The Arrest of Winiata Te Whaaro and the Eviction of the Pokopoko Community

A Report Commissioned by the Waitangi Tribunal for the Taihape Inquiry District (Wai 2180)

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Glossary of legal terms

Civil law – a body of law governing disputes between individuals, as opposed to those governing offences that are public and relate to the government.

Civil action/proceedings – cases brought to court by private individuals or organisations to settle disputes or gain redress for the infringement of rights.

Criminal law – a body of rules and statutes that defines conduct prohibited by the government because it threatens and harms public safety and welfare, and that establishes punishments to be imposed for the commission of such acts.

Criminal action/proceedings – cases brought to court by the state or government to maintain law and order and to protect society.

Common law – ancient law of England based on custom as recognised and enforced by judgments and decrees of the courts, embodied in case law rather than legislative enactments.

Contempt of court – or simply 'contempt', the offence of being disobedient or disrespectful towards a court of law and its officers; one example of which is wilfully failing to obey a court order.

Ejectment – a nineteenth-century common law term for civil action to recover the possession of land, now obsolete.

Eviction – the action of expelling someone from a property, a more common term today for ejectment, but more precisely in historical context the removal of a tenant from rental property by the landlord, or the removal of persons from premises which have been foreclosed by a mortgagee.

Forcible entry – the crime of taking possession of real property by the use of physical force or serious threats against the occupants.

Mesne profits – pronounced 'mean', profits which have been made by the occupier of land in wrongful possession.

Posse comitatus – 'powers of the county', the power and duty of the sheriff, in cases where resistance to civil process was met, to raise and arm persons to help him enforce the law.

Poundage – a commission levied by the sheriff on money realised from writs of execution. In England the sheriff was entitled to poundage as remuneration for his services. In New Zealand poundage was paid instead to the government.

Sheriff Fees – regulated charges for the processes involved in the execution of civil writs, including mileage.

Sheriff – the officer of the Supreme Court charged to execute civil writs of execution.

Writ of summons – a writ by which an action was begun in the Supreme Court, a legal document ordering a person to appear in court to answer a complaint at a specified date, or respond in writing to the court.

Writ of execution – in common law, a formal written order issued by the Court to a specified person to undertake a specified action.

Writ of sale – a Supreme Court document obtained after a favourable judgment authorising the officer to whom it is directed to seize all the chattels, including money, cheques, bills of exchange, promissory notes, bonds, or other securities of the person against whom it is issued (except wearing apparel, bedding, and tools and implements of trade not exceeding £25 in value), and to sell the same in order to satisfy the judgment. A writ of sale could also be satisfied by the sale of land.

Writ of possession – sometimes referred to as a writ of ejectment, a Supreme Court document authorising the officer to whom it is directed to deliver to the successful party named in the writ possession of any land or of any chattels specified in the writ, and for that purpose to eject any other person from such lands, or to seize and take possession of any such chattels.

Where a party had been ordered by the Court to both pay a sum of money and to deliver up land, a single writ could be issued, called a *writ of sale and possession*, to recover both money and possession.

Writ of attachment – a Supreme Court document empowering the officer to whom the writ was directed to arrest any person named in the writ, and to bring them before the Court. Attachment was the common law remedy for contempt.

Introduction

In May 1897 Winiata Te Whaaro was arrested at his kainga of Pokopoko by police for contempt and taken to Wellington to appear before the Supreme Court. At the same time his family was escorted to Waiokaha, the nearest kainga on the Rangitikei River three miles away. The following day, acting under instructions from the Sheriff of Whanganui, the Pokopoko kainga was destroyed, the community's belongings first gathered and piled up outside to be carted away later to the family, and then the houses set alight and burned to the ground.

These events occurred as a result of civil proceedings taken against Winiata Te Whaaro in the Supreme Court by legal property owner John Studholme Jnr, the culmination of a title dispute of more than 15 years standing. This report is about the arrest and eviction of Winiata Te Whaaro and his people of Ngati Paki. It is about the use of Supreme Court civil ejectment proceedings within frontier New Zealand to gain possession of land occupied by Maori. And it is about the Crown's role in this process: how the state positioned itself with regard to such 'lawful' eviction within the contested and colonial landscape.

Author statement

I am a Pakeha historian who has been involved in researching Treaty claims for most of my adult life, beginning in 1991 as a research assistant for the Waitangi Tribunal, and in between raising my family. I have some competency in Te Reo Maori, my early foundation through University courses subsequently developed by immersion with family members. I hold a Bachelor of Arts (First Class Honours) degree in History from the University of Waikato. Since 2007 I have been self-employed as an historian, undertaking research commissions for the Crown Forestry Rental Trust and the Waitangi Tribunal, and smaller projects for the Waipa District Council (2011) and the Maori Land Court in Gisborne (2016). In terms of more recent Waitangi Tribunal inquiry commissions, I have researched and reported on the impact of local government on Maori within the inquiry districts of Te Tai Rawhiti (2009) and Te Rohe Potae (2011); Muaupoko land alienation and political engagement for the Porirua ki Manawatu Inquiry District (2015); and a local block study within Te Paparahi o Te Raki (2016). In 2013 I was employed by the Waitangi Tribunal as a writer for the production of its Te Paparahi o Te Raki Stage One Report. I live and work in Gisborne.

Focussed as it is on the impact of civil law proceedings, one of the challenges of this project has been its heavy emphasis on law. I am not a legal expert. With regard to legal aspects, the resulting report is limited to untangling the legal processes at work and what actually happened within the historical

colonial context: it is beyond my expertise and indeed the parameters of this project to explore the wider legal remedies, if any, that may have been available to counter eviction or contempt proceedings.[1] The report does point to such issues where they arise, but I am all too aware of my limitations in this respect. It was only as the report was undergoing QA review, for example, that I was struck by the full implications of the law surrounding forcible entry (raised in the context of the Maungatautari eviction case study 13 years before) and the unspoken bearing this may have had on events at Pokopoko.

Claims

A claim about the arrest of Winiata Te Whaaro, the destruction of the Pokopoko kainga, and the removal of the community was first lodged by Peter Wairehu Steedman on behalf of himself and Ngati Paki 20 years ago, on 24 January 1997 (Wai 662). Today the claims about these events are still led principally by the descendents of Winiata Te Whaaro and fall into two camps. Peter Steedman's initial claim is part of that of Ngati Hinemanu me Ngati Paki, based at Winiata Marae (Wai 662, 1835, 1868), who claim that the Crown denied Ngati Hinemanu/Ngati Paki independence and autonomy and usurped their rangatiratanga and right to self-management. In particular, the Crown sanctioned the unlawful and illegal arrest of Winiata Te Whaaro, the assault of his whanau, and the theft and looting of their property, the consequences of which were their forced dislocation and the denigration of Winiata Te Whaaro's mana.[2] Nga Iwi o Mokai Patea (Wai 385, 581, 588, 647, 1705, 1888) claim that the Crown introduced laws and policies which prejudicially affected customary land tenure including the saga resulting in the persecution of Winiata Te Whaaro and his whanau.[3]

Project brief

The arrest and eviction has been touched on in three research reports in this inquiry already. Dr Grant Young has reported on the convoluted legal contest over the title for the Mangaohane block which endured for a decade and ended with the arrest and eviction.[4] Martin Fisher and Bruce Stirling also discuss the arrest and eviction briefly in their sub-district block study which includes Mangaohane.[5] The matter also features in Peter McBurney's oral and traditional report for Ngati Hinemanu and Ngati Paki, which examines the customary rights of these hapu within the wider Mokai Patea district,

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[1] One example is the apparent incompatibility with the common law 'My home is my castle'principle ('That the house of every one is to him as his castle and fortress, as well for his defence against injury and violence, as for his repose') which deemed it unlawful for the sheriff in any civil suit to break the defendent's house, with the destruction of dwellings at Pokopoko, see Cameron Churchill, *The Law of the Office and Duties of the Sheriff with the Writs and Forms relating to the Office*, (London, Stevens and Sons, 1879), p. 169.

2 Wai 2180, #1.2.17, paras 278-325.

[3] Wai 2180, #1.2.23, para 5.2.9.

4 Dr Grant Young, 'Mangaohane. Mangaohane Legal History and the Destruction of Pokopoko', (Crown Forestry Rental Trust (CFRT), 2014), Wai 2180 #A39.

5 Martin Fisher and Bruce Stirling, 'Sub-district block study – Northern aspect', (CFRT, 2012) Wai 2180 #A6.

and how they fared under Native Land Court processes of the late nineteenth century.[6] However, in view of the significance of the Pokopoko eviction within the Taihape District Inquiry, the Waitangi Tribunal commissioned this report as a targeted gap-filling project to examine the arrest and detention of Winiata Te Whaaro and the eviction of the Pokopoko community more closely. In particular, the following matters were to be covered:

> 1. How had Crown policies and practices for eviction of Māori for trespass on lands they claimed developed by the mid-1890s – as evident, for example, with the evictions at Maungatautari and Hauturu/Little Barrier Island?
>
> 2. How did the implementation of the arrest of Winiata Te Whaaro, the eviction of the Māori community at Pokopoko, and the loss or destruction of their homes and property in 1897, fit within the overall context of evictions by this time?
>
> 3. On what legal and administrative authority was the arrest and detention of Winiata Te Whaaro, his appearance before the court at Wellington, and the eviction of the Pokopoko Māori community carried out?
>
> 4. What role did the Wanganui sheriff, runholders and/or their agents, and members of the police force play in the eviction of the Pokopoko Māori community, including any destruction or relocation of houses and property, or loss or destruction of stock, and on what authority?
>
> 5. What were the immediate and longer term social, cultural and economic outcomes of the arrest and eviction for the Pokopoko Māori community?[7]

In summary, the task has been one of establishing, to the extent possible, the circumstances of the actual arrest and eviction in the autumn of 1897; untangling the legal process behind what happened, in particular the role of the runholders, sheriff and police; exploring, through the use of case studies, how events at Pokopoko compare with other evictions of Maori in this era; and assessing the impact of the arrest and eviction on the Pokopoko community; with the overall aim of illuminating the Crown's role in this civil proceeding.

At the outset in March 2017, I discussed the parameters of the project with claimants in Wellington and at Winiata Marae, and with Crown counsel. On this occasion, claimants expressed their view that the arrest and eviction cannot be seen in isolation; that it was but the culmination of processes already set in place. This report essentially agrees with that proposition, not just in terms of the immediate context of the Mangaohane title dispute, but also district-wide and ultimately nation-wide developments in which the arrest and eviction took place. The report also takes as given Winiata Te Whaaro's customary rights with respect to Mangaohane. This is despite the fact that time constraints prevented me from immersing myself in the Native Land Court minutes pertaining to this and

[6] Peter McBurney, 'Ngati Hinemanu and Ngati Paki Oral and Traditional Report', (CFRT, 2015) Wai 2180 #A52.
[7] Wai 2180 #2.3.20.

neighbouring blocks. In the context of the times, the establishment and continued occupation of the Pokopoko kainga by Winiata Te Whaaro and Ngati Paki in the absence of any challenge from Mokai Patea tangata whenua is prima facie evidence of their legitimate *take* to do so.

Methodology

The report constitutes five months work. It has been a challenging project. On its face, in addition to exploring the background to the relevant civil law processes, the job seemed largely one of consulting existing technical research, revisiting sources to see what may have been missed, and collating this research into one place. Although it has benefitted immensely by the three studies already undertaken on Mangaohane, as well as the wider technical research for the Taihape Inquiry District as a whole, what began as a seeming discrete and straightforward research topic quickly proved much more complex, raising issues that have not been the subject of previous research or Tribunal investigation in any depth.

The civil action against Winiata Te Whaaro in 1897 cannot be understood without the context of the title dispute which underpinned it. The steadfast claim of Winiata Te Whaaro to his farm at Pokopoko brought him head to head with competing landholders of Goliath proportions in a battle for title which endured for more than a decade. It was not my job however to repeat the history of this litigation. The expectation is that readers will be familiar with the legal history set out by Young in order to fully engage with the issues presented in this report as background to the arrest and eviction. Illuminating the role of the runholders was made possible primarily through a closer scrutiny of the Studholme papers at the Alexander Turnbull Library. The meticulous and thorough way John Studholme Jnr approached Mangaohane matters is reflected in the records he kept.

With regard to the role of the Sheriff of Whanganui, time was spent unravelling 'Sheriff Law' and, indeed, the process of civil law itself at work. In the early stages of research, a number of potentially useful archival files on civil process had been rendered inaccessible as a result of the Kaikoura earthquake. I turned instead to nineteenth-century legal texts and electronic searching of newspapers for reported ejectment and contempt cases to explore how these common law provisions were applied in New Zealand. The section on the role of the police draws heavily on Richard Hill's trilogy on policing in New Zealand.

With regard to the immediate arrest and eviction, having already been the subject of three separate research projects, from the outset it seemed unlikely that new archival material would be found. The great discovery was the Supreme Court agency files at Archives New Zealand which contain the official legal papers relating to John Studholme Junior's writ of sale and possession. This has enabled some clarification of the legal process at work involving two writs: the original writ of sale and possession (on which the eviction was based) and the writ of attachment against Winiata Te Whaaro

for contempt, which was the basis for his arrest. To an extraordinary degree the devil has been in the detail. Closer scrutiny of Studholme's legal accounts, for example, has provided crucial insights in a number of respects.

The report is also informed by the accounts held within the family of what transpired, as passed on by family members who were directly affected. Two claimants in particular, Neville and Ngahape Lomax, were raised by their great-grandfather Wirihana Winiata, the son of Winiata and Peeti Te Whaaro, who was a young adult at the time of the eviction. With regard to Maori language sources, I have used contemporary translations where they exist, and have translated myself where they do not.

The Crown's positioning with respect to civil ejectment proceedings is further explored through a study of five evictions involving Maori undertaken in peacetime in the last two decades of the nineteenth century. Two of these studies – Maungatautari and Hauturu – were identified in the project brief itself. That of Pouwhakarua was discovered as a result of my initial visit to meet claimants at Winiata Marae, raised in discussion by claimant Ngahape Lomax. The remaining case studies were already known to me through previous research, and were included because of the insights they provide into Crown policy and practice. The South Island case study provides an early contrast to North Island circumstances, highlighting the extent to which the Crown's position with regard to civil eviction proceedings in the colonial landscape was influenced by the political factors of demographics and land ownership. The Horowhenua eviction case studies, like that at Hauturu, provide further insight into Crown policy with respect to its own eviction practices. A sixth, twentieth-century example has been included to consider the extent to which the subordination of the interests of resident Maori property owners had become normalised by then. There has not been time to assess how representative these case studies are, or indeed the extent of eviction experienced by Maori in this time period.

Assessing the impact of the arrest and eviction on the Pokopoko community has focussed primarily on tracing the Te Whaaro family fortunes in terms of (mostly) remaining land tenure. Again, this has been a matter of drawing existing technical research into one place, augmented by further archival research and consultation of Maori Land Court records.

Deconstructing the Crown's role in the civil proceedings against Winiata Te Whaaro and what this amounts to in the colonial context has been an ongoing challenge, and one requiring time to distil and reflect on. At the point the draft report was circulated to parties, most of the content was in place. Since then considerable more work has been directed towards identifying the issues the research presents. As a result of the QA review, further time has enabled the restructuring of the report in the interests of clarity, and the addition of a concluding chapter.

Report structure

The report is divided into five chapters. Chapter 1 is necessarily lengthy, introducing the main protagonists and placing them in context within Mokai Patea at the close of the nineteenth century. The arrest and eviction of Winiata Te Whaaro was primarily the result of legal proceedings to gain possession undertaken by property owner John Studholme Jnr. The report refrains from a blow-by-blow account of the legal contest over title to Mangaohane 2 on which the civil ejectment proceedings were based. It does, however, consider the extent of influence wielded by these runholders in the course of that contest, both locally and at a national level. It also sets out the main features of nineteenth-century Supreme Court practice surrounding civil proceedings relevant to the arrest and eviction, and in particular the role of the Supreme Court officer responsible for carrying out court orders, known as the Sheriff.

As crucial as the individuals involved is the context of Mokai Patea itself, the Maori hinterland in the 1890s on the cusp of change heralded by Native Land Court title determination and concerted Crown purchase. Chapter 1 considers the implications of Pakeha expansion into the district, particularly with respect to the writ of law and the role of the police, introducing issues regarding the extent to which Maori required protection from the adverse impacts of such settlement.

Having established the background context, Chapter 2 turns to a narrative of the arrest and eviction based on documentary records discovered to date, together with the stories held by Te Whaaro family descendents. It examines the immediate issues arising from these events: the process itself; the grounds of Winiata's arrest; the destruction of the kainga; the loss of sheep and property. It also identifies fundamental issues arising from two very different perspectives about the nature of civil proceedings, which in turn raises issues about the application of these common law provisions to Aotearoa. Winiata Te Whaaro could not separate the Supreme Court action against him from the underlying dispute over title. The Crown's insistence that he comply with the law rested on the opposite premise that the two issues were distinct.

A significant feature of Winiata Te Whaaro's eviction was the Justice Department's refusal to agree to Sheriff Thomson's repeated requests for police assistance. In the same breath, Under-Secretary of Justice Frank Waldegrave insisted that Winiata Te Whaaro obey the law and remove from the land. Chapter 3 considers five other evictions involving Maori in the last two decades of the nineteenth century with the aim of discerning more clearly what the Crown's policies and practices amounted to. The case studies of Maungatautari and Pouwhakarua have proved particularly illuminating with regard to events at Pokopoko.

Winiata Te Whaaro and Ngati Paki were evicted from a working farm which provided their livelihood. Humiliated by the arrest and eviction itself, the rangatira of Mokai Patea was also rendered

virtually landless in his homeland as a result. Chapter 4 examines these impacts within the context of a Liberal Government era marked by aggressive state land purchase to facilitate Pakeha settlement on the one hand, and a diminishing provision for Maori needs (disbanding the Native Department altogether between 1893 and 1906) on the other. To what extent was the marginalisation of Winiata Te Whaaro an inevitability of wider Crown policies and practices? Chapter 5 is a brief conclusion, returning readers to the issues identified in the project brief.

Acknowledgments

The timely completion of this project owes much to the assistance of a number of people, particularly supervisor Matthew Cunningham who has provided excellent support throughout. Archival files unable to be accessed in March and April were subsequently photographed for me by Rhiannon Bertaud-Gandar and Craig Innes as they became available. I am grateful to Tribunal staff member Noel Harris for his mapmaking, and to Jeff Abbott and Craig Innes for their help accessing sources. Keith Bacon from the Maori Land Court in Gisborne helped me access court records for Chapter 4. I also appreciate the careful reading and feedback to the draft report by Leanne Boulton, who took over the role of supervisor towards the end of the project. At both the outset of the project, and again at the point of the draft report, claimants provided a considered and frank response to the issues. I am grateful for their time and trust. Nga mihi nui ki a koutou. Claimant Richard Steedman helpfully clarified family relationships and details by email. The response from claimants and Crown counsel to the draft report, which included new sources of information, together with the considered QA review, has also benefitted the end result.

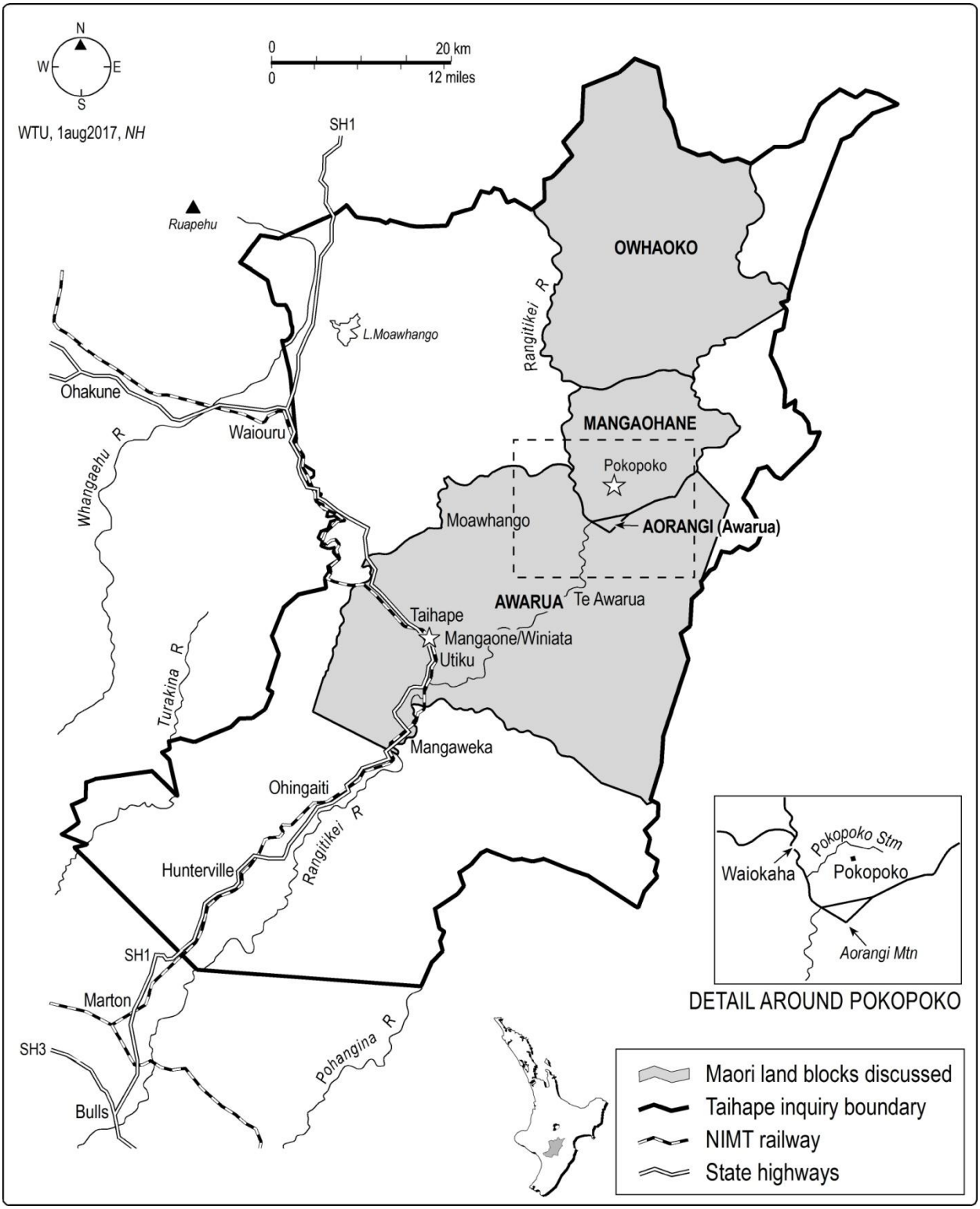

Figure 1: Mokai Patea, showing Winiata Te Whaaro's kainga of Pokopoko and Mangaone

Chapter 1
Background Context

The arrest of Winiata Te Whaaro and the eviction of his Pokopoko community – the subject of this report – was the closing act of a long-running title dispute to the Mangaohane Block, the background and course of which has already been set out fully in historical studies commissioned for this inquiry. The following discussion about the backdrop to the arrest and eviction in terms of the roles of the main protagonists, assumes that readers will be familiar not only with the litigious path to the title for Mangaohane, but also with socio-economic developments in the wider Mokai Patea district as well.[8] Winiata Te Whaaro was one of a number of rangatira within Mokai Patea who took up farming sheep with enthusiasm from the end of the 1870s, at a time when this Maori hinterland straddling the provincial districts of Wellington and Hawkes Bay was still in customary ownership. The relatively low entry costs, minimal capital, and abundance of ready-made pasture meant that pastoralism presented tangata whenua with real opportunities to participate in new economic enterprise. The potential of the high country was also recognised by established Pakeha runholders seeking to expand their investment and operations. Early sheep farming enterprises in the district often combined Pakeha capital and knowledge with tangata whenua land and labour, but these economic alliances did not last in the face of the underlying competition for the land itself which drew Maori inexorably towards title determination.

Establishing his kainga on prime grazing land below Aorangi brought Winiata Te Whaaro into direct competition with two socio-economic heavyweights, representing both old and new money. Post-title, competition over Mangaohane 2 in particular assumed at least two fronts. On the one hand, Winiata Te Whaaro and his hapu of Ngati Paki claimed ownership of the land they had begun farming south of the Mangaohane Stream, their ensuing struggle one for inclusion as owners on the Native Land Court title. On the other hand, the Studholmes claimed ownership on the basis of transactions undertaken with the owners determined by the court, their struggle one of validating these purchases against the background of ongoing controversy over ownership. In the event, after a decade of litigation, in 1896 the Studholmes were awarded certificates of title to the land on which Winiata Te Whaaro's kainga and farm of more than 20 years stood. One year later John Studholme Jnr began legal proceedings against Winiata Te Whaaro and his brother Irimana Te Ngahou to gain possession.

[8] In addition to the three reports of direct relevance to Mangaohane cited in the introduction see also for example Phillip Cleaver, 'Māori and Economic Development in the Taihape Inquiry District 1860-2013', (Waitangi Tribunal, 2016), Wai 2180, #A48; Bruce Stirling, 'Taihape District Nineteenth Century Overview', (CFRT, 2016), Wai 2180, #A43; and Tony Walzl, 'Twentieth Century Overview' (CFRT, 2016), Wai 2180, #A46.

Figure 2: Winiata and Peeti Te Whaaro[9]

[9] Portrait downloaded from https://familysearch.org/photos/artifacts/.

Winiata Te Whaaro and the Pokopoko Community

To Winiata Te Whaaro, Mokai Patea was home. He was born and raised on Awarua, having ancestral connections through his mother's side, and was related to virtually everyone who lived there. With his brothers he had served with Renata Kawepo for the Crown in the campaign against Te Kooti. It was while he was away that he met his wife Peeti Mokopuna Hamutana, returning with her to Mokai Patea to raise their family.[10] This was the mid-1870s, when sheep farming on the high country inland was just taking off.

With Renata Kawepo's help, Winiata and Peeti Te Whaaro began farming sheep at Waiokaha, and then, from 1877, north of Aorangi on what in the following decade became known as the Mangaohane Block.[11] All but the four eldest of their 11 children were born at Pokopoko over the following decade.[12] Their kainga there was known as Pokopoko, taking its name from the forest nearby. The establishment of such family kainga in the district seems to have been common, associated with the novel land use of sheep farming.[13] In the context of opening Crown purchase within Mokai Patea in 1890, Winiata Te Whaaro described himself as the rangatira of Ngati Ohuake and Ngati Hauiti.[14] In the same year before the Awarua Commission he spoke as Ngati Te Ohuake, Ngati Whiti, Ngati Hauiti and Ngati Hinemanu.[15] Claimants today refer to the Pokopoko community as Ngati Paki.

Winiata Te Whaaro's two brothers Irimana Te Ngahou and Hori Tanguru were part of this farming enterprise. Irimana had one daughter, in Hawkes Bay.[16] Hori Tanguru and his wife Merehira Te Taipu had at least seven children.[17] Other residents of Pokopoko over the years included Pirimona Te

[10] Herbert W Steedman relates that Peeti was the daughter of Meri Waipaopao of Ngati Wairangi and William Hamilton, and that the couple met and married at Mokai, Affidavit of Herbert Winiata Steedman, Wai 2180 #E3(a), p. 5. The monument to their military service inside the church grounds at Omahu indicates that Winiata and his brothers were three in a contingent of 30 men fighting for 'Queen and Country'.

[11] Winiata Te Whaaro spoke of his farming beginnings in the 1893 Mangaohane rehearing, Scannell MB 30/2-3; Wai 2180 #A30(a)(5), pp. 148-149.

[12] Affidavit of HW Steedman, Wai 2180 #E3(a). Steedman relates that three further children died in infancy and were buried at Pokopoko.

[13] Long-time Moawhango resident RAL Batley points to similar settlement patterns there, listing the 'main settlements' of Henare Kepa (Te Manukairakau), Hiraka Te Rango (Papapowhatu), Horima Paerau (Te Riuopuanga) and Heperi Pikirangi (Moawhangoiti). 'Moawhango Valley and School: A short history of the Inland Patea published to commemorate the Diamond Jubilee of the Moawhango Maori School 1897-1957', (Taihape, Moawhango School Jubilee Committee, 1958), p. 23.

[14] CB Morison to Native Minister, 18 August 1890, MA-MLP1 28d 1890/267. In the context of the Committee of Rangatira for the purposes of the Awarua title determination the same year, Winiata Te Whaaro again represented Ngati Te Ohuake, which essentially comprised the Pokopoko community, see See Richard Steedman, Overview presentation for hearing week one, Wai 2180 #E1(b), pp. 41-43. The 23 listed individuals of 'Ngati Te Ohuake' included the Te Whaaro and Tanguru whanau, brother Irimana Ngahou, and Ema Te Waka, her son Te Wharehere Te Awaroa, and Te Raita Makarini.

[15] Minutes of Awarua Commission Inquiry, MA-MLP 1 1906/91 in Wai 2180 #A6(a), p. 298.

[16] Record of interview with Lewis Haines Winiata, McBurney Wai 2180 #A52, p. 409. At a meeting at Winiata Marae on 24 June 2017, claimants confirmed Irimana's daughter was Roka Tukotahi, who married Winiata Te Whaaro's eldest son Te Keepa Winiata.

[17] Hori and Merehira's children listed in the 1891 Awarua partition were Te Moroati, Raupi, Wi, Hinemanu, Maraea, Rapana and Te Nuia, see for example Whanganui MB 20/496 in Wai 2180 #A30(a)(3), p. 438. There

Urukahika, Kararaina, Hana Hinemanu, Rapana Hahu and Hone Kaweka.[18] Te Raita Makarini, a close relation who was named in Studholme's legal action in 1897, was registered as a sheep owner there with a flock of 500 in April 1896 although she had died in 1893.[19] At the time of eviction, at least four of Winiata and Peeti's children were married, and the youngest, Whakawai, nine years old.[20] Winiata and Peeti themselves, with their youngest children, may have lived between Pokopoko and their new kainga at Mangaone, described below. Son-in-law Hune Rapana managed affairs at Pokopoko, while annual sheep returns suggest that their eldest son Te Keepa Winiata was already utilising his wife's land at Maraekakaho.[21] In all, the community evicted from Pokopoko included at least 25 people.[22]

From small beginnings, over 20 years the Te Whaaro family had built a considerable business. In 1892 the three brothers were among 26 Maori sheep farmers listed as occupying the Awarua and Motukawa blocks, Winiata Te Whaaro's flock of 8,000 sheep ranking him third in terms of flock size.[23] In January 1894 when Studholme was considering an out of court settlement, Owhaoko farm manager Richard Warren considered that Winiata Te Whaaro would 'ask at least for half the block'.[24] Later that year, in correspondence with his lawyer, Studholme estimated Winiata's flock at 10,000 sheep, occupying some 10,000 acres south of Pokopoko Stream.[25] The seven grown sons at Pokopoko were no doubt a large part of this success. In 1894 the family had expanded their enterprise to Mangaone, on the Awarua block. At this time title to Awarua had been determined, but the numerous interests had yet to be located. Winiata Te Whaaro described the improvements his children had made

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are also other references however to other offspring, in particular Turitakoto, Te Aue, Hanuere and Pani by 1897. Richard Steedman advises that Hanuere (January) was also known as Nuia (New Year), not to be confused with his sister, Te Nui. R Steedman, email communication. Studholme recorded Hori Tanguru's death, or rather the succession of his children in July 1894, on the ownership lists of Owhaoko D, MS-Papers-0272, folder 2.

[18] These are individuals Winiata Te Whaaro named (in 1893) as being resident in 1884, Scannell MB 30/2-3; Wai 2180 #A30(a)(5), pp. 148-149. Hana Hinemanu was Irimana's wife (communication with Richard Steedman, 1 May 2017).

[19] Annual sheep returns, AJHR 1897 sess II H-23, p. 37. Te Raita Makarini was also known as Te Raita Parekawa, the daughter of Winiata Te Whaaro's first cousin, Raina Te Waka, Whanganui MB 52/57; Richard Steedman personal email communication, 1 May 2017.

[20] Whakawai Winiata Te Whaaro died in 1961, aged 73. Communication from Ngati Hinemanu me Ngati Paki Heritage Trust, 3 July 2017.

[21] Annual sheep return, April 1897, AJHR 1897, H-23, p. 36. Evidence of Peter Steedman, Wai 2180 #4.1.4, p.80.

[22] They are Winiata and his wife Peti; their children Iramutu, Momo, Wirihana, Hauiti, Horiana (Waimatao), Te Ngahoa, Matehaere, Ngohengohe, Papara and Whakawai; Iramutu's husband Hune Rapana, and their child Te Teira; Hori Tanguru's children Aue, Te Nuia/Hanuere Tanguru; Momo Whaaro's wife Ripene and child Tamihana; and Wirihana Whaaro's wife Peretua. Signatures on a letter from the community the following year also include Maremare Awaroa, Awaroa Patari, Makereni Hemonui, Hariana Hinahou and Raukawa Tauke. See Hune Rapana and others to Premier, 5 November 1898, J1 606w 1898/1393. This list does not include Hori Tanguru's older children or his wife Merehira Te Taipu, or Winiata's eldest son Te Keepa.

[23] Utiku Potaka and others to Native Minister, 9 September 1892, MA-MLP 1/75/h 1905/93 in Evald Subasic and James Taylor, 'Crown and Private Land Purchases Records and Petitions Document Bank',Wai 2180 #A16, pp. 12271-12277. Irimana Ngahou's flock was estimated at 2,000, and that of Hori Tanguru at 1,000, making the combined flock at Pokopoko perhaps 11,000 sheep, the southern end of Mangaohane bounding the Awarua block.

[24] R Warren to J Studholme Jnr, 18 January 1894, MS-Papers-0272, folder 11.

[25] J Studholme Jnr to P McLean, draft letter, 26 October 1894, MS-Papers-0272, folder 7.

at Mangaone since 1894 to the Native Affairs Committee in August 1899.[26] Two areas, one of 50 acres and the other of 26 acres had been cleared and fenced at this time, Winiata's offspring paying Pakeha for both the felling of the bush and the fencing of these areas, which were then cultivated. Tautahi, the family wharepuni standing at Mangaone and known today as Winiata Marae, was built by June 1896, also by a Pakeha. Taihape two miles away was not much bigger at this time.[27]

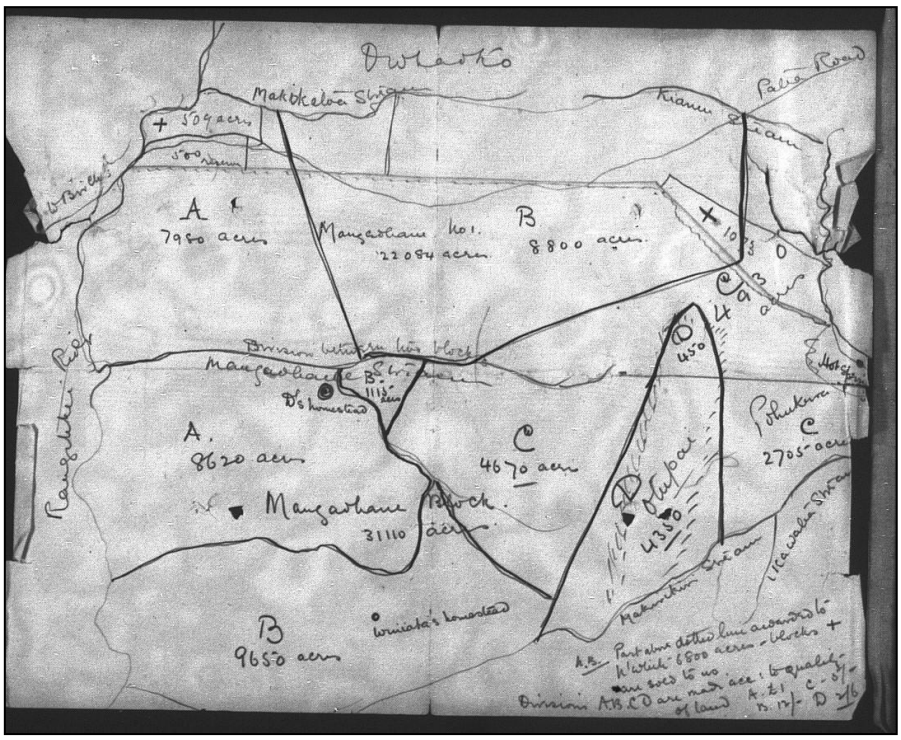

Figure 3: Studholme's notebook sketch of Mangaohane, showing 'Winiata's homestead'[28]

Winiata Te Whaaro's arrest and eviction from Mangaohane was directly connected to the failure of the Native Land Court to recognise his customary interests in the title investigation of Mangaohane of 1885, together with the lack of any lawful means to rectify its mistakes. As Young sets out, Winiata Te Whaaro began this process with a claim bounded by the Mangaohane Stream (what became Mangaohane 2) on the basis of ancestry from Ohuake. He would have been disconcerted by the

[26] Evidence given before the Native Affairs Committee of the Legislative Council on the Petition of Hauiti Whaaro & others, 23 August 1899, in J1 664l 1901/881.

[27] The first teacher arriving at Taihape in a snowfall in June 1897, weeks after the eviction, found it a 'gloomy prospect'. JJ O'Reilly, 'Reminiscences' in C A Young, 'The Diamond Jubilee of the Taihape District High School', 1956, p.21. O'Reilly recalls that Taihape at this time consisted of the accommodation house where he stayed, a corrugated iron store, the single-roomed, unlined 'town hall' used for the school, a bootmaker's shop and a government 'whare'. Of the three dwellings in the town, two were unfinished. What seemed to strike him most was the 'most magnificent bush' and the life it held: 'In summer time it was really beautiful in the bush, for there were innumerable birds – tuis, bell-birds, kakas, huias, wild pigeons and fantails.' More than half of the children on his initial roll of 24 were Maori, among them the younger members of the Te Whaaro and Tanguru families, see Chapter 4.

[28] 'Sketch map of Mangaohane', MS-Papers-0272, folder 5.

court's decision over entitlement in early 1885 which awarded part of this area – between the Mangaohane Stream and Te Papa-a-Tarinuku – to the descendents of Honomokai instead. Indeed, he appealed immediately.[29] Yet, given the 1885 judgement itself which left the southern end 'to be decided on a future application', and the subsequent dismissal of Winiata Te Whaaro's appeal on the grounds that the claim of Ngati Paki and Ngati Hinemanu represented by Winiata lay within this undetermined area, it may not have been until 1890 when Studholme's survey was brought out into the light of day for the purpose of partition, that Winiata Te Whaaro would have realised the extent of the threat to his homestead and farm, the southern boundary of Mangaohane now extending all the way to the Awarua Block.[30] For the next five years he exhausted every possible legal avenue to prevent the validation of Studholme's purchases of Mangaohane 2, to upset the partition arranged around such purchases, and to have the original title decision reheard. In August 1894 Chief Judge Davy recognised the essential justice of his case, ordering that the list of owners of Mangaohane 2 be amended to include Winiata Te Whaaro and his people, the extent of their interest to be determined through further inquiry.[31] The victory was short-lived. Further legal action in the Supreme Court undertaken by the Donnellys, co-owners with the Studholmes in Mangaohane 2, resulted in the prohibition of the favourable order on the grounds that the Chief Judge had exceeded his jurisdiction.[32] Winiata's unsuccessful appeal in July 1895 marked the end of the legal remedies available to him.[33]

Winiata Te Whaaro's tenacity earned him a reputation for 'litigousness'.[34] As McBurney's report relates, he was ill-served by the Native Land Court process throughout the larger Mokai Patea district. In the context of this wider title determination the inconsistencies in his evidence over time were highlighted, the tupuna on which he based his ancestral *take* repudiated by his kin. However, as this chapter explores, this reputation demands to be reconsidered in the light of the battle over Mangaohane, which brought him head to head with competing landholders of considerable influence and wealth.

As the narrative of the arrest and eviction shows, Studholme had initially explored using debt as a cheaper means to evict Winiata in August 1896, to no avail (see p. 63). The same tactic had been employed two years before, when stock and station agents Murray Roberts & Co (who also financed

[29] See Young, Wai 2180 #A39, pp. 25-29.
[30] See Young, Wai 2180 #A39, pp. 28-35.
[31] Ibid, pp. 168-169.
[32] Ibid, pp. 182-184.
[33] Ibid, pp. 184-187. Young notes that Winiata's lawyers obtained leave to appeal to the Privy Council (which was opposed by solicitor HD Bell on behalf of the runholders), but that the appeal does not appear to have been pursued.
[34] In 1899 Judge Mair described him as 'a very unreliable man and very litigious too.' ACGS 16211 J1 664l 1901/881, 12/41. In connection with the same issue, Chief Judge Davy merely noted that 'Winiata is a well-known person in connection with the litigation in the Mangaohane case...' Chief Judge Davy to Chairman, Native Affairs Committee, 31 July 1899, in the same file.

the Studholmes' Mangaohane operations) took legal action against Winiata Te Whaaro to recover his debt of more than £500 (see p. 48). On this occasion, Winiata Te Whaaro settled the debt as soon as he became aware of the judgment, avoiding further debt recovery measures being taken against him. However, coming as it did on top of the protracted battle over title to Mangaohane 2, the action could only have stretched the family's resources thinner. As set out in Chapter 4, the evidence suggests that Winiata Te Whaaro and his four eldest children – Te Rira (Iramutu), Te Keepa, Te Momo and Wirihana – sold their interests in Awarua lands to the Crown at some point prior to 1896, before the eviction. When the Crown moved that year to have its purchased interests in Awarua defined through partition, the 'residue' awarded to 'non-sellers' within the family's parcels of Awarua 3B2 and 4C15 did not include them.[35] What this points to is that by the time of Studholme's civil action against him in 1897, Winiata Te Whaaro had few financial reserves left to fight with.

The Studholmes

The Studholme brothers, John and Michael, were early English immigrants who began farming sheep on the extensive Te Waimate run in South Canterbury in 1854 and became renowned for their acquisition of real estate, both in the South Island and later in the North. The 'Studholme family land holdings' are featured in the Te Ara Encyclopedia of New Zealand, which relates that over a period of 20 years the Studholmes acquired, by purchase or lease, 360,957 acres in eight different South Island properties, and five North Island properties amounting to 547,000 acres.[36] The Studholmes did not farm all this land themselves: they put managers on to farm it for them.

[35] The partition took place in Hastings before Judge Mair in August 1896, see Napier MB 39/166-68, also Title orders for 3B2J and 4C15, accessed at Gisborne Maori Land Court. The title orders show that only six Te Whaaro children were entitled to these lands. I did not have time to research the circumstances behind any sale of interests. This issue is discussed further in Chapter 4.

[36] Jim McAloon, 'Land ownership – Centralisation after 1870', Te Ara – the Encyclopedia of New Zealand, http://www.TeAra.govt.nz, accessed 9 May 2017. John Studholme's land speculation in the North Island is said to have begun in the early 1870s in partnership with John Russell and Thomas Morrin, the trio bent on securing more than a million acres in the neighbouring Murimotu district for their private settlement scheme, Nicholas Bayley, 'Murimotu and Rangipo-Waiu 1860-2000', (Waitangi Tribunal, 2004), Wai 903 #A56, p.48. Bayley relates that by an agreement reached in 1874, Studholme's party agreed to end their private negotiations in the district in exchange for the exclusive right to lease for 14 years any land obtained by the government, pp. 52-61.

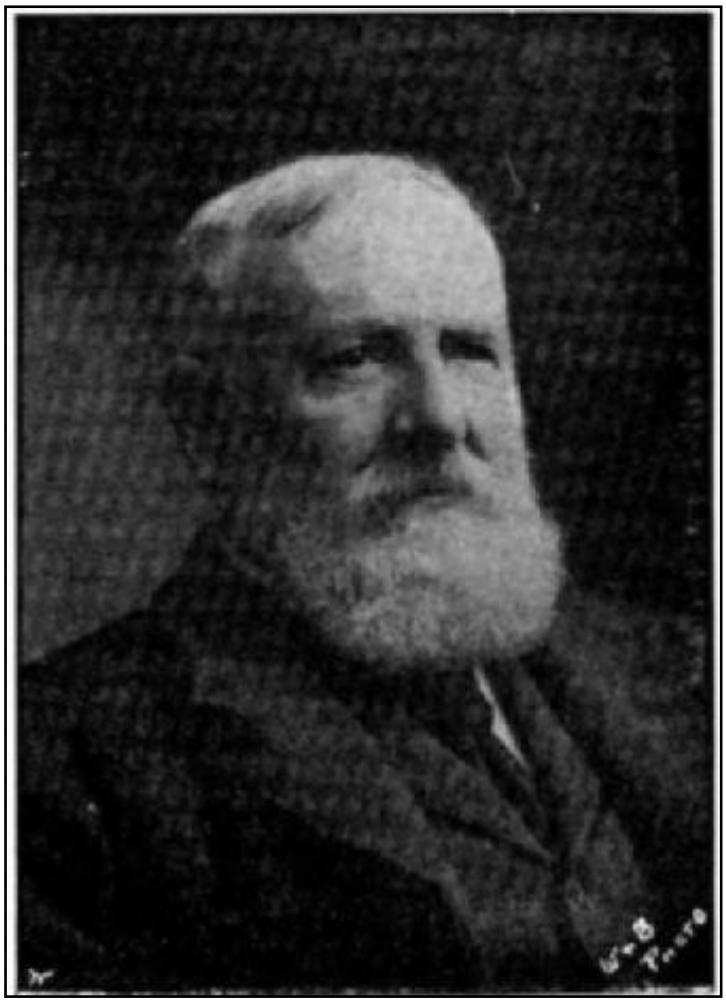

Figure 4: John Studholme Snr[37]

As John Studholme Jnr himself recounted, his father's venture in Mangaohane began with the leasehold of the vast, high-altitude tablelands of the Owhaoko block to the north, in 1877.[38] Studholme quickly discovered there was insufficient sheltered land within Owhaoko for lambing, and 'was therefore compelled by force of circumstances and as the necessary complement of his Owhaoko purchase' to obtain the bordering Mangaohane lands to the south.[39] Undeterred by the fact that there was as yet no title to Mangaohane – which meant it was not legally a marketable commodity – in December 1879 Studholme engaged the prominent lawyer, Walter Buller, to persuade Renata Kawepo

[37] Photo by Wrigglesworth and Binns, in *The Cyclopedia of New Zealand [Canterbury Provincial District]*, (Christchurch, Cyclopedia Company Ltd, 1903), accessed online at http://nzetc.victoria.ac.nz. I was unable to find a photograph of John Studholme Jnr.
[38] John Studholme Jnr relates that his father John and Uncle Michael purchased the goodwill of Maney's Owhaoko lease for £35,000 from the Bank of Australia, with 19 years to run. John bought out his brother's interest in 1879, see 'Notes on history of Mangaohane', MS-Papers-0272, folder 20.
[39] Ibid.

to allow him to occupy the block.[40] These negotiations occurred in the context of growing conflict over sheep farming on Mangaohane. Winiata Te Whaaro was already at Pokopoko by this time, south of the Mangaohane Stream. The newly-wed Donnellys, having fallen out with Uncle Renata Kawepo, had formed a new farming partnership with locals Ihakara Te Raro and son Hiraka Te Rango of Ngati Whiti, with flocks grazing at Otupae on Mangaohane. Indeed, part of Studholme's overture to Kawepo seems to have involved financing the chief to repurchase the sheep he had been forced to auction as a result of his fall-out with George Donnelly.[41] Between 1881 and 1884 Studholme also paid Renata Kawepo a total of £1,850 for his 'lease' of Mangaohane lands, an informal – and unlawful – arrangement, given the customary status of the land.[42] Kawepo's agreement to sell the whole block to Studholme for £20,000 clear in August 1883 'because I have many other lands under lease still left to me' was equally presumptuous, for the same reason that it was not his to sell. The contest over the land was evident in the multiple applications for survey authority and title investigation between 1880 and 1884, and the obstruction to the survey on the ground in this period.[43]

As a result of the title investigation of 1884-1885, Mangaohane was divided in two by a boundary that followed the Mangaohane Stream. Renata Kawepo, among others, was found to be entitled to both areas. John Studholme Jnr related that Buller's fee of £2000 for winning the Mangaohane title for Kawepo was paid by his father (the receipt itself suggesting the sum would be deducted from future purchase payments).[44] Studholme also paid for the post-title survey of the block (extending the southern boundary to encompass an area the Native Land Court had left un-adjudicated). The purchase agreement reached with Kawepo in 1883 was followed post-title with a down payment of £1000 in August 1885 for Kawepo and others' undefined interests, the balance (on the basis of 10 shillings per acre) to be paid when these interests were defined and located through partition.[45] At this time too, Richard T Warren, Studholme's Owhaoko manager, also leased and purchased the interests of Ngati Whiti individuals in Mangaohane 1.[46] Over the next four years, Warren continued to

[40] 'John Studholme Esq Dr to Messrs Buller Ferris & Gully; Re Mangaohane', 28 July 1880, MS-Papers-0272, folder 29. Studholme's legal accounts reveal that over the course of eight months, Buller (with RT Warren) made more than five trips to Napier to see Renata Kawepo and two trips to Inland Patea (the second such visit lasting seven days with 'long night meetings etc'), to negotiate Studholme's tenancy of Mangaohane, for which services Buller charged Studholme an exorbitant £500.

[41] Ibid. Buller records that he attended the auction with Warren, and afterwards visited Omahu 'to get Mortgage of Stock and Bond'. See also Fisher and Stirling, Wai 2180 #A6, p. 176.

[42] 'Receipts Mangaohane Lease', MS-Papers-0272, folder 5.

[43] The agreement between Renata Kawepo and John Studholme (represented by RT Warren) is in MS-Papers-0272, folder 19. For contested interests leading up to title investigation in December 1884 see Young, Wai 2180 #A39, pp.18-26.

[44] Rough draft for validation court, undated, MS-Papers-0272, folder 8, #0034; receipt dated 17 December 1885, folder 29.

[45] The transfer was made between named individuals and RT Warren on 8 August 1885, for a total purchase price of £13,811 6s 6d, see copy of statement of John Studholme Jnr to Validation Court, MS-Papers-0272, folder 8.

[46] Twenty individuals were listed in Studholme's 'List of Natives in Mangaohane No 1 who leased to Mr RT Warren on 4 August 1885', MS-Papers-0272, folder 5. In March 1886 Warren transacted a second purchase

purchase undivided interests, or make advances on the same, from a number of registered owners.[47] The upshot by 1890 was the claim that £15,610 had been expended by the Studholmes on the purchase of interests of 'Renata & Co' amounting to 30,022 acres of land.[48]

There are three aspects to John Studholme Snr's purchase activities in this period that warrant comment. Firstly, he continued to transact knowing full well that the court's initial title determination was controversial and that the applications for rehearing, lodged immediately after the decision, were likely to go ahead.[49] He was also all too aware that Winiata Te Whaaro continued to occupy 10,000 acres at the southern end of the block. Secondly, Studholme himself was concerned about the legality of his transactions for individual interests in light of prevailing legislation which, on its face, precluded the sale or lease of 'memorial' land for more than 21 years without the consent of all the owners.[50] In the event, Studholme's early transactions were validated in July 1893, deemed by the Validation Court to have been 'bona fide' despite the fact that 'the law had not been strictly complied with.'[51] Similarly, with regard to his later purchase of Tamakorako interests (added to the title of Mangaohane 2 as a result of Rena Maikuku's successful appeal in December 1892), John Studholme Jnr barely gained their agreement to settle for 3000 acres before the October 1894 prohibition against private sale was enacted. In November Studholme applied under Section 118 of the Native Land Court Act 1894 to be allowed to proceed with the purchase, successfully arguing that that the

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with registered owners of Mangaohane 1, the purchase price of these interests stipulated as £951 7s 7d, Statement of John Studholme Jnr to Validation Court, MS-Papers-0272, folder 8.

[47] 'List of Mangaohane Purchase Receipts', MS-Papers-0272, folder 5.

[48] See list 'Renata & Co', MS-Papers-0272, folder 5. In addition to Renata, the list included Wm Broughton, Hareta Hokohoko, Waata Rukawerohia, Mata Kato, Rere Te Rere, Waipu Temoata, Hoeroa, Waateraari Hohaia, Mere Tauwhare, Harata Keokeo, Ta Aruapo Miria, Karena Tauiwha, Metatahuna, Heta Hokiwai, Anaru Te Wanikau, Rora Potaka, Atareta Kangahuri or Hetarihi, Karena Te Manatowehi, Wi Hakiwai, Rungaeki Hakiwai, and Tauria Paraotene.

[49] Although Winiata Te Whaaro's application for rehearing was dismissed, Captain Richard Blake, who had represented tangata whenua interests in the Awarua title investigation, told Warren as much in September 1888 (see p. 25). Young writes that under Section 7 Native Land Laws Amendment Act 1883, negotiations to alienate land were prohibited in cases in which rehearing applications had not been dealt with, Wai 2180 #A39, p. 143. The same criticisms apply to Airini Tonore's transactions in this period, see for example Chief Judge MacDonald's order of 9 July 1886 permitting Tonore's purchase of minors' interests in Mangaohane 1 and 2, Wai 2180 #A39, pp. 63-64.

[50] J Studholme Jnr to HD Bell, 28 December 1894, MS-Papers-0272, folder 4. In particular, Studholme referred to Sections 48-49 and 51 of the Native Land Act 1873. Title to Mangaohane had been granted under the Native Land Court Act 1880 (and the earlier Native Land Act 1873). There is ongoing debate over the intention of the 1873 Act with respect to the purchase of individual interests, the issue being argued in the Waitangi Tribunal's Turanga Inquiry. The Tribunal concluded on that occasion that there was no question but that the intention and effect of the memorial of ownership was to create individually tradable interests, *Turanga Tangata Turanga Whenua: The Report on the Turanganui A Kiwa Claims*, (Waitangi Tribunal, 2004), vol. 2, p. 443. Others like Richard Boast consider that it was not until the Native Land Act 1894 (Section 73) that every owner of 'memorial' land became the proprietor of an estate in fee simple. The same year however, purchase once again became the sole prerogative of the Crown. R Boast, *The Native Land Court: Volume 2, 1888-1909* (Wellington, Thomson Reuters, 2015), pp. 6-7.

[51] Young, Wai 2180 #A39, pp. 142-143. As Young points out, the purchases were also problematic because they took place before certificates of title had issued, and because purchase negotiations were absolutely prohibited before applications for rehearing had been dealt with (Section 7, Native Land Laws Amendment Act 1883).

settlement with Ngati Whiti had been negotiated on the understanding that he would then purchase the 3000 acres at 10 shillings an acre as soon as partition was completed.[52]

The third aspect of Studholme's transfers was that they were conducted in the name of Richard Townsend Warren, the farm manager at Owhaoko. Warren had a long work history with the Studholmes and was regarded by them as 'good and loyal'.[53] His purchase of Mangaohane was on the basis that he held the land in trust for John Studholme Snr's three sons.'[54] In a time before any statutory limitations on the quantity of Maori land any individual could own, it is not quite clear what was behind this early example of 'dummying'.[55] It may have been motivated by the family's credit arrangements rather than any attempt to deflect public sensitivity about their extensive land holdings. As it was, Warren was listed in the Hawkes Bay County as the occupier of Owhaoko, part Mangaohane and part Rangipo-Waiu, all together some 149,632 acres of Studholme land in that county alone, with a rateable value of £50,000.[56] As detailed below, Warren played a key role in promoting the Studholmes' cause, including lobbying senior politicians in Wellington, up until John Studholme Jnr's arrival in 1893 to take matters into his own hands.

John Studholme Jnr's move to Owhaoko in 1893 to expedite Mangaohane matters was prompted by growing pressure from the family's creditors. The Studholme empire was founded on debt: father and sons between them owing by 1893 £54,000 to wool merchants and stock and station agents Murray Roberts & Co and a London lender.[57] Despite the lack of legal title, Murray Roberts & Co had advanced £14,760 on the Mangaohane block alone, making the company vitally interested in the success of the Studholmes' bid for 'indefeasible title', and soon. By this time, low wool prices meant that the Studholme's Owhaoko property was losing money. The company was unwilling to continue existing credit arrangements without a reduction to the Mangaohane account and further security for the loan. John Studholme Jnr countered, by the winter of 1894, with the threat to walk away unless the company continue to fund farming operations and the legal costs associated with gaining title to Mangaohane.[58] As McBurney points out, this financial crisis provides important context to the struggle for title during 1893-1895, J Studholme Jnr reiterating to AH Miles, director of Murray Roberts & Co in December 1894: 'The Mangaohane settlement has been more protracted than I had

[52] Copy, J Studholme Jnr to Judge Edger, 6 December 1884, MS-Papers-0272, folder 7.The actual transfer was dated 25 February 1895, 'Epitomy of Transfer of Tamakorakos', MS-Papers-0272, folder 25.
[53] Studholme, *Coldstream*, pp.11, 19, cited in Hazel Riseborough, *Ngamatea: the land & the people* (Auckland, Auckland University Press, 2006), p.11.
[54] Copy of J Studholme Snr to W Buller, 1 August 1885, MS-Papers-0272, folder 25; J Studholme Jnr to AH Miles, 13 June 1894, folder 13.
[55] The practice of using family members or employees to front purchase and lease arrangements became more widespread after the Native Land Act 1909 prescribed a 3000-acre limit of Maori land any one person could acquire (Section 193), discussed with respect to Muaupoko in J Luiten, 'Muaupoko Land Alienation and Political Engagement Report', (Waitangi Tribunal, 2015), Wai 2200 #A163, pp. 358-362.
[56] Notice of valuation, MS-Papers-0272, folder 5.
[57] Using the Reserve Bank inflation calculator, this is the equivalent of almost NZ$10.25 million.
[58] J Studholme Jnr to AH Miles, 14 June 1894, MS-Papers-0272, folder 13.

expected but I have done and will continue to do everything in my power to hasten matters.'[59] In the wake of deteriorating relationships with Murray Roberts & Co, the finance company's vested interest in Mangaohane, too, was considered by J Studholme Jnr to have kept them from taking his father to the bankruptcy court.[60] If the Studholmes' efforts to secure Mangaohane had begun with the relatively simple aim of obtaining sheltered pastures for lambing in order to make Owhaoko viable, it is clear that by 1894 a great deal more rested on the battle for title. It also explains the extent of resources the Studholmes committed to the contest.[61]

Doing 'everything in my power' involved first and foremost engaging a number of lawyers, some of them the best in their field, to argue the Studholmes' case for title in court. Between 1890 and 1895, ALD (Donald) Fraser, JM Fraser, TW Lewis Jnr (the former Native Department Under-Secretary's son), Patrick McLean, HD Bell and William Rees were engaged by the Studholmes in the 'longwinded business' of Mangaohane. HD Bell was perhaps the highest regarded and skilled of these, with an expertise in Maori land law. In this period, from 1893 to 1896, he was also Member of Parliament for Wellington.[62] Bell also acted for Murray Roberts & Co, and his relationship with the Studholmes cooled somewhat throughout 1894 as a result of the dispute over credit. One implication of the company's refusal by March 1895 to continue to allow legal costs to be charged against the Mangaohane account was that the Studholmes felt they could no longer afford to employ Bell.[63] In his stead, the Studholmes turned to William Rees.[64] WL Rees, too, had considerable expertise in Maori

[59] J Studholme Jnr to AH Miles, 23 December 1894, MS-Papers-0272, folder 13; discussed in McBurney, Wai 2180 #A52, pp. 349-354.

[60] 'Mangaohane is our only pull over them, our only means of assisting the position & our personal exertions. If they would give you a personal release, I would be willing to work away at these matters until things are put straight. ... to work away at the northern affairs until all the native matters were settled.'; 'our possession of Mangaohane is the only leverage we have over them', J Studholme Jnr to J Studholme Snr, 27 February 1895, MS-Papers-0272, folder 14.

[61] In the event, the financial dispute was resolved by March 1895. The Studholmes borrowed £10,000 from a family member to settle the Mangaohane account, agreed to give control of farm management to Murray Roberts & Co and the Owhaoko run the use of Mangaohane lands for 14 years. In exchange, J Studholme Snr was given a 'personal release' from Murray Roberts & Co, ending the threat of bankruptcy proceedings, the London loan was renewed, and the Mangaohane account with Murray Roberts & Co continued to finance farm operations. J Studholme Jnr to Murray Roberts & Co London, 23 April 1895, MS-Papers-0272, folder 14.

[62] Bell was regarded within the law fraternity as second only to Robert Stout. He worked as Crown solicitor in Wellington from 1878 to 1890, and was elected mayor of Wellington in 1891, 1892, and again after his parliamentary term, in 1896. In 1907 Bell was appointed one of New Zealand's first king's counsels, and returned to his job as Crown solicitor in Wellington from 1902 to 1920. He was also president of the New Zealand Law Society from 1901 to 1918. WJ Gardner, 'Bell, Francis Henry Dillon', from the Dictionary of New Zealand Biography, Te Ara – the Encyclopedia of New Zealand, http://www.TeAra.govt.nz, accessed 10 May 2017).

[63] 'Our merchants are pressing us for money & have intimated that we must only draw on them for ordinary work expenses. Legal expenses are outside ordinary expenses. We will therefore be unable to [employ?] Bell further.' See undated, unaddressed draft letter by J Studholme Jnr in MS-Papers-0272, folder 8. The context referred to in the letter, including the mention of Rees' legal partner Lusk, strongly suggests the letter was directed at Rees, and written at the end of February 1895.

