

CHAPTER 6

THE NATIVE LAND COURT IN THE RANGITIKEI–MANAWATU

6.1 THE HIMATANGI HEARING

Under section 40 of the Native Lands Act 1867, the Governor-in-Council was able to refer the claims of non-signatories to the deed of sale to the court, negating the exception of Rangitikei–Manawatu lands under the earlier legislation. In late November, Richmond directed that notice be given that:

any persons having claims within the block of land described in the schedule thereunto annexed and who have not signed the deed of sale therein and who desire to have their claim referred to the Native Lands Court may send the same to the Governor for consideration and reference if he shall see fit.¹

In March 1868, Parakaia and 26 other members of Ngati Raukau, Ngatiteao, and Ngatituranga applied to the court for a certificate of title to Himatangi, which was situated on the west bank of the Manawatu, at the confluence with the Oroua, and bounded to the south by Te Awahou. The provincial government, anxious to defend its purchase, objected to such a certificate being ordered, and appeared against the claimants. This was one of the first occasions on which the Crown claimed to have acquired an interest in lands brought to court, and the presence of Government officials in the role of counsel and as adversaries was regarded with considerable suspicion. The claimants complained that the proceedings were weighted against

1. *New Zealand Gazette*, no 63, 28 November 1867, pp 6461–6462

them: not only did the Crown appear as the opponent but its title would not be investigated while their own rights would be subjected to all the court's scrutiny.²

Initially, counsel for the Crown tried to block the case on grounds that the claim was too vague. Richmond, however, was fully committed to an investigation, and this effort to impede the hearing on a technicality drew his criticism:

I observe that sect 17 of the Native Lands Act 1867 distinctly recognises this sort of Representative claim as within the class of claims by 'persons' independently however of any technical question the Government are bound in fulfilment of the plain intention of the legislature to secure for all claimants a full hearing without formal impediment on the part of the Crown.³

Reassuring Featherston that the general government was disposed neither 'to neglect any means of supporting the substantial rights of the Province under the Crown', nor to tolerate inroads on the purchase from 'fictitious or mythical pretensions', he stressed the importance of dealing, none the less, with every claim on its merits:

The Government are necessarily and expressly pledged to have all claims treated on their merits. To impede any claim would add strength to disloyal suspicions throughout the Island, without saving us from local excitement.

2. Rolleston, 31 October 1867, 'Memo on Parakaia's letter of 23 October 1867', MA series 13/73B, NA Wellington
3. Richmond to Featherston, 11 March 1868, MA series 13/73B, p 2, NA Wellington

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The Government therefore request that the Counsel may be instructed to rely on broad considerations and not to allow any smaller or semi-technical difficulties to postpone a decision by the Court which the quiet of the Country requires should be arrived at without delay.⁴

The case proceeded over the course of the following six weeks, in an atmosphere of considerable acrimony. The case for the claimants was conducted by T C Williams, son of Henry Williams, untrained as a lawyer, but a ‘spirited advocate’.⁵ Overseeing the case for the Government, was Fox, with Buller and Featherston in attendance. According to Galbreath, Fox ‘revelled in the combative role in the courtroom or in Parliament’, and attacking his opposition with ‘invective, sarcasm and innuendo’, used ‘all his barrister’s skill’ to refute Ngati Raukawa’s claim.⁶ He described Parakaia as a ‘land shark’, and attempted to undermine the credibility of Hadfield by raising the question of his land purchase activities within the bounds of the Rangitikei–Manawatu. When Williams appealed to the Treaty’s guarantee to Maori of the undisturbed possession of their lands, Fox poured scorn upon the argument, calling the Treaty a ‘great sham’ and ‘the work of landsharks and missionaries and missionary landsharks’.⁷

6.2 THE CLAIMANTS’ CASE

4. Ibid, p 3

5. R Galbreath, *Walter Buller: The Reluctant Conservationist*, Wellington, GP Books, 1989, p 72

6. Ibid

7. Ibid

Parakaia's claim of ownership was based on an argument of right acquired by conquest, and confirmed by actual occupation. Williams, in his opening argument, stressed the extent of Ngati Raukawa dominance. He argued that members of Ngati Raukawa had been living as far up the coast as to the north bank of the Rangitikei. Parakaia had been in occupation of Himatangi, as guaranteed by the Treaty, until the late 1840s when Ngati Apa had begun to sell. Any Ngati Apa living on the south bank had been in a 'state of captivity'. According to William's argument, the rest of the tribe had not moved to the south side of the Rangitikei River until 1854, when they had attempted to lease land there. The deed was not to be taken as establishing the claim of these people, Featherston having used the excepting clauses within the Native Land Act 1862 and 1865, to deny the wish of the majority of Ngati Raukawa for an investigation of title before any alienation of land took place.⁸

The court had taken the view that it had to reach a decision on the conflicting tribal claims to the Rangitikei–Manawatu, as a whole, before it could determine the ownership of Himatangi itself. Evidence was presented accordingly. The first witness, Matene Te Whiwhi, testified to the tribal history of the district, starting with Te Rauparaha's initial invasion with Ngapuhi. Ngati Raukawa participation in the migrations to the Kapiti Coast was then outlined. According to Te Whi Whi, 'Ngatitōa thought to give the land as far as Whangaehu to Ngati Raukawa because of the murder of Te Poa by Muaupoko at Ohau – Ngatitōa chiefs assented and gave Te Ahukarama the land. "The land on which Te Pou was killed".'⁹ As the waves of

8. Otaki Native Land Court MB 1c, 11 March 1868, pp 194–195; *Wellington Independent*, 10 March 1868

9. Otaki Native Land Court MB 1c, 11 March 1868, pp 197–198

heke reached the district, Ngati Apa, Rangitane, and Muaupoko left the district for the Wairarapa. Te Whi Whi testified that they had been attacked by Wairarapa forces and after a year returned to the west coast, some going to the Rangitikei, some to Whanganui, some to Waitotara, and others to their ‘hunaonga’ – Te Rangihaeata, at Kapiti, who had taken Pikinga to wife. In Te Whi Whi’s view, these people – ‘the greater part of Ngati Apa’ – were ‘dependents’ on Te Rangihaeata.¹⁰ Ngati Raukawa’s mana had been extended to Turakina when they had successfully assisted Ngati Apa in fighting against Whanganui.

Parakaia testified next, giving an account of their heke to the coast. According to Parakaia’s account, Te Rauparaha had invited Te Whatanui and Te Hukiki to occupy territory extending from Porirua to Turakina. The witness gave an account of various battles fought by Ngati Raukawa against Ngati Apa, Rangitane, and Muaupoko, as their major body (Te Heke Nui) moved into the area. He told the court:

Ngatiraukawa then proceeded to apportion the lands at Manawatu and Rangitikei between themselves. In 1830 peace having been partially made Ngatiapa came and lived under the protection of Ngatiraukawa – all the land had been taken by Ngatiraukawa and Ngatiapa occupied by their permission and under their protection.¹¹

Not until the arrival of Christianity had Ngati Apa began to be ‘whakahi’ to Ngati Raukawa. Fox’s cross-examination, however, brought an acknowledgment of Ngati Apa’s exercise of cultivation and fishing rights at various locations within the block

10. Ibid, pp 198–199

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– at Tawhirihoe, Te Awahuri, Kaikopu, Pukapuka, and Oroua – under the authority of various Ngati Raukawa chiefs.¹²

This testimony to Ngati Raukawa dominance of the general region was strongly supported by Hadfield, who told the court:

11. Otaki Native Land Court MB 1c, 12 March 1868, pp 201–202

12. *Ibid*, pp 203–204

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Up to the time of the Treaty of Waitangi Ngatiraukawa was the only tribe acknowledged to be in possession of this part of the country from Kukutauaki 3 miles this side of Waikanae up to Turakina – Muaupoko were then living at Horowhenua; Rangitane were living in the neighbourhood of Oroua; Ngati Apa were living on the other side the other side of Rangitikei on to Turakina excepting a small fishing settlement at the mouth – kainga o Taratoa. I always understood that Muaupoko were living in subjection under Whatanui – were living at Horowhenua under the ‘mana’ of Te Whatanui.¹³

Meihana gave corroborating evidence that, while some Ngati Apa were living at Putanga (Oroua) and Parewanui, and Rangitane at Te Mahau, ‘Ngati Raukawa was the tribe in occupation’ in 1840 and ‘had the mana’. He told the court that he believed that those Rangitane and Ngati Apa residing on the block were living ‘manakoie’ and had ‘no tikanga to the land then or from some time previous’.¹⁴

Evidence was also brought forward to prove the importance of the consent of Ngati Raukawa to the sale of Rangitikei–Turakina and Ahuaturanga, and to interpret the significance of those sales. Samuel Williams testified that he had encouraged both Ngati Toa and Ngati Raukawa to consent to the alienation of the lands north of Rangitikei, advising Raukawa to ‘to shew kindness to the tribes whom they had conquered formerly’ and to ‘curtail their boundaries, and not to hold useless tracts of land.’¹⁵ He told the court that Ngati Raukawa ‘relinquished their mana’ over this territory, enabling Ngati Apa to sell. Ngati Raukawa retained authority over the south bank. Although he did not consider Ngati Apa debarred from occupying and sharing in those lands, Williams considered that their rights could not revive in them without boundaries being set, nor sold without the permission of Ngati Raukawa.¹⁶ He admitted under cross-examination, however, that it would not have been wise to

13. Otaki Native Land Court MB 1c, 13 March 1868, pp 211–212

14. Otaki Native Land Court MB 1c, 14 March 1868, pp 222–224

15. *Ibid*, pp 228–229

16. *Ibid*, pp 230–231

have omitted signatures from the purchase deed of conquered people who had been allowed to acquire rights in the block.¹⁷

