

Enclosure in No. 2.

Edward Torrens Brissenden, of Epsom, in the Province of Auckland, Esq., stated: I know the farm at Waitakerei, belonging to Mr. John Kelly. I know the land that was in dispute between Mr. Kelly and Mr. O'Neill. The plan produced I recognize as being a delineation of this land. In the year 1870 I made an arrangement with Mr. Kelly for a portion of this land for a mill site, for mill-race for a tramway, and to cut flax from. A written memorandum was made of the arrangement, and I entered into possession, and expended a large sum of money. I spent nearly £4,000 in building a mill, making a mill-race and tramway, and clearing the river to make it navigable. By Mr. Kelly's and my instructions, a lease was prepared by Messrs. Whitaker and Russell. The document produced is the lease as approved by me, and which I should have signed had it not been for the dispute between Kelly and O'Neill. O'Neill claimed the site of a large portion of the tramway. When I first went, O'Neill claimed only a small portion of the land he afterwards claimed and was awarded by the Court. The part he then claimed is coloured yellow, and is bounded by the line marked on the plan, O'Neill's fence. After an occupancy of eight months he claimed the whole of the piece marked yellow. I then abandoned all my operations and have never resumed them. I have lost about four thousand pounds. O'Neill saw me making the improvements, but never objected. He offered at first to let me take the tramway through the small piece marked yellow, and bounded by his fence, for £15; afterwards he claimed the small piece of bush adjoining, and then offered that in addition for £10 more, or £25 altogether. My partner refused to go on, on the ground that there was no security of title, and I was left with the whole on my hands. Mr. O'Neill shifted his ground so often, I could not bring him to any conclusion. I know the ground marked yellow on the plan. About 100 acres of that land had been cleared. It must have been very costly: not less than from £20 to £30 an acre the cost of clearing, the timber being very large and thick underbrush. The cost of constructing the tramway on the yellow piece was about £280. I cannot say exactly what the cost of the clearing the river was, as the men were not constantly employed—not in bad weather—but the cost was considerable. My reason for abandoning my works was the difficulty about the title—the claim made by O'Neill. Apart from the value of the land now held by O'Neill and formerly Kelly's, there is much damage to Kelly's property by his losing the best part of his property, and that which had been most improved. O'Neill has now taken the heart of the property, very near up to Kelly's house, and a great deal of the water frontage—the best of it.

Taken before me this 19th day of February, 1872.

THOMAS BECKHAM.

Horatio Nelson Warner stated: I am a surveyor, residing in Auckland. I produce a plan of Mr. Kelly's and Mr. Allan O'Neill's property at Waitakere. The piece of land coloured blue, 193 acres, was marked off by Mr. Tole, the Government Surveyor, as the land included in the Crown grant to Mr. O'Neill, together with the strip coloured green, 27 acres, making together 220 acres. Mr. O'Neill claimed the piece coloured green and yellow, containing 173 acres, as included in his Crown grant. 146 acres of this land was included in a subsequent Crown grant to Mr. Kelly. Mr. O'Neill brought an action in the Supreme Court against Mr. Kelly, in which I was a witness for the defendant, to recover the land coloured green and yellow, and Mr. O'Neill obtained a verdict. The land thus recovered from Mr. Kelly comprises a large portion of his best river frontage, and some of the best land comprised in his grant. A considerable portion of it also had been cleared and laid down in grass, which must have entailed much expense, as the forest was very heavy. The boundaries of the land recovered by O'Neill run up very close to Mr. Kelly's homestead, and very considerably diminish the value of his estate. The portion of land included in Mr. Kelly's Crown grant, and awarded to Mr. O'Neill, contained 146 acres. This land has also running over it two-thirds of a tramway, laid down from a mill site to the landing-place at the head of the navigation of the river. That part on the plan coloured yellow is copied from the plan deposited as a record in the Supreme Court, to show the land awarded to Mr. O'Neill by the Jury.

Taken before me this 23rd day of February, 1872.

THOMAS BECKHAM.

John Stewart Kelly stated: I am the eldest son of Mr. John Kelly, defendant in the case of O'Neill v. Kelly. I know my father's land at Waitakere, and the land that was in dispute between himself and O'Neill. I resided for six years on the farm. I was grazing cattle and sheep, clearing the land, and putting it under grass. I know the portion of land marked yellow on the plan, and awarded to Mr. O'Neill. A portion of it was cleared and laid down in grass. The bush was very heavy and costly to clear. About 100 acres had been cleared. The cost of clearing has been between £28 and £30 an acre. We had a quantity of cattle running on the estate when the award was made to O'Neill, which were driven from the cultivated portion given to him by his son and his men, and have since gone wild. We have no means of getting them again: they could only be recovered by driving through O'Neill's property, which is now fenced. They were a mixed herd of seventy-five head, and worth, on an average, £9 per head. My brother, myself, and some men have tried to recover them, but have only been able to get a few of them. There are seventy-five still missing.

Taken before me this 7th day of March, 1872.

THOMAS BECKHAM.

John Kelly, of Auckland, Surveyor, stated: I am the defendant in the action of O'Neill v. Kelly. The action was brought to recover a piece of land that had been granted to me by the Crown. I purchased the land on the 28th March, 1859, and have been in possession until judgment was obtained against me. I had built a house and stockyard, and had made a farm of it. As far as I am able to judge, the plan by Baber, Warner, and Fairburn gives a fair representation of the property. The piece coloured yellow, that was awarded to O'Neill by the Court, runs up to the house and farm