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The Rakiura Purchase

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THE RAKIURA PURCHASE

1. Introduction

Ironically, Rakiura, known to Europeans as New Leinster, or more commonly, Stewart Island, the last substantial area of land to be purchased from Ngai Tahu by the Crown, had one of the longest histories of European contact. James Cook rounded the island in 1770, disproving earlier suspicions that he had discovered the legendary southern continent, Terra Australis Incognita. Although observers on board the Endeavour suspected the existence of a channel dividing Rakiura from the mainland, Cook charted Rakiura as a peninsula. During the first decade of the eighteenth century vessels involved in the seal trade took the news back to Australia that a strait divided Te Waipounamu and Rakiura. In August 1809 the Pegasus, a sealing boat working out of Port Jackson, made landfall in the harbour on the south east side of Rakiura which has become known as Port Pegasus. William Stewart, the first officer on the Pegasus, took advantage of the halt to chart the harbour. Stewart's chart was published in 1816 and with it a description of the island containing the first recorded use of the term Stewart's Island.[1]

Stewart did not mention having made contact with any Maori inhabitants of the island. Information about Maori use of Rakiura in pre-European times is sketchy. The island is said to have provided a refuge for Ngati Mamoe chiefs retreating from invading Ngai Tahu. Some of these fugitives are said to have been killed by a Ngai Tahu taua led by Tuwiriroa, who was alerted to their hiding place by the smoke from cooking fires.[2] The survivors eventually returned to Te Waipounamu and intermarried with Ngai Tahu. Later, the Ngai Tahu chief Te Wera made Rakiura his stronghold. After Te Wera's death his people also returned to the mainland to live.[3] Although the island does not seem to have supported a permanent Maori population at the time of initial European contact it is clear that it was frequented by Maori. A party of sealers stationed on Rakiura from late 1809 to mid 1810 is said to have relied on trade with Maori for most of its food supplies.[4] In December 1822 when the crew of the Snapper landed on Rakiura in search of flax, they found a party of Maori on the island, accompanied by two

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1. B. Howard, Rakiura, Dunedin, 1940, p.29.

2. J.W. Stack, South Island Maoris: A Sketch of their History and Legendary Lore, Capper Press Reprint, Christchurch, 1984, p.70, (first published 1898).

3. ibid, pp.70-1.

4. Howard, p.37.

pakeha men who had integrated themselves into the group.[5]

Although there were occasional fracas between Ngai Tahu and the sealing gangs working in and around Foveaux Strait, for the most part Pakeha and Maori appeared to have co-existed in relative harmony. In the mid 1820s a semi-permanent settlement of sealers and their Maori wives was established, with Ngai Tahu consent, on Whenuahou (Codfish Island), the largest of Rakiura's offshore islands. William Stewart, after whom the island was given its European name, returned to Rakiura in 1826 and started a ship building enterprise at Port Pegasus. The cost of establishing the settlement was to have been met from the proceeds of sealing, but because Stewart's sealing venture failed, the settlers, including a number of Maori from the Bay of Islands, were left to fend for themselves. They are reputed to have supported themselves by building whaleboats.

While sealing went into decline in the 1820s, the rise of the whaling industry meant that the Foveaux Strait area continued to see a significant amount of traffic during the 1830s. The first southern whaling station was established at Preservation Inlet in 1829. In addition to the shore whaling venture, Rakiura became the summer home of many whalers and their families. By the mid thirties a sizable community had grown up around 'The Neck' on the eastern peninsula of Paterson's Inlet.

In June 1840 an incident took place at Port Pegasus which earned Rakiura a place in the standard histories of the establishment of British authority in New Zealand. Major Thomas Bunbury had been sent south by William Hobson to collect signatures on the Treaty of Waitangi. The Herald, the twenty gun frigate transporting Bunbury, called first at Mercury Bay where William Stewart, was embarked. After a stop at Akaroa, where two chiefs, Iwikau and John Love,[6] signed the Treaty, the ship headed south. Bunbury intended to stop at Otakou but was thwarted by bad weather. With Stewart as pilot the ship sailed past Ruapuke, which Stewart at least would have been aware was a major centre of Maori population and the home of the leading Ngai Tahu chief Tuhawaiki. Instead of landing at Ruapuke, the ship headed for Rakiura, where it by-passed the populated areas, and sailed into the uninhabited harbour at Port Pegasus (Zephyr Bay). Bunbury considered there was little probability of finding Maori on Rakiura and decided to proclaim British sovereignty. On the 5th of June Bunbury and the

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5. Howard, p.49.

6. According to some sources John Love was Tikao, see C. Orange, The Treaty of Waitangi, Wellington, 1987, p.78.

officers of the Herald went ashore. A detachment of Marines were paraded, the British flag was saluted and a volley fired. The assembled company gave three cheers and after burying a copy of the proclamation on a small island near their anchorage, the party returned to the ship. On the 9th the ship left the island for Ruapuke, where several Ngai Tahu chiefs, including Tuhawaiki, signed the Treaty.

By the early 1860s a rather complicated situation was developing on Rakiura. Although the island was nominally under Maori control Europeans were beginning to make more use of it. There were a number of European settlers on the island. Some of these had claims to land on the basis of purchases from Ngai Tahu, including some pre-1840 purchases. In the official correspondence about the island, the Colonial Secretary also mentioned some absentee European claimants.[7] The island was a rich source of timber and by the early sixties Europeans were beginning to exploit the resource commercially. It is not clear whether permission for this had been obtained from Ngai Tahu. In 1860 John Macandrew, the Superintendent of Otago Province had received an application from John Bullock who wished to be guaranteed possession of saw mills, roads and jetties which he proposed constructing on Rakiura. The Superintendent replied that although the island was not included in Otago Province, 'in the event of it being included he would be quite prepared to comply'.[8] In 1861 Macandrew, informed the Colonial Secretary that several individuals were in the process of erecting sawmills on the island.[9]

There was also a community of half-castes on the island, apparently living in reasonable harmony with the Maori owners. Theophilus Heale, the Southland Provincial surveyor, visited Rakiura in February 1864 and brought the problem of the aged whalers and sealers and their families to the attention of the Southland Provincial Government. These families appear to have been concentrated at Port Adventure and on the peninsulas at the mouth of Paterson's Inlet. Heale found that few of these settlers had made Old Land Claims, but lived on land 'originally occupied by the consent of its Native owners, and which they considered as their own'. Heale recommended that their title, though without legal basis, should be recognised, in order 'that these numerous half-caste children should [not] be left landless in the land which their fathers were the first Europeans to explore, and

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7. Compendium, II, p.54.

