

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?