

Wai 894 # AHS
WAI 144
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Submission of Duncan Moore
Regarding Panekiri Tribal Trust Board
Waitangi Tribunal Claim #144
At Patunamu State Forest

1. Introduction

This submission seeks to examine the grounds of the Crown's interests in the Patunamu State Forest. The crucial question in this case is whether the Crown's ownership of Patunamu State Forest originated in a confiscation of the lands from Ngati Ruapani, or by a voluntary cession.

If by voluntary cession, the question devolves to whether the claimants were unjustly prejudiced by the cession, a question of the Crown exercising due care in purchasing lands.

If by confiscation, though, it would seem there is a prima facie claim against the Crown: the question moves toward, to what extent have the claimants been unjustly or unnecessarily prejudiced by the confiscation? That is, questions of their their customary title, their 'rebellion,' and the Crown's regard for and response to these.

2. Background to the Crown's Title

2.A. Maori-Pakeha Conflict

After the wars of the 1860's had died down in most of Taranaki, the Pai Marire ['Good and Peaceful'] movement rapidly spread from Taranaki to the East Coast tribes, including Ngati Ruapani living at Waikaremoana.

The Pai Marire movement has attracted much historical and anthropological study, even internationally. It was, like the Ghost Dance of the Lakota Sioux, a separatist, millennialist "revitalisation movement," offering mythic and magical hopes to people who had come to despair of historic and secular forces.

Pai Marire evoked deep fear and anger, from the New Zealand Government and pakeha settlers -- not only because it threatened to prolong and expand the race/land wars, but especially because (as a revitalisation movement) it revived certain cannibalist practices. In March 1865, at Opotiki, one of the movement's leaders, Kereopa, publically executed and ceremoniously ate parts of a Lutheran missionary, Rev. Volckner, who was spying on the movement for the Government. The Government promptly outlawed adherence to Pai Marire, and began hunting down those connected with the atrocity, who were hiding in the Ureweras amongst Tuhoe sympathisers.

Conflict flared rapidly, battles lines overlapping somewhat with Kingite/Crown antipathies around the East Coast region (which in turn, largely reflected traditional inter-iwi rivalries and tensions). Fighting centred at Opotiki-to-Ruatahuna in the North, and Turanga/Gisborne to the East. In December 1865, in an effort to reach Pai Marire Tuhoe at Ruatahuna, troops (with Kupapa Ngati Kahungunu) marched Northwest from the military camp at Wairoa. They met Ngati Ruapani resistance at Te Kopani, just below Waikaremoana. Excluding later Te Kooti-associated 'scares' amongst settlers at Wairoa, this was apparently the only fight between the Crown and Ngati Ruapani 'rebels' per se.

The East Coast conflict cooled equally rapidly. By October 1866, McLean's military campaign was scaled down, most of the unrest already contained.

2.B. Maori-Maori Conflict

Sandwiched between Ngai Tuhoe and Ngati Kahungungu, Ngati Ruapani have always lived with difficult, disputed boundaries - both regarding their tribal identity and their lands.

All agree that a group living at the Lake have always identified themselves as Ngati Ruapani. However, even prior to the nineteenth century, this group shared not only significant tipuna with both of their larger neighbors -- Tuhoe to the North and Kahungungu to the South -- but also had thoroughly inter-married, especially with Ngati Kahungungu.

In the 1820's, Ngai Tuhoe (with some Ruapani) overran the Lake, and killed many Ngati Ruapani. Almost immediately, though, Ruapani called upon their links with Kahungungu, who assisted in driving Tuhoe back away from the Lake.

According to Ngati Kahungungu accounts, this alliance in effect subsequently incorporated Ruapani into Kahungungu, as a subordinate hapu.

According to Ngati Ruapani, though, Kahungungu neither occupied the Lake, nor substantially altered their prior relations with Ngati Ruapani. Ngati Ruapani, in effect, retained full independence viz. both Tuhoe and Kahungungu. As evidence of their willingness and ability to control Kahungungu access to lands in the Upper Wairoa, Ngati Ruapani cite the 1865 battle at Te Kopani (above), and subsequent history to the present day -- throughout which Ngati Ruapani have identified and acted as tribally independent from Ngati Kahungungu.

Obviously, in such a situation, territorial boundaries have been controversial. In a nutshell, Ngati Kahungungu have tended to claim Ngati Ruapani's Northern boundary as a Ngati Kahungungu/Tuhoe boundary, while Tuhoe have pointed to Ngati Ruapani's Southern boundary as a Tuhoe/Kahungungu boundary. Ngati Ruapani have literally occupied the middle ground, and consistently claimed both boundaries as their own viz. both Ngati Tuhoe and Ngati Kahungungu.

3. The Origins of the Crown's Title

3.A. The Formulation of the East Coast confiscation Policy

Late in 1866, almost at the peak of his powers regarding Native Affairs, the Superintendent of Hawkes Bay, Donald McLean, easily obtained both the Government's and even Turanga (Ngati Porou) Maoris' agreement to the principle that the Crown ought to be compensated in land for the expense it had incurred in restoring/bringing order to the East Coast. The lands to be used, were to be confiscated from those Maori whose 'rebellion' had necessitated the expense.

