

Continued

21-5-90

Mr Bush If time is allowed I will communicate with the Government.

The Court adjourned at 10.45 a.m. until 10 a.m. tomorrow.

Thursday 22nd May 1890

present place the same

The Court opened at 10 a.m.

O A M A R U C A S E R E S U M E D

(No arrangement arrived at)

S. Bush The block was surveyed as one block, but when the block was heard, the Court divided it into 7 divisions.

A rehearing of the block was applied for and refused by the Chief Judge.

About 1 month after that **dismissed**

Rōbert Smith Bush (sworn) I was directed by the Government to apply to the Court
Agent for Crown at Opotiki to have land awarded to the Crown in each division
2/- in proportion to area, and to offer for the Crown to undertake
the subdivision survey, if land at 1/- per acre was then award-
ed to the Crown for each of such subdivision surveys -

In April 1886 I

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Continued

O A M A R U S U R V E Y

A. S. Bush

was asked by the Natives who applied to have the land investigated to have this land surveyed by the Government and offering land in payment, but as the Survey Department could not undertake the survey. The Natives then asked a Surveyor to be sent and the Natives signed i.e. Tauraka Nikora, Hautakaru, Tairua Apanui Petamana Patangata an agreement with Mr Baker to survey the land at 5^d per acre. The agreement is I beleive lost.

The Natives also agreed if after the block was investigated the survey was not paid that the Surveyor should take land at 1/- per acre in any part of the block. As the money was not paid, the Government were asked by the Natives to pay for the Survey.

Mr Barron of the Survey Department sent a wire to the Assistant Survey General in which he says that Tauha Nikora for the Natives had asked Government to pay for the survey.

Tauha Nikora afterwards sent in a formal application for the Government to pay cost of survey. I produce this letter.

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charges continued

R. S. Bush

The Natives Committee at Opotiki met in the Court House adjoining my Office and I know of my own knowledge that the survey of this block was twice before the Committee and it was so generally known that any Native who claimed an interest in the land had an opportunity of appearing before the Committee.

The Committee confirmed the application for survey.

The Government now only claim at the rate of 3^d per acre for the survey and the Natives have had the benefit of the survey and map as they have had the land awarded to them upon this plan.

Other Natives, than those whose names are on the application came and asked that their land should also be included in the one survey. The whole block is in point of fact owned by one tribe, Whakatohea one small portion excepted.

The Natives, Hohaia Iti, and Rewiti Newa etc, came and asked me personally to get the surveyor to include whatever interest they owned in the block.

I ask if this Court is inclined to make orders in each division to make orders at once as against such divisions as are

22-5-90

O A M A R U S U R V E Y

R. S. Bush not represent now -

V. G. Day The order for rehearing is as to the survey charges over the whole block and not as to divisions.

R. S. Bush I applied to the Court at Opotiki for land and held a meeting with the Natives before I went into Court, but we could not agree, we went into Court next day and the representatives of No. 3, 4, and 5 divisions assented to the land being taken.

Representatives of 5 of the divisions No 3, 4, 5, 7, 2, agreed to give land at 1/3 per acre for cost of survey of the outside boundaries.

Rewiti Newa was one who assented for No. 4 division, Paora Pakihi represented No. 2 division.

Te Hautāmihana represented No. 3 division.

No. 5 represented by Te Ua and Paora Pakihi

Heremia Hoera represented No. 7

Te Ua was not present in Court on the first day.

Tamaikoha for No. 1 would assent to nothing and went out of Court.

Awanui assented for No. 6 division.

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Charges

R. S. Bush After some wrangling in the Court five of the representatives agreed to give land for the outside boundaries, 5 of the parties agreed to give land, then for both the outside and subdivisional surveys.

The Court finally made orders for land for both surveys as to divisions No's. 2, 3, 4, 5 and 7 and orders to the Crown for No. 1 and No. 6 as to the outside boundaries.

