1945

NEW ZEALAND

THE NATIVE PURPOSES ACT, 1943

REPORT AND RECOMMENDATION ON PETITION No. 308 OF 1936, OF MUTU KARAITIANA, CONCERNING THE BOUNDARIES BETWEEN THE POUPOUTAHI AND MATATUOWHIRO BLOCKS AND THE TE AUTE COLLEGE ENDOWMENT RESERVE

Presented to Parliament in pursuance of the Provisions of Section 19 of the Native Purposes Act, 1943

Native Land Court (Chief Judge's Office),
Wellington C. 1, 30th October, 1945.

Memorandum for the Hon. the NATIVE MINISTER,
Wellington.

POUPOUTAHI AND MATATUOWHIRO BLOCKS AND TE AUTE COLLEGE ENDOWMENT RESERVE

PURSUANT to section 19 of the Native Purposes Act, 1943, I transmit to you the report of the Court on the claims and allegations contained in Petition No. 308 of 1936, of Mutu Karaitiana, concerning the boundaries of these blocks. A copy of the plan from Exhibit "J" referred to in the report has been appended.

I have considered the report of the Court, and recommend that no further action be taken on this petition.

D. G. B. MORISON, Chief Judge.

Wellington, 28th June, 1945.

Memorandum for His Honour, the Chief Judge, Native Department,
Wellington.

POUPOUTAHI, MATATUOWHIRO, AND TE AUTE COLLEGE ENDOWMENT RESERVE

I have the honour to report as follows:—

The subject-matter of this inquiry is set out in Petition 308/1936, of Mutu Karaitiana, and is concerned with the boundaries between the Poupoutahi and Matatuowhiro Blocks and the Te Aute College Endowment Reserve. Paragraph 3 of the petition alleges that the boundary between the college reserve and the Poupoutahi and Matatuowhiro Blocks was wrongly fixed, and that thereby an area of 8 acres 1 rood 20 perches belonging to the Poupoutahi Block and an area of 31 acres 2 roods 10 perches belonging to the Matatuowhiro Block were wrongly included in the college reserve.

In evidence the petitioner claimed the area of 8 acres 1 rood 20 perches mentioned above and also an area of 24 acres 0 roods 10 perches being a portion of the area 31 acres 2 roods 10 perches mentioned above. The balance of 7 acres 2 roods he makes no claim to, on the grounds that it was sold by the Native owners to Mr. Priest and is now included in his title. Mr. Pere, who appeared for the petitioner, described the areas of 8 acres 1 rood 20 perches and 31 acres 2 roods 10 perches as the Poupoutahi overlap and Matatuowhiro overlap respectively.

The only witness called by Mr. Pere was the petitioner himself, but he supported this evidence with a wealth of documentary extracts. Mr. Prentice, who appeared for the Te Aute trustees, also contented himself with one witness—namely, Mr. Rochfort—who made some of the original surveys. This evidence he supported by plans, a Land Transfer title, and various copy Native Land Court searches.

