1942.

NEW ZEALAND.

# THE NATIVE PURPOSES ACT, 1938.

REPORT AND RECOMMENDATION ON PETITION No. 32 OF 1937, OF L. W. PARORE AND ANOTHER, PRAYING FOR AN INVESTIGATION AS TO THE DISPOSITION AND OWNERSHIP OF CERTAIN NATIVE RESERVES IN THE MAUNGANUI BLOCK.

*Presented to Parliament in pursuance of the provisions of Section 23 of the Native Purposes Act, 1938.*

Native Land Court (Chief Judge's Office),
Wellington C. 1, 2nd July, 1942.

Memorandum for the Hon. the NATIVE MINISTER, Wellington.

MAUNGANUI BLOCK.

I TRANSMIT to you the report of the Court, made pursuant to section 23 of the Native Purposes Act, 1938, upon Petition No. 32 of 1937, of L. W. Parore and another, concerning certain alleged reserves in the Maunganui Block.

The Court's view is that two areas within the confines of the Maunganui Block—one containing approximately 110 acres, called "Manuwhetai," the other containing 22 acres, called "Whangaiariki," which were surveyed prior to the sale to the Crown, in 1876, of the Maunganui Block, and delineated on a plan under the description of "Native reserves" were intended to be reserved from the sale, and that they should be returned to the Natives.

While giving due regard to the Court's findings, I cannot help but think that, whatever the purpose of the survey of the two parcels was, it was not done with the express or, at all events, the immutable purpose of having the areas reserved from the sale to the Crown. The vigilance with which the two contending chiefs, Parore te Awha and Tiopira Kinaki, watched over events leading to, and surrounding, the investigation of title to the Maunganui and Waipoua Blocks, and the cession of those blocks to the Crown, must inevitably have been rewarded by the retention of the ownership of the two reserves in the Natives if that had been intended. The sale was the subject of Magisterial inquiry (see parliamentary paper C.-6, 1876), but at no point was there the slightest suggestion that any stipulation had been made for these reserves. Incidental to the matters which fell for determination, an account was taken of the purchase-money paid to, and the value of the reserves made for, the Natives in the Maunganui and Waipoua Blocks, and in the statement as for the Maunganui Block the value of only one reserve appears, that of the 250-acre reserve for Parore which had been provided for in the conveyance and for which a Crown grant subsequently issued. It appears to me unthinkable that, if there had been any suggestion touching further reserves, it would not have been the subject of notice before the tribunal.

Set over against any inference which is to be drawn from the existence of the plan of the supposed reserves are these facts and statements of record:—

(1) No provision was made for the reserves in the deed of conveyance. The only reserve which was provided for was the area of 250 acres for Parore:

(2) No mention was made of them on the proceedings for the investigation of title which immediately preceded the sale to the Crown:

(3) The deed of conveyance bears a certificate by a Judge of the Native Land Court to the effect that Parore te Awha and Tiopira Kinaki (the two chiefs whose names were put into the title) signed the same in his presence after the contents had been explained to them by an Interpreter of the Court and they appeared fully to understand its meaning:

(4) The deed of conveyance bears a clear certificate by a Trust Commissioner under the Native Land Frauds Prevention Act:

(5) In a memorandum dated the 12th February, 1876, addressed by the Purchasing Officer (Mr. J. W. Preece) to the Under-Secretary of the Native Office, Mr. Preece, after mentioning the fact that, under the terms of the compromise between Tiopira and Parore, the latter was getting no reserve, stated: "I also agreed to let Parore have a small reserve in the Maunganui Block of about two hundred and fifty acres, being an eel fishery, which is to be cut out of the block and a Crown grant issue to him for the same." Elsewhere in the same memorandum, Mr. Preece, writing with respect to a certain reserve in the Opouteke Block, said: "This, as well as the reserve before mentioned in Maunganui, will be laid off and placed on the plans of the deeds before the same are deposited for registration."