A similar argument of Ngati Raukawa restoration of mana was made with reference to Rangitane and the Ahuaturanga sale. A number of Ngati Raukawa witnesses then testified to their defence of their control over the lands south of the Rangitikei since the setting of the tribal boundary there. They pointed to Te Huruheru's protection of Ngati Parewahawaha's clearings at Pakapakatea from Ngati Apa incursions.¹⁸ Evidence was also brought forward to the nature and significance of leasing arrangements in the 1850s. Henare Te Herekau testified to Ngati Rakau driving off sheep being pastured under Ngati Apa permission. It was argued that Taratoa had allowed Ngati Apa to lease land at Kakanui (Makowai) for three years in order to enable them to participate in running a mill there. In a lease to Robinson of lands on the north-west bank of the Manawatu, Nepia had allowed Ngati Apa to share in the rents for Omarupapaka, but Parakai had refused to admit them into the arrangements made with regard to Himatangi.¹⁹

17. *Ibid*, pp 230–231

18. Otaki Native Land Court MB 1C, 16 March 1868, pp 238–243

19. Otaki Native Land Court MB 1C, 18 March 1868, pp 270–279

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Intrinsic to the claimants' case was the argument that Featherston's purchase had been unfairly conducted. Buller was thus closely questioned about the inclusion of so many Whanganui and the means by which other signatures been obtained. The witness defended the course pursued by the provincial government, arguing that monies paid to Whanganui and others were loans rather than advances, that the signatures of non-claimants would not invalidate the deed and that the purchase had been necessary to the maintenance of peace.²⁰

Parakaia also had to uphold his claim against the selling section of Ngati Raukawa. Evidence was thus brought forward to show that the interests of Ihakara, who had also preferred a claim to the Himatangi lands had been confined to Te Awahou and extended up-river to Motoua only.²¹ Amiria Taraotea admitted that Ngati Patukohura had once cultivated Himatangi lands, but only for a period of two years while others described the boundaries laid down by Taratoa and the leading chiefs of adjacent areas for the three claimant hapu of Ngati Rakau, Ngatiteao, and Ngatituranga.²²

20. Otaki Native Land Court MB 1c, 13 March 1868, pp 193–194, 216–220

21. Otaki Native Land Court MB 1c, 18 March 1868, pp 264, 269

22. Otaki Native Land Court MB 1c, 21 March 1869, pp 304–307

6.3 THE CROWN'S CASE

During cross-examination, Fox had attempted to highlight the apparent inconsistency of non-Raukawa witnesses who had signed the deed now supporting claims of ownership by that tribe. He threw doubt on the integrity of Parakaia's evidence, on Hadfield's motives, and on the depth of his understandings in 1840, raising questions about the witness' knowledge of Maori at that date. Now in presenting its case, the Government did not contest that Ngati Raukawa had been in possession of the block at the time of the Treaty signing but sought to deny any exclusive right on the part of the claimants deriving from conquest. Witnesses called by Fox, thus, stressed the failure of Ngati Raukawa to dispossess the original occupiers, and argued that the claimants had occupied only a small portion of the block under examination.

The case for the Crown was opened by Tamihana Te Rauparaha, Nopera, Tamaihengia, and others from Ngati Toa. The import of their evidence was that authority over the region lay with Ngati Toa, who had been at peace with Ngati Apa when Ngati Raukawa arrived in the region. Tamihana argued that Ngati Apa's mana had been fixed at the Manawatu River by Te Rauparaha in 1840. He disparaged Ngati Raukawa, arguing that they came as the soldiers and 'kai mahi' of Te Rauparaha. The court was told that those living in the Rangitikei–Manawatu after the 1849 sale of the north bank, did so as the 'mokai' of Ngati Apa, whose mana was

the greater.²³ Greater credence seems to have been given to the more moderate evidence of Nopera and Tamaihengia. Nopera testified to the significance of Rangihaeata's marriage to Pikinga, and told the court that Ngati Apa had escorted Ngati Toa down to Kapiti on their return to the region after the first taua. He suggested that Ngati Raukawa had been forced north after their defeat by Te Ati Awa at Haowhenua and Kuititanga and stated that in 1840, Ngati Apa were living on their own land, exercising full mana over it as demonstrated by their sale of the Rangitikei–Turakina block:

When I fought these tribes I drove them off – when the fighting ceased, we lived together. After this Ngati Apa lived on the land and had 'mana', otherwise how could they have sold the land? Did the Ngatiraukawa gain any battle or take any 'pas' of the Ngati Apa upon which it should be said that they had destroyed the Ngatiapa 'mana'?²⁴

Under cross-examination Nopera drew a contrast between the authority exercised by Taratoa at the Rangitikei–Manawatu and the place of his ancestors:

the reason why he considered Nepia in no way superior to Ngatiapa was that Nepia did not resent the curses of Ngatiapa; that if the same terms of opprobrium had been made use of at Maungatautari with reference to Nepia the country would have been swept
...²⁵

Tamaihengia corroborated that Ngati Raukawa's settlement of the north bank of the Manawatu had not taken place until the mid-1830s and had been conducted peacefully. Ngati Apa's fires had never been extinguished on the Rangitikei–Manawatu lands. Tamaihengia told the court that, although some members of Ngati Apa had been enslaved, the tribe had been 'elevated' by the Raukawa leaders. He

23. Otaki Native Land Court MB 1D, 28 March 1868, pp 384–391

24. Otaki Native Land Court MB 1D, 30 March 1868, p 395

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explained that lands were owned by those actually occupying, but that those outside – the forests – belonged jointly to the tribes. The witness testified further that Te Rauparaha's allocation to Ngati Raukawa extended only as far north as Poroutawhao, just south of the Manawatu River.²⁶

25. *Wellington Independent*, 30 March 1868; Otaki Native Land Court MB 1D, 30 March 1868, p 398

26. Otaki Native Land Court MB 1D, 30 March 1868, pp 399–403

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Leading chiefs of the other tribes claiming interest in the region were next called to testify: Kawana Paipai and Mete Kingi of the Whanganui, Karaitiana of Kahungunu, Paramona Te Naunau of Ngati Upokoiri, Peeti Te Awe Awe of Rangitane, Hunia Te Hakeke of Ngati Apa, Matene Te Matuku – also of Ngati Apa – who had lived at Himatangi before the arrival of Parakaia, and others. Their evidence tended to stress that Ngati Raukawa had moved to the coast after defeat at the hands of Ngati Kahungunu and to confirm that they had taken up residence north of the Manawatu only after fighting with Te Ati Awa. There was some confusion, however, whether that move north had taken place after Haowhenua or Kuititanga. It was admitted that Raukawa's movement to the Rangitikei–Manawatu had not been entirely under duress, since Te Ati Awa had also withdrawn from the scene of conflict. Kawana Paipai suggested, however, that Ngati Raukawa's survival owed much to the support of Whanganui.²⁷ Witnesses acknowledged defeats by Ngati Raukawa in the first battles, but maintained that enslavement and death had been restricted to people of little standing.²⁸ It was also emphasised that the later occupation of the Rangitikei–Manawatu by Ngati Raukawa hapu had been conducted without fighting. According to Kawana Paipai, they were not conquerors, only people in search for a place to live.²⁹ The mana of these new arrivals extended only over the lands pointed out to them by Ngati Apa and Rangitane chiefs.³⁰

Matene Te Matuku of Ngati Apa claimed that he had been living at Himatangi at the time of the Treaty, but after the sale of Rangitikei–Turakina had moved residence to Koputara. Although he had stopped cultivating Himatangi, he had continually returned to catch eels and told the court, had occupied the land until it was sold to

27. Otaki Native Land Court MB 1D, 31 March–1 April 1868, pp 425–430, 436–443

28. Otaki Native Land Court MB 1D, 31 March–2 April 1868, pp 427, 468

29. *Ibid*, p 428

Dr Featherston and had burnt Parakaia's houses and boundary poles. The import of his testimony was, however, modified under cross-examination. It was reported that the witness admitted, 'Parakaia's fire is and has been burning on the bank of the Manawatu', and that he had received part of the rents for the area from Nepia's hands.³¹ When Te Matuku was questioned by the court as to why he would allow a Ngati Raukawa to have the management of leases over lands which he claimed to own himself:

He answered that it was because Nepia Taratoa in defining the boundary then, stood on the boundary at Omarupapako, and first turned to Ngatiraukawa (ie, towards the Manawatu) and said 'this Ngatiraukawa is for you,' and then turning to Rangitikei, said 'I shall now turn my front to Ngatiapa,' thereby meaning that Ngatiraukawa were not to transgress this boundary (running from the sea to above Moutoa) with regard to Ngatiapa.³²

Peeti Te Awe Awe also claimed resource use at Himatangi, giving the names of lakes where Rangitane used to catch eels. He is reported as having told the court that after Matuku's departure, 'Ihakara, Tukumarū, Mamakau and others of us went and took possession of the land; Matene Te Matuku disputed, and if one cultivated the other cultivated too'.³³

General support for these claims was given by Amos Burr who was called by Fox, apparently to challenge the evidence of Hadfield. Burr had been involved in the New Zealand Company's Manawatu negotiations in 1841 and subsequently had operated the ferry on the river. Pointing to this experience, he claimed that he had a better knowledge of the district than did the missionary, who only occasionally travelled through the area. Burr testified that although Ngati Raukawa had cultivations near Opiki, nobody was living at Himatangi in the mid-1840s. He told

30. Otaki Native Land Court MB 1D, 4 April 1868, p 496

31. Otaki Native Land Court, 2 April 1868, *Wellington Independent*, Hadfield Papers, MS Papers 139 (30), ATL

32. *Ibid*

33. Otaki Native Land Court, 4 April 1868, *Wellington Independent*, Hadfield Papers, MS Papers 139 (30), ATL

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the court that Ngati Raukawa occupied land in the Manawatu–Rangitikei block by consent of Te Hakeke and Ngati Apa, who eventually left the district to be near their missionary, Mr Taylor; they were not driven away by Ngati Raukawa.³⁴

