OFFICIAL

PETANE AND TE PAHOU BLOCKS

#C12 Wai 299
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A Report to the Waitangi Tribunal

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Preface

My full name is Richard Peter Boast. I am a Senior Lecturer in Law at Victoria University of Wellington and reside at Pukerua Bay, Porirua. My qualifications and experience are as already stated to the Tribunal in respect of my evidence in the Mohaka-Waikare claim. The object of this report is to examine the legal history of the Te Pahou and Petane blocks, which lie between the boundaries of the Ahuriri purchase of 1851 and the Mohaka-Waikare confiscation of 1867. Both the Te Pahou and the Petane blocks were alienated as a consequence of the 'ten owners rule' as applied by the Native Land Court in Hawkes Bay after 1865, and for this reason their history is in fact quite distinct from the Ahuriri Block (a pre-emption deed purchase carried out by Donald McLean) and the Mohaka-Waikare block (confiscated under the New Zealand Settlements Act 1863). My general conclusion is that the Petane and Te Pahou blocks would best be considered as part of a general enquiry into the effects and operations of the Land Court in Hawke's Bay after 1865.

I would like to express my thanks to the claimants generally and to Fred Reti for his assistance in locating documents held in Hawke's Bay.

Richard Boast

1. Introduction and scope of this report:

1.1. General Introduction:. These two blocks happen to intersect the boundaries of the Mohaka-Waikare confiscated block (the two southernmost of the post-1870 Mohaka-Waikare subdivisions being the Tangoio South and Pakuratahi blocks) and the Ahuriri purchase of 1851. The history of these two blocks, which were investigated by the Native Land Court in the 1860s, obviously is interconnected with both McLean's acquisitions of 1851 and with the Mohaka-Waikare confiscation. An oddity of the Petane block is that although clearly included within the boundaries of the Mohaka-Waikare confiscation, it was never in fact treated as one of the confiscated blocks and was not included within the blocks settled by the Mohaka-Waikare deed of 1870. The iwi/hapu groups who are affected are essentially the same as those affected by the Te Whanganui-a-Orotu claim, already heard and reported on by the Waitangi Tribunal, and by at least the more southerly and easterly of the Mohaka-Waikare subdivisions. To deal with the Petane and Te Pahou blocks as adjuncts to the Ahuriri and Mohaka-Waikare claims makes a certain amount of geographical sense, but whether it makes *historical* sense is perhaps debatable. This is because the Petane and Te Pahou blocks were both investigated by the Native Land Court at a comparatively early date, and if these blocks are historically adjunct to anything, it is to the operations of the Native Land Court in Hawke's Bay generally after 1865. Although the Tribunal has some documentation on the operations of the Court in the region (most notably in the Scott-Ballara report), there has been no comprehensive investigation of the Court's operations. Te Pahou and Petane are small pieces of a very large picture; the larger pieces include the other Hawke's Bay Native Land Court blocks at Heretaunga, Aorangi and so on.

1.2. The issues: The Te Pahou and Petane blocks are minor aspects of an important and very difficult question, this being the very rapid alienation of Maori lands to private purchasers in Hawke's Bay after the advent of the Native Land Court in 1865. To unravel the complex business dealings of Maney, Tanner, Sutton and others and their relationships with such Hawke's Bay rangatira as Paora Torotoro, Te Waka Kawatini, Karaitiana Takamoana, Henare Tomoana, and Tareha Te Moananui would be virtually a lifetime's work. The necessary focus of the Waitangi Tribunal on acts or omissions of the Crown has meant that private sector dealings have gone unscrutinised, which in the particular circumstances of Hawke's Bay is to ignore probably the most important and most richly-documented means of land alienation. The effect of the ten owner's rule and the loss of such critical pieces of land as the Heretaunga Block was probably a much more serious matter than the Ahuriri Purchase of 1851. With the events of 1865-73, however, the issues are not as clear-cut as with the earlier pre-emptive Crown purchases. To some degree the Hawke's Bay chiefs were the authors of their own misfortunes. They became entangled in a complex morass of debt and often sold land to extricate themselves from their financial difficulties, only to find that the sale proceeds were simply credited against debits in the books of Mr. Maney and others and no cash was received. The financial affairs of some chiefs such as Paora Torotoro seem to have been in a horrendous state and he seems to have been completely at a loss to understand his circumstances. One effect of the ten-owner's rule as applied by the Native Land Court before it was abolished in 1873 was that the debts of a few chiefs could lead to the alienation of entire tribal estates. This caused great injustice and was a source of grievance and

protest, but when action was finally taken the damage, in Hawke's Bay, at least, was already done.

The Hawke's Bay Commission of 1873 was set up to inquire into land transactions in the province, which by this time had become a national scandal. The Commission, however, pinned all the blame on the Land Court and the statutes under which it was established. The Chairman, C.W. Richmond, a Supreme Court Judge and an important member of the Richmond-Atkinson clan, declined to find any evidence of fraudulent dealings on the part of the settlers, which, as Keith Sinclair has written, was "a conclusion it is impossible to believe, and which probably no one believed then."[1] All the same, there is no doubt some force in the Commission's view that the Land Court and its empowering legislation lay at the core of the problems that developed in the province. And while the complex dealings of Mr Maney, land-dealer, moneylender, store-keeper and publican, are not acts or omissions of the Crown, the Native Lands Acts undoubtedly are.

1 Keith Sinclair, *Kinds of Peace,* 118.

2. The Native Land Court in Hawke's Bay

2.1. Documentation: The operations of the Native Land Court in Hawke's Bay happen to be very well documented. This is mainly because of the Hawke's Bay Native Lands Alienation Commission, which reported in 1873.[2] Both the Te Pahou and the Petane Blocks were considered by the Commission. The Commission was established in response to a background of complaints by Hawke's Bay Maori about the effects and operations of the Native Land Court and the rapid rate of Maori land alienation in the province. The background to the Commission and its limitations have been well-described by Sinclair:[3]

> Both the Maori and European population in Hawke's Bay was in a turmoil. The former were holding constant meetings; the latter were thronging at hearings of the Native Land Court. In 1872 two numerously signed Maori petitions to Parliament, asking for a Commission to enquire into their grievances, were favourably received by a Select Committee and the government set up a Commission. The Commissioners were C.W. Richmond, a Supreme Court judge who had been Native Minister when the wars began and who was not noted for his sympathy towards Maori, and F.E. Maning, author and judge of the Native Land Court. In addition there were two well-known Maori, Wiremu Hikairo and Te Wheoro.
>
> The attempt, probably the first, to combine, in a Commission, Maori assessors with European magistrates, as in Grey's Resident Magistrates Courts of the 1850s and later Native Circuit Courts,was not a success. Richmond said that no attempt was made to induce the Maori to adopt a European point of view. He wanted their opinion to be their own. He and Maning rarely disagreed, but it did not prove possible to agree on a general report. He and Maning reported separately; Hikairo wrote a brief comment. Te Wheoro, who was frequiently away, possibly involved in negotiations in the Waikato, mrely commented on some individual cases.

Sinclair sees the Commission as a severe blow to the hopes of the Repudiation[4] movement:

> The Commission heard just over 300 Maori complaints over a three-month period. Richmond disappointed the claimants from the start by explaining that the Commission was merely a fact-finding one. He told them that it could not undo any decision of the Native Land Court and that Parliament itself rarely undid the decisions of a court. Moreover, Parliament would not pay compensation for wrongs done by individuals. In short, Repudiation had no hope.

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2 1878 AJHR G-7.

3 Keith Sinclair, *Kinds of Peace: Maori people after the wars 1870-75,* Auckland University Press, Auckland, 1991, 117-8.

4 For a discussion of the Repudiation movement see generally Sinclair, *Kinds of Peace,* 112-20. Repudiation seems to have begun in the Gisborne area but became centred in the Hawke's Bay region in the 1870s. A more radical wing of the movement was led by Henare Matua and a moderate section by Karaitiana Takamoana. The movement received considerable assistance from Henry Russell of Waipukurau ("Lord Henry"), who owned the Mt Herbert estate near Waipukurau, and his lawyer,John Sheehan, later to become Native Minister in the Grey Ministry which took office in 1877. Russell and Sheehan were political enemies of Fox, McLean and Ormond.

2.2. The ten owner's rule: The Hawke's Bay region was the scene of concentrated activity by the Native Land Court in the late 1860s and early 1870s, before the 'ten owner's rule' was abolished by the Native Lands Act 1873. The ten owner's rule derived from s 23 of the Native Lands Act 1865:

> At such sitting of the Court the Court shall ascertain by such evidence as it shall think fit the right title estate or interest of the applicant and of all other claimants to or in the land respecting which notice shall have been given as aforesaid and the Court shall order a certificate of title to be made and issued which certificate shall specify the names of the persons or of the tribe who according to Native custom own or are interested in the land describing the nature of such estate or interest and describing the land comprised in such certificate or the Court may in its discretion refuse to order a certificate to issue to the claimant or any other person *Provided always that no certifcate shall be ordered to more than ten persons* Provided further that if the piece of land adjudicated upon shall not exceed five thousand acres such certificate may not be made in favour of a tribe by name.

