THE NATIVE LAND COURT AND THE TEN OWNER RULE IN HAWKE'S BAY, 1866-1873: AN ANALYSIS

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This article is an analysis of the operation of the 'ten owner rule' established by section 23 of the Native Lands Act 1865 in the Hawke's Bay region. It was in Hawke's Bay that the effects of the rule were most significant. The article analyses the precise effects of the rule based on a full examination of the unpublished manuscript records of the Native Land Court. The article shows that in fact many blocks of land were allocated to fewer than ten owners and that typically alienation to private sector purchasers was very rapid. During the ten owner period the Native Land Court essentially did not issue judgments but just recorded the lists of grantees in the Court records, as was the Court's practice in other areas at this time. The ten owner system was paradoxically both revolutionary and conservative in that it created a new kind of tenure and led to the rapid development of an unregulated market in Maori land in the province while at the same time it reinforced the power of the indigenous chiefly elites. The net effect was rapid dispossession, leading to a great deal of protest resulting ultimately in a remodelling of the Maori land system in 1873.

Cet article est une étude de la règle dite des 'dix propriétaires', mise en place par l'article 23 du Native Land Act de 1865 dans la région de Hawkes Bay située sur la côte Est de l'île du Nord en Nouvelle-Zélande. Les auteurs analysent, à la lumière d'un examen attentif de documents qui n'ont jamais été publiés par le Native Land Court, les effets de cette règle et démontrent que dans la réalité, de nombreuses parcelles de terre ont été allouées à beaucoup moins de dix propriétaires et démontrent que les ventes au profit d'acheteurs privés se sont très rapidement développées. Pendant toute la période mise en application de la règle des 'dix propriétaires', le Native Land Court, suivant en cela la méthode en vigueur à

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pareille époque dans d'autres régions de la Nouvelle-Zélande, s'est généralement contenté de transcrire dans ses registres la liste des bénéficiaires des titres de propriété dans la région de Hawkes Bay. Les auteurs soulignent que la règle des 'dix propriétaires' était paradoxalement tout à la fois révolutionnaire en ce qu'elle a créé une nouvelle forme de droit de propriété qui devait être la source de transactions rapides et non régulées des terres appartenant aux maoris et conservatrice car elle a permis à la même période, de renforcer le pouvoir des élites indigènes. Ces effets conjugués entraînant une dépossession rapide des terres maories ont été à l'origine d'importants mouvements de protestations, contraignant le gouvernement néo-zélandais à procéder en 1873, à une totale refonte du système foncier maori.

I INTRODUCTION

The Native Land Court is an important institution in New Zealand legal history and is seen by many historians as having contributed substantially to Maori landlessness and poverty by the early decades of the twentieth century.[1] The Court was first set up in 1862 by the Native Lands Acts of that year, and its powers were significantly augmented by the Native Lands Act of 1865. The Court's main function was to convert land held on indigenous customary tenures into a Crown-granted freehold tenure. The Native Lands Acts were a complete reversal of the former policy of Crown purchase by deed, operative from 1840-1862, under which about two-thirds of the country had earlier been acquired by Maori but which had become discredited as a policy by the crisis over the Waitara block purchase and the outbreak of the New Zealand wars in Taranaki in 1860.

The Native Land Court did not begin to have a really significant impact until 1866, and it was in Hawke's Bay, on the east coast of the North Island, that the Court's effects were felt soonest and most dramatically. During this period the Court applied the so-called "ten owner rule" by which the maximum number of owners who could be recorded for any one block of land was, at least in most

1 This article will not review the historiography relating to the Native Land Court. On the Court see generally Richard Boast *Buying the Land, Selling the Land: Governments and Maori Land in the North Island 1865-1921* (Victoria University Press, Wellington, 2008) at 41-118, Richard Boast, Andrew Erueti, Doug McPhail and Norman F Smith *Maori Land Law* (2nd ed, Lexis Nexis, Wellington, 2004) at 65-119; Judith Binney "the Native Land Court and the Maori Communities" in J Binney, J Bassett, and E Olssen (eds) *The People and the Land: Te Tangata me te Whenua: An Illustrated History of New Zealand 1820-1920* (1990) at 143; David V Williams *'Te Kooti Tango Whenua': The Native Land Court* (Huia Publishers, Wellington, 1979). The Native Land Court and the Native Lands Acts have frequently been considered by the Waitangi Tribunal: for recent discussions see eg Waitangi Tribunal, *He Maunga Rongo: Report on Central North Island Claims*, Wai 1200, 2008, at 446-551; *The Wairarapa Ki Tararua Report*, Wai 863, 2010, at 395-554.

circumstances, limited to ten. The rule, its legal foundations, and its effects, are discussed in the following sections. The main focus of this article is on the actual application of the rule in practice by the Native Land Court, based on a close analysis of the Court's own unofficial records and using the tenurial history of Hawke's Bay as a case study. Our analysis is based on the Native Land Court's minute books and the evidence and findings of the Hawke's Commission of 1873.[2]

The Native Land Court had a very rapid impact. In June 1872 Chief Judge Fenton reported that the Court had issued titles to 5,013,839 acres in its first seven years of operation, mostly in the provinces of Wellington, Auckland and Hawke's Bay.[3] The official annual figures for the 1865-1875 period of the Court's operation are as follows:

Table 1: Acreages investigated by the Native Land Court 1865-1875[4]

Period	Acreage
1 November 1865-1 November 1866	778,649
1 December 1866-30 June 1867	441,827
1 July 1867-30 June 1868	705,154
1 July 1868-30 June 1869	791,827
1 July 1869-30 June 1870	916,280
1 July 1870-30 June 1871	485,913
1 July 1871-30 June 1872	895,124
1 July 1872-30 June 1873	504,430
1 July 1873-30 June 1874	647,395
1 July 1874-30 June 1875	771,416

The ten-owner rule lasted from 1865 until it was repealed by the Native Land Act 1873, enacted on 2 October 1873 and which came into operation on 1 January 1874.[5] This means then that the Native Land Court investigated title to 5,519,204 acres while the ten owner rule was in force, although some of this land will have been made subject to orders under section 17 of the Native Lands Act 1867. 'Section 17' land is discussed further below.

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2 *Report of the Hawke's Bay Native Lands Alienation Commission*, 1873 AJHR G-7.

3 Return of the Proceedings of the Native Land Court [1872] AJHR F6.

4 Figures for 1865-1872 from [1872] AJHR F6, and for the following years from [1873] AJHR G5; [1874] AJHR G3; and [1875] AJHR G9.

5 Native Land Act 1873 s 2.

The rule was applied not only in Hawke's Bay but in other areas as well, including the southeastern Waikato, the Bay of Plenty, the Chatham Islands, parts of Hauraki and Northland, and the Manawatu region, but Hawke's Bay was affected earliest on a large scale, and within a much more concentrated geographical area. Hawke's Bay experienced large-scale investigation as early as 1866, although 10 owner cases can certainly be found in other parts of the country at this time. There was, for example, a group of important early cases in the southeastern Waikato, mainly affecting the Ngati Haua people of the Matamata area: Hinuera (March 1866),[6] Wharetangata (March 1866),[7] Matamata (March 1866),[8] Whenuakura (May 1866)[9] and others, the Court sitting at Hamilton, Port Waikato and Cambridge. It was Hawke's Bay, however, which became the focus of widespread concern about the effects of the rule, and it was Hawke's Bay which was the focus of a major enquiry into the effects of the Native Land Court's operations in 1873. This enquiry, the Hawke's Bay Native Lands Alienation Commission, generated a great deal of evidence, including much direct testimony from the Hawke's Bay Maori chiefs about their affairs and their lands.[10] This wealth of material provides for an in-depth study of the effects of this first phase of the Native Land Court's operations. In 1873 the legislature took action and the ten owner rule was abolished. With the Native Lands Act 1873 the indigenous customary tenure system was remodelled, although the Native Land Court was retained as its central institution. The Court, today the Maori Land Court, continues to administer its special jurisdiction and is an important component of the Maori land system in operation today.

It may seem that an analysis of a rule of practice of the Native Land Court which only lasted effectively for eight years is a rather narrow subject of enquiry, but in fact the application of the ten owner rule by the Court had, and continues to have, very substantial impacts on the Maori people. That is in itself reason for studying it closely. Moreover very substantial areas of land were affected. The entire city of Hastings, with a population of about 50,000 people, and its surrounding countryside, today a very valuable winemaking and orcharding region, is entirely comprised within just one ten owner block, Heretaunga, investigated and allocated by the Native Land Court in December 1866. The capital value of the

6 (1866) 1 Waikato MB 7-15 (30 March 1866).

7 (1866) 1 Waikato MB 16-20 (31 March 1866).

8 (1866) 1 Waikato MB 21-24 (31 March 1866).

9 (1866) 1 Waikato MB 25-26 (25 May 1866).

10 Above, n 4.

land within the former Heretaunga block boundaries today must run into the hundreds of millions of dollars. It was granted to ten people in 1866, most of whom parted with their shares within a few years for store goods, including wine and spirits. Heretaunga is just one of hundreds of such blocks, although at nearly 20,000 acres it was larger than most. The impacts of the process were thus considerable and it is important partly because of its sheer scale. It is hoped, moreover, that the following discussion, while essentially a case study of a process which was peculiar to New Zealand, will be of interest to a broader audience concerned with the relationships between law, colonialism and indigenous peoples in the Pacific. The ten owner rule is an example of what can happen when relationships between indigenous peoples and their lands are mediated through a judicial process. It shows also the effects of tenurial change on the power of indigenous elites, reinforcing this in ways that were not necessarily conducive to the well-being of the indigenous population.

II THE LEGAL FRAMEWORK FOR THE TEN-OWNER RULE

The Native Lands Acts of 1862 and 1865 waived Crown pre-emption, set up the Native Land Court, and put in place a mechanism for the conversion of customary tenures to Crown grants in freehold. Obtaining a grant was a two-step process. First, the Court conducted an investigation of the title, which could be contested between a number of groups. This was a process of judicial inquiry, therefore, followed by an order *in rem* determining the owners of the block. At this early stage of the Court's history, the Court's determination was virtually never on the basis of a particular iwi or hapu, but rather was based by noting in the court records the individuals in whose names the Court had made a favourable determination. In this article we refer to these named owners as 'grantees' as that is what they ultimately became, but they were not strictly speaking legally grantees – in the sense of holders of a Crown grant – until a further step had been taken. This second step was an administrative act: those successful in Court were required to produce to the government the Court order, called a certificate of title, and would in due course receive from the Governor a Crown grant to the block. Following the enactment of the Land Transfer Act 1870, instead of receiving a Crown grant as such, the successful parties in Court would receive, or should have received, a Land Transfer Act 'Torrens' title (legally the same thing as a Crown grant). The concept of Maori freehold land, as this is understood today, in fact developed only slowly: there was no intention to create a separate tenurial category at first, the

whole point of the Native Lands Acts being to convert Maori landholding directly from a customary to a Crown-granted Common Law tenure.

