

1917.
NEW ZEALAND.

HIHIAUA BLOCK

(REPORT OF COMMISSION OF INQUIRY INTO PETITION OF HOORI REWI AND OTHERS IN
RESPECT OF THE LAND KNOWN AS).

Presented to both Houses of the General Assembly by Leave.

COMMISSION

TO INQUIRE INTO AND REPORT AS TO THE HIHIAUA BLOCK OF LAND, NEAR
WHANGAREI.

LIVERPOOL, Governor.

To all to whom these presents shall come, and to Thomas Henry Wilson, a
Judge of the Native Land Court: Greeting.

WHEREAS it is expedient that inquiry should be made into certain matters relating to the Hihiaua block of land, situated near Whangarei, and in respect of which a petition was presented to Parliament during the last session thereof by Hoori Rewi and certain other Natives:

Now, therefore, I, Arthur William de Brito Savile, Earl of Liverpool, the Governor of the Dominion of New Zealand, in exercise of the powers conferred by the Commissions of Inquiry Act, 1908, and of all other powers and authorities enabling me in this behalf, and acting by and with the advice and consent of the Executive Council of the said Dominion, do hereby constitute and appoint you, the said

THOMAS HENRY WILSON,

to be a Commission to inquire into and report upon the following matters with respect to the said Hihiaua Block:—

1. As to whether that portion of the said block which was above ordinary high-water mark at the time of the passing of the Whangarei Harbour Act, 1907, was before then Crown land or Native land:
2. Whether, if such portion was Native land, it should have been included in the Second Schedule to that Act as an endowment for the Whangarei Harbour Board without any compensation being given to the owners:
3. Whether, if such portion was Native land, compensation should now be given to the Native owners, to be ascertained by the Native Land Court, either by the Harbour Board or by the Crown, and, if so, what amount of compensation:
4. Whether such portion should be revested in such owners as may be determined by the Native Land Court, and in such case whether compensation should be given by the Crown to the Harbour Board:

And generally to inquire into and report upon the allegations contained in the said petition.

And for the better enabling you, the said Commission, to carry these presents into effect you are hereby authorized and empowered to make and conduct any inquiry under these presents at such times and places in the said Dominion as you deem expedient, with power to adjourn from time to time and place to place as you think fit, and to call before you and examine on oath or otherwise, as may be allowed by law, such person or persons as you think capable of affording you information in the premises; and you are also hereby empowered to call for and examine all such books, papers, writings, documents, or records as you deem likely to afford you the fullest information on the subject-matter of the inquiry hereby directed to be made, and to inquire of and concerning the premises by all lawful means whatsoever.

And, using all diligence, you are required to report to me, under your hand and seal, not later than the first day of March, one thousand nine hundred and seventeen, your opinion as to the aforesaid matters.

And it is hereby declared that these presents shall continue in full force and virtue although the inquiry is not regularly continued from time to time or from place to place by adjournment.

And, lastly, it is hereby further declared that these presents are issued under and subject to the provisions of the Commissions of Inquiry Act, 1908.

Given under the hand of His Excellency the Right Honourable Arthur William de Brito Savile, Earl of Liverpool, Knight Grand Cross of the Most Distinguished Order of Saint Michael and Saint George, Member of the Royal Victorian Order, Governor and Commander-in-Chief in and over His Majesty's Dominion of New Zealand and its Dependencies; and issued under the Seal of the said Dominion, at the Government House at Wellington, this twenty-seventh day of November, in the year of our Lord one thousand nine hundred and sixteen.

W. H. HERRIES,
Native Minister.

Approved in Council.

F. W. FURBY,
Acting Clerk of the Executive Council.

EXTENDING TIME FOR FORWARDING REPORT OF COMMISSION APPOINTED TO
INQUIRE INTO AND REPORT AS TO THE HIHIAUA BLOCK OF LAND, NEAR
WHANGAREI.

LIVERPOOL, Governor.

To all to whom these presents shall come, and to Thomas Henry Wilson, a
Judge of the Native Land Court: Greeting.

