

## CHAPTER 6

# CASE STUDY: THE McCASKILLS AT HIKUTAIA

This fourth and final case study has as its primary focus the presence of Maori agency in the old land claims process. This distinguishes it from its predecessors which have largely been concerned with examining the various ways in which the Crown dealt with old land claims. The McCaskill old land claims at Hikutaia are ideal for this purpose because they have generated a voluminous official record which documents a sustained and varied campaign by Hikutaia Maori to resist the implementation of the Crown grants which were issued in satisfaction of the McCaskills' old land claims. Through an examination of this official record in the course of this case study, it is hoped the reader will be left with an impression of the range and scope of resistance which could be carried out by those Maori affected by old land claims.

Before beginning, however, three qualifications are necessary. Firstly, it should be pointed out that the existence of this voluminous record makes the McCaskill old land claims rather exceptional. As a general rule, the official documentary record contains few references to Maori resistance which arose when efforts were eventually made to put the grants deriving from old land claims into effect. Even when such references can be found, they are often so fleeting or insubstantial as to give only the barest indication of the form or extent of the resistance concerned.

This scarcity should not, however, be automatically assumed to indicate that there was rarely any substantive resistance by local Maori to the alienation of land which had been Crown-granted as a result of an old land claim. Rather, the absence of such references could be seen as a product of what James Belich has labelled the 'problem of one-sided evidence'.<sup>1</sup> This is particularly true of old land claims where 'the documentary record is overwhelmingly created by only one of the two interested parties'.<sup>2</sup> As such, there is a potential for serious distortion in the recording of historical events. An additional factor contributing to the apparent absence of Maori resistance to old land claims was the fact that in many instances the claimants, or the Crown if surplus or scrip was involved, took a very long time to survey their respective holdings. Until such surveys actually took place, there was really no cause for Maori resistance because, as W H Oliver has argued before

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1. James Belich, *The New Zealand Wars and the Victorian Interpretation of Racial Conflict*, Auckland, Penguin Books, 1988, p 330
  2. 'The Crown and Muriwhenua Lands: An Overview', submission of W H Oliver, (Wai 45 rod, doc 17), p 20

the Muriwhenua Tribunal: ‘Rights, such as the Crown to the surplus, asserted in the abstract but not on the ground and incapable of identification are more likely to be ignored than contested, and perhaps to be forgotten’.<sup>3</sup> Once again, this case study will examine how this occurred in practice.

A second qualification arising from the deliberate focus on Maori resistance is that this case study does not purport to provide an answer as to the justice of the McCaskills’ Hikutaia grants, nor as to the validity of the Maori objections to them. Such an answer would require a great deal more research than is provided for in the context of this case study.

Thirdly, it is important to acknowledge that resistance or opposition was certainly not the only manifestation of Maori agency in the old land claims process. Such agency also included acts of affirmation, for example, testifying before the Land Claims Commission or assisting in the identification and surveying of boundaries. The important point remains, however, that acts of affirmation were recorded much more frequently in the official documentary record than were acts of resistance or opposition by Maori. It is this fact which makes the McCaskill claims at Hikutaia notable, and worthy of a case study.

The McCaskill claims at Hikutaia derive from the alleged purchase by L A McCaskill and S M D Martin in December 1839 of four blocks of land: two at Hikutaia, one at Opukeko, and one at Ohinemuri. This case study will focus on the first two blocks, although occasionally it will be necessary to refer to the other two purchases. The location of the two Hikutaia blocks, on the north and south banks of the Hikutaia Creek, is shown in figure 10. Of the two, Hikutaia South was the first to come before the Land Claims Commissioners. Sitting at Kauaeranga in June 1843, Commissioner Mathew Richmond found that a bona fide purchase had been completed to an area south of the Hikutaia Creek, estimated at 8,000 acres. He came to this conclusion after hearing the testimony of one of the claimants, Lachlan McCaskill, a supporting Pakeha witness, William Webster, and three of the Maori vendors, most significantly Rangituia Hauwhenua of Ngati Pu.<sup>4</sup> It is worth noting that this was one Maori witness more than was generally considered the minimum necessary by the commissioners to establish that a bona fide purchase had in fact been completed. Hikutaia North came before Commissioner Edward Godfrey just over a year later. Sitting at Coromandel Harbour he concluded that the area claimed by McCaskill and Martin north of the creek, estimated at 4000 acres, had also been the subject of a bona fide purchase. He came to this conclusion on the basis of the testimony of two Maori witnesses. One of these was Kawhero of Ngati Karaua, who would appear to have been the principal vendor in all four of the purchases transacted at the original meeting in December 1839. Godfrey’s report also notes the testimony of two Maori witnesses who opposed the sale of part of the area claimed on the grounds that they were absent at the time the sale took place and consequently received none of the sale proceeds. The lack of an accompanying

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3. Ibid, p 7

4. The full reports of Commissioners Richmond and Godfrey are contained in olc 1/287–291, vol 2.

Figure 10: Boundaries of Lachlan McCaskill's Hikutaia claims  
with granted subdivisions

survey means that the extent and location of this smaller area, identified as Wharekupunga, is not immediately apparent from the commissioner's report.

As a result of their investigations the commissioners made the following recommendations. With regard to Hikutaia South, Richmond recommended that a grant for 1379 acres should be issued. In the case of Hikutaia North, Godfrey did not recommend the issue of any grant. This was because, once the 1296 acres recommended as a result of their Opukeko claim was taken into account, McCaskill and Martin had already received more than the maximum of 2560 acres which was allowed under the provisions of the 1841 Land Claims Ordinance.<sup>5</sup> Before these recommendations could be actioned, however, Governor FitzRoy determined that the McCaskill claims were special cases which might justify an extension of the recommended grants beyond the maximum prescribed under the 1841 ordinance. In such an instance, the ordinance provided for the claims to be referred back to a Land Claims Commissioner so that he might re-consider the claims to see whether such an extension could be justified. This task of re-consideration fell to the recently appointed commissioner, Robert Fitzgerald, who subsequently recommended that grants totalling 4000 and 8000 acres should be issued for the claims on the north and south banks of the Hikutaia Creek.<sup>6</sup> Governor FitzRoy accepted these recommendations in principle, although he reduced the amounts slightly to a total of 3000 and 7000 acres respectively.

The justification for these extensions was couched primarily in economic terms. Since he had purchased the property, Lachlan McCaskill had constructed a sawmill and other buildings for a total outlay of around £7000. The successful operation of this mill was of course dependent on continued access to a reasonable supply of timber. To this end, Fitzgerald observed, McCaskill and Martin had purchased in December 1839:

about 12,000 acres of forest land for which they [had] paid £1025.14. The payment was proved and the native testimony quite satisfactory.

Although the expenditure in buildings and improvements in ordinary cases would not be allowed to be taken into consideration where they are beneficial to the property, such an exclusion in the present case would probably entail a ruinous loss to the parties, as the machinery and buildings do not appear to have been erected for such an object, and, would be quite useless without a considerable tract of adjacent forest.

In addition to the hardship that a non-extension may have imposed on the claimants, an important sub-text to Fitzgerald's memorandum was the fact that the colonial authorities were very keen to encourage economic investment in the new colony. Extractive industries, which provided employment and, in the case of

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5. Summarised in Bell, 23 June 1862, olc 1/287–291, vol 1

6. Fitzgerald to Land Office, 6 May 1844, olc 1/287–291, vol 2

7. FitzRoy, 1 May 1844, olc 1/287–291, vol 2

8. Fitzgerald to Land Office, 6 May 1844, olc 1/287–291, vol 2

timber, materials for housing, would always be a prime candidate for such encouragement.