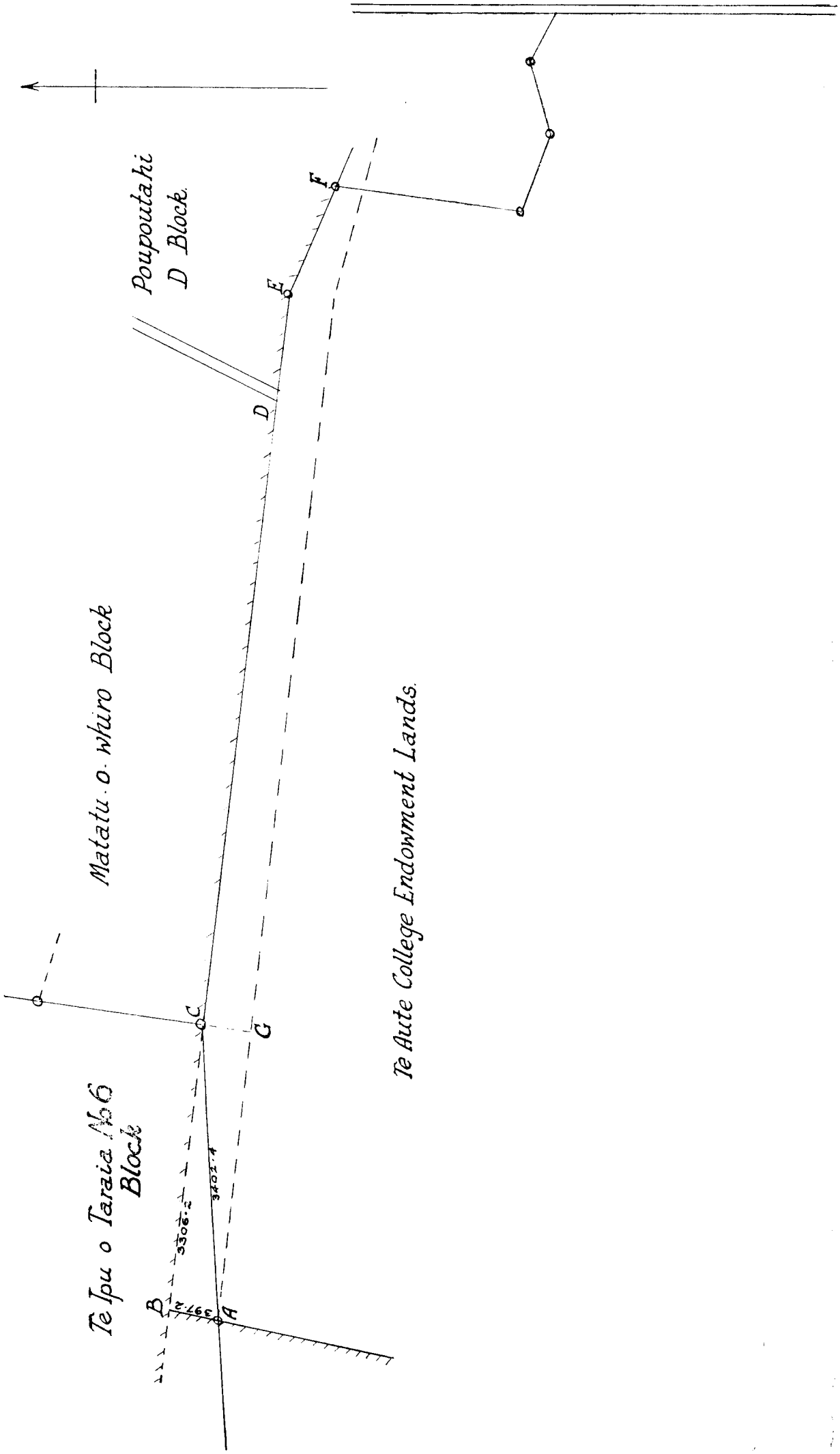
The investigation of this matter takes us back to 1857 when, following a gift by Natives, the land was vested in the Bishop of New Zealand by Crown grant. The Court was informed that since that time the land has been occupied by the trustees of the Te Aute Trust Board continuously and without interruption. It is clear that when it is sought to disturb a position under these circumstances the evidence in support must be full, clear, accurate, and convincing. The case which was presented to the Court attempted to substantiate the allegation that the land which was gifted by the Natives is not properly described in the certificates of title which were subsequently issued to the Trust Board.

The case for the petitioner was presented by Mr. Pere, who relied upon the testimony of the petitioner as his sole witness and supported this with official documents supplemented by extracts from miscellaneous correspondence. Much of this was clearly inadmissible in a Court of Law, but will be considered in this report.

