

The East Coast Petroleum Wars

RAUPATU AND THE POLITICS OF OIL IN 1860s NEW ZEALAND



WAR, IT HAS OFTEN BEEN SAID, can make for the strangest of bedfellows. It is well known that prominent Auckland businessmen such as Frederick Whitaker and Thomas Russell were, in their capacities as prominent members of the Fox–Whitaker ministry of 1863–1864, largely responsible for devising plans that eventually saw extensive tracts of fertile Waikato, Taranaki and other lands confiscated in the name of the Crown. According to R.C.J. Stone this ministry ‘did what the city’s capitalists had long demanded when it prosecuted the war with thoroughness, and pressed on with plans for confiscating Maori lands’.¹ No real surprises there, then. As Stone and other historians have highlighted, moving from capitalist to politician involved no more than a change of hat away for many of the elite in early colonial New Zealand, and so as long as Auckland business leaders were assured of ready access to the confiscated lands they remained happy to support the raupatu (confiscation) plans.² But why, then, would one group of such businessmen, and their mouthpiece the *Daily Southern Cross*, apparently turn against later plans to confiscate large tracts of the East Coast, instead championing the cause of Maori against a seemingly rapacious and grasping government? Oil is the short answer. But the complex web of personal and provincial rivalries, both economic and political, which subsequently helped to shape the course of confiscation plans in the district reinforce the extent to which confiscation was driven not just by the need to punish, but also by the desperate desire to acquire.

The presence of oil in the district could not, at least, be linked with the decision to invade. Nominal British rule touched the region only lightly prior to 1865. At Turanga (Poverty Bay) the hapless Resident Magistrate Herbert Wardell was withdrawn after a few short but humiliating years, while his counterpart further north at Waiapu found his efforts to acquire land for a magistrate’s residence hampered by the fact that ‘the very word “whenua” used by an agent of the Government, seemed sufficient to arouse suspicion and distrust’.³ The arrival of Pai Marire emissaries in the district, hot on the heels of the murder of Reverend Carl Volkner at Opotiki in March 1865, provided a pretext for greater government intervention, which in turn polarized some Maori communities. The consequent ‘civil war’ amongst the various sections of Ngati Porou from June 1865, though won by the ‘loyalist’ chiefs a few months later with the support of Crown troops and weaponry, was extended to Turanga in November of the same year, despite the best efforts of local Maori from both factions to avoid such an outcome.⁴ The attitude of many Turanga settlers and interested politicians was summed up in the private comments of prominent Hawke’s Bay leader J.D. Ormond to his close friend Donald McLean shortly

before the siege of Waerenga-a-Hika: 'I expect to hear ... that war has broken out at Poverty Bay & I hope so too — we ought to give them a lesson whilst we have the force at hand to do it'.⁵ As the prospect of war loomed on the horizon early in 1865 Ormond and McLean had together launched an unsuccessful bid to have the East Coast — formally part of the province of Auckland above the 39th parallel — annexed to Hawke's Bay. They would revive their efforts the following year in the wake of the crucial and potentially lucrative discovery of oil.

In February 1866 reports began to emerge that Oskar Beyer had procured a sample of petroleum from the 'friendly' Te Aitanga-a-Mahaki chief Wi Haronga. The missionary William Leonard Williams fancied this sample — procured 'from a place up the [Waipaoa] valley' — to be a very good one and concluded, 'we shall be having a great kerosene manufactory here in the course of time'.⁶ Beyer, a member of the Forest Rangers, had evidently been exploring the district for some time, claiming to have discovered a payable goldfield in a similar location in April 1865, and informing McLean in December of that year of his confidence that oil springs 'yielding abundance would be discovered with a little prospecting'.⁷

There would be no shortage of entrepreneurs ready to take up this opportunity. In the same month James Mackelvie, general manager of the Auckland firm of Brown & Campbell Company, received samples of oil obtained from the East Coast petroleum springs.⁸ Mackelvie was excited at the prospects this discovery opened up — even in the 1860s petroleum was a valuable commodity, used for street lighting and other purposes — and the opportunity presented itself to 'get up a Co. in Melbourne or Sydney & sell the wells at a thumping price'.⁹ The first man engaged to visit the district on behalf of the company was eventually forced to admit that he was too afraid to go, especially given the death sentences recently issued for 30 Maori implicated in the killing of Volkner.¹⁰

By early May 1866, however, James Preece, the New Zealand-born son of a missionary, had been employed (along with Hanson Turton, himself a former missionary and Preece's partner in a native land agency) to undertake a 'secret expedition' to the district on behalf of Brown & Campbell.¹¹ Preece was to determine the nature and quantity of the oil, its owners, and their willingness to sell. He was also instructed not to divulge the reason for his interest in the land to its owners, no doubt in order to keep the purchase price as low as possible. Turanga Maori were not so easily hoodwinked: the owners told Preece soon after his arrival in the district that they knew he was after the oil springs, which were known to local Maori as 'stink water'.¹²

Mackelvie had consented to allow Preece the use of a cutter, deeming it 'the best plan to keep his movements from being talked about'.¹³ But the Turanga district was now a centre of attention as its 'opening up' to European settlement following the siege at Waerenga-a-Hika and subsequent exiling of large numbers of nominal 'rebels' to the Chatham Islands loomed on the horizon. Under the circumstances there was really little hope of the Brown & Campbell venture remaining secret for long — particularly once the local newspaper had published almost the exact whereabouts of the oil springs. The

Hawke's Bay Herald had announced, on 14 April 1866, the existence of large quantities of oil at Turanga, with samples recovered from an area 35 miles up the Waipaoa River from Turanganui, near the junction with the Mangatu River.¹⁴ This report was carried in the *New Zealand Herald* a week later.¹⁵ Suddenly the existence of potentially hugely profitable land at Turanga was common knowledge throughout the Australasian colonies. It did not take long for others to enter the field, in competition with Brown & Campbell.

Early in May 1866 Julius Vogel, an Otago journalist and parliamentary member for Dunedin North, acting on behalf of Otago and Melbourne interests, approached the Auckland Superintendent, Frederick Whitaker, with a proposal to lease the East Coast oil springs from the provincial government. Vogel offered to pay the financially embarrassed province — already stung by the high costs of settling confiscated land at Waikato — a royalty of one-fifteenth of the petroleum raised,¹⁶ though Mackelvie, for one, was convinced that the Superintendent, 'like most of our Colonial politicians', was 'taking care to have some share of the plunder for himself'.¹⁷

Whitaker — along with Vogel, for that matter — was certainly not afraid of combining personal gain with political and provincial advantage.¹⁸ Samuel Locke, a loyal agent of McLean, claimed that one of those subsequently employed by the Auckland province in order to obtain the oil springs was 'under the cloak of the govt. working for Whitaker's private interest'.¹⁹ But whether or not personal enrichment formed part of the plan, Whitaker agreed to Vogel's proposal.²⁰ Vogel was informed that the provincial government would be prepared to negotiate on the basis of the very 'reasonable and fair' terms proposed by him. Others were less fortunate. A later applicant, Brooks Mason, engaged on behalf of a Sydney firm interested in working the springs, was informed merely that his application would be 'recorded and not lost sight of'.²¹ Vogel clearly had the inside running.

