

## CHAPTER 6

# HOW THE RIVER WAS TAKEN

### 6.1 INTRODUCTION

The river passed from Maori control partly through the application of English law but primarily through the operation of New Zealand statutes. It did not result from the sale and purchase of riparian land or from negotiations with Atihaunui. In the final analysis, it came about because the New Zealand Government had assumed and had then acquired, in fact, an unbridled power over the Maori people.

River passed primarily through parliamentary intervention

This chapter considers the statutory process and Maori objections.

### 6.2 THE STATUTORY REGIME

Earlier, we introduced the raft of legislation over years by which the Government assumed control of rivers and water for agricultural, industrial, drainage, town, and recreational purposes. This was traced from ordinances of 1864 for water-powered flourmills and sawmills through to statutes on water rights for mining, irrigation, and hydroelectricity, beginning with the Gold Fields Act 1862 and culminating in the Resource Management Act 1991. Provisions to secure rivers for transport were considered, beginning with the Timber Floating Act 1873, and also measures for flood protection, such as the River Boards Act 1884. These consolidated the Government's control over rivers and water, regulating potential conflict between farming, mining, and industrial interests, preventing monopolies and assuring public access, though rarely with thought for Maori customary usages.

General statutes on water and statutes specific to Whanganui

Here, we are concerned with statutes more specific to the Whanganui River.

#### 6.2.1 Enabling legislation for the port

From 1854, the Government was in the settlers' control. With the introduction of representative institutions, the Wanganui settlers could readily enlist the support of the Wellington Provincial Council and the General Assembly for legislative authority to develop the river, the port, and the sea entrance. Wanganui settlers elected four members to the Wellington Provincial Council and one member to the House of Representatives. They also made common cause on matters involving wider west coast concerns with the members for the neighbouring Rangitikei,

Settler control of the Government

Waitotara, and Egmont electorates, and their interests were at all times well served by influential members of the House.

The position was not materially altered when four Maori electorates were established in 1867, because the Maori members were so outnumbered.

Between 1858 and 1878, the General Assembly passed four general Acts governing the building of roads, bridges, ports, and harbours and four Acts specific to Wanganui.<sup>1</sup>

Highways and  
Watercourses  
Diversion Act 1858

The Highways and Watercourses Diversion Act 1858 empowered superintendents and provincial councils to ‘build Bridges Dams Wharves and other erections on the Banks or in the Beds of any . . . River Stream or Creek’. They could also ‘sell exchange or otherwise dispose of . . . the bed of any river stream, or creek so diverted or stopped up’. Crown titles were granted on any land for the purposes of the Act and later disposed of. Compensation for Maori prejudicially affected was not provided for and they were not represented on the local bodies.

Marine Acts 1866,  
1867

The Marine Acts of 1866 and 1867 dealt with ports, pilots, and lighthouses. The 1867 Act set out a comprehensive code for the control and management of ports. A port was defined as ‘any port harbour or haven or navigable creek or river or lake or inland water within the limits defined for such a port’ (s 3).

The Act delegated administrative responsibility to provincial superintendents, boards, or marine boards, subject to overriding powers of supervision and regulation vested in the Governor in Council. The power to define and re-define port perimeters was to be exercised by the Governor or a provincial superintendent, subject to notification in the *Provincial Gazette* (s 32). Nothing in the Act, however, was to interfere ‘with any rights or privileges of water frontage or any other rights or privileges of any persons in to or over any lands reclaimed or to be reclaimed from the sea’ (s 33).

Wanganui Bridge  
and Wharf Act 1872

During the Taranaki wars, a bridge across the Whanganui River to link Manawatu and South Taranaki by road became a military priority, and the provincial government made a number of unsuccessful attempts to fund and build one. In 1872, the General Assembly passed the Wanganui Bridge and Wharf Act to sort out a financial tangle, authorise the Borough of Wanganui to raise £20,000 to finance the bridge, empower it to control and manage the bridge and the wharf, and charge tolls for their use. Section 26 of the Act defined the boundaries of the wharf to include:

all the foreshore of the Wanganui River between Victoria Avenue and Churton Street, containing three acres three roods and thirty-eight perches . . . and bounded towards the South-east by a line of three feet in depth at low-water spring tides, and towards the North-west by the line of high-water spring tides . . .

1. The four general Acts were the Highways and Watercourses Diversion Act 1858; the Marine Acts of 1866 and 1867 (concerned with ports and related matters); and the Harbours Act 1878. The four Acts specific to Wanganui were the Wanganui Bridge and Wharf Act 1872; the Wanganui River Foreshore Grant Acts of 1873 and 1874; and the Wanganui Harbour and River Conservators Board Act 1876.

Figure 10: Tawhitinui Pa on the Whanganui River. Photograph by Frank Denton.  
 Courtesy Alexander Turnbull Library (Tesla Studios collection, G23312½).

The Governor was empowered to issue a Crown grant for the wharf in the name of the Wanganui Borough. Subject to the consent of the Governor, the borough was also empowered to build works obstructing public navigation over so much of the wharf as was covered by the water at high tide (s 31). It was assumed that, by common law, the Crown had an estate and interest in the bed of the river on which the wharf was constructed.

The Wanganui River Foreshore Grant Act 1873 authorised the Governor to grant certain land, being ‘part of the bed of the River Whanganui’ to the Wellington provincial superintendent under the provisions of the Public Reserves Act 1854. In this case, the transfer was to be without prejudice to the ‘rights of any persons claiming and entitled to water frontage’. Owners or persons deprived of water frontage as a result of the wharf and its facilities were entitled to compensation. The land comprised 29 acres on the right side of the Whanganui River but excluded the three acres three roods 38 perches of river foreshore between Victoria Avenue and Churton Street referred to in the Wanganui Bridge and Wharf Act 1872. The Act also excluded up to a quarter of an acre from the designated port area for its customs examination shed and river frontage (ss 2–4, schedule).

These provisions were repealed by the Wanganui River Foreshore Grant Act 1874. The principal purpose of this Act was to substitute the Wanganui Borough for the Wellington provincial superintendent as the body to whom a Crown grant

**Wanganui River  
 Foreshore Grant Act  
 1873**

would be given in respect of part of the bed of the Whanganui River. The area of land comprised some 56 acres (schedule). It appears that this included the 29 acres referred to in the 1873 Act. The approval of the Governor was necessary before the Wanganui Borough could reclaim any land granted to it or carry out harbour or other works. Owners of land injuriously affected were entitled to compensation.

Maori town reserve

On this occasion, however, the Native Minister, now Sir Donald McLean, secured a provision excepting up to one acre out of the lands authorised to be granted to the Wanganui Borough. This was to be vested in the Crown as a reserve for the use of the Maori inhabitants of the town of Wanganui and the neighbourhood as ‘a market-place and place for landing and embarking goods and persons’, and such other purposes as the Governor might determine (s 4).

Wanganui Harbour  
and River  
Conservators Board  
Act 1876

The 1874 Act survived a little over two years before being repealed by the Wanganui Harbour and River Conservators Board Act 1876. The 1876 Act established a board to take the control and management of the Wanganui Bridge and wharf from the Wanganui Borough Council. The board comprised nine members, six elective and three ex officio. There was no provision for Maori representation.

The river was defined as ‘all the navigable waters of the River Wanganui as far inward as the railway bridge across the river’ (s 2). The Governor was authorised to grant to the board the 56 acres referred to in the 1874 Act and four further lots comprising 200, 1000, 67, and eight acres. This additional land, it appears, was not part of the riverbed and was to provide the board with a leasing endowment. The earlier provision to reserve up to one acre as a landing place for Maori was retained. In addition, the Crown reserved 10 acres for a flagstaff battery and signal station and 20 acres for a land-guard battery (s 53).

### 6.2.2 Code of management for harbours

Harbours Act 1878

In 1878, a comprehensive code was enacted for the management of New Zealand harbours. The Harbours Act 1878 repealed all existing harbour board Acts and associated legislation relating to the seven provinces. In some cases, including the Wanganui Harbour and River Conservators Board Act 1876, certain provisions of the repealed legislation were kept in force (s 3, first schedule). The existing boards named in the second schedule were deemed to be constituted under the 1878 Act, as provided in the second schedule (ss 19–20). The earlier provisions relating to the control of the Wanganui bridge and wharf by the board were retained (s 3, first schedule). Once again, there was no provision for Maori representation on the Wanganui Harbour Board (s 19).

The 1878 Act defined ‘harbour’ and ‘port’ in extremely wide terms. These included ‘any harbour properly so called, whether natural or artificial, and any haven, estuary, navigable lake or river’ (s 8). It is likely, however, that the intention of the Act was to extend the board’s jurisdiction only over the tidal parts, extending upriver to Raorikia, some 24 kilometres from the town bridge. ‘Navigable river’ was presumably meant to refer to the tidal part, and once more we must refer to the underlying principle of the common law that, by prerogative right,

the Crown is prima face the owner of the beds of seas, foreshores, and the tidal reaches of rivers.

Tidal lands were defined as ‘such parts of the bed, shore, or banks of a tidal water as are covered and uncovered by the flow and ebb of the tide at ordinary spring tides’, and ‘tidal water’ had a corresponding meaning. Section 7 provided that nothing in the Act should be construed or allowed to affect any right or prerogative of the Crown.