[64] Although in fact Rees had been engaged by the Studholmes since at least March 1894 (see Mangaohane correspondence in folder 7) and Bell continued to represent the Studholmes in Supreme Court proceedings in April 1895 and again in the Court of Appeal the following month.

land litigation. Richard Boast relates that Rees was involved in 'practically every Supreme Court and Court of Appeal Maori land case from the East Coast region of any importance' as well as 'endless cases' in the Native Land Court, Native Appellate Court, and Native Validation Court.[65] Rees, too, was a Member of Parliament for Auckland between 1890 and 1893. Given his public posturing against monopolists and land speculation, on the face of it Rees' support of the Studholmes seems puzzling.[66] The fact that he used his anticipated fee from the Mangaohane prosecution as security for a bank loan suggests fiscal factors played a part.[67] In taking over from Bell in March 1895, Rees himself felt moved to reassure John Studholme: '... I cannot permit you to think that I am either lukewarm or doubtful in the advocacy of your claims in Mangaohane – claims which I believe to be founded on justice, and which I certainly shall spare no pains in supporting'.[68] This support, in fact, had begun while Rees was in Parliament, with his successful promotion of the Native Land (Validation of Titles) Bill in September 1892 (created explicitly with the Studholmes' Mangaohane purchase in mind)[69]; and continued after his electoral defeat when, as Studholme's solicitor, he utilised the 'wonderful powers' of the Validation Court created the following year to finally obtain Studholme's title to Mangaohane, in December 1895.[70] In this period, Rees also used his influence outside the courtroom to lobby political colleagues, namely James Carroll and Premier Richard Seddon, and the judiciary, to expedite the Studholmes' case.[71]

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[65] Boast, *The Native Land Court,* p.100. Boast comments that Rees' criticisms of the Native Land Court and legislation, expressed for example in the Rees-Carroll 1891 Commission, need to be taken with an 'especially large grain of salt' given that Rees himself contributed to the complexity with his litigation, pp. 100-101.

[66] Rees ostensibly favoured Liberal ideologies of close settlement by 'bona fide' small settlers, see Tom Brooking, 'Rees, William Lee', from the Dictionary of New Zealand Biography, Te Ara – the Encyclopedia of New Zealand, http://www.TeAra.govt.nz, accessed 11 May 2017.

[67] Rees divulged to Studholme in October 1894 that the Bank of New Zealand held a lien on his Mangaohane fee, see W Rees to J Studholme Jnr, 26 October 1894, MS-Papers-0272, folder 7.

[68] WL Rees to John Studholme Jnr, 8 March 1895, MS-Papers-0272, folder 8.

[69] The Native Land (Validation of Titles) Act 1892 and the direct bearing Mangaohane had in the formulation of the Bill is dealt with by Young, Wai 2180 #A39, pp.117-127. The background and purpose of the Validation Court to validate incomplete and disputed titles is discussed in Boast, *The Native Land Court,* pp. 37-45.

[70] W Rees to J Studholme Jnr, 26 March 1895, folder 8. Note that Rees had previously sought the Chief Judge's sanction to bringing the case to the Validation Court: 'After leaving you in 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 bringing Mangaohane into the Validation Court at once but he requested me to obtain the consent of Judge Barton to hear the case.' W Rees to J Studholme Jnr, 8 March 1895, MS-Papers-0272, folder 8.

[71] Rees and Carroll had worked together on the 1891 Native Land Commission, both men sharing strong ties with the East Coast. In March 1894, for example, with Carroll's help Rees took advantage of Premier Seddon's visit to Gisborne to urge a prompt filling of the Chief Judge vacancy in order to proceed with Warren's application to have his certificates of Mangaohane purchases confirmed. W Rees to J Studholme Jnr, 29 March 1894, MS-Papers-0272, folder 7. Rees had already written to outgoing Chief Judge MacDonald to hear the case before his departure: 'Whoever may be appointed to fill the position of Chief Judge cannot bring the knowledge which you possess to the settlement of this protracted and ruinous litigation'. Rees to Chief Judge, 9 March 1894. He also promptly apprised incoming Chief Judge Davy of the need to expedite a hearing: 'My clients have been delayed and harassed for many years in every Court and before Parliament in determining their title. In every tribunal they have incontestably proved their bona fides yet they are suffering very great and serious loss by delay besides cost and expenses.' Rees to Chief Judge, 21 April 1894, MS-Papers-0272, folder 7. The

Bell and Rees led the Studholmes' campaign in the higher courts and political circles, but there was also an understory of lawyers working at the local level of Native Land Court litigation. The close relationship between title investigation and purchase makes it difficult to ascertain just who was working for who in any given case: things were rarely as they seemed. The Studholme-Buller-Kawepo combination driving the initial Mangaohane title investigation has already been alluded to above. In the Mangaohane partition of April 1890, Carroll (Member for Eastern Maori at the time) ostensibly represented the interests of 'Renata Kawepo and his party' (now spearheaded by his successor Wiremu Broughton who was, as discussed below, as equally beholden to Studholme). As the purchaser of these interests, Studholme was vitally interested in the outcome, and in fact orchestrated the partition in concert with the Donnellys.[72] In these circumstances who instructed and paid Carroll for his services? Another example is the partial rehearing of Mangaohane 2 title investigation in December 1892, when Rena Maikuku and others succeeded in proving entitlement through the tipuna Tamakorako. In this contest, the Studholmes were represented by Bell and Rees. ALD Fraser and JM Fraser, on the other hand, were said to be acting for Wiremu Broughton and Anaru Te Wanikau. However ALD Fraser sent his bill of £185 for his 59 days on the case to Warren, not Broughton, for payment.[73] Fraser also charged Warren for half of the cost of his services on Mangaohane-related cases throughout 1893, the other half billed to Airini Donnelly.[74] The circles within circles of overlapping interests this evidence points to gives credence to the suggestion that the Studholme-Donnelly combination contributed to the marginalisation of Winiata Te Whaaro's claims in neighbouring land blocks like Awarua and Owhaoko. As McBurney relates, in the Awarua partition of 1890-91, ALD Fraser (again representing Anaru Te Wanikau as well as Noa Huke and Wi Te Roikuku) subjected Winiata Te Whaaro to a week of cross-examination intended to discredit his integrity.[75] In the 1893 hearing regarding relative interests in Owhaoko D, Fraser and Captain Richard Blake (discussed below) represented Ngati Whiti, successfully limiting Winiata Te Whaaro's interest in the block to a nominal award on the basis of 'aroha'.[76]

ALD Fraser's accounts reveal that he was also employed by Studholme to lobby politicians directly. Having won certificates from the Native Land Court confirming Studholme's purchase of unascertained interests in Mangaohane 1 and 2 in July 1893, for example, two weeks later Fraser

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hearing duly took place in Hastings in June 1894, where Judge Butler appears to have ordered the confirmation, see Young, Wai 2180 #A39, pp. 154-55.

[72] See for example the agreement made between George and Airini Donnelly and William Studholme, 11 June 1890, where the parties agreed to abide by the partition 'as laid by them before the Native Land Court now sitting at Hastings...'. The agreement included the resolve 'to use their best endeavours to obtain the withdrawal of any application for any ... rehearing...' MS-Papers-0272, folder 22.

[73] 'RT Warren to Alfred LD Fraser', MS-Papers-0272, folder 29. The itemised account makes it clear that all four men were working together.

[74] Ibid.

[75] McBurney, Wai 2180 #A52, pp. 289-292.

[76] See judgement reported in *Daily Telegraph*, 10 July 1893. The Owhaoko decision is also discussed briefly in Stirling and Fisher, Wai 2180 #A6, pp. 66-67.

travelled to Wellington to press Carroll and Bell to include the Mangaohane certificates in the Native Land Court Certificates Confirmation Bill before the House. It took him two days to convince the Members, the certificates duly listed in the schedule of the resulting Act, and the whole exercise costing Studholme over £34.[77] Studholme's folder of legal bills (which may or may not be complete) indicates that the litigation to obtain title to Mangaohane between 1890 and 1896 cost him at least £1,320, the equivalent in today's terms of around a quarter million dollars.[78]

John Studholme's papers provide a window into the era of title determination within Mokai Patea, in particular the thick addiction to credit which seems to have entrapped virtually everyone. The Studholmes' position at the top end of this debt chain as lessees and purchasers gave them a degree of control over their beneficiaries. Wiremu Broughton, Renata Kawepo's whangai, is a case in point. After a costly and very public court case Broughton defeated Airini Donnelly in the battle for succession to Renata Kawepo's interests, but he proved no more successful than his predecessor at disentangling himself from the attached debt and compromise that came with it.[79] In the midst of litigation and strife over the Omahu title in August 1889, one interested lawyer, HA Cornford, approached Warren:

> The pressing requirement of the Broughton natives is money. It is needed for the Native Land Court and for the criminal cases now pending. It is impossible for them to find it except by borrowing. ... I believe that there is every disposition on the part of the Broughton natives to pledge or sell their property to raise the funds necessary to fight the common and much hated enemy.
>
> In the Omahu case their agent Captain Blake is (perforce) pressing them for something on account. He has already been six weeks in the case and may be five or six more. He wants £150 for pressing requirements and pledges me his word that if this be advanced he will see the case through to judgement and will look to the natives alone for the balance of his costs.[80]

Cornford's audacity was breathtaking. As Renata Kawepo's heir, Broughton was a vital component of Studholme's bid for Mangaohane, and Cornford used this leverage to good effect:

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[77] 'RT Warren to Alfred LD Fraser', MS-Papers-0272, folder 29.
[78] The legal accounts are in MS-Papers-0272, folder 29; the calculation was made with the Reserve Bank inflation calculator.
[79] Richard Boast, 'The Omahu Affair, the Law of Succession and the Native Land Court' (2015) 46 VUWLR. Donnelly's initial success in the Supreme Court in August 1888 was overturned by the Court of Appeal three months later, Broughton's victory celebrated with a torchlight procession through the town of Napier. Donnelly then lodged an appeal to the Privy Council. The litigation over the will coincided with an equally fierce battle over title to the Omahu Block, and in June 1889 Airini's brother Turanga Karauria was shot dead by Broughton's uncle Watara Wi. In 1890 the Native Land Court effectively split the block between them, although Donnelly was widely perceived to have received the best of the deal. In July 1891 the Privy Council largely agreed with the Court of Appeal, and the following year the Omahu title was reheard, with little resulting change. The cost of the litigation from beginning to end was thought to have run to thousands of pounds.
[80] HA Cornford to RT Warren, 14 August 1889, MS-Papers-0272, folder 6. Boast relates that Cornford was Watara Wi's defence counsel.

> If I may be permitted to make a suggestion, I think that some arrangement might be arrived at between Murray Roberts & Co and Mr Studholme which would be to the advantage of both parties. Whether this be done or not, I feel convinced that nothing can more surely jeopardise your interests than for a feeling to gain ground in the minds of our natives that they were being left to their own resources. One man I know would willingly spend large sums to foster and take advantage of such a feeling. And in the present infamous condition of the Native Land Laws it is above all things necessary that in the completion of titles one should possess the 'goodwill' of his native vendors or lessors.

Cornford was undoubtedly referring to George Donnelly who, with his wife Airini, was not only Broughton's 'much hated enemy' but also Studholme's major rival in Mangaohane. In the event, Studholme agreed that Broughton's goodwill was worth purchasing: in addition to smaller periodic payments which had been made to Broughton over the years, a payment of £3000 was made to 'Broughton & Co', explained by Studholme Snr as being 'for expenses in connection with putting different things through the Court by Broughton for his people'.[81] This sum, like the others, was treated as an advance on the purchase of Mangaohane, reflected in partition arrangements the following year.[82] As a result, Broughton not only fronted Studholme's 'bona fide' purchase of Mangaohane in the 1890 partition and all further validation litigation over the block, his support was also called on for less savoury tasks. In February 1894 when John Studholme Jnr decided to sue Winiata Te Whaaro for trespass, Broughton's signature with that of two others at Omahu were the first (and only) to be obtained on the necessary warrant.[83] The action was dropped two months later, Warren and William Studholme having failed to convince Ngati Whiti registered owners to participate in the trespass proceedings.[84]

The influence that credit arrangements exerted over title determination is similarly hinted at in Ngati Tama's refusal in September 1888 to take Warren's money (that is, Studholme's) to have JM Fraser represent them with regard to Owhaoko. At the time Ngati Tama were pursuing the rehearing of Mangaohane, and were wary of Warren's offer 'lest they and their agent should be compromised by such act against getting redress for their grievance in Mangaohane.'[85] Again, the degree to which title determination within Mokai Patea was shaped by such leverage is difficult to establish, but it was clearly a factor. And it was not only Maori vendors who were compromised in this way. Like Cornford, Captain Richard Thomas Blake turned to Studholme for money owed to him as

[81] J Studholme Snr to J Studholme Jnr ('Jack'), 28 March 1895, MS-Papers-0272, folder 8. See also notes of payments made in folder 5, which accounts for the payment as 'expenses in connection with tribe according to arrangements among themselves.'
[82] Ibid. J Studholme Snr told his son the £3000 was the basis of the allotment of Mangaohane L to Broughton.
[83] The attempt to sue Winiata Te Whaaro for trespass is outlined, in journal form, over January to April 1894 in MS-Papers-0272, folder 36. Broughton's signature was obtained on 24 March 1894.
[84] Warren informed John Studholme Jnr about his unsuccessful attempt to talk Ngati Whiti into signing the authorisation to sue in early April: 'I should have had a better chance of getting it done away from the Pah.' RT Warren to J Studholme Jnr, 4 April 1894, MS-Papers-0272, folder 11.
[85] RT Blake to RT Warren, 6 September 1888, MS-Papers-0272, folder 6.

Broughton's agent, albeit with a markedly different approach.[86] In addition to representing Broughton in the Omahu title investigation and again in Owhaoko, Blake had represented tangata whenua including Winiata Te Whaaro in the Awarua title investigation in 1886. Completely at home in both English and Maori and new to the job, Blake was a conscientious agent who took his own minutes – in Maori – of the lengthy Awarua proceedings.[87] In September 1888 as Owhaoko proceeded, he had advised Warren that the chances Mangaohane would be reheard were 'growing stronger and stronger', sharing his opinion that should it proceed, the 'great injustice' done to Ngati Hinemanu in the original investigation would be rectified:

> What I think will happen if a rehearing of the Mangaohane is granted is this: North of Mangaohane Stream will go to N'Whiti and N'Tama. East of Otupae range, to the N'Honomokai Anaru Te Wanikau's lot, and between the Mangaohane Stream and Aorangi to the N'Hinemanu and N'Paki, and the Airini Tonore set knocked out altogether, they [sic] only chance they will have in my opinion is that of getting into the piece East of Otupae range towards Pohokura.[88]

Eight weeks later Blake again wrote to Warren. In payment for acting for him in the Owhaoko title determination, Broughton had given Blake an order against Warren for £250. Neither Warren nor Studholme, however, had apparently agreed to any such arrangement. Blake was facing bankruptcy proceedings, and in his letter to Studholme literally begging him to honour the order, he also confided that his wife was in need of expensive medical treatment. If Studholme were to pay in full, he promised, 'it would be doing me a good turn that would never be forgotten by one and one that I shall always do my best to repay.'[89] Studholme responded with a payment to Blake of £150. In August 1892, having successfully won for Rena Maikuku her inclusion into Mangaohane 2 the previous April, Blake signed the following undertaking for the Studholmes:

> I Richard Thomas Blake ... do hereby guarantee & solemnly promise that from the date of this writing I will in no way directly or indirectly take part assist or give any information whatsoever to those persons their solicitors or agents now claiming to be admitted as owners in the Mangaohane block either privately or in any Court of Law or Native Land Court. I further hereby agree to give immediate notice to my late clients and their solicitor that I have retired from the case and can take no further action on their behalf therein.[90]

It would appear that Blake's debt to the Studholmes had been called in.

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[86] Blake was the eldest son of an Irish father and Ngamahanga mother, earning his rank of Captain in the New Zealand wars. He came to Hastings in 1885 where he began work as an agent in the Native Land Court. His brother John was also working in the same arena in Hawkes Bay. Blake committed suicide in 1904. *Manawatu Standard*, 20 December 1904; *Hastings Standard*, 13 December 1904.
[87] The private Blake Papers, comprising three volumes of court minutes, are in Wai 2180 #A20.
[88] RT Blake to RT Warren, 6 September 1888, MS-Papers-0272, folder 6.
[89] RT Blake to J Studholme Snr, 10 November 1888, MS-Papers-0272, folder 9.
[90] Copy of undertaking, 8 August 1892, witnessed by ALD Fraser, MS-Papers-0272, folder 6.

The political connections the Studholmes enjoyed pervade the history of their dealings in Mokai Patea, the early relationship cultivated with Renata Kawepo having repercussions outside the boundaries of Mangaohane. John Studholme Snr told his son that the early Owhaoko leases – as unlawful as those of Mangaohane – were arranged on his behalf by the government agent in Hawkes Bay, Samuel Locke, with the concurrence of the then Native Minister Donald McLean.[91] The influence exerted by Members of Parliament HD Bell and WL Rees has already been touched on above. In addition, the relationship established with a young James Carroll as Walter Buller's protégé in the early title investigations in the district endured into the 1890s. Carroll advised Warren in September 1888 that he did not think a rehearing of Mangaohane would proceed, and that even if it did, the government would be 'compelled' to protect Studholme.[92] Seven months later Warren accompanied the Member for Eastern Maori to Wellington, and in a 'long interview' with Native Minister Mitchelson the pair 'put things very plainly before him & the action of the Govt re Mangaohane'.[93] This lobbying was in the context of competing transactions with the Donnelly-Richardson partnership. Warren's reports to his employer suggest that up until at least mid-1892 the Owhaoko Station manager actively sought Carroll's help in advancing Studholme's cause.[94]

This does not mean a successful outcome was assured – the length of the litigation over Mangaohane suggests that the processes of law could not be overturned altogether, or at least not immediately. It does strongly indicate however that throughout this contest the Studholmes enjoyed a political patronage that was not available to Winiata Te Whaaro. This pressure extended to the judiciary, in terms of keeping Mangaohane to the forefront of court business at a time when it was besieged by a backlog of some 13,000 cases.[95] In his bid to get Warren's purchases confirmed, for example, in March 1894 J Studholme Jnr tailed the Chief Judge all the way to Te Aroha, securing MacDonald's agreement to 'squeeze in' hearing Mangaohane 1 before his retirement.[96] When this was thwarted by the government, pressure was maintained on Premier Seddon by Studholme personally, by Carroll and

[91] 'It was never regarded as coming under the restriction.' J Studholme Snr to J Studholme Jnr, 22 November 1894, MS-Papers-0272, folder 9. Such support is presaged by correspondence from 1867 between McLean and Ormond about the potential of Mokai Patea for their own large-scale sheep-farming operations, and those of McLean's 'Southern friends', see for example JD Ormond to D McLean, 27 November 1867, #1019330, ms-papers-0032-0482.
[92] RT Warren to J Studholme Snr, 24 September 1888, MS-Papers-0272, folder 11.
[93] RT Warren to J Studholme Snr, 15 April 1889, MS-Papers-0272, folder 11.
[94] With regard to the Native Land (Validation of Titles) Bill for example, Warren advised Studholme of his discussion with Bell to have two clauses inserted specifically to address the issues with Mangaohane, claiming that Carroll (and Butler and Buller) 'agree thoroughly with my own opinion.' In the same letter he strongly recommended that Rees take up the litigation, arguing: 'Rees & Carroll work together & there is no mistake about his energy & keeping Carroll up to the collar...', RT Warren to J Studholme Snr, 23 July 1893, MS-Papers-0272, folder 11.
[95] Boast, *The Native Land Court*, p. 41.
[96] Studholme's diary re Mangaohane 1, MS-Papers-0272, folder 36.

Rees, and also by a deputation from the Law Society on Studholme's behalf.[97] The hearing duly took place in Hastings in June 1894, where Judge Butler appears to have confirmed the purchases.[98]

There is no evidence to suggest that the judiciary was overtly partisan to upholding Studholme's interests, but in at least one case – that of Judge Butler – the close ties evident in the Studholme papers raises serious issues about judicial impartiality. William James Butler had been in the job for a year when he confirmed Warren's purchases. Prior to that he had been working as a government land purchase officer in the district – involved in the purchase of interests in Te Kapua and Awarua blocks as late as 1892 – making him an extraordinary choice as the arbiter of Mangaohane matters.[99] Warren was in the habit of discussing Mangaohane with Butler before his judicial appointment.[100] This support seems to have continued in his new role: in March 1895 Judge Butler accompanied Rees to Otaki where they 'spent the evening' talking over Mangaohane matters with the Chief Judge, in particular whether the Validation Court had jurisdiction to hear Studholme's case.[101] J Studholme Snr was encouraged enough by the response from the Chief Judge, and Judges Barton and Butler that he urged his son to proceed with the litigation.[102] HD Bell's efforts in January 1895 to have Judge Butler in particular authorised to validate the Mangaohane certificates he had earlier granted caused Chief Judge Davy to explain to the Under-Secretary of Justice that the only reason behind Bell's request was to avoid delay: 'I do not believe that there is any other reason.'[103]

Appointed in June 1893, Butler's very first case as Native Land Court Judge (with Judge Mackay) may have been the rehearing of Owhaoko D, in which Winiata Te Whaaro was vitally interested. The judgement, issued in July 1893, did not uphold Winiata's appeal, rationalising instead his patent local familiarity with the land as 'possibly attributable to a knowledge gained of the localities while travelling over the country of late years or to evidence given in the Native Land Court, and to information gleaned from elderly persons acquainted with the district.'[104] It was Judge Butler, too, who in July 1894 found against Winiata Te Whaaro's appeal under Section 13 of the Native Land

[97] Ibid. The deputation was led by Patrick McLean and Cornford.
[98] See Young, Wai 2180 #A39, pp. 154-55.
[99] William James Butler was New Zealand born, and trained as a surveyor. He served briefly as a government native agent in the Wairarapa. In 1879 Butler became private secretary to a succession of Native Ministers. In 1885 he became a land purchase commissioner, based at Whanganui, involved with the Crown's acquisition of Waimarino, in 1886. Butler's activities as Land Purchase Officer within the Taihape District Inquiry are discussed in E Subasic and B Stirling, 'Sub-District Block Study – Central Aspect', Wai 2180 #A8.
[100] See for example RT Warren to J Studholme Snr, 23 July 1892, advising him with respect to the additional clauses to the Native Land (Validation of Titles) Bill, that he had had 'two long interviews with Butler on this matter'. MS-Papers-0272, folder 11.
[101] W Rees to J Studholme Jnr, 8 March 1895, MS-Papers-0272, folder 8.
[102] J Studholme Snr to J Studholme Jnr 'Jack', 28 March 1895, 30 March 1895, MS-Papers-0272, folder 8.
[103] Chief Judge Davy to Under-Secretary Justice Haselden, 4 January 1895, cited in Young, Wai 2180 #A39, p. 178. As Boast explains, the Native Land (Validation of Titles) Amendment Act 1894 allowing Native Land Court judges to be authorised to act as Validation Court judges was justified by the government on the grounds of expediency and cost, *The Native Land Court*, p.143.
[104] In the same vein, the judgment discounted evidence of past use and occupation of the block by Winiata and his 'matuas', Owhaoko D Judgement, 7 July 1893, printed version in MS-Papers-0272, folder 22.

Court Act Amendment Act 1889, with another pronouncement that the original Mangaohane judgement may have been different had the whole of the evidence been available to the court, but that this was the fault of the parties themselves.[105]

Throughout the decade of strife over Mangaohane, the Studholmes maintained that the land had been honestly acquired, the long delay over title to 'their' land occasioned by the 'mistake of a judge'.[106] Based on the partition arrangement in 1890, the Studholmes claimed 19,000 acres of Mangaohane 2 – some two thirds of the block – which was nonetheless occupied by others, namely the Donnelly-Richardson partnership and Winiata Te Whaaro.[107] From his arrival in 1893, John Studholme Jnr had done his utmost to 'get rid of Winiata'.[108] In addition to opposing his neighbour's appeals for title in court, in March 1894 Studholme attempted to persuade Winiata Te Whaaro's relations at Moawhango to sue him for trespass.[109] Given their intersecting interests, Studholme was also undoubtedly behind Murray Roberts & Co's prosecution for Winiata's debt in May 1894 (see p. 48). According to claimant Ngahape Lomax, the Studholmes also pressured local woolbuyers to boycott Winiata's wool, forcing him to raft his produce downriver, where it was sold to Wellington merchants.[110] At the point of Chief Judge Davy's decision in August 1894 to admit Winiata Te Whaaro into the title, the Studholmes were prepared to 'give up' as much as 5,000 acres to accommodate Winiata's claim.[111] The proffered settlement was an indication of just how desperate John Studholme Jnr was to obtain title for farming operations 'as speedily as possible'.[112] In the event, the Donnellys picked up the litigation baton at this point with their successful action against Chief Judge Davy in the Supreme Court.

John Studholme Jnr was known to be a devout member of the Church of England. In 1901 he was president of the fledgling Farmer's Union. He was actively involved in local government for many

[105] Discussed in Young, Wai 2180 #A39, pp. 163-167.
[106] In his undated notes prepared for the Validation Court John Studholme Jnr wrote: 'We have paid for the land but are prevented from using it by a mistake of a judge. ...', MS-Papers-0272, folder 8. See also draft copy John Studholme Jnr to Murray Roberts & Co, London, 23 April 1895: 'Who could have seen that .... the Chief Judge of the Native Land Court would be found to have made a [illegible] error in 1885 and that that error would lead to our being deprived of the use of our land up to the present date & would involve unending litigation.' MS-Papers-0272, folder 14. See also Rees to Chief Judge, 21 April 1894, 'In every tribunal they have incontestably proved their bona fides yet they are suffering very great and serious loss by delay besides great cost and expense.' MS-Papers-0272, folder 7.
[107] John Studholme Jnr explained to PS McLean in October 1894 that as a result of Winiata Te Whaaro's occupation and the overstocking by Donnelly and Richardson to the extent of 10,000 acres, the Studholmes had 'never yet had the use of a single acre of Mangaohane No. 2...' J Studholme Jnr to PS McLean, 26 October 1894, MS-Papers-0272, folder 7.
[108] See J Studholme Jnr journal entries 1-10 January 1894, MS-Papers-0272, folder 36.
[109] The attempt to sue Winiata Te Whaaro for trespass are outlined, in journal form, over January to April 1894 in MS-Papers-0272, folder 36.
[110] Ngahape Lomax, Recording of meeting at Winiata Marae, 14 March 2017. I have not found evidence to support this claim, but Studholme's tactics certainly give credence to it.
[111] Draft settlement, October 1894, MS-Papers-0272, folder 4. Note that Studholme apparently initially offered Winiata, in January 1894, 1000 acres or £800. RT Warren to J Studholme Jnr, 18 January 1894, folder 11.
[112] J Studholme Jnr to PS McLean, draft, 26 October 1894, MS-Papers-0272, folder 7. Emphasis in original.

years as councillor for Ashburton County and in 1902 and again in 1905 he contested the Ashburton seat in the General Election. From 1900 to 1908 he was part of the local Mounted Rifle Volunteers, and in the 1913 waterfront strike Studholme commanded the special constables at Christchurch. In March 1915, at the age of 52, he joined the New Zealand Expeditionary Force, serving in Egypt, Gallipoli, France and Germany, and then as Assistant Adjutant-General to the Commander of the New Zealand Forces from 1917 to 1919. He received a Distinguished Service Order (DSO) in 1916 and was made Commander of the Most Excellent Order of the British Empire (CBE) in 1919.[113]

There is very little in the Studholme papers to suggest that either father or son thought twice about the ethics of their actions, or the impact on Winiata Te Whaaro's family. The closest they ever came to admitting Winiata Te Whaaro's interest in the land is contained in notes John Studholme Jnr prepared for the Validation Court which read: 'It may be urged that it would be unjust to allow the rightful owners to suffer prejudice owing to a mistake made by the N.L.C. But on the other hand it is at least equally unjust that an innocent person should suffer through an error of the Native L.C.'[114] Although John Studholme Jnr was himself dubious about the legality of his family purchases,[115] this did not seem to upset the fundamental tenet that the purchases were 'bona fide'. And yet the revisions in the narratives John Studholme Jnr recorded about Mangaohane suggest a conscious effort to cast his father's actions and recast events in a better light, amounting to a justification. These 'notes' stress the lack of past Maori habitation on the block, together with Renata Kawepo's 'leading position' within Inland Patea as 'a man of very strong character'.[116] The claim that Renata was the first to put sheep on the land is later substituted for that of being 'the first to make permanent use of the land'. In the same way, Studholme Snr's friendship with Renata Kawepo as the basis of early arrangements is removed, and even the rangatira himself erased from the narrative, the runholder now transacting with the 'principal claimants'. In these notes Winiata Te Whaaro is one of Renata's shepherds, his settlement at Pokopoko omitted altogether.

For the Studholmes Mangaohane was, ultimately, a matter of business. John Studholme Jnr was not present at the eviction because he had left to get married. He returned with his new bride in June 1897

[113] Macdonald Dictionary Record: John (Junior) Studholme, Canterbury Museum, available online at http://collections.canterburymuseum.com; Military personnel files for Studholme, John, WW1 7/1293 – Army; Record no: 0110542; R no: R7922562; Series 18805 available online at https://www.digitalnz.org; 'Col. J. Studholme, C.B.E., D.S.O.', *Evening Post*, 26 May 1934, 'The General Election', *Evening Star* 13 October 1902.
[114] Notes, undated, MS-Papers-0272, folder 8.
[115] Studholme was concerned enough about the legality of both Warren's purchases and his own purchase of Tamakorako interests to worry his solicitor HD Bell about it in December 1894. J Studholme Jnr to Bell, 28 December 1894, MS-Papers-0272, folder 4.
[116] 'Notes on the history of Mangaohane', MS-Papers-0272, folder 20.

to the family estate of Coldstream, not Owhaoko.[117] Within seven years of the eviction, following their father's death in 1903, the brothers sold their Mangaohane titles to the Donnellys.[118]

The Donnellys

The other major landholders involved in Mangaohane were George and Airini Donnelly (Tonore). George Donnelly was an Irishman, immigrating to New Zealand in 1862, and serving in the Cavalry during the New Zealand Wars.[119] By the mid-1870s he was working for Renata Kawepo as a shepherd on Mangaohane, which is how he met Airini.

Airini Karauria was the granddaughter of Renata Kawepo's sister. Her close relationship with her great-uncle came to an end in 1877 when she decided to marry George Donnelly. This also spelled the end of Donnelly's sheep-farming business with Kawepo, the Supreme Court litigation over the assets a taste of things to come. After this falling out, the Donnellys' foothold in Mangaohane was maintained by a new farming partnership with local Hiraka Te Rango. This, too, ended when Airini Donnelly was awarded interests in the title to the block by the Native Land Court in 1885.[120] In the wake of the controversial title investigation, the Donnellys rapidly expanded their flock on Mangaohane to 22,000 sheep and, like Studholme, began acquiring the interests of other registered owners. In the period between 1885 and the partition of 1890, it was the Donnellys, rather than Winiata Te Whaaro, who were the primary concern of Studholme's manager RT Warren.[121]

[117] The engagement between John Studholme Jnr and Alexandra Thomson (the fourth daughter of the late Archbishop of York and no apparent relation to Sheriff Andrew Thomson) was announced on 29 March 1897, and the couple were married quietly at Lyttleton on 23 June 1897, *Ashburton Guardian*, 29 March 1897; *Star*, 24 June 1897; Press, 25 June 1897.
[118] Riseborough writes that the Studholme brothers received more than £30,000 for the Mangaohane leases and freehold, Riseborough, *Ngamatea*, p. 18.
[119] McGregor, *Mangaohane*, p. 15.
[120] Bruce Stirling, 'Taihape District Nineteenth Century Overview', Wai 2180 #A43, p. 585. Like the dissolution with Renata Kawepo a decade before, Donnelly took legal action against Ihakara Te Raro for £2375 attached to the business partnership with his son, Hiraka. See also Tony Walzl, 'Twentieth Century Overview', Wai 2180 #A46, pp. 197-199.
[121] In this period the Donnellys attempted to get conflicting transactions validated by the Trust Commissioner, causing Warren to protest to Native Minister Mitchelson and call for an independent court, RT Warren to J Studholme Snr, 15 April 1889, 21 April 1889, MS-Papers-0272, folder 11.

Figure 5: Airini Tonore nee Karauria, circa 1870-1880[122]

Airini Tonore seems to have been a *force majeure*. Nowhere was she more formidable than in the male domain of the Native Land Court.[123] Her knowledge of history and whakapapa combined with an audacity and ambition that saw her confront her great-uncle in the Mangaohane case with the argument invoking the '1840 rule' that, as a slave of Ngapuhi at that time, his claim to mana rangatira had no standing.[124] Her husband proved an equally ambitious farmer. The couple's farming operations on extensive landholdings acquired through both litigation and purchase made them a considerable fortune, establishing them among Hawkes Bay's gentry and governing elite. According to Richard

[122] Photographer: Samuel Carnell, ¼-022134-G, Alexander Turnbull Library.
[123] Airini's career in litigation began as a teenager when she successfully argued her case in the Otamakapua title investigation in Rangitikei, receiving 1000 acres in her own right. SW Grant, 'Donnelly, Airini', from the Dictionary of New Zealand Biography. Te Ara – the Encyclopedia of New Zealand, http://www.TeAra.govt.nz, accessed 16 May 2017.
[124] Media coverage about the 1885 Mangaohane decision was dominated by Donnelly's grounds of appeal on this basis, see for example 'The Mangaohane Case', *Hawkes Bay Herald*, 3 March 1885.

Boast, Dunedin-based lawyer and politician Robert Stout was both Airini's friend and legal advisor.[125] Prime Minister Seddon was also said to be a personal friend. Native Minister Ballance stayed with the couple in 1886, John Studholme Snr attributing the subsequent parliamentary inquiry into Owhaoko to this visit.[126] Carroll, too, acted for Airini Tonore in the 1886 Awarua title investigation and 1890 Mangaohane partition.[127] During the winter of 1901 Airini Donnelly – described in newspapers as a 'princess of the bluest blood' – together with Carroll escorted the Duke and Duchess of York on their tour of New Zealand.[128] Shortly before her death in 1909 she visited England with her husband and was presented at Court.[129]

According to Warren, the Donnellys' influence extended to the judiciary of the Native Land Court, particularly after Renata Kawepo's death. In April 1889 Warren told Native Minister Michelson as much, his allegations supported by the Member for Eastern Maori: 'Both Carroll & myself spoke very plainly to him & told him that the Court will be useless unless he appoints judges that Donnellys people can't get at.'[130] Warren also considered Trust Commissioner GA Preece was in the Donnelly camp, accusing him of bias in his treatment of their respective transactions over Mangaohane.[131]

The 1890 partition of Mangaohane 2 saw the 31,000-acre block divided between Studholme (holding two-thirds of the interests) and the Donnellys (holding one-third). These parties signed an agreement at the close of the partition, to abide by the court decision, to forego further obstruction of transactions before the Trust Commissioner, and to 'use their best endeavours to obtain the withdrawal of any application for any such rehearing'.[132] Their respective areas were to be fenced before the year was out, and the Donnellys' stock removed to their portion. William Studholme also agreed to allow the Donnellys to cut timber from 100 acres in the Pokopoko forest.

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[125] Boast, 'The Omahu Affair', p. 852. Stout acted for Airini Tonore in her contest of Renata Kawepo's will and her claim in the 1893 hearing into relative interests in Omahu. *Daily Telegraph*, 14 December 1893.
[126] J Studholme Snr to J Studholme Jnr (Jack), 20 November 1894, MS-Papers-0272, folder 9.
[127] Strangely enough, in the Awarua title determination Carroll acted for two sets of counter-claimants, Subasic and Stirling, Wai 2180 #A8, p. 71. For the Mangaohane partition see Young, Wai 2180 #A39, pp. 86-87.
[128] See for example *Otago DailyTimes*, 14 June 1901; *Hawkes Bay Herald*, 13 June 1901. Donnelly featured numerous times in the extensive media coverage of the royal tour. Husband George is said to have ordered and purchased the English carriage harness used by the royals on their tour, *Evening Post*, 4 June 1901.
[129] 'The Passing of Airini Tonore', *Marlborough Express*, 9 June 1909.
[130] RT Warren to J Studholme Snr, 15 April 1889, MS-Papers-0272, folder 11.
[131] RT Warren to J Studholme Snr, 21 April 1889, MS-Papers-0272, folder 11. 'Preece seems very frightened of McLean [Donnelly's lawyer] & has had our deed now before him about 6 or 7 weeks & the only objection is that McLean does not want it passed. They cant find a hole in it. Donnelly lease was only a week before him, & he was going to pass it right off, & only advertised it in the Evening News, being sure it was a paper we would not look for anything of the kind in. Comments were also freely made on the way he lent to the Donnelly side during the row with Broughton though Mrs Donnelly's party were plainly the aggressors.' RT Warren to J Studholme Snr, 28 April, 'I think it is now sufficiently apparent that Preece is holding back our deed till McLean & Richardson have sufficient time to find an objection. It has been before the Trust Commissioner for six weeks, no objection that he could entertain been lodged & at McLean's request he has withheld his signature.' Emphasis in original.
[132] The agreement was between George and Airini Donnelly and William Studholme, 11 June 1890, MS-Papers-0272, folder 22.

When Winiata Te Whaaro filed for a writ of certiorari in the Supreme Court in November 1890 to have the original 1885 title determination quashed, for the first time the Studholmes and the Donnellys found themselves on the same side.[133] Over the course of the next four years of litigation, they combined to defeat Winiata's bid for inclusion in the Mangaohane title, John Studholme Jnr recording the informal agreement reached with the Donnelly's lawyer Patrick McLean, that 'All costs in connection with obtaining the Mangaohane title incurred on our side was to be shared by Studholme & Donnelly in due proportion as to the share of each in the Block [two thirds/one third] ...'[134] The two runholders did not always agree on tactics: the Donnellys did not sign J Studholme Jnr's trespass warrant against Winiata Te Whaaro in March 1894 and they similarly rejected his proposals to settle six months later.[135] The Supreme Court action for the writ of prohibition in April 1895 which ultimately overturned Chief Judge Davy's decision was undertaken by the Donnellys alone. Moreover, throughout this period, the Donnellys continued to take advantage of the uncertainty over title by overstocking Mangaohane 2 by some 10,000 sheep, at the expense of the Studholmes.[136]

Patrick McLean of Carlile & McLean – engaged by J Studholme Jnr to undertake the civil proceedings against Winiata Te Whaaro in January 1897 – had acted for Airini Tonore throughout the years of litigation over title to Mangaohane.[137] The relationship between Winiata Te Whaaro and the Donnellys seems to have been hostile: neither party could contemplate a compromise after Chief Davy's decision in August 1894.[138]Although the Donnellys played a key role in the litigation over the Mangaohane title, they seem to have left the business of eviction to the Studholmes, possibly because Pokopoko was located on the Studholmes' title. The only hint of direct involvement in the eviction comes from the stories that were handed down through the family, that it was Airini Tonore who instructed the sheriff that his men 'could do what they wanted' to the Te Whaaro children.[139]

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[133] WP Studholme to HD Bell, 26 November 1890, MS-Papers-0272, folder 6. The case was referred to the Court of Appeal and heard in May 1891, see Young, Wai 2180 #A39, pp. 99-104.

[134] Mangaohane notebook, MS-Papers-0272, folder 37. Studholme noted in this arrangement, 'that Bell had the control of the whole matter, that McLean was acting as Bell's agent and all his work would be charged to Bell who in return would charge us for same.'

[135] PS McLean to J Studholme Jnr, 18 September 1894, MS-Papers-0272, folder 7.

[136] J Studholme Jnr to PS McLean, 26 October 1894, MS-Papers-0272, folder 7.

[137] See for example Affidavit of PS McLean, 30 October 1894, in *Airini Tonore & another v Davy & others*: 'I am the Solicitor for the Plaintiffs, and have acted for them in all matters and proceedings in the Supreme Court of New Zealand and Court of Appeal of New Zealand, and in most of the maters and proceedings in the Native Land Court of New Zealand relating to the land known as Mangaohane, and to the subdivisions thereof known as Mangaohane No. 1 and Mangaohane No. 2.' MS-papers-0272, folder 23.

[138] J Studholme Jnr 'notes' in MS-Papers-0272, folder 4. At this point Studholme was proposing to accommodate Winiata's inclusion into the title with 5000 acres. He recorded that Winiata and Morison both refused to compromise with Donnelly, and that Donnelly 'at first absolutely refused' to a proportional loss. 'Such being the state between the parties there seems little [chance] of effecting a compromise ...'

[139] Meeting with Neville Lomax in Wellington, 13 March 2017. Neville Lomax was raised by his great grandfather Wirihana Te Whaaro.

The Role of the Runholder: Civil proceedings

Obtaining legal title to the disputed land at Mangaohane was a crucial victory for Studholme, but in the face of Ngati Paki's existing settlement *gaining possession* required additional legal procedures to remove the community lawfully. The civil action to recover the possession of land was known as ejectment. This term today is better known as eviction. The arrest and eviction which forms the substance of this report was first and foremost the result of civil proceedings against Winiata Te Whaaro and others undertaken in the Supreme Court by the runholder John Studholme Jnr.

The lawful, and therefore peaceable, means of settling private disputes over property or debt is part of English common law traditions evolved over centuries of case law developed by the courts, which was inherited by New Zealand after 1840. English common law itself dictated that in any new colony acquired by settlement, British colonists carried with them elements of English statutory and common law that were applicable to the circumstances of the new colony.[140] In New Zealand, the Resident Magistrates' Courts quickly evolved as a 'lower court' to deal with small civil claims and petty misdemeanours within the small enclaves of Pakeha settlement.[141] This report, however, is primarily concerned with the Supreme Court of New Zealand, established in 1841 with a wide jurisdiction over more serious issues of law that included civil disputes involving sums (after 1867) exceeding £100.[142] The procedural rules of the Supreme Court of New Zealand, designed for local circumstances, were first set out in legislation in 1844.[143] Forty years later these rules were revised and included as a schedule to the Supreme Court Act 1882.[144] The 1882 Code of Civil Procedure – heralded as a 'simplification' – ran to 570 Rules, a reflection of the growing role and ambit of the Court, and indeed the colony, in the intervening period.[145] The following summary of Supreme Court civil procedures at work in New Zealand by the late nineteenth century focuses on aspects of particular relevance to the subject of this report. It is based primarily on the 1882 Code of Civil Procedure and supplemented where appropriate by nineteenth-century texts on 'Sheriff Law', the sheriff being the immediate officer of the Supreme Court responsible for carrying out the civil judgments and orders of the Court.[146]

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[140] Peter Spiller, Jeremy Finn & Richard Boast, *A New Zealand Legal History* (Wellington, Brookers, 1995), p. 76.
[141] Ibid, p. 179.
[142] Ibid, pp. 190-195. The Supreme Court was given the combined jurisdiction of the common law and equity courts in England, in addition to criminal and lunacy jurisdiction, see also Supreme Court Act 1844.
[143] Supreme Court Rules Act 1844.
[144] Second Schedule, Code of Civil Procedure in the Supreme Court, Supreme Court Act 1882.
[145] The 1882 Code was the result of an 1880 government commission comprised of magistrates and representatives from the Crown Law Office and legal profession, Spiller, Finn and Boast, p. 194.
[146] In addition to Churchill already cited, this report draws on George Atkinson, *Sheriff –Law; or, The Office of Sheriff, Undersheriff, Bailiffs, etc.: their duties and the election of Members of Parliament and Coroners, Assizes, and Sessions of the Peace. Writs of Trial; Writs of Inquiry, Compensation Notices; interpleader; writs; warrants; returns; Bills of Sale; Bonds of indemnity, etc. 3rd edition,* (1854).

Commencement of actions

Every civil proceeding began with a *writ of summons*, prepared and filed by the aggrieved party (the plaintiff) or their solicitor and accompanied by a statement of claim, which was then sealed and issued by the court. The statement of claim set out the cause of the action and specified the judgment sought. The writ of summons had to be delivered to (served on) the person against whom the action was directed (the defendant) in person. It notified that an action against them had begun, requiring them to file a statement of defence to Court within between 7 to 14 days, depending on how far away they lived.[147] The writ of summons warned the defendant that if they did not file a statement of defence, the plaintiff could proceed in their action without a Court hearing. In addition to the statement of defence, the writ of summons directed the defendant to appear at the first sitting of the Court to be held between 10 and 28 days after receipt of the writ, the timeframe again dependent on their distance from court. In any statement of defence (an extra copy of which was required to be served on the plaintiff), every allegation not denied was deemed to be admitted (Rule 127). The defendant was also required to provide an 'address for service' within three miles of the Court office where further notices of proceedings not required to be served personally could be sent (Rules 122-123).

Rule 101 stipulated that 'No cause of action shall, unless by leave of the Court, be joined with an action for the recovery of land, except claims in respect of mesne profits, or arrears of rent in respect of the premises claimed...' Mesne (pronounced 'mean') profits being money made from disputed land by the occupant in possession, as opposed to the legal owner.

Obtaining Judgment

Defendants had the option of settling before the action went to trial, either making payment or delivering possession (Rules 212-216). If the defendant filed a statement of defence in time, the action proceeded to trial. Actions involving sums less than £500 could be heard by a judge, or a judge and jury of four. Claims involving debts or damages exceeding £500 were to be tried before a judge and jury of twelve (Rules 249-252). If no statement of defence had been filed, the plaintiff could move for judgment by default in their favour, without a hearing (Rule 228).[148] An affidavit of service of the writ of summons had to be filed in order to obtain a judgment by default (Rule 231). The successful plaintiff could then, by leave of the Court, have such judgement prepared and signed, for execution (Rule 293).

[147] Ibid, Rules 1-24, see also Table A, Third Schedule to Code of Civil Procedure in Supreme Court Act 1882. Within 20 miles of the court office, the defendant had 7 days to respond; between 20 and 100 miles, 10 days; and over 100 miles, 14 days to respond.

[148] A non-appearance at a hearing could result in a similarly favourable judgment for the plaintiff (or the dismissal of the action in the case where the plaintiff did not appear).

Writs of Execution

On the application by a successful plaintiff, any judgment could be enforced by way of a writ of execution issued by the Court.[149] By the late nineteenth century in New Zealand, the range of common law writs of execution developed from medieval times had been simplified to just three: a *writ of sale* for debt or damages; a *writ of possession* for the recovery of real estate or chattels; and a *writ of attachment* for contempt, that is, any behaviour that interfered with the administration of justice.[150] Any such writ of execution had to strictly follow the judgment or court order on which it was based and remained in force for one year from the date of issue, with an option of renewal with the leave of the Court.

A writ of sale authorised the seizure and sale of chattels or goods or lands belonging to the person named in the writ, such property first levied according to the sum set out in the writ before being sold (Rules 356-376).[151] Only so much as would satisfy the demand on the writ, together with the attendant costs, could be seized. Goods which were pledged or mortgaged as security for debt could not be seized. A writ of possession authorised the officer to whom it was directed to remove all persons and their goods from off the premises named in the writ, or to seize and take possession of any chattels specified in the writ, in order to deliver 'full and quiet possession' to the successful plaintiff (Rule 377).[152] Where a party had been ordered by the Court to both pay a sum of money and deliver land, a single writ could be issued, called a *writ of sale and possession*, to recover both money and possession (Rule 387).

Based on traditions that, within the realm, all persons ought to be obedient to the King's law and within his peace, from the earliest times courts have wielded a common law jurisdiction to punish any behaviour that interferes with the administration of justice as *contempt*. To refuse to obey an order of a court amounted to 'a grievous insult to the sovereign, the fountain of justice, who had an intangible, but nonetheless substantial, position in every court where his will was done.'[153] In time, the monarch's interest has been translated into that of the public, on the grounds that the whole justice system would be undermined if the order of any court could be disregarded with impunity. The *writ of attachment* was the remedy for cases of contempt. It empowered the officer to whom it was directed to arrest any person named in the writ, and to bring them before the Court at the appointed time and place to answer their contempt (Rule 378). The challenge contempt posed to the very status and adequacy of

[149] The application was called a *praecipe*. Rule 352 clarified that writs of execution were to be prepared by 'the proper officer' and sealed with the seal of the Court, and then delivered by that officer to the 'officer for the time being appointed to execute writs of execution', and when so delivered were deemed to be issued.
[150] The three writs of execution feature in the 1882 Code, and also in Robert Stout and William Sim's 1892 text on local practice, *The Practice of the Supreme Court & Court of Appeal New Zealand*, (Dunedin, Horsburgh, 1892), pp. 96-100.
[151] Chattels included moneys, cheques, bills of exchange, promissory notes, bonds, or any other securities for money except wearing apparel, bedding, and tools of trade not exceeding £25 in value (Rule 356).
[152] See also Churchill, pp. 248-251.
[153] Julie Maxton, 'Contempt of Court in New Zealand', MA thesis, University of Auckland, 1990, p. 37.

the state's legal system is reflected in the severity with which it was treated, usually by imprisonment (Rule 379). At common law there was no limit on the sentence of imprisonment: a person was held until they complied with the order of the court.[154] The bottom line was that court orders had to be obeyed, even if it might be argued the orders were not made validly in the first place. Because of the gravity of the consequences, a writ of attachment required the leave of the court, the application for the issue of such a writ called a *motion*. Notice of the motion was required to be served on the party against whom the attachment was sought. According to Churchill, the purpose behind this rule was twofold: to ensure that the court, and not the suitor, should have the power of imprisoning anybody, and to provide an opportunity for discussion before any such order was made.[155]

With regard to civil contempt arising from a private action like that against Winiata Te Whaaro, it is widely recognised that punishment served the 'inextricably linked' dual purposes of coercing compliance for the benefit of the private party on the one hand, and upholding judicial authority for the benefit of the public on the other.[156] By the nineteenth century civil contempt proceedings had become a method for executing judgments of the court in favour of the successful party. In her MA thesis discussing the development of contempt proceedings in New Zealand, Julie Maxton writes that attachment by imprisonment was only used in private actions which involved a breach of the peace.[157] Both the 1882 Code of Civil Procedure and Stout and Sims' text on local Supreme Court practice published 10 years later are silent on this issue, although the development of bankruptcy law in this period tends to support Maxton's interpretation.[158]

The nineteenth-century codes of civil procedures are also silent on related law surrounding *forcible entry*, possibly because the principle was so fundamental that it was taken for granted. However the law in this respect has a direct relevance to the New Zealand colonial context, and indeed illuminates the way in which the arrest and eviction at Pokopoko was carried out. From the fourteenth century – a

[154] New Zealand Law Commission, 'Contempt in modern New Zealand', Issues Paper, May 2014, p. 7.
[155] Churchill, p. 237.
[156] NZ Law Commission, p. 69.
[157] Maxton, p. 5. The common law application of attachment for contempt was tested in New Zealand for seemingly the first time in 1885, in Regina v. Buckley, a case in which the defendant had resisted the attempt of the bailiff to recover goods, and was charged with both resisting the bailiff in the execution of his duty and common assault. Counsel for the defence argued that there was no such indictable offence as resistance to a bailiff, that the mode of dealing with the case was by attachment. In the event Buckley was found guilty of resisting the bailiff, the issue of whether this was in fact an indictable offence referred to the Court of Appeal. The Court of Appeal decided that it was. See newspaper coverage of the case in *Lyttelton Times*, 7 January 1885; *Press*, 8 January 1885; *New Zealand Times*, 30 May 1885..
[158] An 1890 motion for a writ of attachment with respect to bankruptcy, for example, was reportedly dismissed, the court noting on this occasion that: 'It has been decided in several cases that no attachment will issue against a debtor for simple disobedience of an ordinary order of Court to pay money.' *Press*, 12 February 1890. Two weeks later the matter was dealt with instead under the Abolition of Imprisonment for Debt Act, the defendent sentenced to prison for three months, or until he had paid the amount owing, *Press*, 24 February 1890. In discussing the writ of attachment Churchill does not mention the writ for civil contempt being contingent on a breach of peace (Churchill, pp.237-239), but with regards to attachment as a remedy against sheriff malpractice he points out that attachment is a criminal process (p. 262).

time when English land titles were mired in disputes – it had been a statutory offence to gain possession of real property over those in actual possession in any other than a peaceable and easy manner.[159] Where force was involved, issues of title became irrelevant. In other words, even the legal owner of property utilising lawful means to gain possession was bound to do so without force, or threat of force, which included tactics (such as engaging a multitude to undertake an eviction) that would be likely to deter a person minded to resist the entry.[160] As set out in Chapter 3, in 1883 Justice Gillies ruled with respect to the forceful eviction of Maori from the Pukekura block that the fact that the Pakeha lessee was the 'true owner' did not entitle him to forcibly dispossess those who had been in 'actual' possession for more than two years (see p. 114). This fundamental tenet applied equally to the Sheriff authorised to undertake the ejectment.

Civil ejectment in the colonial context

The common law procedures regulating civil ejectment were adopted in New Zealand with little fundamental change. The only concession to local circumstances by 1882 was the requirement that all written communications relating to civil actions taken against Maori in the Supreme Court were to be translated by an authorised interpreter (Rule 552).[161] Applying such procedures to the frontier, however, was problematic on a number of levels. Churchill's nineteenth-century treatise on 'Sheriff Law' pertaining to ejectment, for example, reflects the English context of tenancy within which the common law had evolved, the use of 'tenant' and 'defendant' in his text used interchangeably.[162] Eviction proceedings in England invariably involved the removal of a tenant from rental property by the landlord, often for rent default. Disputes over occupancy involving Maori, by contrast, had markedly different tenurial foundations. On the most superficial level, the process itself seems inappropriate for the circumstances. The speed at which a landlord plaintiff could obtain a favourable judgement, for example, reflected the urgency to stem ongoing economic loss from a defaulting tenant. However, the same procedure utilised in a case like that of Winiata Te Whaaro against the backdrop of two decades of peaceable possession, smacks instead of indecent haste.

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[159] For a brief background to the development of forcible entry see the Law Commission, 'Working Paper No 54 Criminal Law Offences of Entering and Remaining on Property', (London, 1974). The Forcible Entry Act 1381 provided 'that none from henceforth make any entry into lands and tenements, but in case where entry is given by the law; and in such case not with strong hand, nor with multitude of people, but only in peaceable and easy manner. And if any man from henceforth do the contrary, and thereof be duly convicted, he shall be punished by imprisonment.' The current provision in New Zealand law is Section 91(1) of the Crimes Act 1961: 'Every one commits forcible entry when, by force or in a manner that causes or is likely to cause a breach of the peace or reasonable apprehension of a breach of the peace, he or she enters on land that is in the actual and peaceable possession of another for the purpose of taking possession, whether or not he or she is entitled to enter.'

[160] Ibid, pp. 4-8. Actual violence was not necessary to constitute an offence, but grounds could include 'going to the premises armed or with such an unusual number of persons as plainly show that force will be resorted to.'

[161] Reiterated in Stout and Sim, p. 146. The extra expense in doing so would no doubt have been passed on to the Maori defendants.

[162] See for example Churchill, p. 250: 'The sheriff must deliver full and quiet possession to the plaintiff. So where the tenant, immediately after the sheriff had given possession, ejected the plaintiff ...'

Such issues of process point to more fundamental shortcomings in the 'lawful' resolution of private disputes over occupancy inherited from England. In the mother country, the underlying title in any ejectment proceedings was never in dispute: the civil procedures were there to gain possession, quite distinct from any ownership issue. In New Zealand, by contrast, as the case studies in Chapter 3 demonstrate, civil ejectment proceedings against Maori often occurred against the backdrop of disputed title. This reality goes to the heart of the issues raised by Winiata Te Whaaro's eviction. The legal process itself was not designed to consider underlying issues of ownership: it took the legal title holder at face value and operated to enforce possession from that basis. This narrow focus is precisely why the 'lawful' eviction process proved so effective against Maori, insisting as it did on obedience to the law without taking into any account the underlying title disputes at work.

Further issues arise from the way in which Maori became subjected to civil ejectment procedures. Before the colonial wars of the 1860s, the writ of law did not extend very far beyond the outskirts of the Pakeha provincial centres around the country. Indeed, the earliest sheriffs were not required to travel more than 20 miles from the towns of Auckland, Wellington, Nelson, New Plymouth and Russell in the execution of any writ.[163] In devolving a scheme of self-government to the colony in 1852, the presence of large 'native' districts in which Maori laws, customs and usages prevailed was at least acknowledged, even if no such districts were subsequently proclaimed. Richard Boast reminds us that whatever legal theory might be, extending effective State sovereignty to the tribal hinterlands outside these Pakeha enclaves was a piecemeal and gradual process measured in decades.[164] In Taranaki, Waikato, Tauranga, the Bay of Plenty and Turanganui, State sovereignty was established through military force. In 'native' districts beyond these hotspots, the full weight of the State settled on Maori communities only as Pakeha settlement proceeded. Again, as Boast points out, the fulcrum of the relationship between Maori and the law of the New Zealand State was land.[165] Within Mokai Patea such change came in the mid-1890s. Although Native Land Court title investigations had begun two decades prior, the controversy they were mired in kept matters at a standstill until the mid-1890s. Awarua itself, the heart of Mokai Patea at 268,548 acres, though initially investigated in 1886, was farmed in common for another six years before Crown purchase of undivided interests forced the partition and transfer of more than half the block by 1896.[166]

The increasing impact of Supreme Court civil proceedings on Maori within Mokai Patea in the late nineteenth century can be gauged by the incidence of Maori individuals involved in Supreme Court

[163] Section 23, Supreme Court Rules Act 1844.
[164] Peter Spiller, Jeremy Finn & Richard Boast, *A New Zealand Legal History* (Wellington, Brookers, 1995), p. 133.
[165] Ibid, p. 135.
[166] Discussed for example in Subasic and Stirling, Wai 2180 #A8, pp. 92-104.

litigation drawn from the archive of Whanganui writ of sale files between 1877 and 1900.[167] A quick analysis based on obviously Maori names indicates that of the 308 civil writs issued in this period, 28 of them involved Maori (around 9 per cent). Of the first 100 writs on file occurring between 1877 and 1880, however, only two were directed against Maori. By contrast, more than half of the total writs involving Maori before 1900 were issued in the last eight years of the century, many of them against rangatira of Mokai Patea: Winiata Te Whaaro, Ani Paki, Erueti Arani, Raumaewa Te Rango, Ihakara Te Rango, Hiraka Te Rango and Taiuru Te Rango.[168] This escalation was related to increasing indebtedness which seemed to accompany Native Land Court litigation. It also coincided with the Crown's land purchasing activities and lends important context to Sheriff Thomson's determination in 1897 to make an example of Winiata Te Whaaro. If Maori only became subject to such laws as Pakeha settlement expanded, to what extent were they disadvantaged by their unfamiliarity with the novel and complex legal process, their ability to defend themselves against legal action further compromised by distance and expense?

The Role of the Sheriff

The office of the sheriff is a long English tradition dating back to medieval times when the reeve of the shire (the 'shire-reeve') was appointed to keep the peace and to undertake all of the King's business within the county.[169] Over the course of time this expansive role was gradually diminished. By the nineteenth century, the sheriff was first and foremost the immediate officer of all the courts in Westminster, charged to execute and return the writs issued by such courts.[170] Sheriffs were appointed

[167] See Archway listings for AAOG 25413 W5918 series, which encompasses legal action in the wider Whanganui district. Note too that Moawhango only became part of the Whanganui and West Coast police district in 1896, transferred from the Napier district on account of better access, the only means of communication from Napier being by coach over a distance of 90 miles (Inspector Emmerson, Annual report on district for year ended 31 March 1897, P1 249 1897/459). It is clear from the processing of earlier writs however that Mokai Patea lands were included in the Whanganui district before this date, see for example action against Ihakara Te Raro, 1890-1891, set out in Bruce Stirling, 'Taihape District Nineteenth Century Overview', Wai 2180 #A43, pp.564-5; and Thomson's handling of the 1894 writ against Winiata Te Whaaro, discussed below.

[168] Murray Roberts & Co v. Te Whaaro; Gooseman v. Ani Paki; Morrison and another v. E Arani; Batley v. Raumaewa; McCormack v. Hiraka Te Rango; Morison v. Harika?; Baldwin v. Taiuru Te Rango, in AAOG 25413 W5918. The bankruptcy action against Ani Paki, Raumaewa and has been discussed in Stirling, Wai 2180 #A43, pp.564-5; and Walzl, Wai 2180 #A46, pp. 198-99.

[169] The sheriff's role was traditionally threefold: the custody of justice, for no law suit began or process was served but by the sheriff, who also was responsible for the return of impartial juries; the custody of law, as the executor of court decisions or writs in both civil and criminal cases; and the custody of the commonwealth, as the principal conservator of the peace. Atkinson, *Sheriff –Law*, p. 2.

[170] The changing importance of the sheriff over time can be seen in the colonial permutations that still exist today. In North America, for example, where British colonisation commenced in the early seventeenth century, popularly-elected sheriffs continue to hold considerable jurisdiction within the county, including an active role in law enforcement. The power to summon the assistance of the people, commonly referred to as a 'posse', and to arm them, remains one of the means at the sheriff's disposal in his role as the principal conservator of the peace. By contrast, as Kopel points out, the English office of sheriff today is barely even ceremonial, consisting of holding annual dinners for local judges and other dignitaries. David B Kopel, 'The Posse Comitatus and the

by the Chancellor Treasurer, the Barons of the Exchequer and the Justices. Anyone, barring a solicitor or Member of Parliament, could hold office but the fact that at common law there was no salary attached to it meant that in practice it was 'men of standing and substance' who were appointed.[171]

Sheriffs were not merely authorised to execute court writs, they were compelled to do so, 'returning' the writ to court afterwards with the outcome of the execution. Moreover, the sheriff was bound to execute every writ in a reasonable time, and was liable to punishment by the courts for any failure to do so. On the other hand, Churchill writes that a sheriff who had used reasonable diligence in the execution of a writ was not liable to an action because he did not use extraordinary exertion, or provide against an unexpected or unforeseen contingency.[172] The 1882 Code of Civil Proceedings regulating New Zealand practice reveals that a return of non-execution was an option if the sheriff had made 'reasonable attempts' to execute the writ (Rule 353). The sheriff could execute such writs himself, or delegate by warrant to a bailiff. Traditionally the sheriff was also empowered to raise the 'powers of the county' or *posse comitatus* to help him execute a writ, to summon the assistance of 'all knights, gentlemen, yeomen, husbandmen, labourer, tradesmen, servants and apprentices', and to arm the same at his discretion. Kopel observes that the *posse comitatus* could be used to enforce civil process if, and only if, there was resistance to the civil process. In practice, the last known use of the *posse comitatus* in England was in 1830 by the Sheriff of Oxfordshire to suppress riots.[173]

Churchill points out that the sheriff acted as the plaintiff's agent for the purposes of executing the civil writs of the court.[174] In England, the sheriff was remunerated for his services by way of 'poundage', a commission of sorts added to the sum levied in any writ. In the case of a writ of sale, poundage was calculated at 1 shilling in the pound (5 per cent) on the sum levied. In the case of a writ of possession, poundage was calculated on 5 per cent of the annual value of the property recovered worth £100 or less, and 6d in the pound (2.5 per cent) for every pound above that sum. There was no entitlement to poundage associated with a writ of attachment. Sheriff fees were one-off charges for the processes involved in any execution, regulated by government.[175]

Office of Sheriff: Armed Citizens Summoned to the Aid of Law Enforcement', *Journal of Criminal Law and Criminology*, vol. 104, no. 4, 2015, p. 783.