By agreeing to accept Vogel's proposal, the Auckland provincial government effectively placed itself in competition with a private firm for the same land. This in itself was not entirely unusual. What was unusual, however, was the fact that the land in question was liable to confiscation by the general government — and was at the same time being coveted by the rival province of Hawke's Bay, led by its Superintendent, Donald McLean, who had commenced a campaign for its annexation early in 1865. Adding to the confusion, McLean in fact officially represented the Crown in the district, having been appointed Agent for the General Government in March 1865.²² There were many different hats being worn at Turanga at this time.

Within a week of receiving Vogel's proposal, Whitaker had despatched Henry Rice to the district to report on its condition generally, and on the title and availability of the oil springs more specifically.²³ These tasks were hampered, Rice reported, by a decided 'feeling existing against Auckland people', in consequence of McLean's annexation campaign.²⁴ When Rice eventually did make his way to the springs he found it necessary to take an armed party with him 'as the roads are still visited by Hauhaus'. From 'the deserted settlement of Mangatu', Rice proceeded on to the location of the oil, but reported that 'the unsettled state of native matters prevents more than a stolen view'. Despite

this, he did manage to get some vital information relating to the ownership of the lands on which the oil springs were located, and informed the Auckland Superintendent that these had been handed over to McLean, in his capacity as agent for the government, but that some 'loyalists' had not signed the document, including Henare Ruru, a principal owner of the springs. Rice had therefore drawn up a deed of conveyance to Auckland Province, which the chief had signed and for which he promised to obtain more signatures, but at the same time warned that there were 'also a number of Hauhau proprietors'.²⁵ In fact, the land so coveted by Whitaker and others belonged to Te Aitanga-a-Mahaki, nearly half of whom had been imprisoned at the Chatham Islands as enemies of the Crown along with Te Kooti and other East Coast Maori.²⁶

There were other major obstacles in the path of Whitaker's ambitious plan for provincial (and possibly personal) enrichment. A Napier firm, perhaps anticipating a successful annexation bid, had reportedly proposed to work the springs jointly with the owners.²⁷ Meanwhile, by July 1866 Preece was claiming the agreement of all but one man to sell the Turanga springs to Brown & Campbell (and similar success further north at Waiapu, where further springs had been discovered), with £50 deposits reportedly paid to secure both sites.²⁸ There were further grounds for confidence in the Brown & Campbell camp. Mackelvie had persuaded Thomas Gillies, 'a long headed lawyer' previously working for Vogel, to defect to their side on the strength of 'an eighth for his political influence & able dodging'.²⁹ This move was soon paying dividends, and by mid-July 1866 Mackelvie was able to report to William Brown that 'Gillies has been very useful in this business and as Fenton the judge of the native land court, considers himself under obligation to Gillies he is now doing all he can to assist in this matter'.³⁰

F.D. Fenton, Chief Judge of the Native Land Court, had scheduled a sitting of the court at Turanga for early September 1866. But with the government now well aware of the competing claims upon land earmarked for confiscation, the Native Minister, A.H. Russell, effectively blocked the court from sitting by refusing to publish notice of this in the *Kahiti*.³¹ This was a matter over which Fenton had no control.³² Mackelvie, though, was typically blunt in his assessment of the excuse offered that the district was not yet in a sufficiently settled state to allow the court to sit, writing that:

This is all d—d humbug and the real object is to prevent us getting the springs, there being one party — the Hawkes Bay one — which said native minister belongs to who want to get the whole of that country annexed to their province. And the other party headed by the Superintendent of this province want to confiscate the land on the ground that the native inhabitants, or at any rate some of the owners were in rebellion, & they would be magnanimous enough to return all the land they did not want to the natives, that is they wd. keep all the oil springs, & pay further a price to be fixed by the Superintendent who wd. then hand them over to the Co. who offered to lease them & pay a royalty.³³

Mackelvie's cynicism seems to have been on a par with his astute analysis of the state of play. 'Our game now', he added:

is to complete the purchase, pay a sum on a/c, get the natives to sign a document to that effect, and address a petition to the Governor in the 'Oh' father style stating in their own peculiar way that they have been loyal – have on the faith of an Act of the Assembly sold their land and asked for a court which has been refused and appeal to his sense of justice to see that they are enabled to complete the sale. You see by all this we will have some fighting and dodging to do and how valuable our Lawyer ally is.³⁴

Preece, accompanied by two surveyors, had started for Turanga on 24 July 1866 with instructions to procure more land near known wells, and to purchase the Turanga wells for between £2000 and £3000 'or over if necessary'. Gillies had reportedly written to Vogel to say that 'as their party were too late in the field he was satisfied we were the winning party', but Vogel had replied that the provincial government's agent, Henry Rice, 'had done more than we gave him credit for ... and that Stafford & Whitaker had arranged to confiscate the land, take what portion they would and return the rest to the natives — in which case, if Vogel's story is to be relied on Gillies says the party he was first associated with would get the springs'.³⁵

Hanson Turton, Preece's partner in the endeavour to acquire the land on behalf of Brown & Campbell, was somewhat more diplomatic in addressing similar allegations to the Premier and Colonial Secretary, Edward Stafford. Writing in response to news of the government's refusal to publish notice of the scheduled Native Land Court hearing in the *Kahiti*, Turton informed Stafford on 8 August 1866 that the applications for hearing had been made in accordance with the relevant legislation, and that an undertaking had even been made 'to defray all extra expense the Govt. might be put to in holding these courts at such distant places'. Surveys and other preliminary work had been undertaken at great expense, on the faith of the 1865 Native Lands Act, he added, and Preece was confident the applicants were the proper owners of the lands, had never been in 'rebellion' against the Crown and were anxious and desirous to have their title investigated to enable them to sell the lands in order to further develop the district. Such investigation, Turton further declared, 'would be attended with not the slightest risk of causing any disturbance amongst the Natives of that district but would on the contrary produce a most beneficial effect as it has done in every district in this Province where the Act has been brought into operation'.³⁶

This might have been fairly compelling were it not for one important point Turton failed to mention. The applicants may indeed have been the rightful owners of the land, desirous of selling, and 'loyal' to the Crown, but they were not the only owners of the land — the others, perhaps even a majority, had been exiled to the Chatham Islands. He was probably closer to the mark, though, in asserting that 'it is the interest of the rival provincial Authorities of Auckland and Hawkes Bay who are each striving to secure that Country for their respective Provinces to prevent private enterprise from stepping in to develop the country until it can be made productive to the Provincial Treasury' and that for these purposes the 'unsettled state' of the district had been 'grossly magnified' and exaggerated.³⁷

William Brown and John Logan Campbell were formidable (if absentee) figures in the business community of the north.³⁸ Even so, they were out of their

depth in coming up against Whitaker and McLean, who were rivals themselves for the same land, yet ironically united by a vested interest in ensuring private parties did not obtain the oil springs and other valuable areas before they could be confiscated and handed over to the provincial government — be it Whitaker's or McLean's — for 'colonization' by their friends.

