*Judith Bassett**

ABSTEMIOUS MILLHANDS AND BUSH LAWYERS: THE TE KOPURU MAGISTRATES' COURT, 1875-1878

SUNDAY DRINKING IN A FAR-FLUNG OUTPOST OF THE BRITISH EMPIRE

ON 10 September 1876 Joseph Raynes, licensee of the Kaihu hotel at Dargaville, appeared before the three justices of the peace who constituted the Te Kopuru Resident Magistrates' Court. He was charged with supplying liquor on Sunday to Frederick Lehman, a labourer at the Aratapu sawmill. The alleged offence was a breach of s38 of the *Auckland Provincial Licensing Act* 1871 (NZ) which prohibited the sale or supply of alcoholic liquor on Sundays except to *bona fide* travellers or residents of the hotel.[1] Raynes pleaded not guilty and the case was tried. Eight witnesses were called for the prosecution and three for the defence. Raynes was convicted and fined the maximum penalty of £20 with costs of £3/16/6 and witnesses' expenses of £4/1/-.[2] On the broad canvas of nineteenth century New Zealand history the event scarcely warrants a brush-stroke. Nevertheless the Raynes trial reveals a good deal about the legal culture of this part of frontier New Zealand.

On the face of it, the case also disclosed details of working men's drinking habits previously unknown to social historians. Lehman, known to his mates as 'Bismarck' because of his German origin, went up to the Kaihu hotel[3] in a boat with five others: Thomas Gellie and Samuel Dickens,

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1 *Acts and Ordinances of the Superintendent and Provincial Council of the Province of Auckland* Sessions XXV and XXVI No 9.

2 *Police v Raynes*: Auckland Archives, BADC A497/67.

3 The Kaihu hotel, now the 'Central', was built in 1876 where the Kaihu creek flowed into the Northern Wairoa River. The village now called Kaihu was several miles further up the creek, so when the witnesses speak of 'the Kaihu' they refer to the hotel and its neighbourhood and not the village. The Aratapu party travelled by boat because there was no road connecting Aratapu, Te Kopuru and Dargaville.

engine drivers, Alfred Mills, a carpenter, Thomas Bascombe, a millhand, and John Chilman, a schoolteacher. According to Lehman's sworn evidence only Thomas Gellie managed to buy a bottle of beer, and he (not Raynes) gave Lehman one glass out of it. Everyone else drank lemonade syrup and ginger beer. Samuel Dickens had a dull day, he drank nothing at all. Alfred Mills drank only sarsaparilla. All were "perfectly sober" when they returned to Aratapu. Samuel Dickens, the second witness, told the Court he was a good Templar. He drank 2 glasses of sarsaparilla but he thought "some of the men were drinking ale". On the way home, he said, 'Bismarck' "seemed to have had something. He wanted to jump overboard." Alfred Mills said he spent an hour and a half in the bar. He confessed to drinking a glass of sarsaparilla and "a glass of grog" bought for him by a stranger. "In answer to a question from the Bench the witness said that he did not say 'grog' but sarsaparilla. Here followed a sharp cross questioning from the Bench, but it was impossible to say whether the word 'grog' which the witness most certainly said, was a simple mistake, or an unintentional speaking of what was intended to be kept back."

Thomas Gellie said that he went to 'the Kaihu' on a charitable mission: to take clothes and money to two destitute children. He denied treating Lehman to a glass of beer. On the way back in the boat, he said, Lehman was perfectly sober. "He did not try to jump overboard. He was only saying that he could swim ashore in 3 or 4 strokes from where those men were drowned." John Hand, a millhand up from Aratapu with another party was more helpful to the prosecution. He himself, he said, drank only ginger beer and raspberry drink in a private room; but on the way back he remembered others teasing Lehman, who was not sober, saying "Bismarck had been out in the sun".

The prosecution's star witness was John Chilman, the Aratapu schoolteacher. He said he went up in the boat with Lehman's party after midday dinner. Chilman went to church and called in at the hotel about 4pm. He drank two glasses of sarsaparilla himself, but he saw "about a dozen" men in the bar, all drinking beer. Lehman was drinking English beer and "was not sober ... Coming back Lehman jumped up in the boat and wanted to swim ashore." More liquor was consumed on the way home and bottles were delivered among the houses of Aratapu. Recalled by the defence, Thomas Gellie insisted he saw no beer in the boat and saw no grog landed. Joseph Raynes said in his defence that he had had a very busy day with many customers for Sunday dinner. "He also said that it was not for him to say who were or who were not travellers, he served all who said they were travellers."

The lemonade syrup and ginger beer served at the Kaihu hotel must have been powerful stuff. When 'Bismarck' got to bed that night he thought someone kept knocking his door open, so he went out and knocked James Brown against the wall. On Monday morning there was another fight between Lehman and Brown. The mill manager sacked Lehman for drunkenness.