In his closing address, Fox summed up the case for Ngati Apa right of ownership over the Rangitikei–Manawatu lands. He first questioned the legality of the ‘forty year rule’, arguing:

34. Otaki Native Land Court MB 1D, 3 April 1868, pp 473–476

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since the Court still respects the native law of ownership, as it existed in and long previously to 1840, and decides between native claimants in accordance with native law, there is not a shadow of a reason shown for fixing a period of limitation, either at 1840 or any other date.³⁵

Pointing out that peoples of defeated European nations would not be denied the right to prosecute claims to their ancestral lands beyond 30 years, Fox continued:

Still less ought such a rule to exist in New Zealand where if in some instance ‘tribal’ ownership may rest on military occupation, the ‘individual’ holding as distinguished from ‘tribal’ almost always rests on the peaceful occupation of the owner achieved by his own manual labour, or that of his immediate ancestors.³⁶

Fox argued that nowhere in New Zealand would a strict application of the 1840 rule be more unjust than in the case of the Kapiti Coast:

At that period owing to a series of events which have been related to this Court by the witnesses for the Crown, the sovereign rights of the tribes and the titles to the land were evidently in a state of fusion; old political landmarks were broken down; new ones hardly yet defined or established. ‘In those days of Satan,’ said one of the old witnesses, ‘the tribes were fighting each other. I cannot say where was the mana.’ At this moment this Court crystallizes, if I may so express it, the title of the lucky holders of 1840, whoever they might be; utterly regardless of the events of previous periods and the interests of those whose claims, if momentarily in abeyance, had never been abandoned or transferred.³⁷

Fox, however, did not admit Parakaia’s title to be good even at 1840. He argued that witnesses for the Crown had given a:

consistent record of continuous exercise of ownership in every possible way in which a Maori could exercise it, to show that Ngatiapa have never ceased to own the land which they inherited from a long line of ancestors, and their occupation of which was fully confirmed to them by the only persons who could have shaken it, Rauparaha and those who accompanied him in his first taua.³⁸

35. W Fox, *The Rangitikei–Manawatu Purchase: Speeches of William Fox Esq, Counsel for the Crown, Before the Native Lands Court at Otaki: March and April, 1868, Together with Other Documents*, Wellington, William Lyon, 1868, p 14

36. *Ibid*, p 15

37. *Ibid*

38. *Ibid*, p 24

Acts of Ngati Apa ownership were then outlined by Fox. They were ‘actually living’ on parts of the block – Oroua, Awahou, Makowhai, Pukepuke, near Matahiwi, and Pakapakatea being admitted by the claimants. Fox argued too, that evidence had been adduced that Ngati Apa had cultivations on every part of the block, some witnesses being able to give specific names, others speaking to the fact generally. In the case of Himatangi itself:

Matene Te Matuku and a number of other Ngatiapas of two hapus, accompanied by two hapus of Rangitane were cultivating in Himatangi bush in 1840, ‘from which place’ says Matene (confirmed by Hamuera), ‘I was sent for to sign the Treaty of Waitangi.’³⁹

Ownership of the eel ponds was also attributed to Ngati Apa, Fox citing in support of this contention the testimony of Kereopa of Ngati Raukawa and the reputed presentation of a dish of 20,000 eels to Featherston. Stating there was ‘no ingredient of so much weight in all this case, to prove the continuance of Ngati Apa mana in the disputed block’, Fox attempted to argue that ownership of adjacent land was essential to the exercise of the right of fishery.⁴⁰ Other examples were cited by Fox as pointing to continuing Ngati Apa authority: the invitation to their chiefs to sign the Treaty of Waitangi at Tawhirahoe; the removal of Ngati Raukawa boundary posts and, subsequent to 1840, their participation in leasing arrangements.⁴¹

While the continuing authority of Ngati Apa over the land was asserted, the superiority of Ngati Raukawa was denied. Fox argued that Ngati Raukawa had come to the coast under Te Rauparaha’s protection and could not cite any significant battles with Ngati Apa. The first Ngati Raukawa settlement north of the river had been undertaken by the father of Tapa Te Whata, the latter having testified that the move was undertaken with the consent of Ngati Apa. Further settlement had

39. Ibid, p 14

occurred after Haowhenua, when Nepia and Horomona accompanied Te Hakeke to the Rangitikei ‘and gradually drew around them a small body of followers who settled on Ngatiapa ground by Ngatiapa permission’. According to this interpretation of events, it was only after the introduction of Christianity that Ngati Apa gradually drew over to the north side of the Rangitikei River, and Ngati Raukawa to the north bank of the Manawatu – not by force, but by the ‘friendly act of Ngati Apa’. Any Ngati Apa slaves in Ngati Raukawa hands were ‘only a few stragglers taken by their eel ponds and cultivations’.⁴²

Fox next questioned Ngati Raukawa’s representation of the Rangitikei negotiations, citing McLean’s opinion, expressed in correspondence with the New Zealand Company and the Government, that Ngati Apa had an ‘undoubted right’ to retain land on the south bank. Crown counsel pointed out that Ngati Raukawa had admitted the existence of those interests at the Awahou meeting in 1849. According to Fox, Ngati Apa’s boundaries on the south bank were acknowledged as incorporating Omarupapako, Pukehinau, Purakau, Waikatira, Oroua, the river, and Otara inland. Those boundaries, he argued, had been confirmed by the sale of the Awahou block, when Taratoa had agreed that Raukawa would confine themselves to south of the Manawatu River.⁴³

40. Ibid, p 25

41. Ibid

42. Ibid, p 27

43. Ibid, p 28

The Crown concluded its case by arguing that the claimants had proved actual occupation of only 30 acres, and cultivation of no more than 120 acres, in a block of some 12,000 acres. Counsel maintained that this occupation was a ‘mere encroachment which conferred ‘nothing even in the character of possessory right beyond the then absolute limits of ground intruded upon’. This was in contrast to the sort of right enjoyed by Ngati Apa: ‘an occupation like that of Matene Te Matuku might do so. It was a representative occupation; he and his two hapus sat there as members of a tribe whose ancestral mana covered the whole district.’⁴⁴

6.4 THE FINDING OF THE COURT

The court decided on two questions: tribal right over the general district lying between the Rangitikei–Manawatu and the ownership of Himatangi itself. At the heart of their reasoning was an affirmation of occupation as conferring ownership. Occupation underlay the three basic principles of customary title enunciated in the court’s finding: that conquest had to be followed by continuous occupation to confer right; that earlier occupiers, even though defeated, retained rights if they remained on the ground and continued to assert their interests; and that title devolved only those in permanent residence, not upon a wider tribal entity.

44. Ibid, p 30

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The court attempted to reconcile these two different assertions of tribal mana over the lands between the Rangitikei and Manawatu Rivers, in a decision intended as a precedent for other claims within the block. It accepted that Ngati Raukawa had ‘acquired and exercised rights of ownership over the territory in question’, before the establishment of British Government. The court considered further that the ‘prominent part’ that Ngati Raukawa had played in the cession of Rangitikei, Ahuaturanga, and Awahou, ‘prove also that those rights have been maintained up to the present time’. On the other hand, it also thought that the evidence showed that the original occupiers were never ‘absolutely dispossessed’ and that they had ‘never ceased on their part to assert and exercise rights of ownership’.⁴⁵

Although the court acknowledged Ngati Raukawa’s military preeminence, it did not see them as conquerors who enjoyed overriding rights over the lands in question:

The fact established by the evidence is that the Ngatiapa–Rangitane, weakened by Ngatitooa invasion under Te Rauparaha, were compelled to share their territory with his principal allies, the Ngatiraukawa and to acquiesce in joint ownership.

Our decision on this question of tribal right is that Ngatiraukawa and the original owners possessed equal interests in and rights over the land in question, at the time when the negotiations for the cession to the Crown of the Rangitikei–Manawatu Block were entered upon.⁴⁶

45. ‘Judgment of the Native Land Court in the Claim of Parakaia Te Pouepa and Others, Otaki, Monday 27th April 1868’, in Fox, pp 33–34

46. *Ibid*, p 34

Next, the tribal interest of Ngati Raukawa was found to be vested in the people in ‘actual occupation, to the exclusion of all others’. Parakaia’s hapu comprised this group. A claim preferred by Ihakara and Patukohura was disallowed because their occupation had been temporary in nature. In addition, two members of Parakaia’s hapu were also excluded from the award since they had signed the sale deed. The court, thus, found that Parakaia and his co-claimants were entitled to one-half less $\frac{2}{27}$ of Himatangi block.⁴⁷

6.5 REACTION TO THE COURT’S FINDING

The decision satisfied no one entirely. Ngati Apa and Rangitane continued to mount challenges to Ngati Raukawa authority. Featherston approved the finding as corroborating his action ‘in giving to the claims of Ngatiapa and Rangitane the weight which I attribute to them’, but condemned the grant of such an extensive acreage to Parakaia. He argued that the chief should have been awarded only that portion of the block actually occupied by his hapu, while the remainder should have gone to the whole of the tribe.⁴⁸

The decision was an especial blow to non-selling Ngati Raukawa – in their opinion, it was based on a misreading of both history and principles of customary

47. Ibid

usage. Parakaia immediately asked Williams to apply to the Governor for a rehearing.⁴⁹ The application, drawn up by Williams, was based on:

the fact that for thirty-three years they have held sole possession of the block which they obtained by conquest and that they cannot see why half of the land should be taken from them and restored to Ngatiapa and Rangitane the 'vanquished survivors'.⁵⁰

Williams objected further, that the court's decision to deal with the Rangitikei–Manawatu as a block had disadvantaged his clients because it ignored their power base to the south of the Manawatu River:

