MANGATU

THE CUSTOMARY INTERESTS OF NGARIKI KAIPUTAHI IN THE MANGATU BLOCK AND THE PROCEEDINGS OF THE NATIVE LAND COURT

A report prepared for Ngariki Kaiputahi for the Mangatu Remedies Inquiry
and commissioned by the Crown Forestry Rental Trust

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A INTRODUCTION

1. The Native Land Court's dealings with the Mangatu block and, in particular, the evidence of witnesses and the submissions of representatives of different kinship groups, are spread over many hundreds of pages of the Court's minute books. They extended through several decades of the twentieth-century as the descendants of three tipuna, Ngariki Kaiputahi, Wahia and Taupara, attempted to have their customary interests in the block acknowledged in the title. Interventions in these proceedings by the Crown, and not just in creating a title which was inconsistent with tikanga, but in effecting change through private and special legislation, continued to have a profound effect on the ongoing customary disputes about the land.

2. This report focuses on the interests of one of those kinship groups: Ngariki Kaiputahi. It is particularly concerned with the Court's dealings with the interests of Rawiri Tamanui and efforts by his descendants to have their claims to the block recognised in the context of an initial decision which marginalised their place on the land. This decision, which the Waitangi Tribunal subsequently found to be 'clearly unsound', had far-reaching consequences for the dealings with the Native Land Court in relation to Mangatu. It is also a decision that Ngariki Kaiputahi have refused to accept over several generations.

3. The purpose of this project was to investigate the nature and extent of Ngariki Kaiputahi interests in the Mangatu block. It commenced with research using the document bank compiled by Bernadette Arapere for her 'Ngariki Kaiputahi Research Report' but there were some significant omissions in the document bank which were addressed through further supplementary research using Native Land Court minute books. Research was also undertaken using Crown records held at Archives New Zealand in Wellington relating to a number of petitions about Mangatu and the administration of the block.

4. The Mangatu lands are obviously a taonga for the iwi and shareholders who own them, but they are also well-known as a valuable financial asset. This asset has been built up over generations through the diligent efforts of trustees and committees of management elected by the owners who have carefully administered the lands in what have often been challenging conditions (not least those imposed by the Crown). However, there have also been periods where owners have raised concerns about the activities of the

incorporation with Crown and some of them have been investigated. The Native Land Court often had a supervisory role in relation to the administration of the land and the East Coast Commissioner was given control of the farms for an extended period.

5. There is a distinction which can be drawn between complaints and hearings relating to customary interests in the blocks and the allocation of shares in the title and complaints and hearings relating to the administration of the blocks. The former discloses useful evidence of customary interests in the land and is the focus of this report. Questions and evidence relating to administration are not examined in this report as it is concerned with accounting, leases and these kinds of issues which are not usually useful when exploring customary issues.

6. The emphasis is on the evidence presented by witnesses at the substantive hearings rather than the submissions made by representatives appeals (which tended to draw on or summarise other evidence). The witnesses who spoke in the Native Land Court were tipuna of the claimants and a purpose of this report is to make their voices heard. The appeals tended not to deal with new evidence but took the form of submissions to the Court by representatives of the parties who drew on the evidence given in the different hearings. They essentially repeat, albeit with emphasis, the evidence of tipuna at earlier hearings. The decisions of the Appellate Court can be helpful in that they set out the nature of the appeals and the reasons adopted by the Court for accepting or rejecting an appeal. Copies of some of the decisions are included as an appendix. Overall, however, the focus is on the evidence presented by tipuna or their representatives at the Native Land Court hearings. An effort is also made to rationalise the different phases of the proceedings in a coherent narrative.

7. Much of the focus is on the Court's first determination of relative interests and the fallout from this which led to special legislation which required the Court to reassess the interests of descendants of Taupara in the block. There is also discussion of the Court process which led up to this hearing, the special legislation which followed and the subsequent proceedings, first to allocate a proportion of the shares to each of the three kinship groups and then, within those allocations, to determine shareholdings for individual owners. Some of the complaints which followed the Court's final determination, including the petitions by Edward Mokopuna Brown, are also examined.

8. It is not the purpose of this report to deal with the interests of other kinship groups and it has not been possible in the time and resources available to address comprehensively the dynamics which are evident from the Court's proceedings. It is not appropriate in these circumstances, if it ever is, to attempt to define or otherwise identify the other kinship groups. Ngāti Wahia and Te Whanau a Taupara are referred to in this report as they figure in the proceedings which are examined. How they are connected to each other and to Ngariki Kaiputahi is not considered here. What can be said is that the evidence shows Ngariki Kaiputahi were an ancient people with an independent whakapapa and independent identity who were, nevertheless, related, even closely related, to Ngāti Wahia and Te Whanau a Taupara by intermarriage and descent. The evidence examined for the purposes of this report, however, is clear, that they were not a kinship group or hapū of another iwi.

9. Having acknowledged that this report is not a comprehensive assessment of either customary interests in Mangatu or the Court proceedings in their entirety, a number of key points arise from the evidence:

- Ngariki Kaiputahi were clearly recognised as having an interest in the land (whatever the consequences of conflict over the land might have been);
- Ngariki Kaiputahi were initially awarded a much smaller proportion of the block than Ngāti Wahia;
- Te Whanau a Taupara were initially excluded from Mangatu No. 1 by the Native Land Court as a result of the Court's interpretation of the 1881 decision but this decision was overturned by statute following petitions to Parliament (and the statute was drafted by counsel representing Te Whanau a Taupara);
- It does appear there were two distinct lines of judicial thought on the interpretation of the statute with the appellate judges taking a narrower view than the Native Land Court judge and the Supreme Court taking a very broad view;
- The shareholding awarded to Ngariki Kaiputahi was further eroded by adding Te Whanau a Taupara owners to the block;
- Re-opening the title to allow descendants of Taupara into the block led to many claims from whanau who lived elsewhere – the proceedings suggest that this particular whakapapa line was prodigious and that Wi Pere's efforts to limit the claims from those descended from Taupara was a strategic decision to avoid dealing with claims from all over the wider region;
- Through these proceedings (both stages), an ongoing issue was the inclusion of Ngariki claims in the lists for the descendants of Wahia and Taupara;
- It appears that Ngariki people relied on their shared whakapapa to seek inclusion in the title through Wahia and Taupara whose descendants were awarded a much larger proportion of shares by the Court;

- Rawiri Tamanui's descendant, Hira Te Uatuku, would not acknowledge that Ngariki Kaiputahi were conquered or otherwise dispossessed of their lands at Mangatu and that while they vacated them from time to time in response to conflict, they returned and occupied there once a threat had dissipated;
- All of the subsequent assessments of Ngariki Kaiputahi interests in the block were predicated on the 1881 decision and its finding about them (which has been characterised by the tribunal as 'clearly unsound'), particularly the crucial Native Appellate Court's decision regarding the allocation of shares to each of the three kinship groups and the report of the deputy secretary on E.M. Brown's petition, which formed the basis for the select committee's decision.

10. It follows from the conclusions that it would be risky to rely on the Court's general awards as representing the shares of each of the kinship groups. For Ngariki Kaiputahi it would appear to represent the minimum allocation but not the total allocation after accounting for owners included in the title through others lists.

11. More importantly, however, there is the ongoing shadow cast over Ngariki Kaiputahi by the decision of the Court in 1881. It will be noted that this report focuses primarily on proceedings of the twentieth-century. The Waitangi Tribunal completed a thorough assessment of the manner in which title was determined during the course of its district inquiry and the 1881 hearings have not been revisited for the purposes of this project. The tribunal's findings in relation to the 1881 decision, in particular, are set out in *Turanga Tangata Turanga Whenua,* and these are accepted and relied on in this report. The tribunal concluded that the decision was 'clearly unsafe:'

> We find that the 1881 judgment by the Native Land Court for the title determination of the Mangatu block was clearly unsafe. The court did little to resolve the conflicting evidence put before it and its written decision was contradictory and unclear. It failed to properly interpret the competing evidence of Wi Pere and Wi Mahuika and it treated all Ngariki as a single, homogeneous group, when evidence was given that clearly indicated that this was not the case. Our concerns here are supported in part by the Native Land Court in 1916 and the Native Appellate Court in 1922. We add our conclusion from the evidence that the community of owners represented by Wi Pere did not subsequently act in a way that suggests that Ngariki were considered by them to be conquered and living in a state of servitude. This is a strong indication that the court in 1881 got its tikanga wrong.[1]

12. The tribunal goes on to absolve the Crown for responsibility for this situation and notes that it initially had little consequence because for several decades the decision was simply ignored by the owners. Trustees administered the land initially under the trust deed and later through a committee elected under the Mangatu No. 1 Empowering Act

[1] Waitangi Tribunal, *Turanga Tangata Turanga Whenua. The Report on the Turanganui a Kiwi Claims,* Wellington: Legislation Direct, 2004, p. 693.

1893. This situation changed profoundly as the Native Land Court moved to determine relative interests in the block.

13. As the tribunal notes, this situation became manifest in two ways. The first was in the awards to the three kinship groups found to have interests in the block where the Court's determination marginalising Ngariki Kaiputahi was given substance in the comparatively small award made to them. Even if the Court took other factors into account in reaching its decision (and it should be emphasised that this is no acknowledgment that what the court was doing was consistent with tikanga), the wide variation in the award made to Ngariki Kaiputahi and the awards to other kinship groups emphasises the continuing consequences of the Court's determination in 1881.

14. Indeed, it was the Court's dealings with relative interests and then the Crown's response to complaints from Ngariki Kaiputahi leaders about the extent of their rights in the block which gave effect to the decision (despite the evident confusion and ambiguity which the tribunal, and on occasions before it the Native Land Court and Native Appellate Court, acknowledged). Until the Waitangi Tribunal's assessment of the evidence and finding, the decision was relied on to limit the area of the block awarded to Ngariki Kaiputahi owners.

15. The focus in this report is primarily Mangatu No. 1 and the customary disputes which arose in relation to this block. The nature of these disputes drew in Mangatu No. 4 and this block is referred to even though none of the Crown forest licensed land is located on this part of Mangatu. What has become colloquially known as 'the 1961 land' is located in Mangatu No. 1.[2] Much of the Mangatu No. 2 block, immediately adjacent and located to the west of Mangatu No. 1, is also Crown forest licensed land.

16. The circumstances of the Mangatu No. 2 block can be dealt with briefly. After the decision in Mangatu No. 1 was given, Pirihi Tutekohe claimed Mangatu No. 2 on behalf of Ngai Tamatea.[3] He claimed the block on the same basis as the Waipaoa block: conquest by Muhunga, Ihu and Tutupuaki. There were no objections to this claim and the minutes record that there was general agreement 'that the judgement in Waipawa

[2] See Waitangi Tribunal, *Mangatu Remedies Report*, p. 50.
[3] Gisborne Native Land Court Minute Book 7, 11 April 1881, fol. 201.

No. 1 should be accepted for this piece also which is really part of the same claim.'[4] Names for inclusion in the title were submitted in the afternoon and an interlocutory order issued. It does not appear there was any subsequent dispute over the title to this block and most of the block was alienated to Pakeha settlers through the twentieth-century.[5]

17. A final point regarding the approach taken in this report. The Waitangi Tribunal's general jurisdiction is concerned with acts of omissions of the Crown which breach Te Tiriti o Waitangi. The jurisdiction which the Waitangi Tribunal is exercising in these remedies proceedings, at least as I understand it in very simple terms, is concerned with the division of settlement assets between different claimant groups. The purpose of this comment is not to give any sort of legal submission but to frame the context for this report as it has required a fundamental rethinking of the kind of evidence which will assist the tribunal in the exercise it is required to undertake.

18. Some or all of the claims have already been established by the tribunal to be well-founded and so further evidence on Crown actions appears superfluous. It is necessary to comment on some Crown actions by way of context, but they are not the key concern of this report. This has required careful consideration of the evidence and treaty-related issues have been excluded because the concern here is to identify evidence of the nature and extent of interests in the land.

19. For example, the Court's decision in 1917 was that Te Whanau a Taupara had no claim in the block but this was reversed by legislation (drafted by Taupara's lawyer) enacted following a petition by the hapu. There is a Crown action here which adversely affects the interests of Ngariki Kaiputahi (whose interests in the block were reduced by this decision) but the action is only relevant to the extent that it allows another group into the block and diminishes the extent of Ngariki's award in the land. The circumstances in which it happened and whether it is treaty compliant are not, in my view, relevant to this report. Even if this approach is wrong, it is important to note that it has informed how the project developed and how the report is presented.

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[4] ibid.

[5] See Jacqueline Haapu, 'Te Ripoata o Mangatu. The Mangatu Report', September 2000, Wai 814, A27, pp. 47-79.

B RECOGNITION OF NGARIKI KAIPUTAHI INTERESTS IN MANGATU IN THE TWENTIETH CENTURY

i RELATIVE INTERESTS: STAGE ONE

a Judge Jones' Initial Decision on Relative Interests in Mangatū No. 1

20. Judge Jones' decision at the end of November 1916 interpreted the 1881 decision to mean that those who claimed through a conquest by Taupara had no interest in Mangatu. Following the Court's decision, discussions on the lists of names involving the parties and the committee continued through December and into January. On 11 January, Judge Jones announced that he would adjourn the application.[6] He told that present that 'it was impossible to finish it before the judge would have to remove to another district.'

b Proceedings Resume Under Judge Gilfedder

21. The Court returned to Gisborne to deal with the application for definition of relative interests in April 1917.[7] Judge Jones was replaced by Judge Gilfedder. The application before the Court was from Himiona Katipa for definition of relative interests under s 9 of the Mangatu No. 1 Empowering Act 1893. At this sitting, Poneke Huihui, Tuehu Pomare, Himiona Katipa, William Pitt, John Mitchell, Rawiri Karaka and Mihi Kerekere represented the parties. One of the trustees, H.C. Jackson, addressed the Court briefly on the proceedings to date.

22. Tuehu initially asked for an adjournment.[8] He represented a number of people he said were left out of the title in 1881. They discovered this in 1905 and petitioned Parliament in 1906 in consequence. A further petition had been sent to Parliament in 1916. Himiona Katipa, an owner in Mangatu No. 1, responded to the request for an adjournment by noting that Judge Jones had already addressed this point and determined that those represented by Tuehu had rights in Mangatu No. 4. William Pitt supported Tuehu's request, arguing that there was no need for haste in determining relative interests and that there had been no hurry in the past. He thought there was

[6] Gisborne Native Land Court Minute Book 42, 11 January 1917, fol. 383.
[7] Gisborne Native Land Court Minute Book 43, 23 April 1917, fol. 133.
[8] ibid.

sufficient time to allow Parliament to hear the petitions.[9] Others, including John Mitchell, Rawiri Karaka, Mihi Kerekere, were opposed to any adjournment.

23. Jackson, who was a trustee with the Commissioner of Crown Lands, explained that the committee had met for nine days and at the conclusion of their deliberations published lists of owners specifying their entitlement to shares.[10] The owners were dissatisfied with the proposed allocation and the lists were submitted to the Native Land Court. The Court was asked to interpret the meaning of the judgment given in 1881. It did so and amended lists were prepared. The Court was yet to decide on those lists. Judge Gilfedder asked for the lists to be read and recorded that 'in nearly every case exception was taken to the number of shares suggested.'[11] He decided that the hearing would continue but adjourned until the following day to allow the parties to coalesce on the basis of whakapapa. He added the following observations regarding the proceedings to date:

> Judge Jones had gone carefully through the evidence given in 1881 when a number of elders were before the Court and able to speak of matters even prior to Ruapekapeka which was fought in 1846, and was enabled to give an interpretation of the judgment delivered in 1881 which seemed ambiguous and inconsistent. On this decision by Judge Jones a few alterations had been made in the shares awarded by the committee but these had not yet been considered by the Court.[12]

24. The following day, a number of representatives provided lists and whakapapa to the Court:

- Patu Te Rito (for several whanau descended from an unidentified tipuna);
- J.H. Mitchell through Wahia;
- Himiona Katipa through Wahia and Ngariki;
- Te Mihi Kerekere through Wahia;
- Rawiri Karaka through Wahia (including Tutearitonga and Rangituamaro);
- Poneke Te Huihui through Ngariki (he subsequently clarified that he represented the Ngariki who were brought back on to the land – Wi Pere had identified some as Wahia and others as Ngariki);[13]
- William Pitt through Wahia and Taupara (through Ihu) on behalf of the Mahuika whanau;
- Tuehu Pomare through Wahia;
- Haka Tautuhi through Wahia and Ngariki.

[9] ibid., fol. 134.
[10] ibid.
[11] ibid., fol. 135.
[12] ibid., fol. 136.
[13] ibid., 26 April 1917, fol. 146.

25. After reviewing the awards in 1881 and the continuing question of the areas awarded to Wi Pere, the Court adjourned until the following day to allow the parties to prepare their submissions and evidence.

26. John Mitchell addressed the Court first for Wi Haronga's whanau and asked for the same area to be awarded to his client as was awarded to Wi Pere (20,000 acres).[14] Both men were of equal importance. Burnard appeared for Tapeta Iretona who claimed under the same ancestor as Wi Haronga and Wi Pere and wanted the same area awarded to him too.[15] The whakapapa was acknowledged by the Court but the minutes note that the occupation of this man would be challenged. Wi Haronga's claim was opposed by the other parties and William Pitt was selected to respond to this claim and Rawiri Karaka gave evidence and denied Wi Haronga occupied Mangatu.[16] Matenga Taihuka also gave evidence and he had heard that Wi Haronga lived at Mangatu 'as chief of Wahia and Ngariki hapus.'[17] This concluded the evidence in Wi Haronga's claim and the parties moved on to address other matters.

27. The following day, there was discussion among the conductors about the extent of Ngariki interests in the block:

> Patu Te Rito said a meeting was held at which the Ngariki people and the shares that the Ngati Wahia are prepared to give to them. The Wahias are prepared to give 17500 shares for the Ngariki.
> Poneke Huihui said he represented the true Ngariki. The first committee had allotted a less number of shares than are now being offered.
> W. Pitt said it was decided to give 17500 acres to Ngariki but it was agreed that the proportion of shares of a Ngariki to those of a Wahia should be as 2 is to 5. He handed in a list of 64 names which the committee decided did not belong to Ngati Wahia.[18]

28. Moanaroa Pera intervened at this point to suggest there was ambiguity around the kinship affiliation of one of those included in this list. The parties spend time arranging the names of those who came in under Wahia and under Ngariki and identifying those included through marriage or aroha. At the end of this exercise, it was found there were 112 names under Wahia, 47 names under Ngariki and 20 included in the title through aroha.[19]

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[14] ibid., 25 April 1917, fol. 140.
[15] ibid., 25 April 1917, fol. 142.
[16] ibid., 26 April 1917, fols 143-144.
[17] ibid., fol. 145.
[18] ibid., 27 April 1917, fol. 147.
[19] ibid., fol. 148.

29. Having completed these lists, the Court proposed the Ngariki representatives should identify those for whom they claimed more than nominal shares:

> Poneke Huihui on behalf of Ngariki said the right of the Ngariki has been recognised. See the evidence of Pimia Te Aata (MB7 page 103, 141) who put forward the rights of the Ngariki. At the conferences even now the claims and rights of Ngariki are recognised by the Ngati Wahia. Wi Pere said after the fighting was over the Ngariki lived on one side of the [Mangatu?] stream and the Wahia on the other. Wi Pere gave the whakapapa of Pera Te Uetuku from Ngariki. They have had continuous occupation. I am ready to abide by the evidence given by Wi Pere about the Ngariki people. The Court of 1881 gave its decision in accordance with Wi Pere's evidence. We must all rely on Wi Pere's evidence and the decision of the Court. The block belonged to Ngariki at first but they were worsted in war and although they lived on the land they lived there as a conquered people. It is suggested that the Ngariki should get half the block.[20]

30. William Pitt rejected this claim stating that 'the Ngariki have no right except through residence.'[21] He noted that the lists prepared by Wi Pere had been divided into those who descended from Wahia and those who descended from Ngariki. Pitt could not explain why Wi Pere had included some of the names:

> … there is nothing to shew why Wi Pere put so many of them in. Possibly their assistance helped Wi Pere to establish his case.

31. Pitt suggested the Court should award Ngariki between 17000 and 20000 acres. Kopu Erueti supported this proposal and also identified one person in the list who could belong to either Wahia or Ngariki. He could not say because he was unable to give her whakapapa. Himiona Katipa supported Pitt's proposal too and noted that he had heard Wi Pere say Ngariki had a good right. They had been awarded interests in an adjoining block and Wi Pere had always allocated 'large rents' to Ngariki.[22] Rawiri Karaka also told the Court that 'the Ngariki have always had a right and everybody recognised it.'[23] He noted that some people of Ngariki descent were claiming through Wahia and intermarriage.

32. These submissions were strongly rejected by Mitchell in reply who alleged that the parties were attempting to revisit the Court's decision in 1881:

> … this Court cannot now enquire if the judgment of 1881 was sound or not. The elders were then alive the case was fought at considerable length. No exception has been taken to the judgment for the last 35 years and it is too late now to try to upset it or to throw the block open again for all comers to have a "try fluke" for. Wi Pere's evidence

[20] ibid.
[21] ibid., fol. 149.
[22] ibid.
[23] ibid.

> (see MB 7 p. 102) indicated that the Ngariki who had intermarried with Wahia had a good right. Ngariki lived under us only those Ngariki who came in under Wahia had any right. The judgment admits that there is a right for residence only for such Ngariki as came back and resided on the land. The few Ngariki who were there did not occupy 100 acres yet they ask for 17000 to 20000 acres.

33. Mitchell also identified an ongoing difficulty regarding the kinship affiliation of those to be included in the title:

> The main Ngariki has abandoned Ngariki and try to come in under Wahia. List No. 33 (Rupene Apuroa and 9 others) were always hitherto regarded as Ngariki. Now they abandoned the losing horse and desire to be on the winner. There are now only 47 Ngariki on the lists handed in. The rest have "ratted." I think 8000 acres would be more than sufficient for Ngariki.[24]

34. These types of issues would continue to be debated through the different phases of the proceedings in subsequent years. Essentially, the Court's decision in 1881 meant it was necessary for those who could claim shares through their whakapapa from Wahia to do so. The award by the Court to Wahia was substantial and it meant the shares allocated to Ngariki could be distributed to a smaller group of owners. Mitchell was evidently concerned that the Wahia shares would be diluted by this situation.

c Preliminary Allocation of Shares in Mangatu No. 1 by the Court

35. After hearing from another witness called by Mitchell to address the status of another person (who had been included in the "aroha" list but who Mitchell apparently thought should be in the Wahia list), the Court gave the following determination:

> The Court said that what is considered to be a fair and equitable allotment would be as follows:–
> Wi Pere's list 12000 acres
> Wi Haronga's List 11000 acres
> 20 arohas 100 acres each 2000 acres
> The Ngariki list 15000 acres
> The Wahia list 60000 acres.

36. The Court adjourned to allow the Ngati Wahia and Ngariki parties to distribute the shares awarded to them. These discussions were to occur over the weekend, facilitated by the Court, and the Court requested a progress report on Monday morning. Most of the proceedings in the following days were focused on those objecting to the inclusion of specific people or whanau in the Ngati Wahia list when they were of Ngariki descent. The focus was on whakapapa evidence and the correctness or otherwise of the whakapapa used to justify the inclusion of names in the list descended from Wahia.

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[24] ibid., fol. 150.

