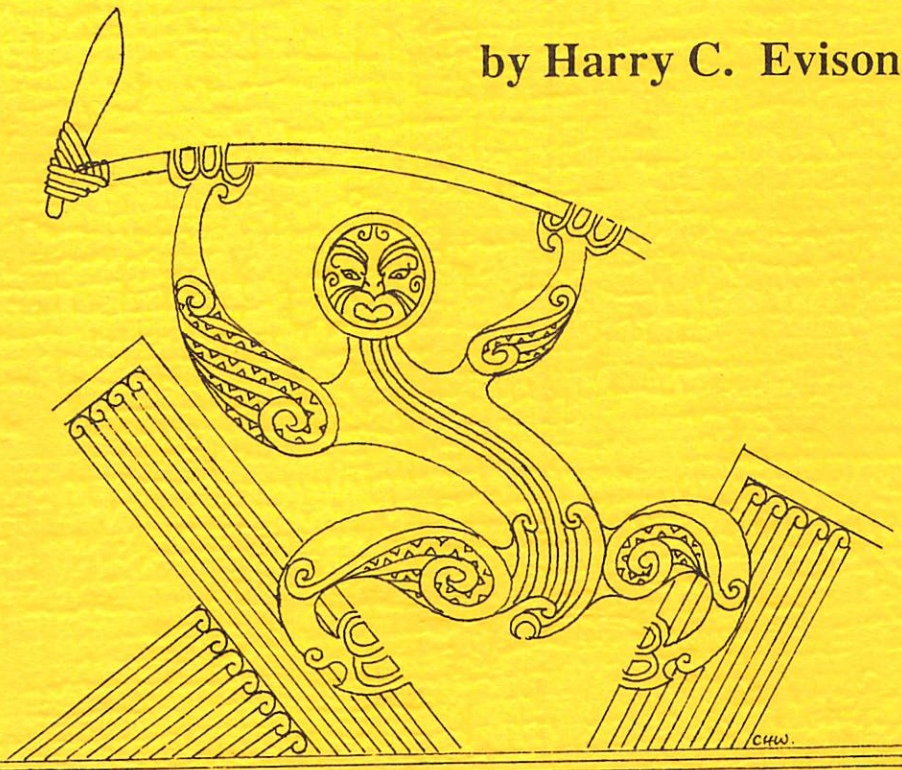
The Treaty of Waitangi and The Waitangi Tribunal FACT and FICTION

Some comments on Hilda Phillips' "Let the Truth be Known"

by Harry C. Evison



Second Edition (enlarged)

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By the same author:

"Ngai Tahu Land Rights" (1986; 1987; 3rd edn enlarged, 1987)
"Ngai Tahu Land Rights Supplements" (1986)
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Cover motif by Cliff Whiting -

"Tuterakiwhanoa the child of Aoraki
who shaped this beloved island Te Waipounamu
and made it fit for people to live in."

Note on the Author:

Harry Evison was born at Beckenham, Christchurch, in 1924. He served in the R.N.Z.A.F. in New Zealand and overseas during the Second World War, after which he read history at Victoria University College Wellington, and at Otago University for his thesis on "The History of the Canterbury Maoris" (1952). He was sometime Senior Lecturer in History and Social Studies at the Christchurch Teachers College. From 1987 to 1989 he assisted the Ngai Tahu Maori Trust Board with the preparation and presentation of historical submissions to the Waitangi Tribunal on the Ngai Tahu Claim.

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Note:

"AJHR" = "Appendices to the Journals of the House of Representatives".
In the text, the symbol "$" indicates page numbers in "Let the Truth Be Known".

PREFACE

When the New Zealand Parliament in 1985 gave the Waitangi Tribunal powers to hear Maori claims dating back to the signing of the 1840 Treaty of Waitangi it provided Maori people for the first time with an opportunity to have their grievances officially investigated outside the political arena of Parliament, in terms of the Treaty itself. This has been widely applauded as a far-sighted decision. It has also provoked bitter indignation in some quarters. Not only Maori claims but the Waitangi Tribunal and the Treaty itself have come under attack, with allegations of malpractice, conspiracy, and even fraud.

The Auckland broadsheet "Let the Truth Be Known"* has attracted attention as an expression of these allegations. Under the banner "The Nation at the Crossroads" it makes grave charges against the Waitangi Tribunal and its empowering legislation, the Maori Affairs Department, Maori Trust Boards, Maori claims, and the Maori Land Court and some of its judges, and calls in question the integrity of the Treaty. Its references to legal documents and parliamentary papers and its author's claims to the blessings of a legal education give it a ring of authority. It has found its way into libraries.

It is not proposed to dissect in detail this extraordinary web of misinformation. Many may find it tedious, repetitive, confused, obsessive, and in places irresponsible and scurrilous. It hardly merits the attention of serious scholarship - except perhaps as an example of what can be done in the name of "the national interest" and "democratic justice", and as a sample of what is currently fuelling the so-called "White Backlash" against Maori Claims.

However, people are searching for the truth on our history. Since the publication of "Let the Truth Be Known" some 12 months ago and its promotion as a discussion paper in the name of "One New Zealand", there have been requests that it should be answered. This is not just a question of defending the Ngai Tahu Claim. The implications are far wider. Many New Zealanders in the past had little opportunity to become familiar with Maori grievances under the Treaty of Waitangi. Maori and non-Maori perceptions of New Zealand history since 1840 have been very different. The obvious way to better understanding for New Zealand as a nation is through the fullest possible exchange of accurate information on our past history, and the unprejudiced discussion of points at issue in a spirit of goodwill. Recently there has been a remarkable upsurge in public interest and sympathy for this process of reconciliation.

The ostensible purpose of "Let the Truth Be Known" is to promote national unity and the reform of the Maori Land law. With these aims there is no quarrel. But the distortion or misrepresentation of legal and historical documents, however inadvertent, and the use of innuendo to discredit public bodies and their officials, serve not to unite New Zealanders but to divide them. Old prejudices are revived and new ones are created. Confusion breeds further intolerance.

Many of the bold assertions made by "Let the Truth Be Known" require no further comment since they are matters of opinion on which readers can judge for themselves. The purpose of the following pages is to indicate where documentary sources have been misused or misinterpreted, and thus to dispel the fallacies that have been extorted from them.

The chapters in this commentary deal with specific points raised in "Let the Truth Be Known", from which the passages discussed are underlined. For greater simplicity crucial references are given in the text rather than by conventional footnotes or reference-lists. The Reference list provided on the final page includes all the sources used in this commentary. It should also be of assistance to those readers wanting to investigate the subject further.

H.C.E., Sumner, August 1989.

* "Let the Truth Be Known" by Hilda Phillips, Auckland 1988, ISBN 0-473-00626-X

Second Edition, March 1990: In meeting the demand for a 2nd Edition the text has been simplified and expanded in places. Chapter 2 on the Ngai Tahu Claim has been considerably enlarged. Otherwise the information remains unchanged.

NOTE: The symbol § in the text indicates page numbers in "Let the Truth Be Known".
Excerpts from "Let the Truth Be Known" are underlined.

C H A P T E R O N E

THE WAITANGI TRIBUNAL: "ILL-FOUNDED RECOMMENDATIONS BINDING ON THE GOVERNMENT" ?

Perhaps the most disturbing allegation in "Let the Truth Be Known" is the persistent assertion that under the empowering legislation the Waitangi Tribunal can make what recommendations it likes and still be binding on the Government - "no matter how ill-founded are its recommendations". On the Title Page, pages § 10-11 and 18, and the "Documentation" on § page 37, we read -

> "According to the Treaty of Waitangi (State Enterprises) Bill, the Waitangi Tribunal may now make a recommendation binding on the Government '**without** being obliged to determine first whether or not the claim is well-founded."

This allegation is made repeatedly, the reference in each case being to § page 37 which gives Section 8D of the Bill (subsequently enacted by Parliament as Act No 105 of 1988.) On § page 13 the implications are clearly alarming -

> "According to Mr Ian McLean, M.P. for Tarawera, claims now lodged with the Waitangi Tribunal 'will approach five BILLION dollars' (NZ Herald 17. 2.1988). But Mr McLean omitted to say that the Waitangi Tribunal may make a recommendation - binding on the Government - '**without** being obliged to determine first whether or not the claim is well-founded'."

"Let The Truth Be Known" tells us that the effect of Section 8D is that the Waitangi Tribunal is not required to examine claims to make sure that they are "well founded", before making recommendations binding on the Government; and that therefore (as emphasized on § page 10) -

> "the Waitangi Tribunal's recommendations are binding on the Government no matter how ILL-FOUNDED they are!".

But when we look at Section 8D of the Bill we find the following -

> "**8D. Special power of Tribunal to recommend that land be no longer liable to resumption** - (1) The Tribunal may, in its discretion, on the application of a State enterprise or other owner of any land to which section 8A of this Act applies, recommend to the Minister of Survey and Land Information that the whole or part of that land be no longer subject to resumption under section 27B of the State-Owned Enterprises Act 1986 if -
>
> "(a) Public notice has been given, in accordance with section 8G of this Act, of the making of an application under this section in respect of that land; and
> "(b) Either -
> "(i) No claim in relation to that land has been submitted to the Tribunal under section 6 of this Act before the date specified in the notice; or

> "(ii) All the parties to any claim submitted to the Tribunal under section 6 of this Act in relation to that land have informed the Tribunal in writing that they consent to the making of the recommendation.
> "(2) The Tribunal may make a recommendation pursuant to subsection (1) (b) (ii) of this section without being obliged to determine first whether or not the claim is well-founded."

When we analyze this Section we find that indeed the Tribunal "may make a recommendation under this section without being obliged to determine first whether or not the claim is well-founded", - but **only** "pursuant to subsection (1)(b)(ii)": in other words, **only under the following circumstances:**

A: That there has been an "application by a State enterprise or other owner" of the land in question, that "whole or part of that land be no longer subject to resumption under Section 27B of the State-Owned Enterprises Act 1986". In the context of Section 27B, that the land "be no longer subject to resumption" means that it **cannot** be resumed (i.e. taken back) by the Crown from a State enterprise or other owner, and therefore **cannot be awarded** to a Maori claimant as the result of a Waitangi Tribunal recommendation.
and B: That "Public notice has been given" of the application in question (i.e. the application by the State enterprise or other owner of the land in question).
and C: That "All the parties to any claim" (**if one has been lodged** before the date of the Public notice) "have informed the Tribunal in writing that they consent to the Tribunal making the recommendation" that the land be no longer subject to resumption.

In other words, if the Waitangi Tribunal has received a claim about certain lands held by a State enterprise or other owner, but subsequently **all** the parties involved **agree in writing** that the land (or part of it) should **not** be subject to resumption by the Crown (i.e. **not** be taken back from the State enterprise by the Crown with a view to awarding it to the Maori claimants), **then and only then** may the Tribunal recommend that the land in question be no longer liable to resumption, **without** investigating the claim any further.

Obviously under the circumstances thus defined by the Bill there would be no point in the Tribunal "determining first whether or nor the claim is well-founded". If all parties had **agreed in writing** that the land should be no longer subject to resumption, all parties would have agreed in effect that the land in question was no longer subject to a claim. What would be the point of the Tribunal "determining first whether or not the claim is well-founded", if the claim were not going to be proceeded with? This provision in Section 8D of the Treaty of Waitangi (State Enterprises) Act, about which "Let the Truth Be Known" complains so bitterly, is merely the same provision that applies in any civil lawsuit: if the parties inform the Court that the case has been withdrawn, the Court is not required to investigate the matter any further.

"Let the Truth Be Known"'s title page proclamation that "The Waitangi Tribunal may now make a recommendation without being obliged to determine first whether or not the claim is well-founded" is true - but of one particular circumstance only: that in which **no** land is going to be resumed by the Crown for the purpose of awarding it to a claimant. But by the time we get to **§** page 10 we are reading that the Bill makes "the Waitangi Tribunal's recommendations binding on the Government no matter how ILL-FOUNDED they are!" The reason for this subtle unexplained switch from singular to plural, making it seem that the provision in Section 8D applies not just to one particular circumstance but to **all** claims, can only be guessed at.

"Let the Truth Be Known" has completely concealed the all-important fact that the provision in Section 8D does not apply to cases where the Tribunal makes a recommendation that land should be awarded to Maori claimants, but only to cases where no land is to be awarded - that is, in the words of the Section 8D sub-title, "**that land be no longer liable to resumption**".

CHAPTER TWO

THE "ILL-FOUNDED NATURE OF THE NGAI TAHU TRUST BOARD'S CLAIM"

Note: "AJHR" = "Appendices to the Journals of the House of Representatives".

"Let the Truth Be Known" discusses only one Waitangi Tribunal claim - the Ngai Tahu Claim, to which it shows peculiar hostility. This Claim alleges that in acquiring Ngai Tahu lands (most of the South Island) the Crown failed to fulfil its obligations under the Treaty. Contrary to frequent news media assertions, Ngai Tahu are not claiming "most of the South Island": the Claim is in respect of present Crown Land within the original Ngai Tahu purchases. It is summarised in previous Ngai Tahu publications (see "References", p 36).