These facts, coupled with the fact that the survey of the reserves was effected before the investigation of title and that it was apparently made without the sanction and authority of the Inspector of Surveys as required by section 74 of the Native Land Act, 1873, seem to me to negative any real and definite intention on the part of the Natives to retain these areas for their use and occupation. Mention is made in the Court's report that the reserves are delineated on the public record maps, that they are shown in the return of reserves made in 1900, and that they are referred to in the Stout-Ngata Commission report. I am unable to attach any significance to these references, it appearing to me that they are merely perpetuations of an original mistake as to the real status of the lands. Nor do I think that the fact, *simpliciter*, that a part of Manuwhetai was used as a burial-ground necessarily imports an intention to reserve the whole area ascribed to Manuwhetai—doubtless, in such a large tract of country, there would be a number of cemeteries.

For the reasons set forth, I find myself unable to make any recommendation to the effect that the areas should be revested in the Natives. At the same time, however, I would suggest that the officers of the Crown endeavour to concert some arrangement whereby any burial place on Manuwhetai or Whangaiariki might be preserved from desecration. Certain circumstances may permit of section 472 of the Native Land Act, 1931, being invoked. If that arrangement be not practicable, then perhaps the Natives might be permitted to exhume any human remains and reinter them in some other suitable spot.

G. P. SHEPHERD, Chief Judge.

---

In the Native Land Court of New Zealand, Tokerau District.—In the matter of section 23 of the Native Purposes Act, 1938; and in the matter of the allegations in Petition No. 32 of 1937, of L. W. Parore and J. Parore, respecting portions of the Maunganui Block alleged to be Native reserves called "Manuwhetai" and "Whangaiariki."

To Chief Judge Shepherd, Native Land Court, Wellington.

IN pursuance of section 23 of the Native Purposes Act, 1938, the Native Land Court reports upon the allegations in Petition No. 32 of 1937, of L. W. Parore and J. Parore, as follows:—

(1) The hearing took place at Kaihu on the 7th July, 1939, before Frank Oswald Victor Acheson, Judge (Kaipara M.B. 22, folios 92–116). Mr. L. W. Parore represented the petitioners. Mr. V. R. Meredith, Crown Solicitor, Auckland, assisted by Mr. O. A. Darby, of the Lands Department, represented the Crown.

(2) The two areas alleged to be Native reserves are—

(*a*) *Manuwhetai* (110 a. 1 r. 12 p., less road). This is the same land as was leased and later sold to Mr. John Downey by the Lands Department under the description Section 19, Block XII, Waipoua Survey District.

(*b*) *Whangaiariki* (22 a. 1 r. 28 p.). Not alienated.

They are shown on Survey Plan 3297-3298, which is endorsed "Plan of Native Reserves Maunganui Block." There is on this plan also a printed note, unsigned and undated, which reads as follows: "Included in Maunganui. Proclaimed waste lands of the Crown. *Vide N.Z. Gazette*, 7th September, 1876, p. 623." This Plan 3297–3298 is dated 14th September, 1875, and was therefore *prior* to the investigation of title to the Maunganui Block, 27th January to 3rd February, 1876. Thus Plan 3297–3298 was in evidence *prior* to the date of deed of sale of the Maunganui Block to the Crown, 8th February, 1876. This point is one of considerable importance to petitioners' claim.

Plan 3297–3298 was signed by the Surveyor, Mr. J. S. Smith, on 14th September, 1875.

(3) Mr. Meredith, for the Crown, contended that Mr. J. S. Smith's Plan 3297–3298 had no status whatever as a survey plan, because it had not been checked and certified to by any one in authority. Mr. Darby stated in evidence that Plan 3297–3298 had not been examined or entered on the survey records of the district. He admitted, however, that it had been used in the production of the Hobson County map as late as 1927, which shows both "*Manuwhetai*" and "*Whangaiariki*" as blocks distinct from surrounding lands. Mr. Darby contended that this inclusion in a county map was a usual practice to assist surveyors. The Court, on the contrary, questions whether the county map was not in reality an unwitting acknowledgment by the Survey authorities that these two areas were set aside as Native reserves. Mr. Darby stated in evidence that search of the old records had thrown no light on Plan 3297–3298, except in a memorandum dated 15th September, 1875 (the day after Mr. J. S. Smith had signed the plan), from Mr. G. F. Allen, Deputy Inspecting Surveyor, to the Provincial Surveyor, stating that the map for Manuwhetai and Whangaiariki had been sent to the Provincial Surveyor for approval. This memorandum said nothing about checking. No answer is on record. The Court, however, is bound to hold that Plan 3297–3298 was regarded as official up to at least the point where it required either approval only or checking and approval.

