

first, the line indicated by Hori Niania, and, secondly, another boundary coloured yellow—a give-and-take line—which approximately follows the edge of the bush as surveyed by Mr. Pelichet. We were satisfied on this latter point by collating Mr. Fitzgerald's plan with Mr. Pelichet's, finding that the yellow boundary gave the reserve seventy-two acres, and took away from the portion now allotted to Heta Tiki three small patches, formerly bush, which contain together twelve acres. Another small piece of one acre is also taken away from the original reserve; the gain on the whole being fifty-nine acres. The yellow boundary is, as already mentioned, that which has been adopted in the issue of the Crown grants both to the native owners of the reserve and the conterminous European purchasers.

That in assuming this boundary no injustice has been done to the native owners of the reserve, appears from the fact that the area comprised in the six grants issued for the several sections of Tarewa is 2,350 acres, the river beds not being included. This is 215 acres in excess of the area as estimated in 1851. As the whole reserve gained by the adoption of the yellow give-and-take line in 1861, the particular sub-division allotted to Heta Tiki and his co-grantees by the Native Lands Court in 1867 must be deemed to have been increased, and not diminished thereby, notwithstanding the cutting off of the small patches of bush previously referred to.

Against the documentary evidence to which I have referred is to be set the evidence of various natives, who were ready in succession to affirm, that the boundary of the reserve was not to be the bush-edge, but was to include land beyond. They were, however, wholly unable to give any other definite limit. Hori Niania had the assurance to pretend, that the true line started from a certain kahikatea tree close to the Tukituki, noted in Mr. Pelichet's field-book, but not forming a point in his survey of Tarewa, and that it ran thence in a straight line to the point on the Waipawa claimed by Heta Tiki as the extremity of his boundary in this direction. Such a line has never been heard of before in connection with this reserve, and would take in some hundreds of acres additional.

I consider it to be proved that the yellow line is the approximate boundary of the reserve as agreed to in 1851. It is also proved, that the line claimed by the complainant was pegged out by Mr. Fitzgerald and Mr. Cooper, and was no doubt at the time taken by Mr. Cooper to be the boundary. But this was a misapprehension induced by the wrong information given to Messrs. Cooper and Fitzgerald, wilfully or ignorantly, by Hori Niania; and it is against conscience that the native owners should profit by the fraud or error of their own agent.

I therefore consider that the claim has not been made good.

C. W. RICHMOND.

I am, on account of the different statements made as to boundaries, unable to give a certain opinion.

F. E. MANING.

REPORT ON CASE No. XXXII.

CROWN PURCHASE No. 5 (*Kai-arero*).

In this case the complainant was Te Waaka Kawatini. He claimed as a native reserve a small piece of land on the right bank of the Wai-o-hinganga, at the mouth of that river, partly bounded by the river and partly by the Napier lagoon (Whanganui-o-Roto). The piece in question is within the limits of the Ahuriri block, purchased by Mr. M'Lean for the Government in 1851. Complainant said he was present at the signing of the deed of cession. A great many persons were present: Mr. M'Lean was in the centre. The deed had been read before the complainant arrived. Complainant said at once to Mr. M'Lean, "Where is Kai-arero?" Mr. M'Lean replied, "Waaka, why are you troubling about that small bit?" In consequence of what Mr. M'Lean said, Waaka considered that Kai-arero was handed back to him. The Crown, and purchasers under it, have been ever since 1851 in quiet possession; but Waaka stated that he had continually demanded the return of the land from M'Lean. A certified copy of the deed of cession was produced. The first name to the deed is Tareha; the second, Te Waaka Kawatini. The reserves are very carefully specified, as, first, the island Roro-o-kuri; secondly, Whare-rangi—a block on the lagoon, containing 1,845 acres; thirdly, an inland reserve at the Puketitiri bush. None of these has any connexion with Kai-arero. Paoro Totoro, who appeared as a witness, admitted that he had heard the deed read over, and the three reserves mentioned; that, after doing so, he signed the deed without asking that Kai-arero should be reserved; and that he had never since claimed it.

The only other witness was a man to whose testimony the Commissioners could attach no weight whatever.

Neither Mr. M'Lean, nor Mr. G. S. Cooper, who for some years was District Land Purchase Commissioner at Hawke's Bay, is aware of any understanding with Te Waaka about Kai-arero, but these gentlemen were not examined by us as witnesses.

In the face of the provisions of the deed of cession, and after a quiet possession by the Crown, and those claiming under it, of more than twenty years, the alleged agreement or understanding appears most improbable, and we recommend that the claim be disallowed.

C. W. RICHMOND.

NOTE.—This Report is concurred in by Mr. Commissioner Maning.