MANGAOHANE

MANGAOHANE LEGAL HISTORY AND THE DESTRUCTION OF POKOPOKO

A report prepared for the Taihape: Rangitikei Ki Rangipo Research Programme
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i OVERVIEW

1. This report provides a detailed narrative of the events surrounding the Native Land Court's dealings with the Mangaohane block. These are very complicated and move through several phases over a seventeen year period from about 1880, when authority to survey the block was given, to 1897, when Winiata Te Whaaro, the chief protagonist in many of the proceedings, was arrested and taken to Wellington on a charge of contempt of court.

2. The report is necessarily focused on the minutiae of the proceedings and, in particular, attempting to navigate through different processes which continue independently but interact at different stages: survey, title investigation, rehearing inquiries, superior court litigation, parliamentary inquiries, partition, validation, alienation and legislation.

3. The clearest evidence shows that the Native Land Court in 1885 intended to exclude a larger part of the south of Mangaohane from its decision than was excluded in the final survey. It is important to note that the Court in 1884 and 1885 conducted the title investigation on a sketch plan where the southern boundary was not clearly defined (and this issue was acknowledged by counsel for one of the claimants). Judge O'Brien, who presided at the hearing, later gave evidence that he thought the Court intended to exclude land either south of or including Pokopoko and added a line to the sketch plan to give effect to this decision.

4. However, when the survey was completed, the southern boundary excluded a much smaller area and Pokopoko was found to be located further north than anticipated. This is reflected in reports prepared in response to rehearing applications and petitions presented to the House of Representatives. It does not appear that this situation was ever investigated or rectified and the requirements of the Native Land Court Act 1880 relating to sketch plans were not fulfilled until many years later, in 1893, during the course of a rehearing relating to part of the block. The area of Mangaohane excluded from the Court's decision in 1885 was investigated in the early twentieth century. It is known as Aorangi Awarua and remains Maori freehold land today.

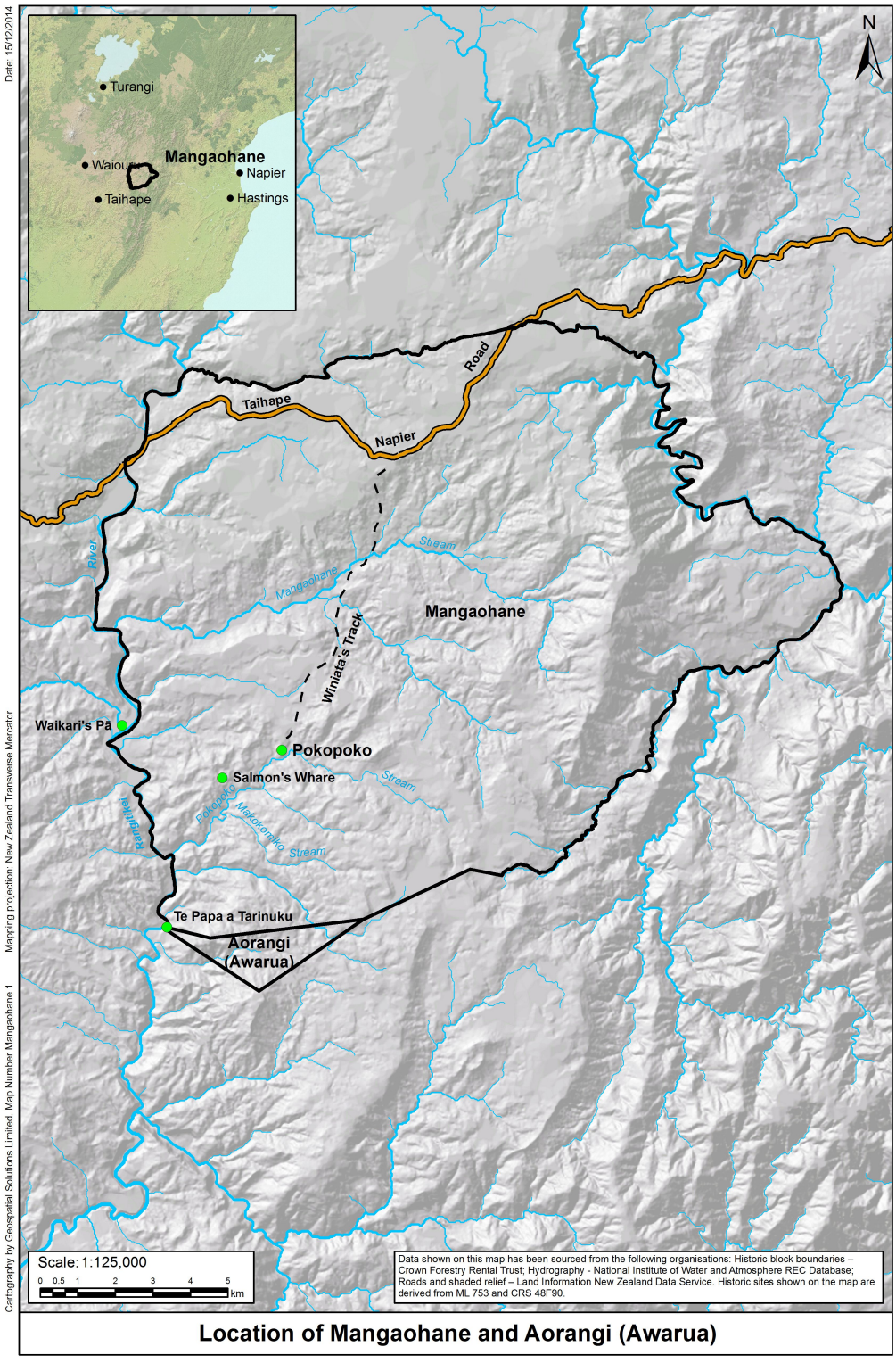

Figure 1: Location of Mangaohane and Aorangi (Awarua)

5. There was a considerable delay in finalising the certificates of title ordered in 1885, initially due to opposition to the survey. Subsequently it appears the refusal by Pakeha purchasers (the Studholme brothers) who procured and paid for the survey to be used further delayed issuing the titles.

Figure 2: Mangaohane Block, 2014 (looking across the Rangitikei River from the Napier Taihape Road towards to the north of the block, the Otupae Range at back)

6. Applications for rehearing were considered by the chief judge but dismissed. However, only three of the six applications for rehearing were dismissed following a Court sitting at which representatives of the applicants could make submissions. Two were dismissed by the chief judge on the papers and the third does not appear to have been dealt with. Although he considered the merits of the application and concluded a rehearing was not justified, he dismissed them by speculating that they were informal or premature because the certificate of title ordered by the Court had not been issued. As noted, they were not issued for many years.

7. The Court of Appeal decided that the chief judge had not dismissed all of the applications for rehearing 'according to law' as he had dealt with two on the papers rather than hearing the applicants. It is important to note that Winiata's application

was not one of the two applications which were not properly considered with by the chief judge. In dealing with the consequences of this decision, the chief judge convened an inquiry. The result of this inquiry was a partial rehearing on the basis of these applications but the Native Land Court, during the course of the rehearing, interpreted the chief judge's order in a narrow way and dismissed a number of claims on the basis that they did not come within the scope of its inquiry. Winiata's claims were among those dismissed for this reason. The Native Land Court's decisions in this rehearing were the subject of two separate actions in the Supreme Court and one of the Supreme Court's decisions was appealed to the Court of Appeal.

8. It is important to emphasise that it is not entirely clear that Winiata's claims, and those of others, were ever considered on their merits. They were rejected at the initial title investigation by the Court in 1884 and 1885 without reasons been given but part of the block was supposed to be excluded. His application for rehearing was rejected because it was premature and his claim for inclusion in Mangaohane No. 2 was excluded because it was outside the scope of the Court's inquiry as defined by the chief judge.

9. Winiata's application under s 13 of the Native Land Court Act Amendment Act 1889, submitted in mid-1894, was a significant turn for these proceedings but it ultimately proved fruitless. It is possible this was the only occasion Winiata's claims were considered on their merits in that the chief judge's decision turned on the merits of his claims rather than some procedural issue. The chief decided to correct an error he concluded had been made by the Native Land Court by including Winiata and his people in the certificate of title for Mangaohane No. 2. However, the chief judge's actions were prohibited by the Supreme Court, and its decision affirmed by the Court of Appeal, on the basis he had exceeded his authority. Leave to appeal to the Privy Council was granted but there is no evidence an appeal was pursued.

10. The litigation involving Mangaohane continued over such a long period, not just because Winiata and his people pursued their claims but also because, for various reasons, the alienation of the title from those awarded the land by the Court could not be completed. While the land remained in Maori ownership, there was still the chance for Winiata and his people and others to have their claims to inclusion in the title recognised. Delays caused by opposition to the survey, then problems in completing

the certificates of title to permit partition and finally the intervention of the Court of Appeal all prevented the Pakeha purchasers from obtaining title to the land they claimed through purchase deed.

11. These deeds, which were negotiated by the Studholme family's farm manager, R.T. Warren, and signed in 1885 and 1886, could never be registered. They were in breach of the provisions of the Native Land Act 1873 (as required by the Native Land Court Act 1880). In addition, the requirements of s 7 of the Native Land Laws Amendment Act 1883, which lifted a blanket prohibition on negotiations in Maori land, had not been satisfied when the chief judge issued his notice. This matter was not considered by officials when considering the deficiencies in the transactions, nor was it an issue addressed in the superior courts. The transactions could only be registered through subsequent legislation (Native Land (Validation of Titles) Act 1892 and the Native Land Court Certificates of Confirmation Act 1893).

12. It is noted that Winiata did not remain long on the land once the transfers had been registered and there is no indication that he continued to pursue any claim to the land once he was removed. This is no reflection on his tenacity, which can only be described as legendary, but was a consequence of the loss of the land which made restitution impossible.

ii WINIATA TE WHAARO AND OTHERS

13. Winiata Te Whaaro of Ngāti Hinemanu and Ngāti Paki is the most significant figure in this narrative. Winiata was born around 1835 at Te Koutu, located at the foot of the Mokai Patea Range, and died in 1911. His wife Peeti was of Ngāti Raukawa and together they had fourteen children, eleven of whom survived into adulthood. Their children were born at Ohiti, near Omahu, and Pokopoko. Ohiti was one of Ngāti Hinemanu's traditional kainga on the eastern side of the Ruahine range. Winiata lived at Omahu and travelled over the Ruahine range where he settled at Pokopoko and established the farm with his brother. A small number of sheep were provided by Renata and built into a substantial flock over many years. The sheep at Pokopoko were run on natural grasslands and clearings at Pokopoko and Winiata bred a flock of 11,000 sheep. The land did not require extensive development and the stock

Figure 3: Winiata Te Whaaro by Samuel Carnell. This photo has been supplied by Trish Cross who is a descendant of Winiata. It is not known when this photo was taken or the identity of the two men in the photo.

helped improve the pasture. He continued to live there until he was arrested and imprisoned. His descendants believe the sheep were driven into the bush when he was arrested. He settled near Taihape at Mangaone on other ancestral land. This area is now known as Winiata.

Figure 4: Pokopoko, 2014

14. Winiata's brothers were Hori Tanguru and Irimana Te Ngahoa (Ngahou). He fought in the Waikato War and was at the Battle of Te Porere near Taupo with his brothers as one of Renata Kawepo's lieutenants. His sister was Maraea Tanguru and she married Karaitiana Te Rango of Ngāti Whitikaupeka and Ngāti Tamakopiri. Their son, Winiata's nephew, was Waikari whose pā was at Makokomiko. Hune Rapana or Rapana Patena was the husband of Iramutu (Winiata's eldest daughter) who was present when he was arrested and his property removed from Pokopoko. He was Winiata's farm manager.

15. During the rehearing of Mangaohane No. 2, in January 1893, Winiata spoke of his occupation of the land. He had a homestead there, woolshed, yards and shearing quarters. In 1884, when the land went through the Court, about 4,000 sheep were at Pokopoko and, at the time of the rehearing, he had around 11,000 sheep.[1] He insisted that the sheep belonged to him and that he was not a shepherd for Renata, arguing that

[1] Judge Scannell Native Land Court Minute Book 30, 25 January 1893, fol. 3.

his ear mark were on the sheep. Studholme's estimate of Winiata's flock in October 1894 was about 10,000 sheep.[2]

Figure 5: Pokopoko, 2014

16. Winiata refused to sell his land at Pokopoko but the loss of it through the Native Land Court meant that his older children married and settled away from the land. His whānau believe that his interests in Awarua and other blocks were alienated to pay the cost of the litigation for Mangaohane. This particularly affected his older children as the lands they would otherwise reside on were lost. Those of his older children who remained in Taihape did so because they married other people in the region with land interests. The burning of the whare was very distressing for Winiata's whānau and their descendants and for Ngāti Paki as it destroyed the kainga entirely. In doing so, the wairua was also destroyed and the mauri desecrated.

17. The arrest of Winiata and the loss of Pokopoko has had a profound impact on his descendants. A valuable flock of sheep bred by Winiata over several decades was lost. Winiata's older children had nowhere to live and most married people from elsewhere and moved away. Only those who married local people whose whānau had their own landholdings were able to remain. Their descendants are unable to return to their tipuna lands. The descendants of Winiata have carried the grievances about his

[2] Studholme to McLean, 26 October 1894, MS-Copy-Micro-0351-1 John Studhome Papers (copy of MS-Papers-0272, folders 1-21), Alexander Turnbull Library, Wellington.

treatment and the loss of Pokopoko for generations together with the shame that he was arrested on his own land at gunpoint and taken away. That their taonga and whenua was lost and the way Winiata was treated by Crown officials and the courts stripped him and his descendants of their mana. Moreover, development opportunities for his descendants were lost with their asset base as there was insufficient land to support whānau.

Figure 6: Pokopoko Stream, 2014

18. In the Native Land Court and in the Supreme Court and Court of Appeal, Winiata was regularly, though not exclusively, represented by C.B. Morison of Wellington. In the superior court litigation, he was invariably junior counsel to Sir Robert Stout. Stout also represented Winiata in the contempt of court proceedings before the chief justice in the Supreme Court in 1897 following Winiata's removal from Pokopoko. Winiata was represented by others in the earlier proceedings in the Native Land Court. Utiku Potaka was another Ngāti Hinemanu leader who participated in these proceedings or pursued various remedies with Crown officials and political leaders.

19. Winiata's chief antagonists were Airini Tonore and her husband G.P. Donnelly and the Studholme brothers. All pursued litigation against Winiata. Renata Kawepo was involved in the initial hearings but it was his solicitor, W.L. Buller, who generally pursued his interests and Renata died prior to the most significant proceedings from the late 1880s. The Donnelly's are also relatively marginal figures in this report as

they appear infrequently in correspondence about the block. In court proceedings they were represented by P.S. McLean of Napier who sometimes instructed H.D. Bell of Wellington when in the Supreme Court or Court of Appeal.[3]

20. Much more significant were the Studholme brothers, particularly John Studholme Jr. They were runholders at Hinds in Canterbury. Their property there was known as the Coldstream Estate. They had also established a large farming operation at Owhaoko, to the north of Mangaohane managed by R.T. Warren, who was also a key figure in their dealings with the Mangaohane block.[4] John was a frequent correspondent with judges, court officials, ministers and Crown officials. Letters and telegrams often refer to informal discussions with judges, ministers and officials and the files contain many letters and telegrams from Studholme in his pursuit of a title to parts of Mangaohane.

21. Studholme was invariably represented by H.D. Bell in these proceedings though W.L. Rees of Gisborne was also retained to appear in the Native Land Court. Rees was a member of the House of Representatives at different times and his role as advocate on behalf of Studholme and elected representative was sometimes unclear. While there were four Studholme brothers, it was John who pursued their interests in Mangaohane. Joseph Studholme, one of John's sons, was also involved but to a much lesser degree. His primary role was in managing the family's farming activities at Owhaoko and Ruanui.[5]

iii ORGANISATION

22. The report is organised chronologically, commencing with the initial authorization to survey the block in 1880 and concluding with the final order in Aorangi (Awarua) in 1912. Each section deals with a different phase of the proceedings. The chronology is interrupted on occasion to draw a particular process to an end in a coherent manner but, as far as possible, the narrative is organised chronologically.

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[3] According to Hazel Riseborough, G.P. Donnelly's nephew was Guy Landsowne Shaw (see Hazel Riseborough, *Ngamatea. The Land and the People*, Auckland: Auckland University Press, 2006, pp. 18-19). An appendix to this report provides an overview of the alienation of the Mangaohane block, and a map showing the different types of alienation. Shaw either acquired blocks or interests in blocks in seven parts of Mangaohane No. 1 in the early twentieth century. These transactions were all confirmed by the Aotea District Maori Land Board.

[4] The Native Land Court's dealings with Owhaoko were also controversial. See Martin Fisher and Bruce Stirling, 'Sub-district Block Study – Northern Aspect', September 2012, pp. 31-137.

[5] Riseborough, pp. 12-13.

23. A conclusion at the end of the report draws together the many strands of the narrative and explains the nature of the grievance which Winiata pursued so doggedly for so many years using every tool available to him. It also considers the nature of the problems created by the Court in its dealing with the block.

24. An appendix sets out the details of the alienation of the block together with a map showing the different parts and how they were alienated.

iv METHODOLOGY

25. This report is based primarily on archival records generated by the Native Land Court, litigation in the Supreme Court and Court of Appeal, records of government departments and officials, newspaper reports and the private papers of some of those who were parties to the litigation. In particular, it draws on:

- The block order and closed correspondence files of the Native Land Court;
- Native Land Court minutes of hearings (including minutes of inquiries by the chief judge);
- Reports of decisions of the Supreme Court and Court of Appeal;
- Newspaper reports;
- Papers of the Native Department and the Justice Department;
- Statutes and other official printed papers; and,
- The Studholme Family Papers, primarily the letters and notes of John Studholme Jr, held at the Alexander Turnbull Library.

26. This material is supplemented with other documents which have been located in the course of the research.

B ATTEMPTS TO SURVEY MANGAOHANE

i INITIAL AUTHORISATION TO SURVEY AND OPPOSITION

27. In September 1880, C.D. Kennedy. an authorised surveyor of Napier, forwarded to the chief surveyor in Wellington an application for the survey of the Mangaohane block.[6] The application was completed by some of the owners, including Hiraka Te Rango, Retimana Te Rango, Ihakara Te Raro, Hirama Paerau, Hakopa Te Hotemutu, Karaitiana Te Rango and others. Kennedy requested an authority for him to proceed with the survey. The application was to be sent to the department's district officer at Wanganui, James Booth, for his comment and approval. However, Booth while unclear on whether the land was in his district and looked into the matter and was most reluctant to give his approval:

> I have however made the necessary preliminary inquiries and I find that the survey of the land in question would cause very serious disturbance. I find that Renata Kawepo is one of the principal claimants. His mother and several other relatives are buried on the block, and he has a numerous following claiming through the same channel. It will not be safe to make the survey until all parties are agreed.[7]

28. The chief surveyor filed the application and suggested Kennedy discuss the matter with Booth. Despite Booth's report, in January 1881 an official in the district survey office at Wellington, in the absence of the chief surveyor, authorised Kennedy to undertake the survey and advised the surveyor general accordingly.[8] In a further undated telegram around this time, Booth reiterated his advice that the survey should not proceed:

> I have made further inquiries and find that majority of claimants are opposed to survey and hearing until the whole of the owners have had a conference on the subject and a protest against this survey being made when I was last in Napier. Will minute application and forward by mail. Natives are most excited about this affair. Renata Kawepo reports that Baker has authorised the survey in spite of my protest.[9]

29. He later clarified that he had received a complaint from Renata Kawepo about the proposed survey.[10] Paramena Te Naonao also wrote to the chief surveyor at this time asking for the leaders of the different iwi with claims in the land – Ngāti Hinemanu,

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[6] Kennedy to Marchant, 9 September 1880, LS-W1 Box 18 744, Archives New Zealand, Wellington.
[7] Booth to Marchant, 22 September 1880, LS-W1 Box 18 744, Archives New Zealand, Wellington.
[8] McKenzie to McKerrow, 18 January 1881; Buller to Booth, 31 January 1881, LS-W1 Box 18 744, Archives New Zealand, Wellington.
[9] Booth to Marchant, undated, LS-W1 Box 18 744, Archives New Zealand, Wellington.
[10] Booth to Marchant, 1 February 1881, LS-W1 Box 18 744, Archives New Zealand, Wellington.

Ngāti Hauiti and Ngāti Whiti – to discuss the matter before the survey began.[11] The chief surveyor was unhappy that the surveyor had been authorised and asked the surveyor general if it was possible to suspend the authority. He was concerned that it had been given without the advice of Booth. However, the surveyor general decided that no action was necessary: the government was not liable (for Kennedy was seeking payment from the owners) and if they stopped Kennedy, the loss caused would be his to bear.

30. A few days later, Kennedy reported that there was opposition to the survey.[12] He asked if the chief surveyor would approve a sketch plan for the Court hearing. The chief surveyor had, however, left Wellington and the chief draughtsman was unwilling to act without consulting his superior. About a week later, he advised that he could not see how a sketch plan could be approved 'as it is contrary to the new act, at best the Court could only take it for what it was worth'.[13]

31. In late March 1882, Buller wrote to the chief surveyor at Wellington regarding the survey of Mangaohane.[14] He was by this time acting for Renata Kawepo, though in the course of the letter he also gave an undertaking on behalf of John Studholme regarding the completion of a survey. Apparently Buller had tried to have Kennedy's authority to survey the block withdrawn but this did not happen and instead Buller advised his clients, after consulting the chief surveyor, to offer no opposition to Kennedy's activities but to carefully observe the surveyed boundaries. Buller thought that Kennedy had completed his survey and prepared a plan for presentation at the Native Land Court sitting in Napier in February 1882.

ii INITIAL HEARING IN THE NATIVE LAND COURT

32. The Court prepared to consider the application of Hiraka Te Rango with Renata and other applicants in opposition. However, according to Buller, Hiraka refused to present any evidence or produce the plan. Their claim was dismissed in consequence and the Court went on to consider other applications for the same land. Since Renata had no plan (relying instead on Kennedy's survey), they could not proceed. Buller

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[11] Paramena Te Naonao to the Chief Surveyor, 1 February 1881, LS-W1 Box 18 744, Archives New Zealand, Wellington.
[12] Kennedy to Marchant, 8 February 1881, LS-W1 Box 18 744, Archives New Zealand, Wellington.
[13] MacKenzie to Kennedy, 15 February 1881, LS-W1 Box 18 744, Archives New Zealand, Wellington.
[14] Buller to Marchant, 25 March 1882, LS-W1 Box 18 744, Archives New Zealand, Wellington

applied to the Court to be permitted to proceed on a sketch plan but it was 'in a very unfinished state and did not bear the provisional certificate of the Chief Surveyor'. The presiding judge, Judge Heale, was also concerned that he was being asked to proceed on the basis of an incomplete sketch map when Kennedy's survey could be used instead (though Buller understood from Kennedy that he had only been able to prepare a sketch map of the block and it was yet to be approved by the chief surveyor). Buller reported that the judge was highly critical of Hiraka's conduct and decided to adjourn rather than dismiss Renata's claim. It would come up at the next sitting where Renata would be the claimant. Buller's inquiry to the chief surveyor was to clarify in what circumstances he would give a provisional certificate for a compiled plan. He had told the judge that a sketch plan would be more than adequate:

> As I pointed out to Judge Heale, in Court, the case is one in which a sketch map would be amply sufficient for purposes of investigation, nearly all the boundaries being well-known topographical features about which there could be no possible mistake.[15]

33. However, after describing the northern, western and eastern boundaries, he admitted that the chief surveyor 'may require some actual surveying to be done on the southern side of the block, so as to connect the boundaries more clearly'. Nevertheless, 'in every other respect I think there would be no difficulty in satisfying you that a sketch map, compiled in the manner proposed, would exactly describe the claim beyond the possibility of any doubt'.[16] The chief surveyor's simple response to this long letter was that he did 'not see any objection to my approving a sketch map of Mangaohane Block if your client can produce one, provided Mr Kennedy's interests are not affected'.[17]

iii RENATA KAWEPO'S SKETCH PLAN

34. In early May, Buller forwarded a formal application by Renata Kawepo for the survey of Mangaohane together with a request from W. Ellison and Son of Napier to the chief surveyor for authority to prepare a sketch plan of Mangaohane on behalf of

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[15] ibid.
[16] ibid.
[17] Marchant to Buller, 3 April 1882, LS-W1 Box 18 744, Archives New Zealand, Wellington.

Renata Kawepo.[18] They planned to request provisional certification under s 15 of the Native Lands Amendment (No. 2) Act 1878.

35. As Buller continued to press for authority to survey the land on behalf of his clients, the chief surveyor approached Kennedy to determine whether there was any overlap with the survey of Mangaohane he had undertaken. It appears that no plans had been submitted for the chief surveyor's approval and Kennedy's response in late July explained why. Renata's application for Mangaohane and Otupae were parts of the block Kennedy had tried to survey while the third, for Reporoa, was not. However, he had faced considerable opposition to his survey:

> On account of the very violent opposition to the survey I was only able to collect sufficient data to construct a rough sketch plan. Should an opportunity offer I will endeavour to make it more complete.[19]

36. Towards the end of August, Buller submitted a compiled plan of Mangaohane for the chief surveyor's provisional certification.[20] The Native Land Court was to sit at Napier in the near future and he planned to ask the Court for interlocutory orders subject to the completion of proper surveys. He insisted again that the boundaries of the block were well defined by geographical features but admitted too that the southern boundary of Mangaohane was an exception 'where a grey line has been put in the bearing of the line given'. After some considerable delay, Ellison's plan of Mangaohane, prepared for Renata Kawepo, was approved nearly twelve months later on 27 August 1883.[21]

37. It would appear, however, that there remained a great deal of opposition to any attempt to survey the block. In February 1883, a letter was sent by Pirimona, Winiata, Irimana and Arona from Pokopoko on behalf of Ngāti Hinemanu to 'Taonui'. This is thought to be Donnelly. The letter was located in the R.A.L. Batley Papers held at the Whanganui Regional Musuem and is in te reo:

> Kia Taonui Otirā kia koutou katoa, tēnā koutou katoa, kua tae mai tau reta kia mātou, i tukua mai nei i te tekau mā whiti a ngā rā o Pepuere (17th Pepuere).
> Kua kite iho mātou i ngā kupu katoa o tā koutou pukapuka. Tā mātou whakautu. 'Kāore mātou e wehi ki te haere mai a ngā pirihimana kite hopu i a mātou'. He aha koutou i kati atu ai i aua Pirihimana?

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[18] Buller to Marchant, 5 May 1882; W. Ellison and Son to Marchant, 19 April 1882, LS-W1 Box 18 744, Archives New Zealand, Wellington.
[19] Kenney to Marchant, 27 July 1882, LS-W1 Box 18 744, Archives New Zealand, Wellington.
[20] Buller to Marchant, 28 August 1882, LS-W1 Box 18 744, Archives New Zealand, Wellington.
[21] File Note, Marchant, 27 August 1883, LS-W1 Box 18 744, Archives New Zealand, Wellington.

> Te tuku mai ai kite hopu hopu i a mātou, me a mātou wahine, me a mātou tamariki, me a mātou rāhui.
> E Hoa ma e mōhio ana mātou, ki ana mahi katoa a te pākehās.
> Heoi anō, nā 'Ngāti Hinemanu' katoa. Nā Pirimona, Nā Winiata, Nā Irimana, Nā Arona.[22]

38. This document refers to a letter they had received the previous day and apparently responds to threats by Donnelly to send police to arrest them.[23] They replied that the did not fear arrest and wanted to know why Donnelly had not already sent them. The letter suggests Ngāti Hinemanu would not compromise in their opposition to the survey and the lack of progress on the survey over many months suggests they were successful. People would later be arrested, after the Native Land Court hearing, for preventing the survey but in 1883 it does not appear that this occurred.

iv A FURTHER REQUEST TO SURVEY MANGAOHANE

39. Several months prior to the approval of this plan, in March, Palmerston and Scott, a firm of surveyors from Palmerston North, forwarded an application for a survey of the Mangaohane block.[24] They had been asked to undertake the survey and requested authority from the chief surveyor to do so. The application was signed by Utiku Potaka, Winiata Te Whaaro and Pene Pirare. Winiata, Irimana Ngahou and Pirimona Te Urukahika (among the signatories of the letter above) were to conduct the surveyor and they and others undertook to meet the cost of the survey.

40. They were advised that two surveyors had already been authorised to undertake the survey and another survey was not considered necessary.[25] They were told that their clients should submit an application to the Native Land Court which could investigate it when the claims were considered by the Court on the basis of one of the other plans.

41. However, according to Palmerston and Scott, their clients were most insistent that they proceed with the survey 'without delay'.[26] They assured the chief surveyor that their work would not cost the Survey Office anything and they would look to their clients for payment. However, the chief surveyor declined their request for authority

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[22] Primona, Winiata, Irimana and Arona to Taonui, 18 Feburary 1883, R.A.L. Batley Papers, 2011.117.1 Box 8, Whanganui Regional Museum, Whanganui.
[23] I am most grateful to Awhina Twomey of Ngāti Hinemanu for her translation of this letter.
[24] Palmerston and Scott, 22 March 1883, LS-W1 Box 18 744, Archives New Zealand, Wellington.
[25] Marchant to Palmerston and Scott, 22 March 1883, LS-W1 Box 18 744, Archives New Zealand, Wellington.
[26] Palmerston and Scott to Marchant, 11 April 1883, LS-W1 Box 18 744, Archives New Zealand, Wellington.

to undertake a survey of the block and noted that his authorisation was required for any survey on Maori land as all surveyors were employed by his department on such work.[27] His authority was not a matter of form, as they appeared to suggest in their letter, but a legal requirement in all cases. He added that he might have to send one of his officials to survey the block if opposition to the survey continued.

[27] Marchant to Palmerston and Scott, 14 April 1883, LS-W1 Box 18 744, Archives New Zealand, Wellington.

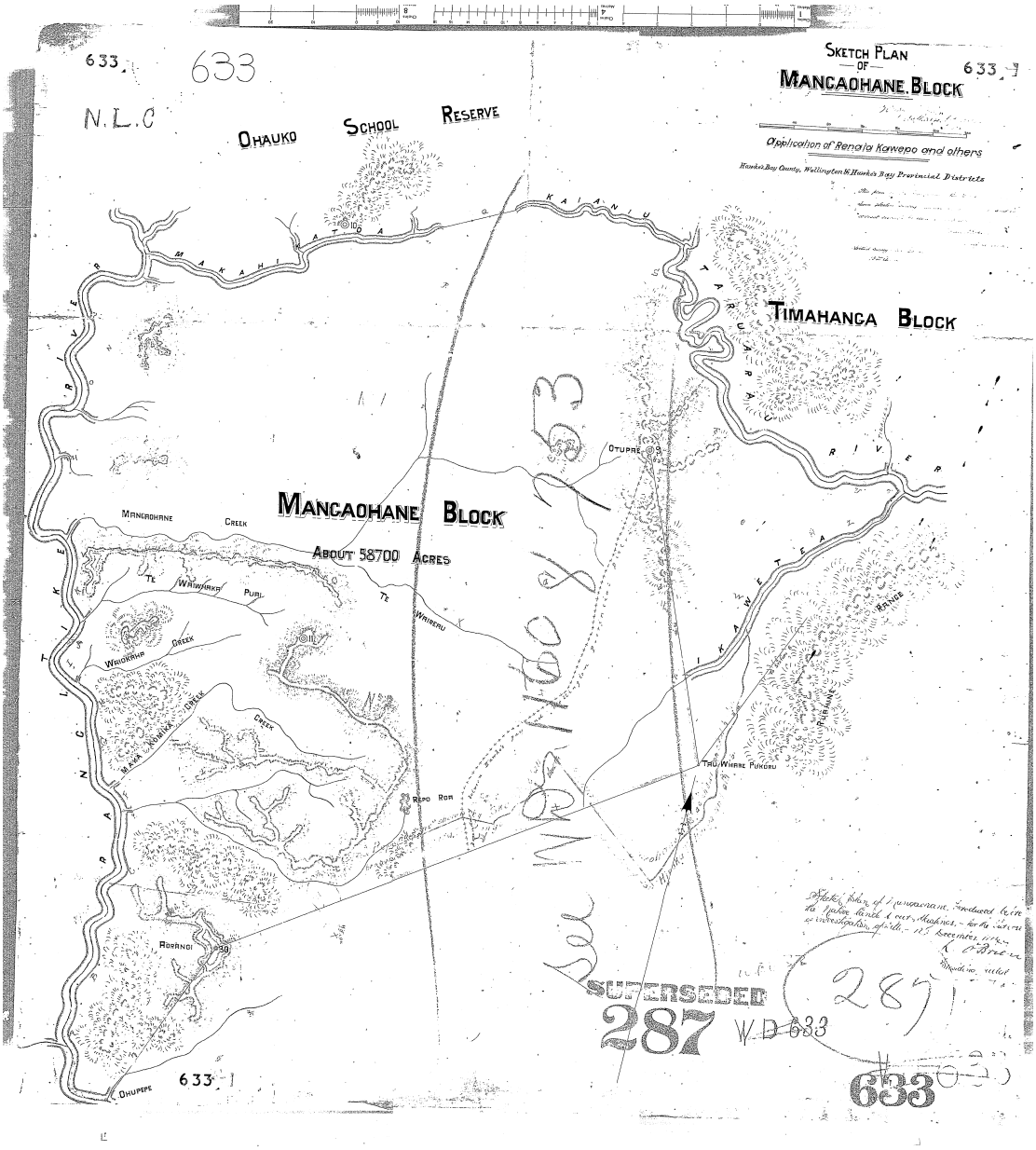

Figure 7: ML 633: the sketch plan used at the title investigation for Mangaohane

C INITIAL TITLE INVESTIGATION AND REHEARING APPLICATIONS, 1884-1185

i THE TITLE INVESTIGATION PROCEEDINGS

42. The hearing for Mangaohane commenced at Hastings on 18 November 1884 and continued until 27 February 1885 when the Court delivered its decision. The Court comprised Judge O'Brien, presiding, Judge Williams and Assessor Hone Meihana.[28] Renata Kawepo with others had submitted two applications for investigation of title (one of which had been earlier adjourned) and he was represented by Timi Kara (James Carroll), despite Airini Tonore's objections.[29] Paramena Naonao of Ngāti Tuterangi and Ngāti Te Honomokai, who lived at Makokomiko on Mangaohane, was called to state a prima facie case on behalf of Renata. As the hearing progressed, there were four kinship groups who claimed interests in the land:

- Renata Kawepo claimed the entire block through Te Honomokai and Tuterangi;
- Winiata Te Whaaro of Ngāti Hinemanu claimed part of the block south of the Mangaohane stream through Ohuake;
- Ihakara Te Raro and Retimana Te Rango of Ngāti Whiti and Ngāti Tama claimed the land north of the Mangaohane stream through Tamakopiri and Whitikaupeka. Judge O'Brien noted that their names were among those on Winiata's application for rehearing;
- Airini Tonore claimed the entire block through Te Honomokai and Tuterangi.

43. John Sheehan also attempted to set up a claim on behalf of a minor, Araputa Karaitiana, for whom he was trustee under the will of Karaitaiana Takamoana.[30] However, the Court would not allow Sheehan to represent him and there were several exchanges between the Court and Sheehan on this claim.

44. Winiata Te Whaaro was represented by Pene Te Uamairangi and Winiata was the first witness of the counter-claimants to give evidence.[31] Wi Wheko, Pirimoana Te Urukahika, Irimana Ngaho and Utiku Potaka also gave evidence in support of this claim.[32] Their case concluded on 1 December.[33] Heperi Pikirangi of Patea led the evidence in support of the claim by Ngāti Tama and Ngāti Whiti through Tamakopiri

[28] Napier Native Land Court Minute Book 9, 12 November 1884, fol. 33.
[29] Napier Native Land Court Minute Book 9, 18 November 1884, fol. 39.
[30] Napier Native Land Court Minute Book 9, 19 February 1885, fol. 223.
[31] Napier Native Land Court Minute Book 9, 18 November 1884, fol. 41.
[32] Napier Native Land Court Minute Book 9, 19 November 1884, fol. 50; 25 November 1884, fol. 58; 26 November 1884, fol. 71; 27 November 1884, fol. 78.
[33] Napier Native Land Court Minute Book 9, 1 December 1884, fol. 93.

and Whitikaupeka.[34] The other witnesses who gave evidence in support of this claim were Ihaka Te Hau and Ihakara Te Raro.[35] Raniera Ahiko gave evidence for Airini's claim along with Te Teira Takitahi, Eruini Te Whare and Airini herself.[36] Paramena Naonao gave further evidence for Renata but Timi Kara had further witnesses to call when the Court adjourned for Christmas and the hearing was adjourned on 19 December until 9 February 1885.[37] When the Court reconvened, there was a further adjournment of one week and the hearing resumed on 17 February.[38] Further witnesses were called in support of the claim by Renata, including Paora Kauwhata, William Colenso and Anaru Te Wanikau.[39] It does not appear that Renata gave evidence during the hearing. Each of the witnesses were cross-examined by the representatives of the other hapū and questioned by the members of the Court.

45. Before the Court adjourned to consider its decision, it called Raniera Te Ahiko to give further evidence.[40] Hoani Taone, who represented Ngāti Whiti, also asked the Court if Retimana Te Rango could give evidence on behalf of his clients as he had only just reached the Hawkes Bay due to illness. The Court agreed to this request and Retimana gave evidence in support of the claim by Ngāti Whiti and Ngāti Tama.[41] Winiata was also recalled by the Court to give further evidence about the interests of Hinemanu in the land.[42] Some of the agents addressed the Court on their claims before the hearing concluded on 24 February.[43]

46. The Court gave its decision three days later.[44] It began by adversely commenting on some of the evidence given by witnesses:

> We regret that this case has taken so long a time, but in that we hold ourselves not to blame, personal feelings have been imported into the discussion.
> This we regret. In our judgment we shall avoid such topics, and base it upon what in our opinion, are the true abstract rights of the parties.

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[34] Napier Native Land Court Minute Book 9, 1 December 1884, fol. 93.
[35] Napier Native Land Court Minute Book 9, 2 December 1884, fol. 107; 3 December 1884, fol. 115.
[36] Napier Native Land Court Minute Book 9, 5 December 1884, fol. 122; 12 December 1884, fol. 158; 12 December 1882, fol. 165; 13 December 1882, fol. 168.
[37] Napier Native Land Court Minute Book 9, 16 December 1884, fol. 189; 19 December 1884, fol. 208.
[38] Napier Native Land Court Minute Book 9, 17 February 1885, fol. 210.
[39] Napier Native Land Court Minute Book 9, 17 February 1885, fol. 210; 18 February 1885, fol. 215; 19 February 1885, fol. 218;
[40] Napier Native Land Court Minute Book 9, 23 February 1885, fol. 232.
[41] Napier Native Land Court Minute Book 9, 24 February 1885, fol. 234.
[42] Napier Native Land Court Minute Book 9, 24 February 1885, fol. 236.
[43] ibid.
[44] Napier Native Land Court Minute Book 9, 27 February 1885, fol. 237.

47. After setting out the four claims argued during the hearing, the Court noted that the land was originally conquered from Ngāti Hotu and that disputes with Ngāti Kahungunu were not a relevant consideration to customary interests:

> All the parties set up a conquest over Ngāti Hotu, as the original owners of this and other lands, whether there was, and it had anything to do with the title of this land, it is not made clear. Probably there was but it is laid in time so remote that a great deal of the mythical attaches to it.
> It is established to our perfect satisfaction that all other fights and quarrels with Ngāti Kahungunu and others, in no way affected the title to this land.

48. On the claim of Ngāti Whiti and Ngāti Tama to the land north of the Mangaohane Stream, the Court made the following observations:

> It is alleged by some that Tamakopiri, Ohuake and Whiti Kaupeka were contemporary and joined in the conquest of Ngāti Hotu but by the genealogy of Tamakopiri given us it would appear that he existed seven generations before Whiti Kaupeka who married the granddaughter of Ohuake. However, it may be as to that [fol. 239] conquest we do not find these facts controverted.
> First that Whiti Kaupeka came from Mohaka to this district of Patea, some say as a fugitive.
> Second that he married Haumoetahanga then living in the Patea district.
> Ngāti Whiti alleged that this and other lands adjacent were gained by Whiti Kaupeka but from the evidence, we believe that he came onto it through his marriage. Whether by personal character he obtained a leading position we cannot say, but we think that his marriage first gave him a status on this land and his personal character may have strengthened that position.
> Haumoetahanga remained upon the land. Her sister Punakiao on her marriage with Taraia removed to Heretaunga. It is not made clear to us that she returned and, if so, when.
> After Haumoetahanga and Whetu Kaupeka the mana which they possessed came to their son Wharepurakau. Te Honomokai also had an interest through his mother (Punakaiao), asserted apparently by him, as we shall refer to presently. Therefore to Renata Kawepo and his co-claimants, to Airini Tonore and her co-claimants to the descedants of Te Honomokai and to Retimana Te Rango and his co-claimants, with the two just named descended of these ancestors, as shall be found entitled by occupation, we award that part of this block lying north of the Mangaohane stream from its mouth on the Rangitikei River to its source at Otupae, thence in a straight line east to the Taruarau Stream.

49. This part was to be known as Mangaohane No. 1. The Court announced it would issue an order for this part once the list of names was settled and certified plans were deposited.

50. The Court moved to deal with the southern part of the block, noting that several claims included the entire block and that there was ambiguity over the southern boundary of the block:

> In proceeding to deal with the remaining portion of the block we remark for the whole of the block there have been various applications.
> Three in all from Renata Kawepo and his party and five from Airini Tonore and her party, not mentioning others from Ngati Whiti. We note as to Renata Kawepo's

> applications that the first was made on the 22nd August 1881 and that an amended application was sent in on the 31st August 1881. We notice these and this fact of the amended application for the reason that, excepting the first one of the 22nd August 1881 by Renata Kawepo, none of them extended their claim to Ohupepe.

51. The Court was unclear on the reason for the amended application and was also doubtful about the evidence in the southern part of the block. It elected to deal with only part of the land in the application and leave the balance to be considered on a future application:

> Why the amended application was sent in was not to our minds satisfactorily account for and we offer no opinion upon it. We confine ourselves to the remark that in our opinion that the evidence as to that part south of Te Papa-a-tarihuku is not sufficiently clear to justify us in coming to a judgment upon it.
> We shall therefore in our judgment only award such part of the Mangaohane block described in claim No. 172 of the panui of the 9th May 1884, as lies to the south of the portion already awarded by us. (Description given on page No. 14 of above panui application No. 172).
> We leave the part south of Te Papa-a-tarinuku to be decided on a future application.

52. The portion of the block they did deal with was awarded to Renata and Airini and the descendants of Te Honomokai (though the Court was unclear on the nature of his interest in the land):

> As to the part we now adjudicate we have no clear evidence as to when Te Honomokai came to this land. He may have been born at Patea or at his father's place in Heretaunga but that personally and by ancestral right he had influence is clear to us. That influence increased by his marriage with Te Aopupurangi, the granddaughter of Wharepurakau.
> No other in our opinion that their descendants have established a right to that part of this block from Mangaohane Stream to Papa-a-tarinuku and we award it, according to the boundaries and limits already stated to Renata Kawepo and his co-claimant and Airini Tonore and her co-claimants and to such other descendants of Honomokai as shall be found entitled by occupation.

53. This part of the block was to be called Mangaohane No. 2 and an order would be issued once the lists of names were settled and a certified plan was submitted to the Court.

54. The claims of Winiata were 'disallowed' along with those of the descendants of Tuterangi. The Court gave no reasons for this decision.

55. Finally, the Court had two observations on issues relating to occupation. First, only those who descended from the common ancestors and had occupied or used the land would be included in the order:

> In giving our judgement it seems to us necessary to state the ancestors from whom the right to this land accrues.

> But although we give these persons as the ancestors in these two parcels of land we do not necessarily admit all their descendants.
> We limit to such as have a right by occupation. What that occupation should be to entitle must be defined according to native custom in such cases as this in which we have a block of land admittedly not much occupied formerly by inhabitation, which the principal rights exercised were bird catching, hunting, fishing and gathering the fruits of the land.
> Acts like these habitually done as of right and undisputed and before 1840 would in our judgment show a sense of right not left or abandoned.

56. Second, there were circumstances surrounding Renata's occupation of the land in the 1830s and 1840s which had been raised by Airini:

> Before closing we have a remark to make which we would have preferred omitting but it has been in a manner forced upon by the counter-claimant Airini Tonore, who in her address has referred us to judgments of this Court, as defining the rights of claimants where possibly affected by events occuring before and after the Treaty of Waitangi.
> We have referred to them, but we see nothing in them parallel with this case but viewing the career and acts of Renata Kawepo, his gathering together his people to Patea and Heretaunga, rehabilitating them, expelling trespassers, in all these we can see an applicability of the words of the late Chief Judge in one of those judgments, quiting which we shall conclude, it is in the Pukehamoamoa judgment in which Renata Kawepo was a claimant. The Chief Judge says 'When Renata was absent at the north, a prisoner with the Ngapuhi, his people had almost ceased to exist as a tribe, that I have gathered from Tareha's long address as well as from other sources, Renata came back. By his energy and determination he re-established his people we find him active on all sides, and the impressions made on my mind is, that almost the existence of his people, at any rate their organisation as a tribe, is due to the energy and character of Renata Kawepo, it would ill become the Court to overlook a circumstance of that kind.

57. Airini would raise these issues again in applications for rehearing.

58. Work on the lists began as soon as the decision was issued and discussions continued over the next few days. Some matters were submitted to the Court for resolution but they were all completed and passed by 10 March. Airini refused to submit a list so the Court prepared it for her, though it appears she was involved in determining who should be included and who should be left out.

ii REHEARING APPLICATIONS

59. The first rehearing application was prepared on 28 February 1885. A number of people, including Winiata Te Whaaro, Utiku Potaka, Ihakara Te Raro, Retimana Te Rango, Ratatia and others, objected to the Court's decision as they considered it was not based on the evidence presented to the Court. In particular, claims included the entire area of the block but part was excluded from the Court's decision. The Court also allowed Renata's lawyer to participate in the hearing when he had no right to do so. His lawyer was also allowed to sit at the bench with the judges and assessor and

he and the assessor conferred throughout the hearing. Their conductor had been opposed to both his presence in the Court and on the bench but the presiding judge replied that no lawyers were appearing before the Court and Dr Buller could not be compelled to withdraw. Renata's conductor was also allowed to present his case to the Court while their attempts to rely on 'professional assistance' were rejected. During the course of the hearing, they had given evidence of their continuous occupation of the land for generations. The Court had allowed claims through Te Honomokai only because he married Te Aopupururangi and had otherwise denied Te Honomokai had any interest in the land. Indeed, the application alleged that witnesses had acknowledged Te Honomokai's parents had never lived on the land but the Court had decided that he was one of the ancestors for the block. Moreover, Mangaohane adjoins Owhaoko where Whitikaupeka, their tipuna, was recognised. The same people occupied these lands and they could not understand why Whitikaupeka had interests in Owhaoko but not in Mangaohane.

60. On 2 March 1885, W.L. Buller sent a telegram to the chief judge asking for him to hold a hearing on the rehearing applications as soon as possible:

> As many other important cases depend on Mangaohane decision, Williams unwilling to proceed with them till questions raised by Mrs Donnelly's solicitor disposed of. O'Brien goes to Masterton. Would great convenience all parties if you could come down here to hear argument and dispose at once of application for rehearing. Please wire to judges for their opinion on this point. I am asking for Renata and maintaining judgment.[45]

61. The chief judge forwarded Buller's message to Judge Williams and asked him to 'say if you want me'.[46] However, he noted that he would be unable to come to Hastings for at least a fortnight. Judge Williams' response provided a further indication of the issue raised by Airini Tonore:

> Re Mangaohane. Airini has table application for rehearing. Question raised Renata not entitled to any lands having been a prisoner to Ngapuhi. Important should be decided as soon as possible. About thirty cases in same potion. Have declined to hear any until this question is settled. Think I shall have enough other work to last a fortnight or more.[47]

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[45] Buller to Macdonald, 2 March 1885, 23/597 Mangaohane Correspondence File, Maori Land Court, Whanganui.
[46] Macdonald to Williams, 3 March 1885, 23/597 Mangaohane Correspondence File, Maori Land Court, Whanganui.
[47] Williams to Macdonald, 3 March 1885, 23/597 Mangaohane Correspondence File, Maori Land Court, Whanganui.

62. The application for a rehearing submitted by Airini Tonore, Iraia Karauria and Teira Tikatai on 11 March 1885 challenged the Court's decision in Mangaohane given on 27 February 1885. Three grounds were set out. The award to Renata Kawepo was challenged because he was held in captivity at the Bay of Islands for many year prior to 1840 and did not return to the district until the second half of 1844. The application insisted that the Court 'dealing with several claims must consider itself as sitting in 1841 and deal with the case as if the circumstances then existing were existing at the time of the hearing'. The application also challenged any award to Ngāti Whiti and a general complaint about the inclusion of those who have no interest in the land and the exclusion of those who did. The registrar referred the application to the chief judge for his consideration.[48]

63. A further amended application by these three, dated 11 March 1885, was submitted to the Court repeating these two grounds and adding a third. This had been submitted to the Court sitting at Hastings and was forwarded to the chief judge by Judge Williams.[49] This was to supersede the initial application. The third ground stated that 'in settling the list of names of persons entitled to share in the above mentioned block the Court has admitted the names of many people who have no right title interest or claim whatsoever to the said block and has rejected persons who have good right and title to share in the block according to Maori custom'.

64. On 7 March, Carlile and McLean, acting on behalf of Airini Tonore, wrote to Chief Judge Macdonald to request he convene a sitting of the Court to hear evidence relating to the application by their client for a rehearing.[50] The key issue they raised related to the status of Renata Kawepo as a prisoner of Ngā Puhi and his return to the Hawkes Bay in 1845 when he was brought back by William Colenso. The solicitors argued that the issue had only become known to their client following the publication of Colenso's memoir of his visits to the Ruahine ranges. In earlier cases, and the letter referred to Pukehamoamoa, it was assumed he had returned to the Hawkes Bay prior to 1840. They claimed 'that this accounts for his having erroneously been admitted to

[48] Application notes reference to 'Rehearing Book', folio 131. It has not been possible to locate a minute book of the chief judge minute which includes these minutes. The minute books which are available contain earlier or later date ranges.
[49] Judge Williams to Chief Judge Macdonald, 12 March 1885, 23/597 Mangaohane Correspondence File, Maori Land Court, Whanganui.
[50] Carlile and McLean to Chief Judge Macdonald, 7 March 1885, 23/597 Mangaohane Correspondence File, Maori Land Court, Whanganui.

ownership in these blocks'. Carlile and McLean noted that the Court had refused to consider this issue despite a specific request by Airini which followed their advice. They had therefore applied for a rehearing so the chief judge could make a decision. In her submissions to the Court, Airini had relied primarily on other judgments of the Court and supplied extracts of the Court's decisions in Orakei and Paengaroa. She also noted that a woman had been excluded from Pukehamoamoa on 'similar grounds' too. Carlile and McLean argued the matter should be decided as Airini was unable to prepare her lists of names for the order of the Court:

> There are many persons, as you will at once see, who would be excluded from such list of this Court were to follow the invariable rule, and many who names would go in if that rule is to be departed from. Airini consequently acting on our advice left it to the Court to make up her list of names.

65. They expected the lists could be finalised among the people, once a decision on this particular issue had been given by the chief judge. They were most insistent that Airini should be heard:

> We are desirous that you should not decide on the application for a rehearing without giving Airini an opportunity of being heard.[51]

66. Carlile and McLean considered the matter one of general policy for the Court, which would be relevant in other proceedings, and should be settled quickly and promptly.

67. Renata Kawepo sent a telegram to the chief judge on 12 March asking him to convene a hearing to settle the dispute between he and Airini.[52]

68. The question of Renata's status, which had been raised by Airini, was one of the first issues considered by the chief judge following the Court's decision. In April 1885, Chief Judge Macdonald sent telegrams to Judge Puckey and Judge Monro requesting their opinion on a question of custom which related to the Mangaohane block:

> Please wire opinion on following question. Would a native by being taken captive before 1840 forfeit his ownership in tribal estate and if so would he on his release in 1845 thereby resume his ownership?[53]

69. Judge Monro responded with great brevity the same day: 'My opinion is that the native would not forfeit his ownership'.[54] Judge Puckey did so too, offering a very

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[51] ibid.
[52] Renata Kawepo to Macdonald, 12 March 1885, 23/597 Mangaohane Correspondence File, Maori Land Court, Whanganui.
[53] Macdonald to Puckey, 1 April 1885; Macdonald to Monro, 1 April 1885, 23/597 Mangaohane Correspondence File, Maori Land Court, Whanganui.

similar view: 'I do think the captors referred to in your telegram would result in the forfeiture by a native of his land has being taken away against his will cannot be construed into an act of abandonment'.[55]

70. Te Rina Mete's application for a rehearing was prepared on 13 April 1885.[56] She had been excluded from the list of names for Te Honomokai and pointed out that she had an equal right with others who had been included. Others were included in the list of names though they had no claim. She also referred to those of her ancestors who had lived on the block and occupied the settlements at Pokopoko, Mangaohane and Pohokura. She complained that Renata Kawepo was assisted at the hearing by Buller, James Carroll and William Broughton whereas she had no assistance. It was Buller who had prevailed on Renata to leave her out of the title. Like other applicants, she stated that Buller had communicated with the assessor during the hearing and Buller was active in representing Renata during the course of the hearing too. Te Rina alleged that the chief judge was present and saw these activities himself.

71. Ema Retimana also applied for a rehearing.[57] She did not participate in the first hearing as she was ill and could not attend. She was sick for four months and she received treatment from a medical practitioner in Foxton. Her claim was on behalf of Ngāti Hau through Te Ohuake. She also claimed through conquest and constant occupation. Her parents were living on the land in 1840 and she had grown up there. She understood that the Court had awarded the land was awarded to Te Honomokai and Wharepurakau and that she was included in the title through Wharepurakau. However, she denied that she was descended from Wharepurakau and insisted on a rehearing to deal with this so that her rightful interest in the land could be recognised. She would continue to seek a rehearing until one was granted.

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[54] Monro to Macdonald, 1 April 1885, 23/597 Mangaohane Correspondence File, Maori Land Court, Whanganui.
[55] Puckey to Macdonald, 1 April 1885, 23/597 Mangaohane Correspondence File, Maori Land Court, Whanganui.
[56] Te Rina Mete to Macdonald, 13 April 1885, 23/597 Mangaohane Correspondence File, Maori Land Court, Whanganui.
[57] Ema Retimana to Macdonald, 14 April 1885, 23/597 Mangaohane Correspondence File, Maori Land Court, Whanganui.

iii JUDGE O'BRIEN'S REPORT ON WINIATA'S APPLICATION

72. The application for rehearing by Winiata Te Whaaro was referred by the chief judge to Judge O'Brien and Judge Williams for their comment.[58] Judge O'Brien replied with a very detailed report on the hearing.[59] The report runs to seventeen pages and parts of the document are damaged and unreadable. The following description of its contents are based on the sections which are able to be read.

73. In his report on Winiata's application for a rehearing, Judge O'Brien noted that there were four parties in the proceedings:

- Renata Kawepo claimed the entire block through Te Honomokai and Tuterangi;
- Winiata Te Whaaro of Ngāti Hinemanu claimed part of the block south of the Mangaohane stream through Ohuake;
- Ihakara Te Raro and Retimana Te Rango of Ngāti Whiti and Ngāti Tama claimed the land north of the Mangaohane stream through Tamakopiri and Whitikaupeka. Judge O'Brien noted that their names were among those on Winiata's application for rehearing;
- Airini Tonore claimed the entire block through Te Honomokai and Tuterangi.

74. According to Judge O'Brien, the applicants were primarily the second party. His notes of the hearing recorded that initially they claimed the entire block but during his evidence, Winiata described boundaries which included only a small part over which they gave their decision. However, the judge stated that he 'contradicted that statement and made a claim beginning higher up on map, taking in land lying south of the Mangaohane stream excepting a good size piece to the east outside traverse line'.

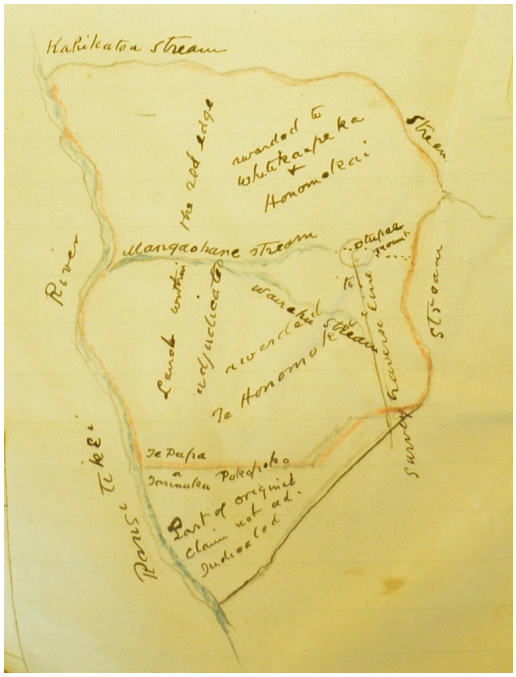

Figure 8: Sketch attached to Judge O'Brien's report on the rehearing applications

75. A rough sketch shows the area north of the Mangaohane stream awarded to

[58] Macdonald to O'Brien and Williams, 6 March 1885, 23/597 Mangaohane Correspondence File, Maori Land Court, Whanganui.
[59] O'Brien to Macdonald, 18 March 1885, 23/597 Mangaohane Correspondence File, Maori Land Court, Whanganui.

Whitikaupeka and Te Honomokai, the central piece south of the stream awarded to Te Honomokai and the area in the south which was not adjudicated on by the Court. The northern boundary of the part not dealt with by the Court started at Te Papa a Tarinuku and the approximate location of Pokopoko on this sketch suggests the judge considered it was either in or near the boundary of the area left out of the Court's decision.

76. Judge O'Brien noted in his report that his understanding of the location of sites was based on the evidence of witnesses as they were not marked on the plan: 'It so appears to me as well as can be made out on a map on which the places are not marked except by witness'.[60] Winiata's ancestor was Ohuake rather than Whitikaupeka who married a descendant of Ohuake.

77. Judge O'Brien began by considering the various reasons given for a rehearing. He rejected the first and referred to the Court's decision not to deal with the part of the block in the south:

> We declined to adjudicate on the part lying south of Papa o Tarinuku going through or by Pokopoko forest, leaving it or a part of it out of our judgment, for reasons which satisfied us that it should be the subject of a future investigation. The evidence seemed to point that that part and the land adjacent to the south and east belonged to these people, Ngāti Pake and Ngāti Hinemanu.

78. He simply rejected the second reason. In explaining the third reason, he referred to a personal dispute between Renata and Winiata:

> There is no doubt that personal dispute unhappily introduced and fomented have at these people by the ears. Renata Kawepo did send this man Winiata with some sheep on this land, and afterwards, when disputes arose, gave him instructions to move off. But that sending might be reconciled either with a sense of some right in Winiata or merely a friendly feeling which did not look too nicely into a question of boundary. I forget whether Winiata had an interest in the sheep but they were principally Renata's.

79. The balance of the long report largely set out, in the judge's recollection, the reasons for rejecting the claim by Ngāti Hinemanu and Ngāti Paki, which were not give in the Court's decision. They are quoted at length for this reason, though they are also a somewhat fragmented account of the judge's thinking:

> As to occupation generally, this is a block which admittedly was not dwelt on - rights exercised over it in former times were bird catching etc. One of the names to this petition, Noa Te Hianga, I wish he had been brought forward. But for some reason he

[60] This sentence is partially obscured by damage to the page but this is the best meaning which can be attributed to the sentence.

> seems to have been kept out although as I have been informed present at the hearing. His name was introduced into the block Ohaoko to the north. That block passed through the Court some years since by mutual arrangement (vide copy minute annexed). It will be noticed that the ancestor there set up was Whitikaupeka. Two, I think, of the witnesses in this case did say that that block and this were one and the same. We were in doubt as to whether Whitikaupeka ought not to have been declared the ancestor in this case. But the general consensus of evidence left no doubt on our minds that that ancestral line was in Ohuake not Whitikaupeka who we were satisfied was a visitor or fugitive from Mohaka. That he came to Patea and married a female descendant of Ohuake named Haumoetehanga. All these petitioners themselves set up Ohuake for the southern portion. And it was only Ngāti Whiti and Ngāti Tama who set up Whitikaupeka and Tamakopiri for the northern piece. Although they say in Reason 7 that they set up Whitikaupeka. I note particularly as having done so Winiata Te Wharo, Utiku Potaka, Pirimona and Irimana. These were witnesses that Ohuake was the true ancestor. However, they reconcile their sworn statements to that effect with No. 7 I cannot say. In fact the Ngāti Whiti and Ngāti Tama also admitted that Ohuake was the ancestor for the piece lying to the south of the Mangaohane stream.
> I give a genealogical table showing the coming of Whitikaupeka.
> Some of the Ngāti Whiti witnesses stated they had a claim on the piece south of the Mangaohane stream under Ohuake.
> Noa Te Hianga is one of these petitioners. Although not produced, he was allied with Winiata and the Ngāti Pake. Winiata says 'I know nothing of the land north of the Mangaohane stream. Renata, Noa and Ngāti Whiti can speak of it'. And he gives as reason why he did not prevent Renata's sheep crossing to the south of it 'as Noa and he were on friendly terms'.
> Ohuake lived about 10 generations ago.

80. The judge proceeded to respond to some of the other allegations in the application:

> Reason 5. Renata Kawepo was incompetent to conduct his case and we only did what was just to enable him to lay his case properly before the Court's. These reasons are on a par with the mode of carrying on case; a lot of puerile matters introduced overlaying the true points. As to the refusal of professional assistant to these people I will only state that they had a conductor who apparently considered himself fully equal to the business. I have no note of such application. It may have been.
> Reason 6. Reference to our judgment will show that this statement is not correct.
> Reason 7. Vide remarks ante upon this.
> Reason 8. It may be correct as stated, but other witnesses to whose evidence the Court attached greater weight said to the contrary. And it will be found further on that one of these people admitted in cross examination to Airini that the name of Te Honomokai was upon the land.
> Reason 9. Requires no answer.

81. The division of the ancestral lands was apparently a difficult question for the Court to resolve:

> The evidence as to division lines between descendants of Ohuake seemed to us wholly to break down. The only thing established which Ngāti Whiti and Ngāti Tama claimed part north of the Mangaohane stream under Tamakopiri and Whitikaupeka. Ngāti Paki claimed a part of it to the south of that stream under Ohuake. And as the parties seemed generally to agree (except Renata Kawepo and Airini) that there was a division there (how may not known) the Court accepted it. Then the difficulty came. Tamakopiri and Whitikaupeka had been set up in Ohaoko. But if this block were part of that, the same ancestor there ought to be the same ancestor here - to the whole - but the whole was not claimed under Whitikaupeka and Tamakopiri, and we were of opinion that his descendants came in by his wife, a granddaughter of Ohuake and Haumoetehanga. If Whitikaupeka was the ancestor how came in any of Ohuake's

descendants on the remainder of the block, because the evidence was pretty well the same as to the whole. And note the evidence in Oruamatua herewith. That was a block across the Rangitikei river to the westward of it and of this block. The evidence in the writing down has been jumbled so far as the genealogy is concerned. Te Pokaitara is made to appear the father of Te Aopupurangi which was not the case. He was a Ngāti Whiti. Te Aopupurangi was the wife of Te Honomokai and a grand daughter of Te Wharepurakau. And the names following hers, Te Orai, Te Mumuhu etc are the descendants of that marriage. In that case I notice that Noa Te Hianga under the name of Noa Te Huke was a witness, but his name is not put apparently into the title.

The principal if not the only doubt in my mind was as to this man. He was not put forward although (as I heard afterwards) present in Court. He was mentioned by Utiku Potaka as a Hinemanu and would therefore come among the Ngāti Pake and Ngai Te Ngahoa (alias Ngāti Hinemanu) who made no claim to the part north of the Mangaohane stream. If Whitikaupeka had been found to be ancestor giving the title for that part, he might have been admitted as a descendant. But he is not a descendant of Wharepurakau or of Honomokai both of whom we found to be the ancestors for that part of Honomokai alone for the southern piece.

Speaking as to division of the block in former time Winiata says 'Ohuake divided the land at the Mangaohane stream. He took both sides of it. I don't know why a line was run. This was a dividing line between the descendants of Ohuake'. He is asked 'Who took to the north of it? ie the Mangaohane stream. Reply 'Some of the descendants of Ohuake'. Q. 'Is he the only one you can mention?' A. The only one I know of'. Q. 'How many children had he?' A. Two. Q. Which got the southern portion?' Te Rangiwakamatuku got the land to the south of the Mangaohane stream'. Utiku is a descendant. Subsequently witness says that both of the two sons of Ohuake had equal rights all over the land. Q. 'Then I suppose these boundaries had now effect?' A. 'Yes I consider they had. Pokopoko is my only place of residence within this block'. Memo. It was here we drew our boundary line leaving out part of land in our judgement.

