

ordinary Native block at all. It was a main watershed block facing north, south, east, and west. Its giant kauri trees could look out upon the waters of the Bay of Islands on the east, to Whangaroa Harbour on the north, to Hokianga Harbour on the west, and to the heart of the Ngapuhi tribal territory on the south. Usually a sub-tribe would in such circumstances claim the right to all the land on its side up to the top of the watershed, and would give that part a name. It seems to the Court incredible that Wi Hau and other Ngatiwhiu chiefs should have seriously claimed the right to name and to sell the portions on the other three sides of the watershed. The Court thinks it more likely that Wi Hau gave the name "Mokau" to the Ngatiwhiu side of the 7,224 acres. The Court cannot believe that Wi Hau or any other Ngatiwhiu chief would have seriously claimed the right to name or to sell the Hokianga side dominated by the mana of famous Tamati Waaka Nene, or the Whangaroa side where Hongi's kinsmen held sway, or the southern side looking towards Okaihau and Kaikohe. Under these circumstances, the name "Mokau" would convey nothing to the other sub-tribes interested in the 7,224 acres. "Mokau" would be Ngatiwhiu's land. If Wi Hau and others sold Ngatiwhiu's land called "Mokau," that would be their concern. To this extent, therefore, the name "Mokau" must have been quite misleading to others than Ngatiwhiu. It could have given them no warning of the sale of their portions to the Crown. Probably this helps to explain the great interest displayed by all Ngapuhi in this inquiry. The Ngatiwhiu are only a fraction of those now claiming to be entitled.

(10) *Right of Vendors to sell.*—It follows from the above that the utmost care and the fullest inquiry on the part of the Crown's officers were called for in 1858-59 before they could reasonably accept the signatories as the persons entitled to sell the whole 7,224 acres to the Crown. If the Ngatiwhiu chiefs led Mr. Kemp to believe that Ngatiwhiu owned the whole 7,224 acres, this would not be reasonable proof that Ngatiwhiu did in fact own the whole 7,224 acres. What inquiries did Mr. Kemp make to satisfy himself that he was dealing with the sole and true owners? The records are silent. There is no evidence that he visited Pupuke in the north, Okaihau or Utakura in the west, Kaikohe or Ohacawai in the south, to inquire of other sub-tribes of Ngapuhi as to whether they claimed the sides of the forest watershed which faced their way. The written record shows clearly that Mr. Kemp regarded Wi Hau, "a useful servant of the Government," as "the seller." Why others joined Wi Hau in the sale is not clear. One of them (Tautahi) was a well-known Ngatiwai chief from far-distant Whangaruru. He must have chuckled at the idea of being asked to sell another tribe's land. Another signatory was from far-off Whirinaki, a district of Hokianga not interested in this land. Some of the other signatories seem to have been genuine Ngatiwhiu, the people on the Bay of Islands side of the block. The Court knows of no grounds for Mr. Kemp's assumption that Wi Hau's mana covered all sides of this watershed block, to the exclusion of the mana of Tamati Waaka Nene and the mana of the Hongi and Hone Heke clans. Was Wi Hau the over-lord of all Ngapuhi? Certainly not. He might speak for Ngatiwhiu by consent of Ngatiwhiu. He could not speak for other sub-tribes. Perhaps this explains the inclusion of surplus names as signatories to bolster up the sale. One name was "Hongi." Who was Hongi? The real Hongi (Hongi Hika) died before 1830, and since his death no one has been allowed to use that name by itself. The Treaty of Waitangi expressly guaranteed the rights of families and individuals, as well as the rights of tribes and chiefs. In the matter of this sale the Crown's representatives did not protect the rights of the families and individuals of Ngatiwhiu. The chiefs of Ngatiwhiu did not protect them either. The Court must therefore hold that the members of Ngatiwhiu are bound now by the acts of their chiefs in 1859 as to the actual fact of the sale, apart from the price accepted for the land. The Ngatiwhiu individuals cannot at this late stage, eighty years after the sale, deny that their chiefs sold Ngatiwhiu's rights in this land. All that they can question now is the price paid to the chiefs who represented them. Even that right is adversely affected by their long delay in claiming redress. As to the rights of other sub-tribes, the Crown claimed that they did not exist. Mr. Meredith stressed the fact that Wi Hau was an owner in certain adjoining lands. The Court comments that Wi Hau (Wiremu Hau) was—

- (a) One out of five owners in Mokau (No. 1), adjoining on the north (investigated 1866).
- (b) One out of twenty-two owners in Mokau No. 2, adjoining on the north (investigated 1878).
- (c) One out of two sellers in Mokau No. 3 (Awarua), adjoining on north (sold in 1839). The fact that he sold did not prove he was the owner.
- (d) Apparently not an owner or seller in the Matawherohia Block, adjoining on the north-west (sold in 1859).
- (e) One out of seven owners in Waitaroto Block, adjoining on south-west (investigated 1866).
- (f) One of the sellers of land on the south in 1836 (Ormond's claim). The fact that he was a seller did not prove ownership.
- (g) Apparently not an owner or a seller of Inumia and other blocks in 1836, adjoining on the east.
- (h) And that one Hamiora Hau was sole owner of Omataroa Block, adjoining on the west (investigated in 1875).

The Court holds that none of these things proved the sole right of Wi Hau (with or without the other signatories) to own and to sell the 7,224 acres in Manginangina. At the most they would prove only that Wi Hau was a Ngatiwhiu chief and an owner in the 7,224 acres. They would not prove that Ngatiwhiu were the sole owners of the 7,224 acres. In view of Wi Hau's participation in so many sales, it is not difficult to see how Mr. Kemp came to regard Wi Hau as a "useful servant of the Government" and accepted him as "the seller" of the 7,224 acres. The Court holds that Mr. Kemp had no apparent justification for regarding Ngatiwhiu and Wi Hau as the rightful owners of the whole 7,224 acres. However, long delays by other claimants have materially strengthened the Crown case and weakened the Native case. The Court holds also that, as the Crown's pre-emptive power was in force in 1859, the Ngatiwhiu sub-tribe had the right to sell that portion of the 7,224 acres which belonged to them,