8. Compendium, II, p.52.

9. Macandrew to Colonial Secretary, 20 February 1861, Compendium, II, p.53.

of which their maternal ancestors were the sole possessors'.[10]

2. Ngai Tahu offers Rakiura to the Crown

There is no indication the Ngai Tahu were reluctant to sell Rakiura. On the contrary there is evidence that Topi Patuki offered to sell the island, at least in part, several times before the government finally acted on his offer and that in the interim arrangements were made with at least one private purchaser to sell a portion of Rakiura. On at least one occasion the Titi islands were also offered to the Crown. An 1854 offer had one important condition attached however. Ngai Tahu had no wish to give up all their interests on the islands, rather Topi wished to gift the Titi islands to the Crown but retain the titi. The tone of the letter suggests that this desire to secure access to the titi may have been the principal concern motivating the offer. After making his offer and stipulating that the Maori should retain the birds, Topi asked the Queen to take prompt action. The letter ends with the exhortation:

> Beloved Elder make a decision quickly and move in case our supply of food are plundered by strange people, then your children will suffer from lack of food.[11] (Appendix C, p.20)

Topi's letter is one of the clearest indications we have of a belief on the part of Ngai Tahu that the transfer of legal title to land to the Crown could be compatible with the retention of tribal rights to mahinga kai. Nothing appears to have come of the offer. Walter Mantell, in his capacity as Commissioner of Crown lands at Dunedin seems to have made a decision not to relay the offer to the Queen.

While the Titi islands and the titi may have been Ngai Tahu's major concern in the area, because of its larger land mass and its timber, the question of the ownership of Stewart's island was more significant to European administrators. In August 1860 John Topi offered to sell the Crown the portion of Rakiura westward of the 168th degree of longitude.[12] There is no indication of whether the eastern portion was not offered because it was to be excepted from the sale or because it

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10. T. Heale to Superintendent Southland, 15 February 1864, Compendium, II, p.56

11. John Topi to Queen, 21 December 1854, ms papers 83 (Mantell papers): folder 194, Alexander Turnbull Library, Wellington.

12. Compendium, II, p.53.

was believed to have already been alienated. In his history of Rakiura, Basil Howard suggested that by 1860 the influx of Europeans had become too much for the Maori to cope with.[13] Howard also suggests that Topi's decision to offer only the western part of the island was pragmatic in that it protected the status quo.

> The reservation of the eastern portion withdrew from sale all the populated area, all the frequented harbours, and the whole of the profitable timber zone. If the Government had agreed to the reservation, conditions in the Native area would have remained unchanged...[14]

Howard seems to have been correct in suggesting that the increase in European interest in Rakiura was related to Topi's desire to sell the island. The indexes to the letterbooks of the Maori Affairs department note several letters from Topi to the government during the early sixties. On 10 May 1861 Topi wrote stating that he did not wish Europeans to locate themselves on 'Rangiura'.[15] Another letter later in May repeated Topi's offer to sell 'Rangiura' to the Crown.[16]

The Crown faced a number of obstacles in expediting the Rakiura sale. In 1861 it ascertained that the Provincial Government of Otago would be willing to pay for the purchase of Rakiura provided the island came under the administration of Otago. Two years seem to have elapsed without significant progress, largely because Macandrew, the prime mover behind the purchase within the Otago Provincial Government, was removed from office because of improper handling of government funds. The cession of Southland from Otago also complicated matters as did the northern war and the instability of government ministries. In this period the problems with European encroachment on Rakiura seem to have continued to grow. In 1863, the Native ~~Minister~~ Secretary, Francis Dillon Bell urged the government to purchase Rakiura as 'a great many people from Victoria, and other parts, are unlawfully occupying and dealing with portions of the Island, and the Government may find itself in great difficulty, by and by, in consequence of these unauthorised transactions.'[17] At least one of these transactions was recognised by Topi as binding, in November 1863 he wrote to the government to inform it that he had

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13. B. Howard, Rakiura, Dunedin, 1940, p.137.

14. ibid., p.139.

15. 1861/664, MA 2/39, National Archives, Wellington.

16. 1861/803, MA 2/39.

17. Compendium, II, p.53.

entered into an arrangement with certain Europeans for the sale of a portion of Stewart's Island.[18] The matter also became more urgent when rumours began circulating that gunpowder was being smuggled into New Zealand through Stewart Island.[18a]

3. An Officer is Selected

By the time the Government received Topi's letter notifying it of his intention to sell the land privately, it had already decided to move to purchase Rakiura. There was some difficulty finding a suitably qualified officer who could be spared to negotiate the purchase. Walter Mantell was initially intended to undertake the task. After it became clear that Mantell would not be available, Theophilus Heale, the Southland surveyor, was issued with instructions.

Heale's instructions set out his duties in detail. A list of those with rights on Rakiura was to be compiled, with an indication of what portion of the island each group had rights to. It is not clear when the decision had been made to attempt to purchase the entire island rather than the western portion offered by Topi, or at what point it was decided to attempt to include the offshore islands. Heale's instructions show that by September 1863 the government had decided to attempt to purchase the whole of Rakiura. They do not explicitly mention the Titi islands. Heale's instructions also show that there was a clear intention to provide an endowment for the vendors and not simply make a one-off payment. Heale was to offer to pay one third of the purchase money at once. He was to promise also that up to one-third of the proceeds from future sale or lease of Crown land on Rakiura were to be remitted to the tribe. This fund was to be dispensed in two sections. Two thirds of it was to be spent for the benefit of the tribe under the direction of government appointed trustees. With the other third the government, intended to make an annual payment to Topi and the heirs of Tuhawaiki. The list of persons who were to benefit under this provision was to be referred to Mantell for approval. As far as the European claimants to the island were concerned, Heale was to distinguish between those actually resident on Rakiura and absentee claimants. All claims from absentees were to be disregarded. The problem of

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18. Topi to Governor, 9 November 1863, 1863/1112, MA 2/40. A letter of 10 November asked for payment for Motopui (Dog Island), 1863/1111 MA 2/40. Neither letter has survived. A comment in a letter from Menzies to the Colonial Secretary of 30 September 1863 suggests Topi's purchaser was John Clarke, IA 64/2669.