Further on speaking of an ancient conquest he says 'My hapū was Whitikaupeka, Hinemanu and Ngāti Pake, were all names of my people at that time'.

There is no doubt that formerly and in ancient times especially these people pulled together. Now owing to quarrels each party is put upon it rights to prove them. In a case like this block it is difficult to say where rights exactly begin and where they end. Inter-marriage admits of Protean shapes and a claimant may belong to many hapus. But electing (on a hearing) an ancestor and his hapū he stands or falls by them so far as the finding of the Court in their favour or otherwise goes.

82. The judge was critical of the evidence given by other witnesses for Ngāti Paki too:

The second witness of Ngāti Pake was Wi Wheko who really knew nothing of the land. He merely could speak as to some gaps in genealogy unsupplied by Winiata. My note of his evidence is that he contradicts himself.

The third witness of Ngāti Pake was Pirimona Te Urukahika one of the petitioners. He claimed the whole as set out in Renata's boundaries which were read out to him. He said 'I have heard these boundaries read. I claim the whole from Ohuake'.

Subsequently in reply to his conductor he give as his boundaries a large area including much more than this and to the eastward of it. Again subsequently on resuming after the midday adjournment he says 'I made a mistake in my boundary. The northern boundary should be the Mangaohane stream'. He says 'Ohupepe (left out in our judgement) I have some claim to it, but it really belongs to Noa Te Hianga. He is co-owner with me over the whole. I do not know of any others who have a claim to the land. Neither do I know of any other ancestor'. 'To the southward of this block I consider that Noa and I have a right' and examined by Airini 'Point out on the map what you claim?' A. 'I don't want to do so'. Q. 'Why?' A. 'It is too much trouble, I don't know about the survey or the map or heard of it until I saw the gazette'.

Remark. This witnesses claim differs from Winiata in that he takes in the piece left out by Winiata to the east of a survey traverse line shown on map and on this sketch

> approximately. He claims all to the south of Mangaohane stream. Subsequently he says 'I adopt Winiata's boundaries (which leave it out) and examined by Airini 'This morning you claimed the whole?' A. 'I speak of what I consider my own. I consider that Ohupepe belongs to me' (left out in judgement). Witness points it out on map where the name is found written on or close to boundary. Q. Are you not aware it is outside this block?' A. The greater portion of it is, but that I point to is in'. Witness points to other places on map. I remark here, I have not the map with me so as now to be able to say positively whether all the places mentioned by the witnesses are outside or inside our judgment. But these witnesses cannot precisely mark the exact position of a place on a map.
>
> After disputing rights of certain of Te Honomokai's descendants through whom Renata and Airini claim, this witness in reply to question by Carroll 'Then through what descent do you say that Renata has a right to a portion of this block?' Witness discuss, asked to answer, replied 'Through his descent from Te Honomokai'. I remark here, a chief named Te Wanikau who was alive when Renata was a young man, seems by general admission to have been a man having the principal influence in his day. He was a descendant of Te Honomokai. Pirimona further says 'I have heard it was Tutemohuta who divided the land among his descendants'. Q. 'To whom did he give the land north of the Mangaohane stream'. A. 'To Wharepurakau and others. That is what I heard from the younger brothers of my father. Irokino (his sister) got the land to the south' (of stream). And then immediately after he say 'I cannot say what ancestor made that division. All I have heard was that Tuterangi (a descendant of Hinemanu who was a sister of Te Honomokai) was allotted Tikitiki outside this block'.
>
> Irimana Ngahou next witness for Ngāti Pake say 'I reside at Pokopoko' (this is where the judgment draws the line). 'I claim from Ohuake. Winiata's evidence is right'. He names places on block as far as Mangaohane stream. This witness claims to the eastward of the traverse line, left out by Winiata. He says 'We have the same right over that portion to the east of the traverse line from Otupae mountain to Ikawetea stream. Ngāti Pake, Ngai Te Ngahoa have a claim to the whole'. Yet he says immediately after 'I heard the boundaries given by Winiata. I think they are correct'. Witness mentions places.

83. Judge O'Brien also noted that Ngāti Whiti and Ngāti Tama came through Ohuake:

> Remark. Ngāti Whiti and Ngāti Tama as before stated set up Tamakopiri and Whitikaupeka. They changed their conductor two or three times. The last one was a young man named Hoani Toane, appointed on 26 November, case commenced 18 November. On 27 November I have this minute 'In reply to Court Hoani states that under Ohuake he does not claim the whole. As he is not prepared to stated at once what part his party claims under Ohuake and what under the other 'tupuna', the Court at his request allows them a few minutes to go outside and consult. On his return Hoani states that they claim under these ancestors, ie that north of the Mangaohane stream under Whitikaupeka and the part south of it under Ohuake'.
>
> This was a new departure. In truth claimants under Whitikaupeka for whom this person acted confined themselves to the northern part. The claimants from Ohuake for the southern part would range under Pene Te Uamairangi the conductor for Ngāti Pake ie claimants under Ohuake.
>
> Irimana Ngahou says in his evidence in chief 'Ngāti Whiti branched off from Wharepurakau, Ngai Te Ngahoa branched off from his sister Irokino descended from her'. He says 'the division at Mangaohane Stream was made in Wharepurakau's time'. Another version. 'Ohuake was the ancestor through whom Ngāti Whiti and Renata are entitled to the northern part of this block.
>
> Our judgment is based on the ancestral line as being in Ohuake, not Whitikaupeka and this witness agrees so far and yet the petitioners of whom he is one say in No. 7. 'Whitikaupeka is the person through whom they claim'.

84. In a rather abrupt digression, the judge noted the manner in which some of the names were recorded in the application and referred to 'outside influence' (though without explaining who that might have been):

> Memo. I have just noticed among these signatures that of Retimana Te Rango on a fly sheet. Winiata and Utiku Potaka's signatures attached twice as separate sheets. Many of these signatures seem written by the same hand and that not of a Maori. I have heard of outside influence being brought to bear in this matter.

85. Returning to the Ngāti Whiti claim, his intention appears to have been to show that the parties in the proceedings were all agreed that Ohuake was the ancestor for the land and that it was divided among his descendants:

> I extract from evidence of one of these signatories, a principal Ngāti Whiti chief, Retimana Te Rango on 24 February. He says 'I make a claim to this block. I claim through Ohuake but not on this block. My claim on this block is through Whitikaupeka and Tamakopiri. Through them I claim. I claim to the north of the Mangaohane stream through ancestry and conquest. As to the part south of the Mangaohane stream I have a claim through ancestry but not through occupation. The ancestor is Ohuake down to Haumoetehanga his descendant (she married Whitikaupeka) but I lay no claim to that part not having a right. I am simply a descendant of the original ancestor'.
> Going back from this digression as I go along the evidence I notice that Irimana Te Ngahoa after stating that Ohuake was the ancestor through whom Ngāti Whiti got their right says that Ohuake divided the land between his two sons Tutemohuta and Te Rangiwakamatuka, but from evidence of other witnesses, notably of Raniera Te Ahiko, an old chief, who was witness for Airini and also practically for Renata Kawepo, we were satisfied no division had been marked out as stated. Raniera says 'these divisions were never heard of until the late disputes about sheep'.
> Irimana says in reply to a question by Airini 'Are you not aware that the great authority over this land is from Taraia's son Te Honomokai?' 'I have heard it'.
> In re-examination after the midday adjournment, he said 'I answered her question that Honomokai's mana rested on Heretaunga (Napier side of Ruahine ranges) alone'. But the Court was careful to ask the interpreter if he had so stated. The reply was as I have written it.
> Again to the question 'You have said the mana descended to Honomokai, on which of his descendants did it rest?', he says 'To his hapū'. Q. Who was the chief of Te Rangi Honomokai? A. 'Renata Kawepo'. Q. 'Did that man descend to him'? A. 'Yes, no portion of it descended to me'.
> Irimana gives evidence of personal acts, catching in eels in Rangitikei and Mangaohane streams and bird snaring and once killing pigs on part of this block. But to these we do not attach undue import. His brother in law, Maru Te Wanikau, is an admitted owner and lived just across the river. This witness lived with him some time. But when a child he was also on the block, whether merely travelling I cannot say. He says 'Of my personal ancestors none are buried on this block. They are all at Te Awarua', a place some distance outside to the East.
> Again he says 'Renata request Winiata to leave Waiokaha (whither Renata had sent him with sheep) where he was pasturing sheep on this block. Winiata did so and came to live at Pokopoko', that place where our judgment draws the boundary.

86. Judge O'Brien gave a detailed account of the evidence of Utiku Potaka for Ngāti Pake and the descendants of Ohuake:

> The next witness for Ohuake (Ngāti Pake) was Utiku Potaka. 'Was on block when he was quite young and again after he was married. Heard it belonged to

> Rangiwakamahuta of whom he is a descendant (second son of Ohuake). Heard the old people say that ancestor had a right to the block. Witness describes the places he witness lived at. But I am of opinion these were merely visiting or hunting excursions, if not merely travelling over the block, vide post, on the first occasion places and their names were pointed out to him. One of those with him was Noa Te Hianga, one of the petitioners, who he says belonged to Ngāti Hinemanu. There were seven of them. 'No one living at Waiokaha when we went there'. 'The only persons who ever went there used to come from Patea' meaning other parts of Patea, a district of that name including, according to some, this block. Subsequently after his marriage witness came again and stayed in same places'. Noa Te Hianga and these same 'people told me that Pokopoko was a place where all the people assembled to hunt rats and snare birds'. Pokopoko is where our judgement draws the boundary line as complained in reason 1. 'I also heard at that time that there were a great many tribes collecting food on this block. Also that the whole of that district bounded by the Kaimanawa ranges and down as far as Te Awarua (outside to the east of this block) and Patea (of which some say this block is part) belonged to Ohuake'. Then he mentions some of his descendants. Now, in reason 7, he lays the ancestral right in Whitikaupeka.
> 'The second time I went, we did so to collect food for a marriage feast of Raita Tuterangi. She was married to Noa Te Hianga. Ngāti Pake and some Ngāti Whiti collected it. It was also a return feast for another given to celebrate same marriage. Ngāti Pake, Ngāti Whiti and Ngāti Hinemanu are the only hapus who lived on that block till now'.
> It will be noticed I am quoting from the Ngāti Pake evidence given them the full benefit.
> Utiku again says that descendants of Wharepurakau took the hapū name of Nga Te Whiti and again 'I have already said that I consider the descendants of Ohuake have a right to this block'.
> Question by Court. 'All the descendants?' Witness pauses. Question repeated. 'If it had been my case I would have said yet, but it is the case of another person'. Question pressed. 'I consider some have a right and other have not'. 'When I first went on to this block I was old enough to hunt pigs. There were no cultivations, no inhabitants, but the people of the Ngāti Whiti and Ngāti Pake were in the habit of hunting birds' etc.
> He had been previously asked 'Have Ngāti Whiti and Ngāti Tama a right to this block?' and he answered 'Let them prove their right'. Subsequently after being pressed, he says 'I consider they are right'.
> In cross examination by Airini he says 'I am aware that your tribe name on this block is Ngāti Honomokai. I did couple Te Honomokai's name with Ngāti Whiti and Ngāti Pake'.
> Again to Airini he says 'I am always in the habit of allowing all to come in whether they can prove occupation or not'.

87. Judge Williams provided a much briefer report on Winiata's application for a rehearing but was dismissive:

> Judge O'Brien has requested me to supplement his remarks upon this application with any I may wish to offer on the same subject, but he entered so fully into the question that I feel it would be superfluous for me to make any additions, beyond perhaps remarking that the reasons given by the applicants are extremely frivolous, and in some instances devoid of truth.
> The judgment when delivered was accepted by them without a word. This is contrary to the Maori mode of dealing with a question when the parties really feel themselves aggrieved. In such case, an intention to apply for a rehearing would have been at once stated. That they were disappointed there can be doubt.
> The application is not a Maori production, and I cannot but think that European influence has been at work, prompting them natives to do that, which otherwise they had no intention of doing.

> Along and patient hearing was granted to all parties, and I fail to see that these natives have shewn sufficient cause why our judgment should be disturbed.[61]

88. On Te Rina Mete's application for rehearing, Judge Williams noted that she attended the entire hearing and claimed inclusion in the lists of names of both Ngāti Whiti and Renata Kawepo.[62] Evidence on her claim for inclusion was heard by the Court and it was rejected. According to Judge Williams, it was 'found wanting in occupation'. He could not 'recommend that her claim should be reinvestigated on the ground set forth in her petition'. However, he thought she should be able to participate if a rehearing was ordered on the basis of one of the other applications.

iv CHIEF JUDGE MACDONALD'S DECISION ON THE APPLICATIONS

89. The chief judge dealt with three of the applications for rehearing in a decision dated 1 May.[63] The first was by John Sheehan on behalf Araputa Takamoana. He had specified five grounds for a rehearing:

> 1st. The person beneficially entitled or claiming so to be is a minor.
> 2nd. That as trustee and guardian claim the right to appear on his behalf.
> 3rd. That my application to be heard was refused by the Court and I was informed that the boy must appear by native agent.
> 4th. That at that time I could not procure such native agent, that only the boy himself was examined by the Court and he could not be expected to give an account of his claim.
> 5th. That consequently he was unrepresented and the judgment how ever otherwise it might be correct ignored him.

90. The chief judge thought it regrettable that Sheehan's client was not appropriately represented at the hearing but he had been assured by the judges that the claims had been considered and that the minor had no interest in the land:

> While regretting Mr Sheehan's cestui que trust was not satisfactorily represented at the original hearing no blame for it attached to the other parties to the proceeding who ought not therefore to be put to the cost of a new trial without it being shown that injustice had resulted and on that point there is the assurance of the presiding judges that they of their own motion so far investigated the case as to satisfy themselves that the youth had no title.

91. He also noted that Sheehan had no right to apply for a rehearing even on behalf of minor for whom he was trustee who was Maori:

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[61] Williams to Macdonald, 28 March 1885, 23/597 Mangaohane Correspondence File, Maori Land Court, Whanganui.
[62] Williams to Macdonald, 28 April 1885, 23/597 Mangaohane Correspondence File, Maori Land Court, Whanganui.
[63] Decision of Chief Judge J.E. Macdonald on Mangaohane, 1 May 1885, 23/597 Mangaohane Correspondence File, Maori Land Court, Whanganui.

> Further than this however I could not have granted a rehearing on the application now under consideration for while it is signed 'John Sheehan Trustee etc' my jurisdiction is limited to cases in which (section 47) a native who feels himself aggrieved makes application in writing, while Mr Sheehan is not a native. While refusing or rather while disclaiming jurisdiction to grant a rehearing on this application I may express a hope that the judgment complained of may not be taken as a precedent adverse to the youth's interests in other cases.

92. The chief judge considered there were three points raised in Winiata's application which required his attention:

> (One) That the whole block was not dealt with.
> (Two) That Dr Buller who was acting for Renata Kawepo the present respondent sat near and spoke to the assessor during the hearing.
> (Three) Allegations of particulars wherein, the judgments was contrary to the evidence'.

93. He rejected the first as 'the Court is expressly authorised by the Act to do what is complained of'. On the second, he was reassured by advice from Judge Williams even if he thought Buller's conduct inappropriate:

> As to the second point though it would have been better if Dr Buller had chosen some other resting place or being where he was had not addressed the assessor I do not think that on the ground now under consideration the judgment should be defeated because luckily Judge Williams is able to say that he heard all that passed between Dr Buller and the Assessor and that the conversation had no relation to the business in hand.

94. The third he simply rejected: 'As to the third point in which the appellant set up their opinion against that of the Court I accept the judgment as being in accordance with the evidence'.

95. The last rehearing application was that of Airini. He summarised her complaints in three points:

> 1st. That the judgment of the Court is so far as it awards Renata Kawepo a share in the above block with other claimants is wrong for the following reasons:
> (a) That the said Renata Kawepo for many years prior to 1840 and up to the latter part of 1844 was in captivity in the Ngapuhi country in the Bay of Islands.
> (b) That the Native Land Court dealing with the several claims must consider itself as sitting in 1841 and deal with the case as if the circumstances then existing were existing at the time of the hearing.
> 2nd. That the Ngāti Whiti are not entitled to share in the block.
> 3rd. That in settling the list of names of persons entitled to share in the above mentioned block, the Court has admitted the names of many people who have no right, little interest or claim whatsoever to the said block and has rejected persons who had good right and title to share in the block according to Maori custom'.
> In dealing with the first ground the facts as to Kawepo's captivity and return were admitted as alleged and I quite concur in the law as affecting title set up in sub-paragraph (b). But I cannot concur in the contention that the fact of a native owner having been taken captive in war by the enemies of his tribe entailed forfeiture of his interest in the tribal lands as would have ensued had he voluntarily abandoned his

> people and so of his own motion deprived them of his contribution to the defence of the tribal life and property.

96. On this application, the chief judge noted that he had heard submissions from counsel (P.S. McLean) on behalf of Airini:

> On hearing counsel upon the question of a rehearing it was sought by Mr McLean on the part of Mrs Donnelly that he should be allowed to import into the case and substantiate by affidavit an allegation that Renata when captured was not engaged in a fight against the enemies of his tribe but in a civil war whereby he proposed to arrogate to himself the whole tribal land and that his capture was really by the numbers of his tribe who he sought to aggress and their allies.
> It is unnecessary to enquire now what if that state of things had been placed before and accepted by the Court at the original hearing the effect would have been because I think it right to deal with the question of rehearing on the merits of the case put before the Court and not on allegations contradicting the appellant's own original evidence.
> It should be observed that Mr McLean quoted with considerable confidence from former judgments of the Court which lay it down that a case must be now dealt with as it would have the Court been dealing with it in immediately after the year 1840. In its broad sense that doctrine is accepted and no doubt in 1841 the interest of Renata would have been passed over but I think this instance may be taken as one of those exceptions which prove the rule and that there many be such an exception is admitted by both sides when the accession of quantity of interest is admitted as a result of an individual owner dying and leaving numerous issue each of whom would become a like owner as his deceased ancestor.

97. He simply rejected the complaint regarding Ngāti Whiti with the observation that 'no reason has been shown for disagreeing with the finding of the Court in favour of Ngāti Whiti'.

98. He was satisfied that any complaints about the inclusion of Renata or the extent of Renata's interest could be dealt with in any partition of the block and that a rehearing was not justified in consequence:

> As to the third and last point I must confess to an impression that some of the persons were admitted more under the wing of Kawepo than as coming within the pale of occupancy made essential by the judgment. But even had my doubts on the point been confirmed I should hardly have granted a rehearing of such a prolonged and expensive case on a point involving errors which if existing at all can be practically dealt with on division of interest.
> There is in the judgment a quotation of the no doubt well deserved panegyric bestowed in the 'Pukehamoanoa' decision upon Kawepo the usefulness of which however in relation to the matter in hand I fail to detect.
> This quotation seems to have been made in reference to the contention of loss of title result from captivity but as the effect contended for was held not to have ensued reference to conduct however meritorious which, taking place after 1840, could not as Dr Buller fairly put it 'either augment or detract from his right' was unnecessary and possibly misleading.
> There is a matter to which it may be useful that reference should be here made.

99. The chief judge's final observations on the applications for rehearing were perhaps the most important. While he elected not to make a definitive finding on the point, he

appeared to suggest that he had no jurisdiction to deal with the applications as the Court might not have made orders the rehearing applications challenged:

> It transpired that it is in the contemplation of the Court, moved by the parties I believe, to hereafter proceed under section 34 Native Land Court Act 1880 to division of the land adjudicated on.
> Now it appears to me that this dilemma presents itself. If the Court has made orders under section 25 then section 34 does not authorize it to re-open the proceeding for the purpose of division while if it has not made orders under section 25 or 34 'the decision' in the case has not been given and the applications for rehearing and consequence action were premature and irregular.
> Further if the Court has not, under the circumstances, jurisdiction under section 34 the consent of parties cannot confer any. I shall refuse a rehearing.

100. On the basis of these comments, it would be at least eight years before there were completed orders to be challenged by applications for rehearing. Moreover, although he did consider the substantive issues raised in the applications, it would appear his reason for rejecting them was entirely technical.

101. In mid-May, the Registrar forwarded a telegram from Carlile and McLean to the chief judge regarding his decision in Mangaohane:

> … in your judgement speaking of the interest of deceased owner you say each of issue takes like interest with such deceased owner. We interpret that as meaning that supposing Erena and Renata to have been equal owners each of Erena's direct issue would now take one equal share with Renata. The others dispute this. Please reply if we are right.[64]

102. Chief Judge Macdonald sent Carlile and McLean the following message:

> I understand such to be the law. Dr Buller certainly so laid it down and Judge Puckey tells me it is so.[65]

103. Carlile and McLean replied that the chief judge's decision on the rehearing applications had not been given in Court but published in the local newspapers with the consent of Judge Williams.[66] They also asked if the papers could report 'that our interpretation has been referred to you and that you agree with it'? To which the chief judge responded promptly: 'Certainly not'.[67]

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[64] Hammond to Macdonald, 12 May 1885, 23/597 Mangaohane Correspondence File, Maori Land Court, Whanganui.
[65] Macdonald to Carlile and McLean, 13 May 1885, 23/597 Mangaohane Correspondence File, Maori Land Court, Whanganui.
[66] Carlile and McLean to Macdonald, 13 May 1885, 23/597 Mangaohane Correspondence File, Maori Land Court, Whanganui.
[67] Macdonald to Carlile and McLean, 13 May 1885, 23/597 Mangaohane Correspondence File, Maori Land Court, Whanganui.

104. A formal order dismissing the applications for rehearing was prepared and signed by Chief Judge Macdonald in Wellington on 28 May 1885.[68] In June 1885, the registrar of the Native Land Court wrote to the under secretary of the Native Department to request publication in the New Zealand Gazette of refusals by the chief judge for a rehearing in the Mangaohane block.[69] They were printed in issue 38 of the gazette.

v OTHER REHEARING APPLICATIONS

105. On 8 June, the Registrar of the Court at Auckland sent a telegram to the Chief Judge in the Hawkes Bay to inform him that although he had dismissed a number of applications for rehearing, there were still two at the office in Auckland which had not been dealt with.[70] However, on 11 June, the chief judge issued a notice under the Native Land Laws Amendment Act 1883. Section 7 of the act prohibited all negotiations in any Maori land:

> It shall not be lawful, after the passing of this Act, for any person to negotiate, either on his own behalf or as agent or trustee for any other person for the conveyance, transfer, purchase, lease, exchange, or occupation of any Native land, or any estate, right, title, or interest therein, until forty days after the title to such land shall have been ascertained.
> Such title shall be deemed to have been ascertained when –
> (a) The time within which a rehearing may be applied for under 'The Native Land Court Act, 1880,' has elapsed without any application having been made; or
> (b) All applications have been refused; or
> (c) Judgment is given on a rehearing.
> Forthwith upon the title to any land being ascertained as aforesaid it shall be a duty of the Chief Judge of the Native Land Court to cause notice to be given in the *Gazette,* setting out that the title has been so ascertained, together with the name by which the land is known, and the day when dealings with such land will cease to be prohibited under the provisions of this Act.

106. The notice, issued before the chief judge had lawfully dealt with all the applications for rehearing, stated that 'on the 10th day of June, 1885, the title to the land mentioned in the scheduled herein became, within the meaning of the said Act, ascertained; and, further, that dealings with the said land will cease to be prohibited by the provisions of the said Act on the 21st day of July 1885'. The land described in the schedule was 'So much of the block of land known as Mangaohane as was the

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[68] Bridson to Macdonald, 10 November 1885, 23/597 Mangaohane Correspondence File, Maori Land Court, Whanganui.
[69] Bridson to the Under Secretary, 4 June 1885, J1 Box 531 1895/6, Archives New Zealand, Wellington.
[70] Hammond to Macdonald, 8 June 1885, 23/597 Mangaohane Correspondence File, Maori Land Court, Whanganui.

subject of the decision of the Native Land Court given on the 10th day of March, 1885'. It was published in the *New Zealand Gazette* on 18 June 1885.[71]

107. Despite issuing this notice, the chief judge was well aware that there were still applications for rehearing to be considered. In a further telegram just over a week later, the Registrar identified the applications which were those of Te Rena Mete and another of Ema Retimana and Rena Maikuku. Judge Williams had reported on the first application.[72] The Registrar also noted that he had not distributed notices under the 1883 act at that time. The Court office at Auckland forwarded the rehearing applications to the chief judge a few days later and asked for direction on the publication of the notices. These could not be issued until all the applications for rehearing had been dealt with. The chief judge asked for the applications to be forwarded to him in Wellington.[73]

108. Later in June, the registrar at Auckland sent the chief judge a telegram to the Hawkes Bay. He noted that a notice had been issued in Wellington dismissing applications for a rehearing in Mangaohane but advised that there were two further applications at his office in Auckland which had not been dealt with.[74] On 23 June, a clerk in the Native Land Court office in Auckland sent a telegram to the chief judge asking him if notices relating to Mangaohane should be published:

> Mangaohane. Rehearing applications posted. Shall I now send gazette notice for publication or will you forward. If all rehearing applications were dismissed by you on 28 May, gazette notice should have been prepared 10 June.[75]

109. Towards the end of 1885, Utiku Potaka also wrote to the chief judge about the survey of Mangaohane.[76] He was concerned that work was underway to survey the block for a forthcoming partition hearing and for the purposes of sale when a rehearing had not been held. He stated: 'The law says, if a person who took part in bringing land before the Native Land Court dies, he has a right to appeal for a hearing'. He asked the chief

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[71] *New Zealand Gazette*, 1885, p. 782.
[72] Hammond to Macdonald, 19 June 1885, 23/597 Mangaohane Correspondence File, Maori Land Court, Whanganui.
[73] Macdonald to the Registrar, 12 June 1885, 23/597 Mangaohane Correspondence File, Maori Land Court, Whanganui.
[74] Hammond to Macdonald, 18 June 1885, 23/597 Mangaohane Correspondence File, Maori Land Court, Whanganui.
[75] Edger to Macdonald, 23 June 1885, 23/597 Mangaohane Correspondence File, Maori Land Court, Whanganui.
[76] Utiku Potaka to Macdonald, 14 December 1885, 23/597 Mangaohane Correspondence File, Maori Land Court, Whanganui.

judge to conduct a thorough investigation. He had spoken to the Native Minister and to the chief judge about a rehearing and considered any consequences to be no fault of his: 'If trouble should rise on this land, the fault will not be mine, because I have already spoken to you about the dispute of this land'. The registrar noted that the refusal to allow a rehearing had been published in the *New Zealand Gazette* on 11 June 1885 (No. 38).[77]

[77] Bridson, File Note, 25 January 1886, 23/597 Mangaohane Correspondence File, Maori Land Court, Whanganui.

D SURVEY AND PARTITION

i INITIAL ATTEMPTS TO COMPLETE THE SURVEY

110. W.L. Buller was keen to move to the division of the block from early June 1885. He advised the chief judge that Airini and Renata had both submitted applications for partition. Buller was planning to send the chief judge 'written consent of the third party in the case' and hoped to have the notice published in the gazette. He also advised the chief judge that Judge Williams was 'willing to take it if required by you'.[78] In response to a query by the chief judge, the registrar at Gisborne subsequently advised that he had received three applications for rehearing.[79]

111. A few days later, the chief judge asked the Registrar at Gisborne if he had received any applications for partition of Mangaohane 'lately'.[80] There were four applications and, at the chief judge's request the following day, these were sent to him.[81] At the end of June, Retimana Te Rango, Hare Tauna and others wished to know which of the two survey plans prepared for the Mangaohane block had been accepted by the Court.[82] According to the note, sent care of a surveyor of Wellington named E.J. Campion, a survey had been prepared for Renata Kawepo of Napier and other for Hiraka Te Rango of Patea. Court officials at Auckland were unable to answer the question and requested advice from the assistant surveyor general who was also unable to provide an answer as the matter was dealt with by the chief surveyor at Wellington.[83] It would appear they decided to tell Retimana to contact the chief surveyor at Wellington.

112. In August 1885, Utiku Potaka and Winiata Te Whaaro wrote to the chief surveyor at Wellington asking when the authority to survey the Mangaohane block was issued.[84]

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[78] Buller to Macdonald, 8 June 1885, 23/597 Mangaohane Correspondence File, Maori Land Court, Whanganui.
[79] Macdonald to Grey, 11 June 1885; Grey to Macdonald, 11 June 1885, 23/597 Mangaohane Correspondence File, Maori Land Court, Whanganui.
[80] Macdonald to Grey, 11 June 1885, 23/597 Mangaohane Correspondence File, Maori Land Court, Whanganui.
[81] Macdonald to Grey, 12 June 1885, 23/597 Mangaohane Correspondence File, Maori Land Court, Whanganui.
[82] Retimana Te Rango, Hare Tauna and others to the registrar of the Native Land Court, Auckland, 30 June 1885, 23/597 Mangaohane Correspondence File, Maori Land Court, Whanganui.
[83] Smith to Edger, 6 July 1885, 23/597 Mangaohane Correspondence File, Maori Land Court, Whanganui.
[84] Utiku Potaka and Winiata Te Wharo to the Chief Surveyor, Wellington, 8 August 1885, LS-W1 2361 Box 56, Archives New Zealand, Wellington.

They were advised that the deputy chief surveyor had issued the authority on 17 January 1881. It was given to Kennedy on an application by Hiraka Te Rango and others to the Native Land Court. The chief surveyor was not aware of any plan in August 1885 which had been produced under the authority. A sketch plan had been prepared by the Ellisons which was approved provisionally in April 1883. However, discussions among officials suggested that a copy of the sketch plan should not be provided to Winiata without the consent of the surveyor as they were unsure if he had been paid.

ii NEGOTIATIONS IN PROGRESS

113. On 22 September 1885, George Preece, the Resident Magistrate at Napier and trust commissioner under the Native Lands Frauds Prevention Act sent a telegram to the registrar of the Native Land Court at Gisborne if notices under s 7 of the Native Land Laws Amendment Act 1883 had been issued for the Mangaohane blocks.[85] He needed the gazette notice and the date of the decisions of the Court regarding the ownership of the blocks. The registrar advised that he was unable to provide information about the gazette notice:

> I cannot say if notice has been given. These notices are prepared in Auckland generally and signed by the Chief Judge, then forwarded to Wellington for Gazette. Sometimes this is done in Wellington if Chief Judge happens to be there. I only casually see anything of that sort in Gazette. Date of order or Mangaohane is 10 March 1885. That of No. 1 same date.[86]

114. Among the documents submitted to the trust commissioner was a declaration by W.L. Buller made on 19 September 1885. Buller was acting for those negotiating a transaction involving the Mangaohane block. The parties were Renata Kawepo and others and Richard Townsend Warren of Owhaoko. According to Buller's declaration, a price of ten shillings per acre had been agreed no matter what area was awarded to them though it also stated that a purchase price of £1,000 had been agreed once a deed of transfer had been completed. After title had been received, a further payment would be made to bring the total price paid for the land to ten shillings an acre. There were several minors in the title for whom Renata was trustee and their interests were to be included in the transaction as well. The purchase money for their

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[85] Preece to Brooking, 22 September 1885, 23/597 Mangaohane Correspondence File, Maori Land Court, Whanganui.
[86] Grey to Preece, 22 September 1885, 23/597 Mangaohane Correspondence File, Maori Land Court, Whanganui.

interests would be paid to the Public Trustee. Buller insisted that these minors 'have considerable interests' in other lands in the Hawkes Bay district. One block had been dealt by the Court but the remainder was customary lands. They had also received money from the alienation of Otamakapua to the Crown.

115. The registrar sent this declaration to Judge Mair at Hastings. The registrar noted that the declaration was not stamped but thought it 'maybe of value to the Court when the case comes on for hearing'.[87]

iii NO PROGRESS ON PARTITION OR SURVEY

116. However, Judge Mair subsequently advised the chief judge that he was unable to proceed with the partition of Mangaohane as the order for certificates was not signed and the survey had not been completed.[88] Around this time, Buller also wrote to the chief judge about the block. The note was addressed informally to 'My dear Macdonald' and marked 'private':

> Although both McLean and myself are equally anxious to go on with the Mangaohane business, I fear we are hopelessly 'stuck up'. We could do nothing yesterday as the assessor had not arrived and the Court not being properly constituted adjourned for the day. McLean is coming out this morning and Mair will hear us at 10 o'clock having how picked up a temporary assessor (Sam Te Mahau).
> I am anticipating that however in order to catch the steamer northward.
> The position, in a few words, is this:-
> The Mangaohane judgment was delivered upon a 'sketch map' then before the Court. It is pretty clear that no certificate of title can issue till there has been an actual survey. We do not want to incur the expense of this general survey, but prefer to have the estate divided among the several sections of native owners, leaving each section to complete the survey of its own portion.
> Section 34 of the Act of '80 provides that after the expiration of a certain time 'the Court may, if it think fit, order one or more divisions to be made in such manner as the Court thinks fit + + and issue certificates accordingly.
> The point McLean has raised is this: whether it is not absolutely essential as a condition precedent to the division orders, that the Court should complete its first proceeding by the issue of a certificate with correct plan of the whole block endorsed upon it.
> I think not seeing that the present may be deemed to be a mere continuation of the proceedings at the original hearing.
> Be that as it may, one thing is clear, namely that the orders must be signed by the Judge who presided at the original hearing.

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[87] Bridson to Judge Mair, 21 October 1885, 23/597 Mangaohane Correspondence File, Maori Land Court, Whanganui.

[88] Judge Mair to Chief Judge Macdonald, 26 October 1885, 23/597 Mangaohane Correspondence File, Maori Land Court, Whanganui. The Court finally dismissed the application for partition of Mangaohane at Hastings on 9 November as the survey was not ready and would not be available for some time (Napier Native Land Court Minute Book 10, 9 November 1885, fol. 277). Judge Mair, noted that a new application would have to be submitted and advertised and that it would probably be heard in December (the following month).

> On going over the papers last evening we found that through some oversight, the Mangaohane orders have never been signed by Judge O'Brien, although the orders for the appointment of trustees, made a day later, were all signed by Judge Williams.
> Under these circumstances, how are we to get on unless you can send O'Brien down with Mair, in this one case at any rate, to take up his unfinished work and complete it by the separate orders as were applied for?
> It seems to me that there is only one other course if Mair can see his way to adopting it, and that is to follow your example in the Waotu case, where after Williams had delivered his interim judgment fixing the title, you proceeded to allot the shares and to make orders accordingly.
> If I remember right, a very similar question was submitted to the Supreme Court by Judge Heale in the Murimotu case, where Smith had fixed the tribal title and entered the names of owners in his minute book but had made no orders.
> The Supreme Court, a special case stated, directed the Native Land Court to complete the unfinished work instead of commencing de novo, and some time afterwards Judge O'Brien took further evidence and made orders for the several divisions of the block.
> I have through it right to put you in possession of these facts, as we may be wiring to you in the course of a day or two.
> I am much obliged for intimation re Waotu A No. 1. Hesketh and Richmond will probably move the Supreme Court for prohibition.[89]

117. In October 1885, Kennedy advised the chief surveyor at Wellington that he was preparing to survey the Mangaohane block. He wrote to the chief surveyor to advise that he planned, with the chief surveyor's consent, to employ assistants to ensure the work was completed 'without delay'.[90] The chief surveyor did not give his consent to Kennedy's proposal and instead indicated that 'the survey should be made upon a fresh authority issued upon an application to this office by the Native Land Court and approved by the District Officer and the Surveyor General'.[91] He was told not to proceed without this authority. However, a few days later, Kennedy replied that he considered he did hold the necessary authority:

> I respectfully submit for your consideration the following circumstances in connection with the above survey: I received an authority from you dated January 17 1881 to survey the land. This authority has not been revoked nor has the proper survey yet been made, owing to opposition from certain natives. A complete survey is now urgently required in order that claims in subdivision may be heard and on the representation of Dr Buller and Messrs Carlile and McLean, acting for different sections of the natives and the fact that I possessed your authority, the Judge of the Native Land Court at Hastings in a letter dated 29 ultimo authorised me to proceed with the survey which I have done having previously arranged to complete the work in a stated time.[92]

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[89] ibid.
[90] Kennedy to Marchant, 31 October 1885, LS-W1 2361 Box 56, Archives New Zealand, Wellington.
[91] Marchant to Kennedy, 31 October 1885, LS-W1 2361 Box 56, Archives New Zealand, Wellington.
[92] Kennedy to Marchant, 21 November 1885, LS-W1 2361 Box 56, Archives New Zealand, Wellington.

118. He hoped, in these circumstances, that the chief surveyor would 'not consider a fresh authority necessary'.[93] The chief surveyor acknowledged this response and simply noted that he had set out the requirements.[94] He was willing to assist as he could and had written to the Court for details on the Mangaohane block so the necessary authority could be obtained. It would appear that some action was taken to issue the authority but that the consent of the surveyor general was not obtained.

119. On 10 November 1885, the chief judge asked the registrar at Wellington to supply him with the date he refused any rehearing in Mangaohane as recorded in the gazette notice.[95] He was advised later in the day that his refusal was given on 28 May 1885.[96] A few days later, presumably in response to a request from the chief judge, the registrar indicated that partition applications had been received from Buller and McLean. He asked for the chief judge for instructions on how he should proceed.[97] The following day, the chief judge directed the registrar to notify any applications for the partition of Mangaohane immediately. A 'batch' of notices was to be sent to the Court at Hastings 'for distribution'.[98]

120. In late November 1885, Retimana Te Rango of Pokopoko, Moawhango, on behalf of his iwi, wrote the Native Minister to complain about the second survey of Mangaohane.[99] They had stopped the survey as they were concerned about the Court's decision and the negotiations which were to proceed:

> Our pain and sorrow are very great at the thought that the land of our ancestors, on which they were wont to tread, is to become the property of strangers who have no claim to the land. Listen, we cannot bear to live quietly and to allow the survey to go on, for we know the result. We have already sent several applications to the Chief Judge of the Native Land Court for a second hearing of Mangaohane, and we sent them in pursuance of our just claims; but they were all dismissed by him, and all the petitions to Parliament were served in the same way, upon this we thought 'Well we have tried all means in respect to law, but without notice being taken,' for our desire is that another hearing should take place before our land becomes the property of

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[93] ibid.
[94] Marchant to Kennedy, 25 November 1885, LS-W1 2361 Box 56, Archives New Zealand, Wellington.
[95] Macdonald to Bridson, 10 November 1885, 23/597 Mangaohane Correspondence File, Maori Land Court, Whanganui.
[96] Bridson to Macdonald, 10 November 1885, 23/597 Mangaohane Correspondence File, Maori Land Court, Whanganui.
[97] Bridson to Macdonald, 13 November 1885, 23/597 Mangaohane Correspondence File, Maori Land Court, Whanganui.
[98] Macdonald to Bridson, 14 November 1885, 23/597 Mangaohane Correspondence File, Maori Land Court, Whanganui.
[99] Retimana Te Rango to the Native Minister, 21 November 1885, J1 Box 531 1895/6, Archives New Zealand, Wellington.

> another person, that is a second investigation of right and wrong; But think that after one hearing only, our land becomes the property of another, all, because wrong decision.
> We write to inform you that this trouble will increase, or summons had come to us this very day with reference to our proceeding. Listen, we will not stop though we die, it will only be, 'We die for our land.' Granting a second hearing is a mere trifle, whereas that has been denied to us: this will cause grievous trouble to us.
> This affair will never cease until perhaps blood has been spilt on the soil, and then the end may come, for then the people living on it will be exterminated.[100]

121. The following month, Retimana wrote to the Native Minister from Hastings, on behalf of Ngāti Whiti and Ngāti Te Ohuake, to repeat his request that the survey of the block be stopped, as it 'still remains a source of trouble to us, the Maori people'. They were living on the land and were willing to allow the survey if a rehearing was to proceed.[101] A similar message was sent by Retimana to the chief surveyor at Wellington who he asked not to authorise the survey because of the difficulties.[102] No response was provided to Retimana but an official asked for the letter to be noted and kept 'in view'.

122. Utiku Potaka also wrote to the Native Minister.[103] He was living at Te Houhou and had heard that the Mangaohane block was being surveyed 'for subdivision and sale'. He was concerned about this development as a rehearing had not been held: 'the law provides that if a person suffers through a decision of the Native Land Court, he may apply for a rehearing'. He suggested the Native Minister investigate the dispute carefully. He had spoken to both the minister and the chief judge about the conflict and any escalation was a consequence of their inaction: 'If trouble arises in connection with this word, it will not be my fault, because I have explained the causes of difficulty'.

123. Utiku's letter led to a request for a report from the registrar of the Native Land Court at Gisborne (who was at the time responsible for the East Coast, Turanga and Hawkes Bay sittings of the Court).[104] The registrar advised that the Mangaohane block was considered by the Court on 16 January 1882. Four applications for title investigation were before the Court. One was submitted by Topia Turoa, two by Retimana Te

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[100] ibid.
[101] Retimana Te Rango to Ballance, 9 December 1885, J1 Box 531 1895/6, Archives New Zealand, Wellington.
[102] Retimana Te Rango to Marchant, 9 December 1885, LS-W1 2361 Box 56, Archives New Zealand, Wellington.
[103] Utiku Potaka to Ballance, 14 December 1885, J1 Box 531 1895/6, Archives New Zealand, Wellington.
[104] Lewis to the Registrar, 21 December 1885, J1 Box 531 1895/6, Archives New Zealand, Wellington.

Rango and the fourth by Renata Kawepo. All three men were joined by others in their application. The application by Topia was withdrawn at the hearing, the two applications of Retimana were dismissed and Renata's application was adjourned to a future sitting.

124. The registrar reported that the application was considered again by the Court at Hastings in November 1884 and a decision on the claims was given on 22 February 1885. Part of the block was excluded from the decision (it would become known as Aorangi Awarua and was dealt with by the Court between 1910 and 1912). The northern part of the block was called Mangaohane 1 and awarded to Renata Kawepo, Airini Tonore and Retimana Te Rango and their people. Utiku Potaka was included in the title. The land south of the Mangaohane stream, extending as far south as what the registrar described as 'an imaginary line' was called Mangaohane and awarded to Renata Kawepo and Airini Tonore and their people. The 'imaginary line' was drawn from a point on the western boundary called Te Papa a Tarinuku and continued to the eastern boundary. Airini refused to submit a list of names so the Court determined those to be included in the title. Her subsequent application for a rehearing was rejected by the chief judge.

iv OPPOSITION TO THE SURVEY AND ARRESTS

125. An application by Renata for the partition of Mangaohane was published in the gazette to be considered at a court sitting in Hastings on 23 October 1885. This was dismissed on 9 November as the plan had not been certified (and the original title investigation was undertaken on a sketch plan). The Court advised the applicants that the survey was underway and that they should submit new applications. The survey was not completed as it was 'obstructed and stopped' and four further applications for partition which were notified in the gazette of 4 December were all adjourned. He added that he thought the papers for the block were with the office in Wellington. In a subsequent telegram, the registrar further advised that he had been told the survey was not proceeding at that time.[105]

[105] Brooking to Lewis, undated, J1 Box 531 1895/6, Archives New Zealand, Wellington.

126. In early December, the surveyor general directed the chief draughtsman at the district Survey Office in Wellington to travel to Napier to give evidence at the Supreme Court on this question:

> Mr A.J. Cotterill, Crown Solicitor, Napier telegraphs me that it will be necessary for your, Mr Marchant [chief surveyor] or myself should attend at the Supreme Court, Napier, on Monday next (7th inst.) to give evidence as to the authority issued by you on 17th January 1881 in favour of C.D. Kennedy, authorised surveyor, empowering him to undertake the survey of the Native block Mangaohane.
> You will therefore be good enough to proceed to Napier accordingly. And in your evidence, you can explain if necessary, that the application for the survey having come through the Native Court, with the statement that the natives would pay the survey, you according to previous routine, authorised the survey without waiting for the sanction of the Surveyor General. That you reported to me, both in writing and veritably, within a few days after you had sent out the authority, of your having done so, and, that I endorsed your action, and also some time afterwards refused to recall the authority, although requested to do so by Dr Buller.[106]

127. On 10 December, the chief draughtsman sent a telegram to his superiors in Wellington advising that all charges had been dismissed by the chief justice. In mid-January 1886, he reported to the surveyor general that the prosecution of several Maori for interfering with Kennedy's survey of Mangaohane was dismissed. He noted:

> In addition to what appears in print, the Chief Justice was of opinion that before a conviction could be secured it would be necessary that the surveyor should not only be authorised, but employed by the Surveyor General and that such survey must be bona fide a government one and not for the benefit of private individuals. His Honour also seems to be of opinion that chief surveyors had no power to authorise surveys.[107]

128. Towards the end of 1885, Carlile and McLean, on behalf of Airini Tonore, Ani Kanara and others with interests in the Mangaohane blocks, wrote to the 'Frauds Commissioner under the Native Lands Acts' at Auckland and to Judge Brookfield to request notification of any application for a certificate relating to these blocks. They advised that should 'any deed of conveyance or other document purporting to convey or to agree to convey any shares and interests in Mangaohane Block and Mangaohane No. 1 Block, District of Patea, is put before you for the purposes of obtaining your certificate thereto'. The firm had been 'instructed to lay before you objections to the application for such certificate'.[108] The letter sent to the office in Auckland was

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[106] McKerrow to MacKenzie, 3 December 1885, LS-W1 2361 Box 56, Archives New Zealand, Wellington.
[107] MacKenzie to McKerrow, 14 January 1886, LS-W1 2361 Box 56, Archives New Zealand, Wellington.
[108] Carlile and McLean to the Frauds Commissioner under the Native Lands Acts, 15 December 1885; Carlile to Judge Brookfield, 15 December 1885, 23/597 Mangaohane Correspondence File, Maori Land Court, Whanganui.

passed to the Native Land Court office in Gisborne which would process any such application.

129. Utiku Potaka's application for a rehearing in Mangaohane was completed in mid-December 1885 but received by the Native Land Court at Wellington in January 1886. This was among the papers forwarded to the chief judge in May 1887. A copy of the application is in the file but it is unclear how the chief judge dealt with it.

130. In January 1886, the chief surveyor advised the registrar at Gisborne that the surveyor, Kennedy, had informed him that the survey of Mangaohane was not proceeding at that time.[109] At this time, a further report on Utiku's earlier letter was requested from the registrar of the Court at Wellington.[110] It does not appear that any report was prepared though on 25 January 1886, the registrar of the Court at Wellington belatedly requested the publication of notices relating to the rehearings for Mangaohane in the *Kahiti*.[111] These notices had been issued by Chief Judge J.E. Macdonald in May 1885 refusing applications for rehearing in the Mangaohane block. They were published in the *Kahiti* in early February 1886.

v THE SURVEY PROCEEDS AND PLAN CERTIFIED

131. In mid-January 1886, W.L. Buller sent a telegram to the Native Minister complaining about the obstruction of the survey of Mangaohane.[112] He noted that he had represented Renata Kawepo at the hearing while McLean represented Airini Tonore. They had come to an arrangement for the survey of the block and employed Kennedy who reported that the survey was obstructed by those who were unsuccessful in the Court proceedings. He complained that they had no right to interfere in the survey. Kennedy was unable to proceed. He insisted 'that this is a case for intervention of government by way of an example' and asked for it to be treated with urgency. Buller had shown Kennedy's telegram to the chief judge who also sent a telegram to the Native Minister urging action by the government:

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[109] Baker to Brooking, 5 January 1886, 23/597 Mangaohane Correspondence File, Maori Land Court, Whanganui.
[110] Morpeth to Bridson, 6 January 1886, J1 Box 531 1895/6, Archives New Zealand, Wellington.
[111] Bridson to to the Under Secretary, 25 January 1886, J1 Box 531 1895/6, Archives New Zealand, Wellington.
[112] Buller to Ballance, 14 January 1886, J1 Box 531 1895/6, Archives New Zealand, Wellington.

> I certainly think such obstruction should be firmly put down all the practice will become more general especially as it is the last resort of dissatisfied Europeans.[113]

132. A few days later, Buller sent another telegram to the Native Minister, again requesting assistance to undertake the survey. His demands for police support were much more specific on this occasion:

> Kennedy wires me that a few days on the ground would enable him to complete subdivisional map for Court, the presence of two constables would effectively put a stop to the outside obstruction complained of.[114]

133. He concluded his telegram by stating that 'the chief has gone to Gisborne'. Presumably this is a reference to the movements of Chief Judge Macdonald. There is no indication that the Native Minister took any action on these requests.

134. The surveyor general provided a new authority for Kennedy on 2 February. However, the chief surveyor was unwilling to issue it until he was clear that the funds to meet the cost had been lodged with the department.[115] He noted the opposition from Retimana Te Rango in particular. Another official advised him a few days later that funds had been deposited with the government and that Kennedy would complete the survey for £462. The communication is ambiguous but it would appear that Kennedy was to be paid as if he was contracting to the government and he would be paid using funds deposited by unidentified parties. They were later identified as the Messrs Studholme.[116]

135. The authority, by the surveyor general and the chief surveyor, Napier, was issued on 30 January and forwarded to Kennedy on 12 February.[117] Kennedy issued a printed public notice on 16 February to all owners and occupiers of the block that he intended to commence work on the survey on 24 February. In advising the chief surveyor of his plans, he indicated that he understood his survey would be further prevented.[118] He subsequently indicated that obstruction was 'probable' and was keen to obtain a further authority from a government minister as he understood it was 'requisite in case of legal proceedings against obstructionists'.[119] However, the minister was ill and

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[113] Macdonald to Ballance, 14 January 1886, J1 Box 531 1895/6, Archives New Zealand, Wellington.
[114] Buller to Ballance, 18 January 1886, J1 Box 531 1895/6, Archives New Zealand, Wellington.
[115] Marchant to McKerrow, 5 February 1886, LS-W1 2361 Box 56, Archives New Zealand, Wellington.
[116] Unidentified Official to MacKenzie, 17 April 1886, LS-W1 2361 Box 56, Archives New Zealand, Wellington.
[117] Marchant to Kennedy, 12 February 1886, LS-W1 2361 Box 56, Archives New Zealand, Wellington.
[118] Kennedy to Marchant, 16 February 1886, LS-W1 2361 Box 56, Archives New Zealand, Wellington.
[119] Kennedy to McKenzie, 23 February 1886, LS-W1 2361 Box 56, Archives New Zealand, Wellington.

out of Wellington and no decision on any authority could be obtained. He was told that the department had no particular interest in the mater as any loss would be his should the survey be prevented.[120] Nevertheless, authority under Part IV of the Public Works Act 1882 was issued the same day and sent to Kennedy. It was signed by another minister in the absence of the Minister of Public Works and authorised Kennedy to undertake the survey of the Mangaohane blocks.

136. In any event, the survey went ahead without any obstruction.[121] Kennedy requested an advance payment for his work on the survey from the chief surveyor who referred it to the surveyor general who held the funds deposited 'by the owners'.[122] The chief surveyor emphasised that he had no knowledge of the progress of the survey nor any way of inspecting the work completed. The surveyor general decided that no payment would be authorised until the plans of survey were available.[123]

137. In early April, Kennedy reported that the plan was nearly ready for examination.[124] He wanted it examined by the chief surveyor at Napier to speed up the process of subdividing the land. Studholme was also moved to send a telegram to the chief surveyor at Wellington asking his to 'please facilitate examination as far as possible'.[125] He had apparently told Kennedy to wait for the chief surveyor's reply on where the plan could be examined before travelling to Wellington. However, the plan was to be examined at the district office in Wellington.[126] He delivered the plan on 12 April for examination and waited in Wellington so he could take it back to Hastings for the Native Land Court sitting there.[127] The examination was completed two days later and a report to the chief surveyor prepared. Approval was given on 30 April and the plan was forwarded to the Native Land Court.[128]

vi PETITIONS FOR A REHEARING

138. The previous month, a solicitor named Southey-Baker had written to the Native Minister enclosing a petition to the House of Representatives relating to the

[120] McKenzie to Kennedy, 23 February 1886, LS-W1 2361 Box 56, Archives New Zealand, Wellington.
[121] Kennedy to Marchant, 20 March 1886, LS-W1 2361 Box 56, Archives New Zealand, Wellington.
[122] Marchant to McKerrow, 22 March 1886, LS-W1 2361 Box 56, Archives New Zealand, Wellington.
[123] McKerrow to Marchant, 31 March 1886, LS-W1 2361 Box 56, Archives New Zealand, Wellington.
[124] Kennedy to Marchant, 5 April 1886, LS-W1 2361 Box 56, Archives New Zealand, Wellington.
[125] Studholme to Marchant, 5 April 1886, LS-W1 2361 Box 56, Archives New Zealand, Wellington.
[126] Marchant to Kennedy, 10 April 1886, LS-W1 2361 Box 56, Archives New Zealand, Wellington.
[127] Kennedy to Marchant, 12 April 1886, LS-W1 2361 Box 56, Archives New Zealand, Wellington.
[128] File Note, Marchant, 30 April 1886, LS-W1 2361 Box 56, Archives New Zealand, Wellington.

Mangaohane block.[129] He was acting on behalf of Noa Te Hianga and the petition requested a rehearing. Southey-Baker suggested the Native Minister advise the chief judge of the petition, noting the difficulties which might arise if dealings with the block were allowed to proceed while Parliament was considering with a rehearing should be authorised. He explained the reasons for the petition and recent events arising out of the survey:

> I may say that I have done all in my power to persuade the Natives to take the present course and not to render themselves liable to the penalties of the law, as they did a short time ago, by again opposing the carrying out of the orders of the Native Land Court in respect to this block. It may have come to your knowledge that some of the chiefs of the Ngati Whiti and Ngati Hinemanu tribes were imprisoned and committed for trial for opposing the surveys of this block but were acquitted on a point of law. All that my clients wish is that their grievances may be fairly brought before Parliament and that until an answer is received from the House nothing further may be done to their prejudice.[130]

139. He referred to Renata Kawepo's actions in proceeding with the partition of the block and referred to an earlier letter but did not specify the nature of any concerns other than noting that his clients 'do not feel secure in leaving the matter to the discretion of Major Mair'. Southey-Baker wrote to officials in the Native Department on several occasions afterwards asking for information on what had been done in response to his request for Court proceedings to be halted pending consideration of the petition. It does not appear any action was taken.

140. The following month, the chief surveyor at Wellington advised the Registrar of the Court that the surveyor general claimed a lien of £1,108 4s 2d for the survey of the Mangaohane block. This sum was not the actual cost to the government but based on the area of the two parts:

> I have the honor to inform you that there is due to the Surveyor General the sum of £1,108 4 2 for the survey of the Mangaohane Blocks containing 53,194 acres situated in the Motupuha etc Districts and request that you will cause the sum to be registered as a charge against the block. I also beg to inform that in accordance with clause 41 of the Native Land Court Regulations, as published in the New Zealand Gazette 1880, page 1705, I have sent to the claimants that such sum is due by them to the Surveyor General. As the area provided for in the schedule of rates is only up to 25,000 I have continued the rate of 5d an acre up to the area quote above. The actual cost of the survey paid by the government is £462.[131]

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[129] Southey-Baker to Ballance, 11 March 1886, J1 Box 531 1895/6, Archives New Zealand, Wellington.
[130] ibid.
[131] Chief Surveyor to the Registrar, 19 April 1886, 23/597 Mangaohane Correspondence File, Maori Land Court, Whanganui.

141. The figures were calculated on the basis of 5d per acre. Mangaohane No. 1 had an area of 22,084 acres which gave a total of £460 1s 8d on that block. Mangaohane (also known as Mangaohane No. 2) had an area of 31,110 acres and the amount calculated on that block was £648 2d 6d. Together these amounts totalled £1,108 4s 2d. It should be emphasised that this survey was undertaken at no cost to the Crown as it was to be paid for using funds deposited by the Studholme brothers but the lien lodged on behalf of the chief surveyor was at scheduled rates.[132]

142. In May, Southey-Baker again wrote to the Native Minister. On this occasion, he asked the Native Minister not to present the petition of Noa Te Hianga to the House.[133] The reason he gave was that he was 'uncertain as to what date I should be able to bring evidence together'. This was because 'most of the Natives interested being engaged in the "Awarua" case now before the Court at Wanganui'. Southey-Baker was advised that the petition relating to the Mangaohane block had not, as he requested, been presented.[134]

143. In early June, the under secretary noted that Southey-Baker had visited him and asked for the petition to be presented.[135] The petition was prepared for presentation to the House of Representatives on this basis. Southey-Baker also wrote to the Native Minister asking for the petition to be presented and indicated he planned to bring some of those who supported the petition to Wellington to give evidence to the Native Affairs Committee.[136] He noted that the circumstances of the Mangaohane proceedings in the Native Land Court were very similar to those relating to the Owhaoko, Kaimanawa and Oruamatua blocks as the same groups were involved in the proceedings, they were all located in the same district and:

> … all under the same ancestral rights as the above mentioned blocks. Might I ask that you would consider the advisability of adding the name of the Mangaohane Block in the bill introduced by you for the rehearing of the Owhaoko and other blocks.

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[132] In a letter to Studholme many years later, in April 1895, the surveyor Kennedy advised that he had received a sum of £587 for the original survey of Mangaohane. G.P. Donnelly had paid £50, he had received £75 from R.T. Warren and a further sum of £462 had been deposited by Warren at the Public Trust Office (Kennedy to Studholme, 25 April 1895, LS-W1 2361 Box 56, Archives New Zealand, Wellington). Nothing had been received from the government. When it came to payment, Kennedy described Warren (Studholme's manager) as his client (Kennedy to Marchant, 25 April 1888, LS-W1 2361 Box 56, Archives New Zealand, Wellington).
[133] Southey-Baker to Ballance, 21 May 1886, J1 Box 531 1895/6, Archives New Zealand, Wellington.
[134] Lewis to Morpeth, 3 May 1886, J1 Box 531 1895/6, Archives New Zealand, Wellington.
[135] Lewis, File Note, 7 June 1886, J1 Box 531 1895/6, Archives New Zealand, Wellington.
[136] Southey-Baker to Ballance, 5 June 1886, J1 Box 531 1895/6, Archives New Zealand, Wellington.

> Postscript: I have to thank you very much on behalf of the Natives interested, for the interest and trouble you have taken in the matter.[137]

144. In response to this comment, and the request to include the Mangaohane block in the bill dealing with the Kaimanawa, Oruamatua and Owhaoko blocks, the under secretary suggested it might be 'desirable' to forward the request to the select committee considering the bill. This could allow the committee to consider evidence on the Mangaohane block.[138] This proposal was approved by the Native Minister and forwarded to the chairman of the Owhaoko Kaimanawa select committee in early July 1886 with the following covering letter:

> I have the honour by direction of the Hon. the Native Minister to forward herewith the copy of a letter received from Mr A. Southey Baker, solicitor, Palmerston North with reference to a petition from Noa Te Hianga for a re-investigation of the title to the Mangaohane Block, Patea, and asking that this block be included in the Kaimanawa Oruamatua Owhaoko Bill, in case it should be deemed desirable to call Mr Baker's evidence in support of the application before the committee.[139]

145. Noa Te Hianga's petition, dated 5 March, stated that during the course of the Mangaohane hearing in November 1884, he 'was dangerously ill, blind, and wholly unable to attend to his interest in the matter'. It noted four claims were argued at the hearing:

- Renata Kawepo through Tuterangi and Te Honomokai, both descendants of Te Ohuake;
- Airini Donnelly, Renata's niece, who claimed through Tuterangi and Te Honomokai too;
- Ngāti Whiti who claimed through Whitikaupeka, an ancestor of Tuterangi and Te Honomokai;
- Winiata Te Whaaro and others of Ngāti Hinemanu through Te Ohuake (an ancestor of Whitikaupeka).

146. Noa Te Hianga described himself as a rangatira of Ngāti Hinemanu who had the same ancestral claims as Renata and Airini through Tuterangi. Like Renata, he was a great-grandchild of Tuterangi. Noa was also descended from Whitikaupeka and from Te Ohuake. The petition states that the Court accepted the claims of Renata, Airini and Ngāti Whiti but rejected that of Winiata and Ngāti Hinemanu through Te Ohuake. However, the common ancestor of Whitikaupeka and Te Honomokai, who were admitted by the Court, was Te Ohuake. The petition insisted that like Renata and

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[137] ibid.
[138] Lewis to Ballance, 28 June 1886, J1 Box 531 1895/6, Archives New Zealand, Wellington.
[139] Lewis to the chairman of the Owhaoko Kaimanawa Committee, 1 July 1886, J1 Box 531 1895/6, Archives New Zealand, Wellington.

Airini, he had a special claim through Tuterangi (though a marginal note on the petition observes that the Court did not accept any claims through Tuterangi). The petition insisted that his occupation, and that of Winiata Te Whaaro and others of Ngāti Hinemanu, were as good as that of those who were awarded the land by the Court. Noa Te Hianga was unable to give evidence on his own claim or that of Ngāti Hinemanu due to illness. He instructed John Sheehan to apply for a rehearing but this did not occur due to Sheehan's death:

> That your petitioner shortly after the delivery of the judgment in the case, and within the time limited for making application for a rehearing engaged the professional services of one John Sheehan, a solicitor of the Supreme Court of New Zealand, and delivered them to him an application in writing to the Chief Judge of the Native Lands Court for a rehearing of this case with instructions to forward it to the Chief Judge without delay, and paid to the said John Sheehan a large sum of money, to wit the sum of seven hundred and fifty pounds, for expenses, and his charges in the matter of making the said application.

147. Noa Te Hianga thought the rehearing application had been taken care of by Sheehan but Sheehan died before doing so.[140]

148. The petition was initially considered by the Native Affairs Committee. The committee's summary of the petition states that Noa Te Hianga was unable to attend the Court hearing for Mangaohane through illness but he had an equal claim with the leaders of those groups who were awarded the land. His claim was rejected by the Court. Following the hearing, he asked John Sheehan to apply for a rehearing but Sheehan died before preparing the application and the time for submitting an application for rehearing expired. He petitioned the House of Representatives for an enquiry into his complaints and asked for a rehearing to be granted. The Native Affairs Committee decided to refer the petition to the government for investigation as

[140] … having forwarded the said application as your petitioner afterwards discovered. 14. That the three out of the four claimants, at the hearing of the case were deeply aggrieved at the judgment of the Court, and applications for a rehearing were sent in by Airini Donnelly, and Winiata Wharo as well as by another native claiming a large interest in the Block, who was unrepresented at the hearing. 15. That the assessor who say upon this case strongly dissented from the judgment of the Court in so far, as it excluded Ngāti Hinemanu and the descendants Tuterangi from taking any interest in the Block, and for several days absolutely declined on this account to sign his conent to the judgment, and that though he did eventually sign his name his opinion as to that part of the judgment to which he had previously dissented remained unaltered. 16. That should your petitioners request be granted, relief will be afforded not only to those of the original claimants at the former hearing, but also to many other persons having a good right, and title to share in the Block, who with your petitioner now feel deeply aggrieved by the decision of the Court. 17. That no subdivision of the Block having yet been made no outside interests (should any exist) would be prejudiced by the case being reheard.

it was unable to assess the substance of the claims and legislation would be required to give effect to the request.[141]

149. In early July, the clerk of the Owhaoko Kaimanawa Native Land Bill Committee wrote the under secretary to advise, at the direction of the chairman of the committee, that the committee 'can only deal with matters referred to them by the House'.[142] The unstated implication of the letter was that the committee could not consider anything other than the legislation which had been referred to it and the Mangaohane block was not included in the bill.

vii INITIAL TRANSACTIONS IN MANGAOHANE

150. In an undated telegram, the chief judge advised the registrar of the Court at Gisborne that he had authorised the sale of part of the Mangaohane block to one of W.L. Buller's clients. However, he could not recall the details and asked the Registrar to advise him of the identity of the purchaser and whether the price was 10s per acre. The registrar recorded in a file note, dated 8 July, that no deed conveying part of Mangaohane had been seen by him and he was unable to provide any of the information requested.[143] The chief judge responded seeking further clarification:

> Mangaohane is there not on file order by me by sale of infants shares and declaration upon which order made?[144]

151. He added that the price specified in the declaration by Buller was ten shillings per acre. The Registrar apparently located a copy of the statutory declaration and confirmed that the price was ten shillings per acre.[145]

152. The court correspondence file contains an order dated 9 July 1886 by Chief Judge Macdonald under the Maori Real Estate Management Act 1868 and subsequent amendments. It related to the interests of a number of minors who held shares in the title to Mangaohane 1. The chief judge approved the sale of these interests to Airini Tonore for the payment of £5 to each of the minors (which was supposed to be the

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[141] Report of the Native Affairs Committee on the Petition of Noa Te Hianga (125/1886), 25 June 1886, J1 Box 531 1895/6, Archives New Zealand, Wellington.
[142] Goodfellow to Lewis, 2 July 1886, J1 Box 531 1895/6, Archives New Zealand, Wellington.
[143] Grey to Macdonald, 8 July 1886, 23/597 Mangaohane Correspondence File, Maori Land Court, Whanganui.
[144] Macdonald to Grey, 9 July 1886, 23/597 Mangaohane Correspondence File, Maori Land Court, Whanganui.
[145] Grey to Macdonald, 9 July 1886, 23/597 Mangaohane Correspondence File, Maori Land Court, Whanganui.

equivalent of ten shillings per acre). The order stated that he had enquired into the proposed transactions and that it was permitted in the circumstances. A similar order for interests held by minors in Mangaohane (also known as Mangaohane 2), and a proposed sale to Airini Tonore of those interests, was also issued by the chief judge.

