

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