18a. See for example Menzies to Colonial Secretary 30 July 1863, he 1/1865/164, National Archives, Wellington, Appendix E, p27

resident claimants was more complicated. Some of these had entered into purchase agreements with Ngai Tahu, others had not. Some had made lands claims before the Land Claims Commissions, others had not. Heale was told not to extend formal recognition to any claims, but to especially ignore those who did not have a current claim according to the records of the Land Claims Commissioner's Office.[19] The news that the government was preparing to proceed with the purchase seems to have become common knowledge. When Menzies, the Superintendent of Southland, returned to the Province shortly after New Year he found a party of Maori assembled in expectation of the arrival of a government officer to negotiate the purchase.[20]

In the event Heale did not complete the task. It is not clear why another officer was substituted for Heale. In February 1864 Heale tendered the Provincial Government a report on the geographical features of Rakiura and the extent to which the island had been settled.[21] The report mentions the prospective purchase but does not indicate whether, at the time of writing, Heale still expected to be the officer directing the purchase. On 20 February 1864 Henry Tacy Clarke was instructed to travel south and organise the purchase. Clarke was to be guided by Domett's instructions to Heale. There had been a change of government since Heale's instructions had been issued, as a result Clarke was instructed to refer those matters intended for Mantell's consideration to the new Colonial Secretary William Fox. He was to make a list of all Maori with an interest in the land on Rakiura, work out what portions they owned and when their claim had originated. No specific instruction were given regarding the making of reserves, nor were the Titi Islands mentioned.[22] The situation with the recent European purchases on the island, was again noted. Some of the European purchasers were claiming that the Waste Lands Act 1862 legalised sale of Maori land to Europeans. The government, while rejecting the argument that private trading in land had been authorised, was keeping an open mind about the alleged purchases and Clarke was to inform the Europeans concerned that if they could prove that a sale had been completed from Ngai Tahu's point of view, the government would refund the money spent if all

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19. Memorandum by A. Domett to W. Gisborne of Instructions for Mr Heale, 5 September 1863, Compendium, II, p.54.

20. Menzies to Colonial Secretary, 11 January 1864, IA 64/2669, National Archives, Wellington. See also Menzies to Colonial Secretary, 12 Feb. 1864, AJHR 1865 I 16A, Appendix C, p 38-40.

21. T. Heale to Superintendent, Southland, 15 February 1864, Compendium, II, pp.56-7.

22. E. Shortland to H. T. Clarke, 20 February 1864, Compendium, II, pp.54-5.

rights acquired in the transaction were transferred to the Crown. If the sales were not complete or it could be shown that Ngai Tahu had not been dealt with fairly, Clarke was to inform the offending Europeans that they were liable for prosecution.[23]

4. The Stewart's Island Annexation Act

The rumours that gunpowder was being smuggled in to New Zealand through Stewart island drew government attention to the fact that the island was not formally part of any province and that the administrative and legal channels through which problems arising on the island could be dealt with were consequently far from clear. In 1863 the Stewart's Island Annexation Act was passed in an effort to remove this anomaly. This move does not seem to have prejudiced the interests of the Maori owners of the island, the move being seen by officials as an expression of the Queen's sovereignty rather than a matter reflecting on the Maori title to the area. In other words neither the Domett ministry or the Whitaker-Fox ministry which replaced it in October 1863 believed that the passage of the 1863 act removed the necessity to proceed with a purchase of the island. In September 1863 Dillon Bell, the Native ~~Minister~~ Secretary, wrote a memorandum summarising the position.

> I take this opportunity of bringing before Ministers the position of Stewart's Island in reference to the Province of Southland. The Island is annexed to no Province. It however naturally belongs to Southland, and should be incorporated with it. I therefore wish that Mr. Wood should be empowered to assure the Provincial Government of Southland that as soon as the Assembly meets, the Government will introduce a Bill annexing the territory comprised in Stewart's Island to the existing Province. It would be quite immaterial whether the Island was ceded or not at that time, as the Queen's sovereignty exists over it, and, therefore, for purposes of Government, at any rate it would be brought within the jurisdiction of the Provincial authorities and the ordinary courts of law, instead of being, as now, a kind of Alsatia in which there exists no authority whatever. When the title was acquired, the land would then be subject to the same colonizing operations as the territory on the north shore of Foveaux's Strait.[24]

Although Bell lost office the following month, the legislation was adopted by the

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23. E. Shortland to H.T. Clarke, 20 February 1864, Compendium, II, pp.54-5.

24. F.D.Bell, Memorandum, 22 June 1863, Compendium, II, pp.53-4. A letter from the Colonial Secretary to Menzies, 5 Sept 1863, similarly expressed the view that annexation and purchase were necessary; Appendix C, pp.25-6

incoming ministry and became law in December 1863.

5. The Purchase Negotiations

Clarke arrived at Invercargill in March 1864 but could not make much progress because he arrived during the muttonbirding season. He notes in his report of 30 March that he had personally communicated with the Maori resident there. A letter had also been sent to Otago informing the Maori there that the government intended to proceed with the purchase and asking them to be ready to meet the Southland claimants when called upon. Disputes about rights on the island had arisen, some Maori claiming rights through Ngati Mamoe. Topi, as the principal claimant through Ngai Tahu, rejected the Ngati Mamoe claim. Clarke recommended the prosecution of one of the companies which had tried to purchase directly from Topi. Coincidentally the principal of the company concerned was also called Clarke. The prosecution was intended as an unequivocal indication from the government to Topi that the government did not recognise private sales.

> My reason for thinking it necessary to take legal proceedings against Clarke is from what has fallen from Topi. Clarke insists, he tells me, upon his (to use Topi's own words) "sticking to his bargain," and to leave the question of the legality of the transaction to be settled between himself (Clarke) and the Government. And I think there is an impression upon Topi's mind that Clarke will be able to maintain his ground against the Government. A conviction will convince Topi to the contrary, and greatly facilitate any negotiations with him.[25]

In May Clarke was able to begin negotiations in earnest. Clarke considered his position inherently unsatisfactory because he was charged with both protecting Maori interests and buying the island as cheaply as possible.

