

'REVOLTING MURDER AT TE AROHA' IN 1881

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‘REVOLTING MURDER AT TE AROHA’ IN 1881

Abstract: *The brutal murder of Hamiona Haira, who had been mining with his two brothers and his father-in-law, shocked the new settlement. Being a member of Ngati Koi and Ngati Hako, these hapu threatened utu on the Pakeha responsible, causing both Maori and Pakeha miners to abandon their claims at Tui. Suspicion immediately fell on John Procoffy, a Finn, and evidence was quickly collected, officials being anxious to obtain a speedy conviction to avoid an innocent Pakeha being killed in revenge. Rangatira agreed to let the courts deal with the case, although some Pakeha criticized the government for being too anxious to appease Maori.*

After a coroner’s inquest, which included Maori as members of the jury, returned a verdict of murder by ‘person or persons unknown’, Procoffy faced two trials. As the prosecution was handicapped by the limitations of contemporary forensic skills, its case was largely circumstantial. Although the police were certain they had their murderer, others were not convinced, and there was a reluctance to convict because of the death penalty. The final outcome was a verdict of not guilty, which, as was pointed out, should have been ‘not proven’.

Procoffy fled the country. His acquittal was accepted by Maori leaders, and calm returned to Te Aroha.

THE FIRST REPORT

The report from the Te Aroha correspondent of the *Thames Star* about the events of the evening of Thursday, 10 February 1881, was headlined ‘Revolting Murder at Te Aroha’:

For the first time in the short history of the Te Aroha goldfield, the police have a serious matter to find out. In the early morning a rumor was current that a Maori had been brutally murdered on the confines of the township. At first the expressions of the miners were confined to such phrases as “not much,” “over the left,”¹ and sundry other sentences indicative of incredibility, but when it became known that the police had been informed of the occurrence, the smile hitherto noticeable on the weather beaten faces of the mining community vanished, and an anxiety to gain information as to the murdered man, and the circumstances of

¹ ‘Over the left shoulder!’ or just ‘Over!’ was ‘a general term of disbelief, absolutely not, impossible etc’: Jonathon Green, *The Cassell Dictionary of Slang* (London, 1998), p. 885.

the deed, manifested itself in the eager questions asked anent the affair. In company with several others, I proceeded to the spot where the deed was supposed to have been committed. Arrived, I was horrified with the terrible spectacle that met my gaze. On the sward by the side of the road leading to Paeroa, and about quarter of a mile from O'Halloran's Hotel, lay the body of the murdered man, lying face uppermost. The throat had been severed almost from the body by a fearful gash, and the gaping wound was a terrible spectacle. The skull was almost battered in, and there were several deep cuts on the face and neck, apparently inflicted by some jagged instrument. The murdered man was named Himiona (Simon) and was a member of the Ngatikoe tribe. There are some doubts as to how the fractures on the skull were caused, some people alleging that they were caused by a conical stone, which was found close by the deceased, covered with gore, while others were of opinion that the wounds were caused by a tomahawk. From the fact of the fern being trampled it would seem that a struggle had taken place, and I think that the murdered man (who was probably unarmed) fought hard for his life. Himiona's coat and hat were found in the middle of the road, as were also an amber mouth piece with silver ferrule attached, and a white handkerchief spotted with blood. Constables Cleary and Hogan, and Sergeant Mulville (in charge), with the assistance of some of the public, placed the body in a cart and conveyed it to the Hot Springs Hotel, where it was placed in an out house. From the fact that the pockets of deceased's trousers were turned inside out, I think that the motive of the murder has been robbery. The body was first seen by a man named Webber, who is employed on Messrs Campbell Bros Waitoa station, and who, after a lapse of half an hour, informed the police of the occurrence. The police dispersed in various directions in search of information - Sergeant Mulville going to a camp of natives about two miles out [at the mines of the Tui district], and Constable Hogan going to [the Ngati Rahiri pa at] Omahu. Constable Cleary remained about the township, and succeeded in discovering what are supposed to be evidences of the murder. In the tent of a man named John Westbrooke (whom I hear is native of Germany) he found some newly washed clothes, still wet. On examination he discovered stains which he believed to be blood. I hear that Westbrooke had been quarrelling with the murdered man the previous night and hence the suspicion that falls upon him. On being charged with the murder the accused replied, "I don't know anything about it. I did not do it." He appeared very much excited when asked the question, but answered without any hesitation. He is in custody, and a careful watch is being kept on him. The accused is a man of small proportions, and I should think from his appearance that he would be likely to commit the crime.

He has been working in the Sunbeam claim. The natives are greatly incensed.²

JOHN PROCOFFY

Who was the man who was taken on ‘Suspicion of Murder’ to the ‘lock-up’, which was just a police tent containing a large totara block, to which he was chained?³ The police recorded that John Prokoffy was a miner, aged 32, born in Russia, a Protestant, and able to read and write; when arrested he had a knife in his pocket.⁴ Later he was recorded as Prokoffi, a Roman Catholic aged 30, an unmarried labourer.⁵ (As his name probably was Procoffy, that spelling is used.) His nationality was soon clarified as being Finnish,⁶ Finland then being under Russian control; Procoffy himself claimed to have been born in Odessa, in the Ukraine.⁷ When visiting Auckland on a Russian warship in December, Admiral Aslambegoff stated that he was a Jew, without providing any evidence; Procoffy said he was a Christian.⁸

If the sketch ‘taken from life’ for the *Observer* was indeed the ‘very fair likeness’ claimed, he was not physically attractive,⁹ which may explain the reporter’s view that he was probably guilty. Sergeant Major Thomas O’Grady, in charge of the Thames police, reported to his superiors that Procoffy ‘appears very sullen and will hardly speak’.¹⁰ When first seen in Auckland, he was described as having ‘a sullen, unprepossessing

² Te Aroha Correspondent, *Thames Star*, 12 February 1881, p. 2.

³ As described by ‘a very old identity’ when the block was uncovered during excavations for a new bowling green in the Hot Springs Domain: *Te Aroha News*, 22 June 1909, p. 2.

⁴ Armed Constabulary Force, Report of Charges taken at Te Aroha Lock-up 1880-1903, no. 7, in private possession.

⁵ *Thames Advertiser*, 1 April 1881, p. 3; *New Zealand Police Gazette*, 1 June 1881, p. 97.

⁶ *Auckland Weekly News*, 19 February 1881, pp. 17, 21; *Observer*, 12 March 1881, p. 265.

⁷ *Thames Advertiser*, 24 February 1881, p. 3.

⁸ *Observer*, 24 December 1881, p. 230; Armed Constabulary Force, Report of Charges taken at Te Aroha Lock-up 1880-1903, no. 7, in private possession; *New Zealand Police Gazette*, 1 June 1881, p. 97.

⁹ ‘Quiz’, Sketch of Procoffy, *Observer*, 12 March 1881, p. 265.

¹⁰ Sergeant Major Thomas O’Grady to Superintendent J. Bell Thomson, 14 February 1881, Police Department, P 1, 1881/521, ANZ-W.

countenance, and a low forehead'.¹¹ When on trial in the Supreme Court, a journalist who wrote a more kindly description of him did not realize that he was 30 years old:

The prisoner is a very young man, of powerful build, and apparently very illiterate. He is rather good-looking than otherwise, but he is short-sighted, and the efforts to discern other faces at a distance distorts his features. His eyes are deep sunk, the brows are prominent, and well defined; the forehead is square, but narrowing upwards; the cheek-bones are high and the lower part of the face square, the jaw being heavy and solid-looking, indicating great determination. The mouth and chin and covered with a short beard of darker shade than the hair, which is light brown.¹²

Procoffy's personality and temperament were observed with interest. When incarcerated in the Thames gaol, he reportedly realized 'his position keenly' and was 'very despondent; but, singular to say, he eats his meals with a considerable gusto. Since his arrival here he has made no reference whatever to the crime'.¹³ A reporter who visited him noted as 'the strangest circumstance' that, although he 'could converse readily enough in broken English' when working as a cook at a Te Aroha hotel, 'when working Hone Werahiko's share¹⁴ in the mine there, when a seaman on board ship, with no other foreigner amongst an English crew, and when associated with Maoris, he has, within the last few days, lost all power of speech except in his native tongue'. The reporter considered that he

looked harmless enough as he lolled against the sides of his apartment, but there was an undoubted air of sullenness about him, and a strong desire to evade any questions. He was asked the place of his birth, and although it was well known that he had told half a dozen persons he hailed from Odessa, he would not admit to his interrogator that he understood the question put. The same indifference was expressed when asked if he would like an interpreter to assist him during the enquiry.¹⁵

¹¹ *Auckland Weekly News*, 5 March 1881, p. 17.

¹² Supreme Court, *Auckland Weekly News*, 16 April 1881, p. 20.

¹³ *Thames Advertiser*, 17 February 1881, p. 2.

¹⁴ See paper on Hone Werahiko.

¹⁵ *Thames Advertiser*, 24 February 1881, p. 3.

When tried at Thames, Procoffy ‘appeared to be very sullen, but after an interpreter was procured he brightened up considerably’.¹⁶ As the time for his trial in the Supreme Court approached, he showed ‘more concern for his position’.¹⁷ Although composed during the coroner’s inquest, a hearing before the magistrate’s court, and his trial in the Supreme Court, when the jury retired to consider its verdict he

gave vent to his emotion, which had been restrained since the trial commenced, and uttered a series of wailing moans, which were heard through the entire building. He steadily refused to go into one of the “dark cells” by himself, and one of the constabulary was told off to keep him company. This display of emotion was variously interpreted by those who were present.¹⁸

Whether Procoffy’s size and physique was relevant to the murder was a matter of considerable debate. Described by one reporter as a ‘short, spare-looking man’, another called him ‘rather an undersized man’ who did ‘not seem to have the physical strength’ needed.¹⁹ He was five feet five and a quarter inches tall,²⁰ not really relevant to an ability to kill if an account of his behaviour before arriving at Te Aroha was correct. He had come to Auckland as a sailor on the barque ‘Dunloe’, which was still in harbour during his first trial. ‘He deserted the second day after her arrival in port, and proceeded to Te Aroha, accompanied by a young man’ named John Moore, a passenger on the same vessel.

We learn from those on board that Procoffy was of a sullen nature, and rather quick-tempered. On one occasion the second mate and he had a dispute, resulting in a fight with fists, and the mate administered severe chastisement to him. At that time he promised to use the knife to that officer when opportunity offered, but his comrades, being Britishers, discouraged any such proceeding.²¹

¹⁶ Thames Correspondent, *Auckland Weekly News*, 5 March 1881, p. 21.

¹⁷ *Thames Advertiser*, 1 April 1881, p. 3.

¹⁸ *New Zealand Herald*, 14 April 1881, p. 5.

¹⁹ Magistrate’s Court, *Thames Star*, 21 February 1881, p. 2; *Auckland Weekly News*, 5 March 1881, p. 17.

²⁰ *New Zealand Police Gazette*, 1 June 1881, p. 97.

²¹ *Auckland Weekly News*, 19 February 1881, p. 17.

HIMIONA HAIRA

The victim was Himiona Haira (sometimes spelt Haera), son of Haira Te Puihi (sometimes spelt Haira Te Puirihi) and Rina.²² Born in 1857 or 1858,²³ he was their eldest child, the next being Kingi Haira; his other siblings were Anaru, Nahi (or Unahi), Harai, and Rina.²⁴ The two eldest brothers had taken out miners' rights for the Te Aroha goldfield on 20 December 1880, and in the following month had interests in adjacent claims in the Tui portion. They were also members of a party of Maori prospectors who pegged out a claim at Waiorongomai in the following month.²⁵ Himiona had an intimate relationship with a first cousin, Mihi Mera,²⁶ the future wife of Hone Werahiko. She was a daughter of Hoera Te Mimiha, a rangatira of Ngati Koi.²⁷ In 1877 Himiona described himself as being married,²⁸ but this was probably to another woman, because Mihi Mera was either 13 or, at most, 17 then.²⁹ He had not fathered any children.³⁰ He owned sufficient land to be on the 1879 electoral roll, but in 1880 sold his interests in four blocks of land in Ohinemuri with a total area of 181 acres for £45 5s.³¹ He had shares in two claims at Tui, assisted to peg off two

²² Maori Land Court, Hauraki Minute Books, no. 14, p. 169; no. 36, pp. 103, 118, 169.

²³ *New Zealand Police Gazette*, 27 March 1878, p. 41, 4 December 1878, p. 176; *Auckland Weekly News*, 29 September 1877, p. 7; *Thames Advertiser*, 12 February 1881, p. 3; *Freeman's Journal*, 18 February 1881, p. 7.

²⁴ Maori Land Court, Hauraki Minute Books, no. 14, p. 169; no. 36, p. 169.

²⁵ Te Aroha Warden's Court, Miner's Rights Butt Book 1880-1881, nos. 1624, 1630, BBAV 11533/1g; Register of Te Aroha Claims 1880-1888, folios 203, 211, 216, BBAV 11567/1a; Notices of Marking Out Claims 1881, nos. 131, 163, 164, BBAV 11557/1b, ANZ-A; *Waikato Times*, 12 February 1881, p. 2; evidence of Hoera Te Mimiha, *Thames Star*, 2 March 1881, p. 2.

²⁶ *Thames Star*, 2 March 1881, p. 2, 3 March 1881, p. 2; *Thames Advertiser*, 12 February 1881, p. 3.

²⁷ See paper on his life.

²⁸ *Auckland Weekly News*, 29 September 1877, p. 7.

²⁹ Marriage of Hone Werahiko and Mihi Hora, 22 December 1881, Register 1090, Anglican Archives, Auckland; *Thames Advertiser*, 3 March 1881, p. 3.

³⁰ Maori Land Court, Hauraki Minute Book no. 36, p. 169.

³¹ *Thames Electoral Roll, 1879*, p. 35; Statement of the Facts and Circumstances Affecting the Ohinemuri Block, Appendices H and I, Lands and Survey Department, LS 36/25a;

claims at Waiorongomai and one at Te Aroha,³² but worked only in the Harbour View at Tui, along with Hoera Te Mimiha.³³

Before coming to Te Aroha, he lived in the small settlement of Waitoki, at the southern end of the Ohinemuri district.³⁴ His father belonged to the Ngati Koi hapu of Ngati Tamatera, and his mother was also Ngati Koi,³⁵ with ancestral links to Ngati Hako and other hapu.³⁶ According to one source Himiona was half Ngati Hako,³⁷ and certainly Ngati Hako were very angry at his death and acted as though he was one of theirs. A maternal uncle, Renata Tamati,³⁸ who had shares in adjacent claims at Tui, and assisted him to peg out a claim at Waiorongomai and another at Te Aroha,³⁹ had been born at the Ngati Hako settlement of Okahukura.⁴⁰ One journalist stated that he was ‘related to a large number’ of the Maori living at Te Aroha,⁴¹ which probably referred not to Ngati Rahiri but to members of Ohinemuri hapu who were most of the miners at Tui.⁴²

The extent of Himiona’s links with Ngati Hako was important because of his involvement in an inter-hapu conflict over land sales in 1879.⁴³ When

Register of Payments to Individuals for Purchase of Land 1873-1880, pp. 195-221, Maori Affairs Department, MLP 7/7, ANZ-W.

³² Te Aroha Warden’s Court, Register of Te Aroha Claims 1880-1888, folios 211, 216, BBAV 11567/1a; Notices of Marking Out Claims 1881, nos. 131, 163, 164, BBAV 11557/1b, ANZ-A.

³³ *Thames Advertiser*, 12 February 1881, p.3; evidence of Hoera Te Mimiha, *Thames Star*, 2 March 1881, p. 2.

³⁴ *Te Aroha Miner*, 12 February 1881, reprinted in *Waikato Times*, 13 February 1881, p. 2.

³⁵ For details of Rina and her brother Renata Tamati, see Maori Land Court, Hauraki Minute Books, no. 10, pp. 205, 210; no. 11, p. 323; no. 13, pp. 118, 158; no. 45, pp. 267, 297; no. 46, p. 21.

³⁶ *Te Aroha Miner*, 12 February 1881, reprinted in *Waikato Times*, 13 February 1881, p. 2; *Thames Star*, 22 March 1881, p. 3, 29 October 1881, p. 3.

³⁷ Ohinemuri Correspondent, *Thames Advertiser*, 22 March 1881, p. 3.

³⁸ Maori Land Court, Hauraki Minute Book no. 36, pp. 103, 141.

³⁹ Te Aroha Warden’s Court, Register of Te Aroha Claims 1880-1888, folios 203, 211, BBAV 11567/1a; Notices of Marking Out Claims 1881, nos. 131, 163, BBAV 11557/1b, ANZ-A.

⁴⁰ Maori Land Court, Hauraki Minute Book no. 45, p. 268.

⁴¹ *Auckland Weekly News*, 19 February 1881, p. 17.

⁴² See paper on Maori and mining at Te Aroha.

⁴³ See paper on Maori land in Hauraki.

Ngati Koi offered to sell the Pukehange block, a survey party was sent to determine its boundaries. Himiona accompanied it 'to show them where to pitch their tents', and warned them 'to look out for the Ngatihakos, that they might come to stop them, and take away their tools'. Some Ngati Hako did come, but instead of taking away their tools they shot William Francis ('Daldy') McWilliams;⁴⁴ Himiona fled, unwounded.⁴⁵ Such conflicts were forgotten when he died, and he was buried near the Ngati Hako settlement downstream of Te Aroha. 'The burial was attended with a good deal of ceremony. For two days previously a tangi had been held over the remains, and a large quantity of food consumed' by about 200 members of Ohinemuri and Piako hapu. 'Deceased was well liked amongst the natives of the district'.⁴⁶

The first press report about his behaviour on the goldfield indicated that he had 'always conducted himself in a very respectable manner', and one man describing him as 'quiet and inoffensive'.⁴⁷ He 'could speak very good English', and socialized with Pakeha in the local billiard rooms.⁴⁸ In contrast, four days after his murder the *Te Aroha Miner* stated that he had a 'somewhat shady' reputation, and a correspondent agreed that 'the relatives of the deceased and the murdered man himself, bear somewhat shady reputations'.⁴⁹ One basis for this judgment was given in mid-February, when a newspaper stated that people at Te Aroha believed that, some time previously, he had been 'considered guilty of murdering a

⁴⁴ See paper on the Daldy McWilliams 'outrage'.

⁴⁵ E.W. Puckey to Under Secretary, Native Department, 17 September 1879, in 'Reports by Mr E.W. Puckey, Native Agent, Thames, Relative to Native Disturbance at Ohinemuri', *AJHR*, 1879, Session 2, G-6, pp. 1-2; evidence of W.F. McWilliams and Thomas Powdrell, Police Court, *Auckland Weekly News*, 10 June 1882, p. 13; *Thames Advertiser*, 30 August 1879, p. 3, 5 September 1879, p. 3, 10 September 1879, p. 3, 15 September 1879, p. 3; *Auckland Weekly News*, 6 September 1879, pp. 7, 12; Maori Land Court, Hauraki Minute Book no. 49, pp. 268, 271-272.

⁴⁶ *Thames Advertiser*, 16 February 1881, p. 3.

⁴⁷ Te Aroha Correspondent, *Thames Advertiser*, 12 February 1881, p. 3; letter from 'Lynx', *Thames Star*, 24 February 1881, p. 3.

⁴⁸ *Thames Advertiser*, 12 February 1881, p. 3; evidence of Kingi Haira, *Thames Star*, 3 March 1881, p. 2.

⁴⁹ *Te Aroha Miner*, 15 February 1881, reprinted in *Thames Star*, 15 February 1881, p. 2; *Waikato Times*, 17 February 1881, p. 2.