On § page 24 "Let the Truth Be Known" gives what it calls "Primary Source Documentation illustrating the ill-founded nature of the Ngai Tahu Trust Board's South Island Land Claim". No reference is made to the Trust Board's own statement of Claim, nor to any of its many submissions read before the Tribunal over a period of ten months commencing in August 1987, nor to the Board's own publications - although these were all available before "Let the Truth Be Known" was published in June 1988. "Let the Truth Be Known"'s "Primary Documentation" consists of the following items -

Copies of Lt-Governor Hobson's two Proclamations dated 21st May 1840, which proclaimed British sovereignty respectively over the North Island by virtue of the Treaty of Waitangi and over the South Island "on the grounds of discovery", suggesting that British sovereignty was not proclaimed over the South Island by virtue of the Treaty (see Chapter 5A below);

A reference to Alexander Mackay's "Compendium of Official Documents Relative to Native Affairs in the South Island" (1871-3) for its "Abstract of Deeds of Purchase in the South Island", to support the assertions that "the land was purchased over and over again" and that "the purchases did not include the Maori places of residence and cultivation" (see Chapter 3A and 3B below);

A reference to the Report of the Sheehan Commission of Inquiry into Maori Reserved Land (AJHR 1975 H-3), pages 321-489, for "a detailed account" of Maori reserved land (see following paragraph below);

A reference to the Report of a 1888 Parliamentary Joint Committee on the Ngai Tahu Claim, to show that "Maori claims in the South Island have been recognized over and over again" (see pages 10-11 below);

A reference to the South Island Landless Natives Act 1906 which awarded additional land to Ngai Tahu, and a reference to the 1908 New Zealand Gazette Pages 1823-1853 giving details of awards under this Act (see page 12 below);

A reference to the 1944 Ngai Tahu Claim Settlement Act (see page 12 below); and -

A reference to the Ngai Tahu Maori Trust Board's Chairman's father having sat on a Commission chaired by a retired Land Court Judge.

On this basis, the Ngai Tahu Claim is dismissed as "ill-founded".
What are the facts?

The Sheehan Commission's 1975 Report on Maori Reserved Land (AJHR 1975 H-3) deals with Maori Reserves as at 1975 - that is, land in 1975 still owned jointly under Maori reserve status, the title never having been individualized, i.e. never transferred to individual owners. (The Report deals in "acres": one acre = .405 hectare). By 1974, according to the Report (pages 376-489), only about 8,700 acres of such land remained with Ngai Tahu, - two-thirds of it on the West Coast, and one-half acre for example in Otago.

By way of historical background the Sheehan Report refers on page 321 to "a computation made by Major Heaphy in 1870", according to which "the quantity of land set apart in the Southern Island for Native purposes amounts to 121,733 acres". This, said Heaphy "gives 53½ acres to each individual" for a Maori

population of "2,275". But by adding 51,170 acres of original Maori land in the Nelson Province Heaphy obtained a total of 172,903 acres; and the proportion of "Native Purpose" land for the whole of the South Island and Stewart Island amounted, by this "computation", to "101¾ acres" per person.

It is claimed (§ page 24) that the Sheehan Report gives "a detailed account" of these Reserves on "pages 392-489". This is not so. As noted above, the Report speaks only of the 8,700 acres which remain today, the bulk of the former reserves having been individualized long ago. The "computation" attributed in the Sheehan Report to Heaphy however, with its suggestion of a relatively generous allocation of Maori reserve land in the South Island, is presumably what "Let the Truth Be Known" wants us to consider when telling us on § page 24 of the "areas of land set apart for the sole benefit of Maoris". It requires closer examination.

Major Heaphy's Report was published in AJHR 1870 D-16. When we examine it, we find that the Sheehan Commission's quotation concerning it [Sheehan Report, page 321] is rather misleading. The additional "51,170 acres" in the Nelson Province was not land that was "set apart" for Maoris: it was land that they had never parted with. Heaphy said of this land, -

> "At Wakapuaka there are 15,150 acres, and in D'Urville's Island 36,000 acres of land which the Natives have never sold, and which if considered along with the reserves bring up the proportion to each Native . . . in the Middle and Stewart's Island to 101¾ acres."

Thus although Heaphy himself recognized that these "51,179 acres" (or 51,150) were not "Reserves", he was still inclined to classify it with "land set apart for Native purposes". This was a deceptive classification: how could the Government have "set apart" these lands when it had never purchased them in the first place? It was deceptive also because the "51,170 acres" at Wakapuaka and D'Urville Island were not Ngai Tahu land, and were certainly not available to Ngai Tahu. They were well outside the Ngai Tahu tribal area (see Map, page 17), and belonged to rival tribes in the Nelson area.

What were the distinctions among "Native Reserves", "Native purposes land", and land that the Maoris had never sold? From the official point of view the distinctions were of minor importance compared with the essential point that they were all lands that (strictly speaking) could not be Crown-granted to Europeans. But from the Maori point of view the distinctions were very important, because of the ways in which they had originated.

The New Zealand Company in the earliest days of its settlements adopted the policy of "Tenths", by which one-tenth (or in the case of Nelson one-eleventh) of all the sections allocated for settlement were to be assigned for the benefit of the Maori people. In explaining this policy the Company's theorist Edward Gibbon Wakefield was careful to distinguish the purpose of the "Tenths" from that of the "Native Reservations" of America, where the "Natives" were segregated. In 1840 Wakefield explained to the House of Commons Select Committee on New Zealand that the "Tenths" were to endow the Maori chiefs with property dispersed among the property of European settlers, so as "to make a Native aristocracy, a Native gentry" [see Jellicoe, page 9]. The increasing value that these "Tenths" would acquire with the passage of time and the progress of European settlement was what justified the mere "token" prices that the Company would pay to the Maori when purchasing the land in the first place.

In practice however, in the areas purchased by the New Zealand Company, there soon emerged a distinction between "occupation reserves", on which Maoris were actually residing, and "endowment reserves" - land which was to provide an endowment to produce funds for the benefit of Maoris, such as to provide schools and hospitals. Besides these two kinds of reserve were the areas which the Maoris had not sold, and which were therefore not "reserves", since they had never been "reserved" by the Company or the Government.

With the purchase of Ngai Tahu lands in the 1840s there was a rapid blurring of these distinctions by the Government. In the case of the Otago Purchase (1844), certain areas were withheld from sale by Ngai Tahu, who

expected to be provided also with "Tenths" out of the block that was purchased, to make up for the Company's small purchase price of £2,400 for 400,000 acres. The Government and the Company, however, with the advent of Governor Grey soon began referring to these unsold portions as "Native Reserves", and maintained that they were the only "reserves" to which Ngai Tahu were entitled. But Alexander Mackay, when Native Reserves Commissioner, always maintained that Ngai Tahu under the Otago Purchase were entitled to an endowment of 14,460 acres - one-tenth of the 144,600 acres taken over by the New Zealand Company for the Dunedin settlement - in addition to the 9,615 acres they had withheld from sale [AJHR 1888 G-1, page 14]. This is now part of the Ngai Tahu Claim.

Ngai Tahu in each of the succeeding Crown Purchases asked to withhold from sale substantial areas for their own farming purposes. But the Government refused this on the grounds that it would interfere with European settlement.

In the case of Kemp's Purchase (1848), under which the Government claimed to have purchased some 20 million acres for £2,000, there were to have been not only occupation reserves but large endowment reserves and the right to retain natural food resources ("mahinga kai") as well. Kemp later testified to this effect at the Royal Commission of Smith and Nairn, on 25th August 1879. Strange to say, similar testimony was given on 6th December 1879 by none other than ex-Governor Grey. But in 1848 Ngai Tahu received only occupation reserves of ten acres per head, increased in 1868 to 14 acres, and the missing endowment reserves and "mahinga kai" are now subjects of the Ngai Tahu Claim.

With the Banks Peninsula Purchases of 1849 Grey's Government adopted the position that the question of land that Maoris could withhold from sale, the question of price, and the question of Maori reserves to be provided out of the land purchased by the Crown, were solely for the Government to decide. In the case of the purchases of Akaroa (1856), North Canterbury (1857), and Kaikoura (1859), the Government's policies of no land to be withheld from sale, tiny purchase prices (see Map "Schedule" page 17), minimal occupation reserves (none in the case of North Canterbury), and no endowment reserves, were enforced by the expedient of the Government's allowing the Provincial authorities to sell or lease nearly all the land to European settlers before "negotiating" for its purchase from the Maori owners. All these matters are now subjects of the Ngai Tahu Claim: the question as to whether or not they are "well-founded" has been submitted to the Waitangi Tribunal for adjudication.

Heaphy's "computation" is in AJHR 1870 D-16, page 46. It shows the area of "Native purposes land" on a provincial basis, along with Maori population figures. Heaphy's population figures are slightly lower that those of Alexander Mackay's 1868 census given on page 45 of the same AJHR. Provincial divisions for tabulating Maori reserves were convenient for administrative purposes, but they did not coincide with tribal boundaries. In Nelson and Marlborough there were other tribes besides Ngai Tahu: to obtain the figures for Ngai Tahu alone we have to analyse the provincial data still further.

At about the same time as Heaphy's Report, Alexander Mackay, Commissioner for Native Reserves, compiled a schedule of South Island Maori Reserves which the Government published in Mackay's famous "Compendium of Official Documents", Volume II pages 333-342 [see "References"]. Mackay's acreages differ in some respects from Heaphy's, particularly as regards Southland.

In Southland Province there were 5,937 acres of Maori reserve land, - 4,988 acres on the mainland and 935 acres on Stewart Island. But both Heaphy and Mackay included also 2,000 acres at the Hokonui on the mainland, which had been provided by the Crown in lieu of £2,000 of the purchase-money for Stewart Island in 1864, to meet the local Maori request for a school for Maori children. (The Government in 1853 had paid Ngai Tahu £2,600 for the Murihiku Block of some 7 million acres, but in 1864 charged them £2,000 for 2,000 acres out of this same Block, to provide for a school.) This land was leased out by the Government for £100 per annum to fund the school. Heaphy included also in his computation Ruapuke Island (4,093 acres), which Ngai Tahu had never sold (see Map, page 17). Neither Ruapuke nor the Hokonui school endowment were strictly Maori reserves, but Heaphy listed them both as "Native purposes land".

For Ngai Tahu the figures of Heaphy and Mackay are as follows -

Province	Population (1868 census)		Reserves, acres		Acres per Head	
			Heaphy	Mackay	Heaphy	Mackay
Nelson	48		4,290	4,230	89	89
Marlborough	77		5,566	5,566	72	72
Canterbury	607		10,076	10,075	17	17
Westland County	73		5,920	5,937	81	81
Otago	400		14,899	15,628	37	39
Southland including Stewart Island	342	(1870 census)	13,069	7,923*	38	23
TOTAL	1,547		53,820	49,359	35	32

* Mackay's Southland acreage does not include Ruapuke Island, nor an area proposed for "Half-castes", both of which were included by Heaphy.

Without Ruapuke and the Hokonui school endowment the Southland acreages of Heaphy and Mackay would have been 6,976 and 5,923, giving a Southland "per head" average of 20 acres and 17 acres respectively, and their total acreages 47,727 and 47,359, giving a "per head" average for Ngai Tahu of 31 acres. This 31-acre average for Ngai Tahu is a far cry from the "101¾ acres" of the Sheehan Report. In Canterbury, where the minimum for a viable European farm was considered to be 100 acres, Ngai Tahu were particularly badly off with an average of 17 acres. But mere acreage figures can also be misleading. More important is the question of the quality of the reserve land, and in the case of Ngai Tahu much of this was poor. In Marlborough for instance 4,800 of the 5,566 acres was in the rugged coastal strip at Maungamauna and Waipapa allowed by the Crown out of the 2½ million acre Kaikoura Purchase in 1859 - land which the purchasing Commissioner himself (James Mackay) had described as "of the most useless and worthless description", and for which he required the owners to sign an agreement that they were to give up without payment any land that the Government required for roading. Kaikoura Ngai Tahu had asked to retain an area of 100,000 acres for pastoral farming between the Conway and Kahutara Rivers, but this was disallowed because the Crown had already allowed it to be leased to two or three European settlers. Again, of the 850 acre reserve allowed at Rapaki by the Crown in 1849, all but 60 acres was in steep hillside. Much of the other Ngai Tahu reserve land was of marginal quality also.

By 1870, the year of Heaphy's Report, in every Province there were Ngai Tahu settlements where the occupants had to subsist on inadequate reserves, after having been refused their own selections of land when their lands were purchased by the Crown. The 1868 Native Land Court provided for Ngai Tahu of Kemp's Block to receive a further 4 acres per head, but much of this when allocated proved marginal. Official records (e.g. AJHR 1891 G-7) leave no doubt that the Ngai Tahu reserves remained quite inadequate. Native Reserves Commissioner Alexander Mackay reported in 1874 that "poverty was increasing" among Ngai Tahu, because of the insufficient land that had been allowed to them. The inhabitants of the 1848 "Kemp's Purchase", which spanned most of Canterbury and Otago, were worst affected.

"Let the Truth Be Known", however, would have us believe that not only were Ngai Tahu amply provided with land, but that by 1888 their Claim had already been satisfied. The main item in "Let the Truth Be Known"'s $ page 24 "documentation illustrating the ill-founded nature of the Ngai Tahu Claim" is the following statement referring us to the 1888 Joint Parliamentary Committee's Report -

> "According to 'An Epitome of the Ngai Tahu Case' in the Appendix to the Journals of the House of Representatives 1888 I-8 page 62: 'the obligations of the Government in regard to the Maori claims in the South Island have been recognized over and over again.' In spite of which, they continued to complain about being 'landless', and were awarded MORE land under the South Island Landless Natives Act 1906, . . . But still they continued to complain, and in 1944 the Ngai Tahu Claim Settlement

> Act awarded them £10,000 for 30 years; now being paid annually in perpetuity to the Ngai Tahu Trust Board. Today, the Ngai Tahu Trust Board's claim is one of many being heard by the Waitangi Tribunal, the chairman of which is Chief Judge of the Court which 'brought into existence a regular system of concocting false claims'."

This passage illustrates the tendency of "Let the Truth Be Known" to draw entirely mistaken conclusions from documentary sources. The Parliamentary Committee's "Epitome of the Ngai Tahu Case" in AJHR 1888 I-8 occupies only pages 2 to 7 of the 99-page document. At "page 62" we are reading not from the "Epitome" but from Item 32 of the Appendix to it, headed "Report on Middle Island Native Land Question, by Mr Commissioner Mackay". This is an extract from Alexander Mackay's Royal Commission Report of 1887, published in full as AJHR 1888 G-1. Thus it was Alexander Mackay and not the Joint Committee who wrote the above passage quoted by "Let the Truth Be Known" - which for some reason has given us only **half** the sentence. The whole sentence reads as follows -

> "Although the obligations of the Government in regard to the Native claims in the South Island have been recognised over and over again, and many efforts of late have been made to devise some satisfactory adjustment of them, every attempt that has been made hitherto appears to have left the question almost as far removed as ever from a complete settlement; and I venture to indulge a hope that this may not prove the case in the present instance, for, even if the recommendations made do not meet with approval in their entirety, they will serve as a basis of operation on which other and perhaps more recommendable propositions can be founded."