> The position in which I stand is, I conceive, rather an anomalous one. On the one hand, I shall be expected to purchase for the Provincial Government on the most favourable terms. On the other, I am instructed to have due regard to the interests of the Natives.[26]

Consequently, before entering into the purchase negotiations Clarke was careful to come to a clear understanding with the Southland Provincial Government over the purchase price. The payment schedule proposed by Clarke differed in several

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25. H. T. Clarke to Native Secretary, 30 March 1864, Compendium, II, p.55.

26. Compendium, II, p.58.

respects from that set out in the government's original instructions to Heale. Clarke proposed a total price of £6000. £2000 of this was to be paid over at the time that the deed was signed, £2000 invested with the Provincial government at 8% per annum and the interest paid annually to certain named chiefs. The remaining £2000 was to be used to buy land in Southland, the reserve so bought to provide an educational endowment.[27] Clarke considered that the system of making payments out of the proceeds of land sales was inconvenient and unworkable.

> This would be especially the case with regard to Stewart's Island. The Provincial Government may find themselves trammelled in their mode of dealing with those lands, and it may become the source of frequent disputes and complications. On the other hand I know from my knowledge of the Natives, that eventually misunderstanding and dissatisfaction would inevitably arise.[28]

The general government and the provincial government both agreed to the proposal, though the provincial government did try to reduce the rate of interest that was to be paid on the £2000 invested with it to 6%.[29]

Clarke's letter to the Superintendent of Southland asking for approval of the revised payment schedule contains the first official mention of an intention to make reserves on Rakiura for Ngai Tahu. Heale had previously noted that it would be necessary to make provision for the half-castes resident on the island. Clarke also recognised this but also suggested that other reserves would have to be made, including several reserves to provide Ngai Tahu with continuing access to titi. The tenor of his comments on these reserves suggest however that he did not see any conflict between the making of these provisions and the government's intentions.

> The reserves necessary for the natives will be two only;- one at Port Adventure, for William John Topi (Topi Patuki's half brother), and others residing in that locality; and one at Paterson's Inlet. it will also be necessary to reserve three or four of the small Islands adjacent where the Natives procure the "titi," or mutton bird.[30]

The impression that Clarke had been given the authority of making reserves before leaving for the south is strengthened by the fact that he saw no need to discuss

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27. H. T. Clarke to Superintendent, Southland, 26 April 1864, Compendium, II, pp.56-7.

28. H.T. Clarke to the Colonial Secretary, 6 May 1864, Compendium, II, p.59.

29. Superintendent of Southland to H. T. Clarke, 5 May 1864, Compendium, II, p.58.

30. H. T. Clarke to the Superintendent, Southland, 26 April 1864, Compendium, II, p.58.

the arrangements regarding reserves in his letter to the Colonial Secretary about the payment schedule. [31]

In October Clarke reported that the sale was complete. His report mentions that there was a dispute between Ngai Tahu and Ngati Mamoe over ownership of the Island but does not record any division over the question of whether or not to sell or any uneasiness about the fact that the government wished to purchase the whole of Rakiura. He had met with 120 representatives of Ngai Tahu and Ngati Mamoe on the 23rd of June and found that the issue of ownership had been settled. To make sure that no undue pressure had been applied Clarke went through the dispute again. He did not record the discussion, concluding that Ngai Tahu 'indisputably' established their right over Ngati Mamoe and that Ngati Mamoe kaumatua were content 'to hold a secondary position, and claim through their Ngai Tahu ancestry.' A second meeting was held on the 24th to discuss the price. Clarke claimed to have told the Maori at the beginning of the negotiations that the government was willing to pay £6000. This was thought to be too low and Topi asked for £50,000, then revised it to £22,000 and finally dropped his price to £12,000. Clarke refused to budge as he felt £6,000 'was a liberal and just payment for an Island which was of little or no value to themselves'. After further discussion agreement was reached and on the 29th a deed of sale signed. The £6000 was to be divided into three equal portions. The first was to be paid at the time of signing, the second invested with the government at 8% and the income distributed annually and the third used to buy land in Southland 'for educational, and other Native purposes.'[32]

It is clear that by 1864 Ngai Tahu were disillusioned with government provisions for their welfare. In his letter to the Superintendent of Southland informing him of his intention to use a third of the Rakiura purchase price to set up an educational endowment, Clarke explicitly stipulated that the arrangement related 'to Stewart's Island only, and does not in any way compromise any obligations which may have been entered into by the Government with the Natives at the time of the purchase of the Murihiku block'.[33] During the purchase negotiations Clarke was asked to pay the £2000 reserved for educational provisions in cash.

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31. H. T. Clarke to Colonial Secretary, 6 May 1864, Compendium, II, p.59.

32. H.T.Clarke to Colonial Secretary, 24 October 1864, Compendium, II, pp.60-1.

33. H. T. Clarke to Superintendent, Southland, 26 April 1864, Compendium, II, p.58.

> Their reason for making this request was, that all promises of a like nature made by former Commissioners had never been fulfilled. I told them that I would provide against any such contingency by entering the stipulation in the text of the deed. This in some measure satisfied them, and they agreed to leave the matter in the hands of the Government, requesting an answer as soon as possible. I held out no hope that their application would meet with success, but, on the contrary, told them that it would be strongly opposed by me. I promised them, however, that they should have an answer.[34]

Several times in the following years the government received letters from Topi repeating the request that the educational endowment be paid out in cash. Clarke's initial decision to retain the money in trust was upheld.

As the negotiations proceeded Clarke appears to have become increasingly nervous that the Southland government's reluctance to part with hard cash would result in the vendors dispersing before a final agreement could be signed. This he felt would create dissatisfaction and increase the difficulty of subsequently reaching an agreement. Clarke met with the Superintendent in late June and impressed upon him the necessity of settling the matter immediately. His view prevailed and Menzies arranged for the money to be made available.[35] On the 29th of June Clarke held another meeting with the owners, this time at Bluff and a deed was executed Thirty-four chiefs signed the deed. The distribution of the money had been discussed before the meeting on the 29th. Money had been allocated to Ruapuke, Otakou, Aparima, Waikouaiti, Waitaki, Moeraki, Oraka, Rakiura, Molyneux, Kaiapoi, New River, Oue, Taieri and Kawakaputaputa chiefs. The chiefs of Rakiura, Ruapuke, Otago and Aparima were however recognised as principal claimants and received over sixty percent of the cash. £945 were paid out at Bluff on the 29th, £1044 at Aparima on the 1st of July and the remaining £11 deposited in Topi's bank account.[36] Clarke determined that the interest on the second portion of the purchase money reserved for Topi and the heirs of Tuhawaiki, should be paid to Topi, Tioni Kihau, Fred Kihau, Ellen Kihau, and their heirs.[37]

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34. H.T. Clarke to Colonial Secretary, 24 October 1864, Compendium, II, p.61.

