

1916.
NEW ZEALAND.

W A I A U R E S E R V E.

REPORT OF COMMISSION OF INQUIRY INTO A CLAIM MADE BY CERTAIN NATIVES TO AN AREA
OF LAND AT W A I A U, S O U T H L A N D.

Presented to both Houses of the General Assembly by Command of His Excellency.

COMMISSION
TO INQUIRE INTO A CLAIM MADE BY CERTAIN NATIVES TO AN AREA OF LAND
AT W A I A U, S O U T H L A N D.

LIVERPOOL, Governor.

To all to whom these presents shall come, and to CHARLES EDWARD MACCORMICK, Esquire, Judge of the Native Land Court, and WALTER EDWARD RAWSON, Esquire, Judge of the Native Land Court : Greeting.

WHEREAS it is expedient that an inquiry should be held regarding a claim made by certain Natives to an area of land situated on the west bank of the Waiau River, in Alton Survey District, in the Southland Land District :

Now, therefore, I, Arthur William de Brito Savile, Earl of Liverpool, 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, do hereby constitute and appoint you the said

CHARLES EDWARD MACCORMICK and
WALTER EDWARD RAWSON

to be a Commission to inquire into the said claim, and in particular—

- (1.) To ascertain whether the award made at Dunedin by Judge Fenton on the twenty-sixth day of May, one thousand eight hundred and sixty-eight, as recorded on page 59 of the South Island Native Land Court Minute-book No. 1A, has been satisfied :
- (2.) If such award has been satisfied, to ascertain the land which was granted in satisfaction thereof :
- (3.) To ascertain the award or the authority for the grant of the block of land known as the Tautuku Native Reserve, situated in Block IX, Tautuku Survey District, in the Otago Land District :
- (4.) To ascertain the authority for the original withholding from sale of the block of land situated on the west bank of the Waiau River, in the Alton Survey District, in the Southland Land District, containing approximately one thousand acres.

And, with the like advice and consent, I do hereby appoint you the said

CHARLES EDWARD MACCORMICK

to be Chairman of the said Commission.

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 as you deem expedient, with power to adjourn from time to time and from place to place as you think fit, and to call before you and examine on oath or otherwise such person or persons as you think capable of affording information in these premises.

And you are also empowered to call for and examine all such books, maps, 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, using all diligence, you are required to report to me under your hand within forty days from the date of these presents the result of your inquiry, with any recommendations you may think fit to make in the premises.

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 sixth day of October, in the year of our Lord one thousand nine hundred and fifteen.

W. F. MASSEY,
Minister of Lands.

Issued in Executive Council.

J. F. ANDREWS,
Clerk of the Executive Council.

REPORT.

To 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.

MAY IT PLEASE YOUR EXCELLENCY,—

Acting under the authority of the Commission issued by Your Excellency on the 6th day of October, 1915, empowering us to hold an inquiry regarding a claim made by certain Natives to an area of land situated on the west bank of the Waiau River, in Alton Survey District, in the Southland Land District, we have the honour to report, for Your Excellency's information, that such inquiry was duly held, and to submit herewith the result thereof.

Evidence was taken at sittings of the Commission held at Invercargill on the 21st and 22nd days of October last, and at Wellington on the 29th day of October. Mr. McAllister, of Invercargill, appeared for the Lands Department, and Mr. Wilford for the Native claimants.

The case set up by the latter was to the effect that not only were they entitled to the Tautuku Native Reserve of about 1,021 acres in the Otago Land District, but also to an area of land situated on the west bank of the Waiau River, in the Southland Land District. They based their claim to the Waiau land on entries in the Native Land Court South Island Minute-book 1A, at pages 50, 57, and 59, copies whereof are set out in Schedule A attached hereto [not printed]. These entries, they contend, show an award in favour of the Natives there mentioned of 1,000 acres at the Waiau River.

The Lands Department maintain that if these minutes do show an award, then that award has been satisfied by the reservation of 1,021 acres at Tautuku for the Natives; that there is no record in the minute-book of any award of land at Tautuku, and that there has been, in short, a substitution of Tautuku for Waiau, which both Natives and Crown have recognized.

At first the claimants placed some reliance on the fact that on several of the Southland Survey Office maps some sections situated on the western bank of the Waiau River, and containing altogether about 1,712 acres, were marked with the letters "N.R.," or the words "Native Reserve." The departmental officers, however, gave evidence to the effect that this had been done in consequence of instructions from the Lands Office, Wellington, that these lands were to be set aside for Native and half-caste claims and not otherwise dealt with. These instructions are contained in a letter from Mr. Barron, Assistant Surveyor-General, to the Commissioner of Crown Lands, Invercargill, dated 28th June, 1892, and Mr. Wilford subsequently admitted that no inference in favour of his clients' claim could be drawn from the fact that the plans were so marked or the lands not thrown open for settlement.