153. In the meantime, consideration of Noa Te Hianga's petition continued. After receiving the recommendation of the Native Affairs Committee, the under secretary advised the Native Minister that '[t]here appears to be some reason for placing this case on the same footing as to rehearing as the Owhaoko and Kaimanawa Blocks'. However, he noted that 'the select committee considers that it does not come within the order of reference'. He suggested that the matter should be referred to the attorney general for his opinion.[146] The attorney general (Sir Robert Stout) asked for the papers, which had to be forwarded from Gisborne.[147]

154. At about this time, Southey Baker again pursued the petition of Noa Te Hianga. In an undated letter, received by the Native Department in August 1886, he noted the report of the Native Affairs Committee on the petition which he paraphrased:

> The Petitioner may have suffered a great wrong – we assumed that he has – but it has been through the negligence of his solicitor and he must stand the consequences.[148]

155. Southey Baker believed this was a consequence of the position of the chairman of the committee who insisted that in the general courts, where a litigant loses due to the failure of their solicitor to act, there is no recourse other than by obtaining damages from the solicitor. Southey Baker argued this was incorrect as there were other options for redress in the general courts:

> Now this is of course and utterly wrong assumption and misled the committee, for in the supreme or any other courts relief would be granted under such circumstances, though the solicitor or defendant might possibly be ordered to pay costs. It is monstrous to suppose that because Mr Sheehan neglected to do his duty by applying for a re-hearing within the proper time, though properly instructed and paid a large sum of money, let these natives should lose their homes, and property of the value of over £20,000 be forfeited, it such is the decision of the committee.[149]

156. He asked for the Native Minister to address the House of Representatives on the injustice his clients had faced and ask for the petition to be considered again. Southey

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[146] Lewis to Ballance, 13 July 1886, J1 Box 531 1895/6, Archives New Zealand, Wellington.
[147] Grey to Lewis, 31 July 1886, J1 Box 531 1895/6, Archives New Zealand, Wellington.
[148] Southey Baker to Ballance, undated [received 5 August 1886], J1 Box 531 1895/6, Archives New Zealand, Wellington.
[149] ibid.

Baker advised that his clients had spent £1000 to have their grievances heard and had come from their settlements to Wellington to give evidence after the petition was referred to the Owhaoko committee. They were greatly disappointed that the committee would not even hear them. The course of action they were told to take despite the acknowledgment of the injustice they had faced – 'they must seek compensation from a dead man who has no estate' – was not satisfactory. He noted that a number of the members of the committee did not support the committee's resolution on the matter and would assist the minister in sending the petition back for further consideration. If no action on a hearing could be taken before the end of the parliamentary session, he asked if the minister could halt further proceedings relating to the block to avoid the matter becoming 'complicated'.

157. The under secretary of the Native Department had no particular recommendation for his minister though he did note that the Native Affairs Committee report was for an enquiry rather than a rejection of the petition as Southey Baker suggested:

> For your information. Mr Baker asks if nothing further can be done this session whether you will stop the subdivision of the block. Perhaps the Hon. the Premier and Attorney General who has had the case before him would advise as to whether Mr Baker's request should be complied with and if so in what way. The Native Affairs Committee of the House of Representatives recommended inquiry.[150]

158. The Native Minister agreed with this proposal and the matter was referred to the attorney general who thought the subdivision of the block should be stopped in the 'meantime'.[151] In response, the under secretary recommended forwarding the file to the chief judge for him to give effect to the attorney general's 'opinion'. Southey-Baker would also be advised of this development.[152] Both actions were approved by the Native Minister and the letters were dispatched.[153]

159. The under secretary wrote to the chief judge, enclosing the file, on 12 August 1886:

> I have the honour by direction of the Honourable Native Minister to forward herewith the files of papers noted in the margin and to request you will be good enough to take the necessary steps to give effect to the Attorney General's minute of 11th instant on NO 85/2362.[154]

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[150] Lewis to Ballance, 9 August 1886, J1 Box 531 1895/6, Archives New Zealand, Wellington.
[151] Stout, File Note, 11 August 1886, J1 Box 531 1895/6, Archives New Zealand, Wellington.
[152] Lewis to Ballance, 11 August 1886, J1 Box 531 1895/6, Archives New Zealand, Wellington.
[153] Ballance to Lewis, 12 August 1886, J1 Box 531 1895/6, Archives New Zealand, Wellington.
[154] Lewis to Macdonald, 12 August 1886, J1 Box 531 1895/6, Archives New Zealand, Wellington.

160. The letter included the words of Robert Stout's minute on 11 August 1886 in the margin: 'I think the subdivision should be stopped meantime'. On 19 August, Chief Judge Macdonald sent a telegram to Carlile and McLean asking if Judge Mair completed 'his division of Mangaohane and if so is any division of the land now before the Court or in contemplation'. Carlile and McLean replied that Judge Mair refused to deal with the partition application pending the survey of the proposed division. They added that the survey had since been completed.[155] At some point during the day, and it is unclear if it was before, during or after this exchange with Carlile and McLean, the chief judge also communicated with Judge Brookfield who was presiding at the Court sitting in Hastings. The chief judge asked to be advised if Judge Brookfield expected to hear the partition application 'within the next few days' and asked him to 'let me know before you commence the hearing'.[156]

161. Nearly two weeks later, the chief judge responded to the attorney-general's minute which he had been sent the previous week. The chief judge indicated he was unable to give effect to it:

> Reference to the Native Office and Native Land Court files accompanying your letter shows the matter proposed to be 'stopped meantime' to be a proceeding under the Native Land Division Act 1882 for division of 'Mangaohane' aforesaid.
> The proceeding in question was regularly initiated and duly set down for hearing at the sitting of the Court now progressing under the presidency of Judge Brookfield.
> As the power to adjourn (sec 18) and the power to dismiss are vested respectively in the presiding Judge or in the Court it would not appear that I have any authority as Chief Judge or otherwise to interfere, my right to postpone given by the Amendment Act 1883 ceasing when the sitting is once opened.
> Ample authority to effect the proposed stoppage of the case is however vested by sec 38 of the Native Land Court Act 1880 in the Governor and to that provision I beg to call attention.[157]

162. This is no indication that any action was taken to stop the proceedings (though they did not proceed at this time). A subsequent letter from Southey Baker shows that the Native Minister met with Noa Te Hianga, Hoani Meihana and Utiku Potaka at Wanganui where they discussed the Mangaohane block.[158] Around mid-September

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[155] Carlile and McLean to Macdonald, 19 August 1886, 23/597 Mangaohane Correspondence File, Maori Land Court, Whanganui.
[156] Macdonald to Brookfield, 19 August 1886, 23/597 Mangaohane Correspondence File, Maori Land Court, Whanganui.
[157] Chief Judge Macdonald to Lewis, 2 September 1886, J1 Box 531 1895/6, Archives New Zealand, Wellington.
[158] Southey Baker to the Native Minister, 10 September 1886, J1 Box 531 1895/6, Archives New Zealand, Wellington.

Southey Baker was still waiting for a decision on Noa's petition and again asked for the partition of Mangaohane to be delayed.

163. It is worth noting that at the end of August, Carlile and McLean advised the chief judge that those obstructing the survey of Mangaohane for the purposes of the partition applications had been prosecuted and acquitted.[159] They thought the acquittal of those charged was 'probably on technical point'. They subsequently added that the acquittal during the trial in the Supreme Court was because the appropriate authority from the surveyor general had not been obtained for the survey to proceed.[160] This authority was subsequently received and the survey was completed.

164. It appears Noa's petition was referred to the Owhaoko Kaimanawa Native Land Bill Committee as that committee prepared a report on it on 14 August. The committee noted the allegations in the petition regarding the application for a rehearing and the request for an inquiry but noted that 'no misconduct on the part of any public officer is alleged'. The difficulties Noa Te Hianga faced were a consequence of his absence at the Native Land Court hearing and the failure of his solicitor to apply for a rehearing. The committee concluded it was of the view that 'the matter is not one in which Parliament should specially interfere at present'. However, it added that 'as it appears that in the Supreme Court, there is power to enlarge time even after the time limited for an application has expired, the committee are of opinion that a provision similar to rule 558 of the Supreme Court code should be made applicable to the Native Land Court proceedings'.[161] On the motion of the chairman of the committee, the House of Representatives decided to refer the report to the government together with Noa's petition.[162]

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[159] Carlile and McLean to Macdonald, 30 August 1886, 23/597 Mangaohane Correspondence File, Maori Land Court, Whanganui.
[160] Carlile and McLean to Macdonald, 1 September 1886, 23/597 Mangaohane Correspondence File, Maori Land Court, Whanganui.
[161] 'Report of the Owhaoko Kaimanawa Native Land Bill Committee on the Petition of Noa Te Hianga', 14 August 1886, J1 Box 531 1895/6, Archives New Zealand, Wellington.
[162] Extract from the Journals of the House of Representatives, 14 August 1886, J1 Box 531 1895/6, Archives New Zealand, Wellington.

viii REPORT OF THE CHIEF JUDGE ON NOA'S PETITION

165. Towards the end of August, at the direction of the Native Minister, both were referred to the chief judge for his consideration.[163] A week earlier, the chief judge asked the registrar of the Court at Auckland to send any rehearing applications for Mangaohane to him.[164] None of them could be located among the records held in the court's Auckland office. However, the registrar's reply shows that at this time, six applications for rehearing had been received by the Court, some of which had been dismissed.[165] He also asked Judge Brookfield to send him the minute book dealing with the initial hearing of Mangaohane but was advised that it was with Judge O'Brien in Wanganui.[166] The following day, he wrote to Judge O'Brien asking for the minute book.[167] He also advised that there was an allegation 'that your assessor did not agree with the decision in that case'. The chief judge asked Judge O'Brien for his view on this complaint.

166. At this time, Southey-Baker also sent a number of papers to the chief judge in support of Noa Te Hianga's petition.[168] These included whakapapa information and a letter from Akenehi Tomoana regarding Noa's health during the hearing of Mangaohane.[169] The purpose of these papers was to show that his claims were equal to those awarded the land by the Court. These papers were filed and Southey Baker was sent a reply by the chief judge advising him that 'my relation with Mangaohane ceased when I refused a rehearing and I have no business with the petition mentioned'.[170] He had no further comment to make.

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[163] Lewis to Macdonald, 27 August 1886, J1 Box 531 1895/6, Archives New Zealand, Wellington.
[164] Macdonald to Hammond, 20 August 1886, 23/597 Mangaohane Correspondence File, Maori Land Court, Whanganui.
[165] Hammond to Macdonald, 20 August 1886, 23/597 Mangaohane Correspondence File, Maori Land Court, Whanganui.
[166] Macdonald to Brookfield, 20 August 1886; Brookfield to Macdonald, 21 August 1886, 23/597 Mangaohane Correspondence File, Maori Land Court, Whanganui, 23/597 Mangaohane Correspondence File, Maori Land Court, Whanganui.
[167] Macdonald to O'Brien, 21 August 1886, 23/597 Mangaohane Correspondence File, Maori Land Court, Whanganui.
[168] Southey Baker to Macdonald, 31 August 1886, 23/597 Mangaohane Correspondence File, Maori Land Court, Whanganui.
[169] Akenehi Tomoana to Macdonald, 28 August 1886, 23/597 Mangaohane Correspondence File, Maori Land Court, Whanganui.
[170] Macdonald to Southey Baker, 11 September 1886, 23/597 Mangaohane Correspondence File, Maori Land Court, Whanganui.

167. However, the chief judge was in the process of preparing a detailed report on Noa's petition in early September.[171] The report provided background to the proceedings prior to the petition by Noa. The original title investigation concluded with the determination of ownership on 27 February 1885. It included a 'rough sketch' of the land claimed by Ngāti Hinemanu located to the south of the Mangaohane Stream and the circumstances in which an application for rehearing submitted by Winiata Te Whaaro was dealt with by the chief judge. This included reference to a sitting of the Court at Hastings on 10 April 1885 where the chief judge heard from various parties (and later refused to allow a rehearing).

168. The chief judge considered the allegations of the petition. In particular, he was of the view that Ngāti Hinemanu's claims were 'by no means neglected' at the original hearing. In addition, those leading the Ngāti Hinemanu claim made no reference to the significance of Noa's evidence nor his incapacity to attend the Court through illness either at the original hearing or before the chief judge when he was considering the application for rehearing (to which he was a signatory). He noted, in particular, that those managing the claim did not request an adjournment to allow Noa to attend to give evidence on a subsequent occasion. Generally, the chief judge rejected the statements of Noa relating to whakapapa and emphasised the Court's findings on occupation.

169. In relation to the allegations regarding the failure by Sheehan to prepare an application for rehearing, the chief judge was of the view that this may not have been neglect on Sheehan's part:

> The engagement of Mr Sheehan's services in some capacity and payment therefor is not questioned but whether Mr Sheehan neglected to make application to the Chief Judge or not is immaterial for an application for rehearing had already been made and disposed of and could not have been repeated. That Mr Sheehan knew of that application is clear for he was present when it was discussed before the Chief Judge and on June 1st 1885 he enquires by telegram 'Have you dealt with applications for rehearing of Mangaohane natives very anxious to get reply'.[172]

170. The allegations regarding the agreement of the assessor to the Court's decision was more serious, though the chief judge was satisfied that the assessor 'never refused to sign, never did sign and was never required to sign, his free and unreserved verbal assent being along requisite and that being after due and proper consideration

[171] Macdonald to Lewis, 2 September 1886, J1 Box 531 1895/6, Archives New Zealand, Wellington.
[172] ibid.

accorded as mentioned in the statement of Judge O'Brien and of Judge Williams'. Under s 35 of the Native Land Court Act 1880, the assessor was required to sign the Court's decision to show his concurrence but this was subsequently repealed. While the assessor still had to concur with the decision under s 11, he was not required to sign it. The chief judge included letters from the two judges and another assessor to support his conclusions on this point.

171. On the recommendation by the Owhaoko Kaimanawa Native Lands Bill Committee that a process similar to that provided by Rule 558 of the Supreme Court rules should be adapted for Native Land Court proceedings, the chief judge observed:

> … that the times which under rule 558 may be enlarged are exclusively times fixed by the other Supreme Court rules. An application for rehearing is in analogy with appeal in the Supreme Court and the time within which appeal can be applied for is limited by the Court of Appeal Act and admits of no enlargement.[173]

172. It would appear his view was that no change was necessary or desirable.

173. He concluded:

> (1) That the case of Ngatihinemanu was efficiently represented at the hearing.
> (2) That application for rehearing was duly made on their behalf and efficiently supported.
> (3) That any transaction with Mr Sheehan was subsequent to such application being made and dealt with and he could not have repeated such application.
> (4) That the petitioner had no claim in his own right to be supported and had he thought to set up a claim he could and would have done it through his son-in-law or through Winiata Te Wharo.
> (5) That the assessor concurred in the decision.[174]

174. A number of very significant documents were attached to the report as appendices. The first was the 'rough sketch' of the block taken from Judge O'Brien's initial report on the rehearing applications. It is a crucial representation of how Court officials understood the block. In particular, it shows the area of the land subject to the Court's decision and the part which was left untouched by the Court. Te Papa or Tarinuku and Pokopoko are shown on the boundary line of the area not adjudicated while the Mangaohane Stream is shown a considerable distance to the north of Pokopoko. The 'rough sketch' suggests that the Court thought it was leaving land immediately to the south of Pokopoko outside the Court's decision and that Ngāti Hinemanu would have an opportunity to establish title to this land when it was dealt with by the Court on a future occasion. It also emphasises the limited knowledge of the southern boundary at

[173] ibid,
[174] ibid.

the initial title investigation which was conducted on a sketch plan without a southern boundary. The sketch plan was not based on a survey.

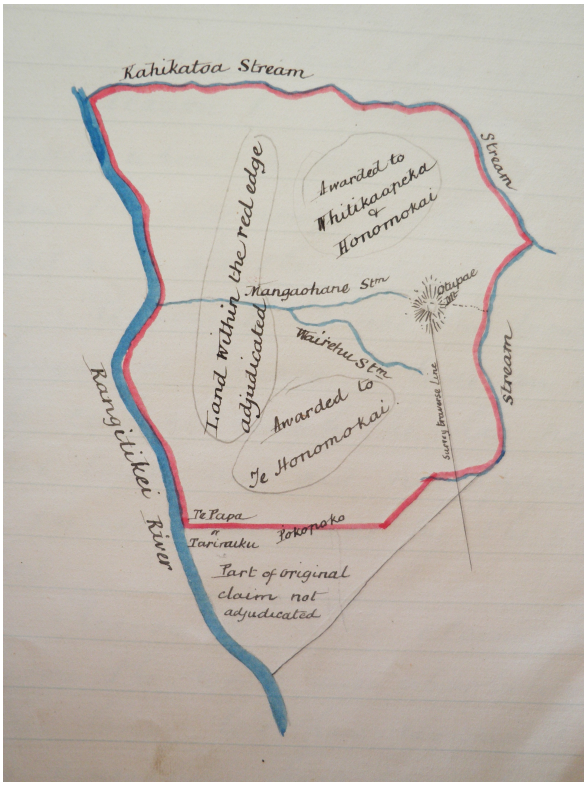

Figure 9: Sketch included in Chief Judge Macdonald's report (taken from Judge O'Brien's report on the rehearing applications)

175. The other three documents of importance attached to this report were letters from Judge O'Brien, Judge Williams and Hamuera Mahupuku (an assessor who relieved Hone Meihana at Hastings). The originals were submitted with the report and it does not appear copies were retained for the Court's records.

176. As noted earlier, the chief judge had requested Judge O'Brien comment on the allegation that the assessor did not agree with the decision of the Court given in Mangaohane.[175] Judge O'Brien insisted this was not the case though he did admit Hoani Meihana initially disagreed with the judges:

> At first he differed somewhat from us. The points on which he did, I should not from memory like to state. But after mutual discussion he agreed and we gave the judgment accordingly.

177. He acknowledged that Judge Williams had communicated with the assessor ('Mr Williams was the medium of communication with the assessor') and Judge O'Brien though he might be able to provide more information but '[t]hat the assessor agreed in the judgment there is no doubt'. Judge Williams agreed with this assessment, insisting 'I can state with certainty that he did so agree after we had fully discussed the question'.[176] The assessor did raise an issue and this was considered further by recalling Winiata Te Whaaro to give more evidence:

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[175] Judge O'Brien to Chief Judge Macdonald, 21 August 1886, J1 Box 531 1895/6, Archives New Zealand, Wellington.
[176] Judge Williams to Chief Judge Macdonald, 30 August 1886, J1 Box 531 1895/6, Archives New Zealand, Wellington.

> During the discussions he did raise a point as to the Ngatihinemanu claim, but after Winiata Wharo had been recalled at this request and had stated that Hinemanu had no claim to the land south of the Mangaohane Stream he perfectly agreed with us on every point and judgment was given accordingly.[177]

178. Judge Williams also supplied a letter from another assessor, Hamuera Mahupuku, on the matter. This letter, as with Judge Williams' letter, written on 30 August at Gisborne, referred to a conversation Hamuera had with Hone Meihana regarding the Mangaohane hearing. Hamuera had arrived at Hastings on 21 March to 'relieve' Hone and spoken to him shortly after he arrived:

> He told me that an argument had taken place between you when considering the case of Ngatihinemanu, and that the Court had recalled Winiata Wharo at his (Hone Meihana's) request. That Winiata Te Wharo had appeared before the Court and had denied the right of Hinemanu to that land, which was the reason that the case of Ngāti Hinemanu failed, and that he had concurred in the opinion of the judges.[178]

179. He had also heard about Winiata's statement to the Court from Pene Te Uamairangi who had initially led the claim of Ngāti Hinemanu: 'That when Winiata said what he did before the Court, they all knew that their case was lost'.

180. The chief judge's report was forwarded to the under secretary, who was in Auckland.[179] A minute also noted that the premier, Sir Robert Stout, had suggested Barton investigate the issues raised in another petition by Te Rina Mete Kingi on the block. The under secretary recommended that the Native Minister refer the chief judge's report to the premier for his information.[180] The Native Minister agreed to this proposal and the premier's view was that:

> I think the judge's report should be sent to the petitioner's solicitor and state that in face of that report government cannot further interfere.[181]

181. A letter to this effect was sent to Southey Baker in mid-November.[182] He subsequently requested the appendices to the report.[183] After consulting the chief judge, who had no objections, the appendices were also supplied to Southey-Baker early in the new year.[184]

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[177] The reference given by the judge for this evidence was minute book 9, folio 236.
[178] Hamuera Mahupuku to Judge Williams, 30 August 1886, J1 Box 531 1895/6, Archives New Zealand, Wellington.
[179] Morpeth to Lewis, 15 September 1886, J1 Box 531 1895/6, Archives New Zealand, Wellington.
[180] Lewis to Ballance, 8 October 1886, J1 Box 531 1895/6, Archives New Zealand, Wellington.
[181] Stout to Ballance, 11 November 1886, J1 Box 531 1895/6, Archives New Zealand, Wellington.
[182] Lewis to Morpeth, 12 November 1886, J1 Box 531 1895/6, Archives New Zealand, Wellington.
[183] Southey Baker to Lewis, 4 December 1886, J1 Box 531 1895/6, Archives New Zealand, Wellington.
[184] Morpeth to Tole, 12 January 1887, J1 Box 531 1895/6, Archives New Zealand, Wellington.

ix PETITION OF TE RINA METE KINGI

182. Another petition, from Te Rina Mete Kingi, was prepared in early August 1886. She claimed an interest in the block through Honomokai and asked for a rehearing. Her people were excluded from the order while others who claimed through the same tipuna (Umuwhateapono, the grandson of Honomokai) were included. She identified Rora Potaka, William Broughton, Tauria Broughton and Watarauri Hohaia as those who were included in the order but claimed from the same ancestor. Tuha o Te Rangi, Te Ora, Ngapapa Tarewa, Ratu and Hohaia Te Tara were those who lived permanently on Mangaohane. Among the places they lived were Pokopoko, Mangaohane and Pohokura. The tīpuna who lived there were Papataumiku and Kaitara.

183. The petition alleged that Renata Kawepo and Anaru Te Wanikau had accepted that their names should be included in the list but W.L. Buller objected to this and Te Rina's husband became confused so that Renata agreed with Buller and their names were excluded. She gave evidence but the Court rejected her claim despite Raniera Te Ahiko, who appeared on behalf of Airini, accepting her ancestral claim. Te Rina objected to the manner in which the Court dealt with her claim and alleged that Buller sat with the assessor of the Court while the hearing was underway. She also identified one owner who was included in the order who she claimed had no interest in the block either by ancestry or occupation. She requested a rehearing of their claims.

184. On 11 August, the Native Affairs Committee reported on her petition, and recommended that the government undertake an inquiry into her claims 'at an early date'.[185] Initially, the under secretary thought the investigation recommended by the committee would need to be made by royal commission. He suggested the committee's report should be referred to the premier for his consideration as he had been dealing with other matters relating to the block.[186] The Native Minister agreed and the papers were referred to the Premier. His view was that 'Mr Barton should enquire into this case'.[187] It would appear, however, that the government took no

[185] 'Report of the Native Affairs Committee on the Petition of Rina Mete Kingi', 11 August 1886, J1 Box 531 1895/6, Archives New Zealand, Wellington.
[186] Lewis to Ballance, 27 August 1886, J1 Box 531 1895/6, Archives New Zealand, Wellington.
[187] Stout to Lewis, 2 September 1886, J1 Box 531 1895/6, Archives New Zealand, Wellington.

action on this proposal. Eventually the committee's report and the petition were referred to the chief judge in April 1887.

185. In an undated recommendation to the Native Minister, the under secretary noted that there had been several applications and petitions on the block which had been referred to the chief judge. Reports on these had been supplied. However, this petition had not been considered by the chief judge:

> Rina has been to see me on the subject and I beg to recommend that the papers be forwarded to the chief judge to be good enough to report at once upon the petition. The petitioner desires to bring her case personally before him and as I understand Mr Macdonald will be shortly in Wellington. She will then have the opportunity of doing so.[188]

186. This was approved by the Native Minister and referred to the chief judge for a report in April 1887.[189] Just over three weeks later, the chief judge advised the under secretary that he was 'prepared to report on this case' but intended to defer his report given Te Rina wished to speak to him on it.[190] The under secretary noted that Te Rina was ill but planned to visit the chief judge in the next day or two.[191]

187. At this time, the chief judge asked the registrar to provide him with all applications for rehearing in Mangaohane, which were detached from the file and forwarded to him.[192] He subsequently requested the entire file, which was at the Court sitting at Taradale, and the clerk of the Court there was asked to send them to Auckland for the chief judge.[193]

188. The chief judge completed his report on Te Rina's petition, and the Native Affairs Committee report, on 27 May.[194] He repeated many of the background details given in earlier reports and included a copy of the sketch plan set out in the report on Noa Te Hianga's petition which was drawn from Judge O'Brien's initial report on the rehearing applications. However, in this report, the chief judge claimed that the Court,

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[188] Lewis to Ballance, undated, J1 Box 531 1895/6, Archives New Zealand, Wellington.
[189] Lewis to Macdonald, 28 April 1887, J1 Box 531 1895/6, Archives New Zealand, Wellington.
[190] Macdonald to Lewis, 19 May 1887, J1 Box 531 1895/6, Archives New Zealand, Wellington.
[191] Lewis to Macdonald, 19 May 1887, J1 Box 531 1895/6, Archives New Zealand, Wellington.
[192] Macdonald to Brooking, date stamp illegible [May 1887], 23/597 Mangaohane Correspondence File, Maori Land Court, Whanganui.
[193] Brooking to Fountain, 9 May 1887, 23/597 Mangaohane Correspondence File, Maori Land Court, Whanganui.
[194] 'Report by the Chief Judge Upon Reference to Him of a Petition to the House of Representatives by Rina Meti Kingi and of the Report by the Committee to Government Thereon', 27 May 1887, J1 Box 531 1895/6, Archives New Zealand, Wellington.

from the 'outset … refused to enquire into the ownership of that part of the block outside the red line on the plan'. This was not correct as the Court declined to make a decision on the land when giving its judgment after the hearing.

189. While the Court had acknowledged Te Rina's ancestor in awarding title, her occupation was not sufficient for her to be included in the lists of names. He noted that the occupation by her people had been of the part excluded from the Court's decision. He had refused her application for a rehearing. A statement in the report that she had been included in the title to the part outside the Court's decision was deleted by the chief judge with an acknowledgment that he was 'in error here'.[195]

190. Te Rina Mete Kingi, with her husband, Hone Mete Kingi, and Hoani Taipua (the member of the House of Representatives for Western Maori), had met with the chief judge a week earlier on 20 May. His notes of the meeting were attached to the report.[196] He again emphasised the importance of occupation to establish a legitimate interest in the land and rejected the allegations in the petition, noting that many of them had been addressed during previous inquiries. This related, particular, to the allegation that Renata's solicitor, W.L. Buller communicated with the assessor during the course of the hearing.

191. The Native Department received the chief judge's report towards the end of May. The under secretary's recommendation was:

> … that Rina Mete Kingi be informed that a careful enquiry appears to shew that she has no claim to have her name included in Mangaohane Block.[197]

192. This was approved by the Native Minister and a letter was sent to her at the end of May.[198]

193. However, on 9 June, the Native Affairs Committee of the Legislative Council produced its own report on the petition of Te Rina Mete Kingi. It had heard evidence from Hoani Taipua:

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[195] The Aorangi Awarua block was investigated by the Court after 1910 and the title created in 1912.
[196] A separate record of this meeting was made by Hoani Taipua and presented to the Native Affairs Committee of the Legislative Council when it considered Te Rina's petition. See Richmond to Macdonald, 10 June 1887, J1 Box 531 1895/6, Archives New Zealand, Wellington.
[197] Lewis to Ballance, 27 May 1887, J1 Box 531 1895/6, Archives New Zealand, Wellington.
[198] Lewis to Rena Mete Kingi, 30 May 1887, J1 Box 531 1895/6, Archives New Zealand, Wellington.

> … who acted as assessor on the investigation of the claims to land adjoining that referred to in this Petition: his evidence affirms that upon inquiry by the Chief Judge in Mr Lewis' office, the petitioner distinctly claimed on the ground of 'occupation by her mother', the Chief Judge on the other hand states that at this meeting the Petitioner while profuse on the point of 'ancestry' made no mention of 'occupation'. The Committee at the present period of the Session have no hope of being able to clear up this matter, they therefore recommend that the Petition stand over till next Session and in the meantime they propose to forward the evidence of Mr Taipua along with a copy of this report to the Chief Judge for his remarks.[199]

194. The report was sent to the chief judge by the chair of the committee, J.C. Richmond, a few days later with a copy of Hoani Taipua's notes of the meeting with the chief judge.[200] The chief judge passed it on to the under secretary of the Native Department some months later with a brief comment that he did not accept there was any difference between his report and Hoani Taipua's record of the meeting.[201] The under secretary requested permission to produce the department's file to the Native Affairs Committee when it considered the petition at the next session and this was approved by the Native Minister.[202] It is not clear that the committee pursued the petition further.

x ATTEMPTS TO PROCEED WITH THE PARTITION

195. By June 1887, the survey plans for Mangaohane were held by the Court sitting at Taradale where an application for partition of the block was being considered.[203] At this time, the resident magistrate in Napier, G.A. Preece, who was also the trust commissioner, asked the Registrar of the Native Land Court to urgently send copies of the memorials of ownership for the two Mangaohane blocks along with a list of successors.[204] He was advised that certificates of title to the block were yet to be issued and that the Court's records were at the sitting in Taradale.[205] At about this time, a McLeod of Wellington enquired whether the Court had received a notice of just over £1,100 on the block. The chief surveyor at Wellington was also interested in

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[199] Report of the Native Affairs Committee Upon Petition 22 of Rina Mete Kingi, 9 June 1887, J1 Box 531 1895/6, Archives New Zealand, Wellington.
[200] Richmond to Macdonald, 10 June 1887, J1 Box 531 1895/6, Archives New Zealand, Wellington.
[201] Macdonald to Lewis, 28 September 1887, J1 Box 531 1895/6, Archives New Zealand, Wellington.
[202] Lewis to Ballance, 3 October 1887, J1 Box 531 1895/6, Archives New Zealand, Wellington.
[203] Brooking to the Clerk, Native Land Court, Taradale, undated [June 1887], 23/597 Mangaohane Correspondence File, Maori Land Court, Whanganui.
[204] Preece to Brooking, 27 June 1887, 23/597 Mangaohane Correspondence File, Maori Land Court, Whanganui.
[205] Brooking to Preece, undated, 23/597 Mangaohane Correspondence File, Maori Land Court, Whanganui.

the titles to the two Mangaohane blocks.[206] He wanted to prevent the issue of titles as there were liens of £460 on Mangaohane 1 and £648 on Mangaohane (also known as Mangaohane 2). He was assured by the Registrar that titles to the blocks were still to be issued. However, the chief surveyor's letter of 19 April 1886 was resent on 27 June 1887 setting out the details of the lien of £1,108 2s 2d claimed by the Crown for the survey of the two blocks (which included an explanation of the actual cost of the survey).[207]

196. On 20 April 1888, the chief surveyor at Wellington asked the registrar at Gisborne if final orders in Mangaohane had been made and when the plans would be returned to his office.[208] The Registrar advised that orders for Mangaohane had been made and that the plans were at the Survey Office in Napier for staff to add them to the draft orders. The plan would be returned to the chief surveyor in Wellington as soon as possible. Three days later, the chief surveyor at Wellington asked for the orders for Mangaohane and the plans to be sent to his office for processing.[209] He also asked for information about any orders which may have already been issued.

197. The registrar assured the chief surveyor that no titles had yet been issued. He was sending the plans, which he had received two days earlier from the chief surveyor at Napier, to the chief judge for his signature and would return it to the chief surveyor's office along with the draft orders.[210] The plans were sent to the chief judge that day.[211] The plan was approved by the chief judge on 8 May 1888.[212] He noted that the plan and orders referred to Mangaohane and Mangaohane 1. The Registrar at Auckland subsequently advised the Registrar at Gisborne that the chief judge thought 'it would be better if the orders were as you name them viz Mangaohane No. 1 and

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[206] Marchant to Grey, 27 June 1887, 23/597 Mangaohane Correspondence File, Maori Land Court, Whanganui.
[207] Marchant to the Registrar, Native Land Court, Gisborne, 27 June 1887, 23/597 Mangaohane Correspondence File, Maori Land Court, Whanganui.
[208] Marchant to Brooking, 20 April 1888, 23/597 Mangaohane Correspondence File, Maori Land Court, Whanganui.
[209] Marchant to Brooking, 23 Aprl 1888, 23/597 Mangaohane Correspondence File, Maori Land Court, Whanganui.
[210] Williams to Brooking, 21 April 1888, 23/597 Mangaohane Correspondence File, Maori Land Court, Whanganui.
[211] Brooking, File Note, 23 April 1888, 23/597 Mangaohane Correspondence File, Maori Land Court, Whanganui.
[212] Chief Judge Macdonald, File Note, 8 May 1888, 23/597 Mangaohane Correspondence File, Maori Land Court, Whanganui.

Mangaohane No. 2'.[213] The plan was received by the chief surveyor in Wellington on 25 May 1888 and returned to the Court sitting at Taradale, with the orders, the following month.[214]

198. In June 1888, the chief surveyor asked the surveyor general if he could use the plan of the Mangaohane blocks to endorse the certificate of titles forms before the survey liens were paid.[215] He was advised that Studholmes' consent was required.[216] The chief surveyor wrote to the Studholme brothers at Napier to seek their consent which was conveyed by Warren (subject to a reservation regarding the funds deposited by the Studholme brothers for the cost of the survey):

> … I have no objection to the plan of Mangaohane and Mangaohane No. 1 being placed in the public office provided the money advanced by me on account of surveying the above mentioned blocks is not endangered by so doing.[217]

199. This was interpreted to mean that the plans could not be used for this purpose and a file note later interpreted this to mean 'consent refused unless government lien is paid'.

200. On 5 April 1889, John Studholme wrote to the Native Minister from his Canterbury estate at Hinds to complain about the partition of the Mangaohane block:

> I wish to call your attention to the delay re holding a Native Land Court at Hastings for the subdivision of Mangaohane. The Court is now sitting at Waipawa and when in Napier lately I saw the Chief Judge who could give me no information as to the probable hearing of this case. A hearing has been repeatedly promised. It has already been gazetted for the Hastings Court three or four times about five years ago. For some reason best known to the Native Office the Court has been adjourned somewhere else whenever the Mangaohane subdivision was next on the list. The delay has been and is causing me considerable loss and inconvenience and is also injurious to the native owners. I think that it is a matter of justice that cases which for years have been set down for hearing should be taken before new cases are heard. Trusting that when your attention is called to the matter you will see that steps are taken to prevent further delay.[218]

201. The Native Minister asked the under secretary to reply that a sitting would be convened at Hastings as soon as the present sitting at Waipawa was completed and

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[213] Bridson to Brooking, 8 May 1888, 23/597 Mangaohane Correspondence File, Maori Land Court, Whanganui.
[214] Marchant to Brooking, 25 May 1888; Marchant to the judge, Native Land Court, Taradale, 27 June 1887, 23/597 Mangaohane Correspondence File, Maori Land Court, Whanganui.
[215] Marchant to McKerrow, 25 June 1888, LS-W1 2361 Box 56, Archives New Zealand, Wellington.
[216] McKerrow to Marchant, 2 July 1888, LS-W1 2361 Box 56, Archives New Zealand, Wellington.
[217] Warren to Marchant, 17 August 1888, LS-W1 2361 Box 56, Archives New Zealand, Wellington.
[218] Studholme to Mitchelson, 5 April 1889, J1 Box 531 1895/6, Archives New Zealand, Wellington.

that it would deal with Hawkes Bay matters.[219] A letter to this effect was sent to Studholme on 11 April. A file note also states that an application for the partition of Mangaohane was advertised in the *Kahiti* on 4 October and would be heard at a sitting at Hastings on 6 November.

202. The Native Minister sent a further request to the under secretary in July. It is not clear if this was provoked by Studholme's letter or subsequent communications which are not recorded in the file. Whatever the reason for the minister's action, he told the under secretary to seek a report from the chief judge on Mangaohane:

> This case is one of sufficient importance to warrant its being forwarded to the Chief Judge for him to examine the papers and report as to whether or not in his opinion justice has been done.[220]

203. The under secretary followed this direction and forwarded the request to the chief judge the same day.[221] However, the chief judge returned the file in September without making the report requested.

204. In August 1889, Chief Judge H.G. Seth Smith, who had replaced J.E. Macdonald, asked the registrar of the Court at Gisborne to send the minute books and papers relating to Mangaohane to him in Wellington.[222] They were at the court sitting in Hastings and the registrar instructed the clerk there to send the records to Wellington.[223] On 14 October, the clerk of Court at Hastings asked for the Mangaohane file.[224] The following day Judge von Sturmer complained to the registrar that the Court's business at Hastings was being delayed while he waited on the Mangaohane papers and asked for them to be sent 'at once'.[225]

205. It appears that it became apparent when preparing the certificates of title in October 1889 that the block was partly in the Napier district. This meant that the provincial boundary between Wellington and Hawkes Bay had to be added to the plan and the

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[219] File Note, Morpeth, 11 April 1889, J1 Box 531 1895/6, Archives New Zealand, Wellington.
[220] Mitchelson to Lewis, 24 July 1889, J1 Box 531 1895/6, Archives New Zealand, Wellington.
[221] Lewis to Seth-Smith, 24 July 1889, J1 Box 531 1895/6, Archives New Zealand, Wellington.
[222] Seth Smith to Brooking, 19 August 1889, 23/597 Mangaohane Correspondence File, Maori Land Court, Whanganui.
[223] Brooking to the Clerk, Native Land Court, Hastings, undated, 23/597 Mangaohane Correspondence File, Maori Land Court, Whanganui.
[224] Fountain to Brooking, 14 October 1889, 23/597 Mangaohane Correspondence File, Maori Land Court, Whanganui.
[225] Von Sturmer to Brooking, 15 October 1889, 23/597 Mangaohane Correspondence File, Maori Land Court, Whanganui.

areas in each province calculated. This issue was not noted when the plan was subject examination.[226] In subsequent communication, the chief surveyor also indicated that the provincial boundary had to be defined on the ground.[227] The chief surveyor also refused to release the title order forms until he had received the consent from Studholme (and it does not appear he treated the letter received from Warren as a consent).

206. Six months after sending the minister's request for a report, the under secretary noted that an application was about to be considered the Native Land Court and in consequence 'I presume the Chief Judge has thought it injudicious to report as requested in attached memo'.[228] He would discuss it with the chief judge on his arrival in Wellington. The Native Minister simply responded that the subdivision of Mangaohane 'should be taken as soon as possible'.[229] A few days later the file was again referred to the chief judge who advised that he was waiting on a s 13 application from Te Rina Mete Kingi.[230]

207. However, the Native Minister remained adamant that the hearing should proceed as soon as possible and instructed the under secretary to tell the chief judge that the government wanted the Mangaohane subdivision to precede the Awarua hearing at the forthcoming sitting in Hastings.[231] His telegram suggests that Judge Wilson and Judge Barton also received communications from either him or the department as he enquired whether replies had been received from them. The telegram was sent to the chief judge as the Native Minister directed.[232]

208. The following month, the under secretary sent a further telegram to the chief judge regarding the forthcoming hearing, this time at the direction of the premier:

> The Hon. the Premier wishes me to ascertain from you whether anything is likely to interfere with hearing of Mangaohane case on 16th instant. He considers with you there should be no further postponement or delay. Please kindly communicate with judges and reply urgent.[233]

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[226] Marchant to Bridsen, 24 October 1889, LS-W1 2361 Box 56, Archives New Zealand, Wellington.
[227] Marchant to Brooking, 9 April 1890, LS-W1 2361 Box 56, Archives New Zealand, Wellington
[228] Lewis to Mitchelson, 7 March 1890, J1 Box 531 1895/6, Archives New Zealand, Wellington.
[229] Mitchelson to Lewis, 7 March 1890, J1 Box 531 1895/6, Archives New Zealand, Wellington.
[230] Seth Smith to Lewis, 12 March 1890, J1 Box 531 1895/6, Archives New Zealand, Wellington.
[231] Mitchelson to Lewis, 25 March 1890, J1 Box 531 1895/6, Archives New Zealand, Wellington.
[232] Morpeth to Seth-Smith, 25 March 1890, J1 Box 531 1895/6, Archives New Zealand, Wellington.
[233] Lewis to Seth-Smith, 14 April 1890, J1 Box 531 1895/6, Archives New Zealand, Wellington.

209. He was advised by the chief judge that Judge Butler would hear the application for partition alone but that Judge von Sturmer would remain at Hastings to deal with rehearings 'in the meantime'.[234] In another telegram sent the same day, the chief judge added that he knew of no reason for any delay except that the Survey Office refused to forward the plan to the Court without Studholmes' consent.[235] The chief judge was 'at loss to understand it'. He thought there might also be some delay as the will of Renata Kawepo could be involved. Lewis subsequently passed this message on to the premier and added that he had spoken to the surveyor general 'and pointed out to him the importance of seeing that no technicality was allowed to prevent the Mangaohane case being gone on with on the advertised date'.[236]

210. On the question of the survey, on 9 April, following an inquiry from the registrar, the chief surveyor at Wellington advised that the surveyor general 'will not allow the plans of Mangaohane to be used till Mr Studholme consents'. He also required the boundary between the Hawkes Bay and Wellington land districts to be 'laid off' by the owners.[237] The registrar replied that the application for partition of the block, to be heard at Hastings on 16 April, could not proceed without the plan. He understood that 'Mr Studholme is anxious for partition'. The registrar was directed by the chief judge to request that the plan be sent to the presiding judge at Hastings, if possible.[238] The chief surveyor repeated his statement that the plan could not be used without Studholme's consent, which he had asked for.[239]

211. However, on 15 April, the surveyor general's office directed that the plan should be sent to Hastings.[240] The chief surveyor subsequently advised the registrar that the plan

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[234] Seth Smith to Lewis, 14 April 1890, J1 Box 531 1895/6, Archives New Zealand, Wellington.
[235] Seth Smith to Lewis, 14 April 1890, J1 Box 531 1895/6, Archives New Zealand, Wellington.
[236] Lewis to Atkinson, 15 April 1890, J1 Box 531 1895/6, Archives New Zealand, Wellington.
[237] Marchant to Brooking, 9 April 1890, 23/597 Mangaohane Correspondence File, Maori Land Court, Whanganui. Note that the surveyor general's earlier direction, that the consent of the Studholme brothers, was required before the plan could be consulted or any of the survey data used was repeated in April 1890 when the registrar of the Court asked for the plan to be sent to Hastings for the partition hearing (Barron to Marchant, 11 April 1890, LS-W1 2361 Box 56, Archives New Zealand, Wellington).
[238] Brooking to Marchant, undated, 23/597 Mangaohane Correspondence File, Maori Land Court, Whanganui.
[239] Marchant to Brooking, 9 April 1890, 23/597 Mangaohane Correspondence File, Maori Land Court, Whanganui.
[240] File Note, 15 April 1890, LS-W1 2361 Box 56, Archives New Zealand, Wellington.

could be used for the Court's purposes.[241] The registrar acknowledged this note and recorded the chief judge's relief at this outcome:

> Chief Judge desires me to say that he is extremely obliged to you for consenting to Mangaohane plan being used and that he fully appreciated your great kindness in doing so.[242]

212. William Studholme sent his own telegram asking for the plan to be sent to Hastings too.[243] However, the chief surveyor also noted that the issue with the boundary between the land districts would need to be dealt with before the plan could be used for title registration purposes.[244]

213. In mid-April, the under secretary sent a telegram to Judge O'Brien at Hastings advising him that the Native Minister 'wishes to know whether Mangaohane case is proceeding'.[245] Judge O'Brien responded that he was leaving Wanganui for Hastings the following day and he expected Mangaohane to commence the following Monday 'if no hitch interferes'.[246]

214. The 'hitch' was discovered on 6 May when Judge O'Brien asked the Native Office if the Crown claimed an interest in Mangaohane. There was no record of any claim but an official realised the problem facing the judge:

> The Court is now evidently in a fix as under the new rules partition cannot go on till original certificate has issued. If certificate had issued a copy would be filed here. This has not been done.[247]

215. A reply was sent to Judge O'Brien and a further undated confidential telegram was sent to the chief judge at Gisborne at the direction of the Native Minister:

> Yesterday Judge O'Brien telegraphed asking if government had any claim on Mangaohane and intimated that certificate had not issued. Native Minister directs me to wire to you who are aware of the urgent necessity that there shall be no hitch in the progress of this case to completion. It is strange that the non issue of certificate was not brought to notice before. Could you not take steps to have certificate issued at once. There should be no break in proceedings of Court till case is finished if it can

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[241] Marchant to Brooking, 11 April 1890, 23/597 Mangaohane Correspondence File, Maori Land Court, Whanganui.
[242] Brooking to Marchant, undated [April 1890], 23/597 Mangaohane Correspondence File, Maori Land Court, Whanganui.
[243] William Studholme to Marchant, 17 April 1890, LS-W1 2361 Box 56, Archives New Zealand, Wellington.
[244] Marchant to Judge von Sturmer, 17 April 1890, LS-W1 2361 Box 56, Archives New Zealand, Wellington.
[245] Lewis to Judge O'Brien, 16 April 1890, J1 Box 531 1895/6, Archives New Zealand, Wellington.
[246] Judge O'Brien to Lewis, 16 April 1890, J1 Box 531 1895/6, Archives New Zealand, Wellington.
[247] Sheridan to Lewis, 6 May 1890, J1 Box 531 1895/6, Archives New Zealand, Wellington.

> be avoided. Government have no claim and have not so far as this department is concerned interfered with the issue of title.[248]

216. The chief judge responded that Judge O'Brien was under the impression that the titles had not issued because of a claim by the Crown. However, as far as the chief judge could determine, 'the non issue is due solely to delay in the Survey Department'.[249] The hearing was proceeding nevertheless.

217. In the meantime, the under secretary had spoken to the surveyor general about Mangaohane and prepared a report for the Native Minister. He was evidently concerned that the Native Department was been criticised for delaying the issue of titles for Mangaohane and so preventing the partition of the block:

> As you are aware charges have repeatedly been brought against this Department, without the slightest foundation, of having delayed and postponed the investigation of this block.[250]

218. He insisted that the department had not prevented the issue of the titles nor did it have any role in issuing the titles. Rule 15 of the Native Land Court rules required that the certificates had to be issued by the Court before an application for partition could be considered. The under secretary believed that '[a]s the Court is entertaining and dealing with the partition of this block, it has, I presume found some way of getting over the difficulty'. He concluded:

> As the Government in consequence of the representations made to it has urged upon the Native Land Court in the interests of all parties that there should be no delay in dealing with the partition of this block it might be desirable to ascertain from Mr Marchant and the Native Land Court what is the exact position and whether there is any difficulty in the way of the Court's adjudication which the Government could assist to remove without interference with the rights of the parties.[251]

219. This proposal was approved by the Native Minister and the under secretary forwarded the request to the chief surveyor at Wellington.[252]

220. The response from the chief surveyor provided a clear explanation of what had happened since the survey of Mangaohane was approved in April 1886:

> The Mangaohane Block was surveyed by a private surveyor (Mr Kennedy) and the plan was passed and approved by me in April 1886. Acting under instructions from the Surveyor General I lodged a lien of £1108 4s 2d in the Native Land Court; this amount represents the cost of the survey at schedule rates. In consequence of some

[248] Lewis to Seth-Smith, undated, J1 Box 531 1895/6, Archives New Zealand, Wellington.
[249] Seth-Smith to Lewis, 8 May 1890, J1 Box 531 1895/6, Archives New Zealand, Wellington.
[250] Lewis to Mitchelson, 8 May 1890, J1 Box 531 1895/6, Archives New Zealand, Wellington.
[251] ibid.
[252] Lewis to Marchant, 9 May 1890, J1 Box 531 1895/6, Archives New Zealand, Wellington.

> arrangement, the basis of which I never clearly understood, entered into between the Head Office and Mr Studholme I have never been allowed to make use of the plans and have had to keep them locked up except when the Court required them. Besides I have been instructed not to complete the Court titles by placing plans upon them unless Mr Studholme consents. This he refused to do when applied in 1888 and I am not aware that he and the Head Office have settled the matter since. There is another difficult in the way of issuing the titles; viz, the fact that the boundary between Wellington and Hawkes Bay has not been surveyed by Mr Kennedy and shown upon the plan though he was called upon long ago to do so. I am not aware that this Mangaohane case has ever been interfered with or delayed by the Native Department or by this office except when absolutely necessary in connection with the survey and plans.[253]

221. Two days later, the under secretary reported to the Native Minister on the results of his investigations. He endorsed the view expressed by the chief surveyor and identified Studholme as the cause of the delay in arranging the partition:

> It is strange that Mr Studholme who has been so anxious to press on the Mangaohane subdivision hearing, should himself have been the person who is responsible for the delay in the issue of the Certificate without which the subdivision case cannot go on to completion.[254]

222. The under secretary summarised the details given by the chief surveyor on the circumstances of the survey before advising that Studholme had met with him the previous Saturday to discuss the case:

> Fortunately Mr Studholme called upon me on Saturday to inquire into the position of the matter, he had previously been with Mr Marchant and was very much surprised to find that he himself was standing in the way of the subdivision he has so much desired.
> I explained to Mr Studholme that the matter was really outside the province of the Native Office, although knowledge of the 'run of the ropes' would enable me to assist him in setting the matter right which I should be very glad to do. I referred to his letter in which he had charged this office with standing in the way of the hearing of this case and am glad to say removed the misapprehension that existed in his mind in the matter. I went with Mr Studholme to see the Surveyor General and Mr Studholme has written an authority, of which I enclose a copy, for the plans to be used in the issue of the Certificate.[255]

223. The under secretary expected this would deal with the issues which had prevented the partition of the block but, he added, 'as the matter is almost sure to come up in some form or other it is desirable that the facts herein stated should be placed on record for future reference if necessary'. This report was acknowledged by the Native Minister and no further action taken: the under secretary asked for the documents be filed 'till the question comes up again'.[256]

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[253] Marchant to Lewis, 10 May 1890, J1 Box 531 1895/6, Archives New Zealand, Wellington.
[254] Lewis to Mitchelson, 12 May 1890, J1 Box 531 1895/6, Archives New Zealand, Wellington.
[255] ibid.
[256] Lewis, File Notes, 14 May 1890, J1 Box 531 1895/6, Archives New Zealand, Wellington.

224. Studholme's authority was dated 10 May and was addressed to the chief surveyor advising him that, acting on behalf of those holding the lien on the survey, he authorised 'the plans to be used for the issue of certificates of title'.[257]

225. As the Native Department was dealing with these matters, the registrar of the Native Land Court asked the chief surveyor, on 7 May, to complete the certificates of title which were sent to him in 1888 by placing the plans on the draft orders. This was because the partition could not proceed until the orders were finalised. The chief surveyor advised the registrar that the Mangaohane orders could not be endorsed with the plans as the surveyor had to complete them.[258] The surveyor was working on the plans at that time. In particular, the boundary between the land districts was surveyed and marked on the plan.[259]

226. A few days later, the chief surveyor recorded that he had been directed by the surveyor general to endorse the certificates for Mangaohane using the survey plan and he told his staff 'to use maps as others are used'.[260] The surveyor general asked for the work to be completed 'as quickly as you can' and noted that Studholme had given his consent to this use of the plans.[261] The certificates were to be sent out that day even though it appears the survey of the provincial boundary had not been completed. An official noted that the 'approximate location of provincial boundary as sketched on plan at the Court, placed on title forms'. The plans and orders were sent to Judge O'Brien in Hastings, at the 'request of Mr John Studholme', on 12 May.[262]

227. Two days later, Judge O'Brien forwarded the completed orders to the chief judge. They had been signed by Judge Williams, who had since retired, but they were prepared after Judge O'Brien had left Hastings so he had been unable to sign them at that time. Judge O'Brien noted that the southern portion of the block was unnumbered while the survey plan referred to Mangaohane No. 2. He suggested the survey plan should be altered to make it consistent with the order but he regretted this error in naming the block in the order as it was, under the terms of the Court's decision,

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[257] Studholme to Marchant, 10 May 1890, J1 Box 531 1895/6, Archives New Zealand, Wellington.
[258] Marchant to Brooking, 7 May 1890, 23/597 Mangaohane Correspondence File, Maori Land Court, Whanganui.
[259] Brooking to Marchant, 7 May 1890, LS-W1 2361 Box 56, Archives New Zealand, Wellington.
[260] Marchant to Brown, 12 May 1890, LS-W1 2361 Box 56, Archives New Zealand, Wellington.
[261] Smith to Marchant, 12 May 1890, LS-W1 2361 Box 56, Archives New Zealand, Wellington.
[262] Chief Surveyor to Judge O'Brien, 12 May 1890, LS-W1 2361 Box 56, Archives New Zealand, Wellington.

supposed to be called Mangaohane No. 2. He also noted an error in the lists of names in the orders for No. 1.[263] It would appear that this was the completion of the certificate of title for the two Mangaohane blocks.

228. On 21 May, the registrar asked Judge O'Brien to confirm the plan met the requirements of s 27 of the Native Land Court Act 1880. He did so the same day.[264] The chief judge signed the certificates on 27 May 1890 and asked the registrar to correct the names of the block.[265] The registrar also asked the clerk at the Native Land Court in Hastings to clarify whether there were any restrictions on the title to Mangaohane and was advised that there were not.[266] Now complete, copies of the titles for the two blocks were sent to the under secretary of the Native Office.[267]

229. The application to partition Mangaohane No. 1 was heard by Judge O'Brien and Assessor B.F.J. Edwards at Hastings in April and May 1890.[268] Evidence was presented by a number of witnesses, including Raita Tuterangi, Winiata Te Whaaro, Heta Tanguru and Hiraka Te Rango for Ngāti Whiti, Gilbert Mair, Raniera Te Ahiko, G.P. Donnelly, Eruini Te Whare for Airini Tonore and Anaru Te Wanikau, J.J. Bays (a settler residing in Patea) and James Lyon (another settler who lived on Mangaohane) for Ngāti Honomokai.[269] Hiraka conducted the case for Ngāti Whiti while T.W. Lewis represented Airini and James Carroll represented Ngāti Honomokai.

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[263] Judge O'Brien to Chief Judge Seth Smith, 14 May 1890, 23/597 Mangaohane Correspondence File, Maori Land Court, Whanganui. Note that this letter is badly damaged down one side.
[264] Brooking to Judge O'Brien, 21 May 1890; Judge O'Brien to Brooking, 21 May 1890, 23/597 Mangaohane Correspondence File, Maori Land Court, Whanganui.
[265] Chief Judge Seth Smith to the Registrar, Gisborne, 27 May 1890, 23/597 Mangaohane Correspondence File, Maori Land Court, Whanganui. The chief surveyor at Wellington subsequently advised that his office copy had been altered by the Court plan was with the Court sitting in Hastings, Marchant to Brooking, 20 June 1890, 23/597 Mangaohane Correspondence File, Maori Land Court, Whanganui. Instructions were sent chief surveyor at Napier to alter that plan, Brooking to Williams, 4 July 1890, 23/597 Mangaohane Correspondence File, Maori Land Court, Whanganui.
[266] Brooking to the Clerk Native Land Court, Hastings, 2 June 1890; Fountain to Brooking, 2 June 1890, 23/597 Mangaohane Correspondence File, Maori Land Court, Whanganui.
[267] Lewis to Brooking, 12 June 1890, 23/597 Mangaohane Correspondence File, Maori Land Court, Whanganui.
[268] Napier Native Land Court Minute Book 20, 24 April 1890, fol. 358.
[269] Napier Native Land Court Minute Book 20, 24 April 1890, fol. 358; 25 April 1890, fol. 368; 30 April 1890, fol. 392; 30 April 1890, fol. 396; 2 May 1890, fol. 412; 2 May 1890, fol. 413; 6 May 1890, fol. 425; 6 May 1890, fol. 429; 7 May 1890, fol. 430; 8 May 1890, fol. 444; 8 May 1890, fol. 446.

230. The Court indicated that its preference, given the evidence, was for the parties to resolve their disputes in negotiation but this did not prove possible.[270] The Court found that Ngāti Honomokai had 'given stronger evidence of occupation than the Ngāti Whiti', noting that the evidence of occupation given by Ngāti Whiti was 'most if not wholly of a date subsequent to 1840'. However, the Court did note that, as in 1885, significant leaders of Ngāti Whiti did not give evidence. It had no explanation for other than noting that 'no satisfactory reason' was given which 'is suggestive that motives influenced it'. An area of 6800 acres was allocated to Ngāti Whiti and this was defined in the decision. The balance of the block was awarded to Ngāti Honomokai (presumably those represented by Lewis and by Carroll). There were further discussions regarding the relative interests of each owners and the Court made final partition orders on 17 June.[271] The minutes suggest that Mangaohane No. 2 was also included in the partition scheme and orders made at this time.

231. In June 1890, Te Retimana Te Rango and others of Moawhango applied for a rehearing of the partition of Mangaohane.[272] The signatories to the application were Te Retimana, Karaitiana Te Rango, Hakopa Te Ahunga, Ihaka Te Konga, Ropoama Pohe, Taiuru Te Rango, Ani Raumaewa, Hoera Te Rango, Hohepa Patumoana and Hoani Patumoana on behalf of the iwi of Ngāti Whiti. The application included an explanation of the causes of their complaints but this document has suffered significant damage and cannot be read in its entirety. The following discussion is based on what can be read or inferred from the parts which can be read. It would appear the Court either received the application, or the fee for the application was paid, in August 1890. Their key complaint related to the award of land to Ngāti Honomokai:

> That the Ngāti Honomokai have been awarded to great an interest therein seeing that they and their ancestors reside and have resided at Heretaunga while the Ngāti Whiti (the applicants) have resided permanently on the Block.[273]

232. They argued that Ngāti Honomokai had no claim to the land through ahikaroa and that the descendants of Whitikaupeka (Ngāti Whiti) were the owners of the land and that their interest was through ahikaroa. The applicants further alleged that the Court's

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[270] Napier Native Land Court Minute Book 20, 13 May 1890, fol. 451.
[271] Napier Native Land Court Minute Book 21, 17 June 1890, fols 107-109.
[272] The application, dated 21 June 1890, and the supporting document are both in very poor condition. See 23/597 1 Mangaohane Correspondence File Volume 1, Maori Land Court, Whanganui.
[273] ibid.

decision was contradicted by other decisions on the Owhaoko block to the north. In that hearing, the Court concluded that Ngāti Honomokai had no interest in Patea west of the Taruarau River, which is part of the eastern boundary of Mangaohane. In addition, Retimana was unable to attend the hearing because of illness and his presence would have assisted Ngāti Whiti's claim.

233. The application also noted that Wera Utiku, who along with Ani Paki signed this document but not the printed application described above, had been 'dispossessed of her residence, and farm, being part of the block which she occupied having been awarded to others'. She had a dwelling on the land, fenced paddocks and crops, all of which had been awarded to others. A note on the application states that Chief Judge Davy dismissed it on 22 May 1894 and a subsequent order shows that this followed a hearing at Hastings with Assessor Rawiri Karaka. The registrar later stated that the chief judge (either Davy or Seth Smith) had issued a minute describing both rehearing applications as 'premature' and Retimana's as 'informal'.[274]

234. In July 1890, Judge O'Brien ordered a question of law to be stated for a decision of the Supreme Court. The question arose out of proceedings involving the Mangaohane block and was:

> Can a Judge of the Native Land Court in the matter of a transaction or negotiation for the purchase of a Block of Land by a European from Natives, who took place in the year 1885 and which transaction the Court fully enquired into and satisfied itself of the assent of all the owners and the bona fides and propriety of the transaction and having explained to the natives the effect thereof and that they had parted with their Land for ever, endorse upon the certificate of title a declaration that the purchaser shall hold the Land in freehold tenure?[275]

235. All other proceedings in the case were stayed pending the decision of the Supreme Court.

236. Judge O'Brien's decision provided greater detail on the background to the order sending the question to the Supreme Court.[276] The purchaser, R.T. Warren had entered into negotiations to acquire interests in Mangaohane and deeds were executed by 'certain natives' on 8 August 1885 and 9 March 1886 and payments to them were

[274] Brooking to Broughton, 15 June 1891, 23/597 1 Mangaohane Correspondence File Volume 1, Maori Land Court, Whanganui.
[275] A copy of the Native Land Court's decision and order, both dated 9 July 1890, and the response of the Supreme Court, dated 26 November 1890, are located in 23/597 1 Mangaohane Correspondence File Volume 1, Maori Land Court, Whanganui.
[276] Native Land Court decision, 9 July 1890, ibid.

made. Judge O'Brien presided at the Court where the land was partitioned on 28 May 1890. Under the terms of that decision, those who had signed the deeds were awarded around 32,000 acres. The Court had been advised that Warren was the agent and manager for John Studholme Jr, William Paul Studholme and James Francis Studholme. Solicitors acting for the Studholme brothers applied to the Court for an investigation of the transactions on 21 June 1890. According to the judge, a full enquiry of the arrangements was made in open Court. The Court was satisfied by the evidence as to the legitimacy of the transactions and also confirmed that the Trust Commissioner at Napier (G.A. Preece) had certified the transactions. The solicitors acting for the Studholme brothers subsequently 'applied to the Court for an order recommending to the Governor that the Crown Grant should be issued in favour of the purchaser'.[277] The question of law arose from this last request.

237. This seems to be the reason that, in mid-June, the clerk at the sitting in Hastings advised that the Court had made no progress on the partition applications:

> No orders have been definitely made as to either portion of Mangaohane as incidental matters have cropped up at the last and they have to be disposed of. The block was struck out of the marked panui by the judge who considered at the time that the case had all but terminated.[278]

238. On 11 July, Judge O'Brien, who was presiding at a Court sitting at Marton, asked the Registrar to request a tracing from the chief surveyor of the portion of Mangaohane south of the Mangaohane stream as he wished to compare it with the northern boundary of the Awarua block.[279] This was requested from the Survey Office, which sent it to the judge.[280]

xi PREPARATIONS FOR THE SUPREME COURT PROCEEDINGS

239. On 4 August, the under secretary reported on an approach from C.B. Morison to the department to the Native Minister. Morison had requested permission to review the department's file relating to Mangaohane. The report suggests that Morison had approach the minister who asked the under secretary to review the file:

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[277] ibid.
[278] Fountain to Brooking, 14 June 1890, 23/597 Mangaohane Correspondence File, Maori Land Court, Whanganui.
[279] Judge O'Brien to Brooking, 11 July 1890, 23/597 Mangaohane Correspondence File, Maori Land Court, Whanganui.
[280] Marchant to Brooking, 12 July 1890, 23/597 Mangaohane Correspondence File, Maori Land Court, Whanganui.

> Mr Morison is inclined to take up the attitude that the course of justice is obstructed if access to papers on government files is not allowed. I have in accordance with you instructions gone over the Mangaohane file and while there is nothing in that, or any other file so far as I am aware that requires to be concealed there are minutes by ministers, under secretary and other government officers, telegrams and memorandum written no doubt in the ordinary confidence which it has always been presumed belongs to official minutes that in my opinion makes it undesirable that this or any other file of papers should be handed over a solicitor for perusal.

240. The under secretary referred to his experience in the public service over 27 years and claimed that it was only recently that solicitors had requested access to departmental files or that such files might be available for public inspection. He believed a general rule should be established and that rule should be that no departmental files should be made available for public inspection, other than those required by law for payment of a fee. Certified copies of documents could be supplied on the payment of the standard fee for copying. The under secretary's recommendation was that the minister obtain the opinion of the solicitor general on his proposed rule. He concluded:

> Mr Morison I may add appeared inclined to regard my objections as obstruction though personally of course I cannot have the slightest objection to his having the papers. But as it appears to me that an important principle is involved I have deemed it advisable to raise the question on board grounds and submit it respectfully for your instructions.[281]

241. The Native Minister referred the report to the solicitor general for his opinion.[282] The solicitor general offered the following advice:

> Having perused the attached memo by the under secretary on the subject of the production of files of government records for the inspection of applicants, I beg to say that I agree generally in the view he has expressed that such files should not be open to inspection on the demand of any person who may allege he has an interest in doing so. Files of government records are the property of the Crown, in charge of the ministerial head of the department to which they relate. He, in his discretion, can allow them to be seen by such persons is he thinks that, but as a rule this would be confined to such documents as part of a public nature, and would not include minutes made by ministers, or by officers for the information of ministers, or any other documents of a confidential nature.
>
> Papers that the latter class are not usually producible in parliament or in a court of law, the general rule being that official transactions between the departments of government and their subordinate officers are treated as secrets of state. If this be so in such a case, still more does it apply in the case of a private applicant. The whole case is summed up in this: there is no right whatever to have access to the government records, on the part of a private person, the sole discretion lies with the minister in charge, who, I am sure would not allow the entire records to be at the disposal of any more private applicant.[283]

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[281] Lewis to Mitchelson, 4 August 1890, J1 Box 531 1895/6, Archives New Zealand, Wellington.
[282] Mitchelson to the Solicitor General, 5 August 1890, J1 Box 531 1895/6, Archives New Zealand, Wellington.
[283] File Note, Reid, 9 August 1890, J1 Box 531 1895/6, Archives New Zealand, Wellington.