[171] Atkinson, *Sheriff-Law*, pp. 6-8. On taking office, sheriffs were required to take an oath 'that I will well and truly serve the Queen's Majesty' within their specified counties, 'and promote Her Majesty's profit in all things that belong to my office as far as I legally can or may...' The same oath included the promise 'to do right as well to poor as to rich in all things belonging to my office', and to 'do no wrong to any man for any gift reward or promise nor for favour or hatred.' With regard to the return and service of the Queen's writs, the Sheriffs promised to do so 'according to the best of my skill and knowledge' and to 'truly and diligently execute the good laws and statues of this realm...' The deposit of a bond was an important backstop to ensure good behaviour.

[172] Churchill, p. 277.

[173] Kopel, pp. 790-1.

[174] Churchill, pp. 168-178.

[175] The schedule of fees in operation in 1897 may have been that gazetted in May 1893, see *New Zealand Gazette*, No. 42, pp. 796-7.

'Sheriff Law' in New Zealand

Sheriffs were part of the Supreme Court apparatus created in the new colony of New Zealand in 1841, the governor-appointed officers to have 'all such powers and privileges and be liable to all such duties and responsibilities' as those in England.[176] In 1858 new legislation clarified that every sheriff should have the same *ministerial* powers, privileges, duties and responsibilities as their English counterparts, meaning that traditional judicial and peace-keeping roles were explicitly dropped from this point, and the sheriff's role effectively limited to the execution of Supreme Court writs, the summoning of juries, and supervising the execution of condemned criminals.[177] The power of the sheriff to raise a posse comitatus to assist him in the execution of any writ appears to have been widely accepted as one of the casualties of his narrowed jurisdiction in New Zealand under the 1858 Act.[178]

As related above, the scope of the Supreme Court was only as large as the scope of fledgling Pakeha settlement. The relative insignificance of the office of sheriff in the cash-strapped colony was also reflected by their pay, or lack of it. English sheriffs, those 'men of standing and substance', were entitled to keep their poundage and fees by way of remuneration for their work. In New Zealand it seems that from an early date, any poundage or fees resulting from sheriff activities were paid instead to the government. The legislation itself is less than clear on this policy: the Sheriffs Act 1858 set down that all fees taken by the sheriff were to be paid to the government, but it is silent about poundage. Indeed, it was not until 1882 that specific provision was made entitling sheriffs to levy poundage, which again was to be handed over to the Consolidated Fund.[179] Common law dictated that poundage was levied before this statutory provision (borne out by newspaper articles on the topic),

[176] Section 16, Supreme Court Ordinance 1841.

[177] Sheriffs Act 1858. The 1858 legislation was part of a general restructuring of the courts, which saw the general government take back control of the Sheriffs' Office from provincial government on the one hand, while at the same time devolving key functions of the office, such as the supervision of gaols, to provincial government on the other. Sheriffs had been given charge of gaols and custody of imprisoned debtors in 1846, 'An Ordinance to Regulate the appointment and the duties of Sheriffs in the Colony of New Zealand, 1846'. Under the Gaolers Act 1858 powers and duties formerly held by sheriffs with respect to prisons were transferred instead to gaolers, to be appointed by the provincial superintendents. The restructuring also saw the creation of district courts with jurisdiction over civil claims of £100 or less, for which bailiffs, rather than sheriffs, were charged with the duty of serving and executing the warrants and writs of the lower court, District Courts Act 1858. Sheriffs also appear to have similarly lost the traditional role of returning officer for parliamentary elections.

[178] The point was made in the Court of Appeal by the Attorney-General in Regina v. Buckley, reported in the *New Zealand Times*, 14 May 1885: 'The office of the Sheriff is fourfold in England. He is head of peace officers, Queen's bailiff, Ministerial officer to execute writs, and a Judge in inquiries. He is only Queen's bailiff and Ministerial officer to execute writs [here]. Here he cannot call out the posse comitatus. That makes a distinction between our Sheriff and the Sheriff in England.' See also Colonel Trimble in the Native Affairs Committee Report on the petition of Paora Kaiwhata and others: 'The *posse comitatus* could not be called out in New Zealand as in the Old Country. In England the Sheriff is empowered to summon all the able-bodied men of the bailiwick to his assistance to give effect to a writ of ejectment. In this country that cannot be done.' AJHR 1881, I-2b, p. 33. In fact as Kopel relates, the *posse comitatus* was also a dying phenomenon in England, Kopel, p. 790.

[179] Sections 3-5, Sheriffs Act 1858 Amendment Act 1882.

and it seems that the 1882 enactment reflected existing practice rather than a new source of government revenue.

The best indicator of the scope of sheriff practice in the colony comes from the government's own book-keeping, and the civil lists published in one form or another throughout the nineteenth century. Accounts in 1861 suggest there were at most five sheriffs at work, the government paying those of Auckland and Dunedin a salary of £150 and £100 respectively 'without fees'; and a smaller wage of £50 to the sheriff of Marlborough. The sheriff of Canterbury is recorded as receiving 'fees' rather than salary, and those of New Plymouth, Nelson, Napier, too, appear to have gone unpaid altogether, if the positions were indeed filled at all.[180] By 1866, the number of sheriffs had grown, but most of these men were also the Resident Magistrates of their districts, which was their main income. Only in Auckland and Nelson were there dedicated sheriffs on full pay. Elsewhere, these men of dual roles were remunerated for their sheriff duties by the fees they collected in that role.[181] This trend continued throughout the 1870s and 1880s. By 1875 there were 18 sheriffs holding office in New Zealand. Eleven of these were primarily employed as Resident Magistrates. Of these 11, two of them had their annual salary topped up by £25 on account of their role as sheriff; two were allowed to keep the fees resulting from such work; the other seven got no remuneration at all for the role.[182] None of the 18 sheriffs at this point held that office solely. In addition to the Resident Magistrates among them, these court officers held a range of government appointments as coroners, returning officers, gaol wardens, registrars of births, deaths and marriages, postmasters, customs officers, commissioners of Crown lands, native officers, receivers of land revenue and even, in Marlborough, immigration officer.[183] By the 1880s Supreme Court registrars, too, often doubled as sheriffs, along with resident magistrates, clerks of the District and Resident Magistrate Courts, and electoral registrars. By 1887, in almost all cases the salaries of these government employees were augmented with sheriff fees as remuneration.[184] At Whanganui, 'Sheriff' Thomson was also 'Clerk' Thomson (of the Magistrate's and District Courts) and 'Deputy-Registrar' Thomson (of the Supreme Court).

The wearing of multiple hats was perhaps a feature of colonial life, but the issues such blurring of roles presented did not go unremarked. During the debate of the Sheriffs Bill 1882, for example, Member Sutton admonished the House for not embarking on a wider reform. As he pointed out: 'In some districts the gentleman who held the office of Registrar of the Supreme Court, and was also Sheriff, had to perform some of the functions of a Judge; so that it not infrequently happened that, in

[180] Finance Accounts of the General Government of New Zealand, AJHR 1861, B-1, p. 7; B1-a, pp. 7-8.
[181] Nominal Return of All Officers in the Employ of the Government, AJHR 1866 D-3, pp. 12-23.
[182] Nominal Roll of the Civil Establishment of New Zealand, AJHR 1875, H-11.
[183] Ibid. Walter Buller was one such example, employed by the government in 1871 as Resident Magistrate at Whanganui, and also as sheriff, returning officer, and something labelled 'Forage'. On a salary of £450, Buller also kept the fees from his sheriff activities. Nominal Roll of the Civil Establishment of New Zealand, AJHR 1871, G-10, p. 7.
[184] The Appropriation Account, AJHR 1887 B-2, pp. 12, 24, 27.

the course of business, the Registrar, in his judicial capacity, directed himself, in his capacity as Sheriff, to carry out his own orders.'[185] He pointed to the legal difficulties the lack of demarcation created, citing the example of a person in Hawkes Bay who had filed a declaration of insolvency before the registrar, who as sheriff had then seized the property on behalf of the execution creditors before the declaration had even been gazetted.

In New Zealand's rural areas the blurring of roles extended to the police. In 1880, prompted again by the 'present financial position of the Colony', Justice Department officials secured Defence Minister Bryce's agreement to use police constables to serve civil summonses issued by the lower courts, 'where constables can do so without materially interfering with their duties'.[186] This was more properly the work of bailiffs, the government intending by such means to reduce the number of bailiffs on salary. In authorising the change, Bryce had made it clear that constables were not to be used for the *execution* of court writs for either the lower or Supreme Court ('they are on no accounts to be employed as Sheriff's Officers'), on the grounds that to do so was both impractical and degrading.[187]

The policy change led to some practical difficulties. In some outlying districts the new duties were simply too onerous for the existing police force:

> if the Constable at Masterton were to serve all the Summonses the Clerk gave him he would have to ride about 600 Miles a month on work formerly done by a Bailiff two assistants and two horses. He must either discontinue to be under the sole orders of the Clerk or I must find another man to do Police duty which at present is neglected for Bailiffs work in this district.[188]

In this instance, the Under-Secretary of Justice opted to reinstate the paid bailiffs. For their part, bailiffs not only lost the three-shilling fee collected from every summons now served by the police, they also lost their salary, without which the job was scarcely worthwhile. In many places the bailiffs simply resigned altogether, again forcing Under-Secretary Fountain to re-evaluate his position.[189] The Justice Department was forced to reconsider its reduction of bailiff services on a case by case basis,

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[185] Sutton, 27 June 1882, NZPD 1882, p. 12.
[186] Under-Secretary Justice Department, RG Fountain, file note, 28 June 1880, J1 286ao AC1880/2183.
[187] Set out in Circular 105/1880, and the whole issue the subject of file J1 286ao AC1880/2183. See for example HE Reader, Commissioner of Police to Shearman, Armed Constabulary Office Wellington, 20 July 1880; Reader to Fountain, file note, 28 October 1880 '... The Defence Minister only authorised Constables to act as Bailiffs so far as serving Civil Summonses but not to execute warrants of Distress which tends to degrade their position.' J Bryce, Defence Minister, file note below: 'I think it would be found impossible for constables to remain in possession of property taken under a warrant as obviously it might interfere with other & more important duties.'
[188] HE Reader, Commissioner of Police to Fountain, Under-Secretary Justice Department, file note, 25 January 1881, J1 286ao AC1880/2183.
[189] See for example correspondence regarding the resignation of the bailiff at Charleston, and the Department's response, 'Let the bailiff's services be retained as heretofore', J1 286ao AC1880/2183.

but the authorisation of constables in outlying areas to serve summons issued by the lower courts remained intact.

The Sheriff of Whanganui, Andrew Thomson

Figure 6: Andrew D Thomson, circa 1897[190]

Andrew Duncan Thomson was New Zealand born. He was educated in his father's private school and began work as a cadet in the Magistrates Court at Whanganui at the age of 14, in 1878. Over the following 14 years, Thomson worked his way up from junior clerk to second clerk in Feilding and

[190] Photo by A Martin, in *The Cyclopedia of New Zealand (Wellington Provincial District)* (Wellington, Cyclopedia Co. Ltd, 1897), online at http://nzetc.victoria.ac.nz.

Wellington and was admitted as a barrister and solicitor of the Supreme Court.[191] In 1892 he was appointed clerk of the Whanganui Stipendiary Magistrate's and District Courts and the Deputy-Registrar of the Supreme Court. He was simultaneously Sheriff, Clerk of the Licensing Committee, and Registrar of Electors.

Sheriff Thomson's tenure at Whanganui coincided with the political changes in Mokai Patea discussed above, a shrinking Maori hinterland and the marked rise in Supreme Court litigation against Mokai Patea rangatira. It is significant that Thomson's predecessor at Whanganui had been unable to execute a writ of sale against a bankrupt Ihakara Te Raro in February 1890.[192] The sheriff had been unable to find the rangatira in order to even serve the writ. Ihakara Te Raro's debt was considerable, and his stock was already mortgaged. When the Official Assignee turned to the government to have him arrested for contempt as a 'recalcitrant bankrupt' who had 'consistently set the court at defiance', Under-Secretary of Justice Haselden responded that it was not a government concern, and that the prosecution sought was one for the creditors to pursue. Subsequent attempts to arrest Ihakara Te Raro for contempt and have him brought before the Wellington Court of Bankruptcy were similarly unsuccessful. As Stirling relates, by December 1891, the bailiff in Napier advised the Whanganui Sheriff that he had given up trying to locate the chief.[193]

From the outset, Thomson proved a conscientious officer who took his duties seriously. In December 1892, the newly-appointed sheriff wrote to the Under-Secretary of Justice, querying departmental policy. Thomson's approach to the constables stationed throughout his district for help with his duties as sheriff had been met with advice that although they were willing, constables were expressly forbidden to act as sheriff's officers. He pointed out to Under-Secretary Haselden that the same constables already acted as bailiffs of the Magistrates Court, arguing that their duties as sheriff's officers would differ little, the workload amounting to 'not probably ... more than two or three writs in the course of the year ...'[194] It was necessary, he went on, that the execution of Supreme Court writs 'should be in the hands of persons in whom some reliance can be placed, especially seeing I am so far from them and unable personally to supervise their actions.' He asked the Under-Secretary to pass on his request to the Commissioner of Police.

Police Commissioner Hume's refusal was based on practical, rather than constitutional grounds: 'How can a Constable where there is only one stationed, such as Marton, Feilding and Foxton take

[191] Ibid.
[192] Set out in Stirling, 'Nineteenth Century Overview', Wai 2180 #A43, pp. 564-5.
[193] This was not the end of the creditors' efforts to recover the debt, however. Stirling relates that overtures to the Native Land Purchase Department eventually led to the loss of Ihakara's undivided interests in Awarua in order to satisfy the debt, Wai 2180 #A43, pp. 564-72.
[194] Sheriff AD Thomson to Under-Secretary, Justice Department, 8 December 1892, J1 493ae 1892/1172.

possession and remain in possession? It is impossible for Constables to perform such duty.'[195] In response, Haselden pointed out that a sheriff's officer could in fact delegate the task of storing any seized property, but he did not press the issue: 'I have no wish to press the matter & I have little doubt that Sheriffs can find other men to act. I merely asked you the question.'[196]

Thomson was based at Whanganui, at least two days' ride from Mokai Patea, and his role of sheriff was but a small part of his regular court work. Notwithstanding the lack of authorisation from above, civil proceedings in this period indicate that the sheriff relied on the district police force to act for him in the outlying areas. In the case of *Gooseman v. Paki*, in June 1896 Thomson turned to Constable Moon stationed at Marton to both demand and execute the Supreme Court writ of sale against Ani Paki to recover property worth some £130 from her personal estate. As a result, Moon seized a traction engine which was duly sold.[197] In the case of *Batley v. Raumaewa* the following year, Sheriff Thomson again appointed Constables Moon and Crozier as bailiffs to seize the property of Raumaewa Te Rango and Ani Paki in satisfaction of a Supreme Court writ of sale.[198]

Sheriff Thomson and Winiata Te Whaaro, too, had crossed swords once before the events of 1897, although they may not have met. In May 1894, Murray Roberts & Co obtained a writ of sale against Winiata Te Whaaro for the sum of £527 7s 2d. Although obtained in Napier, the writ was forwarded to Sheriff Thomson to execute because Winiata's real and personal property fell within his district. In forwarding the writ, the Napier registrar passed on Murray Roberts & Co's plea for a prompt execution 'as native may remove chattels or prejudice position.'[199] Two weeks after the writ was sent, however, solicitors for Murray Roberts & Co asked Sheriff Thomson to stay proceedings, the matter having been settled.[200] In fact, once Winiata became aware of the judgement, payment was made immediately, obviating the need for a bailiff to demand the sum. The dispute with Sheriff Thomson arose from the poundage of £15 15s 6d added to the judgment, and paid under protest by Winiata. His solicitors, Sainsbury & Logan, insisted that this sum be refunded, on the grounds that in light of the prompt settlement, nothing had been done by the Sheriff's Office to warrant levying poundage. After making inquiries, Thomson retracted his initial refusal of their request, referring the issue to the Justice Department: 'the poundage is almost entirely a Government fee so that it is more a matter for

[195] A Hume, Commissioner of Police to Under-Secretary Justice Department, note on coversheet, 15 December 1892, J1 493ae 1892/1172.
[196] Ibid, note by CJA Haselden, 15 December 1892.
[197] The case is related in Stirling, 'Nineteenth Century Overview', Wai 2180 #A43, pp. 572-74. Stirling's summary suggests that once again, the dual roles Thomson held resulted in complications between competing writs issued by both the District and Supreme Courts against Paki.
[198] Warrant in AAOG 25413 W5918 33/275, also discussed in Stirling, Wai 2180 #A43, pp. 575-76.
[199] Registrar Napier to Sheriff Wanganui, 2 June 1894, telegram, in AAOG 25413 W5918 33/255.
[200] Coterill & Humphries to Sheriff Wanganui, 13 June 1894, AAOG 25413 W5918 33/255.

their consideration than mine.'[201] In the event, the Justice Department agreed that no poundage was claimable. Winiata was refunded the amount in August 1894.

The Role of the Police

The role of the police in the arrest and eviction raises similar issues to those already discussed with respect to civil law. Richard Hill opens his second volume on the history of policing in New Zealand with the definition of the office of constable as the front-line defender of the state and the socio-economic condition of things desired by the state. Policing, he tells us, is the function of imposing and maintaining enough social order to permit the maximisation of profit creation and protection.[202] Hill writes that in New Zealand an overtly coercive policing strategy was employed by the State against Maori from 1840 to crush resistance to Pakeha authority. In the wake of the sovereignty wars of the 1860s, the Armed Constabulary was established to consolidate Pakeha control of conquered areas through continued surveillance and the development of communication infrastructure. Having imposed 'law and order' by force of arms, the focus of the new constabulary became that of maintaining pacification. As Hill observes, Donald McLean's dual roles of Minister for Colonial Defence and Native Minister was a conspicuous acknowledgement of just how closely entwined these portfolios were at the time.[203] Over the following decade the Armed Constabulary was rushed to hotspots of resistance – at Pukearuhe in Taranaki, for example, or to hold the Napier-Taupo defensive line against Te Kooti. Within otherwise 'tranquil' Maori districts, the weight of substantive Crown sovereignty was ushered in by other means – namely the Native Land Court and the land sales that inevitably followed – and felt only as and when Pakeha settlement reached such outlying districts. Even if the reach of civil law had yet to catch up, by the mid-1870s government officials were gratified that sufficient control had been established over 'Maori' districts that police were able to execute warrants for the arrest of Maori offenders (with the exception of Te Rohe Potae, Te Urewera, and some parts of Taranaki).[204] Much of this can be credited to the mediatory role that Native Constables played at this time under the Resident Magistrate regime but the larger reality was that unless Maori presented a direct threat to state authority they were left alone. Pakeha Constables generally policed Pakeha, a truism reflected by Constable Roberts' report of the Taupo district in 1871: 'Owing to the scarcity of European population ... the Force in the district has not been often required to act in a civil capacity.'[205] The flipside to this is that within Maori communities, by and large, the scale of offending seems to have been low. Maori kept their own order. In 1876, for

[201] Sheriff Thomson to Sainsbury & Logan, 26 June 1894, AAOG 25413 W5918 33/255.
[202] Richard S Hill, *The Colonial Frontier Tamed: New Zealand Policing in Transition, 1867-1886*, (GP Books, Internal Affairs, 1989), p.x.
[203] Ibid, p. 41.
[204] Ibid, p. 212.
[205] Cited by Hill, *Colonial Frontier Tamed*, p. 69.

example, Inspector Atchison reported that the Maori population within Wellington Province posed no problem, being 'void of any of the elements of habitual wrong-doing.'[206]

By 1877 the government felt secure enough to separate policing from the military altogether. Provincial police were absorbed into the reformed New Zealand Constabulary Force, the 'Armed' symbolically dropped from the name, and the carrying of actual arms abandoned the following year. For the first time political control of internal defence was separated from Native Affairs. For the first time too, New Zealand's fledgling army – the 'Reserve Division' – began looking to outside threats, rather than those posed by citizens. As Hill relates, the change marked a new era of 'policing by consent', of social control at the non-overtly coercive, or benign, end of the control continuum.[207]

Three features of the evolving Constabulary force have relevance to the arrest and eviction of Winiata Te Whaaro. The first is the degree of political control wielded over police affairs. Provincial policing, geared primarily at Pakeha populations, had often been overtly political, the office of constable filled at the behest of the dominant economic interests in any province. In the case of Hawkes Bay and Wellington, the provinces were ruled by wealthy runholders who not only exerted influence over the selection of constables, but also provided their own non-constabulary policing services.[208] As Hill relates, such men exercised a tight control over their employees and other working people in their neighbourhoods, gaining even greater powers as Justices of the Peace from 1870.[209] Centralisation and demilitarisation after 1876 does not seem to have curbed these tendencies, particularly as the recession of the 1880s set in. Ministerial authority was required for all constable appointments, dismissals and transfers. Under the Liberal government of the 1890s, the political pressure affecting transfers and promotions was declaimed as intolerable, Police Commissioner Hume himself complaining in 1896 of ministerial intervention 'breaking of the bonds of discipline and a consequent loss of efficiency.'[210] Hill relates that reform first attempted in the late 1890s by Police Commissioner Tunbridge did not take root until at least a decade later.[211]

The second aspect to bear in mind is that the story of policing in the last quarter of the nineteenth century is one of continual retrenchment. The recession of the 1880s was met by redundancies, and reductions in rank and pay for those constables who remained. Pay rates remained low and living

[206] Ibid, p. 212.
[207] Ibid, p. 294.
[208] JD Ormond and Isaac Featherston, the respective superintendents of Hawkes Bay and Wellington Provinces, are two cases in point. Hill gives the example of the principal runholder at Wharehaera in Wellington Province being provided with a fulltime constable. 'This was a much valued acquisition, for although pastoralists conducted informal policing (which was quasi-formalised if they were JPs) over their own domains, the provision of a paid constable save them money and bother.' *Colonial Frontier Tamed*, p. 200.
[209] Hill, *Colonial Frontier Tamed*, p. 193.
[210] Cited in Richard S Hill, *The Iron Hand in the Velvet Glove: the Modernisation of Policing in New Zealand, 1886-1917*, (Dunmore Press, New Zealand Police, Department of Internal Affairs, 1995), p. 48.
[211] Ibid, p. 278. Hill maintains that the issue of political interference was not seriously addressed until the Reform government of 1913, and was largely at an end by 1917, p. 422.

conditions poor into the 1890s, even as the range of civil functions police were expected to carry out increased. Monetary 'rewards' for services partly made up for the low remuneration. Hill writes that Police Commissioner Gudgeon used such reward monies up until 1890 to reimburse constables for out-of-pocket expenses, but that this practice, too, was pared back in 1890 by new policy that services 'clearly within the scope of ordinary duties' would no longer be rewarded, the fund now limited to reward 'exceptional intelligence, or exertion'.[212] Sergeant Cullen, introduced below, received at least 12 such rewards between between 1892 and his promotion in 1897, many of them related to his detection of sly-grogging.[213] Rewards had to be applied for, and Cullen's applications suggest that he only did so when his work not only resulted in conviction, but when any resulting fine had been paid into court (although the sum of the reward appears to have had little bearing to that of the fines arising from any successful prosecution). In other words, the monetary reward held out to police seems to have been dependent in the first instance on the receipt of court fines. Sergeant Cullen's rewards over the five-year period ranged between £2 and £8. Often, but not always, Cullen's applications were justified by the out of pocket expenses incurred, although these were seldom itemised. Each application required the recommendation of the district Inspector before it was fowarded for Police Commissioner Hume's approval. Hume's close oversight of this established practice, together with the careful attention to expenditure, is one reason why the £10 payment to Cullen for 'costs of the arrest' of Winiata Te Whaaro stands out as such an anomaly (see Chapter 2, 'As to "Police Department" charges.)

The third feature of policing in this period, touched on above, is the light-handed approach to policing 'Maori' districts. In his day, Native Minister and Defence Minister Donald McLean kept a close ministerial watch over the Armed Constabulary as part and parcel of the government's Native policy. The Commissioner of Police was also the Under-Secretary or Permanent Head of Defence, taking instructions from the Minister (or, in Whitmore's case, the Commissioner was also Colonial Secretary). The Native constables and assessors associated with McLean's tenure as Native Minister became another casualty both of economic recession and a different government approach to managing Maori based on gradual integration rather than differential treatment. Hill explains this transition in the 1880s as a 'trend towards conciliation' by the government, now that the prospect of armed resistance seemed remote.[214] Having won the war, further overt coercive force could still be targeted at individual or localised challenges as they arose (such as resistance to survey). The mainstay of state control, however, now rested on the police and the law. Native Minister and later Premier John Ballance took considerable satisfaction from the 'one-man stations' which were deemed

[212] Hill, *Iron Hand in the Velvet Glove*, p.10.
[213] The applications for rewards can be found in the Police archive series ACIS 17627 P1/222-249. The twelve applications referred to above are 1892/400; 1892/564; 1895/420; 1895/615; 1895/1515; 1896/203; 1896/307; 1896/331; 1896/698; 1897/341; 1897/609; 1897/656.
[214] Hill, *Colonial Frontier Tamed*, p.331; *Iron Hand in the Velvet Glove*, p.61.

sufficient in such outlying areas to uphold order and security for property. The flipside to this policy, as Hill points out, was that as long as Maori communities did not overtly challenge the state's right to enforce the laws which mattered most to the government, they were simply left alone. This was scarcely an innovative approach, resembling the 1852 provision for native districts.

In the meantime, constables were cautioned to proceed with care. Newspaper reports in this era indicate that police were called on to assist sheriffs and bailiffs to execute civil writs against Pakeha where resistance was encountered.[215] On occasions, as set out above, sheriffs also delegated the execution of writs to the police.[216] However, in the wake of a civil ejectment conducted by mounted constables on the outskirts of the King Country, in March 1884 Defence Minister John Bryce emphasised the need for the 'exercise of great care [as] to how warrants are executed in Native Districts difficult of access,' instructing the constabulary to use 'discretion in cases where the peace of the country is at all likely to be disturbed.'[217] More particularly, Circular 4/1884 directed that constables were not to execute civil writs of ejectment against Maori without ministerial consent. In some cases, a warrant might be 'held in abeyance altogether'.[218] This issue is discussed more fully in Chapter 3.

Under the Liberal Government of the 1890s, district constables increasingly became the government's intermediaries with respect to Maori in rural areas, despite few of them having any knowledge of the communities or their language. As set out in Chapter 4, in the vacuum left by the disbandment of the Native Department, the Winiata community's appeal for food following the crop failure of 1898 ended up on the Justice Department's Under-Secretary's desk, and from there was sent through the police chain of command to Constable Black at Ohingaiti (see p. 144). Constable Black duly visited Winiata Marae, but he obtained most of his intelligence about their circumstances from Pakeha residents of Taihape next door.

Another consequence of the changing role of policing in peacetime evident by the end of the nineteenth century and highlighted in the arrest and eviction of Winiata Te Whaaro, seems to have been a degree of ambiguity over Ministerial responsibility for the police. As set out above, control of the Armed Constabulary originally rested with the Minister of Defence who, up until 1887, was also simultaneously Native Minister. Control never seems to have been formally transferred from Defence to the Justice Department but newspaper reports by the close of the nineteenth century reveal that the Minister of Justice tended to act as the Minister in charge. Throughout 1897, for example, it was the

[215] See reportage of Regina v. Buckley in *Lyttelton Times*, 7 January 1885; *Press*, 8 January 1885 in which a Christchurch bailiff attempting to recover goods called on the assistance of the local sergeant in the resulting brawl.
[216] In an altercation over occupancy which escalated into a charge of assault in Temuka in 1891, for example, it was the local constable who carried out the original writ of ejectment, see *Temuka Press*, 20 January 1891.
[217] Hill, *Colonial Frontier Tamed*, p.331.
[218] Ibid.

Minister of Justice, Thomas Thompson, who fronted police appointments and dismissals, as well as law enforcement issues related to liquor licensing.[219] The ambiguity is not helped by the fact that between 1897 and 1900 Thompson was both Minister of Justice and Minister of Defence. As the narrative in Chapter 2 sets out, Sheriff Thomson was advised that it was the *Minister of Justice* who refused to accede to his request for police assistance, while at the same time the Under-Secretary for Justice kept referring Thomson's correspondence to Police Commissioner Hume on the grounds that 'the Police Force is under your control' (see p. 75). The Police Commissioner himself declined to act unless directed to do so by the *Native Minister*. The Native Minister at this time was also the Premier, but Seddon seems conspicuously absent in the government decision-making over Pokopoko.

A fourth salient point is that Mokai Patea was never in a state of resistance to the Crown. Indeed, Winiata Te Whaaro and his two brothers fought with Renata Kawepo for the Crown between 1860 and 1872.

Sergeant John Cullen

Sergeant John Cullen, primarily responsible for attaching Winiata Te Whaaro for contempt, had a notable career, rising through police ranks to become Police Commissioner in 1912. Cullen was an Irish immigrant with a policing background who joined the New Zealand Armed Constabulary on his arrival to New Zealand, in 1876. He spent the next decade of his police career at different posts in the South Island. In 1891 he was put in charge of the Napier sub-district, taking up his Whanganui post in 1894. Months after his arrest of Winiata Te Whaaro, Cullen was promoted to Inspector. Hill attributes this promotion to Cullen's undercover work against sly-groggers in the King Country which resulted in numerous convictions, and the fact that a vacancy had opened with the death of Inspector Pratt.[220]

[219] See for example, *Wanganui Chronicle*, 20 October 1897 regarding Cullen's replacement at Whanganui; or *Colonist*, 29 October 1897, regarding the dismissal of a police detective at Christchurch; or *New Zealand Herald*, 1June 1897, where the Minister of Justice received a deputation regarding the enforcement of licensing laws.

[220] Hill, *Iron Hand in the Velvet Glove*, pp. 37, 274.

Figure 7: John Cullen, circa 1916[221]

According to Hill, at the time of his first North Island posting, Defence Minister Seddon had instructed Cullen to deal with Maori by 'Firmness and decision'.[222] The reputation he earned gives credence to claimant stories about a stealthy and forceful arrest at Pokopoko (see p. 83).[223] Cullen personified the 'Iron Hand' of the state's police force, Hill concluding that under Cullen's reign as Police Commissioner from 1912 to 1916, the benign policing strategy developed since the 1870s – the

[221] Photograph by Stanley P Andrew, 1/1-013786-G, SP Andrew Collection (PAColl-3739) Alexander Turnbull Library

[222] Hill, *Iron Hand in the Velvet Glove*, p. 274.

[223] Cullen's biographer came to the conclusion that Cullen was 'a strikingly unpleasant personality who repeatedly brought the force into disrepute, tragically exacerbated public confrontations and vindictively hounded opponents, including many of his colleagues.' Mark Derby, 'Czar Cullen: Police Commissioner John Cullen and coercive state action in early 20th century New Zealand', MA dissertation, Victoria University of Wellington, 2007, p. 94. In 1903 Inspector Cullen was again confronted by Maori refusing to abide by decisions of the Native Land Court, this time at Tautoro, near Kaikohe. Cullen's reaction was characteristically uncompromising, combining stealth and armed police to arrest Kuao and twenty followers. Set out in Derby, pp. 37-43.

state's 'velvet glove' – was halted or reversed.[224] In this time of industrial strife and international war, Cullen was the man for the job. On his retirement in December 1916, Cullen received two British Empire awards, the Imperial Service Order and the King's Police Medal.

As Hill observes, Cullen's willingness to crack down on the perceived 'enemies of order', with little regard for legal principles, made him one of the most controversial police leaders in New Zealand history.[225] In his personal handling of the Waihi Miner's Strike of 1912, the more general waterfront strikes of 1913, and the expedition against Rua Kenana's community at Maungapohatu in 1916, Cullen not only demonstrated a lack of regard for legal principles, he also showed a callous cynicism for human life. His signature trait in all three conflicts was to provoke and escalate the potential for violence, to the point where people were killed, in order to justify an equally ruthless restoration of state control. Hill points to the 'extra-legal' tactics employed by Cullen and the state in these times to pick apart the myth that police are agents *only* of 'the law':

> In the post-frontier society the primary social control emphasis lay firmly in the colonisation of the beliefs and behaviour of both races. Although this was effected by many means, the police were one of the significant players, and played several roles at that. It was the 'rule of law', to which the police were supposedly alone responsible through their 'original authority' (derived from the judicial branch of state rather than from the legislative and executive) which provided their legitimatory ideological resonance.[226]

In the final analysis, Hill argues, for those in power the law is 'a valuable but subordinate mechanism serving to maintain a social order'. Where conflict arises between enforcing the law and maintaining 'order' – at Waihi in 1912 or Wellington in 1913 – the latter takes precedence.[227] However obscured it has become by the overarching strategy of restrained coercion and hegemonic control – public consent to both 'the law' and the police – Hill reminds us that the police remained an agent of the state, the tool of the political executive and the forces it represented.[228]

Little has been discovered about the other constables involved in the arrest of Winiata Te Whaaro: District Constable Black at Ohingaiti and District Constable Jones at Moawhango, as well as Constable Shearman at Whanganui. Shearman and Jones were both involved in Sergeant Cullen's sly-

[224] Hill, *Iron Hand in the Velvet Glove*, p. 326.
[225] Richard S Hill, 'Cullen, John', from the Dictionary of New Zealand Biography, Te Ara – the Encyclopedia of New Zealand, http://www.TeAra.govt.nz, accessed 17 May 2017.
[226] Hill, *Iron Hand in the Velvet Glove*, p. 416.
[227] Ibid, p.409.
[228] Ibid, p. 409.

grogging detection activities: in six of Cullen's 12 applications for rewards, for example, the sergeant also applied on behalf of Shearman; on two occasions he applied on behalf of Jones.[229]

The Role of the Crown

It seems reasonable to suggest that the political influence the Studholmes wielded to gain title to Mangaohane 2 continued throughout the civil proceedings undertaken to remove Winiata Te Whaaro, even if Bell was no longer in Parliament. The sympathies of key politicians involved in the arrest and eviction, such as acting Colonial Secretary James Carroll, are discussed in the following chapter, together with other evidence of the government's tacit sanction of events.

More significant are the systemic shortcomings the Crown's role with respect to civil proceedings involving Maori presents, arising primarily through its insistence that it had no role. Unravelling the Crown's stance of disassociation with such civil actions – the contention that private disputes be left to the law – has been one of the biggest challenges of this project. It goes to the heart of the claim regarding Winiata Te Whaaro's arrest and eviction. The underlying dispute over Mangaohane 2 is fundamental to any consideration of the civil proceedings that followed once Studholme obtained the certificate of title. As the narrative in Chapter 2 shows, Winiata Te Whaaro himself could not separate Studholme's civil action against him from the legal battle over title that preceded it (see pp. 78-79). His descendents concur just as strongly today. Was it fair to subject Maori to a civil ejectment procedure, to demand their obedience to law, which took no account of their peaceable possession of more than 20 years or the ongoing dispute over ownership?

This chapter has already introduced related issues presented by the increasing impact of civil proceedings against Maori. If Maori only became exposed to Supreme Court civil litigation as and when Pakeha settlement expanded, to what extent was it encumbent on the Crown to ensure that Maori were not disadvantaged by their inexperience with the complex, foreign and potentially expensive proceedings? Against the backdrop of frontier title disputes, to what extent was the Crown responsible to ensure that civil ejectment proceedings were appropriate for New Zealand circumstances, and not simply a means to 'lawfully' dispossess existing Maori settlement?

A striking feature of Winiata Te Whaaro's arrest and eviction is the way in which it invariably ended up on the desk of Justice Under-Secretary Frank Waldegrave. In 1893 the Native Department had been disbanded, although the position of Native Minister was retained. Native Minister Seddon was also Premier, Minister of Finance, Minister of Labour, Minister of Education, Minister of Defence (in

[229] For joint applications on Shearman's behalf see 1895/420; 1895/615; 1896/331; 1896/698; 1897/341 and 1897/656 in ACIS 17627 P1 series. For applications including Jones see 1895/615 and 1895/1515 in the same series.

1896 and again in 1900) and Minister of Immigration. Richard Boast writes that Seddon had no particular interest in Maori affairs, other than to see more Maori land being made available for Pakeha settlers.[230] Indeed, from 1894 the Liberal Government had a dedicated Native Land Purchase Department, headed by Patrick Sheridan. In the new arrangement the Native Land Court was the responsibility of the Justice Department, which also seems to have assumed responsibility for Maori affairs almost by default. As outlined above, the Minister of Justice at this time, Auckland Member Thomas Thompson, was also Minister of Defence.[231] This early 'mainstreaming' of Maori affairs reflects the wider Liberal government policy of integration, which is another, related, issue underlying the Pokopoko eviction identified in this report. At the very time Mokai Patea was being drawn into the vortex of Pakeha settlement, including exposure to Supreme Court civil proceedings, there was no obvious government authority to turn to for protection.

Having set out the context at some length, the report now turns to consider the arrest of Winiata Te Whaaro and the eviction of his community at Pokopoko.

[230] Richard Boast, *Buying the Land, Selling the Land: Governments and Maori land in the North Island 1865-1921*, (Wellington, Victoria University Press, 2008), p. 193.
[231] Thompson held both positions from 1897 to 1900, when he retired, JO Wilson, *New Zealand Parliamentary Record*, 1840-1984, (Wellington, Government Printer, 1985), p. 73.

Chapter 2

The Arrest and Eviction

> The law has a long arm, and an instance of its far-reaching effects was afforded in the Supreme Court this morning, when a venerable Maori, 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 brought to Wellington yesterday. He has been concerned in a long course of litigation with the Messrs. Studholme, well-known runholders, about a block of land at Mangaohane, of which Winiata claims about 4000 acres. The Courts finally decided that he had no title. An action for his ejectment followed in due course, to which he did not plead, but he seized a gun and a Bible, and when the Sheriff went to execute the writ he produced these tokens of peace and war, and intimated that if any endeavour was made to enforce the writ, the gun would be brought into action. Then the Supreme Court issued a warrant for Winiata's arrest for contempt, which was executed as described.
>
> *Evening Post*, 21 May 1897

The arrest of Winiata Te Whaaro for his refusal to vacate his Mangaohane farm briefly caught the nation's attention in the last week of May 1897. The *Evening Post's* report of his court appearance was repeated in local papers throughout New Zealand. What seemed to pique media interest was Winiata Te Whaaro's use of metaphors – the bible, the gun, and the pound note – together with his argument in court that the Crown, as party to his dispossession, should shoulder the legal cost of his arrest. Considerably less attention was paid to the dispossession itself, or indeed the eviction of the community at Pokopoko that had followed Winiata Te Whaaro's arrest.

For the descendents of Winiata Te Whaaro and his wife Peeti Mokopuna, the arrest and eviction continue to be a source of deeply-felt pain and anger. Their claims speak of the persecution of Winiata Te Whaaro, or, alternatively, of his illegal arrest, the assault of his whanau, and the theft and looting of their property.[232] They, too, have been brought up on stories about their tipuna's stand based on the bible, the pound and the gun. Winiata Te Whaaro's declaration to Sheriff Thomson has become a whakatauki for the Mokai Patea Claims Trust: 'ko to korero kia haere ahau; ko taku kia noho tonu ara

[232] Nga Iwi o Mokai Patea amalgamated claim, Wai 2180 #1.2.23 para 5.2.9; Ngati Hinemanu me Ngati Paki amalgamated claim, Wai 2180, #1.2.17, paras 278-325.

ka eke rawa aku toto mo tenei Poraka / I am being asked to leave but my aim is to remain here always. There will be bloodshed for the sovereignty of my land.'[233]

Winiata Te Whaaro's metaphors have kept his story alive. One such handed-down version is that compiled by Val Bevan in the 1970s from conversations he had with Boy Te Whaaro Winiata, a grandson. In Bevan's account:

> Te Whaaro was provoked by GP Donnelly into a court case presided over by Sir Donald McLean. Winiata, being an old time Maori, ignored his summons and finally was apprehended for contempt of court. The outcome of which Winiata through an interpreter said 'the Pakeha brought this (holding a bible) and this (displaying a musket)' then saying to the judge 'I will use it on you (pointing the musket at Sir Donald McLean)'. Winiata was arrested immediately and to avoid a jail sentence had to pay a very heavy fine. Not having the ready cash he was forced to sell 'PokoPoko" which was then purchased by GP Donnelly.[234]

More legendary still is the tale of 'Yesterday (Inanahi)' by DA Bathgate which recounts 'The Destruction of Aorangi Pa', the settlement itself said to have been a recent creation intended as part of a strategy to defend the land from the 'well-known pakeha graziers from the South Island' who claimed they had purchased the block.[235] In this iteration, the eviction is sparked by the report of a considerable arsenal discovered by a shepherd inside one of Winiata's houses, 'whereupon a party of twelve troopers with a Superintendent rode across to Otupae to take possession of the land which an English Court had judged to belong to the pakehas.' With the twelve troopers in hiding, once again Winiata appears with a bible. In this account he pulls a pound note from his pocket, announcing he has plenty more with which to buy rifles and ammunition. The Superintendent slips on handcuffs and blows his whistle, alerting both Winiata's people and his troopers. Winiata is taken to Wanganui 'with some of his followers' and sentenced to two years' detention; the settlement is burned; and the community moved away with their 'horses, cows, and household belongings'.[236]

As claimant Richard Steedman told the tribunal, there are multiple versions of these stories, all of which contain a kernel of truth.[237] This chapter attempts to mediate between what the documentary record discovered to date reveals about the circumstances of Winiata Te Whaaro's arrest and the eviction and the stories held within the family about what transpired.

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[233] 'C', Winiata Te Wharo to Tamihana, 10 April 1897, with Affidavit of AD Thomson, filed 24 April 1897, AAAR 7585 W3558 103/4. The translation is that of Utiku Potaka, transcript of Hearing Week 1 held at Rata Marae, Hunterville, Wai 2180 #4.1.8, p. 24. Richard Steedman also reiterated this whakatauki in the course of his evidence, Wai 2180 #4.1.8, p. 68; 93.
[234] 'Time and Again' Val Bevan notes from Richard Steedman.
[235] DA Bathgate, *Yesterday (Inanahi)*, (Hastings, Hart Printing House Ltd, 1970), pp. 96-97.
[236] Bathgate, p. 98.
[237] Richard Steedman, Wai 2180 #4.1.8, p. 99.

John Studholme Jnr v. Winiata Te Whaaro and others

The arrest of Winiata Te Whaaro and the eviction of the Pokopoko settlement was the result of civil action taken by legal property owner John Studholme Jnr to gain possession. John Studholme Jnr received the certificates of title to his Mangaohane 2 properties on 11 January 1896, his entitlement backdated to the Native Land Court order of 18 December 1895.[238] Chief Judge Davy's order on which the certificate of title was based is testament to both the protracted legal battle over entitlement to the block and the obscurity of associated transactions which sit below this struggle:

> Whereas the said Mangaohane or Mangaohane Number Two Block was partitioned at a sitting of this Court at Hastings on the 13th day of June 1890 before Loughlin O'Brien Esquire Judge and Benjamin Frederick James Edwards Assessor and whereas prior to the said partition an application was made by one Rena Maikuku for a rehearing of the original investigation of the title to the said Block which application had not been determined in due form of law but was still pending and whereas the said application for rehearing was heard and granted subsequent to the said partition at a sitting of the Native Land Court held at Hastings and whereas the said rehearing so granted was heard at a sitting of the rehearing Court held at Hastings on the Third day of May 1893 and the said Rena Maikuku and twentynine others being members of the Ngati Tamakorako hapu were admitted as owners in the said Block but their interests therein were not defined and whereas application was made under 'The Native Land (Validations of Titles) Act 1892 by one Richard Townsend Warren for a Certificate under that Act in respect of the shares and interests thereof purchased by him from certain of the owners in the said Block under a deed dated the Eighth day of August 1885 which application was heard at a sitting of the said Court at Hastings on the Nineteenth day of July 1893 and a certificate was granted under the said Act to the said Richard Townsend Warren in respect of the same which certificate was afterwards confirmed by 'The Native Land Court Certificates Confirmation Act 1893' and whereas for divers good considerations the said Richard Townsend Warren assigned all his estate and interest in the said Block and the said certificate to one John Studholme the Younger of Owhaoko Sheepfarmer by deed bearing date the _____ [blank] day of _____ [blank] 1895 and whereas the said John Studholme the Younger lodged a claim under Section 118 of 'The Native Land Court Act 1894" to be allowed to complete the purchase of certain shares in the said land which was duly granted by certificate under the said Section 118 of the said Act on the Eighteenth day of December 1894 and whereas in pursuance of the said Certificate the said John Studholme the Younger has purchased all the interests of the members of the Ngati Tamakorako so admitted as aforesaid and whereas arrangements have been made between the said John Studholme the Younger Airini Tonore Iraia Karauria and one George Edward Gordon Richardson who are now the sole owners of the said land for a partition of the same in general accordance with the partition effected by the Native Lands Court presided over by Louglin O'Brien Esquire on the thirteenth day of June 1890 which arrangement has been reduced to writing and filed in this Court and whereas by the Seventh Section of 'The Native Land Court Certificates Confirmation Act 1893' it was provided that no order under Section Four of that Act should be issued in respect of the said Block or any part

[238] CT 81/55 Wellington Province.

> thereof until the final determination of certain matters specified in a certain memorandum therein alluded to and whereas it has been proved to the satisfaction of this Court that the said several matters have been finally determined upon hearing the evidence and in exercise of the jurisdiction conferred by the above mentioned Acts ... [239]

In 1894 one of the Studholmes' solicitors, Gisborne-based William Rees, had written of 'the alarm which the mere name of Mangaohane raises in the minds of those who approach it for the first time and without knowledge.'[240] Presenting the above order at length is not intended to bewilder the reader, nor convey the expectation of an all-encompassing knowledge about the history of litigation over Mangaohane 2. But the excerpt does point to some of the key legal manoeuvres involved in winning title to Mangaohane 2. Winiata Te Whaaro's absence from this rendition of events is significant, a reflection of his lack of *locus standi* resulting from flawed Native Land Court process.

As Chief Judge Davy indicated, the orders of December 1895 were 'in general accordance' with the earlier partition of Mangaohane in 1890. The upshot was that John Studholme Jnr was found to be entitled to an estate in fee simple to Mangaohane A (12,401a 3r 21p) and G (6,817a 19p). Both these parcels, however, were intersected by the provincial boundary between the districts of Wellington and Hawkes Bay. This meant that when Studholme's title was forwarded for registration, he received two: the certificate of title which became the basis for Winiata's ejectment encompassed the areas of Mangaohane A and G falling within the Wellington Province, together comprising 13,506a 3r 21p.[241]

The 1890 partitions lying between Mangaohane A and G were amalgamated at the point of the December 1895 order, and renamed Mangaohane C. Chief Judge Davy found Airini Tonore (Donnelly), Iraia Karauria and George Richardson were entitled to this 11,891-acre block, in different shares set out in the accompanying schedule. Like Studholme, their certificate of title was issued on 11 January 1896 and backdated to the December order.[242] This arrangement is depicted in the plan in Figure 8 below.

[239] Chief Judge Davy, Partition Order, 18 December 1895, Wellington Provincial Register vol. 3 fol. 25.
[240] Rees & Lusk, Solicitors, to Chief Judge Native Land Court, 17 March 1894, John Studholme Papers, MS-Papers-0272, folder 3.
[241] CT 81/55 Wellington Province.
[242] CT 81/56 Wellington Province.

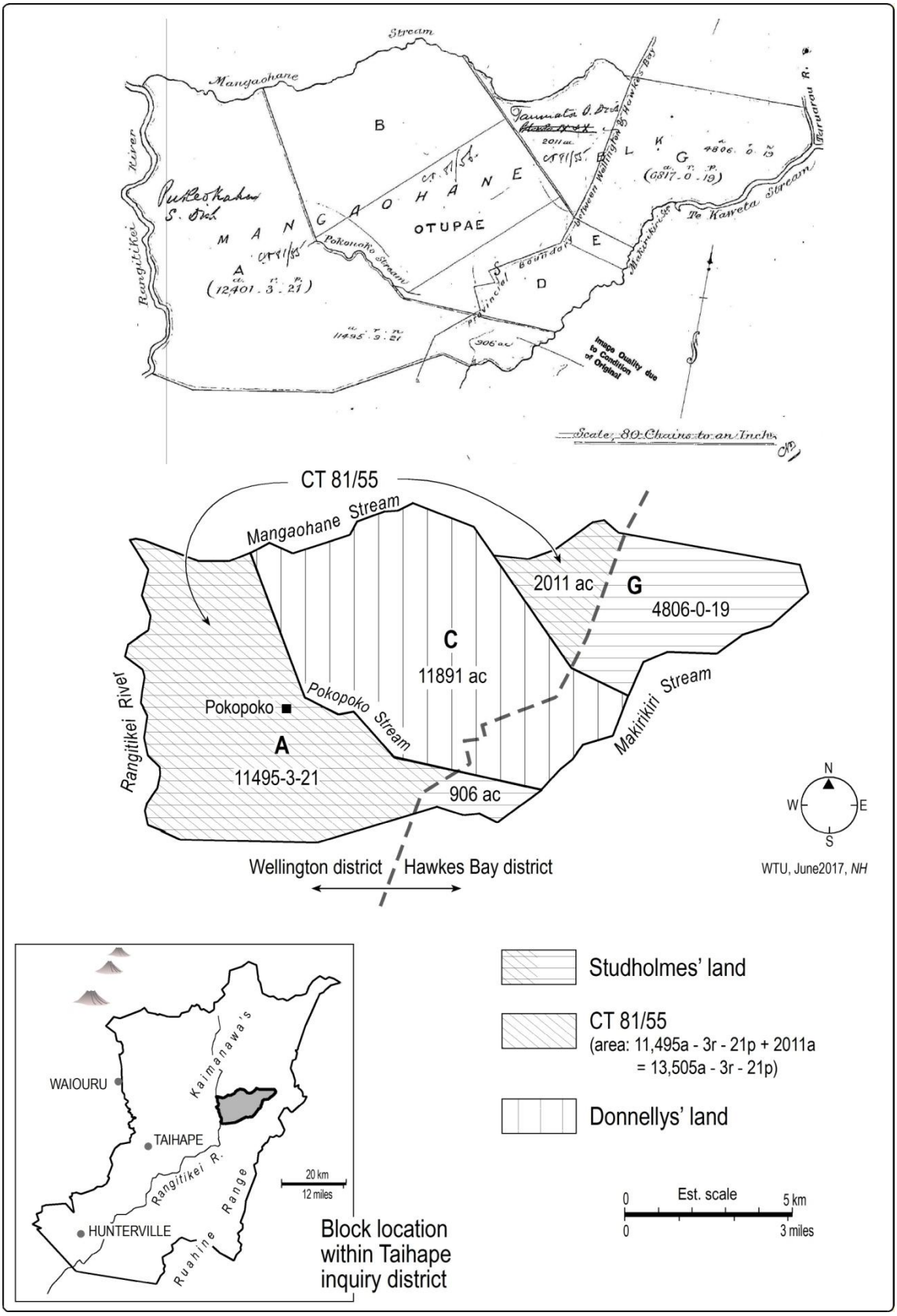

Figure 8: Mangaohane title, 1895.[243]

[243] Map by Noel Harris, based on Wellington Provincial Register vol. 3 fol. 25.

John Studholme Jnr's title came with a survey lien of £241 16s 8d in favour of the Crown, which was paid on 24 March 1896. At this time too, Studholme began action, through his Napier solicitors Carlile & McLean, to sue Winiata Te Whaaro for trespass. A warrant was prepared, but it seems the complexities over just who owned what were too much even for the legal owners and their lawyers to untangle.[244] The planned legal action was abandoned in early May. Studholme's title to Mangaohane A and part G was mortgaged to the New Zealand Trust and Loan Company Limited at this time.[245]

By August 1896 Studholme and his Napier solicitor Patrick McLean were exploring a different tactic, attempting to induce Winiata Te Whaaro's creditors to call in his debts. McLean had established that Winiata's advances from the Farmers Cooperative Society amounted to around £100, scarcely sufficient, he reported to Studholme, 'to serve the purpose which we hoped would be served by their pressing Winiata.'[246] McLean had nonetheless invited the Cooperative manager to talk further: 'No doubt Mr Louden will come and see me and I shall then get him, if possible, to act as was proposed...' In the meantime, he suggested, if Studholme was in Wellington, it might be as well to see his solicitor HD Bell to discuss 'the propriety of bringing an action for ejectment.'[247]

Studholme re-initiated civil proceedings to eject Winiata in January 1897, once again through Carlile & McLean. The solicitors' itemised account reveals that two days after authorising them to act, Studholme decided to travel to Wellington in order to gain a writ of summons from there, apparently unsuccessfully. A warrant to sue Winiata Te Whaaro, his brother Irimana Ngahou and Raita Makarini was filed in the Supreme Court in Napier by Carlile & McLean on 1 February 1897. It was accompanied by a writ of summons and statement of claim.[248] John Studholme Jnr claimed that the defendants had since 18 December 1895 (the date of Chief Judge Davy's order granting his entitlement) unlawfully possessed and occupied certain lands belonging to him (Mangaohane A and part G, comprising 13,506 acres) 'by living thereon and running large numbers of sheep and cattle on the same...'[249] Studholme claimed possession of the land, and £500 for the mesne profits the defendants had made from their possession since 18 December 1895. The writ of summons gave the defendants ten days from receipt of the writ to file a statement of defence in court. Both the writ of

[244] John Studholme Jnr's 1896 itemised account with Carlile & McLean for 'You v.Winiata & Ors', indicates that at this point Studholme believed he also owned part Mangaohane C. MS-Papers-0272, folder 34. The accounts show that Carlile & McLean drew up a 'warrant to sue' on 19 March 1896, and consulted Owhaoko Station manager RT Warren two days later about how the writs should be served. Over the following fortnight, the solicitors sought particulars of Studholme's title to Mangaohane A, C and G from the Wellington Land Registry and in addition visited Murray Roberts & Co 'on several occasions ... with reference to defining area of Your Mangaohane lands.' A further complication suggested by the itemised accounts is the fact that John Studholme the younger seems to have given power of attorney to his father.
[245] Mortgaged registered on 12 May 1896, CT 81/55 Wellington Province.
[246] PS McLean, Carlile & McLean Barristers & Solicitors to J Studholme Jnr, 3 August 1896, MS-Papers-0272, folder 17.
[247] Ibid.
[248] John Studholme the Younger v. Winiata Te Whaaro, Irimana Ngahou and Raita Makarini, No. 1094, Warrant to Sue; Writ of Summons and Statement of Claim, filed 1 February 1897, AAAR 7585 W3558 103/4.
[249] Ibid, Statement of Claim.

summons and statement of claim were translated into Maori. Studholme also claimed £15 15s in costs for each service of the writ.

Affidavits of service were subsequently filed in court asserting that these legal documents in English and Maori were served on Irimana Ngahou at Ngatarawa on 13 February by Carlile & McLean's law clerk, William Wood; and on Winiata Te Whaaro at Taihape on 8 February by assistant surveyor Thomas Harwood.[250] The third named defendant, Raita Makarini, had died more than three years before.[251] Both affidavits were filed in court on 19 February. Inexplicably, a third affidavit of service on file appears to be a duplication of Harwood's service on Winiata, the only difference being the date of witnessing by Moawhango storekeeper and Justice of the Peace RT Batley, which had changed from the 8 February to the 25 of February. This third affidavit was filed in court on 2 March, the same day judgment against Winiata was obtained.[252]

Neither Winiata nor his brother Irimana filed a statement of defence, and Carlile & McLean moved quickly to obtain judgement by default. In the case of Irimana Te Ngahou, on 25 February 1897 the court ruled that the plaintiff recover possession of the land, and £17 19s 10d for costs.[253] A similar judgement against Winiata Te Whaaro was obtained one week later, on 2 March.[254] By 13 March writs of sale and possession against both men had been obtained to give effect to the judgement.[255]

Because the land in question fell outside the Hawkes Bay District, Carlile & McLean then engaged Fitzherbert & Marshall, solicitors of Whanganui, to act as agents. The writs were forwarded to them at once with instructions to consult the sheriff there. The outcome of their deliberations with Sheriff Thomson over the next two days was Thomson's first approach to the Under-Secretary of Justice on 19 March 1897, requesting police assistance to execute the writs:

> I have received two Writs of Possession for execution against Natives in the Moawhango District – Winiata te Wharo [sic] and Irimana Ngahou... . 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 Sergt Cullen

[250] Affidavits of Service, filed 19 February 1897, AAAR 7585 W3558 103/4.
[251] Te Raita Makarini was also known as Te Raita Parekawa, the daughter of Winiata Te Whaaro's first cousin, Raina Te Waka. Her inclusion in the action may relate to her being registered as a sheep owner at Pokopoko in 1896, although she had died in 1893, Annual sheep returns, AJHR 1897 sess II H-23, p. 37; 4 August 1904, Whanganui MB 52/57.
[252] Affidavit of Service, filed 2 March 1897. AAAR 7585 W3558 103/4.
[253] Judgement, 25 February 1897, AAAR 7585 W3558 103/4.
[254] Judgement, 2 March 1897, AAAR 7585 W3558 103/4. Winiata Te Whaaro's costs were slightly lower, at £17 1s.
[255] Only the cover sheets of the Praecipes for these writs are on file, dated 13 March 1897, AAAR 7585 W3558 103/4. A copy of the writ of sale and possession against Winiata Te Whaaro was filed with the subsequent application for a writ of attachment, also on file.

> from Wanganui. If you concur would you please ask the Police Dept. to instruct the Inspector of this District.[256]

Sheriff Thomson was all too aware of existing policy and practice about the use of police to execute civil writs. As explained in Chapter 1, in a cost-cutting measure dating back to 1882, the government had done away with salaried bailiffs in some outlying districts, the duty of *serving* writs falling instead to local constables. These new police duties, however, expressly precluded the *execution* of writs, which remained the responsibility of the sheriff and his appointed bailiffs. Over and above this general proscription against using police to enforce civil writs, since 1884 – for the reasons set out later in this report – there had been an explicit instruction that police were not to involve themselves in the execution of writs of ejectment against Maori without direct written Ministerial authority (the Commissioner of Police also being the Under-Secretary or Permanent Head of Defence). This is precisely why Sheriff Thomson wrote the letter. Ten days later he repeated the request, prodding the Justice Under-Secretary for a response before he left to execute the writ early the following week:

> 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.[257]

By way of a sweetener, Thomson held out the prospect of government revenue arising from the enforcement, by way of poundage amounting to £200-£300, 'as the land I understand is worth almost £12,000.' The sheriff was referring here to the standard practice of calculating poundage at 2.5 per cent of the sum levied, although how or even if this would apply to the writ of sale and possession in this case is not clear.[258]

Justice Under-Secretary Frank Waldegrave had forwarded Thomson's request of 19 March 1897 to the Commissioner of Police, Arthur Hume, together with his opinion: 'I think you should be cautious in granting police assistance in this case.'[259] Hume, in turn, sought advice from the District Inspector of Police at New Plymouth, Francis McGovern. Inspector McGovern's response was much more emphatic:

> 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

[256] AD Thomson, Sheriff's Office Wanganui to Under-Secretary Justice Department, 19 March 1897, J1 578 1897/982-1056, Wai 2180 #A52(a), p.66.
[257] Sheriff Thomson to Under-Secretary Justice Department, 29 March 1897, J1 578 1897/982-1056, Wai 2180 #A52(a), p.64.
[258] It is not clear how English common law relating to poundage for writs of possession, developed in a context of landlords and tenants, was applied in the New Zealand colonial context. The Sheriffs Act 1883 does not spell out whether poundage was to apply for writs of possession, although it did provide for the Supreme Court to determine sheriff's fees in such cases (Section 18).
[259] F Waldegrave note, 22 March 1897, on coversheet of J97/1039 (Thomson's letter of 19 March 1897), J1 578 1897/982-1056, Wai 2180 #A52(a), p.63.

> Officers residing in Native Districts appreciate and I trust it will long remain in force.[260]

Even before McGovern's input, Commissioner Hume was agreed that Thomson's 'somewhat unreasonable request' should be refused.[261] The Commissioner had been unable to discover the background behind the 1884 circular referred to by McGovern – the relevant files were missing – but he did confirm that it was still in force.[262] On 1 April he informed Sheriff Thomson that his request was refused, enclosing an extract from Circular 4/1884 for good measure.[263]

Sheriff Thomson immediately wired Under-Secretary Waldegrave, urging him to reconsider: '... 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 ...'[264] The sheriff's informants were Studholme and his solicitors. Thomson had been meeting almost daily with Fitzherbert & Marshall since receiving the writ, and he met with Studholme himself on 26 March to discuss the ejectment.[265] The urgency to execute the writ was largely driven by Studholme and his legal team – with or without the help of local constables – and indeed Thompson was already at Mangaohane when the Under-Secretary's response to his telegram for police assistance reached Whanganui, informing him that the Minister of Justice was unable to alter the decision.[266] Thomson was accompanied by an interpreter from Hastings, and on 5 April the sheriff had been paid £15 by Fitzherbert & Marshall to cover the expenses of his impending trip.[267] On the same day in Napier, Carlile & McLean met with Studholme's farm manager Richard Warren to discuss the arrangements for removing the sheep, confirming in writing the same day, 'as to steps to be taken if Sheriff does not remove them.'[268] The reference by McLean to a visit undertaken with Studholme a fortnight before to Napier Stock and Station agents Wenley & Lanauze was likely connected to the sale of the sheep to be removed.[269]

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[260] Inspector McGovern to Commissioner of Police, 25 March 1897, note on back of above, Wai 2180 #A52(a), p.62.
[261] Commissioner Hume to Inspector McGovern, 23 March 1897, note on above, Wai 2180 #A52(a), p. 63.
[262] Commissioner Hume to Under-Secretary Justice, file note 27 March 1897, J1 578aj 1897/1039.
[263] Commissioner Hume to Sheriff Thomson, Wanganui, 1 April 1897, J1 578 1897/982-1056, Wai 2180 #A52(a), p. 65.
[264] Sheriff Thomson to Under-Secretary Justice Department, telegram, 2 April 1897, J1 578 1897/982-1056, Wai 2180 #A52(a), pp. 58-9.
[265] See itemised accounts from Fitzherbert & Marshall in 'Costs Subsequent to Judgement', AAAR 7585 W3558 103/4.
[266] Waldegrave, Under-Secretary Justice Department to Sheriff Thomson, 8 April 1897, J1 578 1897/982-1056, Wai 2180 #A52(a), pp. 60.
[267] See itemised accounts from Fitzherbert & Marshall in 'Costs Subsequent to Judgement', AAAR 7585 W3558 103/4.
[268] J Studholme Jnr Esq to Carlile & McLean, itemised accounts, in MS-Papers-0272, folder 34. The accounts do not divulge just what steps were envisaged by the Owhaoko manager.
[269] Entry in above accounts for 22 March 1897.

