

CHAPTER 11

NGARARA 1873 TO 1904

11.1 NGARARA 1873 TO 1888

The land to the south of the Kukutauaki Stream, some 45,000 acres, passed through the court in 1873, after being gazetted for hearing under the name ‘Te Ngarara and Waikanae, at Waikanae’.¹ The block was first called, at Foxton, under the name Te Ngarara.² The hearing, under the name of Ngarara, was adjourned from Foxton to Waikanae, then to Wellington.³ Although Ngati Toa disputed Ati Awa’s claim, the issue of most concern during the hearing was the question of where the boundary of the Government land to the south, at Wainui, should be located. Eventually this issue was settled by agreement between the Government’s agent, Wardell, and Wiremu Te Kakakura Parata, who was managing Ati Awa’s case. Judge Rogan then awarded the land to Ati Awa, Parata producing a list of names ‘of the Ngatiawa tribe’ to be registered.⁴

In January 1874, 19,600 acres of this land was sold, under the name Maunganui, for £600.⁵ This left 29,500 acres in Ati Awa hands.⁶ Subsequently, in February of 1874, a further sum of £200 was paid to Parata, to extinguish his and his family’s claim to the Maunganui block.⁷ The matter of this additional payment was raised during the 1888 Native Affairs Committee hearing, the inference being that it had been in some way improper.

1. ‘Notice of Times and Places for Investigating Claims’, *New Zealand Gazette (Province of Wellington)*, vol 19, no 26, 7 October 1872, p 192

2. Otaki Native Land Court MB 1, 19 November 1872, p 23

3. Otaki Native Land Court MB 2, 8 April 1873, p 56; Otaki Native Land Court MB 2, 16 May 1873, pp 163–165; Otaki Native Land Court MB 2, 22 May 1873, pp 197–198; Otaki Native Land Court MB 2, 29 May–2 June 1873, pp 203–211

4. Otaki Native Land Court MB 2, 2 June 1873, p 211

5. H H Turton, TCD, vol 2, pp 134–135

6. Native Affairs Committee of the Legislative Council, Marchant, 20 August 1888, MA series 70/3, p 1, NA Wellington

7. H H Turton, TCD, vol 2, p 434

In 1874, a Ngati Toa claim to an area of some 840 acres within the Ngarara block was heard. This land lay on the south side of the northern boundary of the block, on the coast; it was land already awarded to Ati Awa. The Ngati Toa challengers were Tamihana Te Rauparaha, Matene Te Whiwhi Hemara Te Tewe, and others. The block was gazetted for hearing as 'Kukutauaki, near Otaki', and identified in the Native Land Court minute book first as Ngarara then as Kukutauaki no 1.⁸ In his decision the presiding judge accepted that Ngati Toa had conquered and occupied this land, but found that they had gone to live elsewhere before 1840. Wi Parata and his co-counter claimants, on the other hand, had proved occupation since 1840, and on that basis judgment was made, in March 1874, in their favour.⁹ A month after this judgment Parata handed in a list of six names to the court, and asked for a certificate of title to be issued. Many other applications of a similar kind were being processed at this time, and no objection seems to have been made to this particular one. The certificate requested was granted, and the 840 acres passed into the hands of the individuals named: Parata, three members of his family, and two members of Ngati Toa, cousins of the Parata family, but not among the owners listed in 1873.¹⁰

In 1887, the remaining area of Ngarara (29,500 acres) was partitioned. The land was variously described in the *Gazette* notifying the hearing as Waikanae, Ngarara, or Te Ngarara.¹¹ It was heard under the name Ngarara West. When the hearing was concluded, and the orders made, Enoka Hohepa and his wife Ema Tini Hohepa received the land they were occupying – about seven acres (Ngarara West A no 1). The two Hohepa belonged to the Otarawa hapu, most of whom lived on the nearby Muaupoko block, and it appears that they (the Hohepas) owned land on this block, but resided on Ngarara West.¹² The claim of Eruini Te Marau, of Otarawa, were accepted as well, to the extent of some 15 acres (Ngarara West A no 3).¹³ A larger grant, of 1584 acres (Ngarara West B) was made to the Puketapu hapu.¹⁴ This land was later described as 'swamp and some sand hills principally.'¹⁵ The great bulk of the 29,500 acres (Ngarara West A), save for a four-acre plot, was awarded to a list of some 40 owners. These owners were members of other Ati Awa hapu; they were led by Wi Parata, whose name appears at the top of the list.

8. 'Notice of Times and Places for Investigating Claims', *New Zealand Gazette (Province of Wellington)*, vol 20, no 26, 9 October 1873, p 176; Otaki Native Land Court MB 2, 5 March 1874, p 225; Otaki Native Land Court MB 2, 6–11 March 1874, pp 235–256

9. Otaki Native Land Court MB 2, 11 March 1874, p 256

10. Otaki Native Land Court MB 2, 16 April 1874, p 396

11. 'Notice of Times and Places for Investigating Claims', *New Zealand Gazette*, no 17, 18 March 1887, p 374

12. Otaki Native Land Court MB 7, 13 May 1887, p 249

13. Otaki Native Land Court MB 7, 14 May 1887, pp 256–258

14. *Ibid*, pp 254–255

15. Native Affairs Committee of the Legislative Council, Brown, 20 August 1888, MA series 70/3, p 4, NA Wellington

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The four acres (Ngarara West A no 2) were for Inia Tuhata and his sister Rangihanu, and represented the extent of the land they were considered to be occupying and cultivating at that time.¹⁶ Inia and his sister were great-grandchildren of Hone Tuhata, of Mitiwai. Evidence had been given during the hearing that this ancestor and the other members of his hapu had left the Waikanae district before 1840, thus relinquishing any claim they might have had to a share of the land being subdivided.¹⁷ Indeed, the only reason Hone's two descendants were given their cultivations was because their names had been included on the 1873 list of registered owners; if the matter was being heard for the first time, they would, according to the judgment, have received nothing.¹⁸