G. Day I ask that the Court only to deal with the cost of outside survey.

R. S. Bush I know an application was sent in to have the land investigated,
V. G. Day for but I don't know where the boundaries are as set out in that
Natives application.

I have no idea if such a block could be surveyed for a less sum than.

Charles Goldsmith (sworn) I am the District Surveyor. I was 17 in the Bay of
Plenty District. I know some of the lands. The land is very
Witness for R. S. broken about this block. This survey was made by arrangement
Bush by Assisstant Surveyor General with Surveyor to have the land
surveyed at 3^d per acre. About the 5th February 1887.
He allowed 3^d per acre on account of the great difficulty of
getting

25-5-90

O A M A R U C A S E

E. C. Goldsmith men and provisions on to the block and also because some triangulation work would be required and also because the Natives had previously agreed to this price.

I say that 3^d per acre is a fair price because the country is so rough and difficult to travel over.

I consider that as the Government has had it's area allotted in different parts that 1/5 per acre a fair value.

The land is bad being broken, black birch country of fair soil, I have been along the Eastern and Northern boundary, and from the Eastern hills, you can see nearly all over the block. I have been on some of the high hills.

I considering the scattered nature of the Government pieces and the difficulty of access and east of opening the country.

I consider 1/5 per acre a fair price for the land.

The cost of the subdivisional survey is at the rate of #12 per mile.

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O A M A R U S U R V E Y

Jones
Cont

these are all high mountains I have also been in the Kowhai track which passes near the centre of the block.

The soil is good near the rivers, and black birch grows on all the mountains.

There are no flats along the river, but the soil is good.

The part cut off for the Crown in No. 4 and 3 and 5 divisions includes some very bad land, being high and rough.

I think 1/3 peracre a very good price, it is very difficult of access and does not adjoin any other Government land.

The Government bought better land in the Motu block at 10^d per acre.

The division No. 6A is about the value as the others. The Southern end of the block is better or less rough than the Northern end. I consider 1/3 a large price for such land, as land for a private person such a small portion would be value less.

Mr Bush closes case

V. G. Day

I have no witnesses to call : -

C H A R G E S C O N T I N U E D

V. G. Day

I cannot contest the price of the land in the pace of the evidence adduced.

But I contend the cost of survey to great, in cases were a block exceeds 25,000 acres, special arrangement has to be made and must be made before the survey is commenced.

The arrangement as to 3^d per acre was made before the survey was made. Between the Assisstant Surveyor General and Mr Baker and now we find about 36 miles of common boundaries which are not allowed for in the sum of £1306.

It has been mentioned that the Natives signed an agreement for survey at 5^d per acre but now they state that is lost.

As shown by dates of Authority on the map the survey work only took 6 months in mid-winter to complete and for 6 months work the surveyor wishes to charge the sum of £1306.

I submit that a deduction should be made for the common boundaries.

S. Bush

The survey was arranged for between the Natives and Mr Baker and it was confirmed by the Assisstant Surveyor General. I witnessed the signing of the special arrangement.

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O A M A R U C A S E

R. S. Bush

At 5^d per acre which was reduced by Assisstant Surveyor General to 3^d per acre.

And no travelling allowance has been charged and this I think ought to have been done.

The Court adjourned at 1 p.m.
until 2.30 p.m.

The Court resumed at 2.30 p.m.
OAMARU Resumed

J U D G M E N T

By the Court
fl.0.. order

We confirm the orders of the Judge below.

No evidence having been given entitling us to say his decision was wrong.

5 hapus out of 7 acre now shown to have agreed in Court and the Judge having stated that all consented and there being now no evidence to the contrary we cannot assume that they did not consent. Mr Day has called no witnesses at all and the onus is upon him (for applicants) to show the decision of Judge O'Brien to be incorrect.