Note, this land-taking rationale was the same as that which underlay the New Zealand Settlements Act 1863 and the Outlying Districts Police Act 1865. Moreover, the rationale seems rooted in the broader grounds for the Crown's cheap pre-emptive purchase of Maori land: that is, that the pakeha brought the value to the land,¹ and if Maori desired a share in this future value in the long-term, they must forgo some of the benefits of land sales in the short-term (by selling cheap). The trouble, of course, is that Maori have not realised their expected share of the value of the long-term development thereby enabled.

In the case of the East Coast 'campaigns and confiscations, after the majority of Turanga Maori had been imprisoned at the Chathams, McLean entered agreements with their 'loyal' relations still at Turanga, whereby they ceded to the Crown all of their lands (including those of their 'rebel' relations), and the Crown undertook to grant fee simple estates in these lands back to the 'loyalists.' Thereby, both the Crown and the 'loyalists' would be compensated with the land of their 'rebel' relations, while avoiding the recriminations, expense and delay of Compensation Courts required under the New Zealand Settlements Act 1863.

At the same time, evidently in conjunction with Chief Judge Fenton, Superintendent McLean and Native Minister Rolleston devised, introduced, and easily passed the East Coast Land Titles Investigation Act 1866 (ECLTIA 1866). The ECLTIA 1866 was, according to one its drafters, "an euphemistic Bill" designed to enable the Crown to make other agreements similar McLean's at Turanga -- which was to "cover with a pretty name that which was absolutely confiscation."²

Under the Act, upon application of the Crown, the Native Land Court could investigate and determine customary title to any lands within a proclaimed district. Any of these lands found to belong to 'rebels'¹ (as defined in Section 5 of the New Zealand Settlements Act 1863) would, by the Court's award, vest not in

¹E.g. capital, skilled labour, access to markets, legal mechanisms adequate to the task of modern commercial development.

²Rolleston speeches, 3 September 1867, Parliamentary Debates p 693; and 19 August 1868, Parliamentary Debates p 518.

the Maori, but in the Crown. The Crown could then cede these lands either to 'loyal' Maori or to military settlers, in payment for their assistance in quelling the Pai Marire movement.

The Act, including a schedule of its initial area of application, entered law 8 October 1866. The next month, Captain Reginald Biggs was appointed Agent to the General Government, and instructed to carry out arrangements (e.g. at Turanga) which McLean had begun.

By February 1867, the Turanga cession/confiscation ran into its first snags, due to clerical errors in the schedule of the ECLTIA 1866. The errors were sufficient to slow the Court's completion of the cession/confiscation at Turanga, but not sufficient to prevent Captain Biggs from initiating a similar arrangement with Ngati Kahungunu 'loyals' at Wairoa.

3.B. The Patunamu Forest Lands are Confiscated

On 5 April 1867, Captain Biggs, 152 Ngati Kahungunu and 1 Ngati Ruapani/Tuhoe signed an agreement whereby the Maori signatories ceded to the Crown all their lands between Wairoa and Waikaremoana, in return for the Crown undertaking to 'return' to them all those lands, excluding several small scattered patches, and a -40,000 acre block named Kauhauroa for which the Crown paid 800 pounds (see Deed and Plan).³

Note, in this instance Captain Biggs did not undertake (in writing) to return the ceded lands by Crown Grant, 'thus avoiding some of the subsequent problems which the Turanga arrangement ran into (which we therefore need not cover here).

More importantly, note that Ngati Ruapani almost certainly held the customary title to most of the lands claimed by the Crown and ceded to the 'loyal' signatories. In particular, Ngati Ruapani had quite clearly retained undisturbed possession of the lands above the confluence of the Waiiau and Waikaretaheke Rivers (the site of Patunamu State Forest).⁴

Indeed, the confiscatory aspect of the deed (viz. Ngati Ruapani) was acknowledged in its preamble, where it recited the provision of the 1866 Act for vesting in the Crown, lands which "but for participation in the rebellion would have been the property of persons who have been engaged in the rebellion." Further, the deed specified that the Crown would forgo certain of its claims

³Deed (142, pp 546-549 in Turton's Deeds Vol 2. Encl. with plan in volume of Explanatory Documents in chronological order).

⁴See the summary of judgments in subsequent Land Courts and Commission contained in pp 1-6 of the Decision of the Native Appellate Court, 22 April 1947, Re: Waikaremoana. in the volume of Explanatory Documents. Also note, the Ngati Kahungunu and Ngai Tuhoe cross-claimants in this late, 'global' case do not deny Ngati Ruapani occupancy, but only Ngati Ruapani independence. These denials of independence seem untenable, given the entirely distinct political tendencies of Ngati Ruapani and Ngati Kahungunu in the 1860's, and Ngati Ruapani's apparent ability to control Ngati Kahungunu (and Crown) access to their rohe in that same period (see below).