WHEREAS by a Warrant dated the twenty-seventh day of November, one thousand nine hundred and sixteen, and issued under my hand and the Public Seal of the Dominion, you were appointed a Commission to inquire into certain matters relating to the Hihiaua block of land, near Whangarei, and you were required to report to me not later than the first day of March, one thousand nine hundred and seventeen, your opinion as to the aforesaid matters:

And whereas it is expedient that the said period should be extended as herein-after provided:

Now, therefore, I, Arthur William de Brito Savile, Earl of Liverpool, the Governor of the Dominion of New Zealand, in exercise of the powers conferred by the Commissions of Inquiry Act, 1908, and of all other powers and authorities enabling me in this behalf, and acting by and with the advice and consent of the Executive Council of the said Dominion, do hereby declare and appoint that the

time at or before which you shall present to me your report aforesaid is hereby extended to the second day of April, one thousand nine hundred and seventeen.

And with the like advice and consent, and in further pursuance of the said power and authority, I do hereby confirm the said Commission.

Given under the hand of His Excellency the Right Honourable Arthur William de Brito Savile, Earl of Liverpool, Knight Grand Cross of the Most Distinguished Order of Saint Michael and Saint George, Member of the Royal Victorian Order, Governor and Commander-in-Chief in and over His Majesty's Dominion of New Zealand and its Dependencies; and issued under the Seal of the said Dominion, at the Government House at Wellington, this twenty-seventh day of February, in the year of our Lord one thousand nine hundred and seventeen.

Approved in Council.

F. W. FURBY,
Acting Clerk of the Executive Council.

W. H. HERRIES,
Native Minister.

REPORT.

Native Land Court, Auckland, 6th February, 1917.

MAY IT PLEASE YOUR EXCELLENCY,—

I have the honour to report, pursuant to the authority contained in a Commission under your hand and seal dated the 27th day of November, 1916, empowering me to inquire into certain matters relating to the Hihiaua block of land, situated near Whangarei, that I held an inquiry at Whangarei on the 25th, 26th, and 27th days of January last for the purpose of dealing with the allegations made by Hoori Rewi and certain other Natives in a petition presented by them to Parliament during the last session thereof.

The petitioners and all other interested parties were duly notified, and at the hearing they were represented as follows:—

Mr. J. J. McGrath for petitioners; *Mr. W. A. Carruth* for Whangarei Harbour Board; *Mr. R. J. Knight* for the Crown.

In addition to the petitioners a very large and representative gathering of Natives, amongst them Mr. Tau Henare, M.P., were in attendance.

After formally opening the proceedings and publishing the terms of the Commission, in order to give the parties some idea of the scope of the inquiry, I adjourned the case for the purpose of visiting the land in dispute, so that an inspection could be made while it was yet high tide, with a view of ascertaining as far as possible what portion of the Hihiaua Block, if any, remained uncovered at ordinary high tide.

The visit was made by a considerable number of persons, of whom I was one, and the time and occasion was both favourable and opportune, inasmuch as it was taken when the tide, according to the evidence of a Crown witness, "was an extraordinary spring tide—that is, more than ordinary spring tide . . . being 9 in. to 10 in. above ordinary spring tides."

In opening his case, counsel for the petitioners stated that his clients were not attacking the title of the Whangarei Harbour Board, because that had been established by an Act of Parliament, but they contended that the Crown had no right to vest the land in the Board without the consent of the Natives or adequate compensation being paid for the land. So far as the petition to the House was concerned, he had to admit after an inspection of the land that many of the allegations made would have to be dropped, because it was now apparent that the