242. The under secretary noted that it 'would be clearly impossible to hand over any file of papers for perusal without disclosing the memoranda and minutes which are in the opinion of the solicitor general are "secrets of state" that should not be disclosed'.[284] He recommended a 'strict rule that government files of papers should not be handed to solicitors for perusal unless in cases where they are acting for the Crown'. The minister approved this recommendation and Morison was advised that his request was denied.[285]

243. At about the same time, a file note from the chief judge to the registrar at Gisborne refers to an application for a rehearing of the partition of Mangaohane.[286] The applicant had to pay the fee and have the signatures 'attested'. Another official noted that the application had been returned to Te Wera Utiku so he could deal with these requirements.

244. On 6 August, the chief judge asked for the Mangaohane files and minute books to be sent to him in Wellington.[287] Some of the material was sent immediately.[288] However, the minutes of the initial hearing were with Judge O'Brien at a sitting in Marton. The registrar advised Judge O'Brien at Marton of this request and asked him to forward the minute books if they could 'be spared'.[289]

245. The under secretary received a note from the clerk of the Native Affairs Committee on 18 August advising that the committee planned to consider a petition by Winiata Te Whaaro the following day.[290] The under secretary was asked to attend. The same day he requested approval from the minister to produce the department file to the committee.[291] This was given the following day.[292]

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[284] Lewis to Mitchelson, 11 August 1890, J1 Box 531 1895/6, Archives New Zealand, Wellington.
[285] Mitchelson to Lewis, 11 August 1890; Lewis to Morpeth, 11 August 1890; Lewis to Morison, 11 August 1890, J1 Box 531 1895/6, Archives New Zealand, Wellington.
[286] Seth Smith to Brooking, 5 August 1890, 23/597 Mangaohane Correspondence File, Maori Land Court, Whanganui. Note Judge O'Brien's report on a petition on Mangaohane for rehearing forwarded to the Native Affairs Committee by Chief Judge H.G. Seth Smith: Seth Smith to the Chairman, Native Affairs Committee, 22 August 1890, 23/597 Mangaohane Correspondence File, Maori Land Court, Whanganui.
[287] Seth Smith to Brooking, 6 August 1890, 23/597 Mangaohane Correspondence File, Maori Land Court, Whanganui.
[288] Brooking to Seth Smith, 6 August 1890, 23/597 Mangaohane Correspondence File, Maori Land Court, Whanganui.
[289] Brooking to O'Brien, undated, 23/597 Mangaohane Correspondence File, Maori Land Court, Whanganui.
[290] Silk to Lewis, 18 August 1890, J1 Box 531 1895/6, Archives New Zealand, Wellington.
[291] Lewis to Mitchelson, 18 August 1890, J1 Box 531 1895/6, Archives New Zealand, Wellington.

246. On 30 August 1890, W.P. Studholme, who was staying at the Hawkes Bay Club, asked the Registrar in Gisborne to send copies of the certificates of title for Mangaohane and the Court's recent orders:

> Would you please have certified copies made in duplicate of the Mangaohane certificates of title and also of all orders of the Native Land Court relating to each block in duplicate. Could they be made immediately? Please wire me Hawkes Bay Club.[293]

247. He was advised that the copies would be sent in the first mail the following week. A file note also refers to other letters from Studholme on 1 September and 4 September which were passed on to Nolan and Skeet, a firm of Gisborne solicitors. Payment of £2 for these copies was requested from Bell, Gully and Izard, a firm of Wellington who were legal advisors to Studholme.[294] On 4 September, Bell, Gully and Izard, sent a telegram to the registrar asking him to send the copies to Studholme and that their cheque had been written. The documents were sent to Studholme at the Hawkes Bay Club in Napier on 6 September.[295] Studholme forward his own cheque in payment for these copies and thank the registrar for 'the trouble you have taken in this matter'.[296] However, he advised the same day by telegram that the copies had not arrived. He was keen to receive them, asking the registrar to 'please enquire and wire me urgent'.[297]

248. In early September, the chief judge forward a cheque for £5 to the registrar at Gisborne.[298] This was the fee paid for an application for rehearing submitted by Retimana Te Rango, Ani Paki, Hohepa Te Rango, Ani Taone and Wera Utiku. The chief judge advised that the application had been referred to Judge Butler for a report.

249. An application for rehearing by Iraia Karauria of Omahu was completed on 8 September 1890 and submitted to the chief judge on his behalf by J.M. Fraser. The

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[292] Mitchelson to Lewis, 19 August 1890, J1 Box 531 1895/6, Archives New Zealand, Wellington.
[293] Studholme to Brooking, 30 August 1890, 23/597 Mangaohane Correspondence File, Maori Land Court, Whanganui.
[294] Brooking to Bell, Gully and Izard, undated, 23/597 Mangaohane Correspondence File, Maori Land Court, Whanganui.
[295] Though his solicitors subsequently asked, after they were dispatched, for the copies to be sent to them. As payment was received direct from Studholme, the cheque from the solicitors was returned to them.
[296] Studholme to Brooking, 8 September 1890, 23/597 Mangaohane Correspondence File, Maori Land Court, Whanganui.
[297] Studholme to Brooking, 8 September 1890, 23/597 Mangaohane Correspondence File, Maori Land Court, Whanganui.
[298] Seth Smith to Brooking, 1 September 1890, 23/597 Mangaohane Correspondence File, Maori Land Court, Whanganui.

application related to the partition of the block on 26 June. The application set out a number of grounds for the rehearing:

> 1. That by a judgment of the Court the following persons:- Airini Tonore, Iraia Karauria, Pani Karauria, Erena Karauria, Ani Kanara, Ihimaera Karaka, Rahira Karaka and Te Hira Karaka were found to be entitled to 15372 acres in Mangaohane.
> 2. That subsequent to the judgment and under arrangement with the parties to whom the remainder of the Mangaohane Block had been awarded 500 acres were purchased by Airini Tonore and 500 acres were given by the said parties to the persons named in the first paragraph.
> 3. That the 1000 acres were then added to the original award making the area 16,372 acres upon which the further subdivisions were made.
> 4. That Airini Tonore, Iraia Karauria, Pani Karauria and Erena Karauria are the surviving children of Karauraia and Haromi Te Ata and as such have an equal interest in lands the title to which is derived through them or either of them.
> 5. That their title to this land was derived through their mother the said Haromi Te Ata.
> 6. That the persons named in the fourth paragraph in addition to their original shares were entitled as successors in equal shares to the interests of Turanga Karauria and Matenga Karauria deceased, also in unequal shares to the interest of Arapera Rangitaiaki deceased.
> 7. That the Court on the 26th of June made orders by which the following persons were awarded the area hereunder and that Iraia Karauria on the same day made objection thereto in open Court and was informed that his objection was made too late.
> …
> 8. That the allocation of the various subdivisions is unfair and inequitable and that the most valuable portion of the Block is absorbed in the subdivisions B and in 1O in which latter Airini Tonore has a very large portion.
> 9. That the application for an order in favour of Airini Tonore for subdivision B 5000 acres to defray survey and other charges was altogether unwarranted and the order must have been made under a misapprehension as no arrangement had ever been discussed by us under which application could be made for this area.
> 10. I enclose rehearing fee five pounds and authority from Iraia Karauria to me to act as his agent.

250. In forwarding the application to the chief judge, the registrar at Gisborne noted that Judge O'Brien had made final orders in Mangaohane B, D, E and Otupae. However, orders in A and C were provisional as questions had been referred to the Supreme Court.[299] The registrar stated that the last day on which the orders could be finalised were 26 June 1890.[300] The chief judge noted on the application:

> This application like the others premature, the partition not having been completed.[301]

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[299] See also Judge O'Brien to Seth Smith, 9 September 1890, 23/597 1 Mangaohane Correspondence File Volume 1, Maori Land Court, Whanganui.
[300] Brooking to Seth Smith, 16 September 1890, 23/597 Mangaohane Correspondence File, Maori Land Court, Whanganui.
[301] File Note, Seth Smith, 20 September 1890, 23/597 Mangaohane Correspondence File, Maori Land Court, Whanganui.

251. It appears there was a hearing at Hastings before the chief judge, with Assessor John Barton, in June 1890 and an order dismissing the application was signed by the chief judge on 11 December 1893.

252. On 11 September, the solicitor Morison, who was apparently examining the files relating to Mangaohane, asked the registrar at Gisborne for advice on the plan for the block:

> Mangaohane. Am searching papers Wellington office. Nothing on file to show whether plan ever open for inspection under section 28 Act of 1880. Please wire Mr Bridsen information on this point.[302]

253. The registrar responded that the plan was never deposited for inspection 'as Judge O'Brien considered plan sufficient as required by sec. 26'. He referred to telegrams between himself and the judge on this point, which were located in the file.[303] Morison later asked for the files to be sent from Gisborne to the Wellington office in anticipation of the proceedings pending in the Supreme Court.[304] He noted that all parties in the hearing were represented by Wellington solicitors and suggested it was most convenient for the papers to be available there.

254. At the start of October, a notice signed by members of the Studholme family (John Studholme Jr, W.P. Studholme and J.F. Studholme) was printed in the *New Zealand Gazette*.[305] It set out the details of their application under s 20 of the Native Land Court Acts Amendment Act 1889. They claimed to have purchased or acquired the interests of a number of those named in the order for Mangaohane No. 1 and Mangaohane No. 2 (given at Mangaohane in the notice).[306] The application was

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[302] Morrison to Brooking, 11 September 1890, 23/597 Mangaohane Correspondence File, Maori Land Court, Whanganui.
[303] Brooking to Bridsen, 12 September 1890, 23/597 Mangaohane Correspondence File, Maori Land Court, Whanganui.
[304] Jordan to Brooking, 29 October 1890, 23/597 Mangaohane Correspondence File, Maori Land Court, Whanganui.
[305] *New Zealand Gazette*, 16 October 1890, p. 1128.
[306] In Mangaohane No. 1, they claimed to have purchased the interests of Te Oti Pohe, Rawinia Wanikau, Kohatu d, Pukapuka Rawiri (Pukapuka Te Ote), Iwikau Te Heuheu, Harawera Heperi, Urania Renata, Rena Maikuku, Kaite Tuterangi, Heta Tangaru, Renata Kawepo (as trustee for Wakapu Tukiawaho), Katarina Hira Tuketerangi, Waata Rakaiwerohia, Waipu Te Moata, Renata Kawepo, Anaru Te Wanikau, Meri Tawhara, Te Manaotawhaki, Renata Kawepo and Wiremu Paraotene (as trustees for Rawiri Te Hoeroa and Te Mate Tahuna), Harata Hokahoka, Atareta Kaingakora, Watarawhi Hohaia, Te Amapo Mina, Wiremu Paraotene, Riria Te Rere, Tauria Paraotene, Rora Te Oi (Te Oi), Harata Keokeo, Hopa Te Auraki, Karena Taniwha and Maata Kato and Renata Kawepo (as trustee for Heta Hakiwai, Hoani Hakiwai, Wi Hakiwai, Ka Hakiwai, Kiruangaaki Hakiwai and Hakiwai). In Mangaohane No. 2 they claimed to have purchased the interests of Renata Kawepo, Anaru Wanikau, Harata Hokahoka, Atareta Kaingakora, Watarawhi Hohaia, Te Amapo Mina, Wiremu

received by the registrar of the Native Land Court at Wellington and a copy was held by the clerk of the Magistrate's Court at Napier where they could be examined. The notice stated that any opposition to their claims had to be filed and notice given at least fourteen days before any hearing.

255. In November 1890, C.B. Morison wrote to the clerk of the Court which sat at Hastings in 1884 and 1885 to request he swear an affidavit regarding the proceedings.[307] According to Morison, the Supreme Court was about to deal with a matter arising from these proceedings and an issue had arisen in relation to the status of the survey at the time of the hearing:

> It seems that the Block was not marked off on the ground as required by the act and that the judges held no inquiry that it was required and there is nothing in the minutes of the Court showing that this was done and independent witnesses say it was not. I have to ask that you will kindly make enclosed affidavit which will obviate the necessity of your being brought to Wellington to prove the minutes. I also enclose copy of two telegrams which appear on the file showing that the orders were signed by Judge Williams at Tarawera.[308]

256. The solicitor also asked the clerk to add a paragraph to the affidavit if he was aware that the lists of names were not attached to the order when they were signed by Judge Williams.

257. The draft affidavit set out the details of the Native Land Court sitting, the position of the clerk and confirmed that he recorded the minutes of the hearing in the minute book. It was also supposed to confirm:

> That if there is no mention in such minute book and record of any enquiry having been made by the Court of evidence having been given before the Court that the boundary of the land comprised in the application before the Court under investigation were marked out on the ground I can say that no such enquiry was held and no such evidence given.
> That after the Court which conducted the Mangaohane investigation had finally risen without adjournment His Honour E.M. Williams aforesaid Judge left Hastings to hold a Court at Tarawera and finding that no order had been made on the investigation of Mangaohane I forwarded the orders to him Tarawera for signature early in the month of November 1885 and shortly after received said order from His Honour Judge Williams signed by him.
> That the names of the Native owners had not at that time been inserted in such orders.

Paraotene, Karena Taniwha, Rora Te Oi, Hopa Te Auraki, Ana Maata Kato, Renata Kawepo (as trustee for Heta Hakiwai, Hoani Hakiwai, Wi Hakiwai, Ka Hakiwai, Kiruangaaki Hakiwai and Hakiwai), Waata Rakaiwerohia, Waipu Te Moata, Meri Tawhara, Renata Kawepo and Wiremu Paraotene (as trustees for Rawiri Te Hoeroa and Te Matetahuna), Te Manaotawhaki, Riria Te Rere, Tauria Paraotene and Harata Keokeo.

[307] Morison to Jackson, 7 November 1890, 23/597 1 Mangaohane Correspondence File Volume 1, Maori Land Court, Whanganui.

[308] ibid.

258. However, the clerk refused to sign the affidavit.[309] He had no difficulty with the details setting out the sitting and his role but could not accept the first of the paragraphs set out above without consulting the minute books to refresh his memory. He also thought it unwise to rely only on his memory in relation to the second paragraph after the extent of the time which had passed. He also doubted that he would have sent the order to the judge to be signed when it was incomplete. He was willing to help where he could 'but you yourself must see how impossible it is for me to make the required affidavit when, situated as I am, I should have to trust solely to my memory about event which took place quite five years ago'.[310] The draft affidavit was returned to Morison.

259. The Supreme Court's decision on the question of law stated by Judge O'Brien and arising out of the partition of Mangaohane No. 1 was given at Auckland on 26 November 1890 by Justice Conolly:

> It is hereby certified that this Court doth decide that under the circumstances stated in the said case the judge of the Native Land Court cannot endorse upon the certificate of title a declaration that the purchaser shall hold the land in freehold tenure.[311]

260. At the end of 1890, the chief judge asked the registrar at Gisborne to send him the papers for Mangaohane to the Court's office in Wellington.[312] No reason was given but some weeks earlier he had received notice from the Supreme Court at Wellington of an application for a writ of certiorari and he forwarded this to the under secretary of the Native Department on the last day of 1890.[313] The application would be considered when the Court next sat at Wellington in February 1891. The Supreme Court's notice, in the form of an order, was on the motion of Morison and issued by the Court's deputy registrar on 21 November. A note on the documents states it was received at Auckland on 30 December. It stated that he would be required to deliver to the Supreme Court orders or decisions relating to the investigation of title to Mangaohane and any subsequent orders or decisions based on them.

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[309] Jackson to Morison, 15 November 1890, 23/597 1 Mangaohane Correspondence File Volume 1, Maori Land Court, Whanganui.
[310] ibid.
[311] Registar, Supreme Court, Napier to Judge O'Brien, 2 December 1890, 23/597 1 Mangaohane Correspondence File Volume 1, Maori Land Court, Whanganui.
[312] Seth Smith to Brooking, 30 December 1890, 23/597 1 Mangaohane Correspondence File Volume 1, Maori Land Court, Whanganui.
[313] Seth-Smith to Lewis, 31 December 1890, J1 Box 531 1895/6, Archives New Zealand, Wellington.

261. In forwarding the order to the under secretary, the chief judge advised that he did 'not consider it incumbent on me to take any active steps to oppose the issue of the writ applied for but ex debito justitiae some one should be instructed to appear and watch the proceedings on behalf of the several officers of the Native Land Court'.[314] He suggested the proceedings should be referred to the Crown solicitor for this purpose. He had instructed the registrar at Gisborne to send the Court's papers relating to the block to the registrar at Wellington. Early in the new year, the Native Minister approved the chief judge's suggestion and the papers were forwarded to the Crown solicitor.[315]

262. In late January 1891, the chief judge asked the registrar at Gisborne whether a majority of owners had transferred their interests to Studholme.[316] The registrar at Gisborne had no papers on this matter and referred the enquiry to Wellington.[317]

263. At around this time, it was found that one of the plans for the block used at the initial hearing had gone missing. The chief surveyor at Wellington had sent plans to both the registrar in Gisborne and Judge O'Brien. These were specified as WD633 and WD633A and WD753.[318] However, Judge O'Brien insisted that these plans were not the one used at the initial hearing in 1884:

> Neither of the Mangaohane plans sent me by you is that on which the case was heard by the Court in 1884. That was a provisionally approved sketch map No. 23 showing an approximate area of 58,000 acres and it is marked by the Court. It has red pencil letters and other references and marks made by the Court during the hearing.[319]

264. The clerk of the Court recalled returning this plan to the Survey Office at Napier at the conclusion of the sitting in 1885.[320] He was also convinced that there was another plan:

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[314] ibid.
[315] Mitchelson to Sheridan, 9 January 1891, J1 Box 531 1895/6, Archives New Zealand, Wellington. They were returned at the end of May and were filed for the time being.
[316] Seth Smith to Brooking, 28 January 1891, 23/597 1 Mangaohane Correspondence File Volume 1, Maori Land Court, Whanganui.
[317] Brooking to Seth Smith, undated, 23/597 1 Mangaohane Correspondence File Volume 1, Maori Land Court, Whanganui.
[318] Marchant to Brooking, 28 January 1891, 23/597 1 Mangaohane Correspondence File Volume 1, Maori Land Court, Whanganui.
[319] O'Brien to Brooking, 27 January 1891, 23/597 1 Mangaohane Correspondence File Volume 1, Maori Land Court, Whanganui.
[320] Brooking to Marchant, undated, 23/597 1 Mangaohane Correspondence File Volume 1, Maori Land Court, Whanganui.

> My impression is that neither of the plans you showed me at Gisborne were produced before O'Brien's Court as the plan he used was marked with letters or figures denoting cultivations or particular marks on land.[321]

265. Judge O'Brien suggested that the plan was used at a hearing by Chief Judge Macdonald to consider the rehearing applications in the late 1880s.[322] However, the clerk at that sitting could not be identified.

266. At about this time, during the course of the partition hearing of Te Awarua at Marton which commenced in July 1890, the Native Land Court, comprising Judge Ward, Judge O'Brien and Assessor B.F.G. Edwards, received a request from Winiata for an adjournment.[323] Winiata told the Court that the hearing for Mangaohane was to commence on 5 February the following year and he needed to be present. The Court refused this request on the basis that 'the application in Mangaohane case was to be heard in chambers, the evidence had been taken by affidavit and it was merely a matter for the solicitors'.

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[321] Jackson to Brooking, date stamp obscured, 23/597 1 Mangaohane Correspondence File Volume 1, Maori Land Court, Whanganui.
[322] O'Brien to Brooking, 29 January 1891, 23/597 1 Mangaohane Correspondence File Volume 1, Maori Land Court, Whanganui.
[323] Wanganui Native Land Court Minute Book 20, 29 January 1891, fol. 221.

E IN RE MANGAOHANE, 1891

i THE COURT OF APPEAL PROCEEDINGS

267. The Mangaohane block was first considered by the superior courts in 1891. The hearing continued over four days in early May and the judges gave their decisions on 21 May. The following discussion of the proceedings is drawn primarily from the reported decision of the Court of Appeal, which provides a summary of submissions by counsel. The motion was for a writ of certiorari to deliver and 'quash' orders made by the Native Land Court in Mangaohane in 1885 and any consequent action of the court which followed these orders. Sir Robert Stout, Charles Skerrett and C.B. Morison represented the applicants (Winiata Te Whaaro, Te Rina Mete and Rena Maikuku) while Martin Chapman, H.D. Bell, P.S. McLean and M.W. Richmond opposed the motion on behalf of the Studholme Brothers and Airini Tonore. Morison was the solicitor for the applicants while the solicitors for the Studholme Brothers were Bull, Gully and Izard and the solicitors for Airini Tonore and her people were Carlile and McLean.

268. Six grounds of appeal were advanced:

- The applications for investigation of title did not contain descriptions of the land which clearly identified it;
- The Native Land Court did not confirm the boundaries had been marked on the ground;
- The Native Land Court had not made appropriate orders dividing the land into two parts;
- No order had been made for the issue of a certificate of title for either block;
- Certificates of title had been issued without applications for rehearing being dealt with according to law;
- Certificates of title were issued without the notice required under s 28 of the Native Land Court Act 1880 being given which provided for inspection of the plan of the lands to be included in the titles.

269. The report of the court's decision notes that there were several applications for investigation of title to the land and there was wide variation in the applications as to the southern boundary of the block. Several 'sketch plans' were presented to the Native Land Court at the commencement of the hearing and one was selected (that prepared by an authorised surveyor instructed by Hiraka Te Rango and his people). The applicants in the Court of Appeal were Winiata Te Whaaro and he was among the

counter-claimants in the Native Land Court. His evidence raised objections to the southern boundary adopted by some of the parties during the hearing.

270. The report focused on the manner in which the Native Land Court divided the land into two parts and the location of the boundary between them:

> The Mangaohane Stream, adopted by the Court as the boundary between the two portions of the block, was a stream running due west from Otupae, near the eastern boundary of the whole block, through the centre of the whole block into the Rangitikei River, the western boundary of the whole block. It appeared from the affidavits before the Court of Appeal that Otupae was the name of a considerable range of hills, but that the name was also applied to a summit of the range on which there was a trig-station. This trig-station was marked with a double circle, and called Otupae on the sketch-plan before the Native Land Court. It further appears that there were three sources of the Mangaohane Stream in the Otupae Range, but that one of them was near to the trig-station. The division-line between the two portions of the block was marked in red and blue pencil on the sketch-plan by direction of the Native Land Court at the time of giving judgement, and the line so marked on the plan followed the Mangaohane Stream to its last-mentioned source, passed through Otupae trig-station, and went thence in a straight line due east to the Taruarau Stream. The two portions of the block were also marked No. 1 and No. 2 on the sketch-plan by direction of the Court.[324]

271. Orders for certificates for each of the two parts were prepared in November 1885 and signed by one of the judges but not sealed. The report includes a comment that no special order dividing the block in two was drawn up. It also notes that the name of the block given order for the southern part was inconsistent with the name given in the Court's decision.

272. In relation to the applications for rehearing, the Court of Appeal held, on the basis of the evidence before it, that the chief judge of the Native Land Court had, by the end of June 1885, dismissed two applications for rehearing. These were by Te Rina Mete and Rena Maikuku. The chief judge reviewed the applications and dismissed them without hearing from the applicants. No specific notice of the dismissal was given and a notice was simply published in the gazette on 11 June 1885 announcing that he had dismissed several applications for rehearing. He had, at this time, heard other applicants for a rehearing in support of their applications but the notice was published prior to his consideration of the applicants by Te Rina Mete and Rena Maikuku.

273. Arrangements for the survey of the block and payment for the survey and plans created problems which delayed the issue of the certificates. These were issued in May 1890. However, the requirements of s 28 of the Native Land Court Act 1880

[324] *In re The Mangaohane Block* (1891) 9 NZLR 731 (CA) 736.

were never satisfied. The plan was supposed to be made available for public inspection so that objections, if necessary, could be lodged. However, the plans were not made available until after the certificates had been issued. The southern boundary included additional lands:

> The southern boundary of the whole block, as laid down by the survey plan and shown on the plan of the southern portion of the block, passed through Koaupari and Ngawharekorari, and otherwise agreed with the sketch-plan adopted by the Court at the investigation, except that it deviated outwards along a considerable portion of it in order to follow what the surveyor considered a proper give-and-take line through the Reporoa Swamp, which had been given in Claim No. 172 as part of the boundary. The additional area thus included was about 430 acres.

274. The proceedings in the Supreme Court were on behalf of Winiata Te Whaaro, Te Rina Mete and Rena Maikuku. Those opposed to the motion were the Messrs Studholme, who claimed to have purchased shares in the block, and Airini Tonore and others to whom part of the block was awarded.

275. Submissions from counsel for the applicants traversed a number of matters but there was a particular focus on the accuracy of the southern boundary given in the application and the sufficiency of the plan used by the Native Land Court during the hearing. They also insisted that the Court had no jurisdiction to issue certificates of title without first satisfying the requirements of s 28 giving notice of the completed plan and allowing objections and undertaking the adjustment of boundaries under s 30. Another key point related to the applications for rehearing which they denied were a waiver of the invalidity of the certificates. This is because the orders did not exist. Moreover, there could be no applications for rehearing until after the certificates of title were issued in 1890. Stout later also identified s 2 of the Native Lands Act Amendment Act 1881 which provided the chief judge with greater flexibility in ordering rehearings but also specifically referred to ‘the exercise of his duty of hearing applications for rehearing’.

276. Most of the submissions were rejected by the chief justice who was satisfied that, whatever deficiencies there were in the process adopted by the Native Land Court, they met the requirements of the Native Land Court Act 1880. The orders of the Court remained incomplete until the survey was finished and matters relating to the survey required by the act were dealt with by the Court. Other minor matters and mistakes could be corrected by the Court and did not affect it jurisdiction to make the orders.

ii THE DECISIONS OF THE JUDGES

277. Nevertheless, the chief justice found 'that both certificates have been made too soon, and consequently without jurisdiction'. That is because the applications for rehearing had not been dealt with properly. The chief justice considered there was a question of fact and a question of law to be dealt with. On the question of fact, he was satisfied, despite the limitations of the evidence, that the chief judge 'proceeded as if he had jurisdiction to dispose of them upon "reading," and without "hearing," the applications.[325] The question of law was whether this was authorised by the act and the chief justice concluded, in light of the amendment in 1881, that it was not. The write would be issued 'but only for the purpose of quashing the certificates'.

278. He added, however, that he did not have any expectation that there would be any significant consequences of this decision:

> Seeing that the Chief Judge has formally "heard" several of the applications for rehearing, and in which lawyers and other skilled agents had been heard in support of them, it is highly probable that no real benefits is to be expected from a hearing of the applications for rehearing now in question. However, as they have not been heard, they have not been lawfully disposed of; and in the absence of any evidence of conduct on the part of the applicants amounting waiver or acquiescence, I think the certificates were made too soon, and without authority of law.[326]

279. The other members of the Court were Justice Williams and Justice Conolly.

280. Like the chief justice, Justice Williams accepted that the Native Land Court could hear the application even if the descriptions of the boundary were imprecise and in the absence of a survey:

> The Act contemplates that where there has been no survey, and therefore, no sufficient plan and description at the time of the publication, the survey is to be made afterwards and the boundaries defined, and that any person who objects to the boundaries so defined shall have an opportunity of being heard before the boundaries are finally adjusted.[327]

281. He also noted that there was no objection raised to the hearing proceeding and that all of the applicants in the Court of Appeal participated in the Native Land Court hearing and subsequently applied for rehearings. He considered that they had 'acquiesced' in the proceedings. Justice Williams also considered the defects in the Native Land

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[325] Justice Williams complained that none of the judges involved in the proceedings had provided evidence in affidavits to the Court of Appeal about the procedures adopted in the Native Land Court's dealings with the block.
[326] *In re The Mangaohane Block* (1891) 9 NZLR 731 (CA) 750.
[327] *In re The Mangaohane Block* (1891) 9 NZLR 731 (CA) 751.

Court's orders and did not believe 'they should be interfered with' as that Court could interpret and rectify its own orders.

282. Justice Williams agreed that the chief judge's dealings with two of the applications for rehearing did not meet the requirements of the Act, particularly given the amendment of 1881. He found that they had not been disposed of properly as the chief judge had made a determination without hearing the applicants. He also considered that the Court of Appeal would be justified in issuing the writ given the certificates of title had been completed without the Native Land Court meeting the requirements of s 28 and s 31 relating to the survey: 'That of itself is a clear excess of jurisdiction which justifies the Court in issuing the writ asked for to bring up the certificates in order that they may be quashed'.[328] He therefore agreed to issue the writ on two grounds:

> In my opinion, therefore, a certiorari ought to go to quash the certificates, because, first, there are two applications for a rehearing which have not been heard; and, secondly, because certificates have been issued in cases coming under section 27 of the Native Land Act 1880 and the conditions precedent to the issue of such certificates prescribed by sections 28 and 31 have not been complied with.[329]

283. In his decision, Justice Conolly also rejected the submissions relating to the applications and proceedings before the Native Land Court. The Native Land Court had sufficient information before it to proceed and any errors in the orders could be corrected by that Court. However, he also found that the chief judge was required to hear applications for rehearing and that he had not done so with two of the applications:

> I am therefore of opinion that, until these applications have been heard and determined by the Chief Judge, no certificates of title can be issued; and that the applicants are therefore entitled to a writ of certiorari to quash the certificates which have been issued.

284. He considered it unnecessary to deal with other objections raised about the certificates but noted that particular provisions relating to the survey 'would appear to have been entirely ignored in the case of the blocks of land with respect to which this present application is made'. He considered this issue, on its own, was 'sufficient to invalidate the certificate of title'.

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[328] *In re The Mangaohane Block* (1891) 9 NZLR 731 (CA) 753.
[329] *In re The Mangaohane Block* (1891) 9 NZLR 731 (CA) 754.

285. At the conclusion of the judge's decisions, Bell asked the Court to declare that only Te Rina Mete and Rena Maikuku could apply for a rehearing. In response, Justice Williams asked whether this was clear from their decisions that there were only two applications for rehearing which were not dealt with and that this was the basis for issuing the writ.

286. In June 1891, William Broughton and Bell, Gully and Izard contacted the Court requesting information about the identity of the applicants for a rehearing in Mangaohane. They both asked for an urgent reply. Later in the month, Broughton forwarded a document purporting to be signed by Te Rina Mete Kingi in which she withdrew her application for a rehearing. The document was dated prior to his inquiry of the registrar but the covering letter was dated later in the month.[330] The chief judge asked the status of the rehearing applications and the registrar supplied a memorandum but it is not in the file.[331]

287. On 8 July, Judge O'Brien was still presiding at the sitting in Marton when he asked the registrar to supply him with the description of the southern and south-eastern boundary of Mangaohane, as it was described in the Court's decision of 1885.[332] The detailed description was sent to him immediately.

iii THE CHIEF JUDGE'S HEARING

288. In August, the Native Affairs Committee considered another petition from Te Rina Mete Kingi. The issues raised in this petition were very similar to those set out in her earlier petition and on this occasion, the committee decided to refer it to the government.[333] The new Native Minister, A.J. Cadman, was advised by the under secretary that the matter was before the courts. The under secretary did not think the government could take any action in the circumstances but suggested the petition could be sent to the chief judge for his consideration.[334] The Native Minister agreed

[330] Broughton to Set Smith, 24 June 1891, 23/597 1 Mangaohane Correspondence File Volume 1, Maori Land Court, Whanganui.
[331] Seth Smith to Brooking, 27 June 1891, 23/597 1 Mangaohane Correspondence File Volume 1, Maori Land Court, Whanganui.
[332] O'Brien to Brooking, 8 July 1891, 23/597 1 Mangaohane Correspondence File Volume 1, Maori Land Court, Whanganui.
[333] Report of the Native Affairs Committee on the Petition of Te Rina Mete Kingi and Others, 21 July 1891, J1 Box 531 1895/6, Archives New Zealand, Wellington.
[334] Lewis to Cadman, 23 July 1891, J1 Box 531 1895/6, Archives New Zealand, Wellington.

but the chief judge had no comment to offer as 'the Court of Appeal has decided that this matter is still subjudice'.[335]

289. On 14 August, the chief judge asked the registrar at Gisborne to send him in Wellington the certificates of title for Mangaohane.[336] They were sent to him by post the following day.

290. In late August, C.B. Morison forwarded an application for investigation of title to Mangaohane and Mangaohane No. 1 and asked for it to be advertised for the next sitting at Hastings.[337] The application was signed by Winiata Te Whaaro, Retimana Te Rango and Hare Tanoa. It was received by the Court on 24 September.

291. In October, the chief judge advised the registrar that he planned to convene a sitting of the Court at Hastings on 8 December to consider the applications for rehearing from Te Rina Mete and Ema Maikuku.[338] He later amended this to 15 December.[339] He had received an amended application for a rehearing from Rena Maikuku while in Hastings which was registered by the Court.[340]

292. Chief Judge Seth-Smith, with Assessor Pepene Eketone sat at Hastings in February 1892 to consider two applications for rehearing from Te Rina Mete and Ema Retimana and Rena Maikuku. Morison appeared for the children of Te Rina (who was deceased) and he appeared with Captain Blake for Rena Maikuku (who submitted an amended application with others).[341] He subsequently stated that he appeared for Ngāti Hau or Ngāti Tamakorako, Ngāti Haukaha and Ngāti Paki. Ngāti Paki and Ngāti Haukaha were, he stated, hapū of Ngāti Hinemanu while Ngāti Hau was partly Ngāti Hinemanu.[342] He had also been instructed to tell the Court that Ngāti Whiti were absent as they were attending another rehearing. Bell with A.L.D. Fraser appeared for

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[335] Seth-Smith to Lewis, 25 July 1891, J1 Box 531 1895/6, Archives New Zealand, Wellington.
[336] Seth Smith to Brooking, 14 August 1891, 23/597 1 Mangaohane Correspondence File Volume 1, Maori Land Court, Whanganui.
[337] Morison to Brooking, 29 August 1891, 23/597 1 Mangaohane Correspondence File Volume 1, Maori Land Court, Whanganui.
[338] Set Smith to Brooking, 19 October 1891, 23/597 1 Mangaohane Correspondence File Volume 1, Maori Land Court, Whanganui.
[339] Seth Smith to Brooking, 27 October 1891, 23/597 1 Mangaohane Correspondence File Volume 1, Maori Land Court, Whanganui.
[340] Seth Smith to Brooking, 20 October 1891, 23/597 1 Mangaohane Correspondence File Volume 1, Maori Land Court, Whanganui.
[341] 19 January 1892, fol. 57, MLC 3 20/28, Archives New Zealand, Wellington.
[342] ibid., fol. 58.

Broughton (the trustee of Renata's will) and Anaru Te Wanikau while Maclean appeared for the Karauria whānau and Ani Kanara.

293. At the outset, Bell insisted that Rena's application could not be amended to allow applicants to set up a claim which had already been dismissed. However, the chief judge did not agree:

> I state that I consider any one who would have been entitled to the benefit of Rena Maikuku's application in first instance would be entitled now. No one not so entitled then can claim a right now.[343]

294. In these initial stages of the hearing, Morison also noted the small parcel of land excluded from the Court's initial decision in the south eastern corner while Maclean drew attention to the different between the plan 'and the other maps'.

295. During the course of Morison's submissions for the applicants, he identified the Otupae range as a 'natural boundary' between Patea people in the west and Ngāti Kahungunu in the east. There were marriages between people from both sides of the range so they shared common whakapapa. However, his argument appears to be that customary interests in the land were derived from Ohuake, at least on the western side of the Otupae range. Those on the other side of the range did not descend from this ancestor except by intermarriage. Morison surveyed the evidence given at the initial hearing and in adjacent lands, including Owhaoko.

296. As for occupation, he noted that Pokopoko was found to be in the 'middle of the south eastern part of the block' when the survey was completed. He wished to call Judge O'Brien to give evidence on the boundary and there were submissions from other counsel on this point. The chief judge ruled that the Court had specified the boundary in its judgment, it had been surveyed and the plan approved 'informally', so there was no need to call the judge. After further discussion, Morison asked to subpoena the judge. The chief judge was willing to oblige but insisted no questions on the correctness of the survey were relevant to the present inquiry. It does not appear Morison pressed the matter further.

297. In support of Te Rina's application, Morison called Ihakara Te Raro of Ngāti Whitikaupeka to give evidence of her occupation of Mangaohane with others. On

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[343] ibid.

several occasions, Ihakara denied that Otupae was a dividing boundary and insisted that Ruahine was the boundary between people of Patea and of Heretaunga.

298. Bell's submissions in response were legal in nature and focused on Winiata's claims as he insisted Rena's application was 'really Winiata's case under a thin disguise'. He cited many legal authorities in support of his opposition to any further rehearing though he also referred to evidence to insist the Court's decision was supported by the evidence and to show the claim through Honomokai was valid. William Studholme briefly gave evidence regarding the leasing arrangements on Mangaohane and identified some of those who signed the transfer agreements.

299. The hearing continued until 19 February when the chief judge and assessor reserved their decision. The Court sat again at Hastings on 4 April when its judgment was delivered. The assessor did not attend this sitting as previously agreed by the parties. The chief judge's minute book records that a partial rehearing was ordered. Several conditions were imposed, including the payment of £50 as security for costs. In addition, 'Particulars of claim with the grounds and names of all persons by whom or on whose behalf the claim is made to be given on or before 1st June'. A more detailed printed decision was attached to the minute book.[344] A copy of the decision given at the rehearing was also included in the minute book.

300. The Court's decision opened with an overview of the proceedings to that time:

> In this case applications have been made for a re-hearing of the investigation of title to a block of native land known as Mangaohane, which was adjudicated on at a meeting of the Native Land Court, held at Hastings in 1885, before Judge O'Brien, and Williams, Hoani Meihana being the Native Assessor. The Court, in exercise of the power conferred by the Native Land Court Act, 1880, sections 24 and 25, declined to give any judgment as to a portion of the land at the southern extremity of the block, and as to the residue made two orders directing that the names of certain natives should be entered on the register as the owners according to native custom of the two parts of the block which were named in the register orders Mangaohane and Mangaohane No. 1. These orders bear date the 10th of March, 1885. Several applications for re-hearing were made within the statutory period, all of which were dismissed by the late Chief Judge by an order under his hand bearing date the 28th of May, 1885. Upon proceedings recently taken in the Supreme Court, and removed to the Court of Appeal for a certiorari to quote the certificates of the Native Land Court which had issued in pursuance of the orders of the 10th of March, 1885, it was held that two of the applications for rehearing viz the application of Terina Mete, dated the 13th of April, 1885, and that of Ema Retimana dated the 14th of April, 1885, had been improperly dismissed, no inquiry having been held at which the several

[344] See Napier Native Land Court Minute Book 29, fol. 317.

> applicants could be heard in support of their claims. These two applications are the subject of the present inquiry.[345]

301. The decision noted that the land north of the Mangaohane Stream was awarded to the descendants of Wharepurakau and Honomokai while part of the land to the south of the stream was awarded to the descendants of Honomokai only. Those included in the title had to establish occupation of the land. An area of land in the south of the block was excluded from the Court's original decision.

302. No rehearing was ordered for Mangaohane No. 1:

> After carefully considering the arguments that have been addressed us upon this inquiry we are of opinion that no sufficient reason has been shown for disturbing the judgment as to Mangaohane No. 1.[346]

303. The Court's decision observed that Te Rina Mete's claim for inclusion was considered at the original hearing and was rejected due to lack of occupation. The chief judge and the assessor did not consider there were any grounds for altering this decision and the application was dismissed. It was also noted that she had withdrawn her application for a rehearing, though the Court appears ambivalent about the effect of this document:

> Of the two applications for re-hearing which are now under inquiry, the former, that of Terina Mete complains of 'the causeless exclusion [of the applicant] from the list of names of descendants of Te Honomokai.' Her descent from that ancestor appears to be undisputed, but she failed to satisfy the Court as to occupation. Upon the evidence before the Court we are unable to say that the finding was wrong, or that there is any reasonable ground for expecting that another Court ought to come to a different conclusion. This renders it unnecessary to express any opinion as to the effect of the withdrawal contained in Terina Mete's letter which has been placed on the file of the Court. The application will be dismissed.[347]

304. In relation to the application by Rena Maikuku, the Court considered there was sufficient evidence for the award to the descendants of Te Honomokai to the south of the Mangaohane Stream:

> The application of Ema Retimana and others, which in its original form or in the amended form which has been put in by Rena Maikuku, in substance alleged that the true ancestral right ('take tupuna') to this land is derived from Ohuake by other lines of descent than these through Honomokai and Wharepurakau. So far as the land north of the Mangaohane stream is concerned, we have already intimated our opinion that the judgment ought not to be disturbed. We are also of opinion that the evidence before the Court was sufficient to justify the finding that the descendants of Honomokai were owners of the portion south of that stream. In fact it has not been contested that they have some right, and the suggestions that the Otupae range was

[345] ibid.
[346] ibid.
[347] ibid.

> the boundary of their territory is not supported by the evidence called before us. There was, however, evidence before the Court of acts of ownership exercised by others besides the descendants of Honomokai in certain localities, especially in the neighbourhood of Pokopoko, which upon survey appear to be to the north of the line laid down on the southern boundary of the land adjudicated.[348]

305. However, it accepted that there was an error in locating the boundary of the land to be excluded from the Court's decision and the location of Pokopoko as the Court did not have a survey plan before it during the hearing and the survey had not been undertaken:

> The exact position of these places with relation to that line not having been determined by survey when the case was heard, their locality could only be esitmated by the necessarily inaccurate opinion of witnesses. The inference that we draw from the action of the Court in excluding a part of the land from adjudication is that the Court considered there was not sufficient evidence on either side to justify a decision as to the debatable portion, and inteded to fix a boundary which should exclude it. We are strengthened in this view by the fact that Judge O'Brien in his report states that they drew the line at Pokopoko, the place about which there seems to have been a strong conflict of evidence. The intention has not been carried out, either because Pokopoko lies further north, or the line laid down runs further south, than was anticipated, and this land, which the Court intended exclude, has in fact been included in the judgment. If this inference is correct, it shows that a decision partially erroneous has been arrived at which it seems cannot be satisfactorily rectified under the powers of amendment or upon the inquiry which is required to be held under sections 28-31 of the Native Land Court Act, 1880.[349]

306. The chief judge and the assessor decided to allow a 'partial rehearing' for Mangaohane No. 2 on a specific question relating to Rena Maikuku and those who claim through the same ancestral grounds and can also show occupation:

> A partial re-hearing will therefore be ordered for the purpose of determining whether Rena Maikuku has by virtue of her ancestry and occupation a right according to native custom to be included as an owner in the title to that part of the Mangaohane block which has been named Mangaohane No. 2 or Mangaohane, ie, the land south of the Mangaohane stream extending to Te Papa a Tarinuku and the line drawn thence in accordance with the order of the Court in that behalf. With Rena Maikuku will also be included any other persons who, claiming under the same ancestral and occupational right as she does, may be found entitled.[350]

307. The applicant was required to deposit the sum of £50 as security together with the particulars of her claim by 1 June. The latter was to include the grounds of her claim and a list of all those who were included in her claim.

308. In early August, the chief judge was asked to comment on a petition relating to the survey of Mangaohane and, in the course of explaining the proceedings relating to the block, he spoke of the forthcoming rehearing:

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[348] ibid.
[349] ibid.
[350] ibid.

> A rehearing has been ordered as to a portion of the block and the Court is waiting until two judge are at liberty to hear the case. It is not intended to disturb the line which divides the two portions of the block called Mangaohane and Mangaohane No. 1 but it is possible that upon rehearing the line laid down as dividing the southern part from that part in respect of which no order was made may have to be shifted and if such is the case the survey already made of that line may prove to be of no value. It is however possible that the Court may affirm the line so laid down in which case the survey can be given effect to.[351]

309. This statement is significant because it shows in the immediate period after ordering the partial rehearing, which was later interpreted very narrowly to questions of including the descendants of specific ancestors in the order, the chief judge considered it possible that the Court could modify the location of the southern boundary. Had this been a possibility at the hearing, the opportunity to correct the mistake over the location of Pokopoko could have been taken.

iv PREPARATIONS FOR THE REHEARING

310. The grounds of claim and list of names required following the chief judge's inquiry was forwarded on behalf of Noa Huke (Noa Te Hianga) by Williams and Loughnan, a firm of solicitors of Hastings.[352] They also supplied a cheque for the £50 deposit required by the chief judge. The solicitors noted the relationship between Noa's application and that of Rena:

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[351] Seth-Smith to Morpeth, 3 August 1892, J1 Box 531 1895/6, Archives New Zealand, Wellington. The petition, by Charles William Reardon, related to the survey of the partition of Mangaohane. Around June 1890, he had been ordered by the Native Land Court to undertake the survey and he had done so and prepared a plan which had been approved. The petition noted the recent proceedings in the Supreme Court and Court of Appeal which led to a rehearing in March 1892 which modified the title to the block. These decisions had meant the survey he had undertaken was 'useless'. He complained that he had been 'put to great trouble and expense' and his costs had never been paid. His charges had been approved by the chief surveyor who had given permission for him to apply to the Native Land Court for a lien but he had been unable to do so since the Court of Appeal decision. He would suffer great loss due to the failure of the chief judge to properly deal with the rehearing applications. He asked for relief. The petition noted that the chief judge published notices in the *New Zealand Gazette* stating that he had dealt with all applications for rehearing when there were still two to be considered. The Public Petitions Committee, which considered Reardon's petition, concluded that he had 'suffered considerable inconvenience and loss through the action of the Native Land Court, and therefore recommend that the department arrange for a rehearing without delay and when the title is ascertained the government register a survey lien on the land for the amount of work performed by the petitioner and pay the same to him. See Report of the Public Petitions A to L Committee on the Petition of Charles William Reardon, 18 August 1892, J1 Box 531 1895/6, Archives New Zealand, Wellington. The owners of Mangaohane were to bear the cost of the chief judge's error in dealing with the rehearing applications. The chief judge subsequently observed that he knew of no basis for the government to register a survey lien (as the committee suggested): 'Whether the Surveyor can obtain a charging order is a question of law that will have to be considered when he applies for it' Seth-Smith to Morpeth, 30 August 1892, J1 Box 531 1895/6, Archives New Zealand, Wellington.

[352] Williams and Loughnan to the Registrar, Wellington, 27 May 1891, 23/597 1 Mangaohane Correspondence File Volume 1, Maori Land Court, Whanganui.

> You will note that Noa Huke under the name of Noa Te Hianga and others of his party are included in the list already presented by Rena Maikuku but the present application is put in for the purpose of defining Noa's personal grounds of claim, he being personally ignorant of the grounds mentioned in the application of Rena Maikuku to which proceeding he and his party are strangers.[353]

311. During May, W.L. Rees prepared a memorandum for the government regarding the Mangaohane recent decisions on the native land laws. The memorandum is undated but it was referred to the Native Minister towards the end of May.[354] Rees noted that since the completion of the report of the Native Land Laws Commission the previous May, which he had chaired, the Supreme Court and Court of Appeal had given decisions in three cases which demonstrated 'the very serious and alarming state of all titles derived through the Native Land Court'. His general assessment of the conduct of the Native Land Court, those participating in court hearings and the activities of trustees was highly critical and expressed in very strong language. For example, he concludes, the 'Natives are growing weary of the heavy tyranny of the Native Land Court'. He provided specific by brief commentary on three cases: Mangaohane, Piripiri and Ohirae. Unfortunately the text on Mangaohane has been detached from the document and is not in the file (though the document is printed and may have been intended, by Rees, to be more widely circulated). The memorandum was referred to the Native Minister who asked to see any covering letter and was advised there was none.[355]

312. It is not clear that the Native Minister took any immediate action on the memorandum but some months later, in September, he wrote to Morison asking for his opinion on Rees' views:

> As you are intimate with the Mangaohane case, I shall feel obliged by you looking into the various Native Land Court Acts and advising me as to whether the decision of the Court of Appeal, has in your opinion, the effect on other cases as alleged in this memorandum.
> Please supply me with sufficient details on each point to enable me if necessary to quote from them.[356]

313. Morison provided two documents in response. One addressed the issues raised by Rees in his memorandum and the other was a response to a recent petition by John

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[353] ibid.
[354] W.L. Rees, Memorandum for Ministers re Native Land Laws and Recent Decisions Thereon, undated (annotated received 27 May 1892), J1 Box 531 1895/6, Archives New Zealand, Wellington.
[355] Cadman to Morpeth, 28 May 1892; Morpeth to Cadman, 30 May 1892, J1 Box 531 1895/6, Archives New Zealand, Wellington.
[356] Cadman to Morison, 11 September 1892, J1 Box 531 1895/6, Archives New Zealand, Wellington.

Studholme. Much of the focus of the response to Rees was on the impact of the Court of Appeal's decision on other blocks of land and general policy considerations, with a particular focus on the validity of titles created by the Native Land Court.[357] Morison's opinion, in general terms, was that the Court of Appeal decision had limited impact on other titles while Rees was much less optimistic about this and insisted remedial legislation was required to avoid extensive litigation. It should be noted that this would have assisted his client too. Morison did insist, however, that the situation regarding Mangaohane was unique:

> In the Mangaohane case the facts were most singular. Judgment on the investigation was given on the 27th February, 1885, but the Native Land Court certificate was not issued till May, 1890 – more than five years afterwards. The survey had long been completed, but the plan remained locked up in the office of the Chief Surveyor at Wellington, accessible to no one but the Messrs Studholme, who claimed a lien on it. Action was taken to attack these certificates of title within six months after their issue, and it was only the promptness of the applicants for rehearing that saved them from the charge of acquiescence, which, had it been sustained, must have proved fatal to their case. The Judges did not lay down them minimum of delay that would bar a proceeding of the kind, but I do not think that any of the counsel who argued the Mangaohane case on either side, and who heard the Judges' *obiter dicta*, would readily advise a similar proceeding where the certificate of title had been issued by the Native Land Court for two years or more.
> In the Mangaohane case, one of the parties to the proceedings in the Court of Appeal, Winiata and his people, remained in occupation of the part of the block claimed by them, with their sheep, in defiance of the successful claimants and their alleged purchasers (and they are now in such occupation with a considerable flock).[358]

314. Morison also noted that where transactions were negotiated prior to the issue of a certificate of title under the Native Land Court Act 1880, he could find no provision in legislation to give effect to them. That is, it 'appears to me that no legal rights are acquired by any purchase of land under 'The Native Land Court Act, 1880,' prior to the issue of the certificate of title thereunder'. This observation is also relevant to the Mangaohane case though he did not specifically refer to the negotiations undertaken by the Studholme brothers.

315. In a separate but attached document, Morison, who identified himself as Winiata's solicitor, provided commentary on a recent petition by Studholme presented to the House of Representatives by Rees.[359] He denied that the Court of Appeal decision affected their 'legal rights' as their title was 'admittedly invalid' for other reasons 'and, some time before my clients commenced their proceedings in the Supreme

[357] 'Memorandum for the Honourable the Native Minister re the Mangaohane Decision', undated, J1 Box 531 1895/6, Archives New Zealand, Wellington.
[358] ibid.
[359] See J1 Box 531 1895/6, Archives New Zealand, Wellington.

Court, Messrs Studholme had lodged an application to have their purchase validated by Mr Commissioner Edwards (under the Act of 1889)'. The second paragraph in this document suggests not just that Winiata expected to have his claims heard in the forthcoming rehearing at that stage but also that the Studholme brothers had negotiated their transactions since the chief judge had decided to order a partial rehearing:

> 2. That they purchased, well knowing that Winiata Te Wharo and his people, whose claims (though rejected by the Native Land Court of 1885) will be dealt with under the order for rehearing made last April by the Chief Judge, in pursuance of the Court of Appeal's judgment, were in occupation.[360]

316. Morison insisted that Winiata had lived at Pokopoko for many years where he kept a large flock of sheep and had constructed fences, houses and woolsheds. He added that Winiata 'has now a legal right to have his claim investigated' while the Studholme brothers had no legal claim to the land. He was apparently deeply concerned that there could be political interference in the legal process which would take Winiata's right to be heard:

> 5. That if the Legislature proceeds to take from Winiata and his people the legal rights which the Court of Appeal and the Native Lands Court have given him and his people, and for which he and they have at great expense been fighting ever since 1885, there is the greatest possible risk of bloodshed should any other person, vested with a statutory title created adversely to his legal rights, attempt to turn him out of possession of the land now held by him and his people.
> Winiata is well known to be one of the most determined and obstinate of Natives where his legal rights are concerned, or where he believes they are concerned.
> 6. That should the Legislature deliberately cancel rights granted to Natives by the Court of Appeal and Native Land Court, the effect on the Native mind in its present attitude towards the latter institution will be disastrous.
> 7. Where the Legislature has previously interfered with judgements of the Native Land Court it has always been to provide for a rehearing, never to stifle one which has been duly ordered in course of law.[361]

317. Although Morison clearly expected Winiata to be able to assert his claim to Mangaohane at the forthcoming rehearing, he noted at the conclusion of his commentary that the order by the chief judge was 'at best a limited one, as it limits the land affected to the block south of the river, and limits the persons to those claiming through the same rights as Rena Maikuku, the successful applicant for rehearing.

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[360] ibid.
[361] ibid.

318. The Native Minister had both of these documents printed but took no further action on them.[362]

v PETITION OF J.F. STUDHOLME

319. In early October, the Native Affairs Committee reported on this petition by J.F. Studholme regarding the Mangaohane block.[363] The petition, presented by Captain Russell, alleged that Studholme and his brothers found that the title to Mangaohane had been issued and the block was 'open for sale' after the chief judge placed a notice in the gazette. After being further assured by judges of the Court that the title was completed, they commenced negotiations and acquired interests in the land. The petition insisted the negotiations were open and conducted in meetings attended by many people. The purchase was concluded in the Court before a judge though the petition later states that the negotiations continued over five years and completed in 1891 when the transaction 'was certificated to by a Judges of the Native Land Court in the presence of the Native vendors after a long and careful examination'. Those who sold their interests, the petition claimed, were still entirely satisfied with the arrangements.

320. In 1891, after they had completed their transactions, a decision of the Court of Appeal had created considerably doubt about the validity of their transaction. The petition went on to insist that the Studholme brothers did not wish to interfere with any persons legal rights but noted that they had been 'informed and verily believes that there are between three and four hundred distinct blocks of land varying in extent from five hundred acres to two hundred thousand acres respectively in which applications for rehearing have been improperly and privately dismissed'. This was Rees' view of the impact of the Court of Appeal decision too. Studholme asked in his petition for legislation 'which, while it assured the rights of the natives whose applications have been as in the Mangaohane Case improperly dealt with may yet restrict the loss to European lessees and purchasers to as small an extent as is consistent with the rights of the Natives'. The cause of their grievance, the petition noted, was 'the mistakes made by the Native Land Court through the Chief Judge thereof'.

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[362] Morpeth to Cadman, 12 November 1892, J1 Box 531 1895/6, Archives New Zealand, Wellington.
[363] Petition of Joseph Francis Studholme, 1892/405, J1 Box 531 1895/6, Archives New Zealand, Wellington.

321. The committee's finding and recommendation on the petition focused on the forthcoming rehearing:

> I have the honour to report
> That the Committee have fully considered the allegations contained in the petition and the evidence adduced; that they have examined the Chief Judge of the Native Land Court and the Court documents in relation to the case and also have heard counsel for all concerned with the result that they find the statements of the petition to be correct.
> They therefore recommend
> That provision be made whereby the petitioners case shall be unaffected by the partial rehearing ordered by the Chief Judge of the Native Land court in the Mangaohane Block, except so far as Native rights may be judged to exist on the said rehearing. The Committee is also of opinion that such rehearing should be limited to those who made the applications upon which it was granted.[364]

322. A subsequent letter indicates evidence was heard from the chief judge, James Carroll and R.T. Warren while Bell, Morison and Vogel addressed the committee. Rees also read statutory declarations from Hiraka Te Rango and William Broughton.[365] Others may also have appeared. Unfortunately all of these papers were returned to the clerk of the Native Affairs Committee and cannot now be located.

323. However, the Native Minister was inclined to move slowly. When the chief judge advised that Judge Gudgeon, who was dealing with Te Rohe Potae lands at Otorohanga, would soon become available for the Mangaohane rehearing, Cadman wanted him to open the Court sitting up the East Coast at Waiomatatini:

> It is not intended to touch Mangaohane just yet. Ask Chief Judge to try and arrange for Judge Gudgeon to go to Waiomatatini as soon as possible, the length of his stay there to be hereafter determined.[366]

324. This request was sent to the chief judge the same day but the chief judge thought Mangaohane was the greater priority:

> In reply to your telegram Judge Gudgeon and Waiomatatini Court I am afraid very little could be done in the short time that would be at Judge Gudgeon's disposal … it would be much better that Judges Scannell and Gudgeon should go to Rotorua to rehear Whakarewarewa. I must however again urge the importance of arranging for a speedy determination of the Mangaohane troubles. Not only are the natives interested but the surveyors are unable to obtain any satisfaction for their outlay.[367]

325. There is no further correspondence between the chief judge and the Native Minister on this point but, at about this time, the chief judge issued a direction under s 53 of

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[364] 'Report of the Native Affairs Committee on the Petition of Joseph Francis Studholme', J1 Box 531 1895/6, Archives New Zealand, Wellington.
[365] Morpeth to Judge Mackay, 13 December 1892, J1 Box 531 1895/6, Archives New Zealand, Wellington.
[366] Cadman to Morpeth, 19 October 1892, J1 Box 531 1895/6, Archives New Zealand, Wellington.
[367] Seth-Smith to Morpeth, 19 October 1892, J1 Box 531 1895/6, Archives New Zealand, Wellington.

the Native Land Court Act 1886 for the Court to sit at Hastings on 1 December 1892. The Court would comprise Judge Mackay, Judge Scannell and an unnamed assessor. The Court was to exercise its jurisdiction under Part III or Part IX of the act. The notice was sent by the Native Land Court office at Wellington to the printer on 1 November.

326. After receiving this notice, a number of people living at Omahu, including Airini Tonore, signed letters to the chief judge in te reo asking him to adjourn the forthcoming rehearing of the Mangaohane partitions at Hastings. Chief Judge Davy declined to do so. Telegrams were sent to solicitors acting for the parties in the proceedings (Bell and Morison).[368] Prior to the commencement of the hearing, J.M. Fraser requested the evidence from a number of blocks should be made available for the rehearing.[369] They included Rangatira, Otairi, Otamakapua (and partition), Awarua (and partition and rehearing), Owhaoko (and partition, subsequent investigation and rehearing), Mangaohane (and partition) and Oruamatua-Kaimanawa (and partition). He also asked for the chief judge's notes from his 1892 inquiry on the Mangaohane rehearing applications.

327. On 12 December, Judge Mackay sent a telegram to Judge O'Brien, who was sitting at Waipawa, to send him the minutes for Mangaohane, Owhaoko and Awarua.[370] He also asked if Judge O'Brien could send his personal minute books as well as those of the Court. Other records, including the original plan used at the Mangaohane hearing and the file and minutes for Owhaoko were later requested too. Judge Mackay also asked the Native Office for the records of the Native Affairs Committee relating to the recent petition of J.F. Studholme.[371] These were requested from the clerk of the committee and sent on to the judge.[372]

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[368] Unsigned File Note, 30 November 1892, 23/597 1 Mangaohane Correspondence File Volume 1, Maori Land Court, Whanganui.
[369] Fraser to Bridson, 2 December 1892, 23/597 1 Mangaohane Correspondence File Volume 1, Maori Land Court, Whanganui.
[370] Mackay to O'Brien, 12 December 1892, 23/597 1 Mangaohane Correspondence File Volume 1, Maori Land Court, Whanganui.
[371] Judge Mackay to Morpeth, 13 December 1892, J1 Box 531 1895/6, Archives New Zealand, Wellington.
[372] The assistant clerk of the House of Representatives asked for the papers to be returned in June 1894. They were requested from Judge Mackay and returned. They could not be located among the Legislative Department records and were probably destroyed. Otterson to Morpeth, 22 June 1894, J1 Box 531 1895/6, Archives New Zealand, Wellington.

vi THE NATIVE LAND (VALIDATION OF TITLES) BILL

328. As the Court was preparing for the rehearing of Mangaohane No. 2, the Native Land (Validation of Titles) Bill was passing rapidly through the House of Representatives and the Legislative Council in the final days of the parliamentary session. The debates on the bill included a significant exchange which related specifically to Mangaohane and it was this bill, when enacted, which provided Studholme with the basis for obtaining titles to parts of Mangaohane, including Pokopoko.

329. On 5 October, James Carroll, who was a member of the Executive Council, spoke about Mangaohane during the course of the debate on the third reading of the bill. In the committee stage debate, the member for Mataura had asked the government to consider amendments to the bill. The amendments were effectively designed to assist Studholme to the extent that Winiata would be unable to pursue his claims further in any rehearing by the Native Land Court though the member for Mataura was careful to present the amendments in general terms. James Carroll undertook to consult with his ministerial colleagues over night and returned to the House the next day and announced that the government would not adopt the proposed amendments nor would the government support the inclusion in the bill of a provision relating to rehearings. Carroll had prepared his own amendment:

> I may state further that, prior to the consideration of these amendments by the Cabinet, I had taken the liberty to make certain alterations in them, which I think would have suited both sides. The amendment which I was prepared to make only affected the last subsection of the series proposed by the honourable gentleman, and that was this – and I think it is a right one in the interests of all parties concerned, and I am sure it would have satisfied the honourable gentleman, because it was strictly in the interests of justice. Subsection (4) read as follows:–
> "If a rehearing of any case has at any time heretofore, or shall hereafter at any time, be refused in open Court upon the application of one or more Natives upon the merits thereof, and a rehearing of the same case shall have been or shall be granted upon the application of any other Native or Natives, no Native or Natives whose previous application has been so refused shall be entitled to be heard or to be admitted upon the rehearing granted upon the application of such other Native or Natives."
> Then I add the following words: "unless good cause be shown to the contrary." Of course in Native cases the House must be aware that exceptional circumstances often arise which create a claim in equity in certain individuals who are shut out from hearing in any Court of law by the strict wording of an Act. The object was really to give the Native Land Court leave to inquire into special cases, and, if there were exceptional circumstances connected with any such case which was really affected by the amendments of the honourable gentleman, that that case should not be completely shut out from the arena of justice. However, this is only to indicate what I was prepared to do, and the government as a whole accepted the amendments of the honourable gentleman, or something in that direction.[373]

[373] *New Zealand Parliamentary Debates*, vol. 78, p. 656.

330. But this too had been rejected by the government:

> But, as I stated, as the government did not deem it wise at this period of the session to accept the proposed amendments of the honourable gentleman, I may dismiss the matter now from further discussion; but before doing so I will give my own individual opinion in regard to the case affected.[374]

331. Until this point in the debate, the speeches of members had addressed general principles rather than specific circumstances. While the proposed amendments were framed in terms of general principles (the rights of particular groups or individuals to be heard in Native Land Court rehearings), and would have applied to other proceedings in the Native Land Court, the statements which followed suggest the focus was Mangaohane and Winiata's claims to the block. This part of Carroll's speech focused on recent developments relating to the block and which led to the amendments proposed by the member for Mataura:

> I think it is one of those cases wherein extreme hardship occurs; I think it is one of those cases that this House should take into consideration and afford a legal remedy for. It is a case that came before the Native Affairs Committee. Evidence was taken on both sides – for and against the petition. Counsel were heard on all sides. Every facility was afforded by the Committee whereby the fullest evidence could be adduced. The Committee unanimously arrived at a report recommending the whole matter to the favourable consideration of the Government, and suggesting certain provisions, which are indicated in the amendments already referred to. It was in pursuance of that report that the honourable member for Mataura moved those amendments which are now the subject of discussion.[375]

332. Carroll explained the background to the hearings of the Native Affairs Committee:

> I will here state the case as shortly as I can. The Mangaohane Block originally came before the Native Land Court for hearing. Certain parties set up claims thereto, and those claims were duly investigated. The Court in its judgment awarded the land to certain sections of Natives, dismissing the claims of certain other Natives. Among the dismissed claimants was one Winiata Te Wharo. Those who took exception to the judgment applied for a rehearing, Winiata being one of them. In due course the Court sat to consider the applications for rehearing. Winiata was represented by counsel – I think the late Mr Sheehan represented him – and he had every opportunity, through his counsel and by evidence that was adduced, to show reasons why he was an aggrieved party. The Court, after carefully considering his case, dismissed the application for rehearing, together with other cases. This all occurred within the three months prescribed by law wherein applications must be sent in for rehearing.[376]

333. There were, however, other applications for rehearing which were not considered at this Court sitting and this action was the subject of a hearing in the Court of Appeal:

> Before that time had expired, however, and after the said dismissal of applications by the Chief Judge in open Court, other Natives sent in applications for rehearing. The Chief Judge dealt with these subsequent applications privately. He dismissed the

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[374] ibid.
[375] ibid.
[376] ibid., pp. 656-657.