The complaint against the publican, Raynes, was part of a campaign to stop Sunday drinking by the millhands in the Northern Wairoa district. In answer to Raynes' defence the bench said sternly that "it was well known that all the justices had decided some months ago that no persons from the Mills in the neighbourhood could be considered as travellers & that Mr Raynes had been previously convicted on a similar charge". As we have seen, they threw the book at him. His second conviction was serious for Raynes because s63 of the *Auckland Provincial Licensing Act* 1871 said that any licensee who was convicted three times of a licensing offence forfeited his licence and became ineligible for any further license. Raynes' livelihood was at stake if he were convicted again, and his profits would suffer if he abandoned the local custom of Sunday trading.

From the justices' point of view there were good reasons for trying to minimise heavy drinking by workmen in the district. The kauri timber mills were huge industrial enterprises. Monday morning befuddlement was a safety issue. So was death by drowning. JA Walker JP, the mill manager, estimated that "there was an average of about one intoxicated man drowned each month" during his eight years at Te Kopuru.[4] Mill managers who ran the towns as well as the mills at Aratapu and Te Kopuru could easily keep licensed hotels out of their towns. Controlling drinking in other places was more difficult. The working week lasted from 7am Monday until noon on Saturday. If the laws against Sunday trading were enforced, the workmen had only Saturday afternoon and evening to patronise the pubs at Toka Toka, Mangawhare and the new one at the mouth of the Kaihu creek just outside Dargaville. The formidable Northern Wairoa flows at a speed of 3 knots so it is not possible to row or sail against the tide. On some weekends when the tides were not right it was impossible to get to the legitimate watering holes and back again on Saturday;[5] hence publicans and their customers had a strong interest in being able to trade on Sundays. Here the magistrates' view of the law and

4 Stallworthy, *The Early Northern Wairoa* (Wairoa Bell & Northern Advertiser, Dargaville 1916) p198.

5 Bradley, *The Great Northern Wairoa* (Bradley Family (Phoenix Printing), Auckland, 4th ed 1982) p34.

the popular legal culture sharply diverged. The workmen were prepared to show respect for the law up to a point. If it would placate their betters on the bench, they would either cheerfully perjure themselves and swear they had had no beer or spirits, or they would claim to be *bona fide* travellers. The second strategy made more sense to them, after all they did have to travel some distance to the pubs. If the magistrates refused to countenance the traveller excuse, let them listen to fairy tales. As far as the publicans were concerned, if the court disbelieved the evidence and imposed a modest penalty, they would pay it philosophically as a sort of tax on their regular trade.

Until the Raynes case in September 1876 those had been the conventions on the Wairoa. On 30 October 1875 RF Spencer of the Mangawhare hotel had been charged with supplying spirits on Sunday but the case had been dismissed for lack of evidence. On the same day Sarah Ann Stanaway, licensee of the notorious Toka Toka hotel,[6] was charged with supplying a bottle of brandy to Fred Whitehouse on Sunday 19 October. She was fined £5 and £1/4/2 costs. A note pinned to the record "most respectfully" informed the justices of Sarah's intention to appeal against "a most unjust verdict". In August 1876 David Drummond of the Toka Toka hotel had pleaded guilty to a similar charge but offered in mitigation the excuse that he was sick in bed at the time and the cook had supplied the liquor against his strict instructions. The cook, Walter Johnson, said he had honestly believed that the customer, an engineer from Te Kopuru, was a *bona fide* traveller. Drummond had been fined £5 with 16/6 costs. Five pounds seems to have been the usual tariff.

The justices' decision to make an example of Raynes provoked a sharp reaction from the publicans and their customers. Flushed with their victory over Raynes the justices heard another case of Sunday trading on 23 September 1876, this time against Edward Downing of the Mangawhare hotel who was charged with supplying Henry Manning, a plumber, with liquor on Sunday. Manning refused to answer questions and was committed to the Te Kopuru lock-up for four days. This is the only example of a recalcitrant witness in the records. The usual cooperation between the community and the court had broken down.

When the court resumed on 27 September Downing was represented by counsel, a Mr Laishley of Dargaville. The presence of a lawyer introduced

6 Toka Toka, the first pub on the Northern Wairoa, was said to be the roughest. It drew its clientele mostly from sailors and gumdiggers. It was also notorious for gambling: Stallworthy, *The Early Northern Wairoa* p130.

a level of legal technicality into the proceedings which was too much for the justices on the bench and the case against Downing was dismissed.[7] The next, and last, licensing case in the record did not occur until nearly two years later, in June 1878. It was brought against Joseph Seymour, master of the steam packet *Tangihua* for supplying liquor to two Te Kopuru labourers who were not passengers on his boat. Seymour was fined £5 and £1/1/6 costs. The customary order of things, in several senses, had been restored.

The case of the abstemious millhands tested local toleration of an oppressive licensing regime. There the court tried to push its authority too far, resulting in the local legal culture being put under strain. After this was recognised everyone had the good sense to return from deep water to a more comfortable level of immersion.