35. H. T. Clarke to Colonial Secretary, 24 October 1864, Compendium, II, p.61. See also Clarke to Menzies, 27th June 1864, Appendix C, p41-3.

36. Howard, pp.395-6. To compile this list of payments made Howard appears to have access to a file which has subsequently been lost.

37. H.T. Clarke to Colonial Secretary, 24 October 1864, Compendium, II, p.61.

Nine reserves were made amounting to about 935 acres plus an unspecified amount of land on The Neck (out of which half-caste grants of ten acres for men and eight acres for women were to be made).[38] (Appendix One) Clarke appended to the deed a list of 28 half-caste residing at The Neck but acknowledged that this was probably incomplete. Seventeen of the Titi Islands were also reserved for Ngai Tahu - Ngati Mamoe but there is no indication of how this list was compiled.

6. The Inclusion of the Titi islands

The official documents do not mention any discussion about the inclusion of the Titi Islands. The deed explicitly included 'all the large islands and all the small islands adjacent', to Rakiura. In evidence before the Tribunal Harold Ashwell has stated that the Titi islands were sold unintentionally.(doc L32:1) In her book Titi Heritage, Eva Wilson suggests that although Ngai Tahu - Ngati Mamoe went into the negotiations with Clarke prepared to sell Rakiura, they were adamant in wishing to retain the Titi Islands. Because Clarke's offer of purchase mentioned only the island and an island, Ngai Tahu - Ngati Mamoe assumed that only Rakiura was being negotiated for and agreed to the sale on this understanding.[39] Wilson, of Ngati Mamoe descent, says that it was not until after the sale that one of the signatories to the deed, read the deed closely enough to realise that the Titi Islands were included. According to Wilson, the original arrangements made by Clarke for access to the islands during the muttonbirding season were not regarded as satisfactory, largely because of a lack of confidence in the willingness of government to keep its promises and because access to the resource was not seen as an adequate substitute for personal ownership.[40] In Wilson's account a split occurred between the Aparima and the Bluff Maori over the issue of whether to risk losing the purchase money by protesting about the inclusion of the Titi islands. Eventually a letter was written to Clarke accepting the fact that the islands had been included in the sale but asking that the resource be managed in the traditional manner and the islands protected from trespassers. This letter resulted in Clarke agreeing to reserve the islands for their beneficial owners and

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38. It was a number of years before these reserves were surveyed or Crown granted, partly because of the remoteness of Stewart's Island. Problems also arose because Clarke had not allowed enough land at the Neck to accommodate the claims of all the half-castes entitled to land. (doc O14a: 54-61) There are a number of claims relating to the granting of Rakiura reserves. Those relating to the Toitoi and Port Adventure Blocks were formerly PC 24 but are now part of Wai 27.

39. Titi Heritage, Invercargill, 1979, pp.29-32

40. ibid., pp.33, 36.

their descendants and guaranteeing the Government's protection of the resource. According to Wilson, this guarantee was later spelt out by Clarke in a letter to the Colonial Secretary.

It is difficult to substantiate Wilson's story. Clarke's report on the purchase was written in October, several months after the negotiations themselves. Both the report and the memorandum concerning reserves carry the same date. Neither mention an approach to Clarke regarding the Titi islands following the signing of the deed. We have clear evidence that in April, before starting the negotiations, Clarke intended to reserve several islands for Ngai Tahu. The negotiations extended over several days and involved a substantial number of people. Clarke's report on the purchase included an enclosure which listed a number of islands reserved for Ngai Tahu and a detailed breakdown of who was to have rights there.(Appendix Two) It is this list which is cited by Eva Wilson as Clarke's compromise guarantee made in response to a belated realisation on the part of Ngai Tahu that they had inadvertently sold the Titi islands with Rakiura. To compile such a list Clarke would have had to discuss the islands at some point in the negotiations. These discussions may have taken place after the deed was signed, giving rise to Wilson's suggestion that the status of the Titi islands was not clarified until after the purchase. In the absence of further evidence there is nothing to suggest that the Titi islands were fraudulently acquired by the Crown or that those who participated in the sale did not discuss the islands at some point in the proceedings. However, the absence of evidence about the manner in which the list of reserved islands was made makes it impossible to say whether all the islands on which Ngai Tahu wished to retain birding rights were reserved. In 1854 Topi appears to have wished to retain rights on all the islands he offered to gift to the Queen.

7. Conclusion

The Rakiura purchase involved a period of extended negotiation. Although there were some disputes between the Maori involved over relative rights in the area there is no evidence that Ngai Tahu were reluctant to sell. At some point in the negotiations the officer conducting the purchase appears to have discussed the Titi islands with at least some of the vendors as a list of reserved islands and chiefs with rights to each island was attached to the deed. Given the fact that Topi Patuki the principal chief involved in the sale of Rakiura and its offshore islands had earlier expressed a clear wish to retain birding rights in all the Titi islands the Tribunal may wish to consider, in conjunction with its examination of other mahinga kai issues in the Ngai Tahu claim, whether the reservations made by Clarke in 1864 were sufficient to ensure the tribe adequate access to and control over titi.