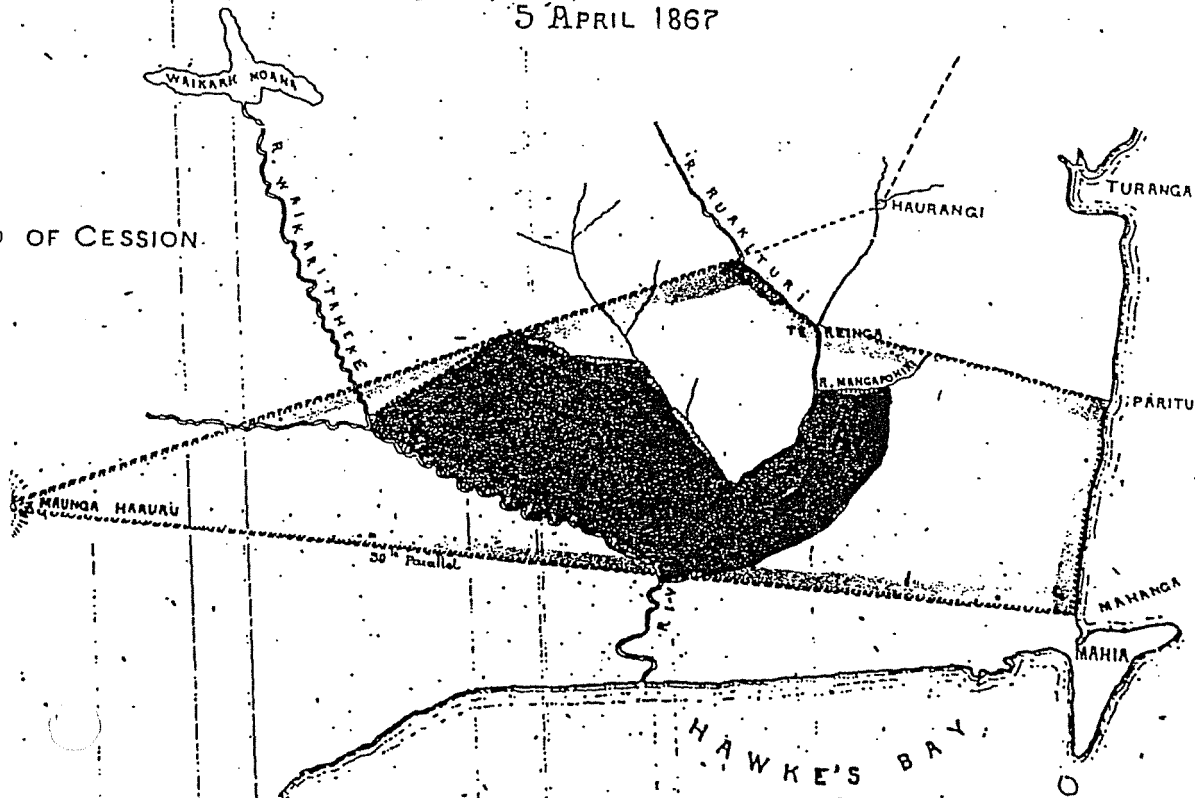
TURTON'S DEED Volume 2

WAIROA DEED OF CESSION No. 42
[coloured after original at Heaphy House, Wgtn.]

HAWKE'S BAY PROVINCE

WAIROA BLOCK

5 APRIL 1867



under the above provisions **in consideration** of "the loyalty and good services of the said Chiefs and natives during the insurrection on the East Coast." The "said [loyal] Chiefs and Natives" (the signatories) being nearly all Ngati Kahungungu, the 'rebels' dispossessed were almost certainly mostly Ngati Ruapani.

Hence, the 1867 deed effected a combination of confiscation (from Ngati Ruapani), cession (by the Crown to Kahungungu), and conveyance (of Kauhauroa from Kahungungu to the Crown).

Consistent with this purpose, almost immediately after the deed was signed, locations for 100 military settlers were surveyed within this block, and settlers moved on by September 1867.⁵

Events, however, soon overtook any efforts at completing the 1867 deed. As noted already, in February 1867, operations of the Land Court had been suspended in the East Coast area, pending correction of errors in the definition of the District in which the East Coast Land Titles Investigation Act 1866 was to apply. All progress in arrangements under the Act was halted until 10 October 1867, when Parliament passed the requisite amending legislation.⁶

By this time, though, Ngati Porou at Turanga rued their initial agreements ceding lands to Superintendent McLean, and so delayed completion of their own agreements.⁷ At the same time, fighting broke out again in the North, with over 200 Tuhoe engaging Major Mair at Opotiki in January 1868.⁸ The Pai Marire leaders, Te Ua Haumene and Kereopa, were still at large (and the movement apparently still thriving) with troops moving throughout the Ureweras hunting for them. And then, in July 1868, Te Kooti escaped from the Chathams. By late 1868, all hell had broken loose, with Te Kooti's "Poverty Bay Massacre" in November,⁹ and with Parliament struggling to re-evaluate from the ground up their 1860's approach of costly military campaigns and poorly implemented confiscations.¹⁰

In August 1868, Carleton moved for the repeal of the East Coast Land Titles Investigation Act. The House directed that Carleton prepare such a Bill, but that he work in conjunction with

⁵Rolleston speech, 3 September 1867, Parliamentary Debates p 693. 'Petitions of Military Settlers at Wairoa,' in Archives, Agent of the General Government/Hawkes Bay 7/2.f.

⁶East Coast Land Titles Investigation Act Amendment Act 1867; only changes were re-wording of Section 4, and correction of spelling errors in schedule.

⁷See, e.g. discussion of their petitions in debates on 1867 ? ECLTIAAA...Perhaps encouraged by the expiration of the 1863 New Zealand Settlements Act on 23 December 1867?

⁸Best, pp 593-594.