We have also positive evidence now produced that the price charged for the survey was a fair and reasonable price, and are further have positive evidence that the land given in payment was paid for at its full value. In the absence of any evidence to the contrary are cannot say that the survey charge was excessive or

J U D G M E N T C O N T I N U E D

that the price for the land was insufficient. But these two questions were the only two questions on which our decision was asked.

We have no grounds for saying that on either question Judge O'Brien was wrong in decision.

Orders as set forth on page 14 confirmed.

The Crown to complete the subdivision survey of No. 2, 3, 4, 5, and 7 in consideration of the area allotted to the Crown.

The Court then adjourned until Tuesday 27th May 1890.

When Tahora No. 2 rehearing case will be taken

22/5/90

(16)

S. S. Bush
cont.

Oamaru Survey

was asked, by the natives, - who applied to have the land investigated to have this land surveyed: by the Govt and offering land in payment; but as the survey Dept. could not undertake the survey: the natives then asked a Surveyor to be sent; and the natives signed i.e. Hauwaka Rikora, Hautakapu, Larua, Apanui, ^{petamana palangata} an ~~arr~~ agreement with Mr Baker, to survey the land at 5^d per acre, the agreement is I believe lost, -

the natives also agreed, if after the block was investigated the survey was not paid, that the surveyor should take land at 1/ per acre in any part of the block: as the money was not paid, the Govt. were asked by the natives to pay for the survey -

Mr Barron of the Survey Dept. sent a wire to the Chief S. General, in which he says that Hauwaka Rikora of the natives had asked Govt to pay for the survey; -
Lauha Rikora afterwards

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charges

R. S. Bush
to cont

cont^d

The Native Committee at Opotiki met in the Court House, adjoining my office; and I know of my own knowledge; that the survey of this block was twice before the committee, and it was so generally known, that any Native who claimed an interest in the land, had an opportunity of appearing before the committee.

The committee conformed the application for survey.

The Govt. rules only claim at the rate of 3^d per acre for the survey; & the Natives have had the benefit of the survey and map; as they have had the land awarded to them upon this plan.

Other Natives, - than those, whose names are on the application - came and asked that their lands should also be included in the one survey. The whole block, is in point of fact owned by one tribe; ^{whakaha} one small portion excepted.

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22/5/90

(18)

Uamare Sur

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Representatives of 5 of the divisions ^{1^o 3, 4, 5, 7, 2} agreed to give land at 1/3 per acre for cost of survey of the outside boundaries -

Reute Rewa was one who assented ^{for 1^o 4 division} Pava Pakihi represented 1^o 2 division
Te Hau Tamihana represented 1^o 3 division
Te Ua and Pava Pakihi represented 1^o 5
Aheremia Hoera represented 1^o 7 -

Te Ua was not present in court on the first day.

Tamaitohu for 1^o 1 would assent to nothing and went out of

charges

3 Bush bench after some wrangling in the
 mp agreed to give land for the outside
 boundaries: 5 of the parties agreed
 to give land, then for both the outside
 and subdivisional surveys:
 the bench finally made orders
 for land for both surveys as to
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 orders to the Crown for 1^o 1 and
 1^o 6. as to the outside boundaries:

1. Day I ask that the bench only to deal
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 a block could be surveyed for a
 less sum or than

Charles Goldsmith (sworn) I am the District
 Surveyor: I was in the Bay of
 Plenty District: I know some of the
 lands: the land is very broken about
 his block: this survey was made
 by arrangement by Asst S General with
 the Surveyor to have the lands surveyed
 at 3^d per acre: about the 5th Feb 1889

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12/5/90

20

E. E. Goldsmith
Cont.

Oamaru case

men and provisions on to the block, and also because some triangulation work would be required; & also because the natives had previously agreed to this price: I say that 3^d per acre is a fair price, because the country is so rough, and difficult to travel over.

I consider that as the Govt. has had its area allotted in different parts, that 1/3 per acre a fair value.