> application of Rena Maikuku, one of those who had subsequently applied. The matter of the private dismissals was then brought before the Supreme Court, and eventually before that Court of Appeal. The judgment of the Court of Appeal was to the effect that the Chief Judge has no right to dismiss privately the application for rehearing by Rena Maikuku – she was the only one before the Court – because she had conformed with the law affecting these matters, and had sent her application in within the three months, and that could only be dismissed in open Court. The judgment of the Court of Appeal further stated that Rena was within her rights in applying to the Native Land Court to consider the application to have the question of title reopened, so as to admit of her claim being investigated.[377]

334. The chief judge had ordered a partial rehearing of the block. It is important to note that this rehearing was yet to be held (it would follow at the end of the year and continue several months into the new year) and Carroll asserted that Winiata planned to pursue his interests in the block at the rehearing:

> The Native Land Court considered her application as directed by judgement of the Court of Appeal, and the Chief Judge decided there were grounds to warrant a partial rehearing. Now, the point is this: Winiata Te Wharo seeks to take advantage of what I may call an accident, so far as he is concerned. He's not in the same position as the party I have just alluded to. He had every opportunity of coming before open Court, which he took advantage of; he had the assistance of counsel; and the Court dismissed his case – legally dismissed it. There is the difference. The Appeal Court said that that which was illegally dismissed should be set right, but said nothing about that which was legally dismissed. The rehearing which is now ordered for the purpose of considering Rena's case will have the effect, unless we take steps to prevent it, of throwing open this block to the whole of the Native population of New Zealand. Now, is that fair? And, especially, I ask, is it fair in Winiata Te Wharo's case, when he has had every justice extended to him, when his case was legally heard and legally disposed of? Why should he come again?[378]

335. Carroll noted that the amendments to the bill proposed by the member for Mataura were designed to prevent Winiata from doing so:

> The object and the meaning of the amendments proposed by the honourable member for Mataura is in the direction of limiting the rehearing to Rena's case, and those immediately allied with herself. I hold personally that that is only right; but, lest some should say that we are crushing out Winiata Te Wharo, I propose to add the words I have quoted, and I believe the honourable gentleman will accept them: "unless good cause be shown to the contrary." The additional words would put Winiata Te Wharo in the same position as the other – that is to say, Winiata Te Wharo would have to run the gauntlet, as Rena Maikuku did. Before he could place himself within the bounds of the rehearing Court he should first go before another Court, and show whether he had a right to be heard in a rehearing Court; and, if such Court decided it would exceptional circumstances in his case sufficient to warrant a rehearing, then that rehearing should take place. I maintain that is as far as one can go in doing justice to Winiata Te Wharo, while at the same time guarding the interests of others concerned.[379]

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[377] ibid., p. 657.
[378] ibid.
[379] ibid.

336. The question of whether the amendment should proceed was with the Native Minister (Cadman) and Carroll would arrange for the bill to be amended if the proposal was approved by the Native Minister:

> I may also tell the House that, with the consent of my colleagues, I have wired the whole of the amendments proposed by the honourable gentleman to my colleague Mr Cadman. And I also pointed out the addition I was willing to make, and asked my colleague for a reply – which I have not yet got – whether he considers the case ought to be dealt with now, or whether such steps should be taken to hold the matter over – so that no injustice may be done during the recess – until next session, when the House will be in possession of the whole of the facts. If his answer is in the affirmative, I shall take steps in another Chamber to give effect to it. If it is in the negative, then I think some provision should be made to protect the interests of all parties, so that nothing shall be done until next session, when we can take the whole matter into consideration.[380]

337. Before concluding his speech, Carroll also took some time to review a document which had been circulated among the politicians sitting in Parliament. He claimed it was prepared by Morison, counsel to Winiata, and was highly critical of Rees (who was a member of the House and would speak several times during the debate):

> Before I sit down I cannot help noticing with much regret that during this afternoon some petition or circular has been circulated through this House having special reference to this matter. How it came to be circulated I do not know. Such a circular, I think, is a gross breach of privilege. Such a circular should never have been allowed to come within the precincts of this House. It is a circular emanating from one of the parties interested, one of the counsel, who, from his position, it is needless to say is pecuniarily interested. When the attempt is made by lawyers in this glaring and scandalous manner to influence honourable members by sending round a circular breathing vile innuendoes against certain of ourselves, it behoves us to take more care than we have done to guard our rights and privileges. If I were the honourable member for Auckland City (Mr Rees), who suffers most severely under the charges contained in this document, I would immediately ask for a Committee of Inquiry. Such a stigma should not be allowed to rest for a single day on any member in this House, for, if these charges were in any way true, he would be unfit to remain in this House, and they cannot be proved to be untrue unless such a course as I suggest is taken. But at this late period of the session the honourable gentleman is in the unfortunate position that we have no time to make the inquiry. And who is behind this circular, headed "A Warning to Members"? A Mr Morison, counsel for Winiata. What is the object of it? To influence the minds of honourable members in favour of his case by roundly abusing those on the other side. Are we to be dictated to by a gentleman of the legal profession outside the House, who is specially retained to procure a rehearing at whatever cost? We should be careful. I was very sorry that the petition was read. I do not think it ought to have been read. We should not have conferred so much notice on the petition as to have allowed it to be read in the House, and to give that publicity for it which was sought. I have already shown that I was ready, in the interests of the client of the petitioner, to do everything that was fair; – and if he had only had patience, and waited, he would have seen that this House only intended to do that which was right. However, the thing having been made so public, and allegations and charges made in his petition being so serious, this question cannot be allowed to go to a rehearing until the foul atmosphere raised by the petition

[380] ibid.

> is cleared away. If we cannot do anything, the matter must be tied up till next session, until the whole case is before us, and it can be properly settled.[381]

338. The member for Waitotara, Hutchison, defended himself by insisting that while he had presented the petition, as he was asked to do so, he new nothing of the circular referred to by Carroll.[382]

339. Rees spoke during this debate. He told the House he would make a statement about the allegations contained in the circular referred to by Carroll, though much of his speech focused on his role in the process of dealing with petitions about Mangaohane and his response to the circular was simply to ask for an investigation if members thought one necessary. He told the House that had the matter been raised earlier in the session, he would have asked for a special committee to investigate the document and the circumstances and report to the House. He proposed to make a statement on it in the course of his speech for the purposes of addressing the allegations made against him:

> The paper first of all states that I am promoting a private Bill; secondly, that the petitioner's solicitor, Mr Morison – or, rather, his is the petitioner – was unfairly stopped by the Native Affairs Committee in addressing them; that he was again stopped by the Chairman of that Committee; that the Hon. Mr Carroll was concerned some years ago for the parties to the petition; and then, that Mr Richardson's amendment would be grossly unjust to the Natives who were decided by the Court of Appeal and the Native Land Court to have certain rights and claims. In regard to nearly all the statements in this petition, I say they are untrue and incorrect. In first instance, it is not a private Bill in disguise in any shape or form.[383]

340. After this general denial Rees insisted that his concern was the general state of native land law in the colony and the impact of the Court of Appeal's decision on titles to many blocks of land:

> For eight years the Judges of the Native Land Court have been giving private orders; and, although only one case has been tried – this case was before the Native Affairs Committee – there are between three and four hundred other cases – blocks of land; each block may contain a dozen cases – the rehearings of which have been privately decided by the Judges, and they are all covered by this case; so that, if the House does nothing, I warn the House either to place such restrictions as these; and they are absolutely just: the Committee has arrived at an absolutely just decision at all points – or if they fail to place restrictions, or failed to stay any proceedings, I say advisedly that the Native Land Court will be filled with revived applications by the Natives who sent them in from twelve to five years ago, and it will have to destroy the title which have been granted on the faith of its own certificates. There will be no help for that. As regards the first statement, it is not a private Bill in disguise. The Chief Judge of the Native Land Court examined and decided a vast number of cases covered by this. Then, as regards the second statement – that the amendments,

[381] ibid., pp. 657-658.
[382] ibid., p. 658.
[383] ibid.

> though nominally moved by the honourable member for Mataura, are promoted by me – that is untrue. The amendments were not promoted by me. I had a copy of them sent to me a day or so ago by a well-known solicitor, Mr Bell, of Wellington. The paper goes on to say that the amendments affect one case only – the Mangaohane Block. That is untrue. The amendments affect cases which run over eight years, which are hundreds in number, and affect property of very great value.[384]

341. However, he did accept that he had represented Studholme at the Native Affairs Committee hearing on the petition:

> Then it says, as regards myself, that I appeared before the Committee although about to act for Mr Studholme in the Native Land Court. Mr Bell, who is acting as solicitor for Mr Studholme – and I ask honourable members to pay attention to this, inasmuch as one of the number is inferentially accused of wrong doing in this matter – Mr Bell, who acted for the Messrs Studholme before the Committee, was engaged also before the Public Accounts Committee. He knew I was aware of the circumstances of this and other cases of a like nature, because I sent the Government a memorandum with regard to the necessity for legislation to govern this and all cases of the same sort. I sent a memorandum, which the Attorney-General put into print and sent to every member of the Government, and to solicitors in Wellington and in different places where Native lands were concerned, pointing out that legislation must take place, or else titles based upon titles fully issued by the Native Land Court would be rescinded. Mr Bell, knowing, therefore, that I had all these cases at my fingers' ends, asked me to go with him to the Native Affairs Committee, and said he would request them to allow me to appear for him and explain the case, and he would then take the case up when he got away from the Public Account Committee. I appeared before the Committee. Mr Morison knew exactly the position I held – that I was about to appear for Studholme in the Native Land Court; and when I made a statement to the Committee that gentleman got up and said that everything I had said was absolutely true; that there was no accusation of unfairness; that there was not a Native who objected to what had been done, and that the precautions taken to see that the titles were good before they bought the land were such as any reasonable man would take. I retired from the case, and Mr Bell then appeared before the Committee, and made an address to them on the evidence.[385]

342. On the allegation that the committee unfairly prevented Morison from speaking on Winiata's grievances, he accepted that the committee chairman did refuse to hear from Morison when he asked to speak:

> Now, Mr Morison says the Committee unfairly stopped him. He spoke twice to the Committee in my presence, and just as the Committee were about to rise again he began to address them again. Several members objected, and the Chairman (Mr Houston) told him that, as he had twice addressed the Committee, they did not see any further need of the Committee's time being taken up; and Mr Morison lost his temper, and stated, as he was about leave the room, that, as he was not allowed to speak again, he would take care that no legislation should take place this session. That was his threat to the Committee. I know nothing of what took place in subsequent meetings, because Mr Bell attended subsequently; but I see he says he was again stopped by the Committee afterwards in regard to addressing them.[386]

343. At this point, Rees turned to address the circumstances of Mangaohane and the expected rehearing:

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[384] ibid.
[385] ibid., p. 659.
[386] ibid.

> Now, as regards this case of Mr Studholme, it is the only case, I say, which has been tried in the Supreme Court, and on which a rehearing was ordered by the Court of Appeal. Some steps must be taken to limit operations and guard the whole interests of the Natives. As to these proposals, I may state, although I had nothing to do with drawing them up, and have not seem them till the last day or so, I entirely agree that they guard the interests of every Native concerned and limit the damage which may be inflicted on the European purchaser. If honourable members consider them they will see that the effect of the proposed amendments is that the Natives shall have the right of rehearing – that is not attempted to be taken away – and of going before the Native Land Court; and, if the case is rehearing, then the European title may be affected to the extent to which the Native's interest is proved, and he is to have full right, although years have passed away, although, in erroneous belief years ago that they were doing their duty, the Chief Judges dismissed his application for a rehearing. I say that is fair. [387]

344. The accuracy of Rees' claims as to the conduct of Studholme in acquiring interests in Mangaohane is, however, problematic as the titles were far from complete when the transactions were negotiated and signed (as the terms of them show):

> What is contended for is that, although certificates have been issued to Europeans who have paid large sums on them, and who believed them to be perfectly correct titles, yet, when one Native is admitted whose application for a rehearing had been previously dismissed years ago, the door is to be opened to any fresh person to come in to claim the property. I would point out that the Judges of the Court were asked if the titles were complete; telegrams and letters were sent to the Chief Judge to ask if they were complete; and the Judge stated that the title was complete, and that there was nobody who had a claim on the land but the Natives with whom Messrs Studholme were dealing.[388]

345. He insisted some limitation on the capacity of people whose rehearing applications had been lawfully denied by the chief judge to subsequently make claims at a rehearing based on another application was essential:

> After they paid the money, and after the Trust Commissioner had signed the deeds, and the Judges were satisfied that the transaction was a bona fide transaction, a Native, whose application had been dismissed five years ago, comes in and obtains a verdict that the petition had never been dismissed. These amendments of the honourable member for Mataura do not take away this Native's right. They say, Let that be admitted in all such cases, but do not let outsiders come in who have no right, because if you do that you offer a premium to persons who have already sold and spent the purchase-money to apply for a rehearing, and say the land never belonged to them. This would offer inducement to controversy and robbery. Where cases have been heard in open Court and refused, then these amendments say such Natives ought not again to be allowed to come in when he door is opened by a third party. They have had their trial and been defeated, and have no hope; and they should not again be allowed to come in. I am sorry the Ministry have taken the stand they have on this matter. They cannot have considered the importance of the stand they have taken – that there are hundreds, if not thousands, of people in the North Island who have settled, believing their titles to be complete, on the faith of the documents issued by the Native Land Court – many under the Land Transfer Act – documents changed for Crown grants, which, are supposing no such restrictions were imposed, are to be swept away to an amount which the House cannot calculate. I have a schedule I obtained from the Court of three hundred blocks, comprising nearly six

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[387] ibid.
[388] ibid.

> million acres, titles to which are believed to be completed; but unless some restrictions are placed by amendments such as these the whole of this would be thrown up and destroyed through the fault, not of the purchasers, not through any fault of the Natives, but through the misreading of the law by Judges appointed by this Parliament and successive Governments, and two Chief Judges of the Native Land Court. All I can say is that, if it be the case, not only will there be widespread suffering, but there will arise indefinite claims, not only against the assurance fund, but against Parliament itself. Are these people to suffer without redress from the ignorance, the mistakes of the Judges? Are they to be ruined without any hope, in this way? And is the Government to refuse to place proper restrictions, as it is doing now, against the advice of its own Native Minister? I ask the Government to reconsider the position they have taken up. The position is a very serious one. And, if it be, as stated, that they cannot sufficiently understand the matter to place these restrictions now in the Bill, then, at any rate, as the Native member of the cabinet has indicated, there should be absolute restriction, absolute stoppage put upon all law proceedings, to allow the Government during the recess, and Parliament when it reassembles, to deal with such an enormous question as this is in reality in something like a satisfactory way.[389]

346. He was scandalised by the government's inaction in dealing with a matter of such significance:

> I do not think I have anything more to say, but I do trust the honourable gentleman who is in charge of this resolution will not let the matter rest – that he will deal with it as he may think best; and I do ask that the matter be dealt with in some shape this session. I fail to understand by what process of reasoning the Government refuses, as a Government, to attempt to do something upon the question. When numbers of titles are placed in danger, not in any case through the fault of the owner, or throughout the illegal action of persons now holding, but through the fault of our Courts and our laws, why should they decline to deal with this matter? It has been placed before the Native Affairs Committee, and I suppose that that Committee has given the matter every consideration. The Committee had the Chief Judge of the Native Land Court before it, it has had counsel for the various parties, it has had various documents before it, and under these circumstances it has arrived at a fair conclusion. I can only leave the matter to the House.[390]

347. He was most insistent that Mangaohane was only one of many blocks which were in placed in similar circumstances by the decision of the Court of Appeal:

> With respect to the Mangaohane case, I may state that I did not deal with that case more particularly than with the bulk of the cases which were brought before the Committee, except in so far as it is a type of all others. To my mind the gravity of the case is one almost unparalleled. The amount of interest at stake is very large. Number of titles the owners of which do not dream of what we are doing can be assailed. Unless something be done a large number of titles will be imperiled, and in all likelihood will in some cases be destroyed. The proposals of these amendments give relief only to those who claim relief. They propose also to limit applications for relief to those who have made application, and those who claims now apply. I submit, with all respect, but in all earnestness, after having for the last six months paid a considerable amount of attention to this matter, that the House ought to act. It is the duty of the Government, and it is the duty of the House, whose officers have caused this confusion, to prevent, so far as they can without doing injustice to other people, disturbance of titles issued under the procedure of their own Courts – titles obtained in all good faith; and I say it is of the largest importance that this should be done at

[389] ibid., pp. 659-660.
[390] ibid., p. 660.

> once. Of course, if that cannot be done immediately, then all law proceedings should be suspended until next session, when proper time can be given by the House to consider and deal with the matter, and to put things on a satisfactory footing.[391]

348. The member for Mataura (Richardson) spoke immediately after Rees in the debate and acknowledged that his amendments had been rejected by the government and that the government had a majority so his amendments would fail. He nevertheless read them out to the House so they could be officially recorded. Their focus was on rehearings:

> 1. In any case where an application for rehearing has been duly lodged within the time limited for that purpose by the law for the time being in force, and has been dismissed by the Chief Judge otherwise than in open Court, the applicant or applicants for any such rehearing may, within twelve months after the passing of this Act, renew his or their application, and thereupon such application shall be heard and determined upon its merits as soon as conveniently may be. Where no renewed application shall be lodged within the said period of twelve months, the original application shall be deemed to have lapsed.
> 2. Where a rehearing shall heretofore have been or shall hereafter be granted by the Chief Judge upon any application which had previously been erroneously dealt with by dismissal as aforesaid, then –
> (1) Such rehearing shall be limited to the inquiry whether the particular applicant, and any persons who had at the original hearing expressly claimed title through and under the particular applicant, were specially aggrieved by the order made on the original hearing, and the remedy to be provided for such grievance (if any).
> (2) The order made upon such rehearing shall extend only to remedy the special grievance (if any) of such application and such other persons as aforesaid, and to the extent necessary for that purpose, and no further, may vary the order made on the original hearing.
> (3) The right, title, and interest of the Natives declared entitled on the original hearing, and of all persons claiming under or through them by descent, purchase, lease, or mortgage, shall be affected by any order on such rehearing to the extent only necessary to give effect to the order on rehearing, and no further or otherwise; and the Court granting such rehearing may, and wherever practicable shall, upon such rehearing, partition the block, and award exclusively to the Natives declared entitled on the original hearing such parts as the Court shall then determine.
> (4) If a rehearing of any case has at any time heretofore or shall hereafter at any time be refused in open Court upon the application of one or more Natives upon the merits thereof, and a rehearing of the same case shall have been or shall be granted upon the application of any other Native or Natives, no Native or Natives whose previous application has been so refused shall be entitled to be heard or to be admitted upon the rehearing granted upon the application of such Native or Natives.[392]

349. He asked for the Native Minister to approve of the amendments and arrange for them to be added to the bill in the Legislative Council. Otherwise, he hoped the government would pass legislation 'which will prevent injustice during the recess owing to the non-passage of the clauses I proposed'.

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[391] ibid.
[392] ibid., pp. 660-661.

350. Before the third reading motion was put to the House (it was passed unanimously, without a vote taken), Rees again asked the minister (Carroll) if something would be done, as suggested by Richardson, to 'stay proceedings'.[393] He wanted the minister to make a public statement on the matter 'for I am certain that unless something be done grave injustice will result'. The minister replied that he thought he had made himself clear in his earlier speech but repeated that '[i]f necessary the interests of all parties will be protected till next session'. Another minister, R.J. Seddon, added that he was concerned that the amendments had only been proposed the previous evening and that further consideration of them would be necessary before the government could support them. He was concerned that the interests of others might be prejudiced in moving so hastily: 'There is no doubt that there are two sides to the question. There are two parties, and I think on party might fairly say it was surprised, and that we had passed legislation to the prejudice of its position'.[394] The government would take advice on what could be done to protect the interests of all those involved but the amendments could not be accepted.

351. In the Legislative Council, W. Downie Stewart referred to the decision of the Court of Appeal which meant 'a large number of titles in the North Island are liable to be upset' and that suspension or validation legislation was required before the end of the session to avoid further litigation the following year.[395] He admitted, however, that he had no idea whether the bill would have the effect of doing so.

352. In response to criticisms from Taiaroa, the Colonial Secretary insisted that the bill had not been intentionally delayed to the end of the session by the government but that it had been considered at great length by the House 'and the difficulty of getting it out of there and getting it here has been something considerable'. The bill was considered by the Legislative Council on the second to last day of the session.[396] The Colonial Secretary stated that the bill was intended to enable judges to investigate transactions 'and set at rest those titles which have been honestly obtained, and to bring before both Houses of the Legislature those which have ben fraudulently obtained'. He

[393] ibid., p. 661.
[394] ibid.
[395] ibid., p.706.
[396] ibid.

insisted these were the 'sole object' of the bill. During the debate on the committee stage, the Colonial Secretary further explained the bill:

> It causes an investigation to be made, and, when that investigation is completed, it is then submitted to the Houses of Parliament, where every precaution may be taken to protect the interests of all parties concerned. The validating of these transactions will have to receive the sanction of Parliament, so that no injury may be done to anybody.[397]

353. He maintained that the bill was simply a first step to permit investigation of transactions. The bill finally enacted by Parliament did not contain the amendments relating to rehearings proposed by the member for Mataura and in favour of which Rees had forcefully argued.

[397] ibid., p. 741.

F MANGAOHANE NO. 2 REHEARING

i THE REHEARING

354. The rehearing for Mangaohane No. 2 (the part of the block south of the Mangaohane Stream) commenced at Hastings on 8 December 1892 before Judge Mackay (presiding), Judge Scannell and Assessor Tamati Tautahi.[398] Many parties were represented at this hearing:

- Morison with Blake appeared for Rena Maikuku and a number of other people;
- Bell with Rees, A.L.D. Fraser and J.M. Fraser appeared for Wiremu Paraotene and Anaru Te Wanikau on behalf of some of those included in the title Court's first decision for the block;
- McLean appeared for the Karauria whānau, Ani Kanara and Airini Donnelly;
- Loughnan appeared for Noa Huke and those included in his list of names;
- Vogel appears for Ramari Te Rango and those included in his list of names.

355. According to Morison, the 'contest is between people of inland Patea and of Heretaunga for lands in Patea district'.[399] He went to suggest that those of Heretaunga were 'a tribe claiming beyond natural boundary of their own historical lands'.[400] He insisted the evidence of their interests was 'vague' and he challenged their evidence of occupation. He did not deny there was a hapū called Ngāti Honomokai but insisted they descended from more junior ancestors. His submissions continued over several days during which he also cited evidence given by witnesses at earlier hearings. He also called Noa Te Hianga (who was led by Loughnan and cross-examined at great length by J.M Fraser as well as by others and the Court), Ihakara Te Raro, Winiata Te Whaaro, Rota Tiatia, Matenga Pekapeka and Rena Maikuku.[401] Each of the witnesses was also cross-examined at length by the representatives of other parties and questioned by members of the Court.

356. During the course of the hearing, the Court decided to call Judge O'Brien as a witness. There was some discussion over the location of the southern boundary, and it would appear the parties had access to his report to the chief judge which included a

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[398] Napier Native Land Court Minute Book 29, 8 December 1892, fol. 185.
[399] Napier Native Land Court Minute Book 29, 8 December 1892, fol. 187.
[400] ibid.
[401] Napier Native Land Court Minute Book 29, 13 December 1892, fol. 209; 17 December 1892, fol. 276; 25 January 1893, fol. 376; Judge Scannell Native Land Court Minute Book 30, 30 January 1893, fol. 49;

diagram of the boundary, but it would appear the parties wanted him to give evidence to clarify the location of the line. The Court decided to call him as a witness on its account to ensure he was not associated with any particular group in the proceedings.[402] He was called as a witness of 17 December and interrupted evidence which was been given by Ihakara as the judge was about to leave for Auckland.[403]

357. His memory of the details of the Court's proceedings in 1884 and 1885 were vague on several points, particularly relating to the circumstances in which the southern boundary line was added to the sketch plan. In response to questions from the Court, Judge O'Brien was asked about discrepancies between the line on the plan and the description given in the Court's decision:

> Q. Will you kindly explain to the Court the discrepancy between the boundary as fixed by the judgment and that afterwards shown in your memorandum to chief judge by a rough sketch (memorandum to Chief Judge Macdonald).
> A. My remembrance of this was that the cutting out of a piece was in reference to Ngati Hinemanu claim, that it either belonged to them or was so doubtful that we cut the piece out. The two judges were agreed but assessor was doubtful as well as I remember returned to Court and asked question.
> Q. Is that line (pencil) on the plan the one you drew?
> A. I think so. The Court drew a line. I cannot say now how much we left out. I cannot say if a surveyor drew the line at our request. I went away before the case was finished and left Judge Williams to finish details. The sketch on the memorandum is no value as against plan as it was drawn from memory at Marton. It cannot be taken as of any value or an estimate of what was intended to be cut off. There was an uncertainty about the position of Pokopoko. The report was written when I had a clearer recollection of the matter than I have now but the sketch is not reliable. Memorandum from notes. Had no plan when I made sketch.[404]

358. However, he was unable to respond with certainty to questions about whether Pokopoko was to be excluded from the Court's decision and deferred to the content of the decision as authoritative:

> Q. With reference to Chief Judge's judgment at application for rehearing portion referring to original judgment, Pokopoko etc.
> A. Speaking from memory in mentioning localities were not properly fixed. I think the opinion expressed by Chief Judge in his application is correct. The Court intended to exclude certain parts of the land from adjudication and for this purpose certain names were given and pointed out on the plan, and a line was intended to be drawn through these. The plan was only a sketch plan so that it was immaterial where the line was drawn. It was the position on the land of these places that was material.
> Q. Was it intended to follow the names of places in your judgment or to leave out Pokopoko?
> A. I would ask the Court to follow the evidence in the case and not anything I may have said in my memorandum which is an opinion.

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[402] Napier Native Land Court Minute Book 29, 15 December 1892, fol. 253.
[403] Napier Native Land Court Minute Book 29, 17 December 1893, fol. 278.
[404] ibid.

> Q. Did the names in the judgment indicate the course the line was to take or intend to leave out Pokopoko?
> A. I cannot say. We had a doubt about a certain claim of Ngati Hinemanu and we wished to leave it out. The names indicate the course we wished to take. I can't say whether these places intended to exclude Pokopoko or not.[405]

359. He was, nevertheless, clear that Ngāti Hinemanu's land was to be excluded from the Court's decision.

360. In response to a question from Morison, counsel for Winiata and others, he admitted that on hearing further evidence from Winiata for other lands, he thought his commentary on Winiata's claims in Mangaohane was mistaken:

> Mr Morison. Q. Do you wish at this distance to qualify anything you stated in the Report you made to Chief Judge Macdonald?
> A. I might. The report conveyed accurately what I thought at the time. I have reason now to think I was mistaken. Winiata made a claim which was dismissed. Because at a subdivision about two years ago, Winiata was called by Ngati Whiti for the northern part during the course of which, he showed a much clearer claim than at the first hearing and I came to the opinion that his claim was clear than I thought and I said so. He may not have been cross-examined. P[arliamentary]. Committee wished me to give evidence but I was sitting in Awarua and could not attend but I sent a memorandum (referred to in Winiata's affidavit in Court of Appeal case as telegram).[406]

361. In addition, he could not recall why the Court decided to proceed with Renata's second application for investigation of title rather than his first. Nor could he remember 'expressing surprise' at the location of Pokopoko during the course of partition hearing. He did agree with McLean, counsel for Airini and others, that the line drawn on the plan was supposed to exclude the claim of Ngāti Hinemanu (even if he was uncertain about the extent of that claim and whether the line added to the sketch plan encompassed it).

362. Those representing the existing owners of Mangaohane No. 2 decided not to call any evidence in the hearing.[407]

363. In its decision, given on 25 April 1893, the Court emphasised the narrow terms of the rehearing authorised by the chief judge:

> Before entering further into the matter it appears desirable to state shortly the nature of the case which had to he considered. Under the terms of the order for rehearing the object of the investigation by the Court was for the purpose of determining whether Rena Maikuku and any other persons who may allege that they are interested therein under the same ancestral and occupational claims as are put forward by the said Rena

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[405] ibid., fol. 278-279.
[406] ibid., fol. 279.
[407] Judge Scannell Native Land Court Minute Book 30, 11 February 1893, fol. 236.

> Maikuku ought to be declared entitled according to native custom to a share or interest in the said Mangaohane block named Mangaohane or Mangaohane No. 2, in addition to the persons who have already been declared to be so entitled. These are the terms on which the rehearing was granted, and the Court is consequently bound to confine its decision to these points only in considering and weighing the evidence, both oral and documentary, submitted to it. The rehearing is essentially a partial one as to the persons who may urge claims before the Court.[408]

364. A key question for the Court was identifying who could be considered for inclusion in the title order in terms of the partial rehearing allowed by the chief judge's order. The Court noted, in particular, that this affected many of those who were claiming with Rena:

> In consequence of the evidence given by Rena Maikuku herself about the close of the proceedings a question arose as to the construction to be placed on the words in the order of rehearing, 'and any others who may allege that they are interested therein under the same ancestral and occupational claims *as are put forward by the said Rena Maikuku*.' And before proceeding any further it is necessary that the Court should declare what in its opinion is the true construction to be placed on this part of the order. This is all the more necessary as the claims of the majority of the applicants now before the Court hinge on and are affected by the construction, and after balancing the various considerations which may be brought to bear on the interpretation the Court is of opinion that it ought to adopt the literal construction.[409]

365. However, this interpretation was strenuously challenged by Morison whose arguments were effectively that it was absurd as it would mean Rena Maikuku rather than the Court would determine who could be included in the title order:

> It is argued by counsel for the applicants that the claims meant are those put forward by Rena Maikuku in her application for rehearing that these were the claims which the Chief Judge had before him when he made the order for rehearing that these claims were the claims on which the order for re-hearing was based and that any other construction placed on that part of the order would defeat the evident intention, inasmuch as it would have made Rena Maikuku the sole arbitress as to who could apply and who could not, as any persons whose names were not included in the list which Rena Maikuku was directed to hand into the Registrar by a certain date would be entirely debarred from complying until they knew what particular grounds of claim Rena Maikuku had put forward, and had Rena Maikuku deferred sending in her grounds of claim to the Registrar to the last moment, as was actually the case, no opportunity would have been given to the other applicants to comply with the conditions of the rehearing, and so bring themselves within the scope of the enquiry, and that therefore the claims put forward by Rena Maikuku in her amended application for re-hearing were those on which the Court was to base its enquiry as to the rights of the whole of the applicants now before it. This view of the case is opposed by counsel on the other side, but it will be only necessary for the Court to examine the reasons put forward by counsel for the applicants.[410]

366. The Court went on to consider the background to Rena's application, presumably for the purposes of determining her 'ancestral and occupational claims'. This included a

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[408] Maketu Native Land Court Minute Book 8, 25 April 1893, fol. 3.
[409] ibid.
[410] ibid.

review of her amended application and the proceedings before the chief judge which led to the partial rehearing:

> The amended application of Rena Maikuku for rehearing, into which the Chief Judge made inquiry, and on which it is stated the order for rehearing was based, states: Paragraph. I., 'That the owners of Mangaohane lands according to native custom are the descendants of the ancestor Te Ohuake, and the hapus who are entitled and who have occupied under that ancestor are the Ngatihau together with the Ngatihaukaha and the Ngatipaki.' And in addition to other matters the application further states that the application made in April, 1885, by Ema Retimana and Rena Maikuku (of which the application then under hearing was an amendment) was not made on behalf of themselves only, but also on behalf of 'all our relatives and people, some of whom join with me in signing this.' This application, together with another from Te Rina Mete, was enquired into by the Chief Judge at Hastings on the 16th February, 1892, and subsequent days, and, as it appears from the Chief Judge's notes, the real claim at first put forward, under cover of this application, was that of the Ngatihinemanu hapu as against the Ngatihonomokai to the ownership of that part of the block now known as Mangaohane No. 2. Evidence was taken, and after arguments by counsel lasting some days, it appears from the notes that Mr Morison, of counsel for the applicants, said that at least he was entitled to 8 rehearing for Rena Maikuku for the southern part, and Mr Bell, of counsel for some of those opposing the application, commenting on this says it was an entirely new matter.
> It is gathered from this and what followed that Mr Morison abandoned his claim for Ngatihinemanu as a hapu, and confined himself to whatever the application made by Rena Maikuku could be made to cover, and as far as can be ascertained from the Chief Judge's notes the subsequent arguments were directed to this point.
> Judgment on Rena's application was duly delivered by the Chief Judge, a partial re-hearing as before mentioned ordered, and Rena Maikuku and all other alleging the same ancestral and occupational rights, or rather claims, as she had, directed to furnish the registrar with their names and the ground of claim by the 1st June, 1892. In the Chief Judge's note giving a precis of his order he says 'Particulars of claim, with the ground and names of all persons by whom, or on whose behalf the claim is made, be given.'[411]

367. Lists of names were submitted, in response to the chief judge's order, by Rena Maikuku and Noa Huke. The Court suggested that these lists included all of Ngāti Hinemanu and it appeared to consider them somewhat doubtfully, noting that the claims of the hapū were earlier disallowed and had been abandoned by Morison before the chief judge:

> In pursuance of this order two lists of names, with what purported to be the grounds of claim, were forwarded to the Registrar by the 1st June, 1892 – one from Rena Maikuku and another from Noa Huke. These two lists appear to embrace the whole of the Ngatihinemanu hapu, who as a body had been disallowed by the first Court, and the claim for whom had been practically abandoned at the hearing before Chief Judge Seth-Smith. The lists also contain the names of all these persons who had previously made application for rehearing to Chief Judge Macdonald in 1885, and after hearing in open Court that their applications disallowed, as well as the children of Te Rina Mete, whose application was dismissed at the same time as that of Rena Maikuku was allowed. In fact, it is not probable that any more could or would have applied or been included had the rehearing ordered been a whole instead of a partial one.[412]

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[411] ibid.
[412] ibid.

368. With the list of names, Rena Maikuku claimed all those included were descendants of Te Ohuake who had occupied Mangaohane. The Court observed of the composition of the list of names:

> These are all the grounds of claim put forward by Rena Maikuku and those on whose behalf she claims, giving even less particulars than the application for re-hearing did, and the lists practically include the whole of the descendants of Te Ohuake not previously found to be owners.[413]

369. In the circumstances, the Court could not accept that the chief judge's rehearing order could be interpreted to include all the descendants of Te Ohuake:

> Now, at the original investigation, when the whole of the Mangaohane block was before the Court, the ancestor put forward as the root of title was Te Ohuake, and the land was awarded to certain descendants of that ancestor, that part north of the Mangaohane stream to the descendants of Haumoetahanga, granddaughter of Te Ohuake, by her husband Whitikaupeka, generally known as Ngatiwhiti, and the remaining part of the block, that lying south of the Mangawhare stream, and now under rehearing, to the descendants of Honomokai, great grandson, of Te Ohuake through his granddaughter Punakiao, known as the Ngatihonomokai.
> The Ngatihonomokai claim at the first hearing was opposed by the Ngatihinemanu, claiming also from Te Ohuake, and by the descendants of Te Rangiwhakamatuku, a son of Te Ohuake; but these claims were disallowed, the Court holding that the land owned by these claimants through that ancestor lay to the south of Mangawhare in the Awarua block, and in other parts of the Patea country.
> The Chief Judge had before him in his enquiry into Rena Maikuku's application the fact that the Ngatihinemanu and other descendants of Te Ohuake had urged their claims at the first hearing, and had those claims disallowed that application for re-hearing on their behalf had been made to Chief Judge Macdonald and been disallowed; that the application then before him was first practically urged in that behalf, viz., for the descendants of Te Ohuake, and then evidently abandoned. Yet with all this counsel contend that in making his order for a rehearing, confining it to a part of the block and to Rena Maikuku and those having the same ancestral and occupational claims, he was practically ordering a rehearing to include all the descendants of Ohuake who could or would urge a claim. In the opinion of the Court this contention cannot be maintained. Had the Chief Judge intended that the rehearing should include all the descendants of Te Ohuake he would have said so, as he did in a similar case in one of the subdivisions of the Awarua block, where a rehearing as to the part called No. 3A was ordered for the purpose of determining whether any, and if any which, of the members of the Ngatitamawhiti hapu who are descendants of Te Ikatakatahi are entitled to be included to this parcel; he would not leave it to be inferred from something said in his order. From the context of his judgment on the application for rehearing, and from the order itself, it is plain that he was of opinion that others as well as Rena Maikuku had claims similar to her. She in fact says so in her application, and it is to this that the order for rehearing refers. When he made his order for rehearing, and included in that order any persons alleging they were interested under the same ancestral and occupational claims as are put forward by the said Rena Maikuku, and that the grounds of claim should be furnished to the Registrar by a certain date, he intended that the persons claiming should be named, and their grounds of claim particularised in that document, not in the vague general way in which it was done, but in accordance with the practice of the Native Land Court, where the root of title alone is not held sufficient to define an ancestral right; but all the steps from the original ancestor by the successive generations and their occupation is held necessary to entitle members of the present generation to ownership, and that those other persons who claimed in accordance

[413] ibid.

> with his order should have the same ancestral and occupational rights as Rena Maikuku in the sense in which ancestral and occupational rights are construed by the Court.[414]

370. It was not until Rena Maikuku gave evidence that the question of her ancestral claims was finally settled and in her evidence she would only claim through Tamakorako:

> Notwithstanding the condition in the order of rehearing it was not till Rena Maikuku herself gave evidence that the Court was aware of what her real ancestral and occupational claims were. Other witnesses previously on Rena's behalf traced her rights as they did their own, from Te Rangiwhakamatuku Tautahi, and even from Hinemanu, all descendants of Te Ohuake, but when she gave her evidence she distinctly and repeatedly disclaimed any rights to Mangaohane except those from Tamakorako, and as distinctly and repeatedly denied the rights of those even on her own list claiming through any other line of descent. The Court is of opinion that Rena Maikuku having defined her ancestral claim as coming from Te Ohuake through Tamakorako, the enquiry is restricted to those on the lists handed into the Registrar claiming through the same line of descent who can prove occupation, this line of descent being as follows:–
> [Decision recites whakapapa from Te Ohuake][415]

371. The Court identified eleven people in Rena Maikuku's list, not including children of living people, who were the descendants of Tamakorako.[416] Of the other names in her list, the Court noted:

> It may be mentioned that Rena Maikuku herself on being examined as to the other names on her list says: 'They are not descended from Tamakaroko; they have another take' – that is, a take or ancestral right different to hers.[417]

372. The Court therefore reached the following conclusion on the scope of its inquiry:

> Under these circumstances it appears to be plain that the question is narrowed to an enquiry into the occupationary rights of those persons through the same line from Tamakorako as Rena Maikuku claims to determine whether or not they are to be placed on the list of owners. The whole of these persons whose claims are to be enquired into are descended from the three children of Te Rito o Tau, grandchild of Tamakarako, viz., Te Wawana, Tukawhiu, and Kaewai, and it would be in accordance with the practice of the Court to enquire whether or not these persons and their descendants to the present generation have exercised such acts of ownership as would according to native custom entitle them to be enrolled in the list of owners, bearing in mind that the occupation of this block was never of a settled nature, it being only used occasionally for procuring such food as it yielded naturally or without cultivation.[418]

373. The Court noted that the interests of the descendants of Tamakorako were not considered at the original hearing for Mangaohane. However, it was satisfied that the

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[414] ibid.
[415] ibid.
[416] They were 1 Rena Maikuku, 2 Ema Retimana, 3 Urania Pokaia, 4 Heta Tanguru, 5 Raita Tuterangi, 6 Erueti Arani, 7 lhakara Te Raro, 8 Horima Paerau, 9 Hakopa Te Ahunga, 10 Ihaka Te Konga, 11 Hirani Te Hei.
[417] ibid.
[418] ibid.

whakapapa given at other hearings and in other blocks, particularly with reference to Awarua and Owhaoko, that there was an ancestor of this name and that his descendants occupied sites on both sites of the Rangitikei River. The Court considered the reason why Winiata preferred to marginalise the claims of Tamakoroko, in both the original hearing and the present rehearing, was to emphasise the importance of interests through Rangiwakamatuku: 'It is a well-known fact that claimants before the Native Land Court when stating their grounds of claim usually choose an ancestor who has the smallest number of collateral descendants, the object being to exclude as many persons as possible from preferring an ancestral or even an occupational claim to the land under investigation'.

374. The Court went on to consider the extent of occupation with the descendants of Tamakorako needed to demonstrate to be included in the title order:

> As to the rights of Rena Maikuku and the other descendants of Tamakorako included in the list submitted to the Court, it is not on actual occupation by members of the present generation that the Court decides ownership. Such occupation would no doubt be *prima facie* evidence of ownership, but it is necessary that any claim made should be supported by proof of occupation and use of the land by at least three generations immediately preceding and including the present claimants. There is no rule, however, of native tenure which fixes the degree of occupation necessary to establish a complete title, and it is a well-known fact that continuous occupation of places that were only utilised for rat-catching or fowling or fishing purposes were the exception; in fact, anything like permanent occupation was always avoided so as not to disturb the rats or birds in their usual resorts. The tenure to land as it existed prior to the establishment of British government in the colony, and not since that event, is the test of ownership established, being the point of time fixed on at which the native title became petrified, and all persons who are found to have been the actual owners or possessors of lands at that time must be regarded as the owners or possessors of those lands now. Possession alone, however, does not confer a right unless the occupation is founded on some previous 'take' of which the occupation can be regarded as a consequence, and this 'take' must be consistent with the ordinary rules governing and defining native custom. Occupation may be actual residence (*noho tuturu*) accompanied by the acts which are generally associated with residence, or may be evidenced by ancillary acts where no actual residence has taken place, such as fishing, catching birds or rats, gathering berries, digging fern roots, or acts of a similar nature but the acts being from their nature necessarily intermittent require to be supported by evidence of antecedent right. It is claimed by the descendants of Tamakorako that their right is derived from Te Ohuake, who, it is asserted, conquered the whole of the Patea district from the original inhabitants. It is generally admitted that Te Ohuake was the first to conquer the district, and that he became possessed through the conquest of the country on both sides of the Rangitikei river, and that this right was transmitted to his descendants who occupied it afterwards in conjunction with the descendants of Te Hauiti and Whitikaupeka, who had also derived a right to parts of the district by conquest and subsequent intermarriages with the descendants of Te Ohuake. There does not appear to have been any well-defined tribal divisions, but each tribe or hapu occupied different parts of the country by tacit understanding, whereby the rights of each were confined to such parts as were

> considered to be their own either through conquest, intermarriage, or other causes, conferring a right of possession.[419]

375. The evidence presented at the rehearing indicated Mangaohane was used primarily for obtaining food, particularly rats and birds, but that Ngāti Tamakorako or Ngāti Hau lived at permanent settlements nearby on other block. The Court took some care in reviewing the evidence in its consideration of the location of the interests of the descendants of Tamakorako. In doing so, it commented on the nature of the southern boundary of Mangaohane, which adjoined Awarua:

> In weighing the evidence it is necessary to take into consideration that these people were owners of that part of the Awarua block immediately adjoining the line drawn by the Court as marking the southern boundary of Mangaohane, and that this line does not follow any natural or ancestral boundary, and that there is evidence to show that they and some of their ancestors were in the habit of resorting to the bush at Pokopoko to collect food as of right, and though the Court at the first hearing was aware of this and intended excluding from its judgment that part of the land which it considered it had not sufficient evidence before it on which to base an award, yet the line actually laid down took in a part where those now claiming had some occupationary rights.[420]

376. This included comment on the location of Pokopoko in relation to the southern boundary of Mangaohane and the evidence of Judge O'Brien given at the rehearing:

> The Chief Judge, in giving the decision of the Court on the application for a rehearing by Rena Maikuku, expressed the opinion that there was evidence before the Court of acts of ownership on the Mangaohane No. 2 block exercised by others besides the descendants of Honomokai, in certain localities, especially in the neighbourhood of Pokopoko, and that it was apparently intended at the original hearing to have excluded the land to the south of Pokopoko, but that owing to the want of accurate information as to the position of that locality with Papa-o-tarinuku, the place the original Court fixed the southern boundary at, it was found on survey that Pokopoko was situated further to the north than it was supposed to be at the time the first judgment was given. Judge O'Brien, one of the Judges who sat at the original hearing, and who subsequently dealt again with the Mangaohane block when it came before that Court for subdivision in 1890, stated in evidence before the rehearing Court on the 17th December last that he thought the opinion expressed by the Chief Judge relative to Pokopoko was correct. He further stated that the Court at the first hearing intended to exclude certain parts of the land from adjudication, and for this certain names were given and pointed out on the plan, and a line was intended to be drawn through these places. The plan before the Court was only a sketch plan, so that it was immaterial where the line was drawn; it was the position of these places on the land that was material.[421]

377. After this lengthy review, the Court concluded that the descendants of Tamakorako did have an interest in the block and found 'that some of the persons in Rena Maikuku's list have established an equitable right to a share of the Mangaohane No. 2 block'. However, the Court was unable to specify the extent of their interest for the

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[419] ibid.
[420] ibid.
[421] ibid.

purposes of the title order without further evidence. It made an interlocutory order adding additional names to the title order.[422] The claims of those in Rena's list who were not descendants of Tamakorako and the claims of those included in Noa Huke's list were 'disallowed in consequence of the case of these claimants not coming within the scope of the rehearing'. It important to emphasise that it was the scope of the inquiry allowed by the chief judge which led to their exclusion from the title order and not the merits of their claims.

ii CONFIRMATION OF THE ORIGINAL SURVEY PLAN

378. On 22 December the previous year, while presiding at the rehearing for Mangaohane No. 2, Judge Mackay had prepared a long memorandum to the chief judge on the Mangaohane rehearing:

> To suit the convenience of counsel engaged in this case, as well as to enable the evidence to be elicited to be compressed into as narrow a limit as possible the resumption of the hearing has been postponed till the 24th proximo so as to admit of the possible of those who are engaged, to gather together the information with a view of reducing the irrelevant matter within reasonable limits.
> Prior to the final disposal of the matter and before fresh certificates can be issued, it will be necessary to act in accordance with the provisions of the Native Land Court Act 1880, as the original hearing was made on a sketch plan, and no steps were formally taken to give effect to the requirements of sections 28/31.
> A survey in compliance with Clause 27 of the aforesaid Act was made of the Mangaohane Block in 1885 by Mr Charles D Kennedy, an authorised surveyor, and as sections 28/31 of the Act of 1880 still have to be complied with, the interim would prove an opportune time in which to issue a notice under section 28 that the plan can be inspected a the Native Land Court, Hastings, on and after the 24th January next, and that the Court will hear any objections that may be made at a date to be fixed by it not less than ten days after the plan is deposited for inspection.
> I am induced to make this suggestion for the reason that it would save the necessity of causing the natives to assemble again after the Mangaohane rehearing is disposed of, for the purposes of attending Court to deal with the boundary question.
> It would also be a matter of convenience if the ordinary sitting of the Court at any other place than Hastings could be postponed until after the rehearing of the Mangaohane Block is over as that Court needs the use of all the minute books for reference which have been used in the Mangaohane hearing and subdivision, the Awarua hearing and subdivision and the Owhaoko hearing and subdivision. The particulars relative to those proceedings are continued in 18 minute books and should another Court be sitting at a distance it means that the proceedings in either one Court or the other would be interrupted through the bocks being needed either in the Mangaohane rehearing or in the other cases being dealt with by the ordinary Court.
> Touching the plan of Mangaohane an approved copy of Mr C.D. Kennedy's survey would probably be sufficient to exhibit for inspection by the Natives but if a copy of that survey is not available, a copy of Mr Reardon's plan denuded of the subdivision

[422] They were: Rena Maikuku, Ngahuia Pikitia, Peti Tumango, Henare Tumango, Ngamako Kumeroa, and Ngawai Nepia, one share; Tairuru Te Rango, Raumaewa Te Rango, Ngarahi Te Rango, Ngamake Te Rango, children of Ema Te Rango, deceased, one share; Urania Pokaia, children and grandchildren, one share; Heta Tanguru, Raita Tuterangi, and Erueti Arani, Ihakara Te Raro, and Hiraka Te Rango, one share; Horima Paerau, Hakopa Te Ahunga and children, one share Ihaka Te Konga, and Hirani Te Hei, one share.

> lines would probably answer, but this is a matter for the consideration of the Survey Department, to see that a sufficient plan is deposited in conformity with the provision of Clause 27 of the Native Land Court Act 1880.[423]

379. The chief judge directed the registrar to issue a notice that the plan of Mangaohane would be available for inspection at the Native Land Court in Hastings from 24 January 1892 to 3 February 1893 (while the rehearing continued). Any objections were to be lodged with the registrar of the Court at Wellington before 3 February and they would be dealt with by the Court sitting at Hastings and dealing with the Mangaohane rehearing on 13 February. A certified copy of the plan was to be displayed rather than the original.[424] At the chief judge's direction, the assistant surveyor general was asked to prepare the necessary plan and a 'general outline tracing of Mangaohane block' was forwarded to the registrar for display at Hastings. Notice of the plan was published in the New Zealand Gazette and Kahiti at the start of 1893. The tracing was forwarded to Hastings on 12 January.[425]

380. On 13 February 1893, while the Court was dealing with the rehearing for Mangaohane No. 2, immediately after the Court opened, it considered the boundaries of Mangaohane. The plan had been exhibited since 24 January. The Court announced that up to 3 February no objections had been lodged and proceeded to confirm the boundaries.[426] No statement was made by any party attending the Court. Immediately afterwards, Morison continued with his address in the rehearing on behalf of Winiata.

381. The tracing was returned by Judge Mackay in May:

> Herewith I beg to hand you a plan of the aforesaid blocks. The plan referred to was deposited in the Court in conformity with section 27 of the Native Land Court Act 1880, and due notice was given as the grounds by section 28. No objections having been lodged the plan has been signed as provided by section 31 and is now transmitted as a record.[427]

382. At the same time, in a separate memorandum, he gave instructions for the preparation of certificates for Mangaohane No. 1 following the decision of the Court on the rehearing applications. The Court he presided at had decided against modifying the

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[423] Judge Mackay to Chief Judge Davy, 22 December 1892, 23/597 1 Mangaohane Correspondence File Volume 1, Maori Land Court, Whanganui.
[424] Davy to Bridson, 28 December 1892, 23/597 1 Mangaohane Correspondence File Volume 1, Maori Land Court, Whanganui.
[425] Bridson, File Note, 12 January 1893, 23/597 1 Mangaohane Correspondence File Volume 1, Maori Land Court, Whanganui.
[426] Judge Scannell 30, 13 February 1893, folks 251-252.
[427] Mackay to Edger, 6 May 1893, 23/597 1 Mangaohane Correspondence File Volume 1, Maori Land Court, Whanganui.

first decision of the Court in this block and so a new certificate could be prepared containing the names of those originally awarded the block in a certificate date 19 March 1885.[428] Judge Mackay added:

> It would be advisable to expedite matters as rapidly as possible so as to have the certificate fully completed prior to the 6th proximo as there is an application under the Native Land Court (Validation of Titles) Act 1892, coming before the Native Land Court at that date, in respect of the aforesaid block.[429]

383. The registrar forwarded the certificates to the assistant surveyor general less than a week later, with the tracing of the plan, so the diagrams could be added.[430] The Court planned to issue the certificates 'forewith' and the registrar asked if they could be returned early the following week in preparation for a forthcoming hearing in Hastings in early June. Following these proceedings, Mangaohane No. 1 and Mangaohane No. 2 were created, modifying the earlier appellations, or at least making them consistent with the earlier decision of the Court. The certificates for Mangaohane No. 1 were apparently signed by the chief judge in early June and returned to the registrar.[431] They were forwarded to Judge Mackay at Hastings, at his request, on 20 June.[432]

384. In early January 1893, John Studholme Jr wrote to the chief judge regarding Retimana's rehearing application (originally submitted in June 1890):

> Could you tell me when the application for a rehearing of Mangaohane subdivision made by Retimana Te Rango is likely to be heard? It is important that this matter should be heard as early as possible as it blocks the settlement of the Mangaohane question. Mangaohane has now been for so many years and so repeatedly before the courts and has involved all parties interested in it into so much litigation that it might reasonably claim precedence for settlement over other blocks, and I would beg that it be gazette for hearing at the next Hawkes Bay courts. I am told at the Native Land Court office here that you have the applications with you in Auckland and I have been unable to find out any reliable information as to its scope. You would greatly oblige if you could tell me who the applicants are, also to what part of Mangaohane it applies and whether it has even been disposed of if it is still pending.[433]

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[428] The certificate had to be requested from the Supreme Court following the Court of Appeal decision. See Thomas to Edger, 11 May 1893, 23/597 1 Mangaohane Correspondence File Volume 1, Maori Land Court, Whanganui. The deputy registrar of the Surpeme Court arranged the return of the certificate but required an official from the Court to collect it and sign a receipt.

[429] Judge Mackay to Edger, 6 May 1893, 23/597 1 Mangaohane Correspondence File Volume 1, Maori Land Court, Whanganui.

[430] Edger to the assistant surveyor general, 12 May 1898, 23/597 1 Mangaohane Correspondence File Volume 1, Maori Land Court, Whanganui.

[431] Browne to Edger, 2 June 1893, 23/597 1 Mangaohane Correspondence File Volume 1, Maori Land Court, Whanganui.

[432] Mackay to Edger, 17 June 1893, 23/597 1 Mangaohane Correspondence File Volume 1, Maori Land Court, Whanganui.

[433] Studholme to Seth Smith, 5 January 1893, 23/597 1 Mangaohane Correspondence File Volume 1, Maori Land Court, Whanganui.

385. The chief judge prepared a reply but it is unclear if it was sent:

> I have the honour to acknowledge the receipt of your letter of 5 the instant with regard to Mangaohane block and in reply beg to enclose a copy of Retimana Te Rango's application for rehearing. I will enquire into the application as soon as I can get to Hawkes Bay but I expect to be in this district for some little time.[434]

386. In mid-July, the registrar wrote to Judge Mackay with questions regarding the partition orders for Mangaohane No. 1. He had received an enquiry about them:

> Enquiries are being made about the issue of the partition orders herein. It appears to me that the certificate having been re-issued, these orders can be carried into effect. Rule 15 would be the only obstacle. But some of the orders have not been drawn up, pending reference to Supreme Court. Could your clerk now draw them up? There is one other question. It is said there were applications for a rehearing of the partition proceedings, not yet properly disposed of. Is this so? You have all papers.[435]

387. There is no response from Judge Mackay to this memorandum and the registrar sent another towards the end of the month requesting the return of the file so the matter could be considered by the chief judge.[436] Judge Mackay apologised for being unable to consider his request but offered an opinion on the partition orders:

> It is a moot point whether these partition orders are of any avail, as the certificates on which they were based were quashed by the Supreme Court, if that is the position of the matter fresh applications will have to be sent to the Court for partition. This course will have to be followed in any case as regards to Mangaohane No. 2 as the determination of interests between those who were left in the original order and those who were put in at the rehearing have yet to be made. I had it in contemplation to state the case for the opinion of the Chief Judge as regards the partition of Mangaohane No. 1, the certificate of which has been reexecuted but as you intimate your intention to do so I send you the papers as requested.[437]

388. At the end of July, the registrar at Wellington asked the chief judge for his opinion on the partition of Mangaohane:

> Would you kindly say what, in your opinion, is the position of the partition orders in Mangaohane No. 1?
> The partition was made in June 1890. Since then, as you are aware, the Supreme Court has quashed the certificate for the original title in No. 1. This has now been re-issued in exact conformity with the quashed certificate. The question is, will the partition order made in 1890 stand or fall? I know of only two reasons why they should fall. (1) As they might be held to contravene Rule 15. (2) In view of the fact that two applications for a rehearing of the partition proceedings were marked by the Chief Judge (Seth Smith) as premature, without enquiry in open Court. See 91/27 and 90/819.

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[434] Draft reply attached to Studholme to Seth Smith, 5 January 1893, 23/597 1 Mangaohane Correspondence File Volume 1, Maori Land Court, Whanganui.
[435] Edger to Judge Mackay, 15 July 1893, 23/597 1 Mangaohane Correspondence File Volume 1, Maori Land Court, Whanganui.
[436] Edger to Judge Mackay, 24 July 1893, 23/597 1 Mangaohane Correspondence File Volume 1, Maori Land Court, Whanganui.
[437] Judge Mackay to Edger, 27 July 1893, 23/597 1 Mangaohane Correspondence File Volume 1, Maori Land Court, Whanganui.

> If you hold that the partition must fall, the case could be brought before the Court again upon an application which will appear in the supplementary panui now being issued for Hastings.[438]

389. Initially, the chief judge thought that it was unnecessary 'that the orders should be treated as cancelled by the cancellation of title seeing that as regards this portion of the land the title has been restored to its original position'.[439] This opinion was referred to Judge Mackay for his information. However, on further consideration, and after reviewing the registrar's memorandum, the chief judge changed his mind and indicated 'they should be treated as subsisting applications and be brought on for hearing accordingly'.[440]

390. At this time, Morison wrote to the chief judge on behalf of Williams and Loughnan who were acting for Noa Te Hianga.[441] He referred to an application for rehearing by Noa and others dated 28 February 1885 and stated that it was 'informally dealt with' by Chief Judge Macdonald, 'he having dismissed the same without the concurrence of an assessor'. He referred to s 11 of the Native Land Court Act 1880 which required the agreement of an assessor in every 'judicial act' of the Court. The chief judge replied that he was 'not prepared to admit that the application was not legally dealt with by him and must therefore decline to re-open the question'.[442]

391. An application for the partition of Mangaohane 1 was submitted by A.L.D. Fraser on behalf of Anaru Te Wanikau and others on 26 July.[443] He asked for it to be included in the Kahiti 'which I am informed is now being prepared for the Court at Hastings'. He added 'the matter is of great importance'. The application was registered and the registrar issued an instruction for it to be included in the panui.[444]

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[438] Edger to Davy, 31 July 1893, 23/597 1 Mangaohane Correspondence File Volume 1, Maori Land Court, Whanganui.
[439] Davy to Edger, 2 August 1893, 23/597 1 Mangaohane Correspondence File Volume 1, Maori Land Court, Whanganui.
[440] Davy to Edger, 28 August 1893, 23/597 1 Mangaohane Correspondence File Volume 1, Maori Land Court, Whanganui.
[441] Morison to Davy, 30 July 1893, 23/597 1 Mangaohane Correspondence File Volume 1, Maori Land Court, Whanganui.
[442] Davy to Atkinson and Morison, 26 July 1893, 23/597 1 Mangaohane Correspondence File Volume 1, Maori Land Court, Whanganui.
[443] Fraser to Edger, 26 July 1893, 23/597 1 Mangaohane Correspondence File Volume 1, Maori Land Court, Whanganui.
[444] Edger to Welch, 17 July 1893, 23/597 1 Mangaohane Correspondence File Volume 1, Maori Land Court, Whanganui.

iii REPORT UNDER THE NATIVE LAND (VALIDATION OF TITLES) ACT 1892

392. On 5 September, Judge Mackay forwarded a report to the chief judge regarding the application of R.T. Warren under the Native Land (Validation of Titles) Act 1892.[445] The return was required to be submitted under s 16 of the Act. The application by Warren was for a certificate of the Court recommending the validation of his purchases of the interests of Maori in the Mangaohane No. 1 and Mangaohane No. 2 block. The Court's inquiry at Hastings commenced on 19 July 1893. After hearing evidence from a number of witnesses, the Native Land Court issued a certificate under the Native Land (Validation of Titles) Act 1892 validating the purchase of interests by R.T. Warren in two deeds.[446] This was despite not meeting the provisions of the Native Land Act 1873 (as required by the Native Land Court Act 1880). The Native Land Act 1873 required the consent of all owners before land could be alienated, whether or not they conveyed their interests. Judge Mackay advised that the Court:

> … was satisfied from the evidence given that the purchases were such that would admit of a certificate being given, although the purchases were not made strictly in accordance with the statutes under which the titles to the aforesaid blocks were held, but in all other respects were bona fide.[447]

393. He went on to explain the deficiency which prevented the completion of the transaction. The report stated that the two blocks were held under a certificate of title under the Native Land Court Act 1880 by 146 people. Warren's deeds purported to effect the transfer of the interests of 64 people. One deed for Mangaohane No. 1 and Mangaohane No. 2 (which referred to Mangaohane) was completed on 8 August 1885.[448] Under this deed, a payment of £1,000 was made on signing with the balance to be calculated and paid on partition of the block so the purchase price was 10s per acre. The second deed was for Mangaohane 1 only and was signed on 9 March

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[445] 'Certificates Granted and Refused Under the Provisions of the Native Land (Validation of Titles) Act 1892 Together with Report of the Court', AJHR, 1893, G-1.
[446] Napier Native Land Court Minute Book 27, 21 July 1893, fols 156-157.
[447] 'Certificates Granted and Refused Under the Provisions of the Native Land (Validation of Titles) Act 1892 Together with Report of the Court', AJHR, 1893, G-1.
[448] This deed was signed by Renata Kawepo, Anaru Te Wanikau, Karena Te Manu-o-tawhaki, Heta Hakiwai, Hoani Hakiwai, Wi Hakiwai, Ka Hakiwai, Kirungaahi Hakiwai, Hakiwai, Atareta Hetariki, Rawiri Te Hoeroa, Te Matetahuna, Harata Keokeo, Meri Tawhara, Wiremu Paraotene, Karena Taniwha, Watarauhi Hohaia, Te Amopo te Mina, Waipu te Moata, Tauria Paraotene, Waata Bakaiwerohia, Riria Te Rere, Maata Kato, Harata Hokahoka, Hopa Te Auraki, and (Rora) Te Oii.

1886.[449] It provided for an initial payment of £350 with the balance to be paid and calculated on the same basis as the earlier deed. Under this statute, the requirements of the Native Land Act 1873 had to be met:

> These purchases consequently are irregular, through having been made in violation of the expressed conditions of the title under which the Natives hold the land, as "The Native Land Act, 1873," which governs the disposal of land held under certificate of title issued under the Act of 1880 expressly forbids alienation except by way of lease for twenty- one years, without the requirements of section 59 of that Act are fully complied with.[450]

394. The Court found that 'although the law had not been strictly complied with, the purchases were bona fide and suitable for validation, and it decided to grant its certificate'. Judge Mackay enclosed the certificate of the Court together with copies of the two deeds and other documents.

395. There are two key points about this report which need to be identified. First, at the time of this hearing, there were certificates of title for the two blocks which were backdated prior to the dates of these deeds. However, the report is incorrect in stating that the land was held under a certificate of title when these deeds were executed. The Native Land Court had made an order but there were no certificates of title which were not completed for Mangaohane No. 1 until June 1893 when the survey was finalised and the judges and the chief judge had signed them. There is no evidence to suggest that the certificates of title for Mangaohane No. 2 were ever completed. In addition, while the transactions did not meet the requirements of this provision of the Native Land Court Act 1880, neither were the requirements of s 7 of the Native Land Laws Amendment Act 1883 (which required notices to be issued by the chief judge once rehearing applications had been dealt with; negotiations to alienate land were absolutely prohibited before this).

iv APPEALS TO THE SUPREME COURT AND COURT OF APPEAL

396. In November, the Supreme Court sat in Banco in Wellington to hear an application by Winiata Te Whaaro for writs of mandamus to the chief judge of the Native Land Court and Judge Mackay and Judge Scannell and also for writs of certiorari and

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[449] This deed was signed by Wakapu Tukiawha, Wiania Benata, Katarina Hiratukiterangi, Raita Tuterangi, Rena Maikuku, Iwikau Te Heuheu, Teoti Pohe, Pukapuka Teoti, Harawira Heperi, Kohatu Rawiri, Rawinia Te Wanikau, and Heta Tanguru.

[450] 'Certificates Granted and Refused Under the Provisions of the Native Land (Validation of Titles) Act 1892 Together with Report of the Court', AJHR, 1893, G-1.

prohibition to the chief judge. It was heard over four days in November and the Court, comprising the chief justice and Justice Conolly, gave its decision on 12 December.[451] These proceedings occurred at the same time as those of Airini Tonore, which are discussed below. W.B. Edwards and Charles Skerrett represented Noa Huke and Wikitoria and Sir Robert Stout and C.B. Morison appeared for Winiata Te Whaaro and his people. All were plaintiffs in the proceedings. The defendants included Airini Tonore and Wiremu Paraotene, who represented by H.D. Bell and P.S. McLean. H.B. Vogel appeared for other unnamed defendants.