The Native Lands Act 1865 was drafted by Francis Dart Fenton, the first Chief Judge of the Native Land Court. The Act was described in its long title as an Act "to Amend and Consolidate the Laws relating to Lands in the Colony in which the Maori Proprietary Customs still exist and to provide for the ascertainment of the Titles to such Lands and for Regulating the Descent thereof and for other purposes".[11] The Native Land Court, in existence since 1862, was given two principal functions under the 1865 Act. These were (a) "the investigation of the titles of persons to Native land"; and, (b), the "determination of the succession of Natives to Native Lands and to hereditaments of which the Native owner shall have died intestate".[12] Part III of the Act, the most important part for present purposes, dealt with the jurisdiction and duties of the Native Land Court, and included s 23, the core section of the Act and pivotal for the ten owner rule.

Section 23 mapped out the Court's investigation of title jurisdiction and contains a double proviso, the first limb of which relates to the ten owner rule, and the second to tribal titles. Section 23, a fine example of turgid 19th century legislative drafting, is important enough to be quoted in full:

> At such sitting of the Court the Court shall ascertain as it thinks fit the right title estate or interest of the applicant and of all other claimants to or in the end respecting which notice shall have been given as aforesaid and the Court shall order a certificate of title to 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 any 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 to any other person. Provided always that no certificate 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 shall not be made in favour of a tribe by name.

It can be seen from the wording of the provision that no certificate of title could be "ordered to more than ten persons". These words are the source of the ten owners rule, abolished in 1873. The statutory language does not clarify whether the ten acquired title as individual fee-simple owners or whether they became trustees for the remaining owners of the block. Certainly there is nothing in the wording which points to any kind of trust, and it is our impression from our close

11 Native Lands Act 1865, Long Title.

12 Native Lands Act 1865, s 15.

examination of volumes 1 and 2 of the Napier Minute Books that Court practice and procedure was not based on any assumption that the owners as recorded in the Court certificate of title were trustees. The word 'trust' or 'trustee' is never seen, and there is never any kind of discussion of the responsibilities of owners as trustees or any mention of any class of beneficiaries. In fact there is practically no discussion of the legal consequences of the Court order of any kind. If the grantees were meant to be trustees it seems reasonable to assume that this would be reflected in some way in the record, however, and such is simply not the case.[13] It does not follow form this that Maori grantees did not see themselves, or were perceived, as trustees in some sense. Our point is that there is nothing in the Court's own practice that points to this conclusion.

III THE TENURIAL SITUATION IN HAWKE'S BAY IN 1866

In understanding the effects of the Native Land Court and the ten owner rule in Hawke's Bay it has to be borne in mind that very large areas of the province had already been alienated from Maori ownership before the Native Land Court opened its doors for business in Napier in March 1866. In Hawke's Bay the Native Land Court system was implemented following nearly fifteen years of intensive land-purchasing by the Crown under the former pre-emptive purchasing system. Land acquired by the Crown did not stay in Crown ownership, but was transferred to the provincial government and then granted to private sector purchasers. The Land Court system affected only those areas still in Maori customary title when the Native Lands Acts were enacted. While some parts of the North Island, such as the Taupo and Rotorua regions were still held almost entirely on customary title in 1865, this was not the case in Hawke's Bay.

Crown purchasing in this region began as early as 1851, when the government purchased from local Maori three large tracts of land. The purchases were managed on the part of the colonial government by Donald McLean, beginning a long and important personal association with Hawke's Bay (he later became provincial superintendent of Hawke's Bay province in 1863, member of parliament for Napier, and a wealthy runholder).[14] On 9 July 1851 McLean forwarded to central

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13 Both authors have read through Napier 1 and 2 minute books, and neither of us found any indication in the record that is consistent with the Court regarding the owners as trustees. Admittedly the discussion of most cases was very cursory.

14 McLean is a key figure in 19th century race relations history. In 1869 he became Native Minister and Defence Minister in the Fox-Vogel government. On McLean see Ray Fargher *The best man*

government the terms of payment "which the Natives of Hawke's Bay agree to accept for the blocks of land they offer for sale to the government".[15] There were three blocks on offer, these being the Ahuriri block, the Waipukurau Block and the Mohaka block. The first two McLean estimated to cover about 300,000 acres each, and the Mohaka block, the smallest of the three, at around 100,000. The purchases were finalised towards the end of 1851, the first of these being the Waipukurau Block, or "Te Hapuku's block", "the first major purchase in Hawke's Bay",[16] on 4 November. Then on 17 November McLean finalised the purchase of the Ahuriri block, the vendors being Tareha, Te Moananui, Paora Torotoro, Karanamu Te Nahu and other people.[17] Ahuriri covered about 265,000 acres, for which McLean paid £1,500 – much less than for the Waipukurau block (279,000 acres for £4,800). The Ahuriri purchase was paid in two instalments, the first on the date of execution of the deed and the balance in November 1852.[18] The deed made provision for a number of reserve areas: Roro-o-Kuri Island, Wharerangi and Puketitiri, as well as a portion of land at Mataruahou known as Pukemokimoki and a "small piece of land where the children and family of Tareha are buried during such time as it remains unoccupied by Europeans". The Waitangi Tribunal has noted that "[t]he reserves altogether totalled less than one per cent of the purchase area, with the deed also stating that roads could be laid through them".[19] The third purchase, that of the Mohaka block, was completed on 4 December, 85,700 acres for £800. Only a small reserve area of 100 acres, called Te Heruotureia, was set aside.

These were not the only Crown purchases in Hawke's Bay before the advent of the Native Land Court. Between 1851 and 1864 McLean also bought numerous smaller blocks, some of which were extensive areas in their own right. Much less is known about these transactions, but collectively they accounted for a considerable area. Between 1851 and 1859 the Crown purchased approximately 1,500,000 acres

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who ever served the Crown? A Life of Donald McLean (Victoria University Press, Wellington, 2007).

15 McLean to Colonial Secretary, 9 July 1851, Report of the Land Purchase Department Relative to the Extinguishment of Title in the Ahuriri District, 1861 AJHR C-1, No 6 at 311-12.

16 Joy Hippolite, *Wairoa ki Wairarapa: An Overview Report Commissioned by the Waitangi Tribunal*, Wai 201 Doc#A22 November 1991, at 33.

17 On the Ahuriri deed see especially Vincent O'Malley, *The Ahuriri Purchase: An Overview Report Commissioned by the Crown Forestry Rental Trust*, April 1995, Wai 201 Doc#J10; Waitangi Tribunal, *Mohaka ki Ahuriri*, at 87-132.

18 Turton's Deeds, vol 2, 291.

19 Waitangi Tribunal, Mohaka ki Ahuriri, 90.

in Hawke's Bay, about half of the total area of the province.[20] By 1866 the Crown had purchased about 32 separate blocks, of which the biggest and most important were still the initial blocks in the sequence, the Ahuriri, Waipukurau and Mohaka purchases of 1851. Other pre-emptive purchases included the Omahaki (1854), Okawa (1854), Moeangiangi (1859) and numerous others. The Native Land Court and the ten-owner rule thus came on top of this massive earlier alienation to the Crown.

IV THE TEN OWNER RULE IN OPERATION IN HAWKE'S BAY

A Year-by-Year Analysis

This section is based on a detailed analysis of Numbers 1 and 2 of the Native Land Court's Napier Minute Books. All blocks have been analysed and tabulated to show the dates of hearings, acreages, and number of owners recorded in the Court certificates of title. Only as a result of this somewhat laborious exercise has it been possible to state with a degree of precision the number of blocks investigated by the Court, the total acreages involved, and the number of owners recorded for each block.

In 1866, its first year of operation in Hawke's Bay, the Court dealt with 46 blocks[21] in four separate sittings, these being at Napier in March, at Napier in August, at Waipawa, also in August, and at Napier again in December. The Court thus did not sit continuously, but rather sat in comparatively short bursts of a few weeks at a time. Although the Court sat mostly in Napier, when it sat at the south-central Hawke's Bay town of Waipawa it dealt with blocks in southern Hawke's Bay and the northern Wairarapa.[22] (Many blocks dealt with at the Waipawa Court, although in Hawke's Bay region as that would be understood today, were in fact in Wellington province). Judge Smith, along with Witi Te Hemara and Te Keene as Court assessors, presided over the March and August sittings at Napier, and Judge

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20 Dean Cowie, *Hawke's Bay*, Rangahaua Whanui Report, 1996, 23. See also Waitangi Tribunal, *The Mohaka ki Ahuriri Report*, Wai 201, Legislation Direct, Wellington, 2004.

21 That is, 46 blocks were surveyed, came before the Court for investigation, and were in fact investigated and owners recorded. As a result of the process, however, the number of blocks that emerged was not 46 but 54, as the Court dealt with some blocks, usually the more contested ones, by partitioning them into smaller sub-blocks at the same time that they were first investigated. Ngatarawa, for example, was partitioned into five smaller blocks, and Te Mahanga into two, given the names Te Mahanga North and Te Mahanga South.

22 The Court sat also at Wairoa in 1873 and one Wairoa case, Muriwhenua, is included in vol 2 of the Napier minute books.

Monro, with Te Hakiriwhi and Te Harawira Tatere as assessors, presided over the August Waipawa hearings and the December Napier hearings. The cases that were finalised in 1866 are tabulated below.