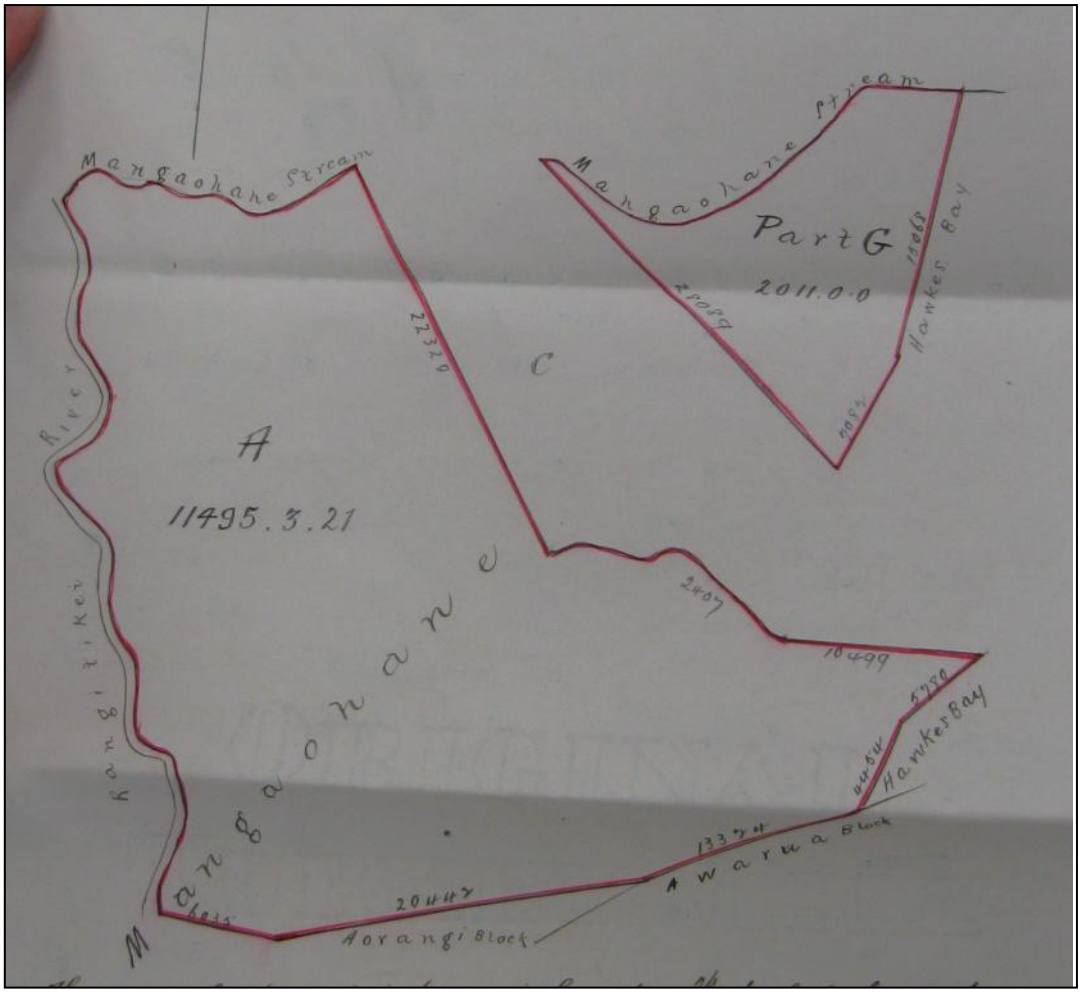

Figure 9: Copy of plan attached to the writ of sale and possession, April 1897[270]

April 1897: Sheriff Thomson's attempt to execute the writ of sale and possession

Thomson set off for Taihape with interpreter George Yeates on 6 April. The sheriff stayed that night with Winiata at his kainga at Mangaone (presumably within the newly-built wharepuni Tautahi), although this detail did not make it into his subsequent affidavit of events. According to Thomson, that evening he 'explained everything to him [Winiata] and reasoned with him but his only answer then was that he would wait till Mr Studholme's representative pointed out what he claimed.'[271] Although Thomson did not say so, the pair must have also agreed to proceed to Mangaohane to meet 'Studholme's representative' – Richard T Warren, farm manager at Owhaoko – there, for it was at Pokopoko two days later, or Aorangi as Winiata addressed his later letter, that the two-day negotiations recorded by Thomson took place, which subsequently became the basis for Studholme's

[270] Plan attached to writ of sale and possession, AAAR 7585 W3558 103/4.
[271] Sheriff Thomson to Under-Secretary Justice Department, 13 April 1897, J1 578 1897/982-1056, Wai 2180 #A52(a), pp. 46-47.

application for a writ of attachment (see below). Winiata Te Whaaro went to the trouble of organising his own interpreter, a Mr Downes, to be present on this occasion.

Thomson arrived at Mangaohane with Yeates and 'other persons' to execute the writ of sale and possession on 8 April.[272] Over the course of the next two days the sheriff had three 'long discussions' with Winiata, through both interpreters, explaining 'fully to him the object of my visit and the nature of the said writ and required him to give up possession of the said land.' Thomson and Yeates seem to have stayed in a house nearby, possibly a hut at Pokopoko recently built by Studholme (see p. 89). Warren was also there, with three shepherds he had hired for the purpose of mustering and removing the sheep.[273] As with the evening spent with Thomson two days before at Mangaone, Winiata Te Whaaro, it seems, would not concede that Studholme's title extended to his farm. The plan attached to the writ (see Figure 9) showed the block bounded by the Mangaohane stream to the north and the Rangitikei river to the west, but no other geographic features. 'Finally', Thomson related in the notes he recorded of the exchange, on the morning of 10 April, having managed to procure a map of Mangaohane, he pointed out to Winiata 'how it agreed with the plan attached to the writ'. Matters then quickly came to a head:

> 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 Govt afterwards, that he and I were both subjects of the Queen and that we must both obey her commands. That I proposed to today gather all the sheep and stock belonging to him and drive them over the boundary line of the Mangaohane Block and command him and 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 Queens 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 anymore and saying that he had given his answer[.][274]

[272] Affidavit of Sheriff Thomson, 24 April 1897, AAAR 7585 W3558 103/4. The identity and number of 'other persons' was not disclosed.
[273] See Warren's expenses amounting to £16 5s, including a charge for three shepherds from 6-12 April, 'Memorandum of payments made by Mr R.T. Warren in connection with execution of Writ of Sale by Sheriff', AAAR 7585 W3558 103/4.
[274] 'B': Notes of meeting, attached to Affidavit of Sheriff Thomson, AAAR 7585 W3558 103/4.

Thomson claimed that once Winiata had left, he explained matters to the community there, again through the interpreters. They were told that as the representative of the Queen, he directed them to remove from the block that same day with their possessions; and that the government relied on their loyalty to do so without recourse to using police. 'I asked them to talk to Winiata and get him to go quietly without making any trouble as if he did not the Govt would insist on being obeyed and Winiata and all his people would get into very serious trouble.'[275]

An exchange of letters then followed, the first from Winiata enclosing £2:

> I hoatu e au tenei paipera me aku moni ara ko te paipera a te Kuini. Na te Kuini tenei paipera i homai ki waenganui i a matou kia whakamutua nga mahi kino, a kia whae tonu tatou i te aroha. I te tau [18]40 i mahia tenei mahi. Koia nei te take i hoatu ai e au te Pauna. Na mo te taha ki te pu[.] [K]oia nei te mea e eke ai nga toto, i runga hoki o te ahi a te Kuini. Koia nei te take i whakatakoto ai e au te pu, me te Pauna, kia whakamutua nga tautohetanga i waenganui ia taua[.] [K]o to korero kia haere ahau, ko taku kia noho tonu, ara ka eke rawa aku toto mo tenei Poraka.[276]
>
> 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 deeds so that we may all live in love. This was done in the year [18]40. This indeed is the reason I gave you the money. Now as regard 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 until my blood is shed on this block.

Thomson had Yeates translate his response, returning the £2:

> You say you will not go off the land. That is not right. Why should you do what will make the Queen sorry. You say you will not leave till the fire of the Queen makes your blood flow. 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 very soon and move your things out of your house on to 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.[277]

It should be noted that there are discrepancies in both the Maori correspondence and English translation which affect the tone and meaning. The letters on the court file are not the original, but rather a typed copy Sheriff Thomson declared to be true. The first letter from Winiata Te Whaaro above speaks of 'te ahi a te Kuini', which, as Thomson's reply reveals, was taken to mean 'the fire of Queen'. Yet the actual translation of Winiata's letter above (which Thomson said was undertaken by

[275] Ibid.
[276] 'C' Winiata Te Wharo to Tamihana, 10 April 1897, with Affidavit of Sheriff Thomson, AAAR 7585 W3558 103/4. The translation is that provided by Thomson, undertaken by his interpreter Yeates.
[277] 'D', AD Thomson to Winiata Te Whaaro, 10 April 1897, AAAR 7585 W3558 103/4.

Yeates) speaks of 'the command of the Queen', and indeed, in the version sent to the Premier later that day, Winiata wrote of 'te oahi a te Kuini', the oath of the Queen, which fits more readily with command than fire.[278] If 'oahi' is restored into the sentence referring to the gun, 'Koia nei te mea e eke ai nga toto, i runga hoki o te oahi a te Kuini', in the context of the paragraph referring to past developments, the result is a possible reference to Winiata Te Whaaro's military service for the Crown, or military service per se, which is somewhat different from the connotation of the translation above: 'this indeed is the thing that will make the blood flow according to the command of the Queen.' It is markedly different from how Sheriff Thomson interpreted the letter: 'You say you will not leave till the fire of the Queen makes your blood flow.'

At this juncture, Thomson relates, Constable Black of Ohingaiti arrived, but the sheriff decided against him joining the negotiations. The schedule of costs for the action on the other hand records that Constable Jones of Moawhango was paid £1 10s by the sheriff to be there. It is possible that in preparing the accounts, the Whanganui solicitors got the two constables confused, but the payment suggests nonetheless that the presence of a policeman was deliberate, and arranged in advance by the sheriff.[279] A second letter from Winiata Te Whaaro was then delivered. According to Thomson, the English-only copy was written by Downes at Winiata's instruction:[280]

> 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 and 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.[281]

According to Thomson, having received this message, he made one last attempt to talk Winiata into leaving:

> 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 others 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 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 shewn 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.[282]

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[278] Winiata Te Whaaro to Premier et al, 10 April 1897, J1 578 1897/982-1056, Wai 2180 #A52(a), p.44. To add to the confusion, in the letter to the Premier 'oahi' was once again translated as 'fire' by the Justice Department translator.

[279] 'Expenses incurred executing Writs of Possession; 1st trip', AAAR 7585 W3558 103/4. This is reinforced by the isolation of Pokopoko: police would scarcely be just 'passing through'.

[280] Affidavit of Sheriff Thomson, AAAR 7585 W3558 103/4.

[281] 'E' Winiata Te Wharo to Tamihana, 10 April 1897, in above.

[282] "notes' in above affidavit.

Having delivered this threat, Sheriff Thomson left without taking matters further. As Winiata had indicated, the same letter presented to the sheriff that day was then addressed and sent to the Premier, the Native Minister, the Members of Parliament, and the Maori Members of Parliament.[283] Seddon of course, was both Premier and Native Minister. In the absence of any Native Department the appeal seems to have been forwarded to the Department of Justice, eliciting a brief comment from Under-Secretary Waldegrave: 'Tell him that he should obey the law.'[284]

The Writ of Attachment

On his return to Whanganui, Sheriff Thomson reported his failure to execute the writ of sale and possession to Waldegrave, enclosing the notes he had made of the encounter. 'The defendant', he wrote, 'will not listen to any reason and says he will die before he leaves the land.'[285] Thomson continued: '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'. Thomson told the Under-Secretary of Justice that he intended to re-attempt executing the writ at the end of the month, explaining that the land was too remote to find assistance locally: 'If force has to be used to put the Maories off as I am quite certain it will I shall have to take the men with me from inhabited parts.'[286] Once again he urged that he be allowed to take Sergeant Cullen and Constable Shearman from Whanganui, and Constables Black and Jones from Ohingaiti and Moawhango.

Sheriff Thomson also related the outcome to Fitzherbert & Marshall. Three days later, on 15 April, he advised them to obtain a writ of attachment against Winiata, on the grounds of his contempt in refusing to give up possession. Thomson's suggestion was duly passed on to Carlile & McLean and quickly acted on.[287] Over 21-22 April, Fitzherbert & Marshall prepared Thomson's affidavit, including as exhibits the correspondence that had passed between the sheriff and Winiata to support the application for a writ of attachment. A discrepancy in the sheriff's affidavit relating to the date of Winiata's refusal to vacate seems to have been identified by Carlile & McLean, prompting a fresh affidavit to be drawn up on 23 April.[288] These papers were filed on 24 April, the motion for leave to

[283] Winiata Te Whaaro to Premier et al, 10 April 1897, J1 578 1897/982-1056, Wai 2180 #A52(a), p.44.
[284] 'F.W' note on translation of above, p. 43.
[285] Sheriff Thomson to Under-Secretary Justice Department, 13 April 1897, J1 578aj 1897/1039.
[286] Ibid.
[287] See entries for 15, 21-23 May 1897 in itemised accounts of 'Costs Subsequent to Judgement', AAAR 7585 W3558 103/4; also entry of 21 April 1897 in itemised accounts of Carlile & McLean, MS-Papers-0272, folder 34.
[288] See entries of costs 22-24 April, 'Costs Subsequent to Judgement', AAAR 7585 W3558 103/4.

issue a writ of attachment set down for hearing by the Supreme Court in Wellington on 11 May 1897.[289]

There are three aspects of this latest development that warrant attention. As set out in the previous chapter, the writ of attachment was the common law remedy in cases of contempt, in this case the refusal to obey an order of the court. Whether, as Maxton writes, attachment could only be applied in the case of civil contempt where a breach of the peace had occurred is not clear (see p. 37). However, presenting the potential for violence appears to have been an important factor in winning the writ. The April exchange between Winiata and Sheriff Thomson set out above, by contrast, is notable for the lack of violent confrontation, although both parties certainly made their respective positions clear. The sheriff interpreted Winiata's gesture with regard to the 'Queen's things' as a threat, namely that '... [Winiata] would not go[,] that the money would buy things for the gun and the gun would make the blood flow'. There is, of course, scope for Winiata Te Whaaro's recorded words and actions to be interpreted in a considerably different way, not least because he laid the gun down and left without it. A more compelling interpretation of his letter of 10 April set out above is that the gun was deliberately laid down before Sheriff Thomson *because* of the potential for bloodshed. As set out below, after receiving notice of the motion for the writ of attachment against him, Winiata felt moved to explain again to the government that no such threat had been intended. Furthermore, it is clear from the written communications between the two men at Pokopoko that both men understood that it was Winiata alone who stood to get hurt ('Even a lion when it is dead is no use'). Thomson communicated as much to Under-Secretary Waldegrave shortly after his return to Whanganui: '[Winiata] says he will die before he leaves the land.'

In Sheriff Thomson's affidavit to support the motion for the issue of a writ of attachment one week later, however, Winiata's steadfast resolve to remain on the land was portrayed as something much more ominous. The sheriff claimed:

> The said Winiata te Wharo [sic] absolutely refused to give up possession of the said land or any part thereof and threatened violence and refused to allow certain natives, members of his tribe, to leave the said land or to remove their or his stock therefrom.
>
> In consequence of the action influence and violence of the said Winiata te Wharo [sic] I was unable to execute the said Writ of Sale and possession and had to return to Wanganui without executing the same.
>
> I am satisfied that owing to the action and conduct of the said Winiata te Wharo [sic] a general riot and fight would have taken place had I endeavoured to proceed further in the execution of the said writ and I had not at my disposal a sufficient body of men to enable me to execute the said writ by force.

[289] Notice of motion, dated 22 April 1897, in AAAR 7585 W3558 103/4.

....

> I verily and conscientiously believe that it is necessary that a writ of attachment should be issued out of this Honourable Court against the said Winiata te Wharo and that if the aforesaid conduct of the said Winiata te Wharo be allowed to pass unnoticed there will be great difficulty in executing any process against natives especially in remote districts such as the one in which the said land is situated.[290]

Not only did the sheriff's affidavit prove integral to Studholme winning the writ, the construction of violence became the received interpretation of Winiata's actions. Following his arrest in May 1897, for example, Winiata Te Whaaro was described in the press as a 'warlike Rangatira' who had 'met the sheriff, armed with a Bible in one hand and a gun in the other, saying "Here's the book, and if you come any nearer you will get the rest."'[291] His reported threat to shoot the sheriff was widely perceived to have been the reason behind his arrest.[292] As set out below, Winiata Te Whaaro himself felt aggrieved about the charge of criminal violence (see p. 79).

Secondly, the last paragraph of Sheriff Thomson's affidavit quoted above suggests (and, too, the *Evening Post's* reference to the long arm of the law set out at the beginning of this chapter), that the sheriff was primarily concerned to demonstrate to Maori within his district that the Queen's writ extended to every last kainga, however remote. It was precisely the government authority that the police represented which the sheriff sought to execute the writ (see below). Of issue here was that the charge of contempt – particularly in the context of the colonial frontier – was inherently a Crown concern. Although Sheriff Thomson was acting as Studholme's agent to execute the writ, as he explained to the Pokopoko community he was also there as the representative of the Queen (see p. 69). And as he also announced, the community's refusal to leave, to obey the writ of law, made them 'enemies to the Queen' akin to Te Whiti at Parihaka. Bell told Studholme after the arrest that in his opinion, the writ of attachment should have been applied for in the name of the sheriff, and not as a part of Studholme's private action.[293] On this point it is significant that in one newspaper report of the subsequent hearing in Wellington, Bell was mistakenly referred to as acting for the Crown.[294]

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[290] Affidavit of Sheriff Thomson, 24 April 1897, AAAR 7585 W3558 103/4.
[291] *Star*, 21 May 1897, and repeated in *Auckland Star*, 22 May 1897.
[292] 'Resisting a Sheriff', *New Zealand Times*, 22 May 1897. In this lurid account, on producing the bible and gun Winiata reportedly 'asked the Sheriff to smell them, adding that there would be bloodshed if he didn't clear. The Sheriff tried argument and threats, but to no purpose; Winiata still threatened to shoot him, and finally the Sheriff left him.'
[293] J Studholme Jnr to PS McLean, Carlile & McLean, 13 May 1897, 'rough copy of letter', MS-Papers-0272, folder 17. In a crossed-out paragraph of the rough draft to McLean, Studholme wrote: Mr Bell thinks that the writ of ['ejection' crossed out] attachment should not have been made a part of the action but applied for I think he said in the name of the Sheriff but him not quite clear on this point; anyhow he states that he believes I might be rendered liable for an action of false imprisonment and that the safer course would have been for an injunction to have been laid by me before a J.P. for 'forcible detainis' but I dont think we are likely to be troubled on this point.'
[294] *New Zealand Times*, 22 May 1897.

The question also arises as to what Studholme hoped to gain by obtaining the second writ which was so damaging to Winiata Te Whaaro's reputation. There is little evidence of personal animosity towards Winiata Te Whaaro in the records Studholme kept, but the runholder did want possession badly. The sheriff's account of Winiata's standing and influence over his community raises the likelihood that Studholme may have considered the ejectment might go easier once Winiata was removed. This conclusion is supported by Sheriff Thomson's advice to Waldegrave on 29 April (see below), that the execution of the writ of possession had been delayed for a few days pending the application for the writ of attachment.

Indeed, the third, unspoken, factor underlying the deliberation about how to proceed may well have been the law relating to forcible entry, outlined in Chapter 1 (see p. 37). Sheriff Thomson had initially indicated to Waldegrave that he intended to return to Mangaohane with men to forcibly gain possession. A writ of attachment presented a more considered approach. Winiata Te Whaaro had made it clear that he would not remove. Any attempt to do so by force would leave Sheriff Thomson and Studholme open to the risk of being indicted for forcible entry. This goes a long way to explaining both the sheriff's insistence on police authority (to convince Winiata Te Whaaro that resistance was futile) and the decision to proceed with the writ of attachment to remove him altogether (for the reason above, that once he was removed, there would be less likelihood to have to use force to evict the community).

In Whanganui on 26 April, Studholme had a long discussion with solicitors Fitzherbert & Marshall about the implications of the writ of attachment and the execution of the writ of possession.[295] Half way through, they were apprised of the telegram Thomson had just received from the Under-Secretary of Justice, in response to the sheriff's latest plea for police assistance: 'Can only repeat former decision that Police assistance cannot be granted.'[296]

At the time Thomson received Waldegrave's telegram, the sheriff had already arranged for Constable Black to serve notice of the motion to issue a writ of attachment on Winiata Te Whaaro. For the fifth time the sheriff made his case for police support, his request on this occasion ending with a veiled threat aimed at the Under-Secretary himself, demonstrating just how keenly Sheriff Thomson wanted the authority of the police behind him:

> I would beg to point out that a Sheriff is liable to an action if he does not execute a Writ 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 Secs 9 & 10 of The Sheriffs Act 1883 a Sheriff in New Zealand

[295] Itemised accounts of Fitzherbert & Marshall, in 'Costs subsequent to Judgement', entry for 26 April 1897, AAAR 7585 W3558 103/4.
[296] F Waldegrave to Sheriff, telegram, 26 April 1897, J1 578aj 1897/1039.

> 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 where the Maories 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 that that would also apply to one forbidding those over whom he has authority to assist.[297]

Thomson here was clutching at straws. As discussed in the previous chapter, the *posse comitatus* provisions had never been utilised in New Zealand and had long since been abandoned in England. The sheriff informed the Under-Secretary about the latest development, the decision to apply for a writ of attachment, and reiterated his call for help:

> 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 the instructions given to Police Officers in Circular No. 4/84 be modified so as to place members of the force at my disposal.[298]

Under-Secretary Waldegrave again referred the sheriff's argument to the Police Commissioner, together with his view that: 'I am strongly of opinion that the Sheriff must execute his writs without the assistance of the Police – the only possible duty the Police could have in the matter would be to prevent a breach of the Peace. However as the Police Force is under your control I refer the papers to you.'[299] To which Commissioner Hume responded: 'I quite concur, and therefore decline to place the police at the sheriff's disposal unless the Native Minister so directs.' On 4 May Waldegrave duly wired Sheriff Thomson: 'I think it is quite clear that Sheriff is not authorised to be assisted by Police – The only possible duty they could have in matter would be to prevent a breach of the peace.'[300]

Sheriff Thomson did not give up. He had already confirmed that Constable Black was willing to execute the writ, but for the government's approval. The day after receiving Waldegrave's telegram, Thomson once again attempted to change the Under-Secretary's mind:

> 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

[297] Sheriff Thomson to Under-Secretary Justice Department, 29 April 1897, J1 578 1897/982-1056, Wai 2180 #A52(a), p. 39.
[298] Ibid.
[299] F Waldegrave to Commissioner of Police, 30 April 1897, file note on above, p. 41. Commissioner Hume's agreement on same dated 1 May 1897.
[300] F Waldegrave to Sheriff Thomson, telegram, 4 May 1897, J1 578 1897/982-1056, Wai 2180 #A52(a), p.41.

> 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 of the Posse Comitatus, to the call of the Sheriff, and I submit that it is not allowable for anyone to forbid them.[301]

The Under-Secretary of Justice was unmoved, his response to the Sheriff's argument as brief as ever: 'I have nothing to add to my previous communications on the subject.'[302]

Thomson was left in a quandary. His job required him to enforce the judgements of the Supreme Court, as the agent for the successful plaintiff. As set out in the previous chapter, since taking up the position in 1892 Thomson had struggled with the practicalities of doing so in a district which was not only vast, but held communities only very recently exposed to Supreme Court civil proceedings. The sheriff's conscientiousness with respect to his duties may have been honed further in this case by Studholme's presence in Whanganui, but his correspondence suggests a primary concern with the nascent state of his own authority within the district. Thomson was acutely aware of the need for a police presence in order to coerce compliance from Winiata Te Whaaro without having to resort to force. Without the show of state authority, how did government Ministers expect him to uphold the law?

The government proved just as obdurate with regard to Winiata Te Whaaro's appeal. On 1 May 1897 notice of the motion for a writ of attachment, in English and Maori, had been served on Winiata at 'Awarua, near Taihape' by Constable Black.[303] By this time, too, Winiata had received an official response to his 10 April letter, the gist of which we can assume from Waldegrave's comment cited above, was that he should 'obey the law'. Two days after receiving notice of the charge of contempt, Winiata attempted once again to explain his conduct. His letter was addressed to 'Te Tari mo nga Tikanga o te Ture Poneke' / the Justice Department, Wellington, to 'Reweti ara ki te Hekeretari' / 'Mr

[301] Sheriff Thomson to Under-Secretary Justice Department, 5 May 1897, J1 578 1897/982-1056, Wai 2180 #A52(a), pp. 4-5.
[302] Under-Secretary Waldegrave to Sheriff Wanganui, 11 May 1897, J1 578 1897/982-1056, Wai 2180 #A52(a), p. 20.
[303] 'Copy of affidavit of service of Notice of Motion for leave to issue writ of attachment', served 1 May and filed 10 May 1897, in AAAR 7585 W3558 103/4. The affidavit was witnessed in Ohingaiti on 3 May, the same day that Winiata wrote to the Justice Department.

Davies, that is, to the Under Secretary'.[304] George Henry Davies was an interpreter for the Justice Department.[305]

> ... mo te heke o te toto, kia marama koe ki te tikanga o taua kupu ana i whakaatutiatu [sic] e ahau i runga i te Paipera o te hahi o te Kuini, nana nei i puru te toto o te Iwi Maori i te Tau wha te kau (40) me te mana hoki o te Kuini me te Tiriti o Waitangi. Koia te tikanga o tena kupu, me te tikanga o te pu whakaheke toto, i hoatu na e au kia Tamihana (Heriwhi). Na te Kuini katoa ena mea. I whakaheketia te toto o te tangata Maori i muri mai i te Tiriti o Waitangi. Ka heke taua toto ki Taranaki; kia te Rangitakei raua ko te Aporotana. Kaihoki me te tikanga o te Ture e noho ana i nga Tiati o te Hupirimi Kooti, ko nga mahi tena he whakawa i nga tangata e mahi ana te whakaheke i te toto a te tangata, ko te kau, ko te hoiho, ko nga mea katoa e rite ana ma te Hupirimi Kooti e whakawa. I muri mai o te Rarurarau ki Taranaki, ka whakaturia he tangata hei takawaenga mo te iwi Maori, ara ko te Tumuaki o te Kooti Whenua Maori, me ana Tiati me ana Ateha Maori kua tukuna atu nei e te Kawanatanga te mana motuhake ki a ia. Koia ra tenei e mahi nei i tenei Ture i runga i nga whenua o te iwi Maori, kia noho pai ai ratou.[306]
>
> ... 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 then is the explanation of that word; and the explanation of the blood-shedding gun given by me [to] 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 Rangitakei and Te Aporotanga. Now with regard to the functions exercised by the Supreme Court acting under the law which consist 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 lands of the Maori people, so that they may live in quiet.

The letter is an important insight into Winiata Te Whaaro's perspective that it was Christianity and the Treaty of Waitangi, both associated with the mana of the Queen, which had brought peace to te iwi Maori ('nana nei i puru te toto o te Iwi Maori').[307] The rangatira seems to have regarded the Native Land Court in the same light: as a peaceable means of resolving the very disputes that had led

[304] Winiata Te Whaaro to 'Reweti', Under-Secretary of Justice, 3 May 1897, J1 578 1897/982-1056, Wai 2180 #A52(a), pp. 27; 35. Contemporary Justice Department translation.
[305] Te Reweti was George Henry Davies (1844-1914), the son of missionary CP Davies, who had worked as a licensed interpreter for the government since 1872, working closely in particular with Donald McLean in his time as Native Minister. After the disbandment of the Native Department in 1893, Davies became translator for the Justice Department. *The Cyclopedia of New Zealand [Wellington Provincial District]*, 1897, p. 135.
[306] Winiata Te Whaaro to 'Reweti', Under-Secretary of Justice, 3 May 1897, contemporary translation by Justice Department.
[307] I have been unable to fathom the references to Rangitakei (possibly Wiremu Kingi Rangitake) and Te Aporotanga (a Whakatohea chief of that name was executed after the battle of Te Kaokaoroa, Matata in 1864).

to war in Taranaki. He understood that the Supreme Court had jurisdiction over criminal and civil matters ('he whakawa i nga tangata e mahi ana te whakaheke i te toto a te tangata, ko te kau, ko te hoiho ...'). However, it was the Native Land Court which exercised an independent jurisdiction over Maori land, and by implication Maori affairs, with the aim, once again, of peaceable relations ('kia noho pai ai ratou').

Winiata then set out the long course of his legal struggle over tenure to Mangaohane, and the reasons behind his determination to stay:

> E hoa ko taku raruraru mo Mangoahane [sic] i te whakawa ia waru te kau ma rima (85), i muri mai ka tuku na atu e ahau ki te Paremata; ka turakina mai e te Paremata. I muri i tena ka tukuna atu ano e au ki te Kooti Piira, ka whakataungia e ratou ma te Timuake [sic] ano e whakawa nga hei [sic] o ta ratou mahi. Whakahokia mai ana e au ki te Kooti Whenua Maori, ka whakawatia ki Hehitingi, ka turakina ahau e taua Kooti, ka whakatika i a [N]gatiwhiti. Ka tukuna atu ano e au ki te Hupirimi Kooti; ka puta ta ratou kupu, kaore ratou e whaimana ki te mahi i te whakawa in nga raru raru a te Kooti Whenua Maori. Ka tukuna atu e au ki te Kooti Piira, ko taua kupu me whakahoki atu ma te Timuaki e whakatika aua whakawa. Ka whakahokia e au ki te Timuaki i a e iwa te kau ma wha (94) ka whakawatia ki Hastings a mutu ana, mauria atu ana ki Poneke whakatau [a]i i runga i aku rohe i whakahaere ai te Kooti i a waru te kau ma rima (85) Tiati o Paraiana (O'Brien). Koi ana te whakataunga a te Tiati Timuaki i riro i au. I muri o tena whakataunga, ka tahi ka peke a Tatamu a Tonore ki te kawe ki te Hupirimi Kooti a ka turakina i te whakatau a te Timuaki. E hoa e hara i te mea ko ahau kei te takahi i nga Ture, ko o Pakeha ano, i te mea kua puta mai nga kupu a te Hupirimi Kooti kaore ratou e whai mana i tuku kawenga atu; a kua takahia ano te Hupirimi Kooti i ta ratou kupu a te whakatau hoki a te Timuaki.[308]
>
> Friend, my trouble is with Mangaohane arising out of 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 me and in favour of Ngati Whiti.
>
> I again took [it] 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 Judge O'Brien in 1885, and the Chief Judge then gave judgment in my favour. Messrs Studholme & 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

[308] Ibid.

> Court have themselves traversed [sic? takahia = trampled on] their own decision and the decision of the Chief Judge ...

Winiata clearly considered Studholme's legal title was wrong, won by protracted litigation in the Supreme Court which was contrary to justice and the jurisdiction of the Native Land Court. Lastly, Winiata referred to the notice he had received from Constable Black for his arrest:

> Koia e pohehe ahau ki nga mahi mai a o taua hoa a Tatamu, e mahi mai nei ki au i roto i enei ra. I roto ahau i tena Ture e haere ana i enei Tau ka mahue ake nei, koia te take i kore ai ahau e tae atu ki nga hamene ki te Hupirimi Kooti a Tatamu ratou ko ona Roia i roto i enei ra. I te mea e marama atu ana ahau ki nga mahi a te Hupirimi Kooti. Kaore hoki ahau i te mahi kino, a e whakawatia ai ahau ki nga whakawa whakaheke toto i roto i enei ra. Engari ma te Pirimia ahau e whakawa i runga o te mana a te Kuini. Ma te Atua taua e tiaki i runga i te mana o to tatou Ariki ko Iho Karaiti, me te Mana a te Kuini ake ake Amene.[309]
>
> ... 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 summonses issued in 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 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 forever and ever, amen.

This last paragraph speaks to the inference of violence contained in the writ of attachment, and indeed the whole basis for the allegation of contempt which Winiata Te Whaaro denied. Once again he appealed to the government to look into the justice of his case according to the 'Queen's mana'. It is not clear who drafted the government's reponse on file, or even whether it was sent. It read:

> You say that the Supreme Ct. has no jurisdiction over the land, but only the N.L. Court – Now that is wrong, the Sup. Ct. 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 N.L. Court only has jurisdiction on the land [in pencil – 'as you say'] why did you appeal from it to Parliament and to the Sup. Ct. & the Court of Appeal. Is it not foolish talk to say that the Court has jurisdiction only when its judgment is in your favour, & that it has no jurisdiction when its judgment is against you.
>
> Now listen to me – this talk about ['defying and shedding of blood' crossed out, 'not obeying' pencilled in] the law is bad. The court has said that the land is Studholmes, and you must let him have it. If the court had said the land was yours, would you let Studholme have it.

[309] Ibid.

My word to you is this – obey the law which is above all, lest evil come upon you.[310]

The response epitomises the Crown's position of non-involvement in private disputes: both with regard to the underlying title and the civil proceedings to gain possession. The condescension of the reply is striking. In insisting that the law have the last word, it dismissed the very nub of Winiata's grievance: that his lack of title was the result of exploiting technicalities in the law rather than justice. Indeed, Winiata Te Whaaro's recourse to the law courts was used to undermine his grievances with respect to the adverse impact of competing court jurisdictions. By reducing the issue to such simple terms, the response failed to engage with the wider injustice Studholme's civil proceedings presented altogether.

In another strategic move, Studholme had decided to proceed with the writ of attachment via Wellington, for the notice served on Winiata Te Whaaro advised that the attachment proceedings would be heard there on 11 May.[311] On 4 May Carlile & McLean attended court in Napier requesting that papers be sent to Wellington, which they duly were. HD Bell, with his long history of working for the Studholmes, was engaged to act as the Wellington agent in the case by Carlile & McLean from 7 May.[312] John Studholme Jnr was also in Wellington from this time, in close contact with his counsel leading up to the hearing. The application for the writ of attachment against Winiata was prosecuted in the Supreme Court before Chief Justice Prendergast on 11 May 1897. It should be noted that the Chief Justice was well aware of the background to the disputed possession. In December 1893 with Justice Richmond, Prendergast had turned down Winiata Te Whaaro's appeal for a writ of mandamus in a bid to have Judges Mackay and Scannell reopen the investigation of title to Mangaohane.[313] In doing so, the Chief Justice had commented that the loss suffered by Winiata and his people through the 'supposed mistake' of Judges O'Brien and Williams at the original title investigation with respect to the boundary was 'unfortunate', but that the error could not be corrected by either the Supreme Court or Native Land Court.[314]

There is little information about the attachment proceedings. The order itself referred to the notice of motion and its service on Winiata, Sheriff's Thomson's affidavit in support, Winiata Te Whaaro's absence in court, and the argument by HD Bell. The writ of attachment, from 'Victoria by the Grace of God of the United Kingdom of Great Britain and Ireland, Queen, Defender of the Faith' was issued to

[310] Draft response on file, pencilled date 7 May 1897, J1 578 1897/982-1056, Wai 2180 #A52(a), pp. 22-23.
[311] 'Notice of Motion for leave to issue writ of attachment', served 1 May and filed 10 May 1897, in AAAR 7585 W3558 103/4.
[312] Entries for 7-11 May, in 'Messrs. Carlile & McLean, Dr. To Bell, Gully & Bell', 'Costs under Order of 21st May 1897', AAAR 7585 W3558 103/4.
[313] Discussed in Young, Wai 2180 #A39, pp. 143-46. A copy of the Supreme Court judgement for Noa Huke & others v Davy and others is in MS-Papers-0272, folder 4.
[314] Ibid.

Sergeant John Cullen, stationed at Whanganui, and 'to all Constables in the Colony of New Zealand', rather than the sheriff. It read:

> We command you to attach the body of Winiata te Wharo of Mangaohane .... and to have him here before Our Supreme Court of New Zealand at Wellington there to answer for his contempt of this Court in resisting and preventing the execution by Our Sheriff of Wanganui and Rangitikei of a certain Writ of possession issued under the Seal of Our Supreme Court of New Zealand at Napier ... [315]

Issuing the writ to the police rather the sheriff was a departure from normal practice.[316] There was provision in the Sheriffs Act 1883, in cases where the sheriff was not present in court, for the judge to appoint someone else to undertake his duties in any particular case, but the evidence suggests the police appointment in this case was an anomaly.[317] In his correspondence to the Justice Department less than a fortnight before, Sheriff Thomson clearly expected the writ would be issued to him (see p. 75). Studholme's update to his Napier solicitors two days later indicates that the request from Bell had given Chief Justice Prendergast pause:

> After some hesitation, the Chief Justice agreed with Bell's view and ordered writ of attachment should be addressed to Sergeant Cullen and all other constables for enforcement, and not the sheriff...[318]

The implications of this deviation from normal practice are significant. Issuing the writ of attachment at all suggests that Chief Justice Prendergast was satisfied by the argument of the potential for a breach of the peace. Issuing the writ to the police not only reinforced the charge of criminality now associated with the action, in doing so it nudged the State further into the thick of the civil proceeding. Judicial writs did not merely authorise the recipient to execute any judgement, they *commanded* action. Issuing the writ of attachment directly to the law enforcement arm of the state, therefore, raises constitutional issues over competing authorities which are beyond my ken. Did the court writ trump Ministerial authority? It seems so. On the face of it, Studholme's successful civil action neatly cut through the past seven weeks of wrangling between Sheriff Thomson and Under-Secretary Waldegrave. In addition to the significant victory of obtaining state force to achieve possession, it may well be that cost was a factor behind the move. In the execution of any writ, in addition to the five shilling fee for the writ itself, the sheriff and his delegated officers were entitled to travel costs charged at 1 shilling per mile for the one-way journey to execute the writ and to convey any defendent from the

[315] J Studholme Jnr v. Winiata & others, Writ of Attachment, AAAR 7585 W3558 103/4.
[316] As set out in Chapter 1, judicial writs of execution were generally directed to the sheriff as the immediate officer of the Supreme Court, see Churchill, p. 161, and also p. 238: 'An attachment is a writ directed to the sheriff commanding him to attach the person against whom it is issued, and have him before the court to answer his contempt.'
[317] Section 20, Sheriffs Act 1883, in relation to 'Deputy-Sheriffs and Acting-Sheriffs'.
[318] 'Rough copy of letter to McLean', 13 May 1897, MS-Papers-0272, folder 17.

place of arrest to the place of return.[319] On this basis, the travel component alone of a Whanganui-Mangaohane-Wellington trip (some 249 miles) would cost perhaps £12 9s for the sheriff's services, and considerably more if he appointed officers to assist in the attachment.[320] It is also the case that the use of constables for the attachment left Sheriff Thomson available to execute the writ of possession.

Sergeant Cullen at Whanganui had the writ by the following evening. Matters were moving fast and now, legally at least, on dual fronts. Studholme, also in Whanganui, was busy with arrangements to have the police, on the one hand, carry out the writ of attachment, and the sheriff, on the other, to execute the writ of sale and possession. On 13 May he advised his solicitor McLean:

> The Sheriff an Interpreter Sergeant Cullen & probably another constable will leave here together on Tuesday and hope to arrest Winiata at Kaikoura [Utiku] on Tuesday night.
>
> Should Winiata be at Mangaohane the police will go on then and arrest him but if at Kaikoura will return with Winiata to Wellington direct: the Sheriff in any case going on to Mangaohane. I meet Mr Warren by arrangement tonight at Ohingaiti and we will then decide all necessary arrangements for the carrying out of the ejectment. I return South and have to catch the [...?] at the Bluff for Melbourne and do not expect to return until late in June.[321]

He then turned to the issue of costs:

> You write in your letter ... 'All the expenses of the ejectment should be included by the Sheriff in the amount to be realised by him from the sheep when they are taken off the land.' The Sheriff states that he will not know what the cost of ejection will be untill [sic] some time after the ejection as the Court has to fix the amount; the net sum allowed to be recovered on the first writ is only £8 so once the sheep are got across the Rangitikei I propose letting the Sheriff get away & not to delay him in order to sell any of them as the cost of delay would very soon far outweigh what we would get. I hope and believe that in about ten days time we will be able to consider the ejectment satisfactorily completed.
>
> There will then remain the question of mesne profits and cost of ejection and the advisability of attempting to recover the same from Winiata.

With his upcoming trip to Australia in mind, Studholme asked that McLean answer to his father at Coldstream regarding his queries about prosecuting for costs, adding:

> The whole matter requires careful consideration. I am doubtful if Winiata has any other realisable property besides the sheep and am afraid that the costs of obtaining & enforcing judgement might exceed anything we got out of him.

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[319] Table of Fees under "The Sheriffs Act, 1883", *New Zealand Gazette*, No. 42, pp. 796-97.
[320] The distance calculaton is based on google maps, https://www.google.co.nz/maps and is intended as a rough guide only.
[321] J Studholme Jnr to PS McLean, Carlile & McLean, 13 May 1897, 'rough copy of letter', MS-Papers-0272, folder 17.

> I hope you will do your best to keep down the Sheriff's charge and all other costs incidental to this ejection as low as possible, the amount will have to be found by myself and brothers, and am afraid in any case it will prove large.

Four days later, Fitzherbert & Marshall again advanced Sheriff Thomson £15 for expenses connected with the writ of possession.[322]

Executing the Writ of Attachment

Winiata Te Whaaro was arrested at his Pokopoko kainga on Mangaohane on Tuesday evening, 18 May 1897, one week after the writ of attachment had been issued. The arrest was undertaken by Sergeant Cullen, accompanied by Constables Shearman, Black and Jones.[323] Sheriff Thomson was present, accompanied by an interpreter, a Mr Barnes. Warren was also there with 'eight or nine men' from Owhaoko Station, the only concrete clue to the presence of these employees contained in the invoice Warren subsequently sent in for the award of costs.[324] The farm manager had arranged a horse-drawn buggy from Ohingaiti to transport Winiata back to the railhead there.

No official account of the arrest has been found. A report published in the *Wanganui Herald* one week later suggests that the community at Pokopoko was caught by surprise, in that the arresting party of Thomson, Sergeant Cullen and Constables Shearman and Black had been 'unknown to the natives'.[325] Winiata Te Whaaro was said to have been taken into custody after a struggle:

> 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.[326]

It seems reasonable to conclude, particularly in light of the published details about the preceding negotiations in April, that the sheriff himself was the source of this news. In the more lurid *New Zealand Times* account, Winiata Te Whaaro was said to have 'fought like a wild cat when arrested.'[327] Stories held within the family, of the sheriff entering Pokopoko alone having left the police constables concealed in the bush above to wait for his prearranged signal, echo Bathgate's account set out at the beginning of this chapter. According to descendant Peter Steedman, Sheriff Thomson sat down to a

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[322] Entry for 17 May 1897, 'Costs under Order of 21st May 1897', AAAR W3558 7585 103 part 4.
[323] The presence of Constables Shearman and Black is mentioned in newspaper reports of the arrest; that of Constable Jones in the subsequent bill of costs, AAAR W3558 7585 103 part 4.
[324] 'Memorandum of payments made by Mr R. T. Warren in connection with execution of Writ of Attachment by Police', AAAR W3558 7585 103 part 4.
[325] *Wanganui Herald*, 26 May 1897.
[326] Ibid.
[327] *New Zealand Times*, 22 May 1897.

welcoming cup of tea before summoning his escort.[328] The element of stealth recurs as a theme in the handed-down accounts of the arrest. Such a strategy would have overcome the common law proscription that, if refused entry at the outer door of the defendant's house in executing any writ of sale and possession, the sheriff had no right to break open the door.[329] It would have similarly minimised the risk of liability for forcible entry.

Descendents are also clear that the women physically resisted the arrest. In addition Neville Lomax, who was brought up on the stories of his great-grandfather Wirihana Winiata, a young man at the time of the arrest, tells of the dread the arrest held for the Te Whaaro children in particular who believed that the sheriff's party had been instructed that 'they could do what they wanted with them'.[330] According to this family story, the children were chased on horseback and cornered on the riverbank. Their plunge into the river to escape their pursuers was commemorated in Horiana Winiata's name change to 'Waimatao' ('Cold-water'), on account of the desperate winter immersion. Once Winiata was in custody, Peter Steedman maintains that the family were 'marched ... from Pokopoko over the hill to Waiokaha'.[331] Waiokaha was the kainga of Winiata's nephew, Waikari Karaitiana and his family, on the banks of the Rangitikei River three miles away.

Winiata was taken by Sergeant Cullen to the railhead at Ohingaiti, and conveyed from there to Wellington by train the following day. Arriving in Wellington on Wednesday evening, he spent that night and the next in a police cell. Thursday was a court holiday but Studholme's solicitor, HD Bell spent 'nearly all morning' trying to arrange a special sitting that afternoon, concerned by Winiata's refusal to eat since his arrest two days before. As he reported to Carlile & McLean: 'we did not want him to die on our hands.'[332] Once Winiata ate lunch, the hearing was put off until the following morning.

When he appeared in court at 10am on Friday 21 May an interpreter had been arranged, but Winiata had no legal representation. His request for an adjournment to Tuesday in order to obtain counsel was reportedly thwarted by Bell's demand for a 'substantial' bail to prevent him from returning home.[333] According to the *New Zealand Times*, Bell's objection was not received well by Winiata: 'The old Maori scorned the idea that he would attempt to get away, and said he did not like such an idea

[328] Korero of Peter Steedman, Wananga at Winiata Marae, 28 June 2014 cited in McBurney, Wai 2180, #A52, p. 369.
[329] Churchill, p. 169. Churchill relies on 'Semayne's case' in which it was resolved: 'It is not lawful for the sheriff (on request made and denial) at the suit of a common person, to break the defendant's house, to execute any process at the suit of any subject.'
[330] Neville Lomax, Korero Tuku Iho hui, 4.1.6 p. 120.
[331] Korero of Peter Steedman, Wananga at Winiata Marae, 28 June 2014 cited in McBurney, Wai 2180, #A52, p. 369.
[332] Bell, Gully & Bell's bill to Carlile & McLean in AAAR 7585 W3558 103/4, #97/100; Bell Gully & Bell, solicitors, to Carlile & McLean, solicitors, 21 May 1897, MS-Papers-0272, folder 17.
[333] *Evening Post*, 21 May 1897. According to the New Zealand Times (22 May 1897), a Mr Ellis, storekeeper, had offered to bail Winiata for £100, but this was objected to by Bell as insufficient.

associated with him.'[334] On Bell's application the case was adjourned until 3pm, and Winiata kept in custody. Over the next few hours negotiations were held between Winiata and Robert Stout on the one hand, and Bell on the other. Stout was a Scotsman from the South Island, another lawyer-politician who had been Attorney-General from 1878 to 1879 and New Zealand's Premier between 1884 and 1887, before giving up politics. With Morison, Stout had represented Winiata Te Whaaro in his successful action under Section 13 of the Native Land Court Act Amendment Act 1889 to have Chief Judge Davy inquire into the court's error with respect to Mangaohane in August 1894.[335] When the Supreme Court issued a writ of prohibition over Chief Judge Davy's favourable order, Stout had again represented Winiata Te Whaaro in the Court of Appeal eleven months later to try and overturn the Supreme Court's decision, to no avail.[336] He was, therefore, well aware of the background to the dispute.

Bell related to Carlile & McLean that Stout had 'happened' to be in court that morning. James Carroll, MP for Waiapu and acting Colonial Secretary at the time, also appears to have played an important part in the settlement reached with Winiata inside the court watch-house. According to Bell Gully & Bell:

> Winiata's principal demand was that his sheep should not be removed until after shearing. To this Mr Bell answered that the request would not be listened to. Then Winiata referred to some grave of his ancestors, and Mr Bell agreed on behalf of Messrs. Studholme that this graveyard wherever it is should be fenced round. Then a question was raised as to the personal possessions which have been collected in some shed on the lands, and Mr Bell agreed that if the Sheriff had not already pulled down this shed these personal effects should be allowed to remain there until the roads became in a better condition for their removal. The terms were reduced to writing, and we enclose a copy.
>
> Of course Mr Bell assumed the authority to deal with these two small matters, but thought 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 with gross harshness, and we have no doubt that Mr Studholme will respect Mr Bell's undertaking.[337]

In effect, the settlement arrived at was that Winiata would be released in exchange for his promise to give up the fight for Mangaohane. An order was made to this effect, with Winiata discharged having undertaken in court 'on behalf of himself and his Hapu to offer no further opposition to the Plaintiff or to the said Sheriff and not to interfere further in any way with the peaceable possession by the Plaintiff

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[334] *New Zealand Times*, 22 May 1897.
[335] See Young, Wai 2180 #A39, pp. 167-170. Stout went on to become Chief Justice, appointed in June 1899, and he remained in this position until 1926.
[336] Ibid, pp. 184-187.
[337] Bell Gully & Bell, solicitors, to Carlile & McLean, solicitors, 21 May 1897, MS-Papers-0272, folder 17. The 'enclosed' agreement referred to is not on file.

of any part of the Block of land known collectively as 'The Mangaohane Block'.[338] Bell relates that in making the order, Chief Justice Prendergast 'very impressively warned Winiata that the law must have the last word.'[339]

In conveying the outcome to Carlile & McLean that same day, Bell wrote that he was 'perfectly satisfied' there would be no further trouble over Mangaohane.[340] In fact, the solicitor was relieved by the outcome. In addition to any adverse political fall-out from the eviction, prior to the arrest Bell had expressed concern to Studholme that he might be liable for an action of false imprisonment.[341] Two months after the arrest, in reminding Studholme about the terms of agreement reached with Winiata in Wellington, he again pointed out: 'You will of course remember that a Judge is always reluctant to send a man to prison for contempt, and that it was very much better for us that Winiata should submit than that we should have to press for a commitment.'[342]

Winiata was ordered to pay the costs associated with the writ of attachment. For reasons which are not clear, Bell insisted that such costs, as yet to be assessed, be served on Stout & Findlay, as Winiata's solicitors, rather than Winiata himself.[343] In relaying the outcome of the hearing to Napier, Bell mentioned Winiata's reaction to this order only briefly. The media, on the other hand, was intrigued by his request that the legal bill be passed on to Carroll, as government representative, reporting the exchange in court more fully:

> 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 preemptive right. Now there is a new state 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 amending Act referred to came into existence. Winiata, however, argued that the Government was a party to the present transaction, inasmuch, as it permitted private

[338] Order discharging defendant from custody, sealed 22 May 1897, AAAR 7585 W3558 103/4.
[339] Bell Gully & Bell to Carlile & McLean, 21 May 1897, MS-Papers-0272, folder 17.
[340] Ibid.
[341] J Studholme Jnr to PS McLean, Carlile & McLean, 13 May 1897, 'rough copy of letter', MS-Papers-0272, folder 17. Although, Studholme did not elaborate, it is presumed that Bell's anxiety arose from the fact that it was not proved that Winiata Te Whaaro's conduct amounted to a criminal breach of the peace that would warrant police intervention.
[342] HD Bell to J Studholme Jnr, 19 July 1897, MS-Papers-0272 folder 13.
[343] Bell wrote '... to avoid service of the bill of costs upon Winiata we had to insist upon a Solicitor being named, and naturally Sir R. Stout's firm was the only one to be named.' Bell Gully & Bell to Carlile & McLean, 21 May 1897, MS-Papers-0272, folder 17.
Order discharging defendant from custody, sealed 22 May 1897, AAAR 7585 W3558 103/4.

> persons to acquire native land. Therefore, he contended, the Government ought to bear the costs, instead of him.[344]

Winiata Te Whaaro clearly believed that the government was party to his dispossession, among other things because of its legislative support of Studholme's title based on purchase.

Executing the Writ of Sale and Possession

In the meantime, the day after Winiata's removal, the Pokopoko kainga was demolished. There is nothing in the subsequent accounts of either Warren or Thomson (below) to suggest the Pokopoko community – or the police – were present to witness the destruction of their homes, which supports Peter Steedman's account that the family, too, had already been escorted to Waiokaha the evening before. It also seems evident from these mens' accounts that Sheriff Thomson himself only stayed on the scene long enough to see that the belongings were removed from the buildings. It was Warren and his men who demolished the settlement, acting on the sheriff's instructions. Nor is it clear whether Winiata Te Whaaro or the community were told beforehand that the settlement would be destroyed. On the one hand, Bell's account of the negotiations in Wellington, in particular his agreement that 'if the Sheriff had not already pulled down this shed these personal effects should be allowed to remain there…' (see p. 85) infers that Winiata was apprised of the impending demolition. Sheriff Thomson, too, later justified the destruction by referring to the notice he gave Winiata in April that 'he [Winiata] was at liberty, if he so desired, to remove all the houses and their contents…' (see p. 89). On the other hand, as outlined below, the grief and anger expressed by both Winiata Te Whaaro and Hune Rapana in the immediate aftermath indicates that the razing of the settlement had not been anticipated.

Warren had organised two bullock-drawn drays with their drivers from Moawhango to remove the community's belongings to 'Waikari's Pah', an exercise which took two days.[345] Everything movable inside the buildings was piled outside. Five of the houses were then set alight, and three cooking houses cut down by axe.[346] Winiata, being in Wellington, would have been unaware of the destruction at the time. Once he arrived home, he expressed his bitterness about the eviction to Carroll, taking exception to the Member's platitude that 'it is well'. We have only the English translation of his letter, in which he remonstrated with Carroll: 'Theirs [the Sheriff and 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.'[347] Warren was accused of removing two guns, and in an accompanying statement, son-in-law Hune Rapana itemised a washing tub, 50 bags of wool,

[344] *Evening Post*, 22 May 1897; also reported in *New Zealand Times*, 22 May 1897.
[345] 'Memorandum of payments made by Mr R.T. Warren in connection with execution of Writ of Attachment by Police', AAAR 7585 W3558 103/4.
[346] Statement by Hune Rapana, nd, in MS-Papers-0272, folder 17.
[347] Winiata Te Whaaro to Carroll, nd, in MS-Papers-0272, folder 17.

two boxes of wool soap and two tins of paint – in addition to the houses and cooking houses – as having been destroyed by fire.[348] This, Rapana added, possibly by way of qualification if indeed the residents had already been marched away, 'is a list of what is known by me, what was seen by the eyes.' Carroll forwarded the complaint to Bell, his covering letter containing a trace of discomfit at the outcome he had helped to bring about: 'Between ourselves I am very sorry for old Winiata.' With regard to the damage he continued: 'I think you should write to Studholme suggesting that some compensation be given to the old chap so that he may not feel that we in some way broke faith with him.'[349] The acting Colonial Secretary's identification with Bell as 'we' in this context is telling.

Warren's subsequent account to his employer in the face of these allegations provides a further insight into the events that day:

> I do not know of any injury whatever done to any of the goods, chattels or movable property belonging to Winiata, his people or anyone else concerned, there was not a single article broken or injured, both the Sheriff & myself superintended the removal of everything from the huts. I had two Bullock drays on the spot and removed all the wool, implements, & effects from his homestead, across the Rangitikei to Waikari's Pah (four dray loads, three were from things in the old huts at Pokopoko that were put outside previous to burning those places down, but they were covered up, & were placed that same evening under an iron roof that had been set down with the axes, & quite safe from the weather. I told the natives myself in presence of the Sheriff that they could take their own time to remove them, also giving them time to remove their horses, pigs, poultry, to dig up their potatoes, & offered to buy their stacks of oats at a fair valuation or give them their own time to remove it. The old wool shed & all that was in it was left intact. The guns were all returned with the last dray load. Both the Sheriff & myself watched the whole time that nothing was injured, opened, or meddled with. There was not a lock of wool burnt or injured in any way. The burning of the two boxes of soap, the Tub & the two tins of paint is also incorrect.
>
> All this had taken place the day after Winiata's arrest previous to his arrival in Wellington but the assurance given by Mr Bell to W on behalf of Mr Studholme has been strictly carried out with regard to respecting all personal property & affording ample time for its removal, although the letter did not reach me for a week later. In fact I have done more as I let them take all the iron from the [...?] in the Pokopoko creek & dig all their potatoes. The Sheriff was pressed for time & could not wait, the cutting down of the three Iron buildings & the burning of the old raupo huts all in a very advanced state of decay was all carried out under the Sheriffs instructions who I assure you did not appreciate the undertaking and I can honestly say was quite as repugnant to myself & all employed at it, but what else could be done? It was one of those unpleasant duties that had to be carried out. A short time previously the Sheriff

[348] Statement by Hune Rapana, nd, in MS-Papers-0272, folder 17. A bag of wool, also called a fadge, usually referred to wool oddments which were not pressed. A wool bale by contrast was pressed wool, weighing anything between 100-200 kg. See 'Woolshed terminology in South Canterbury, New Zealand', http://www.rootsweb.ancestry.com; personal communication with Tom Jackson, retired sheep farmer of Karioi.
[349] J Carroll to Bell, 17 June 1897, attachment 'E' in Affidavit of Herbert Winiata Steedman, Wai 2180 #E3(a), p. 32.

> an Interpreter and myself spent two full days in expostulating and trying to get them to move away peaceably, but both Winiata and his people refused to listen to any argument & openly defied the Sheriff. I have been & talked with Hune Rapana shortly after the exodus and he never complained of the loss of a single [...?]. What seemed to cut him up was the destruction of the huts – I think Mr Thompson the Sheriff, will endorse what I have written as strictly correct in all details. This is possibly rather voluminous, but I state distinctly that nothing belonging to Winiata or his people was hurt or damaged in any way and it was impossible to have been more careful with everything that was removed.[350]

Notwithstanding the fact that by Warren's own account Sheriff Thomson did not remain to oversee the demolition, Thomson did indeed subsequently endorse Warren's account, refuting any suggestion of wanton destruction. He informed Studholme in August:

> The Whares were burnt down and the tin houses destroyed. 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 destroying 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 at 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 he 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.[351]

As to destruction of property

Te Whaaro descendents are adamant that the 'church' at Pokopoko was among the buildings destroyed in the eviction. In his claim, Peter Steedman refers to the burning of the whare karakia there (Wai 662). This may be the 'wharepuni' Winiata Te Whaaro referred to when he described the Pokopoko kainga to the Native Land Court in 1893. At that time, the settlement was said to comprise a 'Wharepuni built of timber'; a 'wooden building'; a woolshed clad in manuka bark; a fenced stockyard; and houses 'used year after year' for shearing.[352] Although Warren downplayed the destruction by dismissing the buildings as 'old raupo huts all in a very advanced state of decay', the family wharepuni was among the buildings destroyed. On his return, Winiata Te Whaaro was so incensed about the destruction of the settlement that he cancelled the undertaking reached in Wellington requiring Studholme to fence the urupa at Pokopoko: 'I will bring away my dead from

[350] RT Warren to J Studholme Jnr, 21 July 1897, MS-Papers-0272, folder 17.
[351] Sheriff Thomson to J Studholme Jnr, 3 August 1897, MS-Papers-0272, folder 17.
[352] Winiata Te Whaaro, 25 January 1893, Judge Scannell MB 30/3.

there because the decision arrived at by us together with the legal gentlemen, and the Chief Judge [has] also become bad.'[353]

Not all of the buildings were razed. As Warren recounted, 'The old wool shed & all that was in it was left intact.' In addition, the 'wooden building' referred to by Winiata in 1893, together with the possessions within, may likely have been the subject of the express agreement reached between Winiata and Bell in Wellington, that is: 'if the Sheriff had not already pulled down this shed these personal effects should be allowed to remain there until the roads became in a better condition for their removal.' It may well be, too, the building and contents referred to by the sheriff in the quote above, that which Winiata was *not allowed* to remove, 'the building near the new hut put up by you [Studholme] ...' It could also well be the building that Hineaka Winiata helped her father Whakawai Winiata (Winiata and Peeti's youngest child) dismantle in 1941.[354]

In addition to the loss of the buildings, on 26 May, more or less as soon as Winiata Te Whaaro returned home, he wired Bell that he had been unable to remove his possessions.[355] This appears to be a separate issue from that voiced to Carroll set out above. Bell wired back the same day telling Winiata to inform Warren of the agreement, 'that we had consented to such removal', and he also let Stout know. By mid-July it seems that the dispute had still not been resolved. Bell exhorted Studholme to honour the agreement reached in court:

> with regard to such property as there was contained in the whare, you will not forget that I had to act in your interests as best I could at the time when Winiata was before the Court, and I did undertake to request you to see that Winiata was allowed to remove these effects. You will of course remember that a Judge is always reluctant to send a man to prison for contempt, and that it was very much better for us that Winiata should submit than that we should have to press for a commitment. He wanted all kinds of absurd things, as for instance that he should be allowed to stay there till the end of the year and so forth, all of which I refused to listen to. When it came down to a question of these trifles in the whare, I did agree that those should be as far as possible preserved to him, and if you had been there you would have done the same. Of course you would not contend that you were not bound by what I said then on your behalf.[356]

The outcome regarding these possessions is not known. There is no evidence of further complaint about the matter from Winiata Te Whaaro.

