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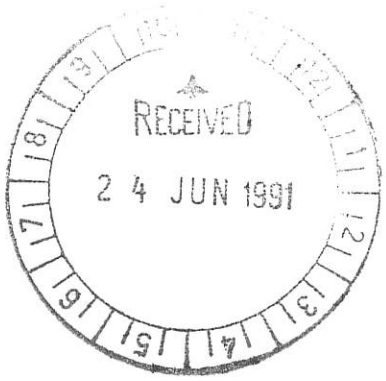

20 June 1991

Chairman
Whakatohea Trust Board
PO Box 207
Opotiki

Fax No 076-57968

Tena koe Claude

JONES, NGATA & SIMS COMMISSIONS REPORT ON WHAKATOHEA

Enclosed extracts of the findings from the above Commissions relevant to Whakatohea.

I should add that part of the inquiry into the Whakatohea claim will look at all past attempts of addressing this grievance and that will include identifying all petitions.

Kai ora

Tom

loyal persons who had received but little before, on account of their lands being within the military settlement block of 50,000 acres, although they had but very small right to land otherwise within the Katikati and Puna Blocks. We also proposed to the ex-rebel party who owned the greater part of the purchased blocks that they should adjust the matter by giving a large share of the consideration-money to the loyal claimants. Neither party, however, cared much for this proposition, and it was negatived at the time by them, though I believe that in the apportionment of the £3,000 instalment recently paid to them they behaved liberally to the loyal claimants." Mr. Mackay continued by saying that all claims received by him for land taken at Tauranga had been settled, with one exception. Later in the letter he said that he held a meeting of the tribe on the 15th July, 1867. The meeting lasted two days, and was attended by loyal and ex-rebel Natives. There was a question as to the abandonment by the Government of two islands in Tauranga Harbour. The meeting was convened, said Mr. Mackay, in order to test the views of the Ngaiterangi Tribe on this subject, "and also to ascertain whether any further claims for compensation were likely to be made by the loyal portion of the people for any of their lands taken within the military settlements block." Mr. Mackay does not say whether or not he received any further claims, but, in view of his earlier statement that he had settled all claims received, it is reasonable to conclude that he did not receive any further claims at or shortly after this meeting.

46. In the year 1886 Mr. Brabant compiled a return showing how the titles to the lands returned to the Ngaiterangi Tribe under the Acts of 1867 and 1868 had been dealt with by the Commissioners appointed under those Acts. That shows that 210 blocks, with a gross area of 136,191 acres, had been dealt with in this way. These figures, as Mr. Brabant pointed out, are exclusive "of the large Katikati-Te Puna Government purchase, of the compensation awards to loyal Natives, and of the reserves made for surrendered rebels and of the actually confiscated block."

47. It seems clear from Mr. Mackay's letter that the claims of both loyal Natives and rebels were duly considered at the time, and an endeavour made to do justice to them all. It is not suggested that any complaint was made on the subject at the time, or, indeed, until quite recently, and in these circumstances it is reasonable to conclude that substantial justice was done to the Natives by the settlements made by the Government. We think, therefore, that the confiscation was justified and was not excessive, and that the Natives have not made out any case for the inquiry asked for by them.

Bay of Plenty Confiscations.

48. These confiscations were the outcome of events which followed the murder of the Rev. C. Volkner at Opotiki on the 2nd March, 1865, and the murder of James Fulloon at Whakatane on the 21st July, 1865.

49. It is true, as pointed out by Mr. Taylor, that of the tribes affected by these confiscations the Tuhoe Tribe took part in the Waikato war in 1863 and assisted in the defence of Orakau. It is true also that the Whakatohea, Ngatiawa, Ngatipokeko, and Ngatirangihouriri Tribes all sent men to join the army raised in 1864 to assist the Waikatos, which was defeated by the Arawas in April, 1864, near Lake Rotoiti. These were acts of rebellion which would have justified confiscation under the New Zealand Settlements Act, 1863; but they were forgiven by the Proclamation of the 2nd September, 1865, which declared that the war which commenced at Oakura was at an end and that the Governor would not take any more land on account of that war.

50. The murder of Mr. Volkner and the murder of Mr. Fulloon were not in themselves acts of rebellion, and if the Natives of Opotiki and Whakatane had not resisted the armed forces sent to capture the murderers there would not have been any excuse for confiscating their lands. By the Proclamation of the 4th September, 1865, published in the same *Gazette* as the Proclamation of peace, the Governor, after reciting that a military force had been employed to capture the murderers of the Rev. Mr. Volkner and of Mr. James Fulloon and his companions, proclaimed that martial law would be exercised throughout the districts of Opotiki and Whakatane.