Table 2: Hawke's Bay blocks investigated by the Native Land Court in 1866[23]

No	Block Name	Date of Judgment	MB ref	Venue	No of Grantees[24]	Area (acres)
1.	Papakura	6 March	(1866) 1 Napier MB 5	Napier	2	3,363
2.	Hikutoto	7 March	(1866) 1 Napier MB 10-11	Napier	3	1,420
3.	Moturoa	9 March	(1866) 1 Napier MB 14-15	Napier	1	197
4.	Waipukurau Reserve	9 March	(1866) 1 Napier MB 21	Napier	5	213
5.	Omaranui No 1 (Moteo)	15 March	(1866) 1 Napier MB 41	Napier	2	3,753
6.	Te Tamumu	19 March	(1866) 1 Napier MB 52	Napier	5	824
7.	Te Awa o Te Atua	8 August	(1866) 1 Napier MB 107-8	Napier	10	5,070
8.	Kakiraawa	8 August	(1866) 1 Napier MB 109	Napier	8	3,043
9.	Matapiro	9 August	(1866) 1 Napier MB 111	Napier	10	22,700
10.	Kohinarakau	9 August	(1866) 1 Napier MB 112-114	Napier	5	612

23 The tables in this article are based not on official statistics but have been generated by means of a page-by-page analysis of the Minute Books. Each block has been cross-checked against a two-volume report prepared by Paula Berghan in 2007: Paula Berghan, *Heretaunga-Tamatea Block Research Narratives*, research report completed for the Crown Forestry Rental Trust's Heretaunga-Tamatea Research Assistance Projects, June 2007. Berghan has worked from Native Land Court block order files to build a profile of each block, tracking its tenurial history down to the present day. While the Native Land Court minutes sometimes give block acreages, these often turned out to be inaccurate on later surveys; the correct acreages, based by Berghan on later survey plans and other Court records have been used where possible. Not all blocks in Napier 1 and 2 MBs however are covered by Berghan as they fall outside the boundaries of the area she was commissioned to research (Petane and Te Pahou are examples).

24 The term 'grantees' is a useful one but it is not quite accurate. The numbers in this column relate to the names recorded in the Court minutes to be entered in the Court certificate of title. Strictly speaking these people did not become 'grantees' in the sense of fee simple owners until a Crown grant had actually been issued to those named in the Court certificate. There was usually a delay of some months between the Court decision and the issue of the grant.

11.	Te Wharau	10 August	(1866) 1 Napier MB 114-115	Napier	9	2457
12.	Pukahu	10 August	(1866) 1 Napier MB 116-118	Napier	8	1850
13.	Te Mangaroa	10 August	(1866) 1 Napier MB 119	Napier	10	11,726
14.	Rangaika	10 August	(1866) 1 Napier MB 122	Napier	1	326
15.	Whenuakura	13 August	(1866) 1 Napier MB 326	Napier	10	367
16.	Mangateretere	14 August	(1866) 1 Napier MB 134	Napier	Block is partitioned into West (9) and East (8) sections	3300
17.	Te Upoko	14 August	(1866) 1 Napier MB 132	Napier	1	166
18.	Pukehou	14 August	(1866) 1 Napier MB 133	Napier	10	734
19.	Pekapeka	14 August	(1866) 1 Napier MB 136, 137-8	Napier	Partitioned into Parts 1 (10) and 2 (10)	4490
20.	Waikahu	16 August	(1866) 1 Napier MB 136	Napier	8	764
21.	Te Pahou	16 August	(1866) 1 Napier MB 140	Napier	10	690
22.	Raukawa	17 August	(1866) 1 Napier MB 145-6	Napier	Partitioned into West (10) and East (10)	9265
23.	Petane	18 August	(1866) 1 Napier MB 148	Napier	10	10,908
24.	Eparaima Reserve	22 August	(1866) 1 Napier MB 153-4	Waipawa	8	4,849
25.	Porongahau	22 August	(1866) 1 Napier MB 156-7	Waipawa	1	72
26.	Oero	22 August	(1866) 1 Napier MB 157-8	Waipawa	6	257

27.	Pakowhai[25]	24 August	(1866) 1 Napier MB 163	Waipawa	4	224
28.	Haowhenua	24 August	(1866) 1 Napier MB 166	Waipawa	8	171
29.	Te Kaokaoroa	24 August	(1866) 1 Napier MB 167	Waipawa	9	4,132
30.	Tukura	27 August	(1866) 1 Napier MB 169-171	Waipawa	4	1386
31.	Ohikakarewa	19 Dec	(1866) 1 Napier MB 177	Napier	10	1520
32.	Moeangiangi	19 Dec	(1866) 1 Napier MB 178-9	Napier	3	1092
33.	Pakowhai	19 Dec	(1866) 1 Napier MB 180-1	Napier	1	1242
34.	Whareangi	19 Dec	(1866) 1 Napier MB 182-3	Napier	4	1845
35.	Kahumoko	19 Dec	(1866) 1 Napier MB 183-5	Napier	8	220
36.	Hikutoto South	19 Dec	(1866) 1 Napier MB 186-7	Napier	5	146
37.	Tutaeomahu	21 Dec	(1866) 1 Napier MB 188-9	Napier	1	140
38.	Rahuirua	21 Dec	(1866) 1 Napier MB 189	Napier	4	1330
39.	Waima	21 Dec	(1866) 1 Napier MB 190-91	Napier	2	71
40.	Whataangaanga	21 Dec	(1866) 1 Napier MB 191-93	Napier	3	303
41.	Otamauri	21 Dec	(1866) 1 Napier MB 195	Napier	6	23315
42.	Koropiko	22 Dec	(1866) 1 Napier MB 196-7	Napier	4	137
43.	Te Mahanga	24 Dec	(1866) 1 Napier MB 200-201	Napier	Partitioned into North (10) and South (10) sections	At least 5,000
44.	Heretaunga	24 Dec	(1866) 1 Napier 207	Napier	10	19,385

25 A block near Porangahau – not to be confused with the larger Pokawhai block near what is now the city of Hastings, investigated in December 1866.

45.	Tautiha	24 Dec	(1866) 1 Napier MB 210-11	Napier	9	3946
46.	Ngatarawa	29 Dec	(1866) 1 Napier MB 212-18	Napier	Partitioned into Parts 1 (6), 2 (9), 3 (7), 4 (7) and 5 (10)	19,243

The overall results will be tabulated below so that the main trends can be seen clearly, but some preliminary comments can be made at this stage on the 1866 figures. In just one year the Court investigated 46 blocks totalling 178,264 acres, and issued 54 separate ten owner titles.[26] As is obvious from the table there was a considerable variation in block size, the smallest being Waima, at just 71 acres, and the largest Otamauri, at 22,315 acres. The most important point to be noted here, however, is that the "ten owner" rule was not actually a *ten* owner rule in practice. Many blocks were allocated to fewer than ten owners. Six (Moturoa, Rangaika. Te Upoko, Porongahau, Pakowhai, and Tutaeomhai) were awarded to just one person. Awards to 2, 3 and 4 owners were common. Only 15 of the 54 blocks (28%) were actually allocated to ten owners. The average number of owners per block was 6.5 owners.

In 1867 the Court sat only in January (at Waipawa) and dealt with the following blocks:

Table 3: Hawke's Bay blocks investigated by the Native Land Court in 1867

No	Block name	Date	Reference	Venue	Number of Grantees	Acreage
1.	Tautane	10 Jan	(1867) 1 Napier MB 220-22	Waipawa	2	1052
2.	Rangatiramata	10 Jan	(1867) 1 Napier MB 223-4	Waipawa	3	210
3.	Poupoutahi	10 Jan	(1867) 1 Napier MB 225-6	Waipawa	5	459

26 The additional blocks come from partitions. Ngatarawa, for instance, was partitioned into five titles, Ngatarawa Nos 1-5, and Te Mahanga into two, Te Mahanga North and Te Mahanga South.

4.	Poukawa	10 Jan	(1867) 1 Napier MB 227-231	Waipawa	No order made. Case not resumed until 1896.	3,668
5.	Ngawhakatara	12 Jan	(1867) 1 Napier MB 232-4	Waipawa	8	2,860
6.	Mangangarara	14 Jan	(1867) 1 Napier MB 235-37	Waipawa	5	14,226
7.	Otawahao and Oringi Waiarauhe	14 Jan	(1867) 1 Napier MB 235-7	Waipawa	8 (Otawhao); 9 (Oringi Waiaruhe)	Circa 11,000
8.	Tahoraiti	15 Jan	(1867) 1 Napier MB 241-5	Waipawa	10	9,397
9.	Kaitoki	16 Jan	(1867) 1 Napier MB 246-8	Waipawa	10	13,400
10.	Mangatoro	16 Jan	(1867) 1 Napier MB 251	Waipawa	10	27,639
11.	Tarewa	18 Jan	(1867) 1 Napier MB 253-68	Waipawa	6 smaller blocks, Tarewa (10); Te Tapairu (8); Whatarakai (10), Kaimotumutumu North (8); Kaimotumutumu South (7); Te Rohitu (5).	2,344

The Court dealt with far fewer blocks than in 1866 (11 investigated, as opposed to 46), five of which, however, were larger than 5,000 acres. The total acreage investigated in 1867 came to 86,255 acres, with an average of 7.4 owners per block (counting partitions as separate blocks).[27] Five out of 16 titles were allocated to ten owners (31%).

The Court did not sit again in Hawke's Bay until August 1868. By this time s 17 of the 1867 Act had been enacted, which allowed the Court to list all other persons with interests in the block on the back of the Court certificate. Section 17 was an important change, which we deal with fully below. What needs to be emphasised here is that s 17 gave the Court a new option, although one which it seems to have

27 That is, 11 blocks were investigated resulting in 16 ten owner titles.

exercised very infrequently. The Court administered this power by recording the ten owners (or fewer) in the Court order as well as the remaining 'section 17' owners on the back of the certificate. What the legal rights the respective groups of owners had, whether before or following the issue of the Crown grant, is uncertain.

The blocks investigated in 1868 are as follows:

Table 4: Hawke's Bay blocks investigated by the Native Land Court in 1868[28]

No.	Block name	Date	Reference	Venue	No of Grantees	Acreage	S 17 order and no. of names
1.	Whataangaanga 2	17-8-68	(1868) 2 Napier MB 2	Napier	9	Unknown	No.
2.	Waipureku	17-8-68	(1868) 2 Napier MB 4	Napier	4	76	No.
3.	Parawhariki	17-8-68	(1868) 2 Napier MB 5-6	Napier	4	228	No.
4.	Waipiropiro	17-8-68	2 Napier MB 8	Napier	3	1126	No.
5.	Te Pukeroa	17-8-68	(1868) 2 Napier MB 9	Napier	1	Unknown	No.
6.	Omaranui No 2	17-8-68	(1868) 2 Napier MB 12	Napier	4	225	No.
7.	Waipuka	20-8-68	(1868) 2 Napier MB 19-20	Napier	10	35,211[29]	Yes (33).
8.	Waimarama	20-8-68	(1868) 2 Napier MB 21	Napier	10	-	Yes (11).

28 Based on (1868) 2 Napier MB, cross-checked against Berghan, Heretaunga-Tamatea.

29 This block and the following two blocks were all parts of a larger block of 35,211 acres. The acreages of the three large sub-blocks are not given in the minutes.

