I now give the extracts from Native Land Court Judges referred to :—

From Judge Browne :—

1. The Court disagrees with the first allegation of the Crown that Native custom did not recognize the exclusive ownership of the bed of rivers such as the Wanganui. The bed of the Wanganui River belonged to the Natives through whose territory it ran just as much as the land forming its banks did. The test is the fact that if one of the outside tribes had claimed to make use of the bed for the purpose of erecting patunas, on the ground as asserted by the Crown that it was public property, the claim would, without doubt, have been strenuously resisted by the local people and would probably have resulted in bloodshed.

2. The general use made of the river in recent years without any proper agreement or arrangement was, in the Court's opinion, largely due to the fact that the Maoris living on its banks, owing to their want of unity and the absence of a powerful and influential leader, were not strong enough to offer an effective resistance and also to the mistaken assumption on the part of the Crown and on the part of Europeans generally that the river was a main highway accessible to every one. The local Natives used the bed of the river from time immemorial for the erection of eel-weirs and other fish-traps yet these were indiscriminately and, as far as the Court can see, without any right or justification, destroyed or done away with to provide a passage for river steamers. Any protest by the unfortunate people who owned the eel-weirs remained unheeded.

3. In the Court's opinion, so far as the Maoris are concerned, these rights, in the case of this river, follow as a matter of course and are incidental to the ownership of the bed of the river and cannot in any way be separated from that ownership. This Court in all its experience of Native land and the investigation of the titles thereto, never once heard it asserted by any Maori claimant that the ownership of the bed of a stream or river, running through or along the boundaries of the land the subject of investigation, whether that stream or river was navigable or not, was in any way different from the ownership of the land on its banks. Nor has it ever heard it denied that the tribes or hapus that owned the land on the banks of a stream or river had not the exclusive right to construct eel-weirs or fish-traps in its bed or exercise rights of ownership over it. The river-bed, being a source of food in ancient times, would be looked upon as a highly important asset to any tribe and the right to it would be very jealously guarded by the members of that tribe.

From Chief Judge Shepherd :—

1. The nature of the inquiry to which the Court is required to direct its mind in ascertaining whether land covered by water is or was Native customary land or not has been indicated by the Court of Appeal in *Tamihana Korokai* v. *the Solicitor-General*, (1913) 32 N.Z.L.R., 321, with respect to Lake Rotorua, where the particular subject of consideration was whether Natives were the owners or whether they had merely fishing rights. The judgment of Mr. Justice Edwards in that case, so it seems to me, makes it clear that it is not enough that Natives show with respect to navigable rivers and lakes that they had exclusive rights of fishing. What they must show is that Native custom recognized a separate and distinct property in the bed of the river or lake ; that is to say, that there was some rule in native custom by which land covered by water was accounted as such and therefore was subject to Native proprietary rights in the same way that land in the ordinary sense was.

2. There are, of course, many rivers and streams included in titles to Native lands issued out of the Native Land Court simply as part of the countryside comprised in such title orders. In these cases the Court has necessarily recognized the ownership of the Natives in the bed of such rivers and streams as flow through the land affected, and it is only a question of the degree as between rivers sufficiently deep to be considered navigable (by our thought) and those not capable of being described as navigable.

3. The Natives, in my view, owned immediately before and at the making of the Treaty of Waitangi so much of the North Island of New Zealand as had not at that time been alienated by them. The Crown has not shown that at the date material to this judgment the Natives had alienated the bed of the Wanganui River. Neither do I understand the Crown to allege any such alienation as part of its case.

(The learned Chief Judge, as indeed did Judge Browne, no doubt relied upon opinions of Bishop Selwyn and Sir William Martin, at one time Chief Justice of New Zealand, as authority for the statement that all land in New Zealand, apart from such as may have been alienated, belonged to some Maori tribe or hapu.)

From Judge Carr :—

1. It must be conceded that the pre-treaty Maori never concerned himself with that abstruse question as to whether or not a river or lake was land covered by water. In many ways the mind of the Maori works inversely to that of the European. The Courts of the latter have laid it down to him that to possess the exclusive use of a lake or river he must own the bed thereof. To the