Tauranga native, although the charge was not sheeted home to him'.⁵⁰ Whatever the truth of this rumour, some other charges of a less serious nature had been sheeted home: in 1877 he was imprisoned for breaking and entering and in 1878 was imprisoned for larceny.⁵¹ His younger brother Kingi Haira had also been imprisoned for horse-stealing and other thefts in 1876 and 1877.⁵²

The doctor who inspected Himiona's corpse gave evidence that he 'appeared to be a strong built man, about the medium height. The deceased was certainly not a man easily to be got over by prisoner'.⁵³ At five feet three and three quarter inches,⁵⁴ he was slightly shorter than Procoffy. His brother described him as being stronger than Procoffy,⁵⁵ and many wondered whether the latter could have committed the murder. When his body was found, it was stated that Maori believed that two Pakeha would have been required to kill him.⁵⁶ The police believed that he 'must have been struck from behind by the murderer, who lay in ambush by the road-side'.⁵⁷

SEARCHING FOR EVIDENCE

The *Te Aroha Miner* of 12 February gave details of the first efforts by both police and public to discover clues revealing the murderer. 'At about eight o'clock yesterday morning the whole township was thrown into a state of horror and painful excitement by the news being brought in that a man way lying dead on the Thames main road not half a mile from' the livery

⁵⁰ *Thames Star*, 16 February 1881, p. 2.

⁵¹ Police Court, *Thames Advertiser*, 23 July 1877, p. 3, 25 July 1877, p. 3; Supreme Court, *New Zealand Herald*, 3 October 1877, p. 3; Police Court, *Thames Advertiser*, 20 August 1878, p. 3; *New Zealand Police Gazette*, 27 March 1878, p. 41, 4 December 1878, p. 176.

⁵² Gillies J, Circuit Criminal Cases 1875-1877, pp. 217-220, Auckland Supreme Court, Judges' Notebooks, BBAE A304/252; 1877-1879, pp. 44-45, Auckland Supreme Court, BBAE A304/253, ANZ-A; *Auckland Weekly News*, Supreme Court, 7 October 1876, p. 8, Police Court, 28 July 1877, p. 21, Supreme Court, 6 October 1877, p. 17.

⁵³ Evidence of Dr Charles Huxtable, *Thames Star*, 25 February 1881, p. 2.

⁵⁴ *New Zealand Police Gazette*, 27 March 1878, p. 41.

⁵⁵ Evidence of Kingi Haira, *Thames Star*, 2 March 1881, p. 2.

⁵⁶ *Te Aroha Miner*, 12 February 1881, reprinted in *Waikato Times*, 13 February 1881, p. 2.

⁵⁷ *Waikato Mail*, 12 February 1881, reprinted in *Auckland Star*, 12 February 1881, p. 2.

and bait stables owned by Clement Augustus Cornes.⁵⁸ After a Waitoa storeman named Webber⁵⁹ related ‘this direful intelligence’ to Sergeant A.N. Mulville, Richard White, a miner, who was prospecting at Tui,⁶⁰

shortly afterwards reported seeing the body of a native with his throat cut from ear to ear, lying near the roadway. This intensified the excitement, and a large crowd of residents accompanied the police and White to the scene of the catastrophe.... The police proceeded to examine the body, while the others hunted for evidences of the crime.... The clothing on the body was searched, but nothing was discovered and there were evidences that the body has been rifled by the murderer. In the meantime the public were closely searching the ground in the vicinity, and Mr Thomas Gavin⁶¹ found an unmounted greenstone pendant, and a silver mounted amber mouth-piece, lying not three yards from the body. The deceased’s coat and hat were found beside a clump of fern, and looked as if they had been laid down carefully. The only other discovery was that of two stones on which were unmistakable marks of blood, and which might have been the instruments used to cause the bruise on the forehead....

After the body had been brought in, great speculation was rife as to the perpetrator and the cause of the terrible crime. The different threads of evidence respecting the last known whereabouts of the murdered man were hastily collected, and enabled Constable Cleary to fasten his suspicions on a man named John Westbrook, a Russian employed in the Sunbeam Claim. This person was seen in the native’s company on Thursday evening, when the latter was heard to threaten to “break Westbrook’s _____ nose.” This was shortly before 10 o’clock, and outside the British Hotel. It would appear also that the suspected man and his supposed victim had had previous differences. Himiona was mounted on the horse of a man named [Joseph Harris] Smallman, that worthy having been taken in charge for drunkenness, and Himiona had been attempting to bail him out.⁶²

⁵⁸ See chapter on his life.

⁵⁹ *Thames Advertiser*, 12 February 1881, p. 3.

⁶⁰ Te Aroha Warden’s Court, *Plaint Book 1880-1898*, 19/1881, BBAV 11547/1a, ANZ-A.

⁶¹ See paper on his life.

⁶² *Te Aroha Miner*, 12 February 1881, reprinted in *Waikato Times*, 15 February 1881, p. 2.

(‘Bail him out’ meant ‘to trap, to corner’.⁶³ Smallman, who had been one of the first to prospect at Thames, in 1865, was now a Pakeha Maori living on his wife’s land a few miles to the north of Te Aroha).⁶⁴

It was in this connection that the native came under the notice of the police. A few moments subsequently Mr Cornes was engaged in conversation with the deceased, who very shortly after left to go to his residence near the Tui claim. It would appear that he had some difficulty in getting the horse along as he stopped at Mr Cornes’ stables, and borrowed a spur from a young man named Archibald Biggs, a nephew of the proprietor of the stables. Both Mr Cornes and his nephew and indeed all who saw the deceased about the time, agree that he was perfectly sober and quiet. Sergt. Mulville hastened to the native claims with a view to seeing if any particulars would be obtained from the natives. Constable Hogan ascertained shortly after the finding of the body that the horse ridden by deceased had arrived at Smallman’s house at about five o’clock in the morning, and soon satisfied himself that this was correct. He found that the horse’s bridle was secured to the saddle as if the rider had dismounted for a short time, and no fence or tree was available to tie the animal to. In the meantime Constable Cleary, who felt convinced from what little he had seen, that Westbrook had something to do with the murder, proceeded at once to his whare near the Golden Anchor claim. Here he found a check woollen shirt and a suit of blue dungarees hanging up to dry, with stains, as if of blood on them. The clothes were nearly dry, and were taken possession of, along with a hatchet lying near. The constable then proceeded to the Sunbeam Claim to arrest Westbrook on suspicion for the murder of Himiona. The man, who has a seafaring appearance, and was attired in a suit of dungarees similar to those found in his tent, was working away quietly when the constable put in his appearance. He expressed no surprise, and remained perfectly cool - even while the “darbies” [handcuffs]⁶⁵ were being clapped on his wrists. On searching the prisoner, a one-bladed Pampa pocket-knife was found on him, the blade receiver of which was completely clogged with blood. The prisoner denied all knowledge of the affair....

Additional Particulars

⁶³ Jonathon Green, *The Cassell Dictionary of Slang* (London, 1998), p. 48.

⁶⁴ See paper on his life.

⁶⁵ *The New Partridge Dictionary of Slang and Unconventional English*, ed. Tom Dalzell and Terry Victor (Abingdon, 2006), vol. 1, p. 552.

A young man named Page, who was serving in [Patrick] Quinlan's bar⁶⁶ last night, saw the prisoner and deceased together at about a quarter past ten o'clock. He states that Westbrook was quite sober. He took notice of the native through his threatening to fight Bill Catran.⁶⁷

William Catran was one of several brothers who were mining at Tui with mostly Maori partners.⁶⁸

It is evident that the unfortunate native was robbed, his pockets being turned inside out. The spur which Archie Biggs fixed on his heel was not there when the body was found, nor could it be found in the vicinity.

From what we can ascertain, Westbrook's mate states that the accused came to his whare about midnight, and rose about 5 o'clock, perhaps for the purpose of washing his clothing. Not only did the man wash his dungarees, but also his felt hat. Westbrook was formerly cook at [George] Clotworthy's hotel,⁶⁹ and is said to be of a pugnacious disposition.

Sergt. Mulville and Constable [Nicholas] Cleary, yesterday afternoon, taking the prisoner's boots and with them made a close inspection of the ground between the township and the racecourse. At a piece of soft ground some distance past the scene of the murder, they found tracks exactly corresponding with the soles of the boots. There was a peculiar protuberance on the heel of one of the boots, to which a resemblance could be traced in the tracks. They likewise found an old hat in the swamp.

We have already referred to Mr Gavin's discovery of a pendant and mouth-piece. The natives identified the greenstone as having belonged to Himiona, and state that he usually carried it in his waistcoat pocket. A man named James [correctly William] Marshall, one of the shareholders of the Homeward [Bound], identified the mouth-piece as his. It appears that during Thursday he broke the pipe in front of O'Halloran's, and could only find the bowl portion. It seems probable that Himiona picked it up.

The natives are greatly impressed with the painful affair, and such as have been working at Omahu [meaning the Tui mines] have determined to suspend operations till the murderer is found.

⁶⁶ See paper on his life.

⁶⁷ *Te Aroha Miner*, 12 February 1881, reprinted in *Waikato Times*, 15 February 1881, p. 2.

⁶⁸ See papers entitled 'The Te Aroha Goldfield From the Opening until Christmas' and 'Mining at Te Aroha before the Murder'.

⁶⁹ See *Thames Star*, 22 November 1880, p. 2, 18 December 1880 p 2; *Thames Advertiser*, 30 November 1880, p. 3, 28 December 1880, p. 3; *Waikato Times*, 18 December 1880, p. 2.

They thoroughly believe a pakeha committed the outrage, and some of them say that two white men must have been engaged in the bloody work. They believe that one man could not master the murdered man, who was very strong and active.

The death struggles of the native must have been terrible. His shirt sleeve was torn off and grasped in his blood-stained hand. The murder is one of the most atrocious and savage we have heard of for some time.⁷⁰

The Te Aroha correspondent of the *Thames Advertiser* described the residents as ‘incredulous as to the truth of the report, believing that a joke was being perpetrated’, but there was a ‘regular stampede’ to the site once a constable had confirmed that a murder had indeed taken place. The wound to the throat was described in gruesome detail; the onlookers differed about what weapon had caused it, ‘but it was the general conviction that it was done with the knife not over sharp’. There was also debate over whether a tomahawk or a conical stone had caused the skull fractures. The victim was clad only in shirt and trousers, his coat and hat

lying in the middle of the road, the latter being on top of the former, and in all probability were put there before the poor fellow was assaulted. This part of the affair is, however, at present a mystery, for it seems strange that Himiona should have had time to take off those articles and place them carefully on the road. Some of the residents are inclined to the opinion that they were placed there by the murderer, in order to have it appear that a duel with knives had taken place, and that Himiona had been worsted.

As well as the pipe with ferrule, the police found a white pocket-handkerchief spotted with blood near the body. ‘They are known not to have belonged to Himiona, and may therefore be the property of the murderer’. According to this report, the police first visited Omahu and the Maori mining camp to discover whether a Maori was responsible for the murder. When Procoffy was marched from the Sunbeam claim to the police camp, about 100 people ‘desirous of obtaining a good look’ watched him pass through the settlement.

On arrival at the police camp, Westbrooke was well handcuffed and chained to the pole of the dining tent, and a constable placed over him. He was then again charged with the murder, and

⁷⁰ *Te Aroha Miner*, 12 February 1881, reprinted in *Waikato Times*, 15 February 1881, p. 2.

replied, "I don't know anything about it...." The natives are greatly indignant at the affair, and a meeting is to be held at Morgantown to-day to consider what steps they will take in the matter.⁷¹

On the morning that the body was found, Mulville reported to Sergeant Major Thomas O'Grady, of Thames, outlining the finding of the body, the searching of the two Maori settlements, and the arrest. There was 'good evidence against the prisoner'.⁷² Jack Gibbons, the *Thames Advertiser* reporter at Te Aroha, volunteered to take this report to Thames, and 25 years later was still telling 'a hair-raising story of his break neck ride ... through what he believed to be hostile Maori country'.⁷³ O'Grady received the report at seven o'clock, and immediately asked magistrate Harry Kenrick⁷⁴ to leave at once, with an interpreter, to conduct a coroner's inquest. They left with Dr Charles Huxtable at six o'clock the following morning, arrived at eleven, and summoned the jury at two o'clock on Saturday the 12th.⁷⁵ George Thomas Wilkinson, the native agent,⁷⁶ attended the inquest as translator, and afterwards recorded in his diary that he could not sleep that night for a long time because he was 'so unstrung over the murder business'. Huxtable could not sleep at all during the night after the post-mortem.⁷⁷

THE CORONER'S INQUEST

Kenrick swore in a jury of 15, two of whom, George Gage and William Grey Nicholls, were half-castes. Gage, formerly an interpreter and a

⁷¹ Te Aroha Correspondent, *Thames Advertiser*, 12 February 1881, p. 3.

⁷² Sergeant A.N. Mulville to Sergeant Major Thomas O'Grady, 11 February 1881, Police Department, P 1, 1881/521, ANZ-W.

⁷³ *Observer*, 21 April 1906, p. 4; see also *Te Aroha Miner*, 12 February 1881, reprinted in *Waikato Times*, 15 February 1881, p. 2.

⁷⁴ See paper on his life.

⁷⁵ Sergeant Major Thomas O'Grady to Harry Kenrick, 11 February 1881; Sergeant Thomas O'Grady to J. Bell Thomson, Inspector Commanding Armed Constabulary Force, Auckland, 14 February 1881, Police Department, P 1, 1881/521, ANZ-W; *Thames Star*, 12 February 1881, p. 2.

⁷⁶ See paper on Mereia Wikiriwhi and George Thomas Wilkinson.

⁷⁷ G.T. Wilkinson, diary, entries for 12, 13 February 1881, University of Waikato Library.

policeman at Ohinemuri, was now mining at Tui.⁷⁸ Nicholls, a landowner in Ohinemuri,⁷⁹ had participated in the rush and was part owner of a Tui claim.⁸⁰ Two jurymen were Maori: one was recorded as being S. Epiha,⁸¹ possibly a mistake for Taha Epiha, who in 1879 was living at the Ngati Hako settlement of Okahukura.⁸² The other was Hoera Te Mimiha,⁸³ both uncle and father-in-law of the deceased, who had interests in three Tui claims.⁸⁴ The two Maori had ‘a good knowledge of the English tongue’.⁸⁵

At the commencement of the hearing, Mulville repeated the details already published, adding that some Maori had found a black pipe, a feather, and a piece of hat lining. He had seen Procoffy on the night of the murder, at about nine o’clock. ‘Prisoner appeared to have been drinking, but was not drunk then’. When charged with murder, Procoffy ‘said that he knew nothing about it, and that he was drunk’ at the time.⁸⁶ When asked how he had come by the wounds that had appeared on his face and hands since the previous evening, he ‘said that he had been fighting in the

⁷⁸ See *Auckland Weekly News*, 30 January 1869, p. 10, Supreme Court, 18 June 1870, p. 5; Mackaytown Armed Constabulary Letter Book and General Order Book 1875-1877, letters of 26 February 1875, 13 December 1875, BAVA 4895/1a, ANZ-A; *Thames Advertiser*, 12 March 1875, p. 3, 14 October 1875, p. 3, Magistrate’s Court, 30 September 1876, p. 3; Communications Received and Despatched from Defence Minister, 26 May 1876, Police Department, P 2/6, ANZ-W; Te Aroha Warden’s Court, Miner’s Right no. 630, issued 1 December 1880, Miners’ Rights Butt Book 1880, BBAV 11533/1e; Register of Te Aroha Claims 1880-1888, folios 178, 189, 201, 216, BBAV 11567/1a, ANZ-A; *Thames Star*, 22 December 1880, p. 2.

⁷⁹ See paper on his life.

⁸⁰ Te Aroha Warden’s Court, Miner’s Right no. 405, issued 25 November 1880, Miners’ Rights Butt Book 1880, BBAV 11533/1c; Register of Te Aroha Claims 1880-1888, folio 117, BBAV 11567/1a, ANZ-A.

⁸¹ *Thames Star*, 14 February 1881, p. 2.

⁸² *Thames Electoral Roll, 1879*, p. 23; note G.T. Wilkinson, diary, entry for 13 February 1881, University of Waikato Library.

⁸³ See paper on his life.

⁸⁴ Te Aroha Warden’s Court, Register of Te Aroha Claims 1880-1888, folios 204, 211, 216, BBAV 11567/1a, ANZ-A.

⁸⁵ *Auckland Weekly News*, 19 February 1881, p. 21.

⁸⁶ *Thames Star*, 14 February 1881, p. 2.

township' but had been too drunk to know whom he had fought.⁸⁷ 'Prisoner said he had not washed the clothes, and he thought the dew had made them wet'.

Cleary gave evidence that Procoffy had a black eye, the bridge of his nose was blackened, and 'there were marks behind each ear, on the cheek bone, and over the left temple'.⁸⁸ There were also marks on his throat, 'on the left side of the body, on the left arm, and his (prisoner's) hands were marked and scarred. Prisoner's person bore evidence of having been engaged in a recent conflict'.⁸⁹ When asked how he had got the black eye, 'he replied that he did not know'. Cleary described a dispute (but not a quarrel) between Procoffy and Himiona over who should return Smallman's horse. 'The deceased seemed to be sober, whilst prisoner appeared to be slightly intoxicated'.⁹⁰ Procoffy had been 'knocking about the hotels all day'. When arrested, he was wearing a white felt hat which 'was very wet'.⁹¹ 'He believed that the shirt produced was worn by accused on the night of the murder. On Thursday night he wore a hat similar to the one produced'.

John Moore, who had travelled to New Zealand on the same ship with Procoffy and had shared his whare, stated that Procoffy was 'perfectly sober' that evening. Moore had been asleep until, at five minutes to twelve, Procoffy had awakened him on his return by asking for the time:

He did not come in, but stopped at the door, and witness laid down again. Some time after, he went out a second time, and prisoner was still at the door. Witness could not say whether he was smoking. Clothes were frequently hung up on the roof to dry. He could not say whether prisoner was hanging up clothes. He did not see him touch the projection of the roof, but believed, from the rustle of the raupo, that he had his hands on it. Witness then went to sleep again.... On going out the second time, witness noticed something hanging over the doorway. It appeared to be clothes. In consequence of it being there he had to crawl into the whare on his hands and knees. He was sure now that it was clothing. He did not observe any stains on them. He could not say whether prisoner wore the shirt produced on Thursday. He had never seen prisoner wash any clothes. He did not know whether

⁸⁷ *Thames Advertiser*, 14 February 1881, p. 3; *Auckland Weekly News*, 19 February 1881, p. 21.

⁸⁸ *Thames Star*, 14 February 1881, p. 2.

⁸⁹ *Auckland Weekly News*, 19 February 1881, p. 21.

⁹⁰ *Thames Star*, 14 February 1881, p. 21.

⁹¹ *Auckland Weekly News*, 19 February 1881, p. 21.

prisoner had a black eye on Thursday. He did not notice any cuts about him. On Friday he noticed that prisoner's nose was swelled a little, and he saw him wrap a handkerchief round one of his hands. He wore the hat produced, and appeared to be sober. He also appeared to be sober enough when witness told him it was midnight. Prisoner carried a knife. He had had one as long as witness had known him. Witness had several times before Thursday last seen him with a handkerchief round his hand. He used to hurt his hands in the mine. Prisoner always kept late hours. On Friday morning he asked prisoner whether he had been washing. Prisoner said, "Yes; I must wash sometime." The clothes he saw hanging on the projection of the whare were something like those produced. He did not look to see what accused was doing at the roof of the whare. He made accused's acquaintance on board ship about six months ago.⁹²

In reply to questions from the jury, Moore stated that he 'never saw the prisoner with a white silk handkerchief. Procoffy gave up smoking a fortnight ago. The last pipe he used was a clay pipe. Witness saw him throw it away. Witness had seen him with a pipe similar to the one found near deceased's body'.⁹³ Whilst Kenrick was reading over this evidence, one reporter noticed that Procoffy 'seemed ill at ease'.⁹⁴

Huxtable described the wounds in detail. They had been made by both sharp and blunt instruments, and he believed Himiona had been stunned by a stone before his throat was cut by a knife such as the one produced in evidence. Some hairs of a dark red brown colour adhered to his fingers. (He gave no indication of having matched these against the colour of Procoffy's hair.)