9.	Okaihu	20-8-68	(1868) 2 Napier MB 22	Napier	10	-	Yes (62).
10.	Pukekura East	31-8-68	(1868) 2 Napier MB 31	Napier	10	2,110	No.
11.	Pukekura West	31-8-68	(1868) 2 Napier MB 31-32	Napier	10	1850	No.
12.	Eparaima West	31-8-68	(1868) 2 Napier MB 33	Napier	5	687	No.
13.	Eparaima East	31-8-68	(1868) 2 Napier MB 35	Napier	2	670	No.
14.	Otukotorewhero	31-8-68	(1868) 2 Napier MB 36	Napier	8	98	No.
15.	Awaporirua	31-8-68	(1868) 2 Napier MB 39	Napier	7	500	No.
16.	Matutowhiro	1-9-68	(1868) 2 Napier MB 40	Napier	10	55.5	No.
17.	Te Tarere	1-9-68	(1868) 2 Napier MB 43	Napier	3	236	No.
18.	Te Kopua	1-9-68	(1868) 2 Napier MB 44	Napier	3	93	No.
19.	Kakewahine No. 1	1-9-68	(1868) 2 Napier MB 46	Napier	4	40	No.
20.	Kakewahine No. 1A	1-9-68	(1868) 2 Napier MB 46	Napier	6	51	No.
21.	Te Rakauomokai	1-9-68	(1868) 2 Napier MB 48	Napier	6	328	No.
22.	Te Whare a Te Atepuru	1-9-68	(1868) 2 Napier 49	Napier	5	10	No.
23.	Paeroa	2-9-68	(1868) 2 Napier MB 51	Napier	3	97	No.
24.	Te Waiongaharakeke	2-9-68	(1868) 2 Napier 53	Napier	9	70	No.

25.	Te Whakakoro	2-9-68	(1868) 2 Napier MB 54-55	Napier	10	364	No.
26.	Pukemapou	2-9-68	(1868) 2 Napier 57	Napier	5	104	No.
27.	Papaaruhe	2-9-68	(1868) 2 Napier 58	Napier	8	276	No.
28.	Roto a Tera	2-9-68	(1868) 2 Napier 60	Napier	10	270	No.
29.	Kakewahine	2-9-68	(1868) 2 Napier 61-2	Napier	10	780	No.
30.	Te Roto a Kiwa	3-9-68	(1868) 2 Napier 67	Napier	6	65	No.
31.	Koparakore	4-9-68	(1868) 2 Napier MB 73-4	Napier	10	1268	Yes (35).
32.	Te Onepu East	4-9-68	(1868) 2 Napier MB 76	Napier	10	155	No.
33.	Te Onepu West	4-9-68	(1868) 2 Napier MB 76	Napier	10	287	No.
34.	Pukerohitu	4-9-68	(1868) 2 Napier MB 78	Napier	5	377	No.
35.	Te Kena	5-9-68	(1868) 2 Napier MB 82	Napier	7	134	No.
36.	Mangapuaka	5-9-68	(1868) 2 Napier MB 84	Napier	5	906	No

In 1868, as seen, the Court investigated and issued titles to 36 blocks, totalling 48,747.5 acres, much less than in the two preceding years. There were just four s 17 awards out of the 36 titles (11%). The average size of the blocks was much smaller than in preceding years (1,433 acres as compared with 5,390 acres in 1867 and 3,301 acres in 1866).[30] The reason for the smaller acreages is simple: Maori within Hawke's Bay province were running out of uninvestigated or unpurchased

30 In calculating the 1968 averages we have excluded the two blocks with unknown acreage.

land. Average sizes per acre increased again in 1869, but that was because the Court was now focusing its efforts on northern Wairarapa/South Hawke's Bay blocks to a greater extent.

In 1869 the blocks investigated are:

Table 5: Hawke's Bay blocks investigated by the Native Land Court in 1869[31]

No.	Block name	Date	Reference	Venue	No of Grantees	Acreage	S 17 order and no. of names
1.	Pakaututu	18-11-69	(1869) 2 Napier 90-91	Napier	6	7,606	No.
2.	Tawhiangiangi or Taumatua	18-11-69	(1869) 2 Napier 93	Napier	7	27	No.
3.	Te Whare o Maraenui	18-11-69	(1869) 2 Napier 94	Napier	2	1,818	No.
4.	Tutae o Mahu No 2	18-11-69	(1869) 2 Napier 95	Napier	2	2	No.
5.	Rotopounamu	18-11-69	(1869) 2 Napier 98-99	Napier	Two smaller blocks: Rotopounamu No 1 (5); Rotopounamu No 2 (9)	1,080	No.
6.	Waitapuke	30-11-69	(1869) 2 Napier 101	Napier	3	52	No.
7.	Tunanui	30-11-69	(1869) 2 Napier 103	Napier	10	31,289	No.

31 Based on (1869) 2 Napier MB, cross-checked against the entries in Berghan (above n 25).

8.	Turamoe	30-11-69	(1869) 2 Napier 106	Napier	10	2,045	Yes (5).
9.	Otane	30-11-69	(1869) 2 Napier 107	Napier	2	1,226	No.
10.	Te Koroki Nos 1 & 2	30-11-69	(1869) 2 Napier 108-109	Napier	No. 1 (10); No 2. (10)	No.1: 9 No. 2: 1	No.
11.	Te Apiti	2-12-69	(1869) 2 Napier 121	Napier	10	6068	No.
12.	Te Ipu-o-taraia	2-12-69	(1869) 2 Napier 122	Napier	10	451	Yes (2)
13.	Patangata Nos 1, 2, 3 & 4	6-12-69	(1869) 2 Napier 139-141	Napier	No. 1 (10) No. 2 (10) No. 3 (10) No. 4 (10)	1: 2075 2: 1980 3: 883 4: 1140	Yes & No. P 1: 0 P 2: 8 P 3: 3 P 4: 0

In 1869 the total acreage increased to 57,752, 10,000 acres more than in the preceding year despite the reduction by half in the number of blocks investigated. The average size of the blocks increased to almost 3,400 acres, although this figure is skewed by the Tunanui Block at 31,289 acres. At the other end of the scale there is tiny Te Koroki No 2, being one acre held by 10 lucky owners. Tutae o Mahu was not much larger at two acres, shared by only two grantees. Eight of the 17 blocks are between 800 and 2,100 acres, of which five were held by 10 owners. The final four s 17 awards are found in this year. In 1870 the ten owner rule continued to be something less than a ten owner rule in practice. The 13 investigated blocks generated a total of 18 titles, an average of 7.5 owners per block

In 1870 the Court moved back to Waipawa, and the investigation area started to move south, radiating out ever further afield from central Hawke's Bay into the region known at the time as the Seventy-Mile Bush.

Table 6: Hawke's Bay blocks investigated by the Native Land Court in 1870

No	Block name	Date	Reference	Venue	No of Grantees	Acreage	S 17 order and no. of names
1.	Waikareao	2-9-70	(1870) 2 Napier 144-5	Waipawa	7	423	No.
2.	Te Aute No. 4	2-9-70	(1870) 2 Napier 145	Waipawa	5	124	No.
3.	Te Aute No. 3	2-9-70	(1870) 2 Napier 146	Waipawa	10	237	No.
4.	Te Aute No. 2 (Rotoakiwa)	3-9-70	(1870) 2 Napier 150-151	Waipawa	10	210	No.
5.	Raukawa No. 3	3-9-70	(1870) 2 Napier 152	Waipawa	6	145	No.
6.	Raukawa No. 1	3-9-70	(1870) 2 Napier 155	Waipawa	5	224	No.
7.	Raukawa No. 2	3-9-70	(1870) 2 Napier 156	Waipawa	10	198	No.
8.	Waihengahenga	5-9-70	(1870) 2 Napier 162	Waipawa	7	245	No.
9.	Te Wai-o-nga-Kohanga	5-9-70	(1870) 2 Napier 163	Waipawa	6	63	No.
10.	Waoko No. 2	6-9-70	(1870) 2 Napier 166	Waipawa	6	63	No.
11.	Te Aute No. 5	6-9-70	(1870) 2 Napier 167	Waipawa	6	40	No.
12.	Te Aute No. 6	6-9-70	(1870) 2 Napier 167	Waipawa	9	57	No.
13.	Puketoi No. 1	8-9-70	(1870) 2 Napier 173	Waipawa	42, but then partitione	110,000	No.

					d into Puketoi 1-4 on 10-9-1870, with 7,8,10 and 8 owners respectively		
14.	Te Ahuaturanga	8-9-70	(1870) 2 Napier 177	Waipawa	Rangitane, then to 7 owners on 10-9-1870 at (1870) 2 Napier 188	21,000	No.
15.	Manawaangiangi	9-9-70	(1870) 2 Napier 177-178	Waipawa	10	12,070	No.
16.	Mangaorapa	9-9-70	(1870) 2 Napier 178	Waipawa	9	16,760	No.
17.	Maharahara	9-9-70	(1870) 2 Napier 181-2	Waipawa	Rangitane, then to 6 owners at (1870) 2 Napier MB 182	13,000	No.
18.	Tamaki	9-9-70	(1870) 2 Napier 182	Waipawa	More than 20, then 3 owners on 10-9-1870 at (1870) 2 Napier	27,000	No.

					MB 191		
19.	Manawatu No. 2	10-9-70	(1870) 2 Napier 184	Waipawa	10	14,000	No.
20.	Manawatu No. 5	10-9-70	(1870) 2 Napier 194	Waipawa	10	15,000	No.
21.	Manawatu No. 7 (Rakaiatai)	11-9-70	(1870) 2 Napier 194	Waipawa	10	8,200	No.
22.	Manawatu No. 6 (Tuatua)	11-9-70	(1870) 2 Napier 195	Waipawa	10	9,600	No.
23.	Manawatu No. 3 (Te Ohu)	11-9-70	(1870) 2 Napier 195	Waipawa	10	20,600	No.
24.	Manawatu No. 8 (Wharawhara)	11-9-70	(1870) 2 Napier 197	Waipawa	3	2,180	No.
25.	Manawatu No. 4A (Tipapakura)	11-9-70	(1870) 2 Napier 200	Waipawa	5	Unknown[32]	No.
26.	Manawatu No. 4 (Tiratu)	11-9-70	(1870) 2 Napier 200-201	Waipawa	9	Unknown[33]	No.
27.	Manawatu No. 4B (Te Otanga)	11-9-70	(1870) 2 Napier 201	Waipawa	10	Unknown[34]	No.
28.	Te Puninga	16-9-70	(1870) 2 Napier 212-213	Waipawa	10	622	No.
29.	Tuhirangi	16-9-70	(1870) 2 Napier 213	Waipawa	10	1,200	No.

