

passing of this Act have been granted by the Crown, shall, on the passing of this Act, be granted to the Superintendent of the said province, upon the trusts and for the purposes mentioned in the second section of this Act: Provided however that all the lands described in the said Schedule shall be deemed to be reserves within the meaning of and subject to be dealt with under "The Public Reserves Act, 1854," and any Act amending the same, and "The Harbours Act, 1870," and any Act amending the same; but the purpose for which such reserves are hereby made shall not be alterable by the provincial Council of the said Province.

120. In this Act what was known to the Europeans of (say) 1851 as Ahuriri Harbour (or Ahuriri Harbour (proper) a little later) is described as the "Port Ahuriri Lagoon of 74 acres." What was known to the Maoris as Whanganui-o-Rotu is described as "The Ahuriri Lagoon of 7,900 acres."

The certificate of title resulting from these Acts has already been quoted as paragraph 114.

121. This certificate of title, founded as it is upon an Act of Parliament, would appear to be unassailable and indefeasible unless Parliament itself should decide to make it vulnerable or defeasible. Without going exhaustively into the abstract question of the rights of Parliament, it would seem that two quotations sum up the present position. These are, firstly—

The power and jurisdiction of Parliament is so transcendent and absolute, that it cannot be confined either for cause or persons within any bounds. (Coke.)

The second one is—

In fact there is only one humanly possible thing that Parliament cannot do, and that is to bind any succeeding Parliament. For the same sovereign power which enacted the restraining statute will reside in the Parliament which proposes to alter or repeal it; and, consequently, the enactments of that later Parliament will be equally binding with those of the earlier. (Stephens.)

122. There would really be no further need to comment upon the case for the Harbour Board were it not for the fact that it purports to go beyond establishing the title of the Board: it goes so far as to attack the status and question the *bona fides* of the petitioners. I think that this is an unfair attack, particularly so if it allows Mr. Prentice to establish points in the Maori history of the district by direct statement or inference and not by evidence. We know that Mr. Prentice has a good knowledge of Maori history, so profound in fact that one has no difficulty in recognizing his efforts in this case as those of an advocate. I offer the following comments upon this aspect of the case for the Napier Harbour Board:—

123. As regards clause 1 (a): What seems necessary for the petitioners to do is to establish that the Whanganui-o-Rotu was not an arm of the sea or that they had rights which could be asserted over it. It is not necessary that they prove it to be a fresh-water lake so long as they can make it appear that this water or land covered by water is a property over which they had assertible rights. Conversely to Mr. Prentice's statement that the Natives had not proved the lagoon to be fresh, I asked him to supply evidence that it was, in 1851, tidal. He submitted the following points, which he claimed to be proof of this fact, and which I will set out and deal with clause by clause:—

124:—

1. *Chart No. 1*: Prepared for Harbour Commission in 1865. This chart is already before the Court, and attached to it you will find a statement by Mr. Pfeiffer to the effect that this particular plan is a copy of Pelichet's plan drawn in 1851 in the same year as the purchase was completed. This plan indicates an inward and outward flow of tide: the strength of tide is given as 6 to 7 knots. For the information of the Court we may mention that the outward flow of the tide is indicated by a plain arrow and the inward flow by a feathered arrow. This is the practice usually adopted in Admiralty charting.

125. I have already dealt with the authenticity of this Chart. It is not a copy of Pelichet's plan drawn in 1851 although it may have been founded on it. It is the one referred to in Mr. Bousfield's letter of the 17th April, 1865, as "Chart No. 1 of *Ahuriri*