

"Begging with a Bludgeon": The East Coast Confiscations

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## **“BEGGING WITH A BLUDGEON”: THE EAST COAST CONFISCATIONS<sup>1</sup>**

In 1995 the Government announced a moratorium on the disposal of surplus Crown lands acquired under confiscation legislation passed in the 1860s, pending the resolution of claims to the Waitangi Tribunal in respect of these. The catch was that this applied only to districts confiscated under the New Zealand Settlements Act of 1863. The Government and its advisers either ignored or were ignorant of the fact that lands were also confiscated under special legislation passed with respect to the East Coast between 1866 and 1868.

This historical blind spot when it comes to lands confiscated under the East Coast Land Titles Investigation Act of 1866, its 1867 amendment, and the East Coast Act of 1868 is not confined to politicians or bureaucrats. Historians have also tended to treat the East Coast confiscations as a minor, somewhat shadowy, adjunct to the story of the Settlements Act and its implementation in the Waikato, Taranaki, and Bay of Plenty. General histories, if they mention it at all, usually state simply that a ‘small’ area of land was also confiscated on the East Coast.<sup>2</sup>

In fact the area affected by the legislation was not small at all. More than a million acres of land, approximately the same area as was proclaimed under the Settlements Act in either Taranaki or Waikato, was theoretically subject to the East Coast confiscation legislation. At Wairoa just over 42,000 acres was ceded to the Crown by Government allies in lieu of its claims to the lands of those deemed ‘rebels’ in April 1867. The entire Poverty Bay district, more than half a million acres, was similarly ceded in December 1868, before the Government was forced to content itself with just over 56,000 acres in June of the following year. Repeated but unsuccessful efforts were made to obtain similar cessions of land from Ngati Porou, and in 1875 more than 172,000 acres of land was practically confiscated from Waikaremoana Maori, who were badgered into withdrawing their claims to the blocks in question under threat of confiscation in return for a nominal payment and a few small reserves. Thus the total area of land effectively confiscated on the East Coast, more than 280,000 acres, could hardly be described as ‘small’, and certainly is not regarded as insignificant by many Maori living there today, who can point out the exact boundaries of the raupatu blocks, and note with more than a touch of bitterness that some of the most prestigious chardonnays in the world are produced on confiscated land.

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<sup>1</sup> This paper is based on two research reports I have completed: ‘Report for the Crown Forestry Rental Trust on the East Coast Confiscation Legislation and its Implementation’, February 1994; and ‘The Crown and Ngati Ruapani: Confiscation and Land Purchase in the Wairoa-Waikaremoana Area, 1865-1875’, October 1994.

<sup>2</sup> See, for example, M.P.K. Sorrenson, ‘Maori and Pakeha’, in G.R. Rice (ed.), *The Oxford History of New Zealand*, 2nd. ed., Auckland: Oxford University Press, 1992, p.158.

When I first commenced researching the history of the East Coast confiscations in 1993, I found that there was no readily accessible and reliable information on the subject, and the muddled accounts of dated secondary sources only added to my confusion. Because of the complex and protracted manner in which confiscation policy was implemented on the East Coast, today's paper will be in some senses a potted history. Hopefully, however, it will prove slightly more accessible than Thomas Lambert's *Old Wairoa*, a masterpiece of incoherence and incomprehensibility, from which those seeking solid facts depart with nothing more than a headache to show for one's efforts.

In order to understand the unique manner in which confiscation was implemented on the East Coast it is necessary to consider the nature of the district prior to the wars of the 1860s. In 1840 there were no more than about a hundred Europeans living between Hicks Bay and Mahia - indeed probably fewer than this.<sup>3</sup> By 1865 this had reached no more than 400-500.<sup>4</sup> When compared to the national increase in the Pakeha population for the same period this was remarkably slow growth.

This was only part of the equation, however. In 1844 missionary estimates put the total Maori population for the same area at about 20,000.<sup>5</sup> By the 1860s this had probably more than halved<sup>6</sup> but was still at least ten times the European population - and this at a time when the latter were becoming an increasingly large majority over the country as a whole.