I have also made an examination of the dungaree clothes of prisoner, but until a microscope was brought to bear on them I could not tell whether the stains were blood stains. I thought, though, that they were blood stains nearly washed out. The knife appeared to have been washed also, and I could not tell at present whether it had had blood. I could not tell how the bruises and scratches on prisoner had been caused.

John Bergen, a young miner, said that he had seen Procoffy and Himiona together. At about eleven o'clock

⁹² *Thames Star*, 14 February 1881, p. 2.

⁹³ *Thames Advertiser*, 14 February 1881, p. 3.

⁹⁴ *Auckland Weekly News*, 19 January 1881, p. 21.

he heard a row. He was in bed in his tent, which was pitched near the river in a line with the place where the murder was committed. He heard a sound as if a woman was crying, and in consequence he got up and went outside, when he heard another cry, a yell in fact - much longer than the first. He then knew that a native was in trouble, because the yell was such as the Maoris use. It was a cry of terror. He heard two or three words of English spoken.... He could not recognise the voice of the European.⁹⁵

James Cook, a fellow miner with Procoffy in the *Sunbeam* and one of its six owners,⁹⁶ saw Procoffy with a black eye and new scars on his face on the morning after the murder, which he had assumed were the results of a fight.⁹⁷

Hone Werahiko, whose interest in the *Sunbeam* was being worked by Procoffy,⁹⁸ also gave evidence of Procoffy being outside the Hot Springs Hotel at about 11 o'clock on the night of the murder searching for the Maori who had taken Smallman's horse. He recalled Procoffy saying that if Himiona did not give up the animal he 'would strike him. Witness told him to be careful, and then went away. Procoffy was, he believed, sober at that time. There were no scars on his face on the Thursday night'.⁹⁹

Procoffy declined to cross-examine the witnesses.¹⁰⁰ Kenrick's summing up laid 'special stress on the importance of the medical testimony', and told the jury 'that they must base their verdict strictly on the evidence, and not take into consideration anything they might have heard outside'.¹⁰¹ Having taken advice from the police, he told them that the best verdict

⁹⁵ *Thames Star*, 14 February 1881, p. 2.

⁹⁶ Te Aroha Warden's Court, Register of Te Aroha Claims 1880-1888, folio 159, BBAV 11567/1a, ANZ-A.

⁹⁷ *Auckland Weekly News*, 19 January 1881, p. 21.

⁹⁸ *Auckland Star*, 12 February 1881, p. 2.

⁹⁹ *Thames Advertiser*, 14 February 1881, p. 3; for Kenrick's notes of the evidence, in his impossible handwriting, see inquest into Hamiora Haora, Justice Department, J 46, 1881/541, ANZ-W.

¹⁰⁰ *Auckland Weekly News*, 19 February 1881, p. 21; Magistrate's Court, *Thames Star*, 21 February 1881, p. 2.

¹⁰¹ *Thames Advertiser*, 14 February 1881, p. 3.

would be one of willful murder.¹⁰² His unreported summing-up was in favour of Procoffy, arguing ‘altogether against the theory’ that he was guilty.¹⁰³ After deliberating for half an hour, the jury decided that Himiona was ‘fouly murdered by some person or persons unknown’.¹⁰⁴ That evening, Kenrick held a brief sitting of the magistrate’s court, at which Procoffy was charged with willful murder and remanded to the Thames gaol.¹⁰⁵

The following incident had nearly brought proceedings to a halt:

Whilst one of the witnesses was giving his evidence, a cry of “Fire!” was raised, and a general stampede from the jury-room set in. The exodus was not confined to the onlookers, but extended itself to the reporters and the jurymen, several of whom started off at a smart pace for the doorway, where they were confronted by the burly form of Sergeant Mulville, who said, “Where are ye going, men?” “My tent’s on fire,” cried one of the jurors. “Tent, indeed,” said the Sergeant. “If the whole country were on fire you’ll have to stop here until this inquiry is brought to a close.” The poor jurors, who had been cooped in the jury-room for three solid hours, and who were evidently in want of sundry refreshers [alcoholic drinks], returned to their seats without a murmur.¹⁰⁶

CONCERN ABOUT POSSIBLE MAORI REACTIONS

After the inquest, the Commissioner of the Armed Constabulary Force sent a telegram to Superintendent John Bell Thomson, who was in charge of policing in the Auckland district: ‘Premier is most anxious that Himiona’s murderer should be brought to justice and wishes all possible steps taken to that end’.¹⁰⁷ The reason for such high-level concern was not simply a desire to solve the crime; there was fear about how Maori would react. For instance, immediately after the first news of the murder, Maori living at

¹⁰² Sergeant Major Thomas O’Grady to Superintendent J. Bell Thomson, 14 February 1881, Police Department, P 1, 1881/521, ANZ-W.

¹⁰³ *Thames Star*, 14 February 1881, p. 2; *Thames Advertiser*, 14 February 1881, p. 3, editorial, 24 February 1881, p. 2.

¹⁰⁴ *Thames Advertiser*, 14 February 1881, p. 3.

¹⁰⁵ *Thames Star*, 14 February 1881, p. 2.

¹⁰⁶ *Auckland Weekly News*, 19 February 1881, p. 21.

¹⁰⁷ James Box (for Commissioner of Armed Constabulary Force) to J. Bell Thomson, 15 February 1881, Police Department, P 1, 1881/521, ANZ-W.

Cambridge were 'much excited'.¹⁰⁸ A perceptive journalist assessed the Maori response for the Auckland press:

The murder at Te Aroha seems to have greatly excited the Maories of that locality, although there is nothing at all about the event to show that it was caused otherwise than by a quarrel. There is nothing political about the murder, and no land question is concerned. But, even in the absence of these, the race feeling and antagonism is quickly aroused. The Europeans have but lately settled in the district: they are still, by the aboriginals, considered as interlopers: and now a European murders a native related to a large number of the residents. The murder is a brutal one, and the natives excitedly discuss it till it becomes a personal matter with each, and till they see a possible murderer in every European. The Ngatihako declared that they would have taken the man and tortured him to death. Probably this was a piece of bounce. So threatening, however, is the attitude of the natives that the miners have left the Omahu camp, and crowded into Morgantown. There is probably no substantial ground for this. The natives have a terrific appearance when excited, and will doubtless frighten those not accustomed to see them in that state. But the Maoris know that everything is being done to discover the murderer, and that any active interference of theirs can only make matters worse.¹⁰⁹

At about midday on the day that the body was found, a meeting of at least 150 Maori, 'by far the greater majority' being Ngati Koi, was held at Te Aroha. According to one reporter,

Several leading chiefs addressed the meeting, and all united in pronouncing the murder to be the work of Europeans. It is sincerely to be hoped for the sake of the place and the good feeling hitherto existing in the district that the whole matter will be satisfactorily cleared up. The natives are very dark, and are eyeing all and sundry pakehas with an air of suspicion.¹¹⁰

Three days later, at the tangi at the Ngati Hako settlement of Okahukura,

a good number of Hauhaus are in attendance, and the late murder is being freely discussed. The feeling this morning was,

¹⁰⁸ *Waikato Mail*, 12 February 1881, reprinted in *Auckland Star*, 12 February 1881, p. 2.

¹⁰⁹ *Auckland Weekly News*, 19 February 1881, p. 17.

¹¹⁰ Te Aroha Correspondent, *Auckland Weekly News*, 19 February 1881, p. 21.

that unless Government bring some pakeha to justice, and that right speedily, the natives themselves will take the matter in hand and deal summarily with certain pakehas, whom they suspect of being concerned in the murder.¹¹¹

At Thames, it was anticipated that Ngati Koi would demand utu.¹¹² Himiona's 'aged father is said to be very pouri' ['sorrowful, distressed']¹¹³ about his son's death and was 'determined to have blood for blood'. In the 'unsettled state' of the Maori mind, 'the passion for revenge' might lead them 'to murder an innocent man'.¹¹⁴ When a miner failed to return from visiting Waiorongomai, 'grave fears' were felt for his safety and the police organized a search.¹¹⁵ Although this was a false alarm, concern remained. The *Thames Advertiser* correspondent's assessed the Maori mood:

The natives of the district are greatly excited over the affair, and some words which have fallen from the lips of a few of deceased's friends have caused a little uneasiness among the residents of the township. Soon after taking possession of the body the friends met to consider what they should do in the matter, and after considerable discussion they resolved to defer any action until it is known whether the authorities will punish anyone for the murder. Should they find that no one is hung, they will take the law into their hands, and kill two or three pakehas as utu. This decision was ratified at a meeting of the Ngatihakos and other Hauhau tribes yesterday, and Europeans will therefore have to look out should the murderer not be found, for the natives will be sure to carry their intentions into execution, and probably take some innocent persons' lives. According to their custom a murder must be avenged, and those of your readers that know the native character need hardly be told that they are sure to avenge the dreadful crime which had just been committed....

Although a good many of the residents of the district are uneasy at the rumoured intentions of the Maoris, it is not thought serious enough to take steps in regard to protection. The natives have certainly given several of the men working in Catranville [the

¹¹¹ Te Aroha Correspondent, *Auckland Weekly News*, 19 February 1881, p. 21 (written on 15 February).

¹¹² 'Thames (15 February)', *Auckland Weekly News*, 19 February 1881, p. 21.

¹¹³ H.W. Williams, *A Dictionary of the Maori Language*, 7 ed., rev., (Wellington, 1985), p. 299.

¹¹⁴ *Te Aroha Miner*, 15 February 1881, reprinted in *Thames Star*, 15 February 1881, p. 2.

¹¹⁵ Te Aroha Correspondent, *Auckland Weekly News*, 19 February 1881, p. 21 [written on 15 February].

miners' camp near the Tui mines] to understand that it is not safe to remain there whilst the inquiry is proceeding, and in consequence, all the Europeans, to the number of 50 or 60, have packed their swags and either taken up their residence in the township or left for home....

The natives believe that a well-known Pakeha-Maori had something to do, or knows something about the murder, and they have been searching about for him, but he cannot be found, and it is supposed that he had secreted himself somewhere. From all I can learn from the natives, he stands a good chance of being roughly handled.¹¹⁶

This Pakeha Maori was Smallman, as he admitted, whilst denying any guilt.¹¹⁷

As the police were determined neither to lose their prisoner nor to let him be captured by Himiona's relatives, at Te Aroha he was 'well handcuffed and chained to the tent, and a strong guard placed over him' and when being sent to the Paeroa lock-up 'his arms and legs were well secured, and he was placed on a horse'. It was expected that 'he would be molested on the road by some of deceased's friends, but although several natives were met en route, they did nothing further than stare at him', and he reached Thames safely.

I have just heard that the Ngatihakos intended to obtain possession of Procoffy if he had been on board the "Vivid" this morning, on his way to Grahamstown, and put him to death in a barbarous manner. On reaching the settlement of that tribe they beckoned to the master of the vessel to come alongside. He did so, and soon a number of eyes were fixed on the boat and her passengers, for the purpose, it was afterwards learnt, of seeing whether the prisoner was on board. Fortunately he was not. A native passenger – Wycliffe, a native assessor - embarked from the settlement, and from him my informant learned that the Ngatihakos were greatly enraged at the murder, and threatened to take some pakeha's life if Procoffy was not punished. He also said that if prisoner had been on board the Vivid that day he would have been tortured by deceased's father and other relatives.¹¹⁸

¹¹⁶ Te Aroha Correspondent, *Thames Advertiser*, 16 February 1881, p. 3.

¹¹⁷ Letter from Joseph Harris Smallman, *Thames Star*, 5 March 1881, p. 2.

¹¹⁸ Te Aroha Correspondent, *Thames Advertiser*, 16 February 1881, p. 3.

(Wycliffe, or Wickliffe, was Te Wikiriwhi Hautonga, a rangatira of Ngati Tamatera.¹¹⁹ He was part-owner of two claims at Tui.)¹²⁰ According to another brief reference to this boat trip, Ngati Hako were ‘exceedingly bumptious, and say that if Procoffy had been on board the “Vivid” they would have seized him and handed him over to old Haera’, Himiona’s father, ‘to be disembowelled in front of the other pakehas’.¹²¹ This threat, like similar ones, became magnified by the time they reached Thames. Wilkinson recorded on 15 February that a constable ‘came to office to tell me that report had come in from Te Aroha that the natives were threatening revenge for Himiona’s murder and that the steamer “Vivid” had been stopped coming down the River. Went at once to Grahamstown and on enquiry found the report exaggerated’ and some of the rumours totally false.¹²² The *Thames Advertiser* did its best to counter such stories, denying that there had been any attempt to stop the steamer. The captain had merely put in at the settlement to take on board Wikiriwhi, who wished to travel to where members of his hapu were fishing.¹²³

This alarm over what might have happened to Procoffy raised an issue constantly in Pakeha minds. As the *Te Aroha Miner* complained, Pakara and Epiha, who had shot Daldy McWilliams, had never been brought to justice, and were free to ‘strut about in broad daylight, and boast what they would have done to Procoffy had he been on board the Vivid’.¹²⁴ A month previously, John McCombie, miner and newspaper correspondent, had travelled up the river. ‘When abreast of the Ngatihako settlement’, the passengers ‘had a splendid view of the would-be murderer, Pakara, who, assisted by several other natives, assailed us with a volley - not of bullets - of peaches’.¹²⁵ Shortly after Himiona’s murder, it was noted that one of those who had shot McWilliams could ‘be seen any day at Te Aroha, not far

¹¹⁹ See Maori Land Court, Hauraki Minute Books, no. 5, pp. 301-302, no. 13, pp. 123, 125; ‘Correspondence Relative to Ohinemuri’, *AJHR*, 1870, A-19, p. 11; *New Zealand Gazette*, 13 April 1871, p. 164; *Thames Advertiser*, Ohinemuri Correspondent, 27 November 1874, p. 3, 5 April 1880, p. 3, 8 September 1887, p. 2.

¹²⁰ Te Aroha Warden’s Court, Register of Te Aroha Claims 1880-1888, folios 203, 211, BBAV 11567/1a, ANZ-A.

¹²¹ *Thames Star*, 18 February 1881, p. 2.

¹²² G.T. Wilkinson, diary, entry for 15 February 1881, University of Waikato Library.

¹²³ *Thames Advertiser*, 16 February 1881, p. 2.

¹²⁴ *Te Aroha Miner*, 19 February 1881, reprinted in *Thames Star*, 21 February 1881, p. 2.

¹²⁵ Te Aroha Correspondent, *Auckland Weekly News*, 22 January 1881, p. 21.

from the young man whose life he sought to take'.¹²⁶ The *Thames Star* complained that those who had shot McWilliams were 'daily sunning themselves under the luscious peach groves of the Waihou river ... where they are a terror and a standing menace to everyone travelling to and from Te Aroha'.¹²⁷ The *New Zealand Herald* noted as 'a ludicrous incident' of the Procoffy trials that Ngati Hako,

who have been the most excited and threatening, were the people who, about two years ago, sent out a party to kill the surveyors working on the Pukehange block, and who dangerously wounded and left for dead the lad McWilliams, one of the survey party. The very person who fired the shot is now one of the leaders of the tribe, the government, after making a great fuss about the matter, having done nothing, though the man is completely in their power. But when a Maori is murdered the greatest eagerness is shown, and the government sends special orders on the subject.¹²⁸

The *Thames Advertiser* responded that, 'if the government were amiss in not prosecuting the aggressor who wounded Daldy McWilliams, it has nothing to do with the present case, and those who try to assimilate them should bear in mind that "two blacks will not make a white" '. A human being had been 'cruelly murdered', and it was 'degrading to our civilization that some people to appear to think as the victim was a Maori it is of little consequence'.¹²⁹ The *Thames Star*, always ready to point out the defects of its rival, after citing the point about two blacks not making a white, asked whether it was 'not a deplorable fact that the lives of many valuable white men have been taken for the death of one black?' It claimed that Ngati Hako had said, 'Let the pakehas choose three white men and deliver them up to us, so that we may have reparation for the blood of Himiona'.

Many white men have been killed, and three murderers are allowed to be at large at Parihaka and in the King country. The motherly care taken of such brutal ruffians, and the anxiety to deprive the Englishman of redress, in order to allay the passionate craving for blood displayed by the Maoris ...

¹²⁶ *Auckland Weekly News*, 19 February 1881, p. 17.

¹²⁷ Editorial, *Thames Star*, 23 February 1881, p. 2.

¹²⁸ *New Zealand Herald*, 22 February 1881, p. 4.

¹²⁹ Editorial, *Thames Advertiser*, 24 February 1881, p. 2.

manifested by the Government is positively sickening to an Englishman.

After describing the government as ‘a collection of prating, prosy, selfish, and imbecile wind-bags, whose combined mental power would scarcely equal that of a fossilised mosquito’, it considered having a Native Assessor sit on the magistrate’s bench at Procoffy’s trial at Thames to be ‘another instance of pandering to Maoridom’.

As soon as this unfortunate case is settled, we shall hope to see the Te Aroha once more revive and progress, and we trust that the miners will not be intimidated by the threats of the natives, which, if uttered in any other country but New Zealand, would be counted as treasonable utterances, and summarily dealt with.¹³⁰

Discontent with government inaction continued after the trials concluded. In September, there were complaints that the men who had shot McWilliams were shooting cattle and threatening to shoot a settler. Pakara was ‘said to be parading about the settlement boasting of what he has done, and of what he intends to do’.¹³¹ A month later Pakara and other Ngati Hako were still shooting cattle, and were wrongly accused of stealing the punt at Waitoki.¹³² Also in that month, Himiona’s father ‘took a prominent part in the work of obstruction’ by Ngati Koi of miners cutting kauri on their Waihi reserve.¹³³

Not till May 1882, when these two men ventured into Waikato, were Epiha and Pakara arrested. At their trial, Pakara was acquitted and Epiha sentenced to three years, to be released seven months later because it was decided that he had taken responsibility for what his hapu had done.¹³⁴ That the government would and did act when it considered the time was right was not anticipated at the time of Himiona’s murder and its

¹³⁰ Editorial, *Thames Star*, 26 February 1881, p. 2.

¹³¹ *Thames Star*, 2 September 1881, p. 2.

¹³² *Thames Star*, 7 October 1881, p. 2, editorial, 22 October 1881, p. 2; *Thames Advertiser*, 26 September 1881, p. 3.

¹³³ *Thames Advertiser*, 29 October 1881, p. 3; see also editorial, *Thames Star*, 22 October 1881, p. 2.

¹³⁴ *Thames Advertiser*, 20 May 1882, p. 2, 10 June 1882, p. 2, 15 February 1883, p. 3; *Auckland Weekly News*, 27 May 1882, p. 9, Supreme Court, 15 July 1882, p. 21; *Thames Star*, 14 July 1882, p. 2, 14 February 1883, p. 2.

aftermath, but apparent weakness in the face of attempted murder concerned Pakeha may well have influenced the outcome of the trial of a Pakeha accused of killing a Maori.