Grants for the McCaskill old land claims were finally issued in July 1844. The total acreage approved by FitzRoy was divided between Lachlan McCaskill and S M D Martin on a ratio of three to two. This meant that in Hikutaia North McCaskill received a personal grant for 1800 acres, while Martin was granted 1200 acres. Similarly, in Hikutaia South McCaskill received a grant for 4200 acres and Martin 2800 acres.<sup>9</sup> A feature of these grants was that they carried a description of the external boundaries of the entire claim, as reported by the investigating commissioner, even though the acreages they purported to convey related to internal sub-divisions within those external boundaries. All the Hikutaia South grants, for example, bore the following boundary description which was taken directly from the original purchase deed:

On the North by a Creek called Hikutaia – on the East by a range of hills called Kairua – on the South by a line drawn in a westerly direction<sup>10</sup> from a place called Kurere to the Main River Thames at a place called Pirori.

This phenomenon was typical of many Crown grants derived from old land claims, and was a result of the fact that no survey had accompanied the early commissioners' investigations.

At Hikutaia, the beneficiaries of Martin's will chose not to immediately occupy the land conveyed in Martin's grants. This meant that Lachlan McCaskill was free, in the absence of a survey establishing any internal boundary lines, to select his granted acreage from anywhere within the external boundaries noted on his grant. As can be seen in figure 10, Lachlan divided each of his grants in two, with the portion of each furthest from the Waihou, or Thames, River passing to his brother, Allan McCaskill. This process of selection became problematic, however, when, sometime after 1864, the holders of Martin's grants finally decided they wished to occupy the land those grants conveyed. When they attempted to do so, it was revealed that the actual acreage contained within the external boundaries as reported by the commissioners more than two decades earlier, was considerably less than the total acreage subsequently granted by FitzRoy in that claim. This in itself was not unusual, and did not present a problem if all, or conversely none, of the grantees had chosen to occupy the land. In such a situation, new grants would be issued reflecting the correct reduced acreage and internal boundaries as determined by survey. Where, however, as at Hikutaia, one of the grantees had abstained from taking up occupation, thereby leaving the other grantee to absorb most of the actual area of the claim in satisfaction of their own grant, the solution

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9. Bell, 23 June 1862, olc 1/287–291, vol 1

10. The original purchase deed is appended to the report of Commissioner Richmond, 18 August 1843, olc 1/287–291, vol 2. This description differs only slightly from that included in Lachlan McCaskill's original notification of claim. In that letter, Lachlan McCaskill delineates the eastern boundary as composing the 'range of Mountains called Kaiaroa'. McCaskill to New South Wales Colonial Secretary, 3 February 1841, appended to the report of Commissioner Richmond, 18 August 1843, olc 1/287–291, vol 2.

was more difficult. At Hikutaia, the only way the inheritors of Martin's grants could take possession of their forty percent share of the actual area of both claims, was by forcing the McCaskill brothers to reduce the area they claimed to occupy. Undoubtedly, a strong case could have been made for such a reduction. After all, the McCaskills only came into possession of that land after exaggerating the size of the original purchases. At the same time, however, the McCaskills could argue that any such reduction, after they had 'occupied' the land for more than two decades, would only serve to replace one injustice with another. This last argument seems to have held some merit for Judge Halse, who adjudicated on the matter after Land Claims Commissioner Charles Heaphy referred the issue of Martin's grants to the Native Land Court in 1879.<sup>11</sup> While stating that it was clear that Lachlan McCaskill had 'received more land than he was entitled to under the original purchase from the Natives in November 1839', the Judge was nonetheless unwilling to order a reduction of those grants after such a long time.<sup>12</sup> Instead, he recommended that Martin's heirs receive scrip, to the value of £1445, in compensation for the relinquishment of their Bell-issued Crown grants to 1254 acres at Hikutaia South and to 191 acres at Hikutaia North. The story of the old land claims at Hikutaia then, is really a story about the relationship between the two McCaskill brothers, Lachlan and Allan, and the Maori residents of the land they claimed.

In its early years, this relationship seems to have been an harmonious one. This can be seen in the following testimony, recorded by James Mackay junior in 1866, of Herewini Te Rangai of the Ngati Pu hapu of Ngati Maru:

McCaskill came to live on the land before it was surveyed. He put up part of a sawmill on the land on the North side of the Hikutaia on the piece granted to him . . . He intended to saw the white pine (Kahikatea) of the Korakorahi and Waihou forests.

The people of the tribe Ngatimaru agreed to construct a mill dam for McCaskill. We worked at it and dammed the Hikutaia Stream the water was backed up a long way . . . The water burst the first dam, We made a second. and it was carried away also. McCaskill then paid us for our work, He gave us ten (10) guns and a cask of (keg of) tobacco.<sup>13</sup>

Clearly, the dam building related above entailed a significant degree of co-operation between the McCaskills and the Maori vendors.

One factor that is certain to have contributed to the initially harmonious relationship with the McCaskills was the fact that the Maori vendors did not actually reside in the immediate vicinity of the McCaskill claims. Te Rangai

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11. Halse refers to this referral in Halse to Heaphy, 14 May 1878, olc 1/287–291, vol 1. Such referrals took place under the auspices of the 1873 Native Land Act. Section 9 of the Act provided for the Native Land Court to investigate, upon referral by a Land Claims Commissioner, 'sundry claims to land that have arisen in respect of dealings between Europeans and the Natives which have not as yet been satisfactorily determined and finally settled'. Section 11 of the Act limited the power of the Native Land Court Judge to making recommendations to the referring commissioner.

12. Henry Halse, 'Judgement in Hikutaia B. case', 26 August 1879, p 5, olc 1/287–291, vol 1

13. Testimony of Herewini Te Rangai, 5 September 1866, translated and recorded by James Mackay, *Native Statements respecting lands at Hikutaia Thames granted to Messrs. McCaskill*, 5 September 1866, olc 1/287–81, vol 1.

testified, for example, that after being paid for the construction of the dams: ‘We (Ngatimaru) then returned to Kauaeranga and Te Puriri[.] Ngatikaraua and Ngatiwhanaunga were at Waiiau and Whangamata, they did not reside at Hikutaia’.<sup>14</sup> This pattern of non-residence should be seen in terms of a preference to reside in localities which would provide much easier contact with the Pakeha. In Hauraki, these localities were invariably located on the coastline, for example, Whangamata, Kauaeranga, and Coromandel Harbour.

Having said that, the considerable co-operation involved in establishing the McCaskills at Hikutaia indicates that, even without the immediate presence of the Maori vendors, both parties to the transaction believed the relationship would be mutually beneficial. As will be shown in much greater detail later, local Maori clearly anticipated that the presence of the McCaskills would generate further revenue from the sale of timber access rights. This timber was a mixture of Kauri, located off the Waipaheke Stream at the very eastern extreme of the McCaskill grants, and Kahikatea, or white pine, located on the land granted to Allan McCaskill south of the Hikutaia Stream. For their part, the McCaskills probably believed that, in addition to providing themselves with a reasonable income, their presence would generate further revenue for the Maori vendors through employment in timber felling activities, and through the negotiation of access to the Kauri at Waipaheke. As such, it is clear that the initially peaceful relations between the McCaskills and those non-resident Maori who still maintained an interest in the land at Hikutaia were also a product of the ignorance of both parties as to their differing perceptions of the exact nature of the original purchase transaction, and of the subsequent determination by the Land Claims Commissioners.