397. Counsel for Winiata Te Whaaro argued that his application for a rehearing in Mangaohane, dated 28 February 1885, was not heard and determined according to law because Chief Judge Macdonald, who heard the applicant and dismissed the application around 1 May 1885, did not sit with an assessor. The Supreme Court did not accept that the agreement of an assessor was required when the chief judge was dealing with the application for a rehearing as the legislation created a special jurisdiction for the chief judge alone. Justice Conolly, in giving the Court's decision noted that there was a distinction in the practice of the superior courts between orders of a court and orders of a judge and he considered the powers of the chief judge to deal with applications for rehearing was an order of a judge.

398. A second issue was raised by counsel for Winiata regarding the interpretation of the chief judge's order for rehearing. The chief judge, in an order dated 4 April 1892, had granted a partial rehearing. The rehearing was undertaken by Judge Mackay and Judge Scannell who decided to allow the claims of thirty people. They were among the defendants in the Supreme Court. The claims of the plaintiffs were rejected. Some of those included in the Native Land Court's original order were also participating in the action as defendants as they opposed the claims of the plaintiffs for inclusion in the title. According to Supreme Court's decision:

> The plaintiffs complain that the two Judges have misinterpreted the order for rehearing, and have refused to exercise jurisdiction under it; and they pray that a mandamus be issued, directing the Judges to hear and determine the plaintiffs' claims.

399. The application for rehearing was by Rena Maikuku on behalf of Ngāti Tamakorako of Ngāti Hau for the descendants of Tamakorako, a grandson of Te Ohuake. The chief judge asked Rena to provide further details about her application and amended

[451] *Winiata Te Wharo and others v Davy and others* (1894) 12 NZLR 502 (SC and CA).

application was submitted prior to the hearing. Justice Conolly appeared to consider this was within the rule of the Native Land Court but the content of any amended application was subject to the terms of the original application. He considered that the amended application was drafted for 'the obvious purpose of extending the rehearing asked for' as the amended claim was on behalf of Te Ohuake including the hapū of Ngāti Hau, Ngāti Haukaha and Ngāti Paki. He noted that it was signed not only by Rena but by two of the plaintiffs (Irimana Ngahou, Winiata's brother and Merehina Taipu) and two others. He stated that none of them were descendants of Tamakorako. Justice Conolly observed of the amended application:

> If this amended application includes persons not parties to nor represented in the original application, it must, to the extent of the alternation, be null and void, as infringing the provision of the Act that applications for rehearing are to be presented by the parties aggrieved within three months after the decision complained of; and any order founded upon it would to that extent be ultra vires. Rena's application must therefore be considered as limited to a demand for the investigation of the title of the Ngaihau and the order of the Chief Judge ought, if possible, to be construed accordingly. It could be no advantage to the plaintiffs to give it a wider meaning, seeing that the Chief Judge himself had no power to extend the scope of the rehearing beyond what was asked for by the original application.

400. Justice Conolly concluded on the basis of this observation that the Native Land Court judges 'were right in refusing to entertain other claims than those of Ngāti Hau'. He added:

> Applications for rehearing should be liberally construed, and representative applications should be freely allowed; but where, as in the present case, the applicants have defined their claim, others who have been themselves too late, or whose applications have already been dismissed, ought not to be allowed to press in and reagitate questions which may have been (rightly or wrongly) determined against them.

401. Whether Rena could show descent from the ancestors of Ngāti Hinemanu and Ngāti Paki was of no consequence in Justice Conolly's view as they were not the basis of her application for a rehearing. As the plaintiffs were not descendants of Tamakorako, they were not entitled to the writs requested and their other claims, which followed from this one, were also rejected. However, he added:

> It may be proper to notice that the claim of Ngāti Hau to a rehearing appears to have been admitted on a ground which might equally have been a ground for granting a rehearing to Winiata Te Wharo and those whom he represented – the ground, namely, of the supposed mistake as to boundary made by Judges O'Brien and Williams, who sat on the original investigation of title to the block in 1885. It is unfortunate that Winiata and his party should suffer through this mistake, and through the circumstance that it was not effectually brought to the notice of Chief Judge Macdonald when dealing with Winiata's application for a rehearing. But no appeal lies from the decision of the Chief Judge on an application for a rehearing under the

> Act of 1880, and the error, if such it were, cannot be corrected either by this Court or by the Chief Judge of the Native Land Court.

402. The effect of the Supreme Court's decision was to limit the Native Land Court's rehearing to the claims of Rena on behalf of Ngāti Hau and the descendants of Tamakorako. Winiata's attempts to broaden the rehearing to include his Ngāti Hinemanu and Ngāti Paki hapū were rejected. The Supreme Court's decision in this case was appealed to the Court of Appeal.

403. At the same time as this matter was before the Supreme Court, an action for prohibition by Airini Tonore and others against the Native Land Court was also dealt with. The case followed immediately on from Winiata Te Whaaro's action. The judges who heard the matter were again the chief justice and Justice Richmond. H.D. Bell and P.S McLean, instructed by Bell, Gully and Izard of Wellington and Carlile and McLean of Napier, represented the plaintiffs. W.B. Edwards and C.B. Morison, instructed by Morison and Atkinson, appeared for some of the defendants while H.B. Vogel represented Raumawae Te Rango and Ngakarahi Te Rango (who were the only defendants not represented by Edwards and Morison). The hearing continued over two days in early November and the Court gave its decision on 12 December.

404. Airini applied to the Supreme Court to prohibit the Native Land Court from issuing a new certificate of title for Mangaohane No. 2 on the basis of an order made on 3 May 1893. The judges of the Court were defendants to the proceedings along with ten people who had been included in the Court's order on the basis that they had established an interest in the land as Ngāti Hau. The plaintiffs were those who had been included in the original order for the block whose shares were diluted on the inclusion of additional names. An additional thirty names had been added to the list and the plaintiffs took exception to ten of them. The grounds for the action related to another application for rehearing:

> The ground upon which prohibition was claimed was that the Native defendants had signed, or been parties to, another application for rehearing, made by Winiata Te Wharo and others (of the Ngāti Hinemanu Hapū), which had been dismissed by the Chief Judge, and that they (the Native defendants) were bound by that dismissal, and the Native Land Court had no jurisdiction to admit them upon the rehearing granted upon the applications of Rena Maikuku and others.[452]

[452] *Airini Tonore and others v Mackay and others* (1893) 12 NZLR 743 (SC) 744.

405. The Supreme Court did not, however, wish to intervene in the matter. There was no evidence available to the Court to make a decision and the Native Land Court was entitled to determine who was included in an application:

> It is for the Native Land Court to decide who is entitled to come in under such an application. The Maori title being communistic, it appears to be strictly proper that applications to the Court of all kinds should be made on behalf of a community, and it seems that if the right of the community is affirmed every individual member must have the benefit of the decision. These, however, are matters which depend on Native custom and the practice of the Native Land Court, and this Court cannot review the decisions of the Native Land Court in regard to them. It is impossible for us to say, as a matter of law, that an individual Native whose claim as a member of one or more hapus has been disallowed may not prefer a distinct claim as member of a different hapū.[453]

406. The Court of Appeal would deal with Winiata's challenge to the Supreme Court's decision on his application in mid-1894.

[453] *Airini Tonore and others v Mackay and others* (1893) 12 NZLR 743 (SC) 746.

G FURTHER ATTEMPTS TO PARTITION MANGAOHANE

i REHEARING APPLICATIONS AND VALIDATION

407. In September 1893, Judge Mackay forwarded an agreement, described as a memorandum, relating to Mangaohane 2 and signed by H.D. Bell and C.B. Morison. It dealt with proceedings in the Supreme Court and the inclusion of a special clause in the Native Land Court Certificates Confirmation Act 1893:

> 1. It has been agreed that Mangaohane No. 2 Block shall be included in the Schedule to the Native Land Court Certificates Confirmation Act 1893 subject to the special clause of which the following is a copy:-
> 'No certificate under Section 4 of this Act shall be issued in respect of the Block called Mangaohane No. 2 or any part thereof until the final determination of the several matters specified in a memorandum signed by the Solicitors of the several parties and filed in the office of the Native Land Court at Wellington on the 11th day of September 1893'.
> 2. The matters referred to in the said clause as specified in a Memorandum signed by the Solicitors to the parties are as follows:-
> (I). An action in the Supreme Court in which Noa Te Hianga and eight other Natives are Plaintiffs and George Boutflower Davy, Alexander Mackay, David Scannell, Hohepa Horomana and Airini Tonore and 66 other Natives are Defendants (which action is hereinafter referred to as 'the present action').
>
> With reference to the present action it is agreed as follows:-
>
> (a). If judgment be given for all the Defendants and against all the Plaintiffs ie if none of the Plaintiffs succeed as to any of the relief sought then no other proceedings of the Plaintiffs excepting as hereinafter mentioned are to be a bar to the issue of Certificates under Section 4 of the said Act provided that the Plaintiffs shall have the usual right of appeal to the Court of Appeal and the Privy Council in the present action and the Certificates shall not be issued until the expiration of one month after the final determination of such action or appeals.
>
> (b). If judgment in this action be in favour of any of the Plaintiffs in any particular or so that further proceedings are directed to be held in the Native Land Court no Certificates shall issue until the final determination of such new proceedings including any proceedings in the Supreme Court (or carried therefrom on appeal to the Court of Appeal and Privy Council) taken by the Plaintiffs in the course of or consequent on such new proceedings.
>
> (c). No objection shall be taken by the Defendants to the mode in which the relief prayed in the present action has been sought nor shall this action be deemed at an end or disposed of or essentially different should the Plaintiffs discontinue against some of the present Defendants and have some of them joined again as Defendants in a representative capacity, or parties be added or varied or the Statement of Claim amended claiming further relief or others.
>
> (II). Any application to the Native Land Court for the exercise of the Native Land Court powers of amendment whether conferred by Section 13 of the Native Land Court Acts Amendment Act 1889 or other enactment or by Common Law (provided such application be made within one calendar month after the final determination of the proceedings hereinbefore referred to as the present action) including any proceedings consequent on

> their failing to succeed in such application, which the Plaintiffs may take in the Supreme Court or therefrom to appeal as aforesaid.[454]

408. The agreement is undated but was received by Judge Mackay on 11 September 1893.

409. The two applications for rehearing in the partition of Mangaohane were advertised for hearing at Hastings in a panui issued on 14 November 1893. The sitting was due to commence on 11 December 1893 but the applications were adjourned to a future sitting on that day.

410. It would appear Studholme considered negotiating a compromise with Winiata in late 1893 or early 1894, though many of his advisors warned against it. A letter from Warren to Studholme in January 1894 sets out aspects of Studholme's proposal: 1,000 acres of land or £800.[455] Warren stated he did 'not think it possible to effect a compromise with Winiata at present', adding he was 'certain he would not listen to the terms you propose'. He thought Winiata would demand much more.

411. Around the same time, Studholme wrote to the registrar at Wellington as he had heard from J.M. Fraser that Retimana's application had been sent from Auckland and he 'was anxious to see' it and wanted a copy made if it was available.[456] He followed this up with a request for a copy and added it was 'most important to post today'.[457] However, the registrar advised the papers were yet to be received in his office.[458] Studholme wrote to the registrar again in April, hoping to locate the partition orders for Mangaohane No. 1.[459] He was also 'anxious to know if a new chief judge has yet been appointed'. A clerk was unable to locate them and there was no record of where they had gone, so Studholme was advised that the partition orders for Mangaohane 1

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[454] The Native Land Court Certificates Confirmation Bill was passed in 1893 with no discussion in the House and a brief government statement in the Council by the Colonial Secretary. The Colonial Secretary told the council that the bill was to validate transactions investigated by the Native Land Court and reported on to Parliament under the Native Land (Validation of Titles) Act 1892.

[455] Warren to Studholme, 18 January 1894, MS-Copy-Micro-0351-1 John Studhome Papers (copy of MS-Papers-0272, folders 1-21), Alexander Turnbull Library, Wellington.

[456] Studholme to Edger, 11 January 1894, 23/597 1 Mangaohane Correspondence File Volume 1, Maori Land Court, Whanganui. The letter is dated 1893 but this appears incorrect given the arrangement of the correspondence and the relationship between this letter and surrounding telegrams which are dated 1894.

[457] Studholme to Edger, 12 January 1894, 23/597 1 Mangaohane Correspondence File Volume 1, Maori Land Court, Whanganui.

[458] Edger to Studholme, 12 January 1894, 23/597 1 Mangaohane Correspondence File Volume 1, Maori Land Court, Whanganui.

[459] Studholme to Johnson, 3 April 1894, 23/597 1 Mangaohane Correspondence File Volume 1, Maori Land Court, Whanganui.

were 'supposed to be at the Survey Office, Napier, for the endorsement of plans'. The deputy registrar added that G.B. Davy was to be appointed chief judge that day.[460]

412. On 16 April, the Native Land Court office at Wellington issued a panui advertising a number of applications relating to Mangaohane. They would be heard by the chief judge and an assessor at Hastings at a sitting starting on 16 May. Applications by Retimana Te Rango for a rehearing of a decision by the Court made on 26 June 1890 in Mangaohane would be considered along with an application by R.T. Warren under s 4 of the Native Land Court Certificates Confirmation Act 1893. The latter application was for confirmation of a certificate made by the Court on 21 July 1893 relating to Mangaohane No. 1.

413. In mid-May, the registrar requested the clerk at the Court sitting at Hastings return immediately two minute books and the chief judge's minute book relating to the Mangaohane rehearing applications. It would appear they were urgently required in Wellington as they were required by the Court of Appeal.[461] The clerk advised four minute books and the file had been placed in the post but noted that the chief judge's minute book was not among them and suggested it could be located behind his chair in the office (the chief judge's clerk, J.W. Brown, was later a judge).[462] However, this minute book could not be located.[463]

414. The chief judge subsequently requested the returns of the records use at the hearing in Hastings, if the Court of Appeal had finished with them.[464] The chief judge particularly asked for the minutes of his predecessor at the hearing which was held in Hastings in December 1893. They were returned, though it was noted the Court of Appeal might require them again as the Court's judgment had been reserved, and it

[460] Johnson to Studholme, 14 April 1894, 23/597 1 Mangaohane Correspondence File Volume 1, Maori Land Court, Whanganui.
[461] Johnson to Browne, 14 May 1894, 23/597 1 Mangaohane Correspondence File Volume 1, Maori Land Court, Whanganui.
[462] Browne to Johnson, 15 May 1894, 23/597 1 Mangaohane Correspondence File Volume 1, Maori Land Court, Whanganui.
[463] Welch to Johnson, 19 May 1894, 23/597 1 Mangaohane Correspondence File Volume 1, Maori Land Court, Whanganui.
[464] Davy to Johnson, 18 May 1894, 23/597 1 Mangaohane Correspondence File Volume 1, Maori Land Court, Whanganui.

was also noted that his predecessor's minutes of the December hearing had still not been located.[465]

ii WINIATA'S APPEAL TO THE COURT OF APPEAL

415. Winiata's appeal against the decision of the Supreme Court regarding the rehearing of Mangaohane No. 2 was held over four days in Wellington in May 1894 (11, 14-16) with the judges giving their decisions towards the end of the month. The application for the rehearing of the partition of Mangaohane was considered by the chief judge and Assessor Rawiri Karaka on 22 May.

416. At the Court of Appeal hearing, were only two groups were represented. Sir Robert Stout and C.B. Morison appeared for Winiata and others while H.D. Bell and P.S. McLean appeared for Airini Tonore, Wiremu Paraotene and others. The Court comprised the chief justice, Justice Williams, Justice Denniston and Justice Conolly. The decision under appeal was that given in the Supreme Court by the chief justice and Justice Conolly.

417. Counsel for the appellants focused on two matters in his submission. The first argued that the chief judge required the concurrence of an assessor in decisions on applications for rehearing. The chief justice subsequently indicated to counsel for the respondents that the Court did not wish to hear him on this point. The other matter argued by counsel for the appellants was the meaning of the order given by the chief judge. According to the court report, Stout insisted that the Native Land Court and the Supreme Court focused too narrowly on the terms of Rena Maikuku's original rehearing application:

> The Native Land Court Judges, before whom the rehearing took place, held that the order, in referring to claims 'put forward' by Rena Maikuku, mean only such claims as should be ultimately put forward and sustained by Rena in the witness-box. That construction makes the order absurd and unworkable, the condition being attached that persons alleging themselves to be interested under such claims should file statements with particulars in Court on or before a certain date before the rehearing. The Supreme Court has held that it must be confined to mean such claims as were put forward by Rena in her original application. But the order shows that it was made upon Rena's amended application. The Chief Judge had allowed the amendment under Rule 37 of the Rules of the Native Land Court. The Supreme Court has wrongly assumed that the Chief Judge could not go beyond the scope of the original application, and that he did not go beyond it. In any case Rena's original application for a rehearing, if granted, would have entitled her to base her claim to be admitted

[465] Johnson to Davy, 19 May 1894, 23/597 1 Mangaohane Correspondence File Volume 1, Maori Land Court, Whanganui.

> upon any ground which she could establish. The Native Land Court, in refusing to deal with the claims of Winiata and his party, declined jurisdiction on a preliminary point, and this Court will interfere.[466]

418. Counsel for the respondents, in contrast, argued that the Native Land Court was competent to interpret its own orders and insisted the Court of Appeal could not interfere. The correct procedure was an appeal, rather than prohibition, and absence of a right to appeal did not mean prohibition should follow (there was no appeal from the decision of the chief judge on a rehearing application). Stout attacked this point directly arguing that the Court of Appeal had earlier found that the chief judge exercised a special jurisdiction and was not the Native Land Court. This meant:

> The Chief Judge, as such special Court, was *functus officio*, and could not direct the Native Land Court as to the meaning of his order. The order was the foundation of the jurisdiction of the Native Land Court, and in misinterpreting it has wrongly declined jurisdiction, and mandamus will issue.[467]

419. These submissions, however, did not convince the judges who dismissed the appeal.

420. The chief justice simply stated that he retained the opinion expressed by the Supreme Court and did not wish to say anything further. However, he did go on to make three further points. First, he wished to clarify his view that the chief judge of the Native Land Court did have the jurisdiction to order a rehearing even though the effect of it might have been 'to give the benefit of a rehearing to Natives whose case had been heard and been adversely decided, and who had themselves failed to obtain an order for rehearing'. His point, although unstated, was presumably that the chief judge could have extended the scope of the rehearing to include Winiata Te Whaaro and his people but chose not to do so. Second, he observed that the further proceedings in the Court of Appeal 'has led me to doubt very much whether, in fixing the southern boundary of the block, the Judges of the Native Land Court acted under any misapprehension'. This would appear to be directed at the possibility raised in the Supreme Court's decision that an error had been made by the Native Land Court in locating the southern boundary but that there was no way to remedy it. Finally, he complained about the matter coming to the Supreme Court and Court of Appeal:

> It is to be regretted that the attention of the Legislature has not been drawn to the frequent and increasing occasions on which proceedings in the Native Land Court are called in question in the Supreme Court, at great cost to the parties. There can be no

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[466] *Winiata Te Wharo and others v Davy and others* (1894) 12 NZLR 502 (SC and CA) 511.
[467] *Winiata Te Wharo and others v Davy and others* (1894) 12 NZLR 502 (SC and CA) 512.

> doubt that the Legislature intended that proceedings relating to the determination of Native titles should be confined to the Native Land Court, and without appeal.[468]

421. In his decision, Justice Williams briefly dismissed the submission relating to the chief judge's dealings with the application for rehearing in the absence of an assessor as being consistent with the legislation. In his approach to the second point, the interpretation of the order, he emphasised the importance of the specialist knowledge, particularly as to 'Native customs and usages' and the procedure of the Native Land Court, required. The Court of Appeal did not have that knowledge. In particular, he noted:

> To appeal to this Court as to the construction of an order of the Native Land Court placed upon it by the Judges of that Court is to appeal from a qualified to an unqualified tribunal. The qualified tribunal may possibly go wrong, but the unqualified tribunal can have no certainty whether the former has or has not gone wrong, or if, and how far, and in what manner it should be set right. The present proceeding, though in the form an application for mandamus, is in substance an appeal from the construction of the order. I do not believe such an appeal was ever contemplated by the Legislature.[469]

422. He also considered the chief judge's order for rehearing to be an order of the Court and it was 'the function of every Court to interpret its own orders, and this must be more especially the case where the interpretation of them depends on questions to which no other tribunal than the Court itself can give an answer'. The Supreme Court could only interfere where the Native Land Court refused to interpret an order or where the interpretation was 'on the face of it perverse'. He concluded with the following observation:

> If, however, this Court ought to endeavor to place an interpretation upon the order, it cannot, at any rate, be said that the interpretation placed upon it by the Judges of the Native Land Court is so plainly wrong as to justify the interference of this Court by mandamus or prohibition. Taking the view most favourable to the plaintiffs, the interpretation is doubtful, as, indeed, was made manifest by the efforts of the plaintiffs' counsel, extending over two days, to demonstrate that there was no doubt about. I am satisfied that we are really unable to pronounce with certainty on the questions raised, but if we are compelled to pronounce with certainty I can only say I see no sufficient reasons to dissent from the opinion of the Supreme Court.[470]

423. Justice Denniston focused only on the interpretation of the order and did not consider their interpretation was inconsistent with the text. He did think some of the terms were 'particularly explicit' nor that applications for rehearing could be amended to include others. An amendment 'could only be treated as putting into form the original

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[468] *Winiata Te Wharo and others v Davy and others* (1894) 12 NZLR 502 (SC and CA) 513.
[469] *Winiata Te Wharo and others v Davy and others* (1894) 12 NZLR 502 (SC and CA) 514-515.
[470] *Winiata Te Wharo and others v Davy and others* (1894) 12 NZLR 502 (SC and CA) 515.

application'. He considered their interpretation of the order 'reasonable' and the procedure by which they arrived at that interpretation appropriate. He also agreed with Justice Williams' comments on whether the Court of Appeal should intervene in the interpretation of an order of the Native Land Court. Like Justice Williams, he too rejected the argument that the concurrence of an assessor in the chief judge's decision on an application for rehearing was required. Justice Conolly simply agreed with the decision of Justice Williams.

iii THE REHEARING APPLICATION AND VALIDATION

424. After the Court of Appeal hearing had concluded but before the judges gave their decision, the application for rehearing the June 1890 partition of Mangaohane was considered by the chief judge and Assessor Rawiri Karaka at Hastings on 22 May.[471] Morison appeared for Retimana and McLean appeared with A.L.D. Fraser for Anaru Te Wanikau and Airini Tonore. An initial question was raised regarding jurisdiction and after discussion among counsel, an agreement was reached which was recorded by the chief judge in his minute book:

> Doubts having arisen as to the jurisdiction and it appearing that there is a remedy under section 4 of the Native Land Court Certificates Confirmation Act 1893 both parties consent to dismissal of application on understanding that applicant or any of the other owners be not in any way prejudiced by such dismissal in any application by the owners or any of them under section 4 of the said act for variation or amendment made in 1890.[472]

425. The application was dismissed on this basis.

426. On 22 May, the Court also considered Warren's application for confirmation.[473] McLean appeared in support while Morison appeared for Ngāti Whiti in opposition. The hearing was adjourned to 14 June as Hastings. A few days later, the Court opened its hearing on Warren's application for confirmation for Mangaohane No. 1.[474] Judge Butler presided and the hearing continued for just over two weeks. Warren was represented by W.L. Rees.

427. There were extensive submissions from various parties on whether the block had been partitioned and how the Court should proceed. The Court had to arrange the partition

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[471] Chief Judge's Minutes of Evidence, 22 May 1894, fols 112-113, MLC 3 12 Box 12, Archives New Zealand, Wellington.
[472] ibid., fol. 113.
[473] ibid.
[474] Napier Native Land Court Minute Book 32, 18 June 1894, fol. 200.

of the block as part of dealing with the application and the status of the earlier partition orders had to be settled first. If the partition orders had not been completed, then the proceedings before Judge Butler would be extended as the partition would have to be dealt with first. Evidence from a number of witnesses was heard by the Court and counsel for all parties addressed the Court at length. Winiata was not represented at this hearing as he was not an owner in the block but Morison appeared for some of those included in the title. The hearing concluded on 29 June when Rees completed his address to the Court. The minute book includes a decision given on 31 January 1895 stated that the Court partitioned Mangaohane No. 1 under s 4 of the Native Land Court Certificates Confirmation Act 1893 and s 7 of the Native Land (Validation of Titles) Act 1892.[475] In doing so, it decided to adopt on the basis of the evidence presented, with one minor modification, the partition of the block decided on in 1890 by Judge O'Brien.

428. While these proceedings were in progress, the Native Land Court was moving to deal with the applications for partition of Mangaohane No. 2. On 22 May, the registrar received a direction by telegram from the chief judge to prepare a supplementary panui including the applications for the partition of Mangaohane No. 2. Studholme had earlier written asking whether the applications had been received and was sent a copy.[476] The chief judge had decided that the applications would be heard at Hastings the following month:

> Please issue supplementary notice in usual form that applications for partition of Mangaohane or Mangaohane No. 2 block will be heard at Hastings on fourteenth (14th) June next or as soon thereafter as business of Court will allow. Carlile and McLean inform me applications are with you and that they will pay cost of printing.[477]

429. The supplementary panui was issued on 26 May.

430. In June, Judge Butler, who was sitting at Hastings, asked as to the location of the orders for Mangaohane No. 1. He wanted to know if they were signed and 'if not can

[475] Napier Native Land Court Minute Book 32, 31 January 1895, fol. 319.
[476] Johnson to Studholme, 22 May 1894, 23/597 1 Mangaohane Correspondence File Volume 1, Maori Land Court, Whanganui.
[477] Davy to Johnson, 23 May 1894, 23/597 1 Mangaohane Correspondence File Volume 1, Maori Land Court, Whanganui.

they be signed without delay'.[478] The location of the orders was unknown at this time.[479]

431. The registrar also sent a message to Judge O'Brien which provided further background to the matter raised by Judge Butler. According the registrar, he had received a telegram from Morison advising that he would move for prohibition on the grounds of lack of jurisdiction and that Hiraka had no authority to represent Ngāti Whiti at the hearing. Morison apparently did not want the partition orders completed.[480] The Court's register showed that the orders were prepared and the diagrams added but that some of them were not completed pending resolution of a question of law by the Supreme Court. Judge O'Brien was asked 'whether the partition was ever completed and whether you know became of the orders engrossed'.[481]

432. Judge O'Brien, who was at Raglan, replied that he did not have his minute book with him so could not confirm whether the orders were drawn up and signed but he could not recall seeing them, let along signing them.[482] The chief judge's clerk reported from Coromandel that he did not believe they were ever drawn up (though he did not have the file).[483] In response to a request from the registrar at Wellington, the deputy registrar of Gisborne advised the same day, that he had located 'a large number of partition orders unsigned made by Judge O'Brien in 1890' which he was forwarding by post.[484] It would appear the certificates were returned to Gisborne in error.

433. Studholme wrote to the registrar a few days later asking for information about the completion of the partition orders:

> As you are no doubt aware the Court at Hastings wish to have the Mangaohane partition orders signed before delivering judgement on the application of Mr R.T.

[478] Butler to Johnson, 18 June 1894, 23/597 1 Mangaohane Correspondence File Volume 1, Maori Land Court, Whanganui.
[479] Welch to Johnson, 18 June 1894, 23/597 1 Mangaohane Correspondence File Volume 1, Maori Land Court, Whanganui.
[480] Morison to Johnson, 19 June 1894, 23/597 1 Mangaohane Correspondence File Volume 1, Maori Land Court, Whanganui.
[481] Johnson to Judge O'Brien, 19 June 1894, 23/597 1 Mangaohane Correspondence File Volume 1, Maori Land Court, Whanganui.
[482] Judge O'Brien to Johnson, 20 June 1894, 23/597 1 Mangaohane Correspondence File Volume 1, Maori Land Court, Whanganui.
[483] Browne to Johnson, 21 June 1894, 23/597 1 Mangaohane Correspondence File Volume 1, Maori Land Court, Whanganui.
[484] Jackson to Johnson, 21 June 1894, 23/597 1 Mangaohane Correspondence File Volume 1, Maori Land Court, Whanganui.

> Warren for the issue of orders in conformance with sec. 4 of the Certificates Confirmation Act of 1893 and which is now before the Courts.
> If you could give me any information as to what is required to be done in the matter and what time is likely to lapse before the orders can be signed and sent to Judge Butler at Hastings I would be much obliged.
> If the plans have been endorsed by the Survey Office the matter should not take more than a few days as I suppose they only require signing by Judge O'Brien and the Chief Judge.[485]

434. This proved to be very optimistic.

[485] Studholme to Johnson, 27 June 1894, 23/597 1 Mangaohane Correspondence File Volume 1, Maori Land Court, Whanganui.

H WINIATA'S SECTION 13 APPLICATION

i THE SECTION 13 APPLICATION

435. The Native Land Court office at Wellington received an application under s 13 of the Native Land Court Act Amendment Act 1889 on 21 June 1894. It was attached to a declaration also submitted to the Court. In the application, Winiata made the following statements:

> I Winiata Te Wharo of Pokopoko in the Mangaohane No. 2 Block an aboriginal native claiming an interest in Mangaohane No. 2 Block and alleging that any interest therein (along with the interests of the others of my hapus the Ngāti Hinemanu and Ngāti Paki) has been prejudicially affected by an error in the decision of the Native Land Court on the investigation of the title to the Mangaohane Block delivered on the twenty seventh day of February 1885 and in the order made in pursuance thereof on the tenth day of March 1885, do hereby apply that enquiry be made into the matters herein alleged by me, that is to say:
>
> 1. That I am a member of the Ngāti Hinemanu and Ngāti Paki hapus.
> 2. That on the investigation of title to the Mangaohane No. 2 Block (then a part of the Mangaohane Block on the claim or application of Renata Kawepo and others the Ngāti Hinemanu and Ngāti Paki hapus were counterclaimants and laid claim to the Mangaohane No. 2 and adduced evidence in support of their claims.
> 3. That is appeared to the court on the investigation that the Ngāti Hinemanu and Ngāti Paki hapus were entitled as owners at Pokopoko and over the adjacent lands and more particularly the land lying to the south and east of Pokopoko and the court for that reason intended to leave unaffected by the judgement and unadjudicated upon a part of the land then before the court which would comprise the lands appearing to them to belong to Ngāti Hinemanu and Ngāti Paki.
> 4. The Court in giving its decision fixed a line as the southern boundary of the land adjudicated upon which the court believed would exclude the places which seemed to belong to Ngāti Hinemanu and Ngāti Paki.
> 5. The title to Mangaohane was investigated on a sketch plan of the land and the exact position of these places without reference to the southern boundary line so laid down was not determined by survey when the investigation of title took place and their locality could only be estimated by the necessary inaccurate opinion of witnesses.
> 6. That the intention of the court to exclude by its decision from adjudication the lands which appeared to it to belong to Ngāti Hinemanu and Ngāti Paki has not been carried out either because Pokopoko lies further to the north or the southern boundary laid down by the court lies further to the south than was anticipated and this land which the court intended to exclude from adjudication has in fact been by error of the court included in its decision and order.
> 7. When the land adjudicated upon was surveyed in 1886 for the purpose of issuing certificates of title to the Native owners, the Pokopoko settlement was found to be about two miles and thirty chains to the north of and within the southern boundary of the land comprised in the decision an order of the court made on investigation instead of being outside and to the south thereof as was erroneously supposed by the court of investigation.
> 8. That by the error of the court in including land in its decision and order on the investigation of title to Mangaohane which it intended to exclude I and the other members of my hapus Ngāti Hinemanu and Ngāti Paki have been deprived of the settlement and lands upon which we are living and on which for many years previously to the said investigation we lived and had and still have houses, fences, woolshed and also our sheep which now number about 11000 and the

said lands have by such error been award to people whom the court did not find to be the owners thereof.

9. That by and through such error as aforesaid the Native Land Court has never determined on the claims of my hapus Ngāti Hinemanu and Ngāti Paki to the lands so erroneously included within the southern boundary laid down by the court at the investigation of title to Mangaohane in 1885.

436. The document was signed by Winiata and also contained a statement by a licensed interpreter and a justice of the peace. The declaration made by Winiata related to the truth and correctness of the statements in the application. This material was referred to the chief judge for his direction.[486]

437. Two days later, Bell acknowledged a letter from Studholme with the statement that he was 'glad to find that Mangaohane matters are going on so satisfactorily' before referring to a statement by Studholme that 'Morison has played into your hands by lodging his application under Section 13'. Bell added 'and so opens the beginning of the end'.[487] Bell mentioned an appeal to the Privy Council and noted that he was unable to request the Registrar claim 'more than the ordinary security'.

ii REES' MEMORANDUM

438. While Winiata's application was being considered by the chief judge, W.L. Rees wrote to him 'to draw your attention to the following facts':

1. The litigation concerning this block has been carried on since 1884 at terrible expense especially to my clients.
2. Winiata Te Wharo was declared by the original decision to have no right whatever in the land, and a certificate was issued to certain persons other than Winiata Te Wharo.
3. The boundaries of the land as decided upon by the Native Lands Court were those given by Winiata Te Wharo and his co-claimants, the southern point on the Rangitikei River being Papa o Tarinuku, thence running to Te Whau Korai and thence eastward.
4. The sole ground of Winiata's present application is his assertion that the Court at the original hearing in 1885 erroneously included lands on which were the settlement, houses, fences and woolshed belonging to Winiata and his people, where they had lived for many years, and on which 11,000 sheep belonging to Winiata had for some years been depasturing, and by such error gave a portion of this block to the Ngāti Honomokai, which it had already declared did not belong to them – which assertion is incorrect.
5. In addition to the fact that the boundaries of the block as awarded were fixed by Winiata himself and all his witnesses, I would point out that a considerable piece of land included in Renata Kawepo's application on the south and east of the Pokopoko forest was cut off in accordance with Winiata's evidence before mentioned by the Court, and is not included in the certificate for Mangaohane.

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[486] Johnston to Davy, 23 June 1894, 23/597 1 Mangaohane Correspondence File Volume 1, Maori Land Court, Whanganui.

[487] Bell to Studholme, 25 June 1894, MS-Copy-Micro-0351-1 John Studhome Papers (copy of MS-Papers-0272, folders 1-21), Alexander Turnbull Library, Wellington.

6. Winiata himself admitted that his settlement, fences, yards and woolshed and the places where his sheep depastured were only called Pokopoko by himself and for a few years back, that its old and proper name was Awapohatu, and that Pokopoko really was the name of the forest to the south of the Mangaohane block.
7. Winiata also admitted that the land to the south of his present settlement, improperly called by Pokopoko, but between that settlement and the real Pokopoko was of some extent and was known by a distinct name.
8. Winiata Te Wharo and others applied for rehearing of the whole block, including both Mangaohane and Mangaohane No. 1, on February the 28th 1885.
9. In Winiata's said application for rehearing the first grounds is – not his present contention that a portion of land was included which the Court did not intend to include – but that 'the whole block was not decided upon, a portion of it being excluded from the judgment, although the evidence was equal as to all part of the block'.
10. Prior to the application for rehearing being heard by the late Chief Judge, Judges O'Brien and Williams were requested to make a report upon the case, which they did on the 18th March 1885, and which speaks of the above ground thus:-

    'Reason I is no reason at all. We declined to adjudicate on the part lying south of Papa-o-Tarinuku going through or by Pokopoko forest leaving it or a part of it out of judgment for reasons which satisfied us that it should be the subject of a further investigation. The evidence seemed to point to that part and the land adjacent to the south and east belonged to these people Ngāti Paki and Ngāti Hinemanu'.
11. The original judgment excludes that part of the land south of Te Papa-o-Tarinuku and left it to be decided on a future application. The claims of Winiata and his people Ngāti Hinemanu are especially disallowed to any of the land between the Mangaohane Stream and Te Papa-o-Tarinuku, and therefore is disallowed his and their right to the place now called Pokopoko, and now claimed by Winiata.
12. The evidence shewed that the Pokopoko forest – that is, Pokopoko properly so called –extended from the north of Papa-o-Tarinuku to the south of that point.
13. Judge O'Brien, not having the properly marked plan before him, drew from memory a line on the plan where he supposed to southern boundary had been placed. This line placed from memory – a memory evidently misled by the improper use of the name Pokopoko applied by Winiata for Awakohatu where his settlement was – is the only ground for Winiata's statement that the Court included in its judgment apart of the land which it intended to exclude.
14. As there is no other ground for Winiata's application I assert that the evidence given proves for this contention to be absolutely baseless. Besides this, in the Native Lands Court, in the Supreme Court, in the Court of Appeal, and in Parliament Winiata's claim on this ground has been persistently urged, and has always failed.
15. Wininata's application already alluded to was dismissed by Chief Judge McDonald in accordance with law, but in two other cases those of Te Rina Mete and Rena Maikuku, the dismissals were in private and without hearing the parties and therefore illegal and void.
16. In 1890 Mr Morison on behalf of Winiata Te Whaaro, Te Rina Mete and Rena Maikuku moved the Court of Appeal to quash the proceedings and certificates made in 1885.
17. The Court of Appeal dismissed the motion so far as Winiata was concerned, but issued an order in favour of Te Rina Mete and Rena Maikuku and directed the Chief Judge of the Native Land Court to hear the applications of Te Rina Mete and Rena Maikuku.
18. Before the sitting of the Native Lands Court under this order Te Rina Mete withdrew her application, leaving only Rena Maikuku before the Court.
19. At the hearing of Rena Maikuku's application Winiata again attempted to get his claims before the Court on the ground of mistake, which he now relies on, but failed, and the Chief Judge directed a rehearing in favour of Rena Maikuku and those claiming with her under the same claims of ancestry and occupation.

20. Under the 12th section of the Act of 1889 it was within the jurisdiction of the Court to rectify this alleged error, but the Court took no such step.
21. At the rehearing Winiata again attempted to enter the block both under Rena's claim and also on his own Ngāti Hinemanu claim, but after exhaustive evidence, including Judge O'Brien's explanation of the line drawn by him from memory on the map, he again failed.
22. On this occasion Judge O'Brien said that the Court must not trust to his line on the plan, but it must go by the evidence and that the judgment which set out the boundaries of the block was correct.
23. After a long and patient hearing, Mr Morison as in all cases appearing for Winiata, the Court again refused to admit Winiata on the grounds now set forward by him of a mistake made by the Court.
24. When the plans of Mangaohane or Mangaohane No. 2 were completed they were gazetted on 5th January 1893, they were hung for inspection, a boundary Court was held, Winiata and his friends made no objection – which considering the evidence they had given on the original hearing is not surprising – and the plan was finally approved and a full minute to that effect was written on the map, signed by Judge Mackay and sealed with the seal of the Court on the 13th of February 1893.
25. When Winiata was again defeated in the rehearing Mr Morison look proceedings in the Supreme Court. He was again defeated. The Chief Justice seemed to lean to the opinion that it was possible an error had occurred about the southern boundary, but if so, he said, neither he nor the Chief Judge of the Native Lands Court could now amend it.
26. Foiled in the Supreme Court, Winiata represented by Sir Robert Stout and Mr Morison went to the Court of Appeal where they were again utterly defeated, the Court being unanimous upon all points.
27. In giving judgment the learned Chief Justice said, in reference to his remark, already quoted as to the possible mistake in the southern boundary, that on fuller consideration and on fuller acquaintance with the facts he had practically come to the conclusion that no mistake whatever was committed in the matter of the southern boundary.
28. In addition to these incessant attempts in the different Courts of the Colony Winiata has, on more than one occasion, petitioned Parliament for relief but on none of these has his prayer been answered, not even to the extent of a favourable recommendation from the Native Affairs Committee.

Under all the circumstances I had intended to ask your Honour forthwith to dismiss the application, but on consideration, seeing that so many facts have to be considered which you probably have no means of verifying I would respectfully request that the application remitted for inquiry and report to Judge Butler's Court now sitting at Hastings. All the parties and witnesses are before them, and they have all the necessary documents and information to enable them to report. The parties express themselves as anxious to have the matter brought on, and I would ask your Honour to have it gazetted for Monday fortnight, on which day the partition of the block is set down for hearing and when evidence could be taken on both matters.[488]

439. The chief judge noted that this letter should be attached to the application by Winiata. There is no indication in the file that the chief judge acknowledged or responded to the allegations contained in the letter. However, on 9 July, the chief judge directed the registrar to prepare a panui including the application which would be heard at Hastings on 23 July. The following day, the chief judge signed a direction to this effect and a panui was prepared the same day though it is unclear when it was issued.

[488] Rees to Davy, 30 June 1894, 23/597 1 Mangaohane Correspondence File Volume 1, Maori Land Court, Whanganui.

iii FURTHER DELAYS TO THE PARTITION OF MANGAOHANE NO. 2

440. On behalf of Winiata, Morison wrote to the registrar in early July to re-iterate his objections to the completion of the partition orders. He explained what had happened in the Court when Warren's application for confirmation was considered:

> … I now have to inform you what took place in Court before Judge Butler at Hastings on Mr Warren's application for the issue of making orders in pursuance of his certificates granted by Judge Mackay.
> Mr Rees appearing for Mr Warren asked the Court to adopt the partition alleged to have been made Judge O'Brien in 1890. I objected that no partition had ever been made because no judgment was delivered, the orders never having been sealed, citing the recent decision of Paraotene v Smith. Mr Rees asked for an adjournment till the afternoon to consider his position and on the Court resuming he abandoned his application for the adoption of Judge O'Brien's partition and asked the Court to direct a partition under section 7 of the Validation of Titles Act 1892 which is incorporated with section 4 of the Certificates Confirmation Act 1893.
> The Court accordingly directed a partition and Mr Rees then proceed to open his case for partition to his clients of a certain part of the block. He put in a quantity of evidence already on the books of the Native Land Court and those opposing the application adduced evidence in reply.
> There are many reasons why the orders should not be sealed. One is that the person who alleged he was agent for Ngāti Whiti undertook to file an authority from those for whom he purported to act. He filed an authority but not from all he was supposed to represent.
> Should you intend to have these orders sealed therefore I will ask that I get sufficient notice and that I may apply to the Court for a writ of prohibition as apart form objecting to the merits there is no jurisdiction.[489]

441. The registrar asked the chief judge for directions so he could reply to both Morison and Judge Butler.[490] A request was also sent to Judge Butler at Hastings, asking him to return the minute books containing the record of the partition hearing.[491] These telegrams suggest no progress had been made in completing the partition orders. A further request was sent a few days later.[492]

442. The registrar also received a demand from Bell, Gully and Izard regarding the recent orders made by the Court in Hastings under the Native Land Court Certificates Confirmation Act 1893:

> We have the honour to inform you that any orders issued by the Native Land Court in respect of the Mangaohane No. 1 Block and in respect of the Mangaohane No. 2 Block pursuant to the Native Land Court Certificates Confirmation Act 1893 are, for the purpose of giving effect to an Agreement between the Messrs Studholme and Mr

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[489] Morison to Johnson, 4 July 1894, 23/597 1 Mangaohane Correspondence File Volume 1, Maori Land Court, Whanganui.
[490] Johnson to Davy, 9 July 1894, 23/597 1 Mangaohane Correspondence File Volume 1, Maori Land Court, Whanganui.
[491] Johnson to Judge Butler, 9 July 1894, 23/597 1 Mangaohane Correspondence File Volume 1, Maori Land Court, Whanganui.
[492] Johnson to Judge Butler, 12 July 1894, 23/597 1 Mangaohane Correspondence File Volume 1, Maori Land Court, Whanganui.

> R.T. Warren on the one part and our clients Messrs Murray Roberts and Co of Napier and Wellington [a wool merchant and Studholmes' stock agent] on the other part, to be delivered to us and to no other person whomsoever.
> We have therefore the honour to request that you will cause a note to be made upon the papers relating to these Blocks to the above effect, and further that you will notify us so soon as the orders are ready to be issued.[493]

443. On 25 July, the registrar at Wellington advised Judge Butler that after forwarding the minutes and other documents to Judge O'Brien at Raglan for his review, Judge O'Brien had advised Morison by telegram 'that in three weeks I shall sign the orders unless prohibition order issue'.[494] The registrar also discovered that five orders were never prepared, pending the resolution of the issue by the Supreme Court, and the chief judge directed the registrar to have a clerk draw them up.[495] There was some delay in getting the minute books returned from Judge O'Brien to allow this to happen as the mail service from Kawhia, where he was now sitting, left once a week.[496] The orders were to be prepared by the clerk at the Court sitting at Hastings. Those already prepared were to be sent to the Survey Office to have plans added and the others would be sent as soon as they were ready.

iv JUDGE BUTLER'S HEARING

444. Judge Butler and Assessor Horomona dealt with Winiata's application under s 13 at a hearing at Hastings which commenced on 25 July 1894.[497] This preceded the partition of Mangaohane No. 2. Morison appeared for Winiata while McLean with Lewis appeared for Airini Tonore, Ani Kanana and the Karakia whānau. He also advised that Rees would appear with Lusk and Fraser for Anaru Te Wanikau, Wiremu Broughton and R.T. Warren.[498] Morison objected to an appearance for Warren who he stated had no standing in the matter and McLean did not press this point pending the arrival of Rees. The hearing comprised primarily of submissions by counsel for the different parties. These submissions addressed both legal issues, relating to the

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[493] Bell, Gully and Izard to Johnson, 7 July 1894, 23/597 1 Mangaohane Correspondence File Volume 1, Maori Land Court, Whanganui.
[494] Johnson to Judge Butler, 25 July 1894, 23/597 1 Mangaohane Correspondence File Volume 1, Maori Land Court, Whanganui.
[495] Davy to Johnson, 8 August 1894, 23/597 1 Mangaohane Correspondence File Volume 1, Maori Land Court, Whanganui. The orders which had been drawn up were 1A, 1C, 1E, 1F, 1G, 1H, 1I, 1K, 1O, 1P and 1R. Those still to be drawn up were 1B, 1J, 1M and 1N. It was thought 1D had been merged into another block (it was included in 1A). See Johnson to Judge Butler, 20 September 1894, 23/597 1 Mangaohane Correspondence File Volume 1, Maori Land Court, Whanganui.
[496] Judge O'Brien to Johnson, 8 August 1894, 23/597 1 Mangaohane Correspondence File Volume 1, Maori Land Court, Whanganui.
[497] Napier Native Land Court Minute Book 33, 25 July 1894, fol. 74.
[498] ibid., fol. 75.

application of the provision to the circumstances, and the facts of the case. No new evidence was presented by witnesses at this hearing. Counsel addressed the Court on each hearing day continued until 4 August when it was closed.[499]

445. Among the matters traversed by those representing the parties, was the confirmation of the plan by the Court in February 1893. According to McLean's affidavit to the Supreme Court in 1894, the Native Land Court sat at Hastings on 13 February 1894 to deal with the boundaries of the Mangaohane block under ss 26 to 32 of the Native Land Court Act 1880. The sitting had been advertised and Morison appeared for Winiata while Loughnan appeared for Noa Te Hianga and the boundaries were amended and finalised by the Court.[500] This is not strictly correct in that the Court's minutes show that no parties appeared in the matter as no objections had been lodged. The Court's minutes do not mention any amendment to the boundaries either.

446. In responding to Winiata's application, McLean argued that this hearing provided the opportunity for the issues raised to be addressed by the Court:

> The boundary Court was held in January or February 1893 in middle of rehearing Court. A special day was gazetted for boundary Court with full notice. Boundary Court was declared open. Case called on in the presence of Winiata's Counsel Mr Morison. No objection was lodged or made and the Court declared the boundaries confirmed.[501]

447. In his reply, Morison addressed this point by insisting that the Court could not deal with the issues raised by Winiata regarding the southern boundary because it had no power to do so:

> I will now show why boundary Court could not deal with the matters I am now referring to. The judgment of 1884-5 laid down certain boundary by name as southern boundary. The land was investigated on a sketch plan and a boundary Court had to sit to see whether the land had been surveyed in accordance with the description in the order on investigation. The Court called southern block Mangaohane No. 2 or Mangaohane.

448. Morison went on to read an extract from the decision of Justice Williams in the Court of Appeal before continuing:

> The Court would refer to judgment of February (p. 240, vol. 9). The southern boundary described as beginning from Te Papa a Tarinuku and going through several places to Ikamatea Whenua.

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[499] Napier Native Land Court Minute Book 33, 4 August 1894, fol. 246.
[500] 'Statement of Claim', 30 October 1894 and repeated in McLean's Affidavit, 30 October 1894, MS-Copy-Micro-0351-2 John Studhome Papers (copy of MS-Papers-0272, folders 22-39), Alexander Turnbull Library, Wellington.
[501] Napier Native Land Court Minute Book 33, 30 July 1894, fols 147-148.

> That being so there is no doubt that that line was southern boundary of Mangaohane No. 2 and the only function the boundary Court had was to see that the line began at Te Papa a Tarinuku and did go through the various places.
> That is precisely what the Chief Judge held in his ruling in the course of Rena's application for rehearing.
> McLean says no error committed because there was no application made to amend it at boundary Court.
> To show that boundary Court could not have gone into this matter I contend that mistake affected more than half the block, the boundary begins at Te Papa a Tarinuku. From peculiar nature of blunder, where could we ask Court to go from Te Papa a Tarinuku. If to Pokopoko that would not carry out intention of Court. Court cannot go into such a question in adjusting a boundary.
> The fact of question not being raised at boundary Court does not affect probability of an err having been committed. Even if it could have been dealt with at boundary Court, it does not limit powers of Chief Judge under s 13. In so far as question of jurisdiction has been raised by Mr McLean, it will have to be argued before Chief Judge.
> The facts are not in dispute. We admit that boundary is nearly enough correct. Small area included not worth fighting about.
> I have glanced at sections 26 to 31 Act of 1880 and am satisfied I am correct in position I have makeup up re duties of boundary Court.
> The point I call attention to is this 'plan and description' in s 27.
> These sections draw a distinction between plan and description. No one could have complained of description but there was no plan to show it. If the description was to vague an action might have been taken but as it turned out it was necessary only to provide a sufficient plan.
> If the description is sufficient ie goes from point to point, all the boundary Court has to do is to see that plan follows description and amend it if it does not.
> The empowering words of s 30 are these, they give Court power to adjust boundary and only that.
> In s 32 there is a provision for amending description. That is where there is an insufficient description.
> Supposing I am before Court as an objector and I say Court has power to adjust boundaries, the adjustment I wish is that Court effaces boundary and lay down another. This would not be adjusting a boundary.
> There I say an error of the magnitude committed by Judge O'Brien and Williams could not be rectified on an adjustment of boundaries.[502]

449. Morison added, moreover, that 'the jurisdiction of the Chief Judge to amend an error of this kind cannot be limited or affected by any other powers of the Court'.

450. McLean, in response, insisted that the Court did have the power to make the necessary amendments to the boundary under these provisions:

> It was suggested that when land investigated on a sketch plan the whole duty of boundary Court was to see whether land had been surveyed in accordance with description contained in order made on investigation.
> If that were so it would mean that the boundary Court could only alter the plan but could not amend description.
> Section 32 Native Land Court Act 1880 expressly gives the power to amend the description. If Morison is asking anything at all from the Court he is asking for an amendment of the description.
> Section 31 gives the power to amend the plan.
> Section 30 gives power to adjust the boundaries according to the rights of the several persons interested.

[502] Napier Native Land Court Minute Book 33, 2 August 1894, fols 209-12.

> What I wish to emphasis on this point is this. That there is no limit to the amendment of the description, the alteration of the plan, or the adjustment of the boundaries. The magnitude of the alteration asked is no less an amendment of the description than a smaller demand would be.[503]

451. He also commented on Morison's suggestion that even if the Court could have rectified the problem by amending the boundary, the scope of s 13 provided an alternative remedy to the problem:

> The only other point re boundary Court question is this. One of Morison's contentions is that whether he could have gone to boundary Court or not, still it was within his right to leave boundary Court along and make application under this section.
> What I wish to point out is that if Winiata could have applied to boundary Court and if an error has been made in the description or boundary or plan then he is prejudicially affected by his refusal to go to boundary Court and not by an error of the original Court. He would therefore fail to establish the second requirement in the 13th section where he is required to show Chief Judge that his interest had been prejudicially affected by such error.

452. Morison was given a further opportunity to respond to these submissions and he repeated his view that the Court did not have the power to change the boundary given the nature of the description given by the Court:

> I would point out that ss 26 and 27 of Act of 1880 distinguish between place and description. I have already said that the description of the land in the judgement of Court in 1880 was a sufficient description. Names of places on southern boundary were posted which could be identified on ground and therefore as description was sufficient to enable survey to be made, the Court had only to see that survey coincided with the description. Had description in judgment been vague and indefinite instead of from point to point the boundary Court would have had to amend it so as to make it a definite description when survey was completed on the ground.
> I don't apply for amendment of description. The application I have made is for the inclusion of names in the title.[504]

453. Morison insisted that the error alleged was that land which the Court intended to exclude from its decision was included, through the survey, in the block.[505]

454. Judge Butler supplied a report to the chief judge on Winiata's application on 8 August. Following the Court's inquiry, he reported the following matters:

> 1. That the title to the Mangaohane block was investigated on a sketch map.
> 2. That the southern boundary of that portion of the block called Mangaohane No. 2 was laid down by the Court from Te Papa-a-Tarinuku to Ngawharekorau, Reporoa and other places to the eastward.
> 3. That the places pointed out by witnesses on the sketch map as points on the southern boundary were found on survey to be substantially correct and that the

[503] Napier Native Land Court Minute Book 33, 4 August 1894, fol. 241.
[504] Napier Native Land Court Minute Book 33, 4 August 1894, fol. 244.
[505] Napier Native Land Court Minute Book 33, 1 August 1894, fols 190-191.

said boundary was subsequently confirmed without objection by a boundary court duly advertised.

4. That from the evidence of witnesses as to Pokopoko settlement and from the plans put into Court indicating its position there could have been no reasonable doubt in the mind of the Court that the southern boundary adopted by it would include Pokopoko settlement.
5. That the Court intended to exclude a portion of the Pokopoko forest from its judgment.
6. That the evidence given at the original hearing does not establish the fact that the proportion of the Pokopoko forest intended to be excluded from the judgment of the Court was not so excluded by the survey of the southern boundary.
7. That the claims of Winiata Te Whaaro, the Ngāti Hinemanu and Ngāti Paki hapus to the Mangaohane No. 2 block were heard and disposed of by the Court at the original hearing.
8. That the evidence given before the Court at the investigation of title to the Mangaohane block does not justify the allegation of Winiata Te Whaaro that his interests and those of his hapus the Ngāti Hinemanu and Ngāti Paki were prejudicially affected by the judgment of that Court.
9. That evidence given on partition of Mangaohane No. 1 and on rehearing of Mangaohane No. 2 block was stronger in support of Ngāti Hinemanu and Ngāti Paki claims to Mangaohane No. 2 block than that given at the investigation of title to the Mangaohane block and if it had been brought out might have affected the judgment of the former Court in their favour, but it was the fault of the parties themselves that the whole of the evidence was not available to the Court.

455. Judge Butler supplied a copy of the minutes of proceedings and other documents used as evidence in the enquiry.

v THE CHIEF JUDGE'S INQUIRY

456. The chief judge's consideration of Judge Butler's report on Winiata Te Whaaro's s 13 application occurred at a sitting at Hastings on 18 August 1894.[506] Initially, Bell wanted to know if the applicants argued the chief judge had jurisdiction to determine the matter without an assessor. Sir Robert Stout, on behalf of Winiata, replied 'that the Chief Judge had power to consider the report and evidence the same as a Judge in Chancery dealing with a Master's report and decide in accordance with the report or otherwise as he should see fit without an Assessor'. The chief judge's minutes are unclear on whether the hearing proceeded but two days later McLean appeared and addressed this question further. He submission was that:

> … the report having been arrived at on investigation of a judge sitting with an assessor has discharged the chief judge of all functions in the matter except the consideration of the report and that while it is competent for the chief judge to override the report he would require strong reasons to be given to him and that if not satisfied with the report he would not proceed to give a finding as upon an enquiry but would either accept the report or refer it back to the judge. The judge's expression of opinion is the essential part of the report because the expression of

[506] Chief Judge's Minutes of Evidence, 18 August 1894, fols 175-176, MLC 3 12 Box 12, Archives New Zealand, Wellington.

> opinion is a finding of fact arrived at on consideration of the evidence and of the argument adduced before him and the assessor.[507]

457. Sir Robert Stout's reply, given the next day, was not recorded in the minute book and the chief judge reserved his decision. This was given on 31 August with Bell and Morison in attendance:

> Ordered that the order of Court ascertaining the title to Mangaohane No. 2 be amended by including in the list of owners the names of the applicant and those ho claimed with him on the original hearing or their representatives subject to such further enquiry as may be necessary for determining the names of the persons to be admitted. And that the applicant furnish a list of names for that purpose.[508]

458. The minute book noted that Bell requested a stay on proceeding with the Court's order for 28 days, which was granted by the chief judge.

459. A more detailed decision was recorded in the minute book to explain the reasons for the chief judge's decision:

> This is an application to me as chief judge of the Native Land Court under the provisions of section 13 of the Native Land Court Act Amendment Act 1889 in respect of an alleged error in the decision of the Court on the original investigation of the Mangaohane Block; by which error, the applicant alleges that his interest have been prejudicially affected. The application purports to be a representative one on behalf of the Ngati Hinemanu and Ngati Paki hapus whose claim to the ownership of a portion of the was disallowed on the original hearing. The application was referred by me to a judge of the Court for investigation and report, and was reported on by him in terms of sub-section 3. The report and evidence are now before me.
> Upon consideration of the whole matter, and of the evidence given by Judge O'Brien before the rehearing Court on Rena Maikuku's application in 1893, it appears to me, that the Court in its decision included a portion of what is now known as Mangaohane No. 2 which portion the Court intended to exclude or believed that it had excluded from its adjudication. It further appears to me, that such inclusion was the result of a mis-apprehension in the mind of the Court as to the position of a place called 'Poko Poko' a kainga or place of residence on the block, stated in the evidence to have been the place of residence of the applicant. The position in point of equity appears to be, that as to some undefined portion of the block lying generally southward of and contiguous to,a nd probably inclusive of Poko Poko the title remains unascertained, and the land is in equity still to be regarded as 'native land'. To this land, the applicant notwithstanding the judgment of the Court, has continued to maintain his claim, and has as I understand from a date prior to the decision up to the present time remained in possession. His position in this respect, may be regarded as analogous to that of a claimant in possession under section 67 of the Land Transfer Act, and assuming his claim to be well founded, I see no reason why an order of the Native Land Court should be deemed more sacred than a Land Transfer Certificate of Title would be under similar circumstances. In such a case even a purchaser for value would have to succumb. It is not necessary however for me to decide that he has a valid title, to enable me to hold (as I do) tha this interests have been prejudicially affected. It is sufficient to say, that by reason of the error, and of the wrongful inclusion aforesaid, he lost his 'locus standi' as a claimant and has been prevented from making use of evidence which there is reason to believe were the Court still

[507] ibid., 20 August 1894, fols 175-176.
[508] ibid., 31 August 1894, fol. 176.

> open to him, might influence a decision in his favour. See paragraph 9 of Judge Butler's report. Also evidence of Judge O'Brien before rehearing Court in 1893.
> It has been contended (and Judge Butler seems to have adopted the same view in paragraph 3 of his report) that the failure on the part of the applicant to bring the matter of the alleged error before the Court under section 29 of the Native Land Court Act 1880 is a bar to any further proceeding on that account. It seems to me, that had the same evidence which has been adduced in support of this application, been before the Court under section 29 the Court although it might have recognised the error, would have been powerless to rectify it. There is not sufficient evidence to reconstruct the boundary on the basis of presumable intention, and it may fairly be assumed that the evidence on that point is exhausted. It is quite clear that the boundary line as at present laid down cannot be altered. But this fact does not alter the equity, which is that the intention of the Court shall be given effect to as nearly as possible, and this undoubtedly was to draw a line at Poko Poko. Nothing but a rehearing could have dealt effectually with the claims of the applicant, and a rehearing is that he has all along been endeavouring but unsuccessfully to obtain. That the dismissal of his application in 1885 was influenced by the report of the Judges is to my mind an irresistible inference: nor can I accept the contention that his claims were disposed of by the rehearing on Rena's application in 1893.
> What the power of the Chief Judge under section 13 may be, is in the absence of decisions, a difficult question to determine. I think this is a case in which I should assume the fullest power the language of the statute will admit of. The words of the statute seem to imply an intention on the part of the Legislature to confer an equitable jurisdiction for the purpose of remedying the omissions and errors which are only too apt to find their way into the proceedings of the Native Land Court. The character of much of the evidence given in that Court, the incompleteness of the plans submitted, the difficulties with regard to service of notices, – these and many other matters render some such provision necessary, and it is for the Legislature to say in whom the power should be vested. In the present case the course suggested by counsel for the applicant seems to supply the appropriate if not the only possible remedy, viz to amend the existing order of the Court by including the applicant and those claiming in the same right with him in the list of owners of Mangaohane No. 2 Block, leaving them to find their level on the definition of interests, or possibly in a partition Court. In this way only can the 'status in quo ante' be to some extent restored by placing the parties once more on an equal footing before the Court. It is in fact precisely what I presume the Court itself would have done, had it not elected to exclude and supposed that it had excluded the doubtful portion of the block from its adjudication. I therefore order that the list of owners in Mangaohane No. 2 Block be amended by including the names of Winiata Te Wharo and those who claimed with him on the original hearing or their representatives, subject to such further enquiry as may be necessary for determining who are the persons to be admitted as aforesaid. The applicant to furnish a list of names for that purpose.[509]

460. On 14 September, Loughnan and Morison appeared before the chief judge for the purposes of finalising the list of names.[510] Bell communicated with the chief judge by letter asking for the hearing to be adjourned to the following day but the chief judge agreed to hear Loughnan that afternoon as he was due to depart the following. Both Morison and Loughnan submitted lists of names for inclusion in the title order for Mangaohane No. 2. On 26 September, Bell appeared before the chief judge asking for a further extension of the stay in issuing the order under 31 October.[511] His grounds

[509] ibid., fols 177-181.
[510] ibid., 14 September 1894, fol. 182.
[511] ibid., 26 September 1894, fols 182-183.

were that Morison had refused to allow the proceedings to be heard directly by the Court of Appeal, that 'negotiations for a compromise are in progress', that both the Studholme brothers represented by himself and Airini Tonore represented by McLean were opposed to the issue of the order and communications between Wellington and Napier took time, and finally that it will take time to prepare evidence if the matter was argued in the Supreme Court. The chief judge did not record his decision on this request.

461. This decision was subject to further proceedings in the Supreme Court and Court of Appeal from April to July 1895 which are considered below.

vi OPPOSITION TO STUDHOLME'S PROPOSAL

462. McLean advised Studholme in September 1894 that his client, Donnelly, was 'very decidedly opposed to effect a compromise at what he consider such a sacrifice as is proposed by you without making an attempt to set aside the judgment of the Chief Judge'. McLean asked Studholme to advise him if Studholme planned to commence prohibition proceedings with Bell as he would otherwise instruct Bell on behalf of Mrs Donnelly. McLean's statements regarding his client's view of the proposed compromise was repeated in a letter to Bell.[512] At this point, he was still unclear whether Studholme intended to initiate prohibition proceedings but wanted Bell to act on behalf of his clients if possible. He noted that it was necessary for Mrs Donnelly to be joined as a party in the proceedings because 'in case Messrs Studholme should arrive at a compromise to which Mrs Donnelly did not see her way to agree, naturally the proceedings so instituted would be withdrawn, and it would be then too late for Mrs Donnelly to reopen'. McLean also wrote to Bell regarding the prohibition proceedings in September 1894.[513] His letter set out the grounds on which he would seek prohibition (as would be argued in the Supreme Court and Court of Appeal).

463. In October, Studholme wrote to McLean who was acting for Donnelly and Richardson.[514] In the course of a long letter, which was written because he was

[512] McLean to Bell, 18 September 1894, MS-Copy-Micro-0351-1 John Studhome Papers (copy of MS-Papers-0272, folders 1-21), Alexander Turnbull Library, Wellington.
[513] McLean to Bell, 21 September 1894, MS-Copy-Micro-0351-1 John Studhome Papers (copy of MS-Papers-0272, folders 1-21), Alexander Turnbull Library, Wellington.
[514] Studholme to McLean, 26 October 1894, MS-Copy-Micro-0351-1 John Studhome Papers (copy of MS-Papers-0272, folders 1-21), Alexander Turnbull Library, Wellington.

concerned that McLean was planning to engage in litigation which would 'prejudicially affect' his interests, Studholme estimated that Winiata was running about 10,000 sheep on the block. Studholme believed Winiata 'cannot be interfered with until the title is settled'. The balance of the land could carry about 21,000 sheep and this was supposed to be divided between Studholme and McLean's clients in proportions set out in an agreement entered into in 1890. Studholme emphasised how important Mangaohane was to the 'profitable working' of his entire run as Mangaohane was the lambing country for Owhaoko. He was also concerned about the cost of unsecured credit while the title was still unsettled. In consequence:

> … my great wish and aim is and has been all along to obtain a final settlement as speedily as possible and it is almost though to quite entirely because prohibition must postpone final settlement by at least a year and possibly by even two years that I am so strongly opposed to its adoption.

