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DUNCAN, e. J. Hoani Te Heuheu Tukino v. Aotearoa District Maori Land Board.

Land Board.

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CAMPBELL J DUNCAN

**HOANI TE HEUHEU TUKINO V AOTEA
 DISTRICT MAORI LAND BOARD:
 MAORI LAND ADMINISTRATION IN
 WEST TAUPO 1906-41**

**LLB(HONS) RESEARCH PAPER
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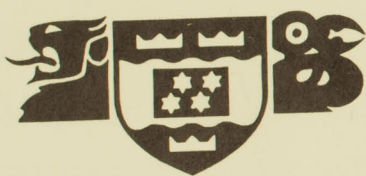
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ABSTRACT

The case of *Hoani Te Heuheu Tukino v Aotea District Maori Land Board* was a milestone in New Zealand legal history in that it influenced the direction of Treaty of Waitangi jurisprudence for over forty years. However little is known of the origins of the case. The focus of this paper is upon the chain of events which lead to the Ngati Tuwharetoa taking their grievance to the Privy Council. The *Hoani* decision will be used as a case-study to examine the administration of Maori lands in the first half of the twentieth century. This period was marked by convoluted legislation that acted to prevent Maori from effectively developing their lands. The effect of the pattern of administration was to significantly disadvantage the Ngati Tuwharetoa.

Word Length

The text of this paper (excluding contents page, footnotes, bibliography and annexures) comprises approximately 7,500 words.

¹ [1941] AC 308.

² Above n 1, 324-325.

³ From 1913 the members of the Board were reduced from three to two meaning that the Board only comprised the President and the Registrar with no Maori member.

I INTRODUCTION

In the case of *Hoani Te Heuheu Tukino v Aotea District Maori Land Board*¹ the Privy Council ruled on the status of the Treaty of Waitangi:

It is well settled that any rights purporting to be conferred by such a treaty of cession cannot be enforced in the courts, except in so far that as they have been incorporated in the municipal law...So far as the appellant invokes the assistance of the court, it is clear that he cannot rest his claim on the Treaty of Waitangi, and that he must refer the court to some statutory recognition of the right claimed by him.²

This judgment set the tone for judicial reasoning on the Treaty of Waitangi for over forty years. Although the judgment itself is well-known, little attention has been given to the historical context that caused the Ngati Tuwharetoa to take this case to the Privy Council. This paper will examine the history of the West Taupo lands and explore the reasons why the case was brought.

By the turn of the century the West Taupo Lands were one of the last significant areas of indigenous timber left in the North Island. The fact that most of this area was in Maori hands would lead one to expect that the resource would be used to the benefit of its owners. However, this case-study of the Tongariro Timber Company concession will illustrate how difficult it was for the Tuwharetoa owners to get any reward from the timber on their land.

This case-study will illustrate the policies of the Native Department and the administration of Maori land by the Maori Land Boards. The history of the Maori Land Boards is not well documented, but they were closely linked to the Native Land Court: the Board comprised the Judge and the Registrar of the Native Land Court.³ The role of the Aotea District Maori Land Board was prominent in the Tongariro Timber Company concession, but the Board as statutory agents of the Tuwharetoa owners was mainly ineffectual.

¹ [1941] AC 308.

² Above n 1, 324-325.

³ From 1913 the members of the Board were reduced from three to two meaning that the Board only comprised the President and the Registrar with no Maori member.

Due to the time-span of this case-study, the policies of the Native Department did vary. Despite this, the Department was mainly in the position of hindering proposals made by the Tuwharetoa owners, as well as purchasing interests in their land during the early 1920's. The interplay between the Land Board and its superior, the Native Department, is also of interest.

between the Maori owners and the Tongaroto Timber Company.⁴ The agreement allowed the Company to mill the timber in exchange for the payment of timber royalties and the building of a railway that would link the Western Interior to the Main Trunk Line (from Kakaheke to Pukawa). The letter showed where the Ngati Tuwharetoa owners hoped the agreement would lead and the current status of the people:

The construction of such a tramway would enable our clients to utilise their lands to advantage and to obtain a revenue therefrom wherewith to maintain themselves and to educate their children. They are at present without any resources and find it difficult to provide food and clothing for themselves and their families. As you are aware, conditions of Maori life have changed very much in the last 20 years. The younger generation has lost the arts and knowledge maintaining themselves without money, as their fathers were able to do, and the complete failure of the potato crops in Taupo this year has threatened them with starvation.⁵

Clearly, the abundance of land was not a guarantee to Maori that they would flourish. What was also required was capital, and at this time Maori found it very difficult to obtain finance to develop their land. There was no state finance, so Maori were given the option of either entering into agreements with private companies or alienating their freehold title.

This endeavour by the Ngati Tuwharetoa people would lead to over thirty years of frustration. Petitions, numerous Parliamentary deputations, several court cases and a Royal Commission would fail to balance the Iwi's grievances. The events that unfold illustrate the operation of government policy and legal processes in New Zealand in the first half of the twentieth century.

⁴ Under s 117 of the Native Land Court Act 1884 precluded the private alienation of any estate or interest in Maori land. Section 4 of the Native Land Laws Amendment Act 1935 allowed an Order-in-Council to exempt certain land from the operation of s 117 of the 1884 Act.

⁵ MA 1:5/15/1 vol. 1.

II AN AGREEMENT IS MADE

On 25 April 1906, the solicitors of the owners of certain lands in the West Taupo area wrote to the Under-Secretary of the Native Affairs Department. The letter was an application for an Order-in-Council to authorise a lease agreement between the Maori owners and the Tongariro Timber Company.⁴ The agreement allowed the Company to mill the timber in exchange for the payment of timber royalties and the building of a railway that would link the Western interior to the Main Trunk Line (from Kakahi to Pukawa). The letter showed where the Ngati Tuwharetoa owners hoped the agreement would lead and the current status of the people:

The construction of such a tramway would enable our clients to utilise their lands to advantage and to obtain a revenue therefrom wherewith to maintain themselves and to educate their children. They are at present without any resources and find it difficult to provide food and clothing for themselves and their families. As you are aware, conditions of Maori life have changed very much in the last 20 years. The younger generation has lost the arts and knowledge maintaining themselves without money, as their fathers were able to do, and the complete failure of the potato crops in Taupo this year has threatened them with starvation.⁵

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⁴ Under s 117 of the Native Land Court Act 1894 precluded the private alienation of any estate or interest in Maori land. Section 4 of the Native Land Laws Amendment Act 1895 allowed an Order-in-Council to except certain land from the operation of s 117 of the 1894 Act.