"Let the Truth Be known" would have us believe from the part-sentence which it quotes on **S** page 24 that the Ngai Tahu Claim had already been satisfied, - "in spite of which they continued to complain about being 'landless'". When we read the whole sentence, however, we see that Mackay is saying that the claim is still "as far removed as ever from a complete settlement", and that he hopes that his recommendations will assist towards a settlement. And when we read the rest of page 62 we find that Mackay's actual recommendation is that Ngai Tahu should be awarded a total of 186,112 acres by the Crown - 55,412 acres for Murihiku and 130,700 acres for Kemp's Purchase! We are left wondering whether the author of "Let the Truth Be Known" read page 62 before quoting from it; and if she read it, did she understand it; and if she understood it, why did she give us only this half-sentence?

In perusing this Joint Committee Report as far as page 62 the author of "Let the Truth Be Known" must surely also have come across the following which is on page 38, - testimony given by South Island Native Reserves Commissioner Alexander Mackay before Chief Judge Fenton at the Native Land Court at Kaiapoi in 1868, about the condition of Ngai Tahu at Waimate in South Canterbury -

> "All Waitaki people live at Waimatemate. The cultivations are limited in extent; the land is quite worn out. Until their reserve was increased the people were living in a state of severe privation. Since the land has been occupied all round by the white man, they have become hedged in. The increase has made them better off, but they complain that their means of food are cut off. The wild birds and animals are not to be obtained. The population at Waimatemate is 76. Including the 300 acres recently added and the land at Waitaki, they have nine acres per head.".

The "300 acres recently added" was not extra land for Ngai Tahu: it was compensation for the original Maori Reserve at Hakataramea, which the Crown had sold to Europeans by mistake.

The Maori settlement at Waimate where 76 Ngai Tahu had to live on just 684 acres was alongside the Waimate Station of 75,500 acres, in the hands of

one European family. At Arowhenua, where 100 Maori had just 578 acres, was the Arowhenua Station originally of 30,000 acres held by one settler. The 229 Tuahiwi Maoris had 2,640 acres, but the 170,000 acre block they had asked for north of the Waimakariri had been allocated instead to just thirteen European settlers [see Acland "The Early Canterbury Runs", pages 31, 33, 65, 173, 195, etc.] These were the inequalities on which the Ngai Tahu Claim was "founded".

Unfortunately for Ngai Tahu, Mackay's Royal Commission recommendation of 1887 only led, after a painful delay of 19 years, to the South Island Landless Natives Act of 1906 [see "Ngai Tahu Land Rights", 3rd Edn, pages 39 and 66-67]. "Let the Truth Be Known" on $ page 24 refers us to the 1908 "New Zealand Gazette", pages 1823-1853, for a schedule of land entitlements under this Act. When we examine this schedule we see that Ngai Tahu residents of Kaikoura, Kaiapoi, Banks Peninsula and other places were indeed allocated sections ranging in size from four to fifty acres, - but in remote, bushclad, roadless areas such as the Waiau Block west of the Waiau River on Foveaux Strait.

For much of this land, according to a subsequent report of Government Commissioners [AJHR 1914 G2], the cost of clearance would have been greater than the land would have been worth when cleared, - and even then to be economically viable the size of the sections would have had to be not 50 acres as envisaged under the Act, but 500 acres. Of the 25,656 acres (10,393 hectares) designated on Stewart Island for the re-settlement of 730 Ngai Tahu people under this extraordinary project, Basil Howard in his "Rakiura" [1940, page 177] remarked - "It is not surprising that the natives who had been theoretically located there preferred the comparative comfort of a destitute existence on the mainland." The nominal award was for 142,118 acres, but the Act was repealed before the land was all allocated - and little of it was ever found fit for profitable farming.

The pretext that Seddon's Liberal Government gave for providing this largely useless land for Ngai Tahu was that "none other was to be had". But at the very same time that the Government was sorting out these dregs of Crown land for Ngai Tahu it was spending millions of pounds on re-purchasing farmland from large estate-owners to settle thousands of landless Europeans under the Land for Settlements Acts of 1892 and 1894 [see "Ngai Tahu Land Rights", 3rd Edn, pages 64-65]. Nearly £5,000,000 was spent in this way on nearly a million acres, including the purchase of nearly 100 estates on former Ngai Tahu lands. But none of it could be spared for Ngai Tahu. Thirty-three thousand acres of "Leases in Perpetuity", giving a 999-year lease at the fixed low rental of 4% of the original land value, were issued to landless Europeans on fertile former Ngai Tahu lands in the very year that the South Island Landless Natives Act was passed. These Europeans were assisted on to the land with low-interest loans under the Advances to Settlers Act of 1894. But these concessions were not available to Ngai Tahu. On such inequalities as these, - all breaches of Article III of the Treaty of Waitangi, - the Ngai Tahu Claim is "founded".

The 1944 Ngaitahu Claim Settlement Act, as "Let the Truth Be Known" says, provided for £10,000 to be paid to the Ngai Tahu Maori Trust Board annually for thirty years, later extended in perpetuity at $20,000 annually. This Act was passed in respect of Kemp's Purchase only, without reference to the Treaty of Waitangi under which the present Ngai Tahu Claim has been brought. The Ngai Tahu Maori Trust Board claims that the £10,000 per year awarded for 30 years under this 1944 Act, and later extended in perpetuity, being merely $20,000 per year in today's money, is inadequate to compensate the thousands of Ngai Tahu Trust Board beneficiaries for the Crown's unfulfilled obligations under the Treaty and under the terms of Kemp's Purchase. And besides Kemp's Purchase, there are eight other Crown purchases of Ngai Tahu land subject to the Claim.

The Waitangi Tribunal of course will judge the validity of the submissions made to it. But if the object of "Let the Truth Be Known" was to make a fair assessment of the Ngai Tahu Claim in advance of the Tribunal's findings it is surprising that apparently its author made no study of the Claimants' own submissions to the Waitangi Tribunal before embarking on a criticism of the Claim.

The "documentation" we are given on the Ngai Tahu Claim concludes -

> "Succinctly, since 1865 Land Court judges and Maori Affairs Department officers have given to some Maoris land rightfully owned by other Maoris and non-Maoris, issued BOGUS titles to Maoris after they'd sold land, and - on a thoroughly ill-founded tribal basis - fathered numerous Trust Boards, some of which are lodging claims with the Waitangi Tribunal!"

This statement is characteristic of much that is in "Let the Truth Be Known". The allegation about "Land Court judges and Maori Affairs Department officers" with regard to land and "bogus titles" is based on a doctored quotation (see page 30 below) from the Rees Commission Report of **1891**, which is discussed more fully in Chapter 6 below. The Rees Commission did not take any South Island evidence, so its findings are hardly relevant to the Ngai Tahu Claim. The comments in the Rees Report cannot possibly apply to events which have happened since 1891 when they were written. Nevertheless "Let the Truth Be Known" pretends that they do. The Ngai Tahu Claim at the time of the Rees Commission was the subject of another Commission entirely, - that of Alexander Mackay [AJHR 1891 G-7], which is completely ignored by "Let the Truth Be Known". A "researcher" investigating the Ngai Tahu Claim as at 1891 would do best to consult the Report of the Commission which dealt with it.

"Let the Truth Be Known"'s authority for the statement that "numerous Trust Boards" have a "thoroughly ill-founded tribal basis" seems to derive, by implication, from the McCarthy Royal Commission Report of 1980 [AJHR 1980 H-3], for "Let the Truth Be Known" on § page 7 has the following -

> "The McCarthy Commission was justifiably outraged to find that the registered Trust Boards are largely 'tribal' in name only; with, in some instances, a far higher incidence of UNKNOWN than known owners."

This seems to imply that the Commission was highly critical of Maori Trust Boards. But in its section on "Incorporations and Trusts" there is little adverse criticism, and at paragraph 28 [page 27] McCarthy has this to say -

> "The trust type of organisation is well suited for land management on a tribal or hapu basis, and there have been moves to form more tribal trusts. The successful establishment of incorporations and trusts has shown that, contrary to a view widely held in the early 1960s, multiple ownership is not necessarily a bar to the economic use of land. Success, however, will come only with the will to co-operate, access to technical advice and to capital for development, together with managerial skills of a high order in the trustees and boards of management."

The McCarthy Report of 1980 is not "outraged" at the "far higher incidence of unknown owners". The example we are given on § page 7 of a trust with 6,000 owners of whom only 753 of known address received dividends of $5 or more is cited by the McCarthy Commission [page 31] not as a matter for condemnation but as a matter of fact. Fragmentation of ownership "has brought about intolerable problems" of administration says the Report, but on the other hand "The many thriving incorporations and trusts bear witness to the fact that fragmented incorporation and trust ownership can contribute to the gross national product just as efficiently as land that is individually owned" [McCarthy Commission Report page 36.] The Report agrees with Chief Judge Durie: "Many Maoris today see fragmentation not as a problem, but as the answer to one - as an opportunity to return to pre-European communal land ownership" [ibid.]

To suggest that the Ngai Tahu Claim is one of a number of "false claims" regularly and systematically "concocted" under the authority of the Chief Judge of the Maori Land Court is absurd. The Claim dates from 1849, fifteen years before the Native Land Court was heard of.

CHAPTER THREE

GOVERNMENT PURCHASES OF MAORI LAND

(see Map on page 17)

A. SUCCESSIVE GOVERNMENTS OFTEN PURCHASED THE SAME LAND "TIME AND TIME AGAIN" FROM DIFFERENT TRIBES ?

"Let the Truth Be Known" states repeatedly that the Government "often" paid different tribes for the same land. This is stated in the "Primary Source Documentation" on pages § 24, 25, 38 and 39, and also on § page 4 as follows -

> "The Crown's right of pre-emption (that is the sole right to purchase land) placed the Government in an invidious position. In the event of a purchase being made from Maoris not entitled to the land in question, the Government was immediately placed in the embarrassing position of either remaining a direct party to a possible act of injustice, or having to extricate itself from that position by a double expenditure of public money. As the evidence on record bears testimony, successive Governments adopted the latter option, and the land was often paid for time and time again."

The "Documentation" for this statement refers us, on § page 24, to Mackay's "Compendium" [Vol I Part 3, pages 3 - 5] for its Abstract of South Island Crown purchases. It refers us on § page 38 to AJHR 1928 G-7 for the Tauranga case, and it refers us on § page 39 to Sir Keith Sinclair on the Waitara Dispute of 1860.

The Tauranga "example" cited by "Let the Truth Be Known" was entirely a matter of a tribal dispute in 1928 over the ownership of land confiscated by the Government in 1864 after the Land Wars, for which a later Government in 1981 paid compensation. The Waitara "example" is based on a misreading of Sinclair's "The Origins of the Maori Wars". These Tauranga and Waitara "examples" are discussed further in Chapter 8 (page 34-35) below.

Thus apart from Tauranga and Waitara, the allegation about Maori land "being often paid for time and time again" is based entirely on the South Island "documentation", in which "Let the Truth Be Known" states as follows -

> "The land was purchased from Ngatitoa, Ngai Tahu, Ngatiawa, Ngatirarua, Ngatitama, Rangitane, Ngatirahiri, Ngatikuia, Ngatikoata, and Ngatimamoe" (§ page 24), and -
>
> In the South Island "the land was often paid for over and over again" (§ page 25).

The statement that in the South Island "the land was often paid for over and over again" cannot be supported from Mackay's "Abstract", or from the documents which follow in his "Compendium". Of 37 Purchases listed in the "Abstract", 32 are shown to have involved one tribe only. Of the other five transactions, four involved two tribes and only one involved several tribes. Thus of the hundreds of Crown transactions involving Maori land in New Zealand we have Tauranga, Waitara, and five South Island instances, as "evidence" that Maori tribes were "**often**" paid for their land "time and time again".

There is no doubt that the Crown got itself into a muddle purchasing Maori land in the northern part of the South Island - the old "Nelson Province". The Map on page 17 (showing places referred to in this chapter) was especially prepared by Commissioner Alexander Mackay in 1875 to enlighten Parliament on the position. It shows the complex criss-cross of overlapping Crown land purchase boundaries in that area. This was the web that the Crown had woven in its haste to provide the New Zealand Company with plenty of cheap land for its settlers, following the debacle of the "Wairau Massacre". Another official map in AJHR 1874 G-6 shows the Nelson Province purchases in greater

detail. Mackay's analysis of all the South Island purchases is set out in the same two AJHRs: 1874 G-6 (Nelson Province) and 1875 G-3 (whole South Island).

This muddle was partly inherited from the New Zealand Company, which had previously got into its own muddle because of William Wakefield's pretentious "purchases" in that area, culminating in the disastrous "Wairau Massacre" of 1843 when the arrest of Te Rauparaha was rashly attempted by Company men. The initial difficulty was that the customary tribal title in this whole area had been completely disrupted by the devastating raids carried out in the 1820s and 1830s by North Island tribes led by Te Rauparaha of Ngatitoa, raids which had extended as far south as Banks Peninsula, Arahura, and even Tuturau in Murihiku (Southland). Some sub-tribes of Te Rauparaha's confederation settled in the coastal territory from Golden Bay to the Wairau along with local survivors. Only Ngai Tahu successfully repelled the invaders [see Anderson's "Te Puoho's Last Raid"], and in a series of counter-attacks from 1832 to 1839 they drove Ngatitoa back beyond Te Parinuiowhiti ("White Bluff" near Cloudy Bay - see Map on page 17). South of that point Ngatitoa let their fires go out. Nevertheless in 1847 Ngatitoa accepted payment from Governor Grey in Wellington for the whole east coast as far south as Kaiapoi, under the "Wairau Purchase". And in 1853 they accepted further payment for land as far south as Arahura on the west coast, under the Waipounamu Purchase (see Map "Schedule", page 17).