The Native Lands Act 1873 replaced the ten-owner system with a "memorial" of title, basically instituting the modern Land Court system by which all those with a claim to the block were admitted into the title as tenants in common with heritable shares[5]. By this time, however, many of the Hawke's Bay blocks, including Te Pahou and Petane, had already been investigated. The effect of the rule in practice seems to have been disastrous. All to often grantees sold the block without the consent, and sometimes even the knowledge, of all those with an interest according to the rules of Maori customary law. In many instances sales took place because grantees were in debt. Often the purchase price would be simply written off against existing debts, and the system was brokered by middlemen such as Mr Maney who ran the Meanee tavern and who seems to have specialised in these practices. Although these were the actions of private individuals rather than the Crown, it is perhaps arguable that the Crown failed to adequately protect Maori interests, or even that the entire system of abandonment of Crown pre-emption and individualisation of title was contrary to the Treaty of Waitangi. The latter argument is not necessarily obvious, in that there is no evidence to show that Maori in 1862 or 1865 favoured the retention of Crown pre-emption, although whether it was necessary or inevitable for the Land Court to have embarked on precisely the course that it did is certainly debatable.

2.3. Effect of the Native Land Court in Hawke's Bay: The operations of the Land Court in Hawke's Bay interconnected closely with the indebtedness of the chiefs and with land alienation. By 1867 this was already causing concern to conscientious Crown officials. G.S. Cooper drew the attention of the general government to these problems in a report to J.C. Richmond:[6]

> The chiefs are allowed, and are indeed sometimes tempted, to take credit without stint from merchants, tradesmen, and often from their own tenants, and this they do with the utmost readiness, and to an extent almost incredible. Some of the principal

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5 Native Lands Act 1873 s. 47.

6 G.S. Cooper, *Report on the Subject of Native Lands in the Province of Hawke's Bay,* 1867 AJHR A-15.

landowners are at this moment in debt to the amount of many thousands of pounds. Then pressure is put upon them, and seeing no other means of raising the money, they have begun to sell their lands in every direction.

It was Cooper's belief that that the government had a "duty" of "endeavouring to save, if possible, the Maori from himself." Unless action was taken, he thought, "a future of pauperism, the details of which it is misery to look forward to, is therefore inevitable for the Maori race in Hawke's Bay". On 15 September 1867 Samuel Locke, in a letter to McLean, referred to one Maltby who was holding about one thousand pounds' worth of bills from Tareha, "driving poor Tareha almost mad. They are hopeless spendthrifts...".[7] Paora Torotoro seems to have been another chief whose affairs were in a chaotic muddle which was instrumental in his decision to sell the Te Pahou block[8].

In 1868 Cooper forwarded another long report, in which the situation of the Maori people of Hawke's Bay was painted in grim tones. Cooper believed that the Maori population was declining, and mentioned in particular the "unfruitfulness of the women"; the supply of children was, he thought, "insufficient to keep up the numbers". Cooper's somewhat moralistic approach to the situation of Hawke's Bay Maori at this time need not, of course, be taken at face value:[9]

> The careless way in which the children are tended and fed is the obvious cause of the numerous deaths among them. The physical condition of the present generation is certainly good. They are strong and active in frame and generally possess good constitutions. They draw large sums, amounting in the aggregate to something approaching 1.18,000 or 1.20,000 annually from settlers in the shape of rents; whilst the sale of timber and of agricultural produce, shearing wages & c.bring them in about 1.5000 more. In this sense and to this extent they are tolerably well off: but money so easily procured is more easily spent, and habits of idleness and dissipation are engendered which it will be impossible to cure. As I pointed out in a former letter the result is becoming visible in the reckless way in which they are beginning to denude themselves of the splendid estate that remained to them when the land-purchasing activities of the government ceased.

Not all Crown officials were so gloomy. Charles Heaphy, Commissioner of Native Reserves, and writing in 1870, has this to say:[10]

> They appear to be remarkable for habits of order, their villages and paddocks are the best kept, and they possess the greatest amount of material wealth of any tribe in New Zealand. At Omaranui they assisted the settlers in crushing out the rebellion of the

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7 Locke-McLean, 15 September 1867, McLean papers, MS 32/393, ATL.

8 For a further details see Angela Ballara and Gary Scott, *Crown purchases and other acquisitions of Maori land in early provincial Hawke's Bay,* A report to the Waitangi Tribunal (Wai 201), June 1993, 158-65.

9 *Reports on the social and political state of the Natives in various districts,* 1868 AJHR A4, 13-14.

10 *Papers relating to Major Heaphy's appointment as commissioner of Native Reserves and reports from the Commissioner of Native Reserves,* 1870 AJHR D-16, 11.

earlier Hauhau fanatics, and at the Mohaka they suffered heavily for their allegiance to the Queen's government.

But Heaphy all the same shared Cooper's concerns at the rapid rate of Maori land alienation. The land was all too vulnerable and under the ten-owner system could only too easily be lost in order to meet the debts of a few. As early as 1871 most of the province had already been sold. In that year the Government survey office at Napier calculated the total area of Hawke's Bay province to amount to about 2,930,000 acres. Of this, 1,854,000 acres had been purchased by the Crown. 557,000 acres had already passed through the Land Court, of which 250,000 acres had been sold to private purchasers and a further 200,000 acres leased to Europeans. This left 519,000 acres in Maori customary title (about a quarter of the province).[11] Concern at the rapid rate of land alienation led McLean to instruct Heaphy to place some Maori land in trust so that at least some land was guaranteed to remain in Maori hands.

In 1869 Karaitiana Takamoana petitioned the General Assembly, drawing attention to 'the working of the Native Lands Court and the individualization of Native title".[12] In 1869 the Fox-Vogel government, with McLean as Native Minister, took power, and McLean had look been dubious about the Native Land Court and took an approach to Maori affairs very different from that of Chief Judge Fenton. In 1871 the former chief justice, Sir William Martin, wrote a long and very critical memorandum on the Native Land Court to the government.[13] In 1872 there was a petition sent to parliament by Renata Kawepo and 553 other people. Scott and Ballara state that this petition is "a powerful indictment of the Crown's land laws which had legislated the Court system into existence".[14] The petition states:[15]

> Much land has been granted to persons not entitled to the lands comprised in the grants; also, much land was granted, the grants being to few persons, who were to be trustees for the tribe; and because no restriction upon alienation was inserted in the grant, the grantees acted towards the others interested as if they were persons out of sight and living at a distance. On the issue of the grants, the persons living among Europeans, who sell goods and are able to entrap people, were wheedled into mortgaging each one's share on account of credit given, without knowing what money or goods were to be given afterwards; and through the fraudulent statements contained in those mortgages, the land of all was consumed by one man; and before the time for the repayment of the mortgage arrived, the storekeepers urged the grantees to sell the portions for which they were trustees for others, stating that no more goods could be supplied, and the sale was urged before the grantees were aware of what they were doing; consequently they sold for a small price, and they did not receive a statement of the accounts showing what they owed and what rents were due to them.

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11 Government survey officer, Napier, to Ormond, 6 June 1867, AGG-HB 1/1, NA Wellington.

12 *Memorial to the General Assembly from Karaitiana Takamoana, Hawke's Bay, relative to the working of the Native Lands Court and the individualization of Native Title to land,* 1869 AJHR A-22.

13 *Memorandum on the operation of the Native Lands Court by Sir William Martin,* 1871 AJHR A-2.

14 Scott-Ballara report, 175.

15 1872 AJHR I-2, Petition of Renata Kawepo and others.

This was followed by a further petition complaining about the Court signed by 371 Maori of Hawke's Bay, the Wairarapa, Wairoa and Gisborne.[16] On 10-11 July 1872 500 Maori met at Pakowhai to discuss 'repudiation'. Samuel Locke RM reported the discussions at the meeting to McLean. Henare Matua spoke:[17]

> stating that the Govt only helped the Maoris when they were compelled. That laws were made and enforced without the nature and effect of them first being explained. That the Govt allowed them to be robbed and cheated out of their lands by means of mortgages etc. without interfering on their behalf, which state of things would have gone on until there was no land left, had not Henry Russell and Purvis helped them and frightened the people who were cheating them with the knowledge or sanction of Govt etc...Henare Tomoana then spoke proposing that all the grievances should be taken to Wellington and that they should unite and form a "district Runanga"...To which Henare Matua objected at present.

These protests led to the 1873 Hawke's Bay Commission. Among the blocks it considered were Te Pahou and Petane.

2.4. Richmond's opening statement: The Hawke's Bay Commission opened at the Provincial Council Chamber at Napier on 3rd Februray 1873. There were four Commissioners, two Maori (Wiremu Hikairo, of Rotorua, and Major Te Wheoro, of Waikato), and two Pakeha, C.W. Richmond and F.E. Maning. Richmond was the Chairman. He began the proceedings by stressing the limited powers of the Commission and its inability to undo the work of the Native Land Court:[18]

> ...I have first to remark, that the Commissioners are not empowered to decide any dispute, or to determine the title to any land. Their duty and their power is only to inquire- to collect facts. The Commissioners are not empowered to undo the work of the Native Land Court. Parliament very rarely undoes the work of any Court. If it did, no man, whether European or Maori, could feel secure in his possessions. I repeat, then, we are here to inquire and not to give any binding decisions.

This, says Sinclair, "disappointed the complainants from the start".[19]

2.5. Richmond's General Report: Before looking at the Commission's investigation of the Te Pahou and Petane transactions in detail, it is necessary to consider Richmond's general report. In general the Commission rejected the complaints of fraud and double-dealing while adopting a critical stance towards the Native Land Court. It is very difficult to evaluate the Commission's stance today, although it must be noted that its approach must have been very congenial to the government, in which Hawke's Bay settler interests and opposition to the Land Court

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16 1873 AJHR J-7.