51. The force of about five hundred men sent in transports under Major Brassey to Opotiki arrived there on the 8th September. The landing was opposed by the Natives, and, after a landing was effected, there was the fighting which is described by Mr. Cowan in the second volume of his "History of the New Zealand Wars" (Chapter x). The Hauhau hapus of the Whakatohea fortified themselves, said Mr. Cowan, between four and five miles up the valley. The entrenchment consisted of three redoubts, and these were captured ultimately after a strenuous resistance by the Natives. Intermittent skirmishing continued in the district until November, 1865. This was followed by the surrender of a number of Hauhaus, including the chief Mokomoko, who was concerned in the murder of Mr. Volkner.

52. The force of Arawas sent out to capture the murderers of Fulloon was under the command of Major Mair. There was fighting between this force and the Natives of the Whakatane district, and the story of the fighting is told by Mr. Cowan in the second volume of his "History of the New Zealand Wars" (Chapter ix). The Hauhaus were driven ultimately to their fortified pa at Te Teko. This was besieged, and on the 20th October the garrison surrendered. About twenty of the principal offenders in the murder of Fulloon were captured.

53. On the 17th January, 1866, an Order in Council was made declaring the district described in the schedule to be a district under the New Zealand Settlements Act, 1863, and reserving and taking it for the purpose of settlements. The boundaries of the district were altered by an Order in Council made on the 1st September, 1866.

54. It is clear that the Natives of Opotiki and Whakatane were engaged in rebellion against Her Majesty's authority when they resisted with arms the advance of the forces sent out to capture the murderers. Their cases came, therefore, within the terms of the New Zealand Settlements Act, 1863, and the Governor was justified in confiscating their lands as a penalty for their rebellion.

55. It has been said, however, that a few only of the twenty hapus of the Ngatiawa Tribe took part in the rebellion while the others remained loyal or neutral. It was claimed that in these circumstances the effect of the confiscation was to punish the innocent as well as the guilty. It is probable that some of the hapus were loyal, but it is impossible at this distance of time to determine exactly the hapus concerned in the rebellion or to ascertain their respective interests in the land confiscated. It would be idle to attempt to discriminate now as to the complicity of the different hapus, and all that we can say is that it has not been proved to our satisfaction that the land of any innocent hapu has been confiscated. If any such land was confiscated, the hapu was entitled to compensation for it under the New Zealand Settlements Act, 1863.

56. The next question to be considered is whether or not the Bay of Plenty confiscations exceeded what was fair and just. The total area included in the proclaimed district was 448,000 acres. Of this, 118,300 acres were restored to loyal Natives and 112,300 acres to rebel Natives. There was an area of 6,340 acres which had been sold privately before the confiscation, so that the area finally confiscated was 211,060 acres. The territory confiscated included an area of 87,000 acres which was claimed by the Arawas, and was ceded to them. This claim was disputed by the Ngatiawas, who said that this area belonged to them. If the area be treated as belonging to the Arawas, the Ngatiawa had originally 107,120 acres, and were left with 50,321 acres, which was increased by grants to 77,870 acres. The Whakatoheas had originally 491,000 acres, and were left with 347,130 acres. The Tuhoes had originally 1,249,280 acres, and were left with 1,234,549 acres. These figures are based on the tribal boundaries as given on what is known as Heaphy's plan. There is some dispute as to the correctness of the boundaries as shown on this plan.

57. The Whakatohea Tribe have in their favour the report of the Commission which sat in the year 1920. The concluding sentences of the report are these: "We have not sufficient material before us to say what would have been a fair and just area to confiscate, nor do we think it wise for us to go into that question. We have no hesitation, however, in affirming that, judged by the light of subsequent events, the penalty paid by the Whakatohea, great as was their offence, was heavier than their deserts."

58. We have considered the matter carefully, and we think that, except in the case of the Whakatohea Tribe, the confiscations in the Bay of Plenty did not exceed what was fair and just. In the case of the Whakatohea Tribe it was excessive, we think, but only to a small extent, and we recommend that a yearly sum of £300 should be paid for the purpose of providing higher education for the children of members of that tribe.

QUESTION No. 2.

59. The second question to be inquired into is this: "Whether any lands included in any confiscation were of such a nature as that they should have been excluded for some special reason."

60. It was claimed that a large number of places should have been excluded, for special reasons, from the confiscated areas. One witness suggested that Mount Egmont should have been excluded, and claimed to have it made a special reserve for himself and his people. We were supplied with a long list of the places claimed in the Taranaki District, and also lists of places claimed in other districts. The Taranaki list includes five canoe-landing places, forty-five cemeteries, fifteen river and lake fishing reserves, twenty-six pas, sixty-four lamprey and eel weirs, and two pipi and mussel beds. It would be difficult, we think, to ascertain now the exact locality of many of these places. It is certain that few of them could be restored to the Natives, and that in most cases the Natives would not want them if they could get them. What, for example, would be the use of a canoe-landing-place to Natives who have not got any canoes, and who travel now in motor-cars.