The Harbours Act 1878 replaced some 18 separate Acts and provided uniform conditions for the control and management of all ports in the colony. As with earlier legislation for the use of harbours, lakes, and navigable rivers, it was grounded in two assumptions: the Crown’s prerogative rights must be acknowledged and statutory provisions should be consistent with common law principles. The Act was silent on both Treaty and customary Maori rights to the foreshore and rivers. In its *Report on the Muriwhenua Fishing Claim*, the Tribunal noted that the Harbours Act 1878 ‘put paid to any contention that the Crown’s common law right to the foreshore was subject to customary usage, at least until 1986 when the doctrine of aboriginal title was revived’.<sup>2</sup>

### 6.2.3 Wanganui River Trust to open and improve navigation

#### (1) *Navigation hazards*

From the time Europeans first traversed the Whanganui River, they were impressed by its beauty and grandeur; but they were soon to discover that the numerous rapids, along with fallen trees and large boulders, were formidable obstructions to paddle steamers. Some rapids in late summer, when water levels were low, were impassable.

During the summer of 1886 to 1887, the *Tuhua* ran a weekly service between Wanganui and Pipiriki, but the local managing company was soon in financial difficulties and the steamer was laid up. The vision, it appears, was to establish an all-year service, and then extend beyond Pipiriki to Taumarunui, where a link could be made with the main trunk railway from Auckland. Such a link would create a significant river tourist route to Wanganui.

The 140-mile journey by steamer from Wanganui to Taumarunui, and the proposed junction of the river and the main trunk railway, faced enormous difficulties. There were 40 rapids in the lower section of 51 miles from the port to Pipiriki, and 103 in the middle section of 59 miles from Pipiriki to Maraekowhai. To establish and maintain an all-year service was to require not only more venture capital but also considerable public money and 30 years’ persistent effort with surveys, snag removals, and the broaching of rapids, as well as the building and maintenance of groynes and training walls to regulate water flows.<sup>3</sup>

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2. Waitangi Tribunal, *Report of the Waitangi Tribunal on the Muriwhenua Fishing Claim*, 2nd ed, Wellington, Government Printing Office, 1989, sec 5.4.5

3. David Young, *Woven by Water: Histories from the Whanganui River*, Wellington, Huia Publishers, 1998, pp 191–225

The harbour board lacked the power to levy a rate for river improvement, and in any event, there was a strong case for giving priority to the development of the port. Furthermore, the board's jurisdiction extended only as far as Raorikia, the furthest point of the tidal flow. Ballance made unsuccessful attempts in 1884 and 1887 to get a local rating Bill through the House. As Premier, however, his scope for legislative enactment was greatly increased.

**(2) Establishment of the Wanganui River Trust, 1891**

River Boards Act  
1884

The River Boards Act 1884 had given wide-ranging powers to local authorities responsible for the management of rivers, streams, and watercourses, but the creation of new river boards required separate enactments. Ballance successfully promoted the Wanganui River Trust Bill in 1891.

Wanganui River  
Trust Bill

The Bill attracted little attention in the House. Two members commended the Government for the initiative it was taking to preserve the Whanganui River's scenic beauty but qualified their endorsement with serious doubts about the wisdom of attempting to remove rapids from its upper reaches. Hoani Taipua, the member for Western Maori, shared their concerns: 'if these natural drifts or rapids were dug away the water would rush out and dry up the river'.<sup>4</sup>

Protection of Maori  
interests

While working up his Bill, however, Ballance had official advice that to empower the trust to do all things necessary for opening or improving the navigation of the river might have 'Native complications'.<sup>5</sup> However, this was ignored during drafting, except in so far as the eventual Act exempted customary lands from the trust's jurisdiction, but as soon as customary land was passed through the Native Land Court, the Governor could declare lands subject to section 8 or section 9. Private lands were also exempt under section 11.

During the second reading, James Carroll, the member for Waiapu and the first Maori to represent a European electorate, proposed an amendment to safeguard Maori rights under the Treaty of Waitangi, referring to 'fishing rights and so forth'. The amendment, which was adopted as section 11, was correspondingly general:

Nothing in this Act contained shall affect any rights conferred upon the Natives by the Treaty of Waitangi, or shall be deemed to confer upon the Trust any jurisdiction over private lands, or over any Native lands the title to which has not been investigated by the Native Land Court.

The Act had two objectives: to preserve the natural scenery along the banks of the upper Whanganui and to keep the river in a fit state for navigation. The river board district established by the Act began at Raorikia and extended for one mile on each side of the river to a point four miles from its source (s 3). The place where Taumarunui would be built, at the junction of the Ohura, was thus included. Over that district – estimated by one member of the House to be about 200,000 acres – the trust could do 'all things necessary for opening up or improving the navigation

4. Hoani Taipua, 3 September 1891, NZPD, 1891, vol 74, p 220

5. John Ballance, 3 September 1891, NZPD, 1891, vol 74, pp 217–218; memorandum from Crown Law to John Ballance, 24 February 1891, J1 1895/947, NA Wellington (doc A49(b), p 305)

of that part of the Wanganui River'. With the approval of the Governor, it could 'erect jetties and make landing-places' (s 5). Instead of being authorised to levy rates, the trust was granted a land endowment of 10,000 acres from the Waimarino block (s 6). With the approval of the Governor, the trust could declare any land within its district to be a public domain and administer it under the Public Domains Act (s 9). It could also take over lands outside its boundaries for public domains (s 10).

The trust comprised seven members: the Mayor of Wanganui; two representatives of local county councils; the chairman of the Wanganui chamber of commerce; the two local members of the House of Representatives; and a person appointed by the Governor (s 2). The member for Western Maori was not included, and there was no provision for consulting those Maori immediately affected. Referring to the membership of the trust, Ballance said 'he could not conceive that any public body could be more fairly constituted'.<sup>6</sup> By the standards of the day, and for long afterward, that was no doubt an acceptable statement from a Pakeha point of view. Yet, in fact, it constituted further disregard of Maori river interests.

### ***(3) Increase of river trust's powers, 1893***

The Wanganui River Trust Act Amendment Act 1893 increased the trust's powers. 'At any time and without giving any notice', it was authorised under section 2:

- (1) To remove any earth, stone, boulders, or sand off, from, or out of the channel or any land upon the banks of the river, . . .
- (2) To deposit the same in any other part of the district:
- (3) and for any of the purposes of the trust to make use of any such earth, stone, boulders, or sand, notwithstanding anything contained in the said Act, and notwithstanding any such earth, stone, boulders or sand shall be removed from or used upon land which is owned by Natives under their customs or usages, whether the ownership of the same has or has not been defined by the Native Land Court.

Maori claiming an interest in land from which any such materials were taken could apply to the Native Land Court for compensation, and the court could make orders as it saw fit, having regard to the provisions of the Public Works Act 1882 (s 3).

Introducing the amendment Bill, Archibald Willis, the member for Wanganui, described it as 'simply to allow the navigation of the river to be proceeded with'. Its passage through the House was short but tense. Mutu Kapa, the member for Northern Maori, said that it might be 'favourable to the Europeans, but the Natives considered it detrimental to their interests'.<sup>7</sup> If it became law:

the River Trust could dig the banks of the river where they pleased, and interfere with the Natives generally . . . It was all very well to bring pressure upon members to pass

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6. John Ballance, 3 September 1891, NZPD, 1891, vol 74, p 218

7. Archibald Willis, 25 September 1893, NZPD, 1893, vol 82, p 636

Bills which gave great benefits to Europeans, but the House never passed any Bills which gave benefit to the Native people.<sup>8</sup>

Taipua supported him. The Bill, he said, should be sent to the Native Affairs Committee, where it would be possible for Te Keepa to appear and give evidence. This was a pointed reminder to the House that, four days previously, the Native Affairs Committee had reported on a petition of Te Keepa and 59 others protesting against the Bill, but it had made no recommendation.<sup>9</sup>

Seddon intervened. The Bill, he said, was ‘simply to give some slight extended powers, and to remove some technical difficulties’. He hoped the Maori members would not force the House to vote. The Bill, he claimed:

did not really affect the interests of the Natives prejudicially: in fact, it was for their benefit. No one would benefit more than the Natives, who were making a good living on the river. The removal of these falls and the protection of the river bank were really in their interests.<sup>10</sup>

He then appealed to the national interest. The river was ‘one of the colony’s assets’, he claimed, and its navigation was of national importance.

The House divided and the Bill passed its second and third readings. No further regard appears to have been had to section 11 of the principal Act, which expressly preserved the rights conferred on Maori by the Treaty of Waitangi.

The Wanganui River Trust thus obtained sufficient statutory authority to do all that it thought necessary to clear the river for a regular steamer service. The Government encouraged local efforts to establish such a service, providing annual subsidies for river mail deliveries amounting to £19,680 for the period 1890 to 1912. From 1899, it also provided subsidies to ‘the owners of steamboat services’, which by 1912, totalled just over £7900. Between 1905 and 1912, it assisted the work of the trust through the expenditure of £11,550.<sup>11</sup>

#### *(4) The trust empowered to remove river gravel*

Gravel and the  
Wanganui River  
Trust Amendment  
Act 1920

The assumption that the Crown owned the bed of the Wanganui River, and thus the gravels and minerals within it, was continued in the Wanganui River Trust Amendment Act 1920. Section 5 of the Act gave the Wanganui River Trust control over, and liberty to sell, the river gravel and shingle in its district.

