

Harbour and Whanganui-o-Rotu occurred once at least between 1769 and (say) 1824 (Pakake fight), because a considerable height of water behind the gravel-bar provided the only means whereby at that time an effective channel could be cut to the sea—and no considerable height of water could be attained while Ruahoro was open as an escape to the sea. In other words, it seems necessary to assume that Ruahoro became closed before one can visualize a body of water behind the gravel-bank sufficient to run over or be led over the spit at Ahuriri and cause the channel we now know by that name. It may possibly be suggested that Ahuriri was cut by a change in course of the Tutakuri River between 1769 and 1824 while Ruahoro was still open, but for this to be so it would be necessary to suppose that there was at that time no communication between Ahuriri Harbour and Whanganui-o-Rotu sufficient for the augmented volume of water from the southern end to find its way out by way of Ruahoro. The nature of the ground, however, leads me to assume that before the inland water rose to the normal height of the gravel-bank it would have made a continuous sheet of water from Petane to Seinde Island and caused a scour through Ruahoro that would have been sufficient to keep it open and automatically wide enough to take all the water offering.

105. Now I think it can be taken that the Whanganui-o-Rotu has not been continuously open to the sea for the past two hundred years (or centuries as the Harbour Board case puts it). It is quite evident that an opening at Keteketerau or Ruahoro would be closed up directly a heavy sea followed a dewatering of the Whanga. Up to (say) 1769, then, we can treat the Maori version as entirely trustworthy—*i.e.*, the lake closed up at times and remained closed up for considerable periods, and had to be reopened by the hand of man.

106. In 1824 we find the opening to be at Ahuriri. I can find no evidence that at any time after that date it closed, but much evidence of strenuous endeavours exerted by harbour-making authorities to keep it open. The statement has been made that the opening once closed despite these attempts to keep it open, but so far no satisfactory substantiation of this point has been made.

It seems, however, necessary to look into this aspect in order to determine what would be the effect if one were satisfied that there were periodic closings of the mouth of the Whanga.

107. I have made a diligent search, and, as far as I can see, the legal status of waters similar to those of the Whakaki Lagoons, Tangoio Lagoon, and the Whanganui-o-Rotu before the signing of the Treaty of Waitangi have never been the subject of proceedings in point in the Supreme Court of New Zealand. The Native Land Court has issued titles based upon the rights of the owners found entitled under their customs and usages in respect of the lagoons at Whakaki and in respect of the lagoon at Tangoio. The reference to the Treaty of Waitangi in this paragraph is for the purpose only of referring to a date at which it might be assumed no pakeha artificial means had been adopted to vary permanently the characteristics of the Whanganui-o-Rotu.

108. In New South Wales the extent to which the territorial rights of the Crown affect lagoons similar to those now being discussed has been determined. On the 28th March, 1905, the following judgment was delivered in the case of *Attorney-General v. Merewether*, N.S.W.S.R., Vol. 5, at page 159, by A. H. Simpson, C.J. in Eq. :—

By Crown grant dated the 29th February, 1840, the Crown granted to Robert Dawson a piece of land containing fifty acres in the parish of Newcastle, described in the grant as being one of five allotments of fifty acres each, measured to the South of James Mitchell's nine hundred and fifty acres, commencing at a small creek at the northern extreme of the west boundary line, and bounded on the west by a line bearing south seventeen chains, on the south by a line bearing east fifty chains to the beach, and on the east and north by the beach and a south margin of a small lake (dividing it from James Mitchell's nine hundred and fifty acres farm) bearing up westerly to the northern extreme of the west boundary line aforesaid, reserving among other things all land within one hundred feet of high water mark on the sea coast and on every creek harbour and inlet.