37. For example, Himiona Katipa was opposed to the inclusion of the Matete whanau in the Wahia list because they were of Ngariki descent.[25] He cited Wi Pere's whakapapa from the 1881 hearing and another whakapapa given to the committee. He alleged the latter was not correct and that the committee had decided Anaru Matete was of Ngariki descent and allocated him shares on this basis. Himiona called Mihi Hetekia (Rawiri Karaka's wife) who gave evidence on the whakapapa but acknowledged that while she knew Anaru, she did not know who his parents were and under cross-examination by Patu Te Rito admitted that she did 'not know the whakapapa of all the Wahia people on this list.'[26]

38. Rawiri Karaka also gave evidence in support of Himiona's objection and he told the Court that the whakapapa given by Patu Te Rito was incorrect.[27] In contrast to his wife, Rawiri did know Anaru's parents. Anaru's father was of Ngariki descent while his mother was from Whanau a Kai. When cross-examined by Patu, however, Rawiri was unable to give Anaru's whakapapa from Ngariki or explain the connection of Anaru's mother to Whanau a Kai.

39. Lastly, Himiona himself gave evidence. He denied the validity of the whakapapa given by Patu Te Rito and claimed it differed to that considered by the committee: 'The present one is built for the occasion.'[28] In response to questions from Patu, he stated that Anaru 'was regarded as a leading man amongst the Ngarikis'.[29] He insisted that he could provide the whakapapa showing descent from Ngariki to Anaru with reference to his whakapapa book. He insisted his old books came from the elders (though he did not supply this whakapapa to the Court in the course of his evidence).

40. In response, Patu called Irite Matete. She was a daughter of Anaru and she could give the whakapapa from Kai to Anaru's mother. She had no knowledge of a whakapapa showing descent from either Wahia or Ngariki. She also gave whakapapa showing the line for Anaru's father from Wahia. She told the Court that her elders had taught her these whakapapa and, in response to Himiona's questions, that it was one given to her

[25] ibid., 30 April 1917, fol. 153.
[26] ibid., fol. 154.
[27] ibid.
[28] ibid., fol. 155.
[29] ibid.

long ago. The Court observed though, in a note in the minute book, that the witness was 'well versed in Ngariki whakapapa but indifferently in Wahia whakapapa.'[30] This comment arose out of her answers as she was unable to specify the children of Wahia (she knew of two) and she could show descent by Anaru from Ngariki.

41. In his submissions, Patu explained the process they had gone through to compile the lists:

> … the Court gave them time on Thursday night to separate the Wahias from the Ngarikis. The conductors met and the Matetes were included amongst the Wahias. On Friday the lists were read out and settled in Court and no exception was taken to the Matetes being on the Wahia list. He handed in his list and whakapapa on Saturday morning. Rawiri was there but did not object. Later Himiona raised an objection and this case this morning is the result. Himiona came before the Court and objected to the work done by the committee of which he was a leading member.[31]

42. Patu also told the Court that Wi Pere did not provide all the Wahia whakapapa at the initial hearing: 'He only gave what suited his own purpose.'[32] Anaru was among the trustees nominated by Wi Pere had been included in the title for the land set aside to meet the survey costs.

43. Himiona was given the right of reply and his submissions alleged a cynical attempt by the whanau to manipulate the Court's allocation of shares:

> Before the committees the Anaru's claimed under Ngariki but admitted they knew little of their whakapapas. Now they have built a whakapapa when it was decided to give the Wahias twice as much as the Ngarikis.[33]

44. Himiona maintained his view that Anaru a leader of Ngariki. The Court reserved its decision on this objection.

45. In the days which followed, there were further statements regarding Anaru's whakapapa, submissions about which list other names should be included in and exchanges regarding the extent of the land to be awarded to Wi Pere and Wi Haronga. These contributions appear to have been inconclusive and the Court moved on to hear evidence of occupation in relation to each list. The evidence tended to be of a general

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[30] ibid., fols 156-157.

[31] ibid., fol. 157.

[32] ibid.

[33] It should be noted that Ioapa Te Hau was also accused of doing the same thing. He had earlier claimed under Ihu and Taupara but was now claiming under Wahia. He saw no difficulty with this situation: he had though his right came through Ihu and Taupara but had since put that aside and was claiming through Wahia. See Gisborne Native Land Court Minute Book 43, 7 May 1917, fol. 170.

nature and was usually given by the conductors associated with each list. This evidence was generally for the purposes of justifying the determination by the committee for each owner.

46. Henare Hamana's objection to the inclusion of Wi Te Ngira on the Wahia list generated further discussion which created additional uncertainty. Henare described Wi Te Ngira as a brother of Karaitiana Amaru who was in the Ngariki list. He added 'nobody knows the whakapapa by which it is sought to bring Wi Te Ngira on to the Wahia list.'[34] He presented a whakapapa showing Wi Te Ngira's descent from Ngariki. Hone Hame, a descendant of Amaru, addressed the Court on this point. He stated that Amaru was Wi Te Ngira's brother but was unclear on whether they should be on the Ngariki list or the Wahia list:

> I do not know whether we should come under Wahia or Ngariki. Wi Te Ngira and Te Amaru should both be on the Ngariki list.[35]

47. Himiona Katipa noted succession proceedings in the Court which suggested the two men were not brothers and that Hone Hame should have been a successor to Te Ngira, who had no descendants, but was not (two other women, one of whom was Wi Pere's mother, were appointed successors by the Court). Nevertheless, Hare Warikia knew both of the men and insisted they were brothers (grandsons of Ihoterangi through Heru).

48. The Court first considered the Wahia lists, where the concern was to establish occupation and exclude certain individuals as Ngariki, and then moved onto the Ngariki lists.[36] The Ngariki list headed by Paora Kingi was considered first. It was represented by William Pitt and Tutearitonga, one of those named in the list, gave evidence first. He endorsed the whakapapa supplied by Pitt and went to explain his whanau's occupation of Mangatu:

> I lived on this block at times. I was born at Te Kaha. I am 27 years here. I am 46 years told. My father Paora Kingi used to live on the block. He is buried at Parihimanihi. Te Au or Hiria did not live on the block. The other person on the list, Te Hate, only listed the block. His mother, Harata, may have lived on the block. The parents did.

49. Pitt also represented the claim for inclusion under Ngariki by Rawinia Te Whiwhi and Topine Turei. Rawinia was called to give evidence and told the Court that they she used

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[34] Gisborne Native Land Court Minute Book 43, 9 May 1917, fol. 178.
[35] ibid.
[36] ibid., fol. 180.

to live on Mangatu, as had her parents and tipuna. She was now living at Gisborne as an adult but had lived at Mangatu in her 'younger days.'[37] In response to Poneke, she added that her claim was through Ngariki's descendant Te Awanga. She was unable to give her whakapapa beyond Te Awanga but described this tipuna as a descendant of Ngariki. Poneke objected to their inclusion in the title as the witness was not of Ngariki and could not show descent from the tipuna.

50. The claim by Wikitoria Puru and Horomona Tuauri was supported by evidence from Haaka Tautuhi. He stated that Wikitoria was the wife of Hori Puru. She and her brother had both lived at Pakowhai and at other locations on Mangatu where they had a meeting house (Wharepapa).[38] Apparently Wikitoria had died and was buried on the block. Horomona was living away from the block but had left about four years earlier. Rawiri Tuauri was part Ngariki and part Ngaitai. Haaka did not know if Rawiri had lived on the block but thought that he had done so.

51. Tamati Te Rangi's claim was represented by Tuehu Pomare and based on the evidence of Pimia Aata (Mills). She knew the claimant and endorsed the whakapapa. Tamati occupied Mangatu (and had seen him there) and she referred to an entire whanau who lived there. Tamati was included in the title as he was the only one alive at the time of the investigation. He had since passed away and was buried at Waerengaahika.[39]

52. There was also an Amaru whanau list among the Ngariki claims and this was represented by Henare Hamana who called Hone Te Hami to give evidence:

> I am a grandson of Te Amaru. Amaru did not live on the block but his elders did and so did his brothers and sisters. The family of Te Amaru did not occupy but visited the block at times. Pohoi's wife was Rawaho who was a Ngati Wahia. Maraea Rawaho lived at times on block (see evidence re list No. 10). One of my children was born on the block.[40]

53. Rawiri Karaka represented the claim by Hetariki Tutaha and 11 others. He told the Court that there was confusion in the lists between Ngariki and Tamatea:

> … these are all of the younger generation here now and do not know much about whakapapas or occupation. Some of these in the title are of Ngati Tamatea and are in No. 2. Mika Rore and some of the others were leading Tamateas as well as Ngarikis. These used to occupy down to the Pikai fight after which they left. They returned with

[37] ibid., fol. 181.
[38] ibid., fol. 182.
[39] ibid., fol. 182.
[40] ibid., for. 183.

> armed forces and began to occupy. I mean both the Ngariki and Tamateas. None of them living on the block now. All about Gisborne. Often visit the block when there are "huis". Since 1865 hardly anyone stayed on Mangatu. For several years the block remained unoccupied up to 1872 when fighting ceased. During the Hau Hau troubles all the people went to live at Gisborne, Waerengaahika and other places. The Ngarikis who came back and lived on the block did so under their conquerors and they keep the embers warm for the others who were away. They ought all to share equally. Those who actually lived on the block did so through sufferance and should get no larger shares than those who did not come and occupy.[41]

54. Hirini Wharekete and nine others were represented by Poneke Huihui who addressed the Court in support of their claim:

> He said the whakapapa handed in by him is not disputed. Rawiri Tamanui had a strong right and good occupation. Nearly all of the witnesses so far (both Wahia and Ngariki) admit that Rawiri Tamanui was a leading Ngariki who lived, died and is buried on the block. His son Pera also lived on the block and died and is buried there. Rewi and Hemi occupied and are buried on the land. Aira Te Uetuku is still living on the block and have married and settled there. Hira has grandchildren now. So for generations they have been on the block and are there to this day. The younger people came into the Court from Mangatu and will go back there as soon as this case is over. In Hohaia's time, he went to Mahia and his children were born there. They since came back and lived with Pera on the block. There are large families but few are in the list of owners.[42]

55. Poneke generally rejected other claims under Ngariki on the basis that "the occupation is weak and scattered." He rejected Rawiri's submission that all should share equally in the land awarded to Ngariki:

> Rawiri Karaka is wrong in saying that all should share equally whether they personally occupied or only leaned on the occupation by remote elders or distant relatives. A large number got in through aroha. Patu Te Rito said Rawiri Tamanui was a brother of Tohukore and the latter is buried on the block. His descendants went to Mahia but came back. There are only three of his mokopunas in the title and the block committee gave them 300 acres each.[43]

56. In response to these statements, Pitt acknowledged the continuous occupation of those represented by Poneke but considered the claim for 14000 acres out of the 15000 acres awarded 'preposterous.' Their shares should be the same as other Ngariki.

57. The last Ngariki claim to be heard by the Court was that of Wiremu Kingi Te Kawau.[44] Peta Hope was a distant nephew of the claimant, who was deceased, who told the Court that Wiremu descended from Ngariki and Wahia and had visited the block. His tipuna was Rangihutake who lived at Wheturau, Pikauroa and Te Apiti. Wiremu visited Mangatu in 1881 when the block was going through the Court though Peta subsequently

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[41] ibid., fols 183-184.
[42] ibid., 10 May 1917, fol. 186.
[43] ibid., fol. 187.
[44] ibid., fol. 188.

stated that Wiremu occupied the block in 1878 and was in Wellington through 1881. He had been included in titles for adjacent lands (Karaka and Motu, for example) and had supported the Crown in the conflicts. Peta mentioned that Wiremu died at Torere.

58. Other parties strongly opposed Wiremu's claim. Pitt told the Court that Wiremu had left more than 60 years earlier and settled in the Bay of Plenty where he married and the relationship produced a daughter who was living and over sixty years old. Pitt added that while Wiremu might have an ancestral right, he had no occupation. Pitt accepted that Wi Pere's earlier evidence what that Rangiwhakataratara had built Pikauroa pa. Iopata also denied that Wiremu had occupied the land while Haaka Tautuhi denied the whakapapa line given from Ngariki.[45]

59. After all this evidence had been given, Hetekia Kani Wi Pere spoke at some length on the different claims:

> It was not necessary to allude to his Wahia whakapapa and connection. Wahia had the chief right. I know who are the genuine Wahias but a number are now "ringing in" as Wahias who previously were regarded as Ngarikis or descendants of other foreign tipunas. Wahia conquered the Ngariki. Ihooterangi brought back the remnant of them who lived on the block under the aegis of their conquerors. No strangers had any right nor did they occupy. A number of those now claiming never fought for the land. Some of the Wahias even fought the true Wahias. The evidence given before this court is of today.[46]

60. Kani went on to give greater detail on the claim he based on conquest:

> My elders and those of Wi Haronga for generations lived and fought on this block, set up rahuis, had cultivations and continuous occupation. The 'mana' remained with us. We sent for Te Whiwhi to help us fight the Ngariki. The descendants of Te Whiwhi got an award on the land for their services.[47]

61. Those who had assisted his tipuna in attacking Ngariki were rewarded for their services but on the basis of their relationship with Ngati Wahia; their rights were not independent. Wiremu Kingi's inclusion in the list of names by Wi Pere was a customary courtesy accorded to rangatira and not because he had any ancestral claim to the land. He explained his own occupation of the block:

> My parents lived permanently on this block. I was living there for three years after I was eight years told. I then went to our place on an adjoining block. When I grew up the history and the boundaries of these blocks were taught to me. In Pakeha times surveys because necessary and my elders and Ngariki had the surveys made. After Ngatapu, Wi Pere brought his people back, placed sheep on the block. Rupene Ahuroa

[45] ibid.

[46] ibid., fol. 189.

[47] ibid., fold 189-190.

> had charge of the sheep. Pera Te Uetuku was there also. Rawiri Kaipo was there before these two for a term of six months. While our elders were at the Chathams. Otene Puru took me on to this block. I often went there hunting and saw there was no one living there. Rawiri Titirangi used to come with us at times. We used to catch eels. We had the 'ringahaka.'[48]

62. Kani denied several claims either on the basis there was no occupation or because the claim had been earlier rejected by the Court. He considered Anaru Matete had a claim but as Ngariki because he was one of those brought back by Ngati Wahia (though he did not know the extent or area of land involved but subsequently specified 'about 500 acres'). He denied Himiona Katipa's claim through Ngati Wahia and insisted he was with Ngariki. Kani's whanau had agreed to accept 20000 acres as full satisfaction of their claim even though his father, Wi Pere, had stated he was entitled to much more. This area had been set aside by the elders and they agreed to abide by it.

63. William Pitt addressed the Court in reply and identified a number of issues with Kani's statement:

> Kani cannot trace from Ihoterangi. What Kani says supports the Wahia claim. The judgment of 1881 separates himself and Wi Haronga from the rest of the Wahias. In MB 7 page 183 "I was asked by Rawiri Tamanui to take the rahuis down." Wi Pere. Wi Pere was away from this block for 70 years. The ancestors of Wi Pere occupied. His elders taught Wi Pere the history and the boundaries because he was their whakahaere and they had to instruct him. When Wi Pere was alive we were not troubled with the Ngari Porou. Since W Pere died they came here to wrest our lands from us. Wi Pere was a half caste and must have got his brains and tongue from the European side. Wi Pere is not a chief in blood. See Omahu No 3 and 4 judgment. There is a difference between rank and pedigree. A man gains a 'mana' through persona qualities and this mana cannot be transmitted. Wi Pere and Lady Carroll [Heni Materoa Carroll] were the two last in this district to have been sent to the Maori school of learning.[49]

64. Pitt denied that Ihooterangi brought Ngariki back to the block and interpreted the 1881 decision in a manner which raised questions about the alleged conquest:

> Ihooterangi did not bring Ngariki back to the block. See Pera Te Uetuku's evidence in MB 7 pages 193 and 196, see evidence of Merehe Ngare. Kani is now under a misapprehension. He claims a larger share because he put sheep on the land. Wi Pere got land and money from the people to farm. He had the use of 20000 acres rent free for a number of years. Ihoterangi had no Wahia right. Wi Pere claimed through Rangiwhakataiataia and not through Ihoterangi. The ahika, ringakaha and mana should repose in Ngariki who had continuous occupation. There were only two fights on this block. The judgment of 1881 says the fights mentioned by Wi Pere had nothing to do with the block.[50]

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[48] ibid., fol. 190.

[49] ibid., fol. 192.

[50] ibid., fols 192-193.

65. Finally, Pitt spoke about the allocation of the shares by the committee and the financial benefit to Wi Pere of the 20000 acres which had been vested in him. He contrasted the treatment of Wi Pere to that of Wi Haronga in assessing how the shares would be allocated:

> Kani was chairman of the committee that suggested a scheme of allocation of shares and it is nonsense for him to say that Himiona did the allotment. The committee got Mr Jackson to submit the list of shares and he made a long speech before a large meeting at Waihirere and no objection was made by Wi Pere or anyone else. The 20000 acres transaction has been already explained by Mr Jackson. Kani says the elders gave his father this area for his own part of the block to hold in fee simple as his own absolute property. But Kani says Wi Haronga is entitled to as much as Wi Pere. Wi Pere has had the profits of this area of 20000 acres since 1891. The land is not worth £7 to £10 an acre. Wi Pere was released from financial difficulties and he has had about £40000 or £50000 out of the land.[51]

66. Poneke made a brief statement to the court, stating that if there were people on the Ngariki list who ought to be on the Wahia list (or the aroha list), as Kani alleged, they should be transferred. He found it 'strange' that Kani was finding fault with the work of the committee he led.

67. The final word was given to Kani who denied that Ihoterangi was a descendant of Wahia. He remained of the view that Wi Haronga had a good claim. In relation to the rahui, he stated that 'Rawiri told Wi Pere to remove the rahuis in order to allow pig hunting in general, not specially by Rawiri.'[52]

d The Less Than Final Decision on Relative Interests

68. The hearing of evidence concluded on 10 May and the Court gave its decision the following day.[53] The Court started by explaining the procedural background which led up to the relative interests hearing:

> The title to the large Mangatu block was investigated by the Native Land Court in 1881 when six subdivisions were made and a list of names for No 1 was passed and recorded in the minute book in order to obviate any mistakes or disputes in the future. The relative interests of the persons adjudged to be owners were not determined but it was ordered that a title should issue in favour of 12 persons who would hold as trustees for all the owners. In 1893 was passed the "Mangatu No 1 Empowering Act" by which the 179 persons found by the Court to be the owners were incorporated under the name of "Mangatu No 1" and a committee of management was set up. Section 9 of this Act says the relative shares of the owners shall be determined by consent, or in case of dispute then by the Native Land Court as if the said land were subject to the ordinary jurisdiction of that Court.

[51] ibid., fols 193-194.

[52] ibid., fol. 194.

[53] ibid., 11 May 1917, fol. 195.

69. An allocation of shares to each of the owners was prepared but, as a consequence of this, an interpretation of the meaning of the 1881 decision was necessary. This had been given by Judge Jones the previous year:

> In pursuance of this section the Native owners appointed a committee to propound and draw up a scheme of allotment of shares to the individual owners. This was done and a suggested allotment was submitted to the block owners at a meeting held at Waihiere on the 16th day of November 1916 when little or no exception was taken to the scheme proposed. When, however, the matter came before the Court numerous objections were raised and on November 29th 1916 the Native Land Court gave a decision regarding the interpretation of the judgment given in 1881.

70. Efforts to delay the proceedings were rejected by the Court (though its warnings about parliamentary intervention came to pass later in the year):

> When the case came before this Court persistent though fruitless efforts were made to postpone the consideration of relative interests until parliament could be induced to throw the block back into the melting pot and enable those not in the title to have another scramble for inclusion. However, as it is now 36 years since the investigation and 24 years since the empowering act was passed it seems unreasonable to grant a further delay.

71. The Court noted its interim decision allocating areas to each party and noted that the Mahuika whanau were not included in Mangatu 1 as their interests had been located in another block in the 1881 decision:

> The judgment of 1881 decided that the chief owners of the block were Wi Pere, Wi Haronga, other descendants of Wahia and the Ngarikis who were brought back and lived on the land. The Mahuikas were adjudged to be entitled to a portion of the block and that Court set it aside for them. This Court gave an interim decision awarding 11000 acres to Wi Haronga, 12000 acres to Wi Pere, 60000 acres to the other Ngati Wahias, 15000 acres to the Ngarikis and 2000 acres to those who could not shew any right to the land but were put in the title through “aroha” or marriage with rightful owners. Lists of families were submitted by the Wahia and Ngariki claimants respectively after the names of some 20 “takekores” were eliminated.

72. The Court heard evidence of whakapapa and occupation which it stated it would interpret in light of a decision of the Native Appellate Court for land located in Tai Tokerau, south of Kawakawa:

> The Court proceeded to hear evidence of genealogy and occupation and in awarding the shares endeavoured as far as practicable to follow the rule laid down by the Native Appellate Court in the Motatau No 2 case. Where there has been continuous occupation through grandparents, parents and the present claimants larger shares have been allotted than where the parent or both parent and grandparent ceased to occupy. Where a parent and children appear in the list of owners the children have received proportionally reduced shares according to what was considered a reasonable and equitable rather than a mathematical apportionment.

73. The Court confirmed some of its initial awards to each of the parties but varied the award to Ngati Wahia and Wi Pere's whanau (by slighting reducing the award to Ngati Wahia and increasing the award to Wi Pere's whanau by the same amount):

> After hearing all the evidence of occupation or the want of it, it appears that the interim award of 2000 acres to 20 "takekores" is fair and adequate as also appear the grants of 11000 acres to Wi Haronga's family and 15000 acres to the Ngarikis. It seems probable however that the award of 60000 acres to the other Wahia descendants is too large and that of 12000 to the Wi Pere family is too small. Wi Pere's son considers that because some 20000 acres were set aside by the owners to enable his father to tide over financial difficulties that he should get this area now in fee simple. No doubt owing to his power of oratory, his knowledge of Maori folklore and Court procedure as well as the history and boundaries of this and other blocks Wi Pere exercised a great influence and considerable "mana" over the people in this district. But these qualities were personal and passed away with him and although he was well connected through his mother with those who had won and held this block it seems that 20000 acres of land valued at over £5 an acre is rather more than is due to his prowess, ability, "mana" and ancestral right. He had had the use of 20000 acres for the last quarter of a century and taking everything into consideration even Kani Pere's allegation that three owners in the "aroha" list got reduced shares with his consent in view of his getting 20000 acres for this own family, the Court considers that by reducing the Ngati Wahia's from 60000 to 57000 acres and increasing Wi Pere's award from 12000 to 15000 acres the Pere family will be treated magnanimously.

74. The final awards were carefully detailed in the balance of the Court's decision. In a number of cases, claims were found by the Court to be strong even where recent occupation was limited:

- Wi Pere's family: 15000
- Wi Haronga's family: 11000
- "Aroha" claims (100 each, 2000 in total):
    - Arapera Pere 100
    - Ani Te Pharao 100
    - Hori Mokai 100
    - Henare Waingaruru 100
    - Hariata Haua 100
    - Hone Kewa 100
    - Kereama Tautuhi 100
    - Matenga Ngaroki 100
    - Mihaere Parehe 100
    - Nepia Heta 100
    - Patihana Mangai 100
    - Pere Haua 100
    - Paku Haua 100
    - Paora Matuakore 100
    - Riripeti Piwaka 100
    - Tipere Tutaki 100
    - Taiuru 100
    - Tuwatawata 100
    - Wikitoria Kanu 100
    - Wikitoria Te Amo 100

75. Wahia Claimants

- Anaru Matete whanau (800):[54]
    - Anaru Matete 400
    - Kauru Matete 200
    - Hinepoka Matanuku 200
- Hirini Te Kani and 13 others (4000):[55]
    - Hirini Te Kani 700
    - Tamaihikitea 300
    - Rutene Te Eke 600
    - Mere Maki 150
    - Piriniha Te Eke 150
    - Karaitiana Te Eke 150
    - Harata Te Eke 150
    - Mihi Hetekia 900
    - Katerina Pahura 150
    - Hatuira Pahura 150
    - Tame Pahura 150
    - Hokimate Pahura 150
    - Ripeka Pahura 150
    - Ihimaera Pahura 150
- Mereana Wewahiahi and 15 others (8000):[56]
    - Mereana Weroahiahi 900
    - Hoera Tako 900
    - Raiha Kota 250
    - Hohepa Kota 250
    - Peka Kerekere 350
    - Heni Te Auraki 250
    - Wikitoria Uwawa 250
    - Tapeta Kerekere 250
    - Katerina Takawhaki 500
    - Mini Kerekere 500
    - Ka Matewai 900
    - Hiraina Poaru 500
    - Heni Puhi 800
    - Hini Puhi 400
    - Merehi Ngore 600
    - Heni Matekino 400
- Tipuna and Tupeka whanau (2400)
    - Epeniha Tipuna 600
    - Heni Tipuna 200
    - Poneke Tupeka 500
    - Wi Pere Tupeka 500
    - Netana Puha 600
- Ihaia Patutahi and two others (1600)

[54] The Court considered the whakapapa evidence relating to Anaru's claim to be ambiguous but decided to 'regard him as a descendant of Wahia.' It also found that occupation by the whanau was limited.