Those settlers who ventured into the East Coast found themselves in an overwhelmingly Maori district where the writ of British law had yet to run. As William Leonard Williams, who first settled at Turanga (Poverty Bay) in 1839, put it:

This was one of those outlying regions in which Her Majesty's Government had no officer of any kind, and with reference to which all Europeans had been warned, that if anyone should choose to settle in such a district for any purpose whatever, he must do so at his own risk; and that, if he should get into any trouble with the natives, or should suffer ill-treatment at their hands, he must not expect the authorities to interfere in any way on his behalf.<sup>7</sup>

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<sup>3</sup> W.H. Oliver and J.M. Thomson, *Challenge and Response: A Study of the Development of the Gisborne East Coast Region*, Gisborne: East Coast Development Research Association, 1971, p.25.

<sup>4</sup> K. Sanderson, 'Maori Christianity on the East Coast 1840-1870', *New Zealand Journal of History*, vol.17, no.2, October 1983, p.172, n.31.

<sup>5</sup> Oliver and Thomson, p.51.

<sup>6</sup> H. Wardell to Native Secretary, 20 September 1861, *AJHR*, 1862, E-7, p.30.

<sup>7</sup> W.L.Williams, *East Coast (N.Z.) Historical Records*, Gisborne: Poverty Bay Herald, n.d., p.16.

Most settlers preferred Otago or Canterbury. Aside from CMS missionaries such as the Williams and T.S. Grace, those who settled on the East Coast during this period were generally whalers or traders. These 'less respectable' elements of British colonization (as the missionaries and occasional visiting customs officers considered them to be) were dispersed among the various hapu along the coastline and were welcomed for the access to western goods and technology which they represented so long as they paid heed to the reality of Maori control.<sup>8</sup>

While East Coast Maori mostly welcomed the trading and other opportunities which having a few Pakeha among their numbers represented, they were far from keen on the idea of wholesale European settlement of their region. When the Land Claims Commissioner, Francis Dillon Bell, finally arrived at Turanga in 1859 in order to investigate old land claims in the region, he reported encountering such stern opposition from a repudiation movement which had been formed to renounce all previous alleged sales of land that he was forced to leave the district without settling a single claim. Government efforts to acquire land on the East Coast were no more successful. Donald McLean twice visited Turanga in the 1850s in the hope of acquiring the rich, fertile plains of the Waipaoa valley for the Crown and twice left empty-handed. When William Baker arrived at Waiapu in 1861, having been appointed its first resident magistrate, he reported great difficulty in obtaining land for his residence, since 'the very word "whenua" used by an agent of the Government, seemed sufficient to arouse suspicion and distrust'.<sup>9</sup> Eventually Ngati Porou consented to gift a small area for a magistrate's residence, highlighting the fact that Baker was there on Maori sufferance.

East Coast Maori, apparently linking the alienation of lands with the loss of autonomy, made it clear that, having retained their estates virtually intact, they considered the Government had little authority to rule over them. When Governor Gore Browne visited Poverty Bay in 1860 he was bluntly informed that local Maori did not recognise Queen Victoria as their ruler and that previous Governors had been afraid to visit them.<sup>10</sup> Browne believed the Poverty Bay tribes had been lacking in courtesy towards him, but this was nothing compared with the regular humiliations which Herbert Wardell, the local Resident Magistrate, was forced to suffer (including being subjected to the law of muru, his own cattle being driven away by a group of Maori dissatisfied with the outcome of a particular case).<sup>11</sup> Wardell became the first permanent Crown agent stationed on the East Coast in 1855 and later recalled that:

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<sup>8</sup> Oliver and Thomson, p.20.

<sup>9</sup> W.B. Baker to Native Secretary, 15 January 1862, *AJHR*, 1862, E-9, Sec.5, p.6.

<sup>10</sup> J.A. Mackay, *Historic Poverty Bay and the East Coast, North Island, New Zealand*, Gisborne: J.G. Mackay, 1966, p.212.

<sup>11</sup> J.A. Mackay (ed.), *Joint Golden Jubilees: Life in Early Poverty Bay, Trials and Triumphs of its Brave Founders*, Gisborne: Gisborne Publishing Company, 1927, p.75.

On my arrival there in that year, I found that the Natives denied the right of the Government to send a Magistrate amongst them, on the ground that, as they had not sold their land to the Queen, the Government had no authority over them...In fact, they regarded the Queen as the head of a people occupying isolated portions of territory in the Island; with whom they had occasional intercourse: but as possessing - as of right - no authority over them.<sup>12</sup>

Clearly Wardell's 'occasional intercourse' with the locals was far from a satisfying experience for him.

