Creek extending from the Hihiaua Block of 7½ 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 7½ 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 7½ 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 7½ 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 7½ 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 7½ 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.