17 Locke to McLean, 10 July 1872, MS 32/394, ATL, cited Scott-Ballara, 173.

18 1873 AJHR G-7, p. 19.

19 Sinclair, *Kinds of Peace*, 117.

were both powerfully represented by Donald McLean. Ormond, the provincial superintendent of Hawke's Bay, was also a very close political crony and correspondent of McLean and Fox. Richmond also no doubt was concerned to ensure that the Maori objective of "Repudiation" - of returning the consideration for earlier sales and recovering possession of their lands - received no encouragement.

Among the issues discussed by Richmond were the practices of dealers and middlemen in Maori lands. Nearly all the proceeds of the transactions complained of were absorbed by credit advances, so that Maori vendors in fact received no money for their land, merely an amelioration or cancellation of debt. Richmond remarked that "it cannot be surprising that the natives are discontented with the results of their own careless and extravagant expenditure";[20] nor was he persuaded to set much store by the complaints that some dealers delayed making the cash advances so that vendors were forced to deal with them on credit, taking goods for land:[21]

> A good many charges were made against dealers, that they refused to pay cash for land which they had agreed to buy, and that the vendors were thus compelled, or induced, to begin to take goods. In the Moteo case Torotoro declared that, after putting him off many times, Sutton told him to come into town when the steamer arrived. He did do, but Sutton said, "This is not the vessel that has my money." "At last," Paul told us, "my thought ceased respecting that money. Sutton said, 'Won't you take sugar and flour for your money? - anything you desire out of the store you can have.' I then saw that Sutton's steamer was his store. I began to take goods." A trade may have been sometimes dexterously forced in this way, but the proof of it broke down in every case. In the Moteo Case, a written agreement was proved postponing payment of the balance of the purchase money; nor does Torotoro seem to have been a customer who needed much solicitation for orders. There were not many cases in which natives had balances at their credit; most of the land transactions having been entered into for the purpose of liquidating debts. In the few instances in which money was coming to natives, I think they must have known that they could insist in payment in cash, and only took goods because they preferred doing so.

Another grievance was raised was that the consideration in many cases for land-selling had been liquor. As a matter of fact this certainly seems to have been true: of Te Waka Kawatini's expenditure at Maney's store "wines, spirits, &c." amount to 1.370 out of 1.948 (39%). Such transactions were illegal. But Richmond, perhaps strangely reasoning that the Commission was a "court of conscience" guided by principles of equity rather than the law, could not accept that selling land for liquor could in any way avoid the contracts:[22]

> Whatever the law may say upon the matter it appeared to us, that it would be unconscientious on the part of a native who had received value in this shape to attempt to rip up the transaction.

But, it is objected, surely it must be "unconscientious" to allow a vendor to keep the benefits of such a bargain, and wrong for the government to stand by while Hawke's

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20 Ibid.

21 Ibid.

22 Ibid, p.3.

Bay exchanged their lands for whisky and rum? Richmond's true objective - to repudiate Repudiation - becomes clear in the following sentences:

> If it be wrong in the dealer to sell, it is, we argued, wrong in the native to buy - morally wrong; whether legally punishable or not. Native and dealer are thus clearly in fault together; though, it may be, not equally to blame; and it is against morality that one party should be rewarded, and the other punished, for an action in which both must concur. The State may be justified in enabling one party to an illegal bargain to repudiate it, after he has taken the full benefit of it. But such legislation is justifiable only as deterrent - as meant to prevent the case occurring. On this ground we determined that the native vendor was, *in foro conscientiae* [in a court of conscience], debarred from raising this objection.

Nor could Richmond find any fault with the practice of threatening Maori debtors with imprisonment for debt unless they sold their lands (this certainly occurred with the Heretaunga block)[23].

> The English law as it stands (or lately stood) making the person and property of a debtor liable to be taken in execution, it cannot, in general, regard the creditor's threat to exercise this right as improper pressure.

Richmond noted that if such pressure resulted in an "unconscionable bargain for the sale of a property" such a contract could "sometimes" be set aside by the Court. But generally, thought Richmond, there is nothing wrong with creditors pressing for payment:

> But in itself mere urgency for the payment of a just debt cannot in law, or conscience. be objectionable, because it can always be got rid of by paying the debt. In itself, therefore, the objection that creditors pressed for a sale of the property is not one to which any weight can attach. The sooner the natives learn to recognise their liabilities in this respect, the better.

Richmond's reasoning here is truly legalistic, applying to land transactions in the wild and chaotic Hawke's Bay frontier of the 1860s the same principles applied in the English courts of common law and equity. For it to be said that threatening a Maori chief with imprisonment for debt is not "improper pressure" is to part company with reality.

Richmond did not wholly reject the grievances of the Maori people of Hawke's Bay. But he was inclined to place the main responsibility on the government and on the Native Land Court. The real problem, thought Richmond, was the practice of vesting blocks in ten owners or less, who then had full rights of alienation. "No one", he wrote (reflecting the prejudices and ideologies of the time) "can doubt the expediency of legislation to promote the breaking up of tribal property".[24] But for this to be done there are two obvious requirements: "first, that the native ownership be ascertained; secondly, that the general consent of the native owners to the extinction of the native tenure be given". Richmond noted that the general practice of the Land Court was to vest blocks in ten owners, relying on s. 23 of the Native Lands Act 1865:

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23 Ibid, 4.

24 1873 AJHR G-7, 3.

> Such a certificate is necessarily false; for, if the native title is to be considered as subsisting, the persons named are not exclusive owners; if the native title is to be considered as extinguished in their favour, they are not the owners according to native custom.

But even more significant were the consequences of the ten owners having full rights of alienation as owners and grantees:

> But the main evil has resulted from the absence of proper provision upon the second head, viz., for the ascertainment, before the issue of a Crown Grant, that the native owners had assented to the extinction of their rights in favour of the proposed grantees. In several of the cases I have referred to, it was most distinctly proved that nothing was further from the intention of the natives concerned than the cession of all their rights in the land to the persons in whose favour the certificate was issued - these persons being named expressly as representatives of, or trustees for, their several hapus. Yet it has been a matter of course to issue a Crown Grant to the persons named in the certificate, who indeed, by the mere order of the Court, are at once clothed with powers of alienation.

Richmond therefore recommended that the existing Native Lands Acts should be repealed, and that a new Native Lands Acts should be drawn up. The Land Court should stay in operation "with certain needful reforms".[25] Richmond indicated some basic principles for future legislation. Most importantly:

> Provision ought to be made, in the first place, for the ascertainment of native title as it actually exists, and for the issue of certificates of native ownership in favour either of a tribe, one or more hapus, or individuals. Such certificates should in nowise modify the native tenure; and especially should have no effect whatever in authorizing alienation to Europeans.

Richmond was also critical of the Court's practice in acting only on the evidence before it. Although that was proper for the ordinary courts of law and equity, the Land Court was a quite different institution: "the judgments of the Native Lands Court are what are technically termed judgments *in rem*, which conclusively ascertain title not merely as between the parties in Court, but as against all the world".[26] That being the case, it should be mandatory for an officer of the Native Department to make a report to the Native Land Court in each case, giving details of the native title and "the validity of the claims made before it". Some of these recommendations were of course included in the Native Lands Act 1873.

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25 1873 AJHR G-7, 8.

26 Ibid, 8.

3. Te Pahou

3.1. The complainants: Those who complained to the 1873 commission about the Te Pahou block were (1) Waka Takahari; (2) Morehu Wherowhero; (3) Paora Torotoro; (4) Hoera Paretutu; (5) Matiu Tamanuwhiri; (6) Turuhira Te Heitoroa; and (7) Reihana Kahui. Waka Takahari claimed that the grantees did not divide the purchase money fairly; Morehu Wherowhero's complaint was directed against R.D. Maney and stated that his share in the grant had never been sold; Paora Torotoro was dissatisfied about the amount and means of payment of the purchase price; Hoera Paretutu, Matiu Tamanuwhiri and Turuhira Te Heitoroa all complained against the mortgagors of the block ("Ten names in grant, seven only signed mortgage deed; complainants want their share divided off"[27]; and Reihana Kahui's complaint was also levelled against Maney ("complains land taken without payment"). These complaints are very typical of those referred to the 1873 Commission.

3.2. Analysis: This block, lying immediately to the north of Te Whanganui-a-Orotu, is a classic illustration of the diffiulties, confusions and resentments brought about by the operation of the ten-owner rule. After the investigation of title by the Native Land Court the block was vested in ten individuals, some of whom were complainants. The Crown Grant is dated October 3rd 1866.[28] The whole block was purportedly acquired by Thomas Richardson by means of a deed of conveyance dated 28 January 1870. Richardson did not handle the transaction himself but left the arrangements in the hands of a Mr Maney. In Commissioner Richmond's words:[29]

> The negotiation with the natives was conducted by Mr Maney, who at that time kept an hotel and store at Meanee, near Napier, and carried on, as he still does, a large traffic with the natives.