This state of affairs can partly be explained by the absence of any survey of the land granted to the McCaskills. Although section 6 of the 1841 Land Claims Ordinance contained an implicit requirement for a survey to be conducted before a grant could be issued, lack of resources and, in particular, a lack of suitably qualified surveyors, resulted in this provision being ignored by the early commissioners and Governor FitzRoy.<sup>15</sup> As long as a survey was absent, the differing opinions of claimant and vendors with regards to the actual boundaries transacted in December 1839 could remain below the surface. An example of how this occurred in practice is provided by Te Rangai’s testimony with regard to the McCaskills’ actions immediately after the dam workers had returned to their coastal residence. Prior to their departure:

McCaskill had . . . erected the large wheel of the mill on his own piece of land on the north side of the Hikutaia . . . When we went home McCaskill took advantage of our absence to pull down that part of his mill, which had been put up, and carry it over and erect it on the other side of the river . . . On our return we found he had placed it on our land. and we objected to him trespassing on our property. He said that Ngatikaraua had sold him that land. We then watched that mill cutting white pine.<sup>16</sup>

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14. Ibid

15. For a discussion of this problem see, ‘The Land Claims Commission; Practice and Procedure: 1840–1845’, submission of David Armstrong (Wai 45 rod, doc i4), pp 60–64

What is to be made of this situation? It might be argued that in allowing the McCaskills' mill to remain upon the land, Te Rangai was conceding that the land had in fact been included within the boundaries of the original sale. Subsequent protests, however, would indicate that manifestly Te Rangai was not willing to make such a concession. During all of these protests, the eastern boundary was consistently stated as being formed by the Paiakau Ridge, with the mill, as shown in figure 11, being located on the eastern side of the ridge. That the mill was permitted to remain on its new site can be explained by the fact that, at the time of the mill's shift, local Maori were still hopeful of deriving considerable benefits from the timber activities of the McCaskills. They may not have wished to jeopardise these benefits by insisting on the relocation of the mill back to the northern side of the Hikutaia. For without the mill, and the considerable capital investment made by the McCaskills to get it operational, local Maori could not fully exploit the resource represented by the timber. At the same time, as will be shown in considerable detail later, local Maori remained the more dominant of the two parties, controlling as they did access to the timber resource without which, the mill could not function. It was undoubtedly with an awareness of this dual dynamic of their relationship with the McCaskills, that local Maori were willing to allow the McCaskills to establish some claim to the new mill site. This can be seen in the following statement of Herewini Te Rangai:

[In 1851] Mr Drummond Hay came to survey the . . . land I saw him surveying above the Kopua [stream] towards Paiakarahi – I then thought if I did not interfere he (McCaskill) would take that land the same as he did the site of the mill, I therefore went and stopped Mr Hay[.]<sup>17</sup>

While the McCaskills might have believed themselves to have physically asserted their claim to all of the lands granted south of the Hikutaia through the relocation of their timber mill, it is equally clear from the above quotation that those Maori who asserted an interest in the wider area of land east of the Paiakau Ridge did not consider themselves to have relinquished that interest as a result of the mill's shift. Only a survey, the physical marking off and mapping out of the extent of the lands contained in the grants, could fully expose such mutual misunderstandings.

As it was, the first attempt to survey any of the McCaskill grants at Hikutaia did not take place until 1851. In that year, Lachlan McCaskill employed Drummond Hay to survey the block of land granted to him south of the Hikutaia Creek. Hay subsequently submitted the following account to Land Claims Commissioner Bell:

I met no opposition whatever until I had worked up about two-thirds of the distance between the mouth of the [Hikutaia] Creek and the Paiakarahi [Stream]. [T]he eastern boundary of the block. The survey was stopped by Te Rangai and my survey

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16. Testimony of Herewini Te Rangai, 5 September 1866, translated and recorded by Mackay, *Native Statements*.

17. *Ibid*

Figure 11: Physical and cultural features of the land

Figure 12 : Extent of granted area subsequently disputed by  
Herewini Te Rangai

labourers being natives of inferior rank. refused to work. some few days after I resumed the survey and completed it with<sup>18</sup> European labourers. Te Rangai . . . was aware that I had recommenced the survey.

Although the survey was completed, the fact that it had been temporarily obstructed exposed for the first time the extent of the discrepancy between the boundaries of the purchase as decided by Commissioner Richmond and repeated in the two southern Crown grants, and the boundaries as understood by Maori. As shown in figure 12, these discrepancies were substantial. Herewini Te Rangai, acting on behalf of the Ngati Pu hapu of Ngati Maru, was disputing that any land to the east of the Paiakau Ridge had ever been alienated. This included not only the ‘third’ identified by Hay in Lachlan McCaskill’s southern grant, that is, the land between the Paiakau Ridge and the Paiakarahi Stream, but also the entire southern grant of Allan McCaskill which was jointly claimed by Ngati Pu and Ngati Tamatera.

While it is not the purpose of this case study to form a judgement upon the boundary discrepancies exposed by the obstruction of Hay’s 1851 survey, the documentary record does provide some insight as to how such discrepancies might have come about. The original purchase transaction was not conducted at Hikutaia, but in fact occurred on Arapaoa Beach on Whanganui Island in the Coromandel Harbour. As has already been indicated, this was a product of the desire of Coromandel Maori to base themselves in areas which allowed for maximum contact with Pakeha. Later, Kawhero of Ngati Karaua accompanied Lachlan McCaskill back to Hikutaia in order to point out the boundaries. These were not traversed in person, but rather were pointed out from the top of Paiakau Ridge. As to the inclusion within the purchase boundaries of the disputed areas east of the ridge, several Maori interviewed by James Mackay junior in 1866 provided testimony similar to that of Te Ruihana Kawhero, reproduced below:

I say it is untrue – Those names were mentioned but not as boundaries, There was a fog on the hills, and McCaskill as he stood with us on Paiakau saw the summit of Kaiaroha peeking through the fog and asked ‘the name of that hill?’ Kawhero replied ‘Kaiaroha’! He then asked the name of another and was told ‘Pukekura near Paiakarahi’; Those names were never mentioned at the Coromandel meeting.<sup>19</sup>

As suggested by H T Kemp when he was given the task of reviewing the Hikutaia grants in 1872, it was not that unbelievable that such a ‘serious misconception’ could have resulted from the ‘imperfect interpretation afforded in those days by Europeans so employed’.<sup>20</sup>

It is difficult, however, to reconcile the above version of events with the fact that no opposition was raised against the sale of Hikutaia South at Commissioner Richmond’s court in June 1843. While Kawhero, the principle seller and the person responsible for pointing out the boundaries of both Hikutaia sales, did not give

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18. Hay to Bell, 14 May 1862, ma 13/36, pt 4.