[55] The minutes noted limited occupation.

[56] The minutes noted occupation to the time of Mereana but limited since then.

    - Ihaia Patuahi 800
    - Karaitiana Akurangi 400
    - Mereana Parehuia 400
- Ka Te Hane and 10 others (7200)[57]
    - Ka Te Hane 900
    - Mere Hake 900
    - Rawiri Hawa 900
    - Pene Te Hira 900
    - Erena Whakamiha 800
    - Wi Te Ngira 600
    - Wi Pere Takitimu 400
    - Hinewehi 400
    - Herewini Puairangi 400
    - Heni Parekuta 500
    - Mahanga Ahuroa 500
- Maraea Rawaho and 7 others (3600)
    - Maraea Rawaho 600
    - Maira Whekirangi 500
    - Hiring Raikaihau 800
    - Arona Raikaihau 300
    - Peneho 800
    - Maiere 200
    - Ngawiki Kuri 200
    - Te Teira Kuri 200
- Riripeti Oneone and 13 others (8000)[58]
    - Riripeti Oneone 1000
    - Matenga Taihuka 1000
    - Peti Taihuka 1000
    - Harete Taihuka 1000
    - Maata Moari 1000
    - Te Awaina Marangai 400
    - Manu Te Oti 400
    - Himiona Katipa 400
    - Maata Whakahamua 400
    - Hoera Roti 400
    - Rawinia Te Ao 250
    - Ruka Te Kahika 250
    - Rawiri Note 250
    - Patoromu Tawhaitiri 250
- Te Aopakurangi and 2 others (1300)
    - Te Aopakurangi 400
    - Hera Poraku 400
    - Harata Tuari 500
- Rangikohera and Teira Ranginui (800)

[57] The minutes noted that those included in this list had joint Ngariki and Wahia whakapapa. Te Amaru had been transferred to the Ngariki list while Wi Te Ngira was retained on the Wahia list (the Court not been able to determine conclusively whether the two were brothers).

[58] The Court accepted that Matiu and Maata Moari descended from Wahia even though it had been suggested they were of Ngariki or Ngatai.

    - Rangikohera 400
    - Teira Ranginui 400
- Pirihi Tutekohi and his brother (1667)
    - Pirihi Tutehoki 834
    - Hiri Tutaha 833
- Te Aira Horahora and the Puru family (4600)
    - Te Aira Horahora 600
    - Ihaia Puru 600
    - Mere Puru 600
    - Rangikapua 600
    - Pepene 600
    - Rawiri Tokowhitu 600
    - Hoki Puru 1000
- Ripeka Hineko and six others (5200)
    - Ripeka Hineko 1000
    - Rutene Ahuroa 900
    - Rawinia Ahuroa 900
    - Heni Kumekume 900
    - Te Pupaku 500
    - Te Rato 500
    - Hoera Whakamika 500
- Wiremu Iretoro and four others (5000)
    - Wiremu Iretoro 1000
    - Tapeta Iretoro 1000
    - Rutu Iretoro 1000
    - Heni Paretaranga 1000
    - Hami Tarahau 1000
- Tiopira Korehe (833)
- Arapeta Rangiuia and Karaitiana Amaru (800)
    - Arapeta Rangiuia 400
    - Karaitiana Amaru 400
- Kararaina Kehukehu and her son Rawiri Titirangi (1200)
    - Kararaina Kehukehu 800
    - Rawiri Titirangi 400

76. These shares totalled the 57000 shares awarded to descendants of Wahia. While the Court expressed these areas in acres, it indicated that they were rather shares in that the specific area might be adjusted on survey.

77. There were eleven Ngariki lists approved by the Court and the shares were divided in the following manner:

- Te Hate Waingaruru and four others (1200)
    - Te Hata Waingaruru 400
    - Paora Kingi 200
    - Hiria Kingi 200
    - Te Au Hamana 200
    - Tuteautonga 200

- Tipene Turei and Rawinia Te Whiwhi (600)
    - Tipene Turei 300
    - Rawinia Te Whiwhi 300
- Karaitiana Ruru and Roka Patutahi (600)
    - Karaitiana Ruru 200
    - Roka Patuahi 400
- Wikitoria Puru and her brother Horomona Tuauri (700)
    - Wikiroa Puru 400
    - Horomona Tuauri 300
- Tamati Te Rangi (300)
- Te Amaru and his four children (1200)
    - Te Amaru 400
    - Hoana Amaru 200
    - Pohoi Amaru 200
    - Pani Amaru 200
    - Keita 200
- Tiopira Tawhiao and eleven others (2000)
    - Tiopira Tawhiao 200
    - Ripeka Awatea 200
    - Mika More 200
    - Apihaka Wahakai 200
    - Pera Kararepe 150
    - Rutu Kuari 150
    - Rongotipare 150
    - Hetariki Tutaha 150
    - Wharepapa 150
    - Maraea Mokena 150
    - Haromi Paku 150
    - Hariata Ahua 150
- Taituha Matauru (300)
- Maata Te Haura and four others (2100)
    - Maata Te Haura 500
    - Paratene Kuri 400
    - Heni Taua 400
    - Ngahirata Taua 400
    - Rangi Taua 400
- Hirini Wharekete and nine others (6000)
    - Hirini Wharekete 400
    - Epeniha Hape 400
    - Neri Wharekete 400
    - Pera Te Uetuku 900
    - Hira Te Uetuku 700
    - Ruka Tahauteka 600
    - Hemi Whaipu 900
    - Rewi Tamanui 900
    - Rawiri Tamanui 400
    - Ruahinekino 400

- Wiremu Kingi Te Kaurau (100).[59]

78. Before the Court sitting concluded, Himiona Katipa indicated his support for the Court's decision. He considered there was general satisfaction with the allocations though he noted that his whanau's interest in the block had been reduced. He supported the increase in allocation to Wi Pere.

e Appeals Against the Decision on Relative Interests

79. Despite his statement, Himiona was one of those who submitted an appeal against the decision with Pa Nooti (or Tawhaitiri) and Haere Taihuka. They disputed the award to Riripeti Oneone and her family and the allocation of shares by the Court to individuals in their family group. Others were unhappy with the outcome too. An appeal was lodged by Patu Te Rito on behalf of the whanau of Amaru Matete (who complained that the award of 800 acres was insufficient and asked instead for 8000 acres). Patu's appeal also stated that other whanau had received shares well in excess of their rights, including Wi Pere's whanau who should have been awarded 8000 acres.

80. Rawinia Ahuroa, with Te Ranginuiaihu Puru and Hone Ahuroa, also appealed the decision. Her grounds for appeal were that she was inexperienced in Court proceedings and had not given all relevant evidence of her occupation or challenged the evidence of other witnesses. She claimed through Wahia in common with Wi Pere and Wi Haronga and thought all three of them should have equal shares (Wi Pere received 15000, Wi Haronga was awarded 11000 and her share was 5000). Ruka Tahiatekau appeal complained that the judge had refused to consider relevant evidence and that the outcome was against the weight of the evidence.

81. Hohepa Kahuroa was unhappy with the area awarded to him, especially as the Kerekere whanau were awarded a much larger area but had the same claim. He wanted the share to be awarded equally. The appeal by Rawinia Te Whiwhi and 27 others or their successors, represented by William Pitt, set out a number of specific grounds regarding the procedure adopted by the Court and the decision:

> That the judgment is against the weight of evidence adduced.
> That the award by the Court to the individual owners is not equitable.

[59] The award reflected the Court's doubts about his ancestral interests (through either Wahia or Ngariki) and his limited connection to the land but he was included in the Ngariki award.

> That the procedure adopted by the Court in refusing the Agents or Conductors permission to cross-examine witnesses was not conducive to the Court obtaining all the necessary evidence and data upon which to make a just and equitable award.
> That the action of the Court in investing and permitting Hetekia Te Kani Pere to re-open his case after the Court had declared it closed (having awarded 12000 acres with the remark that the Court considered that too much) is an entirely new procedure to us and your appellants consider such a procedure is entirely wrong.
> That the Court having invited H. Te Kani Pere to re-open his case should to be consistent have granted the same privilege to others.
> That after Hetekia Te Kani Pere had closed his case the second time the Court actually intimidated the other parties (inasmuch as the Court threatened to cut down the shares and did actually do so) from cross-examination.
> That the Court in framing its judgment relied too much upon the statements of H. Te Kani Pere which were not substantiated or borne out by facts.
> That in regard to occupation the Court gave too much weight and consideration to occupation since 1840 and more particularly to present day occupation.
> That the Court did not follow or consider Maori custom when it awarded the larger portion of the land to Wi Pere and Wi Haronga.
> That your appellants contend that the whole award of the Court is unfair, unjust and inequitable and altogether against Maori custom and usages.
> That the land is subject to Special Enactment and the Title thereto is a Statutory one and not Native Land Court Title. That the land is not native land within the meaning of the Native Land Act, 1909.
> That Section 9 of the Mangatu No. 1 Empowering Act 1893 provides "The relative shares of the owners shall be determined by consent or in case of dispute then by the Native Land Court as if the said land were subject to the ordinary jurisdiction of the Court."
> That Section 2 of the Mangatu No. 1 Empowering Act 1893 determined who were the owners of the land which your appellants contend is prima facie evidence that Parliament and not the Native Land Court determined the ownership of the land.[60]

82. An appeal by the Iretoro whanau (Tuhita Iretoro, Haare Warakihi and Wiremu Iretoro) was particularly concerned with the award of 15000 shares to Ngariki: 'These Ngarikis were conquered and then in due time were returned on to the land.' They also objected strongly to the 2000 acres set aside for those included in the title through aroha or intermarriage. They also object to the 8000 acres awarded to the Kerekere whanau, who they considered to be descendants of Ngariki; their connection to Wahia was remote. They descended from the same whakapapa as Wi Haronga and Wi Pere and provided the lines in their appeal to demonstrate this. Their appeal appeared to demand a greater interest in the block, similar to that awarded to Wi Pere and Wi Haronga.

83. Mihi Hetekia and Katerina Hei (or Pahura) presented several grounds of appeal. They argued that the initial investigation had found the Ngariki hapu had no right to the land as they were conquered and were very unhappy with the procedure adopted by the Court as it restricted the capacity of Wahia whanau to argue their claims:

[60] Wai 814, A21(b), pp. [326-327].

> After the Court had given this judgment it made out the shares for Ngatiwahia and those for Ngariki. Before it gave its decision, there were several objections raised by the people. The Court there and then threatened the people in the following manner namely that if they would persist in raising objections or if they would dwell unnecessarily on any matter to such an extent as would test the patience of the Court or if they would waste the time of the Court in useless and fruitless cross examination the shares would be reduced in each case.[61]

84. Moreover, the Court would not allow the individual claims through Wahia (a total of ten) to give evidence 'but demanded with threats that all claims should be represented by one man.' It also allowed Kani Pere to give further evidence, during which he opposed all the other claims. The Court subsequently threatened any party who wanted to cross-examine Kani with a reduction in shares. They asked for a new hearing so all the evidence could be properly put before the court and tested through cross-examination.

85. Security deposits of £15 were required on all these appeals (the chief judge adopted Judge Gilfedder's recommendation) but those who paid were refunded after the decision was annulled by legislation.[62]

ii LEGISLATIVE INTERVENTION

a Native Land Amendment and Native Land Claims Adjustment Act 1917

86. Despite all of this activity, Judge Jones' preliminary decision was immediately the subject of at least two petitions to Parliament, one by Karaitiana Ruru and the other by Patoromu Ruru. Karaitiana submitted a separate petition relating to the administration of the block.[63] Both the petitions asking for an inquiry regarding the ownership of Mangatu No. 1 were referred by the committee to the government for inquiry on 12 September 1917.[64]

87. The result of all three petitions were ss 6 and 7 of the Native Land Amendment and Native Land Claims Adjustment Act 1917. Section 7 dealt with the administration of the land (by vesting it in the East Coast Commissioner and establishing a commission

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[61] ibid., p. [337].

[62] ibid., p. [323].

[63] AJHR, 1917, I-3, p. 5. The petition by Karaitiana Ruru and 20 others (233/16) asked for an inquiry into the administration of three Mangatu blocks by the trustees. The Native Affairs Committee referred the petition to the government with a recommendation for an inquiry on 31 July 1917.

[64] See AJHR, 1917, I-3, p. 11. The committee dealt with Patoromu's petition (231/1917) and Karaitiana's petition (213/1916).

to investigate the activities of the former trustees). Section 6 reversed Judge Jones' decision and gave the Native Land Court jurisdiction to inquire into and determine the interests of Te Whanau a Taupara not just in Mangatu No. 1 but in Mangatu No. 4 as well. Subsection 2 set out the interpretation of the 1881 decision:

> The said Act and order shall be construed respectively as if the lists of owners set forth therein respectively comprised some only of the owners of the said blocks. The judgment given on investigation of title to the Mangatu lands shall be construed as declaring that such of the members of the Whanau-a-Taupara Hapu as can establish a claim to be admitted to the list of owners according to Maori custom are owners of the blocks known as Mangatu No. 1 and Mangatu No. 4, together with the other groups of owners found by the Court to be entitled to the said lands respectively, but the said judgment shall not be construed as defining either generally or otherwise the relative interests of any groups of owners found to be entitled.

88. The other parts of the section authorised the Court to inquire and determine the interests of Te Whanau a Taupara in Mangatu No. 1 and Mangatu No. 4 in addition to those specified in the second schedule to the Mangatu No. 1 Empowering Act 1893 and the title order for Mangatu No. 4. The section also provided that the consequences of adding new owners to the title for either block is that they would become tenants in common with the existing owners and would not affect any rights or interests held under lease or mortgage in the land. Any existing order relating to the relative interests of the owners was annulled and the Court given special power to determine relative interests in the two blocks.

b Passage of the Bill

89. The bill was not the subject of any comment in the House of Representative but the Minister of Immigration briefly explained some of its content when the bill came to the Legislative Council. During the second reading debate, he noted that '[a]ll the questions with which this Bill deals have been examined into and reported upon by the Native Affairs Committee, and, moreover, in nearly every case the matters legislated upon are matters of reference to the Native Land Court.'[65] He told the council he had copies of the petitions with him relating to these provisions. The minister did give an extended explanation of what would become s 7 (vesting the property in the East Coast Commissioner pending a commission of inquiry which was also established by the provision by the Act). Otherwise, he told the council, the matters dealt with in the bill

[65] NZPD, vol. 181, p. 587.

had been determined by the Native Affairs Committee and, in any case, the proposals referred them to the Native Land Court for investigation.

90. The bill was passed and came into force on 31 October 1917.[66]

iii RELATIVE INTERESTS: STAGE TWO

a Interpreting the Statute

91. Many parties submitted claims and lists of names and the Court conducted a hearing on them during 1918. Charlies Morison KC and Captain Pitt for Whanau a Taupara (other descendants of Taupara were separately represented), Sim and Dunlop for the committee of owners (descendants of Ngariki Kaiputahi and Wahia) and Poneke Huihui represented some Ngariki descendants who were included in the title.[67] Pitt also gave evidence for the descendants of Taupara.[68] Morison was the Wellington King's Counsel who drafted s 6 of the Native Land Amendment and Native Land Claims Adjustment Act 1917.[69] At this hearing, there were extensive legal submissions on the construction of the statute as there was ambiguity around its interpretation and this ambiguity would lead to an appeal to the Native Appellate Court and a referral to the Full Court of the Supreme Court.

92. In his submissions for the owners (including Ngariki owners), Sim noted that the provision was an 'extraordinary section.' [70] He also argued the situation was extraordinary because there had been no complaint about the original judgment until 1916 or 1917 when the petition was submitted. This was a period of 37 years.[71] He insisted that Whanau a Taupara had been permitted to set up a claim led by Wi Mahuika, have it heard and received an award of 6% of the land area (which became the No. 4

[66] The commission was appointed on 15 January 1918 (prior to the Native Land Court undertaking its hearing under s 6). Judge W.E. Rawson, who would preside at that hearing, was appointed to the commission together with a Wellington account (A.T. Clarke). The inquiry was concerned with the administration of the incorporation and is outside the scope of this evidence. The commissioners held their inquiry at Gisborne in the second half of February and reported on 18 April. See Report of Commission of Inquiry into Management and Control of Mangatu Nos 1, 4 and 4 Blocks, AJHR, 1918, Sess. II, G-2.

[67] Gisborne Native Land Court Minute Book 45, 9 August 1918, fols 21-22.

[68] ibid., 13 August 1918, fol. 53.

[69] Morison to Herries, 1 October 1917, MA 31 Box 1 1c, Archives New Zealand, Wellington.

[70] Gisborne Native Land Court Minute Book 45, 14 August 1918, fol. 72.

[71] ibid., fol. 73.

block).[72] They did nothing about their complaints for nearly four decades despite a number of opportunities to articulate them and Sim thought it remarkable that their representatives argued Te Whanau a Taupara were ignorant of the ownership of the No. 1 block.

93. Sim insisted that occupation was the foundation of title to the block and added: 'Even the twice conquered Ngariki who continued in occupation have better rights than highest rangatira who had no occupation.'[73] While Sim's words are based on a certain logic, they also show the extent to which Ngariki were disadvantaged by the Court's handling of the block. No matter the extent of the occupation which could be shown by descendant of Ngariki, the share of the block allocated to them would also be a tiny part of the portion awarded to them. That is, a descendant of Ngariki could show continuing occupation and receive an award of a few hundred acres while a descendant of another ancestor could show much weaker occupation but receive a much larger area of land.

94. He later relied on Ngariki occupation as evidence of occupation by the descendants of Wahia: 'Ngariki and Wahia people largely intermarried which in itself proves Wahia occupation, shows the two peoples were living in same neighbourhood.'[74] His first witness, Himiona Katipa, insisted that Wahia was the correct ancestor for the block and that Ngariki were able to come in with Wahia through intermarriage (though in later proceedings, this claim would be directly contradicted by Hira Te Uatuku).[75]

95. The hearing on the preliminary question of whether Te Whanau Taupara had further interests in the block (and the meaning and consequences of s 6) concluded on 17 August 1918 and the Court reserved its decision.[76] It appears, however, following a short adjournment so all could attend the tangi following the death of Numia Kereru, the Court proceeded to move onto the lists of names receiving submission from all interested parties, presumably pending the outcome of its decision. Many lists with whakapapa attached were submitted to the Court, all claiming inclusion in the title

[72] ibid.
[73] ibid., fol. 79.
[74] ibid., 15 August 1918, fol. 81.
[75] ibid., fol. 94.
[76] ibid., 17 August 1918, fol. 128.

through descent from Taupara, at this point and objections received from both Sim for Ngati Wahia and Pitt for Te Whanau Taupara.

96. As individual lists were reviewed, the Court reserved its decision on the inclusion or otherwise of the names specified in the list in the title to the block. While it has not been possible to undertake a detailed analysis, it appears many people in the region used the opportunity to seek inclusion in the block through their Taupara lines (and Captain Pitt for the descendants of Taupara he represented opposed many of these claims). Witnesses were called to give whakapapa evidence and evidence of occupation in support of the lists.

97. The Court gave its decision on the Taupara claims on 28 October 1918.[77] This covered both the general claim for inclusion in the title under s 6 and specific lists of names claiming inclusion. Judge Rawson took an expansive view of the provision:

> This means that while Tauparas now in No. 4 may claim shares outside that subdivision in the No. 1 subdivision, the owners named in the said second schedule have not the right to claim in number four except they can show themselves a such close relatives on their Taupara line to the present owners of No. 4 as to convince this Court they have been wrongly or inadvertently omitted from that group of owners by the Court of 1881. If this view be the correct one, this Court is then left with an absolutely free hand as to the definition of relative interests, for subsection 2 says that "the said judgment shall not be construed as defining titles generally or otherwise the relative interests of any groups of owners found to be entitled.
> Subsection 4 does not then in our opinion refer at all to the original division of the No. 1 and No. 4 Blocks, but refers to every agreement, order or judgment as to relative interests made since, but that, notwithstanding that, this Court has power to put aside or amend the original division of the owners by the Court of 1881 into owners for No. 1 and owners for No. 4 to the extent stated above.

98. One further observation can be taken from this stage of the proceedings. Parliament opened the title back up for adjudication by the Court which was to determine which descendant of Taupara had interests in the land. However, it appears Ngariki people who had previously been excluded from the title took the opportunity to pursue their claims through Taupara. In particular, the Court noted in its decision that several groups, including Patu Te Rito's list for the Matete whanau and Hurimoana and others (Lists 13 and 15), Maraea Peneha and others (List No. 16), Rapata Kingi's claim under Taupara and Kuraiteapata (List 38), Horiana Rare and Pere Kararehe under Tumurau and Whakauika (List 29), Rawiri Tawhiao and others under Tumurau and Whakauika (List 31), were connected with Ngariki and Wahia as well as Taupara.

[77] Gisborne Native Land Court Minute Book 46, 28 October 1918, fol. 103.

99. It rejected some but not all of these claims, acknowledging that people had shared whakapapa they could draw on. The Court's comments in relation to Rapata Kingi's claim are probably the clearest statement of this situation:

> Other members of this family have been included but the witness called admitted the occupation was a Ngariki one. In short this is one of those cases in which people other than Tauparas are seeking to use the section of the Act to rectify an omission under another take.

100. Nevertheless, the Court accepted they descended from Taupara 'and may not have lost all Taupara rights seeing that they are owners in this land where Whanau Taupara claims so much though under another take.' It recognised this interest by including Rapata Kingi in the No. 1 block as representative of his whanau but noted that any share would be small as 'the others of the family must be content with their claims under the ancestors found in 1881.'

101. A total of 172 names were to be added to the title to Mangatu 1 and two names included in the title to Mangatu 4 as a consequence of this decision. The focus of this particular proceeding was the inclusion of those descended from Taupara in the title to the land and it has been passed over more briefly for this reason. However, the issues raised by the statutory provision dominated the Court's dealings with the block over the next few years.

102. A request was immediately made for an adjournment to allow an appeal to the Native Appellate Court to proceed although some, including Timoti Matai for Ngariki, asked for the Court to continue to determine the shares.[78] The following day, the Court decided there was little point in proceeding if the Native Appellate Court found that its interpretation of the provision was wrong. Moreover, even if the Native Appellate Court affirmed the Court's decision on this point, it might overturn the inclusion or exclusion of some of the lists.[79] The Court wanted to go on and determine shares but anticipated that it would save time and trouble if it provided the opportunity for the parties to challenge its decision.