Three Natives, Taituha Hape, Raniera Erihana, and Tiaki Kona, who had been present at the sitting of the Native Land Court at Dunedin in May, 1868, were called by Mr. Wilford.

Taituha Hape stated that Court settled the owners for Waiau, but that he knew nothing about Tautuku. He asserted that nothing was done in the Court regarding Tautuku on the same day that Waiau was dealt with.

Raniera Erihana said that after the matter of the Waiau Reserve had been completed the question of another reserve at Tautuku was discussed with Mr. Mackay, Native Commissioner, at the Prince of Wales Hotel, and that after lunch on that day the question of an award for Tautuku was mentioned in the Court, but was not finally settled by the Court till some days later; that altogether 1,000 acres were reserved at Tautuku, and 1,000 acres at Waiau.

Tiaki Kona, or John Connor, was present outside the Court at Dunedin in 1868 with other Natives, when the list of owners for Waiau was made up by the Natives and Mr. Mackay. He did not go into the Court when the list was handed in and read. He stated that at the meeting with Mr. Mackay it was agreed that 1,000 acres at Tautuku should be given to the same people who had been included in Waiau. Further, he said that this meeting took place on the evening of the day on which the Waiau list was settled. As he left Dunedin the next morning he cannot say if Tautuku was ever brought before the Court.

Before the Landless Natives Commission in 1914 Raniera Erihana and Phillip Ryan gave evidence to the effect that Tautuku was settled before the question of Waiau was brought up, which does not coincide with the statements made before us.

All the three witnesses named above would be young men in 1868, and naturally would not take an active part either in the proceedings in Court or in discussions which are said to have taken place with Mr. Mackay outside as to the lands to be set apart for Natives. As they themselves admit, the elders would attend to those matters. After the lapse of so long a period as nearly fifty years their recollection of what happened in 1868 cannot be very clear, and, however honest the intentions of the witnesses may be, it is more than probable that the conversations and discussions of later years have become interwoven with the memories of the earlier occurrences. Being Natives, they have naturally been in contact with those who are interested in the success of this claim, and, moreover, are either claimants themselves or their wives or relatives are. Therefore we do not attach much weight to their testimony.

The rest of the Native evidence was led with the intention of showing that the Natives had used this area of 1,712 acres on the west side of the Waiau River for various puposes at times, and of identifying it with the alleged award made by the Chief Judge Fenton. The evidence is not sufficient, in our opinion, to warrant us in drawing any strong inference from it.

In short, then, it seems to us that the only strong points in the Natives' case consist of the following :—

- (1.) The entries in South Island Minute-book 1A above referred to.
- (2.) The fact that there are differences between the owners given on page 59 of the said minute-book for Waiau and those given on page 250 of Volume ii, Mackay's Compendium, as owners of Tautuku.
- (3.) The fact that so far as has been ascertained there is no document, record, plan, or statement on the files of the Lands Department or of the Native Department, or entry in the Native Land Court's minute-books, setting out that the 1,000 acres at Tautuku were in substitution for or in satisfaction of the award of 1,000 acres at Waiau River.

It seems to us that the entries in Minute-book 1A, concluding as they do with what purports to be an award of a Court clothed with a special jurisdiction to set aside reserves for Natives, must be regarded as evidence of the very strongest kind, notwithstanding that the award is incomplete, as no description of the land is given beyond "1000 a. at Waiau R." And, also, we think the other two points are worthy of very careful consideration.

On the other hand there is this fact, which seems to us of very great weight : The minute-book of the Court shows that the Waiau award was made on the 26th day of May, 1868. The last entry concerning that Court is made on the 28th May. On the very next day the Native Commissioner, Mr. Mackay, reporting to the Under-Secretary, Native Department (see McKay's Compendium, Volume ii, page 252), makes absolutely no reference to any order or award for Waiau, and states the Court "ordered in final extinguishment of all claims and engagements under Kemp's deed that land to the extent of 2,000 acres should be awarded to the Natives out of Crown lands within the Province of Otago, out of which 1,000 acres has been allotted in satisfaction of the claim of those Natives who signed the deed, and to the immediate descendants of those who were parties to the sale but never received any share of the land reserved for Native purposes within the boundaries of that purchase as stipulated by the deed."