Appendix One: Reserves Made on Stewart's Island

No.	Location	Acres	Individual Reserved For
1	Lord's Harbour	30	Haereroa
2	Port Adventure	330	William John Topi (75 acres)
			Maika Neira (90 acres)
			Hira Huatakitaki (65 acres)
			Matiu Rupawera (25 acres)
			Aperahama Kowatu (25 acres)
			Pahepa Hakeke (10 acres)
			Reita Karate (10 acres)
			Merika Keitia (10 acres)
			unappropriated (20 acres)
3	The Neck		Half caste men (10 acres)
			Half caste women (8 acres)
			Ihaia Whaitiri/Hoani Tunarere (remainder)
4	Paterson's Inlet	400	Tioni Topi Patuki
5	Horse Shoe Bay	40	Hone Wetere Korako
			Tari Wetere Te Kahu
6	Cultivation Point (Port William)	80	Paitu
7	Ragged River	50	Aparima Maori
8	Island, Mason's Bay		Aparima and Oraka Maori
9	Port Easy	5	Aparima and Oraka Maori

Note: Reserves 7,8 and 9 were landing places for Maori on birding expeditions

Source: Compendium, II, p.61

Appendix Two: List of Titi Islands Reserved in 1864

Name	Chiefs for whom reserved
Horomamae [1], Te Wharepuaitaha	Haereroa
	Kaupatiti
	Horomona Pohio
	Huruhuruhuro
Kaihuka, Potuatua, Te Pomatakiarehu, Tia [2], Pikimamaku, Herekopare [3]	Tioni Topi Patuki
	Tioni Kihau
	Fred Kihau
	Ellen Kihau
Taukiepa (Long Island)	Matiu Keapane
	Rawiri Mamaru
	Rewati te Akau
	Rawiri te Awha
	Tauira
	Tioti Mauhe
	Aperahama Hutoitoi
	Henare Paremata
	Tioti Turi
	Ihaia Mi
	Patepa te Huruhura
	John Paina
	William Fisher
	Tukurua
	Horomona Patu
Moki ite, Moki nui [4], Timore	Horomona Patu
Rerewhakaupoko [5]	Horomona Patu
	Paororo
Huirapa	John Paororo
Te Pohowaitai [6], Tamai te Mioko	Rawiri Mamaru
	Riria Paitu
Poutama [7]	Hohepa Tarawa
	Mere Titahi
	Paitu
	Rawiri Tapuae
Kai Mohu	Jack Miller

24th October 1864 H.T. Clarke

Source: Compendium, II, p.62.

Notes:

1. Owen Island
2. Entrance Island
3. Refuge Island
4. Moggy Islands
5. Solomon Island
6. Wedge Island
7. Evening Island

Appendix C

1. John Topi to Her Majesty Queen Victoria, 21 December 1854, ms papers 83 (Mantell Papers), folder 194, Alexander Turnbull Library, Wellington.

2. Menzies to the Colonial Secretary, 19 October 1863, IA 63/2876, National Archives, Wellington.

3. Menzies to the Colonial Secretary, 30 July 1863, Le 1/1865/164, National Archives, Wellington.

4. Colonial Secretary to Menzies, 5 September 1863, Le 1/1865/164.

5. Menzies to Colonial Secretary, 12 February 1864, Le 1/1865/164

6. Clarke to Superintendent Southland, 27 June 1864, Le 1/1865/164

MS papers 83 (Mantell Papers): folder 194.

(20)

Taranaki Otaketi, Otaki.
Tiheema 21. 1854.

Nuare ra e taku kukapukai tekuahomia kia Wikitoria, kia te Kuini.

Ehai i te-matou hakui tamaraka. Kotou ko au tamariki piirimihi.

Whakarokohai ra ki tapaku kupu atu ki a Koe — na matau katoa hoki tenei kupu.

Ko hia maolasi tiki e te ama ki waho o Poti-wera, o tetahi ata wahi, o tetahi ata wahi.

Matau ano te whakaaro, hei a Koe ka mouture, hei a matou ka titi; hei kai mo matou, mo o-matou whanauka.

Ki te pai mai Koe, ki te whakaae mai hoe ki tenei tikaka; a — hei a Koe ano ka mouture, tamau ai, — ko te tukuka ano tenei ki a Nae: otira, ma matau ano ka titi, Matau e whakatamau mai kia matau.

E Kui, kia kaupapa mai, kia kororoho mai. Tohu tikaka kai takohina katoatia, koi maheti a matau kai e ka takata pora; koi mate Oe tamariki i te kore kai.

Nei oti ano
na Tohu tana aroha nui
whakaharahara
na-

John Topi
Chief of the
Ngaitahu Tribe.

Private Secretary's Office
Received 25 JUL 1854
Auckland

Dunedin
Otago.
21st Dec. 1854

I go forward my letter ceding land to Victoria the Queen
Our beloved Elder greetings to you and your Royal family.
Take heed of what I have to say to you - this is the message from us all.
The Mutton bird Islands outside Foveaux and other areas.
The decision is yours the Islands to you and the mutton birds we retain for food for us and our families.
If you are in favour and agree to this arrangement that is you have the Islands in your possession - this confirms the ceding to you, however, the mutton birds to remain ours, so you may confirm this with us.
Belved Elder, ~~decide~~ make a decision quickly and move in case our supply of food are plundered by strange people, then your children will suffer from lack of food.

In conclusion
From your loving
and caring son
John Topi
Ihaka of the
Ngaitahu Tribes.

1/25/76 16 Oct 63 Completed

Dr Mengen & Sandwell Students Law Office Toronto

Sir Clearance Mr Fox Mr Attorney General Mr Solicitor General

Subject Public Customs Mr Fox Mr Attorney General Mr Solicitor General

I has had my Colleagues & Superintendent of Light Houses

Monday Nov 2nd

I have the honor Sir to acknowledge the receipt of your letter of 5th inst in which you inclose

several matters referred to in your letter of 2nd Oct

Sir I have the honor to be Your obedient Servant

Sir I have the honor to be Your obedient Servant

Sir I have the honor to be Your obedient Servant

bill would be in Parliament I would suggest
just that the Option of the power
such was to be reserved should be
defined. I am informed that Mr
Dobson Surveyor of the Plan have purcha-
sed a portion of Stewart's Island from
Tobi quite lately - in fact since
I first drew your attention to the
circumstance of such attempts being
in prospect - this may obstruct the
Endeavour to purchase the Island on
account of the Government -

I after some conversation with
Mr Veale on the subject of the Res-
erve Reserve we agreed that some
Explanation on the nature of the title
the occupancy before any serious steps
could be taken - from the Informa-
tion at present before the Provincial
Government it would appear that a Special
title to the particular land in question
was acquired by Mr Hamilton at
the time of the purchase of the Run -
the Run Stock and that although
apparently forming part of the Sys-
tem block known as the Maori
Reserve yet it was admitted by the Maoris
it belong'd to an individual