THE TE KOPURU TIMBER MILL

It is necessary to step back now and consider the context of these events. The Te Kopuru Magistrates' Court in the 1870s was operating at the lowest level in the hierarchy of courts in the British justice system and on one of the most remote frontiers still left in the empire. The Northern Wairoa, about 100 miles north of Auckland, was an unusual frontier because it was industrialised as well as remote.[8] In the second half of the nineteenth century the kauri timber industry was the economic mainstay of the Auckland province. A huge tree, growing to 100 feet high with a girth of up to 40 feet, provided up to 8,000 feet of durable, silky, knot-free timber. The trees were felled by gangs of 'bushmen' and the trimmed logs were dragged out by bullock trains or floated down streams to the timber mills. There they were converted into posts, floorboards, and finely shaped joinery for the villas of Auckland, Sydney and Melbourne. Duncan Mackay has described the distinctive culture of the bushmen who felled the trees and extracted the logs from the bush,[9] but the men who

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7 Laishley argued that the prosecution's case was defective because it had omitted to formally prove that Downing was the licensee of the hotel on the relevant date; that it had not produced a copy of the relevant Act; and that the term "supply" meant "selling liquor as a publican to the public and not asking a friend to take anything at one's own house". The Bench accepted the first two submissions and dismissed the case but stoutly rejected the third "seeing that a Licensee should not suffer same [alcoholic liquor] to be drunk".

8 Horn, *The Northern Wairoa: Its Development by Europeans, 1840-1950* (unpublished MA thesis, University of Otago 1954) p17.

9 Mackay, "The Orderly Frontier: The World of the Kauri Bushmen 1860-1925" (1991) 25(2) *New Zealand Journal of History* 147 at 153-157, gives an account

worked in the mills experienced another environment. The timber mills, unlike the bush or the gumfields, where 'gumdiggers' retrieved kauri gum or fossilised resin from swamps to sell to varnish manufacturers, produced compact settlements, distinct from the hinterland but linked to it by the common water transport systems and the economic enterprise in which they were all engaged.[10] Timber mills, with their constellations of yards, drying sheds, workshops and wharves, employed up to two hundred men each and were substantial industrial investments, usually financed by British capital and designed by British engineers. The Northern Wairoa mills were steam-powered, the offcuts from the logs providing a constant supply of fuel. Palls of smoke hung over them from the pits of burning sawdust. These were lighted on the first day and kept burning for the whole life of a mill. The Te Kopuru mill, built in 1871, was a 'double' mill, noted for its 200 foot high brick chimney towering above its twin boilers.[11]

Once a mill was built, a small town to house the workers inevitably followed; a substantial house for the manager, cottages for married men and boarding houses or bunkhouses for single labourers. Before 1871 there had been no Pakeha settlement at Te Kopuru. There were earlier mills at Aratapu (1865) and Mititai (1866), gumfields at Aoroa, down the peninsula at Pouto and across the river around Toka Toka. Ferries and trading steamers came up the Kaipara harbour from Helensville to Dargaville. There were hotels at Mangawhare and Toka Toka, and 'settlers' moving cattle and sheep into the bush in the wake of the timber men. In 1874 the non-Maori population of the Wairoa North roading district was only 508.[12] The district was accessible only by water.[13] Roads were mere bush tracks in the 1870s. Te Kopuru's site was chosen for a large mill because a creek ran into the river there. It was dammed to make a holding pool which eventually spread over four and a half acres,

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of their codes of behaviour which enabled them to keep order in their camps far from any formal legal resources.

10 Horn, *The Northern Wairoa: Its Development by Europeans, 1840-1950* p47.

11 Bradley, *The Great Northern Wairoa* pp48-50. At Te Kopuru the workers' houses were let for 2/- a week. The Company also ran a store selling food and clothing which the workforce was obliged to use. Such stores were outlawed by the *Truck Act* 1891 (NZ).

12 New Zealand, Census and Statistics Office, *Report on the Results of a Census of New Zealand* (Census and Statistics Office, Wellington 1874) p16.

13 A road between Te Kopuru and Dargaville, a distance of only 8 miles, was not built until 1879: Bickers, *Te Kopuru, with fragrant memories of some of her pioneers: a brief history of Te Kopuru and the work of the Methodist Church and Sunday School, 1853-1953* (Times, Dargaville 1953) p2.

and could hold 1,000 logs at a time. The mill and its three wharves dominated the foreshore with the settlement flowing back from the river towards the 'bush'. The inhabitants looked across the river to the dominant local landmark, the strange pointing-finger peak of Toka Toka, a basalt 'plug' from a long-dead volcano.

ACQUIRING THE TRAPPINGS OF CIVILISATION

Services were exiguous on the Northern Wairoa. The trappings of civilisation were painfully acquired. Schools, churches and law courts were most in demand. A district that possessed all three, and later, perhaps, a hospital, a police station and a newspaper could fairly claim to be 'settled'.[14] In the 1870s New Zealand was also short of legal skills. The census of 1878 shows that the legal resources available to the whole of the Auckland province at that time consisted of 124 people: three magistrates, eight law court officers, 66 lawyers, one law student, 44 law clerks, and two "others connected with the law".[15] There were only five puisne judges travelling on circuit from their bases in Auckland, Wellington, Christchurch and Dunedin. The Auckland judge had to travel south as far as Gisborne and New Plymouth.[16] He did not come north to Dargaville. Beneath the Supreme Court, a system of resident magistrates' courts was established. Some resident magistrates had legal qualifications, but most did not. They were usually recruited from retired Army and Navy officers. In rural areas they were administrative as much as judicial officers - "general factotums" for both Provincial and Central Government.[17] So thinly was the available expertise stretched in the period of 'amateur justice' in New Zealand that it was not until the *Stipendiary Magistrates Act* of 1908 that a magistrate was required to be qualified as a barrister and solicitor.