Parakaia and his people object to this that Himatangi is not necessarily a portion of such block but rather apart of their portion of the country which fell to their share at the time of the conquest, the other part being on this side of the Manawatu river immediately opposite to Himatangi.⁵¹

48. 'Extract From the Speech of his Honour the Superintendent, on Opening the Sixteenth Session of the Provincial Council, Tuesday, 19 May 1868', in Fox

49. Parakaia and others to Williams, 2 May 1868, MA series 13/73B, NA Wellington

50. Williams to Colonial Secretary, 7 May 1868, MA series 13/73B, pp 1–2, NA Wellington

51. *Ibid*, p 2

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The claims of Ngati Apa and Rangitane that had survived conquest had been recognised by Ngati Raukawa when they ‘formally returned’ large, adjacent areas to them. Ngati Raukawa, thus, ‘considered themselves thenceforth relieved from any joint ownership with these two tribes and entitled to be left in undisputed ownership’ of the remaining land.⁵² Williams pointed to past Government acknowledgment of right by conquest, the court’s recognition of Ngati Apa’s forced acquiescence in the occupation by Ngati Raukawa, and shortcomings in the evidence of the Crown witnesses, but did not directly challenge the finding that Ngati Apa had retained interests in the region.⁵³

The judges of the court, to whom the Ngati Raukawa complaint was referred, defended the bases of their decision, expanding on their reasoning. They informed the Government that Parakaia had failed to prove either sole possession of the Himatangi block or that he had taken it by conquest. Those boundaries had no existence at 1840 and had been fixed by Parakaia at a recent date. Parakaia’s argument that Himatangi should be seen as a northerly extension of his territory to the south was also rejected:

It was not shown that the Himatangi block as defined and described in the evidence formed portion of country which fell to the share of Parakaia and his people or that formal possession of it was taken by them until very recently. The evidence brought before the Court did not prove any conquest of Ngatiapa and Rangitane by Ngati Raukawa or any forcible dispossession by the former by the latter of the country lying between the two rivers.⁵⁴

The other objections raised by Williams were not considered to require comment.

The Government informed Parakaia, accordingly, that there were no grounds for a

52. *Ibid*, p 3

53. *Ibid*

54. ‘Memorandum on Mr Williams’s Letter Applying on Behalf of Parakaia Te Peneha and Others for a Rehearing of Their Claim to the Himatangi Block’, 14 May 1868, MA series 13/73B, NA Wellington

rehearing.⁵⁵ Parakaia's people continued to refuse to acquiesce in the court's decision, failed to survey, and were considered to be 'squatting' on the land over five years later.

6.6 REMAINING DISSENTIENT CLAIMS IN THE RANGITIKEI– MANAWATU

The implications of the decision regarding Parakaia's case were inescapable for other non-sellers whose claims remained to be heard. Included here were Akapita, near present-day Kakariki; Te Koro Te One in the vicinity of Mangatangi and Puketotara; Rawiri Te Wainui at Kakanui; and Te Ara Takana at Awahuri and Rairakau.⁵⁶ Te Koro outlined the position of the Oroua non-sellers:

55. *Ibid*

56. Rawiri Te Wainui to Rolleston, 2 November 1867, MA series 13/73B, NA Wellington

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The court laid down a principle of equal tribal title over the whole block. We then sat down and tried to devise some measure for ourselves in accordance with the principle (new law) laid down by the court of equal tribal right with those tribes who had ceased (to have title) long before the time of the Treaty (of Waitangi) and have continued in the same state up to the present time.⁵⁷

They sought counsel, but Williams declined to appear on their behalf, against what he saw as unfair odds – an adverse precedent and the combined forces of Fox, Featherston, and Buller.⁵⁸ The court reconvened at Rangitikei, against the wishes of the Raukawa claimants who preferred Otaki or Wellington, but closed its session without deciding upon the remaining cases.

In November 1868, the claims of the non-sellers were resubmitted to the court by A McDonald, their newly authorised agent. But, once again, the hearing failed to go ahead. Fox reported that McDonald had failed to bring the case before the court ‘in a manner satisfactory to it’.⁵⁹ On being informed by the court that it would be obliged to dismiss his clients’ cases, McDonald had applied for an adjournment, or for permission to withdraw the case which had been referred to the court by the Governor. McDonald complained that the opposition of the Crown disadvantaged his clients. While the Crown was ‘assumed to have a good title which must not be enquired into’, that of his clients would be ‘sifted in every possible way’.⁶⁰ He objected too, that the court was composed of the same judges who had decided on Himatangi. Counsel had informed him that there was ‘little hope, therefore, of being able to convince them that their opinion is erroneous and that the grounds upon

57. Te Koro Te One and others to Head of Government, 11 May 1868, MA series 13/73B, pp 1–2, NA Wellington

58. Galbreath, p 72; T L Buick, *Old Manawatu or the Wild Days of the West*, Palmerston North, Buick and Young, 1903, p 244

59. Fox to Colonial Secretary, 18 November 1868, MA series 13/73B, p 1, NA Wellington

60. McDonald to Richmond, 10 November 1868, MA series 13/73B, p 2, NA Wellington

which the claimants base their right represents the correct principle on which the judgement of the court should proceed.' J G Allan had written to McDonald:

The claimants consequently if they go on with their cases must do so with the very strong probability that the judgment in the former case so far as it relates to the manner in which Maoris can obtain and hold possession of land under native custom will be confirmed.⁶¹

McDonald told the Government that his clients would not accept the court's decision and requested its support for their withdrawal from the court.⁶²

Richmond replied, defending both the Crown's position and the operation of the Native Land Court:

61. Allan to McDonald, 10 November 1868, MA series 13/73B, NA Wellington; *Wellington Independent*, 13 July 1869, p 2

62. McDonald to Stafford, 14 November 1868, MA series 13/73B, pp 1–2, NA Wellington

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a negative proof on the non-selling claims but this is no advantage but the reverse and The Crown's proof may perhaps be limited by a strictly technical reading of the Act to in practice this limitation has been impossible. The court has evidently acted upon the opinion that their duty could only be effectually done by taking a comprehensive view of the history of the whole title and the principle of the decision in Parakaia's case is drawn from an examination of the claims of all parties. Nor have I heard of any reason to doubt that the action in the present claims will be on narrower grounds. The Court has really been acting as a Commission of general enquiry.⁶³

Richmond advised McDonald that his clients should proceed with their case, suggesting that the court would be acting as a general commission of inquiry.⁶⁴ But on McDonald's repeated application and the advice of Fox, Richmond consented to the withdrawal, on the proviso that:

In doing this you will be able to state to the Court that the Crown was not to be considered as pledged to a new reference, or to any other particular mode of dealing with the cases, but only to an equitable treatment of every claim on its merits.⁶⁵

For their part, Ngati Apa and the selling portion of Ngati Raukawa were frustrated by the continuing delay. As soon as the court had made its finding in favour of joint ownership, Hunia Te Hakeke had begun to run sheep on the block, and to interfere with Ngati Raukawa stock.⁶⁶ Halse advised Hunia that such an action should wait until the court had finished its work.⁶⁷ But as the question dragged on, Ngati Apa objected to any further investigation at all, complaining that it was Ngati Raukawa's own fault that their claims had not been decided and insisting that the rents be distributed and that the survey should go ahead.⁶⁸ Fox backed their complaint to Bowen, arguing that they had been put to the expense and inconvenience of attending three sittings and were increasingly impatient 'at what they regard as a failure of justice, and a break down of the institutions provided for

63. Richmond to McDonald, 15 November 1868, MA series 13/73B, pp 1–2, NA Wellington

64. Richmond to Halse, 17 November 1868, MA series 13/73B, NA Wellington

65. Colonial Secretary to Fox, 22 November 1868, MA series 13/73B, NA Wellington; Colonial Secretary to McDonald, 22 November 1868, MA series 13/73B, NA Wellington

66. Parakai to Richmond, 15 July 1868, MA series 13/73B, p 2, NA Wellington

67. Halse to Hunia Te Hakeke, 10 July 1868, MA series 13/75A, NA Wellington; Halse to Akapita, 11 July 1868, MA series 13/75A, NA Wellington

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the settlement of their case'. The greatest point of irritation for vendors was the continuing non-payment of back rents. Fox advised that there was a growing danger of Ngati Apa seizing stock in lieu of rents and of conflict again flaring between the two tribes.⁶⁹

The frustration of the vendors was shared by the provincial government and settlers who still could not move into the area. But, from the point of view of the general government, the quick completion of the purchase was secondary in importance to maintaining the peace. In light of the continuing complaint from both sides, and the failure of the land court to settle the question, Richmond again suggested that it should 'sit as a commission conducting the whole enquiry itself':

68. Hunia Te Hakeke to Bowen, 21 November 1868, MA series 13/73B, NA Wellington

69. Fox to Bowen, 25 November 1868, MA series 13/73B, p 4, NA Wellington

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For the disposal of those claims I believe a great deal of irritation may be escaped by appointing a special commission of four members, two Messers Fenton and Maning to be named by the Government, the others to be named by the claimants and Mr Featherston . . . the Commission should report on the whole subject of the purchase and should make recommendations for satisfying the outstanding claims . . .⁷⁰

Frustrated by the continuing delays in the court, Richmond hoped to remove the adversarial element imparted by Fox, Travers, and McDonald. The investigation would be conducted in public, but the commission, rather than counsel or agents, would call and examine witnesses. However, the idea fell through, when McLean, who had been nominated by Featherston, declined the commission. Richmond informed McDonald that the Government preferred the Native Land Court ‘to appointing Commissioners who would not have the greatest weight with the country and the claimants’.⁷¹