⁹See Best, pp 604-5.

¹⁰See, e.g. Journals of the House of Representatives 1868, pp 12, 23, 28, 37, 70, 72, 238, 265-66. Also, Parliamentary Debates 1868, pp 37-43.

Rolleston, who opposed wholesale repeal of the Act.¹¹ Rolleston's "repeal" measure, the East Coast Act 1868, passed 20 October 1868. It effectively left the earlier Acts' confiscatory Land Court powers and procedures untouched.¹²

3.C. Trying to Complete the Confiscations

From late 1868 to mid-1869, to the North (between Whakatane and Ruatahuna) Crown forces fought Tuhoe, and to the South (inland from Wairoa and down to Mohaka) Crown forces chased and skirmished with Te Kooti and his followers.¹³ The latter campaigns forced the Kauhauroa military settlers off their plantations,¹⁴ and no doubt, drew Ngati Ruapani (and other Maori then living in the Upper Wairoa area) back into their 'rebel' position of three years prior.¹⁵

Having already, in September 1868, failed to have their 1867 Wairoa deed ratified by the Land Court,¹⁶ Ngati Kahungunu now saw the Crown's very possession of the lands apparently slipping away. On 5 October 1869, the Native Lands Purchase Officer, Samuel Locke, reported to Superintendent McLean that Ngati Kahungunu

"appeared anxious to know whether the arrangements that were made in the presence of Messrs. McLean and Richmond at Hatepe, Wairoa, respecting the lands to be returned to the Government Natives at Wairoa [i.e. the 1867 deed], would be carried out....It is very desirable that a matter which has now been pending for over three years should be settled without further delay."¹⁷

Perhaps, this formed one of the reasons why the Crown focused military action on Ngati Ruapani at Waikaremoana from April to June 1870. By August 1870, Ngati Ruapani from Waikaremoana surrendered at Wairoa -- and by April 1871, Tuhoe were generally

¹¹Parliamentary Debates 1868, pp 517-525. See Carleton's rejected Bill in 'Debates, Bills and Acts' volume of Supporting Documents.

¹²Prepared with Hall, see 14 October 1868, Journals of the House of Representatives 1868, p xxix. Very informative debates, Parliamentary Debates 1868 pp 145-160 and 517-525. Act passed 20 October 1868.

¹³Best, pp 240-41 and 609-640.

¹⁴'Petitions of Military Settlers at Wairoa,' in Archives Agent of the General Government/Hawkes Bay 7/2.f. Also Journals of the House of Representatives 1870, pp xix, 92, 225 and 279.

¹⁵Testimony of Hemi Huata, 14 May 1946: 'Te Kooti and his soldiers settled at Tukurangi,' p 11 of Extract from Appellate Minute Book 27 Fols 1 to 45 (Tairawhiti) (in Volume of Explanatory Documents).

¹⁶The original 1867 Deed of Cession, at Heaphy House, Wellington, is marked 'presented in Native Land Court 17 September 1868.' We have not yet checked Minute Books to confirm that the case was dismissed, but subsequent events make clear that no investigation or determination of title occurred.

¹⁷Report cited by Sims Commission, apparently working from an original (not yet located): SMHR 1928 G-7, p 26 para. 82. Note, this is also our only source for designating Mr. Locke as a Native Lands Purchase officer.

subdued.¹⁸ Note, although they had "surrendered," in July 1872 Waikaremoana Maori remained reportedly "sympathetic" to Te Kooti¹⁹ -- and though they were "subdued," in June 1872 Tuhoe announced a large rohe within which land sales, leases and even road surveys were prohibited.²⁰

Meanwhile, special legislation passed enabling completion of the cessions/confiscations at Turanga, and retrospectively validating leases and sales which had been made pursuant to them.²¹

At Wairoa, though, the 1867 cession/confiscation had not progressed as far as matters in these neighbouring districts. Here, on 3 August 1872, Samuel Locke convened a meeting at Wairoa of approximately 400 Maori -- mostly Ngati Kahungunu -- to attempt to shore up the earlier 1867 agreement without resort to special legislation.²²

Several new elements of the 1867 cession/confiscation arose in Locke's 1872 description of it: e.g. for reasons as yet undetermined, Locke understood the 1867 deed to have been accompanied by a "promise that the Government would divide [the Upper Wairoa] into blocks...and also decide on the persons to be inserted into grants for the same."²³

In the main, Locke's 1872 meeting at Wairoa:

- added two areas to the Government's portion (250 acres for a Constabulary post at Onepoto/Waikaremoana and -50 acres for roading on Waikaretaheke Stream),
- settled the northwestern boundary of the area to be granted to the signatories (Kahungunu),
- divided the entire area into the Waiiau, Tukurangi, Taramarama, and Rangikituri blocks.

In his report of the meeting, Locke expressed satisfaction that "settlers will now be able to occupy the country as sheep runs."

¹⁸See Best, pp 648-52 and 657.

¹⁹Best, p 660, citing report of Major Cumming upon occupation of Waikaremoana pa, 23 July 1871.

