

Touching the aforesaid allegation, the Featherston River Board claim authority to open the mouth of the outer lake, under the provisions of "The River Board Act, 1884," whenever the waters threaten to inundate the adjacent land, both the upper and lower lakes being within the boundaries of the South Wairarapa River District, as proclaimed on the 16th September, 1886. (*Vide New Zealand Gazette* No. 50, of 23rd September, 1886.) It is submitted, however, that the action of the Board is *ultra vires*, as no authority is conferred by the aforesaid Act, nor in the clauses of "The Public Works Act, 1882," that are incorporated with the River Board Act, as the powers of the Board are confined to the conservation, &c., of rivers, streams, and watercourses, and opening a lake does not come within such powers.

In 1889 the following clause was inserted in the Public Works Act of that year: "18. The powers conferred in respect of drainage under Part VIII. of the principal Act [1882] shall extend to and include the power of making, constructing, and maintaining an outlet to any lake or other body of water not *having a navigable communication* with the sea or any navigable river." It will be observed that the power conferred under this section only authorises the construction of a navigable channel, and does not confer any authority to open a lake, the property of private individuals held under a compact with the Imperial Government, for mere drainage purposes; nor does it confer any authority on the River Board to meddle in the matter. The County Council is the only local body authorised to act under the aforesaid clause, and the powers of the Council under Part VIII. of "The Public Works Act, 1882," prior to the passing of clause 18 of the Act of 1889, are, according to the subjoined opinion of the Solicitor-General, insufficient to deal with the drainage of a natural reservoir like the Wairarapa Lake.

In reply to a request preferred by the Native Minister on the 22nd March, 1888, as to whether any local body is vested with power to open the Wairarapa Lake to prevent its overflow upon the land of the settlers, the Solicitor-General gave the following opinion: "The only local body that has power to carry out drainage-works is a County Council acting under the authority of section 268 and the following sections of 'The Counties Act, 1886.' The power is to execute 'drainage-works of any sort,' but these must be taken to mean drainage in the ordinary sense of removing superfluous water from land for the purpose of improving it. It does not appear to me that altering a large natural reservoir like the Wairarapa Lake, which receives the waters of several large streams, can be said to be within the meaning of the drainage-works contemplated by the Counties Act. The question is, however, rather one for an engineer, as no particulars are given as to the extent or nature of the works it would be proposed to execute. All I can say upon the question as put is that there is a legal power to execute 'drainage-works,' but that, in my opinion, a work of such presumed magnitude and effect as draining a large lake was not contemplated by the Act."

With reference to the concluding portion of the aforesaid allegation, that the action of the River Board in trespassing on their property and forcibly entering thereon, and, against the will and consent of the owners, opening the mouth of the lakes, thus depriving the owners of their fishing and proprietary rights, without compensation

The complaint alluded to above is a justifiable one, inasmuch as the property on which the trespass is made belongs to the petitioners, and the interference with their fishing-rights is an infraction of the 2nd article of the Treaty of Waitangi, which guarantees to the Natives *the full, exclusive, and undisturbed possession* of their lands and estates, forests, fisheries, and other properties which they may collectively or individually possess, *so long as it is their wish and desire to retain the same in their possession.*

Both of the Wairarapa Lakes, and also the spit dividing the lower lake from the ocean, are the property of the Natives, and no disposition has been shown on the part of the owners, excepting in the case of a few individuals in 1876, to alienate any of these properties.

Before the River Board arrogated to itself a right to open the lower lake the settlers recognised the right of the Natives, and usually asked their permission to open it, besides paying them compensation for the concession; but the Board entirely ignores them, and will not even delay action for a short time until their fishing is over before allowing the flood-water to escape.

It is while the lakes are at their highest flood-level that the eels abound at the mouth of the lower lake, and are caught in large quantities by the Natives. A much larger variety of eels are obtainable during this period, and some of the choicest kinds can only be procured when the lake is flooded. The sudden opening of the lake by the River Board at such times allows large quantities of eels and other fish to escape to sea before the Natives have time to secure them, and this is the cause of their complaint.

The outlet to the lower lake usually becomes closed about the end of December, and remains closed till April, excepting artificial means are resorted to to open it. It was during these four months that the best fishing-season existed for the Natives, in consequence of the eels and other fish congregating near the outlet, waiting for the water to burst out, to escape to sea. It will be seen, therefore, that the action of the River Board in opening the lake before the fishing-season is over is a serious interference with the proprietary rights of the Natives.

The Native owners, recognising that the flooding of the lake and the inundation of the adjacent land is a great public inconvenience and loss, have consented to allow the Government, on certain conditions, to open the lake at the end of February; but it is possible that it may not be practicable to concur with the conditions on which the stipulation is based.

Many persons may probably not appreciate the importance of the eel-fishing to the Natives; but it has a parallel in English history, as not only the name, but a great part of the revenue of one of the richest abbeys and cathedral churches in England was derived from eel-ponds.

In the primitive state of life formerly led by the Natives the eel-preserves were the most important property they possessed. Eels were a favourite food with the Maoris, and a good eel-fishery like the Wairarapa Lakes is of as much value to them as the banks of Newfoundland are to those who deal in cod-fish. To European minds cultivation may seem a more important exercise of ownership than catching eels; but you may raise crops or depasture stock anywhere, but eels can