⁵ MA 1, 5/15/1 vol. 1.

III STATUTORY EFFECT

The agreement was required to be brought before the Maniapoto-Tuwharetoa District Maori Land Board under the provisions of section 26 of the Native Land Claims Adjustment and Laws Amendment Act 1907 since it concerned the alienation of timber.⁶ The Board concluded that the contract was fair, reasonable and to the advantage of the owners:

The statutory agent of the Maori owners and executed owners of the blocks affected who live principally on the shores of Lake Taupo are practically isolated and are at times in a state of semi starvation. As the Blocks are at present, they are, to all intents and purposes, of no benefit to the them.⁷

After due consideration it was approved, subject to some modifications.

After much correspondence between the Native Affairs Department, the Tongariro Timber Company and the Maori owners, an Order-in-Council was finally executed on 22 January 1908. The Order-in-Council excepted certain areas of the land subject to the agreement, and enabled the freehold of land required to build the railway to be sold to the Tongariro Timber Company for one pound an acre.⁸ This was despite the protests of some owners that did not want their interests subsumed in the agreement, some even claiming the paramount chief (ariki) Te Heuheu Tukino had misled them.⁹

The "Stout-Ngata Commission" also considered the agreement as part of their report on "Native Lands and Native-Land Tenure". The Commissioners concluded, after a hearing at Rotorua, that the agreement be approved by the Government. The potential advantages to the Tuwharetoa included the railway and employment for Maori on the construction of it, and the fact that it would open up the area for settlement. After arguing that the Crown could not provide the services

⁶ Section 26 of the Native Claims Adjustment and Laws Amendment Act 1907 concerned a restriction on the alienation of timber, flax "or such indigenous usufructs upon Native lands". The parties to such a transaction had to apply to the District Maori Land Board within two months for approval of the agreement.

⁷ Memorandum from Judge Browne to Under-Secretary of Native Affairs, 18 May 1907, MA 1, 5/15/1 vol. 1.

⁸ *Report of Native Land Commission on Agreement by Ngatituwharetoa Tribe and a Company for Sale of Timber and Construction of Railway* [1908] AJHR G.1T.

⁹ see J W Cullen, on behalf of his wife Te Pae Kitawhiti Hoera, to Under Secretary of Native Department, 20 July 1907, MA 1, 5/15/1, vol. 1.

for a smaller cost, the Commissioners recommended that legislation be passed enabling the Maniapoto-Tuwharetoa District Maori Land Board to enter into an agreement with the Tongariro Timber Company so that the Board could act as agent for the Tuwharetoa owners.¹⁰

In December 1908, under Section 37 of the Native Land Laws Amendment Act 1908, the Maniapoto-Tuwharetoa District Maori Land Board became the statutory agent of the Maori owners and executed an agreement with the Tongariro Timber Company verifying the modifications to the original agreement.

However, the District Maori Land Board was already involved in the transaction, because of their statutory duty under the Native Land Claims Adjustment and Laws Amendment Act 1907. Throughout 1907 and 1908 the Board was corresponding with the Tongariro Timber Company solicitors over the Board's concerns for the way the royalties were to be paid. The President of the Board was concerned that the agreement would require the Company to pay money to all the block owners, not just those that had had timber harvested on their blocks. The Company assured the Board that all the owners had interests in each of the blocks.¹¹

IV. A MODIFIED AGREEMENT

With this in mind it is not surprising that the Board was persuaded by the Tongariro Timber Company to become the corporate body that administered the agreement and paid the royalties to the owners and ensured they did not get more than their share.¹² This illustrated the real concern with individualised property rights on Maori land. By contrast, it would appear from the correspondences of the Ngati Tuwharetoa owners, that many thought the venture should benefit the people as a whole.

In 1910 the agreement was taken over by the Aotea District Maori Land Board. An Order-in-Council reconstituted the Maori Land Board districts and with the change of boundaries, the Aotea District stepped

¹⁰ Above n 8.

¹¹ Browne to Company Solicitors, 16 March 1908, MA 1, 5/15/1 vol. 1.
Tongariro Timber Company to President, 21 March 1908, MA 1, 5/15/1 vol. 1.

¹² Tongariro Timber Company to Browne, 21 March 1908, MA 1, 5/15/1 vol. 1.

into the shoes of the Maniapoto-Tuwharetoa District Maori Land Board.

However, there were some objections to this arrangement. For Section 37(7) of the Maori Land Laws Amendment Act 1908 allowed the agreement to be modified by the parties by mutual agreement and with the agreement of the Native Minister. In December 1910 the Tongariro Timber Company approached the Aotea District Maori Land Board requesting a reduction of the royalty payments and an extension of time to complete the railway.

The complex legislative process that Maori had to go through to deal with their land is indicative of the paternalistic attitude of the Legislature toward Maori land. Any transaction made in the attempt to improve Maori land was subject to a protracted process of consent. In addition, the proposal was also liable to be modified by the District Maori Land Boards and the Native Department.

Nevertheless, at this point in time the Tuwharetoa owners were left with the belief that the prospect that their land would be opened up by the railway and therefore more valuable.

IV A MODIFIED AGREEMENT

On 9 December 1910, modification of the agreement was required by the Tongariro Timber Company. A meeting was held before the Aotea District Maori Land Board to ascertain the owner's opinion. Te Heuheu Tukino appeared as a representative of some of the owners who were the "leading people of hapus".

He had spent 17 years trying to devise a scheme for the profitable use of the lands without selling them. He saw no benefit to natives in selling their lands. From 1886-8 lands near Taupo had been sold at from 1/- to 5/- per acre for the freehold, and some of these sales only recently completed.¹³

Te Heuheu Tukino said he had negotiated various timber-cutting schemes in the past. In fact he took a pro-active role in seeking out

¹³ MA 1, 5/15/1 vol. 1.

entrepreneurs and was even a director of some of the companies.¹⁴ It was signed by 22 October 1915 and completed by 22 October 1916.

However, there were some objections to this arrangement. For example, Inia Ranginui appeared for seven owners who had not signed the original deed. They had petitioned parliament and expressed their objection to the fact that their interests should be subsumed in the overall agreement when they wished to use the land themselves.