Following the "Wairau Massacre" of 1843 the New Zealand Company's settlers at Nelson had been hemmed in, unable to get on to the Maori land that the Company had promised them, for fear of Ngatitoa. They were outraged that Grey's predecessor Governor FitzRoy had refused to punish Ngatitoa for the "Massacre", and still more outraged that Ngatitoa and their allies remained in possession of the Wairau when the settlers wanted it for themselves. Grey's mission as Governor was to rescue the Company and its settlers from this predicament, and to help the land business back to profitability. His Wairau and Waipounamu Purchases released the Nelson settlers from their frustration.

Grey spurned the advice of the Protector of Aborigines Department, who advised that before purchasing Maori land it should all be visited and the true owners verified by interviewing the occupants [Shortland's "Southern Districts" pages 284-291 and 302-304]. He abolished the Protectors' office in 1846 on the grounds that it was "incompetent", and decided that the interests of Maoris could be best looked after by himself. A consummate politician, Grey contrived to use Crown land purchases to gain political ascendancy over the tribes. His £3,000 Wairau Purchase on 18th March 1847 from Ngatitoa followed his seizure of Te Rauparaha in 1846, and served to placate Ngatitoa - whom Grey described in a Despatch to Earl Grey eight days after the Purchase as "a very treacherous and dangerous tribe". The payment of money for land - preferably by instalments - Grey saw as a means of securing tribal allegiance to the Crown.

Ngai Tahu, seated quietly at home, were unaware that the Governor was "buying" their land from Ngatitoa over their heads. Unknown to them, the boundary of the Wairau Purchase which Grey had made with Ngatitoa included the coast from White Bluffs south to Kaikoura and Kaiapoi (see Map, page 17). This was all Ngai Tahu territory, retrieved by their successful counter-attacks of the 1830s. Paying Ngatitoa for this was a mortal threat to Ngai Tahu mana over all their lands. Thus Grey put pressure on Ngai Tahu to come to terms very unfavourable to themselves when it came to Kemp's and later purchases. As late as 1859, James Mackay by his own account used the Ngatitoa "bugbear" to get Ngai Tahu to surrender cheaply their rights over the Kaikoura Block.

On their map of Kemp's Purchase in 1848 the Crown and Company officers drew a straight line from Kaiapoi to the West Coast and labelled it "the boundary of Nelson and of Ngatitoa" (see "Kemp's Purchase Boundary" on Map, page 17). They then maintained that the Wairau Purchase had included not only the eastern coastline to Kaiapoi but the interior of the island along "Kemp's Boundary" as well, and that Kemp's Purchase included also the whole West Coast although Kemp's Deed included no west coast place-name except "Wakatipu Waitai" (Lake McKerrow). These devious transactions further complicated the muddle.

Mackay's "Compendium" contains transcripts of the Deeds and other documents involved in these South Island purchases. When we examine these we

find how the Crown set about extricating itself from these difficulties. In the Nelson area, the Crown followed a policy of paying all tribes - conquerors and conquered - for their entire respective interests rather than attempting the difficult alternative of establishing their respective customary tribal boundaries within the block. In the case of North Canterbury, Kaikoura and Arahura, the Crown for political reasons (never having visited these areas) paid Ngatitoa, - but were subsequently advised by Commissioners Hamilton and James Mackay that Ngai Tahu were the real owners and occupants. New deeds were then negotiated with Ngai Tahu: "Hamilton's Purchase" 1857, Kaikoura 1859, and Arahura 1860. And in other cases two allied tribes were joined in the same deed - as for example Ngai Tahu and Ngati Mamoe for Stewart Island. This is what "Let the Truth Be Known" calls "Paying for the same land over and over again". It was done by the Crown for its own convenience, not as the helpless victim of its own right of pre-emption as "Let the Truth Be Known" suggests.

Under the Waipounamu Deed of 1853 the Crown sought to purchase from Ngatitoa, Ngatiawa, Ngatikoata and Ngatirarua, all their remaining respective claims in about 6,000,000 acres of the South Island north of Kemp's "boundary", and on the West Coast as far south as Arahura (between Hokitika and the Grey River - see Map). In a series of subsidiary deeds the various sections of Ngatiawa, Ngatitama, Rangitane and Ngatikuia were included. These were all tribes which had participated in or had been victims of the devastating raids carried out by Te Rauparaha's confederation in the 1820s. Chief Land Purchase Commissioner Donald McLean named Ngai Tahu also in the Waipounamu Deed: but they were never consulted, never signed the deed, and were never paid.

These devious and complicated land dealings were to the advantage of the Crown, the Company and the settlers, - but not of the rightful Maori owners. Years later the Crown conceded that Ngai Tahu and not Ngatitoa were the rightful customary owners of the North Canterbury Block and the Kaikoura Block. But by this time both blocks had been almost entirely sold or leased on the authority of the Crown to European settlers, against the constant objections of Ngai Tahu. Consequently Ngai Tahu, having lost the land anyway, had no option but to sign the Crown's deeds of sale (the "Hamilton's" and "Kaikoura" Purchases - see Map) for a pittance - £800 for more than a million hectares, with a tiny residue of inferior land on the Kaikoura coast left for themselves. In Hamilton's North Canterbury Purchase, Ngai Tahu were left with no reserves at all. The Crown also conceded that Ngai Tahu had **not** sold the West Coast under Kemp's Purchase, and that none of it belonged to Ngatitoa. In 1860 Commissioner James Mackay was sent to buy it from its inhabitants, Poutini Ngai Tahu - and the Crown paid £300 for the three million hectare Arahura Block.

In the South Island the "double expenditure of public money" deplored by "Let the Truth Be Known" [$ page 4], arose from the Crown's haste and anxiety to provide the New Zealand Company's settlements with plenty of cheap land, and from Grey's deliberate policy of dealing with tribes separately and divisively, and thus seeking the political advantage of the Crown rather than the genuine interests of the Maori people. These "double purchases" were to the detriment of the Maori people and to the advantage of the Crown, - not the reverse as "Let the Truth Be Known" implies.

The notion that when the Crown purchased blocks of land from more than one tribe with customary title it was purchasing the land "over and over again" shows little understanding of Maori customary title. Buying and selling land as a commodity was quite foreign to the Maori. It was introduced into New Zealand by capitalist land-speculators such as the New Zealand Company, and then carried on by the Crown as its main source of revenue and influence.

Maori customary title was not a matter of separately divided private properties. It was a complex system of often over-lapping rights to go on to the land and use its resources, based on family and intertribal relationships, and much complicated by intermarriage among sub-tribes and tribes. This system was disrupted by the introduced system of private ownership and private speculation in land. When the land companies and the Crown engaged in purchasing Maori land their aim was not to do celestial justice but to make a profit, - by buying land cheap from Maoris and selling it dear to settlers.

SCHEDULE

OF LANDS PURCHASED FROM THE NATIVES IN THE SOUTH ISLAND AND STEWART'S ISLAND

Index Letter	District purchased	Name of Tribe ceding Claims	Date of Purchase	Amount Paid	Approximate Acreage contained in purchase.	Extent of Land Reserved for Natives.
			£. s. d.	Acres	A. R. P.	
A.	Nelson District	Ngatitoa, Ngatitama	25th Oct. 1839	1780-15-0	151,000	3053 1 30
	N.Z. Co.s Purchase	Ngatiruaua Ngatiawa	8th Nov.1839			1554 0 0
B.	Wairau	Ngatitoa	18th Mar.1847	3000-0-0	3,002304	
C.	Pakawau	Ngatitoa Ngatitama	Between 13th May 1852 and 7th Mar. 1856.	7637-0-0	5,983336	19568 0 9
D.	Waipounamu	Ngatikoata Ngatirama				
E.	Separation Pt	Ngatiawa Ngatikuia & Rangitane.				6359 0 0
F.	a. Kemp's Purchase	Ngaitahu	12th June 1848	2000-0-0	20,070314	1174 2 16
						4793 2 24
G.	Port Cooper	Dº	10th Aug. 1849	200-0-0	59.000	859 0 0
H.	Port Levy	Dº	15th Sept. 1849	300-0-0	121.000	1361 0 0
I.	b. Hamilton's Prh.	Dº	10th Dec. 1866	200-0-0	80.000	1298 0 0
J.	c. Otakou (Otago)	Dº	31st July 1844	2400-0-0	400.000	9615 0 0
K.	Murihiku	Dº	17th Aug 1853	2600-0-0	7,407.206	4830 0 26
L.	Stewart's Island	Dº	29th June 1864	6000-0-0	500.000	(400 0 0)
	d. North of Kaiapoi (Hamilton's Prh.)	Dº	5th Feb 1857	700-0-0		935 0 0
						(2000 0 0)
	e Kaikoura P.	Dº	29th Mar 1859	300-0-0		5565-0-0
	f Arahura P.	Dº	21th May 1860	300-0-0		10224-0-0

Note a. Besides the land originally reserved for the Natives in the purchase, 1174 ac 2 rds 16 pr was subsequently added by the General and Prov.t Governments 5937 ac 1 rd 16 pr were reserved on the West Coast in 1860, and the Native Land Court awarded 4793 ac 2 rds 24 pr in 1868 in final satisfaction of the engagements in the Deed of Purchases, making a total of 18,264 ac 2 rds 16 pr.

Note b. This Block includes 30000 ac originally purchased by the Nanto Bordelaise Company from the Natives for £ 234, and subsequently sold to the New Zealand Company in June 1849 for £ 4500.

Note c. The Native Reserves within this Purchase were land excluded from sale.

Note d. This Purchase overlaps territory previously acquired from the Natives within the Boundaries of Kemp's, the Wairau and the Waipounamu purchases.

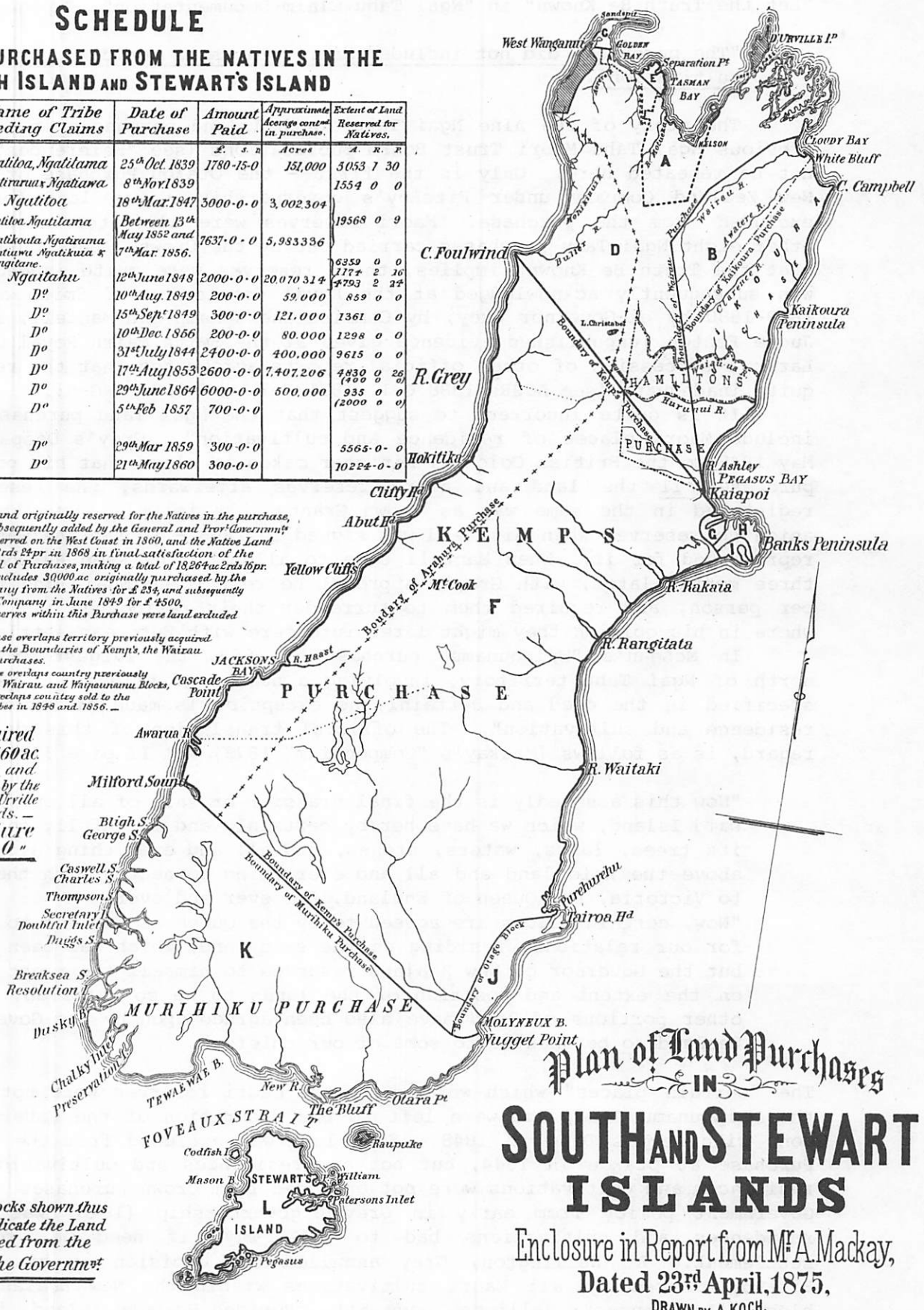
Note e. This purchase overlaps country previously included in the sale of the Wairau and Waipounamu Blocks.

Note f. This Block overlaps country sold to the Government by other tribes in 1848 and 1856.—

Total Area of aquired Territory 37,774160 ac. minus Native Reserves and 51,000 acres retained by the Natives, exclusive of D'Urville and Ruapuke Islands.—

Total Expenditure £ 27,417 „ 15 „ 0 „

Blocks shown thus indicate the Land not purchased from the Natives by the Governmt



Plan of Land Purchases IN SOUTH AND STEWART ISLANDS

Enclosure in Report from Mr A. Mackay,

Dated 23rd April, 1875.