[78] ibid., 29 October 1918, fol. 134.
[79] ibid., 30 October 1918, fol. 135.

b Preliminary Appeals to the Native Appellate Court

103. The Court adjourned for the day to allow the judge to consider the request and seek advice from the chief judge regarding the resumption of the hearing. The following morning, Judge Rawson announced an adjournment of the applications to allow appeals on the interlocutory decision:

> As to the question of allowing appeals from the preliminary decision of the Court given on the 28th October.
> It is apparent that if this Court's reading of the section be not upheld by the Appellate Court such last named Court then have to direct the Native Land Court to rehear or reconsider the case – it could not itself very well settle the question of what new owners should be admitted.
> If the Appellate Court upholds this Court's decision as to the meaning of the section, it might consider this Court wrong in admitting some lists and in excluding others.
> Any material alteration would render it impossible for the Appellate Court to distribute the shares. In such case it would have to refer the matter back to the Native Land Court.
> Therefore, though this Court would itself prefer to go on and conclude the case by fixing shares, it seems to it that this is a case where very likely trouble, time and expense will be saved by allowing appeals now. Furthermore the Court considers that the wishes of those natives who have been undisturbed owners of the land for so many years should have consideration weight. Their representatives strongly pressed the Court yesterday to allow this case to stand adjourned till appeals against the preliminary decision had been heard.
> This Court has some doubt as to whether section 49/1909 covers this case but as section 6/1917 directs the Court to determine in its ordinary jurisdiction on investigation of title, it makes this to all intents and purposes an investigation of title case, and so within the section.
> Leave granted to all desiring to appeal from decision of 25th instant.[80]

104. The Native Appellate Court sat at Gisborne from the end of July the following year to hear a number of appeals against Judge Rawson's decision.[81] The appeals were solely focused on the meaning of the statutory provision and counsel for the appellants (the owners led by Te Kani Pere) and respondents (those claiming inclusion in the title). At the conclusion of the hearing, Deputy Chief Judge Jones and Judge McCormick gave separate judgments on the question of law and a joint decision on the questions of fact raised by the appeals.[82]

105. Judge Jones adopted a much more constrained interpretation of the provision, starting with the following proposition: that statute 'make[s] it quite plain that the owners to be found are in addition to those already in the titles.' That is, those already include in one of the blocks cannot be added to the other. From this he explained:

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[80] ibid., 29 October 1918, fol. 135.

[81] Gisborne Native Appellate Court Minute Book 18, 30 July 1919, fol. 19.

[82] ibid., 11 August 1919, fol. 73.

> If this reading is correct, then it appears clear that any order made by the Court is to contain only new names and not the names of those already submitted to the Court and included in their respective titles. From this it will follow logically that a Taupara descendant already in No. 4 cannot be admitted into No. 1 Block and vice versa a Taupara descendant already in No. 1 cannot be admitted into No. 4. The right of a Taupara descendant to be admitted, seems to have been exhausted by his admission into either block. Indeed there seems no reason he should be so admitted except it be in the case of those already in No. 4 to enable them, to put it as the learned Judge of the Court below says, to "claim shares outside that subdivision in the No. 1 subdivision." This is a matter affecting relative interests and the right of a party to a larger award than he would be able to obtain perhaps if he were strictly confined to the No. 4 Block. On the other hand he might, through other Tauparas who ought to share with him being put into No. 1 Block get more than his due. But the matter of ascertaining who should be admitted is one really apart from defining the relative interests of the owners of the respective blocks, which latter can be done if thought fit by subsequent order or orders. If the intention of the Statute was to allow the owners of No. 4 to be also included in No. 1 for the purpose adjusting the relative interests as if the blocks were still one area, then one must reluctantly come to the conclusion that the intention is very imperfectly stated.

106. A descendant of Taupara who had been included in Mangatu No. 4 at the original title investigation could not be added to Mangatu No. 1. This conclusion was the opposite of that reached by Judge Rawson and would have limited the number of owners who could be added to the title of Mangatu No. 1 because they were already in Mangatu No. 4.

107. Judge MacCormick vented more than a little judicial frustration at the Legislature in introducing his judgment:

> The elaborate attempt made in Section 6 to direct the Native Land Court as to what it may or may not do, appears to have resulted in such obscurity that scarcely two opinions can be found to agree altogether as to what the section really does mean.

108. He took, as his starting point, the clear intention of the Legislature to preserve the two separate parcels of land and the separate titles and ownership of the two block. The Court was empowered to add names to the list of each block but the issue in contention was 'whether Section 5 does or does not empower the Native Land Court to admit as an owner of No 1 any member of Whanau a Taupara who was in 1881 found to be an owner of No 4 block, or to admit as an owner to No 4 Block any such member who is already an owner of No 1.' With great 'hestitation,' Judge MacCormick concurred with Judge Jones and concluded 'that the Native Land Court can admit to either No 1 or No 4 Block only such persons of Whanau a Taupara as it finds entitled according to Maori custom and usage, and who were not admitted as owners in either block by the Court of 1881.' Those already in the title for one of the blocks could not be added to the other

under this provision. He was, however, prepared to state a case for the opinion of the Supreme Court if either party requested.[83]

109. On the questions of fact, the judges were unwilling to express an opinion until the relative interests had been determined by the Native Land Court and considered the appeal premature. They noted that it was still possible for the Native Land Court to produce an outcome which was consistent with their decision on the law. The Native Land Court's decision was interlocutory so 'there is nothing to prevent that Court from revising the list and excluding any names therefrom if sufficient cause be shown.'

c Case Stated to the Supreme Court

110. Following its decision, the Native Appellate Court was asked to state a question of law for the opinion of the Supreme Court under s 6.[84] Coleman for the Taupara respondents presented the request and Dunlop and Bright had no objection but did request security for costs. Judge MacCormick indicated that he would discuss the question of security with Judge Jones but agreed to state a case.

111. The case stated was considered by the Full Court of the Supreme Court at Wellington in July 1921.[85] This decision restored Judge Rawson's finding and reversed that of the Native Appellate Court. By reading several words into the provision, the judges of the Supreme Court determined that it was possible for any of those already in the title to one block to be added to the other block.

iv PROCEEDINGS IN THE NATIVE LAND COURT RESUME

112. The proceedings returned to the Native Land Court in November 1921.[86] The purpose of this stage of the proceedings was to allocate a share of the block to each of the three kinship groups.[87]

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[83] This was to avoid what he called the 'tedious and costly process' of appealing a decision of the Native Appellate Court by way of a petition to the Privy Council.
[84] Gisborne Native Appellate Court Minute Book 18, 14 August 1919, fol. 75.
[85] *In re Mangatu Nos 1 and 4 Blocks* [1922] NZLR 158.
[86] Gisborne Native Land Court Minute Book 45, 17 November 1921, fol. 144.
[87] Gisborne Native Land Court Minute Book 46, 14 November 1921, fol. 143.

113. A number of witnesses were called by Dunlop to give evidence regarding the descendants of Wahia. Among them was Peneha Tamaihohia. He explained his kinship affiliation in this way:

> I have been recognised as Ngariki but in Court of 1881 I claimed as Wahia. Originally land belonged to Ngariki but in 1881 Court found Wahia was the 'take' and that is how I got in. I am under Wahia now.[88]

114. The evidence given by witnesses through these proceedings, including this statement by Peneha, indicates that the three kinship groups were distinct and had distinct whakapapa. Nevertheless, they also showed that many participating in the proceedings could draw on a shared whakapapa to seek inclusion through either their Ngariki lines, through descent from Wahia or descent from Taupara. It appears those of Ngariki descent who also descended from Taupara used the opportunity provided by Parliament in reopening title to the block to pursue their interests further. Moreover, the evidence presented suggests in 1881 claims had been organised around Wahia by Wi Pere, possibly to avoid bringing in other tipuna (including Taupara) . However, the evidence given by those who claim through any or all of these lines was always ambivalent. Ngariki was the source of their claim but they deployed their whakapapa to reflect the 'take' established by the court process.

115. After the Wahia case closed, Wi Rangihuna advised the Court that he appeared for some Ngariki. The remainder were with the main Wahia case represented by Dunlop (with Tiaki Mitchell). Another conductor, Down, also announced that he appeared for other Ngariki. The Court suggested Ngariki should decide how they wanted to proceed. Wi Rangihuna evidently represented Poneke Huihui and his list of names as they were the only ones who were not joined with Wahia. The Court wanted them to consider whether they would pursue a separate case as a whole or in parts. The Court adjourned until the mid-afternoon to allow Ngariki to discuss this issue before Wi Rangihuna appeared and stated that Ngariki were united in a single claim and he was to appear as their conductor.[89]

[88] ibid., 22 November 1921, fol. 173.
[89] ibid., 24 November 1921, fols 201-202.

116. Wi Rangihuna called Hira Te Uetuku to give evidence. He was the grandson of Rawiri Tamanui and the son of Pera Te Uetuku. He explained by Rawiri Tamanui left Mangatu but subsequently returned:

> When Pikai the cause of the fighting Mangatu was taken. Tamanui then went and lived at Mahia remaining there a few years. Kaumoana came for him and he was brought to Gisborne. He lived at Toenga where his house was built. While he was living there his son Pera stole a pipe. It was then determined Pera should be killed but that was not done. They lived for a time. When Pera committed adultery. Next day it was proposed to kill him. It was suggested after service in the morning to bank him for a time into the bush. Tamanui went outside. Tipene who was to banish Pera stood before Pera and Hone Ahuroa also came. A struggled ensued with Pera. Pera knew Tipene and Hone and they wanted outside. Mahuika heard of this and came down. In presence of all Aitanga Mahaki who were in Tamanui's house Waaka said to the people, that is to Tamanui, 'Go home to your land with your children ie to Mangatu.' Waaka said to Tamanui 'Go home and put your double fires out as so as to prevent me from seeing your children.' Tamanui replied 'I thought you were returning the whole of my lands.' Waaka replied 'Go.' Tamanui left for Mangatu. His provisions were taken in three canoes. They found no one living there at Mangatu when they arrived. They first went to Oue???, stayed there for a time, then came back to Puketarewa. Lived, died and is buried there and his children also. The children of Pera and ReWi Pere born there. I am Pera's child. I have always lived there continuously. My children were born and are living there. When I left they were still there.

117. Hira went to identify some of the Ngariki sites on the land:

> Otarapane is a Ngariki Pa. Otaha is another. Pikauroa another. Two settlements on Mangatu are Te Apiti and Potaka. I can located them. Otarapane is just above Puketarewa. These pas are all on the Puketarewa side. They are all I know. Te Rewha is the name of the urupa. That is only old one. There are modern ones.[90]

118. After giving evidence, Hira was cross-examined by Mitchell on behalf of Ngati Wahia. Hira refused to acknowledge any suggestion that Ngariki Kaiputahi were in any way a broken or subject people:

> I was not in Court at first investigation in 1881 but I was here at the time. I heard nothing of Te Uetuku's case. I heard we were with Wahia in that case. I cannot say whether that was because Wi Pere had the better right. I never heard my father Pera complaining that he had been unfairly treated in that court. Pera was quite in accord with Wi Pere's conduct of the case.
> The fight on account of Pikai not over Ihoterangi's eel weir. After Pikai fight Mangatu was taken so people went away. I have heard of Rangiwhakataetae and Ihoterangi. I never heard Rangiwhakataetae had any pas there. Ngati Wahia had pas there. I can name them. Te Huapiri, Manawaraurakau, Te Rou, Te Maere. The descendants of Wahia occupied these and pas are under the Wahia mana today. I never actually saw them living there but I heard so. They were living there as a strong hapu.
> Otarapane pa was a Ngariki pa only. Ngati Wahia had their own pas. Ngariki lived there under there own right, not as a conquered people. Land belonged to Ngati Wahia. Ngariki and Ngati Wahia were practically one. I don't know what happened in old days but in my time they were one.
> I have heard of some Ngariki being killed on this land. None of our division of Ngariki were killed. Only section of Ngariki killed were Ngariki Ratoawe. Ngati Wahia was

[90] ibid., fols 202-204.

> always defeating Ngariki, who would fly to Opotiki and on their return they would be defeated.
> I don't know if Ngariki Ratoawe had any rights on Mangatu but they were defeated on Mangatu. I don't know if they had any pa there. From that time Ngati Wahia and my section of Ngariki were always associated. I never heard of Ngati Wahia living in Ngariki pas or Ngariki living in Ngati Wahia pas.
> I don't know if Rangiwhakataetae and Ihoterangi killed any Ngariki on this land.
> Ngati Wahia and Ngariki were the only people on this land.
> When Rawiri Tamanui was living at Toenga after coming from Mahia, the Aitanga a Mahaki were living there, the whole of them because of the land being taken in Pikai fighting. I was told the Gisborne lands were taken then.
> Ruru Mauraiwi may have been living at Toenga when Rawiri arrived but I did not see him there. The reason they lived there was the fighting over Pikai. Waaka Mahuika's house was on the other side of river. The Ngapotiki and Whanau a Kai were living there. Don't remember name of place, something like Tarata. The Mahuika people and Toenga people were quite friendly buy Mangatu was still in Mahuika's hands.

119. In response to further questions from Mitchel, Hira explained that Ngariki and Ngāti Wahia had jointly occupied the land prior to the conflicts involving Pikai but all had left in consequence of the fighting. Rawiri Tamanui subsequently came back to the block with his people:

> The occupation by Wahia and Ngariki people was before the Pikai fight. After Pikai fight no-one lived on Mangatu until the return of Rawiri Tamanui on the land. Pikai fight was one distinct fight. I don't know if there were any other rights after the fighting over Pikai. I don't know where the fight over Pikai took place but I heard that consequent on the fight over Pikai Mangatu was taken.
> My father Pera Te Uetuku would know better than I would for he has seen these places and I am only saying what I have heard. I heard it from everyone. I believe Pera has given the story that I have. Waaka Mahuika told Tamanui to go to 'your land', that is to Mangatu on his own right.
> Under the Pikai fighting, Waipaoa and Waingaromia also passed and Manuwhitiketeke.
> I cannot say if my people were driven off Mangatu but I know they went away to Mahia at the time of the Pikai fighting [207]. It was Tamanui and his family only who went to Mahia. They were a numerous people. The balance of the Ngariki went to Uawa and some are still there, some here. Rawiri Tamanui was satisfied to return from Te Mahia under the mana of Kaumoana. It was only after RAwiri's return that occupation on Mangatu began. Later some of his other relatives came there.
> Ngati Wahia and Ngariki ??? occupied on Mangatu prior to fight over Pikai. After that they scattered, both Ngati Wahia and Ngariki. Ngati Wahia and a section of Ngariki came to live at Poparai (near Gisborne).
> Only one Peraka went to Tolaga Bay. Hori Mokai and Eru Whanau were descendants of Puiha. Neither left issue.

120. Mitchell's cross-examination of Hira continued the following day and Hira re-iterated that Waaka Mahuika told Rawiri Tamanui to return to his land. He did not accept that Rawiri did so subject to Waaka Mahuika's authority, simply that Waaka Mahuika told him to return to his (Rawiri's) land. Ngariki Kaiputahi *were not conquered*:

> [208] Prior to Pikai affair Ngariki and Ngati Wahia were living on this land. The land belonged to Ngariki at that time, that is originally it was Ngarikis but Ngati Wahia had right to a certain part of Mangatu.
> In 1881 Wi Pere took the bread out of Pera's mouth.

> The 'take' to the land was Ngariki and Ngati Wahia owned a small portion, the remainder belonged to Ngariki up to time of Pikai. I don't know anything about Whanau Taupara living there.
> Rawiri Tamanui was the first to go back and live at Mangatu after the Pikai fight. He and his family were the only ones living there then. Some followed after Rawiri had settled there – his cousin Matiu Kahore, Tipene, Hone Te Ahuroa. Other Ngarikis also returned there. Seeing that the land was Ngariki they followed Tamanui and joined him. Waaka Mahuika paid visits there but did not say there permanently. That was in Christian times.
> [209] Tamanui was not living under the mana of Waaka Mahuika but Waaka told him to go back there. Waak'as were ordinary visits, to meetings and so on.
> Tamanui was living at Puketarewa on Mangatu before he went away to Te Mahia. So when he returned to Mangatu he went back on to his own land.
> Waaka Mahuika's evidence, that some laid to kill Ihoterangi and Ngariki driven off the land. Tamanui was saved and lived with Wi Pere's elders at various places on this block and Toanga which is not on this land. Is that correct? I agree Rawiri Tamanui lived at Toanga. I don't know anything about the former position of that. Rawiri lived at Toanga after he came back from Mahia.
> After Pikai fights Ngariki and Ngati Wahia left the land and those who conquered it (Waaka Mahuika) took the land. I did not hear who leader of conquerors was but I took it be Waaka. Mangatu was taken them. My father father and father told me these things. My father should take Waaka's side as he sent Tamanaui back (Pera's case false).
> I am Ngariki Kaiputahi, the section that returned to the land. The other section I don't know. Let them speak for themselves.
> Ngariki Rotoawe were the conquered section, not Ngariki Kaiputahi.
> [210] Wi Mahuika cannot have known what he said he he said otherwise. It was Waaka Mahuika's tribe who conquered the land. Taupara, Potiki and other hapus which I cannot name. Waaka returned Tamanui on the land signifying peace between the tribes. Waaka was returning Tamanui to Tamanui's own land Mangatu.
> I don't know Taupara's occupation. Let them speak for themselves.
> …
> I am the advisor in our family cases since 1918 when Poneke was my conductor. My son-in-law has not acted with me in this case. Poneke looked after my case then under Ngariki proper.

121. This concluded Mitchell's cross-examination and Captain William Pitt was given the opportunity to ask questions:

> Ngati Wahia's pas named by me were never occupied by Ngati Wahia after the Pikai fighting.
> After Ngariki and Wahia left the land after Pikai fight no one was living there. No one at all, not even the conquerors.
> Ngati Wahia pas named by me all in the block near Urukokomuku.
> At time of Pikai fight Mangatu taken by Te Waaka but he returned it when he told Tamanui to go back.
> The meaning of Mahuika's reference to double fires was that someone else might light a fire and if so Tamanui to put it out ie extinguish the fire. He [211] did not want to see two fires burning there.
> I don't know where the Pikai fight took place but I heard that in consequence the land was taken.

122. Following Pitt's questions, Wi Rangihuna was given the opportunity re-examine his witness:

> Rawiri and Tohukore went to Te Mahia. Tohukore married a women of that place and remained there … That is all I know.
> Ohaia and Hirini ??? Rawiri Tamanui. They were very young then. Their children still visit Mangatu and return to Mahia.

123. The Court also asked questions of Hira:

> I think Tohukore and Rawiri were half-brothers. Same father. Another version is 'Mangahaumia the mountain, Herokiroki the river and Ngariki the tribe' but I have heard of Hineka the woman also. It is more modern but I don't the originator. The Hineka version arose just a little before the Pikai fight.

124. This concluded Hira's evidence to the Court.[91] Wi Rangihuna advised the Court that another Ngariki group wanted to call their own evidence. They were represented by Down who called Tutearetonga Kingi to give evidence and during the course of his evidence, identified himself as Ngariki Rotoawe (the kinship group said by Pera to have been conquered). He insisted that they also retained an interest in the block:

> Ngariki who were not killed occupied at Mangatu under their own right. I have never heard of any lands taken by any hapu. The right of the other tribes to this block is the right taken by them from the conquered portion of Ngariki. The right of my people still remains to us (ie my section of Ngariki).[92]

125. Tuteraretonga denied Hira's evidence regarding the Pikai conflicts and that Ngariki left the land and generally disclaimed any knowledge of the fighting related to Pikai's actions. However, like Heia, he insisted that Ngariki and Ngati Wahia both had mana on the land and occupied under the mana of their own leaders. In response to questions from the Court, he mentioned a meeting he had attended long after the title investigation. The elders discussed the 'take' to the block and 'Wi Pere said the people must not "hoard" this this land.'[93] Wi Pere insisted that if anyone were greedy, 'he would return Wi Haronga's land.'[94] Tutearetonga explained that it was Wi Haronga's ancestor, Rangiwhakatatae, who held the mana of Ngati Wahia's Mangatu lands.

126. At this point, the proceedings concluded with addresses from each of the parties. The Court went on to determine the allocation of shares among the three main kinship groups (Ngariki, Wahia and Taupara).[95] The Court decided that Whanau a Taupara were 'entitled to a large award.'[96] The Court noted that it was 'strange' that Taupara did not pursue their claims more vigorously in 1881. It speculated, in the absence of a clear statement that a list of owners for the No. 1 block which was submitted by Wi Pere was read to allow people to object, that the list was approved by the Court and an

[91] ibid., 25 November 1921, fol. 212.
[92] ibid., fol. 214.
[93] ibid., fol. 215.
[94] ibid.
[95] ibid., 7 December 1921, fol. 217.
[96] ibid., fol. 218.

order made vesting the block in trustees without consideration of the beneficial ownership of the land. The Court's theory was that the 'Tauparas therefore may have misunderstood the position and believed that the question of owners for No. 1 was left over for a later Court to settle.'[97]

127. The Court also considered there was a balance to be achieved between the costs and other burdens on the Wahia and Ngariki owners of obtaining titles and preparing the land for settlement over many decades so that they might now expect a return and the Taupara people who, even if the Court found their claims valid, had 'slept' on them. On the Ngariki claim, the Court's opinion was:

> As to the Ngariki it seems clear that they were really dependents of the other two hapus and were largely intermarried with Ngati Wahia. It is clear that the family of Rawiri Tamanui have had the best occupation on the block, having been specially brought back on to the land. Those in J Down's list do not appear to have had the same kind of occupation and their rights are consequently smaller.[98]

128. On the basis of this assessment of the evidence and a finding that Ngati Wahia were entitled to the largest share, the Court determined that Ngariki were entitled to 8000 shares, Taupara were entitled to 40000 shares and Wahia and Ngariki jointly to 58000 shares (a total of 106000 shares where one share was approximately equivalent to one acre). The Court was explicit in making one award to Ngariki (those lists represented by Wi Rangihuna and Downs) and to Wahia and Ngariki jointly (the list represented by Mitchell). The allocation was therefore far from a tidy division between the three kinship groups. At the request of the parties, the Court further adjourned at this point to allow appeals on this decision to the Native Appellate Court.[99]

129. The hearing on the application was adjourned at this point after the parties indicated they planned to appeal.[100] The appeals proceeded in May of the following year. The Native Appellate Court comprised Chief Judge R.N. Jone and Judge C.E. MacCormick. Eight appeals were considered by the Court including two by Ngariki (one from Te Hira Uatuku and the other from Tuteari Kingi).[101] Te Hira's representative, Timoti Maitai, insisted that Ngariki Kaiputahi were never driven off the block and contrasted

[97] ibid., fol. 220.
[98] ibid., fol. 221.
[99] ibid., 8 December 1921, fol. 223.
[100] ibid., fol. 223.
[101] See Gisborne Native Appellate Court Minute Book 21, 9 May 1922, fol. 7.

them to two other kinship groups who descended from Ngariki. His submissions were brief and to the point.

130. The Appellate Court gave its decision on 29 June 1922 and swiftly dismissed the Ngariki claims:[102]

> … the appellants have not satisfied us that they have been unfairly treated by the award of 8000 shares to Ngariki. The addresses by the conductors for appellants appear to us mainly to consist of an attempt to show that the judgment of 1881 was erroneous. This however is not open to them to do. So far as these appellants are concerns they are still bound by that judgment and to obtain any increased award they must be able to show us that under that judgment the Native Land Court did not award them enough shares. This in our opinion they have not done. The judgment of 1881 finds Ngariki to be a conquered and subordinate people, some of whom were replaced on the land by the good will of their conquerors. This applied to all sections of Ngariki proper and it is therefore needless to discuss the confusion that seems to exist as to the different sections.