At the same time, the Government sought to come to a settlement of the rents. Richmond accepted Fox’s suggestion, approved in discussions with Ngati Raukawa, and by Bowen, that the back rents be divided as in Taratoa’s lifetime. He proposed, further, that rents accruing after December 1866, when the purchase was supposedly completed, should be divided in half according to the court’s finding for Himatangi. Half of this sum was to go to the Crown, and the remainder to Ngati Raukawa. He suggested that the money designated for the latter tribe be divided again between the Crown and the non-sellers. Advances would be paid to them, while the remainder of their share would be placed into a trust account until their titles had been defined.⁷²

While the Government sought for some means of settling the question of title, tribal tension flared. Pakapakatea continued to be hotly disputed, Hunia occupying the 1000 acres that had been reserved for Ngati Apa by Featherston. He was accused

70. Richmond, Manawatu Block, 28 November 1868, MA series 13/73B, pp 1–2, NA Wellington

71. Richmond to McDonald, 17 February 1869, MA series 13/73B, p 2, NA Wellington

72. Richmond, Manawatu Block, 28 November 1868, MA series 13/73B, p 1, NA Wellington; Fox to Bowen,

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of building a fighting pa, but Hunia insisted that he was merely reoccupying ancestral land ‘reserved for us to light our fires upon when the land was sold to Dr Featherston Superintendent’. Hunia refuted any suggestion that this area should be confined to the north of the Rangitikei.⁷³ McDonald complained that Hunia had threatened to destroy the Pakapakatea steam mill, which had been built with the consent of all local parties. A confrontation with local Ngati Raukawa passed without incident, but Hunia subsequently set fire to a kainga of Matiawa, arguing that it lay within the bounds of his intended reserve.⁷⁴ Rangitane’s dissatisfaction found vent at Puketotara, while tensions were also growing at Horowhenua.

6.7 AKAPITA’S HEARING

25 November 1868, MA series 13/73B, pp 3–4, NA Wellington

73. Te Hakeke to Cooper, 1 February 1869, MA series 13/73B, pp 1–2, NA Wellington

74. MacDonald to Stafford, 17 December 1868, MA series 13/73B, NA Wellington; MacDonald to Cooper, 8 May 1869, MA series 13/73B, NA Wellington

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In June 1869, the Governor referred ‘all questions affecting the title or interests’ of all those who had not signed the December 1866 deed of sale to the Crown. These comprised the claims of Akapita Te Tene, Keremihana Wairaka, Paranini Te Tau, Punipi Te Kaka, Wiriharai Te Angiangi, Henare Te Waiatua, Hare Hemi Taharapi, Rawiri Wainui, Te Kooro Te One, and Te Ara Takana.⁷⁵ In the following month, the court opened its session in Wellington. Fenton and Maning sat on the bench, and Ihaia Porutu filled the position of assessor. Travers, a member of Parliament, appeared on behalf of the claimants, and the Attorney-General, Prendergast, for the Crown. Travers again raised technical objections to the presence of the Crown as objector, but was overruled by the court and the case proceeded.

The tribal history of the Rangitikei–Manawatu lands was re-examined over the following six weeks. Some 80 witnesses, many of whom had testified in the Himatangi hearing, gave evidence on that history and the relationship of the tribes. The arguments of both sides were essentially unchanged from those presented in the earlier case. Travers opened with a narrative of the conquests, arguing that Ngati Raukawa played a vital role in the support of Ngati Toa. He pointed to the status of the tribes at 1840 as establishing the claim of Ngati Raukawa. Travers denied that Ngati Apa had retained their authority over the block in question:

Rauparaha with aid of his allies succeeded in completely subjugating the Ngati Apa and Rangitane tribes. Tribes were placed in a condition of submission or bondage to the conquerors. The conquest was complete within the rules of Maori custom. Joint

75. *Wellington Independent*, 10 July 1869, p 3

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occupation on friendly terms after this almost an impossibility. Insisted that when two tribes proceed to make a peace, the ceremonial was a very important one – no evidence of any such formal establishment of peace. Ngati Apa were allowed to remain in occupation of the land on sufferance.⁷⁶

It was argued by the claimants that ‘if any Ngati Apa acquired rights subsequently after conquest they were merely such individuals as actually occupied, and . . . were absorbed into Raukawa or the occupying hapu’.⁷⁷ As regards Ngati Toa, they had abandoned their interest in the Rangitikei–Manawatu lands, which had been taken possession of, in specific blocks, by various Ngati Raukawa hapu. The court’s denial at Himatangi of an over-arching tribal interest, which impinged on the ownership of those in actual occupation, was not accepted by the claimants. While the rights of those Ngati Raukawa who had sold were recognised by them, it was contended that ‘those signing had no right to do so without the common consent of the tribe’.⁷⁸

After evidence had been heard for the claimants, Prendergast set out the Crown’s lines of argument, again rejecting claims of Ngati Raukawa conquest and stressing Ngati Apa’s continuing independence. He argued that Ngati Raukawa had sought the protection of Te Rauparaha, after suffering defeats at the hands of Ngati Kahungunu, and Whanganui assisted by Ngati Apa, and in fear of the Waikato at Maungatautari. The marriage of Pikinga to Te Rangihaeata was again pointed to as cementing an alliance between Ngati Apa and Ngati Toa. Neither that alliance nor the established

76. Wellington Native Land Court, ‘Notes of Evidence, Rangitikei–Manawatu Claims’, 14 July 1869, MA series 13/71, p 2, NA Wellington

77. Travers, *Wellington Independent*, 12 August 1869

78. Wellington Native Lands Court, ‘Notes of Evidence, Rangitikei–Manawatu Claims’, 14 July 1869, MA series 13/71, p 3, NA Wellington

occupation of Ngati Apa and Rangitane north of the Manawatu had been disturbed by Raukawa's arrival. Ngati Raukawa had secured a 'foothold' in the Rangitikei–Manawatu only after Haowhenua, their occupation of that area being by permission of Ngati Apa:

Small parties under Taratoa and Te Whata squatted side by side with Ngati Apa cultivating the same ground, living in the same pa and fishing the same lagoons . . . certain permissive rights of ownership were acquired by a section of Ngati Raukawa . . . with the tacit assent of Ngati Apa who if not of themselves in a position to resist, were backed by the numerous and powerful Wanganui tribes . . .⁷⁹

Prendergast argued that further proof of Ngati Apa's independence was to be found in the assistance rendered to Ngati Raukawa by Te Hakeke at Haowhenua, and by their inclusion in the signing of the Treaty of Waitangi. This was rejected by Ngati Raukawa, who contended that Ngati Apa formed a tributary party of whom leaders of both forces had taken 'no notice'. Hadfield, who had accompanied Williams in the gathering of signatures for the Treaty, also attempted to throw doubt on the importance of Ngati Apa inclusion in that process. He told the court that Ngati Raukawa had scorned their signing, but that Williams had not had the time to investigate the right of tribes.⁸⁰

Crown counsel also pointed to events occurring after 1840 as indicating title at that date. Prendergast emphasised that Ngati Apa had fully participated in the negotiation of leases, sometimes jointly but, on other occasions, independently.⁸¹ He argued further that the bulk of the claimants resident at Otaki, Ohau, and Waikanae, belonged to hapu that had never acquired rights in the block through occupation – 'not till recently – till the sale of land to the Crown', had they put in any claim to it.

79. *Wellington Independent*, 7 August 1869

80. Wellington Native Land Court, 'Notes of Evidence, Rangitikei–Manawatu Claims', 28 July 1869, MA series 13/71, pp 4–5, NA Wellington

81. *Wellington Independent*, 7 August 1869

Nor, according to the Crown, had there been any general division of territory at the 1849 sale of Rangitikei.⁸² McLean was called to testify on this point. Ngati Raukawa had frequently directed Government officials to McLean assuming his support on the significance of the sale of the Rangitikei block in terms of ownership of the remaining west coast lands. Now, however, their understanding of that event was refuted by McLean. Of especial significance was the recognition of Ngati Apa rights to Omarupapaka, which had been affirmed by Ngati Raukawa at the Awahou meeting in 1849. In Taratoa's eyes, the nature of those rights had not encompassed that of alienation. McLean's interpretation was, however, quite different. He told the court:

82. Ibid

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My impression was that the Ngatiapa claimed land on the south bank of the Rangitikei as far as Omarupapaka. Nepia and Ngatiraukawa who were with him adduced claims there; but Ngatiapa never relinquished their rights over this land. I did consider it necessary to the obtaining of a quiet title that land that all the tribes claiming should give their consent – including the Ngatiraukawa. I believed myself that the Ngatiapa had a perfect right to dispose of that land; but for quiet possession it was necessary to get the sanction of all the tribes.⁸³

According to McLean, Ngati Apa had been ‘in actual possession’ of the north bank and jointly held the land to the south of the river. Questioned by the court, McLean stated that he understood Ngati Raukawa to have agreed at the Rangitikei negotiations that Omarupapaka should be the boundary between the two tribes. He argued that ‘when Ngati Raukawa speakers referred to Rangitikei as the boundary they spoke of the sale to the Crown and not of any boundary between the Ngatiapa and Ngatiraukawa’.⁸⁴

83. Wellington Native Land Court, ‘Notes of Evidence, Rangitikei–Manawatu Claims’, 28 July 1869, MA series 13/71, p 1, NA Wellington

84. *Ibid*, p 3

6.8 THE DECISION OF THE COURT IN THE SECOND HEARING

The court had decided that, as the basis on which title was argued was the same for all the claimants, and the specifics of their individual claims of secondary importance, it would reserve its decision on tribal title until all the cases had been investigated. The judgment would, thus, dispose of all the claims at once, preventing the withdrawal of the outstanding cases if the first decision went against them.⁸⁵ In late August the court delivered its finding. The decision was based on the examination of six issues that had been submitted for its deliberation, by agreement of counsel.

