

Upon a careful review of the evidence and facts we can come to no other conclusion than that the Natives have been deprived of this particular land known as Aorangi by mistakes (honestly made) arising out of the various transactions which took place in the early days: firstly, as to the northern portion of the land, because it was never included in any deed of sale; secondly, as to the southern portion of the land, because, although included in a deed of sale, we have every reason to believe that that sale was not made with the consent of the whole of the Natives interested; that on the settlement of the dispute which had arisen out of this the Crown took another deed confirming its title to the greater part of the land, but expressly leaving out of such new deed the part which gave special rise to the dispute; and that this new contract was intended to supersede and take the place of the former contract, and carry out the arrangement which had been made to settle the dispute.

We are aware that this finding differs somewhat from that of the learned Chairman of the 1873 Commission, but we respectfully submit to Your Excellency that the facts and circumstances could not have appealed so strongly to him as they do to us, otherwise he would not have ventured the opinion that the claim was an afterthought or invention on the part of the Natives. Probably this was the fault of the Natives in not making the real position clear to that Commission; for instance, they would appear not to have mentioned the name Aorangi before that Commission, but used the general name Whenuahou, although boundaries then given by them show Aorangi was part of the land then claimed by them. On this occasion they have had the advantage of the assistance of learned counsel.

The learned Chairman of the 1873 Commission, after summing up the case put before that Commission for the Crown—viz., that the whole matter was settled by payment at the Porangahau sale to the Crown—expressed the opinion “if this were the real intention, it is certainly to be regretted that the boundary of the Porangahau Block was not carried back to Kiriwai, which would have been a clear confirmation of the title of the Crown to the whole of the Umuopua. We asked Mr. Cooper why this was not done, and he was unable to satisfy us upon the point.” He then goes on to say that the non-inclusion of Whenuahou in the Porangahau deed was insufficient in itself (which is quite correct) to prove the Crown had abandoned its right over that piece of land, and lays great stress on the fact that the local Natives had not in 1865 obstructed the survey of the boundaries as laid down in the 1854 deed. In addition he says that for the past twelve years Mr. Johnston had been in undisputed possession of the disputed ground.

Assuming that the learned Chairman knew, and sufficiently appreciated the fact, that there were grave doubts as to the power of the four Natives to sell the land in the 1854 deed without the consent of (and also, as appears, in direct opposition to) the great body of owners, he does not seem to have been made aware of the fact that the land immediately to the north of the portion claimed to be excluded had not as a fact been included in any deed of sale, but by an unfortunate set of circumstances had been dealt with and treated as if it were so included. He would then have seen there was a strong reason for not extending the Porangahau deed or boundary to Kiriwai. Mr. McLean was present at the sale in 1858 of the Porangahau Block, and took possession of the deed. He knew of the former dispute and how it was settled. If that settlement included the validation or confirmation of the former deed he would, in our opinion, have taken care to have that land surveyed and included in the new deed. He was a gentleman well versed in Native custom and dealings, and knew the necessity for having such a position fully explained to the Natives. Moreover, he would understand, in view of the discussion and disputes that had taken place, that the Native mind would construe the omission of the portion as equivalent to “a returning of the land into their own hands.” Also, while it does appear that it was called to the attention of the 1873 Commission that Mr. Johnston had paid to the Natives certain grazing-money, there is no indication that the Commission had been told that Mr. Johnston had originally been

1873, G.-7,
p. 37.

1873, G.-7,
p. 142.
1862, C.-1,
p. 336.