131. The two appeals were dismissed. None of the other appeals disputed this award which was left at 8000 shares. The only other issue raised by the remaining appeals was the extent of the award to Te Whanau Taupara. The Appellate Court disagreed with the Land Court's speculation on why Taupara did not press its claims at the title investigation but did not consider this a material issue. On this issue, the Court concluded, somewhat unauthoritatively:

> The definition of relative interests must always be to some extent a matter of guesswork depending largely on individual opinion. After weighing to the best of our ability the whole of the facts and circumstances we conclude that after deducting 8000 shares for Ngariki a reasonable division of the remainder would be about 1/3 for Captain Pitt's list and 2/3 for the Wahia list.[103]

132. This represented 32,667 shares, including the 6,000 shares in Mangatu No. 4, for Taupara and 65,333 shares for Wahia (or 'Wahia and Ngariki' as the Land Court described Mitchell's list).

133. The relative interests hearing resumed nearly four months later.[104] The concern with Ngariki people on the Wahia lists was a particular focus of this phase of the proceedings. A decision on the division of shares among the Ngariki list was given in October.[105] Formal orders issued under s 6 of the Native Land Amendment and Native

[102] ibid., 29 June 1922, fol. 50.
[103] ibid., fol. 55.
[104] Gisborne Native Land Court Minute Book 46, 18 September 1922, fol. 224.
[105] ibid., 2 October 1922, fol. 267.

Land Claims Adjustment Act 1917 for the title followed a week later.[106] The final orders were also subject to an appeal. The hearing commenced in September 1923.[107] The Native Appellate Court divided its decision into three sections, one dealing with Ngariki appeals, a second with Taupara appeals and the last with Wahia appeals. Four appeals had been submitted regarding the distribution of shares among the Ngariki owners (Ngariki had been awarded 8000 shares, Taupara had been awarded 32,667 shares and Wahia had been awarded 65,333 shares). Three of the four appeals were dismissed and there was a small redistribution of 200 shares between two of the whanau arising out of the fourth.

v EDWARD MOKOPUNA BROWN'S PETITIONS

134. Once the relative interests were determined, whanau of Ngariki Kaiputahi petitioned Parliament for a reallocation of their shares in the Ngariki award on several occasions. However, the most significant challenge to the award of shares to Ngariki came in the late 1950s led by Edward (Ned) Mokopuna Brown. Inspired by a statement made by Ned's father, Reuben Brown (who had recently passed away), about Wi Pere and Mangatu. Reuben was of Te Whanau Taupara but married to Ruahinekino Uatuku Tamanui who was a descendant of Rawiri Tamanui.

135. The petition was submitted by Ned, with sixty others, in June 1958. It stated that Ngariki Kaiputahi were the original owners of Mangatu. The petition described the evidence given at the title investigation for the block as 'exceedingly confused' and recited some of that given by Pimia Aata before noting that there was no evidence of the conquest of Ngariki Kaiputahi despite the Court's finding. According to Ned Brown, an elder of Te Whanau a Taupara (apparently his father Reuben Brown) who was an original trustee of the land and had died in March 1957 had stated that Wi Pere had deceived Pera Uetuku Tamanui and bribed him to give inaccurate evidence.

136. The petition cited further evidence from the proceedings and the whakapapa from Arikinui and Puhinga to Ned Brown's mother Ruahinekino Uewtuku Tamanui (the wife of Reuben Brown) and concluded with a quote from Reuben Brown:

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[106] ibid., 13 October 1922, fols 330-331.

[107] Gisborne Native Appellate Court Minute Book 21, 29 September 1923, fol. 74; 8 October 1923, fol. 125.

> There are more crooks in the Mangatu than anywhere in America. Ngariki Kaiputahi was taken down badly by Wi Pere, clever man and well up at the time of the hearing 1880-81 Mangatu Court.

137. After Wi Pere passed away, Captain Pitt and Henry Ruru 'thrashed Ngariki again; now down to one third of the land which is rightly theirs.' Ned Brown noted that the last conflict on Mangatu was against Whakatohea and Rawiri Tamanui overwhelmed them and sent them home. He was commemorated in the Ngawari Meeting house at Mangatu for his warrior prowess and his descendants continued to live on the block. The conflicts involved Te Whiwhi and Ihu were much earlier, well before the time of Rawiri Tamanui.

138. The descendants of Wahia and Taupara, who he charactertised as the same people, were connected with Ngariki Kaiputahi but through intermarriage only. As a consequence of the claims by Wi Pere, Wi Haronga and others, '[t]he outstanding part of Ngariki have been suppressed in the past by prominent leaders and not show in Court files or minutes because their own claims would be endangered.' Ned Brown concluded that Ngariki Kaiputahi 'were deprived of their rights by Wi Pere, Henare Ruru and Captain Pitt.' He had reached this conclusion on the basis of his father's statements to him and his own research.

139. A supplementary document set out the petition of Mr Brown and those who signed with him:

> That Ngariki Kaiputahi are the original owners of Mangatu.
> They reclaim to the extent of one hundred and eleven thousand acres.

140. The petition included a statement recorded by Ned Brown regarding the death of Te Whiwhi's son Pikai made by his father Reuben Brown. This related to the Taupara claim to Mangatu. His father insisted that the death of Pikai was an internal matter involving one of Te Whiwhi's relations and had nothing to do with Mangatu. Wi Pere had told the Court in 1881 that Te Whiwhi had never attacked Ngariki and Ned Brown's view was that his father's korero supported Wi Pere's evidence.

141. The Maori Affairs Select Committee referred the petition to the Secretary of Maori Affairs for a report.[108] An official from Head Office noted that there were extended

[108] Clerk of the Committee to the Under Secertary, Maori Affairs Department, 20 June 1958, AAVN W3599 869 Box 39 7/6/96 1, Archives New Zealand, Wellington.

proceedings regarding interests in the block and that relative interests were finally determined in 1922. This official saw no reason to reopen the question of Ngariki Kaputahi interests in the block:

> It is apparent that persons claiming to be admitted to the title have had every opportunity of presenting their claims on previous occasions prior to ownership of Mangatu being finally determined. The petitions have not produced any fresh evidence but have merely recapitulated previous evidence – the value of which has already been carefully weighed.
> In the circumstances, there appears to be no reason to reopen proceedings, and it would appear that no action should be taken in respect of the present petition.[109]

142. Of course, these proceedings had taken the Court's finding in 1881 at face value in its assessment of relative interests and had not 'carefully weighed' the evidence presented to it where that evidence challenged the 1881 finding. The tribunal has since determined that finding to be 'clearly unsound.'

143. Despite this view, another official requested a report from the Gisborne district office.[110] The district officer produced a very similar report to that of the head office official using almost identical wording and concluded:

> It is quite evidence that all claims were fully investigated at various sittings of the Court over a long period.
> From these it will be seen that Ngariki's claims were taken into consideration and it would appear that the present claim is not sufficiently clear or well founded to warrant re-opening the matter at this late date.[111]

144. Again, this recommendation was predicated on the results of the relative interests hearings from 1918 to 1922 which relied on the finding of the Court in 1881 which the tribunal subsequently decided was 'clearly unsound.' The department provided a report to the elect committee with no recommendation (effectively refusing the requests in the peititon). The refusal to pursue the complaints further left Mr Brown unable to remedy the grievance which the tribunal later found to have substance.

145. The Maori Affairs Select Committee also requested the views of the Committee of Management of the Mangatu Incorporation through its solicitor (Kenneth Gillanders Scott, later judge and chief judge of the Maori Land Court and chairperson of the Waitangi Tribunal). The committee considered the petition at its meeting on 21 August

[109] McRae to Blane, 9 July 1958, ibid.
[110] Smith to McRae, 11 July 1958; McRae to the Registrar, Gisborne, 14 July 1958, ibid.
[111] Holst to the Secretary, 24 July 1958, ibid.

1958 and the chairman forwarded a letter to the select committee the same day.[112] While the chairman reported the committee did not consider the issues raised by the petition required lengthy comment by the committee, and that it should 'take a dispassionate attitude in the circumstances', he went on to express strong and adverse opinions about the petition at some length.

146. The committee's response emphasised the importance of stability of title for the affairs of the incorporation and the difficulties of revisiting matters settled long ago. In particular, the committee observed 'To effectively operate in the interests of the equitable owners as a whole, there must be not only certainty but security of title.' Like officials, the committee noted the ongoing proceedings which concluded in 1922 and then s 21(2) of the Maori Purposes Act 1947. The Maori Land Court awarded shares to each of the three hapu with Wahia receiving 65,333, Taupara receiving 26,667 and Ngariki receiving 8,000. One share was roughly the equivalent of one acre. Following this allocation, the 'shares were then divided up internally within the particular hapu having regard to the usual considerations of occupation and the like and other matters constituting Maori land custom.'

147. Although Mr Brown and the other petitioners claimed the Mangatu block almost in its entirety, the committee characterised the complaint as an internal one regarding the distribution of shares to descendants of Ngariki:

> The petition is further directed to the alleged insufficiency of allocation of shares within the Ngariki award to the persons signing the petition and the family interests therein represented. It is fair then to say that in so far as that complaint is concerned, it is a purely domestic one to be resolved within the present holders of the Ngariki shares.[113]

148. Any suggestion that the title to the block should be revisited was considered impossible due to the passage of time and in any event was rendered unnecessary through intermarriage:

> A re-allocation of shares on an overall basis would not only be expensive but would raise most difficult legal problems as to the rights of owners now seised of shares forming part of the original Ngariki award and which have devolved upon them by purchase, exchange, vestings under wills and the like.

[112] Ruru to the Clerk, Maori Affairs Committee, 21 August 1958, ibid.
[113] ibid.

> Through the passage of time Ngariki has married Wahia, Wahia has married Taupara, Taupara has married Wahia and Ngariki, and so on. Reclassifiction would be practicably an impossibility.[114]

149. The committee insisted that a high threshold had to be placed on revisiting the ownership of the land as requested in the petition:

> There must surely be an end to litigation. Eminent legal counsel were employed in the 1880/1922 investigation and it is felt that whilst some may form the view that some minor aspects of the case may not have been placed before the Court, it is equally fair to say that there would have been ample opportunity to have so placed them if the counsel and agents appearing had considered them relevant and of probative value. As in all litigation of that nature, there must be some dissentients and dissatisfied persons – and the real test, it is most respectfully submitted, on a petition of this kind is whether or not after such a lengthy investigation of title, is a prima facie case made out establishing that there has been a grave miscarriage of justice, or in other words do the dictates of natural and moral justice compel a re-opening of the whole matter – a fresh investigation of title de novo.[115]

150. The Maori Affairs Select Committee decided, on 3 September 1959, against making a recommendation on this petition and no further action was taken.[116]

151. Despite this setback, Ned Brown continued to pursue the interests of Ngariki Kaiputahi in the Mangatu block and submitted a further petition in June 1975. The petition was again referred to the Secretary of Maori Affairs for a report and the department asked its Gisborne office for comments.[117] The district officer undertook a relatively thorough investigation of the records over the course of nearly a month but the report he produced was qualified:

> It will be realised that litigation has now spread over the years from 1881 onwards and that there is a massive amount of minutes, evidence and supporting papers. We have not been able to examine all in detail, in fact have found the research difficulty and at some times confusing.

152. The report generally provided the same general narrative of the Court's dealings with the land though officials provided some additional details not previously identified:

- Rawiri Tamanui was included in the list of beneficial owners for Mangatu 1 produced by the Court after the 1881 hearing but it came with the following observation: 'The name Rawiri Tamanui appears in the latter list but we have been unable to clearly identify which one it is is ie the son of Taia (Tai?) or the son of Hira Te Uetuku';

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[114] ibid.

[115] ibid.

[116] 'Maori Affairs Committee, 1959,' AJHR, 1959, I-3, p. 4.

[117] Dew to the Secretary for Maori Affairs, 24 June 1975; Dark to District Officer, Gisborne, 30 June 1975, AAVN W3599 869 Box 39 7/6/96 1, Archives New Zealand, Wellington.

- Officials had attempted to locate the branches of Ngariki in their records and discovered four, which were described as the 'main ones':
    - Ngotoawe;
    - Kaiputahi (Rawiri Tamanui's line);
    - Rakaihake;
    - Te Kapu.

153. They had also reviewed the minutes of the 1917 hearing and found a list submitted by Poneke Huihui on behalf of some Ngariki for 6,000 shares. Rawiri Tamanui was included in the list but the district officer was not certain that it was the son of Taia (or Tai). It was thought that the Rawiri Tamanui named in the list, who was awarded 400 shares, was a great grandson of the original tipuna who was a son of Hira Te Uetuku. The list also allocated 900 shares each to Pera, Rewi and Hemi, whom the district officer described as the children of the tipuna Rawiri Tamanui. Following further hearings and appeals, the Native Appellate Court, in October 1923, decided that Rawiri Tamanui's descendants had not been awarded sufficient shares:

> It held the view that Rawiri Tamanui's family had not been given sufficient recognition while the rights of another had been overestimated. As a result, the claim of Hira Te Uatuku as representing part of the Ngariki group (which includes Rawiri Tamanui) was increased by 200 shares. In the final allocation these additional 200 shares were given to Ruahinekino (the mother of the petitioner) because she was said to have borne the burden of enquiries by the Court and appellate Court as well as having a large family.

154. The district officer explained that this summary had been provided 'in an attempt to illustrate clearly that the Ngariki group has already brought similar claims for larger allocations of shares which have been thoroughly and painstakingly investigated.' Rawiri Tamanui was, he argued, recognised 'as a person of some prominence' whose interests in the block, and the interest of his descendants, had been acknowledged in the awards by the Court. Extracts from the Court's minutes were supplied with the report.

155. The department's deputy secretary prepared his own report for the Maori Affairs Select Committee. After explaining the procedural history relating to the block, the deputy secretary concluded:

> Since that time [1922, when the shares were determined] there have been 9 petitions concerning the shares awarded, of which 4 were on behalf of Ngariki and the remainder other sections of the owners. The comment which has been made on the past petitions applies equally today. The matter of ownership was very thoroughly sifted by the Court and the Appellate Court over a period of years. The final judgement of the Court in 1922 gave effect to a division of shares agreed to before the Court without dissent, all

> parties being fully represented. It is difficult to see how any first hand evidence could be produced at this remove of time to upset that division.[118]

156. He attended a hearing on 24 September when the committee asked for further information and for an official from Gisborne to attend with the deputy secretary. A later report by the deputy secretary suggests that Mr Brown attended the committee's meeting.[119] It appears his submissions gave the committee pause in dealing with his petition and was the basis for their request for further information. The committee planned to deal with the petition again at its meeting scheduled for 1 October but deferred to 8 October. The district officer had Gisborne subsequently advised that further investigation had been undertaken but they had nothing further to add to their earlier report. A further report was sent by the deputy secretary to the select committee at the end of September. This report supplied the additional information on the specific awards to some of the descendants of Rawiri Tamanui. The deputy secretary explained that this:

> … information and the information already supplied to the Committee have been obtained after considerable investigation and effort. The subject has been exhaustively traversed by petition since 1922 including a submission by Mr Brown the present petition in 1958.[120]

157. The deputy secretary insisted that no new information had been supplied to the committee at its earlier meeting by Mr Brown other than the whakapapa he presented. He proceeded, however, to rely entirely on the 1881 decision despite raising doubts about the basis for it:

> It must be stressed that the primary material relating to the investigation into the Mangatu title carried out by the Court in 1881 was voluminous, and involved the taking of evidence from all the available sources at that time. Much of the evidence given to the Court would have been oral and may not have been recorded in the minute books, and it may be that some of that evidence persuaded the Court that the Ngariki were not entitled to the extent that other groups were entitled.[121]

158. In the course of his presentation to the committee, Mr Brown had 'made the claim that his ancestors rather than the ancestors of others were entitled to a large portion or the whole of the Mangatu Block.' However, the deputy secretary asserted that no new

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[118] Williams to Dew, undated, ibid.

[119] See Williams to Dew, 29 September 1975, ibid.

[120] ibid.

[121] ibid.

evidence had been presented to support this claim and it had been rejected on earlier occasions:

> The petitioner himself has not brought any detailed further evidence which would enable the validity or otherwise of his claim to be verified. It appears that a number of courts and petition committees have considered this matter on a number of occasions and been convinced that adequate recognition has already been given to the petitioner's ancestors.[122]

159. The deputy secretary provided copies of 'relevant minutes' but noted that 'there are many other scattered source materials especially relating to the original title investigations which would take months of painstaking toil by an officer skilled in title investigation work to research and analyse.'[123] His opinion, therefore, was qualified even though his recommendation was not qualified. The department did not undertake the work necessary to assess the validity or otherwise of the petition. He concluded with the observation that other owners would be affected by an increase in the shares awarded to the descendants of Rawiri Tamanui:

> The crux of the matter is that any increase in the shares of the descendants of Rauwiri [sic] Tamanui can only be made by a corresponding reduction in the shares of the other owners.[124]

160. Despite the qualified opinion expressed by the deputy secretary, the committee decided to make no recommendation on the petition of Mr Brown in October 1975.[125] The committee was at this time engaged in hearing submissions on the Treaty of Waitangi Bill.

[122] ibid.
[123] ibid.
[124] ibid.
[125] See ABGX W3706 16127 Box 12, Archives New Zealand, Wellington.

C CONCLUSION

161. While the Waitangi Tribunal comprehensively dealt with the 1881 hearing on the Mangatu block, the effort to establish a stable title and create an administrative body to manage the land through the Mangatu No. 1 Empowering Act 1893, its assessment of the Native Land Court's dealings with the block in the twentieth-century is more qualified. Nevertheless, the proceedings in the Court relating to the determination of relative interests produce evidence of customary interactions between Ngariki Kaiputahi and the other kinship groups which are significant for making sense of customary interests in the block.

162. It does not appear that there is a comprehensive research report, particularly related to the relative interests hearings and the unusual and convoluted manner in which the proceedings developed. The analysis of the many hundreds of pages of evidence and submissions has been necessarily truncated by the scope of this report and the resources and timeframe available. Nevertheless, it has been possible to reach several robust conclusions.

163. There is no question that all of the assessments of Ngariki Kaiputahi interests in the block which occurred in the twentieth-century were predicated on the 1881 decision and its finding about them (which has been ridiculed by the tribunal as 'clearly unsound'). This conclusion applies particularly to the crucial Native Appellate Court's decision regarding the allocation of shares to each of the three kinship groups and the report of the deputy secretary on E.M. Brown's petition, which formed the basis for the Maori Affairs Select Committee's decision to make no recommendation on the petition.

164. It is also clear that while the whakapapa lines dividing Ngariki, Wahia and Taupara are blurred, there are still three distinct kinship groups. Individuals drew on their whakapapa to pursue their interests in the context of the proceedings as they evolved and the division of shares by the Court was far from clear. This was not just because the Court acknowledged some Ngariki were included in the Wahia allocation. The evidence suggests that Parliament's decision to re-open the title in 1917 allowed Ngariki people to pursue their interests in the block and that they did so through their Taupara whakapapa. This was a matter of some dispute as the relative interests in the block were thrashed out through the prolonged hearings on lists of names.

165. Finally, and perhaps most significantly, one of the clearest Ngariki Kaiputahi voices in the early twentieth-century proceedings, indeed the only Ngariki Kaiputahi voice heard when the Court was determining the proportion of shares for each kinship group was Rawiri Tamanui's descendant, Hira Te Uatuku. He was questioned by representatives for Ngāti Wahia and Te Whanau a Taupara. He repeatedly refused to acknowledge that that Ngariki Kaiputahi were conquered or otherwise dispossessed of their lands at Mangatu. While his tipuna vacated their lands from time to time in response to conflict, they returned and occupied there once a threat had dissipated.

166. Nevertheless, Ngariki Kaputahi continued to live on Mangatu in the long shadow cast by the 1881 Court decision. It was accepted as authority by the Court and Crown officials through the twentieth-century until the Waitangi Tribunal reviewed it in the early twenty-first century and found the flawed. In light of this finding, and Hira Te Uatukua's evidence, the decisions of earlier courts on Ngariki Kaiputahi must be critically re-assessed.

D APPENDIX: TRANSCRIPTS OF DOCUMENTS

i NATIVE LAND COURT DECISION ON RELATIVE INTERESTS IN MANGATU 1, NOVEMBER 1916.

Gisborne 42, 29 November 1916, fols 153-156.

Judge R.N. Jones

Mangatu 1 Relative Interest.

The Court delivered judgment.
The Court has carefully perused the evidence given at the original hearing and having done so can well understand the difficulty the natives have in construing the judgment since it contains some apparent inconsistencies which may be due to errors in copying it into the minute book. Even the natives who heard it read seem to have some confusion in their minds and this Court was called upon to endeavour within a couple of days to explain its own judgment. That explanation, if this Court may be allowed to say so, really involved it more than it was before. For the cases set up, though burdened with evidence of events that did not touch the land in question, seemed to be fairly simple in their elements. It was admitted the land originally belonged to Ngariki and that they by conquest got certain rights over it. Owing to actions of a section of the Ngariki under Po and his being driven off by them Wi Pere the claimant on his side claimed that right claimed by Ihu through descent and force of circumstances became vested in his eldest child Ranginoanoaaua down to Wahia through that line and that certain of Ngariki remained in possession in confirmation with the conquerors. Wi Mahuika on his side as a counter claimant contended that Ngariki were practically wiped out not only by the original victory of them over Po but by a serious of battles that took place under Uhuuhu in earlier days. He admitted the rights of Wi Pere's ancestor but claimed that the descendants of the youngest son of Ihu, Taupara, were also entitled under the conquest but he declined to recognise any Ngariki except those brought there as he alleged on his father's invitation. The claimant denied the right of Whanautaupara through the conquest alleged. They occupied in other places and not under the conquest on this block but admitted that after the Ruapekapeka certain of Whiuhi's descendants came upon the land by intermarriage with Ngatiwahia or the Ngariki who occupied and that this would probably entitled them to some rights in the land but on the claimed as argued by Wi Mahuika. Stripped of all the verbiage about fights in remote times and fights in later days the question the Court had to decide was whether the claimants were correct in claiming for one son of Chu alone, for the question of what Ngariki of what Ngariki was entitled to would rest between them and Ngatiwahia if successful or the counterclaimants in seeking have both those claimed by Wi Pere and those claiming under Taupara admitted into the title. There is doubt that the descendants of Taupara were men of note and if they had a real strong claim in the land their rights would be strenuously urged and they would be entitled to a fairly large share of it. It is not for this Court to give a judgment as to who it things should succeed upon the evidence but to discover if it can whom the former Court decided should succeed. It would have been perfectly simple for the Court to have said "we think one or the other is correct" but it allowed itself to wonder into a discussion on the evidence in the first part of the judgment and by inference leading one to believe it was taking the Mahuikas side. However when it comes to finding of the Court it makes no doubt of its opinion in saying that Wi Pere and Wi Haronga, the descendants of Wahia, are the chief owners of the land. These are the people represented by the claimants and then it also find that those of ??? Mahuika's party who returned to the land after Ruapekapeka would also have claims on a part of it. This then is clearly inconsistent with the view that they have retained large rights under the conquest by them or that the subsequent battled against Whanau a Law as their allies in later days affected the Mangatu Block. That this view is correct is shown by the fact that the Court a few days later in explaining its judgment cut off the section with 6000 acres out of 100000 acres of land and located their position at Mangahauini. Whatever the actual wording of the judgment this shows the Court's estimate of their claim and the Court in addition had cut off a separate portion of the block to satisfy that claim. This Court must hold that the people in the title to Mangatu No 1 are not entitled to set up rights under the conquest through Taupara as a substantive right.

ii NATIVE LAND COURT DECISION ON RELATIVE INTERESTS, 1917

Gisborne 43, 11 May 1917, fol. 195.