McLean advised the government that the object of Turton and Preece was no doubt 'to do all in their power to further the interests of their employers', rather than the interests of the colony, and that they were unlikely to care whether the properties they were in negotiation for belonged to 'rebels' or not.³⁹ It would, he suggested, be both 'inexpedient & impolitic' to allow the Native Land Court to sit on the East Coast.⁴⁰ Preece attempted to counter this by asserting that he had done no more than enter into preliminary negotiations with a group of 'friendly' Maori, pending the decision of the court with respect to ownership. There had been no disturbances on the East Coast for more than seven months, and the district had not been proclaimed under the New Zealand Settlements Act, 1863. To deprive local Maori of an opportunity of having their titles determined now would, Preece advised Stafford, only destroy their confidence in the Native Lands Act.⁴¹

The Brown & Campbell faction were boxing clever. Fenton, for example, had reportedly got around the government's refusal to publish notice of the scheduled hearing in the *Kahiti* by distributing printed notices around the district.⁴² J.C. Richmond, who had only just assumed the de facto office of Native Minister, was forced to plead with the Chief Judge for a postponement, on the grounds that the sitting 'would give rise to embarrassment and be injurious to the public service'.⁴³ But whatever it was that Gillies was alleged to have had on Fenton must have been persuasive as Richmond's last-minute plea was to no avail. Despite this, the judge appointed to hear the case, H.A.H. Monro, reportedly feared giving offence to the government and, after discussions with Fenton, decided to postpone the hearing on the basis that it had not been sufficiently proclaimed in Hawke's Bay.⁴⁴

Preece wrote to Fenton the day after the hearing had been scheduled to commence, to complain that its postponement had left Maori with the impression that the court was subject to political considerations: 'they think the Government have kept the Court back in order to confiscate the land'.⁴⁵ This was precisely the government's intention, of course, and it was now just a question of time. Fenton was apparently informed in mid-September 1866 that the district from East Cape to Turanga would be confiscated within six to eight weeks.⁴⁶ Yet, with a further Native Land Court hearing scheduled for Turanga on 29 October 1866, the government effectively managed to achieve its goal in under four weeks.⁴⁷ Notwithstanding the Chief Judge's complaint as to the 'injurious effect of the interruption of the course of the law',⁴⁸ he was once again informed that the government would not publish notice of the hearing in the *Kahiti*.⁴⁹ Meanwhile, the Native Under Secretary had suggested that a clause might be inserted in the Native Lands Bill that was then before the House, giving the government — rather than the Chief Judge — control over when and where the court could sit.⁵⁰ This suggestion was adopted by the government and passed into law just over a week later, as was the East Coast Land Titles Investigation Act, a tailor-made

piece of legislation designed specifically for the unique and complex situation the Crown's procrastination had fostered at Turanga.⁵¹

A further important factor at this time was widespread disillusionment with the New Zealand Settlements Act of 1863, which had been used to confiscate vast areas of land elsewhere in the North Island.⁵² Fearing that crudely and excessively implemented confiscation under the Act would prolong Maori resistance, thus entailing increased financial and military burdens upon itself, the Imperial government had in April 1864 given reluctant and heavily qualified assent to the legislation. Many of the restrictions imposed by the secretary of state for the colonies, Edward Cardwell, were subsequently ignored in whole or part by the colonial authorities, including a two-year limit on the operations of the Act, along with requirements to first seek voluntary cessions of land before resorting to outright confiscation and to avoid taking 'loyalist' lands unless absolutely essential.⁵³

Within New Zealand, retired Chief Justice Sir William Martin, a strong critic of the legislation, pointed out that, if peace was the purported aim of the Act, the government did not need to look further than the Irish model upon which it was based to see how misguided such a policy was. His voice of opposition was a relatively lonely one in 1863, but by 1866 many others had come to regard the measure as a burden rather than boon to the colony. Nominally, the government may have acquired nearly 3 million acres of land through various proclamations under the Act, but it had also indebted itself to the tune of £3 million, with the original plan to recoup the costs of war and colonization through the sale of confiscated lands backfiring badly, plunging the colony into serious financial crisis.⁵⁴ While officials flirted with the idea of proclaiming parts of the East Coast under the New Zealand Settlements Act in the absence of any obvious alternative mechanism of confiscation, they remained reluctant to take such a step. Stafford later informed Parliament with reference to the failure apply the Act on the East Coast that 'it was thought inadvisable to act under that, as its operation was unsatisfactory and expensive, and left discontent behind it, which would be well to avoid'.⁵⁵

Yet despite the Byzantine-like scheming and alternative considerations which had resulted in the East Coast confiscation legislation, its immediate origins were quite simple: in a word, oil. By his own account Whitaker had departed for Wellington early in July 1866 to attend the opening of the General Assembly. He was already aware that 'the question of title would be found one of great difficulty', given that many of the owners of the oil springs were now exiled at the Chatham Islands, at large in the interior or, in the case of the so-called 'loyalists', either parties to the arrangement with the Auckland provincial government or in league with private parties seeking the same lands.⁵⁶ In these circumstances the Native Land Court as it was constituted could not, for political reasons, be employed to facilitate the acquisition of the land. As Whitaker noted, the court had no power to do otherwise than recognize 'rebel' claims, and no title could be obtained without their extinguishment. At the same time it was equally clear that the government could not be seen to 'permit men, who had been in rebellion, and some of whom were prisoners in their hands, to deal with land on equal terms with loyal natives'.⁵⁷

The only solution to this dilemma, Whitaker later wrote, was a kind of compact with the government for the future acquisition of the land: 'In order, therefore, to render the oil-springs available ... it appeared to the Superintendent to be especially an occasion in which the Provincial Government could advantageously employ a portion of the funds at the disposal of the Superintendent ... in acquiring, from the loyal natives, the title, subject to making an arrangement with the General Government, in reference to the claims of the Hau Hau rebels, captive and at large'.⁵⁸ That was a long-winded and euphemistic way of saying that the intention was to buy 'loyalist' interests whilst confiscating those of the 'rebels'.

Soon after arriving in Wellington Whitaker met with the Premier, Edward Stafford, and found that the government had resolved to adopt some comprehensive measure in respect of the East Coast district, but was undecided as to what this might involve.⁵⁹ In August 1866 Rice, accompanied by Turanga chiefs Panapa Waihopi and Paora Parau, also travelled to Wellington to testify before the Public Petitions Committee on the supposedly near-unanimous desire of East Coast Maori for their district to be annexed to the province of Hawke's Bay.⁶⁰ Their evidence highlighted not only an orchestrated campaign of fraudulently signed petitions (organized through local settler James Wyllie, who was in the pay of the province), but also once more brought to public attention Whitaker's dealings for the oil springs.⁶¹ However, according to Wyllie, Rice had bribed the chiefs into supporting the Auckland position.⁶² Both provinces were playing hardball in their efforts to acquire the oil springs.

Whitaker now sought to legalize Rice's dealings on behalf of Auckland province by applying to the Colonial Secretary for permission to negotiate valid purchases on the East Coast prior to the lands in question passing before the Native Land Court.⁶³ This request was verbally agreed to, according to Whitaker, but was subsequently strengthened even further. Just as a clause was included in the Native Lands Bill then before the House giving the Governor-in-Council the power to suspend the Native Land Court's operations (section 18), a further amendment was also included at this time purportedly allowing Superintendents to make valid purchases of Maori land prior to the issuing of title (section 13).

This clause had been included specifically at the request of Whitaker,⁶⁴ yet just as he was finally being hounded out of office over the whole affair in March 1867 the clause was deemed invalid, owing to the overriding effect of the 1852 Constitution Act.⁶⁵ On 3 September 1866 Preece had written confidently to Whitaker that the provincial government stood 'not the slightest chance' of getting the Turanga oil springs, located on Te Aitanga-a-Mahaki land at Pakake-a-Whirikoka.⁶⁶ This letter was accompanied by one from Wi Pere, Pita Te Huhu, and several other Mahaki chiefs declaring their support for Preece's bid for the land.⁶⁷ Even so, the chiefs had merely stated that the 'majority' favoured Preece, and Rice was confident that the support of many of these people would 'be secured by the highest bidder'.⁶⁸ Now that Whitaker could be certain that any agreement reached would stick, Rice was reportedly instructed to outbid Preece 'no matter what was offered'.⁶⁹ In this way the province of Auckland would acquire the oil springs by two means — through

the purchase of Kawanatanga ('loyalist') interests and through the confiscation of those of the exiled 'rebels'.

