Block was the flood-line, Mr. Russell gave the following evidence before the Commission on the 27th April last: "In reply to my statement to Mr. McLean about the settlers wanting to open the lake because their land was flooded, he made use of the following expression: *It is impossible the settlers land could be flooded, because the land below the flood-line had not been acquired.*" And under cross-examination, Mr. Russell stated, "I am positive that Mr. McLean told me that he had not bought the land below the flood-line; but I am unable to account for the inconsistency of this statement with the description in the deed—that the boundary follows the margin of the lake." On re-examination he stated, "Mr. McLean said that the lake must never be opened; that the high-water line was the boundary of the Crown land. It was impossible, therefore, that settlers could be injured by the closing of the lake, as the land that was flooded belonged to the Natives. The land ceded to the Government was the dry land. . . . Consider that the sale of the Taheke (Puata) Block in 1862 is inconsistent with the contention that the whole of the low land in what is known as the Turanganui Block was sold to the Crown in 1853."

With reference to the deed of 1876, on which reliance is placed as conferring a right to open the lake, I would beg to submit that no such right is conferred*. In the first place, the Government relied on section 42 of "The Immigration and Public Works Act, 1871," as conferring authority to acquire Native land; but the authority conferred under that section was to acquire for a specific purpose, which the acquisition of interests in the Wairarapa Lake does not come within the meaning of; and, secondly, clause 87 of "The Native Land Act, 1873," impliedly repeals the aforesaid section. All that has been acquired, therefore, is a certain number of fishing-rights, and some of these are of doubtful value. If the position is correctly stated the acquisition of these shares would not confer any right to open the lake at all, but more especially during the season while the other co-owners in the fishery were entitled to have their rights protected.

It has been urged that because Hiko Piata and a few other leading men were parties to the sale that consequently the interests acquired were of more value, and confer larger powers and authority than if the same shares had been acquired from persons of lesser rank; but the only difference in point of value would be, that some might have the right to fish in both lakes, and others only in one. It will be obvious, therefore, that all the Crown could have acquired was exactly what each of the signatories to the deed of 1876 possessed in his own right, and that the acquisition of such rights by the Crown did not confer on it any privileges beyond those the vendors had previously enjoyed themselves.

As regards Hiko's rights, it has been asserted that he possessed a paramount control over the lakes, and could dispose of them at his will; but this was not the correct position of the matter. Hiko, it was true, had a superior control to this extent: that he was the only person who could open the fishing-season in the lower lake; but on that ceremony being over his position was exactly similar to that of other persons of his own rank, and neither he or any of the others could or would think of performing any act that would operate detrimentally to the interest of those who possessed fishing-rights in the lakes.

To clearly elucidate the matter, it may be here observed that a New Zealand chief did not possess a sole right to the land, nor yet to eel-preserves or other food-producing places, which were even more common property if possible than land was amongst the hapu or tribe to which such possessions belonged. It has been clearly demonstrated by many authorities on the matter that there was a right of property in the soil not residing in the chiefs, but in them conjointly with their whole tribe, which they, the chiefs, could not alienate, because they were not the sole proprietors thereof, for, although they were the recognised authority for treating for the sale of it, they possessed no more than an individual interest, and, unless with the consent of the tribe, could not surrender any portion of those lands held in common by it, and this rule extended to all the proprietary rights of the tribe in all forms of property.

Touching the contemplated claim for compensation incidentally alluded to in the evidence stated before the Commission for not setting apart the reserves enumerated in the Turakirae deed, on the ground that these reserves, according to the terms of the deed, were reserved for all the persons interested in the land ceded, it is impossible to determine by the wording of the deed who the reserves were intended for, but the literal reading of the words used—"the lands reserved by us within the boundaries now sold are"—would mean that these lands were intended for the persons who executed the deed, and they consisted of four persons—viz., Maraea Toatoa, Hemi te Miha, Raniera te Iho, and Ngairo Takatakaputea; but it does not follow that these were all or any of the persons for whom the lands were set apart, as instances are known of reserves made under similar circumstances in other cases being intended for persons who did not execute the deeds of purchase.

Three out of four of these reserves were sold shortly after the sale of the Turakirae Block by some of the leading men of the party who claimed to own the particular parts reserved, and these sales were known of at the time, and no exception was made to them. It is too late now to revive questions of this kind.

It is respectfully submitted that the evidence taken before the Commission, and the research amongst the records and papers pertaining to the lake question, warrants the following conclusions:—

1. That it is doubtful, notwithstanding the Turanganui Block is described as being bounded by the lake on the western side, that this was the boundary agreed on between the Natives and Mr. Commissioner McLean, but that such boundary was merely placed there as a matter of form, and for the sake of easy description, and that subsequent acts of the Government point to the fact that the contention of the Natives is correct—that the flood-line was the actual boundary agreed on.

* The invalidity of this purchase is supposed to have been cured by clause 3 of "The Native Land Acts Amendment Act, 1881."