Richardson claimed that he handed l.400 over to Maney and left all the messy details to him. Richardson himself gave evidence to the Commission. He described himself as a "sheep-farmer and grazier at Petane":[30]

> In the first instance, I rented the block, and afterwards it was purchased. I paid l.80 per annum. I used to make my payments to the Maoris through Mr Locke. I proposed to purchase, through Mr Maney, to Paul Torotoro. The negotiations were through Mr Maney. I proposed to Paul [Paora], through Mr Maney, to purchase for l.400. I paid the whole purchase money to Mr. Maney, at different times. The whole l.400 in money. The Natives have not come to trouble me till recently. Tareha first came to me. It was after this Commission was talked of. I had nothing personally whatever to do with the transaction, beyond the first conversation with paora. A large part of the block is sea beach and shingle bed. I have fenced in a good deal/ I suppose I have enclosed about 120 acres, a portion of the best. I should say if I got 230 acres of good available land, it would be about the quantity.

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27 1873 AJHR G-7, p.3 (List of complaints).

28 Block Order file 211, Maori Land Court, Hastings.

29 Ibid, p. 10 (Commissioner Richardson's report on Case II [Pahou]).

30 Ibid, Minutes of Evidence, p. 6.

Thus in Richardson's view he bought the block legitimately from the Crown grantees. He discussed the original proposal with Paora Torotoro, but otherwise left matters in Maney's hands.Richardson is careful to insist on all times on Maney's role as broker and middleman. It should be noted however that Paora Torotoro states that the initial negotiations were conducted directly between himself and Richardson, but "when Richardson found that I was obstinate, he left the matter with Mr Maney for him to negotiate with me."[31]

(a) Non-grantees

Those who were unhappy about the alienation included, firstly, a group represented at the enquiry by Utiku Te Paeata who represented those who were not included in the grant. This amounts to a classic and straightforward complaint about the effect of the ten-owner's rule. Utiku told the Commission:[32]

> I belong to the section of those who are outside the Crown grant but are interested in that land. I live at Petane. I have a word to speak representing those who are outside the Crown grant. We did not receive any money or goods, or any other thing belonging to the Europeans. There are about forty of us, who are sad on account of our land being devoured by those down in the Crown grant, and we wish now to be included with those who have spoken today. Formerly Wi Whanga was our rangatira at Petane, subsequently Tareha. I was present in Court when the block went through the Court. On that occasion the Court said it would not be right to have twelve or twenty people in the grant, but only ten, and Paora also objected; consequently there were only ten names. I objected in Court. I appeared and stood up before the Court and said, I should be one who should be included in that land. Monro and Smith were the Judges - the two European Judges. The Court said it would do; they already had ten names. I replied that I should also be one. I was exceedingly sad on account of their not consenting, because the land belonging to the whole of the hapu; hence my sadness.

Commissioner Hikairo asked, "how did you young men allow yourselves to be left out of this grant?". Utiku replied:

> Paora Torotoro and Te Waka Kawatini applied to have the land put through the Court, and it was their doing we were left out; through them the forty or fifty I have mentioned were left out. I asked Te Waka how it was we were left out, he knowing we were entitled? Te Waka said, This statement is correct, that it was not his fault. It was Paora's and the Court. The Court only required ten names. It was previous to the order of the Court that this conversation took place with Te Waka. We had contended about this before the order of the Court was given. I have already stated that I applied to the Court to be included in the grant. It had not been arranged amongst us that those old men and women were to be the grantees. It was Paul's[33] own doing, he placed those persons in the grant because he desired to do so. I did not consent that those people should be in the grant; what I did was to apply to be included.

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31 Ibid, p. 4 (Evidence of Paora Torotoro).

32 Ibid, p. 5.

33 i.e. Paora Torotoro.

Utiku stressed that all those entitled should have received a share of the purchase money, not merely the grantees.

> Those ten were to be the persons in the grant, and the hapu was to be outside, but when the land was sold the hapu were to get a share of the money. It was not known at that time that the land was to be sold, but the land was to be investigated to know who it belonged to. Paul himself, unseen by us, wrote the names of those persons whom he wished to be the grantees, but we were all equal in the land - those who were in the grant and those who were not. The ten who were in the grant said they were to be the guardians for those who were outsiders.

(b) Mortgage of the block

Others complained about the actions of some grantees who had taken out a mortgage on the block. Hoera Paretutu[34], Matiu Tamanuwhiri[35] and Turuhira Te Heitoroa[36], who must have been grantees of the block, all denied having taken out a mortgage on the block, but the significance of this is unclear. Richardson, the purchaser of the block, does not say anything about a mortgage, nor is it mentioned in Commissioner Richardson's report in this block. The mortgage is however discussed by Commissioner Hikairo, who notes that Hoera, Matiu and Turuhira "were of both sexes and very old"[37]. Since there is no discussion of a mortgage elsewhere in the evidence, it is possible that the complainants had confused the sale with a mortgage, or that the discussion of a mortgage is due to an error of translation.[38]

(c) Non-selling grantees.

Some of the grantees complained that they had received none of the purchase money. Morehu Wherowhero's evidence was as follows:[39]

> My request is that my Crown grant be returned to me. My reason for so asking is that nothing was placed in my hands - no goods, no spirits, nor anything else. I did not sign away my Crown grant. Mr Maney was the European who purchased the land. I

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34 Hoeta said (ibid, p.4): "My word is that we did not mortgage that land. I live at Waiohiki. We all three live at the place; that is Tareha's place. We did not mortgage the land.".

35 Matiu said, similarly (ibid, p. 5): "I did not make the mortgage. I did not sign and wish to hold the Crown grant for my land. Brown wrote the letter for us."

36 Turuhira said: "My story is the same as the previous two witnesses".

37 See ibid, p. 56: "Hoera Paretutu, Matiu Tamanuwhiri, and Turuhira Heitoroa appeared to complain against those who mortgaged the land. They said they did not execute the mortgage deed, and they applied to have their piece of land cut off from the rest. The complainants were of both sexes and very old."

38 In his report Commissioner Hikairo certainly does use the Maori word for mortgage (mokete), but the Maori originals of the evidence of the three complainants is not printed in the AJHR and has been lost.

39 Ibid, 3.

did not write this complaint myself. I think Reihana wrote it. It was written by my desire.

Turuhira Te Heitoroa (and possibly the other two complainants who spoke of a 'mortgage') also seem to be saying much the same thing). Turuhira said attempts were made to pressure him to sign the deed of sale by Maney, but that he refused. In evidence in chief Turuhira said:[40]

> I have another word respecting the European trying to get my share of Pahou, and my withholding my Crown grant. The European endeavoured to get my Crown grant, but I refused. I was shown the document to let the Pahou go to the European, but I refused. The pen was offered to me that I might sign, but I refused. Afterwards the back of my hand was touched by the pen merely, at our place Waiohiki; Tareha was not there. This took place when we were cultivating in the filed, not in the house. Te Wereta, Hoeterene and Kerei were there. [Q.] Was Martyn Hamlin there? No; only the European, Mr Maney. I cannot tell how long ago. Was James Hallett there? No; only Mr Many; he had no companion.

Under cross examination Turuhira continued:

> I got no money or goods from Tareha after signing this deed. [Q.] Did you have any money or goods from Maney? No; I never erecived any goods from Maney at all. [Q.] Is that your mark? It was me, and it was not me; I cannot see, I am blind. I did not hold the pen or make any mark. I heard Pahou was going to the Pakeha, but I still held my own. [Q.] Who told you Pahou was going? I heard it stated. [Q.] Did Tareha know it was going? I do not know.

(d) Paora Torotoro's complaint:

Paora Torotoro, however, had a different sort of complaint. He gave evidence that he had been promised an additional l.100 in addition to the 1.400 purchase price, but he had never received it. His evidence was as follows:[41]

> There were two European purchasers of that block. The first was Thomas Richardson; his companion to my pa (Kohupatiki) was Mr Locke. I did not consent, and they came away. I did not agree to the talk of that European Richardson. One week after this I came into town, and Thomas Richardson asked me to sell, and mentioned the sum of l.400. I Asked l.1,400. He did not consent to my terms, and I would not consnet to his. Our conversation ceased, and on another week I again came into town. Richardson requested me to take l.400 for the land. I said, No; he must give me l.1,400. He then said, Will you not consent if I give you l.100 for yourself? I then asked him what that money was for, and he said, It is a present of mine to you, given without any consideration. I did not consent. When Richardson found I was obstinate, he left the matter with Mr Maney for him to negotiate with me. Mr Maney then came up to my pa. He said, you must consent to the terms offered by your friend Richardson, and I will give you l.100. I said to Mr Maney, will you give it to me at once in cash? He said, Yes; you must sign your name. He said, Yes; you must come down to my house at the bridge, and I will give you the l.100. I consented that I

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40 Ibid, p. 5.

41 Ibid, 3-4.

should sign my name to the document (Conveyance produced.) That is the document, and my name; I signed it myself. He said, Come down in the morning to get the money.

But, Paora complains, he never did receive his additional hundred pounds. Instead, by the sound of things, Maney took the position that the money was simply credited to Paora's account, but Paora was at the same time quite bamboozled by his own financial affairs and could hardly tell if the money had been fairly offset or not.