The defiantly independent stance of the Tairāwhiti tribes did not, however, translate into automatic support for the King Movement. The Turanga tribes, Te Aitanga a Mahaki and Rongowhakaata, in particular, maintained a strongly 'neutralist' position. Although many expressed sympathy for the plight of Wiremu Kingi at Waitara, none were prepared to respond to his pleas for assistance, instead considering that they should remain at home to look after their own lands.<sup>13</sup> Ngāti Kahungunu overtures for 'Maori unity' were similarly dismissed, as were those of the Waikato people in 1863.<sup>14</sup> As Kay Sanderson says: 'the Turanga Maoris had no desire to become involved in what were for them essentially foreign wars'.<sup>15</sup>

Ngāti Porou, by contrast, were much more polarised on the question, although in the wake of Kingite reverses in 1864 many had reconsidered their allegiances, or at least kept their heads down. A similar situation applied amongst Wairoa Maori. Coastal Ngāti Kahungunu at Nuhaka, Mahia and elsewhere had declared themselves for the Queen. Upper Wairoa Kahungunu, led by Te Waru Tamatea, had fought for the Kingite side at Waikato, along with Ngāti Ruapani and Tuhoē; but in the face of this standoff neither side was anxious to bring the war to their own doorstep.

It was, however, the arrival of a group of Pai Marire emissaries in the district in March 1865, just weeks after the murder of the Opotiki missionary, Carl Sylvius Volkner, which did bring war to the East Coast. In April Governor Grey issued a proclamation announcing that the Crown would 'resist and suppress, by the force of arms if necessary' all such 'fanatical doctrines' and calling on all 'well-disposed'

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<sup>12</sup> Wardell to Native Secretary, 20 September 1861, *AJHR*, 1862, E-7, p.31.

<sup>13</sup> Wardell to Native Secretary, 20 September 1861, *AJHR*, 1862, E-7, p.31.

<sup>14</sup> K.S. Neal, 'Maori Participation in the East Coast Wars 1865-1872: Local Politics and Greater Commitments', M.A. thesis, University of Auckland, 1976, pp.14-15.

<sup>15</sup> Sanderson (1983), p.175.

persons of either race to assist in this to the best of their abilities.<sup>16</sup> According to Paul Clark, many younger and less conservative East Coast leaders may have viewed the new religion as an opportunity to assert their tribal or chiefly mana over rivals.<sup>17</sup> More established leaders, particularly amongst Ngati Porou and Ngati Kahungunu, concerned both at the threat of confiscation hanging over their tribes as a result of the involvement of some of their numbers in the Waikato War, and for their own power base, thus sought to head off this challenge through alliance with Queen and Church.

Neither response was based on fundamentally divergent views on issues such as the proper role of the Government in their affairs or attitudes towards further European settlement, however. Both groups generally maintained that the Government should act upon their invitation rather than its own initiative on the East Coast and opposed uncontrolled Pakeha settlement of their district. The East Coast in the 1860s remained essentially Maori and its responses to the religion were determined in a local context in which the Government and Pakeha settlers, though both helping to polarise opinion, were not, per se, the central issues. At Turanga, for example, large numbers had flocked to the new religion, in consequence of which many Europeans had panicked and fled the district by boat.<sup>18</sup> Yet despite this a Pai Marire deputation to J.W. Harris told him to stay at Turanga and to advise the other settlers to also remain, as no harm would be done to them. The settlers could remain on their lands, they told him, (although no more would be sold to them) and all debts would be paid, the deputation adding:

the Hauhau here will not molest you. We wish to remain at peace and protect our Pakeha friends, and trade with them as before.<sup>19</sup>

In political terms Pai Marire on the East Coast involved little real change from the status quo. And in religious terms Kay Sanderson has argued that it was less of a revolutionary rejection of Christianity than those such as Bishop Williams (who had never comprehended the inclusive and syncretic nature of the Maori faith) perceived it to be.<sup>20</sup>

All this counted for nothing, however, as a group of Ngati Porou 'loyalists' launched

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<sup>16</sup> *New Zealand Gazette*, 29 April 1865, p.129.