61. With regard to cemeteries, the practice of the Government, Mr. Taylor said, had always been to exclude these from land offered for sale, when they were pointed out to the surveyors. That has not been done in a number of cases, and burial-places have been included in land sold to Europeans.

62. When the confiscations were made it was impossible, of course, to go into the question of excluding particular places from the area to be confiscated. They could have been dealt with afterwards when parts of the confiscated areas were being restored to the Natives. It is clear that any general attempt to restore these places now is quite out of the question. Provision is made by section 13 of the Native Land Amendment and Native Land Claims Adjustment Act, 1924, for the restoration to Natives of cemeteries on Crown land, and cases of the kind are dealt with from time to time, we understand, under this section. The practice of dealing with them under this section will continue no doubt.

QUESTION No. 3.

63. This question, as we understand it, is intended to deal with the case of Natives, belonging to a tribe or hapu whose land was properly confiscated, who, for reasons personal to themselves, did not deserve to share in the punishment thus inflicted. Our answer is that such a case was not put forward on behalf of any Native.

QUESTION No. 4.

64. This question directs an inquiry as to the provisions made for the support and maintenance of Natives excluded by section 5 of the New Zealand Settlements Act, 1863, from any right to compensation, and the inquiry is as to the provision made for each particular tribe or hapu.

65. Petition No. 7 (Bay of Plenty District) is a case of this kind, and we refer to what is said in this report on the subject of that petition. It was the only case of the kind that was brought before us, except that, in the course of this argument in connection with the Tauranga confiscations Mr. Smith claimed that certain of the rebel Natives were not given sufficient lands for their support. In connection with this claim a list of names was submitted, with a list of blocks awarded to certain members of the Pirirakau hapu, but the claim was not supported by any further evidence. The petitioners in petition No. 22 (Arawa District) claim to be descendants of loyal Natives, and allege that they are landless. We refer to what is said in this report on the subject of that petition, and of petition No. 23 (Arawa District).

Bay of Plenty District.

Petitions Nos. 1, 2, 3, 6, and 8.

66. These all deal with the general question of the Bay of Plenty confiscations, and are covered by what has been said already on that subject.

Petition No. 4.

67. The petitioners are members of the Ngamaihi, a hapu of the Ngati-Awa. They assert that owing to the confiscations they were left landless, and that a piece of land known as Lot 72, Parish of Matata, to which they were entitled in accordance with Native custom, was awarded instead to another hapu, known as the Pahipotos.

68. During the hearing of this petition it was ascertained that an award had been made to this hapu in conjunction with the Pahipotos of Section 59 (Mount Edgecumbe), containing 12,710 acres. They assert, however, that on definition of relative interests, which was effected in accordance with Native custom, the Pahipotos were able to prove greater rights and got the major share, and all that was awarded to them was about 4,000 acres. They further asserted that another block, Section 72, Matata, to which they could prove ancestral rights, was awarded to the Pahipotos only. A perusal of the report made by Mr. Wilson, the Government Agent, in March, 1872, discloses the fact that Section 72 was awarded to the Pahipotos as claimants, a right which loyalists were allowed by the Act. The Ngamaihis, therefore, either did not then claim inclusion, or, if they did so, were excluded for some reason. The award of Lot 59, in which both hapus were included, was made under the 3rd and 4th section of the Confiscated Lands Act, which empowered the Commissioner or other official acting to make awards to rebels. As the award to the Pahipotos for Lot 72 appears to be a loyalist award, the reason for the award for Lot 59 being made under the 3rd and 4th section of the Act above mentioned can only be explained by the fact that rebels had been included. We assume, therefore, that the Ngamaihi were treated under that award as rebels.

69. It appears, however, that practically all of the hapus of the Ngati-Awa (Fulloon's hapu included) were treated for the purpose of these awards as rebels. That may be explained by the fact that the majority of the Ngati-Awa were indifferent to Government action, preferring evidently to await the result of the representations which their chief, Wepiha, proposed to make to Parliament in connection with all their lands. This undoubtedly would induce them not to enter claims for specified areas, but it is strange that no attempt was made soon after the true position was ascertained by them to assert their rights.

70. We do consider, however, that the award in Lot 59 was strictly a compensation award, having no cognizance of ancestral "takes," and consequently the definition of relative interests should not be based on rights by ancestry, but should be divided equally among the individual owners. On referring to the Native Land Court records we find that this was the basis suggested by the Court, but that the owners took it upon themselves to arrange the shares. This arrangement, at the wish of the Natives, was confirmed by the Court. We therefore have no recommendation to make.

Petition No. 5.