²⁰See Captain Preece to Civil Commissioner, Tauranga (Hopkins Clarke), 9 June 1872, 'Proceedings of Meeting at Ruatahuna,' encl. in No. 34, Clarke to Civil Commissioner, Auckland, 25 June 1872. Also Henere Kepa Te Ahuru and ors to Native Minister, 9 June 1872, No. 32. Also Te Whenuanui and ors to the Government, 9 June 1872, No. 33; all in 'Further Reports from Officers in Native Districts,' AJHR 1872(73?) F-3A, in Volume of Explanatory Documents.

²¹See, e.g. Mohaka and Waikare District Act 1870, East Coast Lands Titles Validation Act 1871, Poverty Bay Grants Act Amendment Act 1871.

²²See Locke to Ormond, 19 August 1872 and deed/schedules, in 'Settlement of [Matters Regarding?] Confiscated Land,' in AJHR 1872 C-4, pp 30-31. Also, AJHR 1873 C-4B, p 6.

²³Because partition and grants of freehold featured in the McLean/Biggs cession/confiscations at Turanga, their absence from Captain Biggs' 1867 deed seems too conspicuous to have been the result of oversight. It seems equally unlikely that, in so delicate a matter as a multi-tribal cession/confiscation, Biggs would have handled the matter of Crown grants verbally. Further, special provision for grants was unnecessary under the East Coast Land Titles Investigation Acts 1866 and 1867. Without further research, though, we can only wonder whether Mr. Locke read the partition and grant promises into the 1867 deed, based upon his experience of neighbouring arrangements. E.g., Locke noted he had dealt here in a similar way to the Mohaka-Waikare block.'

Before the year was out (by July 1873), with the security of title afforded by the 1872 deed with Locke, Ngati Kahungungu leased the Upper Wairoa blocks to Percival Barker and others -- runholders -- for twenty one years.²⁴

3.D. Bringing the Matter to Court

There matters appear to have lain for the next 22 months. Then, on 25 May 1875, 'Native Officer' Samuel Locke, on behalf of the Crown, purchased Barker's lease for 1,500 pounds. The Crown by this time clearly intended purchasing the blocks back from Maori, as the May agreement assured Barker of the right of purchasing back the freehold of 5,000 acres near and around his homestead (after the Crown had acquired it from Maori), at whatever price the Crown had paid Maori for the land.²⁵

Shortly after, Ngati Kahungungu brought the Upper Wairoa blocks before the Land Court for determination of customary title.²⁶ As was their right (even under the East Coast Act 1868), Ngati Ruapani and Tuhoe set up cases against Ngati Kahungungu. Of course, even if their cases were successful, the Ngati Ruapani and/or Tuhoe 'rebels' titles could have, in all likelihood, vested in the Crown (under the East Coast Act 1868).

On 29 October 1875, the day after the case opened in the Land Court, Samuel Locke convened a meeting of about 700 Ngati Kahungungu, Tuhoe, and Ngati Ruapani at Wairoa. Locke opened the meeting, stating that its purposes were to openly discuss the questions of customary title to and boundaries' in the Upper Wairoa blocks. Then; Locke explained:

This land -- that is, up to Waikaremoana Lake -- was confiscated during the time of the rebellion, the principal owners having allied themselves with the enemy of the Government. On the restoration of peace, some little time elapsed, when the Government relinquished its hold to a large tract of the country so confiscated, in favour of the Natives of the district who had throughout preserved their allegiance to the Crown.

He continued, apparently referring to the Crown's present attempts to purchase the lands:

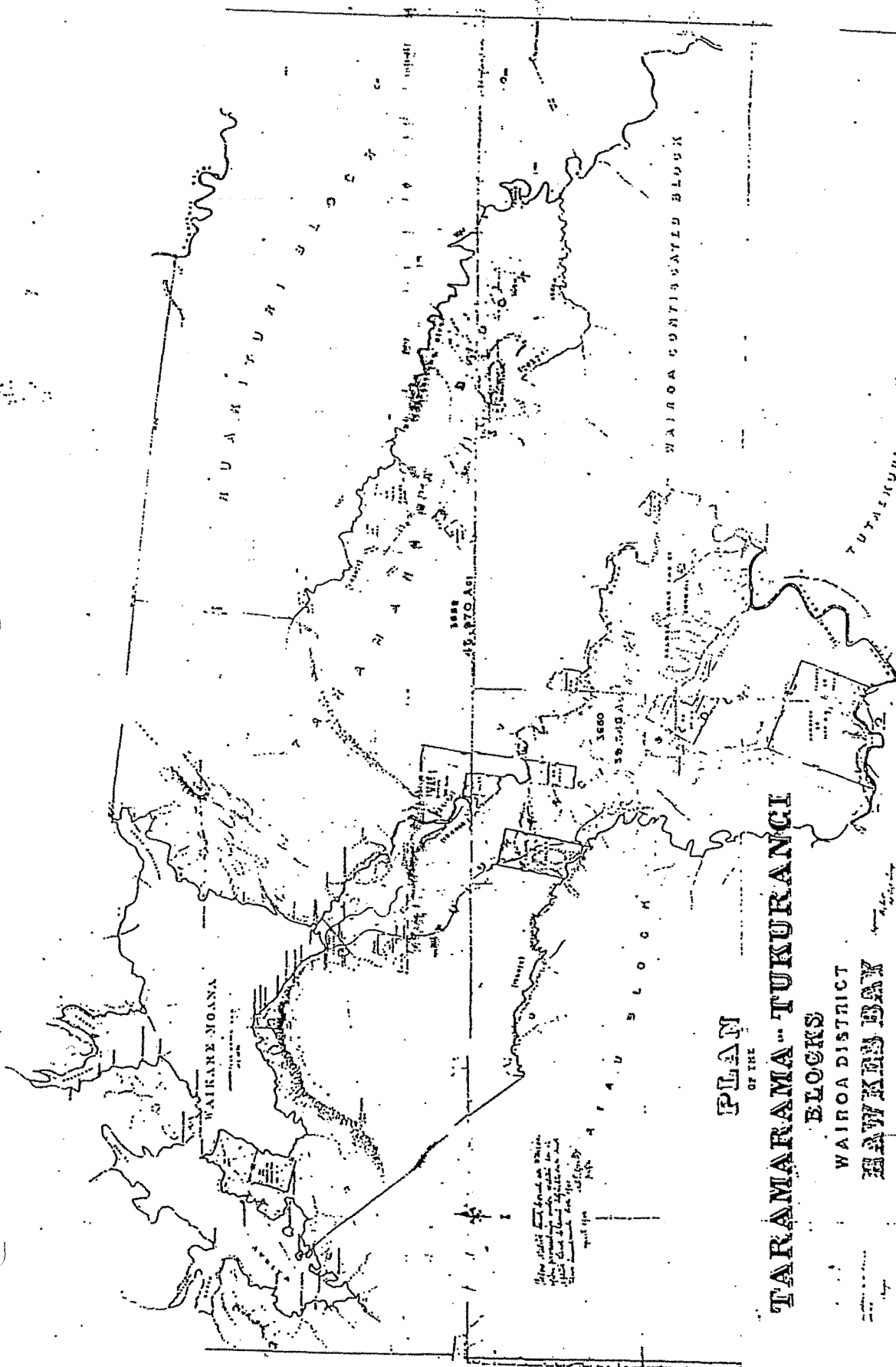
Subsequently thereto, action was taken to effect the