Judging by the minute books, no investigations of title were conducted in the years 1871 or 1872 in Hawke's Bay. Volume 2 of the Napier minute books includes one 1873 case investigated at Wairoa. Then in early 1874 the abolition of the ten owner rule by the Native Land Act 1873 came into effect and the rule ceased to be

32 Minute Book does not state area.

33 Minute Book does not state area.

34 Minute Book does not state area.

applied. By that time, however, most of the land that remained in Maori ownership in the province at 1866 had "passed the Court", as the contemporary expression was, and had been allocated under the ten owner system.

Table 7: Hawke's Bay blocks investigated by the Native Land Court in 1873[35]

No.	Block name	Date	Reference	Venue	No of Grantees	Acreage	S 17 order and no. of names
1.	Muriwhenua	16-12-73	(1873) 2 Napier 238	Wairoa	2	4,390	No.

V OWNERSHIP PATTERNS

One question we were particularly interested in finding an answer to related to how interests were allocated amongst individuals. Some individuals received interests in a large number of blocks, while most people were allocated interests in just one block. That is to say, some people did quite well out of the system, receiving a large number of valuable interests.

Our calculation is that the total number of named grantees before 1874 comes to 566 names. In 1874 the Maori population of Hawke's Bay south of the Tangoio river was 1,870, at least according to the notoriously unreliable official census, indicating that something like two-thirds of the population was not named in any of the grants.[36] The term used in Hawke's Bay for people not in the lists was the revealing expression 'tangata o waho', meaning outsiders, or outside people.[37] Probably most of those excluded would have been women and children. As it

35 Based on (1873) 2 Napier MB, cross-checked where possible against the entries in Berghan (above n 25).

36 *Approximate census of the Maori population,* 1874 AJHR G-7. The return for Hawke's Bay south of the Tangoio River was made by a resident magistrate, Samuel Locke. There is no official census data before 1874, although missionaries and others did sometimes attempt to record population figures. In 1878 the Maori population of Hawke's Bay was recorded at 1,690: *Census of the Maori population,* 1878 AJHR G-2., 23.

37 1873 AJHR G-7, Minutes of Evidence at 15.

happens there are certainly some women's names recorded in the titles: Ripeka – that is, Rebecca – Hekeheke, Miriama Hinekura, 'Arapeta', 'Makereta', 'Ani' (Annie) and others, although it is not always easy to be certain. Is, for example, Rititia Hinepaia, a grantee in Puketoi, male or female? Or Oriwia Te Hori? 'Oriwia' might be a Maori equivalent of either 'Oliver' or 'Olivia'. A full analysis of gender patterns in the lists will be dependent on expert local knowledge from the descendants of the grantees, something we hope to embark on at a later stage in the research. The role of women in the Native Land Court and in the Crown-granting process is not well understood and could do with a lot more research.[38] Our impression is that women are in a minority in the lists of grantees, although they are certainly present here and there, and that women played little or no role in the actual cases. There is no way of telling whether some grantees were minors, which is certainly possible. About a third of a whole population appears to be a reasonably comprehensive spread of ownership rights, more than might perhaps have been expected.

It is certainly the case that a small group of people did comparatively well out of the process, while most people were either wholly excluded or received comparatively small interests. The majority of grantees, 68.3%, received interests in just one block. Eleven individuals were allocated ten-owner shares in 10 or more blocks, 34 in five blocks or more, 25 in four blocks, 31 in three blocks, 77 in two blocks, and the remaining grantees in just one. Those who received interests in just one or two blocks can be contrasted with others who received interests in many blocks, with the powerful chief Karaitiana Takamoana receiving interests in 30 blocks, followed by Te Hapuku (19), Hohepa Te Ringanohu (15) and Te Waka Kawatini (15). The names of the 31 individuals who received the largest number of interests (greater than five blocks) are as follows:[39]

38 On women in the Native Land Court see Boast, *Buying the Land, Selling the Land*, 83; Ann Parsonson, "Stories for Land: Oral Narratives in the Native Land Court", in Bain Attwood and Fiona Magowan (eds), *Indigenous History and Memory in Australia and New Zealand*, Bridget Williams Books, Wellington, 2001, 21, 25.

39 This table was by the far most difficult, time-consuming and challenging one to generate, as it involved identifying all names in all blocks and then calculating interests allocated per block. The table and the calculations are as reliable as we can make them. Some names will certainly have been mis-spelled owing to the sometimes impenetrable handwriting of the original record. It is only too likely that some names that we have counted as separate are in fact different spellings or alternative versions of one person's name. The full list, of all 566 names, is too long to be included in this article but we would be happy to provide a copy to anyone interested.

Table 8: Allocation of Individual Interests by Block 1866-1874

Ranking	Name	Number of Block Interests Granted
1	Karaitiana Takamoana	30
2	Te Hapuku	19
3=	Hohepa Te Ringanohu	15
3=	Te Waka Kawatini	15
4=	Henare Tomoana	14
4=	Tareha Te Moananui	14
5=	Paora Torotoro	13
6=	Hoani Waikato	12
7=	Hinepaketia	10
7=	Hoera Pareike	10
7=	Urupene Puhara	10
8=	Manaena Tini	9
8=	Paramena Oneone	9
9=	Meihana Takihi	8
10=	Hokomata	7
10=	Ihaka Kapo	7
10=	Karauria Tamaiwhakakiteaterangi	7
10=	Pera Wheraro	7
10=	Renata Pukututu	7
10=	Wiremu Maiaia	7
11=	Ahere Te Koau	6
11=	Akeniki Patoka	6
11=	Ani Kauare	6

11=	Ereatara Te Kuru	6
11=	Te Hoko	6
11=	Hone Wharemako	6
11=	Karaitiana Te Kahuirangi	6
11=	Paroane Hakihaki	6
11=	Pukepuke	6
11=	Renata Kawepo	6
11=	Te Waihiku	6

This list, as anyone familiar with Hawke's Bay Maori history will know, includes a number of well-known names. In fact they are on the whole the very people that one would expect to see. Karaitiana Takamoana, Te Hapuku, Te Waka Kawatini, Henare Tomoana, Tareha Te Moananui, Manaena Tini and Renata Kawepo all played important roles in land issues and chiefly politics at the time. Karaitiana Takamoana, for example, was a powerful chief of the Ngati Whatuapiti people of south-central Hawke's Bay and a political opponent of Te Hapuku and Tareha Te Moananui. Those who were included in the titles are probably largely the same people who signed the earlier pre-emptive purchase deeds negotiated with the Crown in earlier years, although this also needs some further research. Some of the other names, such as Hohepa Te Ringanohu and Hoani Waikato are less familiar, but this may indicate only that the standard historiography does not necessarily reflect the real patterns of chiefly authority in the region in the 1860s and 1870s. Maori traditional polities were chiefdoms on the classic Polynesian model, and so it is not unexpected that powerful chiefs would receive larger interests than ordinary commoners, if one may use the latter term.

Title to land was essentially granted according to the believability of the claimants' cases. The credibility of a claimant would have been based on a number of factors, not least of which were their ranges of power and influence. Some claimants, obviously, would have enjoyed high standing in the eyes of the court. An analysis of the minutes of two cases in which Te Hapuku had an interest enables us to draw a light sketch of the subtle influence of chiefly credibility.[40]

In Pukerohitu, Te Hapuku, although absent and therefore unable to give evidence to support his claim, was admitted by the successful claimant as an owner and was named by the Court as one of five grantees of this 377 acre block. This is

40 (1868) 2 Napier 73-74; (1868) 2 Napier at 77-78.

highly unusual, as the Native Land Court was far more likely to throw out a claim for lack of appearance.[41] The second case, Koparakore, was a block for which there were several competing claims. Te Hapuku, the second claimant, described the first claimant's (Aihipene Te Taira's) evidence as only "correct as far as it goes". He then elaborated slightly on Te Taira's version of events, naming a different ancestor as the primary owner of the block. There is nothing that particularly makes Te Hapuku's evidence stand out from that of the other claimants, yet his party is one of two groups to make it on to the grantees list.[42] The other claimant parties had to be content with a s 17 list placing. This list was handed in to the Court by Te Hapuku himself.

Ten-owner awards on the whole, then, appear to reflect traditional structures of power and authority, although this is an issue that more properly falls outside legal history and belongs to the fields of anthropology and Maori studies. From the perspective of legal history, however, what is pivotal is the legal nature of the interests that chiefs such as Karaitiana Takamoana were allocated. As a grantee under the ten-owner system, as that system was applied in practice, Karaitiana Takamoana received proprietary interests as a co-owner in no less than thirty blocks of land scattered across Hawke's Bay and the northern Wairarapa, all of which were now legally his private property to deal with as he liked. The personal and financial affairs of the chiefs thus became fatally interwoven with the fate of Maori land ownership in this region.[43] To put it another way, the tenurial revolution brought about by the Native Lands Acts and the Native Land Court was soon followed by an ownership revolution as proprietary interests began to rapidly pass into the hands of private purchasers. Until the advent of the Native Land Court the Maori land market was dominated by only two parties, the Crown and the Maori chiefs as representatives of their various iwi and hapu. But now a third force entered upon the scene: private land purchasers who could deal directly with the Maori legal owners.

Chiefly dominance under the Land Court system could be reflected in two different ways, that is by the relative size of interests within a block, and by the acquisition of a large number of interests in different blocks. The above table

41 See, for example 2 Napier 243.

42 It is not entirely clear from the minutes how many parties are claiming this block, however the final order lists 10 grantees and 35 s 17 interests. (1868) 2 Napier 73-74.