71. The petitioner asserts that he is a descendant of Rewiri Manuariki, a loyal member of the Ngamaihi hapu, and also of the Ngati-Pikiao hapu of Te Arawa, and that the Ngamaihi lands of this chief were confiscated notwithstanding his loyalty. He prays for the return of these lands, known as the Ahikokoa Block, on the west bank of the Tarawera River. The assertions made by the petitioner were not seriously disputed by the Crown, and, if true, an injustice has been done to him. It is strange, however, that Rewiri Manuariki did not assert this right before Mr. Wilson when the claims were being heard. This is significant in view of the fact that the names of himself and members of his family appear in the list of names for Lot 63, Parish of Matata, which was awarded to his tribe,

August 1907

1908.

NEW ZEALAND.

NATIVE LANDS AND NATIVE-LAND TENURE:

INTERIM REPORT OF NATIVE LAND COMMISSION, ON NATIVE LAND IN THE COUNTY OF OPOTIKI.

Presented to both Houses of the General Assembly by Command of His Excellency.

Native Land Commission, Morrinsville, 17th June, 1907.

To His Excellency the Governor.

MAY IT PLEASE YOUR EXCELLENCY,—

We have the honour to submit for your consideration a report upon Native lands in the County of Opotiki.

The Commission held sittings at Opotiki, Torere, Omaio, Te Kaha, and Orete, and are in possession of data supplied by the Waiariki Maori Land Board.

Opotiki is a new county, recently formed out of the eastern portion of Whakatane County. It extends from Ohiwa on the west to Whangaparaoa on the north-east. Within it are the following Maori tribes: Whakatohea, between Ohiwa and Opape; Ngaitai, at Torere; Whanau-a-Apanui, between Hawai and Omaio; Whanau-a-te-Ehutu, at Te Kaha; and Whanau-a-Para-raki, at Raukokore and Whangaparaoa.

WHAKATOHEA.

Dealing first with the Whakatohea Tribe, we find that they have little land left in their hands. The lands about Opotiki were confiscated by the State by the same Act which affected the lands of the Ngatiawa at Whakatane. The Government subsequently granted reserves out of the confiscated area, the principal block being Opape Reserve, of 20,290 acres. The title to this has just been settled by the Native Land Court. It is not good land, and at best can only be called second-class land. The owners are desirous of reserving all but a small area. Beyond this the Whakatohea have by ancestral right portions of Whakapaupakihi, residual areas from former sales to the Crown near Motu, and a remnant of the Oamaru Block. Of the latter the Crown has by purchase at various times acquired 87,897 acres. The residue, owned by the Whakatohea, is 16,773 acres (including 4,814 acres owned by their Tuhoe kin). Of this they offer 3,063 acres for lease to the general public, and stipulate that no part shall be sold.

We are of opinion that the Whakatohea Tribe has no surplus land for sale. The total area they now hold is 35,449 acres. Of this they offer 6,733 acres for lease to the general public, retaining 28,676 acres. Two of their subtribes are industrious, and have already started sheep-farming on a small scale. Upon

subdivision of the Opape Reserve, just completed but requiring surveys, various families have turned their attention to farming their small holdings. The schedules to this report will show how this block has been subdivided.

Ngaitai.

To the north of the Whakatohea, the Ngaitai, of Torere, a smaller but more compact tribe, are large landowners, and hold 64,706 acres, inclusive of approximately 12,000 acres of papatupu land.

They have proved their capacity to administer the lands in a businesslike manner. They adopted the system of incorporation as best suited to their circumstances, and used it for the purpose of opening their lands for general settlement. In the first place the Kapuarangi No. 1 West Block was incorporated for the purpose of sale to the Crown. The sale was completed with little trouble, with the minimum of expense to the Crown, and at a price satisfactory to the Natives. The proceeds were carefully allotted by the Committees first towards the discharge of existing encumbrances on this and other tribal lands, and, secondly, amongst the owners according to their relative interests. The area sold to the Crown in this manner was 11,474 acres. There were happily absent from the transaction those incidents which usually mar the purchases of the Crown where treaty with individual owners is necessary. Once it was decided by the people in meeting to sell to the Crown and a Committee was lawfully appointed for the purpose of carrying out their desire, the rest was a matter of bargaining between the Committee and the land-purchase officer.

In pursuance of their plan to sell portion of their tribal estate, to lease the greater part, and to reserve a portion, the Ngaitai have incorporated a number of other blocks, Tunapahore South, Takaputahi, Awaawakino, and Waiohoata, chiefly for the purpose of leasing to Europeans. Leases have been executed covering an area of 18,431 acres, and have been approved by the Board. The area under negotiation is 29,240 acres. The area proposed to be reserved for the use and occupation of the tribe (inclusive of the area of papatupu above mentioned) is 16,306 acres. It is proposed to finance the improvement of this reserve on the security of the revenue from the lands leased. They offer for sale an area of 729 acres.