Whitaker assumed that the arrangement he had entered with the general government would allow him to negotiate valid agreements with 'loyalists' prior to any sitting of the Native Land Court (which he could request the postponement of until confident of having their consent to sell to Auckland). Under the East Coast Land Titles Investigation Act, the Native Land Court would still have jurisdiction with respect to the lands, but its first duty would be to confiscate any interests found to belong to 'rebel' Maori — interests which might then be transferred to the provincial government, along with those purchased from the 'friendly' chiefs. No longer legally obliged to purchase 'rebel' interests in the springs in order to obtain valid title, Whitaker now had reason to feel confident of being exempt from allegations of dealing with 'Hauhaus' for their lands.

Preece, rather optimistically, had led his employers to believe that the Turanga oil springs were located exclusively on the lands of Kawanatanga Maori.⁷⁰ Title to Turanga lands was rarely so clear cut. Yet, in the light of this information, Mackelvie remained more peeved by the amendment to the Native Lands Act allowing Superintendents to make purchases in advance of a court sitting than by the Act confiscating the interests of East Coast 'rebels'.⁷¹ Whitaker was less naive on this point. Clearly, if he did not personally draft the relevant confiscatory legislation — the East Coast Land Titles Investigation Act 1866 — he had at least been instrumental in promoting the case for such a measure, probably from the time of his 'arrangement' with the government in August 1866. He was certainly experienced in these matters, having drafted the New Zealand Settlements Act in his capacity as Premier and Attorney-General in 1863.

Yet if Whitaker did play such a prominent role in the passage of the 1866 legislation concerning the East Coast, what was the government's role in the affair? It has been suggested that the Stafford ministry had little idea of the bitter struggle for control of the oil springs at this time and had allowed itself to be deceived into passing the East Coast Land Titles Investigation Act by Whitaker 'solely to enable the confiscation of Maori land for the benefit of Auckland province and the companies anxious to exploit the oil'.⁷² Such analysis is based on an uncritical acceptance of the government's later protestations of innocence regarding these sordid dealings. In 1868, for example, Stafford himself informed the House that Whitaker's actions with regard to the oil springs had been undertaken by him 'not only without the sanction of the Government, but without our knowledge; and it was only towards the close of the session of 1866, when Mr. Whitaker was present as a member of the House, that, by accident purely, I became aware that he was taking any action as to those oil springs'.⁷³

On closer inspection the truth of the matter was somewhat different. Not only had Whitaker had a number of discussions with the Colonial Secretary on the subject, but on 9 August 1866 the Superintendent had even written to Stafford specifically seeking permission to negotiate for the acquisition of lands at Turanga, and informing him that 'Petroleum Springs have recently been

discovered there, and I am anxious, on the part of the Provincial Government, to secure them'.⁷⁴ According to Whitaker's account of events, Stafford immediately acceded to this request, later formalizing this — 'at the instance of the Superintendent' — through a section inserted in the Native Lands Act 1866.⁷⁵ In addition on 14 August 1866 the report of the Public Petitions Committee on the annexation petitions of East Coast Maori was brought before the House. Amongst the minutes of evidence attached to this report was the testimony of Henry Rice, who had informed the committee members that, as an agent acting for the Auckland provincial government, he had 'made advances to the Natives with reference to their rights in connection with the Petroleum Springs'.⁷⁶ Moreover, acting in compliance with a request from the Colonial Secretary, McLean had forwarded him a specimen obtained from the Turanga oil springs less than three weeks after the 1866 session of Parliament had commenced — and nearly three months before the East Coast Land Titles Investigation Act was passed into law.⁷⁷ Stafford immediately forwarded these samples for analysis by Dr James Hector.⁷⁸

Taken together with the voluminous amount of more anecdotal evidence contained in the papers of James Mackelvie, the evidence for a degree of collusion between Whitaker and the central government with respect to this whole affair would appear to be overwhelming. Even Hugh Carleton, who had served as Whitaker's Provincial Secretary in 1866, was later to inform the House that 'Mr. Whitaker came to Wellington and succeeded in prevailing on the Government to pass the East Coast Land Titles Act'.⁷⁹ He was certainly in a position to know the truth of the matter, as was J.C. Richmond, who in 1868 stated that the legislation had been 'suggested by the honorable member for Parnell (Mr. Whitaker), and was adopted by the Government, and passed on their motion'.⁸⁰

Yet although the Stafford government certainly knew of the existence of the oil springs and Whitaker's efforts to acquire them well before the passage into law of the East Coast Land Titles Investigation Act — which indeed appears to have been passed at the instigation of the Auckland Superintendent for the purpose of obtaining the Turanga oil springs — this is not to say that some similar piece of legislation would not have been drawn up by the government, regardless of such concerns. There is no doubt that even before the siege of Waerenga-a-Hika the government had determined to implement some form of confiscation on the East Coast, nor that it remained dubious about the merits of doing so by means of the now widely discredited New Zealand Settlements Act of 1863. It was also obvious that, if raupatu was to be pursued, it was in the government's best interests to prevent private parties from securing lands liable to confiscation before this could be arranged.

Taken together, the East Coast Land Titles Investigation Act and section 18 of the Native Lands Act meant that the Native Land Court could only be convened when the government deemed it prudent, and that even then it would be obliged to confiscate the lands of East Coast 'rebels', thus fulfilling the government's stated policy. This approach was altogether more effectual than a widely ridiculed and ignored warning to settlers in the local newspaper, as had earlier been attempted.⁸¹

McLean's involvement or otherwise in these proceedings is less clear. In 1868 J.C. Richmond claimed in the House that the East Coast Land Titles Investigation Act had been introduced 'with the advice of Mr. McLean and Mr. Whitaker'.⁸² However, during the course of the same debate McLean denied this, asserting that 'the Superintendent of Auckland was the author' of that Act and claiming that he had personally favoured more moderate legislation along the lines of the Outlying Districts Police Act, which encouraged cessions rather than confiscation of land.⁸³

This was not strictly correct. McLean had suggested to the government in December 1865 that *either* the Outlying Districts legislation or the New Zealand Settlements Act 'might be made applicable to the case'.⁸⁴ Indeed, he appeared less concerned at that time as to which piece of legislation was used than with the urgent need to take steps to prevent private parties from acquiring lands liable to confiscation by the Crown. Yet McLean was soon to have second thoughts about the wisdom of swift action. His closest political companion, J.D. Ormond, was to comment in May 1866 that they were in agreement with respect to the preferred course of action regarding the East Coast. This was now quite clearly to delay matters as much as possible, and Ormond noted that he did not fear that confiscation of 'our East Coast land' would occur before the Assembly met. Stafford was a cautious man, while Ormond had given 'fair reasons' to Grey as to why nothing precipitate should be done in the matter and believed he would assist them if necessary. Above all else, he advised McLean to 'stir up the question as little as possible, let it remain in abeyance & probably Stafford in the multitude of his engagements will forget it'.⁸⁵

