

- (d) The Deed must be read if possible to avoid ambiguity or inconsistency. The alternative to Clause (c) above is to make the whole deed obscure so far as the land comprised in the sale is concerned because what the deed described as the boundary of the land sold ceases to be the boundary altogether. To allow the deed to operate in this way is to give it an effect which was never intended by the Crown Purchase Officer and was certainly never intended by the Natives. They made clear (as the 1921 Commission found) that they would not sell their ancient rights in the lagoon.

The Deed must in all fairness be construed to satisfy the obvious and admitted intentions of the Natives, and not to work an absolute and irremediable injustice on them.

161 :—

REPLY TO CASE FOR CROWN

1. (a) The boundaries in the deed clearly indicate that Te Whanga was never sold.
- (b) The Islands in the said Lake are native customary lands and not Reserves.
- (c) Of the fifteen reserves recorded in Journals of the House, E. No. 10, page 9, 1862, 14 have already been proven Native Lands. Is it feasible or reasonable to dispute the fifteenth?

If so, then the facts (a) and (b) must be shown to be wrong, and the onus of proof is with the Crown.

The return showing "general Reserves" was honestly made, and at the request of Mr. Mantel.

That the deed nowhere makes any such reserve is admitted. There was no need, as it was not included within the area sold. It was exempted and thereafter included in the lists of Reserves.

There is absolutely nothing in the deed to suggest that Te Whanga was intended by all parties to pass to the Crown.

The boundaries in the deed absolutely disprove such a suggestion.

See Appendix, E. 9, page 15. Enclosure 5 in No. 1, Year 1859.

This Proclamation was issued to prevent the Europeans from trespassing on Native properties. First was in reference to lands south of the Tutaekuri, the second was for areas to the north of it.

2. Bounded on the west by the *Eastern Boundary of the Ahuriri Block*, on the north by the Mohaka River, on the east by the Waikari R., and on the south by the waters of H. Bay.

In the face of the above and previous statements of facts, the above suggestion would be altogether indefensible.

Re CROWN RIGHTS BY VIRTUE OF THE "COMMON LAW"

The Treaty of Waitangi was drawn up by the British people at the instigation of the Crown and its terms were acquiesced in by the Native people.

As the Treaty constitutes in fact the only conditions on which the English sovereignty in New Zealand is founded, therefore no law whether common or otherwise can by virtue of that Treaty override any of the privileges solemnly guaranteed to the Natives by that Treaty.

Among those possessions guaranteed to the Natives were their fisheries and other properties which they may collectively or individually possess, so long as it is their wish and desire to retain the same in their possession.

Te Whanga was a possession of the above description and was retained by the Natives.

Lord Stanley in directing Under-Secretary Hope to write the New Zealand Land Company 10/1/43 stated . . . "Her Majesty distinctly recognised the proprietorship of the soil in the Natives, and disclaimed alike all *Territorial Rights* and all claims of sovereignty, which should not be founded on a free cession by them."

What are the limits of these *Territorial Rights* over which Her Majesty disclaimed all claims of sovereignty (common law) which should not be founded on a free cession by the Natives?

Te Whanga comes well within the limits of "Territorial Rights."

Lord Stanley's letter continues . . . "that in entering into the arrangement with them *Her Majesty could not contemplate deliberately violating the faith which she had publicly pledged to the Natives* in conveying to the Company rights which on the part of the Crown she had solemnly declared."

To allow the Common Law to deprive us of our Rights to Te Whanga would be distinctly violating the faith which Her Majesty had publicly pledged to the Natives under the Treaty.

Sir Robert Peel . . . "If ever there was a case where the stronger was obliged by its position to respect the demands of the weaker, if ever a powerful country was bound by its engagements with a weaker, it was the engagements contracted under such circumstances with the Native Chiefs."

Our rights to Te Whanga come within the engagements contracted.

The Imperial Government in advising the Governor of New Zealand as to his powers, E. No. 7 page 7, paragraph 8, 1863, stated . . . You would be bound to recognise the negative powers which you would possess by preventing any step which invaded Imperial Rights or was at variance with the pledges on the faith of which Her Majesty's Government acquired the Sovereignty of New Zealand, or in any other way marked by evidence injustice towards Her Majesty's subjects of the Native Race,