16. Otaki Native Land Court MB 7, 13 May 1887, pp 256–257

17. *Ibid*, p 250

18. Otaki Native Land Court MB 7, 14 May 1887, p 255

The Tuhata party asked for an extension of the hearing, so that they could bring forward fresh evidence. This was denied. Enoka Hohepa also sought to have the case adjourned, possibly for other reasons. This request was refused as well, on the grounds that the case had already been closed.¹⁹ The Tuhata family made an application to the Chief Judge for a rehearing. This failed.²⁰

Inia Tuhata and others then petitioned (12 June 1888) for an inquiry into the title of the Ngarara block, and that their claim to a share of the block be reheard.²¹ The House Native Affairs Committee commented in its report (26 June 1888) that the Tuhata petition was yet another request for a rehearing after the Chief Judge had refused an application, and recommended that the Government introduce general legislation to deal with the question of rehearings. On the particular matter before it, the committee recommended that the Government should inquire carefully into the allegations that had been made.²² It appears that the Government's response was to insert a clause in the Native Land Court Act 1886 Amendment Bill, then being passed through Parliament, authorising a rehearing of the Ngarara block. Parata and 18 others petitioned, on 16 August 1888, the House of Representatives, opposing both this clause, and any rehearing.²³ A similar petition was presented on the same day to the Legislative Council.²⁴ Inia's aunt, Heni Te Rau (Mrs Jane Brown) had already petitioned the Legislative Council, on 14 August 1888, in favour of her niece and nephew.²⁵ This may have been the same petition forwarded to the House of Representatives in June 1888.

11.2 NATIVE AFFAIRS COMMITTEE HEARING 1888

19. Ibid, p 253

20. Native Affairs Committee of the Legislative Council, MacDonald, 20 August 1888, MA series 70/3, p 1, NA Wellington; *New Zealand Gazette*, no 17, 15 March 1888, p 357

21. Petition of Inia Tuhata, 12 June 1888, MA series 70/4, NA Wellington

22. 'Report of Native Affairs Committee', AJHR, 1888, I-3, p 14, no 209

23. 'Report of Native Affairs Committee', AJHR, 1888, I-3, p 32, no 481

24. JALC, 16 August 1888, p 169

25. JALC, 27 August 1888, pp 205–206

The Native Affairs Committee of the Legislative Council took evidence for and against Inia Tuhata's petition, beginning on 17 August 1888 and continuing on into the following week. Inia's aunt, Mrs Jane Brown, was the main witness for the Tuhata family, and during her questioning the main issues emerged.²⁶ The 1887 subdivision court had based its decision on evidence that Hone Tuhata had left the district before 1840. Judge E W Puckey would not allow the case to be reopened so that evidence in rebuttal could be given. The Chief Judge had rejected an application for a rehearing. Not just the Tuhata family, but every member of Hone Tuhata's hapu, had been disadvantaged by these decisions. As for Parata, he was said to have behaved badly. To begin with, it was alleged that he had used the name Ngarara to conceal exactly what land was being passed through the courts. It was claimed that he had then interfered with the list of owners. Subsequently, he had taken the 840-acre (Kukutauaki no 1) block for himself and his family, something that only became known some years later. It was stated also that Parata was principally of Ngati Toa descent, and only distantly connected with Ati Awa. His claim to land at Waikanae was, therefore, questionable.

Hadfield gave evidence that Hone Tuhata had indeed been resident at Waikanae in late 1839, and other witnesses said that it was from Waikanae that Hone had been summoned to Wellington, in 1840, to sign the Treaty of Waitangi.²⁷ Hadfield also said that he had never before heard the name Ngarara used to describe the land in question. From reading the papers, he had gained the impression that the block normally known as Waikanae had been gazetted for the purposes of the Native Land Court hearing as Ngarara. Whoever had suggested that this name be used 'must have done so for the purpose of deceiving those interested in the land.'²⁸ As for the ownership of the land, Hadfield stated flatly that it belonged to Ati Awa; no other tribes had had rights there in 1840. Hadfield had a good deal to say about Parata: he (Hadfield) remembered him as being, in 1840, a small child of about four or five. Parata's grandfather had been, according to Hadfield, a Ngati Toa chief who 'was

26. Native Affairs Committee of the Legislative Council, Brown, 20 August 1888, MA series 70/3, NA Wellington

27. Native Affairs Committee of the Legislative Council, Pirihiira Te Tia, 23 August 1888, MA series 70/3, p 2, NA Wellington; Native Affairs Committee of the Legislative Council, Wi Hape Pakau, 23 August 1888, MA series 70/3, p 1, NA Wellington

28. Native Affairs Committee of the Legislative Council, Hadfield, 17 August 1888, MA series 70/3, p 3, NA Wellington

distantly connected with Ngatiawa.²⁹ The committee was interested to obtain Hadfield's views on Maori custom with regards to tribal affiliation and land ownership, and Hadfield expressed very firm beliefs on these matters:

All the time I am referring to, such a thing as a man belonging to two tribes was unknown, in the sense, that is, of possessing property in both. There was no exception to this. In the case of marriage between persons of different tribes, they were obliged to elect to which tribe they would belong. There is no fact in reference to native custom on which I am more positive than on this.³⁰

It was an 'absurdity', he said, to suppose:

that any member of a different tribe could claim, or rather own, land in the territory of another tribe, the reason of this is too obvious, when it is borne in mind that each tribe was a distinct nation, politically considered, and at anytime liable to be at war with the other tribes, that it would hardly seem to need proof. But of the fact there can be no doubt.³¹

Hadfield had been called as an expert witness, to shed light on, among other things, Wi Parata's claim to belong to two tribes, his claim to have rights to land stemming from both of these tribal affiliations, and his claim to own land, in respect of these two tribal identifications, in the same district or location. According to the sense of Hadfield's testimony, while it was certainly possible to belong to two different tribes, rights to land would always be related to membership of one tribe or the other, but not to both. Hadfield, of course, was describing the situation that existed in 1840, when tribal warfare had only just ceased. Then the bitterness and insecurity created by the fighting during the 1820s and 1830s perhaps made tribal

29. Ibid, p 2

30. Ibid, pp 2-3

31. Ibid, p 4

boundaries, and tribal identifications, more clear cut and rigid than had been customary in the past. It is also possible that by the time (1888) the Native Affairs Committee held its hearing, decades of peace between the tribes had eroded away the sharp distinctions Hadfield saw in the 1840s. Again, the attitudes about land that Hadfield described may have originated in the special circumstances that pertained along the west coast during the 1830s, as successive waves of the different tribes arrived, and struggled in the usual ways to establish and hold tribal territories in the area. By the 1880s these traditional methods had long been rules out of order; it was now the Native Land Court that determined tribal rights; and new rules of engagement had had to be learnt and applied.