Mr. Mackay's letters of the same day to the Superintendent of the Province of Otago and to the Commissioner of Crown Lands, Dunedin, show how this area of 2,094 acres was made up. It included 1,000 acres situated in the Tautuku district, at the mouth of the River Tautuku (being the 1,000 acres mentioned in the report to the Under-Secretary), but there is no mention of any reserve being made at Waiau. In his letter to the Superintendent Mr. Mackay says the orders for these lands were made on the 28th May, 1868, and it is impossible that he can have overlooked the award of Waiau on the 26th, which it is alleged he took an active part in arranging.

There is no entry in the South Island Minute-book 1A of any award of Tautuku, and yet not only in these letters of Mr. Mackay's, but at page 245, Volume ii, Mackay's Compendium, in a return of reserves in the Province of Otago made in pursuance of awards of the Native Land Court in May, 1868, in final extinguishment of all claims under the Ngaitahu deed of 1848, a certificate for 1,000 acres at Tautuku is mentioned and a description of the land given. On pages 250 and 257, same volume, the names of trustees and owners are given, and they are very nearly the same names as those set out on page 59 of South Island Minute-book 1A as being the persons entitled to "1000 a. at Waiau R."

It is to be noted that the Waiau list of names is divided into A and B in the same manner as the Tautuku list, though the Court minutes show no reason for this.

Again, on the 7th June, 1870, the Superintendent of the Province of Otago wrote to Major Heaphy, V.C., Commissioner of Native Affairs, complaining of the action of the Native Land Court in awarding the reserve at Tautuku. Chief Judge Fenton, of the Native Land Court, in a memorandum on the above says, "As far as I know the order in this case was well and effectually made,

and should in my judgment be supported.” Mr. Commissioner Mackay also has a memorandum on this supporting the Chief Judge. Yet we do not find any minute on such an award in the Court minute-book. Therefore it is clear from this that the minutes in South Island Minute-book 1A do not show the whole of the proceedings of Chief Judge Fenton’s Court in 1868, and from the omission of all mention of a reserve at Waiau in the report and letters of Mr. Mackay it is possible some agreement was arrived at whereby Tautuku was substituted.

Again in 1870 Major Heaphy, V.C., Commissioner of Native Reserves, reported at considerable length on the Native reserves in the Provinces of Otago and Southland, giving very full details of the Tautuku Reserve, but making no mention of any reserve at Waiau River.

Again in 1876 Chief Judge Fenton, reporting on a petition of Ngaitahu and speaking of the proceedings before the Native Land Court in 1868, said that “There was nothing left undetermined by the Court except some portions of Topi’s territory in the extreme south, those Natives declining to remain any longer on account of the mutton-bird season.”

Mr. H. K. Taiaroa, M.H.R., made a statement in writing in reply to Chief Judge Fenton’s report. This statement is dated 26th October, 1876, and contains the following: “After that the Court sat in Otago to investigate the title to the lands which were reserved formerly. The Maoris asked for no extra land in fulfilment of Kemp’s deed, but the Court and the Commissioners said this: ‘Will not you the Maoris of Otago and Murihiku desire some other land in fulfilment of the words of the Government?’ The Maoris did not regard with favour that word of Mr. Alexander Mackay’s. Then they and some chiefs went into a room and there talked, and the land agreed upon was Tautuku. in the Province of Otago, the area being 1,000 acres.” (I.—8, 1888, p. 45.)

Giving evidence before the Joint Committee on the Middle Island Native Claims Mr. H. K. Taiaroa again states 1,000 acres were awarded (p. 97). Now, Hori Kerei Taiaroa was the most prominent of the Otago chiefs, and his name is the first mentioned in the list of owners of Tautuku and the first in the list of names on page 59 of South Island Minute-book 1A. He took a leading part in 1868, and it cannot be doubted that he knew what the real position of these matters was. Yet he not only never mentions a reserve at Waiau, but he specifically states that “the land agreed upon was Tautuku, the area being 1,000 acres.”

A report by Mr. Commissioner Mackay dated 5th May, 1887, on the Middle Island Native land question, presented to both Houses of the General Assembly, sets out on page 8 that in 1868 the Native Land Court ordered that additional lands be set apart in extinguishment of all claims or demands under Kemp’s deed, and that reserves were made in Otago for occupation purposes amounting to 2,100 acres. (G.—1, 1888, p. 8.)

On page 28 of parliamentary paper I.—8, 1888, is a return of reserves with a total area of 2,100 acres 3 roods 24 perches. There is no mention of a reserve at Waiau, but there is the following entry as to Tautuku:—

District.	Date of Certificate.	Name of Award.	Area.			Nature of Trust, Limitations, &c.	Trustees.
			A.	R.	P.		
Murihiku . .	28th May, 1868	Tautuku	1,000	0	0	The estate to be absolutely inalienable	Hori Kerei Taiaroa and nine others for residents in the Province of Otago, and Teone Topi Patuki and nine others for residents in the Province of Southland.

