

Tutaekuri had prior to Captain Cooke's visit changed its course and was flowing into Te Whanga. The whole of Te Whanga was then under water, and undoubtedly a fair quantity of water flowed through Ketekeaterau but as Te Whanga was even at that date slightly above highwater mark, salt water could not have even entered the lake as the " pupus " were found only at its mouth.

Eels were plentiful in Te Whanga, as plentiful as they were at Whakaki.

(a) No answer.

(b) It is true that a claim under Equity and good conscience has perhaps never before been made by the natives, and indeed such a claim would not have been made in that Petition had they known of that valuable information in App. & Journals of the House E. No. 10, page 9, 1862.

And that in E. 9, page 15, 1859: In agreeing to make a claim under " equity and good conscience " they had in mind the fact that the Te Whanga was given to the Napier Harbour Board for the purposes of Harbour, and since by the earthquake it had become dry land and of no further use for the purpose it was given, they should at least participate in the area that they had always maintained as theirs.

They argued that that to which the Harbour Board had acquired a right over by Statute had gone out to sea and what remains now is theirs by Right under the Treaty of Waitangi.

(a) It was never sold by them.

(b) It comes within the scope of the 2nd article of the Treaty.

And supported by the late Queen Victoria's disclaimer over the " Territorial Rights " unless on a free cession by the Natives.

British Territorial area extended three miles to sea though Native fishing rights in some localities extended further out than that.

By virtue of the Second Article of the Treaty, a Treaty recognised by Imperial Statute and by the Land Claims Ordinance of 1841: Our fisheries and other properties were guaranteed to us.

If British Law is to supercede the conditions of a Treaty which is the foundation of Imperial Sovereignty in New Zealand then the Treaty is of no value as it would fail in those conditions guaranteed to the Natives.

163. In recapitulation of the case for the petitioners and their replies to the Crown and Harbour Board cases the Court makes the following submissions:—

- (a) The portion of the Whanganui-o-Rotu outside the boundaries of the Ahuriri deed has not, as far as the Court can ascertain, been specifically reserved or specifically promised by the Crown to the Natives in any way. Also, such area is not included in the Ahuriri deed of cession to the Crown. If the area was land within the meaning of the Native Rights Act, 1865, or Native land within the meaning of the Native Lands Act, 1865, the owners had an opportunity and right of asserting their title against the Crown until the year 1874, when by Act of Parliament the area was vested in the Napier Harbour Board. Again assuming the area to be " land," this Act of Parliament extinguished the Native title, and the title of the Napier Harbour Board can be set aside only by another Act of Parliament (which is a matter entirely within the discretion, dominion, and control of Parliament itself) or by proceedings in the Supreme Court of New Zealand which could show that the issue of a certificate of title to the Napier Harbour Board was not done in accordance with the provisions of the Act. There has been no suggestion of any mistake in the issue of the certificate, and to this Court it must be considered impregnable to any form of judicial process. Even if the area had been promised, and that does not appear to be so, the only method by which redress could be obtained is by moving Parliament to pass appropriate legislation.

NOTE.—In *Riddiford v. the King* the following passage occurs in the Privy Council decision (N.Z.P.C. Cases at page 116):—

It is impossible to suppose that such an engagement would not be scrupulously fulfilled to the very letter. But suppose there were a failure on the part of the Crown in carrying out its engagement (if it is permissible for the sake of argument to make such a supposition) no Court of law or equity could give relief. The only remedy would be in representation and remonstrance addressed to the advisers of the Crown.