Districts without a designated resident magistrate made do with even more informal arrangements. A Resident Magistrates' Court could be constituted by two or more justices of the peace. These amateur, grass-

14 Mackay, *Frontier New Zealand: The Search for Eldorado (1800-1920)* (Harper-Collins, Auckland 1992) pp114-115, traces the evolution of sawmill villages into service centres. Some succeeded while others failed to diversify in time to break their dependence on timber. Te Kopuru, too near a larger service centre, Dargaville, did not prove a long-term 'success'.

15 New Zealand, Census and Statistics Office, *Report on the Results of a Census of New Zealand* (Census and Statistics Office, Wellington 1878) pp297-298.

16 Cooke (ed), *Portrait of a Profession* (Reed, Wellington 1969) pp420-421.

17 McLintock, *Crown Colony Government in New Zealand* (RE Owen, Government Printer, Wellington 1958) pp206, 228-229.

roots courts were the primary means of dispensing justice in nineteenth century New Zealand. They cast a comforting veneer of civilisation and order over many crude frontier settlements. Usually court registers were kept, and many of these survive, but detailed accounts of their proceedings have mostly vanished. It was the magistrate's responsibility to keep notes of evidence but these were not preserved with the court record kept by the clerks.

COURT PROCEEDINGS IN TE KOPURU

In Te Kopuru, however, a punctiliously kept Minute Book records 79 cases heard between September 1875 and June 1878.[18] The minutes were taken by George Gooch, the schoolteacher, acting as Court Clerk; the record ceased when Gooch moved away. The sturdy volume survived and was sent to Dargaville where it was used as a register of Justice Department telegrams. It ended its days as the Dargaville Old Age Pensions Register Book. The book is an invaluable source, recording much more than who used the court at Te Kopuru, how often, and for what reasons. It provides insights into the disputes and tensions in the town, and methods used to resolve them. Its pages show that gum-diggers, mill-hands, and 'settlers' carried with them a robust and flexible legal culture to the Northern Wairoa frontier. A large number of people from the town and the surrounding area used the court. It met often, and at times which suited its users. Most of the cases were resolved locally. When Gooch's records are matched with other accounts of Northern Wairoa life at the time[19] it is possible to knit together some of the social fabric of the town in the 1870s, to see how the court and the community interacted, and hear what the court hearings themselves have to say about the nature of that community.

The first justices of the peace in the Te Kopuru district, Thomas Webb and Franklyn Bradley, were appointed in 1866 when Pakeha settlers in the district petitioned for licences to be issued. Both were local 'settlers'; neither had any legal training. Webb, the son of a Wesleyan Minister, had run a pharmacy before coming to New Zealand to become a farmer.[20]

18 Auckland Archives, BADC A497/64.

19 Stallworthy, *The Early Northern Wairoa*; Bradley, *The Great Northern Wairoa*; Bickers, *Te Kopuru, with fragrant memories of some of her pioneers: a brief history of Te Kopuru and the work of the Methodist Church and Sunday School, 1853-1953*; manuscript and typescript collection of the Northern Wairoa Maori, Maritime and Pioneer Museum, Dargaville.

20 Stallworthy, *The Early Northern Wairoa* p154. As well as being a justice of the peace, Webb acted as Registrar of Births, Deaths and Marriages, Vaccinations

Bradley, born in County Down, was one of the first Pakeha farmers in the Arapohue district. He became the first president of the Northern Wairoa Agricultural and Pastoral Association.[21] They convened their first court three years later under unusual circumstances and in an unorthodox venue, the accused's living room. Francis Walker of Arapohue was accused of shooting a cow belonging to his neighbour, Edward Jones. A search party was organised. It found the cow's skin on Walker's land whereupon it was decided, since the party included the two justices of the peace, to try the case immediately. A burly local farmer was sworn as a special constable and the schoolteacher was appointed clerk of the court. Walker returned to find the hearing in progress. Despite vigorous protestations of innocence he was found to have a case to answer and, after a struggle with the special constable, sent to the Supreme Court at Auckland for trial.[22]

No formal records of the *Walker* case or any others heard by the local justices exist before more regular sittings commenced in 1875. By then the Te Kopuru mill had been built and in 1872 a hall was constructed by volunteer labour, from timber donated by the Company. This hall was the venue for more orthodox court sittings, presided over by the district's three justices of the peace, Webb, Bradley and JA Walker. School classes were also held in the hall,[23] which explains how Gooch, who was appointed the first resident schoolteacher in 1874, came to be the court clerk as well. The Company built a house for a policeman thus enticing the provincial government to appoint the first police constable, Marcus Madill, to the Northern Wairoa district in 1874, doubling the number of full-time police constables north of Auckland township.[24]

In the 33 months between September 1875 and June 1878 the Te Kopuru court sat on 59 days. The sittings appear to have been convened only when required or when the justices were available. For six months (February and March 1876, October and November 1876, December 1877 and March 1878) no sitting is recorded. In the busiest month, June 1877, the court met five times. The citizens of Te Kopuru were strangers to the

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Inspector, Returning Officer for two Provincial electorates, Licensing Commissioner and Coroner.