The land is bad, being broken; black birch country of fair soil; I have been along the eastern and northern boundary; and from the eastern hills, you can see nearly all over the block; I have been on some of the high hills.

I considering the scattered nature of the Govt. pieces, and the difficulty of access; and cost of opening the country, I consider 1/3 per acre a fair price for the land: -

demith
 trig. work done and yet not shown
 of plan were the are common
 boundaries an reduction is made
 proportionately; the £13.06 is
 made up at the rate of 5^{rs} per
 acre over the whole block; the
 natives had agreed to pay 5^{rs} per
 acre for the survey if contracted
 for I do not think the survey would
 have been done for less than 13^{rs}
 per acre; the rates adopted from
 other surveys were allowed for in
 charging 3^{rs} per acre; the Govt.
 allowed 1^{rs} per acre for triangulation
 survey.

I don't think this land
 worth more than 1/5 per acre;
 there are about 36 miles
 of common boundaries; but
 common boundaries deductions do
 not apply to areas beyond 10,000
 acres;

I know this land; I
 have been over nearly all the
 north western end of block;
 as far south as Omai Koto
 I have been over all the
 northern boundary line; I have been

31

Jones
to land

12/5/90

22

Camara Survey

These are all high mountains; I have also been on the Kowhai track which passes near the centre of the block.

The soil is good near the rivers; and black birch grows on all the mountains;

there are no flats along the river, but the soil is good.

The part set off for the Crown in 1864 & 3. 5 divisions includes some very bad land being high and rough;

I think 1/3 per acre a very good price, it is very difficult of access and does not adjoin any other Govt. land.

The Govt. bought better land in the Mote block at 10^s per acre.

The Division 1669 is about the value as the others;

The Southern end of the block is better, or less rough than the Northern end; I consider 1/3

a large price for such lands as land for a private person such a small portion would be valueless.

larges
G. Day

6 cont'd

23

32

I cannot contest the price of the land in the face of the evidence adduced, - but I contend the cost of survey too great: in cases were a block exceeds 25,000, a special arrangement has to be made, and must be made before the survey is commenced.

The arrangement as to 3rd per acre was made before the survey was made, a between the ass: Surveyor General and Mr. Baker, and now we find about 36 miles of common boundaries which are not allowed for in the sum of £1300. It has been mentioned that the natives signed an agreement for survey at 5th per acre, but now they state that is lost.

As shown by dates of authority on the map the survey work only took 6 months, in mid-winter to complete, and for 6 months work the surveyor wishes to charge the sum of £1300.-

I submit that a deduction should be made for the common boundaries.

S. Bush

The survey was arranged for between the natives and Mr. Baker and it was confirmed by the

22/7/90

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Pamarian case

A. S. Bush

at 5⁰ per acre; which was reduced by ass. S General to 3⁰ per acre, and no travelling allowance has been charged and this I think ought to have been done.

The court adjourned at 1 pm until 2.30 pm the court resumed at 2.30 pm Pamarian resumed

By the court order

judgment
We confirm the orders of the judge below. No evidence having been given entitling us to say his decision was wrong.

5 Haps out of the 7 are now shown to have agreed in court and the judge having stated that all consented and there being now no evidence to the contrary we cannot assume that they did not consent. Mr Day has called no witnesses at all and the onus is upon him (for appellants) to show the decision of judge Obrien to be incorrect.

We have also positive evidence now produced that the price charged for the survey was a fair and reasonable price; and we further have positive evidence that the land given in barment was hard for

Judgment cont.

that the price for the lands was insufficient. But these two questions are the only two questions on which our decision was asked. We have no grounds for saying that on either question Judge Abner was wrong in his decision.

Orders as set forth on page 14 confirmed.

The court then adjourned until Tuesday of 16th 2, 3, 4, 5 and 7, in consideration of the area allotted to the town.

The court then adjourned until Tuesday 27th May 1890 - when before 16th 2 rehearing case will be taken.