Without waiting for a prompt from their political masters, local officials had acted quickly to prevent trouble. Although the police did not inform Wilkinson of the murder, immediately after reading the newspaper reports he went to the inquest, where he had 'several talks' with those members of Ngati Koi, Ngati Rahiri, and Ngati Tamatera present, and recorded that 'they seemed willing to leave it to the Law to carry out'.¹³⁵ He telegraphed the head of this department that he had asked Hoera Te Mimiha, who had been a member of the coroner's jury, to 'use all his influence with his people' so that they left the matter to the police to solve. He wrote to Pineaha Te Wharekowhai, who had 'great influence over' his tribe, assuring him that the law would deal with the crime. As he was worried about the mood of Ngati Hako, he decided to write to them rather than 'intrude myself upon them for a few days'. He wanted the police to send 'a clever detective in order to have every clue thoroughly worked out'. Because the deceased's relatives had no money 'I guaranteed that the coffin & some other individual expenses would be paid for by Govt'.¹³⁶

Later, Wilkinson explained that Maori were 'very unsettled on account of the brutal and ferocious character of the murder'.

Notwithstanding, however, the greatness of their *pouri*, or sadness, I was pleased to find that they were likely to be amenable to reason, and after condoling with them, I impressed upon them the advisability of leaving the matter for the law to decide. As a man had already been arrested on suspicion of the crime, and as an inquest was at that time being held on the body, I had strong arguments in my favour to show that we were anxious to deal with this matter in the same way as if the victim had been one of our own people, and to impress upon them that this was the most advisable course for them to pursue, assuring them that everything that was possible would be done to discover the murderer and bring him to justice. This, through the influence of their chiefs Pineaha Te Wharekowhai and Hoera Te Mimiha ... they agreed to do, and also undertook not to do

¹³⁵ G.T. Wilkinson, diary, entry for 12 February 1881, University of Waikato Library.

¹³⁶ G.T. Wilkinson to Under-Secretary, Native Office, 15 February 1881 (telegram), Justice Department, J1/299, 1881/2417, ANZ-W.

anything in the meantime that might be looked upon as retaliation for the crime committed.¹³⁷

After his initial discussions, Wilkinson talked

with Haira father of the murdered lad and he said that if the Ture or law did not give him satisfaction for the death of his son that he would take it himself meaning that he would kill someone - The body was taken and put in a canoe and brought down to the Ngatihako settlement at Okahukura. Kenrick and party left to go to Shortland, I remained behind to see the natives - rode over to Waitoki and wrote a letter to Ngatihako which I gave to Hoera to deliver tomorrow.

He asked George Gage to tell him what was said at the Ngati Hako meeting.¹³⁸ On his way back to Thames on the 16th, he met Wikiriwhi 'and got from him the particulars of the Ngatihako meeting'.¹³⁹ He was informed that the hapu 'had resolved not to do anything until they had seen whether the authorities would punish anyone for the crime. If no one was brought to justice they would then proceed to avenge the death'.¹⁴⁰ Wikiriwhi earlier had told a Maori on board the 'Vivid' that Ngati Hako speeches had been 'very temperate' and that they were prepared to leave the matter to the law.¹⁴¹ Later on the same day, Pineaha Te Wharekowhai of Ngati Hako,¹⁴² told him that his tribe would 'await the result of the trial'.¹⁴³ But he warned 'that if Procoffy was not punished for the crime it was likely that deceased's relatives would wreak vengeance on somebody else', probably Smallman, whom they suspected of being involved.¹⁴⁴

¹³⁷ G.T. Wilkinson to Under-Secretary, Native Office, 28 May 1881, *AJHR*, 1881, G-8, p. 10.

¹³⁸ G.T. Wilkinson, diary, entry for 13 February 1881, University of Waikato Library.

¹³⁹ G.T. Wilkinson, diary, entry for 16 February 1881, University of Waikato Library.

¹⁴⁰ *Thames Advertiser*, 17 February 1881, p. 2.

¹⁴¹ *Thames Advertiser*, 16 February 1881, p. 2.

¹⁴² See Native Land Court, *Daily Southern Cross*, 23 May 1870, p. 4; *Thames Advertiser*, 17 February 1881, p. 2, 23 March 1882, p. 3; John Lincoln Hutton, ' "Troublesome Specimens": A study of the relationship between the Crown and the Tangata Whenua of Hauraki, 1863-1869' (MA thesis in Anthropology, University of Auckland, 1995), p. 168.

¹⁴³ G.T. Wilkinson, diary, entry for 16 February 1881, University of Waikato Library.

¹⁴⁴ *Thames Advertiser*, 17 February 1881, p. 2.

Wilkinson immediately informed the press of his actions, which praised his 'commendable promptitude'. His letter to Ngati Hako¹⁴⁵ had told them 'the steps taken by the government in the murder case, and advising them to remain quiet. He has had assurances from the relatives of the murdered man that his wishes will be carried out'. Wikiriwhi was quoted as telling him that 'nothing of a violent character had been said' at the tangi, and Pineaha as stating that 'if the murder is proved against some person they will be satisfied'.¹⁴⁶ In his report to the Native Office in May, Wilkinson wrote that the

principal chiefs - notably Pineaha Te Wharekowhai, and Hoera Te Mimiha, of Ngatikoi - behaved remarkably well all through the trying time, and were the first to accede to my request to leave the matter for the law to decide, and it was mainly through their influence and exertions that some of the more turbulent spirits were restrained from taking immediate revenge upon one or two Europeans who were suspected by them of being guilty of the outrage.¹⁴⁷

Pineaha's 'long and tedious' journey to see Wilkinson was noteworthy 'for such an old man. He walked to Kerepehi, on the Piako river, and from thence to the Piako towers, where he obtained a boat, and was rowed across to Shortland'.¹⁴⁸

One week after the body was discovered, the police could report that 'Natives [are] now quiet'.¹⁴⁹ Apart from his discussions and letter writing, Wilkinson took two practical steps to ease the anger and grief of the bereaved, guaranteeing the cost of the coffin and passing on to the

¹⁴⁵ The *Thames Star* incorrectly recorded this as being written to Ngati Koi; Wilkinson's diary and *Thames Advertiser*, 16 November 1881, p. 2, make it clear that he wrote to Ngati Hako.

¹⁴⁶ *Thames Star*, 16 February 1881, p. 2.

¹⁴⁷ G.T. Wilkinson to Under-Secretary, Native Department, 28 May 1881, *AJHR*, 1881, G-8, p. 8.

¹⁴⁸ *Thames Advertiser*, 17 February 1881, p. 2.

¹⁴⁹ Superintendent J. Bell Thomson to Colonel Henry Reader (Commissioner of Armed Constabulary Force), 17 February 1881 (telegram), Police Department, P 1, 1881/521, ANZ-W.

government the request of Himiona's father for £20 to buy food for his son's tangi, which was agreed to.¹⁵⁰

NGATI RAHIRI'S RESPONSE

As the victim was not of their hapu, Ngati Rahiri did not threaten utu, although in 1930 a Pakeha claimed that only a speech by Mokena Hou¹⁵¹ had prevented retribution. There was no contemporary evidence for any such speech, and the accuracy of the recollection can be doubted not only because he exaggerated the danger, muddled some of the details, and claimed that on the day of the races,

two men, one a Maori and the other a European, were seemingly inseparable throughout the day. They attracted a good deal of attention owing to their behaviour and noisy demonstrations in the publican's booth and on the course as well. The police gave little heed to their drunken orgies, regarding them as a pair of idiots.

Evidence given at the trials indicated that, although both men were at the races, there was no 'inseparable' behaviour; and Te Aroha was not in danger from an attack by enraged Maori. And so the claim that 'the noble savage rose to the occasion and saved a situation which had become tragic and almost untenable' was both patronizing and incorrect.¹⁵²

At the time the *Waikato Times*' Te Aroha correspondent reported that 'a silly hoax' had

been perpetrated at the Thames, by some sensation monger reporting that the natives here, were terribly excited and that the lives of the people here were in danger, and urgently needed protection.... I need hardly say that no one here ever anticipated that the natives would make any organized attack on the township, the only damage feared that some of the natives in their excitement might seek revenge by murdering some one in the vicinity of the settlement, that danger however, appears to be

¹⁵⁰ Telegrams from G.T. Wilkinson, 14 February 1881, 15 February 1881, and official's memorandum, 18 February 1881, Justice Department, J1/299, 1881/2417, ANZ-W.,

¹⁵¹ See paper on Mokena Hou.

¹⁵² Letter from W.H. Taylor, *Te Aroha News*, 15 December 1930, p. 5.

passing away, the majority of natives being willing to leave matters in the hands of the authorities.¹⁵³

The *Thames Advertiser* also tried to counter the rumours ‘regarding the excited and belligerent attitudes of the natives at Morgantown’, pointing out that all Maori were at the tangi.¹⁵⁴

Because some Maori considered that the Catran brothers were involved in the murder and ‘were not in a mood to be reasoned with’, they were sent to Auckland.¹⁵⁵ The police ordered them to leave ‘for the peace of the district, and for their own safety’, and they had to walk to Hamilton with William Marshall,¹⁵⁶ the owner of the mouthpiece of the pipe found with Himiona.¹⁵⁷ Another man possibly in danger was Smallman, whom some Maori considered to be the murderer. This belief prompted the *Te Aroha Miner* to note ‘how difficult it is to disabuse the mind of a native of an idea, no matter how palpably erroneous it may be proved to be’.¹⁵⁸ As Smallman was in custody for drunkenness at the time of the murder, he could not be the killer.¹⁵⁹ According to one account, Procoffy had been Smallman’s ‘mate’, and some Maori stated that Smallman had once threatened to kill Himiona and knew something about the murder. Smallman, it was reported, had ceased timber cutting in the bush and gone to Thames, for fear of being killed by Himiona’s relatives.¹⁶⁰ A theory, propounded by some Ngati Hako, was that Smallman, Marshall, and an unnamed man held Himiona while Procoffy cut his throat. When Himiona’s brother was in Thames on 21 February, he ‘seemed satisfied that Smallman was not implicated, but he states that he will not be able to disabuse the minds of his tribe of the idea that Smallman was mixed up in the affair’.¹⁶¹ Hone Werahiko would tell the court that he had heard ‘the natives of Te

¹⁵³ Te Aroha Correspondent, *Waikato Times*, 19 February 1881, p. 2.

¹⁵⁴ *Thames Advertiser*, 16 February 1881, p. 2.

¹⁵⁵ *New Zealand Herald*, 22 February 1881, p. 4.

¹⁵⁶ Whose name had first been recorded as James: see *Te Aroha Miner*, 12 February 1881, reprinted in *Waikato Times*, 15 February 1881, p. 2.

¹⁵⁷ *Thames Star*, 19 February 1881, p. 2; *Auckland Weekly News*, 26 February 1881, p. 17.

¹⁵⁸ *Te Aroha Miner*, n.d., reprinted in *Thames Star*, 19 February 1881, p. 2.

¹⁵⁹ *Thames Star*, 21 February 1881, p. 2; note Armed Constabulary Force, Report of Charges taken at Te Aroha Lock-up 1880-1903, no. 6, in private possession.

¹⁶⁰ *Thames Star*, 18 February 1881, p. 2, 19 February 1881, p. 2.

¹⁶¹ *Thames Star*, 21 February 1881, p. 2.

Aroha' threaten to kill Smallman if Procoffy was not hung.¹⁶² For his part, Smallman wrote from his farm near Te Aroha on 25 February that a friend had indeed come to warn him to

clear out as two Maories were hanging about my place, determined to shoot me. I went into Morgantown, and was advised to go to the Thames via Hamilton. I remained in Morgantown two days, and considered that the Maories had then sufficient time to prove that they were in error, and would not molest me, I returned home, where I have remained ever since.¹⁶³

He continued to remain there, unmolested.¹⁶⁴ One week after the murder, fears of utu were fading. One correspondent wrote that 'the usual amount of talk' during the 'great tangi' appeared

to have acted as a vent for their excitement, and they are now again visiting the Township in considerable numbers, always clearing out, however, before sunset, as nothing would induce them to pass the spot where the murder was committed after dark. They have also tapued the creek, which runs past O'Halloran's Hotel, on account of the water from it being used to wash the body of the murdered man, and are very particular in seeing that the water they drink, even in the Hotel, does not come from that source.¹⁶⁵

Such customs were sneered at by another correspondent, no doubt reflecting the views of other Pakeha:

An instance of the superstition innate of New Zealand aborigines came under my notice yesterday. It appears that the water bottle in the Warden's Office is always filled at the creek flowing past O'Halloran's, in which the bucket used for washing the body of Himiona was dipped. The natives most religiously avoid the bottle.¹⁶⁶

¹⁶² Magistrate's Court, *Thames Star*, 1 March 1881, p. 2.

¹⁶³ Letter from J.H. Smallman, *Thames Star*, 5 March 1881, p. 2.

¹⁶⁴ Evidence of J.H. Smallman, Supreme Court, *Auckland Weekly News*, 16 April 1881, p. 21.

¹⁶⁵ Te Aroha Correspondent, *Waikato Times*, 19 February 1881, p. 2.

¹⁶⁶ Te Aroha Correspondent, *Thames Star*, 18 February 1881, p. 2.

(When Pakeha showed that they also had a ‘superstition’ about the whare of a man who might have committed murder, this correspondent failed to realize the implication of what he wrote.)¹⁶⁷

Whilst the rage simmered down, arrangements were made for the trial in Thames. The government instructed Kenrick to obtain legal assistance for Procoffy ‘on the ground that he is a foreigner, without means’.¹⁶⁸ A prominent local barrister and failed local politician, George Nathaniel Brassey,¹⁶⁹ volunteered to defend Procoffy for no charge, or so he told the press, but in fact he received half the usual fees. His involvement was allegedly at the request of ‘several foreigners interested in the prisoner’s behalf’, but really was on his own initiative.¹⁷⁰ Brassey, warned by Ngati Hako not to defend Procoffy,¹⁷¹ seized the opportunity not just to assist the course of justice but also to flaunt his skills before the Thames and Auckland public and to continue his vendettas against Kenrick and a local justice of the peace, William Wilkinson, owner of the *Thames Advertiser*.¹⁷² His behaviour, largely omitted here, caused unnecessary delays and legal argument during the trials.¹⁷³

¹⁶⁷ ‘Pigeongrams: Te Aroha: This Day 11 A.M.’, *Thames Star*, 24 February 1881, p. 3.

¹⁶⁸ *Thames Advertiser*, 19 February 1881, p. 3.

¹⁶⁹ See paper on Harry Kenrick.

¹⁷⁰ G.N. Brassey to Minister of Justice, 19 February 1881; John Procoffy to Minister of Justice, 19 February 1881; J. Bell Thomson to Colonel Reader, 20 February 1881; William Rolleston to John Hall, 21 February 1881, and Hall’s memorandum of 22 February 1881, Justice Department, J 1, 81/914, ANZ-W; *Thames Star*, 24 February 1881, p. 2.

¹⁷¹ *Thames Star*, 21 February 1881, p. 2.

¹⁷² See *Observer*, 26 May 1900, p. 6, 23 September 1905, p. 3; *New Zealand Herald*, 23 September 1921, p. 6.

¹⁷³ See, in particular, letter from G.N. Brassey, *Thames Star*, 12 February 1881, p. 2; Harry Kenrick to Secretary, Law Society, Auckland, 19 February 1881, Thames Warden’s Court, Receiver of Goldfields Revenue Letter Book 1878-1892, folios 240-242, ZAAAN 14143/1b, ANZ-A; Harry Kenrick to Minister of Justice, 23 February 1881; undated memorandum by Under-Secretary for Justice, Justice Department, J 1, 81/914, ANZ-W; *Thames Star*, Magistrate’s Court, 12 February 1881, p. 2, ‘Paul Pry’, ‘On the Corner’, 23 February 1881, p. 2, editorial, 1 March 1881, p. 2, letter from ‘A Lover of Justice’, 3 March 1881, p. 2; *Thames Advertiser*, ‘Paul Pry’, ‘At the Corner’, 24 February 1881, p. 2, 28 February 1881, p.3.

Before the trial, the police collected more evidence, and more rumours circulated. On 15 February, pigeongrams reported that the police had ‘evidence tracing the amber mouthpiece of the pipe found near the body of the murdered native to the possession of Procoffy’. Two men stated that he had offered to sell one of them ‘a mouthpiece similar to that found near the murdered man’.¹⁷⁴ This evidence would not be produced in court. It was rumoured that the circumstantial evidence collected could be countered: people ‘intimately acquainted with the suspected man’ were reported as being able to satisfactorily explain the wounds on his face and the stains on his clothing. It was also asserted that on the night of the murder Procoffy was wearing a cap and not a felt hat as stated at the inquest. One reporter wrote that, at Te Aroha, the ‘received opinion’ was that this murder was ‘the most complicated case of the kind with which the police have had to deal with for many years’.¹⁷⁵ Detective Farrell was sent from Thames to collect evidence. According to one Te Aroha correspondent, as he was

one of the most experienced officers of the colony, he ought to be able to bring a good case against somebody. It is now generally believed here that Procoffy is the right man. The circumstances are certainly against him, and if the police are able to bring further proof he is almost certain to be convicted.¹⁷⁶

The police certainly believed they had their murderer. On 17 February, Superintendent Thomson reported that the evidence was ‘strengthening’ with ‘traces of blood on prisoners clothes knife and boots’.¹⁷⁷ Two doctors, Charles Huxtable and James Kilgour, after examining the bloodstains under the microscope considered it was human blood.¹⁷⁸ The police were confident ‘that they have a clear case made out, and indeed the evidence is of a most condemnatory character’, according to the *Thames Star*.¹⁷⁹ All leads, however unlikely, were followed up.

¹⁷⁴ Pigeongrams, *Thames Star*, 15 February 1881, p. 2.

¹⁷⁵ *Auckland Weekly News*, 19 February 1881, p. 21.

¹⁷⁶ Te Aroha Correspondent, *Thames Advertiser*, 16 February 1881, p. 3.

¹⁷⁷ J. Bell Thomson to Colonel Henry Reader (telegram), 17 February 1881, Police Department, P 1, 1881/521, ANZ-W.

¹⁷⁸ *Thames Advertiser*, 19 February 1881, p. 2.

¹⁷⁹ *Thames Star*, 18 February 1881, p. 2.

Constable Hobson returned to Coromandel on Thursday from his trip to the Tiki, whither he had gone after the Te Aroha miner who made some assertions bearing on the Te Aroha murder case, which, though scarcely credited by the police, they were obliged to investigate. Inquiry, however, proved the statements unworthy of notice. The Thames authorities have been very much pestered with this gratuitous sort of information.¹⁸⁰

This miner claimed to know a Maori at Te Aroha who had sworn to kill 'Symonds' because he was cohabiting with his wife.¹⁸¹ Two Maori were reported to have said that they had seen Procoffy and Himiona together near the scene of the murder.¹⁸² This rumour grew into one Maori being willing to swear that he saw the two men quarrelling near there, but a reporter found 'no truth in the report'.¹⁸³

On 26 February, Thomson sent two telegrams to Wellington. The first stated that more evidence was still being collected, and that he expected to establish 'a very strong prima facie case against prisoner'.¹⁸⁴ A second briefly reported that 'Very important fresh evidence' had been discovered.¹⁸⁵ This new evidence resulted from the burning down of Procoffy's raupo whare at eleven o'clock on the evening of 22 February.¹⁸⁶ A pigeongram sent on the morning of 24 February reported on the fire and its consequences:

Whether the conflagration was the result of design or accident has not yet transpired, though there are many who state they believe it may be attributed to the former. It appears since the murder some of the neighbours have been filled with a kind of superstitious fear of the whare, and someone may have caused the fire in consequence of that feeling of dread. It will doubtless be remembered that during the inquest the witness Moore stated that he heard prisoner's fingers working with the raupo roof. In consequence of this evidence Sergt. Mulville searched the materials of the frail structure, but found nothing. Now comes the

¹⁸⁰ *Thames Advertiser*, 19 February 1881, p. 3.

