

terms of the conveyance, any loss—and it is not suggested here that there was any loss—must lie where it fell. There can be no room for speculation as to what would have happened had it so transpired that the area was less than was estimated. Even allowing for a moment that the Crown could have set up the ground of a mistaken description, it would have met immediately with the objection that after completion of a conveyance, and in the absence of a stipulation to the contrary, a purchaser is not entitled to compensation in respect of errors of description: *Larnach v. Irving* (12 L.R. 212). Colloquially speaking, that cuts both ways. By the deed of conveyance, the minds of the selling Natives were explicitly directed to the boundaries of the land which passed to the Crown under it; the sellers were satisfied with the bargain made; and *in foro conscientie* their descendants are now debarred from taking the ground that their forefathers were misled and did not receive that to which they were entitled. For these reasons and with the thought in mind that the plans incidentally used or referred to in many of the purchases undertaken in the early days of the Colony were merely essayed by the Crown's servants or agents from descriptions given by the Natives themselves and without any detailed traverse of the boundaries, I regret I am unable to concur in the Court's recommendation touching compensation.

Concerning the reserves, it does appear that, notwithstanding that at least one reserve was set aside in the adjoining Mokau Block which cannot now conclusively be accounted for, the Natives are, in accordance with the agreements witnessed by the deeds of conveyance, entitled to two further reserves, and I suggest that steps be taken to have the appropriate areas vested in them. Possibly the provisions of section 80 of the Native Purposes Act, 1931, could be applied for the purpose.

G. P. SHEPHERD, Chief Judge.

REPORT FOR THE CHIEF JUDGE, NATIVE LAND COURT, UPON INQUIRY INTO MATTERS RAISED BY PETITION 25/1938 IN RELATION TO AWAKINO, TAUMATAMAIRE, AND OTHER BLOCKS PURCHASED BY THE CROWN.

I HAVE to report having conducted an inquiry as directed into the matters referred to in Petition No. 25/1938 in connection with these several blocks at Awakino on Tuesday, 19th August, 1941. Mr. F. Phillips, of Otorohanga, appeared for the petitioners, and Mr. Darby, of the Lands and Survey Department, Auckland, for the Crown. The petition was in such general terms that it was impossible to gather, until the hearing, what the claims of the petitioners were precisely. When finally stated they were as follows:—

1. That upon the acquisition of the Awakino Block by the Crown in 1854 the area, although defined in terms in the deed of conveyance or cession, whichever it may be called, was also referred to in the margin of the deed as containing 16,000 acres, and a sketch plan prepared by the officer of the Crown responsible for the acquisition showed the area as 16,000 acres. The land was surveyed by Mr. Brookes, a departmental surveyor, in 1884, and upon survey was discovered to contain an area of 23,000 acres. The petitioners asked that the excess of 7,000 acres should be returned to them.

2. That the Native owners of the four blocks referred to in the petition acquired at about the same time were entitled to the benefit of "tenths."

3. That in the deed of sale of the Awakino Block, provision was made for vesting in the owners certain reserves, and that these were not vested or reserved or, in so far as they were, they were deficient in area. These were referred to in the Awakino deed as follows:—

- (1) "At Ketekarino a small piece, the boundaries of which have been fixed by Mr. Cooper and Mr. Rogan":
- (2) "Another place, the south boundary is Omutae, the north boundary at Waihi. The inland boundary is at Orongorea":
- (3) "50 acres are to be granted to Reihana Takerei's son."

4. That in the deed of conveyance relating to the Taumatamairi Block of 24,000 acres, a reserve was provided for in these words: "It commences at the bend of the Awakino Stream and thence to Mangakawakawa. It then follows the stream of Mangakawakawa, and ascending the hill, proceeds to Awakino, a short distance inland of the road to Ruakaka." This reserve was never vested in the owners.

It will be convenient to deal with these claims in the order in which I have set them out:—

1. As to the claim to the 7,000 acres excess referred to, it is claimed that if the Native owners had been aware that the block sold contained 23,000 acres, the purchase-price of £530 would have been proportionately greater, and that they have lost the money equivalent since 1854 and that this sum compounded at 5 per cent. is what they should receive.

The plan upon which the purchase was founded was a sketch prepared by Mr. John Rogan, and appears to have been the result of a compass survey. Even allowing for the fact that his first plan for the purpose of purchase was a sketch only, the employment of any method of survey should have disclosed a greater area than 16,000 acres. The boundaries shown on the sketch are physical boundaries which were used between vendors and purchaser to define the block, and in so far as the boundaries were incorrectly placed on the plan, error as to area would necessarily be involved. Mr. Moverly, of the Lands and Survey Department, New Plymouth, who was called by the Crown, was able to point out, for instance, on Rogan's sketch that the northern boundary was so incorrectly placed as to show at once a very substantial error, and he expressed the opinion that the discrepancy in area might have arisen almost wholly from that error. He also expressed the opinion that from this sketch by Rogan the estimate of an area of 16,000 acres was not unreasonable.