The Common Law if applied and allowed to over-rule the " pledges " would most certainly be at variance with the intentions of Her Majesty when entering into the Treaty with the Natives.

Mr. Justice Chapman said that the Treaty of Waitangi was imposed upon the Colony as a sacred Trust . . . It was the duty of the Court to take judicial notice of the Treaty of Waitangi.

The Treaty had been recognised by Imperial Statute and by the Land Claims Ordinance of 1841.

It is true that Roro-o-Kuri is first of Reserves mentioned in Deed of Ahuriri Sale. It however was reserved because it was included in the Block sold, *i.e.*, the Ahuriri Block.

The Solicitor for the Crown erred in supposing that Roro-o-Kuri was reserved out of Te Whanga.

We admit reference in the Deed to equal rights with the Europeans, to fishing, cockles, &c., but we confine its application to that area contained in the Harbour proper which was limited by the old Traffic Bridge.

In reference to the words appearing in the Deed " with their sea, the rivers and the waters and the trees and all appertaining to the said land."

Owing to the absence of such evidence as are now before Your Honour, *i.e.*, " Recorded a Reserve " and that " pipies " or " cockles " were not at that period found beyond the Old Traffic Bridge until recent years, when tidal waters commenced to encroach further and further into the lagoon." It was difficult for the Commission to arrive at any other conclusion than that which they themselves saw : " pipies " spread over a large portion of Te Whanga.

The application of the word sea or moana was however confined in 1851 to where the cockles or pipies, fish, &c., were found, and to the only portion that was at that period salt water, namely, the Harbour proper.

The " rivers and waters "—these were actually on the land that was sold—The Ahuriri Block, and did not refer to Te Whanga.

The timbers were also on the Ahuriri Block and not in Te Whanga.

Mr. Parks' statement does not support the argument that Te Whanga had been ceded.

The report was made five months before the Deed was signed. It merely indicated their desire to acquire Te Whanga along with the land from the Natives.

The latter portion of that paragraph indicates the portion that was actually ceded by the Natives for a Harbour.

It was owing to the cession of this Harbour and the arrangements agreed to with the Natives why it was necessary to add to the Deed, " It is agreed we shall have an equal right with the Europeans to the fish, cockles, &c., &c."

The report to the Colonial Secretary of July, 1851, is just another indication of that desire to acquire Te Whanga. That intention, however, was never effected, as is shown by the boundaries, &c.

It seems evident that Parliament in 1874 was not aware that the Natives had not sold Te Whanga as it was already vested in the Superintendent for the District by the Act of 1854.

As to the Act of 1874, we are peculiar to learn why it was necessary to vest that area in two separate sections—Schedule 12 : Port Ahuriri Lagoon of 74 acres—this includes an area that was agreed upon as a Native Reserve for Church, school, &c.

Schedule 14 : The Ahuriri Lake of 7900 acres. You will note it was described as a Lake. A lake is not an arm of the sea.

We further ask why has it always been necessary for the Harbour Board to seek on several occasions since 1874 further powers and authority from Parliament ?

Act of 1875, Act of 1887, Act of 1912, and Act of 1914.

We repeat that the boundaries set out in the Deed and later laid down by survey did not include Te Whanga. The Deed boundaries are those that apply to Te Whanga. Any recent plan with boundaries extended, cannot be accepted.

Paragraph marked 2 : We have already replied to the effect of the Common Law over this area as against our Rights under the Treaty of Waitangi.

We have already submitted arguments and proofs that Te Whanga was in 1841 and even up to 1865, fresh water. The Harbour proper was fresh water even after inauguration of Provincial Government.

See *White Wings*, Vol. 2., page 97 (Turnbull Library).

Reasons for non-success in previous claims have already been submitted. That we had failed in the past is no reason why we should be debarred from making further investigation of our rights, when new and good grounds become available. Especially as our important source of information in these matters has and is still made unavailable to us.

In 1851, tidal waters did not enter the " Lake." Tidal waters merely backed up the flow of fresh water, but did not enter the rapids.

Te Whanga was described in 1851, and at later dates even down to 1874, as a " Lake."

There were several eel weirs in the Lake when Tutaekuri broke into it. Among them was one at Taputeranga. See Napier Minute Book 19, page 414, date 1889.