19. Testimony of Te Ruihana Kawhero, 5 September 1866, translated and recorded by Mackay, *Native Statements*, vol 1

20. Kemp to Native Minister, 21 August 1872, ma 13/36, pt 1

testimony in the case of Hikutaia South, three others who were present at the original sale did. One of these witnesses was Rangituia Hauwhenua, mother of Herewini Te Rangai, the leader of the later resistance against the extent of the McCaskill grants south of the Hikutaia. Herewini would testify before Commissioner Bell in 1859 that while his mother had been present at the 1839 sale of the Hikutaia blocks, she had remained ‘silent’ because ‘she was vexed by Kawhero’s proceedings’.<sup>21</sup> If this was indeed the case, she certainly seems to have recovered from her vexation by the time of Commissioner Richmond’s investigation into the sale of Hikutaia South in July 1843. At that hearing, she gave the following testimony in support of the sale:

That is my signature to the deed before the Court I saw my late Husband and the rest of the Chiefs sign – it was read and explained to us before we affixed our names – we fully understood it and were satisfied – we sold the land described in the Deed to Mr McCaskill at the time we signed – we were aware that we were parting with the land forever . . . we received the Payment specified in the Deed – the Boundaries are correctly described and I can point them out whenever I am required to do so.<sup>22</sup>

The other two Maori witnesses, Huna and Moana, gave very similar testimony. All agreed that the boundaries, as given in the evidence of Lachlan McCaskill, were correctly described. The description given by McCaskill was taken directly from the purchase deed he produced before the court and has already been quoted above.<sup>23</sup> All three Maori witnesses ended their testimony with a variation of the statement that ‘they were able to point out the boundaries whenever they were required to do so’. As it was, they were never called upon to do this. Not until the first survey in 1851 was any attempt made to define the boundaries in a manner more precise than the four line description taken from the original purchase deed. By then, however, as will be shown in more detail later, the relationship between the McCaskills and local Maori had already deteriorated significantly from the harmonious state that had characterised it at the time of the commissioner’s hearing.

By comparison with his 1851 survey, Drummond Hay’s survey of the two Hikutaia North grants in 1857 went relatively smoothly:

In or about 1857. I surveyed some 700 acres on [the] northbank of Hikutaia . . . no opposition whatever was offered and subsequently when Heta put in a claim of some trifling extent. in this block. I was authorised to settle the matter by making a small payment. I saw Heta was amazed that I should give him £10. and he was to accompany me to the land in question and renounce all claim to it. I had no money at the time . . . and when I called subsequently . . . to pay him he was absent[.]<sup>24</sup>

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21. Testimony of Herewini Te Rangai, 6 February 1859, recorded by Commissioner Bell, ma 13/36, pt 4

22. Testimony of Rangituia, 1 July 1843, translated and recorded by Henry Clarke, olc 1/287–291, vol 2

23. See above, p 5

24. Hay to Bell, 14 May 1862, ma 13/36, pt 4.

This second Hikutaia survey was prompted by the passage of the 1856 Land Claims Settlement Act. Under the terms of that Act, Land Claims Commissioner Bell had recalled and cancelled all of the Crown grants covering land at Hikutaia. These grants would only be re-issued once they had been re-investigated by Bell. It has been argued in the main text of this report that Bell did not believe his re-investigations under the Act were meant to re-examine the original Godfrey and Richmond findings. Instead, in his investigations, Bell primarily sought to give old land claim-derived Crown grants full cartographic definition, a goal which, through the promotion of the Act's liberal survey allowance, he hoped would also increase the Crown demesne through the identification of surplus and scrip land. As such, a pre-condition of any investigation by Bell was that the land must be accurately surveyed.

This pre-condition also necessitated a re-survey of the McCaskills' southern grants. Drummond Hay's 1851 survey, obstructed by Herewini Te Rangai, was incomplete having stopped at the eastern boundary of Lachlan's grant, the Paiakarahi Stream. Accordingly, in early 1858 Hay was once again employed by the McCaskills to survey the external boundaries of both their southern grants. And once again, his survey was stopped by those who disputed the sale of any land east of Paiakau Ridge: 'Messrs McCaskill then caused a survey to be commenced, but this was objected to by several of the Ngatimaru, and Tukukino of Ngati Tamatera – many of the ranging rods and pegs were pulled up'.<sup>25</sup> As will be shown in much greater detail later, Lachlan McCaskill was not one to give up easily, especially when the economic viability of his family's staying at Hikutaia depended on his securing the re-issue of his southern grants:

Mr L. A. McCaskill waited for some time, until the whole of the resident Natives went to a meeting at Otau, Whangamata; he then took advantage of their absence and procured the services of a surveyor named Campbell, who completed the survey.<sup>26</sup>

Some 22 years later, W C Kensington, chief surveyor for the province of Auckland, would have the following observations to make upon the combined 1858 survey of Hay and Campbell: 'The government requires a re-Survey of the several grants issued to McCaskill at Hikutaia . . . the original surveys are believed to be very erroneous, and to be classed under those popularly known as "Moonlight" surveys'.<sup>27</sup>

The result of this moonlight survey was that by the end of 1858 both sides at Hikutaia were extremely keen for Commissioner Bell to hold court there as soon as possible. For the McCaskills, the primary motivation was the fact that their timber mill, the primary justification put forward by Fitzgerald for the considerable extension of the grants in 1844, had ground to a halt. This was because they had been denied free access to the timber located upon the southern grant of Allan McCaskill, it being disputed that the land had ever been alienated.<sup>28</sup> Until this could

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25. Mackay, *Memorandum on Herewini Te Rangai's Letter*, 25 July 1866, olc 1/287–291, vol 1

26. *Ibid*

27. W C Kensington to Hickson, 5 February 1880, ma 13/36, pt 2

be resolved, Lachlan McCaskill attempted to negotiate access to a potentially more lucrative alternative. This was a stand of Kauri located at Waipaheke, just to the northeast of his brother's southern grant. Around 1850 Lachlan McCaskill paid Te Ruihana Kawhero an earnest of two casks of tobacco for the right to mill the timber at Waipaheke. This arrangement, however, soon ran into difficulty, as the following testimony of Herewini Te Rangai reveals:

He [McCaskill] went to fell the Kauri timber at Waipaheke. He cut some. We then went and objected. He would not hearken. That was all. I waited until he cut up the timber into boards. I then saw [two] rafts of timber which were to form Mr Lanfears (Revd Mr Lanfears) Church at Kauaeranga. I then detained those rafts. We then had a great quarrel. After this his side being the strongest, he retained possession of the wood, and it was placed on board a vessel named 'Te Hori Heke' – After this McCaskill arranged . . . to cut [some more] of the Kauri timber. I then became angry and on account of the strength of my opposition, they ceased. The kauri logs rotted; and the mill stood idle.

It was my mother (Rangituia) who showed the kauri timber of Waipaheke to McCaskill; but he would not pay sufficient for it – that is why it was objected to – Ruihana attempted to sell it, but I did not admit his right to do so; and prevented him from receiving the £100 and the house – he only got the gunpowder[.]<sup>29</sup>

Denied access to the Kauri at Waipaheke, and with their mill standing idle, the McCaskills were understandably keen for Commissioner Bell to visit Hikutaia and enforce Maori acquiesce to the Crown grants they had been issued, so that they might mill the timber which stood upon the lands conveyed in those grants.

Local Maori were also keen for Commissioner Bell to come to Hikutaia. They had obstructed the survey of the land they claimed had not been alienated, reinforcing their point with what effectively amounted to an economic stranglehold which directly challenged the economic viability of the McCaskills remaining at Hikutaia. The McCaskills, however, did not accept the legitimacy of the Maori case, as was amply demonstrated by the completion of the 1858 survey in their absence.

