

81. The reply of the Chief Surveyor, dated the 6th March, 1922, is quoted in full :—

I have to acknowledge receipt of your letter of the 23rd ultimo, and in reply to advise that I think it is safe to conclude that all the islands mentioned above with the exception of Te Roro-o-Kuri are customary land. The latter Island is held under Deeds Title 38/550 by a person named David Milne. There is a detail map in this office from a survey by a surveyor named Pelichet. This was done in 1851 and his field book shows it was carefully executed, and was a good survey of that time. This plan is the one referred to by Mr. Knight in the Inner Harbour petition. Whether it is good enough for production before the Court on the investigation of title I cannot say. It is difficult to say as to what extent the area and shape of these islands have suffered by the effluxion of time. If the investigation is with the idea of establishing the interests of the Natives concerned, prior to the partition of the land, it would be advisable for the Court to order a periphery survey of each of the Islands for the purpose of determining its correct area, and having a plan produced on which the investigation could be reliably based. The work would not require to be done again when the partition lines are being run.

82. The reply of the Registrar of the Native Land Court, dated 9th March, 1922, is as follows :—

Referring to your memorandum of the 6th instant with reference to the above blocks I have to inform you that at the present time I do not consider it desirable to have any further survey work carried out until such time as the investigation of the title has been decided by the Native Land Court, and when the matter is being dealt with by the Court, further surveys can be requisitioned if the Court thinks it necessary to do so.

83. The applications came before the Court (Judge Gilfedder) on the 5th August, 1924, the minutes being as follows :—

Investigation of title to some Islands or rather sand banks in the Whanganui-o-Rotu Lagoon. One of these Te Roro-o-Kuri is owned by David Milne under C.T. 38/550 (or deeds title). The other islands are useless and there is no plan of any them. It will be necessary to have surveys made if it is desired to go on with the investigations.

See letter from Lands & Survey Department.

Adjd. sine die.

84. Subsection (5) of section 396 of the Native Land Act, 1909, reads :—

Any Judge of the Native Land Court may exercise the power conferred by this section upon that Court or upon the Appellate Court if he is of opinion that a survey is necessary or expedient for the purpose of the jurisdiction of either of those Courts or for the completion of any order made by either of those Courts, whether before or after the commencement of this Act.

85. Although the Chief Surveyor pointed out the necessity for a survey and the Court realized the necessity for a plan, no requisition for survey was made, and these applications for investigation of title were, like their predecessor, dismissed for want of prosecution on the 19th February, 1925.

86. The preamble to the Napier Harbour Board Empowering Act, 1932–33, declares definitely that Uruwiri, Poroporo, Tirowhangahe, Tuteranuku, Awa-a-waka, and Matawhero Islands are Native land the title to which has never been investigated, ascertained, or determined.

87. These islands are still Native land and are now held under freehold order of the Native Land Court by representative Natives as trustees for those entitled.

88. The foregoing being so, it seems most difficult to conceive of a construction being put upon the Ahuriri deed of cession of 1851 that would include the Whanganui-o-Rotu as a whole without including these islands scattered over the surface of that part of the Whanga which is outside the recited boundary-line of the first parcel to the deed.

89. It is all very well to point to a provision in the deed which purports to include with the sale of the land

The sea (moana) and the river, and the waters and the trees, &c.

and to say that such provision passes to the Crown “the sea (moana) rivers waters and trees, &c.,” *within* the boundaries set out in the deed. It is another thing altogether when an attempt is made to read into such a provision a disposal of “seas, rivers, waters, and trees” occurring outside the boundaries of the deed. Recourse to contemporaneous