The next session of the General Assembly saw a renewed (but, as was seen above, ultimately failed) effort to have the East Coast annexed to the province of Hawke's Bay. Confiscation prior to annexation would see the lands handed over to Auckland. As Ormond was quick to point out to McLean, this would leave the Assembly's Hawke's Bay contingent (led by themselves) in an invidious position in relation to the Stafford government: 'it wd. be Hawkes Bay heave for Stafford or away goes Poverty Bay to Auckland', he wrote.⁸⁶ Confirming his own change of heart on the pace of confiscation plans on the East Coast, McLean wrote officially to the Colonial Secretary that he now believed it would be 'inexpedient to move in the matter until I can report the war on the East Coast is finally ended' and that justice required that the lands of the 'friendly Natives' should be clearly marked off before any proclamation was issued.⁸⁷

McLean was now quite clearly playing for time, but possibly covering his back by seeking Maori consent to some kind of confiscation arrangement at a future date.⁸⁸ In September 1866 the newly elected member of Parliament for Napier finally introduced the Auckland and Hawke's Bay Boundaries Bill into Parliament. As a sweetener, McLean promised to spend some £20,000 of Hawke's Bay's revenue on war compensation for 'friendly' Maori and Pakeha of the district, with a further £20,000 to be expended on land purchases.⁸⁹ Te Aitanga-a-Mahaki chief Panapa Waihopi's damning evidence before the Public Petitions Committee had already helped to discredit the idea promoted by McLean of some kind of spontaneous desire of East Coast Maori to be reunited

with their Heretaunga kin. Despite McLean's best efforts, Auckland's 15 votes to Hawke's Bay's two effectively decided the matter.⁹⁰ The East Coast would remain part of the Auckland province and its southern boundary at the 39th parallel would mark the limits of the area subject to the East Coast Land Titles Investigation Act. Faced with a choice of offending either Auckland or Hawke's Bay — Whitaker or McLean — the government had opted for the latter.⁹¹

Worse was to follow for McLean. With the government jealous of his independent power base, and angered by his continuing refusal to follow instructions, in November 1866, McLean was effectively replaced as Crown agent on the East Coast by Reginald Biggs — one of the heroes of the war campaign now resident at Turanga.⁹² This was far from the end of McLean's involvement in the district's affairs, but for a time at least he was to be on the outer. He may have voted for the East Coast Land Titles Investigation Act, but clearly he had little if any role in its framing.

With the government seemingly short of ideas on how to deal with the East Coast land question, and McLean and Ormond determined to avoid the question of confiscation before their annexation measure had been debated, Whitaker stepped in to fill the policy vacuum. The Stafford government had not been hoodwinked into passing the East Coast Land Titles Investigation Act by Whitaker. Rather, it would appear that Whitaker's confiscation proposals were adopted by the government, even though aware of the superintendent's motives for advancing them, because they suited the government's own vague notion of taking territory to pay for the cost of suppressing 'rebellion'. This was about the limit of government 'policy' regarding the East Coast prior to Whitaker's involvement in matters. Any detailed proposal which specified precisely how a modified form of *raupatu* might be implemented was likely to receive serious consideration from the government, regardless of the motives of those advancing it. Whitaker, with all his political connections, happened to be in the right place at the right time.

What, then, of Fenton, the Chief Judge of the Native Land Court? J.C. Richmond informed Parliament in 1867 that the East Coast Land Titles Investigation Act 'was first recommended by the chief judge of the Native Lands Court, to avoid the most vexatious part of the New Zealand Settlements Act'.⁹³ A year later Stafford also told the House that Fenton had even 'authorized him to say publicly, that the East Coast Land Titles Investigation Bill was one of the best Bills ever devised for the settlement of disputes where there had been large sections of the Native race in organized aggression against the supremacy of the Crown'.⁹⁴

If this was indeed the case, then on the surface it would seem difficult to reconcile with Mackelvie's allegation that Fenton was somehow indebted to the Brown & Campbell lawyer, Gillies. Fenton may well have later become a fan of the legislation — after all it did reserve to the Native Land Court the dubious honour of confiscating Maori lands (by contrast with the New Zealand Settlements Act, which denied the court any jurisdiction with respect to areas proclaimed under it). Yet, apart from Richmond's and Stafford's statements to the House, there is no credible evidence to suggest that Fenton had suggested the legislation.

In the weeks and days leading up to the passage of both the East Coast and Native Lands legislation, the Chief Judge continued with his efforts to schedule a hearing of the Brown & Campbell claims at Turanga, notwithstanding continuing opposition from the government. James Preece had consistently informed his employers that the owners of the Pakake-a-Whirikoka springs were not 'rebels'. In the light of this information, Mackelvie remained more peeved at Whitaker's 'political trickery' in getting the pertinent amendments to the Native Lands Act 'smuggled' into law than he was at the passing of the East Coast Land Titles Investigation Act.⁹⁵ In fact, even after the confiscatory legislation became law, Brown & Campbell pressed on with efforts to have their claims heard, apparently confident the springs would be awarded to 'loyal' Maori.

Fenton does not appear to have been quite so optimistic about this point. Mackelvie wrote in November that 'Fenton ... notwithstanding his repeated protestations that he would not allow his dignity as a Judge of the Native Land Court to be interfered with seems almost to have been playing into Whitaker's hands'.⁹⁶ The latest hearing, scheduled for Turanga on 29 October 1866, had again been adjourned by the Chief Judge, notwithstanding the government's failure, so far, to suspend the operations of the Native Lands Act with respect to the East Coast. And Whitaker, perhaps crucially, was instead said to be threatening the chief judge that if he did persist with plans to convene the court on the East Coast, measures would be taken to ensure that no land was left to adjudicate upon. Given just how jealously Fenton did guard the powers and jurisdiction of his court, this was perhaps a formative moment in the Chief Judge's later apparently enthusiastic response to the East Coast Land Titles Investigation Act.

Preece, meanwhile, was apparently now using the passage of the East Coast Land Titles Investigation Act to persuade Te Aitanga-a-Mahaki that they should sell the oil springs to Brown & Campbell for just over £5000, rather than enter a 20-year lease with the government.⁹⁷ Rice's efforts to outbid him were apparently to no avail. Preece had told Turanga Maori that Whitaker would simply take their land for the government, and that that had been the object in preventing the Native Land Court from sitting.⁹⁸ Even Rice acknowledged that the continual postponement of scheduled court sittings had been a 'great disappointment' to many Maori.⁹⁹ William Brown's newspaper, the *Daily Southern Cross*, put things somewhat more forcefully, reporting that Maori had 'returned to their homes, grumbling and disgusted' by the latest failure of the court to convene.¹⁰⁰

On 5 December 1866 Whitaker instructed Rice to return to Auckland.¹⁰¹ In so far as Turanga was concerned, the Superintendent had been outmanoeuvred on the commercial front yet remained in a dominant position because of the legislation he had persuaded the government to pass. Yet if he had thought that his actions were backed up politically at a local level, he was in for something of a shock. One week later the Auckland Provincial Council passed a resolution stating that "'The Native Lands Act, 1866", and "The East Coast Land Titles Investigation Act, 1866", are contrary to good policy, and opposed to the best interests of both Natives and Europeans in this Province'.¹⁰² Whitaker,

humiliatingly, was required to convey this resolution to the government, even whilst making clear his opposition to it.¹⁰³

By February 1867 Whitaker had been forced to place all correspondence relating to his efforts to acquire the Turanga oil springs before the Provincial Council.¹⁰⁴ Government policy with respect to the East Coast, and the Auckland Superintendent's role in formulating this, was now the subject of intense public scrutiny and examination, and with the *New Zealand Herald* pitching in in defence of Whitaker, a war of words soon commenced between the two rival Auckland newspapers.