In any event, while Hadfield's evidence before the Native Affairs Committee was probably persuasive, the evidence of the Chief Judge of the Native Land Court, Judge J E MacDonald, may have been conclusive. He conceded that if it could be shown that Hone Tuhata had been resident at Waikanae in 1840, then the petitioners had a good claim to a rehearing.³² While MacDonald was most reluctant to accept that there might be grounds for rehearing not just the partition but the original claim, he agreed that poor or misleading descriptions of the land being heard, or failure to give proper notification of a hearing, could constitute grounds for a rehearing.³³

Parata was among the last witnesses to be heard. He seemed to admit that the use of the name Ngarara had originated with him, but denied he had been trying to deceive anyone. Ngarara, according to Parata, was the name of the block in dispute between Tamihana Te Rauparaha and himself.³⁴ However, the minute books show

32. Native Affairs Committee of the Legislative Council, MacDonald, 20 August 1888, MA series 70/3, pp 10–11, NA Wellington

33. *Ibid*, p 22

34. Native Affairs Committee of the Legislative Council, Parata, 20 August 1888, MA series 70/3, pp 8–9, NA Wellington

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that this particular block went through the court as Kukulauaki no 1, not as Ngarara, although the case was first called under the name Ngarara, and the Ngarara Stream did run along its southern boundary.³⁵ In any case, the point at issue was how the name of a part, Ngarara, had been extended to cover the whole, Waikanae. On this question Parata said that the name Waikanae referred only to the stream; the land on either side had many names and those who owned these cultivations would never have referred to them as Waikanae.³⁶ This, however, did not explain why Ngarara was an acceptable name for all of these different areas while Waikanae, apparently, was not.

35. Otaki Native Land Court MB 2, 5 March 1874, p 225

36. Native Affairs Committee of the Legislative Council, Parata, 20 August 1888, MA series 70/3, p 9, NA Wellington

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The committee reported on 27 August 1888 that the evidence it had obtained pointed to ‘a serious miscarriage of justice in the subdivision of 1887’.³⁷ An insignificant portion of the land had gone to Hone Tuhata’s descendants; the general effect of the subdivision had been to shift ownership of the land away from Ati Awa and into Ngati Toa hands. Prompt action was recommended because the expulsion of the disinherited parties, and the alienation of the land, were likely to occur quickly. Once these things happened, attempts to have the matters reconsidered would be of little use.

The Government had added a clause to the Native Land Court Act 1886 Amendment Bill, then being passed through Parliament, effectively authorising a rehearing of the Ngarara block. The Legislative Council struck out the this clause, on the grounds that it was misplaced with respect to the legislation in question, and because it had the effect of making Parliament into a court of appeal.³⁸ However, there seemed to be general agreement that something had to be done about Ngarara, and the solution was a new clause, making the land inalienable until the ending of the next session of the General Assembly.³⁹ The Bill passed the House on 30 August 1888. The day before, the Native Minister, Mitchelson, announced the setting up of a commission to examine Ngarara and some other matters.⁴⁰

37. Richmond, JALC, 27 August 1888, p 205

38. 24 August 1888, NZPD, vol 63, pp 360, 363

39. Native Land Court Act 1886 Amendment Act 1888, cl 27

40. Mitchelson, 29 August 1888, NZPD, vol 63, p 523

11.3 NGARARA COMMISSION 1888

The Ngarara, Porangahau, Mangamaire, and Waipiro Commission began taking evidence on the Ngarara block on 15 November 1888. The main issues concerning the Ngarara dispute had been determined by the judgment of 1887, and by the hearing before the Native Affairs Committee the previous August. Was Hone Tuhata resident at Waikanae in 1840? What was his status or importance? What was Parata's claim to the land? Had he behaved wrongly with respect to the hearings in 1873, 1874, and 1887? How had the name Ngarara become attached to the block, and what was the significance of this change of name?

The Parata party argued that Hone Tuhata had been, at best, the chief of a minor hapu; some said he was just an ordinary man. He and his hapu (variously described as Ngatipawhenua or Mitiwai) had left Waikanae permanently for Arapaoa (Picton) in the mid-1830s, after the battle of Haowhenua. Some said that Hone and his people had run away, fearing the vengeance of Ngati Raukawa. The Mitiwai hapu was not the same as, or related to, the Kaitangata hapu: that hapu could claim land at Waikanae, whereas the Mitiwai hapu had had no cultivations. According to the Parata witnesses, Hone Tuhata had had no significant role at Waikanae before Haowhenua, and he had played no part at all in the affairs of Waikanae after that

event. In particular, he had not been present at the key battle of Kuititanga, in 1839, which had confirmed Ati Awa's right to the land.⁴¹

41. Ngarara, Porangahua, Mangamaire, and Waipiro Commission, Enoka Tatairau, 26 November 1888, MA series 70/1, p 11, NA Wellington; Ngarara, Porangahua, Mangamaire, and Waipiro Commission, Pare Tawhera, 27 November 1888, MA series 70/1, p 4, NA Wellington; Ngarara, Porangahua, Mangamaire, and Waipiro Commission, Tamihama Te Karu, 4 December 1888, MA series 70/1, p 1, NA Wellington; Ngarara, Porangahua, Mangamaire, and Waipiro Commission, Ihakara Karaka, 5 December 1888, MA series 70/1, p 6, NA Wellington