21 Stallworthy, *The Early Northern Wairoa* pp159-160.

22 As above p101.

23 As above p34.

24 A "regular man" had to be employed because "no 'respectable' person in the Northern Wairoa 'could be induced to accept the office' of district constable, in view of its workload and dangers (hundreds of unruly 'wood-cutters and saw-mill labourers')": Hill, *The Colonial Frontier Tamed: New Zealand Policing in Transition, 1867-1886* (GP Books, Wellington 1989) p262.

law's delay. Malefactors and nuisances were caught, tried and sentenced within a day or two. Private actions were despatched expeditiously. The laudable speed of proceedings may be connected to the deficiencies of the town lock-up, a far from secure room in the police constable's house.[25] The impression is of a service provided enthusiastically by the volunteer personnel and resorted to by others in the settlement because it was quick, cheap and effective.

THE COURT AS AMATEUR PEACE-MAKING MACHINERY

Who used the court? Of the 79 reported cases, 35 (44%) were civil suits (30 of these for debt), and 44 (56%) were criminal prosecutions. Of the latter, 27 were brought on police summonses and two originated with one of the justices of the peace. An interesting sub-set of the criminal cases, however, (15 of them) were private prosecutions. As well as the police there were 34 different plaintiffs, only seven of whom came to court more than once. Only two of the 34 plaintiffs were women, one of whom was Maori. The number of women and Maori users increases only slightly if we add the complainants in police cases: that gives us two more Maori and two more women. The overwhelming majority of cases, then (72, or 91%), originated amongst the dominant group in the town: pakeha males. The untypical cases will be discussed later. Meanwhile it is useful to consider further the group of men who brought cases to the court. Miles Fairburn in *The Ideal Society and its Enemies*[26] found in nineteenth century New Zealand a high degree of inter-personal conflict expressed in violence and civil litigation. He cites studies of magistrate's court cases in the lower North Island in the 1860s and 1870s in which few cases were settled out of court; there was a significant overlap in personnel between civil suits and violence cases; most of the litigation was 'instrumental'; the majority of cases were economic (concerning debt, breach of contract, wages, etc). In colonial New Zealand, he concludes, the courts had to be used to resolve disputes that in a less atomised society would have been attended to by 'amateur peace-making machinery' - mediators, relatives, patrons, etc. Fairburn also found in the studies he used that there was a significant socio-economic difference between the plaintiffs and defendants in the civil suits. Plaintiffs "tended disproportionately to be businessmen and the settled (shopkeepers, merchants, tradesmen,

25 *Police v Cleston*: Auckland Archives, BADC A497/64, 27 October 1875. James Cleston was convicted of breaking out of the lock-up while awaiting transfer to Mt Eden gaol.

26 Fairburn, *The Ideal Society and its Enemies: The Foundations of Modern New Zealand Society, 1850-1900* (Auckland University Press, Auckland 1989) p193.

hoteliers), while the defendants tended to be disproportionately manual workers".[27]

The Te Kopuru court operated at a lower level than the magistrates' courts referred to by Fairburn. It can be seen as an institution constructed by cooperative effort within the community. The original petition for justices of the peace was a community initiative, volunteers assisted the lone police constable as enforcement agencies and local settlers devoted much of their own time to sitting on the bench and keeping records.[28] The witness statistics reinforce this impression. As well as the police, there are 46 individual witnesses named in the record, and only six attended more than once. This is a high level of participation in a district containing 365 Pakeha men. In fifteen of the 79 cases workmen came to court to support their fellows (or the publicans) as defence witnesses or in civil claims. The Te Kopuru court was a piece of amateur peace-making machinery constructed as a substitute for the mediators, relatives and patrons that might have filled that role in older societies. Some of the characteristics identified by Fairburn are to be found in Te Kopuru, but in general the court reflected a spirit of community building rather than atomisation.

On the face of it, Te Kopuru was a company court. Much of the time it was presided over by the mill manager sitting as one of the two justices; it was held in the public hall provided by the company; and the policeman and the clerk/schoolteacher were both materially beholden to the company. One would expect to find the same clear status division between plaintiffs and defendants as Fairburn found. The 'propertied' element predominated among the plaintiffs and complainants: JA Walker, the mill manager, or his company, was plaintiff or complainant in four cases; Joseph Dargaville, the most substantial local merchant, brought three more. But in general there were few regular litigants even from the propertied sector. The publicans were the busiest group in the community as far as court business was concerned. Sarah Anne Stanaway (later Saunders) initiated 15% of the cases, bringing 10 actions for debt and being the complainant in two police prosecutions, one for assault and one for obtaining goods on false pretences. She was the defendant in one case of breaching the *Licensing Act* and acted as a surety for one of her customers in another case. Hotels were the scene of the crime in nine actions ranging from abusive language to serious assault and malicious

27 As above pp228-229.

28 Walker heard 47 (59%) of the 79 cases. The most persistent sitter was Samuel Webb who heard 54 (68%) of the cases. Franklyn Bradley heard 20 (25%) of them.

damage. Yet the propertied did not have exclusive use of the court: of the 20 private suits for matters other than debt, eight originated among the labourers and workmen who supplied nearly half the complaints in the 27 police cases. A discussion of how the court was used by the settlement's 'grass-roots' begins with this group.