43 As it happens Karaitiana Takamoana managed his affairs much better than many other people.

shows that the latter was very much a reality in Hawke's Bay at this time. This outcome was however cemented into place by the former method as well. Thus Tareha Te Moananui, who received interests in 14 blocks, was one of two grantees to the Papakura block,[44] Karaitiana Takamoana (30 blocks) was one of three grantees in the Hikutoto block,[45] Paora Torotoro (14 blocks) was one of two grantees to Omarunui No 1,[46] and Renata Kawepo (7 blocks) was one of six grantees to the 24,315-acre Otamauri block.[47] There are many other such examples. Blocks varied very widely in size, and a number of the chiefs who were in the maximum number of blocks were also grantees in the largest and most valuable blocks. Henare Tomoana (14 blocks) and Karaitiana Takamoana (30) were both of them grantees in the large and valuable Heretaunga block of 19,385 acres investigated in December 1866.[48] Renata Kawepo, as seen, was one of seven grantees in Otamauri (24,315 acres), and he was also one of 10 grantees in Matapiro (22,700 acres)[49] and one of seven grantees to Ngatarawa 3 (5000 acres).[50] By the same token, many who received just one interest would be those who were one of ten owners to a small block of a few hundred acres or less. To quantify chiefly entitlement taking into account number of interests, relative interests, and block acreages would take more time and ingenuity that we have at our disposal, but it is clear that all three factors are relevant to grasping the full extent of the outcomes in the Native Land Court. What can be said is that chiefly dominance of the process was almost complete and was much more than a factor of the number of interests in different blocks, although that was certainly an important aspect of such dominance as we have shown.

While in the long run the ten owner system lead to rapid land alienation and contributed to Maori impoverishment and economic marginalisation by the end of the 19th century, in the short term the system actually reinforced and even and even expanded the power and authority of the Maori chiefly governing class. Political leadership and authority was translated into unfettered control over thousands of acres of land. The situation in Hawke's Bay admits of little doubt on this score. On

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44 (1866) 1 Napier MB 5.

45 (1866) 1 Napier MB 10-11.

46 (1866) 1 Napier MB 41.

47 (1866) 1 Napier MB 194-5.

48 (1866) 1 Napier MB 42-50.

49 (1866) 1 Napier MB 111.

50 (1866) 1 Napier MB 212-218. Ngatarawa, a block of 19,243 acres was partitioned by the Court into five subdivisions. Nearly all of the leading Hawke's Bay chiefs received an allocation in one of the subdivisions.

the other hand the memorial of ownership system, brought into effect in 1874 by the Native Land Act 1873, was to have precisely the opposite effect. By allowing all owners, however many, to be entered into the memorial of title, the chiefs became just one of a many names entered into the Court documents. We hope to explore this in more depth in further work on the 1873 and its effects, which continue to be felt to the present day, when some blocks of Maori freehold land can have many thousands of owners. We can say, however, that while the ten-owner system, as applied in practice, reinforced and expanded the power of the indigenous governing elite, the 1873 Act depressed it.

VI ALIENATION

Under the pre-1862 pre-emptive purchase system only the Crown was legally able to extinguish customary title, this being standard imperial constitutional law as reflected in Article II of the Treaty of Waitangi and early colonial land purchase ordinances. The Native Lands Acts reversed this policy, and in this sense formed a unique experiment in the British empire. Instead of a common law native title, Maori could become freeholders and, like any freeholder, could alienate their lands to anyone. The legislation did not, therefore, allow private purchasers to extinguish customary titles. Rather, the law provided a mechanism for conversion to freehold and thus to freedom of alienation.

Maori did not have to bring their land to Court, nor did they necessarily sell their land privately or to the government once they had done so. Maori might, and frequently did, choose to retain Crown-granted land in their own hands and either farm it themselves, or lease it. Thus Te Awa o te Atua block, investigated in 1866, stayed in Maori ownership and in 1893 it was partitioned amongst the owners inter se, and parts of it remain Maori freehold today. Te Whenuakura, Whareraangi, and Hikutoto South are other examples. Other blocks, although sold eventually, remained in Maori ownership for a number of decades.[51] Papakura, for example, investigated in 1866, was sold in 1897. There are some blocks about which not much more can be said than that were investigated by the Native Land Court under the ten-owner system but are no longer Maori land today. Some areas remained wholly uninvestigated, and thus remaining on customary title, until comparatively

51 In this context we mean the *original* Maori ownership. Several Maori who were not grantees leased and/or bought land in the Hawke's Bay from the original owners; see for example the Patangata blocks in which Mere Tupaea, P Rukiruki, Hoani Ratima, T Ihaia and others gained leasehold and freehold interests over a period of time. See Berghan, above 25, at 416-427

late. There is no Maori customary land remaining in Hawke's Bay today, however, at least as far as is known. An example of a late investigation is the Omahu block, a block of about 7500 acres near Heretaunga and an important area of Maori settlement, which stayed in customary title until investigation in 1890-92.[52] Parts of Omahu are Maori freehold land at the present time. Nonetheless the fact is that alienation of the Hawke's Bay blocks was in fact very rapid, and was often in the most questionable of circumstances.

Of the land blocks investigated in 1866, which came to a total of 177,526 acres, 123,255 acres (by our calculations) had been sold by the time the Hawke's Bay Commission sat in 1873, an alienation rate of 70% within a 7-year period. This land had mostly been bought by private purchasers, rather than the Crown, although there were a few Crown purchases – examples are Pukahu, bought by the Crown in 1867 with the exception of a 55-acre reserve[53], and Raukawa West, 4287 acres of which was allocated to the Crown on investigation of title in 1866.[54] Other blocks were bought by churches. Whataangaanga block, located on the coast just south of Napier, an area of 303 acres, was bought by Father E Reignier of the Marist order before 1873. But overwhelmingly the land was purchased by land speculators and land brokers, and one sees the same names over and over again in the documentation, including Frederick Sutton, Hutton Troutbeck, R D Maney, J H Coleman, J G Kinross, Thomas Richardson, Henry Russell and others. The ten-owner rule created a massive free land market in Hawke's Bay in which Maori and Pakeha dealt with each other directly, unmediated by the state.

There is a thriving literature on the economies of land dealing and land speculation that arise on imperial frontiers, especially in North America, and Hawke's Bay seems to be a typical example of the same phenomenon, a New Zealand equivalent of upstate New York in the early 19th century, or of the economy of graft and land speculation that flourished in late 19th-century Oklahoma and which has been minutely investigated by Western historian Angie Debo.[55] In Hawke's Bay, examples of what must charitably be described as less

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52 Omahu judgment, (1890) 20 Napier MB 131-4. This block was reheard in 1892: see Omahu rehearing judgment (1892) 26 Napier MB 7-8.

53 Berghan, above n 25, at 498

54 (1866) 1 Napier MB 145-6; Berghan, above n 25, at 89.

55 See eg Andrew R L Cayton and Fredrika J Teute (eds) *Contact Points: American Frontiers from the Mohawk Valley to the Mississippi, 1750-1830* (University of North Carolina Press, Chapel Hill, 1998); Alan Taylor *William Cooper's Town: Power and Persuasion on the Frontier of the Early American Republic* (Alfred A Knopf, New York, 1995); Alan Taylor *The Divided Ground: Indians, Settlers and the Northern Borderland of the American Revolution* (Alfred A Knopf, New York, 2006). Books by Angie Debo include *And Still the Waters Run: The Betrayal of the Five Civilized Tribes* (Princeton University Press, Princeton, 1973) [1940], and *The Rise and Fall of*

than fair and transparent dealings are easy to find. The role of the Native Land Court Assessors, whose job was to quite literally 'assess' the case, sometimes seems questionable. To avoid partiality they were conventionally chosen from outside the area under consideration. In spite of his having been named a grantee of the Kohinurakau block on the 9th of August 1866, a local man, Te Harawira Tatere, was however selected as the Assessor for the Waipawa hearings which commenced on the 19th December that same year. A conflict of interest arose almost immediately when Tatere was named as one of 10 owners in the Tauhitiha block on the 24th of December, Christmas perhaps having come early for him that year. In 1868, possibly to allay any suspicions of undue influence, Tatere stood aside as Assessor in order to act as principal claimant in the Waimarama and Okaihau cases, a part he played with great success.[56] He was, however, replaced as Assessor by Karaitiana Takamoana, the most successful claimant in the Napier and Waipawa hearings by a considerable margin.[57] This does not prove that Karaitiana Takamoana would not or could not have given independent advice that would have been helpful to the Court, but it does show that the chiefs and the Court could be close partners.

A wonderfully representative figure of the times is R D Maney, who set himself up as a store keeper and land broker at Meeanee near Napier. Much of the evidence given to the Hawke's Bay commission of 1873 related to Maney and his business practices.[58] Maney seems to have run a complicated and sophisticated operation, lending money on credit, brokering bills of sale, bills of exchange, promissory notes, mortgages, leases, and sales, and making advances of goods and services in lieu of cash. Maney would take advances for sales of land and then credit the accounts of merchants – and the local doctor – based in Napier. He took from the chiefs delivery of crops, such as wheat, in order to discharge debts. He drew up

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the Choctaw Republic (2nd ed, University of Oklahoma Press, Norman, 1972). Debo's meticulous chronicling of the graft and speculation that accompanied the dispossession of the Indian nations of Oklahoma was not well received at the time and she struggled to gain recognition for her work and secure academic tenure for much of her scholarly career. She is now recognised as one of the finest historians of the American West. On Debo see Shirley Leckie *Angie Debo: Pioneering Historian* (University of Oklahoma Press, Norman, 2000).

56 Tatere was also a grantee of the Te Apiti block, (1869) 2 Napier 121. By that time Wiremu Hikairo, who was from Rotorua, had replaced him as Assessor.

57 Takamoana was named as a grantee of no fewer than 30 blocks, the most blocks awarded to any one person. See Table 8.

58 An example is the Petane case: see 1873 AJHR G-7, Minutes of Evidence at 15.

agreements which stipulated that blocks of land would be sold in order to discharge debts, probably creating in this way a type of commercial paper that circulated in the province in lieu of cash (of which there seems to have been a major shortage). He was in short a combined corn-merchant, tavern-keeper, banker, cashier, store-keeper and landbroker, someone who could have stepped straight from the pages of a novel by Thomas Hardy.

VII SECTION 17 AND 'EXCESS' OWNERS

Section 17 of the 1867 Act, as noted, allowed the court to compile and register a further list of the names of those with an interest in the land but who were not included in the 'ten owners'.

The Napier 2 Minute Book contains only eight blocks to which s 17 was applied, with the number of interested parties varying from two to 62.[59] The sparse records of the Napier 2 cases do not, with one exception, indicate how or when (or even whether) the application of s 17 was requested. The orders merely include the fact of application and lists of the relevant names. While the names on the final list must have been provided by the claimants, there is such variation between those which are recorded as requested and those which make the final list as to make the Court's decision-making process something of a mystery.