If the Ngaitai are regarded as a company or syndicate of landowners they must be complimented on the management of their business, which had as its aim the benefit of the shareholders. They have within three years made available for settlement a very large area of land. There is no better example of the success of the incorporation system in the hands of capable men, representing hapus or tribes that have been accustomed to work harmoniously together, and to sink personal differences for the common good.

Whanau-a-Apanui.

Their tribal lands adjoin on the north those of the Ngaitai. Indeed, the two tribes have for a generation keenly disputed the intertribal boundary. Successive Courts dealt with the boundary blocks, and a Royal Commission was set up by Parliament to dispose of the disputes.

The bulk of the Whanau-a-Apanui lands are still papatupu, estimated at from forty to fifty thousand acres. The lands for which they have titles are :—

	Acres.
Houpoto and subdivisions	13,754
Kapuarangi No. 1 East No. 2	11,474½
Tunapahore North	2,628
Pukemauri No. 2	3,270

Houpoto and subdivisions have been incorporated and leased to Europeans. In fact, the Whanau-a-Apanui were the first in the Bay of Plenty to make use of incorporation for the purpose of leasing their lands. Houpoto is, on the whole, poor land, and fit only for rough pastoral purposes. Kapuarangi No. 1 East No. 2 has also been incorporated, and is under negotiation for lease to

2. Lands recommended to be Reserved for Maori Occupation under Part II of "The Native Land Settlement Act, 1907"—*continued.*

Name of Block.	Owners.	Area.			Remarks.
		A.	R.	P.	
Opape 6B	8	27	0	0	Family holding.
.. 6C	3	9	0	0	..
.. 6D	9	33	0	0	..
.. 6E	11	36	0	0	..
.. 6F	3	12	0	0	..
.. 6G	3	12	0	0	..
.. 6H	7	18	0	0	..
.. 6J	14	48	0	0	..
.. 6K	1	12	1	12	..
.. 7	15	125	1	0	To be incorporated under section 61 for lease to Maoris. Unoccupied.
.. 9	100	1,164	3	0	Ditto.
.. 12D, Y, E ..	17	528	3	0	Family holding.
.. 12F	5	181	3	26	..
.. 12H, J, R, M ..	22	668	3	25	..
.. 12K, C	20	875	2	25	..
.. 12O, G	11	360	2	30	..
.. 12P	11	393	1	15	..
.. 12Q, R, J, N	24	575	1	10	..
.. 12W	20	349	2	0	..
.. 12X, T	14	456	3	25	..
Oreto A	7	88	0	0	
.. B		58	0	0	
.. C	3	50	0	0	
.. D		220	0	0	
.. E	1	50	0	0	
.. F	1	30	0	0	All occupied and farmed.
.. H	1	80	0	0	
.. J	3	115	0	0	
.. K	2	9	0	0	
.. L	7	176	0	0	
.. M	6	17	0	0	
Omaaru 2B	57	1,650	0	0	Owners desire further subdivision.
.. 3B	25	744	0	0	
.. 7B	108	1,645	0	0	To be incorporated for lease to other Maoris.
Waiohoata A ..	116	1,724	0	0	Cut out by Court for Native reserve.
Whitikau 3A 3 ..	31	1,652	0	0	Incorporated. Proposed to be leased to one of the owners. Over 400 acres improved.
.. 3A 1	11	530	0	0	Being incorporated for family farm.
Total		29,686	3	0	

3. Lands recommended to be incorporated under Section 28 of "The Maori Land Claims Adjustment and Laws Amendment Act, 1907," with Power to lease to Maoris or Europeans.

Name of Block.	Owners.	Area.			Remarks.
		A.	R.	P.	
Opape No. 11	200	3,270	0	0	
Oamaru 5B ..	25	3,063	0	0	
Whakapaupakihi 1 ..	35	200	0	0	No. 2 already incorporated; owners of Nos. 1 and 3 wish to join same.
.. 3 ..	82	200	0	0	
Total		6,733	0	0	

4. LANDS RECOMMENDED FOR GENERAL SETTLEMENT UNDER PART I OF "THE NATIVE LAND SETTLEMENT ACT, 1907."

Name of Block.	Owners.	Area.			Remarks.
		A.	R.	P.	
Opape 6 (balance) and 8	70	1,587	2	16	Owners want this leased by the Board, but not sold.
Oamaru 1C	139	4,814	0	0	Owners do not desire to sell.
„ 4B	48	1,857	0	0	„
Whitikau 2B 2	106	199	0	0	Owners wish to sell.
„ 3A 4	87	530	0	0	„
Total	..	8,987	2	16	