<sup>17</sup> P. Clark, *"Hauhau": The Pai Marire Search for Maori Identity*, Auckland: Auckland University Press/Oxford University Press, 1975, p.21.

<sup>18</sup> J.W. Harris to McLean, 1 April 1865, McLean Papers (folder 327), Alexander Turnbull Library.

<sup>19</sup> Harris to McLean, 25 July 1865, McLean Papers (f.327), Alexander Turnbull Library.

<sup>20</sup> Sanderson (1983), p.166.

an attack on Pai Marire supporters of their own tribe in June 1865. With Government supplies of men and weaponry, by October the Pai Marire party had been soundly defeated, with the exception of those refugees who fled south to Turanga, providing a pretext for Government and Ngati Porou intervention in that district also. In the wake of the defeat of the Pai Marire supporters at Waerenga-a-Hika in November, a group of refugees from this conflict again fled south to Wairoa, where a similar scenario was played out over the following month. By May 1866 almost all of the East Coast Pai Marire faithful, with the exception of Tuhoe and Ngati Ruapani, had tendered their submission to the Crown.<sup>21</sup> Yet despite the fact that the Crown and its allies had been the real aggressors in the East Coast Wars, the Stafford Government had already signalled its intention to punish those deemed 'rebels' through the confiscation of their lands.<sup>22</sup>

In February 1866 Colonel Haultain, the Defence Minister, visited Poverty Bay and announced that the Government was considering deporting a number of those so-called 'rebels' taken prisoner during the wars, 'the object being to have them out of the way until the question of the confiscation of land should be settled...'.<sup>23</sup> This, it was considered, would take no more than about twelve months, and Donald McLean, the Agent for the General Government on the East Coast, arrived in the district the following month to consult with 'loyalist' leaders as to those who ought to be exiled. Ironically, as will be seen shortly, it was the unscheduled return of the exiles, most of whom were from Poverty Bay, in 1868 which finally made it possible to enforce confiscation in that area.

The logical method of implementing confiscation on the East Coast was by proclaiming large areas under the provisions of the New Zealand Settlements Act, before returning portions to 'loyalists' and 'surrendered rebels' through the Compensation Court. Yet by 1866 the confiscation scheme which had proven so coherent and straightforward on paper had proven a dismal failure in practice. The Government may have acquired some 3,000,000 acres of additional land, but it had also inherited £3,000,000 of additional debt and few means to repay it, with the plan to recoup the costs of war and colonisation through the sale of surplus lands backfiring badly and plunging the colony into financial crisis.<sup>24</sup> Fed up with paying the costs of a war they considered they gained little from, Otago and Canterbury gave rise to vigorous separation movements, whilst Auckland, nearly bankrupted by the colonisation schemes, did likewise. Maori resentment at 'creeping confiscation'

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<sup>21</sup> Col. Fraser to Under Secretary, Colonial Defence Office, 26 May 1866, AD 1/1866/844, National Archives.

<sup>22</sup> E. Stafford to McLean, 3 November 1865, McLean Papers (f.584), Alexander Turnbull Library.

<sup>23</sup> Cited in Williams, p.50.

<sup>24</sup> B.J. Dalton, *War and Politics in New Zealand 1855-1870*, Sydney: Sydney University Press, 1967, p.257.

had only added to the financial burdens, prolonging the need to station large and expensive military forces in disaffected areas.<sup>25</sup>

Instead of securing the peace, confiscation had prolonged the war, plunging the colony into a financial and military crisis, and bringing relations with the Imperial Government (which took great exception to the colonial administration's deliberate flouting of the conditional assent it had given to the 1863 legislation) to an all-time low. Though few disputed the need to punish 'rebel' Maori through the confiscation of their lands, many now sought less crude methods of doing so. Thus the East Coast became the testing ground for what it was hoped would be a more moderate and more palatable form of confiscation.

The Imperial Government's instruction to Grey that voluntary cessions of land should first be attempted before resorting to harsher measures offered one option, but was not without its difficulties. For one thing, without the carrot of purchase money or the stick of confiscation (or the threat of it) how was the Government going to persuade East Coast Maori to freely give their lands to the Crown without recompense? And how was it going to decide which lands belonged to 'rebels' and which to 'loyalists'?

