He said, 'Impossible! as I only bought to high-water mark. The water can never come on Government land.' I spoke of the land (below high-water mark) being bought from Government. Mr. McLean said there would be no end of trouble over the land being sold without proper surveys. Mr. McLean said any person putting a spade in the lake would be fined £50, as it would violate the purchase and break faith with the Natives altogether. Mr. McLean himself spoke of the high-water mark.' It is submitted that the evidence which we quote is of the utmost importance for the following, in addition to the reasons already given.

The Maori at the date of the cession of the Wairarapa lands was in his primitive state. One feature of that state was that written instruments were almost unknown, and their importance as evidence and exclusive evidence of the terms of a bargain consequently unrecognised. They attached equal if not greater importance to the words of a person in authority uttered, upon a great occasion, in presence of the people, than to the writing which they were asked to attest by making a mark. European people, and especially those nurtured for centuries in the principles of the Statutes of Frauds—which makes writing the exclusive evidence of certain bargains—pay little attention to declarations at the time of a sale which are not made part of the instrument in writing. This difference in the habits and practice of the Maori and European must be taken into account when weighing the importance of Mr. McLean's statements as testified to by perhaps the only independent witness now living who saw and heard what took place.

It may be alleged that if Mr. McLean really guaranteed the Native owners in the full enjoyment of their fishing-rights that guarantee should have been expressed in the deeds, and that the Native owners should have insisted upon this being done. To this it is replied: That the deeds themselves show that the waters of the lake were reserved, together with the said spit at the mouth. That one of the most important deeds—that of the Turanganui cession—has not been produced by the Crown. That the Secretary to the Native Land Purchase Commissioner, present at the sale, testifies to the terms agreed upon. That the importance of the written instruments, and, still more, their exclusive effect, was not at that time recognised by the Native race. This last proposition is supported by numberless examples in dealings of the two races. That the testimony of Mr. Russell, before quoted, and of the deeds themselves, is supported by the subsequent conduct and admissions of both Mr. McLean himself and of the Native Department.

If it is not the case that on the cession of the Wairarapa lands the full enjoyments of the Native fishing rights was reserved, how explain. (1) The acquiescence in the Native rights by the settlers to the year 1889, a period of thirty-six years, during which period the lake was only opened by permission of the Natives when the fishing was at an end, or upon payment of an agreed sum of money as compensation; (2) the recognition by the Crown of the Native rights by the several attempts to purchase the same which have already been detailed, and upon which the Crown has expended £800 in acquiring the rights of seventeen owners out of 138 included in the memorial of ownership issued by the Native Land Court to the Natives; (3) the fact testified to by Mr. Russell, that when a meeting was held in Featherston to request the Government to open the lake, and Mr. Russell, as a Justice of the Peace, was called upon to preside, and transmitted a resolution to Government embodying the feeling of the meeting, he was sharply reprimanded by the Government for taking part as a J.P. in a meeting likely to cause trouble; (4) the grant of the memorial of ownership by the Native Land Court to 138 Natives as owners, according to Native custom, of the lake and the sandspit; (5) the report of the Public Petitions Committee of Parliament made after hearing evidence. We submit that these facts conclusively establish the Native right.

The second claim which is asserted by the Native owners of the Wairarapa Lake is that the Government of New Zealand have wrongfully seized a large area of land on the eastern side of the lakes which the Native owners never ceded to the Crown. The evidence which is relied upon to support this claim is that— (1.) The land ceded to the Government in 1853 was bounded by the high-water mark of the lake; this is supported by the evidence of Mr. Russell and others. (2.) That the Government have admitted this position at one point by subsequently purchasing from certain Natives land which, according to the boundaries now insisted on, should have been the property of the Government. These parcels of land have been already referred to. (3.) That the boundaries of the lake were altered in 1855, subsequent to the cessions, by the earthquake, which raised large tracts of land theretofore covered with water.

A sketch survey has been made, and the map has been put in evidence, showing the high-water mark of the waters of the lake. To this map we crave leave to refer. The boundary as laid off on this map is clearly distinguishable on the ground. This boundary is not insisted on as determining the boundary throughout its extent, but merely in places where the land has been proved by evidence to have been raised by the earthquake.

The land in the Kahutara cession is not claimed by the Natives.

The Native owners allege that their vested rights have been violated, and that consideration which would be extended to Europeans as of course has not been shown to them. They assert that, whether their claim to land be ascertainable or no, their fishing-rights include the right to flood acres of swampy land on the borders of the lake. They demand as of right as British subjects under the Native Rights Act, and, further, as parties to the Treaty of Waitangi, free compensation for the rights of which they have been deprived ,or, in their alternative, their restitution.

There are other points raised by the evidence upon which we forbear to touch, such as the sale of reserves, &c.

Whilst fully acknowledging the patience, impartiality, and courtesy of the Commissioner, we have to express regret that the Crown was not represented by counsel, as the Commissioner was thus placed in the difficult position of having to conduct the case, summon, examine, and cross-examine witnesses on behalf of the Crown. We should have expected more consideration at the hands of the Government.

We are, &c.,

A. S. Menteath,

C. A. Pownall,

10th June, 1891. Counsel on behalf of Native owners of lake.