Wellington

The Tuhata camp, to the contrary, claimed that Hone had in fact been one of the principal chiefs of the Waikanae Ati Awa – an uncle, in fact, of the paramount chief Wiremu Kingi. After Kingi's departure for Taranaki in 1848, Hone had been the dominant Ati Awa chief in the district. He had been one of the Ati Awa generals at Haowhenua; he had fought, and been wounded, at Kuititanga; he had welcomed Hadfield to Waikanae in November 1839; in 1840, at Wellington, he had signed the Treaty of Waitangi, under the name Patuhiki. There was documentary evidence that he had been present at Waikanae, and exercising the rights of a chief, on several occasions during the 1840s and 1850s. He had, for example, signed the deed of sale for the Wainui block in 1858, along with Tamihana Te Rauparaha, Matene Te Whiwhi, and many other principal men of the district, including, it should be noted, Wi Parata.⁴²

If Hadfield's evidence both to the commission and the earlier Native Affairs Committee was correct, then many of these claims made on behalf of the Tuhata family were beyond dispute. Certainly there was not the slightest doubt that Hone Tuhata had signed the Treaty in 1840, and the 1858 Wainui deed, or that he had been present at Waikanae at various dates between these two signings.

The commissioners reported that Waikanae was indeed the more generally accepted name for the Ngarara block, but they did not find that the change of name

42. Ngarara, Porangahua, Mangamaire, and Waipiro Commission, Tamati Te Wera, 15 November 1888, MA series 70/1, p 7, NA Wellington; Ngarara, Porangahua, Mangamaire, and Waipiro Commission, Wi Hapi Pakau, 16 November

had confused or deceived anyone. On the central issue, the evidence they had been given was ‘extremely conflicting’, but they found that Hone Tuhata had been resident at Waikanae, and that his descendants had continued to occupy land in the district after his death. Mitiwai was either the same as, or a branch of, the Kaitangata hapu. They were unable to determine Hone’s interest in the land with any exactitude, but considered that it was at least equal to other chiefs of the Kaitangata hapu.

As for Wi Parata’s behaviour, the commission found nothing ‘which would justify an interference with the judgment of the Court in 1887’. The court had made, in the commission’s view, an ‘unsatisfactory’ decision, but this was not due to improper actions on the part of Wi Parata; rather the fault lay principally with the Tuhata party, who had not been sufficiently prepared to deal with the arguments advanced by the other side during the 1887 subdivision hearing.⁴³

When the circumstances of the 1887 hearing are considered in detail, this aspect of the commission’s report seems unfair. As for the absolution granted to Wi Parata, there were many who remained convinced that he had acted in 1873, 1874, and in 1887 in his own interests rather than in the interest of Ati Awa. Some disparaging remarks about the fact that his father had been a Pakeha were made, both during the hearing and in the House, but Parata was in fact a man of distinguished ancestry. His mother, Metepere Waipunahau, of Ngati Toa, was a daughter of Rangihiroa, a niece

1888, MA series 70/1, p 1, NA Wellington

43. ‘Report of the Commission on Ngarara, Porangahau, Mangamaire, and Waipiro Blocks’, AJHR, 1889, G-1, p 1

of Te Pehi, and a woman of considerable prestige and standing on the Kapiti Coast. When Wiremu Kingi decided to return to Taranaki in 1848, and there was a need to settle the northern and southern boundaries of the Ati Awa lands, Waipunahau was consulted on this matter by all of the tribes concerned. One of Parata's grandfathers had been Ati Awa, a member of the Kaitangata hapu. He could thus quite legitimately claim membership of both tribes, although it does appear that the stronger tie was to Ngati Toa.

In any event, by virtue of his Ati Awa ancestry, the fact that his mother was Waipunahau, and also because of his Pakeha education and his knowledge of Pakeha ways, Parata seems to have been left in charge at Waikanae when Wiremu Kingi returned to Taranaki. In this capacity he collected the rents and, in 1873, managed the business of the tribe in the Native Land Court. In that year Parata was well into a five-year term as the Member for Western Maori; he was a minister without portfolio in both 1873 ministries, and remained so until 1876. There seems to have been no one else at Waikanae with any better right to direct the affairs of the tribe, or with more standing in the world of the Pakeha. Parata, in fact, was in much the same position of dominance that Kemp enjoyed to the north, at Horowhenua, and there are many parallels between the two situations, not least of all the suggestions that the powers of stewardship were being abused. In Parata's case, no satisfactory explanation for the re-naming of the Waikanae block as Ngarara was ever forthcoming. The suspicion that he had doctored the list of owners presented to the court in 1873 never abated. After the event he claimed Kukutauaki no 1 for himself

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on the basis that it was Ngati Toa land. This argument had been rejected by the court in 1873 and it was to be rejected again by the court in 1890. Finally, the judges who presided over the 1890 rehearing all but accused him and his supporters of manufacturing evidence, both in 1887 and 1890, the objective being to disinherit the Tuhata family and others with a right to the land.

All of these criticisms were made to the Ngarara Commission, but none of them seemed to have struck home. In the commissioners' view, if anyone was to blame for what had happened at the 1887 subdivision hearing it was the Tuhata family. At the same time, the commissioners did accept that Hone's descendants had a grievance. There were, they said, 'sufficient doubts as to the correctness of the decision of the Native Land Court in 1887 to render further inquiry proper'.⁴⁴ The 1887 decision should be set aside, and a rehearing ordered.⁴⁵

11.4 PUCKEY'S REFUSAL

44. *Ibid*, p 2

45. *Ibid*, p 3

The fact that Puckey had refused to grant the Tuhata family an adjournment, so that they might produce evidence in rebuttal of the statement that Hone Tuhata had left Waikanae in the 1830s, was not mentioned in the commission's report. But the commissioners did comment that the argument that Hone had abandoned his Waikanae lands seems to have been advanced for the first time during the 1887 hearing.⁴⁶ This fits evidence from the Tuhata camp that they had never anticipated that such a claim would be made, that they had been taken aback with the audacity of it, and been ill-prepared to immediately refute what had been said, or provide counter-argument.⁴⁷ In fact, the statement in question seems to have been made after the Tuhata party had finished presenting their case, and it was apparently for this procedural reason (that is, that they had already closed their case) that Puckey refused to grant an adjournment so that fresh evidence might be presented. But had the Tuhata party been able, on the day, to provide an immediate rebuttal, it seems likely Puckey would have refused to allow them to do so, on the same grounds that he justified his refusal to grant an adjournment.