Nevertheless the Board recommended that the Native Minister should modify the agreement.¹⁵ A new agreement was signed between the Board and the Tongariro Timber Company on December 24 1910 whereby the anticipatory royalties to the Maori owners were decreased and the time for completing the railway was extended until 1 March 1916.¹⁶

The Company, however, found it impractical to follow through and applied to the Board for further concessions. After gauging the feelings of the owners the Board consented to a new agreement on 24 October 1913. This agreement separated the land covered by it. Most of the blocks were subject to prior contractual conditions. However, the Company was given the right to construct the first five miles of the railway, as a separate undertaking, and to have the timber in that vicinity free of charge. In addition, the timber-cutting rights over the Whangaipeke, Pukepoto, Waione, Ruamata, Hohotaka and Puketapu Blocks were subject to new conditions. The royalty for the timber on this land was fixed at one tenth of the total royalty payable annually. The Company's rights over these blocks were not liable to cancellation or forfeiture for default with regard to the other land affected by the previous agreement.¹⁷

The Company could also assign its obligations to construct the railway and the timber-cutting rights over the six blocks. There was also an incentive for the Company beginning the railway: this would give it

¹⁴ M Roche, *History of Forestry* (New Zealand Forestry Corporation and Government Print, Wellington, 1990) 122.

¹⁵ Subject to s 37(7) of the Maori Land Laws Amendment Act 1908, the Native Minister had to approve all modifications to the original agreement.

¹⁶ Subject to s 37(7) of the Maori Land Laws Amendment Act 1908, the Native Minister approved the modification on 27 December 1927.

¹⁷ MA 1 5/15/1 vol. 3.

immunity from cancellation or forfeiture provided it was commenced by 22 October 1915 and completed by 22 October 1916.

In a deputation to the Native Minister, W H Herries, on 5 November 1913 the Company representatives argued that they could acquire capital in London for the venture. The solicitor for the Maori owners seemed to be saying that it should be left to the Company to do as it saw fit.¹⁸ The Minister approved the new arrangement on 23 December 1913.

Following this agreement, Tongariro Timber Company entered into an agreement with the Egmont Box Company on 9 September 1914 whereby the Egmont Box Company agreed to raise the money for the first five miles of the railway or would act as contractor for the Tongariro Company. One section was to be completed in two and a half years, the second section in four years from the contractual date. The Tongariro Company gave as security its rights over the lands the railway would be constructed on and the six blocks it had received as a separate undertaking in 1913.

The Aotea District Maori Land Board declined to consent to the agreement unless it was directed or authorised to by statute. The Egmont Company then petitioned Parliament asking for its sanction.¹⁹ The Native Affairs Committee recommended that the petition be considered favourably by Parliament and section 5 of the Native Land Claims Adjustment Act 1914 was passed.²⁰ The section validated the agreement between the Egmont Box Company and the Tongariro Timber Company and provided that if the Tongariro Company failed to fulfil its obligations that the rights of the Egmont Company would not be prejudiced. The section also stated that should the Tongariro Company fail in its obligations to the Land Board then the Egmont Box Company could enforce its rights against the Aotea District Maori Land

¹⁸ MA 1 5/15/1 vol. 1.

¹⁹ Petition 448/14 [1914] AJHR I-3.

²⁰ See NZPD, vol. 171, 787, 13 November 1914. When the Native Minister, Herries, was asked if the Maoris had approved of the extension, he replied "yes". See also MA 1 99/1. Te Heuheu Tukino appeared before the Aotea District Maori Land Board with Hira te Akau and Erua te Akau to consent to the extension.

Board.²¹

Nevertheless, the Tongariro Timber Company was still having trouble gaining finance. The anticipated investment from London was not forthcoming owing to World War One. After application from the Tongariro Timber Company to extend the time for completion of the railway, section 19 of the Native Land Amendment and Native Land Claims Adjustment Act 1915 was passed. Section 19(1) of this Act provided that no remedies for default could be sought by the Board against the Tongariro Timber Company until two years after the expiration of the war.

The various agreements of this time were authorised by institutions outside the control of the Tuwharetoa owners. Even if the Maori owners had wished to rescind this agreement they could not now do so. The modification of 1913 had the effect of providing the Maori owners with a reduced royalty payment. It would seem likely that this agreement was approved in the expectation that the railway was forthcoming.

The subsequent contract between the Egmont Box Company and the Tongariro Timber Company was perhaps viewed as a means of securing the project and royalties. An interesting aspect of that agreement is the conflict between the Aotea District Maori Land Board and the Native Department over its approval.

V CROWN PURCHASING

By 1919 the Crown was looking to acquire interests in the land. According to its advisors, land, once cleared, could be used for dairy farming and as soldier settlements.²² The Solicitor-General, Sir John Salmond, concluded that there was no legal barrier to the Crown purchasing land. The Board would act as their agent, providing the sale was attested to by Maori owners under the the Native Lands Act

²¹ *Report of Royal Commission Appointed to Inquire into and Report Upon Claims Preferred by Certain Maori Claimants Concerning the Payment of Certain Moneys by the Aotea District Maori Land Board in Respect of the West Taupo Lands* [1951] AJHR G-1.

²² Memorandum for Secretary of the Department of Forestry, 22 October 1919, MA 1, 5/15/1 vol. 1.

1909. Many of the leading Tuwharetoa owners objected.²³

This was part of the resumption of Crown purchasing after 1910. Between 1911 and 1921 nearly two and half million acres of Maori land was alienated.²⁴ However, such activity in the West Taupo area was toward the end of this era and may have been more of a reflection of the policy of Sir Francis Bell, Commissioner of State Forests, who was committed to acquiring state forests to control the timber industry. However, he was making an offer to the Tongariro Timber Company.²⁵ This illustrates a lack of coordination between government departments.

The Native Land Purchase Officers were, therefore, taking advantage of the vulnerability of the owners to purchase undivided shares. Hampson, the solicitor for the Tuwharetoa, approached Bell and demanded that the purchasing of individual shares cease.²⁶ The purchasing discontinued, but not before some thirty-five thousand acres had been acquired.²⁷

VI POST-WAR CONDITIONS

In 1921 the Tongariro Timber Company requested another extension. It appears that the arrangement was not communicated by the Board to the Tuwharetoa owners in whose interests they were acting. M Hampson, solicitor for the owners, cabled the Minister of Public Works speaking of a rumoured "deal" between the Board and Tongariro Company to seek an extension by Order-in-Council and commented that this was

bitterly opposed by united native owners in all blocks for whom I act urgently

²³ Herries to Skerrett, 26 March 1919, MA 1 5/15/1 vol. 1.