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[353] Winiata Te Whaaro to Carroll, nd, in MS-Papers-0272, folder 17. Note that Peter Steedman relates that Winiata's intention to remove the deceased was not subsequently carried out. Miriam Macgregor, too, states that two urupa at Pokopoko were fenced off until 1945, when rumours of potential grave-robbing caused family to remove the paling fence and let the sheep in, making it 'almost impossible to tell the exact position of the graves.' Miriam McGregor, *Mangaohane: the story of a sheep station*, (Hastings, Herald-Tribune Print, 1978), p.67. Macgregor maintains these urupa held perhaps 18 people.

[354] Korero Tuku Iho Week One transcript, Wai 2180, #4.1.4, p. 83.

[355] The telegram is not on record, but it is referred to in Bell's account of costs, see entry for 26 May, AAAR 7585 W3558 103/4.

[356] HD Bell to J Studholme Jnr, 19 July 1897, MS-Papers-0272, folder 17.

In their claim, Ngati Hinemanu and Ngati Paki (Wai 662, 1835, 1868) refer to 'the assault of [Winiata Te Whaaro's] whanau, and the theft and looting of their property'. There seems little question that this was a forceful eviction. It is also clear that the settlement was destroyed as a result. What is not evident from the documentary record available, is that *excess* force was used, or that *wanton* destruction of property ensued. The element of stealth seems to have been used to mitigate the need for force. Hune Rapana's finite itemised list, too, appears to corroborate Warren and Sheriff Thomson's testimony of careful regard for the community's possessions, four dray-loads of which – each pulled by eight bullocks – were conveyed to Waiokaha. This conclusion is tempered by the fact that the move was undertaken by Pakeha strangers who demonstrably did not share the same value system as the property owners, the destruction of the family wharepuni in particular constituting wanton and grievous destruction. Nor, as already stated, is it known whether Winiata recovered the belongings in his shed that was left standing, but HD Bell's concern on this point is telling. Bell seemed particularly sensitive about any potential political fall-out from the eviction. It was Bell who forwarded Winiata's complaint to Carroll about the destruction of Pokopoko to his client, admonishing Studholme: 'Can you not do something to spare the old man – if any trifles of his have been burnt or removed can't you compensate him?'[357] Bell's reproach was not motivated by any concern for Winiata, but rather his opinion that 'His letter looks like further trouble & it would be well to show Carroll that you are desirous of being fair to him.' In chastising Studholme the following month about honouring the agreement made with Winiata, Bell again referred explicitly to the political expediency of doing so:

> I agree with you that Winiata does not deserve consideration, but am glad to find that you concur with me in thinking that it will be expedient, in view of possible attack during next Session, to meet him in the way you suggest.[358]

As Sheriff Thomson had explained, the Pokopoko settlement was destroyed to prevent Ngati Paki from returning. What was presented as a necessary expediency by both the sheriff and Studholme's station manager ('one of those unpleasant duties that had to be carried out'), however, assumes a different aspect, not only from the perspective of the victims of the destruction, but in terms of the law surrounding forcible entry. Once again, the Maungatautari eviction case study provides an insight into alternative perspectives about what was acceptable. Unlike Studholme, the lessee in question at Maungatautari in 1883 had not obtained a writ before he set his band of workers on the Ngati Kauwhata community, pulling down their fenced cultivations and burning their whare. Even so, as Chapter 3 relates, his conviction for forcible entry rested on the use of violence, 'taking a number of persons armed with spades, shovels, hatchets, &c.,' to overawe resistance by those who had been in 'actual occupation' for more than two years (see p. 114). Winiata Te Whaaro's peaceable possession

[357] HD Bell to J Studholme Jnr, 17 June 1897, MS-Papers-0272, folder 36.
[358] HD Bell to J Studholme Jnr, 19 July 1897, MS-Papers-0272, folder 17.

at Pokopoko, by contrast, predated title determination, and Studholme's own tenure. In this light, would the razing of his settlement by Warren and his men, even if the property inside had been removed and taken to the owners at Waiokaha, present grounds for constituting a criminal offence?

As to sheep

Bell's sensitivity about the political repercussion from the eviction seems equally relevant with regard to the fate of Winiata's stock. For the year ending 30 April 1897, just weeks before the eviction, Winiata Te Whaaro of 'Waiokaha, Moawhango' was registered as an owner of 3,624 sheep.[359] The number of stock at Pokopoko may have been augmented by flocks belonging to other family members, although attempting to establish this from the annual sheep returns is a fraught exercise.[360]

The idea that the flock was either scattered or sold by Studholme at the time of the ejectment remains a matter of conjecture among Winiata's descendents, with varying opinions. According to the sole newspaper report about the ejectment, once Winiata Te Whaaro had been taken away Sheriff Thomson ordered the removal of his stock, whereupon 'Some 6000 sheep were mustered and driven over the boundary...'[361] In his Oral and Traditional Report prepared for Ngati Hinemanu and Ngati Paki, McBurney relates Peter Steedman's claim that Winiata's flock was driven over the *southern* boundary of Mangaohane into the Makirikiri Valley, referring to the place there known still as 'Wild Sheep's Spur'.[362]

Studholme's last-minute instructions to Carlile & McLean, on the contrary, speak of taking the sheep 'across the Rangitikei' (see p. 82). Furthermore, while it is certainly true that Studholme envisaged recovering the costs of the ejectment from the sale of the sheep, there is no evidence that this was subsequently acted on. There may have been legal grounds to prevent him from doing so. The original writ of possession and sale against Winiata was for the sum of £17 1s, and the eventual costs awarded against him after the event limited to a maximum of £31 14s (see p. 94). Sheriff Thomson would have lacked jurisdiction to recover more than this sum without further prosecution.

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[359] Annual Sheep Returns for the year ended 30th April 1897, AJHR 1897 sess II H-23, p. 37.

[360] Not least because for a number of entries Mangaohane or Waiokaha is said to be situated at Napier or Maraekakaho. The 1896 return lists Hori Tanguru's flock of 560 at 'Waiakaha, Moawhango'. Tanguru however, had died prior to July 1894 (Ms-Papers-0272, folder 2). His wife Merehira Te Taipu is listed in 1896 as an owner of a flock of exactly the same size – 560 sheep – but located instead at 'Waikaha, Maraekakaho'. By April 1898 Merehira was the registered owner of 869 sheep at 'Makokomiko, Moawhango', AJHR 1898 H-23, pp. 35-36. Her Tanguru children were part of the Pokopoko community. Rapana Tanguru, Merehira's son and Winiata's nephew is also recorded in the 1897 return as an owner of 405 sheep at 'Mangaohane, Napier'. Other family members, namely Irimana Ngahou (Winiata's brother) and Te Keepa Winiata (Winiata's son) were registered as sheep owners at Maraekakaho, on the other side of the ranges near Hastings, where Merehira Te Taipu's flock was also registered in 1897.

[361] *Wanganui Herald*, 26 May 1897.

[362] McBurney, Wai 2180, #A52, p. 378. McBurney concludes that the sheep were indeed scattered, 'driven across the southern boundary to go wild on the Awarua block', p. 381.

As related below with respect to the issue of costs, in a letter to the Native Minister at the end of August Stout urged the government to consider Winiata's demand that the government pay his costs on the grounds that 'he has lost his land and stock unjustly ...'[363] Taking this as evidence of any sheep loss as a direct result of the eviction, however, is outweighed by Stout's further correspondence on the issue of costs to Bell Gully & Bell in October 1897. On this occasion, Stout urged that Studholme desist from enforcing the payment of costs: 'Winiata says he really has no means whatever, the Sheep and other property he has is mortgaged and he has nothing wherewith to pay anything.[364] Five months after the eviction, Stout's reference to the sheep in the present tense suggests that Winiata still had his flock. The fact that the sheep were mortgaged would have been a further reason preventing the sheriff from proceeding with a sale to enforce the writ. Furthermore, in February 1898, nine months after the eviction, Winiata Te Whaaro was fined 1 shilling plus costs in the Magistrates Court for failing to dip sheep within the required time.[365] Perhaps the most compelling proof that Winiata's stock remained intact in the immediate aftermath of the eviction is the absence of any mention of sheep loss in his complaint to Carroll. All things considered, the most likely scenario is that Winiata Te Whaaro's sheep were mustered by Warren's men and taken with everything else to Waiokaha.

That said, the fact remains that Winiata Te Whaaro lost the farm and therefore his means of farming sheep. This, I would suggest, is what Stout meant when he said that Winiata had lost everything, land and stock. The annual return for the following year indicates that by April 1898 Winiata Te Whaaro's flock was reduced to 2700, still located at 'Waiakaha [sic], Moawhango'.[366] Twelve months later his return was 'nil'.[367]

Carlile & McLean's invoice raises the possibility that it may have been the horses on Mangaohane, rather than Winiata Te Whaaro's sheep, that were sold by Studholme's farm manager after the eviction. Before Winiata's arrest, on 3 May the Napier solicitors had talked to Warren for an hour 'as to method of dealing with wild horses on Mangaohane', setting this out in writing the following day.[368] One month after the eviction, on 27 June, McLean again saw Warren 'about horses and framing letter to be sent by him to the purchaser of same'.[369] Two weeks later Warren was asking McLean for further advice 'as to course to be taken as to wild horses.'[370] The final entry on this matter is that of 26 July, when McLean again met with Warren 'further as to Settlement of impounding question.' No other information has been discovered on this issue.

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[363] Stout Findlay & Co to Native Minister, 31 August, J1 578 1897/982-1056, Wai 2180 #A52(a), p. 3.
[364] Stout Findlay & Co to Bell Gully & Bell, 8 October 1897, MS-Papers-0272, folder 17. I was unable to discover any details about this mortgage.
[365] *Hawke's Bay Herald*, 1 March 1898.
[366] Annual Sheep Returns for year ending 30th April 1898, AJHR 1898 H-23, p. 36.
[367] Annual Sheep Returns for year ended 30th April 1899, AJHR 1899 H-23, p. 36.
[368] Entry for 3 May 1897 in Carlile & McLean's account, MS-Papers-0272, folder 34.
[369] Ibid, entry for 28 June.
[370] Ibid, entry for 16 July 1897.

As to costs

As outlined above, the order discharging Winiata Te Whaaro from custody dated 21 May 1897 directed him to pay the costs associated with the *writ of attachment*, including expenses relating to the motion for the issue of the writ, the arrest itself and the court hearing that day.[371] Bell immediately informed Carlile & McLean of the outcome, telling them to forward their bill of costs to Wellington, and asking them to instruct Fitzherbert & Marshall to do the same.[372] Four days later, on 25 May 1897, Bell was back before Chief Justice Prendergast, this time in chambers, to obtain an order for costs associated with the sheriff's execution of the *writ of sale and possession*.[373] Neither Winiata Te Whaaro nor Robert Stout was present. The sheriff's fees and expenses were allowed, with a stipulated maximum of £25 17s each for two writs, or £31 14s for one.

Bell had been forced to act because it had quickly become apparent that most of the costs related to the eviction rather than Winiata Te Whaaro's arrest. Fitzherbert & Marshall had met with Sheriff Thomson the day after the hearing, the Whanganui agents promptly settling his bill of £51 14s, which included the expenses of both trips to enforce the writ of sale and possession, his fees of £8 10s to execute the same, and poundage of £21.[374] Constable Black, too, was paid £1 1s 6d for serving the notice of motion on Winiata on 1 May.[375] With the solicitors' own charges tacked on, the bill from Whanganui alone was £71 8s 4d. To this was added payments Warren had made during the failed execution of the writ of sale and possession in April, including interpreter's costs and those of the hired shepherds from Hastings (£30 15s), as well as Bell's legal fees for attending to the costs in Wellington after the event, making a grand total of £120 5s 4d of costs for the writ of sale and possession alone. This bill of costs for the writ of sale and possession was referred to in the legal documents as 'Costs Subsequent to Judgement'.[376]

The 'Costs under Order of 21st May 1897' relating to the writ of attachment, on the other hand, amounted to £58 17s 5d. This also comprised legal fees arising from Whanganui, Wellington and Napier, interpreter's fees and payments made by Warren, but the itemised accounts were limited to efforts relating to Winiata Te Whaaro's arrest. In other words, the bills of costs were prepared to reflect and satisfy the legal fiction that the arrest and eviction were two separate actions.

[371] Order discharing defendant from custody, sealed 22 May 1897, AAAR 7585 W3558 10314.
[372] Bell Gully & Bell to Carlile & McLean, 21 May 1897, MS-Papers-0272, folder 17.
[373] Agency Register, AAOM W3265 6044 4/4; Note that costs associated with the writ of attachment were described in subsequent legal documents as 'Costs under Order of May 21', whereas those associated with the execution of the writ of sale and possession were 'Costs Subsequent to Judgement'.
[374] 'Expenses incurred executing Writs of Possession', AAAR 7585 W3558 103/4.
[375] Ibid.
[376] 'Costs subsequent to Judgement', AAAR 7585 W3558 103/4.

By 8 July Carlile & McLean were pressing Studholme for payment, to Fitzherbert & Marshall as well as on their own behalf.[377] From their correspondence it appears that a further claim for damages against Winiata was contemplated, although Studholme had decided against pressing a claim for mesne profits 'in the meantime'.[378] That same week, Bell advised Studholme that the costs allowed by the court would not be anything like what they amounted to.[379] This proved to be the case. On 18 August the 'Costs under Order of 21st May 1897' (the writ of attachment), calculated at £58 17s 5d were taxed and allowed at £28 18s. The 'Costs subsequent to Judgment' (the writ of sale and possession), calculated at £120 5s 4d, were taxed and allowed at £59 5s.[380]

As he had argued in court the previous May, once the costs were awarded by the court, Winiata Te Whaaro had Stout approach the Native Minister, submitting that the costs should be paid by the Government and not him. Stout endorsed his demand:

> 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.[381]

Seddon seems to have referred the matter to the Justice Department, for Stout's letter came full circle to Under-Secretary Waldegrave, who responded:

> I see no reason why the Govt. 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 Govt.[382]

Waldegrave's response suggests, among other things, that any political flashpoint Winiata's stand may have presented in May had dissipated by September. This is further supported by the suggestion that it was another nine months before the request was even responded to, the brief scrawl below Waldegrave's opinion, dated 3 June 1898, simply 'Reply accdly'. Equally significant is Waldegrave's closing reference to the government having defrayed the 'costs of the arrest' as seeming further grounds for refusing the request. Just what did the Under-Secretary mean?

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[377] Carlile & McLean to J Studholme Jnr, 8 July 1897, MS-Papers-0272, folder 17.
[378] Ibid, see also letter of 16 July 1897.
[379] Bell to J Studholme Jnr, 19 July 1897, MS-Papers-0272, folder 17.
[380] Agency Register, AAOM W3265 6044 box 4/4, p.36; see also 'Costs under Order of 21st May 1897' in AAAR 7585 W3558 103/4.
[381] Stout Findlay & Co to Native Minister, 31 August 1897, J1 578 1897/982-1056, Wai 2180 #A52(a), p. 3.
[382] F Waldegrave, 9 September 1897, note on coversheet of above, Wai 2180 #A52(a), p. 2.

As to 'Police Department' charges

Over and above the itemised accounts subsequently prepared by Studholme's lawyers, Sergeant Cullen was paid £10 for bringing Winiata Te Whaaro to Wellington, the equivalent today of $1,898.[383] The circumstances surrounding this payment are far from clear. On the day of the hearing, Bell represented the payment as a government charge: 'the Government or the Police Department had charged £10 for costs in bringing Winiata down ...', the solicitor wanting it treated as an extra claim against Winiata Te Whaaro.[384] Stout immediately wrote to Carroll to use his influence to waive this extra charge in view of 'the large costs to which Winiata has been put, and that he has lost his land', adding for good measure Chief Justice Prendergast's opinion that 'he supposed the Government would not charge expenses, as the action was taken by the Police.'[385] The opinion of the Chief Justice suggests that Bell's overture to Stout about the matter had been stated in court. This request was approved by both Police Commissioner Hume (for the Minister of Justice) and Native Minister Seddon (also Premier) the very next day, 22 May, which only adds to the sense of government sensitivity surrounding the arrest. Hume's news to Stout that 'the [Justice] department waive their claim to these expenses', dated 26 May 1897, was conveyed by Bell to Whanganui agents Fitzherbert & Marshall the very same day.[386] Why the urgency?

As it turns out, the payment seems to have had nothing to do with any official government charge. Under-Secretary Waldegrave met Commissioner Hume's query about letting court officials know of the waiver with the comment 'I don't think the officers of the Court are concerned.'[387] Indeed they were not. Two months later Bell Gully & Bell clarified to the Commissioner of Police that it was *reimbursement* they were after: 'Our agents at Wanganui paid Serg. Cullen, who executed the Writ, the sum of £10 for expenses in connection therewith.'[388] Hume duly forwarded the issue to Inspector McGovern at New Plymouth, wanting to know whether these expenses had been paid. Cullen was on leave. McGovern confirmed that the sergeant had 'informed me verbally that the costs of conveying Winiata to Wellington had been paid', but he could not say what these expenses were.[389] On this advice, Hume informed Bell Gully & Bell that the matter would have to stand over until Cullen's return. The solicitors' terse reminder in September 1897 coincided to the day with Cullen's promotion to Inspector: 'we shall be glad to receive a cheque for the sum of £10 paid by us and agreed to be

[383] Calculated with the Reserve Bank of New Zealand Inflation Calculator, http://www.rbnz.govt.nz.
[384] R Stout to J Carroll, Acting Colonial Secretary, 21 May 1897, J1 578 1897/982-1056, Wai 2180 #A52(a), p. 17.
[385] Ibid.
[386] Police Commissioner Hume to Stout Findlay & Co, 26 May 1897, 21 May 1897, J1 578 1897/982-1056, Wai 2180 #A52(a), p. 15. Fitzherbert & Marshall's itemised accounts reveal that Bell informed them 'as to allowance of fees by Police Department' on 26 May, Fitzherbert & Marshall account to Carlile & MacLean, AAAR 7585 W3558 103/4.
[387] See Coversheet on Stout's request, J97/1039, J1 578 1897/982-1056, Wai 2180 #A52(a), p. 14.
[388] Bell Gully & Bell to Commissioner of Police, 21 July 1897, J1 578 1897/982-1056, Wai 2180 #A52(a), p. 12.
[389] See Inspector McGovern's note on corner of above, Wai 2180 #A52(a), p. 11.

refunded by the Government.'[390] Hume, still none the wiser, referred the matter to Under-Secretary Waldegrave. On 4 October 1897 the claim passed audit without further inquiry and was forwarded to Treasury for payment.

The intrigue over Sergeant Cullen's 'expenses' provides another example of the issues raised by Winiata Te Whaaro's arrest and eviction, not least of which is the ambiguity of evidence. At its worst, the payment can be construed as corruption on the local level, where the sergeant named in the writ at the runholder's insistence then receives a 'kick-back' from the runholder for carrying out the task. If these costs had been a legitimate charge, why were they not included in the itemised accounts submitted by Fitzherbert & Marshall? The solicitors' accounts do include, for example, standard fees paid to the district constables on the three occasions they helped out with the execution of the civil process: Constable Jones was paid £3 by Sheriff Thomson for his presence at Pokopoko in April and May; Constable Black was similarly paid £1 1s 6d by Fitzherbert & Marshall for serving notice of the motion for a writ of attachment on Winiata. As Chapter 1 sets out, Sheriff Thomson preferred to use the district constables to help him carry out the work of the court within his vast district, the constables in question happily pocketing the associated fees for work that fell outside regular police duties. Given the writ of attachment was issued to Sergeant Cullen and other police constables, however, delivering Winiata Te Whaaro to Wellington was clearly a police duty, not an extra service. Certainly none of the other constables involved in the arrest appear to have been paid extra for their service on this occasion, and nor were any applications subsequently made for police rewards in connection with the arrest (for discussion of police rewards see p. 50).

What then, were these expenses? No one in Wellington, it seems, including Chief Justice Prendergast and Police Commissioner Hume, expected that such 'charges' – *if exacted at all* – would have been already levied and paid. Hume, in particular, seems to have been nonplussed by Bell's request for reimbursement of 'expenses of executing the writ by the police', and in fact he declined to do so until further information was provided by Cullen.[391] There is nothing on file to suggest fresh information was forthcoming before the payment was eventually reimbursed in October. The most plausible explanation behind the £10 payment to Sergeant Cullen is that it was considered by those who were party to the transaction to be commensurate with the travel fees the sheriff would have been entitled to in his place.[392] The fact that this fell completely outside legislative and bureaucratic protocols underscores the novelty of having the writ issued to the police in the first place. A payment to Cullen on this basis removes some of the sting of what otherwise appears as a personal reward from

[390] Bell Gully & Bell to Commissioner of Police, 21 September 1897, J1 578 1897/982-1056, Wai 2180 #A52(a), p. 9; Inspector McGovern was notified of Cullen's promotion on 21 September 1897, see P1 251 1897/1143.
[391] Bell Gully & Bell to Commissioner of Police, 21 July 1897, J1 578 1897/982-1056, Wai 2180 #A52(a), p. 12.
[392] Table of Fees under 'The Sheriffs Act, 1883", New Zealand Gazette, No. 42, pp. 796-97.

Studholme. The lack of transparency, however, remains problematic. Bell's overture with respect to reimbursement seems to have been made precisely because the payment could not be charged legitimately. The persistence in pursuing the matter with the government constitutes an act of supreme confidence of Studholme's footing, made more secure perhaps by Cullen's promotion. If the payment is construed as a personal reward, the government reimbursement of Sergeant Cullen's 'costs' constitutes complicity – unwitting or no – in the corruption. It would also render Under-Secretary Waldegrave's rejection of Winiata Te Whaaro's claim for government liability for costs – on the grounds that it had already defrayed such costs – to a hollow joke. Are the implications lessened by the justification that the same amount or more would have been charged if Sheriff Thomson had undertaken this role?

On the strength of the evidence all we can say for sure is that Sergeant Cullen was paid £10 by Studholme's agents in Whanganui for 'expenses' which were never subsequently accounted for; the reimbursement pushed through by Justice Department Under-Secretary Waldegrave without any apparent further investigation. Rather than being called to account, Cullen was promoted to the rank of Inspector. At the very least, the government's 'defrayment' of costs which never appear to have been validated constitutes a tacit endorsement of Studholme's tactics.

The eviction left Winiata Te Whaaro in financial ruin. In October 1897, Stout asked Bell Gully & Bell directly not to press for payment:

> We have seen Winiata and we have also seen Mr. Carroll on the matter of paying any costs to your client Mr. Studholme. Winiata says he really has no means whatever, 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 the 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.[393]

Winiata's request was forwarded to John Studholme Jnr who was back living at the Coldstream family homestead in Canterbury. Studholme must have initially baulked at Winiata's proposal, for at the end of October Bell tried again:

> Do you not think the better course would be to allow me to inform Stout that so long as Winiata gives no trouble he will not be bothered for the costs, but that if he gives any trouble we shall be down upon him at once; that is to say, that we make no

[393] Stout Findlay & Co to Bell Gully & Bell, 8 October 1897, MS-Papers-0272, folder 17.

> bargain, but we hold a kind of weapon in terrorum over him with which we can seize some of his personal property if he annoys us.[394]

This seems to have been where matters were left. Bell Gully & Bell's account, amounting to £41 19s 7d was paid by Carlile & McLean on 23 November 1897. Carlile & McLean, in turn, forwarded their bill to Studholme. The cost of legal action against Winiata Te Whaaro commencing in March 1896 amounted to £198 9s 7d.[395]

Reflections on the Civil Proceedings

The result of Studholme's civil action against Winiata Te Whaaro was that Ngati Paki's settlement of 20 years was destroyed, their livelihood ended, the community removed, with Winiata Te Whaaro branded as a violent criminal. The 'lawful' eviction had taken just four months, from the time the first writ of summons was filed on 1 February to Winiata Te Whaaro's discharge on 21 May 1897.

The contest was extremely uneven. Winiata Te Whaaro did not submit a statement of defence, nor appear at court to answer the initial charge. Nor did he travel to Wellington to defend himself against the notified attachment. The rangatira had some experience of the Supreme Court as a result of his campaign to obtain title to Mangaohane. The ramifications of civil proceedings for debt had also been felt in a very real way three years before, although it is pertinent that he only became aware of the judgement against him brought by Murray Roberts & Co after the fact. However, Winiata Te Whaaro's response throughout the different stages of the civil proceedings for possession was predicated on the essential justice of his *take* to Mangaohane, his appeal for government protection in early May in the face of the charge of contempt posited in terms of the injustice of Studholme's title. In other words, unlike the government and the legal system itself, Winiata Te Whaaro could not see the civil proceedings in isolation, to be defended on separate grounds. From a Maori world view in which mana was actively demonstrated, to separate the action for gaining possession from that of proving title would have appeared nonsensical.

This may have been the fundamental reason for not defending the action, but there were other contributing factors. The lengthy litigation over title that preceded the civil proceedings would have severely compromised Winiata Te Whaaro's capacity to engage legal counsel. The exacting pace of prosecution would have further prejudiced him in this respect, the bare minimum observed between each step in the legal process, and the repercussions of this haste compounded by Winiata's distance from town. Studholme had three different sets of lawyers on the job. Winiata Te Whaaro had none. On top of this he was faced with deliberate obstacles: the motion to issue a writ of attachment heard in Wellington, his bail application after his arrest in order to obtain legal counsel opposed.

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[394] HD Bell to J Studholme Jnr, 29 October 1897, MS-Papers-0272, folder 17.
[395] 'You v. Winiata & Ors', Carlile & McLean's account in MS-Papers-0272, folder 34. Using the Reserve Bank of New Zealand inflation calculator, this amounts to more than $37,200, see http://www.rbnz.govt.nz.

On this point, Robert Stout's involvement warrants comment. Stout's appearance at Winiata's attachment hearing in Wellington seems fortuitous. At a critical point when Winiata Te Whaaro has no legal representation, Stout assumes the role of negotiator and counsel, facilitating terms with Studholme's lawyer which lead to Winiata Te Whaaro's release. The costs are served on Stout, rather than Winiata Te Whaaro, and there seems little likelihood that Stout was ever paid for his services on this occasion. In the months that followed he pursued Winiata Te Whaaro's claim that the costs against him be passed on to the government. Stout's correspondence demonstrates a genuine sympathy for Winiata Te Whaaro's predicament, but the concern of the future Chief Justice did not extend to challenging the legality of the arrest. The fact that the writ of attachment had been made out to the police implied that Winiata's contempt with regard to the writ of sale and possession amounted to criminal behaviour. If Bell was uneasy about pressing for a commitment in light of the potential for false arrest, one wonders whether Stout – of equal legal calibre to Bell – could have fought for Winiata Te Whaaro a bit harder. This, of course, is unknowable, but at the end of the day, Stout was part of the establishment which believed in the law upheld. Richard Boast writes that he was also a close friend and legal advisor of Airini Donnelly.[396]

Would a different outcome have ensued had Winiata Te Whaaro been better resourced or counselled about the proceedings against him? John Studholme Jnr was a determined plaintiff, and very well-resourced. The legal proceedings were well thought out, involving as they did hours of consultation with three different sets of solicitors and Sheriff Thomson. It was Studholme who drove the civil process: moving quickly to obtain judgements against Winiata Te Whaaro and Irimana Te Ngahou; urging Sheriff Thomson in Whanganui to organise the ejectment; engaging Bell in Wellington in order to have the writ of attachment issue from there; pressing Chief Judge Prendergast to issue the writ to the police; and then issuing last-minute instructions to his manager and solicitors from Whanganui before his departure. Each step was carefully designed to achieve the desired outcome, the pace of the civil proceedings kept up by advance payments for 'expenses' to Sheriff Thomson and Sergeant Cullen. Studholme throughout was careful to follow the letter of the law so as not to jeopardise the outcome: the summonses and notices served on Winiata Te Whaaro were translated into Maori as required, and this same concern, I have argued, is a compelling argument against the wanton destruction of property alleged by claimants. However, the evidence also suggests that Studholme and his solicitors successfully manipulated the legal process in order to bring about the eviction. In particular, the manufacturing of the charge of violence against Winiata Te Whaaro succeeded in Studholme obtaining essential police support.

[396] Boast, 'The Omahu Affair', p. 852. Stout acted for Airini Tonore in her contest of Renata Kawepo's will and her claim in the 1893 hearing into the relative interests in Omahu.

As the officer of the court, Sheriff Thomson was acting as Studholme's agent in the civil proceedings: it was his job to see that the original writ of sale and possession was carried out and he worked in close collaboration with Studholme's Whanganui solicitors, and Studholme himself, to do so. That said, his two-day negotiation with Winiata Te Whaaro in April 1897 to persuade him to leave voluntarily, on the face of it, seems reasonable and well-intentioned. The sheriff took the time to explain both the action and the implications of it to the Pokopoko community, even if his patience wore thin with their response. In the legal framework within which he moved, it was also reasonable to interpret Winiata Te Whaaro's refusal to leave as contempt. What seems considerably less reasonable, however, is the sheriff's complicity in presenting Winiata's declaration to die rather than to leave his land as a threat of violence directed at him. The writ of attachment appears to have been Sheriff Thomson's idea, although in suggesting it Thomson clearly expected any resulting writ would be issued to him, not the police. His affidavit as to 'the action influence and violence of the said Winiata Te Whaaro' was clearly an integral factor in winning the writ. Contrary to his assertion to the Under-Secretary of Justice, Sheriff Thomson did have the option of non-execution: there was precedent enough within Mokai Patea, the established government policy regarding police involvement giving the court official ample justification for not proceeding further. It may be that Studholme's personal involvement together with the monetary advances paid to Sheriff Thomson before each trip to Mokai Patea (£15 on both occasions) made the option of non-execution less tenable, but the evidence suggests that Sheriff Thomson's primary motivation for escalating matters to a writ of attachment related to the wider issue of law enforcement within his district. As Chapter 1 sets out, the Sheriff had ignored Departmental guidelines about the use of police to execute Supreme Court writs of sale on previous occasions (see p. 47). Winiata Te Whaaro's eviction presented the sheriff with an important test case, the repeated appeals for police support made with his own authority, as the ministerial officer of the court, uppermost in mind. The fact that Thomson took his job so seriously was, of course, to Studholme's advantage.

Five times Sheriff Thomson asked his superiors for police support and five times he was turned down on the grounds that government policy precluded the use of police in civil ejectment proceedings against Maori. It is important to understand just how crucial the police presence was in the circumstances: any effort to forcibly remove the Pokopoko community without them would have left Studholme vulnerable to the criminal charge of forcible entry. It seems highly unlikely given his longevity in the role that Chief Justice Prendergast was unaware of the government's policy on this issue. The last-minute change to the motion for a writ of attachment to be issued to the police presents yet another example of the extent of the Studholmes' influence, the striking departure from accepted practice suggesting that the Chief Justice, too, viewed Winiata Te Whaaro's contempt as a watershed in frontier justice. It also demonstrates once again the degree of deliberation put into the action. Technically, the police assistance had been obtained for the writ of attachment, not to gain possession.

As intended, however, the removal of Winiata Te Whaaro by the police enabled Sheriff Thomson and Warren to proceed with the eviction, again minimising the risk of grounds for forcible entry.

It seems likely that the naming of Cullen in particular on the resulting writ was also at the behest of Studholme, through his solicitor Bell, although the extent to which Cullen's reputation as the 'iron hand' of the law was already set by this time, and accounted for the selection, is not evident. On this point Cullen was the sergeant in charge at Whanganui at the time, from where the execution of the writ was organised, and he was named along with the district constables in Sheriff Thomson's first request for police back-up. Once the writ was issued to the police, it could be argued that the Crown's law enforcement arm had little choice, and certainly Studholme gave Justice Department officials no time to object. The evidence suggests, however, that Crown officials were wholly unsympathetic to Winiata Te Whaaro's plight, and were not moved to intervene either before or after the arrest and eviction. In particular, the Justice Department's blind eye to Studholme's payment to Sergeant Cullen for 'expenses' associated with the arrest, and its reimbursement of the sum, at the very least suggests a tacit endorsement of the runholder's tactics.

Carroll's intermediary role in the Supreme Court contempt proceedings in Wellington provides further insight into the Crown's positioning with respect to the civil action. Carroll, too, had been involved in Mangaohane matters from the outset, representing Renata Kawepo at the title investigation in 1884/85, and continuing to do so with respect to his heir's interests in the Mangaohane partition in 1890. On occasion he worked for Airini Donnelly with respect to her Mokai Patea claims. Carroll was a close colleague of fellow East-Coaster William Rees, working with him on the 1891 Native Land Commission, for example. In the 1892 debate of Rees' Native Land (Validation of Titles) Bill Carroll had spoken out against Winiata Te Whaaro's attempt to join Rena Maikuku's appeal for a rehearing of Mangaohane, on the grounds that Winiata had already had his day in court.[397] Carroll had also supported the inclusion of Studholme's Mangaohane certificates in the Native Land Court Certificates Confirmation Bill before the House in July 1893.

The subsequent correspondence with both Winiata Te Whaaro and HD Bell indicates the acting Colonial Secretary played a key role in negotiating Winiata Te Whaaro's release. This release, of course, was contingent on Winiata giving up all further resistance to the eviction in the face of police arrest and certain imprisonment. In effect, the Crown Minister's mediation achieved Studholme's desired outcome: the capitulation of Winiata Te Whaaro. Any sympathy Carroll may have harboured for 'the old chap' did not extend to challenging the legality of the arrest, or the injustice of his ejectment. Moreover, Carroll's intervention may well have saved Winiata from prison, but the Member's motivation for doing so may have had more to do with the political fall-out the incarceration of Winiata posed. Government sensitivity about the arrest can be discerned from

[397] Young, Wai 2180 #A39, pp. 117-120.

Carroll's presence at court in the first place, together with the Premier's acquiescence in waiving the police charges the very next day. Once the immediate crisis passed, there was demonstrably little concern about the outcome for the rangatira.

The fact that Winiata Te Whaaro addressed his plea for government intervention in early May to the translator of the Justice Department is a small detail, but not insignificant. The response to his lengthy appeal for protection was dismissive: Winiata Te Whaaro should obey the law. In the absence of any Crown protection, and indeed, as a direct result of police action, the civil proceedings against Winiata Te Whaaro proved not only humiliating and distressing, but ultimately resulted in Ngati Paki's dispossession from their home of 20 years. In allowing the writ of law to move into Maori hinterlands as Pakeha settlement expanded, did the Crown have a responsibility to ensure that Maori were adequately represented and resourced in any civil proceedings against them? In cases in which the peaceable possession of existing kainga was at stake, did the Crown have a responsibility to stay such proceedings altogether? Where their tenure and economic enterprise predated Crown title, was leaving them to the 'lawful' ejectment process really the best the Crown could offer?

The tug of war over police involvement between Sheriff Thomson and Under-Secretary Waldegrave is one of the more challenging issues to untangle in this drama. In this colonial context can the reluctance of key government officials to lend the might of the state to successful private litigants be construed as Crown protection for Maori? Or, having insisted that the writ of law be extended nationwide, is the same policy a failure of leadership, leaving the extent of enforcement to be fought out in each local arena, the outcome determined by the contest of wills of the individuals involved? The report now turns to consider other examples of eviction proceedings taken against Maori in order to discern more closely just what the Crown's policies and practices amounted to.

Chapter 3

Eviction case studies: Crown policy and practice

In the face of Winiata Te Whaaro's intransigence over the writ of possession for Mangaohane in April 1897, Sheriff Thomson announced that Winiata and his people 'by their action had shewn they were enemies to the Queen'. To illustrate the 'very serious trouble' that would result, the sheriff drew a parallel with Te Whiti's resistance and imprisonment, leaving the Pokopoko community with the threat that they would be treated in the same way (see p. 71).

Parihaka, of course, stands out as an exemplar of Crown eviction in the face of direct action by Taranaki iwi over perceived injustices, namely the Crown's survey for sale and settlement of confiscated lands between Hawera and New Plymouth before the government had made any effort to delimit the reserves promised by the acts and proclamations of confiscation. When the first ploughmen from Parihaka began digging up lawn near Hawera in June 1879, Native Minister Sheehan condoned their mass arrest, instructing the armed constabulary officers throughout the district not to worry about the law: 'you take the men and the government will find the law.'[398] And find the law it did. From 1879 to 1883 parliament enacted at least six separate Acts to legitimate the suppression of the Parihaka resistance.[399] Among other things this legislation enabled arrest without warrant, detention without trial, and outlawed gatherings greater than 50 people. Tohu Kakahi and Te Whiti o Rongomai and hundreds of ploughmen, fencers and cultivators were imprisoned without trial in this period. The actual destruction of Parihaka and eviction of the community there took place in November 1881 under the personal supervision of Native Minister Bryce.

The Crown's response with respect to Parihaka was justified at the time by the argument that such measures were necessary in times of rebellion. There are earlier examples of such naked state power based on the same rationale: the confiscations of Taranaki, Waikato, Tauranga, Bay of Plenty and Turanganui constitute Crown eviction of supersize proportions. Whether or not the Crown was justified in treating these conflicts as 'rebellion' is an argument for another report. For the purposes of this report, this chapter considers case studies of evictions of Maori communities and individuals

[398] Hazel Riseborough, *Days of Darkness: Taranaki 1878-1884*, (Wellington, Allen & Unwin, 1989), p. 75.
[399] Maori Prisoners Trials Act 1879, Maori Prisoners Act 1880, Maori Prisoners Detention Act 1880, West Coast Settlement (North Island) Act 1880, West Coast Peace Preservation Act 1882, West Coast Peace Preservation Continuance Act 1883, all discussed in Riseborough, *Days of Darkness*, chapters 5-6.

carried out in times of peace, where the 'the lifeblood of the colony' was patently not in peril.[400] These are arranged in chronological order, and focus on the Crown's reaction and role in each case, as well as the extent to which each eviction could be said to be 'lawful', that is, based on civil proceedings, in order to explore further the development of Crown policies and practices regarding the eviction of Maori from disputed land.

Te Aomarama, 1879

Kai Tahu of Te Waipounamu had been rendered virtually landless as a result of early Crown purchases from 1848 to 1864, the impact of which came to be felt with the dramatic rise of the Pakeha population in the South Island provinces by 1860. Post-purchase European settlement not only brought an end to early tribal farming initiatives, it also began to impinge on customary resource harvest associated with traditional mahinga kai. Grievances about unfulfilled Crown promises of reserves – articulated increasingly by Kai Tahu as 'Te Kereme' / 'The Claim' – were only exacerbated by the provision of additional limited mahinga kai reserves in 1868, and the apparent finality of the terms of the Ngaitahu Validation Act 1868. By the 1870s Kai Tahu found themselves thoroughly marginalised in the new order.[401]

Hipa Te Maiharoa provided a sense of hope. From Arowhenua in South Canterbury, Te Maiharoa's renown from the mid-1860s was primarily on account of his spiritual authority. The miracle-worker was inspired by Kaingarara ideas about resolving tapu and New Testament ideas about good living, and over the next decade he gained a large following.[402] Horomona Pohio, appointed Native Assessor at Te Waimate in 1859, became one of his principal missionaries.[403] Te Maiharoa's concern for the wellbeing of his people inevitably drew him into the ongoing socio-political issues facing Kai Tahu. In 1877 a ban against hunting weka on what had been reserved land at Hakataramea in the Waitaki Valley (but which had been illegally sold by the provincial government) provoked him into direct political action. In the winter of 1877 the aged tohunga led a heke numbering over a hundred, with their stock and belongings, inland up the Waitaki Valley towards Lake Ohau. In the broad basin between mountain ranges at Omarama they stopped and settled in the high-country tussock. They named their new home Te Aomarama.

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[400] The justification was articulated by Fox with respect to Parihaka, NZPD 1880, p. 284 cited in Riseborough, *Days of Darkness*, p. 106.
[401] Waitangi Tribunal, *Ngai Tahu Report 1991*, (Wellington, Brooker and Friend Ltd, 1991), pp. 933-945.
[402] According to Richard Hill, most of the Kai Tahu kaika other than those near Christchurch had adopted Te Maiharoa's 'laws' by 1877, Hill, *The Colonial Frontier Tamed*, p.302. Buddy Mikaere explains that the Kaingarara cult arose in Taranaki during the 1850s through the teachings of a former Wesleyan preacher called Tamati Te Ito, who accounted for the increasing death rate among Maori in terms of breached tapu. His answer to the decline was to make places and objects noa, or spiritually free from tapu. Buddy Mikaere, *Te Maiharoa and the promised land*, (Auckland, Reed, 1988), pp. 39-45.
[403] Mikaere, pp. 39-56.

Te Maiharoa's direct action is thought to have been inspired by Te Whiti's stand in Taranaki. The occupation was designed to force the government to take the tribe's grievances seriously: a commission of inquiry promised several years before had still not eventuated. Buddy Mikaere writes that the kaika was established on part of an 180,000-acre Omarama run owned by Colonel FG Dalgety in partnership with Sir Henry and Lady Fox Young, and managed by Duncan Sutherland, member of the local county council. The location may have been chosen because Kai Tahu understood it was Crown land. Certainly the Benmore run next door was Crown leasehold, one of three such leaseholds in the Waitaki basin held by Robert Campbell, who chaired the Waitaki County Council and represented the district in Parliament.[404] Almost one year into the occupation Horomona Pohio and his son travelled to Wellington to explain the community's claim to Native Minister Sheehan: 'The thing I have to say is this: the interior of the island of Te Waipounamu, that is, the part not included in the area sold to the Pakeha, must be returned to me. That is the reason we went onto Omarama to live.'[405] This is further supported by Pohio's letter to lawyer Walter Buller around the same time: 'It is the Crown alone that owns the grasslands lying in the interior of this island. The grasslands rent goes to the government.'[406] It seems that it was only at the meeting with Sheehan in October 1878 that Kai Tahu found out otherwise, Sheehan admonishing Pohio: 'My friend Horomona, it was wrong, very wrong, your going to live on the government's land. As for that land, the sale has been completed, and the Pakeha have obtained the Crown grant.'[407] For their part, Kai Tahu seems to have regarded this development as a deliberate deceit on the part of the Crown. The issue was raised by Te Maiharoa when Member for Southern Maori Hori Kerei Taiaroa returned to Omarama in April 1879 as an envoy for the government. On that occasion Te Maiharoa was recorded as saying: 'Sheehan's word has been completely false, utterly deceitful, because straight after his assurances he ordered the land to be subdivided and it was then sold to the Europeans.'[408] This issue seems to have been overlooked by historians, and there has not been time to find out more.

The presence of the Te Aomarama community – the people and their collection of sod huts, cultivations, fences and stock – was not welcomed by the runholders of Waitaki. Initial opposition focussed on the issue of sheep worrying by the community's dogs. Relationships between the community and the station managers and shepherds quickly deteriorated. Negative publicity in the local newspaper repeated wildly exaggerated reports of sheep killings and threatening conduct, with political pressure brought to bear on central government through local government channels. By October 1878 the Waitaki County Council had resolved to bring parliament's attention to the 'lawless

[404] Mikaere, p. 80. Campbell's leaseholds in the Waitaki basin alone ran to 247,000 acres, and he owned other properties throughout New Zealand besides, his annual income more than £35,000.
[405] HK Taiaroa, record of meeting October 1878, in WA Taylor, Collected papers, Canterbury Museum Library, translated by Lyndsay Head and cited in Mikaere, p. 92.
[406] H Pohio to Walter Buller, 6 November 1878, cited in Mikaere, p. 99.
[407] Mikaere, pp. 92-93.
[408] Cited in Mikaere, p. 105.

proceedings of Maoris in this County...', calling for 'immediate action [to] be taken for the protection of life and property'.[409] For their part, the community denied such allegations, Te Maiharoa describing the 'cheating nature' of particular station managers with striking biblical imagery: 'Those Pakeha are like an animal that vomits, and comes back and licks up his own vomit.'[410] The runholders were accused in turn of deliberate harassment and cruelty.[411]

It was in such a climate, almost twelve months into the occupation, that Te Maiharoa had Horomona Pohio with his son Tuwhare deliver his message to Native Minister Sheehan in person.[412] The exchange, which took place in Wellington over a number of days, did not go well. Te Maiharoa's claim expressed as 'stories about the traditions, about the beginning, stories about that and the myriad utterances of the Maori world' was dismissed by Sheehan. Horomona Pohio was admonished for trampling on HK Taiaroa's efforts to establish a commission of inquiry, and told his occupation at Omarama was wrong, the killing of sheep 'disgraceful', and both grounds for arrest and imprisonment. In response to Horomona's claim that Kai Tahu had not sold the interior, Sheehan produced Kemp's 1848 Deed of Purchase:

> Horomona, these are your own speeches and your name. You should be very clear that you have sold that land to the Queen. In my opinion your wandering about the land is wrong.
>
> It is my opinion, Horomona, you should be securely locked up for you law-trampling behaviour. You have behaved very treacherously towards the Hon. Campbell and his friends. Your hand is filthy with blood! I have no love for sinful men that they should come into my presence to speak. If you were hoping that injustice should be investigated so that your right will be revealed, then the only proper thing is to hold the Commission that Taiaroa and I agreed on.[413]

Mikaere writes that the duo returned to Te Aomarama angry and defeated, with the Native Minister's threat of imprisonment hanging heavily. At the last minute, their parliamentary representative HK Taiaroa had defended the occupation at Omarama and the reason behind it, extracting a promise from Sheehan that the Native Minister would deliver his verdict to the community in person. In a letter to

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[409] Waitaki County Council minute book cited in Mikaere, pp. 84-85.
[410] H Pohio to W Buller, 6 November 1878, Walter L Buller letters, MS Papers folder 14, Alexander Turnbull Library, translated by Lyndsay Head and cited by Mikaere, p. 99. Possibly an allusion to Proverbs 26:11, also partially quoted in 2 Peter 2:22.
[411] According to Te Maiharoa, it was the station manager and armed shepherds who were instead harassing the inhabitants of Te Aomarama. Poison was laid to kill dogs, and any dogs caught by the shepherds were hamstrung and left to suffer, or shot out of hand, Mikaere, pp. 83-84; 99.
[412] In addition to Horomona Pohio and his son Tuwhare and Native Minister Sheehan, other Members of Parliament present at this meeting included Hori Kerei Taiaroa, Hori Karaka Tawhiti and Robert Campbell, as well as three government officials, and Pohio's lawyer Walter Buller. A translation of Taiaroa's record of the meeting is reproduced in Mikaere, pp. 90-96.
[413] Ibid, p. 94. Horomona's own counsel Walter Buller joined in the condemnation of his 'law-trampling' behaviour at this meeting.

Te Maiharoa relating how the meeting went, Taiaroa advised him to 'live peaceably. Stop killing the Pakehas' sheep or you will get into trouble.'[414]

Sheehan kept his promise the following month, travelling to Te Aomarama with Taiaroa and Campbell in November 1878. At Oamaru, the Native Minister spent his day before the meeting reviewing the local volunteer troops. At Omarama he told the Te Aomarama community that they were 'acting unlawfully and even against their own interests', that they could not hope to have their grievances heard while they took the law into their own hands, and finally, that they had to remove by the end of the year. The message was not received well, Te Maiharoa announcing angrily that the Minister had no power to order them away, that they would not go. This was met by an equally angry Sheehan, who countered with the pronouncement that he would have them removed by the police as soon as he returned to Oamaru. Sheehan and his entourage then departed in silence.

The end of the year came and went. In March 1879 the Smith-Nairn Commission of Inquiry was gazetted to inquire into the issue of Kai Tahu's reserves and weeks later Southern Maori Member HK Taiaroa was sent back to Te Aomarama to tell the community that in light of the forthcoming inquiry, there was no further justification for their occupation.[415] Taiaroa delivered the government message to the community on 9 April, but he found Te Maiharoa just as resolute about staying and he could not bring himself to argue against him. 'Sir', he explained to Sheehan afterwards, 'I felt I could never argue with them, or speak to them, on account of my certain belief that they are quite right. If they are in the wrong, then the law has been trampled.'[416]

Native Minister Sheehan withstood ongoing pressure from the runholders until August 1879, when he directed the Police Commissioner to have the community removed. The legal pretext for the police action was arrived at by Dunedin Superintendent TK Weldon who informed his superior that '...Sections 50 and 53 Malicious Injuries to Property Act 1867 and a local ordinance relative to trespass will meet their case'...[417] This was a curious choice, Section 50 relating to correspondence threatening to burn or destroy property, and Section 53 relating to injuries to any 'tree sapling shrub or underwood', which suggests that the legal basis for the impending eviction was of passing importance. The eviction was delegated to Inspector Andrew Thompson of the Otago Armed Constabulary who left for Te Aomarama from Oamaru with 12 armed constables, and who left behind two companies of armed volunteers and an artillery battery, amounting together to 180 men.[418]

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[414] HK Taiaroa to Te Maiharoa, 27 October 1878, Taiaroa papers, box 6b, letter books, Canterbury Museum library, translated by Lyndsay Head, cited by Mikaere, pp. 97-98.
[415] Mikaere, p. 102.
[416] Cited by Mikaere, p. 106.
[417] Superintendent TK Weldon to Colonel Reader, telegram, 8 August 1879, FP 2340/79 Archives NZ, cited by Mikaere, p. 108.
[418] Mikaere, p. 111. Mikaere writes that 60 constables had been offered from throughout Canterbury and Otago. Inspector Andrew Thompson is no relation to Sheriff Andrew Thomson.

Thompson was accompanied by station manager Duncan Sutherland. By the time the armed party arrived at Te Aomarama on the 11 August 1879, Thompson also had ten armed shepherds at his disposal from the surrounding runs, presumably sworn in as 'specials'.

Sheehan had warned Horomona Pohio of the police action, so the community was aware of the advancing force. Mikaere writes that even as the police arrived at Te Aomarama the community was divided over whether they should resist. Te Maiharoa was ill and he left matters to a group of men headed by Tuaha Matenga and Rawiri Te Maire. Inspector Thompson sought in the first instance to persuade the community to leave. He refused to be drawn into an argument over Kai Tahu's ownership of the land, telling them they could have recourse to the courts if the police action was indeed illegal. And then he gave them five minutes to decide what they would do. At the end of this time when Te Maire still refused to leave he was arrested and led away. It was at this point Te Maiharoa decided that they would leave peacefully: 'I do not want action which sheds blood.'[419]

The community was given 48 hours to remove, and Te Maire was released. Te Maiharoa, too ill to travel, succeeded in winning Thompson's agreement to remain with his caregivers for up to a week more. On the morning of the 13 August 1879 a procession of about 150 men, women and children made their way out into the snow. Behind them, their homes were set on fire and burned to the ground. The heke's return journey to the coast was slow, their prophet catching them up in the Waitaki Valley, where they were harried on again by Thompson at the behest of an exasperated Campbell. The community eventually settled on reserved land at Korotuaheka at the Waitaki river mouth, Native Commissioner Alexander Mackay supplying flour and other staples at the government's expense to help them through the period of resettlement.[420] Horomona Pohio died the following year, in 1880. Te Maiharoa lived for a further five years. The Smith-Nairn Royal Commission of Inquiry sat over a two year period travelling extensively through the South Island, but in July 1880 proceedings were cut short by Native Minister Bryce who refused to fund it further. In spite of this curtailment, the commission reported that important promises attached to the purchase of Kai Tahu lands had not been fulfilled by the Crown and recommended a fund be established for the supply of medical and educational aid, and other forms of assistance. None of the commission's recommendations were subsequently acted on.[421]

The occupation at Te Aomarama is an example of direct political action aimed at calling attention to the wider grievances felt by Kai Tahu by the 1870s. It seems that Te Maiharoa had intended to make his stand on Crown land: at the time he was not aware that the high country tussock lands had been sold into private ownership. What is noteworthy about the eviction for our purposes is the central role the Crown played in the eviction despite the private ownership. Native Minister Sheehan's direct

[419] Beattie collection, E-21, 6-8, Hocken Library Dunedin, cited in Mikaere, p. 116.
[420] Mikaere, p. 121.
[421] Waitangi Tribunal, *Ngai Tahu Report 1991*, p. 961.

involvement in the negotiations to persuade the community to leave stands in direct constrast with the Crown's hands-off approach by 1897. The Minister's readiness to use the police, too, was markedly different from the response to the confrontation at Pokopoko. Allied to this is the fact that 'the law' played a very minor role at Te Aomarama, the legal basis for the police action of passing importance to the officials involved. The eviction of the Te Aomarama community was not the result of civil proceedings taken by the legal owners of the Omarama Station. Rather, fellow high country neighbour and local Oamaru Member of Parliament Robert Campbell, who also worked through local government channels, applied direct pressure to government to have the community removed.

What sets Te Aomarama apart from the other case studies that follow, is that it occurred in the South Island at a time when the Maori population was thoroughly marginalised and demographically overwhelmed. Mikaere describes Inspector Thompson's approach as diplomatic, suggesting that the comparatively gentle diplomacy reflected government embarrassment over events at Parihaka, namely the mass arrest and imprisonment of Te Whiti's ploughmen.[422] Even so, there was less need for political caution here, if anything the police force accompanying Inspector Thompson kept the runholders' posse in line. The bulk of volunteers and their ammunition was left at Oamaru, the 'specials' at Te Aomarama kept under strict supervision. In this case the police presence certainly brought an end to the occupation but it may have also prevented bloodshed.

Maungatautari, 1884

Maungatautari in this same period was a world away from the South Island. This was still frontier land, lying just outside both the Waikato confiscation and the closed Rohe Potae of the King, with a complexity of socio-political forces at work.[423] Here the country supported a large Maori population, and one displaced by war, confiscation and, in the case of Ngati Kauwhata (closely associated with Ngati Raukawa), reverse migration from the Porirua-Manawatu coast. Adding to the complexity was the different positions hapu had taken in the recent war with the Crown. On the Pakeha side, the tribal lands around Maungatautari were among the first in the district to pass through the Native Land Court in a new age of private alienation, leading to considerable land speculation which was maintained throughout the 1870s. Often operating in partnership or as syndicates, these speculators did not necessarily occupy the lands they acquired, and competition between them was fierce. In such circumstances – the numerous and unsettled Maori population on newly marketable land with buyers

[422] Mikaere, p. 117.

[423] The following discussion of Maungatautari relies on research reports undertaken for the Waitangi Tribunal's Te Rohe Potae inquiry, including Peter McBurney, 'Ngati Kauwhata and Ngati Wehi Wehi interests in and about Te Rohe Potae District', (CFRT, 2013), Wai 898 #A120; TJ Hearn, 'Raukawa, land, and the Crown: a review and assessment of land purchasing in the Raukawa Rohe, 1865 to 1971', (CFRT, 2008),Wai 898 #A12; and Cathy Marr, 'Te Rohe Potae Political Engagement 1864-1886', (Waitangi Tribunal, 2011), Wai 898 #A78.

poised with ready cash – the Native Land Court's 'ten-owner' guideline which granted contested tribal lands to no more than ten named individuals was a recipe for further upset. Another Crown dimension to local politics was the attempt, from the mid-1870s, to cultivate a relationship with rangatira of the neighbouring Te Rohe Potae, with the view of taming this vast preserve of Maori autonomy.

Pukekura and Puahue were adjacent blocks near Maungatautari created by the Native Land Court process in 1868, together comprising 17,000 acres. The title disputes that ensued over these blocks were complicated by the fact that the initial certificates of title issued under Section 17 of the Native Lands Act 1867 to Ngati Haua individuals (in which the ten grantees on the front of the CT were deemed to hold the land in trust for themselves and the other owners listed on the back of the CT) were cancelled shortly after and replaced by certificates of title without the co-owners on the back, nor any reference to any trust arrangement.[424] Both blocks were leased immediately to Thomas Douglas acting for Thomas Grice and John Benn, both overseas merchants. Despite the restrictions against permanent alienation on the titles, Grice & Benn – through their agents – at once set about obtaining the freehold, employing a twin strategy of advancing payments to the named owners in exchange for their signatures on undated sale deeds, while lobbying the government to have the restrictions removed. By 1880, eight of the ten grantees of both blocks were reported by Major William Mair to have 'pledged' themselves to sell. Equally strong opposition, however, was voiced by the minority opposed to the sale of what they regarded as tribal land. One of the most stalwart opponents to the permanent alienation of these blocks was Hori Puao of Ngati Raukawa, one of the ten listed owners of Pukekura.

Grice & Benn employed land agents like William Grace to promote their interests in the emerging Maori land market, while EB Walker held power of attorney for the partnership on the ground.[425] Pukekura and Puahue, however, were but two of several properties within their investment portfolio. The stipulated rental for both blocks was £170 per annum (approximately 2.5 pence per acre), but there is some doubt as to whether even this nominal amount was paid in full.[426] Nor did their tenancy amount to anything meaningful on the ground. Over 1870-1871 stock depastured on the land was

[424] Hearn, Wai 898 #A12, pp. 187-89.

[425] William H Grace was the eldest son of the Reverend Thomas Grace, and he worked as a land agent in the Maungatautari frontier in this period. His diaries and letterbooks held by the Alexander Turnbull Library provide an intriguing insight into the business, in particular William Henry Grace Letterbook 1880-1882, msy-4506; and William Henry Grace Diary 1882, msx-4741. Grace seems to have acted as Grice & Benn's agent in Tatua, Whangamata and Manukatutahi lands as well. EB Walker was also director of the Patetere Land Settlement Company.

[426] One of the allegations in the ejectment proceedings of 1883 was that Grice & Benn had refused and neglected to pay rent, Hearn, Wai 898 #A12, p. 204. It is supported by William Grace's reminder to another speculator RHD Ferguson in December 1882 of the importance of doing so, citing 'Walkers business at Pukekura' by way of example: 'If this is not done the person to whom rent is due can re-enter on the property and give no end of trouble'. WH Grace to Ferguson, 16 December 1882, Grace Letterbook 1880-1882, p.346.

driven off or killed.[427] In February 1873 Timothy Sullivan, who worked for Walker, was killed on the Puahue block by Ngati Haua men opposed to the transactions over the land.[428] After the killing, Walker testified a decade later, he 'did not press for the assertion of his rights'.[429]

Rather, the land was occupied by those who considered they had missed out on their entitlement in the Native Land Court process. In particular, Ngati Kauwhata claimed that their absence at the initial title investigation had resulted in their ancestral lands being awarded to others. Ngati Kauwhata had been part of the larger pre-colonial Ngati Raukawa heke south which eventually settled the Porirua-Manawatu coast. In 1868 the court had ruled against Ngati Raukawa's claim to their old Maungatautari homeland on the grounds that they had never reoccupied. By the mid-1870s Tapa Te Whata and others of Ngati Kauwhata had moved back to do precisely this. In their 1877 petition they emphasised their distinctness from Ngati Raukawa, and insisted they be recognised as legal owners of the land. The Ngati Kauwhata communities on Pukekura and Puahue were reported to have moved in on the invitation of legal owner Hori Puao.[430] For Hori Puao and others, whose efforts to prevent the sale of the land to Grice & Benn had drawn them into litigation to challenge the replacement titles which ignored the trustee role of the ten grantees, the presence of Ngati Kauwhata settlements strengthened their argument for the tribal land to remain protected.[431] For Ngati Kauwhata, their settlement was a tangible reassertion of ancestral *take* to the land. Maori resettlement of this nature in the district was not confined to these two blocks. In 1885 for example, William Grace advised his client Every Maclean to deal smartly with similar occupation occurring on the Okauia block. Having been personally involved in the recent eviction of Ngati Kauwhata on Pukekura and Puahue, his comments provide an insight into how Pakeha regarded such settlement:

> it is my opinion the sooner steps are taken to compel the natives to go off the land and cease trespassing, the better and easier it will be to accomplish. The longer the natives are allowed to remain on the land and allowed to cultivate, to graze their horses and cattle, and to sell your timber, the more difficult it will be to turn them off. You will remember I told you this sometime ago. At that time they only had a small cultivation, through not being at that time stopped effectually they have become bolder and are splitting posts and selling them to Mr Firth[.] [I]f they are now not stopped you will find others will join Kawau and instead of having to deal with two or three individuals you will have to deal with a large number and perhaps in a body will start to build houses and make new cultivations thereby increasing the difficulties of removing them from off the land tenfold, in fact by delay, the natives will come to believe they have a proper right to occupy the land.

[427] Marr, Wai 898 #A78, pp. 266-67.
[428] See sketch map in 'Report from Mr. James Mackay, Jnr', AJHR 1873 G-3. See also Marr, Wai 898 #A78, pp. 273-74.
[429] *New Zealand Herald*, 10 April 1883.
[430] Hearn, Wai 898 #A12, p. 194.
[431] In 1882 Hori Ohomairangi and 328 others of Pukekura petitioned Parliament about their land and homes being awarded to no more than ten persons without their knowledge, see Hearn, Wai 898 #A12, p. 200.

....

