

The fact that the river was the “larder” of the Maoris settled on the banks of the river, the natural features of the river, and the fact that the settlement as a whole depended upon the river, and that the pursuit of fishing demanded weirs results in an accumulation of circumstances more significant than those that have been held sufficient to raise the presumption of ownership to the beds of English rivers.

In English law if, on the sale of riparian lands, the vendor reserves fishing-rights that accompanied his right *ad medium filum* of a stream, the reservation could rebut the presumption that his purchaser acquired the bed of the river *ad medium filum*. If such an owner had erected weirs while he was the owner and reserved the right to use those weirs, the ownership of the soil would still remain with him, and such a presumption must be held in this case in favour of the Maoris since they establish the ownership and use of the weirs they had erected.

Taking into account the presumptions and counter presumptions that can arise in the circumstances of each case, I think it abundantly clear that the ownership of the bed of the Wanganui River held by the Maoris under their usages and customs despite control by the Trust Board or River Board, could no more be said to be abandoned or lost to them than would be the case in respect of other large and practically unoccupied areas held by them. Earlier conveyances by Maoris to the Crown can be cited as showing that at the time they were drawn Maori ownership of the land covered by water was generally recognized and that the erection of eel-weirs carried the soil of the bed of the water in which they were erected and constituted a corporeal hereditament. For instance, the parcels relating to the Waitotara-Okehu Blocks, for which the Crown paid some £2,000, are described as “All that piece of land situated between the Okehu Stream the boundaries whereof are set forth at the foot of this deed and a plan of which land is found on the back of this deed with its rivers, trees, minerals, lakes, streams, waters, and all appertaining to the said land or beneath the surface of the said land and all our right, title, claim and interest therein.”

A Conveyance of 1863 seems to be of the land in which the eel fisheries were situated in streams. It is as follows:—

TRANSLATION

This deed written on this first day of October in the year of our Lord one thousand eight hundred and sixty three, is a full and final sale conveyance and surrender by us the Chiefs of the Ngapairangi tribe whose names are hereunto subscribed and witnesseth that on behalf of ourselves our relations and descendants we have by signing this deed parted with and transferred to Victoria the Queen of England Her Heirs and Successors in consideration of the sum of thirty five pounds (£35) paid to us by I. E. Featherston Esq. Land Purchase Commissioner all our rights title and interest in the eel weirs and Manga Fisheries situated in the streams in the Okui District, *i.e.* in the Matarawa, Kaukatia, Puwharawhara, Matakarohe, Mangamouku, Mangamuutu, Mataongaonga Streams, and their tributaries as set forth and shewn on the map attached to the back of this deed.

A true copy of original deed and translation.

H. HANSON TURTON.

Wellington, February 7th, 1876.

The Crown claim that the Maoris abandoned the bed of the river, if they once had it, is said to be supported by the effect of control and use of the river authorized by legislation. I think it is clear that before the Maori title can be regarded as extinguished by legislative action or control and use under legislative action, it must be apparent that expropriation of the Maori title was intended. It is well, therefore, to bear in mind the quotation and approval by the Privy Council of what is regarded as the classic declaration of the sanctity of Maori title set out by Mr. Justice Chapman in the *Queen v. Symonds* :—

Whatever may be the opinion of jurists as to the strength or weakness of the Native title, whatsoever may have been the past vague notions of the Natives of this country, whatever may be their present clearer and still growing conception of their own dominion over land, it cannot be too solemnly asserted that it is entitled to be respected, that it cannot be extinguished (at least in times of peace) otherwise than by the free consent of the Native occupiers. But for their protection, and for the sake