Mangatu No 1 – relative shares judgment

The title to the large Mangatu block was investigated by the Native Land Court in 1881 when six subdivisions were made and a list of names for No 1 was passed and recorded in the minute book in order to obviate any mistakes or disputes in the future. The relative interests of the persons adjudged to be owners were not determined but it was ordered that a title should issue in favour of 12 persons who would hold as trustees for all the owners. In 1893 was passed the "Mangatu No 1 Empowering Act" by which the 179 persons found by the Court to be the owners were incorporated under the name of "Mangatu No 1" and a committee of management was set up. Section 9 of this Act says the relative shares of the owners shall be determined by consent, or in case of dispute then by the Native Land Court as if the said land were subject to the ordinary jurisdiction of that Court.

In pursuance of this section the Native owners appointed a committee to propound and draw up a scheme of allotment of shares to the individual owners. This was done and a suggested allotment was submitted to the block owners at a meeting held at Waihiere on the 16th day of November 1916 when little or not exception was taken to the scheme proposed. When, however, the matter cam before the Court numerous objections were raised and on November 29th 1916 the Native Land Court gave a decision regarding the interpretation of the judgment given in 1881.

When the case came before this Court persistent through fruitless efforts were made to postpone the consideration of relative interests until parliament could be induced to throw the block back into the melting post and enable those not in the title to have another scramble for inclusion. However, as it is now 36 years since the investigation and 24 years since the empowering act was passed it seems unreasonable to grant a further delay. The judgment of 1881 decided that the chief owners of the block were Wi Pere, Wi Haronga, other descendants of Wahia and the Ngarikis who were brought back and lived on the land. The Mahuikas were adjudged to be entitled to a portion of the block and that Court set it aside for them. This Court gave an interim decision awarding 11000 acres to Wi Haronga, 12000 acres to Wi Pere, 60000 acres to the other Ngati Wahias, 15000 acres to the Ngarikis and 2000 acres to those who could not shew any right to the land but were put in the title through "aroha" or marriage with rightful owners. List os families were submitted by the Wahia and Ngariki claimants respectively after the names of some 20 "takekores" were eliminated. The Court proceeded to hear evidence of genealogy and occupation and in awarding the shares endeavoured as far as practicable to follow the rule laid down by the Native Appellate Court in the Motatau No 2 case. Where there has been continuous occupation through grandparents, parents and the present claimants larger shares have been allotted than where the parent or both parent and grandparent ceased to occupy. Where a parent and children appear in the list of owners the children have received proportionally reduced shares according to what was considered a reasonable and equitable rather than a mathematical apportionment. After hearing all the evidence of occupation or the want of it, it appears that the interim award of 2000 acres to 20 "takekores" is fair and adequate as also appear the grants of 11000 acres to Wi Haronga's family and 15000 acres to the Ngarikis. It seems probable however that the award of 60000 acres to the other Wahia descendants is too large and that of 12000 to the Wi Pere family is too small. Wi Perl's son considers that because some 20000 acres were set aside the by the owners to enable his father to tide over financial difficulties that he should get this area now in fee simple. No doubt owing to his power of oratory, his knowledge of Maori folklore and Court procedure as well as the history and boundaries of this and other blocks Wi Pere exercised a great influence and considerable "mana" over the people in this district. But these qualities were personal and passed away with him and although he was well connected through his mother with those who had won and held this block it seems that 20000 acres of land valued at over £5 an acre is rather than than is due to his prowess, ability, "mana" and ancestral right. He had had the use of 20000 acres for the last quarter of a century and taking everything into consideration even Kani Pere's allegation that three owners in the "aroha" list got reduced shares with his consent in view of his getting 20000 acres for this own family, the Court considers that by reducing the Ngati Wahia's from 60000 to 57000 acres nd increasing Wi Pere's award from 12000 to 15000 acres the Pere family will be treated magnanimously. The Court decides the shares of the individual owners to be as follows:

1. Wi Pere's family 15000
2. Wi Haronga's family 11000
3. Those who got into the title through marriage or "aroha" twenty in number to get 100 acres each. These are:

    Arapera Pere 100
    Ani Te Pharao 100
    Hori Mokai 100
    Henare Waingaruru 100

Hariata Haua 100
Hone Kewa 100
Kereama Tautuhi 100
Matenga Ngaroki 100
Mihaere Parehe 100
Nepia Heta 100
Patihana Mangai 100
Pere Haua 100
Paku Haua 100
Paora Matuakore 100
Riripeti Piwaka 100
Tipere Tutaki 100
Taiuru 100
Tuwatawata 100
Wikitoria Kanu 100
Wikitoria Te Amo 100
2000

4. Anaru Matete, his son and daughter.

There is a difference of opinion as to whether this family belongs to Ngati Wahia or to Ngariki. The whakapapa given by Wi Pere in 1881 indicates that Tuarau had only two children and not three as alleged by the supporters of the Matete claim. A remark was however made by Wi Pere in the Rangatira case (see MB 6 page 244) from which it might be inferred that Anaru belonged to a section of Ngati Wahia. It seems that Anaru Matete was a man of some importance in the early eighties and I am prepared to give him the benefit of the doubt as to his ancestry and regard him as a descendant of Wahia. He may have lived on Mangatu in his youth but it is certain that he spent most of his life away from the block and none of his family ever occupied it. The Court awards this family 800 acres:

Anaru Matete 400
Kauru Matete 200
Hinepoka Matanuku 200
800

5. Hirini Te Kani and 13 others

It is admitted that these persons have ancestral rights and that their tipunas occupied. However, since the time of Hineka there has been little or no occupation although visits may have been made occasionally to this block. The award tot his list is an area of 4000 acres allocated as follows:

Hirini Te Kani 700
Tamaihikitea 300
Rutene Te Eke 600
Mere Maki 150
Piriniha Te Eke 150
Karaitiana Te Eke 150
Harata Te Eke 150
Mihi Hetekia 900
Katerina Pahura 150
Hatuira Pahura 150
Tame Pahura 150
Hokimate Pahura 150
Ripeka Pahura 150
Ihimaera Pahura 150
4000

6. Mereana Wewahiahi and 15 others

The claim of this branch is fairly strong. The elders used to occupy down to the time of Mereana but since her day the occupation has been slight. To this long list of names 8000 acres are awarded as follows:

Mereana Weroahiahi 900
Hoera Tako 900
Raiha Kota 250
Hohepa Kota 250
Peka Kerekere 350
Heni Te Auraki 250
Wikitoria Uwawa 250
Tapeta Kerekere 250

Katerina Takawhaki 500
Mini Kerekere 500
Ka Matewai 900
Hiraina Poaru 500
Heni Puhi 800
Hini Puhi 400
Merehi Ngore 600
Heni Matekino 400
8000

7. The Tipuna and Tupeka families

The occupation of Ihaia Te Not is not disputed. No witnesses were called but references were made to Wi Perl's statements in 1881 and in 1897 to show that Ihaia was a man of some importance and standing. Although exception has been taken to his inclusion in the Wahia list because his descendants claimed under Taupara before Judge Jones and because Wi Pere stated at the hearing of the Rangatira case that Heni Tipuna had no right under Wahia to any part of Mangatu yet it must be admitted that Ihaia after his escape from captivity did signal service to the people by apprising them of an intended hostile attack. The Committee in arranging shares proposed to give this family 1500 acres but this Court will increase this grant to 2400 acres distributed as under:

Epeniha Tipuna 600
Heni Tipuna 200
Poneke Tupeka 500
Wi Pere Tupeka 500
Netana Puha 600
2400

8. Ihaia Patutahi and two others

These are well connected and their elders appear to have resided on the block but there are no recent occupations. They will get 1600 acres as follows:

Ihaia Patuahi 800
Karaitiana Akurangi 400
Mereana Parehuia 400

9. Ka Te Hane and 10 others

The persons on this list seem to have both Ngariki and Wahia ancestry. Their elders occupied Mangatu and some of those now claiming appear to have resided on the block, such as Mere Hake, Rawiri Hawa and Pend Te Hira but on the whole the occupation has been indifferent and casual. A question was raised as to whether Wi Te Ngira was a brother of Te Amaru or not and although there is some room for doubt the evidence of Court books and files goes to shew that they were not brothers. The name of Wi Te Ngira is therefore retained on the Wahia list while Te Amaru appears among the Ngarikis. The Court's allotment to the persons on this list amounts to 7200 acres as follows:

Ka Te Hane 900
Mere Hake 900
Rawiri Hawa 900
Pene Te Hira 900
Erena Whakamiha 800
Wi Te Ngira 600
Wi Pere Takitimu 400
Hinewehi 400
Herewini Puairangi 400
Heni Parekuta 500
Mahanga Ahuroa 500
7200

10. Maraea Rawaho and 7 others

The genealogy of the family of Animaraea's is not disputed. She and her mother had good accusatory rights and it is said that Hirini and Peneha lived for a time on Mangatu. This family will get 3600 acres:

Maraea Rawaho 600
Maira Whekirangi 500
Hiring Raikaihau 800
Arona Raikaihau 300
Peneho 800
Maiere 200
Ngawiki Kuri 200

Te Teira Kuri 200
3600

11. Riripeti Oneone and 13 others

Matiu and Maata Moari occupied but it has been suggested they belong to Ngariki or Ngatai rather than to Wahia. However, their genealogy has not been seriously impugned and as some members of the family had good occupation an award of 8000 acres will be made as under:

Riripeti Oneone 1000
Matenga Taihuka 1000
Peti Taihuka 1000
Harete Taihuka 1000
Maata Moari 1000
Te Awaina Marangai 400
Manu Te Oti 400
Himiona Katipa 400
Maata Whakahamua 400
Hoera Roti 400
Rawinia Te Ao 250
Ruka Te Kahika 250
Rawiri Note 250
Patoromu Tawhaitiri 250
8000

12. Te Aopakurangi and 2 others

The ancestral rights of these are admitted. Harata has fair occupation through her father Peneha. There has been no occupation in recent years. Their shares will be:

Te Aopakurangi 400
Hera Poraku 400
Harata Tuari 500
1300

13. Rangikohera and Teira Ranging

These two claim through Wahia on both their fathers and their mother's side although at times they claim to be descendants of Ihu and Taupara. Neither they nor their parents occupied although they appear to have ancestral right and remote occupatory rights as well. They get 800 acres:

Rangikohera 400
Teira Ranginui 400
800

14. Pirihi Tutekohi and his brother.

Hirini Tutaha have good pedigree but their occupation is unsatisfactory. They were men of standing and obtained interests in adjoining block. The allotment to them is as under:

Pirihi Tutehoki 834
Hiri Tutaha 833
1667

15. Te Aira Horahora and the Puru family

No question was raised about the ancestral right of the persons on this list. Te Aira lived for a time on the block but she went away to Opotiki where she died and is buried. Hori Puru and his family have good occupation. 4600 acres are conceded to them as under:

Te Aira Horahora 600
Ihaia Puru 600
Mere Puru 600
Rangikapua 600
Pepene 600
Rawiri Tokowhitu 600
Hoki Puru 1000
4600

16. Ripeka Hineko and six others

These have good ancestral right and undisputed occupation. They are awarded 5200 acres distributed as follows:

Ripeka Hineko 1000
Rutene Ahuroa 900
Rawinia Ahuroa 900
Heni Kumekume 900

Te Pupaku 500
Te Rato 500
Hoera Whakamika 500
5200
17. Wiremu Iretoro and four others
It is understood that these have good rights and occupation. They get 1000 acres each:
Wiremu Iretoro 1000
Tapeta Iretoro 1000
Rutu Iretoro 1000
Heni Paretaranga 1000
Hami Tarahau 1000
5000
18. Tiopira Korehe
This person has good ancestral right and his elders used to occupy. He is in a similar position to Pirihi and Hirni in List 14. He will get a similar area viz
Tiopira Korea 833
19. Arapeta Rangiuia and Karaitiana Amaru
These have an admitted right and although their elders may have resided on Mangatu, they themselves did not. They are granted 400 acres each.
20. Kararaina Kehukehu and her son Rawiri Titirangi have strong ancestral right by their occupation is indifferent. They are granted:
Kararaina Kehukehu 800
Rawiri Titirangi 400
1200
[This page, fol. 208, is headed 'Ngarikis'].
21. Te Hate Waingaruru and four others
These are claiming as Ngarikis though Kani Were states that they are regarded as Ngari Wahias of a "milk and water" type who took no party in the fights waged in protection the block. There was some former occupation but not in recent times. Their claim can be adequately met by a grant of 1200 acres apportioned as under
Te Hata Waingaruru 400
Paora Kingi 200
Hiria Kingi 200
Te Au Hamana 200
Tuteautonga 200
1200
22. This list contains two names of persons who occupation was meagre and confined. They will get 300 acres each.
Tipene Turei 300
Rawinia Te Whiwhi 300
600
23. Karaitiana Ruru and Roka Patutahi
There is little evidence of occupation and Kani Were says his father put Karaitana in the title through 'aroha'. They were be required with:
Karaitiana Ruru 200
Roka Patuahi 400
600
24. Wikitoria Puru and her brother Horomona Tuauri occupied the block but Horomona soon left it. According to Kani Were they are Ngaitai people. They will get:
Wikiroa Puru 400
Horomona Tuauri 300
700
25. Tamati Te Rangi 300
This is the only member of a large family that got into the list of owners and it is alleged he got in through "aroha". He seems to have occupied.
26. Te Amaru and his four children
These are well connected in whakaapa but their occupation is slight. They will get the following shares:
Te Amaru 400
Hoana Amaru 200
Pohoi Amaru 200

Pani Amaru 200
Keita 200
1200

27. Tiopira Tawhiao and 11 others
This list which Kani Pere described as a heterogenous one was well championed by Rawiri Karaka. There is little evidence of occupation and it is considered that 2000 acres will be a fair award for them.
Tiopira Tawhiao 200
Ripeka Awatea 200
Mika More 200
Apihaka Wahakai 200
Pera Kararepe 150
Rutu Kuari 150
Rongotipare 150
Hetariki Tutaha 150
Wharepapa 150
Maraea Mokena 150
Haromi Paku 150
Hariata Ahua 150
2000

28. Taituha Matauru 300
This man is said to have a similar right to that of Karaitiana Te Ruru. He will however get a somewhat larger share.
29. Maata Te Haura and 4 others
These have ancestral right probably under Wahia as well as Ngariki. They were defeated but brought back to the block. They were get 2100 acres distributed as follows:
Maata Te Haura 500
Paratene Kuri 400
Heni Taua 400
Ngahirata Taua 400
Rangi Taua 400
2100

30. Hiring Wharekete and 9 others
These have admitted good right and some of them fair occupation although that of Tohukore's side is inferior to Rawiri Tamanui's. The persons on this list will get 6000 acres distributed as follows:
Hiring Wharekete 400
Epeniha Hape 400
Neri Wharekete 400
Pera Te Uetuku 900
Hira Te Uetuku 700
Ruka Tahauteka 600
Hemi Whaipu 900
Rewi Tamanui 900
Rawiri Tamanui 400
Ruahinekino 400
6000

31. Wiremu Kingi Te Kaurau
It appears from the evidence that this man would experience some difficulty in tracing his descendant from either Wahia or Ngariki. He certainly had some standing among other hapu and lived at Torere in the Bay of Plenty. It is alleged that he was put in the title through courtesy and that he ought to be in the "aroha" list. His connection with Mangatu seems to have been only a meteoric one and 100 acres will suffice for him.
(Note. All through this judgement acres are alluded to instead of shares. It will be better however to substitute shares for acres as there may be an increase or deficiency of acreages).

iii NATIVE LAND COURT DECISION ON RELATIVE INTERESTS, 1918

Gisborne 44, 28 October 1918, fol. 103.

Court: Judge W.E. Rawson

Mangatu No. 1 and 4 Blocks under Section 6 of the Native Land Amendment and Native Land Claims Adjustment Act 1917.

The title to the whole of the Magnate was first investigated in 1881 when the block was divided into six subdivisions and owners appointed for the same.

Last year Section 6 of the Native Land Amendment and Native Land Claims Adjustment Act 1917 empowered the Native Land Court to reopen the question of the ownership of the Nos 1 and 4 Blocks. As there is considerable difference as to the true meaning of that section the Court proposes to discuss that phase of the case first and in doing so find its necessary to refer at some length to the proceedings and findings of the earlier Court.

Its judgment given on 11th April 1881 sets out that the whole Magnate Block originally belonged to Ngariki who were broken by Ihu and his sons and again at a later period by Te Whiwhi, grandfather of Waaka Mahuika, and that since then though they continued to dwell on the land, they can only have done so in subjection to the conquerors.

That the fighting which occurred at the time of Te Whiwhi and at a later period had no relation to this block, which remained after Te Whiwhi's death and until the return of the remnants of the tribe in the time of Hinekoia, unoccupied unless by a few of the Ngai Tamatea and the remnants of Ngariki under their protection.

The judgment then proceeds to dismiss certain claims and concludes as follows:

"The Court finds that the chief owners of the land are Wi Pere and Wi Haronga and the descendants of Bahia.

That the descendants of Waaka Mahuika and those of the party who returned to the land after Ruapekapeka also have claims on part of it and the Ngariki who were brought back on to this land have rights in respect of their residence."

Following on this Mangatu No 2 was cut out for Ngai Tamatea, and two days later the following was entered in the minute book:–

"All the morning discussing as to names of owners and the portions of land to be given. The Court then said that it meant by its judgment that Wi Mahuika and his party have proved that the mana over the Ngariki and on this land descended from Te Whiwhi and remained to them to the last to the time of Ruapekapeka and therefore that they are entitled to participate as claimants. If the parties cannot agree upon the names and the Court is obliged to fix a promotion it would say that the claims of the three hapus represented by Wi Mahuika as coupled with Ngatiwahia and Ngariki may be estimated at about 6 per cent."

Wi Pere agreed and a general agreement was come to that their claims should be satisfied with a piece of 6000 acres at Maunga??? Abutting on the Motu. The list of names for No. 3 was then handed in, read out and agreed to and later on in the afternoon the following entry was made:

Mangatu No. 4 6000 acres.

"Wi Mahuika on giving in his names for Magnate No. 4 (said) that he would record Wi Pere's agreement to bear the expense of survey.

"Wi Pere said that he made that offer when he offered him 3000 acres and he objected. The Court said it had suggested 6 per cent as about the share of Wi Mahuika and the whole would probably be at least 12000 acres. If therefore they were to have only 6000 acres it was reasonable that he should pay for the survey as that would be very little while surveying the Block of 160000 acres.

"List of names handed in and read."

On the 30th of April 1881 Wi Pere handed into Court a list of 179 names as the owners of No. 1 but there is no record that it was either read, agreed to or object to. The Court directed that an order issue in favour of Wi Haronga, Wi Pere, and ten others for Magnate No. 1 containing by estimation 100000 acres.

The minutes show that these twelve were really put into the title as trustees for the persons named in the list, and by Section 2 of "The Mangatu No. 1 Empowering Act 1893" the 179 persons names in the second schedule thereto (being the persons in the said list) are declared to be the owner of the No. 1 Block.

Since that time Mangatu No. 1 and 4 have been vested in trustees, who hold the lands under several certificate of title, work portions of the estate themselves and have given leases over other parts thereof. One dealing with the land in particular requires to be noticed as it considerably complicates the title. A deed of trustee Wi Pere and others and the Magnate No. 1 Corporate Body was executed on the 7th November 1898 by virtue whereof 20000 acres of Mangatu No. 1 was given to the Wi Pere family to mortgage such area to revisit as soon as the mortgage had been repaid. This 20000 acres is therefore now part of the Wi Pere Family Estate (but subject to the said Deed of Trust) and the Certificate of Title is in the names of Henry Cheetham Jackson and Hetekia Te Kani Pere. It is with other lands of the Wi Pere Estate subject to a mortgage for £61500 advanced by the Public Trustee on the 29th March 1917.

There are also mortgaged over other portions of Mangatu No. 1 amounting to between £50000 and £60000 but on No. 4 there is encumbrance.
The question of relative interest in Mangatu No. 1 has also been brought before the Native Land Court and an order was made last year. This however has been annulled by the said section 6 but can be seen from the foregoing that many difficult questions are likely to arise whatever the result of the present claim to ownership is.
The foregoing shortly explains the history and position of the titles to the land affected by section 6 of the Native Land Amendment and Native Land Claims Adjustment Act 1917. That section empowers the Native Land Court to enquire and determine what members of the Taupara hapu are entitled according to Maori Custom and usage to be declared to be Native Owners in addition to the present owners of Mangatu Nos 1 and 4.
Subsection 4 of the said section 6 sets out "that the Native Land Court may, by the said order or orders or by any subsequent order or orders, ascertain and define the relative interests of the Native Owners in the said blocks or in either of them, and every agreement or order or judgment of the Native Land Court heretofore made ascertaining, defining or declaring the relative interests of the Native owners or groups of Native owners in the said lands or any of them is hereby annulled."
Great difference opinion existed to the true meaning of this subsection. Mr Morrison argued that "every agreement order or judgment" and the following words covered the agreement and the award pursuant thereto of the 6000 acres comprising No. 4 to Wi Mahuika and his party under Taupara and that therefore that agreement and order was annulled.
Mr Sim and Mr Dunlop maintained the contrary and that the division of the residue of the block into No 1 and No 4 for the respective parties still held good.
If we turn to subsection 1 we find that the Court is empowered to inquire and determine what members of the Taupara hapu are entitled "to be declared to Native owners of the Mangatu No. 1 and the Mangatu No. 4 Block in addition to the owners whose names are set forth in the second schedule to the Mangatu No. 1 Empowering Act 1893 and, as to the Mangatu No. 4 Block, in addition to the owners whose names are set forth in the order issued for the Mangatu No. 4 Block on the investigation of title to the Mangatu lands.
It will be noted that in the first part of this subsection both subdivisions are grouped together, and in the last part No. 4 is separated. Mangatu was investigated as a whole and, after judgment, separate orders made for different portions to different hapus or groups of owners. Subsection 1 would be perfectly clear if the words "as to Mangatu No. 4 Block" in the latter portion of the subsection were omitted. It would then be certain that the Court was empowered to inquire what Tauparas in addition to the ascertained owners of the land known as Nos 1 and 4 were entitled to be declared Native owners of the area formed by those two divisions.
The addition of the above words "as to the Mangatu No. 4 Block" and the semi colon after the figures 1893 appear to this Court to point to some other meaning. No. 4 was the portion awarded Wi Mahuika group under Taupara and, bearing this in mind, the meaning seems to be that this Court can add to the list in the second schedule of the 1893 Act the Tauparas it finds entitled and that together they form the owners taken as one block, but as regards the No. 4 portion, when this Court, settles the owners thereof as a separate division from No. 1 it must confine itself to the owners set forth in the investigation order for No. 4 and such new Tauparas as it holds to be entitled there. Therefore this Court must declare such Tauparas as it thinks entitled and those persons in the second schedule to the Act of 1893 to be the owners of the joint area of No. 1 and 4.
This means that while Tauparas now in No. 4 may claim shares outside that subdivision in the No. 1 subdivision, the owners named in the said second schedule have not the right to claim in number four except they can show themselves a such close relatives on their Taupara line to the present owners of No. 4 as to convince this Court they have been wrongly or inadvertently omitted from that group of owners by the Court of 1881.
If this view be the correct one, this Court is then left with an absolutely free hand as to the definition of relative interests, for subsection 2 says that "the said judgment shall not be construed as defining titles generally or otherwise the relative interests of any groups of owners found to be entitled.
Subsection 4 does not then in our opinion refer at all to the original division of the No. 1 and No. 4 Blocks, but refers to every agreement, order or judgment as to relative interests made since, but that, notwithstanding that, this Court has power to put aside or amend the original division of the owners by the Court of 1881 into owners for No. 1 and owners for No. 4 to the extent stated above.
Now as to the different lists of names submitted for inclusion.
It was common ground that Ihu had the mana over the people of this Mangatu Block. His children would naturally inherit his rights but there is evidence to show that neither Mokaituatini, Kai, Whakamahi or Tauwheoro retained any so far as Nos 1 and 4 Blocks are concerned.