²⁴Deed, with J. P. Hamlin's Interpreter's certifications, pp 87 - 91 of Patunamu Forest Land Database, in volume of Explanatory Documents. Maori continued adding signatures to the lease from 28 July 1873 to mid-March 1874. Note, the 1872 deed only scheduled one 'Urewera' (Ngati Ruapani?), Makarini te Wharehuia, as an owner (see Sims commission Report, 1928 AJHR G-7, p 27 para. 85, and p 37).

²⁵Locke/Barker Memorandum of Agreement, 25 May 1875, in DOSLI Patunamu Forest Land Database, pp 92-94, in volume of Explanatory Documents (chronological order). Note, Hori Wharerangi spoke in 1875 of advance payments for the land made to Ngati Ruapani: 1876 AJHR G-1A, p 4.

²⁶Apparently, Apirana Teihana applied on behalf of Ngati Kahungungu. See his speech, AJHR 1876 G-1A, p 7, in volume of Explanatory Documents.

567 365
366



PLAN
OF THE
TARAMARAMA-TUKURANGI
BLOCKS

WAIROA DISTRICT
NEW ZEALAND
PROVINCE OF AUCKLAND

UNITED
STATES
OF AMERICA
1880

567
1880

The State of New Zealand
has hereby proclaimed that
the land shown on this plan
is reserved for the purpose
of a public reserve and
shall remain so until
otherwise ordered by
the Governor.

transfer of this land to the Government; and now the question arises, To whom does the land belong? With whom rests the power of legally conveying this land to the Government? It is to meet these questions that the necessity occurs of having the land dealt with primarily by the Native Land Court.²⁷

Locke had apparently assured that Ngati Ruapani's interests, if recognised by the Court; would be respected to some extent by the Crown, as he stated at the close of the meeting:

The Government were evincing no small consideration for the Urewera Natives in sanctioning at all the investigation of the claim put forth by them, ...being as they were at the time in rebellion when the land was confiscated and dealt with.²⁸

The meeting made little progress toward settling outstanding differences between Tuhoe, Ruapani and Kahungungu. Frustrated, Locke closed:

Now, when the owners are desirous of disposing of it, the Government is endeavouring to amicably settle the long outstanding dispute between these contending tribes that have been for generations at war: at the same time completing the investigation of the title by the Native Land Court, in accordance with the law of the country, before concluding the purchase. We will now bring this meeting to a close, and lay the whole matter before the Native Land Court on Monday next, the 2nd of November.²⁹

3.E. Completing the Confiscation

Sim Commissioner Vernon Reed summarised the subsequent Land Court hearing thus:

As agreed at the Wairoa meeting of Maoris, the Native Land Court first dealt with the two undisputed blocks on the 3rd November, 1875 -- viz. the Rotokakarangu and Putere Blocks -- Toha Rahurahu [Ngati Kahungungu] nominating the owners in the latter block. The claims to the four blocks, in the following order -- Tukurangi, Ruakituri, Taramarama, and Waiiau -- were heard on the 4th, 5th and 6th November, when the Court decided "that, owing to the conflicting nature of the evidence, it was desirable that some one should go on the ground; but, at any rate, no judgment would be given till a proper survey was made; that the Court would return to Wairoa for that purpose when the surveyors were prepared