It was a valuable concession. Work on the main trunk railway in the vicinity of Taumarunui created a demand for river stones and gravel as ballast for the railway track. With further railway works and roading for motorised transport, this demand was to increase in succeeding decades. Before 1920, only limited use had been made of extraction and crushing machinery, but mechanised gravel processing was to become a significant industry thereafter, along with sand

8. Mutu Kapa, 25 September 1893, NZPD, 1893, vol 82, p 636

9. Hoani Taipua, 18 July 1893, NZPD, 1893, vol 82, p 636; ‘Major Kemp’s Petition’, NZPD, 1893, vol 79, p 549; ‘Native Affairs Committee’, AJHR, 1893, 1-3, p 17

10. Richard Seddon, 25 September 1893, NZPD, 1893, vol 82, p 636

11. J Hislop, under-secretary of Internal Affairs, 4 November 1912, AJHR, 1912, C-15B, pp 1-2

extraction for concrete. The demand increased when the construction of the River Road to Pipiriki began in 1931.<sup>12</sup> The 1920 amendment Act contained no provision for compensating Maori. In 1958, the Wanganui Harbour Board was given the right to license gravel and sand extraction from the river's tidal reaches.<sup>13</sup>

#### ***(5) Substantial increase in the trust's powers***

The Wanganui River Trust Amendment Act 1922 had reconstituted the Wanganui River Trust as a trust board, amended representation on it, and substantially increased its powers. The reconstituted board comprised representatives of the counties and boroughs of the region and the members of Parliament of the four electorates in the board's district. The member for Western Maori was not included and Maori identified with the river were not represented. Once more, Maori river interests were denied or ignored.

Grafted to the authority vested in the former trust board were powers to purchase or hire steamers or other craft, to carry on the business of common carriers, to convey passengers, to erect or purchase accommodation houses, and to erect buildings and workshops for making or repairing vessels. Such buildings were not to be erected on the river below the spring high-tide watermark without the prior approval of the Governor-General in Council.

The change was explicable in terms of the changing fortunes of the old steamer company. Steamer services on the river enjoyed a heyday from 1903, when services were extended to Taumarunui, until the First World War. After the war, problems increased. A network of roads spread through the region and the demand for river services declined. The maintenance of open river channels was a never-ending concern, and from the beginning, two matters could not be resolved. The upper reaches below Taumarunui remained difficult to navigate, so regular services could not be guaranteed, and, in the late summer months, when the demand for space for both freight and passengers was at its height, water levels in stretches below Pipiriki could become too low for steamers to operate. Furthermore, floods of increasing severity occurred in the 1910s, a consequence of the loss of bush cover in the river catchment area.

Solutions to these problems were beyond the trust board's financial capacity. Various proposals were put to the Wanganui public and the Government and what was eventually settled on was to empower a reconstituted trust to run a steamer service of its own.<sup>14</sup>

#### ***(6) Abolition of the board***

In the end, neither the board nor the Government ever took over Hatrick's steamers. The demand for river services continued to decline and, in 1929, Kirikau, 24 miles below Taumarunui, became the upper terminus, passengers travelling

Steamer services  
and the Wanganui  
River Trust  
Amendment Act  
1922

12. Document A31, p 5

13. Ibid, p 16

14. For an overview, see Robert D Campbell, *Rapids and Riverboats on the Wanganui River*, Wanganui, Wanganui Newspapers, 1990, particularly ch 14.

between there and Taumarunui by bus. During the 1930s, bus services competed with or replaced steamers between Pipiriki and Wanganui. The Depression of the 1930s was the final blow. The Government discontinued the subsidy for maintenance work on the river from the end of 1933 and abolished the board in 1940. Section 28(1) of the Reserves and Other Lands Disposal Act 1940 vested all its property in the Crown.<sup>15</sup>

Section 28(1) further provided that such lands should be controlled and administered by the Minister of Lands and the commissioner of Crown lands, unless a domain board was later appointed for this purpose. This was fortified by sections 64 and 65 of the Public Reserves, Domains, and National Parks Act 1928.

Section 28(6) of the 1940 Act revoked the endowment of land provided for in the 1891 Act and vested it as Crown land subject to the Land Act 1924. Section 28(9) authorised the Minister of Public Works to do anything necessary for opening up or improving the portion of the Whanganui River previously within the jurisdiction of the trust and board, and for the removal of all obstructions affecting navigation of the river.

#### ***(7) Maori concern over Treaty rights***

At the third reading of the Reserves and Other Lands Disposal Act 1940 in the Legislative Council, the Honourable Rangi Mawhete had sought an assurance that Maori would not lose the protection of their Treaty rights that the Wanganui River Trust Act had given them. Referring to a recent decision of the Native Land Court in favour of the Maori claim to customary ownership of the river, and to the Crown's decision to appeal it, he said, 'All along the Crown has assumed that it owned the Wanganui River, but the Native Appeal Court will now be called upon to decide who is the rightful owner'. The leader of the Council assured him that nothing in the Bill would affect any river rights that Maori had previously held.<sup>16</sup>

### **6.2.4 Enabling legislation for Pipiriki township**

#### ***(1) Hotel accommodation at Pipiriki***

After the inauguration of steamer services between Wanganui and Pipiriki in the summer of 1894–95, the time had come to do something decisive about the Pipiriki hotel. An existing accommodation house was built under an arrangement with local Maori on Maori customary land. This could not be improved because lending institutions did not recognise such arrangements as sufficient security for loans.<sup>17</sup> Te Keepa, for one, was opposed to putting the land through the Native Land Court. Even if some land could be brought under freehold title, prospective land-buyers would still have to gather signatures from a majority of interest holders. Under the

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15. Proclamation of abolition date for Wanganui River Trust Board, *New Zealand Gazette*, 21 November 1940, no 118, p 3445

16. Rangi Mawhete (Legislative Council), 29 August 1940, NZPD, 1940, vol 257, pp 951–952

17. Campbell, p 58; J McKenzie, 27 June 1895, NZPD, vol 87, p 180

procedures of the law as it then stood, there was no quick or certain way by which Europeans seeking to invest in Pipiriki's future could obtain a firm title.

*(2) The Native Townships Act 1895*

The idea of establishing a township on Maori land was first promoted by Ballance with Te Keepa, Topine Turoa, and other influential rangatira of the district. When Ballance died, his successor, Willis, continued to press the case with the Government. At Wanganui in March, Seddon met with members of the chamber of commerce, who stressed that the development of the river tourist trade was hampered by the inadequate accommodation at Pipiriki. Pipiriki was only one of several central North Island places where Maori land was required for townships. Drawing on the precedent of the Thermal Springs Districts Act 1881, Parliament passed the Native Townships Act 1895, 'promoting the settlement and opening-up of the interior of the North Island'. This Act enabled Maori land to be laid out as a town, with sections to be available for sale or lease.

The three North Island Maori members were out of Wellington during the debate on the second reading of the Bill in the General Assembly, but Hone Heke, the member for Northern Maori, spoke during the third reading. He had recently visited many Maori settlements in the North Island, he said, and had talked to people about letting their lands be used for native townships. They seemed prepared to do so. He believed that the only reason that they were withholding land was their objection to the Native Land Court Act 1894, which had put an end to free trade in Maori land and resumed the Crown's right of pre-emption:

The intention of this Bill to make townships as a sort of reserve for the Natives was a very good one in its way, but for such townships to be of any benefit to the Natives the Crown must be barred from acquiring any interest in them.

Heke gave examples of land purchase officers who, when given the opportunity, purchased the beneficial interests of Maori in their lands, and he argued that it should be illegal for them to do so.<sup>18</sup>

Carroll responded with a vigorous defence of the Government's intentions. It was in the public interest, he argued, that there should be townships in places where settlement was increasing. In many such places, land held under customary tenure 'was in such a state of entanglement that there was not under present law any convenient method of dealing with [it]'. This was 'a good Bill', which, in the end, 'would prove exceedingly satisfactory to the Natives'.

The Bill was passed with only one division. While it was in committee in the House, an attempt was made to exclude 'any Native burying ground or any native pa' from the streets, reserves, or allotments of a native township. The three Maori members present voted for an amendment to this effect but it was defeated 27 to 22.

The native townships were to be an extension of the settler world. Their local government was left to the determination of the Governor in Council. Although

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18. Hone Heke, 16 July 1895, NZPD, 1895, vol 87, p 595

some members expressed views on the form that this should take, no one proposed any form of local Maori representation on governing township boards or consultation with them.<sup>19</sup> Without this consent, they effectively lost control.

As finally passed, the Act enabled the Governor to declare that any native land not exceeding 500 acres be set apart for a native township, provided that there was not within it a homestead of less than 100 acres tenanted under a valid lease, and provided that no other native township site was closer than 10 miles (s 3). The land was to be surveyed and laid off by the Surveyor-General with streets, allotments, and reserves, as he thought fit (s 5). No more than 20 percent of the area was to be 'reserved and laid off for the use of the Native owners', and this was to include 'every Native burying-ground, and every building actually occupied by a Native at the date of the gazetting of the Proclamation' (s 6). Maori rights, however, were subordinate to the requirements of the township as a whole.

In the selection of native reserves, the wishes of Maori owners were to be complied with only in so far as, in the opinion of the Surveyor-General, such compliance did not interfere with the survey and layout as a whole (s 7). Dissatisfied Maori could take their objections to the chief judge of the Native Land Court, who would decide whether the plan should be altered (s 9).