Waipuka, Waimarama and Okaihau, the first three blocks to which s 17 was applied, highlight the lack of procedural clarity. All three contain considerable disparity between the claimants' s 17 proposals and the final Court-ordered lists. Unfortunately there is not a scrap of information on the record to show how the Court arrived at these variations on the requested names. Te Teira te Akitai's proposal for Waipuka contained nine grantees and listed 28 or 29 "other owners"; the final order listed 10 grantees and 33 other named parties to whom s 17 applied.[60] Te Harawira Tatere proposed for Okaihau and Waimarama 10 grantees each, and requested the s 17 list be "those named by Te Teira", in other words the same 33 names as for Waipuka.[61] The final Okaihau order listed 10 grantees and 62 other named parties to whom s 17 applied, and the Waimarama order provided 10 grantees and 11 other persons to whom s 17 applied.[62] There is no discussion at all

59 There are no such awards recorded in Napier No 1 MB for the obvious reason that that the cases recorded in it pre-date the enactment of the 1867 amendment.

60 Because of the condition of the record it is not possible to be certain of the number of names. (1868) 2 Napier MB 13 at 14 and 19-20.

61 (1868) 2 Napier MB 13 at 14, 15.

62 (1868) 2 Napier MB 13 at 20-22.

in the minutes and we are left to speculate about the reasoning and process which resulted in the final Court-ordered lists.

The Koparakore case, however, provides a slightly clearer view of both the workings that may have led to the application of s 17, and of its perceived legal significance to the interested parties. Several influential chiefs, being Aihipene Te Taira, Te Hapuku, Karaitiana Takamoana, Te Meihana, Urupene Puhara and Paurini Te Whiti (or Te Whitu) claimed the Koparakore block as their own. The Court, rather than accepting or dismissing any of the claims outright, delivered a judgment awarding the certificate of title to five each of Te Taira's and Te Hapuku's party, with "all other persons interested to be Registered under clause 17." A total of 35 names were proposed by Te Hapuku, including those of the claimants Te Meihana, Puhara and Te Whiti (Takamoana had been included in Te Taira's party as a grantee). This case indicates that s 17 could at least provide a convenient solution for a court faced with a situation in which multiple parties appeared to have valid claims.[63]

The final four s 17 blocks were investigated in 1869, with Judge Monro sitting again. Turamoe (2045 acres) was the first of these, successfully claimed by Paurini Te Whiti who provided the Court with a list of 10 proposed grantees. No mention is made in evidence of s 17 or any to whom it might apply, yet the Court ordered a list of five persons who were to be registered under s 17. Although the claimants must have had some input into the s 17 list, we are once again left to wonder how the Court arrived at this decision.

The second 1869 case, Te-Ipu-o-taraia (451 acres), contains more than the usual amount of information. Hoani Waikato claimed the land uncontested and named 12 owners, of whom nine made it on to the 10 grantees list. The substituted name on the Court's list may be a clerical error; Waikato named Henare Koura as an owner but the final grantees included the prominent Maori leader Henare Matua. Both these men were successful grantees of other blocks of land. The other two interested parties named by Waikato, Te Remana Kataraina and Renata [Pukututu], were named as s 17 listees at Puketutu's request.[64] This sole case of a request

63 A small window into the practical effects of s 17 on this block can be seen in Berghan. Henare Tomoana, an s 17 'listee' gave evidence in the 1886 partition hearing for the Koparakore block, stating that he had "leased the whole land to Mr Chapman…". When asked about the amount of rent, Tomoana replied that the rental was £60 per annum "I think for the whole block. Can't say if each one in the Crown Grant received the rent." Berghan, *Heretaunga-Tamatea* at *188.*

64 Evidence of Renata Puketutu, (1869) 2 Napier 122.

granted without alteration does not, however, provide us with much in the way of extra insight. Why it was so granted, the record does not show.

The two final s 17 cases were heard together as part of the Patangata series of blocks. As with Koparakore there were a number of claimants, 14, in fact, each giving a welter of evidence of acceptance, partial acceptance and denial of each other's claims.[65] These four blocks would seem to be ideal candidates for the oil-on-troubled-waters solution which s 17 could to some extent provide. In the end, Patangata blocks 2 and 3 had s 17 applied to them; 1 and 4 did not.

As indicated, it is very difficult to know why the Court sometimes made s 17 orders. Such orders were certainly unusual. It is logical to assume that the Court would only make such an order if it was asked to do so, and that is probably largely true. As the previous discussion indicates, however, sometimes the Court may have used s 17 as a way of dealing with complex contested cases as in Koparakore without being asked to do so, using the provision as a way of allocating some applicants supplementary rights in the block while at the same time allocating the dominant interests to the named ten or fewer grantees. The evidence is however very slight and not easy to interpret.

VIII TRIBAL TITLES

The second limb section 23 of the 1865 Native Lands Act allowed the Native Land Court to issue tribal titles, although the statutory language relating to this was somewhat convoluted:[66]

> 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.

This means, although it might not be obvious, that if a block was in fact larger than five thousand acres, and many were, the Court *could* issue a title to a "tribe by name" – that is, to say "Ngati Porou" or "Rongowhakaata". The provision is an interesting anomaly, as Maori tribes (iwi) do not have legal personality as such, and operate by means of companies, incorporated societies, and various types of statutory land trusts today. The general consensus is that the provision was a dead letter.[67] When ex-Chief Judge Fenton gave evidence to the Rees-Carroll Commission on Native Land Law in 1891 he could recall only two instances where

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65 The claimants were: Wi Tipuna, Te Hapuku, Karaitiana Te Kahuirangi, Tamawharu, Keremeneta Tauke, Namana Te Whiti, Te Haurangi, Hera Te Atatakirangi, Aperahama Huke, Hoera Pareihi, Tamati Maruhaere, Hemi Waiparera, Renata Pukututu and Morena.

66 Native Lands Act 1865, s 23, second proviso.

67 See R P Boast, "The Evolution of Maori Land Law 1862-1993", in Boast, Erueti, McPhail and Smith, Maori Land Law, 65-119, at 75.

a block had been vested in a tribe rather than in individuals.[68] This may, however, have been an underestimate. There are a number of decisions in Napier No 2 MB which appear to be quite clearly tribal awards, or something resembling them.

The examples of apparent tribal titles found in Napier No 2 MB are the blocks Puketoi No 1 (110,000 acres), Te Ahuteranga (21,000 acres), Maharahara (13,000 acres) and Tamaki (27,000 acres), all of which were brought before Judge Rogan at Waipawa. These blocks were awarded to Rangitane and, in the case of Maharahara, also to Ngati Pakapaka, admitted by Rangitane as part owners of the block.[69]

The minutes of the four cases reveal nothing about how or why such an application was made, nor do they mention s 23. Presumably the fact of the application was apparent to the Court at the outset of a case. One clue might be found in the evidence, in which many names are given; in the case of Maharahara the principal claimant for Rangitane provides 71 names "…and some others I can not remember at present."[70] It is not apparent until the judgment that the land is to vest tribally, and in striking contrast to the Ten Owner Rule judgments no order is made at the time of the decision. Instead the minutes record, for example, the "Decision of the Court that the aforementioned Claimants are the admitted owners of the Block of land called Tamaki containing 27,000 acres."[71]

Most curiously, in no more than two days after each judgment (and in the case of Maharahara, on the same day), the blocks were immediately granted, or partitioned and granted, to 10 or fewer named owners without further ado. The tribal title was thus merely an interim measure and remained in effect for only a few days – or hours. There is simply no explanation in the Minute Book of the need for the anomalous interim step.

IX THE DECISIONS OF THE COURT

Although the Native Land Court certainly could write quite lengthy and analytical judgments when it needed to, one searches in vain the early minute

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68 1891 AJHR G-1, 46.

69 There is an order for a Certificate of Title for Maharahara being 19,000 acres to six owners immediately following the Maharahara judgment. It is utterly unclear why the land would be awarded as a tribal title and then be immediately made the subject of an order under the Ten Owner Rule.

70 (1870) 2 Napier 179, evidence of Hohepa Paewai.

71 (1870) 2 Napier 182.

books of the Court in Hawke's Bay to find an actual judgment, or anything remotely resembling one. The Court did little more than record the evidence given by claimants, counter-claimants (if any: many blocks were uncontested) and then list the owners. Most cases followed a standardised format, whereby the claimants announced themselves, followed by the counter-claimants; the boundaries were described and the evidence of the surveyor taken, followed by typically very brief remarks and statements made by the parties in Court, the whole then being rounded off by the Court order. Very large blocks can leave only a few pages of recorded material in the minutes. We are unsure, admittedly, whether the transcriptions of claimant and counter-claimant evidence actually are full transcriptions or whether they are abbreviated summaries only, but given that the Court often dealt with numerous cases in a single day it seems most likely that not a great deal was actually said in Court. Probably the real business of the day went on outside the courtroom, the Court decisions reflecting discussions and informal agreements reached amongst the parties. The very long statements of evidence found in other areas at later times, where witnesses sometimes spoke from days on end and gave detailed accounts of iwi and hapu political history, are not seen in these early Hawke's Bay cases.

As to the actual judgments, if they can be called that, typically all that survives are brief entries in the minute books. Thus in the Papakura case, the first heard in Hawke's Bay, the Court's judgment is just a few lines:[72]

> After hearing some further evidence and discussion on this claim, the Court ordered that a certificate of title be made and issued in favour of the following persons, viz. Tareha [and] Wiremu Maiaia for the piece of land called Papakura block as shown on the map produced before the Court and containing 3363 acres.

The Omarunui No 1 decision is another example:[73]

> The Court then ordered that a certificate of title should be made and issued to Paora Torotoro and Rewi Haokore for a piece of land called Omarunui and issued to Paora Torotoro and Rewi Haokore for a piece of land called Omarunui containing 3773 acres the boundaries of which are delineated on the plan produced before the court at the investigation.

Petane, a block of nearly 11,000 acres and which included a substantial Maori village, is yet another example:[74]

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72 Papakura case, (1866) 1 Napier MB 4-5 (6 March 1866).

73 Omarunui case, (1866) 1 Napier MB 40 (14 March 1866).

> The Court ordered that a Certificate of the title of Paora Torotoro, Te Waka Kawatini, Paraine Kuware, Tamihana Te Rakaitari, Tame Tuki, Taka Taina, Anaru Kume, Ahere Te Koari, Hamahona Te Koari, Ani Te Whanga to the piece of land called Petane, as shown on the plan produced at the investigation containing 10,000 acres be made and issued to the Governor. It was further ordered that the Crown Grant issued in pursuance of the above mentioned certificate be delivered to A.L.W. Bousfield of Meeanee, Hawke's Bay, Surveyor.

The 'judgments' are all of this kind. As legal texts they are of no real interest and create nothing to analyse, although as we hope we have shown the actual effects of these decisions are difficult to overestimate.