Puckey was consulted when the request for a rehearing was made to the chief judge; he also gave evidence before the Ngarara Commission. The chief judge, MacDonald, gave evidence to the earlier Native Affairs Committee hearing. On that occasion MacDonald had observed that it was usual for the findings of the Native Land Court to be disputed, especially when the ownership of land was concerned.

46. *Ibid*, p 2

47. Ngarara, Porangahua, Mangamaire, and Waipiro Commission, Hone Taramena (John Drummond), 19 November 1888, MA series 70/1, pp 37–38, NA Wellington

He also had some views about the nature of the evidence the Native Land Court had to deal with:

The evidence in nineteen cases out of twenty in the first place is mere hearsay of what persons profess to have had from an ancestor. Of later years especially the class of person who come before the Court are distinguished from those who did so formerly by giving evidence not only of hearsay handed down from father to son but of evidence manufactured for the purpose of the case. Evidence is often most unreliable for this reasons.⁴⁸

Puckey had made a similar observation, but one specific to the Ngarara subdivision hearing, in a memorandum to MacDonald:

Most of the facts alleged have come to light since the case was determined and there can be no doubt if they are not strong enough to accomplish the object in view others of a more impressive nature will be unearthed.⁴⁹

Perhaps this attitude to the parties that came before him, which seems to have been shared by the chief judge, was why Puckey told Morison, the lawyer for the Tuhata party at the Ngarara Commission hearing, that he very seldom permitted evidence in rebuttal to be presented.⁵⁰

48. Native Affairs Committee of the Legislative Council, MacDonald, 20 August 1888, MA series 70/3, pp 8–9, NA Wellington

49. Puckey to MacDonald, 21 July 1888, MA series 70/4, p 4, NA Wellington

50. Ngarara, Porangahua, Mangamaire, and Waipiro Commission, Puckey, 23 November 1888, MA series 70/1, p 8, NA Wellington

Wellington

During his questioning by Morison, Puckey made other, seemingly damaging, admissions. He conceded, for example, that Parata had produced no evidence of abandonment and that he could not be certain that the Tuhata party had known in advance that Parata would advance an argument of that kind. Morison suggested to Puckey that Inia's mother, Mary Pomare, had come to see him after the court had risen, on the day the statement was made, before the judgment was delivered. Puckey agreed that this was true.⁵¹ Morison wanted to know if Mrs Pomare had asked him to extend the case. Puckey did not think she had, but could not be positive. The next day, at 10 am, Mary had asked for an extension, to bring more evidence. This had been refused, and the judgment delivered. The reason for the refusal was, said Puckey, that 'the court did not see any reason at the eleventh hour to grant the request. Had it been made before it would have been granted.'⁵² The minute book shows that the abandonment theory was stated as fact by Parata during his closing address; it had not been raised during cross-examination. The court adjourned for the day shortly afterwards. The minute book shows that Mary Pomare made the request for an extension the next morning, as soon as the court opened. In other words, at the earliest possible time. Indeed, Morison suggested that the request had been made informally the evening before. The inference to be drawn from Morison's line of questions was quite clear: Puckey had decided the case on the basis of an unsupported statement made by Parata, after unreasonably denying the Tuhata party the opportunity to make a reply.⁵³

A good deal flowed from this decision: a two-day hearing before the chief judge, to consider the case for a rehearing; petitions and counter-petitions; a Native Affairs

51. *Ibid*, p 7

52. *Ibid*, p 6

53. *Ibid*, p 10

Committee hearing; parliamentary debates; the Ngarara Commission; legislation; a lengthy rehearing of the Ngarara subdivision; and then another set of petitions.

11.5 NGARARA AND WAIPIRO FURTHER INVESTIGATION ACT 1889

Legislation was necessary to give effect to the recommendations of the Ngarara Commission, and this emerged in July 1889. The commission, while admitting that ‘a substantial failure of justice’ had occurred at the hearing in 1887, apparently felt that this failure had nothing to do with the court; rather it was the fault of the parties. Therefore, in the interest of justice, the commissioners had recommended that:

a reasonable proportion of the costs of and incidental to this Commission, and all subsequent costs reasonably incurred in and about obtaining the necessary legislation, be made a first charge upon the land contained in the Ngarara Block; and that the costs of and incidental to the rehearing be in the discretion of the Court before whom the rehearing is had.⁵⁴

The commission had also expressed the opinion that the situation revealed by its investigations had ‘brought forcibly before us the desirability of making some general provisions for individualising Native titles; and we are strongly impressed

54. ‘Report of the Commission on Ngarara, Porangahau, Mangamaire, and Waipiro Blocks’, AJHR, 1889, G-1, p 3

with the advantage that would accrue from such legislation in obviating future disputes.⁵⁵

55. *Ibid*, p 3

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Both of these recommendations found their way into the Ngarara and Waipiro Further Investigation Bill, and both were subject to strong attack during the debate. Parata had hired E Stafford, of Buckley, Stafford and Treadwell, to represent him, and Stafford also strongly attacked, in letters to the chief judge, and Mitchelson, the clauses in question.⁵⁶ These objections and representations appear to have been effective. The final version of the Bill provided for a rehearing of the Ngarara subdivision, excluding lands already awarded to the Puketapu and Otarawa hapu. It allowed the court to determine the relative shares of each hapu or individual, but there was to be no survey or subdivision of the land unless the owners asked for it. No costs were to be levied against the land.