²⁴ S Katene *The Administration of Maori Land in the Aotea District 1900-1927*, MA Thesis, Victoria University of Wellington, 1990.

²⁵ Hampson to Masters, 1 October 1933, MA 1 5/15/1 vol. 6.

²⁶ Deputation of Ngatituwharetoa and other Maori Organisations to the Prime Minister, 13 March 1939, MA 1 5/15/1 vol. 9.

²⁷ *Report of the Native Affairs Committee: Tongariro Timber Company and West Taupo Forest Lands* [1929] AJHR I.3A, 4. The blocks listed containing Crown interests were Hauhungaroa 1D 1, Hauhungaroa 2D, Okahukura 3, Okahukura 4b, Okahukura 6, Pukepoto 1, Pukepoto 2, pukepoto 3, Pukepoto 4, Waimanu 2G, Waituhi-Kuratau 1B, Waituhi-Kuratau 4A, Waituhi-Kuratau 4B 1, Waituhi-Kuratau 4B 2 and Waimanu 1. Of these Hauhungaroa 1D 1, the Pukepoto blocks and Waituhi-Kuratau 4A and Waituhi-Kuratau 4B 1 had been proclaimed Crown land.

desire opportunity to place their position before you before Order in Council granted 28

Patena Karehi and other owners also petitioned Parliament complaining about the deal and the small reward for the owners.²⁹

Despite the opposition, an Order-in-Council was issued under section 19 of the Native Land Amendment and Native Land Claims Adjustment Act 1915 extending the contractual conditions for completing the railway by another seven years. Section 19 of the Native Land Amendment and Native Land Claims Adjusting Act 1921 was enacted on 11 February 1922 validating the Order-in-Council and making it conditional on the Tongariro Company that it pay six thousand pounds to the Board within twelve months. The standard of the railway was also upgraded.

On 20 February 1922 the President of the Aotea District Maori Land Board, Judge Acheson, wrote to the Under-Secretary of Native Affairs to say that the Tongariro Timber Company was now behind in royalty payments by thirty thousand pounds. Acheson demanded that the government not pass legislation allowing the Company to modify the agreement once more. He complained that

on two occasions, while the [Maori Land] Court has been sitting at Kakahi, a start has been made with the company's siding near the Railway station at Kakahi, but on each occasion the departure of the court appears to have practically coincided with the cessation of operations on the railway siding.³⁰

The Tongariro Timber Company took legal action against the Aotea District Maori Land Board over the amount of royalties they were liable to pay. Chief Justice Stout ruled that Clause 8 of the original deed had been repealed by Clause 2 of the deed executed on December 21 1910. This meant that the liability on the Company was reduced.³¹

On 29 August 1923, section 28 of the Native Land Amendment and Native Claims Adjustment Act 1923 was passed and amended the 1921

²⁸ 18 August 1921, MA 1, 5/15/1 vol. 1.

²⁹ Petition 83/21 [1921-22] AJHR I.3, 10.

³⁰ MA 1, 5/15/1 vol. 2.

³¹ *Tongariro Timber Company v The Aotea District Maori Land Board*, Unreported, Supreme Court, Wellington. 24 August 1922.

Act by providing that no remedies could be sought against the Tongariro Company without the consent of the Governor-in-Council being obtained. The fate of the agreement was now completely at the discretion of the Crown. The Aotea Board had little independent power.

By September 1924, the Board served notice on the Tongariro Timber Company for specific performance of the agreement, but by November, the contract had been varied. This had been achieved by more legislative intervention: section 40 of the Native Land Amendment and Native Land Claims Adjustment Act 1924 empowered the Board to vary any of the conditions of the agreement if the Board deemed the modification to be just and non-prejudicial to the owners. This was, of course, subject to the approval of the Governor-General in Council.

An Order-in-Council was duly passed on August 25 1925 varying the terms of the 1921 Order-in-Council by extending the time for the completion of the railway by seven years from 1 January 1925 on condition that the first eighteen miles from Kakahi Station was completed in three years from 1 September 1925.

This period illustrates the belief that legislation would resolve practical problems in the agreement. It also shows the inability of the Aotea Maori Land Board to administer the area effectively due to fetters on its powers from the Native Department. The Tuwharetoa owners were in a position of even less control. Their lands were tied up and yet the Government of the day, now also an interested party, saw fit to allow the Tongariro Timber Company to continue with a project that seemed not to promise any rewards.

VII RATING

The issue of rating on Maori land was as problematic here as in other areas. The Taumarunui County Council took legal action against the Board for non-payment. The President of the Aotea District Maori Land Board, reflecting the views of the Maori owners, stated that the Tuwharetoa should not have to pay for services that they were themselves initiating:

The Taumarunui County has already collected a sum of over [one thousand eight hundred pounds] in rates on these blocks, not one penny of which has been spent on any road giving access to them, but on road on other parts of the County which are of no benefit to the blocks in question or to the Native owners.³²

Judge Browne also blamed the Crown for this hardship to the Tuwharetoa owners since it has passed legislation to circumvent a Court of Appeal decision that stated that "Native Bush was not ratable".³³ Nevertheless, the Taumarunui County Council continued to pursue the Tongariro Company for rates and subsequently reduced the potential royalty payments to the owners, being both the Crown and Maori.

VIII DESPERATE SITUATION

That would have been the situation if any royalties had been forthcoming. By August 1926 the Tuwharetoa owners were in a desperate situation. It appears that the Tuwharetoa Dairy Factory at Tokaanu-Waihi was in financial difficulties and the anticipated royalties from the Tongariro Timber Company would have helped save it.³⁴

At the same time representatives of the Maori owners approached the Native Minister for permission to take legal action against the Tongariro Company for the arrears of royalties and interest from the 1911/22 period. This amounted to nearly ten thousand pounds. The owners were prepared to make concessions such as taking shares in the Company in exchange for reducing the interest payable.³⁵

Nothing was done and the Board applied to the Governor-General to repudiate the contract with the Tongariro Company. The Board recognised that the tying up of the Tuwharetoa land had meant that the expected rewards from the timber concessions were of no advantage to them now:

The position now is that many of the owners, especially those in the vicinity

³² Browne to Under-Secretary of Native Affairs, 27 May 1926, MA 1, 5/15/1 vol. 2.

³³ Above n 21.