At this stage the completion of the plan was not held up by the Natives, but by officers of a Government Department. If held up for any valid reason, that valid reason should have been put on official record. The reason for any hold up in approval should certainly have been announced to the Natives interested in the reserves. There is nothing on record to show that the Natives were told that the two reserves were not reserves or that the plan was not approved or the two reserves had been cancelled. Can the Crown take advantage of the incompleteness of the official records and say now that these two reserves were not really set aside for the Natives?

(4) Mr. Darby said on cross-examination that Plan 3297–3298 was by a private surveyor. This is immaterial, as numerous surveys in those days were by private surveyors. In fact, the Taharoa Native Reserve, out of the same Maunganui Block, was surveyed by a different private surveyor (Mr. Graham). Mr. Darby also contended that the unsigned and unprinted note on Plan 3297–3298 amounted to a "repudiation" of these two areas as Native reserves, but he admitted he could find no official record of such "repudiation."

(5) Mr. Darby produced to the Court an earlier Plan 3253 dated 17th May, 1875, certified to by Mr. S. Percy Smith. Mr. Darby regarded this as the original plan, and said it was the plan used for the deed of sale to the Crown. However, Plan 3253 is merely a *compiled* plan—a plan compiled from the existing surveys of the boundaries of the blocks adjoining Maunganui Block. Therefore, however accurate as to the *outside* boundaries, it was no guide whatever to what lay *inside* the boundaries of Maunganui Block. It does not in any way disprove the existence of two Native reserves "Manuwhetai" and "Whangaiariki" inside the Maunganui Block. The important point to note is that *in between* the date of this compiled Plan 3253 (17th May, 1875) and the dates of the investigation of title (27th January, 1876, to 3rd February, 1876) and the deed of sale (8th February, 1876) there was a regular survey (not compiled) Plan 3297–3298 dated 14th September, 1875, by Surveyor Mr. J. S. Smith, which showed the exact boundaries of "Manuwhetai" and "Whangaiariki" and described them as Native reserves. Moreover, Plan 3253 is cross-referenced with Plan 3297–3298 and shows the boundaries of both "Manuwhetai" and "Whangaiariki" in pencil. The date of the pencilling is not shown. Plan 3253 also refers to Plan 2256, but unfortunately Plan 2256 was not produced to the Court.

(6) The Court now refers to some extraordinary features pointed out by Mr. Parore to the petitioners:—

(*a*) "Manuwhetai" and "Whangaiariki" Native Reserves are not shown on the deed of sale dated 8th February, 1876, although Plan 3297–3298 showing these reserves was dated 14th September, 1875, and was sent to the Provincial Surveyor on 15th September, 1875.

(*b*) On the other hand, the "Taharoa" Native Reserve in the same Maunganui Block in Plan 3457 dated 22nd *March*, 1876, is shown on deed of sale to Crown dated 8th *February*, 1876.

(*c*) So also Plan 3457 for "Taharoa" Native Reserve dated 22nd March, 1876, is fully shown on Plan 3253 dated 17th May, 1875, whereas the earlier Plan 3297–3298 dated 14th September, 1875, is not shown except by pencilled notes.

(7) Mr. Parore also drew attention to "Return showing all Native Reserves in New Zealand" as produced by the Hon. Mr. Ormond in 1900 to the Legislative Council (Return No. 20, folio 7). This return refers to "Whangaiariki," 22 acres 1 rood 23 perches, and in the remarks column it adds: "*Exempted from lands sold.* Repurchased as Crown lands."