All land in a native township would be vested in the Crown. Native allotments would be held by the Crown in trust 'for the use and enjoyment of the Native owners' (s 12), and that land would be inalienable (s 18(1)). Other reserves laid off for public use would be administered under the Public Reserves Act 1881 (s 12). All other allotments would be vested in the Crown 'in trust for the Native owners according to their relative shares or interests therein' (s 12), and the chief judge of the Native Land Court would determine their individual interests (s 22). Maori could then sell their shares, but only to the Crown (s 18(1)).

Those seeking to establish themselves in the area could lease land from the commissioner of Crown lands for up to 21 years, renewable, and owning their own improvements, but only the Crown could buy Maori shares (ss 14, 15, 18). The Maori owners would receive net payments for the sale of leaseholds, the cost of surveys being charged against their land. Rental payments, less administrative costs, would be paid each six months according to their shares (ss 18,19,20).

Maori were without representation on the governing township boards, and without their consent, they had effectively lost control.

In November 1895, Seddon met with Te Keepa and Topine Turoa at Pipiriki formally to receive the site. A township of 366 acres was laid out, and the first sections were auctioned in July 1897.<sup>20</sup> In December 1903, the main trunk railway reached Taumarunui, and from there two days later, a weekly steamer service began to Pipiriki and Wanganui. The last link in the chain was forged when Taumarunui was gazetted a native township in 1906. Travellers could now venture into what Hatrick's publicity called 'the very heart of Maori land'.<sup>21</sup>

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19. Debate on the Native Township Bill, NZPD, 1895, vol 87, pp 180–181, 593–597

20. Campbell, p 47

21. Ibid, pp 95–96

## 6.2.5 Preserving river scenery

### *(1) Objective of Wanganui River Trust*

As discussed at section 6.2.3(2), one of the objectives of the Wanganui River Trust Act 1891 was to preserve natural scenery along the banks of the Whanganui River. By the beginning of the new century, the board controlled 1084 acres. According to Willis, the member for Wanganui, the land reserved for scenic purposes on each side of the river was still in Maori ownership in 1903.<sup>22</sup>

By the early years of the new century, a growing body of opinion in the colony was in favour of conserving native bush. Preservation was argued for intrinsic reasons and for its importance for a growing tourist industry. The Scenery Preservation Bill 1903 sought to achieve both objectives. Some members criticised the way that the proposed Scenery Preservation Commission would be funded, and objections were made to money being spent on roads and bridges for remote districts.

Heke entirely agreed with the object and sentiment of the Bill, noting that something had to be done to preserve the northern kauri forests from sale. But he objected to the provision for the Native Land Court to assess the value of the Maori lands to be reserved for scenic or historical purposes. That would not be a proper use of the court, he said: ‘the same tribunal should assess the value of Native lands that assesses the value of pakeha lands’.<sup>23</sup> The Bill was widely supported, however, and passed without much further opposition. Instead, several members regretted that the work of preservation had not begun 20 years earlier. Scenic and historical spots in many parts of the colony were extolled, but none more than the Whanganui River.

### *(2) The establishment of the Scenery Preservation Commission*

Under the Scenery Preservation Act 1903, the Scenery Preservation Commission, comprising not more than five persons (s 2), was established to make its own inspections and inquiries and to recommend to the Governor lands that ‘should be permanently reserved as scenic, thermal, or historical reserves’ (s 3). Much of the land likely to be reserved was already held by the Crown, but private and Maori lands came under the commission’s purview.

The Governor, acting on a recommendation from the commission, could create reserves that were to be preserved intact as an inalienable patrimony of the people of New Zealand (s 4). The cutting or removal of timber or otherwise damaging the reserves was made an offence (s 9).

Any land, including native land, required for the purposes of scenery preservation could be taken under the Public Works Act 1894, which made provision for compensation in section 90 and, in section 2, defined ‘Native land’ as being ‘land held by Natives under their customs or usages, whether the ownership thereof has been determined by the Native Land Court or not’. There was no

Scenery  
Preservation Bill  
1903

22. Archibald Willis, 22 October 1903, NZPD, 1903, vol 126, p 710

23. Hone Heke, 22 October 1903, NZPD, 1903, vol 126, p 711

provision for Maori to be notified of the intention to take land, giving them the right to object, as there was with the taking of European land or Crown land granted to Maori.

In the case of native land, a map was to be prepared showing its position and extent. The Governor, by Order in Council, could then declare that this land had been taken for a public work. Thereafter, the land vested in the Crown (s 88).

In the case of both Maori customary land and Maori land under freehold title, compensation was to be fixed by the Native Land Court. This was the provision objected to by Heke. Compensation for European landowners was fixed by the Compensation Court, which, depending on the amount involved, comprised a magistrate or Supreme Court judge, sitting in each case with two assessors. These provisions were carried forward into the Public Works Acts of 1905 and 1908.

### **(3) No Maori representation on commission**

Maori  
representation

The Scenery Preservation Commission (later the board) comprised three officials, but in 1906 the Government sought to broaden its membership by including 'a member of the Native race'. On the ruling of the chairman of committees, however, this provision was struck out of the amendment Bill since it affected 'the Maori race' but had not been translated to Maori.<sup>24</sup> In the debate, Apirana Ngata, the member for Eastern Maori, regretted the lack of Maori representation. Maori people, he told the House, were not being sufficiently consulted on matters in which they had a direct interest. The board often made recommendations, he said:

without viewing the spots proposed to be reserved; . . . and owing to that a great many spots that should have been reserved had been deliberately destroyed by the Natives as a sort of protest against the methods of the Scenery Preservation Commissioners. There was a way of dealing with Natives and their lands, and if the method was not pursued tactfully the Maori was inclined to be irritable and take objection . . . it would pay the colony if the Natives were approached in a proper way, and in a way that Europeans would be approached. The Maori was not accustomed to giving his consent in writing, but from time immemorial he had been accustomed to give it in a meeting in his own way. It was necessary to explain the policy of your legislation to him there in his own environment, and when he had once given his consent you could go and take the land under any Act; but it was necessary, first of all, to get the approval of the leading men in the district.<sup>25</sup>

An amendment of 1910 enabled the under-secretary of the Native Department to sit on the board (s 4).

Maori opposition

As shall be seen in the following chapter, the activities of the Scenery Preservation Commission aroused considerable opposition amongst Whanganui Maori. Not surprisingly, given the arbitrary powers of the Crown to take Native land, the commission received protests from Whanganui Maori covering the procedure for both the taking of their land and the assessment of compensation.

24. J G Ward, 24 October 1906, NZPD, 1906, vol 138, p 595 (doc A49(b), p 356)

25. Apirana Ngata, 24 October 1906, NZPD, 1906, vol 138, p 596 (doc A49(b), p 356)

Although the commission made no recommendation to improve the relevant parts of the Public Works Act, it did propose the assessment of compensation by arbitration, with one arbiter appointed by Maori.<sup>26</sup> The recommendation was not implemented.

### 6.2.6 The statutory vesting of the riverbed in the Crown

The long-held official assumption was that the bed of the Whanganui River either was or should be vested in the Crown. Although several enactments had already given that assumption practical recognition, it was finally given full force and effect to in section 14 of the Coal-mines Act Amendment Act 1903. This arose from some doubts as to the true legal position in a case affecting coal-mining on the Waikato River. By this enactment, all beds of navigable rivers, which included the Whanganui River, and thus all associated minerals, were deemed to be and to have always been vested in the Crown, unless the Crown had granted the riverbed to someone else.

Coal-mines Act  
Amendment Act  
1903

## 6.3 THE MAORI PROTEST

As Maori became aware of the statutory regime, they could do little but protest against Government 'interference'.

Their protests were not against the Government, the Europeans, or development as such but against the assumption that things could be done without Maori agreement. They show a concern for Maori participation in district development, as well as a continuing unwillingness to cede their river interests and rights of control. In a word, they were about mana.

Protests neither  
anti-European nor  
anti-development

## 6.4 THE EMERGING DEBATE

In the late 1860s, works to control the river flow around the port appear to have caused erosion of about a chain's width from the Putiki reserve on the opposite foreshore. The occasion provided a lesson on the application of Western law.

From 1871, Maori owners applied to the Native Land Court to adjust the boundaries of their allotments. One would have the boundary on the new river route but at the low-water mark; another claimed to the river's centre line. Another again sought exclusive use of the river between the high- and low-tide levels, arguing that everyone could use that part but that 'if there were pipis there my father only would have a right to them'. Moreover, the water had 'consumed' land on which taro and kumara had been planted. Certain Putiki rangatira asked the

Putiki River  
encroachment

26. Report of the Scenery Preservation Commission, *Wanganui Chronicle*, 27 June 1917; Campbell, pp 174–176

court to preserve the original foreshore boundaries. The Crown was represented at the hearings.<sup>27</sup>

The court fixed the boundaries at the new high-water mark, contrary to Maori pleas, but, since it gave no reasons for its decision or account of the proceedings, recourse must be had to a newspaper account. The *Wanganui Evening Herald* reported that counsel for the Crown had gone to the court:

to argue on behalf of the Crown for rights which have come to be universally recognised among civilized nations. The natives relied on the treaty of Waitanga [sic], which secured to them the land, forests and fisheries of New Zealand, in exchange for their acknowledgement of the Sovereign rights of the Queen, her heirs and successors. If the natives had then been advised as to the law of nations, they would have seen that 'Sovereign rights' debarred them from claiming below high water mark.<sup>28</sup>

The 'aboriginals', the report commented, received the decision 'with many shakes of the head expressive of dissatisfaction with the application of a law which they fancied was made in favour of the *white* man' (emphasis in original).