³⁴ van Dyk to Carrington, August 11 1926, MA 1, 5/15/1 vol. 2.

³⁵ Deputation to the Prime Minister, 19 August 1926, MA 1, 5/15/1 vol. 2.

of Lake Taupo, will be hard pushed to get through the present winter without suffering hardship. They have property worth at least [five hundred thousand pounds] yet, under the conditions as they exist at present, they can do nothing with it and get nothing out of it beyond the paltry [five thousand pounds] per annum which heretofore, with great difficulty, been obtained from the Company at irregular intervals. And of this [five thousand pounds] per annum the Taumarunui County is claiming [one thousand eight hundred and three pounds] per annum for rates and the Crown [one hundred pounds] for Land Tax, so that there is not a great deal left for the Natives.³⁶

With their lands subject to this agreement, the Tuwharetoa owners could not obtain revenue from the timber, because the Tongariro Timber Company had rights over it. This was even though the Company was not developing the area in any way that would advantage the Maori owners.

There seems to have been an interim period where the Native Department did not wish to do anything. The Native Affairs Committee, however, recommended that no extension of the agreement be granted beyond March 1928.³⁷

IX A NEW INITIATIVE

By the beginning of 1928 there was a new proposal floated for rescuing the agreement. Other projects for rescuing the Tongariro Timber Company had been muted, but this initiative was one that came from some of the Tuwharetoa owners. Earlier extensions in the 1920's were contingent upon the Tongariro Timber Company finding overseas capital.

The suggestion was that a new company could be set up to take over the responsibilities of the Tongariro Timber Company. This would require the extension of the determination of the contract to pay the royalties and build the railway. The Reform Government promised to consider the project and to not cancel the contract in the meantime. This was on condition that finance was arranged to complete the railway, that all royalty arrears and interest were paid and all

³⁶ Memorandum from Aotea District Maori Land Board to Under Secretary of the Native Department, 12 May 1927, MA 1 5/15/1 vol. 2.

³⁷ Petition from Kira Kapa and 47 others [1927] AJHR I.3, 12.

outstanding rates, taxes and Board commission and other charges due by the Tongariro Timber Company were paid. This was all muted at a time when the Aotea District Maori Land Board was demanding notice be given.³⁸ This also illustrates the real dissociation between the Land Board and the people whose interests they were agents for, the Tuwharetoa owners (and of course the Crown). However, the Aotea Land Board were also receiving messages from some owners that they wanted the agreement cancelled and their land returned.

The project was endorsed by a large group of owners.³⁹ However, the agreement had to also be approved by all of the Tongariro Timber Company's creditors. Most creditors approved except for creditors in England, who would not reduce their claim. The conditions laid down by Coates could then not be fulfilled.⁴⁰

The project received further approval from the owners on 29 February 1929, and therefore it was up to the Crown to endorse the proposal.⁴¹ This did not happen. The newly elected United Government did not act on the guarantees made by the previous regime and the opportunity for the proposal was lost. Instead Sir Apirana Ngata, the new Native Minister, chose to investigate the possibility of the whole project. Following several petitions from Tuwharetoa owners, the Native Affairs Committee heard evidence on the West Taupo lands.

By this time the Tuwharetoa owners had received no royalty payments on their land for some four years. The forests were tied up by restrictive legislation, so that Maori owners had to rely once again upon the Government to determine the agreement or to try and salvage it. The Government as it happened did nothing. This underlines the inability of the Native Department and the Aotea District Maori Land Board to

³⁸ Coates to Duncan, 14 February 1928, MA 1 5/15/1 vol. 3. Coates promised that the agreement would be protected and no action would be taken to "wind-up" the Tongariro Timber Company pursuant to section 19(1) of the Native Land Adjustment and Native Land Claims Act 1915 (as amended by section 19 of the Native Land Amendment and Native Land Claims Adjustment Act 1921 and section 28 of the Native Land Amendment and Native Land Claims Adjustment Act 1923) provided the conditions set down by Cabinet were complied with.

³⁹ Hoani Te Heuheu and 149 others to Ngata, 7 September 1928, MA 1 5/15/1 vol. 3.

⁴⁰ The conditions had to be fulfilled by 12 September 1928.

⁴¹ see MA 1 5/15/1 vol. 3. Those that objected to the project, such as Taite te Tomo, did so in order that they could develop the land themselves free of encumbrances.

create a cohesive policy toward this land. The problems with the administration of Maori land are in evidence once again.

X NATIVE AFFAIRS COMMITTEE 1929

The Native Affairs Committee heard evidence from all interested groups at the end of October 1929 and made their report on 1 November 1929. The evidence from the respective Tuwharetoa owners outlined the fact that the Government, by refusing the project, had severely hampered the ability for the agreement to be salvaged. Nevertheless, the representatives of the owners asked the committee to consider the project once more and approve it.⁴² The owners asked that the Government allow the Maori Land Board to give six months notice to the Tongariro Timber Company, and if the new company was not registered within that period and if the royalties were not paid, then the contract should be cancelled.⁴³

The claims of creditors were also heard. Some of them called for the Crown to acquire all of the area. This was especially given that it was the Government who had upgraded the standard of the railway by Order-in-Council in 1921 and therefore raised the cost of building it to the Tongariro Timber Company.⁴⁴ Others, including representatives of the Sawmillers' Federation, were also of the opinion that the state should purchase the area.

The Native Affairs Committee recommended that the Aotea District Maori Land Board give notice to the Tongariro Timber Company and that the Crown either negotiate to buy timber and land or join with the Tuwharetoa owners in a "...scheme for the management, control, and disposal of the timber" and that the Crown create a settlement scheme to occupy the open country once the timber was removed.⁴⁵ Section 29 of the Native Land Amendment and Native Land Claims Adjustment Act 1929 was duly passed.

⁴² Above n 27.

⁴³ Above n 27, 10.

⁴⁴ Above n 27, 21. Dr Chapple argued that the cost of the railway had risen from four thousand pounds a mile to thirteen thousand pounds a mile.

⁴⁵ Above n 27, 1.

The wishes of the majority of the Maori owners had been ignored. The agreement was not to be salvaged and instead there would have to be further negotiations by the Aotea District Maori Land Board with creditors of the Tongariro Timber Company. Their lands would be tied up for a further period while a 'rescue plan' would have meant the Tuwharetoa at least had some hope of obtaining revenue.