271876 AJHR G-1A, p 1.

281876 AJHR G-1A, p 3.

291876 AJHR G-1A, p 8.

to put in a duly certified plan." On the 12th November, while the Court was still sitting on other business, Wi Hau Taruke and Hetaraka Whakaunu came into Court and stated, "We come to the Court and wish to say that we have withdrawn, on the part of Urewera, our claims to Tukurangi, Waiiau, Taramarama, Ruakituri; it is not our intention to come into Court again. We have arranged our dispute with Ngatikahungungu." Toha Rahurahu (representing the Ngatikahungungu) then said, "The evidence has been taken relative to these blocks referred to by Wi Hau Taruke. I apply for an order in favour of" -- and he thereupon nominated the owners for each of the four blocks, the total number of owners so nominated being fifty--three; and the Court minute was as follows: "Memorial of Ownership ordered for Waiiau, Tukurangi, Taramarama, and Ruakituri as per lists above written. Court adjourned till surveys are complete for subdivision later. Date to be fixed."³⁰

Commissioner Reed erred in the date of the Urewera/Tuhoe/Ngati Ruapani conveyance; the deed was dated the 12 November, the same day that Wi Hau Taruke and Hetaraka Whakaunu withdrew their case from the Land Court.³¹ By this deed, Ngati Ruapani's (and any of Tuhoe's) interests in the Upper Wairoa blocks were conveyed to the Crown, in return for 1,250 pounds plus 2,500 acres of reserves.³²

five days later, on the 17 November, Ngati Kahungungu similarly conveyed their Upper Wairau interests to the Crown. Ngati Kahungungu received 2,350 pounds plus 3,600 acres of reserves. By a further deed dated 15 January 1876, eight more Kahungungu received another 1,500 pounds for the same blocks, as well as "for services rendered during the rebellion."³³

Given the Crown's manner of purchase of Barker's leasehold (May 1875), plus the fact that the out-of-Court meetings were convened by the Native Land Purchase Officer, and the various mentions during that meeting of prior purchase negotiations and even advance payments on the Upper Wairoa lands, it seems most likely that the Land Court hearings arose as part of a wider purchase process (not vice-versa) -- perhaps, as explained by Locke, to help decide the boundaries of the lands to be purchased, and to apportion proceeds between the various iwi claiming interests in

³⁰Sim Commission Report, AJHR 1928, p. 39. Note, elsewhere the Commission estimated that the Court awarded the land to about eighty 'loyal' and about 121 'rebel' Maori: AJHR 1928, p 27 para. 84. Judge Rogan presided. Owner lists appear to be jumbled in the DOSLI Databank copy, and the originals have not been checked for this preliminary report. See Memorial of Ownership for Tukurangi Block, p 72 of DOSLI Patunamu Forest Land Databank, in volume of Explanatory Documents.

³¹See Deed, p 117 of DOSLI Patunamu Forest Land Databank, in volume of Explanatory Documents.

³²F. J. Ormond and J. P. Hamlin signed for Her Majesty, the approximately 60 Maori signatures are illegible in the copies sighted for this preliminary report.

³³DOSLI Patunamu Forest Land Databank, pp 81 and 83-86. The same persons signed for Her Majesty, and only ten Maori signed. In May 1877, for another 100 pounds, the same ten Maori sold their interests in one of the reserves (500 acres) to the Crown: Ibid. p 82. NLC Chief Judge MacDonald certified the 17 November 1875 alienation as bona Eide on 26 February 1883; Ibid. p 77.

the blocks.

The out-of-Court settlement would seem to have appealed to all parties involved (except Tuhoe, who appear not to have ended up with any interests recognised): unless it pressed its rights of confiscation under the East Coast Act 1868, the Crown stood to lose the purchase of that part of the blocks awarded to Ngati Ruapani -- who appear to have decided against sale by this time.³⁴ Likewise, without such confiscation, Ngati Kahungunu stood to lose the proceeds of sale of those lands awarded to Ngati Ruapani. And given the Crown's clear expectation of acquiring the lands, Ngati Ruapani still stood to lose by confiscation any interests awarded to them that they refused to sell. The out-of-Court settlement resolved this three-way stand-off.

³⁴See remarks of Hemi Huata at the 1875 meeting, above.

4. Subsequent to the Crown's Acquisition

4.A. Land Court Consequences

It has since proved unfortunate to all that, due to the Crown's prevaricating and dilatory approach to acquiring these lands, the relative interests of Ngati Ruapani, Ngai Tuhoe and Ngati Kahungungu were not decided at the time. In a nutshell, it has meant continuing recriminations between these iwi -- each for their own reasons claiming to have been wrongfully dispossessed in the eight-year process of forced cession/confiscation described above.