See Minute on back of letter

on this point it is advisable to obtain the opinion of the Crown Lawyers who must be familiar with the facts

3-4-5 I have to report any Instructions which may be given on the subject of the Customs House - & have the honor to solicit Your favourable consideration

Respectfully

I may notice however that the Department of Registrar of Deeds Supreme Court &c appears to have been overlooked in the instructions of the Commissioners of Customs as the additional duties required thereon are still paid by the Provincial Government. The Deputy Treasurer having no instructions to pay them - and I learn that the Registrar has not been his appointment received any salary for one of the Offices he holds

6 I have had no communication on the subject of the Bay Island light house from the Government of Canada the Report and Plans of which have been transmitted to Dundas

(25)

63/23

I am satisfied that there is the intention of your Government to extend the Postal Service to the Tribes of the Lake District bi-monthly both which at the same time they may be allowed to keep the Opinion that boats of small power such as the Kakaritai have at the Bay of Islands will be suitable, in the meantime to extend the service a subsidy to boats of that class upon for this Service would be given.

I have the honor to be

Sir

Your obedient Servant

J. A. Maunsell

Superintendent

The Honble
The Colonial
Auckland

Superintendents Office
Southland
30th July 1863.

Sir.

The return of Mr Wood from Dunedin leaving a part of his mission unaccomplished has occasioned much disappointment here Questions relating to important interests are thus left unsettled — some of those have been for some time imprudently delayed until a Minister of New Zealand could visit the place. That Mr Wood found himself unable to do so on this occasion is a cause of regret - Some points upon which I should have been glad to confer with him I have now to bring under your notice in this communication.

1. Stewarts Island. - It has been urged in previous communications that a necessity exists for dealing at once with this

The Hon.ble
The Colonial Secretary
Auckland.

this case - some additional circumstances can be stated which give further proof if that were required. - the probability that a depôt of ammunition has been formed there by the Maories. - Moffats declaration has been transmitted to you, he has since stated that ammunition to the value of £700. was bought by the Maories during last summer from two American Whalers - it is obvious that smuggling to any extent may go on unsuspected - again I am informed that Topi and some of the other leading Maories have been tampered with for the purchase and by persons who ought to have known that such could not be effected by private individuals - it is said that six thousand pounds have been offered for Stewarts Island.

If the General Government propose to purchase it at all that purchase could be effected now at a lower price than it is likely to be sold for hereafter.

2nd Atkariona Reserve - Riverton. nothing has been done in this matter - a

Jetty

Jetty (new or additional) is urgently wanted there, but so long as there is some hope of being able to purchase a small portion of the land near the only proper place for a Jetty the Provincial Government is reluctant to fix the Jetty permanently at a very unsuitable place by making the required additions to the present one — The Provincial Government however may take action in this matter and in the way of building a Pier at the right place on the ground that it possesses. The water frontage even opposite to the Maori Kainga - and it probably will shortly act on this assumption if the General Government cannot find any means of clearing up the difficulty.

3rd Custom House - I have already adverted to the very insufficient accommodation which the building erected eighteen months ago for the Customs now affords for the transaction of its business the Collector of Customs informs me that he has represented this matter fully - I abstained from doing so for some weeks past relying on the assurance that

that Mr. R. Wood would come here by the "Firedale" in July - at my desire the Provincial Engineer prepared a plan which was intended to be submitted for the approval of Mr Wood - as that gentleman did not find it convenient to come, only one course is open - the conduct of the business in the present chambers will be simply impossible when the trade freshens in Spring and some further accomodation must be provided - it is not desirable to make the required additions to the present building, because such additions never could be so commodious as a building erected with the view of suiting the object - next this addition if made, would necessitate another addition to the Post Office, which was doubled in size about four months ago and is now again inadequate for the business. The Post office and Custom House are under one roof, and the removal of the Customs to another building would give to the Post Office

all

of the additional room it is likely to require for a long time - even when the Electric Telegraph is worked therein, and above all the state of the Customs Revenue ranking now fourth on the list of Provinces and rapidly increasing, is such as to justify a large outlay in providing such accommodation for the transaction of business as the public of the Province has a right to demand.

I have come to the conclusion of taking the responsibility of ordering the work to be begun with as little delay as possible and asking you now to endorse this action by giving directions to the Collector of Customs to make the necessary payments, a tracing of the Plan is enclosed. it is to be built on the General Government Reserve in Clyde Street and the cost is limited to £3000 even if built of brick.

4th Salaries of Officers of General Government. - I regret that I should again have to draw attention to the low salaries paid to the officers of the General Government

Government, Your Government cannot surely weigh the evidence afforded by the Provincial Salaries - of the opinion of the local Government - it overlooks the facts of the great expense of living and Rent in this place and the necessary consequence that the Customs and Post Office are continually changing officers, altogether in consequence of the low salaries - for example, junior Clerks in those offices get I believe £150. the Chief Postmaster £200. - in the Provincial service the labourers on the Jetty get above £180. - a Sergeant of Police £210 to £220 such anomalies cannot fail to operate injuriously on the service of Your Government. The case of the Chief Postmaster is peculiarly hard and if he should resign his office Your Government would not easily find a successor equally prompt, intelligent, and efficient.

5th Provincial Guarantees. As you are aware the Provincial Government has guaranteed salaries for a number of the officials of your Government, and has made

made payments on this account and on account of Postal Contracts - it has guaranteed very considerable sums on the latter account as the Chief Postmaster has no doubt informed you - I have now to request that you will relieve this Government of those liabilities by giving directions to the Collector of Customs to pay out of the abundant Revenue which he receives the sums of the various Salaries and Contracts guaranteed by the Provincial Government on account of the General Government as they fall due -

I am well aware that those payments will be greatly in excess of the appropriation by the Assembly, but it appears to me that as such payments would be equally "in excess" or unappropriated the Provincial Council is paid by the Provincial Government their payment by the Collector of Customs would be more legitimate - the same remarks will apply to Salaries in the Registrar of Deeds department.

6th Light House. Dog Island.