As to the eldest son Ranginaonaoariki, Wi Pere's evidence is not clear but it set outs his child WAhia took his place. We are not now deciding as to the rights of Ngatiwahia so it is sufficient to point out that the Court that heard the evidence given in 1881 decided that Wi Pere, Wi Haronga and the descendants of Wahia were the chief owners of the land.
As to Whanau a Taupara, until we have heard the Ngati Wahia on the question of shares the Court must endeavour to keep an impartial mind, and we will therefore merely say that in all the stories of the fighting that occurred in connection with this district or on this block, the Whanau a Taupara appear to have taken a leading part. There is proof that they had occupation on other lands in the vicinity and evidence that would lead one to believe that they occupied and had rights over this land now in question.
The Court of 1881 in its judgment recognise that the descendants of Waka Mahuika and those of the party who returned to the land after Ruapekapeka had claims on part of it, and that the Ngariki who were brought back on this land had rights in respect of their residence.
As mentioned before that Court interpreted its decision by saying it meant that Wi Mahuika and his party had proved that the mana over the Ngariki and on this and descended from Te Whiwhi and remained to them to the time of Ruapekapeka and therefore they were entitled to participate as claimants.
Now Wi Mahuika's party were claiming as Whanau a Taupara and it is as such that the Court [in] in 1881 has included them. The Whanau a Taupara claiming before this Court are, it appears, equally as well entitled to inclusion as those in Mahuikas party; provided of course that they can show that they have always been identified with the Whanau a Taupara of this locality. The Court finds that those in Captain Pitt's list fulfil this condition and will therefore admit their names for inclusion, that is to say a total of 126 names, which includes the following four names added during the hearing:–

Harawira Te Ua
Taraipine Tutaki
Tipene Tutaki (already in No. 1)
Mohi Tutaki
Whakarau Tutaki

As to Tuehu Pomare's list for Hami Te Hau and 19 others and Iopa Te Hau's list for nine names.
Both these lists under Taupara and Whakamika really based their claim upon Hinekoia and on the inclusion of various members of the family in the titles of this and other lands in the district. The objectors to them as Tauparas appears to relate only to the descendants of Matenga Tukareao who was said to have been cursed by his wife Hinekoia. As to that the Court is doubtful as to whether such course would extend to Hinekoia's own children by Matenga and their descendants. The inference to be drawn from the inclusion by Paora and Hami The Hau and others in the title to No. 4 is that it did not.
It is clear however that the permanent homes of these people are not in this district and though the Court decides to admit them their shares must be small.

As to List 4 Rapihana Hawaikirangi and others, List 18 Rewi Wahapango and others, List 23 Heremia Maehe and others, List 14 Hipora Te Apatu and others.
These four lists are under Tamanui and Parawhero and their claims are founded on the Kekeparaoa fight and canoe building. As to Kekeparaoa, people from all parts joined Aitanga a Mahaki in defending this district against Whakatohea and the elders of these lists came with others as allies of the local people. This does not give them any claim to this block. Neither does the canoe building or occupation therewith. As a matter of fact the place claimed as being the scheme of these works was Mangamaire which is not on Mangatu. Consideration of the evidence in the minute books has convinced the Court that persons connected with these lists who have been included in title to this or other lands in the locality have been so included either from aroha or under takes than those now set up.
All these people belong to the Wairoa District and, though their descent from Taupara is admitted, it is clear they are quite distinct from the recognised Whanau Taupara of this locality and cannot be considered to have had occupation or rights in Mangatu.
These claims are dismissed.

List No. 9 Pimia Mills and others, No. 36 Peta Hape's list, No. 12 Te Waaka Kereru's list, Nos 3 and 5 J. Down's list.
These were all heard together. Pimia Mills who was the witness called for her list under Kuraiteapata and Hineuru, stated that her grandparent Tipoki had built canoe on this land, that her mother gave birth to a child there, that her mother's brother Tamati Te Rangituawaru had occupied and was included in the title, as was also her cousin Horomona Karakitai. Pimia stated that she had been put in the title to Makauri under Taupara, and also had rights in Poututu and Motu near Mangatu but admitted that she herself had

been on this land only two or three days about the time of making her application for investigation of title.
Peta Haps for his list stated that the ancestress Hineuru claimed from had lived permanently on Mangatu but the marriages of her descendants strongly support the contention of the objectors that these people are not regarded as Whanau Taupara of this district.
Te Waaka Kereru's list also, it appears to the Court, cannot be said to have established a claim to be recognised as Whanau Taupara so far as this land is concerned.
As to John Down's lists under Hineuru the objectors denied that Tiraokarika was a child of Hineuru. Tame Arapata the witness called on behalf of the list stated that his mother, who was well versed in the traditions of her people, had given him this whakapapa, but he could give no details outside the bare descent from the ancestors. He stated he lived on Mangatu in 1873/74 with his half sister (same father Arapata), when they got birds there, but that there were no cultivations or clearings. Also that after his mother had married Tiopira she and her husband lived on this land about the times canoes were being built. It would seem however that the sister Tame spoke of was married to the lessee of the block.
Tame also stated that Ngariki and Ngapotiki were the tribes on the land in 1873/74 and that the place he then stayed at was Mangataikapua outside this block.
It was admitted that this line had married away from Whanau Taupara but it was contended that, Mangatu being waste land, all who could trace from the ancestor were entitled to inclusion.
Captain Pitt for the Whanau Taupara objectors maintained that Hineuru, having married into the Rongowhakaata tribe, and her descendants not having intermarried against with the Taupara people, that these lists could not claim to be considered Whanau Taupara.
The occupation put forward as renewing their rights does not appear to have been anything more than the building of canoes and bird snaring. As this was the only place where totara in sufficient size could be obtained and, as the canoe builders had to be provided with food while there, it is a natural assumption that was done with the consent of the owners and without any intention of establishing or renewing rights to the land.
As to this see Pimia's evidence in 1881 when she said "Te What and Kahutia chiefs of the canoe building" "Don't know who took them to Waipaoa". Also Wi Mahuika's statement that the canoe building was a tribal undertaking, "Kahutia and Kahungunu were given ottar at Waipaoa."
The people in these lists all belonged to the Wairoa side and the fact that their elders came as allies to fight at Kekeparaoa gives them no claim here. Wiremu King was a chief of the Ngaitai and the great probability is that the was included out of aroha as were others in the title.
The minute books also support the contention that Hineuru did not beget Tira Okarika and that Tira Okarika did not beget but married Tukuwai.
The Court considers none of these lists have proved occupation of such a nature as to re-establish any right that their ancestors may have held in days long past.
These five claims are dismissed.

List 28A Mika Taruka and 13 others.
This claim was from Taupara through Whakaiuka down to Hinehuka.
Mika Taruke in his evidence claimed that the ancestors down to Paipai, husband of Hinekoia had occupied on Mangatu but that no one at all had occupied since, that he ascertained this when on a visit to Gisborne at the time of Henare Ruru's tang in the early seventies. He says he saw the people living at Waerangaahika and Matawhero so knew from that there was no occupation on Mangatu.
His real argument however is that, as Paipai's descendants have been included in the title to No. 1 these relatives should also have been put in. Now it is certain that these descendants of Papa did not get in as Wahia or Ngariki in 1881, so their inclusion must have been by Aroha.
Also inclusion is claimed for relatives of Hinekoia's other husband Te Matenga Tukareae but there is nothing to show that he was recognised as a Whanau Taupara of this land, he was really a leader of the Rakaipaka of the Nuhaka district and was here on his wife's rights only. No occupation is shown for others in the whakapapa and this Court cannot think these people have any just claim.
This list is dismissed.

List 37 Hori Rylands and 17 others
List 35 Moana Paratene and 10 others
These two claims under Taupara and Tumurau were taken together.
Hori Rylands, the witness for the first list, stated that when Kaipapa died, his wife Te Manawakume and children went away from Gisborne to Tokomaru and lived there on their rights as Whanau Ruataupare. From the time of Te Maurire down to Huhana they visited Gisborne district at intervals and also in the time of the parents of his list. It was stated that Hiria Raerena's children born at Tokomaru were brought

here by Wi Pere as his Taupara relatives, that some other members of that family have lived here for certain periods, as have also the family of Keriata, and the descendants of Waiopotango and Te Ahiatengu but no details were given.
Hori put forward as a further argument the inclusion in the title of No. 4 of Harata Poiwa who, he asserted, had kept alive rights derived from her father Paratene Te Moko under Taupara and Te Whetuki, but visiting this district, and he also pointed out that she Raniera Raerena and Hare Parahako had been included in Waiohiarore Block No. 2.
As to the second of these two lists no further evidence was given, but it was stated by the conductor that it was owing to the intermarriage of the descendants of Taupara and Wahia with Rongowhakaata that they were strong enough to defend Mangatu and this district.
Harata Poiwa is also claimed by this list but it was stated that her rights came through her mother and that of her father Paratene Te Moko had no right, thus contradicting Hori Ryland's statement.
The objections to these people assert that those in the first list have their permanent home outside the district, and never returned to occupy on Mangatu or intermarry with Whanau Taupara, that the inclusion of some of them in the Waiohiharore fishing reserve proves nothing, as everyone is in that division. Harata Poiwa it is maintained got no award as a Taupara, but from Aroha only, and in other lands in this district is included as belonging to the Rongowhakaata tribe.
The second list also have no occupation, nor intermarriage with the Whanau Taupara, and also appear to be Rongowhakaata.
Captain Pitt in his addresses stated that none of the persons in these two lists had ever made any effort to join the Whanau Taupara in obtaining an investigation into the title to this land, although the petition to Parliament was widely discussed for some two years. He argued from this that these claimants have no real belief in the claims they present.
Both these lists are refused admission.
List No. 6 for Waaka Taketake and others.
Two in this list, Hirini Haereone and Raiha Taketake, are already in the title for No. 4, but the other two Waaka Taketake and Puhara Timo are new names.
Hirini Haereone is in Mangatu Not 2, 3 and 4 and is also included in Waipaoa and Whaitiri Blocks so it is maintained that this list cannot be regarded as mataotao under the conditions obtaining as to occupation on Mangatu.
The whakapapa shows descent from Hinewaho, who was a sister of that Ihooterangi of whom so much was heard in the main case, and it is claimed that, in those troublous days, when people father together for protection, Hinewaho's occupation would surely be similar to that of her brother.
It was admitted that Hinewaho married Pakura of Whanau a Kai and the objectors to this list say he was of Mokaituatini also. They argue from the marriages of Hinewaho's descendants in this whakapapa that their connection with Whanau Taupara absolutely ceased in Hinewaho's time. They point out that Mangatu No. 2 was awarded to Ngai Tamatea, No. 3 to Whakauika (from whom Hirini cannot trace) and that Hirini only got a nominal share in Whaitiri while her inclusion in No. 4 is from Aroha.
These people can trace from Taupara and although this Court considers that there isn o sufficient evidence to establish connection by later generations with the Whanau Taupara of this district, they have such close relatives in the title for No. 4 that this Court add the names of Waaka Taketake and Puhara Timo to the owners of No. 4 but for small shares only.
It cannot include them in No. 1 division.

List No. 46 Te Waea Poipoi and 18 others.
This was a claim under Kuraiteapata a son of Taupara. The whakapapa was disputed and has never been set up in cases this district before. The witness called for the list admitted that, if successful in this case, it would be his first award in this district under Taupara or any other ancestor. He certainly had very little knowledge of Mangatu or its history and stated that he got his information from Iraia who died prior to the Mangatu hearing, that ht was in Gisborne during that case and that he set up no claim then. We cannot see our way to admit this list.

List No. 32 Mihi Korohere's list for Hamiora Ngarangikatea and two others.
This was a claim for inclusion under a whakapapa from Kuraiteapata also. No occupation or any connection with this land was shown by the ancestors from Te Waotapu down the members of the list. Under cross examination the witness for the list stated these people were down as Ngati Maru and Whanau a Kai and had been included under a Whanau a Kai ancestor in Puharakeke Block and that their only claim was descent from Taupara.
This list cannot be included.
List No. 7 Paetai Wirihana's List for Horiwia Maru and two others

Another list under Kuraiteapata composed of people really belonging to the Wairoa side although they have shown that some of their elders have at times resided in this district. They set up no claims in 1881. Neither have they joined in the petition to Parliament nor claimed before in Taupara lands.
The whakapapa was questioned but assuming it to be correct they have failed to establish to the satisfaction of the Court that they or their elders have ever had any association with this block as members of Whanau Taupara. The witness for the list could not show the connection of Kanapu, through whom they trace, with others of that hapu.
When it is remembered that Kuraiteapata married Kai and that Wi Pere said no lands went with her it will be seen that only those who returned here and lived with the Whanau Taupara as Taupara's can claim rights in Taupara lands.
This list cannot be included.

Lists 13 and 15 Patu Te Rito's List for the Matetes and Hurimoana and others.
These are further lists under Kuraiteapata. Ereti Matete, the witness, called for the list stated that her elders, Harawira and Hinetautope, after the Kekeparaoa fight and after the introduction of Christianity went back to Mangatu and lived at Tapuwaeoterangi on No. 2. But there is nothing to show that this was on Hinetautope's right from Taupara. The fact that Anaru Matete, Te Kaur and Hinepoka Matete were included in No. 1 would make it appear that any occupation they had there was under Harawira's right from Wahia. This seems more likely when it is remembered that this witness could show no occupation on this land by Kuraiteapata's descendants Te Waotapu, Taukiwaho and Hinekaitangi. On cross-examination under their father's take from Wahia and Ngariki, and, that had she been included with them she would have been satisfied. Her evidence shows that Hinetautope was associated with her Rongowhakaata relatives and that through Anaru Matete was associated with Wi Pere and the Wahia claim at the original Mangatu hearing, he did not present any claim on behalf of himself or these people under Taupara. Hinetearikí a descendant of Hinetautope, is in the title to No. 4 but there is no evidence concerning her beyond the insertion of her name in the whakapapa.
As these people seem to have had no connection with the land as Tauparas previous to the introduction of Christianity the Court cannot include them though it appear likely that their claim under Wahia was overlooked.
These lists are dismissed.

List 34 Wi Karauria's List under Whakanika.
In this case both the whakapapa and occupation were disputed and it was also denied that these people formed part of the Whanau Taupara who had rights in this land.
The evidence called to support this list does not establish anything that show occupation as of right by either their elders or themselves, but that is perhaps not surprising when the circumstances are considered.
As to the whakapapa, the Court is of opinion that the weight of evidence is against that put forward by these people. At any rate its denial, being apparently an honest one, may be taken as showing that those in this list are not considered as part of the true Whanau Taupara of this district otherwise their whakapapa would be known here. This view is confirmed by the fact that they neither claimed in 1881, signed the petition to Parliament, nor claimed in other Taupara lands here.
It was argued that Poututu was the same land as this block, but, if it is separated by arbitrary lines only, it was invested under another take, and as a matter of fact Ngati Hiakai got only a portion of it. Wi Pere at that hearing said that he was of Whanau Taupara but had no claim there, thus showing that Ngati Hiakai who were included in that title were distinct from the true Whanau Taupara so far as rights to the land were concerned.
Mangatu was part of Ihu's conquest while Poututu was acquired by Mahaki, and, as Wi Mahuika said in 1881 Mahaki lands were outside this block. Also it would appear, according to Wi Pere, that "a section of Nga Potiki called Ngati Hiakai were with Whakatohea, the enemies of Ngati Wahia and Whanau Taupara at Kokeparaoa."
After carefully considering this claim the Court is of opinion that it should be dismissed.

List 21 Hipora Niania and others under Timirau.
In this case also the whakapapa was called in question and the weight of evidence is against the contentions of these claimants. Some of the persons in this list are already in the title, but one of then Peneha, called by their opponents made it quite clear that it was as Ngati Wahia, not as Whanau Taupara that they were so included and he maintained that Rongokako was of Whanau a Kai. The evidence made it quite clear these people belong to Te Reinga and that they are not of the Whanau Taupara connected with Mangatu.

This list is dismissed.

List 19 Hang Paretipua and Wi Te Rama under Hineuru.
This list might property have been taken with those of Peta Hape and Mika Taruke. The first whakapapa put in was lodged apparently with the intention of showing relationship to Wi Mahuika and relying on him as an ahika. However that was eventually withdrawn and descent claimed from Hineuru. This was disputed and cross-examination showed that the witness was by no means sure of his ground, through it was admitted by Captain Pitt that he was a descendant of Hineuru. The evidence as to occupation was unconvincing and the witness admitted Wairoa was his permanent king and that he was included in numerous blocks there, while those he has shares in here are all Rongowhakaata lands, not one of them is Aitanga Mahaki. The fact that the witness did not know his true descent points to the family not being Whanau Taupara of this district and a fair assumption is that Waaka Tarakau returned to Wairoa on the death of his Gisborne wife. In short this is another of those claims depending on the assistance given by outside haps at Kekeparaoa but that fight in our opinion had no effect on the ownership of Mangatu.
Careful consideration of the evidence leads this Court to believe that these people have no claim to inclusion.
This list is struck out.

List of 25 and 26 Hinetearikí Punahamoa's List under Hineuru, Kuraitepata and Tumurau.
In this case the whakapapas under Hineuru and Tumurau were disputed. That under Kuraiteapata was not denied. The claimant said she obtained her information from Hipora Niania whose own whakapapa was severely attacked. The claimant relied to some extent on the fact that her half-sisters were in the title to No. 4 and her brother Mihaere Pareha was in the title to No. 1 but one of these sisters, Te Waara Parehe not only gave evidence to the effect that she did not know the whakapapa put forward under Hineuru but stated that Rina Parewhai, the claimant's mother had no rights in Taupara lands, though her three children by her first husband Hami Parehe were included in Mangatu.
The Tumurau whakapapa was also brought forward in connection with Hipora Niania's claim and severely discredited. As to the Kuraiteapata line it is clear from other cases before Court that through the intermarriages with Whanau a Kai no rights remained the descendants of this ancestor who have not become again incorporated with the Taupara people. No occupation or any other connection with the land has been shown and the Court is of opinion that both these lists must be refused.

List 42: Wiremu Iretara's list under Tumurau and Whateauika
The names formerly in Hara Warakihi's list have been added to this one.
Tapita Iretoro the witness for this list claimed admission in No. 4 because she understood her brother Wiremu Iretoro had been included in that title. It was found however that this was not so and that Wiremu was in Number 3. Captain Pitt stated he was objecting to them as Wahias only and admitted that they were Tauparas who should have been in his list.
In answer to Mr Sim Tapita said "I am only claiming in No. 4 as a Taupara not in No. 1 because I through Wiremu Iretoro my brother was in No. 4." In the Court's opinion witness did not clearly understand the position. It is clear that while this list have rights in Bahia they are also of Whanau Taupara associated with this block and should be included in both No. 1 and No. 4.

List No. 44 Rutene Takina and Ere Takina.
This claim is based on admitted descent from Taupara through Te Kete and the fact that Haruru is included in Captain Pitt's Taupara list. The relationship with Haruru is as under:–
[Whakapapa]
Rutene said that his father Hone Takina was asked by Ropiha (whose children were included in No. 4) to come and live with his relatives in this district, and that a similar request was made to Te Puia. In neither case, he told us, was the invitation accepted, though a younger brother born since 1881 did come and live three years at Wharehinu about four miles from Mangatu. It is admitted Hone Takina got into no lands under his mother Te Waro. This supports the objection that these people have always held to their Ngati Konohi side and have never been considered Aitanga Mahaki.
This list is dismissed.

List No. 16 Maraea Peneha and others.
Really two lists, one claiming descent from Whakauika through Hikairirangi and the other from Tumurau through Te Hauraranga.
As to the first one the whakapapa was admitted to be correct. It showed
[Whakapapa]

The persons in this list area descendants of the latter.
Peneha Hauia's evidence was to the effect that Wikitoria lived and died on this block and that Anamaraea after her marriage with a member of Whanau a Kai often came to her mothers on Mangatu.
He stated that on Anamaraea's death the Whanau Taupara elders came to Korohinga to take her body to Waerengaahika where she was buried. He said that he went back to the block in 1874 and was now living there and that Maora also lived on the land.
It was clear from the cross-examination of Peneha that he always considered their rights ere under Wahia and it is only the fact that two of the family were not included in the title that induced this claim under Taupara.
But they have descent from Taupara, occupation, and are of course local people. Their rights under the heading of Taupara are small and as the rest of the family have been placed in the title as Wahia, we will only include the two left out in the list of Whanau Taupara the Court proposes to admit namely Te Otene Houia and Hemi Haua.
As to the second list there is a dispute as to the whakapapa on one line. That produced to the Court by Himinona Katipa showed as follows:–
[Whakapapa]
Captain Pitt stated that whakapapa in his parties possession showed:
[Whakapapa]
This shows Ihooterangi and Tanga Hengu as the parents of Hiku, and could discredit Himiona's as showing that Hiku married his sister or half-sister. However they can claim from Wahia by another line then that through Turimi.
The ancestors of these people have apparently intermarried with both Ngariki and Wahia and their half brother Penete Aira is in the title. It was stated their mother Heni Haua and their father Peneha lived on the land and Heni's brothers and sisters have been included as owners. On similar reasoning to the prior case we are inclined to give the persons omitted the benefit of the doubt and include them as Tauparas leaving those of the family already in the title the rights under Wahia and Ngariki.
The names are:

Te Otene Haua
Maraea Peneha
Hemi Haua
Mangere Peneha
Te Rua Peneha
Hirini Peneha
Watene Peneha
Heni Haua

List 38 Rapata Kingi's claim under Taupara and Kuraiteapata
Other members of this family have been included but the witness called admitted the occupation was a Ngariki one. In short this is one of those cases in which people other than Tauparas are seeking to use the section of the Act to rectify an omission under another take.
This family were not included in No. 4 at the first hearing, but they can trace from Taupara and may not have lost all Taupara rights seeing that they are owners in this land where Whanau Taupara claims so much though under another take. But any such right must be small. We are therefore of opinion that Rapata Kingi should be included in No. 1 as representing the whole family, that is to say the others of the family must be content with their claims under the ancestors found in 1881.

List 29 Horiana Rare and Pere Kararehe under Tumurau and Whakauika
Under Tumurau and Whakauika Horiana Rore claims in both Not 1 and 4 blocks and Pera Kararehe (who is already in No. 1) claims in No. 4.
The whakapapa produced was admitted to be correct and Horiana gave evidence to the effect that her elders had occupation before the time of Kekeparaoa and that at that time her grandfather Rangitarewa was sent as a messenger to Rongowhakaata. Also that the children of her uncle Mokena have been included in the title as were her father Mika Rore and his other children. But she admits this was as Ngariki. She and Pera Kararehe have been appointed successors to her father's interest and so are included amongst the present owners.
Witness admits that she never knew of any Taupara right until she heard of her whakapapa and the section of the Act. No claim has been put up by other members of the family, and it is clear their inclusion was not under Taupara. It seems to the Court that the omission of the claimants from the list of owners has been rectified by appointing them successors to Mika Rore and their position can be considered when individual shares are allotted.

But their claims under Taupara must be dismissed.