¹⁸¹ *Auckland Star*, 17 February 1881, p. 2.

¹⁸² *Thames Star*, 18 February 1881, p. 2.

¹⁸³ *Thames Advertiser*, 21 February 1881, p. 2.

¹⁸⁴ J. Bell Thomson to Colonel Henry Reader, 26 February 1881 (telegram), Police Department, P 1, 1881/521, ANZ-W.

¹⁸⁵ J. Bell Thomson to Colonel Reader, 26 February 1881 (second telegram), Police Department, P 1, 1881/521, ANZ-W.

¹⁸⁶ *Thames Star*, Te Aroha Correspondent, 23 February 1881, p. 2, 24 February 1881, p. 3.

interesting portion of the narrative. Yesterday morning, Messrs John Moore (not prisoner's mate) and Hinton were searching the ruins and came on the steel clasps of a purse and three rings - one brass and two silver - lying close together as though they had been inside the purse at the time of the fire. The finders at once saw that the rings were similar to those often worn by natives, one of them having been made from a shilling. Mr Moore cleaned the articles, and after some trouble, found that there were letters inside. He took them to the police, when it was discovered that the letters - which were rude Roman capitals - spelt "MIHI MERA" and "MIHI." The rings were shown to Mick, the native constable, who said they were those of a female relation of Himiona's. It is needless to say that this evidence is very strong against the prisoner. Constable Hogan rode to Paeroa last evening in company with Hinton, who will no doubt be produced as a witness at the hearing of the case against Procoffy, which takes place at the Thames today.¹⁸⁷

(Henry Hinton, a sawyer,¹⁸⁸ who helped to find the rings, had participated in the rush and bought a share in a company.¹⁸⁹ He would soon be an owner of one claim.¹⁹⁰ 'Mick, the native constable', was Meke Te Ngakuru, of Ngati Rahiri, who had been a policeman at Te Aroha since the later 1870s.¹⁹¹ He did not invest in mining until 1888.)¹⁹²

The *Waikato Times* correspondent at first reported that it was believed that 'the high wind blowing at the time must have carried some sparks into the raupo, which being very dry easily ignited'.¹⁹³ His next report stated that 'grave doubts' had since arisen about its origin. 'There was no fire within a very considerable distance of the whare, which lies off the road, out

¹⁸⁷ 'Pigeongrams: Te Aroha: This Day 11 A.M.', *Thames Star*, 24 February 1881, p. 3.

¹⁸⁸ *Thames Advertiser*, 3 March 1881, p. 3.

¹⁸⁹ Te Aroha Warden's Court, Miner's Right no. 921, issued 25 November 1880, Miners' Rights Butt Book 1880, BBAV 11533/1b, ANZ-A; *New Zealand Gazette*, 30 December 1880, p. 1797.

¹⁹⁰ Te Aroha Warden's Court, Register of Te Aroha Claims 1880-1888, folio 229, BBAV 11567/1a, ANZ-A.

¹⁹¹ Maori Land Court, Hauraki Minute Books, no. 10, p. 357; no. 59, p. 372; *Thames Advertiser*, Licensing Court, 14 December 1878, p. 3, 25 October 1880, p. 3, 1 November 1880, p. 3.

¹⁹² Te Aroha Warden's Court, Register of Te Aroha Claims 1880-1888, folio 325, BBAV 11567/1a, ANZ-A.

¹⁹³ Te Aroha Correspondent, *Waikato Times*, 24 February 1881, p. 2.

of the track of passers-by, and the occurrence took place at a time when most of the inhabitants were in their beds'. He described the finding of the rings, and reminded readers of Moore's evidence that Procoffy had fumbled in the roof of the whare:

The police searched the building very carefully, but without result. The question now arises, has the guilty party, with the view of strengthening the suspicion against the accused, placed these articles in the whare, and then set fire to it? Or were they placed there by the prisoner, and overlooked by the police in their search? Both these theories have their adherents here, and the result of the prisoner's examination is anxiously waited for. An uneasy feeling pervades the community at the thought that the murderer may still be at large amongst us.¹⁹⁴

ASSESSING THE EVIDENCE

At first there was 'very little doubt' at Te Aroha about Procoffy's guilt.¹⁹⁵ That did not prevent other theories circulating, such as one allegedly propounded by Ngati Rahiri and by John William Richard Guilding, an interpreter living at Te Aroha.¹⁹⁶ This was that Maori from Tauranga, who had attended the race meeting, had killed Himiona in revenge for his earlier killing one of their tribe.¹⁹⁷ This theory 'exploded' almost immediately, Guilding being 'very wrath' at the report, 'saying that the paragraph in question is calculated to damage his native practice'.¹⁹⁸ In mid-February, 'the general feeling' was that Procoffy was guilty, but two weeks later residents were equally divided as to his guilt or innocence.¹⁹⁹

One Thames resident doubted that a single man could have committed the deed unaided, a view he said was held by Maori and by 'various miners who were up at Te Aroha at the time'. He argued that, 'being a foreigner in a strange land', Procoffy 'ought to secure every consideration to vindicate himself', for he had heard of evidence in his favour being suppressed. His

¹⁹⁴ Te Aroha Correspondent, *Waikato Times*, 26 February 1881, p. 2.

¹⁹⁵ Te Aroha Correspondent, *Thames Star*, 18 February 1881, p. 2.

¹⁹⁶ See paper on his life.

¹⁹⁷ *Thames Star*, 16 February 1881, p. 2.

¹⁹⁸ *Thames Advertiser*, 19 February 1881, p. 3, Te Aroha Correspondent, 23 February 1881, p. 3.

¹⁹⁹ *Thames Advertiser*, 19 February 1881, p. 3; Te Aroha Correspondent, *Waikato Times*, 1 March 1881, p. 2; see also *Auckland Weekly News*, 5 March 1881, p. 17.

'few facts' were that the police had been shown a place close to the site of the murder with 'articles indicating that two men' had lain in ambush. As for the blood on his clothing and the scratches on his body, 'he was wrestling five times that day'. The bloodstains were caused by grazing his knuckles when working in the mine and wiping them on his trousers. As for the black eye, he claimed that Procoffy had 'attempted to trip a miner of the name of C.', presumably William Catran, in a billiard room. 'One of the friends of the latter remonstrated, and stated that if he did not "plug him" (this is the expression used) that he would, whereupon C. struck Procoffy between the eyes'. He doubted if the doctors could tell human from animal blood, especially after it had been partially washed out of the clothes. And could they judge 'whether it is Maori or European blood; learned *savants* state there is a difference between white and coloured races'. He had written to the press because a foreigner's life was in jeopardy: 'I never saw the man myself, but I speak for fair justice for the unfortunate man'.²⁰⁰

The fact that a guilty verdict meant that Procoffy would be hanged was of general concern. The *Auckland Star* considered that even more important than bringing 'the perpetrator of the diabolical murder' to justice was the preservation of 'the integrity of our judicial system'. While accepting that Procoffy appeared to be guilty, 'it would be an infamous blot on the name of British justice if the processes of law were so pressed against him that, justly or unjustly, he must be sacrificed to appease the wrath of the natives. We are told that something very like this is being done'. As proof of this claim, clearly made by Brassey, it reported that Procoffy had 'applied in vain for an interpreter to help him to explain the points of his defence to his solicitor'. Being 'virtually unprotected in a foreign country', it was 'the duty of the authorities and the press to demand for him a fair trial'. Having been told that Kenrick had refused to provide an interpreter, it expected the Minister of Justice to reverse this decision instantly.²⁰¹ The *Thames Advertiser* trusted that there would be 'no attempts on the part of the prosecution to in any way bolster up the case, and if, in accordance with British law, any doubt should exist as to the prisoner's guilt, it would only be fair to give him the benefit of that doubt'.²⁰² At the same time, this newspaper tried to refute some of the exaggerated statements about how

²⁰⁰ Letter from 'Lynx', *Thames Star*, 24 February 1881, p. 3.

²⁰¹ Editorial, *Auckland Star*, 23 February 1881, p. 2.

²⁰² Editorial, *Thames Advertiser*, 24 February 1881, p. 2.

the police treated Procoffy, one of its reporters investigating the false rumours that he was handcuffed and ‘heavily ironed’.²⁰³

William McCullough, editor of the *Thames Star*,²⁰⁴ with some other Thames residents made one extraordinary attempt to find the identity of the killer. Wilkinson recorded that McCullough had seen him ‘relative to discovering the real murderer of Himiona by the aid of spiritualism’, and referred to a ‘meeting’ with James Forgie, a baker,²⁰⁵ and others at night.²⁰⁶ Presumably McCullough wrote the editorial agreeing with ‘those who say the police were just a trifle over zealous in the matter, and the treatment which it is reported the unfortunate accused received at Te Aroha is such as to make every honest man’s blood boil’. It claimed the police had supplied the *Thames Advertiser* with ‘gross untruths’ and that only since Superintendent Thomson had arrived at Thames was the case ‘conducted with propriety and decency’.²⁰⁷ The *Thames Star* published criticism of William Wilkinson, the editor of its rival, for having made up his mind that Procoffy was guilty and then sitting on the Bench that judged him.²⁰⁸ That there was sympathy for Procoffy at Thames was indicated by donations of clothing, for his ‘wardrobe was not particularly well supplied’.²⁰⁹ ‘Justice’ wrote that ‘a little attention to his personal appearances would not be asking more than has been allowed to others who have been placed in a similar position’.²¹⁰ In Auckland, according to the *Thames Star*, ‘the feeling’ was ‘strongly in favour of the accused man’, and ‘several influential Auckland men have offered to find a qualified Russian interpreter’ for him.²¹¹ The former statement was explicitly denied by an Auckland newspaper, which wrote that there was ‘no “strong feeling” in Auckland on the matter. Procoffy will no doubt receive a fair deal’.²¹²

²⁰³ *Thames Advertiser*, 24 February 1881, p. 3.

²⁰⁴ See *Cyclopedia of New Zealand*, vol. 2, p. 96; *Ohinemuri Gazette*, 22 October 1892, p. 3; *Observer*, 1 August 1925, p. 4.

²⁰⁵ See *Thames Electoral Roll, 1882*, p. 7.

²⁰⁶ G.T. Wilkinson, diary, entry for 26 February 1881, University of Waikato Library.

²⁰⁷ Editorial, *Thames Star*, 24 February 1881, p. 2.

²⁰⁸ *Thames Star*, letter from ‘Honesty’, 28 February 1881, p. 2, letter from ‘A Lover of Justice’, 3 March 1881, p. 2.

²⁰⁹ *Thames Star*, 22 February 1881, p. 2.

²¹⁰ Letter from ‘Justice’, *Thames Advertiser*, 22 February 1881, p. 2.

²¹¹ *Thames Star*, 22 February 1881, p. 2.

²¹² *Auckland Weekly News*, 26 February 1881, p. 17.

THE TRIAL AT THAMES

The three days' postponement of the trial in the magistrate's court provoked 'considerable speculation'.²¹³ The official reasons were to allow time for witnesses to come from Te Aroha and because the police had further information to follow up.²¹⁴ The *Te Aroha Miner* detected other forces at work, because of

certain peculiar telegrams from Wellington, officially conveying the intelligence that the residents of Te Aroha are in no danger from the natives. Why on earth a political aspect has to be given to every misdemeanour in which a Maori is concerned, we cannot understand, unless it is through the machinations of that class known as pakeha Maoris, who have so long tried to make people believe that nothing can be done with the natives except through their instrumentality, and so manage to retain their little sinecures.²¹⁵

Many Pakeha went to Thames from Te Aroha to attend the conclusion of the trial,²¹⁶ accompanied by 'a large number' of Maori. By then, a Te Aroha correspondent wrote,

The district is once more assuming its wanted aspect of quietude, the Maoris having calmed down after the excitement caused by the late murder, and numbers of them are now to be seen in the township. They discuss the *pros* and *cons* very intelligibly, and seem equally divided as to the guilt or innocence of the man accused. Some of them still blame two others - whom they name - and peculiar stories are going about respecting one of these, whom they blame for having a hand in the crime.²¹⁷

Sitting through the entire proceedings were an unspecified number of Ngati Koi and Ngati Hako.²¹⁸ 'Everything is quiet and orderly', Wilkinson

²¹³ Te Aroha Correspondent, *Waikato Times*, 24 February 1881, p. 2.

²¹⁴ Police Court, *Thames Advertiser*, 22 February 1881, p. 3; Magistrate's Court, *Thames Star*, 21 February 1881, p. 2.

²¹⁵ *Te Aroha Miner*, 19 February 1881, reprinted in *Thames Star*, 22 February 1881, p. 2.

²¹⁶ *Waikato Times*, 1 March 1881, p. 2.

²¹⁷ Te Aroha Correspondent, *Thames Advertiser*, 28 February 1881, p. 3.

²¹⁸ *Thames Star*, 24 February 1881, p. 2.

assured his department.²¹⁹ Having ‘watched the case on behalf of the Natives’ and noted ‘a great many natives in Court’, Wilkinson had previously warned them that they ‘need not expect to be kept at Government expense’.²²⁰ When the under-secretary told the Native Minister of Wilkinson’s view that Ngati Hako were not going to cause trouble before a verdict was reached and that many would attend the trial, on Wilkinson’s recommendation he sought permission to pay two or three rangatira of Ngati Hako and Ngati Koi, ‘who, I think, would be beneficially impressed by hearing the case tried from beginning to end’; payment was duly made.²²¹

In everybody’s minds remained the continued threat of utu should the verdict offend the hotter heads of Ngati Hako. The *Te Aroha Miner* reported on 19 February that ‘the father of the murdered man has been at Ohinemuri during the past few days, threatening what he would do if Procoffy got off. It is admitted on all sides that the deceased’s relations are a dangerous lot’.²²² Rumours became more dramatic the further they travelled from Te Aroha: in the *Observer*, published in Auckland, Himiona’s relatives were stated to have ‘solemnly sworn that unless somebody is hung, they will revenge themselves by “doing for” six Europeans’.²²³ At Thames, the number had been only three.²²⁴

When the trial commenced on 24 February, Kenrick was unable to hear the case because Brassey had served him with a subpoena to give evidence about the inquest. Accordingly, it was heard by two justices of the peace, William Wilkinson and brewer and former mayor Louis Ehrenfried,²²⁵ assisted by Wikiriwhi Hautonga.²²⁶ Brassey tried to prevent

²¹⁹ G.T. Wilkinson to Under-Secretary, Native Department, 24 February 1881 (telegram), Justice Department, J1/299, 1881/2417, ANZ-W.

²²⁰ G.T. Wilkinson, diary, entry for 24 February 1881, University of Waikato Library; letter received, n.d., from G.T. Wilkinson, written 16 February 1881, Register of Inward Correspondence 1881, 81/639, Maori Affairs Department, MA 2/19, ANZ-W.

²²¹ Under-Secretary, Native Office, to Native Minister, 17 February 1881, Outward Telegrams Book, pp. 102-104, Maori Affairs Department, MA 5/11; memoranda of 14 February 1881, 18 February 1881, 16 February 1881, Justice Department, J1/299, 1881/2417, ANZ-W.

²²² *Te Aroha Miner*, 18 February 1881, reprinted in *Thames Star*, 22 February 1881, p. 2.

²²³ *Observer*, 26 February 1881, p. 242.

²²⁴ Editorial, *Thames Star*, 26 February 1881, p. 2.

²²⁵ See *Cyclopedia of New Zealand*, vol. 2, pp. 332-333.

²²⁶ *Thames Star*, 24 February 1881, p. 2.

the latter's involvement, but was informed that 'the Bench allowed the Native Assessor to sit as a matter of courtesy, to show that the greatest fairness was intended'.²²⁷ There had been trouble obtaining a Russian interpreter, needed because, allegedly, Procoffy had lost his fluency in English, but an Aucklander was found who did the job competently during the last two days of the hearing. Proceedings were 'somewhat delayed by the double interpretations, one to the Maoris and one to the accused, but the satisfaction is complete, as that British love of fair-play is satisfied'.²²⁸ The native agent, who interpreted for Maori, 'felt quite unwell through listening to the evidence of the brutal way in which the deceased Himiona was murdered'.²²⁹

Because of the need to translate the voluminous evidence, the case took four days, three sittings lasting until midnight.²³⁰ The court was crowded, 'several ladies being accommodated with seats' at one session.²³¹ When the trial commenced, the *Thames Advertiser* wrote that the proceedings appeared 'to be conducted in a very patient and painstaking manner'. The ability displayed by Superintendent Thomson, the prosecutor, was 'favourably commented upon, and it is notable that he affords every facility to the counsel for the defence'.²³² At the end of the trial, an editorial (written by William Wilkinson?) attacked Brassey for serving a subpoena on Kenrick and then not calling him as a witness. This editorial also replied 'to the feeling very common, that because the murdered man was a Maori, the crime was of little consequence': murder was murder, whatever the race.²³³

Amidst all these emotions, the trial commenced with Brassey attempting to have Wilkinson removed from the case because of his newspaper stating (correctly, but Brassey denied it) that Brassey had asked Procoffy to use his services. Brassey claimed that he was undertaking the defence 'without fee or reward'; in fact he had asked the government for half-fees. He further claimed (falsely) that he had been denied admittance

²²⁷ *Thames Advertiser*, 25 February 1881, p. 3.

²²⁸ *Thames Advertiser*, 1 March 1881, p. 3, 2 March 1881, p. 2.

²²⁹ G.T. Wilkinson, diary, entries for 23 February 1881, 25 February 1881, 1 March 1881, University of Waikato Library.

²³⁰ J. Bell Thomson to Colonel Henry Reader, 7 March 1881, Police Department, P 1, 1881 /521, ANZ-W.

²³¹ *Thames Advertiser*, 2 March 1881, p. 2.

²³² *Thames Advertiser*, 26 February 1881, p. 2.

²³³ Editorial, *Thames Advertiser*, 3 March 1881, p. 2.

to his client and (again falsely) that Kenrick had refused to allow him to use a translator.²³⁴ Wilkinson declined to step down. As the police were unable to produce an interpreter, the first day's evidence was translated only into Maori. The police implied that an interpreter was unnecessary because they had talked in English with Procoffy until 16 February, when 'he had shown a reluctance to speak to anyone'. After more jousting with the police by Brassey, including a claim that the prisoner had been badly treated in gaol, Sergeant Mulville repeated his evidence to the inquest. When charged, Procoffy had said (in English), 'I know nothing about it. I was very drunk all night'. Mulville revised his statement made at the inquest about Procoffy being the worse for liquor by stating that he considered he was sober, but smelling of drink. 'I did not see him drinking that evening. No report was made to me on that evening or towards the next morning of any one quarrelling with the deceased'. Procoffy told him that 'he had been fighting during the night in the township, but that he did not know who it was with, as he was too drunk. He made other statements; he had been drinking with his own money, and also with money he got from Smallman'. Mulville agreed that 'the ground could have been more trampled than I observed it to be. Some 40 people were round me at the time'.

Cleary described going to Procoffy's whare 'in consequence of information I received'. Finding Procoffy sitting at the mouth of the Sunbeam drive, he arrested him. 'He said, "I know nothing about it," and hung down his head and muttered something else, which I did not catch'.²³⁵ Cleary gave evidence of Himiona having complained to him that

some fellow with one eye was riding Smallman's horse about the township, and asked me to get the horse for him. Smallman at this time was in custody at the police camp for being drunk and disorderly. I went over in consequence, and found a man named William Catran riding the horse. William Catran is the man known as "one eyed Bill." I asked Catran to give up the horse and he did so. Deceased mounted it and rode away to Smallman's on

²³⁴ *Thames Advertiser*, 23 February 1881, p. 2, 24 February 1881, p. 3; *Thames Star*, 24 February 1881, p. 2; Thames Correspondent, *Auckland Weekly News*, 5 March 1881, p. 21; compare with G.N. Brassey to Minister of Justice, 19 February 1881, J. Bell Thomson to Colonel Henry Reader, 20 February 1881, William Rolleston to John Hall, 21 February 1881, and memorandum by John Hall, 22 February 1881, Justice Department, J 1, 81/914, ANZ-W.