> On the following morning I came down to Mr. Maney's place. I said, I have come for the money you have agreed to give me. Mr. Maney said, Paul, there is no money. He said, If you will come on another occasion I will give you the money. I went on another occasion to ask Mr Maney for the money, and he said, Paul, we know all about this; the money is with us two. I said to him, You are deceiving me. He said, We are not strangers to each other; we have known one another for a long time; leave the matter with me. My thought respecting the money ceased, and I then began to get goods from him - sugar, and other things. [Q.] Was it in satisfaction for the 1.100? For the 1.400 purchase money also. I got things from him like those mentioned in the compliant - goods and spirits. I still continued to get into his debt, and also to request him to give me the 1.100. Maney always said that this money was in his hands; it was all right. Up to the present time I have not received the 1.100.

None of this proves, of course, that Maney was cheating Paora Torotoro. But it does seem clear that Maney was deliberately holding back from paying Paora Torotoro out in cash in order to induce Paora to deal with him on credit: "my thought respecting the money ceased, and I then began to get goods from him". In other words, despairing of getting his money, Paora began to take payment in goods - at Maney's prices, of course, and from Maney's store. Commissioner Hikairo, one of the two Maori commissioners, was especially critical of this aspect of Maney's business operations.

Maney seems to have run a complicated and sophisticated operation, lending moeny on credit, brokering bills, and making advances of goods. Maney would take advances for sales of land and pay bills to merchants - and the local doctor - in Napier on behalf of the chiefs. He also took delivery of crops, such as wheat, from the chiefs in satisfaction of debt. And he drew up, or exacted, agreements with the chiefs that blocks of land would be sold in order to discharge debts. Maney was a combined corn-merchant, tavern-keeper, banker, cashier, landbroker and store-keeper. In fact one gets the impression that there may not have been very much cash in circulation and that the whole economy of the province revolved around debts secured against Maori land sales. Paora said that he had not received any bills or accounts from Maney, which may point to a degree of sharp practice on Maney's part. But it certainly does show that Paora was very uncertain about his own financial affairs and was enmeshed in a complicated web of debt which was very difficult to disentangle. (He certainly was not the only one of the Hawke's Bay chiefs in this plight.) Paora was obviously in need of a good accountant and some independent financial advice. When asked whether Maney had paid for some ploughs that he had bought, Paora admitted that he "was not clear about it, how many ploughs I had, or about the payment". The complexities of his affairs are only too obvious from his responses to the cross-examination:

You signed a Maori deed as well as the other at the same time? I suppose it was signed in European and Maori. (Maori duplicate produced.) That is my signature. How much money did you expect to get out of Pahou? L.100. Have you not received more than l.100 from Mr Maney since that? Not having received an account of the goods I cannot say. Have you not repeatedly seen Mr Maney's book for years? No; I have continued to ask him to see the account. Have you never received any bills? No. Did you not, a few days after the the deed was signed, receive l.30 from Mr. Maney in money at the Bank of New Zealand? The reason I did not mention that money before was, that it referred to another piece of land. What piece? Ohikakarewa. Do you know whether at the time you signed the deed you owed Maney any money or not? No; I was not in his debt; I had not begun to take goods from him. Had you not begun to take goods from him before that time? No; it was not before; it was subsequent to signing that I began to take goods. Had you not before that signed orders on Mr Maney to pay debts in town? There was one person named Neagle to whom I gave an order on Mr. Maney to pay a debt of mine. It was to pay for two coats, two pieces of print, two pair of boots and one pair of trowsers I had had of Neagle. Did you draw any order to pay Peacock? I did so, but Maney did not pay it. How much did you draw it for? L.10. Mr Maney was to pay it; but my gig was taken in payment for it. Was anythingpaid to Faulkner, wheelwright, at Waitangi? I do not know. Did Many pay for ploughs that you bought? I am not clear about it, how many ploughs I had, or about the payment.Do you remember you and your children were sick, and Dr. Carr attended you and your children? When my child was taken ill I did not go to Maney; I went to Sutton. Sutton arranged about the medical man going to see my child. Did you not write an order for Maney to pay Dr. Carr? I am only clear about what I stated, about seeing Mr Sutton about a doctor. Will you swear that you do not owe Maney money now? I am not in his debt - not to the extent of l.100? I am not aware of owing him any money, beacuse the land went and the debts were paid. Did you not promise him, the year before last to give him wheat for a debt of more than l.200? That is not correct; when I sold the land Maney said to me that the debts were ended. Do you know that the deed was signed three years ago? I do not remember. Have you not promised Mr Maney that he should have the Waikahu block in payment? That statement is untrue; no. Have you not talked with Maney about giving him Waikahu for debt? I did not know that my debts were heavy; why should I agree to give Waikahu if I had no statement of account?

(e) **The fishing reserve:** This was mentioned in Maney's evidence given in the Petane case.[42] Maney said:

> There was an agreement allowed in reference to the Pahou. At the time of the sale of Pahou, Tareha would not give his consent to the sale unless the Natives had a right of fishing reserved. They represented this right to be the building of a few whares to use when they should go for the purpose of catching fish. That agreement is not disputed now. I believe Mr Richardson admits it; he will speak for himself.

Commissioner Hikairo asked Maney why there was no mention of the fishing right in the deed; Maney replied:

> Because it was to be a fishing right, and not a right to the land.

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42 Ibid, p. 18.

3.3. The Commissioners' reports: Commissioner Richmond wrote a brief report on Te Pahou (Maning concurred with it). Richmond says nothing at all about the complaints made by those who had not been included in the grant. He does, however, note that it is certainly the case that some of the grantees received no payment for their interests in the block, but he did not think that the Commission was in a position to do anything; and probably the unpaid grantees, having consented to the sale (although they said they did not) had no legal basis to seek a remedy:[43]

> Are we to say that the grantees who got nothing have been inequitably dealt with? Possibly; but if so, it is by their own chiefs, through whose influence their names were obtained. That they consented to the sale is apparent, and unless their consent was obtained by means of false promises, or other fraud on the part of the European purchaser, we conceive that they are not entitled in equity to repudiate their own act.

Richmond appended to his report an extract from Maney's accounts relating to Pahou. Richmond believed that the sums due were properly credited by Maney or deducted against balances due[44]. But those grantees who complained of not being paid are listed as having "no account in ledger" - that is, not being creditors of Maney there was nothing to offset the sale price against and they were simply ignored. It seems that although Maney, then, may received a cheque or cash from Richardson, no cash distributions were actually made to any of the grantees; instead they simply received an accounting credit in Maney's ledger, and that the money was distributed around those grantees who were in the ledger. This seems more likely in view of the fact that some non-grantees were also credited with money from the sale (Wi Nganga, Utiku, Tareha and Paraone) - again because they happened to run an account with Maney. The chiefs involved may or may not have colluded in this.

Richmond and Manning simply repudiated Paora Torotoro's claim for his additional one hundred pounds:[45]

> Paora Torotoro's allegation that Maney agreed to pay him an additional 1.100 we believe to have been pure fiction.

In regard to the fishing right, Richmond recommended that the reserved right should be defined and put upon "a proper legal basis". That aside, the Commissioners could could see "no reason to except to the...transaction."

Commissioner Hikairo wrote a separate report on Te Pahou. He was much more critical of Maney than the two non-Maori commissioners, and was in no doubt that Maney deliberately withheld payments as a matter of course as a means of

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43 Ibid, p. 11.

44 See ibid: "Next, as to the mode of payment. All the principal vendors have accounts with Many, and the sums mentioned in the appended statement appear to have been properly credited to them, or to have been retained against balances due. Subject to any general observations which we may have to make on Maney's accounts, now under examination by an accountant appointed by ourselves, we find that the consideration-money in the present case has been duly paid or carried to account.

45 Ibid.

inducing Māori vendors to deal with him (and to extinguish their cash reserves on his goods). Hikairo wrote:[46]

> I will now give my opinion on this case. I believe Paora Torotoro's statement that he made frequent applications to Maney without success, and that through that he went in for getting goods on credit. It was also found, through the numerous complaints which were made against that European, that he was in the habit of holding back money, so as to compel the Maoris to go to him in order to get goods on credit. I believe also the statements of Hoera Paretutu, Matiu Tamanuwhiri, and Turuhira Heitoroa. They said that they had got no goods on account of this land, and I did not see the names of these applicants in Maney's accounts. My opinion on Morehu's statement is the same as the foregoing. This transaction was not quite fair. The grantees were not assembled in one place to sign their names.

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46 Ibid, 56.

4. Petane[47]

4.1. Relationship with the Mohaka-Waikare confiscation: The block known as"Petane" (the Maori transliteration of Bethany) passed through the Native Land Court in August 1866, that is before the engagement at Omaranui (12 October 1866). It was Omaranui which was, of course, the pretext for the Mohaka-Waikare confiscation of 12 January 1867.[48] However the 1868 and 1870 deeds settling the confiscation issue both clearly include Petane within their respective boundaries. The 1868 deed boundary commences at "the sea coast from the old mouth of the river Esk or te Waiohinganga", up the coast to Waikare river, inland to the western boundary of Awa o Totara, along the eastern boundary of the Maungaharuru block and then "following a line nearly due south to the source of the river Esk or Te Waiohinganga down that river to its mouth".[49] This clearly includes all land on the Wairoa side of the Waiohinganga (Esk) River, that is to say the Petane Block. Petane is likewise included within the boundaries of the deed of June 13 1870.[50] Although why it was included within the boundaries of both deeds is something of a puzzle, the fact that Petane is not separately listed in the schedule to the 1870 deed can obviously be explained by the fact that the block had been investigated by the Native Land Court four years earlier. As Robertson rightly observes, the fact "as the Native Land Court [in 1866] had awarded ownership of the Petane block to predominantly 'loyal' Ngati Kahungunu Maori, the objectives of the 1870 Agreement were effectively met."[51]

4.2. Petane as a centre of Maori dissent: Although close to Napier and not far from the powerful pro-government chiefs of Hawke's Bay, Petane was also a centre of Maori opposition to the Crown. On the same day as the battle of Omaranui (12 October 1866), a force of military settlers from Wairoa led by Major James Frazer defeated at Petane a Pai Marire group led by Anaru Matete, Paora Toki and Te Rangihiroa.[52] This Pai Marire force may have had a certain amount of local support.[53] Certainly Petane was a bastion of support for Te Kooti and his Ringatu faith in the 1880s.[54] When in 1873 Hamahona Tangaehe and Raima Tamihana wrote to Chief

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47 On Petane, see also Stephen Robertson, *The Alienation of the Petane Block, 1866-1912: A Report Commissioned by the Crown Forestry Rental Trust,* February 1998 (cited as Robertson, *Petane.*) Most of the text of this report was written before I saw Robertson's report.