This return must have been prepared from official records in the Lands Department. The return specifically says that "Whangaiariki" was exempted from the lands sold. Yet at the hearing at Kaihu in 1939 it was contended for the Crown that "Whangaiariki" was not exempted from the sale. Which is correct? The parliamentary return in 1900, or the departmental evidence in 1939?

The return also says that "Whangaiariki" was "repurchased as Crown lands." In that case there should be clear evidence in the Lands Department's records to prove the repurchase. No proof of repurchase has been given to the Court. Neither Mr. Meredith nor Mr. Darby has claimed on this inquiry that "Whangaiariki" was "repurchased" by the Crown. They said it was included in the original sale because it was not excluded. Now, it has been held by the Privy Council that the Crown can be required to *prove* a purchase. A mere statement that land was purchased or is Crown land is not proof of purchase by the Crown or title of the Crown.

(8) The "Manuwhetai" Native Reserve was not mentioned by the Hon. Mr. Ormond in his 1900 return of Native reserves (No. 20). Why? It is explained by the fact that some time previously this Native reserve had been placed on the market under a new description—*i.e.*, *Section 19*, *Block XII*, Waipoua Survey District, which would mean nothing to the Natives interested in the "Manuwhetai" Native Reserve. A Mr. John Downey applied for Section 19 on 1st March, 1897, and a lease in perpetuity was granted to him 15th July, 1897. In 1899 Chief Te Rore Taoho is on record as claiming the Manuwhetai Native Reserve as his. On the 30th December, 1899, Mr. Kenzington, for the Commissioner of Crown Lands, replied that Te Rore Taoho was in error in supposing that a reserve was made for him at "Manuwhetai." Mr. Kenzington then went on to make the following remarkable admission: "*It was cut out at first*, but *afterwards* it was found that the deed of sale did not exclude it, so the land was opened for selection as Crown land." The Court regards this admission as going to the root of the claim of the Natives. By inadvertence or otherwise the reserve was not excluded from the deed of sale. Therefore, in effect, Mr. Kenzington held that the Crown had the right to take advantage of the omission and to open up the reserve (under a different description) for selection as Crown land. As the two sellers (Parore and Tiopira) were dead, the claim by their kinsman Te Rore Taoho should have been investigated by judicial tribunal instead of being fended off by Mr. Kenzington in this way. Te Rore himself was apparently too old and frail at the time to stand up for his rights, the rights of an ariki whose father, the famous fighting Chief Taoho, had died on "Manuwhetai." The Court is unable to believe the allegation on behalf of the Crown that Te Rore attempted to sell this reserve for £1 an acre. An offer by an alleged agent named Snowden purporting to act for Te Rore was produced as proof, but the Court regards this offer as merely an attempt by Snowden to do something for the aged Te Rore or to gain some advantage for himself. It is incredible that a chief of Te Rore's high rank would desire to sell the land where Taoho died, and which was well known to contain a big wahitapu or burial-ground.

(9) It is significant also that the report of the Stout-Ngata Commission mentions these reserves in its return showing Native lands and tenures as presented to both Houses of Parliament (parliamentary paper G.–1G, 1908).

It includes the following in its schedule of lands recommended to be reserved for Native occupation :—

(*a*) *Manuwhetai Native Reserve* (area, 110 acres 3 roods). In the remarks column are the words " Reserved from sale to Crown as Wahitapu."

(*b*) *Whangaiariki Native Reserve* (area, 22 acres 1 rood 23 perches). There is no comment in the remarks column.

Thus as late as 1908 these two areas were regarded as Native reserves. Mr. Meredith, for the Crown, expressed surprise that the Stout-Ngata Commission should have overlooked the lease to Downey. However, the Court points out again that Downey's lease affected an innocent looking piece of land described as Section 19, Block XII, Waipoua Survey District, and not as " Manuwhetai."

(10) Mr. Darby under cross-examination said : " It was a frequent practice for reserves to be set aside out of big blocks. After the Crown acquired title it was fairly frequently the case that reserves were afterwards cut out. It was often the case that reserves were arranged for but not excluded from the deed, and later the reserves were Crown-granted back to the Natives. I don't think this happened in this particular case. If it did it would be merged in the big Waipoua Reserve."