²³⁵ *Thames Star*, 24 February 1881, p. 2.

the Paeroa road. Prisoner appeared to be a little the worse for liquor. Deceased, I should say, was sober.

At five minutes past ten, when he again saw Procoffy and Himiona together, the former told him that he had 'taken the horse to Smallman's'.

Prisoner said "I have been speaking to the Sergeant, and he tells me that Smallman is coming out at 12 o'clock," and prisoner said, looking at deceased, "You had better go and fetch the horse back." He said "I am tired; you better go." Deceased said, "You had better go." Prisoner said, "I won't go."

Cleary denied Brassey's claim that he had rubbed the knife in bullock's liver to create the bloodstains or had tampered with it in any way. He had thought he could see 'blood inside the handle, but cannot see it now. I will not swear positively it was blood. I took the stains inside the knife to be wet blood. I will not say the deceased had not been fighting between the time I last saw him and the first occasion'. Cross-examined by Brassey, he stated that there had been

some strange natives about in the early part of the evening, but I did not see them at a late hour. I cannot say they came from Tauranga. I have not heard of places near the scene of the murder being discovered where two men had apparently lain in ambush. The sores that appear on the prisoner's hands have not the same appearance as those I saw the day after the murder.

He saw Procoffy at the races but 'did not see him fighting. I saw some persons wrestling, and I saw a blow struck, but not by prisoner'. There was no blood on Procoffy's clothes or flowing from his nose when he saw him on the evening of the murder. He had not heard of any quarrelling between Procoffy and the Catran brothers and others.

John Moore deposed that he had been a passenger and Procoffy a sailor on the 'Dunloe' sailing from London to Auckland and that they arrived in Te Aroha before Christmas. After repeating his evidence to the inquest, he added that the second time he awoke after Procoffy's return he

had occasion to go outside the whare, as he was not well. Prisoner appeared to be fixing something at the top of the whare, as he heard the raupo rustling, and judged he was there. He had occasion to go out again during the night, but could not say how long afterwards. On going out and returning on this occasion he

found something like clothes hanging on the doorway of the whare. He had to go in and out on his hands and knees owing to the clothing hanging about the whare. He touched some of the clothes, and found water dropping off on to a corner of the blanket. The clothes were not there when he went out on the first occasion.

In the morning, when Moore asked if he had been washing, Procoffy replied 'that he must wash some time'.²³⁶ 'I never knew him to wash clothes at the whare before' during the two weeks they had lived there.²³⁷ Procoffy had no cuts or bruises on the morning of the murder, but had a swollen nose on the morning after it. 'Witness was short sighted, and prisoner might have had cuts or bruises about his face without witness observing them in consequence'. He did not see these cuts and bruises, but had seen marks on his hands, which had been there for some time; Procoffy, who did not work the same shift, told him that they had been hurt in the mine. Moore neither knew what Procoffy had been doing with his hands in the raupo nor saw any blood on his clothes. When Procoffy returned to the whare in the evening

he evidently had taken drink, but did not seem to be drunk, neither did he appear to be excited, and there was nothing different to his usual appearance. The accused has of late been in the habit of coming in late at night. He was in the habit sometimes of getting intoxicated.... The accused was generally of good behaviour, except when he was tight.... He was quarrelsome when drinking.

To a question from the Bench, Moore replied that he had 'never heard him threaten any Maories with any violence of any kind. I heard him make use of threats while at Te Aroha more than once'.²³⁸ 'He had threatened to cut people's throats and other things'.²³⁹ Moore also stated that he had seen Procoffy with various knives. 'He always carried a knife of some sort.... The last knife I saw in his possession was similar to the one produced'.²⁴⁰

²³⁶ *Thames Star*, 25 February 1881, p. 2.

²³⁷ *Auckland Weekly News*, 5 March 1881, p. 20.

²³⁸ *Thames Star*, 25 February 1881, p. 2.

²³⁹ *Waikato Times*, 26 February 1881, p. 3.

²⁴⁰ *Auckland Weekly News*, 5 March 1881, p. 20.

On the second day, John Bergin repeated his earlier evidence, with additional details. He had seen Himiona with Procoffy at about eight o'clock in the evening, just after Smallman was locked up. 'The Maori was trying to take Smallman's horse from Bill Catran, in front of the British Hotel. When I last saw the prisoner and deceased, they were going towards O'Halloran's [hotel]. The Maori was leading the horse and the prisoner was walking beside him'. He described hearing the prolonged yell in the night; it was later discovered that the distance from his whare to the body was 517 yards.²⁴¹ 'He thought the row was a row between Kepa and his wife', a reference to Keepa Te Wharau and Maraea Mere Peka, prominent members of Ngati Rahiri,²⁴² 'and some European interfered'. Bergin recalled Procoffy having a 'row' with Bill Catran, leading to the call for 'a ring' and them starting to fight; he had not watched but had gone to a dance instead.

Huxtable gave details of his post mortem examination and of the scientific tests he had conducted with Kilgour to determine if the stains were blood. Despite Brassey attempting to disprove his competence to do these tests, Huxtable proved he had the necessary experience. He did admit that the blood on the trousers could have come from Procoffy's nose, and stated that Himiona was 'a strong built man' who was 'certainly not a man easily to be got over by prisoner'. Procoffy's bruises were, he considered, 'the result of a fight'. The hair in Himiona's grasp did not resemble Himiona's; he was not asked (nor did anyone pursue the point) if it resembled Procoffy's.²⁴³ He considered that Procoffy's knife 'could be made to produce the wounds I have described on the throat under certain conditions, and also the cutting wounds I described on the face'.²⁴⁴ He and Kilgour had spent four days testing the clothes.²⁴⁵

James Cook repeated that he had not seen any bruises on Procoffy's face on the night of the murder. He had been standing 'close to him' at 9.30, 'and could hardly have helped seeing any marks or scars on his face'. Next morning, 'I noticed that he had a black eye and some scars on his face, which I am positive he had not the night before'. When he stated that Procoffy spoke English well, Brassey denied this and accused Superintendent Thomson of 'coaching the witness'. Cook said that Procoffy

²⁴¹ *Thames Star*, 25 February 1881, p. 2.

²⁴² See papers on Reha Aperahama and Keepa Te Wharau.

²⁴³ *Thames Star*, 25 February 1881, p. 2.

²⁴⁴ *Auckland Weekly News*, 5 March 1881, p. 20.

²⁴⁵ *Auckland Weekly News*, 5 March 1881, p. 21.

'had several times knocked his hands against the drive whilst wheeling a barrow' and that the marks on his face 'might have been caused by a tumble'.²⁴⁶

Hearings resumed on Tuesday 1 March, with a Russian interpreter present for the first time. Sergeant Major O'Grady gave evidence of Procoffy telling him that blood found on his boots when he was in gaol was caused by his 'bleeding at the nose, and spit on the floor and walked on the blood with my boots'. O'Grady then saw that he had been picking his nose and making it bleed. 'I will not swear that the scratch within prisoner's nostrils was made by himself, but it indicated being made by his nail'. Prompted by Brassey, he refused to swear that this scratch 'was not an old sore recently opened, but it showed the appearance of a wound recently inflicted. I will not swear it was blood I saw under the nail of the fore-finger'. Nor would he swear that the bloodstains on the boots 'might not have got there during the time prisoner was in the cells'.

Hone Werahiko told of meeting Procoffy at ten o'clock outside O'Halloran's hotel, which had just closed. Procoffy told him that he was going to get Smallman's horse from an unnamed Maori.

Prisoner said if the Maori did not give up the horse he would strike him and fist him. I said, "You must not do that." Prisoner went down towards the Paeroa road. To my remark prisoner made no reply, and that was the last I saw of him. I cannot say whether prisoner was drunk or sober. I saw no scars on prisoner's face when he was speaking to me.

Cross-examined by Brassey, Werahiko insisted that he could understand Procoffy, who had said, 'I go out to get "Mallman's" horse from the Maori; he no give it me, I hit him" '. Procoffy 'did not appear to be angry at the time he was speaking to me'. No Tauranga Maori had been at Te Aroha, and he certainly would have noticed a black eye, for it was moonlight.²⁴⁷ 'Did not think prisoner had been fighting'.²⁴⁸

The next witness, James White, a bushman living at Te Aroha, had seen Procoffy at 10.30 at night seeking information about Smallman's whereabouts so that he could 'bail him out'. Procoffy appeared to be half-

²⁴⁶ *Thames Star*, 26 February 1881, p. 2.

²⁴⁷ *Thames Star*, 1 March 1881, p. 2.

²⁴⁸ *Thames Advertiser*, 2 March 1881, p. 3.

drunk; there were no marks on his face. Procoffy had asked a Maori, whose face was unfamiliar to White, whether he was going to Smallman's:

The Maori said, "No, I'm going up to the bush, if you're going you had better come." Prisoner said no, he was going to Smallman's. Witness went a short way with them, and then went to where a lot of men were singing, and afterwards went home. When prisoner went up to speak to the Maori he put his hand up to the latter's shoulder or neck. Two other Maoris were standing with the deceased when the prisoner was talking to him.

When in bed in his tent, 'he heard a kind of low wail; he did not get up as he thought it was someone mimicking a cat. The wail was of a mournful tone.... The sound he described appeared to come from the place where the body was found'. He told Brassey that Procoffy 'could stand straight, although he was half drunk; I thought prisoner was a little more excited than usual when I spoke to prisoner; I cannot say whether drink was the cause of his excitement'.²⁴⁹

The next witness was Karaka Kamura, a miner from Ohinemuri who had shares in one company and was an owner of a claim at Tui and of another at the mouth of the Waiorongomai valley.²⁵⁰ Along with Kingi Haira he had called to Himiona to return with them to the Omahu claim, where they were camping, but as Himiona wanted to talk to Procoffy first, they went on without him. He estimated the time as being after ten o'clock, for the hotels were closed.

Had seen prisoner wrestling at the races on the previous day with some natives. He wrestled with the deceased on that day, and was thrown by the deceased. Witness heard prisoner tell deceased that if he were playing with knives he would best Himiona. He was an expert at that. At the time he put his hand inside his shirt, as if to take hold of his knife, but did not take it out. Prisoner was not thrown by any other Maori, and did not succeed in throwing any other.... He did not know English, but knew what a knife meant.... He thought they were wrestling in anger. His reason why he thought it was done in anger was on account of the use of the word knife, after they were finished. Neither of them were laughing.... When they fell on the ground, deceased was on top of the prisoner, who fell on his back.... When the combatants

²⁴⁹ *Thames Star*, 1 March 1881, p. 2.

²⁵⁰ Te Aroha Warden's Court, Register of Te Aroha Claims 1880-1888, folios 203, 219, BBAV 11567/1a, ANZ-A; *New Zealand Gazette*, 24 February 1881, p. 258.

got up from the ground, after the wrestling was over, he saw their faces. They looked angry. The remarks of the prisoner with regard to the knife were interpreted by a Maori who was present who understood English.²⁵¹

Kingi Haira gave evidence that his elder brother was with himself, Karaka, and Procoffy on the evening of his death, at an unknown time. 'Karaka and I called out to deceased to come home, and he replied, saying "Wait a while: I want to speak to the pakeha," meaning the prisoner. He replied the second time, "You go on; I'll come afterwards" '. The last time he saw his brother alive he was in the company of Procoffy. Cross-examined by Brassey, he stated that, when in the billiard room, he saw Himiona take some rings off his fingers and place them in his purse:

I saw Procoffy and deceased wrestling. Prisoner was, to the best of my knowledge, a little the worse of drink. Procoffy had been wrestling a good deal that day. I did not notice prisoner having any blood on his face that day. I am positive there was no blood.... Himiona was a stronger man than the prisoner; at least I saw my brother throw the prisoner on the race course; but he might have been drunk at the time.... Prisoner and deceased were wrestling at first for fun; but when prisoner was thrown he became angry.... After the wrestling was over prisoner said something to deceased. He said that if they were to play knives deceased would be no match for him. He was positive he heard Procoffy say, "If the Maori play me with the knife, I beat the Maori." Procoffy took his knife out of his pocket. Karaka was there at the time, but he was not standing at my side. I believe Karaka heard all that was said, for he was near enough. I would not say that Karaka was telling an untruth in saying that prisoner only put his hand in his breast without taking out a knife, as Karaka might only have seen that; but what I am relating was true. I was standing six yards from Karaka. The knife was shut when the prisoner took it out, and he did not open it.... There were no strange natives about at the time of the murder. On the day of the murder I heard prisoner ask Himiona to fight. Both of them wanted to fight. Prisoner was not at that time drunk, neither was I.

Carl Rasmussen, a miner and part owner of two claims,²⁵² said that Procoffy wore an old dungaree suit when mining, but that in the evenings

²⁵¹ *Thames Advertiser*, 2 March 1881, p. 3.

²⁵² Te Aroha Warden's Court, Register of Te Aroha Claims 1880-1888, folios 155, 194, BBAV 11567/1a, ANZ-A.

and on Sundays he put on a new suit. On the night of the murder he was wearing his best suit, and when he saw him, before nine o'clock, there was no dirt or mud on his clothes 'which would necessitate their being washed'. He had 'looked in at the inquest. He believed the prisoner's clothes had been washed or dipped'.

On the fourth day of the hearing, Henry Hinton described finding the rings when 'kicking the remains of the whare about'. They had been in the centre and to the right of the structure. He and John Moore (not the John Moore who lived in the whare) had gone out of curiosity; he insisted, despite Brassey's scepticism, that the police had not asked him to inspect the remains. Moore, who had mined in the Sunbeam with Procoffy, confirmed this evidence, and then stated that he had seen Procoffy at eight o'clock on the night of the murder. 'He appeared to be under the influence of liquor, and was a little excited; so far as I could see he had no bruises or cuts about his face at that time'. Between six and seven the next morning, Procoffy came to his tent and asked about who was on the morning shift:

I asked him why he did not want to go to work, and he replied he had been drunk the night previous. I now noticed the skin was knocked off one of his cheekbones. He came into my tent and apparently went to sleep. He remained there until woken up by the witness Cook at 8 o'clock, when he got up and went out.²⁵³

Constable Hogan informed Brassey that he had tried to find out who had set the whare on fire, without success.²⁵⁴

Hoera Te Mimiha deposed that Himiona had lived in his house and had the purse and the rings. He had seen Himiona make a ring for his daughter Mihi from a shilling she owned. 'I cut with a knife the word "Mihi" inside the larger silver ring worn by Himiona; it was on when it was in my daughter's possession; I took it off her hand'. When the rings were placed on the table, Hoera immediately and correctly picked up the one in which he had scratched her name. The other rings had been in Himiona's and his daughter's possession.²⁵⁵

Mihi Mera described the rings, one of which she had worn before returning it to Himiona. She had seen him on the night of the murder, when he had two rings on his fingers and one on his tie. 'She knew the rings

²⁵³ *Thames Star*, 2 March 1881, p. 2; *Thames Advertiser*, 3 March 1881, p. 3.

²⁵⁴ *Thames Advertiser*, 3 March 1881, p. 3.

²⁵⁵ *Thames Star*, 2 March 1881, p. 2.

produced were those Himiona had on the day of the murder because they were the only ones he wore. Himiona was the only native who made rings with a ridge running round the centre of the outside’.

Kingi Haira was recalled to describe the rings. The John Moore who shared the whare with Procoffy was also recalled, and deposed that he did not remember Procoffy having a purse with a clasp. The morning after the murder, Moore found a ring

on one of the blankets on which witness and prisoner slept. This was about 6 o’clock. Witness was looking at it and prisoner said, “That is mine.” He gave it to him. He could not say what he did with it. On looking at it witness noticed some letters inside it. He could not say what the letters were. He was not certain about it. Witness never remembered having seen any rings in prisoner’s possession before.

He had not told the police about the ring ‘because he had not been asked about it, and he did not think it was of any importance’; only after the burning of the whare and the discovery of the rings did he mention it.

That closed the evidence for the Crown. Thomson submitted that he had established a prima facie case that justified Procoffy’s committal for trial before the Supreme Court, and trusted that he had conducted the case ‘in a spirit of fairness and moderation, and to the satisfaction of all concerned’. The Bench congratulated him on his ‘just and gentlemanly manner’ and said that all the police deserved credit. Asked whether he intended to call any evidence, Brassey replied: ‘Whatever evidence I may call will be at the Supreme Court’.²⁵⁶

When the court resumed on 3 March, Procoffy said that he was not guilty, and would reserve his defence. He was committed for trial at the next sitting of the Supreme Court in Auckland, a decision translated by Wirope Hoterene Taipari for the benefit of Maori. In the concluding pleasantries, Ehrenfried thanked Brassey for stating that the prisoner had been treated fairly, and assured Procoffy ‘that whenever British law was administered, it would always be conducted with fairness and impartiality’. He also complimented Brassey for his skill in conducting the case: it ‘was a most peculiar one, calling for more than the usual patience and ability’.²⁵⁷

²⁵⁶ *Thames Star*, 3 March 1881, p. 2.

²⁵⁷ *Thames Star*, 3 March 1881, p. 2.

AFTER THE TRIAL

A correspondent commented that many witnesses 'appeared to have little or no idea of how to give evidence in a straightforward way, and the time of the Court was frequently wasted through their stupidity in not at once answering simple questions which were put to them about matters with which they must have been intimately acquainted'. As between 10.30 and 12.00 on the night of the murder Procoffy had not been seen, making that time 'a blank', the evidence was 'wholly circumstantial'.²⁵⁸ Brassey told the Premier that the evidence was 'entirely circumstantial and indeed very unsatisfactory and the general feeling throughout the district is that the man did not commit the crime'.²⁵⁹ Thomson, however, believed that he had solved the case:

After personally investigating this case in the most searching and thorough manner, I am completely and positively satisfied (in my own mind) that we have secured the real murderer of Himiona Haera, and although the jury (partly out of misplaced sympathy for the prisoner, as being a foreigner) may ultimately give him the benefit of any slight doubt that may apparently arise as to his guilt, he has before that stage of his trial is reached, a very very strong case to answer and rebut.²⁶⁰

It was reported that Maori at Te Aroha were patiently awaiting the result of the next trial, and should Procoffy be acquitted a Pakeha would be sacrificed.²⁶¹ A *Thames Advertiser* reporter when visiting Waihi was told by Himiona's father that unless Procoffy was 'punished he and his friends will wreak their vengeance on some other European'. He was 'very cut up', and there was 'no knowing what he may do' if Procoffy was acquitted.²⁶² However, Charles Featherstone Mitchell,²⁶³ a settler at Paeroa since

²⁵⁸ Thames Correspondent, *Auckland Weekly News*, 5 March 1881, p. 21.

²⁵⁹ G.N. Brassey to Premier, 7 March 1881, Justice Department, J 1, 81/914, ANZ-W.

²⁶⁰ J. Bell Thomson to Colonel Henry Reader, 7 March 1881, Police Department, P 1, 1881/521, ANZ-W.

²⁶¹ *Thames Star*, 7 March 1881, p. 2.

²⁶² *Thames Advertiser*, 8 March 1881, p. 3.

²⁶³ See paper on the Thames Miners' Union.