DRAWN BY A. KOCH.

B. THE SOUTH ISLAND PURCHASES "DID NOT INCLUDE MAORI PLACES OF RESIDENCE AND CULTIVATION" ?

"Let the Truth Be Known" in "Ngai Tahu Claim Documentation", § page 24, says -

> "The purchases **did not** include 'Maori places of residence and cultivation'.

The story of the nine Ngai Tahu South Island purchases is summarized in previous Ngai Tahu Maori Trust Board publications (see "References"), and need not be repeated here. Only in the first - the Otakou Purchase of 1844 by the New Zealand Company under FitzRoy's governorship - was land for Maori use excluded from the purchase. Maori reserves were allocated in seven of the other eight Ngai Tahu purchases carried out by the Crown. But contrary to what "Let the Truth Be Known" implies, these reserves were quite inadequate. This was subsequently acknowledged at the Royal Commission of Smith and Nairn in 1879-1880 by ex-Governor Grey, by Commissioners Kemp and Mantell, and by Chief Judge Fenton [unpublished evidence given at the Smith Nairn Royal Commission]. Later a succession of other official reports agreed too that the reserves were quite inadequate [see AJHRs 1888 G-1, 1891 G-7, and 1921-2 G-5].

It is quite incorrect to suggest that the Ngai Tahu purchases "did not include Maori places of residence and cultivation". Grey's Despatch of 15th May 1848 to the British Colonial Minister makes it clear that his policy was to purchase all the land and award reserves afterwards, the reserves to be registered in the same way as Crown Grants. It is well known that Kemp set aside no reserves when his Deed was signed in 1848 - in fact he was officially reprimanded for it. When Mantell came to allocate the Kemp Purchase reserves three months later, with Grey's approval he restricted Ngai Tahu to ten acres per person, and required them to surrender their residences and cultivations where in his opinion they might later interfere with European settlement.

In McLean's "Waipounamu" purchase of 1853, the largest Crown purchase north of Ngai Tahu territory, involving a number of tribes, no reserves were specified in the deed and certainly no exception is made of "Maori places of residence and cultivation". The official translation of this deed, in this regard, is as follows [Mackay's "Compendium" 1873, Vol II page 308] -

> "Now this assuredly is the final transfer or sale of all our lands on the said Island, which we have hereby certainly and faithfully conveyed, with its trees, lakes, waters, stones, and all and everything either under or above the said land and all and everything connected with the said land, to Victoria, the Queen of England, for ever and ever.
> "Now, certain places are agreed to by the Queen of England to be reserved for our relations, residing on the said land, which has been sold by us, but the Governor of New Zealand reserves to himself the right of deciding on the extent and position of the lands to be so reserved, and certain other portions of land have also been agreed upon by the Governor of New Zealand to be granted to some of our chiefs."

The "certain places" which were to become Maori reserves were not defined in the Waipounamu Deed, but were left to the discretion of the Governor, as was done with Kemp's Deed in 1848. Some land was excluded from the N Z Company Purchase at Otakou in 1844, but not as "residences and cultivations". Maori residences and cultivations were **not** excluded from Crown purchases as of right. Government policy from early in Grey's governorship (1846) was that Maori residences and cultivations had to make way, if need be, for European settlement. At Wellington, Grey annulled the decision of his predecessor FitzRoy to reserve all Maori cultivations within the New Zealand Company's block ["References": Jellicoe, page 51]. Besides Ruapuke Island, in the South Island there were only three areas of Maori land excluded from Crown purchases, and these were not "residences and cultivations" (see Map on page 17).

CHAPTER FOUR

MAORI CUSTOMARY TITLE

A. BASED ON "WAR OF THE MOST INHUMAN AND MERCILESS DESCRIPTION" ?

On § page 25 of "Let the Truth Be Known" we read from a photocopied unsourced extract about the "background" and "nature" of Maori customary title:

> " . . . War of the most inhuman and merciless description raged . . . with very little cessation. Massacre and cannibalism because [sic] the order of the day and night; no man's life was safe; all metes, and bounds, and titles were overthrown and a new Native title to land arose - the title by conquest".

No source is given us for this nasty, semi-literate little piece, which does not even begin to explain Maori customary title. To suggest that Maori warfare was more "inhuman and merciless" than any other is, of course, pure prejudice.

For example the savagery of European warfare is well documented. Those who doubt it should read Stephen Runciman's History of the Crusades, or C.V. Wedgwood's History of the Thirty Years' War, or an account of Cromwell's conquest of Ireland or the British reprisals against the Scottish highlanders after the battle of Culloden, or look at Goya's etchings of "Disasters of War" (an eye-witness portrayal of the Napoleonic war between France and Spain, two leading Christian nations), or the First World War poetry of Wilfred Owen, or an account of the Nazi concentration camps or of the bombing of Dresden or Hiroshima. It is surprising that anyone should think that modern warfare in any of its forms is other than "most inhuman and merciless".

The brutality of war is a human characteristic, not just a Maori one. If "war of the most inhuman and merciless description" **was** a feature of Maori society, the history of Europeans in their home continent for the last two thousand years has also been one of repeated wars, massacres, and brutalities. Warfare has been the scourge of all human societies, Maori and non-Maori.

B. "LARGE TRACTS OF NEW ZEALAND" WERE NOT OWNED BY ANY MAORI TRIBE ?

On § pages 3 - 4 "Let the Truth Be Known" informs us -

> "In pre-European times . . . there were only isolated, very small, groups of Maori living in the South Island; and even in the more populated North Island there were large tracts of land **between** the territories of the different tribes".

The pre-European Maori population of the South Island consisted of communities that were small by modern standards, but they were anything but "isolated". Ngai Tahu in particular were inveterate travellers throughout their vast tribal territory and visited one another regularly for trade and social purposes. Under the food-gathering economy which prevailed, Ngai Tahu also ranged far and wide each season for their accustomed foods especially during the summer season when food-gathering was at its peak.

A good account of this economy is given in Dr Atholl Anderson's "When All the Moa Ovens Grew Cold". Dr Anderson's evidence to the Waitangi Tribunal on the Ngai Tahu Claim [WAI-27 #H1] shows that there are scores if not hundreds of Maori archaeological sites in the interior of the South Island, which they frequented during their food-gathering expeditions and in search of the stone necessary for their technology, and where they also had settlements [see also

Anderson's "Te Puoho's Last Raid"]. The search for the priceless greenstone took them into the remotest recesses of the Southern Alps, where its sources were jealously husbanded. The re-discovery in 1970 of a pre-European quarried greenstone deposit at remote Slip Stream in the Dart Valley is evidence of this [see Russell Beck's "New Zealand Jade" 1984, pages 51ff]. The evidence of place-name accounts such as those of Herries Beattie indicates that pre-European Maori were acquainted with the whole of the South Island. The whole territory was frequented by, and therefore subject to the customary ownership of, one hapu (sub-tribe) or another. The Journals of Cook and Boultbee show for instance that Maoris were present even in remote parts of Fiordland.

"Let the Truth Be Known"'s idea that there were "large tracts of land between the territories of the different tribes" is not new. It was advanced by the New Zealand Company and its supporters in the 1830s and 1840s to support the "waste land" theory, which held that land not actually cultivated was "waste land" belonging to no-one. Lord Durham, at one time Governor of the New Zealand Company, argued that these "empty lands" were "the rightful patrimony of the English people, which God and Nature have set aside in the New World for those people whose lot has assigned them but insufficient portions in the Old."

On this basis the British Government at first proposed to treat the vast uncultivated areas of New Zealand as "waste lands" not subject to Maori ownership. But this was strongly opposed by Bishop Selwyn, Chief Justice Martin, Governor Grey, and others with a knowledge of Maori tribal society and the food-gathering economy, who pointed out that the so-called "wastelands" were in fact an essential traditional source of food for the Maori - their mahinga kai. As was the case among the nations of Europe, there were frequent territorial disputes among Maori tribes. But there were no territories not claimed by one tribe or another, or never visited by any.

Just as rural communities in medieval England exercised commonage rights over vacant wilderness areas between villages for their food-gathering, so did Maori tribes and sub-tribes in pre-European New Zealand. This is characteristic of societies where food-gathering is important. These Maori food-gathering and fishing rights were essential economically, were jealously guarded and highly organized, and in fact were an integral part of the social and political fabric of Maori society. The idea that there were unused "vacant tracts of land" claimed by no-one is a mistaken notion born of a failure to understand the importance of food-gathering in pre-industrial society.

In the "Enclosures" of the 18th and 19th centuries the commonage rights of English and Irish villagers and Scottish crofters were usurped by the gentry, who had control of Parliament. The would-be gentry of the New Zealand Company's settlements sought to do the same to the Maori in New Zealand, - and with the backing of the Government from the time of Governor Grey they did so. As noted above, Grey joined with Selwyn and Martin in protesting against the British Government's proposal for outright confiscation of the "wastelands". But he soon found a way of putting the Company's settlers in possession of the "wastelands", through the policy that he introduced with Kemp's Purchase. There Ngai Tahu were persuaded to sign over the whole of their lands by the promise that the Government would allow them a fair share of the resources of the "wastelands" - their mahinga kai - when the land was surveyed. This promise as yet remains unfulfilled, and is now part of the Ngai Tahu Claim.

During his visit to Ngai Tahu in 1843-44 Edward Shortland reported that the doctrine that there were large tracts of ownerless land in New Zealand was "a very favourite one" among the Canterbury squatters, "who landed full of the idea that there were large spaces of what they termed waste and unreclaimed land, on which their cattle and flocks might roam at pleasure, and to which they had a better right than those whose ancestors had lived there, fished there, and hunted there; and had, moreover, long ago given names to every stream, hill, and valley of the neighbourhood. The older residents had learnt that, although the theory might be very convenient, it was useless to try to apply it to New Zealand." [Shortland, "The Southern Districts of New Zealand" 1851, pages 259-269.] Shortland might have been surprised had he known that this "doctrine" would still be alive and well in New Zealand in 1988.

"Let the Truth Be Known" on $ page 25 says -

> "A good deal of New Zealand territory was NOT Maori-owned at the time the Treaty was signed; . . . But the land was nevertheless purchased, and often paid for over and over again."

As indicated above, capable contemporary witnesses such as Edward Shortland (who became Hobson's private secretary in June 1841) are emphatic that the "wastelands" of New Zealand were subject to Maori customary title and claimed by one tribe or another, and this is confirmed by the traditions of the various Maori tribes themselves. In his "Traditions and Superstitions of the New Zealanders" (1856, page 280) Shortland describes the "buffer zones" between the territories of rival tribes as "land lying between the lands occupied by neighbouring tribes, claimed by both, but occupied by neither."

Such land can hardly be said to have been "NOT Maori-owned". The point is that ownership in such a case was claimed by more than one tribe or hapu, and none ventured to occupy it permanently because it was unsafe to do so. Such a situation of course has not been uncommon in other societies, and might be compared with that of the Scottish and Welsh "Marches" in medieval times - claimed by both the English and the Scots or Welsh, but vacated by everybody in times of war. Today a parallel might be seen in the demilitarized zone between North and South Korea, which is occupied by neither state, - but it could hardly be said to be "not Korean-owned".

CHAPTER FIVE

THE "RIGHT OF DISCOVERY"

A. BRITISH SOVEREIGNTY OVER THE SOUTH ISLAND "BY RIGHT OF DISCOVERY" ?

This old chestnut seems to be a favourite among opponents of South Island Maori land claims, and is advanced as evidence that the Treaty of Waitangi does not apply to the South Island. As "Let the Truth Be Known" has it -

> "Furthermore, Governor Hobson proclaimed British sovereignty over the South Island and Stewart Island 'on the grounds of Discovery': see copy of the Proclamation on page 24" ($ page 23, 25).

Exactly what did happen in the South Island in 1840 as regards British sovereignty and the Treaty? As is well-documented, some weeks after the signing of the Treaty at Waitangi on 6th February Hobson sent his deputy Major Bunbury to seek South Island signatures to the Treaty, and Bunbury obtained these in May and June of 1840. On 17th June 1840 at Cloudy Bay Bunbury duly proclaimed British sovereignty over the South Island by virtue of its "having been ceded in sovereignty by the several Native Independent Chiefs to Her Most Gracious Majesty Victoria" [see log of HMS Herald quoted in McNab "The Old Whaling Days" 1913, page 378].

Meanwhile at the Bay of Islands two or three weeks' sailing-time away Hobson, unaware of the impending success of Bunbury's mission and anxious about the South Island ambitions of the New Zealand Company, decided to proclaim British sovereignty over the South Island "by right of discovery", which he did - unknown to Bunbury - on 21st May 1840.

Events soon obliged Hobson to rely upon Bunbury's proclamation, rather than on his own. On 11th July 1840 the French corvette "L'Aube" of 22 guns and 160 men called at the Bay of Islands en route to support the expedition then on

its way to Akaroa to begin colonizing the South Island for France. The French naval commander Lavaud called on Lt-Governor Hobson. On 21st July Hobson reported to his immediate superior Governor Gipps of New South Wales that Lavaud had challenged the British "right of discovery" over the South Island -

> "On the receipt of my letter Captain Lavaud requested an interview, which I granted on the 20th instant, Major Bunbury, 80th Regiment, and Captain Stanley being present. The conversation was introduced by Captain Lavaud denying the right of the British Government to investigate the titles of French subjects to lands obtained from the natives." [Gov. Gipps Despatch No 118 to Lord Russell, 24th August 1840]

Hobson decided to counter the French challenge using Bunbury's proclamation. On 23rd July he requested Captain Owen Stanley of HMS "Britomart" to proceed urgently to Akaroa, secretly informing him that -

> " . . . The tone in which Captain Lavaud alluded to Akaroa and Banks Peninsula excite in my mind a strong presumpion that he is charged with some mission in that quarter incompatible with the sovereign rights of Her Britannic Majesty, and which as I have observed it will be your study by every means to frustrate. . . You will perceive by the enclosed copy of Major Bunbury's declaration that, independent of the assumption of the sovereignty of the Middle and Southern Islands as announced by my proclamation of the 21st May last, a copy of which is also enclosed, the principal chiefs have ceded their rights to Her Majesty through that Officer, who was fully empowered and authorised to treat with them for that purpose: it will not therefore be necessary for you to adopt any further proceedings." [see Buick, "The French At Akaroa" (1928), p 85-6.]