The Court agrees with Mr. Darby as to this well-known practice, but observes that the practice was not carried out in the case of the " Manuwhetai " and " Whangaiariki " Native Reserves. The reference by Mr. Darby to the Waipoua Reserve is beside the point, as this is a totally different reserve. The Judge taking this inquiry regrets to have to say that in his twenty-one years' experience on the Native Land Court Bench he has come across quite a number of cases where Native reserves originally arranged for have apparently without reason and without the knowledge or consent of the Natives been allowed to sink into oblivion. Only a petition can resurrect them.

(11) The Court, from its wide knowledge of Maori life and customs, says it is preposterous to think that so long a stretch of coast-line, lying close to the big inland Maori settlement at Kaihu, would have been without areas in regular occupation by Natives for fishing, cultivation, kainga, and burial purposes. The evidence given in Court by Paiwiko Anania, an intelligent Maori of rank and one whose evidence the Court has always found to be reliable, was not seriously challenged by counsel for the Crown. Paiwiko said that the Natives lived on the Manuwhetai Reserve (110 acres), but used it mostly for cultivation and burial purposes. Paiwiko personally knew of two burial-grounds on " Manuwhetai," with many old graves in each. He traced back nine generations, and gave detailed evidence about a tohunga named Pinea who lived there, died there, and was buried there. He mentioned other burials also, including one Miriama, and some children of Parore te Awha (one of the *vendors* of Maunganui Block) by his first wife. Paiwiko said he himself had seen numerous skeletons on " Manuwhetai." The famous Chief Taoho died on " Manuwhetai," but was buried at Waipoua. Paiwiko said also that the Maoris had homes on " Whangaiariki " and cultivated there, but did not use it as a burial-ground. Many Natives lived there, including his own parents. He mentioned other elders who had lived and cultivated there. He said also that the Natives of the Kaihu district regularly used both reserves as bases for the collection of shell-fish and other sea-foods, a practice as old as the Maori race itself. Even to this day the Maoris go to " Manuwhetai " almost every week and sometimes stay there for two to three months. They have houses there which they occupy.

(12) The Court is quite satisfied from the evidence that the Kaihu Natives must have been in regular occupation of these two reserves at the time of the sale to the Crown in 1876. That would be the ordinary and natural reason for the two areas being surveyed off as reserves. How could a private surveyor or even a Government surveyor have laid off those well-defined boundaries (not mere squares or rectangles) unless shown the boundaries by Natives in actual occupation of the reserves ? The surveyor could not think out the boundaries. He would have to be shown them. Indeed, in those days (1875) he would not have been allowed to survey reserves at all except with the knowledge and approval of the leading Maori chiefs of the district.

It cannot be supposed that two high chiefs like Parore te Awha and Tiopira Kinaki would deliberately sell to the Crown two reserves, both occupied and in regular use for important food and residential needs, and one of them containing big and tapu burial-grounds. The clear presumption is that they carried out their chieftain duties and protected the occupation rights of their tribesmen within the area to be sold (1876) by first arranging (in 1875) for the two areas to be surveyed off and marked on the plan as reserves. It would hardly dawn on them that a sale deed signed so soon afterwards would include in the sale the two reserves so recently surveyed out. They were not living in modern days—days when keen scrutiny might be expected of a seller. They were two high chiefs who would probably have scorned to show distrust of the Crown's officers by a close examination of the deed submitted to them for signature. The Court considers it highly probable that Plan 3297–3298 showing the two reserves was before their eyes as they signed the deed of sale. They would not suspect that, by an oversight on the part of the official who drew up the deed, the two reserves were not protected by the deed.

(13) As against all the above points of support for the claims of the Natives, the Crown representatives could offer only the following :—

(*a*) The evidence on investigation of title in 1876 made no reference to these reserves.
The Court's comment on this is that the principal parties to the investigation were too intent on their own bitter contest to think it necessary to bother about two reserves already surveyed off for exclusion from the sale to the Crown.

(*b*) The deed of sale and the sketch on the deed did not show the two reserves as excluded.
The Court's report shows how this happened.

