. The most frequent surveyors were Tole, with 22 surveys, O’Meara with eight, Rintoul with seven, and Harding, Blake, and Government surveyors with four each.

From the table opposite, it is readily apparent that the survey of smaller blocks entailed proportionately far greater expense than larger blocks, and that the average figure of sixpence per acre is misleading. The more interesting statistic is the comparison between the cost of surveying a block and the amount for which it could then be sold. For example, the survey of the Owhetu block cost £40, yet the sale price was only £100. The Government paid £1600 for 20,000 acres of the 31,400-acre Pakiri block, yet the block’s survey cost its owners £400. While it must remain speculative, it seems that owners paid between 25–40 percent of the on-sale value

Size of block (acres)	Number	Price per acre
0–9	1	£1 5s
10–49	5	8s 6d

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50–99	5	3s 7d
100–249	6	2s
250–499	7	1s 6d
500–999	8	1s 6d
1000–1999	9	1s
2000–5000	8	9d
above 30,000	2	2d

of their land to have it surveyed. The land could not be sold without a legal title, but a title required a survey, and Maori indebtedness from survey costs may well have hastened many sales. Smaller blocks fetched comparatively better prices but necessitated higher survey charges.

In a number of cases – such as Paeroa 1, Paeroa 2, Marunui and Te Nukuroa 2 – the court ordered that the Crown grant should be delivered into the relevant surveyor’s possession to secure his charges. Thus, even where the land’s eventual

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grantee had not ordered a survey, they could not receive their grant until the (sometimes exorbitant) survey costs had been paid.

In several cases, however, the surveyor Edward O'Meara's charges were disputed. In the case of Oneonenui, where he had charged £112 11s 6d for 787 acres, Paora Tuhaere objected and the matter was referred to the inspector of surveys in Auckland and was subsequently heard by Chief Judge Fenton, in Auckland, on 9 March 1871, under section 69 of the Native Lands Act. The evidence is perhaps worth recording:

O'Meara: I am a licensed surveyor. I got Oneonenui surveyed by another licensed surveyor [a Mr Baker], at Paul's request. I charge 2/6 per acre. That is a fair charge considering the delays made by Natives. £4/4/- for attendance at Court.

X Ed by Paora Tuhaere: Did you not say if there were 3000 acres you would charge 1d per acre less than anyone else?

Yes except one man who was living among the Natives.

What surveyor has charged more than you?

Tole. He charged £40 for 500 acres [presumably Owhetu].

Did you know that 9d was charged at Arakiore for 400 acres by Tole?

I never heard of it.

Did you know that Blake charged 9d an acre for Muriwai?

I asked Blake and he said the Maoris cut all the lines. All he had to do was take the distances and observations.

X Ed by Chief Judge: Was there any Native Agent concerned in this matter?

Yes.

Was any commission agreed to be given him?

Yes – every Native Agent gets it.

How much?

Ten pence on the sum received.

How much did you pay over the survey?

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£29.

Over these four surveys?
Travelling expenses.

If you had taken your own labourers how much would you have charged?
2/- if there had been no delay.

What could there have been?

As much as with Natives – I allude to the delays of settling boundaries changing them etc.¹⁰⁸

The court's decision was to charge £49 4s (including £4 4s for two days' court attendance), thus less than half O'Meara's original charge. Paora Tuhaere also objected to O'Meara's charge of £105 for the 891-acre Ururua block and £17 2s for the 66-acre Rangiahua block, while Te Otene Kikokiko objected to O'Meara's lien of £118 10s on the 1164-acre Hauekau block. Fenton ruled charges of £33 2s, £5 2s, and £36 2s for these blocks respectively, including in each case a charge of £2 2s for court attendance. Thus, where survey costs were actually disputed and ruled upon under section 69, the surveyor's original charges were reduced in these cases by over 300 percent.

Surveyors were a cause of much disquiet amongst Maori during this period. Blocks of land were often surveyed more than once, as opposing claimants employed their own surveyors for the same piece of land. The court could only recognise one survey, however, meaning any others were a waste of time and expense. Maori seem to have favoured the idea of Government surveyors doing all the survey work, thus circumventing the possibility of double-up. Charges, according to Wiremu Te Wheoro and Paora Tuhaere, varied between ninepence to 2s 6d per acre.¹⁰⁹

108. Kaipara minute book 2, pp 238–240

109. *Return Relative to the Working of the Native Land Court Acts*, p 26

Wiremu Pomare provided the following account of the problems inherent in the survey of land under the Native Lands Act:

I have heard of several cases in which the surveyors have caused great trouble to the Natives. 1220 acres of my land at Mahurangi was surveyed by Campbell; he was to receive £2 per day, and the bill came to £33. I could not pay the money at once, and Campbell threatened to sell the land, and instructed a lawyer to demand the money, who said that the land should be sold if I did not pay it. I did pay it, and got my Crown grant, but it cost me a great deal of money. We had an agreement with the surveyor specifying the terms, and telling him that he might have to wait for his money, but it was not witnessed, and it was our own fault; but these things often happen, and Maoris get frightened when they are threatened with the law, and do as they are required. Patuone, of the Bay of Islands, was imposed upon about two years ago. The surveyor said he would do the work and wait for the payment until the land was sold, and now he demands payment. He should have ascertained before he commenced when the land was to be offered for sale. A piece of land in which I was interested at Puketapu (Waimate) was surveyed against my wish, and now we must have it done over again, because I don't approve of the first survey.¹¹⁰