The following day, 24th July, Captain Lavaud wrote to the French Minister of Marine and the Colonies a report from which the following is a translation -

> " . . I believe it is quite possible through negotiations with the British Cabinet to get it to repudiate Captain Hobson's first proclamation, which justifies the Queen's sovereignty by right of discovery, which cannot be tolerated by other nations. It seems to me that this supposed right cannot be invoked at the present day on the basis of Captain Cook's discovery of these islands: moreover, rights of discovery can only be exercised over uninhabited countries, and not over lands whose soil is trodden by those to whom it should rightfully belong. . . Given the present state of affairs, if the British government has not yet obtained the signatures of the Banks Peninsula chiefs, in other words their consent recognizing its sovereignty, I shall attempt to convince the chiefs that they should not relinquish their land to any nation, but retain it for themselves and their descendants by accepting the patronage of the French nation and its government." ["The French in Akaroa 1840", French Department, University of Canterbury October 1984 pages 24-5, and Buick op. cit., page 96.]

Thus it is clear that Captain Lavaud contemplated the French Government's challenging Hobson's "Right of Discovery" proclamation of 21st May, and that he believed that the way to do it would be to himself obtain the consent of South Island chiefs to French patronage - a course which he considered practicable "if the British government has not yet obtained the signatures of the Banks Peninsula chiefs." But, as Lavaud subsequently learned from Captain Stanley at Akaroa, Major Bunbury had already obtained the signatures of Ngai Tahu Banks Peninsula chiefs to the Treaty of Waitangi at Akaroa. The potential French challenge to British sovereignty in the South Island then collapsed.

This episode had its sequel in the French Chamber of Deputies on 28th May 1844 when the French Government was under attack by its opposition for having decided to abandon to the British the French dream of colonizing the South

Island of New Zealand - a very unpopular decision with the French imperialists in the French National Assembly. The French Foreign Minister justified his government's acknowledgement of British sovereignty over the South Island by quoting the very words of Bunbury's Proclamation of 17th June 1840: "having been ceded in sovereignty by the several independent chiefs" - "ayant été cédée en souveraineté, par differens chefs indépendans" ["Fifteenth Report of the Directors of the New Zealand Company", London 1844, page 75].

Thus not only in the eyes of British colonial administrators but also on the international stage, British sovereignty over the South Island was secured not by Hobson's Proclamation by "right of discovery" but by the South Island Maori signatures to the Treaty of Waitangi. Although Hobson's original proclamation of 21st May 1840 used the words "on the grounds of discovery", in later printings these words were omitted, - as in the version appearing in Mackay's "Compendium" Vol. I Part 3, pages 26-27. [See also Rutherford, "The Treaty of Waitangi & the Acquisition of British Sovereignty", page 23.]

B. THE "RIGHT OF DISCOVERY" WAS ALLOWED FOR MAORIS BUT NOT FOR EUROPEANS ?

On § page 24 "Let the Truth Be Known" tells us -

> "The 'right of discovery' was one of the Maori's recognized principle [sic] rights to land. Unfortunately, the right was not considered to be as valid for the European settlers as is was deemed to be for the Maori, and 'nearly the whole of the South Island was purchased by the Government'."

The suggestion that European settlers "discovered" parts of the South Island has already been dealt with in Chapter Four above. Neither Edward Shortland nor any other official of the time ever supported this absurd notion.

"Right of discovery" was a European concept, not a Maori one. Maori tribes acquiring additional territory did so by agreement, by marriage between ruling families, or by conquest, - as was also the case among European nations. The first people to arrive in New Zealand can be considered to have discovered it since there was no-one here before them. Those who came later obviously cannot be said to have "discovered" New Zealand as it was already inhabited - unless, of course, the inhabitants are to be deemed "not people".

One wonders whether those who canvass Hobson's proclamation of sovereignty over the South Island "by right of discovery" are aware of the full implications of this alleged "right". It is based on the old medieval doctrine of "terra nullius" - literally "land of nothing" - a term applied to a land inhabited only by "heathens" or "savages" incapable of understanding or entering into formal contracts over land. Such beings could be put to the sword as heretics - as indeed they were by the Spanish conquistadors in America. In the 18th century the mercantile nations of Europe claimed the so-called "right of discovery" to new territory by denying the rights of the inhabitants, who were deemed to be inferior beings.

This doctrine was applied by the British in Australia, with cruel results for the Australian aborigines - who were driven off their lands and at times hunted like animals. "Nigger, nigger, pull the trigger, Bang! Bang! Bang!" not so long ago was a jingle called by school-children in Australia and even in New Zealand in consequence of this doctrine, when they saw a coloured person.

To suggest that Hobson's proclamation "by right of discovery" could have been valid is to suggest that Maoris were not people. This is turning back the clock with a vengeance - by about 300 years in fact. The Treaty of Waitangi was an acknowledgement that the doctrine of "terra nullius" was obsolete, and had no place in an enlightened world. Those like the author of "Let the Truth Be Known" who resurrect the British "right of discovery" over the South Island of New Zealand should ponder where they stand on this question.

CHAPTER SIX

MAORI LAND COURT JUDGES AND MAORI AFFAIRS DEPARTMENT OFFICERS HAVE BEEN ISSUING WRONGFUL AWARDS AND "BOGUS TITLES" FOR OVER A CENTURY ?

> "For over a century, SANCTIONED BY PARLIAMENT, Land Court judges and Maori Affairs Department officers have given to SOME Maoris land rightfully owned by other Maori and non-Maori; issued BOGUS titles to Maoris **after** they'd sold land" [$ page 11-12.]

This statement, or some variation of it, is made repeatedly in "Let the Truth Be Known" ($ pages 5, 11-12, 24, 25, 28, 37, 40, and the "Documentation" on $ page 29), citing as "reference" the 1891 Report of the Commission of Inquiry into Native Land Laws chaired by W.L. Rees [AJHR 1891 Session I G1]. "Let the Truth Be Known" would have us believe that because the Rees Report alleged certain abuses in 1891 the same abuses must have been going on ever since, - "for over a century"!

"Let the Truth Be Known" is misleading as to what the Rees Report actually said. When we read the Report we find that it describes the Native Land Courts and its judges and officials as the **victims** rather than the perpetrators of the mischief that the Report complains of. The authors of the mischief, in the Rees Report's view, were the law-makers. The Report does not describe it as a matter of the Land Court judges and officers committing these wrongs with the tacit approval or "sanction" of Parliament, as the above passage from "Let the Truth Be Known" implies, but rather as a matter of Parliament having enacted legislation that was so confused and contradictory that it was impossible for the Courts to interpret or administer it properly. This was the difficulty stressed by a number of legal witnesses who appeared before the Commission. Auckland solicitor E.T. Dufaur for example told the Commission of how titles obtained through the Land Court had been upset by the Supreme Court -

> "According to recent decisions there is no Land Transfer title obtained since the Act of 1873 came into force that could not be upset." [Rees Report page 79].

Another Auckland lawyer Theophilus Cooper told the Commission -

> "It is almost impossible to advise with any degree of certainty upon the effect of the Native Land laws. So conflicting are the clauses of various Acts that it is almost impossible to extricate anything like order from this legislation. . . It is absolutely impossible for any lawyer to advise his client upon any complicated question concerning Native lands without a feeling of uncertainty that he may have overlooked some section or Act which may have a bearing on the case. And it is also almost impossible to reconcile the many inconsistencies in the various Native Land Acts now in force." [Rees Report pages 84-5].

The Rees Commission Report of 1891 attacked not only the Native Land Court's proceedings but the whole body of Native Lands legislation as having been the means of depriving many Maoris of their land, by fair means or foul. Discussing "Evil Effects Of Our System" the Report states (pages x - xi) -

> "For a quarter of a century the Native-land law and the Native Land Courts have drifted from bad to worse. The old public and tribal method of purchase was finally discarded for private and individual dealings. Secrecy, which is ever a badge of fraud, was observed. All the power of

the natural leaders of the Maori people was undermined. A slave or a child was in reality placed on an equality with the noblest rangatira or the boldest warrior of the tribe. An easy entrance into the title of every block could be found for some paltry bribe. The charmed circle once broken, the European gradually pushed the Maori out and took possession. Sometimes the means used were fair, sometimes they were not.

"The alienation of Native land under this law took its very worst form and its most disastrous tendency. It was obtained from a helpless people. The crowds of owners in a memorial of ownership were like a flock of sheep without a shepherd, a watch-dog, or a leader. Mostly ignorant barbarians, they became suddenly possessed of a title to land which was a marketable commodity. The right to occupy and cultivate possessed by their fathers became in their hands an estate which could be sold. The strength which lies in union was taken from them. The authority of their natural rulers was destroyed. They were surrounded by temptations. Eager for money wherewith to buy clothes, food, and rum, they welcomed the paid agents, who plied them always with cash and often with spirits. . . In most of the leases and purchases effected the land was obtained in large areas by capitalists. . .

"Not that the men whose names were used and money expended were always to be personally blamed. Often ignorant of the means employed, they simply entered into the purchase of Native lands from a natural desire to become the owners of beautiful or fertile estates. To their agents was committed the task, always disagreeable and sometimes disgraceful, of completing the title. It was, and is, the result of the bad system which Parliament determined to enforce, that it exercised a baneful influence on all those who had anything to do with it.

"The pernicious consequences of Native-land legislation have not been confined to the Natives, nor to the Europeans more immediately concerned in dealing with them for land. The disputes thence arising have compelled the attention of the public at large, they have filled the Courts of the colony with litigation, they have flooded Parliament with petitions, given rise to continual debates of very great bitterness, engrossed the time of Committees, and, while entailing very heavy annual expenses upon the colony, have invariably produced an uneasy public feeling.

"In one year - 1888 - there were eight Acts passed, and in 1889 nine, especially dealing with Maori lands and Courts, besides others partially touching them; and, again, others were introduced but thrown out or abandoned. There were in ten years, from 1880 to 1890, more than a thousand Native petitions presented for consideration to the House of Representatives.

"Numerous witnesses bear testimony to the gradual deterioration of the Native Land Court. It takes a longer time now to hear a case than formerly. Its fees and charges are greatly in excess of what they were. Its adjournments and postponements are more frequent and inconvenient. The applications for rehearings are greatly increased. It has gradually lost every characteristic of a Native Court, and has become entirely European - as Hone Peeti said, 'only the name remaining.' It has brought into existence a regular system of concocting false claims, by which the real owners are often driven out, and their lands given to clever rogues of their own race."

The Report goes on to discuss the "Consequences of Legislation" (p xii) -

"It is impossible, within reasonable limits, to follow the windings and intricacies of those laws by which the Legislature from the outset has been vainly attempting to continue an unsatisfactory system. Every year has seen some attempt to amend the existing confusion. During some sessions half a dozen Bills have been introduced, and three or four have become law. The pages of Hansard are filled with discussions upon Native

> lands. The Natives have been surrounded with innumerable safeguards and restrictions, all of which have been unavailing to protect them, but which have been signally effectual in providing pitfalls for the honest but unwary purchaser of Native lands. Courts with costly procedure have been created; the sanctity of oaths and affirmations has been invoked; examinations by Judges and Commissioners into the bona fides of every transaction have been compulsory. The results are today partially known. In numerous instances frauds have been perpetrated successfully both upon Natives and Europeans; the most honest and straightforward dealing has not been sufficient to protect purchasers from loss and injury, while the Courts have been imposed upon and the true owners defrauded by conspiracy and perjury."

In these florid, polemical passages the Rees Report blames not the Native Land Court and its officers, but the legislators responsible for the complicated and confusing legislation which, says the Report, led to these abuses. The Court, it suggests, was the victim of Parliament.

Referring to the Rees Report's comment on "the fruit of a mistaken system", "Let the Truth Be Known" tells us (§ page 5) that "Unfortunately, the Rees Commission omitted to identify the 'mistake'." In point of fact the Commission did identify the "mistake" -

> "When the colony was founded the Natives were already far advanced towards corporative existence. Every tribe was a quasi-corporation. It needed only to reduce to law that old system of representative action practised by the chiefs, and the very easiest and safest mode of corporate dealing could have been obtained. So simple a plan was treated with contempt. The tribal existence was dissolved into its component parts. The work which we have with so much care been doing amongst ourselves for centuries - namely, the binding-together of individuals in corporations - we deliberately undid in our government of the Maoris. Happily, there is yet an opportunity to retrace our steps, to get back into the old paths. The evidence shows that both races are anxious to return as near as possible to the old system. What they require is that the principle of tribal, or corporate, dealing and action shall again rule, but that it shall be regulated and assisted by law." [Rees Report, page xviii.]

Clearly in criticizing the land-purchasing procedures, and the Native Land Court, legislation, and Parliament that brought all these into being, the Rees Commission regarded the root of the problem as none of these. The basic cause of all the trouble in the Commission's view was the **individualization of Maori land** which the European community had "mistakenly" regarded as essential for the progress of the Maori race. The Commission's solution, as indicated in the above paragraph, was to restore some form of Maori corporate ownership and corporate responsibility for Maori lands. Interestingly enough, that is what the legislation and Maori Affairs Department policies of recent years have been encouraging in the form of Maori Trust Boards and Incorporations, - and more recently, iwi authorities.

"Let the Truth Be Known" would have us believe that the Rees Report's criticism began and ended with its strident criticism of the Native Land Courts and Native Land legislation of the 1880's. Not only that, but this criticism is somehow projected on to the Maori Land Court of the present day, and laid at the feet of Chief Judge Durie:

> "Furthermore, the public has a right to know that the chairman of the Waitangi Tribunal is Chief Judge of the Court which 'brought into existence a regular system of concocting false claims'" [§ page 29].