1872,²⁶⁴ pointed out that, as some Ngati Hako were mining ‘at the south end of the Aroha mountain, ‘reports that they purposed to murder some one in revenge for Himiona’, who was only half-Ngati Hako anyway, were ‘groundless’.²⁶⁵ Such reassuring words seem to have been ignored at the time, if experiences published about Pakeha travelling through Ohinemuri were typical. One recorded that a ‘well-known resident’ of Thames had

a great fright whilst riding through the Rotokohu Gorge on his way to Te Aroha the other evening. He was walking the horse up the siding, when on turning a corner he came upon a Maori who was walking in the opposite direction and carrying a double-barrelled gun. The Thamesite, remembering the threats of the natives at the time of the murder, thought his last moment had come, but to his great joy the native, who could speak fair English, saluted him, and asked the time. The two entered into a short conversation, and our friend learned that the Maori, having to go to Paeroa on urgent business, had armed himself to the teeth, being afraid to travel alone on such a solitary road without means of protection, and was as much startled by the sudden appearance of the traveller as the pakeha was of him. Mr A -- vows he will never ride along that road again at dark without a six-shooter.²⁶⁶

‘Pendulum’, describing a visit to Waihi, began with the following story:

To anyone unacquainted with the road it is a bold thing to start off in the evening, when the possibility is that the only human being you are likely to meet for miles might be a Maori; and I must confess that when in the dead of the night I found myself quietly wending my way through the territory of old Tukukino,

otherwise Te Ahiataewa Tukukino, rangatira of Kiriwera hapu of Ngati Tamatera, who firmly resisted Pakeha intrusion,²⁶⁷

without even a blunderbuss to defend myself, and remembering that some natives had threatened to be avenged for the late Te

²⁶⁴ See *Thames Guardian and Mining Record*, 12 January 1872, p. 3, 10 February 1872, p. 2; *Thames Advertiser*, Ohinemuri Correspondent, 7 April 1873, p. 3, 16 April 1873, p. 3, 14 May 1873, p. 3, 23 May 1873, p. 3.

²⁶⁵ Ohinemuri Correspondent, *Thames Advertiser*, 22 March 1881, p. 3.

²⁶⁶ *Thames Advertiser*, 16 March 1881, p. 3.

²⁶⁷ See Hutton, p. 172.

Aroha murder, I felt a slight sensation of fear; and fancy how this crept upon me when as I trudged along there came behind me the sound of horses' hooves and an indistinguishable clatter of voices. I thought if I kept on the track my death warrant was sealed, and it was but the work of a moment for me to step into the bush and hide myself from what I feared was a band of Maoris intent upon removing my scalp; and the reader can better imagine than I can describe my feelings when, who should I distinguish by the light of the moon but

three well known mining investors 'pressing forward intent, from what I could hear by the tones of their voices, upon trying to make a trifle in the gold mines of the Waihi'.²⁶⁸

A small number of rangatira were selected to attend the trial in Auckland, their travel costs being met by the government.²⁶⁹ Before it was held, Brassey asked the government to appoint him as Procoffy's counsel, but the Premier stated that Procoffy should choose his own counsel; not surprisingly, he chose Brassey. As Procoffy was unable to pay for his services, Brassey asked the government to pay him 50 guineas; he would finally receive £34 10s 6d.²⁷⁰

THE SUPREME COURT TRIAL

Mr Justice Richmond told the grand jury that there was no

technical difficulty in the case. You will just have to deal with it as men of common sense, to say whether the evidence is such as to warrant the prisoner being put upon his trial.... It is a subject for congratulation that suspicion in this case has not fallen upon any person who may be counted as one of the regular settlers of the colony.

²⁶⁸ 'Pendulum', 'A Visit to Waihi', *Thames Advertiser*, 16 March 1881, p. 3.

²⁶⁹ G.T. Wilkinson, 9 April 1881, 4 May 1881, Justice Department, J1/299, 1881/2417, ANZ-W.

²⁷⁰ G.N. Brassey to Premier, 7 March 1881; Louis Ehrenfried to Premier, 7 March 1881; John Hall to E. Fox, 12 March 1881; G.N. Brassey to Minister of Justice, 3 April 1881, 25 April 1881, plus memoranda on payment, Justice Department, J 1, 81/914, ANZ-W; *Thames Star*, 31 March 1881, p. 2, 9 April 1881, p. 2; *Auckland Weekly News*, 9 April 1881, p. 20.

The jury, possibly cheered by this reflection, found a true bill.²⁷¹ The start of the trial was slightly delayed because the Crown Prosecutor, Frederick Brookfield, had visited Te Aroha with Thomson to enable the former to see where the murder had taken place, and as they found new witnesses, Brassey needed time to consider their evidence.²⁷² Accordingly, the trial started on Monday, 11 April, with two Russian interpreters and 26 witnesses.

Brookfield told the jury that ‘he felt a deep sense of responsibility, for the evidence was entirely circumstantial, and no eye had seen the act committed with which the prisoner stood charged. But circumstances could not be altered although the deductions from them might not be correct’. He summarized the injuries to the body, the major one being to the throat, which was ‘cut so completely that the windpipe was severed and the backbone was laid bare. The body was completely drained of blood’. He described Procoffy wrestling with several people at the races; Procoffy had thrown several adversaries, but Himiona had thrown him, resulting in the comment that ‘if we played with knives you would not have done it’.

All the next day there was evidently bad blood springing up between the prisoner and the man now deceased. Prisoner told him that he would cut his b --- throat, and the prisoner persisted in following the Maori about the whole day of the 10th. The Maori said to prisoner several times, “Don’t bother me; do you want to quarrel with me? I don’t want to have anything to do with you.”

Three witnesses heard a yell about half an hour after the last time the two men were seen together. None of the other evidence Brookfield summarized was new. He insisted that the marks on Procoffy’s clothing ‘had been tested by every test known to science, and the medical testimony would go to show that these marks were marks of blood. Two days afterwards it was found that his boots were stained, and they were taken away to be tested. After they were taken, not before, the prisoner said his nose had been bleeding’.

The same witnesses repeated the same evidence, but some added new information. Mulville said that he had not searched the raupo in the whare very minutely, as ‘prior to his search he knew nothing of John Moore saying he heard fumbling about that whare’. He ‘could not say’ whether Himiona

²⁷¹ Supreme Court, *Waikato Times*, 5 April 1881, p. 2.

²⁷² *Thames Advertiser*, 6 April 1881, p. 3, 9 April 1881, p. 2.

was more muscular than Procoffy. Cleary said he made no further search of the whare after hearing Moore's evidence 'as he attached no importance to it'. A new witness, William James Hyde, a miner who had arrived at Te Aroha at the beginning of January,²⁷³ stated that he had seen Procoffy with several Maori at 10.15. At about 11 o'clock,

he heard a strange noise. He thought from the noise that some one was getting hammered and wanted help, but about that time Maoris were always fighting along that road, and the noise was apparently a Maori's voice. Witness went outside his tent, but heard nothing further, so he went back to bed again. The sound proceeded from the direction of the spot where the body was found.²⁷⁴

On the second day of his trial, Procoffy's 'face seemed careworn and he appeared to feel his position keenly'. The clothes, stone, and knife were now produced in evidence, the latter being described as 'an ordinary pocket knife, with one blade, such as is used by men of the prisoner's class for cutting tobacco'. Huxtable confirmed that the bloodstains were from a mammal, but 'could not swear that it was the blood of a human being, because there are certain animals (the hare, the rabbit, and dog) whose blood could be, with difficulty, distinguished from human blood, even when the stains were recent'. He confirmed that Procoffy had scratched his nostrils to make them bleed, and stated that inspecting the hair adhering to Himiona's fingers under a microscope had proved it was not Himiona's hair. Hogan then revealed that he had taken samples of hair from Himiona and from Procoffy's moustache, beard, and hair. Huxtable stated there was 'a strong resemblance between the hair found sticking to the dead man's knuckles and that cut from the prisoner's beard. He thought that the resemblance was strongest in the hair cut from the prisoner's moustache'.

A new witness, local Pakeha Maori George Lipsey,²⁷⁵ deposed that he saw Himiona and Procoffy together outside the Hot Springs Hotel between 5 and 6 o'clock,

²⁷³ Te Aroha Warden's Court, Miner's Right no. 1655, issued 4 January 1881, Miners' Rights Butt Book 1880-1881, BBAV 11533/1g, ANZ-A [at first recorded in press as Hyth].

²⁷⁴ Supreme Court, *Auckland Weekly News*, 16 April 1881, p. 20; see also *Waikato Times*, 16 April 1881, p. 2.

²⁷⁵ See paper on his life.

and heard deceased tell accused in an angry tone to go away. Witness stood and looked, thinking they were going to have a row. Himiona walked to the bar door and up the steps. Procoffy followed him, and Himiona put his hand on Procoffy's chest and said, "You keep away, or me break your b --- nose." He pushed Procoffi away, and then both walked into the hotel, Procoffi following Himiona.

Another witness, John Meagher, confirmed this evidence, adding that Procoffy 'was knocking about the racecourse on the 9th with the Maoris. He was half drunk'. William Baker, part owner of one claim,²⁷⁶ 'gave similar evidence. He heard the squabbling between the Maori and the prisoner, who said he would cut the Maori's throat'.²⁷⁷

On the third day, John Moore and Hone Werahiko²⁷⁸ repeated their former evidence. The latter added that he had seen Procoffy and Himiona together at 11 o'clock. 'There were a lot of natives together. They called to Himiona to come. He said he would come when he had talked to the pakeha'. After more repetition of earlier evidence, Brassey opened the case for the defence. He claimed he could prove that Himiona was seen alive at the time the murder was supposed to have been committed, and that Procoffy was not wearing the clothes that earlier witnesses had claimed he had worn. He did not repeat some points he had made at Thames, such as the ambush of Himiona by two men and the police forging evidence by rubbing the knife in a bullock's liver, and called only two witnesses. The first was Daniel McCarthy, who had come to New Zealand on the same ship as Procoffy, and deposed that the latter had 'made himself very useful on board. He was constantly washing clothes. He appeared to be a very quiet man. It was not a remarkable circumstance that the prisoner should have washed his clothes in the middle of the night'. Hugh Taylor, who had a butcher's shop at Te Aroha and an interest in one claim,²⁷⁹ deposed that he had tried to get a drink after a late supper, but the hotels would not open for him because it was after 10 o'clock.

²⁷⁶ Te Aroha Warden's Court, Register of Te Aroha Claims 1880-1888, folio 199, BBAV 11567/1a, ANZ-A.

²⁷⁷ Supreme Court, *Auckland Weekly News*, 16 April 1881, pp. 20-21.

²⁷⁸ His name disguised in the Auckland press as Hone Wera Meru.

²⁷⁹ *Auckland Star*, 14 April 1881, p. 3; Te Aroha Warden's Court, Register of Te Aroha Claims 1880-1888, folio 194, BBAV 11567/1a, ANZ-A.

Just as witness was going home to bed he saw the prisoner. Procoffy said, "Do you know b --- Jack?" Procoffy was very drunk, and said so. Procoffy also said he had been wrestling all day, and wanted to "shout" for witness. Prisoner had no vest on, only his shirt and trousers on. He had not at this time a dungaree suit or a blue suit, as had been sworn to by other witnesses. Procoffy's face was disfigured at the time. Next morning picked up a tweed vest, which witness knew belonged to the prisoner.

The witness was cross-examined at great length, for the purpose of testing his knowledge of the exact time when he saw Procoffy, about 11 o'clock. But he could not state exactly the time it occupied him to go from O'Halloran's to Clotworthy's, and from Clotworthy's back to O'Halloran's. Witness had to carry sheep from the ferry to his shop, and the test was whether he could have gone the various distances in the times stated.²⁸⁰

The closing addresses were given on the fourth and last day of the trial:

Mr Brassey said the jury would probably think that the evidence which the Crown had adduced was not sufficient for the conviction of a man upon a trial for murder. The evidence did not cleave together in such a way as to exclude the possibility of the Maori who was said to have been murdered being killed by some other hand than that of the prisoner. When any portion of the evidence pointed in the direction of the prisoner it did not go far enough. The theory of the Crown was that the Maori met his death at 11 o'clock at night on the day in question. The evidence of Taylor was that he saw Procoffy 700 yards from the scene of the murder at 11 o'clock, and that Procoffy was very drunk. It had been proved that the Maori was a stronger man than the prisoner. The prisoner, even if he had been sober, could not have walked from the place where he was seen by several of the witnesses in time to have committed a murderous attack upon a Maori. But he was so drunk that he could not have done such an act, neither could the prisoner have walked from the place where he was seen by a number of witnesses about 10.30 to the place where Taylor saw him. Therefore the identification of the prisoner and the discrepancies in the other testimony created the impression that there was some mistake, which would surround the whole of the circumstances with doubt. The learned counsel collated different portions of the evidence of the witnesses with the view of showing - (1) That their statements varied so as to affect their credibility; (2) that the Maori witnesses must have

²⁸⁰ Supreme Court, *Auckland Weekly News*, 16 April 1881, p. 21.

been biased; (3) that the medical evidence was made jointly by two witnesses, and not separately by each; (4) that microscopic examinations of the hair would be a dangerous reason for taking away a man's life; (5) that a certain amount of suspicion attached to the finding of the rings, and also to the statements of the police when interpreting for their purposes particular facts.²⁸¹

Brookfield clarified technical points about malice aforethought and the distinction between murder and manslaughter. He discussed the behaviour of the victim and his alleged murderer before the crime, and said that 'the jury would hardly be of opinion that the Maoris and Europeans had formed a conspiracy to hang the prisoner'. He stressed the significance of the bloodstains on the clothes what were washed in the middle of the night, the finding of the rings, the discovery of blood on Procoffy's boots, and his

endeavour to divert the attention of the police and the doctors. As to the witness Taylor, his evidence was not to be relied on, not that he had perjured himself, but simply because the cross-examination showed that he could not speak distinctly to several times and distances which were referred to, in order to test his knowledge.²⁸²

He had 'listened attentively' to Brassey 'in the expectancy of hearing some theory of defence but he had heard none. Mr Brassey, failing to develop any such theory, had passed on to simply discredit and vilify the witnesses'.²⁸³

The judge then summed up:

The difficulty of cases like that before the Court consisted in this, that the Crown relied for the proof of the guilt of the prisoner upon a number of minute facts and circumstances, and that these facts and circumstances are separate from and independent of each other, so that if they were taken alone they be of absolutely little worth at all.

He urged the jury 'to examine the parts upon which the Crown relied, and then to consider them all together. If in their consciences they

²⁸¹ Supreme Court, *New Zealand Herald*, 15 April 1881, p. 6.

²⁸² Supreme Court, *New Zealand Herald*, 15 April 1881, p. 6.

²⁸³ Supreme Court, *Auckland Star*, 14 April 1881, p. 3.

entertained a doubt upon the case as a whole, then he heeded it was hardly for him to tell them that it was their duty to give the prisoner the benefit of the doubt'. He stressed that the crime 'could not be reduced to manslaughter. It was murder or nothing'.²⁸⁴ He stressed six points: Procoffy being seen with Himiona an hour before the murder, washing his clothes, marks on his face, bloodstains on his clothing and boots, the hair grasped by Himiona compared with the samples taken from Procoffy, and the rings. Medical testimony given jointly was a strength, not a weakness. If the jury considered the rings had belonged to Himiona,

there was a very strong case made out against the prisoner. As to the appearance of the prisoner next morning, that was a matter worthy of consideration. As to the evidence for the defence, it was for the jury to say what weight they would give to the evidence of Taylor.... If their deliberation should bring them to the conclusion, as reasonable men, that the facts made out the case clearly and completely against the prisoner, they should do their duty regardless of the consequences. If they felt any reasonable doubt as to the guilt of the prisoner, they would give him the benefit of that doubt.

This summing up took two and a half-hours, and finished at 4.40.²⁸⁵

THE VERDICT

When the jury retired, Procoffy was removed from the dock. 'As he was taken to the cells under the Court he set up a moaning which could be heard all through the building. He showed signs of great nervous excitement during the progress of the trial'.²⁸⁶ Another reporter described him as having been 'nervous and agitated in manner all day', and when removed from the dock 'he began to moan piteously'.²⁸⁷ At 6 o'clock the jury had not agreed, but the foreman thought they might do so within an hour. At 7 o'clock, the foreman suggested two further hours would be needed. Procoffy, having been brought into court for the foreman's report, was returned to his cell. 'When he was placed in the cell he set up a loud howling which was heard all over the building. He refused to go into the

²⁸⁴ Supreme Court, *Auckland Star*, 14 April 1881, p. 3; *Thames Star*, 16 April 1881, p. 2.

²⁸⁵ Supreme Court, *New Zealand Herald*, 15 April 1881, p. 6.

²⁸⁶ Supreme Court, *New Zealand Herald*, 15 April 1881, p. 6.

²⁸⁷ Supreme Court, *Auckland Star*, 16 April 1881, p. 3.

dark cell, and remain there by himself. A constable was told off to occupy the cell with him until 9 o'clock'. Shortly before then,

there was a very great crush into Court, and every available space was occupied by the public. Some had found their way into the gallery, but were summarily ejected, as admission to the gallery can only be obtained by the judge's order. The prisoner was led into the dock at five minutes to 9. He was somewhat agitated in his manner, but had got over the intense excitement from which he previously suffered. He spoke for a few moments with the interpreters, and then glanced restlessly round the Court while waiting.

As the jury had not agreed on a verdict, and in the opinion of the foreman there was 'not the slightest' probability that they would, they were locked up for the night.²⁸⁸ It was 'generally believed' that a new trial would have to take place.²⁸⁹

When the court met at 10 o'clock the following day, Procoffy 'betrayed much trepidation and looked as if he had spent a sleepless night'.²⁹⁰

There was evidently great interest taken in the result, and notwithstanding the early hour of the morning the Court was crowded. The prisoner looked haggard and careworn. All kinds of rumours were current as to the possibilities of the verdict. Some said, that up to a quarter to 10 o'clock the jury were still dissentient. It was very generally believed that the jury would be discharged without agreeing, and that there would be a new trial. The actual result, when it was announced, had not been expected. The Registrar of the Court challenged the Foreman and the Jury in the usual form.- Have you agreed upon your verdict?

Foreman: We have.

Registrar: How say you, is the prisoner guilty or not guilty?

Foreman: Not guilty.

This announcement was received by some persons in the body of the hall with stamping of feet, which was evidently meant for applause. But the majority of the public seemed rather surprised. The verdict was at once interpreted to the prisoner. He started with the apprehension of the sudden change in his position. He crossed himself in the form of his Church, passing his right hand quickly from his forehead to his breast, and thence to the left and right shoulder, bowing low to the Court. He next performed the

²⁸⁸ Supreme Court, *New Zealand Herald*, 15 April 1881, p. 6.

²⁸⁹ *Thames Advertiser*, 13 April 1881, p. 3.

²⁹⁰ Supreme Court, *Auckland Star*, 16 April 1881, p. 3.

same obeisance to the jury, who were still standing in their box. He paid a similar compliment to the reporters' box, and then turned clean round to the populace in the body of the Court, and bowed low to them. The whole of these movements were done with extreme rapidity. He next faced the Court and joined his hands in prayer, raising his looks gradually to the roof of the building.

His Honor: The prisoner is discharged.