XI TUWHARETOA RESISTANCE

During this period of limbo when the Syndicate was attempting to negotiate a new deal, some owners took alternative measures to try and gain some value from the timber that they were currently receiving no remuneration from. A small group of owners had entered some of the blocks under the agreement and cut timber to sell as railway sleepers. One of the owners, WH Grace, wrote an anxious letter in anticipation of this action:

the contemplated action of the section of Natives mentioned will be flagrantly illegal and they will, moreover, if they take such action, be filching timber from the general body of owners (Crown as well as Natives) who will ultimately derive a considerable source of revenue⁴⁶

The various owners were served with injunctions from the Native Land Court and had the amount debited from the royalties. The Board had to pay the people employed to fell the timber a fair wage from the sale of the timber seized.⁴⁷ This would not be the last time that such defiance would take place.

XII NATIVE AFFAIRS COMMITTEE 1930

Notices were served on the Tongariro Timber Company and the Egmont Box Company following the legislation of 1929. This left the problem of how to settle outstanding claims by the owners of the affected blocks and the creditors. Negotiations and correspondences took place and the most popular solution seemed to be for the Crown to purchase the

⁴⁶ WH Grace to GW Forbes, 31 July 1929, MA 1 5/15/1 vol. 3. These owners had interests in Waimanu, Mangahouhou and Oraukura Blocks. Of these the first two had Maori and Crown interests.

⁴⁷ WH Grace to Under Secretary of Native Department, 16 December 1929, MA 1 5/15/1 vol. 4.

timber.⁴⁸

By the middle of 1930 a number of Tuwharetoa owners were suggesting that the state acquire the forests. A group of owners were elected at a meeting, presided over by Ngata, to represent the Tuwharetoa owners in all dealings with what was the Tongariro Timber Company concession.⁴⁹ The Crown offered to purchase the timber for five hundred thousand pounds. The owners counter-offered and proposed that the Crown purchase the timber for eight hundred and thirteen thousand pounds. The project embodied suggestions that the Crown exchange areas of timber for open lands and that a fund be created for Maori land development.⁵⁰

However, the project never got off the ground, instead, the government decided to have all the claims heard before the Native Affairs Committee. The Aotea District Maori Land Board was once again a very insignificant player in the whole West Taupo affair.

The Native Affairs Committee heard submissions in August 1930. The Tuwharetoa proposed that the Government take over the "Duncan Syndicate" project and enter into an agreement with the Maori owners, because it was the Crown who had prevented the proposal going ahead.⁵¹

The Native Affairs Committee found that the Tongariro Timber Company had no claim against the state. However, the Egmont Box Company did have legal rights over the "Western A" block (basically the Whangaipeke Block) that should be defined by legislation or a new agreement.⁵²

⁴⁸ For example WH Grace to Ngata, 28 November 1929, MA 1 5/15/1 vol. 4. Grace recommended that the Crown take over the scheme that the "Duncan Syndicate" proposed and purchase the timber and pay the owners nine hundred thousand pounds in estimated royalties in the form of dividends and shares. Some of the owners wished to sell their interests. Those that did not wish to sell should have their interests consolidated. The Crown should also give the first right of employment to Maoris.

⁴⁹ Memorandum Under-Secretary of Native Department to Registrar of Aotea District Maori Land Board, August 1930, MA 1 5/15/1 vol. 5. The members of the committee were Hoani Te Heu Heu, Te Pau Mariu, Marku Gotty, PA Grace, Kahu te Kuru, Werihē te Tuirī, Waratana Ngahana, JA Asher, and WH Grace.

⁵⁰ Hoani Te Heu Heu and others to Ngata, July 21 1930, MA 1 5/15/1 vol. 5.

⁵¹ *Report of the Native Affairs Committee: Tongariro Timber Company and West Taupo Timber* [1930] AJHR I.3A, 2-12.

⁵² Above n 51, 1.

Section 18 of the Native Land Amendment and Native Land Claims Adjustment Act 1930 was duly passed. Under the legislation the Aotea District Maori Land Board were directed to enter into a contract with the Egmont Box Company.

As far as the Tuwharetoa owners were concerned, their lands would remain encumbered until the Aotea District Maori Land Board had settled with the Egmont Box Company. For some Maori owners it added to the hardship they already felt.

XIII NEGOTIATIONS WITH THE EGMONT BOX COMPANY

Following the recommendations of the Native Affairs Committee, the Tongariro Timber Company creditors felt the need to push their claims against the Government. This was despite the fact that the Native Affairs Committee had found the Tongariro Timber Company, and by implication their creditors, had no claim against the Crown. At a meeting between the creditors and the acting Prime Minister, Ransom, and the Native Minister, Ngata reacted strongly to the constant "haranguing" he had received from Dr. Chapple:

The problem he had put to Dr. Chappel (sic.) was this- supposing that the position was reversed and this was a Native company and the owners of the freehold were Europeans- what sort of a chance would that Maori company have had in these years? would they have had any chance at all? They would have been pushed out years ago. It would have been held up against them that their legal rights had terminated, and so on. He had not been in politics for twenty years without knowing that the far stronger claims of the natives than the Tongariro Timber Company's had been absolutely disregarded by Parliament because they were against the Pakeha interests.⁵³

This did not prevent the creditors from constantly calling for arbitration to clear up their claim.⁵⁴ No action was taken by the Government from these constant correspondences, but the situation with regards to the Egmont Box Company was entirely different.

As directed by the legislation, negotiations took place between the

⁵³ Note of Meeting Between Tongariro Timber Company Creditors and Acting Prime Minister (Ransom) and Native Affairs Minister, 27 September 1930, MA 1 5/15/1 vol. 5.

⁵⁴ see letters from Chapple to Ransom, 25 October 1930, Holland to Ross, 6 October 1930, and Chapple to Bell, 18 October 1930, MA 1 5/15/1 vol. 5.

Egmont Box Company and the Aotea District Maori Land Board. At a conference in May 1931, the Company claimed they were owed over forty six thousand pounds on account of the railway they had constructed, and as guarantors of debentures issued by the Tongariro Timber Company in 1920. The Company also claimed an additional amount of four thousand and two hundred pounds, because they had cut out over ten thousand pounds of timber from the Whangaipeke Block and yet had paid fifteen thousand pounds in anticipated royalties to the Aotea District Maori Land Board. The Board offered to pay twenty six thousand pounds in full settlement provided it was taken out of the Whangaipeke royalties alone, but the Company argued that would accept thirty thousand pounds as long as it came from all of the royalties. There was an impasse and the Board suggested that the Company try their luck in court, but the Company did not do so.