The case of the Ohaurua block also illustrates the way rightful owners of blocks of land could be both unaware of the survey of their land and be forced to testify in court lest their names be omitted from the Crown grant. The eventual grantee, Manukau Rewharewha, stated that he appeared:

as an objector. This piece is part of Hukatere as was also Kakatamanawha. When Hukatere was surveyed I left this piece as a run for my horses. During my absence the land was surveyed by Pairama without my knowledge. When I came back the survey was completed and I was very sorry. I went and took up the surveyors pegs and through [sic] them away. The reason I done this I was offended that my friend did not come and ask me about the survey. This is the fourth piece that has been cut off Hukatere. I wish my name to be inserted in the Crown Grant.¹¹¹

Similarly, in the case of the Te Wai o Parewhakahau block (which was dismissed by the court upon the production of evidence from John White that the Provincial Government had previously purchased the land), the claimant, Tautari, stated that:

110. *Ibid*, pp 35–36

111. Kaipara minute book 2, p 166

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the land had been surveyed clandestinely several times. I have spoken about it several times to Mr McLean . . . I have not surveyed this land myself. This land has been taken by the Europeans. I wish this land to be given back to me.¹¹²

The court could be impatient with Maori who openly expressed their concerns with a particular survey. For example, in the case of the Pohutu block, Wiremu Marua stated that he ‘did not see the survey of this land. I do not know whether the survey is correct or not. If the line is right I do not object.’ He was told by Rogan, however, ‘that his objection was a frivolous one, that if he had any doubt of the correctness of the line he should have gone on the ground and examined it for himself.’¹¹³

As confirmed by Edward O’Meara’s testimony above, it was a common practice for ‘native agents’ (usually licensed interpreters) to persuade Maori to have their lands surveyed and then receive a commission from the surveyor who was contracted to do the work. Bay of Islands Resident Magistrate Barstow reported in February 1871 that:

I cannot state whether interpreters have visited the Natives as agents for surveyors, or have sold the job after obtaining the Natives’ assent thereto. The Natives are sometimes informed that they will not have to pay for the surveys until the lands have been disposed of, and in this way are induced to bring their lands before the Court; but payment is demanded and pressed at an earlier period, and the owners are worried into parting with their land at a sacrifice to meet the liability.

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112. Kaipara minute book 1, p 95. See also the cases of the Manginahae and Motutare blocks, which Henare Taramoeroa and Te Kiri respectively claimed had been ‘surveyed by stealth’: Kaipara minute book 2, pp 82, 86.

113. Kaipara minute book 2, pp 90–91

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If Europeans wish to secure any particular block under the present system, their best plan is to get a surveyor to undertake the work, then induce him to press for payment, and they can get the land from the Native owner on almost any terms by advancing the money.¹¹⁴

The acquisition of Maori land under the court system could thus be a calculating and cynical enterprise, where surveys were just one technique of prising Maori land from its owners.

7.10 CONCLUSION

The experience of Kaipara Maori under the 10-owner system from 1865–73 may well have differed from that of other tribal groups in other parts of the North Island. Perhaps most importantly, Kaipara had remained relatively insulated from the turmoil occasioned by the fighting elsewhere in the 1860s, and the relations of the region's leaders with the Crown were generally very good. This political background is important to bear in mind when considering the period after 1865, as is the fighting between Ngati Whatua and Ngapuhi in the 1820s (and the subsequent desire on the part of Ngati Whatua to sell land to the Crown for their own security); the Crown's similar aim of creating a buffer of settlement between Ngapuhi and Auckland; and the many expressions of 'loyalty' and willingness to sell land made by Kaipara chiefs throughout the early 1860s. These matters are dealt with by Rigby more fully in his report on Kaipara Crown purchases.

114. *Return Relative to the Working of the Native Land Court Acts*, p 47

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Nevertheless, certain universal themes are apparent in the information contained in the Kaipara minutes books which undoubtedly apply to other parts of the country. These are also backed up by Geiringer's research on the 10-owner period in Muriwhenua. They include the inadequacy of the de facto role of the 10 (or fewer) owners as 'trustees'; the ineffectiveness of the assessors; the court's unwillingness to make use of the statutory provisions which may have ameliorated the situation for Kaipara Maori, such as section 17 and those relating to reserves; the extent of land passing from the tribal estate and into the hands of private purchasers; and the injurious effects of numerous aspects of the Native Land Court system, such as the cost of surveys, the necessity of travelling long distances to attend lengthy hearings, and the predations of shopkeepers, publicans, agents, and the like.

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The evidence points to Kaipara Maori being worse off in 1873 than in 1865. Rogan, who was in a good position to observe, was convinced that the local Maori population was dwindling and that the people were in a state of ‘gradual decay’. Indeed, while not partaking in the New Zealand Wars and suffering the subsequent hardships of casualties and confiscation, Kaipara Maori fell victim to the ‘subtle conquest’ spoken of by Belich. The years 1865–73 undoubtedly saw the alienation of significant amounts of Kaipara land and, while the question of how purchase monies were spent remains largely a matter for speculation, probably resulted in little tangible benefit to Kaipara Maori, other than to a few chiefs. Kaipara chiefs were undeniably willing sellers, but even they may have grown apprehensive as to the long-term effects of their actions.

The Waitangi Tribunal has already found that the 10-owner system breached the Crown’s obligations under the Treaty. It suffices to reiterate here that, especially in terms of the retention by Maori of a sufficient endowment for their present and future needs, the Crown’s creation of the Native Land Court system showed a disregard for its responsibility to protect Maori interests guaranteed under the Treaty.