(*c*) The epitome of official documents relative to Native affairs and land purchase at 1876, Vol. I, C.–6, p. 11 *et seq.*, deals with an inquiry by Mr. Barstow and a report by Mr. Preece. No mention is made of the two reserves in these.

The Court's comment is that such omission to mention the reserves signifies nothing, because the inquiry was about a totally different matter—namely, the dispute between Parore and Tiopira Kinaki. In other words, the inclusion of the reserves was not a matter for inquiry at that date.

(*d*) Plan 3253 on which the sale deed was based did not show the two reserves.

The answer to this is given in the Court's report. Plan 3253 was merely a compiled plan. The two reserves were specially surveyed afterwards, but *prior* to the 1876 sale to the Crown.

(14) The present position as to the title to the reserves and the occupation of the land is as follows:

(*a*) "*Whangaiariki.*"—There is no separate title in existence, and there is no record of any alienation in the Deeds or Land Transfer Registry. This reserve is apparently not occupied or used by any one except the Natives.

(*b*) "*Manuwhetai.*"—As described in clause (8) of this report, "Manuwhetai" became known as Section 19, Block XII, Waipoua Survey District, and as such was leased in 1897 to Mr. John Downey, who freeholded it in 1914 at a cost of £98 3s. for 105½ acres. It is now owned by W. W. R. Pryce or by a purchaser from him. C.T., Volume 610, folio 195, includes other sections besides No. 19, and all are subject to mortgages—

(1) To State Advances Superintendent:
(2) To Mabel Sutherland:

as affected by order of Court of Review.

(*c*) *Occupation.*—The evidence before the Court is conclusive that the Natives at all times have objected to and resisted attempts by Downey and Pryce and other Europeans to eject them from "Manuwhetai." They persistently objected to Europeans occupying "Manuwhetai." For many years past the Natives have been making representations to the Court and to Wellington in respect of their claims to these reserves. The Court is satisfied that they have not slept on their rights, but have done everything in their power to assert and uphold their rights since the time when Downey's lease warned them that their reserves were in jeopardy. Recently there has been serious trouble on the Manuwhetai Reserve between Natives whose houses are on the land and a European (Mr. E. Hall) who appears to have bought from Mr. Pryce. Mr. Hall's solicitor has threatened legal proceedings for ejection of the Natives. In the opinion of the Judge holding this inquiry it will be scandalous if the processes of the law are to be used against Natives entitled in justice to occupy this land as a Native reserve.

(15) Finally, attention is drawn again to the survey of the two reserves in *1875 prior* to the *investigation of title in 1876*. The Native Land Court upon investigation of title acts upon a plan of the area to be investigated. It is alleged for the Crown that the plan used upon investigation was Plan 3253. However, there is nothing to show that Plan 3297–3298 dated *1875* was not also before the Court in *1876*. It should have been before the Court. It was the bounden duty of the Crown's officers to produce it to the Court on the investigation in 1876. It was an existing survey affecting land within the boundaries of the Maunganui Block shown on Plan 3253. It is quite clear, therefore, that the Natives, knowing about the reserves, must have felt they were investigating the Maunganui Block *less the reserves*. In that case, the order on investigation of title should also have excluded the reserves as not investigated. The reserves would remain "papatupu" or "customary" land, available for separate investigation proceedings at a later date. On this basis, the Whangaiariki Reserve is still papatupu land to be investigated, while the Manuwhetai Block is still papatupu land wrongfully alienated by the Lands Department in 1897.

*In Conclusion.*—In the opinion of this Court the essential need is to uphold at all times the King's honour and the standard of British justice in dealings between the two races in New Zealand. The circumstances of this case of "Manuwhetai" and "Whangaiariki" cry aloud for redress for the Natives. The two reserves are theirs and should be returned to them, no matter what cost to the Crown this may involve.

As witness the hand of the Judge and the seal of the Court.

[L.S.] F. O. V. ACHESON, Judge.

*Approximate Cost of Paper.*—Preparation, not given; printing (433 copies), £7 10s.

By Authority: E. V. PAUL, Government Printer, Wellington.—1942.

*Price 6d.*]