Nothing happened between 1931 and 1934 with respect to this issue. The Company sat on its rights and waited for the next offer. So for three more years the Tuwharetoa owners had their lands tied up while settlement was decided upon.⁵⁵

The Minister of Finance, after meeting with the representatives of the Egmont Box Company, referred the matter to the Native Land Settlement Board. The Board then appointed a sub-committee to investigate and make recommendations. The sub-committee was made up of Rodda, from Treasury, Pearce, Under-Secretary of the Native Department, and Judge Browne, President of the Aotea District Maori Land Board. Since the Aotea District Maori Land Board was one of the parties in the negotiations, it seems curious that Judge Browne should be appointed to mediate the settlement.

The Company's offer was at twenty three thousand seven hundred and fifty pounds with the proviso that the Company retain the portions of railway it had laid down. The Board on the other hand insisted it was not liable for more than twenty thousand pounds but this was only if

⁵⁵ See Inia Ranginui to Ngata, 30 July 1931, MA 1 5/15/1 vol. 6. Ranginui and other owners of Okahukura 4A Block requested the reversion of their lands so they could begin milling the timber themselves.

Ngata to Inia Ranginui, 16 July 1931, MA 1 5/15/1 vol. 6. Ngata replied that nothing could be done until the issues between the Egmont Box Company had been settled.

the timber in the Whangaipeke Block was found to be a certain value by the Forestry Department.⁵⁶ Pearce and Rodda of the Native Land Settlement Board sub-committee directed the Native Minister to intervene and approve the Egmont Box Company settlement as long as the railway was also vested in the Board. The Native Minister duly directed that the offer of twenty three thousand seven hundred and fifty pounds be legislated on and section 10 of the Finance Act 1934-35 was passed to give effect to the offer. The Native Minister had intervened in a matter that was supposed to be negotiated on behalf of the Tuwharetoa owners and the Crown, the Aotea District Maori Land Board. As a result of further negotiations a final settlement of twenty three thousand five hundred pounds was accepted by the Company.⁵⁷

Prior to payment being made, however, Judge Browne questioned whether section 10 of the Finance Act 1934-35 actually reflected the intention of the settlement. The Aotea District Maori Land Board had contended that any amount it paid the Egmont Box Company should be secured by a charge over all the lands affected by the Tongariro Timber Company's agreements. The payments received by the Board were paid to the owners of all the blocks in proportion to all the owners in proportion to the estimated quantity of timber in each block.

Section 10 of the 1934-35 Act, by making the amount to be paid to the Egmont company, which to all intents and purposes was a refund of a portion of the royalties received, a charge against the Whangaipeke Block and a certain limited adjacent area alone, had imposed a grave injustice on the owners of those subdivisions by freeing the owners of other blocks from any liability.⁵⁸

Section 14 of the Native Purposes Act 1935 was passed to amend the legislation and so a charge over the whole of the West Taupo lands was effected. The Maori owners had not been consulted over this settlement at all, even though they were forced to pay for it.

The sum of twenty three thousand five hundred pounds to be paid by

⁵⁶ Three shillings per hundred feet.

⁵⁷ Above n 21, 16-17.

⁵⁸ Above n 21, p. 18.

the Maori owners was effectively a repayment of some of the royalties they had received from the Tongariro Timber Company. This was an example of the Native Minister acting unilaterally with the belief that he understood the problems and processes more intimately than the Maori owners or their agents. In this context, it comes as no surprise that the Ngati Tuwharetoa chose to take legal action.

XIV LITIGATION

This state of affairs led many of the Tuwharetoa owners to think of other means of settling the problem. There was a resurrection of the idea of alienating the timber rights to the Crown.⁵⁹ But due to the Government's own fiscal restraints at the time, this was never seriously entertained.

But there were grievances regarding the sanctioning of the payment to the Egmont Box Company by the government. Pateriki Hura wrote the following to Savage, the new Native Minister:

A great injustice has been done to the Natives in this regard and also in respect of the proclamation which prevented them from disposing of their timbered interests to prospective millers more particularly in view of the failure on the part of the Crown to acquire these blocks. Several owners have had to struggle along on relief works and or unremunerative employment, an aspect which is not commensurate with the benefits that would have accrued, had these areas been free for disposal.⁶⁰

These grievances eventually lead the Tuwharetoa owners to take legal action against the Government for imposing an onerous restriction on their lands without consulting them in the first place. In 1937 the case was heard before the Supreme Court in Wanganui. The owners were seeking a declaration from Justice Smith to the extent that the Crown indemnify the Maori owners for the obligations imposed on them by the Native Purposes Act 1935.

Counsel for the Tuwharetoa argued that the Aotea District Maori Land

⁵⁹ Telegram Hoani Te Heu Heu to Bell, 6 April 1935, MA 1 5/15/1 vol. 6

"Tongariro Timber area owners much interested in your representation to Native Minister. We are prepared to negotiate and is only a question of conditions and price."

⁶⁰ Pateriki Hura to Savage, 15 December 1935, MA 1 5/15/1 vol. 7.

Board had been in breach of trust with its dealings with the Egmont Box Company. The Government had agreed in 1930, Counsel contended, to pay thirty thousand pounds to the Egmont Box Company with the Maori owners paying the remaining two thousand pounds. However, Treasury had intervened and argued that there was no liability on the Crown, and if the Company had a claim against the Tuwharetoa owners, then they should go to court. Counsel argued that the Board was in breach of trust by not seeking direction from the court in the interim between 1931 and 1934. The final breach of trust occurred when the Board did not go to court after November 1934, when a settlement was likely, and before legislation was passed in April 1935. The Tuwharetoa owners contended that the inaction by the Board led to the intervention by the government and setting of the settlement in legislation.