Some

Some time ago a plan of the structure for a light house was designed by the Chief Surveyor of this Province Mr Heale, who also drew up a most elaborate report on the subject a copy of which and of the Plan I transmitted to the Superintendent of Otago on 12th May - it has not been acknowledged and by a letter of July from the Secretary of the Chief Marine Board the communication does not seem to have been brought under the notice of that body - I have sent a copy of the report to the Secretary requesting him to bring it under the notice of the Board.

7th Northern Steamers. - I have to draw your attention to the fact that the services of only one monthly boat from the North to this Province are not sufficient - the minor boats which generally convey the intermediate Mails from Dunedin are of insufficient power to ensure regularity, and the accommodation for passengers is very

inferior

inferior, one of those boats I have reason to know is old and worn.

It appears to me that the commercial interests of this province as evidenced by the Customs Returns justify the demand that the communication with Auckland shall be at least — fortnightly.

I have &c.
signed J. A. B. Menzies
Superintendent.

Extract from letter.

Colonial Secretary's Office
Auckland.
5 September 1863.

Sir.

I have the honor to acknowledge the receipt of your letter of the 30th Ultimo in which you bring under the notice of the Government several matters of importance connected with the Province of Southland still unsettled.

The condition of Stewarts Island certainly requires that it should be no longer left out of the pale of the ordinary establishments for the maintenance of law and Government which prevail throughout the Middle Island.

The first step should be to effect if possible the purchase of the Island from its Native Owners, it was hoped that the Hon.ble Mr. Mantell, whose knowledge of these Natives and his interest in all that concerns them, are such as to have made him always willing

His Honor
The Superintendent
Southland

willing to undertake this task. would have been able to visit Stewarts Island and have himself accomplished it. I fear however there is little chance at present of his doing so. Government propose therefore at once to Authorise Mr Theophilus Heale to endeavour to effect this purchase. It is presumed that he would be able by procuring the personal attendance of the Natives interested at Invercargill to negociate this matter without interfering materially with his other Official duties. or if an occasional visit to Stewarts Island were necessary. that he could with the assistance of Your Honor make arrangements for the performance of those duties during his temporary absence.

A Bill will also be submitted to the General Assembly at its next session to annex Stewarts Island to the Province of Southland - When this Bill has passed the Assembly. whatever officers may be necessary for the maintenance of law throughout the Island will be at once appointed.

As the General Government have no funds applicable to the purchase of any

Native

Native Lands except those in the Northern Island. I presume Your Honor would advance from the Provincial Treasury whatever sums might be necessary for the purchase. on the understanding of course that if the Assembly declined to pass the Bill for annexing the Island to Southland. such sums would be repaid to that Province by the General Government.

I have &c
signed Alfred Domett.

Superintendents Office
Southland
12th February 1864.

Sir.

I have the honour to remind you that it was arranged in the end of November 1863 when I was in Auckland, that an officer of standing in the Native Department should come to the South at the same time as I did, to clear up questions of Native title in this Province, and endeavour to effect the purchase of Stewarts Island. - at the time I left Auckland, about Christmas, your attention was absorbed by the disturbed state of a Native District South of Auckland, and this arrangement was overlooked, an explanation which seemed in some degree to satisfy the Maories, who were collected awaiting the arrival of the "Phebe" there - I expressed my belief that on the

The Hon.
The Colonial Secretary
Auckland

on the next return of the "Phoebe" if not sooner. The officer in question would arrive - but he has not yet come, and in consequence a strong feeling of irritation has arisen in the minds of the Maories, who as I am informed say that they are being cajoled by the Government - One of the parties, who professes to have effected the purchase of a part of Stewart Island, does not fail to take advantage of these circumstances, and I apprehend that delay in proceeding with the negociation of the purchase will most seriously increase the difficulties of effecting it. After consultation with Mr. Weale I feel so much impressed with this belief that I have to request that in case you cannot by return of the Mail Steamer "Lord Ashley" send some competent officer to conduct and conclude the affair, you would by the same opportunity inform me that he cannot come shortly. I think it would then be proper for Mr Weale or Watt or both conjointly to undertake

it

it under the authority which has already been given to them by the General Government

I have &c
signed J. A. B. Menzies.
Superintendent

Invercargill
June 27th 1864.

Sir.

I have the honour to lay before you in writing what I have already communicated to you verbally respecting the progress of my negociations with the Natives for the purchase of Stewarts Island for Her Majesty's Government.

I cannot attempt to give your Honour a full report of all that has passed between myself and the Natives at the meetings held by me, as I am just now very much pressed for time, suffice it to say, that the question of title was gone into and settled on the 23rd Inst. to the satisfaction of all parties.

On the 24th I made known the terms upon which I would purchase the Island on behalf of the Government.

I need not tell you that they affected to look upon my offer as insignificant, and scrupled not to ask the extravagant sum

To His Honor
The Superintendent
Southland.

sum of £50.000 then £20.000 and last of all £12.000. But when they found after a three hours discussion that I would not make the least concession they proposed that I should go to Auckland and aske the Governor to grant more favourable terms to themselves. and return again. I replied that it was very doubtful whether I would return, that it was more than probable some one else would be sent to negociate with them. after some further discussion amongst themselves. they accepted my terms provided that I was prepared to pay the sum of Two thousand pounds at once. £2.000

I felt so impressed from what fell from the Natives. that it was absolutely necessary to come to some immediate arrangement to complete the purchase before the Natives was allowed to disperse. that I at once left Riverton for this place to consult with your Honour. and to urge the necessity of at once closing the arrangements. My reasons were these.

1st The Natives when they left their

distant

distant homes supposed that I was fully prepared to pay down any sum which might be agreed upon. To allow them to disperse without satisfying their claims would disgust them with the whole proceeding and render the chance of re-assembling them very problematical and lay ourselves open to a charge of breach of faith.

2nd Your Honour is aware of the trouble I have had to bring Topi Patuki the principal man interested in the Island to face the other claimants. To allow him to return to Ruapuke and be again subjected to influences opposed to the acquisition by the Government of Stewarts Island, would postpone to an indefinite period the accomplishment of this desirable object, as well as add greatly to the increased demands of the claimants.

£2.0.0

I beg to express my thanks to Your Honour for your promptitude in meeting my wishes and making arrangements for the payment of the money when required, and I have now the pleasure to state that the negotiations may now be said to be completed.

I have &c

Signed Henry T. Clarke