Even before the moonlight survey of 1858, local Maori had adopted a third mode of resistance, that is, they wrote to Commissioner Bell and asked him to intervene and provide a favourable settlement. This can be seen in Bell's comment that: 'In consequence of numerous Native letters having been at various times addressed to the Government containing objections to the claims, I considered it necessary to hold a court on the spot for the investigation of such objections'.<sup>30</sup> The fact that Bell felt it necessary for him to hold a special court at Hikutaia speaks volumes about the quantity of mail that must have reached him.

Bell eventually got to Hikutaia in February 1859. The first claim he investigated was the McCaskills' purchase at Opukeko. Like Hikutaia North, this had been

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28. Mackay, *Memorandum on Herewini*

29. Testimony of Herewini Te Rangai, 5 September 1866, translated and recorded by Mackay, *Native Statements*, vol 1

30. Bell, 23 June 1862, olc 1/287–291, vol 1

surveyed in anticipation of Bell's investigation under the 1856 Act. Like Hikutaia south, the survey had been obstructed on the grounds that only part of the claim had actually been alienated. At Opukeko, McCaskill had secured the continuance of the survey by repeatedly telling 'them [the obstructors] that the survey was not final or decisive, as the whole decision was to be left to the decision of the Commissioner'. Armed with this assurance that the 'survey was [therefore] a matter of no importance', they allowed it to continue and saved their objections for Bell's Hikutaia court.<sup>31</sup> The result of this chain of events was that when Bell began his investigation into the Opukeko claim the 'natives seized the advantage thus given, and made wholesale objections, many of which appeared to me [Bell] to be quite unsustainable'. Bell's response to this opposition, as reported by him three years later, was to:

state distinctly to them, that it was impossible for me to entertain the claims of those who were mere children at the time of the sale . . . or [who] had failed to bring forward their objections in a valid manner before the investigating Commissioners in 1843.<sup>32</sup>

This reprimand failed to have the desired effect. Indeed, such was the continued intensity of opposition expressed before the commissioner in regard to the Opukeko claim that McCaskill told Bell he would not proceed with any of his claims, including those at Hikutaia. He subsequently relented from this position, however, and consented to Bell investigating the grants north of the Hikutaia.<sup>33</sup> If McCaskill had expected this would give him some respite from the barrage of opposition, he was seriously mistaken. Asked for his opinion regarding the northern grants, Herewini Te Rangai immediately evaded the question and sought to provoke a discussion of the disputed boundaries south of Hikutaia Creek.<sup>34</sup> Faced with the certainty of prolonged opposition to his southern grants, McCaskill 'at length made an application to me [Bell] to postpone the whole of the claims until he should be able to produce other evidence – I of course at once granted the adjournments, and informed the natives accordingly'.<sup>35</sup>

Further light is shed on the exact nature of this adjournment by a written summary of proceedings signed and dated by Bell three days after the court had first opened:

Mr McCaskill here made an application to the Court to postpone a decision on *any of the claims* until he should have an opportunity of assembling those natives who could give evidence in his favour.

The Court acquainted Mr McCaskill that this application appeared fair, and would be granted. At the same time the Court intimated that the course which Mr McCaskill

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31. Hay, *Sworn Testimony of Natives at Hikutaia Lands Claims Court*, 3 February 1859, ma 13/36, pt 4. Corroborated in Bell, 23 June 1862, olc 1/287–291, vol 1.

32. Bell, 23 June 1862, olc 1/287–291, vol 1

33. *Ibid*

34. Hay, *Sworn Testimony*

35. Bell, 23 June 1862, olc 1/287–291, vol 1

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had pursued appeared the most suicidal, because up to the present time a mass of hostile evidence had been tendered and not a single favourable testimony given; and that it did not appear that any steps whatever had been taken by him to meet this hostile evidence though he was aware it would be offered. That under the circumstances the Court would grant the postponement of the hearing. The Commissioner informed the natives accordingly, that the case would be postponed until Mr McCaskill [could] have an opportunity of producing more evidence. [Emphasis in original]<sup>36</sup>

It is difficult to reconcile Bell's subsequent actions with this earlier account of his reasons for the adjournment of the Hikutaia court. On the one hand, it is clear that given the sympathy of Hikutaia Maori for the objectives of the King Movement, Bell was reluctant to return immediately to Hikutaia.<sup>37</sup> But while it might be argued that the increasing tension between the Government and the Kingites justified a postponement of Bell's promised return, it certainly cannot be held to justify the course he subsequently pursued. For Commissioner Bell never returned to Hikutaia. On 15 May 1862, Drummond Hay appeared before Bell in Auckland and presented the court with a memorandum regarding the surveying of Hikutaia. After acknowledging the 1851 obstruction by Herewini Te Rangai, Hay's memorandum stated:

This was the only opposition offered during the survey. Within the last three or four years other opposition has arisen.

I consider that the opposition could be disposed of by payment of a certain sum . . . I imagine that if they were informed that the matter was to be finally disposed of and no further reference to it permitted they would be willing to accept a sum of money in preference to persisting [with] their claims[.]<sup>38</sup>

Hay's evidence in 1862 was consistent with earlier testimony he had submitted to Bell shortly after the Hikutaia adjournment:

The disposition evinced by the natives to oppose Mr McCaskill's claim appears to increase every year . . .

There is some truth I think in the supposition that the natives have taken advantage of the confusion created by the numerous names that exist for the various portions of a block[.]<sup>39</sup>

By relegating the opposition of local Maori to the level of personal greed or financial opportunism, and by suggesting that it could be removed by a monetary payment, Hay was making a conscious decision to downplay the determination of that opposition. For not only had Hay been twice obstructed in attempting to survey the southern grants, he had also been employed by the McCaskills in their Kauri

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36. Bell, 6 February 1859, ma 13/36, pt 4.

37. John Hutton, 'Troublesome Specimens: A study of the relationship between the Crown and the Tangata Whenua of Hauraki 1863-1869', MA Thesis, University of Auckland, 1995, p 66

38. Hay to Bell, 14 May 1862, ma 13/36, pt 4

39. Hay to Bell, 16 June 1859, ma 13/36, pt 3

removal operations.<sup>40</sup> He would have been only too aware then, of the seriousness of the economic stranglehold currently exercised over the McCaskills' property.

The importance of Hay's evidence was highlighted when on 16 May 1862, the day after Hay had appeared, Lachlan McCaskill appeared before Commissioner Bell. Lachlan requested that all four Hikutaia grants should be re-issued immediately. In support of this request he produced no evidence other than citing the memorandum presented by Hay the day before.