56. Stafford to Chief Judge, Native Land Court, 12 July 1889, MA series 70/4, NA Wellington; Stafford to Native Minister, 12 July 1889, MA series 70/4, NA Wellington

11.6 NGARARA REHEARING, JANUARY 1890 TO JUNE 1891

The Ngarara rehearing commenced on 13 January 1890, in the Methodist School Room, Sydney Street, Wellington. It was immediately adjourned until 20 January, when the real business got under way. Judges W G Mair and D Scannell presided. Rakena Wi Waitaia was assessor. C B Morison represented Inia and a number of others. There were four separate parties within the group represented by Morison, united by their dissatisfaction with the 1887 subdivision and their opposition to Parata. Stafford appeared for Parata and, according to the minute book, the other owners not presented by Morison.⁵⁷ Stafford's task was to defend, on Parata's behalf, the 1887 subdivision.

The claim of Eruini Te Marau, on behalf of the Ngatirahiri hapu, was the first to be heard, commencing on 20 January and running through until mid-February. The hearing of Inia Tuhata's application began on 20 February, and concluded on 25 February 1890. Other applications were heard during March and April, and the court also visited Waikanae. At the end of April 1890 the court adjourned to Auckland, apparently to await a ruling from the Supreme Court on a matter raised by Stafford, to do with section 2 of the Ngarara and Waipiro Further Investigation Act 1889. The Supreme Court ruling was to the effect that the Native Land Court could do, with respect to this section of the Act, whatever it felt was just. Having received this opinion, the Native Land Court proceeded, on 23 July 1890, to deliver

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its decisions on the various subdivision applications received. The judgment was wide-ranging, taking in the history of the conquest, the tribal wars of the 1830s, and the nature of Ati Awa's occupation of Waikanae prior to 1840.

Parata had advanced to the court the arguments that Ngati Toa had a claim to the land, based on conquest, and that his title to the 840-acre block was based on a gift made by the Ngati Toa chief Te Pehi to an ancestor. The court rejected both arguments: Ngati Toa had no claim to Waikanae; no gift was ever made.⁵⁸

57. Otaki Native Land Court MB 10, 20 January 1890, p 9

58. Otaki Native Land Court MB 12, 24 July 1890, pp 20–21, 25

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All of the applications to the court had been argued as hapu claims. The court found, however, that claims made on that basis were untenable. The situation in the period before 1840 was that, for security reasons, the different Ati Awa hapu had not dispersed across the Waikanae block, but congregated together in one or two locations. There was good evidence for this finding: Hadfield had mentioned to the Ngarara Commission, for example, that when he was at Waikanae, in 1840, the Ati Awa took their weapons when they went to work, fearing that they might be caught unaware by Ngati Raukawa.⁵⁹ Again, some of Parata's witnesses had talked of a general exodus from Waikanae after Haowhenua, attributing this to fear of Ngati Raukawa retaliation. To the court, the implication of evidence of this sort was clear: Waikanae had to be considered land held in common by the tribe rather than land that had been divided, parcelled out, or occupied hapu by hapu. Claims based on the premise that a particular hapu had exclusive rights to a particular location or set of cultivations could not, with a few exceptions, be entertained.⁶⁰ Claims would be determined on the basis, of individual rights, and these in turn would be based on the contribution that individuals had made to the conquest and holding of Waikanae before 1840, and to the extent of his or her transferred occupation since 1840. On this basis allocations of between 125 to 600 acres or more were made to the various claimants represented by Morison.⁶¹

59. Ngarara, Porangahua, Mangamaire, and Waipiro Commission, Hadfield, 22 November 1888, MA series 70/1, p 4, NA Wellington

60. Otaki Native Land Court MB 12, 24 July 1890, p 16

61. *Ibid*, p 30

With respect to the Tuhata claim, the court found they had a right to a substantial area of Waikanae, although not to as large an area as they had claimed in their application. The court referred in critical tone to the string of witnesses who had stated positively, from personal knowledge, that Hone Tuhata had left Waikanae in the 1830s, that thereafter he had returned only as an occasional visitor, and that he had neither been present, nor wounded, at Kuititanga. These witnesses, while they had been able to minutely account for all of Hone's movements during the 1830s and 1840s, had, when previous testimony was taken into account, contradicted themselves, and their efforts to explain these contradictions had further devalued their testimony.⁶² The court made specific mention of Hadfield's evidence, which was based not on memory, but on entries from his journal, that Hone had been present when Hadfield arrived at Waikanae in 1839, shortly after the battle in question, that he was suffering from a musket wound sustained during the fighting, and that Hone was, after his nephew Wiremu Kingi, the principal chief of Ati Awa at that time.⁶³ The court also noted that Hone's descendants had remained in occupation after his death, until the present time. On the basis that Hone Tuhata had made an important contribution to the conquest and defence of Waikanae, and that his family had continued to occupy the land, and defend their claim, the court awarded Inia and his sister 1220 acres, to be shared equally.⁶⁴ This was less than 10 percent of the land, but a large improvement on the four acres they had been given in 1887.

62. *Ibid*, pp 21–23

63. *Ibid*, p 23

64. Rangihanu's share went to her daughter, Rangihanu Eruera: Otaki Native Land Court MB 12, 24 July 1890, p 30.

Wellington

Section 4 of the Ngarara and Waipiro Further Investigation Act 1889 had provided that the court, at its discretion, could determine the share, and mark on a map the position, of the land belonging to each individual and hapu. The court decided to exercise this discretion, and adjourned so the various owners could agree among themselves what their shares were, and where they were located.⁶⁵ The owners, however, were unable to reach agreement, and the matter was adjourned to Wellington. When the case resumed in January 1891, the owners were still unable to agree, so the court began to take evidence. Progress was slow. In March 1891 the court ruled that the parties were neither to be represented or assisted by counsel, and for some weeks the hearing continued without the presence of lawyers. This mode of operation apparently did not produce the desired results, and the lawyers re-appeared. In due course the hearing ended, and the court issued a long series of orders defining the share of each owner, and the boundaries of the different blocks containing these shares.⁶⁶ The details relating to ownership were subsequently transcribed, no doubt for some official purpose, and found their way into the files of the Native Department.⁶⁷ The land was divided into two large blocks, Ngarara West A and Ngarara West C; Ngarara West B was the 1584 acres awarded to the Puketapu hapu in 1887. West A was divided into 78 sections, and West C into 41, making 119 subdivisions. The largest of these subdivisions was over 8000 acres, but that was very much an exception. Most were less than 100 acres; some were less than 20 acres. Some individuals had shares in more than one subdivision, and while the court apparently tried to consolidate shares, some fragmentation of holdings may have occurred. Most of the subdivisions had more than one owner, and individual