According to the *Southern Cross*, the government had put a stop to the operation of the Native Land Court on the East Coast 'until other Acts could be passed to favour certain arrangements entered into, in respect of these lands, between influential members of the General Assembly, whose "vote and interest" were of importance to the Government'.¹⁰⁵ The East Coast Land Titles Investigation Act had been 'hurried through its stages at more than railway speed', the newspaper continued, 'and ... was specially framed to assist the Superintendent in preventing private individuals from interfering with his own arrangements'.¹⁰⁶ As the same paper put it elsewhere: 'Who [was] so potent in the balance of parties in the House of Representatives as the Superintendent of Auckland, leader of "the Auckland Phalanx", and Mr. Julius Vogel of Dunedin. No Ministry could despise such opponents. The law was changed.'¹⁰⁷

Whitaker's agreement with Vogel concerning the sale or lease of the land in question was, it was remarked, 'an extraordinary proceeding'. 'A private understanding' had been reached between Whitaker and Stafford regarding the fate of the East Coast, the paper claimed, but as James Preece wrote in a letter to the editor, why, if the purpose of the East Coast Land Titles Investigation Act was to punish 'rebel Natives', was not the eastern Bay of Plenty included within its boundaries? 'It was not necessary to do so, as there were no fertile plains, no oil springs there. The boundary is only fifteen miles this side of the last oil-spring. When threats and entreaties failed, another plan was resorted to.'¹⁰⁸

Preece claimed that, although Rice had beaten him to the Turanga oil springs by a matter of 'a day or two', he had been first to reach agreement with the owners for their lands. Rice had followed him about everywhere, he added, but at no point did he inform Maori that they could not sell their lands because they were 'rebels'. Instead, he had simply attempted to offer more than anyone else for the land. The *Southern Cross* certainly pulled no punches, even going so far as to allege that both Whitaker and the rival newspaper had deliberately suppressed correspondence revealing the true extent of the superintendent's murky East Coast dealings with Vogel and the government.¹⁰⁹

Although denying its alleged status as a mere 'organ' of Whitaker, the *Herald* nevertheless mounted a stern defence of his moves to prevent the 'Great Land Sharks' of the province from dealing in 'rebel' land liable to confiscation.¹¹⁰ Its rival paper had 'waxed virtuously indignant' at Whitaker's alleged 'interference' on the East Coast, the *Herald* remarked, when he had had no other option but to interfere to prevent 'rebel' lands from being purchased.¹¹¹ The *Southern Cross* had, it was suggested, gone from being an

enthusiastic supporter of the Superintendent to his fiercest critic for a very specific reason: 'In the passing of the East Coast Land Titles Investigation Act, "the firm" saw that the interest of the public would have the preference with Mr. Whitaker over "commercial enterprise" of a certain kind, and the *Cross* was let loose upon him.'¹¹² If Brown & Campbell had suffered as a result of the Act, this in itself, the paper pointed out, was an acknowledgement that they must have been dealing in 'rebel' lands, since the interests of 'friendly' Maori were supposedly left untouched by the legislation.¹¹³

Mackelvie, for one, found some solace in the fact that Whitaker had been 'bullied' into resigning from his superintendency over the affair in March 1867, but neither party emerged from this debate with much credit.¹¹⁴ The Stafford government, too, had its reputation soiled by its involvement in the business, and politically only Donald McLean emerged unscathed from the whole affair. Time and again, when the 'East Coast land question' came before the House for debate, McLean and his allies were able to point to the way in which Whitaker's efforts to acquire the Turanga oil springs had allegedly undermined McLean's own exertions to implement confiscation in the district. As McLean asserted in 1868:

the Superintendent of Auckland ... had coveted very much some valuable oil springs which happened to be in the very centre of this territory, which ought to have been the property of the Colony, and which the Natives acknowledged was Hauhau property. An agent was employed by the Superintendent of Auckland, who represented that the agreements entered into with the Colonial Government should be rescinded; that the whole question vested in the Superintendent of that Province; that he was anxious to possess the oil springs, and that a large price should be given for them. This money was actually to be given for what was the property of the Colony.¹¹⁵

Given that Whitaker had actually played a pivotal role in seeing legislation passed which indeed provided for the confiscation of these lands, McLean was rewriting history here somewhat. Even so, McLean's barbs tended to stick, and the Stafford ministry was not immune from his criticisms: 'The Government, by not promptly checking the proceedings of Mr. Whitaker and others, virtually cut the ground from under my feet, and destroyed every prospect of effecting a satisfactory settlement of the East Coast.'¹¹⁶

McLean might claim the high moral ground, but his own tactics in seeking to obtain the same lands by means of annexation were hardly any less dubious. He, too, had stood up in Parliament and told bare-faced lies, asserting that East Coast Maori had spontaneously petitioned to be reunited with their Heretaunga kin, when in fact the whole campaign had been carefully orchestrated by himself and Ormond as part of their own plan of provincial (and probably also personal) enrichment.¹¹⁷ Moreover, once it became clear that the Hawke's Bay contingent did not have the numbers to annex the East Coast, they reversed their earlier opposition to confiscation, with Ormond urging the government to get on with the job under the New Zealand Settlements Act.¹¹⁸ Their earlier opposition to swift confiscation had been just as self-interested as that of Brown & Campbell and their Auckland business associates.

For the owners of the oil springs, their only real friend was perhaps government incompetence. In January 1867 it was discovered that the oil springs at Turanga had inadvertently been excluded from the schedule to the East Coast confiscation legislation, while a further serious defect in the wording of the Act saw ‘rebel’ lands actually excluded from those liable to be taken, prompting amending legislation later in the year.¹¹⁹ Meanwhile, as the inherent flaws in the legislation, supposedly offering a milder form of confiscation, became apparent over time a new strategy was devised. Rather than rely on the Native Land Court to confiscate ‘rebel’ interests, leaving the Crown to pick up potentially widely scattered blocks, the legislation would instead be used to induce East Coast Maori to enter into out-of-court arrangements in which the lands to be given up were consolidated into fewer blocks. This strategy, aptly described by one critic as ‘begging with a bludgeon’,¹²⁰ was eventually employed, along with occasional threats to introduce the ‘harder law’ of the New Zealand Settlements Act, to secure large areas of ‘voluntarily’ ceded lands at Turanga and Wairoa-Waikaremoana.¹²¹ But by the time these convoluted deals were eventually completed in the late 1860s and early 1870s, oil had long since ceased to be of any importance in the story. In fact, as early as August 1867 Mackelvie had reported to his associates that deep boring would be required to get to the oil — something not yet economic.¹²² For a brief time oil had, however, been at the very centre of efforts to confiscate and ‘open up’ the district to European settlement.

There is a tendency to view *raupatu* in one-dimensional terms, in which all Pakeha and all shades of settler government invariably supported a policy of confiscation. Yet even leaving aside humanitarian critics such as Martin, the reality was sometimes more complex than this. Inter-provincial, personal and business rivalries could make for a more fluid picture. As the story of the short-lived East Coast ‘petroleum wars’ suggests, there is a need to explore such dynamics in greater detail, even in the context of the most blunt and seemingly straightforward of nineteenth-century colonial policies of indigenous dispossession.