Then, as now, the legal system was used to pursue private quarrels. Workmen appear to have felt no particular awe of the institution; it was a tool provided for the use of the whole town. In *Louden v Parker*[29] a labourer brought a suit against his neighbour, a saw sharpener, for unlawful detention of 10 fowls. Several witnesses were heard and the bench ordered the defendant to pay the plaintiff the value of the fowls. Each party paid his own costs including witness' expenses of 2/6 each. A charge of assault between workmen where the defendant pleaded guilty was quickly dismissed. Another where the parties came to court together and the defendant pleaded guilty resulted in a nominal 1/- fine. A more serious assault complaint where the victim was a woman, however, led to the defendant being bound over to keep the peace for six months on a bond of £10/-/-.[30]

COMMUNITY USE OF THE TE KOPURU MAGISTRATES' COURT

In her study of the nineteenth century New South Wales magistracy, Hilary Golder describes the provision of courts as a vital sign of 'progress' in a new community. Magistrates and private citizens used the legal system to define and enforce standards of acceptable behaviour. The same concerns appear in Te Kopuru. There too "private citizens seemed surprisingly eager to vindicate their own rather anxious respectability by taking disputes and scandals to their local magistrate".[31] There were five private prosecutions for insulting language brought under the *Vagrancy Act* 1867 (NZ), three brought by 'respectable' elements and two by labourers. George Gooch, the court clerk, alleged that George Saunders the Toka Toka barman (who later married Sarah Stanaway) had used abusive and threatening language to him while he was in pursuance of his duties (recording the case against Sarah for Sunday trading). The charge was tactfully dismissed as "not proven". Joseph Dargaville, the dominant local entrepreneur, who owned "almost exclusively, the land and buildings

29 Auckland Archives, BADC A497/64, 24 March 1877.
30 *Lowe v Gillard*: Auckland Archives, BADC A497/64, 12 January 1878.
31 Golder, *High and Responsible Office: A History of the New South Wales Magistracy* (Oxford University Press, Melbourne 1991) pp79-80.

of the township" as well as being the Wairoa's most substantial timber and kauri gum merchant,[32] clearly felt that enforcing standards of public decency was part of the battle to be fought when transforming frontiers into settled districts. He brought two of the private prosecutions for obscene language. On 30 August 1876 he prosecuted Fred Evans (alias 'Tommy the Colock'), a bushman, for using obscene language "in the hearing of several respectable women".[33] Witnesses said that 'Tommy', had consumed a bottle of brandy on the boat between Whakahara and Dargaville and the captain had thought it prudent to lock him in the hold for an hour until he was "sober or quiet". An hour proved insufficient, because he then walked up the bank towards houses where women were living, "shouting out continuously the most filthy and obscene expressions, behaving ... like a madman". When accosted by Dargaville he threatened to "burn down the bloody place". Evans did not appear and the court issued a warrant for his arrest. On 27 September 1877 Dargaville prosecuted Edward Donnelly for abusive and obscene language. Donnelly was fined 40/- and 13/8 costs. The labourers' prosecutions for language were more quickly dealt with. They seem to have been laid in pursuit of quarrels which had died down by the time the court heard them. One was settled out of court and the other resulted in an order binding the defendant to keep the peace.

Another group of cases shows workmen using the legal process to seek redress against employers for a variety of injustices; again the court operated as amateur peace-keeping machinery. In *Thornton v Hurley* the mate of the brig *Wild Wave* successfully prosecuted the captain, MP Hurley for assault.[34] The cook gave evidence that he saw the captain "collar the mate and shake him like a dog". This was corroborated by a seaman. While the justices were clearly unhappy about criticising an authority figure, they decided that although the captain "had been greatly provoked, he had however no right to collar and shake the mate". Hurley was fined £2/-/- with £1/8/6d costs. The *Wild Wave* was an unhappy ship.

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32 Oliver & Orange (eds), *Dictionary of New Zealand Biography* Vol 2 (Allen & Unwin, Department of Internal Affairs, Wellington 1993) pp10-11.

33 It was not necessary to show that the words had been heard by any of the women to secure a conviction. In the leading New Zealand case on offensive language in 1915 the Supreme Court applied the same rule. It upheld the decision of a Balclutha magistrate that indecent language ("move that bloody calf") used in a paddock near a public street need not have been actually heard. It was sufficient that "the words were spoken in such a way that they were capable of being heard by some person in a public place if such person was attending to what was taking place": *Purves v Inglis* [1915] NZLR 1051 at 1052-1053 per Sim J.