5. AREA NOT DEALT WITH.

	Acres.
(*a.*) Blocks where title has been ascertained, area estimated at	12,638
(*b.*) Papatupu lands, area estimated at	140,000

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300 acres down at £3 per acre. It was probably less valuable per acre than the original reserve, and more valuable per acre than the substituted reserve. We then have this result :—

	£	£
625 acres of original reserve taken		3,470
Less—705 acres (less 75 acres still in original reserve) of substitute reserve = 630 acres at £2 per acre	1,260	
300 acres compensatory reserve at £3 per acre ...	900	2,160
		£1,310

To this extent, then, it appears to us, the settlement was not just to the Natives; and this, to our minds, represents the loss the Natives made at the time by having the position of the reserve changed against their will. Probably at that date they would have taken less, and been satisfied, as the future values were then unknown. If our figures are correct they are, in addition, entitled to simple interest at the rate of £5 per cent., which since 1876, when the land was taken, totals forty-four years. The Native owners of the original reserve are therefore entitled, for their forced deprivation, to the following compensation : Loss sustained by Natives, £1,310; forty-four years' interest at £5 per cent., £2,882 : total, £4,192.

In addition to their actual loss, the Natives also have been put to considerable expense in endeavouring to have the wrong righted. It is not possible to allow all such expense, but we think that they are entitled to some allowance, which we fix at 10 per cent. on the principal they were entitled to, or a sum of £131. This, then, makes the total compensation payable £4,323, and we therefore recommend Your Excellency accordingly.

As some of the original grantees are dead, and there may be disputes as to the present persons entitled should any compensation become payable in respect of the matter, the Native Land Court should be authorized to settle the list of beneficiaries and their respective interests.

WHAKATOHEA CONFISCATION.

This is a complaint from the Whakatohea Native Tribe, who belonged to Opotiki. They say that when their lands were confiscated in 1866, for the murder of the Rev. Mr. Volkner on the 2nd March, 1865, they were unduly punished by the deprivation of so much of their lands.

The facts which led up to the confiscation were shortly as follows : The people of the place had sympathized with the Natives engaged in the Waikato War, and some of them had taken part in that war. When the wave of Hauhau fanaticism passed over the Native race it is said that no spot was more prepared to receive it than Opotiki. "Their cultivations," it was said, "had been neglected, and a low fever caused by lack of food had carried off more than one hundred and fifty persons." It was in these circumstances that Rev. Mr. Volkner, who was not altogether in favour among the Natives, and despite warnings, resolved to leave Auckland and to revisit them, carrying with him wine and quinine, though he considered it doubtful whether they would take such things from his hands. Meantime, towards the end of February, 1865, the Hauhau apostles under Kereopa and Patara arrived from Taranaki and Taupo, carrying with them the head of Captain Lloyd. At Whakatane they expressed their intention of giving Mr. Volkner orders to leave, and if he refused he would be killed. The Hauhaus arrived at Opotiki about the 28th February, 1865, and Mr. Volkner about the 1st March; and on the 2nd March he was, after what may be termed a mock trial, murdered under most revolting circumstances. The actual murder was committed, it is said, by Kereopa, but there is no doubt others, partially influenced by the frenzy of their new religion, were concerned in it. Three of the perpetrators were sentenced to death in March, 1866, and another suffered imprisonment; and Kereopa himself was tried, convicted, and hanged in 1871, and died acknowledging the justice of his sentence.

1866, A.–1, p. 68.

1865, E.–5, p. 1.

Owing to the disturbed state of the district no immediate attempt was made to punish the murderers, although a skirmish took place about the 21st May, 1865, by an expedition under Captain Freemantle in an attempt to seize one of those implicated. On the 27th July, 1865, Mr. Fulloon and others were murdered at Whakatane by another tribe, and it was decided to despatch a punitive expedition. In the Proclamation of Peace of the previous war, dated the 2nd September, 1865, the following reference is made: "The Governor is sending an expedition to the Bay of Plenty to arrest the murderers of Mr. Volkner and Mr. Fulloon. If they are given up to justice the Governor will be satisfied; if not, the Governor will seize a part of the lands of the tribes who conceal these murderers, and will use them for the purpose of maintaining peace in that part of the country and for providing for the widows and relatives of the murdered people." Two days later martial law was proclaimed throughout the Opotiki and Whakatane districts. *Gazette*, 1865, p. 279.

An expedition followed, assisted by the officers and men of H.M.S. "Brisk," and some of the murderers of Mr. Fulloon and Mr. Volkner were secured; and on the 30th December, 1865, Mr. Stafford decided they should be tried by the Civil Courts, which event took place a few months later. 1866, A.–1, p. 85.