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NOTES

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- 3 W.B. Baker to Native Secretary, 15 January 1862, *Appendices to the Journals of the House of Representatives* (AJHR), 1862, E-9, Sec.V, p.6; Vincent O'Malley, 'Treaty-Making in Early Colonial New Zealand', NZJH, 33, 2 (1999), pp.138–9.
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- 6 W.L. Williams Journal, 16 February 1866, MS 2458, ATL; *Hawke's Bay Times*, 5 February 1866.
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- 8 G.C. Dunstall, 'Colonial Merchant: J.T. MacKelvie, Brown Campbell and Co., and the Business Community of Auckland, 1865–71', MA thesis, The University of Auckland, 1970, p.171.
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- 11 Mackelvie to W. Brown, 7 May 1866, MS 196, ACL.
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- 13 Mackelvie to Brown, 7 May 1866, MS 196, ACL.
- 14 *Hawke's Bay Herald* (HBH), 14 April 1866.
- 15 *New Zealand Herald* (NZH), 21 April 1866.
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- 17 Mackelvie to Hamilton, 10 August 1866, MS 196, ACL.
- 18 R.C.J. Stone, 'Whitaker, Frederick', in *The Dictionary of New Zealand Biography* (DNZB), Vol. One, 1769–1869, Wellington, 1990, pp.586–87; Raewyn Dalziel, *Julius Vogel: Business Politician*, Auckland, 1986.
- 19 S. Locke to McLean, 20 November 1866, MS Papers 0032:0393, ATL.
- 20 Whitaker to Vogel, 15 May 1866, JAPC, 1866–1867, A-12, p.4.
- 21 Whitaker to B. Mason, 8 July 1866, JAPC, 1866–1867, A-12, p.5.
- 22 Colonial Secretary to McLean, 15 March 1865, AGG-HB 1/1, Arch-NZ.
- 23 H. Carleton (for Superintendent) to Rice, 18 May 1866, JAPC, 1866–1867, A-12, p.6.
- 24 Rice to Whitaker, 1 June 1866, JAPC, 1866–1867, A-12, pp.6–7.
- 25 Rice to Whitaker, 11 June 1866, JAPC, 1866–1867, A-12, pp.7–8.
- 26 Brian Murton, 'Te Aitanga-a-Mahaki 1860–1960: The Economic and Social Experience of a People', Wellington, 2001, p.70; Judith Binney, *Redemption Songs: A Life of Te Kooti Arikirangi Te Turuki*, Auckland, 1995, pp.58–59.

- 27 Rice to Whitaker, 15 June 1866, JAPC, 1866–1867, A-12, pp.8–9.
- 28 *ibid.*; Mackelvie to Hamilton, 11 July 1866, MS 196, ACL; Mohi Turei to McLean, 26 June 1866, AGG-HB 2/1, Arch-NZ; Harris to McLean, 2 July 1866, MS Papers 0032:0327, ATL.
- 29 Mackelvie to Hamilton, 11 July 1866, MS 196, ACL.
- 30 Mackelvie to Brown, 17 July 1866, MS 196, ACL. In a subsequent letter Mackelvie wrote that ‘our legal chum had arranged for Native Courts to be held on the spot on certain dates’. Mackelvie to Hamilton, 10 August 1866, MS 196, ACL.
- 31 W. Rolleston (Native Under Secretary) to Chief Judge, Native Land Court, 1 August 1866, MA 62/8, Arch-NZ.
- 32 A.J. Dickey (Chief Clerk of Native Land Court) to Turton & Preece, 8 August 1866, MA 62/8, Arch-NZ.
- 33 Mackelvie to Hamilton, 10 August 1866, MS 196, ACL.
- 34 *ibid.*
- 35 Mackelvie to Brown, 11 August 1866, MS 196, ACL.
- 36 H. Turton to Stafford, 8 August 1866, MA 62/8, Arch-NZ.
- 37 *ibid.*
- 38 See R.C.J. Stone, ‘Brown, William’, and ‘Campbell, John Logan’, in DNZB, Vol. One, pp.44–45, 67–68. Both men were absent from the country at the time of these developments, weakening their ability to influence the course of events.
- 39 McLean, memorandum, 20 August 1866, MA 62/8, Arch-NZ.
- 40 McLean, memorandum, 4 September 1866, MA 62/8, Arch-NZ.
- 41 Preece to Colonial Secretary, 23 August 1866, MA 62/8, Arch-NZ.
- 42 *ibid.* See panuitanga, 17 July 1866, MA 62/8/ Arch-NZ.
- 43 J.C. Richmond to Fenton, 8 September 1866, MA 62/8, Arch-NZ. The Stafford government had nominally abolished the office of Native Minister. Richmond was officially collector of customs.
- 44 Mackelvie to Brown, 11 September 1866, MS 196, ACL. See also Fenton to Native Minister, 15 September 1866, MA 62/8, Arch-NZ.
- 45 Preece to Fenton, 13 September 1866, MA 62/8, Arch-NZ.
- 46 Mackelvie to Brown, 11 September 1866, MS 196, ACL.
- 47 Panui, 11 September 1866, MA 62/8, Arch-NZ.
- 48 Fenton to Native Minister, 20 September 1866, MA 62/8, Arch-NZ.
- 49 Richmond (marginal note), 17 September 1866, MA 62/8, Arch-NZ.
- 50 Rolleston (marginal note), 30 September 1866, MA 62/8, Arch-NZ.
- 51 See Vincent O’Malley, ‘Report for the Crown Forestry Rental Trust on the East Coast Confiscation Legislation and Its Implementation’, Wellington, 1994.
- 52 A number of Waitangi Tribunal reports have explored raupatu under the New Zealand Settlements Act at Taranaki, the Bay of Plenty and elsewhere. For a brief overview on the subject, see also Bryan Gilling, ‘Raupatu: The Punitive Confiscation of Maori Land in the 1860s’, in A.R. Buck, John McLaren and Nancy E. Wright, eds, *Land and Freedom: Law, Property Rights and the British Diaspora*, Aldershot, 2001, pp.117–34.
- 53 E. Cardwell to Grey, 26 April 1864, AJHR, 1864, E-2, pp.20–23.
- 54 B.J. Dalton, *War and Politics in New Zealand 1855–1870*, Sydney, 1967, p.257.
- 55 New Zealand Parliamentary Debates (NZPD), 1867, 1, p.868.
- 56 Whitaker, message no.43, 5 February 1867, JAPC, 1866–1867, p.95.
- 57 *ibid.*
- 58 *ibid.*
- 59 *ibid.*, p.96.
- 60 AJHR, 1865, G-12, G-13, G-14.
- 61 AJHR, 1866, F-11A. J.W. Harris, a Turanga settler and ally of McLean, informed the latter in July 1866 that Rice had gone out of his way to prejudice the annexation campaign, including telling local Maori that Auckland was rich while Hawke’s Bay was poor and would force them to pay for roads and other facilities. Harris to McLean, 2 July 1866, MS Papers 0032:0327, ATL. Biggs, who also remained on close terms with McLean, described Rice as ‘the most unprincipled man I ever saw in government employment’. Biggs to McLean, 19 November 1866, MS Papers 0032:0162, ATL. Yet Biggs was not without an eye to his own interests, urging Samuel Locke to take up the appointment as government surveyor at Turanga on the basis that only the two of them would know which lands were to be confiscated from the ‘rebels’ and those interests to be

retained by the 'loyalists', which the pair of them might stand to make a considerable profit from by purchasing privately ahead of any competition from others. Biggs to Locke, n.d. [c. November 1866], MS Papers 0032:0162, ATL. For his part, Locke suggested to McLean that if the annexation cause really was lost as supposed, 'the Napier people' ought to '[g]et up a company' and instead buy up all the land 'right and left'. Locke to McLean, 26 September 1866, MS Papers 0032:0393, ATL.

