"*Rights and Privileges*":—

Blackstone—The right of personal security,
The right of personal liberty, and
The right of personal private property.

Argument

1. It has been suggested that the Treaty does not apply because the Te Whanga was a Saltwater Tidal Area—in other words, part of the sea. The answer to that is threefold:—

(*a*) Even if this were correct the Natives are entitled to the Te Whanga because the Treaty refers specifically "to other properties" which they may collectively or individually possess. Even though composed of salt water or tidal the Te Whanga had always been in the possession of the Maoris, and they are entitled to have their claim recognized in priority to the rights of any local body or other institution such as a Harbour Board.

Blue Book, Under-Secretary Hope to N.Z. Comp., 1041/43.

Lord Stanley . . . "Her Majesty distinctly recognized 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".

(*b*) In actual fact the Te Whanga has become wholly salt and tidal only in recent years, and that only by intervention of man. Man's interference with natural conditions cannot be invoked to displace the ancient vested rights of the Natives.

At page 33.

The 1921 Commission was in error in reading into Mr. Parks' Report more than it contained. Mr. Parks, in referring to the "large sheet of water" did not say it was salt, though "salt water" might have been inferred when he referred to the Harbour Proper. This would only include the area up to the Iron Pot, so at the date of the sale by far the greater part of the lagoon was non-tidal.

The fact that mussels and pipis and other salt-water shell-fish were not found much beyond the Iron Pot area until recent years clearly demonstrates that for all practical purposes the Te Whanga was still a fresh water lake.

2. It is not contended that the Natives sold Te Whanga. The deed of Sale explicitly excludes Te Whanga. It is suggested, however, that Te Whanga was sold because in the very Deed which excluded Te Whanga there was a general clause inserted which excluded the sea and the rivers and the waters and the trees, and everything else appertaining to the said land.

The answer to this is threefold:—

(*a*) The Deed does not bear the meaning that Te Whanga had been sold. This general clause about the inclusion of the sea, &c., was inserted after completion of negotiations for the Harbour Proper, and was never intended to add to what was conveyed in the operative part of the Deed, which, of course, was the Ahuriri Block.

There is a well recognized principle of construction in documents to the effect that general words following particular words must be read in the light of the particular words. That is how the concluding clause in this document must be regarded. To treat it in any other way is to create an inconsistency and an ambiguity in the Deed.

There is further a well recognized rule in construction that if there remains a doubt as to the effect of a document, recourse can be had to acts done as a guide to the intention of the parties, particularly as to Acts done shortly after the incident.

Date when Harbour Board commenced reclamation works.

In this connection, it is to be mentioned that within ten years the Chief Tareha, one of the actual vendors, set up a claim that he was entitled to land being reclaimed by the Harbour Board, since he had only sold to high-water mark. This fact was accepted by the 1921 Commission.

Then later when the old traffic bridge was put up, Tareha again interposed to have the bridge treated as the limit for the Harbour.

The surveyors themselves did not, as was their bounden duty, connect up boundary as from Purimu to the Port.

Nor did the Crown Purchase Officer declare the Islands within Te Whanga as Reserves which was distinctly necessary if Te Whanga had been sold. The said Islands are still Native Land.