34 Auckland Archives, BADC A497/64, 16 April 1876.

In March 1878 Frederick Lenhardt, then the cook, was sentenced to 14 days hard labour in Mt Eden for assaulting Captain Hurley. "He laid hold of my whiskers & tore them from one side of my face."[35] Lenhardt was further charged with the use of obscene and indecent language and fined £5/-/- with 11/6 costs. Hurley, the chief witness against him, said sanctimoniously that the language was "most frightful", too bad to repeat in court. The words were written down and the evidence helpfully corroborated by JB Topp, clerk for the Te Kopuru Timber Company, who was on the wharf.

Even the kauri bushmen who, like the miners, lived according to their own customary legal code, used the Te Kopuru court occasionally. In *Moroney v Dunn* a bushman sued his contractor for wages due, and in *Vernon v Sanders* a servant sued his employer for £10/10/- wages. These cases were settled out of court, but without the opportunity to sue it is unlikely that Moroney or Vernon would have extracted any settlement. Moroney's costs were 15/- and Vernon's 19/-. In November 1877 James Naysmith, an axeman, succeeded in a claim against Joseph Dargaville, the merchant, for payment of £17/13/- for kauri palings he had split. In this case an expert witness was called to testify that the quality problem related back to Naysmith's selection of a twisted log as his raw material. Naysmith relied on the fact that Dargaville had not questioned the quality of the palings until after he had taken delivery and that his manager had selected the palings and had not allowed Naysmith to select as the contract provided. The court ordered Dargaville to pay Naysmith in full.

Only one case was brought by a Maori to the Te Kopuru court. It was *Hoani v Fritz, Larsen & Jansen*[36] alleging malicious injury to property. Hoani said the defendants had maliciously set fire to some fern at Tikinui and thereby destroyed two tons of kauri gum belonging to himself and others. The action did not succeed, but it was followed by another, similar case, this time prosecuted by the police against Alexander Andrew, a local settler's son, who was accused of maliciously burning a titree shed containing eight hundredweight of gum belonging to Robert Rogan, a Maori. Rogan, his wife Catherine, and his friend John Brown gave evidence in Maori. In the *Andrew* case the court was sufficiently convinced that there was a case to answer, for it to set Andrew's bail at £100 and remitted the case to the Auckland Supreme Court for jury trial.

35 As above 21 March 1878.
36 As above 10 April 1876.

There, sadly, the Rogans lost.[37] Despite the outcome however, malicious arson was not a pastime to be tolerated on the gumfields.

Two Maori were brought to court on charges of being dangerous lunatics and sent to Auckland for medical examination. Toko Mowhiti had disturbed the gumdiggers at Tikinui by threatening them with knives and a spear. The local chief, Tauha, helped to send him to Te Kopuru. "All the Maories thought he ought to be confined as they were frightened for their lives. They said he was 'Pohrangi' (mad) - They rendered every assistance to bring him to Te Kopuru."[38] Wi Winiata was arrested on the complaint of his sister, Mrs King, who said he had threatened to burn her house down. He, too, was dispatched to Auckland. In one other case the chief, Pirama, was a key witness. The key issue was ownership of logs which had floated past the Te Kopuru sawmill and had come ashore on Pirama's land twelve miles downstream. Walker, the mill manager, charged Charles Adams, a bushman who was splitting the logs into posts, with wilful damage.[39] Adams pleaded that he had Pirama's authority to cut the logs. The justices on the bench that day, Webb and Bradley, found themselves in the middle of a dispute which concerned local mana (spiritual power or authority) as much as ownership. They adjourned the case for a month so that Pirama could give evidence. When the action resumed Pirama gave evidence through an interpreter that he considered the logs to be his as they had been lying on his land for three years. He also asserted local custom: "He had known Mr Walker's men to fetch the logs as far as the Awaroa creek [ten miles further up the river] but not lower down." The chief's evidence was accorded respect. Webb and Bradley found against their fellow justice of the peace, accepting a defence amounting to 'colour of right'. In general though, the court was a Pakeha court administering law to and for Pakeha.

Similarly, it was no place for women, except for the redoubtable Sarah Saunders. Apart from Sarah few women appeared in any capacity. Catherine Rogan and Mrs King attended as witnesses. "Several respectable women" were a shadowy chorus in Dargaville's case against 'Tommy the Colock'. They had allegedly been able to hear the offending language in their houses, but none came to court to say so. "Several

37 Auckland Archives, *Crown Record Book, January 1876 - October 1882: Circuit Court Criminal Sittings* 5 July 1876 p35. The 12 jurymen listed appear from their names to have been exclusively Pakeha.

38 *Police v Mowhiti*: Auckland Archives, BADC A497/64, 20 January 1877.

39 *Walker v Adams*: Auckland Archives, BADC A497/64, 28 July 1877, 25 August 1877.

ladies" were said to have been upset by a drunken disturbance during a concert at the Te Kopuru hall. Ellen Lowe of Mangawhare brought an action for assault against Charles Gillard and succeeded in having him bound over for six months.

