From the file it appears that the certificate issued on the 6th July, 1871, and that before the land was granted to the Thames Harbour Board under the Act of 1876 the Natives had conveyed their rights to the Crown.

155. The petitioners urge their ancient fishing practices in the waters of the area as support to their claim to ownership of the soil. On reviewing this phase of the petitioners case, however, it is necessary to remember that mere fishing-rights do not carry with them the ownership of the soil. If the Maori people owned the Whanganui-o-Rotu, their fishing-rights were merely part of the general right of ownership. If, on the other hand, the area is tidal water of the sea or forming an arm of the sea, some assistance may be had from a perusal of *Waipapakura* v. *Hempton, (1914) 33 N.Z.L.R.*, p. 1065.

156. In this case, at pp. 1071 and 1072 (*ibid.*), Stout, C.J., says :—

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> Even if the Treaty of Waitangi is to be assumed to have the effect of a statute it would be very difficult to spell out of its second clause the creation or recognition of territorial or extra-territorial fishing-rights in tidal waters. There is no attempt in the Fisheries Act, 1908, to give rights to non-Maoris not given to Maoris. All have the right to fish in the sea and in tidal rivers who obey the regulations and restrictions of the statute. This statute has not given, and no New Zealand statute gives, any communal or individual rights of fishery, territorial or extra-territorial, in the sea or tidal rivers. All that the Fisheries Act does is to regulate all fisheries so as to preserve the fish for all. There are concessions given, but these concessions are to Maoris, as appear in the sections already referred to, and do not affect the question to be decided in this case. Now, in English law—and the law of fishery is the same in New Zealand as in England, for we brought in the common law of England with us, except in so far as it has not in respect of sea-fisheries been altered by our statutes—there cannot be fisheries reserved for individuals in tidal waters or in the sea near the coast. In the sea beyond the three-mile limit all have a right to fish, and there is no limitation of such general right in the regulations dealing with such waters. There is special legislation regarding extra-territorial waters the result of treaties, but that does not apply to us. In the tidal waters—and the fishing in this case was in this area—all can fish unless a specially defined right has been given to some of the King's subjects which excludes others. It may be, to put the case the strongest possible way for the Maoris, that the Treaty of Waitangi meant to give such an exclusive right to the Maoris, but if it meant to do so no legislation has been passed conferring the right, and in the absence of such both *Wi Parata* v. *The Bishop of Wellington*(1) and *Nireaha Tamaki* v. *Baker*(2) are authorities for saying that until given by statute no such right can be enforced. An Act alone can confer such a right, just as an Act is required in England to confer such a right unless some charter from the Crown prior to Magna Charta can be proved : see *Halsbury's Laws of England*(3). There is no allegation in this case that the land over which the tide flows belongs to the Maoris. The Maoris have land adjoining, but if so the Crown grant would be to high-water mark and would not include the land under the sea or tidal waters. In *Mueller* v. *The Taupiri Coal-mines, Limited*(4) the Court of Appeal held that even the bed of a navigable river remained vested in the Crown and did not pass to grantees of land fronting the river.
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> Therefore, so far as sea-fisheries are concerned—and the question of fishing-rights on inland rivers adjoining Maori land is not before the Court—there must, in our opinion, be some legislative provision made before the Court can recognize the private rights, if any, of Maoris to fish in the sea or in tidal waters.

(1) 3 N.Z.Jur. N.S. S.C. 72.
(2) (1901) A.C. 561.
(3) Vol. XIV, p. 574, pars. 1269, 1274.
(4) 20 N.Z.L.R. 89.

157. With regard to the reference to *Mueller* v. *The Taupiri Coal-mines, Limited* in the foregoing paragraph, it is well to remember that in *Tamihana Korokai* v. *the Solicitor-General*, 15 G.L.R. at page 106, Stout, C. J., says :—

> The case of *Mueller* v. *The Taupiri Coal-mines, Limited*, turned on the effect of a grant under the Land Acts.

158. It will be seen, therefore, that, although the ancient fishing usages of the Maori people over the area in question may be good evidence of occupation and to some extent evidence in the matter of the nature of the lagoon, they could not have been used to set up a title against the Crown unless the area was deemed to be "land" within the meaning of the various Native Land Acts.