In 1876, Te Keepa complained to the chairman of the Whanganui Harbour and River Conservation Board about public works to control the river flow:

I salute you! and convey my thoughts to you. My ancestors downwards, have been in the habit of frequenting these waters of the ancient Pa of Putiki wharanui. The right passage for the waters of the Wanganui to take is that through Te Patapu, which is now being closed by the European. If you persist in closing up the passage naturally sought after by the contending waters of the Wanganui, the money of the Government spent thereon will float to the sea and be lost sight of. In the ancient days, before the memory of living man, this was the course taken by the Wanganui. Therefore, I advise you, let the waters seek their ancient outlet by the direct channel of my ancestor, Rere o Maki, to nature's outlet.<sup>29</sup>

This was not opposition to development as such but an intimation that Te Keepa still expected a say on how the river was used.<sup>30</sup> Te Keepa, Mete Kingi, and Takarangi were later directors of the Wanganui Prospecting Company formed in 1884 to prospect for minerals on the Tangarakau River.<sup>31</sup>

27. Whanganui Native Land Court minute book 1D, 12–13 December 1871, pp 489–492 (doc A49(d), pp 1–4); doc C10, pp 33–36

28. *Wanganui Evening Herald*, 15 December 1871 (doc C10, p 32); doc A49, p 35

29. Te Keepa Rangihwinui to the Whanganui Harbour Board (cited in M J G Smart and A P Bates, *The Wanganui Story*, Wanganui, Wanganui Newspapers, 1972, pp 98–99). There is evidence of earlier Maori protest at Government encroachment on river rights, particularly in Hauraki: see Robyn Anderson, *The Crown, The Treaty and the Hauraki Tribes, 1800–1880*, vol 4 of *Hauraki Treaty Claims*, Paeroa, Hauraki Maori Trust Board, 1997, pp 274–279, and Alan Ward, *A Show of Justice: Racial Amalgamation in Nineteenth Century New Zealand*, Auckland, Auckland University Press, 1974, p 305.

30. *Evening Herald*, 30 November 1871 (doc C10, p 30). This material includes a laudatory speech by Te Keepa about the bridge and Pakeha technology. (Sinclair refers to the chiefs taking debentures in the bridge project. While it may be true, it cannot be confirmed from his footnotes.)

31. *Wanganui Chronicle*, 9 May 1884 (doc A49(iii), p 511); *The Yeoman*, 28 March 1884, p 10 (doc C10, p 61)

Similarly, Maori still assumed the right to limit river passage in the interior, as seen by the denial of access to the surveyor John Rochfort in 1884, until after he had spoken with the principal rangatira of several localities (see sec 5.3.3). Rochfort comforted himself with the thought that, as a result, the rangatira were better informed of the Government's intentions and did not appear averse to them. But the rangatira had made a political point. The main trunk railway line was as much an opportunity as a threat, but rights of entry and control could not be assumed.

Denial of access to  
Taumarunui

Clearly, Maori saw the maintenance of their own law and authority as the key to their future development and relations with the Government and Europeans, and it was the inroads into their law and authority that led to a substantial parliamentary petition, with, significantly, four major tribal groups combining for that purpose. In 1883, Ngati Maniapoto, Ngati Raukawa, Ngati Tuwharetoa, and Atihaunui-a-Paparangi petitioned Parliament, complaining that its laws deprived them of rights secured by the Treaty of Waitangi. They saw no good in the new laws affecting their lands. They wished to be relieved of the entanglements of the Native Land Court and asked instead for a law making their lands 'absolutely inalienable by sale' (but not by licence or lease), with the tribes to fix tribal boundaries amongst themselves. Yet, as the Waitangi Tribunal observed in the *Pouakani Report 1993*, their intention was not to lock out Europeans but to ensure their control over, and participation in, the development of their lands.<sup>32</sup>

Combined tribal  
protest

This was further apparent in negotiations over the Government's plans to develop the interior. When John Ballance, the parliamentary member for Wanganui, became the Minister of Native Affairs in 1884, Te Keepa and others sought to raise the Government's proposals with him, and in January 1885, Ballance attended marae meetings at Ranana, Kauaeroa, and Pipiriki. At Ranana, Paori Kurimate, speaking for the group, raised questions of tribal boundaries, surveys, the Maori committee's role in land administration, and the proposed route of the main trunk railway over Maori land. Maori would cooperate with the Government, he said, but would still seek to keep control. Ballance was informed that they would 'allow a steamer to be put on the Wanganui River'. A report on the meeting added that this would be dealt with by the committees, a rider suggesting that Maori assumed that their own committees would determine the nature and extent of the river usage.<sup>33</sup>

Railway and steamer  
proposals

Others spoke only for their own areas. Te Pehi wanted a road from Waimarino to Manganui-a-te-ao to link Pipiriki to the railway. Hakaraia of Koriniti wanted the railway from Marton started 'as soon as possible' because of his interest in the Te Kopua block, though he was reported as saying to Te Keepa that he wanted nothing to do with the steamer.

Ballance, in reply, emphasised the benefits of a steamer to Maori, increasing the value of their lands, transporting their produce, and themselves, more cheaply than by canoe, and delivering mail each week. A steamer, he said, 'would make the Whanganui what it was intended to be – a great highway for the people into the

32. Waitangi Tribunal, *The Pouakani Report 1993*, Wellington, Brooker's Ltd, 1993, sec 7.1, app 6

33. 'Notes of Native Meetings', AJHR, 1885, G-1, p 2 (doc A49, p 66)

interior'. However, it was not for the Government but for private individuals to build and run the steamers. Some people in Wanganui proposed to form a company for this purpose, and thought the chiefs might seek to be involved, but he saw:

difficulties in the way – not great difficulties, but difficulties in the way of steamers passing up and down the river. The rapids will have to be made so as to allow a steamer to pass up and down; and I think it is likely that the Government will come to their assistance and vote money for the improvement of the rapids.<sup>34</sup>

He did not suggest a role for the Maori committee in regulating the steamers, but rather implied that the right of regulation was with the Crown. Indeed, this was what the Wanganui Harbour Board, of which he was a member, assured. He simply advised them of the Government's proposals to make the Maori committees statutory, making no mention of their intended powers.<sup>35</sup>

## 6.5 OBSTRUCTION OF WORKS

### River clearance works

Soon after Ballance's visit, work began removing snags and boulders in the rapids for a steamer channel, but Maori were considerably uneasy. The problem that brought matters to a head was not only that the work interfered with eel and lamprey weirs but that, by this time, larger pleas to recognise Maori authority had fallen on deaf ears.

The district engineer for the Public Works Department had listed 203 rapids requiring clearance work, with four or possibly five eel pa to be removed below Pipiriki. The initial work reached Pipiriki, and the steamer was running to there by 1886, but more clearing and maintenance work, or the building of further groynes or training walls, was required.<sup>36</sup> This affected additional eel and lamprey weirs, either directly by removal or indirectly by weakening the structures through the mining of stones and impairing the catches through the change of river flows.

### Maori obstruction

In 1891, Maori obstructed workers for the Wanganui River Trust. Although the trust's wide-ranging powers were not meant to affect 'any rights conferred upon the Natives by the Treaty of Waitangi', the weirs were seriously affected. Ranana became a centre of resistance and obstruction because it was near to there that most of the additional clearing was required. A section below Pipiriki, some 10 miles between Matahiwi and Hiruharama, proved the most difficult because it was thought that two eel weirs at Kauaeroa, one at Kaiwaka, and, later, two at Matahiwi would have to be removed.<sup>37</sup>

34. 'Notes of Native Meetings', AJHR, 1885, G-1, pp 1-8 (doc A49(b), pp 226-234)

35. Ibid, pp 3-4 (pp 228-229)

36. 'Annual Report of Railways', AJHR, 1886, D-1 (doc A49(b), pp 246); 1887, D-1 (doc A49(b), p 256)

37. Tom Bennion cites various evidence of obstruction of the clearing of the river between 1892 and 1895: doc A49, pp 82-84.

Thirty workers, some of them Maori, were obstructed at Karatia and Kauaeroa, and police protection was required. Some Maori were charged with obstruction and one was fined, but other charges of assault were dismissed.<sup>38</sup> Twice, in 1891 and 1892, the Government asked Te Keepa to use his influence but he did not obtain the people's agreement.<sup>39</sup>

Maori cooperation was needed because without their agreement the trust was obliged to follow lengthy public works processes in order to remove weirs, but the agreement was not forthcoming. By then, the removal of stones was an issue. The trust offered Kauaeroa Maori sixpence a cubic yard but this was refused.

To break the impasse, the trust appealed to the Native Minister in early May 1893.<sup>40</sup> Seddon, who became the Minister of Native Affairs shortly thereafter, drove an amending Act through the General Assembly, enabling the trust to remove stones and other materials from the riverbed and banks, but stopping short of allowing it to remove weirs without recourse to the Public Works Act. Then, in 1894, as the Premier and Native Minister, he visited Pipiriki with Carroll – a Minister without portfolio 'representing the Native race'. Both advised the protesters that 'they must not take the law into their own hands, as the country would not tolerate such a line'. They must instead 'consult the Government so that a reasonable understanding might be arrived at'. No mention was made of Maori Treaty rights being written into the trust's governing Act.<sup>41</sup>

Maori responded by constructing new eel weirs. Soon after Seddon's visit, Hatrick informed the local member of Parliament that two eel weirs had been built in the most dangerous rapids in the river. A valuable canoe in the steamer's tow had been smashed, costing him £35, he said, and if the obstructions continued he thought the steamer might be smashed too, 'with probable loss of life'. The steamer had cost £3500, could not be insured, and his company could not continue the risk. If there were no understanding with Maori, he would need to stop the service and lay off the staff.<sup>42</sup>

Tamatea Aurunui alone showed a token willingness to compromise. He wrote to Seddon claiming the Kauaeroa eel and inanga weirs as his and offering, for £90,000 compensation for weirs and rocks, 'paid in a lump sum', to 'cease to have anything to do with Kauae-roa'.<sup>43</sup> His letter does not appear to have been answered.