Most of the cases in the record were resolved locally. Of the 79 only one may have been appealed and two were sent up to the Supreme Court. The proportion of cases in which dispute resolution occurred, compared with the merely formal or administrative cases, is high. Sixteen cases (21%) were regulatory or administrative, including six licensing cases and nine purely formal proofs of debt where neither party appeared. All the others (79%) settled some local dispute. Even the debt cases show a high level of resolution. Five out of a total of 30 were settled out of court; three were paid in full; four were partly paid; and in three more, schedules of payment were agreed to.

A high level of violence is to be expected in a frontier settlement which was also a port. But only nine cases (12%) brought before the court concerned violent or threatening behaviour. Three were trivial private prosecutions, settled out of court; one of the accused was fined; two were bound over; but three were serious threats to the peace of the district and resulted in gaol sentences. One was Lenhardt's attack on Captain Hurley already mentioned. Another concerned Michael Ryan, a gumdigger who seems to have run amok in the Toka Toka hotel, kicking doors down, throwing Sarah Saunders across the room, threatening to "knock my brains out and do for me", and breaking "some" of her husband's ribs.[40] It was the fourth time Ryan had reacted violently when refused liquor. The last of these cases was brought by Duncan McGregor against Francis Walker,[41] who had threatened to shoot him. The evidence given by McGregor and several others was that Walker was given to believing that he was being persecuted by his neighbours, and had threatened to shoot them. Lenhardt got 14 days, Ryan six months, and Walker 12 months hard labour in Mt Eden.

Imprisonment was resorted to fairly sparingly and used mainly to persuade real social pests that the Northern Wairoa was not the place for them. When they came out of Mt Eden prison in Auckland they should go elsewhere. That seemed to be the message in theft cases too. Dishonesty was an absolute menace in communities where men shared bunkhouses.

40 *Police v Ryan*: Auckland Archives, BADC A497/64, 16 April 1877.

41 This is the Francis Walker who featured in the first, informal court sitting in 1869.

The same applied on the gumfields and in the bush where tents and whares could not be made secure. Five of the 14 prison sentences were for theft. One of the accused, George Fischer, caused a one-man crime wave stealing from houses and former workmates after his discharge from the mill. After he broke into the company store he was hunted down on the gumfields by a posse of 100 men. In court he said "I own to having done it" and was sent to the Supreme Court at Auckland for sentencing.[42]

Another of the dishonesty cases concerned the engaging William Brown, also known as 'Dr Brown' of Aratapu, who went across to Toka Toka and obtained "one bottle of brandy, one bottle of whisky, 2 bottles of gin, 1 flask of brandy and other drinks to the amount of 3/6d" from George Saunders.[43] Brown, who paid by cheque, was charged with obtaining goods by false pretences. When arrested, he ingeniously argued that "he got the goods before giving Saunders the cheque so that 'he got no goods on the strength of the cheque' and 'he always had some balance to his credit in the Bank of New South Wales'". The case had to be adjourned for evidence from the Bank. It was shown that William Brown did hold an account. It had had a penny in it since 1870. In the days before transaction charges an account could be kept alive as long as it had a farthing in it. A note on the file records five previous convictions against Brown. He was sent to Mt Eden for six months. He did, however, return to the district. A note in the Dargaville Old Age Pensions Register says that William Brown's application for a pension was refused on 6 September 1910 as he was not old enough to be eligible until 31 December 1911.[44]

THE ROLE OF THE EARLY TE KOPURU MAGISTRATES' COURT

In their article on the county courts of Alameda and San Benito counties, Lawrence Friedman and Robert Percival showed a steady trend in those courts away from dispute resolution towards formality.[45] The Te Kopuru record is regrettably too short to show a trend. But it reveals a court whose work was predominantly resolving local disputes. People used the

42 *Police v Fischer* (1), (2) & (3): Auckland Archives, BADC A497/64, 10 September 1877.

43 *Police v Brown*: Auckland Archives, BADC A497/64, 24 & 28 December 1875, 11 January 1876.

44 Auckland Archives, BADC A497/68, memo dated 16 February 1912.

45 Friedman & Percival, "A Tale of Two Courts: Litigation in Alameda and San Benito Counties" (1976) 10(2) *Law and Society Review* 267.

court to deal with situations they could not settle for themselves, or to seek the help of the authorities (such as they were!) against crimes that seriously disturbed the community: assaults, larceny, criminal damage, etc. In most of these situations the feelings of the community were expresed by imposing a fine or else the case was settled in some other way. Serious nuisances were removed from the district if the circumstances warranted it. The language and behaviour cases were dealt with in a similar way: local standards were upheld and unmanageably turbulent characters (including three lunatics) were sent away.

The Te Kopuru outpost of the British justice system kept its 'patch' in good order between 1875 and 1878. It could not have done so without community support. In order to receive that support a live and let live quality was essential to the court's operations. In the *Raynes* case the court momentarily became drunk with power and behaved in a more draconian way than the community would tolerate. It was obliged to readjust a little. After the *Downing* case of September 1876, in which Mr Laishley secured his client's acquittal, the court did not sit until 30 December and it didn't hear another licensing case for two years. The 'orderly community' on the Northern Wairoa was fragile, yet the court was one of the institutions which helped to support it. Nevertheless, it was an amateur court run by volunteers and accorded only as much deference and cooperation as the community was prepared to give it. Chaos was always just around the corner.