

3. On the question as to whether Whanganui-o-Rotu was prior to November 1851 or at any rate at that date, which it is submitted is the vital date, really an arm of the sea partially landlocked and subject to tidal influences we submit the following evidence—

- (a) Copy of Captain Cook's chart dated October 1769 showing a distinct Para. 104. entrance to the landlocked Whanganui-o-Rotu and showing also opposite the entrance a mile off shore a depth of 14 fathoms.

The original chart can no doubt be inspected by Your Honour at the Dominion or Parliamentary Library Wellington.

- (b) A map in Yates, New Zealand dated 1835 showing entrance to what is Para. 96. called McDonnell's Cove which is in fact Whanganui-o-Rotu. The word "Cove" is only used it is submitted in connection with sheltered portions of the sea coast.
- (c) Admiralty Chart 1855 (produced) showing entrance to Harbour before any artificial work done there and showing 5 fathoms of water at entrance and tidal speed of 7 knots.
- (d) Harbour Board Commission Map dated 1863 (produced) showing varying Paras. 91 to 94. depths all over the Whanganui-o-Rotu and at the North-eastern extremity of lagoon showing ebb and flood of the tide right up to Western extremity known as Wharepanga. No artificial works had then been carried out.
- (e) Map of late survey by Mr. Rochfort showing exact present position of all islands mentioned in the Harbour Board Act of 1874 thus refuting claim of Petitioners that islands incapable of identification and therefore lost to them.
- (f) Evidence given on the Commission of 1920 by Mr. Henry Hill, B.A., F.G.S.
- (g) "Transactions of N.Z. Institute" 1908 Vol. 41 page 429 giving diagrams prepared by Mr. Hill of former configuration of the coast.

It is submitted that no evidence can be produced to show that any of the Harbour Works executed at the Port have affected the character of the Water in the Lagoon as suggested by the Petitioners.

We do not intend to discuss seriatim the various clauses of the Petition but the Crown cannot admit the correctness of many of the statements contained therein and submits that they are not borne out by evidence.

It is noted that the Petitioners tacitly admit that they did part with their title to the Lagoon but suggest that the changes brought about by the earthquake have created a new position entitling them to share the benefits derived by the Harbour Board due to Nature's upheaval.

16. Summed up, the Crown claims—

- (a) That the lagoon was never at any time reserved to the Natives and that its inclusion in the return (E.-10 of 1862) of

general reserves for Natives which have been made in cessions of territory to the Crown.

was a mistake of the compiler Mr. Andrew Sinclair.

- (b) That the Whanganui-o-Rotu was intended by all parties to pass to the Crown under the Deed of Conveyance of the Ahuriri Block to the Crown dated 17th November, 1851, and that it did so pass.

- (c) That the Whanganui-o-Rotu was at the date of the signing of the deed of conveyance of the 17th November, 1851, a lagoon or arm of the sea and, being subject to the rise and fall of the tide, was by common law the property of the Crown.

17. The case put forward by the Napier Harbour Board is as follows:—

In the Native Land Court, Ikaroa District, New Zealand.—In the matter of Application No. 44 for an inquiry into the Petition of Hori Tupaea and others for relief in connection with Whanganui-o-Rotu and right of property therein.