The Lands Department maintain that if these minutes do show an award, then that award has been satisfied by the reservation of 1,021 acres at Tautuku for the Natives; that there is no record in the minute-book of any award of land at Tautuku, and that there has been, in short, a substitution of Tautuku for Waiau, which both Natives and Crown have recognized.

At first the claimants placed some reliance on the fact that on several of the Southland Survey Office maps some sections situated on the western bank of the Waiau River, and containing altogether about 1,712 acres, were marked with the letters "N.R.," or the words "Native Reserve." The departmental officers, however, gave evidence to the effect that this had been done in consequence of instructions from the Lands Office, Wellington, that these lands were to be set aside for Native and half-caste claims and not otherwise dealt with. These instructions are contained in a letter from Mr. Barron, Assistant Surveyor-General, to the Commissioner of Crown Lands, Invercargill, dated 28th June, 1892, and Mr. Wilford subsequently admitted that no inference in favour of his clients' claim could be drawn from the fact that the plans were so marked or the lands not thrown open for settlement.

Three Natives, Taituha Hape, Raniera Erihana, and Tiaki Kona, who had been present at the sitting of the Native Land Court at Dunedin in May, 1868, were called by Mr. Wilford.

Taituha Hape stated that Court settled the owners for Waiau, but that he knew nothing about Tautuku. He asserted that nothing was done in the Court regarding Tautuku on the same day that Waiau was dealt with.

Raniera Erihana said that after the matter of the Waiau Reserve had been completed the question of another reserve at Tautuku was discussed with Mr. Mackay, Native Commissioner, at the Prince of Wales Hotel, and that after lunch on that day the question of an award for Tautuku was mentioned in the Court, but was not finally settled by the Court till some days later; that altogether 1,000 acres were reserved at Tautuku, and 1,000 acres at Waiau.

Tiaki Kona, or John Connor, was present outside the Court at Dunedin in 1868 with other Natives, when the list of owners for Waiau was made up by the Natives and Mr. Mackay. He did not go into the Court when the list was handed in and read. He stated that at the meeting with Mr. Mackay it was agreed that 1,000 acres at Tautuku should be given to the same people who had been included in Waiau. Further, he said that this meeting took place on the evening of the day on which the Waiau list was settled. As he left Dunedin the next morning he cannot say if Tautuku was ever brought before the Court.

Before the Landless Natives Commission in 1914 Raniera Erihana and Phillip Ryan gave evidence to the effect that Tautuku was settled before the question of Waiau was brought up, which does not coincide with the statements made before us.

All the three witnesses named above would be young men in 1868, and naturally would not take an active part either in the proceedings in Court or in discussions which are said to have taken place with Mr. Mackay outside as to the lands to be set apart for Natives. As they themselves admit, the elders would attend to those matters. After the lapse of so long a period as nearly fifty years their recollection of what happened in 1868 cannot be very clear, and, however honest the intentions of the witnesses may be, it is more than probable that the conversations and discussions of later years have become interwoven with the memories of the earlier occurrences. Being Natives, they have naturally been in contact with those who are interested in the success of this claim, and, moreover, are either claimants themselves or their wives or relatives are. Therefore we do not attach much weight to their testimony.

The rest of the Native evidence was led with the intention of showing that the Natives had used this area of 1,712 acres on the west side of the Waiau River for various puposes at times, and of identifying it with the alleged award made by the Chief Judge Fenton. The evidence is not sufficient, in our opinion, to warrant us in drawing any strong inference from it.