48 See R.P. Boast, *Mohaka-Waikare Consolidated Report,* 1, 34-48, 54-59.

49 H.H. Turton, *Maori Deeds of land purchases in the North Island of New Zealand,* Wellington, 1877, vol 2, No. 45, pp 556-8. For a discussion of the 1868 Mohaka-Waikare deed see Boast, *Mohaka-Waikare Consolidated Report,* 59-63.

50 See Boast, *Mohaka-Waikare Consolidated Report,* vol 1, 77.

51 Robertson, *Petane,* 23.

52 See R.P. Boast, *Mohaka-Waikare Consolidated Report,* vol 1, 43

53 Binney states (*Redemption Songs,* 339) that Ngati Matepu sent "many men to Wharekauri in 1866", but it is unclear what the sources are for this assertion. In fact it is far from clear what the tribal affiliations were of the Pai Marire groups who were defeated at Petane and Omaranui in 1866, although it is clear that a considerable number of them were Ngati Hineuru. See Boast, *Mohaka-Waikare Consolidated Report,* 44-5. But it is certainly possible that there was a certain amount of local support at Petane, especially given the area's strongly pro-Te Kooti stance in the 1880s.

54 See Robertson, *Petane,* 59-60, citing Binney, *Redemption Songs,* 339, 362-3.

Judge Fenton asking that the non-seller's interests in Petane be identified and partitioned, one of the reasons given is as follows: [55]

> But the Pakeha is contending that a Portion of ours should be subdivided off. I said I did not approve, because a great many people had come to grief outside of the place, Petane, one hundred and fifty.

This could be a reference to persons displaced after the battles at Omaranui and Petane, and the subsequent exiles and confiscations, who now had nowhere else to live. This would account for the Ringatu leanings of some of the people at Petane in the 1880s.

4.3. Certificate of Title and Crown grant: The investigation of title to Petane was heard in the Native Land Court at Napier on 7 August 1866 before Judges Smith and Munro and the certificate of title, issued by Judge Smith, is dated 18 August 1866. Those named in the certificate are Paora Torotoro, Te Waaka Kawatini, Tane Tuki, Paraone Kuare, Ani Te Whanga, Anaru Kume, Tamehana Te Rakatairi, Takataina, Hamahona Tangaehe and Ahere Te Koari.[56] This attracted the standard court fees of l.3 - l.1 for the investigation, examination of plan, and certificate of title respectively. The block covered 10,908 acres. The Crown Grant is dated 11 January 1867. Eight of the ten shares in the block were sold to Richardson and Troutbeck, brokered by Maney, between April and August 1870.

4.4. The complainants in 1873: Those who complained to the Commission regarding the Petane block were:
(1) Te Waka Kawatini, who lodged a complaint against R.D. Maney, and asked that the "transaction be looked into".
(2) Paora Torotoro, who also lodged a complaint against Maney that the purchase money was to be l.100 but who (he said) "received only food, sugar and rum, no money."
(3) Tareha Te Moananui, who lodged a complaint against the mortgagees, and asked that the Commission inquire into the mortgages.
(4) Hoera Paretutu, also a complainant against R.D. Maney, who claimed that an agreement to reserve a part of his share at the time the block was mortgaged had not been complied with.
(5) Hamahona Tangaehe, who complained that Hemi Taka had mortgaged the land "for 28 gallons of grog, some goods, and 12 bags of flour, and no money; complainant received nothing". [57]
(6) Ahere Te Koari, who complained against Maney that he had mortgaged his interest for l.200 but "only received goods and l.26 in money.
(7) Mita Ngapu, who complained against Maney ("Mortgage. Begs transaction be looked into.)

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[55] Hamahona Tangaehe, Raima Tamihana "or rather the whole people" to Chief Judge Fenton, March 3 1873, Correspondence File 211 [Petane], Maori Land Court, Hastings.
[56] Block Order File 202, Maori Land Court, Hastings.
[57] There was also a separate complaint, No. 98, from Hamahona Taingaehe, obviously the same person: "complains l.400 still due; begs rents be divided in future l.100 for purchasers, and 1.100 for those grantees who have still not sold their shares."

(8) Hirini, Henare Pae, Werahiko, and others, who complained that the grantees had sold the land without consulting them.

4.5. Analysis: The pattern of complaint is similar to Te Pahou (and the other Hawke's Bay blocks, for that matter). Here eight out of the ten shares in the block (the 'ten owner rule' again) were sold to Maney, once again acting on Richardson's behalf. It seems that Richardson continued to pay rent to the non-sellers after the sale.

(a) Non grantees: As in the case of Te Pahou, one section of complainants was made up of those not included in the grant. On this occasion they were represented by Tareha te Moananui. Tareha said:[58]

> This complaint is from me to represent the Tangata-o-waho [those whose names were not in the Crown grant]. That complaint is from the whole tribe respecting that land. That land was not managed properly by the persons who were in the Crown grant.

This can be thought of as a "ten-owners rule" complaint.

(b) Complaints about Maney: Most of the other evidence given related to the business dealings between the grantees and Maney. Once again, Maney acted as a broker for the purchaser, in this case Thomas Richardson and Hutton Troutbeck.[59] Once again, after the elapse of so many years, it is difficult to be very sure of anything execpt that the grantees were extremely confused about their affairs. Te Waka Kawatini admitted that he needed help to understand Maney's accounts, and when Ahere Te Koari was asked whether he understood accounts he replied:[60]

> I do not know the writing or the figures.

Te Waka Kawatini said that Maney told him that the other grantees had already sold and that he was at risk of losing all his interests in the block by not selling.

> Mr Maney came and asked me for Petane. I asked him the price he would give; he said I will pay you in money. The other persons in the grant have sold their shares, and if you do not sell yours it will be taken by the others (grantees).

Under this pressure Te Waka Kawatini then signed a document (he did not know what its effect was), and then began to receive items on credit.

> After Mr Maney had seen me on two or three occasions, I consented; I then signed. I did not know whether it was a mortgage or whether my land returned to me again.[61] I did not know the name of the document; I then began to get some things on credit.

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58 1873 AJHR G-7, Minutes of Evidence, p. 15.

59 Maney himself mentions Richardson in his evidence before the Commission. Robertson refers to Edger's schedule of February 1889 which lists all transactions affecting the Petane block since 1870; this document gives Richardson and Troutbeck as the purchasers in 1870. See Robertson, *Petane*, 26.

60 Ibid.

61 By which, one assumes, Te Waka Kawatini thought that it may have been a lease. In fact it was a deed of conveyance.

He was then asked by the Commissioners whether he was paid in cash when he signed the deed:

> I was not; the only money I got was spirits and blankets.

Te Waka then said that he asked to see the accounts:

> I asked him to show me the account of my debts which were in his book; he did not show me the account. I then asked Reihana (my *tamaiti*) to accompany me to Mr Maney. Reihana came with me; he was a person who knew about accounts. I there got some blankets, shirts, saddles, spirits, rum. When I obtained those things they were put down. Maney was living at that time at his hotel and store at Tutaekuri (Meanee); he had not gone to Omahu.

Te Waka says that he continued to ask Maney for his money, but that all he received were small sums "for his pocket".

> When I saw that I was only getting spirits I asked Mr Maney for money. Mr Maney pushed a pound into my pocket and said, This is for your pocket. On another occasion when I went to get money he put ten shillings into my pocket, and said, This is for your pocket. I took the ten shillings away with me because he said it was only for your pocket and not for the land. That was what Maney used to do when I asked him for the 1.500 for Petane.

The Commissioner asked Te Waka about the price of Petane. Te Waka's reply was that it had been agreed that there was to be 1.1000 paid to the ten grantees, and a further payment of 1.500 directly to himself:

> The money was agreed by the parties that sold was 1.1000 for all. I asked him 1.500 for myself. There were ten grantees. They all joined in the sale. I was one of the ten. The ten were the principal persons who were in the Crown grant. Their relatives and younger people were left out.

In cross-examination it was suggested to Te Waka Kawatini that he had, in fact, received both goods and money, and Maney had applied money on Te Waka's order to discharge debts with third parties. Te Waka denied all of this:

> How many years have you been dealing with Mr Maney? I do not know. How much money and goods have you had from Mr Maney altogether since you have been dealing with him? I did not receive money; I only received 30s. In money, the other was in spirits; I mentioned that the other day. Have you not received 1.900 in goods and money? That statement is untrue. Did you not give Maney an order on Tanner for 1.100, in part payment of your debts? That is false; I heard something about it on another occasion, but denied having anything to do with it. Did you not give Maney an order on Sutton for 1.250 to pay a part of your debt? It is a false statement. I did not do so.