Five weeks later, Bell recommended that grants should be re-issued for the land north of Hikutaia, and for Lachlan's block south of Hikutaia. The issue of a grant for the other southern block, that of Allan McCaskill, was delayed until March 1864.<sup>41</sup> It is clear from Bell's report containing these recommendations that he placed considerable stock in the testimony of Drummond Hay. Explaining his re-issuing of the grants covering Hikutaia North, Bell commented: 'I have a certificate from the District Land Purchase Commissioner [Hay] that there is no risk [of Maori disturbance] in issuing the grants immediately'. As for Lachlan's southern grant, Bell noted that:

the District Land Purchase Commissioner has stated in evidence that when he made the survey . . . there was no opposition excepting that of Herewini, son of the chieftainess Rangitua, she was a party to the sale to McCaskill and admitted such before the investigating Commissioners in 1843 . . . I cannot admit that Herewini shall now be entitled to dispute his mothers sale. Moreover Mr Drummond Hay states that there would be no risk of Herewini seriously disturbing Mr McCaskill's possession, and that if any opposition was made it would be made by natives who gave no notice of their claims prior to the survey[.]<sup>42</sup>

Several points might be made about Bell's report. Firstly, Bell was clearly misled in assuming that any subsequent disturbance of the McCaskills' possession would be groundless because there had been no indication of its existence during the survey of the southern grants. While James Campbell could truthfully write to McCaskill in 1858 'that no obstruction whatsoever was offered by the Natives to the survey of any of the lines', this was because the survey had been carried out in the absence of the local residents who, at the time, were on the other side of the Coromandel Peninsula.<sup>43</sup> While Bell may have been unaware of this, he no doubt would have been informed of it had he kept his promise to return to Hikutaia to hear further evidence upon the McCaskill claims. Secondly, it has already been argued that Hay consciously downplayed the determination and nature of the opposition of local

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40. Testimony of Herewini Te Rangai, 5 September 1866, translated and recorded by Mackay, *Native Statements*, vol 1

41. There were several reasons for this delay. The primary one was that the derivative holders of S M D Martin's Hikutaia grants had the first right to select land at south Hikutaia as a result of a much earlier arrangement. As has already been shown, this was problematic in that the McCaskills claimed to already occupy all the available land at Hikutaia. Other problems causing delay were the issue of outstanding fees, Lachlan McCaskill's right to represent his brother's interests, and attempts to gain scrip in exchange. For the large collection of relative correspondence see ma 13/36, pt 5.

42. Bell, 23 June 1862, olc 1/287-291, vol 1

43. Campbell to L A McCaskill, 1 November 1858, olc 1/287-291, vol 2

Maori to the boundaries as conveyed in the Crown grants. Bell himself must have been aware that this was the case because of the ‘mass of hostile evidence’, to quote his own minutes, advanced at the 1859 Hikutaia hearing.<sup>44</sup> Which leads on to the perhaps the most important point surrounding Bell’s 1862 report, that is, the massive discrepancy in tone between it and his minutes taken immediately after the adjournment of the Hikutaia court. Bell’s 1862 report makes no mention of Lachlan McCaskill’s failure to subsequently bring forward any supporting witnesses, nor of his own promise to return to Hikutaia to allow for a full investigation of the Hikutaia grants. These omissions, reliance upon the testimony of Hay, and the inclusion of statements such as: ‘after much verbal communication with the parties interested, I have arrived . . . [at] the present position’, seem to amount to a deliberate ignoring of the evidence.

Certainly this is how the report would have been perceived by those Maori who still maintained an interest in the land granted at Hikutaia. This can be seen in statements recorded by H T Kemp in 1866 which clearly show the impression and expectations local Maori took away from the 1859 hearing:

McCaskill was not satisfied, he asked for an adjournment until he could procure evidence in support of his claim from the NgatiKaraua . . . We understood Bell was to come back to finish Kakaramea [North Hikutaia] – There was nothing further said about the land on the south side of the Hikutaia Stream . . . I, and every one else supposed it was to be investigated when McCaskill produced the evidence from Ngatikaraua; and Mr Bell returned to hold the Court – McCaskill has never found the witnesses – and we have been waiting for Mr Bell to come back to complete his work and fulfill his promise[.]<sup>45</sup>

The feeling of local Maori that a wrong had been committed against them as a result of Bell’s non-fulfilment of his 1859 promises was strong and enduring. This can be seen in the following memorandum from E Puckey, written after he had personally visited Hikutaia in 1872:

Some dispute having arisen the Court was adjourned . . . they [local Maori] had no notice of any subsequent sitting of the Court at which the cases were further gone into and a decision given and it has been difficult to convince them that Crown Grants had actually been issued in favour of the McCaskills upon these grounds, therefore the Natives complain that an injustice has been done them[.]<sup>46</sup>

Denied the chance to present their grievances before the commissioner’s court, those who claimed an interest in the disputed land at Hikutaia continued to maintain their previous forms of resistance. They continued to deny the McCaskills free access to the timber located upon the disputed lands and maintained a steady correspondence with various Government agents.<sup>47</sup>

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44. Bell, 6 February 1859, ma 13/36, pt 4

45. Testimony of Herewini Te Rangai, 5 September 1866, translated and recorded by Mackay, *Native Statements*, vol 1

46. Puckey to Kemp, 5 July 1872, olc 1/287–291, vol 1

Significantly, they also adopted new forms of resistance. In 1866, Te Rangai and four others petitioned Parliament on behalf of the runanga of Ngati Pu. The petitioners asked that Parliament annul the grants to the disputed lands and appoint a fresh tribunal to look into the case:

The reason is a grievance of ours – and our living in affliction. Because our land is taken by the hand of (Mr) McCaskill and the Crown grant. According to our idea the Crown Grant is wrongfully taken by this European . . . because Mr Bell’s investigation was not quite completed . . . We do not know what person gave that land to him – And the final survey we never saw.<sup>48</sup>

A second form of active resistance commenced by those Maori who maintained an interest in the lands granted to the McCaskills was, from 1868, to take up continuous residence at Hikutaia.<sup>49</sup> The precise location of this settlement is not clear. An 1872 memorandum from E Puckey locates it adjoining the creek on the block granted to Lachlan McCaskill north of the Hikutaia. If this was in fact the location, it would be highly significant because this was the area whose alienation was least disputed by local Maori. Other correspondence, however, seems to locate the settlement somewhere on the two southern grants, or on Allan McCaskill’s northern and southern grants.<sup>50</sup>

While the exact location of this settlement may not be clear, there can be little doubt as to its impact which was to decrease even further the economic viability of the McCaskills’ continued residence at Hikutaia. This is reflected in the following extract from a letter written on behalf of David Nathan. Nathan held the mortgage over the McCaskill lands. The letter sought to draw the attention of the Defence Minister, Donald McLean, to:

certain encroachments and annoyances, which Allan McCaskill . . . has been subjected to by aboriginal natives having encroached on his lands, for which he holds a Crown grant, and on which, notwithstanding his repeated notices for them to leave, they continue to reside, to his great injury and loss; he only being able to beneficially

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47. See for example, Herewini Te Rangai to James Mackay, 4 June 1866, in which Te Rangai asks Mackay to come to Hikutaia and settle the continuing dispute. olc 1/287–291, vol 1.

48. Herewini Te Rangai and others, 7 August 1866, olc 1/287–291, vol 1. I can find no reference in the AJHR to this petition having being reported upon by a select committee.

49. As shown in figure 11, previous to this there was already a significant site of Maori settlement bordering the McCaskill grants. This earlier site was inhabited by refugees from the Waikato tribes, principally Ngati Haua, who had kinship ties with those at Hikutaia. The settlement was a product of ‘the expulsion of the Maori living near Auckland into the Waikato and the subsequent confiscation of the Waikato lands . . . While Ngati Haua retained territory outside of the confiscation boundaries . . ., their post-war resources were not large enough to support such large numbers of refugees’. Hutton, p 73. It is highly interesting that a James Mackay sketch map, dated 25 July 1866, has the Waikato settlement located on both banks of the Hikutaia, the southern portion being approximately one-quarter of the total area taken up by the settlement. On his sketch, Mackay has annotated the southern portion of the settlement with the comment: ‘Waikato refuge settlement, abandoned by my orders, to prevent dispute’. Mackay, ‘Rough Sketch of lands granted to Messrs McCaskill at Hikutaia – Thames’, 25 July 1866, olc 1/287–291, vol 1.

