Then later :—

Therefore, when you find the grant of a weir, the grant of the place where you take the fish, and the grant of the bed of the river there, it seems to me that is of wider import ; and that from it you are to infer, if there is nothing to the contrary, that the grant of the soil is not the grant of the soil merely where the weir is situated, but is the grant of the soil over which the river runs, and upon which there is the right to construct weirs for the purpose of taking fish.

There is a second ground, and that is this : What are the apt words apart from the use of the word " weirs " to create a several fishery ? Do you want the word " several " ? Do you necessarily look for that word ? I think the answer is no. Mr. Neville has shown me from the case of *Malcomson* v. *O'Dea* and *Neill* v. *Duke of Devonshire*, that in neither of those cases do you find the word " several " used. You find a grant of the right of fishing or the grant of the weir or something of that kind and from that there follows the inference that what is granted is a several right.

Before leaving this case and turning for a moment to any supposed loss of rights through absence of manifest acts of ownership, I think it appropriate to cite words used by Lord O'Hagan on another occasion, which are relevant to another branch of this inquiry :—

" An interruption may have been permitted through the absence of the proprietor ; or through his ignorance, partial or complete, or the acts relied on ; or through his neglect or indifference to them as not vitally affecting, in his own case, his interest or position ; or as requiring from him, for the purpose of resistance, effort, or expense unjustified by the necessity of the case ; or as allowed from kindly or benevolent motives to humble people for a great length of time. And it would not seem just, as it would not be legal, on the ground of such an interruption, so tolerated, to pronounce the forfeiture of his vested estate."

It appears to me that I can entirely give effect to these various acts of goretting, gravel getting, and cattle fencing by referring them to an absence of objection, by the owner of the bed of the river, to an act which did him no harm, and which was reasonably convenient, or necessary if you will, for the protection or enjoyment of the property of the riparian owner.

A finding that prior to the treaty, Maori custom and usage established that the Maoris held the bed of the river necessitated a factual finding that such usage was exclusively exercised by the particular tribe claiming. That the tribe used the river for the coming and going of their canoes and for fishing by means of eel-weirs and other traps is beyond question as is also the permanent nature and construction of the weirs. The Crown set out to show that the use to which the river was put was open to all Maoris and not the exclusive privilege of a certain tribe or a constituent group of a tribe. Mr. Prendeville, counsel for the Crown, in the Maori Appellate Court submitted :—

> " In the light of differences of opinion amongst jurists as to the nature of the ownership of beds of rivers, it is impossible, I submit, to say with confidence that the Maori had such a high legal conception as to claim or hold ownership rights of the bed of the river."

That inferences or presumptions of title from the use to which the river was put should be the same whether exercised by Maoris or Europeans, can, I think, in this case, be conceded. Consequently, if it could be shown the river was of necessity or by use, a highway for Maoris for any tribe or hapu in New Zealand and not merely a private road for the use of a particular tribe, no particular tribe would be entitled to claim ownership of the bed without proof of right in the bed of the river superior to any right-of-way or passage. The evidence that the river was open to passage by others than the claimant tribe was but slight, and, in my opinion, quite insufficient to disturb the finding of the Maori Courts that the use of the river as a right-of-way was confined to the Maoris of the tribe and no right of passage to the general public was established.

The Crown contention that the river was a highway and must be held by the Crown for the public was, as I have stated, in my opinion, on the evidence rightly rejected by the Native Land Court.

(In Mr. Justice Hay's judgment in the Supreme Court, he set out a quotation from a judgment of Mr. Justice Edwards and it appears from the quotation that Mr. Justice Edwards said the Wanganui River was navigable, but it is a misprint. What Mr. Justice