65. Otaki Native Land Court MB 12, 24 July 1890, p 29

66. Otaki Native Land Court MB 12, 2 June 1891, pp 214–277

67. MA series 14/8, NA Wellington

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shares were, in some cases, quite small: Ngarara West A no 75, for example, contained 16 acres and had nine owners: one owner received eight acres, the other eight received one acre each. It seems probable that in many cases the owners of each subdivision were related to each other, and possibly to the owners of adjacent subdivisions as well, but if true the long-term significance, if any, is hard to say. Some of the subdivisions were quite large: several hundred acres, and in these cases, if the number of owners was small, quite substantial individual holdings could result, 60 to 100 acres or more. The quality of the land in these holdings is unknown, although certainly discoverable.

When all the land had been divided, Wi Parata was the largest single landowner, receiving something in excess of 8000 acres. After 1891 he and his family possibly held as much as a third, perhaps more than a third, of Waikanae.

Before 1840, and until the late 1880s, Waikanae had been land held in common by the tribe. After 1891, it was a patchwork: dozens of subdivisions; hundreds of different sized shares; scores of individual owners.

11.7 NGARARA PETITIONS 1891 TO 1904

Following the decision of 1890, Wi Parata and one of his strong supporters, Tamihana Te Kura, petitioned Parliament and made representation to Government for a rehearing, Tamihana complaining specifically that his cultivations had been given to others.⁶⁸ These endeavours came to nothing, but the file on these petitions contains a memorandum from Judge Scannell setting out the reasoning underlying the 1890 decision, and commenting in particular on Te Kura's complaint:

occupation was shown to be of that intermittent kind usual among the Natives. Individuals came and went from Taranaki, Picton and elsewhere in addition to those who remained after the exodus to Taranaki and all cultivated whenever and wherever fancy or convenience dictated, remaining as long as it suited them and left it as they choose; and came again.

In the particular case of Tamihana Te Kura . . . he left for Taranaki with Wirimu Kingi's party in 1847, returned to Waikanae after the Taranaki War of 1860–61, remained there a short time, went to Collingwood in the South Island, remained there about two years, returned to Waikanae and remained there until 1874, went to Taranaki and did not return to Waikanae except for a short visit in 1879, till just before the Court sat in 1887, and then in consequence of the receipt of a letter from Wi Parata for the express purpose of driving Inia Tuhata off the land he taken up long before. He was prosecuted for forcible entry into Inia Tuhata's house.

Any cultivations then that Tamihana Te Kura could have had on that part he says he was deprived of could only have been made since his arrival in 1887, and these, as shown by his own statements principally, were made for the express purpose of asserting ownership and ousting Inia Tuhata . . .

68. 'Report of Native Affairs Committee', AJHR, 1891, I-3, p 10, no 7; 'Report of Native Affairs Committee', AJHR, 1891, I-3, p 19, no 243; 'Report of Native Affairs Committee', AJHR, 1892, I-3, p 9, no 304

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There were several reasons which induced the Court not to locate Tamihana Te Kura on that particular part. Among others, that by exclusive and long continuing occupation he could not assert a better claim to this than to other parts, that he had as good or as bad a claim to other parts as to this, that the parts on which he was located were equal to these, that the party to which he had attached himself since his return to Waikanae and with whom he was actually residing were located on another part of the block and were anxious to retain that part and that party and Tamihana Te Kura were particularly hostile to Inia Tuhata and to all who opposed their desire of taking to themselves the bulk of the land, leaving to those who opposed them the patches only on which their cultivations actually stood, that considering the hostility and actual violence shown by Tamihana to Inia it would be undesirable to locate them together and that this keeping them apart resulted in no real injury to Tamihana Te Kura, the claims of the persons to whom it is complained Tamihana Te Kura's land as been given were confined to that part of the land and part of their interests had already been defined in that neighbourhood by previous courts.⁶⁹

69. Scannell to Chief Judge, Native Land Court, 22 February 1892, Maori Affairs (MA) series 13/53, NA Wellington

Wellington

Among the other petitions received after the 1890 rehearing was one by Rako Eruera Wiremu Kingi. He and his hapu petitioned in 1891 that the law be amended to allow their Ngarara claim to be heard as an original application, and that a special commission be set up to investigate the actions of the Native Land Court. The Native Affairs Committee made two reports on this petition, but had, in both cases, no recommendation.⁷⁰ It is not clear from the reports of the Native Affairs Committee who Rako Eruera Wiremu Kingi was, or what the nature of his claim might have been. He does not seem to be among those who gave evidence at any of the earlier hearings. It is possible that he belonged to the Taranaki branch of Ati Awa.

Mere Ngapaki Hughes and Jane Clements also petitioned Parliament in 1891, stating that their grandmother Ihipera Nukiahu had been one of the principal chiefs of Ati Awa. According to their petition they, Ihiperia, and their sister Mere Cameron had all been resident at Waikanae in 1873, but their names had been omitted from the list of owners drawn up by Wi Parata. They said that the use of the name Ngarara to describe the land, and the adjournment of the Foxton court first to Waikanae and then to Wellington, had made it difficult for the owners to know what decisions were being made. They made the point that Wiremu Kingi and others who were not resident at Waikanae in 1873 had also been excluded from sharing in the land.⁷¹ The Native Affairs Committee recommended that this petition be referred to the Government for inquiry.⁷² A memorandum from Sheridan to the Native Minister, dated 7 July 1893, seems to have been part of the inquiries the Government made.