On page 29 of "Let the Truth Be Known" this statement is arrowed to the clause of the Treaty of Waitangi Act which lays down that "the Chief Judge of the Maori Land Court shall be the Chairman of the Waitangi Tribunal", with the word "NOTE" - insinuating (without further evidence) that the Waitangi Tribunal itself, through the person of the Chief Judge, is today implicated in the malpractices alleged by the Rees Commission in 1891!

The Rees Commission's brief was to enquire into the Native Land Laws and Courts and to make recommendations. The members were William Lee Rees (Chairman); James Carroll , Member for Eastern Maori (later Sir James, first Maori Cabinet Minister); and Thomas Mackay, a former civil engineer and land commissioner. An ardent admirer of Sir George Grey, Rees in 1891 with his daughter's help produced a eulogistic biography - "The Life and Times of Sir George Grey".

The Rees Commission drew heavily on the evidence of former Civil Commissioner James Mackay, who in 1891 had just published his own polemic on the Native Land Laws, - "Our Dealings With Maori Lands" (Auckland 1887). This concluded with a draft of a proposed "New Zealand Native Land Titles Settlement and Determination Act". Mackay's proposal was to repeal all existing Native Land legislation, replace the Native Land Courts with Commissioners responsible for tribal districts, and reassign all existing Maori land titles to registered Maori hapu (sub-tribes). Mackay proposed that all Maori land should then be divided into two categories by the hapu which owned it: "reserved land" and "disposable land." The Commissioners suggested by Mackay would then supervise the sale of the "disposable" land. Under this streamlined system, according to James Mackay, the purchase of Maori lands by Europeans would then proceed more smoothly than under the existing Native Land Court procedures.

Rees, as his questions to witnesses at the Commission show, was strongly drawn to Mackay's scheme. But the scheme provided nothing to show how the abuses of bribery, cajolery, and undue pressure on Maoris to sell could be avoided, any more than they had been avoided under the system which Rees and Mackay wanted to replace. As Crown Commissioner for the Kaikoura Purchase from Ngai Tahu in 1859 Mackay by his own admission had himself used threats to get the Kaikoura Ngai Tahu to sign his deed of purchase - 2½ million acres for £300 [see Mackay's "Compendium" Vol II page 34]. Again, while Resident Magistrate at Thames in the 1860s and 1870s, Mackay had entrapped certain reluctant chiefs into debt as a means of pressuring them into signing away the mining rights to their lands ["Address of Mr James Mackay to the Ngatimaru tribe of Hauraki on the opening of the Hauraki District", 1896].

The Rees Commission was confined to the North Island under its terms of reference, and took no South Island evidence. Consequently it was not informed about the South Island situation. The Commission's Report (page vi) was full of praise for the land purchase methods of Rees's idol Governor Grey, carried out in the South Island at the expense of Ngai Tahu by Land Purchase Commissioners H.T. Kemp, W.B.D. Mantell, W.J.W. Hamilton and James Mackay -

> "In the early days of settlement, both before and after the Treaty of Waitangi, land was purchased from the Natives by private individuals or by the Crown in a manner at once simple and public. . . No such sales were ever disputed. Disputes as to the correct boundaries might arise, but the contract itself, thus made public with the tribe, was held irrevocable. . . Land-purchases of a very extended character took place in this open and public manner prior to 1865. Nearly the whole of the South Island and large districts of the North were purchased by the Government. Only a few of these purchases were ever questioned, and then only on the ground of disputed Native ownership."

The Rees Commission would have heard a different story had it taken evidence in the South Island. Ngai Tahu had suffered considerably from the methods of Crown Land Purchase Commissioners under the very system that the

Rees Report was praising, and had been trying since 1849 to get the promises made under the terms of Kemp's Purchase honoured by the Crown as Alexander Mackay's 1891 Royal Commission Report shows [AJHR 1891 G-7].

For the Rees Report to suggest in 1891 that the South Island purchases had been questioned "only on the ground of disputed Native ownership" was quite incorrect. The Ngai Tahu purchases were questioned on the ground of the Crown's having refused to allow the Maori vendors to retain for themselves adequate land of their own choice, as a result of which many Maoris had become destitute. In 1888 both Alexander Mackay's Royal Commission Report and the Joint Parliamentary Committee Report [AJHR 1888 G-10 and I-8] had given a detailed account of the Ngai Tahu Claim, and Alexander Mackay's Report had strongly supported the Claim.

Although these Reports had already been published for three years when Rees wrote his Report, he completely ignored them. This suggests that Rees was more interested in freeing up the market in Maori land by clearing away the obstacles presented by the Native Land Courts and the confusing legislation, than in preventing more land from being lost to the Maori people or in avoiding further grievances such as those of Ngai Tahu. The state of Maori land in the South Island was of no interest to Rees or his Government because there was little more Maori land there to be bought. It had nearly all gone to the Crown under Grey's purchasing policy. For that very reason the Rees Commission's terms of reference were confined to the North Island.

Commissions of Inquiry do not take place in a vacuum. They are generally products of the political climate of their time, and the Rees Commission was no exception. The Rees Report is best understood against the background of the politics of the day, in which W.L. Rees was an active participant. When the Commission was appointed in February 1891 Rees had just been elected to Parliament for Auckland City and had been a radical member of the election team that brought John Ballance to office as New Zealand's first Liberal Premier. For this, Rees was rewarded with the post of Chairman of Committees in the House of Representatives.

Rees, as it turned out, was the only member of the Commission who agreed with his Report. Commission member Thomas Mackay indicated that he substantially disagreed, but died leaving his Dissenting Report incomplete [AJHR 1891 G-1A]. Carroll also dissented from certain parts of the Rees Report, particularly its recommendation that the Crown's right of pre-emption over Maori lands should be reinstated.

Presumably James Carroll as a Maori was unhappy also with the way in which Rees had pursued the unwritten purpose of his inquiry. Not specified in the Commission's terms of reference [Rees Report page iii] was the overriding question in every colonial politician's mind in 1891: how to get the business of buying up Maori land running smoothly again, so that European settlers could be placed on that land.

The newly-elected Liberal Government had come to power on the slogan, "Put the small man on the land". They had great plans for assisting thousands of working farmers on to the land. As John Williams expressed it - "The Liberals' great aim was to put the small settler on the land, and the continued purchasing of Maori land was vital to this aim" ["Politics of the New Zealand Maori" page 19]. Thus it was no accident that within three weeks of the Liberals' coming to power the Rees Commission was set up. Its job was to find out how to free up the purchase of Maori land so that the new Government could fulfil its election promise.

At the Commission's hearings Rees made it perfectly obvious that this was the main problem as far as he was concerned. A lawyer himself, he repeatedly asked European legal witnesses the stock question -

> "Do you think that under the present system of Native-land laws, and the administration of those laws, it would be practically possible to settle the country?" [Rees Report, page 44] . . . or -

"Do you consider that under any Act which provides for every individual signing and making these documents it is possible that the country can be settled?" [ibid.] . . . or -

"You are aware that things have now drifted into such a position that the settlement of Native lands is at a deadlock?" [Rees Report, p 49] . or -

"Are you aware that at the present day, owing to the complicated state of the Native-land laws, the transfer of Native interests to Europeans is practically at a standstill; that in the settlement of Native lands there is little or nothing doing?" [Rees Report, page 67].

European settlers were clamouring for Maori land, and land conveyancers and their agents were anxious to get it for them. The "log jam" created by the Native Land legislation was frustrating them all. This was the real reason for the Rees Commission, - not a moral crusade against muddled legislation, inefficient courts and dubious practices. It was the desire to "settle the country" that inspired the Rees Report - that is, to acquire as much of the remaining 11 million acres of Maori land for European settlement as possible.

The strident words of the Rees Report were intended as the Jericho blast that would bring the obstructions in the Native Land Court tumbling down. It succeeded. The 1894 Native Land Court Act reformed the confused legislation, freed up the registration of Maori land titles, and restored the Crown's right of pre-emption so as to give the Government a monopoly of the trade in Maori land. Within fifteen years of the Rees Report's publication, the Liberal Government had acquired a further three million acres of North Island Maori land - more than a quarter of the land that had been in Maori hands in 1891.

In the same period, under the Land for Settlements Acts of 1892 and 1894 the Liberal Government spent £5,000,000 on buying back a million acres of farmland from settlers, - £2,000,000 of it being spent in the very Block that Kemp had purchased from Ngai Tahu in 1848. These "resumed" estates were divided into farms not for landless Maoris but for landless Europeans - the Liberals' "small men". The average price the Government paid for this land was five pounds ($10) per acre. But the price the Government paid for Maori land under the reforms promoted by Rees averaged only five shillings (50c) an acre.

Rees soon quarrelled bitterly with Ballance's Minister of Native Affairs A.J. Cadman (who had narrowly beaten James Mackay for the Coromandel seat in 1887), accusing him of using his position to benefit from native lands. Cadman then challenged Rees to join him in resigning from Parliament and contesting a seat of Rees's choice. In 1893 both men resigned their seats. Rees then chose to stand for his own constituency of Auckland City, and Cadman beat Rees in the by-election that followed. Rees then left Parliamentary politics and formed the Native Land Laws Reform League with J.C. Firth and A. Boardman - who had both speculated in Maori lands [Williams, op.cit. page 85ff].

The Rees Report should be read in the context of the politics of the day, and not as if it were eternal truth. Its objectivity is compromised by the fact that the Rees's main concern was to get more Maori lands into European hands. Its findings are discredited by the fact that the Commission, being confined to the North Island, took no account of the disastrous consequences for Maoris in the South Island of the land-purchase system that Rees and many of his expert witnesses were so anxious to re-establish in the North.

The legislation and procedures which the Rees Report railed against have long since lapsed. With a view to facilitating his Party's Maori Land Policy, Rees wrote his Report in 1891 to pave the way for a new Native Land Court Act. To this end the Rees Report was to be a stick to beat the existing legislation, and to beat the Native Land Court and the Native Affairs Department of the day. To try to use it as a stick with which to beat their counterparts today, a century later, as "Let the Truth Be Known" does, is of course absurd.

CHAPTER SEVEN

"BOGUS TITLES" AND OTHER CURIOSITIES

In various subtle ways, and some not so subtle, "Let the Truth Be Known" contrives to coax the desired shade of meaning from the sources used. For example the "documentation" on the Rees Report on $ page 29 consists of four short excerpts from the Report. The last one of these four is the following, from page xviii of the Report -

> "NATIVE LAND COURT GIVING TWO DISTINCT TITLES.
>
> "Titles given by the Native land law are indistinct and uncertain. In many instances Natives have sold to Europeans, and the title of the purchaser is registered under the Land Transfer Act. Then the property is divided in the Native Land Court, and a fresh title given to the Natives who have already sold."

In the last sentence here, "Let the Truth Be Known" inserts by hand the word "BOGUS" in capitals, so that the passage is made to read "and a fresh BOGUS title given to the Natives who have already sold". "Let the Truth Be Known" then adds further comment, referring to the McCarthy Commission Report -

> "But, wittingly/unwittingly the McCarthy Commission omitted to say that many 'Maori Land' titles - issued to Maoris **after** they'd sold land - are BOGUS." [$ page 29]

Readers might assume that the term "Bogus titles" is perhaps a fair paraphrase of what the Rees Commission had to say. But what the Rees Commission actually says is rather different. "Let the Truth Be Known" has not given us the whole of what the Commission printed under the heading "Native Land Court Giving Two Distinct Titles" on page xviii of its Report. There are two more sentences in the paragraph, which read -

> "Thus two titles to the same land exist. The consequences are obviously disastrous."

The Commission was not saying that a second "bogus title" had been issued after the first. The term "bogus" of course means "forged" or "counterfeit". The Commission was not saying that in such cases there was one good title and one forged, but that there were "two titles to the same land" - both equally valid. This was "disastrous" - but the Commission was not accusing anyone of forgery. As the Commission saw it, the fault lay in the confused legislation.

The expression "BOGUS titles" originates purely with "Let the Truth Be Known" itself. Yet the expression is used in seven different places in the text, with footnote references to "Primary Documentation" purporting to show that it has come from the documents. It is itself bogus.

On $ page 5 "Let the Truth Be Known" tells us -

> "Instead of fulfilling its function, the Maori-named Land Court 'brought into existence a regular system of concocting false claims, by which the real owners are often driven out. In numerous instances, frauds have been perpetrated successfully both upon Maoris and Europeans, the true owners being defrauded by conspiracy and perjury.'"

Strong words these, evidently referring to the Maori Land Court of today. But again the "Documentation", when we turn to it, is simply the Rees Report of 1891. The "real owners" were often driven out - in 1891, according to the Rees Report. Rees was not referring to a "Maori-named Land Court", as "Let the Truth Be Known" likes to call the Maori Land Court of today, but to the Native

Land Court of 1891. "Let the Truth Be Known" has also altered the 19th-century wording of the Rees Report. The Report says, "both upon Natives and Europeans". But "Let the Truth Be Known" ($ page 29) changes this to "Maoris and Europeans", making it seem that the phrase is of modern origin.

The above two sentences are quoted on $ page 5 of "Let the Truth Be Known" as one paragraph from the Rees Report. But actually the two sentences are from two separate pages of the Report. The first sentence, from a section of the Report's page xi headed "Native Land Court", blames the Land Court for having "brought into existence a regular system of concocting false claims". The second sentence, from the Report's page xii headed "Consequences of Legislation", reads in full -

> "In numerous instances frauds have been perpetrated successfully both upon Natives and Europeans; the most honest and straightforward dealing has not been sufficient to protect purchasers from loss and injury, while the Courts have been imposed upon and the true owners defrauded by conspiracy and perjury."

Thus the "frauds by conspiracy and perjury" are blamed on the legislation, not the Land Court. Evidently the passage on page 5 of "Let the Truth Be Known" has been edited so as to give the impression that the Rees Commission was blaming the Land Court for the "frauds, conspiracy and perjury". But what the Rees Report actually says [page xii] is, "the Courts have been imposed upon and the true owners defrauded by conspiracy and perjury."