> In conclusion I would again impress on you the necessity of not delaying to use proper means for compelling the natives to desist from trespassing on your land, and so save yourself a great deal of trouble and expense.[432]

It is pertinent that Every Maclean was a Justice of the Peace in this frontier, as was RHD Fergusson, another wealthy land speculator who was also implicated in forceful evictions of Maori from land in the district.[433] Entrusting the peace of the district to such men tended to render the contending claims over land a one-sided battle – literally – the harassment and eviction of Maori communities carried out on behalf of the speculators by their armed workers, rather than under any process of law. As Grace referred to this in a letter to Fergusson, it was a matter of making things 'hot for the natives'.[434]

Matters with respect to Pukekura and Puahue first came to a head in October 1881. Having first obtained some kind of mandate from Tawhiao with respect to their holdings at Maungatautari, Walker and Grice took steps to 'formally occupy' the land.[435] What this meant in practice was 'a good deal of hand to hand scuffling' between Grice's band of hired men and a dozen of Tapa Te Whata's.[436] The altercation does not appear to have resulted in any change of the status quo. Grice & Benn's subsequent efforts to sue Tapa Te Whata and Tamehana Te Waata for trespass and damages of £1000 were undermined by the fact that Ngati Kauwhata were there at the invitation of one of the grantees, Hori Puao, and the ongoing litigation over the title itself.[437] Eleven months later, in August 1882 Walker again tried to force the issue, accused by Tapa Te Whata of laying poison close to their homes and then, two weeks later, of setting fire to five whare at Mangapiko. The following month William Grace sent Walker and Grice a bill for 'services rendered re occupation and taking possession of Pukekura and Puahue Blocks as per agreement. £100-0-0.'[438] The invoice revealing a cash payment of £25 in August 1881 indicates that Grace had been involved in the altercation described above. In June 1882 he had received a further £50, leaving the 'Balance due' at £25.[439] On 17 November a group of as many as 30 armed men, including Grace, descended on Ngati Kauwhata's settlement on Pukekura, burning down all but one house and breaking down fences around the cultivations of oats and potatoes. Ngati Kauwhata were reported to have met the assault with 'the greatest indifference and never interfered with the men.[440] Grace on the other hand recorded in his diary that the men 'had [a]

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[432] WH Grace to E Maclean, 11 May 1885, Grace Letterbook 1880-1892, pp. 870-872.
[433] Hearn, Wai 898 #A12, p. 202.
[434] WH Grace to Ferguson, 14 February 1882, Grace Letterbook 1880-1892, p. 201.
[435] Hearn relates that it was following negotiations with Tawhiao in October 1881 that the band of speculators including Grice, Walker, Fergusson and Maclean stepped up their campaign for possession, Hearn, Wai 898 #A12, p. 198.
[436] Hearn, Wai 898 #A12, pp. 198-99.
[437] See memo in MA13 107 67; A McDonald to Under-Secretary TW Lewis, 3 September 1882, MA13 107 67.
[438] WH Grace to EB Walker and J Grice, 23 September 1882, Grace Letterbook 1880-1892, p. 314. Note that Grace was also providing the same 'services' for Fergusson at this time.
[439] Ibid.
[440] *New Zealand Herald*, 22 November 1882.

short struggle with about 12 or 13 native women.'[441] Charges were laid against Walker and Grice and 23 others by Hori Puao. The men appeared in the Resident Magistrate's Court the following month. Resident Magistrate Northcroft ordered the defendants to stand trial in the Supreme Court, dismissing their argument that as the lessee of the land they had the right to take possession:

> That even if the defence do prove all which they have stated they intend to prove, yet, as the natives were allowed to remain on the land for so long a time they acquire an occupation or possession which made it unlawful for the defendants to do what they did … They (the natives) had actual physical possession, and that, having been fixed for so long, is in my judgment, quite sufficient.[442]

In the event, the charges of assault and riot were subsequently dropped, leaving that of forcible entry which came before the Supreme Court in April 1883. Notwithstanding his acceptance that Walker, as lessee, was the 'true owner' of the land, Justice Gillies essentially upheld Northcroft's interpretation of the law pertaining to forcible entry:

> It seems to me to be the law that there may be forcible entry committed by the true owner of land who may be indicted for that offence. The rights of the true owners are undoubtedly protected by the law, still if he attempt to enter with the strong hand, either with force or by assembling such an unusual number of persons as to overawe resistance, that is, if a person comes with a large number of others so as to overawe those actually in possession, that is "forcible entry" in law, and this may be the case in regard to persons who are in actual although not in legal possession. These natives were on the land two years. This was the third season. They had actually cultivated the land; they had it fenced in without opposition on the part of the true owner. They appeared to have such possession as disentitled the true owner to forcibly dispossess them. By taking a number of persons armed with spades, shovels, hatchets, &c., he did overawe resistance. He levelled the fence. That was forcible entry according to my reading of the law.[443]

On this occasion, Walker pleaded guilty on the condition that the charges against the other men were dropped on account of them acting as his employees. Able to fine, but not empowered to award compensation, Justice Gillies instead bound Walker with a payment of £500 until he came up for sentencing at the next criminal sitting, 'with the intimation that if it shall be shown to me by affidavit or otherwise, that the natives have been settled with, the fine will be nominal or such as will vindicate public justice.'[444] The matter seems to have been settled out of court.

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[441] Entry for 17 November 1882, Grace Diary 1882.
[442] *Waikato Times*, 6 January 1883, cited in Hearn, Wai 898 #A12, p. 202.
[443] *The New Zealand Herald*, 10 April 1883 in ACIH 16046 MA 13 107 67.
[444] Ibid.

The following year, Walker resorted to lawful means. In July 1883 he obtained a writ of possession against those still residing on the two blocks. The writ was issued against Annie Waata and may have been connected to the occupation of owners disenfranchised by the cancellation of the original title, rather than Ngati Kauwhata, although this is difficult to determine on the basis of the evidence available.[445] The case was heard by the Supreme Court in October 1883, which found in favour of the plaintiffs and ordered damages of £400. In February 1884 the Auckland Sheriff, Major Green, accompanied by a surveyor and two mounted constables, arrived at Pukekura to enforce the judgement: to hand over possession of the properties to Walker and to seize property to satisfy the damages. As a result, 76 horses and other property were seized, Green warning the Maori residents that he would be back to burn down their homes if they remained. Although it scarcely received a mention in the papers, this ejectment – and in particular Green's use of constables – was the basis of Native Minister and Defence Minister Bryce's directive to police on 13 March, Circular 4/1884, that police were not to participate in the execution of civil writs against Maori without his express consent:

> It having been brought to the notice of the Hon. the Defence Minister, that LtCol 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 the kind is not given, especially in cases in which Maories are concerned, without authority as above.[446]

The horses were sold at Cambridge. William Grace was among those who purchased a black mare, only to have it re-appropriated shortly after.[447] When Sheriff Green tried to seize another 'Kauwhata' horse in Cambridge at the end of May, manhandling the boy rider in the process, he was prevented from doing so by two female onlookers, who overpowered the sheriff and freed the horse and boy. Ngati Kauwhata's legal counsel Major Hay, who happened to be on the spot, harangued the sheriff about his lack of warrant for the seizure. In the fracas the sheriff had appealed to a sergeant of the Armed Constabulary for help and had been met with the response that 'he was forbidden to do so by direct instructions from Wellington.'[448]

At the end of May 1884 the sheriff carried out his threat to demolish the settlements on the blocks, returning with EB Walker and 'about a dozen of his men'.[449] The settlement at Pukekura was empty, and the men pulled down all the structures. They then continued on to Mangapiko where they found a

[445] Hearn, Wai 898 #A12, pp. 202-205.
[446] Extract from Circular 4/1184, 13 March 1884, signed by HE Reader (Commissioner of Police), in J1 578 1897/982-1056, Wai 2180 #A52(a), p.67.
[447] WH Grace to T Walker, 17 July 1884, Grace Letterbook 1880-1892, p. 695.
[448] *Waikato Times*, 31 May 1884.
[449] *Waikato Times*, 3 June 1884.

small number of women 'still in occupation', who tried to block their doorways against the men. Once again the houses were pulled down and burned.[450] Within a fortnight Ngati Kauwhata were back, making campsites from tents and windbreaks. In retaliation for the destruction of their homes and theft of their potato crop, Walker's bridge across the Mangapiko stream was destroyed in early June. Three men were charged under Section 61 of the Malicious Injuries to Property Act 1867 and warrants were issued for their arrest. On this occasion the Native Minister sanctioned the involvement of Constable Brennan to carry out the arrest. Their arrest at the end of June seems to have provided Walker the opportunity to demolish what remained of the occupants' encampments. Tensions were high, and the actions of Walker's men provoked resistance from the residents, again mostly women, although no one appears to have been seriously hurt in the struggle. The newspaper account indicates that the police constable was present during these altercations.[451] The case against the Ngati Kauwhata men was heard in the Resident Magistrates Court before Judge Northcroft in July. On the strength of Hay's argument, the three men were acquitted on the grounds that they had acted 'in the bona fide assertion of their right.'[452]

Walker seems to have won the day with his forceful approach, in that Ngati Kauwhata's attempts to live on Pukekura and Puahue seem to have come to an end at this point. In June 1885 the Supreme Court ruled that the Crown grants for Pukekura and Puahue, based as they were on the second set of Native Land Court orders and certificates of title, were null and void. In one sense, the struggle of Hori Puao and other disenfranchised owners with respect to the tribal land was validated by the decision, although the situation on the ground was scarcely affected. The leases to Grice & Benn remained valid. The extent to which these lessees had obtained the freehold seems to have been dealt with by partition in 1887, although there has not been time to pursue this. In 1887 and again in 1888 Grice & Benn unsuccessfully petitioned Parliament for reimbursement for the 'very heavy expense and inconvenience' – which they calculated at £6,000 – they had been put to as a result of the Native Land Court's actions.[453]

Like Kai Tahu's occupation at Omarama, Ngati Kauwhata's occupation of Maungatautari lands can be seen as direct political action, intended to re-open title determination with a view of having their customary interests recognised. The heated and protracted dispute over entitlement to Pukekura and Puahue began from the point of title determination in 1868, cost the life of Timothy Sullivan, and generated files thick with petitions, Supreme Court proceedings and a Commission of Inquiry. Unlike Te Aomarama, however, the occupation occurred on disputed land within the colonial frontier in

[450] Ibid.
[451] *Waikato Times*, 3 July 1884.
[452] *Waikato Times*, 15 July 1884.
[453] Hearn, Wai 898 #A12, pp. 208-210.

which Maori remained a dominant force. It also occurred at a time when the government was trying to build rapport with King Country rangatira just over the boundary. Tawhiao does not seem to have had much sympathy with Ngati Kauwhata's tenure at Maungatautari, but he and other leaders like Rewi Maniapoto were watching the unfolding title dispute with keen interest.[454] In these circumstances the obvious significance of the case study lies in Defence/Native Minister Bryce's directive that police were not to be used in the ejectment of Maori without his express consent, a Ministerial check on the practical enforcement of Supreme Court judgements that was maintained in 'outlying districts' until the turn of the century. What lay behind the directive?

The Maungatautari case study illuminates the power of civil law proceedings within the colonial context. Grice & Benn's attempt to gain possession between October 1881 and December 1882 involved intimidation and force, rather than the law, the underlying dispute over title making the success of any 'lawful' proceedings doubtful. Men like William Grace were instead contracted to burn Ngati Kauwhata's settlements and destroy their crops. It was only after these men were charged with assault and forcible entry, that Grice & Benn's agent Walker turned to the law. How Walker obtained a writ of possession against the Maori occupiers on Pukekura and Puahue given the ongoing dispute over title (the Supreme Court ruling in 1885 that the Crown Grants on which Grice & Benn's leases were based were null and void) is not clear. Certainly nothing in terms of the wider title dispute, or the circumstances on the ground had changed. What is evident is that once Walker obtained the writ, the subsequent destruction of Ngati Kauwhata settlements, crops and property undertaken by Sheriff Green and Walker's men – the same aggressive behaviour as before – was now deemed to be 'lawful'. The final act of forcibly removing Ngati Kauwhata's remaining tents appears to have been undertaken under the watch of a police constable, sanctioned by Bryce in this particular instance because of the charges against three Maori men of malicious damage to a bridge.

While curbing, on the one hand, police involvement in the *execution* of writs of possession against Maori, Crown officials were among the main proponents that matters be left to the law. Unlike Sheehan's direct involvement with regard to Te Aomarama, the Maungatautari case study contains early evidence of disassociation by Crown Ministers themselves from civil proceedings, an increasing reluctance to intervene. In September 1882, with Grice and Walker's trespass case against Tapa Te Whata hampered by Hori Puao, Ngati Kauwhata's legal counsel Alick McDonald warned Native Minister Bryce what was coming next:

[454] In December 1882 Tawhiao wrote to Grice and Walker assuring them, 'I absolutely thrust on you those Blocks of land, under my word and authority. But do not go beyond ... do not go side ways...' King Tawhiao to Grice and Walker, 17 December 1882, MA13 107 67. The same lobby met with Rewi Maniapoto and Bryce at Kihikihi in February 1882 (with Grace acting as interpreter). Their dinner together was followed by a two-hour discussion with Bryce that left Grace confident that 'things very satisfactory'. Entry for 24 February 1882, WH Grace Diary 1882.

> the European Claimants propose to take possession of the land by their own strong hand without waiting for the tardier operation of the Law – I venture to hope that the Native Minister will think it right to protect the maories against violence of this kind – I dare not advise them to protect themselves.[455]

In response, Bryce demurred from any responsibility in the matter, pointing to McDonald's own reference to the pending legal action: 'I am certain any interference of mine at present would be improper, acknowledge letter and say so.'[456] Only seven weeks later came the first show of strength, when 30 armed men descended on Tapa Te Whata's settlement and pulled it to the ground.

Bryce's handling of the wider title dispute affecting Pukekura and Puahue demonstrates a concern for order. In March 1880 when the Native Minister asked William Mair to report on the veracity of Grice & Benn's claims to have all but purchased the blocks, one of the questions Bryce posed with regard to removing the restrictions over alienation was whether the objection of the owners to any sale would endanger 'the peace of the country'. Mair was sure it would not.[457] In the same month that the Native Minister issued his directive about police involvement in the ejectment of Maori, he was also reportedly celebrating the tranquillity of 'Native affairs' and looking forward 'in a year or so' to the end of any need for a Native Department.[458] Such aspirations contain the seeds of future Liberal Government policy which was to oversee the disbandment of the Native Affairs Department in 1893. Yet it also contains a paradox. What Alick McDonald highlighted to the Native Minister in 1882, and what came to pass at Maungatautari, was that the failure of the government to intervene to protect Maori interests in such civil disputes resulted in violence against them, and, ultimately, their dispossession. Did Bryce's caution about police involvement in civil proceedings against Maori arise from a tacit acknowledgement of the inherent bias of the statutory title framework underpinning the common law proceedings? A desire, in the midst of a numerous and autonomous Maori population, to disassociate the government with the enforcement of such unfairness in the interests of frontier 'tranquility'?

Horowhenua, 1889; 1901

When it came to guarding its own land interests, the Crown's response to Maori occupation was a great deal more peremptory. There are two examples of eviction following Crown acquisitions of Maori land that came to light in my research with respect to Muaupoko at Horowhenua.[459] In both cases, the occupants were not making any political statement: they were merely living on land they

[455] A McDonald to Under-Secretary TS Lewis, 3 September 1882, MA13 107 67.
[456] J Bryce, 6 September 1882, on coversheet of above.
[457] Hearn, Wai 898 #A12, pp. 193-194.
[458] *Auckland Star*, 29 March 1884.
[459] The following case studies are drawn from Jane Luiten, 'Muaupoko Land Alienation and Political Engagement Report', (Waitangi Tribunal, 2015), Wai 2200, #A163.

considered to be theirs. In both cases, they were not forewarned of the Crown's acquisition, and nor were their protests permitted to alter the outcome.

The first concerns Hoani Puihi and Winara Te Raorao and their families who by 1886 had created small farms within forest clearings beside Lake Horowhenua, on part of a 52,000-acre tribal estate belonging to Muaupoko. Puihi and Te Raorao were among the 143 registered owners of this Horowhenua block, the title of which had issued in 1873 under Section 17 of the Native Lands Act 1867.[460] The certificate of title to Horowhenua itself had been made out to Te Rangihiwinui Te Keepa (Major Kemp) alone, but it was widely known that Kemp held this tribal land in trust, the arrangement adopted to keep the estate intact by eliminating the possibility of any third party (including the Crown) purchasing undivided individual interests. For the next 13 years Kemp proved a good trustee, the Muaupoko residents at Horowhenua benefitting from new lease arrangements and engaging themselves in the new business of farming sheep on their communal estate.

By 1883, however, Kemp was coming under increasing pressure to sell and subdivide. One direct threat to Muaupoko ownership was the construction of the Wellington-Manawatu railway line right through the block, not only by the loss of the rail corridor itself, but also because the private construction of the line was predicated on the government purchase of adjoining Maori land.[461] Faced with a combination of factors including a Supreme Court judgement against him for debts of £2,800, Kemp began negotiations in June 1886 with Native Minister Ballance for the subdivision and sale of the tribal block. Part of the subdivision agreement brokered with Muaupoko and Ballance in 1886 was that 4,000 acres would be allocated for a township (the basis of present-day Levin), to be sold to the government for this purpose at an agreed (unspecified) price. Muaupoko were to remain stakeholders in this venture, not only as beneficiaries of the anticipated schools and hospital, but in the reservation of every tenth section in the town for the tribe. They were also told that revenue from the township sale would pay for the survey of the remainder of the land in their ownership.[462] Once the subdivision was made, however, Native Minister Ballance delayed the township purchase for seven months, beating an indebted Kemp down in price, and then, with the sale complete, disavowing any government undertakings with respect to the vision of an integrated township or the provision of town reserves for Muaupoko.

The Crown's township purchase had been based on a hand-drawn plan of partition. A proper partition survey was not undertaken until August 1887, after the sale. On this survey plan the township extended to the shores of Lake Horowhenua, taking in the farmed clearings by the lake. This survey

[460] This provision was seen as a welcome improvement on the 'ten-owner rule' of 1865, allowing for the names of all those found to have interests – not just ten representatives – to be registered as owners in the court record, see Luiten, Wai 2200, #A163, p. 115.
[461] Set out in Luiten, Wai 2200, #A163, pp. 130-139.
[462] Ibid, pp. 157-159.

plan was subsequently sanctioned by Kemp but it was never exhibited publicly or shown to Muaupoko. The subdivision of Levin into town, suburban and rural lots began more than a year later, in November 1888. Within days Chief Surveyor Marchant, also Commissioner of Crown Lands, relayed the objections of residents on the north-western end of the partition to the survey running through their kainga. In addition to telling the surveyor on the ground, Hoani Puihi complained to Under-Secretary of Native Affairs TW Lewis: 'He kainga tuturu tenei no maua no mua noatu' / 'This has been our permanent home for years.'[463] The following week both Te Raorao and Puihi wrote in again, advising Lewis they had stopped the survey, explaining:

> I te wa hoki o te hoko o taua poraka i whakaae a te Keepa ki o maua whenua kia taka ki waho o taua hoko. He kainga tuturu no o maua tupuna a iho tae noa kia maua inaianei. Kei runga tonu hoki maua e noho ana.[464]
>
> At the time of the sale of that land Keepa agreed to leave our lands out of the sale. These have been permanent places of residence since the time of our ancestors and we are now still occupying them.

Eight years later Puihi told the Horowhenua Commission that Lewis's response to his plea was to refer him to Kemp. Kemp in turn is said to have told him not to obstruct the survey, that he would have his land cut out once the survey was finished. For his part, Kemp told the Commission that Ballance had refused his appeal to exclude the clearings from the township: 'He said that he did not see that they wanted a Maori kainga there, as it would not do to have Natives in the township.'[465]

Under-Secretary Lewis had been privy to the undertakings his Minister had made with respect to the township. He had also attended the partition hearing in order to get the arrangement – based on the shared township vision – passed through the court. In the face of the protest from residents in 1888, however, he nonetheless advised Marchant that there were no legitimate claims to the land: the Native Land Court had awarded the block to Kemp as sole owner, and Kemp had since transferred it to the Crown without reservation.[466] The chief surveyor persisted, so convinced by the merits of the residents' case that he drew a plan showing how the 200 acres they claimed might be accommodated within the subdivision, and he pressed that these claims be 'properly investigated and settled otherwise the sale of the land will be delayed'.[467] This suggestion was similarly quashed by Sheridan, Head of the Land Purchase Department, on the grounds that the Crown's title was 'perfectly clear'

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[463] Hoani Amorangi to Under-Secretary Lewis, 7 December 1888, MA 75/4/21, contemporary translation by Native Office, cited in Luiten, Wai 2200, #A163, p. 180.
[464] W Te Raorao, H Amorangi to Under-Secretary Lewis, 16 December 1888, MA 75/4/21, contemporary translation by Native Office, cited in Luiten, Wai 2200, #A163, p. 180.
[465] Keepa Te Rangihiwinui, 7 April 1896, AJHR 1896 G-2, p. 193, cited in Luiten, Wai 2200, #A163, p.182. Asked whether he had done what he could to get it cut out Kemp responded, 'No; when it was not cut out, I assented to what he did.'
[466] Under-Secretary Lewis to Chief Surveyor Marchant, note on letter, 29 November 1888, MA 75/4/21, cited in Luiten, Wai 2200, #A163, p. 181.
[467] Chief Surveyor Marchant to Sheridan, note on coversheet, 31 December 1888, ibid.

and had passed under the Land Transfer Act: 'It would be highly imprudent on the part of this office to pretend to make any enquiry into the matter'.[468]

The response from the Native Department prompted Marchant to ask the Surveyor-General 'Are these Natives to be evicted & forfeit their house and cultivations?' The Surveyor-General replied:

> I think the best course will be to burden the sections on which Native improvements exist with a moderate valuation & then offer the land for sale. If the Natives purchase good and well, if not, then the valuation would be secured to them [illegible] another purchase.[469]

This course was adopted to some extent. When the township sections were advertised on 11 February 1889, Rural Section 20 of 84 acres – part of Hoani Puihi and Winara Te Raorao's kainga – was weighted with £14 of 'improvements'. This was later said to have been paid to Te Raorao after the section was sold on 22 March 1889.

The displacement of Hoani Puihi and Winara Te Raorao from their homes, cultivations and 'kais' in the Ngurunguru and Tirotiro clearings caused an outcry among the Muaupoko community at the time. Having just attended a hui at Horowhenua about the issue, on 18 March 1889 Wirihana Hunia wrote to Native Minister Mitchelson of 'Te ahu e tangi, Te ahu e mate' / 'the state of sorrow and distress' among Muaupoko over the inclusion of Section 20 in the township, asking the Minister to exclude it from sale.[470] As a result, Marchant was asked by Sheridan on 21 March 1889 whether the section had been sold. The next day it was.

The second Muaupoko example occurred 13 years later, as a result of the Crown's compulsory acquisition of 40 acres at the Hokio river mouth under Native Townships legislation.[471] Sheridan still headed the Land Purchase Department, Marchant by this time promoted to Surveyor-General. 'Native Townships' were somewhat of a misnomer, given that the outcome was the establishment of Pakeha townships in areas in which the government could not otherwise acquire Maori land. The relevant legislation from 1895 was justified by the 'public interest' of establishing settlement in such areas, generally measured in the demand for the resulting sections in any such township, and reflected too, by the reserves set apart for public purposes. The abrogation of Maori property rights the legislation represented was justified by the income Maori land owners would derive from the venture, and further assuaged by the provision for 20 per cent of the sections in any Native township to be held for such owners.

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[468] Sheridan to Morpeth, note on coversheet, 5 January 1889, ibid.
[469] Surveyor-General to Marchant, note on coversheet, 11 January 1889, ibid.
[470] Wirihana Hunia to Native Minister Mitchelson, 18 March 1889, ibid, p. 181. Contemporary translation by Native Department.
[471] Discussed in Luiten, Wai 2200, #A163, pp. 328-344.

The Hokio Native Township cannot be said to have come close to any such benchmarks. With Levin only 5.5 miles from the river mouth, there was never any demand for a 'township' as such. Indeed the initial survey consisted of only 20 residential lots, and no public reserves whatsoever. Marchant himself had been dubious about the prospect from the outset, not least because the area comprised drifting sand hills. Rather, the scheme seems to have been initiated by a conversation at the train station between a handful of influential Levin residents and the Minister of Lands as he passed through town. These men had asked Duncan for 100 acres of Maori land west of Lake Horowhenua, cut into quarter-acre sections, the request coming in the midst of growing local contention over use rights to the lake. It was Sheridan who suggested proceeding under the Native Townships Act.

There is no evidence that the Muaupoko owners, determined as such just three years before the gazettal of the township, were informed about the development, let alone approached for consent. It was only after the township was gazetted, when the Crown Lands Ranger visited to value the allotments for the purpose of advertising them for sale, that any mention was made of existing Muaupoko occupation there:

> W. Broughton (a half cast, is residing with family on section 3 Block V & has built a rough whare, done some fencing & is getting more building timber in. He states that he is part-owner of the land in this Township & is not aware that the land has been given or taken for Township or other purposes & that if any of the sections are leased that he will prevent the lessees from taking possession & that he will not shift nor give up possession of the land on which he is now residing.[472]

In the accompanying schedule, Broughton's sections were among the few considered by the Crown Land Ranger to be of any value. More than half of the allotments were described as drifting sand hills 'of little or no value', given an annual rental of 5 shillings, with the further prognosis that no one would take them up. The township would never be of any importance, he opined, declaiming the need for any public reserves or auction. Indeed, the Crown Lands Ranger concluded his report with the dire prediction that 'if something is not done to prevent it the sand will drift over the whole of the sections in the township.'[473]

The sale plan of the township was approved by the Land Board on 27 November 1902, before the required exhibition period had expired, and before the Chief Judge of the Native Land Court had approved the same. The evidence suggests the matter was rushed through, over advice that strong objections of the resident owners existed. On 6 January, as a result of renewed local lobbying through local MP WH Field, the Chief Surveyor was again instructed by the Surveyor-General to treat the

[472] Crown Lands Ranger Craig to Commissioner Crown Lands Wellington, 20 November 1902, AAMA 619 W3150/27 20/278, cited in Luiten, Wai 2200, #A163, p. 334. Emphasis in original. I have been unable to establish the relationship, if any, between the Horowhenua Wiremu Broughton (also known as Te Ahuru Porotene) and that of Renata Kawepo's heir. The Horowhenua Broughtons were the children of Hereora Taueki and Charles Broughton, see Luiten, Wai 2200, #A163, p. 249.
[473] Ibid.

matter as urgent, and to forward the sale plan at once 'so that the sale may be pushed forward as quickly as possible.'[474] In the schedules on file, Broughton's sections 3 and 4 in Block V had crosses written in the margin beside them. These sections were included in the sale plan gazetted on 23 January 1903, weighted with £11 and £3 respectively for Broughton's improvements, a re-run of tactics Sheridan had employed against Hoani Puihi and Winara Te Raorao 13 years before.

The two examples of Crown eviction of Maori land owners that occurred at Horowhenua provide a stark illustration of State power, and a corresponding lack of regard by high-ranking Crown officials for property rights or common justice. Native Department Under-Secretary Lewis' uncompromising attitude towards the appeal to exclude existing Muaupoko homes from the surveyed township seems particularly iniquitous in light of the Native Minister's undertaking with respect to the future town, and Lewis' role two years earlier in presenting the township partition to the Native Land Court on behalf of the Crown as an arrangement for Muaupoko's benefit. The sum loaded by the Crown Lands Department for the value of 'improvements' – their homes and farm clearings in fact – scarcely made up for the appropriation. The fact that the same strategy was used 13 years later with respect to Broughton's 'improvements' at Hokio – again, his home – with no apparent discussion amongst officials suggests the practice had become accepted.

In both cases the injustice inflicted on the resident property owners was the result of direct Crown action. Once Hoani Puihi's appeal to Under-Secretary Lewis was ignored, there was very little recourse left to him but to leave. The Crown did not resort to any lawful eviction proceedings to achieve their removal: in the face of State might both sets of residents seemed to realise opposition was futile.

Both Crown evictions at Horowhenua introduce the issue of public interest: the extent to which the Crown by its actions favoured the 'public' interest over those of Maori property owners, or, put another way, the extent to which Maori interests were not included by the Crown in the provision for such 'public' interests. As argued at the conclusion of Chapter 4, such issues underlie Crown policy and practices with respect to the treatment of Winiata Te Whaaro and his family. The eviction of Hoani Puihi from his farm by Lake Horowhenua to make room for the town of Levin can be contrasted with the 'ample reserves' made in the township itself for future public purposes including sections for public buildings, municipal endowments, primary education, recreation, a cemetery, water supply and gravel.[475] Broughton lost his home at Hokio seemingly because five Levin businessmen had wanted the coastal Maori land made available for Pakeha settlement. The resulting 'Native Township' on the shifting sandhills did not meet the Crown's own statutory requirements.

[474] Surveyor-General to Chief Surveyor, 8 January 1903, ibid.
[475] Luiten, Wai 2200 #A163, p. 183.

Little Barrier Island / Hauturu, 1896

The army's involvement in the eviction of Maori owners from Little Barrier Island, it will be remembered, was used by Sheriff Thomson the following year to have Under-Secretary Waldegrave reconsider his refusal to provide police back-up, without success (see p. 75). Between 1878 and 1886 title to Hauturu or Little Barrier Island in the Hauraki Gulf was fought out in the Native Land Court between members of Ngati Whatua hapu claiming ancestral rights as their former society of 'Te Kawerau' on the one hand, and members of Ngati Wai on the other, who, in addition to having ancestral connections to the island, had also lived there since early colonial times.[476] Between 1880 and 1886 this contest was brought before the Native Land Court on five different occasions, before different combinations of judges and assessors. The end result was an ostensible win for the Ngati Wai residents, but it came at considerable cost. Tenetahi, who with his wife Rahui Te Kiri led the case for these residents, later claimed that he had expended up to £1000 on the litigation over title.

Underlying this title contest was the Crown's interest in purchasing the island, initially as a strategic military base at the entrance to the Gulf, and then, in a climate of increasing environmental consciousness from the mid-1880s, as a valuable forest reserve and bird sanctuary. The degree of ministerial and parliamentary intervention in the judicial process was remarkable, even by New Zealand standards. At the Crown's insistence, at the end of the 1881 rehearing, on the grounds that the island was 'an important military position', the court declared the island to be inalienable by sale or mortgage or lease for more than 21 years, with the exception of sale to the Crown. The following month the Crown gazetted a formal notification of its interest to acquire Hauturu by purchase.[477] In 1883 Parliament overturned the previous Native Land Court decision with respect to the Hauturu title, by including the island in special legislation which effectively restored its customary status, to be investigated anew by the court.[478] In the course of the resulting 1884 hearing, Judge Williams pointed out that he was unable to carry out Native Minister Bryce's edict to re-impose the restriction against alienation other than to the Crown – there was no lawful basis for doing so given the sentiments expressed by the owners themselves. But he did impress on those found to be entitled that no private transactions could be entered into until the court order matured in three months time, the order itself delayed for a week in which Chief Judge MacDonald and the Native Minister met to discuss the outcome.[479] In the parliamentary session that followed in 1884 the whole exercise was repeated: Hauturu was again included in special legislation which restored its customary title, the job of

[476] For a full discussion on past settlement see Peter McBurney, 'Traditional History of Mahurangi and Gulf Islands Districts', CFRT 2010, Wai 1040 #A36. The following narrative is drawn principally from Ralph Johnson, 'Report on the Crown Acquisition of Hauturu (Little Barrier Island)', (Waitangi Tribunal, 1999), Wai 567 #A1. The case study is also featured in Boast, *Buying the Land Selling the Land*, pp. 439-442.
[477] Johnson, pp. 8-10.
[478] Special Powers and Contracts Act 1883, Johnson, p. 12.
[479] Johnson, pp. 14-15.

determining title handed back to the Native Land Court a fourth time. On this occasion Ngati Whatua owners protested that the legislative intervention had come about because they had refused the government's purchase price of £2,700, which was significantly less than the value of the island and the timber on it.[480]

The result of the final title determination in October 1886 was the award of the island to 14 individuals of Ngati Wai, including residents Tenetahi and Rahui Te Kiri and their two children. Within a week of the decision, Ngati Wai's lawyer Charles Cave informed the Native Department that the owners were prepared to sell for £4000, provided Tenetahi's family were permitted to retain their home and surrounds amounting to 100 acres. The island was repeatedly offered for sale to the Crown as the economic depression of the 1880s bit, but these offers were not taken up because of the lack of funds for land purchasing.[481] Negotiations were resumed in 1890 but agreement could not be reached over price. In September 1891 Native Minister AJ Cadman advised the Ngati Wai owners that the government's purchase offer of £3000 would expire at the end of October. Three owners including Tenetahi signed a sale agreement, contingent on the consent of the other owners, with the £3000 to be paid to Tenetahi, leaving to him the distribution among the owners. Tenetahi later explained that this arrangement was designed to enable him to recoup the considerable legal costs arising from the repeated title investigations. Almost immediately, however, Cadman had second thoughts and in mid-October he withdrew the offer, telling the owners that funds were required for other land settlement purchases.

The next three years proved a battle of wills between government ministers under increasing pressure to appropriate the island for conservation purposes and the resident owners who sought to reap an economic benefit from their title by milling the kauri forest. Alarmed by news of Tenetahi's milling contract in the wake of the government's withdrawal from purchase at the end of 1891, almost at once Premier Ballance countermanded Cadman's decision, directing Auckland registrar HF Edgar to recommence negotiations. In May 1892 the relative interests of the owners in the island was determined by the Native Land Court, enabling the government to proceed with the purchase of individual owners' interests, rather than deal with them as a collective.[482]

The Crown wanted the island, but it was not prepared to raise its offer to take in the value of the timber the forest represented for the owners. Nor was it prepared to allow the owners to mill the forest resource, thwarting Tenetahi's milling operations throughout 1892 by threatening to prosecute anyone doing so for trespass, on the grounds that the land had been declared subject to the Government

[480] Special Powers and Contracts Act 1884, Johnson, pp. 16-17.
[481] See for example Tenetahi's 1888 offer to sell for £4000, Johnson, p. 24.
[482] Tenetahi later claimed that the application had been made at the instigation of the government land purchase officer, that the applicant alone was present in court, and that neither he nor his wife had ever been notified of the hearing, Tenetahi, 'Letter to Editor', *New Zealand Herald*, 25 November 1895.

Native Land Purchase Act 1877 and Amendment Act 1878. In addition, the owners' residence on the island was increasingly seen as incompatible with the government's conservation ambitions. In December 1892 Edgar's logical suggestion that Tenetahi be appointed Crown custodian as a way through the impasse was ignored.[483]

By July 1894 the Crown had purchased most of the owners' interests. Tenetahi himself repudiated the earlier 1891 sale agreement as having been abandoned by the Crown. His wife and daughter also retained their interests. In the intervening period Tenetahi had petitioned Parliament to have the family interest partitioned, in the hope of retaining their home and getting an economic return from the timber, to no avail. Unable to complete the purchase on its terms, the government resorted to legislative coercion. In October 1894 Parliament passed the Little Barrier Purchase Act 1894 which simply extinguished the non-sellers' interests and ordered that compensation be paid to the Public Trustee. As Ralph Johnson relates, the legislation itself and the accompanying debate rendered the nature of the acquisition ambiguous. On the one hand, it was presented as a compulsory acquisition in terms of the public interest in conserving the island as a bird sanctuary, while on the other the acquisition was presented as a purchase from the (mostly) willing owners (including the misrepresentation that Tenetahi himself agreed by virtue of his signature on the abandoned 1891 sale contract). Dissenting voices in Parliament suggesting that the Bill represented a violation of the Treaty of Waitangi were told the opposition from non-sellers was simply a matter of price. In the same way, although in Parliament Minister of Lands MacKenzie pledged to assess compensation for Tenetahi's expenditure on legal costs related to title determination, the 'compensation' for the compulsory taking itself was calculated on the basis of the Crown's purchase price, rather than the value of what the non-sellers lost as a result.[484] Two such non-sellers reluctantly accepted payment at this time, but the Tenetahi family remained in their family home of forty years and refused to move.

In June 1895, following reports of a Maori expedition to Hauturu to catch kereru, the government issued notice requesting all inhabitants of the island to remove before 31 July, under threat of prosecution for trespass. When this written notice was ignored, Tenetahi and Rahui Te Kiri were served with a summons for trespass. Commissioner of Crown Lands Mueller, accompanied by police and an interpreter, visited Hauturu at the end of June to explain matters in person:

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[483] Johnson, p. 232. Ironically, the Crown's choice of ranger Charles Robinson, together with one of the strongest proponents of the bird sanctuary, Walter Buller, were both later implicated in the smuggling of endangered bird species from the island to international bird collectors.

[484] Johnson, pp. 44-48. Magistrate Northcroft was directed to undertake a valuation of sorts for the assessment of compensation. As Johnson relates, his calculation of £2,900 came very close to the Crown's purchase price of £3000, based on an unimproved land value of £1700; a timber value of £800; and dwellings and cultivations valued at £460. In addition to the questionable values of land and timber, it scarcely seems fair that the value of improvements belonging to the Tenetahi family was included in the value as a whole, which was then divided by owner interest to deduce a proportionate share, rather than attributed to the resident owners.

> I took the greatest pains to make them understand the provisions of the Little Barrier Island Purchase Act 1894 shewing how that Act is on a par with the Public Works Act under which the Government can acquire land for roads or railways or any other public purposes through the land of Europeans in a similar manner, although these Europeans may oppose in every possible way and refuse to give their consent.[485]

Tenetahi refused to leave, telling the commissioner that the purchase had been improper; that neither he nor his wife had sold their share; and that, regarding the bird life, he had 'always preserved them to the present time'. His later invoice suggests that the family of three may have been arrested and taken to Auckland to come before the Magistrates Court in October 1894. Magistrate HW Northcroft initially showed some sympathy with Tenetahi's argument, both with regards to the Crown's breach of the 1891 agreement and the low price paid for the land, his comments reported in the newspaper. After an adjournment of five days during which the magistrate was reprimanded by the Crown Solicitor Tole, Northcroft ordered that the defendants remove from Hauturu by 10 December 1895.[486]

Tenetahi protested the eviction judgement in a long letter to the editor of the *New Zealand Herald*, setting out the background of litigation and Crown interference, and invoking article two of the Treaty of Waitangi and its guarantee to all Maori of the exclusive and undisturbed possession of their land, so long as they desired to retain the same.[487] In closing he signalled that the Crown would have to enforce the eviction: 'The bailiffs of the Crown will find us at our home on the 11th December'. In light of this letter, the Crown Solicitor advised the Commissioner of Crown Lands that it would be necessary to arrange police to accompany the bailiff, the cost of the eviction to be charged against the purchase money held by the Public Trustee on behalf of the family. On 12 December 1895, Robinson compiled a list of those still there, which was sworn in as an affidavit.

Wheels were set in motion to enforce the eviction in the third week of January 1896. In the intervening six weeks the government had changed its mind as to approach, abandoning the idea of using the police in favour of the army. By 20 January Crown Solicitors Tole and MacAlister, acting on instructions from the Minister of Lands, had engaged the steamer *Nautilus* to ferry themselves and a contingent of 13 Permanent Artillery men under the command of Lieutenant Hume to the island. With them was the bailiff, a Mr Menzies and his assistants, and an interpreter, a Mr Thompson. As the newspaper noted, the police were 'out of the business this time': Constable Luke McDonnell was the sole constable with the party, specially selected because 'he had known and been friendly with Tenetahi for years.'[488]

In a strange twist which scarcely seems coincidental, at the same time the armed force was gathering on the mainland to undertake the eviction, Governor Lord Glasgow stopped in at Hauturu on board the

[485] Mueller to Surveyor-General, 29 June 1895, L&S 4411/29 cited in Johnson, p. 52.
[486] Johnson, pp. 52-53. Tenetahi's expenses are set out in Boast, *Buying the Land Selling the Land*, pp. 441-442.
[487] Tenetahi, 'Letter to the Editor', *New Zealand Herald*, 20 November 1895, cited in Johnson, p. 55.
[488] *New Zealand Herald*, 20, 22 January 1896.

Hinemoa. Newspaper reports of the visit clearly linked it to the impending eviction, namely to see whether the family were still there.[489] The governor was said to have berated 'Tenetahi and his friends' telling them that 'they were the only natives in the colony whom he was not able to meet in a friendly spirit. He pointed out that they were doing wrong in not obeying the Government and the law.'[490] This version of the visit was reportedly denied by Tenetahi after the eviction a week later. Tenetahi maintained that the Governor had merely wanted to see the island, that he had not broached the subject of their possession, and that if he had, Tenetahi would have set him straight.[491]

The *Nautilus* arrived off Hauturu at 5am on 21 January 1896, Tenetahi meeting the two boat-loads of armed soldiers on the beach. These troops were left there while the officials accompanied Tenetahi to his house to prepare for his removal. His remonstrations about the injustice were cut short by Constable McDonnell 'tapping him, in a friendly way on the shoulder, and asking him to come away without making any bother.'[492] Tenetahi and Rahui Te Kiri were then escorted on board and taken to Auckland via Great Barrier Island. Once in Auckland the couple do not appear to have been detained. Tenetahi spoke to the press from his lawyer's office the same day, highlighting the extent of his loss and the fact that he had never intended to forcibly resist the eviction. His allegations of a threat to burn down his house were denied by McAlister: 'Every facility was given to the residents to get together their belongings, and they were told that whenever they chose to go and fetch the remainder, stock or what not, every facility would be offered them.'[493]

Days before the eviction the *New Zealand Herald* had commented how 'rather curious' it was that the first New Zealand Government 'to do a real old-fashioned eviction' was one whose members sympathised with the Home Rulers in their opposition to evictions in Ireland.[494] The show of force was also later mocked by this newspaper, which contrasted the Liberal government's heavy-handed approach with that of former Premier Ballance:

> Mr Ballance announced that his course of action on the native question was to be the 'one policemen policy'. No native difficulty could be of greater dimensions than could be overcome by one member of that force to whom we all look up to with awe, and whose most formidable weapon is a wooden baton. Mr. Seddon is not the political heir of Mr. Ballance, and that is proved by the fact that when a poor old Maori couple have to be evicted from an island where they have no tribe around them, and no relatives, the one policemen who would be quite sufficient of the purpose is not sent, but a corp of artillerymen with a torpedo detachment.[495]

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[489] 'The Warlike Expedition to Little Barrier', *New Zealand Herald*, 20 January 1896.
[490] 'The Governor's Visit to Little Barrier', *New Zealand Herald*, 17 January 1896.
[491] *New Zealand Herald*, 25 January 1896.
[492] 'The Little Barrier Expedition', *New Zealand Herald*, 22 January 1896.
[493] 'The Little Barrier Expedition', *New Zealand Herald*, 22 January 1896.
[494] 'The Natives and the Little Barrier', *New Zealand Herald*, 18 January 1896.
[495] *New Zealand Herald*, 25 January 1896 supplement.

In the newspaper's opinion, 'the whole affair has been a misfortune and a bungle', suggesting that the government's handling of it, in terms of wielding both its legislative and military force, was highly questionable. 'We venture to say that the measures taken by the Government in regard to Tenetahi would be contemplated by astonishment by lawyers in England if Tenetahi were to get his case to that Court of Appeal.'[496] Tenetahi, the paper claimed, 'undoubtedly deserves considerable sympathy'. Interestingly, although disapproving of the forceful tactics, the paper did not blame the government for his misfortune, but rather the public interest the government served:

> The purchase of the island, for the special purpose of protecting those native birds which have disappeared from the mainland, and which all mean of science are anxious should be preserved, was urged upon Ministers by Lord Onslow, who was then Governor, by the whole people of the colony, and also by those in Europe who take an interest in natural science.[497]

Three soldiers had been left on the island with the Crown ranger, 'with instructions to let any Maori land to get property belonging to him, but to allow no permanent residents to again take up occupation.' In March a party of eight was reported by the ranger to have landed and reoccupied their homes. Once again Tole and MacAlister availed themselves of the services of the army under Lieutenant Hume, and Constable McDonnell to arrest and remove them. On this occasion 18 armed soldiers were sent and four men, including Tenetahi and his son, were arrested. The two women with the party, one of whom was Rahui Te Kiri, were landed at Great Barrier Island. In the Magistrates Court in Auckland the men were charged with wilful trespass and released on bail. The following day Tenetahi argued in court that they had returned to Hauturu to protect their kumara and potato crop from pigs 'after an express understanding had been arrived at that he should be allowed to do so.'[498] The charges were dismissed by Magistrate Northcroft.

As invited by the government, in 1901 Tenetahi subsequently sent in his statement of account of monies expended in connection with Hauturu, 'Te kaute o nga moni i pau mo nga mahi me nga whakahaerenga, me nga whakawakanga me nga raruraru i pa mo tenei moutere mo Hauturu' / 'Statement of the monies expended in connection with the dealings and adjudication and troubles affecting the Little Barrier'.[499] The bill, going back to the first hearing in Helensville in 1878 and including the loss of his home at Hauturu, came to £2,052. Sheridan dismissed this as 'altogether too absurd for serious consideration', suggesting £200 would be 'I should say, a very generous offer'.[500]

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[496] 'The Little Barrier Case', *New Zealand Herald*, 22 January 1896.
[497] Ibid.
[498] *New Zealand Herald*, 28 March 1896.
[499] Cited in Boast, *Buying the Land Selling the Land*, p. 441.
[500] Sheridan, 27 February 1901, MA 13/45 cited in Johnson, p. 57.

Johnson recounts that even this fraction was never subsequently paid. As late as 1910 Tenetahi was still petitioning the government for restitution.[501]

The Hauturu case study outlined above ends Richard Boast's study of nineteenth-century government policy with respect to Maori land as an example of the highly coercive stance the government was occasionally prepared to adopt in order to procure Maori land, the expropriation achieved in this case by statute.[502] For our purposes, the statutory extinguishment of Tenetahi and his family's property rights on Hauturu raises again the issue of public interest and the weight given by the Crown to such interests at the expense of, or without proper regard for, the Maori land owners.

Unlike the Crown evictions at Horowhenua, Tenetahi and his family refused to move from their island home. The result was that perhaps for the first time, as the *New Zealand Herald* had commented, the government was drawn into its first 'real old-fashioned eviction', meaning recourse to legal trespass proceedings to remove the family. In the face of the family's determination not to comply with the court order, the government bypassed the police and called instead on the army. The intimidation this show of force represented was not lost on the media of the day. If, in the context of the times, involving the police in an ejectment of Maori depended on a potential breach of the peace, did recourse to the army imply that the Maori occupiers were, once again, an enemy of the State? The media, and Tenetahi himself, seems to have found such a proposition absurd.

Pouwhakarua, 1899

Much closer to home on the banks of the Rangitikei River near Mangaweka, Ngati Haukaha were evicted from Pouwhakarua 1 within two years of the Pokopoko eviction. The 1200-acre block had been created from the partition of Otairi 1D in August 1884.[503] Pouwhakarua 1 had been awarded to Retimana Te Rango alone, but he held the land in trust for members of 'the Ngati Haukaha family or hapu of the Ngatihauiti tribe': a declaration in English and Maori to this effect was signed at the time. In this deed, Retimana Te Rango was said to transfer the land 'in consideration of the natural love and affection [for named Ngati Haukaha individuals] … provided that the land should be inalienable by gift sale mortgage or lease except with the previous consent in writing by Retimana Te Rango or his appointee.'[504] Like Kemp's trusteeship on behalf of Muaupoko, this arrangement was adopted by the Ngati Haukaha owners to prevent the alienation of the land through the purchase of undivided individual interests. One need only read the history of Crown acquisition of the parent block Otairi via advances to competing hapu *before* title had been determined, with additional acreage debited *after*

[501] Johnson, p. 58.
[502] Boast, *Buying the Land Selling the Land*, pp. 439-432.
[503] See map in TJ Hearn, 'Sub-district block study – southern aspect' (CFRT, 2012), Wai 2180, #A7, p. 149.
[504] Copy of Declaration, 21 August 1884, J1 616q 1899/482.

for survey and legal costs, to appreciate the tactic.[505] These Ngati Haukaha owners took the further precaution of having the declaration drawn up by a solicitor in Whanganui and authorised by Trust Commissioner Alexander Mackay in January 1885.[506] Among the 17 individuals listed in the schedule was Merehira Hori, that is, Hori Tanguru's wife, Merehira Te Taipu.

Retimana Te Rango apparently leased the land to the Hammond brothers, keeping the rent himself.[507] When he died in 1894, his successors renewed the lease over the protest of the Ngati Haukaha beneficiaries who wanted to live there. At that point, in August 1897, these beneficiaries approached the Chief Judge of the Native Land Court through their solicitor JM Fraser for an inquiry under Section 14(10) of the Native Land Court Act 1894. This Section gave the court jurisdiction to determine whether a trust existed and, if so, to order the inclusion of such beneficiaries as owners on the title. Having sighted a copy of the declaration, Chief Judge Davy recommended that the requisite Order in Council authorising the inquiry be issued. This was duly gazetted in February 1898.[508] The inquiry went ahead in July 1898 at Whanganui, where Judge Ward indeed found the individuals listed in the declaration to be the owners of the land.[509] Having proved their legal title in court, the following summer Ngati Haukaha moved in, a presence of four men, five women and four children.[510] In the meantime, however, the Hammond brothers had been declared bankrupt, the renewed lease of Pouwhakarua 1 made with Retimana Te Rango's successors assigned as part of their estate to the New Zealand Loan & Mercantile Company, who had then employed a Mr Georgetti to manage the land.

Ngati Haukaha had been at Pouwhakarua a month when the finance company took action to evict them, the crisis encapsulated in Pene Pirere's telegram to Premier and Native Minister Seddon:

> Re Pouwhakarua No 1 Judge Native Lands Court decided eight months ago that we eighteen in number owners now in possession loan and mercantile hold lease signed by four five years ago loan mercantile ejecting us seek protection reply.[511]

On 28 March 1899 Georgetti had appeared on Police Constable Rutledge's doorstep at Mangaweka, armed with a letter from Company solicitor Louis Cohen, requesting the policeman's assistance to execute the eviction:

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[505] Hearn, Wai 2180, #A7, pp.150-174. As set out earlier, Muaupoko took similar measures in 1873, vesting their entire 52,000-acre estate in Te Rangihiwinui Te Keepa (Major Kemp), J Luiten, Wai 2200 #A163, pp. 107; 115.
[506] Mackay confirmed that he had inquired into the arrangement and was satisfied by it, 6 January 1885, on declaration, J1 616q 1899/482.
[507] P Pirere and others to Premier Seddon, 31 March 1899, J1 616q 1899/482.
[508] Order in Council dated 4 February 1898 on file in J1 616q 1899/482.
[509] The owners were Te Mihi Te Rango, Hoera Te Rango, Ani Te Rango, Pene Pirere, Hemi Papakiri, Rena Maikuku, Ema Retimana, Arapera Potaka (Pirere), Ngamoko Maikuku, Ngawai Maikuku, Ngahuia Maikuku, Te Otene Pirere, Kereopa Pirere, Mere Hira Hori, Tawhara Te Rango, Wereta Henare Maikuku, Peeti Maikuku.
[510] At least this is how many were counted by Constable Rutledge at the time of their eviction in March 1899, Report by Constable Rutledge, 29 March 1899, J1 616q 1899/482.
[511] P Pirere to Seddon, telegram, 29 March 1899, J1 616q 1899/482 14/38.

> As you are doutbtless aware several natives have unwarrantably intruded and are still trespassers upon the lands known as Pouwhakarua near Mangaweka. As Solicitor for the New Zealand Loan & Mercantile Company the owners I have written to these natives asking them to leave. They have declined. Mr Georgetti has been duly authorised by the NZ Loan Company to remove and eject these natives. Of course no more force will be used than is necessary – I hope no force will be needed. But in view of there possibly being a breach of the peace I beg to request that you will accompany Mr Georgetti so that in the exercise of the Company's lawful rights no disturbance may be created.
>
> The Company will pay all necessary expenses. Will you please assist Mr Georgetti by procuring a sufficient number of men to accompany you to Pouwhakarua. The matter should be kept quiet as otherwise the whole country side will doubtless be present and that would probably make it more difficult to deal with the Natives.
>
> Of course the Company is strictly within its legal rights in forcibly ejecting these trespassers. Should any natives resist – they should be charged with assault.[512]

The following morning – 29 March – seven men turned up at Pouwhakarua to help Georgetti undertake the ejectment. Constable Rutledge was present. In his report to Inspector Gillies at Whanganui later that day, Rutledge explained: 'I went to Pouwhakarua this morning & the manager had 7 men ready to put these natives out of the premises...'[513] In Pene Pirere's version, the police constable was associated with the arrival of this show of force, even if his stated role was one of peace-keeping: 'He [Georgetti] however took up a coach load of men to eject us together with the Constable who stated that he was there to see that no breach of the peace was committed.'[514]

Pene Pirere and his Ngati Haukaha community were not prepared to leave. Once again there were different versions of their response to the request. Rutledge reported: 'they refused & stated that if hands were put on them they would resist.'[515] Pene Pirere told Seddon: 'the manager evidently tried to incite us into committing a breach of the peace and then sought to have us arrested. We pointed out that we were waiting for the law to take its course and that if he wanted to arrest us well and good but he would not do that.'[516] To break the impasse, Rutledge agreed that Pirere telegraph the Premier, 'asking him [Seddon] what they should do & they said that they would act on his reply.' This is the telegram set out above, asking in fact for protection. Constable Rutledge continued: 'I considered that there would be a serious row & told the manager that it would be best to wait for a reply to their wire so if it is possible for them to be got out quietly it would be better. I would like advise [sic] on this matter.'[517]

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[512] L Cohen, Solicitor to Constable Rutledge Mangaweka, 28 March 1899, J1 616q 1899/482 9/38.
[513] Report of Constable Rutledge, 29 March 1899, J1 616q 1899/482 11/38.
[514] P Pirere and others to Premier Seddon, 31 March 1899, J1 616q 1899/482.
[515] Report of Constable Rutledge, 29 March 1899, J1 616q 1899/482 11/38.
[516] P Pirere and others to Premier Seddon, 31 March 1899, J1 616q 1899/482.
[517] Report of Constable Rutledge, 29 March 1899, J1 616q 1899/482.

Pirere's telegram defused the potential for violence that day, but not for good. As Constable Rutledge pointed out in his report penned that afternoon: 'They will fight if they are forced out and one Constable will be useless there, & there is no JPs in Mangaweka.' By this stage Rutledge was aware of the background to the dispute, setting it all out for Inspector Gillies.

In the days that followed both parties appealed to Premier Seddon. In a long letter written for the correspondents in English, Pine Pirere, Merehira Te Taipu, Wereta Roru and Otene Pirere explained the history of the dispute: 'As this Sir has resolved itself into a very intricate case we seek your protection until settled and ask you to see that our rights are maintained. As we have little or no land we require this for a home ...'[518] Utiku Potaka, too, telegraphed the premier from Rata in support: 'Kai te rarurarau a ngati hauiti mo te whenua ko pouwhakarua te ingoa. Kai te tika nga maori no ratou te whenua me awhina mai koe i a ratou' / 'Ngatihauiti are in a difficulty about the land known as Pouwhakarua. The Maoris are in the right the land is theirs – assist them.'[519]

Company solicitor Louis Cohen had a more direct line to the Premier. On 30 March he, too, sent a telegram to Seddon in his capacity as Native Minister:

> Serious disturbance threatened by natives at pouwhakarua I acting for Loan Mercantile registered owners of lease pene pirere has wired you can I see you Wellington Saturday morning peace in meantime please reply.[520]

This meeting went ahead, Seddon informing Cohen that the government could not interfere.[521] There is nothing on file to suggest that the Premier communicated with the owners of the land in response to their plea for protection.

Most of the above correspondence was referred to the Under-Secretary of Justice, Frank Waldegrave, by the end of the first week of April. The matter had also come to the Justice Department's notice via police channels. Constable Rutledge's plea to Inspector Gillies for advice after his tense day at Pouwhakarua had been referred in turn to Police Commissioner Tunbridge. In doing so Gillies wrote:

> In the face of Judge Wards decision which is referred to in Constable Rutledges report I am doubtful if the police should lend their assistance in such a case as this and I will instruct Constable Rutledge not to interfere in this case until I receive your instructions. The most I think the police should do is to proceed against these natives under subsection 3 of section 6 of the Police Offences Act 1884 by summons and have the case fought out in Court or the Company should obtain a writ of ejectment, then the police could be present to prevent a breach of the peace.[522]

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[518] P Pirere and others to Premier Seddon, 31 March 1899, J1 616q 1899/482.
[519] U Potaka to Premier Seddon, telegram, 1 April 1899, J1 616q 1899/482. Contemporary translation on file.
[520] L Cohen to Native Minister, 30 March 1899, telegram, J1 616q 1899/482.
[521] See Under-Secretary Waldegrave's note, 6 April 1899, J1 616q 1899/482.
[522] Inspector Gillies note on back of report, 30 March 1899, J1 616q 1899/482.

As Gillies' advice highlighted, the company's eviction attempt had not been undertaken on the strength of any writ. Section 6(3) of the Police Offences Act 1884 referred to by him provided for the punishment of those who 'wilfully trespasses in any place, and neglects or refuses to leave such place after being warned to do so by the owner or any person authorized by or on behalf of the owner.' It is difficult to see how this provision would apply, given that 'the natives' in question were the legal owners. Tunbridge simply passed the issue on to Waldegrave with the comment, 'as this matter appears to have already been brought under the Notice of the Rt Hon the Premier I refer the matter to you. It appears to me the Company should proceed by writ of ejectment.'[523] Waldegrave responded five days later: 'the Premier has informed Mr. Cohen ... that Govt. cannot interfere. I understand the natives are mere trespassers.'[524] In communicating this back to Whanganui, Tunbridge set out the limits of police intervention: 'If the [company] decide to forcibly eject these Natives let Constable Rutledge and one or two other Constables attend to take action only in case of a breach of the peace.'[525] The Commissioner's omission of any requirement for a writ of possession is significant. Gillies in turn advised Rutledge. By now it was 9 April, 11 days after the initial confrontation: 'you can have the assistance of Constables Black and Moon, but you must be careful to carry out the Commissioner's instructions.'[526] On 22 April Rutledge informed Inspector Gillies: 'the natives ... have left Pouwhakarua peacefully of their own accord.' On 1 May 1899 Ngati Haukaha's appeal of 30 March to Premier and Native Minister Seddon arrived on the Justice Under-Secretary's desk. Waldegrave's note on the cover sheet reads 'already dealt with – file'.[527]

Hearn's research indicates that the Section 14/1894 ruling with respect to Pouwhakarua 1 was taken to the Native Appellate Court in December 1900.[528] The following year the block was partitioned, possibly at the instigation of the Crown which seems to have purchased one-third of the undivided interests by this time. There has not been time to research these matters any further.

The dispute over occupation at Pouwhakarua, occurring as it did in a similar time and place as the Pokopoko eviction, provides another opportunity to consider the Crown's position with respect to such disputes. In their letter to the Premier/Native Minister, Ngati Haukaha had stressed that they were a 'peaceable people'.[529] The appeal for protection from Georgetti's men is reiterated in their letter to Seddon in three different places. Add the telegrams of Pene Pirere and that of Utiku Potaka, and the result is five explicit calls for help. In setting out the history of the dispute for the Native Minister, Ngati Haukaha was well aware that it presented 'a very intricate case'. Once again, however, we see a government impervious to Maori appeals and indifferent to the underlying issues in

[523] Commissioner Tunbridge to Under-Secretary Justice, 1 April 1899, J1 616q 1899/482.
[524] F Waldegrave, note dated 6 April 1899 on above.
[525] Commissioner Tunbridge to Inspector Gillies, 6 April 1899, note on above.
[526] Inspector Gillies to Constable Rutledge, 9 April 1899, note on above.
[527] See Coversheet, 'Pene Pirere and others Pouwhakarua', 6 May 1899, J1 616q 1899/482.
[528] Hearn, Wai 2180 #A7, p. 175.
[529] P Pirere and others to Premier Seddon, 31 March 1899, J1 616q 1899/482.

dispute. There is no indication on file that Pene Pirere received any response from the Premier, let alone any encouragement that the dispute would be inquired into, or protection afforded them. We know that Cohen was told by Seddon that the government could not interfere.

The implication from such a stance once again seems to be that the dispute would be resolved by the law. This much was communicated through police channels, albeit with an assumption that the law would be on the side of New Zealand Loan & Mercantile, and not the Maori land owners. In the event, with no prospect of government protection, it appears Ngati Haukaha elected to leave Pouwhakarua without a fight. Having experienced the eviction at Pokopoko two years before, Merehira Te Taipu may not have been able to face another. Perhaps Ngati Haukaha knew from this experience that things would not go their way in any case. The comments on file tend to suggest they would have been right in thinking so. Unlike Winiata Te Whaaro, the Ngati Haukaha owners had legal title to Pouwhakarua, but ultimately this did not make their tenure any more secure, or cause Ministers of the Crown to intervene on their behalf. Unlike Studholme, those seeking to remove the owners from the land could not be said to be acting 'lawfully', in that the finance company had not won a writ of possession and nor, in the circumstances, is it probable they could have done so. At the end of the day, this made no difference as to whether the eviction would go ahead or not. The last advice to the police constables on the ground, to intervene only at the point where peace was breached, is crucially silent on the issue of whether the company was in fact acting 'strictly within its legal rights' as Cohen maintained. It is difficult to avoid the conclusion that in any contest between Pakeha commercial interests and those of 'natives', the former would inevitably triumph.

The case study highlights, too, the complexity surrounding police involvement in such proceedings. Like the earlier evictions at Te Aomarama and Maungatautari, and even that at Hauturu (carried out peacefully largely due to the relationship between Constable McDonnell and Tenetahi) the presence of Constable Rutledge at Pouwhakarua seems to have defused what could have been a violent altercation. Certainly Georgetti's henchmen were discouraged by the constable from carrying out the eviction that day. On the other hand, as Cohen's request to Constable Rutledge makes explicit, a peaceable eviction with the assistance of the police was precisely what such private parties were after. The bottom line of Bryce's 1884 directive acknowledged that police involvement in the civil process lent state support to private actions which, in the context of the colonial frontier, he was not prepared to lend. The writ of attachment made out to Cullen and the constables of New Zealand to advance Studholme's civil proceeding against Winiata Te Whaaro was ultimately an act of profound intimidation.

Mimitu-Ruarei, 1914

Perhaps the most common type of eviction, and possibly the one least heard of, was that arising from the routine partitioning of Maori land on which there was existing settlement. As set out in the following chapter, the Te Whaaro family were subjected to just such dispossession – amounting to a second eviction – at their Mangaone kainga in 1899. Improvements they had made in the locality were, as a result of the partition of the block in 1896 in their absence, awarded to other owners. The extent of their loss only became apparent to them once the surveyors arrived three years later, cutting the land according to a different plan than that allegedly produced in court (see 'A Second Eviction, pp. 144-148). Winiata Te Whaaro's protest about this confiscation received a sympathetic hearing from the Native Affairs Committee three years in succession but the committee's favourable recommendation for an inquiry, or rehearing, or compensation, was not acted on. The Under-Secretary for Justice Frank Waldegrave dealt with the matter in his usual way, by filing it.

