

The subsequent proceedings in the Supreme Court consisted of a motion by the Crown to prohibit the Maori Land Court proceeding further to investigate and determine the particular owners of the bed of the river on the ground that from the date of the Treaty or, at least, from the passing of the Coal-mines Act, the bed of the river became vested in the Crown.

The Supreme Court decision while it adverted, with some approval, to the contention that from the treaty onwards the Crown was the owner of the bed of the river, turned on the effect of the Coal-mines Amendment Act of 1903.

In his judgment the learned Judge said :—

The language of section 206 [which re-enacts section 14 of the Coal-mines Amendment Act of 1903], is to my mind plain and unambiguous as expressing an intention on the part of the Legislature that the beds of all navigable rivers are to be deemed always to have been vested beneficially in the Crown excepting in cases where such beds have been expressly granted by the Crown. Unless that interpretation is adopted, it is difficult to see what purpose was to be served by passing the legislation at all.

In the face of that interpretation of the Coal-mines Act, the Maoris can proceed no further in their application to the Maori Land Court to investigate the ownership of the bed of the river and ask issue of a freehold title thereto.

The question to be answered by this Commission is whether, apart from section 206 of the Coal-mines Act, 1925, which took the place of section 14 of the Act of 1903, the Maoris could proceed through the Maori Land Court with their application for investigation of title.

The learned Judge in the Supreme Court judgment found it unnecessary to determine the questions which have been advanced before this Commission. He rested his decision on the Coal-mines Act of 1903. The Crown, aware that a decision on this ground might invite compensation, has argued that the Maoris had never any title to the bed of the river and even if they once had, had abandoned or lost it. The proceedings in Maori Land Courts and in the Supreme Court and before this Commission are concerned solely with the bed of this particular river—that is, the Wanganui—and the particular natural features of this river and its use and manner of use by the Maoris can lead to conclusions which may not be applicable to other rivers of which Native use and possession may be quite distinct from the use and possession exercised over the Wanganui River. The river is now described as navigable despite a number of rapids ; which seem to preclude the ordinary idea of navigation, the number in the stretch of river relevant to this inquiry being about 230. The most significant feature of the use to which the river was put by the Maoris was the very great number of eel-weirs and fish-traps for lampreys, erected in the river ; the number of weirs in the relevant stretch being placed at about 442.

In the Native Land Court evidence was given as to the use of the river by the Maoris as a source of food and the permanent construction of the eel-weirs. The eel-weirs ran right out into the stream. The lamprey-traps seem to have been adjacent to the banks.

Evidence was given of passage on the river by canoes by tribal occupiers going from weir to weir and from settlement to settlement and records were put in of journeys up or down the river by European travellers or missionaries. Although I have had to examine these records, I think it unnecessary to include extracts from them in this report because the Judges of the Maori Land Court had reference to them, and their finding that the river was not a highway is, I think, incontestable.

The ponderable and learned judgments delivered by the Maori Land Court Judges when deciding that the bed of the river for the relevant stretch whether navigable or not, was held by the Maori owners under their custom and usage and was customary Maori land is, in my opinion, the only sure guide to the correct answers to the questions before me. Their judgments set forth, to my mind, in a way no other Judges could do, the foundations of Native title and its comprehensive implications. Before dealing with