50. Fannin, 13 May 1878, olc 1/287–291, vol 1 refers to a July 1870 letter in which Allan McCaskill ‘informed the Government that the natives had within the past twelve months taken possession of the whole of one section of land and part of another owned by him’.

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occupy about 300 Acres; out of about 4,000 Acres [the approximate area of both the southern grants]. The houses and pigs belonging to the natives are doing great damage to his land, and his fences are continually destroyed. On one occasion the Natives burnt a fence which divided the farm.<sup>51</sup>

The last sentence gives an indication of the consequence of this new form of resistance. While the issue of the ownership of the land remained at all times the fundamental one, from the late 1860s the conflict at Hikutaia intensified to a very personal level as a result of the close proximity of the two parties and of the increasingly desperate economic situation of the McCaskills.

It is clear that the McCaskill brothers were both very determined individuals. Given the situation they increasingly found themselves in, it is perhaps understandable that they did not draw back from inflicting inconvenience upon those who, through the effective imposition of an economic stranglehold, were attempting to force them and their families off the land.

In its mildest form, this inconvenience took the form of the McCaskills closing down two Maori roads which traversed their southern grants. As Herewini Te Rangai testified to James Mackay in 1866:

McCaskill has stopped two main roads, running through the land. One is the great road leading up the eastern side of the Thames, and the other is the road leading from Hikutaia to Whangamata. These roads have been used by our ancestors from the earliest times, and they are now closed for the first time by this European.<sup>52</sup>

Not even the intervention of Mackay himself, in his capacity as Civil Commissioner, could dissuade them from this course of action:

On the 1st May 1865 I called on Mr Allan McCaskill and requested him not to stop the roads – He refused to accede to my wishes – I then denied his right to do so as they had been used as public roads for many generations. The tracks have been partially closed since that time . . .

The blocking up of these paths has been productive of much mischief and ill-feeling[.]<sup>53</sup>

Other examples of activities which contributed to this heightened ‘mischief and ill-feeling’ are highlighted in the following extract from a memorandum which dealt with the shooting of three of the McCaskills’ cattle:

With regard to the cattle shooting. The natives do not deny that they did wrong but they excuse themselves for having done so on the plea that it was a ‘safer utu’ for Lachlan . . . McCaskill having killed a number of their pigs, and also for his having tied up by the legs one of their horses which had strayed into one of Allan McCaskill’s paddocks[.]<sup>54</sup>

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51. Nathan’s Attorney to McLean, 28 June 1872, o/c 1/287–291, vol 1

52. Testimony of Herewini Te Rangai, 5 September 1866, translated and recorded by Mackay, *Native Statements*, vol 1

53. Mackay, *Memorandum on Herewini*

The response of the McCaskills to the cattle shooting was to have a summons issued against Herewini Te Rangai. Although it is doubtful this summons was actually delivered in the correct manner, the point is a moot one because Te Rangai failed to appear in court.<sup>55</sup> While the Pakeha jury found against Te Rangai, the judge refused to issue a warrant for his arrest unless Puckey consented. This Puckey refused to do, prompting an exchange with Allan McCaskill which provides an excellent insight into the latter's frame of mind by 1870:

I [Puckey] told him I thought the most prudent course to adopt would be not to take out a warrant as the attempt to carry it into execution would I was convinced be attended with a serious breach of the peace. He then told me he had thirty years of native experience and would yield to no one in his opinion. [H]e knew how best to secure peaceable possession of the land . . . all that was required was that a warrant should issue for the apprehension of Herewini te Rangai [sic] which should be held out as a threat hanging over his head in case any further molestation should be attempted[.]<sup>56</sup>

The dispute between the McCaskills and local Maori continued to escalate until it reached the level of acts of violence against individuals. These acts were perpetrated by both sides in the dispute. In August 1872 Lachlan McCaskill wrote a letter to draw to the 'attention of government' the details of one such attack. After declaring that he and his brother had been forced by the attack to withdraw their cattle and pigs so that they were no longer able to make a living off their lands at Hikutaia, Lachlan went on to write:

I will only add that the the [sic] personal attack lately made on me by the natives was the third attack made upon me within three years. On the first occasion I was enabled to master the aggressor though armed with a knife. On the second occasion I attained possession of the assailants axe and with this kept him at bay until I found I must either use it against him to his destruction or let him close with me which event I have no doubt he would have used it against me to my destruction he being much the stronger person as a last alternative I flung it over a fence and by this means escaped but not until he had severely maltreated and assaulted me. I refer to this simply as a reason for the conviction that it is too dangerous to attempt to protect the . . . crops until these natives have been reprimanded[.]<sup>57</sup>

According to Puckey, Lachlan McCaskill was 'a most cantankerous person . . . who according to statements made to me by disinterested parties of both races misses no opportunity of committing petty acts of spite to irritate and vex his Maori neighbours'.<sup>58</sup> Lachlan may have been committing such a 'petty act of spite' on 1 June 1872 when he was accosted by a group of local Maori, one of whom he shot

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54. Puckey, 23 November 1870, ma 13/36, pt 3

55. It would seem that the summons was not delivered personally to Te Rangai but thrown at the door of a house which did not even contain him. *Ibid.*

56. *Ibid.*

57. A McCaskill, 7 August 1871, ma 13/36, pt 1

58. Puckey, 23 November 1870, ma 13/36, pt 3

and seriously wounded. The Maori had been drawn to the site of the shooting by hearing the sounds of their pigs being disturbed by dogs. Their arrival coincided with that of Lachlan McCaskill, who was carrying a gun and holding one of his dogs on a flax leash. Upon sighting McCaskill, one of the group, Hoani Pahau, approached Lachlan who shot him before they came together. As might be imagined in light of the ongoing dispute at Hikutaia, each side gave considerably differing testimony with regards to the manner of Hoani's approach and the degree of warning shouted by Lachlan before he opened fire. The case came before the Supreme Court in Auckland in early July 1872. Maori testimony, taken previously before the Resident Magistrate at Hikutaia, was presented to the court and then Allan McCaskill, who had arrived at the scene prior to Lachlan, gave evidence as the only defence witness. The all-Pakeha jury acquitted him of the charge of discharging a firearm with intent to injure on the grounds that he had acted in self-defence. To quote J W Lewis, a Native Department official:

It is clear that the jury gave the preference to the evidence of the European – tho' according to the dispositions [before the Resident Magistrate] the consistency of the evidence of the Natives appear to stamp it as truth and if so the case of Hone Pahau is a very hard one.<sup>59</sup>

It is impossible to reconstruct so long after the event exactly what happened on the day of the shooting. This is especially so in this instance where there is no independent third party to corroborate the evidence of two sides polarised by a prolonged and bitter dispute. There can be no doubting, however, that the shooting and its subsequent repercussions represent the climax of the dispute over the McCaskill old land claims at Hikutaia. These repercussions began almost immediately upon the verdict being announced. On the day the trial ended, Puckey wrote to McLean that the acquittal of McCaskill had 'caused so much sensation and disappointment amongst the Natives' that he did not think it wise or safe for Lachlan McCaskill to return to Hikutaia in the near future.<sup>60</sup> On the recommendation of Native Lands Commissioner Daniel Pollen, McCaskill was cautioned accordingly and decided to stay in Auckland for the meantime.<sup>61</sup> The wisdom of that decision was borne out by a meeting of local Maori at Hikutaia on 11 July. The results of that meeting, called specifically to discuss the McCaskill verdict, were subsequently conveyed by the participants in a letter to McLean:

the law has made a mistake in allowing McCaskill to get off unpunished.