River clearance work then shifted to the Te Autemutu rapid just above Pipiriki. Once more, the workers were obstructed, the police were brought in, and the work did not start again until two days later, when the local people finally agreed not to

Gravel

Trust appeals to Seddon

38. *Wanganui Chronicle*, 3 July 1891, 1, 2 December 1892 (doc A49(c), pp 519–521)

39. Document A49, p 82; Wanganui River Trust to Minister of Native Affairs, 10 May 1893, J1 1895/947, NA Wellington (doc A49(b), pp 302–304)

40. Wanganui River Trust to Minister of Native Affairs, 10 May 1893, J1 1895/947, NA Wellington (doc A49(b), pp 302–304). A J Cadman was the Minister of Native Affairs under Ballance, but he resigned within two months of Seddon becoming Premier. Seddon took over as Minister of Native Affairs.

41. Document A49, p 85; 'Pakeha and Maori: A Narrative of the Premier's Trip through the Native Districts of the North Island', AJHR, 1895, G-1, pp 7–9

42. AHatrick to Archibald Willis, 5 May 1894 (doc B23, pp 1–2). Note that this is obviously NA material, but it is not referenced except at the top of the page with 94/418.

43. Tamatea Aurunui to Premier, 31 October 1895, J1 1895/947, NA Wellington (doc A49(b), p 293)

Figure 11: River weir right across the Whanganui River below Kauika, Ranana.  
 Photograph courtesy Alexander Turnbull Library (1116¼).

stand in the way. The trust insisted that it always tried not to antagonise local Maori and that it considered their interests as far as possible. With one exception, there were no further recorded protests against the clearance work between Pipiriki and Taumarunui.<sup>44</sup>

## 6.6 FURTHER RECOURSE TO PETITIONS

1887 petitions

Maori were thus persuaded to observe the Government's law, though they had already adopted legal channels by petitioning Parliament. In 1887, there were two petitions from different Whanganui groups. Paora Tutaawha and 66 others said 'that their fisheries and eel weirs are being destroyed by the steamers running on the Wanganui River'. It was claimed that, at the Ranana meeting, Ballance had said that the steamers would not go beyond Ranana.<sup>45</sup>

In the second petition, Werahiko Ateara and 162 others prayed 'that the work of deepening the Wanganui River may be stopped, as they have never agreed to it'.<sup>46</sup>

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44. Document c10, pp 65, 73

45. Petition of Paora Tutaawha and 66 others, 'Native Affairs Committee', AJHR, 1887, 1-3, p 8 (doc A49, pp 71-72)

46. Petition of Werahiko Ateara and 162 others, 'Native Affairs Committee' AJHR, 1888, 1-3 (doc A49(b), p 258)

Figure 12: The paddle steamer *Manuwai* on the Whanganui River, circa 1910s. Photograph by Frank Denton. Courtesy Alexander Turnbull Library (Harding–Denton collection, G17102¼).

The petition was presented by Hoani Taipua, the member for Western Maori, who, speaking on the Wanganui River Trust Bill in 1891, recalled:

The Natives objected to the works because, as they pointed out, the works interfered with certain fishing rights at places where they caught lampreys, and those works had to be pulled down. The places where they were in the habit of catching lampreys had been handed to them by their ancestors, and these they guarded very jealously: they looked upon these as being of very great importance to them . . . [If] these natural drifts or rapids were dug away the water would rush out and dry up the river.<sup>47</sup>

The Native Affairs Committee referred the first petition to the Government for consideration, but no action was taken. On the second petition, it made no recommendation.<sup>48</sup>

On 18 November 1895, Nga Komiti Wahine o Te Tai Hauru (the Ladies Committee) of the Whanganui people wrote a letter to the Premier and petitioned Parliament after an unsuccessful bid to pursue Supreme Court proceedings over the damage to the constructions of their ancestors. Signed by 151 women, the

**Nga Komiti Wahine  
take up the cause**

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47. Hoani Taipua, 3 September 1891, NZPD, 1891, vol 74, p 220

48. Petition of Werahiko Ateara and 162 others, 'Native Affairs Committee', AJHR, 1888, 1-3, p 5 (doc A49(b), p 258); and see doc A49, p 72

petition, they said, was ‘drafted by an influential assembly of women of rank’ at meetings at Karioi, Pipiriki, and Jerusalem.<sup>49</sup>

In a letter following up the petition, they alleged, as with the petition of Paora Tutaawha, that Ballance had said that the steamers would stop at Ranana and that ‘no meeting of hapu or influential chiefs or Govt ever agreed or arranged that the steamer and the road should go up to Pipiriki’.<sup>50</sup> They had petitioned against the destruction of eel weirs, lamprey weirs, and whitebait dams on the river, the sides of the river, and its banks. They wanted the taking of stones to cease:

We your petitioners all say that we are Maori women of Aotearoa. In the year 1840 Queen Victoria’s Treaty of Waitangi gave to the Maoris of Aotearoa the absolute rights over their fishing grounds, their lands and their tidal rivers.

Your petitioners ask what is the principal reason of the Government breaking Queen Victoria’s Laws of the year 1840 as mentioned herein.<sup>51</sup>

On this occasion, there was at least a response, though the outcome for Maori was not great. Presented by Ropata Te Ao, the member for Western Maori, the petition was referred to the Native Affairs Committee, thence to the House, from there to the Government, and then Seddon met with Maori at Pipiriki in November 1895.<sup>52</sup> In anticipation, Nga Komiti Wahine had written to him.<sup>53</sup> Seddon concluded that one of the two Kauaeroa weirs could stay, Aterea then agreeing to the removal of the other. The first was taken out in January 1896, a 650-foot training wall was made for the Haumoana rapid, with ‘a small passage for canoes’, and the Te Puhi rapid between Pipiriki and Hiruharama was cleared of large boulders and stones.<sup>54</sup>

Maori dissatisfaction thereafter was expressed over the sale of liquor, and it was the liquor question that enabled Maori to assert that the river was really theirs. In brief, Maori wanted no liquor in the area, but the steamer owners wished to supply it, both on board and at accommodation houses along the way. At Maori urgings, the upper Whanganui area, as far south as Parikino, which in turn was 56 kilometres below Pipiriki, had been a no-licence district since 1887. This no-licence district had been proclaimed under section 25 of the Licensing Act 1881, which related specifically to Maori land.<sup>55</sup>

Liquor petition 1902  
and subsequent  
proceedings

49. Translation of petition of Mereaina Ranangina and 151 others, J1 1895/947, NA Wellington (doc A49(b), pp 296–297); doc B13, pp 5–7; Nga Komiti Wahine o Te Tai Hauru to Premier, 18 November 1895, J1 1895/947, NA Wellington (doc A49(b), pp 298–300)

50. Translation of petition of Mereaina Ranangina and 151 others, J1 1895/947, NA Wellington (doc A49(b), pp 296–297)

51. Ibid

52. ‘Pakeha and Maori: A Narrative of the Premier’s Trip through the Native Districts of the North Island’, AJHR, 1895, G-1, pp 7–9; doc A49, p 87; doc C10, p 70

53. Nga Komiti Wahine o Te Tai Hauru to Premier, 18 November 1895, J1 1895/947, NA Wellington (Wai 167 ROD, doc A49(b), pp 296–297); doc B13, pp 9–10

54. Wanganui River Trust to Department of Justice, 9 March 1896, J1 1895/947, NA Wellington; Under-Secretary of Justice to Te Keepa Rangihwinui, 9 March 1896, J1 1895/947, NA Wellington (doc A49(b), pp 284–285, 288); ‘Lands and Survey Report: Wanganui and Tangarakau Rivers’, AJHR, 1896, C-1, pp 114–115 (doc A49(b), pp 311–312)

55. Campbell, pp 81–83; proclamation prohibiting licences on certain native lands, *New Zealand Gazette*, 7 April 1887, no 23, pp 436–437

Some members of Parliament lamented the fact that river travellers could not be served liquor at the Pipiriki accommodation house, but when the Native Townships Bill was considered, differences on the liquor question were too strong for them to do anything about it.<sup>56</sup> In 1902, the Wanganui Licensed Victuallers Association, of which Hatrick was a prominent member, pressed the Wanganui Licensing Committee to relax restrictions on non-Maori travelling in the no-licence district. Te Keepa's widow, Wikitoria, and other Maori opposed this and successfully petitioned the licensing committee to have the no-licence status of Pipiriki and the area confirmed.<sup>57</sup> On this occasion, Wikitoria and her associates also challenged the legality of liquor sales on the steamers themselves, which had packet licences to sell liquor to passengers on the river but not to people on the land. Though there were allegations of sly-grogging from the steamers, the central point was the validity of the licences themselves. The question was whether the river was part of the no-licence district or part of the no-licence land, with Maori contending it was indeed part of the land and was Maori land.

