

The Maoris, on the other hand, have contended that the greater part of the area was not included in the sale to the Crown.

The claim of the petitioners is summarized in clause 8, and the prayer of the petition, which are as follows :—

8. Your petitioners therefore submit that they have—

- (a) A claim as of right to the territory represented by the islands, now lost or left undefined in the general emergence of land ; and
- (b) A claim according to equity and good conscience, with a large measure of right, to share in the benefits which may accrue from the added territory.

WHEREFORE your petitioners humbly pray that your Honourable House will make provision by law for an examination of these claims of your petitioners, and for the satisfaction of such just and equitable rights as your petitioners may be found to possess ; and for such further or other relief as to your Honourable House may seem meet.

The present Court in its inquiry has directed its attention to two main questions, namely :—

- (1) Whether the area was included in the sale to the Crown.
- (2) If not, whether the area was an arm of the sea, in which case it would belong to the Crown, subject, perhaps, to fishing and possibly other rights of the Maoris ; or whether it was an inland non-tidal water, in which case it would have belonged to the Maoris as part of their tribal territory.

These questions required to be determined in order to determine whether the rights of the Maoris were in any way invaded by the vesting of the area in the Harbour Board. The Court in its report has shown that it is of the opinion that the greater part of the area was not included in the sale to the Crown, but it has been unable on the evidence submitted to it to come to a final conclusion on the second question set out above. The views of the Court are summarized at the end of the report in paragraph 163 appearing on pages 89–91 of the printed report.

In expressing the view that the greater part of the area was not included in the sale to the Crown, the Court has differed from the view taken on this question by a Commission set up in 1920 to deal with the matter. The Court in its report deals at length with this question and sets out fully the grounds for the conclusion (see paragraphs 19–89).

The petitioners ask for the “ satisfaction of such just and equitable rights as they may be found to possess.” In order to establish that they do possess some just and equitable rights it appears to me that they must be able to show that they had some rights in respect of the area, at the time when it was vested in the Harbour Board, when whatever rights, if any, they had appear to have been extinguished.

Owing to the lack of evidence above referred to the Court has been unable to decide this matter one way or the other. It does appear, however, that if the area was not included in the sale the Maoris, at the time of the vesting in the Harbour Board, must either have owned the area under their customs and usages or must have had some fishing and, possibly, other rights in it ; and such rights of ownership or other rights must have been extinguished by the vesting, without payment of any compensation. However, at the time when the rights, if any, which they had were extinguished in 1874 the results of the earthquake could not have been foreseen, and therefore any redress to which they may be entitled should be assessed on the value of those rights at the time when they were extinguished.

The petitioners suggest that the very great increase in value of the area as the result of the earthquake should enable some recompense to be made to them, whereas prior to the earthquake such was not feasible.