The first question was whether Ngati Raukawa had acquired the ‘dominion’ over any part of the Rangitikei–Manawatu lands by themselves ‘or others through whom they claimed’. To this, the court answered, ‘No’.⁸⁶ Secondly:

Did that tribe or any and what hapus thereof, acquire, subsequently to conquest thereof, by occupation, such a possession over the said land, or any or what part or parts thereof, as would constitute them owners according to Maori custom; and did they, or any and what hapus, retain such possession in January, 1840 over the said land, or any and what part or parts thereof?⁸⁷

85. *Wellington Independent*, 15 July 1869

86. ‘Memorandum on the Rangitikei–Manawatu Land Claims’, AJHR, 1870, A-25, p 3

87. *Ibid*

Having deleted the words, ‘subsequently to conquest thereof,’ Maning and Fenton ruled that Ngati Raukawa ‘as a tribe’ had not acquired any interest through occupation. Three hapu – Ngati Kahoro, Ngati Parewahawaha, and Ngati Kauwhata – had, however, ‘with the consent of Ngati Apa, acquired rights which will constitute them owners according to Maori custom’. Those rights were judged to extend throughout the block, Maning stating that the court had heard no evidence to cause it to limit the interests of the three admitted hapu to any specified piece of land.⁸⁸ The question of the interests of Ngati Wehiwehi was left for later consideration (when they were excluded on the grounds that their residence on the block had been temporary only). Were, then, the rights of Ngati Apa completely extinguished? To this question, the court answered that they had been merely affected by the others’ acquisition of rights at 1840. And on the point whether Ngati Apa’s ownership was ‘hostile, independent of, or along with, that of the Ngati Raukawa, or any . . . hapus thereof’, it was found that the rights of the three Raukawa hapu existed alongside those of Ngati Apa.⁸⁹ Although Maning did not explain, at this point, the distinction between ‘independent’ and ‘along with’, it became clear, subsequently, that he saw those hapu occupying the land by permission of Ngati Apa. Furthermore, any significance in the existence of a group, calling themselves ‘Rangitane’, settled at Puketotara ‘unopposed and apparently in a permanent manner’, was discounted because they were the product of intermarriage with Ngati Apa.⁹⁰ Thus, the progeny of intermarriage were found to be entitled only through their Ngati Apa parentage.⁹¹

88. Ibid

89. Ibid

90. Ibid, p 6

91. Ibid, p 3

The court proceeded to sift through the list of some 500 claimants, hearing the case on either side, and excluding all but 62 of them. At this point, the sitting adjourned to allow absent claimants, whose names had been eliminated by the court, to bring evidence in support of their claim. While McDonald sought out these people, Featherston and Buller attempted to reach an agreement with the admitted claimants about the extent of their boundaries. Ngati Apa chiefs who accompanied them to the first meeting at Oroua suggested an award of 10 acres each – an offer that was rejected out of hand. Featherston then proposed that each claimant should receive an award of 100 acres, and should be consulted in the selection of that land. This suggestion was accepted by the Oroua people, but rejected on the Rangitikei side, at Matahiwi.⁹²

The court reconvened on 25 September. McDonald was absent and no fresh evidence was brought forward in support of disallowed claims. Judge Maning examined a representative each from Ngati Apa and Ngati Kauwhata at Oroua about their negotiations and, according to Buller's later report, 'further Native evidence was taken as to the absolute requirements of the hapus for whom provision was about to be made'.⁹³ A final and detailed judgment on the claim of Akapita was then delivered.

Maning first outlined the court's understanding of the history of the invasions from the north. Te Rauparaha was seen as the central figure, skilfully playing off one tribe against the other. With the assistance of Ngapuhi, he drove Ngati Apa into retreat, took possession of a large tract of territory around Otaki, and laid the 'foundation for a more permanent occupation and conquest'. Te Rauparaha then

92. *Ibid*, pp 4–5

93. *Ibid*, p 4

returned to Kawhia to collect the remainder of Ngati Toa. At the same time, he invited Ngati Raukawa to settle the territory which had been only ‘partially conquered’. Maning continued:

It is to be noticed here that on the return of Rauparaha to Kawhia he was met by the chiefs of the Ngatiapa Tribe on their own land, and that upon this occasion friendly relations and peace were established between them, he returning to them some prisoners he had taken in passing through their country . . . presents were also exchanged, and the nephew of Te Rauparaha, Te Rangihaeata, took to wife, with all due formality, a chieftainess of the Ngatiapa Tribe, called Pikinga, notwithstanding that she had been taken prisoner by himself on the occasion of the first inroad into the Ngatiapa country.⁹⁴

The judge then moved to the effects of Te Rauparaha’s invitation, which he saw as triggering the movement of ‘strong parties’ of Ngati Raukawa to Kapiti, primarily for purposes of trade and acquisition of muskets. In a statement subsequently criticised by Buick for its unfair characterisation of the opposing forces, Maning described the ensuing conflict:

These parties of Raukawa, on their way South, in passing through the country of the Ngatiapa, killed or took prisoners any stragglers of the Ngatiapa, or others whom they met with, and who had lingered imprudently behind in the vicinity of the war track, when the prudent but brave war chief of the Ngatiapa had withdrawn the bulk of the tribe into the fastnesses of the country whilst these ruthless invaders passed through, being doubtless unwilling to attack the allies of Te Rauparaha, with whom he had wisely made terms of peace and friendship. In passing through the country of the Ngatiapa these Raukawa parties also took a kind of pro forma, or nominal possession of the land, which, however, would be entirely invalid except as against parties of passing adventures like themselves, who might follow; because the Ngatiapa Tribe, though weakened, remained still unconquered, and a considerable proportion of their military force still maintained themselves in independence in the country under their Chief Te Hakeke.⁹⁵

The primary reason for this continuing independence was the peace made by Te Rauparaha, which signified that he had ‘waiv[ed] any rights he might have been supposed to claim over their lands’.

94. Ibid, pp 4–5

95. Ibid, p 5

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From this time onwards, friendly relations were maintained between Ngati Toa and Ngati Apa except for a brief period of conflict triggered when some men of the latter tribe were killed at a Rangitane pa. Maning saw Te Rauparaha not only as repaying friendly acts by Ngati Apa, but also as balancing the two tribes to cement his position in the region:

The policy, however, of Te Rauparaha has been evidently, from the beginning, after having made the Ngatiapa feel his power, to elevate and strengthen them as a check on his almost too numerous friends the Ngatiraukawa, who, were it not that they were bound to him by great common danger, created by himself in placing them on lately conquered lands, he would never trusted.⁹⁶

The implications of the close kinship links between Ngati Raukawa and Te Rauparaha and Te Rangihaeata were not considered by the court.

96. Ibid, p 6

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The court did not believe that Ngati Raukawa in the early heke, ‘whether by killing or enslaving individuals of the Ngatiapa, or by taking a merely formal possession of any of their lands’, had acquired any kind of right over that territory.⁹⁷ Nor had they been allocated it by Te Rauparaha when the bulk of the tribe arrived. After Haowhenua, however, three Ngati Raukawa hapu had settled on the north bank. Maning did not consider that authority over the district had shifted to Ngati Raukawa as a result of that movement. Maning described integrated communities in which Ngati Apa exercised the greater mana:

we find that three distinct hapu of the Ngatiraukawa Tribe settled peaceably and permanently on the Ngatiapa lands between the Manawatu and Rangitikei Rivers unopposed by the Ngatiapa, on terms of perfect alliance and friendship with them, claiming rights of ownership over the lands they occupy, and exercising those rights, sometimes independently of the Ngatiapa, and sometimes conjointly with them; joining with the Ngatiapa in petty war expeditions; ‘eating out of the same basket’; ‘sleeping in the same bed’, as some of the witnesses say; and quarrelling with each other; and on the only occasion on which the disagreement resulted in loss of one’s life, making peace with each other like persons who, depending much on each other’s support, cannot afford to carry hostilities against each other to extremity . . .⁹⁸

The court underscored the implications of the Himatangi judgment, now explicitly rejecting the claimants’ argument of conquest, either by taking the land by force, or as a result of Te Rauparaha’s general allocation of territory to the allied, incoming tribes:

two at least of these Raukawa hapu, namely Ngatiparewahawaha and Ngatikahoro, were simply invited to come by the Ngatiapa themselves, and were placed by them in a position which, by undoubted Maori usage, entailed upon the newcomers very important rights, though not the rights of conquerors.⁹⁹

Ngatikauwhata, the third group, had ‘stretched the grant of Te Rauparaha’, moving to the north bank of the Manawatu River. This move had been conducted peaceably. Maning described the nature of this process as follows:

97. Ibid

98. *Ibid*, pp 6–7
99. *Ibid*, p 7

the facts appearing in reality to have been that they made a quiet intrusion onto the lands of Ngatiapa, but offering no violence, lest by so doing they should offend Rauparaha, as, under the existing relations between the tribes, to do so would have been a very different affair to the killing of the stragglers they met with several years before on the occasion of their first coming into the country. The Ngatiapa, on their part, for very similar reasons, did not oppose the intrusion, but making a virtue, apparently, of what seemed very like a necessity, they bade the Ngatikauwhata welcome, and soon entered into the same relations of friendship and alliance with them which had entered into with the other two sections of Raukawa . . . It is well known to the Court that all the chiefs of tribes, and all the tribes, particularly such as were, like the Ngatiapa, not very numerous, were at all times eager by any means, to increase their numerical strength; and that, much as they valued their lands, they valued fighting men more, and were at all times ready and willing to barter a part of their territorial possessions for an accession of strength, and to welcome and endow with lands parties of warlike adventurers like the Ngatiraukawa, who would, for the sake of those lands, enter into alliance with them, and make common cause in defending their mutual possessions.¹⁰⁰