In the same report of 5th May, 1887, above referred to, Mr. Mackay recommends that a large area be set aside for Natives, and states that the locality where “the land best suited for Native purposes could probably be obtained in the country on the seaboard between the Catlin’s district and the Maitara and

to the *west of the River Waiau*, in Foveaux Strait. Natives living at Riverton and to the westward are very desirous to secure a block of land in the last-named locality, and I beg to strongly recommend that their wishes be given effect to." (G.-1, 1888, pp. 13, 14.)

Here, then, is the same gentleman who acted as Commissioner in the Court of 1868 considering applications by Natives for land in the locality of the alleged award at Waiau, and he never makes any reference to any Native reserve having been granted there. Surely if there was such a reserve there he could not have avoided some reference to it.

It appears that the Natives have lived at Tautuku, and from 1887 onwards the Native Land Court has on the applications of Natives made orders dealing with interests there, but nothing was done by the Natives on the land or in the Courts with respect to Waiau for nearly forty years after the sitting at Dunedin in 1868—that is, not until after the plans had been marked "Native Reserve" as mentioned previously—with the exception of a few stray visits at long intervals to obtain totara-bark and eels from the river.

It seems to us, in view of the statements on record by Chief Judge Fenton, Mr. Commissioner Mackay, and Mr. H. K. Taiaroa, together with the other matters referred to above, that the most probable explanation is that, with the consent of the Natives and the Court, the original award of 1,000 acres at Waiau was, on the 28th May, 1868, cancelled in favour of an award for a similar area at Tautuku, and that the list of owners was amended at the same time as regards some of the names.

It is unfortunate that this matter was not brought under the late Judge Mackay's notice, as he would no doubt have been able to thoroughly explain the position; but as it is we feel that, though it is not beyond question, the answers to the inquiries numbered 1 to 4 in the Commission should be answered as follows:—

- (1) and (2). The award made at Dunedin by Judge Fenton on the 26th day of May, 1868, as recorded on page 59 of the South Island Minute-book 1A, has been satisfied by the substitution of an award for land at Tautuku. A note at the bottom of page 245, Volume ii, of Mackay's Compendium, says, "The land is situated in the Tautuku district: Bounded towards the north, 9000 links or thereabouts, by Crown land; towards the east by a road reserve along the banks of the Tautuku River; towards the south by the sea; and towards the west partly by the sea and partly by Crown land, so as to include 1,000 acres."

We would note, however, that in letter dated 16th May, 1911, from the Chief Surveyor, Dunedin, to the Registrar of the Native Land Court, Wellington, enclosing a lithograph plan of Tautuku, it is stated the land was subdivided into sections in 1896, and that the block, exclusive of reserves made by the Surveyor, contains 1,021 acres 1 rood 27 poles, not including roads already surveyed. This letter and plan are attached to the Native Land Court file for Tautuku, Otago 31.

- (3.) The award or authority for the grant of the block of land known as the Tautuku Native Reserve appears to us to be an order of the Native Land Court at Dunedin on the 28th day of May, 1868, under the jurisdiction conferred by an order of reference made under the 83rd section of the Native Land Act, 1865, as validated by the Ngaitahu Reference Validation Act, 1868. We have been unable to find any note of such order in the minute-books of the Native Land Court, but have inferred the existence of such an order from the frequent references to a reserve at Tautuku contained in the reports of the Commissioners referred to herein. Full details of this order are given in the return on page 245, Volume ii, Mackay's Compendium, and the note at the bottom thereof.

- (4.) The land situated on the west bank of Waiau River was not withheld from sale by reason of any award of the Native Land Court, but in accordance with instructions contained in letter dated 28th June, 1892, from Mr. A. Barron, of the Surveyor-General's Office, Wellington, to the Commissioner of Crown Lands, Invercargill, to mark off this land as specially set aside for Native and half-caste claims, and not to deal with it in any other way pending further instructions.

In addition to the schedule already referred to we have also the honour to forward herewith for Your Excellency's information Schedule B [not printed], containing a copy of the minutes of evidence taken at the inquiry.

All these particulars are humbly submitted for Your Excellency's consideration.

Signed and sealed at Auckland, this 18th day of November, 1915.

CHAS. E. MACCORMICK (Chairman), } Commissioners.
W. E. RAWSON,

Approximate Cost of Paper.—Preparation, not given; printing (750 copies), £3 10s.

Price 6d.]

By Authority : MARCUS F. MARKS, Government Printer, Wellington.—1916