As Judge Mair pointed out at the time, in partitioning land the Native Land Court *generally* aimed to design an outcome which took account of existing improvements. The Te Whaaro family's loss above was partly due to the mistakes in the plan put before him, and partly due to the fact that the family had not been notified about the partition hearing in the first place. Research for the Waitangi Tribunal frequently uncovers similar loss arising from shortcomings in process. The unsurveyed southern boundary of Mangaohane at the point of title determination is a case in point. On the other hand I have come across examples in my research in other districts where Maori resident owners were displaced as a result of partition, even after it was explicitly stated by the judge at the outset of the hearing that no such displacement would occur. This was most likely to happen when the purchase of undivided interests preceded partition. In such cases, the purchasers were invariably dealt with first by the court, the Maori non-sellers having to wait to process their arrangements only once the purchasers had been satisfied. What is a little more difficult to prove, but no less true, is the fact that the purchaser, whether the Crown or private individuals, invariably got first pick of location in any partly-purchased block – with proportionally higher amounts of the best quality land in terms of farming potential – the non-selling owners left with a higher proportion of hillsides.

My recent block study of Mimitu-Ruarei which lies in the Mangakahia Valley north-west of Whangarei provides such an example.[530] The 5000-acre block encompassed the established Maori settlement of Te Oruoru, and a number of smaller kainga besides. Moreover by the time of partition in 1914, a number of locals had begun to farm in a modest way. The task facing Judge Wilson was not an easy one. In addition to satisfying three private purchasing parties, the judge also had to satisfy 275 'non-sellers', both resident and non-resident, organised into 11 different lists. As was customary, the

[530] The following narrative is drawn from J Luiten, 'Mimitu-Ruarei: a local study', (Waitangi Tribunal, 2016), Wai 1040 #A63, pp. 70-75.

court began the partition by dealing with the purchasers first. Indeed, two days before the hearing Judge Wilson had driven to Mangakahia to view the land in the company of these purchasers. In court, an early objection to their arrangements prompted the judge to explain the rationale behind the whole scheme.

> None of those owners in occupation of the land would be dispossessed of their holdings & cultivations, but all absentee owners would have to comply with a system of subdivision which would be for the general benefit of the community and the advent of genuine European purchasers should be encouraged because by the expenditure of their money and the well recognised improvement which followed their effort tended to enhance the values and the reproductiveness of all lands in the vicinity.[531]

Judge Wilson's address contains the familiar argument in favour of renewed Maori land alienation from 1909, the subdivision and transfer of land into Pakeha hands portrayed as a matter of public interest. Absentee owners would not be allowed to stand in the way of 'reasonable subdivision' based on principles of 'quality and utility'. On the other hand, the pronouncement contains a clear reassurance to the resident owners that they would not be dispossessed. This was tested the following day when the court was confronted by competing claims to some of the highest valued lands in the block. The Pakeha purchaser had selected his portion on the rich river valley where a number of owners had lived and cultivated for at least 16 years. In more recent times their nikau whare had been replaced by a paling house. When the proposed partition for the purchaser was presented, the owners' kaiwhakahaere produced their own list of owners and shares, claiming their home. This however was cut short by the court, which decreed that: 'Before dealing with the other lists decided to complete cases for purchasers first of all', effectively relegating the Maori owners to the role of objectors.[532] The court was adjourned for the day to give the parties time to resolve matters. The next morning it was announced that the owners would vacate to another part of the block, giving up their home to the purchaser. The basis for this capitulation is not known, and while it could be argued that such compromise was part and parcel of the 'give and take' required for partition, the outcome ran counter to the court's earlier explicit reassurance. In bringing matters to a close, Judge Wilson gave owners displaced by the partition arrangement six months to remove any 'fences, and growing crops, as well as houses etc'. Two wahi tapu were also located on the partitions awarded to purchasers. The minutes record their undertaking to fence these off, but the court did not make any formal reservation.

The twentieth-century example of Mimitu-Ruarei has been included because it demonstrates the extent to which the preference shown by the Native Land Court to Pakeha purchasers of Maori land over Maori land owners had become routine practice. This ingrained preference was justified by the 'public interest' of 'close settlement', what Boast describes as a 'kind of sacred mantra in the New Zealand

[531] 26 January 1914, Whangarei MB 11/114, cited in above, p. 70.
[532] Whangarei MB 11/122, cited in above, p. 71.

political mind', which nonetheless seemed to contain no space for Maori.[533] Maori occupation had to give way to such 'reasonable subdivision', even when the court explicitly reassured residents otherwise. What is less clear is whether the lack of concerted protest in this particular case constitutes Maori acceptance of such a rationale, or whether they knew by 1914 that resistance was futile.

Critiquing Crown non-intervention

To make sense of what these case studies reveal about Crown policies and practices regarding the eviction of Maori, we can begin by dividing them into evictions where the Crown was directly interested in the outcome – like Horowhenua and Hauturu – and those where private interests were involved. In the case of Crown evictions, Crown officials had demonstrably few qualms at wielding both parliamentary and military might against Maori land owners to achieve the desired outcome. At Horowhenua there was no need to resort to 'lawful' ejectment proceedings. At Hauturu, in the face of Tenetahi's resolution to remain, the Crown responded by calling in the army to execute the eviction. The policy of non-intervention patently did not apply where Crown interests were at stake.

With regard to civil ejectment proceedings, Crown behaviour was more complex. Native Minister Sheehan's direct involvement to facilitate the police eviction of Te Maiharoa's community on behalf of the wealthy runholders of Waitaki Valley appears as an aberration against developing Crown policy and practices with respect to the 'Maori' hinterlands of the North Island. In such frontiers, the Crown's approach appears double-edged. On the one hand, Bryce's Circular 4/1884 constituted direct Crown intervention in the execution of civil ejectment proceedings against Maori: sheriffs were not permitted to use police to execute their warrants without the express written consent of the Defence Minister. The directive was an important Ministerial check on police involvement that was still in operation in 1897 at the time of Studholme's writ against Winiata Te Whaaro. Against the backdrop of law surrounding forcible entry, it practically meant that writs of possession against Maori could not be enforced at all. On the other hand, successive Crown Ministers and their officials took increasingly less responsibility for intervening in such civil actions, to the point where Maori appeals for protection were seemingly not responded to at all. Viewed together, both practices amount to Crown disassociation from civil proceedings affecting Maori, a studied insistence that civil disputes be left to the law. Justice Department officials viewed Winiata Te Whaaro's resistance in just such light: 'The court has said that the land is Studholmes, and you must let him have it.'[534] It is crucial to understand the paradox contained in this policy of integration: on the one hand insisting that the law of the land

[533] Boast, *Buying the Land Selling the Land*, p. 450.
[534] Draft response on Justice Department file, 7 May 1897, J1 578 1897/982-1056, Wai 2180 #A52(a), pp. 22-23, (see p.26).

now applied equally to Maori, while on the other deflecting the full repercussions of doing so, by effectively preventing the practical enforcement of court orders.

Winiata Te Whaaro's refusal to give up possession was regarded by Under-Secretary Waldegrave, and indeed by Sheriff Thomson and Chief Justice Prendergast, as contempt for the law and disobedience to the Queen. Any consideration of his supposed 'contempt', however, demands an acknowledgement of the inherent bias of New Zealand law at the time. Studholme's ejectment of Winiata Te Whaaro rested on his title to Mangaohane 2 which was finally won in January 1896 after five years of legal proceedings costing (in today's terms) over $250,000. As set out in Chapter 1, the runholders' ultimate success relied on the financial and political influence they wielded. Crucially, Studholme's title was obtained through key statutory provisions between 1892 and 1894 designed to fast track the resolution of disputed Maori land transactions in favour of the purchasers, and Mangaohane in particular.[535] In the case of Studholme, his unlawful transactions of Mangaohane 2 were validated as 'bona fide' as a result. As Winiata Te Whaaro pointed out to Chief Justice Prendergast in Wellington, this parliamentary support for Studholme as purchaser stands in stark contrast to the absence of any similar provision to protect his interests as the occupier of customary lands, despite this interest having been recognised by the Chief Judge of the Native Land Court.

Tom Brooking estimates that by 1891 perhaps one million acres were subject to ownership disputes arising from transactions of Maori land.[536] The Crown's insistence that Maori obey the law without any consideration for underlying issues of injustice in any title dispute, particularly where Pakeha title rested on statutory intervention, is difficult to construe as impartial 'non-intervention'. On the contrary, the Crown's disassociation ultimately constitutes support for the interests of Pakeha settlement. Civil ejectment proceedings, even when Maori defendants did participate, were not designed to consider underlying title disputes. As the Maungatautari case study demonstrates and, indeed, Winiata Te Whaaro's own experience shows, in the context of the colonial frontier such civil actions acted as the final trump card held by the successful title owner, rendering dispossession 'lawful'. When such titles were the result of inequitable laws passed by a settler government, the trump card of the common law writ became an effective means of dispossession.

It is this reality that lies behind Circular 4/1884. Title-holders were prevented by law from forcibly removing those in peaceable possession. Bryce's directive effectively meant that in the last two decades of the nineteenth century Supreme Court writs of possession against Maori could not be enforced as a matter of course. The Ministerial check was necessary precisely because the laws of the land were so weighted in favour of Pakeha settlement at the expense of tribal enjoyment, occupation and control of their lands. Although the directive could be regarded as a protective measure for Maori,

[535] The background to the Validation Court is discussed in Boast, *The Native Land Court*, pp. 37-45.
[536] Tom Brooking, '"Busting Up" the Greatest Estate of All: Liberal Maori Land Policy, 1891-1911' (1992), 26(1) NZJH 103 cited in Boast, *The Native Land Court*, p. 37.

this was not Bryce's motivation. Its roots in the contested lands bordering Te Rohe Potae expose the Ministerial check as a short-term expediency to maintain 'tranquility' within the frontier, enduring only until the weight of Pakeha settlement forced the issue. What the directive actually represents is a failure to accommodate and protect Maori interests within the statutory law of the colony. The constraint with regard to police enforcement also meant that the way each dispute over possession unfolded, and indeed the extent to which the law was enforced, became a local contest between the personalities involved. Winiata Te Whaaro chose to remain and was arrested by the police anyway, the Justice Department officials outwitted by Studholme. Pene Pirere, although possessing legal title, chose to leave in the face of Georgetti's show of force and the absence of any prospect of government protection. The outcome in both cases was the same: Maori dispossession.

One final point is that in every single case the Maori occupants were not asking for much. Place Winiata Te Whaaro's farm in the context of his vast Mokai Patea homeland; compare the acreage occupied by the community of Te Aomarama with the similarly expansive runs of the interior Te Waipounamu; or Hoani Puihi's clearing of 200 acres in the context of a 4000-acre township; or Tenetahi and Rahui's request for a 100-acre plot around their island home on Hauturu. Why was it so hard to leave Maori with so little?

Chapter 4

Impacts

> [Pokopoko] has been a hurtful subject to talk about, even to read the questions [in preparation for the interview]. I went home, and Maurīni had given [the questionnaire] to me. It made me cry when I read it. I think it is a hurting part of us. It's been going on. Even to read my own piles [of research] from my own bits and pieces that I've been gathering since I've been trying to learn our whakapapa. Because when I read about it, what Winiata Te Whaaro went through, it's just something that hurts you. That's why we always grieve. It has been done to us and many others.[537]

The most obvious consequence of enforcing Studholme's title over that of Winiata Te Whaaro was the loss of the family's home, livelihood and economic base. In time the Donnellys acquired the whole of Mangaohane: 48,000 acres of freehold and 20,000 acres of leasehold.[538] As councillor for the Erewhon Riding of the Hawkes Bay County from 1905 to 1917, George Donnelly was behind the county council decision in 1907 to form Mangaohane Road, giving crucial road access to his property.[539] By 1914 the property carried 40,000 Romney-Merino sheep, and cattle and horses. Described as a small village, Mangaohane Station employed four permanent shepherds, two seasonal shepherds, a fencer, wagoner, cook, rouseabouts, a ploughman, blacksmith, cowman-gardener, a rabbiting gang, and two or three cadets. At shearing time there were up to 75 people on hand.[540] It is precisely such enterprise, albeit on a smaller scale, that Winiata Te Whaaro's family was deprived of as a result of the eviction. On George Donnelly's death in 1917, the block was divided and sold. Three blocks, the 'Homestead', 'Kelly's' and 'Pokopoko' comprising together 16,156 acres, were purchased in 1920 by a partnership as a business investment. The property, stock and plant were valued at the time of purchase at £120,450, the equivalent in today's terms of almost $11 million.[541] Cleaver reminds us that the end of the Te Whaaro family's sheep farming enterprise was part of a trend afflicting the district as a whole. Between 1898 and 1910, Maori-owned stock declined dramatically,

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[537] Hineaka Winiata, cited in McBurney, Wai 2180 #A52, p. 331.
[538] Miriam Macgregor, *Mangaohane: the Story of a Sheep Station*, (Hastings, Macgregor, 1978) p. 39. Airini Tonore died in 1909.
[539] Suzanne Woodley, 'Maori Land Rating and Landlocked Blocks Report 1870-2015', (CFRT, 2015), Wai 2180 #A37, pp. 287-88.
[540] Macgregor, pp. 39-40.
[541] Macgregor, pp. 46-47. Calculation based on Reserve Bank Inflation Calculator, available online at http://www.rbnz.govt.nz.

from 83,002 to 5,874, the number of Maori sheep-farming operations over the same period falling from 29 to just six.[542]

The loss of Mangaohane was not merely economic. The high tussock country was a special place, and Pokopoko had been home to a generation of Te Whaaro and Tanguru children. Claimant Ngahape Lomax, brought up by Wirihana Te Whaaro, tells how his koroua's eyes would mist when he spoke of Pokopoko. Mr Lomax explains that the eviction diminished Winiata's mana as a rangatira among his people: 'In Maori culture when you lose, you're shamed. And you're shamed even more when you lose unjustly.'[543] He maintains that the stigma attached to the unjust eviction fell heavily on the shoulders of Winiata's children, and is felt still as a deep wound within the family. He also shared that the treatment of Winiata Te Whaaro which ultimately led to the family's removal instilled a lasting hatred for the Crown, an authority Winiata and his brothers had fought for, but which left them with an abiding sense of betrayal.

Mangaone / Winiata

After the eviction in May 1897 the family moved to their kainga at Mangaone, where the wharepuni Tautahi had been built by Winiata Te Whaaro the previous year. The photo below, listed as 'Maori group at a farm in Winiata' is variously dated at 1894 or 1895, but given the structure to the right and the fact that the kainga is referred to as Winiata rather than Mangaone, it is most likely to have been taken post-eviction. It is also likely that the children in the photo are the younger members of the Te Whaaro family.[544] Those of school age were among the first pupils of Taihape's new school in 1898, walking there by way of a track their father cut for them through the bush for the purpose.[545]

[542] Cleaver, Wai 2180 #A48, pp. 165-66.
[543] Ngahape Lomax, recording of meeting 14 March 2017, Winiata Marae.
[544] In June 1897, within weeks of the eviction, newly-arrived school teacher J O'Reilly was told the kainga was Winiata, see CA Young, 'The Diamond Jubilee of the Taihape District High School, 1896-1956' (1956), p. 20.
[545] Mrs Tau Wilson (nee Papara Winiata), '70th Jubilee of Taihape School', Maori Programme 1966-05-02. No.86, #46380, Nga Taonga Sound & Vision, available online at http://www.ngataonga.org.nz/collections.

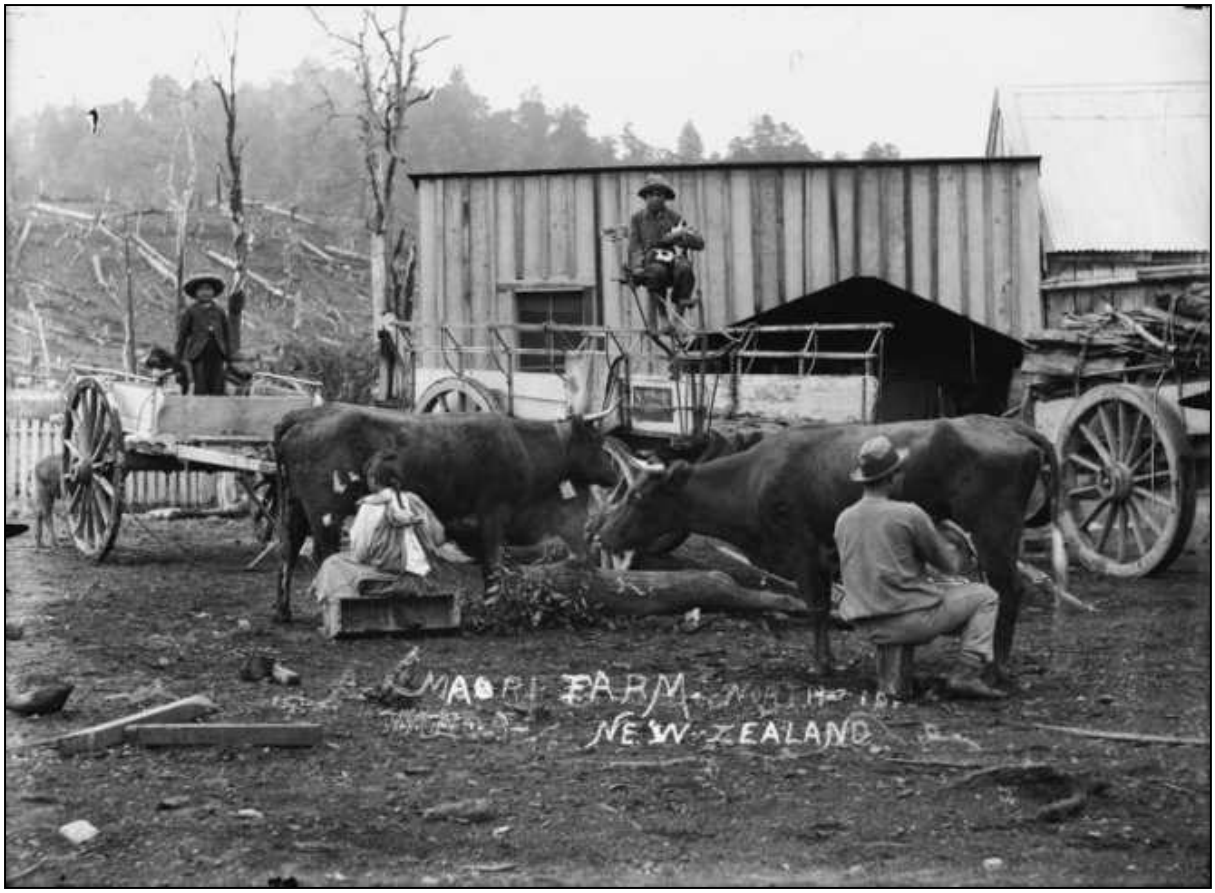

Figure 10: Early days at Winiata[546]

Ever the entrepreneur, in June 1898 Winiata Te Whaaro was reported to have acquired machinery for sawmilling operations, which were predicted to begin in a month.[547] This was still the beginning of the timber industry at Taihape, for while the Awarua forest presented a rich and seemingly limitless resource of rimu, matai, kahikatea and totara, Taihape as yet had neither proper road nor rail. Even as communications infrastructure improved, small mill operators in the district were said to have been hampered by their reliance on outside markets, which were unreliable and often paid poorly.[548] At the time of its closure in 1905, Winiata Te Whaaro's mill was said to be worked by a Pakeha.[549]

The loss of the family's economic base at Mangaohane rendered them vulnerable to short-term adversity. Nine months after the eviction, for example, cold frosts in February 1898 ruined the potato and corn harvest throughout the district. In November 1898 a John Clouston of Mangaone appealed

[546] 'Maori group at a farm in Winiata', 1894, Child, George Edwards, Photographs of the Ongaiti district, ref 1/2-032309-G, Alexander Turnbull Library.
[547] *Wanganui Chronicle*, 6 June 1898, p. 3.
[548] Vivienne Bird, 'Sawmilling', in Denis Robertson (ed.) *'...give me Taihape on a Saturday night'*, (Heritage Press, 1995), p. 52. Bird relates that the millers subsequently combined into the Rangitikei Sawmillers Cooperative Association to combat their disadvantage.
[549] Cleaver, Wai 2180, #A48, p.141.

on the family's behalf to Premier Seddon for potatoes: 'I can assure you some of the Natives in this district are badly off for food at the present time.'[550] His letter was accompanied by a list of 25 signatures from the Mangaone kainga, all of whom Constable Black later reported were 'related to Winiata Te Whaaro'.[551]

Under-Secretary of Justice Frank Waldegrave forwarded the appeal to Police Commissioner Tunbridge, who in turn passed it down the chain of command through Inspector McGovern, Sergeant Ellison and finally, some three weeks later, to Constable Black at Ohingaiti: 'Ascertain if it is seed potatoes they require or for eating at once and what quantity they need.'[552] Black duly visited and reported Winiata Te Whaaro's request for a ton of potatoes: unable to afford to purchase potatoes at the high prices demanded in Taihape, the family were said to have been going without for 'some months'.[553] Black's inquiries about the family's circumstances extended to the Pakeha residents at Taihape. He informed his boss that 'these natives ... have land but have no money', adding 'Winiata Te Whaaro did have money but lost it all in Law Costs over a Station which Mr Studholme now holds.'[554]

In light of this information, Waldegrave recommended to the Minister of Justice that Winiata Te Whaaro be given the ton of potatoes he requested. Constable Black was told to go ahead with the purchase 'if the Natives are still in need of assistance', the cost of the potatoes to be charged to the Justice Department.[555] By now it was January. Five days later Constable Black reported that 'the Natives at Mangaone Tiahape [sic] have got new potatoes of their own now & are not in want of any.'[556] This intelligence was again passed up the chain of command and that is where matters were left. However, by this time the family were facing an even greater crisis.

A Second Eviction

The Winiata kainga at Mangaone was located on Awarua 4C. As set out in Chapter 1, Winiata Te Whaaro's adult offspring had begun to clear and fence land at Mangaone for farming as early as 1894,

[550] J Clouston to Premier Seddon, 5 November 1898, J1 606w 1898/1393.
[551] The signatories provide a good indication of who was living at Mangaone at this time. Listed in order as they appear are Winiata Te Whaaro, Wirihana Whaaro, Ngohengohe Whaaro, Te Rira Herueti, Iramutu Rapana, Ngahoa Whaaro, ite Kukaka (?), Matehaere Whaaro, Te Nui Tanguru, Papara Te Whaaro, Aue Tanguru, Maremare Awaroa, Hanuere Tanguru (as known as Nuia), Awaroa Tatari, Momo Whaaro, Tamihana Te Momo, Ripine Te Momo, Perepetua Wirihana, Makereni Hemonui, Te Teira Rapana, Horiana Hinahou, Mokopuna Peti, Raukawa Tauke, Whakawai Te Whaaro, Hune Rapana, in J1 606w 1898/1393. Constable Black to Sergeant Ellison, 8 December 1898, in above.
[552] Sergeant Ellison to Constable Black, 3 December 1898, in above.
[553] Constable Black to Sergeant Ellison, 8 December 1898, in above.
[554] Ibid.
[555] Under-Secretary for Justice Waldegrave to Commissioner of Police, 28 December 1898, in above.
[556] Constable Black to Sergeant Ellison, 5 January 1899, in above.

at a time when their interests in the 15,632-acre block were undefined. Two years later, and two months after Tautahi was opened, in August 1896 Awarua 4C was partitioned in Hastings by Judge Mair. Application for partition had been made by the Minister of Lands to have the Crown's purchased interests defined, and by Utiku Potaka to have the owners' balance partitioned. According to Winiata Te Whaaro, only five of perhaps 50 affected owners were present at the partition hearing.[557] He was not one of them. The whole arrangement was facilitated by JM Fraser out of court, the court simply recording the partitions as presented on a plan and satisfying itself, by the testimony of key individuals such as Utiku Potaka and Hakopa Te Ahunga that the resulting divisions were 'fair', and that there were no objections.[558] As a result of this partition, six Te Whaaro off-spring and ten of their Tanguru cousins were among the 29 owners of Awarua 4C15, some 2,057 acres at the northern end of the block which encompassed Winiata Marae.[559]

Winiata Te Whaaro later claimed that he had been unaware of the hearing in Hastings, that neither he nor his children received gazette notices about the partition. Alerted by some of his children 'who happened to be over in Hawkes Bay', he attempted to intervene:

> My son arrived [at Winiata] at ten o'clock at night, and on the morning of the next day, Friday, I went to Ohingaiti and sent two telegrams. I sent one to the Judge, asking him to withhold his decision, and that I would go down on the Saturday. I sent the other telegram to Mr. Fraser to the same effect.
>
> …
>
> I went to the Court on the Monday morning and I found that the case was over and that the people had gone away.[560]

Most of the partition business was in fact complete by Saturday, 15 August 1896.[561] The court minutes record that on 24 August JM Fraser communicated Winiata Te Whaaro's request for an alteration in the boundary of the adjacent Awarua 4C13 to the court. Judge Mair advised him to consult with the affected parties and adjourned the matter for five days.[562] Winiata Te Whaaro later explained that he had been unable to get Hakopa (who fronted the partition in court) to agree to move Awarua 4C13 to the end of the block. He claimed to have objected once more to the court, to no

[557] In particular he named Utiku Potaka, Hakopa Te Ahunga, Erueti Arani, Waikari and Hirani Te Hei, Evidence given before the Native Affairs Committee of the Legislative Council on the Petition of Hauiti Whaaro & others, 23 August 1899, in J1 664l 1901/881.
[558] The partition was heard intermittently over 8-24 August, Napier MB 39/166-68; 192-200; 216.
[559] The Te Whaaro siblings included on the title were Hauiti, Horiana, Te Ngahoa, Matehaere, Ngohengohe and Papara. Whareherehere Te Awaroa, who was brought up with the family (Winiata Te Whaaro acted as his trustee), was also included. Unlike the Te Whaaro family, all of the Tanguru siblings were included on the title. CT 190/116 of Awarua 4C15, in Walzl, Wai 2180 #A46(2), p. 1206.
[560] Evidence given before the Native Affairs Committee..., 23 August 1899, in J1 664l 1901/881.
[561] Napier MB 39/216.
[562] Napier MB 39/250.

avail;[563] Judge Mair maintained that no one appeared in court on the Saturday, and that he never heard any more about the matter.[564]

The issue of concern was the improvements the Te Whaaro family had made at Mangaone, the two clearings of 50 acres and 26 acres valued at £141.[565] Winiata's objection at the point of partition in August 1896 indicates he was aware of the potential risk to these improvements, but it was not until surveyors arrived three years later, in March 1899, that the family found out all their hard work was located on land that had been awarded to others. In July 1899 Hauiti Te Whaaro and 13 others petitioned Parliament:

> Those parts of the Block upon which Your Petitioners have expended their substance and strength in making improvements have been awarded by the said Court to persons who have not spent anything nor done any improvements thereon, that is, as to some portions of the Block which we have improved.
>
> We Your Petitioners solemnly declare that we did not know or hear that the Court was going to sit and deal with the subdivision of the Awarua No.4C Block. It was not till afterwards that we heard the Court had dealt with and decided the subdivisional lines of the Awarua No.4C Block.[566]

Winiata Te Whaaro spoke to the petition before the Native Affairs Committee in August 1899. The family seems to have regarded the land lying between the Mangatua and Otaihape Streams as theirs, and had even fenced this area off from the new road formation. In relating what had happened in Hastings three years before, Winiata Te Whaaro pointed to discrepancies between two plans of the subdivision, claiming: 'The Court were evidently deceived by this plan, as the Mangatua creek comes on a different subdivision. ... What they [my children] want is their own land. They find by this survey that they are shoved off their clearing.'[567] The Te Whaaro family wanted these areas restored to them although Winiata told the committee he would accept compensation for the loss.

The petition was referred to the government for further enquiry, the committee having been unable to consult Judge Mair who was in Samoa.[568] Mair duly set out his understanding of events in November 1899. He was noncommittal about the substance of the petition, pointing out that: 'In partitioning land the Court always endeavours to give parties the benefit of any improvements which they may have

[563] Evidence given before the Native Affairs Committee ..., 23 August 1899, J1 664l 1901/881.
[564] Judge Mair, 'Awarua 4C', 19 November 1899, J1 664l 1901/881.
[565] H Williams, Chairman Native Affairs Committee, 10 October 1899, J1 664l 1901/881.
[566] English translation of Petition of Hauti Te Whaaro and others. In addition to the Te Whaaro and Tanguru siblings, Maata Kotahi, Hokimai Te Tene and Turiroa Pirere were also signatories, J1 664l 1901/881.
[567] Evidence given before the Native Affairs Committee ..., 23 August 1899, J1 664l 1901/881.
[568] Kelly, Chairman Native Affairs Committee, 6 October 1899, J1 664l 1901/881.

made.'[569] The crux, of course, was the issue of notice. 'I am not disposed to believe that Winiata knew nothing of the proposed partition, he is a very unreliable man and very litigious too.'[570]

Nothing further had been done when the petition was again brought before the Native Affairs Committee 11 months later. On this occasion Chairperson H Williams again recommended further immediate inquiry 'and if possible a rehearing granted in order to adjust the shares more equitably, or failing that, there should be a valuation of the improvements made by Winiata Te Whaaro and family and that they should be in some way compensated for their loss.'[571] To Native Minister Carroll the chairman explained:

> The error appears to have been caused by the map upon which the partitions were made by the Court being an unreliable one.
>
> Upon that map the Mangatua Creek is in the wrong place, and the boundary of No.15 appears close up to the Mangatua Creek, on which is a natural bridge, as indicated in the map.
>
> This no doubt influenced the other owners (Winiata Te Whaaro was not present) in agreeing that the creek should be the boundary of No. 15.
>
> But when the boundary pegs were put in by the surveyors it was found that, instead of No. 15 running up to the Mangatua Creek, No. 13 and No. 12 intervened, thus cutting off all the improvements of the owners of No. 15.
>
> I may mention, also, that Winiata Te Whaaro had some of his improvements cut off in No. 14.[572]

This information was relayed in turn to Chief Judge Davy, who asked for the plans and confirmed that the partition orders had been signed. As Under-Secretary of Justice Waldegrave commented, a rehearing would require legislation, and once again the matter was left.[573]

During the parliamentary session the following year, 1901, the Native Affairs Committee again recommended the petition be referred to the government for consideration.[574] Once again the matter was referred to Waldegrave, who again turned to Chief Judge Davy to report. In response, Davy simply referred the Under-Secretary back to William's previous memorandum, which 'probably contains all the information available.'[575] A fortnight later, H Williams again set out the facts of the matter for Native Minister Carroll:

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[569] Judge Mair, 'Awarua 4C', 19 November 1899, J1 664l 1901/881.
[570] Ibid.
[571] H Williams, Chairman Native Affairs Committee, 10 October 1900, J1 664l 1901/881.
[572] Chairman Native Affairs Committee to Native Minister, 13 October 1900, J1 664l 1901/881.
[573] F Waldegrave, 30 October 1900, note on back of above. On this occasion the Under-Secretary pointed out the three-year gap between the partition and the petition.
[574] Houston, Chairman Native Affairs Committee, 30 July 1901, J1 664l 1901/881.
[575] Chief Judge Davy to Waldegrave, 5 August 1901, note on coversheet 1901/881 in J1 664l 1901/881.

> It appeared to the Committee that the Petitioners had been wronged.
>
> 1. By the case having been heard, and subdivision of the Block made during their absence.
> 2. That Winiata Te Whaaro had suffered loss to the amount of £261:14:- for improvements made by him on the land taken from him and awarded to others ...[576]

Carroll referred the matter to Land Purchase Officer Sheridan, who duly asked Chief Surveyor Marchant for information. In doing so, Sheridan was dismissive of the claims: 'I do not altogether fall in with the line of argument adopted by him [Winiata]. It seems to me that he improved land which did not belong to him with the view of establishing a title to it.'[577] Marchant was unable to add anything further on the issue. In December Sheridan informed the Minister of Lands that he had been unable to locate the 'alleged improvements' on any tracings, adding that it was 'very probable' some of the improvements fell within 4C1 – the Crown piece – 'the Natives not having recognized the boundary between the two blocks being the Mangaone stream ...'[578] Sheridan advised the Under-Secretary of Justice that the papers 'be filed for the present.' If the Native Affairs Committee's recommendation was to be acted on, he continued, Sections 4C12, 13, 14 and 15 would need to be re-amalgamated into one title.[579] The last note on file is dated June 1904: 'Mr Waldegrave. These papers had better be filed at present. Action may yet have to be taken on them.'[580]

There is nothing on file to suggest that the Te Whaaro family were informed of the government's deliberations or the outcome of their petition. By 1900 they seem to have given up any hope of compensation for their improvements, relinquishing, too it seems, the improvements themselves. For the first two years following their eviction from Pokopoko, Winiata and Peeti's son Te Ngahoa Te Whaaro was listed as the owner of 300 sheep at Taihape, no doubt grazing the pastures the family had cleared and sown.[581] In April 1900, a year after the arrival of the surveyors, Te Ngahoa made a nil return.

Landlessness

One of the most insidious aspects of Winiata Te Whaaro's battle over Mangaohane is the way in which it impacted on his entitlement to the wider Mokai Patea district (see Figure 1). In the partition of Awarua (1890-91), and again in the rehearing and partition of Owhaoko (1887; 1888; 1893), his

[576] H Williams to Native Minister, 20 August 1901, in J1 664l 1901/881.
[577] P Sheridan to Chief Surveyor Marchant, note on back, 30 August 1901, J1 664l 1901/881.
[578] P Sheridan to Minister of Lands, MacKenzie, 3 December 1901, J1 664l 1901/881.
[579] P Sheridan to Under-Secretary of Justice, Waldegrave, 20 December 1901, J1 664l 1901/881.
[580] See note on above.
[581] 'The Annual Sheep Returns for the Year ended 30 April, 1898, AJHR 1898, H-23, p. 51; AJHR 1899 H-23, p. 51; AJHR 1900, H-23, p. 51.

ancestral *take* were challenged, his interests were reduced to those of 'aroha', and the resulting awards in terms of acres but a fraction of those awarded to his kin.[582] In determining title to the vast 'rohe potae' of Awarua, estimated at around 256,000 acres, Winiata and his family emerged from the court process in 1891 with small shares in Awarua 1, 3B and 4. Their Tanguru first cousins were slightly better endowed because they also received entitlement through their mother, Merehira Te Taipu. The family seem to have sold their interests in Awarua 1 early on, for they are not among the owners of the 'residue' block of Awarua 1D created in 1894 for 'non-sellers'.[583] By 1896, after the Crown had purchased much of the block, Te Whaaro family members were left to share what little was left in Awarua 3B2J of 449 acres and Awarua 4C15 of 2,030 acres. The fate of Awarua 4C15 is discussed in detail in the following section of this chapter.

The family were initially excluded from Owhaoko altogether. Winiata Te Whaaro had been a principal witness for Ngati Whiti in the rehearing and partition of 1887.[584] Six years later he was offered 780 acres out of Ngati Whiti's Owhaoko D of more than 100,000 acres, as 'aroha'.[585] The family interests were eventually located in Owhaoko D4, which was leased to Studholme.[586] Winiata Te Whaaro was also a key proponent in the Awarua Royal Commission of 1890 which found that an area of 17,400 acres – Te Koau – had never been part of any former Crown purchase. In the ensuing title investigation he received just 10 of the 403 shares in the rugged and inaccessible block.[587] Woodley relates that in 1922 at least some of these interests were sold over the objections of TK Winiata, that 'the children of Winiata Te Whaaro' had no other land.[588] Title investigation to Aorangi Awarua, another fragment omitted from the Awarua block as a result of similar survey and title errors was begun in 1910, shortly before Winiata's death. His family were among the 90 owners of this 967-acre triangle on the slopes of Aorangi.[589] None of these multiply-owned lands were remotely capable of providing the family with a livelihood. As Walzl concludes in his twentieth century overview, as early as 1900 the Te Whaaro whanau was virtually landless.[590]

Another issue felt keenly by the claimants today is the fact that not all of the family members retained an interest in the remaining Awarua titles. The four eldest siblings, and Winiata himself, seem to have

[582] Subasic and Stirling, Wai 2180 #A8, pp. 81-86; Stirling and Fisher, Wai 2180 #A6, pp. 48-67; McBurney, Wai 2180 #A52, pp. 283-303.
[583] Title order Awarua 1D 1894, Maori Land Court database, accessed at Gisborne.
[584] Fisher and Stirling, Wai 2180 #A6, p. 52. Three years later, before the Awarua Commission of 1890, Winiata Te Whaaro was endorsed by Ihakara Te Raro as a rangatira of Ngati Whiti, 'My son Hiraka and Winiata conduct the business of our tribe', Minutes of Awarua Commission, 8 August 1890, MA-MLP 1 1906/91, Wai 2180 #A6(a), p. 302.
[585] Ibid, p. 67.
[586] Ibid, p. 80.
[587] Subasic and Stirling, Wai 2180 #A8, pp. 7-19.
[588] Woodley, Wai 2180, #A37, pp. 441-42.
[589] Subasic and Stirling, Wai 2180, #A8, pp. 179-184. Note that the family may well be owners in Awarua o Hinemanu, the 'wedge of papatipu land' which was not investigated until 1991 due to similar survey errors, pp. 187-190.
[590] Walzl, Wai 2180 #A46, p. 385.

sold their interests to the Crown some time prior to 1896. It is reasonable to conclude in the circumstances that the money was required to either settle the legal action taken against Winiata Te Whaaro by Murray Roberts & Co in 1894 (see p. 48), or used to fund the considerable litigation over Mangaohane. This is supported by the korero passed directly from Te Wirihana Winiata (one of the siblings whose interests were sold) to his mokopuna Neville and Ngahape Lomax. At my initial meeting with Ngati Hinemanu/Ngati Paki at Winiata Marae in March 2017, Ngahape Lomax related his understanding that his koroua Wirihana Te Whaaro sold his shares to pay his father's legal bills.[591] When I returned to discuss the draft report in June, Neville Lomax independently confirmed this, highlighting the element of compulsion contained in his great-grandfather's explanation: 'He explained to us that he, together with his older siblings had been forced to sell their interests in these lands, to assist their father Winiata Te Whaaro to pay off some of his debts and legal costs associated with the Pokopoko eviction.'[592] The impacts of this decision were lasting. The short-term effect of losing their land base in Mokai Patea was to disperse the elder siblings outside the district. Iramutu and Rapana's only child, Te Teira, eventually moved to live with his wife's people at Mangamingi, between Ohakune and Raetihi, as it became clear that Iramutu's lack of title gave him no standing at Winiata.[593] Te Keepa Winiata remained with his wife's people at Maraekakaho. Similarly, Te Momo or Warumomo went to live with his wife's people at Wairoa. Te Wirihana married closer to home, their family brought up on his wife's land at Utiku. In the longer term of course, it meant that the descendents of these tuakana, too, did not share in the entitlement to the family lands back home. The fact that some Te Whaaro descendents have no legal rights to Winiata Marae continues to be a source of pain and division. Again, Neville Lomax shared that growing up down the road at Utiku the issue did not affect him to any great degree in his youth: 'we were all one whanau, and while we did not live at Mangaone, it was always a place where our whanau there always welcomed us as being part of the hau kainga.' In more recent times, however, with the passing of the older generations, Mr Lomax says he has often been reminded that he has no tangata whenua rights at Winiata Marae on account of his great-grandfather Wirihana Winiata having sold his interests there. Such comments, he explains, are a source of great hurt, particularly in light of the fact that the elder siblings had been compelled to sell in order to save Pokopoko.[594] Although this issue affects the descendents of five of Winiata and Peeti's 11 children equally, the plight of their youngest, Whakawai, seems particularly poignant. Born after the Awarua partition of 1886, Whakawai does not appear on the original owners' lists for the block: at the time two-year-old Papara was the potiki.[595] When Winiata sold his interest, therefore, he also sold the inheritance of his youngest child. In time, Whakawai had 17 children of his own, with no

[591] Ngahape Lomax, recording of meeting at Winiata Marae, 14 March 2017.
[592] Notes from Neville Lomax on draft report, 23 June 2017.
[593] Email from Richard Steedman, 26 May 2017. Te Rira or Iramutu's husband Hune Rapana, also known as Rapana Patena, died in 1905 and lies at Winiata. Communication from Ngati Hinemanu me Ngati Paki Heritage Trust, 3 July 2017.
[594] Notes from Neville Lomax on draft report, 23 June 2017.
[595] Whanganui MB 10/410 in Wai 2180 #A30(a)(1), p. 808.

place to stand whatsoever. The lasting exclusion of these siblings and their descendents from land that is still widely regarded in ancestral and tribal terms, is a striking illustration of the impact of Native Land Court title determination, which both froze ‘ownership’ of such customary lands to individuals alive at the point of inquiry, and title individualisation, particularly the 1894 statutory innovation, which transformed every owner of ‘memorial’ land into the proprietor of an estate in fee simple.

Awarua 4C15

The Crown's purchase of Awarua interests and the subsequent partition of what was left to 'non-sellers' has been set out in other reports, but it is pertinent to review this story in terms of the impact on the Te Whaaro family in particular.[596] For the reasons set out above, to call the land encompassing Winiata Marae Te Whaaro 'family' land is something of a misnomer. Only six Te Whaaro children were legally entitled, and they shared this land not only with their Tanguru first cousins, but with other non-sellers besides.

This foothold for Te Whaaro family members at Mangaone was the residue after two Crown purchasing drives. The first Crown acquisition, procured by the purchase of undivided interests in the Awarua 4 block between 1891 and 1894, was defined by partition in 1894. The Crown was awarded Awarua 4B of 18,818 acres. Awarua 4C became the 'residue' awarded to the non-sellers. The Crown then resumed purchasing in Awarua 4C and the process of defining its acquisition was repeated two years later, in Hastings. On this occasion Awarua 4C was partitioned 15 ways, the Crown receiving 4C1 and 4C2, together 6,781 acres. This was the out of court arrangement discussed above, to which Winiata Te Whaaro as the trustee of his children was not party to, and which resulted in the loss of the family's improvements at Mangaone. Hauiti Te Whaaro and five of his siblings, together with their Tanguru cousins, were among the 29 owners awarded 4C15, of 2,030 acres. The configuration of their award, in which the Crown’s portion 4C1 appears to bite 4C15 almost in two, raises further questions about the basis of these subdivision decisions (see Figure 11).

[596] A block history of Awarua is set out in Subasic and Stirling, Wai 2180 #A8, pp. 69-161.

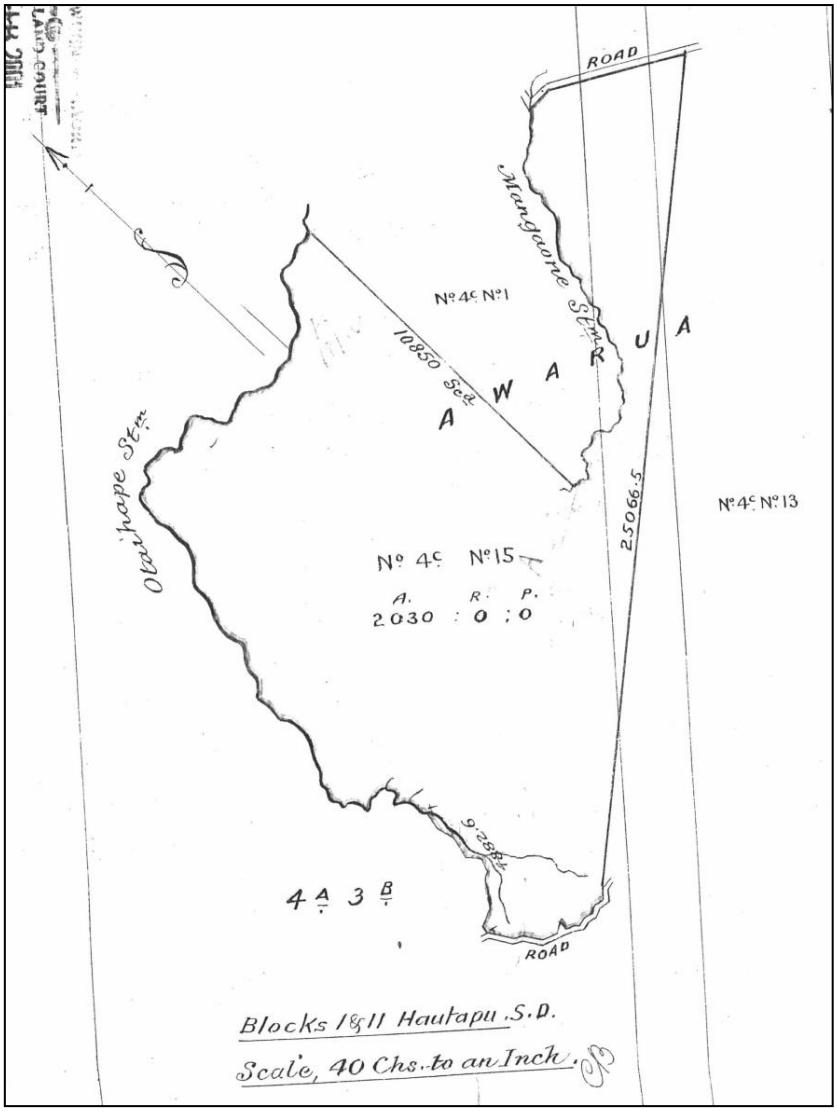

Figure 11: Awarua 4C15, 1896 partition[597]

This was not the end of Crown purchasing within the block. In November 1897, six months after the Pokopoko eviction, Te Moroati and Rapana Tanguru sold their interests in Awarua 4C15 to the Crown. Ngamoko Te Rango, another owner, sold in June 1898, all three transactions recorded on a single deed which became the basis for the Crown's application to have its interest defined in 1904 (discussed below).[598]

In February 1899 the Commissioner of Crown Lands applied to have the survey costs for Awarua 4C15 charged against the land. The parcel was one of 38 Awarua titles processed by the court that day, a Mr Thomas Browne of the Government Survey Office testifying that the amounts in each case

[597] Awarua 4C15 Title order, Maori Land Court Records Document Bank, Wai 2180 #A18(1), p. 552.
[598] Deed of purchase in ABWN 8102 349 WGN 910.

were correct and 'all requirements by law met'.[599] Awarua 4C15 was duly charged with a lien of £52 15s 8d. Three months later Browne was back in court, asking that the former charging orders with regard to 21 Awarua sections be cancelled, and new orders for increased amounts be made. The liens obtained in February, he explained, had been based on 'an approximation'. For Awarua 4C15 in particular, the Crown now sought a survey lien of £106 11s 4d, more than double the amount charged previously.[600] Having decided that it lacked jurisdiction to cancel the previous orders, the court instead made supplementary ones. Awarua 4C15 was burdened with a further survey charging order of £55 15s 8d, with five years interest at 5 per cent per annum.[601] The basis of this survey charge has not been the subject of research, but it is consistent with Crown practices and policies which, as Boast notes, saw the burden of 'unbearable transaction costs' associated with the new market in Maori land fall on the Maori owners.[602]

Ongoing Partition

In January 1903 Ngakaraihe Te Rango applied to have her interest in Awarua 4C15 partitioned.[603] The court minutes suggest that both the Te Whaaro and Pirere families were aware of the application, and were willing to use the opportunity to subdivide their interests along family lines also. However the Tanguru whanau were absent and the case was adjourned to give them an opportunity to appear. One week later Moroati and Rapana Tanguru objected to the proposed partition in court. These are the brothers who had sold most of their interests to the Crown four years before. The minutes do not elaborate on the basis of their opposition, merely recording 'The above own only a few acres each. No chance of agreement.'[604] When the case came up again in April, there was still no progress on a subdivision proposal that suited everyone and the matter was again adjourned.[605] In June the impasse seems to have been overcome by the Pirere whanau's agreement to swap their locality with the Tanguru whanau, whose interests would be combined with their first cousins in a single Te Whaaro-Tanguru allotment. The block was accordingly divided into five: A, B, C, D and E. In this arrangement, the 16 members of the Te Whaaro-Tanguru combination received 4C15E: 1,327 acres in the eastern part of the block.[606]

One year later the Head of the Land Purchase Department himself appeared in court on behalf of the Minister of Lands to have the 1903 partition of Awarua 4C15 annulled under Section 53 of the Native Land Laws Amendment Act 1895, on the grounds that it had been made after the Crown had lodged

[599] 17 February 1899, Whanganui MB 40/65-66.
[600] 30 May 1899, Whanganui MB 41/17-20. Using the Reserve Bank inflation calculator, the sum equates to around $19,400 in today's terms.
[601] Awarua 4C15 Charging Orders in #A18(1), pp. 656; 702.
[602] Boast, *Buying the Land Selling the Land*, p. 448-452.
[603] 30 January 1903, Whanganui MB 50/189.
[604] 6 February 1903, Whanganui MB 50/232.
[605] 3 April 1903, Whanganui MB 50/349.
[606] 24 June 1903, Whanganui MB 51/34-36.

an application for the definition of its purchased interests.[607] Sheridan explained that the interests the Crown had acquired were scattered throughout the five partitions, and asked that the division begin *de novo* 'to enable Crown to get area in one block…' JM Fraser was recorded as representing the owners. He stated there was no objection provided that the residue for the non-sellers was partitioned at once. In fact, the Crown had purchased the interests of just three owners, amounting to 221 acres, but it was nonetheless successful in overturning the 1903 arrangement: the previous partition orders were declared void. The following week the parties were back in court to arrange the partition of the balance, on the application of Raupi Tanguru. By this time there was evident tension between the Te Whaaro family and their Tanguru cousins over entitlement to the road frontage at Winiata. The split in family relations was brought into stark relief by the choice presented to 19-year-old Te Whareherehere Te Awaroa over which of his two trustees – Aunty Merehira Te Taipu or Uncle Winiata Te Whaaro – he supported. Te Whareherehere had been raised by Merehira with his cousins at Pokopoko; in 1904 he still lived at Winiata, running a few cattle. In the event he chose to join the Tanguru case, represented by JM Fraser.[608]

The Tanguru whanau wanted their share of land at the Winiata kainga, taking in half of the road frontage there. Winiata Te Whaaro objected, arguing that although his late brother's family had contributed to the initial clearing and cultivation at the kainga, it had now been some years since they had lived there. The Te Whaaro family was prepared to offer a 10-chain road frontage to their cousins, Winiata Te Whaaro pointing out that the boundary proposed by Fraser based on a 21-chain frontage would rob them of their wharepuni.[609] The Tanguru family declined the offer.

An overnight adjournment failed to bring resolution. In light of the dispute, the court then moved to protect the Crown's interest from any future appeal, by dealing with the partition as two separate cases. Fresh partition orders were issued, based on its earlier hearing of the Crown's application for a definition of its interests. Awarua 4C15A of 221 acres was awarded to the Crown, the other partitions renumbered and rejigged slightly to reflect the interests which had been sold.[610] The previous Te Whaaro/Tanguru allocation of 4C15E was relabelled 4C15F, the area reduced by around 105 acres to 1,221 acres 3 roods 20 perches, and further reduced by 21 acres 2 roods 20 perches taken for road,

[607] 24 July 1904, Whanganui MB 52/19. Section 53/1895 provided for the annulment of partitions that had 'not been given effect to by survey or otherwise', which, 'having regard to subsequent dealings … it would be useless or otherwise inexpedient to give effect to…'
[608] 3 August 1904, Whanganui MB 52/42. Te Whareherehere Te Awaroa was the son of Merehira Te Taipu's half-sister Ema Te Waaka, who in turn was first cousin to Winiata Te Whaaro, whakapapa on Whanganui MB 52/52A. Te Whareherehere consistently appears in ownership lists as part of the Te Whaaro/Tanguru interest. A minor at this time, Winiata Te Whaaro and Merehira Te Taipu were appointed as his trustees.
[609] 4 August 1904, Whanganui MB 52/53.
[610] 4 August 1904, Whanganui MB 52/51. 'Under the circs, & in order to keep the Crown & those parties clear of any appeal which may result from the partition of the main portion of the residue area, Ct will now complete action under the Crown app. by making fresh Orders pro forma ...'

leaving the two families in dispute with 1,200 acres 1 rood between them (see Figure 12).[611] Having finalised this aspect of the partition, the court then moved to consider the partition of Awarua 4C15F under the application of Raupi Tanguru. Given that Awarua 4C15F only existed for five minutes, one wonders whether the cost of the plan of this block that appears on file was also charged to the owners.

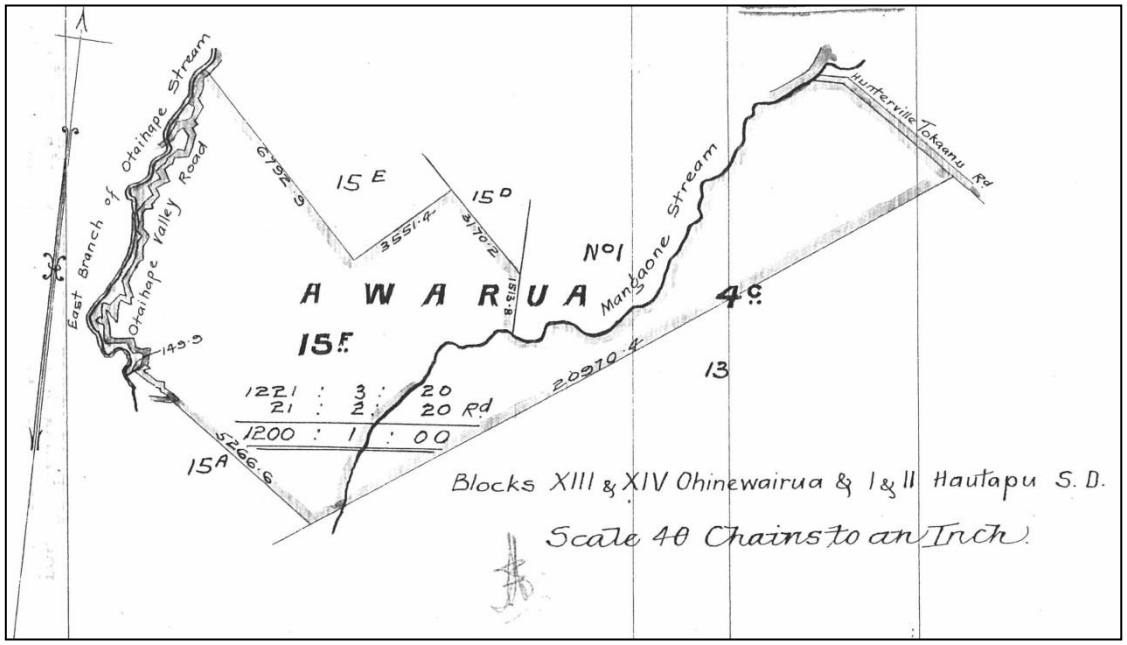

Figure 12: Te Whaaro/Tanguru partition Awarua 4C15F, August 1904

The Te Whaaro family interests in Awarua 4C15F amounted to 514 acres, just over 40 per cent of the land parcel. In the event the court divided the land between the two families on the basis of Fraser's original proposal, giving the Tanguru whanau their 21-chain road frontage from the Mangaone stream, with the proviso that:

> If it should be found that such line takes in Winiata Te Whaaro's 'wharepuni', it should be deflected so as to leave 20 feet clear of the side & end of that house. If house belonging to Papara Te Whaaro sh[oul]d be found to be included, house may be removed at any time within six months of maturing of Ct Order.[612]

It is not known whether in fact Papara Te Whaaro suffered a third eviction. Awarua 4C15F1 of 514 acres was duly awarded to Hauti, Horiana, Te Matehaere, Te Ngahoa, Te Ngohengohe and Papara Te Whaaro in equal shares and declared inalienable (see Figure 13). Informed that Winiata Te Whaaro

[611] The reduction was due in part because Te Moroati and Rapana Tanguru had sold a portion of their interests to the Crown.
[612] Whanganui MB 52/55.

would appeal the decision, the court recorded 'that he could please himself.'[613] The division of the family land at Mangaone coincides with the end of Winiata Te Whaaro's timber milling business.

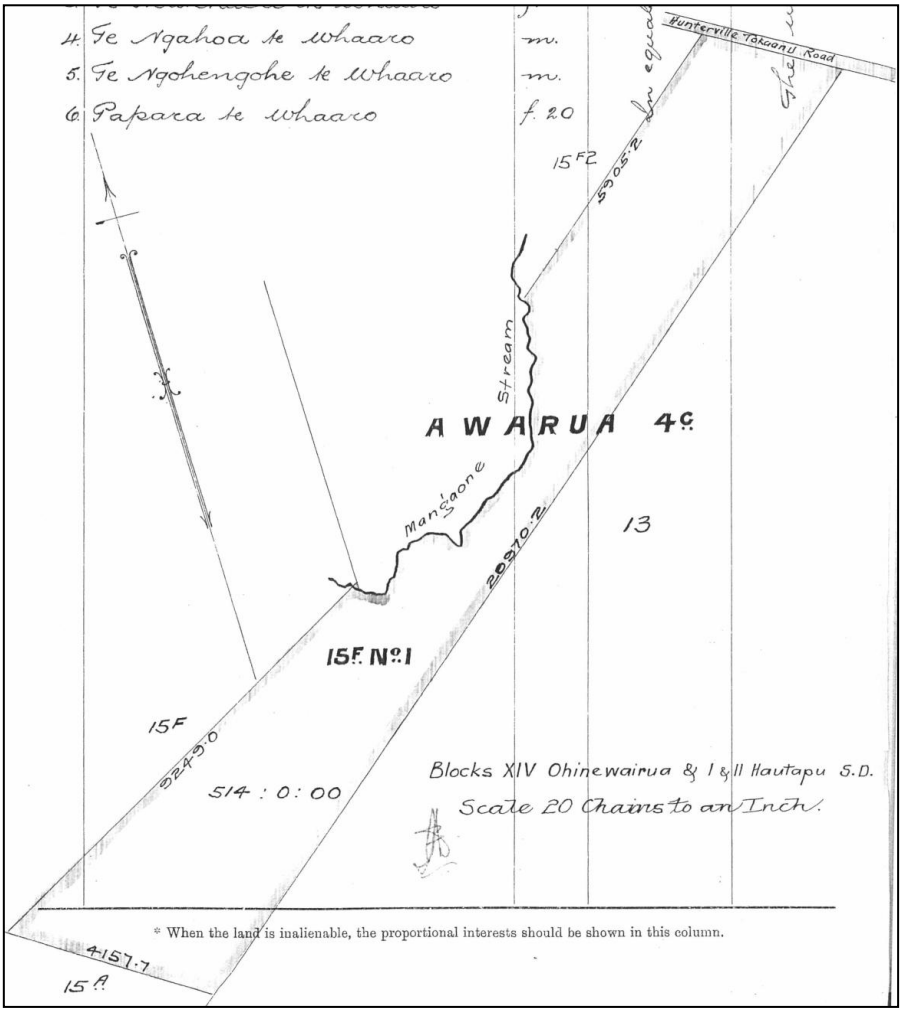

Figure 13: Te Whaaro partition, Awarua 4C15F1, August 1904[614]

Of the four Awarua 4C15F 'absolutely inalienable' subdivisions created for the Tanguru siblings in 1904, only half an acre (Awarua 4C15F3A) remained in family ownership by 1917. All four blocks were leased by 1908 to local sawmillers, but there is no indication in the District Maori Land Board files of arrangements for the receipt of timber royalties from these lands. The only stipulation in these

[613] Ibid.
[614] Partition order, Wai 2180 #A18(1), p. 601.

lease agreements, with regard to 4C15F4 and 4C15F5 for example, was that the lessee was to pay rates and taxes, to fence and sow English grasses, and to keep the land free from noxious weeds.[615]

All four sections were sold between 1913 and 1916.[616] In the case of the 204-acre Awarua 4C15F4, Te Wharehere Te Awaroa sold the land in March 1915 to keep him from going to prison for debt. In less than a year, from June 1914 to April 1915, he was said to have charged £475 worth of goods on account at a general store in Taihape, and had Magistrate Court judgements against him for other, lesser amounts, his total indebtedness calculated at £597 5s 9d.[617] Te Wharehere was hopeful that once these debts were met there would be enough money left over from the sale to enable him to purchase a small property in Hunterville where he could 'live apart from other natives.' According to his solicitor, Te Wharehere attributed his indebtedness to 'the fact that he has had no home of his own and has been compelled to live with other natives.'[618]

Awarua 4C15F1 – Te Whaaro partition

The Te Whaaro siblings' allotment, Awarua 4C15F1, remained intact for the next 16 years. In this period the bush on their section was milled by a George Syme, who in 1909 operated a mill on their land.[619] In 1917 Te Ngahoa Te Whaaro took steps to formalise a lease of his absent sister's share, but withdrew from the arrangement ten months later.[620] In April 1921 Papara Te Whaaro's application to partition the land was heard by Judge Acheson.[621] At this time, only four of the siblings were living at Winiata, Horiana and Te Ngohengohe having moved away. In the arrangement devised by the family, 60 acres fronting the road, which encompassed their homes and the wharepuni, was to be set apart as a papakainga in favour of all the owners. Behind this, six parallel sections of 23 acres 1 rood and 4 perches each, were to be carved out for the individual owners. The balance of 314 acres at the rear of the block was to remain whole, and held in common by all six siblings (see Figure 14).

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[615] Awarua 4C15F3, 4 and 5 were leased in 1905 to John Knapp. Awarua 4C15F2 (the papakainga road frontage) was leased to A Boscher, Maori Land Administration file 1905/113 in AEGX 19124 MLC-WGW1645-35 3-1915-64. See also Wai 2180 #A46, p. 152.
[616] Walzl, Wai 2180 #A46, p. 153.
[617] HD Bennett & Co accounts, 31 May 1905, AEGX 19124 MLC-WGW1645-35 3-1915-64. The accounts were criticised at the time by Te Wharehere's lawyer Hussey & Thompson as being 'evidence of gross overcharge'. Hussey & Thompson to President Aotea Maori Land Board, 18 June 1915. See also Bullock, Durrie & Douglas to President Aotea DMLB, 23 July 1915.
[618] Hussey & Thompson to Judge, Native Land Court, 23 August 1915, AEGX 19124 MLC-WGW1645-35 3-1915-64.
[619] See correspondence from A Shepherd to Commissioner of Crown Lands, Under-Secretary Native Department, April 1909 in AFIE 619-136 13/96 part 1. Shepherd was a driver and hauler for Syme on the Winiata property.
[620] AEGX 19124 MLC-WGW1645-124 3/1535.
[621] 14 April 1921, Whanganui MB 75/97.