These were not the only problems. The result of the East Coast Wars was widely seen as a victory for the Government. Whether accurate or not, this perception led many settlers to believe that the district was now ripe for colonisation. Maori may have remained numerically dominant, but now found themselves subject to huge pressures to 'open up' the region in order to prove their loyalty to the Crown. From the Government's perspective this in itself was not a problem, but given the limited extent of land suitable for close settlement on the East Coast, and the Government's need to locate the military settlers who fought for it somewhere, it now found itself facing potential competition from private interests for the best of the lands.

Moreover, whereas prior to the wars, neither the Auckland or Hawke's Bay provincial governments took much interest in the district, with the prospect of the area being opened up in the wake of a British victory, suddenly the question of which province was to administer the East Coast in the post-war period became one of vital interest to many people. In 1865 the Hawke's Bay Superintendent, Donald McLean, along with J.D. Ormond, launched a vigorous campaign for the annexation of the East Coast, which was only discredited when Parliament's Public Petitions Committee heard evidence that the supposedly spontaneous requests of East Coast Maori to be reunited with their Heretaunga kin had been instigated by the Superintendent and contained numerous forged signatures.<sup>26</sup>

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<sup>25</sup> J. Belich, *The New Zealand Wars and the Victorian Interpretation of Racial Conflict*, Auckland: Penguin Books, 1988 [orig.ed. 1986], p.204.

<sup>26</sup> 'Report of the Committee on Public Petitions on the Petitions of the East Coast Natives, Praying that their District May be Annexed to the Province of Hawke's Bay', *AJHR*, 1866, F11A.

The discovery of oil springs in the district in February 1866 added any even fiercer tone to this rivalry. Julius Vogel, acting on behalf of Dunedin and Melbourne interests, offered the financially-embarrassed Auckland Government a royalty of one-fifteenth of the petroleum raised. Frederick Whitaker, its Superintendent and architect of the 1863 legislation, promptly dispatched an agent to the district to acquire the springs for the province, but met stern opposition from a private party, the Brown and Campbell Company, which also made frenzied efforts to obtain the lands. Whitaker, through his political connections, succeeded in persuading the Government to include a clause in the 1866 Native Land Act allowing provincial governments to make valid purchases of Maori land prior to any adjudication by the Native Land Court, at the same time having a major input into the provisions of the East Coast Land Titles Investigation Act, which ensured that any sitting of the Court would not have the effect of depriving the Government of lands potentially liable to confiscation by obliging it to confiscate the interests of those who had engaged in 'rebellion' again the Crown.

Although the settlers of the East Coast, and speculators with an eye on the region, had enthusiastically supported the war as a means of opening up the area to European influence and control, once this goal had been achieved their interests were by no means identical with those of the Stafford Government. In this struggle to acquire the best and most valuable of the lands, the Native Land Court became the focus of attention, with settlers and speculators mostly keen on the soonest possible sittings of the Court in order to confirm their purchases and leases, and the Government equally determined to prevent the Court from sitting until confiscation matters had been arranged.

In September 1866 agents employed by Brown and Campbell had sought to have the oil spring lands adjudicated upon. Despite desperate pleas from the Government for a postponement on the grounds that the sitting would 'give rise to embarrassment and be injurious to the public service',<sup>27</sup> Chief Judge Fenton (who was reportedly under some kind of unspecified 'obligation' to Brown and Campbell's lawyer, Thomas Gilles),<sup>28</sup> was in no mood to grant this. The Government's refusal to advertise the sitting in the *Gazette* appears to have put a halt to proceedings. James Preece, one of the agents complained to Fenton that the postponement had left Maori with the impression that the Court was subject to political considerations: 'they think the Government have kept the Court back in order to confiscate the land'.<sup>29</sup> The Chief Judge concurred as to the 'injurious effect' of the interruption of the course of the law and informed Richmond that notices had already gone out for the

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<sup>27</sup> J.C. Richmond to Fenton, 8 September 1866, MA 62/8, Raupatu Document Bank, vol.131, p.50411.

<sup>28</sup> J. Mackelvie to W. Brown, 17 July 1866, Mackelvie Papers, letterbook 1865-68, NZ MS 199, Auckland Public Library.