464. He added

> In order to avoid it I proposed immediately after the Chief Judge gave his decision on Judge Butler's report that a settlement should be arrived at out of Court on the basis of 5000 acres being awarded to those coming in under Winiata's application and 3000 acres being awarded to the Tamakorakos, both to be allocated on the southern boundary and to be taken form the respective parts awarded to Donnelly in the proportion of 2/3 and 1/3.

465. Donnelly rejected this proposal and Studholme believed Winiata would only agree to a compromise with Studholme alone and not with Donnelly. Apparently Ngāti Tamakorako were also satisfied with the planned compromise. Studholme applied to have his certificates confirmed and the chief judge set this application down for hearing on 1 November at Hastings: 'Mr Morison agreeing not to put any obstacles in the way of its being heard':

> I then proposed, as a settlement of our claim, to you and Mr Morison that I would be prepared to give 5300 acres south of Pokopoko settlement to you and Winiata and Tamakorako collective if you and they would allow the Court to issue me a title to the balance of the 19,000 awarded to Messrs Studholme in 1890, stating at the same time that failing the above compromise I was quite prepared to fight the matter out in the open Court.
> It now appears that owing to clause 7 of the C.C. Act 1893 the Court must refuse to hear my application unless some agreement re the suspension of prohibition is come to between you as acting for Messrs Donnelly and Richardson and Mr Morison as acting for Winiata. I therefore now ask you and Mr Morison to agree to suspend prohibition until after my application has been imposed of. If you both agree to this I will then offer to accept the Chief Judge's decision as far as I am concerned, to disclaim any possible benefits that may be obtained by prohibition and to give up 5,300 acres south of Pokopoko to you and the other two parties collectively if you will all agree not to oppose the issue of a title to me for the balance of the 19,000 acres warded us in 1890.

466. It was still open to them to dispute the extent of the award to the Messrs Studholme in the Native Land Court if they wished and, once the titles were determined, they could return to their proceedings for prohibition in the Supreme Court for the balance of Mangaohane No. 2. If agreement on this point could not be reached, Studholme asked McLean to accept the chief judge's decision and apply for the partition of the land:

> If you and Mr Morison cannot and will to agree to the above suggestion, then I will ask you to accept the Chief Judge's decision and giving up all idea of prohibition, to at once apply for a partition Court and we would then fight the matter out on its merits together against Winiata and the Tamakorakos at the earliest possible date.

467. Studholme refused to participate in the prohibition proceedings even were he to benefit from them. He would not prevent Bell from taking instructions from McLean in the matter but he would act on behalf of Donnelly and Richardson only and he would not share in the costs either. If Donnelly and Richardson would not agree to this either, he would enforce the terms of the agreement made in 1890 and demand a reorganisation of the occupation of Mangaohane No. 2. He added 'I hope you will understand that I am not opposed to prohibition on legal grounds, as I think our chance of success very fair, but entirely owing to the unfair position we at present occupy'.

468. While these discussions continued, John Studholme advised the registrar in early October that the partition orders for Mangaohane 1 'were to be sent to you yesterday'.[515] He thought they might have missed the mail but in any case, he urged the registrar to process them quickly: 'I would be much obliged if you would kindly forward them on to the Survey Office with the least possible delay after their arrival'.[516] He also had a query about another block of Maori land. He was advised by the registrar that they were still waiting on the partition orders for Mangaohane No. 1 to arrive.[517] Later in the month, the registrar again asked for the partition orders to be drawn up and checked again the minutes. They were supplied to him in mid-October.[518]

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[515] Studholme to Johnson, 5 October 1894, 23/597 1 Mangaohane Correspondence File Volume 1, Maori Land Court, Whanganui.
[516] ibid.
[517] Johnson to Studholme, 15 October 1894, 23/597 1 Mangaohane Correspondence File Volume 1, Maori Land Court, Whanganui.
[518] Judge Butler to Johnson, 17 October 1894, 23/597 1 Mangaohane Correspondence File Volume 1, Maori Land Court, Whanganui.

469. After further correspondence among court officials and Judge Butler, the draft partition orders for Mangaohane No. 1, in duplicate, were sent to Judge O'Brien for his signature. The court minute book and his private minute book containing the minutes of the partition hearing were also sent to him.[519] Plans had been added to each order by the Survey Office.[520] The following month, Judge O'Brien requested a further minute book so he could check the orders.[521] Toward the end of the month, in response to a enquiry from Judge Edger, the registrar advised that they were still waiting on Judge O'Brien to sign the orders but he expected to 'receive them shortly'.[522] The partition orders for both Mangaohane No. 1 and Mangaohane No. 2 were received back from Judge O'Brien at the end of November with queries for which he requested further information:

> Remarks. I return all signed except No. 1J not signed for a reason stated in my memo on the back of duplicate order. If that be explained and the order returned to me I will sign it. No. 1F I have signed as well as No. 1A although in former the individual interests of Nos 1 and 2 cannot be stated. These two also appear in order for No. 1A in the same conditions. Possibly the remarks by Court on p. 38 of Court's minute book had references to this. As to 26 to 29 in No. 1F if these were children of deceased they would share equally, or if all in the same degree of relationship but I have not the minute books showing how the order was made.[523]

470. A subsequent message to Judge O'Brien indicates that he questioned one of the names included in the order and returned it unsigned for clarification.[524] This was sent back to him with further information and a request that he sign the order and initial an amendment to one of the names. The order for 1A was also returned as the area included in the title had been amended by the Survey Office. He was asked to initial this amendment too.

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[519] Johnson to Judge O'Brien, 26 October 1894, 23/597 2 Mangaohane Correspondence File Volume 2, Maori Land Court, Whanganui.
[520] Chief Surveyor to Johnson, 26 October 1894, 23/597 2 Mangaohane Correspondence File Volume 2, Maori Land Court, Whanganui.
[521] Judge O'Brien to Johnson, 19 November 1894; Judge Edger to Johnson, 21 November 1894, 23/597 2 Mangaohane Correspondence File Volume 2, Maori Land Court, Whanganui.
[522] Johnson to Judge Edger, 26 November 1894, 23/597 2 Mangaohane Correspondence File Volume 2, Maori Land Court, Whanganui.
[523] Judge O'Brien to Johnson, 28 November 1894, 23/597 2 Mangaohane Correspondence File Volume 2, Maori Land Court, Whanganui.
[524] Johnson to Judge Edger, 6 December 1894; Johnson to Judge O'Brien, 12 December 1894, 23/597 2 Mangaohane Correspondence File Volume 2, Maori Land Court, Whanganui. See also Johnson to Chief Judge Davy, 8 December 1894, 23/597 2 Mangaohane Correspondence File Volume 2, Maori Land Court, Whanganui.

vii FURTHER VALIDATION AND PARTITION PROCEEDINGS

471. At this time, the registrar also forward papers connected with a validation application to Judge Edger at Hastings.[525] According to a message to the judge, this followed a verbal request from Studholme to send them through. In late November, Studholme also submitted two applications under s 118 of the Native Land Court Act 1894. One was for Mangaohane No. 1, which amended an earlier application, and the other was for Mangaohane No. 2. He advised that Judge Edger was willing to hear them on 8 December and Studholme asked the registrar to issue a notice for them.[526] The registrar referred the request to the chief judge for direction as the applications had missed the deadline for that week's panui and a notice could not be published in time for the proposed sitting date.[527] He noted that a supplementary panui notifying applications for certificates of confirmation had recently been issued for Hastings. The chief judge directed the registrar to notify the application for 15 December.[528] Studholme was advised of the date of the forthcoming hearing and that his request for it to be advertised for hearing a week earlier was not possible as it was too late to be notified.[529]

472. In early December, Studholme wrote to the registrar advising that he planned to bring Warren to the forthcoming hearing in Hastings to give evidence. He noted that Warren was the manager of Owhaoko Station, that he was in the midst of shearing and that he would have to travel some so asked the registrar to send him advance warning by telegram if there was any chance the hearing would not proceed.[530] He also requested the deeds for Mangaohane in preparation for the hearing. Apparently these were with the Court's records for the block. Lastly, he asked about the status of the partition orders for Mangaohane No. 1:

> Can you give me any information as to the reason for the continued and further delay of Judge O'Brien in signing Mangaohane No. 1 partition orders? On July 27 last

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[525] Johnson to Judge Edger, 17 November 1894, 23/597 2 Mangaohane Correspondence File Volume 2, Maori Land Court, Whanganui.
[526] Studholme to Johnson, 27 November 1894, 23/597 2 Mangaohane Correspondence File Volume 2, Maori Land Court, Whanganui.
[527] Johnson to Chief Judge Davy, 28 November 1894, 23/597 2 Mangaohane Correspondence File Volume 2, Maori Land Court, Whanganui.
[528] Chief Judge Davy to Johnson, 28 November 1894, 23/597 2 Mangaohane Correspondence File Volume 2, Maori Land Court, Whanganui.
[529] Johnson to Studholme, 29 November 1894, 23/597 2 Mangaohane Correspondence File Volume 2, Maori Land Court, Whanganui.
[530] Studholme to Johnson, 5 December 1894, 23/597 2 Mangaohane Correspondence File Volume 2, Maori Land Court, Whanganui.

> Judge Butler received a wire from your office to the effect that Judge O'Brien had notified to Mr Morison that he intended signing the Mangaohane No. 1 partition orders in three weeks from the above date. On October 18th these orders were sent to Judge O'Brien for signature and it is now December 5th. My application for the issue of orders under sec. 4 Act 93 was made on February 20 last.

473. In response to further requests from Studholme, the registrar advised that the partition orders for Mangaohane No. 1 had been signed, except for 1J.[531] He noted in a memorandum to Judge Edger that 1A had been amended and returned to Judge O'Brien for him to initial.[532] The other partition orders were sent on to Judge Edger who was sitting at Hastings on 13 December together with a request to seal them: 'In hurry, overlooked that they had not been sealed by Judge O'Brien'. The registrar asked for Judge Edger to arrange for the orders to be sealed.[533] The two other orders (1A and 1J) were completed and returned by Judge O'Brien on 21 December.[534]

474. The completion of the partition orders by Judge O'Brien was the subject of a letter from Morison to the chief judge on 11 December:

> I have the honour to call your attention to the fact that Judge O'Brien has not only signed and sealed partition orders in Mangaohane No.1 but has also completed orders on partition of Mangaohane No. 2. About these latter there can surely be question. The order on investigation of title made by Judges Mackay and Scannell had added considerably to the owners of Mangaohane No. 2 since Judge O'Brien's partition Court sat, besides which there is Winiata's application pending. I call your attention to the fact so that no further complications may be effected by issuing partition orders which are beyond contest void and null.[535]

475. The chief judge referred the letter to Judge O'Brien for his comment. Judge O'Brien noted that he partitioned both blocks in 1890, the Supreme Court subsequently 'quashed' the certificates and a rehearing of the southern portion of Mangaohane No. 2 was ordered by Chief Judge Seth Smith. The partition orders for Mangaohane No. 1 were reissued and Judge O'Brien believed they 'held good'. However, in relation to Mangaohane No. 2, his partition orders 'fell' following the rehearing by Judges Mackay and Scannell. Judge O'Brien stated that he had only just become aware of this situation and concluded:

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[531] Judge O'Brien to Johnson, 28 November 1894; Johnson to Studholme, 8 December 1894, 23/597 2 Mangaohane Correspondence File Volume 2, Maori Land Court, Whanganui.
[532] Johnson to Judge Edger, 12 December 1894, 23/597 2 Mangaohane Correspondence File Volume 2, Maori Land Court, Whanganui.
[533] Johnson to Judge Edger, 13 December 1894, 23/597 2 Mangaohane Correspondence File Volume 2, Maori Land Court, Whanganui.
[534] Judge O'Brien to Johnson, 21 December 1894, 23/597 2 Mangaohane Correspondence File Volume 2, Maori Land Court, Whanganui.
[535] Morison to the Chief Judge, 11 December 1894, 23/597 2 Mangaohane Correspondence File Volume 2, Maori Land Court, Whanganui.

> If this be a correct 'resume', why did the Registrar send me partition orders for Mangaohane No. 2 to sign? I have signed them in ignorance as I have only just obtained the statements in 3, 4 and 5 from the Registrar (Mr Browne) here.[536]

476. On 20 December, the registrar had advised Judge Edger that 'Mr Studholme proposes arrange with Judge Butler complete action soon as possible'.[537] Two days later, the registrar provided further details to Judge Edger:

> Judge Butler adjourned the Mangaohane matter from Greytown North to Wellington on 5th proximo, and has since arranged with Mr Studholme to further adjourn to Hastings on 8th proximo. I would therefore suggest that it would be advisable that you should communicate with Mr Collings, so that there may be no difficulty in Judge Butler's obtaining the necessary papers.[538]

477. Judge Edger did not receive this message until 16 January 1895.[539] Through December, the registrar at Wellington continued to communicate with other court officials in attempting to get the Mangaohane records sent to Wellington so that the hearing of Studholme's application could proceed.

478. The question of the partition orders in Mangaohane No. 2 was also considered by the chief judge at the end of December when he directed the registrar to cancel them.[540] The chief judge noted that Judge O'Brien accepted Morison's complaint and agreed that 'were signed by him under a misapprehension'.[541] They were returned by Judge Edger and cancelled.[542]

viii JUDGE BUTLER'S AUTHORITY

479. The validation of the Studholme's deeds, and the rush to have them certified by Judge Butler at the sitting in Hastings, meant that some minor details, which proved very difficult to deal with, were missed. On 4 January 1895, Studholme's solicitor, H.D. Bell of Bell, Gully and Izard, (who was also a member of the House of

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[536] Judge O'Brien to Chief Judge Davy, 12 December 1894, 23/597 2 Mangaohane Correspondence File Volume 2, Maori Land Court, Whanganui.
[537] Johnson to Judge Edger, 20 December 1894, 23/597 2 Mangaohane Correspondence File Volume 2, Maori Land Court, Whanganui.
[538] Johnson to Judge Edger, 22 December 1894, 23/597 2 Mangaohane Correspondence File Volume 2, Maori Land Court, Whanganui.
[539] Judge Edger, File Note, 16 January 1895, 23/597 2 Mangaohane Correspondence File Volume 2, Maori Land Court, Whanganui.
[540] Chief Judge Davy to Johnson, 28 December 1894, 23/597 2 Mangaohane Correspondence File Volume 2, Maori Land Court, Whanganui.
[541] ibid.
[542] Judge Edger to Johnson, 2 February 1895, 23/597 2 Mangaohane Correspondence File Volume 2, Maori Land Court, Whanganui.

Representatives) raised the question of Judge Butler's authority to make orders under the Native Land (Validation of Titles) Act 1892 and subsequent legislation:

> I have the honour to point out to you that Judge Butler has not been specially authorised to exercise the jurisdiction conferred on the Court constituted by the Native Land (Validation of Titles) Act 1892.
> Under the Native Land Court Certificates Confirmation Act 1893 Section 4 provision is made that the Court may cause effect to be given to the certificates thereby validated by issuing orders, and that the Court should for the purpose of enabling it to make such orders continue to have the powers conferred upon it by Sections 7, 8 and 13 of the Act of 1892.
> By section 2 of the Act of 1893 that Act is to be read together with the Act of 1892.
> It appears to me therefore essential that Judge Butler should be specially authorised.
> You are aware that Judge Butler has already sat in the matter of the partition, but that he has not delivered judgment, and it is proposed if the Governor should be advised now to specially authorise him that he should sit and hear the case afresh and deliver judgment. Probably there will be no objection by any of the parties to his acting upon the minutes of the evidence taken before him in June last.[543]

480. Bell asked the chief judge 'to move the Hon. the Minister to advise His Excellency to specially authorise Judge Butler pursuant to Section 15 of the Native Land (Validation of Titles) Act 1892'. He included a draft of the words he thought appropriate for the authority. However, the chief judge responded the same day, noting one issue which had escaped Bell's attention:

> With regard to the question as to Judge Butler's position under the Native Land Court Certificates Confirmation Act, and to the proposal to remove the doubt or difficulty (if any) by an authorization under the repealed Act of 1892, I have come to the conclusion, after careful consideration, that it would not be expedient for me as Chief Judge to move in the matter. Any suggestion or application made formally by you will of course be submitted at the earliest opportunity for the consideration of the minister.[544]

481. Bell initially persisted by forwarding a special request to appoint Judge Butler a judge under the Native Land (Validation of Titles) Act 1892 and another for a special direction under Rule 112 of the same legislation. Bell requested the special direction from the chief judge under Rule 112 specifying three days notice to be sufficient for a Court sitting to hear applications to partition Mangaohane No. 1.

482. The chief judge also wrote to the under secretary of the Justice Department regarding Bell's request and included the letter received ffrom Bell. He noted that Judge Butler was not authorised under the required statute and that a question had arisen as to

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[543] Bell to Chief Judge Davy, 4 January 1895, J1 Box 531 1895/6, Archives New Zealand, Wellington.
[544] Chief Judge Davy to Bell, 4 January 1895, 23/597 2 Mangaohane Correspondence File Volume 2, Maori Land Court, Whanganui.

'whether the proceedings before him are not liable to be made void'.[545] He anticipated that new proceedings would be required, rendering the question irrelevant:

> It is to my mind an open question whether the Governor has power (the Act of 1892 being now repealed) to give the authorisation requested. Messrs Bell, Gully and Izard contend that he has, though as it appears that the proceedings will in any case have to be commenced do novo, there hardly appears to be a sufficiently strong reason for such action. Messrs Bell, Gully and Izard however seem to think it important.[546]

483. He added in a post-script that he considered the only reason Bell was so keen for Judge Butler to be authorised was 'to avoid delay'. He added 'I do not believe that there is any other reason'. The chief judge expected the opinion of the 'Law Officer' would be obtained, prior to any action by the governor.

484. The under secretary did indeed refer the matter to the assistant law officer for his opinion.[547] His assessment was that the governor had no power to give the authorisation requested by Bell:

> The Act of 1892 having been repelated, as from 1st January 1894, I do not see how the governor can now be advised to make the appointment asked for. The power of continuing and completing proceedings clearly applies only to proceedings lawfully commenced and taken and does not extent to proceedings taken or certificates or orders made by a person not duly authorised ab initio.[548]

485. This opinion was referred to the chief judge the same day who noted, again on the same day, that he had advised Bell.[549]

486. A few days later Bell acknowledged another letter from the chief judge and indicated that the proceedings would have to be commenced again before a different judge who was appointed under the 1892 statute:

> I have the honour to acknowledge the receipt of your memorandum of the 5th inst. informing me that the Law Officers are of opinion that the Governor cannot be advised to give the authorization requested and asking me whether under the circumstance I should desire the proceedings before Judge Butler to be continued to judgment or whether it would be necessary to commence de novo.
> I do not myself see any advantage in the proceedings before Judge Butler being continued to judgment. It seems to me that it is necessary to commence de novo before another Judge who has been duly appointed under the Act of 1892.[550]

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[545] Chief Judge Davy to Haselden, 4 January 1895, J1 Box 531 1895/6, Archives New Zealand, Wellington.
[546] ibid.
[547] Haselden to Reid, 4 January 1894, J1 Box 531 1895/6, Archives New Zealand, Wellington.
[548] Reid to Haselden, 5 January 1894, J1 Box 531 1895/6, Archives New Zealand, Wellington.
[549] Chief Judge Davy to Haselden, 5 January 1895, J1 Box 531 1895/6, Archives New Zealand, Wellington.
[550] Bell to Chief Judge Davy, 8 January 1895, 23/597 2 Mangaohane Correspondence File Volume 2, Maori Land Court, Whanganui.

487. The following day the chief judge referred the request to the registrar with a direction under Rule 112 to notify the application under s 4 of the Native Land Court Certificates Confirmation Act 1893 for hearing at Hastings.[551] It was originally notified for hearing on 16 May 1894. The registrar asked Court staff to prepare a panui but, the following day, the chief judge asked for the notice to be withdrawn on the basis of a request he had received from Studholme.[552]

488. Through January and February there were frequent requests from Judge Butler at Otaki for records and papers relating to Mangaohane. The Court's decision on Warren's application for confirmation in relation to Mangaohane No. 1 was given by Judge Butler and Assessor Horomona at Hastings on 29 January 1895.[553]

ix THE CHIEF JUDGE CONFIRMS HIS DECISION

489. Also at Otaki, on 6 February, the chief judge considered an application by John Studholme to 'rescind' the order he had made under s 13.[554] Chapman appeared for Studholme and Morison appeared for Winiata. Chapman produced a statement from Judge O'Brien 'as to intention of Court in fixing southern boundary of Mangaohane Block on original investigation of title'. Chapman argued 'that the Chief Judge should amend his order in accordance with such statement'. Morison was given the opportunity to reply but his submissions were not recorded. The chief judge reserved his decision. It is not clear when the decision was given but it was written up in the minute book:

> The ground of this application is a statement in writing by Judge O'Brien, one of the Judges who acted upon the original investigation of the title to the Mangaohane Block, as to the intention or presumable intention of the Court in fixing the southern boundary. With regard to the manner in which this statement has been obtained as detailed in the affidavit of Mr A.L.D. Fraser, it appears to me that to render it admissible it would have to be taken in open Court in one or other of the modes of enquiry prescribed by section 13. This would involve the reopening of the proceedings, a course which would certainly not be justified unless the evidence were of the most cogent nature such as must unless refuted necessarily lead me to alter the decision formerly arrived at. I do not consider that the statement now put forward is of such a character. As pointed out by Mr Morison it is not a matter of positive averment supported by actual recollection on the part of Judge O'Brien so much as it is a series of inferences drawn by him as to what as it now appears to him the Court

[551] Chief Judge Davy to Johnson, 9 January 1895, 23/597 2 Mangaohane Correspondence File Volume 2, Maori Land Court, Whanganui.
[552] Chief Judge Davy to Johnson, 10 January 1895, 23/597 2 Mangaohane Correspondence File Volume 2, Maori Land Court, Whanganui.
[553] Wairararapa 21, 31 January 1895, fol. 217.
[554] Chief Judge's Minutes of Evidence, 6 February 1895, fol. 202, MLC 3 12 Box 12, Archives New Zealand, Wellington.

> must have intended. It has in this respect little more value than would attach to a similar statement but a person not originally connected with the proceedings. It certainly would not outweigh in my mind the effect of statements made by Judge O'Brien on former occasions of a contrary tendency. Moreover the evidence (if such it can be called) might just as well have been adduced on the original enquiry. I must therefore decline to reopen the proceedings to depart in any way from the decision already arrived at.[555]

490. On 8 March 1895, Rees sent Studholme a letter which included the following statements:

> After leaving you at Hastings I went with Judge Butler to Otaki and there spent the evening with the Chief Judge. I entered fully into the circumstances with him. He concurred in the advisability of brining Mangaohane into the Validation Court at once but he requested me to obtain the consent of Judge Butler to hear the case.[556]

491. After explaining his work on the case and his interactions with Bell, Rees went on:

> Mr Bell's position is one of great difficulty. He had with your consent accepted a retainer from Donnelly. He had advised Mr Donnelly to take proceedings in the Supreme Court to prohibit Judge Davy from signing and issuing the orders. He was of opinion that in that opinion I concurred that the Chief Judge had exceeded his jurisdiction as certainly one and probably two or three grounds. Under the circumstances Mr Bell naturally desired to confer with you before invoking the assistance of another Court and thereby suspending the proceedings in the Supreme Court. I understood from Mr Bell that he would confer at length with you upon the question and then communicate with me. I am therefore somewhat surprised at your statement that Mr Bell declined to read the Statement of Claim originally prepared by me.

492. This statement of claim was prepared for the Validation Court (and under s 20 of the Native Land (Validation of Titles) Act 1893 as amended by 6 of the Native Land (Validation of Titles) Amendment Act 1894, proceedings in the Validation Court created a stay of proceedings in any other Court):

> I refrained from filing the Statement of Claim with the Registrar of the Validation Court in Wellington for the sole reason that I desired to hear the result of the consultation between yourself and Mr Bell. I have seen Judge Barton upon the matter and I am authorised by him to tell the Chief Judge that he is quite willing to act in the case and relieve Chief Judge Davy from the serious interruption which the hearing of the Mangaohane case in the Validation Court would afford to his ordinary work in the Native Land Court.

493. Rees was otherwise keen to pursue Studholme's interests in the Validation Court. He later added that he thought it was necessary to bring Mangaohane into the Validation Court 'in order to bring this long protracted litigation to an end'.[557] He was not opposed to the prohibition proceedings and expected to be successful and assist their

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[555] ibid., fols 203-204.
[556] Rees to Studholme, 8 March 1895, MS-Copy-Micro-0351-1 John Studhome Papers (copy of MS-Papers-0272, folders 1-21), Alexander Turnbull Library, Wellington.
[557] Rees to Studholme, 26 March 1895, MS-Copy-Micro-0351-1 John Studhome Papers (copy of MS-Papers-0272, folders 1-21), Alexander Turnbull Library, Wellington

application to the Validation Court. However, he was certain the Validation Court was the best route:

> Bell's opinion that there will be nothing to decide in the Validation Court is I think not fully considered by him. The fact is that this Court is of so strange a character and so utterly subversive of all ordinary legal principles and procedure that the orthodox mind regards it with suspicion and disfavour. I look upon it from a contrary point of view. Having for many years utterly failed to obtain justice in cases similar to yours from the ordinary tribunals of the Colony I find in the Validation Court one which can rectify grievances and find a single way to set things right which are now wrong. You need not therefore be supposed at the different of opinion between Mr Bell and myself.

494. He added in his conclusion that 'having experience of the wonderful powers possessed by the Validation Court I cannot forbear expressing the strongest opinion that it is a suitable Court for us to seek'. However, Bell wanted to pursue the Supreme Court proceedings and Rees was content to wait for the outcome of the Supreme Court proceedings 'as a few weeks delay will not matter much'.

495. April, a hearing at the Supreme Court required the return of many of the records to Wellington for the Court's use. In early April, the registrar was served with a subpoena by Bell, Gully and Izard issued by the chief justice requiring him to supply records and plans relating to the Mangaohane block, including all minute books. The registrar immediately sent telegrams to several judges asking for minute books and records they held to be returned to the Court office in Wellington so they could be conveyed to the Supreme Court. Judge Edger at Hastings received the following message:

> Mangaohane: have just received Supreme Court subpoena produce tomorrow all minute books and papers. Please cause all in your possession be forwarded first mail and let me know action taken.[558]

496. However, a second message was sent to the judge following discussions with Studholmes' solicitor:

> Mangaohane: Mr H.D. Bell states does not wish interfere with Mr Studholme's arrangement now before you and will dispense with production minute books if cannot be conveniently spared. Please not send, as requested in previous telegram.[559]

497. However, the judge's clerk had already sent them and advised this in a telegram noting that they would be required at Hastings again.[560]

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[558] Johnson to Judge Edger, 2 April 1895, 23/597 2 Mangaohane Correspondence File Volume 2, Maori Land Court, Whanganui.
[559] Johnson to Judge Edger, 2 April 1895, 23/597 2 Mangaohane Correspondence File Volume 2, Maori Land Court, Whanganui.

x SUPREME COURT PROCEEDINGS

498. In April 1895, counsel for Airini Tonore and Ani Kanara, H.D. Bell and P.S. McLean, appeared in the Supreme Court on a motion for a writ of prohibition. In these proceedings, Airini Tonore and Ani Karana were the plaintiffs and the defendants were: G.B. Davy, chief judge; Winiata Te Whaaro (representing a number of others who were to be added to the title for Mangaohane No. 2); Porokoro Kaweka (representing a number of others who were to be added with Noa Te Hianga to the title for Mangaohane No. 2); Rena Maikuku (representing a number of others who were added to the title for Mangaohane No. 2 following the rehearing); Wiremu Paraotene (representing a number of others who were included in the original title to Mangaohane No. 2); and John Studholme and W.P. Studholme (who had acquired interests in Mangaohane No. 2).[561] C.B. Morison appeared for two 'representative defendants' (Winiata Te Whaaro and another unidentified person).

499. This proceeding related to Winiata's application under s 13 and the motion was to prohibit the chief judge of the Native Land Court 'from making, signing, sealing or issuing an order, under section 13 of the Native Land Court Acts Amendment Act 1889, admitting the appellant and certain other Natives ot the ownership of a block of land known as Mangaohane No. 2'. The background given in the law report is generally consistent with the records of the Native Land Court as discussed above. It explains in detail the application by Winiata and the basis for it, the referral of the application by the chief judge to Judge Butler for investigation and a report, and it cites Judge Butler's report verbatim and sections of the chief judge's decision on the report and the application.[562]

500. Justice Richmond heard the motion in the Supreme Court in Wellington and gave his decision on 19 April. His initial focus was the scope of s 13 of the 1889 amendment act. Initially he contrasted it with the language of s 62 of the 1886 principal act and noted that the amendment widened the scope of the chief judge's powers. However, he could not accept that the clause provided scope for the chief judge to overturn or vary every decision of the Native Land Court as it would 'impliedly repeal' the

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[560] Holland to Johnson, undated, 23/597 2 Mangaohane Correspondence File Volume 2, Maori Land Court, Whanganui.
[561] 'Statement of Claim', 30 October 1894, MS-Copy-Micro-0351-2 John Studhome Papers (copy of MS-Papers-0272, folders 22-39), Alexander Turnbull Library, Wellington.
[562] *Winiata Te Wharo v Airini Tonore and another* (1895) 14 NZLR 209 (SC and CA) 214-216.

provisions relating to rehearings in both the principal act and the amendment. Every decision of the Court would be subject to the oversight of the chief judge. He found that the 'literal construction must therefore be abandoned as contrary to common-sense'. The next step, therefore, was to consider how the literal meaning of the clause was to be confined:

> There is, I think, only one way open. As it cannot have been meant that the Chief Judge should be at liberty to substitute his own opinion on the facts and the law for that of the original Judges, and to pronounce a new judgment, his power must be limited to the rectification of errors, whether of omission or commission, which, being inconsistent with, or foreign to, the true and proper intention of the Court, as expressed in its judgment, or as proved by other evidence, must be deemed to have occurred *per incuriam*. And, as the order to be made must be confined to setting right such errors, the error and its consequence must be of a definite nature, and must be particularised. Where the error is such as to affect the whole judgment, and to require for its remedy the exercise anew of judicial discretion upon the whole case, the original decision is, *ex vi termini*, not amendable.[563]

501. The chief judge should never substitute his opinion for that of the judge who made the order; he 'must be limited to giving effect to their opinion, as far as it is ascertainable in the ways already mentioned'. Justice Richmond cited other decisions of the Supreme Court to support his interpretation of the clause.

502. He went on to consider the decision of the chief judge and the order which flowed from it to assess whether it was consistent with his interpretation of s 13. He emphasized that the mistake alleged to have occurred – the inclusion of Pokopoko through the location of the southern boundary of the block when it was supposed to be excluded – affected an unknown area of land. It was not possible to correct what the judges had done because they did not know what part of the block was affected: 'They can never have had a mind upon the subject'. An order correcting the error under s 13 could not possibly be made because the nature and extent of the error was unknown even to the judges who made it. The only way to deal with 'their misapprehension would have opened for their determination fresh questions which they never approached, but would now necessarily, under any possible order which could be made, not equivalent to an order on rehearing be left open to future decision'. Justice Richmond concluded: 'Every error or omission within the section

[563] *Winiata Te Wharo v Airini Tonore and another* (1895) 14 NZLR 209 (SC and CA) 217.

must, in my opinion be a definite mistake capable of a definite and definitive correction by the amending order itself'.[564]

503. Justice Richmond agreed to the motion and issued a writ of prohibition to the chief judge.

xi WINIATA'S APPEAL TO THE COURT OF APPEAL

504. Winiata appealed this decision which was heard by the Court of Appeal the following month over five days. Its decision was given on 6 July. At the appeal hearing, Winiata was represented by Sir Robert South and Morison while H.D. Bell and P.S. McLean appeared for the respondents. The Court comprised the chief justice, Justice Williams and Justice Denniston. The decision of the Court was given by Justice Denniston.

505. His initial focus was the nature of any error or omission which was included in the scope of the clause. He noted that counsel for Winiata accepted that the chief judge's power was not without limits as found by Justice Richmond in the earlier proceedings. However, the decision suggests that counsel for Winiata had instead argued that the Supreme Court should not intervene in matters which were for the chief judge to determine:

> Accepting for the purpose of dealing with this case this common ground as correctly expressing the limitation of the meaning of "error" and "omission" as used in the section, the next question is whether the Supreme Court can be asked to consider in any case whether the Chief Judge has decided erroneously, either in fact or law, that on the facts as alleged or as found by him there has been an error or omission within such limitation. It is contended for the appellant that the Chief Judge has jurisdiction not only to ascertain the facts, but to decide whether such facts amount to error or omission within the statute – in other words, that it is the allegation of such error or omission, and not its existence, which gives him jurisdiction.[565]

506. Justice Denniston went on to review the particular circumstances which led to the s 13 relating to the inclusion of Pokopoko in Mangaohane No. 2. The Native Land Court fixed the southern boundary of the Mangaohane No. 2 so that it included Pokopoko when the Court intended to exclude land to the south of Pokopoko. He was most dismissive of the suggestion this was an error:

> Now, if the question is for this Court, we should, after having on this and on previous appeals heard the evidence for and against this alleged error discussed with extreme minuteness, find decidedly that no such error had been proved. The original judgment gives no indications of anything of the kind. It is extremely difficult to

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[564] *Winiata Te Wharo v Airini Tonore and another* (1895) 14 NZLR 209 (SC and CA) 220.
[565] *Winiata Te Wharo v Airini Tonore and another* (1895) 14 NZLR 209 (SC and CA) 225.

> arrive from outside evidence at another person's intentions. Neither of the Judges has ever admitted such error. We concur in the observations of Mr Butler, the Judge by whom the matter was last investigated, that there could be no reasonable doubt in the mind of the Court as to the position of Pokopoko settlement in relation to the points through which the boundary-line was drawn. It seems absurd to suggest that the Natives were not quite cognisant of such positions. The question of what the Court actually intended was one, in case of dispute, really to be determined by the Judges; but during the ten years during which this litigation has lasted we are not aware of steps having been taken at any of the numerous judicial investigations on the subject to obtain from either of these gentlemen a categorical answer to a question as to whether they did intend to exclude Pokopoko settlement as distinguished from Pokopoko forest or district.

507. Justice Denniston acknowledged, however, that the Court of Appeal could question the chief judge's finding on this point, at least in proceedings for prohibition. He therefore, despite this view, assume that the Native Land Court did originally intend to exclude Pokopoko from the block.

508. Justice Denniston agreed with Justice Richmond that it must be possible to determine error or omission with some accuracy and for a correction to be made without substituting the view of the chief judge in place of the original judges. He noted that counsel for Winiata accepted 'that if the only remedy is a rehearing the case is not within the section'. Justice Denniston emphasized that 'the error should be one which, at the time it is made, could have been rectified by the Court without further inquiry had it been made aware of the error'. He did not accept that the original judges could have dealt with the issue of Pokopoko without further consideration of its location and extent. Moreover, the chief judge's approach to dealing with the error he found, by including others in the title to Mangaohane No. 2, 'seems to us clearly unjustifiable'. The Native Land Court intended to leave the claims to this area of land undetermined. The alternative available to the Court was to draw a different boundary or determine Winiata's interest in the land. Justice Denniston was entirely confident that the Court 'certainly would not have done is what the Chief Judge has presumed it would have done, and has himself done – have inserted without investigation the names of the appellant and his numerous followers in the list of owners of the block'.[566] He was convinced that this action had 'serious consequences'.

509. He was highly critical of the chief judge's reasoning that the jurisdiction under s 13 was an equitable one and that the chief judge could amend the Court's orders on the basis of general principles of equity. He described this as 'both extravagant and

[566] *Winiata Te Wharo v Airini Tonore and another* (1895) 14 NZLR 209 (SC and CA) 230-231.

dangerous' (a phrase repeated in the penultimate paragraph of the decision). The Court of Appeal considered it was justified in prohibiting the chief judge when he 'misinterpreted the statute giving him jurisdiction, and thereby assumed a jurisdiction to do something not thereby authorised'. Justice Denniston applied these principles to the circumstances before him in the following comments:

> In the present case the Chief Judge is shown on the face of the proceedings to have declared the applicant and his followers to be owners in Mangaohane No. 2 on his own motion, without, investigation, and consequently without giving the parties whose interests are affected by such decision an opportunity of being heard. He has done so, as we have before pointed out, not as having himself erroneously decided, on the evidence, that they have proved themselves to be such owners, or even that the error lie had to correct was the not declaring them such owners, but as deciding that declaring them such owners was the only way to compensate them for a failure by the Court to investigate their claims to ownership. To do this he has assumed a right to, in effect, constitute himself a Court for investigating titles. All this appears on the face of the proceedings, in the judgment of the Chief Judge, taken with the statement in the application that the Native Land Court had never determined the claims of the appellant and his followers to the land. In doing so we think, as before said, that he misinterpreted the Act, and thereby improperly assumed a jurisdiction not given him by the statute. In many cases a prohibition on this ground would simply refer the matter to the Chief Judge; but in the present case he finds (and we think correctly) that no other order than that made by him is possible.[567]

510. The Court of Appeal also noted that s 13 required that the applicant have an 'ascertained interest' in the land which is the subject of the application for correction of an error or omission. However, in Mangaohane No. 2, the Native Land Court had either determined that Winiata did not have an interest in the block or specifically decided not to determine Winiata's interest in the land to the south of the block.

511. Lastly, in procedural terms, Justice Denniston observed that under s 13 the chief judge could either investigate the application and make a determination or delegate the investigation to a judge to make a determination. In this instance, the chief judge referred the application to Judge Butler who concluded that there was no mistake (because the boundary was deliberately drawn by the judge to exclude some of Pokopoko forest which was excluded). In consequence, the Court of Appeal considered the chief judge 'bound by the Judge's finding on the question referred'. The chief judge had not heard the evidence and could not substitute his judgment for that of the judge who had presided at the hearing. It is possible that the chief judge could ignore the report but he will still need to hold his own hearing with an assessor. However, in relation to Winiata's application, the chief judge had not done so.

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[567] *Winiata Te Wharo v Airini Tonore and another* (1895) 14 NZLR 209 (SC and CA) 233.

512. The power given by s 13 was to ‘ remedy an error or omission in a decision of order of a Court, not remedy errors or mistakes in the conduct or proceedings of the Court’. The appeal was dismissed and the writ of prohibition issued to the chief judge. Winiata and his people, who had been included in the certificate of title for Mangaohane No. 2, were once again excluded.

513. Sir Robert Stout with Morison obtained leave to appeal to the Privy Council after this decision was given.[568] Bell opposed the motion on behalf of Donnelly and Studholme. Winiata was required to provide security for costs. The newspaper report indicate there was some discussion as to whether prohibition should be issued and the Court decided not to ‘but that each party should be left in the same position with regard to other remedies as if application under section 13 of the Native Land Court Act had not been made to the Chief Judge of the Native Land Court’. During July and August, there was discussion between Studholme and his legal advisors about preventing Winiata from obtaining the necessary funds to provide security for the appeal to the Privy Council. However, there is no evidence that the appeal was pursued.

[568] *Evening Post*, 27 July 1895.

I FINAL STEPS

i COMPLETING TITLES

514. While this litigation continued from May through to early July, little progress was made in dealing with Studholme's application for certificates of confirmation. In mid-July, he wrote to the registrar regarding the partition of Mangaohane No. 1:

> I would be much obliged if your office could hasten on the 'issue' of these orders and would send them on to the District Land Registrar Wellington as early as possible. I am anxious to register my purchase of some of the partitioned blocks and a lease from the owners of other portions and can do nothing in the matter until the orders are completed and sent on.[569]

515. Fifteen orders dividing Mangaohane No. 1 were sent to the chief surveyor's office on 17 July for plans to be added but a file note indicates that the order for 1A was held back for Judge Butler's consideration. These orders were made on 31 January 1894 under s 4 of the Native Land Court Certificates Confirmation Act 1893 and superseded the earlier partition orders made by Judge O'Brien. By August, the registrar advised that the partition orders made by Judge Butler had not been signed and were still at the Survey Office so diagrams could be added to them.[570] They were received back on 23 August.[571] The order for 1A was yet to be processed at this time. They were passed on to Judge Butler for signature on 20 September and completed and returned by him on 7 November. They were signed by the assessor (H. Horomona) on 18 November. They were sent to the chief judge for signature on 6 December and signed by him on 9 December. Three copies of 1J and 1I were required for some purpose and these were signed by Judge Butler on 16 December.

516. On 19 November, Studholme had sent another request to the registrar indicating he was 'anxious to register my title to the blocks awarded me in Mangaohane No. 1 as soon as possible'.[572] He asked the registrar to forward the partition orders made by

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[569] Studholme to Johnson, 12 July 1895, 23/597 2 Mangaohane Correspondence File Volume 2, Maori Land Court, Whanganui.
[570] Johnson to Judge Edger, 22 August 1895, 23/597 2 Mangaohane Correspondence File Volume 2, Maori Land Court, Whanganui.
[571] Brown to Johnson, 23 August 1895, 23/597 2 Mangaohane Correspondence File Volume 2, Maori Land Court, Whanganui.
[572] Studholme to Johnson, 19 November 1895, 23/597 2 Mangaohane Correspondence File Volume 2, Maori Land Court, Whanganui.

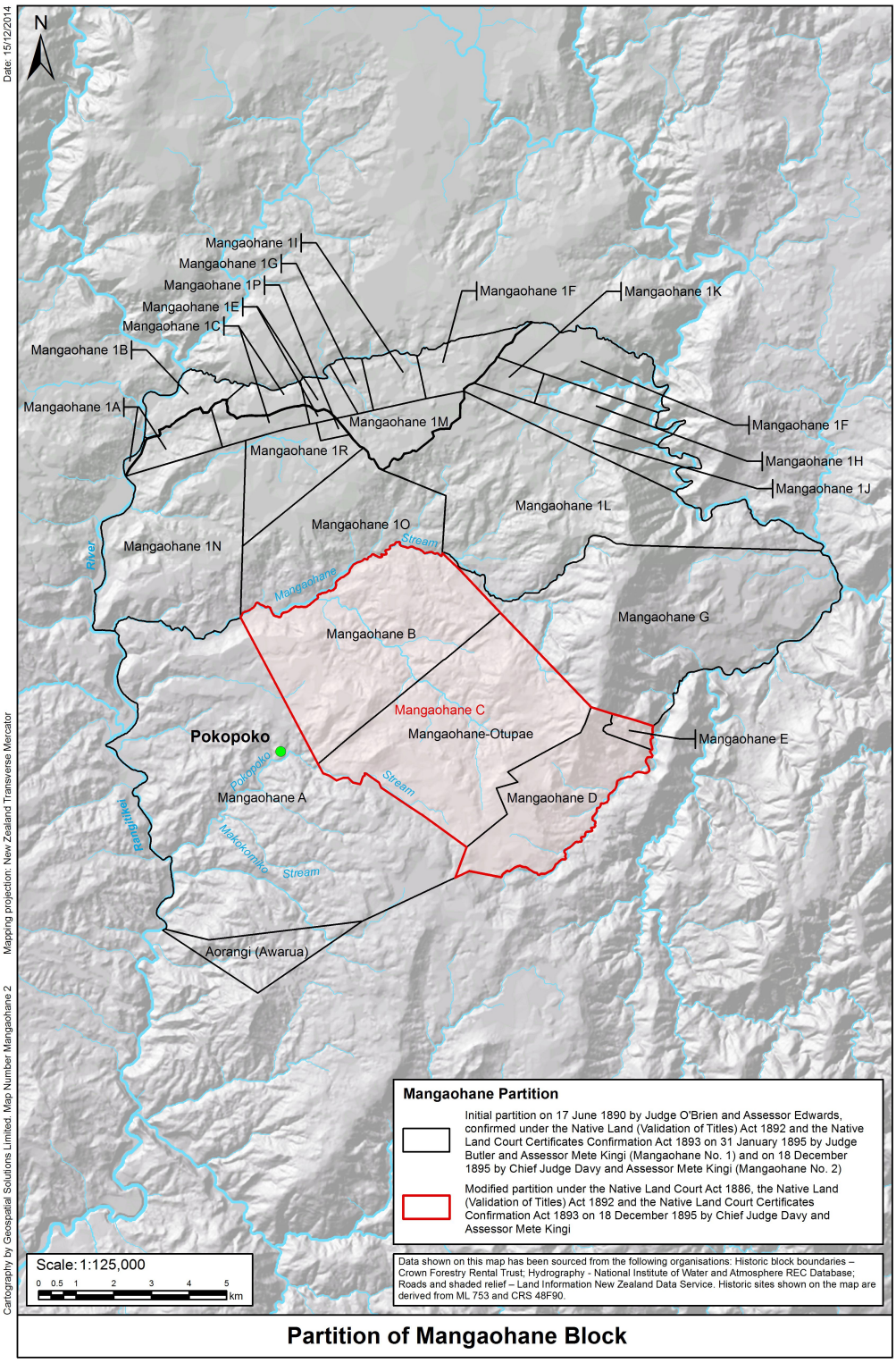

Figure 10: Partition of Mangaohane Block

Judge Butler to the district land registrar 'as soon as they are ready'. He also referred to s 21 of the Native Land Laws Amendment Act 1895. The registrar asked the chief judge for direction on this last point:

> In accordance with sec. 21 of the Native Land Laws Amendment Act 1895, orders will now be forwarded direct to the District Land Registrars, instead of to the Hon. the Minister of Lands for issue of titles. Please say whether, in cases where orders have only been engrossed and completed in duplicate, third copies will require to be prepared for transmission to the Minister in terms of Rule 64 or whether it will be sufficient in such cases to send a copy to Mr Samuel for notation and return, as has been done during the past twelve months in the case of memorials of ownership and certificates of title under Native Land Acts. For the future, of course, orders must in such cases be engrossed (and completed) in triplicate, in terms of Rule, but I am now referring to the case of orders made previous to the passing of the Native Land Laws Amendment Act 1895. Mr Studholme is anxious to get the partition orders in Mangaohane No. 1 sent forward with as little delay as possible, but they have only been engrossed and completed in duplicate.[573]

517. The chief judge did 'not think rule 64 applies in this instance' and no further action was taken.[574]

518. A sitting was convened at Napier before the chief judge and Assessor Takarangi Mete Kingi on 18 December.[575] At this hearing, the Court considered an application by R.T. Warren for certificates to be issued under the Native Land (Validation of Titles) Act 1893. Rees appeared on behalf of Warren, the applicant, and John Studholme Jr, who was described as 'assignee of the interest of the applicant'. Rees told the Court that the provisions of s 7 of the Native Land Court Certificates Confirmation Act 1893 had been satisfied and supplied two certificates of the registrar of the Supreme Court to demonstrate this. The Court made orders as requested, subject to the production of both the assignment to Studholme and powers of attorney between the Studholme brothers.

519. After dealing with this application, the Court moved on to consider an application by Airini Tonore for partition of Mangaohane No. 2.[576] McLean appeared for all the owners in Mangaohane No. 2 whom he described as Airini, Iraia Karauria, George Edward Richardson and John Studholme Jr. However, Rees also appeared for Studholme and submitted two transfer documents, from Rena Maikuku and others to

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[573] Johnson to Chief Judge Davy, 23 November 1895, 23/597 2 Mangaohane Correspondence File Volume 2, Maori Land Court, Whanganui.
[574] Chief Judge Davy to Johnson, 26 November 1895, 23/597 2 Mangaohane Correspondence File Volume 2, Maori Land Court, Whanganui.
[575] MLC 3 13, Archives New Zealand, Wellington.
[576] MLC 3 13, Archives New Zealand, Wellington.

Studholme and another form Ani Patu Kaikino and others to Studholme. A further document, an agreement regarding the partition of the block between the four owners, was supplied to the Court too together with a plan. McLean supplied other transfer documents, from Arapera Rangiteati and others to Airini and Iraia, from Iraia to Airini and from Ihimaera Karaka and others to Airini and Iraia. Lastly, there was a memorandum of transfer from Studholme to Richardson. The Court issued partition orders for the block the following day, on the basis of the agreement between the owners, without further discussion.

520. At the same sitting, a number of applications for charging orders for surveys were considered by the Court and approved.[577] The assistant surveyor general applied for orders for £602 12s 7d for Mangaohane No. 1 and £543 7s 1d for Mangaohane No. 2. These charges related to the initial survey of the Mangaohane block. According to the official from the Survey Office in Wellington who appeared in support of the application, the government had paid the surveyors and taken over the amounts owed. Kennedy also applied for charging orders for his survey for several of the subdivisions in Mangaohane No. 1 and he made a separate application for several of the subdivisions in Mangaohane No. 2. His claim was for £93 7s 4d in Mangaohane No. 1 and £247 14s 11d in Mangaohane No. 2. Finally, John Studholme applied for a charging order over several parts of Mangaohane No. 1. The amount was £366 14s 4d and Kennedy gave evidence in support of the claim. He had received £767 1s 11d from Studholme for his survey and Kennedy had assigned his claim for these blocks to Studholme. There were no objections to any of these applications and the Court issued orders for the amounts requested. Interest was also to be paid on the amounts owing to the applicants (the Crown, Kennedy and Studholme).

521. At the end of the year, Studholme was still waiting for the orders to be issued and he wrote again to the registrar regarding Mangaohane No. 1 and Mangaohane No. 2:

> I hope to arrive in Wellington about 10th January for the purpose of settling stamp duties, survey liens and finally registering my title to Mangaohane.
> As nothing can be done until the orders are ready for issuing I would be much obliged if you could make it convenient to have everything complete before the 10th.
> I know of no reason for delay and am anxious to see the final scene of this protracted business.[578]

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[577] MLC 3 13, Archives New Zealand, Wellington.
[578] Studholme to Johnson, 30 December 1895, 23/597 2 Mangaohane Correspondence File Volume 2, Maori Land Court, Whanganui.

522. On 10 January the deputy commissioner of stamps advised the registrar that all stamp duty and native land duty owing on the transfers relating to Mangaohane No. 1 and Mangaohane No. 2 had been paid.[579] The matter was referred to the chief judge who directed the registrar to issue the orders immediately.[580] This was arranged over the next few days.

ii INITIAL ATTEMPTS TO REMOVE WINIATA

523. On 19 March 1897, the sheriff at Wanganui wrote to the under secretary of the Justice Department at Wellington requesting police assistance for an operation to remove those residing on parts of Mangaohane near Moawhango:

> I have received two writs of possession for execution against natives in the Moawhango District, Winiata Te Wharo and Irimana Ngahou. The land is the Mangaohane A Block and part of Mangaohane G on the upper Rangitikei River containing in all 13,500 acres. I understand there are a number of natives now on it who with their stock have been there for many years and are not likely to leave quietly. I think it would be advisable to have some members of the Police present, say the constables from Raetihi, Ohingaiti, and Moawhango with Sergeant Cullen from Wanganui. If you concur would you please ask the Police Department to instruct the Inspector of this District.[581]

524. The request was referred to the Commissioner of Police, Arthur Hume, with a comment from the chief clerk of the Justice Department (Frank Waldegrave) that 'I think you should be cautious in granting police assistance in this case'.[582] The commissioner forwarded the request to Inspector McGovern with the comment 'I am of opinion that this somewhat unreasonable request should be refused'.[583] Inspector McGovern agreed:

> I consider it would be unwise to grant the within request.
> I sincerely hope Circular No. 4 of 13th March 1884 is still in full force and in no way made null or void. That is so far as it relates to civil writs of ejectment by Sheriffs. It is a circular which all Police Officers residing in Native Districts appreciate and I trust it will long remain in force.[584]

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[579] Deputy Commissioner of Stamps to Johnson, 10 January 1896, 23/597 2 Mangaohane Correspondence File Volume 2, Maori Land Court, Whanganui.
[580] Chief Judge Davy to Johnson, 11 January 1896, 23/597 2 Mangaohane Correspondence File Volume 2, Maori Land Court, Whanganui.
[581] Thomson to Under Secretary, 19 March 1897, J1 Box 578 1897/1039, Archives New Zealand, Wellington. Andrew Thomson was the clerk of the Wanganui Stipendiary Magistrate's and District Courts, deputy registrar of the Supreme Court, sheriff, clerk of the Licensing Committee and registrar of electors. He was born at Napier and had held various positions in court registries in Wanganui, Feilding and Wellington. *The Cyclopedia of New Zealand (Wellington Provincial District)*, Wellington: Clyclopedia Company, 1897, p. 1402.
[582] Waldegrave to Hume, 22 March 1897, J1 Box 578 1897/1039, Archives New Zealand, Wellington.
[583] Hume to McGovern, 23 March 1897, J1 Box 578 1897/1039, Archives New Zealand, Wellington.
[584] McGovern to Hume, 25 March 1897, J1 Box 578 1897/1039, Archives New Zealand, Wellington.

525. The circular referred to was issued on 13 March 1884 and stated:

> It having been brought to the notice of the Hon. the Defence Minister, that Lieutenant Colonel Lyon lately authorised two mounted constables to attend the Sheriff, Major Green, when proceeding to give effect to a civil writ of ejectment, he desires it to be known, that this should not have been done without his direct written authority, which in this particular case would not have been given, and that care must be taken in future, that assistance of this kind is not given, especially in cases in which Maoris are concerns, without authority as above.[585]

526. An unsigned file note requests further information from the police file on the basis for this circular and another unsigned response which advised the papers had gone missing but an official thought it was sent on the instruction of the then Native Minister, John Bryce, and was 'simply a memo' from him.

527. The sheriff sent another memorandum at the end of the month requesting a reply later in the week as he planned to set out early the following week and wanted to give the constables notice of the intended operation. He added:

> I understand the natives are not likely to cause any trouble if they see that the thing is being done under the authority of the government but otherwise there will probably be a good deal of difficulty.[586]

528. He also noted that:

> The government fees in the matter for poundage etc will amount I expect to £200 or £300 as the land I under is worth about £12,000.

529. Two days later, the sheriff was sent a response, from the commissioner of police, rejecting his request:

> … I have the honour to inform you that the matter has been referred to the Inspector of Police in charge of the Wanganui District and he is of opinion it would be unwise to grant the request and therefore I regret to have to refuse your application.
> In enclose a copy of a circular which was issued in 1884, and still remains in force.[587]

530. The following day, the sheriff sent a telegram to the under secretary of the Justice Department asking for the decision to be reconsidered:

> Police Commissioner says inadvisable to send Constables to Moawhango with me. I urge decision be reconsidered as I am informed natives will not leave unless they see it is no use objecting. If I fail in getting possession it will only make them more troublesome afterwards. Please wire me tomorrow if possible.[588]

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[585] See Circular 4/84 of the Commissioner of the New Zealand Constabulary, 13 March 1884, pp. 228-229, P-WG1 1, Archives New Zealand, Wellington.
[586] Thomson to Under Secretary, 31 March 1897, J1 Box 578 1897/1039, Archives New Zealand, Wellington.
[587] Hume to Thomson, 1 April 1897, J1 Box 578 1897/1039, Archives New Zealand, Wellington.
[588] Thomson to Under Secretary, 2 April 1897, J1 Box 578 1897/1039, Archives New Zealand, Wellington.

531. The chief clerk referred the telegram to the Minister of Justice, Thomas Thompson, with the following recommendation: 'I do not think that the sheriff should have the aid of the police in executing these writs'.[589] This was approved by the minister on 8 April and the sheriff was advised the same day.

Figure 13: Tautahi. This photo has been provided by the Ngāti Hinemanu me Ngāti Paki Heritage Trust. It is said to have been taken at the opening of the wharenui.

Figure 11: Tautahi Wharenui, 2014.

532. On 13 April, the sheriff provided a detailed report of his recent discussions with Winiata Te Whaaro.[590] It would appear the sheriff met with Winiata at Mangaone, just south of Taihape, at the whare commissioned by Winiata and built by Willoughby in 1896.[591] The whare was named Tautahi (Hinemanu's husband) opened on 30 June 1896 (the year prior to the sheriff's meetings). The sheriff acknowledged the most recent communication from the under secretary, which arrived after he had left to enforce the writs:

Figure 12: Entrance to the wharenui

> I had left to execute the writ before this last letter arrived but acting on the previous communication from the Commissioner of Police went along starting on the 6th April. I am sorry to say that my visit was unsuccessful as the defendant will not listen

[589] Waldegrave to Thompson, 6 April 1897, J1 Box 578 1897/1039, Archives New Zealand, Wellington.
[590] Thomson to Under Secretary, 13 April 1897, J1 Box 578 1897/1039, Archives New Zealand, Wellington.
[591] Morvin T. Simon, *Taku whare e. He mauri tu. My Home My Heart. The Spirit Dwells Still*, 2nd ed., Wanganui: Wanganui Regional Community College, 1991, p. 68.

> to any reason and says he will die before he leaves the land. He had about a dozen male natives with him and at least three guns and as I had no force with me at all I could do nothing. I commanded him and all the other natives to go and told them they would bring serious trouble upon themselves if they did not obey but it had no effect. Winiata himself does not usually live on the land in dispute but at another settlement near Taihape. I stayed with him there on the night of the 6th and explained everything to him and reasoned with him but his only answer was that he would wait till Mr Studholme's representative pointed out what he claimed. It takes three days to get on to the block which is just on the border of the Hawkes Bay Province well up the Ruahine Range and surrounded by very rough country. It contains about 13,000 acres worth £1 an acre but being so inaccessible there is no chance of getting assistance near at hand. If force has to be used to put the Maoris off as I am quite certain it will I shall have to take the men with me from inhabited parts. I propose to leave here again on the 27th instant for the purpose of executing the writ and would respectfully urge that I might be allowed to take Sergeant Cullen and Mounted Constable Shearman from here, Constable Black from Ohingaiti and Constable Jones from Moawhango with me. Although Winiata himself does not reside on the disputed land his son in law and about a dozen others do. I enclose a copy of the rough notes I made of the interviews I had with Winiata and would ask you to be good enough to let me have an answer as early as possible so that I may make arrangements. The Maoris will have to be shifted fully three miles over very rough country in bullock drays and I will have to see that these drays are in readiness. There only two mails a week to Moawhango and the disputed land is more than 20 miles further on.[592]

533. The notes show that he met with Winiata on three occasions during April:

> Waited on Winiata several times (3) and had long discussions with him on 8th, 9th and 10th. Finally on 10th (Saturday) in the morning showed him the map of block produced by Warren and explained it to him and pointed out how it agreed with the plan attached to the writ. He admitted they agreed and that he thoroughly understood it but insisted the Supreme Court had made a mistake in fixing the boundary line between Mangaohane Block and Aorangi Block and had altered the decision of the Land Court which is the highest Court for natives.
> I told him I could not go into the question as to whether any mistake had been made, that if he thought there was a mistake he must obey now and appeal to Government afterwards, that he and I were both subjects of the Queen, and that we must both obey her commands. That I proposed today to gather all the sheep and stock belonging to him and drive them over the boundary line of the Mangaohane Block and command him and all his people to remove off the Mangaohane Block and take all their things with them.
> He then replied by placing a bible on the ground with a gun beside it and also two £1 notes saying they were all the Queen's things. The Bible had brought peace and done away with bloodshed but that he would not go, that the money would buy things for the gun and the gun would make the blood flow.
> He then walked out refusing to discuss matters any more saying that he had given his answer. Towards end of discussion Winiata asked for production of writ. I did so and handed it to him. He handed it to his interpreter Mr Downes and when he found it was in English only he asked for the Maori one. I explained there was no need for it to be in Maori as it was for me and not for him but that either my interpreter (Mr Yates) or his (Mr Downes) could translate it to him. I showed him also the seals of the Court. He however would have nothing more to do with it and said there ought to be one for him in Maori and then closed the discussion as stated above.
> This and what is written on page 1 read by Mr Downes and admitted by him to be correct, I then gathered all the natives who were about into the room where we were, Winiata of course being away, and explained the whole matter to them, Mr Yates interpreting and Mr Downes being present, and told them I as representative of the

[592] Thomson to Under Secretary, 13 April 1897, J1 Box 578 1897/1039, Archives New Zealand, Wellington.

> Queen directed them that they were to remove from the block today and take all their things with them. I explained that I had asked the government if I should take policemen with me and that they relying on the loyalty of the Maoris and believing they would be true to the Queen had said not to take any. They all said they understood perfectly what was required. When I asked them if they understood they said yes. I asked them to talk to Winiata and get him to go quietly without making any trouble as if he did not the government would insist on being obeyed and Winiata and his people would into very serious trouble. I then left after telling Downes to get them to talk it over amongst themselves and come down to us at our house and tell us the result. A little after 1pm a messenger came from Winiata bring Letter A with £2 enclosed. I replied as per Letter B and shortly afterwards went up to Winiata again. Jones arrived just as we were going (Yates was the only one with me) but I thought it advisable not to take any constable. Just before we reached the whare the messenger met us with another letter (C) to same effect as A. We went into the whare and again tried to reason with Winiata staying nearly an hour. I again called on him to show his loyalty to the Queen and obey Her command as given in the writ but he resisted and said he would not go till his blood fell on the land. I then called on all the other to say if they would go. They would not answer, Winiata saying he was their chief and his answer was theirs. I then told them that if they did not answer I would consider they refused to go but still no one answered. I then said that Winiata and his people by their action had shown they were enemies to the Queen and that they would get into very serious trouble. I had previously reminded them of what Te Whiti had done and how he was imprisoned for it and said they would be treated in the same way as they were doing the same thing. We then left.[593]

534. Winiata's first letter was dated 10 April and marked 'Aorangi'. It reflected his earlier statements to the sheriff (the letter was written in te reo but a translation is attached):

> I gave you my bible and my money. That is the bible of the Queen. The Queen gave the bible between us all to finish all evil deed so that we may all live in love. This was done in the year 40. This indeed is the reason I gave you the money. Now as regards the gun and this indeed is the thing that will make the blood flow according to the command of the Queen. This indeed is the reason that I laid down the gun and the notes to finish the discussion between us both. You say I must go. I say I will stay till my blood is shed on this block.[594]

535. The sheriff's response emphasised obedience to the Queen:

> Your messenger has given me your letter. You say you will not go off the land. That is not right. Why should that be necessary? It is not right. The Queen wants a living subject. Even a lion when it is dead is no use. You must live and serve our good Queen many many years. I will come up very soon and move your things out of your house on the wagon. I shall be very sorry if you stop me for I will then have to write to Wellington and say you have disobeyed the Queen. That is not living in love but doing what an enemy would do.[595]

536. The sheriff also returned the £2 Winiata had sent him. Winiata acknowledged receipt of the money but again emphasised the symbolism of the notes rather than their financial value:

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[593] ibid.

[594] Winiata Te Whaaro to Thomson, 10 April 1897, J1 Box 578 1897/1039, Archives New Zealand, Wellington.

[595] Thomson to Winiata Te Wharo Winiata Te Whaaro to Thomson, 10 April 1897, J1 Box 578 1897/1039, Archives New Zealand, Wellington.

> The money I placed on the bible and the gun of the Queen. All those I placed in front of you. I also intend to place before the government so the government's Supreme Court can see for themselves what I intend doing. That is why I placed the money down as a sign. What I say is this. I shall bleed for my country.[596]

537. The same day, Winiata sent a letter to the premier, the Native Minister and members of Parliament. He explained his dealings with the sheriff:

> I have given all my property to the Queen's sheriff. This Bible and my moneys, that is to say the Bible given by the Queen with an injunction that evil should cease and love followed. This was done in the year 40 and that was why I gave you the pound.
> Now with regard to the gun it is this that will cause blood to flow and because of the Queen's fire.
> The reason why I laid down my gun and the pound was to cause wrangling to cease between us.
> Your word was that I should go, mine that I should remain that my own blood should be shed because of this block.[597]

538. The chief clerk issued an instruction that a reply should be sent to Winiata telling him to 'obey the law' and this was dispatched on 24 April.