In 1903, the Solicitor General, on behalf of Eruera Te Kahu, Hori Pukehika, and Wikitoria Keepa applied to the Supreme Court to quash the two packet licences issued by the Wanganui Licensing Committee.<sup>58</sup>

Rights in the river were raised as a secondary line of argument. The question was whether it was lawful for a steamer to be granted a packet licence in Wanganui, when most of its journey was through lands in the no-licence district. Counsel for the relators – namely, Wikitoria Keepa, Eruera Te Kahu, and Hori Pukehika – cited the opinion of Chief Justice Sir Robert Stout in *Mueller v Taupiriri Coal-Mines Ltd* that 'the river was within the proclaimed area'. He invoked the Wanganui River Trust Act 1891, which preserved 'the rights of Natives where they have not yet been acquired by the Crown', and argued that 'The bed of the river is Native land, and it is the same as other Native land, even though there be a public right of navigation'.<sup>59</sup>

Counsel for the licensing committee countered by arguing for the Crown's prerogative right:

The applicant must show that a licence cannot be issued when part of the district passed over is a prohibited area. The Wanganui River was not Native land. All Native lands are demesne of the Crown, subject to the Native rights of occupation. The mere right of occupation could not vest the bed of the river in the Natives. In non-tidal rivers the soil is presumed to be in the adjoining owners, but this depends upon a presumption of a grant, which cannot apply in the case of Native possessory rights. Their possessory rights over the adjoining lands and rights of fishing in the river are all that they have. It is absurd to suppose that they have possessory rights in the bed of the river: that is demesne of the Crown. 'The Wanganui River Trust Act, 1891,' recognises the river as a public highway.<sup>60</sup>

56. John Duthie, George Smith, 27 June 1895, NZPD, 1895, vol 87, pp 180–181

57. Campbell, pp 82–83; *In re Wanganui River Packet Licence to Stuart* (1903) 23 NZLR 510

58. Document A49, p 95; *In re Wanganui River Packet Licence to Stuart*, p 514

59. *In re Wanganui River Packet Licence to Stuart*, p 512

60. *Ibid*, p 514

The judges did not advert directly to these arguments. Justice Conolly stated, however, that the relevant legislation and proclamation implied a place within the area of Maori land and could not be extended to a vessel that was near, though not upon, some part of the Maori land one day, and the next day near, though not upon, another part of the same land some 50 miles off. The appeal was dismissed.<sup>61</sup> The court held that:

the packet licence was not a licence ‘granted within’ or ‘to take effect within’ the proclaimed area within the meaning of section 25, and that the Wanganui Licensing Committee had therefore power to grant it.

The prohibition of section 25 extends only to licences which are local to and confined to a proclaimed area, in the sense of being in respect of defined premises within the area.<sup>62</sup>

The decision was on the basis that the licence did not relate to any particular site in the district and was instead an ‘ambulatory’ one. Hence, the issue of the legal ownership of the river was avoided. In the decision, however, the English common law presumption of Crown ownership of navigable rivers was reinforced.<sup>63</sup>

## 6.7 PROTEST AND SCENIC LANDS

On the need to  
change the  
argument

By the turn of the century, the Government and the settler community had established their control of the river in fact and the supremacy of English law in New Zealand. To Maori, there must have seemed little point in pursuing the claims of their parents and grandparents to rights of self-government and self-administration, or to argue outside the framework of European politics and law. Without resiling from their forebears’ position, they came rather to contend that the river was owned by them, either presenting their case in terms of the Treaty of Waitangi or arguing it within the confines of English law.

People’s  
circumstances

Maori were no longer a political force and were preoccupied with their own survival. About two-thirds of their lands and their economic base had gone. While settler numbers increased, Maori population on the river declined dramatically between 1857 and 1901, and in 1891 Wanganui fertility rates were one of the three lowest in the North Island.<sup>64</sup>

The skills of the Maori canoeist were no longer in demand. The Maori committees, councils, and land boards had been marginalised. Eel and lamprey weirs had been destroyed or made ineffective, access to traditional foods had been

61. The judgment cannot be considered a precedent on the ownership of the Whanganui River. It was not treated as binding in *In re the Bed of the Wanganui River* [1955] NZLR 419.

62. *In re Wanganui River Packet Licence to Stuart*, p 510

63. *Ibid.* The decision on 14 July 1903 explicitly draws this inference out (see semblance). On 23 November 1903, this was given legislative force in the Coal-mines Act Amendment Act 1903.

64. A Walton, ‘Settlement Patterns in the Whanganui River Valley, 1839–1864’, tables 1–8 (doc A49, pp 36–43); ‘Maori Population’, AJHR, 1906, H-26A; Ian Pool, *Te Iwi Maori: A New Zealand Population, Past, Present and Projected*, Auckland, Auckland University Press, 1991, app 1

taken away, and major developments in new forms of production had not materialised.

The popular Pakeha perception of Maori as a dying race infected Maori too, and those old enough to remember their earlier condition were bitter about their plight. When Kerehoma wrote a history of his people in about 1895, he recalled the exploits of the famous Tamatuna and his underwater struggle with a totara tree:

Image of a dying  
race

The stump of that totara tree can still be seen . . . but where is the canoe? Alas, long since gone, like all our old people, our mighty works and our histories. Why do you pakeha want to know these things, and why have you come here? You have come to be great mountains like Rua-pehu, while we remain low on the ground as little hillocks. Why should one hill be high and another low? This is bad. See! When you came to our land, you looked at it and stopped, and then came up our river. What did we do? We gave you potatoes. You gave us one fish-hook; that is all. We have been cheated. You pakeha are thieves. You tear one blanket and make two pieces, which you sell us for two blankets. You buy a pig for £1 in gold and sell it back to us for three! But what does it matter? We have had our day – Ka tuhoa te ra, ka warara, ka hinga. (The sun rises to its zenith and then declines). Our land is nearly all gone, and we, too, are a vanishing people, and will soon be like the moa, extinct (ka ngaro a moa te iwi nei), and when this happens, in a few short years hence, perhaps you grasping pakeha will be satisfied.<sup>65</sup>

Only the ancestral pride remained. Tutairoa, his ancestor, he revered as:

the stone pillar from whom descended all the chiefs of Whanganui, even to the Rangitane tribe. . . All the taniwha (great chiefs) of this river of Whanganui come from this chief – all the great chiefs who have been heard of in this island, commencing at the source, even to the mouth of the river. . . Hence the saying, ‘A spliced rope, if broken, is made whole again’.<sup>66</sup>

While most Pakeha and many Maori assumed that the decline would continue, by the 1890s there were signs of a population increase and positive adaptations to the ravages earlier in the nineteenth century. The population increase resulted from a stabilisation and slight improvement in fertility rates, a greater immunity to disease, and possibly from better sanitation and health care, although the latter two factors probably had a greater impact later in the twentieth century. There was an improvement in Maori political organisation. While James Carroll, Apirana Ngata, and the work of the Young Maori Party are often cited as evidence of this trend, the Kotahitanga movement, the continuing influence of prophets, and the Kingitanga movement were also essential factors in Maori reinvigoration. Maori protest, which had never ceased, became a force that Pakeha governments increasingly had to address, albeit with only minor successes for Maori in the initial stages.<sup>67</sup>

Signs of  
reinvigoration

65. T W Downes, *Old Whanganui*, Hawera, WA Parkinson, 1915 (doc A40), p 45

66. *Ibid*, p 41

67. Michael King, ‘Between Two Worlds’, in *The Oxford History of New Zealand*, 2nd ed, Geoffrey Rice (ed), Auckland, Oxford University Press, 1992, pp 285–307; Judith Binney, ‘Maori Prophet Leaders’, in *The Oxford Illustrated History of New Zealand*, Keith Sinclair (ed), Auckland, Oxford University Press, 1990, pp 153–184

Compulsory  
acquisition of scenic  
lands

For Wanganui Maori, there was the immediate problem over the compulsory taking of Maori riverside land for scenery preservation purposes. About 4000 acres were acquired, most of them by 1912.<sup>68</sup> A further 15,000 acres had been recommended to be taken by the Scenery Preservation Commission in 1904. Of the total of 19,140 acres recommended for scenery preservation purposes, only 190 acres were owned by Pakeha.

The policy itself was controversial in a district where the clear felling and burning of the bush were the usual practices to establish grazing land. Settler farmers and Maori owners would burn and clear the bush for grazing (or perhaps to prevent its acquisition), while preservationists would protect a pristine river environment and an asset that was winning domestic and international acclaim. Hatrick was a leading advocate for taking the land along the river banks and was indignant that Maori were destroying bush on lands designated for scenery preservation. He publicised his views, protested to the Lands and Survey and Tourist Departments, and lobbied Ministers and members of Parliament. Disastrous fires in the upper river districts in 1908 were evidence of what could happen when late-summer burn-offs got out of hand.<sup>69</sup>

1913–14 petitions

Maori protested too. In 1913, Eruera Hurutara and nine others of Pipiriki petitioned Parliament to return Te Aomarama Papakainga, the marae and village that marked the post-war reconciliation earlier described and that was part of the Whakailuwaka block said to have been taken as a scenic reserve. Perhaps it was felt that to ask for the return of more may have prejudiced the recovery of the most sacred part, for in another petition of the same year, Te Weru Haeretuturangi and 196 others simply sought relief for 'land at Wanganui River taken for scenery-preservation purposes'.

