

MINUTES OF EVIDENCE.

THURSDAY, 4TH AUGUST, 1910.

Mr Lawry: I have very few words to say in connection with this matter, because it is a question that rests mainly on documentary evidence. I have not the slightest doubt myself that there was an error in the original survey of these blocks, and that it was the intention of vendors and purchasers that the watershed was that originally indicated. I should like to say that the thanks of the Committee and the thanks of the country are largely due to Mr Kensington for the manner in which he has dealt with this great and important question, as set out in the memorandum which has been read before the Committee. Mr Kensington has said that it was his duty to protect the interests of the Crown, but at the same time he stated that the company had abandoned all legal claim, and were appealing to this Committee on a matter of equity. I have not the slightest doubt that Mr Kensington does consider it his duty to protect the interests of the Crown, but, strange to say, in almost every case that I have been connected with on Select Committees, the head of the Department has invariably reported against the petition. I think Mr Kensington is an exception to the general rule, and that he is the best of them. The position is really this: that the company have abandoned all legal claim; they appeal to this Committee as to a Court of equity, and I think the Committee will realize from the evidence that there was an error made in the original survey. I think, therefore, the case may be fairly left to the Committee to deal with on the lines of equity.

OLIVER NICHOLSON, Solicitor, Auckland, examined. (No. 1.)

Hon. the Chairman: I would like to hear what you have to say in support of the petition.

Witness: I desire to thank you, Mr Chairman and gentlemen of the Committee, and Mr Lawry especially, for your kindness in calling this meeting to suit our convenience, and to assure you that your action is greatly appreciated by all of us. I desire also to briefly explain the position as indicated by the petition before calling on Mr. Milroy to give evidence in favour of the petition. The whole question is governed by the matter of a mistake originally made as to the location of the dividing-range between the Waiwhakaurunga River on the one side and Mercury Bay on the other side. Mr Kensington has carefully checked the survey made by a surveyor appointed by us, and he has found that the watershed or dividing-range was wrongly located by the original surveyor. There is a part in Mr Kensington's report just read where a mistake has been made which is very material so far as the company is concerned. I refer to that portion of the report which states that the Te Tipi Block was purchased by the Crown prior to the purchase of the Waiwhakaurunga Block. The purchase of the Te Tipi Block was made four years after the purchase of the Waiwhakaurunga, and this is very important to the company, because it was made with full knowledge as to the position at the time. I think, however, it is a clerical error.

Mr. Kensington: Mr Nicholson's contention is right, and I should like to have that correction made. I say in the report the Waiwhakaurunga purchase was subsequent.

Witness: It is quite true, as Mr Kensington has pointed out, that the company has abandoned all legal claim to this timber, and I am approaching the Committee not on the legal aspect of the claim, but from a purely equitable standpoint. We consider that in a matter of this kind, where a survey of land is in dispute, and that survey has been made by Government officials at some time or other, the proper tribunal to settle it is Parliament and not a Court of law. The error has been a very unfortunate one for the company, and it has only recently been ascertained. It is quite true that the Te Tipi Block has been declared waste lands of the Crown. If not, there would have been no necessity for us to appear before you. The fact that the boundaries of the two blocks have been made to overlap one another requires our attendance here to substantiate our claim. The Waiwhakaurunga Block and the Te Tipi Block were originally held by the same Native owners, and the freehold of these two blocks has at different times been acquired by the Crown. Therefore the question at issue is one which only affects the Crown on one side and the Kauri Timber Company on the other. The original mistake as to the dividing-range has been perpetuated in locating the goldfields boundary. On the certificate of title of the Waiwhakaurunga Block a portion of the north-eastern boundary-line is shown as being the "goldfields boundary". A part of the north-eastern part of the goldfields boundary was fixed by statute as being at the source of the Waiwhakaurunga River. Now, the source having been fixed wrongly necessarily means that the goldfields boundary is wrongly located. It might appear to be strange that the mistake has not been seen until recently, but when I produce the documents it will be seen that the company could not have ascertained the position until the true dividing-range was ascertained, as the plans attached to the deeds were misleading. The fact that the words "Dividing Range" appeared on the plans attached to the deeds of purchase as the north-eastern boundary of the Waiwhakaurunga Block tended to deceive not only the Crown, but also the company. All parties were deceived by the words "Dividing Range" having been mentioned and fixed as the north-eastern boundary. The Crown always considered that the timber on the Thames side of the dividing-range was owned by the Kauri Timber Company, and that on the other side of the dividing-range, towards Mercury Bay, was the property of the Crown. The Crown has not attempted to dispose of the timber on the Thames side of the range, but has marked and sold