<sup>29</sup> J. Preece to Fenton, 13 September 1866, MA 62/8, Raupatu Document Bank, vol.131, p.50418.

next scheduled sitting of the Court at Turanganui later in October.<sup>30</sup>

Meanwhile, though, the Government had adopted the suggestion of the Native Under Secretary, William Rolleston, and inserted a clause in the Native Land Act Amendment Bill then before the House giving it the power to suspend the operations of the original Act within any district. And on the same date, 8 October 1866, the East Coast Land Titles Investigation Act was passed.

This Act's rather innocuous-looking long title ('An Act to enable the Native Land Court to inquire into and determine Titles to Land in the East Coast District') concealed the fact that the Court already had such powers and had already attempted unsuccessfully to use them. Under the new Act, though, inquiry was to be directed not merely at determining customary entitlement to particular lands upon application of those who claimed to be the owners, but at determining (regardless of whether an application had been made or not) whether those who might otherwise have been entitled to the lands had rendered themselves ineligible to receive Crown grants for the same on the basis of their involvement in rebellion. In this sense the Native Land Court's function with respect to East Coast lands was to be almost the converse of that which Compensation Courts had within districts proclaimed under the New Zealand Settlements Act and set aside for colonisation. As Richmond pointed out, in the case of the latter lands a *prima facie* title vested in the Crown: Maori had to prove that they had not engaged in 'rebellion' in order to win back their lands through the machinery of the Compensation Court. Under the ECLTIA, on the other hand, the Crown (or any other interested party presumably) had to prove to the satisfaction of the Native Land Court that the land's owners had engaged in 'rebellion' in order to deprive them of it. As Richmond noted bitterly in 1868, this was considerably harder to do, especially when faced with Maori unwilling to provide information as to who the land's owners might be.

This 'mild sort of confiscation' as J.C. Richmond described it, proved completely unworkable in practice, in part because a clerical error in the Act effectively stated that 'rebels' were to be included in the Court's awards, rather than excluded, but more importantly because East Coast Maori simply refused to provide the Court with information on customary ownership of their lands, and because the lands the Crown might obtain as a result of the Court's decisions were not necessarily those most suited to closer settlement (or containing the much sought after oil springs). Because of this, the Government effectively used the Act as a stick with which to induce East Coast Maori to make so-called 'voluntary cessions' of land to the Crown in lieu of its claims under the legislation. In April 1867 a large meeting was convened at Te Hatepe, where the Native Minister heard complaints from Wairoa 'loyalists' that although they had conquered their 'Hauhau' kin in order to save their lands from confiscation, they now found their former ally stepping in to oppress them and

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<sup>30</sup> Fenton to Richmond, 25 September 1866, MA 62/8, Raupatu Document Bank, vol.131, pp.50412, 50415.

asserting its right to their lands.<sup>31</sup> Despite this, Richmond informed the gathering that 'It had been decided by the government at Wellington that land should be taken; it might therefore be said it was gone'.<sup>32</sup> Forty-two thousand acres was accordingly ceded to the Crown, which in turn waived its claims to the remaining lands in favour of the 'loyalists'.

Yet despite threats to use the 'harder law' of the Settlements Act, the bullying and intransigent stance of the Crown agent, Reginald Biggs, created a backlash against the idea of giving up any land at Waiapu and Poverty Bay, and little progress was made towards securing cessions of land at those places. Ngati Porou 'loyalists' pointed to the fact that they had not been paid for the very considerable share they took in the fighting in refusing to accede to the confiscation proposals, at the same time pointing out that the land was 'so much mixed up' that they were themselves unable to identify any area belonging solely to 'rebels'.<sup>33</sup> Turanga Maori noted that those responsible for the 'rebellion' had already been punished by their exiling to the Chathams. In 1867 more than 250 of their number petitioned Parliament that 'the blood shed has long since dried, during the two years which have passed; yet the word of the Government, that we are to be deprived of our lands, has only now come forth'. They had offered Captain Biggs the greater portion of their lands, they stated:

only because we were wearied at his constantly teasing us, and because of the many intimidating words of the Government used towards us; but he was not satisfied with what we had agreed to. What he wanted was, to get all the level country, and we might perch ourselves on the mountains. Thereupon we told him it must be left for the Land Court to give us relief; then he replied, he would bring the land-taking Court.<sup>34</sup>