On the 17th January, 1866, an Order in Council was issued confiscating all the lands within the Bay of Plenty district as defined in the schedule; and this was later amended, on the 1st September, 1866, by altering the boundaries and dating the taking as from that date. *Gazette*, 1866, p. 17. *Gazette*, 1866, p. 347.

On the 23rd March, 1866, the Governor reported that he had visited Opotiki among other places, and found the Hauhau fanatics entirely subdued, and tranquility fully established. Any defect in the Proclamation was apparently relieved by the Act of 1866, passed later, which expressly validated all Proclamations theretofore made.

Further than to reiterate that all the principal parties concerned were tried, convicted, and punished, and that a reserve of just over 20,000 acres was set aside for the rebels, it is unnecessary to follow the history further, since the confiscation could only be based on the preceding occurrences, and once peace was restored and an amnesty granted it forgave all intermediate offences. The Whakatohea, however, claim that, in addition to doing nothing to aggravate their crime, they actually assisted in bringing the arch-offender to justice.

To arrive at an understanding of whether the confiscation was based upon justice it is necessary to refer now to the circumstances under which such a confiscation could take place. The Proclamation is based on the New Zealand Settlement Act of 1863. By the 1864 Act the former statute was confined in its operation to two years. By the 1865 Act it was made perpetual, save that no more land could be taken after the 3rd December, 1867, making that portion of it operative for four years in all.

Prior to 1863 the colony was in a continual ferment with Native risings, and it was suggested, as a means to prevent their recurrence, the lands of the Natives might be seized (see Sir Frederick Whitaker's memorandum). Therefore the New Zealand Settlement Act of 1863 was passed, authorizing the Governor to reserve and set aside land for military and other purposes, while providing compensation for loyal owners whose possessions might be so seized. The Act was reserved for Her Majesty's pleasure, and disapproval was withheld subject to certain reservations, which, as the Governor would exercise the power, the Imperial authorities evidently expected he would see observed. These reservations or conditions are summed up as follows: "They considered that the duration of the Act should be limited to a definite period, and suggested the period of two years from its enactment. They desired that the aggregate amount of forfeiture should be at once made known, and the exact position as soon as possible; that an independent Commission, not removable with the Ministry of the day, should be appointed to inquire what land should be forfeited; that you yourself should be personally party to any confiscation, satisfying yourself that it was just and moderate; and that the lands of innocent persons should not be appropriated without their consent merely because it was in the same district as rebel property, and because it was required 1864, A.–1, p. 1. 1864, E.–2, App. II, p. 20. 1866, A.–1, p. 53.

for European settlement, but only in case they had a joint interest with some guilty person, and in case of some public necessity, as of defence or communication. Her Majesty's Government desired further that the proposed Courts should have the power of compensating not only persons absolutely innocent, but those whose guilt was not of such a character as to justify the penalty imposed on them. . . . With such observations as these, and subject to the requirements which I have described, the Act was allowed to remain in operation (though still subject to disallowance) because Her Majesty's Government greatly relied on your own desire to guard the Natives from any unnecessary severity; and on the conviction expressed by your Ministers that as this would be the first, so it would be the last occasion on which any aboriginal inhabitant of New Zealand would be deprived of land against his will."

The true construction of the Act and the instructions from the Imperial Government seems to have been the subject of a struggle between the Governor and his Advisers for many months. The position of the Government was, as summed up by Sir William Fox on the 4th July, 1864, as follows: "The intentions of the Government are precisely those indicated in the Governor's Speech, to which you refer. They have four objects in view in confiscating rebel lands —first, permanently to impress the Natives with the folly and wretchedness of rebellion; second, to establish a defensive frontier; third, to find a location for the European population, which may balance the preponderance of the Natives who occupy the rebel districts; fourth, in part to pay off the cost of a war forced by the Natives upon the colony. While achieving these ends, they would reserve for the future use of the Natives so large a portion of the confiscated land as would enable them to live in independence and comfort, and they would secure it to them by such individual titles under the Crown as might tend to elevate them above that communal system (or no system) of life which lies at the root of their present unsettled state."

1864, E.–2, p. 77.

In the reply of the Ministers to the Aborigines Society, of the 5th May, 1864, it is said the chief object of the Government in confiscation is "neither punishment nor retaliation, but simply to provide a material guarantee against the recurrence of these uprisings against the authority of the law and the legitimate progress of colonization which are certain to occur if the rebel is allowed to retain his lands after involving the colony in so much peril, disaster, and loss. . . . But it is not and never has been proposed to leave them without an ample quantity of land for their future occupation. A quantity much larger per head than the average occupation of Europeans in this Island is proposed to be set apart for them, on a graduated scale according to rank and other circumstances."

1864, E.–2, p. 20.