Do not let him return to his land at Hikutaia but leave it as payment for Hoani Pahau's blood, he must not return, his brother and the children must be expelled from Hikutaia, Leave his land as payment for the blood of Hoani.

These words are lasting.<sup>62</sup>

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59. Lewis to McLean, 10 August 1872, olc 1/287–291, vol 1

60. Kemp to McLean, 6 July 1872, ma 13/36, pt 1

61. Pollen minute, 8 July 1872, on Kemp to McLean, 6 July 1872, ma 13/36, pt 1

62. Eru Te Ngahue and twenty others to McLean, 12 July 1872, ma 13/36, pt 2

Significantly, the same letter makes it clear that the repercussions from the acquittal of Lachlan McCaskill extended beyond the immediate issue of the old land claims at Hikutaia. Specifically, Lachlan's acquittal had incensed Maori throughout the Upper Thames region and they had begun to question the justice of the European legal system itself. After outlining several instances where Hauraki Maori had previously turned over individuals to, or allowed certain incidents to be dealt with under, the Pakeha system of law, the letter asked that the testimony and proceedings of the case be translated and published in Waka Maori. They asked that this be done so that they might be able to come to some understanding of why McCaskill was acquitted and Haoni Pahau found to be in the wrong.<sup>63</sup> As Puckey wrote to the Under-secretary of Native Affairs, G S Cooper, the:

Natives [are] extremely dissatisfied and say they will not allow any similar case for the future to go before the Supreme Court – But will take the law into their own hands [for] they feel that no jury composed of white men will convict one of their own colour of an offence against a native.<sup>64</sup>

These sentiments were just as strong two weeks later, when another meeting took place amongst local Maori. 'The object of the meeting was to consider the course pursued by the Jury in discharging McCaskill . . . and also to consider the propriety of admitting Maoris to form part of the Jury in such cases'.<sup>65</sup>

Even amongst such fundamental questioning of the possibility of the European legal system delivering justice to Maori, the participants at this second meeting still found time to reiterate their earlier demand that 'Makahiki', McCaskill, should not return to the Thames district. This was a clear indication that they were not in any way placated by McCaskill's decision, five days earlier, to allow the reopening and marking off of the two Maori roads previously blocked on his property.<sup>66</sup> It was not until October 1872, almost exactly four months after his acquittal, that Lachlan McCaskill returned to Hikutaia. His motivation in doing so seems to have been to place pressure upon the Government to buy out his family's interests at Hikutaia, having recently had the land valued by a private valuer.<sup>67</sup> His presence certainly had the potential to provoke a further incident in the long running dispute. As much can be seen in the following letter, written on behalf of all Ngati Pu, on the very day McCaskill arrived back at Hikutaia:

Salutations to you. This is a word to you respecting Mr McCaskill, who has been seen back here.

Friend. Come and bring him back from this. If he is left here, we will do as we have said if he again begins any evil influence, he will be killed by us.<sup>68</sup>

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63. Ibid

64. Puckey to Cooper, 9 July 1872, ma 13/36, pt 2

65. Taipari to McLean, 25 July 1872, ma 13/36, pt 2

66. Pollen to Native Minister, 20 July 1872, ma 13/36, pt 2

67. Pollen minute, 10 October 1872, on Pokai to Puckey, 8 October 1872, ma 13/36, pt 2

68. Pokai to Puckey, 8 October 1872, ma 13/36, pt 2

The Colonial Government, however, would not be pressured. Throughout the dispute it had consistently refused to attempt a resolution by buying out the McCaskills' interests. Instead, the McCaskills, financially ruined by the prolonged dispute, sold their interests to Henry Alley, a settler from the Hawkes Bay.

While the removal of the McCaskill brothers from Hikutaia ensured that the dispute was much less intense, it was certainly not given up by local Maori, who continued to reside upon the property and thereby limit its economic viability. Writing in April 1873 to Dr Pollen, recently recalled to the Legislative Council, Henry Alley stated that the resident Maori refused to allow him to lay drains so as to increase the cultivable acreage of the property. They also opposed the erection of fences and burnt down a whare which housed one of his workers.<sup>69</sup> When this failed to provoke a satisfactory response he wrote to other governmental officials, for example, Julius Vogel, at that time Premier, to whom he complained that:

the natives are preparing to plant their crops on the land so disputed.

I therefore have to submit to the Government the advisability of their at once having this matter settled, as owing to my cattle and men being on the land there may be disputes and ill-feeling in the event of their crops being damaged[.]<sup>70</sup>

Local Maori also continued their long-established practice of corresponding with Government officials in an endeavour to gain recognition of their rights to ownership of a substantial portion of the lands which had been Crown granted as a result of the McCaskills' old land claims at Hikutaia. One such effort was the 1876 petition of Tamati Paetai and thirteen others, on behalf of all Ngati Pu. While the relevant Parliamentary select committee reported that it was 'entirely unable to investigate the merits of the petition', it also suggested that the Executive branch might wish to investigate the matter further by referring it to the Native Land Court.<sup>71</sup>

This was in fact what occurred, although, as has already been seen, the eventual referral was in response to the claims for compensation by the derivative holders of S M D Martin's Hikutaia grants, rather than the 1876 petition. The investigating Judge was Henry Halse, sitting at Shortland township, in August 1879. Significantly, the eventual written judgement by Halse gives extensive and highly sympathetic coverage to the various grievances raised by local Maori in relation to the McCaskill old land claims at Hikutaia. That Halse was willing to go to such lengths is especially interesting when it is considered that he would eventually rule that, because the lands at Hikutaia had been Crown granted, the court only had jurisdiction to recommend compensation for Martin's derivatives and could make no recommendations relating to the validity of the grants themselves.<sup>72</sup> It seems probable that it was because of the highly sympathetic coverage given by Halse that

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69. Alley to Pollen, 14 April 1873, ma 13/36, pt 1

70. Alley to Vogel, 29 August 1873, ma 13/36, pt 1

71. John Bryce, 'Report on Petition of Tamati Paetai and Thirteen Others', 6 October 1876, AJHR, 1876, i-4, p 18

72. Halse, 26 August 1879, olc 1/287-291, vol 1

in 1880 the Government finally moved to negotiate a form of settlement with local Maori at Hikutaia. The exact nature of this, and subsequent settlements, is not at all clear and will need to be more fully researched before definitive statements can be made.

Certainly, as this case study has shown, any settlement was a long time coming. Since the very first survey in 1851 had exposed the differing conceptions of the area purchased in December 1839, those Maori who had traditionally asserted an interest in the disputed lands had resisted the subsequent Crown grants being made effectual. This resistance had initially taken three main forms, resistance to survey, correspondence to colonial officials, and most important in the long run, denial of effective economic use of the property. While Commissioner Bell in his 1862 Report to Parliament, and Drummond Hay in his surveyor's memorandum before the Auckland sitting of the commissioner's court, deliberately sought to downplay the scope and depth of this resistance, they were in this instance unsuccessful. This was because local Maori reacted to the above attempts to deny them an opportunity to present their case with the continuation of old, and the adoption of new, modes of resistance. In addition to petitioning Parliament directly, Ngati Pu took up residence upon the disputed lands. As well as tightening their economic stranglehold, this also placed the two sides in close proximity. The combined effect of these two factors was an intensification of resistance which climaxed in personal acts of violence by both sides.