

19. We will deal firstly with the contention that the water was not reserved from a cession of territory to the Crown.

20. When Mr. Mantell was made Native Minister in 1861 he became exceedingly active in an endeavour to see that the Maori race were given title to reserves that had been promised them. Official records show that the non-fulfilment of these promises had been exercising his mind for some time previously.

21. On the 11th November, 1861, therefore, Mr. Mantell called upon Donald McLean, Chief Commissioner of the Land Purchase Department, for a return showing every promise or engagement which had been made by the Government to Natives that they should have Crown grants issued to them. The return was to be divided into two classes. Firstly, cases where reservations of land for individual chiefs had been made or promised, as part of the consideration in deeds of cession; and, secondly, cases where promises had been made not connected with Cession of territory (E.-10/1862, p. 3).

22. The return was compiled by Andrew Sinclair, at one time a Government Surveyor employed by the Land Purchase Department and at one time Colonial Secretary, and it included, under the heading "Name of reserve," the words "Whanganui Lake."

23. I do not attach much importance to these words in this return, as it appears to me that they are part of the description of Roro-o-Kuri—i.e., "Roro-o-Kuri (in the) Whanganui Lake" set up for want of space in two lines instead of one—

Thus "Roro Okuri."
"Whanganui Lake."

Strength is lent to this assumption by reason of the fact that there is neither map number nor area opposite the entry "Whanganui Lake," although both were available to Mr. Sinclair if he had required them. Furthermore, there is no reference to a reservation of the Whanganui-o-Rotu in the deed of cession, but Roro-o-Kuri, which is reserved, is described as being in the Whanganui-o-Rotu Lake.

24. With regard to the second contention of the Crown's representative, that it was the intention of the parties to the deed that the lagoon should pass to the Crown, the following observations apply. As a preliminary, however, it should be noted that the Lands Department have placed themselves in the repugnant dual positions of claiming that it was the intention of *all parties* that the lagoon should pass by the deed, although it was already owned by the Crown under the common law as an arm of the sea. More may be said upon this point when the question of what was lagoon and what was harbour is being discussed.

25. The deed of conveyance of the 17th November, 1851, is in the Maori language and purports to convey to the Crown what was designated as the Ahuriri Block. The construction of the effect of this deed in so far as it relates to the Whanganui-o-Rotu has already been the subject of an inquiry by the Native Land Claims Commission of 1920. Its report may be found on page 12 of P.P.G. 5 of 1921, and is summarized as follows in the final paragraph:—

We think, however, that, whether they appreciated the full effect of the dealing (of which there is some doubt) or not, it was made clear to the Natives that the Crown was buying the land and their interests in the harbour, and when in the sale of the land they included, according to the deed "the sea (moana) and the rivers and the waters and the trees and everything appertaining to the said land" they intended to give over the use of the harbour, although perhaps in doing so they were not fully conscious of the effect it would have on those fishing-rights that they were so anxious to retain. It is only to the harbour that the reservation of fishing-rights and landing-places could apply.

26. The Native Land Claims Commission (like this Court) was not a Court of Construction, and its findings, influenced as they apparently were by what it conceived to be the intention of the parties to the deed, must not necessarily be taken as presaging the result of a judgment of a Court of Construction charged with construing the terms of the deed.