

(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.