Te Waka Kawatini's affairs were in a hopeless tangle, that much is clear. But it is also noticeable that Te Waka Kawatini, like Paora Torotoro in the Te Pahou case, stresses his difficulty in obtaining his promised monies from Maney. The fact that this was raised in two cases by two different claimants shows that the difficulties went beyond

mere confusion, and that Maney perhaps did go out of his way to enmesh the local chiefs in debt. One important matter not investigated by the Commission was Maney's prices.We do not know what Maney charged Te Waka Kawatini for, say, a bottle of rum or a saddle or a suit of clothes. Where people are paid not in cash but in credit at a store, there is an obvious risk that prices can be manipulated or inflated (this was a principal reason for the original Truck Acts, which made it illegal for employees to be paid in 'truck' or 'tommy' - that is chits or orders redeemable only at the Company store.)

Paora Torotoro was also a grantee of Petane, and he had his own concerns:[62]

> Mr. Maney came to my pa to ask for Petane; at that time Petane was leased to Thomas Condie. Mr Maney offered 1.1000 for the purchase of it. I said to him I would not consent to that price. Te Waka was not with me; I was alone. Maney then asked me what I desired. I said 1.3000. He said, I do not desire the whole of that land. I said, why do you not wish for it? He said, It is bad land. Maney only wanted the face of the pa - for that, 1.1000 was to be paid - the name of Petane (the native settlement), not the larger portion of the lands. I said, If that is so, if it is Petane only, I consent, but do not go stretching after the other land which you describe as bad. Maney said he would not take any of the other land, and I agreed. I did not go myself to show Mr Maney the boundaries, but told Te Paraone to go. Paraone was living at Petane and a number of others who are present, I signed afterwards. Each of the grantees was to receive 1.100. Did you hear Maney say that Waka was to have 1.500? Maney's talk with Waka was on another occasion.

Paora's main concern here was to establish that not all of the block had been sold, and this was accepted by the Commission. As in the Te Pahou case, Paora Torotoro also claimed that he had not received his share of the purchase money, and once again he was cross-examined very closely. The cross-examination reveals once again the intractable confusion of Paora's affairs:[63]

> Do you know your handwriting to this paper? (Promissory note for 1.200, January 12, 1870, one month after date, to Maney, signed Paora Torotoro.) The document is correct, but the money was not given. At the time you signed that paper, did you not owe Maney 1.160, and wanted some goods? I signed this document, but I thought I was to receive money immediately. I admit I signed that document. I signed the note at Maney's own place. Martyn Hamlin was there; he was the interpreter. At this time (the same day) I looked at Mr. Maney's book, and it was interpreted to me. When you saw the book did not the book say you owed Mr. Maney 1.160? No; that was not explained to me. I always asked to be shown the accounts, and they were not shown. It was another time Mr. Maney showed me the accounts. The accounts were not explained to me till Mr Maney said I should get no more credit. Then he showed me.

Paora was questioned about goods (bricks, boots, coats, tobacco, sugar, brandy, boxes of cigars, suits of clothes, wire, flour) and services (medical services, having his house painted) that he had received:

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62 Ibid.

63 Ibid, 15-16.

> Do you remember getting some bricks, 200? All I know is my taking them; I do not know how many. The same month, did you not send over a cart to Mr Maney's to get 1.40 worth of goods? Witness: Will you say what I received? (List given: boots, sugar, flour, clothing, and two cases of brandy.) I only got one case of brandy. Do you say I took all those away in one cart? No; it was not so. Did you not tell Maney to pay Dr. Carr for attending you and family when you were sick? I mentioned that on previous occasion. I went to Mr Sutton, not to Mr. Maney. Do you remember ever getting 1,000 bricks from Maney? Yes, I remember. I used not to take all those things at one time. I used to get tobacco, coats, spirits, on different occasions; not all at one time. On 5th May, 1870, do not you recollect getting two tons of wire? The only wire I got was that I obtained from Mr. Kinross; three tons. (Witness corrects himself.) I received a ton of wire from Mr. Maney; and on the same day 2,500 lbs. of flour, price 1.25. (Witness: How many bags? 25 bags.) If you say that I took it all at once, it is untrue. I did not purchase those 25 bags.

Paora was then questioned about payments made to his order and other supplies of goods:

> Do you remember on the 4th May Mr Maney paying 1.10 to Mr. McMurray for you? I asked Mr Maney to pay it. The same day did Mr Maney give you 1.10 in money? That 1.10 was for the whole of us, Waka and others, on account of the lease, not for this place, for Ohikakarewa. But Mr Maney did not give me 1.10. Three of us took it for the lease of Ohikakarewa. Was Maney the tenant of Ohikakarewa? He was not. Another person held the lease of it (Heslop). How came Maney to pay rent for it. Heslop gave it to Maney to pay us.

It is at this point in the evidence that a crucial exchange took place - not noticed by the Commission - but which explains clearly one of the main reasons for Paora's confusion - Maney's practice of not keeping accounts for each block:

> (Witness asked, Was this an account of Pahou or Petane? He was answered that there was only one account.) My idea was that there was a separate account for each place.

The rest of the details of Paora's cross-examination can be omitted.

Paraone Kuare said that one reason why he sold was because Maney threatened to bring civil proceedings against him:[64]

> Maney told me Paul [Paora Torotoro] and the others had sold their shares. I heard Paul's shares had gone; I did not wish to do the same as he had done, but he persisted in asking me for mine. Maney continued to come after me; what he gave me was *waipiro* [spirits]. He was endeavouring to get my Crown grant; I would not let it go. Maney said, You must give me your Crown grant, or I shall summons you. I said, Why should you summons me for that reason? He said, For holding on to your share. During the year that Tareha was at Wellington Maney came after me again. Did you not in August, 1870, owe Mr. Maney 1.460 and more? No. When Mr Richardson and Mr Maney met me in town he asked me where Hamahona was, and when we found him we went into the hotel opposite and were given a glass of beer. They spoke to Hamahona and me. I have already mentioned what was said. I began to get afraid, in consequence of Maney's threat of summoning me. I asked 1450; that was to make him afraid of my demand. He offered 1.300. Hamahona had made his escape by that time;

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64 Ibid, 17.

he ran away. I remained, and after a good deal of talk Mr. Maney consented to my terms.

(c)Hamahona Tangaehe's complaints: Hamahona Tangaehe was a non-seller. He did not himself give evidence to the Commission, although he is mentioned by H.M. Hamlin in his evidence:[65]

> Explained about the signature of Hamahona Tarawai, who represented himself to be Hamahona Tangahe. He received l.80 at that time. He has never repaid it. I have asked him for it. He says He has no money. He says he was the grantee. He was living at Tareha's place. I discovered the mistake about a week afterwards.

This is a little cryptic, but it seems that Hamahona Tarawai had attempted to represent himself as Hamahona Tangaehe and had pocketed some of the consideration for Hamahona Tangaehe's share (each share was worth l.200). The Commission obviously accepted this, as it was generally accepted that only eight of the ten shareholders had sold.

As to Hamahona Tangaehe's complaints, one of them, said Commissioner Richmond, was "wholly unintelligble, nor could the complainant himself explain it".[66] His other complain related to the division of rent. In Richmond's words:

> The other letter of complaint related to the division of rent for the block. Hamahona has not sold his share, and consequently he receives l.20 per annum, being one-tenth part of the rent of l.200, named in the lease of the block to Mr Richardson. Hamahona desired that the apportionment of the rent might be varied, and that l.100 a year might be paid in respect of the two unsold shares.

This seems puzzling, and Hamahona's request only makes sense if it is accepted that the more valuable part of the block still lay in Maori hands and was (in effect) the whole of the area leased.

4.6. The Commission's findings regarding Petane: Commissioner Richmond (whose report was, again, concurred in by Commissioner Maning) saw two main issues. One related to the rights of those who had not been included in the grant: the tangata o waho. Richmond stated that this was a common ground of complaint and was considered in general terms in the main report.[67] The other main question was whether there were any justifiable complaints to be made against Maney. Richmond noted that Maney's accounts had been produced, and that "each of the complainants appeared to have been duly credited in account with the price of one-tenth share". Richmond notes also that "we have directed a particular examination of the accounts of Waaka, Kawatini, and Paora Torotoro, with Mr Maney, and the present report is made subject to the result of that investigation". (I have been unable to discover whether this examination was actually done, and what its outcome may have been.). Commissioner Richmond declined to make any recommendation regarding Hamahona's request for a variation of the rental.

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65 1873 AJHR G-7, Minutes of evidence, p. 17.

66 1873 AJHR, G-7, 17.

67 1873 AJHR G-7, Report on case no XI, 17.