two houses mentioned by the petitioners were not on the Harbour Board endowment, but upon an area of $7\frac{1}{2}$ acres investigated by the Native Land Court in the year 1867 under the name of "Hihiaua," part of which now belonged to the Whangarei Harbour Board by right of purchase on the 18th October, 1901, and part to a European named William Woods. The petitioners, however, claimed all the land outside this area of $7\frac{1}{2}$ acres as being a portion of a reserve used by the Natives from time immemorial as "a landing reserve, a fishing-station, and a shark-drying ground"; and in support of the claim that the land had been occupied as such within the memory of living man he called four reputable and well-known residents in the district to give evidence. These witnesses, whose knowledge of the land began as far back as sixty-four years ago in the case of Mr. Holman, to forty-three years in the case of Major Clark-Walker, state positively that they saw Natives occupying the block and making use of it for fishing purposes, and living there in tents whilst so engaged; and, moreover, that they used to tether their horses there, and that their working-bullocks were allowed to roam about at will. They also had a clear and distinct recollection of there being a high dry bank of land extending from the mouth of the Waiarohia Creek, which, by the way, forms the western boundary of the Board's endowment of 53 acres, southwards to the Harbour Board's purchased land opposite Cameron Street, and that flax, tea-tree, and ngaio grew thereon. Mr. Holman's evidence on this matter was very emphatic. He stated that in or about 1863 or 1864 he assisted Mr. John Grant Johnson, the first surveyor in this district under the Provincial Government, to make a magnetic survey of this block, as well as other adjacent lands, for the purpose of locating the high-water mark, and to define what lands belonged to the Natives. Though no old records or plans were produced in confirmation of this statement, Mr. Holman was of opinion that such records were in existence somewhere, though whereabouts he was unable to say with any certainty. He said that at the time referred to the Waiarohia Creek, as well as other waterways in the locality, had well-defined clay banks, which have all since disappeared. He also stated that the land thereabouts seemed generally to be lower now than in the olden days, just as if caused by sinking or subsidence.

I may here remark that it was suggested as a geologic fact that land on the east coast of the northern part of New Zealand was sinking, whilst land on the west coast was rising; but I have no means of verifying the correctness of this theory. Mr. Holman, however, was prepared to accept it, and as an illustration of it mentioned the fact that many years ago a Mr. Petengell, whose place was close to the Court-house, on land of about the same level as Hihiaua, had a fine garden above high-water mark, yet in recent years he had seen as much as 3 ft. of tidal waters on it.

The evidence of the witnesses called on behalf of the petitioners agree in every particular as regards the physical appearance of the land in dispute and of its use by the Natives; and one feature of the evidence that particularly impressed me was the knowledge displayed by them of the names and localities of the various tribes using the land, and also the names of the dominant chiefs who held sway there, information which I am able to confirm from evidence adduced in cases which I have investigated during the last four or five years in my capacity as a Judge of the Native Land Court.

When we turn to examine the statements made by the four witnesses who appeared for the Harbour Board and Crown, we find their evidence absolutely contradicts that given on behalf of the petitioners. Their statements were given clearly and unhesitatingly, and in a highly commendable manner; and were such as one would expect from reputable persons who had no interest to serve in coming before the Commission, save to give information likely to lead to an elucidation of the matters in dispute.

The character, standing, and reputation of the witnesses on both sides are such that one cannot for a moment doubt the honesty of their respective statements; and it is for that reason that I find it extremely difficult to satisfactorily weigh the evidence given by them. The only point in agreement by the whole of the witnesses is the important fact, which we ascertained for ourselves during our visit to the land, that there is an area of dry land within the 53 acres of the endowment, and that it consists of an irregular strip along the bank of the Waiarohia

Creek extending from the Hihiaua Block of $7\frac{1}{2}$ acres northwards towards the mouth of the said creek, but of unascertained area or extent. The quantity can only be arrived at after a careful survey has been made. The witnesses, however, disagree as to its nature and formation, those for petitioners contending that the dry land has been in existence as far back as they can remember, whilst the others assert that the dry land has been built up within the last nineteen or twenty years by the deposit of some 2 ft. 6 in. of silt as the result of floods in the Waiarohia Creek. If this latter statement is correct, one wonders what the creek was doing during the previous fifty years, and why no floods took place then, because Mr. Dent and Mr. Cossil say that they have known the land for seventy years, and that throughout that period it consisted of one large mud-flat, with no dry land whatever showing above ordinary high tide.