In the early months of 1868 more than a thousand Maori from all along the East Coast signed a number of petitions calling for the repeal of the East Coast Land Titles Investigation Act. The petitioners stated that 'we should have been unaware of the existence of a Government in this country had it not been for the fact of their (officers) making monthly visits to this place for the purpose of teasing us into making our lands over to them without any recompense'.<sup>35</sup> At the conclusion of hostilities in the district they had set about leasing their lands to Europeans. Only when they refused to sell to the Government, they complained, had it sought to suppress the hearings of their claims before the Native Land Court and set about

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<sup>31</sup> *Hawke's Bay Herald*, 27 April 1867.

<sup>32</sup> *Hawke's Bay Herald*, 23 April 1867.

<sup>33</sup> R. Biggs to McLean, 27 March 1868, McLean Papers (f.162), Alexander Turnbull Library.

<sup>34</sup> *AJHR*, 1867, G-1, p.10.

<sup>35</sup> *AJHR*, 1868, A-16, p.6.

'constantly endeavouring to persuade us to agree to give up our land to them'. The Government had, the petitioners complained, 'left no stone unturned to effect this purpose; they have tried coaxing, intimidation, and innumerable other artifices'.

Some politicians, too, noting the failure of the Government's efforts on the East Coast, sought to repeal the confiscation legislation, believing that the Native Land Act would be a far more effective tool of colonisation in the district. Hugh Carleton, quoting an earlier remark of Richmond's that the legislation was no doubt 'euphemistic...inasmuch as it attempted to cover with a pretty name that which was absolutely confiscation', asserted that despite the Government's purported desire to open up the district by peaceable means, in reality they were using the Act to coerce Maori into ceding land to the Crown. In common parlance this was called 'begging with a bludgeon'.<sup>36</sup>

Richmond maintained however that to repeal the Act 'would be retreating before a victorious foe'.<sup>37</sup> Maori opposition to the Act was, he alleged, based on a total misapprehension as to the meaning of the law, which had been encouraged by 'land-jobbers' and 'political peddlars' who spent their time misinterpreting the objects of the legislation to Maori in the hope of securing the lands for themselves. Despite this, many members expressed dismay at the manner in which the settlement of East Coast affairs had dragged on almost interminably, and Richmond, bowing to this pressure, introduced a fresh Bill, reportedly drafted by Chief Judge Fenton, which allowed the Court to award the whole of lands owned jointly by 'rebels' and 'loyalists' to the latter (or, as was left unstated at the time, to the Crown). Richmond's confident belief that 'loyal' Maori would now cooperate fully with the Government in its efforts to obtain further cessions of land was based on a complete failure to understand their objections to the previous legislation, and stood little chance of success.

It was the raid of Te Kooti and the other escaped Chathams prisoners on Poverty Bay in November 1868 which made it possible to obtain a further cession of land at Poverty Bay, at the same time forcing the Government to eventually abandon plans for the confiscation of Ngati Porou territory once it became dependent on their support for the pursuit of the 'rebels'. Richmond later informed Parliament that the Poverty Bay tribes had 'expressed themselves in bodily fear of Te Kooti' and had requested that he place an armed force of Europeans on the ground for the purposes of defending the district.<sup>38</sup> Recognising this as 'an opportunity of restoring, to some extent, the mana of the Government on the coast', he accordingly proposed that the tribes should cede land on which the defence force could settle, and a deed was signed on 18 December 1868 handing over the entire Poverty Bay district to the Crown, subject to the return of such portions as might be found by a commission

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<sup>36</sup> *New Zealand Parliamentary Debates*, 3 September 1868, p.158.

<sup>37</sup> *New Zealand Parliamentary Debates*, 19 August 1868, p.519.