70. 'Report of Native Affairs Committee', AJHR, 1891, I-3, p 17, no 199; 'Report of Native Affairs Committee', AJHR, 1891, I-3, p 31, no 199

71. 'Petition of Mere Ngapaki Hughes and Jane Clements', 1891, MA series 13/53, NA Wellington

72. 'Report of Native Affairs Committee', AJHR, 1891, I-3, p 16, no 200

This document indicated the nature of the problem as it appeared to the Native Department:

... [That] Wi Parata dealt unfairly with a number of persons entitled under Native custom and usage to a share in the Ngarara block is patent and if the bulk of the land had not changed hands it might be well to re-open the title – this, now however is an impossibility.

There is not a single block of Native Land which has ever passed through the NLC in respect of which some similar hardship could not be shown.

The only suggestion I can make is that if the natives are as they allege landless they should be advised to take up land under the Village Settlements regulations.⁷³

The only other relevant document in the file is a letter from Ihakara Te Ngarara to the Native Minister, A J Cadman, objecting to the Hughes–Clements petition.⁷⁴ Te Ngarara apparently occupied the land Mrs Hughes and her sisters wanted, so he was not a disinterested party. But according to him ‘these women’ had attended the 1873 court. They had requested, and been given, a small area of land. They had not made any other claims. They had attended the court in 1887, and made no claims then either. In 1890 they had attempted to make a claim, but because their names were not on the list of owners, the court would not consider it.

All of the things Te Ngarara said about 1873 and 1887 might have been true, but the important issue was this. On the basis of what the court had decided in 1890, if the ancestor, Ihiperia Nukiahu, had been a person of importance, and if her family had been in continuous occupation of the land, then Mrs Clements and her sisters had a claim; on the face of it, perhaps as good a claim as that of the Tuhata children.

73. Sheridan to Native Minister, 7 July 1893, MA series 13/53, NA Wellington

74. Ihakara Te Ngarara to Cadman, 30 May 1892, MA series 13/53, NA Wellington

Wellington

In 1894 the member for Otaki, J G Wilson, asked if the Government had considered the petition of 1891, or made any inquiries concerning it.⁷⁵ Seddon replied that the Government had considered the matter but decided that the Government, as Government, could do nothing. He suggested that Wilson might attempt to amend the Native Land Court Bill, then before the House, in a way that would confer upon the Native Land Court the power to deal with cases of the kind in question.⁷⁶ A copy of this question is contained in the files of the Native Department, with a notation by Haselden, Under-Secretary, Department of Justice, dated 20 September 1894, that 'The Government considered this matter and decided that it would take no action.'⁷⁷ This is possibly the departmental brief to Seddon, so that he could provide an answer to Wilson.

In 1903 the member for Hawera, C E Major asked again if the Government had considered the petition of 1891, and the corresponding report of the Native Affairs Committee, and, if not, would legislation be introduced that would allow the Native Land Court to investigate the title of those parts of Ngarara still in Wi Parata's hands. The Native Minister, J Carroll, replied that Ngarara had been investigated under the terms of the Ngarara and Waipiro Further Investigation Act 1889, and that this legislation did not permit any investigation of the claims of Mrs Hughes and Mrs Clements. Carroll thought that the parties might consider petitioning Parliament, in order to get provision for a further investigation, but he 'offered no opinion on the matter'.⁷⁸ Major asked if the Minister would prevent Wi Parata from alienating the land. Carroll replied that the Government would take no such step.

75. Wilson, 20 September 1894, NZPD, vol 86, p 118

76. Seddon, 20 September 1894, NZPD, vol 86, p 119

77. Haselden, 20 September 1894, MA series 13/53, NA Wellington

78. Carroll, 30 September 1903, NZPD, vol 126, p 91

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In 1904 Mrs Clement and Mrs Hughes petitioned Parliament again, seeking legislation that would allow their claim to Ngarara to be heard. The Native Affairs Committee made no recommendation, on the grounds that the petitioners had yet to exhaust all the legal remedies available to them, although it is not clear what these may have been.⁷⁹ There is no further information on the files, and it seems that this claim, in the face of legal difficulties, and reluctance on the Government's part to reopen the Ngarara case, simply lapsed.

79. 'Report of Native Affairs Committee', AJHR, 1904, I-3, no 785, p 13

One of the last petitions produced by the 1890 rehearing was presented in 1896. In that year Hone Tuhata, sometimes named as John Damon, the brother of Inia Tuhata and a great-grandson of Hone Tuhata, petitioned that his name and that of his brother (Te Matoha) and sister (Ngaropi) had been omitted from the list of owners drawn up in 1873 and 1890, and asked for legislation to enable their names to be inserted into the titles.⁸⁰ The Native Affairs Committee recommended that this petition be referred to the Government for consideration.⁸¹ The Chief Judge of the Native Land Court, G B Davy, had no doubt that Hone and his brother and sister had a just claim, and that a mistake had been made in 1890. The difficulty was that the certificate of title had been issued in the names of Inia and Rangihanu. His verdict was that 'it is beyond the power of the Court to rectify the omission.'⁸² The Government attached a clause to the Reserves, Endowments, and Crown and Native Lands Exchange, Sale, Disposal, and Enabling Bill 1897, providing for a rehearing of the Ngarara block with reference to the children of Inia Tuhata, but the Bill lapsed.⁸³ Hone Tuhata petitioned the House again in 1897; the petition was held over until 1899, but no recommendation was made.⁸⁴ There is no further information on the files, and it may be that this claim, admitted by Davy to be every bit as strong as that of Inia Tuhata's, lapsed as well.

80. 'Petition of Hone Tuhata', 1896, MA series 13/53, NA Wellington

81. 'Report of Native Affairs Committee', AJHR, 1896, I-3, no 503, p 26

82. Davy to Chairman, Native Affairs Committee, 2 October 1896, MA series 13/53, NA Wellington

83. 'Supplementary Order Paper', House of Representatives, 20 December 1897, MA series 13/53, NA Wellington

84. 'Report of Native Affairs Committee', AJHR, 1899, I-3, p 6, no 259