In evidence the petitioner stated that he was eighty-nine years of age, and if this is correct it is clear that he could have no personal knowledge of events which occurred eighty-eight years ago. He frankly admitted that his source of knowledge was overhearing conversations between members of his family. The Court is not unmindful of the fact that many claims have been successfully established in the Native Land Court on evidence of this kind, but in this case it must be remembered that he could only have knowledge of conversations which took place many years after the event. However, the Court is not prepared to discount his evidence on this ground alone. The whole case rests upon an alleged discrepancy between the land which was actually gifted to the Crown and the subsequent Crown grant which should have embodied the gift. The petitioner attempted to define the boundaries of the gifted land, but in this vital aspect of the matter there was a complete breakdown in his evidence. He purported to identify landmarks in the disputed area sufficient to support his case, but as for the great bulk of the block he was in the difficult position of finding himself completely ignorant. Having regard to his source of knowledge, the Court is at a loss to understand why his memory did not extend beyond the disputed area. However, the petitioner was not called upon to establish the gift, but merely to define the boundaries of the gift. However weak his personal testimony may have been, this may have arisen by weakness of memory and the supporting testimony should still be carefully considered. At this stage reference should be made to Exhibit "A," which is a plan alleged to have been prepared by Mr. Sim in support of this claim. A similar plan marked "J" was produced by Mr. Prentice, and these two exhibits could well be considered together, using the reference letters marked on Exhibit "J." It appears to the Court that such consideration clearly shows that the petitioner has completely failed to understand the true position. He makes no claim to the area ACG, comprising 7½ acres, alleging that this area was sold to Mr. Priest after the southern boundary had been rectified. The original fence-line ran from B to C to D, E, and F as shown on Exhibit "J," and the rectification of boundary between Mr. Priest and the trustees resulted in the fence from B to C being moved to the present position of A to C as shown on Exhibit "A." The area of 7½ acres abandoned by the trustees was the triangle ABC and not the triangle ACG as alleged by the petitioner. It will be seen that the point C was deemed to have been accurately placed, and by abandoning his claim to the triangle ACG the petitioner virtually abandons his claim to the rest of the land which is bounded by an extension of the line A to G. The present college boundary is the line joining the points A to C to D to E and F, and not A to G to C and so on. Here, again, the Court is prepared to accept the possibility that in abandoning his claim to the triangle AGC the petitioner may have been wrongly advised. It is clear that if the point C has been accurately placed, then a considerable weakness has become apparent in the petitioner's case. Reference should now be made to the evidence of Mr. Rochfort. In 1869 a magnetic survey of the Te Ipu-o-Taraia Block was made by Mr. Ellison, and this was used as the basis for the Native Land Court plan prepared by Mr. Rochfort. The south-east corner of Subdivision 6 on Mr. Ellison's plan (Exhibit "D") corresponds with the point C shown on Exhibit "B" produced by Mr. Rochfort and with the point C previously referred to on Exhibits "A" and "J." We find that the eastern boundary of Subdivision 6 is 1,470 links in length and 1,469·3 links on Mr. Rochfort's plan. There is no reasonable doubt that the crucial point C is accurately placed in conformity with the magnetic survey of 1869. From the correspondence and reports put in by the petitioner it is abundantly clear that there is an overlap between the Crown grant affecting the trust property and the Crown grant affecting the Poupoutahi Block. The original deed of gift of the trust property has been lost and there is no present means of determining whether or not the grant exceeded the gift in area. The fact remains that in 1867 a Crown grant was issued in respect of the Poupoutahi Block which included an area which was part of a Crown grant issued in 1857. In dealing with the Poupoutahi Block the Native Land Court adopted the boundary shown in the earlier grant, and in the opinion of this Court this was the proper course to adopt.

It was stated by Mr. Pere that the original gift comprised 4,000 acres and that any area taken in excess of this has been wrongly acquired. The Court finds great difficulty in appreciating the weight of this contention. In all probability the gift would have been along well-established lines. The boundaries would be accurately delineated and the area would be approximately determined and finally settled on survey. In other words, there would be no possible doubt as to the exact boundaries of the gift, and the resultant area would be a matter for subsequent determination on survey. It is recognized that there is an overlap between the various Crown grants, but there is insufficient evidence to show that the grant to the trustees is erroneous. As there is little possibility of further evidence being forthcoming, and as the question of overlap has already been disposed of by the Native Land Court, this Court can only recommend that no further action be taken in this matter.

[L.S.] A. A. WHITEHEAD, Judge.



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