Consequently there was a complete nexus or linking up between the obligation imposed on the natives by the statute to pay this amount, and the breaches of trust by the board.⁶¹

Justice Smith found that the Aotea District Maori Land Board was a statutory agent, not a trustee and therefore its decisions were subject to the approval of the Native Minister who would be responsible for any agreement between the Egmont Box Company and the Board. It was the Native Minister who intervened in 1934 and therefore there was no connection between the action or inaction of the Board and the payment of twenty three thousand five hundred pounds. The Native Minister's intervention was outside the scope of section 18 of the Native Land Amendment and Native Land Claims Adjustment Act 1930, so there was nothing the Board could do.⁶²

The Maori owners then appealed the decision, but at this stage a new ground was added. The plaintiffs contended that section 14 of the Native Purposes Act 1935, by imposing a charge upon the Tuwharetoa land, was contrary to the Treaty of Waitangi (namely Article II). The argument being that section 72 of the Constitution Act 1852 recognised the Treaty of Waitangi and it was lawful for the New Zealand Parliament only

⁶¹ Wanganui Chronicle, 28 August 1937, MA 1 5/15/1 vol. 7.

⁶² *Te Heu Heu Tukino v Aotea District Maori Land Board* [1939] NZLR 107, 114.

to make laws for regulating the sale, letting, disposal, and occupation of...lands wherein the title of Natives shall be extinguished as hereinafter mentioned.⁶³

The Court of Appeal found that section 72 no longer had force in New Zealand. Therefore the Treaty of Waitangi was not part of New Zealand's domestic legislation and could not be examined by a court. The Court also reasoned that even if the Constitution Act 1852 had effect, the ground would still fail, because it had been the Maoris themselves who had ceded some of their rights to the Land Board. The 1935 legislation was merely remedying past difficulties.⁶⁴

The reason the Tuwharetoa chose to introduce the Treaty of Waitangi issue into their case is unclear, but it received the support of a number of other iwi.⁶⁵ This was probably because the case was perceived as an opportunity to seek legal opinion on the Treaty of Waitangi with the 1940 "Centennial Celebrations" approaching.⁶⁶ Leaders such as Ngata now believed that the 1935 legislation should not have been passed and that a pronouncement should be made on the status of the Treaty of Waitangi.⁶⁷ The Government, as trustee for the Maori, should not have acquired timber lands worth one and a quarter million pounds for seven thousand pounds.⁶⁸ Hampson contended that the purchasing of land at such a low price must have been a

mistake otherwise they would be forced into the position of assuming that the Crown, while in the highest relationship of one person to another (in loco parentis) had betrayed that trust and purchased from its child land for one-twentieth of its value.⁶⁹

⁶³Above n 62, 120.

⁶⁴ The Tuwharetoa lands were under Maori freehold title, having passed through the Native Land Court, and not Maori customary title, so the whole argument regarding extinguishment of title seems to have been misconceived by the Court of Appeal. See above n 51, 120, per Myers CJ: "It appears to have been argued that s. 72 of the Constitution Act recognizes the Treaty of Waitangi, and also that land can only be taken away by cession; and that any statute giving power to take Native customary land in any other way is *ultra vires* the Legislature".

⁶⁵ See Deputation of Ngatituwharetoa and other Maori organisations to the Prime Minister, 13 March 1939, MA 1 5/15/1 vol. 9.

⁶⁶ C Orange *The Treaty of Waitangi* (Allen and Unwin, Port Nicholson Press, Wellington, 1987) 237.

⁶⁷ see NZPD, vol. 254, 731-732, 1939. Ngata and others were calling for a full bench of the Supreme Court to be directed by the Government to make a ruling on the status of the Treaty of Waitangi.

⁶⁸ Above n 65.

⁶⁹ Above n 65.

XV CONCLUSION

As the Tuwharetoa prepared their case for the Privy Council, a small group of owners challenged the restrictions on their land. They attempted, as Maori owners had in the late 1920s, to go onto their land and cut the timber out to acquire revenue from the land.⁷⁰ The Aotea District Maori Land Board would not consent to them doing this because the block was subject to a charge under the Native Purposes Act 1935. The solicitor of the Maori owners communicated the following message: "This will enable us to explain to the Privy Council precisely how the rights of the native owners of these timber lands are viewed at present by the Board."⁷¹ An injunction was subsequently served against the owners to prevent them from dealing with their own land.

The appeal to the Privy Council was heard in 1940, the same year as the "Centennial Celebrations" were taking place in New Zealand. However, the Privy Council did not recognise the Treaty of Waitangi as a constitutional document, but affirmed the ruling of the Court of Appeal that the Treaty could only have force of law if it was incorporated into domestic legislation.⁷² As a consequence the Ngati Tuwharetoa lands in this area remained burdened by the charge imposed by the Native Purposes Act 1935. A Royal Commission would later reduce the amount to be paid to twenty thousand pounds and recommend that some of the costs of litigation be paid by the Crown. Although the Commission recognised the Ngati Tuwharetoa had a right to feel a sense of injustice, they could see "...no justification for the matter having been taken to the Privy Council."⁷³

⁷⁰ Pateriki Hura and Ngaroimatu Motu had interests in Waimanu 2D Block. MA 1 5/15/1 vol. 9.

⁷¹ Hampson to Dudson, 9 November 1939, MA 1 5/15/1 vol. 9.

⁷² Above n 1.

⁷³ 1951 Commission, p. 21.

XV CONCLUSION

The history of the Tongariro Timber Company concession illustrates several themes regarding Maori land during the first half of the twentieth century.

Maori, even iwi like the Ngati Tuwharetoa who still retained large tracts of land, found it difficult to develop their lands because capital was difficult to raise. They were then forced to enter into agreements with private interests who might not have the necessary acumen to successfully develop the land.

Before this could be executed, however, the Maori owners had to navigate through a complex web of legislation that required them to gain permission from a number of institutions. This was an indication of the paternalistic attitude of the state toward Maori land - the Maori owners had to be saved from themselves.

This paternalism was misguided. The cumbersome legislation was, on the whole, backed up by administrative inadequacy. How could a District Land Board that consisted merely of the Judge of the Native Land Court and the Registrar, have the inclination or time to deal with complex land administration over a large area? Clearly the resources were insubstantial.

In fact, interference from state institutions worked to obstruct the process of land development. This is perfectly illustrated by the proposal that was facilitated by some of the Tuwharetoa owners to salvage the whole development project in 1928. The Government chose to do nothing, and so went against the wishes of the major landowners, consequently depriving them of an income from those lands for many years to come.

Large quantities of "washing-up" legislation were passed during this period relating to the Tongariro Timber Company's concession. This reflected the tendency of government to enact laws which gave the

impression that a problem had been solved. In many cases the circumstances would not change at all. In addition, this legislative pattern is indicative of the control the Government and Native Department chose to have over Maori land.

The continued interference was the final catalyst for the Ngati Tuwharetoa taking their grievances to the Privy Council.

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