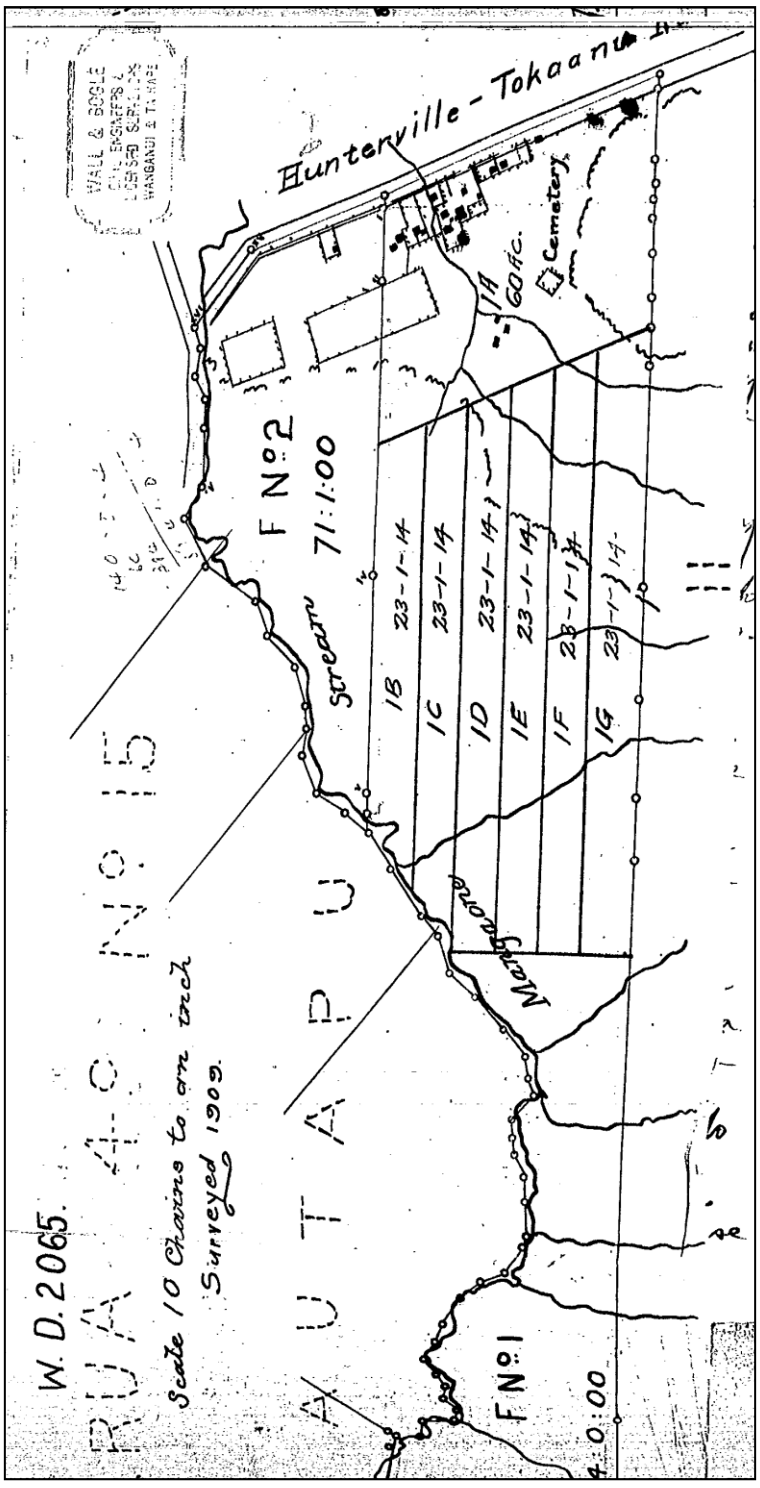

Figure 14: Te Whaaro partition, Awarua 4C15F1A-H, April 1921[622]

The 60-acre papakainga allocation on the road front presents something of an anomaly in a political climate still bent on the individualisation of Maori land titles, even to the point of rendering family remnants into fragments. Judge Acheson had a reputation for being sympathetic to the aspirations of

[622] Whanganui MB 75/99A.

Maori land owners, but his acquiescence to a papakainga of this magnitude suggests that he was won over by the Te Whaaro family owners. To a certain extent, as the plan shows, the papakainga reflected existing settlement at Winiata, but again the magnitude of the allocation is intriguing. Is it possible that papakainga status was sought to provide turangawaewae for the family members who had been disenfranchised through earlier sales? As it happened, the intentions behind the papakainga partition were undermined by government lending critieria. Hauiti Te Whaaro's 1924 application for the partition of an acre house-site from the papakainga was undoubtedly prompted by Maori Land Board rules which insisted that housing loan applicants provide solely-owned titles as security. Awarua 4C15F1A1 of one acre was duly chipped off fronting the road, the other 59 acres becoming Awarua 4C15F1A2.[623] Walzl relates that the security for Hauiti Te Whaaro's successful application in 1927 was both the one-acre section and his individual 23-acre section further inland, Awarua 4C15F1E.[624]

In fact the papakainga arrangement lasted only until 1927, when the area was again apportioned between the six siblings giving each around nine acres, with a smaller area encompassing the wharepuni and urupa remaining in common ownership.[625] There has not been time to explore how the partition impacted on existing settlement at Winiata. Ten years later the owners applied to have the three acres encompassing the marae reserved for the use of Ngati Hinemanu and Ngati Paki as a meeting place, burial ground and church. The reservation of Awarua 4C15F1A2A was gazetted in April 1939.[626]

Of the six 23-acre lots created in 1921 for each of the siblings, two were sold: one in 1970 the other by 1990.[627] A third, Awarua 4C15F1G, was declared European land after 1967.[628] Three remain as Maori land titles.[629] Of the six nine-acre lots created from Awarua 4C15F1A2 in 1927 for each of the siblings, one was partitioned further, two were declared European land after 1967, three remain as Maori land titles today.[630]

Awarua 4C15F1H, the back 314-acre section held in common was leased in July 1923 to Mangaweka farmer AE Bosher for 21 years, promising the siblings an annual income of £157.[631] Bosher, however, proved an 'unsatisfactory' tenant, both in terms of payment and in looking after the land. The history of the efforts by the Te Whaaro owners to call Bosher to account, including two petitions to the Native Land Board in 1932 and to the Minister of Lands in 1933, has been set out in full in Walzl's

[623] 21 July 1924, Taihape MB 01/363.
[624] Walzl, Wai 2180 #A46, pp. 386-387.
[625] 12 April 1927, Whanganui MB 86/178-181.
[626] *New Zealand Gazette* no. 27, p. 1218. Trustees for the reservation were appointed in October 1944.
[627] Awarua 4C15F1B and C, listed in Walzl, Wai 2180 #A46, p. 153.
[628] Ibid, p. 154.
[629] Awarua 4C15F1D, E and F, ibid.
[630] See Walzl, Wai 2180 #A46, pp. 153-154; Subasic and Stirling, Wai 2180 #A8, pp. 154-155.
[631] Details in alienation file MLC-WGW 1645-109 3-615. A decade before Bosher had milled the forest on adjacent lands, A Shepherd to Commissioner of Crown Lands, Under-Secretary Native Department, April 1909, AFIE 619-136 13/96 part 1.

twentieth-century overview of the district.[632] Bosher also leased Ngahoa Te Whaaro's 23-acre lot, with a similarly poor record. After years of persistent arrears, in 1934 the owners finally managed to get the lease of Awarua 4C15F1H transferred to AH Doole, who unilaterally decided to reduce the rent payable from 10 to 8 shillings per acre, on the grounds that under the National Expenditure Act 1931 he was entitled to a 20 per cent reduction in rent.[633] As Walzl sets out, after such a disappointing history of lease, the owners accepted the reduction. When the lease expired in 1944 it was not renewed. Instead, the block was halved by partition and, at some point before 1960, Awarua 4C15F1H2 of 153 acres was sold.[634] The other half, Awarua 4C15F1H1 of 161 acres was declared European land after 1967.[635]

Marginalisation

On the eve of Crown purchasing within Mokai Patea in 1890, Winiata Te Whaaro (with kinsman Retimana Te Rango) presented himself as the rangatira of 'Ngati Ohuake' and 'Ngati Hauiti', advising Native Minister Mitchelson that all Crown purchase negotiations of hapu lands were to be conducted through them.[636] The fall in the fortunes of this rangatira in the space of less than a decade is staggering. Winiata Te Whaaro's stand at Mangaohane cost him in three ways. In a bid to undermine his claim to Mangaohane, his adversaries seem to have done their utmost to discredit the rangatira within the Native Land Court's business of determining relative interests within the wider district. What little land Winiata and his children were granted from this skewed process was then sacrificed to fund the costs of gaining legal title to Mangaohane. When the battle for Mangaohane was lost, the Te Whaaro family had little left. Their fallback position at Mangaone amounted to 514 acres in the name of six family members. From producing a livelihood from their customary land as a cohesive social unit in the new capitalist order, the family were dispersed, the individual members reduced to wage-labourers. Two years after the eviction from Pokopoko, the family experienced a second displacement as a result of poor Native Land Court process, their petition to government defeated by familiar government inertia and lack of concern. Winiata Te Whaaro died in April 1911, aged 86, one month after his wife. They both lie buried at Winiata.

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[632] Walzl, Wai 2180 #A46, pp.884-894.
[633] H Te Whaaro to Registrar, 29 January 1935, with translation, MLC-WGW1645 109 3/615.
[634] Walzl, Wai 2180 #A46, p. 153. There has not been time to research the circumstances of the sale.
[635] Ibid, p. 154. Claimant Lewis Winiata advises that Awarua 4C15F1H1 was purchased by him from his mother, Waipai Winiata, who in turn purchased the block from family owners at the point when the land was partitioned. Feedback from Ngati Hinemanu me Ngati Paki Heritage Trust, 3 July 2017.
[636] CB Morison to Native Minister, 18 August 1890, MA-MLP1 28d 1890/267. In the same vein, Ihakara Te Raro told the Awarua Commission at this time that his son Hiraka and Winiata Te Whaaro represented Ngati Whiti: ''My son Hiraka and Winiata conduct the business of our tribe…', Minutes of Awarua Commission, 8 August 1890, MA-MLP 1 1906/91, Wai 2180 #A6(a), p.302.

The earliest class photo of Taihape's new school captures some of the Te Whaaro and Tanguru cousins months after their eviction from Pokopoko.

Figure 15: 'Earliest Taihape School Group about 1897'[637]

Te Matehaere Te Whaaro is the commanding presence in white at the centre, her siblings Te Ngohengohe (Miki) and Papara flank both sides of the group. Whakawai, the youngest, stands left of Matehaere and the young boy sitting next to the teacher is Iramutu and Rapana's son, Te Teira.[638] Both the dress and deportment of these children convey a sense of strength and wellbeing one might expect from their farming background. What is also striking is the way in which the Maori students in this early school portrait appear as tuakana within this new institution. Ken Stewart, an early Pakeha pupil sitting third from the right in the second row, made the same point on the occasion of the school's 70th jubilee celebrations in 1966. Stewart was part of the first Pakeha family settlement scheme at Taihape which began in tents, their income supplemented from work making roads. There

[637] 'Earliest Taihape School Group about 1897', A553, Taihape Museum.
[638] From school caption supplied with above, Taihape Museum, and information supplied by Te Whaaro family descendents. Whakawai, the youngest, was also known as Winiata.

was, he recalls, 'nothing but Maories all around' and he made a point of expressing how 'splendid' they had been.[639] Those at Winiata, he recalled in particular, were a 'very fine type', the manaakitanga extended to the early Pakeha families epitomised by a social evening the Winiata community put on for the Taihape newcomers, with supper and song.[640]

That position was quickly eroded. In the decade following the family move to Winiata, the neighbouring Pakeha settlement of Taihape grew rapidly, the town achieving borough status by 1906. Compare for example the school photo above with one taken just eight years later:

Figure 16: Taihape School children, 1905[641]

Within four years of this photo, the children of Winiata were separated from Taihape School altogether, attending instead a 'side school' operating from a rented hall in Winiata between 1909 and

[639] Ken Stewart, '70th Jubilee of Taihape School', available online at http://www.ngataonga.org.nz/collections.
[640] Ibid.
[641] 'North Island Main Trunk Railway: a Group of School Children at Taihape', taken from the supplement to the Auckland Weekly News 27 April 1905, p. 6; available online at http://www.aucklandcity.govt.nz.

1925.[642] Phillip Cleaver's research indicates that Winiata was a significant Maori settlement in the district in the first half of the twentieth century, reproducing 1936 census records which place the size of kainga's population of 66 residents second only to Moawhango.[643] A further 55 Maori lived within the Taihape borough next door. The Winiata whanau and Maori in general, however, suffered a similar side-lining within the new order marked by the arrival of the railroad. Denis Robertson's *'... give me Taihape on a Saturday night'* opens with four pages about pre-European Maori settlement. With the exception of the early school photo reproduced above, however, Maori then vanish from this local history, reappearing only in the 1980s as Maori wardens, kohanga reo, and individual sports achievers.

Their eviction from Pokopoko did not destroy the Te Whaaro family. Indeed, Tautahi still stands at Winiata, the photos of departed family members that line three walls of the wharepuni testimony to their resilience and continued presence in the district, just as the sunflowers on the amo of the wharepuni, and the 'Pakeha' tekoteko above, speak of their tupuna's openness to innovation in the face of changing times.[644] But the family's position in the new order in place by the twentieth century was very much reduced from the promise their Mangaohane farming endeavours held for them just a decade before. The ongoing partition of the remnant left to half of the family members at Winiata reinforces the diminishing opportunities available to the family, the limits of such individualisation highlighted by every succeeding generation. The attrition of this remaining estate through twentieth century pressures such as survey and rating liabilities has also taken its toll.

In his affidavit claimant Herbert Winiata Steedman asks some searching questions: Why was Winiata Te Whaaro treated so highhandedly? Why was the law unable to protect his lands? Why were his family homes and possessions destroyed?[645] On the face of it, Winiata Te Whaaro was living the Liberal dream: a productive smallholder, making an independent livelihood for his family from the land and contributing, too, to the wealth of the nation. Pokopoko was a hard-working, law-abiding, peaceable settlement. In a nation which was already beginning to pride itself on its race relations, in the early 1890s Winiata Te Whaaro was a poster-child of Maori success in the new colonial order. Why did the Crown stand by and allow his demise?

In his recent comprehensive study of nineteenth-century government policy towards Maori land, Richard Boast sums it up as both crude and effective: 'to acquire as much Maori freehold land as possible as cheaply as it could'.[646] He attributes this policy to the 'sacred mantra' in the New Zealand

[642] Paul Christoffel, 'Education, Health and Housing in the Taihape Inquiry District, 1880-2013' (Waitangi Tribunal, 2016),Wai 2180 #A41, p. 150.
[643] Cleaver, Wai 2180 #A48, p. 213.
[644] According to Morvin Simon, the tekoteko is a representation of the Pakeha, Willoughby, who built the whare, Simon, 'Taku Whare E: My Home My Heart', vol. 2, p. 103.
[645] Affidavit of Herbert Winiata Steedman, Wai 2180 #E3(a), p. 11.
[646] Boast, *Buying the Land Selling the Land*, p. 450.

political mind of providing land for close settlement, rather than any intentional ill-will towards Maori. Given that the end result for Maori was so damaging, one has to wonder how much importance to place on the issue of intention. Does the absence of any malice towards Winiata Te Whaaro in the Studholme papers make the eviction any less unjust? Boast criticises the government for failing to include Maori within its objective of close settlement, for squandering money on land purchase rather than investing it in Maori development through capital assistance and training. Government policy over a period of fifty years, he concludes, was 'unimaginative, thoughtless, mediocre, governed by untested assumptions and mean-spirited', even if it was not actively hostile to Maori.[647] Again, to continue with a policy of dispossession for such a sustained period, in the face of persistent appeals from the dispossessed, seems by definition hostility.

Boast here is writing of Crown purchase and settlement policies, but the same holds true for Crown support for private purchase and settlement. Winiata Te Whaaro was arrested and evicted because he had been unable, despite great cost and effort, to obtain legal title to his kainga and farm. Studholme, the legal owner, ultimately obtained the title to Winiata Te Whaaro's farm as a result of the statutory support he was afforded. Law, Boast reminds us, is ultimately a product of politics and power.[648] In the colonial context of disputed land, the Crown's insistence on Maori obedience to civil writs based in turn on such a one-sided contest, together with its disregard of the underlying injustice in each case arising from the skewed statutory framework, rendered the civil ejectment proceedings an effective means of dispossession.

The eviction of Pokopoko extends the policy failure identified by Boast further. Premier Seddon visited Moawhango in 1894 accompanied by James Carroll at a time when Mokai Patea was on the cusp of change, the locomotive of Pakeha settlement hurtling towards them oiled on the wheels of recent Crown purchase. Seddon had come to talk about their land, and in particular, the 'Settlement of the Country':

> the time had now arrived when settlement must no longer be retarded. The land could not be allowed to lie unproductive, for the European population was increasing, and every day longer this state of things was allowed to continue the worse it would be for the Natives.[649]

This, of course, was standard Liberal rhetoric of the time which justified the state's aggressive program of Maori land purchasing nationwide. What is extraordinary about this occasion is that Seddon was seemingly blind to the audience of productive Maori sheep farmers before him. That night, the Premier stayed with Studholme's farm manager at Karioi, well aware that the leaseholds

[647] Ibid, p. 452.
[648] Ibid, p. 449.
[649] 'Settlement of the Country', AJHR 1895 G-1, p. 4.

there, some 240,000 acres on which 80,000 sheep were depastured, were but a portion of his host's landholdings. This irony, too, seems to have been lost on the ministerial entourage.

The larger state policy failure the arrest and eviction represents is the failure to recognise Maori as an integral part of the public interest. Winiata Te Whaaro did not need state help to enter into the new business of farming. He and his family were already doing it. What he did require was protection from the laws of the land which favoured the interests of the wealthy and well-connected. Seddon could not see what was in front of him. Ten years later, to all intents and purposes, the tangata whenua of Mokai Patea had been rendered invisible.

Chapter 5

A Question of Law

The project brief for this report provides a useful way of returning to consider the main issues arising from the arrest and eviction.

> How had Crown policies and practices for eviction of Maori for trespass on lands they claimed developed by the mid-1890s – as evident, for example, with the evictions at Maungatautari and Hauturu/Little Barrier Island?

Crown policies and practices in this regard fit with the general approach to managing Maori affairs identified by Richard Hill in his study of policing. Post-war, as confidence in the 'tranquility' of the colony took root, government policy towards Maori moved to one of integration. Whether earlier policies amounted to differential treatment or mere neglect is a moot point. What is clear is that the policy of integration coincided with post-war Pakeha expansion into former Maori districts. Indeed, the increasing application of the writ of law to Maori was carried on the back of expanding settlement, ushered in by land alienation that inevitably followed the Native Land Court. The Liberal Government of the 1890s extended this policy further: dismantling the Native Department altogether and creating in its stead a Native Land Purchase Department.

In other words, it is not that the Crown created a special policy and practice for the eviction of Maori. It simply allowed existing civil procedures inherited from colonial roots to be increasingly applied to Maori as they were brought into the ambit of expanding Pakeha settlement. It is significant that the English context of civil ejectment did not share the same background of disputed title. The only concession to Maori by 1882 was the requirement that all written notices relating to civil actions against Maori in the Supreme Court be translated by an authorised interpreter. Yet while insisting that the law surrounding ejectment applied to all, in the last two decades of the nineteenth century an important Ministerial check prohibited the use of police in the execution of 'lawful' ejectments involving Maori without the written consent of the Native Minister. Against the backdrop of law surrounding forcible entry, this effectively meant that civil writs of possession against Maori could not be executed at all.

As we have seen, this Crown intervention had its genesis in the contested frontier at Maungatautari, under the watchful gaze of King Country leaders. The importance of Circular 4/1884 in such frontiers belies the political nature of the underlying land disputes on which civil proceedings for possession

rested. It is also the case that the Crown disassociation with respect to civil proceedings against Maori – restraining state police from enforcing court writs on the one hand while refusing to engage with underlying issues of justice or afford protection to Maori on the other – did not apply to evictions in which the Crown's own interest was at stake (such as Horowhenua or Hauturu).

> How did the implementation of the arrest of Winiata Te Whaaro, the eviction of the Maori community at Pokopoko, and the loss or destruction of their homes and property in 1897, fit within the overall context of evictions by this time?

The arrest and eviction of Winiata Te Whaaro provides a prime example of Crown disassociation described above. Under-Secretary Waldegrave remained impervious both to Sheriff Thomson's repeated pleas for police assistance and those of Winiata Te Whaaro for justice. The outcome exposes the shortcomings in the Crown's studied refusal to take responsibility for what in essence was a political issue, and one of justice: Maori dispossession. One of the repercussions of the Crown's abnegation of responsibility was that how each eviction played out became a local contest between the personalities involved. In the case of Winiata Te Whaaro the personalities involved loom larger than life.

What sets the eviction apart is the care taken by John Studholme Jnr to follow the letter of the law. To a large degree this reflected the particular circumstances surrounding Mangaohane, but it also points to the particular political significance of the 'lawful' displacement of the Maori settlement which pre-dated Crown title. It was imperative that the ejectment be 'lawful', so as to better impress on Maori, as Chief Justice Prendergast impressed on Winiata Te Whaaro, that 'the law must have the last word'. Contrast Studholme's care with process, for example, with the method of the New Zealand Loan & Mercantile Company downriver at Pouwhakarua two years later. Pene Pirere and Ngati Haukaha were intimidated into leaving in the absence of any government protection, despite their status as the legal owners and the Company's lack of legal writ. Their tenure there, however, had been a matter of months, not decades. The attention paid to undertaking the Pokopoko ejectment 'lawfully', by contrast, masked the bigger injustice the eviction posed. Sheriff Thomson was correct in identifying the ejectment as an important watershed: that a Maori community could be evicted from a working farm of 20 years as a result of civil process was a powerful message to Maoridom that resistance to similar displacement was futile.

> On what legal and administrative authority was the arrest and detention of Winiata Te Whaaro, his appearance before the court at Wellington, and the eviction of the Pokopoko Māori community carried out?

The events were the result of a civil action taken by private property owner John Studholme Jnr to gain possession of land for which he held the certificate of title. The civil proceedings were based on common law inherited from England at the point of colonisation, as refined and included as a schedule in the Supreme Court Act 1882.

The action began with a single writ of sale and possession obtained by Studholme from the Supreme Court, and issued to the Sheriff of Whanganui, Andrew Thomson. After Winiata Te Whaaro's refusal to give up possession on the strength of this writ, Studholme then moved to obtain a writ of attachment from the Supreme Court, to have Winiata arrested and brought to court in Wellington to answer his contempt. The writ of attachment was issued to Sergeant Cullen and the police constables of New Zealand. Once Winiata Te Whaaro was in custody, the Sheriff of Whanganui organised the eviction of the Pokopoko community on the strength of the original writ of sale and possession.

The Office of the Sheriff came under the Justice Department. In the absence of a Native Department, by this time the Justice Department seems to have assumed responsibility for Maori issues: all the correspondence of this era was directed to the Under-Secretary of Justice, Frank Waldegrave. The Police Department remained part of Defence, but this research shows close relationships were maintained with the Justice Department. As the potato crisis of 1898 demonstrates, Waldegrave relied on the Police Department to respond to requests from Maori in outlying areas.

The arrest and eviction was undertaken under the authority of Supreme Court writs. The claim about these events raises fundamental issues about the application of New Zealand law to Maori:

- To what extent was it encumbent on the Crown to ensure that Supreme Court civil ejectment procedures were appropriate for New Zealand circumstances, particularly where title to land was in dispute and the effect of the proceedings would be the dispossession of communities of long-standing.

- In subjecting Maori to such civil proceedings as Pakeha settlement expanded, to what extent was it encumbent on the Crown to ensure that Maori were not disadvantaged by their unfamiliarity with the novel and complex legal process, but rather had equitable access to justice?

> What role did the Wanganui sheriff, runholders and/or their agents, and members of the police force play in the eviction of the Pokopoko Māori community, including any destruction or relocation of houses and property, or loss or destruction of stock, and on what authority?

Runholder John Studholme was ultimately responsible for bringing the civil action against Winiata Te Whaaro to gain possession, and for pursuing the writ of attachment against the rangatira when he refused to remove. The Studholme family land holdings amounted to almost one million acres in different properties throughout New Zealand.

By law, Sheriff Thomson was responsible for executing the original writ of sale and possession. He spent two days at Pokopoko in April 1897 attempting to persuade Winiata Te Whaaro to give up possession, without success. The writ of attachment seems to have been his idea, obtained on the strength of his allegations of Winiata Te Whaaro's violence. The Sheriff utilised district constables to assist him with the execution of the writ of sale and possession and the service of the writ of attachment. However, police became directly involved at the point that Chief Justice Prendergast issued the writ of attachment to Sergeant Cullen and other constables, commanding them to arrest Winiata Te Whaaro and bring him to Wellington to answer his contempt. Issuing the writ of attachment to the police was a departure from usual court practice. In addition to assisting with the arrest, the three other constables present seem to have then escorted the community to Waiokaha.

Although responsible for the execution of the writ of sale and possession, Sheriff Thomson did not remain at Pokopoko to see this carried out to completion. On his instructions, movable property inside was taken outside before the houses were destroyed. The destruction of the kainga and the transportation of the community's property was undertaken by Studholme's station manager, Richard Warren and his workers.

This report suggests that the evidence does not support allegations of stock loss occurring in the process of eviction, nor looting of property, although there are issues posed by the destruction of the kainga and whether Winiata Te Whaaro was able to recover possessions inside one particular building. The eviction did result in Winiata Te Whaaro losing his flock, primarily because he no longer had land to farm. His son's sheepfarming venture at Mangaone seems to have come to a similar end as a result of the family's second eviction from land there.

> What were the immediate and longer term social, cultural and economic outcomes of the arrest and eviction for the Pokopoko Māori community?

The arrest and eviction was a humiliating end to a fifteen-year conflict over tenure on Mangaohane 2 Block, bringing to an end, too, Ngati Paki's livelihood. Evidence suggests that the long battle over title to Mangaohane adversely impacted on Winiata Te Whaaro's title to other Mokai Patea lands. In addition he had sold his interests and those of some of his children in Awarua to fund the litigation over the family farm on Mangaohane. The eviction, therefore, rendered the Te Whaaro family virtually landless. The remaining land of six Te Whaaro siblings at Winiata amounted to 514 acres. The lack of turangawaewae for the elder siblings within Mokai Patea led to some of them leaving the district: in the long term it continues to be a source of friction and hurt among the family.

The Te Whaaro family's kainga at Winiata remained a significant Maori presence in the Taihape district. However their circumstances were much reduced from their position at Mangaohane as productive farmers on customary lands. The land at Winiata has been further partitioned on individual lines, burdened with survey and rates liens, and various sections over time leased, 'Europeanised', and sold.

A question of law

If we are to believe Under-Secretary of Justice Frank Waldegrave, the story of Pokopoko is a straightforward one about the process of law, involving a civil suit against Winiata Te Whaaro that had nothing whatsoever to do with the Crown. Indeed, the Crown official had to spell it out five times to the Court officer on the ground that the state would not enter the fray unless there was a breach of the peace. As it happened, the government's policy of studied non-intervention came undone when Chief Justice Prendergast issued a writ of attachment for Winiata Te Whaaro's arrest to the police constables of New Zealand.

Those on the ground confronted by the realities of frontier life had markedly different views about the Crown's role. Sheriff Thomson's repeated pleas for police assistance in order to execute the civil writ bordered on the insubordinate. Charged to enforce the Queen's writ over communities only recently exposed to Supreme Court decrees, Thomson was well aware that compliance could not be taken for granted. Even before Winiata Te Whaaro confirmed it, Thomson recognised that the eviction of the established kainga presented a tipping point in the power dynamics of what had been an entirely Maori rohe, for which the visible authority of the state was required. Thomson was not troubled by Winiata's claims of injustice, it was not his job to be so. What he did know was that when it came to the point, he needed constables at his side to show the Pokopoko community that the law meant business and could not be ignored.

The bible, the gun, the pound notes. It is difficult to say for certain what Winiata Te Whaaro meant with his symbolic gestures. Was he pointing to his own allegiance to the 'Queen's things': his

Christian faith, his military service on behalf of the Crown, his engagement in the new market economy, his recourse to the courts of the land? Or were the pound notes he proffered to Sheriff Thomson representative of how the rangatira perceived he had been defeated by Studholme in the contest for title? What is clear is that Winiata Te Whaaro understood the Crown's role in his dispossession. Fundamentally, he did not accept the state's premise that the civil proceeding against him could be detached from the underlying dispute over title. His starting point for refusing to leave his farm was that Studholme's title was wrong, a miscarriage of justice obtained by his opponents through the weapon of litigation which exploited competing court jurisdictions. Winiata Te Whaaro viewed his arrest and eviction as evidence of Crown support for Studholme's title on the basis of unlawful purchases at the expense of his own *take* to his kainga and farm. Send the bill, he told Chief Justice Prendergast, to the government. Winiata Te Whaaro did not see his resistance, framed in terms of contempt, as a threat to peace nor as a breach of law: 'I roto ahau i tena Ture e haere ana i enei Tau ka mahue ake nei ...' / I have been keeping within that law during these years past ...' As an ex-serviceman and successful farmer in his own right, he could scarcely be labelled as anti-establishment. His vow to die rather than to leave expressed his conviction in the righteousness of his cause. Finally, as legal processes for the eviction pressed close, in setting out at length his long legal battle for entitlement Winiata Te Whaaro expressed confidence in a Crown that would intervene to prevent his dispossession.

Winiata Te Whaaro believed in the law. He had spent five years in litigation and sold his childrens' inheritance to pursue his title to his farm through the courts. The issues arising from that battle are not the subject of this report, although as indicated above, they cannot be ignored. The civil ejectment proceedings inherited from England protected property owners where the underlying title was not in dispute. The process itself had little room to consider such issues: the New Zealand experience shows the Supreme Court took matters on face value, particularly where Maori defendants did not appear to defend the action. Indeed, the overwhelming response to Winiata Te Whaaro – by Sheriff Thomson, Chief Justice Prendergast, and Crown officials like Waldegrave alike – indicates that there was *no* room at all within civil ejectment proceedings to consider the justice or otherwise of underlying title issues.

The primary issue involved with the subjection of Maori to civil ejectment proceedings, therefore, arises from the lack of any provision to take such matters into account. Within the disputed landscape of the colonial frontier the Crown's insistence that civil ejectment proceedings be treated in isolation effectively armed Pakeha settlers with the law. The disadvantage to Maori was compounded by their unfamiliarity with the process, and factors such as expense, distance, and access to legal counsel, but the fundamental unfairness the application of civil procedure posed, was the underlying statutory bias supporting Pakeha settlement.

The Crown, moreover, was well aware of this. It was the reason why Native Minister Bryce in 1884 issued his directive to curb police involvement in the execution of ejectment writs against Maori as a matter of course. The Ministerial check effectively suspended the law being applied to Maori for the next 15 years, a crucial time of post-war Pakeha expansion, although the same cautious approach did not seem to apply to Crown evictions undertaken in this period. Inspector McGovern's view of Circular 4/1884, as one 'which all Police Officers residing in Native Districts appreciate and I trust it will long remain in force', suggests the policy was an important factor in frontier relations. Can it be regarded as Crown protection? It is possible to see the reluctance of Police Commissioner Hume and Under-Secretary Waldegrave to give in to Sheriff Thomson's repeated requests for police assistance as a protectionary measure for Maori. This is lessened somewhat by the impression that neither of them really understood why it had been invoked in the first place, and dispelled altogether by the evidence of official indifference to the subsequent hardships faced by the family. The Head of the Native Land Purchase Department could find time to attend court in Whanganui to upset partition arrangements in order to extract another Crown purchase from the family's land of Awarua 4C15. But he showed no similar initiative or interest in implementing the Native Affairs Committee's recommendation for three consecutive years to put right the court's 1896 partition which had resulted in further loss to the family at Mangaone in the wake of their eviction.

The events at Pokopoko, together with the other eviction case studies considered in this report, also tend to cast Bryce's injunction, not as an active protection for Maori, but rather a means of ensuring that Pakeha expansion in this period did not breach the prevailing peace. Again, the kainga of Pokopoko and Winiata Te Whaaro's farming enterprise predated Crown title. Real protection might have ensured that civil proceedings could not be invoked where title was an issue of ongoing dispute, or threatened peaceable Maori settlement at all. Rather than devise a code of civil procedure to take such factors into account, however, the Crown's approach seems to have been to suspend the enforcement of the existing code until such time as Pakeha settlement in any district forced the issue. For Winiata Te Whaaro and his people at Pokopoko, this time was the autumn of 1897.

'Obey the law which is above all, lest evil come upon you'. It is not known whether Winiata Te Whaaro ever received this scarcely veiled threat posing as a pearl of biblical wisdom from the Justice Department. In any event, it was no more than Sheriff Thomson had communicated to the community when he first visited in April. This claim, to be sure, is about law but it is not straightforward. Just as Winiata Te Whaaro's metaphors were misunderstood and manipulated to become the pretext for his arrest, this eviction story is about the use of civil ejectment law as a weapon of dispossession when the guns had been laid down, bolstered by the might of the state. Placed in its context, it is about the way New Zealand law has effected the transfer of land – and corresponding wealth – out of Maori hands into private Pakeha ones, and the extent to which the Crown, as the architect and enforcer of this law, stood by and let it happen.

Bibliography

Primary Sources

Archives New Zealand, Wellington

Justice Department (ACGS)

ACGS 16211 J1 578/aj 1897/1039	From: Stout, Findlay and Company, Barristers and Solicitors, Wellington Date: 2 September 1897 Subject: Regarding costs against Winiata te Whaaro in case of Studholme against him regarding possession Mangaohane A (£88.3.0)
ACGS 16211 J1/578/aj 1897/338	Sheriff, Wanganui Date: 23 March 1897 Subject: Asks for assistance of Police regarding execution of Writs of Possession against Mangaohane A and G Moawhango district.
ACGS 16211 J1/578/aj P1897/668	From: Messrs Stout, Findlay and Company, Barristers and Solicitors, Date: 25 May 1897 Subject: "Regina v Winiata, contempt of court" that government waive claim to costs etc
ACGS 16211 J1 493/ae 1892/1172	From: Sheriff, Wanganui Date: 9 December 1892 Subject: As to the Police acting as Sheriff's Officers, 1892
ACGS 16211 J1 522/u 1894/1017	From: Sheriff, Wanganui Date: 20 July 1894 Subject: Regarding poundage in Murray Roberts and Company v Winiata
ACGS 16211 J1 606/w 1898/1393	From: J Clouston, Mangaone [Winiata], Taihape, Rangitikei Date: 18 November 1898 Subject: Natives are in want of potatoes
ACGS 16211 J1 664/1 1901/881	Clerk House of Representatives, Wgtn 31 July 1901 Subject: Petition of Hauiti Te Whaaro with Report of Native Affairs Committee referred to Government, by Order of the House [re subdivision of Awarua 4C].
ACGS 16211 J1/616/q 1899/482	From: Pene Pirere and others, Pouwhakarua Date: 6 May 1899 Subject: Re their occupation of Pouwhakarua No.1
ACGS 16211 J1/531/f 1895/6	From: Chief Judge, Native Land Court, Wellington. Date: 4 January 1895. Subject: Forwarding application that Judge Butler be authorised to hear application regarding Mangaohane No.1 Block. [Petitions: Joseph Francis Studholme, Charles William Reardon, Te Rina Mete Kingi & others, Noa te Hianga [or Hainga?], letter from Retinana Te Rango]
ACGS 16211 J1 286/ao AC 1880/2183	From: Superintendent Shearman, Depot, Wellington Date: 23 July 1880. Subject: Instructions given for police to serve summonses but not to be employed as sheriffs officers attached Circulars No. 105
ACGS 16211 J1 546/f 1895/1357	From EG Jellicoe, Wellington Date: 5 November 1895 Subject: Regarding Jellicoe contempt case, that fees of Court be refunded to him
ACGS 16211 J1 694/by 1903/609	From TC Jones [Licensed Interpreter] Wanganui Date: 26 May 1903 Subject: Applicaiton of HM Downs, trustee for owners , for removal of restrictions on Awarua 4C No. 15A

Department of Justice, Head Office (AAAR)

AAAR 7585 W3558/103 4	Agency case files 1-50, 1897
AAAR 7585 W3558/104 4	Agency case files 51-190, 1897-1898

Department of Maori Affairs (ACIH)

ACIH 16046 MA13 107 / 67	Pukekura Puahoe - Copies of Supreme Court writs - Published report of investigation of Sullivan murder - Crown Grants - Newspaper clippings - Native Office Registered Files
ACIH 16036 MA1 436 21/3/60	Awarua 4C15F 1A2A – Maori Reserve, Section 298/1931
ACIH 16036 MA1 1162/ 1916/4167	Received: 20th November 1916. - From: Lands Department, Wellington. - Subject: Potaka (Utiku) Native Township
MA-MLP 1 28d 1890/267	From: CB Morison, Wellington Date: 18 August 1890 Subject: Winiata Te Wharo and Retimana Te Rango desire that negotiations for purchase of Ngatiohuake, Ngatiwhiti and Ngatitama lands should be conducted through them

Police Department (ACIS)

ACIS 17627 P1 249 / 1897/474	From: Inspector McGovern, New Plymouth Received: 10 April 1897 Subject: Annual report on district, year ended 31 March 1897
ACIS 17627 P1 249 / 1897/459	From: Inspector Emerson, Napier Received: 7 April 1897 Subject: Annual report on district, for year ended 31 March 1897
ACIS 17627 P1 251 1897/1143	Promotion of 1/c [1st Class] Sergeant John Cullen, to rank of Inspector
ACIS 17627 P1 257/ 1898/698	From: Inspector McGovern, New Plymouth Received: 20 April 1898 Subject: Annual report on district for 12 months ended 31st March 1898 [31 March 1898
ACIS 17627 P1 257/ 1898/699	From: Inspector Emerson, Napier Received: 21 April 1898 Subject: Annual report on district for 12 months ended 31st March 1898 [31 March 1898]
ACIS 17627 P1 264 / 1899/127	From: [Inspector] Gillies, Wanganui Received: 24 January 1899 Subject: Charge of alleged drunkenness against [Constable] Black, Ohingaiti, reports, etc
ACIS 17627 P1/207 1888/1375	From: Inspector Kiely, Napier Received: 17 July 1888 Subject: Conviction of Thomas Snelling and Robert Thompson Batley for sly grog selling recommends Sergt Cullen for reward
ACIS 17627 P1/207 1888/1375	From: Inspector Kiely, Napier Received: 4 August 1888 Subject: Recommends Sergt Cullen Detective Grace and Constable Lawless for rewards in recognition of their services in connection with detection and prosecution of Norman Fitzgerald and Nellie Fitzgerald for sly grog selling
ACIS 17627 P1/222 1892/400	From: Inspector Emerson, Hamilton Received: 18 March 1892 Subject: Reports regarding conviction of E Arnold and Olaff Hoff, sentenced to 6 years penal servitude for assault and robbery; Sergeant Cullen applies for reward for himself, Detective Grace and

	Constables Stephenson and Montgomery
ACIS 17627 P1/223 1892/564	From: Inspector Emerson, Hamilton Received: 12 April 1892 Subject: Arrest of a deserter from "HMS Ringarooma" by Sergeant Cullen, who applies for the usual rewards
ACIS 17627 P1/240 1895/1515	From: Inspector Thomson, New Plymouth Received: 25 November 1895 Subject: Recommends Sergeant Cullen and District Constable Jones for rewards re 3 convictions against W.A. Floyd for sly grog selling at Moawhanga
ACIS 17627 P1/236 1895/420	New Plymouth Received: 20 March 1895 Subject: Recommends Sergeant Cullen and Constable J Shearman, for rewards for conviction of Charles Ashwin, sly grog selling etc
ACIS 17627 P1/237 1895/615	From: Inspector Thomson, New Plymouth Received: 4 May 1895 Subject: Conviction of William Moir, fined £20 and costs for sly grog selling at Kerioi; recommends Sergeant Cullen; Constables Stacey and Shearman, and District Constable Jones, of Moawhanga, for rewards
ACIS 17627 P1/243 1896/698	From: Inspector McGovern, New Plymouth Received: 30 May 1896 Subject: Conviction of D.B. Howard; sly grog selling at Kerioi; (2 cases); recommends Sergeant Cullen and Constable Shearman for reward
ACIS 17627 P1/242 1896/307	From: Officer in Charge, New Plymouth Received: 13 March 1896 Subject: David Creech convicted of sly grog selling at Mangaweka; application of Sergeant Cullen for reward for himself and Constable O'Leary.
ACIS 17627 P1/242 1896/331	From: Officer in Charge, New Plymouth Received: 20 March 1896 Subject: Conviction of Alexander Chase, and Tukino a Native of sly grog selling at Karioi; Sergeant Cullen applies for a reward for Constable Shearman and himself etc
ACIS 17627 P1/241 1896/203	From: Inspector Thomson, New Plymouth Received: 15 February 1896 Subject: Conviction of Mrs Jane Simpson, sly grog selling at Wanganui; recommend Sergeant Cullen and Constable Hope for rewards etc
ACIS 17627 P1 248 1897/341	From: Inspector McGovern, New Plymouth Received: 10 March 1897 Subject: Conviction of James Mulray [Mulroy?] on two charges of sly grog selling at Kerioi; recommends Sergeant John Cullen and Constable John Shearman for rewards
ACIS 17627 P1 249 1897/609	From: Inspector McGovern, New Plymouth Received: 11 May 1897 Subject: Conviction of Mrs Jane Simpson; sly grog selling; recommends Sergeant John Cullen and Constable John Cassells for rewards
ACIS 17627 P1 249 1897/656	From: Inspector McGovern, New Plymouth Received: 20 May 1897 Subject: Conviction of Richard Underwood of sly grog selling at Kerioi; recommend Sergeant Cullen and Constable Shearman for rewards etc

Department of Conservation, Whanganui Conservancy Office (AFIE)

AFIE W5717 619 136 13/96 pt 1	Otaihape Scenic Reserve – Awarua Block 4C no. 15A Block I Hautapu SD

Department of Lands and Survey, Wellington District Office (ADXS)

ADXS 19483 LS-W1 409 / 21408	Winiata and others - Claim for loss of land Awarua 4 C Block (1901)

Department of Lands and Survey, Head Office (ACGT)

ACGT 18190 LS1 1595	Roads – Awarua 4a 3c 4c and 4h

Department of Lands and Survey, Wellington District Office (ADXS)

ADXS 19483 LS-W1 340/ 16584 part 1	Native Township near Kaikoura in Awarua Block (Potaka No. 6 at Utiku
ADXS LS-W1 222 9489	Road running through Awarua No 4 Block – Wellington Land District
ADXS LS-W1 409 21408	Winiata and others – Claim for loss of land Awarua 4C Block

Land Information New Zealand, National Office

ABWN 8102-349 WGN 910	Awarua No. 4C No. 15A & Road Through Lot 2 Block B Manchester Block

Land Information New Zealand, Wellington Processing Centre (AFIH)

AFIH W5692 22381 118 RP 561	Awarua 4a and 4c Block Subdivisions – Maori Land Plan ML 1525

Wellington High Court (AAOM)

AAOM W3265 6044 4/4	Agency Register 1897

Whanganui District Court (AAOG)

AAOG 25413 W5918 36/	Sherriffs returns, 1879-1883
AAOG 25413 W5918 32/111	Hurley and another vs Wunu Rangiwherohia
AAOG 25413 W5918 32/108	Hurley and others vs W W Hipongo
AAOG 25413 W5918 32/113-114)	Writ of attachment against Reihana Terekuku
AAOG 25413 W5918 37/152	Albert Walter v Apehanna Tahuiarangi
AAOG 25413 W5918 37/180	Cooke v Winiata Puhaku)
AAOG 25413 W5918 37/203	Te Puia v Williams
AAOG 25413 W5918 33/255	Murray Roberts and Co vs Te Wharo
AAOG 25413 W5918 33/269	Gooseman vs Ani Paki
AAOG 25413 W5918 33/267	Morrison and another vs E Arani
AAOG 25413 W5918 33/272	Sunncar vs Wirihana Huia
AAOG 25413 W5918 33/275	Betley vs Raumaewa
AAOG 25413 W5918 33/281	McCormack vs Hiraka te Rango
AAOG 25413 W5918 33/280	Morison vs Harika
AAOG 25413 W5918 33/282-283	Baldwin vs Taiuru te Rango
AAOG 25413 W5918 33 / 276- 277	Studholme vs Winiata (1906)

Maori Land Court, Aotea (AEGX)

AEGX 19124 W1645 MLC-WGW1645 1 Awarua, 4C15 - 30 October 1903 - 2 April 1904 3/1904/340
AEGX 19124 W1645 MLC-WGW1645 Awarua 4C15C – 9 August 1905-19 July 1912 18 3/1912/143
AEGX 19124 W1645 MLC-WGW1645 Awarua, 4C 15E – 9 August 1905 – 15 April 1913 23 3/1913/8
AEGX 19124 W1645 MLC-WGW1645 Awarua 4C 15F5 – 9 Augusut 1905- 29 May 1936 27 3/1913/289
AEGX 19124 W1645 MLC-WGW1645 Awarua, 4C 15D – 31 October 1914-28 August 1915 33 3/1914/292
AEGX 19124 W1645 MLC-WGW1645 Awarua 4C 15F4 – 9 August 1915- 9 September 1916 35 3/1915/64
AEGX 19124 W1645 MLC-WGW1645 Awarua 4C 15F 3B – 9 August 1905-19 November 1926 40 3/1916/32
AEGX 19124 W1645 MLC-WGW1645 Awarua 4C 15B – 9 August 1905-5 September 1916 42 3/1916/105
AEGX 19124 W1645 MLC-WGW1645 Awarua 4C 15F2 – 7 May 1908-26 May 1936 42 3/1916/120
AEGX 19124 W1645 MLC-WGW1645 Awarua 4C 15H 1H – 25 October 1923-24 May 1944 109 3/615
AEGX 19124 W1645 MLC-WGW1645 Awarua 4C 15F 1A – 7 June 1917-30 November 1925 124 3/1535
AEGX 19124 W1645 MLC-WGW1645 Awarua 4C 15F 1A 2A – 9 May 1939-4 November 1960 201 3/5647
AEGX 19124 W1645 MLC-WGW1645 Awarua 4C 15F 1A 2G – 17 July 1944-17 December 1974 220 3/6233
AEGX 19124 W1645 MLC-WGW1645 Awarua 4C 15F 1A and 2A 287 4/5647

Alexander Turnbull Library

MSY-4506, William Henry Grace Letterbook 1880-1882
MSX-4741, William Henry Grace Diary 1882
MS-Papers-0032, Donald McLean papers
MS-Papers-0048, Walter L Buller letters, folder 14
MS-Papers-0272, accessed via MS-Copy-Micro-0351-1/2, John Studholme Papers.

- Folder 1: Owhaoko block correspondence, 1893-1897, and notes
- Folder 2: lists of original owners of Owhaoko a, b, c, d; list of some Owhaoko subdivisions, with reg, no and area.
- Folder 3: Mangaohane No. 1: correspondence, 1894; notes, copies of official documents
- Folder 4: Mangaohane No. 2: correspondence 1893-95; notes, copies of official documents
- Folder 5: Lists of original owners of Mangaohane Block(s), and more
- Folder 6: re Mangaohane blocks correspondence 1883, 1886, 1888-1893
- Folder 7: Mangaohane block(s) correspondence 1894
- Folder 8: Mangaohane block: correspondence, 1895-1897, 1900, and misc. notes
- Folder 9: Miscellaneous letters 1881-1904
- Folder 10: Renata Kawepo
- Folder 11: letters from R.J. Warren, Owhaoko: letters, mostly to John Studholme Sr. and Jr., 1888-1903

- Folder 12: correspondence and other material concerning the financial arrangements between John Studholme (Snr and Jnr) and Murray Roberts & Co, 1886-1893
- Folder 13: correspondence and some papers concerning the funeral [sic] arrangements between John Studholme (Snr and Jnr) and Murray Roberts & Co, 1894
- Folder 14: correspondence concerning the financial arrangements between John Studholme (Snr and Jnr) and Murray Roberts & Co
- Folder 15: Correspondence and notes concerning surveying Mangaohane block and Owhaoko block, 1883-1895
- Folder 17: Relating to the Winiata Ejection: correspondence 1895-1897; Judge Buller [sic] report on Winiata.
- Folder 18: including Owhaoko judgement, 10 October 1888, etc
- Folder 19: manuscripts in Maori
- Folder 20: notes on history of Mangaohane ownership; extracts from Judge Scannell's minute book; notes on Pokopoko, Winiata; notes from appendix to journal of house of representatives, miscellaneous notes
- Folder 22: legal and official documents, 1887-1893
- Folder 23: legal and official documents 1894
- Folder 25: drafts or copies of various legal documents 1885-1895
- Folder 29: Accounts – legal, 1879-80; 1885; 1890-97
- Folder 30: receipts and accounts, nd, 1881, 1885, 1888, 1890, 1893
- Folder 34: Receipts and accounts, 1896-1897
- Folder 35: Cheque book and butt. Telegrams
- Folder 36: envelopes
- Folder 37: Notebook on Mangaohane 1 and 2

1/2-032309-G ‘Maori group at a farm in Winiata’, 1894, Child, George Edwards, Photographs of the Ongaiti district

SP Andrew Collection (PAColl-3739) Photograph by Stanley P Andrew, 1/1-013786-G

Canterbury Museum Library

Taiaroa papers, box 6b, letter books
WA Taylor, Collected papers

Hocken Library Dunedin

Beattie collection, E-21, 6-8

Taihape Museum

A553 ‘Earliest Taihape School Group about 1897’

Victoria University of Wellington

MSS S889 Robert Stout papers, STOUT003 Letter book [Spine title 'Sir R. Stout. Private'] Oct 1890 - 22 Dec 1897

Maori Land Court Minute Books (MB vol/pp):

Judge Scannell
Napier
Taihape
Whanganui
Whangarei

Also Maori Land Information System (MLIS), accessed at Maori Land Court, Gisborne

Official publications

Appendices to the Journals of the House of Representatives (AJHR)
New Zealand Parliamentary Debates (NZPD)
New Zealand Gazette (NZG)
New Zealand Statutes

Newspapers

Ashburton Guardian
Colonist
Daily Telegraph
Evening Post
Hastings Standard
Hawkes Bay Herald
Lyttelton Times
Manawatu Standard
Marlborough Express
New Zealand Herald
New Zealand Times
Otago DailyTimes
Press
Star
Temuka Press
Waikato Times
Wanganui Chronicle
Wanganui Herald

Waitangi Tribunal Document Banks

Subasic, Evald and James Taylor, 'Crown and Private Land Purchases Records and Petitions Document Bank', (CFRT) Wai 2180 #A16

'Maori Land Court Records: Document Bank Project. Taihape: Rangitikei ki Rangipo Series', (CFRT), Wai 2180 #A18

Walghan Partners, 'Maori Land Court Minutes Index and Document Bank Project, Taihape: Rangitikei ki Rangipo series', (CFRT), Wai 2180 #A30(a)

Smith, Lee and Jane McRae, 'Te Reo Sources: Regional Manuscripts, Archives and Private Papers Document Bank', (CFRT, 2012) Wai 2180 #A20

Internet sources

'70th Jubilee of Taihape School', sound recording, Maori Programme 1966-05-02. No.86, #46380, Nga Taonga Sound & Vision, http://www.ngataonga.org.nz/collections

North Island Main Trunk Railway: a Group of School Children at Taihape', taken from the supplement to the Auckland Weekly News 27 April 1905, p. 6; available online at http://www.aucklandcity.govt.nz

Military personnel files for Studholme, John, WW1 7/1293 – Army; Record no: 0110542; R no: R7922562; Series 18805 available online at https://www.digitalnz.org

Portrait of Winiata Te Whaaro and Peeti Mokopuna Hamutana from https://familysearch.org/photos/artifacts/

Google maps, https://www.google.co.nz/maps
Reserve Bank of New Zealand inflation calculator, http://www.rbnz.govt.nz.

Secondary Sources

Books and publications

Atkinson, George, *Sheriff –Law; or, The Office of Sheriff, Undersheriff, Bailiffs, etc.: their duties and the election of Members of Parliament and Coroners, Assizes, and Sessions of the Peace. Writs of Trial; Writs of Inquiry, Compensation Notices; interpleader; writs; warrants; returns; Bills of Sale; Bonds of indemnity, etc. 3rd edition,* (1854)

Bathgate, DA, *Yesterday (Inanahi),* (Hastings, Hart Printing House Ltd, 1970)

Batley, RAL (comp.), 'Moawhango Valley and School: A short history of the Inland Patea published to commemorate the Diamond Jubilee of the Moawhango Maori School 1897-1957', (Taihape, Moawhango School Jubilee Committee, 1958)

Boast, Richard, *Buying the Land, Selling the Land: Governments and Maori land in the North Island 1865-1921*, (Wellington, Victoria University Press, 2008)

Boast, Richard, *The Native Land Court: Volume 2, 1888-1909* (Wellington, Thomson Reuters, 2015)

Churchill, Cameron, *The Law of the Office and Duties of the Sheriff with the Writs and Forms relating to the Office*, (London, Stevens and Sons, 1879)

Hill, Richard S, *The Colonial Frontier Tamed: New Zealand Policing in Transition, 1867-1886*, (GP Books, Internal Affairs, 1989)

Hill, Richard S, *The Iron Hand in the Velvet Glove. The Modernisation of Policing in New Zealand, 1886-1917*, (Palmerston North, Dunmore Press and the New Zealand Police, 1995)

McGregor, Miriam, *Mangaohane: the story of a sheep station*, (Hastings, Herald-Tribune Print, 1978)

Mikaere, Buddy, *Te Maiharoa and the promised land*, (Auckland, Reed, 1988)

New Zealand Law Commission, 'Contempt in modern New Zealand', Issues Paper, May 2014

Riseborough, Hazel, *Days of Darkness: Taranaki 1878-1884*, (Wellington, Allen & Unwin, 1989)

Riseborough, Hazel, *Ngamatea: the land & the people*, (Auckland University Press, 2006)

Robertson, Denis, (ed.), *'... give me Taihape on a Saturday night'*, (Heritage Press, 1995)

Simon, Morvin T, 'Taku Whare E: My Home My Heart', vol.2. (Whanganui, Moku Whanau Trust, 1991)

Spiller, Peter, Jeremy Finn & Richard Boast, *A New Zealand Legal History* (Wellington, Brookers, 1995)

Stout, Robert and William A Sim, *Practice of Supreme Court & Court of Appeal New Zealand*, (Dunedin, James Horsburgh, 1892)

The Law Commission, 'Working Paper No 54 Criminal Law Offences of Entering and Remaining on Property', (London, 1974).

Waitangi Tribunal, *Ngai Tahu Report 1991*, (Wellington, Brooker and Friend Ltd, 1991)

Waitangi Tribunal, *Turanga Tangata Turanga Whenua: The Report on the Turanganui A Kiwa Claims*, (Waitangi Tribunal, 2004)

Wilson, JO, *New Zealand Parliamentary Record, 1840-1984*, (Wellington, Government Printer, 1985)

Young, CA (ed.), 'The Diamond Jubilee of the Taihape District High School', 1956

Journals

Boast QC, Richard, 'The Omahu Affair, the Law of Succession and the Native Land Court', *Victoria University of Wellington Law Review*, vol. 46, 2015

Brooking, Tom, '"Busting Up" the Greatest Estate of All: Liberal Maori Land Policy, 1891-1911', *New Zealand Journal of History*, vol. 26(1), 1992

Kopel, David B, 'The Posse Comitatus and the Office of Sheriff: Armed Citizens Summoned to the Aid of Law Enforcement', *Journal of Criminal Law and Criminology*, vol. 104, no. 4, 2015

Thesis

Derby, Mark, 'Czar Cullen: Police Commissioner John Cullen and coercive state action in early 20th century New Zealand', MA dissertation, Victoria University of Wellington, 2007,

Maxton, Julie, 'Contempt of Court in New Zealand', MA thesis, University of Auckland, 1990

Private Notes

Bevan, Val, ‘Time and Again’, supplied by Richard Steedman

Waitangi Tribunal Research Reports

Armstrong, David, ‘Mokai Patea land, people and politics’ (Waitangi Tribunal, 2016) Wai 2180 #A49

Armstrong, DA, ‘The Impact of Environmental Change in the Taihape District, 1840-c1970’, (Waitangi Tribunal, 2016), Wai 2180, #A45

Bayley, Nicholas, ‘Murimotu and Rangipo-Waiu 1860-2000’, (Waitangi Tribunal, 2004) Wai 903, #A56

Christoffel, Paul, ‘Education, Health and Housing in the Taihape Inquiry District, 1880-2013’ (Waitangi Tribunal, 2016),Wai 2180 #A41

Cleaver, Phillip, 'Māori and Economic Development in the Taihape Inquiry District 1860-2013', (Waitangi Tribunal, 2016), Wai 2180, #A48

Fisher, Martin and Bruce Stirling, ‘Sub-district block study – Northern aspect’, (CFRT, 2012), Wai 2180 #A6

Hearn, TJ, ‘Raukawa, land, and the Crown: a review and assessment of land purchasing in the Raukawa Rohe, 1865 to 1971’, (CFRT, 2008),Wai 898 #A12

Hearn, TJ, ‘Sub-district block study – southern aspect’ (CFRT, 2012), Wai 2180, #A7

Johnson, Ralph, ‘Report on the Crown Acquisition of Hauturu (Little Barrier Island)’, (Waitangi Tribunal, 1999), Wai 567 #A1

Luiten, Jane, ‘Muaupoko Land Alienation and Political Engagement Report’, (Waitangi Tribunal, 2015), Wai 2200 #A163

Luiten, Jane, ‘Mimitu-Ruarei: a local study’, (Waitangi Tribunal, 2016), Wai 1040 #A63

Marr, Cathy, ‘Te Rohe Potae Political Engagement 1864-1886’, (Waitangi Tribunal, 2011), Wai 898 #A78

McBurney, Peter, ‘Traditional History of Mahurangi and Gulf Islands Districts’, (CFRT, 2010), Wai 1040 #A36

McBurney, Peter, ‘Ngati Kauwhata and Ngati Wehi Wehi interests in and about Te Rohe Potae District’, (CFRT, 2013), Wai 898 #A120

McBurney, Peter, ‘Ngati Hinemanu and Ngati Paki Oral and Traditional Report’, (CFRT, 2015), Wai 2180 #A52

Stirling, Bruce, ‘Taihape District Nineteenth Century Overview’, (CFRT, 2016), Wai 2180 #A43

Subasic, Evald and Bruce Stirling, ‘Sub-District Block Study – Central Aspect’, Wai 2180 #A8

Walzl, Tony, ‘Twentieth Century Overview’, (CFRT, 2016), Wai 2180 #A46

Woodley, Suzanne, 'Maori Land Rating and Landlocked Blocks Report 1870-2015', (CFRT, 2015), Wai 2180 #A37

Young, Dr Grant, 'Mangaohane. Mangaohane Legal History and the Destruction of Pokopoko', (CFRT, 2014), Wai 2180 #A39

Internet resources

Brooking, Tom, 'Rees, William Lee', from the Dictionary of New Zealand Biography, Te Ara – the Encyclopedia of New Zealand, http://www.TeAra.govt.nz

Gardner, WJ, 'Bell, Francis Henry Dillon', Dictionary of New Zealand Biography, Te Ara – the Encyclopedia of New Zealand, http://www.TeAra.govt.nz

Grant, SW, 'Donnelly, Airini', from the Dictionary of New Zealand Biography, Te Ara – the Encyclopedia of New Zealand, http://www.TeAra.govt.nz

Hill, Richard S, 'Cullen, John', from the Dictionary of New Zealand Biography, Te Ara – the Encyclopedia of New Zealand, http://www.TeAra.govt.nz

Macdonald Dictionary Record: John (Junior) Studholme, Canterbury Museum, available online at http://collections.canterburymuseum.com

McAloon, Jim, 'Land ownership – Centralisation after 1870', Dictionary of New Zealand Biography, Te Ara – the Encyclopedia of New Zealand, http://www.TeAra.govt.nz

The Cyclopedia of New Zealand [Canterbury Provincial District], (Christchurch, Cyclopedia Company Ltd, 1903), http://nzetc.victoria.ac.nz

The Cyclopedia of New Zealand (Wellington Provincial District) (Wellington, Cyclopedia Co. Ltd, 1897), http://nzetc.victoria.ac.nz

'Woolshed terminology in South Canterbury, New Zealand' http://www.rootsweb.ancestry.com

Hearing proceedings

Affidavit of Herbert Winiata Steedman, Wai 2180 #E3(a)

Transcript of Wai 2180 Nga Korero Tuku Iho Week One on 31 March - 1 April 2016 at Winiata Marae, Taihape (Wai 2180, #4.1.4).

Transcript of Wai 2180 Nga Korero Tuku Iho Week Two on 11 - 14 July at Taumata o Te Rā Marae, Halcombe (Wai 2180, #4.1.5).

Transcript of Wai 2180 Nga Korero Tuku Iho Week Three held at Rātā Hall, Rātā Monday 12 – Tuesday 13 September 2016 and Moawhango Marae, Moawhango Thursday 15 September 2016 (Wai 2180, #4.1.6).

Speaking notes of Hineaka Winiata concerning Pokopoko (Wai 2180, #B6(b)).

Speaking notes of Patricia Cross concerning Pokopoko and Winiata Te Whaaro (Wai 2180, #B6(d)).

Speaking notes of Peter Steedman concerning Pokopoko (Wai 2180, #B6(f)).

Richard Steedman, Overview presentation for hearing week one, Wai 2180 #E1(b)