"Let the Truth Be Known" goes on to admonish us -

> "**NOTE:** Many NON-Maoris have also been victims of the "conspiracy", "perjury", and "fraud" perpetrated by the Maori-named Law Courts masquerading as a Maori Affairs Department. Furthermore: 'In many instances, after Maoris sold land the property was divided in the Court, and a fresh - BOGUS - title was issued to Maoris who'd sold the land.'"

For this disturbing news we are referred to $ page 29 for "Documentation". There we read -

> "Furthermore, the public has a right to know that the Chairman of the Waitangi Tribunal is Chief Judge of the Court which 'brought into existence a regular system of concocting false claims': and that the Tribunal may now make a recommendation binding on the Government '**without** being obliged to determine first whether or not the claim is well-founded."

"Let the Truth Be Known" has lifted some alarming and probably exaggerated expressions from the Rees Report of 1891, and then pretends that they refer to the "Maori Affairs Department" of today. We are told that the "Court" referred to in these phrases is Judge Durie's Maori Land Court, when in fact it was the Native Land Court of 1891.

On $ page 10 appears the following:

> "Whilst some people of Maori descent have benefited, many more Maori - as well as non-Maori - have been victims of the mal-practice perpetrated by Land Court judges and Maori Affairs Department officers."

This statement concludes with a footnote referring us to $ "page 29". When we turn to $ page 29 we find that our reference for the statement consists of the four Rees Report excerpts mentioned above. "Let the Truth Be Known"'s statement on $ page 10 blames the "malpractice" on "Land Court judges and Maori Affairs Department officers" - which the reader would assume means those of recent times. But the "judges and officers" referred to by the Rees Report in the passage quoted on $ page 29 are those of a hundred years ago.

In referring to the 1980 McCarthy Royal Commission on the Maori Land Courts "Let the Truth Be Known" complains on § page 7 -

> "However, wittingly or unwittingly, the Commission omitted to state that of the known owners many have been WRONGFULLY and WRONGLY named by Land Court judges and Maori Affairs Department officers."

We are then referred to § page 29 for "documentation". There we read, by way of introduction to the four Rees Report excerpts discussed on page 30 above, -

> "Furthermore, wittingly or unwittingly, the [McCarthy] Commission also omitted to state that Maoris - as well as many NON-Maoris - have been dispossessed by Maori-named Law Courts masquerading as a Maori Affairs Department. See xeroxed excerpts from the Rees Commission's Report."

It is a safe assumption that the reason that the McCarthy Commission "omitted" to repeat accusations made by the Rees Report in 1891 is simply that the Rees Commission's Report is completely irrelevant to the Maori Land Court and Maori Affairs Department of today.

On § page 18 "Let the Truth Be Known" tells us -

> "Mr Wetere" [the Minister of Maori Affairs] "completely ignores the fact that Parliament's own records abound with proof that the Maori-named Land Court **alias** the Maori Affairs Department has been guilty of 'concerted perjury, injustice, false claims, insecurity of title after adjudication."

For "documentation" of these very grave charges against the officers of Mr Wetere's Department we are referred to § "page 29" - the four excerpts from the Rees Report. Mr Wetere's officers are being blamed for what was said to have happened 100 years ago. "Parliament's own records abound with proof", we are told. But the only "proof" that "Let the Truth Be Known" can refer us to is the Rees Report of 1891.

In the last five extracts quoted above from "Let the Truth Be Known" the use of the verbal past tense in "frauds **have** been perpetrated" (§ p 5), "**have** been victims of malpractice" (§ p 10), "**have** been dispossessed" (§ p 29), "**have** been wrongfully named" (§ p 7), "**has** been guilty of perjury etc" (§ p 18), rather than the pluperfect tense "**had** been perpetrated", "**had** been victims of malpractice", "**had** been dispossessed", "**had** been wrongfully named", and "**had** been guilty", conveys the impression that these abuses have been going on continuously rather than simply that they were reported by the Rees Commission in 1891 as having occurred then or earlier. In the fourth of these extracts, quoting the present tense from the Rees Report in "the real owners **are** often driven out" also tends to suggest that this is going on here and now, rather than that it happened as long ago as 1891. Whether "Let the Truth Be Known" uses these verbal tricks "wittingly or unwittingly" we are left to wonder.

On § page 28 appears a 1986 clipping from the New Zealand Herald's "100 Years Ago" column. Datelined "Kihikihi", it says of the Native Land Courts that "another great cause of discontent is the ease with which bogus claims are admitted". "Let the Truth Be Known", without further evidence, adds -

> "'Bogus claims' are still being recognised by the Land Court, now being aided and abetted by the Waitangi Tribunal. See page 37."

When we turn to the "Documentation" on § page 37 we find that the sole justification offered for this grave allegation is Clause 8D of the Treaty of Waitangi (State Enterprises) Bill discussed in Chapter 1 above, with the words underlined - "without being obliged to determine first whether or not the claim

is well-founded". Thus the fact that the Tribunal is not obliged to further investigate the basis of a claim which is not going to be proceeded with (see Chapter 1 above) means, according to "Let the Truth Be Known", that "Bogus claims are still being recognised by the Land Court, now being aided and abetted by the Waitangi Tribunal."

One more example of this "Documentation" must suffice. On § page 31 as "Documentation" on the 1980 McCarthy Commission's findings is the following -

> "Furthermore, as the Commission found, the Maori-named Land Court and the Maori Affairs Department are INSEPARABLE. In the Commission's words: **'The Court was the Department.'** (AJHR 1980 H-3 page 47-4)"

But when we turn to AJHR 1980 H-3 (the McCarthy Commission's Report), page 47-4, we read as follows -

> "4. The department today is a large, complex organisation of about 1000 people, of whom roughly 10 percent are in the Court and Titles Divisions. From 1900 to 1934 the Native Department, as the department was then called, comprised the Native Land Court and the Maori Land Councils, which later became the Maori Land Boards. Some of the jurisdiction then exercised by the Maori Land Boards is today exercised by the Court, so that all officers of the Native Department were then in fact officers of the Court as we know it today. The Court was the department."

The McCarthy Commission's statement here that "The Court was the department" refers to the period **"from 1900 to 1934"**, when "all officers of the Native Department were in fact officers of the Court". The Commission is not saying "the Court and Department **are** inseparable", but that they **were** - until 1934. By 1980 when the McCarthy Commission Report was written, as it says, "roughly 10 percent" of the department personnel were in the Court and Titles Division - which was a "branch" of the department, not identical with it.

Finally on § page 41, "Let the Truth Be Known" tells us in her conclusion headed "NEW ZEALAND AT CROSSROADS" -

> "Since 1865 we have progressively sacrificed historical truth."

How true.

CHAPTER EIGHT

THE TREATY OF WAITANGI: "DEFECTS" AND "ABUSES"

"Let the Truth Be Known" seems to be at some pains to discredit the Treaty of Waitangi, as for example with the following suggestion (§ page 6) -

> "512 Chiefs were party to the Treaty of Waitangi, so there must have been at least 512 tribes (otherwise they would not have been Chiefs)"

In the commonly-used Maori version of the Treaty, **"hapu"** (sub-tribes) are parties to the Treaty, not **"iwi"** (tribes); and **"rangatira"** (chiefs), not **"ariki"** (paramount chiefs). Each iwi had many rangatira, and powerful hapu themselves had many rangatira. To suggest that every rangatira must have been head of a "tribe", or even of a sub-tribe, shows little understanding of Maori society at the time of the signing of the Treaty of Waitangi.

As "Documentation" on The Treaty of Waitangi (§ page 22) "Let the Truth Be Known" makes five allegations regarding the various articles of the Treaty -

1. (Article One) - "A Chief's Kawanatanga/Rangatiratanga could not ensure anyone's continued occupation - or use - of land, let alone that the next generation would inherit it. Whatever land or fishing rights they had in those days were not inviolate even in their own lifetime: see 'Background to Customary Title' on page 25."

The unsourced excerpt "Background to Customary Title" given as "Documentation" on § page 25 is discussed in Chapter 4 above (page 19). It is a mere polemic of no value as an account of Maori customary land tenure such as can be found, for example, in Edward Shortland's "Traditions and Superstitions of the New Zealanders" (1856), Sir William Martin's "The Taranaki Question" (1860), or Sir Hugh Kawharu's "Maori Land Tenure" (1977). As for the violation of property rights by warfare, this has occurred in all societies and all ages - including our own, as those who have seen modern warfare well know.

2. (Article Two) - "Maori 'undisturbed' ownership of properties and possessions . . has been NEGATED by Land Court judges and Maori Affairs Department Officers".

The "Documentation" cited for this statement about "Land Court judges and Maori Affairs Department Officers" is again the 1891 Rees Commission Report, whose competence and reliability is discussed in Chapter 6 above. The Rees Commission Report of course is no authority on events which had yet to take place when it was written, such as the activities of "judges" and "officers" during the last hundred years.

3. (Article Two) - "The Chiefs agreed that the Queen (or her representatives) could purchase those pieces of land which **'the owner'** was willing to sell. But it was often difficult to establish who, **if anyone**, was the rightful owner; and the land was often paid for time and time again: see pages 22/23, 24, 36, and 38/39".

Of the "Documentation" for these statements in "Let the Truth Be Known", § "22" is the page we are reading from, § "23" gives the English text of the Treaty, and § "24" is the so-called "Documentation" for the Ngai Tahu Claim discussed in Chapters 2 and 3 above. § page "36" is a letter by "The New Zealand Herald"'s Deputy Editor dated 15th July 1987, expressing surprise that "no comprehensive list exists of the chiefs who signed the Treaty, the tribes they represented and the areas they came from", together with the ritual statement that "legislation permits the Waitangi Tribunal to make a recommendation binding on the Government **without** being obliged to determine first whether or not the Claim is well-founded".

The "Documentation" on § page 38 is a page on the Tauranga Claim from the 1928 Confiscation Commission Report [p 18 of AJHR 1928 G7], with the comment -

> "In 1981, the Government paid the Tauranga Moana (10-member) Maori Trust Board $250,000 for the same land! This is but one example to illustrate the outrageous nature of many contemporary land claims."

The 1928 Commission considered that the confiscation of "rebel" tribes' land at Tauranga in 1864 had been justified. The 1981 Government presumably did not think it had been justified, and awarded compensation. Whether confiscation was fair and just, and compensation "outrageous", as "Let the Truth Be Known" evidently still believes, must remain a matter of opinion. But even if we agree with "Let the Truth Be Known" on this point, why we should accept this one Tauranga example as evidence that there are "many contemporary land claims" of a similar "outrageous" nature is not explained.

On § page 39 Sir Keith Sinclair is quoted as saying that the Waitara Block, the dispute over which sparked the first Taranaki War, was purchased "over and over again". He does not say this. In the excerpt cited by "Let the Truth Be Known" from Sinclair's "The Origins of the Maori Wars" (page 119), for four of the five instances of the Waitara being "purchased" Sinclair puts the word "purchased" in quotation marks - indicating that these (in 1839, 1840, 1859 and 1860) were in his view purchases in name only, and that only the last (in 1873) was a genuine purchase.

4. (Article Two) - "The repeated payments are in breach of **the Chiefs agreement**; and as contemporary land claims highlight, there is an urgent need for national recognition of the fact that there is **no** 'comprehensive list' of which tribes were represented by the Chiefs who put their signature or mark to the Treaty, **or** which areas of land were occupied by them at the time the Treaty was signed."

These so-called "repeated payments" are discussed in Chapters 2 and 3 above. The "urgent need" that "Let the Truth Be Known" talks about is presumably meant to imply that tribes not represented among the signatories to the Treaty are not entitled to the benefits of it. But the Crown regards the Treaty as applying equally to all Maoris whether or not their ancestors signed the Treaty, just as it claims sovereignty over all Maoris whether or not their ancestors signed the Treaty.. Whether this is fair and just must obviously remain a matter of opinion. However, some Maori Treaty signatories (including some Ngai Tahu) **are** identified by tribe or sub-tribe on the Treaty documents. These were published by the Government Printer in the "Facsimiles of the Treaty of Waitangi" (1976). A map showing general tribal locations, but not boundaries, is in "The Oxford History of New Zealand" (1981) and "The Treaty of Waitangi" by Claudia Orange (1987). Claimants before the Waitangi Tribunal are of course required to establish to the satisfaction of the Tribunal their customary tribal title boundaries at all times relevant to the claims that they bring before the Tribunal.

5. (Article Three) - "Article the Third guaranteed to Maoris 'all the **same** rights' as non-Maoris. Consequently, each and every law on this nation's statute book which provides for DIFFERENTIAL treatment completely NEGATES that guarantee. A 1960 list of discriminatory laws is on pages 34/35. INSTITUTIONAL racial discrimination practised by the Waitangi Tribunal is utterly 'inconsistent with the principles of the Treaty of Waitangi'."

On § page 35 it is claimed that the laws listed by the 1960 Hunn Report as "providing for differential treatment" of Maoris and Europeans are "discriminatory laws", and "defy all logic", "deny our shared humanity", and so on. Whether this is so can be judged only by examining the actual contents of the statutes and regulations in question, not merely by reading a list of their titles. "Let the Truth Be Known" makes no attempt to discuss even one example from Hunn's list.

It is absurd to claim that "differential treatment" of Maoris and non-Maoris is contrary to the Treaty when the Treaty itself provides differential treatment. Under Article Two of the Treaty the Crown claimed the right of "Pre-emption" ("first refusal") on all sales by Maoris of their lands, and thus was able to buy the land at prices well below market value (see pages 9, 16 and 29 above). The Treaty placed no such requirement on non-Maoris.

No evidence is offered to show that the Waitangi Tribunal "practises racial discrimination", institutional or otherwise. The reconstituted Tribunal had been in operation for almost twelve months before "Let the Truth Be Known"'s publication date of "June 8, 1988". This should have given ample opportunity to obtain such evidence - if there had been any.

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We New Zealanders are at a significant stage in our history. The year 1990 marks the 150th anniversary of the signing of the Treaty of Waitangi, the nation's founding covenant between the country's indigenous Maori people and the British Crown.

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