List 31 Rawiri Tawhiao and five others. Claim under Tumurau and Whakauika.
One of those in the list put forward, Irihapeti Tawhiao, dies before 1881 hearing no issue consequently that name was struck out together with that of Hineawe Taitapu who was not born at the time of the original investigation.
Tiopira the father of Rahiri is in the title for No. 4 and other relatives are in No. 1 and in other lands in this district.
They are apparently in the Mangatu lands as Ngariki and those in the present list not having been included with them are endeavouring to have this rectified by claiming as Tauparas.
However, as with other claimants they are plainly of this district, and as relatives are in the Mangatu Blocks we find it difficult to believe that they have not associated with the true Whanau Taupara. We will give them the benefit of the doubt. Those admitted at the first Court retaining the rights they were then admitted under while those present claimants Rawiri Tawhiao, Wharekauri Tawhiao, Oriwia Tawhiao, Rutene Taitapunui will take the shares representing the Taupara interest of the family.

List 45 Apirana Waimotu's list under Taupara, Tumurau and Pohatu.
The whakapapa put forward was disputed by Captain Pitt who maintained that Tumurau did not marry Te Atuarererangi and did not have a child Pohatu. On the evidence before it the Court believes that the objection is well founded and that Apirana Waimotu, Apihkara and Himiona have no claim to be considered members of Whanau Taupara.
But apart from the whakapapa the evidence established to the Courts satisfaction that these three people are Ngai Tamatea and have never claimed before as Whanau Taupara. Apirana in his address to the Court practically admitted this for he stated he and his elders occupied with others as Ngai Tamatea.
The first four persons in Apirana's list are in Captain Pitt's list claiming under another line and will be left there.
So far as this list is concerned the claim is dismissed.

The following lists have already been dealt with:
Nos 10 and 11 Rutene Tuhi's list dismissed (p. 241).
No. 5A Struck out as being the same as No. 19.
No. 22 Included in Hipora's list No. 21.
No. 30 Add to No. 18 Rewi Wahapango's list.
No. 17 Added to Captain Pitt's list (p. 2).
No. 24 Heremia Maeke's list withdrawn as a duplicate of 23.
No. 27 Struck out, names in Wiremu Iretoro's list No. 42.
No. 33 Dismissed p. 328, Patu Te Rito's list.
No. 43 Te Paea Kingi and others dismissed p. 328.
No. 47 Puhara Tiri's list withdrawn.

There are three lists still be heard but which will come before the Court in connection with the Wahia and Ngariki case viz:– Mr Sim's list No. 40 of Taupara descendants who will claim to share in any award to Taupara though maintaining at present that land in No. 1 belonged to Wahia and Ngariki and who are in title to No. 1. Poneke Huihui's list No. 39 of Ngariki, Rawiri Karaha's list No. 41, also of Wahia and Taupara.

iv NATIVE APPELLATE COURT DECISION, 1919

Appellate 18

In re Mangatu No. 1 and 4 Blocks:

Judgment of Deputy Chief Judge Jones (in the Native Appellate Court).

With regard to Section 6 of the Native Land Amendment Act, 1917, that clause bristles with difficulties. It was passed for the purpose of bringing within the jurisdiction of the Native Land Court, a subject matter not contemplated by the Native Land Act, 1909. In the year 1881 a large block of land called Mangatu was brought before that Court for investigation of title. It was found with regard to certain sections of it, there was little dispute but that the balance (which comprised the portion now divided into

two blocks and called Mangatu Nos 1 and 4 respectively) was keenly contested. After a prolonged hearing, the Court eventually found that the chief owners of this balance were Wi Pere and Wi Haronga, and the descendants of Wahia, and that the descendants of Waka Mahuika and those of the party who returned the land after Ruapekapeka also had claims on it. This letter section was championed by Wi Mahuika who had based his claim under the ancestor Taupara.

The Court then directed that lists of names of those who were to be included in the title should be handed in within two days later. This is in accordance with the usual practice of the Court in such cases, those who claim inclusion place their names before the Court, the names are read out, objectors are called for, and these objections being disposed of the lists as finally passed by the Court form the schedule of the owners who are inserted in the title. On the day appointed (13 April 1881) according to the minutes, the Court was occupied all morning discussing as to names in the portions of land to be given, and the Court then explained that it meant by its judgment that Wi Mahuika was entitled to participate as claimants (owners?), and eventually it was decided that these claims should be satisfied with a piece of 6000 acres now forming the portion called Mangatu No. 4. An order was thereupon made in favour the persons who now appear in the title. With regard to Mangatu No. 1, it was proposed for convenience sake to vest this in trustees. The Court declined to create a trust, but accepted a voluntary arrangement by which the land should vest in twelve persons who should execute a declaration of trust and it directed that a complete list of owners should be furnished of all persons recognised as owners of the block. This appears to have been done and the names recorded in the minute book. The title remained in this position till the passing of the Mangatu No. 1 Empowering Act, 1893 (Private) the preamble of which gives a history of the different events and which act vested the block in the owners set out in the second schedule thereto. This then was the state of both titles when the section now under review was passed. It presumably had been discovered that there was reason to believe that on the investigation of title some of the rightful owners under Taupara headed been omitted from the title – a not unlikely thing with the large number of owners in the nature of the proceedings at the time, while it seems there was dissatisfaction with the amount of land awarded to that section. Probably the intention of the framers of the statute was to give power to remedy these alleged defects, but care at the same time, to be taken to preserve the entity of each block, so that the rights of third parties should not be prejudicially affected.

The portion of Section 6 which gives the Court jurisdiction runs as follows:–

"The Native Land Court is hereby empowered, on application of any native claiming to be interested, to enquire and determine, as in its ordinary jurisdiction on investigation of title, what members of Whanau a Taupara Hapu are entitled, according to Maori custom and usage to be declared to be Native owners of the Mangatu No. 1 Block, and the Mangatu No. 4 Block in addition to the owners whose names are set forth in the second schedule to the Mangatu No. 1 Empowering Act, 1893; and, as to the Mangatu No. 4 Block, in addition to the owners whose names are set forth in the order issued for Mangatu No. 4 Block on the investigation of title to the Mangatu lands. The said Act and Order shall be construed respectively as if the lists of owners set forth therein respectively comprised some only of the owners of the said blocks."

The latter sentence is part of subsection 2, but it seems more applicable to subsection 1.

The section as it stands it will be noted, does not give a general right of admission to all rightful owners who have been omitted but only to those who can claim to be Whanau a Taupara.

It will also be observed that the section does not give a general jurisdiction to the Court to rehear the whole matter and to make Orders rectifying and readjusting the titles, but stipulates that it shall exercise its powers as in its ordinary jurisdiction on investigation of title. It makes no provision for the making of orders although subsection 3 speaks of "*any order made as aforesaid*" but doubtless Part IV of the Native Land Act, 1909, which supplies the Machinery for investigation of title to customary land would apply. Some difficulties in carrying this into effect can be foreseen but need not concern us now.

It will, it is believed, be accepted that the Native Land Court being a creation of Statute must exercise its powers strictly in accordance with the Act that gives it jurisdiction, and that Section 6 of the 1917 Act must be construed with reference to the principal Act that directs its functions. Applying these principles then under ordinary circumstances the investigation authorised would be practically a continuation of the proceedings on investigation of 1881 to ascertain if any owners were left out on those proceedings. Certain names were then placed before the Court and allocated in their respective portions. Could those persons those persons although their rights under Taupara had been admitted and those rights assigned to a certain specified block in which they were as a consequence included as owners, likewise claim that they were entitled to be admitted under that right to the portion set aside for Wahia? The obvious answer in any ordinary case would be in the negative. Possibly the area might be enlarged but the parties would still be kept to their respective sides if that Court had found that its original decision did not cover all their rights.

That being so does the Statute of 1917 take the position any further? It seems so far from doing so, to make it quite plain that the owners to be found are in addition to those already in the titles. The Act treats the Blocks as the original Court did as one for investigation purposes, but for title purposes and defining relative interests they are taken to be as they are, separate blocks. The reason in the case of relative interests is obvious since there is not power in the Native Land Court to combine the two blocks for the purpose of defining the relative interest of the owners and had the Court of 1881 gone on and exercised that parts of its jurisdiction it would have treated them as separate blocks for the purpose.
The section uses the term "in addition to the owners who names are set forth" twice in the first subsection while in the second subsection it is provided that the judgment of the 1881 Court is to be construed as declaring that such of the members of the Whanau a Taupara hapu as can establish a claim to be admitted to the list of owners according to Maori custom are owners of the blocks known as Mangatu No. 1 and Mangatu No. 4 together with the other groups of owners found by the Court to be entitled to the said lands respectively. It is difficult to understand what is meant by the "other groups of owners" unless it is the groups already found and allotted to their respective blocks and it is just as difficult to understand what "lists of owners" they are declared to be entitled to establish their claim to be admitted to, unless it is the list already found and made up of the other groups of owners found by the Court to be entitled. If this reading is correct, then it appears clear that any order made by the Court is to contain only new names and not the names of those already submitted to the Court and included in their respective titles. From this it will follow logically that a Taupara descendant already in No. 4 cannot be admitted into No. 1 Block and vice versa a Taupara decensant already in No. 1 cannot be admitted into No. 4. The right of a Taupara descendant to be admitted, seems to have been exhausted by his admission into either block. Indeed there seems no reason he should be so admitted except it be in the case of those already in No. 4 to enable them, to put it as the learned Judge of the Court below says, to "claim shares outside that subdivision in the No. 1 subdivision." This is a matter affecting relative interests and the right of a party to a larger award than he would be able to obtain perhaps if he were strictly confined to the No. 4 Block. On the other hand he might, through other Tauparas who ought to share with him being put into No. 1 Block get more than his due. But the matter of ascertaining who should be admitted is one really apart from defining the relative interests of the owners of the respective blocks, which latter can be done if thought fit by subsequent order or orders. If the intention of the Statute was to allow the owners of No. 4 to be also included in No. 1 for the purpose adjusting the relative interests as if the blocks were still one area, then one must reluctantly come to the conclusion that the intention is very imperfectly stated. It is possible that strict justice will require the two blocks to be treated as one. The case has not far enough advanced for us to express any opinion on that, but even so, the Supreme Court in Awhi Maihi v Mackay, 16 Gaz LR 452 has held that no argument of inconvenience or injustice can prevail against the well established principle of law as to the jurisdiction of Courts or give to statutory Court a jurisdiction not give to them by the Statute.

Judgment of Judge MacCormick (in the Native Appellate Court).
The first question for consideration is the true effect and meaning of Section 6 of the Act of 1917 under which the present proceedings were instituted.
The history of the proceedings on the original investigation of title and subsequent thereto is fully set out in the judgment now appealed from, and it appears unnecessary to repeat it here.
The elaborate attempt made in Section 6 to direct the Native Land Court as to what it may or may not do, appears to have resulted in such obscurity that scarcely two opinions can be found to agree altogether as to what the section really does mean.
It is not proposed to discuss here the several difficulties of procedure in regard to future orders and effective constitution of titles which the section as once presents to the mind of any one conversant with the practical working of the Native Land Acts. Those difficulties may be left to the Native Land Court which eventually has to face them.
The material point to consider at present is the extent of the jurisdiction conferred upon the Native Land Court by the Section.
I find myself unable to agree in all respects with the interpretation of the Section adopted by the Court below. I do agree entirely, however, with its view as to subsection 4. That view moreover was not contested before this court and may therefore be looked upon as accepted by both parties.
But the meaning the lower Court gives to subsection 1, I cannot unreservedly accept. It imports a difference in treatment between No. 1 and 4 Blocks. This different the lower Court infers from the semi-colon after the figures 1893 and the words "and as to the Mangatu No. 4 Block" following the semi-colon, the Mangatu No. 4 Block having previously been referred to in conjunction with Mangatu No. 1 Block, but in the second occasion being referred to by itself.
Punctuation is not generally used as an aid to interpretation of statutes.

As to the words referred to it is very plain that the draftsman of the Section intended firstly to preserve the identity of No 1 and 4 Blocks as separate areas, and secondly to preserve the persons already found to be owners of these blocks respectively from any liability to be excluded therefrom.
Bearing this in mind it would appear that subsection 1 should be read as if the words "as to the Mangatu No 1 Block" were added between the words "Mangatu No 4 Block", and the words "in addition to" where they occur in the sixth line of the said subsection. This addition enables the subsection to be read in a plain and common-sense manner. Counsel for respondents himself suggested during the argument that this was the proper method.
And the language of Subsections 2 and 3 strongly support it.
The Court could then add to the list of owners of either block such members of Whanau a Taupara as it found entitled.
The differences between this view and that of the lower Court may not ultimately result in any practical difference.
There is however a much more important question, and that is whether Section 5 does or does not empower the Native Land Court to admit as an owner of No 1 any member of Whanau a Taupara who was in 1881 found to be an owner of No 4 block, or to admit as an owner to No 4 Block any such member who is already an owner of No 1. I will refer to these persons hereafter as present owners. The argument does not of course apply to success of the 1881 owners.
The lower Court held that it could admit as owners of No 1 any of the Tauparas now in No 4 but as already pointed out drew a distinction as to admission of Tauparas now in No 1 into No 4.
The section is at least ambiguous.
Subsection 1 refers to admission of persons as Native owners of Nos 1 and 4 Blocks in addition to present owners. If the lower Court's interpretation of subsection 1 were take as correct the argument against admission of present owners of either block would be even stronger.
But the language of subsection 2 appears to go much further. It declares that the judgment given on investigation of title to the Mangatu lands shall be construed as declaring that such of the members of the Whanau a Taupara hapu as can establish a claim to be admitted to the list of owners according to Maori custom are owners of the Blocks known as Mangatu No 1 and Mangatu No 4, together with the other groups of owners found by the Court to be entitled to the said lands respectively.
The words "found by the Court" obviously mean previously found by the Court, ie in 1881.
Now the present owners in each block do not require to be admitted. They form "the other groups of owners found by the Court."
The section then appears capable of being read as permitting only the inclusion of new names, not as permitting an interchange of names of present owners from one block to the other. Such a construction may very possibly result in a failure to really effect justice as between all parties, or effect what I believe to have been the intention of the promoters of the special legislation. What the Legislature itself intended can of course only be gathered from the Section itself; the history of the matter so far as it is known to us does not led any real assistance.
Though the Section is part of a Public Act it is beyond doubt dealing with the rights of private persons as among themselves, and therefore I agree with counsel for the appellants that if it be capable of two constructions that one should be adopted, which, while having a remedial effect, will least interfere with private vested rights. There is a remedial effect whichever construction is adopted.
I come to the conclusion therefore, though with a good deal of hesitation, that the Native Land Court can admit to either No 1 or No 4 Block only such persons of Whanau a Taupara as it finds entitled according to Maori custom and usage, and who were not admitted as owners in either block by the Court of 1881.
But, having regard to the value of the property at stake, and the fact that there is no appeal from the decision of this Court except by the tedious and costly process of a Petition to the Privy Council, it would seem desirable that the true intent of Section 6 should be settled by the Supreme Court, and as far as I am concerned, I am prepared to agree to the stating of a case for the opinion of that Court if either party so desires.

Judgment of the Native Appellate Court.
(Judges Jones and MacCormick).

As to the merits of the several appeals it will be convenient first to consider what may be termed the Ngatiwahia appeal which contends that no one at all should have been admitted by the lower Court into Mangatu No 1 for the reason that no right of Whanau a Taupara has been proved.
Much of the exhaustive addresses of Mr Sim and Mr Dunlop for these appellants both in the Native Land Court and before us was more directed towards the extent of the respective rights of Ngati Wahia and

Whanau a Taupara than to the question of whether the latter had any right at all, though this also was strongly urged as regards No 1 Block.

It is common ground that Mangatu 1 and 4 were one block. The decision of the 1881 cutting of No 4 could just as well have been effected by leaving the land as one block but awarding shares equal to 6000 acres to Wi Mahuika's party. It was a mere matter of expediency.

Thus Whanau a Taupara if they had any rights at all possessed them in respect of the area now constituting 1 and 4 Blocks.

On the evidence and admissions before the 1881 Court and its findings thereon and evidence in other cases it would in our opinion be impossible for us to say that Whanau a Taupara have no right in the area last mentioned.

Indeed we do not understand Mr Sim and Mr Dunlop to contest that, their case really being that Whanau a Taupara rights have been fully recognised by the award of No 4 Block.

With the case at its present stage we do not consider we ought to express any opinion as to that. To do so would be to anticipate the decision of the Native Land Court on the question of relative interests.

No doubt other material for consideration will be forthcoming when that Court enters upon the determination of that question. As to the list put in by the respondents some of the persons in it are already owners in No 4 and the legal position as to those persons has already been discussed. With regard to the others a number appear to us clearly to have the same right to inclusion as those already in the Whanau a Taupara list of 1881. The list was challenged as a whole in the lower Court and was not analysed in regarding to individuals, nor has that been attempted before us. But the decision of the lower Court being interlocutory and provisional only there is nothing to prevent that Court from revising the list and excluding any names therefrom if sufficient cause be shown.

All that the judgment of the lower Court says is "This Court must declare such of Taupara as it thinks entitled and those persons in the Second Schedule in the Act of 1893 to be the owners of the joint area of Nos 1 and 4."

It proceeds to say: "This Court is then left with an absolutely free hand as to the definition of relative interests."

Later on the judgment says: "The Court finds that those in Capt Pitt's list (No 1 list) fulfil this condition and will therefore admit their names for inclusion.

Inclusion to what? Obviously to the joint area of Nos 1 and 4. Therefore not necessarily to No 1.

It may be that the present appellants will be able to convince the Native Land Court that the rights of Whanau a Taupara both those admitted in 1881 and those admitted in the proceedings now under review in the joint area of Nos 1 and 4 are adequately recognised by the 1881 award, and if so that Court will define relative interests accordingly.

Until the extent of the rights in the joint area is expressly determined by the Native Land Court we do not see how we can decide the position of either appellants or respondents. We do not consider the judgment to go as far as the appellants fear that it does, namely that "it brings a large number of persons into No 1 block without real trial of their rights." That may ultimately result, but it has not yet resulted and to that extent the appeal appear premature.

Having indicated our opinion on the questions of law and fact raised by the appeal we propose to allow it to stand adjourned with liberty to either party to apply to the Court and without prejudice to the appellants right to appeal from the final order of the Native Land Court upon any point not settled on this present appeal.

There are 4 other appeals which we will deal with together. They are all of persons claiming inclusion as Whanau a Taupara whose claims were rejected by the lower Court.

The four appeals are by:

1. Primia Mills and others.
2. Papa Hape and others.
3. Rapihana Hawaikirangi and others.
4. Waea Poipoi and others.

We do not consider that any of these appellants have shown sufficient reason for us to disagree with the decision of the lower Court. Though descendants of Taupara the evidence shows that the ancestors under whom they claims, intermarried with outside tribes and lost their connection with Whanau a Taupara. It seems to us they cannot have any right in the tribal lands of that people. As to Paora Te Apatu we consider as did the Native Land court that his admission into several blocks in this district not all of which were Taupara lands, was out of compliment to a distinguished relative of the true owners and not of right.

Some doubt was created in our minds in regard to Pimia Mills owing to the fact that her mother and some other relatives were included in 1881. A review of the evidence renders it most probable that they were admitted for other reasons their their strict rights. Pimia Mills has set up cases before both the 1881 Court and that of last year and her claim was rejected by both Courts. She would therefore need to adduce the

very strongest possible proof of right to justify our reversing the findings of those Courts. This she has not been able to do. It is to be observed that in 1881 she expressly stated that she claimed from Anarehe, not Taupara.
These four appeals are accordingly dismissed.
The Court allows £20 costs to respondents represented by Mr Pitt to be made up by £5 from each of the deposits in the four appeals now dismissed. £20 to be paid to W.T. Pitt, Gisborne.
The balance of deposit in each case may be refunded to the depositor.
Deposit in appeal No 5 by Te Kane Pere and others to remain in Court pending further direction.
Deposits in the appeals of Himiona Katipa and Iopa Te Hau may be refunded to the respective depositors.
Note:

Appeal No 7 Deposit to be repaid to Pimia Mills, Gisborne.
8A to Paea Hape, Pakipaki.
8B to Rapihana Hawaikirangi, Pakipaki.
6 to Wi Pane Te Hanene, Nuhaka.
4 to Iopa Te Hau, Nuhaka.
3: to Himiona Katipa, Gisborne.

v EDWARD MOKOPUNA BROWN'S UNDATED PETITION TO PARLIAMENT IN 1975 (1975/30)[126]

That the ancestral right of the descendants of Rawiri Tamanui to Mangatu lands has not been adequately recognised.
Although the Maori Land Court at Gisborne in 1881 was satisfied that the land originally belonged to Ngariki, the Court in its Judgements went on to state that the Ngariki were completely broken as a tribe in the time of Ihu and his sons and again by Te Whiwhi, grandfather of Waaka Mahiuka and that since then, though they continued to dwell on the land, they could only have done so in subjection of the conquerors. This conclusion it is respectfully submitted was incorrect although perhaps understandable in view of the evidence presented which the Court described at the time as "exceedingly confused". At the heart of this confusion was the Court's apparent inability to distinguish clearly between the different branches of Ngariki. Since the Court sittings of 1881 the main genealogy of Ngariki has been more clearly defined the Ngariki genealogy of Kaiputahi follows from the main vein or Tahu which is not preserved in the Wellington Museum as set out hereunder:
Canoe: Te Ika-Nui-Arauru Skipper: Puhinga
Arikiku
Arikiroa
Ariki Matua
Arikitaito
Puhinga
Ihingaru
Monitaieroa
Putahi
Mumura
Waruhanga
Takitini
Ruaneke
Manuere
Piringatahi
Nuku Pawhere
Ririwhare
Rangipa
Te Whawhatu
Whawhai
Tai Rawiri Tamanui
Pera (Te Uetuku) Tamanui
Te Hira Uetuku
Ruahinekino Paaraone

[126] See ABGX 16127 W4731 Box 117 1975/30, Archives New Zealand, Wellington.

That the last-named in the above Tahu, Ruahinekino was the mother of this Petitioner and wife of the Petitioner's father, Reuben Brown. It will be noted that Rawiri Tamanui is almost at the bottom of the above genealogy. Te Whiwhi and Ihu, conquered the Ngariki well before the time of Rawiri Tamanui who played a heroic part in the last battle fought on Mangatu between the local Ngariki (Kaiputahi) and the Wakatohea tribe. This battle was won by the Ngariki. A photograph of the battle site and brief reference to the struggle is included in the Government Printer's 1973 publication "The Story of Mangatu". A photograph of the cared figure of Rawiri Tamanui is also reproduced on the half-title and title ages to that publication. The actual figure itself is situated in the Meeting House on the Mangatu Marae. As this is the only Teko Teko in the Meeting House it is respectfully submitted that neither Rawiri nor his descendants ever lived in subjection on Mangatu. According to the testimonial of Reuben Brown, Rawiri Tamanui continued to live on Mangatu until his death by natural causes.

When Reuben Brown arrived at Mangatu in 1894 he saw a garden and orchard of apples along the Mangatu river and heard the land referred to as belonging to Rawiri Tamanui. Again, according to the testimony of Rueben Brown, Rawiri Tamanui's son, Pera Tamanui led the European surveyors over the Mangatu and with his brothers and Mr A.T. Teasdale surveyed the Block. It is respectfully submitted that Pera Tamanui would have not have assisted with the survey had he not been occupying the land. Pera Tamanui is buried in Mangatu in a named grace and his descendants have continued to live there. Wi Pere in whose favour the 1881 Court held, on the other hand, is buried at Wharenga-hika, not Mangatu. That sworn evidence Pima Te Ata and others at the time of the 1881 Court hearings stated that Pera Tamanui was at that time living on Mangatu and always had been and that his claim to thel and had never been extinguished by wars. In spite of such evidence the Court held in 1881 in favour of Wi Pere and Wi Harango and the descendants of Wahia to be the chief owners of the land.

Your petitioner therefore humbly prays that your Honourable House will recognise and determine the ancestral right of the descendants of Rawiri Tamanui to a greater interests in the land of Mangatu.

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