

O. L. Bousefield (17/4/65):—

For whereas by Captain Drury's soundings the greatest depth was 5 fathoms in 1855, now I find in 1865 the greatest depth to be 4 fathoms . . .

Herald, 2/12/65.

That since the commencement of what are called the Harbour Improvements a very great change for the worse has taken place in this interesting locality (Iron Pot). At all events it can only be maintained in a useful state at an enormous first cost and an annual expenditure.

Mr. Carruthers:—

There was a probability of the shingle which drifted round the Bluff silting up at the mouth of the Harbour. . . . and in any case these groins will of themselves be very valuable protective Harbour Works tending to improve the bar and widen the Eastern Spit. *Herald*, 2/5/74.

The vigorous prosecution of the proposed Breakwater and Harbour Works at Port Ahuriri is one of the pressing necessities of the place if Napier is to hold her own. *Herald* 4/5/74.

. . . pile driving for the breastwork was started on the 5th instant. These works of men have materially altered the character of the Te Whanga. It gradually became tidal and ceased to be a fresh water lagoon. *Herald*, 9/5/74.

To the natives, however, this change made no difference to their claim, and to the uses they made of the area. It was still the source of food as it had been to their elders.

In 1851 a sale was made to the Crown of the Ahuriri Block. It was made under three separate arrangements. The first dealt with the main block. Its southern boundary commenced at Purimu and ran in a westerly direction to the Kaweka Ranges. After traversing its westerly and northerly boundaries it fell into the Waiohinganga Stream which formed part of its Eastern boundary. At the mouth of this stream it followed the western foreshores of Te Whanga to the starting point at Purimu. Para. 30.

The reserves made were—Puketitiri,
Wharerangi, and
Te Roro-o-Kuri.

The second arrangement made was in connection with the Gravel Spit—Boundary commenced at Ruahoro on the Wai-o-Hinganga, followed foreshores eastern side of Te Whanga, round foreshores of Harbour (Ahuriri) and back along foreshore of open sea to a point opposite Ruahoro where it turned in to starting point.

The Reserves made were—Te Ihu-o-Terei, and
Parapara.

No. 3 arrangement was for Harbour Proper—Boundary from below old Traffic Bridge around High Water mark along southern and eastern boundary taking in Gough and Te Pakake Islands.

Reserving to natives' canoe landing places, Mataruahou and burial ground of 2 of Tareha's children. And further securing to the natives equal rights with the Pakehas to fishing and to cockle and mussel beds, &c.

Twenty-three years later, in 1874, the whole of Te Whanga was vested in the Napier Harbour Board by Statute. The natives, however, claim that Te Whanga still belongs to them.

Issues of the Case

9E No. 10, 1862:—

1. Excluded from Sale and shown as a Reserve.

2. The Treaty of Waitangi (Article 2) guaranteed to the Natives the full exclusive and undisturbed possession of their lands and estates, forests, fisheries and other property which they may collectively or individually possess, so long as it is their wish and desire to retain the same in their possession.

Para. 19, *et seq.*

It is indisputable that Te Whanga was in the possession of the Natives when the Treaty was signed.

Therefore the Treaty protects the Natives unless it can be shown:—

1. That the Treaty does not apply,
2. That the Natives have sold their interest in Te Whanga, or
3. That Natives have abandoned their interest.

The Treaty constitutes in fact the only condition on which the English Sovereignty in New Zealand is founded.