62 Wyllie to McLean, 21 August 1866, MS Papers 0032:0660, ATL.

63 Whitaker to Colonial Secretary, 9 August 1866, JAPC, 1866–1867, A-12, pp.21–22.

64 Whitaker, message no.43, 5 February 1867, JAPC, 1866–1867, p.97.

65 Colonial Secretary to Hawke's Bay Superintendent, 13 March 1867, 2 April 1867, Colonial Secretary's outwards letterbook to North Island Superintendents, IA 4/187, Arch-NZ. The Hawke's Bay superintendent was informed that under the Constitution Act only the Queen, rather than the Governor, could delegate authority to superintendents to make valid purchases on behalf of the Crown.

66 Preece to Whitaker, 3 September 1866, JAPC, 1866–1867, A-12, p.22.

67 Pita Te Huhu and others to Whitaker, 25 August 1866, JAPC, 1866–1867, A-12, p.23.

68 Rice to Whitaker, 14 November 1866, JAPC, 1866–1867, A-12, pp.19–20. Wi Haronga informed McLean in October 1866 that he was opposed to the work of both Preece and Rice, having placed the land in the hands of the government. He would subsequently become a stern critic of confiscation measures, however. Wi Haronga to McLean, 29 October 1866, AGG-HB 2/1, Arch-NZ.

69 Mackelvie to Brown, 11 October 1866, MS 196, ACL.

70 *ibid.*

71 Mackelvie to Brown, 11 November 1866, MS 196, ACL.

72 Dalziel, p.84.

73 NZPD, 1868, 3, p.153.

74 Whitaker to Colonial Secretary, 9 August 1866, JAPC, 1866–1867, A-12, pp.21–22.

75 Whitaker, message no.43, JAPC, 1866–1867, pp.96–97.

76 AJHR, 1866, F-11A, p.5.

77 McLean to Colonial Secretary, 18 July 1866, IA 1/1866/2226, Arch-NZ; McLean, NZPD, 1868, 4, p.37. The 1866 session of Parliament commenced on 30 June. The East Coast Land Titles Investigation Act was passed into law on 8 October 1866.

78 J. Hector, memorandum, 19 July 1866, IA 1/1866/2226, Arch-NZ.

79 NZPD, 1868, 3, p.38.

80 *ibid.*, p.145.

81 HBH, 12 May 1866.

82 NZPD, 1868, 2, p.518.

83 *ibid.*, p.524.

84 McLean to Colonial Secretary, 12 December 1865, IA 1/1866/1470, Arch-NZ.

85 Ormond to McLean, 2 May 1866, MS Papers 0032:0481, ATL.

86 Ormond to McLean, 25 April 1866, MS Papers 0032:0482, ATL.

87 McLean to Colonial Secretary, 7 May 1866, IA 1/1866/1470, Arch-NZ.

88 In May 1866 Leonard Williams had reported that Turanga 'loyalists' were being asked to sign a document indicating their consent to the district being placed under the New Zealand Settlements Act 'at least as far as the land of the Hauhaus is concerned'. W.L. Williams to William Williams, 19 May 1866, Williams Family Papers, MS Papers 0069:0056A, ATL.

89 NZPD, 1866, p.962.

90 R.H. Trustcott, 'Poverty Bay and Colonial Land Policy, 1865–1868', research essay, The University of Auckland, 1976, p.14.

91 Michael Turnbull, 'Politics and the East Coast War, 1865–69', *Political Science*, 5, 2 (1953), p.7.

92 Biggs to Native Under Secretary (W. Rolleston), 22 November 1866, MA 62/8, Arch-NZ. McLean was frequently admonished for lavish and unauthorized expenditure on native affairs, for issuing arms to Maori too freely, and for failing to follow instructions such as that concerning the non-imprisonment of women and children. Despite its age, one of the best analyses of McLean's relationship with the government with respect to East Coast affairs during this period is M.R.M. Turnbull, 'An Enquiry into the Conduct of the East Coast War, 1865 to 1869', MA thesis, Victoria University College, 1947.

93 NZPD, 1867, 1, p.693. In a later debate Richmond claimed that the general scope of the East Coast legislation was in accordance with measures first proposed by Fenton in 1863 instead of the New Zealand Settlements Act. NZPD, 1868, 3, p.145.

94 NZPD, 1868, 2, p.520.

95 Mackelvie to Brown, 11 November 1866, MS 196, ACL.

96 *ibid.*

97 Mackelvie to Brown, 3 December 1866, MS 196, ACL.

98 Rice to Whitaker, 14 November 1866, JAPC, 1866–1867, A-12, p.19.

99 Rice to Deputy Superintendent, 15 September 1866, JAPC, 1866–1867, A-12, p.11.

100 *Daily Southern Cross* (DSC), 26 November 1866.

101 Whitaker minute, 5 December 1866, JAPC, 1866–1867, A-12, p.20.

102 G.M. O'Rorke (Speaker) to Superintendent, 12 December 1866, 'Papers Relative to the Native Lands Act, 1866, and the East Coast Land Titles Investigation Act, 1866', *Appendices to the Journals of the Legislative Council* (AJLC), 1867, p.39.

103 Whitaker to Colonial Secretary, 24 December 1866, AJLC, 1867, p.39.

104 Whitaker, message no.43, 5 February 1867, JAPC, 1866–1867, p.94.

105 DSC, 28 February 1867.

106 *ibid.*

107 DSC, 22 February 1867.

108 DSC, 25 January 1867.

109 DSC, 7 February 1867, 12 February 1867.

110 NZH, 6 February 1867.

111 NZH, 17 January 1867.

112 NZH, 6 March 1867.

113 NZH, 22 January 1867.

114 Mackelvie to Bond, 12 March 1867, MS 196, ACL. Whitaker's biographer in the *Dictionary* makes no mention of the oil springs controversy which plagued the latter part of his superintendency. Clearly, however, as Raewyn Dalziel says, it had made him many enemies, and formed a major factor in his decision to resign from office. R.C.J. Stone, 'Whitaker, Frederick', in DNZB, vol.1, pp.586–7; Dalziel, p.84.

115 NZPD, 1868, 3, p.148.

116 NZPD, 1868, 4, p.37.

117 O'Malley, 'East Coast Confiscation Legislation and its Implementation', pp.64–65.

118 NZPD, 1866, p.1022.

119 Biggs to H. Halse, 6 January 1867, MA 62/8, Arch-NZ; Rolleston to Fenton, 22 June 1867, AJHR, 1867, A-10D, p.3.

120 NZPD, 1868, 3, p.158.

121 See Waitangi Tribunal, *Turanga Tangata Turanga Whenua*, I, chs 6, 7; Vincent O'Malley, 'The Crown and Ngati Ruapani: Confiscation and Land Purchase in the Wairoa-Waikaremoana Area, 1865–1875', Wellington, 1994; O'Malley, 'East Coast Confiscation Legislation'. The Waitangi Tribunal concluded that the deed of cession signed at Turanga in December 1868 was 'confiscation both in its underlying motivation and . . . in its technical effect as well' (p.338).

122 Mackelvie to Hamilton, 10 August 1867, MS 196, ACL.