This very spare judicial style is also found in other areas at this time. Here is the judgment in the Matakohe case, heard at Whangarei in 1865 (under the 1862 Native Lands Act):[75]

> Survey produced. Proclamation of Te Tirarau's claim, and no objector appeared. Certificate of a fee simple to Te Tirarau.

Or, even more sparely:[76]

> Certificate ordered to Wiremu Pohe.

The 'judgment' in a case in the Bay of Plenty relating to White Island (Whakaari), an active volcano lying 51 kilometres out to sea, is of the same character:[77]

> Ordered, that a certificate of title be issued in the name of Reteriti Tapihana and Katherine Simpkins. (Whakaari/White Island).

Slightly more discursive is the Court's judgment in the Horohora case, relating to a block of land in the southeastern Waikato near Cambridge:[78]

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74 (1866) 1 Napier MB 147 (18 August 1866). The Court made the order that the Crown Grant be delivered to the surveyor in order by way of lien to protect Bousfield's survey costs. The grantees in other words would not get the all-important Crown grant until they had paid the surveyor. This was at Bousfield's own application. After describing the survey in evidence Bousfield "applied for an order of the Court to cause the Crown grant to be delivered to him"; he "[s]tates that he had not been paid for the suvey": (1866) 1 Napier MB 148 (18 August 1866).

75 (1865) 1 Whangarei MB 2.

76 Wharauroa case, (1865) 1 Whangareii MB 57 (21 August 1865).

77 (1867) 1 Maketu MB 4 (15 October 1867).

> Judge Rogan said, that the judges had considered the evidence and they had concluded that the land belonged to Ngatikoroki. Ngatikoroki had agreed that Parakaia's name should be included in the Crown Grant, that was the only reason for doing so for in the opinion of the Court the land belonged to Ngatikoroki who were the persons who had continually occupied the land. There were more names mentioned as owners who could be put into a Crown Grant, therefore the Court had to consider amongst themselves the names of the parties who were to be inserted in the Grant.

Thus the style of the Hawke's Bay ten-owner judgments was not of itself unusual, and was, indeed, standard practice. To be sure, the Court occasionally wrote fairly lengthy judgments in its early years on occasion as well. As a generalisation judgments tended to become slowly more elaborate and comprehensive over the years. Length and comprehensiveness of judgments usually turned not on how big the block was but rather on how contested the case before the Court actually was. Sometimes the Court's judgments are written in such a way that makes it clear that they are aimed at a much wider audience than the parties before it. Many Native Land Court judgments were in fact published in the daily newspapers and in pamphlets for an eager audience. Judges only feel the need to write long judgments when there is something to actually adjudge, however. If there was no objection to a particular application, then the Court had no cause to say anything much about it. This seems to be the case with the Hawke's Bay ten owner cases. The judicial style that one sees in these cases is typical of the time, but it reflects, as well, careful management behind the scenes. The real debate, the actual cut and thrust of claim and counter-claim, is happening not inside the courtroom but outside it, and invisible to the legal historian.

X PROTEST AND INVESTIGATION

Judging from the minutes the investigation and allocation of interests in the Hawke's Bay ten owners blocks can seem uncontroversial and unproblematic, but in reality this was far from the case. The operations of the Native Land Court in Hawke's Bay happen to very well-documented as a result of the Hawke's Bay Native Lands Alienation Commission, which reported in 1873.[79] Were it not for this important report, which includes a great deal of evidence given by local Maori people as to the effects of the Court on themselves and their lands, we would be in the main left with only the very sparse and not particularly informative court minutes to go on.

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78 (1867) 1 Waikato MB 132-3 (26 November 1867).

79 1873 AJHR G-7.

The operation of the ten-owners' rule in Hawke's Bay seems to have created an artificial, and, for the Maori population, very perilous economy based on debt and credit entries in the accounts of storekeepers and land brokers based on ten owner interests in Court-investigated land blocks. By 1867, barely a year after the Court began to hear cases on a significant scale in the province, the matter was starting to trouble conscientious Crown officials. GS Cooper drew that matter to the attention of the Native Minister, JC Richmond, in a report sent from Napier:[80]

> 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 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.

Cooper believed 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, the provincial superintendent, 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."[81] Paora Torotoro seems to have been another chief whose affairs were in a chaotic muddle, this being instrumental in his decision to sell the Te Pahou block.

In 1868 Cooper forwarded another long report to the Native Department, in which he painted the situation of the Maori population of Hawke's Bay in grim tones. Cooper believed that the Maori population was declining, and he mentioned in particular the "unfruitfulness of the women"; the supply of children was, he thought, "insufficient to keep up the numbers".[82] While not all of Cooper's

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

81 Locke to McLean, 15 September 1867, McLean Papers, MS 0032/393, Alexander Turnbull Library.

82 *Reports on the soclai and political state of the Natives in various districts,* 1868 AJHR A4, 13.

somewhat moralising commentary ought to be taken at face value, it seems clear that the tribes of Hawke's Bay were in a risky and exposed position:[83]

> 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 to something approaching £18,000 or £20,000 annually from settlers in the shape of rents; whilst the sale of timber and agricultural produce, shearing wages &c. bring them in about £5000 more. In this sense and to this extent they are tolerably well off: but money so easily acquired 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.

In terms of the general wellbeing of the Maori of Hawke's Bay, however, some Crown officials presented a rather more positive and optimistic picture. Charles Heaphy, Commissioner of Native Reserves, writing of the Hawke's Bay Maori communities, had this to say:[84]

> 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 Omarunui they assisted the settlers in crushing out the rebellion of the earlier Hauhau fanatics, and at the Mohaka they suffered heavily for their allegiance to the Queen's government.

Like Cooper, however, Heaphy was concerned about the effects of the Native Lands Acts in Hawke's Bay. Individualisation of title and the Land Court's ten owner system meant that Maori land was vulnerable: it could be lost in order to pay for the debts of a few. Land had passed out of Maori hands in the province with dismaying speed; by 1871, most of the Province had already been alienated. In that year the Government survey officer at Napier calculated the total area of the province to be about 2,930,000 acres. Of this, 1,854,000 acres had been purchased by the Crown. 557,000 acres had been passed through the Land Court, of which 250,000 acres had been sold to private-sector purchasers, and 200,000 leased to Europeans. This left 519,000 acres in Maori customary title.[85]

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83 Ibid, 13-14.

84 *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.

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

Mindful of the dizzying rate of land alienation and of the real risks of pauperisation of the Maori population, McLean instructed Heaphy to arrange for suitable areas of Maori land to be placed in trust so that at least some land was guaranteed to remain in Maori hands.[86] Some 31,000 acres was placed in trust in this manner, with Chief Judge Fenton assisting by making available the Land Court's standard form of trust deed. By this time,however, most of the ten owner awards had already been made, and, as we pointed out above, there is no indication in the Cout's own records that the blocks were being allocated on trust.

In 1869 the Fox-Vogel government, with McLean as Native Minister, took power. McLean had long been dubious about the Native Land Court. Meanwhile pressure increased on the government from a variety of directions regarding the situation in Hawke's Bay. In 1871 the former chief justice, Sir William Martin, wrote a long and very critical memorandum on the Native Land Court to the government.'[87] In 1872 there was a petition sent to Parliament by Renata Kawepo and 553 other people. The petition complained that while grantees "were to be trustees for the tribes", in fact because there were no restrictions on alienation in the grants "the grantees acted towards the others interested as if they were persons living out of sight and at a distance".[88] This was followed by a further petition complaining about the Court signed by 371 Maori of Hawke's Bay, the Wairarapa, Wairoa and Gisborne.[89] 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:[90]

> 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

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86 Ibid, at 12

87 Memorandum o n the operation of the Native Lands Court by Sir William Martin, 1871 AJHR A-2.

88 1872 AJHR 1-2, Petition of Renata Kawepo and others.

89 1873 AJHR J-7.

90 Locke to McLean, 10 July 1872, MS 321394, ATL, cited Scott-Ballara, 173.

> Govt etc ... Henare Tomoana then spoke proposing that all the grievances should betaken 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 This petition led to the 1873 commission of enquiry into the operations of the Native Land Cout. In 1873 a new Native Land Act was enacted, which abolished the ten owner rule and restructured the Maori land law system on a quite different basis. This Act, and its application, will be the subject of further research by the authors.

XI SUMMARY AND CONCLUSIONS

This article has endeavoured to chart some of the effects of the ten owner rule in the Hawke's Bay region (a larger area than Hawke's Bay province under the provincial system) by analysing as carefully as we can all blocks investigated by the Native Land Court sitting at Napier and Waipawa and recorded in Napier Minute Books Numbers 1 and 1 (1866-73). Our principal findings are summarised in the following table:

Table 9: Summary of Ten Owner Allocations in Hawke's Bay 1866-74:

Year	**No of Blocks investigated**	**No of Titles issued**	**Average number of grantees per block**	**Total Acreage**	**Average block size (acres)**[91]
1866	46	54	6.5	178,264	3,301
1867	11	16	7.4	86,255	5,390
1868	36	36	6	48,747.5	1,434
1869	17	18	7.5	57,752	3,208
1870	29	32	7.6	273,261	8,539
1871	N/A				-
1872	N/A				-
1873	1	1	2	4,390	4,390
TOTALS	140	157	6.2	648,669.5[92]	4,377

In short, the ten owner rule was not even a ten owner rule in practice. Many blocks were allocated to one or two owners. Large areas were investigated under it

91 That is of titles issued, not titles investigated.

92 This figure is too low, as the acreages for a few blocks are missing. But the general trends documented by the figures are in our opinion robust.

the rule until its abolition in 1873 and alienation rates were very high, dominated by private-sector buyers rather than the state. The ten owner system suddenly created a new private land market in ten owner shares out of virtually nowhere, and a small group of well placed merchants, brokers and land speculators were there on hand in Napier to take advantage of the new opportunities. We have shown also that the ten owner system was, while revolutionary in its effects and the types of legal interests that it created, was also conservative in that it reinforced the power and authority of the traditional elite. This was only a temporary phenomenon, but while it lasted the effects were significant and deleterious for the Maori people of Hawke's Bay in the long run. As is often the case, research leads to further questions. It may be possible to work out a full list of per-head acreages, which will allow the role to be played by the chiefs in the process to be stated with greater precision. The extent to which women were entered into the Court certificates and Crown grants needs to be better understood. There may yet be in existence manuscripts which record more fully in Maori what was said in the courtroom and what was arranged outside. Further research will serve to further clarify the picture that we have outlined here.