After a careful review of the evidence, I am inclined to accept the statement made by the petitioners' witnesses that some portion of the block was above ordinary high-water mark. The contention that Hihiaua Block consisted only of $7\frac{1}{2}$ acres investigated by the Native Land Court in 1867, and that it was vested in Renata Manihera, is no proof that the whole of the area outside it was subject to tidal water. An inspection of the plan produced at the investigation in 1867 shows that on the eastern side the area outside the $7\frac{1}{2}$ acres is marked "Native land"—surely a clear indication from which it can be presumed that the surveyor and the Court did not look upon the $7\frac{1}{2}$ acres as being the limit of Native land. The petitioners say that the whole of the land between the Waiarohia Creek and Okara Block was known to them as "Hihiaua," and that the portion awarded to Renata Manihera was merely his own share of it, the residue of the block being retained for the several *iwis* or tribes as a reserve in accordance with their ancient customs. This view of the matter is certainly consistent with Native custom, and it is quite a common practice for a large block of uninvestigated land to be known by one name, and for a portion of that block to be subsequently investigated, and then given the distinctive name applied to the larger piece. So far as this land is concerned, I see no reason for doubting the assertion made on behalf of the petitioners that Hihiaua as known to the Natives consisted of more than $7\frac{1}{2}$ acres. If this contention be correct, then two important points have to be considered before the matters herein can be finally disposed of, namely:—

- (1.) Was any portion of the block dry land when Major Clark-Walker first became acquainted with it in 1874?
- (2.) Was such dry land made by the deposit of silt from the Waiarohia Creek?

As to the first question, I am of opinion, the matter being one of fact testified to by persons who had an intimate acquaintance with the Natives exercising proprietary rights over the land, that there was some dry land uncovered at ordinary spring tide, and that consequently it belonged to the Natives in accordance with their ancient Native usages and customs.

As to the second question, if the contention of the witnesses for the Harbour Board and Crown is correct, then the law is clear on the subject. The deposit of silt has by imperceptible degrees reclaimed land from the sea or from the tidal creek, and has added it to the adjoining land, which in this instance is the Native land lying outside the boundaries of the $7\frac{1}{2}$ acres.

I do not consider the Crown has any right or claim to these dry portions, for the following reasons:—

- (1.) The land was reserved for fishing and other purposes by the Natives themselves, and if they have no legal rights to retain their fisheries in accordance with Article 2 of the Treaty of Waitangi, they certainly have a right which is binding upon the conscience of the Crown.
- (2.) The Crown has never acquired any portion of the land by a contract entered into with the Native owners.
- (3.) The Crown has not been in possession of the land for a period of ten years prior to the 31st March, 1910. (See section 100, Native Land Act, 1909.)
- (4.) The Crown has never issued a Proclamation taking any portion of the land.

The only authority adverse to the rights and claims of the Natives is the Whangarei Harbour Act, 1907, which took from the Natives certain unascertained areas of Native land, and handed them over to the Harbour Board without the Natives being granted compensation, and without giving them a full opportunity of lodging complaints or objections. A reasonable and probable explanation for this may be that the Department responsible for the matter may not have been aware of the existence of land above ordinary high-water mark, though we are told by Major Clark-Walker and Hoori Rewi that they actually made the necessary objections not only in writing addressed to the Marine Department, but also personally to the Hon. Mr. J. A. Millar, the then Minister of Marine, during a visit paid by him to Whangarei some time prior to the passing of the Whangarei Harbour Act, when he gave assurances that no Native land would be taken for Harbour Board purposes.

There is not the slightest doubt of the existence of land above ordinary high-water mark, because I personally walked upon some of it during a period of extraordinary spring tide, and found both gorse and grass growing freely on it—a sure sign of the land not being affected by tidal waters.

There is a substantial piece of land, upon which no mangroves are growing, roughly estimated at some 8 to 10 acres; but the exact area of dry land can only be ascertained by a survey or making long and exhaustive observations of the tides, and defining the true limit of ordinary high-water mark.

