

The land was surveyed by Mr. Brookes, a departmental surveyor, in the year 1884, and upon completion of the survey it was discovered for the first time that the area was incorrect. The petitioners claim that this excess area of 7,000 acres should now be made good, either in the shape of money or in the grant of land.

In my opinion, the exact area of the block when the purchase was made in 1854 was a matter of little moment to the Native owners. The land sought to be acquired by the Crown was confined within physical boundaries, and the sketch prepared for the purpose of purchase did not profess to be accurate, and the area was therefore expressed in round figures at 16,000 acres. Unfortunately, however, this assessment of area was made by an officer of the Crown, and the error was so substantial that it should not have occurred. Had the difference in area been a matter of a few hundred acres either way, no objection could have been taken, but when the area was discovered to be half as much again as the area bargained for, it does seem to me that, notwithstanding little attention was paid by the Native owners to the precise area being sold, the Crown acquired through its own error a substantial area that it did not intend to acquire.

My attention was drawn to discrepancies in area in the case of seven other purchases where areas were specified in the purchase deeds. These discrepancies, which, with one exception, are all in excess of the areas specified, vary from a few acres to over 4,000 acres in the case of a specified area of 29,500 acres. In no case, however, does the difference approach an excess of 7,000 acres in a specified area of 16,000 acres.

From the Crown's point of view the matter was put by Mr. Darby in this way: That in 1854 land had little value on the basis of acreage, and that wilderness lands were of no value. This, no doubt, is true, but in making the purchase the Crown itself gave the area an acreage value by fixing the purchase-price, evidently related, whether closely or not, to a definite area. Although it is only a matter for speculation now as to whether the difference in area if known to the Natives at the time would have made any difference to the amount of purchase-money, in my opinion it is only equitable that the Crown should pay for what it got upon the basis fixed by it—that is to say, £530 for 16,000 acres, otherwise 8d. per acre.

It was a matter for some comment by the Crown that no complaint had been made by the Native owners since 1854 as to the discrepancy in area. To this they reply that it was not known until 1884 at the earliest, that they were not advised upon survey of the precise area, and that it was many years before they were aware that there had been any error in computation. This reply seems to me to be well founded.

On the whole, in my opinion, the claim would be justly met if a proportionate sum were allowed in respect of the 7,000 acres, together with simple interest from 1884.

2. The second claim, relating to "tenths," appears to me to have resulted from historical research by somebody on behalf of the Native owners. Their counsel placed little reliance on this claim and declined to address the Court on the subject, although invited to do so. He did, however, call one witness to support the claim, and this witness, after stating that they had not had tenths, was unable to say whether the tenths should have been represented by a refund of one-tenth of purchase-money or by a reservation of one-tenth of the area to the Native owners, nor did he appear to know whether the claim related to possible expenditure on behalf of the Native owners of one-tenth of the price at which the Crown might ultimately have sold the land. In short, he had so little appreciation of the claim that I am satisfied he was not aware of how it was founded and that the claim should be disregarded.

3. *Ketekarino*.—This is referred to in the deed relating to the Awakino Block in the terms mentioned above. The area, undoubtedly, was used as a burial-ground and pa reserve in the early days, but it is quite apparent that it is many years since it was last so used.

The Crown undertook in the deed that it should be set aside, and this has not been done. If there was any reason why it was not so set aside, and it may well be between 1854 and 1884 that the necessity for the reservation had disappeared, the Crown was not able to show what the reason was for the land not being set aside. The petitioners' suggestion in respect of this piece is that it should be a small piece, similar to other small pieces referred to in the deed, containing an area of 50 acres. It is true that in the Awakino deed there is reference to small pieces. For instance, a small piece at Rangitoto was to be reserved for Hokiopera. This was reserved and was an area of 55 acres. In my opinion, the claimants are entitled to have an area at Ketekarino set aside, as undertaken by the Crown, and that the "small piece" should be similar in area to the other small pieces—about 50 acres—for their old burial-site.

The conclusion I came to at the hearing was that the site was no longer used as a pa reserve, nor likely to be, and that the Native owners attach importance to it solely for the reason that it had been used as a burial place and had therefore sacred significance. I understood at the hearing that the Crown was inclined to assent to the setting-aside of a small area of, say, 5 acres as bargained for in the deed. I do not think an area of 5 acres, however, would be a sufficient area to satisfy the meaning of the words "small piece" in the deed.

4. *Ounutac*.—This reserve, referred to in the deed, is shown on Rogan's sketch plan as containing an area of 220 acres. When it was set apart by survey in 1884, the area so set apart was 110 acres. The petitioners therefore claim that the area of this reserve should now be increased to 220 acres or compensation granted to them. I am satisfied from examination of the plans that the area of 220 acres shown on the sketch plan was an error, and that the land reconveyed to the Natives containing 110 acres was the identical piece bargained for between the Natives and the Crown. It had certain physical features, to wit, streams to the north and south. These boundaries were adopted upon survey, and the only position in which error might have occurred was on the eastern boundary. The eastern boundary, upon survey, conformed so closely to that appearing on Rogan's sketch that I am satisfied that the Native owners obtained the exact piece of land they were entitled to.