539. At the end of April, the sheriff acknowledged a response to his earlier request, which is not located in the file, but noted that he would become liable for failing to execute the writ:

> I would beg to point out that a sheriff is liable to an action if he does not execute a write within a reasonable time and that it is no answer to such an action that execution was prevented by defendant for it is the duty of the sheriff, it would be answered, to raise the Posse Comitatus and execute the writ by force … By sections 9 and 10 of the Sheriffs Act 1883 a sheriff in New Zealand has the same powers and duties as a sheriff in England and I submit that includes the power to raise the Posse Comitatus. No doubt this power should be used so as to cause as little inconvenience as possible to Her Majesty's subjects but that I think is a strong argument for using the ordinary peace officers and not private men. I understand the members of the permanent artillery in Auckland were used for a somewhat similar purpose recently when the Maoris on Little Barrier Island were removed. The authorities say distinctly that anyone refusing to assist when required by the sheriff to assist is guilty of contempt and I would respectfully submit would also apply to one forbidding those over whom he has authority to assist. The execution of the writ of possession against Winiata has been delayed for a few days pending an application for a writ of attachment for contempt in refusing to obey the writ of possession. This will also come into my hands for execution and I would again urge that instructions given to Police Officers in Circular No. 4/84 be modified so as to place members of the force at my disposal.[598]

540. He asked for a prompt decision by the middle of the following week.

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[596] Winiata Te Whaaro to Thomson, 10 April 1897, J1 Box 578 1897/1039, Archives New Zealand, Wellington.
[597] Winiata Te Whaaro letter to the premier, the Native Minister and members of Parliament, 10 April 1897, J1 Box 578 1897/1039, Archives New Zealand, Wellington.
[598] Thomson to Under Secretary, 29 April 1897, J1 Box 578 1897/1039, Archives New Zealand, Wellington.

541. The under secretary referred this request again to the commissioner of police repeating his view that the sheriff 'must execute his writs without the assistance of the police'.[599] He believed the only circumstances where the police could become involved was to prevent a breach of the peace. However, it was the commissioner's responsibility and the papers were referred to him. The commissioner agreed and declined to agree to the request. He did note that he would do so if directed by the Native Minister.[600]

542. The under secretary sent a telegram to the sheriff repeating that police officers would not be involved in the matter.[601] He considered it 'quite clear that sheriff is not entitled to be assisted by Police'. The only circumstances where the police would get involved was to prevent a brief of the peace.

543. A few days later, the department received a long letter from Winiata regarding their response and one he had received from the premier:

> Friend, I have received the letter written by you and the premier in reply to my letter to him and have seen what you say in reply thereto and what you say with regard to the shedding of blood. Be clear then with regard to the meaning of that expression made use of by me with the Bible of the Queen's Church before me, through which the shedding of Maori blood was stopped in the year 1840, and through the exercise too of the Queen's 'mana' and the Treaty of Waitangi that there is the explanation of that word and the explanation of the blood shedding gun given by me Mr Thomson (the sheriff) is that they were all the Queen's things. Maori blood has however been shed since the Treaty of Waitangi, blood having been shed at Taranaki, that of Rangitahei and Te Aporotanga.
> Now, with regard to the functions exercised by the Supreme Court, acting under the law which can sit in judging people who have caused blood to be shed and cases dealing with cattle, horses and all other matters which are subject to the jurisdiction of the Supreme Court.
> But after the trouble at Taranaki a mediator was appointed for the Maori people namely the chief judge of the Native Land Court with his judges and assessors and the government gave him separate 'mana' (jurisdiction) such as the administration of the law affecting the land and the Maori people so that they may live in quiet.
> Friend, my trouble is with Mangaohane arising out the hearing of the year 1885. Subsequent thereto I submitted the matter to the Parliament by which it was rejected. After that I carried it to the Court of Appeal, whose decision was that it was the chief judge himself who should hear their own wrong decisions. I took it again into the Native Land Court, it was heard at Hastings and Court decided against men in favour of Ngati Whiti.
> I again took into the Supreme Court, their decision was that they had no power to deal with the difficulties of the Native Land Court. I then brought it before the Appeal Court whose decision was that it be referred to the Chief Judge to rectify those decisions. I again brought it before the chief judge in the year 1894. The hearing took place at Hastings and after its conclusion the decision thereon was given in Wellington upon the boundaries advocated by me at the hearing presided over by

[599] Waldegrave to Hume, 30 April 1897, J1 Box 578 1897/1039, Archives New Zealand, Wellington.
[600] Hume to Waldegrave, 1 May 1897, J1 Box 578 1897/1039, Archives New Zealand, Wellington.
[601] Waldegrave to Thomson, 4 May 1897, J1 Box 578 1897/1039, Archives New Zealand, Wellington.

> Judge O'Brien in 1885 and the chief judge then gave judgment in my favour. Messrs Studholme and Donnelly then stepped in to bring it before the Court of Appeal with a view of upsetting the chief judge's decision. Friend it is not I who commit a breach of the law but it is your Pakehas who are doing so because the Supreme Court had already decided that it had no jurisdiction when I brought it before it and the Supreme Court have themselves traversed their own decision and the decision of the chief judge. The chief judge had the assistance of an assessor and I do not understand the action of our friend Studholme at the present time.
> I have been keeping within that law during these years past and that is why I did not attend upon the Supreme Court summons issued on the application of Mr Studholme and his lawyers during these days because I am quite clear about the work of the Supreme Court for I have not done anything wrong that I should now be judged as one who has shed blood but that it is the premier who should judge me under the Queen's mana.
> May God have us both under His safe keeping under the 'mana' of our Lord Jesus Christ and under the 'mana' too of the Queen, for ever and ever, Amen.[602]

544. In a reply sent a few days later, the under secretary responded to Winiata's statements regarding the legal process:

> I have received your letter about Mangaohane.
> You say that the Supreme Court has no jurisdiction over the land, but only the Native Land Court. Now that is wrong, the Supreme Court has jurisdiction over all the land whether it belongs to the Pakeha or to the Maori. The Supreme Court is the Court of the Queen, and when it says that a person must leave the land, then that person must do so. But my friend if the Native Land Court only has jurisdiction over the land, as you say, why did you appeal from it to Parliament and to the Supreme Court and the Court of Appeal. Is it not foolish talk to say that the Court has jurisdiction only when its judgement is in your favour and that it has no jurisdiction when its judgment is against you?
> Now listen to me. This talk about not obeying the law is bad. The Court has said that the is Studholmes', and you must let him have it. If the Court had said the land was yours, would you let Studholme have it?
> My word to you is this. Obey the law which is above all, lest evil come upon you.[603]

545. The sheriff at Wanganui wrote again to the under secretary on 5 May:

> I am in receipt of your wire of yesterday saying Police Department decline to afford Police assistance and that the only duty they could have in the matters would be to prevent a breach of the peace. I think my report shows that on this ground their presence would be very desirable as there is every prospect of a serious breach of the peace unless the natives see that it is useless. I am not however asking for the men as policemen only but as subjects of Her Majesty who are liable to be called on to assist in such a matter as this. At present they have instructions that they are not to accompany a sheriff without first obtaining leave. I grant it is quite right that the department should be communicated with before an officer leaves his place and that was the reason I communicated with you in the first instance. I submit however that members of the Police force are not exempted from being called on, as part of the 'posse comitatus', to assist in the execution of writs. I am in this position that if I call on the Police even as a portion of the posse comitatus they will refer me to their instructions and I therefore ask that it should be made plain to them, even if the department will not allow them to go as policemen, that they are liable, as members

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[602] Winiata Te Whaaro to the Justice Department, 3 May 1897, J1 Box 578 1897/1039, Archives New Zealand, Wellington.
[603] Waldegrave to Winiata Te Whaaro, 7 May 1897, J1 Box 578 1897/1039, Archives New Zealand, Wellington.

> of the posse comitatus, to the call of the sheriff, and I submit that it is not allowable for anyone to forbid them.[604]

546. In response to this memorandum, the under secretary simply stated that he had 'nothing to add to my previous communications on the subject'.[605]

iii WINIATA'S ARREST

547. A draft letter from Studholme to Donnelly's solicitor on 13 May 1897, written from Wanganui, indicates that writs of attachment had been issued by the chief justice and delivered to Sergeant Cullen.[606] Studholme's letter states that the chief justice 'hesitated' in issuing the writs to Cullen 'and all other constables for enforcement' but decided to do so at Bell's request. It would appear the chief justice's initial preference was to issue the writ to the sheriff. Sergeant Cullen, with the sheriff and another constable, were preparing to leave on Tuesday and expected to arrest Winiata that night. Studholme was to meet with Warren that night at Ohingaiti to make arrangements to remove Winiata's property. He was heading south the following day and was leaving for Australia shortly afterwards for some weeks. Studholme mentioned that it was planned to drive the sheep off the block across the Rangitikei river. He wrote at some length on matters relating to the cost of evicting Winiata from the land, noting in particular that he thought Winiata had very little 'realisable property besides the sheep' and he doubted that any cost order against Winiata would produce anything.

548. Just over a week later, Stout and Findlay wrote to the acting colonial secretary (James Carroll) noting that Winiata had been released and that he had been brought to Wellington by police to appear on a contempt of court charge before the chief justice in the Supreme Court.[607]

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[604] Thomson to Under Secretary, 5 May 1897, J1 Box 578 1897/1039, Archives New Zealand, Wellington.
[605] Waldegrave to Thomson, 11 May 1897, J1 Box 578 1897/1039, Archives New Zealand, Wellington.
[606] Draft letter to McLean, 13 May 1897, MS-Copy-Micro-0351-1 John Studhome Papers (copy of MS-Papers-0272, folders 1-21), Alexander Turnbull Library, Wellington.
[607] Stout to Carroll, 21 May 1897, J1 Box 578 1897/1039, Archives New Zealand, Wellington. In a recent issues and discussion paper on reform of the law of contempt in New Zealand, Professor A.T.H. Smith provides some useful context to this process. He notes that 'The expression "contempt of court" refers to a body of rules, principles, procedures and practices enabling the courts to protect the administration of justice through the use of summary processes. Originally developed through the common law, it has been supplemented historically by Parliaments over the years, including the New Zealand Parliament, but the law of contempt in New Zealand is essentially still to be found in the interstices of the common law' (p. 8). He argues that the 'most characteristic feature of the contempt

549. On 21 May, Bell reported to Carlile and McLean on the recent contempt proceedings before the chief justice in the Supreme Court.[608] Sergeant Cullen arrived with Winiata on the evidence of Wednesday 19 May. The following day was a court holiday and, according to Bell, some time was spent in discussion with the chief justice as they tried to find a registrar. However, it was also unclear whether the registrar 'had jurisdiction to sit on a holiday'. Cullen had advised the parties to the proceedings 'that Winiata had eaten nothing since his arrest two days before, and we did not want him to die on our hands'. A hearing was arranged for Thursday afternoon but they were subsequently advised 'that Winiata had eaten a hearty meal' so the hearing was adjourned to Friday morning. When Winiata was 'brought up' for the hearing, he asked for an adjournment until the following Tuesday. Bell reported:

> This the Chief Justice would not listen to unless he could procure bail, and eventually Mr Bell suggest that if the Court adjourned till 3 o'clock Winiata could be kept in custody in a convenient room in the watch-house (he had spent the last two nights in the cells) and could there see some Solicitor. The Chief Justice advised him to see a lawyer at once, and it happened that Sir Robert Stout was in Court and Winiata sent for him. Thereupon a long series of negotiations took place between Sir Robert Stout and Mr Bell, Mr Carroll also being present.

550. Winiata had asked to allow his sheep to stay on the land until after shearing but Bell refused to entertain this request. He did agree that Studholme would fence a burial site at Pokopoko. Bell also allowed Winiata to remove personal property from some dwellings on the land when the tracks were in better condition to allow them to be transported away. These undertakings were given by Bell without consulting

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jurisdiction is that it is summary; it is intended to authorise prompt intervention by judge alone when the ordinary processes are regarded as being too slow and cumbersome to protect the processes of justice' (p. 8). A civil contempt is committed by non-compliance with court orders in the course of civil litigation. Professor Smith suggests that where 'failure to comply with a court order was persistant and defiant, the purpose has increasingly come to be seen as metamorphosing into a punitive process', at which point, the proceedings became criminal 'in character'. (p. 9). That is, there is the issue of enforcing court order but there is also a separate proceeding which is punitive where the court order cannot be enforced which is considered contempt. However, the method for dealing with contempt is distinct from those for dealing with ordinary criminal offences in that the process is summary, the judge determines facts, determines guilt and decides sentences (that is, prosecutes, is witness and judges), and there were no limitations on sentencing until recently (p. 10). It is important to note that sentence may be indefinite until compliance with the court order is given (and that occurred in this instance with Stout's statement to the Court). Moreover, Professor Smith notes, in general terms, that civil contempt of court is designed to 'compel compliance with a court order … through the threat of sanctions' (p. 98). Sanctions available to the court include imprisonment, fines or sequestration of property. If litigants refuse to comply with court orders, 'the proceedings begin to take on a more public dimension, in the sense that it is in the public interest that court orders should be obeyed. The more wilful and defiant the refusal to comply, the more the proceedings become criminal in character'. (p. 98). See A.T.H. Smith, 'Reforming the Law of Contempt of Court: An Issues/Discussion Paper', 18 April 2011.

[608] Bell, Gully and Bell to Carlile and McLean, 21 May 1897, MS-Copy-Micro-0351-1 John Studhome Papers (copy of MS-Papers-0272, folders 1-21), Alexander Turnbull Library, Wellington.

Studholme but he 'though it politic to give way to Mr Carroll upon two questions which are evidently of not much importance and which might have enabled the Government to suggest that Winiata had been treated without gross harshness'.

551. Stout represented Winiata at the hearing that afternoon where an order was made by consent. Bell did not expect 'further trouble of any kind' following his discussions with Winiata with Stout and Carroll present. He concluded that the chief justice 'very impressively warned Winiata that the law must have the last word'. However that went to Winiata who, after hearing the translation of the order that the bill of costs should be sent to Stout, agreed to this proposal but asked the chief justice to direct Stout to pass it on to the government for payment.

552. Press reports also show that Winiata was taken to Wellington and came before the chief justice on 21 May. The *New Zealand Herald* included a report from the press association on 22 May 1897. It was prepared the previous day:

> In the Supreme Court a Maori named Winiata Te Whaaro was brought up in custody before the Chief Justice to answer for contempt. Winiata was arrested last Tuesday evening by Sergeant Cullen in the back country along the Rangitikei River, and was brought to Wellington. He has been concerned in a long course of litigation with the Messrs Studholme, the well-known runholders, about a block of land at Mangaohane, of which Winiata claims about 4000 acres. The Court finally decided that he had no title. An action for his ejectment followed, to which he did not plead. The Supreme Court issued a warrant for Winiata's arrest for contempt, which was executed. On appearing Winiata applied for an adjournment of the proceedings until next Tuesday, in order that he might consult his friends and a lawyer. Later in the day Sir R. Stout appeared for Winiata and said his client would not interfere further with the steps taken to obtain possession.[609]

553. Towards the end of May, the *Wanganui Herald* published a report of the events which led to Winiata's arrest. It appears to be an eye-witness account:

> The particulars in connection with the arrest of the Maori Winiata Tawhaio, [sic] at Mowhanga [sic] for contempt of court are somewhat interesting. Last month Mr A.D. Thomson, sheriff, went to Moawhanga for the purpose of serving that native with a writ, the Supreme Court having decided that the land (13,000 acres on the Ruahine range) was the rightful property of Mr Studholme. Mr Thomson had long discussions with Winiata on the 8th, 9th and 10th April. Finally, on the morning of the latter date, the sheriff informed Winiata that he proposed to gather all the sheep and other stock belonging to him and drive them over the boundary, and command him and all his people to remove off the block and take all their belongings with them. The old man replied by placing a Bible on the grounds with a gun beside it, and all took two £1 notes, saying they were all the Queen's things. The Bible had brought peace and done away with bloodshed, but that he would not go; that the money would buy things for the gun, and the gun would make the blood flow. He then walked out refusing to discuss matters any more with Mr Thomson. The latter, in company with Sergeant Cullen and Constables Shearman and Black, went up last week, unknown to

[609] *New Zealand Herald*, 22 May 1897.

> the natives, for the purpose of arresting Winiata for contempt of court. The old man refused to submit to such an indignity, and violently resisted the efforts of the police to handcuff him. Winiata's wahine and several of his daughters came to the rescue and belaboured the police with palings, sticks and stones. Their efforts were, however, unavailing, for Winiata was overpowered and taken away. The sheriff then gave orders for the stock to be removed. Some 6000 sheep were mustered and driven over the boundary, and the houses and whares of the family were demolished.[610]

554. Part of the Supreme Court proceedings were also reported by the *Evening Post* immediately after Winiata appeared before the chief justice. Winiata had addressed the Court on the question of costs:

> An ingenious argument for evading costs was put forward in the Supreme Court yesterday afternoon by Winiata Te Whaaro, the elderly Maori brought down from Mangaohane for resisting the Sheriff in his attempt to evict him from land to which the Courts have found he has no title. "I think the Government ought to pay these moneys," said Winiata, through his interpreter, "because according to the Acts brought in by this Government no private individual is to be allowed to acquire native lands, and the Crown alone is to have pre-emptive right. Now there is a new states of things, and the Government is backing up the purchase of the Messrs Studholme." Mr Bell, counsel for the Messrs Studholme, hastened to explain that his clients obtained this land long before the amendment Act referred to came into existence. Winiata, however, argued that the Government was a party to the present transaction, in as much as it permitted private persons to acquire native land. Therefore he contended, the Government ought to bear the costs, instead of him. The Chief Justice said somebody would have to pay the costs. Winiata might try to get them out of the Government if he would, but, in the meantime, the order would be that he was to pay the costs, the bill to be served on Messrs Stout and Findlay, defendant's solicitors, for taxation. Winiata, determined to have the last word, said he hoped the bill would be passed on to Mr Carroll.[611]

555. The question of costs was taken up by Winiata's counsel in correspondence with government ministers. Bell, solicitor for various parties in the proceedings including the Studholme brothers, had told the Court during the course of the hearing that the government or the police department had charged £10 in costs for bringing Winiata to Wellington.[612] The chief justice had 'said that he supposed the Government would not charge expenses, as the action was taken by the Police'. Stout and Findlay asked the colonial secretary to ensure the costs of police were not imposed on him given 'the large costs to which Winiata has been put, and that he has lost his land'. Neither the under secretary nor the commissioner of police had any objections to this proposal, which was put to the Native Minister and approved.[613] The commissioner of police

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[610] *Wanganui Herald*, 26 May 1897.
[611] *Evening* Post, 22 May 1897. Taxation of costs was the administrative process of the Court in determining the costs to be paid by the litigant who failed in any proceedings. The process is based on a bill of costs supplied by the successful litigants.
[612] Stout to Carroll, 21 May 1897, J1 Box 578 1897/1039, Archives New Zealand, Wellington.
[613] Waldegrave to Carroll, 22 May 1897, J1 Box 578 1897/1039, Archives New Zealand, Wellington.

replied to Stout and Findlay at the end of the month to advise that his department had agreed to waive their claim to costs.[614]

556. In early June, Winiata wrote to James Carroll to complain of his treatment by the sheriff and Warren when they removed the property of his children and set fire to some of the dwellings on the land and, in doing so, destroyed other property of his children.[615] Two guns had also been taken by Warren. It would appear that a telegram he had received from Carroll, possibly referring to the costs question raised by Winiata's counsel, had angered Winiata:

> The action of the Sheriff and Te Warana [Warren] … was bad work in taking the property of my children and breaking down the houses and setting some of them on fire by which some of my children's property was destroyed by fire … I do not understand your telegram saying 'it is well'. Is it the destruction by fire that is well? And the taking away of the two guns by Te Warana? That is why I do not understand what is meant, when you say 'it is well'.[616]

557. Hune would describe the property that had been lost. Finally, Winiata advised the minister that he wished to remove his dead from the property. A copy of this letter was sent by Carroll to Bell together with a statement from Hune regarding the property which had been left. Carroll observed:

> Between ourselves I am very sorry for old Winiata.
> I think you should write to Studholme suggesting that some compensation be given to the old chap so that the may not feel that we in some way broke faith with him.[617]

558. A document signed by Hune Rapana stated that five houses were burnt and three cooking houses broken down. In addition, one tub, 50 bags of wool, two boxes of soap for washing wool and two tins of paint were lost in the fire.[618]

559. The following month, Bell reported to his client that he had given an undertaking that Winiata could remove his personal property from Pokopoko. He advised 'that a Judge is always reluctant to send a man to prison for contempt' and added 'that it was very much better for us that Winiata should submit that that we should have to press for a

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[614] Hume to Stout and Findlay, 26 May 1897, J1 Box 578 1897/1039, Archives New Zealand, Wellington.
[615] Winiata Te Whaaro to Carroll, 7 June 1897, MS-Copy-Micro-0351-1 John Studhome Papers (copy of MS-Papers-0272, folders 1-21), Alexander Turnbull Library, Wellington.
[616] Winiata Te Whaaro to James Carroll, 7 June 1897, MS-Copy-Micro-0351-1 John Studhome Papers (copy of MS-Papers-0272, folders 1-21), Alexander Turnbull Library, Wellington. This letter was preserved in the Studholme Family Papers as a copy was sent to Studholme.
[617] Carroll to Bell, 17 June 1897, MS-Copy-Micro-0351-1 John Studhome Papers (copy of MS-Papers-0272, folders 1-21), Alexander Turnbull Library, Wellington.
[618] Hune Rapana to Studholme Jr, 7 June 1897, MS-Copy-Micro-0351-1 John Studhome Papers (copy of MS-Papers-0272, folders 1-21), Alexander Turnbull Library, Wellington.

commitment'. Bell refused Winiata's requests to be allowed to remain on the land for a further period.[619] He assured Studholme that the final details would be 'all fixed up in a short time', concluding 'I sincerely hope that this is the end of the Mangaohane trouble, and that you may now be able to reap the benefit of the fight that you have carried on with so much determination and patience'.

560. In response to a request by Studholme for a report on what transpired at Pokopoko, the sheriff advised that the whare were burnt down and the tin houses 'were destroyed'.[620] According to the sheriff:

> We considered it advisable to do so to prevent Winiata and his people coming back to live in them. We searched them all carefully before destroyed them and took everything out of them and sent them to Waikari. None of the contents of the houses were destroyed as far as I know. Winiata too had notice from me some time previously that he was liberty, if he so desired, to remove all the houses and their contents except the building near the new hut put up by you but would not do so. I did not see any bags of wool. There were eight (8) bales and these were all sent to Waikari. I did not see any of the other things mentioned in Hune's list but they may have been amongst the rest of the things. We found a number of guns in the whares at the Pokopoko and two I think in the house by your hut but they were all sent down to Waikari's with the rest of the things.

561. Warren was involved in removing Winiata's property from Pokopoko and he too reported to Studholme on what happened. He had spoken to Carroll about Winiata's letter and reported that Carroll was 'fully justified that Winiata's charge was groundless'.[621] He insisted that all the property was removed from the 'huts' and Winiata's homestead and taken by bullock and dray 'across the Rangitikei to Waikari's pah'. Winiata's people were also given the opportunity to dig up their potato crop and remove the houses and their other stock. According to Warren, the property was cleared the day after Winiata was arrested but before he arrived Wellington. The letter also indicates that Warren was present at the sheriff's earlier discussions with Winiata at Mangaone.

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[619] Bell to Studholme, 19 July 1897, MS-Copy-Micro-0351-1 John Studhome Papers (copy of MS-Papers-0272, folders 1-21), Alexander Turnbull Library, Wellington.
[620] Thomson to Studholme, 3 August 1897, MS-Copy-Micro-0351-1 John Studhome Papers (copy of MS-Papers-0272, folders 1-21), Alexander Turnbull Library, Wellington.
[621] Warren to Studholme, 21 July 1897, MS-Copy-Micro-0351-1 John Studhome Papers (copy of MS-Papers-0272, folders 1-21), Alexander Turnbull Library, Wellington.

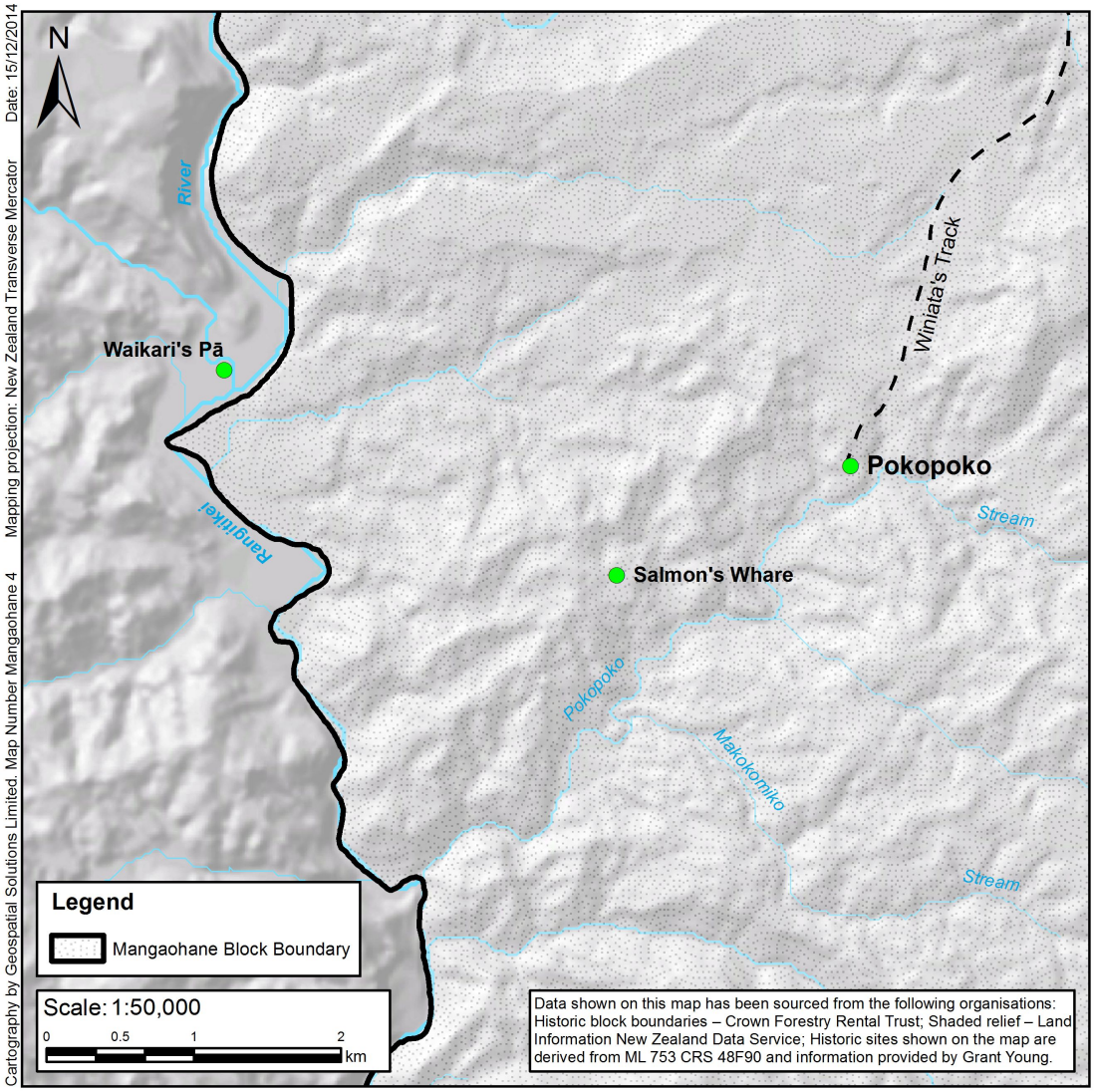

Figure 14: Location of Waikari's Pā.

iv COSTS

562. Nearly two months later, the expenses associated with the police action were the subject of a letter from Bell, Gully and Bell who provided further details on what had happened to Winiata.[622] According to these solicitors, 'a Writ of Attachment was issued by the Supreme Court directing the police to arrest and bring the defendants, Winiata, to Wellington'. The firm's representative at Wanganui paid Sergeant Cullen £10 to offset the expenses associated with enforcing the writ. Apparently the government had agreed to refund this amount and Bell, Gully and Bell requested approval of the payment of this amount. Initially the commissioner asked the local inspector to confirm the amount had been paid. Inspector McGovern advised that

[622] Bell, Gully and Bell to the Commissioner of Police, 21 July 1897, J1 Box 578 1897/1039, Archives New Zealand, Wellington.

Sergeant Cullen had informed him that the costs of taking Winiata to Wellington had been paid but he could not specify the amount and he would not be able to supply this information until the sergeant returned from leave. Payment was eventually arranged by the commissioner.[623]

563. The chief justice awarded costs of £88 3s against Winiata in the proceedings. According to his solicitors the amount was considerably larger but had been reduced through their submissions. Winiata had instructed them to approach the government regarding payment:

> Winiata asked that they should be submitted to the Government and that they will be paid by the Government and no claim made upon him.
> The Hon. Mr Carroll is aware of the circumstances attending Winiata's arrest. It is a case which aid we think should be given to this Native. He has lost his land and stock unjustly we think and by the blunders of the Native Land Court he has been denied redress. Under the circumstances we think considering the great loss he has sustained, it is a case in which the Government might give some relief.[624]

564. The under secretary did not believe the government should meet the cost:

> I see no reason why the government should pay these costs. Winiata practically set the law at defiance; he refused to give up occupation of the land and defied the sheriff to turn him off; and it was not until he was arrested and brought before the Supreme Court that he gave up the fight. The costs of the arrest were defrayed by the government.[625]

565. The minister, Premier R.J. Seddon, approved this response and instructed the under secretary to reply to Stout and Findlay.[626] It is not clear if the file was mislaid or if other negotiations were in progress but it took the premier just under nine months to issue this decision. It is not clear from the file that the response was sent either and it is probable that the request was filed.

566. However, Stout also approached Bell about the costs and explained Winiata's financial position:

> … the Sheep and other property he has is mortgaged and he has nothing wherewith to pay anything. He therefore asks that Mr. Studholme should not seek to insist upon costs. When it is considered that Winiata has lost everything, and that even those who were against him in the land fight believe that he was entitled to some portion of

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[623] Hume to Bell, Gully and Bell, 5 October 1897, J1 Box 578 1897/1039, Archives New Zealand, Wellington.
[624] Stout and Findlay to the Native Minister, 31 August 1897, J1 Box 578 1897/1039, Archives New Zealand, Wellington.
[625] Waldegrave to Seddon, 9 September 1897, J1 Box 578 1897/1039, Archives New Zealand, Wellington.
[626] Seddon to Waldegrave, 3 June 1898, J1 Box 578 1897/1039, Archives New Zealand, Wellington.

> the land – Mr. Carroll for instance – we think that Mr. Studholme would be doing a graceful and generous act.[627]

567. In October 1897, Stout, Findlay and Co further advised Bell, Gully and Bell that they had met with Winiata regarding the payment of Studholme's costs. Winiata had advised them that 'he really has no means whatever, the Sheep and other property he has is mortgaged and he has nothing wherewith to pay'.[628] Winiata had asked Studholme not to insist on costs. They added:

> When it is considered that Winiata has lost everything, and that even those who were against him in the land fight, believe that he was entitled to some portion oft he land – Mr Carroll for instance – we think that Mr Studholme would be doing a graceful and generous act if he were to intimate that he would not seek to insist upon payment of costs from Winiata.

568. Against the advice of his legal advisors, Studholme chose this course (although another letter from his solicitor suggests Studholme did not believe Winiata 'deserved' any 'consideration').[629]

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[627] Carlile and McLean to Studholme Jr, 8 July 1897; Carlile and McLean to Studholme Jr, 14 July 1897, MS-Copy-Micro-0351-1 John Studhome Papers (copy of MS-Papers-0272, folders 1-21), Alexander Turnbull Library, Wellington.
[628] Stout, Findlay and Co., to Bell, Gully and Bell, 8 October 1897, MS-Copy-Micro-0351-1 John Studhome Papers (copy of MS-Papers-0272, folders 1-21), Alexander Turnbull Library, Wellington.
[629] Bell to Studholme, 19 July 1897; Bell to Studholme, 29 October 1897, MS-Copy-Micro-0351-1 John Studhome Papers (copy of MS-Papers-0272, folders 1-21), Alexander Turnbull Library, Wellington.

J AORANGI (AWARUA)

569. There remains one last footnote to address. Aorangi, later known as Aorangi (Awarua), was initially called on by the Court on 11 December 1896.[630] This was the small area in the south of Mangaohane which was excluded from the Court's decision of 1885. It was advertised for hearing the previous day but Utiku Potaka had sent a telegram requesting an adjournment, which was granted, and no one else appeared. There was no one in attendance the next day either and the Court adjourned the application for a further week when it would either proceed or be dismissed.

Figure 15: Aorangi Maunga, partly located in Aorangi (Awarua), 2014

570. The block came before the Court again at Hastings in August 1910 when Fraser appeared before Judge Gilfedder and advised that the block 'had been virtually disposed of'.[631] He expected to have a list of names for the title order later that day. Iria Maru appeared on behalf of Hera Te Upokoiri, the applicant, and supported these submissions noting that 'Ngati Hinemanu were the only persons entitled'.[632] However, when the applicant was called again on 25 August, no one appeared and it was adjourned.[633] She appeared later in the day and claimed the land through Hinemanu.[634]

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[630] Napier Native Land Court Minute Book 41, 11 December 1896, fol. 32.
[631] Napier Native Land Court Minute Book 62, 18 August 1910, fol. 72.
[632] ibid.
[633] Napier Native Land Court Minute Book 62, 25 August 1910, fol. 92.
[634] Napier Native Land Court Minute Book 62, 25 August 1910, fol. 94.

Others asked to be included in the title while Winiata Te Whaaro set up a claim in opposition to that of Hera's claim through Te Marua Kainuku who descended from Te Rangiwhakamatuku and Te Ngahoa (who was one of the tipuna for Awarua). He described Aorangi as part of Awarua.

571. The hearing resumed in May 1911 at Hastings but at the request of various parties was adjourned to the July sitting, as Hiraka Te Rango was engaged in the Court sitting at Wanganui but also apparently so the records for Koau could be obtained and reviewed.[635] However, when the Court called the application on 9 August, the records had not arrived and the hearing was further adjourned to the next sitting of the Court.[636]

572. Further proceedings followed on 15 March 1912 at Taihape before Judge Rawson (assessors no longer required to comprise the Court).[637] Kanapu appeared for Hiraka Te Rango and people he described as 'partly Ngati Hinemanu, Ngati Paki, Ngati Te Upokoiri, Ngati Tamakorako and Ngati Hauiti' while A.L.D. Fraser appeared for Ngāti Hinemanu. The applicant was Hera Tupokoiri who was represented by Fraser. Another application by Kingi Topia had previously been dismissed (though Kanapu applied to withdraw it at this hearing). Fraser noted that Mangaohane was located to the north of the block, Awarua to the south and Koau to the east. His submissions focused on the proceedings relating to Awarua No. 1 and Koau (which included a decision by the Native Appellate Court which upheld the Native Land Court's decision in favour of Ngāti Hinemanu). He insisted that Ngāti Hinemanu were awarded the land on the east side of the Rangitikei River while Ngāti Whiti were awarded the land on the west side of the river. Aorangi should therefore be awarded to Ngāti Hinemanu.

573. The Court gave an interlocutory decision on 20 March.[638] The judge decided at Aorangi should be awarded to the same owners as in Koau and the northern part of Awarua No. 1. It adjourned the hearing to Hastings for further consideration and completion of the lists. Judge Gilfedder took up the case again at Hastings in mid-

[635] Napier Native Land Court Minute Book 62, 12 May 1911, fol. 264; 15 May 1911, fol. 279.
[636] Napier Native Land Court Minute Book 62, 9 August 1911, fol. 352.
[637] Wanganui Native Land Court Minute Book 62, 15 March 1912, fol. 79.
[638] Wanganui Native Land Court Minute Book 62, 20 March 1912, fol. 96.

September 1912.[639] There was some discussion among counsel representing different parties as to the status of Judge Rawson's interlocutory decision as one of them wished to revisit the title orders for Koau. After hearing submissions, the Court adjourned the hearing to allow the parties to consider the issues further. Hera Te Upokoiri appeared two days later and insisted the land belonged to Ngāti Hinemanu. Fraser also addressed the Court regarding the ownership of adjoining lands.[640] Scannell appeared on behalf of the Te Whaaro whānau (whose inclusion was opposed by Hera). They believed Koau and Aorangi belonged to the same people. There was opposition to the inclusion of the Te Whaaro whānau in Koau but the Native Appellate Court had decided in their favour. There were further discussions involving several parties before the Court decided 'to adhere to the list of names as settled in Koau'.[641] This was confirmed two days later despite objections to some of those in the Koau list and requests by others to be included. The Court also decided that the relative shares in Aorangi would be calculated according to the proportions in the Koau block.[642]

[639] Napier Native Land Court Minute Book 64, 16 September 1912, fol. 201.
[640] Napier Native Land Court Minute Book 64, 18 September 1912, fol. 209.
[641] Napier Native Land Court Minute Book 64, 18 September 1912, fol. 210.
[642] Napier Native Land Court Minute Book 64, 20 September 1912, fol. 226.

K CONCLUSION

574. In the long history of litigation pursued by Winiata Te Whaaro and others in pursuit of their interests in Mangaohane, two key issues stand out:

- The southern boundary of the block was not surveyed prior to the title investigation by the Native Land Court in late 1884 and early 1885 and was not publicly notified until 1893 (when it was confirmed without opposition);
- The transactions negotiated by R.T. Warren on behalf of the Studholme brothers in 1885 and 1886, on the basis of the Court's interlocutory decision, could never be converted to a legitimate title as they were in breach of the Native Land Amendment Act 1883 (although a notice was issued, the period for applying for rehearings had not yet expired and the chief judge had not dealt with all applications for rehearing) and they also contravened the Native Land Act 1873 (as required by the Native Land Court Act 1880).

575. These transactions could only be given effect to by special legislation which was first enacted in 1889. Further similar legislation was passed in 1892 and 1893 before it was incorporated into the consolidation of native land legislation in 1894. The long delays in giving effect to these alienations meant that the land was still subject to the jurisdiction of the Native Land Court and therefore the possibility that Winiata and his people could have their interests in Mangaohane acknowledged remained.

576. The initial step which put Mangaohane into the Native Land Court process was the application, in September 1880, for authorisation to survey the block. This application was submitted by a Napier surveyor on behalf of Hiraka Te Rango and others. Despite the concerns of a Crown official about the survey of the land, authorisation was given in January 1881. Opposition to the survey was immediate and prevented progress. There was some suggestion at this time that the Native Land Court could proceed on the basis of a sketch plan.

577. The Native Land Court prepared to consider Hiraka Te Rango's application for a title investigation at Napier in February 1882 but, according to W.L. Buller (who represented Renata Kawepo) he refused to present any evidence or produce the plan and the claim was dismissed. It appears little progress was made on the survey before the hearing and there is later evidence which suggests the plan was in a very preliminary form and had not been approved for use by the chief surveyor.

578. Unlike Hiraka's application, Renata's application for investigation of title was not dismissed by the Court in February 1882, even though the survey had not been completed. Renata's counsel, Buller, was keen to proceed on the basis of a sketch plan, an incomplete diagram of the land which was not properly surveyed on the ground. This was permitted under the Native Land Court Act 1880 but ss 27 to 30 had to be complied with before ss 31 to 32 applied and a certificate of title issued under s 33 (after the period during which an application for rehearing could be made).

579. In support of his request to proceed on a sketch plan, Buller insisted that the boundaries were well defined by geographical features but most importantly he acknowledged that the southern boundary was not well defined and would need to be surveyed. This was not done prior to the Court's hearing, which proceeded on the basis of a survey plan with a very poorly defined southern boundary. It does not appear from the records that the southern boundary was cut on the ground.

580. Renata, through Buller, asked for permission from the chief surveyor to prepare his own sketch plan. They were evidently unable to use Hiraka's plan and further permission was given. A compiled plan prepared by W. Ellison and Son of Napier was submitted to the chief surveyor by Buller in August 1882 for provisional certification under s 15 of the Native Lands Amendment (No. 2) Act 1878. This was given nearly twelve months later in August 1883. A request for a further authorisation to conduct a survey, in March 1883, on behalf of Winiata and others was rejected by the chief surveyor as two surveyors had already been authorised.

581. The Native Land Court's hearing for Mangaohane commenced at Hastings on 18 November 1884 and continued until 27 February 1885. The land was awarded to Ngāti Whiti and Ngāti Honomokai and part was excluded from the Court's decision. The relationship between the southern boundary of the block and the location of Pokopoko would be the source of much litigation in the following twelve years. Ngāti Hinemanu's claim was dismissed but no reasons were given.

582. In the months which followed, four applications for rehearing were received by the chief judge. He referred them to the judges at the original hearing for their reports. Judge O'Brien's report was a long and detailed defence of the Court's decision which included a small sketch showing Pokopoko on the southern boundary of the

Mangaohane block (locating the southern boundary of the block well north of its final location using the description given by the Court as later survey). This sketch would be repeated by the chief judge in reports on petitions from various parties.

583. It is important to note that in later evidence, during the rehearing of Mangaohane No 2, the judge, who was called as a witness at the rehearing, initially insisted that his report, though based on his recollection at the time, was accurate. However, when question further he subsequently appeared to assert it was not necessarily reliable and regarded the sketch it contained as questionable. During this evidence, he indicated that thought Pokopoko was to be excluded by the Court but emphasised the lack of knowledge about the location of sites on the block. Despite Judge O'Brien's statements at this hearing about the report and the sketch, however, they had been used in earlier proceedings (in dealing with the rehearing applications and petitions) and treated as accurate and authoritative.

584. In dealing with the rehearing applications, the chief judge convened a sitting before him at Hastings to consider three of them. The decision which followed this hearing was given on 1 May 1885 and the three applications were dismissed. They were the applications of John Sheehan on behalf of Araputa Takamoana, Winiata Te Whaaro, Utiku Potaka and others and Airini Tonore, Iraia Karauria and Teira Tikatai.

585. While he considered the points raised in each of the applications, and rejected their complaints, after considering the statutory provisions he doubted he had jurisdiction to deal with the applications as they were 'premature and irregular' as orders had not been made. A formal order dismissing all applications relating to Mangaohane was issued on 28 May and this was published in the *New Zealand Gazette* the following month. The notice did not specify which applications had been dealt with.

586. However, two applications for rehearing (those of Te Rina Mete and Ema Retimana) were still in the registrar's office and had not been considered. A sixth application, from Utiku Potaka, was received by the Court in January 1886. These had to be dealt with before a notice under s 7 of the Native Land Laws Amendment Act 1883 which would allow private parties to deal with the land. This notice was issued on 11 June 1885 with effect from 21 July. The notice lifted a prohibition on dealings with the land but was issued, contrary to the statutory requirements, prior to the chief judge

dealing with all the rehearing applications. In addition, given his finding on the rehearing applications (that they were premature and irregular) it would be many years before the period for applying for a rehearing expired.

587. While these applications for rehearing were being disposed of, the representatives of those awarded the land in the Court's decision were keen to have the block partitioned. This required the external boundary to be surveyed (to complete the Court's initial orders) and the internal boundaries to be surveyed (for the partition orders). Documents passing between officials in September 1885 suggest that negotiations to alienate the land had already begun.

588. The survey commenced towards the end of 1885 but in the face of sustained protest which led to the arrest of unidentified people. The charges against them were dismissed following a hearing before the chief justice in the Supreme Court in Napier in December 1885 on the basis that the appropriate authority to undertake the survey was never given by the surveyor general. The survey proceeded from February 1886 and the plan was ready for examination by the Survey Office in April. It was approved at the end of that month and sent on to the Native Land Court (though the Survey Office subsequently realised that the provincial boundary had to be added to the plan and surveyed on the ground and refused to return orders to the Court until this work was completed). The actual cost of the survey was £462 but the government claimed a lien of £1,108 4s 2d on the basis of the rates specified in cl 41 of the Native Land Court Regulations.

589. During 1886, Noa Te Hianga of Ngāti Hinemanu (also known as Noa Huke) petitioned the House of Representatives for a rehearing of the title to Mangaohane. The Native Affairs Committee of the House was doubtful about the complaint but recommended an inquiry and Robert Stout, the premier and attorney general asked for the partition proceedings to be 'stopped meantime'. The chief judge insisted he had no power to do this but no progress was made in the Court as the survey of the proposed subdivision had not been completed. The chief judge did not believe that Noa had suffered any injustice in the proceedings and rejected his request for a rehearing. He insisted that Ngāti Hinemanu's claims had been considered by the Court and rejected for sound reasons.

590. Attempts from mid-1887 to partition the block foundered because the surveyor general would not allow the plan to be used without the consent of the Studholme brothers. This meant that the title orders for the block, based on the Court's decision in 1885, had not been issued either. Partition could not proceed until these title orders were issued. Indeed, the plan could not be consulted for any purpose without their consent and it had never been subject to the inquiry required under the Native Land Court Act 1880. This process would not be completed until February 1893.

591. In June 1888, Warren gave conditional consent on behalf of the Studholme brothers but this was interpreted as a refusal by the chief surveyor. Little progress was made on the partition by the Court despite efforts by John Studholme to lobby the government and increasingly impatient directions from the Native Minister to the chief judge. Until it became clear that it was the question of consent to use the plan which was delaying the proceedings, no further progress was made. In October 1889, further delay was caused after it was found that part of the block was located in the Hawkes Bay Province and the land district boundary needed to be added to the plan and marked on the ground.

592. John Studholme finally provided the necessary consent on 10 May 1890 and the certificates of title, which had been sent to the chief surveyor for the endorsement of plans in 1888, were sent to Judge O'Brien on 12 May for his signature. This was in response to considerable pressure from senior officials and Studholme and despite the chief surveyor's direction that the certificates of title should be retained until the additional work he required on the survey was done. The orders were signed by Judge O'Brien even though he identified discrepancies in the description of the block and the lists of names.

593. The first partition hearing was held at Hastings in April and May 1890 when the block was divided. Final orders were made in June. Several rehearing applications followed and there were also questions about whether land acquired by Warren on behalf of Studholme could be directly vested in them on partition. A question of law was sent to the Supreme Court by Judge O'Brien in July 1890. All other proceedings were halted in the meantime and no further progress was made on the partition (in late November, the question was answered in the negative). The chief judge noted on at least one of the rehearing applications that it was premature as the partition was not

complete, though another was returned to the applicant with a request for two matters to be addressed.

594. In early October, a notice was printed in the *New Zealand Gazette*, signed by the Studholme brothers, setting out the details of their application under s 20 of the Native Land Court Acts Amendment Act 1889. This was their first attempt to validate the deeds Warren had negotiated on their behalf in 1885 and 1886. These applications would not be pursued, however, as the decision of the Court of Appeal the following year prevented any action on them. John Studholme would later obtain Validation Court decrees for the deeds under successor legislation. This was necessary because the deeds did not meet the requirements of the Native Land Act 1873 (as required by the Native Land Court Act 1880). The question of the notices issued under the Native Land Laws Amendment Act 1883 was noted in a petition by J.F. Studholme but it was not a matter considered in the Validation Court proceedings or a deficiency noted by the Court in its decisions.

595. At the Court of Appeal's hearing for Winiata's motion for certiorari in May 1891 several grounds for overturning the title orders for Mangaohane which were made in 1885 were advanced. However, it was the chief judge's dealings with the rehearing applications which led the Court of Appeal to grant the motion. As noted, the chief judge did convene a hearing for three of the rehearing applications and heard from the applicants for their representatives. Winiata's was one of those. However, two of the applications had been dealt by the chief judge without hearing submissions and the Court of Appeal found that they had not been dismissed 'according to law'.

596. Following this decision, the chief judge, with an assessor, sat at Hastings in February 1892 to consider the applications for rehearing from Te Rina Mete and Ema Retimana (whose application was pursued by Rena Maikuku). Throughout these proceedings, legal representatives appearing for Airini Tonore and political supporters of Studholme worked assiduously to narrow the proceedings as far as possible to exclude Winiata from pursuing his claims any further. The question was even debated in the House of Representatives and amendments to legislation were proposed to achieve this though they were not formally considered by the House. One of Studholme's legal representatives, who was also a member of the House of Representatives, participated in these debates.

597. In any event, these moves were rendered unnecessary, first by the decision of the chief judge's inquiry in April 1892, which allowed a partial rehearing for Mangaohane No. 2 only, and the subsequent decision of the Native Land Court during the rehearing, given in April 1893. The Court adopted a very narrow interpretation of the chief judge's decision and excluded Winiata's claims from consideration at the rehearing. The Court decided, in its interpretation of the chief judge's order, that it would not hear the claims of all those who descended from Te Ohuake but only those who descended from Tamakorako through the same line as Rena Maikuku. This decision and the substantive decision of the Court to include an additional 30 names in the title were both subject to further litigation in the Supreme Court 1893.

598. Neither succeeded and Winiata's appeal of the Supreme Court's decision on his motion to the Court of Appeal, heard in 1894, was also dismissed. An observation by Justice Williams in the course of his decision noted that an appeal to the Court of Appeal on the construction of an order of the Native Land Court 'is to appeal from a qualified to an unqualified tribunal'. The qualified tribunal may make a mistake 'but the unqualified tribunal can have no certainty whether the former has or has not gone wrong, or if, and how far, and in what manner it should be set right'. He concluded 'we are really unable to pronounce with certainty on the questions raised, but if we are compelled to pronounce with certainty I can only say I see no sufficient reasons to dissent from the opinion of the Supreme Court'. It appears Winiata planned to appeal this decision to the Privy Council and obtained the necessary leave but there is no evidence that an appeal was pursued.

599. It was during the Native Land Court rehearing, in February 1893, that the Court finally moved to approve the original survey plan for Mangaohane. After a period during which a tracing was displayed in Hastings (while the Court was dealing with the rehearing) and objections could be lodged with the Court's registrar in Wellington, the Court confirmed the boundary of the block. No objections to the boundary were raised. In later proceedings, Winiata's legal representative insisted that the Court could not have remedied the question of Pokopoko and the southern boundary while counsel for Airini Tonore argued that it would have been the correct forum to raise these complaints.

600. Certificates of title for Mangaohane No. 1 (but not Mangaohane No. 2) were finally completed in June 1893. It is not clear that the certificates of title for Mangaohane No. 2 were ever completed, though it was probably not necessary under the legislation later used to partition the land.

601. In September, a report was prepared under the Native Land (Validation of Titles) Act 1892 which dealt with Studholme's deeds relating to Mangaohane. His application was for a certificate of the Court recommending the validation of his purchases in the block. The 'irregular' nature of the transactions was explained in the report which concluded that they were 'in all other respects' 'bona fide' and that a certificate should be issued. This recommendation had to be confirmed by a further enactment of Parliament and was included in the Native Land Court Certificates Confirmation Act 1893.

602. Before any of the deeds could be given effect to, an application for the rehearing of the partition of Mangaohane had to be dealt with and certificates of title had to be issued for Mangaohane No. 2. At this time, it appears Studholme was considering negotiating a compromise with Winiata. He was keen to complete his title and avoid further litigation. However, nothing came of it.

603. The chief judge considered the rehearing application in May 1894 but it was dismissed on the basis that there were doubts about the Court's jurisdiction and the possibility that s 4 of the Native Land Court Certificates Confirmation Act 1893 provided a suitable remedy for adjusting the partition. The following month, the Court, with Judge Butler presiding, heard Warren's application for confirmation relating to Mangaohane No. 1. Its decision was given at the end of January 1895 when the block was partitioned under s 4 of the Native Land Court Certificates Confirmation Act 1893 and s 7 of the Native Land (Validation of Titles) Act 1892. The scheme of partition adopted that decided on in 1890 by Judge O'Brien (with one small modification).

604. Before progress could be made on the partition of Mangaohane No. 2, in June 1894, Winiata submitted an application to the chief judge under s 13 of the Native Land Court Act Amendment Act 1889. The application alleged the Court had made an error in including Pokopoko in Mangaohane No. 2 when, as set out in the decision given in

1885, it intended to leave this area of the block outside the scope of the decision. The chief judge referred the application to Judge Butler and the Court held an inquiry at Hastings in July and August. A report was sent to the chief judge in early August which rejected Winiata's claim that an error had been made. However, after considering this report at a sitting of the Court in Hastings later in August, and hearing from the representatives of the parties, the chief judge declined to accept this finding and instead decided an error had been made. He considered his powers under s 13 at some length before ordering that the list of owners for Mangaohane No. 2 should be amended to include Winiata Te Whaaro and those who claimed with him.

605. Following this decision, Studholme wanted to come to negotiate a compromise with Winiata for either land or cash. However, his legal advice was that he should seek prohibition from the Supreme Court. It appears he rejected this advice but Donnelly did not wish to compromise and wanted to initiate proceedings in the Supreme Court. When they did commence, in April 1895, Studholme was joined as a defendant with Airini Tonore and Ani Kanara as plaintiffs. The Supreme Court decided that the chief judge had exceeded his statutory jurisdiction and granted the writ of prohibition preventing the chief judge from issuing the order. Winiata and his people were once again excluded from the title to Mangaohane No. 2 (and Pokopoko).

606. Winiata's appeal to the Court of Appeal was heard the following month and the judges gave their decision in July. They affirmed the Supreme Court's decision and dismissed the appeal. Justice Denniston gave the Court's decision which agreed that the chief judge had exceeded his jurisdiction in attempting the correct the error he had found. However, in contrast to Justice Williams' comments in earlier proceedings noted above, Justice Denniston considered he could find that no error had been made. While Justice Williams did not consider the superior courts had the capacity to review decisions of the Native Land Court, Justice Denniston insisted there was no error though he admitted that it was not known whether the Native Land Court intended to exclude the settlement at Pokopoko from its decision. His thinking on this point appears both at odds with accepted practice in the superior courts and contradictory. As with the earlier decision of the Court of Appeal, leave to appeal to the Privy Council was obtained but there is no evidence that further action was taken.

607. Through the rest of 1894, the Native Land Court was also occupied in the partition of Mangaohane and the validation of Studholme's deeds. There remained confusion about the status of the partition orders for the two parts of Mangaohane. It was also discovered, in the rush to have the deeds dealt with, that Judge Butler was not authorised to make orders under the Native Land (Validation of Titles) Act 1892. The certificates were therefore void and the judge could not be authorised as the legislation was subsequently repealed and replaced.

608. With the completion of the litigation in the Supreme Court and Court of Appeal, steps were taken to partition Mangaohane No. 1 and No. 2 and complete the validation of Studholme's deeds so he could obtain titles. Further hearings in the Native Land Court were held to partition the block and award parts to Studholme and others. The partitions were completed under the Native Land (Validation of Titles) Act 1892 and the Native Land Court Certificate Confirmations Act 1893. By early 1896, he had obtained titles to the land, including Pokopoko.

609. The Crown gave preferential treatment to Studholme in that it passed legislation on several occasions which he could use to give effect to deeds that were otherwise invalid. As has been noted elsewhere, he was very well connected with key judicial and political figures and with officials in government departments. While there is no clear evidence of corruption on their part, he and his legal representatives frequently wrote to and spoke to judges of the Court dealing with his applications and with other officials of the Court.

610. In contrast, although Winiata's interests in Mangaohane No. 2 were eventually recognised by the Native Land Court, it was found by the Court of Appeal to have acted without jurisdiction. The legislation the chief judge attempted to use to give effect to his decision did not provide him with the power to include Winiata and his whanau in the title. Legislation enacted by the Crown gave one man a mechanism to have his interests in Mangaohane recognised in a title while another statute did not permit the other to have his customary interests acknowledged.

611. In March 1897, preparations were made to remove Winiata from the land. Civil proceedings had been taken by Studholme to obtain trespass orders and they had been given to the sheriff to enforce. His requests for police assistance were repeatedly

denied but the sheriff made no progress in his negotiations with Winiata. He and Winiata met and exchanged letters in April but he was unable to convince Winiata to withdraw.

612. The following month, the chief justice issued a writ of attachment to Sergeant Cullen and police constables generally to arrest Winiata and bring him before the chief justice for contempt of court. This occurred in the second half of May when Winiata was arrested and taken to Wellington. He remained in custody for several days until he was brought before the chief justice and, after negotiations between the parties involving James Carroll, was released. According to press reports, Winiata's counsel, Sir Robert Stout, told the Court that Winiata would not go back on the land. In his absence, his property was removed, the dwellings at Pokopoko destroyed by fire and the sheep were driven off the land. There is no clear evidence to show what happened to the sheep.

613. There is one last footnote to these proceedings. Between 1910 and 1912, the Native Land Court dealt with the Aorangi (Awarua) block, the small part of Mangaohane excluded from the Court's 1885 decision. There was general agreement that this land belonged to Ngāti Hinemanu and the Court awarded the block to the owners of Koau, an adjacent block. Winiata Te Whaaro and his whānau were among those included in the title (earlier attempts to exclude them from Koau were rejected by the Native Appellate Court).

APPENDIX: ALIENATION OF MANGAOHANE

Partition	Area acres: roods: perches	Alienation Process
1A	502:2:10	Aotea District Maori Land Board to Guy Lansdowne Shaw. NOTE: includes 1D.
1B	509:2:22	Subject to an order under the Native Land (Validation of Titles) Act 1892 and the Native Land Court Certificate Confirmations Act 1893 on 31 January 1895 vesting the block in John Studholme Jr.
1C	720	Aotea District Maori Land Board to Guy Lansdowne Shaw.
1E	328	Aotea District Maori Land Board to Guy Lansdowne Shaw.
1F	1966	Aotea District Maori Land Board to Guy Lansdowne Shaw.
1G	240	Probate of will of owner granted to Conrad Bryan Heatley and Eliza H. Blake in May 1908. Subsequently transferred to Conrad Bryan Heatley (Transfer 67395A) and registered on 2 May 1908.
1H	681	Aotea District Maori Land Board to Guy Lansdowne Shaw.
1I	480	Maori landowners to Guy Lansdowne Shaw (confirmed by the Aotea District Maori Land Board).
1J	1072:3:08	Subject to an order under the Native Land (Validation of Titles) Act 1892 and the Native Land Court Certificate Confirmations Act 1893 on 31 January 1895 vesting the block in John Studholme Jr.
1K	300	Maori landowner to Guy Lansdowne Shaw (confirmed by the Aotea District Maori Land Board); balance of interests in block alienated in the 1970s.
1L	6000	Subject to an order under the Native Land (Validation of Titles) Act 1892 and the Native Land Court Certificate Confirmations Act 1893 on 31 January 1895 vesting the block in John Studholme Jr.
1M	893	Subject to an order under the Native Land (Validation of Titles) Act 1892 and the Native Land Court Certificate Confirmations Act 1893 on 31 January 1895 vesting the block in John Studholme Jr.
1N	3920	Subject to an order under the Native Land (Validation of Titles) Act 1892 and the Native Land Court Certificate Confirmations Act 1893 on 31 January 1895 vesting the block in John Studholme Jr.

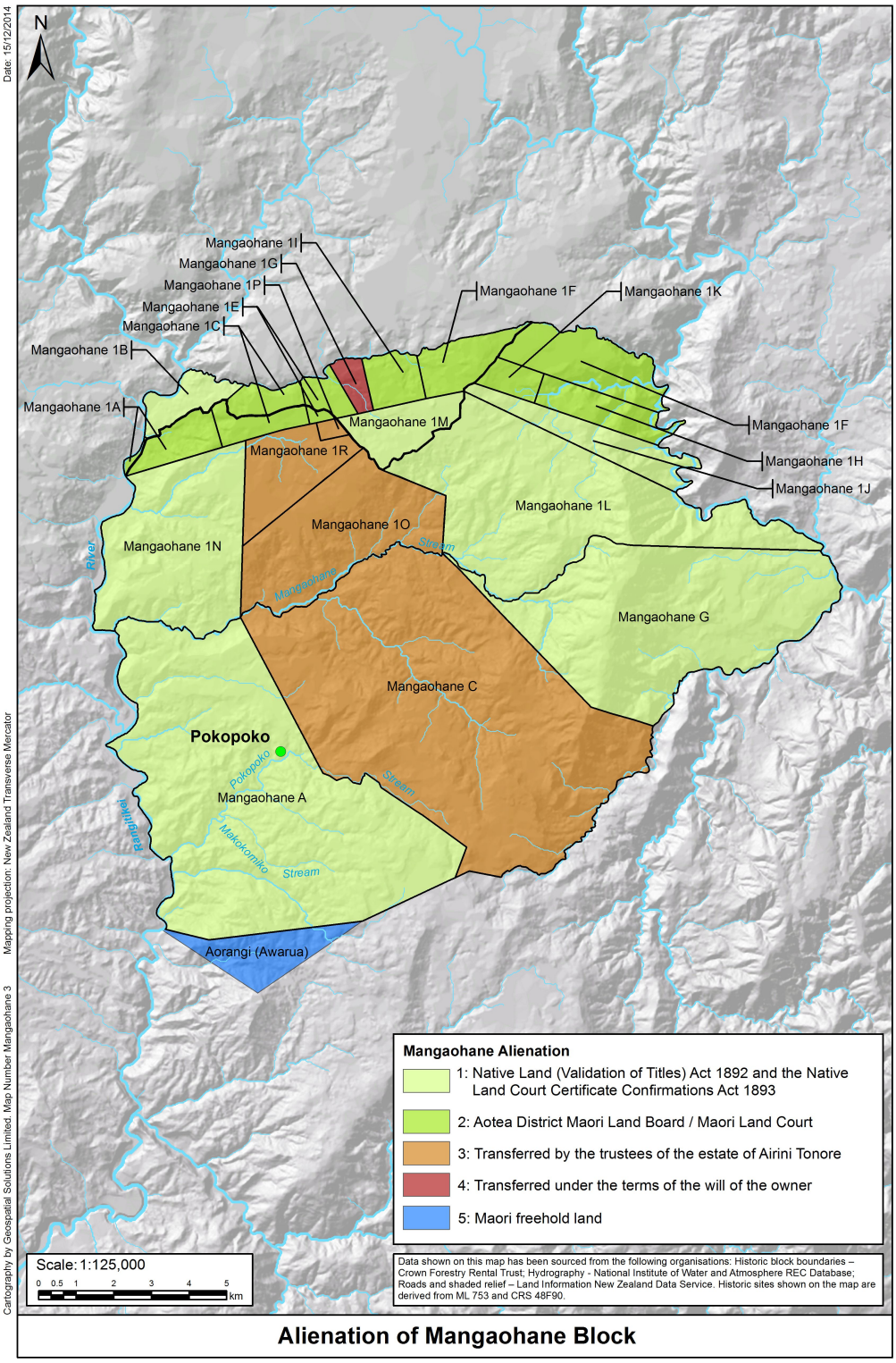

Figure 16: Alienation of Mangaohane Block

1O	3125	Originally vested in Airini Tonore, Iraia Karauria and Ani Kanara. By transfers and exchange, the land was vested in Airini Tonore alone and on her death was transferred to the trustees of her estate. They transferred the land to Thomas Victor Morrin by transfer on 18 May 1915 (Transfer 99447).
1P	81	Originally vested in Ihimaera Karaka, Rahira Karaka and Te Hine Karaka (all minors). The land was acquired by Airini Tonore and on her death was transferred to the trustees of her estate. They transferred the land to Thomas Victor Morrin by transfer on 18 May 1915 (Transfer 99447).
1R	1275	Originally vested in Pani Karauria and Erena Karauria. Subsequently vested in Airini Tonore alone and on her death was transferred to the trustees of her estate. They transferred the land to Thomas Victor Morrin by transfer on 18 May 1915 (Transfer 99447).
A	12401:3:21	Subject to an order under the Native Land Court Act 1886, the Native Land (Validation of Titles) Act 1892 and the Native Land Court Certificates of Confirmation Act 1893 vesting the land in John Studholme Jr, following an inquiry by Chief Judge G.B. Davy and Assessor Takarangi Mete Kingi in December 1895. Studholme purchased his interest in the this part of the block from Richard Townsend Warren who had acquired the interests of the Maori owners by deed on 8 August 1885 and obtained a certificate under the Native Land (Validation of Titles) Act 1892 following a hearing in Hasting on 19 July 1893 and this certificate was confirmed, subject to conditions, by the Native Land Court Certificate Confirmation Act 1893.
B	5000	Partitioned, now Mangaohane C
C	11891	Originally vested in Airini Tonore, Iraia Karauria and George Edward Gordon Richardson. By transfer and exchange, the entire block was acquired by Airini Tonore and subsequently dealt with as part of her estate. The land was sold by the trustees of her estate, along with other Mangaohane blocks, by transfer on 18 May 1915 to Thomas Victor Morrin. There is no indication that the land was subject to the Native Land Act 1909 (Transfer 99447).
D	2735	Partitioned, now Mangaohane C
E	291	Partitioned, now Mangaohane C
G	6817:0:18	Subject to an order under the Native Land Court Act 1886, the Native Land (Validation of Titles) Act 1892 and the Native Land Court Certificates of Confirmation Act 1893 vesting the land in John Studholme Jr, following an inquiry by Chief Judge

		G.B. Davy and Assessor Takarangi Mete Kingi in December 1895. Studholme purchased his interest in the this part of the block from Richard Townsend Warren who had acquired the interests of the Maori owners by deed on 8 August 1885 and obtained a certificate under the Native Land (Validation of Titles) Act 1892 following a hearing in Hasting on 19 July 1893 and this certificate was confirmed, subject to conditions, by the Native Land Court Certificate Confirmation Act 1893.
Mangaohane	3865	Partitioned, now Mangaohane C
Otupae		
Aorangi	967	Maori freehold land administered by an Ahu
Awarua		Whenua Trust.

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