Maning found that, according to customary usage, those Ngati Raukawa hapu enjoyed ‘well-known and recognised rights in the soil’. These were, however, the rights of allies rather than conquerors, with the greater authority again judged to lie with the Ngati Apa community:

Those who, living on the soil, have assisted in defending it, – who, making a settlement, either invited or unopposed by the original owners, have afterwards entered into alliance with them, and performed the duties of allies, – acquire the status and rights of ownership, more or less precise or extensive, according to the circumstances of the first settlement, and what the subsequent events may have been.¹⁰¹

The question framed in Maning’s judgment was not whether Ngati Apa were entitled, but whether Ngati Raukawa were:

But be the motives of the Ngatiapa whatever they were, for inviting or not opposing the settlement of these three Raukawa hapu, the fact remains that we find them in a position, and doing acts, giving or proving that they had acquired, according to Maori usage and custom, rights which the Court recognizes by this judgment, that is to say, firstly, that the three Ngatiraukawa hapu – called respectively Ngatikahoro, Ngati Parewahawaha, and Ngatikauwhatua, have acquired rights which constitute them owners, according to Maori usage and custom, along with the Ngatiapa Tribe, in the block of land the right to which has been the subject of this investigation.¹⁰²

100. Ibid

101. Ibid

102. Ibid

Finally, Maning endorsed the Himatangi decision on tribal rights of veto, finding that Ngati Raukawa, as a tribe, enjoyed no ‘right, title, interest, or authority in or over’ the Rangitikei–Manawatu lands. This left a limited number of interests to be recognised and excised from the purchase. The court then ordered 4500 acres to Ngati Kauwhata, 1000 acres to Ngati Kahoro and Ngati Parewahawaha, 500 acres to Te Kooro Te One’s people, and 200 acres to Wirihirai Te Angiangi – with a 21-year restriction on alienation.¹⁰³

6.9 DISCUSSION ON THE COURT’S FINDING

The workings of the Native Land Court – why one set of evidence should be accepted over another, what were the persuasive arguments, what was the basis of their authority within customary usage for their decisions about rights conferred in particular instances, how closely they stuck to the 1840 rule, the role of outside influences – are not easily ascertained. Conclusions in individual cases are likely to remain a matter of inference rather than proof. The court strengthened the Himatangi judgment which had already endorsed the Crown’s purchase policy, both in the relative weight given to Ngati Apa, and in the denial of any right on the part of non-resident Ngati Raukawa as tribal members to interfere in the alienation of lands occupied by others within the wider structure. The thorny issue is whether the court was correct in that interpretation of customary usage or whether its findings were made in response to the political imperative to confirm Featherston’s purchase.

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These decisions were controversial, seen by settlers and the provincial government as a complete vindication of Featherston's actions, but protested by Ngati Raukawa, and prompting later accusations of political interference. Buick, arguing that Ngati Raukawa had been opposed not merely by Ngati Apa, but by the combined forces of the provincial and general governments, suggested that undue influence had been exerted.¹⁰⁴ This opinion has been echoed by M P K Sorrenson who states that 'It is almost certain that there was direct political interference during the first sitting of the Court'.¹⁰⁵

Such criticisms seem to be founded largely on the contrast between the court's finding and the writings of observers around 1840. At that date, the descriptions and dealings of officials, missionaries, and travellers recorded the dominance of Ngati Raukawa in the general region. The extent of that territorial dominance was not defined in specific geographical terms and, as we have seen, the Crown raised questions about the accuracy of some of that early evidence – how much familiarity commentators had with the interior, the degree of their understanding of Maori – and brought in their own witnesses asserting a different perception, engendered by contact with Ngati Apa and Rangitane in the Oroua area. Yet even McLean, despite his insistence on Ngati Apa interests in the lands south of the Rangitikei, did not doubt, privately, that they had been defeated in the battles with the invading tribes, recording in 1849 that 'several of the Ngatiapas inhabiting the country from Rangitikei to Wangaehu escaped the vengeance of the conquerors whilst others were

103. Ibid

104. T L Buick, p 265

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saved by them or taken prisoners'. Christianity had intervened before Ngati Apa had been 'entirely subdued'.¹⁰⁶ That assessment was shared by Richmond who was still of the opinion, after the Himatangi decision, that Ngati Apa had been driven out of the territory, but that:

105. M P K Sorrenson, 'The Purchase of Maori Land 1865-92', MA thesis, University of Auckland, 1955, p 70
106. McLean to Fox, 12 April 1849, New Zealand Company (NZC) series 3/10, p 3, NA Wellington

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After some years of slaughter and violence, the expelled tribes the Ngatiapa and Rangitane were suffered by the conquerors to return. They came back as slaves, but gradually resumed more and more of equality with the conquerors, intermarried with them and cultivated the land.¹⁰⁷

Ngati Apa assertion of their claims had strengthened appreciably during the period after 1840 – a process acknowledged by McLean at the Kohimarama conference in 1860. Arguing that the ‘various customs of nature tenure’ resolved themselves into the single ‘law of might’, McLean stated:

It was true that Christianity introduced a different state of things. By its influences the conquered were permitted to reestablish themselves on the lands of their ancestors. In the process of time, however, the conquered encroached too far on the formerly recognised rights of the conquerors, occasioning . . . much bitterness of feeling between the two classes of claimants.¹⁰⁸

Featherston’s support, a friendly relationship with the white Government, and the ability to call on Kemp’s support had further strengthened the Ngati Apa voice. But, at the very least, Ngati Apa could have argued that they had always retained their independence of action over the north bank of the Rangitikei River and had kept their fires alight in their ancestral lands to the south by maintaining cultivations, continuing to take eels throughout and, later, by challenging Ngati Raukawa claims. While there is growing recognition that the claims of ancestry, and resistance to intrusion were adequate to keep a claim alive for some three generations, an award of title on such grounds was less than assured in the forum of the nineteenth-century land court.

Why the court should have rejected the generally held perception of the relative status of the two tribes is not easily demonstrated. But to have done otherwise would have challenged the legitimacy of the Crown’s purchase, since tribes deemed to have

107. Richmond, ‘Memorandum on the Petition of Parakaia, Paranihi Punipi and Rawiri Te Wainui to the Queen’, 20 July

conquered were often found by the court to be owners to the exclusion of the interests of a defeated people even when they lived side by side. In the Rangitikei–Manawatu case, it was considered that Ngati Raukawa’s intrusion did not constitute conquest, since it had not resulted in the complete expulsion of the original inhabitants – a prerequisite to title that seems to have been erratically applied.

The basis of the court’s reasoning at the Rangitikei–Manawatu was reflected in its refusal to consider the question of the rights of hapu within the wider entity of Ngati Raukawa. The court flatly rejected the argument that the tribe as a whole had to agree to the alienation of any territory. Ngati Apa, Whanganui, Kahungunu, and Raukawa signatories – in many instances, non-resident – had been able to wield their numbers to push through the transaction. The court, however, was not obliged to directly consider the basis of their right to have participated in the sale. In contrast, the claims of over 400 Ngati Raukawa non-sellers were rejected on the grounds of non-residence at 1840. Included here were not only those who were based in the Otaki area, but some 200 to 300 Ngati Wehiwehi who had moved to join their kin in the Rangitikei–Manawatu block after that date.

Ngati Raukawa interests on the north bank of the Manawatu had already received some recognition through the sale of Te Awahou, and the initial court award of 5500 acres, restricting Parakaia’s ownership to a half share of Himatangi. The other dissentients were now left with only 6200 acres in a block of some 250,000 acres. Maning rejected criticism that such an award failed to reflect the court’s own finding that it had heard no evidence to cause it to limit their rights to any specified piece of the block, arguing that:

1867, MA series 13/73B, p 1, NA Wellington
108. ‘McLean’s Speech at Conference of Native Chiefs’, 1860, Turton, *Epitome*, 1883, p 17

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The whole tenor of the evidence from beginning to end shewed that the rights of those hapus *could not* be defined exactly, or even approximately by precise boundaries; they had territorial rights which the court endeavoured as nearly as possible to compensate by adjudging to them certain *areas of land*, and the time given them to agree about the precise spots and boundaries was given as a favour, and with the consent of the other parties, and from a consideration by the Court that it might lead to a peaceable and desirable arrangement of the matter by giving the Raukawa a chance to obtain certain spots which they seemed attached to, or desirous to become possessed of, and which lands, or part of them, they seemed to have resided on or used more than others, but to which they could not show that they had an absolute right more than others. [Emphasis in original.]¹⁰⁹

Maning was confident that Ngati Raukawa dissentients would have ‘submitted quietly, if not with satisfaction’ to the court’s award had it not been for the subsequent agitation of Travers and Macdonald. Others, however, believed that Ngati Raukawa had been unfairly treated – not by the finding for joint ownership but by the excision of such a limited interest from the purchase. Included amongst this group were McLean, Native Minister since mid-1869, and even some Ngati Apa who had opposed Ngati Raukawa’s efforts to be declared the sole owners of the block, but thought that the non-signatories deserved to retain more land.¹¹⁰

6.10 MCLEAN’S INTERVENTION

109. Fox, 8 September 1866, NZPD, vol 9, p 579

110. MacDonald to Superintendent, 15 September 1871, MA series 13/75A, p 18, NA Wellington

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Notice was published in October 1869 that native title had been extinguished over all the Rangitikei–Manawatu block, except for those portions that had been awarded to Maori. The back-rents were then paid out, but resistance was immediately offered when the provincial government began to survey the block for settlement. A section of Ngati Kauwhata pulled up survey pegs and destroyed a trig station. The leader of the obstruction, one of the admitted claimants, Miratana, was arrested despite strong local opposition. Convicted, he was sentenced to a fine of £25 or three months' imprisonment. Pakeha sympathisers were blamed for inflaming Maori opinion, and McDonald was also convicted and fined £30 for inciting persons to commit a breach of the peace.¹¹¹ A lull followed, but when opposition resurfaced under Parakaia's leadership at Oroua, in May 1870, the general government suspended survey activities.