In the present instance, given their close genealogical links with their larger, acquisitive neighbours, Ngati Ruapani have always distinguished their claim to the lands upon the basis of their own independent, continuous occupation.³⁵ However, because the question of customary title first re-appeared in an official context around the turn of this century (about thirty years after the lands were confiscated/ceded), Ngati Ruapani have been disadvantaged in bringing sufficiently decisive evidence to prove their occupation **take**. This difficulty has only increased with time.³⁶

4.B. Commission Consequences

In 1928, the Sim Commission reported on the petition of Hemi Huata (Ngati Ruapani) and 126 others regarding the loss of Ngati Ruapani interests in the Upper Wairoa blocks. Here, the problem was somewhat different. Ngati Ruapani claimed that "the confiscations were excessive," and that (if necessary at all) they "should have concentrated upon the district starting the rebellion" -- not those swept along in the cross-fire, as it were.³⁷

The Commission decided that:

"the [Ngati Ruapani] rebels were not bound by the [1867] deed of cession, and that the [Ngati Kahungungu] Natives who signed it were not entitled to transfer to the Crown the interests of the rebels in the block. The Crown might have acquired these interests by obtaining a certificate

³⁵See, e.g. Wiren's testimony, 16 May 1946: 'All that long occupation no one can point to a time when N'Ruapani were not there at the Lake. We have had our troubles but we have always been there.. We have frequently become connected with N'Kahungungus by marriage but we have always treated ourselves as a separate tribe and have been treated as such... We think we are more related to Tuhoe than Kahungungu: p 17 in Extracts from the Gisborne Native Appellate Court Minute Book, Vol 27 Fol 1-45, in volume of Explanatory Documents.

³⁶The Appellate Court, in its 22 April 1947 decision on the above case, likewise Eelt it 'unfortunate that the investigation of the title to the Lake [which hinged upon title to the surrounding lands] did not commence until 1915 when most of the persons who could have given reliable evidence of occupation were dead.' Gisborne Appellate Minute Book Vol 27 Fol 46 et seq. (p 7 of decision in copy in volume of Explanatory Documents). Note, this judgment also summarises the pre-1947 hearings and Commissions regarding the Upper Wairoa lands.

³⁷Sim Commission Report, 1928 AJHR G-7, p 24 para. 78. See also p 25 para. 79 & 80. .

under section 4 of the East Coast Land Titles Investigation Act 1866. But that was not done, and on a strictly legal basis there is no answer to the claim put forward by the descendants of the rebels. That, however, is all that can be said in favour of the claim, for otherwise it is without merit. The land of the rebels was practically confiscated by the Act of 1866, and all that the Crown had to do to complete its title to the land was to obtain a certificate under section 4 of the Act. According to good conscience and equity, the Crown ought to be treated, so far as the rebels are concerned, as being in the same position as if a certificate had been obtained, and we recommend accordingly that the claim should not be recognized."³⁸

Clearly, the majority of Commissioners did not doubt the fundamental equity of confiscation per se, and so did not offer Ngati Ruapani's petitions serious consideration.

³⁸Sim Commission Report, 1928 AJHR G-7, p 25 para. 80. Note, at para. 85, the Commissioners considered 'the Ureweras obstinate and notorious rebels;' and regretted that they had obtained any consideration for, or even reserves, out of their confiscated lands. Remarkably, the Sim Commission spoke more harshly of Ngati Ruapani than did the Crown officials at the time of the confiscation.

5. Conclusion

In the end, only the 1875 deeds raise any question whether Ngati Ruapani's lands were confiscated or voluntarily ceded. And that question seems quite small.

Already, for nine years prior to that 'agreement,' Ngati Ruapani had been effectively dispossessed of their Upper Wairoa lands:

- Originally by passage of the 1866 Act, which clearly 'marked' them for confiscation.
- Then, by the deed of April 1867, which recited the 1866 Act and its provisions for confiscating lands of 'rebels' such as Ngati Ruapani (who did not participate in the deed).
- Then, by devoting a portion of the Upper Wairoa lands so acquired to compensating military settlers.
- Then, in the deed of 1872, by the express extension of the boundaries of this earlier confiscation up to Waikaremoana.
- Then, by the 'loyalists' 1873 lease of the lands to runholders, and the Crown's May 1875 sanction of this lease by purchase.

Ngati Ruapani seem most unlikely to have participated voluntarily in the 1875 land 'sale':

- From the time of the first deed to its 1872 ratification and extension, Ngati Ruapani, with other Pai Marire believers, actively opposed the encroachment of pakeha into their rohe.
- In 1872, the pan-Tuhoe ban on leases, sales, and even roads, encompassed the Upper Wairoa lands. It is difficult to ascertain, but it is likely that Ngati Ruapani participated in this ban.
- Just weeks before the 1875 deed, in the meeting with the Crown's Land Purchase Officer, Ngati Ruapani's spokesperson stated he wished to return moneys advanced on the lands, and merely wanted a determination of title by the Court.
- At this 1875 meeting, the Crown's agent repeatedly referred to the Patunamu Forest Lands as "confiscated."
- When it heard the Upper Wairoa case in 1875, despite any assurances to the contrary by Land Purchase Officer Locke, the Land Court was technically required by section 3 of the East Coast Act 1868 "to refuse to order a certificate of title to issue in favour of any [rebels]."

Thus armed with the belief that their lands were virtually

() already confiscated, Ngati Ruapani signed the November 1875 conveyance to the Crown -- no doubt under the perceived threat of otherwise not receiving any benefit at all from the alienation.

This being the basis of the Crown's title to the lands at Patunamu State Forest, the question moves to the claimants' assertion that such confiscation was unjustified, and if justified at all, was excessive.

To the extent that such assertions remain in doubt today, they require a wide-ranging examination of Ngati Ruapani's customary interests in the lands, Ngati Ruapani's role in the unrest at the time, and an assessment of the Crown's response to these interests and this role, in light of the Treaty of Waitangi.