After a careful consideration of the evidence adduced at the inquiry, I have to report that my findings upon the questions submitted to me are as follows :—

- (1.) That such portion only of Hihiaua Block (as known to the Natives) which remained above ordinary high-water mark at the time of the passing of the Whangarei Harbour Act, 1907, was before then Native land.
- (2.) That such portion as aforesaid should not have been included in the Second Schedule to that Act as an endowment for the Whangarei Harbour Board without compensation being given to the owners.
- (3.) No compensation should be given to the Native owners, because I recommend a return of the land to such Natives as may be ascertained by the Native Land Court upon an investigation of title.
- (4.) That such portion as aforesaid should be revested in the Native owners as may be determined by the Native Land Court, and that no compensation be paid by the Crown to the Harbour Board.

I wish to make it clear that my findings only affect the dry land within the boundaries of the 53 acres described in the Second Schedule to the Act of 1907. The whole of the 13 acres 2 roods is covered at ordinary high tide.

As regards question 3, I find that the petitioners do not desire compensation, because the damage suffered by the loss of a fishing reserve cannot be measured by pounds shillings and pence. They want the return of the land for the purposes of camping thereon whenever Land Courts are held in Whangarei, because at the present time they have no other land that can be so utilized.

The equities of the case in so far as the petitioners are concerned could be met by an amendment of the boundaries of the 53-acre portion, by excluding therefrom such area of dry land as may be defined after an accurate and careful survey has been made.

Finally, as regards the allegations made in the petition, I have to remark as follows :—

- (1.) The investigation referred to was never completed, because of insufficient information.
- (2.) The land upon which the two houses stand is called Hihiaua Block, and it was investigated by the Native Land Court on the 15th day of May, 1867, but no portion of it is included in the Second Schedule to the Whangarei Harbour Act, 1907.
- (3.) Allegation is true.
- (4.) The evidence given at the inquiry would be sufficient to establish such a claim before the Native Land Court.
- (5.) Allegation is true.

(6.) I have already reported upon this.

(7.) Houses were not taken under the Act. The Native occupants were ordered by the Health Department to remove from the houses at the time of the smallpox epidemic in the North, and they do not appear to have used them since. One of the houses is upon land which belongs to the Whangarei Harbour Board by right of purchase, having been erected there by Hoori Rewi without knowledge that the Native title had been investigated, and that it was now European land. The other house stands upon European land owned by a Mr. William Woods.

For your information I attach my notes of the inquiry, together with a compiled plan of the land in dispute showing the position of the adjacent lands [not printed].

I have, &c.,

To His Excellency the Governor.

T. WILSON, Judge.

Office of the Tokerau District Native Land Court,
Auckland, 27th March, 1917.

MAY IT PLEASE YOUR EXCELLENCY,—

Since forwarding my report with reference to the petition by Hoori Rewi and others in the matter of Hihiaua Block inquiry, I have received unexpected and important information of a nature that should be submitted to you for perusal.

Under the powers of my Commission I am required to make such inquiries as will enable me to fully ascertain the verity or otherwise of the allegations made by the petitioners, and for that purpose I can seek what information I want, and by means of my own choosing, without necessarily adopting the rules and procedure followed by Courts of law. In other words, it is the truth that is wanted, together with all facts relative thereto.

I have received from a Mr. J. McLeod a long, vivid, and illuminating communication describing what he knows of Hihiaua Block, and of its history and appearance, and he explains many things concerning its occupation that are of the highest importance. The statement reached me while I was at Ahipara, in the far North. Unfortunately, no full address was given by the writer, but as I was due in Whangarei on the 14th March I thought I would be able to find him there. After making diligent inquiries, I ascertained that he had left for his home somewhere in the South Island. In the circumstances the statement has not the same force or value it otherwise would have had if I had been able to have had it verified on oath. It, however, bears the similitude of truth, and for that reason furnishes strong corroborative proof of the correctness of the evidence adduced by the petitioners.

As an addendum to my previous report of the 6th February last, I submit the statement, together with a typewritten copy thereof, for your further information.

I have, &c.,

To His Excellency the Governor.

T. WILSON, Judge.

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