<sup>38</sup> *New Zealand Parliamentary Debates*, 24 August 1869, p.681.

consisting of two Native Land Court Judges to be the property of 'friendly' Maori. Richmond's private remarks to the premier were more revealing, however. He had, he told Stafford, informed them that they had the choice of three governments: Te Kooti's, Ngati Porou's or Sir George Bowen's. They were not in much doubt as to which they preferred, Richmond added.<sup>39</sup>

Shortly after the Poverty Bay Commission opened before Judges Rogan and Monro in June 1869, the Crown agent present, W.S. Atkinson, was able to announce that he had reached an out-of-court settlement whereby the Te Muhunga, Patutahi and Te Arai blocks were to be handed over to the Crown in return for waiving its claims to the remaining lands.<sup>40</sup> There were many discrepancies concerning the boundaries of the blocks to be given up (which were not noted in the Commission's minute book) and Poverty Bay Maori later consistently maintained that they had agreed to give up only 15,000 acres, when the blocks contained approximately 56,000 acres. At least 20,000 acres of this discrepancy can be accounted for by the fact that the Government surveyor surreptitiously included this extent in the subsequent survey of the blocks.<sup>41</sup>

Just as extraordinary, the Commission validated a number of illegal old land claims, completed after the imposition of Crown pre-emption in 1840, and in 1870, when the return of the remaining lands was not completed, the Native Land Court briefly sat to determine native title to what had been declared Crown lands by Gazette notice in February 1869. These remarkable proceedings were brought to a premature end, but the second sitting of the Poverty Bay Commission in 1873 proved a stormy affair. For a week the Commissioners went through a daily ritual of opening the Commission only to close it again owing to the absence of any claimants, until 14 August, when 300 Maori, led by the Hawke's Bay repudiationist, Henare Matua, arrived in the courtroom en masse. After being lectured to by Monro (who told them that the only way they would get their lands back was by applying to the Commission), Paora Te Apatu, formerly one of the Government's most important allies in the district, informed the Commissioners that they wanted the confiscated lands to be returned to them and the proceedings of the Commission to cease.<sup>42</sup> The following day a scuffle broke out in the courtroom, when a few individuals sought to have their claims heard, the Commissioners advising the Native Minister that although they might continue at the point of a bayonet, to do so would in their opinion 'probably be disastrous'.<sup>43</sup> Instead, in November the Government was forced

<sup>39</sup> Richmond to Stafford, 12 December 1868, Stafford Papers (f.42), Alexander Turnbull Library.

<sup>40</sup> Poverty Bay Commission Minute Book, 30 June 1869.

<sup>41</sup> S. Locke to McLean, [?] August 1873, McLean Papers (f.394), Alexander Turnbull Library.

<sup>42</sup> Minutes of the Commission Continuing its Enquiries, MA 62/4, Raupatu Document Bank, vol.129, p.49543.

<sup>43</sup> Rogan and Monro to Native Minister, 15 August 1873, MA 62/6, Raupatu Document Bank, vol.129, p.49674.

to return the remaining lands without adjudication in order to wind up the Commission's proceedings.<sup>44</sup>

The East Coast Act of 1868 remained on the statute books until 1891 (during which time Land Court Judges were theoretically bound to refuse to issue certificates of title in favour of East Coast Maori who had engaged in acts of 'rebellion' against the Crown), but the only time it appears to have been used again was in November 1875, even though more than half the area of the four blocks at Waikaremoana being adjudicated on fell outside the boundaries of the confiscation district. Samuel Locke, the Crown agent present on this occasion, had already negotiated the purchase of these with a handful of 'loyal' Ngati Kahungunu leaders, and Judge Rogan, working in league with Locke, suspended the hearing of these cases in order to allow Locke time to pressure the 'ex-rebel' counter-claimants, Tuhoe and Ngati Ruapani, into withdrawing their claims under threat of confiscation. Having declared it 'utterly impossible' for him to continue with the cases until proper surveys had been completed just days earlier, Rogan proceeded to issue certificates of title for an area of over 172,000 acres in favour of those with whom Locke had negotiated his purchases just as soon as Tuhoe and Ruapani had been successfully bludgeoned into withdrawing their claims.<sup>45</sup>

As with those at Wairoa and Poverty Bay, this was a messy, protracted and intricate form of confiscation, but confiscation nonetheless. Despite the initial disappointments and failures, the Government had ultimately been successful in achieving its immediate goal of obtaining cessions of land and in its broader goal of opening up the East Coast to Pakeha settlement and control, regardless of determined Maori opposition.

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<sup>44</sup> Poverty Bay Commission Minutes, 22 November 1873, MA 62/4, Raupatu Document Bank, vol.129, p.49578.

<sup>45</sup> See O'Malley (1994), pp.121-40.