In 1914, Waata Hipango and 406 others of Whanganui petitioned for two forms of relief: that land vested in the Maori Land Board be exempt from takings for scenery preservation purposes and that a commission be established to inquire into the taking of the Whanganui lands as a whole for scenery preservation purposes.<sup>70</sup>

1916 commission

On the recommendation of the Native Affairs Committee of the House, a commission was appointed in 1916.<sup>71</sup> It was to report on:

- (1) Whether the reservation over any of the existing scenic reserves should be cancelled:
- (2) What portion of the proposed scenic reserves should be acquired and set apart under the Scenery Preservation Act:
- (3) Which of the existing forest areas on Native, private, or Crown land, or in the Wanganui River Trust Domain ... should be retained under forest for water

68. Document A49, pp 101–103; doc A49(f), pp 11–12. The takings before 1910 were under the Public Works Act; those after were under the Scenery Preservation Act, which had been amended to allow the taking of Maori land.

69. Campbell, pp 105–106, 127; doc C10, pp 76–77

70. 'Native Affairs Committee', AJHR, 1914, 1-3, p 17

71. Ibid; doc C10, p 78

conservation or the protection of the river banks from denudation or in the interests of river navigation generally, or for any other purposes.<sup>72</sup>

The commission comprised Thomas Duncan, a sheep farmer of Hunterville, as the chair, Edward Turner, the inspector of scenic reserves and one of those who had surveyed the Maori land for acquisition, and Hikaka Takirau of Oeo, Taranaki.<sup>73</sup> Evidence was taken at Wanganui, Ranana, Hiruharama, Pipiriki, Parinui, and Taumarunui. Thirty-four Maori witnesses were heard, 12 days were spent on the river, and sites were inspected on the way.<sup>74</sup>

Some Maori said they had not been consulted on the land to be taken, others that they had received no compensation, and others again complained of arbitrary procedures where Maori land was involved. It was urged that only the cliffs and inaccessible land be taken, that in all cases burial grounds be kept out, and that full compensation be paid for that taken, having regard to the scenic value of the land. Hatrick, they claimed, was benefiting from tourism at their expense.

Tahuri Ngahinu asked the commission to recommend:

that as these lands are of special interest . . . we should be paid a special price for them. Here we have an instance . . . of a specially fat and big pig for which the owner would be paid a special fat pig price, whereas if it were the case of a small and lean pig the price would be correspondingly lean and small.<sup>75</sup>

When asked how scenery was to be valued, Te Iriringa Te Pikikotuku replied:

That is easily answered. If these beauty spots are so interesting to a multitude of people, and if as I personally know so many people photograph and paint these beauty spots for money, then these beauty spots have intrinsic value, notwithstanding that they are cliffs and we expect to be paid for them.<sup>76</sup>

The commission made 50 recommendations on lands either reserved or proposed for reserves. These included reserving to the skyline and releasing the remainder, providing river access for 26 blocks, and excluding urupa from three reserves and a kainga at Tieke from another.<sup>77</sup>

Commission's  
recommendations

Most of the report was considered controversial, and the wartime coalition Government had resolved that controversial matters be shelved in the interim. Thus, only a few small matters were actioned. At times till 1926, the Lands Department reminded its Ministers that the commission's recommendations affecting Maori riparian lands were still to be determined, but they were allowed to lapse.<sup>78</sup>

72. DOSLI HO228/01/04, LINZ (doc A49(b), pp 410–427)

73. Campbell, p 174; DOSLI HO228/01/04 (doc A49(b), pp 410–427)

74. DOSLI HO228/05/07 (doc C10(a)(7))

75. Ibid, p 28

76. Ibid, p 32

77. DOSLI HO228/05/04 (doc A49(b), pp 410–427); *Wanganui Chronicle*, 27 June 1917, p 7

78. 'An Investigation of the Circumstances of the Crown's Acquisition of an Area of Land Located on the Wanganui River and Associated with Tieke Hut', Crown Law Office memorandum, 2 March 1994, paras 98–123 (citing LS4/219, Department of Conservation, Wellington)

Commission and  
river

Given the lack of an outcome, the main interest in the commission's proceedings, for the purposes of this chapter, is in the opportunity it afforded Maori to raise once more their rights in relation to the river. Technically, river rights were outside the commission's terms of reference, but they were raised anyhow.

In reporting, the commission's consideration of the river was limited to the inquiry's purposes. It was seen as 'an important highway' and, with the difficulty in building roads, was likely to remain 'the chief means of transport' for Europeans and Maori.<sup>79</sup> It had therefore to be kept navigable, and to that end, bush along its banks had to be preserved. As seen, there were already problems with water flows. A former steamer master for 24 years had deposed that the water flow had become less regular since the bush felling and, after heavy rains, rose more rapidly and correspondingly fell more quickly. As a result, there was 'a shorter time available for the running of the river steamers with comparative convenience'.<sup>80</sup>

For Maori witnesses, the recognition of their river rights was the more consuming matter. As translated, Wharawhara Topine said:

No doubt the work of the Commission is more in the matter of scenic reserves, but to us Native owners the question of our river rights has suddenly overshadowed that of the scenic reserves, and we realise that if we do not press the matter now, we will get no compensation or recognition for our river rights . . .

This question as to river rights extends from the head of the river to its mouth, and all of our sub-tribes who own the abutting lands are interested in its solution.<sup>81</sup>

To a 'chorus of Eh Eh' from the other Maori present, he concluded that part of his 1030-acre block should go for scenery purposes, but with the condition that the river rights be fixed first.

Hakiaka Tawhaio, listed as the head chief, said much the same: 'If the river waters fail there will be no longer travellers to visit and admire the scenic beauties, and that brings me to the great question of the river itself'. He argued for compensation based not on the land lost to scenic reserves but on the river:

We should be compensated for the benefits that others are deriving from our river waters. First of all we are entitled to compensation from Mr Hatrick for the eel-pas destroyed by his steamers. Secondly now Mr Hatrick derives a large amount of benefit and income by his use of the Wanganui River and in taking along these tourists to admire the scenic beauties, whilst we Native owners are being correspondingly put towards the losing of our land and property, at first along the foreshores and cliffs, but now the system is being extended to the main lands all for the benefit of other people. My purpose here is not so much to discuss and object to the scenic system, as to ask that we be compensated for the benefits which so many other people are getting from the use of our river waters about which we have petitioned Parliament, basing our claims on the provisions of the Treaty of Waitangi . . . I want from the Government a clear statement as to what it proposes to do in

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79. *Wanganui Chronicle*, 27 June 1917, p 7

80. Campbell, pp 174-176

81. DOSLI HO228/05/07 (doc C10(a)(7), p 37)

regard to the river waters submitting that those waters belong entirely to us. The Maoris own the river . . . I lay far more stress on our river rights than on these scenic lands.<sup>82</sup>

The commission chairman was 'glad' to have heard their remarks about their river rights but could not make any recommendation with regard to them.<sup>83</sup> They were matters 'between the owners themselves and the Government'. The owners were insistent that, if not answered before more scenic land was taken, they would lose their right as landowners to press for them. Tawhiao was sceptical about the likely outcome:

No doubt it is the position as explained by the Chairman. In all probability there will be as little notice taken of our wish and our protests, by the Government, as there has been in regard to our representations about our rights in our fairway.<sup>84</sup>

Compensation was at the heart of two further petitions of 1927, though in other respects these were essentially the same as those of 1887. The petition of Te Akihana Rangitariora and 210 others linked the lack of compensation paid to Maori for the use of the river with the payment of £2000 to Hatrick for carrying the mail. It pointed out that Maori were required to pay the full freight and passenger charges. It also asked for Moutoa Island to be reserved.<sup>85</sup>

1927 petitions

The petition of Piti Kotuku and 125 others of Taumarunui prayed for £300,000 in compensation for their numerous and varied 'rights in the Wanganui River and its tributaries'. The riparian owners should be compensated for money made by the steamer company that used the river, it claimed. Eel, lamprey, and other weirs had been destroyed, and coming generations 'deprived of the benefits accruing therefrom as means of obtaining a livelihood'. The release of trout into the river had killed off toitoi, pariri, papanoko, inanga, paneroro, and tuna-riki species, and compensation should be paid from a portion of the fees for trout fishing licences. Royalties should be furnished for gravel taken from the river and compensation paid for the land taken for scenic purposes:

All the benefits have accrued to the Company controlling the steamers plying on the Wanganui river because tourists come to see the beautiful scenery on the river. These lands did not belong to the Europeans but to us and were practically confiscated for scenic purposes.<sup>86</sup>

The Government acted by including a clause in the Native Land Amendment and Native Land Claims Adjustment Act 1930 authorising the chief judge of the

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82. Ibid (pp 30–31); doc C10, pp 79–80

83. DOSLI H0228/05/07 (doc C10(a)(7), p 37)

84. Ibid (p 34)

85. Petition of Te Akihana Rangitaroa, 18 July 1927, MA15/13/188, pt 1, NA Wellington (doc A49, pp 108–109)

86. Petition of Piki Kotuku and others, 1927, 'Native Affairs Committee', AJHR, 1928, I-3, p 10; *Evening Post*, 6 September 1927; for the full text, see MA5/13/188, pt 1, NA Wellington (doc A49(d), pp 211–213)

Native Land Court to inquire into the petition's 'claims and allegations' and to report to Parliament 'on as early a date as possible' (s 34, schedule).

When, some seven years later, no report had been made to Parliament by the chief judge, Titi Tihu applied to the Native Land Court for an investigation of the ownership of the Whanganui riverbed, and the great litigation began.