A careful review of the different standpoints seems to indicate that the Home authorities, while admitting the principle of confiscation, sought to confine it within prescribed bounds, which were not, owing to the peculiar nature of the tribal ownership of land, altogether applicable to the circumstances of New Zealand. The New Zealand Government apparently claimed the right to confiscate all lands (if all or some of the tribe rebelled), paying those who were not rebels compensation either in land or money, and to utilize the remainder of the land for public purposes.

To any one acquainted with Native tenure it must be apparent that an indiscriminate confiscation within a certain boundary, although practically the only one that would answer for settlement purposes, must work injustice in the case of many individuals, since their shares in the ownership of the land taken would be by no means equal. Similarly, where the lands of two rebel tribes adjoin, although both might be equally culpable, the exigencies of the situation might require more to be taken from one tribe than another; and it seems altogether impossible to work out in practice those estimable principles laid down by the Home Government, in which it required that the confiscation of territory was "not to be carried further than was consistent with the permanent pacification of the Island and the honour of the English name." There is, however, no guide as to what set of circumstances will make the confiscation just or moderate.

1864, E.–2, App. II, p. 21.

In this case, as far as we can gather, about 440,000 acres in all were taken from the Whakatane and the Opotiki Natives. The latter are the Whakatohea Tribe. In the first Proclamation about 87,000 acres, as we understand it, belonging to the Arawa Tribe, were erroneously included, and were restored to them; and about 40,832 acres at the eastern end were abandoned. This left about 312,168 acres, out of which 3,832 acres were absorbed by old land claims, leaving 308,336 acres. From the information supplied us we have reason to believe that the area taken within Whakatohea Block was 173,000 acres, or about half their total possessions, and all the flat and useful land. Out of both blocks there was required for the military settlers an area of 23,461 acres, and apparently 201,213 acres, including 96,261 acres awarded to loyal Natives, were returned to Natives. As far as we can learn, only the Opape Block, 20,326 acres according to survey, and about 2,000 acres of other lands, or 22,000-odd acres in all, were returned to Whakatohea. The consequence is that, after various sales to the Crown, the Whakatohea have, including the land returned to them, a total area of 35,449 acres. The Government is not, of course, responsible for the sales, but the land sold was the inland portion of the land left, and which was not so useful to the Natives as the former settlements from which they had been removed to Opape.

Colonel St. John's report, 1872, G.-4, p. 5.

Stout-Ngata, 1908, G.-1M, p. 1.

Judging by later events it would appear that, as far as Whakatohea was concerned, the confiscation of such a large area came very close to that punishment or retaliation that in 1864 the Government avowed was not its principal object. The strong feeling at the time may be gathered from Mr. Stafford's speech in the House on the 19th August, 1868: "The honourable member possibly alluded to the confiscation of from 400,000 to 500,000 acres. He was prepared to say, if there ever was a confiscation which was deserved, it was that at Opotiki. If there were ever atrocities unprovoked and utterly wanton and diabolical in their character, they were to be found in connection with the murders of Mr. Volkner and Mr. Fulloon, which led to the confiscation. Those atrocities were committed upon unoffending men by a people whose lands had never been invaded, who had been left in peace, and against whom no threat had been held out. They were committed without the slightest provocation, by persons amongst whom Mr. Volkner had lived peacefully for a series of years, labouring solely for the benefit of the very people by whom he was barbarously murdered. If those acts did not call for confiscation, how could previous confiscations be justified?"

1864, E.-1, p. 20.

Hansard, 1868, Vol. 2, p. 521.

It would seem to us that righteous indignation at a very diabolical murder partly swayed the judgment of those who advised and authorized the confiscation of such a large area. The punishment of the actual perpetrators was an after-event, and could not have been taken into account in assessing the amount of land that should be confiscated. Nor, apparently, was the fact sufficiently considered that the arch-criminal was of another tribe altogether. No doubt the Whakatohea Tribe was carried away by fanaticism, and was equally responsible.

In our opinion the fact that punishment was inflicted on the Whakatohea by a punitive expedition in 1865, and that the actual offenders were captured and dealt with according to the civil law, should have had some effect in lightening the punishment that was imposed on the tribe by confiscating so much of their land. But as a fact the lands were actually cut up and partly sold and dealt with before the principal offender (Kereopa) was brought to justice. We have not sufficient material before us to say what would have been a fair and just area to confiscate, nor do we think it wise for us to go into that question. We have no hesitation, however, in affirming that, judged by the light of subsequent events, the penalty paid by the Whakatohea Tribe, great as was their offence, was heavier than their deserts.

SOUTH ISLAND CLAIMS.—KEMP'S PURCHASE.

This is a matter which arises out of a transaction entered into some seventy-two years ago.

In the year 1848 the New Zealand Company was anxious to form a settlement on that part of the east coast of the South (or, as it was then known,