The gaol warders opened the door of the dock, and the prisoner was once more free. He was immediately surrounded by a group of the idlers about the Court, and one or two of his compatriots took possession of him. He was followed by a crowd of people, and taken by his friends to the Provincial Hotel, Princes-street, where there was quite a house full of people. Some were shouting drinks for the prisoner. Here some time was passed in congratulation or solace to the man who had so narrowly escaped the clutch of the hangman.²⁹¹

At the hotel Procoffy 'called for a glass of lemonade, and in doing so stated that he has firmly resolved from that time forward never to drink anything stronger than lemonade'. The *Auckland Star* understood that he professed to having been 'so drunk on the night of the murder as to have recollected nothing of what transpired between seven o'clock in the evening and the following morning'.²⁹²

It was 'rumoured there were nine jurymen favourable to the acquittal from a point in Sergt. Mulville's evidence. Two yielded subsequently, and only one held out till this morning'.²⁹³ An official in the Justice Department later commented that the evidence against Procoffy was 'very strong but at the last moment a witness was produced for the defence who deposed to having seen' Procoffy 'at some distance from the scene of the murder at about the same time at which it was alleged the murder was committed', which 'gave rise to the doubt of which the Jury gave the prisoner the benefit'.²⁹⁴ (It would have been hard for jurymen, realizing that a guilty verdict meant a capital punishment, not to have given Procoffy the benefit of any doubts they may have had.) According to one source, the attitude of the foreman of the jury 'was from the first favourable to the prisoner, and when it became

²⁹¹ Supreme Court, *New Zealand Herald*, 16 April 1881, p. 5.

²⁹² Supreme Court, *Auckland Star*, 16 April 1881, p. 3.

²⁹³ *Thames Star*, 16 April 1881, p. 2.

²⁹⁴ Memorandum of S. Williamson, 17 December 1881, Justice Department, J1/299, 1881/2417, ANZ-W.

known that there was a serious difference twixt the twelve, most people foresaw that he could be acquitted'.²⁹⁵ The theory that the foreman was sympathetic was supported by his interruption of the case to complain that the police were prompting the prosecutor by passing notes to him. In response, the judge assured the jury that nothing at all untoward was occurring, it being the role of the police to assist the prosecution in this way; Brookfield commented that while he 'should not like to say the intervention of the foreman was impertinent', it was 'most unusual'.²⁹⁶

COMMENTS ON THE OUTCOME

The *Observer* pungently commented on the aftermath of the verdict:

One of the most beautiful traits in the colonial working man is the unquestioned faith [with] which he receives the verdict of a British jury. At a quarter past ten on Friday morning no one would have spoken to Procoffy or touched his hand, much less have "shouted" for him. At half past hundreds were vying with each other for the honor, and doing their level best to celebrate the wretched man's release from prison by making him blind drunk.²⁹⁷

An Auckland journalist noted that the trial had 'assumed more than ordinary importance, no less by the nature of the evidence than by the character of the place and community in which the crime was committed'.²⁹⁸ Reportedly, Maori who had attended the trial were 'very "dark" over his acquittal'.²⁹⁹ The *Freeman's Journal* commented on the Maori response:

In the case of the unfortunate Maori, who was so foully murdered at Te Aroha ... justice is for once at fault. After a patient and protracted investigation of the strong array of circumstantial evidence brought against the man Procoffy, the jury found themselves unable to bring in a verdict of "Guilty," and the accused was therefore acquitted. Apart from any consideration of the wisdom or unwisdom of this act, it must be admitted on all hands that the successful evasion of punishment by the culprit,

²⁹⁵ *Observer*, 23 April 1881, p. 339.

²⁹⁶ Supreme Court, *Auckland Weekly News*, 16 April 1881, p. 21.

²⁹⁷ *Observer*, 23 April 1881, p. 339.

²⁹⁸ *New Zealand Herald*, 15 April 1881, p. 5.

²⁹⁹ *Thames Star*, 16 April 1881, p. 2.

whoever he may be, is a matter to be deeply deplored. It does not often occur that a Maori is murdered by a European, and when such a crime does occur it is highly desirable that it should be sheeted home with the least possible delay, and an example made of the offender. The Maori mind would then be impressed with a respect for a law which vindicates itself unerringly upon the guilty person irrespective of race or sectarian differences, and there would be a natural inclination to observe strictly its precepts. The failure to punish the guilty on the contrary will not only create a feeling of contempt, but also raise grounds for the belief that our justice is partial, and that people of our own colour can offend with impunity against the aboriginal race. Maories are not apt to see the contradictions which such an idea will involve, for, accepting a recent instance of unexpiated crime as their cue, they will determine the general by the particular.³⁰⁰

This Irish-Catholic journal appeared to be suggesting that one man should die for the good of the people. Others in Auckland shared the view that the likely result of the verdict would be utu against innocent Pakeha. According to the *Observer*, since the verdict 'became known at Te Aroha the European residents have been going about armed to the teeth. It is fully anticipated that the Maoris will commit some fearful outrage ere long to appease the *manes* [soul] of the murdered man'.³⁰¹ However, no correspondents based at Te Aroha reported people there being armed and fearful. During the trial, relations between Maori and Pakeha seemed to have returned to normal, one correspondent noting 'a great number of regular Maori visitors to the settlement' and the hotels doing a 'roaring trade'.³⁰² Nothing reported after that date suggested any change of behaviour, although some worries may well have remained. The only correspondent to report the views of residents wrote that 'people here are not astonished to hear of the verdict of God's elect in the Procoffy case. They only hope that the Maoris will not demand a victim for their victim with a high hand'.³⁰³

Although fears of utu were not groundless, no reprisal occurred, in part because of the calming influence of some rangatira. In late April, the *Waikato Times* reported that a Cambridge resident had met Pineaha Te Wharekowhai of Ngati Koi, who 'expressed his full satisfaction with the

³⁰⁰ Editorial, *Freeman's Journal*, 22 April 1881, p. 6.

³⁰¹ *Observer*, 23 April 1881, p. 339.

³⁰² Te Aroha Correspondent, *Waikato Times*, 5 April 1881, p. 2.

³⁰³ Te Aroha Correspondent, *Waikato Times*, 28 April 1881, p. 2.

decision'. He believed 'that no good can be done by more blood spilling, and is desirous of maintaining the peace in the Hauraki district'.³⁰⁴ Because he was believed to have threatened utu, Pineaha was interviewed by J.C. Young, a land court interpreter, one month later.

Mr Young said, "Your name has been frequently used in connection with the Te Aroha murder. There are other persons present who understand the Maori language, and there are Maoris with you also. I wish to ask you what are your feelings in regard to Procoffy." Piniha replied "I have no feeling whatever in regard to the matter. Had he been handed over to me at the time I should have liberated him, because there was no reason why another person should be murdered because Himiona was killed. There is no use in committing two wrongs," opening his satchel and taking out his pipe and tobacco. "The whole matter is of no less importance to me now than simply lighting my pipe. I wish to maintain peace in the Hauraki district. I utter my thoughts plainly to you because I was opposed to you when the late Mr [John] Williamson was Superintendent, and you tried to open Ohinemuri." Mr Young - "You have given me such a candid reply that I may now tell you that I am very glad that the aspersions cast upon you are not true, and that the comments on your conduct were not justified."³⁰⁵

Of particular importance was Tawhiao's reported statement at this Kingite meeting

that he was quite satisfied with the action taken by the Government, and believed every means had been taken to find out who was the murderer. The treatment given Procoffy was characteristic of Englishmen, and although the man was a foreigner he had had fair play. The jury could not with the circumstantial evidence have convicted him. This expression of opinion has had great weight with the natives of Te Aroha and the Upper Thames.³⁰⁶

PROCOFFY FLEES

³⁰⁴ *Waikato Times*, 28 April 1881, p. 2.

³⁰⁵ *Waikato Mail*, n.d., reprinted in *Bay of Plenty Times*, 26 May 1881, p. 2.

³⁰⁶ *Thames Star*, 24 May 1881, p. 2.

Because of the fear of utu, it generally believed that Procoffy's life 'would not have been very safe had he remained' in New Zealand.³⁰⁷ He took Brassey's advice to leave, giving him his watch and chain to show his gratitude.³⁰⁸ As he lacked the money for his passage, a fellow Russian sought subscriptions from the public.³⁰⁹ These were forthcoming, and on 19 April he left for Sydney. The *Thames Advertiser's* report implied disapproval of those who supported the acquitted man:

The discharged Procoffy, after being lionised by individuals of morbid tastes, was honoured with a free pass to Sydney by S.S. Ringarooma yesterday. The Captain declined the honour of his company, when solicited by his friends to take him, whereupon the latter subscribed the necessary funds, and he stepped on board shortly before the steamer sailed.³¹⁰

An Auckland newspaper commented that Procoffy's leaving was 'the wisest thing he could have done, as in the present state of public opinion he could have done no good here, and might possibly have been the means of further embroiling the Government with the natives'.³¹¹

A GRIEVING FATHER

In late November, the murdered man's father wrote to Thomas Bannatyne Gillies, a former Superintendent who was now a Supreme Court judge.³¹²

How am I to be cured in the year of the murder of my child.... My pain for him has not been finished in this year, I have been very strong in curbing my thoughts – The Governor's word to me was – "Son let your thoughts be good" – but how can the thought be good of this dreadful evil of murder.

³⁰⁷ 'St Mungo', 'Echoes from the Cafe', *Waikato Times*, 23 April 1881, p. 2.

³⁰⁸ G.N. Brassey to Minister of Justice, 25 April 1881, Justice Department, J 1, 81/914, ANZ-W; *Thames Star*, 2 May 1881, p. 2.

³⁰⁹ *Thames Advertiser*, 18 April 1881, p. 3.

³¹⁰ *Thames Advertiser*, 20 April 1881, p. 2.

³¹¹ *Auckland Weekly News*, 23 April 1881, p. 9.

³¹² See Hugh Rennie, 'Thomas Bannatyne Gillies', *Te Ara: The Encyclopedia of New Zealand*, online.

He sought a quick reply 'lest I should spring up to do evil'.³¹³ Gillies responded by expressing his sorrow that the murdered had not been discovered and punished but urged: 'Let your thoughts be strong to obey the law and do not do evil yourself because the murder of your son has not been clearly discovered'. After explaining that his letter had been forwarded to the government, Gillies concluded: 'Be patient my friend'.³¹⁴ The government supported his response and wrote a letter to the same effect,³¹⁵ and the bereaved father took no further action.

GUILTY OR INNOCENT?

Was Procoffy guilty? Lacking the forensic tools available to their successors, the police were clearly handicapped, and only had circumstantial evidence; they could not even distinguish between animal and human blood. William Hammond, who was a Thames school pupil at the time of the first trial, spent part of his lunch time with some mates looking into the courthouse to see the prisoner and hear some of the evidence. He believed that 'several men were under suspicion, but the real culprit escaped'.³¹⁶ Those whose views were published were glad that Procoffy had received the benefit of the doubt. 'Toby Twinkle', a newspaper columnist, noted how capital punishment influenced the verdict, and was suspicious of the later evidence:

Some people don't seem satisfied that Procoffy hasn't been hanged, and it looks very much as if he deserved the suspensory process. The worst of it is you can't resuscitate a man, so it's a trifle awkward to make a mistake. Circumstantial evidence is the best, if good, but the worst if bad. Well, you know, it was good, very good, too good, some of it superlatively good, good enough to have been manufactured expressly for the occasion. There were the deceased's rings, you know, that couldn't be found and then were found in a mysterious sort of way. Gentlemen, if ever you

³¹³ Haira Te Puihi to Mr Justice Gillies, 22 November 1881, Justice Department, J1/299, 1881/2417, ANZ-W.

³¹⁴ Thomas Bannatyne Gillies to Haira Te Puihi, 20 December 1881, Justice Department, J1/299, 1881-2417, ANZ-W.

³¹⁵ Memoranda and letters dated 27 December 1881, 30 December 1881, 3 January 1882, 4 January 1882, Justice Department, J1/229, 1881/2417, ANZ-W.

³¹⁶ William Hammond, 'Daldy MacWilliams', *Ohinemuri Regional History Journal*, vol. 2 no. 1 (May 1965), p. 8.

are on a jury, doubt evidence that is too good, and take account of the quarter whence it comes.³¹⁷

Nobody else accused the police of manufacturing evidence, although such a suspicion added to the concern exploited by Brassey about Procoffy being handcuffed and chained to a post at Te Aroha because there was no lock-up. It was at first suggested that Thames ‘public opinion appeared to be divided as to the justice of the action of the jury’, but later it was reported that there was ‘a feeling of great satisfaction’ at Thames at the verdict, coupled with ‘general sympathy’ for Procoffy, ‘who was not too well treated by the prosecution’.³¹⁸

A Hamilton columnist, in arguing that a Scottish verdict would have been more appropriate, also noted the fear of sending a possibly innocent man to the gallows:

Much surprise was felt in the city at the result of the trial... Of course the evidence was purely circumstantial, but it was very strong, and circumstantial evidence is, as a rule, all that is available on a murder case, the exceptions being when the prisoner confesses his guilt, or when an accomplice turns Queen’s evidence. It is the rarest thing in criminal law for there to be an actual witness of a murder other than an accomplice. Knowing that jurymen are very much averse to pronouncing a man guilty of murder on purely circumstantial evidence, most people thought that the jury would be unable to decide as to a verdict, and so would have been discharged, and a fresh jury would have been empanelled. However, the twelve “good men and true” decided that the evidence was not sufficiently strong, and so gave the prisoner the benefit of the doubt. It seems to me that Procoffy’s case shows the desirableness of having the third verdict “not proven,” which may be given in Scotland. I cannot believe that twelve men of average intelligence, after hearing the evidence given against him, could have come to the conclusion that Procoffi was innocent of the charge brought against him, but that the jury simply considered that the evidence was not sufficiently conclusive to justify them in sending a fellow-man to the gallows; and so, having only two verdicts to choose from, brought in that of “Not Guilty.”³¹⁹

³¹⁷ ‘Toby Twinkle’, ‘Snap Shots’, *Auckland Weekly News*, 23 April 1881, p. 9.

³¹⁸ *Thames Advertiser*, 16 April 1881, p. 2; ‘Thames Tittle Tattle’, *Observer*, 23 April 1881, p. 242.

³¹⁹ ‘St Mungo’. ‘Echoes from the Cafe’, *Waikato Times*, 23 April 1881, p. 2.

The *Thames Star*, always sympathetic to Procoffy, was not surprised at the verdict, believing the evidence at the Thames trial was ‘insufficient to convict’ and claiming that ‘very little new evidence’ was produced in Auckland. Whilst admitting there was ‘a strong chain of circumstantial evidence’, it was ‘apparent to the most superficial observer’ that it was not ‘sufficient to convict a man of committing the very serious crime of murder’. It believed that ‘a fair and impartial hearing has been given to the case, and such a conviction will force itself upon the native mind when a little time has been taken for reflection’.³²⁰

Its morning rival stated that it had always thought that Procoffy deserved the benefit of any doubt, and was pleased that he had ‘not been sacrificed because he was a foreigner, according to the cry raised by certain journals, but has received every assistance and fair play possible’. The evidence was circumstantial, ‘and in keeping with the love of justice that characterizes the British heart the jury have wisely given the accused the benefit of the doubt’. It praised the work of the police against those who considered them over-zealous, but agreed that it was ‘better the guilty escape than an innocent man should suffer’. Too many had been wrongly hanged because of circumstantial evidence later proven to be fallacious. Many people had believed that the jury, influenced by threats of utu, would consign the accused man to the gallows, and it was pleased that the jury had decided to ‘let justice be done though the heavens fall’. It hoped the Maori mind was not ‘so blinded to the spirit of British fairplay’ that the earlier threats would be carried out. If they were, it would be ‘the duty of the Government to devise such measures as will make them respect the laws which govern this land’.³²¹

In Auckland, the acquittal of Procoffy was ‘the engrossing topic of conversation’. Public opinion was ‘greatly divided’, the general expectation having been that the jury would not reach a verdict and a new trial would be ordered, thereby giving more time to find evidence that might ‘establish more definitely and explicitly the guilt or innocence of the prisoner’.³²² The evening newspaper believed that ‘the general opinion does not coincide with that of the jury. If conviction is ever to be made on circumstantial testimony, it is hard to conjecture how a much stronger chain than that which was constructed by the prosecution in this case will ever be

³²⁰ Editorial, *Thames Star*, 16 April 1881, p. 2.

³²¹ Editorial, *Thames Advertiser*, 16 April 1881, p. 2.

³²² *Auckland Weekly News*, 23 April 1881, p. 13.

forthcoming'. Nevertheless, it accepted that the accused was entitled to the benefit of doubt, and should now be treated as 'untainted by suspicion'.³²³ The *Auckland Weekly News* considered that the case against Procoffy was strong, 'but we think the general opinion will concur with the verdict, that there was a possibility of a doubt - and where such exists, the prisoner is of course entitled to the benefit'. The editorial writer then turned to one of the underlying issues, race:

We are quite prepared to find that the natives of the district are much dissatisfied. They were greatly excited about the murder. It was done by a white man; there could be no doubt of that; and the feeling of race antagonism came in. They were determined to have *utu*, and perhaps they did not care much what European was sacrificed. Now the man who was arrested, and who they are assured was guilty, is let off, and it will be difficult to persuade them that his acquittal is owing to the fact that the case has not been made out against him. They will be firmly convinced that Procoffy has been liberated because the murdered man was a Maori. Undoubtedly, on the other hand, some feeling was aroused in the prisoner's favour at the Thames, because it was thought that the authorities treated him unfairly, from a base desire to curry favour with the natives. Such is a specimen of the unhappy feelings aroused when two races are in contact.³²⁴

'Toby Twinkle' made a less discreet assessment of how the issue of race had become entangled in the verdict. 'Such a fuss had been made about the Maori's death, such a parade and fear, and such threats by the Maoris, and it was so different to the proceedings' when Daldy McWilliams

was wounded by a Maori, that some of the jury, made sick by the contrast, and outraged at the humiliation, wouldn't convict on any terms. They didn't see why white men should be murdered and wounded with impunity by Maoris, and the whole community be strained and trembling to appease the Maoris by the execution of Procoffy. I say nothing of the *morale* of the thing, but it's very natural; the agitation displayed over the Maori's destruction was sickening and cowardly. The Government now know why Procoffy got off. May it serve as a lesson.³²⁵

CONCLUSION

³²³ Editorial, *Auckland Star*, 16 April 1881, p. 2.

³²⁴ *Auckland Weekly News*, 23 April 1881, p. 13.

³²⁵ 'Toby Twinkle', 'Snap Shots', *Auckland Weekly News*, 23 April 1881, p. 9.

The accounts of the murder and subsequent trials illustrate contemporary Pakeha fears about Maori, and allegations, later disproved, that the government and its officials were being too gentle on dangerous Maori. The government and its officials certainly were anxious to follow correct procedures, but they believed that the murderer had been identified and should be punished. Nevertheless, they may have been relieved that Procoffy was not found guilty and was promptly spirited out of the country because of the controversy that would have been aroused should he be either hanged or reprieved. Considerable efforts were made to ensure that Maori understood that the law must take its course, and statements by leading rangatira, including Tawhiao, accepting both this argument and the verdict were conveyed to the general Maori community. The grief and anger amongst Hamiona's kinsfolk was understandable, and considerable effort, particularly by Wilkinson, was required to keep this within acceptable bounds.

The events preceding the murder illustrated the close social interaction between Maori and Pakeha on the new goldfield. Fortunately for future interactions, it had no long-term consequences, and was not referred to by Maori in subsequent years, for they accepted the argument that the rule of law must prevail. From the Pakeha perspective, the fears of utu took a while to abate, but again, the verdict was accepted and the murder and its attendant fears was not referred to, at least not publicly, in the future. But the crisis had disrupted mining at Te Aroha during the first stages of developing the field.

Appendix

Figure 1: 'Quiz', sketch of John Procoffy, Observer, 12 March 1881, p. 265.



The above sketch of Procoffy, the Russian-Finn accused of the murder at Te Aroha, was taken from life by "Quiz," and is said to be a very fair likeness.