These issues aside, the only point of substance, thought Richmond, was whether it had been agreed to set aside a reserve. Here the difficulty was the conflicting evidence of Paora Torotoro and Ahere Te Koari on the one hand (who said that the sold area was the coastal frontage) as opposed to that of Paraone Kuare, who said that Maney had purchased the back country leaving the coastal part around the pa remaining in Maori ownership.[68] In view of this the claim for a reserve was dismissed. In Richmond's words:

> Apart from the question whether the sellers who are complainants received from Mr Maney a fair equivalent for their money, the only tangible ground of complaint we were able to find consisted in the allegation that a portion of the block should, according to the agreement made, have been excepted from the conveyance as a reserve. On this point the native witnesses contradicted one another so directly - one saying that the whole of the hills at the back were to be reserved, another, that the reserve was to be a small piece on the flat around the native settlement - that we were compelled to give credit to Maney's denial that there was any agreement for a reserve.

Wiremu Hikairo wrote a separate report on Petane. In respect of Te Waka Kawatini's complaints, Commissioner Hikairo thought that the main issue was Maney's use of liquor as consideration, the legality of which Hikairo was unsure of: "I leave that for the Parliament of New Zealand to consider".[69] In respect of Paora Torotoro's claim Hikairo was not very sympathetic: "he [Paora] was foolish in running into debt", he thought; nor was it clear that a portion of the land was, as was claimed, to be set aside as a reserve. Hikairo also had little patience with Tareha Te Moananui appearing to represent the interests left out of the grant:[70]

> My opinion is, if his name had been in the grant he would have acted as the other grantees have done; he would have had no regard for those names were not inserted in the grant.

Hamahona Taingaehe's complaint was also rejected: "it was found that no part of his interest in the land had been interfered with, because the rent had been regulalrly paid to him".[71] The other complaints also received short shrift.

4.7. Later history of Petane: As noted, only eight of the ten Petane shares had been sold at the time of the 1873 commission. The ninth share was that held by Hamahona Tangaehe. The remaining share was held by Tamihana Te Rakatairi. Tamihana who died intestate in 1870, whereupon his share was vested in his daughter, Raima Whakia, by the Native Land Court on 19 September 1870 at the application of Tareha

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68 See 1876 AJHR G-7, 15-16. Paora Torotoro said that "Maney only wanted the face of the pa", and for that l.1000 was to be paid; this was supported by Ahere Te Koari who said that "Maney did not want the whole of the land...He only desired the frontage". Both Paora and Ahere are arguing, of course, that most of the block remained unsold. But Paraone Kuare stated that "[t]he boundary of the place which was to be returned to us is the foot of the ridge. The boundary commences at Wai-o-hinganga, above Petane, running along the spur, and going to the ridge at Waiwairaupa, Te Pa te Rongomai te kapua, coming down from there into the stream Pihauwahine; from there to Paretaka, another stream; from there to the Hokapuni, and reaching from there to the sea. That is the piece Maney agreed to give us back - the part around the pa."

69 1873 AJHR G-7, 61.

70 Ibid, 62.

71 Ibid.

Te Moananui.[72] Tareha and Raima's grandfather, Maihi Raukapua, were appointed as trustees on the same day.[73] On September 21 1870 Hamahona and Raima wrote to Chief Judge Fenton asking that the non-sellers' section of Petane be partitioned out, pointing out that a partition survey had already been done:[74]

> The Chief Judge, Native Land Court: Friend, this is to ask you to divide for us two, our piece of land in the Crown Grant for Petane at Heretaunga, that it be given entirely to us two. We two wish to hold this for ever for us two and for our Tribe, about fifty of them, that is those whose names are not in the Crown Grant, as there is not any other land for us two to live on, the survey is done and we have it.

Nothing was done. On 3rd March 1873 Hamahona and Raima wrote again to Chief Judge Fenton asking that their shares be identified and partitioned, but nothing seems to have come of this.[75] Raima herself died in 1880, and her interests were succeeded to by her two infant sons, Iripoama Te Rakatairi and Eriata or Rewi Pokai.[76] .[77] There was a certain amount of dispute as to who should act as trustees for these two very young children.[78] Then Hamahona Tangaehe died in 1882, and his share was succeeded to on the application of Merepeka Hoani by Merepeka Hoani and Te Aata Kotaha However, as Robertson notes, Merepeka's claim that Hamahona had died intestate turned out to be incorrect. He had, in fact, left a will, bequeathing his 10% share of Petane to Henare Pangopango and Akenehi Hineraro; this meant that the succession order had to be cancelled and Merepeka Hoani and Te Aata Kotaha lost their interests in the block. At this stage Petane still had not been partitioned. Twenty percent of it was Maori-owned, that is, by the successors to Tamihana Te Rakatairi and Hamahona Tangaehe. The remaining 80% belonged to Richardson and Troutbeck, the 1870 purchasers, but the various interests were still all undefined. There was a "pa" at Petane with presumably a substantial population, but in somewhat insecure circumstances given that most of the block was European-owned and it was not at all certain who owned what.

4.8.The 1882 Deed: A further complication ensued in 1882, when Hutton Troutbeck, who seems to have acquired Thomas Richardson's interests in Petane with the death of the latter[79] then acquired the interests of Henare Pangopango and Akenehi Hineraro, these two being of course the the heirs of Hamahona Tangaehe. This was then followed by the execution of a deed between Hutton Troutbeck and Akenehi Hineraro. This was a very complicated agreement by which in consideration of the earlier deed of transfer of 1 February 1882, Troutbeck agreed that should he acquire

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72 (1870) 2 Napier MB 22 (16 September 1870); Robertson, *Petane*, 27. The succesion order, dated 19 September 1870, is on Block Order File 211, Maori Land Court, Hastings.

73 Ibid.

74 Hamahona Tangaehe and Raima Tamihana to Chief Judge Fenton, 21 September 1870, Correspondence File 211, Maori Land Court Hastings.

75 Hamahona Tangaehe, Raima Tamihana "or rather the whole people" to Chief Judge Fenton, March 3 1873, Correspondence File 211 [Petane], Maori Land Court, Hastings.

76 (1880) 6 Napier MB 23; Robertson, *Petane*, 36.

77 Succession order 16 Jan 1882, Block Order file 211, Maori Land Court Hastings.

78 On April 15 1882 Maehe Raukapua and Mereana Awakari wrote to Chief Judge Fenton asking that they, in association with Captain Preece, be appointed as guardians: Maehe Raukapua and Mereana Awakari to Fenton, 15 April 1882, Correspondence File 211, Maori Land Court Napier. See also Robertson, *Petane*, 36-7.

79 Robertson, *Petane*, 37.

the rest of the block or should (mysteriously) he acquire ownership of the "Native Reserve mentioned and described in a deed of covenant dated 29 March 1876"[80] then he would convey 100 acres of the reserve to Akenehi Hineraro. If, however, Troutbeck did not acquire title to the 'reserve' within ten years then he was to transfer to Akenihi Hineraro 100 acres "as near to the said Native Reserve as possible". What exactly the purpose of this arrangement was is obscure. The further complexities that this arrangement led to are discussed by Stephen Robertson and need not be addressed further here, save to note that in 1900, finally, the block was partitioned and the relative interests of the sellers and non-sellers finally defined. The block was split into Petane 1 (10,090 acres which was vested in George Richardson and Arthur Cotterill as Hutton Troutbeck's executors) and Petane 2 (273 acres, Maori freehold land vested in Iripoama Rakatairi) and Petane 3 (545 acres, Maori freehold land vested in Eriata Pokai).[81] This then in turn required a certain amount of adjustment. The adjustments, and the subsequent alienations of the remaining parcels, are fully described by Robertson.[82]

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80 The deed is on Correspondence File 211, Maori Land Court Napier. But what can this reserve be? No formal reserve seems to have been established and, as noted, the Hawke's Bay Commission of 1873 declined to find that there was a reserve. Nevertheless a sketch plan attached to the 1882 deed clearly shows a reserve situated in the southeastern corner of the Petane block. Perhaps, rather than a reserve strictly speaking, this represents in some way part of the non-sellers' interests in the block. It is noted that Robertson (*Petane*, 39)is also puzzled about this reserve: he notes that although the 1882 covenant recites that the the reserve was set aside by a deed of March 29 1876 a search of the deeds registry in Napier "failed to recover this [1876] deed". The deed may, of course, have been destroyed in 1931.

81 Robertson, *Petane*, 41.

82 Ibid, 46-58.

5. Summary and conclusions

Little remains to be said. The main object of this report has been to site the history of the Te Pahou and Petane blocks within the general framework of the effects of the Native Lands Acts in Hawke's Bay and the Hawke's Bay Commission of 1873. In both blocks non-grantees complained about being left out of the titles. The two blocks are clearly examples of the problems caused by the Native Land Court's operations during the 'ten owner' period in Hawke's Bay from 1865-1873. The main issues were identified over a century ago by Commissioner Richmond in his 1873 report: the vesting of blocks in ten owners, and the clothing of those ten with the full rights of individual owners with the issue of Crown grants. This is a hugely complex and important historical problem, meriting comprehensive examination in its own right, and taking into account key blocks such as Heretaunga. A full examination would involve a comprehensive enquiry into the evolution of the Native Lands Acts from 1863-73, the various shifts in official policy, the particular objectives and approaches of Chiefg Judge Fenton, Maori reactions to the whole process, the adequacy of the 1873 investigation, and the extent to which the Native Lands Acts 1873 successfully implemented the reforms advocated by the 1873 Commission. As noted at the outset of this report, these two blocks, while in many ways fairly typical of what went on in central Hawke's Bay during these years, raise rather different issues than those posed by the pre-emptive Ahuriri deed of 1851 or the Mohaka-Waikare confiscation of 1866.

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