The provincial government, in increasing financial difficulties, partly because of the failure of its land revenue, sought a compromise so that the block could be opened.¹¹² In Featherston's absence, McLean was requested to undertake further negotiations to settle the matter. McLean found that considerable dissatisfaction existed among all parties. Those who had signed the deed threatened to repudiate the sale, complaining that promises of ample reserves had not been fulfilled or had become the sole property of individual chiefs. Rangitane continued to protest the failure to receive full payment for their lands and demanded 10,000 acres in lieu of the monies retained by Ngati Apa. McLean blamed these demands on Featherston's

111. 'Memorandum on the Rangitikei–Manawatu Land Claims', AJHR, 1870, A-25, p 8

112. Taylor to Gisborne, 26 September 1870, 'Claims of the Province of Wellington Against the Colony', AJHR, 1872, G-

improper conduct of the purchase. In his opinion, the failure to properly define reserves and awards before the final payment of the purchase price had given vendors the ‘opportunity to escape from their engagements on the plea of non-fulfilment of the promise made to them respecting their reserves’.¹¹³ None the less, another 4750 acres were eventually added to Featherston’s limited award of 3300 acres.¹¹⁴

Non-sellers had been awarded 6200 acres by the court. They continued to argue against any decision of the court ‘purporting to limit and define their interests’, and rejected the purchase as invalid because the general estate could not be sold before title had been individualised.¹¹⁵ They complained, too, that their boundaries had been marked out by Buller rather than by themselves.¹¹⁶ Although he had done much to promote the interests of Ngati Apa in the block, McLean was critical of the limited court award to the non-sellers and wished to remove an irritation to Ngati Raukawa that could provoke them into closer alliance with the King movement in the Taupo, Waikato, and Hauraki areas.

Non-selling Ngati Raukawa argued that they should be entitled to a proportionate share of the ‘general estate’, which McDonald, looking at the number of owners ascertained by the court, calculated to be a little over 21,000 acres. This suggestion

40, p 3, no 2

113. Undated memorandum, Donald McLean Papers, MS 32 (35B), ATL

114. McDonald to Fitzherbert, 26 July 1871, MA series 13/75A, p 3, NA Wellington

115. *Ibid.*, pp 2–3

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was rejected by McLean, who had told them, 'If you persist in that demand you will find it out of my power to be kind (atawhai) to your tribe'. According to McDonald:

while the previous injustice to the natives was admitted generally by Mr McLean he had called upon them to agree to a final settlement of the dispute according to the proverb 'Ko maru kai atu ko maru kai mai, ka ngohe ngohe' without entering into the special merits of the case or into the injustice or otherwise of past proceedings . . .¹¹⁷

116. Notes of meeting at Oroua, 18 November 1870, MA series 13/72, p 23, NA Wellington

117. McDonald to Superintendent, 15 September 1871, MA series 13/75A, p 8, NA Wellington

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Ngati Raukawa dissentients eventually agreed to accept 3000 acres, on the understanding that a portion of the difference between what they had demanded and what they received should go to disallowed hapu.¹¹⁸ A further 6500 acres were set aside for these groups.¹¹⁹ Included here was provision for Ngati Wehiwehi, who had been excluded, even though they had been resident on the block for some 30 years, and for ‘a considerable number of Natives [200–300] of different tribes of Ngatiwhakaterere of the Ngatipikiahua and of Ngatimanaiapoto’, who had moved onto the block to take advantage of the settlement of Rangitikei–Turakina. They considered this area to be their home and McLean was told by them:

that if the Government were determined to take possession they, the natives, must first be driven into the river or elsewhere for they had no Land to which they had a better right to retire than that upon which they were then located.¹²⁰

In his view, they were industrious people who should receive reserves for their maintenance in order to prevent them from ‘scattering about in marauding bands and joining any disaffected leaders in any parts of the island such Taupo, Waikato, Upper Whanganui, Mokau from which places they [had] come’.¹²¹

When McLean left the district in December, he directed H T Kemp to complete his arrangements – to secure to Maori ‘large cultivations . . . in places they had occupied along the banks of the river’ while making it clear that ‘while the Government would make sufficient provision for their actual wants, they were not to expect any lands, not being cultivated, extending back from the first range of hills’.¹²² Kemp was charged with adjusting any dispute, and reported subsequently, that he had to add a further 3000 acres to the boundaries at Reureu, opposed there by

118. Ibid

119. McDonald to Fitzherbert, 26 July 1871, MA series 13/75A, p 6, NA Wellington

120. Ibid, p 3; McDonald to Fitzherbert, 2 August 1871, MA series 13/75A, p 3, NA Wellington

121. ‘Rangitikei–Manawatu Block’, 21 November 1870, MA series 13/70, p 7, NA Wellington

122. ‘Report on the Claim of the Province of Wellington in Respect of the Manawatu Reserves’, AJHR, 1874, H-18, p 11

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Ngati Pikiahu and Ngawaka, one of the leading obstructionists in the earlier attempts to survey. According to Kemp, this was far below their expectations, since, ‘as non-sellers, they were claiming an “unfettered right to select”’.¹²³

123. Kemp to McLean, 18 January 1871, Donald McLean Papers, MS 32 (369), ATL

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McLean's negotiations and Kemp's additions added a further 14,379 acres to the earlier allocations.¹²⁴ Featherston, returning from Great Britain, immediately rejected the agreement, making a claim against the general government for the price of the additional reserves at £1 and the cost of survey. In reply, McLean defended the increases, arguing that the demands of the non-sellers had been reduced from 19,000 acres to the lowest figure that they would accept. He told Featherston, too, that all but 1800 acres of the newly allocated lands comprised sandhills, swamp, and bush. For these limited concessions a question had been settled that, if left in abeyance, would have proved 'a source of lingering irritation and annoyance', and prevented the peaceful settlement of a 250,000 acre block.¹²⁵

Fox halted the survey of the extra awards made by Kemp, while the provincial government continued to protest McLean's allocations, complaining that the Rangitikei River was 'spotted' by reserves, taking valuable river frontage. McDonald defended the sites, pointing out that:

They were almost without exception laid off so as to include cultivations, graveyards, eel fisheries etc in the occupation of the Natives and are necessary for the maintenance of the 500 or 600 souls forming many distinct families for whom the reserves are made.¹²⁶

McLean again met with the Rangitikei people after Ngati Maniapoto, under Rawiri, started obstructing survey for road and railway on the inland portions of Reureu. Agreement was reached at Wanganui on 23 January 1872. In return for £1500, they would relinquish their claims for costs in prosecuting their case and to all but the land awarded to them by the court and McLean. Five hundred pounds was paid to MacDonald and four complainants 'as being for the purchase of surplus land

124. 'Further Correspondence Relating to the Manawatu Rangitikei Purchase', AJHR, 1872, F-8, pp 4–5

125. McLean to Featherston, 15 February 1871, 'Claim of the Province of Wellington Against the Colony: Manawatu Purchase', AJHR, 1872, G-40, p 11, no 18

126. McDonald to Fitzherbert, 2 August 1871, MA series 13/75A, p 3, NA Wellington

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and reserve at Rakihou'. The balance of £1000 was paid to MacDonald on behalf of Kooro Te One and his followers, to settle their claims in the block. Two hundred pounds was given towards the Oroua mill, £500 for the purchase of agricultural tools, and a further £1500 advanced on security of their reserves, for which two mortgages were executed by them.¹²⁷

McLean sent specific instructions to Carkeek regarding the survey of a 4400-acre reserve for some 200 people at Reureu, noting that 'greater care' would be required in laying off these boundaries because the residents came from so many different tribes. He was to include cultivations and important sites where possible. More detailed directions were given with regard to the inland boundary which was to be cut with the cooperation of Ngati Upokoiri, who were offering to sell land to the east of that line.¹²⁸

127. McLean to Superintendent of Wellington, 6 February 1872, MA series 13/75A; 'Rangitikei-Manawatu Purchase: Memorandum of Data Connected with the Rangitikei-Manawatu Purchase', MA series 13/74A, pp 8-9, NA Wellington

128. McLean to Carkeek, 3 February 1872, MA series 13/75A, NA Wellington

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Despite this apparent agreement, disputes rumbled on as promises, not fully recorded, had to be worked out on the ground.¹²⁹ Dundas, the district surveyor reported, for example, that problems had arisen with the survey of eel reserves at Kaikokopu and Koputara, since the fishing site at the outlet of the lagoons, had been promised to different tribes.¹³⁰ Furthermore, the status of McLean and Kemp's allocations remained unsettled. Maori were unable to obtain Crown grants because, until validating legislation was passed, McLean's awards were an illegal disposal of Crown lands.¹³¹ In late 1872, McDonald complained of the continuing delay which was preventing Maori from meeting their financial engagements – to complete the mill at Oroua, fencing of reserves, survey of a township, and the authorisation of trustees.¹³² Four years later, the details and implementation of the deal, worked out at Wanganui, were still being disputed. By then, however, attention had shifted south of the Manawatu to Kuketauaki and Waikanae, the last substantial areas of Maori land remaining in the Wellington district.

129. McDonald to Superintendent of Wellington, 15 September 1871, MA series 13/75A, NA Wellington

130. Dundas to Commissioner of Crown Lands, 28 March 1872, MA series 13/75A, NA Wellington

131. Cooper on McDonald to Fitzherbert, 12 September 1872, MA series 13/75B, NA Wellington

132. McDonald to Fitzherbert, 16 September 1872, MA series 13/75B, NA Wellington; McDonald to McLean, 25 October 1872, MA series 13/75B, NA Wellington

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PART II

1870 to 1970

